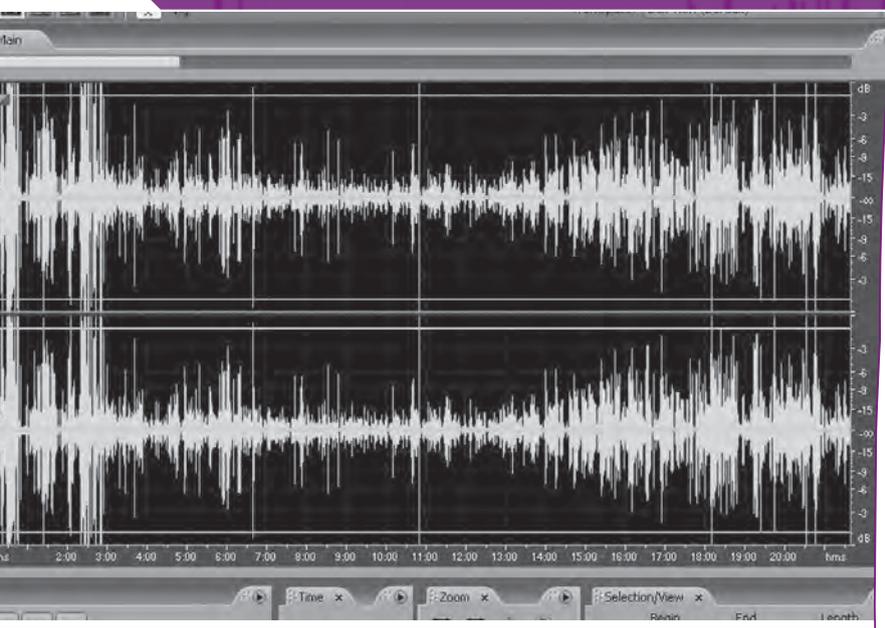




INDEPENDENT COMMISSION  
AGAINST CORRUPTION



**INVESTIGATION INTO  
ALLEGATIONS OF  
CORRUPTION MADE BY  
OR ATTRIBUTED TO  
MICHAEL MCGURK**

**ICAC REPORT  
MARCH 2010**

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In accordance with section 74 of the *Independent Commission Against Corruption Act 1988* I am pleased to present the Commission's report on its investigation into 13 allegations principally arising from:

- an audio recording made by Michael McGurk of a conversation he had with Ron Medich, a property developer, during which Ron Medich appeared to represent that he had a corrupt relationship with Sam Haddad, the Director General of the Department of Planning and others;
- various statements attributed to Mr McGurk relating to corrupt conduct by New South Wales public officials; and
- other audio recordings claimed to have been made by Mr McGurk concerning corrupt conduct of various public officials.

I presided at the public inquiry held in aid of this investigation.

The Commission's findings are contained in the report. The Commission found that none of the allegations was substantiated.

I draw your attention to the recommendation that the report be made public forthwith pursuant to section 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D Ipp'.

The Hon David Ipp AO QC  
Commissioner

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# Executive summary

## The investigation

This report concerns an investigation conducted by the Independent Commission Against Corruption (“the Commission”) into allegations arising from:

- an audio recording made by Michael McGurk of a conversation he had with Ron Medich, a property developer, during which Ron Medich appeared to represent that he had a corrupt relationship with Sam Haddad, the Director General of the Department of Planning, and others;
- various statements attributed to Mr McGurk relating to corrupt conduct by NSW public officials; and
- other audio recordings claimed to have been made by Mr McGurk concerning corrupt conduct of various public officials.

On 8 September 2009 the Commission obtained from the NSW Police a copy of the audio recording of Mr McGurk’s conversation with Ron Medich. Based on allegations contained on the recording and information provided to the Commission by Kate McClymont and Vanda Carson, journalists at *The Sydney Morning Herald*, James Byrnes, a business associate of Mr McGurk and “Z”, a current correctional centre inmate, the Commission identified 13 allegations for investigation. The central purpose of the investigation was to determine whether there was any improper relationship of influence between Ron Medich and others, on the one hand, and Department of Planning officials, members of the government, Ministers and city councillors, on the other.

In the course of its investigation the Commission obtained documents and information by issuing notices under sections 21, 22 and 23 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), took statements from relevant persons, obtained and executed search warrants on various premises in

order to locate other recordings allegedly made by Mr McGurk and conducted 27 compulsory examinations.

Widespread media reports following the murder of Mr McGurk on 3 September 2009, concerning the existence of audio recordings made by Mr McGurk, gave rise to a mass of rumour and speculation concerning corruption in the public administration of New South Wales. These reports tended to undermine confidence in government and the administration of the State. The Commission, therefore, determined it was in the public interest to hold a public inquiry so as to open to public scrutiny the nature of the Commission’s investigation into the allegations. The inquiry was held over five days between 2 February 2010 and 6 February 2010. Ron Medich, Mr Haddad and Graham Richardson gave evidence at the public inquiry and the Hon David Ipp AO QC, Commissioner, presided. Jeremy Gormly SC appeared as Counsel Assisting the Commission.

## The Commission’s findings and section 74A(2) statements

The Commission’s findings are set out in Chapter 2.

The Commission examined in detail each of the 13 allegations and found that none was substantiated.

The Commission found, however, that Ron Medich falsely represented to Mr McGurk during their conversation on 6 February 2009, which Mr McGurk secretly recorded, that he had paid unnamed public officials to ensure that approvals or consents that he needed for the further development of the land at Badgerys Creek would be forthcoming and that he had a corrupt relationship with Mr Haddad which he could exploit to ensure development approval for land he owned at Gerroa would also be forthcoming. The Commission found that Ron Medich told these lies to gain an advantage over Mr McGurk in relation to their commercial disputes, never expecting that they would be made public.



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The report contains a statement, pursuant to section 74A(2) of the ICAC Act, that the Commission is not of the opinion that consideration should be given to:

- (a) *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*
- (b) *the taking of action against the person for a specified disciplinary offence,*
- (c) *the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.*

# Chapter 1: Introduction

This report concerns the Commission's investigation into various allegations principally arising from:

- an audio recording made by Michael McGurk of a conversation he had with Ron Medich, a property developer, during which Ron Medich appeared to represent that he had a corrupt relationship with Sam Haddad, the Director General of the Department of Planning, and others;
- various statements attributed to Mr McGurk relating to corrupt conduct by NSW public officials; and
- other audio recordings claimed to have been made by Mr McGurk concerning corrupt conduct of various public officials.

## Why the Commission investigated

One of the Commission's principal functions, as specified in section 13(1)(a) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act"), is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that the following may have occurred, may be occurring or may be about to occur:

- corrupt conduct, or
- conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- conduct connected with corrupt conduct.

The Commission's role is set out in more detail in Appendix 3. The definition of corrupt conduct under the ICAC Act is stated in Appendix 4.

Mr McGurk was murdered outside his home at Cremorne on 3 September 2009. 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.

The Commission had no role to play in an investigation of any aspect of Mr McGurk's murder and the alleged fraudulent activities in which he or others associated with him might have been involved. The Commission, however, was concerned with investigating allegations of corruption.

Various reports appeared in the media that Mr McGurk had made a recording of a conversation he had had with a business associate, 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* on 5 September 2009. This allegation was widely disseminated.

On 7 September 2009 senior members of the New South Wales Police attended the Commission and reported that they were in possession of a recording of a conversation between Mr McGurk and Ron Medich, a property developer and investor. A copy of the recording was provided to the Commission on 8 September 2009. The recording was of a conversation between Mr McGurk and Ron Medich on 6 February 2009 in which Ron Medich appeared to represent that he and Sam Haddad, the Director General of Planning, had a corrupt relationship.

The conversation involving Mr McGurk and Ron Medich raised serious concerns that Ron Medich had improperly obtained or sought to obtain favourable decisions from Mr Haddad affecting the development of land he owned or in respect of which he had an interest. On the basis of these concerns the Commission immediately commenced an investigation into the veracity of the allegations.

## Conduct of the investigation

Initial examination of the 6 February 2009 recording alerted the Commission to the possibility that Mr McGurk had made the recording without the knowledge or consent of Ron Medich. Possession of a recording of a private conversation made in these circumstances may be unlawful and, if so, prevent the Commission from lawfully using the recording in the course of its investigation. Because of these concerns the Commission asked the NSW Government to enact legislative amendments to allow Commission officers to lawfully possess and make use of the recording

made by Mr McGurk and any other similar unlawful recordings obtained by the Commission in the exercise of its functions. On 30 November 2009 the ICAC Act was amended to allow the Commission to lawfully possess, use and publish, before 31 December 2010, a recording of any private conversations to which Mr McGurk was a party or was apparently a party that was obtained by use of a surveillance device in contravention of Part 2 of the *Surveillance Devices Act 2007*.

The Commission identified 13 allegations for investigation. These allegations were based on the content of the recording made by Mr McGurk on 6 February 2009; various statements attributed to Mr McGurk by Kate McClymont and Vanda Carson, journalists at *The Sydney Morning Herald* and James Byrnes, an insolvency specialist and business associate of Mr McGurk; and information provided to the Commission by a current correctional centre inmate, referred to in the Commission's public inquiry and this report as Z.

The 13 allegations investigated by the Commission are that:

1. 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 Limited at 16 Crooked River Road, Gerroa;
2. Ron Medich caused payments to be made by Graham Richardson to various Ministers of the Crown (names provided to the Commission) and Mr Haddad as an inducement for favour to be shown in respect of planning decisions affecting applications relating to land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek;
3. in March 2006 Mr McGurk, at the direction of Ron Medich, offered a Member of Parliament (name provided to the Commission) a corrupt payment as a reward for persuading Mr Haddad to recommend the rezoning of land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek;
4. Mr Haddad, having become aware of the existence of information capable of implicating him in the receipt of corrupt payments, withdrew his approval for the rezoning of the land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek;
5. Ron Medich provided a motor vehicle to the wife of a local council mayor in return for that mayor (name provided to the Commission) providing assistance with respect to a development being undertaken by Ron Medich in the area of the local council concerned;
6. a property developer and former local councillor (name provided to the Commission) arranged to have property rezoned to financially benefit a current Member of Parliament (name provided to the Commission);
7. Ron 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;
8. Ron Medich used his relationship with a Police Minister to ensure that the police would not commence criminal proceedings arising out of a positive breathalyser test;
9. Ron Medich used his relationship with a Police Minister to ensure that the NSW Police did not proceed with an investigation into an allegation that he (Ron Medich) and others engaged in fraud in respect of an insurance claim arising out of a motor vehicle accident;
10. Ron Medich used his relationship with a Police Minister to ensure that the NSW Police did not proceed with an investigation into an allegation that he (Ron Medich) engaged in fraud in respect of an insurance claim arising out of the death of a horse owned by his company;
11. a relative of a NSW Member of Parliament (name provided to the Commission) represented that he could arrange for the Member of Parliament (name provided to the Commission) to have the NSW Police renew a lease of a particular premises;
12. from October 2005 to April 2007 Mr McGurk secretly recorded a number of conversations during which senior NSW public officials and Members of Parliament (names provided to the Commission) discussed engaging in corrupt dealings with Mr McGurk; and
13. Ron Medich made corrupt payments to a former Minister for Planning (name provided to the Commission) to assist with a planning matter.

The Commission investigation involved examining documents and information obtained from Members of Parliament, senior public officials employed by the Department of Planning and persons connected with other public sector agencies by issuing notices under sections 21, 22 and 23 of the ICAC Act. The Commission also interviewed and obtained statements from a large number of witnesses. The Commission searched premises suspected of containing other recordings made by Mr McGurk of conversations he had with public officials.

The Commission also searched for transcripts of those conversations. The searches were authorised by search warrants obtained under the ICAC Act.

The Commission conducted 27 compulsory examinations of witnesses.

ICAC Chief Investigator Lang prepared two statements summarising relevant aspects of the Commission's investigation. A copy of each of these statements appears in Appendix 1 and 2 respectively.

## The public inquiry

The ICAC Act provides that for the purposes of an investigation the Commission may conduct a public inquiry if it considers it is in the public interest to do so. Section 31(2) of the ICAC Act provides that:

*Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:*

- (a) *the benefit of exposing to the public, and making it aware, of corrupt conduct,*
- (b) *the seriousness of the allegation or complaint being investigated,*
- (c) *any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),*
- (d) *whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.*

The media reports concerning the existence of a recording made by Mr McGurk 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.

Based on the results of its investigations conducted prior to the public inquiry the Commission formed 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 recording made by Mr McGurk 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 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 Hon David Ipp AO QC, Commissioner, presided at the inquiry and Jeremy Gormly SC acted as Counsel Assisting the Commission. The public inquiry was conducted over five days, commencing on 1 February 2010 and continuing until 5 February 2010. Messrs Haddad, Ron Medich and Richardson gave evidence. A copy of the recording of 6 February 2009, a transcript of the recording and the statements prepared by Chief Investigator Lang were tendered as exhibits.

Mr Gormly SC; Mr Tim Game SC and Ms G Bashir, appearing on behalf of the estate of Mr McGurk; Mr Ian Faulkner SC, appearing on behalf of Ron Medich; and Mr A Galasso SC and Dr J Renwick, appearing on behalf of Mr Haddad, made oral submissions regarding possible findings. On 5 February 2010, the Commissioner orally delivered the Commission's findings and summary of reasons which form the basis of this report.

## Non-publication orders

Section 31(2)(c) of the ICAC Act requires the Commission, in determining whether it is in the public interest to conduct a public inquiry, to consider any risk of undue prejudice to a person's reputation. In the course of the Commission's investigation a number of people were named in connection with the allegations as having engaged in corrupt conduct. However, the evidence obtained by the Commission during the course of its investigation did not substantiate their involvement in such conduct.



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The Commission determined, therefore, that to name these people would unduly prejudice their reputations. Accordingly, the Commissioner made non-publication directions under section 112 of the ICAC Act at the commencement of the public inquiry preventing publication of any evidence that identified any of these persons.

## **Investigation outcomes**

In Chapter 2 the Commission makes findings that none of the 13 allegations investigated is substantiated. No findings of corrupt conduct are made.

Chapter 2 also contains a statement pursuant to section 74A(2) of the ICAC Act that the Commission is not of the opinion that consideration should be given to any of the matters referred to therein.

## **Recommendation that this report be made public**

Pursuant to section 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either presiding officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

## Chapter 2: The investigation and findings

This chapter examines the evidence obtained by the Commission in relation to each of the 13 allegations, sets out the Commission's findings and contains a statement required to be made under section 74A(2) of the ICAC Act.

### Background

The relationship in February 2009 between Mr McGurk and Ron Medich, and their respective property interests, are important background facts in understanding the nature of the allegations of public corruption which were the subject of the Commission's investigation.

Mr McGurk was the director of Bentley Smythe Pty Limited, a company whose principal business was the making of loans. He was involved in other activities as well, including fixing various financial and commercial problems for clients.

Ron Medich and his brother Roy Medich are property developers.

Ron Medich, through his company, Ron Medich Properties Pty Limited, was the legal owner of land at 16 Crooked River Road, Gerroa. Gerroa is an area to the south of Sydney. Prior to 6 February 2009, Mr McGurk and Ron Medich had entered into some kind of joint venture relationship for the development of that land. Later, Mr McGurk contended that Ron Medich and his company held that land on trust for Mr McGurk and his wife.

In the months leading up to Mr McGurk's death on 3 September 2009, he was under pressure from various sources. These included a prosecution against him (later withdrawn) for arson concerning a fire. Another was deteriorating relations with Ron Medich.

By 6 February 2009 litigation between Mr McGurk and Ron Medich concerning the Gerroa land had not commenced but it was not far off. Shortly thereafter, proceedings were initiated.

By 6 February 2009 Mr McGurk and Ron Medich were also litigating about certain property in Point Piper.

Proceedings were initiated in the Supreme Court of New South Wales and a claim and counterclaim were filed.

Roy Medich and Ron Medich, through their respective companies, jointly owned 340 hectares of land, being the former CSIRO site at Badgerys Creek. The Badgerys Creek land is to the west of Sydney. A consortium that included Roy Medich and Ron Medich (through their companies) 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 their land (which was required if the land were to be developed) and by February 2009 had had several discussions with Department of Planning officials concerning the steps that should be taken by the Consortium to obtain rezoning approval.

### The meeting on 6 February 2009

In February 2009, Mr McGurk told Ron Medich that he wished to meet. At the meeting, and unbeknown to Ron Medich, Mr McGurk had with him a digital voice recorder which he used to record their entire conversation. Mr McGurk did not tell Ron Medich that he had the recorder and that he was using it to record the conversation. Indeed, he told Ron 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 Ron Medich into making statements that he could use against Ron Medich. According to Mr Byrnes, Mr McGurk intended to ensure that there were various people who would know of the incriminating evidence against Ron Medich. Mr Byrnes told the Commission that Mr McGurk believed that those people would pressure Ron Medich "to fix whatever problem he had with Mr McGurk so that the problem went away".

Ron 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. Ron Medich wanted to make Mr McGurk think that he, Ron Medich, had his own

connections in government and could get everything done that he needed through paying those connections.

Once Ron Medich made his remarks about paying his connections in government, Mr McGurk thought that he had incriminating evidence against Ron 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 Ron 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, first, that Ron Medich did say words to the effect that he had paid certain public officials for services they had rendered in connection with town planning approvals; secondly, that what Ron Medich said in this regard was to his knowledge, false; thirdly, that Mr McGurk understood that Ron Medich had said those things and that he, Mr McGurk, could use the recording against Ron 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 Ron 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, deserve 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 engaged in 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.

The Commission is satisfied that each of Mr McGurk and 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 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.

**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 Limited at 16 Crooked River Road, Gerroa.**

The conversation that Mr McGurk recorded on 6 February 2009 lasted for more than an hour and a half. Prior to the public inquiry, the NSW Police provided Vivian Evans, the solicitor acting for the estate of Mr McGurk, with a written transcript of the 6 February 2009 recording. At the commencement of the public inquiry it emerged that the transcript of the conversation in the possession of Ms Evans differed from the Commission’s transcript. However, these differences were narrowed. Save in regard to relatively brief passages which appear in parentheses in the extract of transcript of the conversation below, the relevant part of the conversation relating to the Gerroa land is not in dispute:

*MEDICH:* And what, what do you intend to do with Gerroa?

*MCGURK:* Graham Boys has really got to comment. I told you about that.

*MEDICH:* Uh.

*MCGURK:* And he’s more than happy to wait, he’ll sit down with you, you know so let’s get it done. I want to, I want to get the trust deed sorted out first and then we can move on. Same with the.... [unintelligible] account. Other than that I want to get that trust deed sorted out and I want to get it moved on.

*MEDICH:* Hmm.

*MCGURK:* Because I think that that’s the best way forward. And Graham Boys and David Furlong have both got plans I met them ...two days ago I met with David Furlong at lunch and Richie the day

before that. They think now's the time to go back in and do whatever you gotta do now in terms of development consents. Now's the time for it.

MEDICH: Well I've got connections there too so I don't care. If they, they can get it through, they can get it through, but I can get it through too.

MCGURK: Well if you think that your, your connections are better then you should use your connections.

MEDICH: Yeah you still got to pay 'em though. They don't do it for nothing.

MCGURK: Well David is a consultant so he's going to be looking for money.

MEDICH: Yeah.

MCGURK: I don't know –

MEDICH: If he can get it through I don't care, someone's gotta get it through.

MCGURK: Well he's a consultant and that's, that's what he gets paid to do. In terms of the other connections that you've got ...what do they do? (Are they consultants or do they get it off their council or what?) (Are they consultants? Are they council? What?) (Are they consultants? That counts a lot).

MEDICH: You're right there.

MCGURK: To what?

MEDICH: Sam Haddad, the whole bloody lot of them.

MCGURK: Alright, well I, I, I, I'd rather use, I'd rather use David Furlong.

MEDICH: I know him.

MCGURK: I don't know, I don't know Sam Haddad but you know him, I mean I don't know.

MEDICH: He's the Director General, Planning Department. It comes to him before it goes anywhere else, the Minister, he's signed off on it.

MCGURK: So he'd be your connection?

MEDICH: Yeah (Mmm).

MCGURK: Alright, well –

The Commission is satisfied that during that conversation Ron Medich said words that meant that: Mr Haddad was a connection of his; that he, Ron Medich, had other, unnamed, connections; that Ron Medich's connections had rendered services to him in the past; that Ron 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 careful consideration was given to the relevant portions of the recording, Ron Medich's evidence and the meaning of the words actually used during the conversation. The Commission also noted that Mr McGurk plainly believed that the recording proved that Ron Medich had admitted that he had paid Mr Haddad and others to obtain town planning favours in regard to the Gerroa land.

The Commission is satisfied that Ron Medich did his best to wriggle out of the plain meaning of the ordinary words he used in the 6 February 2009 conversation. He told the Commission at the public inquiry 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 he had paid Mr Haddad and others for favours they had provided to him.

Mr Faulkner SC argued on behalf of Ron Medich that in the absence of any express assertion by Ron Medich that he had paid Mr Haddad, a finding that Ron Medich implied that he was in a corrupt relationship with Mr Haddad was not open because of Ron Medich's idiosyncratic manner

of speech and his tendency not to listen or respond to what other people said during normal conversation. In the Commission's opinion, despite the able argument advanced by Mr Faulkner SC, Ron 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 Ron Medich said during the 6 February 2009 conversation.

In the course of his evidence at the public inquiry, Ron Medich said that he did not know Mr Haddad, had never met or spoken to him and had never bribed him. Ron 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 told the Commission 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 person 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 one 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 Ron Medich was "boasting about his ability to get things done". Counsel Assisting the Commission submitted that, more likely, Ron Medich was intending to fend off unwanted offers of help by Mr McGurk and was trying to distance himself from Mr McGurk's help. In the Commission's view, both of these elements were present in Ron Medich's mind when he made the statements in question.

Whatever Ron 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.

The Commission is satisfied that the allegations made by Ron Medich during that conversation concerning Mr Haddad are not true. 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 Ron Medich caused payments to be made by Graham Richardson to various Ministers of the Crown (names provided to the Commission) and Mr Haddad as an inducement for favour to be shown in respect of planning decisions affecting applications relating to land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek.**

Allegation 2 is based on statements attributed to Mr McGurk by Ms McClymont, Ms Carson, and Mr Byrnes. Their accounts of conversations with Mr McGurk are set out in detail at paragraphs 19 to 27 in Appendix 1.

Mr McGurk told Ms Carson that he had made a recording of a conversation he had with Ron Medich concerning the Badgerys Creek property. He told her that Ron Medich had named politicians, government officials and councillors whom 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 Mr Haddad, and a Minister of the Crown, in an attempt to have the Badgerys Creek property rezoned.

During the 6 February 2009 conversation, Ron Medich told Mr McGurk that a "lobbyist" involved in promoting the rezoning of the Badgerys Creek property was concerned that a recently published newspaper article about Ron Medich and others created a perception that he (Ron Medich) was connected with or employed standover men. In the following extract from the transcript of the 6 February 2009 recording, Ron Medich explained to Mr McGurk how this could be adverse to the rezoning

application relating to Badgerys Creek:

*MCGURK: ... why would that have an impact, why would that even have an impact on you getting that thing at Badgerys Creek?*

*MEDICH: I don't think it should have any impact, but -*

*MCGURK: But why, why would they think it would?*

*MEDICH: Well you know why.*

*MCGURK: Why?*

*MEDICH: If they don't put it through (as us)(as asked). So well I might bloody well bump them or something like that. Particularly if they're being paid or whatever, you know.*

The Commission is satisfied that Ron Medich said words on this occasion 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.

Ron Medich denied that the words he used were intended to convey that meaning. He said that Graham Richardson was the person he had impliedly referred to as the “lobbyist” in his conversation with Mr McGurk and that his reference to persons “being paid” should be understood as a reference to payments being made to Mr Richardson. The Commission rejects this explanation. Accordingly, the Commission accepts that Mr Byrnes’ evidence as to what Mr McGurk said in regard to this allegation is correct and that Mr McGurk accurately reported to Ms Carson that Ron Medich had said words to the effect that he had paid persons to “smooth the way for the Badgerys Creek development”.

Mr Game SC cogently submitted by reference to various passages in the transcript that Mr McGurk was entitled to infer that Ron Medich had intimated that he had arranged for Mr 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 Ron 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, however, 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 SC 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 Mr Richardson would make corrupt payments to Ministers of the Crown and Mr Haddad concerning the Badgerys Creek land.

Mr Richardson denied the allegation that he had made any corrupt payments to Members of Parliament or public officials on behalf of Ron Medich. Mr Haddad denied accepting any corrupt payments from any persons in connection with the application to rezone Badgerys Creek.

The results of the enquiries undertaken by the Commission relating to Allegation 2 are summarised in paragraphs 29 to 75 in Appendix 1 and paragraph 7 in Appendix 2. This evidence conclusively shows that there is no truth in what was being alleged by Ron Medich. The Commission is satisfied that first, 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 Western Sydney Employment Lands Investigation Area (“WSELIA”), 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, the then Planning Minister, 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 of Planning 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 Allegation 2.

The Commission is satisfied that Allegation 2 is without substance.

Allegation 3 is dealt with in connection 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 land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek.**

This allegation is based on 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”. Mr Byrnes’ account of the conversation is set out at paragraph 28 in Appendix 1.

Allegation 4 rests on the premise that Mr Haddad engaged in corrupt conduct in connection with Badgerys Creek (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 person 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 Ron Medich provided a motor vehicle to the wife of a local council mayor (name provided to the Commission) in return for that mayor providing assistance with respect to a development being undertaken by Ron 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 on 29 July 2009, 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. The relevant details of this conversation are set out at paragraph 77 in Appendix 1. Mr Game SC did not request that Ms McClymont be cross-examined and the Commission accepts the accuracy of her evidence with regard to this allegation.

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.

The NSW Roads and Traffic Authority 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 SC 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 this issue. However, the idea that someone else may have informed Mr McGurk of Allegation 5, and that it was reasonable for him 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 (name provided to the Commission) arranged to have property rezoned to financially benefit a current Member of Parliament (name provided to the Commission).**

The source of this allegation is Ms McClymont. Ms McClymont said that Mr McGurk had suggested to her on 29 July 2009 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 relevant details of this conversation are set out at paragraphs 89 to 90 in Appendix 1.

Details of the enquiries made by the Commission into this allegation are set out at paragraphs 91 to 102 in Appendix 1. In summary the Commission was able to identify property formerly owned by the property developer and former local councillor. The title deed searches, examination of council records, and other investigations carried out by the Commission, including an examination of all applications made to the relevant local 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 SC 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 Ron 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 told the Commission 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. Mr Byrnes' account of the conversation with Mr McGurk is set out in more detail at paragraph 83 in Appendix 1.

The Commission has expressed no concluded view about the credibility of Mr Byrnes' evidence 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 persons 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 Ron 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. Ron 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 Ron Medich used his relationship with a Police Minister to ensure that the police would not commence criminal proceedings arising out of a positive breathalyser test.**

This allegation is based on Mr Byrnes' and Ms McClymont's accounts of conversations with Mr McGurk, the details of which are set out at paragraphs 105 to 107 in Appendix 1. 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, the details of which are set out at paragraphs 108 to 111 in Appendix 1, established that Ron Medich had been arrested by police after returning a roadside breath alcohol reading of 0.05. Ron 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. The Commission is satisfied that Allegation 8 is not substantiated.

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

Allegation 9 is based on Mr Byrnes' account of conversations he had with Mr McGurk. 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. Details of the information provided by Mr Byrnes and the enquiries undertaken by the Commission into this allegation are found at paragraphs 113 to 115 and 116 to 121 respectively in Appendix 1.

The only relevant information recorded in the NSW 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 Ron Medich used his relationship with a Police Minister to ensure that the NSW Police did not proceed with an investigation into an allegation that he (Ron 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. Details of the information provided by Mr Byrnes and the enquiries undertaken by the Commission into this allegation are found at paragraphs 123 and 124 and 125 to 127 respectively in Appendix 1.

Extensive enquiries were undertaken. These established that Ron 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 NSW Member of Parliament (name provided to the Commission) represented that he could arrange for the Member of Parliament (name provided to the Commission) 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 of a particular 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 to the value of the property. Details

of Mr Byrnes' allegations are set out in more detail at paragraphs 129 to 130 in Appendix 1.

The two persons concerned told the Commission at compulsory examinations 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 NSW 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.

The Commission is satisfied that Allegation 11 is not substantiated.

**Allegation 3 – that in March 2006 Mr McGurk, at the direction of Ron Medich, offered a Member of Parliament (name provided to the Commission) a corrupt payment as a reward for persuading Mr Haddad to recommend the rezoning of land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek.**

**Allegation 12 – 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 (names provided to the Commission) discussed engaging in corrupt dealings with Mr McGurk.**

The source of these two allegations is Z. Z told the Commission that he and Mr McGurk, acting in concert, secretly recorded a number of conversations, the details of which are set out at paragraphs 142 to 148 in Appendix 1.

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 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. These enquiries are summarised at paragraphs 149 to 177 in Appendix 1 and paragraphs 5 and 6 in Appendix 2.

In a compulsory examination, Z said 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 alleged by Z forms the basis of Allegations 3 and 12.

Z told the Commission 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 several locations. Again, enquiries made by 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 them. 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 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.

Paragraph 5 in Appendix 2 details other allegations made by Z about police officers, prosecutors and judicial officers connected with criminal proceedings brought against Z. The Commission is satisfied that these allegations are inherently improbable and show Z to be someone who

makes allegations against anyone who acts other than in his interest or whenever there is an event adverse to him. 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.

**Allegation 13 - that Ron Medich made corrupt payments to a former Minister for Planning (name provided to the Commission) to assist with a planning matter.**

The source of this allegation is "Y", another business associate of Mr McGurk. Details of the information provided by Y are set out at paragraphs 179 to 184 in Appendix I. Y has not been identified in the Commission's public inquiry nor in this report as he 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 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 that 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 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 circumstance 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 the 6 February 2009 conversation does not bear out the statement made to Ms McClymont by X 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 is 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.

## Section 74A(2) statements

In making a public report, the Commission is required by the provisions of section 74A(2) of the ICAC Act to include, in respect of each "affected" person, a statement as to whether or not in all the circumstances, the Commission is of the opinion that consideration should be given to the following:

- (a) *obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,*
- (b) *the taking of action against the person for a specified disciplinary offence,*
- (c) *the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.*

An "affected" person is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of, or in connection with, an investigation.

For the purposes of this report Mr Haddad, Mr Richardson and Ron Medich are "affected" persons.

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 sections 74A(2)(b) and (c) of the ICAC Act.

## Conclusions

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'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.

# Appendix 1: Statement by ICAC Chief Investigator Robert Lang

## (EXHIBIT 1)

### STATEMENT IN THE MATTER OF: OPERATION CALPURNIA

**PLACE:** Sydney, NSW  
**NAME:** Robert Munro Lang  
**ADDRESS:** L21/133, Castlereagh Street, Sydney NSW 2000  
**OCCUPATION:** Chief Investigator  
**TELEPHONE NO:** (02) 8281 5999  
**DATE:** 1 February 2010

#### States: -

1. This statement is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.
2. I am 52 years of age.
3. I am currently employed by the Independent Commission Against Corruption (“the Commission”) as a Chief Investigator. I have been so employed since 1995. My primary responsibility is to lead and manage multi disciplinary investigation teams. Those teams are responsible for conducting major investigations into allegations of serious and systemic corrupt conduct occurring in or impacting on the NSW Public Sector.
4. On 7 September 2009, I was allocated responsibility for the investigation that had been commenced by the Commission following the death of Michael Loch McGurk on 3 September 2009. It had been widely reported in the print media at the time that Mr McGurk had been in possession of a recording that implicated senior public officials in serious corrupt conduct. On 5 September 2009, the Sydney Morning Herald ran a front page headline that read, “*Revealed: Secret Tape Blamed For Killing. ‘It could bring down the Government’*” and reported in the accompanying article that Mr McGurk “*may have been in possession of a tape that had potential to bring down the NSW Government*”. I was allocated a team of Commission officers with which to conduct the investigation that followed. The investigation was given the working name Operation CALPURNIA.
5. The NSW Police Force investigating the murder of Michael McGurk (Strike Force NARRUNGA) provided the Commission with two digital storage devices, each containing an audio recording that Mr McGurk had separately provided to Richard Allsop and Andrew Williams. The recordings were of a conversation conducted between Mr McGurk and Ron Medich. Commission investigation identified the date of the conversation as 6 February 2009. The recording produced by Richard Allsop was lengthy and of poor audio quality. The recording produced by Andrew Williams appeared to be a truncated recording of the conversation conducted between Mr McGurk and Ron Medich on 6 February 2009.

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6. I caused Commission officers to enhance the quality of the audio recording produced by Richard Allsop and to produce a transcript of the recording.
  7. The Commission obtained copies of relevant statements taken by the NSW Police Force during the course of its investigation into the murder of Mr McGurk. The Commission also conducted 25 compulsory examinations with various witnesses. These included journalists and associates of Mr McGurk as well as a person currently serving a period of imprisonment for serious fraud related offences. From this evidence a number of allegations of public corruption were identified. Each allegation, the source of the allegation and what was done by the Commission to investigate the allegation.
  8. **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 Sam Haddad in respect of a proposed development application relating to land owned by Ron Medich Properties Pty Limited at 16 Crooked River Road, Gerroa.
  9. **The Source** - The source of this allegation is the audio recording made by Mr McGurk of his conversation with Ron Medich conducted on 6 February 2009. During their conversation, Mr McGurk and Ron Medich discussed their common interest in developing certain property at Gerroa. This property has been identified by the Commission as being land at 16 Crooked River Road, Gerroa owned by Ron Medich Properties Pty Limited, a company controlled by Ron Medich. The following is the relevant extract from the transcript of the conversation of what was said:

*MEDICH: And what, what do you intend to do with Gerroa?*

*MCGURK: Graham Boys has really got to comment. I told you about that.*

*MEDICH: Uh.*

*MCGURK: And he's more than happy to wait, he'll sit down with you, you know so let's get it done. I want to, I want to get the trust deed sorted out first and then we can move on. Same with the (unintelligible) account. Other than that I want to get that trust deed sorted out and I want to get it moved on.*

*MEDICH: Hmm.*

*MCGURK: Because I think that that's the best way forward. And Graham Boys and David Furlong have both got plans I met them ...two days ago I met with David Furlong at lunch and Richie the day before that. They think now's the time to go back in and do whatever you gotta do now in terms of development consents. Now's the time for it.*

*MEDICH: Well I've got connections there too so I don't care. If they, they can get it through, they can get it through, but I can get it through too.*

- MCGURK: *Well if you think that your, your connections are better then you should use your connections.*
- MEDICH: *Yeah you still got to pay 'em though. They don't do it for nothing.*
- MCGURK: *Well David is a consultant so he's going to be looking for money.*
- MEDICH: *Yeah.*
- MCGURK: *I don't know -*
- MEDICH: *If he can get it through I don't care, someone's gotta get it through.*
- MCGURK: *Well he's a consultant and that's, that's what he gets paid to do. In terms of the other connections that you've got I what do they do, are they consultants or (unintelligible) councillor?*
- MEDICH: *You're right there.*
- MCGURK: *To what?*
- MEDICH: *Sam Haddad, the whole bloody lot of them.*
- MCGURK: *Alright, well I, I, I, I'd rather use, I'd rather use David Furlong.*
- MEDICH: *I know him.*
- MCGURK: *I don't know, I don't know Sam Haddad but you know him.*
- MEDICH: *He's the Director General, Planning Department. It comes to him before it goes anywhere else, the Minister, he signed off on it.*
- MCGURK: *So he'd be your connection?*
- MEDICH: *Yeah.*
- MCGURK: *Alright, well -*
- Talking over each other*
- MEDICH: *Just see what they (unintelligible). I'll leave it with them.*

10. **The Investigation** - The Commission issued notices under section 22 of the ICAC Act requiring the Department of Planning and Kiama Municipal Council, the local municipal council, to produce a copy of all applications to develop or rezone the land at 16 Crooked River Road, Gerroa since it was purchased by Ron Medich Properties Pty Limited on 20 December 2007. Statements were obtained from Graham Boys and David Furlong as they were referred to by Mr McGurk during the conversation. Ron Medich was questioned about the conversation during a compulsory examination conducted before the Commission on 23 December 2009.
11. The section 22 notice responses of the Department of Planning and Kiama Municipal Council indicated that no applications had been made by any person to develop or rezone the land at Gerroa since it was purchased by Ron Medich Properties Pty Limited. Palladian Pacific Pty Limited, the former owner of the property had obtained consent on 16 March 2005 from the Hon. Diane Beamer, then Minister assisting the then Minister for Infrastructure and Planning for a tourist facility on the site.
12. Ron Medich told the Commission at a compulsory examination on 23 December 2009 that Mr McGurk intended to obtain authority to develop land adjacent to 16 Crooked River Road, Gerroa. Ron Medich said

Mr McGurk was attempting to persuade him to purchase the property. Ron Medich was asked about his reference to having “connections” and gave the following evidence:

*[Counsel Assisting]*

*[Q]: Look at line 5 there?*

*[Ron Medich]*

*[A]: Yep.*

*[Q]: “I’ve got connections there too.” So see that?*

*[A]: ---Yeah.*

*[Q]: Who are your connections, what were you talking about?*

*[A]: ---Do you want to know the truth?*

*[Q]: Yes?*

*[A]: ---I was referring to no connections, I only said that to see where he was coming from because I wouldn’t have trusted him to be doing anything in the future.*

*[Q]: Well, you’ve said there “But I can get it through too.”?*

*[A]: ---Yep.*

*[Q]: Well, you’ve said that you had connections and you’ve said that you can get it through and it seems to be about a development consent?*

*[A]: ---Yeah. But no development consent has been, has gone in.*

*[Q]: You’re saying you made it up?*

*[A]: ---Well, no, all’s I’m saying is that I just wanted to see where he was coming from and then I will, then I will decide what I would do about it if I’m going to do anything.*

*[The Commissioner]*

*[Q]: How does this help you to see where he’s coming from by saying that you’ve got connections and that you can get it through? How does that help you to find out where he’s coming from?*

*[A]: ---Well, it does because I wanted to know exactly what he had in mind and then I can decide what I’d do.*

13. Ron Medich denied that by saying he paid “his connections” he was referring to persons employed by or acting on behalf of consent or development authorities. He gave the following evidence:

*[Counsel Assisting]*

*[Q]: Do you see there Mr McGurk says, “Well, if you think that your connections are better then maybe you should use your connections.” And you’ve said, “Yes, but you’ve still got to pay them, they won’t do it for nothing.”?*

*[A]: ---Yep.*

[Q]: *You are talking there about paying your connections in a development authority to get consent, a development consent over land at Gerroa are you not?*

[A]: *---I am not because first of all you've got to hire the consultants to do the job, you would have to pay them.*

[The Commissioner]

[Q]: *What are you talking about there?*

[A]: *---Well, we haven't even got to the stage of doing a development consent.*

[Q]: *Who were you referring to when you said, "You've still got to pay them."?*

[A]: *---Well, I might've got Planning Workshop or someone like that to do it.*

[Q]: *We're talking about your connections. Look at the previous - you've still got to pay them and that is your connections?*

[A]: *---My connections are the consultants, who else are they?*

[Q]: *Connections?*

[A]: *---I don't have any connections.*

[Counsel Assisting]:

[Q]: *You're talking about a connection that you have in a consent authority aren't you?*

[A]: *---I don't have a connection in the consent authority so I wasn't referring to that.*

...

[Q]: *Well, you see in line ten there, you have referred to a consultant haven't you?*

[A]: *---As you all know, the only reason he was there was to try to get me to say that I know someone or do someone because of the court action I had against him.*

[Q]: *Yes, but you're saying things too Mr Medich?*

[A]: *---What have I said?*

[Q]: *You said that you have to pay connections to get a development consent through?*

[A]: *---The only people I pay and I'm telling you this are consultants to do a job for me.*

[Q]: *Is that, does that include passing money onto someone in a development authority?*

[A]: *---I've never passed money to anyone in my life – be clear on that.*

[Q]: *What does that mean?*

[A]: *---I haven't paid anyone or bribed anyone the word is bribed right – I've never had to and I don't do it.*

[Q]: *You seem to be saying here that you do?*

[A]: ---That's not the inference that I get.

[Q]: Well, at line five – you've still got to pay them though they won't do it for nothing?

[A]: ---We've got to pay consultants all the time.

[Q]: Is that what you say – that you've paid no bribes no monies?

[A]: ----I've never paid a bribe - - -

[Q]: Just wait for the question. Is your position that you have paid no bribes and you have paid no monies to anyone in a consent authority such as a counsel of a planning department to get a development consent through?

[A]: ---Nobody – I haven't deal with anyone in the departments and I personally do not have any connections with any of them.

14. Ron Medich denied paying any money to Sam Haddad. He gave the following evidence:

*[Counsel Assisting]*

[Q]: You say you've never paid Sam Haddad any money. Is that right?

[A]: ---I have never met him and never paid one cent to him ever in my life and you can put your life on that one.

15. Roy Medich told the Commission at a compulsory examination conducted on 22 January 2009 that Ron Medich never attended the meetings he arranged with Mr Haddad in relation to the rezoning of land at Badgerys Creek and that Ron Medich never suggested to him that he knew Mr Haddad.
16. The Commission obtained statements from Graham Boys, a retired architect and Property Development Management Consultant and David Furlong, a Town Planning Consultant. Both said they were asked by Mr McGurk to review the existing consent documents relating to the Gerroa property in early 2008 and to provide advice as to whether the land had greater use options. Mr Boys and Mr Furlong said their involvement did not extend beyond advising Mr McGurk about various ways in which the potential of the land could be realised. The information provided by these witnesses does not advance the Commission's investigation into this allegation.
17. **Allegation 2 & 4** - 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 Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek (**Allegation 2**).
18. That Mr Haddad, having become aware of the existence of information capable of implicating him in the receipt of corrupt payments, withdrew his approval for the rezoning of the land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek (**Allegation 4**).
19. **The Source** - Allegation 2 is based on statements attributed to Mr McGurk by James Byrnes, an insolvency specialist and Kate McClymont and Vanda Carson, journalists employed at the Sydney Morning Herald. The source of Allegation 4 is set out at paragraph 28.
20. The Commission obtained a copy of a statement Mr Byrnes provided to the NSW Police Force on 4 September 2009. In the statement Mr Byrnes said he was introduced to Mr McGurk in June 2008. He said he provided professional services to Mr McGurk in relation to a number of matters. Mr Byrnes said during the course of their professional relationship Mr McGurk discussed various matters involving Ron Medich. Mr Byrnes alleged that during one of these conversations, Mr McGurk told him that he had

recorded a conversation with Ron Medich and that during the conversation Ron Medich had admitted that he had arranged for Mr Richardson to make a “substantial payment” to a Minister for the Crown (name supplied) in return for the rezoning of land near Eastern Creek owned by the Medich’s and known as the old CSIRO site. According to Mr Byrnes, Mr McGurk told him that “he (McGurk) had people speak to Richo and tell him this was all going to become public and there would be a few less Parliamentarians”. Mr Byrnes stated that Mr McGurk told him Mr Richardson had listened to the recording.

21. On 17 September 2009 Mr Byrnes was summonsed to give evidence at a compulsory examination before the Commission. He gave the following evidence:

*[Counsel Assisting]*

*[Q]: And in your discussions with Mr McGurk did he ever mention to you that he’d adopt a practice of recording conversations?*

*[James Byrnes]*

*[A]: Numerous times he said to me that I’ve, I’ve got, I’ve got all the tape recordings, I’ve got all the messages and I’ve got, yes, I think is the answer.*

*[Q]: Did he tell you with whom he’d recorded conversations?*

*[A]: Well amongst others, the only one that I can think of at this point in time is his conversations he’s had with Mr Medich.*

*[Q]: That’s Ron Medich is it?*

*[A]: ---It is.*

*[Q]: And did he tell you he was recording conversations with other people?*

*[A]: ---I can’t be specific as to names, but, yes. Now if I can define, because I’m fully aware of the listening devices act, it was my understanding that when he was set down in a negotiation with or discussion to try and resolve a matter for Mr Medich, which at that stage he had befriended and was, you know, had a very healthy relationship with, he then said so he can get the records down right, he said he was going to tape, as I am told, he said he was going to tape the conversation so that he could get, so that he could later on transcribe it so he’d get the details of what Mr Medich’s claim was. This was in respect to a particular matter. This is what I’m told by McGurk. And subsequently during the course of the, the meeting, Mr McGurk said that, sorry Mr Medich had strayed from the original subject matter and then gone into a parlay about - - -*

*[Q]: We’ll come to the conversation - - - ?*

*[A]: --- - - - other matters.*

*[Q]: Did he tell you whether he had recorded more than one conversation with Mr Medich?*

*[A]: ---He didn’t say, “I recorded more than conversation”, but he said, “I have tapes”, as in plural.*

*[Q]: And when he said he had tapes, was that in context of tapes of conversations with Mr Medich or tapes generally in relation to conversations with a number of people?*

[A]: ---No, tapes of his conversations with Mr Medich.

22. Mr Byrnes said that Mr McGurk told him that he “had arranged to have a tape which was alleged to have substantially incriminating information on it transcribed... and I understand that he proposed to have copies left with attorneys in the event of I suppose as an insurance policy..”

23. Mr Byrnes said that Mr McGurk told him that the recording contained statements made by Ron Medich that he had made payments to Sam Haddad and a Minister of the Crown (name supplied), through Mr Richardson, in relation to the property known as the CSIRO site to “elevate whatever chance he might have in having the property moved from one zoning to another or changed from one zoning to another.” Mr Byrnes said the amount of money mentioned by Mr McGurk as being paid to Mr Haddad and a Minister of the Crown was not insignificant and may have ranged from \$50,000 to \$80,000.

24. Mr Byrnes told the Commission that he was sceptical about the account provided to him by Mr McGurk. He gave the following evidence:

*I don't, didn't at the time put a lot of weight in what Mr McGurk was telling me and I've tried to make that quite clear in the public, I didn't put as much weight in it and I thought that it was a, you know, when he told me that Richo was coming to listen to the tape and then when he told me that Richo had listened to the tape and then he told me all these other things, you know, I didn't know whether I was talking to somebody who was a pathological liar or whether or not this was, you know, this was another Watergate type. And it wasn't my job to be, to examine the evidence at that time and make a determination, that wasn't my, my role so I didn't put a lot of weight in it.*

25. The NSW Police obtained statements from Kate McClymont and Vanda Carson shortly after Mr McGurk's death. As Ms McClymont and Ms Carson had reported in the Sydney Morning Herald that they had spoken to Mr McGurk about the recordings he made prior to his death, the Commission obtained a copy of their police statements.

26. In her police statement dated 7 September 2009, Ms Carson said she and Ms McClymont met Mr McGurk on 29 July 2009 to discuss an article she and Ms McClymont had written concerning a financial dispute involving Mr McGurk and premises in Wolseley Road, Point Piper. Ms Carson said she had heard that Mr McGurk had a recording and asked him about it. She made the following statement about their conversation:

*I kept asking McGurk about the tape that everyone was saying he had. McGurk said it was a recording he had made of Ron Medich. He said that Medich had consented to the recording... McGurk said it was to do with the CSIRO site at Badgery's Creek that Medich owned. He said Medich had named politicians, government officials and counselors (sic) who he'd paid to smooth the way for the development. McGurk said Medich was boasting about his ability to get things done... McGurk told me that he had a copy of the tape and he may even have said there was more than one copy... Kate and I asked McGurk for a copy of the tape and he said he would get back to us in the next couple of days.*

27. Ms Carson said that Mr McGurk did not provide her or Ms McClymont with a copy of the recording.

28. **Allegation 4** is based on the following statement attributed to Mr McGurk by James Byrnes at his compulsory examination on 17 September 2009:

[Counsel Assisting]

[Q]: Did he provide you with any details as to how (a Minister) was to go about doing that?

[James Byrnes]

[A]: ---No. Well, with the exception and I don't know, it wasn't at this conversation but at a subsequent conversation McGurk told me that Haddad had become aware, sorry, I'll start that again. I wasn't the only person Mr McGurk told about this tape. And in fact I think just about anybody who he thought might be able to improve his position, he would tell about this tape. And I, I think his intention was to ensure that there were various people who were implicated would become aware and then they would no doubt go back to Mr Medich with a view to getting Mr Medich to fix whatever problem he had with McGurk so that the problem went away. So, as I understood, because McGurk had told me at one stage that the appropriate approval or sign off that he was looking for was all prepared, ready to be signed. It was, he said it was sitting on Haddad's desk ready to be signed off, but Haddad wouldn't sign it because he was aware that there was some information which could implicate him.

- 29. The Investigation** - According to the account provided by Mr Byrnes, Mr McGurk had represented to him that Ron Medich had said, during the recorded conversation conducted on 6 February 2009, that he had made payments to public officials in connection with the former CSIRO site at Badgerys Creek. The absence of these comments by Ron Medich on the recording seriously undermined this allegation. However, as Mr Byrnes had referred to the possibility that Mr McGurk had recorded more than one conversation with Ron Medich the Commission interviewed and examined a number of witnesses in order to identify and locate any other recordings, if they existed.
30. To investigate the allegation that Sam Haddad, the Director General of Planning, the Minister of the Crown and other public officials had accepted bribes from Ron Medich through Graham Richardson acting as an intermediary, the Commission issued a notice under section 21 of the ICAC Act to Sam Haddad requiring him to provide information about the applications made to the Department of Planning to rezone the former CSIRO site. Roy and Ron Medich, James Richard Vereker, and Graham Richardson gave evidence before the Commission at compulsory examinations. A notice under section 21 of the ICAC Act was issued to the Minister of the Crown the subject of the allegation.
31. What follows is a description of the inquiries conducted by the Commission in order to identify and locate any other recordings made by Mr McGurk of conversations with Ron Medich. The enquiries met with a negative result and I believe that the recording of the conversation between Mr McGurk and Ron Medich on 6 February 2009 is the only recording Mr McGurk made of a conversation with Ron Medich.
32. The Commission interviewed and obtained statements from members of staff employed at Bentley Smythe Pty Limited, a credit provider in respect of which Mr McGurk was the director. Tiffany Boys told the Commission that she was employed as the General Manager at Bentley Smythe from 19 May 2008 until 3 March 2009. Ms Boys said that in January 2009 Mr McGurk told her to purchase batteries for his voice recorder as he intended to record a meeting with Ron Medich. She said that following the meeting Mr McGurk told her he had secretly recorded it and that he wanted a transcript of the recording. Ms Boys said that Mr McGurk told her that Ron Medich had been "*blabbing about politicians*". She said that Dan Nolan and Phoebe Simmer, employees at Bentley Smythe undertook the task of transcribing the recording.
33. Phoebe Simmer told the Commission that Mr McGurk asked her to make audio copies of various parts of the recording. She said she was assisted in this task by Dan Nolan. Ms Simmer said that, at Mr McGurk's request, she took the recording to a specialist sound engineering company at Fox Studios for the purpose of enhancing the audio quality of the recording.
34. Enquiries conducted by the Commission identified Trackdown Digital Pty Limited as the sound engineering company to which the recording had been taken. Daniel Brown, a Sound Engineer at Trackdown told the Commission that on 11 February 2009 he received a Dictaphone, digital in format, from a male customer. The customer told him he wanted the recording transferred to a compact disc and made audible. He said

he later obtained the cables for the Dictaphone from Ms Simmer and used specialised equipment and techniques to copy and enhance the quality of the audio recording. According to the Managing Director of Trackdown, Geoffrey Watson a compact disc containing a copy of the enhanced recording was collected from Trackdown by Mr McGurk on the following day.

35. A copy of the enhanced recording was obtained by the Commission from Trackdown's computer records. Examination of the enhanced recording confirmed it was a copy of the recording of the conversation conducted between Mr McGurk and Ron Medich on 6 February 2009.
36. The Commission obtained a statement from Dan Nolan who was employed by Mr McGurk to provide IT support at Bentley Smythe. He said in mid to late February 2009 Mr McGurk asked him to edit a compact disc. According to Mr Nolan, Mr McGurk said that he needed the audio edited and placed back on his voice recorder so he could "fuck Medich" with it. Mr Nolan said that using instructions Mr McGurk had provided to Ms Simmer, he and Ms Simmer produced two compact discs containing an edited version of the recording which he gave to Mr McGurk. Mr Nolan told a Commission officer that, after Mr McGurk's death, he provided a compact disc containing the recordings to Richard Allsop, a solicitor.
37. At the outset of the Commission's inquiry, members of the NSW Police Force advised the Commission that Andrew Williams and Rachael Porter, solicitors formerly employed by ClarkeKann Lawyers had possession of an audio recording and a transcript of the recording which had been provided to them by Mr McGurk.
38. Ms Porter gave evidence before the Commission at a compulsory examination on 17 September 2009. She said that she was introduced to Mr McGurk in February or March 2009 for the purpose of providing him with legal advice about certain legal proceedings Mr McGurk anticipated commencing against Ron Medich. Ms Porter said during the course of taking instructions from Mr McGurk he produced a compact disc and indicated he wanted a transcript made of a conversation recorded on the disc involving himself and Ron Medich. She said Mr McGurk told her "...there's serious allegations on there, you know, it, it could bring, it could bring everyone down..." Ms Porter said she caused the conversation on the disc to be transcribed.
39. Andrew Williams, formerly a partner at ClarkeKann Lawyers gave evidence at compulsory examinations before the Commission and produced a copy of the transcript of the conversation obtained by Ms Porter. Examination of the transcript by the Commission confirms it is a transcript of the conversation between Mr McGurk and Ron Medich conducted on 6 February 2009.
40. Mr Williams told the Commission that Mr McGurk sought legal advice from ClarkeKann Lawyers in early February 2009 about the possibility of commencing legal proceedings against Ron Medich. These anticipated proceedings included a claim that Ron Medich held land on trust for Mr McGurk and his wife including land at 16 Crooked River Road, Gerroa. Mr Williams said that on at least two or three occasions Mr McGurk said to him words to the effect, "*I have a recording of a conversation I had with Ron Medich, which was taken or made with Mr Medich's knowledge and consent. He knew I was making it. I warned him I was making it. There is stuff on that tape that could bring a government down.*"
41. Mr Williams said that Mr McGurk first told him about the recording in the first two weeks of February 2009. He said Mr McGurk intended to use the recording, which had been provided to Ms Porter by Mr McGurk, to pressure Ron Medich into making concessions in relation to the claims Mr McGurk had made against him. Mr Williams said Mr McGurk withdrew instructions from ClarkeKann Lawyers immediately after Ron Medich Properties Pty Limited commenced legal proceedings against Mr McGurk in the Federal Court on 18 March 2009. He said Mr McGurk instructed Richard Allsop, a solicitor employed at Holman Webb Lawyers to represent him in those proceedings and others. Mr Williams said he did not provide the transcript and audio recording to Mr Allsop.
42. Mr Williams said he gave the disc containing the recording to members of the NSW Police Force on 5 September 2009. On 8 September 2009, the NSW Police Force produced the disc to the Commission. Examination of the disc confirms it contains a recording of the conversation conducted between Mr McGurk and Ron Medich on 6 February 2009.

43. Mr Williams told the Commission that he had no knowledge of any other recordings made by Mr McGurk. He said Mr McGurk did not tell him he had other recordings.
44. Richard Allsop was summonsed to attend the Commission to give evidence at a compulsory examination and produce any audio recordings provided to him by or on behalf of Mr McGurk.
45. Mr Allsop did not produce any audio recordings. He told the Commission that he first received instructions from Mr McGurk on or about 19 March 2009. He said Mr McGurk was seeking legal advice in relation to various matters including advice about legal proceedings commenced against him in the Federal Court by Ron Medich Properties Pty Limited. He said that during their initial meeting Mr McGurk told him that he had a meeting with Ron Medich about matters which were the subject of court proceedings and during the course of their meeting Ron Medich said he had paid money to the Director of Planning in respect of a planning matter. Mr Allsop said that Mr McGurk told him the meeting corroborated his version of events in relation to the legal proceedings in which he was involved and that he had recorded the conversation. Mr Allsop said that Mr McGurk never mentioned he had other recordings of conversations involving Ron Medich.
46. Mr Allsop said that sometime in June or July 2009, Mr McGurk told him that he thought his home had been broken into and that whoever did so was looking for the recording. He said a day or two later Mr McGurk delivered to his office a small digital data storage device which was sealed in an envelope. Mr Allsop said he was instructed by Mr McGurk not to open the envelope.
47. On 30 July 2009 Mr McGurk reported a break and enter to members of the NSW Police Force. Mr McGurk told the police that an unknown person(s) had gained entry to his premises at 11 Cranbrook Ave, Cranbrook on 29 July 2009. According to the police report, the unknown person(s) had accessed the property through an unlocked door at the rear of the premises. The unknown person(s) proceeded towards the master bedroom and rummaged through cupboards, throwing clothes and other items on the floor. No items were taken.
48. Mr Allsop said he kept the device in safe storage. On 4 September 2009, members of the NSW Police Force investigating the murder of Mr McGurk obtained the digital audio file from Mr Allsop. On 8 September 2009, the NSW Police Force provided a copy of the digital audio file to the Commission. Examination of the audio file by the Commission confirms it is a recording of the conversation conducted between Mr McGurk and Ron Medich on 6 February 2009.
49. Mr Allsop said that on 6 September 2009 he was telephoned by Mr Hugh, a solicitor. He said Mr Hugh told him he had been approached by Jim Nolan and his son Dan Nolan, who had a disc containing some recorded information he wanted to pass on to someone representing Mr McGurk's family. Mr Allsop said he met the father and son the next day. He said they gave him 2 or 3 discs and the son (Dan Nolan) said one of the discs contained a recording he had edited while employed by Mr McGurk. Mr Allsop said he gave the discs to Vivian Evans, a solicitor acting on behalf of the executrix of Mr McGurk's estate, a few days later. He said Ms Evans told him she had given the discs to the NSW Police Force.
50. Ms Evans was summonsed to give evidence at a compulsory examination on 23 December 2009 and produce any sound recordings in her possession or control which appear to have been made by Mr McGurk.
51. Ms Evans attended the Commission and produced two compact discs in response to the summons. She said the first disc contained a copy of the audio recording of the conversation involving Mr McGurk and Ron Medich on 6 February 2009 which she had recently obtained from the NSW Police in connection with civil proceedings involving the estate of Mr McGurk. She said the second disc was provided to her by Mr Allsop. Ms Evans said she provided it to the NSW Police after making a copy of it. Examination of the second disc by the Commission revealed it contained three differently formatted versions of the audio recording of the conversation involving Mr McGurk and Ron Medich on 6 February 2009.

52. Ms Evans said that she understood that the recordings on the second disc were prepared by Dan Nolan. Ms Evans said that during the course of administering the estate of Mr McGurk she identified an electronic back up database and a Google Mail account, both of which were used by Mr McGurk and capable of storing digital audio files. She said she reviewed the backup database and Google Mail account and was unable to locate any audio digital recordings.
53. Kimberley McGurk, the widow of Mr McGurk gave evidence before the Commission at a compulsory examination on 27 January 2010. She said that Mr McGurk told her that he had had a meeting with Ron Medich in Rob Hugh's office for the purpose of clarifying "*dealings that they'd had together and to clear any, up any grey in the negotiations that they had had to date because the relationship was souring and he wanted everything to be clear on what, what they had previously arranged in regard to business dealings that they had been working on together.*" She said that her husband told her he had made an audio recording of the conversation and that during the conversation Ron Medich volunteered information about dealings he had with government officials. Mrs McGurk said she had never heard the recording. She said her husband never told her he had made recordings of other conversations.
54. Ms McClymont told the Commission at a compulsory examination conducted on 21 January 2010 that she had received information that copies of the recorded conversation between Mr McGurk and Ron Medich had been given to three solicitors by Mr McGurk, namely, Robert Hugh, Damien Phair, and Andrew Williams. She said she had no other information concerning the existence of recordings made by Mr McGurk.
55. Mr Phair was interviewed by a Commission officer. He denied ever meeting Mr McGurk. He said that he only had dealings with Mr McGurk over the telephone and these were during July and August 2009 in relation to business matters. He denied that he was ever given any recordings by Mr McGurk.
56. Mr Hugh was summoned to attend the Commission on 27 January 2010 to give evidence and produce any audio recordings or transcripts of recordings given to him by Mr McGurk. Mr Hugh did not produce any recordings or transcripts. He said that Mr McGurk had never provided him with any recordings or transcripts.
57. Ms Carson told the Commission at a compulsory examination on 21 January 2009 that since Mr McGurk's death she had been asking around for a copy of the recording but no one had said they had a copy. She said she did not have any recordings made by Mr McGurk.
58. Members of the NSW Police Force investigating the murder of Mr McGurk advised the Commission that they had searched the homes and offices of Mr McGurk and collected a large number of electronic recording devices, mobile telephones, computers, memory cards and physical documents.
59. The NSW Police Force produced a copy of approximately 2 terabytes of data contained on these devices to the Commission for forensic analysis. During the analysis all known audio file extensions were isolated from the mass of electronic data and reviewed to establish whether there were any other relevant electronic recordings. This review met with a negative result. All of the remaining data was similarly reviewed for relevance to the investigation with negative results.
60. The Commission undertook the following inquiries for the purpose of examining the veracity of the allegations 2 and 4.
61. James Richard Vereker was identified as a potential witness by the Commission as he was reported in the media, following Mr McGurk's death, as having some involvement with Mr McGurk in connection with the recording.
62. James Richard Vereker told the Commission at a compulsory examination that he "bumped into" Mr McGurk at the Bowlers' Club in York Street, Sydney in February 2009. He gave the following evidence about their meeting:

*[Counsel Assisting]*

*[Q]: And what did Mr McGurk tell you about this recording, can you recall?*

*[James Richard Vereker]*

*[A]: ---He said, he said, he said something to the effect that Ronnie's been opening his big mouth again, I've got him fucked really, he said I, he was in trouble.*

*[Q]: Sorry? I've got him -- --?*

*[A]: ---Fucked.*

*[Q]: Right. And he said he's in trouble?*

*[A]: ---Yeah.*

*[Q]: Right. Did you ask him what he meant by that?*

*[A]: ---Well, he, I didn't have to ask him he just rattled on.*

*[Q]: All right. What did, did he say? Did he explain himself?---*

*[A]: Sorry?*

*[Q]: Did he explain what he meant?*

*[A]: ---Yes. He said, "Ronnie's been opening his big mouth again and I've recorded what he said and he's dumped some people right in the shit or, at government, in the government.*

*[Q]: Right.*

63. Mr Vereker said he told Mr Richardson about the existence of the recording and Mr Richardson asked him to arrange a meeting with Mr McGurk for the purpose of listening to the recording. He said he arranged a meeting at the Bowlers' Club between Mr McGurk and Graham Richardson around three or four days later. Mr Vereker said he introduced Mr McGurk to Graham Richardson at the meeting and they left his company to have a private discussion. He said when Mr Richardson returned he told him the recording was inaudible and a "complete waste of time."
64. Graham Richardson gave evidence at a compulsory examination on 10 December 2009. He said that Mr Vereker contacted him in mid February 2009 and told him that Mr McGurk had a recording of a meeting with Ron Medich during which Ron Medich had claimed to have bribed State Government officials. Mr Richardson said he told Roy Medich about the recording and was instructed by him to listen to the recording. Mr Richardson said that either in late February 2009 or on 3 March 2009, he met with Mr Vereker at the Bowlers' Club to discuss the recording. He said Mr Vereker told him that Ron Medich was alleged by Mr McGurk to have boasted on the recording that he had paid bribes to a number of government officials including Sam Haddad. Mr Richardson said he asked Mr Vereker to obtain a copy of the recording and arranged to meet with him at the Bowlers' Club in approximately one week. Mr Richardson said he recalled speaking to Ron Medich around this time and advising him about the nature of the allegation. He said Ron Medich angrily denied the allegation.
65. Mr Richardson said he met with Mr Vereker at the Bowlers' Club as planned and Mr McGurk was unexpectedly present. He said Mr McGurk played him segments of the recording however, except for the first segment which contained the voice of Ron Medich and Mr McGurk, he was unable to identify what was being said on the other segments of the recording because of their poor audio quality. Mr Richardson then gave the following evidence about his conversation with Mr McGurk concerning the recording:

*[Counsel Assisting]*

[Q]: *All right. I take it, well, you've given evidence that you indicated to Mr McGurk that you couldn't work out what was being said in the second part of the recording that was played to you. I take it Mr McGurk then proceeded to explain to you what he thought was on that portion of the recording?*

*[Mr Richardson]*

[A]: *---Yes. He assured me that it was Ron Medich saying that he had bribed Haddad and other government officials in the Department of Planning ---*

[Q]: *Right?*

[A]: *--- --- and by that stage I, to be frank I just thought it was a load of rubbish and it was probably ---*

[Q]: *Well, did you say to him, look ---?*

[A]: *--- --- a great tryon.*

[Q]: *Did you say queue it up again and demonstrate to me ---?*

[A]: *---He played it twice.*

[Q]: *So he did play it twice. And in either ---?*

[A]: *---When I say twice I don't want you to get the impression this was taking a long time. Like, this is twenty or thirty seconds, that's all you need you know you can't understand a word.*

[Q]: *Yeah?*

[A]: *---And, and he talked over it, he kept talking over it.*

[Q]: *And what was he saying when he was talking over it?*

[A]: *---Oh, you know, how big a story it was and what damage it was going to do.*

[Q]: *Damage to who did he say?*

[A]: *---The Labor government and Ron Medich.*

[Q]: *Yes. Right. And did you ask any questions about when he made the recording or where he made it, why he made it?*

[A]: *---No.*

[Q]: *Well, did he indicate to you what he wanted?*

[A]: *---I forget whether it was \$7 or \$8 million but it was of that ilk.*

[Q]: *Well, what was his words to the best of your recollection, what did he say?*

[A]: *---It's really hard to remember the exact words but ---*

[Q]: *Well, have a look at paragraph 7 of your statement?*

[A]: *---Yeah.*

*[The Commissioner]*

*[Q]: So he wanted, he wanted to Medich to pay him a sum of money to settle a litigation?*

*[A]: ---He wanted, he wanted \$7 or \$8 million. He said he was owed it by Medich - - - - - and Medich had failed to pay him and so he'd taken him to court and the case was coming up. I don't, you know, no idea when but the case was coming up and unless Medich paid him the money this tape would get released.*

66. Mr Richardson said he then left the meeting and never saw or spoke to Mr McGurk again. He said he told Ron Medich about Mr McGurk's threat to publish the recording. According to Mr Richardson, Ron Medich said, "let him publish it, I've done nothing wrong, I've said nothing like that so I don't care."

67. Mr Richardson denied the allegation that he had paid money to public officials on behalf of Ron Medich. He gave the following evidence:

*[Counsel Assisting]*

*[Q]: Have you ever made any payments to Sam Haddad on behalf of Ron Medich in connection with the applications to develop the former CSIRO site at Badgerys Creek?*

*[Mr Richardson]*

*[A]: ---No.*

*[Q]: All right. Have you made any payments to any other public official including a member of Parliament on behalf of Mr Ron Medich or Medich, or Roy Medich in connection with the applications to develop the former CSIRO site at Badgerys Creek?*

*[A]: ---No.*

68. A notice under section 21 of the ICAC Act was served on the Minister of the Crown identified by Mr Byrnes in relation to allegation 2. He was asked whether he had any discussions with Roy or Ron Medich or any persons acting on their behalf in relation to planning issues affecting their property at Badgerys Creek. He responded he had no recollection of any such discussions. He was asked whether he had received any payment of money, gift or other benefit from or on behalf of Ron or Roy Medich or associated companies. He responded that he had received two campaign donations totalling less than \$1,500 from Medich Property Group Pty Limited in 2002 and 2003. He was asked whether he had made any representations to any Minister of Planning or the Department of Planning in relation to planning issues affecting the Medichs' property at Badgerys Creek. He responded, "No".

69. Roy Medich told the Commission at a compulsory examination conducted on 22 January 2009 that he and Ron Medich, through their respective companies, jointly owned 340 hectares of land known as the former CSIRO site at Badgerys Creek. He said the Badgerys Creek Consortium which involved himself, Ron Medich and a number of adjoining land owners was formed for the purpose of applying to the Department of Planning for a Part 3A development of the land. He said he engaged Mr Richardson to provide advice about dealing with government in connection with his plans to rezone the land for employment purposes and to promote to government the case for having the land rezoned. Roy Medich said the Badgerys Creek Consortium also engaged senior consultants including Professor Sonja Lyneham to present a case to government. He said that he was not given any assurances from any person within or acting on behalf of the Department of Planning that the land at Badgerys Creek would be rezoned for employment purposes. He said, however, that the land had been earmarked in the late 1980's by government as being suitable for such development.

70. Roy Medich was questioned about the role played by Ron Medich in connection with attempts to rezone the Badgerys Creek land for employment purposes and he gave the following evidence:

*[Counsel Assisting]*

*[Q]: What role did your brother Ron play in progressing the plans to develop the land at Badgerys Creek?*

*[Roy Medich]:*

*[A]: --Very little..*

*[Q]: Well, what, well, describe the little he did?*

*[A]: ---Well, he'd occasionally come to a Badgerys Creek Consortium meeting but basically I was the representative on, on our behalves at the Badgerys Creek Consortium as the minutes will, will, will prove.*

*[Q]: But, look, did he provide any advice as to how to progress the matter before government?*

*[A]: ---No and I didn't seek any advice. Well, I mean, as I said, we were running separate organisations and I, I, I attended every meeting of the Badgerys Creek Consortium. He rarely came and rarely had any inputs as far as I'm concerned.*

*[Q]: Well, apart from occasionally or rarely attending the Badgerys Consortium meeting, did Ron have any other part to play in - ?*

*[A]: As far as I'm concerned, no.*

*[Q]: Well, as far as you're aware?*

*[A]: ---And that's as far as I'm aware.*

*[Q]: All right. Did Ron Medich ever tell you that he knew people within Planning?*

*[A]: ---No.*

*[Q]: That he had contacts with people inside Planning?*

*[A]: ---No, he did not.*

*[Q]: You had met Sam Haddad, the Director General of Planning?*

*[A]: ---Yes, I have.*

*[Q]: Did Ron ever attend any of the meetings you had with Mr Haddad?*

*[A]: ---No, he did not.*

*[Q]: Right. Did Ron ever tell you that he knew Mr Haddad?*

*[A]: ---No, he didn't tell me that.*

*[Q]: Do you know whether or not he did?*

*[A]: ---I don't believe he did.*

*[The Commissioner]*

[Q]: *Did he ever tell you that he was able to obtain favours from members of the government or in civil service by paying them money or doing them favours himself?*

[A]: *---No, Commissioner.*

[Q]: *Never?*

[A]: *---No and I wouldn't tolerate it even if he did but, but he did not, no ...*

[Q]: *And did you ever discuss, did he ever discuss with you whether this should be done, something like this should be done?*

[A]: *What do you mean?*

[Q]: *Bribing ministers or bribing Planning Department people?*

[A]: *---Absolutely not, Commissioner and he knows what my opinion of that would be anyway.*

71. Roy Medich said that Graham Richardson told him about the existence of the recording made by Mr McGurk in March 2009. He said he spoke to Ron Medich about the recording and Ron Medich said that Mr McGurk was making a lot of outlandish claims. Roy Medich said that he never heard Mr Richardson or Ron Medich mention any other recordings made by Mr McGurk. He said he was unaware of any person attempting to bribe any public official in connection with the land at Badgerys Creek.
72. The Commission obtained a statement from Adjunct Professor Sonja Lyneham, a planning expert engaged by the Badgerys Creek Consortium to project manage the joint venture's proposal to develop the land. Professor Lyneham stated, amongst other things, that at no time did any officer of the Department of Planning, the Minister for Planning or any of the Minister's staff give her any firm undertakings or assurances about the proposal.
73. Ron Medich told the Commission at a compulsory examination on 23 December 2009 that he had never met Mr Haddad or had dealings with officers from the Department of Planning. He said Mr Richardson met with Mr Haddad and other officials from the Department of Planning and reported to him about the progress of the rezoning application on around a dozen occasions. Ron Medich denied that Mr Richardson made payments to Mr Haddad or other public officials. He gave the following evidence:

*[Counsel Assisting]*

[Q]: *In those dozen or so occasions did Mr Richardson tell you about conversations he had had with Mr Haddad?*

*[Ron Medich]*

[A]: *---Yes. He told us, well, he was talking to the department up there. He was talking to other people in there. I didn't exactly discuss with him who he was talking to. But I know that he did speak to Sam Haddad, you know on - - -*

[Q]: *How do you know?*

[A]: *---Well, because he said he did.*

[Q]: *He told you that?*

[A]: *---Yeah.*

[Q]: *What did he say?*

- [A]: ---What did he say?
- [Q]: Yes. What did he say that Sam Haddad said?
- [A]: ---He just said it was proceeding. I don't mean the thing was proceeding, you're going to get it. He said they were all still working on it.
- [Q]: Was there ever any discussion with Mr Richardson about inducements to get something hurried up over Badgerys Creek?
- [A]: ---Definitely not.
- [Q]: Was there ever any discussion about payments of money to Mr Haddad?
- [A]: ---Definitely not.
- [Q]: Or any other officer in the department?
- [A]: ---Definitely not.

74. Mr Haddad and Frank Sartor, the former Minister for Planning were issued separate notices under section 21 of the ICAC Act requesting information in relation to the Medich owned land at Badgerys Creek. The following is a summary of information provided by Mr Haddad in response to the section 21 notice:
- i. Employment lands include areas for manufacturing, warehousing, construction and repairs; business and technology parks for higher-order jobs; and areas containing a mix of activities associated with transforming, storing, maintaining and repairing materials and goods.
  - ii. In March 2007, the Government released the 'Employment Lands for Sydney Action Plan', which included the identification of the Western Sydney Employment Lands Investigation Area (WSELIA) for investigation to provide future employment land. WSELIA spans approximately 10,500 hectares. The Medich land, comprising 340 hectares is included in WSELIA.
  - iii. The WSELIA has been identified in various planning strategies since the late 1980s for urban investigation or employment purposes in strategic plans for Sydney.
  - iv. The inclusion of lands in WSELIA has no immediate impact on the zoning of that land but does indicate an intention on the part of Government to investigate the area for the purposes of delivering medium and long term employment lands.
  - v. In August 2007, officers of the Department of Planning prepared a brief to the then Minister for Planning, Mr Sartor recommending listing the entire WSELIA including the Medich land as a potential State significant site.
  - vi. A State significant site is a development identified by the State Government as being of state or regional significance. The Minister for Infrastructure and Planning is the consent authority in respect of such developments. Prior to making a decision as to the State significance status of a site, the Minister may initiate an investigation by requiring the Director-General of Planning to undertake an assessment to determine the appropriate uses for the site.
  - vii. The August 2007 briefing note anticipated investigations by the Department of Planning would be completed by mid 2008. Mr Sartor signed the brief on 29 October 2007. The NSW Government allocated \$2 million to the Department of Planning to undertake the investigation of WSELIA. Technical and planning investigations were commenced by the Department of Planning in January 2008.

- viii. Key outcomes of the investigation (which the Commission notes was set out in a draft structure plan in early September 2008) included the identification of around 4000 hectares of land including the Medich and Badgerys Creek Consortium lands as suitable for employment related activities subject to meeting infrastructure and service arrangements.
- ix. Recommendations were made to Cabinet by the Department of Planning in July 2009 to rezone the entire WSELIA but to stage the release of land for employment uses over 30 years depending on the extent to which infrastructure and other relevant matters had been resolved. The Medich land was identified as being part of stage 3 as it required further assessment in relation to infrastructure requirements and other matters. (The Commission reviewed extensive documents provided by the Department of Planning. These documents indicated that the recommendation made to Cabinet in July 2009 underwent refinement by the Department of Planning from January 2009).
- x. Cabinet resolved not to rezone the entire WSELIA and only endorsed stage 1 and 2 for release. In the light of the infrastructure requirements for the stage 3 lands, Cabinet resolved to undertake further work on funding and delivery of essential infrastructure. The stage 3 lands, including the Medich land, were not rezoned.
- xi. Since 2006 a number of representations have been made on behalf of Ron and Roy Medich to the Department of Planning and Mr Haddad that their land be rezoned for employment use. Mr Haddad and the Department of Planning were *"broadly sympathetic"* to requests to rezone the land. Mr Haddad said that *"the Department commenced and provided in principle support to a process to look at the proponent's rezoning requests consistent with the broader strategic intent to plan for the supply of employment land."* He said, however, any land use decision affecting WSELIA required Government approval as it involved the delivery of infrastructure.
- xii. Mr Haddad and other officers of the Department of Planning have had a number of discussions, communications and meetings with Roy Medich and his representatives, including Graham Richardson, between 2006 and September 2009. Mr Haddad said he has only met with Roy Medich and has never met Ron Medich.
- xiii. According to Mr Haddad, he and Mr Sartor formed the view around mid 2008 that considering further requests to rezone the Medich land (or any other site specific rezoning requests) was neither appropriate nor possible without finalizing the investigation into WSELIA and setting parameters at the strategic level for infrastructure and servicing requirements.
- xiv. Mr Haddad stated, *"...to the best of my recollection and based on a search of the Department's records, there is no record of any Member of Parliament making any specific representations on the Medich properties..."*

75. The following is a summary of information provided by Mr Sartor in response to the section 21 notice:

- i. As a result of work done by the Employment Lands Task Force, a whole of government task force in 2006, gaps in the supply of employment lands were identified. WSELIA was identified as an area for further study. The Department of Planning proposed a study of the area in August 2007. Mr Sartor sought and obtained \$2 million to fund the study.
- ii. Since 2006 Mr Sartor has met with various representatives of the Medich's and the Badgerys Creek Consortium in relation to their applications to rezone their land.
- iii. According to Mr Sartor, at a meeting on 15 August 2007 at which Roy Medich and representatives of the Badgerys Creek Consortium were present, Mr Sartor advised those present that while rezoning of their land was *"theoretically possible, a condition precedent was to complete a strategic study of the broader area (WSELIA) and that only if this was positive could an application even be considered"*. Mr Sartor also advised those present *"that any decision to release such land would have to go to cabinet for approval."*

- iv. Mr Sartor said that he had “persistent reservations about allowing the Medich Badgerys Creek land to enter the development assessment process”. He said he wanted to see the outcome of the strategic study of WSELIA before he would further consider the rezoning of the Medich land.
  - v. Mr Sartor said he made known his views about the rezoning of the Medich land to Mr Haddad in May 2008 and Roy Medich at a meeting on 5 May 2008.
76. **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.
77. **The Source** - Ms McClymont told the Commission at a compulsory examination on 10 September 2009 that at the meeting that she and Ms Carson conducted with Mr McGurk on 29 July 2009, Mr McGurk alleged that Ron Medich provided the “wife” of the then mayor of a Sydney municipal council (name provided) with a “new car” in return for being “very helpful” with a large development that was before the council concerned.
78. **The Investigation** –The former mayor was interviewed by the Commission and denied doing anything to favour any development of land that involved Ron Medich. He also said he was not married during the period of the development. He denied that any female partner or any female associate of his received a car or any other valuable consideration from Ron Medich or anyone acting on his behalf.
79. The person who had been the partner of the former mayor during the relevant period was interviewed and denied receiving a car or any other valuable consideration from Ron Medich or anyone acting on his behalf.
80. The NSW RTA’s computer database was interrogated by the Commission to establish whether there had been a transfer of ownership of any vehicle from Ron Medich or any of his associated companies to any known female associate of the former mayor and to establish whether the former mayor’s female partner had taken ownership of a vehicle during the relevant period. These enquiries failed to disclose any transfer of the kind alleged or any acquisition of a new car by the female partner in the relevant period.
81. Mr Medich denied the allegation at his compulsory examination on 23 December 2009.
82. **Allegation 7** - That Ronald Medich made corrupt payments in order to obtain approval with respect to a development being undertaken by Mr Medich in the local council area referred to in allegation 5.
83. **The Source** - Mr Byrnes told the Commission at a compulsory examination on 17 September 2009 that Mr McGurk had told him that Ron Medich admitted making the corrupt payments the subject of allegation 7 during the course of their recorded conversation. He gave the following evidence:
- Okay, uhm, okay he said that he had a tape recording that was made in a conversation between himself and Mr Medich and in the tape, in a tape recording there was originally discussions with respect to a development he’d done in (the local council area) and how he had managed to get that approval which was a, a substantially larger building than it, than what would have ordinarily have been approved under the local planning guidelines, how he got that approved and his relationship with various people at the Council, um, and planning.”*
84. In a statement Mr Byrnes provided to NSW Police Force officers investigating the murder of Mr McGurk he said that Mr McGurk told him that Ron Medich had admitted paying bribes to get approval to develop the land during the recorded conversation.
85. **The Investigation** – The local council identified by Mr Byrnes was the consent authority in respect of a development undertaken by Ron Medich. The former mayor of the local council told the Commission that he recalled receiving some telephone calls from Ron Medich about his development application but there was nothing untoward about this contact. He denied doing anything to favour or influence the council’s decision about the application.
86. Mr Medich denied making any corrupt payment to any person with respect to the development concerned at a compulsory examination conducted before the Commission on 23 December 2009.

87. Commission officers reviewed those local council records relating to the development application which are still available and found no evidence which would give rise to any suspicion of misconduct by any person in relation to the approval of the development application.
88. **Allegation 6** - That a property developer and former local councillor arranged to have property rezoned to financially benefit a current Member of Parliament.
89. **The Source** - In her written statement to NSW Police dated 7 September 2009, Ms McClymont said that at the meeting conducted on 29 July 2009 with Mr McGurk, he suggested that a property developer and former local councillor (name supplied) had caused land to be rezoned on behalf of a Member of Parliament (name supplied) and that the Member of Parliament "*was set to make money out of it.*"
90. Ms McClymont told the Commission at a compulsory examination on 10 September 2009 that Mr McGurk had not provided any details about how the property developer and former local councillor had assisted the Member of Parliament. At a compulsory examination conducted on 21 January 2009 [sic] Ms McClymont said she was not able to provide any further information in relation to this allegation.
- 91. The Investigation** –The Commission conducted title searches, issued notices to the relevant local council, reviewed relevant documentation and issued a notice to the Member of Parliament under section 21 of the ICAC Act requiring provision of a statement of information.
92. Through undertaking title searches the Commission was able to identify property formerly owned by the property developer and former local councillor. The property is currently owned by another party.
93. Council records identified that the property was re-zoned in 1984 following determination of an application in December 1983. A search of the relevant local council's records revealed no record of the Member of Parliament in promoting, canvassing or lobbying for approval of the re-zoning or of the property developer and former local councillor canvassing or lobbying for approval of the re-zoning of the property.
94. Council records show that the relevant Local Environmental Plan zoned the land as "2(b1) Residential B1 (Tourist)" and "2(b2) Residential B2 (Tourist)". According to the zoning, development of tourist, recreational and residential development was allowed.
95. Title searches and Land Titles Office ("LTO") documents revealed no ownership interest by the Member of Parliament in the relevant property at any time.
96. The property developer and former local councillor was a director in a company (since deregistered) that lodged a development application in 1992 for a subdivision of 188 residential lots and construction of a golf course. The application received consent in 1992. Council records show that the property developer and former local councillor had no further financial interest in the development from August 1992.
97. Title searches indicated that on 4 May 1995 a caveat was registered on the title, by a company connected with the Member of Parliament, claiming an interest in the subject land as a result of the assignment of a mortgage to the company on 4 January 1995.
98. The Commission examined all applications made to the relevant local council in relation to the property during the period it was owned by the property developer and former local councillor. The Commission did not identify any irregularities in the applications or the way in which those applications were dealt with by the relevant local council. There was no evidence that the property developer and former local councillor improperly influenced the consideration of any of the applications. When the property developer and former local councillor first submitted a subdivision application in 1977 he was a member of the relevant local council. That application was deferred due to planning and environment issues. The next major application was made in 1984 by which time he was no longer a member of the relevant local council.
99. Council records show that on one occasion in 1992 the property developer and former local councillor wrote to the then mayor of the relevant local council requesting a development application lodged with respect to the property be dealt with urgently. Council records show the request was declined.

100. No applications have been made to the relevant local council since 1983 requesting any re-zoning of the property.
101. The Member of Parliament was served with a notice under section 21 of the ICAC Act requesting him to provide a statement of information as to whether he or any company in which he had an interest obtained or anticipated obtaining any money, gift or benefit in connection with the property owned by the property developer and former local councillor. He responded "No".
102. Council records also identified property owned by the Member of Parliament in the relevant area. One application was lodged with respect to the property in 2002. The application had not been determined as of 13 January 2010. A search by the relevant local council revealed no record of any involvement by the property developer and former local councillor in promoting, canvassing or lobbying for approval of the application.
103. **Allegation 8** - That Ronald Medich used his relationship with a Police Minister to ensure that the police would not commence criminal proceedings arising out of a positive breathalyser test.
104. **The Source** – In her statement to the NSW Police, Ms McClymont stated that at the meeting with Mr McGurk on 29 July 2009 he told her that Ron Medich had been arrested by the police for drink driving outside the Slip Inn in Sussex Street. She said he told her that Ron Medich was taken away in the back of a police wagon and was heard shouting at police, "Don't you know who I am? I know the Police Minister."
105. Mr Byrnes told the Commission at a compulsory examination on 17 September 2009, that Mr McGurk had told him that Ron Medich had engaged in corrupt conduct in relation to his positive breathalyser test. He gave the following evidence:
- ... Medich was consistently telling people that he was good friends with the Police Minister... McGurk was aware that Medich was very well connected and had the capacity and he said to me, words to the effect that, well he said to me that for instance, and that would probably be six maybe ten weeks ago that Mr Medich had a car accident after leaving a restaurant and being rather intoxicated and was, and two police officers pulled him over or attended and he had an abusive conversation with the police officers and he had said that he was friends with the Police Minister and that subsequently the matter seemed to have disappeared all together... McGurk had said that Medich had a very close relationship with the Police Minister and I don't know, and I can't put a name to that because I don't know which Police Minister it is or was... only that Medich had had a few problems and they'd been made to go away.*
106. Both Ms McClymont and Mr Byrnes said that Mr McGurk did not identify the Police Minister that was allegedly involved.
107. Mr Byrnes gave evidence at a compulsory examination on 29 January 2010 in which he no longer asserted any mention of or involvement by a police minister in the allegation.
108. **The Investigation** –Prior to receiving Mr Byrnes' evidence on 29 January 2010, Commission officers interrogated the NSW Police Computerised Operational Policing System (COPS) and established that on Friday 3 July 2009, Ron Medich had been arrested by police after returning a roadside breath alcohol reading of 0.05.
109. Mr Medich was taken to the Rocks Police Station where his breath alcohol content was retested 46 minutes later, according to NSW Police records, and found to be 0.035. Mr Medich was released from police custody without charge.
110. The arresting police were both interviewed by Commission officers as was the officer that conducted the second breath analysis test at the police station. Each officer denied that any person had attempted to influence them in relation to their dealings with Ron Medich. The officers did not recall Ron Medich mentioning, at any time, that he knew the Minister for Police.

111. At a compulsory examination conducted by the Commission on 23 December 2009 Ron Medich said he had no idea who the Police Minister was at the time of this incident and denied that any part of the allegation was true.
112. **Allegation 9** - That Ronald Medich used his relationship with a Police Minister to ensure that 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.
113. **The Source** – In his statement to the NSW Police, Mr Byrnes stated that Mr McGurk told him he had information about a fraudulent claim Ron Medich made on his wife’s car.
114. Mr Byrnes told the Commission during his compulsory examination on 17 September 2009, that Mr McGurk had told him that Ron Medich engaged in corrupt conduct in relation to an insurance claim involving his wife’s car. He gave the following evidence:
- ...McGurk had said that Medich had a very close relationship with the Police Minister and I don't know, and I can't put a name to that because I don't know which Police Minister it is or was...only that Medich had had a few problems and they'd been made to go away... There was an insurance job done on Odetta, Medich's car and apparently the insurance fraud investigators referred the matter (to the Police) and the insurance, the claim was on a Porsche I believe and the, and then it was fixed up, in so far as Medich they withdrew the claim...No Medich's withdrew the claim on the insurance policy and it was all, it was, the Police didn't proceed.*
115. Mr Byrnes was asked whether Mr McGurk had identified the Police Minister concerned. He said that Mr McGurk did not identify the Police Minister but told him, “*that he's fixed up several of his matters. He (McGurk) told me about that matter..*”
116. **The Investigation** –The Commission conducted a review of COPS to identify any record of a reported accident involving a vehicle owned by Odetta Medich, the wife of Ron Medich, and any subsequent investigation.
117. The only relevant information recorded on COPS described an accident occurring at about 4:30 am on 26 March 2006, in the Eastern suburbs involving a Porsche motor vehicle owned by Mrs Medich. The attending police officer was interviewed and stated that Mrs Medich’s vehicle was one of three that had been stationary and unattended when struck by an unidentified vehicle. There were no witnesses to the incident.
118. The COPS database did not reveal any record of an insurance investigation arising from the incident and the attending police officer was not aware of any such investigation having occurred.
119. Further enquiries conducted by the Commission revealed that the Porsche had been insured at the time of the collision for \$135,000 through MB Insurance Group Ltd.
120. The National Claims Manager for MB Insurance Group Ltd told the Commission that on 5 April 2006 a claim had been lodged in relation to the damage to the Porsche. The damage to the vehicle was then estimated at \$29,211.89. He said that on 10 April 2006, approval was given by the insurer to effect repairs to the vehicle. The vehicle was eventually repaired at a total cost of \$54,726.76. He said that this increase in repair costs was not unusual in respect of expensive vehicles and that the company had not been concerned by the cost increase. The insurer paid the monies directly to the vehicle repairer. He said that there was no suspicion of fraud in respect of the claim or any police involvement.
121. On 23 December 2009, Ron Medich gave evidence at a compulsory examination and denied that any part of the allegation was true.
122. **Allegation 10** - That Ronald Medich used his relationship with a Police Minister to ensure that 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.

123. **The Source** – Mr Byrnes told the Commission at a compulsory examination on 17 September 2009 that Mr McGurk had told him that Ron Medich had made a fraudulent claim on a racehorse. Mr Byrnes attributed the following words to Mr McGurk:
- McGurk had said that Medich had a very close relationship with the Police Minister and I don't know, and I can't put a name to that because I don't know which Police Minister it is or was...only that Medich had had a few problems and they'd been made to go away...he told me about, a, apparently a race horse that had been killed for a very large insurance pay out which was paid out...*
124. When Mr Byrnes was asked whether Mr McGurk had told him the manner in which the Police Minister may have been involved in fraudulent claim, he said, “*Well, apparently it was being investigated and then it was no longer being investigated.*” Mr Byrnes stated that Mr McGurk did not identify the Police Minister that was allegedly involved.
125. **The Investigation** – Commission officers conducted enquiries with Racing NSW to identify all racehorses that had been registered by Ron Medich, his wife or any associated companies or entities. Commission officers then conducted inquiries with racehorse trainers, bloodstock agents and stud farm managers about each of the racehorses identified by Racing NSW as having some connection with Ron Medich. These inquiries established that of the racehorses registered by Ron Medich only one was dead, namely Prince Zeditave. According to the Melbourne based Bloodstock Agent who received the horse it was in poor condition. He said he caused it be humanely destroyed by a veterinarian.
126. Enquiries were conducted with nine insurance companies that are reputed to control most of the horse racing insurance business in Australia and New Zealand. None of those insurers had any record of Ron Medich ever being a client or having ever lodged an insurance claim.
127. Ron Medich gave evidence at a compulsory examination conducted by the Commission on 23 December 2009. He stated that he had only ever insured one racehorse, namely Cheeky Choice, and that he had never lodged any insurance claim in respect of a race horse. Ron Medich stated that Cheeky Choice was still alive. He denied that any part of the allegation was true.
128. **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 over particular premises.
129. **The Source** - During his evidence to the Commission at compulsory examinations on 17 September 2009 and 1 December 2009, Mr Byrnes said that he and W1 (name supplied) were acting as middlemen in the sale of property to W2 (name supplied). Mr Byrnes said that the NSW Police Force was a tenant of part of the property at the time W2 agreed to purchase the property. He said that W2 intended to rely on the rental income generated from the NSW Police Force tenancy to help repay the money he (W2) was required to borrow to finance the purchase of the property. However, Mr Byrnes said that NSW Police Force terminated its tenancy shortly after W2 agreed to purchase the property which had an adverse impact on W2's ability to secure a loan to complete the purchase of the property. Mr Byrnes said W2 was unable to raise the necessary funds to purchase the property and the sale did not proceed.
130. Mr Byrnes alleged that W1 and W2 told him that the relative (name supplied) of a NSW Member of Parliament had told them that he could arrange for the Member of Parliament (name supplied) to use his influence to cause NSW Police to renew their lease over the premises. Mr Byrnes also said he met with W2 and the relative of the Member of Parliament at a cafe in Sydney. Mr Byrnes alleged that during the meeting the relative of the Member of Parliament told him that if W2 “*buys the premises, I can get the police to go back in*”. Mr Byrnes said that he understood that the relative of the Member of Parliament, by making this remark, was intending to represent that he could call upon the Member of Parliament to influence NSW Police to change its decision to terminate the rental arrangement.
131. **The Investigation** -The Commission received evidence from W1, W2 and the relative of the Member of Parliament at compulsory examinations and issued a notice to the Member of Parliament under section 21 of the ICAC Act requiring him to provide a statement of information. Emmanuel Varipatis, General Manager, Police Property Services Group provided a statement to the Commission dated 8 December 2009. The Commission also interviewed John Madden and Chris Shead of United Services Group, a private entity engaged by NSW Police to manage its rental of the property concerned.

132. W1 told the Commission at a compulsory examination on 3 December 2009 that W2 was a friend of the relative of the Member of Parliament and introduced him to the relative. He said that at the meeting he spoke to the relative of the Member of Parliament about the adverse impact of the decision of NSW Police not to continue as tenants. He said, however, that the relative of the Member of Parliament made no mention about taking any action to cause NSW Police to alter its decision about terminating the tenancy arrangement. W1 denied that he told Mr Byrnes that the relative had represented to him that he could arrange for the Member of Parliament to influence NSW Police to continue as tenants. W1 gave the following evidence:

*[Counsel Assisting]*

*[Q]: Mr Byrnes says that during these conversations that you and he had at the coffee shop you would tell him about the conversations you had with the [relative of the Member of Parliament], in which he indicated that he would attempt to influence the decisions of the police, favourably influence the police to execute the lease?*

*[W1]:*

*[A]: Byrne, Byrne says...*

*[Q]: Is that, did you have such conversations with Mr Byrnes?*

*[A]: No, definitely not.*

133. W1 also denied having any conversation with W2 about the possibility of asking the relative to arrange for the Member of Parliament to influence NSW Police in a way favourable to W2.

134. W2 told the Commission at a compulsory examination on 11 December 2009 that he had no recollection of attending any meeting involving Mr Byrnes and the relative of the Member of Parliament. He said the relative refused to meet with Mr Byrnes. W2 said that when he told the relative of the Member of Parliament of the decision of NSW Police not to continue as tenants he (the relative) told him "he would make some inquiries". W2 said, however, that he understood this to mean that the relative would make inquiries with United Services Group, the private entity managing the rental arrangement on behalf of NSW Police.

135. The relative of the Member of Parliament told the Commission at a compulsory examination on 11 December 2009 that he was an acquaintance of W2. He said he became aware that W2 was attempting to purchase the property concerned. He said W2 did not tell him that NSW Police were renting the property or that the decision of NSW Police to discontinue as tenants adversely impacted on his ability to obtain a loan to purchase the property. The relative gave the following evidence:

*[Counsel Assisting]*

*[Q]: In any event, did W2 come to you at some point in time later and indicate to you that he was frustrated about the fact that the police had withdrawn as tenants from the property?*

*[The relative]:*

*[A]: No, he did not.*

*[Q]: He never reported to you that the police were no longer going to rent the property that he was interested in purchasing?*

*[A]: I was, I was not aware that the police were in the property.*

....

[Q]: *And it is your evidence, I take it, that [W2] never said to you that the police were not taking it up or were withdrawing as tenants?*

[A]: *No, he never mentioned, he never mentioned to me the, he never mentioned to me the fact that there was police in there or they weren't in there.*

[Q]: *I take it from that answer that he never sought your assistance in getting the police to go back into, into the property as tenants?*

[A]: *Certainly not.*

[Q]: *And W1, did he ever seek your assistance in that regard?*

[A]: *No, he certainly did not.*

136. The relative told the Commission that W2 introduced him to Mr Byrnes at a cafe. He said this was the only occasion he has ever met Mr Byrnes. The relative said that he did not discuss the property concerned with Mr Byrnes during the meeting:

*[Counsel Assisting]*

[Q]: *Mr Byrnes alleges that at such a meeting as you've described at a coffee shop with [W2] you said these words, "If [W2] buys the premises", and the premises is a reference to the [property concerned], "I can get the police to go back in." This is what you've alleged to have said?*

[A]: *That is a lie, sir.*

....

[Q]: *Did you represent to anyone that you could help get the police to go back as tenants of this property?*

[A]: *That is, that is a fabrication.*

[Q]: *Did you ever to speak to [your relative] about W2's?*

[A]: *Never.*

[Q]: *...attempt to purchase the property?*

[A]: *I, I've never spoken to my [relative] about the property, [W2], Mr Byrnes or anyone else.*

137. The Member of Parliament was served with a notice under section 21 of the ICAC Act requiring him to provide a statement of information as to whether he had engaged in any discussions with any persons concerning the decision of NSW Police not to execute a lease agreement in relation to the property concerned. He responded "No".
138. Emmanuel Varipatis, General Manager, Police Property Services Group provided a statement to the Commission dated 8 December 2009. He said that NSW Police rented premises on the property concerned from 2006. He said the rental was managed on behalf of the NSW Police Force by United Group Services. Mr Varipatis told the Commission that around the time W2 agreed to purchase the property the NSW Police Force had expressed an intention of continuing its rental of the premises by executing a formal lease. However, he said that the NSW Police Force decided not to execute the lease. He said that United Group Services [*sic*] did not have any authority to enter into any lease on behalf of the NSW Police Force without their approval and that such approval would come through him. Mr Varipatis said he had not been approached by the Member of Parliament or any other person and asked to execute a formal lease after the NSW Police Force terminated its rental arrangement. He said, however,

that he received a telephone call from Mr Byrnes in January 2009, during which Mr Brynes complained to him about the decision of the NSW Police Force to terminate the rental arrangement.

139. The Commission interviewed John Madden and Chris Shead of United Services Group. They also said that they had not been approached by the Member of Parliament or any other person and asked to influence the NSW Police Force to execute a formal lease after it had terminated the rental arrangement. However, they reviewed their records and said that according to a file note, Mr Byrnes contacted Mark Slater, an employee of United Service [*sic*] Group and suggested to him that the NSW Police Force were bound by their expression of intent to execute a lease in respect of the property concerned.
140. **Allegations 3 & 12** -That in March 2006 Mr McGurk, at the direction of Ron Medich, offered a Member of Parliament a corrupt payment as a reward for persuading Mr Haddad to recommend the rezoning of land owned by Ron Medich Properties Pty Limited and Roy Medich Properties Pty Limited and known as the former CSIRO site at Badgerys Creek (**Allegation 3**).
141. 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 (**Allegation 12**).
142. **The Source** -The source of both allegations is a current correctional centre inmate (Z) who is serving sentences for fraud related matters.
143. In a letter to the Police Integrity Commission dated 5 September 2009, Z claimed that he had been “...a friend and colleague of long standing of the late Mr McGurk.” He claimed that Mr McGurk had made tape recordings of conversations in 2006 and 2007 with “officers” of a NSW law enforcement agency (name of agency provided), “Members of Parliament” (names not provided) and “business colleagues” (names not provided). Z claimed to have listened to “...the tape recordings which were made on 3 separate cassette tapes on several occasions and am fully aware of their contents.” He further claimed that “in respect of taped recordings made by Mr McGurk, which I have heard, I have no doubt that should their content be made known, the State Government of NSW would be unlikely to be able to continue...” Z requested “...satisfactory arrangements be reached concerning my release from prison, quashing of convictions and payment of substantial compensation *inter alia*.”
144. Z telephoned the Commission at about 9:30am on 16 September 2009 to discuss other matters he had previously raised with the Commission primarily concerning his treatment in the corrections system. He was asked about his knowledge of corruption involving Mr McGurk. He claimed to have listened to tapes made by Mr McGurk but refused to provide further details unless the Commission agreed to assist with his problems.
145. In accordance with a decision previously made by the Commission, a Commission officer attended the correctional centre housing Z later on the morning of 16 September 2009. When questioned about the information he could provide he diverted the conversation to his own requirements being met before he would provide further information. These requirements included his conviction being reviewed and compensation being provided to him. He refused to provide any further information in relation to the allegations he had made in his letter of 5 September 2009.
146. Consideration was given to summoning Z to a compulsory examination however this was not done immediately as it appeared likely that any tape recordings of conversations made by Mr McGurk of which Z had knowledge were likely to have been illegally recorded and accordingly there were legislative restrictions on what evidence the Commission could obtain with respect to such recordings and what use the Commission could make of such evidence. Given similar problems with any use that could be made of the audio recording that is the source for Allegation 1 it was decided to seek legislative amendment to remove any doubt about the Commission’s ability to obtain information about and make use of any illegally recorded conversations made by Mr McGurk.
147. The ICAC Act was relevantly amended in late November 2009.

148. Z gave evidence in a compulsory examination on 22 December 2009. During the course of his evidence he told the Commission that:
- A. Mr McGurk secretly recorded a number of conversations.
  - B. Z made handwritten transcriptions of seven such conversations after he and his wife had dinner with Mr McGurk at the Bowlers' Club on York Street, Sydney on or about 1 June 2007. Z said he made the transcripts at Mr McGurk's request.
  - C. The alleged conversations were as follows:
    - i. A conversation in December 2004 between Mr McGurk and an officer (name provided) of a NSW law enforcement agency (name provided). This concerned the officer providing Mr McGurk with narcotics valued at \$200,000 held by the agency which Mr McGurk would sell. In return the officer was to receive \$100,000 from the sale proceeds, \$50,000 was to be paid to the NSW Government Minister responsible for the agency, and \$25,000 was to be paid to two police officers (names provided). Mr McGurk would keep \$25,000 for himself. It should be noted that although in his letter of 5 September 2009 to the PIC he had referred to Mr McGurk recording conversations with (unnamed) "officers" of this law enforcement agency, at his compulsory examination he only mentioned one officer.
    - ii. A conversation in October 2005 between Mr McGurk and a NSW Government Minister (name provided). This related to an arrangement instigated by the Minister whereby the Minister would arrange for his department to enter into contracts for the supply of goods in return for which Mr McGurk would arrange for the suppliers to pay the Minister ten percent of the value of the contracts.
    - iii. A conversation in February 2006 between Mr McGurk and a former judge of the NSW Supreme Court (name provided). The former Supreme Court judge agreed to make representations to the Supreme Court to ensure the appointment of a judge to determine a commercial litigation matter in which Mr McGurk was a party in a manner favourable to Mr McGurk. In return the former judge of the NSW Supreme Court agreed to receive a payment of \$1m from Mr McGurk.
    - iv. Another conversation between Mr McGurk and the officer referred to in (i) above in March 2006. The officer discussed supplying Mr McGurk with a large quantity of a precursor chemical necessary to manufacture amphetamines that was to be obtained from persons overseas for Mr McGurk to sell.
    - v. A conversation in March 2006 between Mr McGurk and another NSW Government Minister (name provided) in which the NSW Government Minister agreed to make representations to the Department of Planning and Mr Sam Haddad to effect the rezoning of land owned by Mr Ron Medich at Badgery's Creek in return for which the NSW Government Minister would receive a payment from Mr Ron Medich of \$800,000 once the rezoning was approved. The NSW Government Minister indicated he did not wish to continue to deal with Mr McGurk and nominated another person to act as intermediary.
    - vi. A conversation in March 2007 between Mr McGurk and Mr Ron Medich in which the payment to the NSW Government Minister referred to in (v) above was discussed, Mr McGurk discussed getting a substantial commission if the rezoning went ahead and Mr Ron Medich told Mr McGurk that he did not want Mr McGurk to continue to act as his intermediary with the NSW Government Minister and that another person would act as his intermediary with the NSW Government Minister.

- vii. A conversation in about April 2007 between Mr McGurk and a NSW Member of Parliament (name supplied) who Z wrongly believed was a Government Minister. Mr McGurk asked the Member of Parliament to make representations to senior members of the NSW Police Force (names not provided) to have drug charges against a third person either withdrawn or “no billed”. No mention of payment was made.
- D. Z kept the transcripts he made of the conversations. He distributed copies of the transcripts in the following manner:
- i. One copy was included in the papers and other property he took with him to the correctional centre. The transcripts are no longer with his property. NSW police executed a search warrant on his property at the correctional centre. Z did not know if the police seized the transcripts.
  - ii. One copy was left at his family home. The transcripts can no longer be located. NSW police executed a search warrant on these premises. Z did not know if the police seized the transcripts.
  - iii. One copy was left at another nominated property.
- E. Mr McGurk made copies of the tape recording using a duplicating machine stored at his home at Cremorne. Mr McGurk distributed copies of three tapes recording the seven conversations in the following manner:
- i. One set was kept at Mr McGurk’s Cremorne home.
  - ii. One set was kept at Mr McGurk’s York Street office.
  - iii. One set was given to Z who, on Mr McGurk’s instructions, took it to an address in Mosman owned by Mr McGurk’s colleague (name provided) and gave it to one of the two people residing at that address (names provided).
  - iv. One set was obtained by Z who deposited it at his family home. This set of tapes can no longer be located.
  - v. One set was given to another colleague of Mr McGurk (name provided).
  - vi. One set was given to another colleague of Mr McGurk (name provided).
149. **The Investigation** - On 20 June 2007 Z was sentenced to a period of imprisonment of 4 years, 11 months and 30 days (with a non-parole period of 2 years, 11 months and 30 days) with respect to four offences of use false instrument and one offence of obtain financial advantage by deception. He was subsequently convicted and sentenced on another fraud related matter.
150. In 2003 Z was convicted of breaches of the *Legal Profession Act 1987* for falsely holding himself out as a solicitor.
151. Z gave evidence in the NSW Supreme Court in a matter concerning a dispute. The presiding judge found that Z was not a credible witness. He found that Z was “...a witness who stands completely discredited. As best I can judge the position, he was prepared to say whatever he thought would advance” his case. The presiding judge found that it was more likely than not that Z had fabricated a document in support of his case.
152. Given the lack of credibility of Z the Commission decided that it could not place any reliance on his evidence unless it was independently corroborated. The most effective means of obtaining corroboration was to locate the tapes and transcripts referred to by Z. Despite extensive enquiries, the Commission did not find any of the tapes or transcripts. The steps taken by the Commission to obtain the tapes and transcripts from the sources identified by Z in his evidence are set out below (using the numbered references referred to above).

153. Evidence was taken from Ms Carson at a compulsory examination conducted on 21 January 2010. She stated that she had interviewed Z whilst he was in custody. Ms Carson said that he provided her with a copy of the letter that he sent to the PIC on 5 September 2009. Ms Carson stated that Z told her that he knew Mr McGurk had given copies of the recordings to an associate (name supplied). She said that Z also told her that he had retained a copy of the recordings in a safe place but did not divulge where that place may be. Ms Carson said that between November and December 2009 Z repeatedly “promised” her that he would provide her with a copy of the recordings; however, he never did so. Ms Carson said that Z sent her two letters from custody which she produced to the Commission.

## The Transcripts

- (i) *One copy was included in the papers and other property he took with him to the correctional centre. The transcripts are no longer with his property. NSW police executed a search warrant on his property at the correctional centre. Z did not know if the police seized the transcripts.*
154. Department of Corrective Services (DCS) records obtained by the Commission of Z’s property do not identify any transcripts but do refer to “70 pages” of documents and “legal documents”. The current property belonging to Z and held by DCS has been examined by Commission officers including the items currently located in Z’s cell. There are no transcripts of the kind described by Z in that property. DCS records show that on 12 September 2009 Z made a complaint to a DCS officer that handwritten transcription notes relating to audio cassette tapes of Michael McGurk were missing from his property. The DCS officer told a Commission officer that Z complained to her that sometime after he made a telephone call to ICAC from custody a number of legal papers and/or tapes went missing from his cell and that these items contained “damning” evidence relating to Mr McGurk’s murder.
155. Enquiries conducted with the NSW Police Force revealed that on 27 August 2007, a search warrant was executed on Z’s property whilst he was in the custody of DCS. It is apparent that the purpose of the search was to obtain samples of Z’s handwriting that could be used in the forensic examination of questioned documents. This was connected with the investigation being conducted by members of the NSW Police Force into Z’s alleged involvement in serious fraud related offences. Copies of the documents that were seized by members of the NSW Police Force were obtained by the Commission. There are no transcripts of the kind described by Z or any other document relevant to the Commission’s investigation.
- (ii) *One copy was left at his family home. The transcripts can no longer be located. NSW police executed a search warrant on these premises. Z did not know if the police seized the transcripts.*
156. The Commission confirmed that on 13 September 2007 members of the NSW Police Force executed a search warrant on the premises. Z was not present. However, Z’s ex partner was present during the search. The records of the items seized by the police during that search were obtained by way of a notice to produce documents addressed to the NSW Police Force pursuant to section 22 of the ICAC Act. The records did not contain any reference to the seizure of transcripts. Detective Senior Constable Orth, the police officer in charge of the police search stated to the Commission that he did not see any transcripts during the search and looked for such items as they were of interest to his investigation. Commission officers physically reviewed the property held by the NSW Police Force as a result of its search of the premises. No items relevant to the Commission’s investigation were located.
157. The Commission also executed a search warrant at these premises on 23 December 2009. There were no transcripts found on the premises. The occupant of the house, Z’s ex partner, was interviewed by Commission officers and said that Z told her that he worked for Mr McGurk. Z’s ex partner said she was having dinner with Z at the Bowlers Club at York Street, Sydney in early 2007. She said that a man that looked like Mr McGurk came into the restaurant and he and Z sat at a separate table to discuss business. She said that after around 30 minutes Z returned to her table and told her that he had to leave as he was required to do some “letter writing for him.” She said Z did not say anything about transcribing any tapes. Z’s ex partner stated that she visited Z in gaol just after Fathers Day of 2009 (6 September 2009). She said that Z asked her whether she recalled the day at the “Bowling Club” when Mr McGurk “had those tapes.” She said she had no recollection of seeing Mr McGurk with any tapes on that day and felt that Z

was trying to “*put me in a situation where I saw something*”. Z’s ex partner said she had no knowledge of the existence of any written transcripts or tapes of the kind referred to by Z.

*(iii) One copy was left at another nominated property.*

158. The Commission executed a search warrant at these premises on 23 December 2009. There were no transcripts located. The occupant of the house, a former female friend of Z’s, provided a statement to the Commission. She said that Z moved some of his belongings to her place. However, she said she gathered them together and gave them to a friend of Z when their relationship came to an end. Z told the Commission that he kept the transcripts in a filing cabinet in a room that adjoins the lounge room. Z’s former female friend said there is no filing cabinet in the room adjoining the lounge room. She said property has never been stolen from her house and no one has called around and asked for Z’s property.
159. Z’s ex partner told the Commission that the friend of Z referred to in the preceding paragraph received a telephone call to collect Z’s belongings from Z’s female friend’s house. She said he brought Z’s belongings to her house where they have remained undisturbed ever since. Commission officers searched through this property on 23 December 2009 and did not find any transcripts.

## The Tapes

*(i) One set was kept at Mr McGurk’s Cremorne home.*

160. Members of the NSW Police Force investigating the murder of Mr McGurk searched his home at Cremorne shortly after his death and removed anything that could potentially be of relevance to its enquiry. This included documents, electronic storage devices, mobile telephones and computers. All of the documents taken by the police were converted to digital files and together with the computer based data were stored on computer hard disc drives. The NSW Police Force was issued with a notice to produce these digital files pursuant to section 22 of the ICAC Act. Copies of those computer based records were provided to the Commission by the NSW Police Force. Those records were interrogated by Commission officers and no documents or recordings of the kind described by Z were located.
161. Mrs McGurk told the Commission at a compulsory examination on 27 January 2010 that she and her husband may have kept a cassette tape duplicating machine at their family home over 7 years ago. She said, however, that she did not recall seeing her husband use such a machine. Mrs McGurk said she was usually at home and had her husband duplicated cassette tapes at home it is likely she would have known about it. Mrs McGurk said her husband told her about his business associates and their dealings in very general terms. She said she had no recollection of her husband mentioning Z. Mrs McGurk said she was unaware of her husband possessing cassette tapes he regarded as important and requiring protection.

*(ii) One set was kept at Mr McGurk’s York Street office.*

162. Members of the NSW Police Force investigating the murder of Mr McGurk searched Mr McGurk’s office at York Street, Sydney shortly after his death and removed anything that could potentially be of relevance to its enquiry. This included documents, electronic storage devices, mobile telephones and computers. All of the documents taken by the police were converted to digital files and together with the computer based data were stored on computer hard disc drives. The NSW Police Force was issued with a notice to produce these digital files pursuant to section 22 of the ICAC Act. Copies of those computer based records were provided to the Commission by the NSW Police Force. Those records were interrogated by Commission officers and no documents or recordings of the kind described by Z were located.

*(iii) One set was given to Z who, on Mr McGurk’s instructions, took it to an address in Mosman owned by Mr McGurk’s colleague (name provided) and gave it to one of the two people residing at that address (names provided).*

163. Mr McGurk’s colleague was spoken to by Commission officers. He said that he had no knowledge of any tape recordings involving or made by Mr McGurk. He said he knew the two people who resided at the

premises at Mosman and they had stayed there for a couple of months in 2007 before moving to live at an address in Cremorne (known to the Commission). He said he does not know Z.

164. Enquires conducted by the Commission revealed that the two men who resided at the premises at Mosman are foreign nationals and no longer reside at that address. One of the men now resides interstate. He was interviewed by a Commission officer and confirmed that he had lived at the address in Cremorne with his friend (known to the Commission). He said that he did some building work and odd jobs for Mr McGurk. He denied having any knowledge of the recordings and stated that he was never asked by Mr McGurk to retain any recordings and, to his knowledge, neither was his friend. He said he moved interstate in 2007 and had no further contact with Mr McGurk. He said his friend has returned to his native country where he now resides.
165. Enquiries conducted by the Commission with the Department of Immigration and Citizenship revealed that the other person who had resided at the premises at Mosman to whom Z claimed he had given the tapes left Australia on 15 July 2007 and has not returned. This person has not been interviewed.

*(iv) One set was obtained by Z who deposited it at his family home. This set of tapes can no longer be located.*
166. The Commission confirmed that on 13 September 2007 members of the NSW Police Force executed a search warrant on the premises. The records of the items seized by the police during that search were obtained by way of a notice to produce documents addressed to the NSW Police Force pursuant to section 22 of the ICAC Act. The records did not contain any reference to the seizure of tapes. Detective Senior Constable Orth, the police officer in charge of the police search stated to the Commission that he did not see any tapes during the search. Commission officers physically reviewed the property held by the NSW Police Force as a result of its search of the premises. No items of evidentiary value were located.
167. The Commission also executed a search warrant at these premises. There were no audio recordings found on the property of the kind described by Z.

*(v) One set to another McGurk colleague (name provided).*
168. The Commission located Mr McGurk's colleague. He is currently in Queensland. He told the Commission that that he knew Mr McGurk for about 14 years and they had been business partners; however, their relationship had soured and he had not had any dealings with Mr McGurk for about four years. He said that they did not part on the best of terms. He said he has never been provided with any tapes or transcripts.

*(vi) One set to another McGurk colleague (name provided).*
169. Enquiries with the Department of Immigration and Citizenship have revealed that this person identified by Z departed Australia on 16 May 2008 and has not returned. It has not been possible to contact him.
170. Z told the Commission at his compulsory examination that while he was not Mr McGurk's employee he provided administrative assistance to him from 2001 to 2007. To check this claim the Commission analysed the 2TB of data obtained by the NSW Police Force in the course of investigating Mr McGurk's murder for any records evidencing an association between Z and Mr McGurk or associated companies. No such records were found.
171. Z alleged that Mr McGurk recorded a conversation in February 2006 with a former judge of the NSW Supreme Court during which the former judge agreed to take steps to influence the appointment of a judge to particular civil proceedings involving Mr McGurk and produce an outcome to the proceedings which was favourable to Mr McGurk (see paragraph 146 C (iii)). The former judicial officer identified by Z was not a judge of the Supreme Court in February 2006 and was not in a position to influence or make representations concerning the listing of matters before judicial officers.

172. The Commission interviewed a senior officer of the suppliers identified by Z in relation to the second of the conversations allegedly recorded by Mr McGurk in October 2005 (see paragraph 146 C (ii)). He said that a review of business records do not reveal any contact with Mr McGurk.
173. Z told the Commission during his compulsory examination that he had sent correspondence to a Member of Parliament (known to the Commission) in which he had raised the allegations of serious corruption involving politicians and senior public officials about which he was giving evidence before the Commission. He produced a copy of the correspondence dated 19 March 2006 addressed to the Member of Parliament which contained reference to the secret recordings allegedly made by Mr McGurk.
174. The Member of Parliament was interviewed and shown a copy of the letter that Z claimed he had sent. The Member of Parliament stated, *“I have read the letter and to the best of my recollection I have not previously received or read the letter nor have I previously been told by any of my Electorate Office staff members about such a letter.”*
175. In response to a Commission request, the Member of Parliament caused all electronic and hard copy records held at the electorate office to be reviewed. No hardcopy or electronic records relating to the letter were located. However, one record suggested that Z may have telephoned the electorate office on 14 November 2005 in relation to a *“judicial complaint”*.
176. The letter Z purported to have sent to the Member of Parliament contained a reference to his attendance at the Member of Parliament’s electorate office. A staffer of the Member of Parliament advised the Commission that he had checked all hard copy files, *“Electrac”* files, a folder kept in the office containing correspondence relating to *“Legal Issues”* and also performed a *“word search”* for the Z’s surname in all electronic records stored at the office. No records pertaining to Z were able to be located. The Member of Parliament said the following:
- I believe if allegations of the nature of those contained in the letter were made to any member of staff there would have been file notes and computer records generated.... To the best of my recollection, I have never met the author of the letter. Given the content of his letter I believe I would recall having received the letter or discussing the contents of it with him. I would have also referred his allegations to the appropriate body.*
177. Z gave evidence at a compulsory examination on 29 January 2010 and said he did not resile from the allegations he had made at his previous examination. He said he had no further information that could assist any investigation of his allegations by the Commission.
178. **Allegation 13** - That Ronald Medich made corrupt payments to a former Minister for Planning to assist with a planning matter.
179. **The Source** - The source of this allegation is Y, a businessman who had some dealings with Mr McGurk and Ron Medich.
180. The Commission identified Y as the source of this allegation from information provided to the Commission by Ms McClymont.
181. Ms McClymont told the Commission at a compulsory examination on 8 September 2009 that prior to meeting with Mr McGurk on 29 July 2009 she had been told by a number of people including X, a relative of Y, that Mr McGurk possessed a tape recording which contained damaging material that related to the former Minister for Planning (name supplied). Ms McClymont said that she understood that X had been told about the recording by his relative, Y. Ms McClymont said she questioned Mr McGurk about the recording at their meeting on 29 July 2009. She gave the following evidence:

*[Counsel Assisting]*

[Q]: *Ah hmm. And when you were speaking to Mr McGurk, you told him that you heard that (the former Planning Minister) was mentioned on the tapes. What was Mr McGurk's response to that?*

*[Ms McClymont]*

[A]: *---He was non-committal.*

[Q]: *And did you pursue that with him at all?*

[A]: *---Of course.*

[Q]: *And what was the result of that?*

[A]: *---Not much joy.*

[Q]: *By not much joy do you mean, what he didn't, he just didn't comment on it?*

[A]: *---He just, he was reluctant, he kept saying, look, you know, there'll be a time. You will get the tapes. But it's, you know, at the moment it's not quite right. But he, what he then did was said, but these are the avenues you should be looking at.*

182. X told Commission investigators he had never met Mr McGurk or heard the recording that had been reported in the media.
183. Y was interviewed by Commission investigators on 29 October 2009. He said that he first heard that Mr McGurk had made a recording of a conversation with Ron Medich in April or May 2009 and "that everyone in the Eastern Suburbs was talking about it." He said he had never heard the recording.
184. Y told Commission investigators that he had heard that Ron Medich had paid the former Planning Minister (name supplied) around \$15,000 on two separate occasions and that the payments had occurred at Ron Medich's house. Y suggested that the payments may have related to land dealings. Y told the investigators he was unsure about the source of the allegation. He suggested, however, that information regarding the former Planning Minister was on the recording made by Mr McGurk. Y said he was unable to recall who had provided him with this information.
185. **The Investigation** - The Commission received evidence from Y and Ron Medich at compulsory examinations and interviewed the former Planning Minister about the allegation.
186. Y told the Commission at a compulsory examination on 21 December 2009 that he first heard about the recording made by Mr McGurk from a business associate in or around July 2009. He said the business associate told him that he had heard that Roy Medich and Graham Richardson had listened to the recording and it did not contain anything about which to be concerned. Y said several people knew about the recording. He said he spoke to Mr McGurk about the recording during a telephone conversation conducted shortly before his death. He gave the following evidence about his discussion with Mr McGurk:

*[Counsel Assisting]*

[Q]: *Yes. So what did Mr McGurk tell you over the phone about the recording? What did he say?*

*[Witness Y]*

[A]: *---No, I actually asked him.*

[Q]: *Right?*

[A]: *---I wanted to know what it was.*

[Q]: *Right?*

[A]: ---He didn't elaborate too much on it other than to say that he got enough evidence to, to get Medich in plenty of trouble and it'll be front page of the newspaper for six weeks. I tell you what, he was pretty close to the mark.

187. Witness Y was then questioned about the allegation concerning the former Planning Minister. He gave the following evidence:

[Counsel Assisting]:

[Q]: You were interviewed by Commission investigators on the I think it was, it was earlier - - -?

[A]: ---October.

[Q]: - - - it was the 27th of October this year. Do you recall that?

[A]: Yes.

[Q]: And I think, I understand that you indicated to Commission investigators that you had heard that Mr Medich had paid (the former Planning Minister) money - - -?

[A]: ---Correct.

[Q]: - - - on two separate occasions. Is that correct? Do you recall - - -?

[A]: ---I do recall somebody telling me that, yeah.

[Q]: All right. Well who told you, who told you that?

[A]: ---Well, that's what I'm saying, I don't recall who told me that. I mean, there was so much speculation - - -

[The Commissioner]

[Q]: That's a very serious allegation?

[A]: ---It is.

.....

[Q]: And if someone told you that, isn't that the sort of thing that you would remember?

[A]: ---Well, I, I think I recall there was a group of people, you know, at a pub on a, you know what I mean, on a Thursday night it was mentioned. So - - -

[Q]: And how did it come to be mentioned? Who were you talking about?

[A]: ---Well, the, the talk of, you know, Medich and McGurk were the talking, they used to, all the hotels I assume in the eastern suburbs, everybody had their point of view.

[Q]: So this was just idle gossip?

[A]: ---Quite possibly.

[Counsel Assisting]:

[Q]: So I take it from your last answer that this conversation you had with people who you can't recall, you can't remember who they were, this was after Mr McGurk had been shot and killed?

[A]: --Correct.

[Q]: Perhaps the conversation took place in the pub?

[A]: ---Correct.  
[Q]: Where people had been drinking alcohol?  
[A]: ---Correct.  
[Q]: Do you have any more information about that particular allegation?---  
[A]: What else do I, no...

188. The former Planning Minister was interviewed by Commission officers on 8 December 2009 and denied the allegation.

189. During his evidence at the compulsory examination on 23 December 2009 Ron Medich said he had once asked the former Planning Minister concerned some advice in relation to the rezoning of land belonging to a relative. He said the former Planning Minister had never been to his house. He gave the following evidence in answer to the allegation:

[Counsel Assisting]

[Q]: Have you ever paid (the former Planning Minister concerned) any money for assistance with any kind of a planning matter?

[Ron Medich]

[A]: ---Definitely not.

[Q]: Have you ever offered him some kind of a benefit for assistance with a planning matter?

[A]: ---Definitely not.

[Q]: Would a suggestion of that type be false?

[A]: ---One hundred per cent.

Signature  \_\_\_\_\_  
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Witness  \_\_\_\_\_

## Appendix 2: Supplementary statement by ICAC Chief Investigator Robert Lang (EXHIBIT 7)

1. This statement is true to the best of my knowledge and belief, and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have willfully stated in it anything which I know to be false or do not believe to be true.
2. I am 52 years of age.
3. I am currently employed by the Independent Commission Against Corruption (“the Commission”) as a Chief Investigator. I have been so employed since 1995. My primary responsibility is to lead and manage multi disciplinary investigation teams. Those teams are responsible for conducting major investigations into allegations of serious and systemic corrupt conduct occurring in or impacting on the NSW Public Sector.
4. This statement is made in furtherance of my statement dated 1 February 2010.
5. As referred to in paragraph 177 of my previous statement, the current correctional centre inmate, Z gave evidence at a compulsory examination before the Commission on 29 January 2010. Z was questioned on the contents of a letter dated 20 September 2009 that he had sent to Ms Vanda Carson a journalist with the Sydney Morning Herald. It was apparent from the contents of that letter, when taken together with Z’s evidence about it, that he had raised with the media allegations of corrupt and/or criminal actions involving; the DPP officer(s) who prosecuted him and the judicial officers who had sentenced him to periods of imprisonment for those offences. Z asserted that these actions were in some way being coordinated to ensure that his evidence about the recordings he alleged McGurk made with a number of senior public officials would not be brought to light. He claimed that this conspiracy extended to causing him to be kept in custody, “to disrupt or prevent me from revealing what I know about the (McGurk) matter.”
6. During his examination Z was invited to make an oral submission in relation to why an adverse finding about his credibility should not be made in the light of the inquiries undertaken by the Commission to investigate his allegations. The nature of these inquiries is set out in paragraphs 149 to 177 of my previous statement. He gave the following evidence:

*[The Commissioner]:*

*[Q]: I’m just telling you.. that if you want to make those submissions and you said that you do, now is your opportunity.*

*[Z]*

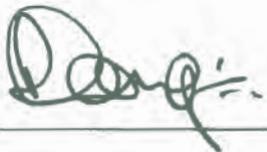
*[A]: What, what appears to me is that in the absence of these tapes or the transcript being found and produced before you very little can be demonstrated and I wonder what assistance I can be to the Commission. I originally approached the matter that it was a matter of public duty to report these matters.*

...

[Q]: *But if you don't wish those findings to be made and I understand you, that you don't, you're entitled to have an opportunity to make submissions contrary to those which Mr Gormley has explained to you he expects to make. I do understand that you say that the veracity of your submissions depends on the existence of the tapes and without the tapes there is nothing more you can say at the moment. That's really I think what you're saying.*

[A]: *That is the position...*

7. As referred to in paragraph 107 of my previous statement, Mr James Byrnes gave evidence at a compulsory examination before the Commission on 29 January 2010. Mr Byrnes was asked, inter alia, about evidence he had given to the Commission earlier concerning the existence of other relevant recordings Mr McGurk may have made of conversations that he had with Ron Medich. Mr Byrne's [sic] said that the recorded conversation involving Ron Medich and Mr McGurk about which Mr McGurk had told him was highly damaging to Mr Medich was contained on one recording and not several.

Signature 

Witness 

## Appendix 3: The role of the Commission

The ICAC Act is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the ICAC Act.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention conduct which is corrupt. Having done so, or better still in the course of so doing, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and co-operating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

## Appendix 4: Corrupt conduct defined and the relevant standard of proof

Corrupt conduct is defined in section 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in either or both sections 8(1) or 8(2) and which is not excluded by section 9 of the ICAC Act. An examination of conduct to determine whether or not it is corrupt thus involves a consideration of two separate sections of the ICAC Act.

The first (section 8) defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- a. *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- b. *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- c. *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- d. *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

Section 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific offences which are set out in that subsection.

Section 9(1) provides that, despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- a. *a criminal offence, or*
- b. *a disciplinary offence, or*
- c. *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- d. *in the case of conduct of a Minister of the Crown or a Member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of sections 8(1) or 8(2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

Section 13(3A) of the ICAC Act provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of section 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently in the Commission. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

*... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.*

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

*... as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.*



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