



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

**Report to the Minister for Local
Government under section 14(2)
of the Independent Commission
Against Corruption Act 1988 into the
conduct of two Burwood councillors**

ICAC REPORT

DECEMBER 2005

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Part 1 – Introduction

This is a report by the Independent Commission Against Corruption (“the Commission”) to the Minister for Local Government under section 14(2) of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”)

This report sets out information the Commission has obtained in the course of an investigation it has undertaken in relation to Burwood Council (“the Council”). The report sets out five recommendations relating to the exercise of the Council’s functions. No findings are made that any Councillor or Council officer engaged in corrupt conduct.

Background

In early August 2004, the Commission received a number of allegations of corrupt conduct relating to Burwood Council. In particular it was alleged that the current Mayor, Councillor (Cr) John Faker and former Mayor, Cr David Weiley (Mayor) were bribed to approve development applications. It was also alleged that Cr Faker and Cr Weiley received these bribes whilst travelling to Lebanon on a Council funded trip with developers. The Commission found no evidence to substantiate these allegations.

The trip to Lebanon was also the source of other allegations. Namely, that Cr Faker and Cr Weiley deceived Burwood Council about key aspects of the trip to Lebanon and that the reimbursement of their flight costs by Council was inappropriate. Cr Faker and Cr Weiley’s trip to Lebanon is discussed later in this report.

The Commission also received complaints that Cr Faker had failed to disclose pecuniary interests relating to Council business. The allegations in relation to planning decisions at Burwood Council are discussed in Part 4.

About Burwood Local Council

Burwood Council is comprised of seven councillors. The Burwood Council is the second smallest in NSW by area and it has no wards.

Its last general elections were in March 2004. The make up of the councillors is as follows:

ALP – Councillors David Weiley (Mayor), John Faker and Bob Nanva

Unity Party – Councillor Ernest Wong

Burwood Community Voice – Councillor Teresa West

Independents – Councillors Chris Christogeorge and Glen Sanders

Cr Sanders is also a member of the ALP.

Cr Weiley has been the Mayor of Burwood Council since September 2003. Cr John Faker was Mayor for the period September 2001 to September 2002. They were first elected to the Council in July 2000. In September 2005, Cr Weiley was replaced by Cr Faker as Mayor and Cr Sanders was elected Deputy Mayor.¹

Burwood Council generally meets on the second and fourth Tuesday of each month. These meetings are either ordinary meetings or Building and Development Committee meetings. Extraordinary meetings are scheduled instead of or as well as ordinary meetings, as the circumstances require.

¹ The events that are the subject of this report took place prior to September 2005. As such, references to the position and role of Mayor of Burwood Council contained in this report should be read as references to Cr Weiley.

Part 2 - A Trip to Lebanon

An invitation to visit

On 28 July and 10 August 2004 respectively, Burwood Council received letters from Imar Municipal Council and Zhratagreen Charitable Association, inviting the Mayor and Councillors to visit Lebanon and attend the Feast of St John. Burwood Council considered these invitations at an extraordinary meeting held on 10 August 2004.

The Zhratagreen Charitable Association² is based in Croydon, Sydney. It is a small organisation of persons with family connections to the village of Zhratagreen in Lebanon. Zhratagreen is located a short distance from the village of Imar.³

The Zhratagreen Charitable Association was registered as an incorporated association by the Department of Fair Trading on 19 August 1997. It was also registered as a charitable association on 10 December 1998 by the Office of Charities within the NSW Department of Gaming Racing. Documents obtained by the Commission show that in 2000 the Zhratagreen Charitable Association had fourteen members.

The Commission's enquiries established that Cr Faker's family was originally from the village of Zhratagreen and that his wife's family was originally from Imar.

The President of the Zhratagreen Charitable Association is Mr Said Chidiac. Mr Chidiac is Cr Faker's cousin. The other office holders of the Association are its Secretary, Mr Assad Faker and Treasurer, Mr Nehme (also known as Norm) Faker. Mr Assad Faker is also Cr Faker's cousin. Mr Nehme is Cr Faker's uncle. Mr Assad Faker drafted the Association's letter of invitation but it was signed by Mr Chidiac.

The Commission contacted the Lebanese Embassy in Canberra to obtain more information about Imar Municipal Council. Embassy officials were unable to

locate Imar on a list of all councils and municipalities in Lebanon. The Commission's subsequent enquiries indicate that Imar Municipal Council is a new local council and that Mr Ghassan Mouawad is its first Mayor. The Commission understands that the inaugural elections for Imar Municipal Council took place in approximately May or June 2004.

The Commission was informed that the population of Imar fluctuates considerably during the year. Mr Mouron Mouawad, an expatriate resident of Imar, estimated that in summer the population is in the range of two to three thousand people, but in winter it can be as low as 20 or 30 people.

The Feast of St John the Baptist

The Commission considered the reference to the Feast of St John in the two invitations.

Mr Chidiac told the Commission in private hearing that the Feast of St John was on 24 June each year. This is confirmed by other sources.⁴ Mr Chidiac could not explain however, why the Zhratagreen Charitable Association invitation that was dated 10 July 2004, referred to the Feast as "upcoming". He told the Commission that;

"I didn't know when he [Cr Faker] was going. I just heard they're going to Lebanon. They might go to Lebanon, but I didn't know when exactly they're going."

In fact, neither of the invitations specifies the date for the Feast of St John. Each invitation simply refers to it as "upcoming". However, the Mayoral Minute prepared for the extraordinary meeting of 10 August 2004 nominates 29 August as the scheduled date for the Feast.

² "Zhratagreen" is an anglicised, phonetic spelling based on the Arabic pronunciation. As such, there are a number of different versions of the English spelling. The version used in this report, "Zhratagreen", is taken from the letterhead of the Zhratagreen Charitable Association letter. Similarly, "Imar" is an anglicised version of an Arabic word and the spelling used in this report is taken from the Imar Municipal Council letterhead.

³ The Commission estimates that the straight line distance between Zhratagreen and Imar is 1.7 km based on the longitude and latitude coordinates taken from www.travelpost.com

⁴ Including the Vatican website see: www.vatican.va/holy_father/john_paul_ii/speeches/1999/june/documents/hf_jp-ii_spe_24061999_knights-malta_en.html

Cr Faker and Cr Weiley both told the Commission they attended a feast celebration in Imar on 29 August 2004. The Commission's enquiries suggest that 29 August 2004 is the date attributed to the death of St John, and that 24 June 2004 is the date his birth is celebrated. The Commission was unable to determine the precise event that Cr Faker and Cr Weiley attended on 29 August 2004. However, the Commission accepts that Cr Faker and Cr Weiley did attend a feast associated with St John on 29 August 2004 and that they were not aware, as Mr Chidiac was, of the alternate feast day on 24 June.

The invitations

The invitation from the Zhratagreen Charitable Association is dated 10 July 2004 and stamped as being received by Burwood Council on 10 August 2004 being also the date of the extraordinary meeting which approved the trip. The invitation from Imar Municipal Council is dated 18 July 2004 and stamped as received by Burwood Council on 28 July 2004.

The two invitations, one of which says it is from the Municipality of Imar in Lebanon and the other from Croydon in Sydney, had a number of similarities including:

- Both were addressed as follows:

*Mayor
Burwood Council
P.O Box 240
Burwood NSW 1805*

with the same atypical punctuation in the address – “P.O Box”. That is, a full stop after the “P”, but not after the “O”.

- Both letters nominate the “*upcoming feast (day) of St John*” as providing an opportunity for Burwood Councillors to visit.
- Both have almost the exact same wording at the end of the second paragraph viz, “*made a significant contribution over many years to the/ your local area*”

- Other similar wording includes:
 - Imar Municipal Council letter - “*Furthermore, we would be able to examine ways in which our exchange of policies and information could be mutually beneficial*”.
 - Zhratagreen Charitable Association letter - “. . . *our village and your Local Council could exchange mutually beneficial policies and programs*”.
 - Imar Municipal Council letter - “. . . *to extend an invitation to you and your fellow Councillors to visit Imar Council*”.
 - Zhratagreen Charitable Association letter - “*by extending to you and the Councillors an invitation to visit our village in Lebanon*”.
- The date format is similar in both letters. That is, “*July 10, 2004*” and “*July 18, 2004*”.

Given the similarities between the two invitations they may have had input from a common source namely:

- a common author, or
- that the person(s) who wrote the second invitation was in possession of a copy of the first invitation.

Drafting of the Zhratagreen Charitable Association invitation

The Zhratagreen Charitable Association invitation is dated prior to the Imar Municipal Council invitation.

The Commission questioned Mr Assad Faker about the date the Zhratagreen Charitable Association letter was written. He told the Commission it was written on or about 10 July 2004. He also gave evidence that the letter was entirely his own composition and he did not base it on any other document.

The Commission obtained a copy of the hand written minutes from the 13 June 2004 meeting of Zhratagreen Charitable Association. The minutes state:

“Said [Chidiac] approached Councillor Faker of Burwood Council with regards to Burwood Council working with Committee in promoting Lebanese Culture, large no. of village people living in the municipality. It was advised to draft a letter & Send to Council.”

Other material available to the Commission confirms that the minutes were accurate in this respect.

Mr Said Chidiac confirmed that he had a conversation with Cr Faker about the possibility of him travelling to Lebanon prior to 13 June 2004. He also confirmed that he had discussed the proposed letter of invitation from the Zhratagreen Charitable Association with Cr Faker during this time.

Mr Assad Faker also told the Commission that he had heard Cr Faker was intending to travel to Lebanon. He also stated that the trip had also been spoken about within the local Lebanese community.

Cr Faker also told the Commission that he may have had some input into the Association’s invitation:

“Oh, from my understanding Assad typed it. He prepared the letter. Now look to be – with regards to the letter – I mean I – he may have asked me for advice I may have given him advice I can’t remember if I’d seen this letter [the letter from Imar Municipal Council] and given him a copy or something, or you know read the letter and then he’s read the letter to me and I said, “Look add this in or add that in, or take that out.””

Cr Faker told the Commission the Zhratagreen Charitable Association invitation was given to him by Mr Chidiac. He then submitted the invitation to Cr Weiley on or shortly before 10 August 2004. He also told the Commission that the date on the Zhratagreen Charitable Association letter may have been amended to make it appear that the Association’s invitation had come first saying;

“Now I think for what’s happened there is they [the Zhratagreen Charitable Association] wanted to look like they invited us first. Like not invited them but like they’ve given us like something first. It’s a face saving thing that’s all.”

There is nothing that contradicts the evidence from Mr Assad Faker that his letter was written on or about 10 July 2004. This is also consistent with the Zhratagreen Charitable Association minutes of 13 June 2004 and Mr Chidiac’s evidence.

Cr Faker’s evidence on this matter was also initially vague when first interviewed by Commission officers. It seems likely that the Zhratagreen Charitable Association letter was written before the Imar Municipal Council invitation.

It should also be noted that other information suggests that Cr Faker and Cr Weiley were booked on flights to Lebanon as early as 8 June 2004. This booking was made on behalf of Cr Faker and Cr Weiley by Mr Mouron Mouawad who was organising travel for a number of persons at the same time. Cr Faker and Cr Weiley were aware of this booking, it having been made with their knowledge and approval. However, they contend that the booking was contingent on the receipt of an invitation from Imar Municipal Council.

Mr Mouron Mouawad

Mr Mouron Mouawad played a key role in organising Cr Faker and Cr Weiley’s travel to Lebanon. He told the Commission that he was distantly related to the Mayor of Imar Municipal Council, Mr Ghassan Mouawad, although he was not sure of the exact nature of the relationship.

Cr Faker told the Commission about his knowledge of the involvement of Mr Mouron Mouawad in his decision to travel to Lebanon:

“So there was – so they were talking about it and so forth. To be quite frank with you I was unsure about whether I was going. Mouron, I don’t know if you know – if you’ve spoken to him or whatever is the type of fellow that, you know he’s a friend and he said, “No, no don’t worry I’m going to you know – I’m going to book your ticket you’re coming” but I never paid him any money or anything. I said, wait and see when I was rock solid I was going I went and paid for my ticket.”

Cr Faker also suggested that Mr Mouron Mouawad was involved in facilitating the invitation from Imar Municipal Council:

Q: *You said before that Mouron was in touch with the Mayor in Imar or was it yourself?*

A: *That got in touch with the Mayor? No I never got in touch with him.*

Q: *Mouron was in touch – speaking with the Mayor?.*

A: *I couldn't tell you exactly but from my understanding was he's the one that organised the – well the Mayor wanted to invite us and he's the one that – my understanding was speaking to the Mayor and the Mayor, I think, sent the letter. I couldn't tell you.*

Cr Weiley confirmed Mr Mouron Mouawad's contact with Mr Ghassan Mouawad:

Q: *What discussions had – did you have with the Mayor of Imar in relation to going over there? Did you have any or was it all through Mouron?*

A: *It was all through Mouron because Gus [the Mayor of Imar] would be flat out.....*

Mr Mouron Mouawad booked Cr Faker and Cr Weiley's flights to Lebanon on 8 June 2004. Mr Mouron Mouawad booked Cr Faker as part of a larger "total complete party" that included himself. Mr Mouron Mouawad did not book Cr Weiley as part of this party, though he did book him on the same flight, Malaysia Airlines flight MH0140, departing Sydney on 26 August 2004.

Cr Faker told the Commission that Mr Mouron Mouawad booked his travel because he could obtain a good fare and he was organising the trip:

Q: *No I'm just talking about just booking – just purely booking of the trip to go over there. And we can all agree to go to Surfers Paradise, but I wouldn't book all of our tickets.*

A: *I know Maroun gets good deals from Orient Travel, because he's got a good relationship with the fellow so I assumed I'd let it be, you know.*

Q: *Get a better rate, a better fare?*

A: *I thought, yeah, I thought because fare wise plus he was, you know, like organising his trip.*

Q: *So he admitted I'll take responsibility I'll book the tickets?*

A: *Yeah.*

Cr Faker said that it was Mr Mouron Mouawad, as opposed to Burwood Council, who informed Imar Municipal Council that its invitation had been accepted:

Q: *So you flew out on the 26th, the Feast of St John was on the 29th, how did they know to set a place for you at the table, how did they know you were coming?*

A: *My understanding was they knew through Mouron. Mouron had direct contact with –*

Mr Mouron Mouawad also took Cr Faker and Cr Weiley to visit a number of tourist destinations in Lebanon. Furthermore, he provided Cr Weiley with accommodation at his residence in Imar free of charge for one or two nights.

Mr Mouron Mouawad is a personal friend of both Cr Faker and Cr Weiley. His relationship with Cr Weiley is particularly close. Mr Mouron Mouawad told the Commission that he sees or speaks with Cr Weiley usually every day. Mr Mouron Mouawad is also related to Cr Faker by marriage, albeit somewhat distantly. Mr Mouron Mouawad has advised the Commission that he speaks with Cr Faker once or twice a week.

According to the Office of Fair Trading website, Mr Mouron Mouawad, is a licensed builder. He was the foreman on a building site at 10-12 Grantham Street, Burwood where an 18 unit residential development was approved by Council. Persons with a financial interest in this development include Mr John Mouawad, Mr Kabalen Faker and Mrs Rosemary Bogdanovski. These persons are respectively, Cr Faker's wife's cousin; Cr Faker's father and Cr Faker's sister-in-law (that is, his wife's sister). The development at 10-12 Grantham Street is discussed in more detail later in this report.

The extraordinary meeting of 10 August 2004

On 10 August 2004, Burwood Council held an extraordinary meeting.

Under the *Local Government Act 1993* (“the LG Act”) and *Local Government (Meetings) Regulation 1999*⁵ councils are permitted to call extraordinary meetings. Under section 366 of the LG Act, if the Mayor receives a request in writing signed by at least two councillors, he or she must call an extraordinary meeting of the council to be held as soon as practicable but in any event within 14 days after receipt of the request. Under Burwood Council’s Code of Meeting Practice, the Mayor is also entitled to call an extraordinary meeting of Council when he or she considers it necessary.

Clause 16 of the *Local Government (Meetings) Regulation 1999* states:

16 Official minutes

(1) *If the mayor is the chairperson at a meeting of a council, the chairperson is, by minute signed by the chairperson, entitled to put to the meeting without notice any matter or topic that is within the jurisdiction of the council or of which the council has official knowledge.*

(2) *Such a minute, when put to the meeting, takes precedence over all business on the council’s agenda for the meeting. The chairperson (but only if the chairperson is the mayor) may move the adoption of the minute without the motion being seconded.*

(3) *A recommendation made in a minute of the chairperson (being the mayor) or in a report made by a council employee is, so far as adopted by the council, a resolution of the council. [Emphasis added]*

These Mayoral Minutes may be put to any meeting of council, including extraordinary meetings.

The minutes for the meeting indicate that it commenced at 5:00pm and concluded at 5:15pm and

that Councillors Weiley, Christogeorge, Faker, Nanva and Sanders were in attendance. The notice of the meeting is also dated 10 August 2004. Section 367 of the LG Act states that councillors are to be given three days notice of any meeting and its proposed agenda. Notice of less than three days is only permitted in the event of an extraordinary meeting that is called in an emergency. The Burwood Council officer responsible for preparing the notice, agenda and business papers for this meeting has told the Commission that he recalls these being prepared on either 4 or 5 August 2004.

An item of business at this extraordinary meeting was a Mayoral Minute discussing a cultural exchange visit to Lebanon by Burwood Councillors.

The two invitations inviting Burwood Councillors to visit the villages of Imar and Zhratagreen in northern Lebanon were also presented to the extraordinary meeting. Both invitations referred to the Feast of St John as an opportunity for Burwood Councillors to travel to the villages. The minutes for the meeting record that it was resolved unanimously:

That Council accept the invitation, and that Mayor David Weiley and Councillor John Faker visit Imar, Lebanon to participate in the feast day of St John celebration on Sunday 29 June.

The Mayoral Minute also referred to the possibility of Councillors exploring a sister city relationship with Imar Municipal Council.

Minutes of the meeting

The Council minutes show that the nine agenda items for the extraordinary meeting were dealt with in the following order:

1. *Confirmation of minutes of 21 July 2004*
2. *Cultural exchange opportunities – Sandakan, Borneo*
3. *Tendering and Procurement policy*
4. *Parramatta Road Taskforce, Formation of*

⁵ On 1 September 2005, a number of local government regulations including the *Local Government (Meetings) Regulation 1999* were repealed and remade as the *Local Government (General) Regulation 2005*. The clauses referred to in this report are from the instruments in force at the time in question.

Steering Committee

5. *Aboriginal Land Recognition*
6. *Imar Municipal Council Lebanon – Cultural exchange visit*
7. *Burwood Plaza Carpark, Belmore Street*
8. *Macquarie Bank – Community Partnership arrangement*
9. *28 Royce Avenue Croydon, proposed purchase*

The meeting minutes indicate the first six items were resolved by 5:05pm (therefore each item taking on average fifty seconds to be considered and dealt with).

Items 2 to 6 were all presented by Mayoral Minutes. As per the *Local Government (Meetings) Regulation 1999*, these were circulated among Councillors at the meeting, rather than being sent to Councillors along with the agenda and other business papers in advance of the meeting.

The meeting minutes indicate that the motion dealing with the proposed trip to Lebanon was passed unanimously.

There does not appear to have been any substantial discussion of the agenda items for the extraordinary meeting. Given that the Councillors in attendance only received the Mayoral Minutes and attachments at or near 5:00pm, it is also unlikely they considered the issues at length prior to the meeting.

Cr Faker had some sort of conversation about his proposed trip to Lebanon with Mr Assad Faker and Mr Said Chidiac as early as June 2004. However, with the exception of Cr Wong, none of the Councillors or Council staff interviewed by the Commission indicated that Cr Faker or Cr Weiley had discussed the issue with them prior to the extraordinary meeting. This was despite Cr Faker and Cr Weiley claiming to have known about the forthcoming invitation from Imar for some time. Notably, for the period of May to September 2004, Cr Nanva and Cr Wong, along with Cr Weiley were the delegates on Burwood Council's Multicultural & Community Relations Committee. In addition, Cr Nanva, Cr Sanders and Cr Weiley were on Council's Cultural, Events & Planning Committee.

Cr Wong told the Commission that he recalled a conversation with Cr Faker in late July 2004 where

Cr Faker was canvassing his support for the proposed trip to Lebanon. Other than this neither Cr Weiley nor Cr Faker saw fit to advise these Committees or its members of their planned visit to Lebanon and the suggested sister city relationship.

The extraordinary meeting was followed by a Building and Development Committee meeting at 6:00pm. At this second meeting Council approved a development application lodged by Mr John Mouawad for 10 – 12 Grantham Street, Burwood.

The non-attendance of Cr West

Cr Ernest Wong and Cr Teresa West were not present at the extraordinary meeting. They were however recorded as having submitted their apologies. This left five of the seven elected councillors in attendance: Cr Weiley, Cr Chris Christogeorge (Deputy Mayor), Cr Faker, Cr Bob Nanva and Cr Glen Sanders.

The Commission has confirmed with Cr Wong that he was overseas at the time of the meeting.

Cr West told the Commission that she was not advised or aware of the extraordinary meeting and therefore did not submit an apology. The motion to accept apologies from Cr Wong and Cr West was moved by Cr Faker and seconded by Cr Nanva. The Commission understands that as a matter of routine, it is normal for apologies to be moved and accepted even where they are not submitted. The minutes of the Building and Development Committee meeting that commenced at 6:00pm show that Cr West was present despite arriving slightly late at 6:08pm.

In respect of the 10 August meetings, Cr West told the Commission,

“That meeting – that was an Extraordinary Meeting that was held at 5.00 o'clock whilst there was another meeting at 6.00 o'clock. I thought that was really – one was the wording of the actual minutes seemed strange to me, two, the fact that I hadn't – that I hadn't received notice of it, and three, because I attended the meeting straight after I came in at 6.00 o'clock and no one said anything to me, no one said anything to me at the dinner

afterward as to why I hadn't come in earlier, which I found very strange."

Cr Christogeorge told the Commission that Cr West had previously questioned the cost of overseas trips:

Q: So you haven't been notified of it, whether Council paid for it or not?

A: No, no but you know I'm sure that, you know, I'm not 100% of course but I think they paid from their own pocket.

Q: So you haven't been notified of it, whether Council paid for it or not?

A: No, no but you know I'm sure that, you know, I'm not 100% of course but I think they paid from their own pocket.

Q: So is it a case that Teresa – every – is it the case that Teresa – every time someone has applied to go overseas Teresa has raised the question that –

A: Yeah, more than anybody else.

Q: -who's paying for it?

A: Yes.

Q: And is it raised each time that someone is going overseas?

A: Yeah, yeah when Teresa is there, yes.

The Commission made enquiries of Council staff responsible for circulating details of the extraordinary meeting.

These enquiries were unable to verify whether Cr West had received notice of the meeting. If Cr West was deliberately not notified of the meeting a number of persons would need to have acted in concert to make this possible. There is nothing to suggest that Cr West's non-attendance at the extraordinary meeting was the result of a deliberate intention not to notify her.

Councillors present at the extraordinary meeting

The Commission interviewed the Councillors present at the 10 August 2004 meeting.

Cr Glen Sanders

Cr Glen Sanders told the Commission that he thought Cr Faker and Cr Weiley were funding the trip to Lebanon themselves:

Q: You – and from your – from your memory can you tell me what led up to the voting or what your understanding of what was going to be undertaken in the trip?

A: Um – I – I can't – I can't with certainty remember the precise details. I remember, it shows here that this was approved unanimously, I remember, yeah, obviously approving it and I was – I was of the impression that it would – it was something that they – that the two councillors concerned, Weiley and Faker, were doing of their own accord and that this would be – this was simply, you know, permission or a role for them to have, you know, ceremonial contact with the Middle East towns.

.....

Q: Alright, now you said there that you thought that it was being funded by both Faker and Weiley, that's correct?

A: Yes.

Q: And what made you have that belief?

A: Um – well I'm not certain that that – that was my impression, that I – that I got that – that – that council – that this was – this was funded by Councillors, you know, Weiley and Faker, that was just the impression I had.

Q: So it wasn't your impression that the council was paying for it -

A: No -

Q: - through rate-payers money?

A: - no, that's correct.

Q: Okay, and is that something that you would recall in the meeting if it was disclosed that the council was paying for it?

A: I suppose yeah, I'm pretty sure I would recall that – that they were – if it had come up that council was paying for it and that – that – that – that if that was the case that I would've, you know, I would've spoken up against it –

.....

Q: Alright, and you wouldn't have voted for it had it been – had it been at the taxpayers or rate-payers expense?

A: My – I don't – I don't believe in, you know, in – in – in Government junkets, in political junkets particularly by – in local government. I mean I – I'd be hypothesising about, you know, how I would've voted otherwise.

Q: Yep, yep, alright. But the reason – so, I just want to get this –

A: Yeah.

Q: - clear that the reason that you did vote in favour of it, is it the case that you did vote in favour of it because you thought that it was being paid for by both Weiley and Faker?

A: Yes.

Cr Nanva

Cr Bob Nanva did not recall any discussion at the 10 August 2004 meeting about who would pay for the trip to Lebanon. However, he stated it “wouldn't surprise me” if Council paid for the trip as he believed it was “an official Council engagement”.

Cr Christogeorge

Cr Chris Chistogeorge told the Commission he believed Crs Faker and Weiley were paying for their trip themselves:

Q: Alright then do you recall someone asking “who's going to pay for the trip?” Is that the case?

A: No. Yeah that's what my thinking is but you know I can't say that 100%.

Q: Yep.

A: Because usually if somebody goes overseas, he has to pay from his own pocket and that was my understanding. That's why I vote for it.

.....

Q: No, well the minutes of the meeting don't mention anything along the lines of who's going to pay what. Is it the case then that it was your underst –

A: Yeah but my understanding was they had to pay from their own pocket.

Q: Yeah. Now can you recall – can you think back and recall whether that was raised in the actual meeting?

A: I'm not sure because, say for example when Ernest [Cr Wong] was going off a few times and he asked for the same thing, Teresa [Cr West] was the one who was you know asking those questions and but it's very hard for me to say it was that meeting or the other meeting.

Q: Right.

A: Because you know in both – both times I voted for it, you know, in favour but I had 100% – my understanding was that they were to pay from their own pocket.

The Mayoral Minute presented to Council at the 10 August 2004 meeting itself did not raise the prospect of Council funding the trip to Lebanon. The accompanying resolution that was passed by Council also did not authorise the use of Council funds for the trip. In fact Council's reimbursement of Cr Faker's and Cr Weily's trips was something that was not properly considered by Council. It is also clear that Cr Sanders and Cr Christogeorge did not believe Council had authorised the funding of the trip.

Travelling to Lebanon

As previously noted, Mr Mouron Mouawad booked Cr Faker as part of a “total complete party” travelling to Lebanon. The party comprised:

- Mr Mouron Mouawad
- Mr John Mouawad
- Mr Slaimanne (also known as Simon) Mouawad
- Mr Anthony Nakhoul
- Mr Pierre (also known as Peter) Sleiman
- Cr John Faker

Cr Weiley’s flights were also booked by Mr Mouron Mouawad but Cr Weiley was not part of the “total complete party”. The Commission understands that Mr Mouron Mouawad booked or arranged travel for a number of other persons travelling to Lebanon for recreational purposes at this time.

Mr John Mouawad is Mr Mouron Mouawad’s cousin (as well as Cr Faker’s wife’s cousin⁶). Mr John Mouawad was a builder and developer with business interests in the Burwood Council area but recently had his licence cancelled.

Mr Anthony Nakhoul advised the Commission that he is an engineer by profession. The Commission’s investigations did not reveal any substantial business interests in the Burwood area held by Mr Nakhoul.

Similarly, Mr Pierre Sleiman has some business interests in development but none of any consequence in the Burwood area at the time of the decision to travel to Lebanon.

Mr Slaimanne Mouawad is a relative of Mr Mouron Mouawad. He is not known to have any interests in property development or building.

Cr Faker told the Commission that at the time his travel was booked:

“I knew John Mouawad was going. From memory that’s the only one that stood out. I had heard there were some other people going like (inaudible) or Mouron’s nephew I think. My cousin Bob, I think ended up booking, who’s Danny Faker, who’s known as Danny Faker. I think – I may have known at the time, Peter Sleiman was going or not I can’t remember.”

In the period 10 July to 26 August 2004, Cr Faker used his mobile phone to call Mr Pierre Sleiman’s mobile phone 39 times. Mr Sleiman also called Cr Faker 32 times during the period 5 August 2004 to 26 August 2004. From this volume of contact it would not be unreasonable to infer that Cr Faker and Mr Sleiman were aware of each other’s travel plans. However, Cr Faker may not have been aware of all of the members of the party travelling to Lebanon.

Cr Weiley distanced himself from any association with the other travelling parties during his interview with Commission officers:

“I went to Lebanon with John Faker and I returned with John Faker. It is true that John Mouawad was on the same flight as us but I – not as part of the – what you – what you just referred to as the same party. That sounds like there’s some travel association. It may be true that the tickets were booked at the same time. Once again they were booked by Mouron Mouawad who’s got the same last name as John Mouawad but if you’re saying that John Faker and I booked our ticket to travel with John Mouawad, well I deny that. Because obviously I stated before why I didn’t book my ticket.”

Cr Faker and Cr Weiley did not return to Australia from Lebanon on the same flight as the other members of the party.

Activities in Lebanon

Cr Faker and Cr Weiley each departed Sydney on 26 August 2004 and returned on 10 September 2004. They were away for a total of sixteen days.

On their passenger cards, Cr Faker and Cr Weiley were asked to indicate the “main reason for overseas

⁶ However it should be noted that this does not make Mr Mouron Mouawad and Mrs Faker siblings. Cr and Mrs Faker and Mr Mouron Mouawad are only related by marriage.

travel". Cr Faker and Cr Weiley each ticked the box stating "visiting friends or relatives".

Cr Faker told the Commission he could not remember why he indicated this as the purpose for his travel as opposed to "Business" or "Employment".

The only official business engagement referred to in the Mayoral Minute and Council resolution of 10 August 2004 was participation in the Feast of St John celebrations. Although not expressly mentioned in the Council resolution, it may be that Council also gave its approval to exploration of a Sister City relationship with Imar, as outlined in the Mayoral Minute.

The Commission asked Cr Faker and Cr Weiley about the official activities they undertook during the 16 day trip.

Cr Faker gave the following account about his itinerary in Lebanon:

"From memory we got there, I think, it was a Friday night. Look I'm not going to be able to tell you dates because – but I can tell you the type of meetings we had there, but I remember we got there the Friday night. I think the Friday and the Saturday we were pretty much consumed with people visiting like the township and they come and visit and so forth. Saturday night was the official Imar celebration Feast of St John, and that went to like six or seven in the morning even eight in the morning. I think I pretty much remember Sunday was wiped out we sort of just hung around at home. I can't remember dates after that, but I remember visiting the priest of Imar who his – he was – he actually resides in Rome but was there at the time. He sort of came at the same time, because he was there for the feast. He set up a meeting with the patriarch. I remember speaking to a lady by the name of Mary – I can't remember she was from Beirut her origins were from Imar. She works for the Department of Infrastructure [in Lebanon] and she gave us some information with regards to the sewerage works and so forth they're doing in that sort of area. I remember visiting the Parliament House. I remember visiting and taking David to the churches like the holy sites and doing that, and they're like custom things because if you don't visit those churches it's like a custom thing."

Cr Faker also stated that he stayed with relatives in Zhratagreen for the duration of the trip with the exception of two nights spent in Beirut.

Cr Weiley told the Commission that:

". . . I wanted to go to Lebanon. I've got a great interest in history and Roman ruins and there was an opportunity that came up through to the – the number of meetings at Burwood Council and there was a window of opportunity for me to go. It's also beautiful weather I heard at that time of the year and John Faker particularly wanted to go because he has two – he's got his grandparents surviving there and they're quite elderly and obviously it was an opportunity for John to go and see his grandparents and his many, many, many relatives in Zhratagreen."

Cr Weiley also stated:

"I had a good time. Obviously stayed at Zhratagreen with Johnny Faker's uncle, stayed a couple of nights with Mouron Mouawad at Imar. Stayed a couple of nights down at Beirut. Went to the feast of St John, saw the Patriarch, went to (unintelligible), went to Byblos, went to (unintelligible), went all over the countryside. Up and down villages, went to – there's another city down the bottom of the hill, Tripoli. On day trips, didn't stay overnight in Tripoli. Went to about 100 peoples' homes for lunch and breakfast and dinner and, and drank some alcohol. Went to the Mayor's place one time for a formal dinner. Went to the Council chambers there and sat in on a meeting there. Oh there was some other feast day celebrations that were held at night, went to those. There's another city too over the other side of the hill which I can't recall but a beautiful city."

.....Yes, I met also the Mayor of (unintelligible), it's called. Went to his residence at (unintelligible). Like I said previously I went to the Mayor Gus's place a couple of times there on a formal dinner invitation. As I stated went to Council chambers, sat in on a meeting there. Met — met the patriarch which is the head of the Catholic Maronite Church in Lebanon and we drove to his location which I can't recall the name of the location but we met with him and had our photo taken with him. They're the official things that we did whilst we were there and obviously the feast of St John was the highlight of that."

Mr Mouron Mouawad told the Commission that he undertook the following activities with Cr Faker and Cr Weiley:

“We went to a lot of places. Lot of tourist attractions. Um took David to the Cedars, to the grottoes, churches, I mean, we basically done all of the tourist things that you do when you go overseas.”

The process of forming a bona fide Sister City relationship may necessarily entail a degree of hospitality and participation in cultural activities. However, from the information outlined above the trip to Lebanon bears many of the hallmarks of a private holiday – the involvement of friends in making travel arrangements, eating, drinking, sight-seeing and visiting relatives. Cr Faker’s vague recollection of the official business that he conducted is also noteworthy. There are no minutes of any meetings that were held, no actionable items and Cr Faker cannot recall the names of many of the people he met with.

Neither Cr Faker nor Cr Weiley produced any written report or statement outlining the duties they performed in Lebanon or an assessment of the merits of entering into a Sister City relationship with Imar. To the extent that the trip was to conduct Council business, there is nothing to show that any benefit has accrued to the ratepayers of Burwood as a result. Finally, to date no sister city relationship exists between Burwood Council and the Municipality of Imar.

The Mayor of Imar, Ghassan Mouawad, made a return trip to Sydney in December 2004. This visit was noted in the Burwood Council minutes of 7 December 2004 under “Items of Current Interest”. The minutes refer to a formal meeting between Mr Ghassan Mouawad and Cr Faker where discussions about the sister city relationship continued. Council did not receive a report about this meeting or the status of the proposed sister city relationship. Cr Faker has advised the Commission that negotiations over the sister city relationship are continuing.

Official business or private holiday?

The question arises whether Cr Faker’s and Cr Weiley’s trip to Lebanon could properly be characterised as official council business.

In examining this issue the Commission considered the bona fides of the two invitations received from the Zhratagreen Charitable Association and Imar Municipal Council.

Both invitations purported to invite the Councillors to visit Lebanon, yet neither inviters offered to pay any of the costs associated with the Councillor’s travel. This is somewhat unusual, but does not necessarily mean the invitations were not genuine. It is also curious that an Association based in Croydon, Sydney would invite Burwood Councillors to visit a foreign country.

Cr Faker has family connections to the office holders of the Zhratagreen Charitable Association. There is evidence that Cr Faker discussed with Mr Chidiac the possibility of the Association sending a letter to Council prior to it being drafted. Cr Faker also told the Commission that he could have had some involvement in the drafting of the letter.

Furthermore, the Association’s letter was not central to Council’s consideration of the proposed trip to Lebanon. It was included as an attachment to the Mayoral Minute. In fact neither the Mayoral Minute nor the Council resolution referred to the Association’s invitation or the possibility of visiting Zhratagreen. The main focus of the item of business was the letter from Imar Municipal Council and the establishment of a sister city relationship with Imar.

Nevertheless, whether the Imar Municipal Council invitation had input from the source of the Zhratagreen Charitable Association invitation is problematic as the two invitations purport to have originated from two different countries. It is unlikely that Mr Ghassan Mouawad drafted the Imar Municipal Council invitation himself. Cr Weiley told the Commission that Mr Ghassan Mouawad’s English was quite poor and that “he can say ‘hello’ and ‘good’ and that’s about it.”

It is clear from what Cr Faker and Cr Weiley told the Commission that Mr Mouron Mouawad was

heavily involved in facilitating the invitation from Imar Municipal Council. Cr Weiley suggests Mr Mouron Mouawad may also have been involved in drafting the invitation:

Q: *Alright, so you didn't have any input as to what should go in the letter?*

A: *No, not direct input. If you said to me would I've discussed things with Mouron, if he asked sort of what sort of things might go in the letter I'd say well it would be normal. Like, something like you know in exchange of policies, you know, obviously and well probably would have been common knowledge that there were many many many people in the local area from Lebanon. So I'm not surprised that that's gone in but Mouron's a quite a well educated person and Mouron, you know, I believe is in contact with Gus on a regular basis. So – it's up to them what they put in their letters.*

For his part Mr Mouron Mouawad denies any involvement in arranging the invitation from Imar Municipal Council. He was however involved in arranging the travel to Lebanon and it is difficult not to think that he was in some way involved in the drafting or facilitating of the Imar Municipal Council letter. It is also likely he received some assistance or at least was shown a copy of the Association's letter, given the similarities between the two letters. Cr Weiley seems to suggest that he may have provided some assistance. However, notwithstanding the likely involvement of Mr Mouron Mouawad, Cr Weiley or anyone else in the drafting of the Imar Municipal Council letter, there is no evidence to conclude that Mr Ghassan Mouawad did not have a legitimate desire to send the letter. Furthermore, both Cr Faker and Cr Weiley denied soliciting the invitation from Mr Ghassan Mouawad for improper purposes.

Another aspect of Cr Faker and Cr Weiley's travel to Lebanon is Mr Mouron Mouawad's booking of their flights on 8 June 2004, which was prior to the drafting of either of the invitations. Cr Faker told the Commission that he may have travelled to Lebanon regardless of whether he received an invitation, although he was less than certain about this:

"Look I couldn't tell you, because I can't remember the state of mind that I was in at the time. I could've gone. Look I may have gone because I probably would've said well gee, you know, Mouron and that's going I would've, you know, I would've gone, but I can't tell you, yeah, I couldn't tell you. I could have or couldn't have."

Cr Weiley also said that Cr Faker wanted to travel to Lebanon to see his relatives.

Cr Weiley was asked about his recollection of whether his ticket had been booked prior to the Council meeting of 10 August 2004:

Q: *Would you have waited for the Council approval in order for you to book it?*

A: *Wouldn't – wouldn't have a clue and because I wanted to go to Lebanon and I've always – I've been planning a trip to Lebanon for years and if you ask me, you know, when I booked it, wouldn't have a clue – wouldn't wouldn't know.*

Cr Weiley also said that in his mind he did not need an invitation to travel to Lebanon. However, interestingly he suggested that an invitation was needed to characterise the trip as being for official purposes:

Q: *Had you been in contact with someone to get them to send us an invitation so that we can travel over there?*

A: *No.*

Q: *In general terms that's what I'm –*

A: *In general terms no – of course not and can I point out as well that I don't - wouldn't require a – a letter from anyone to go to Lebanon, it might change the fact with regards to whether or not it would be deemed to be an official visit –*

Q: *H'mm, H'mm.*

A: *But you know we could have just as soon written to them.*

Q: *Yep.*

A: *And said, "Well we'd like to come, would you, would you invite us?"*

Q: *All right.*

A: *So that's nothing unusual about that at all.*

There is material to suggest that the possibility of an official trip by Burwood Councillors to Imar was raised as early as January 2004 with Cr Faker and Cr Weiley. This was prior to the booking of their flights.

Mr Ghassan Mouawad visited Australia in January/February of 2004. While he was not Mayor of Imar at this time, the inaugural Imar Municipal elections were pending. It is understood that Mr Ghassan Mouawad believed he was likely to be successful in his candidacy for the Mayoralty of Imar at this time. Cr Faker and Cr Weiley both told the Commission that Mr Ghassan Mouawad raised the possibility of inviting them to Lebanon at this time. The Commission's investigation did not reveal any evidence to contradict this and there has been no opportunity to interview Mr Ghassan Mouawad.

Cr Faker also referred to the possibility of receiving the invitation from Mr Ghassan Mouawad as something that influenced his decision to allow his ticket to be booked as early as 8 June 2004.

There is no evidence to suggest that there was nothing other than a legitimate desire on the part of Mr Ghassan Mouawad to invite Cr Faker and Cr Weiley on an official visit to Imar.

There is also no evidence to suggest Cr Faker's and Cr Weiley's travel was solely undertaken for private purposes and performed no official purpose at all notwithstanding its strong resemblance to a private holiday.

The Commission received allegations that the intended purpose of the trip to Lebanon was for the payment of bribes to Cr Faker and Cr Weiley by developers with business interests in the Burwood Council area.

The Commission also found no evidence to support these allegations.

Council's travel policy and the reimbursement of travel costs

On 4 May 2004, Burwood Council adopted a revised *Councillors' Expenses & Facilities Policy* (the Policy). The Policy covers Councillor entitlements in a number of areas including travel expenses.

The Policy states that proposals for interstate or overseas travel are to be considered and approved at an open meeting of Council through a report from the General Manager. This report is to include and address:

1. *Who is to take part in the travel.*
2. *The objectives for undertaking the trip, including an explanation of the benefits that will accrue to the community/Council from taking the trip.*
3. *The duration of the trip and general details of travel arrangements.*
4. *The approximate cost of the trip, including accommodation and other expenses payable.*
5. *If the trip is to be sponsored by private enterprise, ICAC guidelines and reporting structures shall be followed.*

The Policy goes on to state:

For overseas travel, travel records need to be kept where the travel involves more than 6 nights away from the Councillor's ordinary place of residence.

Finally, the Policy stipulates that Council will only reimburse Councillors for travel by economy class. Councillors wishing to travel by business class are required to fund the difference themselves.

Cr Faker paid for his flight on 16 August 2004 and Cr Weiley paid for his on 20 August 2004.

On 24 August 2004, Cr Faker and Cr Weiley submitted expense claims covering the cost of their flights to Lebanon to the General Manager, Mr Pat Romano, for reimbursement.

Cr Faker claimed \$4,995, while Cr Weiley claimed \$1,905.⁷ The difference between the two claims in respect of the travel to Lebanon is explained by the

⁷ Cr Weiley simultaneously submitted expense claims for a trip to Sandakan in Borneo for \$1,980.77 which brought his total claim to \$3,885.77.

fact that Cr Faker travelled in business class. Cr Faker's expenses claim did not indicate that he was travelling business class.

Mr Romano authorised the payment of the claims. Council subsequently paid Cr Faker's and Cr Weiley's flight costs directly into their accounts on 26 August 2004.

The process that led to Cr Faker's and Cr Weiley's reimbursement for overseas travel was inconsistent with the Policy for the following reasons:

- The report to Council was by a Mayoral Minute (not a report from the General Manager);
- The Mayoral Minute did not:
 - adequately explain the benefits accruing to Council and the community from the trip;
 - state the duration of the trip or include details of the general travel arrangements;
 - include the cost of the trip to council;
- Cr Faker was reimbursed at the Business Class rate of travel.

Mr Romano told the Commission that he was satisfied that the trip was legitimate Council business. He also stated that this was the basis on which he approved payment of Cr Faker's and Cr Weiley's expense claims. Mr Romano told the Commission that:

"I didn't haven't any knowledge of what they were doing, ok? I pretty much left it to their integrity and their professionalism to, you know, conduct the business of Council there as they would."

Mr Romano told the Commission that he was unaware of Cr Faker's family links to Imar, Zhratagreen and the Zhratagreen Charitable Association. He was also unaware that Cr Faker would be visiting relatives whilst overseas.

Mr Romano also said that he was unaware that Cr Faker and Cr Weiley were booked on flights to Lebanon as early as 8 June 2004. He also stated he was not aware that they were travelling to Lebanon as part of a larger party.

Mr Romano was unclear exactly how the possibility of Cr Faker and Cr Weiley's reimbursement came about. He told the Commission:

"They didn't specifically ask me about what they could claim. It came up in conversation, I think the both of them might have been in the room together at the time."

Cr Faker says that the issue of reimbursement was raised by Mr Romano:

If you're asking me was it for a financial gain as in to get a trip, no because like you could ask Pat I'd never spoke to him about the reimbursement or anything before. I wasn't even thinking about it. He mentioned it to me.

Cr Weiley told the Commission that:

Now with regards to overseas travel, I was advised by the General Manager that I could claim the cost of my airfare which I did in turn but I felt very uneasy about it, you know, from the word go and so I actually repaid those monies.

Cr Weiley confirmed that he refunded the \$1,905 to Council after questions were raised about the propriety of his trip to Lebanon.

There is no evidence to suggest that Cr Faker and Cr Weiley initiated an attempt to be reimbursed for their flight costs.

It does appear however that Mr Romano did not have key information that may have been relevant to his decision to reimburse their flight costs.

In relation to Cr Faker the following information may have been relevant;

- his family connections to the Zhratagreen Charitable Association office holders;
- the opportunity the trip provided for him to travel with friends and family, and visit relatives overseas;
- the private recreational activities he was likely to undertake in Lebanon;
- the fact he was already contemplating a trip to Lebanon for private purposes;

- he was travelling in Business Class.

In relation to Cr Weiley the following information was not provided;

- He was likely to undertake significant personal recreational activities in Lebanon
- He was already contemplating a private trip to Lebanon prior Council's consideration of the matter.

In his submission to the Commission, Mr Romano claimed that he understood the Mayoral Minute and Council resolution overrode Council's policy. He said he accordingly believed that reimbursement was authorised by the resolution and therefore there it was unnecessary for him to prepare a report to activate reimbursement.

Part 3 – Corruption Prevention Issues

Each year many Councillors and council officers travel overseas and around Australia on official business. The Commission accepts that public officials may undertake overseas travel that is necessary to conduct council business. However, the Commission views such travel as a potential corruption risk. This is because of the potential for public officials to accrue a personal benefit at ratepayers' expense.

Developing a travel policy

Public officials who undertake overseas travel should do so in accordance with a written policy. The policy should include processes covering:

- obtaining approval to travel
- the submission of travel expense claims
- the authorisation of payment of expenditure.

(i) *Approval to travel*

It is important that any policy covering overseas travel by public officials considers the circumstances in which it is appropriate for a council to fund the travel. As part of this requirement, a travel policy should make it a condition of approval that the benefits to the community and council are clearly demonstrated.

The Commission considers that in order to demonstrate community benefit, a minimum requirement would be the preparation of a proposed itinerary or program of official duties to be undertaken. In addition, any report recommending approval should articulate what will follow from the travel and identify the expected economic, social or other community benefits that will accrue to ratepayers.

Council funded travel to establish sister city relationships should not be an exception to these requirements.

The Commission is of the opinion that ratepayer funded official travel should not ordinarily be sought by councillors and council officers. In the absence of a demonstrable community benefit, such a practice is open to abuse by councillors and council officers wishing to take private holidays at ratepayers' expense.

Consequently, the estimated cost of any overseas trip should be clearly specified prior to the granting of its approval.

(ii) *Submitting a travel expenses claim*

A policy covering overseas travel should also be clear about the types of expenditure that can be claimed. Generally, the submission of receipts should also be required as a condition for reimbursement. Each type of item of expenditure should also be specified along with other relevant information, such as the class of travel.

(iii) *Authorising the payment of expenditure associated with an overseas trip*

An overseas travel policy should make it clear that authorising the payment of expenditure associated with an overseas trip is not merely a 'tick and flick' exercise. An authorising agent should be under an explicit onus to check all submitted expenditure claims comply with council policy. The delegations for authorising expenditure also need to be specified.

In addition, the Commission also recommends that councils contemplate the issue of public officials incorporating an element of private recreation into official travel. A council should consider how the costs of official travel will be separated from private travel if it decides to permit this practice. The overriding principle should be that any private recreational activities are not undertaken at council's expense.

Adherence to policy

Once a Council has developed a policy that includes overseas travel it is in the interests of accountability and transparency that it be followed. At the time of Cr Faker's and Cr Weiley's travel to Lebanon, Burwood Council had in place a policy covering Councillors' overseas travel.

In this respect Mr Romano stated that there was no requirement for the Policy to be adhered to because the trip was passed via a Mayoral Minute. That is, once Council had resolved to approve the trip to Lebanon, Mr Romano appeared to be of the view that the resolution could not be fettered by any other policy requirement. He stated

“That’s because it was a Mayoral Minute, and because it was done in the fashion that it – it was done, I don’t believe the Council’s policy applies.”

A Council can of course resolve to amend its own policies if it chooses. A Mayoral Minute may also be used as a mechanism to do this. However, in order for a Mayoral Minute and accompanying resolution to amend council policy it needs to clearly establish this intent. This was not the case with Cr Weiley’s Mayoral Minute about the trip to Lebanon. The Commission is concerned with any practice that involves reliance on a Council resolution alone as a justification for failing to comply with Council policy when the resolution does not clearly purport to override the policy. Any intent to do so should be manifest by clear and unambiguous language.

Recommendation 1

That Burwood Council ensure that all future proposals for Councillors’ overseas travel are presented and approved in accordance with its Councillors’ Expenses & Facilities Policy.

Burwood Council has advised the Commission that it has resolved to adopt this recommendation and has directed the General Manager to undertake an ongoing review of all policies and procedures in relation to implementation of the Expenses & Facilities Policy.

Declarations of conflicts of interest

Cr Faker had a personal interest in undertaking the trip to Lebanon. His personal interests included:

- his family connections to the Zhratagreen Charitable Association;
- the opportunity the trip provided for him to travel with friends and family, and visit relatives overseas;
- the private recreational activities he was likely to undertake in Lebanon;
- the fact he was already contemplating a trip to Lebanon for private purposes.

Cr Weiley also had a private interest in visiting Lebanon in that he;

- had a personal a desire to travel to Lebanon and was contemplating a private trip to Lebanon with friends;
- was aware that he would be undertaking significant recreational activities whilst in Lebanon.

Cr Faker’s and Cr Weiley’s private interests in travelling to Lebanon could have quite reasonably created the perception of a conflict of interest in accepting reimbursement for their flight costs. This is not to suggest that merely harbouring a desire to visit a particular location constitutes a conflict of interest.

The Commission is not opposed to the involvement of Councillors in the establishment of sister city relationships with their family’s countries of origin. The Commission also appreciates that the establishment of sister city relationships can involve an element of hospitality and ceremonial activities. However, Cr Faker and Cr Weiley exposed themselves to suggestions of inappropriate conduct by failing to manage their personal interests in travelling to Lebanon.

As a minimum, Cr Faker and Cr Weiley should have disclosed their personal interests in travelling to Lebanon, particularly when the issue of their reimbursement at Council’s expense arose. It is arguable that their failure to do so could involve a breach of Council’s code of conduct. However, it should be noted that Council’s code at the time did not clearly prescribe how Councillors should manage the perception of conflicts of interest. Issues concerning breaches of a Council’s code of conduct were also outside the Commission’s investigative jurisdiction at the time.

In the same factual circumstances the new prescribed model code for local councils would require a councillor to disclose their personal interests in undertaking official travel at Council’s expense. The code requires all Councillors as a minimum to disclose the nature of any non-pecuniary conflict of interest in a matter.⁸ It should also be noted that the *Local Government Amendment (Discipline) Act 2004* has provided the Commission with additional scope to make corrupt conduct findings against a Councillor

⁸ NSW Department of Local Government, *The Model Code of Conduct for Local Councils in NSW*, Dec 2004, p. 13

in situations where a substantial breach of a council's code of conduct has occurred as provided for in section 9(b) of the *ICAC Act 1988* and the requirements of section 8 of the *ICAC Act 1988* are also met.

Recommendation 2

That Burwood Council remind all Councillors of the requirement in the prescribed model code that all non-pecuniary conflicts of interest be disclosed and managed by Councillors.

Burwood Council has advised the Commission that it has adopted this recommendation and is committed to ongoing training to ensure Council remains appraised of its obligations under the *LG Act* and its code of conduct.

Part 4 – Planning decisions at Burwood Council

The Commission investigated complaints that Cr Faker failed to declare pecuniary interests in respect of two matters.

In one of these matters the Commission recommends that consideration be given to reviewing relevant provisions of the LG Act.

For the remaining matter the Commission recommends that the DLG consider whether the matter requires referral to the Pecuniary Interest & Disciplinary Tribunal.

The purchase of 13 Greenhills Street, Croydon

On 27 June 2003 Cr Faker and his wife, Julie Faker (nee Obeid) purchased a property at 13 Greenhills Street, Croydon. They paid a 10% deposit of \$140,000. The property was settled on 27 January 2004 when the balance of the total purchase price of \$1,400,000 was paid. Greenhills Street is within the boundaries of the Burwood Council area. The land parcel is 1,556m² with a four bedroom, single storey house.

Cr Faker told the Commission he intends to use the land to develop a child care centre. There is a possibility that the development application for the child care centre would be considered by Council, as opposed to approval or refusal under delegated authority.

Cr Faker borrowed \$1,000,000 from a financial institution to pay for the property. The remaining \$400,000 plus transaction costs were raised privately.

Cr Faker informed the Commission that Cr Weiley and Mrs Rosemary Bogdanovski, his sister-in-law, had both provided him with financial assistance in purchasing 13 Greenhills Street.

A Loan from Cr Weiley

On 4 July 2003 Cr Weiley's wife, Ms Angela Turco, wrote two cheques. One was for \$10,000 made out to Mrs Julie Faker. The other was for \$140,000 and was made out to Time Realty Real Estate in Five Dock. This was the agency managing the sale of 13 Greenhills Street. The \$140,000 was the Faker's

deposit for 13 Greenhills Street, being 10% of the total purchase price.

The Commission obtained a copy of the Deed of Loan dated 4 July 2003 for the \$150,000 loan (that is, \$10,000 plus \$140,000 deposit). The Deed in fact nominated Mrs Julie Faker as the borrower and Ms Angela Turco as the lender.

The Deed of Loan specified the proposed repayment date for the principal plus interest as being eight months after the date of the Deed (i.e. 4 March 2004). However, at the time of this report the Commission understands that none of the money has been repaid. The Deed of Loan also nominates Mrs Faker's interest in a property in Salisbury Road, Camperdown as security for the loan.

Section 449 of the Local Government Act 1993

Section 449 of the LG Act 1993 sets out the requirements for the lodgement of annual pecuniary interest returns by Councillors and other designated persons. The *Local Government (General) Regulation 1999* specifies the information Councillors and designated persons must furnish in their returns.

The pecuniary interests requiring declaration are:

- Interests in real property (clause 40D);
- Gifts of more than \$500 (clause 40E);
- Contributions to travel of more than \$250 (clause 40F);
- Interests and positions in corporations (clause 40G);
- Interests in trade unions and professional or business associations (clause 40H);
- Dispositions of real property (clause 40I);
- Sources of income of more than \$500 (clause 40J); and
- Debts of more than \$500 (clause 40K).

Section 449(6) of the LG Act also states:

Nothing in this section or the regulations requires a person to disclose in a return lodged under this section

an interest of the person's spouse or de facto partner or a relative of the person.

Cr Faker did not disclose the \$150,000 debt in his pecuniary interest return dated 25 August 2004. Cr Weiley's pecuniary interest return of 26 August 2004 also did not disclose the loan repayments (of either principal or interest of 6%) as an expected source of income. Cr Weiley says that he had received legal advice that he did not have to declare the loan before completing the return. Section 449(6) would indeed appear to suggest that each was not obliged to do so as on its face, the \$150,000 loan represents respective interests held by Mrs Julie Faker and Ms Angela Turco, and not Cr Faker or Cr Weiley. Both councillors though appear also to have had some interest in the loan.

The cheques for \$10,000 and \$140,000 were drawn on Ms Turco's account. However, it was Cr Weiley who transferred an amount of \$151,776.37 from a 3 month term deposit account in his name to Ms Turco's account on 4 July 2003.

Cr Faker told the Commission that he was aware that Cr Weiley's term deposit was the origin of the funds for the loan:

“... I – remember discussing it or something and advised that, you know I was short on funds we could've been discussing the property – I can't remember to be honest and I remember him making the offer. Saying “look if you like I've got some money sitting in a –” I think he had a deposit or something or a some type of account, he said to me “it's just sitting there I don't need it”, I said “look are you sure?”, like I felt a bit bad, you know, but he helped out.”

Cr Weiley advised the Commission that his term deposit originated from a combination of the proceeds of the sale of a property in Webb Street, Croydon; the repayment of a loan from his father-in-law and proceeds from the estate of his wife's aunt.

Both Cr Faker and Cr Weiley repeatedly referred to themselves as parties to the loan when spoken to by the Commission. For example, Cr Weiley said:

“I gave him \$150,000. I don't know – it sounds terrible, but I did.”

“... I've got a legal binding agreement and John was buying property so I loaned him the money.”

“It's, it's all straight up and down as far as I'm concerned. He bought a property, I loaned him the money, that's it.”

“... I probably should be a little bit more careful with my money but I'll be a long time dead.”

“I think my agreement with John says 150 [thousand]”

“I went with John and personally paid that cheque with him.”

In a similar vein were the comments of Cr Faker;

A: *I borrowed from certain banks and a friend.*

Q: *And which friend is that?*

A: *Well David Weiley.*

There is no evidence that Cr Faker and Cr Weiley intended to avoid disclosure under the LG Act. However, they both acknowledged that they were interested parties to the loan and neither declared it as a pecuniary interest.

Cr Faker also told the Commission that the loan was transacted in the names Mrs Faker and Ms Turco as a result of legal advice obtained by Cr Weiley.

Reviewing section 449 of the Local Government Act 1993

The Commission is of the view that consideration should be given to reviewing section 449(6) of the LG Act to cover the factual situation of declaring significant interests held by Councillors' spouses as outlined.

The Commission considers that there are significant public interest factors in requiring matters of this kind to have been disclosed including:

1. The size of the loan;
2. The nature and location of the proposed project (that is the intent to lodge a significant development application in

relation to the property and its location in the Burwood local government area);

3. The fact the loan was from the spouse of a fellow Councillor and Mayor who participates in Council's consent authority functions.

This may go some way to addressing a potential conflict of interest in similar circumstances arising from any interest Cr Weiley may have in consideration of any development application for 13 Greenhills Street as the ability of Cr Faker and/or his wife to repay the loan could be dependent on the success of the development.

Recommendation 3

That the Department of Local Government/ Minister for Local Government review the terms of s.449(6) of the Local Government Act 1993 with a view to requiring the disclosure of significant pecuniary interests held by spouses, de facto partners or relatives that form part of the same income unit as a person to whom the section applies.

In any event given the circumstances of the loan as disclosed by the Commission's inquiries and the nature of those interests required to be declared as set out in section 449 of the LG Act, it is by no means clear that both Cr Weiley and Cr Faker were not obliged to declare the loan in their respective annual pecuniary interest returns. On this basis the Commission recommends that the DLG give consideration to whether this matter should be referred to the Pecuniary Interest and Disciplinary Tribunal.

Recommendation 4

That the Department of Local Government give consideration to whether the failure of Cr Faker and Cr Weiley to declare the loan of \$150,000 between their respective spouses should be referred to the Pecuniary Interest and Disciplinary Tribunal.

10-12 Grantham Street, Burwood

Burwood Council approved a development application for an 18 unit complex at 10-12 Grantham Street on 10 August 2004. The development applicant was Nasser Constructions P/L. Nasser Constructions P/L is owned by Nasser Developments P/L, which is owned by Mr John Mouawad. It has been noted that Mr John Mouawad is Cr Faker's wife's cousin.

Nasser Constructions P/L purchased 12 Grantham Street on 21 May 2004 for \$900,000. Settlement took place on 21 September 2004, after development consent was granted by Burwood Council. Nasser Investments P/L purchased 10 Grantham Street also on 21 May 2004 for \$1,000,000 and settlement also occurred on 21 September 2004.

Mrs Rosemary Bogdanovski is the sole director of Nasser Investments P/L. As mentioned, Ms Bogdanovski is Cr Faker's sister-in-law (sister of Cr Faker's wife). Mr John Mouawad and Mrs Rosemary Bogdanovski were in partnership to develop 10 - 12 Grantham Street. Mrs Bogdanovski also told the Commission that Mr Kabalen Faker (Cr Faker's father) has an equitable interest of approximately \$300,000 in the development. She confirmed that he would receive a share of the profits from the development.

Three matters were considered at the Council Building and Development Committee meeting of 10 August 2004:

1. 135-137 Liverpool Road, Enfield (establishment of a remedial massage service);
2. 33 Murray Street, Croydon (erection of a dual occupancy);
3. 10-12 Grantham Street, Burwood (demolition and erection of residential flats).

The meeting minutes show that at 6:35pm, prior to consideration of item 3, Cr Christopheorge made a declaration of pecuniary interest in the Grantham Street development. He stated that he was the manager of an investment property in the area. He then left the meeting and did not return.

The minutes also record that at 6.38pm Cr Faker left the meeting and did not return. He however made no declaration of a pecuniary interest. Council then approved the Grantham Street development application. Cr West requested that her name be recorded as having voted against the motion to approve. The meeting concluded at 7:30pm.

Cr Faker told the Commission he knew who was involved in the Grantham Street development. While he did not believe that he had a pecuniary interest in the development he stated he choose to leave the chamber for “perception reasons”.

Section 451(1) and (2) of the LG Act states:

451 Disclosure and presence in meetings

- 1) *A councillor or a member of a council committee who has a pecuniary interest in any matter with which the council is concerned and who is present at a meeting of the council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.*
- 2) *The councillor or member must not be present at, or in sight of, the meeting of the council or committee:*
 - (a) *at any time during which the matter is being considered or discussed by the council or committee, or*
 - (b) *at any time during which the council or committee is voting on any question in relation to the matter.*

Section 443 of the LG Act also provides that a Councillor has a pecuniary interest in a matter if the pecuniary interest is the interest of a relative. The LG Act defines “relative” to include:

- (a) *the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person’s spouse,*
- (b) *the spouse or de facto partner of the person or of a person referred to in paragraph (a).*

Cr Faker’s relationship with his father and sister-in-law created a pecuniary interest for him in the Grantham Street development. While Cr Faker did not vote on this matter or participate in its consideration he appears to have been initially “present at a meeting of the Council” at which the Grantham Street development application was being considered and in relation to which he does not appear to have formally declared a pecuniary interest. The language of section 451 is unclear however, as to whether merely removing oneself from the meeting without also additionally disclosing an interest in the matter is sufficient to comply with the section.

Recommendation 5

That the Department of Local Government give consideration to whether the Burwood Council’s consideration of 10-12 Grantham Street, Burwood by its Building and Development Committee meeting of 10 August 2004 and Cr Faker’s interest in the matter should be referred to the Pecuniary Interest & Disciplinary Tribunal.