

# INDEPENDENT COMMISSION AGAINST CORRUPTION

## OPERATION WITNEY

### OPENING STATEMENT OF COUNSEL ASSISTING THE COMMISSION

(ROB RANKEN)

#### **Introduction**

1. The principles of integrity, selflessness and impartiality are of critical importance to the role of Local Councillors and the discharge of their duties. They are given legislative effect in the Model Code of Conduct for Councils in NSW prescribed by the *Local Government (General) Regulations 2005* (NSW) for the purposes of s 440 of the *Local Government Act 1993* (NSW).
2. These key principles require Local Councillors to:
  - (1) ensure they do not place themselves under any financial or other obligation to any individual or organisation that might reasonably be thought to influence them in the performance of their duties;
  - (2) make decisions in the public interest and not in order to gain financial or other benefits for themselves, their family, friends or business interests. In other words, they must make decisions because they benefit the public and not because they may benefit the decision maker or provide preferential treatment to some private interest; and
  - (3) make decisions on merit and in accordance with their statutory obligations when carrying out public business. This means they must seek to do fairness to all, act impartially and consider only relevant matters.
3. Any attempt to seek to influence Local Councillors to make decisions that may benefit a private interest but which are plainly contrary to the public interest is a serious matter. Such conduct undermines the integrity, selflessness and impartiality of Local Government and jeopardises public confidence in Local Government decision-making processes and outcomes. That is particularly so where the decisions concern development controls and zoning, which have the potential for private interests to achieve great financial benefit at the expense of longstanding impacts upon the liveability and public amenity of the local community.

4. Indeed, 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 is a form of corrupt conduct.<sup>1</sup>
5. This public inquiry is being conducted for the purposes of an investigation by this Commission into whether or not between November 2013 and September 2017, the State Member for Drummoyne, the Hon. John Sidoti improperly influenced or attempted to improperly influence Local Councillors on the City of Canada Bay Council and/or Council Staff Members, to dishonestly or partially exercise any of their official functions in respect of advancing amendments to development controls affecting land between Second Avenue and Barnstaple Road on Waterview Street, Five Dock; and/or any rezoning of the land and/or any proposals to develop the land situated at 120, 122 and 124 Great North Road, Five Dock, and 2 Second Avenue, Five Dock.
6. In addition, and relatedly, this public inquiry will examine whether or not, between 30 June 2011 and 30 June 2019, Mr Sidoti engaged in a breach of public trust by failing to make a number of pecuniary interest disclosures contrary to his obligations to do so under the *Constitution (Disclosures by Members) Regulation 1983*, the *NSW Parliament Code of Conduct for Members* and the *Ministerial Code of Conduct*.

## **Background**

7. John Sidoti has been the Liberal Party State Member for Drummoyne since the NSW State election in March 2011. Between 1992 and 2008, Mr Sidoti worked in a family business involving a function centre at 120 Great North Road, Five Dock.
8. Evidence obtained by the Commission will establish that the property at 120 Great North Road was purchased in 1992 by a company, Deveme Pty Ltd, the directors and shareholders of which were and continue to be Mr Sidoti's parents, Mr Richard Sidoti and Mrs Catherine Sidoti. Deveme Pty Ltd is the trustee of the Sidoti Family Trust. It is also the trustee of an indefinite continuing superannuation plan known as the Deveme Pty Limited Staff Superannuation Fund. Mr John Sidoti and his wife Sandra and children

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<sup>1</sup> Section 8(1)(a) of the *ICAC Act*.

are general beneficiaries under the Sidoti Family Trust. Mr Sidoti is also a member of the Deveme Pty Limited Staff Superannuation Fund.

9. In 2000, Mr Sidoti, together with his wife and his parents, replaced Deveme Pty Ltd as trustees of the Staff Superannuation Fund.
10. In November 2007, Deveme Pty Limited sold 120 Great North Road to Mr Sidoti, his wife and his parents, who then became the registered proprietors of 120 Great North Road in their capacity as trustees of the Staff Superannuation Fund. That is, they held the legal title to the property on trust for the members of that fund, which members included Mr Sidoti and his parents.
11. I expect the evidence will establish that the function centre business run by Mr Sidoti's family at 120 Great North Road finished in about 2008 at which time, Mr Sidoti's parents retired and Mr Sidoti pursued a political career. From that time until June 2019, Mr Sidoti, together with his wife and his parents, continued to be the registered proprietors of 120 Great North Road in their capacity as trustees of the Staff Superannuation Fund. In April 2019, Mr Sidoti and his wife were removed from their positions as trustees of the Staff Superannuation Fund and, consequently, were removed from being registered proprietors of 120 Great North Road.
12. In 2008, Mr Sidoti was elected a Councillor on Burwood Council and served as Mayor of that Council from 2009 to 2011, after which he entered State politics.
13. Between October 2014 and March 2015, Mr Sidoti was a parliamentary secretary for planning and between August 2015 and January 2017, he was parliamentary secretary for roads and transport. In April 2019, he was appointed as Minister for Sport, Multiculturalism, Seniors and Veterans, a position from which he stood down pending the Commission's investigation.

#### **The allegation of improper influence**

14. The investigation concerning the allegation of improper influence arises out of the circumstances in which Mr Sidoti engaged with Liberal Councillors on the City of Canada Bay Council (**Council**) and members of staff of that Council in relation to planning decisions concerning the Canada Bay Local Environment Plan (**LEP**) and the

Canada Bay Development Control Plan (**DCP**) arising from the Five Dock Town Centre Urban Design Study (**Urban Design Study**) conducted in 2013, which itself built on previous work, including the Five Dock Town Centre Strategy 2012 (**Town Centre Strategy**).

15. Before turning to the background and detail of the Town Centre Strategy, the Urban Design Study and the LEP and DCP, I should say a little about the City of Canada Bay and the State electorate of Drummoyne.
16. **[SHOW DRUMMOYNE STATE ELECTORATE MAP]** – As can be seen from the map of the Drummoyne State electorate, the City of Canada Bay Local Government Area takes up the entirety of the electorate. In fact, a small part of the Local Government Area sits outside the Drummoyne electorate (in the Strathfield State electorate). That means that the Council is responsible for all planning decisions within Mr Sidoti's State electorate.
17. The suburb of Five Dock sits within both the City of Canada Bay Local Government Area and the Drummoyne State electorate. Running through the middle of Five Dock is a main road, Great North Road, which extends from Parramatta Road to the South through Five Dock and continuing north through Wareemba and Abbotsford, terminating at Werrell Reserve, Abbotsford Point, which is at the northern end of what I might call the Abbotsford peninsula.
18. Historically, commercial activity in Five Dock has been centred around a Town Centre situated along a section of the Great North Road bound by Lyons Road to the north, East Street to the west, Fairlight Street and Queens Road to the south and extending mid-block between the Great North Road and Waterview Street on the eastern side. The Town Centre is surrounded by predominantly medium to lower density residential development.
19. In 2012, the Council undertook the Five Dock Town Centre Strategy, which explored the economic factors that influence the Town Centre and identified actions to enhance its vitality into the future.

20. One of the key recommendations of the Town Centre Strategy was to consider the Five Dock Town Centre from an integrated design perspective by undertaking an urban design study to ensure that any potential changes to the existing planning controls, such as building scale, density and height, were carefully considered. To that end, the Council engaged independent external experts – Arup, Hill PDA and Studio GL – to undertake what was potentially a far-reaching study, the Urban Design Study.
21. In October 2013, following an extensive community engagement process with the Five Dock community, the independent experts engaged by the council completed the Urban Design Study, which came to be considered by the Council at its meeting on 26 November 2013.
22. At that time, the Council was comprised of 9 Councillors (including the Mayor). These included the Labor Mayor Angelo Tsirekas, the Greens Deputy Mayor Pauline Tyrrell, Labor Councillors Tony Fasanella, Neil Kenzler and Marian O’Connell and four Liberal Councillors, Michael Megna, Helen McCaffery, Mirjana Cestar and Dr Tanveer Ahmed.
23. Key recommendations of the Urban Design Study included:
  - a new Town Square;
  - an expanded Fred Kelly Place;
  - a welcoming Northern Gateway;
  - green & tree lined Streetscapes;
  - improved pedestrian network, including a new Five Dock School link;
  - enhanced east west cycle connection;
  - consolidated, efficient parking;
  - new controls to facilitate quality new development; and
  - an expanded B4 Mixed use zone.

The last recommendation is of particular relevance to the Commission’s investigation.

24. **[SHOW MAP AT EXHIBIT 2 PAGE 232]** As I said, one of the recommendations of the Urban Design Study was to expand the width of the Town Centre core by creating additional “mixed use” areas along West Street south of Henry Street, between Garfield

Street and Kings Road and along Waterview Street south of Second Avenue. The recommended expansion was said to allow the Town Centre to grow over time and provide additional pedestrian connections.

25. Significantly, the Urban Design Study did not recommend extending the Town Centre along Waterview Street to the north, between Second Avenue and Barnstaple Road. The independent experts recommended this area remain zoned R3, being medium density residential and not be rezoned B4 mixed use. That meant the zoning of that particular block was split, with B4 mixed use zoning for properties between Second Avenue and Barnstaple Road that fronted Great North Road and R3 medium density residential zoning for those properties between Second Avenue and Barnstaple Road that fronted Waterview Street. The function centre at 120 Great North Road was one of the properties in that block that fronted Great North Road.
26. Another issue that was identified by the Urban Design Study was that feedback from local developers and investors had suggested development that conformed to the existing Development Control Plan (**DCP**) controls in Five Dock struggled to achieve the then current maximum floor space ratio (**FSR**) of 2.5:1. A floor space ratio is commonly used to estimate the development potential of a site and therefore its “land value”. To address these concerns, the Urban Design Study did not recommend an increase to the existing FSR, but did recommend changes to the DCP and height controls to make it more possible to achieve an FSR of 2.5:1.
27. To implement the recommendations of the Study, three draft documents were prepared:
  - (i) **Planning Proposal**: to amend the Canada Bay Local Environmental Plan (LEP) 2013. The planning proposal details land to be rezoned, land identified for acquisition and new developments standards;
  - (ii) **Canada Bay Development Control Plan (DCP)**: provides additional guidance for new development and includes building envelopes (maximum number of storeys and setbacks), a framework to deliver pedestrian and vehicle connections as well as streetscape and building design objectives;
  - (iii) **Canada Bay Development Contributions Plan**: revised to include public infrastructure in the Five Dock Town Centre.

28. At the Council meeting on 26 November 2013, those Councillors present voted unanimously in accordance with the recommendations of Council Staff to endorse the Urban Design Study and associated documents for public exhibition throughout December 2013 and January 2014. I should perhaps note, however, that Councillors Fasanella and Megna each declared a pecuniary interest in the matter arising from the fact they owned property within the Study area and left the meeting when the matter was being considered. Councillors Fasanella and Megna adopted that course on each occasion the Urban Design Study and associated planning proposals were considered by the Council.
29. The Urban Design Study and associated planning proposals were publicly exhibited between December 2013 and January 2014. Of the 31 submissions received by the Council, only one, from Silvana Cassisi of [REDACTED], suggested expanding the town centre to include the western side of Waterview Street between Second Avenue and Barnstaple Road (**Waterview Street Site**). In response to that submission, Council staff noted there was little public benefit in rezoning this site from residential to mixed use (R3 to B4). They noted that the Waterview Street Site had a predominantly low-rise residential character, including a heritage building and existing strata development. It was considered that a rezoning of the Waterview Street Site was undesirable and would provide no public benefit.
30. Evidence obtained by the Commission indicates that Mr John Sidoti did not agree with the planning controls recommended in the Urban Design Study. On 7 April 2014, he attended and spoke at a meeting held at the Five Dock Chamber of Commerce in his capacity as the State member for Drummoyne. Minutes of the meeting record, relevantly, that Mr Sidoti expressed the view that Five Dock's density was "far too low" and that attractive buildings could be built on small and large parcels of land. He suggested a 3:1 FSR was required.
31. There will also be evidence that Mr Sidoti sought to arrange a meeting between all four Liberal Councillors – including Mr Megna – and the President and Vice President of the Five Dock Chamber of Commerce in advance of the Council's next consideration of the urban Design Study and associated planning proposals in May 2014, specifically the Council meeting on 20 May 2014.

32. In advance of the Council meeting on 20 May 2014, the independent experts reported back to Council about the outcome of the public exhibition of the Urban Design Study and associated planning proposals. Relevantly, it was recommended that a clause be included in the planning proposal that would permit an FSR of 3:1 and a height of 27 m (8 storeys) on sites with an area over 1500 m<sup>2</sup>. The bonus floor space and height would be possible for the majority of buildings within the Town Centre Study area, but would not apply to certain land that was identified as being a maximum of 3-4 storeys because of the impact on established dwellings.
33. This proposed bonus provision to the planning proposals would not apply to 120 Great North Road because it did not meet the minimum 1500 m<sup>2</sup> requirement and, in any event, so long as the land behind it continued to be zoned as R3 medium density residential, the development potential of 120 Great North Road would be limited to a maximum of 3-4 storeys because of the impact on those established dwellings.
34. Although Council Staff recommended that the Council adopt the Urban Design Study, endorse the Planning Proposal for the Town Centre and submit the Planning Proposal to the Department of Planning and Infrastructure for a “Gateway Determination”, all Councillors present at the 20 May 2014 Council meeting voted to defer the matter to consider issues of height setbacks overshadowing, mix of development and the amenity of the surrounding residents.
35. One of the issues under consideration was the extension of the B4 Mixed Use zone. In that regard, the Urban Design Study proposed to extend the B4 Mixed Use zone around the central core of the centre, which the independent experts considered would benefit most strongly from the proposed investment and upgrade to the public domain. Critically, the Waterview Street Site was not identified for rezoning as it was considered to be located outside the central core of the Town Centre, contained a few constrained sites, including a heritage item (No 39 Waterview Street) and existing strata development; and would require the extension of a lane to facilitate improved access. It was considered that rezoning land outside the central core would provide fewer benefits and was therefore not recommended.



36. When the matter was next before the Council on 24 June 2014, all six Councillors present and able to vote, including Dr Ahmed and Ms Cestar (but not Ms McCaffrey, who was not present) voted to endorse amendments to the LEP as recommended by Council staff and refer the proposed changes to the Department for a Gateway Determination.
37. What constituted the public benefit in the Five Dock Town Centre planning process had therefore been determined after extensive community consultation over a number of years, following exhaustive scrutiny of submissions from the community and the recommendations of independent consultants engaged by the council as well as the expert advice of Council's own planning staff.
38. These processes had determined that a vast majority of the affected constituents were opposed to higher heights, densities, commercial rezoning and development and wanted to retain the village atmosphere of the area.
39. The planning outcomes sought by the majority in the Five Dock community and endorsed by Council staff presented differently to the outcome subsequently raised and pursued by Mr Sidoti.
40. I expect there will be evidence that, in the meantime, in July 2014, Mr Sidoti was involved in engaging town planners. Whether he retained these town planners on his own initiative or on behalf of his parents is a matter to be explored in the course of this public inquiry. The town planners in question were retained to assist with a development proposal for 120 Great North Road including, the preparation of an options analysis for the site and associated adjoining lots in Second Avenue and Waterview Street, providing town planning advice concerning the effect of the draft Planning Proposal once it was certified and reviewing the proposed heights, FSR, setbacks, heritage controls, site amalgamation incentives and the like.
41. The reference to adjoining lots in Second Avenue and Waterview Street is of interest to the Commission because, as at July 2014, the only property owned by Mr Sidoti's family was 120 Great North Road, which Mr Sidoti, his wife and his parents held as trustees of the Staff Superannuation Fund. However, I expect there will be evidence that in October 2014, an adjoining property at 2 Second Avenue was purchased by a company, Anderlis Pty Ltd as trustee of the Anderlis Investment Trust. The evidence will establish that Anderlis Pty Ltd was first incorporated on the same day that it exchanged contracts for

the purchase of 2 Second Avenue. At the time of its incorporation, the sole director and shareholder of Anderlis Pty Ltd was Mr Sidoti's sister, Lisa Anderson. She ceased being a director and shareholder on 21 October 2014, whereafter her parents, Richard and Catherine Sidoti were the directors and shareholders of the company. Relevantly, John Sidoti and his wife are general beneficiaries of the Anderlis Investment Trust.

42. The evidence will establish that members of the Sidoti family were involved in further property purchases on that block between Second Avenue and Barnstaple Road. In particular, on 15 May 2015, Deveme Pty Limited as trustee of the Sidoti Family Trust purchased 122 Great North Road and on 1 December 2017, Deveme Pty Limited (again as trustee of the Sidoti Family Trust) purchased 124 Great North Road.
43. In the meantime, on 25 September 2014, the delegate of the Minister at the Department of Planning and Environment determined that the amendment to the LEP should proceed subject to further community consultation and a public exhibition of planning proposals. Following the period of public consultation, the Council was required to refer the proposed LEP back to the Department for finalisation.
44. From 21 October 2014 to 17 November 2014, the Council publicly exhibited the draft Planning Proposal as required by the Gateway Determination.
45. Over the ensuing two and a half years, the Urban Design Study and associated planning proposals became the subject of a protracted process of consideration by the Council. Between November 2014 and February 2017, the Urban Design Study and associated planning proposals were an item on the agenda for Council meetings on a further 5 occasions.
46. A consistent matter of contention were representations made by planners engaged on behalf of, inter alia, interests associated with Mr Sidoti's family seeking to have the Waterview Street Site included in the expansion of the area to be rezoned as B4 Mixed Use. The planning outcome advanced on behalf of the Sidoti family interests was consistently not supported by the independent experts engaged by the Council or by Council staff. To the contrary, the independent experts and Council staff remained of the view that an expansion of the area to be rezoned as B4 Mixed Use beyond that proposed by the Urban Design Study would have no public benefit.

47. The evidence will establish that following the first public exhibition of the Planning Proposal, town planners engaged by the Sidoti family made a written submission to Council contending for a rezoning of the Waterview Street Site as B4 mixed use. This would then allow the joint development of 120 Great North Road and 2 Second Avenue as a commercial and residential property.
48. The Council engaged Studio GL an Urban designer and one of the co-authors of the Urban Design Study to review the submissions. Studio GL noted but did not support the Sidoti family's town planners' submission regarding the rezoning of the Waterview Street Site and further recommended removing the eight-storey bonus incentive from adjoining sites along Great North Road. Studio GL's recommendations were adopted by Council staff in a report prepared for the Council meeting dated 2 June 2015.
49. At the Council meeting at 2 June 2015, the Sidoti family town planner addressed the Council arguing, unsuccessfully, that the Waterview Street Site should be rezoned B4 mixed use and the eight-storey bonus should not be removed from adjoining properties on Great North Road. Notably, all Councillors present at the meeting, including the Liberal councillors Helen McCaffrey and Mirjana Cestar, voted to adopt the recommendations. Councillor Ahmed was not present at the 2 June 2015 Council meeting.
50. This meant that as at June 2015, the Waterview Street Site remained outside the areas proposed to be rezoned, which outcome had been supported by each of the Liberal Councillors on at least one occasion. That is, they had implicitly rejected arguments advanced on behalf of the Sidoti family's private property interests.
51. Notwithstanding the position as at 2 June 2015, following a further exhibition of the Planning Proposals in July 2015, the town planners engaged on behalf of the Sidoti family interests made a further submission to Council repeating the argument in favour of a rezoning of the Waterview street site as B4 mixed use. The submission was not supported by Council staff who noted that there was no significant public benefit from the proposed rezoning.
52. At a meeting of the Council on 20 October 2015, consideration of the matter was deferred on the motion of Councillor Ahmed and Councillor McCaffrey pending the preparation

of an addendum report setting out the advantages and disadvantages of alternative height options presented in Studio GL's report.

53. The evidence indicates that a meeting was arranged between Mr Sidoti, his town planner, the then Mayor of City of Canada Bay Angelo Tsirekas and Council staff on about 27 October 2015. Within a few days of that meeting a draft resolution was prepared for the next Council meeting on 3 November 2015 recommending that Council investigate the possibility of rezoning three areas at the edge of the Five Dock Town Centre at the edge of the Waterview Street Site. This resolution was passed at the Council meeting.
54. Studio GL was again engaged to investigate the three sites on behalf of the Council and prepared a report dated 3 March 2016. Studio GL identified two options for the redevelopment of the Waterview Street Site. Critically both options retained the R3 residential rezoning for the site, although the second option proposed removing the heritage listing on 39 Waterview Street and providing for a maximum building height of 14 metres (four storeys) with the upper level set back. In addition, Hill PDA undertook a feasibility study which indicated that many of the sites will not be viable for development for some years.
55. At a Council meeting on 2 August 2016, Councillors Ahmed and Cestar moved that the Council adopt Studio GL's second option in relation to the Waterview Street Site. That motion was passed on the casting vote of Helen McCaffrey who at that stage was the deputy Mayor and presiding Councillor following the earlier resignation from Council of Mayor Tsirekas.
56. Following a further public exhibition of the Waterview Street planning proposal in August and September 2016, Studio GL again reviewed public submissions including a further submission made on behalf of the Sidoti family interests, which submission urged the Council to rezone the Waterview Street Site to B4 mixed use and increase the height limit to 17 metres (five storeys). Studio GL was not persuaded by that submission and maintained its view that a height limit of 14 metres (four storeys) and a residential zoning for the site was the most appropriate.
57. Although the matter was deferred at the Council meeting on 6 December 2016, at a subsequent meeting on 7 February 2017, the Council formally adopted Studio GL's second option. Accordingly, the Liberal Councillors ultimately did not vote in favour of

a rezoning of the Waterview Street Site, which was contrary to the position that had repeatedly been advanced on behalf of the Sidoti family's property interests.

58. As has been noted, this public inquiry will explore what, if any, role Mr Sidoti played in engaging and instructing the planners who made representations to the Council on behalf of his family's interests seeking to advance those private property interests.
59. This public inquiry will also explore whether Mr Sidoti used his position as the Liberal member of State Parliament and the concomitant access to the Liberal Councillors that he was able to enjoy, in order to influence those Councillors (whether by threats or otherwise) to make decisions in respect of the Urban Design Study and associated planning proposals that were contrary to that which had been identified by the independent experts and Council staff as in the public interest but would favour or advance the private property interests of the Sidoti family.
60. In that regard, the Commission in the course of its investigation has obtained various emails and other correspondence that suggests Mr Sidoti regularly raised with the Liberal Councillors issues concerning the Urban Design Study and associated planning proposals, particularly the exclusion of the Waterview Street Site from the proposed expansion of the B4 Mixed Use zone. The evidence obtained to date suggests Mr Sidoti arranged and attended meetings with Liberal Councillors, apparently for the purpose of discussing upcoming consideration by the Council of the Urban Design Study and associated planning proposals, how the Councillors might decide the issue and even on an occasion what motion they should move. This evidence will be explored and scrutinised during the course of this public inquiry.
61. This inquiry will consider whether or not in the period between November 2013 and September 2017:
  - (a) The Liberal councillors, or any of them, were subjected to any improper influence or attempt to influence them in the exercise of their public official functions as councillors of City of Canada Bay Council so as to achieve planning outcomes that would benefit the Sidoti family's private property interests in the Five Dock area but which were not in the public interest;

- (b) Whether or not Mr John Sidoti sought to improperly influence or attempt to influence Liberal councillors' honest and impartial exercise of their public official functions with a view to achieving such planning outcomes;
- (c) Whether or not Mr John Sidoti exercised his own functions as the local member for Drummoyne purporting to represent the concerns and interests of his constituents, including "shopkeepers" in the Five Dock area when in fact pursuing his family's private property interests in the Five Dock area; and
- (d) Whether or not Mr John Sidoti sought to use his status and/or office as the local member for Drummoyne and/or his position in the Liberal party to persuade the Liberal councillors to move, support and vote as a block in favour of specific resolutions that would favour or benefit his family's private property interests in the Five Dock area.

#### **The alleged failures to declare pecuniary interests**

- 62. Turning to the alleged failures to declare pecuniary interests, Members of Parliament, Ministers and Parliamentary Secretaries have different obligations concerning the disclosure of their pecuniary interests.
- 63. The *Constitution (Disclosures by Members) Regulation 1983 (Disclosure Regulation)* requires all Members of Parliament to disclose their pecuniary interests in accordance with the requirements of it. Relevantly, the *Ministerial Code of Conduct (Ministerial Code)* imposes an additional requirement on a Minister or a Parliamentary Secretary to disclose to the Premier not only their own pecuniary interests as defined by the Regulation but also the pecuniary interests of any spouse or de-facto partner.
- 64. The Disclosure Regulation requires that members of both Houses of Parliament lodge regular returns, disclosing certain interests such as real property, interests and positions in corporations, income, debts and gifts. The Regulation also requires that each Clerk compile and maintain a Register of Disclosures for their respective Houses. The purpose of the Register of Disclosures is to promote greater transparency, openness, and accountability in the parliamentary process.
- 65. Members are required to make a primary return disclosing their pecuniary and other interests at the beginning of their term in Parliament. Every six months after that,

members must make either an ordinary or supplementary ordinary return disclosing ongoing interests.

66. The Ministerial Code commenced on 20 September 2014 as an Appendix to the *ICAC Regulation 2010*. It applies to a Minister, relevantly defined as including a Parliamentary Secretary.
67. Clause 5 of the *Independent Commission Against Corruption Regulation 2017*, prescribes the Ministerial Code as an applicable code for the purposes of s 9 of the *ICAC Act*. A substantial breach of the Ministerial Code may give rise to a finding of corrupt conduct under ss 8 and 9 of the *ICAC Act*.
68. The Ministerial Code requires a Parliamentary Secretary to provide the following information to the Premier, for inclusion in the Register of Interests that is maintained by the Department of Premier and Cabinet:
  - a copy of the most recent return they provided to Parliament (this is a continuing obligation);
  - notice in writing to the Premier setting out the particulars of any events that have occurred since that return was lodged that will need to be disclosed in the next Parliamentary return; and
  - notice in writing to the Premier of any pecuniary and other interests of any immediate family member the disclosure of which would be required under the Regulation if the relevant interest were instead that of the Parliamentary Secretary. Relevantly, an immediate family member is defined to include any spouse or de facto partner.
69. A Parliamentary Secretary should notify the Premier of changes in their pecuniary or other interests, or those of their immediate family members, as soon as practicable after the change occurs.
70. The disclosures referred to above are kept on the Ministerial Register of Interests. Clause 9 requires a schedule of the disclosures of current interests made by all Ministers under this Part to be kept on the Ministerial Register of Interests.

71. A member may also make a discretionary disclosure at any time. Pursuant to cl 6B of the Regulation, if a member considers it appropriate to do so, a member may make any disclosures in a discretionary return concerning any or all of the matters that a member is required or permitted to disclose in an ordinary return, before the date on which the member is next required to lodge an ordinary or supplementary ordinary return.
72. The enforcement of the Ministerial Code, including any sanctions for a breach, is a matter for the Premier, who is supported by the Department of Premier and Cabinet (**DPC**) in this function. Disclosures made under the Ministerial Code to the Premier and to the DPC Secretary are handled by DPC. Upon a person's appointment as a Parliamentary Secretary, DPC writes to the Parliamentary Secretary, and the General Counsel meets with them to explain their obligations under the Ministerial Code.
73. The Commission has obtained the returns made by Mr Sidoti to the Premier over the relevant period. They were produced by DPC in response to a s 22 compulsory notice.
74. According to the Commission's analysis to date, Mr Sidoti was required to declare the following pecuniary interests:
- Income received in connection with residential and commercial properties at 120, 122, 124 Great North Road, Five Dock and 13 Andrew St, West Ryde:
    - 120 Great North Road:
      - (i) income for John Sidoti for 2011/12, 2012/13, 2013/14 and 2014/15;
      - (ii) income for John and Sandra Sidoti for 2015/16, 2016/17 and 2017/18;
    - 122 Great North Road: income for Sandra Sidoti for 2015/16, 2016/17, 2017/18 and 2018/19;
    - 124 Great North Road: income for Sandra Sidoti for 2017/18 and 2018/19;
    - 13 Andrew Street, West Ryde: income for Sandra Sidoti for 2015/16, including capital gain from the sale of the property;
  - Interest derived from term deposits made by The Staff Superannuation Fund and The Sidoti Family Trust:
    - Staff Super Fund:



- (i) interest income for John Sidoti for 2011/12, 2012/13, 2013/14 and 2014/15;
  - (ii) interest income for John and Sandra Sidoti for 2015/16, 2016/17 and 2017/18;
  - Sidoti Family Trust – interest income for Sandra Sidoti for 2015/16, 2016/17 and 2017/18
  - his interest in real property situated at 120 Great North Road, Five Dock & 3A Byer Street, Enfield;
  - his directorship of Betternow Pty Limited. Although Mr Sidoti has declared an interest in land held by Betternow Pty Ltd as trustee for the JAFS Investment Fund since the financial year ending 30 June 2014, he did not disclose his directorship and status as a shareholder of Betternow Pty Ltd until he submitted a Discretionary Return Form on 20 June 2019. Mr Sidoti and his wife were appointed directors on 15 July 2014.
75. This public inquiry will explore the extent to which Mr Sidoti may have failed to disclose the matters he was required to disclose and, particularly, the extent to which any non-disclosure may have been deliberate or was otherwise a substantial breach of the Ministerial Code.
76. Finally, I should say, for the benefit of the public, that this Commission is an investigative body; not a Court. As such, it will not make any findings that a person has committed a criminal offence. It may, however, make findings concerning the conduct under investigation and may also consider whether advice should be sought from the Director of Public Prosecutions concerning the possible prosecution of any persons for a specified criminal offence.
77. To that end, it will be necessary for the Commission to make assessments as to the credibility of witnesses and their evidence in this public inquiry. In that regard, I should perhaps also note that a person who knowingly gives false or misleading evidence to this Commission, whether at a compulsory examination or public inquiry, is liable to prosecution for a serious indictable offence punishable by up to 5 years' imprisonment.

**Rob Ranken**

Counsel Assisting the Commission

Date: 29 March 2021