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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 18 AUGUST 2010

AT 2.17PM

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THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, we'll continue with the evidence of Mr Furolo.

THE COMMISSIONER: Yes.

<ROBERT FUROLO, on former affirmation

[2.17pm]

10

MR GORMLY: Mr Furolo, I want to go to local government if I may. The first thing that I want to explore with you is whether or not you consider having had the experience now of being both in state government and local government, whether you would agree or disagree with the general proposition that so far as lobbying is concerned, by whatever definition you use wide or small, it's a different, that different issues arise?---Definitely different issues, by virtue of the fact that they're different levels of government with different responsibilities. I think the nature of what would be seen to be lobbying at local government is definitely different to what is seen as lobbying at the level or a federal level.

20

I think I understand your hesitation. You're saying or you're thinking perhaps in effect that lobbying at any level has characteristics that are identical?---Of course. Lobbying I guess, a broad definition would be seeking an outcome that is agreeable to you or to people that you represent. At a local government level that might be closing off a street to traffic or putting a speed hump in or, or putting a gross pollutant trap in to stop rubbish getting into the river. Technically, that's lobbying and that happens a lot in local government. Being elected representatives of council the community want your ear. And - - -

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Yes. And, right, let me narrow the question down. It would seem that the hired gun professional third party political type of lobbyist has made little inroads into local government. Would that be your experience?---I think that's a fair assessment.

40

Right?---However, there is active lobbying going on at local government level by applicants directly, by planners, builders, architects and others who are seeking approval for a project. Correct?---Yes. I think there needs to be some clarity on this issue.

Yes?---It's an essential part of the assessment process in a council for there to be a dialogue between the applicant and the assessing authority. Applicants at councils are rarely ever submitted complete and entire. It's often required that the council needs to seek additional information or to clarify information that's been provided.

Sure?---And so there is a communication between the applicant, their architect, their lawyer and, and the council to resolve issues in their applications. That doesn't necessarily suggest there's lobbying going on. And I think one of the challenges in trying to codify the relationship between proponents or objectors and council when you loosely define lobbying is how do you, how do you differentiate between what is the normal engagement process between the assessing authority and the applicant and what is lobbying.

10 All right. Can we just work on that for a moment. Correct me if I'm wrong, but do I understand you correctly when I put it this way, that a council in seeking regularity in planning schemes, consistency perhaps, compliance will make demands of applicants that they would be happy to meet if they knew or understood them all. Or if they had the information sufficient to be able to comply. That is they're not lobbying for a particular outcome, they are simply engaging in a process by which compliance ultimately occurs, subject to discretion?---I think that's right.

20 All right. All right. So that, that really is a process of not necessarily persuasion by an applicant of a council, but rather just meeting the requirements bit by bit?---Understanding, I mean you'll appreciate that while council's and have consistency you know between councils and on land use rights and development control plans, that there are differences and applicants might not necessarily have a full understanding of the requirements of each individual council.

All right?---And that process is important for them to understand that.

30 Right. And that, it may take time because the council says we need detail about this so that you comply with that and that means the applicant has got to go away and get that detail?---Correct.

The provision of it may be a nuisance but they're not endeavouring to persuade the council on anything to do with the detail?---Correct.

40 Right. There is as I apprehend you to be saying a whole other area though where a persuasive process may occur and that is where council perhaps has the capacity to exercise discretion. Is that right? Is that the other area you were talking about?---Yeah. Well, I think there's two other areas.

Right?---One which you've just outlined and one which is the, the normal inter-relationship between the community and, and the council.

Over local issues?---Yes. Yes.

I see?---But on the former that you've outlined, of course, applicants will sometimes seek to have a more favourable outcome compared to what the

strict compliance of the numerical code would provide. That does happen of course.

All right. Can we just take an example, an attempt by a residential owner to achieve dual occupancy of their block. They don't have the required number of square feet, whatever it might be. But they're only just under it. Council has a discretion to allow the dual occupancy to be built on that single block provided there are various setback screen areas, et cetera. Is that, have I roughly got that right?---That's right. Yep.

10

All right. Now in order to achieve the project, the council want to be largely happy that its requirements are met and it may exercise a discretion to allow the dual occupancy on an undersized block?---They may.

Right. That would necessarily involve I take it the putting of technical planning arguments as to why the undersize should be permitting given various other factors that are in existence?---With a development control plan, which is the guiding document by which the council assesses an application - - -

20

Ah hmm?--- - - - it's a development control plan is a principal document, it's compliance with the, compliance with the requirements of the development control plan is at the discretion of the council. What's important in, in the document is the objectives that the council is trying to achieve. When an applicant submits an application they are required to subject what's called a statement of environmental effects so if there's an issue of non-compliance but in the view of the applicant they can demonstrate it complies with the objective - - -

30

Yes?--- - - - of the development control plan that does the give the council some leeway or some, some discretion in their decision-making.

Right. All right. Now, that, that environmental control plan that is to be submitted in support of the applicant's argument is one that would generally I take it be drawn up by someone with expertise?---The council establishes the development control plan and the statement of environmental effects - - -

40

I'm so sorry, yes, of course?--- - - - provided by the applicant.

Statement of environmental effects?---That's right, and they generally engage an urban planner to assist them or an architect to assist them with that, that submission.

But to assist them would be in effect to draw it up, wouldn't it?---Correct.

Yeah. Okay. Would you have any difficulty with a description of the process of preparing and providing and then arguing that statement as being a form of lobbying?---I think that's a fair assessment.

Because the council doesn't have to exercise the power but if it's persuaded of merits then it will or it may?---That's correct.

All right. Now - - -

10 THE COMMISSIONER: Sorry, Mr Gormly, I'm not sure whether this is important but I, I do, I do have a feeling that there is a, a difference between that kind of exercise and, and, and lobbying at state and federal government level. In the example that Mr Gormly's given you, you really are looking at a small one-off application relating to the use of property?---Yeah.

Which is within the local council's power and it's something that happens constantly I imagine throughout Australia?---I, I suspect it does.

20 The lobbying, and I mean there is a, there can be perceptions about that, perceptions of corruption about that. They in a sense, it's arguable, could be siphoned off into a different category of, of low-level corruption of a particular kind involving the use of land and by use I mean in the technical sense use of land. The other kind of lobbying with which professionals get involved and other lobbyists, involve changes to legislation, changes to policy, grants of funds which seems to me to be a different kettle of fish in a sense, although it's hard for me to articulate that?---I'm not sure if the negotiations between an applicant and the council about consideration of a non-complying DA would or should be considered corruption. I think that's part of the normal process of - - -

30 No, I'm talking about when it's, something honest happens and obviously when the ordinary, the ordinary process happens properly there's no corruption?---Mmm, yes.

40 But in the nature of the exercise of persuading a local authority officer to grant approval or even the council perhaps to grant approval, certainly the local authority office to grant approval to say a development application is a long way from what a professional lobbyist does?---It's not, I, I agree. I don't think that the process of consultation and lobbying for want of a better term between an applicant and the council is the normal lobbying process that I think this inquiry might have a stronger interest in. In local government it's not my experience that professional lobbyists get involved in routine applications. I think there's no value in it for the applicant and they don't pursue that.

I think I've chosen a bad example because I see the point of this discussion. Could I try for another example and one that has had a lot of currency in the past and has been - - -?---Change of land use?

Hmm?---Change of land use?

I hadn't had that in mind, I was thinking more of the addition of floors in a block of units above those that are otherwise authorised at the discretion of council?---Yep.

10 Is that something with which one could work? It's a commercial venture, it may be a multi-million dollar exercise, the council can say no and it's the sort of project where a degree of active lobbying may apply. I don't know if that, Commissioner, is closer.

THE COMMISSIONER: I suppose so. I mean, change of land use is also similar.

MR GORMLY: Is that an example? All right.

20 THE COMMISSIONER: Similar but it is, that's true, it is, you're talking about, it's a benefit which is different from the change of legislation, the change of policy or the grant of funds but it's, it is localised but I suppose it's closer to what - - -

30 MR GORMLY: Perhaps we can work with both, we can work with a land, you have a land use example I see?---Well, I was actually just going to give a little background if I can to some things which I think may be relevant, I certainly hope so. My early experience on council as a councillor I very much had the view that if an application didn't comply it should be rejected outright. I didn't understand the principle of merit assessment and as my experience from council grew I saw that that wasn't necessarily the best outcome to simply reject something because it didn't comply with the strict numerical controls of a DCP. So my knowledge and my experience conformed my view at the time. But regardless of how council came to a decision it would often be the case that the decision would upset somebody. Invariably at local government level there are proponents and objectors and when we talk about lobbying there is lobbying on both sides and rarely in my experience has it ever involved political pressure, I beg your pardon, it rarely involved, you know, financial inducements or anything along those lines.

40 THE COMMISSIONER: When you say rarely - - ?---I'm, I'm, you know, I'm not, sorry, let me be clear. I've never seen an instance at my council where financial inducements have been offered but there is always the, particularly with objectors the notion of political pressure is one that's very easily applied and again this is very hard to regulate because it is in the nature role of local government to be accountable to, to the community and the residents have a strong view that you are elected to implement their view. And so this notion of lobbying and political pressure can put local government representatives and councillors under enormous pressure and

very hard to regulate. If someone says to you as a councillor my whole street won't vote for you at this next election if you approve this mosque in my street that's a very strong threat, that's a very strong inducement. Now, they're not offering me a bribe but they are threatening my potential re-election.

But that seems appropriate, I mean that's the nature of democracy?---Well, except that the decision that the council should make should be in accordance with its policies not necessarily because some groups or some  
10 residents don't necessarily agree with it. And so to address this issue at - - -

MR GORMLY: But you're not suggesting there's anything wrong with a street of people going to an elected person and saying if you vote in favour of this then we won't vote for you at the next election?---Well, I'm not saying there's anything wrong with that at all, what I'm saying is that it's one of the factors that councillors have to balance when they're making their assessment but to simply make your decision based on that threat I think is poor governance.

20 By whom? By the councillor?---By the councillor.

Yes. I see?---And so in an effort to try and address this issue, because as I said, invariably a decision will please some people and please other people. And the perception of how that decision was arrived at is critical to ensuring that the people who are upset with the decision or pleased with it, feel as though there was integrity in that process. At Sutherland Council, who will be coming up shortly, has a model. My council has adopted this model. I think Warringah, Fairfield and Liverpool have also developed what's called an Independent Hearing and Assessment Panel. And I championed the  
30 introduction of this system at our council, precisely for this reason, as a way of taking the assessment of an application outside of the political sphere so that the council officers will do their initial assessment based on the development control plans. A panel of five experts in the field of planning, who aren't residents of the council, who aren't employed by the council, who have got no financial pecuniary interest in any business in the area, can then independently assess the application, take submissions from the applicant and the objector in a public forum. And then make a further recommendation to the council for consideration. So when the councillors go in to make a decision, they have the officers report, the independent  
40 hearing and assessment panels report and that gives them more information and an ability to make a decision that I think is more transparent. If a councillor or a council resolves to ignore the reports and recommendations of both those groups and make something different, that I think sort of, they have to show very clearly why they aren't recommending or supporting these recommendations. In the first year of operation of IHAP at my council - - -

IHAP, this Independent Hearing and Assessment Panel, yes.?--- The Independent Hearing and Assessment Panel. In the first year the panel considered 65 applications. And by definition they are the most contentious of the applicants that council considers. There was, one of those that was considered by the council which was challenged by the occupant. Now, in the course of development assessments and contentious DA's to have one out of your 65 most contentious DA's challenged, I think is a very good result.

- 10 You mean challenged in court?---Correct. And as it happens that decision was upheld by, by the, the council's decision was upheld by the court. Importantly, the council surveyed all the participants in the IHAP process over the first twelve months to get their view on their, their satisfaction. And what came through from that survey was that even those people who didn't like the outcome felt that the process was robust, it was transparent and there was integrity. And I think from the councils point of view, that was what we were striving to achieve, informed decision making that was transparent and, and robust. And I think when we talk about lobbying there are systems you can put in place that go to the decision making process that
- 20 can give comfort and, and certainty to participants and the community more broadly, that don't necessarily involve a register. But not that I oppose a register.

Sure. Can I just ask some questions about the IHAP process first?---Sure.

I take it that, that what the IHAP panellists receive, panel members receive does not include oral submissions or oral, or personal contact with the applicants or opponents?---Most definitely it does.

- 30 It does. Right?---They, the, as part of the notification process anyone whose made a submission to the council in its assessment will be notified that the matter has been referred to IHAP.

All right?---And invited to make a submission.

Okay. Thank you for that. Next may we assume of those 60 odd, 65 was it?---Correct.

- 40 65 matters that went through only one of which was tested in court on final decision by the council, can you tell us what proportion of those applications were varied by council?---Very few.

Some?---Maybe minor. The IHAP has recommendation powers. It doesn't have determinative powers.

Yes?---And council officers would also review the IHAP recommendation and sometimes there were drafting issues, sometimes there were - - -



So there may be adjustments you're saying?---Correct, yeah. And council would either accept the IHAP recommendation, the council officer's recommendation or a shandy of the both.

Yes?---Taking into account the, you know, their objectives they're trying to achieve.

10 What is it, Mr Furolo, that you think about that process, what, what are the features of that process that have made the applicants and opponents content with the outcome even if they don't, even if it's adverse to them?---I think they like the idea that there is a panel of external experts in the field who, who have no pecuniary interest, who aren't under any political pressure to make a recommendation, they're not employed directly by the council, they're engaged on a fee for service basis, that they have a chance to make their case to this panel, that they get to hear the arguments of the applicant or the objector while they're in the same room, so they get both parties together and they both make their submissions. I think the combination of those factors gives the community and the participants a sense that the process is robust and transparent.

20

When those submissions are being made by the two parties to the IHAP is that a process open to the public?---It is, it is.

And just one, one last question on that. When the IHAP delivers its decision I, I assume that's with some statement of reasons, is it?---Yes. They, they provide a report of all the issues that are considered, then they provide a report on each individual application and their recommendations.

30 All right. Now, thank you for that. Can we just go back now to the question of what might be regarded as lobbying at local government level. We exclude the political lobbyist except in the rare circumstance and we look at those people who engage in a persuasive process to try and persuade council or IHAP for that matter of their, of the merits of their particular view and we leave out the personal applicant, that is, an individual householder, I'm really thinking - - -?---The mum and dad - - -

The domestic situation, yes, and we look more at the commercial field? ---Yeah.

40 Am I right in considering that the persuaders, the class of persuaders consists of the informed applicant, the commercial applicant, they're probably the same thing, the planner, the architect, perhaps the lawyer and maybe one or two other fields, engineers, et cetera?---Most common would be an architect or an urban planner who would be advocating on behalf of the owner.

And in IHAP that's done orally?---You can make a written submission and you can speak your submission.

Right, all right. Now, from what you described and from what we've heard elsewhere - -?---I might say, let me just clarify.

Yes?---The written submission is made to the council as part of its assessment process and the verbal submission is made to the IHAP but who, which has access to all of the assessment information.

10 I understand, right. Well, from what we've heard so far Mr Furolo, from you and elsewhere, it sounds as though the process is a reasonably robust and detached one?---My experience says yes.

We have also heard that to the extent that urban or town-planners and other experts are used that in some ways rather than being a corruption risk that they can also act as a corruption preventer, that is, that they're a professional needing to maintain standards in order to maintain registration and business and acceptability and so forth?---I, I accept that.

20 You agree with that?---Yes.

All right. Do you see any basis for requiring that class of person, so excluding the pure third party political lobbyist that's on the New South Wales register of lobbyists, excluding them and excluding the domestic personal persuader but looking more at the commercial class, do you see any corruption risk in the balance, that is, in the commercial area, either by expert or by self-represented commercial entity?---I'm not sure that I do.

30 I'm talking about in the local government arrangement as it currently stands?---Yeah.

My, in my experience of, of local government the, the assessing officers are fairly careful, they have very limited discretion in their reports and recommendations they can make. Where a council officer has determinative authority the delegated power to them is very controlled and there's very little leeway for them to make a decision outside of the delegated power and the delegated power reflects the strict numerical compliance with the controls. So in that sense, that process is self-managed in a sense. Where an applicant is - - -

40 That is it's hard for a council officer to be corrupt, is that what you're saying, because of the processes?---The report that they base their decision on has to demonstrate compliance with the standards of the development control plan and if there's a variation outside of the delegated authority they aren't permitted to make the decision. It has to go higher up, usually to the council, to the elected council. So as a council officer it's very hard to, unless they fudge the report, which I'm certainly not aware of, to make a decision with the delegated authority that gives an applicant a bonus that they otherwise wouldn't be permitted.

All right. Well, you're, I want to put two things to you. Firstly, that over the many years that this institution has existed a, a body, a fairly continuous or frequent body of investigation and complaint comes from the local government field, it's the first thing I want to put to you and I think you probably accept that, one reads it in the newspaper at the very least?---I, I accept that local government probably generates lots of complaints to this, to this Commission.

10 And many of them are found sustained?---Well, I'm not aware of the - - -

All right?--- - - - that process but - - -

Certainly some in recent times that one couldn't miss?---(not transcribable)

Wollongong and, anyway, there have been a number of them. The second matter that I'd ask you to consider is some evidence that's been heard here from a number of persons that the prime corruption risk if one can identify a  
20 prime corruption risk probably lies at the feet of the small to middle, small to medium developer rather than in the hands of planners or architects rather than at the big end of town so to speak, the very large developer who are under other forms of constraint and that that is the area where corruption activity is initiated in local government. Would, would you accept that as a general description?---I can't speak from any experience to that suggestion. I think I understand what you're, what you're suggesting.

All right. Well, we're not endeavouring to point the finger in fact at any particular segment, we're looking rather at trying to ensure that systems are  
30 in place that will avoid or manage a particular type of risk or particular types of risk?---Yes.

So I'm not endeavouring to say that all small and medium developers are bad?---(not transcribable)

Right, all right. Now, if its reasonable and feasible to identify that group as a corruption risk and if we rule out for practical purposes a register of the various experts who do lobbying, planners and architects et cetera, do you, have you considered whether there are procedures that could be put in place which would better manage the corruption risk that seems to occur in that  
40 sector of the market?---I'm, I think I understand what you're saying. Having not had experience of the types of corruption that you're referring to, of the, the sort of the small to medium developer who does one or two blocks here and there, I'm not sure what system you could put in place to prevent it because I, I have no reference point for it. My, I do believe that the current systems that operate certainly in the council that I have involvement with where there are defined delegations for council officers to make decisions, where there is a process of external assessment by an

independent panel for larger, more contentious applications, I'm not quite sure what more we could do.

Can I just explore some with you?---Sure.

I understand your point but one way of dealing with it is to regularise and formalise contact between those who determine applications and those who make them. Would you agree with that?---Those, when you say make the applications do you mean the applicant?

10

Council planners on the one hand and developers on the other?---I, I, my understanding is the contact between the ministers is pretty well defined and regulated.

Yes, I agree with you that council staff are required not to speak to developers about applications away, in effect away from work?---Indeed.

Right. And secondly, that when they do it's to be in a business environment with - - -?---(not transcribable).

20

Yes. And as I understand it, Mr Furolo, those kinds of restrictions generally in local government are met?---In my experience that's the case.

Now, at the moment the regulation is one-sided only, that is, it applies to the council officer and the council officer takes the full brunt of the process of regulation. The applicant is treated more or less as a creature at large only to be dealt with if they are caught engaging in corrupt activities such as offering a bribe or engaging in corrupt behaviour, that is, drawing the council officer into it. At present, correct me if I'm wrong, apart from signing a DA which provides information there is no restraint and no system of imposing on an applicant a standard of behaviour and a set of rules as to how they are to behave towards council officers?---That's my understanding.

30

Right. Now, what do you say to the practicality of, for example, requiring a code of conduct to be executed by an applicant from a stage even prior to DA but certainly a DA which informs them of what council officers are required to do and what constraints are upon them and what they are required to do and what constraints are upon them?---A couple of comments. The more information that applicants have about the process I think the better. Detailing what is expected of them in the process and what they can expect from the council in the process I think is, is useful and I have no objection to that per se. If you are trying to address corruption and if someone has intent to commit corruption I'm not sure that signing that document would necessarily stop them from seeking that per se.

40

Would you accept the view that if somebody makes a deliberate and acted attempt to engage in corruption for the purposes of this discussion there are

ways of dealing with that, that one catches them one way or another and then deals, examines it and then deals with the outcome?---Correct.

10 But in order to invest a system with a discouragement from engaging in corrupt activity and minimising the risk of it that attaching a code of conduct to an application or to early contact with a council over a specific project would serve a value. And I'm not trying to persuade you about this, Mr Furolo, I'm asking you what your view is as to whether A, it's practical and B, whether it would have any beneficial effect?---I think as I said the more information that applicants have about what to expect in the process the better it would be for them. So in a broad sense I'm comfortable with the proposition you put. In a practical sense applicants generally are only focussed on the process, on the, on the approval and they'll sign anything, you know, if I need to sign this, yeah, that's fine, what else do I need sign? Okay, yeah, I'll sign that. And where do I put my initials and here's my check for the assessment. That's on a practical level and I'm just thinking human nature here.

20 Well, and human nature and personal interest, that is, they're very focussed on their own interests. Is that right?---And I look at the community that I represent more than 150 different nationalities make up the local area, nearly half of them born overseas and obviously a very high non-English background. Now, while people may be able to build a building and, and engage an architect to help them with their application forms and paperwork are often not their strong suit and if you told them that they had to sign something they'll sign it. Does it inform them? Sometimes yes, sometimes no. Would it prevent them from, you know, illegal behaviour? I'm not convinced it would. Is it useful? It can be. Does that - - -

30 Yes, it does, no, that's, that's of assistance, thank you. In putting the questions I've put to you so far I have ruled out the formulation of a register of some kind where people are required to sign and thereby adopt a code of conduct. Am I right to do that, Mr Furolo, is a register unlikely to be practical at local government?---I think given the amount of engagement that's required in the assessment of an application between an architect, an urban planner, a traffic engineer, hydrological engineer, a landscape architect all representing the one applicant it could become unwieldy and in effect it may be a trap that people have failed to sign something even though their intentions have been entirely appropriate and I would loath to be in a system where people can make a mistake inadvertently with no intention to deceive or be corrupt and be caught for that. So that's my anxiety.

40

All right. Mr Furolo, just going back to that point about requiring people to sign a code of conduct bearing all your reservations would you agree that a striking feature of the difference between the political third party lobbyist and the person propounding a development for financial gain a striking distance between those two is that the professional third party lobbyist becomes quite focussed not only on what their client's interests are but what

government need is because they need to match the two. Now, that is something that does not occur at local government level would you agree by the self-represented developer?---I agree with that. I think one of the features of professional lobbyists is what they bring to their client is an understanding of the client's objectives but importantly an understanding of the government's objectives to try and find a common ground to support their, their, their client's position whereas at local government level an applicant who wants to build a block of units doesn't really care about the council's vision for the area they only care about the approval.

10

On the block?---That's right. It's fairly simple, it's, yep.

Yeah. All right. One last matter, Mr Furolo. Sorry, just give me one moment.

THE COMMISSIONER: Mr Furolo, while Mr Gormly's thinking of his question can I just bring you back to your opening statement to where you said I think that you saw no difference in practical reality between professional lobbyists and associations who represent companies and in-house lobbyists working for other companies. Is that correct?---Yeah. I certainly am not clear on what the differences are in a practical sense. They want to engage with government whether they are an in-house corporate lawyer or a government relations person in-house or they're a third party lobbyist working on behalf of a company their objectives are the same in the sense that they want to engage with the government, they want to understand what the government wants to achieve, they want to understand how their client's objectives and the government's objectives can be aligned to put their client's proposal in the best possible light.

20  
30 And that includes association?---I believe so.

Yes. The, if there is to be a register, there is a register for professional lobbyists of course at state government level would you have any objection to putting all those people on a register in some form or other?---I wouldn't have an objection to it.

Do you think it's a good idea?---I think fundamentally clarity is important.

40 It's just, the purpose of it is to create a trail for a GIPA application?---I see no reason why wouldn't do that.

And do you, what about lawyers and accountants, do you think they fall into a separate class or are they still the same as all the others?---I, well, if it's a lawyer that is representing a clients interest to the government - - -

Yes?---then I think that the same principals should apply.

Yes. Mr Gormly.

MR GORMLY: I remembered what my last point was, Mr Furolo, I'm sorry. It's back in local government. It's about the amount of pre-application contact there is between an inquiring applicant and local government, a planner, because of course, in local government contact is greatly encouraged. Correct?---Correct.

10 So that if somebody has a potential project they can go to the planner and talk to them about it first. Do you, can you tell us as a matter of ordinary procedure in your council whether when somebody comes to make an inquiry about the possibilities of developing 31 to 33 Clissold Street somewhere, that a file will be opened about that inquiry? Or can you simply come in and generally talk to a planner?---I can't say with certainty if a file is opened. But if I'm aware or if somebody approaches me about an interest in developing a site, I encourage them to speak to the planners first and foremost. Sometimes people are contemplating buying a block of land and they have in mind a development that they want to put on it. I encourage them before they even acquire the land to talk to the planners about what's permissible on that site so that there's clarity for them about, before they  
20 make a financial commitment.

Right. But so far as council is concerned, do you know if that meeting is minuted to note the inquiry?---I, I can't with certainty.

All right. Commissioner, I have nothing further for Mr Furolo. Thank you.

THE COMMISSIONER: Mr Furolo, thank you very much for coming and your observations particularly as to local government, have been very valuable to us. Thank you?---Thank you, Commissioner.  
30

THE WITNESS EXCUSED [3.02pm]

MR GORMLY: Commissioner, I call what will now be our final witness for the day, Mr Ray Plibersek.

THE COMMISSIONER: Mr Plibersek.

40 MR PLIBERSEK: Yes, thank you, Commissioner.

THE COMMISSIONER: Do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR PLIBERSEK: I'm happy to give it under oath, Commissioner.

THE COMMISSIONER: Yes, thank you.

THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner. Mr Plibersek, can you tell us your full name?---Raymond Joseph Plibersek.

10 Mr Plibersek, I think that you are currently with the Sutherland Shire Council?---I am.

In what capacity?---I'm the internal Ombudsman.

All right. How long have you been with them?---Just below four years.

Right. And I think you've got a background in Arts and Law with a masters in law?---I have.

20 In what field?---In Masters in Law?

Yes?---Mainly admin law and intellectual property.

Thank you. And I think prior to that you'd been a prosecutor with the Australian Commonwealth Director of Public Prosecutions?---Correct.

Where I think you were dealing with prosecution in tax and corporate fraud?---That's right.

30 You've also worked as a lawyer for WorkCover New South Wales and you've been a legal and policy advisor to the New South Wales cabinet office?---That's right.

And I think you do mediation. You've also worked in Consumer Tenancy and Trader Tribunal for many years?---I have. Correct.

All right. Now Mr Plibersek, your council is one of the few in New South Wales who actually has a register of lobbyists. Is that right?---As I understand it, that's right.

40

Right. All right. Now, I want to ask you about that and a number of other matters. But, but firstly before we get to that is there any preliminary comment that you would wish to make by way of an opening?---I've prepared a short statement which I've sent to the Commission earlier or late this morning.

THE COMMISSIONER: And thank you for that, Mr Plibersek. Have you got Mr Plibersek's statement?



MR GORMLY: I have.

THE COMMISSIONER: I have it. I don't think it's necessary for Mr Plibersek to read it, because we can just put it as part of the papers of the inquiry.

MR GORMLY: All right.

10 THE COMMISSIONER: Because it's all here.

MR GORMLY: Right. Good. All right. We're going to go straight to the questions then if we may?---Yes.

Mr Plibersek, there are three areas I want to ask you about. The first is about the register, what brought the register about, how it's used and about why you think it's operating the way it is. The second area is as to a method such as might be needed to regulate lobbying in, at local government and the third is a question of, of some practicalities about what happens in the  
20 process of public inquiries to local government about potential developments. I think they're all areas about which you can answer questions. Is that right?---Yes, I can.

Good. Can we start with the, the register. If you can just tell us what was behind the development and introduction of a register and how, how it's used?---The exact trigger was, I think it's referred in some of my written submissions, and I think the exact trigger was the Mormon Inquiry and council responded to that by passing a resolution. I think it was in early  
30 2008, from memory it was March, 2008. But certainly the details were referred to in some of the written work I've submitted. And really council was expressing a concern about what, what more could be done from Sutherland Council's point of view to ensure its integrity at the (not transcribable) application process and to minimise corruption. And as I said that's referred to in my written submissions.

All right. Now as I understand it, the, the register that has been introduced in to Sutherland Shire is one that adopts the definition of lobbyist or substantially adopts the definition of lobbyist that is used in the New South  
40 Wales register system. Is that correct?---Yes, that's correct.

Right?---I'll just, for assistance of the Commission, I've brought in some copies of our paper, not paper, but the, what we give to potential lobbyists. I've got three copies there.

Right. Thank you?---It may help you to, we can go through that, I can - - -

Yes. That would be helpful?---You can follow it through that.

Right?---You can see the definition appears, a lobbyist appears there on, in the middle of the first page.

Right?---Under the heading Registration Procedures.

All right?---And the, and the definition is similar to what you referred to.

Okay. And so are the rules?---Its intent to summary, because of course it's a voluntary process.

10

Yes.

THE COMMISSIONER: There is no definition of lobbying?---No.

So the definition of lobbyist is really open to argument?---It is. You see the, not the problem, I was going to say the problem, but the approach we adopted is we, we had many drafts of this and there was a considerable discussion with senior staff within the council but in the end we thought that if it was going to be too prescriptive and too detailed that would deter a lot of people from making declarations and from registering as a lobbyist. So we thought because it's voluntary the best thing to do is to try and make it capture the essence of the important concepts and not, not be too prescriptive. For example, to give an example we had a process of registration if people didn't, as a lobbyist if they registered and they didn't comply with say putting in an annual return or if they breached the rules we'd remove them from registration similar to the Commonwealth and West Australian systems.

20

MR GORMLY: Right?---But in the end we thought that it's, that was too cumbersome so we thought it's a voluntary process, we'll try and get the main principles in and that's the way we, we chose to do it.

30

All right. So that what, what you have in effect is a register that asks professional third party lobbyists to put their name down and put down the name of their clients and to in effect adopt those rules that are set out there? ---That's correct.

Right. Now, in, in fact I think you have had almost no registrations. Is that right?---We've had, we've had two people register.

40

Right?---And that's in relation to a very large development just behind the Wanda Beach sand dunes on Kurnell Peninsula and that was involving a, a very large development. The, the area was zoned commercial residential or large industry heavy like bulky goods and there was an application there to convert that to residential development and there was a couple of people were involved lobbying on behalf of the proponents for the application which was Breen and Australand.

Right?---And they, they registered under the registration process, procedures.

Do you know if they're also registered on the New South Wales register of lobbyists?---I don't know as a fact but I would be surprised if they weren't because the people who registered were professional lobbyists known to the councillors and - - -

10 Right?--- - - - in fact I, I know one of them and I know, I know them to be professional lobbyists so I'd be very surprised if they weren't registered on the New South Wales system.

And were they active as lobbyists during the process of that development? ---I assume they were but I don't know as a fact because I had no contact with them and I didn't actually ask what, what the contact was.

20 All right?---But I can tell, I can say to you from my knowledge that they did attend meetings of council where the proposed rezoning of the subject land was discussed and so I did see them in the public gallery, attending public meetings and apart from that I can't say from my own experience.

All right. Now, Sutherland Shire is a, it's a large shire, it's a, it's a large council area with a high population?---It is.

A lot of coastline, river line and various high-rise areas as well as some industrial, is that correct?---That's correct, and a lot of residential. It's, I think it's the second largest in terms of actual budget. I think in terms of population I think it's also the second largest behind Blacktown.

30 Right?---But our annual budgets about \$220 million so it's quite a large concern.

All right. And it's not one that is innocent of large, sorry, that's really badly put, it's not one that is unfamiliar with the application for large projects? ---That's correct.

40 Right. So that if, if there were an area or a number of councils where one might expect to see professional lobbying Sutherland would be up there, it'd be Sydney City Council, Blacktown perhaps and one or two, Parramatta? ---That's correct. Sutherland would probably be towards the bottom of the top ten would be a guess but certainly the Council of City of Sydney, North Sydney, places like Chatswood and Hurstville which has large scale high-rise residential development around the business centres and Parramatta, they'd be, they'd be all examples which would be way ahead of Sutherland but Sutherland would be towards the tail end of that group.

All right. When the firms that did register went onto the register were they, were they encouraged to do that, were they informed of the register and asked to register?---I don't know as a fact but I believe they were.

Have you seen signs of professional lobbyists operating in Sutherland Council area who have not, who have chosen not to register on the voluntarily register?---Not personally but I've been told here's some information about lobbyists in the past but not, not to myself (not transcribable).

10

Prior, prior to the register do you mean?---Yes, yes, some years ago.

Right. But since the register has come on are you aware of any political lobbyists, third party lobbyists active who haven't registered?---Not personally, no.

All right. Do you think that it would come to your attention if, if there were?---Not necessarily. Like, I, I have many examples of councillors that are lobbied by resident for particular a development application like (not transcribable).

20

I'm talking about third party professional lobbyists?---No, no. I, look I may or may not be depending upon the nature of the development.

All right. Would this be fair, I'm trying to get a handle on quantity, Mr Plibersek?---Sure.

Would it be fair to say that there would not be much professional lobbyist activity in Sutherland?---Yes, that would be fair to say.

30

All right, and that - - -?---That's quite small.

Okay. And from you knowledge of the local government field would that be difficult?---Depending upon the council. Like in terms of a council similar to Sutherland that would be the case but - - -

Right?--- - - - compared to say the Council of City of Sydney which is, has many multi-million dollar developments it would be much more common.

40 I take your point?---So - - -

All right?--- - - - it, it's horses for courses, it depends upon the council - - -

Sure?--- - - - and the area they administer.

Right. So it's generally fair to say then that such lobbying activity as occurs in Sutherland, and one assumes there'd be a fair bit, is not coming from the

professional lobbyist, it's coming from others?---The great majority, that's correct.

Now you were present in court when Mr Furolo was giving evidence?  
---Since the lunch adjournment, yes.

10 Yes. You'll no doubt have heard the discussion concerning whether or not there would be any utility in having a register at local government which would expand beyond the third party lobbyist to include other categories of lobbyist. Do you recall that?---Yes, I did hear it, hear that.

Did you agree with his views about that? That is, that there would be little utility in expanding it to planners, architects, builders, et cetera?---Speaking for myself personally - - -

Yes?--- - - - no, I, I would, I'd be happy to see it expanded to some extent.

20 What, what would you see it expanded to?---Well, I've struggled with this question quite a great deal and I'm, I won't be able to give you a very clear answer because of my struggle with exactly what would be appropriate but let me put it this way, just bear with me, I'll just give you an example, and you did refer to examples, you might have a mum and dad developer who, who want say five or ten per cent more floor space than the development control plans allow them and the architect might ring up the town, the, you know, the assessment officer and say look, can't we just sort of squeeze this extra five per cent in, you know, that could be regarded as being lobbying or it may not be, it depends upon people's views of things.

30 Sure?---To the other extreme you might have a large development where the developer wants to add an extra four or five stories on top of a ten storey building which is grossly above the permitted floor-space ratio and that may not just involve the developer, the architect speaking to council planning people but they also may be speaking to councillors themselves so that's clearly lobbying in my point, from my point of view. So the opponents of the system registration would say well, look, what's wrong with the architect asking for five per cent more from mum and dad investor but, but then again you'd want to have the architect registered in cases where there are, where they're advocating, you know, a significant increase in floor space in a large commercial building. So - - -

40

THE COMMISSIONER: Mr Plibersek - - -?---Yes.

I'm interested in these views because they are inconsistent with your registration procedures. Your, your registration specifically - - -?---Yes.

- - - specifically excludes surveyors and town planners and architects?

---It does but I did preface my remarks by saying it's my personal view.

It's not a criticism but it is - - -?---No, no.

It demonstrates the controversy in this - - -?---Yes, yes.

- - - area?---I accept that, Commissioner and I, and I did say that, I've said in my written submissions and I'm repeating now that this is my personal view.

10 I understand that and I respect that but I'm just observing that it's an ongoing problem?---Yeah, yeah. No, it highlights the difficulty and that's, what's what I've tried to demonstrate with my example. Like, on one hand, people, most people would say look, the mum and dad investor, you know, seeking a bit of extra floor space is not really lobbying is where you view it but - - -

Can I just come at this in a different way?---Sure.

I've read your statement, which is very helpful, thank you?---Thank you.

20 It seems to me that you've gone far in, in satisfying your community about your town planning procedures. You, you agree with that?---Yes, I do, I think it's, I think it's a very good system and, and in my position I'm the internal ombudsman so I do get a lot of complaints or I can get a lot of complaints about development applications and development process and whether or not the rules have been and I've been there four years now and the number of complaints I have is quite small in this area and it's declined since I've been there because our council's procedures I think are very good and I think that they're about the best in local government that I've, that I've seen.

30 That's the IHAP procedure?---It's an IHAP procedure but I've referred in my written submission about it but we, we go more than just the IHAP, we have the, the assessment of developments as they come in. I've got here a copy which I may hand up, it may be appropriate now but I'll just make two comments if I might, well, actually it's probably best if I hand it up as a bundle but there's, what I have is there's, there's three copies, there's two copies of a development application and I hope I answered your question but can I go through the documents and just explain what I mean?

40 Yes?---Is that possible?

I think that's, that would be a good idea, it helps us all?---Okay. Well, if I just take you to page 7 of this document, that's the document headed Application for Development Consent. You'll see there that's the, the heading is 15 Owners Applicants Declaration Affiliation.

And, and so you've got under the general declaration a statement relating to conflicts of interest?---Yes. So what we've done there essentially is we've,

we've set out the obligation under section 147 of the Environmental Planning & Assessment Act which requires the disclosure of political gifts and donations. We've added to that a voluntary request for people to declare any affiliations they may have with councillors or council officials and describe the nature of that affiliation.

And then you've got the section on lobbying - - -?---And then we've got the section on lobbying as well. So we've combined those sort of three ideas.

10 And political donations?---Yeah. And so we've tried to, we make it clear it's voluntary and we make it clear that there's a compulsion to declare the donations.

Why do you make it voluntary?---Because there's no legal mechanism by which we compel people to do it.

And do you put this information on your website?---Yes, we do.

20 And that's, right?---So I'll just, I'll just - - -

Are these, would you say these are the most important things that you do? ---Well, it's one of the most important things we do. But I need to, if I may just have five minutes to explain the procedure in a totality - - -

30 Yes. Right?--- - - - so you can get an appreciation of what we do. So, so this is a development application that comes in and so we ask people to fill it in then combined with that we have the lobbyist registration procedures which I've shown you and then also we have, I might just show you this at the same time, this is an extract, I report twice to council, this is my most recent report and I'll hand, I'll hand two copies to you, one for counsel and one for yourself. And that's just a bit of information for you as to the number of affiliations we get declared. So we keep a record of affiliations that are made and they're just the numbers for my report there.

40 MR GORMLY: This might be having a relative working in the council, is that what (not transcribable)?---Yeah, relative working in the council or you might have a friend or you might have an association with someone at the sporting club or even a political affiliation. We did ask some people who have, are members of political parties to declare their affiliation as well.

(not transcribable) affiliation?---Yeah, that's right. As described at the top of page 97 in the development application process.

THE COMMISSIONER: What happens if they give you false information?---Well, that's referred to in my written submissions, Commissioner, but because it's voluntary we can't do anything but what we do do is sometimes staff recognise the name and they recognise a potential affiliation. The, one of the environmental planning assessment managers I

spoke to she said that they do, they will send, staff will send the affiliation back or the form back where they do know of an existing affiliation and I'll ask the applicant to reconsider what they've said and sometimes it comes back with additional information added in about an affiliation. So that's, that's the direct answer to that question. But what's particularly interesting, I was interested also comparison between what we do and what other councils do as evidenced by the previous witness, we do some additional things which includes when the application comes in we examine it for obviously declarations of affiliations but then there's at least two sets of meetings where panels of planners and assessing officers get together, they assess the actual application and they consider who's the appropriate assessment officer to deal with it and that's based upon, you know, the importance of the application, the seniority and the experience of the planners but also whether or not there's any declaration of affiliation or political donations or anything else like that. So there are some examples where a planner within council will know, will know someone, the applicant or there will be an affiliation declared in which case obviously that application doesn't go to that person. So that's an additional safety mechanism as it is, as it were compared to what other councillors do. So right from the beginning we're sort of, we're sort of sorting out potential conflicts of interest and, you know, potential other conflicts.

And this must implicate its own culture?---It does. Well, that's very interesting, in preparing for my appearance today I did speak to a number of people specifically about this and one, and I've commented upon that in my written submissions and one of the points is that staff themselves are very much aware of this and they themselves bring these things to the attention of senior management so it's got a self-enforcing sort of mechanism. So I was interested in Mr Gormly's comment, I think one of the questions was about, to the previous witness was the one-sided nature of obligations. One of the important features of what we do is the two-sided nature of the obligation so that we also, as well as putting obligations on staff and councillors we also ask potential lobbyists or people, applicants with affiliations to declare that. So you've got two sides as it were looking out for each other but also it has an educative role for staff and an educative role for potential applicants.

It must help staff morale as well?---I think so, yeah.

You don't need a register then do you?---Well, - - -

What else does the, what does the register do that this doesn't do?---Well, the register has an educative role for potential lobbyists because we give them lobbyist procedures which we've just, I've just referred to.

But, so that, is there any reason why that - - -?---It's also a transparency issue because if someone's registered as a lobbyist, for example, the (not transcribable) Australand development which is the example I spoke to before, the fact that people registered that's referred to at council meetings,



it's much more, that is the transparency of the process so that, at local government you may be aware that if, speaking for objectors, objectors I'll often get objectors calling me and say council's corrupt, you haven't listened to my objection therefore someone's being paid, it must be corrupt. The fact that, you know, council may not like a particular development but if it complies with the rules it should go through otherwise it will lose in court. People don't, you know, a lot of objectors don't understand that and they think that if they object and council doesn't listen to their objection, sorry, doesn't act on the objection then somehow there's something wrong. So that's why the registration process aids in that transparency and the understanding process and the educative process.

Is there any reason why a similar sort of form as this could not be given to any town planner or any mayor or architect acting on behalf of a client in an application?---In my personal view absolutely not but some people in council take the view that it would be potentially unnecessarily restrictive but in my personal view, speaking on my own personal view I think there's no, I'd have no problem with it.

20 Why do they think it's restrictive, what does it restrict?---Well, - - -

You mean forcing the people to disclose their affiliations?---I think as the previous councillor said it's just an extra piece of paperwork and people, you know, the general view is less paperwork is the better but that's not my personal view but that's the other, that's the other view which has been put.

MR GORMLY: What you're saying, Mr Plibersek, is consistent with some evidence we've heard from a planner to the effect that there's a great deal of regulation already and they don't want to be registered as a lobbyist because they're professional people who work in accordance with a code of conduct and it's true in the case of lobbyists and lawyers, in the case of town planners and lawyers who are a member of a professional association do you think that those kinds of codes of conduct are not sufficient?---My answer to that would be that it's going to sound self-serving, please excuse it, it's not meant to but I think in terms of lawyers the lawyers are highly regulated and in that particular case I think it's sufficient not to have them sign the code, I'm sorry, not to be involved in the registration process but insofar as town planners go I don't know enough about their code of conduct and how good their self-regulation is to make an informed comment so I couldn't comment. But I would say one thing and that is that we had a lot of problem with private certifiers and it's probably outside the terms of the reference in this inquiry but private, the private certification system basically is this that someone can sign off in effect to say that a building complies with the way, you know, the development consent conditions. We have no end of problems at Sutherland Council, many councillors - - -

Can I just stop you for a second? It's important so that we have this evidence clear on the record. You are talking about the system by which

approval can be achieved by what amounts to a statutory delegate, somebody out there in the private market who does what the council would otherwise have done. Is that right?---Yes.

And they're usually people who are planners and they're registered for the purposes of being able to - - -?---Planners and architects, yes, that's correct.

Yes. Able to give the approval council would otherwise have given?---Yes.

10 And they will also carry on a process of certifying at stages through the building and sign it off in the end?---That's correct.

Right?---The point of my example is that council gets many complaints of private certifiers not sticking to the rules and I've seen that myself on a number of occasions where people complain, mostly neighbours. Council does complain to the Department of Fair Trading who's the body that regulates them and the amount of, the poor service that councillors got from the department in terms of checking the complaint and pursuing it is in my opinion very, very poor. Basically council, if council makes a complaint it's  
20 virtually required to compile the brief of evidence including a statutory declaration, send that to the Building Services Board or whatever they call it, I just forgot for the moment and then nothing but the most egregious cases are in my experience ever dealt with so that the short answer to your question is that if there's an adequate degree of self-regulation such as lawyers I think it may not be necessary for them to sign the, to be involved in the registration of lobbyist procedures but if there's inadequate, if there's an inadequate degree of self-regulation or government regulation such as private certifiers most certainly I would like to see those included. Again that's my personal view.

30 \*1530cp

I suppose, Mr Plibersek, a private certifier in itself is outside the scope of this inquiry but the fact that that occurs may be evidence of the degree to which persons outside council must be governed or regulated in their conduct towards council because if they're not then there's non-compliance. Is that - - -?---Yes, I'd agree with that.

THE COMMISSIONER: Can I just come back to this paragraph 15 of the owner's declaration?---Yes.

40 Did you give consideration to the notion that persons acting on behalf of the applicants should sign such a declaration?---Yes.

And you obviously decided against it?---Well, the, the, the application can be made by the owner of the land or it can be made on behalf of the owner of the land and so it's, it's expressed in a way as to require whoever the applicant is to make that declaration.

MR GORMLY: Just reflects the Act as to an application. Is that right?

---That's correct. The application, an application can be made by the owner of the land or someone on behalf of the owner.

Yes. The Commission is asking a different question though that whatever the Act might say where an applicant or an agent for an applicant can apply was consideration given to having the agent sign and the applicant sign where the two exist?---Consideration was given but I think the consensus was that the application shouldn't go beyond what it would normally do so if an applicant, if an applicant applies him or herself they should make the declaration but if it's made on behalf of the applicant then the person making application should - --

THE COMMISSIONER: But one can immediately see the loopholes in that?---Of course, yeah, yeah.

I mean, you might have very strong affiliations and made many donations and you expect favours to be shown to you but you don't want to disclose it so instead of making your application yourself you ask your wife to do it and, or you ask a lawyer to do it and that person doesn't have to disclose anything?---Well, it's not quite, it's not quite that way because you'll see that the introductory paragraph does ask that, the development application process property owners and development applicants are requested to declare all affiliations or associations so it's, we do ask that even where the owner is not the applicant that that be disclosed but again there's no way of enforcing that.

MR GORMLY: Your preference would be I take it to have this kind of form part of the DA as a statutory instrument so that it could be enforced or alternatively to have it as a second instrument where you could require it without it being voluntary?---Speaking personally that's, that's correct.

THE COMMISSIONER: Would that add a lot to the administration of the council's business?---No, we already do it and it doesn't, doesn't make a lot of difference to us that I can see but it only takes a few minutes to go through it and I think it's a, a very important safeguard that we do rely upon to some extent.

MR GORMLY: Judging from your report to the council it looks as though there are enough affiliations to justify requesting people to declare them? ---That's correct, yes.

And you'd expect in a local government area?---Yes.

THE COMMISSIONER: Would you think that this would apply, this system would apply as well in a small council?---I think with a small council, in a sense it's even more important because, taking a small country council for example, which I have some experience of just by observation and my written, the council's initial submission refers to it, there's much

closer contact between those people in a small country council and the councillors because basically everyone knows everyone else and so in some senses it's more important that that be declared.

Yes?---As the practicality of how to deal with that declaration once it's made, that may be more difficult, it may involve say the development being assessed by a neighbouring council or some other mechanism but certainly I think it's as important if not more important in such a small council.

10 MR GORMLY: Mr Plibersek, these probity, various additional probity procedures that you've referred to and the affiliations, examination process and the register, are these things that have flown out of the ombudsman's position at Sutherland?---I would say so. Like, as I said before, the initial impetus was the resolution passed by council but a lot of the ideas, the procedures, the research behind them, the thinking behind it, it comes from my office.

Right?---Yes.

20 Is an ombudsman position a common position in local government?  
---There's about six at the moment, mostly metropolitan Sydney, for example Warringah, Auburn, Ku-ring-gai. I note from the previous ICAC reports that, that the ICAC has commented favourably on the position in Wollongong and also Ku-ring-gai as being of assistance to the Commission in what work they've done.

Are they usually lawyers or people with legal qualifications?---About half in my experience, about half in my, yeah, about half. I would just note out of interest is that there's a current opposition if I might say by the New South  
30 Wales Ombudsman to council ombudsmen because they see them, I'm not sure, I won't speculate as to the reason but there's a report been put out recently, a discussion paper put out by the New South Wales Ombudsman question the role of internal ombudsmen at council level.

Adversely?---Adversely, yes. We, we responded to that but it's, I was surprised and disappointed by the position taken by the New South Wales Ombudsman.

All right. Yes?---Speaking personally.  
40

Yes, I understand. Commissioner, I have nothing further for Mr Plibersek.

THE COMMISSIONER: Yes. Well, Mr Plibersek, last but not least. You're our last witness but by no means the least. You've given us much food for thought and your material has been extremely helpful. Thank you for coming here?---Thank you, Commissioner.

MR GORMLY: Thank you, Mr Plibersek.

**THE WITNESS EXCUSED**

**[3.37pm]**

THE COMMISSIONER: The Commission will now adjourn.

**AT 3.37pm THE MATTER WAS ADJOURNED ACCORDINGLY**

10

**[3.37pm]**