

INDEPENDENT COMMISSION AGAINST CORRUPTION

OPERATION GALLEY

OPENING STATEMENT OF COUNSEL ASSISTING THE COMMISSION

(ZELIE HEGER)

A. SCOPE AND PURPOSE OF INQUIRY

1. The principles of integrity and impartiality are of central importance to the role of local councillors in the exercise of their official functions. Those principles are reflected in the Model Code of Conduct for Councils in NSW, which is prescribed for the purposes of s 440 of the *Local Government Act 1993* (NSW) (**LG Act**). In short, that Code requires that councillors be vigilant in identifying conflicts of interests and avoiding or appropriately managing them. It also requires that councillors avoid situations giving rise to the appearance that a person, through the provision of gifts or benefits or hospitality, is attempting to secure favourable treatment, or accept gifts or benefits that may be perceived as an attempt to influence them in the exercise of their official functions.
2. Those obligations are particularly important in the context of council decisions on development controls and zoning, which have the potential to generate very large financial benefits for developers, potentially at the expense of the amenity of the local community.
3. This inquiry concerns the conduct of then Councillors Hindi, Badalati and Sansom in making decisions in relation to planning applications regarding two developments in Hurstville, and also the conduct of three private individuals – Ching Wah or Philip Uy, Wensheng Liu and Yuqing Liu – in their interactions with those councillors. Each of Mr Hindi, Badalati and Sansom was a councillor of Hurstville City Council (**HCC**) until 12 May 2016, when Council was dissolved and went into administration. It was amalgamated with Kogarah City Council to form Georges River Council (**GRC**). Mr Sansom was not re-elected to GRC, but Mr Hindi and Badalati were re-elected on 9 September 2017 and served until December 2021. As such, none of Mr Hindi, Badalati or Sansom are currently serving as local councillors at GRC or otherwise.
4. The planning applications concerned two developments:
 - (a) First, a block of 75 apartments located at 1-5 Treacy St, Hurstville, known as “The One” (**Treacy St Development**). In the initial DA, the construction costs were stated

to be approximately \$30 million, but in subsequent modification applications was stated to be \$44 million. The Treacy St Development is situated in the centre of Hurstville, only 700m from both Hurstville and Allawah Railway Stations. The DA was lodged with HCC in October 2014, and the three Councillors made various decisions on that project throughout 2014 to 2016. Mr Hindi and Badalati continued to make decisions in 2017 and 2018.

- (b) The second is a development known as “Landmark Square”, situated at 53-75 Forest Road, 108-126 Durham Street and 9 Roberts Lane, Hurstville (**Landmark Square Development**). The announcement of this inquiry referred to 53-57 Forest Road, but that was an error: it is 53-75 Forest Road. It is a large site of approximately 14,000m² on the eastern edge of the Hurstville urban centre, about 800m metres from Hurstville train station and 400m from Allawah station. The proposal was to build 357 residential apartments, a 200 room hotel and various other commercial uses. A planning proposal was lodged in June 2015, which proposed to amend the relevant local environmental plan to rezone the site – from industrial to mixed use – and increase the permissible building height and floor space ratio. Councillors Hindi, Badalati and Sansom voted in favour of that planning proposal in April 2016. Councillors Hindi and Badalati continued to make decisions in relation to the development from 2017 to 2019.

5. This inquiry concerns allegations that:

- (a) *First*, since 2014, then Councillors Hindi, Badalati and Sansom:¹
- i. sought and/or accepted benefits as an inducement or reward for partially and dishonestly exercising their official functions to favour the interests of Philip Uy, Yuqing Liu and Wensheng Liu, in relation to planning matters affecting the Treacy St and Landmark Square Developments; and
 - ii. deliberately failed to declare or properly manage any conflict of interest arising from their relationships with Philip Uy, Yuqing Liu and Wensheng Liu in relation to the Treacy St and Landmark Developments.
- (b) *Secondly*, that since 2014, Philip Uy, Yuqing Liu and Wensheng Liu provided benefits, including overseas flights and accommodation, to then Councillors Hindi, Badalati and

¹ Only Mr Hindi and Mr Badalati were re-elected to Georges River Council. Mr Sansom ceased being a councillor in 2016 when Hurstville City Council was dissolved and was not re-elected to Georges River Council.

Sansom, as a reward or inducement to favour their interests in relation to Council decisions regarding planning matters affecting the Treacy St and Landmark Square Developments.

B. THE COMMISSION'S FUNCTIONS

6. Before I address the detail of the issues to be explored in this inquiry, I will say something about the Commission's functions and powers. This inquiry is being conducted pursuant to the Commission's functions under s 13 of the ICAC Act, which include investigating circumstances which in the Commission's opinion imply that corrupt conduct may have occurred.
7. For conduct to constitute "corrupt conduct" under the ICAC Act, it must fall within s 8 of the Act but not be excluded by s 9 of the Act.
8. Relevantly for Mr Hindi, Mr Badalati and Mr Sansom, s 8 includes any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions (s 8(1)(b)) or that constitutes or involves a breach of public trust (s 8(1)(c)).
9. Relevantly for Philip Uy, Wensheng Liu and Yuqing Liu, s 8 includes:
 - (a) conduct of any person that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official (s 8(1)(a)); and
 - (b) conduct of any person that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official and which could involve bribery, or obtaining or offering secret commissions (s 8(2)).
10. Under s 9, for conduct to be "corrupt conduct" it must also constitute or involve (relevantly) a criminal offence or a disciplinary offence: s 9(1)(a), (c). It will therefore be necessary for the Commission to determine whether it is satisfied that the persons under investigation have engaged in conduct that could constitute or involve a criminal offence or disciplinary offence.
11. Importantly, in considering that matter the Commission is doing so as an investigatory body and not as a criminal court. It is not making any findings of criminal guilt.

12. The Commission is also required to include in its report a statement in respect of each “affected person”² as to whether or not the Commission is of the opinion that consideration should be given to the obtaining of the advice of the Director of Public Prosecutions with respect to prosecution of that person for a specified criminal offence: s 74A(2).
13. The Commission will also consider making recommendations as to changes that should be made to laws, practices or procedures with a view to reducing the likelihood of the occurrence of corrupt conduct in the future and to promote the integrity and good repute of public administration: s 13(1)(g), 13(3)(b) and 74A(1)(a).

C. COUNILLORS HINDI, BADALATI AND SANSOM AND THEIR OBLIGATIONS AS PUBLIC OFFICIALS

14. I will now explain the roles held by Councillors Hindi, Badalati and Sansom and their obligations as public officials, and then the relationships they had with each of Philip Uy, Wensheng Liu and Yuqing Liu in relation to Treacy St and Landmark Square.

Constantine Hindi

15. Mr Hindi was a Liberal Party councillor on HCC between 2004 and 12 May 2016 (when HCC was dissolved). Following the amalgamation of HCC and Kogarah Council, he was elected to the newly formed GRC on 9 September 2017 and remained a councillor until December 2021, when he did not stand for re-election. He was Mayor of HCC between September 2014 and September 2015.
16. Mr Hindi has also been a member of the Sydney East Joint Regional Planning Panel (**JRPP**) in 2014-2015 which made decisions in relation to the Treacy St development at various times. Regional Planning Panels were at that time established under s 23G of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**). Those panels were given the power to determine DAs in some circumstances, including for example where the capital investment value was in excess of \$20 million.

Vincenzo Badalati

17. Mr Badalati was a Labor Party councillor on HCC between 1999 and 12 May 2016 when HCC went into administration. It is notable that Mr Hindi and Mr Badalati were from

² That is, a person against whom substantial allegations have been made in the course of or in connection with the investigation: ICAC Act, s 74A(3).

different sides of politics, and yet, as the evidence will show, they worked very closely in relation to the Treacy St and Landmark Square developments.

18. Like Mr Hindi, Mr Badalati was elected to the newly formed GRC on 9 September 2017 and remained a councillor until December 2021, when he did not stand for re-election. He was Mayor of HCC twice, including between September 2015 and May 2016. Mr Badalati was also at one time a member of the regional planning panel which made decisions in relation to the Treacy St development.

Phillip Sansom

19. Mr Sansom was councillor with HCC between 1991 and May 2016. He was initially in the Labor Party, but then later served as an Independent between 2012-2016. In 2011, he was given the title of Emeritus Mayor which he still retains. Mr Sansom ran as an Independent in the September 2017 election for GRC but was not re-elected. Thus, insofar as this inquiry concerns Mr Sansom, it is only concerned with his conduct up until May 2016. Mr Sansom was also at one time a member of the regional planning panel which made decisions in relation to the Treacy St development.

Their obligations as public officials

20. Each of the Councillors was required to comply with HCC's Code of Conduct made for the purposes of s 440 of the LG Act.³ When Mr Hindi and Mr Badalati were re-elected to GRC, they were likewise required to comply with its Code of Conduct which was in relevantly similar terms.
21. *First*, the Councillors were required to identify and avoid, or appropriately manage, conflicts of interest (cl 4.2). A conflict of interest exists where a reasonable and informed person would perceive that a councillor could be influenced by a private interest when carrying out their public duty (cl 4.1). A private interest can be pecuniary or non-pecuniary:
- (a) a **pecuniary interest** is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or to a family member (cl 4.5, cl 4.6). The councillors were required to lodge initial and annual disclosures of pecuniary interests that could potentially be in conflict with their

³ HCC Code of Conduct dated 7 March 2013; and GRC Code of Conduct dated September 2017. References in this section are to both the HRC Code and GRC Code, which were to the same effect.

duties (cl 4.7) and to disclose the interest at council meetings and not participate in those meetings;⁴

- (b) a **non pecuniary interest** is an interest that can arise out of family or personal relationships or associations (cl 4.10). The Code required that councillors disclose non-pecuniary interests fully and in writing, even if the conflict is not significant (cl 4.12). If the interest is significant, such as a friendship or business relationship (cl 4.15), then the conflict must be managed by removing the source of conflict or by having no involvement in the relevant matter (cl 4.16).

22. *Secondly*, they were required avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind either to the councillors or to their immediate family members, is attempting to secure favourable treatment from them or the Council (cl 5.1, cl 5.2). They were also required not to seek or accept a bribe or improper inducement, or accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duties (cl 5.5).
23. The Code of Conduct for the JRPP, on which each of Mr Hindi, Badalati and Sansom served from time to time, contained similar obligations.

D. CHING WAH (PHILIP) UY, YUQING LIU AND WENSHENG LIU AND THEIR INTERESTS IN TREACY ST AND LANDMARK SQUARE

24. I will now explain how Philip Uy, Wensheng Liu and Yuqing Liu were connected to the Treacy St and Landmark Square developments, and their relationships with the three councillors.

Phillip Uy

25. Mr Uy's Chinese name is Ching Wah Uy. It seems he was also known, as least to Mr Hindi, as "Faye". Mr Uy started Hurstville Real Estate Agency in the 1990s, situated at 206 Forest Road in Hurstville.⁵ He was also the sole director and secretary of a building company called Gencorp Pty Ltd, which was established in 2012⁶ and which was the builder for the Treacy St Development. Mr Uy also worked closely with Wensheng Liu's company, the

⁴ At the relevant time, these obligations were also imposed by ss 449 and 451 of the LG Act.

⁵ Vol 1.7 p 121.

⁶ Vol 1.7 p 31.

One Capital Group, to progress the Landmark Square planning proposal. Mr Uy had invested in both the Treacy St and Landmark Square developments.

26. Mr Uy has known Vince Badalati and Philip Sansom for at least 15 years. The evidence will show that since at least 2007 Mr Uy met up with Mr Badalati and Mr Sansom in China or Hong Kong regularly, sometimes multiple times a year, and spent weekends together eating, drinking, and doing karaoke. Mr Sansom has described these as “boys weekends”. That fact alone raises a potential conflict, given that from 2014 Mr Sansom and Mr Badalati were considering the Treacy St developments, but did not declare any conflict of interest in relation to those developments.
27. Mr Uy has known Mr and Mrs Hindi since at least 2014. Mrs Hindi, like Mr Uy, is a real estate agent trading under the name Sydney Realty.⁷
28. In April 2016, Mr Uy took a trip to China with Mr and Mrs Hindi, along with Mr Badalati. This trip will be a significant focus of this inquiry, and I will return to it in more detail shortly. The trip is important because it occurred only a week before Mr Hindi and Mr Badalati, along with Mr Sansom, voted on both the Treacy St and Landmark Square Developments at a Council meeting on 20 April 2016. That meeting on 20 April is a very significant meeting and will be one focus of this inquiry.
29. The inquiry will examine the circumstances of that trip and who paid for it. There is a question whether Mr Uy paid for some of the Hindis’ and Mr Badalati’s expenses, or facilitated their payment on behalf of Wensheng Liu or Yuqing Liu. I will now explain who those two gentlemen were, and what their interests were in the two developments.

Wensheng Liu

30. Wensheng Liu is a property developer. Mr Liu was a co-director of GR Capital Group Pty Ltd (**GR Capital**), which in October 2014 lodged a development application for 1-5 Treacy St.⁸ As mentioned, Mr Uy’s company Gencorp was the builder for the project. As I will explain, the DA came before Council and the JRPP multiple times throughout 2014 to 2016. The DA was approved by the JRPP (of which Mr Sansom and Mr Hindi were members) on

⁷ Vol 1.7 p 169.

⁸ Vol 1.3 p 4.

1 April 2015.⁹ Further decisions regarding the development were made by Council in 2015, 2016 and 2018.

31. Mr Liu was also the sole director and secretary of the entity initially behind the Landmark Square planning proposal - The One Capital Group Pty Ltd (**One Capital**).¹⁰ One Capital was registered on 21 July 2014,¹¹ but went into administration in October 2018.¹² One Capital acquired the options for the properties comprising Landmark Square in August 2014¹³ and instructed a firm of architects and planners, Dickson Rothschild, to prepare the planning proposal to rezone the land. Mr Uy worked with Mr Liu on this project: he was involved in instructing Dickson Rothschild in the preparation of the planning proposal and at one time even had the title of “General Manager” of One Capital.
32. I expect the evidence will show that Mr Liu had an association with Mr Sansom and Mr Badalati from at least 2014. Travel records and text messages situate them in China or Hong Kong at the same time in 2014 and 2015, and sometimes together with Mr Uy.
33. In April 2016, Mr Liu also travelled to China with Mr Uy, Mr and Mrs Hindi, and Mr Badalati, on the same trip I mentioned earlier, the week before key decisions were made by Council on 20 April 2016 in relation to both developments.

Yuqing Liu

34. Yuqing Liu is a businessman based in China. He is no relation to Wensheng Liu. His company in China is known as Tangshan Xinfeng Thermoelectric Group Co Ltd (**Xinfeng**), but on 21 April 2016 there was also registered in Australia a company called Xinfeng Australia International Investment Pty Ltd.¹⁴ In April 2016 Yuqing Liu signed an agreement with Wensheng Liu whereby he agreed to invest \$50 million in the Treacy St Development and \$80 million in the Landmark Square Development.¹⁵
35. It is not suggested that Mr Sansom had any relationship with Yuqing Liu. However the evidence will show that, by March 2016 at the latest, Yuqing Liu had met both Mr Hindi and

⁹ Vol 1.3 p 238.

¹⁰ Vol 1.7 p 179, 181-2, 214.

¹¹ Vol 1.7 p 178.

¹² Vol 1.7 p 182.

¹³ Vol 1.2 p 1, 238,

¹⁴ Vol 1.7 p 202.

¹⁵ Vol 1.4 p 108.

Mr Badalati at a dinner in Chinatown in Sydney, where the agreement I just mentioned was first signed. In April 2016, his company Xinfeng hosted Mr and Mrs Hindi and Mr Badalati in China, including inviting them to attend a ceremony and dinner at a hall in the Xinfeng building where the same agreement between Yuqing Liu and Wensheng Liu was signed again. As I said I will come to the circumstances of that trip more closely shortly.

36. To the Commission's knowledge, Mr Liu has not been in Australia since 2018. However, he has been notified of the scope of this inquiry and been invited to participate in an interview via video-link. While he indicated a willingness to be interviewed, attempts to arrange that interview have been unsuccessful to date. Mr Liu is not presently legally represented at this inquiry and it is not presently anticipated that he will be giving evidence. However, the invitation for him to participate in an interview to tell his side of the story still stands.

E. TREACY ST AND LANDMARK SQUARE

37. I will now turn to the detail of the inquiry. The issues concerning the three councillors and the three private individuals concern the same set of underlying facts. They concern the alleged provision of benefits by Mr Uy, Mr Wensheng Liu and/or Mr Yuqing Liu to Councillors Hindi, Badalati and Sansom (and an acceptance by them of those benefits) as an inducement or reward for them partially and dishonestly exercising their official functions in their favour in respect of the Treacy St and Landmark Square Developments.

Oct 2014 to Dec 2015: Treacy St DA is lodged and considered by the JRPP; and a further modification application is lodged

38. The inquiry will focus on events from 2014 onwards, which is when work on both the Treacy St and Landmark Square proposals really took off. As mentioned, on 3 October 2014, Mr Liu's company GR Capital lodged a DA for the Treacy St Development with HCC (DA 2014/1083).¹⁶ At that time it was for an 11 storey mixed use development, comprising 75 apartments as well as a commercial/industrial/retail space of 400m² and a basement carpark. The total cost of the work to be undertaken was about \$30 million.
39. The proposed height and floor space ratio for the development was well in excess of the then applicable planning controls. The relevant planning controls at the time permitted about 7 storeys and an FSR of 3:1, where as the development application was for 11 storeys and an FSR of 4.9:1.¹⁷ FSR is an acronym that will be referred to throughout this inquiry. It is a

¹⁶ Vol 1.3 p 4.

¹⁷ Vol 1.3 p 71.

ratio of the floor area that can be built compared to the total area of the block. So a floor space ratio of 3.0:1 means that, for a block of 1000m², there is a permissible floor area of 3000m². Developers obviously have an interest in maximising the FSR, because more floor area means more apartments, which means more money.

40. By 31 October 2014, the DA for the Treacy St Development had been referred to the Sydney East JRPP, of which Mr Hindi and Mr Sansom were members.¹⁸
41. Around the same time GR Capital made an offer to HCC to enter into a Voluntary Planning Agreement (VPA).¹⁹ VPA is another acronym that will be used throughout this inquiry. A VPA is a legal document agreed between developers and local councils under s. 7.4 (or, at the relevant time, s 93F) of the EPA Act in connection with a DA or planning proposal. Under a VPA the developer agrees to dedicate land, pay monetary contributions or provide other material public benefits usually for infrastructure, services or other public amenities. They are an important tool in securing public benefit from developments. It is obviously important for councillors to carefully consider whether a VPA offers sufficient benefit to the community given the nature of the development.
42. In this case, the VPA offer proposed to dedicate a strip of land, construct a new footpath and undertake some landscaping works and road upgrade works²⁰ and was later amended to propose the dedication to Council of a ground floor retail tenancy and car space.²¹ In November 2014, Council staff prepared a report to Council recommending that the VPA offer be refused on the basis that it did not provide sufficient public benefit for an apartment block of that scale.²² However, on 19 November 2014, in a closed meeting, Mr Badalati and Sansom successfully moved for Council to accept the VPA.²³ The decision caused some controversy at Council: a rescission motion was later lodged, but that was unsuccessful, with Mr Hindi, Mr Badalati and Mr Sansom voting against it.²⁴
43. While all of this was happening in 2014, the evidence suggests that Mr Uy was in fairly regular contact with Mr Sansom and Mr Badalati. Travel records indicate that Mr Uy was in

¹⁸ Vol 1.3 p 66.

¹⁹ Vol 1.3 p 1.

²⁰ Vol 1.3 p 1.

²¹ Vol 1.3 p 65.

²² Vol 1.3 p 70.

²³ Vol 1.3 p 7; Vol 4.5 19/11/14 minutes.

²⁴ Vol 4 17/12/14 minutes.

China or Hong Kong at the same time as one or other of Mr Sansom or Mr Badalati a couple of times in 2014. The same applies to Mr Wensheng Liu.

44. None of Mr Hindi, Mr Badalati or Mr Sansom declared any conflict of interest in respect of any relationship with Mr Uy or Mr Liu.
45. On 1 April 2015, the Sydney East JRPP, of which Mr Sansom and Mr Hindi were members, approved the DA for the Treacy St Development subject to deferred commencement.²⁵ The evidence will show that, just before this vote, Mr Uy was again in China or Hong Kong at the same time as Mr Badalati, and just after this vote he was in China or Hong Kong at the same time as Mr Sansom.
46. On 17 December 2015, GR Capital lodged a Section 96 application in respect of the Treacy St Development.²⁶ This was a significant modification, which sought to increase the building height by 5 storeys (27 units),²⁷ which represented yet a further height increase over and above the existing planning controls. The annexed VPA proposed a contribution of \$200,000 to be used for infrastructure.²⁸ This application and VPA were ultimately considered at the Council meeting on 20 April 2016, which, as I mentioned, was a significant meeting and which I will return to later.

August 2014 – March 2016: One Capital acquires the options for Landmark Square; the planning proposal is lodged; Council staff are asked to finalise it as soon as possible

47. Also in 2014, there was activity regarding the Landmark Square development. By August 2014 Mr Wensheng Liu's other company One Capital had acquired options to purchase some of the property.²⁹ In October, One Capital engaged Dickson Rothschild, a firm of architects, planners and urban designers, to prepare a master plan and planning proposal for the Landmark Square Development.³⁰ Nigel Dickson of that firm worked on the planning proposal for several years, as did Michael Gheorghiu for some time. Mr Dickson regularly attended meetings with Mr Uy, who was his primary contact for the Landmark Square work. Mr Dickson will also give evidence that, on a few occasions, Mr Hindi or Mr Badalati attended meetings with him and Mr Uy outside Council offices regarding Landmark Square.

²⁵ Vol 1.3 p 236.

²⁶ Vol 1.4 p 22.

²⁷ Vol 1.4 p 23.

²⁸ Vol 1.4 p 26.

²⁹ Vol 1.2 p 1, p 238.

³⁰ Vol 1.3 p 13.

The reasons why Mr Hindi and Mr Badalati considered it appropriate to attend those meetings, while also being councillors who would ultimately vote on the proposal, will be explored in this inquiry.

48. On 12 June 2015, Dickson Rothschild lodged the planning proposal with HCC.³¹ It proposed a change in zoning from IN2 Light Industrial to B4 Mixed Use, a change in FSR from 1:1 to 4.5:1, and a change in maximum height from 10m to 90m.³² It was necessary to amend the Hurstville Local Environmental Plan for those changes to be implemented. The plan was to build an apartment block of 357 units, a 200 room hotel, retail uses including a supermarket, commercial floor space, a child care centre and community facilities.³³ It was a very large development worth hundreds of millions of dollars.
49. In February 2016, Mr Uy was again in China or Hong Kong at the same time as Mr Badalati and Mr Sansom.
50. On 8 March 2016, a council officer noted that planning staff had been “requested that the review and assessment of the Planning Proposal and VPA offer be undertaken as quickly as possible and that they be presented to the next Council meeting on 6 April 2016”.³⁴ Council obtained legal advice on the VPA. The VPA proposed a monetary contribution of \$1 million for roads and traffic management works, but this was made conditional on the proposed hotel being approved. The legal advice was that it should not be entered into on the terms proposed. The advice was that, because the money was not to be only upon approval of the hotel, in effect “nothing is offered for the increase in FSR...or for the provision of bonus FSR”.³⁵ That is obviously a concern in circumstances where the increase in FSR alone represented a very significant financial gain for One Capital at the time. The advice said that the “important question is whether the Council would be prepared to change the planning controls as sought by the planning proposal without any benefits being provided under the VPA”.³⁶
51. The Landmark Square planning proposal was ultimately considered at the Council meeting on 20 April 2016, together with the Treacy St VPA. Before I get to that meeting, I want to

³¹ Vol 1.3 p 259.

³² Vol 1.3 p 259.

³³ Vol 1.3 p 268.

³⁴ Vol 1.4 p 73.

³⁵ Vol 1.4 p 81.

³⁶ Vol 1.4 p 81.

explain what occurred in March and early April 2016 involving the signing of an agreement between Wensheng Liu and Yuqing Liu and the trip to China taken by Mr and Mrs Hindi and Mr Badalati.

March 2016: Yuqing Liu comes to Australia; Hindi and Badalati attend signing ceremony

52. In March 2016, Yuqing Liu travels to Australia and meets Mr Badalati and Mr Hindi for the first time. The evidence suggests that, aside from his interest in Treacy St and Landmark Square, he was interested in building a waste to energy plant in New South Wales similar to the plant his company Xinfeng was operating in Tangshan, China. The basic proposition was that waste would be incinerated to generate energy which could be sold in NSW.
53. Soon after he arrived he met with Mr Badalati at his Council office. Mr Badalati was Mayor at the time. It has been said that the purpose of this meeting was to discuss the possibility of building a waste to energy plant in Hurstville, although quite how that could be achieved in an area like Hurstville is unclear.
54. At some point, Mr Badalati, as well as Mr and Mrs Hindi, were invited to attend a dinner in Chinatown with Yuqing Liu, which occurred on 18 March 2016. Wensheng Liu and Philip Uy were also there.
55. At that dinner, Wensheng Liu and Yuqing Liu signed an agreement, as representatives of their respective companies One Capital and Xinfeng.³⁷ The agreement concerned a number of projects in Sydney, including the Treacy St and Landmark Square developments.³⁸ It was agreed that:
- (a) Yuqing Liu would invest \$50 million in the Treacy St Development and obtain 24% of the net profit upon completion of the project, with the remaining net profit going to Wensheng Liu (cl 1); and
 - (b) Yuqing Liu would invest \$80 million in the Landmark Square Development and obtain 75% of the net profit upon completion of the project, with the remaining net profit going to Wensheng Liu (cl 2).
56. At this meeting the two Mr Lius signed an agreement, in the presence of Mr Hindi and Mr Badalati, concerning two developments that were before Council at the time.

³⁷ Vol 1.4 p 108.

³⁸ Vol 1.4 p 109.

57. At some point, at or around the time of this dinner, Mr and Mrs Hindi and Mr Badalati are invited to come to China and to visit Yuqing Liu's waste to energy plant in Tangshan. Exactly who invited them, and why they went there, will be investigated in this inquiry.

8 to 14 April 2016: the Hindis and Mr Badalati travel to China

58. On 8 April 2016, Mr Badalati and Mr and Mrs Hindi flew to China. They met up with each other, and Philip Uy, in Shenzhen. On 10 April, all four of them flew from Shenzhen to Beijing, where they checked into the Beijing International Hotel together.
59. On 11 April 2016, Mr and Mrs Hindi and Mr Badalati were collected from Beijing by Yuqing Liu's staff and taken to Tangshan.³⁹ A welcome banner proclaimed Mayor Badalati's arrival.
60. The next day, on 12 April 2016, a signing ceremony was held in a hall at the Xinfeng building. As the sign on stage indicated, it was for the signing of an agreement between the One Capital and Xinfeng. The evidence will show it was the same agreement that had been signed at the dinner in Chinatown a month earlier. The agreement was signed on stage by Wensheng Liu and Yuqing Liu. Mr Uy was there too. Mr Badalati delivered a speech. Mr Hindi did not attend the ceremony, but he and Mr Badalati attended the dinner that followed, in the very same hall.
61. There is a question as to why the Hindis and Mr Badalati were invited to China. There has been a suggestion they were invited to tour the waste to energy plant and had no knowledge that an agreement was to be signed regarding the Treacy St and Landmark Square developments. That issue requires further investigation.
62. The evidence suggests that the title of Mayor carries great weight in China. The itinerary described Mr Badalati as Mayor and he was announced on various welcome banners as such.⁴⁰ The itinerary also described Mr Hindi as Deputy Mayor, although he was not that at the time. Mrs Hindi was described as a Councillor of Kogarah, which of course she was not. There is no evidence that HCC knew about this trip.
63. On the same itinerary, Mr Uy is listed as the General Manager of One Capital, Elaine Tang as the Customer Relationship Manager of One Capital and Xin Yan (or Chris Yan) as assistant to the Chairman of One Capital.⁴¹ Both Ms Tang and Mr Yan were involved in

³⁹ Vol 1.4 p 242.

⁴⁰ Vol 1.4 p 245.

⁴¹ Vol 1.4 p 245.

- organising this trip, and their names will appear on various documents during this inquiry. The itinerary also refers to Qinghe Huang as the General Manager of the Sales Department of One Capital's Hong Kong branch. He is also known as Wong Ching Ho or Tommy Wong.
64. On the night of 12 April, the Hindis and Mr Badalati stayed at the same hotel in Tangshan.⁴² The next morning, Xinfeng staff transferred them back to Beijing. They spent one more night in Beijing. The Hindis flew home on 14 April 2016, while Mr Badalati flew to Shenzhen, spent two more nights there, and then flew home.
65. This inquiry will investigate who paid for Mr and Mrs Hindi's and Mr Badalati's flights to and from China; their internal flights in China from Beijing to Shenzhen; who paid for their accommodation in Beijing and Tangshan; and who paid for their meals and other expenses.
66. As mentioned, this trip is very significant in the context of this inquiry. That is because, only one week later, on 20 April 2016, Council – including Mr Hindi, Mr Badalati and Mr Sansom – voted on both the Treacy St and Landmark Square developments; the very same developments that were the subject of the agreement signed between the two Mr Lius in Chinatown and in Tangshan. The evidence indicates that, at least by the end of that trip, Mr Hindi and Mr Badalati were well on notice that the two Mr Lius, and Mr Uy, had an interest in both developments.
67. It may be said that Mr Badalati's long standing relationship with Mr Uy poses a non pecuniary conflict of interest. The same might be said for Mr Hindi, who had just spent a few days enjoying Yuqing Liu's hospitality in China and mingling with both Wensheng Liu and Philip Uy who were also on that trip. Of course, if it could be established that their flights or accommodation were paid for by Mr Uy or the two Mr Lius, it may be said that the situation gave rise to the appearance that Wensheng Liu, or Yuqing Liu, or Mr Uy were providing benefits to Mr Hindi and Mr Badalati to secure favourable treatment (Code of Conduct, cl 5.2), or that Mr Hindi and Mr Badalati had accepted an improper inducement that created a sense of obligation or was perceived to be intended or likely to influence them in carrying out their functions regarding Treacy St and Landmark Square (Code of Conduct, cl 5.5).
68. Whether or not Mr Sansom, Mr Hindi and Mr Badalati were provided any other benefits in relation to either development will be the subject of this inquiry.

⁴² Vol 1.4 p 243.

20 April 2016: key decisions made on Treacy St and Landmark Square

69. By 15 April 2016, Council staff had finalised their assessment report for the Landmark Square planning proposal.⁴³ While the staff supported the proposal overall, they did not support the proposed height and FSR for the development. Staff reduced the recommended height from 65m to 40m for Site A, and from 25m to 18m for Site B. Staff proposed that the FSR be capped across the whole site at 2.5:1 (less than the 3.5:1 sought by One Capital) with a bonus 1.5:1 for hotel or motel accommodation only.
70. Michael Gheorghiu of Dickson Rothschild told Elaine Tang about the report, who was then working for One Capital, and suggested that “discussions need to occur at the relevant political levels to make them aware of the recommendation”.⁴⁴ The inference is open that this was a reference to Mr Uy having discussions with Mr Hindi, Mr Badalati or Mr Sansom.
71. For some reason, just prior to the Council meeting, Mr Sansom took upon himself the task of drafting a resolution supporting the planning proposal which departed in significant respects from the staff’s recommendations.⁴⁵ He sends it from his private email account to Mr Hindi and Mr Badalati at their private email accounts. Both Mr Hindi and Mr Badalati commented on the draft.⁴⁶ Contrary to the staff’s recommendation, the draft resolution ultimately supported a maximum building height of 60m for Site A and 25m for Site B: which equates to 19 storeys (up from the recommended 40m or 12 storeys) and 7 storeys (up from the recommended 18m or 5 storeys). It also supported an FSR of 3.5:1 for Site A and 1.5:1 for Site B with a bonus FSR incentive of 1.5:1 for “hotel or motel accommodation” on Site A.⁴⁷ The resolution was then sent to the General Manager.⁴⁸
72. At the Council meeting that evening, the planning proposal is approved with Mr Sansom, Hindi and Badalati voting in favour.⁴⁹ Council staff report being shocked at the outcome. Mr Dickson was surprised given the level of opposition from Council staff.
73. The next step was for the Council to forward the proposal to the Department of Planning where it would be assessed and a recommendation made to the Minister or delegate as to

⁴³ Vol 1.4 p 255.

⁴⁴ Vol 1.4 p 255.

⁴⁵ Vol 1.4 p 257, 267-273.

⁴⁶ Vol 1.4 p 270, 273.

⁴⁷ Vol 1.4 p 268.

⁴⁸ Vol 1.4 p 276.

⁴⁹ Vol 1.4 p 280.

whether there was merit in the proposal proceeding.⁵⁰ The Minister would then make what is known as a “gateway determination” under then s 56 of the EPA Act, which would determine whether the proposal proceeded or not.

74. At the same meeting on 20 April 2016, Council also considered the application to modify the Treacy St Development to include the extra 5 storeys. Council staff had recommended that the modification application be refused on the basis that the proposed height and FSR were inconsistent with planning controls, and that the VPA be refused for providing insufficient public benefit.⁵¹ However at the meeting the VPA offer was accepted by Council with Mr Sansom, Hindi and Badalati voting in favour.⁵²
75. On 4 May 2016, the modification application for Treacy Street was considered by the JRPP. The JRPP determined to accept the staff’s recommendation to refuse the application. Mr Hindi and Mr Badalati voted against that decision.⁵³

May 2016 to September 2017: HCC is in administration

76. All of this occurred just prior to the dissolution of HCC on 12 May 2016. Obviously, when that occurred, Mr Hindi, Badalati and Sansom ceased to be councillors. Mr Sansom was never re-elected to Council. Insofar as Mr Sansom is concerned, this is where the investigation into his conduct ends. Mr Hindi and Mr Badalati were re-elected in September 2017 and continued to make decisions on both developments.
77. In the meantime, Mr Hindi was exploring a new business venture, with Yuqing Liu – the same Mr Liu who had hosted him in Tangshan in April 2016 and who had agreed to invest many millions of dollars in the Treacy St and Landmark Square developments. On 22 May 2016, Mr Hindi registered a company called Variable Solutions.⁵⁴ Around the same time, Mr Hindi signed a letter of intent regarding the establishment of a waste to energy plant in NSW.⁵⁵ The other signatory was Yuqing Liu, through his company Xinfeng. Xinfeng agreed to invest \$450 million for the construction of the project, with the total investment to be \$1.5 billion over the next 5 years. Variable Solutions agreed to “represent the Australian government” to provide support and service for the project, including investigating the

⁵⁰ Vol 1.4 p 281.

⁵¹ Vol 1.4 p 285.

⁵² Vol 1.4 p 282; vol 4 20/4/16 minutes.

⁵³ Vol 1.4 p 292.

⁵⁴ Vol 1.7 p 193.

⁵⁵ Vol 1.8.

project and providing reports for approvals from government; assisting Xinfeng to register a company, open a bank account and obtain approval from the Foreign Investment Review Board and apply for visas; and to assist Xinfeng to enter relevant agreements with the government and utilities companies.

78. This inquiry will examine whether any work was actually done by Mr Hindi pursuant to this agreement, and what if anything Mr Hindi got in return.
79. It seems the venture was short lived, because by 17 November 2017 Mr Hindi had applied for deregistration of Variable Solutions. It was deregistered on 24 January 2018.⁵⁶

Sept 2017: GRC is formed; Hindi and Badalati are reelected; One Capital sells to Aoyuan

80. On 9 September 2017, Mr Hindi and Badalati were re-elected to GRC. While the Council had been in administration, the Department of Planning had returned the planning proposal for Landmark Square, advising that the “proposed density increases are disproportionately distributed across the site”.⁵⁷ The Department also expressed concern that the Council’s approach would make it “difficult to address additional demands particularly on the road and traffic network...generated by the proposed development”.⁵⁸ A revised proposal was submitted to GRC and it determined in August 2017 that the proposal should be sent for gateway determination.⁵⁹ The gateway determination was issued in October 2017.
81. Later in 2017, One Capital transferred the options for Landmark Square to Prime Hurstville Pty Ltd (**Prime**), which is a subsidiary of Aoyuan Property Group (Australia) Pty Ltd. Prime exercised the options in late 2017.⁶⁰ The total sale price was approximately \$40.5 million.⁶¹ The evidence suggests that this price was determined based on the existing FSR under the LEP, but on the agreed basis that Prime would pay One Capital a further amount if the planning proposal was gazetted and the FSR increased.⁶² The available inference is that One Capital had an interest in the Landmark Square planning proposal even after it had transferred its interest in the property.

⁵⁶ Vol 1.7 p 201.

⁵⁷ Vol 1.5 p 161.

⁵⁸ Vol 1.5 p 161.

⁵⁹ Vol 1.6 p 235.

⁶⁰ Vol 1.5 p 333-355.

⁶¹ \$25.5 million for 61-67 Forest Rd, \$5 million for 73 and 75 Forest Rd and 126 Durham St, and \$10 million for 71A Forest Road: Vol 1.5 p 333; Vol 1.6 p 18, 21.

⁶² Vol 1.9.

2018-2019: Hindi and Badalati continue to make decisions on Treacy St and Landmark Square

82. That is important because, throughout 2018 and 2019, Mr Hindi and Mr Badalati continue to make decisions in relation to the planning proposal. A question to be explored in the inquiry is whether any inducement was offered by Mr Uy, Wensheng Liu or Yuqing Liu to Mr Hindi and Mr Badalati in relation to those decisions.
83. In 2018, the planning proposal stalled. Despite the land having been purchased by Prime, One Capital continued to make representations to Council, primarily through Elaine Tang, expressing its frustration with the delays.⁶³
84. In August 2018, Council ultimately resolved to endorse an amended planning proposal and to forward it for gateway determination. On 30 August 2018, Ms Tang writes to Council staff (cc Mr Hindi, Mr Badalati and other councillors) and says that if the proposal is not exhibited by Council in the first week of October 2018, “we will have no choice but to withdraw the VPA and apply to the department for a rezoning review”.⁶⁴ The very next day, Mr Hindi and Mr Badalati met with Council staff and expressed their concern about the delays.⁶⁵
85. Ultimately the timeline demanded by One Capital is met. In October 2018, Council resolves that the planning proposal go on public exhibition, with Mr Hindi and Mr Badalati again voting in favour.⁶⁶ On 22 July 2019, Council resolves to forward the planning proposal to the Department for gazettal, with Mr Hindi and Mr Badalati again voting in favour.⁶⁷ Gazettal is the final stage for a planning proposal, which results in the amended LEP actually taking effect. The VPA is executed on 26 August 2019.⁶⁸
86. That’s not the end of the story, however. The next year, a further issue arises with the VPA. In March 2020 Adrian Liaw, on behalf of Prime, writes to Mayor Greene and Deputy Mayor Hindi explaining the difficulties in obtaining the relevant tenants’ consent, and suggesting that the Council’s interests could instead be protected by lodging a caveat.⁶⁹ Mr Hindi

⁶³ Vol 1.6 p 87, 88.

⁶⁴ Vol 1.6 p 203.

⁶⁵ Vol 1.6 p 201.

⁶⁶ Vol 4, minutes 29/10/18.

⁶⁷ Vol 4, minutes 22/7/19.

⁶⁸ Vol 1.6 p 233.

⁶⁹ Vol 1.7 p 3.

queries with Council staff why Council cannot adopt that approach,⁷⁰ but Council ultimately holds the position that the relevant consents are required.⁷¹ Mr Hindi follows up with staff again in June 2020.⁷² He seems eager to complete the deal: an email from him stated “when does council expect to receive the VPA money...council needs the money and can be used for capital projects”.⁷³ Quite why he was so eager is an issue to be explored.

87. On 7 August 2020, the planning proposal is finally gazetted.⁷⁴ As I have said, Wensheng Liu’s company One Capital had an agreement with Prime whereby One Capital would receive a payment if the proposal was made with increased FSR. An available inference is that Mr Liu, and possibly Mr Uy, continued to have a financial interest in the finalisation of the planning proposal throughout 2017 to 2020. The question is whether and how Mr Hindi and Mr Badalati were induced to favour Mr Liu’s or Mr Uy’s interests during this time.

F. CORRUPTION PREVENTION

88. Finally, as I have noted, as part of this inquiry the Commission will also consider making recommendations as to changes that should be made to laws, practices or procedures with a view to reducing the likelihood of the occurrence of corrupt conduct in the future and to promote the integrity and good repute of public administration.⁷⁵ The Commission will consider what if any recommendations should be made regarding councillors’ overseas travel; managing relationships between councillors and developers; the determination of development applications and assessment of VPAs; procedures that should be adopted when council decides against staff recommendations (including preparing reasons for decision); and the role of councillors on regional planning panels.

G. CONCLUDING REMARKS

89. Finally, for the benefit of the public observing this inquiry, it should be understood that the Commission is an investigatory body. It is not a Court. As I have explained, the Commission will not be making findings of criminal guilt, although it may make findings of “corrupt

⁷⁰ Vol 1.7 p 3, 6.

⁷¹ Vol 1.7 p 9.

⁷² Vol 1.7 p 15, 16.

⁷³ Vol 1.7 p 16, 18.

⁷⁴ Vol 1.7 p 20.

⁷⁵ ICAC Act, s 13(1)(g), 13(3)(b) and 74A(1)(a).

conduct” and may also consider whether advice should be sought from the DPP concerning possible prosecutions for criminal offences.

90. Because this is an investigation, and the investigation is ongoing, it may be that the focus of the inquiry shifts or new allegations emerge against the six individuals who have been named, or indeed other individuals. That is the inherent nature of any investigation. The Commission will not however make any findings adverse to any person without giving them notice of the proposed finding, at least through submissions made at the end of this inquiry.
91. For the purposes of making its findings, the Commission will need to assess the credibility of witnesses and the evidence they give in this inquiry. Anyone giving evidence should bear in mind that a person who knowingly gives false or misleading evidence to this Commission, whether at a compulsory examination or a public inquiry, is liable to prosecution for a serious indictable offence punishable by up to 5 years’ imprisonment.
92. In circumstances where this investigation has been ongoing for some time, and the Commission has already obtained a wealth of material by collecting documents and interviewing witnesses, if a person gives false or misleading evidence there is a good chance the Commission will know about it.

14 June 2022

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