

ICAC

INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

**Report on an investigation into
allegations of bribery relating
to Wollongong City Council**

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DECEMBER 2007



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ISBN 978 1 920726 52 2

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Independent Commission Against Corruption

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The Hon Richard Torbay MP
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Legislative Assembly
Parliament House
SYDNEY NSW 2000

Mr President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the report of the Independent Commission Against Corruption on an investigation into allegations of bribery relating to Wollongong City Council.

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

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jerrold Cripps', written in a cursive style.

The Hon Jerrold Cripps QC
Commissioner

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Executive summary

This report presents the results of an investigation by the Independent Commission Against Corruption (“the Commission”) into the following three matters:

1. an allegation made by Peter Coyte, Manager Commercial Projects and Property at Wollongong City Council (“the Council”), that a developer named Lou Tasich offered him a \$30,000 bribe at a meeting in Mr Coyte’s office on 2 May 2007;
2. a counter-allegation made by Mr Tasich that Mr Coyte solicited bribes from him during luncheon meetings at restaurants on two occasions “many months” prior to 2 May 2007; and
3. the reasons for the delay in Rod Oxley, former General Manager of the Council, reporting the alleged bribe by Mr Tasich to the Commission in accordance with his obligation under section 11 of the *Independent Commission Against Corruption Act 1988* (“ICAC Act”).

As part of its investigation the Commission issued 11 notices requiring persons to provide statements of information and/or produce documents, conducted compulsory examinations of a number of witnesses and held a public inquiry from 5 to 7 November 2007 at which four witnesses testified and over 100 documents were tendered.

Mr Tasich was required to attend the public inquiry and give evidence, but he failed to appear. He and Mr Coyte had previously testified in each other’s presence at compulsory examinations at which each was represented by a barrister who cross-examined the other. On the morning of the first day of the public inquiry Mr Tasich’s barrister informed the Commission that Mr Tasich was in Serbia and produced documents purporting to show that he was ill. The Commission (for reasons identified in Chapter 7 of the report) was not satisfied that Mr Tasich had a reasonable excuse for failing to appear and (for reasons referred to in Chapter 1 of the report) decided to proceed with the public inquiry in Mr Tasich’s absence. Mr Tasich’s barrister was granted leave to appear at the public inquiry and was permitted to cross-examine witnesses (including Mr Coyte) and present submissions on Mr Tasich’s behalf.

Findings of fact

The Commission’s findings of fact are set out in Chapters 5 and 6 of this report. In summary, those findings are as follows:

1. At a meeting between Mr Tasich and Mr Coyte in Mr Coyte’s office on 2 May 2007 Mr Tasich offered

a \$30,000 bribe to Mr Coyte with the intention of inducing him to support a proposal Mr Tasich had prepared for the purchase and development of Council land known as the Thomas Street carpark. Mr Tasich communicated his offer to Mr Coyte by writing “30K 4U” on a piece of paper and sliding the paper across the desk towards Mr Coyte. Mr Coyte immediately rejected the bribe and promptly reported it to his superiors.

2. After, and only after, he became aware of Mr Coyte’s allegation against him did Mr Tasich raise the counter-allegation that Mr Coyte had solicited bribes from him during luncheon meetings at restaurants on two occasions many months prior to 2 May 2007. This counter-allegation is false. Mr Tasich made it up in an attempt to discredit Mr Coyte and undermine Mr Coyte’s allegation against him.
3. Mr Oxley became aware of the details of the alleged offer of a bribe by Mr Tasich on 4 May 2007, but failed to report the matter to the Commission until sending a letter on 31 May 2007 (his last day in office) that was not received by the Commission until 4 June 2007. On 31 May 2007 Mr Oxley, without consulting the Commission (even though he had been encouraged to do so by the Council’s solicitors), also wrote to Mr Tasich and informed him that Mr Coyte had reported that Mr Tasich had offered him a \$30,000 bribe. Mr Oxley’s conduct fell below the standard expected of a principal officer of a public authority and had the potential to prejudice the Commission’s investigation. However, the Commission was not persuaded by the available evidence that Mr Oxley wilfully disregarded his statutory duty or attempted to “tip off” Mr Tasich. It is more likely that his conduct was the result of inadvertence due, at least in part, to the unusual circumstances arising from the fact that the matter arose during the final month of his 19-year term in office.

In addition, for reasons identified in Chapter 7 of the report, the Commission was not satisfied that Mr Tasich had a reasonable excuse for failing to appear before the Commission and give evidence on 5 November 2007, the first day of the public inquiry. In particular, the evidence before the Commission indicated that it was likely that before Mr Tasich departed Australia (on 9 October 2007) he decided to remain overseas until well after he was due to appear before the Commission and that any illness he may have suffered while overseas was not sufficiently serious to prevent him returning to Australia in time for his scheduled appearance on the first day of the public inquiry.

Conclusions and recommendations

The Commission has concluded that Mr Tasich, in offering the \$30,000 bribe to Mr Coyte, engaged in corrupt conduct. In addition, pursuant to section 74A(2) of the ICAC Act, 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 Mr Tasich for the following offences:

- the common law offence of bribery;
- corruptly offering an inducement contrary to section 249B(2) of the *Crimes Act 1900* (NSW);
- giving false or misleading evidence to the Commission contrary to section 87(1) of the ICAC Act; and
- failing to attend before the Commission without a reasonable excuse contrary to section 86(1)(a) of the ICAC Act.

The Commission did not find that Mr Coyte or Mr Oxley engaged in corrupt conduct and is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of either of them for any offence or taking disciplinary action against Mr Coyte.

Chapter 1: Introduction

This report presents the results of an investigation by the Independent Commission Against Corruption (“the Commission”) into the following three matters:

1. an allegation made by Peter Coyte, Manager Commercial Projects and Property at Wollongong City Council (“the Council”), that a developer named Lou Tasich offered him a \$30,000 bribe at a meeting in Mr Coyte’s office on 2 May 2007;
2. a counter-allegation made by Mr Tasich that Mr Coyte solicited bribes from him during luncheon meetings at restaurants on two occasions “many months” prior to 2 May 2007; and
3. the reasons for the delay in Rod Oxley, former General Manager of the Council, reporting the alleged bribe by Mr Tasich to the Commission in accordance with section 11 of the *Independent Commission Against Corruption Act 1988* (“ICAC Act”).

As part of its investigation the Commission issued 11 notices requiring persons to provide statements of information and/or produce documents, conducted compulsory examinations of a number of witnesses and held a public inquiry from 5 to 7 November 2007 at which four witnesses testified and over 100 documents were tendered.

Why the Commission investigated

One of the principal functions of the Commission, as specified in section 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint, or any circumstances which in the Commission’s opinion imply, that corrupt conduct may have occurred. The role of the Commission is explained in more detail in Appendix 1. The definition of “corrupt conduct” is set out in Appendix 2.

The Commission’s investigation commenced as a result of the receipt on 4 June 2007 of a report from Mr Oxley detailing Mr Coyte’s bribery allegation against Mr Tasich and further information subsequently provided by David Farmer, who replaced Mr Oxley as General Manager of the Council on 1 June 2007, which referred to Mr Tasich’s counter-allegation against Mr Coyte. The information implied that corrupt conduct may have occurred and also identified that Mr Oxley had not reported Mr Coyte’s allegation to the Commission in a timely manner. The Commission

determined that it was in the public interest to conduct an investigation for the purpose of determining whether any person had engaged in corrupt conduct, including ascertaining the reasons for Mr Oxley’s apparent failure to promptly report Mr Coyte’s allegation to the Commission in accordance with his obligation under section 11 of the ICAC Act.

The public inquiry

The Commission held a public inquiry from 5 to 7 November 2007. The Hon Jerrold Cripps QC, Commissioner, presided at the inquiry and Carolyn Davenport SC acted as Counsel Assisting. The Commission was satisfied that it was in the public interest to conduct the public inquiry for the following reasons:

- the matters being investigated were very serious, particularly the allegations of bribery;
- the matters had become relatively widely known in the Wollongong area;
- it was considered desirable that the relevant evidence be exposed to the public so there could be an informed appreciation of any conclusions ultimately reached by the Commission;
- the Commission was conscious that the holding of a public inquiry presented a risk of prejudice to the reputation of some persons, but it did not regard that risk as being undue; and
- the Commission concluded that there was a substantial public interest in exposing the relevant matters that was not outweighed by any public interest in preserving the privacy of the persons concerned.

On 5 November 2007 four witnesses (Mr Coyte, Councillor Frank Gigliotti, Mr Oxley and Peter Clinch, Mr Tasich’s former solicitor) testified at the public inquiry. On 6 November 2007 Ms Davenport made oral submissions to the Commission and Cr Gigliotti’s solicitor made oral submissions on his behalf. On 7 November 2007 oral submissions were made to the Commission on behalf of Mr Tasich and Mr Oxley. Some additional written submissions were also received. The Commission took all of these submissions into account in preparing this report.

Mr Tasich's failure to appear before the Commission

Mr Tasich appeared and gave evidence at compulsory examinations on 19 and 27 September 2007. He was also obliged to appear before the Commission and give evidence on 5 November 2007, the first day of the public inquiry, but he failed to do so. At no time prior to that date did Mr Tasich inform the Commission that he would be unable to attend the proceedings. On that date Mr Tasich's barrister informed the Commission that he was in Serbia and produced documents purporting to show that he was ill. His barrister indicated that he was nevertheless instructed to appear at the public inquiry on Mr Tasich's behalf "in order to protect his interests" and he was granted leave to appear.

The Commission decided to proceed with the public inquiry in Mr Tasich's absence, having regard to the following factors: (i) Mr Tasich had already given evidence to the Commission on 19 and 27 September 2007; (ii) Mr Tasich and his legal representatives had been present when Mr Coyte gave evidence to the Commission at a compulsory examination on 19 September 2007 and Mr Tasich's then barrister had been afforded, and taken advantage of, the opportunity of cross-examining Mr Coyte on that occasion; (iii) at no stage, including on 5 November 2007, was any application made on Mr Tasich's behalf that any part of the inquiry should be postponed or adjourned; and (iv) Mr Tasich's current barrister was permitted to appear at the public inquiry, cross-examine witnesses (including Mr Coyte) and present submissions on Mr Tasich's behalf.

For the purpose of determining the truth of the allegations made against and by Mr Tasich, and making the findings and recommendations set out in Chapter 5 of this report, the Commission did not draw any adverse inference from Mr Tasich's failure to appear at the public inquiry.

The circumstances relating to Mr Tasich's non-appearance at the public inquiry are further addressed in Chapter 7 of this report.

Structure of this report

Chapter 2 outlines the background facts and general circumstances that are relevant to the matters investigated by the Commission. Chapter 3 presents a summary of the evidence relating to the alleged offer of a bribe to Mr Coyte by Mr Tasich. Chapter 4 presents a summary of the evidence relating to the alleged solicitation of bribes from Mr Tasich by Mr Coyte. Chapter 5 contains an assessment of the overall evidence relating to the two allegations (including an assessment of the credibility and

reliability of relevant witnesses), as well as the Commission's findings and recommendations in relation to each allegation. Chapter 6 addresses the conduct of Mr Oxley in failing to promptly report Mr Coyte's allegation to the Commission and also informing Mr Tasich of that allegation without consulting the Commission. Chapter 7 addresses the issue of whether action should be taken in respect of Mr Tasich's failure to appear at the public inquiry.

Recommendation for publication of this report

Pursuant to section 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 2: Background and general circumstances

Peter Coyte has been employed by the Council since January 2005 as its Manager of Commercial Projects and Property. Lou Tasich is the Managing Director of a company engaged in property development named Tasich Investments Pty Ltd (“Tasich Investments”), which is based in Sydney.

In mid-2006 Mr Tasich was actively searching for commercial opportunities in the Wollongong district. For this purpose he spoke to and met with Wollongong City Councillor Frank Gigliotti on a number of occasions and also met with Rod Oxley, the then General Manager of the Council, on two occasions.

In July or August 2006 Cr Gigliotti informed Mr Tasich about land owned by the Council in Yallah, a suburb of Wollongong, and suggested that it might be suitable for purchase and development by him. Cr Gigliotti gave Mr Tasich information about the property and took him out to see it. Cr Gigliotti also recommended that Mr Tasich speak to Mr Coyte about the property and he subsequently introduced the two men to each other.

The first lunch meeting between Mr Tasich and Mr Coyte on 30 August 2006

On 30 August 2006 Mr Tasich and Mr Coyte had a meeting over lunch at the Harbourfront restaurant in Wollongong at which they discussed the Yallah property and engaged in “a lot of personal-type banter”. The meeting lasted for about five hours and during that period the two men consumed two bottles of wine and two beers, but Mr Coyte told the Commission that he did not believe he was “highly intoxicated”. The total bill for the lunch, including alcohol, amounted to \$226.60 and Mr Coyte paid for all of it with Council funds.

On 31 August 2006 Mr Coyte made a file note of his meeting with Mr Tasich in which he recorded that he had advised Mr Tasich that the Council itself was interested in developing the Yallah property in the future, that it was too early for the Council to consider selling it and that if it did decide to sell the property it would normally do so “by either EOI [expressions of interest], tender or auction”.

For a period of six weeks or so after the luncheon meeting Mr Tasich and Mr Coyte spoke with each other over the telephone about the Yallah property on a number of occasions before Mr Tasich eventually decided not to pursue any purchase or development of it. During this period Mr Tasich did not make any complaint to the Council about Mr Coyte.

The Thomas Street carpark

The Council owns a 4,350 m² property in the Wollongong central business district (“CBD”) known as “the Thomas Street carpark” that is currently being operated as a commercial carpark. The Council has estimated the nominal value of the property as \$6,525,000 (\$1,500 per m²), calculated by reference to past sales of comparable sites, but has not obtained a formal valuation of it from an independent valuer.

In September 2006 Mr Tasich had a meeting over lunch at a restaurant with Mr Oxley and a mutual friend. At this meeting Mr Tasich raised the possibility of purchasing and developing the Thomas Street carpark. Mr Oxley gave unchallenged evidence to the Commission that at the meeting he advised Mr Tasich to submit “a formal proposal” to the Council and told him that it “would need to meet the objectives of Council”, there would have to be “a transparent process” and “there was no guarantee that his proposal would be accepted”. Over the following months Mr Tasich conducted a feasibility study, had schematics and designs prepared, apparently liaised with a major supermarket chain that expressed interest in leasing a portion of the site once it was developed and commenced drafting a proposal for consideration by the Council.

In late October or early November 2006 Mr Coyte received a letter dated 23 October 2007 from a finance company unrelated to Mr Tasich expressing interest in pursuing a Public–Private Partnership (“PPP”) with the Council to develop the Thomas Street carpark. Mr Coyte replied by letter dated 7 November 2007 in which he indicated that Council was not yet ready to redevelop the property and that “[t]he process of a PPP, as required by the Department of Local Government, involves calling for Expressions of Interest in order to pass the ‘probity’ and ‘community interest’ tests”.

A PPP is defined in section 400B(1) of the *Local Government Act 1993* (NSW) as “an arrangement between a council and a private person for the purposes of: (a) providing public infrastructure or facilities (being infrastructure or facilities in respect of which the council has an interest, liability or responsibility under the arrangement); or (b) delivering services in accordance with the arrangement, or both”, subject to certain exceptions. A council entering into a PPP must comply with strict guidelines issued by the Department of Local Government (“DLG”). The guidelines require councils to provide detailed information to the DLG about any proposed PPP including “a risk assessment”,

which (among other things) demonstrates that:

- (i) the proposal satisfies probity requirements relating to openness, transparency and competition; and
- (ii) the project itself will “have an overall positive effect in regard to public or community interest”.

On 1 February 2007 Mr Tasich, after attempting to meet with Mr Oxley in person without success, left at Mr Oxley’s office a written proposal from Tasich Investments dated 20 January 2007 for the purchase and development of the Thomas Street carpark. Mr Oxley forwarded the proposal to Mr Coyte and directed him to follow it up with Mr Tasich. The proposal itself is untitled, not addressed to any particular person or entity, brief and vague. Among other things, it provides for:

- the purchase of the land from the Council, by way of a put and call option, subject to a development application (“DA”) being approved by the Council for the construction of a seven-storey building to be utilised for commercial and residential purposes, with an additional three levels of underground car parking;
- the building having a floor space ratio (“FSR”) approximately five per cent above the FSR recommended in the latest Development Control Plan (“DCP”) for the site and not complying with set-backs on two sides on the ground floor;
- payment to the Council for the land being made “by way of a stratum of one level of car parking under the building, providing approx 100 – 110 car spaces” to be valued at \$35,000 per parking space or \$3.5 to \$3.85 million in total (the proposal does not provide for any other form of payment to the Council); and
- the Council negotiating directly with Tasich Investments without needing “to waste time going to expressions of interest”, as Mr Tasich “would like to secure the site ASAP” because he had a major supermarket chain “ready to commit to a long lease” of the ground floor of the proposed building.

Mr Tasich claims that prior to 1 February 2007 he discussed his proposal for the Thomas Street carpark with Mr Coyte over the telephone “on numerous occasions” and that during these discussions Mr Coyte informed him that he could deal with the Council directly and purchase the property “without going to expressions of interest, as long as the property was valued by independent valuers, and a fair market value was determined”. However, the Commission did not find any documents or records to support this claim and it is inconsistent with correspondence written by Mr Tasich or on his behalf (namely, an email sent from him to his then solicitor Mr Clinch on 26 July 2007 and a letter from Mr Clinch to the Council dated 9 August

2007 that was approved by Mr Tasich before it was sent) which represents that he only commenced dealing with Mr Coyte in relation to the Thomas Street carpark after Mr Oxley forwarded his written proposal to Mr Coyte. Mr Coyte has denied Mr Tasich’s claim and maintained that he was unaware of Mr Tasich’s proposal for the Thomas Street carpark until he received a copy of it from Mr Oxley on 1 February 2007. The Commission accepts Mr Coyte’s evidence on this point.

The second lunch meeting between Mr Tasich and Mr Coyte on 2 February 2007

On 2 February 2007 Mr Tasich and Mr Coyte had a meeting over lunch at the Crown Table restaurant in Wollongong at which they discussed Mr Tasich’s proposal for the Thomas Street carpark. The meeting lasted for about two hours and during that period they ordered two bottles of wine. Mr Coyte told the Commission that when the meeting ended at around 3.00 pm he was “quite sober” and he returned to work and attended a number of meetings. The total bill for the lunch, including alcohol, amounted to \$216.00 and Mr Coyte paid for all of it with Council funds.

On 2 February 2007, shortly after his lunch with Mr Tasich, Mr Coyte made a file note of their meeting in which he recorded that:

- he met with Mr Tasich “to discuss the possibility of a joint venture on the Thomas Street Car Park” after “Mr Tasich had forwarded concept plans to the General Manager”;
- he explained to Mr Tasich that “his proposal constituted a [PPP] and therefore was the subject of the provisions of section 400 of the Local Government Act”, which “would mean that any proposal would need to go to public competition through an Expression of Interest (EOI)”;
- he told Mr Tasich that “this site was not one that we [Council] were focused on at present as we had several other PPP’s we were dealing with” and “also mentioned that this site was considered to be a prime CBD site”;
- he “advised him ... to consider whether he went to any more expense in respect to the Council site as it may be funds that he has at risk [sic] of not recovering”; and
- Mr Tasich asked “whether there was any way around the PPP legislation” and he said he “did not believe there was and that it was not appropriate to look for them”.

Mr Tasich has denied that he asked Mr Coyte whether there was any way around the PPP legislation and claimed that he merely asked what offer he could make to ensure that his proposal would not constitute a PPP and not require an EOI process. He explained his motivation at that time in the following terms:

I wanted to make the Council an offer to purchase the property without the Council needing to go through the process of going to expressions of interest and wasting another three months or four months time as I was pressured by the general manager of [the major supermarket chain he was negotiating with] to, by this stage, come up with an offer to lease as he was waiting on me to secure the property in order for us to enter into a lease. So I wanted to close – enter into some formal agreement with the Council in order to make a formal offer to [the supermarket chain] ... I wanted to purchase the property or propose whatever it takes to secure the property ...

Mr Tasich claims that at the lunch on 2 February 2007 Mr Coyte advised him that his proposal would not be a PPP, and would not require an EOI process, if he offered to make a “straight-out purchase” of the property with “no leasing back” or other continuing relationship between his company and the Council.

In the months following their meeting on 2 February 2007 Mr Tasich continued to deal with Mr Coyte and did not make any complaint about him to the Council.

On 9 February 2007 Mr Coyte sent Mr Tasich a letter entitled “Council’s Thomas Street Car Park” in which he referred to their luncheon meeting on 2 February 2007 and wrote:

As discussed on the day, there were several issues that would need to be examined in giving consideration to the proposal, namely:

1. *The nature of this proposal may see it caught by the Public Private Partnerships (PPP) provisions of the Local Government Act 1993 ...*
2. *In the event that the transaction was not a PPP, Council would still need to demonstrate clearly that it was the best value for Council and met the “Public Interest” test. This would require at the very least independent professional valuations and assessment of the transaction.*
3. *The City Centre Movement and Access Strategy has identified a need to provide at least 500 community car park spaces on this site.*

In addition to the above and as discussed, I am seeking some geo-technical advice on the site to gain a better understanding of its development potential.

The third lunch meeting between Mr Tasich and Mr Coyte on 9 March 2007

In mid-to-late February or early March 2007 Mr Tasich telephoned Mr Coyte and invited him to another luncheon meeting to discuss his proposal for the Thomas Street carpark. Mr Coyte accepted the invitation and on 9 March 2007 they met at Antics restaurant in Wollongong. The meeting lasted for about two-and-a-half hours and during that period the two men probably consumed two bottles of wine. It appears that Mr Tasich paid for the entire lunch, including alcohol.

After the lunch Mr Coyte made a file note of the meeting in which he recorded that:

- Mr Tasich said that his proposal for the development of the Thomas Street carpark had the support of Ms Noreen Hay MP, Member of NSW Parliament for Wollongong, and local councillors, and Mr Coyte replied that he was “not able to assist in respect of the DA/development issues and irrespective of the political support, [he] still needed the PPP legislation adhered to”;
- Mr Tasich “asked if there was any way to progress” his proposal and Mr Coyte said that the Council “may consider direct negotiation” with him if his proposal was to purchase the site, provide the parking spaces required, and own and manage the carpark himself, but there would still be “a probity process” to go through;
- Mr Tasich stated that he wanted to test the geology of the site and Mr Coyte offered to provide him with some geotechnical data held by the Council; and
- Mr Coyte repeated to Mr Tasich that “he should not invest too much” in his proposal “as it was at risk”.

After this third luncheon meeting Mr Tasich continued to deal with Mr Coyte in relation to the Thomas Street carpark without making any complaint about him to the Council.

On 27 March 2007 Mr Coyte provided Mr Tasich with a copy of a geotechnical report for the site that had been commissioned by the Council in 2001. The report indicated that some parts of the site were composed of hard rock that would be difficult to excavate for the purpose of constructing underground parking facilities.

On 12 April 2007 Mr Tasich sent to Mr Oxley a formal offer for the purchase of the Thomas Street carpark on the following principal terms:

The offer is to purchase the land outright from the council subject to development application approval yet to be finalised ...

1. *Purchase price \$3,000,000 Cash, PLUS providing one whole level of car parking station comprising of 110 cps, estimated TOTAL INVESTMENT \$6,850,000.*
 - (a) *There will also be an additional 230 car spaces provided for the development bringing the total number of car spaces to approx 340 over three levels at an estimated cost in excess of \$12 million.*
2. *Option Period and Option fee; \$20,000 for (3 months) three months with the right to extend for a further period of 12 months for an additional option fee of \$30,000 bring the total option fee to \$50,000 ...*

We have chosen an Option as a way forward due to the nature of the project in particular the Retail Leasing aspect, [which] involves securing a major anchor tenant that has confirmed the willingness to enter into a lease should our company be able to secure the site and deliver the completed project within a reasonable time.

Like Mr Tasich's previous proposal dated 20 January 2007, his formal offer was vague. In particular, it was unclear exactly what, in addition to \$3 million cash, was being offered to the Council in consideration for the land. On its face, it appears that Mr Tasich was offering to construct and provide to the Council one level of car parking with 110 spaces valued (according to him) at \$3,850,000 in total or \$35,000 per space, but he did not identify the terms on which it would be provided including who would own, manage and receive the income generated from those spaces. It was also unclear whether the "additional 230 car spaces provided for the development" were intended to be spaces available to the public or only to the commercial and residential occupants of the building.

On 20 April 2007 Mr Tasich sent a copy of his formal offer to Mr Coyte by facsimile. Mr Coyte gave evidence to the Commission that at that time he regarded Mr Tasich's offer as still constituting a PPP because part of the consideration for the land was the provision of 110 car-parking spaces to the Council. Mr Coyte also gave unchallenged evidence to the Commission that Mr Tasich's offer for the site was "substantially below market value".

On 26 April 2006 Mr Oxley sent a letter, drafted by Mr Coyte, to Mr Tasich which provided as follows:

Thank you for your letter of 12 April 2007 in respect of your offer to purchase Council's property in Thomas Street, Wollongong.

As discussed with ... Mr Peter Coyte, the proposed arrangement has been referred to the Department of Local Government (in principle) and the advice received was that this arrangement constitutes a [PPP]. As such, the proposal is subject to the provisions of Section 400 of the Local Government Act and would require public competition through an Expression of Interest.

Council is not able to consider your offer and must therefore decline to proceed further.

Should you wish to further discuss please contact Mr Coyte ...

Upon receipt of this letter Mr Tasich telephoned Mr Coyte and sought a further meeting. They ultimately agreed to meet in Mr Coyte's office on 2 May 2007.

The meeting between Mr Tasich and Mr Coyte in Mr Coyte's office on 2 May 2007

At 11.00 am on 2 May 2007 Mr Tasich met with Mr Coyte in Mr Coyte's office. Shortly after the meeting Mr Coyte made two separate file notes recording what he claims occurred during the meeting. The first file note contains a brief summary of the issues relating to Mr Tasich's proposal for the Thomas Street carpark that were discussed at the meeting. The second file note records an allegation that Mr Tasich offered Mr Coyte a \$30,000 bribe which he immediately rejected. Later that same day Mr Coyte also prepared a formal memo to his superior, Stephen Payne, Chief Financial Officer of the Council, which contains a more detailed account of the matters referred to in both of the file notes. The first part of the memo includes the following text:

Mr Tasich called to further discuss the approach he had made to Council in respect to the Thomas Street Carpark. I advised him that Council had responded to his proposal and considered that it was a PPP and therefore subject to the provisions of section 400 of the [Local Government Act] as stated in the letter [from Mr Oxley of 26 April 2007]. Mr Tasich explained to me that he was offering to buy the lands outright and that he was not looking to involve a cash and car space transaction. He was offering cash and would build an extra floor of car spaces which he would own and operate commercially but which would be available to the public to meet Council's carpark needs. Mr Tasich went through some "rough" calculations on a piece of paper in respect to how he had arrived at the [proposed

purchase price of] \$3,000,000 and then outlined how he believe[d] that additional community value could be added to the carpark.

At this point in the discussion I advised Mr Tasich there were three matters that I needed to consider before advancing this any further and they were:

1. *I needed to check the City Centre [Local Environment Plan] as I thought there were issues in there in respect to car spaces ...*
2. *I need to check with Traffic Planners to see whether this proposal met their needs ...*
3. *I mentioned that I need to consider the probity of dealing direct.*

The second part of Mr Coyte's memo refers to the alleged offer of the \$30,000 bribe by Mr Tasich (the details of this allegation are addressed in Chapter 3 of this report).

After the meeting on 2 May 2007 Mr Coyte promptly reported his bribery allegation to a number of Council officers, including Mr Oxley.

On 8 May 2007 Mr Tasich, who did not know at that time that Mr Coyte had made the bribery allegation against him, sent to Mr Oxley a letter which included the following text:

Having spoken with Mr Coyte on the issue, it became obvious that the Council has misunderstood my offer, I therefore would like to clarify my offer made to [the] Council on ... 12 April 2007 ...

The offer is to purchase the land outright from the council subject to development application approval yet to be finalised ...

1. *Purchase price \$3,000,000 (three million)*
 - (a) *There will be approx 230 car spaces provided for the development over (2) levels at an estimated cost in excess of \$7 million.*
 - (b) *Should the Council DCP [Development Control Plan] allow additional car parking to be constructed on the site, we are willing to consider construction of another level of parking of approx 110 spaces to be used as a commercial car parking station, this would bring the total number of spaces on the site to 340 at an approximate cost of \$12 million.*
2. *Option Period and Option fee; \$20,000 for (3 months) three months with the right to extend for a further period of 12 months for an additional option fee of \$30,000 bring the total option fee to \$50,000 ...*

This offer (which appears to be similar to the verbal offer Mr Tasich made to Mr Coyte during their meeting on 2 May 2007) differs from the one contained in Mr Tasich's letter of 12 April 2007, and from his initial proposal dated 20 January 2007, in not including the provision of one level of car parking with 110 spaces as part of the consideration to the Council for the land and merely containing an undertaking "to consider" constructing such a level of car parking without identifying who would own or manage it if it were constructed. In addition, this offer, like the previous one and his earlier proposal, is vague in terms of identifying which parking spaces (if any) would be available to the general public, as opposed to only the occupants of the proposed building.

By letter dated 31 May 2007, Mr Oxley responded to Mr Tasich's letter of 8 May 2007 as follows:

Thank you for your letter dated 8 May 2007 in respect of an opportunity to purchase the [Thomas Street carpark].

Council's Manager Commercial Projects and Property, Mr Peter Coyte, has advised that during a discussion held in his office on Wednesday, 2 May 2007, an 'inducement' of \$30,000 was made by you to progress the matter in your favour. In light of this action Council is not able to progress any dealings with yourself or your company in this or other matters.

Council regards actions of this nature as highly inappropriate. Mr Coyte has advised me that he has made a diary note of the 'inducement'.

Chapter 3: Alleged offer of a bribe by Mr Tasich

The first part of this chapter presents a summary of the evidence given by Mr Coyte relating to his allegation that Mr Tasich offered him a \$30,000 bribe. The second part presents a summary of the evidence given by Mr Tasich in responding to and denying Mr Coyte's allegation. The third part presents a summary of evidence relating to potentially relevant conversations, concerning the allegation, had by Councillor Gigliotti with Mr Tasich and David Farmer, who took over from Mr Oxley as General Manager of the Council on 1 June 2007. The Commission's ultimate assessment of the evidence, including of the credibility and reliability of relevant witnesses, and conclusions in relation to the allegation, are set out in Chapter 5 of this report.

Mr Coyte's evidence

The evidence Mr Coyte provided to the Commission about his bribery allegation against Mr Tasich, which remained consistent throughout his testimony on two separate occasions (at a compulsory examination on 19 September 2007 and the public inquiry on 5 November 2007) and is consistent with the content of the contemporaneous records created by him (his two file notes and formal memo of 2 May 2007), may be summarised as follows:

- Mr Tasich requested the meeting on 2 May 2007 to discuss his offer of 12 April 2007 for the purchase and development of the Thomas Street carpark;
- at the meeting Mr Coyte advised him that Council "couldn't proceed any further" because, as stated in Mr Oxley's letter of 26 April 2007, his proposal was considered to constitute a PPP and therefore to be subject to the provisions of section 400 of the *Local Government Act 1993* and to require public competition through an EOI;
- Mr Tasich sought to ascertain whether he could purchase the property in any way that would not constitute a PPP and he modified his previous offer by saying that he would pay \$3 million for an outright sale of the property without also transferring to the Council a stratum of parking spaces;
- Mr Tasich sought to explain how he arrived at his proposed purchase price of \$3 million for the site, but Mr Coyte told him that he thought the site was "much more valuable than that" and worth around \$6.5 million;
- Mr Coyte informed Mr Tasich that even if his modified offer did not constitute a PPP there were "still inhibitors to the development" and he specifically

raised the following three issues: (i) the need to check the City Centre Local Environment Plan for issues relating to parking spaces; (ii) the need to check with Traffic Planners to see whether the proposal met their needs; and (iii) the need to consider whether probity requirements could be satisfied by dealing directly with Mr Tasich when such a sale (even if not a PPP) would normally involve an EOI process;

- at this point, which was towards the end of the meeting, Mr Tasich wrote "30K 4U" on a torn piece of paper and slid the paper across the desk towards Mr Coyte;
- Mr Coyte regarded Mr Tasich's actions as amounting to an offer to pay him a \$30,000 bribe if he progressed the matter in Mr Tasich's favour, was "stunned as this was [his] first experience of such an offer" and rejected the offer by saying words to the effect of: "No, I don't do that sort of thing ... that's not the way I do business ... I value my integrity and my position too much";
- Mr Tasich then withdrew the piece of paper, apologised and said "I didn't mean to offend"; and
- Mr Coyte, for reasons he does not understand other than because he was "in something of a state of shock" and not immediately sure how to react, replied that "no offence was taken", even though he was offended, and continued the meeting for a few minutes, during which he recapped the issues that would need to be considered before Mr Tasich's revised proposal could be advanced any further.

After his meeting with Mr Tasich on 2 May 2007 Mr Coyte promptly reported and recorded the bribery allegation. He gave unchallenged evidence to the Commission that in the few hours immediately after that meeting he did the following:

- when the meeting concluded at around 11.40 am he prepared one file note that contains a brief summary of the issues relating to Mr Tasich's proposal for the Thomas Street carpark that were discussed at the meeting, but does not contain any reference to Mr Tasich having offered him a bribe;
- shortly afterwards he reported to Wayne Douglass, the Council's Property Services Manager, and his (Mr Coyte's) immediate supervisor Stephen Payne, the Council's Chief Financial Officer, that Mr Tasich had offered him a bribe and sought advice from Mr Payne, who told him to write down what had occurred and undertook to provide him with further advice later that day (Mr Coyte was not certain of the precise timing and sequence of these events);

- he promptly prepared a second file note specifically referring to Mr Tasich having offered him a \$30,000 bribe during their meeting earlier that day;
- at some time between 1.00 and 3.00 pm he met with Mr Payne again, he showed him his two file notes, they discussed the allegation and Mr Payne advised him to write a formal memo recording what had occurred at his meeting with Mr Tasich, which would be provided to Mr Oxley; and
- later that afternoon he completed a formal memo containing a detailed account of his meeting with Mr Tasich, including the alleged offer of the bribe, and provided it to Mr Payne believing that he would forward a copy of it to Mr Oxley.

Mr Coyte's evidence about what occurred after the meeting is not only supported by the contemporaneous documents he created (i.e. his two file notes and formal memo of 2 May 2007), but is corroborated by written statements provided to the Commission by Mr Douglass and Mr Payne, by various diary entries made by Mr Payne and by an email sent from Mr Coyte to Mr Payne at 7.38 am on 3 May 2007.

On 3 May 2007 Mr Payne forwarded to Mr Oxley a copy of Mr Coyte's memo and on 4 May 2007 the three men had a meeting during which Mr Oxley undertook to report Mr Coyte's allegation to the Commission (the circumstances of the meeting on 4 May 2007 and subsequent events relating to the reporting of Mr Coyte's allegation to the Commission are addressed in Chapter 6 of this report).

Mr Coyte told the Commission that he always intended to make a record of, and report, Mr Tasich's offer of a bribe and does not know why he did not refer to it in the first file note he prepared immediately after the meeting "other than the fact that ... [he] was somewhat stunned by it all" and not sure what to do as he had never been placed in such a position before.

Mr Tasich's response to Mr Coyte's allegation

Mr Tasich has denied Mr Coyte's allegation that he offered a \$30,000 bribe at the meeting on 2 May 2007 and suggested that Mr Coyte might have misunderstood innocent offers he made to pay the Council \$30,000 for various matters as part of his proposal for the purchase of the Thomas Street carpark.

Mr Tasich was first informed that Mr Coyte had alleged that he offered him a \$30,000 bribe at the meeting on 2 May 2007 by Mr Oxley's letter to him dated 31 May 2007 (referred to in Chapter 2 of this report). It appears that at some time before 16 June 2007 he prepared

a draft response to Mr Oxley's letter that was never sent but was provided to Mr Tasich's then solicitor, Mr Clinch, to enable him to prepare a response to the Council on Mr Tasich's behalf. Mr Tasich's draft response included the following text (as written):

I would first like to stress how much I'm offended, shocked and bewildered by the serious accusation you have made based on one disreputable persons word without discussing it with me ...

[During my meeting with Mr Coyte on 2 May 2007] we did discuss option fees and using figures of \$30,000 which I offered to increase it, I also offered to increase the offer to allow the valuation costs, although my offers were to Coyte at no time did I or would I have made the offer to him personally it was always made to the council as it is councils land ...

At this point I demand an apology from Coyte as well as yourself for false accusation ...

It appears that in this draft response Mr Tasich claims that at the meeting on 2 May 2007 he offered to pay "the council", rather than Mr Coyte personally, an increased option fee of \$30,000, plus an unspecified amount to cover "valuation costs", and he arguably suggests (albeit by implication only) that one or both of these offers might have been misconstrued by Mr Coyte as an attempted bribe. However, no such claim or suggestion (explicit or implicit) is contained in letters dated 18 June and 9 August 2007 that were subsequently sent to the Council by Mr Clinch for the purpose of responding to Mr Coyte's bribery allegation. Both of these letters were written on Mr Tasich's behalf and email records show that he checked and approved them before they were sent.

At his compulsory examination on 27 September 2007 Mr Tasich stated that:

- at the meeting on 2 May 2007 Mr Coyte said that the Council would need to obtain an independent valuation of the Thomas Street carpark before it could consider Mr Tasich's offer to purchase it and he (Mr Tasich) offered to pay for the valuation in order to expedite consideration of his proposal "since [Mr Coyte] was not taking the initiative";
- he asked how much the valuation would cost, Mr Coyte said "\$20,000 to \$30,000" and he offered to pay that amount, but Mr Coyte told him "it wasn't necessary";
- he also offered to increase the option fee in his proposal from \$20,000 to \$30,000 (one per cent of the proposed purchase price), but Mr Coyte again said "it wasn't necessary";

- as they discussed these matters he scribbled (among other things) the figure \$30,000, in reference to the valuation cost and/or increased option fee, on a piece of paper in large writing and Mr Coyte was sitting close enough to him to see that figure;
- after the meeting he discarded the paper on which he scribbled the figure \$30,000; and
- he did not include his offer to pay \$30,000 for a valuation or his offer to increase the option fee to \$30,000 in the letter he subsequently sent to Mr Oxley dated 8 May 2007 (referred to in Chapter 2 of this report) because Mr Coyte had told him that neither of those additional offers was necessary.

At the public inquiry Mr Coyte was asked about these matters and he stated that:

- Mr Tasich did not offer to pay for a valuation of the site, there was no discussion about how much such a valuation would cost and he did not represent that it could cost between \$20,000 and \$30,000;
- he regularly arranged for valuations of Council properties to be obtained and the Council had never paid “anything in the vicinity of \$30,000 for a valuation”;
- the Council had recently obtained valuations of two carparks in the Wollongong CBD generally comparable to the Thomas Street carpark and those valuations cost \$2,854.72 and \$3,960 (Mr Coyte produced the invoices for those valuations);
- he had no recollection of Mr Tasich offering to increase his option fee to \$30,000 during the meeting and he did not believe that he did offer to do so;
- during the meeting Mr Tasich was “writing things down” on a piece of paper, including figures, but this activity was clearly separate to that of him sliding the piece of paper across the desk with “30K 4U” written on it; and
- he was “absolutely not mistaken” that Mr Tasich offered him a bribe and he recalled “explicitly” the piece of paper being passed to him with “30K 4U” written on it.

It is convenient to record at this point that the Commission rejects the contention that Mr Coyte’s belief that Mr Tasich offered him a bribe may have resulted from a misunderstanding of innocent offers and ‘scribblings’ made by Mr Tasich. Not only has Mr Coyte rejected this contention and it is inherently unlikely that the words “30K 4U” written on a piece of paper (as opposed to some oral comment mentioning the figure \$30,000) could be misunderstood, but the contention is incompatible with the evidence Mr Coyte gave as to what occurred immediately after

Mr Tasich allegedly offered the bribe, which was that Mr Coyte said words to the effect of “No, I don’t do that sort of thing ... that’s not the way I do business ... I value my integrity and my position too much” and Mr Tasich then withdrew the piece of paper, apologised and said “I didn’t mean to offend”. Mr Tasich would have had no reason to respond in such a way if his actions were innocent. If Mr Coyte is found to be a truthful witness in relation to these matters the possibility of a misunderstanding must be rejected.

Conversations between Cr Gigliotti and Messrs Tasich and Farmer

The Commission received information from Mr Farmer suggesting that Mr Tasich might have admitted to Cr Gigliotti that he did offer a bribe to Mr Coyte. If such an admission had been made it would be highly relevant to the Commission’s investigation.

Mr Farmer sent the Commission a letter dated 21 June 2007 and a file note dated 28 June 2007 in which he stated that:

- on 19 June 2007 he met with Cr Gigliotti who told him that he had recently had a conversation with Mr Tasich during which Mr Tasich admitted that he did offer the \$30,000 “inducement” to Mr Coyte “but only did so due to Mr Coyte making it clear that he was expecting such an inducement” by having “on a number of occasions indicated that he had to feed his family”;
- during that same meeting he “double checked with Cr Gigliotti about Mr Tasich admitting he offered an inducement and he said yes he did”; and
- on 28 June 2007 he again asked Cr Gigliotti to recount his conversation with Mr Tasich and on this occasion Cr Gigliotti was “less definitive about his position on Mr Tasich’s admission” and said that Mr Tasich “did not admit to offering the bribe but he [Cr Gigliotti] read between the lines that that was what had occurred”.

Cr Gigliotti initially gave evidence to the Commission at a compulsory examination on 19 September 2007, the most relevant parts of which may be summarised as follows:

- he first met Mr Tasich in late 2006 or early 2007 and has only met him a few times since then, with most meetings having been “chance encounters” such as running into him on the street or at a function;
- in May 2007 he attended a function and spoke to Mr Coyte who told him that Mr Tasich had offered him a \$30,000 bribe and said “If I was you I would stay away from Mr Tasich”;

- in June or early July 2007 Mr Tasich approached him at a function and said words to the effect of: “What is wrong with Peter Coyte? ... I’ve had lunch with him on a couple of occasions and each time after he’s had a – a couple of drinks – he has asked me ‘What is in it for me? My children are hungry. What is in it for me?’”;
- he was “apprehensive” when Mr Tasich said this to him, because of what Mr Coyte had previously told him, so he cut Mr Tasich off and told him that “as far as [he] was concerned Peter Coyte was always a professional person” and he “wasn’t interested in those allegations”;
- at no time did Mr Tasich admit to him that he had offered a bribe to Mr Coyte, but he nevertheless formed a “personal view” that Mr Tasich had done so;
- a couple of days after his conversation with Mr Tasich he met Mr Farmer and told him “in no uncertain terms” that during that conversation Mr Tasich admitted to him that he had offered a bribe to Mr Coyte because Mr Coyte had said that “he had to feed his family and that he wanted money”;
- Mr Farmer then specifically asked if he was sure that Mr Tasich had admitted to him that he had offered a bribe to Mr Coyte and he replied “Yes, he did”;
- he could not explain to the Commission why he had twice told Mr Farmer that Mr Tasich had admitted to him that he offered a bribe to Mr Coyte if Mr Tasich had not made such an admission to him;
- a few days after their initial conversation Mr Farmer contacted him again and sought a third confirmation as to whether Mr Tasich had admitted to him that he offered a bribe to Mr Coyte and on this occasion he “clarified the situation” and may have said words to the effect of: “Well, he didn’t really make that admission to me ... I was just reading between the lines”;
- he could not explain to the Commission why he only clarified the situation on the third and not on the second occasion that Mr Farmer specifically sought confirmation about the content of his conversation with Mr Tasich and he could not explain what occurred during the period between those two occasions to cause him to change his position; and
- at no time did he make any note of the conversation he had with Mr Tasich, even though he regarded it as “very important”.

After Cr Gigliotti gave his evidence on 19 September 2007 Mr Tasich testified that he had “met Councillor Gigliotti on dozens of occasions over the last few years”, including “every time [he] went to Wollongong” if he could. In addition, the Commission examined both men’s 2006 and

2007 diaries and these contained numerous references to pre-arranged meetings between them from July 2006.

Cr Gigliotti subsequently gave evidence to the Commission at the public inquiry on 5 November 2007, the most relevant parts of which (for present purposes) may be summarised as follows:

- he first met Mr Tasich earlier, subsequently met him on more occasions and had more pre-arranged meetings with him, than he admitted in his evidence given on 19 September 2007;
- on 19 September 2007 he “genuinely couldn’t remember” these additional matters and he had not been “trying to minimise” the extent of his contact with Mr Tasich;
- Mr Tasich never admitted to him that he had offered a bribe to Mr Coyte; and
- he could no longer recall whether during his first meeting with Mr Farmer he told him that Mr Tasich had admitted to him that he offered a bribe to Mr Coyte.

Mr Tasich has denied ever admitting to Cr Gigliotti that he offered a bribe or inducement to Mr Coyte.

The Commission accepts that on 19 June 2007 Cr Gigliotti twice told Mr Farmer that Mr Tasich had admitted to him that he offered a bribe to Mr Coyte. Not only did Mr Farmer promptly make a written record of Cr Gigliotti having told him this and report it to the Commission, but Cr Gigliotti specifically admitted having told Mr Farmer this at his examination on 19 September 2007. However, the Commission is not satisfied that Mr Tasich did actually admit to Cr Gigliotti that he offered a bribe to Mr Coyte for the following reasons:

- Cr Gigliotti’s evidence in relation to this particular matter was so inconsistent, illogical and unsatisfactory that the Commission ultimately had no confidence in the truth or accuracy of anything he said to the Commission or Mr Farmer about it; and
- in their evidence to the Commission Cr Gigliotti and Mr Tasich both denied that Mr Tasich admitted to Cr Gigliotti that he had offered a bribe to Mr Coyte.

Consequently, the Commission does not find that Mr Tasich admitted to Cr Gigliotti that he offered a bribe to Mr Coyte and has not taken the possibility of such an admission having been made into account in determining the truth of the allegation made by Mr Coyte against Mr Tasich.

Chapter 4: Alleged solicitation of bribes by Mr Coyte

The first part of this chapter presents a summary of the allegation made by Mr Tasich that Mr Coyte solicited bribes from him at two luncheon meetings prior to 2 May 2007. The second part presents a summary of the evidence relating to Mr Tasich's claim that he told four persons (two Members of Parliament and two Councillors) about this allegation before 31 May 2007, the date on which he first learned of Mr Coyte's bribery allegation against him. The third part presents a summary of the evidence given by Mr Coyte in responding to and denying the allegation. The Commission's ultimate assessment of the evidence, including of the credibility and reliability of relevant witnesses, and conclusions in relation to this allegation are set out in Chapter 5 of this report.

Mr Tasich's allegation

As referred to in Chapter 2 of this report, Mr Tasich and Mr Coyte had three luncheon meetings at restaurants and at each of these a significant amount of alcohol was consumed by each of them. The first meeting was on 30 August 2006 and it related to the Yallah property. The second and third meetings were on 2 February 2007 and 9 March 2007, respectively, and they both related to the Thomas Street carpark.

The earliest known written record of Mr Tasich's allegation that Mr Coyte solicited bribes from him at two of the luncheon meetings is the draft response to Mr Oxley's letter of 31 May 2007 that was apparently prepared by Mr Tasich at some time between that date and 16 June 2007. It includes the following relevant text (as written):

I did meet with Peter Coyte ... During our long lunch meetings which normally finished at 4pm & 5pm in the afternoon by which time we would be both highly intoxicated we discussed the needs of Wollongong and the prospects of investment in certain sectors. During another one of our long lunches he asked what was in it for him where I replied employment and car parking which was laughed off.

Months had passed and nothing was happening so I asked to meet with him again which we did at another restaurant ... [A]t this meeting Coyte stated that the council can and will sell me the site, when I asked how long will it take and what process will be used he said a valuation would be required and [then] he surprised me by asking me how much would he make as he had a family and they have to eat.

This time I was certain he was asking me to offer him an inducement and I did not know how to react so I chose to ignore it, at this point the conversation stalled for a while as he got me by surprise I continued talking whilst thinking how to respond, our lunch finished approx 5 pm again without him hearing I suppose what he wanted even though we were drunk again.

This document does not identify the dates of the two lunches at which Mr Coyte allegedly asked "what was in it for him" and "how much would he make as he had a family and they have to eat". However, the opening words of the second paragraph quoted above ("During another one of our long lunches ...") clearly represent that it was not at their first lunch and the overall text further represents that both luncheon meetings related to the Thomas Street carpark, which is consistent with Mr Tasich's claim that at the first of these two lunches he replied to Mr Coyte's question by saying "employment and car parking". The Yallah property, which was the subject of the discussion at the luncheon meeting on 30 August 2006, is not a carpark. Accordingly, the text in this document created by Mr Tasich clearly represents that the two luncheon meetings at which Mr Coyte solicited bribes from Mr Tasich were the ones on 2 February and 9 March 2007, both of which related to the Thomas Street carpark. However, the text also represents that between the two lunches at which Mr Coyte solicited bribes "months" passed and "nothing" happened in relation to Mr Tasich's proposal, which does not accurately reflect what occurred between the two meetings on 2 February and 9 March 2007.

Mr Tasich's allegation that Mr Coyte had solicited bribes from him was first reported to the Council in Mr Clinch's letter dated 18 June 2007. This letter, which was written on behalf of Mr Tasich and was checked and approved by him before it was sent, included the following text:

Our client initially approached Mr Oxley to discuss a development on the Thompson [sic] Street car park ... [and was advised] that the appropriate party with whom he should meet was Mr Coyte.

Our client met Mr Coyte for several long lunch time meetings to discuss the proposed development. Most of these meetings were held in restaurants and Mr Coyte was highly intoxicated at the end of each of these meetings ...

During one of the first long lunches Mr Coyte asked what was in it for him. Our client replied “employment and car parking”. This was laughed off by Mr Coyte.

At a later meeting Mr Coyte stated that the Council would sell the site to our client. He then said words to the effect: “How much will I make as I have a family and they have to eat?”

Our client was astonished at this approach by Mr Coyte. Our client chose to ignore it and at that point the conversation stalled for some time.

After this meeting the project stalled for many months and Mr Coyte was unavailable for discussion with our client. It would appear that Mr Coyte’s lack of response may be due to the rejection of the improper overtures made by Mr Coyte.

Again, this letter does not identify the dates of the two lunches at which Mr Coyte allegedly solicited bribes from Mr Tasich, but it clearly represents that both meetings related to the Thomas Street carpark and also represents that they occurred after Mr Tasich had discussed this property with Mr Oxley, which was September 2006. Accordingly, this letter again represents that the two luncheon meetings at which Mr Coyte solicited bribes from Mr Tasich were the ones on 2 February and 9 March 2007. However, the letter also represents that after the second such meeting “the project stalled for many months”, which does not accurately reflect what happened after either of those meetings.

At his compulsory examinations on 19 and 27 September 2007 Mr Tasich stated that:

- it was at their very first luncheon meeting on 30 August 2006 that Mr Coyte initially solicited a bribe from him by asking “What’s in it for me?”; at that meeting they only discussed the Yallah property and there was no discussion about the Thomas Street carpark or any other Council carparks; he did not respond to Mr Coyte’s question by saying “employment and car parking”; the representation that he did so in Mr Clinch’s letter of 18 June 2007 is incorrect; at the time of the luncheon meeting when Mr Coyte asked the question he thought he was “half joking” and he “laughed it off”; it was only after Mr Coyte asked a similar question at their second luncheon meeting that he realised that Mr Coyte had not been joking and had sought a bribe from him at their first luncheon meeting;
- it was at their second luncheon meeting on 2 February 2007 that Mr Coyte asked “what’s in it for me as I’ve got a family to feed?”; it was “quite clear”

to Mr Tasich on this occasion that Mr Coyte was soliciting a bribe and implying that he would advance Mr Tasich’s interests in relation to the Thomas Street carpark if Mr Tasich paid him some money; he was “absolutely shocked” and “stunned” by Mr Coyte’s question and after a pause he responded to it by saying “employment and car parking”; Mr Coyte then got up from their table and went to the bathroom and when he returned there was no further conversation on this particular point;

- even though he believed that Mr Coyte was corrupt he continued to deal with him in relation to the Thomas Street carpark because he “didn’t think it was that serious of a matter” (until he received the letter from Mr Oxley on 31 May 2007 informing him of the allegation Mr Coyte had made against him) and he “was quite aware in the real world out there, that this goes on all the time, so [he] brushed it off”; and
- Mr Coyte did not solicit a bribe from him at their third luncheon meeting on 9 March 2007 or at the meeting in Mr Coyte’s office on 2 May 2007.

Mr Tasich’s claim that he told others about his allegation before 31 May 2007

At the end of his compulsory examination on 19 September 2007 Mr Tasich said that he did not recall telling “anyone” about Mr Coyte having solicited bribes from him at any time before he received Mr Oxley’s letter of 31 May 2007 informing him of the bribery allegation Mr Coyte had made against him. At the end of that examination and beginning of his compulsory examination on 27 September 2007 he also specifically stated that he did not “immediately” tell Cr Gigliotti or anyone else about what Mr Coyte had done after the meetings at which he solicited bribes from him.

However, at later points during his compulsory examination on 27 September 2007 Mr Tasich claimed that:

- he told Cr Gigliotti on numerous occasions before 31 May 2007 that Mr Coyte had solicited a bribe from him, including at around the time of his first luncheon meeting with Mr Coyte on 30 August 2006, “immediately after” his second luncheon meeting with Mr Coyte on 2 February 2007, at a meeting on 2 March 2007 (referred to below) and on 27 April 2007; on some or all of these occasions he asked Cr Gigliotti to speak to Mr Coyte about the matter and Cr Gigliotti said that he would; when previously asked about these matters he did not indicate that he had told Cr Gigliotti these things at those times because he “didn’t want to drag anyone else” into the Commission’s investigation;

- on 2 March 2007 he had a meeting with Ms Noreen Hay MP, Member for Wollongong, and Ms Lylea McMahon MP, Member for Shellharbour, at which Cr Gigliotti was also present, and at that meeting he complained that Mr Coyte “had requested a bribe” from him and Ms Hay “might have said something like ‘it doesn’t surprise me’”; Ms Hay said that “she would look into it” and he “chase[d] her up afterwards”, but “nothing happened”;
- at some time before 31 May 2007 he spoke to Wollongong Deputy Mayor Kiril Jonovski and complained to him that Mr Coyte had solicited a bribe from him; and
- in June 2007, after he received Mr Oxley’s letter of 31 May 2007, he met with Ms Hay and Ms McMahon and “complained again” about Mr Coyte having solicited a bribe from him; he said to Ms Hay “I complained two or three months ago, you said you’d look into it, what have you done?” and she responded by advising him to get a solicitor.

All four of these persons have denied that Mr Tasich told them before 31 May 2007 that Mr Coyte had either solicited a bribe from him or said to him words to the effect of “What’s in it for me?” or “How much will I make as I have a family and they have to eat?”.

Councillor Gigliotti has consistently stated to the Commission (at his compulsory examination on 19 September 2007, in a statement provided to the Commission on 17 October 2007 in response to a notice issued under section 21 of the ICAC Act and during his testimony at the public inquiry on 5 November 2007) that Mr Tasich first told him in June 2007 at the earliest that Mr Coyte had solicited a bribe from him. At the public inquiry he specifically denied that Mr Tasich told him anything about this before 31 May 2007 and said that if Mr Tasich had done so he would have reported it to the Council’s General Manager, as he did do after Mr Tasich first told him in June 2007.

In a written statement provided to the Commission in response to a notice issued under section 21 of the ICAC Act, Ms Hay indicated that the first time Mr Tasich made any complaint to her about Mr Coyte was in an email he sent her on 24 July 2007 which (due to illness) she did not read until 30 July 2007. The complaints made against Mr Coyte in that email do not include any allegation that he solicited a bribe from Mr Tasich. Ms Hay also produced various documents, including correspondence received from Mr Tasich before 31 May 2007, which did not support Mr Tasich’s claim that he complained to her about Mr Coyte soliciting a bribe before 31 May 2007.

In a written statement provided to the Commission in response to a notice issued under section 21 of the ICAC Act, Ms McMahon indicated that the first time Mr Tasich made any complaint to her about Mr Coyte was at a meeting on 6 June 2007 at which he alleged that Mr Coyte “had asked him for an inducement and was now saying that ‘Lou had offered him (Peter) an inducement’”.

There are some inconsistencies in the information provided to the Commission by Cr Gigliotti, Ms Hay and Ms McMahon, but all three are consistent in refuting that Mr Tasich told them at any time before 31 May 2007 that Mr Coyte had solicited a bribe from him or said to him words to the effect of “What’s in it for me?” or “How much will I make as I have a family and they have to eat?”.

In a written statement provided to the Commission in response to a notice issued under section 21 of the ICAC Act, Cr Jonovski indicated that Mr Tasich had never told him that Mr Coyte solicited a bribe from him or said to him words to the effect of “What’s in it for me?” or “How much will I make as I have a family and they have to eat?”.

At his compulsory examination on 27 September 2007 Mr Tasich also claimed that after he received Mr Oxley’s letter of 31 May 2007 he sent a fax to Cr Gigliotti in which he complained about Mr Coyte. The Commissioner directed him, pursuant to section 35(2) of the ICAC Act, to produce a copy of that fax to the Commission within two days and he undertook to do so, but he never did (and never offered any explanation for not having done so) despite two subsequent requests from the Commission.

Mr Coyte’s response to Mr Tasich’s allegation

During his testimony at a compulsory examination on 19 September 2007 and the public inquiry on 5 November 2007 Mr Coyte consistently and categorically denied having ever solicited a bribe from Mr Tasich or having ever said anything to him along the lines of “What’s in it for me?” or “How much will I make as I have a family to feed?” at any of their luncheon meetings.

Chapter 5: Assessment of Mr Coyte's and Mr Tasich's evidence, findings and recommendations

There is no independent direct evidence to support the allegations Mr Coyte and Mr Tasich have made against each other. Consequently, the truth of the allegations falls to be determined by an assessment of the credibility and reliability of each of them as witnesses. In undertaking this task it is useful to consider such things as:

- the consistency of, and manner in which they provided, their evidence;
 - the content of their evidence, including the inherent likelihood of it being true;
 - whether their evidence of particular events is consistent with the way they behaved at the time of those events;
 - whether they had any apparent motive to lie or make false accusations; and
 - whether they lied in relation to any aspect of their evidence and, if so, whether those lies reflect a consciousness of guilt.
- he was being pressured by the general manager of the supermarket chain he was negotiating with to promptly secure the property from the Council so they could enter into a lease and he was determined to avoid any EOI process;
 - less than one week before the meeting Mr Oxley had written to him and emphatically rejected his proposal; and
 - according to his own evidence, he thought that bribery "goes on all the time".

The way Mr Coyte behaved after the meeting on 2 May 2007 in promptly reporting the alleged offer of a bribe is consistent with his allegation and generally conforms to the way an honest public official who had been offered a bribe would be expected to act.

Mr Coyte had no apparent motive to falsely allege that Mr Tasich offered him a bribe at the meeting on 2 May 2007. In particular, there was no evidence that he had any personal animosity towards Mr Tasich or was aware that Mr Tasich had complained or was contemplating complaining about him. In addition, if Mr Coyte had solicited bribes from Mr Tasich on prior occasions (as alleged by Mr Tasich) it is even more unlikely that he would have falsely alleged to his superiors that Mr Tasich offered him a bribe because he would have realised that doing so would trigger an investigation into his dealings with Mr Tasich that could result in the discovery of his own corrupt conduct.

Finally, apart from the testimony from Mr Tasich himself, there is no evidence from which it could be concluded that Mr Coyte lied about any matter or any evidence otherwise demonstrating a consciousness of guilt on his part in respect of any matter.

Overall, Mr Coyte presented as an honest and accurate witness. There was nothing in either the content or manner of his evidence, or the general circumstances of this matter, to cast doubt on his credibility or reliability.

Assessment of Mr Coyte's evidence

Mr Coyte gave his evidence to the Commission in a confident, consistent and convincing manner. He answered questions promptly and directly, gave his evidence in a straightforward way and was not caught out in any apparent lies or exaggerations. The content of his evidence never varied and was entirely consistent with versions of events he had contemporaneously recorded in documents or reported to others. The only person who contradicted any significant evidence given by Mr Coyte was Mr Tasich himself.

Apart from the fact that members of society do not ordinarily engage in corrupt conduct, there is nothing about the specific allegation made by Mr Coyte against Mr Tasich that renders it inherently unlikely to be true. In particular, Mr Tasich had a clear motive for offering Mr Coyte a bribe at their meeting on 2 May 2007 for the following reasons:

- documents created by him record that he had spent eight months and \$45,000 on his proposal for the Thomas Street carpark by the time of the meeting;
- he was seeking to purchase the property from the Council for substantially less than its estimated value and thus had a lot to gain from acceptance of his proposal;

Assessment of Mr Tasich's evidence

Mr Tasich was a very unconvincing witness. He frequently changed his testimony when inconsistencies or contradictions were drawn to his attention and by the time of his compulsory examination on

27 September 2007 he presented as a person who was prepared to say whatever he thought would advance his interests irrespective of whether it was true. None of his testimony in relation to contested issues, including his allegations against Mr Coyte, is supported by contemporaneous records. Indeed, most such testimony of his is squarely inconsistent with or contradicted by relevant documents and/or evidence from other witnesses. The following are some, but not all, examples of the unsatisfactory nature of his evidence:

- his testimony about Mr Coyte soliciting bribes from him at their first two meetings on 30 August 2006 and 2 February 2007 was inconsistent with the representations contained in the undated draft response he prepared to Mr Oxley's letter of 31 May 2007 and the letter from Mr Clinch to the Council dated 18 June 2007 (which he checked and approved), both of which clearly represent that the solicitations took place at the second and third meetings on 2 February and 9 March 2007;
- after representing in the two abovementioned documents, and having initially stated during his testimony, that when Mr Coyte first solicited a bribe from him by asking "what's in it for me?" he replied "employment and car parking", he changed his evidence when it was pointed out to him that the proposal discussed at the meeting on 30 August 2006 did not involve car parking;
- after initially stating in his testimony that he could not recall telling "anyone" prior to 31 May 2007 that Mr Coyte had solicited bribes from him, and specifically stating that he did not "immediately" tell Cr Gigliotti or anyone else about what Mr Coyte had done after the meetings at which he solicited the bribes, he changed his evidence and claimed that he did immediately tell Cr Gigliotti and had also told three other persons (Ms Hay, Ms McMahon and Cr Jonovski) prior to 31 May 2007;
- Cr Gigliotti, Ms Hay, Ms McMahon and Cr Jonovski have all denied that Mr Tasich told them prior to 31 May 2007 that Mr Coyte solicited a bribe from him; and
- during his testimony he claimed to have sent a relevant fax to Cr Gigliotti and was directed, and undertook, to produce a copy of it to the Commission, but he failed to do so, without explanation and despite two further requests from the Commission.

In the Commission's opinion, even if Mr Coyte was the kind of person who would solicit a bribe, it is inherently unlikely that he would have done so at his first meeting with Mr Tasich on 30 August 2006 because the two men barely knew each other at that stage. In addition, the fact that Mr Coyte promptly reported his allegation

against Mr Tasich after the meeting on 2 May 2007 makes it highly unlikely that he had solicited a bribe from Mr Tasich on any prior occasion because he would have realised that his report would trigger an investigation into his dealings with Mr Tasich. If he had previously solicited a bribe from him he would not have wanted to do anything to encourage such an investigation, given the obvious risk that it could lead to the discovery of his own corrupt conduct.

In the Commission's opinion, the way Mr Tasich behaved between 30 August 2006 and 31 May 2007 is fundamentally inconsistent with his allegation that Mr Coyte solicited bribes from him on two occasions prior to 2 May 2007. In particular, even though Mr Tasich claims that he was "absolutely shocked" and "stunned" by Mr Coyte's behaviour (at least after the second solicitation), at no time during that period did he: create any written record of Mr Coyte's behaviour or make any written complaint about it; make any oral complaint to Mr Oxley, the Commission or the police; or take any steps to have the Council allocate someone other than Mr Coyte to deal with him. Instead, according to his evidence, he continued to spend substantial time and money on a project that was very important to him and actively deal with a person he knew was corrupt without offering him a bribe when he knew that he wanted one. Of course, after initially giving evidence to the contrary, Mr Tasich belatedly claimed that he did complain to Cr Gigliotti, Ms Hay, Ms McMahon and Cr Jonovski before 31 May 2007, but all four have denied this and the Commission has no hesitation in accepting their denials and concluding that Mr Tasich did not tell anyone that Mr Coyte had solicited bribes from him until after 31 May 2007, when he discovered that Mr Coyte had made a bribery allegation against him.

In the Commission's opinion, after Mr Tasich discovered that Mr Coyte had made a bribery allegation against him he had a clear motive to falsely allege that Mr Coyte had solicited bribes from him in order to discredit Mr Coyte and undermine Mr Coyte's allegation against him.

Finally, the Commission is satisfied that Mr Tasich has told a number of lies and those lies reflect a consciousness of guilt on his part in relation to the allegation made against him by Mr Coyte. In particular, the Commission is satisfied that: (i) Mr Tasich lied in alleging that Mr Coyte solicited bribes from him prior to 2 May 2007; (ii) Mr Tasich lied at his compulsory examination on 27 September 2007 in claiming that he told Cr Gigliotti, Ms Hay, Ms McMahon and Cr Jonovski that Mr Coyte had solicited bribes from him before he found out about Mr Coyte's allegation against him on 31 May 2007; and (iii) he told those

lies because he knew that Mr Coyte's allegation against him was true and realised that it would be likely to be believed unless he invented a story that could discredit Mr Coyte and undermine his allegation.

Overall, the Commission found Mr Tasich to be an entirely unsatisfactory witness whose evidence is not believable. He was ultimately prepared to say whatever he thought would best serve his own interests, even if it was untrue. To the extent that there is any inconsistency or conflict between uncorroborated evidence of Mr Tasich and evidence of any other person, particularly Mr Coyte, the Commission has no hesitation in accepting the evidence of the other person ahead of that of Mr Tasich.

Findings of fact and corrupt conduct

The Commission's ultimate findings of fact in relation to the allegation made by Mr Coyte against Mr Tasich and counter-allegation made by Mr Tasich against Mr Coyte are as follows:

- (1) At a meeting between Mr Tasich and Mr Coyte in Mr Coyte's office on 2 May 2007 Mr Tasich offered a \$30,000 bribe to Mr Coyte with the intention of inducing him to support a proposal Mr Tasich had prepared for the purchase and development of Council land known as the Thomas Street carpark. Mr Tasich communicated his offer to Mr Coyte by writing "30K 4U" on a piece of paper and sliding the paper across the desk towards Mr Coyte. Mr Coyte immediately rejected the bribe and promptly reported it to his superiors.
- (2) After, and only after, he became aware of Mr Coyte's allegation against him did Mr Tasich raise the counter-allegation that Mr Coyte had solicited bribes from him during luncheon meetings at restaurants on two occasions many months prior to 2 May 2007. This counter-allegation is false. Mr Tasich made it up in an attempt to discredit Mr Coyte and undermine Mr Coyte's allegation against him.

In light of these findings, the Commission concludes that Mr Tasich, in offering the \$30,000 bribe to Mr Coyte, engaged in corrupt conduct, as defined in sections 7–9 of the ICAC Act, on the basis that:

- his conduct could have adversely affected the honest or impartial exercise of official functions by Mr Coyte (a public official), within the meaning of section 8(1)(a) of the ICAC Act; and could have adversely affected the exercise of official functions by Mr Coyte or the Council (a public authority) and also involved bribery, within the meaning of section 8(2)(b) of the ICAC Act; and
- his conduct could constitute, within the meaning of section 9(1) of the ICAC Act, the following criminal offences: the common law offence of bribery;¹ and corruptly offering an inducement contrary to section 249B(2) of the *Crimes Act 1900* (NSW).²

The Commission does not conclude that Mr Coyte engaged in corrupt conduct.

Statement under section 74A of the ICAC Act

Pursuant to section 74A(2) of the ICAC Act, the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions ("the DPP") with respect to the prosecution of Mr Tasich for the following offences:

- the common law offence of bribery;
- corruptly offering an inducement contrary to section 249B(2) of the *Crimes Act*; and
- giving false or misleading evidence to the Commission contrary to section 87(1) of the ICAC Act.

The Commission is not of the opinion that consideration should be given to taking disciplinary action against Mr Coyte or obtaining the advice of the DPP with respect to the prosecution of him for any offence.

¹ The common law offence of bribery extends to offering a bribe that is not accepted: see, for example, *R v. Allen* (1992) A Crim R 251 (and the authorities cited therein).

² The offence in section 249B(2) involves corruptly giving or offering any benefit to an "agent". The term "agent" extends to employees of local government councils because it is defined in section 249A to include "any person employed by ... any other person ... in any capacity". The term "person" is not limited to natural persons. Pursuant to section 4 of the *Crimes Act*, it includes "any society, company, or corporation". Pursuant to section 21 of the *Interpretation Act 1987* (NSW), it also includes "a corporation and a body corporate or politic". A local government council is a "body corporate": section 220 of the *Local Government Act 1993* (NSW).

Chapter 6: Delayed reporting by Mr Oxley

There is no dispute that Mr Oxley became aware of the details of Mr Coyte's bribery allegation against Mr Tasich on 4 May 2007, but failed to report the matter to the Commission until sending a letter on 31 May 2007 (which was his last day as General Manager of the Council) that was not received by the Commission until 4 June 2007. There is also no dispute that on 31 May 2007 Mr Oxley, without consulting the Commission, also wrote to Mr Tasich and informed him that Mr Coyte had reported the bribery allegation to the Council. This chapter examines the reasons for Mr Oxley acting as he did in relation to both matters.

Reporting obligations under section 11 of the ICAC Act

Pursuant to section 11(2) of the ICAC Act, Mr Oxley, as the then principal officer of the Council (a public authority), was under a statutory duty to report to the Commission any matter that he suspected on reasonable grounds "may concern corrupt conduct".

In February 2000 the Commission issued guidelines, pursuant to section 11(3) of the ICAC Act, entitled *Reporting Corrupt Conduct to the ICAC: Guidelines for Principal Officers*. These guidelines have been widely distributed to principal officers and public authorities throughout NSW and are available on the Commission's website. The guidelines include the following commentary:

Duty to report suspected corrupt conduct

The duty to report resides with the principal officer and cannot be delegated. Where another person is acting as principal officer during periods of leave or other absence, the duty applies to that person.

Reasonable grounds for suspicion

The words suspects on reasonable grounds mean there is a real possibility that corrupt conduct is or may be involved. Certainly, proof is not necessary ...

When must a report be made?

The brief answer to this question is as soon as you have a reasonable suspicion that corrupt conduct may have occurred or may be occurring. The Act contains no provision permitting delay in reporting. The ICAC prefers matters to be reported prior to disciplinary or other action being taken ...

Maintaining confidentiality

It is important that reports to the ICAC be made without advising the person(s) to whom the report relates and without publicity. Failure to handle reports to the ICAC confidentially may prejudice any subsequent investigation and may cause unnecessary hurt or embarrassment to individuals.

A wilful failure to comply with the duty imposed under section 11 of the ICAC Act could constitute "corrupt conduct", as defined in sections 7–9 of the ICAC Act, and amount to a criminal offence on the following basis:

- such conduct could adversely affect the exercise of official functions by the Commission (a public authority) and involve "official misconduct", including "nonfeasance", within the meaning of section 8(2)(a) of the ICAC Act; and
- such conduct could involve, within the meaning of section 9(1) of the ICAC Act, the following criminal offence: the common law offence of misconduct in public office, a well-established species of which is a wilful failure by a public official to perform a statutory duty without reasonable excuse or justification.³

The relevant facts

There was ultimately little or no dispute as to the objective facts relating to this matter.

In January 2007, after having been General Manager for almost 19 years and having worked for the Council for almost 27 years in total, Mr Oxley formally notified the Lord Mayor that he would cease his employment with the Council on 31 May 2007.

On 2 May 2007 Mr Coyte prepared and provided to his supervisor, Mr Payne, a memo containing a detailed account of the meeting he had just had with Mr Tasich, including the facts relating to Mr Tasich having offered him the \$30,000 bribe. On 3 May 2007 Mr Payne forwarded a copy of the memo to Mr Oxley. In the morning on Friday, 4 May 2007, the three men had a meeting and discussed the memo and pages 12 and 17 of a publication issued by the Commission in June 2006 entitled *Managing Gifts and Benefits in the Public Sector: Toolkit*. The text on these pages provides that bribery is "particularly serious", the chief executive officer of an

³ See, for example, *R v. Wyatt* (1705) 1 Salk 380, 381; 91 ER 331, 332; *R v. Dytham* [1979] QB 722; *GJ Coles & Co Ltd v. Retail Trade Industrial Tribunal* (1987) 7 NSWLR 503, 524; *Shum Kwok Sher v HKSAR* [2002] HKCFA 30 at [66], [74]–[78] & [81]–[85]; *Attorney General's Reference (No. 3 of 2003)* [2005] 1 QB 73.

agency has an obligation to report to the Commission “any matter that he or she suspects on reasonable grounds concerns or may concern ... bribery” and “[i]f an officer is offered a bribe ... ICAC ... must be informed immediately”.

At the meeting on 4 May 2007 there was “a clear consensus” that Mr Coyte had been offered a bribe by Mr Tasich and Mr Oxley informed Mr Coyte and Mr Payne that he “would notify the Commission of the matter, pursuant to section 11 of the [ICAC Act]”. Mr Oxley then placed Mr Coyte’s memo in his “pending tray” and Mr Coyte assumed that his memo “would be forwarded to ICAC immediately”.

On Tuesday, 8 May 2007, Mr Oxley commenced annual leave and travelled to China, returning to Australia and work in the morning on Monday, 14 May 2007. During this period another person acted in his position, but Mr Oxley did not ask that person to report the matter to the Commission in his absence.

On 8 May 2007 the Council also received a letter of that date from Mr Tasich (referred to in Chapter 2 of this report) containing his revised offer for the purchase of the Thomas Street carpark. On 17 May 2007, Mr Coyte prepared a draft response in Mr Oxley’s name, which contained the following three paragraphs:

Thank you for your letter dated 8 May 2007 in respect of an opportunity to purchase the [Thomas Street carpark].

Council’s Manager Commercial Projects and Property, Mr Peter Coyte, has advised that during a discussion held in his office on Wednesday, 2 May 2007, an ‘inducement’ of \$30,000 was made by you to progress the matter in your favour. In light of this action Council is not able to progress any dealings with yourself or your company in this or other matters.

Mr Coyte has made a diary note of the matter which I have forwarded to the Independent Commission Against Corruption.

On 17 May 2007 Mr Coyte, who assumed that Mr Oxley had already reported the matter to the Commission, emailed his memo of 2 May 2007 and the draft response to Joseph Murphy, an external solicitor engaged by the Council, and requested that he advise “of any changes that we should make”. On 24 May 2007 Mr Murphy sent an email to Mr Coyte outlining some slightly amended wording for the letter (the details of which are not pertinent for present purposes) and containing the following advice:

1. *check if your memo has been sent to the ICAC already.*
2. *if it has then [Mr Oxley] should inform the ICAC that he is proposing to inform Mr Tasich that the matter has been referred to the ICAC (and are they happy for him to do so?)*
3. *if they do not protest then [Mr Oxley] should send the letter ...*

[I]f your memo has not been sent, then let me know and there are a few things I would fix in it before it goes.

On 24 May 2007 Mr Coyte forwarded Mr Murphy’s email to Mr Oxley and wrote in his email “Has the memo been forwarded to ICAC?”. On 30 May 2007, Mr Oxley sent an email to Mr Coyte in which he wrote “This is ok. I will have the letter finalised ...”. Mr Coyte immediately responded with an email in which he wrote “The only issue raised by [Mr Murphy] was whether we should say to Mr Tasich that we have referred [the matter] to ICAC. Apparently they like to work on the quiet.”

In May 2007, and prior to that, Mr Oxley had been in direct email contact with David Lusty, a Principal Lawyer of the Commission, and he had Mr Lusty’s full contact details, including email address and telephone number (this contact related to another matter being examined by the Commission). However, at no time in May 2007 did Mr Oxley inform Mr Lusty or any other Commission officer of Mr Coyte’s bribery allegation against Mr Tasich or consult him about the content of, or whether to send, the proposed letter to Mr Tasich.

On 31 May 2007 Mr Oxley finalised, signed and sent the letter to Mr Tasich. It was the same as the (previously quoted) initial draft prepared by Mr Coyte with the sole exception that the third and final paragraph had been replaced with the following: “Council regards actions of this nature as highly inappropriate. Mr Coyte has advised me that he has made a diary note of the ‘inducement’”. Accordingly, while the letter did not specifically mention that the matter had been reported to the Commission, it nevertheless informed Mr Tasich that Mr Coyte had reported to the Council that he inappropriately offered him a \$30,000 inducement at their meeting on 2 May 2007.

On 31 May 2007 Mr Oxley also sent a brief letter to the Commission attaching copies of Mr Coyte’s memo of 2 May 2007 and the letter of 31 May 2007 sent by him to Mr Tasich. The letter to the Commission was not received by it until 4 June 2007.

The two issues of concern to the Commission arising from the abovementioned facts were: (i) why Mr Oxley did not immediately report Mr Coyte's allegation to the Commission; and (ii) why he sent the letter to Mr Tasich informing him that Mr Coyte had reported that he inappropriately offered him a \$30,000 inducement at the meeting on 2 May 2007 without first consulting the Commission, particularly when Mr Murphy had encouraged him to do so (albeit in qualified terms) and he was also in direct email contact with a Commission officer during the relevant period. Both actions had the obvious potential to prejudice any subsequent investigation by the Commission.

Explanations offered by Mr Oxley

Mr Oxley provided evidence to the Commission explaining his conduct in the form of two written statements dated 8 and 31 October 2007 and oral testimony at the public inquiry on 5 November 2007. That evidence may be summarised as follows:

- at the meeting on 4 May 2007 he determined that he was obliged to report Mr Coyte's allegation to the Commission under section 11 of the ICAC Act;
- after his many years as General Manager, he was familiar with the Commission's guidelines for reporting matters to the Commission under section 11 of the ICAC Act and he was "certainly aware that there is a responsibility to report as soon as possible";
- after the meeting on 4 May 2007 he had various appointments that prevented him from having the time to report Mr Coyte's allegation to the Commission on that day;
- he did not ask the person acting in his position while he was in China from 8 to 14 May 2007 to report Mr Coyte's allegation to the Commission in his absence because it had always been his practice to handle such matters personally "because of their sensitivities";
- his delay in reporting the matter to the Commission was primarily due to "a range of extenuating circumstances" arising from the fact that it arose during his final month in office, including that he had a substantial backlog of outstanding official tasks to complete before his employment with the Council ceased on 31 May 2007 and he had numerous farewell functions to attend after his 19 years as General Manager and 27 years in total working for the Council;
- he conceded that in May 2007 he was in direct contact with Mr Lusty, and it would have been quick and simple for him to have reported the matter to him by telephone or email, and said that his only explanation for not having done so was that there had been "an oversight" on his part;

- the letter that was sent to Mr Tasich on 31 May 2007 was initially drafted by Mr Coyte and he believed that its ultimate content, which he determined, strictly accorded with the legal advice from Mr Murphy because it did not contain any specific reference to the matter having been referred to the Commission;
- he conceded that Mr Murphy's advice also encouraged him to check with the Commission before sending the letter and said he had "no logical explanation" for not having done so;
- he denied that it was ever his intention to "tip off" Mr Tasich in any sense; and
- he has been diligent in meeting his obligations under section 11 of the ICAC Act in the past and he is "deeply embarrassed" by his delay on this occasion.

Mr Oxley gave his evidence in a forthright manner and made a number of concessions against his own interests. There was nothing in the content or manner of his evidence, or the general circumstances of this matter, to cast doubt on his honesty, credibility or reliability. In particular, his evidence was not inconsistent with or contradicted by any other matters and the Commission did not find any evidence to suggest that his actions in failing to promptly report Mr Coyte's allegation to the Commission, and sending the letter to Mr Tasich on 31 May 2007, were designed to protect Mr Tasich or "tip him off" in any way.

Findings and conclusion

Mr Oxley's conduct fell below the standard expected of a principal officer of a public authority and had the potential to prejudice the Commission's investigation. However, the Commission was not persuaded by the available evidence that he wilfully disregarded his statutory duty or attempted to "tip off" Mr Tasich. It is more likely that his conduct was the result of inadvertence due, at least in part, to the unusual circumstances arising from the fact that the matter arose during the final month of his 19-year term in office.

The Commission does not conclude that Mr Oxley engaged in corrupt conduct and it is not of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of him for any offence.

Chapter 7: Mr Tasich's failure to appear before the Commission

This final chapter of the report addresses the issue of whether, and, if so, what, action should be taken in respect of Mr Tasich's failure to appear before the Commission on 5 November 2007, the first day of the public inquiry.

The obligation to appear

Mr Tasich was obliged to appear before the Commission on 5 November 2007 pursuant to two separate summonses.

The first summons was issued on 13 September 2007 and it required Mr Tasich to appear at a compulsory examination at 11.00 am on 19 September 2007 and "until such time as [he was] excused from further attending". Mr Tasich appeared on that occasion, gave evidence and was directed to reappear on 27 September 2007. Mr Tasich appeared on that second occasion, gave evidence and was directed to reappear on 5 November 2007. He failed to do so and, by virtue of sections 35(4) and (5) of the ICAC Act, he is "taken to have failed to appear before the Commission in obedience to the summons".

The second summons was issued on 18 October 2007 and it required Mr Tasich to appear at the public inquiry at 10.00 am on 5 November 2007 and "until such time as [he was] excused from further attending". This summons was sent by email and post to Mr Tasich, by email and post to his current solicitor, James Lahood, and by email to his barrister. This constituted valid service under section 108 of the ICAC Act.

A failure to attend before the Commission at a compulsory examination or public inquiry in accordance with a summons, "without reasonable excuse", is a criminal offence under section 86(1)(a) of the ICAC Act.

Relevant circumstances

On 31 October 2007 Mr Tasich's solicitor, James Lahood, informed the Commission that Mr Tasich was overseas, said that he had been unable to contact him by telephone or email and expressed concern that something might have happened to him.

On 2 November 2007 the following events occurred:

- Mr Lahood informed the Commission that he had still not heard from Mr Tasich, that he was due to have arrived back in Australia on 1 November 2007 and they were supposed to have had a conference that day (i.e. on 2 November 2007).
- The Commission obtained a copy of an Outgoing Passenger Card filled out by Mr Tasich on his departure from Australia on 9 October 2007. On the card Mr Tasich had written that his intended length of stay overseas was two months and that he would spend most of his time abroad in Serbia and Latvia.
- A Commission officer spoke to Mr Tasich's nephew, who said that Mr Tasich was in Serbia and might be difficult to contact because he sometimes used a local SIM card in his mobile phone which might not pick up international calls. He further said that Mr Tasich was due to have already returned to Australia, but he had a medical condition and was not supposed to fly until he received the results of some tests from a doctor. His nephew said that this information was provided to him by Mr Tasich when he spoke to him "a few days ago" by telephoning his Australian mobile phone.
- The Commission officer subsequently spoke to Mr Lahood and requested that he try to get in contact with Mr Tasich by telephoning his Australian mobile phone and encourage him to either appear at the public inquiry on 5 November 2007 or provide evidence that he was too ill to travel back to Australia.

On the morning of 5 November 2007 Mr Tasich's barrister informed the Commission that Mr Tasich was in Serbia and produced: a fax apparently sent from Mr Tasich to Mr Lahood on 3 November 2007; an itinerary for Mr Tasich dated 9 October 2007 recording that he was originally booked on return flights departing from Europe on 1 November 2007 and arriving in Sydney on 3 November 2007; and three documents apparently written in Serbian dated 25 October 2007, 26 October 2007 and 3 November 2007. The fax contained the following message (as written):

Hi James,

Sorry my email is down and calling from here can be a task.

As I said to you this morning, I'm still very sick as a matter of fact after our conversation I received a call from the doctor informing me that I have still some very bad virus & she may want to put me in hospital on Monday.

I'm still coughing & have a runny nose & blocked ears, it is for this reason I have had to postpone the flights to the 21/11/07, I'm still waiting to get the family confirmed. Please attend ICAC and inform them that I will not be able to attend on the 5/11/07 as planned.

Regards
Lou

On 12 November 2007 Mr Tasich's lawyers provided to the Commission English translations of the three Serbian documents, which indicated that the two dated 25 and 26 October 2007 contained the results of various medical tests apparently conducted in relation to Mr Tasich without containing a diagnosis of any particular illness or medical condition and the one dated 3 November 2007 was a report from a specialist appearing to indicate that Mr Tasich had complained of flu-like symptoms, had denied other illnesses, was diagnosed with acute bronchitis and was prescribed a seven-day course of antibiotics.

On 12 November 2007 Mr Tasich's barrister also provided to the Commission written submissions relating to Mr Tasich's non-appearance, which the Commission has taken into account in examining the matters referred to in this chapter of the report.

A reasonable excuse?

In considering whether Mr Tasich had a reasonable excuse for not appearing before the Commission on 5 November 2007 it is significant to have regard to the following factors:

1. The material provided to the Commission on Mr Tasich's behalf does not identify the seriousness of any illness he might have suffered or contain any statement to the effect that he was too ill to travel back to Australia.
2. As referred to in Chapter 5 of this report, the Commission has found Mr Tasich to be an entirely unsatisfactory witness whose evidence cannot be believed. He was prepared to say whatever he thought would best serve his own interests, even if it was untrue. Accordingly, it is not prepared to accept anything he says or represents as accurate in the absence of some convincing corroboration and the material he produced to seek to explain his non-appearance on 5 November 2007 is far from convincing.
3. At no time prior to 5 November 2007 did Mr Tasich inform the Commission that he would be unable to attend the proceedings, and at no time did he or his legal representatives seek an adjournment of the Commission's proceedings until he would be able to attend. No satisfactory explanation has been offered for these failings. In particular, from Mr Tasich's itinerary it appears that he must have decided not to return to Australia on his booked flight by 1 November 2007 at the very latest (and it appears from the information provided by his nephew that he actually decided well before this and informed his nephew of his decision at that earlier time), yet he took no steps to inform the Commission or his lawyers at that time and seek an adjournment.
4. There is a range of information from which it can be inferred that when Mr Tasich departed Australia on 9 October 2007 he already had an intention not to return in time for the Commission's proceedings, including the following:
 - (a) In an email sent on 20 September 2007 by Mr Tasich's then solicitor, Mr Clinch, to the Commission it is represented that *at that time* Mr Tasich had an intention to go overseas and not return "until mid November".
 - (b) According to Mr Lahood, Mr Tasich was due to attend a conference with him on 2 November 2007, but his itinerary records that his original return flight was not scheduled to arrive in Australia until 3 November 2007, which suggests that before he departed Australia on 9 October 2007 he had decided not to attend that conference and he failed to inform Mr Lahood.
 - (c) Notwithstanding that when he departed Australia on 9 October 2007 he knew that he was obliged to be back in Australia (and before the Commission) in less than one month, he wrote on his Outgoing Passenger Card that his intended length of stay overseas was two months. There appears to be no plausible reason for Mr Tasich to have written this if he had intended to return to Australia and appear before the Commission when he was obliged to on 5 November 2007.
 - (d) In the fax he sent to Mr Lahood on 3 November 2007 Mr Tasich represented that he had to postpone his return flights to 21 November 2007, a postponement of some 20 days, which seems excessive considering that the only

treatment prescribed for his apparent illness was a seven-day course of antibiotics. This implies that he may have postponed his return flight for some reason other than any illness he might have had.

5. As referred to in Chapter 5, the Commission has found that Mr Tasich told a number of lies during his compulsory examination on 27 September 2007, particularly in claiming that he told Cr Gigliotti, Ms Hay, Ms McMahon and Cr Jonovski that Mr Coyte had solicited bribes from him before he found out about Mr Coyte's allegation against him on 31 May 2007. It is likely that after that examination he realised that his lies would be easily discovered (as they were) and he would be confronted with them at the public inquiry. The desire to avoid such an embarrassing situation would have provided a strong motive for Mr Tasich to deliberately refrain from returning to Australia in time for the public inquiry.
6. At his compulsory examination on 27 September 2007 Mr Tasich was directed under section 35(2) of the ICAC Act to produce to the Commission within two days a copy of a fax he claimed to have sent Cr Gigliotti, but he never did (and never offered any explanation for not having done so) despite two subsequent requests from the Commission. This conduct, involving a disregard of the Commission's statutory powers, is consistent with an intention to disobey the summonses and not appear before the Commission at the next scheduled date.

In light of the matters referred to above, the Commission was far from satisfied that Mr Tasich had a reasonable excuse for failing to appear before the Commission and give evidence on 5 November 2007. It is likely that before Mr Tasich departed Australia on 9 October 2007 he decided to remain overseas until well after he was due to appear before the Commission and that any illness he may have suffered while overseas was not sufficiently serious to prevent him returning to Australia in time for his scheduled appearance on the first day of the public inquiry.

Statement under section 74A of the ICAC Act

Pursuant to section 74A(2) of the ICAC Act, the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of Mr Tasich for the offence of failing to attend before the Commission without a reasonable excuse contrary to section 86(1)(a) of the ICAC Act.

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 New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the 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 section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and 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 the prosecution or other action against any particular person or persons, be they public officials or not.

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

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

The first (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 and include bribery.

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

- (a) a criminal offence, or
- (b) a disciplinary offence, or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
- (d) in the case of conduct of a Minister of the Crown or a Member of a House of Parliament—a substantial breach of an applicable code of conduct.

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

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 section 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.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there is no right of appeal against findings of fact made by the Commission nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v. Briginshaw* (1938) 60 CLR 336 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 *Rejfeek 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).

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



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

