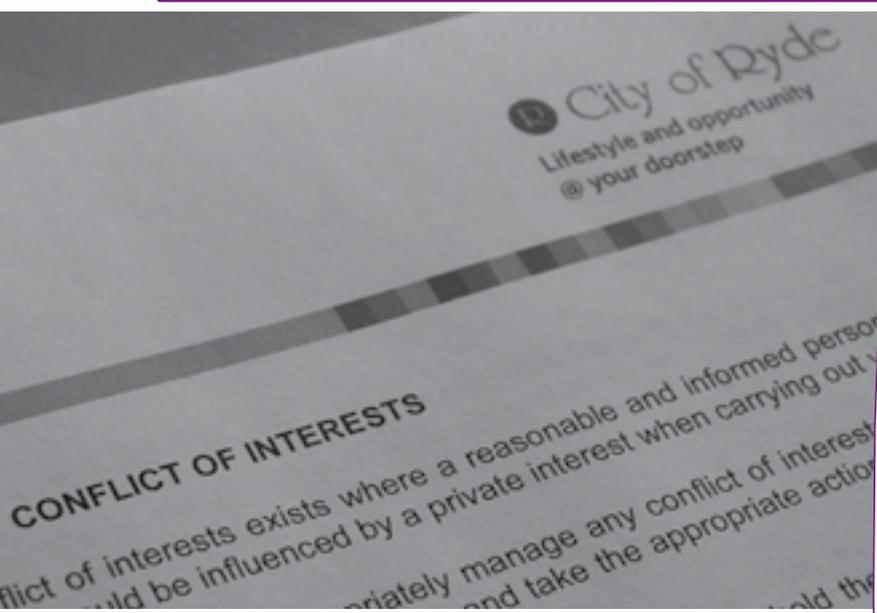


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INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES



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## INVESTIGATION INTO THE CONDUCT OF CERTAIN CITY OF RYDE COUNCILLORS AND OTHERS

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**ICAC REPORT  
JUNE 2014**

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**I·C·A·C**

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INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

**INVESTIGATION INTO  
THE CONDUCT OF CERTAIN  
CITY OF RYDE COUNCILLORS  
AND OTHERS**

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JUNE 2014**

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# I·C·A·C

INDEPENDENT COMMISSION  
AGAINST CORRUPTION  
NEW SOUTH WALES

The Hon Don Harwin MLC  
President  
Legislative Council  
Parliament House  
Sydney NSW 2000

The Hon Shelley Hancock MLA  
Speaker  
Legislative Assembly  
Parliament House  
Sydney NSW 2000

Mr President  
Madam Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into the conduct of certain City of Ryde councillors and others.

Assistant Commissioner Theresa Hamilton presided at the public inquiry held in aid of the 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 s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely



The Hon Megan Latham  
Commissioner

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## Summary of investigation and results

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) concerned a number of allegations primarily concerning Ivan Petch, a councillor of the City of Ryde Council (“the Council”), who also served as mayor of Ryde between September 2012 and September 2013.

The Commission investigated allegations that Mr Petch:

- organised for an offer to be conveyed to John Neish, then general manager of the Council, that his job would be safe after the September 2012 local government elections if he agreed to take certain steps to delay the proposed Ryde civic precinct redevelopment
- attempted to publicly embarrass Mr Neish and force his resignation from Council by leaking confidential information
- attempted to influence Danielle Dickson, then acting general manager of the Council, by stating that she needed to authorise the payment of legal fees by the Council in exchange for his support for her appointment as the permanent general manager
- failed to disclose a pecuniary interest in relation to a local newspaper when the Council was considering a motion that would benefit that newspaper
- released confidential, and in some cases commercially sensitive, Council information to his associates, either for their benefit or his own.

The Commission also investigated an allegation that Mr Petch and fellow councillors Justin Li, Jeffrey Salvestro-Martin and Terry Perram and former councillor Victor Tagg breached the *Election Funding, Expenditure and Disclosures Act 1981* (“the EFED Act”) in relation to newspaper advertising that appeared in the lead up to the 2012 local government elections.

In addition to the allegations concerning Mr Petch, the Commission also investigated an allegation that Richard Henricus, a contractor performing work for *The Weekly Times* newspaper, approached Bill Pickering, a councillor of the Council, and told him that, if he agreed to support a development application lodged by John Booth, owner and managing editor of *The Weekly Times*, Mr Henricus would ensure that *The Weekly Times* printed favourable newspaper articles about Mr Pickering.

### Results

Chapter 2 of the report contains a finding that John Goubran engaged in corrupt conduct by arranging through Tony Abboud to convey a threat to Mr Neish implying that Mr Neish’s position of general manager of the Council would not be safe after the 2012 local government elections unless Mr Neish agreed to establish a community consultative committee to consider the Ryde civic precinct redevelopment. The ultimate result of the establishment of this committee would be that the redevelopment would be delayed until after the local government elections.

Chapter 2 also contains a finding that Mr Petch engaged in corrupt conduct by arranging, through Mr Goubran, to convey a threat to Mr Neish, as outlined above.

Chapter 3 of the report contains a finding that Mr Petch engaged in corrupt conduct by releasing confidential information concerning the discovery of adult material on Mr Neish’s computer to various people in an attempt to encourage its reporting in the media so as to undermine Mr Neish’s credibility and reputation and to cast doubt on his suitability to serve as the Council’s general manager.

Chapter 4 of the report contains a finding that Mr Petch engaged in corrupt conduct by deliberately releasing confidential advice from the Department of Planning and Infrastructure (DPI) to Anthony Stavrinou on 26 November 2012 and an email from the Council’s group

manager of environment and planning to Norman Cerreto on 27 June 2012, in both cases with the intention that the information would be provided to Mr Goubran and used by him for his benefit.

Chapter 5 of the report contains a finding that Mr Petch engaged in corrupt conduct in May 2013 by attempting to improperly influence Ms Dickson to resolve in favour of six defendant councillors (of which he was one) an ongoing costs dispute in relation to Supreme Court of NSW proceedings in which the Council was involved, by making a threat implying that if she did not do so, he and his fellow defendant councillors would not support her application to be appointed as the Council's general manager.

Chapter 6 of the report contains a finding that, at the Council meeting of 26 March 2013, during consideration of the motion to split the Council's advertising between *The Weekly Times* and another newspaper, Mr Petch deliberately failed to disclose his pecuniary interest or conflict of interest arising from his financial dealing with Mr Booth (the owner and managing editor of *The Weekly Times*) and *The Weekly Times*.

Chapter 7 of the report contains a finding that Mr Petch engaged in corrupt conduct by deliberately releasing Council information that he knew to be confidential to Mr Cerreto, in relation to the Council waste collection and disposal contract.

Chapter 7 also contains a finding that Mr Petch engaged in corrupt conduct by deliberately releasing Council information that he knew to be confidential to John Mahony in relation to the proposed Ryde civic precinct redevelopment

Chapter 9 of the report contains a finding that Mr Henricus engaged in corrupt conduct when he approached Mr Pickering and told him that Mr Pickering would receive favourable publicity in *The Weekly Times* if he withdrew

his opposition to a development application lodged by Mr Booth in relation to the property on which the office of *The Weekly Times* was located.

Statements are made in the report that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons for the specified criminal offences:

### Ivan Petch

1. The common law offence of misconduct in public office in relation to his handling of the discovery of adult material on Mr Neish's computer and his attempts to leak the material to the media.
2. Five offences of giving false or misleading evidence pursuant to s 87 of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") relating to the discovery of adult material on Mr Neish's computer.
3. The common law offence of misconduct in public office in relation to his release of confidential advice from the DPI, and also internal Council emails concerning planning approvals.
4. Making an unwarranted demand with menaces with the intention of influencing the exercise of a public duty pursuant to s 249K of the *Crimes Act 1900* ("the Crimes Act") in relation to the approach to Ms Dickson.
5. Offences of accepting an indirect campaign contribution pursuant to s 96E of the EFED Act in relation to advertising published in *The Weekly Times* on 1, 7, 15, and 22 August 2012, and also 29 August and 5 September 2012.

## John Goubran

Making an unwarranted demand with menaces with the intention of influencing the exercise of a public duty pursuant to s 249K of the Crimes Act in relation to the approach to Mr Neish.

## Anthony Stavrinos

Giving false or misleading evidence to the Commission pursuant to s 87 of the ICAC Act in relation to the leaking of details of the discovery of adult material on Mr Neish's computer.

## John Booth

Giving false or misleading evidence to the Commission pursuant to s 87 of the ICAC Act in relation to his claim during the public inquiry that election advertising published in *The Weekly Times* under the banner of the website "saveryde.com" was organised by Barry O'Grady.

## Jeffrey Salvestro-Martin

Accepting an indirect campaign contribution pursuant to s 96E of the EFED Act in relation to advertising published in *The Weekly Times* on 29 August and 5 September 2012.

## Terry Perram

Accepting an indirect campaign contribution pursuant to s 96E of the EFED Act in relation to advertising published in *The Weekly Times* on 29 August and 5 September 2012.

## Justin Li

Accepting an indirect campaign contribution pursuant to s 96E of the EFED Act in relation to advertising published in *The Weekly Times* on 29 August and 5 September 2012.

## Victor Tagg

Accepting an indirect campaign contribution pursuant to s 96E of the EFED Act in relation to advertising published in *The Weekly Times* on 29 August and 5 September 2012.

## Richard Henricus

Corruptly offering a benefit pursuant to s 249B(2) of the Crimes Act in relation to an approach to Mr Pickering in which Mr Pickering was asked to withdraw his opposition to a development application.

The Commission also recommends that the Office of Local Government should give consideration to the following matters:

- (i) The immediate suspension of Mr Petch from civic office with a view to his dismissal

pursuant to s 440B of the *Local Government Act 1993* ("the LG Act") in relation to his intention to improperly influence Mr Neish's exercise of his public official functions by arranging to convey a threat to Mr Neish in relation to his position as general manager, actions that the Commission considers amount to serious corrupt conduct (in accordance with s 74C(2) of the ICAC Act).

- (ii) The immediate suspension of Mr Petch from civic office with a view to his dismissal pursuant to s 440B of the LG Act in relation to his release of confidential information about the discovery of adult material on Mr Neish's computer, including his attempts to leak the material to the media, actions that the Commission considers amount to serious corrupt conduct (in accordance with s 74C(2) of the ICAC Act).
- (iii) The immediate suspension of Mr Petch from civic office with a view to his dismissal pursuant to s 440B of the LG Act in relation to his release of confidential information to Mr Stavrinos and Mr Cerreto with the intention that the information would be provided to Mr Goubran and used by him for his benefit, actions that the Commission considers amount to serious corrupt conduct (in accordance with s 74C(2) of the ICAC Act).
- (iv) The immediate suspension of Mr Petch from civic office with a view to his dismissal pursuant to s 440B of the LG Act in relation to his intention to improperly influence Ms Dickson's exercise of her public official functions as the Council's acting general manager by making a threat implying that he would not support her application as permanent general manager unless she resolved Supreme Court proceedings in a way favourable to him, actions that the Commission considers amount to serious corrupt conduct (in accordance with s 74C(2) of the ICAC Act).

In the event that Mr Petch is not dismissed as a result of recommendation (i), (ii), (iii) or (iv), the Commission recommends that the Office of Local Government gives consideration to:

- (v) disciplinary action against Mr Petch, pursuant to s 440H and s 440L of the LG Act, in relation to breaches of clauses 5.8, 5.9 and 5.10 of the 2011 *City of Ryde Council Code of Conduct* ("code of conduct"), as well as s 664 of the LG Act, relating to the disclosure

of confidential information concerning the discovery of adult material on Mr Neish's computer, matters that could amount to misconduct as defined in s 440F of the LG Act

- (vi) disciplinary action against Mr Petch, pursuant to s 440H and 440L of the LG Act, in relation to breaches of clauses 5.8, 5.9 and 5.10 of the 2011 code of conduct, as well as s 664 of the LG Act, relating to his disclosure of confidential Council information concerning the Council's waste collection and disposal contract and the proposed Ryde civic precinct redevelopment, matters that could amount to misconduct as defined in s 440F of the LG Act.

Pursuant to s 467 of the LG Act, the Commission also refers to the chief executive of the Office of Local Government the parts of this report that relate to possible breaches by Mr Petch of clause 4.2 of the 2013 code of conduct, as well as s 451 of the LG Act, relating to Mr Petch's failure to declare a pecuniary interest in relation to Mr Booth and *The Weekly Times* when dealing with matters relating to the Council's advertising before Council.

This report does not contain any corruption prevention recommendations. Chapter 10 of this report, however, highlights some of the legislative changes that have been made to the LG Act in an attempt to address issues of corrupt conduct in local government.

## **Recommendation that this report be made public**

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

# Chapter 1: Background

This chapter sets out some background information on how this investigation originated, the conduct of the investigation, and the public officials whose conduct was investigated.

## How the investigation came about

In July 2012, the NSW Independent Commission Against Corruption (“the Commission”) received a report from John Neish, then general manager of the City of Ryde Council (“the Council”), pursuant to s 11 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”). Section 11 of the ICAC Act imposes an obligation on the principal officer of a public authority to report any possible corrupt conduct to the Commission.

Mr Neish reported that he had been approached by real estate agent Tony Abboud on behalf of local property developer John Goubran and told that, if he took certain steps to set up a community consultative committee in relation to the proposed Ryde civic precinct redevelopment, his position as general manager would be secure after the September 2012 local government elections. This allegation is considered in further detail in chapter 2 of this report.

Other allegations, as outlined in the summary section of this report, came to the attention of the Commission during the investigation.

## Why the Commission investigated

One of the Commission’s principal functions, as specified in s 13(1)(a) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), is to investigate any allegation or complaint that, or any circumstances which in the Commission’s opinion imply that:

- (i) corrupt conduct, or

- (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or

- (iii) conduct connected with corrupt conduct,

*may have occurred, may be occurring or may be about to occur.*

The role of the Commission is explained in more detail in Appendix 1, while Appendix 2 sets out the approach taken by the Commission in determining whether corrupt conduct has occurred.

The conduct reported to the Commission was serious and could, if established, constitute corrupt conduct within the meaning of the ICAC Act. The Commission decided that it was in the public interest to conduct an investigation to establish whether corrupt conduct had occurred and whether there were any corruption prevention issues that needed to be addressed.

## Conduct of the investigation

During the course of the investigation, the Commission obtained relevant information and documents from the Council, financial institutions and various other sources by issuing notices under s 22 of the ICAC Act.

These documents and information were closely analysed and used to guide the investigative process. Statements were obtained from some witnesses, while others participated in electronically-recorded interviews.

The Commission made use of lawful covert surveillance, both physical and electronic, pursuant to a warrant obtained under the *Surveillance Devices Act 2007* and a warrant obtained under the *Telecommunications (Interception and Access) Act 1979*.

The Commission conducted 16 compulsory examinations with persons of interest between December 2012

and August 2013. The Commission conducted these examinations in order to obtain further relevant evidence and refine areas of investigation.

## The public inquiry

The Commission reviewed the documentary and electronic evidence that had been gathered, and the evidence given by various witnesses at the compulsory examinations. After considering this material, and taking into account each of the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry.

The public inquiry was conducted over 11 days, between 15 and 26 July 2013, and then on 20 September 2013 (due to the unavailability of a number of witnesses during the original period set aside for the public inquiry). Twenty-three witnesses gave evidence at the public inquiry. Assistant Commissioner Theresa Hamilton presided at the public inquiry and Jason Downing acted as Counsel Assisting the Commission.

At the conclusion of the public inquiry, Counsel Assisting prepared submissions setting out the evidence upon which it was proposed the Commission should rely for this report, and also addressing the findings and recommendations that could be made based on the available evidence. These submissions were provided to all relevant parties and submissions were invited in response. When preparing this report, the Commission has taken into account all submissions received in response on behalf of affected persons.

## The City of Ryde

The City of Ryde was proclaimed in 1992 and lies in the central northern part of the Sydney metropolitan area, approximately 12 kilometres from the centre of Sydney.

The City of Ryde occupies most of the divide between the Parramatta and Lane Cove rivers, and consists of 16 suburbs.

The Council occupies premises within the Ryde Civic Centre, situated at 1 Devlin Street in Ryde. Throughout 2011 and 2012, the Council considered the proposed redevelopment of the Ryde civic precinct, a large parcel of land on which the Ryde Civic Centre sits. The precinct also includes gardens and other open public areas.

## Ivan Petch

Mr Petch is a long-time resident of what is now the City of Ryde. He was first elected to the Ryde Municipal Council in 1977, and from 1980 to 1987 sat on the Sydney County Council. In 1988, Mr Petch was elected to the NSW Legislative Assembly as the member for Gladesville. He held the seat until the 1995 election.

In September 1995, Mr Petch was elected a councillor of the Council, and has served as a councillor continuously since that time. He has served three terms as mayor, most recently between September 2012 and September 2013.

## Chapter 2: Approach and offer to Mr Neish

This chapter deals with an approach made in April 2012 by Mr Abboud, a local real estate agent, to Mr Neish, general manager of the Council. It was alleged that the purpose of the approach was to convey a “deal” to Mr Neish to the effect that his employment would be secure beyond the 2012 local government elections if he delayed, until after the elections, the process whereby the Council was to enter into a contract for the Ryde civic precinct redevelopment. It was also alleged that the approach was orchestrated by Mr Goubran, a property developer, and Mr Petch.

### The plan to redevelop the Ryde civic precinct

While the Commission is not concerned with the relative merits or otherwise of the Ryde civic precinct redevelopment, it is necessary to provide a brief outline of the history of the redevelopment in order to place the actions of relevant individuals into a proper context.

The Council had considered the future of the Ryde civic precinct – an area of Council-owned land located on the corner of Devlin and Parkes Streets in Ryde – for some time prior to September 2011. A variety of options were available, including undertaking reactive maintenance, refurbishment and large scale re-development.

In September 2011, councillor Artin Etmekdjian was re-elected mayor by his fellow councillors – Nicole Campbell, Roy Maggio, Gabrielle O’Donnell, Bill Pickering, Sarkis Yedelian, Mr Petch, Terry Perram, Jeffrey Salvestro-Martin, Justin Li, Victor Tagg and Michael Butterworth.

Prior to September 2011, a majority of councillors had supported the redevelopment. From September 2011, the Council was effectively split 6–6 over the proposed Ryde civic precinct redevelopment. Those in favour of the redevelopment were the mayor (Mr Etmekdjian) and Ms

Campbell, Mr Maggio, Ms O’Donnell, Mr Pickering and Mr Yedelian. Those against the proposal were Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Tagg, Mr Perram and Mr Butterworth.

At an extraordinary Council meeting held on 18 October 2011, the Council resolved to delegate powers to the then general manager, Mr Neish, for the expression of interest (EOI), tendering and selection process for the proposed Ryde civic precinct redevelopment. As a result of that resolution, the Council was taking steps towards a large-scale redevelopment via an EOI and tender process.

In November 2011, the Council called for EOIs to redevelop the Ryde civic precinct. The intention was to identify a development partner that could construct buildings and develop existing Council facilities on Council-owned land. In return, the development partner would be given the opportunity to construct residential units, which could then be sold privately.

Nine companies lodged submissions in response to the call for EOIs by the closing date of 23 December 2011. The nine submissions were reviewed by a Council-appointed panel and a shortlist of four tenderers was then provided to Mr Neish for approval.

On 10 February 2012, Bilbergia Pty Ltd (“Bilbergia”), Leighton Properties Pty Ltd (“Leighton”), Lend Lease Development Pty Ltd (“Lend Lease”), and Mirvac Projects Pty Ltd (“Mircac”) were each sent an invitation to participate in a tender process. Each company accepted this invitation.

Tenders closed on 10 April 2012. By that date, the Council had received letters from Mirvac and Leighton indicating that they no longer wished to participate in the tender process. Tender documents were received from Bilbergia and Lend Lease.

On 20 April 2012, Lend Lease and Bilbergia presented their proposals to the evaluation panel, a process that was

overseen by the Council's probity advisers. On 3 May 2012, the evaluation panel met with, and received advice from, Clayton Utz lawyers, who had been engaged by the Council to assist in the tender process.

On 7 and 8 May 2012, both Lend Lease and Bilbergia representatives met with the evaluation panel, where the key issues that the Council wished to resolve before making a final decision were explained to them.

On 9 May 2012, the evaluation panel met and scored the tenders of Lend Lease and Bilbergia, resolving to reject the Bilbergia tender and further consider that of Lend Lease.

On 21 May 2012, the evaluation panel met again and finalised the marking of the Lend Lease tender. Lend Lease had put forward two alternative proposals as part of its tender but the evaluation panel resolved to reject both proposals in their current form as neither was considered to be compliant with the set criteria.

Following that decision of the evaluation panel, the Council resolved at a meeting on 12 June 2012 to enter into negotiations with Lend Lease with a view to signing a project delivery agreement. The Council delegated to Mr Neish the task of negotiating with Lend Lease with a view to entering into a project delivery agreement, preferably by August 2012.

Mr Neish then undertook negotiations with Lend Lease with a view to ultimately entering into a contract pursuant to which the Ryde civic precinct redevelopment would occur.

## The involvement of Mr Abboud

Mr Abboud has worked in the Ryde local government area for over 30 years. He is the principal of a local real estate agency, the president of the Ryde-Macquarie Park Chamber of Commerce and a member of the Rotary Club of Ryde. As a result of his active involvement in

the chamber of commerce and rotary club, Mr Abboud was familiar with the Ryde councillors, as well as senior Council staff.

On 30 March 2012, Mr Abboud received a message to call Mr Goubran, a property developer with a number of property interests in the Council area and an associate of Mr Petch for more than 30 years. The message said that Mr Abboud would know what the call was regarding. Although Mr Abboud knew Mr Goubran, he did not, in fact, know what the call was about. Mr Abboud telephoned Mr Goubran that day. Mr Goubran told him that he wanted to discuss a few things. They agreed to meet the following Tuesday morning at Mr Goubran's office.

On 3 April 2012, Mr Abboud met Mr Goubran as planned. The discussion between Mr Abboud and Mr Goubran at that meeting, and the discussion during a telephone conversation between the pair later that day, were the subject of conflicting evidence before the Commission.

Mr Abboud told the Commission that, during the face-to-face meeting, Mr Goubran said that he been asked to put a proposal to Mr Abboud on behalf of others.

Mr Abboud said that, during the face-to-face meeting and the later telephone call, Mr Goubran explained the proposal that he wanted Mr Abboud to convey to Mr Neish. The proposal related to the Ryde civic precinct redevelopment and involved the creation of a community consultative committee, which was said by Mr Goubran to be a way to break the "deadlock" between councillors as to the proposed redevelopment, but which would have the ultimate effect of delaying the Ryde civic precinct redevelopment process until after the 2012 local government elections. Mr Neish was to set the terms of reference for the community consultative committee and would have input into the members of the committee.

Mr Abboud claims that, either during the face-to-face meeting or the later telephone call, Mr Goubran said that

if Mr Neish agreed to the proposal being put to him, then Mr Neish's position as general manager would be secure after the 2012 local government elections.

Mr Abboud did not make any notes during his face-to-face meeting with Mr Goubran but he did make notes during the telephone call later that day. Telephone records obtained by the Commission show that Mr Goubran telephoned Mr Abboud at 4.58 pm on 3 April 2012. This call is recorded as lasting for approximately 16 minutes. Mr Abboud's notes of this telephone conversation reveal that Mr Goubran initially proposed a deal that could be seen as "face saving" for both sides, as well as a "way out" for the Liberal Party councillors who supported the Ryde civic precinct redevelopment.

Mr Abboud told the Commission that, during the telephone call, Mr Goubran also provided the names of a number of councillors and members of the public who it was proposed would form the community consultative committee.

Mr Abboud did not make a note of a specific threat to Mr Neish's job if he did not agree to the proposed deal. Mr Abboud told the Commission that if a direct threat were made to Mr Neish then it was something that he would probably have written down. Mr Abboud said, however, that there was an implied threat to Mr Neish's employment because Mr Goubran said that the position of Mr Neish would be secure after the 2012 local government elections if Mr Neish agreed to the deal.

Mr Goubran told the Commission that he came up with the idea of the community consultative committee because, in his opinion, the community felt that it had not been properly consulted on the project. To support this view, he also referred to the fact that there had been attacks on the general manager (Mr Neish) and the mayor (Mr Etmekdjian) from the public gallery during Council meetings.

In relation to the meeting with Mr Abboud on 3 April 2012, Mr Goubran denied that he told Mr Abboud that, if Mr Neish agreed to the deal, his position as general manager would be secure beyond the 2012 local government elections.

Mr Goubran agreed that he had suggested to Mr Abboud that a community consultative committee be formed and that it should comprise four councillors, four community representatives and a number of members of Council staff. Mr Goubran denied that he told Mr Abboud who the particular councillors sitting on the committee should be, beyond suggesting that there should be two from each "side" – that is, two opposed to the proposed Ryde civic precinct redevelopment and two who favoured it.

In relation to the telephone call during the afternoon of 3 April 2012, Mr Goubran told the Commission that he

and Mr Abboud discussed Mr Petch and the fact that Mr Petch was initially opposed to the idea of a community consultative committee when Mr Goubran raised it with him. He denied ever telling Mr Abboud that Mr Neish's position as general manager would be secure beyond the 2012 local government elections if Mr Neish agreed to establish the committee.

After speaking with Mr Goubran on 3 April 2012, Mr Abboud attended a meeting of the Rotary Club of Ryde. At that meeting, he spoke with Mr Etmekdjian. Mr Abboud told the Commission that he told Mr Etmekdjian that he had received a telephone call from Mr Goubran and that Mr Goubran had wanted Mr Abboud to approach Mr Neish and put a proposal to him. Mr Abboud said that he provided no further details to Mr Etmekdjian as to what that proposal entailed or that it related to the Ryde civic precinct.

Mr Etmekdjian told the Commission that he did not identify anything untoward in what Mr Abboud had told him, and, indeed, Mr Etmekdjian mentioned to Mr Neish on 4 April 2012 during their regular weekly meeting that he understood that Mr Abboud wanted to meet with Mr Neish.

A meeting was arranged between Mr Abboud and Mr Neish for 11 am on 13 April 2012. Before the meeting, Mr Abboud spoke with Mr Goubran twice by telephone. Mr Abboud told that Commission that, during those calls, Mr Goubran outlined further details of the deal that Mr Abboud was to propose to Mr Neish.

Mr Abboud said that, during the telephone discussions, Mr Goubran indicated that the councillors who were to be part of the proposed community consultative committee had changed. Mr Petch and Mr Salvestro-Martin were now to be on the committee. Mr Abboud said that he questioned why Mr Petch was now being included, and Mr Goubran replied that Mr Petch had changed his mind. Mr Goubran also provided the names of three members of the public who would be part of the committee.

Mr Abboud made further notes following the telephone discussions he had had with Mr Goubran before Mr Abboud met with Mr Neish. These notes corroborate what Mr Abboud told the Commission during his evidence.

Mr Goubran told the Commission that he did not recall speaking with Mr Abboud on 13 April 2012. He agreed that he had discussed the community consultative committee with Mr Petch around that time on behalf of the councillors opposed to the Ryde civic precinct redevelopment. He denied that he had discussed with Mr Petch who would be on the community consultative committee. Mr Goubran did say, however, that Mr Petch was to nominate two councillors from those opposed

to the Ryde civic precinct redevelopment to sit on the committee.

Mr Abboud met Mr Neish at a cafe in Ryde. During the course of the meeting, Mr Abboud referred to the notes he had made of his telephone discussions with Mr Goubran.

Mr Abboud told Mr Neish that he had been asked by Mr Goubran to convey a proposal to Mr Neish for the establishment of a community consultative committee to consider the Ryde civic precinct redevelopment. Mr Abboud indicated that he did not agree with the proposal to form a community consultative committee. Mr Abboud took Mr Neish through the proposal, and told him that Mr Goubran had said that Mr Neish's employment would be secure beyond the 2012 local government elections if he went along with the proposal and accepted the "deal". Mr Abboud recalled that Mr Neish expressed concerns that the security of his job had been raised.

Mr Neish gave evidence consistent with Mr Abboud's account of the meeting. He told Mr Abboud that he could not act in the way requested as he (Mr Neish) was abiding by a resolution of Council to proceed with the Ryde civic precinct redevelopment. He asked Mr Abboud to tell Mr Goubran that he (Mr Neish) was not prepared to implement the proposal as it was at odds with the most recent Council resolutions on the subject.

Mr Abboud reported the result of his meeting with Mr Neish to Mr Goubran.

On 18 April 2012, Mr Neish met with Mr Etmekdjian for their regular weekly meeting. Mr Neish told Mr Etmekdjian about the approach from Mr Abboud. Mr Neish further informed Mr Etmekdjian that he had grave concerns about the approach and what had been proposed. Mr Neish told the mayor that he intended to report the approach to this Commission. Mr Etmekdjian agreed that that was the proper thing to do, and Mr Neish said that he intended to ask Mr Abboud to prepare a statement detailing their meeting and the proposal.

During the public inquiry, it was suggested to Mr Abboud by Mr Goubran's counsel that Mr Abboud had made up the part of the proposal to be taken to Mr Neish about his job being secure if he agreed to go along with the deal because Mr Abboud was determined to see the Ryde civic precinct redevelopment proceed, and the addition of the threat to Mr Neish's employment was designed to make the proposal less attractive to Mr Neish. Mr Abboud denied this.

The Commission accepts Mr Abboud's denial of this proposition. If, as alleged, Mr Abboud was so concerned with ensuring that the Ryde civic centre redevelopment progressed, then it would have been far easier for Mr Abboud to refuse to convey Mr Goubran's proposition to

Mr Neish, rather than attempting to make the proposition less attractive to Mr Neish by adding the threat to Mr Neish's employment.

The Commission found Mr Abboud to be a reliable witness and accepts his recollections of his conversations with Mr Goubran in relation to the proposal to be conveyed to Mr Neish, including that the proposal that, if Mr Neish agreed to establish the community consultative committee, his position as general manager would be secure after the 2012 local government elections.

The clear inference of this message is that, if Mr Neish did not agree to establish the committee, then his position as general manager would not be safe. The Commission is satisfied this was intended as a threat to Mr Neish to persuade him to accept the proposal to establish the community consultative committee.

The next issue to consider is whether Mr Goubran was acting on his own initiative in conveying the threat to Mr Neish or whether he was acting on behalf of another.

Mr Goubran said that, before speaking with Mr Abboud, he outlined his proposal for a community consultative committee to Mr Etmekdjian during a private meeting that Mr Goubran believed, with reference to his diary, may have occurred on 30 March 2012. Mr Goubran said that Mr Etmekdjian was supportive of the proposal and asked him to speak to Mr Abboud about the proposal.

Mr Etmekdjian denied that this meeting ever took place or that he was briefed on the proposal by Mr Goubran. Mr Etmekdjian told the Commission that he would not have supported the creation of a community consultative committee because, by April 2012, he believed that there had been adequate community consultation already in relation to the proposed Ryde civic precinct redevelopment.

Mr Etmekdjian referred to a meeting recorded in his own diary with Mr Goubran on 21 January 2012. Mr Etmekdjian believed that Mr Goubran mentioned something about forming a committee to deal with community concerns regarding the proposed Ryde civic precinct redevelopment; however, there was no reference to Mr Neish's employment at that meeting. Mr Etmekdjian also recalled that Mr Goubran mentioned during the meeting that Mr Petch supported the creation of a community committee.

The Commission does not accept the evidence of Mr Goubran that he was asked to take his proposal to Mr Abboud by Mr Etmekdjian. Motions before Council in relation to the Ryde civic precinct redevelopment were split 6–6 between those who favoured the redevelopment and those who opposed it. Through the use of his casting vote, Mr Etmekdjian had the power to pass or reject motions on behalf of the bloc of "yes" voting councillors.

If Mr Etmekdjian supported the proposal, as suggested by Mr Goubran, Mr Etmekdjian could have simply introduced the motion to Council himself. In any event, such a motion would be completely at odds with Mr Etmekdjian's record of voting in relation to the Ryde civic precinct redevelopment up until that point. The Commission also accepts, based on Mr Etmekdjian's evidence, that he was of the view that there had been sufficient community consultation up until that point.

At a Council meeting on 8 May 2012, Mr Petch and Mr Tagg presented a motion seeking the establishment of a Civic Centre Redevelopment Community Advisory Committee. The motion consisted of seven points. Mr Neish told the Commission that, upon seeing the motion, he thought that it mirrored the proposal that had been put to him by Mr Abboud at their meeting on 13 April 2012, with the exception that the original proposal had Mr Neish, himself, writing the terms of reference for the committee and the selection process for the community representatives was slightly different. In the original proposal put to Mr Neish by Mr Abboud, the community representatives had already been nominated and were generally people opposed to the Ryde civic precinct redevelopment. In the motion before Council, prospective community representatives were to be invited to nominate for appointment to the committee.

The motion was defeated along the established voting pattern at the time, with Mr Etmekdjian using his casting vote to break the 6–6 deadlock and defeat the motion.

During the public inquiry, Mr Petch initially denied that he came up with the seven points that constituted the motion put before Council on 8 May 2012. Although he ultimately said that the motion was his idea, Mr Petch qualified this admission by saying that Stefano Laface, a solicitor, gave him advice and assisted with the final wording of the motion. Mr Petch agreed that the purpose of the committee was to put the redevelopment process on hold and that the committee would not report back to the Council until after the 2012 local government elections.

Mr Petch told the Commission that his sole objective from January 2012 onwards was to stall the approval for the Ryde civic precinct redevelopment and delay Mr Neish signing the sale of the land encompassing the Ryde Civic Centre to Lend Lease.

Former councillor Mr Tagg said that Mr Petch and perhaps one other councillor had come up with the idea of creating a community advisory committee and that Mr Petch had shown him the wording of the seven-point plan contained in the motion.

Mr Li said that it was Mr Petch who came up with the idea of creating the committee and showed him the proposed wording for the motion.

Mr Perram said that it was Mr Petch who came up with the idea of the committee and presented the detail of the motion.

Mr Salvestro-Martin could not recall any discussions with Mr Petch about the motion prior to the 8 May 2012 Council meeting.

The Commission is satisfied that it was Mr Petch who suggested the creation of a committee and who was responsible for the wording of the motion. The Commission is also satisfied that the establishment of the committee was intended to delay any work on the Ryde civic precinct redevelopment until after the 2012 local government elections. Given the similarities between Mr Goubran's proposal and the motion sponsored by Mr Petch, the question arises as to whether Mr Petch had organised for Mr Goubran to arrange for Mr Abboud to speak with Mr Neish and convey to him the threat concerning his employment if he did not establish a community consultative committee.

## The involvement of Mr Petch

There is no direct evidence that Mr Petch asked Mr Goubran to make the approach to Mr Abboud. Mr Petch denied doing so. Mr Goubran denied that Mr Petch asked him to speak with Mr Abboud.

Mr Neish gave evidence about a number of occasions in late 2011 and early 2012 when Mr Petch suggested to him that the Ryde civic precinct redevelopment should be delayed until after the 2012 local government elections. Mr Neish said that, after one of these discussions, Mr Petch sent him correspondence warning Mr Neish that if he continued to proceed with the redevelopment he may be in breach of the *Local Government Act 1993* ("the LG Act") and would be personally liable for any breaches or wrongdoing as a result of his actions to progress the redevelopment. The Commission accepts this evidence.

As Mr Etmekdjian was able to use his casting vote as mayor to defeat any motions before Council seeking to delay the redevelopment, it is clear that those opposed to the Ryde civic precinct redevelopment would have had to explore other options to prevent the redevelopment from progressing or to, at least, delay it until after the 2012 local government elections, when a possible change in the makeup of the Council might produce a majority in favour of stopping the redevelopment from proceeding.

Mr Petch told the Commission that he never discussed the establishment of any type of community committee with Mr Goubran and that he did not ask Mr Goubran to approach Mr Abboud or Mr Neish. He offered an explanation to support these denials. Towards the end of the public inquiry, Mr Petch told the Commission that on 2 April 2012 he met with a management consultant named

Errol Chadwick, who he knew to be an associate of Mr Neish. Mr Chadwick said he had a message to convey to Mr Petch from Mr Neish to the effect that Mr Neish wanted to meet with Mr Petch to sort out the “problem” regarding the Ryde civic precinct redevelopment. This proposition was not put to Mr Neish during cross-examination of Mr Neish by counsel representing Mr Petch during the public inquiry. Mr Petch conceded that he had not informed his legal representatives of this meeting with Mr Chadwick because he did not consider it to be relevant. Mr Petch knew at all times during the public inquiry that the Commission was investigating whether he was responsible for Mr Goubran’s approach to Mr Abboud. He proffered the meeting with Mr Chadwick to support his denial that he was responsible for the approach to Mr Neish. Mr Petch would have appreciated that the meeting, if it really occurred, was highly relevant. The Commission rejects his claim that he did not mention it to his legal representatives because he did not consider it relevant.

After Mr Petch gave this evidence, the Commission attempted to locate Mr Chadwick. He was not able to be questioned about this matter as he was overseas.

There was no reason for Mr Neish to want to meet with Mr Petch to discuss a “problem” with the Ryde civic precinct redevelopment. As general manager, Mr Neish had been delegated responsibility for entering into a contract for the Ryde civic precinct redevelopment pursuant to a resolution of the Council. Mr Neish had been asked to complete this process by August 2012. The Commission accepts the evidence given by Mr Neish during the public inquiry that he was progressing the Ryde civic precinct redevelopment because of the resolutions passed by Council during Council meetings. The Commission does not accept that Mr Neish would have any reason to want to “sort out a problem” as suggested by Mr Petch during evidence. The Commission is not satisfied that Mr Petch was told by Mr Chadwick that Mr Neish wanted to meet with him to sort out problems with the Ryde civic precinct redevelopment.

Even if Mr Petch had a conversation with Mr Chadwick in the terms outlined during his evidence, it does not follow that simply because that conversation took place that Mr Petch could not have also asked Mr Goubran to approach Mr Abboud to speak with Mr Neish. Mr Petch offered no explanation as to how his contact with Mr Chadwick would have precluded him from doing so.

Telephone records obtained by the Commission reveal that Mr Petch telephoned Mr Goubran at approximately 1.34 pm on 3 April 2012 and had a telephone conversation of approximately 4 minutes duration. Telephone records also show that Mr Goubran and Mr Petch had further telephone conversations on 16 April 2012, twice on 17 April 2012, and on 20 and 25 April 2012.

Mr Goubran told the Commission that he believed that he had telephoned Mr Petch on 3 April 2012 after his meeting with Mr Abboud in order to put to Mr Petch the proposal in relation to a community consultative committee. Mr Goubran said that Mr Petch was not in favour of the proposed committee when it was first put to him. Mr Goubran could not recall specific details of any of the other calls, although he did acknowledge that he was speaking to Mr Petch in April 2012 because Mr Petch was speaking on behalf of the councillors opposed to the Ryde civic precinct redevelopment.

Mr Petch could not recall specific details of any of the telephone conversations with Mr Goubran shown in the telephone records. He told the Commission that he had been in communication with Mr Goubran on and off for years.

The Commission does not accept the denial by Mr Petch in relation to discussing the community consultative committee with Mr Goubran. While precise details of conversations are not clear, the telephone records establish that Mr Petch and Mr Goubran were in telephone contact at the time. Mr Goubran acknowledged that he discussed the community consultative committee with Mr Petch as a representative of the councillors opposed to the redevelopment. Mr Etmekdjian also told the Commission that he recalled Mr Goubran mentioning during their meeting on 21 January 2012 that Mr Petch supported the creation of a community committee.

When Mr Goubran first outlined the proposal to Mr Abboud during the meeting and telephone call on 3 April 2012, Mr Goubran said that Mr Petch would not be one of the councillors to be involved with the community consultative committee. This position had changed by the time Mr Abboud spoke to Mr Goubran on the morning of 13 April 2012, before Mr Abboud’s meeting with Mr Neish. During that telephone conversation, Mr Abboud said that Mr Goubran told him that the makeup of the committee had changed and that Mr Petch would now be involved. Mr Abboud told the Commission that when he questioned what had changed, Mr Goubran replied that Mr Petch had “changed his mind”.

The Commission is satisfied that this evidence shows that Mr Goubran was in contact with Mr Petch in relation to a proposal to establish a committee to consider the redevelopment and that this contact occurred prior to Mr Abboud’s meeting with Mr Neish on 13 April 2012.

Considering the delegation by Council in October 2011, Mr Neish had considerable power in relation to the redevelopment. Mr Neish was responsible for undertaking the EOI, tendering and selection processes. A tender review panel had been established that was to report back to him with a shortlist of preferred developers. Mr Petch had unsuccessfully approached Mr Neish on a number of

occasions in late 2011 or early 2012 and suggested to him that the redevelopment be delayed until after the 2012 local government elections. The advent of a community consultative committee with the support of Mr Neish would have had the effect of slowing the redevelopment process, a proposition with which Mr Petch agreed during the public inquiry. When considering the involvement of Mr Petch in the approach to Mr Neish, the Commission has considered the similarity between the proposal conveyed to Mr Neish by Mr Goubran via Mr Abboud, and the motion seeking the establishment of a community consultative committee placed before Council on 8 May 2012 with Mr Petch's support.

Both the proposal put to Mr Neish by Mr Abboud and the motion brought before Council sought the establishment of a community committee comprising four councillors and four members of the public. In both the proposal put to Mr Neish and the motion before Council, any actions by Council in furtherance of the Ryde civic centre redevelopment were to cease until the committee had been given the opportunity to report to Council on its recommendations.

Mr Petch would have the Commission believe that he did not discuss a community consultative committee with Mr Goubran at all; yet, a month later, formulated the idea for a committee with almost identical features. The Commission does not accept that Mr Petch had no knowledge of the proposal for the establishment of a committee that was outlined to Mr Neish by Mr Abboud in April 2012. The two proposals are too similar to be a mere coincidence.

Mr Goubran told the Commission that he favoured the Ryde civic precinct redevelopment. Mr Petch, rather than Mr Goubran, stood to gain most from a delay in the redevelopment process. Mr Petch was a staunch opponent of the redevelopment. Mr Petch had tried unsuccessfully to convince Mr Neish to delay the redevelopment until September. The Commission is satisfied that the idea for the community consultative committee came from Mr Petch rather than Mr Goubran, and it was Mr Petch who asked Mr Goubran to organise an approach to Mr Neish to suggest the establishment of a committee.

The approach to Mr Neish went beyond the establishment of a community consultative committee. It included an implied threat to Mr Neish's position as general manager if he did not agree to the proposal put to him. As outlined previously, the Commission is satisfied that this was intended as a threat to Mr Neish that his job would be in danger if he did not agree to the proposal.

The purpose of the threat was to force Mr Neish to establish a community consultative committee for the redevelopment project and, thereby, delay the project in the hope that, after the 2012 local government elections, the numbers in Council opposed to the project would

be in the majority and the project would, therefore, not proceed. Mr Goubran told the Commission he favoured the redevelopment. In any event, there is no evidence that he had anything to gain by delaying or stopping the development. There was no advantage to him to threaten Mr Neish. Nor was he in a position to make such a threat. He was not a councillor and was not standing for election. He could have no say in whether or not Mr Neish's employment would remain secure after the 2012 local government elections.

Mr Petch, on the other hand, had a clear motive for making such a threat. He knew it was pointless trying to get the councillors to agree to delay the project because, each time a motion to that effect was introduced, Mr Etmekdjian used his casting vote to defeat it. Mr Neish might be able to effect a delay by establishing a committee. There was, however, no reason for Mr Neish to agree to such a proposal. The threat to his employment was one way to attempt to persuade him to agree. Moreover, Mr Petch was more likely that Mr Goubran to be able to give effect to the threat. He was a councillor and was likely to be re-elected after the 2012 local government elections. He would be in a position to raise the issue of Mr Neish's employment and could seek to persuade other councillors to take action to terminate Mr Neish's contract. The Commission also takes into account the fact that Mr Petch had directly raised with Mr Neish the suggestion that Mr Neish might be acting in breach of the LG Act and would be personally liable for any such breaches. This demonstrates that Mr Petch was prepared to make threats to Mr Neish in an attempt to stop the redevelopment from proceeding.

The Commission also takes into account, as set out in the next chapter, that once it was clear that there would be no community consultative committee, it was Mr Petch who promoted a motion before Council to terminate Mr Neish's employment.

The Commission is satisfied that Mr Petch asked Mr Goubran to have conveyed to Mr Neish that his job would be secure beyond the 2012 local government elections but only if he agreed to the proposal for the establishment of a community consultative committee. Mr Petch arranged for the threat to be conveyed by someone else because he knew that such a threat was improper and did not want to make it to Mr Neish himself and place himself in a position where Mr Neish would be able to report his conduct to appropriate authorities.

## Corrupt conduct

In making findings of fact and corrupt conduct, the Commission applies the civil standard of proof of reasonable satisfaction taking into account the decisions

in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362 and *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171.

Corrupt conduct is defined in s 8 and s 9 of the ICAC Act. The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission then determines whether those facts fall within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements contained within s 13(3A) of the ICAC Act.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find the person had committed a particular criminal offence.

## John Goubran

The Commission finds that Mr Goubran intended to improperly influence Mr Neish's exercise of his public official functions by arranging, through Mr Abboud, to convey a threat to Mr Neish implying that his position as general manager of the Council would not be safe after the 2012 local government elections unless Mr Neish agreed to establish a community consultative committee to consider the Ryde civic precinct redevelopment.

The Commission finds that this conduct on the part of Mr Goubran is corrupt conduct because it could adversely affect the honest or impartial exercise of Mr Neish's official functions as a public official and therefore comes within s 8(1)(a) of the ICAC Act. It is also conduct that could come within s 8(2)(c) of the ICAC Act as the conduct involves an approach to Mr Neish that could adversely affect the exercise of his official functions and could constitute an attempt to blackmail.

For the purposes of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249K of the Crimes Act 1900 ("the Crimes Act"). That section provides that:

- (1) *A person who makes any unwarranted demand with menaces:*
    - (a) *with the intention of obtaining a gain or of causing a loss, or*
    - (b) *with the intention of influencing the exercise of a public duty,*
- is guilty of an offence.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Goubran's intention to improperly influence Mr Neish, as outlined above, were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Goubran had committed the offence of making an unwarranted demand with menaces with the intention of influencing the exercise of a public duty contrary to s 249K of the Crimes Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Ivan Petch

The Commission finds that Mr Petch intended to improperly influence Mr Neish's exercise of his public official functions by arranging, through Mr Goubran, to convey a threat to Mr Neish implying that his position as general manager of the Council would not be safe after the 2012 local government elections unless Mr Neish agreed to establish a community consultative committee to consider the Ryde civic precinct redevelopment. Mr Petch's motivation in doing so was to delay the Ryde civic centre redevelopment in the hope that the 2012 local government election would change the composition of the Council so as to prevent the proposed redevelopment from being undertaken.

The Commission finds that this conduct on the part of Mr Petch is corrupt conduct. This is because it was conduct by him that constituted or involved the dishonest or partial exercise of his official functions and therefore comes within s 8(1)(b) of the ICAC Act. It is also conduct that could come within s 8(2)(c) of the ICAC Act as the conduct involves an approach to Mr Neish that could adversely affect the exercise of his official functions and could constitute an attempt at blackmail.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Petch's involvement in the approach to Mr Neish, as outlined above, were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch had committed the offence of being an accessory before the fact to the making of an unwarranted demand with menaces with the intention of influencing the exercise of a public duty contrary to s 249K of the Crimes Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74C(2) recommendation

Section 74C(2) of the ICAC Act provides that the Commission is authorised to include in a report under s 74 a recommendation that consideration be given to the suspension of a councillor from civic office under the LG Act with a view to his or her dismissal for serious corrupt conduct.

Section 440B of the LG Act gives the Governor of NSW the power to dismiss a councillor from civic office. The section states:

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

Section 440A of the LG Act defines serious corrupt conduct as conduct that may constitute a serious indictable offence, and must be conduct in connection with the exercise or purported exercise of the functions of a civic office.

The Crimes Act defines a serious indictable offence as an indictable offence punishable by imprisonment for life or for a term of five years or more.

The Commission is of the opinion that consideration should be given to the suspension of Mr Petch from civic office with a view to his dismissal in relation to the serious corrupt conduct that is the subject of the corrupt conduct finding against Mr Petch in this chapter.

## Section 74A(2) statements

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include,

in respect of each “affected” person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- (a) obtaining the advice of the Director of Public Prosecutions (DPP) with respect to 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.

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

For the purposes of this chapter, the Commission considers that Mr Goubran and Mr Petch are affected persons.

### Mr Goubran

Mr Goubran gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

Both Mr Neish and Mr Abboud have provided statements to the Commission consistent with the evidence each gave during the public inquiry. In addition, the Commission is in possession of Mr Abboud’s notes made during and following conversations with Mr Goubran, as well as telephone records confirming contact at relevant times between Mr Neish and Mr Abboud, between Mr Abboud and Mr Goubran, and between Mr Goubran and Mr Petch. All of this evidence is admissible in criminal proceedings.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Goubran for an offence of making an unwarranted demand with menaces with the intention of influencing the exercise of a public duty under s 249K of the Crimes Act.

### Mr Petch

Mr Petch gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be

used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

The Commission is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Petch as an accessory before the fact to an offence of making an unwarranted demand with menaces with the intention of influencing the exercise of a public duty under s 249K of the Crimes Act. This is due to an absence of admissible evidence to establish to the necessary criminal standard that Mr Petch requested Mr Goubran to approach Mr Neish to tell him that his job would be secure beyond the election if he agreed to the proposal dealt with in this chapter.

## Chapter 3: The attempts to remove Mr Neish

This chapter deals with an attempt made by Mr Petch and others in July 2012 to remove Mr Neish from his position as general manager of the Council. This involved calling an extraordinary general meeting of the Council to consider a motion to terminate Mr Neish's employment. Although the motion was passed, subsequent legal proceedings effectively prevented the termination of Mr Neish's employment.

This chapter also deals with the discovery of adult material on Mr Neish's Council-issued laptop, Mr Neish's subsequent resignation from the Council, and the unauthorised release of details about the discovery of the material on the computer to members of the community and media outlets.

### The extraordinary general meeting of 23 July 2012

Following the defeat of the motion to establish a community consultative committee at the Council meeting on 8 May 2012, Mr Petch considered ways in which to terminate Mr Neish's contract of employment.

Mr Perram told the Commission that he recalled Mr Petch expressing a view, in around July 2012, that having Mr Neish sacked was a means of preventing the Ryde civic precinct redevelopment from progressing. Mr Perram also recalled Mr Petch formulating a plan to seek an extraordinary meeting of the Council in order to terminate Mr Neish's contract.

On 9 July 2012, a letter of the same date signed by Mr Petch and Mr Tagg was delivered to Mr Etmekdjian. A copy was also delivered to Mr Neish. The letter requested that an extraordinary council meeting be held within 14 days. The letter indicated that the Council would be asked to consider a motion to terminate Mr Neish's employment contract with immediate effect, and to appoint Danielle Dickson acting general manager.

Mr Neish told the Commission that this letter took him by surprise, as no one had previously discussed with him any issues in relation to his performance or the termination of his employment.

The extraordinary council meeting was held on 23 July 2012. Voting on the motion followed the same voting patterns as previous motions, with those councillors opposed to the Ryde civic precinct redevelopment voting in favour of the motion to terminate Mr Neish's employment, and those in favour of the redevelopment voting against the motion. Mr Yedelian, at that point a supporter of the redevelopment, was not present at the meeting and, thus, the motion was successful by six votes to five. The minutes of the Council meeting show that, following the vote, a rescission motion was signed by Ms O'Donnell and Mr Maggio and immediately lodged. As a result, the termination of Mr Neish's contract was stayed, pending the hearing of the rescission motion.

Legal proceedings were instigated by the Council and by the Commission to seek to prevent the termination of Mr Neish's employment. On 14 August 2012, the Supreme Court of NSW made an order restraining Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Perram, Mr Tagg and Mr Butterworth from voting against the rescission motion, effectively preventing the termination of Mr Neish's contract at that time. Further details in relation to the Supreme Court proceedings are contained in chapter 5 of this report.

### The September 2012 election

Local government elections were held in NSW on Saturday, 8 September 2012. The makeup of the Council changed following the election, as a number of councillors either chose not to contest the election or were not re-elected. Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Perram, Mr Etmekdjian, Mr Maggio, Mr Yedelian and Mr Pickering were re-elected. They were joined by new

councillors Craig Chung, Jerome Laxale, George Simon and Denise Pendelton.

At a Council meeting on 25 September 2012, Mr Petch was elected mayor and Mr Li deputy mayor. At that meeting, the Council resolved not to proceed any further with the Ryde civic precinct redevelopment and, pursuant to that resolution, Mr Neish was instructed to take no further action to progress the project.

## The discovery of adult material on Mr Neish's computer

Mr Neish took approved holidays in January 2013. Soon after returning from that holiday later in the month, Mr Neish was informed by a Council information technology (IT) officer that a virus had been remotely detected on Mr Neish's laptop computer. Mr Neish was requested to deliver his laptop to IT staff for review, which he did.

While working on Mr Neish's laptop on 31 January 2013, a Council IT officer discovered adult material in the form of pictures of a sexual nature on the computer's hard drive. That evening the IT officer who made the discovery visited the mayor, Mr Petch, in his office at the Council chambers. The officer handed Mr Petch a compact disk (CD) and said that it contained something that Mr Petch may be interested in.

The IT officer who discovered the material on the computer did not make a formal notification or complaint about Mr Neish's conduct to his supervisor until he sent an email at 9.01 am on 5 February 2013. This email was also blind-copied to Mr Petch.

On the afternoon of 5 February 2013, Mr Petch met with the Council's human resources (HR) manager and informed her that he had received a complaint concerning Mr Neish. Mr Petch stressed to the HR manager that the matter should remain confidential. Mr Petch told the

Commission during a compulsory examination in February 2013 that he told the HR manager that he wanted to keep the matter confidential, primarily because of the impact it could have on Mr Neish's family. It was, of course, quite appropriate that the matter be treated confidentially. The complaint was of a sensitive nature and affected a senior Council officer. Although the material had been located on Mr Neish's computer, that, in itself, did not establish that he was responsible for the material being there.

Later that afternoon, Mr Petch discussed the matter with Roy Newsome, the Council's group manager of corporate services. Following that meeting, Mr Newsome sent Mr Petch an email referring to specific parts of the 2011 *City of Ryde Council Code of Conduct* ("code of conduct") and complaint-handling procedures. In the email, Mr Newsome emphasised that the matter needed to be dealt with on a "confidential" basis. That code of conduct provided that complaints against the general manager were to be dealt with by the mayor.

Sometime during the afternoon of 5 February 2013, Mr Petch forwarded a memo to Mr Neish advising him that he (Mr Petch) had been informed that a staff member had made a complaint against Mr Neish in relation to the downloading and saving of adult material on Mr Neish's computer. In a memorandum on 6 February 2013, Mr Petch instructed Mr Neish to deliver his laptop computer to Mr Petch by 4.30 pm so that the computer could be forensically examined; although, it became apparent during evidence at the public inquiry that Mr Neish's laptop computer had not been returned to him after he delivered it to the IT officer in late January 2013.

On 7 February 2013, Mr Neish contacted Mr Petch and indicated that he would like to negotiate the end of his employment with the Council. Negotiations occurred between Mr Petch (on behalf of the Council) and Mr Neish on 7 and 8 February 2013. Mr Petch also sought the advice of Bryan Belling, a solicitor, in relation to the cessation of Mr Neish's employment.

Agreement was reached between Mr Neish and Mr Petch concerning the termination of Mr Neish's employment. Mr Belling was tasked with drafting a deed of release and separation, which was signed by the parties on 8 February 2013. As a condition of the deed, a joint media release was to be issued that made no reference to the discovery of adult material on Mr Neish's computer. Further, both parties undertook to "refrain from actions or statements that would be detrimental to the other's reputation".

Mr Neish took leave from 8 February 2013, and his employment with the Council officially ended on 28 February 2013.

## The Council's code of conduct

The 2011 version of the Council's code of conduct contained specific provisions in relation to how Council officers, including councillors, were to deal with confidential information. Clause 5.8, which is titled "use of certain council information", states:

*In regard to information obtained in your capacity as a council official, you must:*

- a) *only access council information needed for council business*
- b) *not use that council information for private purposes*
- c) *not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council*
- d) *only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.*

Clauses 5.9 and 5.10, which are both titled "use and security of confidential information", state:

- 5.9 *You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.*
- 5.10 *In addition to your general obligations relating to the use of council information, you must:*
  - a) *protect confidential information*
  - b) *only release confidential information if you have authority to do so*
  - c) *only use confidential information for the purpose it is intended to be used*
  - d) *not use confidential information gained through*

*your official position for the purpose of securing a private benefit for yourself or for any other person*

- e) *not use confidential information with the intention to cause harm or detriment to your council or any other person or body*
- f) *not disclose any information discussed during a confidential session of a council meeting.*

These sections of the code of conduct mirror s 664 of the LG Act, which relates to the disclosure and misuse of information obtained in the course of official duties under the LG Act. The section states:

- (1) *A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:*
  - (a) *with the consent of the person from whom the information was obtained, or*
  - (b) *in connection with the administration or execution of this Act, or*
  - (c) *for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or*
  - (d) *in accordance with a requirement imposed under the Ombudsman Act 1974 or the Government Information (Public Access) Act 2009, or*
  - (e) *with other lawful excuse.*

## Mr Petch's conduct

Despite declaring to the HR manager that the discovery of adult material on Mr Neish's computer and the subsequent complaint should be treated as confidential, and being told the same by Mr Newsome, Mr Petch's conduct following his receipt of the CD on 31 January 2013 shows that he had no intention of treating the matter as confidential.

During a lawfully-intercepted telephone call to Mr Salvestro-Martin at 10.18 pm on 31 January 2013, Mr Petch informed Mr Salvestro-Martin of the discovery of adult material on Mr Neish's computer. During the call, Mr Petch discussed alternative means for distribution of the material, including sending it to the Commission, giving it to the local media, and also giving a copy to Anthony Stavrinis, a publicist and freelance journalist who had previously done some work for Mr Petch. Mr Salvestro-Martin indicated during the telephone call that he had no problem with the copy of the CD containing the adult material being given to Mr Stavrinis, and further stated that Mr Petch needed to reveal the information to

the community.

In his evidence before the Commission, Mr Salvestro-Martin accepted that what Mr Petch was proposing in the telephone call on 31 January 2013 was improper, and agreed that the complaint should have been handled sensitively and confidentially. Mr Salvestro-Martin also said that there was no justification at all for giving the material to Mr Stavrinis, and that his own responses to Mr Petch were ill-conceived and inappropriate. The Commission agrees with Mr Salvestro-Martin's assessment of his conduct.

On 1 February 2013, Mr Petch made numerous telephone calls, as detailed below, about the discovery of material on Mr Neish's computer and the complaint against him. These calls were lawfully intercepted by the Commission.

At 8.35 am, Mr Petch telephoned an associate, local businessman Norman Cerreto, and told Mr Cerreto about the discovery of adult material on Mr Neish's computer. When Mr Cerreto said that they needed to "get that in the right hands", Mr Petch agreed and said that he would show the material to Mr Cerreto that day. Mr Petch also said that he would deliver a copy to Mr Cerreto. At the public inquiry, Mr Cerreto confirmed that he subsequently met with Mr Petch and was given a copy of the CD and a page of thumbnail images containing adult material from Mr Neish's computer.

At 8.36 am, Mr Petch left a voicemail message on the mobile telephone of solicitor Stefano Laface. As at 1 February 2013, Mr Laface had not been retained by Mr Petch to give any advice in relation to the employment of Mr Neish, although he was acting on behalf of Mr Petch and other councillors in the ongoing Supreme Court proceedings taken to prevent the councillors from terminating Mr Neish's employment. During the voicemail message, Mr Petch said some "manna from heaven" had arrived on his desk the previous day, and he went on to tell Mr Laface about the adult material found on Mr Neish's computer.

At 8.38 am, Mr Petch telephoned Mr Belling. During the call, Mr Petch informed Mr Belling about the discovery of adult material and then said that, if the material got to the national press, it would be irrefutable and, in relation to Mr Neish, would "destroy him absolutely". Mr Petch went on to say that if the material was to "accidentally" make its way to the press, Mr Neish would have to leave town because his personal standing would be at an all time low. It is clear from this that Mr Petch understood the confidential nature of the information concerning Mr Neish. Mr Petch also remarked that the material could well "accidentally" make its way to the press. After describing the discovery as "manna from heaven", Mr Belling went on to tell Mr Petch that he had friends at the *Daily Telegraph* newspaper, which would be the place that

Mr Petch could publish the material because the paper would apparently "love this stuff". The pair then arranged to meet later that day at Mr Cerreto's cafe in Ryde.

At 8.59 am, Mr Laface returned Mr Petch's call from earlier that morning. During the call, Mr Petch provided further details to Mr Laface about the discovery of adult material on Mr Neish's computer and how Mr Petch came to be in possession of the CD. Mr Laface advised Mr Petch to make a copy of the CD, to which Mr Petch replied that he had already made several copies of the CD and he also intended to make colour copies of the prints as well. Mr Petch also said that he would make a copy of the CD for Mr Laface.

At 9.10 am, Mr Petch had a telephone conversation with Robbie Patterson, a journalist at the *Northern District Times*. During the telephone call, Mr Petch informed Mr Patterson about the discovery of adult material on Mr Neish's computer and arranged to meet Mr Patterson later that day at a cafe in Ryde.

Mr Petch admitted that later that day he attended the cafe and had separate meetings with both Mr Patterson and Mr Belling, during which he gave both men pages containing thumbnail images of adult material taken from Mr Neish's computer. Mr Petch also admitted giving Mr Belling a CD containing a copy of the images.

While at the cafe, Mr Petch also met with John Booth, owner and managing editor of *The Weekly Times*, a local newspaper. Covert surveillance conducted by the Commission revealed Mr Petch handing Mr Booth a page of thumbnail images. During their evidence at the public inquiry, both Mr Booth and Mr Petch denied that what Mr Petch handed Mr Booth was a copy of thumbnail pictures from Mr Neish's computer. Mr Booth claimed that he did not have a clue what he was discussing with Mr Petch during their meeting on 1 February 2013.

Based on an analysis of the document that can be seen on the surveillance footage taken by Commission officers, and taking into account Mr Petch's preparedness to disclose to others the information he had received concerning Mr Neish and the fact that Mr Petch had just handed over pages containing the thumbnail pictures to Mr Patterson and Mr Belling, the Commission is satisfied that Mr Petch did, in fact, give Mr Booth a page containing thumbnail images of adult material from Mr Neish's computer.

In addition to providing copies of CDs and images to the individuals referred to above, Mr Petch had a number of discussions with Mr Stavrinis about releasing the details of the discovery of material on Mr Neish's computer to media outlets.

On 8 February 2013, after Mr Petch had signed the deed of separation and release pledging, on behalf of the Council, to avoid any public criticism of Mr Neish, Mr

Petch had a telephone conversation with Mr Stavrinis in which they discussed the leaking of information to journalists. During the conversation, which was lawfully intercepted by the Commission, Mr Stavrinis revealed that he had been corresponding with a female journalist about Mr Neish's departure and he mentioned to Mr Petch that further information might find its way to her. Mr Petch also suggested further information that Mr Stavrinis should pass on to the journalist critical of a fellow councillor (Mr Pickering) and of Mr Neish, while also pointing out Mr Petch's own career achievements to be relayed to the journalist. The pair also discussed Mr Petch maintaining a dignified position if approached by the media for comment about Mr Neish's departure from the Council.

They both expressed some surprise that the story of Mr Neish's sudden departure had not appeared in online media as yet, not even the *Northern District Times*, where Mr Patterson was a journalist. Mr Petch said that he had spoken to Mr Patterson and was informed that a story about Mr Neish's departure had been written.

When Mr Stavrinis gave evidence at the public inquiry about this particular telephone conversation, he denied that he knew that Mr Petch had already leaked the story to the media. The Commission does not accept this evidence. The telephone conversation with Mr Petch clearly showed Mr Petch informing Mr Stavrinis that he had already spoken to Mr Patterson about the discovery of adult material on Mr Neish's computer. The Commission is satisfied that Mr Stavrinis was not telling the truth when he said in evidence that he was not aware, as at 8 February 2013, that Mr Petch had leaked the details of the discovery of adult material on Mr Neish's computer to the media.

Mr Petch spoke to Mr Stavrinis again by telephone on two occasions on 10 February 2013. At 9.41 am, Mr Petch and Mr Stavrinis spoke with some frustration about the fact that the story of Mr Neish's departure from the Council had not been published in any of the major newspapers over the weekend. Mr Stavrinis revealed that he had been discussing the story with Mr Patterson, the journalist to whom Mr Petch had provided a copy of the images from Mr Neish's computer, as well as with other News Limited journalists, in an attempt to get further details published relating to the discovery of material on Mr Neish's computer.

Mr Petch and Mr Stavrinis spoke on the telephone again at 11.10 pm that day. Mr Stavrinis informed Mr Petch that the news of Mr Neish's departure had now appeared on the News Limited website, although it was difficult to find. The pair discussed the gradual feeding of further information about Mr Neish to journalists.

During a telephone call at 12.24 pm on 13 February 2013,

Mr Stavrinis expressly asked Mr Petch for the "green light" to expedite the release of information to journalists concerning the discovery of adult material on Mr Neish's computer. Mr Petch referred to the undertaking of confidentiality he had given as part of the deed of separation and release, but then asked Mr Stavrinis to work out a way of leaking the story.

On 14 February 2013, Mr Stavrinis sent an email to two News Limited journalists with details about the discovery of material on Mr Neish's computer, as well as a number of false accusations relating to Mr Neish's performance as Council general manager, no doubt intending to make the story more appealing to the journalists.

During the public inquiry, Mr Petch denied that he had organised for Mr Stavrinis to leak material to the media relating to Mr Neish. He claimed that, after speaking to Mr Belling on 1 February 2013 and being advised by Mr Belling about the consequences for Mr Neish's family if the material were released, he backed off completely with regard to providing any information to the media.

The Commission does not accept this evidence. The telephone calls intercepted by the Commission and played during the public inquiry speak for themselves in this regard. They show that Mr Petch had a number of discussions with Mr Stavrinis about the release of material to the media and that he (Mr Petch) provided information about the adult material found on the laptop and copies of thumbnail pictures of the material to Mr Patterson, Mr Belling and Mr Booth. The Commission is satisfied that Mr Petch was promoting the public release of information about the discovery of adult material on Mr Neish's computer even after he entered into the deed of separation and release with Mr Neish, and that Mr Petch specifically asked Mr Stavrinis to leak information about the discovery of the material to the media.

During the public inquiry, Mr Petch was also asked about his awareness of the Council's code of conduct and complaint-handling procedures. Mr Petch accepted that, through his handling of the complaint against Mr Neish, he had breached clauses 5.9, 5.10(b) and 5.10(e) of the 2011 code of conduct. He also accepted that the way he handled the complaint against Mr Neish amounted to a very significant breach of the code of conduct.

Mr Petch could argue that he was not acting improperly when he informed Mr Salvestro-Martin and Mr Laface about what had been found on Mr Neish's computer. One was a fellow councillor, and the other a solicitor acting on behalf of Mr Petch and others in relation to litigation concerning Mr Neish's employment. There was no such justification, however, in relation to his divulging the information to Mr Belling, Mr Cerreto, Mr Patterson, Mr Booth or Mr Stavrinis. Although it may have been relevant to divulge information of a general nature to Mr

Belling for the purpose of drafting the deed of release, no such deed was in contemplation on 1 February 2013 when Mr Petch divulged the information to Mr Belling. The Commission is satisfied that Mr Petch divulged the information to Mr Belling for personal, rather than Council, purposes. It is clear from the lawfully-intercepted telephone calls that Mr Petch's primary interest was in having the discovery of adult material reported by the media and reported in such a way as to undermine Mr Neish's credibility and reputation.

Mr Petch readily admitted in his evidence that he had wanted to terminate Mr Neish's employment since at least July 2012 and, were it not for the Supreme Court proceedings that were still on foot in February 2013, he would have taken steps to terminate Mr Neish's employment at the earliest opportunity. He admitted that he saw the discovery of material on Mr Neish's computer as an excuse to dismiss Mr Neish. He denied, however, that he considered using the complaint to embarrass Mr Neish into resigning. The Commission rejects this evidence, which is belied by Mr Petch's actions and his comments during the telephone conversations set out above.

Mr Petch was provided with the information concerning the adult material located on Mr Neish's computer in his official capacity as mayor. The Commission is satisfied that the information was confidential and should have been treated by Mr Petch as such. The Commission is satisfied that Mr Petch sought to use this information for an improper purpose; namely, to encourage its reporting in the media to damage Mr Neish's credibility and reputation and to cast doubt on his suitability to remain in his position as Council general manager.

## Mr Petch's appearance at the Commission

On 8 February 2013, Mr Petch was served with a summons requiring his attendance at a compulsory examination at the Commission on 15 February 2013. The summons indicated that the Commission was investigating "the circumstances relating to and also following the investigation and reporting of ... material discovered on a City of Ryde Council laptop issued to Council General Manager John Neish by officers of the Council".

The summons also included a paragraph warning Mr Petch not to disclose any information about the summons. In bold, capital letters, the paragraph said:

***YOU MUST NOT DISCLOSE INFORMATION ABOUT THIS SUMMONS INCLUDING THE EXISTENCE OF THE SUMMONS WHICH IS LIKELY TO PREJUDICE THE INVESTIGATION TO WHICH IT RELATES.***

This was followed by a warning that it is an offence under s 114 of the ICAC Act to disclose information about the summons that was likely to prejudice the investigation.

Mr Petch appeared at the compulsory examination on 15 February 2013 and was asked questions about the discovery of material on Mr Neish's computer. At the commencement of his evidence, Mr Petch said that the only person to whom he had spoken about attending the Commission that day to give evidence was Mr Belling.

During the compulsory examination, Mr Petch confirmed that he was handed a CD containing material from Mr Neish's computer by a Council IT officer on the evening of 31 January 2013. Mr Petch provided the original CD to the Commission during the examination. He informed the Commission that he had made a copy of the CD for his own reference, and had also made a copy of the CD and provided it to Mr Belling to have it forensically examined to authenticate its contents. Mr Petch confirmed that the three copies of the CD that he referred to were the only three copies in existence.

During the public inquiry, Mr Petch was again asked whether he had spoken to anyone apart from Mr Belling about attending the Commission to give evidence on 15 February 2013. Mr Petch again confirmed that he had not and acknowledged that, at the time he was summonsed to give evidence at the compulsory examination, he was aware that he was not supposed to speak to people about that fact that he was giving evidence at the Commission, including after he had given the evidence. Mr Petch qualified this answer somewhat when he said that, while he understood that he was not supposed to discuss the subject matter of his evidence at the Commission with others, he suggested that he did not understand that he was not supposed to mention the existence of his summons to attend the Commission.

The Commission legally intercepted a number of telephone calls that demonstrate that Mr Petch disclosed to a number of persons in the days before his attendance at the compulsory examination that he was to attend the Commission and give evidence in relation to the complaint against Mr Neish.

On Sunday, 10 February 2013, Mr Petch told Mr Stavrinou that he was giving evidence at the Commission on Friday (15 February 2013), and added that he was not supposed to tell anyone that.

On 11 and 13 February 2013, Mr Petch had telephone conversations with an anti-development activist and a personnel recruiter respectively in relation to the complaint against Mr Neish and informed both that he was attending the Commission to give evidence on Friday (15 February 2013).

On 14 February 2013, Mr Petch had a telephone conversation with an associate in the financial sector during which Mr Petch informed the associate that he was attending the Commission the next day to give evidence “against” Mr Neish.

On 15 February 2013, about half an hour before attending the Commission, Mr Petch had a telephone conversation with a former employee of the Council and informed him that he was going to the Commission that day to give evidence “against” Mr Neish.

Faced with this evidence at the public inquiry, Mr Petch ultimately accepted that he was under no misapprehension, as at 15 February 2013, that he was not supposed to speak to other people about the fact that he was attending the Commission to give evidence. He attempted, however, to qualify this by saying that he had not told anyone about the substance of his evidence.

The Commission does not accept Mr Petch’s qualification that he did not disclose the substance of his evidence. Mr Petch clearly said to a number of people in the days before his attendance at the Commission on 15 February 2013 that he was going to give evidence “against” Mr Neish in relation to the discovery of adult material on his Council-issued computer. The Commission does not accept that Mr Petch could have been mistaken about the telephone calls or the fact that he discussed giving evidence at the Commission, given their proximity to his attendance at the Commission on 15 February 2013.

The Commission is also satisfied that Mr Petch lied during his compulsory examination on 15 February 2013 when he said that there were only three copies of the CD in existence.

During a telephone call with Mr Laface on 1 February 2013, Mr Petch told Mr Laface that he had already given a copy of the CD to Mr Belling, but that there were “several” other copies. Mr Petch also told Mr Laface that he would leave a copy with Mr Cerreto for Mr Laface.

During a telephone call with Mr Cerreto on 2 February 2013, Mr Petch told Mr Cerreto about the material on a CD and said that he would deliver a personal copy to him. Later that day, Mr Petch sent Mr Cerreto a text message asking Mr Cerreto if he was going to be at his cafe that afternoon because Mr Petch had “the data we discussed”. The Commission is satisfied that it can be reasonably inferred from this evidence that Mr Petch was talking about dropping a copy of the CD to Mr Cerreto. Mr Cerreto confirmed during evidence before the Commission that Mr Petch delivered a copy of the CD to him on 3 February 2013.

The Commission does not accept the submission on behalf of Mr Petch that he had forgotten about giving a copy of

the CD to Mr Cerreto when he came to give evidence at the compulsory examination on 15 February 2013 – only 12 days later.

## Corrupt conduct

Mr Petch’s unauthorised release of confidential information concerning the discovery of adult material on Mr Neish’s computer to Mr Belling, Mr Cerreto, Mr Patterson, Mr Booth and Mr Stavrinis in an attempt to encourage its reporting in the media so as to undermine Mr Neish’s credibility and reputation and to cast doubt on his suitability to serve as the Council’s general manager is corrupt conduct for the purposes of s 8 of the ICAC Act. This is because it is conduct of a public official that involves the misuse of information or material that he had acquired in the course of his official functions and comes within s 8(1)(d) of the ICAC Act.

In relation to s 9 of the ICAC Act, it is relevant to consider the common law offence of misconduct in public office. The elements of the offence of misconduct in public office were considered in *R v Quach* (2010) 201 A Crim R 522. Redlich JA (with whom Ashley JA and Hansen AJA agreed) said at 535 that the elements of the offence were as follows:

1. *a public official;*
2. *in the course or connected to his public office;*
3. *wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his or her duty;*
4. *without reasonable excuse or justification; and*
5. *where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.*

To constitute the common law offence of misconduct in public office, the relevant conduct must be serious and meriting criminal punishment having regard to the responsibilities of the officeholder and the extent of the departure from those standards. As mayor, Mr Petch was in a considerable position of power within the Council, especially when it came to complaints relating to the conduct of the general manager. The 2011 code of conduct dictated that the mayor was an appropriate person to deal with such complaints. The code of conduct, however, was also clear about the confidential manner in which such complaints should be handled, a point that Mr Petch, himself, emphasised when discussing the complaint with other Council staff.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Petch's release of confidential information were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch had committed the common law offence of misconduct in public office.

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that, if the facts it has found concerning Mr Petch's misuse of information acquired in the course of his official functions, as outlined above, were to be proved to the requisite civil standard and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch had committed disciplinary offences involving a substantial breach of the Council's code of conduct.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74C(2) recommendation

The Commission is of the opinion that consideration should be given to the suspension of Mr Petch from civic office with a view to his dismissal in relation to the serious corrupt conduct that is the subject of the corrupt conduct finding against Mr Petch in this chapter.

## Section 74A(2) statements

For the purposes of this chapter, Mr Petch and Mr Stavrinou are affected persons.

### Mr Petch

Mr Petch gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

Lawfully-intercepted telephone calls obtained by the Commission during its investigation would, however, be admissible in a prosecution for a criminal offence.

The evidence shows that Mr Petch embarked on a course of conduct designed to release confidential Council material to the media in order to embarrass and discredit Mr Neish. Lawfully-intercepted telephone calls show the various discussions that Mr Petch had with numerous individuals about the discovery on Mr Neish's computer, while covert surveillance also shows the meetings with Mr Patterson, Mr Booth and Mr Belling where Mr Petch provided them with thumbnail pictures and details of the

discovery of the adult material. In addition, Mr Neish has provided a statement to the Commission that is consistent with the evidence that he gave during the public inquiry in relation to his dealings with Mr Petch at the relevant time.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Petch for the common law offence of misconduct in public office.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Petch for five offences of giving false or misleading evidence to the Commission pursuant to s 87 of the ICAC Act.

The first of these five suggested offences relates to Mr Petch's evidence at the compulsory examination on 15 February 2013 when he said that the only person that he told about attending the Commission to give evidence was Mr Belling.

The second relates to Mr Petch's evidence at the compulsory examination on 15 February 2013 when he said that there were only three copies of the CD containing material from Mr Neish's computer in existence.

The third relates to Mr Petch's evidence at the compulsory examination on 15 February 2013 when he said that he wanted the complaint in relation to the material on Mr Neish's computer dealt with confidentially and properly.

The fourth relates to Mr Petch's evidence at the public inquiry on 25 July 2013 when he denied that he had asked Mr Stavrinou to work out a way to leak material in relation to Mr Neish to the media.

The fifth relates to Mr Petch's evidence at the public inquiry on 25 July 2013 when he said that he had desisted completely from doing anything to try to alert the media to the discovery of adult material on Mr Neish's computer after a meeting with Mr Belling on 1 February 2013.

Pursuant to s 440H and s 440I of the LG Act, the chief executive of the Office of Local Government can investigate alleged misconduct by a councillor, and take disciplinary action against the councillor if satisfied that misconduct has occurred. The definition of "misconduct" in s 440F of the LG Act includes a failure by a councillor to comply with an applicable requirement of a code of conduct. Should the Commission's recommendation in relation to the suspension and dismissal of Mr Petch not be accepted, the Commission recommends action by the chief executive of the Office of Local Government pursuant to these provisions in respect of the conduct discussed in this chapter.

Mr Petch gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of such a

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declaration is that his evidence is not admissible against him in relation to any disciplinary offence.

Section 114A of the ICAC Act, however, provides that evidence given to the Commission by a public official may be admitted and used in evidence in disciplinary proceedings against the public official in circumstances where a finding has been made in a report under s 74 of the ICAC Act that the public official has engaged in corrupt conduct. In these circumstances, Mr Petch's evidence at the public inquiry is available to be used against him in any disciplinary proceedings.

### **Mr Stavrinos**

Mr Stavrinos gave evidence at the Commission with the protection of a declaration under s 38 of the ICAC Act. That protection, however, does not extend to offences under the ICAC Act, including an offence of giving false or misleading evidence to the Commission.

The Commission is of the opinion that the advice of the DPP should be sought in relation to the prosecution of Mr Stavrinos for an offence of giving false or misleading evidence to the Commission pursuant to s 87 of the ICAC Act.

The suggested offence relates to Mr Stavrinos' denial during evidence at the public inquiry on 24 July 2013 that he was aware, as at 8 February 2013, that Mr Petch had leaked the details of the discovery of adult material on Mr Neish's computer to the media.

The lawfully-intercepted telephone call between Mr Stavrinos and Mr Petch on 8 February 2013 provides evidence of them discussing the release of information to journalists, and also formulating a strategy for the release of further information. During the call, both men expressed surprise that the story of Mr Neish's departure

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had not appeared in the newspaper, and Mr Petch revealed that he had spoken to a journalist (Mr Patterson) and had been advised that a story about Mr Neish's departure had been written.

## Chapter 4: Release of confidential information to assist Mr Goubran

This chapter deals with the release of confidential Council information. The information was ultimately used in a letter of complaint sent to the Council on behalf of Mr Goubran about a report prepared by Dominic Johnson, group manager of environment and planning at the Council. The confidential material consisted of an email dated 20 June 2012 from the NSW Department of Planning and Infrastructure (DPI) to the Council dealing with zoning, along with a related email dated 27 June 2012 dealing with zoning and planning issues sent to councillors by Mr Johnson.

### The property in College Street, Gladesville

Mr Goubran is a property developer with a number of property interests in the Council area. As at mid-2012, one of the properties in which he had an interest was a strata title complex of industrial units located at 43–51 College Street in Gladesville.

The strata title complex was zoned “light industrial”. Mr Goubran and some of his fellow strata title owners had made a submission to Council seeking that the property be rezoned to “bulky goods” as part of a proposed local environmental plan (LEP). Through their interactions with the Council on this issue, Mr Goubran and his fellow owners in the strata plan became aware that Mr Johnson, in his role as group manager of environment and planning, had prepared a report for the Council indicating that his team did not support the rezoning.

In late 2012, Mr Goubran became aware that land located close to 43–51 College Street was also the subject of a submission to change the zoning from light industrial to bulky goods, so that a Bunnings Warehouse could be built on the site. Mr Goubran also became aware that Mr Johnson had prepared a report supporting the rezoning of that particular site. Mr Goubran told the Commission that he became aware of this information through Ray

Dresdner, who was a fellow owner of the strata complex.

At the public inquiry, Mr Goubran told the Commission that Mr Johnson’s two reports – one from July 2012 and the other from November 2012 – in respect of the proposed rezoning of the two sites were available to the public via the Council website. Mr Goubran also stated that both submissions by Mr Johnson quoted from a DPI advice dated 20 June 2012 provided to the Council.

The DPI advice in question is a 20 June 2012 email from Danijela Karac-Cooke, a DPI senior planner, to Sue Wotton, a member of the Council’s planning and environment staff. The email related to the DPI’s attitude towards zoning changes from light industrial to bulky goods for the “IN2” (light industrial) zone.

### The use of the DPI advice

On 14 March 2013, Charles Parisi, a lawyer and the principal of Parisi & Associates Lawyers, sent a letter to Mr Petch in his capacity as mayor. The letter indicated that Mr Parisi was acting on behalf of a group of property owners within the IN2-zoned area.

Mr Parisi referred to the fact that a submission prepared by his clients (Mr Goubran and his fellow owners at 43–51 College Street in Gladesville) to rezone their land had been rejected after the Council had considered Mr Johnson’s report. Mr Parisi said that Mr Johnson’s report appeared to have been prepared with the assistance and advice of the DPI. Mr Parisi noted that an extract of the DPI’s advice dated 20 June 2012 was included in Mr Johnson’s report, and also noted that Mr Johnson used the advice to show that the DPI was opposed to the rezoning of land in the Council area.

Mr Parisi went on to refer to the fact that, in November 2012, the Council dealt with a submission seeking rezoning of land in order to develop a Bunnings Warehouse on a nearby site. Mr Parisi noted that that submission was

accepted and the site rezoned, following consideration of another report by Mr Johnson, this time supporting the rezoning of the land.

Mr Parisi said that Mr Johnson referred to the same DPI advice of 20 June 2012 on that occasion. Mr Parisi alleged that Mr Johnson's report supporting the rezoning had been written in a way that suggested that the DPI took a favourable view to the rezoning of land to include bulky goods. He suggested that there were issues of impropriety that needed to be addressed in this alleged inconsistency in approach.

Mr Parisi lay the blame for the conflicting reports at the feet of Mr Johnson. In his letter, Mr Parisi made four demands of Council, specifically that Council:

- initiate an investigation into the preparation of the two reports by Mr Johnson
- initiate an investigation into the conduct of Mr Johnson as the group manager of environment and planning regarding the assessment of submissions
- take "appropriate action" against Council staff involved (Mr Parisi did not suggest what action the Council should take)
- reassess its views and determinations in relation to the submission of Mr Goubran and his fellow owners.

Mr Parisi concluded his letter by threatening to refer the matter to the Commission if the Council did not give an undertaking by 3 pm on 19 March 2013 that the matter had been "appropriately acted upon".

Mr Parisi's letter did not quote directly from the DPI advice of 20 June 2012, despite the fact that Mr Parisi acknowledged in his evidence at the public inquiry that he was in possession of the advice at the time of preparing the letter to the Council, and despite the fact that alleged inconsistency by Mr Johnson in applying that advice was at the heart of his complaint. The significance of this omission will be explored later in this chapter.

Following receipt of the letter from Mr Parisi, Mr Petch engaged Mr Belling's legal services. On 20 March 2013, Mr Belling sent a letter to Mr Parisi indicating that he had been retained to act for the Council. Mr Belling advised that the Council had initiated a confidential investigation into the preparation of the two reports. He also indicated that the Council would be referring the matter to the Commission if the Council was of the view that corrupt conduct had occurred. He undertook to keep Mr Parisi informed of the progress of the investigation and indicated that the previously unsuccessful application of Mr Goubran and his fellow owners might be reconsidered.

## How did the information make its way to Mr Goubran?

At some time on 26 November 2012, or in the days prior, Mr Petch requested his executive assistant, Linda Smith, to locate the DPI advice of 20 June 2012. The precise details of what Mr Petch requested are not clear but Ms Smith was able to locate the DPI advice and forwarded it to Mr Petch by email on 26 November 2012. It is not clear how much detail was provided by Mr Petch to assist Ms Smith to locate the advice. Ms Smith's email to Mr Petch, attaching the advice, said:

*Good afternoon Mr Mayor, I believe this is the information you are seeking. The email was not addressed to Dominic [Mr Johnson] but to one of his staff. The date and subject matter seem to match what you are looking for.*

Ms Smith's email was titled "Information re Bunnings site". The Commission is satisfied, based on Ms Smith's email, that Mr Petch had requested her to locate an email from the DPI sent to Mr Johnson in about June 2012 concerning the rezoning of land for the Bunnings site.

At 4.28 pm on 26 November 2012, Mr Petch forwarded the email from Ms Smith, containing the attached DPI advice, to Mr Stavrinou.

The Commission is satisfied that the DPI advice was confidential Council information that should not have been provided to anyone outside the Council. This was information that Mr Petch obtained in his position as a councillor and mayor of the Council. It was commercially-sensitive advice that related to the proposed zoning of land in the Ryde area, and information that could provide significant financial benefit to anyone looking to purchase property or undertake redevelopment of existing sites in the area.

The Commission does not accept a submission, made on behalf of Mr Petch, that his release of confidential information was justified on the basis that there was possible impropriety on the part of Mr Johnson and/or his staff in relation to the preparation of the reports in July and November 2012. It was argued on behalf of Mr Petch that the possible impropriety removes any duty of confidentiality on the part of Mr Petch over the relevant documents. An allegation of impropriety would not justify the unauthorised release of confidential information to Mr Stavrinou. The proper way to deal with such an allegation would be to conduct an internal Council inquiry or refer the matter to an appropriate investigative authority. It is also notable that at no stage during his evidence before the Commission did Mr Petch claim that the allegation of impropriety on the part of Mr Johnson removed Mr Petch's duty of confidentiality.

Mr Petch's reasons for forwarding the DPI advice, and the manner in which that advice found its way to Mr Goubran, and eventually to Mr Parisi, was the subject of some contention during the public inquiry.

Mr Petch told the Commission that he forwarded the DPI advice to Mr Stavrinis following a request from Mr Stavrinis that Mr Petch get any information he could find in relation to the proposed Bunnings Warehouse site. Mr Petch denied that Mr Goubran had asked him for a copy of the DPI advice. Mr Stavrinis also denied that Mr Goubran had asked him to obtain the DPI advice.

Mr Stavrinis gave somewhat different evidence from Mr Petch as to the circumstances in which he came to receive the DPI advice. He said that Mr Petch informed him of a complaint about corruption from someone called "Ray" (presumably Mr Dresdner), and that he (Mr Stavrinis) then asked Mr Petch how he could get hold of the original advice. Mr Stavrinis said he did not ask Mr Petch for information in relation to the proposed Bunnings Warehouse site. Mr Stavrinis said that he asked for the document from Mr Petch because he was interested in the possible corruption involved, although he admitted that he did not follow through with his plan to investigate the alleged corruption. He also said that he did not read all the way through the DPI advice and effectively dropped the matter.

Nonetheless, Mr Stavrinis claimed that, by January 2013, he had taken a hard copy of the DPI advice and given it to Mr Goubran, knowing that it would be of interest to him because he had a landholding in the area affected by possible rezoning.

While admitting that he was aware of some dissatisfaction on the part of Mr Dresdner in relation to the Council's decision to refuse to rezone the land at 43–51 College Street, Mr Petch denied that, as of 26 November 2012, he was aware that his long-term associate Mr Goubran also had an interest in the land. Mr Petch said that the first he knew of Mr Goubran having an interest in the property was when he received the letter from Mr Parisi on 14 March 2013.

When Mr Goubran gave evidence at the public inquiry, he contradicted Mr Petch's evidence on this point to a significant degree. Mr Goubran acknowledged that, from about mid-2012 and certainly before the 2012 local government elections, Mr Goubran had made Mr Petch aware of his desire to change the zoning of his land at 43–51 College Street. Mr Goubran went on to tell the Commission about one instance in 2012 when Mr Petch had attended his office on College Street in Gladesville because he wanted Mr Goubran to show him where the land was and how the proposed change in zoning would affect Mr Goubran and other owners in the strata property, as well as others in the area. Mr Goubran had

no reason to lie to the Commission about this matter. The Commission accepts his evidence on this point.

There is additional evidence that Mr Petch was aware that Mr Goubran had an interest in the property at 43–51 College Street in the form of an email sent by Mr Petch to Mr Cerreto in June 2012.

On 27 June 2012, Mr Petch forwarded to Mr Cerreto an email that was originally sent by Mr Johnson to all councillors on the same date. The email explicitly dealt with the submission by Mr Goubran and Mr Dresdner to change the zoning of the land encompassing 43–51 College Street from light industrial to bulky goods. In the email, Mr Johnson referred to the submission forwarded by Mr Goubran and signed by Mr Dresdner "who also owns land in the IN2 zone". Mr Petch wrote in his email to Mr Cerreto, which had Mr Johnson's original email attached, "this may be of interest to John Goubran".

The email from Mr Johnson concluded with a paragraph below his email signature indicating that the email was privileged and confidential. The contents of the email itself detailed the reasons for particular decisions taken by Council planning staff and included reference to the further consideration by the Council of the rezoning of the entire IN2 zone. This information could be extremely valuable to landowners within the area or people interested in purchasing or developing land within that zone. As such, the Commission is satisfied that the email from Mr Johnson contained commercially-sensitive confidential information and should have been treated as confidential by Mr Petch. The Commission is satisfied that, as an experienced councillor, Mr Petch was aware that Mr Johnson's email was a confidential document. The Commission is satisfied that, from at least June 2012, Mr Petch was aware that Mr Goubran had an interest in the property at 43–51 College Street.

The next issue is whether, in sending the DPI advice to Mr Stavrinis, Mr Petch intended or understood that it would be passed on to Mr Goubran to assist him in his attempt to get the property rezoned.

Both Mr Goubran and Mr Cerreto told the Commission about conversations with Mr Petch regarding advice that was being obtained from senior counsel on behalf of Mr Goubran and a letter that would be sent to the Council complaining about the conduct of Mr Johnson in relation to the reports he prepared regarding the rezoning of the College Street property and the proposed site of the Bunnings Warehouse.

Mr Goubran said that he had spoken to Mr Petch in the past about his concerns with Mr Johnson, but had not discussed Mr Johnson's reports directly with Mr Petch. Mr Goubran did say, however, that Mr Dresdner had been to see Mr Petch and briefed him about the alleged

discrepancies in the two reports. Mr Goubran then said that Mr Petch had telephoned him and enquired whether he had received the legal advice from senior counsel.

Mr Cerreto said that he had a number of conversations with Mr Petch about the preparation of a letter of complaint and the fact that legal advice was being obtained from senior counsel. As a result of those conversations, Mr Cerreto said that Mr Petch was aware that Mr Goubran was getting legal advice from senior counsel in relation to alleged corruption involving Mr Johnson. Mr Cerreto said that Mr Petch was anxious to get that legal advice in his hands to take it to the Council and the Commission.

The Commission is satisfied that Mr Petch was aware that Mr Goubran was obtaining legal advice in relation to the alleged discrepancies in Mr Johnson's reports, and that Mr Petch was anxious to get hold of the advice when it had been obtained. When Mr Petch gave evidence to the Commission, he denied that he was even aware that Mr Goubran had any interest in the property at 43–51 College Street. The Commission is of the view that this was an attempt to distance himself from Mr Goubran and the letter sent by Mr Parisi to the Council. Given his various discussions with Mr Goubran and Mr Cerreto in relation to this matter, the Commission is satisfied that Mr Petch was aware that Mr Goubran was seeking to have his rezoning submission reconsidered by the Council, primarily by questioning the accuracy of Mr Johnson's report.

Given his knowledge of Mr Goubran's intention, the Commission is satisfied that Mr Petch forwarded the DPI advice contained in the email of 20 June 2012 to Mr Stavrinis in the belief that it would be provided to Mr Goubran to assist the rezoning submission, in which Mr Goubran had an interest. The Commission is satisfied that the DPI advice was provided to Mr Stavrinis, as opposed to Mr Goubran himself, to provide some distance between Mr Goubran and Mr Petch.

Mr Goubran told the Commission that Mr Stavrinis gave him the DPI advice sometime in January 2013. Mr Goubran had been aware of the existence of the DPI advice prior to receiving it from Mr Stavrinis because Mr Dresdner had drawn his attention to Mr Johnson's apparently conflicting reports that referred to the advice.

Mr Goubran said that the provision to him of the DPI advice by Mr Stavrinis was entirely unsolicited. He denied that he had requested a copy of the DPI advice from Mr Stavrinis or Mr Petch. He said it was entirely coincidental that Mr Stavrinis turned up at his office with a copy of the very document that Mr Goubran needed in order to compare Mr Johnson's two reports.

In early February 2013, Mr Goubran engaged Mr Parisi to obtain advice from senior counsel in relation to the discrepancies between Mr Johnson's two reports. Mr

Goubran told the Commission that he provided Mr Parisi with a copy of the two reports by Mr Johnson and a copy of the DPI advice.

Mr Parisi told the Commission that the DPI advice was contained in a bundle of documents provided to him by Mr Goubran during their first meeting. Mr Parisi said that Mr Goubran did not tell him where he had obtained the advice, and he did not make any enquiries of Mr Goubran as to the source and provenance of the advice. Mr Parisi confirmed that he provided a copy of the DPI advice to senior counsel in his advising brief, along with Mr Johnson's two reports.

While the Commission is unable to make any finding of fact as to when exactly Mr Goubran received a copy of the DPI advice from Mr Stavrinis – whether in late November 2012 or another date prior to late January 2013 – whenever Mr Goubran received it, the DPI advice would have been of the utmost significance to him, Mr Dresdner and their fellow owners in the strata complex at College Street.

Mr Dresdner had apparently identified inconsistencies in Mr Johnson's two relevant reports of July 2012 and November 2012 that were said to quote from the DPI advice. Mr Goubran said that Mr Dresdner had taken his concerns to Mr Petch as mayor. Mr Goubran had, himself, been briefed by Mr Dresdner, and Mr Goubran was considering obtaining legal advice in relation to possible corrupt conduct by Mr Johnson. With that as a backdrop, it beggars belief that the DPI advice would not be of significant interest and importance to Mr Goubran. The DPI advice would have been the ideal way in which to identify which of Mr Johnson's reports was quoting the advice correctly – obviously a point of great importance for Mr Goubran, whose submission to rezone his land had been rejected following a negative report by Mr Johnson.

## Corrupt conduct

The Commission finds that Mr Petch engaged in corrupt conduct by deliberately releasing confidential information in the form of the DPI advice contained in an email of 20 June 2012, which was provided to Mr Stavrinis on 26 November 2012, and in the form of the email of 27 June 2012 sent by Mr Johnson, which Mr Petch sent to Mr Cerreto on 27 June 2012, in both cases with the intention that the information would be provided to Mr Goubran and used by him for his benefit. This is because Mr Petch's conduct involves the misuse of information or material that he acquired in the course of his official functions and therefore comes within s 8(1)(d) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Petch's release of confidential information for the

benefit of Mr Goubran, as outlined above, were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch had committed the common law offence of misconduct in public office.

The information released by Mr Petch to Mr Goubran via Mr Stavrinis and Mr Cerreto was confidential information that Mr Petch had obtained in his role as a councillor. He used his position as a public official to obtain the DPI email of 20 June 2012. He knew that Mr Johnson's email of 27 June 2012 was provided to him in his position as a public official and was a confidential document. The information he released contained commercially-sensitive information relating to the zoning of land within the Ryde local government area, and could have provided significant financial advantage to anyone interested in developing or purchasing land within the relevant area. Mr Petch was aware that the information would assist Mr Goubran's quest to have his rezoning submission reconsidered. If successful, Mr Goubran stood to gain financially from the Council's decision.

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch, by breaching clauses 5.8, 5.9 and 5.10 of the 2011 code of conduct relating to the use of confidential Council information and s 664(1) of the LG Act, committed disciplinary offences amounting to misconduct pursuant to s 440F of the LG Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74C(2) recommendation

The Commission is of the opinion that consideration should be given to the suspension of Mr Petch from civic office with a view to his dismissal in relation to the serious corrupt conduct that is the subject of the corrupt conduct finding against Mr Petch in this chapter.

## Section 74A(2) statement

For the purposes of this chapter, Mr Petch is an affected person.

### Mr Petch

Mr Petch gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act.

The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

Emails show that Mr Petch requested the DPI advice from Ms Smith and then forwarded it to Mr Stavrinis. Emails also show that Mr Petch forwarded Mr Johnson's email of 27 June 2012 to Mr Cerreto. Although statements have not been obtained from Mr Stavrinis, Mr Cerreto and Mr Goubran, they remain compellable witnesses in relation to their roles in obtaining the advice provided by Mr Petch.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP in relation to the prosecution of Mr Petch for the common law offence of misconduct in public office in relation to his release of the information outlined in this chapter.

Mr Petch gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of such a declaration is that his evidence is not admissible against him in relation to any disciplinary offence.

Section 114A of the ICAC Act, however, provides that evidence given to the Commission by a public official may be admitted and used in evidence in disciplinary proceedings against the public official in circumstances where a finding has been made in a report under s 74 of the ICAC Act that the public official has engaged in corrupt conduct. In these circumstances, Mr Petch's evidence at the public inquiry is available to be used against him in any disciplinary proceedings.

If the recommendation under s 74C(2) above is not accepted, the Commission is of the opinion that the chief executive of the Office of Local Government should consider taking disciplinary action against Mr Petch in relation to breaches of clauses 5.8, 5.9 and 5.10 of the 2011 code of conduct, as well as s 664 of the LG Act.

Section 664 of the LG Act states that a person must not disclose any information obtained in connection with the administration or execution of the LG Act. Mr Petch was performing duties in accordance with his role as mayor, as regulated by the LG Act, when he forwarded confidential Council information to Mr Stavrinis and Mr Cerreto.

## Chapter 5: Attempt to influence the acting general manager

This chapter deals with an allegation that Mr Petch improperly used his position as mayor to attempt to influence Ms Dickson, the Council's acting general manager, in relation to the payment of costs associated with Supreme Court proceedings concerning Mr Neish, in which Mr Petch was a defendant.

Ms Dickson was appointed acting general manager of the Council on 8 February 2013, following the departure of Mr Neish. Prior to her appointment to this position, Ms Dickson held the position of group manager of community life at the Council from November 2011.

### The Supreme Court proceedings

As outlined in chapter 2 of this report, on 18 April 2012, Mr Neish disclosed to the then mayor, Mr Etmekdjian, that he had received what he considered to be an inappropriate approach from Mr Abboud in relation to the proposed Ryde civic precinct redevelopment.

As outlined in chapter 3 of this report, on 9 July 2012, Mr Petch and Mr Tagg requested an extraordinary meeting of the Council to consider a resolution that Mr Neish's contract of employment be terminated.

On 11 July 2012, Mr Neish provided information to the Commission in relation to the approach made to him by Mr Abboud.

On 23 July 2012, the motion to terminate Mr Neish's employment was passed by the Council six votes to five. A rescission motion was lodged before the completion of the Council meeting.

The rescission motion was due to be heard on 14 August 2012 but, on 13 August 2012, the Council, on the instruction of Mr Etmekdjian, brought proceedings in the Supreme Court seeking an injunction prohibiting the six councillors who voted in favour of Mr Neish's termination

– Mr Petch, Mr Tagg, Mr Li, Mr Salvestro-Martin, Mr Butterworth and Mr Perram – from proceeding with attempts to terminate Mr Neish's employment contract.

The proceedings were heard before the Hon Justice McCallum in the Supreme Court on 13 November 2012. On 14 November 2012, her Honour made an order restraining the councillors from voting on a rescission motion until 5 pm on 14 September 2012. On 24 September 2012, the Supreme Court extended Justice McCallum's order restraining the councillors from voting on the rescission motion.

On 28 September 2012, the proceedings returned to the Supreme Court before the Hon Justice Schmidt. At this time, the Commission joined the proceedings to seek an order preventing the defendant councillors from taking action against Mr Neish until the conclusion of an investigation commenced by the Commission into, inter alia, whether there had been reprisal action against Mr Neish.

On the same day, Justice Schmidt made orders with the consent of all parties – the Council, the Commission, and the six defendant councillors. In relation to the proceedings brought by the Commission, the defendant councillors gave undertakings to the court that they would not take any action to terminate the employment of Mr Neish until the Commission notified the councillors in writing that the Commission had concluded its investigation in relation to the matters referred to it by Mr Neish.

In light of the undertakings given by the councillors not to take any action that would terminate Mr Neish's employment, there was no need for the Supreme Court to extend the original orders in the matter. Rather, the proceedings were stood over so that the parties could attempt to resolve the issue of who should pay the legal costs incurred in the matter.

## Ms Dickson's role

On 9 April 2013, the Council delegated to Ms Dickson, as acting general manager, the ongoing management of the Supreme Court proceedings, which then primarily concerned the issue of who should pay the legal costs.

At that time, the Council was embarking on the process of recruitment for a permanent general manager. The proposed recruitment timeframe involved a selection process between April and August 2013, so that the new general manager could commence work sometime in September 2013. At a Council meeting on 23 April 2013, the recruitment process was delegated to a committee comprising all 12 councillors.

Ms Dickson told the Commission that Mr Petch had encouraged her to apply for the general manager's position during one of their regular Monday meetings prior to the delegation of the recruitment to the committee. In his evidence at the public inquiry, Mr Petch agreed that he had encouraged Ms Dickson to apply for the position. Ms Dickson told Mr Petch that she was intending to apply for the position.

Although the Council had delegated the management of the Supreme Court proceedings to Ms Dickson, Mr Petch continued to seek advice on behalf of the Council in respect of the Supreme Court proceedings from Mr Belling. Mr Belling was not involved in the original Supreme Court proceedings, and the Council already had HWL Ebsworth Lawyers engaged to act in the proceedings and the subsequent negotiations as to the outstanding costs issue. Solicitor Mr Laface was acting on behalf of the six defendant councillors. Despite this, Mr Petch engaged Mr Belling on 15 January 2013 on a broad retainer to provide advice in relation to the costs issue in the Supreme Court proceedings.

## Discussion between Mr Petch and Mr Salvestro-Martin

On 4 April 2013, only days before the Council meeting at which management of the Supreme Court proceedings was delegated to Ms Dickson, Mr Petch telephoned Mr Salvestro-Martin in order to discuss the question of costs in the Supreme Court proceedings in which they were both defendants. During the call, which was lawfully intercepted by the Commission, Mr Petch told Mr Salvestro-Martin:

*...on Tuesday night we'll probably delegate to the Acting General Manager the ah the delegation of Council but the thing is ah before she goes to delegate I'll give her a good a firm talking to and say listen a lot of people have been watching the majority of Council have been watching how you ah handle the matter.*

After Mr Salvestro-Martin indicated his agreement with what Mr Petch was saying, Mr Petch continued, indicating that he would tell Ms Dickson "...and if you ever want to be the general manager of this place ah I'd tread very very carefully if I were you". Mr Salvestro-Martin replied, "absolutely, absolutely mate...".

During the public inquiry, Mr Petch acknowledged that the delegation of the management of the Supreme Court proceedings to Ms Dickson, his position as a defendant in the proceedings and his position as mayor, all created various difficult conflict of interest issues. Mr Petch denied, however, that his telephone call with Mr Salvestro-Martin evidenced his intention to pressure Ms Dickson into doing anything in relation to the costs issue. Mr Petch explained that, at the time of the call, Mr Salvestro-Martin was "fretting" over the costs issue more than anyone else, and he was just trying to allay his concerns.

Mr Salvestro-Martin told the Commission that he understood that what Mr Petch was suggesting during the telephone call was that he wanted to communicate to Ms Dickson that, if she wanted to be appointed as general manager, she should handle the costs aspect of the Supreme Court proceedings as Mr Petch wanted. That is the plain meaning of the words used by Mr Petch during the call and the Commission accepts that that was Mr Petch's meaning. Mr Salvestro-Martin conceded that putting pressure on Ms Dickson to agree to pay the defendant councillors' costs, if she wanted to be appointed general manager, was grossly improper.

With respect to the costs issue, there is evidence that Mr Petch sought to carry out his intention to pressure Ms Dickson to come to a decision favourable to him and the other defendant councillors.

## Mr Belling's advice

On 23 April 2013, Mr Belling sent Ms Dickson a letter containing his advice on the costs issue. In the letter, Mr Belling indicated that he had been asked to provide his advice to the Council by Mr Petch as mayor, but that the advice should not be provided to Mr Petch as he had a pecuniary interest in the ongoing proceedings. Mr Belling informed Ms Dickson that, based on his experience in dealing with another council, he was of the view that the Council could and should pay the legal costs of the six defendant councillors.

Ms Dickson told the Commission that she was very surprised to receive unsolicited advice from Mr Belling and, in fact, emailed him to query the basis upon which he was retained to provide such advice.

## Mr Petch talks with Ms Dickson

At 12.04 pm on 2 May 2013, Ms Dickson sent an email to all councillors informing them that the Supreme Court proceedings had been adjourned on 19 April 2013 for two weeks until 3 May 2013. She also indicated that the Council's solicitors had attempted to negotiate a resolution of the costs issue with the solicitors for the six defendant councillors, with an offer that each party bear its own costs. Ms Dickson noted in the email that the defendant councillors had declined this offer.

There was a function at the mayoral chambers on 2 May 2013. This function was attended by Ms Dickson and a number of other people, including Mr Petch. Ms Dickson told the Commission that, at the end of the function, Mr Petch asked her to remain behind, and asked the departing attendees to close the door to the mayoral chambers. Ms Dickson said that Mr Petch then told her that, after her email earlier that day, he had received a number of telephone calls from councillors expressing concern about

the way the Supreme Court matter was proceeding. Ms Dickson said that she told Mr Petch that it was not a matter that they should be discussing and she stood up to leave. According to Ms Dickson, Mr Petch then said to her "let me give you some fatherly advice", and proceeded to tell her that the defendant councillors would be looking at this matter with great interest, and it would be in her favour to come to a decision on the matter of costs that was favourable to those councillors.

Ms Dickson said that she again told Mr Petch that it was not appropriate that they discuss the matter, and that she was still waiting on advice from the Council's insurers. Ms Dickson said that, at that point, Mr Petch appeared to be upset and angry about what she had told him and he sat forward in his chair so that he was about 30 centimetres away from her. She said that he was speaking more loudly, and his face was red. He repeated that he thought that she should come to a position that was consistent with the advice of Mr Belling and that such a decision would be looked on favourably by the majority of councillors. Ms Dickson also recalled Mr Petch saying that she would need his support to get his fellow councillors across the line when it came to their decision on the appointment of a general manager. Ms Dickson said that she got up and left the chambers after repeating to Mr Petch that they could not discuss the matter.

At the public inquiry, Mr Petch gave a very different version of events. He agreed that he spoke with Ms Dickson after the function, and they discussed the Supreme Court proceedings. He denied, however, that Ms Dickson suggested to him that it was a matter that they should not discuss and that she got up to leave. Rather, Mr Petch said that they had had quite a cordial conversation. He said that they sat down and he put to Ms Dickson the concerns of councillors. He believed he may have also discussed Mr Belling's advice.

Mr Petch denied that he got upset, aggressive or angry at any time, although he admitted that, as Ms Dickson was leaving at the conclusion of their conversation, he said to her: "By the way, a lot of the councillors will be looking upon what you do in this matter and don't forget they'll be voting". He said that this was not a threat to Ms Dickson but rather some advice as a "lobbyist" to try to get the support that she needed to become general manager.

While not present at this meeting, Mr Salvestro-Martin told the Commission that he recalled that, both before and after the meeting, Mr Petch indicated that he was going to speak to, or had spoken to, Ms Dickson to indicate that she should handle the costs issue in a particular way, if she wanted to be looked on favourably as a candidate for the general manager position.

At about 10 pm on the same day, while driving home, Ms Dickson received a call on her mobile telephone from Mr

Petch. Ms Dickson said that Mr Petch told her that he was in his office with his “colleagues” and then asked her whether she had had a chance to think about the matters they had discussed earlier that day. Ms Dickson said that she told Mr Petch that it was inappropriate for them to continue to discuss the matter and reiterated that she had given instructions to the Council’s solicitors and the matter was back in court the next day. She then terminated the call, before turning off her telephone.

Ms Dickson said that, when she turned her telephone back on a short time later, she had a voicemail message from Mr Petch asking her to call him back. Ms Dickson said that she sent a text message to Mr Petch’s mobile telephone saying that she had bad telephone reception. This was an excuse as she did not want to speak to him. Ms Dickson also told Mr Petch in the text message that she could not discuss the matter with him as he was a defendant.

Mr Petch confirmed that he had telephoned Ms Dickson and placed her on speaker phone while a number of other councillors were in his chambers. He said that he did so because they had been asking him about Ms Dickson’s position in relation to the costs issue. He denied that she ever told him that it was inappropriate for them to discuss the issue, but confirmed that the call was ended when Ms Dickson’s telephone dropped out and he called her back, unsuccessfully, before leaving her a voicemail message.

Mr Salvestro-Martin told the Commission that he was present in the mayoral chambers on 2 May 2013 when Mr Petch telephoned Ms Dickson. He said that Mr Petch used words to the effect that there were a number of people involved in the costs issues and that Ms Dickson needed to take that into account and arrive at a position that was favourable to the affected councillors, if she wanted a favourable outcome in terms of her appointment as general manager. Mr Salvestro-Martin agreed that Mr Petch’s comments could be interpreted as offering an inducement to Ms Dickson to act in a way favourable to Mr Petch or as an implied threat that, if she did not act in that way, she might not receive favourable treatment when it came to a decision about appointing a permanent general manager. The Commission accepts Mr Salvestro-Martin’s evidence concerning the conversation.

Where the evidence of Mr Petch and Ms Dickson is contradictory, the Commission prefers the evidence of Ms Dickson. Ms Dickson was an impressive witness. She was precise in her detail about the meeting, and was unshaken when her recollection was tested in cross-examination. The telephone call between Mr Petch

and Mr Salvestro-Martin shows that Mr Petch was intending to speak to Ms Dickson to advise her that it would be in her best interests to resolve the costs issue in favour of the defendant councillors, if she wanted to be appointed general manager. Mr Petch clearly had a conflict of interest in this matter and there was no proper basis upon which he could make such a demand.

The Commission is satisfied that Mr Petch told Ms Dickson that she should come to a decision on the matter of costs that was favourable to him and the other five councillors and implied that, if she did not make such a decision, she would not be appointed general manager.

In submissions forwarded to the Commission on behalf of Mr Petch, it was argued that Mr Petch was simply suggesting that Ms Dickson should come to a decision in relation to the Supreme Court costs matter that was consistent with the advice provided by Mr Belling. It was further argued that, because Mr Belling had been retained by Mr Petch in his capacity as mayor to provide legal advice, it was reasonable and open for Mr Petch to have adopted such a position.

The Commission does not accept this submission. The Commission accepts the evidence of Ms Dickson in relation to what was said, and her evidence concerning Mr Petch’s demeanour during the meeting in the mayoral chambers on 2 May 2013. The Commission accepts that Mr Petch became agitated, spoke loudly and leaned towards Ms Dickson after she told him that she was not prepared to discuss with him the issue of the defendant councillors’ legal costs. The Commission is satisfied that Mr Petch was attempting to pressure Ms Dickson into making a decision that was favourable to him and the other councillors by using the threat of a lack of support for Ms Dickson when it came to the recruitment of a general manager.

## Corrupt conduct

The Commission finds that Mr Petch intended to improperly influence Ms Dickson’s exercise of her public official functions by making a threat implying that, unless she resolved the Supreme Court costs issue in a way favourable to Mr Petch and his fellow defendant councillors, they would not support her application to be appointed as the Council’s general manager.

Such conduct on the part of Mr Petch is corrupt conduct. This is because it was conduct by him that constituted or involved the dishonest or partial exercise of his official functions and therefore comes within s 8(1)(b) of the ICAC Act. It is also conduct that adversely affects the official functions of a public official and could involve

blackmail and therefore comes within s 8(2)(c) of the ICAC Act.

For the purpose of s 9(1)(a) of the ICAC Act, it is necessary to consider the provisions of s 249K of the Crimes Act. That section provides:

*(1) A person who makes any unwarranted demand with menaces:*

- (a) with the intention of obtaining a gain or of causing a loss, or*
- (b) with the intention of influencing the exercise of a public duty,*

*is guilty of an offence.*

For the purposes of s 249K of the Crimes Act, “menaces” includes an express or implied threat of any action detrimental or unpleasant to another person and a general threat of detrimental or unpleasant action that is implied because the person making the unwarranted demand holds a public office.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Petch’s attempt to influence Ms Dickson, as outlined above, were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch had committed the offence of blackmail contrary to s 249K of the Crimes Act or, alternatively, the common law offence of misconduct in public office (the elements of which have been outlined earlier in this report).

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch, by breaching clause 6.7(e) of the 2013 code of conduct (formerly clause 4.7(e) of the 2011 code of conduct) relating to inappropriate actions, committed a disciplinary offence amounting to misconduct pursuant to s 440F of the LG Act.

Clause 6.7(e) of the 2013 code of conduct states that councillors must not engage in inappropriate interactions, relevantly including:

*Councillors and administrators being overbearing or threatening to council staff.*

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74C(2) recommendation

The Commission is of the opinion that consideration should be given to the suspension of Mr Petch from civic office with a view to his dismissal in relation to the serious corrupt conduct that is the subject of the corrupt conduct finding against Mr Petch in this chapter.

## Section 74A(2) statement

For the purposes of this chapter, Mr Petch is an affected person.

Mr Petch gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

Ms Dickson has provided a statement to the Commission consistent with her evidence at the public inquiry. The telephone call between Mr Petch and Mr Salvestro-Martin was lawfully intercepted by the Commission and would be admissible in any prosecution proceeding, while telephone records also support Ms Dickson’s evidence in relation to the timing of telephone calls and messages between herself and Mr Petch.

The Commission considers that the advice of the DPP should be sought in relation to the prosecution of Mr Petch for an offence of blackmail pursuant to s 249K of the Crimes Act in relation to his unwarranted demand of Ms Dickson with menaces with the intention of influencing the exercise of her official functions as general manager of the Council.

On the basis of the evidence outlined above, the Commission also considers that the advice of the DPP should be sought in relation to the prosecution of Mr Petch, in the alternative, for the common law offence of misconduct in public office.

Mr Petch gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of such a declaration is that his evidence is not admissible against him in relation to any disciplinary offence.

Section 114A of the ICAC Act, however, provides that evidence given to the Commission by a public official may be admitted and used in evidence in disciplinary proceedings against the public official in circumstances where a finding has been made in a report under s 74 of the ICAC Act that the public official has engaged in corrupt conduct. In these circumstances, Mr Petch’s evidence at the public inquiry is available to be used against him in any disciplinary proceedings.

Pursuant to s 440H and s 440I of the LG Act, the chief executive of the Office of Local Government can investigate alleged misconduct by a councillor and take disciplinary action against the councillor, if satisfied that misconduct has occurred. The definition of “misconduct” in s 440F of the LG Act includes a failure by a councillor to comply with an applicable requirement of a code of conduct. Should the Commission’s recommendation in relation to suspension and dismissal of Mr Petch not be accepted, the Commission recommends action by the chief executive of the Office of Local Government pursuant to these provisions in respect of the conduct discussed in this chapter.

## Chapter 6: Mr Petch's failure to disclose

This chapter deals with the failure by Mr Petch to disclose a pecuniary interest arising from his relationship with Mr Booth, owner and managing editor of *The Weekly Times*, during consideration by the Council of its newspaper advertising contract. During this consideration, Mr Petch spoke in favour of a motion to award part of the Council's advertising contract to *The Weekly Times*, at a time when Mr Booth was indebted to him in the amount of \$250,000 and repayment of that debt was in arrears.

### Disclosure requirement

During the period relevant to this investigation, councillors were required to disclose pecuniary interests pursuant to s 442 and s 444 of the LG Act. The Local Government (General) Regulation 2005 provides guidance as to the type of pecuniary interests that needed to be disclosed by councillors, along with the form of the disclosure that is required.

Section 442 of the LG Act defines a pecuniary interest as an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. The section further requires that a person does not have pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision a person might make in relation to the matter.

Section 451 of the LG Act requires that councillors who have a pecuniary interest in any matter with which the council is concerned, and who are present at a meeting of the council at which the matter is being considered, disclose the nature of the interest at the meeting as soon as practicable. The section further requires that the councillors not be present at, or in sight of, the meeting of the council at any time during which the matter is being considered or discussed by the council or at any time during which the council is voting on any question in relation to the matter.

Similar provisions are contained in the Council's code of conduct. Clause 4 of the 2013 code of conduct, titled "conflicts of interest", gives explicit guidance as to how to identify and manage conflicts of interest and how to identify and manage pecuniary and non-pecuniary conflicts of interest.

Clause 4 defines a conflict of interest as existing where a reasonable and informed person would perceive that a councillor could be influenced by a private interest while carrying out their public duty. The code of conduct goes on to place the onus on the councillor to avoid, or appropriately manage, the conflict of interest in order to uphold the probity of Council decision-making.

Clause 4 of the 2013 code of conduct adopts the definition of a pecuniary interest in s 442 of the LG Act.

Clause 4.7 of the 2013 code of conduct adopts s 451 of the LG Act, which requires councillors to disclose a pecuniary interest at a meeting, and then leave the meeting without participating in discussions or voting on a matter where they have a pecuniary interest.

### The loan by Mr Petch to Mr Booth

In October 2012, Mr Petch entered into a loan agreement and mortgage transaction with Mr Booth and *The Weekly Times* Gladesville Pty Ltd. At the time, Mr Booth was the owner and managing editor of *The Weekly Times*. Mr Petch agreed to loan Mr Booth the sum of \$250,000 on the security of properties owned by Mr Booth and his sister.

The \$250,000 loan was advanced to Mr Booth in two instalments. First, a bank cheque was drawn to Mr Booth in the sum of \$235,000 and, secondly, a personal cheque for \$15,000 from Mr Petch was drawn to *The Weekly Times* and given directly to Mr Booth.

Mr Booth used the loan monies, at least in part, to meet the operating expenses of *The Weekly Times*.

The terms of the loan agreement set an interest rate of 10% per annum, with the loan (principal and interest) to be repaid within six months of the date of the advance. Mr Booth told the Commission at the public inquiry that he had not repaid the loan, and had, in fact, paid nothing more than the first interest instalment.

It is clear that Mr Petch had a pecuniary interest in any matter that might come before Council concerning any financial benefit the Council might provide to Mr Booth or *The Weekly Times*. Mr Petch admitted during the public inquiry that he knew that he was obliged to declare to the Council his pecuniary interest arising out of the loan agreement and mortgage transaction when any matter involving Mr Booth or *The Weekly Times* came before the Council.

### **The motion of 26 March 2013**

In early 2012, the Council had entered into a contract with the *Northern District Times* to place advertising with that newspaper for the period from 1 April 2012 to 30 March 2013. In early 2013, Ms Dickson, as acting general manager, exercised an option to extend the contract until 30 September 2013.

During the course of a telephone conversation on 20 March 2013, which was lawfully intercepted by the Commission, Mr Petch and Mr Salvestro-Martin discussed the Council's advertising contract. Mr Petch suggested to Mr Salvestro-Martin that Mr Salvestro-Martin should put a motion before the Council that the Council's advertising contract should be divided between the two local papers. Mr Salvestro-Martin agreed to do so.

On 26 March 2013, the Council considered a motion put forward by Mr Salvestro-Martin that the Council's advertising contract be split between two newspapers – *The Weekly Times* and the *Northern District Times* – when it came up for renewal in September 2013. Mr Petch had

a clear pecuniary interest in the outcome of the motion and a clear conflict of interest. He had loaned Mr Booth a significant amount of money and Mr Booth's ability to repay the money largely hinged on the financial viability of his business, *The Weekly Times* newspaper. Evidence before the Commission shows that, at the time the motion was discussed in Council, Mr Booth had made only one interest repayment and the entire loan amount remained unpaid. Mr Booth's ability to repay Mr Petch would be affected by Council's decision of whether or not to award an advertising contract to Mr Booth's newspaper.

During the consideration of the motion by Council, Mr Petch spoke in favour of the motion. The relevant audio from the Council meeting was played during the public inquiry. Mr Petch is recorded as speaking in favour of the motion, pointing to financial difficulties for print media outlets and saying that, if the Council wanted a newspaper to report Council's activities, the Council had to support that newspaper first. At no time during the consideration of the motion, or at all during the Council meeting, did Mr Petch disclose his financial relationship with Mr Booth or the newspaper.

The Council eventually passed a motion in different terms following advice from Ms Dickson. The motion that was passed unanimously did not mention the splitting of the advertising contract between the two newspapers, but rather allowed for Council's advertising services to be tendered and contracts issued when the then contract expired in October 2013.

Mr Salvestro-Martin initially told the Commission that it was he who came up with the idea of splitting the advertising contract and that he decided to formulate a notice of motion to that effect. Upon hearing his telephone call with Mr Petch on 20 March 2013 played, however, Mr Salvestro-Martin agreed that it was Mr Petch who had come up with the idea. Mr Salvestro-Martin claimed that, at the time he discussed the matter with Mr Petch on

20 March 2013, he was not aware of the loan agreement and mortgage arrangement involving Mr Petch, Mr Booth and *The Weekly Times*.

Mr Petch told the Commission that his failure to mention his financial relationship and clear conflict of interest when speaking in favour of the motion before the Council was a "slip of the mind". Despite what was said in the telephone call on 20 March 2013 and what was said by Mr Salvestro-Martin during his evidence, Mr Petch initially maintained that he did not ask Mr Salvestro-Martin to put forward a motion to split the Council's advertising contract. When challenged further on this point, however, Mr Petch eventually conceded that he probably did suggest to Mr Salvestro-Martin that he should put forward such a motion. Mr Petch said that he did not see anything wrong with making such a suggestion.

Mr Petch had an obligation to disclose his pecuniary interest and conflict of interest when the question of the Council's advertising contract came before the Council and to leave the Council meeting during discussion of the matter. He did not do so, and, in fact, remained in the meeting and spoke in favour of the motion.

The Commission does not accept Mr Petch's evidence that his failure to disclose his pecuniary interest and conflict of interest was a slip of the mind. The telephone call with Mr Salvestro-Martin on 20 March 2013 shows that Mr Petch suggested what motion should be put before Council. The motion put forward in relation to the termination of Mr Neish's employment (referred to in chapter 3 of this report) shows that Mr Petch was more than willing to put a motion before the Council himself when he felt strongly about a subject. The Commission is satisfied that, by asking Mr Salvestro-Martin to put forward the motion, Mr Petch was attempting to distance himself from the motion because he knew that he had an interest that should have been declared.

At the time the loan agreement and mortgage transaction were entered into by Mr Petch, he was advised by his solicitor, Mr Laface, about his disclosure obligations in relation to the Council. In any case, Mr Petch conceded during evidence at the public inquiry that, irrespective of the advice from Mr Laface, he was well aware of his obligations and had no confusion whatsoever about his duty to declare his pecuniary interest and conflict of interest should any matter involving Mr Booth or *The Weekly Times* come before Council.

In the circumstances, the Commission does not accept that Mr Petch simply forgot about his obligations when the matter came before Council. As he had asked Mr Salvestro-Martin to put forward the motion, Mr Petch knew that the matter was coming before Council so he cannot claim to have been taken by surprise.

## Corrupt conduct

At the Council meeting of 26 March 2013, during consideration of the motion to split the Council's advertising between *The Weekly Times* and another newspaper, the Commission is satisfied that Mr Petch deliberately failed to disclose his pecuniary interest or conflict of interest arising from his financial dealing with Mr Booth and *The Weekly Times*. This conduct is corrupt conduct for the purpose of s 8(1)(b) of the ICAC Act because it involves the dishonest or partial exercise of his official functions as a councillor.

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch, by breaching clause 4.2 of the 2013 code of conduct (formerly clause 2.2 of the 2011 code of conduct), and s 451 of the LG Act, committed a disciplinary offence.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74A(2) statement

For the purposes of this chapter, Mr Petch is an affected person.

Mr Petch gave his evidence subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of such a declaration is that his evidence is not admissible against him in relation to any disciplinary offence.

Section 114A of the ICAC Act, however, provides that evidence given to the Commission by a public official may be admitted and used in evidence in disciplinary proceedings against the public official in circumstances where a finding has been made in a report under s 74 of the ICAC Act that the public official has engaged in corrupt conduct. In these circumstances, Mr Petch's evidence at the public inquiry is available to be used against him in any disciplinary proceedings.

Mr Petch acknowledged that he had failed to disclose a pecuniary interest in relation to Mr Booth and *The Weekly Times*. There is also evidence in the form of the lawfully-intercepted telephone call between Mr Petch and Mr Salvestro-Martin and documentary evidence of the loan made to Mr Booth capable of supporting a finding that Mr Petch deliberately failed to declare a pecuniary interest.

Should the Commission's earlier recommendations in this report that Mr Petch should be the subject of

suspension and dismissal proceedings not be accepted, the Commission recommends that the chief executive of the Office of Local Government should treat this report as a referral to him under s 464 of the LG Act of Mr Petch's alleged breaches of clause 4.2 of the Council's 2013 code of conduct and s 451 of the LG Act, as outlined in this chapter, for the purpose of consideration being given to the taking of disciplinary action against Mr Petch.

## Chapter 7: Further releases of confidential information by Mr Petch

This chapter deals with allegations that Mr Petch released confidential Council information to some of his friends and acquaintances with the intention of assisting them or to further his own personal interests.

### Waste contract information

Between May 2011 and June 2012, Mr Petch sent a number of emails to his friend Mr Cerreto, forwarding internal Council communications and reports that were, in many cases, confidential and, in some cases, clearly commercially sensitive. The most significant releases of information were contained in a series of emails relating to the Council's waste collection and disposal contract, which was due to expire on 30 April 2013.

On 26 May 2011, Mr Petch sent Mr Cerreto an email forwarding information in relation to the duration and value of the waste collection and disposal contract. The email showed that Mr Petch had sought the information from Terry Dodds, then group manager of public works at the Council.

On 29 September 2011, Mr Petch sent Mr Cerreto an email that again contained information that had been provided to Mr Petch by Mr Dodds. The email contained three attachments relating to the waste collection and disposal contract: reports prepared by tendering companies, a report on the various tenders prepared for the Council, and a letter of offer to the successful tenderer.

On 3 November 2011, Mr Petch forwarded Mr Cerreto an email that he had received from Mr Dodds, entitled "Waste collection & disposal contracts". The original email from Mr Dodds to Mr Petch, although undated, said "as requested". The email contained the same three attachments as the email that Mr Petch had received from Mr Dodds and forwarded to Mr Cerreto on 29 September 2011.

On 16 November 2011, Mr Petch forwarded an email to Mr Cerreto that he had received that same day

from Mr Dodds. The email from Mr Dodds was titled "COMMERCIAL IN CONFIDENCE: rates in year 1 of contract for disposal". In the body of the email, Mr Dodds said: "Dear Councillor Petch, As requested, please see additional 2006 rates".

The body of the email again indicated that the material was "commercial in confidence", and included financial information relating to the Council's then waste collection and disposal contract.

Mr Petch told the Commission that he was asked to obtain information in relation to the Council's waste collection and disposal contract by a young man whom he met at Mr Cerreto's café. Mr Petch said that he had never met the young man before that meeting. He thought that Mr Cerreto knew him, as it was Mr Cerreto who introduced them. The young man told Mr Petch that he would like to have a look at the Council's contract for waste disposal, and asked if it was available. Mr Petch told the Commission that he said to the young man, "of course I'll get it for you".

Mr Petch said that, after the request from the young man, he contacted Mr Dodds and asked Mr Dodds to send him (Mr Petch) a copy of the Council's waste collection and disposal contract. Despite the nature of the contents of the documents provided to him by Mr Dodds, Mr Petch told the Commission that he did not consider the information to be confidential. In relation to commercial sensitivity, Mr Petch said:

*Now, to me that was not a commercially, it was published and everybody has the right to know how much we're paying for garbage disposal and anything else.*

Mr Petch said that he forwarded the information to Mr Cerreto because he did not have contact details for the young man.

Mr Cerreto told the Commission that he recalled Mr Petch talking to a group of men at his cafe one day. One member of the group was Antonio Salerno, a friend of Mr Cerreto's. Mr Cerreto said that Mr Petch approached him and said that he was going to forward a tender to him because one of the men in the group wanted to put a tender together and needed to know how to fill it out. Mr Cerreto said that he did not have any clear understanding about what Mr Petch was going to send him but he knew that he was being asked to forward it to Mr Salerno.

Mr Cerreto said that, on his understanding, Mr Salerno was not the person to whom Mr Petch wanted to provide the information. Rather, Mr Petch forwarded the information to Mr Cerreto so that he could forward it to Mr Salerno who, in turn, would provide it to the person who had requested the information from Mr Petch. Mr Cerreto believed that that person was named "Alfonso". Mr Cerreto said that he believed Alfonso was doing a university assignment on putting together a tender.

Mr Cerreto said that he passed on the material he received from Mr Petch to Mr Salerno. He denied that he would have understood that the material was commercially sensitive, and said that he "couldn't care less" about the content of the emails and attachments. He told the Commission that he assumed that, if Mr Petch had sent him the information, it was not confidential.

The email Mr Petch sent to Mr Cerreto on 29 September 2011, which attached information that Mr Petch had obtained from Mr Dodds, suggested that the information was, in fact, intended for Mr Cerreto. The following passage is relevant: "I just received this information as an email. Would you please read through it and let me know if it is what you need".

When asked about this email, Mr Cerreto said that Mr Petch had met with Alfonso a few times at the cafe and Alfonso had asked for a break-up of some rates of some sort. He said that, following one of these meetings, Mr

Petch asked Mr Cerreto to send him an email reminding him to get the information that Alfonso had requested. Mr Petch did not give evidence of this conversation he had with Mr Cerreto, and the Commission has no record of an email to Mr Petch from Mr Cerreto in the terms outlined by Mr Cerreto during his evidence.

The attachments to the emails of 29 September 2011 and 3 November 2011, which Mr Petch had obtained from Mr Dodds, could not reasonably be mistaken for anything other than confidential, internal Council information. They related directly to the manner in which tenders for the Council's waste collection and disposal contract were evaluated, and the decision that was eventually made in relation to the awarding of the contract. Any possible confusion as to the commercially-sensitive nature of the material would have been eliminated by the title "COMMERCIAL IN CONFIDENCE" on Mr Dodds' email of 16 November 2011 forwarded to Mr Cerreto, and the contents of that email, which also indicated the information was confidential.

The Commission does not accept Mr Petch's claim that the documents were not commercially sensitive. It is impossible to accept that a person in Mr Petch's position, with experience in civic office that exceeds 30 years, would not understand that the type and extent of the information he provided relating to a current, lucrative Council contract was confidential. The Commission is satisfied that he understood the information was confidential.

An analysis of the chain of emails sent by Mr Petch to Mr Cerreto shows that Mr Petch went to Mr Dodds on four separate occasions seeking specific documents in relation to the Council's waste collection and disposal tender, as well as the contract. Further, the language of the 29 September 2011 email, where Mr Petch said to Mr Cerreto "would you please read through it and let me know if this is what you need?", clearly demonstrates that

Mr Petch had discussed the documents with Mr Cerreto and was attempting to obtain particular documents in response to a request from Mr Cerreto.

The Commission rejects Mr Cerreto's explanation of the wording of this email. The email shows that Mr Cerreto was more than a mere conduit to facilitate the passing of information by Mr Petch to another person.

The explanation given by both Mr Petch and Mr Cerreto in relation to the young man, identified by Mr Cerreto as Alfonso, apparently requesting the information to assist with a university assignment, is not convincing.

If Mr Petch truly wanted to provide information to a young man to assist with a university assignment, believing, as he professed during the public inquiry, that the information was not commercially sensitive or confidential, then the logical approach, and the one dictated by common sense, would have been for Mr Petch to obtain the contact details of the young man and send material directly to him. Instead, Mr Petch and Mr Cerreto attempted to convince the Commission that the material was being provided to Mr Cerreto, who would forward it to Mr Salerno, who would then deliver it to the young man. This explanation lacks any credibility and it is not accepted by the Commission. The Commission is of the view that both Mr Cerreto and Mr Petch were deliberately attempting to mislead the Commission on this issue.

The Commission is satisfied that Mr Petch forwarded to Mr Cerreto Council information, which he knew was commercially sensitive and confidential, following a request from Mr Cerreto.

While it is possible that Mr Cerreto or an associate of his wanted the information because they were interested in obtaining the waste collection and disposal contract in the future, there is insufficient evidence to allow the Commission to make a finding as to Mr Petch's real motive for forwarding the information to Mr Cerreto.

## The Ryde Concerned Citizens Association

Another instance of the release of confidential Council information by Mr Petch arose during his dealings with an organisation known as the Ryde Concerned Citizens Association.

In mid-2012, Beth Cooper, a Ryde resident and wife of Mr Petch's friend, Warwick Cooper, telephoned Mr Petch and suggested that a class action might be brought on behalf of the community in order to prevent the proposed Ryde civic precinct redevelopment. As outlined in chapter 2, Mr Petch was one of the councillors who opposed the proposed redevelopment.

Mr Petch organised a meeting with John Mahony, the principal of Mahony Taren Lawyers, who had been recommended to him by Mr Cerreto. On 15 June 2012, Mr Petch attended Mr Mahony's office, along with Mr Cooper and Mrs Cooper and two other residents who were similarly opposed to the proposed redevelopment.

During the meeting, advice was sought about bringing a class action against the Council. Mr Mahony gave those present advice that some formal structure, such as an unincorporated association, would be required if they wanted to proceed with legal action.

During the public inquiry, Mr Mahony, Mr Cooper, and Mr Petch all gave evidence about this initial meeting. There was no dispute that, during the meeting, Mr Petch indicated that he did not want to be associated with the proposed unincorporated association. Both Mr Cooper and Mr Mahony gave evidence that Mr Petch said words to the effect that it was not appropriate for him to be involved as a member of the association because of his role as a councillor.

Despite his desire to remain at arm's length, or at least to be seen to remain at arm's length, from any association that might be formed, Mr Petch attended the meeting armed with a large bundle of documents in relation to the proposed Ryde civic precinct redevelopment. He provided these to Mr Mahony at the meeting.

Numbering in excess of 240 pages, the documents included the report of the Civic Precinct Committee meeting held on 6 June 2012, the *City of Ryde Precinct Redevelopment Tender Report*, and a series of attachments, three of which were clearly and explicitly marked "confidential". The attachments marked as confidential were:

- the tender evaluation report prepared by the tender evaluation panel that provided an overview of the evaluation methodology, the criteria by which tenders were evaluated and scored, the findings of the tender process, and the recommendations provided to Mr Neish as general manager
- a paper titled "Legal risks and financial overview", analysing the main elements of the Lend Lease and Billbergia tenders from a legal-risk perspective, and also the financial benefits that both tenders could provide to Council
- a paper titled "Commercial and risk principles", analysing the tenders.

There is no doubt that the three attachments marked as confidential were commercially sensitive as they contained details of the tenders and an analysis of the financial benefits and the legal and commercial risks of the competing proposals.

Following the meeting on 15 June 2012, Mr Mahony sent a letter to the Council dated 22 June 2012, which was also copied to Mr Neish and the chief executive of the then Division of Local Government. In the letter, Mr Mahony said that he represented an association of concerned ratepayers in Ryde. He outlined a number of legal, economic and community concerns that the association had with the Ryde civic precinct redevelopment and the Council's decision (on 12 June 2012) to enter into an agreement with Lend Lease to proceed with the redevelopment. Mr Mahony asked the Council to postpone all further action, negotiation and discussion on the redevelopment until after the September 2012 local government elections. He concluded his letter by indicating that, if the mayor did not vote in favour of postponing further action on the redevelopment, his client would consider seeking injunctive relief in the Supreme Court.

Mr Mahony told the Commission that, while drafting the letter to Council, he considered the documents provided by Mr Petch during their meeting on 15 June 2012 and that Mr Petch had himself settled the letter before it was sent. Further, Mr Mahony confirmed that the majority of his instructions as to what to do on behalf of the Ryde Concerned Citizens Association, including what he was to say, what correspondence was to be sent and to whom, all came directly from Mr Petch himself.

Upon receipt of the letter from Mr Mahony, Mr Etmekdjian engaged Clayton Utz to act on behalf of the Council. On 25 June 2012, Clayton Utz sent a letter to Mahony Taren Lawyers seeking details about the clients for whom Mr Mahony was acting and information about the members of the association, as the letter from Mr Mahony had made reference to Council material that was confidential. Upon receipt of the letter, Mr Mahony sent an email to Mr Petch seeking further instructions about how he should respond.

On 26 June 2012, Mr Mahony sent a letter to Clayton Utz in response to its letter of 25 June. In it, Mr Mahony advised that he acted for an unincorporated association known as the Ryde Concerned Citizens Association. Mr Mahony refused to provide information about the identities of the members of the association and said that the identities were of no concern to Clayton Utz's client, the Council.

Ultimately, the "Ryde Concerned Citizens Association" was never actually formed into an unincorporated association and the threatened legal action never eventuated.

Mr Petch did not deny that the three attachments he provided to Mr Mahony were confidential. He told the Commission that he provided the documents to Mr

Mahony because he wanted to see if he was correct in his belief that the Council had acted illegally in delegating control of the Ryde civic precinct redevelopment project to Mr Neish.

The Commission does not accept that Mr Petch's personal concerns outweighed his obligation as a councillor to maintain the confidentiality of material and knowledge that he had obtained in the course of his civic duties.

If Mr Petch genuinely had concerns about illegal activity on the part of the Council, there were a number of legitimate means available to him to challenge the Council's authority. He could have made contact with the Office of Local Government directly and sought its advice, raised his concerns with the Council's own general counsel, Bruce McCann, obtained legal advice, himself, in his capacity as a councillor, or raised his concern in a Council meeting or with individual councillors.

The Commission finds that Mr Petch provided Mr Mahony with three commercially-sensitive documents that he knew were confidential. He did so for the purpose of attempting to prevent the Ryde civic precinct redevelopment from proceeding.

## Mr Mahony's conduct

Mr Mahony conceded that it was likely that he had identified some of the documents provided to him by Mr Petch during the 15 June 2012 meeting as being marked "confidential". He further confirmed that when, on the following day, he read through the documents provided by Mr Petch, he understood that they contained commercially-sensitive information about the various tenders that had been received by the Council in relation to the Ryde civic precinct redevelopment.

Upon receipt of the letter from Clayton Utz on 25 June 2012 alleging that some of the material referred to in his letter of 22 June 2012 was confidential, Mr Mahony admitted that he paused to consider whether the material that had been provided by Mr Petch on 15 June 2012 constituted confidential Council documents or information.

It seems, however, that Mr Mahony ignored this possibility and proceeded to act on instructions provided by Mr Petch. Mr Mahony accepted during evidence that, in hindsight, Mr Petch may well have breached his duties of confidentiality by providing the information to him, though Mr Mahony went on to state that he simply did not consider whether the public policy concerns of some Ryde residents trumped Mr Petch's duties of confidentiality.

Mr Mahony is an experienced solicitor and had previously worked on local government matters. He was specifically

aware of the model code of conduct mandated by the LG Act. In these circumstances, he would have been aware of the strict obligations of confidentiality placed on councillors. The fact that Mr Petch provided confidential and commercially-sensitive documents to Mr Mahony should have alerted an experienced practitioner like Mr Mahony to the strong possibility of impropriety on the part of Mr Petch. The Commission considers that Mr Mahony should have identified the impropriety in Mr Petch's conduct and raised the issue with him.

## Corrupt conduct

The Commission finds that Mr Petch engaged in corrupt conduct by deliberately releasing Council information that he knew to be confidential to Mr Cerreto, in relation to the Council waste collection and disposal contract, and to Mr Mahony, in relation to the proposed Ryde civic precinct redevelopment.

This is because Mr Petch's conduct involved the misuse of material that he acquired in the course of his official functions as a councillor of the Council, for his own benefit or the benefit of others, and therefore comes within s 8(1)(d) of the ICAC Act.

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that, if the facts it has found were to be proved on admissible evidence to the appropriate civil standard of the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Petch, by breaching clauses 5.8, 5.9 and 5.10 of the 2011 code of conduct relating to the use of confidential Council information and s 664(1) of the LG Act, committed disciplinary offences amounting to misconduct pursuant to s 440F of the LG Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74A(2) statement

For the purposes of this chapter, Mr Petch is an affected person.

Mr Petch gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

Section 114A of the ICAC Act, however, allows the evidence given by Mr Petch in the public inquiry to be used in disciplinary proceedings against him where the Commission has made corrupt conduct findings and published a report under s 74 of the ICAC Act.

Mr Petch admitted that he provided the confidential documents that he obtained in his position as a councillor to Mr Cerreto and Mr Mahony. The documents were available to the Commission at the public inquiry and a number of them are clearly marked "confidential".

The Commission is of the opinion that the Office of Local Government should consider taking disciplinary action against Mr Petch in relation to breaches of clauses 5.8, 5.9 and 5.10 of the 2011 code of conduct, and s 664 of the LG Act in relation to his provision of confidential information to Mr Cerreto and Mr Mahony.

## Chapter 8: Political advertising

This chapter examines whether Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Perram or Mr Tagg engaged in corrupt conduct by deliberately breaching the *Election Funding, Expenditure and Disclosures Act 1981* (“the EFED Act”) in relation to advertising in *The Weekly Times* newspaper in the lead up to the 2012 local government elections.

### The legislation

The EFED Act imposes obligations on candidates for local government and state elections by regulating candidates, agents and campaigners, and identifies the nature and form of political donations and campaign contributions. The EFED Act also creates prohibitions on the acceptance of certain donations and contributions, and imposes reporting and disclosure obligations on candidates. The EFED Act created the Election Funding Authority (EFA) of NSW, which, among other duties, is responsible for the management of the EFED Act and the recording of information required to be disclosed under that act.

Part 6 of the EFED Act deals with political donations and electoral expenditure.

Section 96E(1) of the EFED Act provides that it is unlawful for a person to make any of the following indirect campaign contributions to a party, elected member, group or candidate, as follows:

- (a) *the provision of office accommodation, vehicles, computers or other equipment for no consideration or inadequate consideration for use solely or substantially for election campaign purposes;*
- (b) *the full or part payment by a person other than the party, elected member, group or candidate of electoral expenditure for advertising or other purposes incurred or to be incurred by the party,*

*elected member, group or candidate (or an agreement to make such a payment);*

- (c) *the waiving of all or any part of payment to the person by the party, elected member, group or candidate of electoral expenditure for advertising incurred or to be incurred by the party, elected member, group or candidate;*
- (d) *any other goods or services of a kind prohibited by the regulations.*

Section 96E(1) also provides that electoral expenditure for advertising is taken to be incurred by a person if the advertising is authorised by the person. Section 96E(2) states that it is unlawful for a person to accept any indirect campaign contribution specified in subsection (1). Section 96E(3)(c) clarifies this somewhat by saying that an indirect campaign contribution made unlawful elsewhere in s 96E does not include:

*... anything provided or done whose value as a gift does not exceed \$1,000 unless the total value of all such things provided or done by the same person over the same financial year (ending 30 June) exceeds \$1,000.*

### The advertisements benefiting Mr Petch

On 1, 8, 15 and 22 August 2012, advertisements promoting Mr Petch for re-election at the upcoming local government elections featured in *The Weekly Times*. The advertisements, each comprising a half-page spread in the newspaper, extolled Mr Petch’s experience on the Council and highlighted some of his local achievements while a councillor. At the bottom of each advertisement, a statement appeared that said that the advertisement was authorised by Mr Petch and also listed his address.

Mr Petch told the Commission that he did not place the advertisements, did not authorise them, despite what appeared on the advertisements themselves, and did not pay for them. Mr Petch admitted that he read *The Weekly Times* each week and had seen the particular advertisements in question. He made no enquiry of Mr Booth, the newspaper's owner and managing editor, about who placed the advertisements because he was fully engaged in electioneering at the time. He thought Mr Booth may have been responsible for the advertisements.

Mr Petch said that, when he received invoices from *The Weekly Times* for the election advertising that he had organised, he cross-referenced the invoices with copies of *The Weekly Times* to check that he had authorised each advertisement for which he was billed. He went on to say that he would not pay for advertisements when he had not authorised them.

Mr Petch did not disclose the cost of the four advertisements listed above to the EFA.

There was evidence before the Commission in the form of invoices from *The Weekly Times* to various councillors, including Mr Petch, which establishes that a half-page advertisement in *The Weekly Times* typically costs \$1,045 (including GST). Mr Petch confirmed during his evidence at the public inquiry that he believed that a full-page advertisement cost \$1,800 (plus GST). The Commission is satisfied that the total cost of the four half-page advertisements exceeded \$1,000, and that Mr Petch would have been aware of this at the relevant time.

When Mr Booth appeared before the Commission at a compulsory examination in May 2013, he said that the advertisements from August 2012 promoting Mr Petch were organised by, and invoiced to, Mr Cerreto.

At the public inquiry, Mr Booth said that he had been mistaken about this. He said that the advertisements were commissioned and paid for by Barry O'Grady, a former resident of Ryde who died in January 2013. During the public inquiry, Mr Booth attributed to Mr O'Grady various advertisements promoting councillors for re-election in August and September 2012.

Mr Petch told the Commission that he was not aware of Mr O'Grady placing any advertisements on his behalf, and that Mr O'Grady had never discussed with him placing the advertisements.

The Commission does not accept Mr Booth's evidence that Mr O'Grady commissioned or paid for advertising promoting Mr Petch. Mr Booth attributed advertising to Mr O'Grady that various councillors, including Mr Petch, Mr Salvestro-Martin and Mr Tagg, admitted in their own evidence that they had organised, authorised and paid for. The councillors' evidence in relation to those

advertisements was supported by invoices from *The Weekly Times*.

Much of the evidence of Mr Booth throughout the public inquiry was difficult to reconcile with the evidence of other witnesses and documentary evidence, such as invoices and copies of advertisements. Mr Booth also attributed a number of advertisements promoting Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Perram, Mr Tagg and Mr Butterworth for re-election under the banner "saveryde.com" to Mr O'Grady, which was directly contradicted by a number of the councillors. Those advertisements will be considered later in this chapter.

Who was responsible for organising the advertising if it was not Mr O'Grady? The advertisements themselves claimed that they were authorised by Mr Petch. He saw the advertisements and the claim that they were authorised by him. If they had not been authorised by him, it would be reasonable to expect that he would have immediately contacted the newspaper after seeing the first advertisement on 1 August 2012 to arrange for what he understood to be an error to be corrected. Not only did Mr Petch not do so on this occasion, he also took no action when further advertisements claiming to have been authorised by him appeared on 8, 15 and 22 August 2012. Indeed, he took no action at any time to contact Mr Booth or anyone else at the newspaper to complain that the advertisements incorrectly nominated him as having authorised them or made any other attempt to correct the record. Mr Petch had stood for a number of elections and would have been well aware of the significance of the statements that the advertisements were authorised by him. There is a clear inference, which the Commission draws, that Mr Petch had authorised the four advertisements and knew that they would be placed in the newspaper. It follows that, if he did not arrange for the advertisements to appear in the newspaper, then he knew who did.

The next issue to consider is whether the identity of the person who was responsible for paying for the advertisements can be established. The Commission has rejected Mr Booth's evidence at the public inquiry that they were paid for by Mr O'Grady.

During his compulsory examination, Mr Booth said the advertisements were organised by and billed to Mr Cerreto. Mr Cerreto denied that he commissioned, paid for, or was liable for payment of, the advertisements.

The Commission generally found Mr Booth to be an unreliable witness and is not prepared to accept his evidence unless it is corroborated by other witnesses or documentary evidence. In this case, Mr Booth's evidence given at his compulsory examination that the advertisements were commissioned and paid for by Mr

Cerreto was supported by an invoice for the advertising addressed to Mr Cerreto dated August 2012.

Although there is a strong inference available that Mr Cerreto was, in fact, responsible for commissioning the advertisements and was also responsible for their payment, the Commission does not consider that there is sufficient reliable evidence available to make a finding to this effect. Mr Petch denied that he paid for the advertisements. The Commission accepts his evidence on this point. The Commission is satisfied, however, that Mr Petch, as the person who authorised the advertising, was aware of the identity of the person who intended to pay for the advertising.

The Commission is satisfied that Mr Petch accepted newspaper advertising, authorised by him, which he knew to be worth over \$4,000, on the understanding that this would be paid for by another person.

## The *saveryde.com* advertisements

On 29 August and 5 September 2012, advertisements appeared in the print and online editions of *The Weekly Times* promoting the re-election of the six councillors who were opposed to the Ryde civic precinct redevelopment – Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Perram, Mr Tagg and Mr Butterworth. It should be noted that, although Mr Butterworth was named in the advertisement, it stated, correctly, that he was not seeking re-election at the September 2012 local government election.

The two advertisements each consisted of two half-page advertisements over the bottom halves of two adjoining pages. They both contained the words “more info at *saveryde.com*” and stated that they were authorised by Mr Petch, Mr Salvestro-Martin, Mr Li, Mr Perram, Mr Tagg and Mr Butterworth. After the election, a further advertisement appeared on 12 September 2012, thanking voters and referring readers to the *saveryde.com* site.

The invoices sent to Mr Cerreto listed the cost of each half-page advertisement as \$950 (excluding GST). The Commission is satisfied that the total cost of each of the four half-page advertisements for 29 August and 5 September was \$1,045.

The Commission heard a considerable amount of evidence, both during the public inquiry and in compulsory examinations before the public inquiry, in relation to *saveryde.com* and who was responsible for placing the advertisements in question just before the September 2012 local government elections. The evidence of various witnesses in relation to the *saveryde.com* advertisements was confusing, contradictory and misleading.

At the public inquiry, two sets of invoices were tendered.

The invoices were produced by *The Weekly Times* for the advertisements in August and September 2012. Two invoices were addressed to Mr Cerreto, dated August 2012 and September 2012, respectively, and another two were addressed to “Corporate Development Australia” for the same months. Each of the invoices to both Mr Cerreto and Corporate Development Australia list the same advertisements and contain the same advertisement reference numbers and customer account number.

In a compulsory examination on 9 May 2013, Mr Booth said that the various *saveryde.com* advertisements had been commissioned by, and billed to, Mr Cerreto. He said that, following the production of the invoices, Mr Cerreto had contacted *The Weekly Times* and asked for the invoices to be changed to the name of Corporate Development Australia. Mr Booth told the Commission at his compulsory examination and during the public inquiry that the invoices remained unpaid.

At the public inquiry, Mr Booth gave a different version about who had organised and been billed for the advertisements. He said that the advertisements had been organised by, and billed to, Mr O’Grady, who was deceased at the time Mr Booth gave his evidence. Mr Booth attempted to explain why the invoices had been addressed to Mr Cerreto as a “computer glitch”, which resulted in the invoices meant for Mr O’Grady being generated and sent to Mr Cerreto. He offered no explanation for the Corporate Development Australia invoices.

Prior to Mr Booth attending his compulsory examination in May 2013 the Commission had served on him and *The Weekly Times* a notice under the ICAC Act requiring the production of all invoices and records of payment relating to the *saveryde.com* advertisements. Nowhere in any of the material produced in response to the notice was there any reference to Mr O’Grady booking or undertaking to pay for the advertisements.

On 23 July 2013, the seventh day of the public inquiry, Counsel Assisting was handed an invoice purportedly from *The Weekly Times* that was addressed to Mr O’Grady in relation to the *saveryde.com* advertisements from 29 August and 5 September 2012. Mr Booth was unable to say when this invoice had been generated or, indeed, if it had been generated prior to Mr O’Grady’s death in early 2013.

This invoice also included a number of advertisements for the Cox’s Road Landowners Masterplan, which the Commission heard in other evidence was a proposed development of retail and residential space being undertaken by a group that included Mr Cerreto. There is no evidence that Mr O’Grady had anything to do with the Cox’s Road Landowners Masterplan nor that he organised or paid for advertising on behalf of that group. On the

contrary, Mr Cerreto readily admitted that he organised and paid for the Cox's Road Landowners Masterplan advertising himself as one of the interested landowners. The Commission does not accept that the O'Grady invoice is genuine.

There was no support for Mr Booth's claim that Mr O'Grady had organised and paid for the advertisements from any of the councillors who benefited from them. There was direct evidence tendered at the public inquiry on behalf of Mr Perram that cast significant doubt on whether Mr O'Grady would have taken out any advertisement in support of Mr Perram. A letter to the editor written by Mr O'Grady, and published in *The Weekly Times* shortly before the first of the *saveryde.com* advertisements, was highly critical of Mr Perram and some decisions that he had made as a councillor. In the circumstances, the Commission does not accept that Mr O'Grady would shortly thereafter be willing to spend thousands of dollars placing advertisements encouraging residents to re-elect Mr Perram.

The Commission does not accept that Mr O'Grady was responsible for the *saveryde.com* advertisements or had agreed to pay for them.

Mr Cerreto told the Commission that he had never placed political advertisements in *The Weekly Times*. He denied that he had organised for the *saveryde.com* advertisements to be placed or that he had undertaken to pay for them. He recalled receiving invoices addressed to him from *The Weekly Times* dated August and September 2012 that included charges for election advertising, but he could not remember when he received the invoices. His best recollection was that he saw the invoices around the end of October 2012. In relation to the Corporate Development Australia invoices, Mr Cerreto told the Commission that he recalled seeing one invoice that had been sent to him addressed to Corporate Development Australia, but he did not know what period the invoice covered. Mr Cerreto said that he knew Corporate Development Australia to be a building company as it had done some work for him in the past. He denied that he ever requested Mr Booth to change invoices from his own name to that of Corporate Development Australia. He said that his secretary had placed the Corporate Development Australia invoice on his desk after it had been put under her door and that he had thrown it in the bin.

Despite receiving the invoices from *The Weekly Times* for August and September 2012 referring to "election advertising", for which he was being charged in late October, Mr Cerreto did not immediately contact Mr Booth or *The Weekly Times* to question why he was being invoiced for election advertising. Mr Cerreto told the Commission that the invoices were not of great concern to him. He said that he told Mr Booth about the invoices when he saw him in mid- to late-November.

Mr Cerreto told the Commission that he did not ask Mr Booth why he had received an invoice addressed to Corporate Development Australia when he spoke to him. Mr Cerreto's counsel did not ask Mr Booth about this conversation during Mr Booth's evidence.

On 14 June 2013, lawyer Mr Parisi sent a letter to Mr Booth on behalf of Mr Cerreto in relation to outstanding invoices from *The Weekly Times*. Mr Parisi said that Mr Cerreto had made payment to *The Weekly Times* in December 2012 for his share of advertising relating to the Cox's Road Landowners Masterplan. Mr Parisi also said that that advertising ceased on 4 July 2012, but that Mr Cerreto had received invoices seeking payment for advertising from 11 July 2012 through to 5 September 2012. Mr Parisi did not refer to election advertising in the letter, but said that Mr Cerreto was not liable for advertisements after 4 July 2012 because they did not relate to the Cox's Road Landowners Masterplan. In his letter, Mr Parisi made no reference to a previous discussion between Mr Cerreto and Mr Booth in relation to the election advertising or the fact that Mr Cerreto had received invoices addressed to Corporate Development Australia.

The letter was sent to Mr Booth by Mr Parisi via email on 17 June 2013. Later that day, Mr Booth sent an email to Mr Parisi saying, "Thank you for your letter and I accept the explanation".

Mr Booth was asked about this letter and his response in the email during the public inquiry. He was asked whether he had been contacted by Mr Cerreto, or someone acting on Mr Cerreto's behalf, prior to receiving the letter from Mr Parisi asking him to agree with the proposition that Mr Cerreto was liable for advertisements only up to 4 July 2012. Mr Booth told the Commission that he had been contacted by someone, whom he thought was Mr Cerreto, explaining the advertising just prior to receiving the letter from Mr Parisi. This evidence was disputed by Mr Cerreto. Mr Cerreto denied that he contacted Mr Booth to tell him that he would receive a letter from Mr Parisi, and he denied that he asked anyone to speak to Mr Booth on his behalf.

The Commission found Mr Booth to be a generally unreliable witness, although his evidence during his compulsory examination – that Mr Cerreto was responsible for payment of the *saveryde.com* advertising – was at least supported by the invoices issued to Mr Cerreto. There is a strong inference available that Mr Cerreto was responsible for the payment of the advertising, at least as far as the newspaper was concerned. The Commission draws this inference. The Commission does not accept the evidence of Mr Booth during the public inquiry that the invoices addressed to Mr Cerreto and Corporate Development Australia were

the result of a computer glitch, and that they were always supposed to be addressed to Mr O'Grady.

Mr Booth told the Commission during his compulsory examination that the invoices were changed to Corporate Development Australia at the request of Mr Cerreto. Although the Commission is reluctant to accept Mr Booth's evidence, in this case that evidence is supported by invoices addressed to Corporate Development Australia that contain the same client number as those addressed to Mr Cerreto. The fact that the client number remains the same but the recipient and address were changed supports Mr Booth's compulsory examination evidence that he was asked to change the name on the invoices to Corporate Development Australia by Mr Cerreto. The Commission is satisfied that such a request was made by Mr Cerreto.

The Commission is satisfied that the invoices for election advertising in August and September 2012 were issued to Mr Cerreto because Mr Booth understood that Mr Cerreto would be responsible for paying the cost of the advertising.

## The source of the *saveryde.com* advertisements

Mr Stavrinis told the Commission that he was the person responsible for setting up and maintaining the *saveryde.com* website. During his compulsory examination on 16 May 2013, Mr Stavrinis said that he could not recall how the *saveryde.com* advertisements came about.

When he gave evidence at the public inquiry on 25 July 2013, Mr Stavrinis' memory had improved. He said that Mr Salvestro-Martin had asked him to put together the advertisement on behalf of the six councillors. Prior to giving his evidence on 25 July 2013, Mr Stavrinis sat in the hearing room for the majority of the public inquiry, and was certainly present during the evidence of Mr Salvestro-Martin, Mr Li, Mr Perram and Mr Tagg on this issue. The Commission is of the view that Mr Stavrinis deliberately tailored his evidence to that of the councillors who preceded him in the witness box. The Commission does not accept that Mr Stavrinis was able to recall with such clarity the events of August 2012 during the public inquiry, when he was not able to do so before the Commission at his earlier compulsory examination.

Mr Salvestro-Martin told the Commission that it was he who came up with the original idea for the advertisements. He said that, in late August 2012, he asked Mr Stavrinis to put together a joint advertisement for the six councillors opposed to the Ryde civic precinct redevelopment. Mr Salvestro-Martin said that Mr Stavrinis then wrote the content for the advertisement that eventually appeared in *The Weekly Times*.

Former councillor Mr Tagg told the Commission that he

was emailed a draft of the *saveryde.com* advertisement by Mr Stavrinis at the request of Mr Salvestro-Martin. Emails tendered during the public inquiry show that Mr Stavrinis forwarded the draft advertisement to Mr Tagg at 1.59 pm on 28 August 2012. At 2.11 pm that day, Mr Tagg sent an email to Mr Perram, Mr Li, Mr Petch, Mr Butterworth and Mr Salvestro-Martin containing the draft advertisement and indicating that Mr Salvestro-Martin had asked that it be forwarded for approval.

Mr Perram was the only councillor who responded to Mr Tagg's email. He sent an email stating, "I have no objection to this being in the paper. Should I ask who is paying?". Mr Tagg replied in an email to all councillors, indicating that he did not know who was paying. Significantly, none of the councillors sent an email to Mr Tagg objecting to the advertisement. The Commission also considers it significant that Mr Salvestro-Martin did not reply to Mr Perram's question in relation to payment.

The advertisement appeared in the 29 August 2012 edition of *The Weekly Times*. There was evidence before the Commission from a number of councillors that the advertisement, in fact, appeared in the online edition of *The Weekly Times* on the evening of 28 August 2012. As no councillors apart from Mr Perram responded to Mr Tagg's email seeking approval for the draft advertisement, and bearing in mind the advertisement appeared in the 29 August 2012 print edition of the paper, and apparently online late on 28 August, the Commission is satisfied that Mr Stavrinis must have forwarded the final "approved" advertisement to *The Weekly Times* without waiting for formal approval from the six councillors.

The advertisement also appeared in *The Weekly Times* print and online editions on 5 September 2012. The Commission is satisfied that the advertisement was authorised by each of the councillors. No councillor indicated an objection to the publication of the advertisement when Mr Tagg forwarded the draft advertisement for their consideration by email on 28 August 2012. The Commission does not accept a submission on behalf of Mr Li that he did not authorise the advertisement because he apparently did not see the email from Mr Tagg until after the advertisement had appeared in the online edition of *The Weekly Times* on 28 August 2012. There is no evidence that, after seeing the advertisement, Mr Li took any action to contact any of his fellow councillors, or Mr Booth, to complain that the advertisement incorrectly nominated him as having authorised it. Nor did he take any action to ensure the advertisement was not repeated.

The next issue to consider is who was responsible for paying for the advertisements. The Commission has already found that Mr Booth understood that Mr Cerreto would be responsible for payment. Mr Stavrinis and Mr Salvestro-Martin both denied making any arrangements

regarding billing or payment for the *saveryde.com* advertisements, either with Mr Cerreto, *The Weekly Times* or the councillors benefiting from the advertisement. At the time of the commencement of the public inquiry on 15 July 2013, none of the councillors had received an invoice for the advertisements. The only person who had been sent an invoice for the advertisements was Mr Cerreto, and he did not pay it.

Mr Salvestro-Martin told the Commission that, after asking Mr Stavrinou to create the advertisement and then forward it to *The Weekly Times*, he expected that he and the other five councillors would pay for the advertisement. He said that he saw the emails from Mr Tagg and Mr Perram on 28 August 2012 in relation to the advertisements but he thought that Mr Perram was posing a rhetorical question. Mr Salvestro-Martin told the Commission that he did not think to mention to any of the other councillors that the cost of the advertising was to be split evenly amongst them because he was busy at the time. He said that he had not spoken to any of the councillors about payment, claiming that he had forgotten about the advertisements. He told the Commission that the six councillors had run advertisements opposing the Ryde civic precinct redevelopment in the past as a group and split the payment between them.

Mr Salvestro-Martin told the Commission that he had not paid for the *saveryde.com* advertisements as he had not received an invoice from *The Weekly Times*. He admitted that he had made no enquiries of Mr Booth or *The Weekly Times* in relation to an invoice for the *saveryde.com* advertisements. He denied that there had been any discussion with anyone about someone other than the six councillors paying for the advertisements. After the issue was raised in the public inquiry, Mr Salvestro-Martin sought an invoice from *The Weekly Times* and made payment for a one-sixth share of the *saveryde.com* advertising, being \$697.40.

The Commission is satisfied that Mr Salvestro-Martin was aware that an advertisement promoting his re-election was to be published in *The Weekly Times*. Mr Salvestro-Martin acknowledged that he had seen the email from Mr Perram questioning who was going to pay for the advertisements but chose not to respond. Had Mr Salvestro-Martin intended that the cost of the advertisements should be split between the six councillors, Mr Perram's email provided the perfect opportunity for Mr Salvestro-Martin to raise the issue. Although Mr Salvestro-Martin was busy with electioneering at the time, he no doubt had an opportunity to reply to the email from Mr Perram or raise the issue of payment for the advertising with his fellow councillors in another way. The Commission does not accept Mr Salvestro-Martin's evidence that he simply forgot about the advertisements nor does it accept his evidence that he intended that the cost of the advertising

would be split between the six councillors. Indeed, there would seem to be little reason why Mr Salvestro-Martin would consider that Mr Butterworth should help pay for the advertisement given that Mr Butterworth was not standing for re-election and, therefore, would not receive any benefit from the advertisement.

The Commission is satisfied that Mr Salvestro-Martin did not intend to pay for the advertisements but rather understood that another person, not being one of the six councillors referred to in the advertisements, would pay as a gift to him and the other councillors standing for re-election to benefit their candidacy for the 2012 local government elections.

Mr Tagg told the Commission that he believed that he had paid for a one-sixth share of the advertisements. When he was taken through his election records produced to the Commission, following receipt of a notice to produce, Mr Tagg conceded that his records showed that no payment had been made. He was referred to his email of 28 August 2012, in which he indicated to Mr Perram and his fellow councillors that he did not know who was paying for the advertisements. Mr Tagg explained this response by saying that he meant that the advertisement would be paid for by whomever amongst the six councillors was prepared to pay for it. He referred to the previous joint advertisements in relation to the proposed Ryde civic centre redevelopment and the fact that the councillors had split advertising costs in the past to support his claim. After the issue of payment was raised in the public inquiry, Mr Tagg sought an invoice from *The Weekly Times* and made payment for a one-sixth share of the *saveryde.com* advertising.

The Commission does not accept Mr Tagg's evidence in relation to the email and his claim that he expected that the cost of the advertising would be split between whomever was prepared to pay for it. While the councillors may have previously split advertising in relation to their joint opposition to the Ryde civic centre redevelopment prior to the election campaign, Mr Tagg made no reference in the email to the cost of the advertisement being split between as many of the councillors who were prepared to contribute or even split evenly between the six councillors as they had done in the past. Rather, Mr Tagg's email response clearly indicates that he did not know who was or would be responsible for payment of the advertisement. The Commission is satisfied that Mr Tagg did not know who was going to pay for the advertising, and did not intend to pay for the advertising himself until the Commission raised the issue of payment.

The Commission is satisfied that Mr Tagg understood that another person, not being one of the six councillors referred to in the advertisements, would pay for the advertisements as a gift to him and the other councillors standing for re-election to benefit their candidacy for the 2012 local government elections.

Mr Perram told the Commission that, when he received the email from Mr Tagg attaching the draft advertisement, he was unhappy as he thought that he was being locked in to paying for an advertisement of which he was previously unaware. Mr Perram said that there was very little he could say except to give his consent to the publication of the advertisement. Despite his email reply to Mr Tagg and the other councillors asking who was paying, Mr Perram said that he expected that he would eventually be asked for payment of his share of the advertising. He recalled receiving the response from Mr Tagg, saying that Mr Tagg did not know who was paying for the advertisement but made no further enquiries of Mr Tagg or anyone else as to who was responsible for the placing of, or payment for, the advertisement. Mr Perram said that he saw the advertisement published in *The Weekly Times* on 29 August and 5 September 2012, and agreed that he derived some benefit from it. In relation to payment, Mr Perram said that he did not know who paid for the advertisement, if anyone. After the issue of payment was raised in the public inquiry, Mr Perram sought an invoice from *The Weekly Times* and made payment for a one-sixth share of the *saveryde.com* advertising.

The Commission is satisfied that Mr Perram knew that there was to be an advertisement promoting his re-election under the *saveryde.com* banner published in *The Weekly Times*. The Commission is also satisfied that Mr Perram authorised the advertisement, due to his email to Mr Tagg on 28 August 2012, indicating that he did not object to its publication, and that he made no further enquiries of the newspaper, Mr Tagg or anyone else as to who was responsible for the payment of the advertising. The Commission is satisfied that Mr Perram did not know who was paying for the advertisements, and was prepared to accept the benefit of the advertising promoting his re-election without knowing who was responsible for its payment.

The Commission is satisfied that Mr Perram understood that another person, not being one of the six councillors referred to in the advertisements, would pay as a gift to him and the other councillors standing for re-election to benefit their candidacy for the 2012 local government elections.

Mr Petch told the Commission that he did not know who placed the *saveryde.com* advertisements and did not know who paid for them. He recalled seeing the email from Mr Tagg circulating a draft of the advertisement, and he was aware at the time of seeing the draft advertisement that Mr Stavrinou was behind the *saveryde.com* website. Mr Petch said that he did not assume that Mr Stavrinou was, therefore, responsible for the *saveryde.com* election advertisements but conceded that this was a possibility. He said that he did not approve the advertisement before

it was published in *The Weekly Times*, however, had he seen the email in time, he would have approved it. After the issue of payment was raised in the public inquiry, Mr Petch sought an invoice from *The Weekly Times* and made payment for a one-sixth share of the *saveryde.com* advertising.

The Commission is satisfied that Mr Petch saw the *saveryde.com* advertisements in *The Weekly Times* on 29 August and 5 September 2012 promoting his re-election. The Commission is satisfied that Mr Petch was unaware who was responsible for payment, and made no enquiries of anyone in relation to payment. His evidence to the Commission that he would have approved the advertisements had he seen them before they were published, along with his concession that he made no enquiries as to who was responsible for the placement or payment of the advertisement, satisfies the Commission that Mr Petch was prepared to accept the benefit of advertising in *The Weekly Times* promoting his re-election without knowing who was responsible for the payment of the advertisements.

The Commission is satisfied that Mr Petch understood that another person, not being one of the six councillors referred to in the advertisements, would pay as a gift to him and the other councillors standing for re-election to benefit their candidacy for the 2012 local government elections.

Mr Li told the Commission that he saw the *saveryde.com* advertisement for the first time in *The Weekly Times* online edition on the evening of 28 August 2012. He said that he saw the advertisement online before reading the emails from Mr Tagg and Mr Perram. Mr Li told the Commission that he did not notice that he was listed as authorising the advertisement but he said that he attempted to access the *saveryde.com* website without success after seeing the advertisement for the first time. Mr Li said that he was not familiar with the *saveryde.com* website and had never seen it before, so when he was unable to access the website on 28 August 2012, he remained unaware of who was responsible for placing the advertisement.

Mr Li told the Commission that he saw the emails from Mr Tagg and Mr Perram on the evening of 28 August 2012. At 5.30 pm he sent an email to the other five councillors, indicating that the advertisement was already in the newspaper's online edition, and informing them that the *saveryde.com* website was not working. Mr Li told the Commission that he did not know who had organised the advertisement and did not know who was paying for it. He said that he was never given the opportunity to accept or reject the advertisement before it was published in the online edition of *The Weekly Times* on 28 August 2012, and did not know that it was going to be published again on 5 September 2012. He conceded that he did

not make any enquiries of *The Weekly Times* or his fellow councillors in relation to who had organised, and paid for, the advertisements.

Although Mr Li claimed that he did not have the opportunity to decline the advertising promoting his re-election because he apparently did not see Mr Tagg's email until after *The Weekly Times* online edition was published, it is significant that Mr Li took no action to ascertain who was responsible for paying for the advertisements when he became aware of them nor did he contact the newspaper or his fellow councillors to indicate that he did not, in fact, authorise the advertisement. The Commission is satisfied that Mr Li was prepared to accept the benefit of the advertisements as he was being promoted for re-election without knowing whether *The Weekly Times* had waived payment or whether some other benefactor had met the cost of the advertisements.

The Commission is satisfied that Mr Li understood that another person, not being one of the six councillors referred to in the advertisements, would pay as a gift to him and the other councillors standing for re-election to benefit their candidacy for the 2012 local government elections.

Former councillor Mr Butterworth told the Commission that he did not recall seeing the *saveryde.com* advertisements in *The Weekly Times* on 29 August or 5 September 2012. He said that he did not regularly read *The Weekly Times*, and did not read the emails from Mr Tagg and Mr Perram in relation to the advertisements on 28 August 2012. Mr Butterworth told the Commission that in the lead up to the September 2012 local government elections, he regularly deleted most of the emails he received in relation to the election because he was not standing for re-election, a decision that he had announced in a Council meeting in approximately March 2012. Mr Butterworth said that, had he seen the advertisements saying that they had been authorised by him when he had not, in fact, done so, it would have concerned him. Mr Butterworth produced to the Commission an email that he sent to the EFA advising it that there was an election banner in Ryde with his picture on it saying that it was authorised by him when he had made no such authorisation. Mr Butterworth told the Commission that he would have made a similar report had he seen the *saveryde.com* advertisements at the time they were published. The Commission accepts Mr Butterworth's evidence on this point. Mr Butterworth was not standing for re-election and stood to gain no benefit from the *saveryde.com* advertisements. He undertook no election advertising of his own, and was not required to make any declarations to the EFA as he was not a candidate.

## Corrupt conduct

### Ivan Petch, Jeffrey Salvestro-Martin, Terry Perram, Justin Li and Victor Tagg

For the conduct of Mr Petch, Mr Salvestro-Martin, Mr Perram, Mr Li or Mr Tagg to come within the definition of corrupt conduct in s 8 of the ICAC Act, it would be necessary to show that their conduct had affected the exercise of their public official functions or the exercise of the official functions of another public official or public authority. The Commission has found that they each accepted advertising, which they had authorised, on the understanding that this would be paid for by another person. In doing so, they were not exercising any of their public official functions. Their acceptance of the benefit of the advertising did not affect the exercise of the official functions of any other public official or any public authority. In these circumstances, no findings of corrupt conduct are made.

### Section 74A(2) statements

For the purposes of this chapter, Mr Petch, Mr Salvestro-Martin, Mr Tagg, Mr Perram, Mr Li and Mr Booth are affected persons.

### Mr Petch, Mr Salvestro-Martin, Mr Perram, Mr Li and Mr Tagg

Each of Mr Petch, Mr Salvestro-Martin, Mr Perram, Mr Li and Mr Tagg gave their evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of these declarations is that their evidence cannot be used against them in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

Other evidence, however, would be available to the prosecuting authority, including the advertisements themselves, email communications between the councillors, financial disclosure records submitted by the councillors, records showing the cost of advertisements in *The Weekly Times* and other documentary evidence.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Petch for an offence of accepting an indirect campaign contribution under s 96E of the EFED Act relating to the advertisements published in *The Weekly Times* on 1, 7, 15 and 22 August 2012 promoting Mr Petch for re-election.

Before considering whether to make a similar statement with respect to Mr Petch, Mr Salvestro-Martin,

Mr Perram, Mr Li or Mr Tagg with respect to the *saveryde.com* advertisements, regard needs to be had to s 96E of the EFED Act. That section provides that it is unlawful to accept an indirect campaign contribution such as advertising but only where the cost of the advertising exceeds \$1,000. The total cost of the four half-page advertisements was \$4,180. Mr Petch, Mr Salvestro-Martin, Mr Perram, Mr Li and Mr Tagg argued that they were each only responsible for one-sixth of this amount and, therefore, only benefited by that amount. If this argument were accepted, it would mean that the benefit each received was below \$1,000 and, therefore, below the threshold for which it is unlawful to accept an indirect campaign contribution. The same argument would apply even if it were accepted that Mr Butterworth had no responsibility to pay for the advertisements and, therefore, each of the others received a benefit equivalent to one-fifth of the value of the advertisements. The Commission does not consider these arguments overcome s 96E of the EFED Act.

Each councillor received the full benefit of the advertising. It promoted the re-election of each councillor. The value of the advertising to each councillor exceeded \$1,000 because that is what it would have cost the individual councillor had he placed an advertisement of that size in the newspaper promoting his re-election.

In these circumstances, the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Petch, Mr Salvestro-Martin, Mr Perram, Mr Li and Mr Tagg for an offence of accepting an indirect campaign contribution under s 96E of the EFED Act.

## Mr Booth

Mr Booth gave evidence at the Commission with the protection of a declaration under s 38 of the ICAC Act. That protection, however, does not extend to offences under the ICAC Act, including an offence of giving false or misleading evidence to the Commission.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Booth for an offence of giving false evidence to the Commission pursuant to s 87 of the ICAC Act.

This relates to Mr Booth's evidence at the public inquiry that Mr O'Grady was responsible for organising and placing the *saveryde.com* advertisements promoting councillors for re-election.

Mr Booth made no mention of Mr O'Grady when he gave evidence at a compulsory examination in May 2013

and, although Mr O'Grady died before a statement could be obtained from him, there is admissible evidence in the form of newspaper articles critical of Mr Perram that the Commission is of the view support a conclusion that Mr O'Grady would not have organised an advertisement promoting Mr Perram's re-election.

## Chapter 9: The approach to Mr Pickering by Richard Henricus

This chapter examines an allegation that Richard Henricus approached Mr Pickering and offered him favourable publicity in the local newspaper, *The Weekly Times*, if Mr Pickering withdrew his opposition to a development application lodged by Mr Booth, the owner and managing editor of *The Weekly Times*.

### 826 Victoria Rd, Ryde

In 2012, Mr Booth lodged a development application over land he owned at 826 Victoria Road in Ryde. The development application sought approval to develop the land and build five villas. *The Weekly Times* operates from 826 Victoria Road but the land itself is quite substantial and the proposed development was to occur on a vacant part of the land.

The development application proceeded through the Council relatively slowly. The ordinary course was for professional planning staff to consider the application under delegated authority. In late 2012, Mr Pickering “called up” the application, as was his right as a councillor, to the Planning and Environment Committee for consideration.

Chapter 6 of this report deals with a loan by Mr Petch to Mr Booth to assist with some financial difficulties that Mr Booth was experiencing throughout 2012. Mr Booth admitted that, as at July 2013, he had managed to make only one interest repayment on that loan and the entire sum of \$250,000 remained outstanding. Mr Booth continued to suffer financial difficulties up to, and including, at least July 2013. There is no doubt that approval of the development application for the subdivision and subsequent development of the land at 826 Victoria Road had some potential to ease Mr Booth’s financial hardship.

### Mr Henricus

As at April 2012, Mr Henricus was a resident of Eastwood within the Ryde local government area. At

the time, Mr Henricus was working for a company called Cyrius Media Group Pty Ltd, which was upgrading software and the website for *The Weekly Times*. Mr Booth gave conflicting evidence to the Commission during the public inquiry as to whether that was the extent of Mr Henricus’ role at *The Weekly Times* or whether he may, in fact, have been selling some advertising for the paper as well. For the purposes of this report, it is not necessary for the Commission to make a finding about the extent of the work performed by Mr Henricus for *The Weekly Times*.

Whatever work Mr Henricus was performing at *The Weekly Times* on behalf of Cyrius Media Group Pty Ltd, there is no dispute that he became aware during the time he was working there of the development that Mr Booth was proposing at 826 Victoria Road in Ryde.

Armed with the knowledge that Mr Booth was looking to develop the land and build five villas, Mr Henricus contacted brothers John Antoun and David Antoun, two builders he had known for some time. The brothers, from time to time, bought sites with development approvals already in place in order to complete the developments and then sell the properties. Mr Henricus had done some limited work for the Antouns on building sites in the past. In April 2013, Mr Henricus contacted John Antoun, and possibly David Antoun, about the villa development that Mr Booth was planning.

Mr Henricus told the Commission that he had limited work available with Cyrius Media Group Pty Ltd so he was keen to inform the Antouns of the possible development of the 826 Victoria Road site because he might then get some work on the site as a safety officer or something similar.

Shortly after being informed about the site by Mr Henricus, John Antoun physically inspected it. After ascertaining from Mr Henricus that Mr Booth was the owner of the property, Mr Antoun organised a meeting with Mr Booth. When Mr Antoun met with Mr Booth,

Mr Booth indicated that approval for the development application was pending, and that he expected approval soon.

John Antoun told the Commission that, soon after meeting with Mr Booth, he made an offer to buy the property on behalf of himself and his brother, subject to the development application being approved. Mr Booth did not respond to this offer for some time, and John Antoun eventually visited Mr Booth at 826 Victoria Road. At that meeting, Mr Booth told him that he had received a higher offer for the property and intended to accept it. As at July 2013, the property remained in the ownership of Mr Booth.

## Mr Henricus visits Mr Pickering

Until the time that Mr Booth rejected the offer by John Antoun, it appears on the evidence that a major stalling point for the proposed sale was the fact that the development application was awaiting approval by the Council.

Mr Henricus acknowledged before the Commission, albeit after initially denying the proposition, that he was aware of the fact that Mr Booth had a development application pending before the Council.

On 1 May 2013, Mr Henricus telephoned Mr Pickering, whom he had known for some years due to their common involvement in the local branch of the Liberal Party, and asked to meet him in relation to advertising with *The Weekly Times* newspaper. Mr Pickering told the Commission that he initially expressed some reluctance to meet with Mr Henricus, as he had no interest in taking out advertising in *The Weekly Times*, largely because of the unflattering publicity that he had received in the newspaper in the past. Following further pleading from Mr Henricus, Mr Pickering eventually agreed to the meeting. While agreeing to the meeting, Mr Pickering arranged

for his work colleague, Nathaniel Smith, to be present. Mr Pickering said that he did this for two reasons: first, because the meeting was in relation to *The Weekly Times* and, secondly, because Mr Pickering had concerns in relation to the emotional state of Mr Henricus.

Mr Henricus attended Mr Pickering's work premises on Victoria Road in Ryde at about 11.30 am on 1 May 2013. There is considerable dispute between Mr Henricus, on the one hand, and Mr Pickering and Mr Smith, on the other, as to what was discussed during the meeting.

Mr Pickering told the Commission that he recalled Mr Smith meeting Mr Henricus at the front door and escorting him to Mr Pickering's office. Mr Smith agreed with this proposition.

Mr Henricus commenced the conversation by saying that he had been offered employment with *The Weekly Times* but, before doing so, he needed to sort out the disagreement between Mr Pickering and Mr Booth. Mr Henricus said that Mr Booth was planning to move on from the newspaper and that Mr Henricus was in line for the position of general manager. Mr Henricus enquired, generally, whether the Liberal Party councillors would be interested in advertising with *The Weekly Times*, before suggesting Mr Pickering could easily resolve the "problem" by withdrawing his (Mr Pickering's) opposition to Mr Booth's development application. It was at this point that Mr Pickering concluded that Mr Henricus was really there to see him about Mr Booth's development application.

Mr Pickering recalled Mr Henricus being in a somewhat agitated state. He was quite emotional, was in tears, and indicated to Mr Pickering that he had been going through some difficulties in his marriage and personal life. Mr Henricus said that he needed the job at *The Weekly Times* to help him get back on his feet. Mr Henricus indicated to Mr Pickering that the development application needed to be approved so that Mr Booth would be in a financial

position to move on from the newspaper, which would allow Mr Henricus to take up the position of general manager.

Mr Pickering said that Mr Henricus told him that if he (Mr Pickering) agreed to withdraw opposition to the development application, he would receive positive publicity in *The Weekly Times*.

Mr Pickering assumed that Mr Henricus was making the approach on behalf of Mr Booth, although he conceded that Mr Henricus did not say that he was. Mr Booth denied asking Mr Henricus to contact Mr Pickering, and there was no evidence before the Commission to support any finding that Mr Booth was involved in the approach.

Mr Pickering said that he told Mr Henricus that he would have to consider the matter. Privately, Mr Pickering was concerned that he did not want to antagonise Mr Henricus but had concluded in his own mind that he would need to report the approach by Mr Henricus pursuant to the Council's code of conduct.

Mr Pickering said that he received a missed call on his mobile telephone on the next day, 2 May 2013, from Mr Henricus. Mr Pickering called Mr Henricus back, and Mr Henricus asked whether Mr Pickering had further considered the matter they discussed the previous day. Mr Pickering told Mr Henricus that he needed to consider a number of things and did not have time to discuss the issue further with Mr Henricus.

By the time of this telephone conversation with Mr Henricus on 2 May 2013, Mr Pickering had already made contact with Mr McCann, Council's general counsel, to discuss the approach Mr Henricus had made to him.

Mr Smith's recollections of the meeting with Mr Henricus on 1 May 2013 were largely consistent with that of Mr Pickering. Mr Smith told the Commission that, when he met Mr Henricus at the door to the office, he could already see that Mr Henricus was emotional and starting to cry. Once all three men were seated in Mr Pickering's office, Mr Smith said that Mr Henricus mentioned his marriage problems briefly before the discussion turned to *The Weekly Times* and the fact that Mr Henricus was doing some work at the paper. Mr Henricus also said that he hoped to one day take over the paper, which was related to Mr Booth's desire to "get out" of the newspaper. Mr Smith recalled Mr Henricus saying that, in order for Mr Booth to do that, the issue with Mr Booth's development application needed to be sorted out. Mr Smith told the Commission that he was unaware at that time of any development application in relation to Mr Booth's property.

Mr Smith said that Mr Henricus spoke about wanting to improve the relationship with the Liberal Party councillors

and about getting positive publicity about them into *The Weekly Times*, if he eventually took over the running of the newspaper.

Mr Smith recalled a telephone call from Mr Henricus on 2 May 2013. He said that Mr Henricus asked whether Mr Pickering had made a decision. Mr Smith said that he told Mr Henricus that he was sure that Mr Pickering would do the right thing within the guidelines that governed his position as a councillor.

Mr Henricus disagreed with much of the evidence of Mr Smith and Mr Pickering. Mr Henricus told the Commission that he met with Mr Pickering in his office, and they were joined by Mr Smith after about five or 10 minutes. Mr Henricus denied that he was met at the door by Mr Smith, and also denied a suggestion that he was upset or crying at any time.

Mr Henricus said that he asked Mr Pickering what the problems were in relation to Mr Booth's development application. Mr Henricus said that he told Mr Pickering that he (Mr Henricus) had some friends who were interested in the property and there was a possibility of some further employment for Mr Henricus. Mr Henricus told the Commission that he hoped to get some work with the Antouns as a safety officer if they purchased the property and developed it.

Mr Henricus said that, at that point, Mr Pickering started "ranting and raving" about his relationship with Mr Booth and how unhappy he was about the treatment he had received from *The Weekly Times*. Mr Henricus said that he tried to tell Mr Pickering that that issue had nothing to do with him but could not get a word in and Mr Pickering continued to tell him about his history with *The Weekly Times*. After listening to Mr Pickering's complaints in relation to *The Weekly Times*, he (Mr Henricus) left the meeting.

Mr Henricus agreed that he telephoned Mr Pickering the next day, 2 May 2013. He denied that he had asked Mr Pickering whether he had further considered what the pair discussed the previous day. Rather, Mr Henricus told the Commission that he confronted Mr Pickering about why they had met the previous day if all Mr Pickering had wanted to do was vent about Mr Booth and *The Weekly Times*.

Mr Henricus also agreed that he had telephoned Mr Smith on 2 May 2013. He said that the reason for doing so was because he was trying to contact Mr Pickering but was having difficulty doing so. On reflection, Mr Henricus thought that he may have telephoned Mr Smith before he eventually spoke to Mr Pickering, after initially having some trouble getting in contact with Mr Pickering. He denied that he had asked Mr Smith to speak to Mr

Pickering about what had been discussed at the meeting on 1 May 2013.

Mr Henricus said he approached Mr Pickering in an attempt to resolve the apparent delay with the approval of Mr Booth's development application. He said that he was not asked to do so by either of the Antoun brothers, a fact confirmed by them when they gave evidence at the public inquiry. The Commission accepts that neither of the Antoun brothers asked Mr Henricus to approach Mr Pickering.

The Commission does not accept the evidence of Mr Henricus in relation to what was discussed at the meeting in Mr Pickering's office on 1 May 2013, beyond his acknowledgment that he discussed Mr Booth's development application. The evidence of Mr Smith largely supports that of Mr Pickering, and the difficult personal situation that Mr Henricus found himself in at the time, both in his marriage and the fact that his contracted employment with Cyrius Media Group Ptd Ltd was soon to come to an end, gives further weight to a finding that Mr Henricus was in a rather desperate position at the time of the meeting with Mr Pickering. The Commission accepts Mr Pickering's evidence as to what occurred at the meeting.

The Commission rejects the evidence of Mr Henricus that Mr Pickering was ranting and raving during the meeting on 1 May 2013 about his treatment in *The Weekly Times* and his relationship with Mr Booth.

The Commission is satisfied that, at their meeting on 1 May 2013, Mr Henricus told Mr Pickering that, if Mr Pickering agreed to withdraw his opposition to Mr Booth's development application, Mr Pickering would receive favourable publicity in *The Weekly Times*. Mr Henricus said this because he believed that, if the development application were approved, he would benefit by being able to take up the position of general manager of the newspaper once Mr Booth retired or by working for the Antouns.

## Corrupt conduct

The Commission finds that the approach by Mr Henricus to Mr Pickering amounted to corrupt conduct because Mr Henricus was asking Mr Pickering to withdraw his previous opposition to a development application in exchange for favourable publicity in a newspaper that Mr Henricus hoped to one day control. By asking Mr Pickering to withdraw his opposition to the development application in exchange for favourable publicity, Mr Henricus was asking Mr Pickering to act in a way that was neither honest nor impartial in his role as a councillor.

The conduct of Mr Henricus amounts to corrupt conduct because it could adversely affect the honest or

impartial exercise of official functions by a public official, Mr Pickering, and therefore comes within s 8(1)(a) of the ICAC Act.

Section 249B(2) of the Crimes Act creates an offence if:

*...any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:*

- (a) *as an inducement or reward for or otherwise on account of the agent's:*
  - (i) *doing or not doing something, or having done or not having done something, or*
  - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,*

*in relation to the affairs or business of the agent's principal, or*

- (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal.*

In the current case, Mr Pickering is considered an "agent" pursuant to s 249A(e) of the Crimes Act, which defines a councillor as an "agent" and also defines the councillor's "principal" as the local council on which the councillor serves.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has found concerning Mr Henricus' offer to Mr Pickering, as outlined above, were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Henricus had committed the offence of corruptly offering a benefit contrary to s 249B(2) of the Crimes Act.

Accordingly, the Commission is satisfied that the jurisdictional requirements of s 13(3A) of the ICAC Act are satisfied.

## Section 74A(2) statement

For the purposes of this chapter, Mr Henricus is an affected person.

Mr Henricus gave his evidence at the public inquiry subject to a declaration made pursuant to s 38 of the ICAC Act. The effect of this declaration is that his evidence cannot be used against him in any criminal prosecution other than a prosecution for an offence under the ICAC Act.

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Both Mr Pickering and Mr Smith have provided statements to the Commission, consistent with their evidence at the public inquiry, that could be used in criminal proceedings against Mr Henricus.

The Commission considers that the advice of the DPP should be sought in relation to the prosecution of Mr Henricus for an offence of corruptly offering a benefit contrary to s 249B(2) of the Crimes Act based on the findings of fact made in this chapter.

## Chapter 10: Changes to legislation

The Commission usually makes recommendations for corruption prevention when systemic or operational failure contributes to or enables corrupt conduct to occur. In this matter, no systemic or operational failure is evident. What the investigation exposed was the willingness of individuals to intentionally ignore any systemic and operational controls that stood in the way of the pursuit of personal interest or political advantage.

When senior public officials intentionally flout controls, a dysfunctional environment is created.

Recent significant changes to the LG Act have now increased the options available to both the minister for local government and the Office of Local Government to deal with individual councillor conduct and dysfunction of a council as a whole.

In a letter to the Commission dated 3 September 2013 that was tendered at the public inquiry, Ross Woodward, Chief Executive of the Office of Local Government, said :

*In relation to individual councillor conduct, the Local Government Amendments (Conduct) Act 2012 amended the Local Government Act 1993 to make further provision in relation to the conduct and discipline of councillors and council staff, delegates and administrators. These amendments commenced on 1 March 2013. The amendments have:*

- *Streamlined the process for commencing investigations.*
- *Provided additional powers to investigators, such as ordering a relevant person to provide documents and/or information which is verified by way of a statutory declaration (Section 440H).*
- *Increased the range of disciplinary action available to the Chief Executive, Local Government, when an act of misconduct has been established. These include ordering a councillor to cease engaging in misconduct, ordering the councillor to apologise*

*and ordering the councillor to undertake training or mediation (Section 440I).*

- *Increased the length of time that the Chief Executive may suspend a councillor from civic office from one month to three months.*
- *Introduced a power to enable the Pecuniary Interest and Disciplinary Tribunal to disqualify a councillor from civic office for a period of up to 5 years. This aligns the misconduct sanctions with those already available for breaches of the pecuniary interest provisions of the Act (Section 482A).*
- *Enabled misconduct of former councillors to be investigated (Section 440N).*

In addition, in March 2013, the Office of Local Government disseminated an updated model code of conduct, including new procedures for the administration of the code.

Mr Woodward said that in response to identified limitations in the powers available to the minister and the Office of Local Government to deal with dysfunction, the *Local Government Amendment (Early Intervention) Act 2013* amended the LG Act from 25 June 2013 to provide the following additional powers:

- *The Minister or Director-General may order Council to provide documents and/or information (Section 429).*
- *The Minister may issue an order in respect of a council, to take action to improve the performance of the council. Such 'performance orders' may include actions the Minister considers necessary to restore the proper functioning of the council, including determining the quorum for a meeting (Section 438A).*
- *Performance orders may be issued to individual councillors or the entire council or both.*

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- *The Minister may appoint a temporary advisor to assist with the compliance with a performance order (Section 438G).*
  - *The Minister may temporarily suspend a council for a period up to three months. This may be extended for a further period of three months (Section 438I).*
  - *The Minister may appoint an interim administrator for the period that the council is suspended (Section 438M).*

“Performance improvement” criteria and “suspension criteria” have since been incorporated into the Local Government (General) Regulation 2005 at clause 413D and clause 413E. The above measures are operational.

# Appendix 1: The role of the Commission

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 NSW, 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 s 3 of the ICAC Act.

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 s 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 cooperating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

## Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both s 8(1) or s 8(2) and which is not excluded by s 9 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.

Section 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*

- c. *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- d. *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

Section 9(4) of the ICAC Act provides that, subject to subsection 9(5), the conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in s 8 is not excluded by s 9 from being corrupt if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Section 9(5) of the ICAC Act provides that the Commission is not authorised to include in a report a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in s 9(4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from the ICAC Act) and the Commission identifies that law in the report.

The Commission adopts the following approach in determining whether corrupt conduct has occurred.

First, the Commission makes findings of relevant facts on the balance of probabilities. The Commission then determines whether those facts come within the terms of s 8(1) or s 8(2) of the ICAC Act. If they do, the Commission then considers s 9 and the jurisdictional requirements of s 13(3A) and, in the case of a Minister of the Crown or a member of a House of Parliament, the

jurisdictional requirements of s 9(5). In the case of s 9(1)(a) and s 9(5) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has committed a particular criminal offence. In the case of s 9(1)(b), s 9(1)(c) and s 9(1)(d) the Commission considers whether, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission

when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

*...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

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

*...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*

See also *Rejfeč v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution*, Queensland, 1977 (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings of fact and corrupt conduct set out in this report have been made applying the principles detailed in this Appendix.



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