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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 12 AUGUST 2010

AT 2.15PM

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This transcript has been prepared in accordance with conventions used in the Supreme Court

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, we have Councillor Allan Ezzy in the box to give evidence.

THE COMMISSIONER: Yes, Mr Ezzy, would you care to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR EZZY: No, I'm happy to give it on oath, sir.

10

THE COMMISSIONER: Thank you.

<ALLAN GORDON EZZY, sworn

[2.16pm]

THE COMMISSIONER: Please be seated, Mr Ezzy.

MR GORMLY: Mr Ezzy's, what your full name?---My full name is Alan
20 Gordon Ezzy, E-Z-Z-Y.

And I think you're a long-time appointment and we'll just go through some of the detail of that but a long-time appointment to various positions relating to local government and also to water management?---That's right.

You're currently - - -

THE COMMISSIONER: Sorry, I didn't hear the last one?

30 MR GORMLY: Water management.

THE COMMISSIONER: Water management.

MR GORMLY: Yeah. You're currently a councillor with the Holroyd City Council, Holroyd City Council?---Yes.

Forgive me for this, where is the Holroyd area?---The Holroyd City Council area is slightly south-west of Parramatta, it's virtually the next suburb south-west of Parramatta.

40

Right. So can you name some of the suburbs that fall into that area?---Yes, there's Merrylands, Girraween, parts of Guildford, Greystanes, Pendle Hill, I'm missing one, I just can't think of the other one for the moment.

That's all right?---Yeah.

We've got the area so it's a very mixed area?---Very mixed. There's a population of about 90, just under 92,000 and it's very mixed population-wise so far as ethnicity goes these goes.

Yeah, okay. But also in activity, mostly residential but some industrial and some retail?---Yes, there's a large, there's a large residential, sorry, there's a large residential area but there's also a large industrial area which I think accounts for about, about a sixth of the gross national product I think.

10 Right, all right. Now, you, you've had nine terms as mayor of Holroyd?
---Yes, sir.

Correct. Three terms as deputy mayor?---Yes. And you've been on the council one way or another since 1977?---Yes, it's about 36 years next month I think it is.

And I, in addition, you've been on the Local Government Association Executive since 1994, you're currently the vice president?---That's correct.

20 Which I think is a two-year term, is that so?---A two-year term.

You finish in October?---That's right.

In addition, you're the state chair of the Flood Mitigation Authority?
---That's right.

And you're a director of the Sydney Catchment Management Authority?
---Yes.

30 And a trustee of the Upper Parramatta River Catchment Trust?---I was up until the time it was disbanded.

Yes. All right. I think you've, back in a prior life you've also been a police prosecutor?---That's correct.

And I think you've done plumbing and post-graduate studies in management as well?---That's correct.

40 All right. Now, and I don't think that that by any means covers all of the positions that you've held over the years. Is that right?---No, that's true.

Mr Ezzy, can I take you first of all to the question of whether or not your council, either councillors or council staff, are lobbied? What's your view about that?---I guess it comes down to a determination of what, what do you consider is lobbying. So far as professional lobbyists go, no, I don't believe we have and I don't believe I have. I get representations made to me from residents about issues, a whole range of issues including development, various social issues, budgetary issues.

What about developers wanting to develop?---Developers, sometimes, usually developers are usually represented by an architect or someone that draws plans or whatever that are not necessarily architects. But, yeah, some are owner builders, some are self employed developers.

So you'd be lobbied but not necessarily by what we might call the professional political lobbyist?---No, not that I'm aware of, no.

- 10 Right. Can I distinguish for the moment between you as a councillor and council staff, those employed by the council. Just looking at councillors for the moment, do you think, your experience of the range of lobbying that you would receive is typical?---Yes, I think it would be fairly indicative across the industry, I think.

- 20 Do you use any mechanisms for dealing with the lobbying that you get, that is do you understand yourself to be under any restraints about speaking with people?---Yes. I'm aware of the restraints under the Local Government Act, model Code of Conduct, which my council subscribes to and we have in place. I'm also bound by my own integrity. And as a consequence if someone comes to me about an issue other than development or anything like that, some sort of, over road failure or something like that, I'll listen to what they've got to say over the phone or if it's a particularly serious matter, I'll arrange to meet them at the council chambers with an officer. If it's a development matter, I'll make an initial appointment with them over the phone or whatever it is and arrange to meet them at the council chambers. And there I meet them with a council officer or officers and we go through the issues and see what the situation is.

- 30 THE COMMISSIONER: And in those meetings, Mr Ezzy, I, I assume you're acting as councillor, you're not acting in any office bearing capacity for the council?---No. I'm acting purely as a councillor.

As a representative of the people who elected you?---Of the people. Generally, of the area which I represent specifically.

Yes?---But it can be across the district at times.

- 40 Yes. And, and, and they come to see you so that you can make representations on their behalf?---That's right. Yes. Many times they'll, they'll come to you and you'll say, well, look, you know, you have an opportunity to come, to either put an objection in in writing or to come to the council and being there on the night that it's to be determined. There's an opportunity to speak if you wish to. And they'll sometimes say they'll do that or sometimes they'll say, well, you know, I'm not too good in writing things or I'm not, I couldn't stand up and say that, but will you say this for me or whatever it is put forward their, their feelings. And there may be occasions when you know, I'll be asked to do that and I may have a

strong view, a personal view that something should go ahead or shouldn't go ahead. But I'll put forward their views and I'm of the opposite view I would say that in, in discussion at the council chambers. Say that, you know, I've been approached by Mr and Mrs whatever, whatever, however, I don't agree with them, but their view is and they've asked me to express this.

10 MR GORMLY: All right. Is it your understanding that, you know, from the councillors that you speak to, which I presume is probably across the state, give your current executive position on the Local Government Association. Am I right?---Yes.

20 Yes. Is it your understanding that councillors generally have an understanding of the limitations or restrictions placed on them about contact with persons for council purposes?---Yes. That's been the general position. After the last general election, which was two years ago, there's been an influx of newer councillors and many of them I think still struggle to come to terms with what their responsibilities are. But, just through education I think it's slowly getting through to some of them, like, you know.

20 Sure. At a, at the state government level as you may know, contact between members of parliament and any interest in the community is much less vetted then it is at local government level. That is - - -?---That's right.

- - -MPs can speak to anyone anywhere really. And they're encouraged to do so?---Yeah.

30 It's obviously more restricted at the local government level. What do you interpret as the cause of that?---Well, I think in some cases it's, there's a bit of a petty jealousy there, I think, between state government and local government. And trying to control local government, I think. The same criteria as, as you say, it doesn't apply to state politicians as it does to the local councillors. And I think that's perhaps grossly unfair in many ways.

40 Do you feel restricted or restrained in carrying out your role as a councillor by reason of having to meet with people, other people present and at council offices? Is that a problem?---No, that, no, that doesn't trouble me at all. I see that as, as a necessary requisite and as a safeguard for me too because, you know, I know of instances where you can meet, people meet with someone and then it may appear to be above board but then when, to use the expression, the boom goes up all sorts of allegations are made and unless there's someone there with you or is taking notes of an officer level your integrity can be very truly ruined.

And I suppose at local government level as a councillor too councillors are much more like a government and a mix of both government and ministerial role all rolled into one?---That's right, yeah.

It's probably true too that the decisions you make can have an immediate impact on the value of land, value of property?---Yes.

10 So do you see there as being a significant difference between the kind of role that you play and the kind of role that an employed council officer plays?---Yes. I see the role of an employed council officer as a professional in their own right who receive the application or whatever it is, assess it using their technical expertise and then I see it as their role then to present to me as a councillor in council their, the application plus the professional assessment of it. Sometimes there's a straight out recommendation, sometimes there might be two recommendations and up to the council to decide which they're going to choose and sometimes one or, one or the other of those recommendations is carried or sometimes it may be deferred while more inquiries are made and it comes back and a different decision is reached then.

20 Sure. So certain (not transcribable) roles?---And my role is to, to take on board what's said professionally, to listen if there's interaction with the community on what their view is and to act accordingly.

Right. Do you think that that's a division of responsibility that's well understood by councillors?---I think so, yeah, I think it's not, sometimes not understood entirely by the public but I think generally it's understood by councillors.

30 All right. I need to get down to some detail if I may. When you have meetings with interests in the community, builders or owners or whatever it might be and you say you tend to try and make the appointment at the council and have someone, council officer present?---Yep.

Has that proven to be a practical problem in the Holroyd Council to have someone else present?---No.

40 Right. There's staff members available?---Yeah, they're readily available and in fact they're, the general manager and it's been the practice for many years and a practice I've endorsed as mayor on various occasions that that's, that's what's to happen and sometimes from those discussions there will be an onsite meeting held with the council officers. The person involved with development or whatever the issue is and the ward councillors or as many councillors as can get there sort of get there.

Right. Are the council officers that you ask to be present at meetings, say in the council rather than a site visit are they officers who will have some knowledge or understanding of the issue that the person is, that the member of the community is bringing in or are they there in essentially as a witness of some kind?---No, they're, well, they're, they're there in a witness form but they're there also to, to look at the issue in a professional manner and to give their professional advice at the time and they will, quite often will

dispel thoughts that someone may have an misapprehension about what they can do and what they can't do. When it's explained to them they realise that they can't do it that way they've got to do it another way and those officers are the ones that eventually write the report that comes back to the council and they're senior officers they're not juniors.

10 So when you have someone, a council officer with you for these meetings, they're not junior clerical staff, they're people with planning knowledge?--- They've either got planning knowledge, engineering knowledge or if there's a legal matter, then it will be the general manager or his deputy or someone there as well.

You arrange who's going to come, do you, depending on what you understand the need to be?---Well, if, if I understand that it's purely an engineering matter, then I would ask for the engineer or the director of engineering services to be at that meeting.

20 Right?---If I am aware that it's a planning and engineering matter, then I ask for both of them. If it's a social issue, then I'd ask the director of community services to be there or one of their staff.

There haven't been practical issues about, you know, lining people up for meetings?---No, never. It may not be readily available to do it today but we make appointments say in a day or two days' time or whatever it is. Unless it's a glaring emergency, well, then everything else is dropped and whoever has to attend that meeting attends it.

30 How many councillors have you got on Holroyd?---We have twelve on our council and that's, that's generally across the state. There are some that are bigger and there are some that are smaller.

Right. All right. And generally speaking are people elected to council also attenders?---At these, at the meetings?

At council, do they remain involved?---((NO AUDIBLE REPLY))

40 And I assume that there are a few people who drop out along the way? ---Oh, yes, yes. You don't, you don't always get everybody to turn up to a site inspection. You'll get, generally you will get the ones who represent that area.

Yeah. I think the point I'm after, Mr Ezzy, is that if you've got twelve councillors and they're all making appointments to meet with, you know, ratepayers or builders or whatever, you haven't struck any difficulties in arranging for council staff still to be present at those meetings?---No. I've not been aware of where, as mayor, where eleven other councillors have been seeking to get appointments in a week. You know, not everybody- - -

Sure.---?- - -is that involved that they want to do it. They, they have varying degrees of interest in issues and sometimes you, you wonder why they're there sometimes.

All right. But generally speaking, the system works obviously?---It works well.

Yeah. Now, during the course of these meetings, are notes taken?---Yes.

10 By the council officer, I take it?---By the council officer.

And are those notes in a form that would mean that they're retained by the council or are they just working notes for the sake of the meeting?---No. To my experience they've usually been notes, they're file notes, they're kept on the file and at some stage in the future where you go back to an issue and you ask to look at the file on a particular subject, you will find these handwritten notes amongst the reports and plans or whatever else is there.

20 Okay. Now, you may be aware that there is at present, really at state government level, a register of professional third party lobbyists- - -?---Yes.

- - -kept by the Department of the Attorney General, by the premier and cabinet?---Yep.

30 There is consideration being given and submissions being heard about whether the register system could usefully be extended outwards to other categories of political lobbyists, but also from state government across to local government as well, with a view perhaps not so much to catching the, not catching, but to including the political lobbyists, of whom we gather there are few in local government, but to catch those people who do lobby local government. Again, when I say catch, I mean to make public those people who lobby. A proposal for a register of that kind would be perhaps an online self-registration, very simple procedure, where a lobbyist's name, let's say a councillor, let's say a planner or a lawyer, would have to put their name on the register and say who they appeared for when they went to see the council and that the council would always then know that they were dealing with somebody who is on the register or not on the register and if they're not on the register then they'd say, well, you must register before you, before you deal with us?---Yeah.

40

So that it's all public and upfront, transparent. And the onus for keeping that register on this proposal would be on the person who has to lobby. Council's responsibility only would be to make sure that they're dealing with people who have signed up on the register. And the other bit of information that might go on the register would be the date of seeing the council and who they saw, so there'd be four bits of information. The name of the lobbyist, X planners, the name of the client they're acting for, the date they came to council and saw somebody and who they saw in relation to

that client. It, it's been suggested that that kind of register would have some utility, both as a means of ensuring that people who came to council were obliged to read and understand a code of their conduct in relation to council, so that they couldn't see council unless they've read and adopted the code of conduct but also just to know who it is that's approaching council on behalf of whom. Do you see firstly a utility in a register of that type?---No, not particularly. I think that there, there are sufficient safeguards in the system so far as local government goes at the moment. I think that to, and in my experience, in 36 years I've not been approached by what you would call a political lobbyist. I don't know of any councillors that have been
10 approached by political lobbyists.

THE COMMISSIONER: This is not intended to apply only to political lobbyists, it's anybody who gets involved in a lobbying activity and that could be a planner, a draftsman, an architect - - -

MR GORMLY: A lawyer.

THE COMMISSIONER: - - - an engineer, a lawyer?---No, I don't, I don't, I don't specifically see the need for that. If, if the system exists as exists in my knowledge and my council, that is, that is already in place. It's not, it's, it's kept in the files that you were approached by a certain company or whatever on site and that's, that's upfront and, and the safeguards are there, I believe, that if I'm approached by somebody in respect to a development then it's incumbent on me, as to my knowledge, to make that known to the general manager that I, I've been asked for a meeting and that there is a, there is officers there who keep records of that meeting.
20

MR GORMLY: All right?---I, I won't meet them outside of that.
30

THE COMMISSIONER: But what about people who don't through councillors, people who go to council staff direct, do council staff automatically make records of the kind you describe?---To my experience, yes.

And is more than one person always present when someone comes in?
---Yes, to my experience, yes.

So no council staff will see someone who is asking for a decision in his favour without there being two people there and notes being taken?---That's
40 been my experience. I know that there's, there was an issue in the last couple of years in the Wollongong area where there was some, some difficulties there and that, that certainly is an embarrassment to local government but generally it's not been my experience that that's happened other than at that particular place.

Let me put some, some, I'm not going to try and persuade you, Mr Ezzy, what I'm going to do is, is use your experience to put some propositions to you for your comment and - - -?---Yeah.

- - - if you agree with them, good, and if you don't, we're interested either way. I accept, I accept your argument that there may be good procedures internally for recording contact by people with the council and that it'll go on a file?---Yeah.

- 10 One of the arguments in favour of having a register is that while it might all appear regular to people involved in the system, that is the councillors and the staff, it's not, it's still opaque to the public, that is, there isn't a transparency about the process for the public, the public has no idea who does or does not approach and while that for the most part may not seem to have much utility if there is a problem, then it can have great utility. That's the first proposition that I'll put to you. But I'm going to put the second as well before you comment on either of them. A second argument in favour of, of having a, a register like that is, is not so much just that we know or the public or the media can know who's approaching council, and therefore
20 perhaps act as a protection for council as well, but it also has the benefit of imposing on people who approach a council, councillors or council staff a statement of the way in which they should conduct themselves, which they are obliged to accept before they go to council. So it could include quite clearly statements about no corruption, no payments of money, no gifts, but it might also include things like an obligation to treat council staff with courtesy or something that will directly benefit the council?---Mmm.

- And that if there are significant breaches of any of those requirements of a Code, that that would entitle perhaps the council or someone to remove that
30 persons name from the register thereby disentitling them from approaching the council for at least a period anyway, whatever it might be, pending re-registration. Now they're the two arguments I want to put to you for the moment, Mr Ezzy. The first is a transparency argument. As everybody inside the council knows, but those outside don't and can complain about it. And secondly, that instead of dumping obligations entirely on council to behave in a certain way and they are under significant obligations to do it and apparently largely do it, that you start to also impose on those who approach council certain standards of behaviour consistent with the ones the council is already subjected to. Now, if you hear those two arguments, does
40 that cause you to alter your view? Or do you have a comment to make about each or any of those?---Look, I can't, I can't complain about the transparency of it. I support that principal, transparency.

Right?---The only misgiving I have is that , I can quote an example, is the local government, the local government has had significant planning powers taken away from it under the name of what they call Joint Regional Planning Panels. And I sit on one, knowingly sit on one of these Joint Regional Planning Panels in my area, and that's supposed to take out any

political bias or anything like that. From what I see the only, the only stage that there's any public engagement with that process is a, is a final, is just before a final decision is made.

When it's too late?---When it's too late, really. So I have some misgivings that what you're proposing sounds good, and I'd support in principal, but when it comes to the nitty gritty of it working, it's not, I can't see it working.

- 10 Right. Let me, that causes me then to put a third and fourth argument for your comment. I understand your point. You appreciate that because this is the Independent Commission Against Corruption, its principal concern in its involvement in this process is about not so much making planning laws work better, except in a perhaps in an indirect sense, but more controlling the possibility of misconduct and corruption. Not just inside council, but outside council as well?---Outside, yeah, yep.

- 20 And so far as it bears on council. So while I understand your point about the Joint Regional Planning Councils and the timing issue, what I'm really putting to you is a slightly different matter, because you'll appreciate that while most local government might operate very regularly and in an appropriate fashion, it's also an area of government where there are reasonably high degree of irregular events?---Yep.

And one sees them in the paper being heard here in this Commission on a fairly regular basis?---Yeah, I know. Yep.

- 30 MR GORMLY: So there is an endeavour to try and do something to regularise those who approach council and will corrupt it. If you look at it from that point of view, rather than the effectiveness of planning, does that cause you to think that there may be some value in it? If there isn't, please say so.---There may, there may be some value in it. When one reflects on some of the things that are in the media that have occurred and have been before this Tribunal, yes, one would think that, yes, that there could be.

- 40 THE COMMISSIONER: Mr Ezzy, with this, I think it's well-known that this Commission is only able to investigate a very small percentage of the complaints that it makes, because it is a Commission which has limited resources. And many of the complaints that are made and are not investigated are complaints concerning the making of various kinds of decisions in councils. And the fact that complaints are made doesn't mean to say that the complaints have any validity. But one does get an impression over a period of time if there is a very regular stream of complaints or usually at a pretty low level, I'm not here talking about the manager of, the managers or whatever, but other council employees who have ability to influence decisions which may allow people to make or lose money. And, I mean for example there are, we've had cases where there are bribes involving \$50 and sometimes less, and that's just one example, an example

of the kind of corrupt activity that's alleged. And I suppose it's a concern, it's a concern of the Commission to try and do something about that, not only to actually stop it but to remedy a perception of corrupt conduct on the part of local, or involving local councils. Do you, I'm not saying, and I'd like to make this absolutely clear, I'm not saying that there is corruption involving local councils of any serious degree, but there is a perception that such corruption- -?---Exists.

10 - - -exists. Do you agree with that?---I agree that there is some, there is some perception of that.

I'm not saying for one moment that the perception is warranted- -?---Mmm.

- - -but the very fact that there is the perception is damaging to the ordinary business of council.---Mmm.

20 Do you accept that?---I accept that, but I don't, I don't see, sir, that by having registered lobbyists that that's going to- - -

Well, that is, we're very interested in your opinion on that issue.?---Mmm.

Why do you say that?---(NO AUDIBLE REPLY)

30 And don't forget, we're not talking about, only about professional lobbyists, we're talking about anybody who comes for a fee or a salary to the council to ask for some benefit for a client?---Mmm. Well, all I can, all I can rely on is my experience and what I have picked up along the way in experience from other councillors. I don't know of a paid individual, and I'm talking about a third party- - -

I'm sorry to interrupt. I don't mean to be rude?---Sorry.

But the answer to my question is not, in my vast experience I've never seen this happen, because that's dealing with the reality. I'm asking you about the perception, which is not the reality?---Well- - -

40 And I'm asking you for ways, whether you think this is a way to combat the perception, not the reality?---Well, I guess if there's anything that can be done to dissolve that perception, then yes, it has to be done.

But do you think this is a way to deal with the perception?---No, I'm not convinced it is.

Well, what will you do?---Well, I think that there's a need for greater education.

On whose part?---On the part of the local government industry generally so far as paid employees go.

Education about what?---What, what is correct procedure, what is basic morals in respect to dealing with people and the professionalism of, of their positions. You know, but if they're, if they're aspiring to be a town planner or an engineer or whatever then as part of that training it should be entrusted in that training that there's moral and legal obligations that come with the title of town planner or engineer or whatever it is. They're the people
10 dealing with the, with the public. I guess you'll always get some clerk at a table or a counter or something just dealing with that as over the counter that probably will be rude or whatever or even an engineer or someone like that might be rude but doesn't necessarily mean that they're corrupt.

No?---It's a, it's a, I think it's a multifaceted problem and I don't know there's a simple answer to it.

MR GORMLY: Can I explore this with you? In one of the early answers you gave about the proposals for a register one of the things you said was
20 that you thought that built into the council already were, you know, quite a number of probity protections?---Safeguards. Safeguards.

Yes?---Yeah.

Now, I appreciate that in modern public administration people involved in the system can often feel as though they can't get their head above requirements that seem to serve probity procedures, from a day to day basis they don't seem to be necessary. Would I be right in thinking that you feel that way?---That's right. I think that's a perception, yeah.
30

Yes. And that one can at times feel that if you could just slash away a bit of the regulation of conduct business would get done a bit quicker or certainly I feel that way at times, Mr Ezzy, so I don't think I see any problem about feeling like that but the reality is we need these various regulatory procedures don't we?---That's right. We do.

Yes. And I suppose it's always appropriate to try and resist undue regulation or regulation that's not going to have any benefit. You can rest assured that in this inquiry there's been a real effort to try and find
40 procedures that are cheap and workable and don't interfere with business. But if you do keep all those things in your mind and you reject the idea of a register and I can understand your reasoning for that can you think of any other method for trying to overcome a perception that people can approach council and have a sort of a private conversation so to speak, no one else is present, maybe a note goes in the council files, the public knows nothing about it and, you know, some time later up goes a building that's got an extra two storeys on it or whatever the problem might be at the time. But that can create a perception that something has happened, something

untoward has happened. That's what happens at state government level a perception of lobbying behind closed doors. Now, we're all in favour of transparency but we need to find a way to make it work. Do you have any suggestions that you'd make as to how council business could be adjusted to make it more transparent or to somehow or another overcome the perception that people coming in demanding things from council or wanting their way for property purposes how we can avoid the perception that that's untoward?---I guess there will always be some who will, no matter what you put in place will never be satisfied with the process because they didn't get their way or whatever. I think what I understand to be or I know happens in my council and I understand to be the general trend across local government if it's perhaps, and I'll probably be criticised for saying this by local government industry but if it's regulated that there's certain steps that have to be documented along the process then that may help to, to give some greater degree of comfort to the community who can then come in and look at the file and see that certain steps were taken and met.

Well, I can accept that entirely, Mr Ezzy. What you're saying is that good proper business procedure of recording the activities of public officers is itself a protection against corruption?---That's right, yeah. And if that was, if that was legislated that that was part of the process I think that would go a long way towards it.

Can you think, I'm sorry?---No, that's fair enough.

Can you think of any area of local government practice at the moment where perhaps a strengthening of ordinary business procedures would improve things? I'm not urging you to find fault, Mr Ezzy, but if there is an area?---I'm just trying to think of something just off the cuff. Now, I just for the moment can't - - -

THE COMMISSIONER: Can I ask you to do this, Mr Ezzy? Instead of, you don't have to answer a question now if it's difficult for you and if you think that you need time to think about it, if you wouldn't mind writing to us before say, before the middle of next week if you have any ideas on this score it would be appreciated?---All right.

There's no obligation on you to do that - - -?---No, I'd be happy to do that. - - - but if you can do it it would be appreciated?---All right. I'd be happy to do that.

MR GORMLY: Just one last matter I want to raise with you, Mr Ezzy, if I may before we move away from local government. It's been suggested a number of times in evidence here that for local government the principle risk is not so much council staff or councillors, it's not necessarily the big player developer or the ordinary homeowner or business owner it's more the person who is trying to convert the value of one property into another value

so the small to middle developer and what might loosely be called the amateur developer, the one-off or somebody who gets themselves caught into a development. Is that a proposition you'd agree with? Where do you see the risk to local government principally coming from?---I think, I think, if I could use the term the bigger end of town that really are looking to capitalise their investment that they can get from it are inclined to try to put pressure onto councils. The one-off, like the mum and dad developer sort of thing, I don't see that that's a real problem because usually, I think once you explain to them what the regulations are, what they can do and what they can't do and this is one of the reasons in our case, my case is that we have predevelopment meetings where a person can come in and speak to the senior staff, there doesn't have to be a councillor there they just make an appointment to come in and see the predevelopment team and they get the guidelines and they know what they're up for so far as meeting regulations before they start to get the plans drawn up. But where I think you get some, some, the bigger developers will come in with a plan which they'll lodge and they know, they know that it doesn't comply, they will come in, they'll lodge it and then they'll wait their statutory 40 days and it's then deemed refusal and they'll take you off to the Land and Environment Court and they will then seek to get what they want which is in contravention to what the local DA, sorry, the local (not transcribable).

So pushing the envelope?---Pushing it all the time.

Right. So if there's an opportunity for a discretionary exercise then they'll grab it?---They'll take it. And that's, I've seen that happen and I know of instances that that's happened in other councils where they just, they come in, they put it in, wait their 40 days, they know it doesn't comply and then they go straight off to the Land and Environment. In fact in some cases they'll lodge the DA today and they'll be off tomorrow to the Land and Environment Court and lodge their application.

All right. That's in a sense a, you're saying in a sense they might be standing over the council or - - ?---Attempting to, yeah.

Yeah?---Yeah.

Do you ever get veiled not necessarily illegal but veiled exercises of pressure or threat by the big end of town? I'm not asking for specific details here?---Yes, at times they'll, they'll, they'll approach the council and I've witnessed it in the chamber where they will come in and they'll, they'll see that a matter's going to be deferred or, there's one matter that I come, I can think of now where a proposed development was rejected and the particular fellow carried out and screamed out and abuse and everything because he just wanted his development approved.

Was this a big developer, a big end of town developer?---No, no, he was about middle, middle of the range I'd say.

All right?---But someone that sort of had a reputation for wanting to stand over councils and, and had done that in so much as that he'd just moved into other areas, taken over a particular property and started to develop it for what he wanted to use it for and then when the council found out they started to put the processes into place and then it, you know, it then would mean a long prolonged exercise and a fight and the council would sometimes surrender and give in.

10 Rather than have a fight (not transcribable)?---And the costs involved, the costs were enormous.

Yes. All right. Well, thank you very much, Mr Ezzy, it's been very helpful.

THE COMMISSIONER: Thank you for coming, Mr Ezzy, and thank you for your time?---Thank you, sir.

MR GORMLY: Commissioner, may I just do one thing. Mr Ezzy, I know you didn't want to make any introductory comments but having now
20 answered the, the questions and you've seen a little bit about what we're about, is there any closing comment that you'd like to make?---Well, I just, I just comment and it's more or less off the cuff I think but local government is, is very tightly controlled under the Local Government Act and the, and the model Code of Conduct. I think councillors generally are more aware nowadays of what their obligations are, to be seen to be doing everything fairly. There are, there are always going to be some elements that will disregard what the codes are or whatever and they, if they think they can get away with it, they'll try and get away with it. Whether that be
30 elected representatives or whether it be developers or council staff but I, I think it's a very small minority if it is, if it's there and I think some of the steps that have been taken when these come to surface, the steps that are taken by way of punishment I think sends a very strong message to anyone that may be contemplating going down that route and I think that perhaps this, you know, this inquiry, this inquiry can certainly help, help that process but I don't see the, I don't see the need at this time for lobbyists, well, I don't see the need for lobbyists in local government and I don't, I don't really support them generally, the concept.

40 The general political lobbyist?---Political lobbyists.

Yes?---Yes. But I think that the, what's got to be kept in mind is that local government representatives are there to represent the people, the small people and I think that perhaps in trying to look after those little people and seeing that their voice is heard that it's not silenced by extreme pressure being brought to bear that because someone, councillor stands up and represents a team, like a football team or a group of residents, 20 residents or something because of a development, that they're seen to be lobbyists, you know, they're concerned residents.

There's no suggestion of that?---No, but I'm just saying that that's the fear that might come across.

Yes, I understand. Okay, thank you very much?---Thank you.

THE COMMISSIONER: Thank you.

10 **THE WITNESS EXCUSED**

[3.05pm]

MR GORMLY: Commissioner, we have our, our last witness Mr Ian Glendinning present in the hearing room. If I could call him to come forward.

THE COMMISSIONER: Mr Glendinning, would you care to give your evidence under oath or would you prefer to affirm.

20 MR GLENDINNING: Oath.

MR GORMLY: Have a seat, Mr Glendinning?---Thank you.

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Mr Glendinning, can you tell us your full name?---Ian Neil Joseph Glendinning.

10

And I think at the present time you are a principal of Glendinning Minto?
---Yes. Town planning consultancy.

Right. And you work in the Ku-Ring-Gai, the difficult area of Ku-Ring-Gai?---I have done a lot of my work in Ku-Ring-Gai, yes.

20

All right. Now I think that you have had a very long history in local government and in planning. Would that be true?---Yeah. I've had 30 years working in local government. The last 12 was Director of Development Control at Ku-Ring-Gai Council.

Right. So when you say the last 12 years - - -?---The last 12 years before I started my current job.

Before you started - - -?---So I left Ku-Ring-Gai in March, 2000.

30

Right. And I think you've worked in rural local government areas as well prior to this (not transcribable)?---Yes. Eight years at Scone Shire Council in the Upper Hunter.

Right. Mr Glendenning, I'm not sure how familiar you are with some proposals that have come up in relation to local government and I want to go to them if I may?---Ah hmm.

40

Before I do, do you have any opening comments or any opening that you'd like to, anything you'd like to say about any form of lobbying in relation to local government?---The first thing I'd like to say is just sitting and listening to the evidence from the prior person, he said that you can file an appeal the day after you lodge a development application, that, you certainly can't do that.

All right. I understand.

THE COMMISSIONER: I know. We all know that?---Okay. Right. That bothered me.

MR GORMLY: But we nevertheless understand the point he was making?
---Yeah.

Okay. Yes?---I, I'm sure it'll come out during our discussions but I can't say that I entirely agreed with everything that the last witness had to say.

THE COMMISSIONER: I think that there were a few things that, that we should just inform you of, so that you understand the context in which you've been asked, in local government, many people have told us that, that there's very little activity of political lobbyists in local government?
---Mmm.

10

But we are considering all forms of lobbying, not only lobbying by professional lobbyists and on one view there is a need to focus on the activities of individuals which are lobbying activities, no matter what they call themselves. Whether they call themselves lawyers, accountants, engineers or whatever - - -?---Or planners.

Yes.

MR GORMLY: Planners, yes.

20

MR GORMLY: Planners, especially, they, they are in a sense doing lobbying work for a fee. And not for one moment is it do I suggest there's anything improper about that. But there is an issue - - -?---It depends upon how you define lobbyist. And I'll discuss that.

Well, it's more how you define lobbying activities. Because you can define a lobbyist as anyone who carries out lobbying activities?---Yes.

No matter what that person calls themselves?---Yes.

30

And, and so, and there is a, I think, there's been a lot of evidence and it's the Commissions own experience that there is a perception about corruption in local government?---Mmm. Yeah, there is certainly that perception, but - - -

Yes. But, and that, and there is, and we've had a lot of evidence from people who say that the reality is, is different?---Yes.

So we, I mean we can all take that perhaps as given although, I mean, my own personal experience in the limited time that I've been here is that no matter what people say, I see, we've already established in a number of inquiries, a degree of corruption in local government?---I think there is some corrupt conduct.

40

Yes?---But it doesn't, it's not corruption in the sense of brown paper bag type of stuff.

No, sometimes it is?---Sometimes it is, I know, but very rarely. I can explain some experience that I've had with those things.

THE COMMISSIONER: But it's not, I think the focus of this inquiry is really to see whether there are, is there anything that can be done that can help to restore confidence in local government because the lack of confidence is in itself a serious thing. Now, you heard the discussion about the register. I do want to make it clear that we have not, we have not made up our minds about recommendations in any respect and certainly local government and a register in a way is a more problematical proposition than state government and a public, and a register?---Mmm.

10

So, and there's no closed door here for developers to have to force open, we really are just interested in your point of view.---Yeah. Just anecdotally I can recall a few occasions when, particularly in Ku-ring-gai where high profile people would approach me and attempt to influence me one way or another, whether they were pro the development or against the development and utilise their authority or position to try and impose that, their view. And that, that happened, that happened on quite a few times because the, there was a high majority of people that were in legal or political worlds in that environment.

20

Yes.

MR GORMLY: You're talking of the three possibilities, that is inducement, threat, the other is the subtle form of bullying?---Yeah. More threats and bullying than inducement.

Right?---The sort of inducement thing really is, it was very minor and, and I was thinking about that in terms of, you know, my experience over thirty-odd years in local government. And I, if you, do you want me to- - -

30

Yes, yes?---So I can remember when I first started in the industry in 1969 that it was not unusual for builders, developers in particular to invite the council staff to parties and, and booze-ups and boat trips and all sorts of different things. That was quite common. And- - -

40

And it happened?---Oh, it happened, and well-accepted. I mean, there was no sanctions against that. And we're talking in the late sixties now. And, you know, that was the norm. And it was quite regular for the same sort of people to deposit bottles of, cartons of beer or bottles of whisky or cartons of wine ah, at the front counter for everybody to see for distribution. Ah, and of course over the years that became not accepted any longer, but that went on for a long time, that sort of thing. I can remember one of the first inspections that I went on. I started my career as a building inspector and ah, it was in an area between where the control was Sydney Water versus the local council. This was a plumber that normally worked in Sydney Water. I go out to inspect it and on the top of the septic tank there was an envelope and it was, you know, the standard monetary retainer over and above the fees for you to do that inspection. Now, I happened to know the

person and I got quite offended and, you know, handed the money back and all that sort of stuff. But that, it was quite normal. And I seem to recall there was some early workings of this Commission which dealt with corruption at Sydney Water and, and plumbing inspections.

But it's changed?---Well, yeah, dramatically changed. So it's just not acceptable these days for any of those sorts of things to happen. But even so, there are still subtle ways in which that happens. There's still dinner invitations or- - -

10

THE COMMISSIONER: Have you worked in council departments involving purchasing?---No, not really. Oh, well, when I say not really, I mean, as a director of development control, part of my responsibilities at that time was waste management, so there was, so I had involvement in being responsible for making recommendations about tenderers for waste services.

I mean, some of the evidence has been suggested of the notion that the only area in which corruption can occur is in planning, but that's not true?

20

---Well, no. I mean, you guys, you just did an inquiry at the Liverpool I think and the purchasing or, or Canada Bay or one of those councils.

Canada Bay?---Yeah.

And one of the witnesses in the Canada Bay inquiry- - -?---Yes.

- - -spoke about the standard procedure of paying the council officer what he called cabbage?---Was that the purchasing officer? Yeah.

30

It was a person who was, had overall responsibility in a particular area for contracts?---Yeah. No, no great involvement in that. Some involvement but of course with waste management tenders, that was always dealt with by a consultant to assess the tenders and, but that's, it not to say that during that period of time high profile people in the waste management industry would not, they would invite you to functions and, and- - -

Waste management is another area where in recent times we've had inquiries?---Well, that's going to be a, waste management is a huge matter waiting to boil over in my judgement. I don't think this city fully appreciates the issues involved with waste management yet and the costs that are going to get involved with that. It's been one of those things that has been buried, excuse the pun.

40

Are you talking, what are you, are you talking about corruption?---Well, I'm talking about, well, not necessarily corruption, but as more pressure comes onto planning and as more, as the shortage of landfill sites becomes- - -

What, and that leads to corruption?---Yeah, I think so, yeah. The opportunities for corruption anyway.

Yes?---I just think it's one of those areas that has been totally ah, underestimated, that is the impact of not having this properly resolved. And, you know, I know the government has just disbanded the waste management, it's, Waste, Waste Services New South Wales has now become a private entity and it's out there competing with other private contractors for work.

10

So what you're really saying is that the process of contracting out is one of the factors that leads to increase in corruption potentially?---It's got huge potential for corruption, yeah. Yeah, I mean, in those early days, in my naivety I thought that was all part of the system and I didn't think I was acting corruptly by accepting a dinner invitation or an invitation to the theatre or whatever it happened to be. At the same time, I often accepted invitations to theatre ah, given to me by high profile businesspeople that lived in the municipality that actually operated the shows if you like.

20

GORMLY: Well, there's been a difference between public service on the one hand and private industry on the other where football boxes and gifts and dinners and so forth are not just, not corrupt but are regarded as an essential courtesy of the system, but that's different, isn't it, on the private side?---Oh, I'm not talking about anything on the private side, no.

30

Let me take you to some specific issues that have arisen. Unless, sorry, I interrupted you. Was there something else you wanted to say?---In case we don't talk about it I wanted to put on the table what I believe to be one of the worst aspects of influence or corrupt activity in local government, and that is the, as an outcome of the 1993 reforms to the Local Government Act where senior staff are now employed under time-limited contracts. The time-limited contracts provides all sorts of pressure and coercion on people that are subject to those contracts. For example, there is pressure placed upon an individual to make assessments of applications in certain ways, otherwise the future of your job will be in jeopardy. Those sorts of threats.

40

THE COMMISSIONER: So who would make the threats?---Ah, councillors normally, people who are employed, maybe the general manager. The general manager is employed by the council, the general, the general manager then employs the senior staff. Before 1993, first of all there were minimal qualifications before you could hold an office and there was no, there were no contracts. Now, I have no objection to contracts, in fact I think contracts are a good thing, provided they are performance-based contracts. I think they are absolutely essential. But the time-limited contracts are a real problem in that they create all sorts of pressures to individual council officers and the opportunity for undue influence being placed on those officers just to keep their jobs. It's not about whether they do their job well or not, it's whether they do their job and ah, maintain an

appropriate relationship or what they see is an appropriate relationship with their councillors.

MR GORMLY: Well, time limited contracts to some extent were a reaction to what was seen to be protected tenure in the past?---Yeah, as I said, I had no objection to contracts but contracts being performance-based contracts.

10 You're, you're saying that, that you don't go from one extreme of tenure to time limited, you, you use performance as the measure for continuity of employment?---Yeah, I mean - - -

You keep, you keep your job subject to, to performance?---Yeah, and whilst I - - -

Is that what you're putting?---Yes, that's exactly what I'm putting.

20 Right?---Now, in my own I chose to, to not reapply for my position because once the general manager said to me that she wasn't going to automatically renew my contract so okay, see you later, I'm not going to stick around here and at the time that was very upsetting for me and very, very, you know, uncertain about what was going to happen to my future. But as it turned out, not much, in fact, I'm much better off with, without it. But the same thing happened to all of the other directors so we had a fantastic team of people who all lost their job at the same time for what I think were political reasons, not because of, because they'd all been successful in their own right in other jobs and you don't come to be a, a head of department in a place like Ku-ring-gai if you, you know, if you don't have some level of intelligence.

30 Sure. It sounds as though you were saying that the ongoing daily pressures of, of politics and development are a pretty destabilising thing to occur at local government level?---I'm sure you've head of planning departments being a toxic workplace and they are extremely toxic because they've got demand placed on them by management, they've got demands placed on them by the elected representatives, they've got demands placed on them by the applicant wanting a decision and they've got demands placed upon them by resident objectors. So you put all that in the mix and it's a fairly ordinary workplace environment.

40 Well, that's the kind of environment too that can produce corrupt conduct? ---Yeah, of various forms.

Yes?---Not necessarily services for money I have to add.

All right. There are other kinds of corruption?---Yes.

Mr Glendinning, let me, let me take you to the question of a register. Were you present in court when Mr Ezzy was being asked about the possibilities

of using a register at local government to require a person to lobby to place their name on a list and to adopt a code of conduct?---No, I wasn't but I have a view if you - - -

Yes, of course. Do you understand the proposal?---Well, I assume that what you're saying, well, you tell me.

10 I think you probably do but just for the sake of clarify the proposal is that you would have either a state-wide self-kept entry onto an Internet log which would be a register of persons who wished to lobby local government, probably identify a local government area, identify yourself and the nature of your function and it may, let's say in your case, be your firm as planners acting for X or Y whoever it was that was current at the time, and you saw the council on such and such date but in order to get on the register you would have to accept or adopt a code of conduct which would govern your conduct in relation to the council and council officers would require that anybody who approached them would be already on the register, no more than that?---Okay.

20 Now, it would be a means of not just imposing a code of conduct on council officers but on those who approach council as well. You will appreciate that a register of that kind is designed to record contact not only by those who are regular and appropriate but by others who may be less so?---Mmm.

But at least there's a standard by which they must behave themselves. Now, do you have a view about that kind of register?---Yes, I do. My first response is that as a professional planner I'm a member of the Australian Planning Institute who have its own, who has its own professional code of conduct.

30 Yes?---And if I don't meet that code of conduct I can be expelled from that institute so, in the same way I'm a life member of the Australian Institute of Building Surveyors.

40 THE COMMISSIONER: This is not designed against planners, I want to make that clear because we've heard the same thing, the same response has been made by people say, who are lawyers, in relation to the state government register when it's put to them that there's a proposal that lawyers who lobby should be put on the register and they say exactly the same as you and, and one answer to that is that their, the professional code of conduct that applies to them as lawyers is not actually specifically designed for relationships involving advocacy on behalf of clients with government, not in a courtroom and as far as developers are concerned it may be that your professional institute's code of conduct is not specifically designed for advocacy between developer, between planners and council? ---Yeah. I'm, as a, as a basic principle I'm not in favour of having any more regulation in the planning environment. We are grossly over-regulated. It's already very complex, the system and there's layer upon layer of regulation

as it is now. The best way of resolving a lot of the problems that I see in the system is to simplify the system. We're well overdue for a rewrite of the Australian, of the Environmental Planning and Assessment Act but that's, that's 30 years old that provision. That, there are - - -

That may well be right but I mean, we're talking about something different aren't we?

10 MR GORMLY: This not about planning?---Yeah, well, I know what it's about, it's about lobbying decision-makers, be it either state government policies or local government.

THE COMMISSIONER: It's about advocacy or lobbying, whatever one wants to call it in secret to people who make decisions that affect others? ---It's interesting, I have a, I have a strong reaction when I become aware of ex-politicians acting as lobbyist and, and getting involved in lobbying for development for, and I've had some peripheral involvement in when I've worked for clients who have decided to engage a lobbyist to help them - - -

20 That's at state government level?---Yeah, to state, state government primarily because I said I'm not a lobbyist and it's not what I do so, and, and these people come along and they've all got the, the connections with government, either by name or by reputation and, you know, I'm - - -

And do you feel that that gives them an unfair advantage?---Yeah, I do. But at the same time it's interesting that they really don't have any idea about what the issues are, you know, in the sense of that the knowledge that's required to promote the activity or they only have the knowledge that they've been provided to either by someone like me or by the client who's
30 the proponent of the development.

So would you welcome control over people like that at state government level?---Personally I would. I mean, I would say those people shouldn't be involved with the lobbyist or the person should be advocate because he should be by the professional person involved talking at a professional level to a, at a professional level not, not, you know, like planner to planner, planner from private enterprise with planner at the state government level. I'm not at all comfortable with this notion of high-profile lobbying of politicians to make decisions, you know, I suppose if I had my way I'd say
40 have no lobbyists.

There are others who say that too?---Okay.

(not transcribable)?---But even if you said no lobbyists they'd still be lobbying.

That's the problem. Well, we've gone a bit away from the, the (not transcribable)?---I just think there has to be right balance between the

introduction of any additional legislation in the framework of the environment that we're working in.

But, again, accepting that to be absolutely correct, this is, this can be characterised as a different environment?---Mmm.

It has nothing to do with your work as a planner?---Mmm.

10 It has to do with work, with advocacy work?---No register, ban them.

MR GORMLY: Mr Glendinning - - -?---I have an opinion.

You're not the first to have said words like that, Mr Glendinning?
---Probably not as directly.

20 Can I just put this to you? You, you know that this Commission has battled for many years and discovered and exposed considerable amounts of blatant, gross corruption, acts of corruption in various local governments right across the state?---Yeah.

From top to bottom?---Yes. Both from an office level and from an elected official level.

Yes. Quite right?---Yes.

30 Quite right. Now, it is being widely said in evidence before this hearing and it's pretty plausible that there are sectors of activity at local government and there are explanations at local government as to why that kind of corruption is occurring. One is that the power of local government in changing the value of an asset is direct and intense. There's no doubt about it, to rezone or to grant approval can transform the value of the piece of property like that?---Rezoning, yes.

Yes. And, and granting a DA?---Only if in granting that DA you've breached the existing planning protocols.

Sure. Sure. Or even getting it can add, I mean people still advertise DA approved for sale?---Yes.

40 It has an impact on value. But the - - -?---But certainly, but certainly it hasn't, if you've got a site and it has an approved consent with it, well it conservatively adds, well I say to my clients, about 30 per cent increase in value because you're not taking the risk to get the consent.

That's right?---And you don't have your money sitting there doing nothing.

Exactly. So, that's the first thing. The second, the second reason it's said to occur is because of the conduct of, there's mixed evidence about this, but

there seems to be a common view that the small to medium developer is a, is a corruption risk. They've got a lot at stake, they're hungry and they are impatient of any kind of procedural control. Now, I don't know whether you agree with that. Obviously there are plenty of small to medium developers and big developers who are not a risk at all. But that does seem to be a risk area. Is that something you'd agree with?---Yes. In both, in both the sense of working on both sides of the counter. Different pressures certainly today, it's client pressure to try and get the consent as quickly as possible. And not being very patient or understanding about why the process has been delayed.

Now you have accepted Mr Ezzy's point, as I think everybody would that good business practice can be a good safeguard against corruption. Proper records, two people meeting, doing things in a regular way and with a minimum of, presumably a minimum of exercise of discretion. Look, good business practice is a protection against corruption. Correct?---Yes. Yep. But the most important one being having more than one person at the meeting.

20 Yes. Yes.

THE COMMISSIONER: And not talking unless there is?---Absolutely. And I mean, I continue to be surprised, particularly when I speak with elected officials who will speak to me by themselves and is say, Mr so and so, don't you think you should have one of your senior officers here? Because I would never do it when I worked in that environment myself.

MR GORMLY: All right. Well, now, the question really, Mr Glendinning, is whether as taking an extra step of having a register that would require those small to middle developers to register because they're lobbying for a commercial interest or requiring them to adopt a code of conduct which may say to them you cannot speak to council officers other than in certain circumstances?---You know what? I think that would be grossly unreasonable because you're talking about small to medium developments, those developments have an impact on somebody, those somebody's will make submissions, they don't have lobbyists to assist them although sometimes they - - -

No, no, we're at cross-purposes here. I think that with Mr Ezzy I want you to understand that the local government register is quite different from the state government register. State government is dealing with political lobbyists. When we're talking about a register for local government we're not thinking about political lobbyists, they (not transcribable) we're thinking about small to medium developers, big developers as well, planners, lawyers, anybody else who tries to persuade local government of something?---Yeah.

We're saying that all of you including you should declare yourselves on a register before you deal with local government. Now, I accept that you are not a corruption risk, Mr Glendinning, and probably neither is anyone in your profession?---I would find that a constraint having to be on a register and register every time that I wanted to do it.

10 THE COMMISSIONER: No, not every time just once?---I'd still find it a constraint and I still think it's unreasonable because I am, I, I am a professional person, I have a code of ethics that I need to comply with, I don't - - -

MR GORMLY: You're saying it's asking you to be straight when you already are?---Yeah, yeah.

THE COMMISSIONER: But lawyers have to register, doctors have to register?---Architects have to register.

Yes?---And I have to register.

20 Why shouldn't lobbyists register?---But all those people are registered with their own professional bodies.

MR GORMLY: Not the small to medium developer?---Yeah, but the small to medium developer he reengaged me to advocate on his behalf or his architect or his lawyer not him himself.

30 Mr Glendinning, accept that we've heard some fairly persuasive evidence that when planners are hired by developers that the planners themselves become a good protection against corrupt conduct by their clients and that is they can cause their clients to act in a regular way?---Yes.

But despite all of that we still get corruption at local government level? ---Yeah, I think that's probably more to do with the environment at that particular local government area than it is across the general sense. I mean obviously, well, not obviously but the way I look at that question is that there is a knowledge by that small developer that they can influence the decision by talking to the local politician, that's what - - -

40 The local state member?---Well, in some cases the local state member who can then influence the local council, councillor.

THE COMMISSIONER: And does that happen?---Yeah, it does, I've seen that happen, yeah. I've been involved with stuff like that where you might - - -

MR GORMLY: In that sense that's not illegitimate in itself?---No, no, no, I mean, I mean, you know, we do live in a democracy and, you know, part of that democracy allows me or my client to go to their local councillor and

say I'm having a problem with the council can you help me with this. I mean that's what they're there for, if they're not well, you know, perhaps we need to rethink that whole process. I mean I have some issues with that as well that if I get the opportunity I'd like to talk about but - - -

Well, that's going to be, I think you're talking there about the structure of local government?---Well, I'm talking about the ability of, well, I'll tell you what I am talking about very quickly is today we have a variety of decision making processes in planning and local government, officers under
10 delegated authority, council meetings, council planning panels or regional planning panels and what's developed in my experience in recent times is this council staff have an inflated level of power because there's no checks and balances, all these applications are now either decided under delegation or by a panel, very few applications ever go to the local council today, the majority of them are dealt with either by external panels or the staff under delegation. And as a consequence if you're involved with a group of staff who have a particular way of dealing with things then, then there can be all sorts of problems associated with it.

20 I mean, the councillors can't interfere with (not transcribable)?---No, that's right, you can't go to the councillor and say look, you know, you need to get a handle on this, this is what's happening.

Because you may have a pro or an antidevelopment culture or something of the sort among the officers?---That's right.

And that can't be interfered with by the council?---That's right.

Well, that's a separation of function isn't it, it means that council officers - -
30 -?---Yeah. It is a real, I mean once upon a time you used to have what we call development control units, that was the norm and then all of a sudden it was realised that the officers that sat on those development control units became an authority of themselves and were acting beyond what you'd expect that authority to be. So as a consequence development control units by and by have been abandoned, that doesn't happen any longer.

All right. Okay. Well, Mr Glendinning, unless there's anything else you want to say, I think we've covered the issues or I've covered the issues that I think we needed to raise with you and I think we understand your position
40 on the register, which is a pretty firm no?---Mmm.

Is there anything else that you would want to add about lobbying?---(NO AUDIBLE REPLY)

The activity of lobbying I'm talking about?---Yes. Not, not in the, in the, in the sense that you're describing lobbying to me, no, no.

Right. In what sense then?---Oh, well, the, the, in the, in the decision-making processes in local government about what happens and- - -

Yeah, I understand?---Which I briefly touched on just then.

That's- - -

THE COMMISSIONER: (not transcribable) part of our brief?---Yes.

10 MR GORMLY: We can't go into that. All right.---More's the pity.

THE COMMISSIONER: I've just got one question that I'd like to ask you, Mr Glendinning. You're against the register and like Mr Gormly I understand why. You have accepted that there is a perception of corruption about the way in which some decisions are made by local council. Do you have any ideas as to how that perception could be reduced?---Yeah. I've often thought about this and I use the analogy of when you do have a matter before the regional planning, Joint Regional Planning Panel or in fact of you've got a matter before the Land and Environment Court, no one would
20 even contemplate trying to contact the members of the panel or the members of the court to try and influence the decision about that application, how it's dealt with. That would be the last thing that they would do, yet, anyone would do, it's not even accepted. The, if you're in a matter and you just happen to be in the lift and the Commissioner hearing the matter is in the same lift, you know, you can't even be in the same lift together to avoid any perception of, of- - -

THE COMMISSIONER: Well, that's because it's a judicial function?
30 ---Well, yeah, but it's still- - -

THE COMMISSIONER: A judicial process?---It's still making a determination on a development application.

Yes, but judicially?---Yes. All I'm trying to say is that why isn't there the same level of scrutiny or- - -

MR GORMLY: Detachment---?- - -probity when you're dealing with a development application that's being considered by the council? Why is there an ability to lobby the decision-makers at all?
40

Because, can I suggest to you, that the Land, the Environmental Planning and Assessment Act has as one of its main object, consultation with the community about planning issues?---Yes, yes.

And that's the reason?---That's in terms of, yeah, and- - -

Well, that's, that's- - -?---When they're doing zoning applications, yes.

Well, that's, that's the huge conflict, isn't it, between democracy on the one hand and judicial action on the other where there is highly-controlled submission of views from parties with an interest in accordance with judicial rules?---Yes.

Well, we're somewhere in between with planning, Mr Glendinning?
---Okay.

All right. Thank you very much.

10

THE COMMISSIONER: Thank you very much, Mr Glendinning. Thank you for your time and thank you for coming?---Pleasure.

WITNESS EXCUSED

[3.43pm]

THE COMMISSIONER: And we now adjourn, Mr- - -

20

MR GORMLY: We do. We do, Commissioner. Thank you.

AT 3.43pm THE MATTER WAS ADJOURNED ACCORDINGLY

[3.43pm]