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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO, QC, COMMISSIONER

PUBLIC HEARING

OPERATION CALPURNIA

Reference: Operation E09/1462

FINDINGS AND SUMMARY OF REASONS

AT SYDNEY

ON FRIDAY 5 FEBRUARY 2010

AT 10.00AM

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

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

THE COMMISSIONER: The evidence and addresses in this public inquiry have been completed. The Commission has decided that, prior to furnishing a report to the Presiding Officer of each House of Parliament as required by section 74(3) of the ICAC Act 1988, it will publish orally a statement of its findings and a summary of its reasons for those findings. The statement so delivered shall then be published on the internet.

I emphasise that the statement is not a report under section 74, although the statement is intended to form the basis of such a report. The report, when furnished, shall contain a full statement of reasons (not merely a summary) and all other matters that it is required, by the Act, to contain.

It is not normal practice for the Commission to proceed in this way. The Commission, however, has decided to follow this course as in this case it is in the public interest that the Commission's findings be made public without delay.

The decision to hold a public inquiry

Mr McGurk was murdered on 3 September 2009, in Cremorne, Sydney. His death was followed by an outpouring of media publicity. The media reports focused on three matters namely, the identity of his murderer and the reason for the murder, alleged fraudulent activities in which Mr McGurk or others associated with him were involved, and allegations of public corruption of which Mr McGurk claimed to have knowledge. This inquiry has not investigated any aspect of Mr McGurk's murder and the alleged fraudulent activities in which he or others associated with him might have been involved. This inquiry is concerned only with the allegations of public corruption.

According to media reports, Mr McGurk, before his death, had made a recording of a conversation he had had with a business associate, Mr Ron Medich, which contained material that could "bring down the government". This was reported and a headline to this effect appeared on the front page of the Sydney Morning Herald. This allegation was widely disseminated.

The allegations, generally, gave rise to a mass of rumour and speculation concerning corruption in the public administration of New South Wales. A parliamentary inquiry was held concerning aspects of the allegations. By the very nature of that inquiry, the evidence

led and the resulting interim report did not dispel the perception of public corruption that had arisen. In particular, the parliamentary inquiry did not make public the recording which, according to the media, contained material that could bring down the government. The rumours of public corruption centred on this recording.

The allegations of corruption were extremely serious and, very soon after the first publicity about them, the Commission decided to investigate them in depth. The main thrust of the investigation was to ascertain whether there was any improper relationship of influence between Mr Medich and others, on the one hand, and Department of Planning officials, members of the government, Ministers and city councillors, on the other.

The investigations led the Commission to form the provisional conclusion that no corrupt conduct had occurred. Nevertheless, the Commission decided that, in the public interest, it was important for a public inquiry to be held. There were a number of reasons for this decision.

There was an ongoing public perception of serious corruption at the highest levels of public administration in New South Wales. The Commission considered that there was a pressing need for the concerns giving rise to this belief to be publicly ventilated, for the McGurk recording to be played publicly, and for the detail of the Commission's investigations to be made known. Merely issuing a report would not expose all relevant material to the public and the media. The Commission regarded it as important that the entire community be able to scrutinise the relevant evidence. Further, holding a public inquiry would enable the Commission to have the benefit of contradictors, that is, senior counsel representing persons whose interests would be contrary to any finding that what Mr Ron Medich and Mr McGurk had said was untrue. The existence of these contradictors would ensure that, as far as possible, different points of view would be put to the Commission before it came to a final view, and the evidence of certain witnesses, who it had examined in private, could be challenged openly, in public. This, in fact, occurred. Moreover, holding a public inquiry would enable the Commission to invite members of the public to come forward and tender whatever relevant evidence they had. This was done in this case, but no-one took advantage of the Commission's invitation.

The background to the recording and its use

Ron Medich, through his company, was the legal owner of land at Gerroa. It seems that, prior to 6 February 2009, Mr McGurk and Mr Medich had entered into some kind of joint venture relationship for the development of that land. Later, Mr McGurk contended that Mr Medich and his company held that land on trust for Mr McGurk and his wife.

Ron Medich and his brother, Roy Medich, through their respective companies, jointly owned 340 hectares of land, being the former CSIRO site at Badgerys Creek. A consortium that included them and a number of adjoining landowners, known as the Badgerys Creek Consortium, was set up to promote the development of their land. The Consortium wished to apply to the Department of Planning for the rezoning of its land and by February 2009 had taken preliminary steps in this regard.

By February 2009, Mr McGurk and Mr Medich were in dispute in several respects concerning their various commercial relationships. They had been business associates but their relationship had deteriorated and neither trusted each other. Claims and counter-claims were in the offing.

In February 2009, Mr McGurk told Mr Medich that he wished to meet. At the meeting, and unbeknown to Mr Medich, Mr McGurk had with him a digital voice recorder which he used to record their entire conversation. Mr McGurk did not tell Mr Medich that he had the recorder and that he was using it to record the conversation. Indeed, he told Mr Medich that he would take notes (thereby giving the impression that the notes would be the only mechanism whereby the conversation would be recorded). The inference arises that Mr McGurk wished to trap Mr Medich into making statements that he could use against him. According to Mr Byrnes, a business associate of Mr McGurk, Mr McGurk intended to ensure that there were various people who would know of the incriminating evidence against Ron Medich. Mr McGurk believed that those people would pressure Mr Medich “to fix whatever problem he had with Mr McGurk so that the problem went away”.

Mr Medich, on the other hand, wished to disengage himself from having any business relationship with Mr McGurk. He thought he was having a private conversation. He wished to explain to Mr McGurk that he did not need his help in getting anything done. Mr Medich wanted to make Mr McGurk think that he, Mr Medich, had his own connections in government and could get everything done that he needed through paying those connections.

Once Mr Medich made his remarks about paying his connections in government, Mr McGurk thought that he had incriminating evidence against Mr Medich. He implemented his plan and told as many people as he could that he had a recording of a conversation with Ron Medich in which Mr Medich had made admissions involving bribes paid to persons at the highest level of government. Mr McGurk obviously attributed great value to the recording and had seven copies made and distributed to others, with the intention that they be held in safekeeping.

The Commission is satisfied, firstly, that Mr Medich did say words to the effect that he had paid certain public officials for services that they had rendered in connection with town planning approvals; secondly, that what Mr Medich said in this regard was to his knowledge, false; thirdly, that Mr McGurk understood that Mr Medich had said those things and that he, Mr McGurk, could use the recording against Mr Medich; fourthly, that Mr McGurk told many people including Ms McClymont and Ms Carson, of the Sydney Morning Herald, that he had a recording of a conversation in which Mr Medich had said certain incriminating things; fifthly, that Ms McClymont and Ms Carson, in accurate reports, caused to be published what Mr McGurk told them; and sixthly, that much of what Mr McGurk told Ms McClymont and Ms Carson and the others with whom he communicated on this issue, was false. In particular, the statements that Mr McGurk made to Ms McClymont, Ms Carson and others, to the effect that the recording contained material that could bring down the government, deserves to be described as “nonsense”.

Only Mr Haddad was specifically named in the recording as a person who allegedly performed corrupt acts. There is not a scrap of evidence that Mr Haddad was guilty of such acts and the allegations against him should also be described as nonsense.

The evidence establishes, it is not in dispute, and the Commission so finds, that when telling people that he had a recording that incriminated Ron Medich in some way, Mr McGurk was referring to the 6 February 2009 conversation alone.

It can be seen that what has happened here is that each of Mr McGurk and Mr Ron Medich has attempted, by dishonest conduct, to gain advantages against the other, in regard to commercial disputes between them. Their manipulations against each other have escaped into the public arena where they were given publicity and credence which, after extensive investigation and inquiry, have been shown to be entirely undeserved.

I now turn to the specific allegations.

Allegation 1 - that Ron Medich represented that he could make a corrupt payment to Sam Haddad, the Director-General of Planning, as an inducement for favour to be shown by Mr Haddad in respect of a proposed development application relating to land owned by Ron Medich Properties Pty Ltd in Gerroa.

The conversation that Mr McGurk recorded on 6 February 2009 lasted for more than an hour and a half. Transcripts of the conversation differed but their differences were narrowed. Save in regard to relatively brief passages, the relevant parts of the conversation relating to the Gerroa land are not in dispute.

The Commission is satisfied that during that conversation Ron Medich said words that meant that Mr Haddad was a “connection” of his, that he, Mr Medich, had other, unnamed, connections, that Mr Medich’s connections had rendered services to him in the past, that Mr Medich would take steps to get Mr Haddad to ensure that the required development consents for the Gerroa property would be obtained, and that Mr Haddad would require payment for the corrupt services he would so render.

In making this finding I have listened several times to the relevant portions of the recording. I have also had regard to Mr Medich’s evidence. I have taken into account the fact that Mr McGurk plainly believed that the recording proved that Mr Medich had admitted that he had paid Mr Haddad and others to obtain town planning favours in regard to the Gerroa land. I have had regard to the meaning of the words actually used during the conversation.

Mr Medich did his best to wriggle out of the plain meaning of the ordinary words he used in the 6 February conversation. He testified that he did not intend in that conversation to convey that Mr Haddad was a connection of his and repeatedly asserted that in referring to connections he was referring to consultants. He also persisted in his denial that he intended to convey that that he had paid Mr Haddad and others for favours they had provided to him. In the Commission’s opinion, despite the able argument advanced by Mr Faulkner SC on his behalf, Mr Medich’s evidence in this regard cannot be accepted. The Commission does not accept that he is telling the truth in this regard.

It follows in relation to allegation 1 that the Commission accepts that Mr McGurk accurately reported to the Sydney Morning Herald journalists the substance of what Mr Medich said during the 6 February conversation.

I turn now to the question whether the allegations made by Ron Medich during that conversation are true.

In the course of his evidence at the public inquiry, Mr Ron Medich said that he did not know Mr Haddad, had never met or spoken to him and had never bribed him. Mr Medich accepted that “it was completely inappropriate [and] wrong” of him to refer to Mr Haddad in the way that he did. He expressed regret for the harm he had done Mr Haddad and his family.

Mr Haddad testified at the public inquiry that he had never met Ron Medich, never spoken to him (not even on the telephone), never had letters or other communication from him, and never received money or bribes in any form from him. Indeed, Mr Haddad had never had any dealings, in his official or any other capacity, with the Gerroa land. The realisation that allegations of corrupt conduct had been made against him was an extremely painful and humiliating experience for Mr Haddad, a man who plainly prides himself on his integrity. Mr Haddad’s evidence was not challenged by any party appearing at the inquiry. Mr Game SC, who together with Ms Bashir appeared for the McGurk interests, candidly and very properly acknowledged that Mr Haddad’s evidence was “heartfelt and compelling”. No doubt it was because it had the ring of absolute truth that no party sought to cross-examine him. Mr Haddad’s evidence was convincing and the Commission accepts it.

According to Ms Carson, Mr McGurk, when referring to the 6 February 2009 conversation, said that Mr Medich was “boasting about his ability to get things done”. Mr Gormly SC, senior counsel assisting the Commission, submitted that, more likely, Mr Medich was intending to fend off unwanted offers of help by Mr McGurk and was trying to distance himself from Mr McGurk. In the Commission’s view, both of these elements were present in Mr Medich’s mind when he made the statements in question.

Whatever Mr Medich’s motivation, the Commission is satisfied that, in the 6 February 2009 conversation, he was falsely overstating his influence with the government and was falsely representing that he had bribed Mr Haddad and others. He had no basis in fact for accusing Mr Haddad or any other person connected with the Department of Planning or government of

corrupt conduct. He told these lies for his own ends, never expecting that they would be made public.

Allegation 1 is not substantiated. No finding of corrupt conduct can be made in regard to it. No evidence has been led that is capable of casting any reflection on the propriety of Mr Haddad's conduct in regard to the Gerroa land.

Allegation 2 - that Ronald Medich caused payments to be made by Graham Richardson to various Ministers of the Crown and Mr Haddad as an inducement for favour to be shown in respect of planning decisions affecting applications relating to land owned by Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd and known as the former CSIRO site at Badgerys Creek.

Allegation 2 is based partly on statements attributed to Mr McGurk by Kate McClymont and Vanda Carson, and Mr Byrnes. Mr McGurk told Ms Carson that he had made a recording of a conversation he had had with Ron Medich concerning the Badgerys Creek property. He told her that Medich had named politicians, government officials and councillors who he had paid to "smooth the way for the development".

Mr Byrnes asserted that Mr McGurk told him that he had recorded a conversation with Ron Medich in which Ron Medich admitted that he had arranged with Graham Richardson to make a "substantial payment" to a certain Minister of the Crown, in return for the latter taking steps to effect a rezoning of the Badgerys Creek land. Mr Byrnes also said that Mr McGurk told him that the recording contained statements by Ron Medich that he had made payments to Sam Haddad, and a Minister of the Crown, in an attempt to have the Badgerys Creek property rezoned. The Commission accepts that Mr Byrnes' evidence as to what Mr McGurk said in this regard is correct.

The Commission is satisfied that in the recording of 6 February 2009 Mr Medich said words that meant that he had paid unnamed public officials to ensure that approvals or consents that he needed for the further development of the Badgerys Creek land would be forthcoming.

Mr Medich denied that the words he used were intended to convey that meaning, but I do not believe him.

Accordingly, the Commission accepts that Mr McGurk accurately reported to Ms Carson that Medich had said words to the effect that he had paid persons to “smooth the way for the Badgerys Creek development”.

Mr Game cogently submitted by reference to various passages in the transcript that Mr McGurk was entitled to infer that Mr Medich had intimated that he had arranged for Graham Richardson to make payments to a Minister of the Crown and Mr Haddad, in return for them taking steps to effect a rezoning of the Badgerys Creek land. The Commission accepts that the words used by Mr Medich are open to the inference that unnamed persons connected with the Department of Planning or government had been paid to give or influence approvals. The Commission does not accept that what was said can reasonably be understood as referring specifically to a Minister of the Crown or Mr Haddad (who were not specifically named in connection with the Badgerys Creek land). The Commission accepts that Mr Richardson was being impliedly referred to in a particular passage, but it does not accept that it can be inferred from what was said overall in the transcript, that it was being alleged that he had been the recipient of a corrupt payment or had been asked to make a corrupt payment.

The Commission has therefore concluded that the passages to which Mr Game referred do not reasonably support the inference for which he argued. The Commission finds that Mr McGurk was not being truthful when he told Mr Byrnes that the recording established that Ron Medich had intimated that he had arranged that Graham Richardson would make corrupt payments to Ministers of the Crown and Mr Haddad concerning the Badgerys Creek land.

The evidence relating to allegation 2 shows conclusively that there is no truth in what was being alleged. It is sufficient at this stage to say, firstly, the decision not to approve the rezoning of the Badgerys Creek Consortium land was not that of Mr Haddad at all (the decision was that of the executive government), secondly, there is nothing to suggest that Mr Haddad made any representations on behalf of the Medichs to have their land rezoned, thirdly, dealings with the WSELIA land, including the Badgerys Creek land, proceeded in an orderly and routine way in accordance with appropriate procedures and nothing untoward, of whatever nature, occurred.

Additionally, several months prior to the 6 February 2009 conversation, Mr Sartor decided that any consideration of the rezoning of the Badgerys Creek land would have to await the

outcome of the strategic study of WSELIA and particularly the outcome of infrastructure proposals.

The notion that, under these circumstances, money was paid to Ministers, Mr Haddad, or anyone else in the Department to obtain rezoning approval is simply not plausible.

In any event the Commission accepts the evidence of Mr Haddad and Mr Richardson in regard to their denials of the allegation 2.

That allegation, allegation 2, is without substance.

I shall deal with allegation 3 when dealing with allegation 12 as they are related.

Allegation 4 - that Mr Haddad, having become aware of the existence of information capable of implicating him in the receipt of corrupt payments, withdrew his approval for the rezoning of the Badgerys Creek land.

This allegation is based on a statement attributed to Mr McGurk by Mr Byrnes. According to Mr Byrnes, Mr McGurk told him that the appropriate approval for the Badgerys Creek rezoning was prepared and ready to be signed but Mr Haddad would not sign it because “he was aware that there was some information which could implicate him”.

Allegation 4 rests on the premise that Mr Haddad engaged in corrupt conduct in connection with Badgerys Creek, that is, allegation 2, and it was information about this conduct which led Mr Haddad to decide not to give the approval sought. The Commission has found that allegation 2 is without substance and that it is not supported by any cogent evidence. These findings, on their own warrant a finding that no corrupt conduct as alleged in allegation 4 has been established. In any event, the evidence independently establishes that Mr Haddad did not perform any act as alleged in connection with the Badgerys Creek site for any corrupt reason.

No party alleged that allegation 4 was substantiated. In fact, it has no substance. The allegations regarding Mr Haddad are false.

Whether Mr McGurk indeed told Mr Byrnes that Mr Haddad would not approve the rezoning of the Badgerys Creek site depends on the credibility of Mr Byrnes. The Commission is not able to say that on this issue it accepts the accuracy of Mr Byrnes’ evidence. That is not to

say that it does not believe Mr Byrnes, but the question is an open one. The Commission makes no finding as to the credibility of Mr McGurk in regard to this issue.

Allegation 5 - that Ronald Medich provided a motor vehicle to the wife of a local council mayor in return for that mayor providing assistance with respect to a development being undertaken by Mr Medich in the area of the local council concerned.

Ms McClymont told the Commission that at a meeting she and Ms Carson had with Mr McGurk, Mr McGurk alleged that Ron Medich provided the wife of the then mayor of a Sydney municipal council with a new car in return for being “very helpful” with a large development that was before the council concerned. Mr Game did not request that Ms McClymont be cross-examined and the Commission accepts the accuracy of her evidence with regard to this allegation and generally and the same applies to Ms Carson.

The former mayor was not married at the relevant time and the person who had been his partner at that time denied receiving a car or any other valuable consideration from Ron Medich or anyone on his behalf. The former mayor has denied doing anything to favour any development of land that involved Ron Medich, and has denied that any female partner or associate of his received a car or any other valuable consideration from Ron Medich or anyone acting on his behalf.

Significantly, the New South Wales RTA’s computer database does not reveal any transfer of a car or any acquisition of a new car by the mayor’s female partner during the relevant period. This alone is compelling evidence that the allegation is not true.

The local council’s records reveal nothing that suggests any improper or inappropriate behaviour or interference with respect to the council’s consideration of the development.

On the evidence available, allegation 5 is not substantiated.

Mr Game submitted that it is notionally possible that Mr McGurk may have been informed of this allegation by some other person. He pointed out that as Mr McGurk is deceased he is not in a position to tender evidence on the issue. However, the idea that someone else may have informed Mr McGurk of allegation 5, and that it was reasonable for Mr McGurk to have accepted that information as being accurate, is entirely speculative. On the evidence before the Commission, the allegation is untrue and there was no basis for Mr McGurk to make it.

Allegation 6 - that a property developer and former local councillor arranged to have property rezoned to financially benefit a current Member of Parliament.

The source of this allegation is Ms McClymont. Ms McClymont said that Mr McGurk had suggested to her that a property developer and former local councillor caused land to be rezoned on behalf of a Member of Parliament and that the Member of Parliament was set up to make money out of it.

The Commission was able to identify property formerly owned by the property developer and former local councillor. The title deeds, examination of council records, and other investigations carried out by the Commission, including an examination of all applications made to the relevant council in relation to the property during the period it was owned by the property developer and former local councillor, do not reveal any irregularities in the applications or in the way they were dealt with by the council.

The Commission also identified property in the relevant area owned by the Member of Parliament. One application was lodged with respect to the property in 2002. The application had not been determined as of 13 January 2010. A search of the records of the relevant council revealed no involvement by the property developer and former local councillor in promoting, canvassing, or lobbying for approval of the application. There is no evidence that the property developer and former local councillor improperly influenced the consideration of any of the applications.

On the evidence available, allegation 6 is without foundation.

Mr Game again submitted that it is notionally possible that Mr McGurk may have been informed of this allegation by some other person. The Commission's finding on this issue, however, is the same as that in allegation 5. On the evidence before the Commission, allegation 6 is untrue and there was no basis for Mr McGurk to make it.

Allegation 7 - that Ronald Medich made corrupt payments in order to obtain approval with respect to a development being undertaken by him in the local council area referred to in Allegation 5.

Mr Byrnes testified at a compulsory examination that Mr McGurk had told him that Ron Medich admitted making the corrupt payments, the subject of allegation 5, during the course of a conversation that he, Mr McGurk, recorded.

The Commission has found that it was not able to rely on the uncorroborated evidence of Mr Byrnes in regard to allegation 4. Mr Byrnes' evidence in regard to allegation 7, however, falls into a different category. That is because, in regard to allegation 7, Mr Byrnes is merely reporting an allegation that Mr McGurk made in connection with the 6 February 2009 recording. This allegation falls into a category of allegations that many have made and which the Commission has found to be true (that is, allegations concerning the contents of the recording). The Commission accepts Mr Byrnes' evidence in regard to allegation 7.

The recording of 6 February 2009 contains no specific reference to an admission by Ronald Medich that he made corrupt payments to obtain approval of a development being undertaken by him in the local council area in question. Mr McGurk's report in this respect was not accurate.

Additionally, the Commission's investigations do not reveal any basis for the corrupt conduct alleged. The mayor at the time of the local council concerned denied that there was improper conduct involved in the approval. Mr Medich denied making any corrupt payment to any person with respect to the development concerned. Significantly, the local council records revealed nothing that suggested any misconduct by any person in relation to the approval of the development application.

In the circumstances, allegation 7 is not substantiated.

Allegation 8 - that Ronald Medich used his relationship with the Police Minister to ensure that the police would not commence criminal proceedings arising out of a positive breathalyser test.

Mr Byrnes told the Commission that Mr McGurk had informed him that Ron Medich had a "very close relationship" with the Police Minister and implied that the Police Minister had corruptly caused a drink driving charge against Ron Medich to "go away".

Investigations by the Commission established that Ron Medich had been arrested by the police after returning a roadside breath alcohol reading of 0.05. Mr Medich was taken to The

Rocks Police Station where his breath alcohol content was retested 46 minutes later and found to be 0.035. He was released from police custody without being charged.

At a compulsory examination on 29 January 2010, Mr Byrnes volunteered evidence to the effect that the evidence he had given in relation to allegation 8 was mistaken. Allegation 8 is not substantiated.

Allegation 9 - that Ronald Medich used his relationship with the Police Minister to ensure that the NSW Police did not proceed with an investigation into an allegation that he (Ronald Medich) and others engaged in fraud in respect of an insurance claim arising out of a motor vehicle accident.

Mr Byrnes stated to the NSW Police that Mr McGurk had told him that he had information that Ron Medich had made a fraudulent insurance claim concerning his wife's car.

The only relevant information recorded in the Police records described an accident occurring at about 4.30am on 26 March 2006, in which Mrs Medich's vehicle (which was one of three that had been stationary and unattended) was struck by an unidentified vehicle. The COPS database did not reveal any record of an insurance investigation arising from the accident and the attending police officer was not aware of any such investigation having occurred.

The national claims manager of the insurance company involved said that there was no suspicion of any fraud in respect of the claim. The matter had been dealt with in a straightforward way in accordance with established procedure.

The evidence compels the inference that allegation 9 is false.

As the source of the allegation is the uncorroborated evidence of Mr Byrnes, the Commission draws no adverse inference against Mr McGurk in connection with it.

Allegation 10 - that Ronald Medich used his relationship with the Police Minister to ensure that the NSW Police did not proceed with an investigation into an allegation that he (Ronald Medich) engaged in fraud in respect of an insurance claim arising out of the death of a horse owned by his company.

The source of this allegation is a statement by Mr Byrnes at a compulsory examination that Mr McGurk had told him that Ron Medich had made a fraudulent claim on a racehorse that had been killed.

Extensive inquiries were undertaken. These established that Mr Medich has only ever insured one racehorse and that horse is alive and well. He had an interest in a racehorse that died but made no insurance claim in respect of it. The allegation has no substance.

As the source of the allegation is the uncorroborated evidence of Mr Byrnes, the Commission draws no adverse inference against Mr McGurk in connection with it.

Allegation 11 - that a relative of a Member of Parliament represented that he could arrange for the Member of Parliament to have the NSW Police renew a lease of a particular premises.

According to Mr Byrnes, two persons told him that the relative of a NSW Member of Parliament had told him that he (the relative) could arrange for that member to use his influence to cause the NSW Police to renew their lease over certain premises. The two persons were involved in the sale of the property, the subject of the lease, and the existence of a lease with the NSW Police would add value to that property.

The two persons concerned testified in effect that they had been wrongly reported by Mr Byrnes. The relative said that he had met Mr Byrnes only once and that the property concerned was not then discussed. The persons who were charged with the responsibility for renewing the lease on behalf of the Police said that they had not been requested by the Member of Parliament or any other person to renew the lease and they each indicated that no improper approach had been made in this connection. They had decided that the lease should not be renewed and it was not.

Allegation 11 is not substantiated.

Allegations 3 and 12

Allegation 3 is that in March 2006 Mr McGurk, at the direction of Mr Ron Medich, offered a Member of Parliament a corrupt payment as a reward for persuading Mr Haddad to recommend the rezoning of the Badgerys Creek site.

Allegation 12 is that from October 2005 to April 2007 Mr McGurk secretly recorded a number of conversations during which senior NSW public officials and members of parliament discussed engaging in corrupt dealings with Mr McGurk.

The source of these two allegations is Z. Z is currently a correctional centre inmate and is serving a sentence of imprisonment for four offences of use of a false instrument and one offence of obtaining financial advantage by deception. He has also been convicted and sentenced on another fraud-related matter and has been convicted of breaches of the Legal Profession Act 1987 for falsely holding himself out as a solicitor. He gave evidence in the NSW Supreme Court in certain civil litigation and the presiding Judge found that he was not a credible witness.

In view of concerns that the Commission, as a result, had as to Z's credibility, the Commission undertook extensive investigations to ascertain whether allegations 3 and 12 could be corroborated independently.

In a compulsory examination, Z testified that Mr McGurk had secretly recorded a number of conversations he had made with several public officials and like persons and he, Z, had made handwritten transcriptions of seven such conversations. The transcriptions, according to Z, established corrupt conduct on the part of various public officials. The corrupt conduct so alleged by Z forms the basis of allegations 3 and 12.

Z testified at a compulsory examination that he had kept copies of the transcripts at a correctional centre where he was being held, at his family home and at another identified property. Searches were conducted at all these places by Commission investigators acting under search warrants but they could not find any transcripts.

Z told the Commission that Mr McGurk made copies of the recordings and had kept the copies at a several locations. Again, inquiries made by the Commission investigators at the places where, according to Z, the copies of the recording were located and would be found proved fruitless.

In addition, the persons to whom (according to Z) he had given the copies (with whom the Commission investigators were able to speak) denied that he had done so and said that they had not seen any copies of recordings or transcripts of the kind to which Z referred.

NSW Police removed from Mr McGurk's office anything that potentially could be of relevance to this case. The material secured included documents, electronic storage devices, mobile telephones and computers. Commission investigators obtained access to this material and reviewed and interrogated it. No transcripts or recordings of the kind to which Z referred were found.

The fact that the recordings and transcripts were not where Z said that they would be found, and the fact that persons to whom he said he gave the tapes denied that they had received the recordings or transcripts, and denied any knowledge of their whereabouts, lead to the inference that Z's allegations cannot be relied on.

Z made other allegations that are inherently improbable or, on the evidence, have been conclusively shown to be highly improbable. Details of these will be included in the report to Parliament. In the opinion of the Commission, Z is not a credible witness.

In the Commission's view there is no cogent evidence that supports allegations 3 and 12. These allegations are not substantiated.

The last allegation is allegation 13, that Ron Medich made corrupt payments to a former Minister for Planning to assist with a planning matter.

The source of this allegation is Y. Y has not been identified in these proceedings as he, too, has asserted to the Commission that he has fears for his personal safety should his identity become known.

Ms McClymont informed the Commission that she had been told by X, a relation of Y, that Mr McGurk possessed a tape recording which contained damaging material that related to a former Minister for Planning. Ms McClymont said that she understood from X that he had been told about the recording by Y. When Y was interviewed he said that he had never heard the alleged recording. He said that Mr McGurk told him that he had enough evidence on the recording to get Mr Ron Medich "in plenty of trouble" and that it would be "front page of the newspaper for six weeks".

Y said that he had heard that Ron Medich had paid the former Planning Minister money on two separate occasions. In the course of a compulsory examination, when Y was pressed on this statement, he said he could not recall who gave him this information. When it was put to

him that the allegation was of a kind that he would remember, he said that he had heard it when he was with a group of people at a pub during a social occasion where alcohol was being consumed. It was put to him that in the circumstances he described the allegations he was recounting were “just idle gossip”. He replied “quite possibly”.

Ron Medich, in a compulsory examination, denied that he had paid the former minister any money or offered him some kind of benefit in connection with a planning matter. The minister himself denied the allegation.

Thus, the allegation rests on a discussion between unidentified people at an unidentified pub during the course of a general social discussion that is likely to have involved the recounting of idle gossip. There is nothing to suggest that any of these unidentified persons had any personal knowledge of the matters that form the basis of Allegation 13.

The transcript of the audio recording of 6 February 2009 does not bear out the statement made to Ms McClymont that the former Planning Minister’s name is mentioned on the tapes.

Allegation 13 is not supported by any evidence that is remotely reliable. It must be rejected as having no credence. The Commission draws no adverse inference against Mr McGurk in this connection. It is not persuaded by the evidence of Y.

Conclusions

I now make some brief concluding remarks.

The Commission’s findings are that none of the 13 allegations the subject of the public inquiry is substantiated. There is no cogent evidence that supports them.

The Commission does not intend to obtain the advice of the Director of Public Prosecutions in regard to any affected person in this inquiry, nor does it propose taking any of the actions referred to in s 74A(2)(b) and (c) of the ICAC Act.

The Commission’s efficacy and the due fulfilment of its statutory obligations do not necessarily depend on it making findings of corrupt conduct. The spread, without verification, of unsubstantiated rumours and speculation of public corruption can lead to unfounded, but significant, loss of confidence in government and public administration. Unwarranted loss of confidence in these circumstances is harmful to our society. The proper

discharge of the Commission's obligations, even when the Commission's findings are that no corrupt conduct has been established, is to make findings to that effect. That is in the public interest. The discharge of this duty by the Commission is part of the checks and balances that our democratic society requires.

Finally, certain matters have been aired at the public inquiry concerning procedures followed in this state relating to the practice applicable when lobbying government. The Commission is presently investigating these procedures and intends to publish its views concerning them later in the year.

This inquiry is now concluded and we will now adjourn.

At 10.55 THE MATTER WAS ADJOURNED ACCORDINGLY

[10.55am]