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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 WEDNESDAY 3 FEBRUARY 2010

AT 9.50AM

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THE COMMISSIONER: Mr Gormly.

MR GORMLY: Commissioner, just before we, we keep going with Mr Medich, may I tender two things.

THE COMMISSIONER: Yes.

10 MR GORMLY: The first is a series of nine, the nine extracts of transcript that were played yesterday. They've each been separated and described as segments with the times. It's just really more of a convenience, Commissioner.

THE COMMISSIONER: Yes. Right. We've got an exhibit, I think two, is it?

MR GORMLY: Yes.

20 THE COMMISSIONER: So we'll give that, all right, these are, how many of them are there?

MR GORMLY: Nine, Commissioner.

THE COMMISSIONER: Nine.

MR GORMLY: Yes. And they're marked 1 to 9.

THE COMMISSIONER: All right. Well, each one of these will be an exhibit 2(1) to (9) respectively.

30 MR GORMLY: 3(1).

THE COMMISSIONER: 3(1) to (9). We've got an Exhibit 2 which is the main extracts. These are segments of it so we'll call it 2(1) and so on.

#ADDENDUM TO EXHIBIT 2 – ATTACHMENTS 1 TO 9

40 MR GORMLY: Commissioner, the second thing to tender is a copy of an article from The Daily Telegraph of 3 February, 2009, "Boss charged with firebombing posh Point Piper mansion." That is the article that was referred to in the transcript of the conversation on 6 February, 2009 (not transcribable) so I tender that as well.

THE COMMISSIONER: Yes. The copy of the article of The Daily Telegraph of 3 February, 2009 is Exhibit 5.

#EXHIBIT 5 DAILY TELEGRAPH ARTICLE DATED 3/02/2009

MR GORMLY: Commissioner, may we next have Mr Medich - - -

THE COMMISSIONER: Yes.

MR GORMLY: - - - back in the witness box. Commissioner, might I just
10 have leave to ask Mr Medich a question which I did not ask before (not
transcribable).

THE COMMISSIONER: Yes. I think that would be convenient, yes.

MR GORMLY: Yes. Certainly, thank you. And, Commissioner, may we
confirm that the section 38 order is - - -

THE COMMISSIONER: Yes.

THE COMMISSIONER: The section 38 order applies for today and, Mr Medich, you're still under your oath?---Yes, Commissioner.

MR GORMLY: Now, Mr Medich, you're aware, I'll withdraw that. You gave evidence that the conversation that you had with Mr McGurk that was recorded and in which you made an allegation about Mr Haddad and others?
10 ---And others.

And others, other, well, presumably others in the Planning Department?
---No, I didn't.

You deny that?---Yes.

But words like that appear in connection with the name Mr Haddad. Let's not get lost in that. You referred to Mr Haddad. Is that right?---Ah, yes.

20 Now, did you ever have any other conversations with Mr McGurk recorded or unrecorded in which you said that you had engaged or that you had connections with any person in the Planning Department or with Mr Haddad or with any minister of the Crown or other public officer, that connection being in some way one where you would be granted improper favours? Did you ever have any such conversation?---To the best of my knowledge, no.

It's something you would know, isn't it?---I can't recall anything along those lines.

30 Thank you, Commissioner.

THE COMMISSIONER: Yes, thank you.

MR GORMLY: Right. And, Commissioner, there is another practical matter that is probably best dealt with now. My friend, Mr Faulkner, appearing for Mr Medich, has provided a statement with a bundle of annexures to it. We had discussed yesterday some objections that I have to that statement and it, there's substantial objections, numerous and bulky as to the statement, they all go to litigation and to opinions expressed by Mr
40 Medich about Mr McGurk. I object to them all as being irrelevant to this inquiry. I think Mr Faulkner and I have agreed on, that all of that should go out bar one or two parts that Mr Faulkner would argue should remain and, as I understand it, Mr Game objects to the statement as a whole. My original position on the matter was that the statement did not really contribute anything new to the matter and regrettably, Commissioner, we're going to ask you to deal with it.

THE COMMISSIONER: Yes. Well, having spent 20 years and, most of which in an appeal court, I've never known an objection to evidence of being of any relevance in the end result of a case.

MR GORMLY: Yes. Well - - -

THE COMMISSIONER: So, I'm really not impressed with this. So I might want the stuff go in and be dealt with in closing submissions subject to, to that.

10

MR GAME: Perhaps if I can tell you where we're at - - -

THE COMMISSIONER: Well, I suppose Mr Game wants to cross examine. All right.

MR GAME: The problem is that - - -

THE COMMISSIONER: I can see.

20 MR GAME: Can I just say this very briefly, Commissioner. I understand entirely the sentiment that everyone has expressed (not transcribable) I at the moment appear to have leave on a very tightly constrained basis.

THE COMMISSIONER: Yes.

MR GAME: And that means that my questioning will be brief but in a very narrow, this, the problem with this statement is that it opens up a whole, whole - - -

30 THE COMMISSIONER: Let's deal with the statement. Can I have the statement?

MR GORMLY: Yes. If I could hand to you, Commissioner, a copy of the statement.

40 THE COMMISSIONER: Yes. And Mr Game, what's the best way to deal with it? My impression is that I should deal with the dispute between Mr Faulkner and Mr Gormly and then in the course of that I might get some idea of what's in the statement and then when that's over I'll deal with your objection.

MR FAULKNER: Yes. Now we originally provided a statement, this statement in an unabridged form together with a couple of hundred pages of annexures. Commissioner, we've deleted all of the annexures except a few pages of transcript that Mr Medich had worked on. And I'll explain to you when you're ready, Commissioner, as to how Mr Gormly and I - - -

THE COMMISSIONER: Well, let's deal with the objections.

MR FAULKNER: Yes. If you go to paragraph - - -

THE COMMISSIONER: I think it's Mr Gormly has to - - -

MR FAULKNER: I'm sorry.

THE COMMISSIONER: - - - to actually deal with that, because he's objecting.

10

MR GORMLY: Commissioner - - -

THE COMMISSIONER: Is that, have I got it right?

MR FAULKNER: Yes, that's right.

MR GORMLY: Look, all the objections have been accepted bar two.

THE COMMISSIONER: Yes. What are ones that are an issue?

20

MR GORMLY: Paragraph 12, there's a reference there to the proposed development at Currawong, which is just irrelevant to this inquiry. It hasn't raised its head in any other way and it's got no place here.

THE COMMISSIONER: Yes. All right. Let's deal with, let me deal with that. It's a good point. Do you really want this in?

MR FAULKNER: No. I don't read that sentence.

30 THE COMMISSIONER: All right. That can go. The next one, Mr Gormly?

MR GORMLY: The next one is thirteen, Commissioner, look, I won't press my objection to that, it doesn't go anywhere.

MR FAULKNER: It's only introductory.

THE COMMISSIONER: All right. The next one?

40 MR FAULKNER: Fifteen.

THE COMMISSIONER: Is there an objection to it? That just seems to be (not transcribable)

MR GORMLY: Yes. I don't, I don't, yes, I don't press it.

THE COMMISSIONER: Yes. Next one?

MR FAULKNER: The next one is in paragraph 16. Just, just one moment, Commissioner, I can speak to Mr Gormly.

MR GORMLY: No, we didn't have, I didn't have an objection to that. That's why the box is there.

MR FAULKNER: Commissioner, you needn't worry about 16.

10 THE COMMISSIONER: Okay. No 16's in, but no the part where he says, not the part in the box that's crossed.

MR GORMLY: That's right.

MR GAME: We'll object to 16.

THE COMMISSIONER: Well, we'll deal with that. Yes.

20 MR GORMLY: And as to paragraph 37, Commissioner, well, I just object to the first sentence of 37.

MR FAULKNER: And I am pressing that too, as to the first line and to the end of Hetherington.

UNKNOWN SPEAKER: Commissioner, I support Mr Faulkner in relation to the first line, 37 (not transcribable)

THE COMMISSIONER: Why can't you put in what he reported instead of giving it a label?

30 MR FAULKNER: As to an issue in form, yes.

THE COMMISSIONER: Take out the words attempting to blackmail and put in what he reported.

MR GAME: Well, I'd have to, I'd have to ask him. I seek leave to ask him, Commissioner.

40 THE COMMISSIONER: Well you can ask him that question then. I'll delete 37 and you can ask him the question.

MR GAME: Yes.

THE COMMISSIONER: What, what he reported. So 37 is deleted. Any more?

MR FAULKNER: No.

THE COMMISSIONER: No. Mr Game?

MR GAME: Yes, Commissioner - - -

THE COMMISSIONER: Just, sorry, Mr Game, there's something I want to, yes, Mr Game.

MR FAULKNER: Sorry, what we didn't tell you Commissioner is this, for example if you, if throughout this document there are diagonal lines - - -

10 THE COMMISSIONER: Yes. Those are deleted.

MR FAULKNER: They were objected to and not read.

THE COMMISSIONER: Yes, I understand that.

MR FAULKNER: Thank you.

THE COMMISSIONER: Mr Game.

20 MR GAME: Sixteen is, I suppose it's just history, but it does bring in what occurred in relation to the signing of the mortgages and that McGurk's suggestion is not the full picture and it's hardly irrelevant to your - - -

THE COMMISSIONER: Mr Faulkner?

MR FAULKNER: Well, it's only history of the - - -

THE COMMISSIONER: It's unnecessary.

30 MR FAULKNER: No, no. It's not unnecessary as to the development of the dispute, which came to be, which came to be part of matters dealt with and certainly creating the atmosphere that - - -

THE COMMISSIONER: It's in dispute, Mr Faulkner.

MR FAULKNER: It's sorry?

40 THE COMMISSIONER: It's in dispute. And I'm not interested in your dispute, in the dispute between you and Mr Game. I don't want to waste time on it. It's got nothing to do with the Commission. So, I'm happy for you to reformulate it in some way that doesn't raise contentious issues in the litigation between your client and Mr Game's client. If you want to put it in as background in some other form - - -

MR FAULKNER: Yes. The only background I want in is that there were disputes and proceedings between them, that's all.

THE COMMISSIONER: Why don't, why don't we say that. If you say that in about June, 2008, there were, there were commercial disputes between Mr McGurk and Mr Medich. Mr Game, can I write that in?

MR GAME: The dispute hadn't arisen yet, Commissioner, so - - -

THE COMMISSIONER: I'm not talking about the litigation. Do you mean to say that there was no dispute?

10 MR GAME: Not at June, 2008.

MR FAULKNER: Yes, that's right. There was not a dispute at that time.

THE COMMISSIONER: Well, can we say that, can we put it this way, that in about June, 2008, steps were taken involving a commercial arrangement that subsequently led to a dispute.

MR FAULKNER: Yes.

20 THE COMMISSIONER: Can I write that in?

MR FAULKNER: Yes.

THE COMMISSIONER: At about June, 2008, steps were taken that subsequently led to a dispute, to litigation between Mr McGurk and myself.

MR FAULKNER: Yes.

30 THE COMMISSIONER: And then delete the rest?

MR FAULKNER: Yes.

THE COMMISSIONER: Mr Game, which paragraph?

MR GAME: Paragraph 22, from the second sentence, the second, there are, there's only two sentences. The second one, just the one sentence.

THE COMMISSIONER: Sorry, can you just repeat that, please.

40 MR GAME: Paragraph 22.

THE COMMISSIONER: Yes.

MR GAME: The second sentence.

THE COMMISSIONER: Around - - -

MR GAME: That's not relevant to, to the end of the paragraph.

MR FAULKNER: Yes. 22 commencing with the word around to end of that paragraph, I will not read it.

THE COMMISSIONER: That can go. Thank you.

MR GAME: And paragraphs 27 to 30, being a substantial dispute, including the dispute about non-disclosure to the Federal Court by Mr Medich. I have a letter of demand from Mr McGurk on the 10th of March,
10 which resulted in the orders - - -

THE COMMISSIONER: Let's start, let's do each one, one by one, Mr Game. Paragraph 27 seems innocuous.

MR GAME: Well - - -

THE COMMISSIONER: That's his state of mind.

MR GAME: Yes. Well, yes, but can I just say - - -
20

THE COMMISSIONER: Are you challenging his state of mind, I mean, what's it got to do with this?

MR GAME: (not transcribable)

THE COMMISSIONER: It's going nowhere.

MR GAME: It's going nowhere except, Commissioner, if you allow it in, I'll tell you what the problem is. The problem is that what is missing here is
30 that on the 10th of March Mr McGurk sent a letter of demand in respect of Amazing Loans and Gerroa, that letter was not disclosed in the Federal Court proceedings and it's not been disclosed here. That was the reason why the interim orders were disposed of by Justice Jacobs, by Justice Graham. You don't know about the hearing (not transcribable)

THE COMMISSIONER: I really don't want to know about that.

MR GAME: But this is just, you'll be dragged into another issue about non-disclosure by Mr Medich (not transcribable).
40

THE COMMISSIONER: All right. Just let me read the paragraph.

MR GAME: We have to cross-examine about the Federal Court proceedings.

THE COMMISSIONER: Mr Faulkner, paragraphs 27 to 29 just seem to me to be background as part of the dispute between the parties, the detail of it is really irrelevant isn't it?

MR FAULKNER: Yes. The detail of it is irrelevant, I agree.

THE COMMISSIONER: What about, what are we talking about? If we have a statement that after 6 February 2009 further steps were taken involving the litigation in which the parties were concerned.

MR FAULKNER: We could say that. What if I didn't read anything but commencing at paragraph 30.

10

THE COMMISSIONER: So you won't read 27, 28 and 29?

MR GAME: Commissioner, we would ask from 30 to go out as well. Litigation commenced.

THE COMMISSIONER: Sorry, I don't think I - - -

MR GAME: But those proceedings (not transcribable)

20

THE COMMISSIONER: There's a verb missing in 30 so I don't understand.

MR FAULKNER: There is. We tried to deal with it on the words that were - - -

THE COMMISSIONER: I understand. Mr Game, why do you object to 30? I mean this is a fact isn't it? I mean what they're trying to say.

30

MR GAME: The fact that they commenced proceedings (not transcribable) but the - - -

THE COMMISSIONER: They made an application for an order, that's a fact.

MR GAME: They did but the - see, it is actually quite beside the point for your inquiry.

THE COMMISSIONER: That's what it seems to me to be but why - do we really have to spend time on it then?

40

MR GAME: That was just my lack of understanding of the microphones. We don't want to have to cross-examine on it, it's, it brings in - - -

THE COMMISSIONER: Why should you?

MR GAME: Well, - - -

THE COMMISSIONER: I don't really understand why it's there. Mr Faulkner, what's the point of it?

MR FAULKNER: Well, we will be content on behalf of Mr Medich that when confronted - I'm sorry, when made aware of what he believed to be was a blackmail attempt by Mr McGurk his response was one of innocence and alarm and that that is - - -

10 THE COMMISSIONER: What's the blackmail attempt in the transcript? When is this blackmail attempt?

MR FAULKNER: If you go to paragraph 36 you'll see that it's during 2009 when - there is not a date there, it commences at 35, it's some time after the Federal Court proceedings and then as to what he was told by Mr Richardson who reported that to Detective Hetherington.

THE COMMISSIONER: Why is it relevant?

20 MR FAULKNER: Because you are going to be asked to conclude, to make findings as to Mr Medich's intentions when he made statements in the conversation with Mr McGurk and you're going to be asked to make findings on the basis of subjective evidence.

THE COMMISSIONER: Mr Faulkner, the only findings I will make are A, what Mr Medich said and B, what the words meant objectively and C, whether they were true objectively.

30 MR FAULKNER: Well, yesterday there was, the thrust of the cross-examination and most of it by Mr Gormly and questions from myself, Commissioner, were as to what this, what Mr Medich meant when he said the particular words.

THE COMMISSIONER: Yes.

MR FAULKNER: Now, I'm only dealing with that.

THE COMMISSIONER: Because what Mr Medich meant has a strong bearing on whether he thought they were true.

40 MR FAULKNER: Yes. And so I'm dealing - - -

THE COMMISSIONER: And that is the question of corruption because this inquiry is concerned with corruption of person's mentioned in the allegation. If Mr Medich believed the allegations to be true and intended them to mean what they say that is a very important fact in deciding whether there's been corruption or not. If Mr Medich on the other hand didn't mean to say what the ordinary meaning of the words convey and didn't believe the truth of the ordinary meaning of those words that's highly relevant. It is

also relevant in determining that fact whether he actually is telling the truth in his evidence. So Mr Medich's credibility as a witness is very much in issue and he stands at risk of having an adverse inference drawn against him.

10 All that being said I have no idea, I do not understand, I'm sorry to put it that way, I do not understand what the issues that I have raised have to do with whether he thought he was being blackmailed or whatever at some later point or a different time. What's that got to do with whether he was telling the truth yesterday?

MR FAULKNER: The question is that it's got to do with your process of determining the facts, that is, when you come to deal with his credibility, his credit as to what he says he meant at the time and in the witness box. One matter in those scales is his conduct as to when he became aware.

20 THE COMMISSIONER: I understand, Mr Faulkner, but can you just please just try and understand the Commission's thinking along as to how this melee has to be decided as regards to Mr Medich. Firstly, we have to decide what's said, what was said in the transcript. Secondly, we have to decide what it meant. Now, assume that it means that Mr Medich objectively said words that meant I have connections with Department of Planning and Sam Haddad and I paid him for results. Assume that what he said meant that. Mr Medich now says he didn't mean that, he didn't subjectively mean that. Now, it would be open for Mr Game to argue that he did subjectively mean that and also he does argue that Mr McGurk believed that the truth of what Mr McGurk, Mr Medich said. So it follows that what Mr Medich actually believed about the truth of what he said is relevant principally in relation to the existence of corruption by others or
30 not.

Tangentially, in the course of making that decision, Mr Medich's credibility is in issue because it is, it may be a necessary part of the Commission's findings that although Mr Medich used words which conveyed a corrupt, that conveyed the notion that people were being corrupt, he actually knew that that was false. And further, that what he's saying today, what he was saying in his evidence yesterday wasn't true, that's he actually trying to wriggle out of what he said. That's open, I mean, when I say wriggle out of what he said, wriggle out of the proposition that he actually intended to
40 convey that they were corrupt and he was trying to do that not because it was true but for his own purposes.

Now, all that, and I know you understand all that, are matters with which you are acutely concerned because that concerns the reputation of your client and adverse inferences drawn against him. In that context though, I do not see how allegations that Mr McGurk was trying to blackmail him are relevant. Even if it's true, I just don't see how that's relevant to those issues.

MR FAULKNER: The conduct that I wish to rely on and will be submitted is a factor to be taken into account for the Commission to conclude Mr Medich's position that he did not intend to convey an ability or history of any corrupt conduct.

10 THE COMMISSIONER: You mean that you are going to argue that although, and I'm asking you that as a question, this a question, are you going to submit, I'm sorry. Let me start from the beginning. Do you accept that the ordinary meaning of the words used conveys corrupt conduct on the part of others, to use shorthand?

MR FAULKNER: No.

THE COMMISSIONER: No, all right. So your first position is that he didn't intend to convey any corrupt conduct?

MR FAULKNER: Yes.

20 THE COMMISSIONER: Do you have an alternative position that if he did intend to convey conduct, he did so for some legitimate reason?

MR FAULKNER: No.

THE COMMISSIONER: Well, what do, do you have no other alternative position?

MR FAULKNER: That's right.

30 THE COMMISSIONER: So all you're saying is that he didn't intend to convey any corrupt conduct? Sorry, your first position is that the words don't convey corrupt conduct?

MR FAULKNER: Yes.

THE COMMISSIONER: What happened, then you have no position if they do?

40 MR FAULKNER: If they do, if you find that they do convey - - -

THE COMMISSIONER: Yes.

MR FAULKNER: - - - corrupt conduct, it's a matter that the Commission might report on but in my submissions I'll be submitting that it's not necessary for you to do so.

THE COMMISSIONER: Yes, I understand that.

MR FAULKNER: Yes, that's all - - -

THE COMMISSIONER: But, but if the only question with which you are concerned is, what do the words mean - - -

MR FAULKNER: What did he mean.

THE COMMISSIONER: No, no. What did the words mean because what -
--

10

MR FAULKNER: No.

THE COMMISSIONER: Well, Mr Faulkner, you're not, let me start again.

MR FAULKNER: Commissioner, can I - - -

20

THE COMMISSIONER: No, no, I'm sorry. I want to understand this and I'm not understanding it at the moment, what your position is. I need, I need to write this down so that there's no, now no misunderstanding. You dispute that the ordinary meaning of the words used by Mr Medich conveys corrupt conduct on the part of others?

MR FAULKNER: Yes.

THE COMMISSIONER: And your second position is that you accept that there was no corrupt conduct on the part of others, as far as you know?

MR FAULKNER: We contend that as far as we know.

30

THE COMMISSIONER: Okay. That's number two. You have no other position?

MR FAULKNER: We haven't, you haven't yet dealt with my position that Mr Medich did not intend.

THE COMMISSIONER: All right. Let me, what is, what is your position? Mr Medich did not intend - - -

40

MR FAULKNER: By the words spoken to convey that he had any corrupt association or capacity.

THE COMMISSIONER: Or that anybody was corrupt? He didn't intend to convey, he didn't intend to allege that he had a corrupt relationship with anyone, is that what you're saying?

MR FAULKNER: Further, that, or that he had a capacity to corrupt anyone.

THE COMMISSIONER: All right. I understand all of that. I accept that those are all legitimate positions to take. Now, can you please explain to me how the question in thirty-six, because I think that's what we're dealing with now, aren't we? Paragraph 36 of the statement. How does that bear on 1, 2 and 3?

MR FAULKNER: The issue upon which it bears is the issue as to whether Mr Medich had an intention to convey to McGurk that he had or had a capacity to corrupt officials.

10

THE COMMISSIONER: But, why is that? I don't understand that, I don't understand what this has to do with that.

MR FAULKNER: Well, Commissioner, I have tried on three occasions to get there. Can I please put my position - - -

THE COMMISSIONER: Are you being irritated now, Mr Faulkner? Are you demonstrating some irritation towards me, because I think that it's time that you behave in a courteous way.

20

MR FAULKNER: Well, I apologise if I am not - - -

THE COMMISSIONER: I'm being courteous to you. If you want me to continue I expect reciprocity.

MR FAULKNER: I need, I do need to be able to put the, to put my - - -

THE COMMISSIONER: I'm asking you to put it.

30 MR FAULKNER: If we go to paragraph 37 he says that what he, he reported it to Detective Hetherington what he regarded as McGurk attempting to blackmail him.

THE COMMISSIONER: That's been deleted.

MR FAULKNER: Well, I've been given leave though to - - -

THE COMMISSIONER: To say what he said.

40 MR FAULKNER: - - - to say what he said so that will be the subject as to what he will say that he said. Now, the point in my case as to whether or not Mr Medich held the intention that others contend for and that I dispute his conduct upon becoming aware that McGurk had a tape, that McGurk was saying that Medich, McGurk was saying that it proved Medich had engaged in corrupt conduct or had corrupt capacity is relevant, is a relevant issue in your determination of that on, can I, can I explain it this way by - - -

THE COMMISSIONER: I don't understand that.

MR FAULKNER: If, after a person has engaged in criminal conduct, when fronted with it they make a statement of guilt, that can be used not only as to confessional material as to a matter as to their intention at the time when the conduct occurred.

10 My submission is on just the same basis, that when a person becomes aware that there is supposed to be a sinister, a tape that is sinister for them if revealed, that there conduct is not of that kind but it is, as Mr Gormly said in his opening, aggressively disputed by my man and that he invites in effect the police to deal with the matter is relevant as to whether a person or as to whether Mr McGurk would do that if he in fact had the intention that is contended for by counsel assisting.

THE COMMISSIONER: Now, where is that said in 36?

20 MR FAULKNER: In 36, at the end of 36 he says that, that is leading to Mr Richardson telling him that McGurk wanted him to drop his legal proceeding against him and our submission will be that McGurk was putting around that he had this tape that would implicate Medich unless, and that he would make it public unless Medich agreed to drop the proceedings and that was what Medich reported to Detective Hetherington.

THE COMMISSIONER: So Medich reported to Detective Hetherington McGurk was trying to blackmail him in effect. Is that what you're saying?

MR FAULKNER: As a result of the existence of the tape, yes.

30 THE COMMISSIONER: I don't see how that's relevant to the truth of the matter.

MR FAULKNER: Well, I've put my position.

THE COMMISSIONER: Yes, I understand. I will not allow the paragraph. Paragraph 36 is deleted on grounds of irrelevance, too remote.

MR FAULKNER: Well, that would make 37, 37 would follow.

40 THE COMMISSIONER: Yes. 38?

MR FAULKNER: No, it goes to the same issue, Commissioner.

THE COMMISSIONER: All right. So 36 is, 36 goes, 37 goes, 38 goes.

MR FAULKNER: Yes.

THE COMMISSIONER: Now, Mr Game, is there anything else?

MR GAME: There's a question I need to raise with you about this question of blackmail but, and I'll do that in a moment if I may, but 46 to, 46 and following are a mixture of things which have, some of which have no relevance at all to your inquiry, others of which are assertions not on - - -

THE COMMISSIONER: Let's deal with it paragraph by paragraph, Mr Game.

10 MR GAME: Certainly, I apologise, sorry. 46, 46 does not appear to be relevant to this inquiry.

THE COMMISSIONER: It seems innocuous.

MR GAME: 47 to - - -

THE COMMISSIONER: 47 seems innocuous.

MR GAME: 49.

20 MR FAULKNER: 48's not read.

THE COMMISSIONER: I really don't see how 49 holds you, Mr Game.

MR GAME: So, yes, well, it's just, I don't think its relevant but I'll put that it's not part, now, your Honour, I'm not sure about 50 but, again it's not really - - -

THE COMMISSIONER: I'll allow 50.

30 MR GAME: Right. Now, Commissioner, in respect of everything from 51 to 57 - - -

THE COMMISSIONER: 51, is that out or in? There's some marks on it I don't understand.

MR FAULKNER: That's in.

MR GAME: It's in.

40 THE COMMISSIONER: Yes. In as between you and Mr Gormly.

MR FAULKNER: Yes.

THE COMMISSIONER: Yes.

MR GAME: 51 to 57 are assertions not on oath about the very matters that Mr Medich was questioned yesterday so then it becomes an alternative account of evidence given on oath.

THE COMMISSIONER: Where is this?

MR GAME: And it's also his interpretation of what Mr McGurk meant.

THE COMMISSIONER: Yes. Mr Faulkner?

MR FAULKNER: Well, it's his explanation.

10 THE COMMISSIONER: No, it's not. Well, I'm sorry, the first sentence is an, it's an assertion by Mr Medich as to what Mr McGurk was talking about.

MR FAULKNER: Yes. It's his, it is only put on the basis of this witness's understanding. I would not be seeking to read any of it on any basis other than his understanding. He had to have an understanding of what was said to him.

20 THE COMMISSIONER: All right. Mr Game, I am, I think this is innocuous, that's 51 I mean.

MR GAME: Oh, well, 51. It's hardly going to figure ultimately - - -

THE COMMISSIONER: No.

MR GAME: - - - but this suggestion he'd previously asked him to shred documents - - -

30 THE COMMISSIONER: Sorry, where's - - -

MR GAME: - - - is an innocent explanation of him saying he's going to shred documents in the - - -

THE COMMISSIONER: Really, I, the last sentence, Mr Faulkner, raises an issue that I'm not concerned with.

MR FAULKNER: Okay. I, I won't read the last sentence.

40 THE COMMISSIONER: Last sentence deleted.

MR GAME: 52 is innocuous. 53 is his interpretation of what Mr, I now think 53 is (not transcribable) interpretation and then the balance of it is - - -

THE COMMISSIONER: It doesn't matter, Mr Game.

MR GAME: It does not matter, that's true, it doesn't matter. The rule of the follows, the following are the same that they are again the innocent explanation that he has given in evidence of the words that he used and it, as

I said, it's an alternative account not on oath of the matters he deposes to on the critical question.

THE COMMISSIONER: Well, I understand what you're saying. Mr Gormly has cross-examined about it. He's given answers on oath on that.

MR GAME: Yes.

10 THE COMMISSIONER: And this is really in essence his evidence in chief if he were to be led on that by Mr Faulkner.

MR GAME: That's correct.

THE COMMISSIONER: I'll let it in.

MR GAME: That's it.

20 THE COMMISSIONER: All right. The statement subject to the deletions by Mr Ronald Medich is Exhibit 6.

**#EXHIBIT 6 – STATEMENT OF RONALD MEDICH DATED
29/01/2010**

THE COMMISSIONER: Do you have a record of what's deleted and what isn't? Right. Yes. Okay.

30 MR GAME: Now, Mr Commissioner, I'm sorry to do this but I wanted, I now need to raise a question with you arising out of this in respect of one of the particular subjects about which I was given leave to cross-examine and that concerns this question of blackmail. But I would wish to do it in, in the absence of Mr Medich because I'm going to put to you those questions that appear to remain relevant from my perspective but they may not be relevant from the Commissioner's perspective so I wish to raise that with you - - -

THE COMMISSIONER: All right.

40 MR GAME: - - - in the absence of Mr Medich before I proceed with those questions.

THE COMMISSIONER: Mr Medich, would you mind going and waiting outside and we'll send a message for you when this is over?---Yes, Commissioner.

It's just a legal issue that has to be dealt with.

MR GAME: Now, Commissioner, one of the few topics that was left for me to address in cross-examination was assertions made by Mr Medich that he was being blackmailed and I propose to cross-examine on that and if your Honour would bear with me for one moment I'll just explain to you what I would put to him if allowed to do so and why. Now, according to
10 Mr Lang, and it appears to have a forensic pertinence as least as we see it, Mr Medich knew of these allegations by about 3 March and that's in Mr Lang's statement at page 66.

THE COMMISSIONER: Medich knew of the tape.

MR GAME: Yes.

THE COMMISSIONER: The allegations made about the tape.

20 MR GAME: That's correct.

THE COMMISSIONER: By what date?

MR GAME: By 3 March at the latest. Now, Mr McGurk sent a letter of demand on 10 March, 2009 in respect of Amazing Loans for 7 to \$8 million.

THE COMMISSIONER: Just a moment, I'm writing this down. Sent a letter of demand on what date?

30 MR GAME: The 10 of March.

THE COMMISSIONER: Re Amazing Loans. Is there anything else you said there? I'm not sure if I picked up everything you said.

MR GAME: The 7 to \$8 million relating to Amazing Loans. That's a risk.

THE COMMISSIONER: Yes.

40 MR GAME: Now, you may recall that in the transcript Mr Medich has confirmed with Mr McGurk that Mr McGurk had nothing to do with the fire. Now, - - -

THE COMMISSIONER: That Mr McGurk had nothing to do with the fire?

MR GAME: The fire-bombing at the Tilleys.

THE COMMISSIONER: Just say that again.

MR GAME: You may recall, Mr Commissioner, that in the transcript on several occasions Mr Medich confirmed that Mr McGurk had no involvement in relation to the fire-bombing at the Tilleys. And if Mr McGurk did have an involvement then he was taking an incredible risk taping it because he might expect that Mr Medich would say some incriminating thing on the tape. Now, Mr Medich - - -

10 THE COMMISSIONER: He had nothing to do with the fire-bombing at the Tilley property and you're saying that by raising this he was taking a risk?

MR GAME: That's what I'm saying, yes. And I'll just explain how that falls out shortly.

THE COMMISSIONER: Yes.

MR GAME: [REDACTED]

20 [REDACTED]

30 [REDACTED]

[REDACTED]

[REDACTED]

40 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 [REDACTED]

[REDACTED]

[REDACTED]

20 [REDACTED]

[REDACTED]

[REDACTED]

30 [REDACTED]

[REDACTED]

40 [REDACTED]

[REDACTED]



MR GAME: If your Honour pleases.

10 THE COMMISSIONER: But, Mr Game, the question of how the recording was set up on the 6 of February whether Mr Medich knew about it and what was Mr McGurk intended to do with it I do not regard as part of the blackmail issue. I regard that as a separate issue and there is other evidence by two persons who have testified as to what Mr McGurk said he was going to use the tape for and what he did do with the tape. That I regard as a live issue.

MR GAME: Yes, thank you.

20 THE COMMISSIONER: My attitude subject to what Mr Faulkner may say is that the question of blackmail and the conduct of Mr McGurk and Mr Medich after the conversation of the 6 February, 2009 in relation to blackmail is irrelevant. It does not exclude in any way the relevance of the way in which Mr McGurk taped or recorded the conversation and what his motives were in doing that and how he used the recording after that.

MR GAME: How he, how he used it would raise an issue about what he said to Mr Richardson and what was - - -

30 THE COMMISSIONER: No. The point about it is this, so that you understand exactly how I regard it as being irrelevant. There was an issue in these proceedings whether Mr McGurk recorded one conversation with Mr Medich containing incriminating evidence, to use a blanket label, or more then one. That is particularly relevant, I think, in relation to those recordings where Mr McGurk is reported to have said that there were things on the recording which were (not transcribable). There is a considerable body of evidence where Mr McGurk either referred only to the one recording, that is on 6 February or, and dealt with that recording in various ways, mechanically. And what he said about that recording and what he
40 said about how he was going to use a recording he had. All of that on one view shows that he only had in mind one incriminating recording. And that there was no other incriminating recording and that anything he did, anything he said about what was on the recording has to be judged against that recording and no other.

MR GAME: We, we won't be making any submission - - -

THE COMMISSIONER: But that is why the evidence about what Mr McGurk did to record, what his intentions were in recording and how he used the recording afterwards become relevant. They become relevant to demonstrate or they become relevant because they tend to prove that there was only one recording.

MR GAME: We accept that.

THE COMMISSIONER: And that's all I'm saying.

10

MR GAME: Can I just raise one thing, that is one factual thing that remains about Mr Medich and the subject of events that happened afterwards. In Mr Richardson's police statement he says that when the tape was played to him, Mr McGurk said that, I haven't got the exact words in front of me, but the contents were the document would have to be played in court. That's, that's what Mr Richardson says in his statement. And we would want that piece of evidence, he said, if there was no settlement that the tape would have to be played in court and there would be tremendous embarrassment to state government. So, we would want to have that, that piece of evidence before the Commission as to that.

20

THE COMMISSIONER: Mr Richardson will be (not transcribable)

MR GAME: I was going to ask Mr Medich what he learnt from Mr Richardson, but I'm now not going to do so because of your Honour's ruling.

THE COMMISSIONER: All right. Mr Faulkner, do you have anything to say?

30

MR FAULKNER: No. I'm sure, the relevance, the relevance issue was only that very narrow one that I, that I submitted to you, Commissioner that you rejected. As to the after tape conduct (not transcribable) whatever, now you've ruled against me on that, so - - -

THE COMMISSIONER: Well, it follows. Thank you. Thank you for that attitude, which is entirely correct. My ruling therefore is that I will not allow any evidence relating to allegations of blackmail after 6 February, 2009.

40

MR FAULKNER: Thank you, Commissioner.

THE COMMISSIONER: Now, can we have Mr Medich back and can we continue with the evidence.

MR GAME: Sorry, does that mean this question about misappropriation and stolen money, that's all gone to one side as well, I take it, on your Honour's (not transcribable)

THE COMMISSIONER: Well, I hadn't applied my mind to that because you didn't, it wasn't - - -

MR GAME: All right. Sorry, but that's virtually gone out of the statement - - -

THE COMMISSIONER: I'm not talking about the statement really because - - -

10

MR GAME: I know, I understand. I understand.

THE COMMISSIONER: - - - you, you asked me about - - -

MR GAME: That's not, I'm sorry, I apologise. It's my mistake. But, Mr Commissioner, there were also assertions made by Mr Medich yesterday about stolen money - - -

20

THE COMMISSIONER: All right. You have your leave to cross examine.

MR GAME: All right.

MR FAULKNER: Commissioner, I have an application.

THE COMMISSIONER: Yes.

30

MR FAULKNER: I would ask you to order a suppression of those parts of Mr Game's submissions where he was referring to contents of police statements. My application would be on the basis that the - - -

THE COMMISSIONER: I understand that - - -

MR FAULKNER: - - - (not transcribable) but irrelevant nature.

THE COMMISSIONER: I understand that. Mr, any objection?

MR GAME: No, Mr Commissioner.

40

THE COMMISSIONER: Do you have any objection Mr Gormly?

MR GORMLY: No.

THE COMMISSIONER: No. Mr Faulkner's application is upheld and I think you need to help me to formulate the order, Mr Faulkner. You better tell me what you want. Do you want to do that later or do you want to do that now. I think you better do it now.

MR FAULKNER: If it needs to be done now, I would ask you to suppress those, off of Mr Game's submissions that reveal contents of police statements.

THE COMMISSIONER: By Mr Medich.

MR FAULKNER: By Mr Medich.

10 THE COMMISSIONER: Well, I, I order that all reference to police statements made by Mr, police statements by Mr Medich, made by Game, by Mr Game in the last hour be suppressed.

DIRECTION PURSUANT TO S.112 - SUPPRESSION ORDER WITH REFERENCE TO POLICE STATEMENTS BY RONALD MEDICH

MR FAULKNER: Yes.

20 THE COMMISSIONER: Right, now, any can remember where we are?

MR GAME: I can remember where we were.

THE COMMISSIONER: You're cross examining now. Yes.

<RONALD EDWARD MEDICH

[10.57am]

MR GAME: Mr Medich, this meeting that you had with Mr McGurk on 6 February, had such a meeting been in the pipeline for a few days?---I'm not a hundred per cent sure when it was in the pipeline, but the solicitors were talking together about it and I, as I stated yesterday, I didn't really want to go to the meeting. But one of my solicitors insisted that I, that I go to it because I might find out what's happened to the monies that were in question.

10

Mr Medich, there were a number of questions to be resolved between you and Mr McGurk weren't there?---Yes.

Mr McGurk wished to extract himself from his involvement with you in a number of matters and to resolve a number of matters. That's correct isn't it?---No, it's not correct. I went, I went there with an open mind and I gave him a list of all the very things that we're talking about here, which he took a copy of and he was supposed to come to Leichhardt because my accountant was going to be over there, the same day, on the 6th.

20

Was this, was this meeting brought forward because of events which had occurred the previous night concerning Mr Mathieson?---No. No, he didn't (not transcribable) Mr Mathieson.

Okay. So - - -?---It was just coincidental.

I see. Mr McGurk made it plain to you from the beginning that he was going to go through a number of matters with you. And he actually wrote down a list of them. Is that correct?---No, he didn't give me any list. I gave him a list of the things.

30

Did you see him writing a list like this?---No.

You did not see that happen?---No. I wasn't even looking at him.

Would you like to have a look at this document. Was he writing down, did you see him write that down?---No.

40

He had a notepad and he was writing things down?---He didn't write anything down.

He didn't write anything down?---That I saw. He had a notepad there at the start of the meeting.

Yes. Did you see him writing in the notepad?---No.

Not at all?---I wasn't watching him that closely.

All right. If you'd like to look at the balance of these notes. Did you see him write those notes or any part of them?---To be truthful, I wasn't watching him.

I see. Well, I intend to tender those - - -

THE COMMISSIONER: How do I know they're Mr McGurk's notes.

MR GAME: They were retrieved from his files, Commissioner.

10

THE COMMISSIONER: How do I know they're his notes?

MR GAME: They tend to correlate with what's - - -

THE COMMISSIONER: I'm not prepared to accept them because there is evidence, as I understand it, that he had a secretary who was taking notes.

THE WITNESS: No, there was no one in there.

20

MR GAME: No, there was nobody else - - -

THE COMMISSIONER: No one. Somebody was taking notes.

MR GAME: No, he was, Mr McGurk said he would be taking notes.

THE COMMISSIONER: I see.

THE WITNESS: There is no way, I would've noticed if he's written this amount of notes. There's no way he wrote this, I'll tell you that now.

30

MR GAME: Mr Medich, Mr McGurk said to you very early in the - - -?
---No, no, I'm objecting to this - - -

THE COMMISSIONER: Mr Medich, it's not for you to object to anything. Mr Faulkner will object on your behalf. You have someone who is here who is representing you. Please answer Mr Game's questions?---What was the question?

40

MR GAME: Mr Medich, Mr McGurk said quite early in the conversation this, "Well, at least that way", he's talking about making a record, "if we've got it on the record, there's no argument. You'll get copies. You can take it with you. She can type it up for you. If you do, you know, what I mean, as well"?---He was doing that but - - -

That's what he said, wasn't it?---No, no. He was doing that to try to explain that, later on when a recording crops up, right, that was his explanation that I'm agreeing to the recording.

Mr Medich, those words were said to you, weren't they?---I just explained why they were said.

And Mr McGurk was making copious notes - - -?---No, I, I didn't actually see him writing one note.

Not one note, not a single word?---Not one, yep, that's right.

Well, I tender those, Commissioner.

10

MR FAULKNER: Well, I object.

THE COMMISSIONER: On what ground, Mr Faulkner?

MR FAULKNER: There's no provenance of the notes except in Mr Game's hands.

THE WITNESS: Commissioner - - -

20

THE COMMISSIONER: Be quiet, Mr Medich. Mr Faulkner will, if you, you have to rely on Mr Faulkner. If you want to have a barrister representing you, you have to do that. If you want to represent yourself, you'll have to terminate Mr Faulkner's mandate. Decide what you want to do.

THE WITNESS: Commissioner, I hadn't finished answering Mr - - -

THE COMMISSIONER: You had. Right. Now, I think Mr Faulkner's right.

30

MR GAME: Well, I will, perhaps ask for those to be marked for identification at the moment because I may seek to make amendments.

THE COMMISSIONER: Yes. The notes to which Mr Game has referred will be marked MFI 1.

#MFI 1 – MICHAEL MCGURK'S HANDWRITTEN NOTES

40

MR GAME: Mr Medich, a number of times during this conversation, Mr McGurk said that he was noting things down and you would get a copy of it in due course, didn't he?---I never received a copy.

All right. For example, he said, and I'm reading from page 74, "I'll, I'll make copies of the records after that, and by the way, I'll send you a copy". Do you remember him saying things like that?---No copy has ever been received.

No, but he did say to you a number of times that you would get a copy of the records from the meeting of that day and I'll give you, I'll just read to you, "I'll give you a copy of my notes. You'll get a copy of this. You'll get a copy of all that sent to Michael White"?---Well, no copy's - - -

Do you remember him saying that to you?---No copy, no, I don't. And matter of fact I didn't receive any copy.

10 No, but he did say - - - -?---I gave him a copy of all my disputes, that's what happened.

Yes. He did say that and you could see there that he was making notes?---I could not and I, I did not see him make one note.

All right. Well, it would be a very odd thing for him to say if he wasn't taking notes - - -?---I just explained to you why he made that statement.

20 All right?---So that he could justify this recording.

Now, Mr Medich, do you remember Mr McGurk saying to you also more than once, "I want to get this down"? Do you remember him saying that? And I'll just give you an example. On page 22. All right. Just let me read this to you. "I'll need" - - -

THE COMMISSIONER: Let Mr Medich have the transcript in front of him.

30 MR GAME: Yes. We have a copy. Do you remember him saying, "I need to get this down"? Do you remember him saying that?---I remember him say that. He just waved his pen but he didn't write anything down.

He just waved his pen but he didn't write anything down?---Correct.

And how - - -?---I never saw him write one thing down.

And that happened a number of times, did it?---A couple of times.

40 He'd say, "I need to write this down" but he didn't write it down?---That's right.

And that happened a couple of times?---That's right.

I see. And he didn't write anything down at all?---I never saw him write one thing down.

All right. Now, Mr McGurk indicated to you that there were a number of matters that he wished to go through with you, didn't he?---Yeah, and I did the same.

All right. And they included the Tilley Supreme Court proceedings?---No, we didn't say which State they were and then item 5 he was bringing up items.

10 All right. They included the Tilley Supreme Court proceedings, Gerroa, Amazing Loans and other things, didn't they?---Briefly in each particular one, yep, but noting was resolved on any issue.

20 In respect, nothing was resolved on any issue, is that correct?---And I was, I was always trying to get to him the way I came there for him and I had my list of all these disputed items which are the subject of the Federal Court proceedings at this moment. And I gave him that list and he was going to come to Leichhardt that afternoon because my, my accountants were coming over there as is mentioned in the transcript at Leichhardt and we mentioned Frank Moyer who was, my accountant was going to be doing some work for him and his son-in-law who was a plumber which is mentioned in there. So I gave him all the items where, my missing moneys and all that that he was supposed to come over and explain to my accountant and everything, time and time again, and he kept, he never ever turned up.

Mr Medich, there is one brief reference in the transcript, late in the piece, to your loan to him but there are a large number of other - - -?---Not my loan. We refer - - -

30 That's how you described it as your loan?---Yeah, we, he, the loans that he - - -

You described it as - - -?---The loans that he said he put on, you know.

You described it as your loan in the conversation, didn't you?---No, no, no.

Not (not transcribable) you described it as a loan?---No. The loan, he put the loans and never, ever go, showed me, you know, where these loans went and what's happened to the money as is mentioned in my statement.

40 All right. Now, Mr Medich, the first things that was discussed was the Tilley Supreme Court proceedings, wasn't it?---It was mentioned.

And there was a lot of discussion about it over a considerable period of time, wasn't there, Mr Medich?---In, in what respect?

In respect of the fact that Mr McGurk wanted to extricate himself from the proceedings?---No, I wanted him extricated from the proceedings and, and I sent him the, the letters, right?

Mr Medich, Mr McGurk said to you numerous times he wished to extricate himself?---No. No, I, I served him the notices to get rid of him out of the proceedings and as you can see I subsequently settled it very quickly.

Mr Medich, you appreciate that there are a number of references in the transcript where Mr McGurk told you he wanted to extricate himself from the Tilley proceedings?---I don't agree with that.

10 I see.

THE WITNESS: Commissioner, may I say, we, we've got these Federal Court proceedings. What relevance does this have - - -

THE COMMISSIONER: I'm afraid, Mr, are you trying to object to evidence again, Mr Medich?---Sir, I, all I'm saying is, this is all going to come out in, in the court proceedings. I, I just don't know what the relevance of this questioning is.

20 MR GAME: Mr Medich, these Supreme Court proceedings are long over, aren't they? The Tilley Supreme Court proceedings are long over?---No, they've just been finalised.

I see?---They've just been finalised.

Mr Medich, Mr McGurk conveyed to you that he wanted to extract himself from those proceedings and he wanted an indemnity from you and you agree?---No, I'm sorry, you are incorrect.

30 Well, I put to you that that's what you agreed and it's - - -?---No, you got to know what's happened before that and this is why I'm saying this is getting onto the court proceedings.

Perhaps you'd like to look at page 37 and you'll see a long passage from him?---Yeah, but you haven't got the evidence before all this.

You refer (not transcribable) that he wished to have his involvement terminated with indemnity from you and you agreed?---Yeah, that's because I'd already served him notices I wanted him out of it.

40

So you did agree?---Yeah, because at that, we, our lawyers have already delivered to his office that I want him out.

[REDACTED]

[REDACTED]

[REDACTED]

10

[REDACTED]

[REDACTED]

THE COMMISSIONER: Mr Game, where is this cross-examination going?
---I'd like to know that.

20

Be quiet, Mr Medich?---Sorry, Commissioner.

You are, if you do not stop interrupting in this way I will take steps against you. Now, be quiet. Do you understand that?---Yes, Commissioner.

Your job is to sit there and answer questions, not to interrupt and the sooner you do that the sooner you'll be out of there.

30

MR GAME: The question that I, the questions that I'm asking go to the issue of Mr McGurk's legal interest in the context of his non-involvement in the fire and the concessions made by Mr Medich in respect of it. That's to say Mr McGurk's legal interest in making a recording of what was said.

THE COMMISSIONER: I'm not, that's not a relevant issue. I'm not going to make any finding about lawful - - -

MR GAME: Well, I understand, all I thought, I, sorry, when you said legality yesterday I thought that I was at risk in respect of that.

40

THE COMMISSIONER: That is not a function of the Commissioner. I'm not interested in the legality of the recording.

[REDACTED]

[REDACTED]

MR FAULKNER: Well, I object, Commissioner. The evidence has not only been dealt with on a number of occasions but I submit it is of no relevance to any issue in the proceedings. I can't, I just at moment cannot see a connection.

THE COMMISSIONER: The only relevance is, I think, Mr Faulkner, the evidence that Mr Medich gave yesterday that he was being blackmailed.

10 MR FAULKNER: Well, I've said where we're going with that now, which is nowhere. All right.

THE COMMISSIONER: I would like to pursue that because I just see the, this all seems to me to be a side issue in the real inquiry. I am prepared to say I will make no adverse, draw adverse inference against Mr Medich or Mr McGurk arising out of anything either of them have said about blackmail. Are you content with that?

MR FAULKNER: Yes.

20 THE COMMISSIONER: Are you content with that?

MR GAME: Yes. There are a few more questions I want to ask about the nature of the purpose of the meeting, Commissioner, and I take it I won't be flouting any ruling if I proceed to see to ask a few more questions on that subject.

THE COMMISSIONER: On what subject?

30 MR GAME: Just on the, on the purpose of the meeting.

THE COMMISSIONER: Well, I'll listen to you, Mr Game. I take it that's in connection with the issue that I raised with you myself.

MR GAME: Yes.

THE COMMISSIONER: Yes, very well.

40 MR GAME: Now, in this, in this conversation one of the things that Mr McGurk wanted to discuss with you was Mr Mathieson and a threat - - -

THE COMMISSIONER: Excuse me, Mr, I'm sorry to interrupt, Mr Game. Mr Faulkner, do I need to supplement that suppression order to deal with what has happened since then?

MR FAULKNER: Yes, I'd ask that you did.

THE COMMISSIONER: Mr Game. Yes. The suppression order that I made concerning the reference to the police statements is to be extended to

the cross-examination that has subsequently occurred to date concerning the police statements and reference to the firebombing.

DIRECTION PURSUANT TO S.112 - THE SUPPRESSION ORDER THAT I MADE CONCERNING THE REFERENCE TO THE POLICE STATEMENTS IS TO BE EXTENDED TO THE CROSS-EXAMINATION THAT HAS SUBSEQUENTLY OCCURRED TO DATE CONCERNING THE POLICE STATEMENTS AND REFERENCE TO THE FIREBOMBING.

THE COMMISSIONER: Is that adequate, Mr Faulkner?

MR FAULKNER: Yes.

THE COMMISSIONER: Yes, thank you.

MR GAME: Now, Mr Medich, one of the topics that was brought up a number of times by Mr McGurk was a telephone conversation between you and Mr Mathieson the previous night?---Ah, yeah.

And Mr Mathieson was concerned with the Amazing Loans issue, wasn't he?---He was concerned. He handling a reverse takeover and he needed to get 90 per cent of the shares.

That was one of the things you were discussion with Mr McGurk at that time weren't - - -?---No, I discussed it the night before and it was raised by Mr McGurk because obviously the moment I finished the conversation with Mr Mathieson he must have got on the phone to Mr McGurk.

Yes. And Mr McGurk expressed to you that he was very concerned because Mr Mathieson had told him that you'd threatened to thump McGurk and also thump Mathieson. That's what he reported to you, isn't it?---Ah, what - - -

That's what he reported to you, isn't it?---Yes, which was totally incorrect.

Yes. He raised it a number of times and he appeared to be deeply concerned about it, did he not?---I don't think he was concerned about it at all to be honest with you. If you, if you have a look at the statement and what, you know, the evidence there, it was Mathieson that raised the issue of, of him going to a unit many years ago which the police have, which I've given to the police because I received a letter about it.

Mr Medich, you attempted to persuade Mr McGurk that the allegation was false, didn't you?---No, we just, I'm just saying what Mathieson said.

Yeah. You attempted to persuade him that it was false, didn't you?---Who?

You attempted to persuade Mr McGurk that he allegation that Mr Mathieson had made was false?---Can you show me this.

Yes. You say things such as, page 41, "Do you believe that"?---Well, hang on, what's this?

10 Have a look at page 41?---We'd have to look at it in its entirety of the conversation.

I'll just give this you though?---Hang on.

You heard a number of passages yesterday and you've read them?---Oh - - -

20 All right. In respect of you thumping Mr, you thumping Mr McGurk, you said to Mr Medich and I'll give you an example, page 41, line 19, "Do you believe that? I'm not that stupid. My phone's probably bugged but, you know." Do you remember saying that?---Yes.

Well, you were trying to persuade him that it wasn't true, weren't you?
---Well, it wasn't true.

And the reason you were trying to persuade him it wasn't true was because he was expressing concern to you about it?---I don't agree with that.

30 I see. Now, Mr Medich, one of the other things that Mr McGurk brought up with you was the, what was described as the statement thing and that was the proxy for the shares, wasn't it, sorry, for the directors' meeting?---Ah, yes.

And he wanted you to sign it?---Correct.

And that was another matter brought up in the meeting?---Correct.

And you agreed to do so?---Ah, no, I agreed to do so on the basis that he doesn't release it, that he does not release it with my permission.

40 Yeah, you actually - - -?---And I took the original and his stamped copy. Now, here again, this is to do with the Federal Court case that we are in so why is this issue being raised?

THE COMMISSIONER: Mr, are you arguing again, Mr Medich?---I'm just asking a question.

I can tell you that the more you argue the less the prospects of you being regarded as a reliable witness.

MR GAME: Now, Mr Medich, Mr McGurk had nothing to do with Badgerys Creek, did he?---No.

And he said to you in this meeting, I don't want to go near Badgerys Creek. Do you remember him saying that?---I do.

Right?---Now I've heard (not transcribable)

10 You were the person who raised Badgerys Creek yourself unsolicited didn't you?---No.

Would you like to have a look at the transcript on page 53 and you'll see that you raised it unsolicited at page 53. (not transcribable) the issue about your visit to town yesterday, your visit to town was to visit, see Mr Richardson (not transcribable)?---Yep.

20 And it was to see Mr Richardson because of the newspaper article that had come out in respect of a suggestion of your prediction with the fire?---No. We were having a luncheon.

I see. But you raised this issue with Mr, you raised this issue with Mr McGurk, you raised the issue with him in respect of your concerns relating to Badgerys Creek and what Mr Richardson had said to you the previous day, didn't you?---No. He just raise the issue in just conversation.

MR GORMLY: Yes. But you're the person that raised Badgerys Creek with Mr McGurk weren't you?---Well, in that sentence, yes.

30 MR GAME: Yes. You raised it. He didn't raise it. That's correct isn't it?--I think it was raised earlier in the conversation.

But you went on talking about it didn't you? You're the one that went on talking about it to him?---It was mentioned earlier in the conversation.

By you?---No. Wasn't it mentioned earlier in the transcript?

Now Mr Medich, what we (not transcribable) in respect of Mr, your meeting with Mr Richardson - - -?---It wasn't a meeting, it was just a luncheon.

40 I see. Yes, you were cross examined about that by Mr Gormly. I don't propose to go there again. But what you said to, have you got the transcript in front of you?---No. That's the one here?

Just have a look at the transcript at page, the bottom of page 53, the top of page 54. Mr Medich, I put to you that, you see here, you're saying, my brother and I had to go into town yesterday?---Yes.

And we go to page, and you said to him, and I'm working on one of my most important F-ing matters, didn't you? You said the whole word, I've just abbreviated it?---Hang on, where is it?

The bottom of page 53, top of page 54?---Yes, that's true.

You brought it up?---With whom?

With Mr McGurk?---Yes.

10

He had said nothing about, to you about Badgerys Creek prior to that point had he?---No. I just wanted to relate to him, because of this firebombing, that's the only reason that I raised the issue. Because, I was very upset about it, my name mentioned in there about a firebombing.

THE COMMISSIONER: You raised Badgerys Creek because of a firebombing?---Well, that affects me.

20

Why is Badgerys Creek got anything to do with the firebombing?---Because when that article appears in the paper we are dealing with a major property.

I see.

MR GAME: Now, two or three - - -?---It would not go down well if people think that I'm responsible for firebombing.

THE COMMISSIONER: I understand. I understand, Mr Medich?---Which I wasn't.

30

MR GAME: Two or three pages later, Mr McGurk's telling you he doesn't want to go near Badgerys Creek?---Ah hmm.

Everything you said to him about your dealings with people, you were worried that people were a bit concerned that you would bump them off particularly if they had been (not transcribable)

MR FAULKNER: I object to that. There's no reference to bump them off.

40

THE COMMISSIONER: No.

MR GAME: I'm sorry, bump them. Sorry. Mr Medich, you were the one that said, "If they don't put it through with us (not transcribable) so well I well bump, bloody bump them or something like that particularly if they've been paid or whatever." You said that didn't you?---Yeah, well, something along those lines.

And you were conveying that people were getting paid on the side, "Don't like the idea of being thumped if they don't - - -"?---No, no. That's not what I was inferring. I explained to you, I explained yesterday that people think if I'm a fire bomber and doing these type of things, I might thump them or something if they don't get the job done that I'm paying them for. That's what I inferred.

Who were they, the people you were referring to? They, who were they?
---Well, it could've been my consultants, Graham Richardson, anybody.

10

Bumping off, bumping your own consultants?---Yep. I mean it's not even the word I used, bump in it. I'm surprised that the, I suppose that he said that. You better check this transcript and see if that's clear.

You dispute that do you?---Well, actually, when I got the tape from the Commission on, last, the other day for the first time, that's where I picked up, it said, yeah and it's definitely mmm and a very important point. And we had very good equipment.

20 I see. Now, all right, I just put to you that you didn't say, yeah, you did say, yeah and not mmm?---No. I put it to you I said, "Mmm."

Yes. And I also put to you that on earlier occasions when you've had an opportunity to correct that, you've left it as "Yeah" and not "Mmm"?---No. It all depends which point it was.

30 Mr Medich, I say that, I put to you that you have actually in respect of your connection in that latter part of the transcript where you say you're saying "Mmm" and not "Yeah", is because you are concerned about the incriminating nature of the response, "Yeah" and that's why you've done it?---I totally disagree with that.

All right. Now Mr Medich, Commissioner, I'm also coming back to something that was at the very tail end of yesterday. When I asked these questions again, don't mean to flout any order that you've made, but I'm about to ask a question about Gerroa and the end of the tape. Now Mr Medich, again, at the end of this tape, at the end of this conversation you are the one that brings up Gerroa again?---Which particular sentence?

40 We're looking at page 79?---Ah hmm.

Now, you're the one that brought it up aren't you?---Yes, because we needed to get the trust deed.

Yes - - -?---You've got, the legal trust deed sorted out.

Mr McGurk was not attempting to elicit any improper comments from you was he?---No. But what I was trying to do, I brought it up because I wanted the trust deed matter sorted out, of which I'd spoken to him about it before.

Mr McGurk was extremely cautious about having any particular further involvement in Gerroa wasn't he?---No, he wasn't.

But he wasn't pushing, his - - -?---No, that's incorrect.

10 He wasn't pushing his consultants on you at all. He mentioned them but - -
-?---That is incorrect.

- - - he didn't push them on you?---Sorry, that is incorrect.

And your, your reference to having your own connections that can get things rammed through was done for the purpose of persuading Mr McGurk that was in fact the case?---That was incorrect.

20 Likewise your reference to Mr Haddad was for the purpose of persuading
Mr McGurk that was in fact the case?---Incorrect. I explained yesterday
what the real reasons was.

In respect of, why did you mention Mr Haddad?---I beg your pardon?

Why did you mention Mr Haddad? Sorry, why did you mention Mr Haddad?---As I explained yesterday, in that analogy I was explaining that when we put, when, we handle matters through our consultants. We start at the council and go to the top, which is Mr Haddad.

30 Now, Mr Medich, in this conversation you also spoke about having a tip-off
that you'd got a reduction in your interest structure levies didn't you?---No.

You didn't?---No.

What did you say?---Where's the transcript?

Have a look at page 82 please?---I never spoke about a tip-off anywhere.

40 Well, what did you say?---And what page is this?

Page 82. 82 line 6. I'm putting to you that what it says - - -?---Hang on,
hang on, hang on, 82 line - - -

I'm putting to you that the reference is to you having a tip-off and you're
saying it means something else?---I never used the word tip-off at any time
so - - -

You say you used the word tick-off?---Yeah.

What does that mean?---Whereabouts is this?

82 line 6. You say the word is tick-off?

MR GORMLY: Commissioner, I'm not objecting but this is for the sake of clarity that this is an area where there was some dispute as to what was said. All I want to say is that the witness may not have had explained just how these alternative interpretations have been inserted into the transcript and
10 this is one where there is alternate - - -

THE COMMISSIONER: Mr Game, do you understand that?

MR GAME: I understand. What do you say that you were saying at that point?---The only thing I can think of, I don't even understand this particular sentence but I was talking with my consultants about levies and they were making (not transcribable) with the Urban Taskforce and on the other land that they'd released, the 800 hectares what the levies were which I believe was 180,000 per hectare or something, it was to do with that.
20

Do you have any proposal as to what words were said at that point?---No, I don't.

You don't know?---No, I don't know.

You're not suggesting it's tick-off?---You've got to be joking. What's tickled mean?

MR FAULKNER: No, sorry, he said what's tickled mean.
30

MR GAME: Tick-off, you don't suggest it means tick-off do you?---No. No way.

Okay. And if it was tick-off it would be meaningless wouldn't it?---I don't even understand that.

It would be meaningless if it said tick-off wouldn't it?---Yeah.

Okay. Now, in this conversation you - also in this same conversation you referred to - this is at page 80 of the transcript?---Mmm.
40

You referred to the Minister, "He signed off on it." That's about 80 line 20. You see that?---Yes.

You also wanted Mr McGurk to think that you had influence right up to the level of the Minister didn't you?---That's incorrect. I just think he said that he's the Director of Planning who we all know who he is and that eventually when he signs off it goes to the Cabinet or whatever, you know.

You just mentioned that out of the blue did you?---That's right. He said, I don't know, I don't know Sam Haddad but you know what I mean, don't know or whatever he said that and that was my answer. I just wanted to let him know I knew who he was.

A little bit later at page 82 line 14 you talk about the Planning Minister again don't you?---Hang on, hang on.

10 See that reference?---We're talking about contributions.

Yeah. Why did you mention the Planning Minister there?---Well, actually it's probably a wrong word.

Is it?---Yep.

What should it be?---Probably Planning Department.

I see. It's a mistake there you referring to the Planning Minister?---Yep.
20

You weren't trying to impress him again?---No.

I see. Now, in respect of Amazing Loans you admitted in this conversation Mr McGurk's entitlement to his one-third didn't you?---No.

If you can have a look please - - -

THE COMMISSIONER: Why are we going into this, Mr Game?

30 MR GAME: Just because of the - I don't particularly want to go there but just dealing with this allegation that Mr Medich made in his evidence yesterday about misappropriation and so forth. It's got no relevance to the Commissioner's determination it just happens to be something he said yesterday.

THE COMMISSIONER: I'm not going to make any finding about that.

MR GAME: I'll just ask this one question. In this conversation, page 74 you admitted that you owed Mr McGurk one-third in respect of that, the
40 Amazing Loans deal didn't you?---No.

Well, have a look at page 74?---I know the question, you have to know that in the whole context of the whole case.

I put to you that your repeated reference to misappropriation and fraud and the like is mendacious and for the sole purpose of blackening Mr McGurk's name?---I completely refute that and we'll see when we get to the court proceedings.

Commissioner, I have no further questions.

THE COMMISSIONER: Yes, thank you. Dr Eame, do you have any - - -

DR EAME: No, thank you.

THE COMMISSIONER: No. Mr Faulkner?

10 MR FAULKNER: I have no questions, Commissioner.

THE COMMISSIONER: Mr Gormly?

MR GORMLY: Nor do I, Commissioner.

THE COMMISSIONER: Mr Medich may be excused. You may be excused, Mr Medich.

20 **THE WITNESS EXCUSED** **[11.38am]**

MR GORMLY: Commissioner, I call Mr Graham Richardson. I do notice the time, Commissioner, it's 20 to 12.00, ten minutes after a morning tea break.

THE COMMISSIONER: All right. Brilliant. We'll adjourn for ten minutes.

30 **SHORT ADJOURNMENT** **[11.38am]**

THE COMMISSIONER: Mr Gormly?

MR GORMLY: Commissioner, I call Mr Graham Richardson.

THE COMMISSIONER: Mr Richardson, do you wish to be sworn or affirmed?

40 MR RICHARDSON: Sworn.

THE COMMISSIONER: Sworn. Would you swear Mr Richardson in.

THE COMMISSIONER: Now, Mr Richardson, do you wish me to make a Section 38 order? Do you know that it is?---Not really.

You don't?---You've probable done this before but I think I'll - - -

10 Yes, I have. That's the order that says every, every answer you give is taken to be under objections and can't be used against you unless the Commission orders it?---I don't, I don't mind really whether it's - - -

I'll make the order?---Okay, fine.

20 Pursuant to Section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr Richardson and all documents and things produced by him during the course of today's hearing are to be regarded as having been given or produced on objection and accordingly there is no need for Mr Richardson to make objection in respect of any particular answer given or document or thing produced. This order is for the duration of Mr Richardson's evidence today.

Mr Richardson, if you're required to return to give evidence on other days, which is most unlikely, and you wish to avail yourself of the protection afforded by an order, it will be necessary for you to apply for another order.

Mr Gormly?

30 MR GORMLY: Thank you, Commissioner.

Mr Richardson, can you tell us your full name?---Graham Frederick Richardson.

You're a registered lobbyist in the State of New South Wales?---I am indeed.

Mr Richardson, you've known the two Medich brothers, Mr Roy and Mr Ron Medich I gather for a long time?---Yes, sir.

40 You provide your services at present as a lobbyist through your company to the Badgerys Creek consortium, is that so?---No.

You did - - - -?---That arrangement ceased at Christmas.

All right. Prior to that for how long had you been providing those services? ---I'd say three or four years, something like that.

Now, did you know Mr Sam Haddad before 6 February, 2009?---I did.

For how long had you known him?---I suppose I've been dealing with Mr Haddad for perhaps five years, four, five years, something of that nature.

In his capacity as the Director-General - - - -?---That's correct.

- - - of the Planning Department, right?---Yes.

10 So that that was essentially a professional contact, was it?---Yes. I, I, I've never seen him socially.

Now, you met Mr Michael McGurk at the Bowlers' Club in either late February or early March and I think when you gave evidence in private hearing you thought it was more likely early March?---Yeah, I was certain of one date that I went to the Bowlers' Club on and not the other.

Had you met him prior to that occasion?---McGurk? No.

20 Had you heard of him?---I think that, that publicity for him being charged in regard to a fire bombing had come out and I think someone had told me that Ron Medich had put up surety for him so I think I'd heard of him at, at that, just heard of him.

Apart from that meeting in the Bowlers' Club, did you, when you were played the, some portion of the recording of 6 February, did you otherwise see Mr McGurk?---I've never seen or spoken to Mr McGurk on any other occasion.

30 Now, you know, is it Richie Vereker or - - - -?---Richie, yes.

Richie Vereker. You've known him a long time I gather, is that right? ---That's correct.

And he told you something in February/March concerning a recording that Mr McGurk had, is that correct?---That's correct.

Right. I just want to briefly take you through the story. I gather you weren't here for all of the opening?---Not all of it, no.

40 All right. Did Mr Vereker tell you that there was something on the tape that was compromising for one of your clients?---I think his main emphasise that was it was compromising for the New South Wales government but yes, it involved a conversation recorded in which Ron Medich had allegedly said some things that would bring the government down.

Did you then speak to the, one of the Medich's about that?---I spoke to Roy Medich about it and he said that he'd appreciate it if I'd listen to the tape

and just find out if there was any problem that was going to occur for the family.

But you mainly dealt with Roy Medich, is that so?---That's correct.

Right. But what proportion of contact would you have had between those two brothers?---Oh, 10 to one.

At 10 to Roy and one to Ron?---Yes, that's correct.

10

You then recontacted Mr Vereker, he made such arrangements as he, I'm sorry. You recontacted Mr Vereker and you met then in the Bowlers' Club. Is that correct?---That's correct.

20

And there was a conversation then about listening to or getting a copy of the tape?---Yes, I said that I'd, I'd like to hear the tape because I didn't think a transcript was much good to me because it can be a transcript of anything, you need to hear the words and he said that he would see if he could arrange that. He contacted me some, a day or two later and, and said, yes, we'll do it next week.

Right. And he made that, he went away and made some arrangement? ---That's correct.

Contacted you again and you then come back to the Bowlers' Club? ---That's right.

30

What did you expect when you got to the Bowlers' Club that day?---Well, I expected Richie to have a copy of the tape, in fact he had McGurk who had a copy of the tape.

When you met Mr McGurk and he took you, I think, off to a quiet area of the club, is that so?---Yeah, yeah.

Open but - - -?---A part that wasn't being used, yes.

Opened a laptop and started to play you the tape. Is that right?---That's correct.

40

Did he tell you how long it was before he started playing it?---Perhaps when he started playing it. I'm not exactly sure but I think he told me it was an hour and a half to an hour and three-quarters long, something like that. I said I wasn't interested in hearing it, I just wanted to hear the bit that matter and he obviously had that keyed up because he was able to press a couple of buttons and a noise began to emit.

Right. Did he initially start to play the thing from the beginning?---I think he played a few words right at the start but as he was telling me it was an hour and a half I just told him I didn't have that sort of time or interest.

And then so he queued up a patch. Now, can you just tell us what you did here?---Well, I, I didn't really do anything. It was so garbled I couldn't make out anything. I mean, I noticed you had a transcript and I saw some of that and I saw some of it reprinted in the paper and there were, like there are names on that, I know one of the consultants that McGurk wanted to use, I, I
10 certainly didn't hear his name, I didn't hear Sam Haddad's name, I didn't hear the words payoff, bribe or anything like it. I couldn't make anything out of it.

What was your view about it at the time?---Well, I, I thought it was a pretty lowbrow attempt to get some money out of, out of Ron Medich under duress.

MR GAME: I object to that.

20 MR GORMLY: I don't press that, Commissioner.

You ended up leaving. Is that so?---That's correct.

Right. And you didn't endeavour to get a copy of the tape after that?---I had suggested to McGurk that if he was serious he would get it enhanced by some sort of audio expert and come back to me. He never did.

He did not?---He never did.

30 No. And did you ever receive any message from Mr Vereker that he was exploring that or anything to that effect?---No.

You didn't hear about it again?---Never.

Now, Mr Richardson, you've heard that there's been an allegation that there's been corrupt conduct between Mr Medich and Mr Haddad and that at one point you have been an intermediary for payments of money from Mr Medich to politicians or a minister and to Mr Haddad?---I'd heard that,
40 yes.

Mr Ron Medich, yes. What do you say about it?---It's nonsense. There is, there is not a skerrick of evidence to support that in your words and it's highly offensive. I'm staggered that we've spent millions of dollars of public money and we're still here and we found nothing, nothing.

Is it false?---It's totally false.

Now, Mr Richardson, in the tape there is reference to a conversation, probably at lunch judging from something Mr Medich has just said, in which there was reference to a newspaper article of 3 February 2009, as a result of which you had given a warning to Mr Medich. Do you recall such a lunch?---Oh, there would have been any number of lunches over time, I don't recall this particular lunch.

10 Any number of lunches with Mr Ron Medich?---Well, often Ron would, would be meeting with some other people separately to Roy and I but on most occasions at some point he'd say hello or the tables would join for a drink or something.

Now, I'll just show you a passage?---Ah hmm.

This is on page 54 of the transcript. Just turn onto page 54, thank you?
---What page?

54?---Right.

20 Now, as it happens, Mr Richardson, this is one of the passages about which there is some dispute as to the exact contents of the words and you'll see in there some initials and brackets that are references to alternative parts of the tape but there's two other bits I want to show you. Do you see at line 24, close to the bottom of the page, Mr Medich is saying, "Yeah, it's a lobbyist"?---Yes, I see that.

30 Yeah. "That are close to the government, you know, he asked me, I said, 'Look, it's got no legs whatsoever,'" and that's a reference to the content of the article and the firebombing but I want you - - -?---So the article's about the firebombing, is it?

Yes?---Because I'm not sure what article we're talking about.

Can I show you the article so that you can refresh your recollections to whether or not that is it?---Thank you. That's right. I do recall articles of this nature, there were several I think, but, yeah, okay.

40 Right. Do you recall a discussion with Mr Medich about that article?---Not specifically but I wouldn't be surprised if I had one but I don't specifically recall it, no.

Do you recall him ever saying to you something like, "Look, it's got no legs to it whatsoever"?---No, not really. I'm, I, I actually don't recall this conversation. I'm not saying it didn't happen - - -

Right?--- - - - but I just don't recall it.

Yeah. All right. I won't take it further, Mr Richardson. Now, I want to ask you some questions about another matter?---Yeah.

Can you tell us at the moment what kind of access you as a lobbyist, and lobbyists generally in your field, would have to the Department of Planning if you wished to carry out lobbying activity on behalf of a client?---I, I can't speak for other lobbyists because, because people do things differently, they have different styles. I represent some fairly large developers with some very big developments so I chose, when I could, to see if I could see the
10 head of the Department or his offsider, he's occasionally had an offsider, and put a case to them. There's been a lot written about this. I would have thought that my opportunities to see Sam Haddad would have been something like three times, four times in a year. He was very difficult to get to see, extremely difficult, and he'd almost always cancel meetings but I would persist and I got in the door. The meetings never lasted very long but I'm, I'm able to cut things short and get to the point pretty quickly so they would (not transcribable).

So would, would you describe your access to the Department as limited to
20 the Director and his offsider? Could you have had access to levels below that if you wished?---I don't know. I've never sought, never sought to have access to anybody else.

Now, can I just ask you to describe for us generally what you would regard as being the role of a lobbyist in the context of say land development?---I think you've got two jobs to do. The first is to make sure the client understands how best to put their case to the Government because many of them would have no idea. What matters to them doesn't necessarily matter to the Government, you've got to try and marry the two. And secondly,
30 you've got to try and convince the Government, in this case I always went to the Department the last few years because it's been fairly obvious that Ministers have gotten pretty wary of the whole development game in my view because of the publicity that it attracts. And they only sign off what the Department recommends so you may as well go to the Department and forget the Ministers.

And so when you see the Department or someone in the Department what kind of a process do you say occurs between the Departmental officer and you as the lobbyist?---The process - you put a case, you, you, I mean, most,
40 most of the meanings I suppose are about pace. The pace of development here is incredibly slow in New South Wales much slower than anywhere else in Australia and that frustrates those who are investing money and you try and quicken the pace.

Would you accept that there's a division or a line of demarcation between the function of a lobbyist on the one hand and the consultants or other kinds of technical experts on the other?---I'm not certain of the answer to that. I do know that from time to time some of those technical experts go in and

push pretty hard for the client they're representing. I know that they do talk to people in the Department at all sorts of levels so I'm not sure you can delineate a difference in the way you're seeking to.

10 Do you have a view, Mr Richardson, as to the need for a method of recording contact between those who lobby and that's not necessarily just lobbyists but those who lobby and the Government department for the promotion of some client's interest through the Department?---It seems to me that notes are always taken so I believe that already happens. I can only think of one time when I saw Sam Haddad when no one else was present but he kept taking notes of what I was saying, what I wanted to do and that's only once and that's some years ago. There was always someone present so, and they were taking notes so in my view that already gets done.

20 But you've had telephone contact with the Department. Is that correct? ---Very little. You do, you do mainly to organise appointments. I've had, you do have telephone conversations and ask where something's up to or something like that but you're never going to achieve much on the telephone in these things I don't think.

30 Given that the processes inevitably a persuasive one that's you're in a role of an advocate with a Government department to achieve a decision, do you accept or is there any comment that you would make about the desirability of ensuring that contact between lobbyist and Department are always recorded?---I don't see that it makes a lot of difference but it happens anyway but I put this to you. If you're representing a big development firm, you know, it's for hundreds of millions of dollars in developments all over the place they're employing armies of people and people in their employ are talking to people in the Department all of the time. It's a constant process. And whether those meetings are recorded or not I don't know. Are those meetings more significant than those of a lobbyist? I doubt it. But in fact in some cases I'm certain they're more significant. But how, do we know if they're all recorded? I don't.

40 All right. One last matter. Presumably you would take the view that for both yourself and any other well-known lobbyist who has a political or another widely known background that the use of a relationship with one of the tools that is available to a lobbyist. Would you agree with that?---I would, yes.

Do you take the view that the use of a relationship, that is, a pre-existing knowledge of people who are decision makers is a tool of value to the clients of the lobbyist?---Yes, it is although in this case I think you've got to understand that if I was going to have a relationship they would tend to be with people in the political process not people in the office and so there was no relationship for you because as I said Ministers were choosing simply to adopt whatever the Department recommended because that, that saves them from controversy.

Would you accept that there's any downside for disadvantage for the purposes of public administration generally if a relationship within politics or within public administration, that is, the Government's Public Service is used to promote an interest such that the relationship becomes a factor as distinct from objective public interest issues?---I'm not really aware of it happening. Have you got some examples?

No, I'm asking you, Mr Richardson?---Because I can't, I can't comment unless I can see some examples. I mean - - -

10

Yes, but you'd expect the relationship plays a role?---Yes, but I think what, what you've also got to understand is, and I think, take the case of Frank Sartor and it's quite well known I'm not exactly close to him. Sometimes if you, if you've got a political history it doesn't necessarily mean you're going to be on good terms with the person who's in the job. You can be on very poor terms. So your, your relationship might hurt of course.

20

All right. So you'd be chosen for a job then though, wouldn't you?---No, you know, I, I've been on the staff at (not transcribable) for years, not on the staff but I mean, consulting with them for years so you, you're on no matter what and that's because you're expected to find a way and in this case I think the only way is to go through the Department where I have no relationships.

Commissioner, thank you.

THE COMMISSIONER: Mr Gormly?

30

MR GORMLY: No questions.

THE COMMISSIONER: Mr Game?

MR GAME: Thank you. Commissioner, I have a few questions but there may be an objection to some that (not transcribable).

Mr Richardson, I wanted to, you may not recall this but, sorry, I appear for the interests relating to the deceased, Mr McGurk?---I'm aware of that, yes.

40

Now, I don't know whether you've read it lately but you made a statement on 3 May, 2009, to the police?---Yes.

Now, I just wanted to read you one line from it?---Sure.

You said this in the statement, "McGurk told me that Medich would have to sit down with his lawyers and try and settle the matter because if there was no settlement then the tape would have be played in court and there would be tremendous embarrassment for the state government". Now, was that to the best of your recollection, what was said to you by Mr McGurk when you

made that statement to the police?---That was one of the things he said to me, yes.

Now, in respect of what you listened to, you're unable to say, you've heard bit in court and you've heard bits in this Commission, we've read bits of transcript. You're unable to assist at all as to which particular bits you heard, is that correct?---Well, I didn't, I couldn't make out the words of the bit I was being played so I can't assist anyway.

10 All right. Now, sorry, you remember that you said that was one of the things he said, about paragraph 7. That's what he said to you about what he proposed to do with the tape, is that correct?---That's correct.

Now, Commissioner, the questions I'm about to ask may infringe your ruling so, or may not so Mr Richardson, I just wanted to ask you a few questions about the passage of the tapes that you were taken to by counsel assisting?---Could, could I have them back please, Commissioner? Could I
- - -

20 Have a look at the tape, the transcript of the tape.

THE COMMISSIONER: Sorry, what do you want, Mr Richardson?---I'm (not transcribable) questioned about the statement or whatever it is that I
- - -

MR GAME: No, no, no, I'm just going to ask, I'm going to ask some questions arising from the transcript in relation to the 5 February meeting with Mr - - -

30 THE COMMISSIONER: You're not going to be asked about the statement.

MR GAME: I'm not (not transcribable) asked about the statement. Ignore about, anything that I'm, you remember just a short time ago counsel assisting asked you about a meeting that you had on 5 February with Mr Medich?---Well, I know, honestly I don't specifically recall that but
- - -

40 Do you remember having a meeting with Mr Medich about that time in relation, in which there was a discussion about the newspaper article linking him or suggesting something between him and the firebombing?---I, I just answered that question to the counsel a few moments ago. I don't specifically recall that. I mean it may well have happened, but I don't specifically recall it.

If Mr Medich had referred to other people being present at the (not transcribable) meeting or referred to other people expressing a concern about it in the context of his meeting with you, would you be able to assist us as to who those people might be?---No. I'm sorry, I can't.

All right. Whether or not those were the people at the meeting or other people - - -?---I don't know who these people are, so I'm totally in the dark on this.

Okay.

THE COMMISSIONER: Yes. Mr Gormly.

10 MR GORMLY: Not at this stage.

THE COMMISSIONER: Mr Richardson may be excused?

MR GORMLY: Yes, Commissioner.

THE COMMISSIONER: Thank you, Mr Richardson?---Thank you, Commissioner.

20 MR GAME: Sorry, can I just - - -

THE COMMISSIONER: Sorry, you want to ask another question?

MR GAME: Yes, I do.

THE COMMISSIONER: Sorry, Mr Richardson. Mr Game wants to ask you another question?---Yep.

30 MR GAME: As at, again, this may seem like an odd question to you, but as at 6 February, the minister had not signed off on anything in respect of Badgerys Creek. That is correct, as far as you were aware?---Yeah. I don't think the Planning Minister ever did.

No, that's correct?---No. Definitely the minister wouldn't of signed off.

THE COMMISSIONER: It's common ground - - -

MR GAME: Maybe. Yes. Thank you, Commissioner.

40 THE COMMISSIONER: That's the last question. Yes.

MR GAME: Thank you, your Honour.

THE WITNESS EXCUSED

[12.21pm]

THE COMMISSIONER: Now, Mr Game, you're not seeking to, for any other witness to be called.

MR GAME: No, your Honour, but I have, I have, I mentioned this to counsel assisting, a newspaper article, an email and I will get it over lunch, a short statement from my instructing solicitor as to the, no, I'm not seeking any further witness, but I will tender a few documents. And I will expect to put a statement before the Commission as to the circumstances in which my instructing solicitor obtained those notes, which are currently (not transcribable) office.

THE COMMISSIONER: All right.

10

MR GORMLY: Commissioner, I knew about the, that my friend wanted to tender the newspaper article and I don't object to that. As for the other matters, I don't know about the email. I'll have a look at that if I may.

THE COMMISSIONER: Okay. At lunch time?

20

MR GORMLY: Yes, if I could. And, Commissioner, I'd also, I would like to see the statement if it's going to be produced that relates to the notes. But can I say this, if it's of assistance to my friend and generally, we made a deliberate decision not to tender the notes for two reasons. Firstly, because the recording ultimately it was what the matter was about and what Mr McGurk wrote down was going to be of limited, not no interest but of limited interest. But more importantly, for the reason that Mr Game said himself, I agree with him about this, the absence of Mr McGurk means that there is no one who can tell us whether those notes are in fact contemporaneous notes or whether they were added to later or whether they're, it's even difficult to tell where those notes might've ended. I, I think that I will probably object, Commissioner, to even tender them in any event. That seems to be the position, Commission. But I'll wait until I see it.

30

THE COMMISSIONER: I need to inquire from all counsel present whether they, anybody wishes to call any evidence?

MR FAULKNER: No, Commissioner.

THE COMMISSIONER: And other than the evidence - - -

40

MR GAME: I'll say, sorry. Yes, Commissioner.

THE COMMISSIONER: Other than evidence to which you referred, you don't wish to call anyone?

MR FAULKNER: Yes.

THE COMMISSIONER: Well, Mr Gormly - - -

MR GORMLY: That's significant because we have had Mr Byrnes and some other witness, Ms McClymont on call. May I release them?

THE COMMISSIONER: Yes.

MR GORMLY: And sorry, Commissioner, lastly, I know you will ask about addresses, but may I tender a supplementary statement of Mr Lang - -
-

10 THE COMMISSIONER: Yes.

MR GORMLY: - - - the chief investigator which just goes to one, or it goes to some matters concerning Z.

THE COMMISSIONER: Yes.

MR GORMLY: I'll just distribute that. It's quite short.

20 THE COMMISSIONER: I don't think the statement will cause problems to anybody.

MR GORMLY: I tender that document, Commissioner.

THE COMMISSIONER: Yes. Well, I think you better read the statement, gentlemen. Do you want time to read the statement? The statement, further statement of Mr Lang will be Exhibit 7. And this will be placed on the internet as well?

30 **#EXHIBIT 7 - FURTHER STATEMENT OF ROBERT LANG
DATED 3/02/2010**

MR GORMLY: Yes.

THE COMMISSIONER: Yes.

40 MR GORMLY: Commissioner, that seems to bring us to the question of addresses.

THE COMMISSIONER: Yes.

MR GORMLY: Certainly, I can address, I don't expect to be terribly long and I am able to do at any time at convenience to the Commission. I don't know about my friends. I'm ready to address at any time.

THE COMMISSIONER: Right.

MR FAULKNER: I'll probably be ten minutes.

THE COMMISSIONER: Yes. Mr Faulkner?

MR FAULKNER: Well, I'll certainly be ready to address after lunch.

THE COMMISSIONER: Yes.

10 MR FAULKNER: And I would've thought thirty minutes.

THE COMMISSIONER: Yes. Mr Game?

MR GAME: I foolishly thought that we'd be putting it in some written document.

THE COMMISSIONER: No, I wanted, I'm ready to give judgement before the end of this week.

20 MR GAME: I can make oral submissions this afternoon, probably no longer than twenty minutes.

THE COMMISSIONER: I suppose I shouldn't say I'm going to give judgement (not transcribable) but I think you understand what I mean.

MR GAME: Yes, I understand. I have preference to paper then to - - -

THE COMMISSIONER: So you'll be able to - - -

30 MR GAME: Yes.

THE COMMISSIONER: - - - to deal with it this afternoon. Mr Gormly, I think you should start. (not transcribable) somebody is standing up.

MRS KELLY: Commissioner, Mrs Kelly for Department of Planning. I have not, Commissioner, I haven't had to seek leave at this point. I'm wanting to just have some confirmation from Mr Gormly in relation to a matter before I determine - - -

40 THE COMMISSIONER: Certainly.

MRS KELLY: If I speak, it'll be very brief.

THE COMMISSIONER: Well, you have leave to, yes.

MRS KELLY: Thank you, Commissioner.

MR GAME: Commissioner, there's no reason why Mr Gormly can't start before I make my tender.

THE COMMISSIONER: Yes.

MR GAME: So I'll just withhold that and deal with it just before I address.

THE COMMISSIONER: Yes. Mr Gormly.

10 MR GORMLY: I'll start with the recording and transcript. It only requires
brief comments. It's my submission that there's no reason to believe that
the recording is other than what it purports to be. It's a continuous
recording. There's no evidence of breaks or interference.

THE COMMISSIONER: Well, no one suggested that.

MR GORMLY: No. Well, Mr Medich faintly suggested that - - -

THE COMMISSIONER: Not in the course of this hearing to me.

20 MR GORMLY: All right. The only other matter then that is worth
referring to is that subject to any decision that needs to be made about
alternative meanings where the tape is clear, there is nothing I would submit
about the transcript that causes any difficulties in understanding what was
said.

30 THE COMMISSIONER: Mr Gormly, the only relevant disputed issue on
the transcript that I have so far detected is whether Mr Ron Medich said,
"Yeah" or "Mmm." That is the only one and unless, unless counsel tell me
that there are other matters, because, and I will just deal with it, I will just
deal with that one. I know that there was an issue about the Badgerys Creek
section, but that has been resolved, as I understand it, in a way that Mr
Game contended for.

MR GAME: Yes.

THE COMMISSIONER: And so that we have got one issue only.

MR GORMLY: All right. Commissioner, you're referring to the off, or tip
off issue.

40 THE COMMISSIONER: No.

MR GORMLY: That's an issue.

THE COMMISSIONER: That is a second issue. I know there was the
tabling and paid, but that's been resolved to, to paid.

MR GORMLY: It has. To paid.

THE COMMISSIONER: And there's the tick off and tip off, which is - - -

MR GORMLY: (not transcribable) insignificant.

THE COMMISSIONER: Yes. Very well.

MR GORMLY: The last matter to be said about the recording is that it's clear that Mr Medich didn't know that he was being recorded and of course, Mr McGurk did know that there was a recording occurring. But if he proposed using the tape, then what you hear of what Mr McGurk says on the one hand and what Mr Medich says on the other, one would have to accept the view that the statements by Mr McGurk are in effect for public hearing and those by Mr Medich are unguarded, that is he thinks he is speaking only to Mr McGurk.

Let me go to the first allegation. This is the one that's on the recording that Mr Haddad was a connection of Mr Medich for improper reward for planning favour. In my submission there is nothing ambiguous about the meaning of the words. Mr Medich said what can be heard. He meant what the ordinary meaning of the words suggests. He was saying to Mr McGurk I have Mr Haddad in my pocket, in effect, for planning benefit. In my submission the proposition put forward by Mr Medich that he didn't mean that and that he meant something more benign should be rejected and that it is a statement that has been made to reduce the meaning of the ordinary English words and that he - - -

THE COMMISSIONER: Yes.

MR GORMLY: - - - for exactly the reason that Mr Game put to him.

THE COMMISSIONER: I think it's important to analyse the particular issue in the way that I was, that Mr Faulkner and I were discussing it, that is what precisely has to be decided in relation to allegation 1. What are the real issues there?

MR GORMLY: Well, firstly as to, well, within this Commission's charter, whether or not Mr Haddad was corrupt.

THE COMMISSIONER: Well, we'll, yes, but, can we just go a bit further back. There is, the first question is, what is the evidence against, what is the evidence of corruption? As I understand it, the only evidence of corruption is what's on the tape.

MR GORMLY: Yes, that's correct.

THE COMMISSIONER: Now, the evidence on corruption that's on the tape is that of Ron Medich.

MR GORMLY: That's right.

THE COMMISSIONER: And Ron Medich, if that evidence were to stand as accepted then that would be a significant corruption.

MR GORMLY: Yes.

THE COMMISSIONER: So the first question, this is what I'm getting at, the first question really that has to be decided is whether what's said on the tape is true. Then, and in answering that question one has to I think ask
10 whether Ron Medich intended to say what he said and then if the answer to that is yes, did he believe that what he was saying is true. Is that a, I mean, I'm actually just thinking this aloud but is that the correct analysis?

MR GORMLY: Yes, it is.

THE COMMISSIONER: And that's what I'm really asking for.

MR GORMLY: It is.

20 THE COMMISSIONER: And so the inquiry is then, the first inquiry is (a) what was said; (b) did, what does it mean; (c) did Ron Medich intend it to be true or did he believe it to be true; and then (d) if not, is there any other evidence, is it true? If not, is it, if not, is it true?

MR GORMLY: Yeah.

THE COMMISSIONER: There is, on the, on the verges of all of these allegations is the, is how the Commission is to treat Mr Medich and Mr McGurk and I would like you to make your submissions on that as well
30 in relation to each allegation.

MR GORMLY: Yes.

THE COMMISSIONER: When I say treat, I mean believe or not believe - -
-

MR GORMLY: Yes.

THE COMMISSIONER: - - - at best inference or not.
40

MR GORMLY: Yes, I can do that.

THE COMMISSIONER: All right. Yes, thank you.

MR GORMLY: All right. Well, now, Commissioner, dealing with that first formulation that you made which is the last question in that list, is it true or not, I suppose we really have to deal with what was said.

THE COMMISSIONER: Yes.

MR GORMLY: What was said is at page 80, it's spread over two pages. It starts on page 79, "What do you intend to do with Gerroa?" We then get the discussion about Graham Boys and David Furlong and right at the foot of page 79 we have Mr Medich saying, "Well, I've got connections there too so I don't care. If they, they can get it through," and that's clearly a reference to Boys and Furlong I'd submit, "but I can get it through too."

10 THE COMMISSIONER: So where is "there", what is "there" referring to?

MR GORMLY: "There" is, can only be interpreted, because it's not specified, as the approval body that will get through this vaguely specified project at Gerroa from line 15. We don't really know what that is but we know it's about development consents because the third line from the bottom but it's some consent authority.

THE COMMISSIONER: Yeah.

20 MR GORMLY: And they both understand what that is because they have in mind some project to do with Gerroa in which both of them have some form of interest. Mr Medich has an ownership interest and Mr McGurk seems to have some form of joint venture interest. So they know what they're after and they know they've got to get a development consent through so they're talking in those last two lines there about getting it through and using connections. Mr McGurk is proposing what one might roughly describe as a, a normal path, that is the use of consultants Furlong and Boys, and Mr Medich is saying, well, if they can get it through they can get it through but I have my own way. I can get it through too. That's the first hint we
30 have of what Mr Medich is about to say and Mr McGurk, who pauses for a second and is fairly quiet in this statement because he hasn't heard this before, I'd submit, "Well, if you think that your, your connections are better then you should use your connections."

40 What Mr McGurk is doing there I would submit is absorbing this piece of information from, or this statement I should say, from Mr Medich but what really is occurring is that there is a sparring going on here. Mr McGurk is suggesting something and Mr Medich is pushing him away. So we have now in the air Mr McGurk's proposition and then Mr Medich pushing that away and saying, "I've got my own way," and Mr Medich then says, and it can't be irrelevant, "Yeah, you still got to pay them though. They don't do it for nothing." Now, whether that relates to Mr McGurk's connections or whatever it is that Mr Medich has in mind which he has not yet specified, we don't know but we know that we're not going to get the development through unless someone gets paid. It may be legitimate, as Mr McGurk's about to suggest, or something else that Mr Medich suggests further down.

So Mr McGurk then says, “Well, David’s a consultant so he’s going to be looking for money.” “Yeah,” says Mr Medich, “I don’t know. If he can get it through I don’t care. Someone’s got to get it through.” He does care of course. I’d submit that what’s happening there is that Mr Medich is still engaging in this process of saying you can suggest who you like, I don’t care. I don’t want him. And then Mr McGurk says, taking up the question of who’s going to do something, “Well, he’s a consultant, that’s what he gets paid to do.” And Mr McGurk there is talking about David.

10 “Someone’s got to get it through, I don’t care” said Mr Medich. Mr McGurk says, “Well, he’s got to get paid. In terms of the other connections that you’ve got”, this is still a puzzle to Mr McGurk, something is said that is largely, I would submit, unintelligible and probably doesn’t matter very much, except that Mr McGurk is now pushing forward the idea that who are your connections, what’s this about.

So he says, “In terms of the other connections that you’ve got, it’s either what I want to know, I don’t know, what do they do? Are they consultants? Do they get it off their counsel or what? Or alternatively, are they counsel”.

20 What. Or if that counts a lot, it doesn’t really matter. The subject is out there. We’ve got legitimate consultants on one hand and Mr Medich’s suggestion on the other. Mr Medich says, “You’re right there. It’s hard to see what that responds to. It may be that it’s got something to do with payment of consultants.” Then McGurk, “To what” and then out of the blue Mr Medich says, “Sam Haddad, the whole bloody lot of them.”

Now, if you were to read that on its own, we might think that he was making some vague reference to people in the consent authorities together with consultants, who would know, but the lines stop there. There wouldn’t

30 be much in it. It’s an out of the blue comment but in fact it gets taken up by Mr McGurk who obviously knows the name, Sam Haddad. He has no concept that Mr Haddad could be approached in relation to a tennis court project in Gerroa. He doesn’t know him anyway. And he says, “I, I, I”. You know, he’s caught short by, “What on earth does this mean? I’d rather use David Furlong. I don’t know Sam Haddad but you’d know, or, I mean, I don’t know whatever it is.”

Then Mr Medich, another comment following up on the Sam Haddad but is equally out of the blue. “He’s the Director-General, Planning Department.

40 It comes to him before it goes anywhere else, the minister, he signed off on it.” All he’s doing is providing two pieces of public information that could be found anywhere, that it, broad propositions that just don’t mean anything on their own. “He’s the Director-General and anything that comes to him before it goes anywhere else” is such a vague statement. But Mr McGurk then says, “So he’d by your connection?” And that’s where the “Yeah, mmm” comes from. I’ve listened to the tape, Commissioner, it’s “Yeah” but it doesn’t really matter whether it’s “Yeah” or “Mmm” because what

Mr Medich is not doing is saying, no, he's not my connection. He's allowing it to be adopted.

Mr McGurk says, "Well, all right then". He's adopting the idea that he must be the connection and we don't hear Mr Medich then saying, oh no, you've got it wrong, he's not my connection. In fact, Mr McGurk goes down the clean path, "Well, I'd rather use David and Graham. I mean, I want to do it right and I want Dave. Dave thinks he can get it through on his thing and he's, you know, he's the lobbyist. That's his job." "Good" says
10 Mr Medich.

So it's garbled and if one is looking for pure meaning or for clear meaning, I should say, it doesn't emerge easily except for these bits. We're talking about Gerroa Development Project. We're talking about the payment of someone to get it through and we're talking about the use of connections who had to be paid, top of page 80, line 2. "You still got to pay them". And that was in response to Mr McGurk saying, "Well, if you think your, your connections are better, then you should use your connections". "Yeah, you still got to pay 'em though. They don't do it for nothing.?"
20

And the only connection that's identified here is Sam Haddad. Well, in my submission, Commissioner, what Mr Medich was saying to Mr McGurk was Sam Haddad is my connection, I can use him to get a development project through and he has to be paid. I'd submit that that was exactly what Mr Medich was trying to say to Mr McGurk, he's rejecting the proposition that the other two should be used and he's saying I'll use my connection Sam Haddad who has to be paid. That's my submission about what the content is, Commissioner, that it's clear language and there is a clear statement being made by Mr Medich to Mr McGurk about Mr Haddad and it's
30 corrupt, that is, he's suggesting a corrupt relationship.

That's the first thing what was said. I would submit that by doing that you also see what it means and I contend for an ordinary English language meaning of those words not just because you look at the words to see what they mean but because you look at the dynamic of the conversation as well and out of that dynamic we can see Mr Medich saying, I've got my connection to get this project through, it's Sam Haddad and he has to be paid. It's not ambiguous, there's no room for Mr Medich to suggest some other. I would submit there's no room for Mr Medich to suggest some other
40 meaning to that.

May I just set aside the next proposition, that is, did he believe it to be true and deal with the "is it true" next. There is one piece of evidence of corrupt conduct by Mr Haddad available and that is this statement by Mr Medich. The Commission has had to conduct a detailed investigation and there is no evidence of corruption or payments or a relationship of any kind whatever between Mr Medich and Mr Haddad and without going through all of the detail of Mr Lang's statement what we've dealt with it's just not true. It

wasn't true in any way, Mr Medich knew it wasn't true, it couldn't have been true but he said it and he said it for a reason, he said that he had a purpose in saying it and his purpose was to try and divorce himself, push himself away from someone in whom he had previously placed trust but in whom he now he did not have the same trust he was trying to disengage himself. Whether or not it's trust, whatever the motivation they were trying to separate, he was trying to separate himself from him and when Mr McGurk comes up with the suggestion he pushes him away, Do not want to be engaged with you.

10

So he uses this fairly scandalous statement about Mr Haddad to achieve that end presumably thinking that not too much was going to happen to it but he doesn't dress his mind to what Mr McGurk might do with such a statement. That's the component of boasting that sits in there because it seems to interfere with the judgment of what might be involved in making such a serious statement about somebody in the position of Mr Haddad. He knew what he was doing, he knew what he meant, he knew what it meant, he knew how Mr McGurk would interpret it.

20

So that then, I would submit, leads us to the last question. He is now putting forward another interpretation which I've submitted should be rejected as to the meaning of the words. Is it possible that he actually believes it to be true that he wasn't suggesting that Mr Haddad was corrupt and my submission about that simply, Commissioner, is that it is an exculpatory statement on his part and it's false.

If I had to summarise the sort of findings that I would submit be made on the evidence they're as follows and they're not in the order, Commissioner, like I say that - - -

30

THE COMMISSIONER: Yeah.

MR GORMLY: But here they go. That the allegation made on the 6th of February about Mr Haddad was a false allegation in fact, there was no relationship between Mr Haddad and Mr Medich, let alone one that could be described as a connection or a corrupt connection, that it's possible to say that not only was there no evidence of a corrupt relationship between Mr Medich and Mr Haddad but the evidence actually points to the contrary. There's no reason to suggest that Mr Haddad isn't anything other than what

40 he seems to be, that is a senior public officer carrying out his duties in an appropriate way and had no involvement in corruption and in particular no involvement with corruption of the type that Mr Medich described. And of course that's something that Mr Medich admits too, admits, asserts.

Next, that, and I put this submission, Commissioner, that Mr Medich was, we're all here having to do this exercise and there's been considerable and serious public debate about this recording. Mr Medich, I submit, was reckless in his use of the name of Mr Haddad. He did it for his personal

benefit at the type to push away Mr McGurk's unwanted help and that he was reckless in his consideration of what Mr McGurk might do with that statement and whether Mr McGurk might convey it to other people as a true statement.

10 It's also probably reasonable to say that given that Mr Medich is a, I use the word and it's an unfortunate word but useful for the purposes, a wealthy land developer, that is somebody with extensive interests, who presumably may know people that Mr McGurk does not know and has wide interests in development of land. It was probably reasonable for Mr McGurk in relation to this allegation to think that Mr Medich may be telling the truth and he's not going to know one way or the other and he has no connection with Mr Haddad and there's nothing in the tape to suggest that Mr McGurk was rejecting this proposition. On the contrary. He seems initially to be somewhat bemused by it or puzzled by it and then more or less accepting of it.

20 I think that it's also reasonable to say, Commissioner, that, and it's really just an extension of that previous submission that to make a statement like that, and he's a private citizen in a private conversation but nevertheless to make a statement like that was one which did and should in his mind have led to the possibility of a real public mischief, damaged Mr Haddad and a perception of corruption and it was all false.

Commissioner, it's convenient now if I may to deal just briefly, I'll come back to it again later, just because we're on the subject, to deal with this suggestion that the, look, I won't, Commissioner, I'll come back to that. May I move to the second allegation.

30 This is an allegation that Mr Medich caused payments to be made by the intermediary, Mr Richardson, an intermediary, Mr Richardson to what is described as various ministers and Mr Haddad as an inducement for favour to be shown in respect of the planning decisions affecting applications.

40 The allegation at this time is not only against Mr Haddad but also Mr Richardson and Minister for the Crown and presumably officers that might be involved in the development approval process if some corrupt action were to occur. It's a fairly widespread allegation covering a lot of people. It's an allegation that comes from, through Mr Byrnes it seems, but a similar claim is reported by Ms McClymont and Ms Carson, as a result of their meeting with Mr McGurk on 29 July, 2009. The claim is that this was on a tape. That is Mr McGurk was saying that this kind of, that there was evidence of, to support this allegation recorded.

Now, in the same way as we did last time, we'll just deal firstly with what the allegation, well, the allegation is clear. As to whether it's true, the first that can be said is that there is only one tape. It's not just that Z made an allegation that he had lots of tapes and that's, I would submit to be

disbelieved, but I would submit it's clear that Mr McGurk only had one tape. I make that submission not just because we have only one tape, but because of Mr McGurk's conduct with that tape after he had it. That is, he had it copied, he had it distributed, he talked about it and he made claims about it. If there was another tape that implicated Mr Medich in high level corruption, Mr McGurk would've been talking about it, copying it, talking to his associates about it and distributing copies. Just as he did with the first tape. And there is - - -

10 THE COMMISSIONER: Part of the tape does deal with Badgerys Creek.

MR GORMLY: It does.

THE COMMISSIONER: But some of the allegations, some parts of allegation 2 are not on the tape.

MR GORMLY: Yes. That's right. That's right. Commissioner, the part that really is, that could be said that is on the tape is the part that deals with Mr Haddad.

20

THE COMMISSIONER: Yes.

MR GORMLY: The rest of it is not on the tape. Now, the only inference I would submit that can be drawn is that when Mr McGurk said that to Mr Byrnes, to Ms McClymont and Ms Carson, it was not true. It could not have been true.

THE COMMISSIONER: It is possible, I think, Mr Gormly, that the extract when in, when references made to, "They have been paid", is to the
30 Department of Planning or people in it, not just Mr Haddad.

MR GORMLY: Yes. That's true, Commissioner. It's true that it may relate to other Planning personnel. And if one looks at this allegation, it seems likely that on an assumption that it was true, it would have to involve Planning personnel as well. The allegation itself goes to Mr Richardson and ministers.

THE COMMISSIONER: Yes. The, that part of it that relates to Mr Richardson and ministers is simply not on the tape.

40

MR GORMLY: Yes. That's right. So - - -

THE COMMISSIONER: So for the purpose of this, this allegation, is it necessary to decide that there was only one tape? I think, I don't think anybody suggests there's another tape.

MR GORMLY: No. That's true, Commissioner. That's true. I raise it because it is necessary to consider of course, that this is the tape. That there

is only one tape. And if that is the tape, there is nothing on it that relates to corruption by Mr Richardson or by ministers. It cannot be true and when Mr McGurk said it he must've been saying something false.

THE COMMISSIONER: Yes. Mr Gormly, is this a convenient time?

MR GORMLY: Thank you, Commissioner.

THE COMMISSIONER: We'll adjourn until 2 o'clock.

10

LUNCHEON ADJOURNMENT

[1.00pm]