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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE PETER M. HALL QC
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION ECLIPSE

Reference: Operation E19/0417

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 17 FEBRUARY, 2019

AT 2.30PM

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

THE COMMISSIONER: Yes, Ms Curtin.

MS CURTIN: Yes, Commissioner, our next witness is Mr Woodhams, from the Greater Sydney Commission. He's to take an oath, and I have explained to him the effect of section 38. He does not wish to avail himself of that protection.

THE COMMISSIONER: Very good. Thank you, Mr Woodhams. Yes.

THE COMMISSIONER: Thank you, Mr Woodhams. Just take a seat. Very good. Thank you for your attendance today.---My pleasure.

Yes, Ms Curtin.

10 MS CURTIN: Mr Woodhams, you are the Executive Director of City Planning Projects at the Greater Sydney Commission, is that right?---That's correct.

How long have you held that position?---Two and a half years.

The Greater Sydney Commission is an independent New South Wales government agency?---Yes.

It's relatively young in age, is that not right?---That's correct.

20 When did it commence operation?---End of 2015 was the legislation, and it effectively commenced in 2016.

And I understand it exercises its functions under two separate pieces of legislation?---That's correct.

And that is the Greater Sydney Commission Act of 2015?---And the Environmental Planning and Assessment Act.

30 Thank you. Broadly, its functions relate to strategic and metropolitan planning across the Greater Sydney region.---Yes.

In particular, it provides advice, is that right?---Yes.

40 And what kind of advice does it provide?---The advice is primarily about the, the alignment of government policy to the Greater Sydney region plan and the district plans. The Greater Sydney region plan reflects government policy and the district plans represent more advice to the government from the commission as to how the Greater Sydney region plan should be interpreted. So our role is principally in relation to guidance and implementation of the Greater Sydney region plan and the district plans.

So, the matters that advice relates to are in the nature of planning and development in the Greater Sydney region?---That's correct.

And also land use and infrastructure?---That's correct. Yeah, the wording of the, the commission's functions under the Greater Sydney Commission Act.

Right. And it also provides reports to the government?---That's right. We report directly to the Premier, but with the, the legislation allows for other advice to be provided to other ministers, and we also provide advice to other government agencies.

And part of your functions are to provide assurance reports, is that right?
---That's correct.

10 And what does that entail?---So, the role of the assurance was introduced when the legislation was changed in 2017, specifically to enable the commission to provide advice to the Premier and other ministers with the approval of the Premier, that the Greater Sydney region plan and the district plans are being implemented and being delivered in accordance with government policy. So that assurance function directly relates to those instruments.

And the Greater Sydney Commission also provides assistance to local council, is that correct?---That's correct.

20 And what is the nature of that assistance?---In particular, the legislation under the Environmental Planning and Assessment Act enables the commission to provide a supporting letter to the councils in relation to their preparation of their local strategic planning statements. That statement is a series of vision and explanatory documents to support their local government council-wide local environmental plans, and the commission has a function to provide a letter of support to the, to the councils in relation to that strategic vision.

30 Broadly speaking, I'd just like to have you describe to the Commissioner, the structure of the Greater Sydney Commission. It has four commissioners, is that right?---There are four commissioners, but also there's district commissioners. So there are four commissioners, the Chief Commissioner Lucy Turnbull, and three commissioners of a thematic nature, Social, Environmental, and Economic. And then there are the district commissioners, whose primary function is to oversee the implementation of the district plans and provide advice about the district plans.

40 And the Greater Sydney Commission also has what is termed "ex officio members"?---Yes. And, and so the, the commission itself is, the board of the commission has, has the secretaries of the major infrastructure delivery agencies, including health, education, transport, and planning, and they sit on the board of the commission and provide advice to the government through that, through that board.

And then you have a CEO?---That's right.

And the CEO is part of the five-person executive team, is that right?
---That's correct.

Including yourself.---Including myself.

And then approximately 60 staff, in total, in the commission?---It, it varies from week to week, because the nature of, the nature of our role is predominantly providing advice, and so our organisation expands and contracts as, as the needs arises to provide that advice.

10 Currently, how many would you say?---I would, I would, I would have to take on notice, but I think there's about 40 this, this week.

Now, there were changes effected to the Greater Sydney Commission remit in around late 2018, early 2019, is that right?---That's right, that's right.

20 And what were the nature of those changes?---The, the principal change was to withdraw the commission's functions in any approval role or any involvement in the preparation of local environmental plans as a planning authority, and so our function shifted from plan-making to advice on plans and predominantly the region plan or the district plans.

THE COMMISSIONER: Now, when did that occur?---The, the, the, I, I can't remember the date of the legislation, I'm sorry.

MS CURTIN: I believe it was December, 2018.---Yes.

And then also in part - - -?---January - - -

- - - 1 January, 2019.---1 January, 2019. That's right.

30 THE COMMISSIONER: All right. Thank you.

MS CURTIN: And so is it correct to say then that as a result of those changes, the GSC or Greater Sydney Commission no longer has a consent function, is that - - -?---That's, that's correct.

Right. So it doesn't determine planning controls?---That's right.

40 But it does have an indirect role in the process of determining those controls?---In an advisory capacity, but no direct role in an, in, in determining any aspect of those planning controls.

Now, the Greater Sydney Commission has provided the Commission a number of documents - - -?---Yes.

- - - consisting of the policies and procedures as they relate to lobbying?
---Yes.

I'll give you a collection of those documents. Commissioner, I'll tender that volume of material now, if I may.---Thank you.

It's entitled GSC Lobbying and Meeting Protocols and Related Material.

THE COMMISSIONER: Yes, thank you. That folder of documents as so described will become Exhibit 33.

10 **#EXH-033 – GREATER SYDNEY COMMISSION – LOBBYING AND RELATED PROTOCOLS**

MS CURTIN: Thank you. If you just open that folder of material, Mr Woodhams.---Yes.

Page 1 - - -

20 THE COMMISSIONER: Do we have a spare copy of that?

MS CURTIN: Commissioner, I'm not sure that I do, I apologise.

THE COMMISSIONER: That's all right.

MS CURTIN: I understood that you may have actually had a folder, but perhaps it's not - - -

THE COMMISSIONER: Was there one handed up, was there?

30 MS CURTIN: It's on the screen for you, Commissioner, if that's - - -

THE COMMISSIONER: That's fine, thank you. Yes, we'll proceed.

MS CURTIN: Thank you. So page 1 of that folder has your policy document which is entitled Engaging with Lobbyists and Business Contacts. ---Yes.

And that was introduced in April 2019. Is that right?---Yes.

40 And is it still in place?---Yes, it is.

And accompanying that document is the procedure document which is entitled also Engaging with Lobbyists and Business Contacts, and you'll find that page, page 11 of the folder.---Yes, I see that, yes.

And that was introduced in June 2019. Is that right?---That's correct.

And are those two documents meant to be read together?---Yes, they are.

And what was your role with respect to the policy, Mr Woodhams?
---My role was to oversee the preparation of the two documents and to undertake the research to ensure that there was consistency with other similar government agency similar jurisdiction policies and procedures and also to confirm that it was consistent with the Premier's Memorandum and the legislation.

10 I see. So in addition to oversight its implementation, did you in fact develop the policy?---Largely, yes.

Yes. So then would you be able to tell the Commission why the policy and procedure was introduced?---The Greater Sydney Commission prides itself on being a listening organisation. We enjoy engaging with members of the community, government agencies and interested parties who want to share information with the commission regarding planning and development in the Greater Sydney region, and so as part of that framework we wanted to ensure that there was a protocol, a process by which we could engage with interested stakeholders, but also in a way that they understood the
20 expectations that we had of them also in engaging with us. So it was very much a two-way communication so that there was a clear protocol in the way that we would be listened to and the way we would be able to listen to interested stakeholders.

And would you say that the need for openness and transparency in your decision-making was at the forefront of your mind in terms of the development of the policy?---Yes.

30 And that's what you hoped to implement?---That's right. Underpinning that is of course the Premier's Memorandum and the legislation to act as a guiding framework in the formation of the policy.

And the Premier's Memorandum is the one which applies to the Lobbyists' Code of Conduct. Is that right?---That's correct.

And the legislation you're referring to is the Lobbying of Government Officials Act 2011?---Yes, yes.

40 And was the policy modelled on any other policy that you'd identified?
---We were working closely with the Department of Planning, Industry and Environment in understanding their protocols and those procedures, and so in the preparation of this document I was informed by that document and in discussions with government officers from that department, that helped to frame the way we formulated the policy and the procedure document here.

Could you tell the Commission the frequency of meetings that the GSC would have with lobbyists or business contacts as they're described in the policy?---Yes. Currently we would have no more than two to three

meetings per month, maybe one, one or two a week, if, if at most, and that ranges from community groups to planning consultancies, on very rare occasions we would have meetings with third-party lobbyists and we maintain a register of those meetings.

Well, I might just turn to the mechanics of the policy then if I may. In terms of its application it applies to staff, commissioners and your youth panel. Is that right?---That's correct, yes.

10 And your youth panel consists of 10 members of Sydney's youth. Is that right?---That's correct, who volunteer to assist the commission in our listening function.

I see. And the object of the policy, and we may have already covered this, but it's to set the standards and behaviour when interacting with lobbyists and business contacts. Is that right?---That's correct.

20 And the policy is implemented through the procedure which we find on page 11 of this folder.---That's correct, yes.

It probably would be helpful just to look at the definitions of lobbying and lobbyists.---Yes. I have them.

At page 5 of the policy we find the definition of lobbying, and I understand that that's adopted from the Lobbying of Government Officials Act. Is that right?---That's right, with the exception of the last dot point which covers any commission matters.

30 And then there are three classes of lobbyist that are referred to in the policy and the procedure.---Yes.

And the first class is third-party lobbyists.---Yes.

And the definition is over on page 6 for that. So that's anyone lobbying on behalf of a third party. Is that right?---Yes.

And third-party lobbyists are required to register - - -?---With the Electoral Commission.

40 Yes.---Electoral Commission, yes.

But it excludes technical specialists and consultants. Is that right?---That's correct.

And then there's another category, which is other lobbyists.---Yes.

Would you be able to explain what that category refers to?---So other lobbyists would, would comprise planning consultants, those community

groups who are interested in making representations to the commission about matters of interest to, to community groups, they're the principal, principal other lobbyists that we deal with, technical specialists who are representing clients to advocate a particular view about strategic planning in Greater Sydney. They would be the main ones.

10 And what does the term business contacts relate to, who does that embrace?---So business contact would be any individual of the community, any peak body of one of the major peak body groups – I'm just trying to think of the other business contacts that we have. We, we exclude government, government officers and council agents, council officers and individual community members, so it's anybody who is not caught by other lobbyists and third-party lobbyists, would be the largest catch-all.

Okay. Are you able to explain the basis for the distinction between the three groups, Mr Woodhams?---The principal difference was to make a clear distinction between third-party lobbyists and other, other stakeholders who wanted to contact - - -

20 THE COMMISSIONER: Why was that distinction thought to be necessary?---Because of the higher standard of requirements under the legislation for third-party lobbyists, that was the principal reason to, to, to distinguish them from other forms of lobbyists, and then the second group, lobbyists and business contacts, we made the distinction to recognise the difference that in some ways business contacts, those planning consultants or technical specialists, or even community groups or peak bodies, didn't necessarily refer to themselves as lobbyists and so we wanted to create an inclusive third category of, of, of, of organisations called business contacts who, who were able to be caught by a larger church, if you like of, of people
30 who wanted to contact and deal with the commission.

MS CURTIN: I think you gave us a brief breakdown of the percentage of meetings that you have with third-party lobbyists and other lobbyists, but just to reiterate that, and on my understanding the evidence is that a very small percentage of your meetings currently are with third-party lobbyists. Is that right?---That's correct. So meetings or contacts, because we record all contacts as well.

40 Are you able to put an approximate figure on that as a percentage?---I'd say no more than 5 per cent of the total volume.

THE COMMISSIONER: That's third-party lobbyists, is it?---That's third-party lobbyists.

Right.

MS CURTIN: And what about other lobbyists and business contacts?
---That, that would principally be I would say 50 to 60 per cent and - - -

Is other lobbyists?---Other lobbyists.

Yeah.---And then, then the remainder would be the business contacts of about 30, 30 per cent, 30 to 40 per cent.

10 Mr Woodhams, the Commission heard some evidence earlier this morning from Mr Hebron, who is the General Counsel for the Department of Planning, Industry and Environment, and his evidence was to the effect that perhaps there is no longer any utility in distinguishing between these three classes of lobbyists. Would you agree with that?---I think, I think the, the point that I'm trying to make is a matter of perception and that some community groups and peak bodies want to avail themselves of the opportunity to contact the commission and engage with the commission on a relatively regular basis and didn't want to be perceived as principally being lobbyists on behalf of a particular interest.

20 THE COMMISSIONER: I think you said earlier in effect the first category, third-party lobbyists, was wholly driven by the terms of the Lobbying of Government Officials Act.---That's correct.

No other reason than that.---That's right.

That's a distinction of that Act.---That's right.

30 And that distinction's been carried.---It draws from that Act, whereas the other two, other lobbyists and business contacts, I think we're trying to just make a perceptual change that not all groups represent themselves as being a lobbyist on behalf of another client or interest, and therefore want to just be with, in a forum where they could engage openly with the commission, and we wanted to, I would, I think the word stigma is too harsh but, but to be identified, be categorised as a lobbyist.

I understand what you're saying. I just understand what you're now talking about in terms of percentages and so on, that relates to the present position, does it?---It does.

So, but before the change that occurred in, was it late 2018?---Yes.

40 Your commission did receive, obviously, lobbying, lobbyists, and do I take it that there's more third-party lobbyists under the previous regime than there is now, that is before late 2018?---Considerably. Yes, considerably. And indeed much more of the lobbyist category were wanting to meet with us, with the expectation that because the commission was involved in a planning approvals role that they could lobby the commission to advance their interests.

All right, thank you.

MS CURTIN: Mr Woodhams, turning to the procedure document which commences at page 11 of that volume of material.---Yes.

There's a statement of the procedure set out under clause 1, at page 14.
---Yes.

And it says broadly that it's to provide guidance and procedures for lobbying business contact interactions. Do you see that?---Yes.

10

And also the procedure is meant to set out guidelines for how meetings are to be arranged.---Yes.

Who may attend the meetings, the record-keeping that follows for a meeting or contact.---Yes.

And the maintenance of what's referred to as a third-party lobbyist contact register.---Yes.

20

The requirements for lobbyists are set out at page 18 of this document.
---Yes, I have that.

And under section 6, and then 6.1 has all the lobbyists and the obligations that apply to all lobbyists.---Yes.

And then there's an additional series of obligations which apply to third-party lobbyists.---Yes.

30

I just wanted to walk through with you the requirements for lobbyists, which are set out there at page 18.---Yes.

So under your procedure, the lobbyists are required to disclose in advance the purpose of the meeting.---Yes.

They're required to disclose any financial or other interests in advance of the meeting.---Yes.

40

And then, as I said, there's a separate series of obligations which relate to third-party lobbyists specifically. Both lobbyists – that is third-party lobbyists and other lobbyists – and business contacts are required to submit to the Greater Sydney Commission a meeting request form, is that right?
---That's correct.

And so that's step one of an proposed contact or meeting that takes place.
---It is, yes.

Mr Woodhams, there's a copy of the third-party lobbyist request form, or meeting request form, at page 30 of that volume of material.---Yes, I have it.

So this is the form that must be submitted at least one week prior to a meeting.---Yes.

It requires the third-party lobbyist to detail the purpose of the meeting.---Yes.

The matters to be discussed.---Yes.

10 The attendees.---Yes.

And over the page, at section 5, the form requires a disclosure of interests.---Yes. And section 6 as well about lobbying on government board or committee business.

Yes.---Yes.

And so that's picking up the requirements under the Act, is that right?---That's correct.

20

And then over the page again, at section 8, there's a confirmation that's required, and that's asking the third-party lobbyists to confirm that they're complying with the ethical standards under the Act and the code.---Yes, that's correct.

And community groups are not required to fill out that form, is that right?---That's right.

30

And that's for the reasons that you explained earlier?---That's right, that's right. So that's, that's the third-party lobbyist meeting request form. The business contact meeting request form, which is the next document on, commencing on page 33, is something that most community groups, if they want to meet with us, are happy to do so, and, and we generally ask them to do so.

On my reading of the procedure, third-party lobbyists and other lobbyists are compelled to fill out the form.---Yes.

40

But business contacts are not in fact compelled, but is it the case that in fact they generally do fill out the business contact form?---They generally do, yes.

And so typically, no contact or meeting is had with the Greater Sydney Commission without either the business contact form or the third-party lobbyist form being submitted first?---I'm just trying to think of any circumstances where that would happen. I can't think of any.

Are you able to tell me off the top of your head what the difference is between the third-party lobbyist form and the business contact meeting request form?---The, principally the stipulation of the requirements for the lobbyist to satisfy the requirements of the legislation, and the, the higher standards of disclosure.

I just had one further question about the business contact meeting request form, Mr Woodhams, and that is the confirmation section, section 6, at page 34 of the volume of material.---Yes.

10

Where it asks the business contact to confirm that the meeting does not involve a specific development application or planning proposal.---Yes.

What's the purpose of that confirmation?---When the legislation changed in 2018, it, it became clear to the commission that a, not a lot of people understood the new role of the commission. And there was a, a continued expectation that the commission had a role in dealing with development applications and planning proposals. And so despite our continual messaging and communication to that effect, we wanted to make abundantly clear that the meetings with the commission are not involved in development applications and, and planning proposals. And so with that, it was a, just an easy way of getting that message across, but also making it abundantly clear that we have no role in, in those matters, and our role is regarding – to, to advance any interests about planning applications or planning proposals, they ought to go to the council or to the Department of Planning.

20

I see. So if someone were to fail to tick that box, they'd be precluded from having a meeting with you, is that right?---The executive assistant would approach me, ask me, and then depending on the, the nature of the, the contact, if it was a, a, a community member, for example, I would just ring them, and just confirm what, what this is about, and if they said, "Look, we want to talk to you about this development application," I would say, "That's probably not the best forum, we're not the best forum to do that. You ought to confer with the local council or the Department of Planning about that," depending on the nature of the, the application.

30

I see. And Mr Woodhams, what's your experience generally with these forms? Have you, has the commission experienced compliance as a general rule with the requirement?---Generally, generally, well, I would say in all cases, people are willing to fill out the form, happy to fill out the form. But I think they see the benefit of having a record and so that they understand that they have a, an expectation that there would be a meeting record retained, and so there is a record for them to, to have, as well as acknowledgement from our policy that we will be keeping notes of the, of the meeting as well.

40

And what about the administrative burden for the agency? Has the Greater Sydney Commission experienced any difficulty in having this procedure in place?---No. No, no. No, we, we maintain a very good corporate software system, and it's relatively easy. We have it streamlined and, and enable us to record and retrieve documents as, as quickly as needed.

10 At page 20 of the procedure document, Mr Woodhams, is outlined the procedure generally for meeting requests for both third-party lobbyists and other lobbyists.---Yes.

And down the bottom of the page, business contacts.---Yes.

I just wanted to walk through with you again what requirements are on each of the different classes for the meeting other than the request form.---Yes.

So a third-party lobbyist, approval must be gained before a meeting can take place - - -?---That, yes.

20 - - - with a senior executive manager, is that right?---And that would generally be me. Yes.

And does that apply to other lobbyists as well?---The, there, there is a – oh, it, it does, but there is a higher onus on me to ensure that the executive assistant has checked the electoral register, the Electoral Commission's register, and also the watch list, so there is an, an additional step for a third-party lobbyist, to just verify their, their registration and, and whether they're on the watch list.

30 But that level of approval isn't required for business contacts, is that right? ---That's correct.

And then in terms of who must attend meetings with third-party lobbyists, who is that?---That's either myself or another executive director, usually another staff member, and then a, a member of our probity office, we have a, a probity company who provides probity service and they attend the meeting of all third-party lobbyists.

40 And does that also apply to other lobbyists?---It, it does as, just as a matter of practice, we, we make sure that the probity officer is attending all meetings, unless it's, unless it's of a matter that I decide is of a, a, a, a minor nature that doesn't involve the, the need to have a probity officer in attendance.

So, probity officers wouldn't ordinarily attend meetings with business contacts, is that right?---We generally, we generally do that, but if there's a specific case where it's, where our business contact is just seeking a short meeting to get clarification of some content in a district plan, there's, we, I, I, I just have to make a decision about whether the probity officer will, will

attend or not. In, in the majority, overwhelming majority of cases, the probity officer attends.

And what about who must attend, from the Greater Sydney Commission, meetings with other lobbyists? Is it the same?---It's the same, same principle.

10 So, a senior executive manager has to attend meetings with other lobbyists?
---Yes, yes, yes. Frequently, the district commissioner attends as well, particularly as they're the, the recipient of the information, generally. And so the district commissioners are informed about a meeting, and if they, if they wish, wish to attend, they can attend as well.

And there are requirements with respect to each class as to where the meeting may be held, is that right?---Yes. And, and the, for a third-party lobbyist, it must be at the commission offices. On occasion we do have meetings with lobbyists and business contacts, usually at the Department of Planning offices in Pitt Street.

20 I see. So the same requirement - - -?---That's just a matter of convenience. That's just a matter of convenience for the parties.

So the same requirement as to the location of meetings that are held applies to other lobbyists?---Yes.

But not to business contacts, is that right?---Not to business contacts.

30 And the procedure also dictates how written contact is to take place with third-party lobbyists, other lobbyists, and business contacts?---Yes. That's right.

And it also sets out how record keeping is to take place, and that's from page 22 of the volume of material, at section 9 and onwards.---Yes, I have that. Yes.

And again, there's a slightly different set of requirements for record keeping as it applies to third-party lobbyists as opposed to other lobbyists and business contacts, is that right?---That's correct. It is, yes.

40 And so what's the requirement for record keeping with respect to third-party lobbyists?---The, the record keeping must record all file notes, telecom, telecommunications as well as meetings, and cover the items of discussion, any substantive issues raised, any key decisions, advice, actions, or outcomes, and who is responsible for the actions arising. And that's, that's recorded on our internal corporate software system, CM9, as well as recorded on the register of third-party lobbyists. The, for other, other lobbyists and contacts, the matters recorded are substantive, substantially the same, in terms of the matters of discussion, substantive issues, and, and

actions, however but we don't need to record them in the, the register of the third-party lobbyists. That's the primary distinction.

I see. I'll come to that. So there's a template form for meetings with third-party lobbyists, is that right?---Yes.

And there's a similar one for other lobbyists and business contacts, and we've got an example of that at page 35, there's a record of meeting for business contacts.---Yes. That's right.

10

So, is it the case that any meeting with a business contact will have as a result this template filled out?---Yes.

And who will do that?---During the meeting, I record notes of the, the discussion. I provide those notes to the executive assistant. She then completes this document with all of those notes, and then those notes are recorded on our corporate software system.

And so you referred to the third-party lobbyist contact register.---Yes.

20

And that's an additional layer, if you will, of record-keeping that applies specifically to third-party lobbyists but not others.---That's correct.

And the situation with that is that the contact that is had with the Greater Sydney Commission with the third-party lobbyists is published on your website, is that right?---That's right.

We have an example of that at page 37 of this volume.---Yes.

30 Do you have that there?---I have it.

So is this the Registered Lobbyists Contact Register as it currently stands on your website?---As at 19 September, yes.

19 September, 2019?---2019.

So that's the most current form?---And that reflects that there hasn't been a contact with a third-party lobbyist since that date.

40 I see. And so could you just explain to the Commission how this process works?---Yes. If any communication is received by a third-party lobbyist, either by an email/document/fax or as the subject of a meeting, then that's recorded by our operations officer. He then prepares the contact register, presents that to me for approval and then if I need to verify anything, I'll verify that through the probity officer or whoever attended the meeting or had the discussion. I will then sign that off and then the lobbyist contact register is updated and then lodged on our website.

I see. So there are six columns here in this table.---Yes.

And the last column is the Method column.---Yes.

And so that embraces, well, the register itself embraces verbal and written contact.---That's right.

So even an email will be included on the register.---Yes.

10 A telephone call or a face-to-face meeting, is that right?---That's right.

And the second-last column is the Outcome column.---Yes.

There's not a lot of detail provided in that column. What's the object of this column?---Really to, to alert any interested person as to the general, the general nature of the, the outcome from the meeting, whether there was any specific action arising, or whether there was any specific decision that needed to be made by the commission. It's not intended to be inclusive of all of the action. There's an opportunity for anybody to request access to
20 the meeting document and review that document if they want to, so in an open document file, to enable them to do that. But this is really just to give a ready note as to what was the outcome of the meeting.

And, sorry, just so I understand that, is it the case that I could come along and look at this and request the meeting notes for a particular meeting? Or when you say there's an open meeting file - - -?---Sorry, there's, through our corporate software system you can request to have a look at our meeting record of that meeting if it was a meeting, or if it's an email or if it's a physical document, then that would be recorded there and then you're,
30 you'd be able to have a look at that.

And similarly the Subject Matter column doesn't provide a whole lot of detail.---No.

So the intention here is what?---Is really just to, to, I guess to alert somebody to the general subject matter without going into considerable detail.

40 THE COMMISSIONER: In terms of the follow-up action if there was one, if it was to go into a, go forward for analysis and decision, what process would cover that ongoing decision-making process?---So on the same file in the corporate software, there'd be a trail of what was the action, then what was the follow-up action from that, and then I would be, my duty is then to follow up and see what's on that outstanding, outstanding action, and then follow that up with the person who was responsible for that and make sure that it is followed through.

So if, for example, a question was raised about a decision taken, might be a question raised in the course of litigation or some other reason to backtrack to find out how this decision was made and the basis for it, would there be a process that would be able to respond to those sort of inquiries which would in fact explain how the decision process works and decision reached, or would it not go into that level of detail?---I, I can't recall any circumstance where we've had to, but I'm just trying to imagine the circumstance.

10 I'm just really talking about process in general and what would be the process and how detailed would it be.---I think we would, we'd provide sufficient detail for the interested party to inform themselves about what the outcome was. I would probably have to take legal advice if there was particular matters of legislation as to how much could be released, and whether it would be best if a person applied under the GIPA Act to provide formal access to the document.

20 So if for example there was some person who's claiming that they've been disadvantaged and they wanted to know how the decision had been made, would the process you've referred to be sufficient for that purpose to gain an understanding or not?---I think, I think I would need to undertake some investigation of the process, particularly if it wasn't a matter that I was directly involved in, and then provide that advice to that person in as open but careful way as I possibly could.

But based on what you've said, you're proceeding on the assumption that there would be files which would contain a greater fund of information about a particular matter. Is that how it works or - - -?---There may, there may well be or may not be.

30 Not be. So I'm just trying to, in terms of process it might be said to be a process that provides for both transparency and accountability.---Yes.

Whether or not there is such a process that's specifically put in place in the lobbying context or whether it depends upon there being some other departmental process which might exist, in other words, how does lobbying legislation for example or the fact of lobbying legislation drive transparency and accountability, is it possible to answer that on a general basis or not? ---I don't believe the legislation can drive that accountability.

40 No, there's really not – we've been looking at the legislation. It puts obligations upon lobbyists, it doesn't put any obligations on the lobbied, the public official.---Yes.

So you're right, legislation doesn't drive a transparency/accountability process which is in the hands of public officials.---Yes.

But I'm just wondering if there's any driver of having a transparency/accountability measure on decision-making in terms of

deliberations the decision that was ultimately reached or not.---Mmm. I think it would be difficult to codify that process in every, in every situation.

Why is that?---Because I think the, the, the nature of the variety of the communications that are involved in may be difficult to codify it for every particular case through, through legislation, so it may be - - -

Sorry, you go.---So it may be that there are some guidelines that might be more effective than a legislative basis to do that.

10

Now, are you addressing the position as it now exists or prior to the 2018 changes?---I'm, I'm addressing it as it is now.

Right. What about before the change in 2018, was there some sort of transparency/accountability mechanism, apart from the contact register? ---Only the meeting record system and then the system of following up on any actions that was arising and then making sure that any actions were followed up and then recorded in the, in the document system so that anybody reviewing the document can then see the trail of information and decisions and outcomes. That's less so no insofar as we're not dealing with decisions.

20

I understand, yes, yes. But in the previous regime there would have been - - -?---It would be more so.

- - - an ability to track decision-making to see where, how it developed. ---Yes, yes. And the responsibilities and roles of the different agents along that path.

30 Right. Thank you.

MS CURTIN: Thank you, Commissioner. Mr Woodhams, your procedure requires that you let a third-party lobbyist know that any contact will be published on your website.---Yes.

Have you experienced any complaints or pushback to that being recorded? ---None whatsoever, no.

40 And the procedure also requires that you update that register in effect in real time, I think it's within about 10 days?---Yes.

Has that been difficult from an administrative perspective to do that?---No, I haven't found that.

And what about the issue of commercial in confidence, has that come up in terms of dealing with this register?---I can't recall any circumstance where that, that has become a problem, nor any matter of privacy or a matter of legislative constraint.

And is that both before the changes to the legislation - - -?---Before and after.

I see. So no one has ever, no third-party lobbyist has suggested that there might be an issue of commercial in confidence that would restrain you from putting the detail on the register?---I'm unaware of any circumstance to that effect.

10 Okay. If that did come up, how would the commission deal with that, the Greater Sydney Commission I should say?---I think our, I think our approach would be to respect that, but then maintain the importance of the register as a record of any instance and we would probably seek legal advice or probity advice about the best way to express it on the register to respect that confidentiality if that was needed.

I mean it seems to me that the nature of the descriptions in the contact register are sufficiently broad that it is unlikely to be a concern?---Unlikely to breach confidentiality I suspect.

20

Now, I think your evidence earlier was that the number of meetings with third-party lobbyists as a percentage was about 5 per cent of the meetings that you have more broadly.---At present, yes.

Has any consideration been given to extending the reach of the register beyond third-party lobbyists to other lobbyists and business contacts?

---Yes, we did consider that at one of the early stages and the reflection that we made was it was important for us to observe the register for third-party lobbyists but again as a matter of perception we didn't want to discourage or to discourage business contacts and lobbyists from approaching us wanting to meet with us on the basis that they might feel that those meetings might be recorded in a public way on the website. There are avenues for people to access the documents in any event but we just felt that recording it in this way for parties that were not third-party lobbyists might act as a deterrent to them wanting to engage with the commission.

30

And what about from an administrative perspective would it be difficult for the Greater Sydney Commission to publish a register that extends to the other classes of lobbyists?---It would just be an additional task. I don't think it would be burdensome, but it would just be an additional task.

40

The register itself goes beyond what is required by the Lobbying of Government Officials Act, does it not?---Yes.

And so why was this step introduced as part of the Greater Sydney Commission's policy and procedure?---I think in an effort to be as open and transparent as we possibly could, conscious that our legislation had changed and that there was a high level of scrutiny about the work of the

commission. We are in an area where we are providing advice to the government and so that area is one where there are many parties who are interested in the work that we do, and particularly the role of registered lobbyists representing clients, we believed it was essential to make sure that we provided a mechanism where other interested parties could see who we were engaging with at that level of registered lobbyists so that they could make, have informed advice about subject matters that we were talking about and, and who they were representing as registered lobbyists.

- 10 And can you think of any incident where there actually has been consequent communications as a result of what's been published on the register?---I'm unaware of anything with the commission, but whether there's been direct contact by somebody with a registered lobbyist about, I don't know that, that would be speculation.

And, Mr Woodhams, you mentioned earlier the probity consultant aspect of the way that you conduct meetings with lobbyists and business contacts.
---Yes.

- 20 Can you explain your rationale for why that measure was introduced?---For, for two, for two reasons. You pointed out at the start we're a relatively young organisation and so we wanted to make sure that having the probity officer there with their expertise and skill to provide a foil for us, if you like, a filter for us to, in the way that we conducted ourselves in meetings was meeting proper probity standards and that those people of the commission who were attending those meetings were briefed by the probity officer prior to and after if there were any issues. So that was the first issue. The second issue, the second reason why we wanted to engage a probity officer was to
30 maintain those high standards of probity at all meetings so that when people met with the commission they respected the importance of probity as a protocol that we would observe through our meetings, and so there was I think an image that we were trying to portray that we were open but very careful about the way we engaged with third-party lobbyists in particular, but all of our business contacts on an equal and similar footing.

- I see. The probity officer, the remit of that officer who attends the meeting is not to ensure compliance with the policy and procedure though, is it, it serves another function?---Other than the legislative requirements in relation to third-party lobbyists, they're just really there to monitor the discussions
40 to ensure that we are not acting inappropriately in any of those conversations.

Okay. That's the evidence from that witness then, Commissioner. Thank you.

THE COMMISSIONER: Mr Woodhams, just relying on your experience in relation to probity standards and the like, one issue that's been raised in this inquiry you may be able to help me with, concerns the fact that the

legislation sets up a registration scheme for third-party lobbyists and provisions relating to third-party lobbyists in terms of registration obligations and the like.---Yes.

A point that's been raised in this inquiry has been why limit it to third-party lobbyists, and from what you've said, you had experience before the 2018 amendments, as I understand it, of dealing with people who, whether they like to be called third-party lobbyists or, no sorry, called lobbyists or not, in fact were not third-party lobbyists but - - -?---Yes.

10

So can you see any justification for making the distinction that the legislation makes, that is it carves out for registration the third-party lobbyists but everyone else is left unregulated. Can you see purpose served by doing that or do you see potential disadvantage from that position?

---I could answer it this way, that the legislation was framed in a particular way to deal with third-party lobbyists and parliament had something in its mind when it, when it enacted that legislation to put them on a different standing to other people, and so I think there is a, there is a rationale behind that decision that there is a different category of lobbyist that parliament wanted to manage in a certain way. I think my second answer to that would be that there are many, there are many opportunities for people to engage with government offices and the more formal those are it may act as a deterrent for people to engage with public officials on matters that may be important to those officials in the conduct of their duties, and it would be disappointing if a higher level of regulatory enforcement acted as a deterrent for those communications.

20

Going back to your first point that parliament saw fit for whatever reason that it was to be appropriate to legislate in respect of third-party lobbyists, but it doesn't explain why parliament wouldn't also consider the other, call them in-house lobbyists if you like, as being candidates for legislative regulatory control.---Yes.

30

Again relying upon your experience of probity standards, if you leave what I'll call in-house lobbyists, I think you know what I'm referring to in that regard - - -?---Yes.

- - - out of regulation, then the result is that communications and ongoing communications about a lobbying proposal may very well carry the risk that it goes nowhere near appropriate probity standards.---That, that may occur, yes, I accept that.

40

Then you may be aware that this Commission conducted a lobbying inquiry some 10 years ago, Operation Halifax.---Yes.

And the recommendations there were in fact for there to be regular regulatory controls over all lobbyists.---Ah hmm. Yes.

Can you see any justification for not doing that?---I'm, I'm just trying to think of the circumstances where public officials, in the conduct of their duty, need to obtain information, and whether it would be inappropriate for them to record that information in a way that is accountable and retrievable and I, and, and I don't, I can't think of a reason why, why those obligations shouldn't extend to other than third-party lobbyists. So, so I think my answer is yes, it could be.

10 But the overall issue that arises in this inquiry is, well, if you're going to either improve on, if improvement is needed to the existing regulatory system under the Act or the regulation under the Act, or if you're going to start again, and have a new regulatory system, hopefully achieves higher standards. Then, having regard to the disparate groups who do engage in lobbying activities, do you see whether a one-size-fits-all approach should be made to regulation? That is, everyone has to comply with the various standards for contacts and then ongoing communications, or whether there should be some differentiation between those lobbyists or their clients who are pursuing commercial objectives as against, for example, a non-profit organisation or a charitable institution who are not in the business of
20 pushing for profit but pushing to improve facilities, for example.---Yes. I, I think there is some logic to make that distinction.

It would seem inappropriate to burden some in the latter category with a more elaborate, what might be called a Rolls Royce approach to regulation than the former.---Mmm, yes.

The other topic that has been explored here is the obligations of public officials. As we all know, the obligations essentially come from common law principles that have been developed over the centuries.---Yes.

30 Going back to the 16th century, I think it is.---Yes.

There are codes of conduct, Premier's directions and things of that kind. But do you have a view as to whether or not in order to ensure that you've got the best form of transparency and accountability in the system (not transcribable) that any obligations arising in, at least in accordance with common law principles, should not be actually implemented by way of codification, with the force of legislation behind it, so that public officials, A, know what the common law provides as essential and, B, lobbyists
40 understand how they have to be careful in the way they deal with public officials. Do you see any benefit of that sort of approach?---Oh, I, I think there are, there are two aspects to what you're talking about, and I think the first is, yes, it'll be beneficial to have the codification of those standards. But secondly, it's just as important to have the training about those standards, so that there is a common understanding, because legislation in itself doesn't help somebody interpret the legislation or apply the legislation. And so there is an important role for guidance documents and for face-to-face training, to have a better awareness and understanding of

how those codified common law principles are to be applied in any particular circumstance.

And would you envisage the training would extend both to elected officials as well as appointed officials?---To, to, to, I think it should be open to anybody who is, has an interest in dealing with government in any form.

10 Yes. Another matter that's arisen for discussion, to which I appreciate any views you care to make about, is whether if you had a regulatory system for lobbying that does in fact impose specific duties both on lobbyists, the
11 lobbied official, whether a person, who might – for want of a better
12 description – be called a commissioner for lobbying, appointed, established
13 and appointed to monitor and enforce, but not necessarily punitively, but by
14 way of perhaps an advisory role, would you see any point in consideration
15 being given to that sort of adjunct to go with the regulatory system?---I
16 think it's worthwhile to have a point of contact for information and advice
17 and I think the Electoral Commission performs a very good role in, in a
18 broad cross-section of information, but as a, as a single commissioner to
19 provide that advisory role I think, I think it's something that might be
20 trialled for a relatively short, when I say short period a two to three-year
21 term so that there is an understanding of the role that that commissioner
22 plays and then that be reviewed after that length of time to see whether,
23 whether it's been effective in getting the communication out and acting as a
24 source, a single point of contact about matters of lobbying and, and
25 lobbyists and public officials' behaviour, so I think within a relatively short
26 time frame I think you'll be able to assess the effectiveness of that role.

So a trial?---A trial.

30 Thank you, Mr Woodhams.

MS CURTIN: No further questions for today.

THE COMMISSIONER: Mr Woodhams, thank you very much for your attendance here today. The Commission does appreciate the assistance of people such as yourself who've got experience in the field. Thank you again.---My pleasure, thank you.

40 You are excused.

THE WITNESS EXCUSED

[3.32pm]

THE COMMISSIONER: Nothing else?

MS CURTIN: No, Commissioner.

THE COMMISSIONER: Right. Very well. I'll adjourn.

AT 3.32PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.32pm]