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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION CALPURNIA

Reference: Operation E09/1462

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 1 FEBRUARY 2010

AT 10.10AM

Any person without publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: This public inquiry is being conducted for the purposes of an investigation conducted by the Commission concerning various allegations principally arising from two matters. First, an audio recording made by Michael McGurk of a conversation in which a representation was made by Ronald Medich that a corrupt payment could be made to Sam Haddad, the Director General of the Department of Planning, with respect to a proposed development and, secondly, various statements alleged to have been made by Mr McGurk to various people relating to corrupt conduct by New South Wales public officials and others including, but not limited to, conduct in relation to the possible rezoning of property at Badgerys Creek.

This public inquiry is not concerned with the reasons for the murder of Mr McGurk or the investigation into that murder. The general scope and purpose of the public inquiry is to one, make public the results of the Commission's investigations to date of the allegations; two, obtain additional evidence to clarify some issues; three, make findings as to whether corrupt conduct has occurred or not and; four, gather evidence relevant to the allegations being investigated for the purpose of determining whether any methods of work practices or procedures should be changed to reduce the likelihood of the occurrence of corrupt conduct.

I will now list the specific allegations investigated by the Commission. They are, one, that Ronald Medich represented that he could make a corrupt payment to Sam Haddad, the Director General of Planning, as an inducement for favour to be shown by Sam Haddad in respect of a proposed development application relating to land owned by Ron Medich Properties Pty Limited at 16 Crooked River Road, Gerroa. This allegation is founded on an audio recording made by Michael McGurk. Mr McGurk reported to various persons, including James Byrnes, a business associate, and Kate McClymont and Vanda Carson, Sydney Morning Herald journalists, being that he had made this recording prior to his death. The recording, which has been the subject of extensive media reporting following Mr McGurk's death, has been obtained by the Commission. The recording is of a conversation involving Mr McGurk and Ronald Medich, the property developer and business associate of Mr McGurk's. Because of concerns that the recording was unlawfully made by Mr McGurk, the ICAC Act was amended to allow the Commission lawfully to make use of the recording in the course of its investigation.

Two, that Ronald Medich caused payments to be made by an intermediary to various Ministers of the Crown and Mr Haddad as an inducement for favour to be shown in respect of planning decisions affecting applications relating to land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek. This allegation is based on Mr Byrnes' account of a conversation that he had with Mr McGurk. According to Mr Byrnes, Mr McGurk told him that Mr Medich admitted making these corrupt

conducts, corrupt payments, or causing them to be made and that he did so during the course of the recorded conversation obtained by the Commission. Sydney Morning Herald journalists, Vanda Carson and Kate McClymont, met with Mr McGurk on 29 July 2009. Ms Carson has told the Commission that Mr McGurk told them he had a recording of a conversation with Mr Ron Medich in which Mr Medich named politicians, government officials and councillors who he had paid to smooth the way for developments in which he was involved.

- 10 Three, that in March 2006, Michael McGurk, at the direction of Ronald Medich, offered a member of parliament a corrupt payment as a reward for persuading Mr Haddad to recommend the rezoning of land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek.

This allegation is based on information provided to the Commission by a current correctional centre inmate and former business associate of Mr McGurk who is presently serving a sentence for fraud related convictions. He has told the Commission that he and Mr McGurk, acting in
20 concert, secretly recorded the conversation during which this offer was made.

Four, that Mr Haddad, having become aware of the existence of information capable of implicating him in the receipt of corrupt payments, withdrew his approval for the rezoning of the land owned by Ron Medich Property Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek. According to Mr Byrnes, Mr McGurk made this allegation to him some time after Mr McGurk had recorded the
30 conversation involving Mr Medich.

Five, that Ronald Medich provided a motor vehicle to the wife of a local council mayor in return for that mayor providing assistance with respect to a development being undertaken by Mr Medich in the area of the local council concerned.

Six, that a property developer and former local councillor arranged to have property rezoned to financially benefit a current member of parliament. Allegations five and six are based on Miss McClymont's account of a conversation she and Vanda Carson, a Sydney Morning Herald journalist,
40 had with Mr McGurk on 29 July, 2009. According to Mss McClymont, Mr McGurk made these allegations during the course of their conversation.

Seven, that Ronald Medich made corrupt payments in order to obtain approval with respect to a development being undertaken by Mr Medich in the local council area referred to in allegation 5. This allegation is based on Mr Byrnes's account of a conversation he had with Mr McGurk. According to Mr Byrnes, Mr McGurk told him during the course of his recorded

conversation with Mr Medich that Mr Medich admitted making these corrupt payments or causing them to be made.

I will not read out allegation 8. The Commission is not persisting with this allegation for reasons Senior Counsel assisting the Commission will shortly detail.

10 Nine, that Ronald Medich used his relationship with the police minister to ensure that New South Wales police did not proceed with an investigation into an allegation that he, Ronald Medich, and others engaged in fraud in respect of an insurance claim arising out of a motor vehicle accident.

Ten, that Ronald Medich used his relationship with the police minister to ensure that New South Wales police did not proceed with an investigation into an allegation that he, Ronald Medich, engaged in fraud in respect of an insurance claim arising out of the death of a horse owned by his company.

20 Allegations nine and ten are based on Mr Byrnes's account of conversations he had with Mr McGurk during which Mr McGurk are said to have made these allegations. The name of the police minister was not specified by Mr McGurk.

30 Eleven, that a relative of a New South Wales member of parliament represented that he could arrange for the member of parliament concerned to have the New South Wales police renew a lease of a particular premises. This allegation is made by Mr Byrnes based on a conversation he alleges he had with a relative of the member of parliament and two other persons involved in purchasing the premises formerly leased by New South Wales police.

40 Twelve, that from October, 2005 to April, 2007, Mr McGurk secretly recorded a number of conversations during which senior New South Wales public officials and members of parliament discussed engaging in corrupt dealings with Mr McGurk. This allegation is based on information provided to the Commission by the current correctional centre inmate and former business associate of Mr McGurk who is presently serving a sentence for fraud related convictions. He is the same person who made allegation 3 and he has told the Commission that he and Mr McGurk, acting in concert, secretly recorded the conversations the subject of the allegation.

Thirteen, and this is the last allegation, that Ronald Medich made corrupt payments to a former minister for planning to assist with a planning matter.

This allegation is based on information provided to the Commission by another business associate of Mr McGurk's. The obligation of the Commission is to investigate serious allegations of public corruption and make public its findings irrespective of whether its findings are that corrupt conduct has occurred or not. The proper discharge of this obligation, even

when the Commission's findings are that no corrupt conduct has been established, is in the public interest. The reason for this is that allegations that give rise to unverified and unsubstantiated rumours and speculation of public corruption are likely to lead to significant loss of confidence in government and public administration. Such loss of confidence is harmful to the fabric of society. Of course, if the allegations are found to be true, the findings should be published and should lead to steps being taken to eradicate the corruption. On the other hand, if the allegations are found to be false, those findings should be published to put an end to the prejudice being caused to the community as a whole and unfair harm to the reputation of affected individuals.

The allegations investigated by the Commission are of a most serious kind and of great public interest. Some have been the subject of widespread and repeated publicity in the media. This in turn has caused much public speculation as to the voracity of the allegations and the identity of the public figures involved. The allegations in question and the speculations that have arisen from them have the capacity to cause mistrust of the government and administration of the State and indeed to harm the fabric of the system under which we are governed.

The Commission accordingly has determined that it is in the public interest to hold a public inquiry so that all the relevant allegations can be openly examined, all the relevant evidence can be led and exposed to public scrutiny and appropriate findings can be made. For the reasons I have given it is of great importance that the rumours and speculation be resolved and a main purpose of this public inquiry is to achieve this end.

A number of people are named in connection with the allegations. In the course of the Commission's investigation a number of other people were named in connection with the allegations as having engaged in corrupt conduct. These people have not to date been named publicly in connection with these matters. The evidence obtained to date does not substantiate their involvement in such conduct. To name them at this stage would therefore unduly prejudice their reputations. Section 31(2)(c) of the ICAC Act requires the Commission, in determining whether it is in the public interests to conduct a public inquiry, to consider any risk of undue prejudice to a person's reputation. I therefore determine that at this stage of the public inquiry, and absent new and persuasive evidence, those persons should not be named in the allegations or the evidence. Accordingly, I've made non-publications directions under section 112 of the ICAC Act in the following terms.

Absent additional and persuasive evidence I am satisfied that it is necessary and desirable in the public interest that I make a direction pursuant to section 112 of the ICAC Act that any evidence given before the public inquiry, including the contents of any exhibits tendered

10 during the course of the public inquiry, that identifies any of the persons referred to below should not be published or otherwise communicated to anyone except by Commission officers for statutory purposes. This direction applies to the following: allegation 2, which is that Ronald Medich caused payments to be made by an intermediary to various Ministers of the Crown and Mr Haddad as an inducement for favour to be shown in respect of planning decisions affecting applications relating to land owned by Ron Medich Properties Pty Limited and Ron Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek, evidence that identifies any Ministers of the Crown. That is to say, section 112 order that is made in relation to allegation 2 concerns evidence that identifies any Ministers of the Crown.

20 Absent additional and persuasive evidence I am satisfied that it is necessary and desirable in the public interest that I make a direction pursuant to section 112 of the ICAC Act that any evidence given before the public inquiry, including the contents of any exhibits tendered during the course of the public inquiry, that identifies any of the persons referred to below should not be published or otherwise communicated to anyone except by Commission officers for statutory purposes. This direction applies to the following: allegation 2, which is that Ronald Medich caused payments to be made by an intermediary to various Ministers of the Crown and Mr Haddad as an inducement for favour to be shown in respect of planning decisions affecting applications relating to land owned by Ron Medich Properties Pty Limited and Ron Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek, evidence that identifies any Ministers of the Crown. That is to say, section 112 order that is made in relation to allegation 2 concerns evidence that identifies any Ministers of the Crown. The direction also applies to allegation 3. I do not propose to read out allegation 3 again but it will be available and published.

40 Evidence that identifies the member of parliament, the subject of allegation 3. Allegation 5, evidence that identifies the local council mayor, his wife or the local council referred to in the allegation. Allegation 6, evidence that identifies the property developer, former local counsellor or the member of parliament mentioned in the allegation. Allegation 7, evidence that identifies the local council mayor, his wife or the local council mentioned in the allegation. Allegation 11, evidence that identifies the relative of the member of parliament and the member of parliament mentioned in the allegation. Allegation 12, evidence that identifies the senior New South Wales public officials and members of parliament mentioned in the allegations. Allegation 13, evidence that identifies the former minister for planning mentioned in the allegation.

I have made a second direction, I have mentioned that the source of information for allegations 3 and 12 is a current correctional centre inmate.

He has advised the Commission that he has been the subject of threats to his safety as a result of assisting the Commission and has fears for his safety if he is named or identified. The Commission has not been able to substantiate these threats or to evaluate to what extent if any his safety might be in jeopardy were he to be named as the source of these allegations.

10 Nevertheless, to publish his identity may place him in danger. Publication of his name in such circumstances may also adversely affect the preparedness of other correctional centre inmates to provide information to the Commission in other matters. As a matter of principal, the Commission is desirous not to do anything that may discourage the provision of information from correctional centre inmates.

I also take into account that the evidence as it currently stands does not substantiate either allegation made by the inmate and therefore publication of his name at this stage is unlikely to further the Commission's investigation or assist those named by him.

20 I am satisfied that it is necessary and desirable in the public interest that I make a direction pursuant to section 112 of the ICAC Act, that any evidence given before the public inquiry, including the contents of any exhibits tendered during the course of the public inquiry that identifies the correctional centre inmate who is the source of allegations 3 and 12, should not be published or otherwise communicated to anyone except by Commission officers for statutory purposes.

30 Now I turn to a third direction. The source of information for allegation 13, is a business man who had some dealings with Mr Medich and Mr McGurk. He has advised the Commission that he has fears for his safety if he is named or identified as the source of this allegation. The Commission has not been able to evaluate to what extent if any his safety might be in jeopardy were he to be named as the source of the allegation.

Nevertheless, to publish his identity may place him in danger. I also take into account that the evidence as it currently stands does not substantiate the allegation and therefore publication of his name or any other evidence that might identify him at this stage is unlikely to further the Commission's investigation or assist those named by him.

40 I am satisfied that it is necessary and desirable in the public interest that I make a direction pursuant to section 112 of the ICAC Act, that any evidence given before the public inquiry, including the contents of any exhibits tendered during the course of the public inquiry that identifies the the identity of the source of allegation 13 should not be published or otherwise communicated to anyone except by Commission officers for statutory purposes.

These directions may be varied or lifted by the Commission without previous notification if the Commission is satisfied that it is necessary or desirable to do so (not transcribable) Mr Gormly.

10 MR GORMLY: Commissioner. The conversation between Mr Michael McGurk and the property developer, Mr Ron Medich was recorded on 6 February, 2009 or seven months before Mr McGurk's death. The content of the recording will be made public in this hearing. Mr Medich accepts that the recording is a recording of a conversation that occurred that day between
10 himself and Mr McGurk. Because of the speculation about this recording and the allegations in it that you have outlined, Commissioner, and that have arisen from it subsequently, I'll outline the background to the recording.

20 Mr McGurk was the director and the principal of a company, Bentley Smythe, which operated from premises at 99 York Street, Sydney. One of Bentley Smythe's business activities was arranging commercial finance, usually short term loans. Mr McGurk was engaged in an array of activities, both through his company and personally. Only some of those activities are relevant in this inquiry. His principal relevant activity seems to have been
20 fixing various financial and commercial problems for clients.

30 In the months leading up to his death on 3 September, 2009, he had been under some pressure from what appears to have been a variety of sources. Part of that pressure included a prosecution against him later withdrawn for arson concerning a fire bombing. Another was deteriorating relations with former business associate and client, the investor and property developer, Mr Ron Medich. At the time of this conversation on 6 February, 2009, litigation between Mr Medich and Mr McGurk had not yet commenced but it was not far off. Mr McGurk was apparently also under some financial
30 pressure. There is evidence that he may have been under pressure from other quarters as well that are not of relevance to this inquiry. He is described by his wife as stressed in the months leading up to his death, though not evidencing fears for his safety.

40 One of the discussions between Mr Ron Medich and Mr McGurk in the tense lead up to the commencement of litigation occurred on 6 February last year and this is the conversation that was recorded by Mr McGurk. Mr McGurk and Mr Medich met alone in the board room of officers of a solicitor on the same floor as Bentley Smythe, being the ninth floor of
40 99 York Street, Sydney. The content of this discussion and other recent events tends to demonstrate that there was some level of engagement between the two, even though not altogether peaceful or harmonious. Mr Medich must have been considering litigation at that stage, yet, for example, less than three weeks earlier Mr Medich had provided the \$100,000 surety required for Mr McGurk's bail when he was charged with arson.

They also had met alone on 1 February according to Mr Medich, which was just a week before this recorded conversation. The conversation of 6 February, 2009, seems to have been initiated by Mr McGurk. The reason given to Mr Medich for the meeting, which can be heard in the first few minutes of the conversation, was to resolve some of the issues developing between them and perhaps to establish some form of working relationship or re-establish some form of working relationship.

10 It would seem that Mr McGurk may have had other motivations for recording the conversation which arose from the deteriorating relationship between them. Mr McGurk used a digital hand held voice recorder which he had asked a staff member to prepare for him before the meeting. Mr McGurk didn't tell Mr Medich that he intended to electronically record the meeting. Rather, when the meeting commenced, he intimated to him that he would take notes with a view to having a record of what each of them said. In that way some matters could be resolved between them. Mr McGurk did take notes during the meeting. The recording lasts one hour, thirty-seven minutes and twenty-two seconds. It seems to have been recorded continuously, that is, without breaks.

20

Almost immediately after the recording of the meeting, Mr McGurk began to make its existence known to certain associates. He seems not to have played those associates the recording, rather, those associates say that he told them about it and made substantial claims for the significance of its contents. The validity of any such claims is best judged by hearing the recording or reading a transcript of it but it is reasonable, even at this early stage, to say that the statement attributed to Mr McGurk about the significance of the recording did not match the content of the recording.

30 Mr McGurk is said to have told one associate, Mr Richard Vereker, that he had Mr Ron Medich because Mr Medich had been talking and had dumped people in the government. Mr McGurk is also reported by Mr Vereker, I'm sorry, is also reported by others as follows.

40 Firstly, that a solicitor, Ms Porter, gave evidence before the Commission at a compulsory examination on 17 September, 2009. She said that she was introduced to Mr McGurk in February or March, 2009, for the purpose of providing him with legal advice about certain legal proceedings Mr McGurk anticipated commencing against Mr Medich. Ms Porter said during the course of taking instructions from Mr McGurk that he produced a compact disc and indicated that he wanted a transcript made of a conversation recorded on the disc involving himself and Mr Medich. She, that is, Ms Porter, said that Mr McGurk told her, "They're serious allegations on there, you know. It could bring, it could bring everyone down." Ms Porter said she caused the conversation on the disc to be transcribed.

Secondly, the solicitor, Mr Williams, said that on at least two or three occasions Mr McGurk said to him during the course of Mr Williams acting

for him, words to the effect, “I have a recording of a conversation I had with Ron Medich which was taken or made with Mr Medich’s knowledge and consent. He knew I was making it. I warned him I was making it. There is stuff on that tape that could bring a government down.”

Next, Mr Vereker told the Commission at a compulsory examination that he bumped into Mr McGurk at the Bowlers’ Club in York Street on an occasions in February, 2009, and he gave the following evidence in a compulsory examination about their meeting. The question was, after some preliminary questions, “What did Mr McGurk say to you about the land in western Sydney and bringing down a government?” Answer, “He said, Ronnie’s been opening his big mouth again. I’ve got info. I’ve recorded him, recorded the conversation and big enough to bring down the governments to do with the planning office.”

Mr Vereker has had longstanding political contacts. He told Mr Richardson, Mr Graham Richardson, what he’d heard about the recording. Mr Richardson, in turn, told Mr Roy Medich, brother of Ron, what he’d heard about the recording. He’d been doing some lobbying work for their property interests for some time. Mr Richardson was asked by Mr Roy Medich to listen to the recording. Mr Vereker was subsequently asked by Mr Richardson to make arrangements for Mr Richardson to have a copy of the recording or to hear it. Mr Vereker then acted as a go-between and approached Mr McGurk to see if those arrangements could be made.

Meanwhile, Mr McGurk was having the recording copied. He left CDs of the recording with his then lawyers. Mr Richardson met with Mr Vereker at the Bowlers’ Club to discuss the recording. At that meeting Mr Richardson was told by Mr Vereker that the recording contained evidence that Ron Medich had paid off or bribed Mr Sam Haddad, Director-General of the Department of Planning. Mr Richardson, who appears to have been sceptical about the claim, wanted to hear the recording personally. Mr Vereker arranged a meeting between Mr Richardson and Mr McGurk at the Bowlers’ Club in York Street, those premises being roughly below Mr McGurk’s office. The precise date of the meeting is unclear. Mr Richardson thought the meeting was in late February or more likely some time in early March.

Mr Richardson’s understanding of the arrangement was that he would be meeting Mr Vereker only and would be being provided with a copy of the recording. In the week between the two meetings Mr Richardson was in touch with at least Mr Roy Medich, being the Medich brother with whom he had most contact. He appears also to have spoken to Mr Ron Medich at some time around that week in which Mr Ron Medich made aggressive denials that he had or could bribe Mr Haddad.

At the second meeting with Mr Vereker at the Bowlers’ Club, contrary to Mr Richardson’s expectation and apparently to his irritation, Mr McGurk

was present with Mr Vereker. He did not have a copy of the recording to provide and brought with him instead, that is, Mr McGurk brought with him instead, a laptop from which Mr Richardson was to listen to the digital version of the recording. Mr Richardson and Mr McGurk stepped to a nearby quiet area of the club where Mr McGurk set up the laptop and started to play the recording, apparently from the beginning.

10 Sometime during the course of the meeting Mr McGurk told Mr Richardson that he wanted seven or eight, seven or \$8 million from Mr Medich as that was what Mr Medich owed him. If a case came up between them, Mr McGurk said, he would release the recording if Mr Medich did not pay up. When Mr Richardson found that the material being played to him was irrelevant to anything he was interested in and when he heard how long the recording was, he asked Mr McGurk to fast-forward it to the relevant part, being the part which asserted that Mr Medich had bribed Mr Haddad.

20 Mr McGurk did as he was asked and fast-forwarded the recording to the relevant point which he had apparently queued to be found. Mr Richardson says that when the passage was played, that passage, unlike the earlier passages, was too distorted to be intelligible. Mr Richardson became impatient and required the playing to cease. He said Mr McGurk words to the effect, "If you're fair dinkum you'll get an audio expert to enhance the quality". The two men went back to Mr Vereker who was sitting at a table. Mr Richardson said to Mr Vereker, and Mr Vereker confirms it in front of Mr McGurk, that he regarded the exercise as a waste of time and left shortly afterwards.

30 Meanwhile, the preparation of cases between Mr Medich and Mr McGurk and others in the Supreme and Federal Courts moved forward. For some time the recording seems to have lain dormant. Mr McGurk talked to some people about it and after a time quite a number of people came to know it existed. Almost immediately after the shooting of Mr McGurk on the 3rd of September the question of the recording surfaced. Known copies were obtained by or provided to the police by the former lawyers of Mr McGurk. The police then gave a copy of the recording to this Commission. It is clear that the copy received was what Mr McGurk had personally provided to his solicitors. The recording remained in the possession of Mr McGurk's lawyers until it was handed over the police and then to the ICAC.

40 Despite the wide scope of the claims Mr McGurk apparently made about the contents of the recording and its general significance for government, Mr Sam Haddad, Director General of the Department of Planning, is the only public officer who is named or specifically identified in the recording. Other public officers are referred to but not in an identifiable way. All other allegations against named persons come from different conversations of Mr McGurk with two journalists, I will describe those in a moment, and from statements made by associates of Mr McGurk after his death and after the existence of the recording of 6 February was known.

Upon receipt of the recording shortly after Mr McGurk's death, this Commission commenced an investigation into the allegation against Mr Haddad. The recording and the other allegations by Mr McGurk or as reported by others specify a few useful dates, projects, methods of payment or any other detail that might amount to corroborative evidence of corruption. The only source of the allegation against Mr Haddad seems to be the statement by Mr Ron Medich in the 6 February recording which will be played in a little while.

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The Commission's investigation has been extensive and has involved, in part, contact with Mr McGurk's various lawyers, with his wife, various of his associates, including a Mr James Byrnes, Mr Vereker, Mr Ron Medich, Mr Roy Medich, contact with Mr Graham Richardson, police officers, planners, departmental staff from the Department of Planning, various public officers, insurance records and insurers, some parliamentarians and many other sources. In the course of the investigation about the claim in the recording concerning Mr Haddad, a number of other allegations were made about a variety of public officers which were not on the recording of 6 February, 2009. They have all been examined.

20

A history of the principal parts of the investigation has been set out in a statement by the chief investigator, Mr Lang of the Commission. It's a large document. It doesn't include transcript of the whole of the evidence taken in private hearing, all supporting documents or even all details of the investigation. It would not be practical to do so and in any event there are issues of confidentiality and privacy of certain witnesses. There is as well the need to avoid undue damage to reputation that you've already referred to, Commissioner, by the publication of unsupported or false allegations as required by section 31 of the Act.

30

Some of the other sources of allegation apart from the recording made on 6 February were two personal or business associates of Mr McGurk. They were located, one of them, as you've referred to Commissioner, serving a prison sentence for a variety of fraud matters, and I shall refer to him as the inmate as well, were questioned. Mr James Byrnes is one of the other associates. He was referred to in the recording made 6 February. He said he was recounting allegations made by Mr McGurk. Mr Byrnes has already made some of this material public in the media. Careful scrutiny of these additional assertions and allegations has been made but the process has been intricate in part because there was no supporting evidence accompanying the allegations.

40

Of greater interest in the investigation were some conversations that Mr McGurk initiated in the last six weeks of his life with the senior journalist, Ms Kate McClymont and her colleague, Ms Vanda Carson. Ms McClymont and Ms Carson were sought out by Mr McGurk after they had published articles concerning the arson charge made against him and the

events that had led up to it. In his conversation with them Mr McGurk is reported as making a series of further allegations. Ms McClymont and Ms Carson knew about the recording and asked for a copy of it but it was not provided to them by Mr McGurk.

10 The reports given by Ms McClymont and Ms Carson of Mr McGurk's statements can be relied upon as accurate reports of what Mr McGurk said. The reports were based on notes made by the journalists. Some of the things that the journalists report that Mr McGurk said make allegations
10 about the use of various political contacts to achieve private ends of benefit to the Medichs' and their interests. In addition, Mr McGurk is reported as making a scattering of allegations against various politicians and public officers. None, as I said, were supported by evidence but to the extent possible from the allegation made, all have been examined and where investigation is possible they've been investigated. It's fair to say that much of his conversation with both associates and journalists has Mr McGurk directing attention towards Mr Medich.

20 The recording was not made under ideal conditions. According to members of his staff, Mr McGurk had used the small handheld recording device probably in his pocket. There may have been a microphone attached to his lapel with a flexible lead though that's not really been confirmed. The recording we shall hear is not distinct. The making of a written transcript of the recording has been a difficult process, though the recording of course is available. Many words and phrases in the recording have been difficult to understand because of slight inaudibility because the speakers at times speak over one other and because of the very different styles of speech of each of the two men. Mr McGurk has a slight Scottish brogue and speaks at times very quickly. Mr Medich speaks more slowly but not distinctly. The
30 recording appears to cover the whole of the conversation except perhaps parting words when Mr Medich left.

Mr Medich has heard the recording here at the Commission with his legal representatives and has offered some interpretation of unclear parts. Those parts of the recording are being re-examined. Some have been accepted as accurate and after further listening, the balance was not. Mrs McGurk's legal team has had a copy of the recording for a long time and have had a transcript as well, prepared apparently, by the New South Wales Police. Over the weekend, they also pointed out a number of matters in the
40 transcript which we had supplied on Friday. They were helpful. Some of it being accepted and some not. But the whole recording was re-listened to and checked against those suggested changes.

There remains doubt about some words in the recording. Whether a valid alternative interpretations, both have been inserted and marked as, or where one can make an alternative choice, but ultimately it depends on a hearing of the tape. Mr Medich has raised the spectre of possible doctoring of the tape. We are satisfied that neither Mr McGurk nor anyone else doctored the

recording. Mr Medich does not point to any part of the recording that he says is doctored and agrees that the parts referring to Mr Haddad are as spoken by the two men. What can be heard in the recording, subject to one matter, is what was said.

10 The transcript and the recording of 6 February, as released will have two minor deletions in it. It is necessary to avoid playing a few words in two parts of the recording because they contain allegations of conduct against two persons which fall outside the jurisdiction of this Commission. Those sections of the recording are being referred to the New South Wales Police. If the assertions are false and it's not supported by evidence of which this Commission is aware, then it will be unfairly damaging to the persons in question to publish it.

20 Excerpts only of the recording will be played during the course of the hearing for practical reasons. Firstly, the recording is too long to play in total, an hour and thirty seven minutes. Secondly, most of the recording consists of detailed discussion between the two men about their own business of no public interest. Thirdly, the recording can be very difficult to listen to. The transcript is regarded as a good reflection of the recording, but ultimately it can only be an aid to the sound recording itself.

30 The particular matter in the recording of 6 February, which calls for oral evidence relates to Mr Sam Haddad. It constitutes the first allegation of the 13 to be examined and I'll play the passage and make some comments about it in a moment. At the outset, however, I wish to make it plain that a detailed investigation has produced no evidence in support of the claim adverse to Mr Haddad that appears to be made in the recording. As I understand it, Mr Medich will place a different meaning on the words used in the recording for the one that's, for the one that seems apparent, at least to me. But whatever Mr Medich's intent in using the words that, heard in the recording, an investigation of the matter shows that the claim made in the recording by Mr Medich about Mr Haddad was false.

40 The passage in question is a small part of the recording and I'll play it now so that I can make some comments about it. The reference we will hear in this passage of the recording to a Mr Boys and to Mr Furlong are references to private planning and property development consultants. Mr Boys is a retired architect. There is no suggestion of improper conduct by them. The reference to Gerroa that will be heard on the tape is a reference to the land to which Mr Medich and Mr McGurk were involved for development in the south coast town of Gerroa, just south of Kiama. In this recording, Mr Medich speaks first and I'll play the other excerpts from the whole of the recording at the end of the opening.

So, if we could just have that passage first.

MR FAULKNER: Before that occurs, I wish to make one - - -

THE COMMISSIONER: Did I announce your appearance (not transcribable)

MR FAULKNER: Certainly. I need to raise a matter before, very briefly before there's any playing of the tape. Ian Faulkner, senior counsel, and I seek leave to appear for Mr Medich.

THE COMMISSIONER: Yes.

10

MR FAULKNER: Just, Mr Medich recognising, of course, that the Commission has the power to make the contents of this tape public. You've heard that there are civil proceedings a foot, I won't go into those. We just want to make it plain, Commissioner, that we do not waive the section 131 Evidence Act Privilege in relation to this tape that we say exists and to the extent that he is able, Mr Medich, would object to the tape being made public. We recognise that that, that the Commissioner's powers override that, but to the best we can, we want to make it plain that privilege is not waived.

20

THE COMMISSIONER: Yes (not transcribable)

MR GORMLY: Yes, we understand that, Commissioner. Now - - -

THE COMMISSIONER: Yes. I think it requires a ruling. My ruling is that the tape be published, in my opinion, considerations of the public interest outweigh the considerations mentioned by Mr (not transcribable) the tape be played.

30

MR GORMLY: Commissioner.

TAPE RECORDING PLAYED

[11.30am]

MR GORMLY: We can stop it there. Now Commissioner, on any ordinary reading there would be two components of possible corruption in that passage. The first is that Mr Haddad had not yet been approached about Gerroa but would be amenable to payment for assistance, because he's a connection of Mr Medich, who can be paid. And the second is that Mr Medich had paid Mr Haddad before.

40

THE COMMISSIONER: Does it not also, does it also not suggest that Mr Medich has paid others, other of his connections before as well in connection with planning matters?

MR GORMLY: Yes. It does make that suggestion, Commissioner.

THE COMMISSIONER: That's, er, a third allegation.

MR GORMLY: Yes, that's true. It's, no one is named who could fit within that category or identified in any way, but the - - -

THE COMMISSIONER: No. The only identified person is Mr Haddad.

MR GORMLY: Yes.

10 THE COMMISSIONER: But there is a, if I understand what Mr Medich there said, he's saying that he had other connections in (not transcribable) and planning who he has paid before.

MR GORMLY: Yes.

THE COMMISSIONER: Gets things done.

MR GORMLY: Yes, I agree with that, Commissioner, yes. Now, Mr Medich says he accepts that the words in the recording were spoken. He says he did not mean what they say. Now, I expect to be putting to him that the passage says what it appears to say, but I also expect to be putting to him
20 that he was not telling Mr McGurk the truth, for reasons of his own, that Mr Haddad was not a connection of his and had never been paid. I'll deal with the evidence about that matter now because it's one allegation in recording that names a public officer. And a detailed examination has been made.

As part of the investigation into the Gerroa claim by Mr Medich on the recording the Commission issued notices under Section 22 of the ICAC Act requiring the Department of Planning and Kiama Municipal Council, the local municipal council for Gerroa, to produce a copy of all applications to develop or rezone the land at 16 Crooked River Road, Gerroa, since it was
30 purchased by Ron Medich Properties Pty Limited on 20 December, 2007.

Statements were obtained from Graham Boys and David Furlong referred to in the recording. Mr Ron Medich was questioned about the conversation during a compulsory examination conducted before the Commission on 23 December, 2009. The Section 22 responses of the Department of Planning and of Kiama Municipal Council indicated that no application had been made by any person to develop or rezone the land at Gerroa since it was purchased by Ron Medich Properties Pty Limited.

40 Mr Boys, who is referred to in the recording, was interviewed. He's the retired architect, property development management consultant. He was introduced to Mr McGurk in 2007 by Mr Richie Vereker. He said in February, 2008, Mr McGurk asked him if he would review the existing consent documents relating to a property at Crooked River, Crooked River Road, I'm sorry, Gerroa. Mr Boys said he understood that there may have been a joint venture agreement between Mr McGurk and Ron Medich involving the Gerroa property. He said he suggested to Mr McGurk that he should consider approaching a neighbouring property owner whose land

adjoined the proposed development property to the south to determine if he was willing to allow the incorporation of a part of his land into the development so that the proposed redevelopment could be increased in size.

Mr Boys said that for this to occur the owner of the property was required to apply to the New South Wales Department of Planning for an amendment to the development consent. Mr Boys said he did not meet or communicate with any person, the department or Kiama Council in relation to the property. There is no aspect of this matter which did or would have reached the department, let alone its Director-General. As to whether Mr Ron Medich had ever had an improper relationship with Mr Haddad in the past there is no evidence whatever. The two men had never met. Any dealings by Mr Haddad with the Medichs was with Mr Roy Medich against whom no allegation is voiced and that related to the Badgerys Creek land. We'll come to that later.

The context in which Mr Ron Medich makes his claim in the recording requires close scrutiny but Mr Haddad was his contact and that Mr Ron Medich had paid him in the past, if the recording is to be interpreted in that way, seems to have been an assertion made by Mr Medich but for his own purposes at that moment of the conversation with Mr McGurk. The assertion may have been a mere boast but more likely it was intended to fend off unwanted offers of help by Mr McGurk which can be heard in the recording. Mr Medich had certainly lost the recently-formed trust he had in Mr McGurk. He'd been attempting to distance himself from Mr McGurk's help and engaged with him in discussion, it seems, only as far as he needed to.

Mr Medich is to be called to give evidence about his statement. Mr Haddad can respond. It's expected that their evidence would largely close that segment of the investigation. There'll be some documents tendered as well. I do not expect, Commissioner, to be making any submission to you concerning Mr Medich's recorded statement about Mr Haddad other than that it was untrue and that there are a number of reasons for arriving at that conclusion. As to the other allegations, the position after investigation is so clear that it is proposed to lead only limited oral evidence.

Just before I move on, Commissioner, I should interpolate, following your earlier comments, that there is, of course, no evidence of Mr Medich paying anybody else in the Planning Department either.

An outline of the investigation into all allegations is in Chief Investigator Lang's statement. That document will be made available to the public. It's a summary but in some detail of the principal parts of the investigation. It's about a hundred pages in length and it'll be made available on the Commission's website after tender. Perhaps, Commissioner, this might be an appropriate time to tender this document.

MR GAME: Mr Commissioner, could I just mention - - -

THE COMMISSIONER: Can you please announce yourself?

MR GAME: Sorry.

THE COMMISSIONER: And you better get leave to - - -

10 MR GAME: I'm going to ask for leave. My name is Game. I appear with, I seek leave to appear with (not transcribable) .

THE COMMISSIONER: Yes, Mr Game.

MR GAME: We have in fact been given leave, well, we (not transcribable).

20 THE COMMISSIONER: Yes. I will, I don't want to do it now but when, if you do seek to question any witness, I would, before you do that and I'll certainly give leave to you to do that, ask you to define your interest because that needs to be understood by me in order to determine the relevance of the questions that you may ask.

MR GAME: Yes, I understand that, Commissioner. There is - - -

MR GORMLY: Commissioner, can I do this to assist? I understand my friend wants to make some kind of objection.

MR GAME: Well, it's not objection.

30 MR GORMLY: I would rather finish the opening so what I would propose doing is postponing the tender until - - -

THE COMMISSIONER: All right. Let's just hear Mr Game.

40 MR GAME: Sorry. I wanted to raise an issue about that document which is, or the transcript because we have some matters we wish to raise with the Commission concerning the making of the Commission's transcript and what has occurred in terms of its content and that which was provided to us and the changes which have been made to it which put a very different, we've only been provided with this document this morning but on Friday afternoon we were provided with what purported to be a Commission copy of the transcript.

Now, we had had a police transcript from (not transcribable) and there were, we could see immediately that there were significant inconsistencies between the two. The inconsistencies went to the significance of the tape, what was said by Mr McGurk and what was said by Mr Medich, favourable to Mr Medich in terms of their exclusions, unfavourable to Mr McGurk. We drew this to the attention of, we listened to the tape and most of the

matters that we, there were important significant errors. We drew this to the attention of counsel assisting. We understand from what has been handed to us this morning that most of the changes have been accepted but we are concerned that the inquiry to date has in significant respects been based on an inaccurate copy of the transcript and it does not even deal with one significant part of this transcript where Mr Medich actually refers to people being paid which was reported in the transcript as “at the table”.

10 Now, we are concerned that this, first of all we’re concerned about us having an opportunity to see what was provided to us this morning. But we are concerned that the inquiry to date has been based on a transcript that does not accurately record precisely what was said in significant respects which could have been ascertained quite quickly by consideration of the police transcript. We wish to place that on the record and we - - -

20 THE COMMISSIONER: Mr Game, I think it’s entirely inappropriate to put that now. These are in the counsel’s opening, his opening. Counsel assisting has opened the inquiry and most of your concerns have been accommodated to the extent that if you have further concerns they will be the subject of debate at the appropriate moment. The admission of this document, which is a statement by Mr Lang, doesn’t of itself establish that anything in it is true, not (not transcribable) of its own unless matters are challenged. You’ve indicated that you wish to challenge some matters. Those matters, those challenges will be considered. If there are defects in the examination that reflect adversely on your client comment will be made about that in the Commission’s finding. What is the point of raising it now?

30 MR GAME: The point of raising it now is that I thought that Mr, that counsel assisting was about, as it were, to put what was said to be the accurate contents of the transcript and also he opened on the basis that, as it were, we’ve had the transcript for many months as if to suggest that this problem didn’t exist in respect of the transcript.

40 THE COMMISSIONER: Mr Game, we’ve all been in this profession for a long time. You know very well that you’ll have an opportunity to deal with this matter and I don’t understand Mr Gormly to have said that anything in the transcript is necessarily accurate and I certainly don’t understand that to be the case. You will have every opportunity I can assure you, of putting what you want to put and will you let Mr Gormly finish his opening uninterrupted?

MR GAME: Yes, yes.

THE COMMISSIONER: Thank you. Mr Gormly.

MR GORMLY: Thank you, Commissioner. Well, Commissioner, I do tender the statement of Robert Munro Lang of 1 February 2010, being an investigation statement of the Commission.

THE COMMISSIONER: Yes. The statement by Mr Lang will be Exhibit 1.

**#EXHIBIT 1 - STATEMENT OF ICAC CHIEF INVESTIGATION
ROBERT LANG DATED 1/02/2010**

10 MR GAME: Commissioner, I have an application in respect of that.

THE COMMISSIONER: Yes.

MR GAME: There is a portion of that which runs from, I'll give you the pages.

THE COMMISSIONER: Excuse me, do we have another copy for my associate so that she can have the one and I can have a working copy?

20 MR GORMLY: Yes, certainly, Commissioner.

MR GAME: We don't have this document. We have a draft of it. We've just been given parts. In the document that we had before - - -

THE COMMISSIONER: Just a moment. Can Mr Game be given the - - -

MR GORMLY: Yes. There's a signed copy.

MR GAME: Now, in this document, and this allegations 3 to 12.

30 THE COMMISSIONER: 3 to 12.

MR GAME: 3 and 12, I beg your pardon.

THE COMMISSIONER: 3 and 12.

MR GAME: And they concern the person who's described as Mr Z who is the inmate and the, in the one I had before was pages 68 to 87 were Mr Z's allegations, I haven't checked on the one that's just been handed to me.

40 THE COMMISSIONER: Yes.

MR GAME: Now, I understand that the Commission's investigations have shown that essentially those allegations are fanciful. In those circumstances, obviously we don't have Mr McGurk to take instructions from on the subject, but in those circumstances if Z is unnamed you've said (not transcribable) fanciful allegations according to the Commission's own

investigations, then Mr McGurk, Mr McGurk's estate is entitled to have his reputation protected in that respect.

THE COMMISSIONER: Mr Game, I can understand that and I have sympathy with what you're putting. Perhaps it would be sufficient for me to say now that there is no present intention to make any finding adverse to Mr McGurk arising from allegations 3 and 13 and should that change you'll be informed in sufficient time to make submissions.

10 MR GAME: Commissioner. Sorry, there is one other matter is that as far as we're aware there was no evidence that Z is a business associate of (not transcribable).

THE COMMISSIONER: Mr Game, as I understand it, that's an allegation that Z made. There is also material in Mr Lang's statement as I recall that shows that on the investigations of the Commission, there is no evidence to support that and so that position will also be made clear.

20 MR GAME: If the Commission pleases.

THE COMMISSIONER: So at the moment you have nothing to fear from allegations 3 and 12.

MR GAME: Thank you. Does that mean that 68 to 87 will stand as being part of the publicly available material?

THE COMMISSIONER: Page 68 and 87?

30 MR GAME: Pages 68 to 87 were the, according to the one we looked at in the weekend - - -

THE COMMISSIONER: Yes.

MR GAME: - - - it's the same (not transcribable) the Z allegations - - -

THE COMMISSIONER: Yes.

40 MR GAME: Is it, would you be prepared, I'm asking you if you'll make an order under section 112 for the time being making a non-publication order of the actual contents of pages 68 to 87.

THE COMMISSIONER: Mr Game, I don't know whether you've read all of, read Mr Lang's statement relating to Z.

MR GAME: I have.

THE COMMISSIONER: But everything that I have said to you is based on what Mr Lang has said therefore anybody reading the entire statement of

Mr Z in my view would come to the same conclusion as the Commission. Therefore I do not see any need to make the order that you suggest. I also see a considerable public interest in making public the allegations and showing that they have no, there is no basis for them because if one doesn't do that rumours still persist and the point of this inquiry is to expose all these matters to the antiseptic of the (not transcribable).

MR GAME: I understand, Commissioner.

10 THE COMMISSIONER: So they will stay in.

MR GAME: Commissioner.

MR GORMLY: Now, before moving onto the individual allegations, Commissioner, there are three matters that need to be detailed a little and outlined. The first of the three matters that requires entry into enough detail, just to understand various parts of the recording of 6 February is the business background between Mr Medich and Mr McGurk together with some reference to the subsequent litigation in so far as is necessary. Mr Ron
20 Medich and Mr McGurk had not had a long association. Mr Medich was introduced to Mr McGurk in 2006 when Mr Medich developed a concern about an investment he'd made. Mr Medich had put some tens of millions of dollars in a company which made large short-term loans. The chief executive of the company, a Mr Paul Mathieson, whose name can be heard on the tape, was involved in the discussions.

Mr Medich seems to have become concerned to recover all of his money. He made use of the services of Mr McGurk to whom he'd been referring. Mr McGurk brought about the recovery of Mr Medich's money and it seems
30 to have, a process that seems to perhaps have left some ill-feeling between Mr Mathieson and Mr Medich and Mr McGurk and you can hear that on the tape. The success of Mr McGurk, however, in recovering the money led to Mr Medich placing enthusiastic trust at the time in Mr McGurk.

Subsequently two new issues arose for Mr Ron Medich. The first was advice given by Mr McGurk to Mr Medich that both should acquire as joint venturers two unrelated parcels of land. Mr McGurk said that the parcels could be resold or developed for profit. Mr Medich accepted the advice in about October 2007, largely he says on trust, and he says he left the
40 acquisitions and the detail to Mr McGurk.

The first parcel of land was at Gerroa, the second was in Queensland. These transactions led to a substantial falling out between Mr McGurk and Mr Medich. Mr Medich alleged fraud by Mr McGurk and subsequently commenced legal action.

The second matter that one hears reference to on the tape concerns a development project in Wolseley Road, Point Piper. A purchaser has

acquired property in Wolseley Road from Mr Medich. He also jointly owned adjacent property with Mr Medich. The acquisition involved a mortgage back, meaning simply that the purchaser borrowed the purchase moneys from Mr Medich, secured by a mortgage with a view to repayment at some later date, perhaps on resale or after development. Various allegations arose. Mr Medich sought repayment of the mortgage moneys. There was a counterclaim that the obligation to repay was subject to a joint venture agreement for the redevelopment of the property together with an adjacent property and the detail of all of that can be passed over.

10

Mr McGurk, however, became involved in the disputes on behalf of Mr Medich. Mr McGurk appears to have taken over the mortgage on a trust for Mr Medich so that the rights under that mortgage could be exercised by Mr McGurk for the ultimate benefit of Mr Medich. It was during this set of circumstances that the charge was made against Mr McGurk for arson. Mr McGurk denied involvement. There was apparently no evidence to sustain that charge and it was withdrawn.

20

Meanwhile, the Point Piper litigation developed some cross-claims. They included a claim by Mr McGurk against Mr Medich seeking trustee expenses in exchange, in effect in exchange for release from his role as trustee and that matter, unlike the Federal Court issue, which does seem to figure in the recording and does not require description has now resolved.

30

The third matter, and the final matter to be outlined before we get to the allegations, concerns the ownership by entities of the Medich family of land at Badgerys Creek. From a government and public planning, perhaps I should just correct that, Commissioner. When I say the Medich family in fact their ownership is separately by Mr Ron Medich and Mr Roy Medich and they're corporate entities.

40

From a government and public planning point of view land around Badgerys Creek has had long history. It was once earmarked for the further Sydney airport. The land in question is now the subject of a detailed long term plan to develop employment close to residential areas with a view to reducing the volume of commuter traffic in all forms in Sydney. It has constituted a substantial part of the work of successive planning ministers, the Department of Planning in its various forms and its directors general. It's been the subject of cabinet decision and long term government policy.

The principal part of the area was known as the Western Sydney Employment Lands Investigation Area or sometimes referred to as, WSELIA, W-S-E-L-I-A. Successive state governments have developed a plan of staged release, but subject at each stage and this becomes relevant, to infrastructure planning and development for the area as a whole. WSELIA is a very large area, some 10,000 hectares in total. The land is largely owned by a number of private interests. The Medich group, Mr Roy and Mr Ron Medich, own 340 hectares of the area. They have co-operated

with adjacent landowners including Sydney University and another family group.

Those interests have lobbied together and carried out studies together as a group known as Badgerys Creek Consortium. The group owns between them about 830 of the 10,000 hectares.

THE COMMISSIONER: Is it 830 or 840?

10 MR GORMLY: I'm sorry, 840, thank you, Commissioner. Their site, that is the BCC site includes a former CSIRO site often referred to in any way in departmental and other documents. The Medich group has owned land at Badgerys Creek since 1996. Its present zoning allows in effect, rural activity. The current zoning of the land prevents development. Rezoning for residential or industrial development or employment purposes would obviously increase its value. But rezonings have been planned to occur only in line with a staged programme and subject to infrastructure development. Those plans have developed over time and have been subject to various changes and reconsideration.

20

Between 2005 and 2008, the Badgerys Creek Consortium, principally through the work of Mr Roy Medich, the brother of Ron, and in part with the use of Planning experts such as adjunct Professor Sonia Lyneham and the lobbyist, Mr Graham Richardson, approached the Department of Planning seeking a rezoning of its Badgerys Creek land. The BCC approach was considered and received some encouragement some years ago, but was ultimately refused substantially as a premature application. The land owned by the BCC formed part of what has become a proposed stage 3 of the release of the lands.

30

There is among the various allegations made concerning the Badgerys Creek land a suggestion that the rezoning of the land would've been permitted, but after allegedly embarrassing statements made by Mr Ron Medich, possibly a reference to the tape of 6 February, the preferential rezoning alleged was stopped.

I have dealt with the first allegation, being alleged possible interference by Mr Haddad over the Gerroa land, I turn now, Commissioner to each of the other allegations that you identified earlier.

40

The second allegation is that Mr Ron Medich caused payments to be made by an intermediary, that's now been said as Mr Graham Richardson, to various ministers of the Crown and Mr Haddad. The source of the second allegation is said to be Mr McGurk and is reported by Mr James Byrnes, a former business associate, who asserts that he is recounting a conversation with Mr McGurk. In it he says, Mr McGurk asserted that he had a recording in which Mr Medich had admitted corrupt payments to Mr Haddad, a named

minister of the Crown to achieve favourable planning decisions at Badgerys Creek.

Mr Haddad is mentioned but there is no reference to payments by Mr Medich to a minister in the 6 February recording. Mr Brynes says that Mr McGurk spoke to him of only one recording.

THE COMMISSIONER: There's no mention of Badgerys Creek in the 6 February recording either.

10

MR GORMLY: Yes, there is, Commissioner.

THE COMMISSIONER: There is?

MR GORMLY: Yes. Yes. We'll come, we'll come to that. A similar claim was made by - - -

THE COMMISSIONER: Is there mention in the recording of payments in connection with Badgerys Creek?

20

MR GORMLY: Not to Mr Haddad.

THE COMMISSIONER: To anyone?

MR GORMLY: Yes. It's certainly capable of that interpretation, Commissioner, but unspecified, unnamed persons. A similar claim was made by Mr McGurk to the journalist, Ms Vanda Carson. Considerable attention has been given to this allegation. Greater detail is set out in Mr Lang's statement. But the outcome is that there is no evidence of any such payments by anyone to a minister or to anyone else. There's no evidence of any payments by or through Mr Richardson or to any minister.

30

More significantly, on examination of the steps in the planning process relating to Badgerys Creek and the chronology of consideration of the Badgerys Creek Consortium requests, any such event by Mr Richardson, Mr McGurk, Mr Medich or anyone else is highly unlikely and could not have been useful, that is a payment couldn't of been useful.

All persons touched by the allegation deny any such payments and not unreasonably, point to the detail of the process which make such payments and involvement unlikely. The land in question remains not rezoned by reasons and processes which can be traced and is consistent with ordinary planning considerations.

40

In 2007, Mr Haddad gave his encouragement to the Badgerys Creek Consortium, but in a letter to them or to their advisor, Ms Lyneham, of 28 May, 2008, Mr Haddad can be seen applying brakes to such encouragement. In that letter after reference to the need for infrastructure planning for the

area as a whole, he says, as you are aware, the Department is currently undertaking a strategic investigation into the WSELIA to determine appropriate infrastructure and servicing arrangements, suitable land uses across the entire area and appropriate staging for release of land parcels. Accordingly, this, at this stage it would be premature to progress development of your site in isolation of the wider area. I am therefore not in a position to recommend to the minister that the site be declared a state significant site and a concept plan be lodged in the absence of a strategic framework.

10

There was then a long process before a clear decision not to rezone the BCC land was made. But that process was well under way before the recording of 6 February. There's every reason to accept that the decision had nothing to do with the recording. The closest one gets to any relationship between the two is that the final decision was made on a day after the recording. That doesn't amount to evidence of corruption.

This second allegation is without evidence in support and the evidence makes the allegation unlikely in the extreme.

20

I move now from allegation 2 to allegation 4, because the first group of allegations is closely related. This allegation emerged orally from Mr Byrnes in a private compulsory hearing. Specifically Mr Byrnes said, McGurk had told me at one stage that the appropriate approval or signoff that he was looking for was all prepared, ready to be signed. It was, he said, it was sitting on Haddad's desk ready to be signed off, but Haddad wouldn't sign it because he was aware that there was some information which could implicate him.

30

No approval was ever prepared that would be able to sit on the desk of Mr Haddad and it's difficult to know how Mr McGurk could have known such a thing anyway, if that's what he said. The allegation is that Mr Haddad, having become aware of the existence of information capable of implicating him in corruption, withdrew his approval for the rezoning of the land owned by the Medich group.

40

It's an initial problem for this part of the allegation that Mr Haddad did not have the power to approve the rezoning. It was an area that was always going to require cabinet approval, a fact known to the Consortium from at least 15 August, 2007, when Mr Roy Medich is never implicated in this matter, was told, was told at a meeting by the then Minister for Planning, Mr Sartor. There is no doubt that Mr Haddad as Director General, supervising one of the states largest planning projects, would see large landholders affected by the plan. He saw and spoke to those lobbying for a rezoning of Medich and BCC land, including Mr Roy Medich and Mr Richardson. He did initially make some encouraging statements, as I've said earlier about the rezoning, but that encouragement and the timing was appropriate.

The refusal and deferral was related to infrastructure and was a ministerial decision at the time. We're assuming that Mr Haddad had the power to influence an approval of the rezoning without a final plan for infrastructure. The passage of the plan for the area suggests that he did not do so. Extensive investigation has been made to determine the history of possible rezoning of the land of the Medich group and the allegation's without foundation but for the sake of clarity and transparency Mr Haddad will be asked questions about the history of the rezoning of that land.

10 THE COMMISSIONER: Is this a convenient time?

MR GORMLY: Certainly, Commissioner.

THE COMMISSIONER: Is there anyone, is there anyone representing anyone else who has concerns about the transcript?

MR GALASSO: Commissioner, may I announce my appearance, Galasso of senior counsel (not transcribable) I appear in the interest of Mr Haddad.

20 THE COMMISSIONER: Yes.

MR GALASSO: I'm only interested, Commissioner, to the extent that the draft - - -

THE COMMISSIONER: Sorry, do you mind speaking up, Mr - - -

MR GALASSO: Sorry, the microphone is not operating. I'm interested, Commissioner, to the extent that the transcript with which we've been provided differs from that which may be the current version of the
30 transcript.

THE COMMISSIONER: Yes. You need to get the current version as soon as possible.

MR GALASSO: Yes, Commissioner.

THE COMMISSIONER: Yes. Well, Mr Gormly, can you arrange for that to happen right away?

40 MR GORMLY: Yes, Commissioner

MR GALASSO: And also (not transcribable) any changes that have been made to the draft investigator's report with which we were provided on Friday.

THE COMMISSIONER: Yes, yes. It seems to me, Mr Gormly, that this issue of the transcript should be resolved before Mr Medich gives evidence.

MR GORMLY: Yes. Commissioner, we - - -

THE COMMISSIONER: So, can there be a discussion between counsel to attempt to resolve this what is outstanding and if there is any and once, once the issue that's outstanding has been isolated we can deal with it?

MR GORMLY: Yes. We can, we can endeavour to do that, Commissioner. It is a poor recording and there are disagreements, I think legitimate disagreements about what words are used.

10

THE COMMISSIONER: Well, I need to understand what the implications are of the - - -

MR GORMLY: Yes.

THE COMMISSIONER: - - - differences.

MR GORMLY: Yes. We'll, we'll endeavour to do that, Commissioner.

20

THE COMMISSIONER: Yes. Mr Game, you, I assume the way in which this has progressed that we will be dealing with this after lunch, that should give you enough time.

MR GAME: Yes, Commissioner. We, we will need some time to see precisely what (not transcribable).

THE COMMISSIONER: Yes, but you will have, you will not be required to deal with the matter until after lunch.

30

MR GAME: Thank you, Commissioner.

THE COMMISSIONER: That should give you enough time?

MR GAME: Well, my solicitor's reading it at the moment so if I (not transcribable).

THE COMMISSIONER: This, it's not a major work. This is something that I'm sure you'll be able to deal with in 10 minutes.

40

MR GAME: No, there are many, many - - -

THE COMMISSIONER: Let's, can we stick to what's, what's important though.

MR GAME: Yes. We've identified (not transcribable).

THE COMMISSIONER: And can you just give me an idea of what the, I don't understand what the implications are. I mean, how does it affect your client?

MR GAME: Well, it affects my client because the transcript that was produced to us had my client saying things unfavourable which he didn't say and it has Mr Medich not saying things indicating that - - -

THE COMMISSIONER: He's saying things unfavourable to him?

10

MR GAME: Yes.

THE COMMISSIONER: Things, what?

MR GAME: That's he's, that he has asserted to have said things to Medich which he didn't say and there are things and, more importantly, there are things which Mr Medich actually did say which indicate a willingness to be corrupt which were not in the transcript that was provided to us - - -

20 THE COMMISSIONER: I understand. Now - - -

MR GAME: - - - but was in the police transcript.

THE COMMISSIONER: Right.

MR GAME: And, and sorry there are, I don't wish to over-estimate this but there were a number of these and critically, in relation to Badgerys Creek, there was a critical mis-transcription where the, as it were, the willingness of Mr Medich to make payments to people appears in the tape and on the
30 police transcript it said, "the table" in your copy and that has meant, in our understanding, that that whole portion of the transcript relating to Badgerys Creek has not received the attention that it should receive to date. So these are, these are not small matters.

THE COMMISSIONER: I don't, what I need to understand, Mr Game, is what you, what the significance of that is. Your, your interests, as I understand it, and I'm not going to, I'm prepared to assume that you have an interest, that the estate has an interest - - -

40 MR GAME: Well, could I, could I - - -

THE COMMISSIONER: But I, your interest is, is to protect the reputation of Mr - - -

MR GAME: Essentially, yes.

THE COMMISSIONER: - - - McGurk - - -

MR GAME: And, and that is a - - -

THE COMMISSIONER: And to, and to take extent you are challenging Mr Medich to the extent that his evidence reflects on that of Mr McGurk.

MR GAME: Yes, what we are saying is in terms of, may I just say that the reputation of Mr McGurk, in our submission, is of legitimate interest and I have in mind then it's (not transcribable) - - -

10 THE COMMISSIONER: No, I don't need to waste time on that. I'm prepared to assume that it is, Mr Game.

MR GAME: Now, may I say this, our point and our single point ultimately is that Mr Medich does say very significant things on this tape. Our concern has been that the significance of these things has not been appreciated and that - - -

THE COMMISSIONER: Well, what is the relevance of that to you?

20 MR GAME: Oh, the relevance of that to me is that Mr McGurk was entitled to infer from, that Mr Medich was making extensive assertions of a willingness to be corrupt in various ways and in various quarters.

THE COMMISSIONER: You should bear in mind, and I say no more at this stage, that there is a real possibility of findings being made without any findings, let me start again. There's a real possibility of findings being made relating to the existence or otherwise of corrupt conduct on the basis of assuming that one or other of Mr Medich and Mr McGurk was telling the truth but without deciding which one.

30 MR GAME: I understand that, Commissioner.

THE COMMISSIONER: And if that is the approach then what's your interest?

40 MR GAME: Sorry, there is a second aspect which is that the tape, the true transcript will show that Mr McGurk was resisting, was resisting actively corrupt implications and assertions by Mr Medich. Now, the point about all this is this, people in the public domain have been and it's been said in effect in various quarters, including by implication here, that the tape is rubbish. The tape is not rubbish. It contains very serious, very serious assertions of a willingness to be corrupt by Mr Medich. That is my interest.

THE COMMISSIONER: Mr Game, I don't think that, I don't intend to say anything (not transcribable) as regards your submission but I think that to say that Mr Gormly said the tape was rubbish might be categorised as rubbish.

MR GAME: No, no.

THE COMMISSIONER: He didn't say that.

MR GAME: Well - - -

THE COMMISSIONER: He said that what was said on the tape didn't bear out the statements that were made, the exaggerated statements that were made to the press about it.

10

MR GAME: Well, I think he said that it was, in respect of Badgerys Creek he said it was a waste of time.

THE COMMISSIONER: All right, all right.

MR GAME: And he said it was - - -

THE COMMISSIONER: We'll deal with this after lunch.

20 MR GAME: All right.

THE COMMISSIONER: You understand - - -

MR GAME: I'm only uncertain - - -

THE COMMISSIONER: I'm really, what I, I know that you have an enthusiastic concern to protect Mr McGurk. I have an enthusiastic concern to limit the issues in this case to what is relevant.

30 MR GAME: I accept that and I think one will find that ultimately the area is a, is a narrow one.

THE COMMISSIONER: Yes. And what I'm really saying, Mr Game, is that I don't think that there is a huge difference in the basic approach of Mr Gormly and yourself and that there is room to cooperate in an attempt to get to the truth of the important issues in the case, namely was there corrupt conduct by the persons against whom allegations are made, irrespective of the person who made the allegations.

40 MR GAME: Of course.

THE COMMISSIONER: That's what I'm interested in.

MR GAME: Of course, understood.

THE COMMISSIONER: Yes.

MR FAULKNER: Yes, before you, before, Commissioner, with Mr Medich to go into the box at 1 o'clock and we - - -

THE COMMISSIONER: No, no. He's not going to go in at 1.00.

MR FAULKNER: Oh, I'm sorry, after lunch.

THE COMMISSIONER: After lunch.

10 MR FAULKNER: Today we've been given the new transcript and also the new statement of Mr Lang, but we don't want to have to go through 83 pages to find, I mean, can we be given track changes of these documents to enable us to be ready?

THE COMMISSIONER: You should be given them and I'm surprised that you haven't and you should be given that immediately.

MR GAME: We would like to have that too.

20 THE COMMISSIONER: Everybody who has an interest should be given that right away and I hope that it will be given before we come back.

MR GORMLY: Well, Commissioner, I would like to be able to say we can do that, it's more difficult than that. A lot of the changes that Mr Game communicated to me yesterday, and it was very co-operative and I was grateful to him for some of the changes they've suggested, had my instructing solicitor up until 4 o'clock this morning. And you just have to go through it item by item and listen to every word and make sure it's right and it's just not that easy to provide a track set of changes.

30 THE COMMISSIONER: I didn't mean the transcript, I mean the statement.

MR GORMLY: Oh, the statement, oh, that shouldn't be a problem.

THE COMMISSIONER: I thought that Mr Faulkner had (not transcribable) the statement. That's what you said.

40 MR FAULKNER: No. I said both the statement and the transcripts where the transcript is 83 pages and I don't know the extent to which this document is different from the document we received on Friday.

THE COMMISSIONER: Mr Gormly - - -

MR GORMLY: We'll do our best, Commissioner.

THE COMMISSIONER: Well, I don't think it would be right to force people on without them having had a fair opportunity of seeing the changes. So, if they don't get the changes, we'll have to have an adjournment.

MR GORMLY: All right. I'm make sure they get the changes, Commissioner.

THE COMMISSIONER: All right.

MR FAULKNER: Commissioner, I think it will take us longer than (not transcribable)

10 THE COMMISSIONER: I'm sure it won't Mr (not transcribable) provided you get the detail.

SHORT ADJOURNMENT

[11.41am]

THE COMMISSIONER: Mr Gormly?

20 MR GORMLY: Commissioner, that then brings us to the third and twelfth allegations. They can be dealt with together and it's an important area this one because of the seriousness of the allegations. The third allegation is that, is the first of the number that came from the prison inmate referred to earlier who claims to have been a friend and associate of Mr McGurk.

THE COMMISSIONER: Mr Gormly, can we call him Z? It's just, so we all call him the same.

30 MR GORMLY: All right. His statements were made during the investigation into the 6 February recording and he claims that in March, 2006, Mr McGurk, at the direction of Mr Medich, Mr Ron Medich, offered a member of parliament a corrupt payment as a reward for that member of parliament persuading Mr Haddad to recommend the rezoning of land owned by the Medich group. Z has it that the conversation from the member of parliament was secretly recorded by Mr McGurk and later transcribed by Z by hand. That recording, of course, would be the best evidence of the truth of the allegation but as it turns out if a tape recording existed it would be the only evidence that the allegation, it should be said that Z accepts that the validity of his allegations would turn on finding the tapes and I'll come to that.

40

The twelfth allegation is also made by Z. It is that Mr McGurk secretly tape recorded a number of conversations with serving and former senior New South Wales public officials, members of parliament, in which they discussed their corrupt dealings with Mr McGurk. Z claims to have assisted Mr McGurk to make such tape recordings and that he, he transcribed seven of them. Whether there were other recordings made by Mr McGurk has been a matter of public speculation fuelled not unreasonably by the fact that there is one recording, though not with a public officer of any kind.

Z claims that he often, was often present or nearby when the tape recorded conversations were occurring. He says that Mr McGurk made copies of the tapes on a tape copying machine that Mr McGurk kept at his home and gave them to this source, gave them to Z to be distributed in various places and to various people for safe keeping. He said that he'd made copies of the transcripts and at Mr McGurk's direction distributed those transcripts, together with copies of cassette tapes of the conversation, not CDs but cassettes, to various identified persons trusted by Mr McGurk and Z says he also left copies with his, Z's, own family members.

Z claims that the police are likely to hold copies of the transcripts and tapes because they executed search warrants at a house he occupied and on his, also on his possessions at corrective services institutions that he'd occupied from time to time but he says that since then the transcripts and tapes are no longer in those places.

It was precisely because of the seriousness of some of these allegations that he says these, he says these tapes contain, it therefore brought about considerable effort and expense to check the claims. The persons he named who are said to have been given copies of the transcripts and tapes have been contacted. They deny the truth of the assertions and they say they were never given tapes or transcripts. Enquiries to the police show that copies of transcripts or cassettes are not among the material seized under warrant as alleged and the Commission has looked not only at the list of the items that the police seized but they looked at the material itself.

Z says he made complaints to many bodies that the items that he says he distributed must have been stolen. He's made certain complaints and they're of limited value given that none of them or none other of the many possible sites of those tapes has been productive. Some of the complaints do not even refer to the theft or seizure of the tapes or transcripts, despite listing other items said to be missing and the inmate, so sorry, Z is unable to explain the absence of his complaints concerning tapes and transcripts.

Mrs McGurk told the Commission that she has not found transcripts or tapes at home as asserted by Z. She says there may have been a cassette copying machine in the house but not since 2003. Most of the tapes alleged to existing were said by the inmate to have been around 2007. Mrs McGurk says she has no recollection of her husband copying tapes at their home. Family members of Z have not produced copies of the items despite assertions that they may have them. Full details of the search for these tapes and transcripts are in Mr Lang's statement.

Mrs McGurk says that if the inmate was as close an associate as Z says he was, then she would've known the person or at least their name. She didn't recognise the name of this person, of Z. It seems that Z may have known Mr McGurk but it's unlikely that he had the close association he claims. It's

a compelling inference that other recordings of the type Z claims to exist do not exist and that they sometimes dramatic and often fantastic claims of recordings said to have been made are inventions or fantasies or lies by Z and I expect to be making a submission like that about that witness at the conclusion of the matter in relation to both the third and the twelfth allegations.

10 The general conclusion to be drawn, Commissioner, is that while it's possible that Mr McGurk may have made other secret recordings just as he did of Mr Medich, the conversation with Mr Medich, none has surfaced. One would have expected to see them by now if they existed but if any member of the public has copies of any such recordings or transcripts, they've actual evidence that such recordings exist, they should provide them to the Commission.

So that deals with the third and twelfth allegations but it also deals with the question that's been widely discussed in public that Mr McGurk may have made other recordings with other people.

20 That brings me to the fifth allegation. This allegation asserts that Mr Medich provided a motor vehicle to the wife of a local mayor who has been named to the Commission in return for the mayor providing assistance in a development being undertaken by Mr Medich. The source of the allegation is said to be Mr McGurk. Ms McClymont told the Commission at a compulsory examination on 10 September, 2009, so a week after the death of Mr McGurk, that the meeting that she and Ms Carson had with Mr McGurk six weeks earlier had Mr McGurk saying that Mr Medich provided the wife of the then mayor of a Sydney municipal council with a new car in return for being very helpful with a large development that was
30 before the council concerned.

All persons who were said to be involved, or who could've been involved, were interviewed. The RTA database was interrogated by the Commission. Motor vehicle use and ownership for all relevant parties has been investigated and established with confidence. Any car ownership, transfer or use of the people involved and their corporate entities is known. No ownership transfer or new ownership even fits the period. All parties deny the assertion. No evidence was provided by Mr McGurk to Ms McClymont and none has been found since. The allegation, as against both Mr Medich
40 and the mayor who, the major in question appears to be without foundation.

That brings us to the sixth allegation. This too has been closely examined because it was noted by Ms McClymont and Ms Carson from their conversation with Mr McGurk on 29 July, 2009.

This allegation is that a member of parliament, who's been named who owned a property received the benefit of a property rezoning as a result of corrupt conduct by a property developer and a former local councillor. It's

said that the member of parliament was set to make money out of it, that is out of the rezoning. That may have meant that the member of parliament still owned the property but would benefit upon its eventual resale, so that contingency was examined as well. All possibilities were explored.

10 Among other inquiries, the Commission conducted title searches, issued notices to the relevant council, reviewed relevant documentation, issued a notice to the member of parliament under section 21 requiring a statement, and some property matters emerged, that is that there was some ownership property in the municipal area that was scrutinised.

One property, formerly owned by the property developer and former local councillor was specifically examined. The property is currently owned by another party. That property was rezoned about 25 years ago, in 1984 following determination of an application in December, 1983. A development application was later approved for another use.

20 There is no record of the member of parliament promoting, canvassing or lobbying for approval of any rezoning of the property or by the property developer or the former local councillor. Neither did any canvassing or lobbying for approval of the rezoning. Title searches and the Land Titles Office documents reveal no ownership interest by the member of parliament and the relevant property at any time, however, title searches indicated that on 4 May, 1995, a caveat was registered on the title by a company connected with the member of parliament, claiming an interest in the subject land as a result of the assignment of a mortgage to the company on 4 January, 1995. There appears to be nothing irregular about the matter at all.

30 There were no irregularities in the applications or in the way in which those applications were dealt with by the council. No evidence that the property developer or former councillor improperly influenced the determination of the applications. Council records show that on one occasion in 1992, the property developer and former local councillor wrote to the then mayor of the relevant local council requesting a development application lodged with respect to the property be dealt with urgently. Council records show that that request was declined. No applications have been made to the relevant local council since 1983 requesting any rezoning of the property.

40 Council records also identified a property that was owned by the member of parliament, the subject of this allegation and in the relevant area. One application was lodged with respect to the property in 2002. The application has, had never been determined as of 13 January, 2010. A search of the relevant local council records revealed no sign of any involvement by the property developer and former local councillor in promoting, canvassing or lobbying for approval of that application.

Sufficient material has been provided to bring about an investigation, so at least we knew the area and we were able to identify a property. The closest

connection between the named parties and some property is a mortgage interest through a company more than 15 years ago. There's no evidence of impropriety and the allegation is unsupported by any evidence.

That brings me next to the seventh allegation. This is that Mr Medich made corrupt payments to the local council mayor, this being the same mayor as the one whose wife was alleged to have received the motor vehicle from Mr Medich. And the corrupt payments were said to be in order to obtain approval in respect of a development that Mr Medich wished to undertake.
10 The allegation is one reported by Mr Byrnes, who says he received information from Mr McGurk, who is said to have claimed that evidence of the corruption in question was recorded in the conversation of 6 February.

He said, that is Mr Byrnes said in a private compulsory examination, referring to Mr McGurk, I quote, "He said he had a tape recording that was made and a conversation between himself and Mr Medich. And in the tape, the tape recording there was originally discussions with respect to a development he'd done in the local council area and how he had managed to get that approval, which was a substantially larger building than what would
20 have been ordinarily have been approved under the local planning guidelines. How he got that approval and his relationship with various people at the council and planning", end of quote. No such statement is made by Mr Medich in 6 February recording, which is the context of Mr Byrnes, the context of Mr Byrnes' evidence was probably the recording being referred to. Mr Byrnes doesn't speak of any recording other than the one. The matter is not adverted to in any way Mr McGurk in that recording either.

The former mayor of the local council was interviewed and told the
30 Commission that he recalled receiving some telephone calls from Mr Ron Medich about a development application, but there was nothing untoward about this contact. He denied doing anything to favour or influence the council's decision about the application. After investigation, the Commission has located no evidence in support of that allegation either.

I can be very brief with this next allegation, the eighth allegation. It was one that suggested that Mr Medich had used his relationship with the Police Commissioner to ensure that the police wouldn't commence criminal proceedings arising out of a positive breathalyser test. That matter was very
40 thoroughly investigated and at the conclusion of the investigation it was like the other allegations, without substance.

But further evidence was taken on a matter from Mr Byrnes before you, Commissioner, on Friday afternoon in a compulsory examination. He, having given evidence earlier, which altered the body of evidence in the matter and even on the evidence that, well, the alteration in the evidence is quite substantial. It weakens the allegation further and it's just not useful or necessary to proceed with that matter.

Now, the ninth allegation is one in which Mr Medich is said to have used his relationship with the police minister to ensure that New South Wales Police did not proceed with an investigation into an allegation that Mr Medich had engaged in fraud in respect of an insurance claim arising out of a motor vehicle. Mr Byrnes gave evidence in compulsory examination on 17 September, 2009, that Mr McGurk had told him that Ron Medich engaged in corrupt conduct in relation to an insurance claim involving Mr Medich's wife's car. He gave the following evidence, and I quote,

10 "McGurk had said that Medich was, had a very close relationship with the police minister. And I don't know, I can't put a name to that, because I don't know which police minister it is or was. Only that Medich had had a few problems and they'd been made to go away. There was an insurance job done on Odetta Medich's car and apparently the insurance fraud investigators referred the matter to the police. And the insurance, the claim was on a Porsche, I believe, and then it was fixed up, in so far as Medich, they withdrew the claim. So the Medich's withdrew the claim on the insurance policy and it was all, it was, the police didn't proceed." Now, that was investigated.

20

Information recorded on COPS, that is the police recording system, described an accident occurring at 4.30am on 26 March, 2006 in the eastern standard time suburbs. It involved a Porsche owned by Mrs Medich. The attending police officer was interviewed and stated that Mrs Medich's vehicle was one of three that had been stationary and unattended when struck by another vehicle. The COPS database did not reveal any record of any insurance fraud investigation or of any investigation by the insurer's fraud divisions itself. The attending police officer was not aware of any such investigation. Further inquiries conducted by the Commission

30 revealed that the Porsche had been insured at the time of the collision for \$135,000 through MB Insurance Group. The national plans manager for MB Insurance Group Limited told the Commission that on 5 April, 2006, a claim had been lodged in relation to the damage to the Porsche.

He said that on 10 April, approval was given for its repair. The vehicle was repaired for about \$54,000. There'd been an increase in the repair costs from the earlier lower quote, but he said, that wasn't unusual in respect of expensive vehicles and the company hadn't been concerned by the cost increase. The insurer paid the monies directly to the vehicle insurer. He

40 said that there was no suspicion of fraud in respect of the claim or any police involvement.

On 23 December, 2009, Mr Medich gave evidence at a compulsory hearing and denied that any part of the allegation was true. The allegation seems to be baseless.

And it brings us then to another insurance claim, allegation 10. This is an allegation that Mr Medich made a fraudulent insurance claim arising out of

the death of a horse owned by Mr Medich or his company and that Mr Medich used his relationship with the police minister to stop an investigation into the alleged insurance fraud. This allegation also came from Mr Byrnes who said that he heard it from Mr McGurk. Mr Medich does not, sorry, Mr Medich does own horses although almost invariably in partnership with another person. However, of all the horses he's owned, he has only ever insured a horse once. He only had a half share in that horse and he insured his half share because it was a valuable horse. The horse is still alive. No insurance claim has ever been made on it. His partner
10 insured the other half of the horse with a different insurer. No claim was made on that policy.

Mr Medich has never had a horse that died during his ownership. The person with whom he owns, usually owns horses did once have a horse die but Mr Medich had no interest in that horse. In any event it was not insured so there was no attempt to make an insurance claim. No claim for a horse death or injury has ever been made by Mr Medich. The principal horse insurers have been approached by the Commission's investigators and there's no evidence of a horse death claim by Mr Medich to any of those
20 insurers, let alone a fraudulent one. Allegation seems to be baseless.

I move now to the eleventh allegation. This allegation made by Mr Byrnes, reporting conversations he says he had with the relative of a named member of parliament and two other persons, is that the relative of the New South Wales member of parliament represented he could arrange for that member of parliament to have the New South Wales police, who are the rent paying tenant of the building, renew a lease on that building. A renewal of the lease would have increase or maintained the value of the property. One of the two persons involved in the conversations was the purchaser of the
30 property.

This has been a difficult but productive matter to investigate. The Commission received evidence from all four persons said to be in the conversation at compulsory examinations. It also issued a notice to the member of parliament under Section 21 of the Act requiring a statement. Emmanuel Verapartis, General Manager, Police Property Services Group, provided a statement to the Commission dated 8 December, 2009, about the events surrounding the leasing of the property in question by the police. The Commission also interviewed John Madden and Chris Shed of United
40 Services Group, a private entity engaged by New South Wales police to manage its rental of the property concerned.

Emmanuel Verapartis in his statement to the Commission said that the New South Wales police rented premises on the property concerned from 2006. He said the rental was managed on behalf of the New South Wales Police Force by United Group Services. Mr Verapartis told the Commission that around the time when there was an agreement between private interest to purchase the property, the New South Wales Police Force had expressed an

intention of continuing its rental of the premises by executing a formal lease. That is, they said that they would.

However, he said, the New South Wales Police Force decided not to continue and to execute the lease. He said that United Group Services did not have any authority to enter into any lease on behalf of the New South Wales Police Force without the approval of the Police Property Services Group and such approval would have come through him.

- 10 Mr Verapartis said that he had not been approached by the member of parliament or any other person and asked to execute a formal lease after the New South Wales police had terminated its rental arrangement. He said, however, that he'd received a phone call from Mr Byrnes in January, 2009, during which Mr Byrnes complained to him about the decision of the New South Wales police to terminate the rental agreement.

- 20 The Commission interviewed Mr Madden and Mr Shed of United Services Group. They also said that they had not been approached by the member of parliament or any other person and asked to influence the New South Wales Police Force to execute a formal lease after it had terminated the rental arrangement. However, they reviewed their records and said that according to a file note Mr Byrnes contacted Mark Slater, an employee of United Services Group, and suggested to him that the New South Wales Police Force were bound by their expression of intent to execute a lease in respect to the property concerned.

- 30 One witness told the Commission at a compulsory examination on 3 December, 2009, that the proposed purchaser was a friend of the relative of the member of parliament and introduced him to the relative. He said that at the meeting he spoke to the relative of the member of parliament about the adverse impact of the decision of New South Wales police not to continue as tenants. He said, however, that the relative of the member of parliament made no mention about taking any action to cause New South Wales police to alter its decision about terminating the tenancy agreement, arrangement.

- 40 That same witness also denied that he'd told Mr Byrnes that the relative had represented to him that he could arrange for the member of parliament to influence New South Wales police to continue as tenants. In addition, he denied having any conversation with the proposed purchaser about the possibility of asking the relative to arrange for the member of parliament to influence New South Wales police in a way favourable to the proposed purchaser.

The proposed purchaser told the Commission at a compulsory examination on 11 December, 2009, that he had no recollection of attending any meeting involving Mr Byrnes and the relative of the member of parliament. He said the relative refused to meet with Mr Byrnes. He said that when he told the relative of the member of parliament of the decision of New South Wales

police not to continue as tenants, he, the relative, told him, “he would make some inquiries”. He said, however, that he understood this to mean that the relative would make inquiries with United Services Group, the private entity managing the rental arrangement on behalf of the New South Wales police.

10 The relative of the member of parliament told the Commission at a compulsory examination on 11 December that he was an acquaintance of the proposed purchaser. He said he became aware that this person was attempting to purchase the property concerned. He said the purchaser did not tell him that the police decision to discontinue as tenants interfered with his ability to obtain a loan to purchase the property.

The member of parliament was served with a notice under Section 21 requiring him to provide a statement of information as to whether he had engaged in any discussions with any persons concerning the decision of New South Wales police not to execute the lease agreement. He responded, “No” and there is no evidence of, to substantiate any corrupt conduct.

20 Now, that brings me to the last matter, last allegation. This is the thirteenth allegation. This allegation is that Mr Ron Medich made corrupt payments to a former Minister of Planning to assist with a particular planning matter. The source of the allegation is a businessman who had some dealings with Mr McGurk and Mr Medich. Ms McClymont told the Commission at a compulsory examination on 8 September, 2009, that prior to meeting with Mr McGurk on 29 July, 2009, she’d been told by a number of persons including a father of a businessman in question, that Mr McGurk possessed a tape recording which contained damaging material that related to a former member or former Minister of Planning.

30 Ms McClymont said that she understood that the father of the businessman had been told about the recording by his son. Ms McClymont said she questioned Mr McGurk about the recording at their meeting on 29 July and it was then that she requested the recording but it wasn’t provided. The father told the Commission investigators he had never met Mr McGurk or heard the recording that had been reported in the media.

40 The businessman was interviewed by Commission investigators on 29 October, 2009. He said he’d first heard that Mr McGurk had made a recording of a conversation with Mr Medich in April or May and, “that everyone in the eastern suburbs was talking about it”. He said he never heard the recording. The businessman told the Commission investigators that he’d heard that Ron Medich had paid the former planning minister around \$15,000 on two separate occasions and that payments had occurred at Ron Medich’s house. He suggested that the payments may have related to land dealings. He told the investigators he was unsure about the source of the allegation. He suggested, however, that information regarding the former planning minister was on the recording made by Mr McGurk.

The businessman said he was unable to recall who had provided him with this information. The Commission received evidence from the businessman and Mr Ron Medich at compulsory examinations and interviewed the former planning minister about the allegation. The businessman told the Commission at a compulsory examination on 21 December, 2009 that he first heard about the recording made by Mr McGurk from a business associate in or around July 2009. The businessman said at the compulsory examination that several people knew about the recording. He said he spoke to Mr McGurk about the recording during a telephone conversation conducted shortly before Mr McGurk's death.

The businessman gave the following evidence about his discussion with Mr McGurk. He didn't elaborate too much on it other than to say that he got enough evidence to get Medich in plenty of trouble and it will be front page of the newspaper for six weeks. The businessman was then questioned about the allegation concerning the former planning minister. He gave the following evidence. Question. "You were interviewed by Commission investigators on the, I think it was earlier." Answer, "October." Question. "It was 27 October this year. Do you recall that?" Answer, "Yes."

20 Question, "And I think, I understand that you indicated to Commission investigators that you had heard that Mr Medich had paid the former planning minister money." Answer, "Correct." Question, "On two separate occasions. Is that correct? Do you recall?" Answer, "I do recall somebody telling me that, yeah." Question, "All right. Well, who told you? Who told you that?" Answer, "Well, that's what I'm saying. I don't recall who told me that. I mean, there was so much speculation." Question, "That's a very serious allegation." Answer, "It is." Question, this is, I'm sorry, I should say, Commissioner, I think this is a question from the Commissioner. Question, "That a very serious allegation." Answer, "It is." Question, "And

30 if you told, if someone told you that, isn't that the sort of thing you would remember?" Answer, "Well, I think I recall there was a group of people, you know, at a pub or on a, you know what I, what I mean, on a Thursday night it was mentioned, so." Question, "And how did it come about to be mentioned, how did it come to be mentioned? Who were you talking about?" Answer, "Well, the, the talk of, you know, Medich and McGurk, were the talking, they used to all the hotels I assume in the eastern suburbs, everybody had their point of view." Question, "So this was just idle gossip." Answer, "Quite possibly." Then counsel assisting questioned, "So

40 I take it from your last answer that this conversation you had with people who you can't recall, you can't remember who they were, this was after Mr McGurk had been shot and killed." Answer, "Correct." Question, "Perhaps the conversation took place in the pub." "Correct." "What, where people had been drinking?" "Correct." "Drinking alcohol." "Correct." "Do you have any more information about that particular allegation?" "Ah, what else do I, no."

The former planning minister was interviewed by Commission officers and denied the allegation. During his evidence at the compulsory examination

on 23 December, 2009 Mr Ron Medich said he once again asked the former minister concerned for some evidence in relation to the rezoning of land belonging to a relative. He said the former planning minister had never been to his house. He gave the following evidence in answer to the allegation. Question, "Have you ever paid the former planning minister concerned any money for assistance with any kind of a planning matter?" Answer, "Definitely not." "Have you ever offered him some kind of benefit for assistance with a planning matter?" "Definitely not." "Would that suggest, would a suggestion of that type then be false?" "One hundred per cent." And it has to be said, Commissioner, that there's no evidence to support that allegation.

It's now proposed to play some excerpts from the conversation which Mr McGurk recorded between himself and Mr Medich on 6 February 2009. It was difficult to choose passages. Those chosen are reasonably clear. They show the nature and tone of the discussion, more or less from start to finish. We can't play the whole thing because it's an hour and 37 minutes long but the excerpts selected include the following, firstly, just the start of the tape so that listeners can hear how the conversation got underway and to pick up voices. The second segment comes from about halfway through the recording. I would describe this passage as showing the speakers in effect sparring with one another. Mr McGurk is reporting what he's heard others say that Mr Medich has said about him and Mr Medich's response.

The third passage is a discussion about Badgerys Creek and a newspaper article which appears to be an article in The Daily Telegraph of 3 February, 2009 and I'll tender that in due course, Commissioner. And the fourth passage is the one that I've already played. That fourth passage is right at the end of the tape and if we were to play beyond what we have already heard it would run out to the end of the tape within a minute or so. Other passages can be played if parties wish it though a little time is needed to allow cueing to occur.

Now, Commissioner, because there is still to be some debate about the transcript, I'll just ask that the recording be played but that the transcript not be shown. Is that technically possible? Yes. All right. Unless my friends at the bar table don't have any objection to the transcript being shown at this stage, it would be easier if we could show it. All right. Well, we'll just play it. We'll just play the sound recording then.

MR GAME: Can I just ask one question for assistance. We now have three transcripts from the Commission and we could have page references to one of the other so that we can know where Mr Gormly is at any particular moment.

MR GORMLY: Commissioner, I think rather than have a situation where we're playing the recording that some people can read and some can't, it may be better to just postpone the playing of the recording.

THE COMMISSIONER: Yes. What is the position with the transcripts, how far have you got?

MR GORMLY: I think what we've been able to do is to, yes, we've got comparison documents that show - - -

THE COMMISSIONER: Tracking.

10 MR GORMLY: Yes, yes. So we certainly do that.

THE COMMISSIONER: And they've been distributed to everyone?

MR GORMLY: Oh, and it's been distributed, I'm told.

THE COMMISSIONER: All right. Now, well, Mr Game, you're the one who started all this.

20 MR GAME: We were going through, but they're, I mean, if you look at this document, there are dozens of them. There are some, obviously some critical ones, but we need time and I assume Mr Medich's counsel need time to - - -

THE COMMISSIONER: How long do you want, Mr Game?

MR GAME: Well, it's going to take us more then, it's going to take us - - -

THE COMMISSIONER: How long do you want, Mr Game?

30 MR GAME: Well, we'd ask until 3 o'clock this afternoon.

THE COMMISSIONER: Yes. You'll be ready then?

MR GAME: Yes.

THE COMMISSIONER: Mr Faulkner?

MR FAULKNER: Yes, I would expect the same.

40 MR GAME: We'd be ready to, as it were narrow down the ultimate areas of, which we can't resolve, so, yes.

THE COMMISSIONER: And you'll be ready? Mr Medich can start his evidence?

MR GAME: I think so. I think so.

THE COMMISSIONER: He'll only start his evidence, you said you could narrow down the issues that haven't been resolved. And then, and then what are we going to do about those issues, Mr Game?

MR GAME: Well, I think that we'll have to work out with Mr Gormly whether or not we can't agree or whether or not there is simply a dispute in relation to what appears in those portions.

10 THE COMMISSIONER: And if there's a dispute, is that simply a matter of (not transcribable) as well?

MR GAME: Yes, yes.

THE COMMISSIONER: How long will that take? I mean, what I'm interested in, it does cost people money to have everybody hanging around. You know, you could say 3 o'clock, but that doesn't allow for discussions with Mr Gormly does it?

20 MR GAME: That's correct. It allows us in a position where we can nail down what (not transcribable)

THE COMMISSIONER: I have a strong feeling that, that because of this, we should start tomorrow morning.

MR GAME: Do you think that (not transcribable)

30 THE COMMISSIONER: That will of course result in additional costs and delay, but I can't see any way out at the moment in fairness to everybody. But I take it that they'll be no more interruptions after this.

MR GAME: No, Commissioner.

THE COMMISSIONER: I mean, I mean that things can happen. But foreseeably there is, we can actually go on.

MR GAME: No, quite, Commissioner. But in self-defence, we drew these problems to the attention as soon as we could.

40 THE COMMISSIONER: No criticism, Mr Game. No need for justification.

MR GAME: Sorry.

THE COMMISSIONER: Just in regard, we all understand that. Is there anything else, Mr Galasso? You look as if you want to jump up and say something?

GALASSO: Only because I haven't said anything for a while, Commissioner. As I (not transcribable) the situation, Commissioner, there is dialogue between Mr Game and counsel assisting regarding the transcript. We do not have the benefit of the sound recording, so we cannot engage in that process. But we expect that, if there is agreement about changes to the transcript that we would be given an opportunity to at least know what those changes are. Some of them may affect the person whom I represent. And if there are those that are still the subject of debate, we wouldn't mind knowing what the debate is about. At the moment, we're hearing all of this
10 (not transcribable)

THE COMMISSIONER: All right. There's no reason why Mr Galasso can't be a party to your deliberation is there?

MR GAME: No, no reason.

THE COMMISSIONER: You will be allowed in, Mr Galasso.

MR GALASSO: The only other thing I've raise, Commissioner, is - - -
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THE COMMISSIONER: I think that you need a copy of the recording though. Do you anticipate that the recording will be played while you discuss it?

MR GORMLY: We can, yes, I would of thought so, Commissioner.

THE COMMISSIONER: Well then, Mr Galasso can be there?

MR GORMLY: Yes.
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THE COMMISSIONER: Would that satisfy your concerns?

MR GALASSO: Yes, Commissioner. I only wish to raise the concern that we are in (not transcribable)

THE COMMISSIONER: Well, I'm trying to accommodate that.

MR GALASSO: I accept that.

40 THE COMMISSIONER: Are you, that would accommodate that?

MR GALASSO: It would, Commissioner.

THE COMMISSIONER: Is there anything else?

MR GALASSO: One other thing, if you're proposing to adjourn it until tomorrow, Commissioner, I think the Commission is aware that Mr Haddad has returned from overseas for the purposes of this hearing.

THE COMMISSIONER: Yes, I know.

MR GALASSO: I just wish to - - -

THE COMMISSIONER: Well, I apologise to him, but these things are not in my control.

10 MR GALASSO: I appreciate that, Commissioner. I'm not making application, I'm just making a reminder note, if I may do so.

THE COMMISSIONER: And I think it's in Mr Haddad's interest that Mr Medich give his evidence first.

MR GALASSO: I accept that, Commissioner.

THE COMMISSIONER: So there's nothing, and I don't think it's fair to Mr Medich to give his evidence until the transcript issue has been resolved.

20 MR GALASSO: I accept that too.

THE COMMISSIONER: Very well. Well, we will, does anybody want to say anything else at this stage? Well, we'll adjourn until 10.00am tomorrow morning.

AT 12.52 THE MATTER WAS ADJOURNED ACCORDINGLY [12.52]

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