



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED MISCONDUCT CONCERNING MR STEPHEN LEE, MAYOR OF THE CITY OF COCKBURN

26 September 2008

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Dear Mr Peacock
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003* ("the Act"), the Commission hereby transmits to you a copy of the *Corruption and Crime Commission Report on the Investigation of Alleged Misconduct Concerning Mr Stephen Lee, Mayor of the City of Cockburn*.

The Commission notes that under section 93(3) of the Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Len Roberts-Smith'.

The Hon Len Roberts-Smith RFD QC
COMMISSIONER

26 September 2008

ABBREVIATIONS AND ACRONYMS

“the Act”	<i>Corruption and Crime Commission Act 2003</i>
ALP	Australian Labor Party
“Anchorage”	Anchorage Industries Pty Ltd
“annual return”	A return required by section 5.76 of the <i>Local Government Act 1995</i> .
“Australand”	Australand Holdings Limited
BB	Brian Thomas Burke
“Canal Rocks”	Canal Rocks Pty Ltd
CEO	Chief Executive Officer
“Consolidated”	Consolidated Marine Developments (Australia) Pty Ltd
CCC	Corruption and Crime Commission
CL	Christopher (Chris) John Lewis
“the Commission”	Corruption and Crime Commission
DLGRD	Department of Local Government and Regional Development
GST	Goods and Services Tax
IAG	Independents Action Group
IPAA	Institute of Public Administration
ISP	Internet Service Provider
PCN	Port Coogee Now
“primary return”	A return required by section 5.75 of the <i>Local Government Act 1995</i> .
“the PSM Act”	<i>Public Sector Management Act 1994</i>
“Riley Mathewson”	Riley Mathewson Public Relations
RMPR	Riley Mathewson Public Relations
“Smiths Beach Report”	<i>Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup, 5 October 2007</i>
“the 2007 submissions”	Extensive written submissions provided to the Commission by Mr Stephen Lee’s lawyers.
WAPC	Western Australian Planning Commission

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EXECUTIVE SUMMARY

Introduction

- [1] During 2005 and 2006, the Corruption and Crime Commission (“the Commission”) investigated allegations of misconduct by public officers in connection with the proposed Smiths Beach development at Yallingup. That investigation examined the efforts of Canal Rocks Pty Ltd (“Canal Rocks”) and its consultants in seeking to influence the Busselton Shire Council, public officers and politicians to support the development. The investigation touched on the activities of Mr Brian Thomas Burke and Mr Julian Fletcher Grill, in their role as lobbyists acting for Canal Rocks, and their influence or attempts to influence public officers involved in the development proposal.
- [2] The Commission *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup* was tabled in the Parliament of Western Australia on 5 October 2007.¹
- [3] In the course of its Smiths Beach investigation, the Commission became aware of a number of disparate matters involving other, serious allegations in which public officers may have engaged in misconduct. One of those allegations related to the funding of the election campaign of the Mayor of the City of Cockburn, Mr Stephen Lee, and is the subject of this report.
- [4] Public hearings were held at the Commission in respect of the Smiths Beach matter in October, November and December 2006, and in relation to other matters associated with the lobbying activities of Mr Burke and Mr Grill, including the matter relating to Mr Lee, in February 2007. During this time Mr Burke, and his relationships with senior public officers, received widespread media attention in Western Australia and nationally.
- [5] The Commission conducted these hearings publicly in order to expose and make the public aware of matters that could represent serious abuse of power by senior public officers in order to ensure that good governance within the Western Australian public sector was not comprised (sic). The Commissioner was of the view that hearings conducted in this way would allow public sector agencies to take any expeditious action they thought appropriate.

Investigation

- [6] Mr Lee is the Mayor of the City of Cockburn. Mr Lee has served as a councillor to the City of Cockburn since May 1991, and was elected Mayor in December 2000. Mr Lee was re-elected as Mayor in May 2005.
- [7] In April 2005 the Commission received an allegation concerning Mr Lee’s fund-raising activities in relation to his campaign for re-election at the Local Government Elections to be held in May 2005. The allegation related to the use of a letter explicitly seeking donations of up to \$199, an amount that is \$1

below the declaration threshold prescribed in the *Local Government (Elections) Regulations 1997*. At the time the Commission considered that the information provided was insufficient to constitute evidence of, or reasonable grounds to suspect, misconduct by a public officer.

- [8] In December 2005 the Commission received a further allegation concerning the funding of Mr Lee's election campaign. The allegation related to donations received by Mr Lee from the action group Port Coogee Now (PCN) and public relations firm Riley Mathewson Public Relations ("Riley Mathewson"). The Commission made an assessment that misconduct had or may have occurred, was or may have been occurring, was or may have been about to occur, or was likely to occur pursuant to section 22(1) of the *Corruption and Crime Commission Act 2003* ("the Act"), and decided to refer the allegation to the Department of Local Government and Regional Development (DLGRD) pursuant to section 33(1)(c) of the Act.
- [9] DLGRD prepared a report detailing the action it had taken in relation to the allegation, pursuant to section 40(1) of the Act, and, in accordance with section 40(2) of the Act, provided that report to the Commission in April 2006.
- [10] DLGRD wrote to Mr Lee in February 2006 asking him a series of questions in relation to the donations he declared in his annual return for the year ended 30 June 2005 from PCN and Riley Mathewson. DLGRD concluded that:

Mayor Lee has complied with disclosure requirements during the election disclosure period outlined in regulation 30C. Gifts promised or received outside of the election gift period must be disclosed in the annual financial interest return, which was done by Mayor Lee.

Nevertheless, there is speculation that Mayor Lee did not disclose the true source of his donations from the Port Coogee Now group and Riley Mathewson Public Relations.

However, the Department is limited in the information that it can obtain on the matter and is unable to examine the circumstances of the donations in any detail.

It is recommended that an appropriate authority, perhaps the CCC conduct background financial checks into Mayor Lee's finances and his association with the developer of the Port Coogee Marina.²

- [11] Based on the assessment of the allegation by DLGRD and other information gathered by the Commission, an investigation was initiated pursuant to sections 32 and 33 of the Act.
- [12] The general scope and purpose of the Commission investigation was to enable the Commission to make an assessment and form an opinion as to whether misconduct by Mr Lee had or may have occurred or was occurring in relation to, and as a consequence of, the funding of his election campaign for the 2005 Local Government Elections.

- [13] The Commission investigation encompassed a review of documentation provided by DLGRD, an examination of documentation provided to the Commission voluntarily and in response to notices served on persons pursuant to section 95 of the Act, interviews of various persons, and private and public hearings.
- [14] This report examines the funding of Mr Lee's election campaign for re-election at the Local Government Elections held in May 2005, particularly the donations received from PCN and Riley Mathewson. This report also examines the relationship between Mr Lee and Australand Holdings Limited (Australand), the developer of Port Coogee, and, in particular, any financial contribution by Australand in relation to Mr Lee's election campaign. The report also examines Mr Lee's role in relation to some matters before Council involving Australand and the Port Coogee development. This report incorporates Commission assessment and opinions as to Mr Lee's actions.
- [15] In November 2007 the Commission received submissions³ for Mr Lee, and this report also examines those submissions, as well as representations made by Mr Lee's lawyers dated 31 July 2008 in response to a notice of possible adverse matters issued by the Commission under section 86 of the Act.
- [16] Neither the investigation, nor this report, has assessed the suitability or merit of the Australand Port Coogee development. Such an assessment is not the role of the Commission.

Commission Assessment and Opinions

Funding of Mr Lee's Election Campaign

- [17] On 26 March 2005 Mr Lee attended a meeting at the home of Mr Burke. Mr Christopher Lewis, Australand General Manager Residential Division for Western Australia, and Mr Peter Owens, Riley Mathewson Senior Consultant, were also present. The purpose of the meeting was to discuss Mr Lee's campaign for re-election as the Mayor of the City of Cockburn. The matters discussed during the meeting included the need for a strong campaign with quality campaign literature, and fund-raising.
- [18] In relation to fund-raising, it was proposed that a fund-raising letter be signed by a prominent local identity and widely circulated, and that lobby group PCN hold a fund-raising luncheon. The fund-raising letter was to seek individual donations of up to \$199. The PCN fund-raising luncheon was not so restricted, as it was considered that PCN acted as an effective veil for people wishing to contribute through it, so that it was PCN, rather than the individual, who was considered to be the source of funds. PCN already had an association with Riley Mathewson and Australand. PCN had an account with Riley Mathewson, and Australand had been paying the invoices issued by Riley Mathewson for work it did on the PCN account for some 18 months, totalling \$490,749.62 by the end of March 2005, through an entity called Marta Fishing Co.⁴

[19] The intention of those present was that the costs of the election campaign would be substantially met from fund-raising, and that it was not intended for Mr Lee to contribute in any substantial way.

[20] There was a second meeting with the same attendees, this time at the offices of Australand, on 4 April 2005, at which it seems the main topic of discussion was the campaign literature. Otherwise, the parties generally communicated by email, apart from regular meetings between Mr Owens and Mr Lee. Regarding the email communication, Mr Lee was sometimes included, or copied in, and sometimes he was not.

[21] In evidence to the Commission, Mr Lee claimed that he may not have received any email communication that was sent to him because he was experiencing problems with his personal computer at the time. The Commission does not accept Mr Lee's evidence in this regard, and is of the opinion that any problems Mr Lee may have been experiencing with his personal computer were not a barrier to his receipt of emails during the relevant period, with the possible exception of emails with large, photographic-type attachments.

[22] The fund-raising letter was signed by former West Coast Eagles football player, Mr Glen Jakovich, and mailed on 31 March 2005. Mr Lee opened a bank account to accept donations in response to this fund-raising letter, and a total of \$3,559 in donations was deposited into the account.

[23] The PCN fund-raising luncheon was held at Peruginos Restaurant on 26 April 2005. It is reasonable to infer from the PCN cheque account, opened shortly prior to the luncheon, that the luncheon was attended by some 18 paying guests, at \$1,000 each. After meeting the cost of the luncheon, PCN made a donation of \$15,820 to Mr Lee on 22 June 2005.

[24] Meanwhile, Riley Mathewson had issued two invoices to Mr Lee in respect of his election campaign.

1. 30 March 2005 \$ 6,301.01
2. 26 April 2005 \$69,095.26

[25] A third invoice was to follow on the conclusion of the engagement, on 9 May 2005, for \$1,201.22. That meant that Riley Mathewson invoices to Mr Lee in respect of his election campaign totalled \$76,597.49. That amount was obviously substantially in excess of the funds raised by Mr Lee in response to the "Jakovich Letter", and by PCN.

[26] In evidence to the Commission Mr Lee claimed that he had not received the Riley Mathewson invoices. The Commission accepts that the evidence does not establish that he did. Instead, Mr Lee recalled an email he had received from Mr Owens on 18 April 2005 suggesting that, three-quarters of the way through the campaign, the campaign costs had reached around \$30,000. Mr Lee's evidence was that he assumed from this that, after one further week of

campaigning, charges by Riley Mathewson in respect of his election campaign would total around \$40,000.

[27] However, on 9 May 2005, two days after the election, Mr Owens met Mr Lee and, on Mr Lee's own evidence, told him that the Riley Mathewson charges in relation to his election campaign were likely to amount to some \$50,000 or \$60,000. To Mr Lee's knowledge then, given that he was the recipient of donations made in response to the "Jakovich Letter", and that he was present at the PCN luncheon, the funds raised must have been substantially less than the anticipated Riley Mathewson charges.

[28] Instead of approaching Riley Mathewson directly and entering into negotiations, perhaps taking some comfort in their prior agreement that the campaign costs would substantially be met from fund-raising, Mr Lee approached Mr Lewis. Mr Lewis understood from Mr Lee's approach that Mr Lee was seeking his help, and he subsequently entered into negotiations with Riley Mathewson on the basis that Australand would be required to make a contribution. In the Commission's opinion, Mr Lewis' understanding of what Mr Lee was asking for (and expecting) was correct.

[29] Following negotiations with Mr Lewis, Riley Mathewson invoiced Mr Lee for \$43,500.73 (including GST). Mr Lee gave Mr Riley a cheque to that amount. Mr Riley gave Mr Lee a cheque (by way of "gift") for \$21,586.83, for which Mr Lee handed him a receipt.

[30] In addition, it was also agreed between Mr Lewis and Mr Riley that Riley Mathewson would issue two invoices to Marta Fishing Co, which happened as follows:

8 June 2005	\$32,625.55
1 July 2005	<u>\$10,875.18</u>
	\$43,500.73

[31] Marta Fishing Co made payment to Riley Mathewson in respect of the invoices after first receiving equivalent payment from Australand. Australand had been paying Riley Mathewson accounts to PCN through the Marta Fishing Co, in respect of work done by Riley Mathewson for PCN lobbying activities in support of the Port Coogee development, for some 18 months. The same arrangement was simply then used to pay Riley Mathewson's accounts for Mr Lee's campaign expenses.

[32] So, following the agreement between Mr Lewis and Mr Riley, Riley Mathewson received \$65,414.63, being \$43,500.73 from Australand (via Marta Fishing Co) and \$21,913.90 from Mr Lee, which, incidentally, was an amount that was substantially met from fund-raising.

[33] From Mr Lee's point of view, the charges by Riley Mathewson had reduced from \$50,000 or \$60,000 to a net amount of \$21,913.90, following the "gift" from Riley Mathewson of \$21,586.83.

- [34] Mr Lee declared the promise of a gift from PCN on a Form 9A (see paragraph [107]), and he declared the gifts from PCN and Riley Mathewson in his annual return filed on 25 August 2005.
- [35] In the opinion of the Commission, given the circumstances, including the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and the huge reduction in charges by Riley Mathewson following Mr Lee's meeting with Mr Lewis, an Australand General Manager who had been substantially involved in his campaign, Mr Lee well knew that payment of the balance of Riley Mathewson's costs had been made by Australand. There was no other possible source. In the opinion of the Commission, it follows that Mr Lee knew that the declaration of a gift from Riley Mathewson in his annual return for the year ended 30 June 2005, made on 25 August 2005, was false, and knew that he ought to have declared a gift from Australand.
- [36] Having assessed all the material gathered during the investigation the Commission has formed an opinion in regard to misconduct by Mr Lee.

First Misconduct Opinion

- [37] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to declare a gift from Australand in his annual return for the year ended 30 June 2005, despite knowing that Australand had made, or would be required to make a substantial payment to Riley Mathewson in respect of his election campaign, constituted conduct that could adversely affect the honest or impartial performance of his functions as Mayor of the City of Cockburn because it assisted in concealing the degree of a potential conflict of interest, and constituted or involved the performance of his functions in a manner that was neither honest nor impartial. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* ("the PSM Act") (see paragraphs [426]-[430]). This conduct therefore constitutes misconduct under sections 4(d)(i), (ii) and (vi) of the Act.

Mr Lee's Disclosure Obligations Regarding Australand Matters before Council

- [38] Given the conclusion reached by the Commission that Mr Lee knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign, it was necessary to consider Mr Lee's role in any matters coming before Council involving Australand, and whether there was a legal requirement for him to disclose a financial interest or an interest affecting impartiality.
- [39] Mr Lee told the Commission at a public hearing on 19 February 2007 that, since the Local Government Elections in May 2005, he has never declared a

financial interest, or an interest affecting impartiality, in relation to matters relating to Australand, including those relating specifically to the Port Coogee development. Mr Lee also told the Commission that he had voted on motions relating to the Port Coogee development.⁵

[40] There were four relevant matters involving Australand and the Port Coogee development that required consideration by Council since the time which the Commission says Mr Lee was aware that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign.

1. 9 June 2005
Minute No. 2832 Proposed Minor Modifications to Structure Plan – Port Coogee
2. 11 August 2005
Minute No. 2927 Proposed Minor Modifications to Structure Plan – Port Coogee
3. 8 September 2005
Minute No. 2954 Bulk Earthworks, Remedial Work and Demolition Works Proposals – Port Coogee Marina and Residential Development
4. 25 July 2006
Minute No. 3222 Proposed Modifications to Structure Plan – Port Coogee

[41] Whether Mr Lee ought to have disclosed a financial interest in relation to these matters depends upon whether the requirements of section 5.60 of the *Local Government Act 1995* were satisfied. The issue here is whether Mr Lee was “closely associated” with Australand, which depends on whether Australand made a “notifiable gift” to Mr Lee.⁶ The term “notifiable gift” is defined to mean “a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election”.⁷ As the regulations relate to electoral gifts, they cover gifts made during the election disclosure period, which ends on the day on which the member makes their declaration prior to taking office.⁸

[42] Consequently, due to the restrictive operation of section 5.62(1)(ea) of the *Local Government Act 1995* arising from the inclusion of the term “notifiable gift” as defined in the *Local Government (Elections) Regulations 1997*, Mr Lee could not be said to be “closely associated” with Australand because the “gift” was made outside the election disclosure period specified in those regulations.

[43] In the opinion of the Commission, this result arises from a technical flaw in the legislation relating to the interaction of the legislation and the regulations, which the Commission considers ought to require the disclosure of a financial interest in these circumstances.

[44] In relation to the disclosure of an interest affecting impartiality, it is the opinion of the Commission that, given the content of the City of Cockburn Code of Conduct, in the context of former regulation 34C,⁹ Mr Lee ought to have

disclosed an interest affecting impartiality prior to any discussion on each of the above four motions. In the opinion of the Commission:

1. Mr Lee knew he was obliged to disclose an interest affecting impartiality because he knew of the involvement of Mr Lewis throughout his election campaign; and,
2. in the circumstances, he knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign.

[45] In the Commission's assessment, Mr Lee's actions would constitute a serious breach of discipline under the PSM Act. The reasons for this conclusion include the factors detailed below.

- Mr Lee did not act out of naivety or inexperience. He was a serving mayor seeking re-election.
- His conduct was not inadvertent nor was it an isolated occurrence. It was deliberate conduct engaged in over a period of time for a reason.
- The amount of funding involved was not insignificant – indeed it was substantial (even on his own evidence the amount would have been in the order of \$30-\$40,000). That went to the extent to which Mr Lee might be perceived to be under some obligation to advance Australand's interests.
- The purpose of concealing Australand's active assistance and funding of his election campaign was to enable him to advance Australand's interests at Council (which he would not have been able to do had he disclosed their financial support of him).

Second Misconduct Opinion

[46] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 2832 – Proposed Minor Modifications to Structure Plan – Port Coogee, at the ordinary Council meeting held on 9 June 2005, constituted conduct that could adversely affect the honest or impartial performance of his functions as Mayor of the City of Cockburn because it concealed the existence of a potential conflict of interest. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (see paragraphs [426]-[430]). This conduct therefore constitutes misconduct pursuant to section 4(d)(i) and (vi) of the Act.

Third Misconduct Opinion

[47] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 2927 – Proposed Minor Modifications to Structure Plan – Port Coogee, at the ordinary Council meeting held on 11 August 2005, constituted conduct that could adversely affect the honest or impartial performance of his functions as Mayor of the City of Cockburn because it concealed the existence of a potential conflict of interest. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (see paragraphs [426]-[430]). This conduct therefore constitutes misconduct pursuant to section 4(d)(i) and (vi) of the Act.

Fourth Misconduct Opinion

[48] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 2954 – Bulk Earthworks, Remedial Work and Demolition Works Proposals – Port Coogee Marina and Residential Development, at the ordinary Council meeting held on 8 September 2005, constituted conduct that could adversely affect the honest or impartial performance of Mr Lee's functions as Mayor of the City of Cockburn because it concealed the existence of a potential conflict of interest. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (see paragraphs [426]-[430]). This conduct therefore constitutes misconduct pursuant to section 4(d)(i) and (vi) of the Act.

Fifth Misconduct Opinion

[49] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 3222 – Proposed Modifications to Structure Plan – Port Coogee, at the special Council meeting held on 25 July, constituted conduct that could adversely affect the honest or impartial performance of Mr Lee's functions as Mayor of the City of Cockburn because it concealed the existence of a potential conflict of interest. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (see paragraphs [426]-[430]). This

conduct therefore constitutes misconduct pursuant to section 4(d)(i) and (vi) of the Act.

Recommendations

- [50] Despite the fact that the Commission has formed an opinion that Mr Lee engaged in misconduct, the Commission makes no recommendation that DLGRD give consideration to the taking of disciplinary action against Mr Lee. This is because prior to 21 August 2007 there was no legislative mechanism for disciplinary action against an individual council member. The Commission notes that amendments to the *Local Government Act 1995* and the *Local Government (Rules of Conduct) Regulations 2007*, which have been operative since 21 August 2007, provide a mechanism to take disciplinary action against individual council members where they do not comply with Rules of Conduct made pursuant to section 5.104 of the *Local Government Act 1995*.
- [51] The Commission considers that this investigation provides further support for Recommendation 4¹⁰ made in the Commission Smiths Beach Report, 5 October 2007, detailed below.

Smiths Beach Report: Recommendation 4

The Commission recommends that the Department of Local Government and Regional Development, in consultation with sector stakeholders, review the adequacy of the current election donation disclosure regime for local government, using the principles articulated by the WA Inc Royal Commission as a benchmark for regulatory reform.

- [52] The Commission considers that the financial interest provisions in Part 5, Division 6 of the *Local Government Act 1995* ought to require the disclosure of a financial interest in circumstances where a relevant person is closely associated with a person who has a direct or indirect financial interest in a matter, by reason of the person having made a gift to the relevant person, whether or not that gift was an election related gift.
- [53] The Commission notes that the *Local Government Amendment Bill 2008*, if passed including section 5.62(1)(eb), would effectively close the identified gap in the interaction between the legislative and regulatory regime in respect of the disclosure of all gifts received from closely associated persons, rather than just election related gifts.
- [54] The Commission considers that the financial interest provisions in Part 5, Division 6 of the *Local Government Act 1995*, section 5.82, ought to require the disclosure of the total amount and true source of the gift, whether or not that gift was an election related gift.

***Report on the Investigation of Alleged Misconduct Concerning
Mr Stephen Lee, Mayor of the City of Cockburn:
Recommendation 1***

The Commission recommends that the Department of Local Government and Regional Development, in consultation with sector stakeholders, review the adequacy of the current gift receipt disclosure regime for local government, in particular the identified gap allowing the amount and the true source of the gift to be concealed if the gift is made after the expiration of the period covered by the regulations.

CHAPTER ONE

FOREWORD

1.1 Introduction

- [55] The Corruption and Crime Commission (“the Commission”) has conducted an investigation under the *Corruption and Crime Commission Act 2003* (“the Act”) in regard to possible misconduct by public officers in relation to the proposed Smiths Beach development at Yallingup by Canal Rocks Pty Ltd (“Canal Rocks”). The investigation examined the efforts of Canal Rocks and its consultants in seeking to influence the Busselton Shire Council, public officers and politicians to support the development.
- [56] In the course of its Smiths Beach investigation, the Commission became aware of a number of disparate matters involving other, serious allegations in which public officers may have engaged in misconduct. One of those allegations related to the funding of the election campaign of the Mayor of the City of Cockburn, Mr Stephen Lee.
- [57] The Commission has conducted an investigation under the Act in regard to possible misconduct by Mr Lee in relation to the funding of his campaign for re-election at the Local Government Elections held in May 2005.
- [58] The purpose of the investigation was to assess, in accordance with section 22 of the Act, the allegation and form an opinion as to the occurrence or possible occurrence of “misconduct”, as defined by section 4 of the Act.

1.2 Jurisdiction

- [59] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the Act faithfully and impartially. The Commission cannot, and does not, have any particular agenda, political or otherwise, other than to comply with the requirements of the Act.
- [60] Under the Act, the Commission is statutorily bound to deal with any allegation of misconduct made to it, in accordance with the procedures set out in the Act.
- [61] One of the Commission’s functions, pursuant to section 18 of the Act, is to deal with allegations of misconduct regarding public officers.

1.2.1 Definition of Public Officers

- [62] The term “public officer” is defined in section 3 of the Act by reference to section 1 of *The Criminal Code* which defines “public officer” and

encompasses police officers, government officers, elected members of Parliament, local council employees, and public service officers.

[63] Mr Lee, as an elected member (Mayor) of the City of Cockburn, is, and was at the material time, a public officer pursuant to section 3 of the Act, with reference to section 1 of *The Criminal Code*.

1.2.2 Definition of Misconduct

[64] It is important to appreciate that the term “misconduct” has a very particular and specific meaning in the Act and it is that meaning which the Commission must apply. Section 4 of the Act is reproduced below.¹¹

4. “Misconduct”, meaning of

Misconduct occurs if —

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*
- (d) *a public officer engages in conduct that —*
 - (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
 - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
 - (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
 - (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the*

misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

- (v) an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

1.2.3 Reporting by the Commission

[65] Under section 84(1) of the Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:

- (a) statements as to any of the Commission’s assessments, opinions and recommendations; and*
- (b) statements as to any of the Commission’s reasons for the assessments, opinions and recommendations.*

[66] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4) of the Act, or dealt with under section 93 of the Act.

[67] Following public hearings of the Commission at which Mr Lee gave evidence on 19 February 2007 Hardy Bowen Lawyers made extensive submissions and provided accompanying statutory declarations to the Commission on 19 November 2007, additional to the evidence that Stephen Lee had given at those hearings.

[68] In summary the materials provided dealt with the following issues.

1. Donations to the election campaign of Mr Lee.
2. The status of Mr Lee’s personal computer and the receipt of emails.
3. Mr Lee’s knowledge of invoices raised in relation to fund-raising for the election.
4. Mr Lee’s knowledge of the fund-raising, the role of Riley Mathewson Public Relations (“Riley Mathewson”) and the steps taken by Mr Lee to determine the source of election funds.

5. Legal and departmental advice in relation to Mr Lee's financial interest in the Port Coogee development.

- [69] That material and those extensive submissions were considered by the Commission when drafting this report.
- [70] Section 86 of the Act requires that, before reporting any matter adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning that matter.
- [71] Accordingly, on 11 July 2008, following the investigation and the preparation of a draft report, Mr Lee was sent a section 86 notification from the Commission including an attached schedule and portions of the draft report that could be seen to reflect adversely upon him. The Commission requested that Mr Lee make representations in response to these matters by 25 July 2008.
- [72] On 14 July 2008 Mr Lee contacted the Commission requesting access to a private hearing transcript referred to in the draft report. Upon the Commissioner's authorisation, Mr Lee attended the Commission to view this transcript on 15 July 2008.
- [73] On 18 July 2008 the Commission received correspondence from Hardy Bowen Lawyers requesting an extension of time for a period of 28 days to enable them to prepare the submissions on behalf of Mr Lee. At this time the Commission extended the due date for the submissions for another week, until 1 August 2008.
- [74] The section 86 representations from Hardy Bowen Lawyers on behalf of Mr Lee were received by the Commission on 31 July 2008, with further statutory declarations delivered on 1 August 2008.
- [75] The Commission has had regard to those representations in finalising this report.

1.3 Disclosure of Information

- [76] The Commission has powers that include the capacity to apply for warrants to lawfully intercept telecommunications, utilise surveillance devices, compel the production of documents and other things, compel attendance at hearings and to compel responses to questions on oath in hearings conducted by the Commissioner.
- [77] Section 151 of the Act controls the disclosure of a "restricted matter" including evidence given before the Commission, information or documents produced to the Commission and the fact that any person has been or may be about to be examined by the Commission.

[78] Section 151(4)(a) states that a restricted matter may be disclosed in accordance with a direction of the Commission. Pursuant to section 152(4) official information may be disclosed in various instances including: for the purposes of the Act; for the purposes of prosecution or disciplinary action, when the Commission has certified that disclosure is necessary in the public interest; or to either House of Parliament.

[79] The Commission takes the decision in releasing information publicly very seriously, and in formulating this report it has considered the benefit of public exposure and public awareness weighed against the potential for prejudice and privacy infringements.

1.4 Opinions of Misconduct: Standard of Proof

[80] The Commission fully appreciates that any expression of opinion by it in a published report, that a public officer has engaged in misconduct, is serious. The publication of such an opinion or any adverse matter against a public officer, or any other person, may have serious consequences for the public officer, or person, and their reputation.

[81] The Commission is careful to bear these matters in mind, when forming opinions, when conducting inquiries and when publishing the results of its investigations.

[82] The Commission may form an opinion as to misconduct on the evidence before it only if satisfied of misconduct on the balance of probabilities. The seriousness of the particular allegation and the potential consequences of the publication of such an opinion by the Commission, also go to how readily or otherwise it may be so satisfied on the balance of probabilities.

[83] Furthermore, the Commission could not reach an opinion of misconduct on the basis of a mere mechanical comparison of probabilities, without any actual belief in its reality. That is to say, for the Commission to be satisfied of a fact on the balance of probabilities, it would have to have an actual belief of the existence of that fact to at least that degree.

[84] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the inquiry. Any expression of opinion in this report is so founded.

CHAPTER TWO BACKGROUND

2.1 Smiths Beach Investigation

[85] During 2005 and 2006, the Commission investigated allegations of misconduct by public officers in connection with the proposed Smiths Beach development at Yallingup. That investigation examined the efforts of Canal Rocks and its consultants in seeking to influence the Busselton Shire Council, public officers and politicians to support the development. The investigation touched on the activities of Mr Brian Thomas Burke and Mr Julian Fletcher Grill, in their role as lobbyists acting for Canal Rocks, and their influence or attempts to influence public officers involved in the development proposal.

[86] The Commission *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup* ("Smiths Beach Report") was tabled in the Parliament of Western Australia on 5 October 2007.¹²

[87] In the course of its Smiths Beach investigation, the Commission became aware of a number of disparate matters involving other, serious allegations in which public officers may have engaged in misconduct.

[88] Public hearings were held at the Commission in respect of the Smiths Beach matter in October, November and December 2006, and in relation to other matters associated with the lobbying activities of Mr Burke and Mr Grill, in February 2007. During this time Mr Burke, and his relationships with senior public officers, received widespread media attention in Western Australia and nationally.

2.2 Cockburn Investigation

[89] Mr Stephen Lee is the Mayor of the City of Cockburn. Mr Lee has served as a councillor to the City of Cockburn since May 1991, and was elected Mayor in December 2000. Mr Lee was re-elected as Mayor in May 2005.

[90] In April 2005 the Commission received an allegation concerning Mr Lee's fund-raising activities in relation to his campaign for re-election at the Local Government Elections held in May 2005. The allegation related to the use of a letter explicitly seeking donations of up to \$199, an amount which is \$1 below the declaration threshold prescribed in the *Local Government (Elections) Regulations 1997*. At the time the Commission considered that the information provided was insufficient to constitute evidence of, or reasonable grounds to suspect, misconduct by a public officer.

[91] In December 2005 the Commission received a further allegation concerning the funding of Mr Lee's election campaign. The allegation related to donations received by Mr Lee from the action group Port Coogee Now (PCN)

and public relations firm Riley Mathewson. The Commission made an assessment pursuant to section 22(1) of the Act that misconduct had or may have occurred, was or may have been occurring, was or may have been about to occur, or was likely to occur, and decided to refer the allegation to the Department of Local Government and Regional Development (DLGRD) pursuant to section 33(1)(c) of the Act.

[92] DLGRD prepared a report detailing the action it had taken in relation to the allegation, pursuant to section 40(1) of the Act, and, in accordance with section 40(2) of the Act, provided that report to the Commission in April 2006.

[93] DLGRD wrote to Mr Lee in February 2006 asking him a series of questions in relation to the donations he declared in his annual return for the year ended 30 June 2005 from PCN and Riley Mathewson. DLGRD concluded that:

Mayor Lee has complied with disclosure requirements during the election disclosure period outlined in regulation 30C. Gifts promised or received outside of the election gift period must be disclosed in the annual financial interest return, which was done by Mayor Lee.

Nevertheless, there is speculation that Mayor Lee did not disclose the true source of his donations from the Port Coogee Now group and Riley Mathewson Public Relations.

However, the Department is limited in the information that it can obtain on the matter and is unable to examine the circumstances of the donations in any detail.

It is recommended that an appropriate authority, perhaps the CCC conduct background financial checks into Mayor Lee's finances and his association with the developer of the Port Coogee Marina.¹³

[94] Based on the assessment of the allegation by DLGRD and other information gathered by the Commission, an investigation was initiated pursuant to sections 32 and 33 of the Act.

[95] The Commission investigation encompassed a review of documentation provided by DLGRD, an examination of documentation provided to the Commission voluntarily and, in response to notices served on persons pursuant to section 95 of the Act, interviews of various persons, and private and public hearings.

[96] Section 139 of the Act stipulates that except as provided in section 140, an examination is not to be open to the public. Section 140(2) allows the Commission to open an examination to the public only if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.

[97] In this case, the Commission weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, and decided that it was in the public interest to conduct the hearings in public. That decision was made in relation to a number of matters arising out of the Smiths Beach investigation collectively, inclusive of the matter relating to Mr Lee, the hearings for which were held in February 2007.

[98] One factor that was of particular importance in that consideration was the need to publicly expose and make the public aware of conduct involving lobbyists and public officers where misconduct had or may have occurred, was or may have been occurring and, if left unexposed, might lead to future misconduct.

[99] In his remarks at the start of February 2007 Commission public hearings, Commissioner Hammond said:

The Commission's focus in these particular hearings, as in the hearings conducted last December, is to investigate whether senior public officers have engaged in what is termed serious abuses of power.

In using the term "serious abuses of power" the Commission means serious misconduct by persons in senior public positions, possibly exploiting their positions of public authority and trust to give special beneficial consideration to the interests of particular individuals or groups in a manner that, if known publicly, would bring the public officers and their offices into dispute [sic] and such actions may, in the context of the act, be characterised as misconduct or serious misconduct and may constitute criminal conduct under the code.¹⁴

[100] Commissioner Hammond reinforced this view in a speech to the Institute of Public Administration (IPAA) on 20 March 2007 when he said that the public hearings were held to address the overwhelming "public interest in identifying the matters raised during these hearings that go to the heart of good and effective governance in this State".¹⁵

[101] The Commission decided to expose the matters addressed in these hearings to enable, in the words of Counsel Assisting, Mr Stephen Hall SC:

... other bodies [to] take immediate action to ensure good governance is not compromised. Public hearings may enable those bodies to take such action as they think fit and in an expeditious way.¹⁶

2.3 Scope and Purpose of the Cockburn Investigation

[102] The general scope and purpose of the Commission investigation was to enable the Commission to make an assessment and form an opinion as to whether misconduct by Mr Lee had or may have occurred or was occurring in

relation to, and as a consequence of, the funding of his election campaign for the 2005 Local Government Elections. The Commission investigation focussed on the communication between Mr Lee, Mr Christopher Lewis, General Manager Residential Division for Western Australia, Australand Holdings Limited ("Australand"), and representatives of Riley Mathewson, as well as the involvement of lobby group PCN.

CHAPTER THREE

THE LEGISLATIVE AND REGULATORY FRAMEWORK

3.1 Introduction

[103] Prior to detailing the Commission's assessment of the key information and material available to it, it is useful to place some of the obligations of local government councillors, including those holding the position of Mayor, into their proper legal context.

3.2 Regulations Relating to Elections

[104] Section 4.59(a) of the *Local Government Act 1995* states that regulations may provide for the provision of information as to gifts made to or for the benefit of candidates. Part 5A of the *Local Government (Elections) Regulations 1997* sets out these regulations.¹⁷

[105] A "gift" is defined as meaning "a disposition of property, or the conferral of any financial benefit, made by one person in favour of another".¹⁸ A gift can include a gift of money or the provision of a service for no consideration¹⁹ but is only relevant if the value of the gift is \$200 or more.²⁰

[106] The candidate must disclose to the Chief Executive Officer (CEO) of the relevant local government the true source of a gift (if known) that was promised or received during the period commencing six months before the relevant election day and concluding three days after the election date for unsuccessful candidates and on the start day for financial interest returns for successful candidates under section 5.74 of the *Local Government Act 1995*.²¹ The maximum penalty for failing to comply with this requirement is \$5,000.²²

[107] The manner of disclosure is set out in regulation 30D which stipulates that a disclosure is to be made by completing a "disclosure of gifts" form, known as a Form 9A, and lodging it with the CEO.²³ The disclosure must be made within three days of the receipt (or promise) of the gift once nominations are made or within three days of nomination, for gifts received (or promised) between the commencement of the period set out in regulation 30B and the day of nomination unless a disclosure outside this time period has occurred due to circumstances beyond the candidate's control.²⁴

[108] The regulations provide that the CEO is to establish and maintain an electoral gift register.²⁵ This register is to be kept at the appropriate local government offices and be available for public access.²⁶

3.3 Financial Interest Returns

[109] Elected councillors are obliged to complete financial interest returns. The first return (“primary return”) must be lodged within three months of the start date²⁷ of the councillor – that is the day on which the councillor makes their declaration after being elected. Thereafter councillors are required to complete returns annually (“annual return”), by 31 August.²⁸ Gifts must be disclosed in these returns pursuant to section 5.82 of the *Local Government Act 1995*, which requires a description of the gift and the name and address of the person who made the gift.

3.4 Interaction of the *Local Government (Elections) Regulations 1997* and the *Local Government Act 1995*

[110] The interaction of the *Local Government Act 1995* and the *Local Government (Elections) Regulations 1997* impose a number of obligations on candidates, and subsequently councillors, including those detailed below.

- In respect of the receipt of a gift or the promise of a gift during the period covered by the regulations, the candidate must disclose the amount of the gift and identify the true source of the gift (if known) by completing a Form 9A.
- In respect of the receipt of a gift outside the period covered by the regulations, the councillor must disclose a description of the gift and the name and address of the person making the gift in the primary or annual return, as the case may be. There is no specific obligation to disclose the amount of the gift or the true source of the gift.
- In respect of the promise of a gift during the period covered by the regulations, but received outside that period, the candidate or councillor must initially disclose the promise of a gift by completing a Form 9A, identifying the true source, if known. Should the candidate be unsuccessful, there is no further disclosure obligation. Should the candidate be successful, the candidate (councillor) must disclose a description of the gift and the name and address of the person making the gift in the primary or annual return, as the case may be. There is no obligation to amend or update the previously completed Form 9A to disclose the amount of the gift and the true source of the gift, nor is there any obligation to disclose the amount of the gift or the true source of the gift in the primary or annual return.

[111] In summary then, the interaction of the *Local Government Act 1995* and the regulations place no obligation on candidates, successful or otherwise, to disclose the true source of a gift received outside the period covered by the regulations, whether or not the gift was promised within that period.

[112] There is an obvious lacuna in the legislative and regulatory regime. It permits fund-raising through the use of an intermediary, conduit, or front entity, which can make the gift after the expiration of the period covered by the regulations, allowing the recipient to disclose only the name and address of the intermediary entity, and thereby conceal the amount and true source of the gift. This is so even if the intermediary entity had promised the gift during the period covered by the regulations.

3.5 Disclosure of a Financial Interest

[113] The requirements in relation to the disclosure of financial interests are contained in Part 5, Division 6 of the *Local Government Act 1995*.

[114] A relevant person has an interest in a matter if the relevant person, or a person with whom the relevant person is closely associated, has a direct or indirect financial interest in the matter.²⁹

[115] A “relevant person” is defined as a member or employee, including an employee under a contract for services, and “member”, in relation to a council, means council member.³⁰ Closely associated person, in relation to a council member, includes a person who gave a notifiable gift to the council member in relation to the election at which they were elected, or has given a notifiable gift to the council member since the council member was last elected.³¹ “Notifiable gift” means a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election.³² Those regulations are discussed at 3.2 above.

[116] In summary then, a council member will be taken to have an interest in a matter if the council member, or someone who has given the council member a notifiable gift, has a direct or indirect financial interest in the matter.

[117] A person has a financial interest in a matter if it is reasonable to expect that the matter will, if dealt with by the local government in a particular way, result in a financial gain, loss, benefit or detriment for the person.³³

[118] A member who has an interest in a matter to be discussed at a council meeting must disclose the nature of the interest, either prior to the meeting in writing to the CEO, or at the meeting immediately before the matter is discussed. Failure to do so can attract a fine of \$10,000 or imprisonment for two years. It is a defence if the member can prove they did not know they had an interest in the matter.³⁴ A member who discloses an interest must not preside at the part of the meeting relating to the matter or participate in any discussion or decision relating to the matter.³⁵

[119] It seems logical to conclude that the intention of Part 5, Division 6 of the *Local Government Act 1995* is to require councillors to declare a financial interest and thereby disqualify themselves from the decision making process where they have received a gift from a person or entity that has a financial interest in a matter under consideration by council.

- [120] However, the provisions do not give effect to such an intention, due to the inclusion of the term “notifiable gift” in section 5.62(1)(ea)(ii). The definition of “notifiable gift” in section 5.62(2) brings the regulations relating to electoral gifts within the ambit of the legislative provisions relating to the disclosure of financial interests generally. However, as the regulations were designed to relate to electoral gifts, they are restricted in their application to the disclosure period prescribed by regulation 30C. That is appropriate for section 5.62(1)(ea)(i) as that section deals with election related gifts. However, it seems that section 5.62(1)(ea)(ii) was intended to have broader application and apply to gifts received by the council member at any time since they were elected. Inclusion of the term “notifiable gift” (as defined in the regulations) in section 5.62(1)(ea)(ii) renders that section practically inoperable because it only applies to gifts made up to the start day for financial interest returns, which is generally the day the member makes their declaration under section 2.29.³⁶
- [121] If the intention of the financial interest provisions was to require disclosure as a consequence of all gifts from closely associated persons (where the other requirements of section 5.60 are satisfied), rather than just election related gifts, then such an intention is defeated by the inclusion of the term “notifiable gift” in section 5.62(1)(ea)(ii). If the intention of the financial interest provisions was to require disclosure of election related gifts only, then section 5.62(1)(ea)(ii) appears superfluous and serves no useful purpose. One would therefore assume that the first mentioned, broader, application of the provisions was that intended by Parliament. However, it is difficult to find support for that proposition.
- [122] Mr Omodei, the Minister for Local Government at the time, said in relation to the proposed section 5.62(1)(ea) that: “where a council member has received an election related gift from a person and that person has a matter before a council meeting then the member shall declare that interest in the same way as a traditional financial interest. This disclosure will preclude councillors from voting on matters involving donors to their election campaigns and addresses concerns about the perception of donations influencing councillors in their voting patterns”.³⁷ (emphasis added)
- [123] There is no indication of an intention for the financial interest provisions to apply to anything other than election related gifts. The only support for such an intention comes from the inclusion of section 5.62(1)(ea)(ii), which, without such an intention, appears superfluous.
- [124] DLGRD released a Financial Interests Handbook which contains comprehensive guidelines in relation to the financial disclosure provisions.³⁸ It seems DLGRD also concluded that the financial interest provisions cover only election related gifts, as it included the following in relation to section 5.62(ea):

7.6 Provider of election-related gifts [s5.62(ea)]

A person gives you (a council member) a gift in relation to the election at which you were last elected, or a gift since you were last elected. If you were required by regulations to provide information on that gift, then the person who gave you that gift is deemed to be a “closely associated” person within the meaning of the Act [“Local Government Act 1995”]. Accordingly, you must disclose a financial interest in any matter that he or she has before council or a committee of council.³⁹

- [125] In the opinion of the Commission, the interaction of the legislation and the regulations leads to the anomalous result that there is no need for a member to disclose an interest in a matter arising for consideration by council where the member has received a gift from the person who has an interest in the matter if the gift was made after the member has taken office. In such a case, it is the provisions relating to the disclosure of gifts in the primary or annual return that are applicable, which simply require the provision of a description of the gift and the name and address of the person who made the gift.⁴⁰ Such a result may be contrary to the intention of the legislation relating to the disclosure of financial interests, but in any event, it allows a member who has received a gift from a person who has an interest in the matter to fully participate in council deliberations and vote in relation to that matter.
- [126] In June 2008 the *Local Government Amendment Bill 2008* was introduced into the Legislative Assembly.⁴¹ One of the key matters in this Bill included improving various accountability provisions relating to declaring financial interests and election donations (to be specified in the regulations).
- [127] Clause 27 of the Bill amends section 5.62(1) of the *Local Government Act 1995* to include an additional category of closely associated person so when a member receives a gift since last being elected, the member has a financial interest with the person who gives the gift.⁴² It is proposed in the Bill that section 5.62(1) is expanded, to include section 5.62(1)(eb) as: for the purposes of this Subdivision a person is to be treated as being closely associated with a relevant person if the person is a council member and since the member was last elected the person gave to the relevant person a gift that section 5.82 requires the person to disclose.
- [128] This proposed amendment to the *Local Government Act 1995*, through expanding the classification for closely associated person to include an individual who gave the council member a gift that section 5.82 requires the council member to disclose in an annual return, would effectively close the gap identified by the Commission, if passed.

3.6 Disclosure of an Interest Affecting Impartiality

- [129] The *Local Government (Official Conduct) Amendment Act 2007* inserted Division 9 into Part 5 of the *Local Government Act 1995* to provide “for a new

complaints system whereby the conduct of individual council members can be reviewed specifically”.⁴³ New section 5.104 provides that regulations may prescribe rules of conduct for council members, and those regulations are the *Local Government (Rules of Conduct) Regulations 2007*, which are operative from 21 August 2007.

- [130] The regulations provide that a council member who has an interest in any matter to be discussed at council must disclose the nature of the interest either in writing to the CEO prior to the meeting or at the meeting immediately before the matter is discussed.⁴⁴ “Interest” is defined to mean “an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association”.⁴⁵ In contrast to the financial interest disclosure provisions, a person who discloses an interest affecting impartiality may participate in any discussion or decision relating to the matter.
- [131] Prior to 21 August 2007 disclosure of an interest affecting impartiality was required via a code of conduct. Section 5.103 of the *Local Government Act 1995* required every local government to prepare or adopt a code of conduct to be observed by council members, committee members and employees, and provided that regulations may prescribe matters relating to codes of conduct. Those regulations are contained in regulation 34C of the *Local Government (Administration) Regulations 1996*. Regulation 34C was inserted on 23 April 1999, and then repealed and replaced on 21 August 2007. Following its replacement, regulation 34C ceased to apply to council members, and applies to council employees only, due to the introduction of the *Local Government (Rules of Conduct) Regulations 2007*, discussed above.
- [132] For present purposes, it is the former regulation 34C that is of importance, as it is that regulation that was applicable at the time of the May 2005 Local Government Elections and at the time of the Australand matters coming before Council, to be discussed later in this report (see section 5.9.2).
- [133] Former regulation 34C provided that a code of conduct must contain a requirement that a council member or employee disclose any interest in any matter to be discussed at a council meeting that will be attended by the member or employee.⁴⁶ “Interest” means an interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected, and excludes an interest under the financial interest provisions of the *Local Government Act 1995*.⁴⁷ A code of conduct must also contain a requirement that such a disclosure be made at the meeting immediately before the matter is discussed.⁴⁸ The City of Cockburn Code of Conduct is discussed later in this report.

CHAPTER FOUR AUSTRALAND AND THE PORT COOGEE DEVELOPMENT

- [134] Port Coogee was formerly known as Port Catherine. It is an area approximately 18 kilometres south-west of the Perth central business district and five kilometres south of Fremantle. Since the early 1980s successive governments have attempted to establish an appropriate development outcome for the vacant land on this site. It is a substantial area of land comprised of some 85 hectares, much of which was disused industrial land. One-third of the area that was proposed for development was actually seabed. The State Government owned large parcels of this land including of course the seabed.
- [135] Two companies with common directors, named Consolidated Marine Developments (Australia) Pty Ltd (“Consolidated”) and Anchorage Industries Pty Ltd (“Anchorage”) owned some 10 hectares of the land. The directors of Consolidated and Anchorage were Mr Guiseppe Rotondella and Mrs Coral Raye Rotondella. In 1996 Consolidated, and a company owned by Consolidated, Port Catherine Developments Pty Ltd, entered into a Heads of Agreement with the Western Australian Planning Commission (WAPC) for development of the area for a variety of uses, including residential, recreational and commercial, known as the Port Catherine Development Project. Under the Heads of Agreement, Consolidated was to involve joint venture participants, and to that end it involved Australand. Australand acquired Port Catherine Developments Pty Ltd, which in turn acquired the land previously owned by Consolidated and Anchorage, so that Australand effectively became the developer. Australand replaced Consolidated as the shareholder of Port Catherine Developments Pty Ltd and some Australand directors replaced Mr and Mrs Rotondella as the directors of Port Catherine Developments Pty Ltd.
- [136] The process in reaching the agreed development proposal was a protracted and, at times, controversial one. In 2003, there was an inquiry by the Parliamentary Public Accounts Committee that examined the costs and benefits to the State Government of the Port Coogee development. In 2004, Supreme Court proceedings were initiated by an anti-development group challenging the validity of decisions made in favour of the development. At a local level, passions became aroused and it wasn’t uncommon for City of Cockburn Council meetings to be attended by large numbers from the public whenever Council was considering the Port Coogee development proposal. The development was of enormous potential financial benefit to Australand and associated interests.
- [137] Work on Australand’s \$700 million Port Coogee marina and residential development⁴⁹ is now well underway. The marina development will include 300 public boat pens, restaurants, cafes, and retail outlets, as well as 60 marine frontage lots with boat pens, apartments and townhouses. The

residential development will include around 600 residential lots surrounding the marina, a public jetty, fishing platforms, cycle ways and parklands.⁵⁰

CHAPTER FIVE THE INVESTIGATION

5.1 Introduction

[138] In March 2005 Mr Lee engaged Riley Mathewson to manage his campaign for re-election as the Mayor of the City of Cockburn. That engagement came about following a meeting at the home of Mr Burke on 26 March 2005, at which Mr Lewis, Australand General Manager Residential Division for Western Australia, was also present. Riley Mathewson belatedly confirmed the terms of the engagement by way of letter dated 19 April 2005, also confirming that “costs associated with this campaign will substantially be met by the fundraising activities presently being undertaken”.⁵¹

[139] Those fund-raising activities took two forms: a fund-raising letter seeking donations of \$199, being \$1 below the disclosure threshold specified in the regulations; and a luncheon held under the banner of lobby group PCN so that PCN could be used to channel donations not limited to \$199. PCN had a close working relationship with Mr Lewis, and had, by this time, engaged the services of Riley Mathewson for some 18 months. Those parties had entered into a billing arrangement designed to distance Australand from PCN whereby Australand paid the Riley Mathewson accounts issued to PCN through an entity called Marta Fishing Co. Marta Fishing Co is a business owned and operated by Mr and Mrs Rotondella, who are the directors and shareholders of Consolidated, being the joint venture participant with Australand in the Port Coogee development. According to Mr Riley, this billing arrangement was initiated by Mr Lewis.⁵² Although the arrangement already in place for payment of Riley Mathewson accounts by Australand through the intermediary Marta Fishing Co was ultimately adopted to pay Riley Mathewson invoices for Mr Lee’s campaign expenses, the Commission does not suggest that Mr Lee was ever aware of the actual mechanics by which that occurred. There is no evidence, for example, that he was aware of the existence of Marta Fishing Co.

[140] Whilst the fund-raising was regarded as successful, it represented only a fraction of the amount charged by Riley Mathewson for managing the campaign. Riley Mathewson issued three invoices to Mr Lee, for a total of \$76,597.49, however, only a net amount of \$15,820 was raised by the PCN luncheon, and a total of \$3,559 in donations was deposited into Mr Lee’s campaign account in response to the fund-raising letter.

[141] On 9 May 2005 Riley Mathewson consultant Mr Peter Owens liaised with Mr Lee regarding “fundraising/accounting issues”.⁵³ Within a few days of that meeting Mr Lee met Mr Lewis and informed Mr Lewis that the cost of the campaign had exceeded his expectations. Mr Lewis offered to assist and subsequently obtained a copy of the invoices and supporting material from Riley Mathewson Principal, Mr Desmond Riley. At a meeting with Mr Riley and Mr Owens on 31 May 2005, Mr Lewis proposed a revised arrangement

whereby Riley Mathewson would accept \$65,288.32 in satisfaction of the account, being a discount of \$7,000 on their consultant fees and the removal of a 10% loading on external disbursements, described as a “write-down” of costs. Mr Lewis also proposed that Mr Riley separately invoice Marta Fishing Co for \$43,500.73. Mr Riley agreed to these arrangements. Mr Riley also agreed to provide Mr Lee with a donation of \$21,586.83, although he is uncertain as to whether this was also proposed by Mr Lewis. The result was that Mr Lee personally paid a net amount of only \$21,913.90 to Riley Mathewson in respect of his election campaign.

[142] On 27 April 2005 Mr Lee declared the promise of a gift from PCN of an unspecified amount on a Form 9A, as required by the regulations.⁵⁴ On 25 August 2005 Mr Lee declared the donation of \$15,820 from PCN and the donation of \$21,586 from Riley Mathewson in his annual return for the year ended 30 June 2005.⁵⁵ Mr Lee specified the amount of these donations in his annual return, although he was not required to do so by the *Local Government Act 1995*.

5.2 Early Communication Regarding Mr Lee’s Election Campaign

5.2.1 Emails Between 21 March 2005 and 24 March 2005

[143] On 21 March 2005 Mr Burke sent an email to Mr Peter Herkenhoff, with a copy to Mr Lee. Mr Herkenhoff was a senior consultant employed by Riley Mathewson, and he was responsible for the PCN account. The other Riley Mathewson senior consultant involved in these matters was Mr Owens, who had responsibility for the Stephen Lee account. In his email, Mr Burke outlined two tasks “in assisting Cockburn”. The first task was to complete what later became the “Jakovich Letter”⁵⁶, and the second task was to “prepare a Cockburn-wider pamphlet featuring Steve Lee and each of the councillors in the particular wards”.⁵⁷

[144] When Mr Lee was questioned about this email during the public hearings he could not recall receiving the email, but did not deny receiving it. Mr Lee denied that Mr Burke was organising his election campaign, and said he was providing advice and assisting in the drafting of the fund-raising letter.⁵⁸ When asked whether he thought Mr Burke was assisting in his capacity as a consultant to Australand, Mr Lee said he thought Mr Burke was assisting him in his capacity as someone who had an interest in his future, and in the outcome of the election.⁵⁹

[145] On 22 March 2005 Mr Burke sent another email to Mr Herkenhoff, with a copy to both Mr Lewis and Mr Lee.⁶⁰ Mr Herkenhoff subsequently forwarded the email to Mr Owens and Mr Riley. Mr Burke commenced with a discussion of the fund-raising letter:

My clear understanding is that the Fund Raising letter is:

...

1. *Written to make sure any donations fall within the limit that means they do not have to be declared.*
2. ...
3. *Deliberately designed to be distanced from Port Coogee Now for the obvious reason that we are describing our opponents as “single issue candidates” – obviously the Mayor and his colleagues do not want to be seen as single issue candidates on the other side of the Port Coogee issue.*

[146] Mr Burke went on to explain the role of PCN:

This is a perfectly proper and transparent approach that abides by all of the electoral and other laws and regulations. It is separate from the PCN effort which will be to:

- *Raise funds that are not limited to \$199 and which will come into the PCN Accounts and then be spent by PCN how it chooses. PCN can meet all its obligations under the electoral and other laws and regulations and be of very substantial assistance in the process.*

[147] Mr Burke then summarised the two forms of proposed fund-raising:

So you can see the Fund Raising falls neatly into two categories both of which are absolutely proper and consistent with all legal requirements. Chris has legal advice on these matters.

[148] Finally, Mr Burke said the ultimate responsibility for ensuring his proposal was legally compliant was a matter for Riley Mathewson (on behalf of PCN):

As far as PCN is concerned, I believe it should confirm absolutely that it provides a legal and legitimate “veil” for people wishing to contribute through it. When this is confirmed PCN should cooperate with Chris to put a fundraising campaign in place as well as a campaign of pamphlets, stickers, calls, etc.

[149] It is evident from this email that, as at 22 March 2005, Mr Burke and Mr Lewis were already in detailed discussions regarding fund-raising for Mr Lee’s election campaign, including the involvement of PCN. This was the second detailed email Mr Lee had received from Mr Burke in relation to his election campaign, although the first email of which Mr Lewis was also a recipient.

[150] The Commission notes the similarity between Mr Burke’s proposal for the use of PCN as a vehicle to channel fund-raising to Mr Lee, and his subsequent proposal to use the Independents Action Group (IAG) as a vehicle to channel funds from developer Canal Rocks to Busselton Shire

Council candidates.⁶¹ In fact, Mr Burke told the Commission that he came up with the idea of using the IAG as a result of the raising of funds by PCN.⁶²

[151] Mr Lee was questioned during the public hearings about the email from Mr Burke on 22 March 2005, however the questioning related primarily to his level of awareness of the involvement of Mr Lewis in his election campaign. When asked whether he made the connection between Mr Lewis and Mr Burke in relation to his election campaign, Mr Lee said:

*I can't remember thinking anything at the time.*⁶³

[152] When asked whether the "Chris" referred to in Mr Burke's email was Chris Lewis, Mr Lee said:

*I don't remember what I realised at the time of reading this.*⁶⁴

[153] And further:

*Wasn't it obvious to you, Mr Lee, of Mr Chris Lewis' involvement in your election campaign?---No.*⁶⁵

[154] Mr Lee's attention was then drawn to other comments in Mr Burke's email: "Chris is thinking about the signatory"; and "Chris is also thinking about the practicalities of sending letters to his database". Mr Lee was then asked whether the work that Mr Lewis was undertaking for him was evident, and Mr Lee said:

*No, it was never evident to me at any time.*⁶⁶

[155] Mr Lee's attention was then drawn to the comment: "PCN should cooperate with Chris to put a fund-raising campaign in place ...". Despite Counsel Assisting highlighting that this was the fourth reference to "Chris" in the email, Mr Lee refused to accept that, had he read the email, he would have been aware of the involvement of Mr Lewis in his election campaign.⁶⁷

[156] In the assessment of the Commission, the email from Mr Burke speaks for itself, and it is obvious from it that Mr Lewis was involved in aspects of Mr Lee's election campaign, particularly in relation to the activities of PCN and its proposed fund-raising activity.

[157] Mr Herkenhoff was also questioned during the public hearings about the email from Mr Burke on 22 March 2005. Mr Herkenhoff said he took this email as very specific instructions from Mr Burke about the manner in which the fund-raising campaign for Mr Lee ought to be undertaken. Mr Herkenhoff added that the email appeared to be providing some sort of reassurance about how it would be done, but noted that it did not provide him with the level of assurance he required.⁶⁸

[158] Mr Herkenhoff's attention was then drawn to the comment: "As far as PCN is concerned, I believe it should confirm absolutely that it provides a legal and

legitimate ‘veil’ for people wishing to contribute through it”. Mr Herkenhoff agreed that this statement caused him some concern because, he said, there was an element of subterfuge about it.⁶⁹

[159] Mr Herkenhoff subsequently added his comments regarding the email from Mr Burke, which he sent by email to Mr Lewis, with a copy to Mr Burke, Mr Lee, Mr Owens and Mr Riley. Mr Herkenhoff wrote:

We agree that PCN should run an apolitical campaign that promotes its “single-issue” position and, to this end, we propose a “Vote 1 Port Coogee” campaign.

...

The campaign elements suggested above can be progressed using the standard modus operandi of PCN, leaving the wider PCN support base (mostly Cockburn ratepayers) open to an approach (Jakovich letter) for donations to the Stephen Lee campaign fund.

This approach would preclude the need for legal assurances, allowing us to mobilise the apolitical PCN campaign quickly.

If this approach is acceptable to you, Sam Fazio need not establish a PCN bank account, which appears to be more complicated than first thought, based on his initial inquiries with his bank manager at Bankwest.⁷⁰

[160] It is clear that Mr Herkenhoff’s proposal involved a separation of the PCN “apolitical” campaign and the fund-raising activity, rather than using PCN as a “veil” for people wishing to contribute through it, as previously proposed by Mr Burke. He told the Commission that this email was his attempt to reel PCN’s involvement back to something with which he felt comfortable. He agreed that his attempt in this regard was unsuccessful.⁷¹

[161] Mr Burke responded to Mr Herkenhoff a short time later, sending an email to Mr Herkenhoff and Mr Lewis, with a copy to Mr Lee, Mr Owens, Mr Riley and Mr Grill, saying:

I certainly agree that PCN can and should run a campaign to support the project and the candidates who favour it. However, it does not have to (and should not) spend all its efforts and money on this aspect.⁷²

[162] Mr Herkenhoff told the Commission that he read Mr Burke’s response as a rebuff of his previous email, and agreed that PCN did, in fact, spend all its efforts and money on supporting the development and the candidates who favoured it.⁷³

[163] On 23 March 2005 Mr Lee sent an email to Mr Owens, with a copy to Mr Burke, wherein Mr Lee provided some candidate profiles for the four

members of his “team”.⁷⁴ Mr Owens responded to Mr Lee on the same day, with a copy to Mr Burke and Mr Herkenhoff, and he included the comment: “There is a suggestion that the letter be forwarded to the Australand mailing list and we will provide a covering letter for Chris Lewis to go out with it”.⁷⁵

[164] Mr Lee was asked why he sent the email to Mr Burke, and he said he couldn’t remember, but hypothesised that it was because Mr Burke was known to be an excellent letter writer.⁷⁶ Regarding the suggestion that the letter be sent to the Australand mailing list, Mr Lee was asked whether that was another indication of Mr Lewis’ involvement with fund-raising for his election campaign. Mr Lee said:

That’s somebody making a suggestion at this point in time. Whether that occurred or not I’m not aware, but subsequent, throughout my campaign and subsequent to these emails I did stress with Peter Owens that if there was any involvement of Australand I needed to know, in the form of donations or anything that needed to be declared so I could declare it, and I – and I stressed that throughout the whole campaign.⁷⁷

[165] Mr Burke responded to the email from Mr Owens shortly afterwards, sending an email to Mr Owens and Mr Herkenhoff, with a copy to Mr Lee and Mr Lewis.⁷⁸ Mr Burke’s email shows comments he made to various suggestions in the prior email by Mr Owens, with Mr Burke’s comments in upper case. Regarding the signatory for the fund-raising letter, Mr Burke appears to be advising Mr Owens to speak to Mr Lewis about that issue. Regarding the suggestion that the letter be sent to the Australand mailing list, Mr Burke said:

Chris will decide this but whatever happens, if we send letters to this data base we should make sure that the cioverinbg [sic] letter is worded so that Chris takes repso=nsibility [sic] and the Mayoair [sic] is fulklky [sic] protected. I think this can be achieved but we should realise this will probably reach the media.

[166] In his evidence to the Commission Mr Burke said he could not recall the email and could only speculate about it. Mr Burke then said that it (his email) appears to be saying that Chris (Mr Lewis) should take responsibility for the letter. When asked what the Mayor would need protection from, Mr Burke said he wasn’t sure. When asked whether Mr Burke was trying to ensure that the public wouldn’t make any connection between Australand and the fund-raising being done for Mr Lee, Mr Burke said:

That’s what it looks like, but I – I don’t recall the – the email so I don’t know.⁷⁹

[167] Mr Lee was also questioned about the response from Mr Burke, but again only in relation to the involvement of Mr Lewis in his election campaign. Mr Lee said he didn’t recall seeing the email before.⁸⁰

[168] On 24 March 2005 Mr Owens sent the draft “Jakovich Letter” to Mr Jakovich and Mr Lee, with a copy to Mr Burke and Mr Herkenhoff. Mr Lee responded to Mr Owens, with a copy to Mr Burke, that evening:

The letter is very good and could be extremely useful if Glen agrees to sign.

...

As discussed I will establish a “Stephen Lee Campaign” cheque account first thing Tues morning.⁸¹

The fact that Mr Lee sent this email in response to that of Mr Owens, later becomes significant (see paragraph [372]).

[169] The Commission’s assessment of the evidence is that, given the content of the emails exchanged between 21 and 24 March 2005, Mr Lee well knew that Mr Burke and Mr Lewis were both playing a role in relation to his election campaign, including a role in relation to the design of the fund-raising strategy. Mr Lee had been a recipient of two detailed emails exchanged between Mr Burke and Riley Mathewson regarding his election campaign. Mr Lewis was also a recipient of the second of those emails, which detailed the two-pronged fund-raising strategy, being the “Jakovich Letter” seeking donations of up to \$199, and the use of PCN as a veil for people who wish to contribute in excess of that amount. Mr Lee had also been copied in on the emails between Riley Mathewson, Mr Lewis and Mr Burke regarding Mr Herkenhoff’s proposal for PCN to run an apolitical campaign, with fund-raising activity confined to the “Jakovich Letter”, and Mr Burke’s rebuff of that proposal. Further, Mr Lee had sent the candidate profiles of the four members of his “team” to Mr Burke, as well as his comments in relation to the draft “Jakovich Letter”.

5.2.2 Meeting at Mr Burke’s Home on 26 March 2005

[170] Following the initial exchange of emails, there was a meeting at Mr Burke’s home on 26 March 2005, with Mr Burke, Mr Lewis, Mr Owens and Mr Lee present.

[171] Regarding the involvement of Mr Burke generally, Mr Lee did not agree that Mr Burke was providing his services for his election campaign, but did say that he attended a couple of meetings at which Mr Burke was present. Mr Lee added that he had known Mr Burke for quite a number of years through membership of the Australian Labor Party.⁸²

[172] Regarding the meeting on 26 March 2006 Mr Lee said he could not recall how that meeting came about, but assumed that somebody phoned him and invited him to meet Mr Burke. Mr Lee recalled that Mr Lewis and Mr Owens were also present at the meeting. Mr Lee added that this was the first time that he met Mr Owens, and the first time it was suggested that he employ Riley Mathewson. Mr Lee said that, to the best of his recollection, he was

introduced to Mr Owens at that meeting, and from that discussion he decided to engage Riley Mathewson.⁸³

[173] Mr Lee accepted that he was aware that Mr Burke had done some work for Australand. When asked whether he “put two and two together” when he saw Mr Lewis present at the meeting with Mr Burke, he said he did not.⁸⁴ Mr Lee added that Mr Burke stressed that he was assisting as a colleague and fellow Party member; that he had heard good things about what they were doing in Cockburn; and that it would be wrong if the best election outcome wasn’t achieved because of some activist group.⁸⁵

[174] Mr Lewis told the Commission that the purpose of the meeting was to discuss the upcoming Cockburn elections, and in particular, Mr Lee’s election campaign.⁸⁶ Mr Lewis said that they discussed the community sentiment, and the need for a high-profile campaign. Mr Lewis initially denied that the financing of the campaign was discussed at that meeting, but subsequently accepted that they may have discussed organising the PCN fund-raising luncheon and the fund-raising letter.⁸⁷

[175] Mr Owens told the Commission that they discussed the need for a strong campaign to counter the campaign by a single-issue group. Mr Owens said they discussed “all aspects of the campaign, the materials that were required to be produced, fundraising”.⁸⁸ Regarding fund-raising, Mr Owens said they discussed the fund-raising letter, and the fund-raising luncheon to be organised by PCN.⁸⁹ Mr Owens added that his understanding was that Mr Lewis was to help coordinate support from the business community.⁹⁰

[176] The Commission notes here that Mr Owens said there was some discussion during the meeting at Mr Burke’s home of a fund-raising luncheon to be organised by PCN, yet not one member of PCN was present at the meeting, nor was the Riley Mathewson consultant responsible for the PCN account present. The implication is that it was Mr Lewis who was at that time exercising direction over the activities of PCN in relation to Mr Lee’s election campaign. Australand had been paying the accounts levied by Riley Mathewson in respect of work it did for PCN for some 18 months, totalling \$490,749.62 by the end of March 2005.⁹¹ There is no suggestion Mr Lewis was acting in a purely personal capacity or out of purely personal interest. In the Commission’s opinion he was acting on behalf of Australand at all relevant times and those present understood him to be acting in that capacity.

[177] Clearly, by the time of the meeting at Mr Burke’s home on 26 March 2005, Mr Lee’s election campaign was underway, and Mr Lee was undoubtedly aware of the involvement of Mr Burke, Mr Lewis and Riley Mathewson in his election campaign. That indeed was the purpose of the meeting; it was why they were there.

5.2.3 Emails after the Meeting on 26 March 2005

[178] On 29 March 2005 Mr Herkenhoff sent an email to the members of PCN providing them with an update in relation to the PCN campaign. It is apparent

that Mr Herkenhoff was pressing ahead with his proposal to keep PCN apolitical, and for its members to contribute via the “Jakovich Letter”. Mr Herkenhoff wrote:

... PCN campaign figurehead Glen Jakovich has agreed to assist the Mayor and incumbent councillors to help ensure Sullivan’s tilt for Council is unsuccessful. In this regard, Glen will sign off on a fundraising letter to financially assist their combined election campaign. (New candidates will run their own campaigns.)

Port Coogee – NOW!, as a planned recipient of Glen’s fundraising letter, will be invited to contribute to this campaign fund and, whilst apolitical, PCN will be forwarding Glen’s invitation to contribute to PCN supporters. ...⁹²

[179] Later on the same day Mr Herkenhoff forwarded the aforementioned email, originally sent to PCN members, to Mr Lewis, Mr Burke and Mr Grill, with a copy to Mr Lee, Mr Owens and Mr Riley. Mr Herkenhoff wrote:

Please see below details of communiqué sent to the PCN committee to initiate a local government re-election campaign.

Our Peter Owens is currently meeting with the Mayor and Glen Jakovich to finalise the fundraising letter, which will be distributed to the PCN support base ASAP.

I will revert with details/considerations of other proposed campaign initiatives (to further assist fundraising) in due course. ...⁹³

[180] Mr Lee said he could not recall receiving this email, but did not deny receiving it. Mr Lee was again questioned primarily in relation to his knowledge of the involvement of Mr Lewis, however he did accept that the email concerned fund-raising for his campaign.⁹⁴

[181] On 30 March 2005 Mr Owens sent an email to Mr Lewis, with a copy to Mr Herkenhoff. The email illustrates, first, that Mr Herkenhoff had little knowledge of the proposed PCN fund-raising luncheon, second, that Mr Lewis was organising the event, and third, that PCN was to be used as the “medium” for donations to Mr Lee’s campaign.

[182] Mr Owens wrote:

Peter H is keen to get across any PCN requirements for the proposed fundraising lunch/dinner as soon as possible.

I haven’t been able to help much other than to report to him that at this stage you were organising the event and that it would involve using PCN as the medium for donations that would assist the Stephen Lee campaign. ...⁹⁵

[183] Mr Herkenhoff forwarded the email to Mr Riley, with a copy to Mr Owens, and he detailed his concerns in relation to using PCN as the “primary repository for the bulk of funds raised”. Mr Herkenhoff wrote:

MY issue is that there seems to be an overriding [sic] presumption with all of these plans that PCN will be the primary repository for the bulk of funds “raised” and that RMPR has created a strategy to ensure all of this would be OK legally.

I attempted to manage this issue last Thursday (1.43 p.m.) by sending the proposal to run an apolitical PCN campaign to CL, BB et al. At that time I said our proposal precluded the need for legal clearances, which we had still not received. ...⁹⁶

[184] Mr Herkenhoff then repeated the response he had received from Mr Burke, and went on to say:

As you know, a meeting took place last weekend and I was not in attendance. (I believe several behind-the-scenes meetings also took place regarding who would be financing what, although Peter was not privy to those discussions.)

I spoke to CL yesterday morning (first thing) to discuss what I had proposed last Thursday and I got the impression that the primary focus of all activities was to bolster Stephen Lee’s fighting fund, rather than “banging the Port Coogee drum”, as it was put. I had no idea that a “fundraising dinner” was on the agenda and it was certainly implied that this was a primary PCN initiative, which suggests that they regard PCN as a fundraising vehicle, that it is our job to ascertain the legalities of this approach, then proceed.⁹⁷

[185] It is apparent that both Mr Owens and Mr Lewis clearly understood that the function of PCN was to act as a fund-raising vehicle to channel funds to Mr Lee’s election campaign. The Commission notes that Mr Lee was not privy to this email, nor the previous email from Mr Owens to Mr Lewis. In their section 86 representations Mr Lee’s lawyers submit that in the email Mr Herkenhoff makes an assumption about a meeting at which he was not present, that he concedes Mr Owens was not privy to the “several behind-the-scenes meetings” and they say that clearly neither was Mr Lee present at any such “behind-the-scenes” meetings. The Commission accepts those submissions. The Commission further notes that Mr Herkenhoff’s reference to a “fund-raising dinner” was obviously wrong, because what was being proposed was a fund-raising luncheon.

[186] Regarding his email to Mr Riley, Mr Herkenhoff said that the phrase “banging the Port Coogee drum” was a direct quote from a conversation he had had with Mr Lewis, which he believed occurred during a call to Mr Lewis regarding the apolitical campaign he had proposed for PCN. Mr Herkenhoff summarised that Riley Mathewson was effectively housing two instruments to support all activities that related to the Port Coogee development, and agreed

that the primary focus of those activities was on “bolstering Stephen Lee’s fighting fund”.⁹⁸

[187] Mr Riley was shown the email sent to him by Mr Herkenhoff, and agreed that, from the email, it appeared that Mr Herkenhoff was worried about using PCN as a fund-raising vehicle. Mr Riley could not recall his response to Mr Herkenhoff, but later mentioned that he recalled Mr Herkenhoff raising some concerns which prompted them to seek legal advice. Mr Riley accepted that the purpose of the fund-raising luncheon was to raise funds for Mr Lee’s election campaign.⁹⁹

[188] On 31 March 2005 Mr Owens sent an email to Mr Lewis, with a copy to Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley. Mr Owens wrote:

The Stephen Lee Election Campaign is off and running, the letters are in the post (CL, BB and PCN included) and the insert/poster is at the printer for completion tomorrow and delivery to the Cockburn Gazette.

...

I spoke with Brian this morning and he reports that you have received advice confirming that PCN provides a legal and legitimate veil for people wishing to contribute (to the Stephen Lee campaign) through it.¹⁰⁰

[189] Mr Owens could not recall the discussion he had with Mr Burke prior to sending that email. When asked why he sent that email to Mr Lewis, Mr Owens said it was because Mr Lewis was involved in aspects of the campaign.¹⁰¹

[190] The email was one which was copied to Mr Lee. It clearly spells out that “PCN provides a legal and legitimate veil for people wishing to contribute (to the Stephen Lee campaign) through it”.

[191] On 1 April 2005 Mr Herkenhoff sent an email to Mr Lewis, with a copy to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley.¹⁰² Mr Herkenhoff essentially provided Mr Lewis with an update on what was happening regarding the PCN campaign and its assistance to Mr Lee, including progress on PCN opening a bank account. Mr Lewis responded to Mr Herkenhoff later the same day, with a copy to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley. Mr Lewis wrote:

As discussed earlier in the week, PCN is more of a vehicle we can use legally to collect funds and promote the re election of Stephen and his team.

Yes, PCN should send out Glen’s letter to its supporters ASAP to help raise further funds to the other account. In addition a more broader [sic] campaign should be designed.

*I suggest we meet to finalise this issue as we seem to be running around in circles.*¹⁰³

[192] Again, the questioning of Mr Lee during the public hearings regarding the email from Mr Herkenhoff related to his knowledge of the level of involvement of Mr Lewis in his election campaign. When asked whether he would accept, had he read the email, that it was obvious that Riley Mathewson was running things past Mr Lewis before acting on behalf of PCN, Mr Lee said it was apparent that Mr Herkenhoff was running issues past Mr Lewis.¹⁰⁴ When asked whether Mr Lewis was playing a significant role in his election campaign, Mr Lee said he wasn't aware that that was the case.¹⁰⁵

[193] It is clear from that response that the use of PCN as a vehicle to "legally" collect funds was the subject of discussion earlier in the week between at least some of the parties who were privy to the email.

5.2.4 Meeting at Australand on 4 April 2005

[194] The suggestion by Mr Lewis in his email of 1 April 2005 that there be a meeting to discuss PCN fund-raising was accepted, as there was a second meeting regarding Mr Lee's election campaign involving Mr Burke, Mr Lewis, Mr Owens and Mr Lee, this time at the offices of Australand. Mr Lee gave evidence about the meeting as follows:

*I went there because I understood that Brian [Burke] wanted to talk to us about the posters and election materials and it was only held there because it was convenient because Brian [Burke], I believe, had been meeting with Chris [Lewis] on other issues. I was on my way back to Cockburn after personal business in Perth and so that's why I – I met there.*¹⁰⁶

[195] And further:

*When you saw Mr Lewis there, what was your understanding as to why he would be present?---Yes, I don't really know. I don't know why he would have been present. I maybe assumed he'd just finished a meeting and – another meeting prior to that, so I don't really know.*¹⁰⁷

[196] And further:

*Did you ask Mr Lewis why he wanted to be present at this meeting?-- I can't recall whether I did or not and it may have – it may have struck a chord with me because I did start stressing to Peter Owens that, "Look, if there's any involvement of Australand I need to know so I can declare".*¹⁰⁸

[197] And later:

*You were there talking about election issues, your election campaign funding. Wouldn't that be the appropriate time to raise with Mr Lewis what precisely his involvement was in all of this?---I can't recall if it was or wasn't or why I did or didn't. I just don't remember doing that at that meeting.*¹⁰⁹

[198] Regarding the particulars of the meeting, Mr Owens said the purpose of the meeting was to review the election material, and to discuss the need for further material.¹¹⁰

5.2.5 Summary of Early Communication Regarding Mr Lee's Election Campaign

[199] By 4 April 2005 Mr Lee had been privy to the following communications in relation to his election campaign.

- An email from Mr Burke to Mr Herkenhoff, with a copy to Mr Lee, in which Mr Burke detailed two tasks "in assisting Cockburn", being to complete what later became the "Jakovich Letter", and to prepare a "Cockburn-wider pamphlet".¹¹¹
- An email from Mr Burke to Mr Herkenhoff, with a copy to Mr Lewis and Mr Lee, in which Mr Burke detailed the two categories of fund-raising, being what later became the "Jakovich Letter", and the use of PCN as a "legal and legitimate 'veil' for people wishing to contribute through it".¹¹²
- An email sent by Mr Lee to Mr Owens, with a copy to Mr Burke, attaching the candidate profiles.¹¹³
- An email from Mr Burke to Mr Owens and Mr Herkenhoff, with a copy to Mr Lee and Mr Lewis, in which Mr Burke added his comments to a previous email from Mr Owens. The email touched on various matters regarding Mr Lee's campaign, including finding a signatory for what later became the "Jakovich Letter", and discussion regarding a suggestion that the letter be sent to the Australand database.¹¹⁴
- An email from Mr Herkenhoff to Mr Lewis, with a copy to Mr Burke, Mr Lee, Mr Owens and Mr Riley, in which Mr Herkenhoff detailed his proposal for PCN to run an "apolitical" campaign. Included at the end of the email was an instruction to direct all communication regarding "these initiatives" to Mr Lee's private email address.¹¹⁵
- An email from Mr Owens to Mr Jakovich and Mr Lee, with a copy to Mr Burke and Mr Herkenhoff, which attached the draft "Jakovich Letter". Mr Lee responded, noting that the letter "is very good and could be extremely useful if Glen agrees to sign".¹¹⁶

- A meeting at the home of Mr Burke attended by Mr Burke, Mr Lee, Mr Lewis and Mr Owens, at which Mr Lewis said the letter and the fund-raising luncheon may have been discussed, and Mr Owens stated that all aspects of the campaign were discussed, including a fund-raising letter and a fund-raising luncheon to be organised by PCN.
- An email from Mr Herkenhoff to Mr Lewis, Mr Burke and Mr Grill, with a copy to Mr Lee, Mr Owens and Mr Riley, where Mr Herkenhoff forwarded an email he had earlier sent to the PCN committee members detailing his proposal for the PCN campaign.¹¹⁷
- An email from Mr Owens to Mr Lewis, with a copy to Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley, where Mr Owens advised that he has spoken to Brian (Mr Burke) and that Mr Burke confirmed that Mr Lewis has advice “confirming that PCN provides a legal and legitimate ‘veil’ for people wishing to contribute (to the Stephen Lee campaign) through it”.¹¹⁸
- An email from Mr Lewis to Mr Herkenhoff, with a copy to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley, where Mr Lewis said “[A]s discussed earlier in the week, PCN is more of a vehicle we can use legally to collect funds and promote the re election of Stephen and his team”.¹¹⁹
- A meeting at the offices of Australand attended by Mr Burke, Mr Lewis, Mr Lee and Mr Owens, which Mr Owens said was to review the election material Riley Mathewson were producing.

[200] In the opinion of the Commission there can be no doubt that by 4 April 2005 Mr Lee was well aware of the role played by each of the persons involved in his election campaign, being Mr Burke, Mr Lewis, Mr Owens and Mr Herkenhoff, as well as the proposal to use PCN to raise funds for his election campaign. It is Mr Lee’s knowledge of the involvement of Mr Lewis that is important in the context of what occurred in relation to the Riley Mathewson invoices, and this will be discussed later in this report.

5.3 The “Jakovich Letter”

[201] The fund-raising letter, referred to in this report as the “Jakovich Letter”, was sent to supporters on 31 March 2005, to request financial support for the re-election of Mr Lee. After detailing some of Mr Lee’s priorities, Mr Jakovich wrote:

Please think carefully about your capacity to help re-elect Stephen and his team at these elections. Any donation you make will be receipted and a letter of acknowledgement and thanks will be posted

to you (donations up to \$199 need not be declared under Regulation 30A of the Local Government Act).

- [202] Mr Jakovich went on to provide the bank account details for Mr Lee's campaign account, which Mr Lee opened for this purpose, for those wishing to make a direct deposit.
- [203] A total of \$3,559 in donations was deposited into this account, including a cheque for \$200 from Control Holdings Pty Ltd, two cheques for \$199 each from TR and HJ Barrett, and two cheques for \$199 each from Gladstone Holdings Pty Ltd, which trades as TR Barrett Radio. The remainder of the donations were for amounts of \$199 or less.
- [204] It is important to note that a gift is relevant under regulation 30A if it is \$200 or more, or one of two or more gifts, with a total value of \$200 or more, made by one person.
- [205] In relation to the donation of \$200 from Control Holdings Pty Ltd, Mr Lee's evidence to the Commission was that he gave one dollar back.¹²⁰
- [206] In relation to the two cheques from TR and HJ Barrett, Mr Lee told the Commission that Tom Barrett and his wife each gave him a donation. In relation to the two cheques from Gladstone Holdings Pty Ltd, Mr Lee told the Commission that Mr Barrett's two daughters each gave him a donation. Mr Lee explained that Mr Barrett told him the family was proud of the work they were doing; and each one of them, in their own individual right, wanted to make a donation.¹²¹
- [207] The Commission accepts Mr Lee's evidence in this regard. The Commission reaches no opinion of misconduct against Mr Lee in relation to the receipt of electoral donations in response to the "Jakovich Letter".

5.3.1 Submissions for Mr Lee Relating to Donations

- [208] In November 2007 Mr Lee's lawyers provided the Commission with extensive written submissions ("the 2007 submissions"), also supported by various statutory declarations. The 2007 submissions were directed to a number of aspects of the information obtained during the hearings and contended there was no misconduct on Mr Lee's part in any respect. The Commission has had regard to the 2007 submissions in making its assessments and forming its opinions, although it does not propose to refer specifically in this report to every discrete aspect of them.
- [209] The 2007 submissions included a statutory declaration from Mr Frank Holguin, director of Control Holdings Pty Ltd. Mr Holguin stated that he sent a cheque to Mr Lee for \$200, and Mr Lee returned the sum of \$2.
- [210] They also included a statutory declaration from Mr Thomas Barrett in which he explained that Gladstone Holdings Pty Ltd is the trustee for the Barrett Family Trust, which has four members (beneficiaries). Mr Barrett stated that

two of those members wished to make a donation, from their individual loan accounts within the trust, and that initially a single cheque was drawn for \$398. Following advice from Mr Lee that the donation must be disclosed, Mr Barrett consulted with the two donors, who did not wish to be named publicly. It was then arranged for Mr Lee to return the cheque, and two fresh cheques were drawn, for \$199 each.

[211] The Commission accepts the submissions made in respect of the Control Holdings Pty Ltd and Gladstone Holdings Pty Ltd cheques and is of the opinion no misconduct has been established in relation to those payments.

5.4 Port Coogee Now (PCN) Fund-Raising Luncheon

[212] PCN sent out its luncheon invitation on 18 April 2005, and in its invitation to Councillor Martin Reeve-Fowkes it said:

With the local council election campaign now well underway, we'd like to register our full support of you and your team. It is patently clear to us that you are committed to a balanced development approach, jobs for our kids, safety and security and improvement of community facilities for the betterment of Cockburn.

These ideals are aligned with our own vision for Cockburn and, as such, we are compelled to throw our weight behind local hero Glen Jakovich's campaign to ensure your Council team is re-elected.

To this end, we have organised a fundraising luncheon to assist your campaign. The luncheon will be held at 12.30 p.m. on Tuesday 26th April 2005 at Peruginos, West Perth, with a select group of Cockburn business leaders.

Accordingly, we extend to each of you an invitation to join us at this luncheon as our special guests.¹²²

[213] Mr Herkenhoff told the Commission that he drafted the PCN luncheon invitation for PCN committee member Mr Sebastiano (Sam) Fazio to sign. Mr Herkenhoff agreed that the purpose of the PCN fund-raising luncheon was to raise funds for Mr Lee and his team, as the invitation suggests.¹²³

[214] When Cockburn Deputy Mayor, Mr Richard Graham, received his luncheon invitation from PCN, he sought clarification from PCN. On 21 April 2005 Mr Graham sent an email to the PCN email address, which, incidentally, was housed at Riley Mathewson. Mr Graham wrote:

Today, I received your invitation to a luncheon, dated 18 April 2005, to be held on 26 April 2005.

Thank you for the invitation.

...

I note that you say in the invitation that “we have organised a fundraising luncheon to assist your campaign”.

...

I am not sure if you actually intended for the luncheon to assist my campaign, or if this statement is misdirected, and would be grateful for your clarification in this regard.¹²⁴

[215] Mr Herkenhoff forwarded Mr Graham’s email to Mr Lewis, Mr Burke and Mr Grill, with a copy to Mr Paul Downie of public relations firm Porter Novelli, Mr Owens and Mr Riley. Mr Herkenhoff wrote:

Richard has queried PCN’s intent and we are unable to provide advice regarding points of law.

As Richard seeks clarification regarding the compliance issues related to PCN’s financial support, do you wish for us to seek legal advice and revert, or can you provide clarification and revert to us?¹²⁵

[216] Mr Burke responded to Mr Herkenhoff’s enquiry, sending an email to Mr Herkenhoff, Mr Lewis and Mr Grill, with a copy to Mr Downie, Mr Owens and Mr Riley. Mr Burke wrote:

It is really unwise to be saying in emails of invitations etc things that are not accurate. The intention of the luncheon is to raise funds that PCN can then use as it sees fit. It may see fit to support candidate/s at the election, it may not.

In completing the required return after the election, a candidate is required to state “honestly” where any support in excess of \$199 (cash or kind) came from. In this case, the declaration will simply say support came from a community group PCN.¹²⁶

[217] Mr Burke then provided a suggested PCN response for Mr Graham, which included the following:

Unfortunately, our email to you was in error when it referred to raising funds “... for your campaign”. The luncheon is to raise funds for PCN to use in “its campaign”. The intention of the luncheon is to raise funds that PCN can then use as it sees fit. It may see fit to support candidate/s at the election, it may not.¹²⁷

[218] Mr Burke’s suggested response to Mr Graham was repeated verbatim in an email from Mr Fazio to Mr Graham sent later on the same day.¹²⁸

[219] Mr Herkenhoff was asked, at a Commission public hearing on 15 February 2007, why he sent his email seeking clarification of PCN’s intent to Mr Lewis,

Mr Burke and Mr Grill, and he said it was because they were involved in providing advice in relation to Mr Lee's election campaign.¹²⁹ When asked why he didn't seek clarification from anyone on the PCN committee, Mr Herkenhoff said that by seeking clarification in the way he did he thought that he was representing the PCN committee. Mr Herkenhoff added that he did not think anyone from the PCN committee would have been able to provide the clarification he sought.¹³⁰

[220] Regarding the intention of the PCN luncheon, Mr Herkenhoff said that it was clear to him that the intention was to raise funds for Mr Lee's election campaign, not to raise funds that PCN could use as it saw fit. Mr Herkenhoff agreed that Mr Burke's suggested response to Mr Graham was not accurate, and accepted that he would have arranged for the response to be sent to Mr Graham by Mr Fazio. Mr Herkenhoff explained that, by this stage, he expected that he would have simply been "taking instructions".¹³¹

[221] Mr Owens was shown the initial email enquiry from Mr Graham, during a Commission public hearing on 14 February 2007, and he agreed that the whole point of the PCN fund-raising luncheon was to raise funds for Mr Lee's campaign, including members of his "team".¹³² When asked whether he thought Mr Burke's suggested response to Mr Graham was accurate, Mr Owens said he didn't know. When pressed, Mr Owens said that Mr Burke's response didn't make much sense to him. When asked whether an email response to Mr Graham in the terms proposed by Mr Burke would be misleading, Mr Owens again said he didn't know. When pressed, Mr Owens said it is a question of semantics, adding that the point Mr Burke was making was that it was PCN's fund-raising campaign as opposed to Mr Lee's election campaign. Mr Owens added that he certainly didn't make that distinction. Mr Owens then agreed that it was always the intention that funds raised from the PCN luncheon would go to the Stephen Lee campaign fund, and that there was never any suggestion that the funds would go elsewhere.¹³³

[222] Mr Lewis was also shown this exchange of emails, at a Commission public hearing on 15 February 2007, and he agreed that the intention as stated by Mr Burke was not accurate, and that the intention of the PCN luncheon was always to raise funds for the Stephen Lee campaign.¹³⁴

[223] Mr Owens forwarded the email from Mr Graham; and the email from Mr Herkenhoff enquiring of Mr Lewis, Mr Burke and Mr Grill, to Mr Lee.¹³⁵ Mr Lee was shown these emails, at a Commission public hearing on 19 February 2007, and it was put to him that he was aware that the PCN fund-raising luncheon was to raise funds for his campaign. Mr Lee said:

*I was aware it was a fundraising lunch for PCN and it was highly likely I would be a recipient of PCN's donations.*¹³⁶

[224] In summary then, Mr Herkenhoff, Mr Owens and Mr Lewis all agreed that, contrary to the distinction asserted by Mr Burke that PCN's intention was to raise funds for use as it saw fit, the true intention of the PCN fund-raising luncheon was always to raise funds for Mr Lee's election campaign. The

Commission is satisfied that was in fact the case and those involved (including Mr Lee) understood that to be so.

[225] The PCN fund-raising luncheon was in fact held at Peruginos Restaurant on 26 April 2005. It is reasonable to infer from the PCN cheque account, opened shortly prior to the luncheon, that the luncheon was attended by some 18 paying guests, at \$1,000 each. Alternatively, it could be said that there were up to 18 paying guests, who paid a total of \$18,000. Two cheques were drawn on the PCN bank account. The first was a cheque for \$2,160 payable to Homestyle Vegetable Processors Pty Ltd, of which PCN committee member Mr Santo Merenda is a Director. PCN committee member Mr Fazio told the Commission that Mr Merenda paid for the luncheon, and was subsequently reimbursed by PCN.¹³⁷ The other cheque drawn on the PCN bank account was a cheque dated 22 June 2005 payable to Mr Lee in the amount of \$15,820.¹³⁸ There were no other transactions conducted on the PCN bank account.¹³⁹

[226] On 27 April 2005 Mr Lee completed a Form 9A “Disclosure of Gifts” and noted a “promise of possible donation after fundraising lunch” from Port Coogee NOW (Sam Fazio) for an unknown amount.¹⁴⁰

[227] On 25 August 2005, after having received the cheque from PCN, Mr Lee filed a Form 3 Annual Return for the year ended 30 June 2005 and disclosed an “electoral gift” of \$15,820 from Port Coogee NOW.¹⁴¹

5.4.1 Conclusions Regarding the PCN Fund-Raising Luncheon

[228] In the opinion of the Commission, Mr Lee knew that the intention of the PCN fund-raising luncheon was at all times to raise funds for his election campaign. In fact, Mr Lee relied on a letter from Riley Mathewson dated 19 April 2005 stating that “costs associated with this campaign will substantially be met by the fund-raising activities presently being undertaken”.¹⁴² That letter was written one week prior to the PCN fund-raising luncheon. Mr Lee sought to rely on this letter in evidence to the Commission, and again in the 2007 submissions, in support of his contention that he understood the “write-down” of costs by Riley Mathewson to be perfectly reasonable, having regard to the content of this letter. In the Commission’s opinion, any assertion that the funds raised by the PCN luncheon were to be directed anywhere but Mr Lee is patently untenable.

[229] As discussed above, Mr Lee was a party to a number of communications that included discussion of using PCN as a “veil” or “vehicle” for people wishing to contribute to his campaign through PCN.

[230] The PCN luncheon invitation said the purpose of the luncheon was to raise funds “to assist your campaign” and is it clear from the evidence of Mr Herkenhoff and Mr Owens that this was a reference to Mr Lee’s election campaign.

- [231] Further, it was the evidence of Mr Herkenhoff, Mr Owens and Mr Lewis that the intention of the PCN fund-raising luncheon was always to raise funds for the Stephen Lee election campaign, and Mr Lee conceded that it was “highly likely” that he would be the recipient of the funds raised by PCN.
- [232] Given that Mr Lee knew that he would be the recipient of any funds raised by PCN, and that he attended the luncheon and may have known the identity of some or all of the other attendees, the question arises as to whether Mr Lee complied with his disclosure obligations.
- [233] The regulations state that a candidate must identify the source of the gift in the manner set out in regulation 30E, and provide for a maximum penalty of \$5,000 for failure to do so. Regulation 30E states:

For the purposes of regulation 30B(3), a candidate must identify the true source of a gift, if known, or state on the “disclosure of gifts” form that the true source of the gift is unknown to the candidate.

- [234] The question is whether PCN was the “true source” of the gift? It is obvious from the material available to the Commission that PCN, as a lobby group, conducts no business and has no source of income independent of donations made to it. Mr Lee was present at the luncheon, and he must have had a reasonable degree of knowledge as to the number of attendees, and their identities. In the Commission’s view, regulation 30B(3) must be given a practical and reasonable construction which gives effect to its apparent legislative purpose. It may be a question of degree. If the whole \$15,820 had (or was to) come from a single known person, through PCN, a conclusion that the regulations required that person to be identified as the “true source” of the gift would both be a reasonable conclusion and one which gave effect to the legislative intent that candidates should disclose gifts which could give rise to a perception of obligation or favour to a person or interest. Be that as it may, it is difficult to accept an argument that it was incumbent on Mr Lee to ascertain the details of each attendee, including the amount paid, and whether or not the attendee was present as a company representative.
- [235] What about the position at the time of receipt of the actual donation, as opposed to the promise of a donation? Was it incumbent on Mr Lee at the time of receipt of the cheque from PCN to ascertain from PCN the “true source” of funds? In the opinion of the Commission, that obligation is not imposed on Mr Lee by the regulations. Regulation 30E states that a candidate must identify the true source of a gift, “if known”. It does not impose any positive obligation on the candidate to attempt to identify the true source of the gift.
- [236] In any event, there is no requirement to amend the previously filed Form 9A in light of any new information that may present itself outside the election disclosure period. This means that the “true source” of a gift may be unknown at the time the gift was promised (within the disclosure period) and the Form 9A lodged. If the “true source” becomes known at the time of receipt of the gift itself (outside the disclosure period), there is no obligation to

amend the previously filed Form 9A, nor indeed is there any obligation to file a fresh Form 9A.

[237] Nor was it incumbent upon Mr Lee to attempt to identify the true source of the gift at the time of filing his annual return, because, as we have seen, there is no “true source” requirement under section 5.82 of the *Local Government Act 1995*.

[238] Consequently, in the Commission’s opinion, the evidence does not show misconduct on the part of Mr Lee in relation to the gift he received from PCN.

5.5 Riley Mathewson Public Relations Account

5.5.1 Riley Mathewson Invoices

[239] Riley Mathewson issued three invoices to Mr Lee in respect of his election campaign:

1.	30 March 2005	\$ 6,301.01 ¹⁴³
2.	26 April 2005	\$69,095.26 ¹⁴⁴
3.	9 May 2005	<u>\$ 1,201.22¹⁴⁵</u>
		\$76,597.49

[240] Mr Riley told the Commission that, although he has no specific recollection of mailing the invoices to Mr Lee, he understood that the invoices would have been sent to Mr Lee.¹⁴⁶

[241] Mr Lee was shown each of the invoices issued to him by Riley Mathewson, at a Commission public hearing on 19 February 2007, and he claimed to have no prior knowledge of the invoices. Mr Lee explained that his wife [Mrs Anna Christine Lee] opens all of the mail and deals with all of the mail.¹⁴⁷

[242] In the 2007 submissions for Mr Lee, a statutory declaration from Mrs Lee was provided. Mrs Lee there said that she always collects and opens all mail, pays all household bills, and generally does not discuss such bills with her husband unless they are unusually large or unexpected. In relation to the Riley Mathewson invoices, Mrs Lee said:

[A]t no time during March, April or May 2005 or indeed at any time since have we ever received an invoice from RMPR to an amount of \$76,597.51.

[243] With their section 86 representations made on 31 July 2008 Mr Lee’s lawyers provided a further statutory declaration from Mrs Lee clarifying what she had said earlier. In her second statutory declaration she said she had never received any invoice from Riley Mathewson addressed to her husband. The Commission notes that the relevant invoices on the Riley Mathewson file are marked “cancelled”, and in light of that and Mrs Lee’s statutory declarations, accepts that the invoices were not received by either Mr or Mrs Lee.

However, the Commission's opinions relating to the Riley Mathewson account are not dependent upon receipt of the Riley Mathewson invoices by Mr Lee.

5.5.2 Mr Lee's Meeting with Mr Owens on 9 May 2005

- [244] On 9 May 2005, two days after the election, and the date of the final Riley Mathewson invoice, Mr Lee met Mr Owens. According to the Riley Mathewson activity report, Mr Owens liaised with Mr Lee "regarding fund-raising/accounting issues"¹⁴⁸. Mr Lee told the Commission, at a Commission public hearing on 19 February 2007, that Mr Owens did not provide him with the invoice dated 9 May 2005 at their meeting on that same day.¹⁴⁹ Mr Lee maintained that Mr Owens made no mention of the total amount invoiced by Riley Mathewson of \$76,597.49. Mr Lee did not deny that they spoke about the campaign costs, but said he told Mr Owens that he thought the costs would amount to around \$40,000, and that he reminded Mr Owens of the commitment by Riley Mathewson that a substantial amount of the campaign would be paid for by fund-raising activities.¹⁵⁰ Mr Lee recalled that Mr Owens seemed to indicate that the figure may be closer to \$50,000 or \$60,000, to which he expressed his surprise.¹⁵¹
- [245] When asked how Mr Lee came to the understanding that the campaign costs would amount to around \$40,000, Mr Lee explained that he had received an email from Mr Owens¹⁵² in April 2005 indicating that, three-quarters of the way through the campaign, the campaign costs had amounted to about \$30,000.¹⁵³ Mr Lee said that he made an assumption from this that, after one further week of campaigning, and one further pamphlet, the cost would have been around \$40,000.¹⁵⁴
- [246] Mr Owens said, at a Commission public hearing on 14 February 2007, that he was unable to recall the details of his meeting with Mr Lee on 9 May 2005, just after the election, but that it was obviously about the accounts, and perhaps the cost of the campaign.¹⁵⁵ When asked whether he could recall discussing with Mr Lee the amounts of the Riley Mathewson invoices issued to him, Mr Owens said he had no specific recollection of such a conversation.¹⁵⁶
- [247] Earlier in his examination Mr Owens was referred to an email he sent to Mr Riley that mentioned "the wonderfully expensive campaign we are conducting for Stephen Lee".¹⁵⁷ When questioned about that email, Mr Owens said that he realised the campaign was proving to be more expensive than they might have initially anticipated, and that if fund-raising was to be the means of paying for their services, then the fund-raising obviously needed to be successful.¹⁵⁸
- [248] Mr Owens was asked what he did about his concerns in relation to the cost of the campaign, and he said he passed his concerns on to the "people that were involved in the campaign", who he said were Mr Riley, Mr Lewis and Mr Burke.¹⁵⁹ When asked whether he also passed his concerns onto Mr Lee, Mr Owens said:

Well, Mr Lee [and] I had meetings and discussions with [him] every day. I didn't have to email him every day because I was meeting with him and having these discussions with him on an ongoing basis.

Had you raised then these concerns with him?---I don't recall that I specifically raised it but I think in terms of discussing the campaign and how it was going I'm sure that we - - -

Mr Owens, why didn't you specifically raise it with him? He's the man that, at the end of the day, is liable?---Well, as I said, I probably had a discussion with him but I don't have a specific recollection that I went to him one day and said, "Hey, this thing is costing too much".¹⁶⁰

[249] In their section 86 representations Mr Lee's lawyers argue that by the above answers Mr Owens made it clear he did not discuss the matter with Mr Lee. The Commission does not accept that – to the contrary, the last answer says Mr Owens probably did have a discussion with Mr Lee about his concerns, although he does not have a recollection of a specific conversation.

[250] Further, during a subsequent Commission private hearing on 24 April 2008, Mr Owens did recall specifically raising the matter with Mr Lee:

I've never worked on any campaign or anything like that where there's been no budget and that became an increasing concern to me as the campaign proceeded, and it was a point that I did discuss with Stephen when I realised – I think probably after we started getting the prices in for the cost of printing and distributing the first and second items and we had three or four and five on the drawing board I came to the realisation that what we were spending would far exceed what I had notionally thought we might raise through the major fundraising, which was going to be the dinner, and I discussed that with Stephen. I discussed that with Des Riley and also I asked Mr Burke a question once or twice and each time when I asked the question I was given the same response, saying, "Don't worry about it. The fundraising will cover the costs".¹⁶¹

[251] In any event, even on his own evidence, Mr Lee was aware that the Riley Mathewson charges in relation to his election campaign were likely to amount to some \$50,000 or \$60,000.

5.5.3 Mr Lee's Subsequent Meeting with Mr Lewis

[252] Shortly after his meeting with Mr Owens on 9 May 2005 Mr Lee met Mr Lewis. Regarding the meeting, Mr Lee said:

We – we were having a meeting, whatever it was, a catch-up at a coffee shop. We were talking about – we were talking about the campaign and he said, "It was a good campaign". I said, "Yes", I said, "but unfortunately I'm not sure that the fundraising was that

successful and I'm not sure – and I'm not entirely convinced that Riley Mathewson haven't confused some of my costs with PCN's costs, but I've spoken to Peter [Owens] about that and reminded Peter [Owens] of RMPR's commitment to" – and I can't remember the precise words but it was along these lines – "to meet the costs substantially through fundraising". He said, "I know a little bit about PCN. Would you like me just to check they haven't mixed up any of the – any of the invoices, mixed up any of their work, PCN's work, with your work?", and I said, "Yeah".¹⁶²

[253] In their section 86 representations, Mr Lee's lawyers say Mr Lee acknowledges that he did discuss the campaign and its success, but only in passing, and that to the best of his recollection it was in the offices of the Chief Executive Officer of the City on Friday 13 May 2005. That was not what he said in evidence. The Commission is satisfied this meeting was at a coffee shop at the specific request of Mr Lee to discuss the campaign and the cost of it.

[254] Mr Lewis, in relation to his meeting with Mr Lee shortly after the election, said:

Mr Lee and I had met just following the election campaign. He described to me his concern as to the cost of the campaign. It was clear to me that he was seeking my help with that. I met with Riley Mathewson.¹⁶³

[255] And later:

We had a meeting after the election campaign to talk about overall how that campaign had run. His – the issue of his election costs were raised. Clearly I felt he wanted to see – wanted my help. I was happy to provide that. I supported Stephen Lee.¹⁶⁴

5.5.4 Mr Lewis' Subsequent Negotiations with Mr Riley

[256] On 16 May 2005 Mr Lewis met Mr Riley, Mr Owens and then Riley Mathewson Co-Principal, Mr Ross Mathewson. Mr Lewis was provided with a summary of campaign costs and funds raised.¹⁶⁵ On 31 May 2005 Mr Lewis had a further meeting with Mr Riley and Mr Owens where he presented some figures, which were accepted by Mr Riley.¹⁶⁶ Mr Lewis was asked, at a Commission public hearing on 15 February 2007, about the meeting, including whether he thought he was acting on behalf of Mr Lee in his negotiations with Riley Mathewson:

When you came to have this meeting with Mr Riley and Mr Owens now on 31 May, you were acting on behalf of Mr Lee, were you?---
No.

Who were you acting on behalf of?---Australand, my employer.

*Australand?---Yes.*¹⁶⁷

[257] And further:

*Were you wearing your Australand hat because you thought, at the end of the day, that Australand would have to make a contribution?--
-Yes.*

*So when you had these figures in mind, you had in mind a figure that Australand would have to pay to satisfy the account for Mr Lee?---
We were happy to support Mr Lee.*¹⁶⁸

[258] The figures presented by Mr Lewis to Mr Riley included a proposal for Mr Lee to make a payment to Riley Mathewson, and to receive a gift from Riley Mathewson, and for Riley Mathewson to invoice Marta Fishing Co for the agreed amount remaining for the cost of Mr Lee's campaign. Mr Lewis was asked why such a complicated method was proposed:

*So why did you come up with this complicated method rather than the more simple one?---I was just seeking to see the account reduced and then make a contribution.*¹⁶⁹

[259] And further:

*The short answer is that you devised it this way so that it wouldn't be so obvious that Australand was paying for a substantial portion of this invoice?---Yes.*¹⁷⁰

[260] Mr Lewis was then asked whether he ever discussed these arrangements with Mr Lee and he said he did not.¹⁷¹ Mr Lewis said that he disclosed the payment to Mr Lee's campaign manager, Mr Riley and Riley Mathewson, and that the obligation to pass that information on to Mr Lee lay with Mr Riley.¹⁷² When it was put to Mr Lewis that he didn't tell Mr Riley that Australand would be repaying Marta Fishing Co, Mr Lewis said:

*Mr Urquhart, we were sitting in Australand's office, I'm a representative of Australand, I believe that it was perfectly clear where the contribution was coming from.*¹⁷³

[261] In any event, it is clear from Mr Riley's evidence that he understood where the payment was to come from:

*So was your understanding that a company that was – or an entity that was in some way associated with Australand would be paying two-thirds of Mr Lee's invoices?---That's correct, yes.*¹⁷⁴

[262] Mr Lewis was again questioned, at a Commission public hearing on 19 February 2007, about whether or not he told Mr Lee that Australand had made a payment to Riley Mathewson in respect of his account. This time, the questioning related to a conversation between Mr Lewis and Mr Lee in June

2006 during which Mr Lee mentioned that the Commission had asked questions of Mr Riley. Mr Lewis' evidence was as follows:

When Mr Lee had raised this matter with you you were aware at least it was all to do with donations in his 2005 campaign?---Yes.

Did you then tell him about the donation from Australand?---No.

Any reason for that?---No reason.

Was it because he already knew?---I don't know if he already knew, you would need to ask Mr Lee.

Well, was the - - -?---But I think it's obvious that Australand have – we met with Des Riley, the bill is being reduced and he pays a much reduced bill.

So it was obvious that what?---That obviously there has been a contribution.

A contribution from Australand?---I would feel so, yes.¹⁷⁵

[263] In the Commission's assessment, the effect of the evidence, then, is that it was obvious to Mr Lee, as a result of his meeting with Mr Lewis shortly after the election and the subsequent reduction in the Riley Mathewson invoices, that Australand had made a contribution to Riley Mathewson in respect of Mr Lee's election campaign. The Commission is satisfied that was so. The evidence of Mr Riley was that the payment was to come from Marta Fishing Co, and he knew that that entity was associated with Australand. However, there is no evidence that Mr Lee knew about Marta Fishing Co nor the actual mechanics of the payment of part of his Riley Mathewson campaign costs by Australand.

5.5.5 Revised Riley Mathewson Invoices

[264] Riley Mathewson cancelled the three invoices initially issued to Mr Lee, and on 20 June 2005 issued Mr Lee with an invoice for \$43,500.73.¹⁷⁶ On the following day, Mr Riley met Mr Lee and there was an exchange of cheques: Mr Lee provided Mr Riley with a cheque for \$43,500.73,¹⁷⁷ and Mr Riley provided Mr Lee with a cheque for \$21,586.83.¹⁷⁸ Mr Lee was aware of the gift to be provided by Riley Mathewson prior to the meeting, as he arrived with a typed receipt for Mr Riley.¹⁷⁹ In their section 86 representations, Mr Lee's lawyers state that Mr Lee was aware of the amount of the gift (\$21,586.83) prior to the meeting because that had been communicated to him on 17 June 2005. The result was that Mr Lee paid a net amount of \$21,913.90 to Riley Mathewson in respect of his election campaign.

[265] Mr Riley was referred to this meeting and exchange of cheques with Mr Lee, at a Commission public hearing on 14 February 2007, and asked whether he had a discussion with Mr Lee about payment of the balance of the account.

Mr Riley said he did not have such a discussion with Mr Lee. Mr Riley was asked whether Mr Lee inquired as to why it was that Riley Mathewson was prepared to discount the invoice in this way, and Mr Riley said he does not recall Mr Lee asking such a question.¹⁸⁰

[266] Mr Lee was asked, at a Commission public hearing on 19 February 2007, whether he was pleased with the result that he only had to pay around \$21,000 to Riley Mathewson, and he said that he was, and whether he thought that Mr Lewis had a lot to do with that result:

*So were you pleased with that outcome?---Which? Which outcome?
The outcome of the elections?*

No. The outcome of you only having to pay \$21,000?---Yes.

Was it your understanding that would have had a lot to do with what Mr Lewis said at that meeting?---No, because I wasn't aware Mr Lewis had had a meeting. As Mr Lewis has presented in his evidence, and I don't deny this, I was at a meeting with Chris [Lewis] after the election and he asked me, "What did you think of the election outcome"? "Good, good result", but I said, "I'm a bit concerned now because Peter [Owens] has told me that it may be 50 or 60 thousand and I'm a bit fearful that they've mixed up some of the work they were doing for PCN with some of my invoices because on my calculations, it doesn't make much sense". He said, "Did you want me to have a word with Des"? or words to that effect, and I just said, "Yes, sure", and then forgot all about it.¹⁸¹

[267] And further:

Lo and behold, an invoice - - -? ... - - - comes back a little bit later in the amount of 43 and a half thousand dollars. Did you not put two and two together that - - -? ... - - - Mr Lewis had had some involvement in this?---I did not because I confirmed, time and time again, with Des [Riley] and with Chris [Lewis] that that hadn't occurred and they told me it hadn't.

That what hadn't occurred, sorry?---That Chris [Lewis] hadn't made a donation or Australand hadn't made a donation ...¹⁸²

[268] Mr Lee was then asked whether he ever directly asked Mr Lewis whether he, as a representative of Australand, ever made a donation or gift to his election campaign, and he said:

It is my recollection that on numerous occasions I asked lots of people – I mean, Chris [Lewis], Peter [Owens], Des [Riley], and I always received a negative.

All right, I'm staying with Chris now for the moment; Chris Lewis, all right? Do you accept that your recollection is at odds with his?--- Well, not really because he said that he never told me.

*Yes, and that you never asked him?---Well, then perhaps our recollections are at odds.*¹⁸³

5.5.6 Satisfaction of the Riley Mathewson Account

[269] Riley Mathewson initially invoiced Mr Lee for a total of \$76,597.49.

[270] Following negotiations with Mr Lewis, Riley Mathewson invoiced Mr Lee for \$43,500.73 (including GST). Mr Lee gave Mr Riley a cheque to that amount. Mr Riley gave Mr Lee a cheque (by way of "gift") for \$21,586.83, for which Mr Lee handed him a receipt.

[271] In addition, it was also agreed between Mr Lewis and Mr Riley that Riley Mathewson would issue two invoices to Marta Fishing Co, which happened as follows:

08/06/05	\$32,625.55
01/07/05	<u>\$10,875.18</u>
	\$43,500.73

[272] Marta Fishing Co made payment to Riley Mathewson in respect of the invoices after first receiving equivalent payment from Australand.

[273] The result is that Riley Mathewson received payment for their work on Mr Lee's campaign as follows:

Invoice to Mr Lee	\$43,500.73
Less "gift" to Mr Lee	<u>\$21,586.83</u>
Net payment by Mr Lee	\$21,913.90
Invoices issued to Marta Fishing Co	<u>\$43,500.73</u>
Total received by Riley Mathewson	\$65,414.63

5.5.7 Conclusions Regarding the Riley Mathewson Invoices

[274] The evidence of Mr Riley and Mr Lewis is that Mr Lee never asked whether Mr Lewis or Australand had contributed to the payment of the Riley Mathewson accounts in respect of his election campaign. Mr Lewis did not mention the payment by Australand to Mr Lee as he believed it was obvious to Mr Lee's campaign manager, Riley Mathewson, where the payment of \$43,500.73 had come from. Mr Riley could not recall discussing the matter with Mr Lee, and could not recall Mr Lee making any enquiry of him in that regard.

[275] The evidence of Mr Lee is contradictory to that of Mr Riley and of Mr Lewis. Mr Lee's evidence was that he asked both Mr Riley and Mr Lewis, and

others, on numerous occasions, whether Australand had made a contribution towards his election campaign, and was always told that it had not.

[276] The Commission has made an assessment of the evidence of Mr Lee, Mr Lewis and Mr Riley in this regard, and in the opinion of the Commission, the evidence of Mr Lewis and Mr Riley must be preferred to that of Mr Lee for a number of reasons. First, the evidence of Mr Lewis and Mr Riley is corroborative. Second, Mr Lewis appeared full and frank in his evidence to the Commission; admitting to assisting in Mr Lee's election campaign, to the use of PCN as an intermediary, to negotiating with Riley Mathewson, and to designing the payment arrangements utilising the Marta Fishing Co to distance Australand from the arrangement. Third, Mr Riley has cooperated with investigators throughout; participating in an interview, providing additional information voluntarily, and clarifying portions of his evidence by phone and email. On the other hand, Mr Lee's recollection of events was poor, and he repeatedly denied facts which seemed obvious from other evidence, such as the involvement of Mr Lewis in his election campaign.

[277] The Commission is satisfied that Mr Lee did not ask Mr Lewis or Mr Riley, at the relevant time, that is, after the election, whether Australand had made any direct or indirect financial contribution to his election campaign. In the opinion of the Commission, there was no need for Mr Lee to ask such a direct question of either Mr Lewis or Mr Riley because the circumstances were such that he knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign. Mr Lewis said so. He considered that it was obvious that Australand had made a contribution to Riley Mathewson in respect of Mr Lee's election campaign.¹⁸⁴ Although that acknowledgement came during questioning about a conversation he had with Mr Lee in June 2006, Mr Lewis was referring to the earlier period when he negotiated the deal with Mr Riley when he made reference to the fact that it ought to have been obvious to Mr Lee that Australand had made a contribution.

[278] On Mr Lee's own evidence, he had received an email from Mr Owens¹⁸⁵ in April 2005, before the election and three-quarters of the way through the campaign, indicating that the campaign costs had amounted to about \$30,000.¹⁸⁶ Mr Lee said that he made an assumption from this that, after one further week of campaigning, the cost would have been around \$40,000.¹⁸⁷ Mr Lee was obviously concerned to ensure that he would not be required to meet any shortfall, following this email from Mr Owens, as Riley Mathewson sent him a letter on the following day that belatedly confirmed the terms of the engagement, and also confirmed that "costs associated with this campaign will substantially be met by the fund-raising activities presently being undertaken".¹⁸⁸

[279] The PCN fund-raising luncheon was held on 26 April 2005, some eight days after Mr Lee received the email from Mr Owens that caused him to conclude that charges by Riley Mathewson in respect of his campaign would ultimately amount to around \$40,000. Mr Lee attended the fund-raising luncheon. It is reasonable to infer from the PCN cheque account that there were some 18

paying guests at the fund-raising luncheon paying \$1,000 each. Whether or not Mr Lee was aware of these precise details, he must have been concerned about the potential for the fund-raising luncheon to raise the sum of \$40,000, which he thought at that time was necessary to fund his election campaign. However, he had in his possession the letter from Riley Mathewson stating that costs would substantially be met by fund-raising activities. There were only two other possible sources of funds to satisfy the balance of the account; Riley Mathewson and Australand.

[280] On 9 May 2005 Mr Owens met Mr Lee and told him that the Riley Mathewson bill was likely to run to \$50,000 or \$60,000. Mr Lee denied receiving invoices totalling some \$76,000, and the evidence does not establish that he did. However, even on his own evidence it is clear that, on 9 May 2005, Mr Lee knew that the Riley Mathewson account was likely to run to \$50,000 or \$60,000, and that the fund-raising luncheon would not have raised anything close to that amount.

[281] Mr Lee met Mr Lewis shortly after his meeting with Mr Owens on 9 May 2005, two days after the election. Mr Lee mentioned the Riley Mathewson charges to Mr Lewis, and Mr Lewis thought it was clear Mr Lee was seeking his help. In fact, Mr Lewis' understanding following the meeting was that he ought to negotiate the costs with Riley Mathewson as it was a cost that would have to be borne by Australand.¹⁸⁹ Mr Lee said that after his meeting with Mr Lewis he "forgot all about it".¹⁹⁰ Mr Lee did not make any subsequent enquiries with Mr Lewis or Riley Mathewson, despite knowing that he could potentially be personally liable for \$30,000 or \$40,000. In the opinion of the Commission, he did not do so because he left the meeting with Mr Lewis with the clear belief and intent that Mr Lewis, on behalf of Australand, would resolve the matter in the way Mr Lewis in fact understood it. In the Commission's assessment, Mr Lee by then was very much aware the monies raised fell substantially short of Riley Mathewson's charges, and that was his reason for approaching Mr Lewis. Obviously the only way Mr Lewis would satisfy them, was by a payment from Australand. That was what he was seeking.

[282] Then, some time prior to 21 June 2005 (his lawyers say it was on 17 June 2005) Mr Lee had become aware that he was to be issued an invoice by Riley Mathewson for \$43,500.73, and was to receive a "gift" from Riley Mathewson for \$21,586.83, resulting in a net amount to be paid by Mr Lee of \$21,913.90. At that time, Mr Lee also knew that PCN would be making a gift to him of \$15,820, leaving an amount of \$6,093.90 to be effectively funded by Mr Lee.¹⁹¹ So, from Mr Lee's perspective, charges by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 as advised by Mr Owens, to \$21,913.90.

[283] At no time did Mr Lee ask Mr Riley or Mr Lewis how it came about that his bill had reduced from \$50,000 or \$60,000 to \$21,913.90. The evidence of both Mr Riley and Mr Lewis is that he did not. In the Commission's opinion he didn't have to. He knew that this had resulted from his meeting with Mr

Lewis. There was no need at that time for Mr Lee to directly ask whether Australand had funded the remainder of the bill because he knew that it had.

- [284] It is inconceivable to think that Mr Lee simply accepted that the accounts issued by Riley Mathewson in respect of his election campaign had reduced from \$50,000 or \$60,000 to \$21,913.90. Even if Mr Lee thought that Mr Lewis was able to negotiate a reduction from \$50,000 or \$60,000 to \$43,500.73, being the amount for which Mr Lee was ultimately invoiced, it strains credibility to think that Riley Mathewson would then offer a further discount (by way of “gift”) to Mr Lee of \$21,586.83 without compensation or benefit. The only other possible source of funding, was Australand. Given the involvement of Mr Lewis throughout the election campaign, including the PCN fund-raising luncheon, and his involvement in negotiations with Mr Riley regarding the campaign cost, it is clear Mr Lee was well aware that Riley Mathewson were only willing to offer such a massive reduction to him because they were to receive the funds from some other source – and it could only be Australand.
- [285] In their section 86 representations Mr Lee’s lawyers say¹⁹² that Mr Lee did ask Mr Riley why Riley Mathewson was making a gift of \$21, 586.83 and was told it was a: “Write-down of costs because the fund-raising was not as successful as it could have been and was a gift from Riley Mathewson to Mr Lee”. They also say specific reference needs to be made to an email from Mr Riley to Mr Lee dated 17 June 2005 which “clearly states” that Riley Mathewson was gifting that sum to Mr Lee. They contend the existence of that email must be “pivotal” in any conclusions to be drawn about the matter.
- [286] The Commission notes a “write-down of costs” was given by Mr Riley to explain the reduction of the account from \$50-\$60,000 to \$43,500.73; it could not therefore reasonably be given as the explanation of the further reduction (effected by way of a “gift”) of \$21,586.83. A later submission by Mr Lee’s lawyers in their section 86 representations tends to highlight this. They submitted¹⁹³ that: “Mr Lee believed that [Riley Mathewson] had reduced its charges to \$43,500.73 by writing-down costs ... and then gifted an amount” (of \$21,586.83). The email of 17 June 2005 could hardly be regarded as “pivotal” in respect of the true nature of the transaction – it simply reflected the way the arrangement had been structured. Mr Lee had asked for it for the purpose of making his declaration of the “gift”.
- [287] The references to Mr Lee repeatedly asking whether Australand had made a donation to his campaign because if they had he would need to declare it, in the Commission’s assessment of the evidence all related to the general fund-raising activity prior to the election, requiring declaration of individual gifts of \$200 or more. And the answer to that question was always – correctly – that Australand had not. Any concern expressed by Mr Lee prior to the election about declarable donations must also be considered in light of PCN, and the understanding of the parties that it acted as an effective “veil” for those wishing to contribute through it. In that sense, the question of individual declarable donations would not arise, as the donor was considered to be PCN and not the individual contributors to PCN.

- [288] The need for Australand to make the financial contribution it did, only arose after the election, when Mr Lee was told (on his evidence) the costs would be in the region of \$50-\$60,000. Any enquiries Mr Lee made prior to the election do not bear upon this issue, because the issue arose only after the election. The presently relevant time is after 7 May 2005.
- [289] In a statutory declaration by Mr Lee dated 22 July 2008 forwarded with his lawyers' section 86 representations he states that "in late April early May 2005" he mentioned to Mr Lewis that rumours were circulating that his election campaign was being funded by Australand. He states that he asked Mr Lewis (sic) if this was true, because if it was, he would need to declare it. Mr Lee states that Mr Lewis "denied it emphatically" and even mentioned that he had received an invoice from Riley Mathewson for approximately \$5,000 for costs associated with Mr Lee's election campaign, which he had returned to the firm, telling them that Mr Lee's campaign costs had nothing to do with him or Australand. The Commission notes this is the first mention of this incident, and of the invoice for \$5,000. In any event, even were it true, it does not go to the issue here. Mr Lee said that he made that enquiry in late April early May 2005 which was before the election, and before Mr Lee's meeting with Mr Lewis shortly after the election to discuss the cost of the campaign. But the need for Australand to make a substantial contribution (and the expectation that it would) did not arise until later – that is, sometime after Mr Lee's meeting with Mr Lewis, which was after 7 May 2005.
- [290] In the opinion of the Commission, Mr Lee knew that the declaration of a gift from Riley Mathewson in his annual return for the year ended 30 June 2005 was false, because he knew that Australand had made, or would be making, a substantial payment to Riley Mathewson in respect of his election campaign.

5.5.8 2007 Submissions for Mr Lee Regarding Fund-Raising

- [291] In the 2007 submissions it was claimed that the gift from Riley Mathewson of \$21,586.83 was entirely appropriate from Mr Lee's perspective because of the undertaking given by Riley Mathewson in its letter of 19 April 2005 for the costs of the campaign to be substantially met from fund-raising.
- [292] The submissions included a statutory declaration from Mr Owens who confirmed that the campaign costs incurred by Riley Mathewson were to be substantially met by fund-raising. Mr Owens referred to the two meetings with Mr Burke, Mr Lewis, Mr Lee and himself, and said:
- During discussions Mr Lee sought and received reassurance from both Mr Burke and Mr Lewis that Port Coogee Now was the legitimate source of any funds raised at the luncheon, which was accepted as the major fundraising activity for the campaign.*
- [293] To repeat, the Commission has reached no opinion of misconduct against Mr Lee in relation to the gift from PCN.

[294] Nevertheless, following the PCN luncheon, Mr Lee was aware that there would be a substantial shortfall, as he said he believed the campaign costs would approximate \$40,000 and he would have known that the PCN luncheon would not have raised anything close to that amount. Then, after a further two weeks, Mr Lee says he met Mr Owens who told him that the Riley Mathewson charges in relation to the campaign were likely to amount to \$50,000 or \$60,000. Mr Lee said he reminded Riley Mathewson of their commitment in relation to fund-raising, and then approached Mr Lewis. The result was that Mr Lee paid a net amount of \$21,913.90.

[295] The obvious question is: why would Mr Lee think that Riley Mathewson would be prepared to reduce their account from \$50,000 or \$60,000, to \$21,913.90? Mr Lee knew Riley Mathewson did not receive funds from PCN as he was the recipient of those funds directly, and was always of the understanding that he would receive those funds. The reduction in the Riley Mathewson invoices occurred following Mr Lee's meeting with Mr Lewis, about which Mr Lewis said it was clear Mr Lee was seeking his help. Mr Lee stated that he asked whether Australand had made a contribution, but the evidence of both Mr Lewis and Mr Riley (which the Commission accepts on this point) is that he did not.

[296] In support of the contention that Mr Lee inquired of Mr Lewis and Mr Riley, Mr Owens stated in his statutory declaration:

The campaign was conducted with no fixed budget and, as Mr Lee and I became aware that costs were running higher than anticipated, he sought similar reassurances from me regularly over the course of the campaign. I sought, and passed on to Mr Lee, reassurances from both Mr Burke and Mr Riley that the campaign costs would be met as arranged.

[297] The Commission sought to clarify portions of the statutory declaration submitted by Mr Owens by conducting a private hearing on 24 April 2008. When asked to explain what he meant by the term "as arranged", Mr Owens said:

The arrangement – the determination that was made at the first strategy meeting, that the costs incurred by RMPR would be met by fundraising.¹⁹⁴

[298] Mr Owens explained that once he started receiving invoices in relation to the posters he realised that, if the luncheon was going to be the major source of fund-raising, then it needed to raise a lot more than what Mr Owens anticipated that it would raise.¹⁹⁵ Mr Owens said that he became concerned about a potential shortfall, and that he passed those concerns on to Mr Lee.¹⁹⁶

[299] Regarding the assurances sought by Mr Owens, he said that he approached Mr Riley with his concerns who suggested he contact Mr Burke. Mr Owens said:

Mr Burke said not to worry about it, he would – to the best of my recollection his words were, “Don’t worry, I’ll let Chris know, but just carry on”.¹⁹⁷

[300] Mr Owens said that this was the only occasion, prior to the election, that he sought any such assurances from Mr Riley or Mr Burke.¹⁹⁸

[301] Mr Owens was also questioned regarding the assurances sought from him by Mr Lee:

You have said that Mr Lee sought assurances from you, and I’m just trying to establish exactly what those assurances were that he sought from you prior to the election itself. What was he asking you to find out?---That the costs would be met as agreed and – and that if Australand were to meet any part of those he would need to know because he had to make a declaration.

So the first part of your statement there, “The costs would be met as agreed” – what do you mean by “as agreed”?---That the costs would be met by fundraising.

Okay, and the second part was that if there was going to be any contribution by Australand he wanted to know?---Yes, but that was consistent throughout the campaign, I mean before he – before we were aware that there was going to be a costs overrun in ---

The Acting Commissioner: And did Mr Lee nominate Australand particularly?---I don’t recall exactly, but if he – if he didn’t it was understood because of Mr Lewis’ involvement with the fundraising.

So there was some expectation that Australand might provide funds?---And I think Mr Lee was worried about that.

...

So he specifically nominated Australand?---Well, I think – yes.

And he wouldn’t have done that, would he, unless there was some expectation that it might?---I think he had that concern, yes.

Harries, Ms: And this conversation with Mr Lee occurred prior to the election, you said?---It was a bit of an ongoing thing. When we would meet he would pretty much ask the same thing every time we met, just about.¹⁹⁹

(emphasis added)

[302] To the extent that the statutory declaration submitted by Mr Owens implies that Mr Lee sought assurances from him in relation to any funding by Australand, and that Mr Owens passed on any such assurances, Mr Owens

accepted that he did not seek any such assurances, and could not have passed on any such assurances to Mr Lee:

*Did you ask Mr Burke whether Australand were going to contribute?--
-No, I didn't.*

...

The Acting Commissioner: So you couldn't reassure Mr Lee that Australand wouldn't be a contributor?---No.

Harries, Ms: So that isn't part of the reassurance that you're referring to in the statutory declaration then?---Well, the assurance that I gave Mr Lee was that the means of paying for the campaign would be as agreed, which was the fundraising.²⁰⁰

[303] In summary then, the relevant portion of the statutory declaration submitted by Mr Owens cannot be said to imply anything other than that prior to the election he sought and obtained an assurance on one occasion from Mr Burke that the campaign costs would be met by fund-raising, and that he passed on that assurance to Mr Lee on numerous occasions. This could only have been a reference to contributions made (directly) by Australand of \$200 or more. There was, however, never any suggestion that Australand would make contributions in that way. If a contribution by Australand was mooted during the election campaign, it would have contributed through PCN. That was why PCN was used for fund-raising – to act as an effective “veil” to channel donations to Mr Lee’s campaign. The section 86 representations from Mr Lee’s lawyers confuse the situation before the election (when Mr Lee’s concern was the declaration of individual gifts of more than \$199) with that following the election, when it became obvious there was a very significant shortfall in funding which would somehow have to be met.

[304] The 2007 submissions also included an email exchange between Mr Lee and Mr Riley. On 27 February 2007 Mr Lee asked Mr Riley to confirm whether Riley Mathewson was the “true source” of the gift to him. Mr Riley responded a few days later saying that there appear to be some legal issues associated with identifying the “true source” of the gift.²⁰¹ This email exchange was included in the submissions for Mr Lee as it was said to be in relation to “the legal advice obtained by Mr Riley with respect to the gift”,²⁰² although there is no mention of the legal advice obtained by Mr Riley. It ought to be mentioned here that, in any event, the legal advice obtained by Mr Riley in relation to the Riley Mathewson gift to Mr Lee is flawed. Mr Riley has provided a copy of an email he sent to Mr Neil Douglas of legal firm Minter Ellison.²⁰³ The email from Mr Riley is a summary of his understanding of previous advice provided by Mr Douglas. Mr Riley summarised the position as, using round figures:

1. *RMPR invoices \$40,000 to SL campaign
RMPR “Gifts” SL \$20,000 to SL campaign*

Therefore, RMPR receives \$20,000 for services rendered.

2. *RMPR invoices client \$40,000*

Total reimbursements to RMPR \$60,000

[305] This advice is merely in relation to the arrangement that gives rise to the gift, being a gross payment by Mr Lee, with a gift back to him, rather than Mr Lee simply making payment of the net amount. There is no mention in Mr Riley's summary of any involvement of Australand, or the Marta Fishing Co. Rather, the term used is "client", which one would assume to mean Mr Lee; a fact which Mr Riley accepted during his evidence. Mr Riley initially said that the term "client" was "probably a euphemism in a sense for the Marta Fishing Co", and subsequently accepted that this wasn't correct, and the client was Mr Lee.²⁰⁴ So, whatever legal advice Mr Riley obtained, it must have been flawed because it was based on materially incorrect or incomplete facts.

[306] The 2007 submissions also included a letter from Marta Fishing Co to Cockburn City councillors, in which Mr Rotondella advised that he knew nothing of the arrangement between Riley Mathewson and Australand, and that Marta Fishing Co did not pay the Riley Mathewson account for Mr Lee; rather Australand paid indirectly. The Commission accepts the accuracy of the Marta Fishing Co letter, but notes that it confirms the Riley Mathewson account was paid by Australand.

[307] The 2007 submissions also included a statutory declaration from Mr Lee himself which it was said "evidences the continuing requests for assurances made by Mr Lee in relation to the source of funding and, in particular, the steps which he was taking to confirm that there was no difficulty in relation to the source of funds and the ongoing obligations imposed upon Mr Lee to make the appropriate declarations in accordance with the provisions of the *Local Government Act 1995*".²⁰⁵ The statutory declaration of Mr Lee does nothing of the sort. Mr Lee declared:

...

3. I asked Mr Merenda [on 21 January 2006] had the cheque I received from Port Coogee Now, for \$15,820 consisted of monies raised by Port Coogee Now, or had it been raised by any other parties and in particular Australand. Mr Merenda vehemently assured me that all monies used for their donation had been raised entirely by them at their fundraising luncheon.

...

[308] There is no issue about that. To repeat, the Commission expresses no opinion of misconduct against Mr Lee in relation to the gift from PCN. Although it ought to be remembered in the context of Mr Lee's final sentence quoted above, that PCN had very little involvement, if any, in the PCN fundraising luncheon, nevertheless, Mr Merenda's advice to Mr Lee was technically correct. But that concerned payments prior to the election. The prospect of Australand making a (substantial) financial contribution did not

arise until the need for it became apparent after the election – that is, after 7 May 2005.

[309] More importantly, however, Mr Lee’s statutory declaration was supposed to detail the “continuing requests for assurances made by Mr Lee in relation to the source of funding and, in particular, the steps which he was taking to confirm that there was no difficulty in relation to the source of funds”.²⁰⁶ The statutory declaration made reference to one enquiry of PCN’s Mr Merenda, but made no mention of Mr Riley, Mr Lewis or Australand. In the context of the public hearings, the crucial issue for Mr Lee was the payment of the Riley Mathewson account by Australand. Mr Lee’s evidence was that on numerous occasions he sought assurances from various people, including Mr Riley and Mr Lewis.²⁰⁷ Mr Lee was aware that his evidence in that regard differed from that of Mr Riley and Mr Lewis. Yet, in a statutory declaration to the Commission to detail the “continuing requests for assurances made by Mr Lee in relation to the source of funding”, he made no mention of any requests to Mr Riley or Mr Lewis. In the opinion of the Commission, this lends further support to the earlier conclusion that the evidence of Mr Riley and Mr Lewis be preferred to that of Mr Lee in this important respect.

[310] Finally, the 2007 submissions included an email from Mr Lewis to Mr Graham which Mr Lee’s lawyers say followed an earlier acrimonious conversation between the two”. Mr Lee’s lawyers went on to say that “the purpose of the email is to confirm the evidence of Mr Lewis to the Commission that he had not disclosed to Mr Lee (and, as evidenced by the email, Mr Graham) any involvement on his part or on the part of Australand in the election campaign”.²⁰⁸ The Commission accepts that Mr Lewis never made any positive “disclosure” as such to Mr Lee about those matters, and notes that the evidence of Mr Lewis was also that Mr Lee never asked him.²⁰⁹ It was not necessary either for Mr Lewis to “disclose” his involvement or that of Australand in Mr Lee’s election campaign, or for Mr Lee to ask, because he was well aware of it.²¹⁰

[311] Having considered all the available information, including the 2007 submissions and the section 86 representations made on behalf of Mr Lee, it is the Commission’s opinion that the evidence establishes that Mr Lee knew that the declaration of a gift from Riley Mathewson in his annual return for the year ended 30 June 2005 was false, because he knew that Australand had made, or would be making, a substantial payment to Riley Mathewson in respect of his election campaign.

5.6 Department of Local Government and Regional Development Investigation

[312] In December 2005 the Commission received a complaint in relation to the gifts declared by Mr Lee in his annual return for the year ended 30 June 2005. The Commission referred the complaint to DLGRD, which reported back to the Commission on 13 April 2006.

[313] As part of its assessment, DLGRD wrote to Mr Lee on 16 February 2006²¹¹ and asked him a number of questions in relation to the two donations from PCN and Riley Mathewson declared in his annual return. Mr Lee responded to DLGRD on 27 February 2006. The relevant questions and answers are reproduced below:

1(iii) *What connection, if any, are you aware of between Port Coogee Now and the developers of the Port Coogee Marina Project?*

Answer: It appeared to me that PCN and the developers of the Port Coogee Marina Project may have shared a common vision in relation to that project. I am not aware of any other connection.

2 *In relation to the gift of \$21,586 from Riley Mathewson Public Relations –*

(i) *Could you please advise of the circumstances surrounding this donation?*

Answer: In about March 2005, I commissioned RMPR to assist me with my re-election campaign for the position of Mayor of the City of Cockburn. After paying RMPR's invoice for the work that it had undertaken, I received from RMPR a cheque for the sum of \$21,586 as an electoral gift.

(ii) *Was this donation funded, or partly funded by another party besides Riley Mathewson Public Relations?*

Answer: As far as I am aware, no.

(iii) *If the answer to the above (ii) is no, please advise whether you have confirmed this with Riley Mathewson Public Relations.*

Answer: Yes, I have confirmed this with RMPR.

(iv) *Are you aware of any relationship between Riley Mathewson Public Relations and the developers of the Port Coogee Marina Project?*

Answer: At the time, no. Since receiving your letter (on 17 February 2006), I enquired of the General Manager of Australind [sic] who informed me that RMPR has undertaken work for Australind [sic].²¹²

[314] DLGRD concluded that Mr Lee had “complied with disclosure requirements during the election disclosure period outlined in regulation 30C. Gifts

promised or received outside of the election gift period must be disclosed in the annual financial interest return, which was done by Mayor Lee”.²¹³ However, DLGRD noted that “there is speculation that Mayor Lee did not disclose the true source of his donations from the Port Coogee Now group and Riley Mathewson Public Relations”, and it was suggested that the Commission conduct financial checks in that regard.²¹⁴

[315] Mr Lee told the Commission that he was honest and open in his responses to DLGRD and that he answered the questions to the best of his ability. Mr Lee denied that he had tried to conceal any relevant information. Mr Lee added that before sending his letter of response to DLGRD he met Mr Lewis and Mr Riley and asked them whether there was anything contained in his response that was not true.²¹⁵

[316] In relation to question 1(iii), Mr Lee said that his answer was truthful to the best of his knowledge at the time, and that when he showed Mr Lewis and Mr Riley the letter and asked whether everything in it was correct, they answered in the affirmative. Mr Lee denied there was a connection between PCN and Australand in relation to fund-raising for his election campaign, saying that PCN ran a fund-raising campaign for him. Mr Lee said he was aware that Mr Lewis helped compile a list of invitees for the fund-raising luncheon, but that would not make him feel that Australand were organising the luncheon. Mr Lee disagreed with the proposition that his answer to question 1(iii) was, at best, incomplete.²¹⁶

[317] In relation to question 2(iv), Mr Lee maintained that his answer was truthful; that at the time he was unaware of any relationship between Riley Mathewson and Australand. Mr Lee added that he confirmed this with Mr Lewis (after receipt of the DLGRD letter).²¹⁷ The Commission notes that DLGRD was enquiring of Mr Lee’s state of knowledge at the time he filed his annual return, not what Mr Lewis’ understanding was. The Commission has already expressed its opinion that Mr Lee knew there was a relationship between Australand and Riley Mathewson, and what that relationship was.

[318] Mr Lewis agreed that he met Mr Lee and Mr Riley following the receipt by Mr Lee of the enquiry from DLGRD. Mr Lewis told the Commission at a public hearing on 19 February 2007 they discussed whether Australand had a “direct account or relationship” with Riley Mathewson. Mr Lewis explained that he actually erred in advising Mr Lee that Australand did in fact have a direct account relationship with Riley Mathewson, as the account was actually with the Marta Fishing Co. Nevertheless, Mr Lewis agreed that there was a relationship between Australand and Riley Mathewson.²¹⁸ In the opinion of the Commission this illustrates that Mr Lee was more concerned with providing a “technically correct” response to DLGRD, than actually revealing that Australand had made a substantial financial contribution to the cost of his campaign. DLGRD did not ask whether the parties had a “direct account or relationship”. DLGRD was simply concerned with a “relationship”. There was clearly a relationship between Australand and Riley Mathewson, and Mr Lee was clearly aware of such a relationship.

- [319] However, on 14 February 2007, after giving evidence, Mr Riley telephoned a Commission investigator. He said then that since giving evidence earlier in the day he had recalled a further meeting with Mr Lee. He said Mr Lee called him in January 2006 and said he had been asked some questions about election funding. Mr Riley said he then met Mr Lee at a café in Nedlands. He said Mr Lee asked him whether his proposed answer that he had not received money from anyone else in respect of Mr Lee's election campaign, was correct. (On Mr Lee's evidence, this was a reference to the "gift" of \$21,586.93.) Mr Riley said he "panicked and said no". He added that he was going through a difficult personal time.²¹⁹
- [320] In a further telephone conversation with the investigator on 5 April 2007 Mr Riley repeated that he had met separately with Mr Lee over coffee in January 2006, after Mr Lee had received the letter from DLGRD. Mr Riley said that was the only occasion on which Mr Lee asked whether Australand was involved in the funding of his campaign – and he lied and said no. He gave no reason for his "panic" nor for telling what he said was a lie. He said he could recall that Mr Lee had the [DLGRD] letter with him and told Mr Riley that he had to answer some questions about his campaign and asked if he could help. Mr Riley could not recall whether he was shown the letter or whether he read it.
- [321] Mr Riley was obviously at least confused about this. He described the meeting as having occurred in January 2006, but the DLGRD letter was dated 16 February 2006. If there was such a meeting in January, it could not have been about the letter – and it was that which, according to Mr Lee – prompted him to ask them about the funding. Mr Lee never said there was a second, separate meeting about it between him and Mr Riley, until his statutory declarations dated 22 July 2008 which were attached to his lawyers' section 86 representations.
- [322] In one statutory declaration dated 22 July 2008 Mr Lee states that he met Mr Lewis on 22 February 2006 to discuss the DLGRD letter and a draft of his proposed reply. He says he gave Mr Lewis the letter to read and asked him if any part of the draft was incorrect, particularly with regard to question 2. He says Mr Lewis confirmed to him that to the best of his knowledge the answers were correct.
- [323] In a second statutory declaration dated 22 July 2008 Mr Lee recounts a meeting with Mr Riley at a café in Nedlands, for the same purpose. Significantly he stated –

...

4. Previously, as a result of information provided to me by Des Riley and others, I made declarations concerning gifts donated to my 2005 election campaign. Specifically I wished to confirm that the gift of \$21,586.93, that Des had said had been from Riley Matthewson Public Relations, was indeed from them and not from anyone else.

5. *I asked this question because Q2 in the letter from The Department, to which I was responding, asked me to.*

6. *Des confirmed that the donation was indeed from Riley Mathewson Public Relations and not from anyone else.*

7. *Des seemed quite calm and not at all panicked and indeed was only confirming a fact that he had confirmed to me on a number of previous occasions.*

...

(emphasis added)

It is clear enough that the “lie” of which Mr Riley spoke to the investigator on 14 February 2007, was confirming that the proposed answer referred to at paragraph [6] of Mr Lee’s statutory declaration, was correct.

[324] The answer to question 2(ii), that the \$21,586.93 was a “gift” from Riley Mathewson and not anyone else, was technically correct, for the reasons explained below. It did answer the question asked, but it did not disclose the full picture of the sources of the funding of Mr Lee’s election campaign. In the Commission’s assessment, it was Mr Riley’s appreciation of this which caused him to describe his agreement with the proposed answer as a “lie”. He was certainly well aware that Riley Mathewson had charged a total of some \$65,000. Mr Lee was (in the end) invoiced for \$43,500, out of which Riley Mathewson “gifted” him \$21,586 – but the firm ultimately still received the whole \$65,000. In the Commission’s assessment, Mr Riley’s “panic” was due to his appreciation that although Mr Lee’s proposed answer to question 2 was strictly correct, it was a “lie” in that it concealed what DLGRD really wanted to know.

[325] In the Commission’s opinion, for the reasons already given, at the time of his meeting with Mr Lewis and Mr Riley in February 2006, Mr Lee was well aware (and had been since at least June 2005) that Australand had made a substantial financial contribution to his campaign.

[326] The Commission has considered whether a referral ought to be made to DLGRD for it to consider whether Mr Lee may have contravened section 5.124 of the *Local Government Act 1995* by knowingly providing false or misleading information in relation to his answer to the questions asked in the DLGRD letter of 16 February 2006. The answer to question 2(i) was strictly correct. Mr Lee did pay Riley Mathewson’s invoice for \$43,500.73 and did receive from them a “gift” of \$21,586.83. Question 2(ii) asked whether “this donation” (that is, the \$21,586.83) was funded or partly funded by another party. Technically, it was not. The money for the “gift” did not come from Australand. Riley Mathewson was no doubt prepared to make it because it was being paid on separate invoices to Marta Fishing Co – an entirely separate process. What Mr Lee’s answers did not reveal, was that the total received by Riley Mathewson was \$65,414.63 (or at least, to his knowledge, in the order of \$50-\$60,000) – the balance of \$43,500.73 being paid by

Australand (through Marta Fishing Co; although the evidence does not show Mr Lee knew that mechanism had been used). The flaw in the questions was that they sought an explanation only about the \$21,586 “gift” declared by Mr Lee. In relation to question 2(iv), the relevant portion of Mr Lee’s answer which, in the opinion of the Commission could be false or misleading, is his comment “At the time, no”. However, Mr Lee was not asked about his knowledge of any relationship between Riley Mathewson and the developers of the Port Coogee Marina “at the time”. He was only asked about his contemporaneous knowledge, and, he advised DLGRD that he was aware that Riley Mathewson had undertaken work for Australand. Consequently, in the opinion of the Commission, the answer provided by Mr Lee to question 2(iv) above could not be characterised as knowingly false or misleading.

5.7 Mr Lee’s Computer Problems

[327] Mr Lee gave evidence at a Commission public hearing on 19 February 2007. Mr Lee’s recollection of events was generally poor, and he appeared to deny knowledge of certain things when the facts and circumstances ought to have made those things obvious to him. One reason advanced by Mr Lee was that he claimed to be experiencing problems with his personal computer around the time of the May 2005 election, and he claimed that consequently he may not have received certain emails that were sent to him.

[328] A summary of Mr Lee’s evidence in relation to the receipt, or non-receipt, of emails is presented at Appendix One.

[329] It can be seen from Appendix One, in general, Mr Lee did not deny receiving the emails, but said he could not recall receiving them, and could not recall the emails themselves.

[330] Nevertheless, Mr Lee was able to send out an email on 23 March 2005 to Mr Owens, with a copy to Mr Burke, attaching the “candidate profiles of the other four team members”.²²⁰ Mr Lee was able to receive an email on 24 March 2005, and to send a response later in the day. Mr Owens had sent an email to Glen Jakovich and Mr Lee, with a copy to Mr Burke and Mr Herkenhoff,²²¹ regarding a draft of the fund-raising letter that was to be signed by Mr Jakovich. Mr Lee responded to Mr Owens later that evening, stating that the “letter is very good and could be extremely useful if Glen agrees to sign”.²²²

[331] Also on 24 March 2005 Mr Herkenhoff sent an email to Mr Lewis, with a copy to Mr Burke, Mr Lee, Mr Owens and Mr Riley. Mr Herkenhoff included the following note at the end of the email: “Please note Stephen Lee’s private email address – [suppressed] - which should be used for all communiqués associated with these initiatives”.²²³

[332] Mr Herkenhoff told the Commission that he believed he was given advice for that email address to be used. Mr Herkenhoff could not recall who provided him with that advice, but said it could have come from Mr Lewis or Mr Owens.²²⁴

- [333] It is likely that such an instruction originated from Mr Lee, or was, at the very least, in accordance with his wishes, and indeed his lawyers in their section 86 representations confirmed that he passed this instruction to Mr Owens. Mr Graham has informed the Commission that he sent a number of emails to Mr Lee's private email address at the request of Mr Lee, as Mr Lee did not want election related emails sent to his Council email address.²²⁵ Mr Owens has also informed the Commission that Mr Lee did not want to receive emails regarding the election campaign at his Council email address because it was not Council business.²²⁶ It seems most unlikely that Mr Lee would issue such an instruction if he was experiencing problems with his computer such that he was unable, even sporadically, to receive important emails.
- [334] It can be seen from Appendix One that Mr Lee said he could not recall emails that were sent to him on 21, 22, 23 and 29 March 2005, 1 April 2005 and 10 May 2005. Yet Mr Lee received an email on 24 March 2005, and he sent an email on 23 March 2005, and another on 24 March 2005. The important period for the purposes of this report, due to the content of the emails, is the period from 21 March to 1 April 2005 (the relevant period).
- [335] Mr Lee's Internet Service Provider (ISP) has informed the Commission that Mr Lee operated what is known as a dialup service, meaning that it was necessary for his computer modem to make a call over a telephone line to allow connection to the Internet. Information from Mr Lee's ISP showing the access by Mr Lee's home computer to the Internet during the period from 21 March 2005 to 1 April 2005 is presented in Appendix Two.²²⁷
- [336] It can be seen from Appendix Two that Mr Lee's computer dialled in to the Internet a total of 49 times during the 12-day period between 21 March and 1 April 2005; and remained connected to the Internet for a total period of over 19 hours during that time.
- [337] However, from the short session time and low kilobyte downloads, it is apparent that some of those connection attempts may have been unsuccessful. The ISP has informed the Commission that the "customer experiences some problems during the period, dialling in and not getting any service. However, this is consistent with a dialup service and the user is seen to re-try connecting and the problem is resolved".²²⁸
- [338] Appendix Three shows a comparison of the time stamp on the emails sent to Mr Lee during the relevant period with the Internet access times detailed in Appendix Two. Of course, it is important to remember that the time stamps on the various computers involved may differ slightly, although they are all in the same time zone.
- [339] It can be seen from Appendix Three that Mr Lee's computer was, as expected, connected to the Internet at the time he sent emails on 23 and 24 March 2005. More importantly, however, it can be seen that Mr Lee's computer was able to access the Internet and receive downloads within a reasonable period of time (ranging from a few minutes to four hours) of each and every email being sent to him during the relevant period.

5.7.1 Submissions for Mr Lee Regarding Mr Lee's Computer Problems

[340] The 2007 submissions contend that “[i]t was Mr Lee’s evidence, during the public hearings, that he had not received a number of emails which were shown to him. ... Mr Lee’s evidence was to the effect that he had been experiencing problems with his personal computer and that he had not received nor seen a number of emails produced and shown to him”.²²⁹

[341] The Commission disagrees with that assessment of Mr Lee’s evidence, and observes that his evidence was not that he had not received a number of emails that were shown to him, but rather it was either:

- (i) that he may not have received the emails; or
- (ii) that he did not deny receiving the emails; but could not recall receiving the emails or having seen them before.

[342] The 2007 submissions included some statutory declarations which they say establish:

- (a) *the difficulties encountered by Mr Lee in maintaining a viable personal computer;*
- (b) *the receipt by a Mrs Kimber of a number of emails on behalf of Mr Lee; and*
- (c) *the re-installation of operating software on Mr Lee’s computer.*²³⁰

[343] Mrs Beverley Kimber, in her statutory declaration states:

*Throughout March and early April 2005 my late Husband [Mr] Ron [Kimber] and I regularly attended the home of Stephen and Anna Lee to assist with their personal computer which was constantly “crashing” and also they were having trouble sending and receiving emails, due, Ron believed, to a number of viruses they kept receiving, either via email or as a result of their children logging on to unsafe sights for music or video downloads.*²³¹

[344] Mrs Kimber attached three emails that were sent to her computer “because the senders were aware Stephen was having problems with his PC”.²³²

[345] The first email was from Mr Owens and it was sent to Mr Lee, with a copy to Mr Kimber, at 6:14 p.m. on 29 March 2005. Reference to the data provided by Mr Lee’s ISP shows that Mr Lee’s computer was actually connected to the Internet at that time.²³³

[346] The second email was from Mr Graham and it was sent to Mr Kimber at 7:49 p.m. on 29 March 2005. The content of the email indicates that Mr Graham sent the email following a telephone conversation with Mr Lee. Mr Lee’s

computer was able to connect to the Internet and receive downloads at 7:53 a.m. the following day.²³⁴

[347] The third email was an exchange between Mr Kimber and Mr Owens, with Mr Kimber sending an email to Mr Owens at 12:52 p.m. on 30 March 2005, and with Mr Owens responding to Mr Kimber at 6:05 p.m. on that same day. Mr Lee's computer was able to connect to the Internet and receive downloads at 3:45 p.m., 6:46 p.m. and 7:01 p.m. on 30 March 2005.²³⁵

[348] Whatever the reasons may be for Mr Owens and Mr Graham directing these particular emails to the email address of Mr Kimber, the fact remains that Mr Lee's computer was able to connect to the Internet either at the time the emails were sent, or within a reasonable period thereafter. The Commission accepts his computer may have been "crashing" from time to time, but that would not have prevented him sending or receiving emails when he was on-line; and emails sent to him while his computer was "down" would have queued and come up next time he was on-line.

[349] In relation to the email he sent to Mr Kimber, Mr Graham has informed the Commission that Mr Kimber may have been taking a photograph for Mr Lee for use in Mr Lee's candidate profile to be filed with the Electoral Commission. Mr Graham said that he sent the email to Mr Kimber, with an attached head and shoulder photograph of himself, so that Mr Kimber could see the type of photograph that would be taken by a professional photographer. Mr Graham added: "I do not recall sending any emails to Rob [sic] Kimber on the basis that Stephen was having problems with his computer. I would remember having done so if that had been the case".²³⁶

[350] Mr Owens, in his statutory declaration, states:

Early in the campaign (the last week in March) I sent an email to Mr Lee at his private email account [suppressed]. The email contained copy that needed to be checked by Mr Lee urgently to meet a print deadline.

I followed up by telephone and Mr Lee reported that his computer kept crashing and he was having difficulty accessing the information I sent.

We discussed that emails were not reliable communication and future draft literature content and artwork proofs would be checked by hard copy only at our regular meetings (we met about three times a week on average during the course of the campaign).

On two occasions later in the campaign when we were unable to meet in person, Mr Lee directed me to send an email via Ron Kimber [suppressed], a friend of his who was assisting with other aspects of the election campaign.²³⁷

- [351] The Commission was unable to determine which email Mr Owens was referring to in the first paragraph of his statutory declaration quoted above. With the exception of any emails that Mr Owens sent to Mr Lee that were also copied to Mr Kimber, Mr Owens sent three emails to Mr Lee during the last week in March 2005.
- [352] The first of those emails was sent by Mr Owens to Mr Lee on 23 March 2005. That email was actually in response to an earlier email that Mr Lee had sent to Mr Owens, attaching the candidate profiles for the other four “team members”.²³⁸
- [353] The second of those emails was sent by Mr Owens to Mr Lee on 24 March 2005, with the “Jakovich Letter” attached. Mr Lee received that email because he responded to Mr Owens later that evening.²³⁹
- [354] The third of those emails was sent by Mr Owens to Mr Lewis, and copied to Mr Lee and others, on 31 March 2005. That email contained an attachment, being the artwork for the first poster.²⁴⁰ It could not have been this email that Mr Owens was referring to in the first paragraph of his statutory declaration quoted above, as this email did not contain “copy that needed to be checked by Mr Lee urgently to meet a print deadline”, as the text of the email indicates that the poster was already at the printer. Nor would it make sense if this was the email Mr Owens was referring to, as that would mean that he sent an email to Mr Lee after he was directed to send all such emails via Ron Kimber, and after Mr Owens had become aware of Mr Lee’s computer problems.
- [355] In relation to the fourth paragraph of Mr Owens’ statutory declaration quoted above, the first email that Mr Owens had sent and that Mr Kimber had been a recipient of was actually sent to Mr Lee, and copied to Mr Kimber.²⁴¹ The attachment to the email was a letterhead for the “Jakovich Letter” with a photograph of Mr Lee with Mr Jakovich. Mr Lee’s computer was connected to the Internet at the time Mr Owens sent this email.²⁴² The other email sent by Mr Owens was sent to Mr Kimber, and the text of that email was directed to Mr Lee.²⁴³ The email contained two attachments: the “Jakovich Letter” including the letterhead bearing the photograph of Mr Lee and Mr Jakovich; and a pamphlet featuring Mr Lee, Mr Graham and three councillors.
- [356] In summary then, there is no evidence of any email sent by Mr Owens to Mr Lee with attached material that needed Mr Lee’s urgent attention. Of the emails that Mr Owens said he was “directed” to send to Mr Kimber, one was actually sent to Mr Lee. The other was sent to Mr Kimber and does indeed appear to be for the attention of Mr Lee. However, without the email to which Mr Owens was referring in the first paragraph of his statutory declaration quoted above, there is no information nor material to establish or confirm that this particular email was directed to Mr Kimber due to any problems which Mr Lee may have been experiencing with his computer.
- [357] During a Commission private hearing on 24 April 2008 the meaning of the four paragraphs of Mr Owens’ statutory declaration quoted above was summarised as follows:

So essentially what you are describing in these four paragraphs, Mr Owens, is that you understood Mr Lee's computer not to be working or not to be reliable, so your fall-back position was meet Mr Lee and if that couldn't occur, email Mr Kimber. Is that correct?---Yes, but I don't think Mr Kimber continued being a point of contact. I think we sorted out that things that I needed to get to him, I just simply jumped in the car and took them out to him.²⁴⁴

[358] The evidence of Mr Owens in relation to the email referred to in the first paragraph of his statutory declaration quoted above was that it was an email with an attachment of the artwork for the first poster that caused Mr Lee's computer to crash.²⁴⁵ Mr Owens was shown each of the three emails that he sent or copied to Mr Lee during the last week in March 2005, and accepted that the email to which he referred in his statutory declaration couldn't have been any of those three emails. In relation to the email to which Mr Owens was referring in his statutory declaration, Mr Owens gave evidence as follows:

Mr Owens, in relation to the first paragraph when I have asked you earlier what email you were referring to, you have been very clear that it was an email attaching artwork that needed to be checked by Mr Lee?---Yes.

You haven't seen that email today. I have shown you three emails around this time; one on 23 March, one on 24 March and one on 31 March. There are no other emails that the Commission has been provided with in respect of communications between yourself and Mr Lee at that time. Are you saying that there's an email in existence that the Commission doesn't have or is it possible that your memory is flawed in that regard?---Look, my memory is obviously flawed. I mean, I wrote a statutory declaration that hasn't been entirely the truth. My recollection of the way I went about the campaign and the presentation of proofs and artwork proofs to Mr Lee was that we try by email, it didn't work, so we ended up doing it physically in the end.

...

The Acting Commissioner: I think what Ms Harries is asking you is this: now that you have seen all the emails that the Commission has, which of those emails do you say is the email that you are referring to in the first paragraph?---I was honestly thinking you had another email to show me so - - -²⁴⁶

[359] When asked why he sent an email to Mr Lee on 31 March 2005 with attached artwork after he had become aware of Mr Lee's computer problems, Mr Owens drew a distinction between sending an email direct to Mr Lee and copying an email to him:

The Acting Commissioner: So why would you send an attachment to an email at Mr Lee's email address, knowing that that all it would do

would be to crash his computer?---Well, I sent the email to Chris and cc'd the others, so he wasn't the primary recipient. I already knew that he had it and if his computer wasn't working, well, it didn't make any difference whether he received it or not.²⁴⁷

[360] And further:

Harries, Ms: Was it not your evidence earlier today, Mr Owens, that you in fact didn't continue to email Mr Lee once you knew that there were issues with his computer?---Yes, that's correct.

...

The Acting Commissioner: There are two possibilities, aren't there, Mr Owens?---Yeah.

Either this is the email that you referred to in your statutory declaration or you continued to use Stephen Lee's personal email and sent him those type of attachments after that first occasion?---Well, maybe it was a mistake. I certainly wouldn't have sent it as a primary communication to Stephen. I could only explain that as an oversight.²⁴⁸

[361] Following questioning about the email Mr Owens sent to Mr Lee, and copied to Mr Kimber, on 29 March 2005, it became clear that Mr Owens' understanding was that Mr Lee's computer crashed when he attempted to open emails with large attachments, and that his understanding was that Mr Lee had no problems receiving and opening emails without large attachments.

In your statutory declaration you said that you sent this email to Mr Kimber. You can see that that's not correct, you have sent it to Mr Lee and cc'd it to Mr Kimber?---Yes.

Why is it that you sent it to Mr Lee's personal address?---Well, other than I'd sent it to him previously and the sending it to Mr Kimber was as the backup, if you like, if he couldn't receive it on that address.

So - - -?---But - - -

Sorry, Mr Owens?---So would this have been subsequent to me sending him one that didn't – he couldn't access?

On the basis of the emails that we have shown you, yes, that would be the case; and in any event, the information that you have provided in your statutory declaration, Mr Owens, is that the only reason you would have sent emails to Mr Kimber was because Mr Lee could not receive them at his address?---Yes.

That's correct, isn't it?---Yes; Yes.

Is it not the true situation that Mr Lee could access emails at his home address but that his computer crashed from time to time but that wasn't a barrier completely to him receiving those emails and you knew that?--- I think my understanding was that his – and I – and I think said earlier that his computer crashed when he tried to open the attachments.

Yes?---And that the attachments were too large. So I guess if he's receiving emails without any attachments, yes, I would have thought that he would've been able to receive emails without larger attachments.²⁴⁹

[362] And further:

But then in respect of your earlier evidence, it's the case that you still had some expectation that Mr Lee was able to not only receive emails but also open attachments; otherwise there would be no point in you having sent him this email, would there?---Well, I think it may not have been the full realisation at that stage that he wasn't – or I wasn't particularly sure that – I mean, if it's over the course of three or four days his computer might – I mean, he said it was intermittently crashing and, as I said, I've obviously had some expectation that he could have received this at his home; otherwise, yes, I wouldn't have sent it.²⁵⁰

[363] Mr Owens was then able to provide some context to the second paragraph of his statutory declaration quoted above which states: "I followed up by telephone and Mr Lee reported that his computer kept crashing and he was having difficulty accessing the information I sent".

To the extent that you say his computer kept crashing, you're now using the word "intermittently" rather than "kept crashing"; so it was something that was intermittent, not regular and not a barrier to receiving emails?---Well, again, the context of that was him receiving draft literature content and artwork proofs and the understanding I had was that his computer crashed when he tried to access those files.²⁵¹

[364] And further:

The Acting Commissioner: But your recollection is, as I understand it, that the first hint you had of a problem with Mr Lee's personal email address was a large attachment?---A large attachment.

Which included some sort of pictorial or photographic material and was a particularly large file?---Yes. I thought that was the first poster but I think it might more properly have been that letter.

Do you now accept that in respect of other email communications which didn't include such attachments, there was no problem with Mr Lee's personal email address?---I do.²⁵²

[365] It is evident from the above quote, and in other areas of the private hearing, that there was some speculation that the email to which Mr Owens referred in his statutory declaration as being responsible for “crashing” Mr Lee’s computer may have been the “Jakovich Letter”, despite Mr Owens’ consistent recollection that it was the artwork for the first poster. The cause of the speculation seems to be the fact that no email sent by Mr Owens to Mr Lee, with attached artwork requiring Mr Lee’s urgent attention, has been found. Nevertheless, in the context of Mr Owens’ statutory declaration, the email concerned could not have been the “Jakovich Letter”. The initial draft “Jakovich Letter” was emailed to Mr Lee by Mr Owens on 24 March 2004. The attachment to that email was the text of the “Jakovich Letter” only, as the photograph of Mr Lee with Mr Jakovich had not yet been taken. Mr Lee was able to access that attachment because he responded to Mr Owens by email, commenting on the attached letter. The next email in relation to the “Jakovich Letter” was when Mr Owens emailed the proposed letterhead with the photograph of Mr Lee with Mr Jakovich to Mr Lee, with a copy to Mr Kimber, on 29 March 2005. It could not have been that email that Mr Owens was referring to in his statutory declaration as he wouldn’t have known to send the email to Mr Kimber.

[366] In any event, it is clear that the message Mr Owens was intending to convey in his statutory declaration was that his understanding was that Mr Lee’s computer crashed when he attempted to open large attachments, being attachments of artwork for election posters, and that he had no information to suggest that Mr Lee was unable to receive and access emails without such attachments.

[367] Mr Neil Lee, in his statutory declaration dated 30 April 2007, states:

On the 09 April 2005 I arrived in Western Australia, with my family, on a 2 week holiday from the UK.

At the time I was operating a small business in the UK called PC GP and the main thrust of my business was repair and upgrade of hardware and software in Personal Computers.

...

From the moment of arrival at my brothers’ home I found his Personal Computer to be infected with viruses which had damaged the operating system causing the PC to repeatedly crash and in the main rendering it unusable.²⁵³

[368] Yet, according to the data provided by Mr Lee’s ISP, his computer was able to connect to the Internet at 2:51 p.m. on 9 April 2005, remain connected for some 70 minutes, and download a total of 14,667.29 kilobytes of data. Mr Lee’s computer was able to connect to the Internet again at 4:31 p.m. on 9 April 2005, for 13 minutes, downloading 2,118.23 kilobytes of data. There was then an unusually long break between Internet connections, presumably whilst installation of the new operating system occurred, and Mr Lee’s

computer did not connect to the Internet again until 10:32 p.m. on 10 April 2005. On that occasion, it remained connected for 287.97 minutes, and downloaded some 21,518.05 kilobytes of data.²⁵⁴

5.7.2 Conclusions Regarding Mr Lee's Computer Problems

- [369] The Commission must weigh the evidence of Mr Lee against the other facts and circumstances, including the information provided by his ISP. The evidence of Mr Lee was quite vague in relation to the receipt of emails. The thrust of his evidence was that he was experiencing problems with his personal computer, and that it was frequently crashing.²⁵⁵
- [370] There was no evidence offered by Mr Lee as to what affect the problems he was experiencing with his personal computer had on the receipt of emails. Mr Lee said his computer was crashing frequently, but did not explain why that would cause emails that he had not yet accessed to have disappeared by the time his computer was next able to connect to the Internet. It is the understanding of the Commission that, in general, un-accessed emails remain stored on the server of the ISP, and ought to be available for download when the user next connects to the Internet and logs onto their email account.
- [371] With their section 86 representations Mr Lee's lawyers included a further statutory declaration made by Mr Neil Lee dated 18 July 2008. In that he again stated that when he arrived in Australia for a holiday with his family on 9 April 2005, his brother's PC was infected with "a number of viruses". He says these were affecting the overall operation of the PC and in particular had corrupted the .dbx files for the mail client, Outlook Express, preventing access to Outlook Express folders, including the inbox, and therefore it was not possible to view or read emails at this time. He says he observed that the Send/Receive function of Outlook Express was operating, but they were unable to access any downloaded emails.
- [372] The effect of the evidence of Mr Neil Lee is that, firstly, Mr Lee's computer was rendered unusable, and secondly, that he was unable to access emails. In the opinion of the Commission, the claim by Mr Neil Lee that Mr Lee's computer was rendered unusable is exaggerated. The evidence is that Mr Lee's computer was used regularly during the relevant period. In relation to Mr Neil Lee's claim that emails could not be read, it is particularly significant that Mr Lee was able to reply to an email he had received on 24 March 2005. In the opinion of the Commission, this casts significant doubt over Mr Neil Lee's claim that emails could not be read.
- [373] Importantly, the Commission also notes that Mr Neil Lee's evidence here goes to the situation on and after 9 April 2005. The relevant period, however, is between 21 March and 1 April 2005.
- [374] In any event, it is clear that Mr Lee was able to send an email from his personal computer on 23 March 2005, and to receive and respond to an email on 24 March 2005. It is also clear from the ISP records that, in relation

to all emails about which Mr Lee was questioned during a Commission public hearing on 19 February 2007, his computer was able to access the Internet and receive downloads shortly after the time at which those emails were sent. Whilst Mr Lee may have experienced some problems with his Internet account at the time, they were consistent with a dialup service and apparently obviated when he tried re-connecting. There is no evidence to suggest that any problems experienced by Mr Lee with his personal computer impacted to such an extent that he was unable to access the Internet regularly and receive emails regularly during the relevant period.

[375] There is, however, information to suggest that any serious problems experienced by Mr Lee with his personal computer may have occurred at a later point in time. Mr Lee's ISP has advised that Mrs Lee phoned the ISP helpdesk on 10 June 2005 and again on 15 June 2005 advising that she was unable to connect to the Internet. The ISP has further advised that Mr Lee's home computer was able to connect to the Internet following both enquiries by Mrs Lee.²⁵⁶ The ISP has also advised that they have no record of a helpdesk enquiry prior to 10 June 2005. Also Mr Lee's private email address was used for all communication with Riley Mathewson until 17 June 2005, when Mr Riley sent an email to Mr Lee, directing the email to Mr Lee's email address at the City of Cockburn.²⁵⁷ The Commission accepts the submission of Mr Lee's lawyers that the email sent to Mr Lee at the City of Cockburn was to enable him to declare electoral gifts, which he was required to do in his capacity as councillor.

[376] On 4 July 2005 Mr Lee drew a cheque payable to Austin Computers for \$1,240,²⁵⁸ and the invoice issued by Austin Computers to Mr Lee on 8 July 2005 shows that he purchased a personal computer and associated paraphernalia.²⁵⁹ If it is assumed that Mr Lee purchased this computer to replace his malfunctioning personal computer, then this occurred almost two months after the election, which was held on 7 May 2005, and more than three months after he was sent important emails regarding his election campaign.

[377] It is the opinion of the Commission that any major computer problems experienced by Mr Lee are likely to have occurred toward the middle of June 2005, rather than from late-March 2005. However, if Mr Lee was in fact experiencing some problems with his personal computer in late-March and early-April 2005 (which may have been the case), it is the conclusion of the Commission from an assessment of all of the evidence that any such problems did not prevent him from having access to the Internet and receiving emails over the relevant period.

[378] The opinion formed by the Commission from an assessment of all of the evidence is that any computer problems experienced by Mr Lee were not a barrier to the receipt by Mr Lee of emails exchanged regarding his election campaign prior to the election on 7 May 2005. Following detailed consideration of the written submissions for Mr Lee, and the examination of Mr Owens at a Commission private hearing on 24 April 2008, the Commission is satisfied that there was a possible exception in relation to the

receipt of emails with large attachments, such as artwork for election related posters. However, this is immaterial to the substantive conclusions formed by the Commission since the relevant emails circulated regarding Mr Lee's election campaign contained no such attachments.

5.8 General Submissions for Mr Lee

[379] The 2007 submissions included contentions relating to specific issues which have, where appropriate, been discussed previously in this report. They also included a number of more general submissions, which will now be addressed.

[380] The 2007 submissions claimed that, if, as was asserted by the Commission, Mr Burke was coordinating Mr Lee's campaign then there ought to be some evidence of Mr Lee responding to the various comments and suggestions made by Mr Burke.²⁶⁰ The Commission notes that it was Mr Lee's evidence that he was experiencing problems with his personal computer at the time, and may not have received the various emails that were directed to him. Yet submissions for Mr Lee now seek to use Mr Lee's non-response to those same emails to support the proposition that Mr Burke was not coordinating his campaign. An obvious reason for Mr Lee not to respond to emails from Mr Burke was that he did not need to. They did not require an answer from him. They were for his information.

[381] In any event, the Commission does not assert that Mr Burke was coordinating Mr Lee's election campaign. The evidence shows that Mr Burke played a role in the early stages of Mr Lee's campaign, setting the overall campaign strategy and fund-raising strategy, and overseeing some of the election paraphernalia.

[382] The 2007 submissions note that Mr Lee declared gifts of \$37,000 in his annual return, and suggest that "[t]here is no logical reason why Mr Lee would not have declared the additional amount (the subject of the costs of the campaign not actually incurred by Mr Lee) if he had reason to believe that there was an interest which at any material time remained undeclared".²⁶¹ The Commission takes the amount of \$37,000 referred to as being the total amount of the declared donations from PCN and Riley Mathewson. The Commission is not sure what is meant by the "additional amount" referred to in the 2007 submissions. In any event, it is not so much the "additional amount" that is of primary concern, but the source of the funds. In the opinion of the Commission, Mr Lee ought to have declared a gift from Australand, rather than a gift from Riley Mathewson. In that context, there is a perfectly logical reason why Mr Lee would not declare the gift; that reason being to disguise the financial involvement of Australand in his election campaign, with the consequence that he would not be required to disclose an interest in relation to any matters before Council involving Australand. In the Commission's opinion, that was precisely why Mr Lee did not declare the source of the funds.

- [383] The 2007 submissions claim that “[i]t is a constant feature of Mr Lee’s conduct during the relevant period that he sought (and received) assurances from a range of people as to the source of his electoral funds”.²⁶² The submission then goes on to cite Mr Owens, Mr Riley, Mr Lewis and Mr Merenda. In the opinion of the Commission, that statement simply is not supported by the evidence. Any inquiries made by Mr Lee prior to the election regarding the possibility of declarable donations must be considered in light of PCN acting as an effective “veil” in that it would be PCN, rather than the individual donors, that would be seen to make the declarable donation. That was the clear intention of the parties. The evidence is that, at the time when the donation by Australand became necessary, which was following the election, Mr Lee failed to make any inquiries whatsoever, and indeed said he “forgot all about it” following his meeting with Mr Lewis.
- [384] The 2007 submissions went on to state that “[a]t no time has it been demonstrated that Mr Lee was advised of, or had any reason to suspect, the true source of the funds as disclosed during the course of the Commission’s hearings”.²⁶³ Indeed, the evidence is that Mr Lee did not ask questions in relation to any funding by Australand, and that neither Mr Lewis nor Mr Riley expressly discussed the funding arrangements. However, on the evidence as a whole, in the opinion of the Commission no discussion was necessary because it was known and understood by those concerned, including Mr Lee, that Australand would be paying a substantial part of his campaign costs.
- [385] The 2007 submissions stated that “[a]t the time of the Departmental enquiry into the allegations made against Mr Lee, Mr Lee sought specific assurances from each of Mr Riley and Mr Lewis that no donations had been made by Australand”.²⁶⁴ The evidence of Mr Lewis is that Mr Lee never asked such a question of him, and he never told him.²⁶⁵ Mr Riley said that Mr Lee did ask him, at a separate meeting, and that he “lied” and confirmed that the \$21,586.93 was a gift from Riley Mathewson and not anyone else.²⁶⁶ The Commission considers that the purpose of the meeting between Mr Lee, Mr Lewis and Mr Riley following Mr Lee’s receipt of the DLGRD letter was to ensure Mr Lee’s proposed answers to the questions posed by DLGRD were technically correct. The Commission does not accept Mr Lee’s assertion that he made a specific enquiry of Mr Lewis and Mr Riley at that meeting in relation to any funding by Australand. What he asked for, as he states in his statutory declaration dated 22 July 2008, was confirmation that the “gift” of \$21,586.93 which he had declared, had been from Riley Mathewson and not anyone else. That answer was (technically) true – it was Riley Mathewson who said they were making the gift. In any event, The Commission notes that this meeting occurred well after the relevant time for the purpose of making the appropriate disclosure in his annual return.
- [386] The 2007 submissions included a letter from DLGRD dated 6 July 2006 stating that Mr Lee had complied with his disclosure requirements. In submissions for Mr Lee it was said that Mr Lee showed that letter to Mr Lewis and Mr Riley and sought confirmation that the DLGRD conclusion in this regard was accurate. The Commission considers this submission to be

irrelevant; neither Mr Lewis nor Mr Riley could confirm or otherwise the conclusions reached by DLGRD.

[387] The 2007 submissions went on to say that Mr Lee was “particularly sensitive to any perception or actuality that he was in receipt of funds in circumstances that would have caused him to declare an interest Mr Lee’s efforts to determine that he was not in receipt of funds which would have given rise to an obligation to that effect were met with appropriate assurances”.²⁶⁷ Again, in the opinion of the Commission, that assertion is simply not consistent with the evidence, and the Commission does not accept Mr Lee’s evidence in this regard. There is no evidence that Mr Lee sought any such assurances during the relevant period, with the possible exception of Mr Owens. However, Mr Owens was only able to provide Mr Lee with the assurance that the costs would be met as agreed, which was by fund-raising.²⁶⁸ The relevant time, however, was after the election, when it was realised that the actual costs would significantly exceed what had been received from fund-raising.

[388] The 2007 submissions suggested that there were “various people involved in determining who should bear the true cost of the conduct of the campaign effected by Riley Mathewson”, and that Mr Lee “was not a party to nor privy to any discussions in that regard”.²⁶⁹ The Commission observes that Mr Lee was present at the initial meeting at the home of Mr Burke, at which Mr Lewis and Mr Owens were also present. Items of discussion at that meeting included the nature of the campaign and fund-raising, including the proposed PCN fund-raising luncheon. Mr Lee was undoubtedly privy to those discussions. Most significantly, however, it was he who sought Mr Lewis’ assistance about the costs, following the election.

[389] However it is likely that the comment in submissions for Mr Lee was meant to relate to the discussions between Mr Lewis and Riley Mathewson after Mr Lee’s meeting with Mr Lewis, as the submissions go on to say that Mr Lee was not privy to the discussions, and simply received advice after those discussions that a gift would be made to his campaign. The submissions go on to say that Mr Lee considered there was nothing surprising about the result due to his understanding that the bulk of the campaign costs would be met by fund-raising.²⁷⁰

[390] The Commission accepts that, upon receiving advice from Mr Owens as to the cost of the campaign, Mr Lee met Mr Lewis who entered into negotiations with Mr Riley, following which Mr Lee’s bill was drastically reduced. The Commission accepts that Mr Lee was not a party to the negotiations between Mr Lewis and Mr Riley. The Commission accepts that Mr Lee’s intention was never to personally finance a significant portion of his campaign costs, and that he had an early expectation and desire that the bulk of the campaign costs would be met through fund-raising.

[391] But those things do not alter the facts as they evolved. The fact was that charges by Riley Mathewson for Mr Lee’s campaign, as far as Mr Lee understood (according to him) were around \$50,000 to \$60,000. On receiving this information, Mr Lee met Mr Lewis, who he knew had been

involved in his campaign throughout, and who was the General Manager of Australand. Mr Lee said he left the meeting with Mr Lewis, and “forgot all about” the Riley Mathewson account.²⁷¹ Mr Lewis said he felt from his meeting with Mr Lee that Mr Lee clearly wanted his help²⁷², and he negotiated with Riley Mathewson on behalf of Australand because he thought that Australand would have to make a contribution.²⁷³ Then Mr Lee was required to pay a net amount of only \$21,913.90 to Riley Mathewson; the bulk of which was funded by the PCN donation. In the opinion of the Commission Mr Lee knew the reason that Riley Mathewson was prepared to so drastically reduce its bill to him was because it was to receive funds from Australand. In the Commission’s opinion there can be no other reasonable explanation in the circumstances.

[392] The final submission for Mr Lee seeks to shift the blame to Riley Mathewson and states that they expended considerable funds without seeking the authority of Mr Lee, that the “fundraising costs” were far in excess of what was anticipated, and that “Mr Lee had no reason to doubt that the campaign was progressing in accordance with the assurances given to him”.²⁷⁴ The evidence of Mr Lee is that he always understood that the costs of his campaign would be substantially met through fund-raising.²⁷⁵ In those circumstances, there seems to be no obligation imposed on Riley Mathewson to seek Mr Lee’s authority prior to expending funds. The evidence demonstrates clearly that Riley Mathewson understood that their obligation was to seek the approval of Mr Lewis, which is demonstrated by the frequent communication between the two.

[393] Regarding the submission that fund-raising costs were far in excess of what was anticipated, it is not clear whether that is, in fact, the case, or whether the proceeds from fund-raising activities fell short of what was anticipated, or some combination of the two. There is no evidence of what the parties anticipated the campaign costs would amount to, and, in fact, the campaign was conducted with no fixed budget. When Mr Owens became concerned about the mounting cost of the campaign, he approached Mr Riley and Mr Burke for reassurance, not Mr Lee.²⁷⁶

[394] Regarding the claim that “Mr Lee had no reason to doubt that the campaign was progressing in accordance with the assurances given to him”, the Commission observes that it was the evidence of Mr Owens that he met or spoke with Mr Lee on a daily basis throughout the campaign,²⁷⁷ and one would expect that he kept Mr Lee informed of all relevant matters, including costs. During examination at a Commission private hearing on 24 April 2008, Mr Owens gave evidence that the assurance he gave to Mr Lee “was that the means of paying for the campaign would be as agreed, which was the fundraising”.²⁷⁸ Mr Owens was also able to recall that he did, in fact, pass on to Mr Lee his concerns about the campaign costs, and the likelihood of a shortfall.²⁷⁹

[395] Finally, the 2007 submissions note that “[n]one of these factors were ever brought to the attention of Mr Lee, nor is there any proper basis for assuming that he knew or ought to have known of the circumstances giving rise to

them”.²⁸⁰ The Commission disagrees for the reasons mentioned previously, and concludes that there is ample evidence to show that Mr Lee knew of a substantial financial contribution by Australand.

[396] In the opinion of the Commission, there is nothing within the 2007 submissions or the section 86 representations that would lead to a different conclusion than that the circumstances were such that Mr Lee knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign.

5.9 Disclosure Requirements Regarding Australand Matters before Council

5.9.1 Introduction

[397] Given the conclusion reached by the Commission that Mr Lee knew that Australand had made, or would be required to make a substantial payment to Riley Mathewson in respect of his election campaign, it is necessary to consider Mr Lee’s role in any matters coming before Council involving Australand, and whether he was required to make any disclosures.

[398] Mr Lee told the Commission at a public hearing on 19 February 2007 that, since the Local Government Elections in May 2005, he has never declared a financial interest, or an interest affecting impartiality, in relation to matters relating to Australand, including those relating specifically to the Port Coogee development. Mr Lee also told the Commission that he has voted on motions relating to the Port Coogee development.²⁸¹

5.9.2 Australand Matters before Council

[399] It is no function of the Commission to make any assessment as to the suitability or merit of the Port Coogee development, and nothing in this report ought to be construed as an expression by the Commission of any opinion in relation to the suitability or merit of the development, or any part of the development.

[400] The proposed Port Coogee Marina, involving Town Planning Scheme No. 3 Amendment No. 3 and associated structure plan, was adopted by Council at its ordinary Council meeting on 16 March 2004. The motion was moved by Mayor Lee and seconded by Deputy Mayor Graham, and carried by seven votes to one, with Councillor Oliver voting against the motion.²⁸²

[401] At its ordinary meeting on 9 June 2005, Council adopted some “minor modifications” to the Port Coogee structure plan. The motion was moved by Councillor Whitfield and seconded by Councillor Limbert, and carried by six votes to three. Mayor Lee was present at the meeting, but it is not known whether he voted for or against the motion. The proposed variations to the structure plan resulted in an increase in density, but, as it was considered

that the variations did not materially change the intent of the structure plan, there was no need to readvertise for public comment.²⁸³

[402] At its ordinary meeting on 11 August 2005, Council adopted some further minor modifications to the Port Coogee structure plan. The motion was moved by Councillor Limbert and seconded by Councillor Whitfield, and carried by six votes to two. Mayor Lee was present at the meeting, but it is not known whether he voted for or against the motion. The proposed variations to the structure plan did not result in an increase in density, apart from some lots opposite the public beach area, which was said to “facilitate an improved urban design outcome in a high amenity location”. Again, it was considered that the variations did not materially change the intent of the structure plan, and there was no need to readvertise for public comment.²⁸⁴

[403] At its ordinary meeting on 8 September 2005, Council resolved to grant approval for bulk earthworks to commence for the marina and residential development. The motion was moved by Mayor Lee and seconded by Deputy Mayor Graham, and carried by nine votes to nil.²⁸⁵

[404] At a special Council meeting on 25 July 2006, Council considered further modifications to the Port Coogee structure plan. Councillor Allen excused himself from the meeting for the duration of matters relating to Port Coogee. The initial motion was moved by Councillor Tilbury and seconded by Councillor Oliver, and defeated three votes to six. A second motion was moved by Councillor Limbert and seconded by Councillor Whitfield, and was carried seven votes to one. The essential difference between the two motions related to residential development on the ground floor of the marina village, with the second motion allowing for some residential use for some parts of the ground floor within the marina village.²⁸⁶

[405] Both motions also provided for the adoption of further modifications to the structure plan which resulted in further increases in density. Again, it was considered that the variations did not materially change the intent of the structure plan, and there was no need to readvertise for public comment. In the report to Council, it was noted that “[t]he number of dwellings within the Structure Plan area is proposed to increase by 248 (15%) and the number of people will also increase by 407 (10%). ... The proposed change in residential density suggests that this may affect the intent of the structure plan but in the context of the approved densities under the current structure plan (R160 Code already applies to part of the Marina Village) and lower proposed building heights it is suggested that the changes are not so significant as to warrant public comment”.²⁸⁷

5.9.3 Disclosure of a Financial Interest

[406] Given the Commission’s conclusion that Mr Lee knew, by mid-May 2005, that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign, the question arises whether there was a requirement for Mr Lee to disclose a financial interest prior to matters relating to Australand coming before Council.

- [407] The answer depends upon whether the requirements of section 5.60 of the *Local Government Act 1995* were satisfied. If Mr Lee was closely associated with Australand, and Australand had a financial interest in the matter, then Mr Lee was required to disclose a financial interest.
- [408] Australand clearly had a financial interest in relation to the matters coming before Council in relation to the Port Coogee development, discussed in Point 5.9.2 above. The matters coming before Council on 9 June 2005, 11 August 2005 and 25 July 2006 all involved minor modifications to the structure plan which would have been to the benefit of Australand. The matter coming before Council on 8 September 2005 involved the approval for the commencement of bulk earthworks, which would also be to the benefit of Australand. Accordingly, it is reasonable to expect that these matters, if dealt with by Council in a particular way, would result in a financial gain, loss, benefit or detriment for Australand.
- [409] The issue then is whether Mr Lee was “closely associated” with Australand, which depends on whether Australand made a “notifiable gift” to Mr Lee.²⁸⁸ As discussed previously, the term “notifiable gift” is defined to mean “a gift about which the relevant person was or is required by regulations under section 4.59(a) to provide information in relation to an election”.²⁸⁹ As the regulations relate to electoral gifts, they cover gifts made during the election disclosure period, which ends on the day on which the member makes their declaration prior to taking office.²⁹⁰
- [410] Mr Lee made his declaration on 9 May 2005. The gift from Australand was made on 21 June 2005, although Mr Lee was aware by mid-May 2005 that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign. Nevertheless, the gift from Australand was not made within the disclosure period detailed in regulation 30C, and consequently, there was no requirement for Mr Lee to disclose a financial interest.²⁹¹

5.9.4 Submissions for Mr Lee Regarding Disclosure of a Financial Interest

- [411] The 2007 submissions included a letter of advice from Minter Ellison lawyers to Mr Lee in relation to PCN. Mr Lee had sought advice as to whether he would have a financial interest in a matter coming before Council on 9 June 2005 regarding the Port Coogee development as a result of the receipt of the promise of a gift from PCN. Minter Ellison advised Mr Lee that he did not have a financial interest as “there is simply no basis to conclude that any of the PCN committee members would, or might, have a relevant financial interest”.²⁹² The Commission merely notes that the advice sought by Mr Lee related solely to the promise of a gift by PCN, and did not in any way relate to the receipt of a gift from Australand, whether directly or indirectly.

5.9.5 Disclosure of an Interest Affecting Impartiality

- [412] Given the Commission's conclusion that Mr Lee knew, by mid-May 2005, that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign, the question arises whether there was a requirement for Mr Lee to disclose an interest affecting impartiality prior to matters relating to Australand coming before Council.
- [413] Prior to 21 August 2007, disclosure of an interest affecting impartiality was required via a code of conduct. Section 5.103 of the *Local Government Act 1995* required every local government to prepare or adopt a code of conduct to be observed by council members, committee members and employees, and provided that regulations may prescribe matters relating to codes of conduct. Those regulations are contained in regulation 34C of the *Local Government (Administration) Regulations 1996*. Regulation 34C was inserted on 23 April 1999, and then repealed and replaced on 21 August 2007. Following its replacement, regulation 34C ceased to apply to council members, and applies to council employees only, due to the introduction of the *Local Government (Rules of Conduct) Regulations 2007*.
- [414] Former regulation 34C provided that a code of conduct must contain a requirement that a council member or employee disclose any interest in any matter to be discussed at a council meeting that will be attended by the member or employee.²⁹³ Interest means an interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected, and excludes an interest under the financial interest provisions of the *Local Government Act 1995*.²⁹⁴ A code of conduct must also contain a requirement that such a disclosure be made at the meeting immediately before the matter is discussed.²⁹⁵ The City of Cockburn Code of Conduct did so.
- [415] The City of Cockburn Code of Conduct provides generally that an elected member shall always act "honestly, impartially and with integrity in its dealings with all elements of the community".²⁹⁶ In relation to former regulation 34C, the Code of Conduct states:
- 3.5 Elected members shall ensure that there is no actual or perceived conflict of interest or incompatibility between their personal (i.e. non-financial) interests and the impartial and independent fulfilment of their civic duties. Any such interests shall be disclosed immediately before the matter is discussed and noted in the minutes of any meeting attended by individuals in their capacity as an Elected Member of Council.*²⁹⁷
- [416] The Code of Conduct specifies "non-financial" interests, presumably because former regulation 34C excluded an interest covered by the financial interest provisions. Nevertheless, given the requirement in regulation 34C and the tone of the Code of Conduct generally, it could not be said to intentionally exclude from disclosure an interest of a financial nature that does not fall

within the financial interest provisions, because of the restrictive operation of those provisions discussed earlier.

[417] This is reinforced by the following provision in the Code of Conduct:

3.7 Elected Members shall not accept a gift, other than a token gift, from a person who is undertaking, or is likely to undertake, business –

(a) that requires the person to obtain any authorisation from the local government ...²⁹⁸

[418] DLGRD released some guidelines in May 2000 entitled “Disclosure of Interests Affecting Impartiality” which were designed to assist local governments with the development of their policies and procedures in line with the former regulation 34C.²⁹⁹ DLGRD noted that the important element in the definition of an “interest” is “the likely public perception as to whether there may be an interest”.³⁰⁰ DLGRD went on to suggest that, when deciding if an interest should be disclosed, it is helpful to answer the following questions.

- If you were to participate in assessment or decision making without disclosing, would you be comfortable if the public or your colleagues became aware of your association or connection with an individual or organisation?*
- Do you think there would be a later criticism of perceived undisclosed partiality if you were not to disclose?³⁰¹*

[419] In relation to paragraph 3.5 of the City of Cockburn Code of Conduct, Mr Lee was asked, at a Commission public hearing on 19 February 2007, whether he would believe or have a concern that members of the public might perceive him to have an interest affecting his impartiality if they were aware of Mr Lewis’ involvement in his election campaign. Mr Lee said:

I don’t believe the public have any perception [other] than that I only ever act in the best interests of the city.³⁰²

I accept all that. It’s a question of whether there would be a public perception that if they were aware of that, that Mr Lewis was assisting you in your election campaign, that that might have an impact on your ability - - -?---I believe that - - - Let me finish the question – impact on your ability to impartially discharge your functions - - -?---I believe - - - in relation to motions regarding Australand?---Okay. I believe that some sections of the community would have that. Possibly.³⁰³

[420] Of course, this exchange during the public hearing on 19 February 2007 related only to the public being aware of Mr Lewis having some involvement in Mr Lee’s election campaign. Given the additional fact that Australand

made a substantial payment to Riley Mathewson in respect of Mr Lee's election campaign, there can be no doubt that public awareness of those facts would have given rise to a public perception that he had an interest affecting his impartiality. The Commission notes the repeated denial in the section 86 representations by Mr Lee's lawyers that he knew of Australand's funding of his campaign, but also notes their concession³⁰⁴ that: "Had he known then he too would have shared that perception that there was a financial interest and made the appropriate declaration".

[421] At the public hearing Mr Lee was also asked about the DLGRD publication "Disclosure of Interests Affecting Impartiality". In relation to the two questions that DLGRD suggested may assist in resolving the question of whether to disclose, Mr Lee was asked whether he would be comfortable if the public became aware of the fact that Mr Lewis assisted in his election campaign. Mr Lee said:

I would, I would accept that there could be a perceived interest given the information that you have shown me here today but based on knowledge that I had prior to today, I wouldn't accept that statement.

You wouldn't accept that statement?---No, but based on information you have shown here today, I accept that there could be that perception.

But you don't state that there would be that perception based on the fact that you knew you had those meetings with Mr Lewis on 26 March and again on 4 April but there was an exchange of emails that you received copies of that clearly demonstrated his involvement?---No, I don't, I don't accept that. As I've said, I reiterate, based on what you've shown me here today and walked me through, yes, I would accept that. Based on the knowledge I had before that, no, I wouldn't accept that.³⁰⁵

[422] In the opinion of the Commission, it must have been obvious to Mr Lee that, had the public known of the meeting at Mr Burke's home on 26 March 2005 and the meeting at the offices of Australand on 4 April 2005, both of which were to discuss his election campaign, there would have been a public perception of a conflict of interest. That is obvious, even without any public awareness of the various emails that were copied to Mr Lee. The nature and extent of the involvement of Mr Lewis, in his capacity as a General Manager of Australand, in Mr Lee's re-election campaign, was alone certainly a circumstance affecting the perception of Mr Lee's impartiality on matters affecting Australand which came before Council. However, given all the circumstances, including that Australand made a substantial payment to Riley Mathewson in respect of Mr Lee's election campaign, there can be no doubt of a public perception that he had an interest affecting his impartiality, had the public known of the payment.

[423] In the opinion of the Commission, Mr Lee had an interest affecting impartiality at the time of the following motions before Council:

9 June 2005 Minute No. 2832	Proposed Minor Modifications to Structure Plan – Port Coogee
11 August 2005 Minute No. 2927	Proposed Minor Modifications to Structure Plan – Port Coogee
8 September 2005 Minute No. 2954	Bulk Earthworks, Remedial Work and Demolition Works Proposals – Port Coogee Marina and Residential Development
25 July 2006 Minute No. 3222	Proposed Modifications to Structure Plan – Port Coogee

[424] Mr Lee sought legal advice prior to the meeting on 9 June 2005 in relation to whether he had a financial interest because of the promise of a gift by PCN. However, the Commission notes Mr Lee did not seek advice in relation to any payment in respect of his election campaign by Australand (which had not been made by this stage, but which Mr Lee knew, in the Commission's opinion, would be required to be made). Nor did Mr Lee seek legal advice as to whether he had an interest affecting impartiality as a result of the promise of a gift by PCN or the likely payment to be made by Australand.

[425] In the opinion of the Commission, due to the involvement of Mr Lewis throughout his election campaign, and due to the circumstances being such that Mr Lee knew that Australand had made, or would be required to make, a substantial payment to Riley Mathewson in respect of his election campaign, Mr Lee ought to have disclosed an interest affecting impartiality prior to any discussion on each of the above motions, in accordance with paragraph 3.5 of the City of Cockburn Code of Conduct.

CHAPTER SIX OPINIONS AND RECOMMENDATIONS

6.1 Commission Opinions as to Misconduct

- [426] Mr Lee, as a public officer but not a public service officer, is not bound by the Public Sector Code of Ethics or the PSM Act. However, as a public officer, he is still subject to the provisions of the Act, and his actions may constitute misconduct as defined in section 4 of the Act.
- [427] Having assessed all the material gathered during the investigation the Commission has formed an opinion in regard to misconduct by Mr Lee.
- [428] Section 4(d)(vi) of the Act talks of a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).
- [429] The words in brackets are important. They make it clear that where the public officer concerned is not an officer of the public service, the test is notional – that is, although it cannot then apply directly, the Commission must assess the public officer's conduct against the objective criteria set out in the PSM Act, as if that person were a member of the public service.
- [430] Although as a local government councillor and mayor at the relevant time Mr Lee was a public officer, he was not a member of the public service. It is, therefore, the notional test in section 4(d)(vi) which must be applied to his conduct.
- [431] General principles of conduct are set out in section 9 of the PSM Act.

The principles of conduct that are to be observed by all public sector bodies and employees are that they –

- (a) are to comply with the provisions of –*
 - (i) this Act and any other Act governing their conduct;*
 - (ii) public sector standards and codes of ethics; and*
 - (iii) any code of conduct applicable to the public sector body or employee concerned;*
- (b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and*

- (c) *are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.*

[432] Breaches of discipline are set out in section 80 of the PSM Act.

An employee who –

- (a) *disobeys or disregards a lawful order;*
- (b) *contravenes –*
 - (i) *any provision of this Act applicable to that employee; or*
 - (ii) *any public sector standard or code of ethics;*
- (c) *commits an act of misconduct;*
- (d) *is negligent or careless in the performance of his or her functions; or*
- (e) *commits an act of victimisation within the meaning of section 15 of the “Public Interest Disclosure Act 2003”,*

commits a breach of discipline.

[433] A breach of discipline may therefore be a minor breach or a serious breach.

[434] A minor breach may be punished by a reprimand (section 83(1)(a)(i) of the PSM Act) or a fine not exceeding 1 days pay (section 83(1)(a)(ii) of the PSM Act) or both (section 83(1)(a)(iii) of the PSM Act).

[435] If a departmental investigating authority is of the opinion that a **serious** breach of discipline appears to have been committed, that authority shall cause the public officer to be charged with that alleged breach (section 83(1)(b) of the PSM Act).

[436] The procedure for dealing with a charge of a serious breach of discipline is set out in section 86 of the PSM Act.

[437] The punishments which may be imposed where a serious disciplinary offence is found proved are set out in section 86(3)(b). They are –

- (i) reprimand;
- (ii) transfer;
- (iii) fine not exceeding 5 days pay;
- (iv) reduction in pay;
- (v) reduction in classification; or
- (vi) dismissal.

- [438] Where the public officer concerned is a CEO and the recommendation is for dismissal, the Minister shall so recommend to the Governor (section 89 of the PSM Act).
- [439] It follows from the above, that not only must there be an **identifiable** (actual or possible) breach of discipline under the PSM Act for section 4(d)(vi) of the Act to be brought into play, but that it must be characterisable as a **serious** breach for the punishment of dismissal to be an option under section 86(3)(b) of the PSM Act.
- [440] In the Commission's assessment, Mr Lee's actions would constitute a serious breach. The reasons for this conclusion include the factors detailed below.
- Mr Lee did not act out of naivety or inexperience. He was a serving mayor seeking re-election.
 - His conduct was not inadvertent nor was it an isolated occurrence. It was deliberate conduct engaged in over a period of time for a reason.
 - The amount of funding involved was not insignificant – indeed it was substantial (even on his own evidence the amount would have been in the order of \$30-\$40,000). That went to the extent to which Mr Lee might be perceived to be under some obligation to advance Australand's interests.
 - The purpose of concealing Australand's active assistance and funding of his election campaign was to enable him to advance Australand's interests at Council (which he would not have been able to do had he disclosed their financial support of him).

First Misconduct Opinion

- [441] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to declare a gift from Australand in his annual return for the year ended 30 June 2005, despite knowing that Australand had made, or would be required to make a substantial payment to Riley Mathewson in respect of his election campaign, constituted conduct that could adversely affect the honest or impartial performance of his functions as Mayor of the City of Cockburn because it assisted in concealing the degree of a potential conflict of interest, and constituted or involved the performance of his functions in a manner that was neither honest nor impartial. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act. This conduct therefore constitutes misconduct pursuant to sections 4(d)(i), (ii) and (vi) of the Act.

Second Misconduct Opinion

[442] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 2832 – Proposed Minor Modifications to Structure Plan – Port Coogee, at the ordinary Council meeting held on 9 June 2005, constituted conduct that could adversely affect the honest or impartial performance of his functions as Mayor of the City of Cockburn and constituted or involved the performance of his functions in a manner that was neither honest nor impartial because it concealed the existence of a potential conflict of interest. This conduct could also constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act. This conduct therefore constitutes misconduct pursuant to section 4(d)(i), (ii) and (vi) of the Act.

Third Misconduct Opinion

[443] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 2927 – Proposed Minor Modifications to Structure Plan – Port Coogee, at the ordinary Council meeting held on 11 August 2005, constituted conduct that could adversely affect the honest or impartial performance of his functions as Mayor of the City of Cockburn and constituted or involved the performance of his functions in a manner that was neither honest nor impartial because it concealed the existence of a potential conflict of interest. This conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act. This conduct therefore constitutes misconduct pursuant to section 4(d)(i), (ii) and (vi) of the Act.

Fourth Misconduct Opinion

[444] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 2954 – Bulk Earthworks, Remedial Work and Demolition Works Proposals – Port Coogee Marina and Residential Development, at the ordinary Council meeting held on 8 September 2005, constituted conduct that could adversely affect the honest or impartial performance of Mr Lee's functions as Mayor of the City of Cockburn and constituted or involved the performance of his functions in a manner that was neither honest nor impartial because it concealed the existence of a potential conflict of interest. This conduct could also constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could

constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act. This conduct therefore constitutes misconduct pursuant to section 4(d)(i), (ii) and (vi) of the Act.

Fifth Misconduct Opinion

[445] It is the Commission's opinion that Mr Lee has engaged in misconduct in that his actions, in failing to disclose an interest affecting impartiality, as required by the City of Cockburn Code of Conduct, prior to discussion of Minute No 3222 – Proposed Modifications to Structure Plan – Port Coogee, at the special Council meeting held on 25 July 2006, constituted conduct that could adversely affect the honest or impartial performance of Mr Lee's functions as Mayor of the City of Cockburn and constituted or involved the performance of his functions in a manner that was neither honest nor impartial because it concealed the existence of a potential conflict of interest. This conduct could also constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. It accordingly could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act. This conduct therefore constitutes misconduct pursuant to section 4(d)(i), (ii) and (vi) of the Act.

6.2 Recommendations

[446] Despite the fact that in the Commission's opinion Mr Lee engaged in misconduct on five occasions, the Commission makes no recommendation that DLGRD give consideration to the taking of disciplinary action against Mr Lee. This is because prior to 21 August 2007 there was no legislative mechanism for disciplinary action against an individual council member. The Commission notes that recent amendments to the *Local Government Act 1995* and the *Local Government (Rules of Conduct) Regulations 2007*, which have been operative since 21 August 2007, provide a mechanism to take disciplinary action against individual council members where they do not comply with Rules of Conduct made pursuant to section 5.104 of the *Local Government Act 1995*.

[447] The Commission considers that this investigation provides further support for Recommendation 4³⁰⁶ made in the Commission Smiths Beach Report, 5 October 2007, detailed below.

Smiths Beach Report: Recommendation 4

The Commission recommends that the Department of Local Government and Regional Development, in consultation with sector stakeholders, review the adequacy of the current election donation disclosure regime for local government, using the principles articulated by the WA Inc Royal Commission as a benchmark for regulatory reform.

- [448] The Commission considers that the financial interest provisions in Part 5, Division 6 of the *Local Government Act 1995* ought to require the disclosure of a financial interest in circumstances where a relevant person is closely associated with a person who has a direct or indirect financial interest in a matter, by reason of the person having made a gift to the relevant person, whether or not that gift was an election related gift.
- [449] The Commission notes that the *Local Government Amendment Bill 2008*, if passed including section 5.62(1)(eb), would effectively close the identified gap in the interaction between the legislative and regulatory regime in respect of the disclosure of all gifts received from closely associated persons, rather than just election related gifts.
- [450] The Commission considers that the financial interest provisions in Part 5, Division 6 of the *Local Government Act 1995*, section 5.82, ought to require the disclosure of the total amount and true source of the gift, whether or not that gift was an election related gift.

***Report on the Investigation of Alleged Misconduct Concerning
Mr Stephen Lee, Mayor of the City of Cockburn:
Recommendation 1***

The Commission recommends that the Department of Local Government and Regional Development, in consultation with sector stakeholders, review the adequacy of the current gift receipt disclosure regime for local government, in particular the identified gap allowing the amount and the true source of the gift to be concealed if the gift is made after the expiration of the period covered by the regulations.

APPENDICES

APPENDIX ONE

Summary of Evidence by Mr Lee Regarding the Receipt of Emails

Date	Sender	Recipient(s)	Counsel Assisting/ Commissioner	Mr Lee	Exhibit
21 March 2005	Mr Burke	Mr Herkenhoff and Mr Lee.	Do you recall getting that email? Having looked at that ---?	No. No, I don't recall it --- I don't deny getting it but I don't recall getting it. ³⁰⁷	E10996 ³⁰⁸
22 March 2005	Mr Burke	Mr Herkenhoff, Mr Lewis and Mr Lee.	Did you not make the connection between Mr Burke and Mr Lewis and your election campaign when you read this email? But you were involved to the extent that you received this email ---?	I can't remember thinking anything at the time. ³⁰⁹ --- I may have received the email --- I may not have. ³¹⁰	E10960 ³¹¹
23 March 2005	Mr Burke	Mr Owens, Mr Herkenhoff, Mr Lewis and Mr Lee.	... what I want to bring to your attention is the fact that Mr Lewis' name appears yet again in an email detailing the organising of an election campaign? Just on your last comment, Mr Lee, about your computer playing up. We have already had a look at an email that you were able to send out? On 23 March? Okay. So sometimes you could send out emails?	Well, yes, you've shown it to me now but I don't recollect seeing this before. And later: Well, I'm not sure that I did receive the email. At the time my – my PC was playing up and was replaced shortly after the – the election. Yes, it was --- It wasn't – it was one of those sporadic things. Sometimes I could receive them, sometimes I couldn't. It was crashing a lot. My friend Ron Kimber was helping me fix it up at the time and then my brother came over from the UK who runs a small PC business there and he helped me after that. ³¹²	E10991 ³¹³
29 March 2005	Mr Herkenhoff	Mr Lewis, Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley.	I don't suppose you recall getting this email?	I'm not denying I did or didn't. This was two years ago. ³¹⁴	E10984 ³¹⁵
1 April 2005	Mr Lewis	Mr Herkenhoff, Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley.	You don't recall the email?	No, I don't. No I don't and that's not to say I didn't read it but I don't recall it. ³¹⁶	E10992 ³¹⁷
22 April 2005	Mr Owens	Mr Lee and Mr Herkenhoff.	Again, I don't suppose you can recall receiving that email from Mr Owens?	No, or if I'd have read it. ³¹⁸	E10988 ³¹⁹
10 May 2005	Mr Owens	Mr Lee.	Do you remember receiving that?	I'm not saying I didn't receive it but – or just no reason I think why it would stick in my memory so ---. ³²⁰	E10989 ³²¹

APPENDIX TWO

Internet Access Between 21 March 2005 and 1 April 2005 (Mr Lee's Home Computer)³²²

Item No.	Date	Start time	Stop time	Session time (Minutes)	Downloads (Kilobytes)
1	21/03/05	09:03:49	09:54:19	50.55	2,084.50
2	21/03/05	11:41:14	14:08:02	147.03	619.37
3	21/03/05	16:03:52	16:52:15	48.45	3,954.24
4	21/03/05	17:25:59	17:34:16	8.35	8.64
5	22/03/05	08:40:07	09:06:06	26.03	102.19
6	22/03/05	13:55:35	14:47:32	52.02	6,830.18
7	22/03/05	16:01:51	17:03:26	61.65	4,319.68
8	22/03/05	19:25:29	19:46:31	21.10	312.27
9	23/03/05	08:30:18	09:27:43	57.48	474.52
10	23/03/05	10:29:17	10:50:36	21.38	24.75
11	23/03/05	14:01:09	14:01:37	0.52	2.13
12	23/03/05	16:27:49	16:34:38	6.90	448.64
13	23/03/05	17:11:34	17:25:12	13.70	912.41
14	23/03/05	19:15:38	19:19:14	3.98	2.11
15	24/03/05	09:07:01	09:15:33	8.60	6.33
16	24/03/05	15:17:51	15:20:24	2.62	81.35
17	24/03/05	15:30:56	15:42:41	11.80	1,051.78
18	24/03/05	15:54:45	16:41:41	47.00	1,436.57
19	24/03/05	20:50:47	21:43:43	52.98	56.97
20	25/03/05	09:29:02	09:30:11	1.20	103.77
21	25/03/05	16:58:00	16:59:54	1.95	97.98
22	25/03/05	22:26:46	23:47:27	80.73	9,982.81
23	26/03/05	09:31:26	09:36:03	4.72	5.11
24	26/03/05	12:46:57	12:49:56	3.05	3.63
25	26/03/05	17:58:12	18:01:52	3.73	2.86
26	27/03/05	09:38:44	09:44:07	5.48	2.58
27	27/03/05	16:38:54	16:40:26	1.92	1.47
28	27/03/05	16:41:12	16:41:56	0.80	6.57
29	27/03/05	20:15:09	20:16:50	1.77	6.08
30	28/03/05	10:56:23	11:02:59	6.68	156.49
31	28/03/05	11:18:16	11:20:06	1.88	1.21
32	28/03/05	20:22:40	21:11:38	49.03	3,570.07
33	28/03/05	21:29:22	21:46:12	16.88	3,731.52
34	29/03/05	07:26:48	07:27:11	0.43	1.66
35	29/03/05	18:11:43	18:29:31	17.87	166.95
36	30/03/05	07:53:18	07:58:43	5.48	182.43
37	30/03/05	13:02:30	13:03:13	1.12	0.44
38	30/03/05	13:04:00	13:06:08	2.20	22.91
39	30/03/05	15:43:53	15:44:49	1.00	2.80
40	30/03/05	15:45:40	16:56:10	70.55	1,016.67
41	30/03/05	18:46:48	19:00:47	14.05	5,113.94
42	30/03/05	19:01:33	21:07:16	125.77	6,076.63
43	31/03/05	08:06:09	08:09:21	3.27	3.02
44	31/03/05	08:10:37	08:21:42	11.15	48.25
45	31/03/05	21:43:48	21:46:32	2.78	61.42
46	31/03/05	21:54:18	21:56:24	2.17	1.47
47	01/04/05	07:17:43	08:18:30	0.83	64.25
48	01/04/05	20:31:47	20:43:43	12.00	1,744.29
49	01/04/05	20:46:33	21:55:33	68.88	6,290.75
Total				1161.51	61,198.66

APPENDIX THREE

Comparison of Email Time and Internet Access Time for Emails Between 21 March 2005 and 1 April 2005 (Mr Lee's Home Computer)

Email				Internet Connection		
Date	Sender	Recipients	Time sent	Start time	Finish time	Downloads (kilobytes)
21/03/05	Mr Burke	Mr Herkenhoff and Mr Lee.	6.31 a.m. ³²³	9.03 a.m.	9.54 a.m.	2,084.50
22/03/05	Mr Burke	Mr Herkenhoff, Mr Lewis and Mr Lee.	12.40 p.m. ³²⁴	1.55 p.m.	2.47 p.m.	6,830.18
23/03/05	Mr Lee	Mr Owens and Mr Burke.	10.49 a.m. ³²⁵	10.29 a.m.	10.50 a.m.	24.75
23/03/05	Mr Owens	Mr Lee, Mr Burke and Mr Herkenhoff.	3.17 p.m. ³²⁶	4.27 p.m.	4.34 p.m.	448.64
23/03/05	Mr Burke	Mr Owens, Mr Herkenhoff, Mr Lewis and Mr Lee.	4.24 p.m. ³²⁷	4.27 p.m.	4.34 p.m.	448.64
24/03/05	Mr Herkenhoff	Mr Lewis, Mr Burke, Mr Lee, Mr Owens and Mr Riley.	12.24 p.m. ³²⁸	3.17 p.m.	3.20 p.m.	81.35
24/03/05	Mr Burke	Mr Herkenhoff, Mr Lewis, Mr Lee, Mr Owens, Mr Riley and Mr Grill.	1.42 p.m. ³²⁹	3.17 p.m.	3.20 p.m.	81.35
24/03/05	Mr Owens	Mr Jakovich, Mr Lee, Mr Burke and Mr Herkenhoff.	5.44 p.m. ³³⁰	8.50 p.m.	9.43 p.m.	56.97
24/03/05	Mr Lee	Mr Owens and Mr Burke.	9.08 p.m. ³³¹	8.50 p.m.	9.43 p.m.	56.97
29/03/05	Mr Herkenhoff	Mr Lewis, Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley.	2.11 p.m. ³³²	6.11 p.m.	6.29 p.m.	166.95
31/03/05	Mr Owens	Mr Lewis, Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley.	4.07 p.m. ³³³	9.43 p.m.	9.46 p.m.	61.42
01/04/05	Mr Lewis	Mr Herkenhoff, Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley.	6.21 p.m. ³³⁴	8.31 p.m.	8.43 p.m.	1,744.29

ENDNOTES

¹ Available at <http://www.ccc.wa.gov.au>.

² DLGRD Assessment Report entitled *Alleged Breach of Electoral Gifts Provisions, Mayor Lee, City of Cockburn* 12/04/06 (E16500).

³ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07 (CCC51696).

⁴ Marta Fishing Co is an entity linked to Consolidated Marine Developments (Australia) Pty Ltd and Anchorage Industries Pty Ltd, being the land vendors for the Port Coogee Project. In accordance with the agreement between the various entities involved in the Port Coogee project, Australand were to pay all costs associated with gaining project approval, meaning that it would reimburse other entities such as Marta Fishing Co for any costs incurred.

⁵ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.140.

⁶ Section 5.62(1)(ea).

⁷ Section 5.62(2).

⁸ Regulation 30C and section 2.29.

⁹ *Local Government (Administration) Regulations 1996*.

¹⁰ Corruption and Crime Commission *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup*, 5 October 2007, p.94 and p.112.

¹¹ *Ibid*, pp. 9-10.

¹² Available at <http://www.ccc.wa.gov.au>.

¹³ DLGRD Assessment Report entitled *Alleged Breach of Electoral Gifts Provisions, Mayor Lee, City of Cockburn* 12/04/06 (E16500), *op cit*.

¹⁴ Transcript of Proceedings, Opening Address by Commissioner Hammond 12/02/07, p.2.

¹⁵ Speech by Commissioner Hammond to IRAA entitled *Corruption, Integrity and the Public Sector* 20/03/07.

¹⁶ Transcript of Proceedings, Address by Counsel Assisting 12/02/07, p.12.

¹⁷ Note that regulations 30A to 30I were inserted into the regulations as a result of recommendations arising out of the Wanneroo Royal Commission.

¹⁸ Regulation 30A(1).

¹⁹ Regulation 30A(2).

²⁰ Regulation 30A4(a).

²¹ Regulations 30B(1) and 30C(1) and 30E.

²² Regulation 30B(1).

²³ Regulation 30D(1).

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- ²⁴ Regulation 30D(2).
- ²⁵ Regulation 30G(1).
- ²⁶ Regulation 30(H).
- ²⁷ Section 5.75(1).
- ²⁸ Section 5.76(1).
- ²⁹ Section 5.60.
- ³⁰ Section 5.59.
- ³¹ Section 5.62(1)(ea).
- ³² Section 5.62(2).
- ³³ Section 5.60A.
- ³⁴ Section 5.65.
- ³⁵ Section 5.67.
- ³⁶ Section 2.29.
- ³⁷ Hansard, Local Government Amendment Bill (No 2), Second Reading, Mr Omodei, 22/10/98, p.2546.
- ³⁸ DLGRD Financial Interests Handbook, Second Edition, July 1999.
- ³⁹ *Ibid*, p.10.
- ⁴⁰ Section 5.82.
- ⁴¹ <http://www.dlgrd.wa.gov.au/Legislation/LocalGovtAmendBill.asp>.
- ⁴² *Local Government Amendment Bill 2008* Explanatory Memorandum.
- ⁴³ Hansard, Local Government (Official Conduct) Amendment Bill 2005, Second Reading, 03/05/06, Mr Ford, p.2018.
- ⁴⁴ Regulation 11(2).
- ⁴⁵ Regulation 11(1).
- ⁴⁶ Former regulation 34C(2), *Local Government (Administration) Regulations 1996*.
- ⁴⁷ Former regulation 34C(1).
- ⁴⁸ Former regulation 34C(4).
- ⁴⁹ ADCORP Marketing Communications, ADCORP Home, News, Australand Port Coogee development, viewed 9 July 2008, <http://www.adcorp.com.au/index.php?&category=34&articleId=98>.
- ⁵⁰ Port Coogee brochure entitled *Discover ... Australand Residential*, available at <http://portcoogee.com.au/default.aspx?id=219>, The Development, Brochure, viewed 9 July 2008.
- ⁵¹ Letter from Riley Mathewson Public Relations to Mr Lee 19/04/05 (E12214).

⁵² Record of Interview of Mr Riley at the Riley Mathewson Public Relations Office, 95 Hay Street, West Perth WA 6005, on 21 December 2006.

⁵³ Riley Mathewson Public Relations Activity Report, p.6 (E10963).

⁵⁴ Local Government Form 9A Disclosure of Gifts 27/04/05 (E16499).

⁵⁵ Form 3 Annual Return for the year ended 30 June 2005, 25/08/05 (E11655).

⁵⁶ Letter signed by former West Coast Eagles footballer Glen Jakovich, and sent to constituents on 31/03/05 seeking donations of \$199 for Mr Lee's campaign (E11006).

⁵⁷ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lee 21/03/05 (E10996).

⁵⁸ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.161.

⁵⁹ *Ibid.*

⁶⁰ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lewis and Mr Lee, Headed "Campaign" 22/03/05 (E10960).

⁶¹ For further information, refer to the Corruption and Crime Commission *Report on the Investigation of Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup*, *loc cit*.

⁶² Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke 19/02/07, p.222.

⁶³ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.163.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid*, p.164.

⁶⁷ *Ibid*, p.165.

⁶⁸ *Ibid.*

⁶⁹ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, p.16.

⁷⁰ Email from Mr Herkenhoff to Mr Lewis, copied to Mr Burke, Mr Lee, Mr Owens and Mr Riley, headed "Campaign" 24/03/05 (E10993).

⁷¹ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, *op cit*, p.18.

⁷² Email from Mr Burke to Mr Herkenhoff and Mr Lewis, copied to Mr Lee, Mr Owens, Mr Riley and Mr Grill, headed "Campaign" 24/03/05 (E10993), *op cit*.

⁷³ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, *op cit*, p.19.

⁷⁴ Email from Mr Lee to Mr Owens, copied to Mr Burke, headed "Candidate profiles" 23/03/05 (E10982).

⁷⁵ Email from Mr Owens to Mr Lee, copied to Mr Burke and Mr Herkenhoff, headed "Candidate profiles" 23/03/05 (E10982).

⁷⁶ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.167.

⁷⁷ *Ibid.*

⁷⁸ Email from Mr Burke to Mr Owens and Mr Herkenhoff, copied to Mr Lee and Mr Lewis, headed “Candidate profiles” 23/03/05 (E10991).

⁷⁹ Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke 19/02/07, *op cit*, p.225.

⁸⁰ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.174.

⁸¹ Email from Mr Owens to Mr Jakovich and Mr Lee, copied to Mr Burke and Mr Herkenhoff, and response from Mr Lee to Mr Owens, copied to Mr Burke, headed “Stephen Lee draft letter” 24/03/05 (E10983).

⁸² Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.158.

⁸³ *Ibid*, p.159.

⁸⁴ *Ibid*.

⁸⁵ *Ibid*, p.160.

⁸⁶ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 15/02/07, p.94.

⁸⁷ *Ibid*.

⁸⁸ Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, p.68.

⁸⁹ *Ibid*.

⁹⁰ *Ibid*, p.69.

⁹¹ The amount paid by Australand, via the Marta Fishing Co, in respect of invoices issued by Riley Mathewson Public Relations to PCN was not insignificant, totalling \$490,749.62 by the end of March 2005.

⁹² Email to members of PCN of 29 March 2005, 1:49 p.m., from Mr Peter Herkenhoff, headed “From Website Contact Page” (E10984).

⁹³ Email from Mr Peter Herkenhoff to Mr Lewis, Mr Burke and Mr Grill, copied to Mr Lee, Mr Owens and Mr Riley, of 29/03/05, 2:11 p.m., headed “From Website Contact Page” (E10984).

⁹⁴ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.175.

⁹⁵ Email from Mr Owens to Mr Lewis, copied to Mr Herkenhoff, headed “Fundraising event” 30/03/05 (E10961).

⁹⁶ Email from Mr Herkenhoff to Mr Riley, copied to Mr Owens, headed “Fundraising event” 30/03/05 (E10961).

⁹⁷ *Ibid*.

⁹⁸ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, *op cit*, p.21.

⁹⁹ *Ibid*, p.25.

¹⁰⁰ Email from Mr Owens to Mr Lewis, copied to Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley, headed “The Stephen Lee Election Campaign” 31/03/05 (E10986).

¹⁰¹ Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, *op cit*, p.71.

¹⁰² Email from Mr Herkenhoff to Mr Lewis, with a copy to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley, headed “PCN Campaign Recommendations” 01/04/05 (E10992).

¹⁰³ *Ibid.*

¹⁰⁴ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.179.

¹⁰⁵ *Ibid*, p.180.

¹⁰⁶ *Ibid*, p.181.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid*, p.182.

¹⁰⁹ *Ibid*, p.183.

¹¹⁰ Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, *op cit*, p.75.

¹¹¹ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lee 21/03/05 (E10996), *op cit*.

¹¹² Email from Mr Burke to Mr Herkenhoff, copied to Mr Lewis and Mr Lee, headed “Campaign” 22/03/05 (E10960), *op cit*.

¹¹³ Email from Mr Lee to Mr Owens, copied to Mr Burke, headed “Candidate profiles” 23/03/05 (E10982), *op cit*.

¹¹⁴ Email from Mr Burke to Mr Owens and Mr Herkenhoff, copied to Mr Lee and Mr Lewis, headed “Candidate profiles” 23/03/05 (E10991), *op cit*.

¹¹⁵ Email from Mr Herkenhoff to Mr Lewis, copied to Mr Burke, Mr Lee, Mr Owens and Mr Riley, headed “Campaign” 24/03/05 (E10993), *op cit*.

¹¹⁶ Email from Stephen Lee to Mr Owens, copied to Mr Burke, headed “Stephen Lee draft letter” 24/03/05 (E10983).

¹¹⁷ Email from Mr Peter Herkenhoff to Mr Lewis, Mr Burke and Mr Grill, copied to Mr Lee, Mr Owens and Mr Riley, of 29/03/05, 2:11 p.m., headed “From Website Contact Page” (E10984), *op cit*.

¹¹⁸ Email from Mr Owens to Mr Lewis, copied to Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley, headed “The Stephen Lee Election Campaign” 31/03/05 (E10986), *op cit*.

¹¹⁹ Email from Mr Lewis to Mr Herkenhoff, copied to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley, headed “PCN Campaign Recommendations” 01/04/05 (E10992).

¹²⁰ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.145.

¹²¹ *Ibid.*

¹²² Port Coogee Now luncheon invitation 18/04/05 (E11004).

¹²³ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, *op cit*, p.26.

¹²⁴ Email from Mr Graham to support@portcoogeenow.com, headed “Invite – Lunch on 26 April 2005” 21/04/05 (E10962).

¹²⁵ Email from Mr Herkenhoff to Mr Lewis, Mr Burke and Mr Grill, copied to Mr Downie, Mr Owens and Mr Riley, headed “Invite – Lunch on 26 April 2005” 22/04/05 (E10962).

¹²⁶ Email from Mr Burke to Mr Herkenhoff, Mr Lewis and Mr Grill, copied to Mr Downie, Mr Owens and Mr Riley, headed “Invite – Lunch on 26 April 2005” 22/04/05 (E10962).

¹²⁷ *Ibid.*

¹²⁸ Documentation provided to the Commission by Richard Graham, p.75 (E12123).

¹²⁹ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, *op cit*, p28.

¹³⁰ *Ibid*, p29.

¹³¹ *Ibid.*

¹³² Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, *op cit*, p.83.

¹³³ *Ibid*, p.85.

¹³⁴ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 15/02/07, *op cit*, p.105.

¹³⁵ Email from Mr Owens to Mr Lee, copied to Mr Herkenhoff, headed “Invite – Lunch on 26 April 2005” 22/04/05 (E10988).

¹³⁶ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.184.

¹³⁷ Transcript of Proceedings, Public Examination of Mr Sebastiano Fazio 14/02/07, p.104.

¹³⁸ Cheque drawn on the account of PCN for \$15,820, payable to Mr Lee 22/06/05 (E10998).

¹³⁹ Bankwest society cheque account statements for PCN (E8756).

¹⁴⁰ Local Government Form 9A Disclosure of Gifts 27/04/05 (E16499), *op cit*.

¹⁴¹ Form 3 Annual Return for the year ended 30 June 2005, 25/08/05 (E11655), *op cit*.

¹⁴² Letter from Riley Mathewson Public Relations to Mr Lee 19/04/05 (E12214), *op cit*.

¹⁴³ Riley Mathewson Public Relations invoice addressed to Mr Lee 30/03/05 (E10977).

¹⁴⁴ Riley Mathewson Public Relations invoice addressed to Mr Lee 26/04/05 (E10978).

¹⁴⁵ Riley Mathewson Public Relations invoice addressed to Mr Lee 09/05/05 (E10979).

¹⁴⁶ Transcript of Proceedings, Public Examination of Mr Desmond Riley 14/02/07, p.29.

¹⁴⁷ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.147.

¹⁴⁸ Riley Mathewson Public Relations Activity Report, p.6 (E10963), *loc cit*.

¹⁴⁹ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.150.

¹⁵⁰ *Ibid*, p.148.

¹⁵¹ *Ibid.*

¹⁵² Email from Mr Owens to Mr Lee, with a copy to Mr Burke, headed “Stephen Lee election campaign gifts to team members” 18/04/05 (E11653).

¹⁵³ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.148, *loc cit*.

¹⁵⁴ *Ibid*, p.147.

¹⁵⁵ Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, *op cit*, p.89.

¹⁵⁶ *Ibid*.

¹⁵⁷ Email from Mr Owens to Mr Riley, copied to Mr Herkenhoff, headed “PCN fundraiser” 19/04/05 (E12217).

¹⁵⁸ Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, *op cit*, p.78.

¹⁵⁹ *Ibid*, p.79.

¹⁶⁰ *Ibid*.

¹⁶¹ Transcript of Proceedings, Public Examination of Mr Peter James Owens 24/04/08, p.11.

¹⁶² Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.151.

¹⁶³ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 15/02/07, *op cit*, p.84.

¹⁶⁴ *Ibid*, p.107.

¹⁶⁵ Email from Mr Owens to Mr Riley and Mr Mathewson, copied to Mr Herkenhoff and Mrs Gail Riley, headed “Stephen Lee Campaign” 16/05/05 (E10964).

¹⁶⁶ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 15/02/07, *op cit*, p.108.

¹⁶⁷ *Ibid*, p.109.

¹⁶⁸ *Ibid*.

¹⁶⁹ *Ibid*, p.110.

¹⁷⁰ *Ibid*, p.111.

¹⁷¹ *Ibid*, p.115.

¹⁷² Transcript of Proceedings, Public Examination of Mr Christopher Lewis 19/02/07, p.126.

¹⁷³ *Ibid*.

¹⁷⁴ Transcript of Proceedings, Public Examination of Mr Desmond Riley 14/02/07, *op cit*, p.42.

¹⁷⁵ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 19/02/07, *op cit*, p.132.

¹⁷⁶ Riley Mathewson Public Relations invoice addressed to Mr Lee 20/06/05 (E10969).

¹⁷⁷ Cheque 451 drawn on the account of Mr Lee, payable to Riley Mathewson Public Relations 21/06/05 (E10971).

¹⁷⁸ Deposit slip for the account of Mr Lee, for cheques from PCN and Riley Mathewson Public Relations 22/06/05 (E16494).

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- ¹⁷⁹ Receipt acknowledging funds from Riley Mathewson Public Relations, signed by Mr Lee 21/06/05 (E10974).
- ¹⁸⁰ Transcript of Proceedings, Public Examination of Mr Desmond Riley 14/02/07, *op cit*, p.50.
- ¹⁸¹ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit*, p.205.
- ¹⁸² *Ibid*.
- ¹⁸³ *Ibid*, p.209.
- ¹⁸⁴ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 19/02/07, p.132, *loc cit*.
- ¹⁸⁵ Email from Mr Owens to Mr Lee, with a copy to Mr Burke, headed “Stephen Lee election campaign gifts to team members” 18/04/05 (E11653), *op cit*.
- ¹⁸⁶ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.148, *loc cit*.
- ¹⁸⁷ *Ibid*, p.147. *Loc cit*.
- ¹⁸⁸ Letter from Riley Mathewson Public Relations to Mr Lee 19/04/05 (E12214), *op cit*.
- ¹⁸⁹ Riley Mathewson Public Relations Activity Report, page 6 (E10963), *loc cit*.
- ¹⁹⁰ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.205, *loc cit*.
- ¹⁹¹ Note that Mr Lee also raised \$3,559 in response to the fund-raising letter, and he also received reimbursement from Richard Graham of \$2,820 and Kevin Allen of \$1,000, meaning that he actually contributed very little funds, if any, to the cost of his election campaign.
- ¹⁹² Section 86 representations, 31 July 2008, paragraph [243].
- ¹⁹³ *Ibid*, paragraph [268].
- ¹⁹⁴ Transcript of Proceedings, Private Examination of Mr Peter James Owens 24/04/08, p.71.
- ¹⁹⁵ *Ibid*, pp.71-72.
- ¹⁹⁶ *Ibid*, p.81.
- ¹⁹⁷ *Ibid*, p.73.
- ¹⁹⁸ *Ibid*, p.81. *Loc cit*.
- ¹⁹⁹ *Ibid*, pp.85-87.
- ²⁰⁰ *Ibid*, p.91
- ²⁰¹ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, Attachment 11 (CCC51696), *op cit*.
- ²⁰² *Ibid*, p.3 (CCC51696).
- ²⁰³ Email from Mr Riley to Mr Douglas, headed “Confirmation” 02/06/05 (E12213)
- ²⁰⁴ Transcript of Proceedings, Public Examination of Mr Desmond Riley 14/02/07, *op cit*, p.47.
- ²⁰⁵ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.3 (CCC51696), *op cit*.

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- ²⁰⁶ *Ibid.*
- ²⁰⁷ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.209, *loc cit.*
- ²⁰⁸ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.3 (CCC51696), *loc cit.*
- ²⁰⁹ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 19/02/07, *op cit.*, p.127.
- ²¹⁰ *Ibid.*, p.132. *Loc cit.*
- ²¹¹ Letter to Mr Stephen Lee, Mayor of the City of Cockburn, from Mr B Peyton, Principal Investigations Officer, Department of Local Government and Regional Development, of 16 February 2006.
- ²¹² Letter to Mr B Peyton, Principal Investigations Officer, Department of Local Government and Regional Development, of 27 February 2006 from Mr Stephen Lee, Mayor of the City of Cockburn (D0600700).
- ²¹³ DLGRD Assessment Report entitled *Alleged Breach of Electoral Gifts Provisions, Mayor Lee, City of Cockburn* 12/04/06 (E16500), *op cit.*
- ²¹⁴ *Ibid.*
- ²¹⁵ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit.*, p.141.
- ²¹⁶ *Ibid.*, p.142.
- ²¹⁷ *Ibid.*
- ²¹⁸ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 19/02/07, p.127, *loc cit.*
- ²¹⁹ Commission case note of a phone conversation between Mr Riley and Commission Financial Investigator White on 14/02/07.
- ²²⁰ Email from Mr Burke to Mr Owens and Mr Herkenhoff, copied to Mr Lee and Mr Lewis 23/03/05 (E10991), *op cit.*
- ²²¹ Email from Mr Owens to Glen Jakovich and Mr Lee, copied to Mr Burke and Mr Herkenhoff, headed "Stephen Lee draft letter" 24/03/05 (E10983).
- ²²² Email from Mr Lee to Mr Owens, copied to Mr Burke, headed "Stephen Lee draft letter" 24/03/05 (E10983), *op cit.*
- ²²³ Email from Mr Herkenhoff to Mr Lewis, copied to Mr Burke, Mr Lee, Mr Owens and Mr Riley, headed "Campaign" 24/03/05 (E10993), *op cit.*
- ²²⁴ Transcript of Proceedings, Public Examination of Mr Peter Herkenhoff 15/02/07, p.18, *loc cit.*
- ²²⁵ Email from Richard Graham to the Commission 22/11/07 (E16559).
- ²²⁶ Transcript of Proceedings, Private Examination of Mr Peter James Owens 24/04/08, *op cit.*, p.29.
- ²²⁷ Conceptual Internet Australia access log for Mr Lee (E16033).
- ²²⁸ Conceptual Internet Australia ISPs Report (E16031).
- ²²⁹ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.2 (CCC51696), *op cit.*
- ²³⁰ *Ibid.*

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- ²³¹ *Ibid*, Attachment 4 (CCC51696).
- ²³² *Ibid*.
- ²³³ Refer Appendix Two, Item 35.
- ²³⁴ *Ibid*, Item 36.
- ²³⁵ *Ibid*, Items 40-42.
- ²³⁶ Email from Richard Graham to the Commission 22/11/07 (E16559), *op cit*.
- ²³⁷ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, Attachment 10 (CCC51696), *op cit*.
- ²³⁸ Email from Mr Lee to Mr Owens, copied to Mr Burke, headed "Candidate profiles" 23/03/05 (E10982), *op cit*.
- ²³⁹ Email from Mr Owens to Mr Jakovich and Mr Lee, copied to Mr Burke and Mr Herkenhoff, and response from Mr Lee to Mr Owens, copied to Mr Burke, headed "Stephen Lee draft letter" 24/03/05 (E10983), *op cit*.
- ²⁴⁰ Email from Mr Owens to Mr Lewis, copied to Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley, headed "The Stephen Lee Election Campaign" 31/03/05 (E10986), *op cit*.
- ²⁴¹ Email from Mr Owens to Mr Lee, copied to Mr Kimber, headed "glen letterhead" 29/03/05 (E17057).
- ²⁴² Refer Appendix Three.
- ²⁴³ Email from Mr Owens to Mr Kimber, headed "Cockburn elections material", 30/03/05 (E17058).
- ²⁴⁴ Transcript of Proceedings, Private Examination of Mr Peter James Owens 24/04/08, *op cit*, p.37.
- ²⁴⁵ *Ibid*, p.43.
- ²⁴⁶ *Ibid*, p.54.
- ²⁴⁷ *Ibid*, p.45.
- ²⁴⁸ *Ibid*, p.46.
- ²⁴⁹ *Ibid*, p.56.
- ²⁵⁰ *Ibid*, p.57.
- ²⁵¹ *Ibid*, p.58.
- ²⁵² *Ibid*, p.59.
- ²⁵³ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, Attachment 5 (CCC51696), *op cit*.
- ²⁵⁴ Conceptual Internet Australia access log for Mr Lee (E16033), *op cit*.
- ²⁵⁵ For details, refer Appendix One.
- ²⁵⁶ Conceptual Internet Australia ISPs Report (E16031), *op cit*.
- ²⁵⁷ Email from Mr Riley to Mr Lee, headed "Riley Mathewson Public Relations Invoice" 17/06/05 (E10968).

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- ²⁵⁸ Cheque 452 drawn on the account of Stephen Lee and payable to Austin Computers (E16493).
- ²⁵⁹ Austin Computers invoice issued to Mr Lee on 08/07/05 (E15719).
- ²⁶⁰ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.4 (CCC51696), *op cit*.
- ²⁶¹ *Ibid*.
- ²⁶² *Ibid*, p.5.
- ²⁶³ *Ibid*.
- ²⁶⁴ *Ibid*.
- ²⁶⁵ Transcript of Proceedings, Public Examination of Mr Christopher Lewis 19/02/07, p.127, *loc cit*.
- ²⁶⁶ Commission case note of a phone conversation between Mr Riley and Commission Financial Investigator White on 14 February 2007.
- ²⁶⁷ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.5 (CCC51696), *op cit*.
- ²⁶⁸ Transcript of Proceedings, Private Examination of Mr Peter James Owens 24/04/08, p.91, *loc cit*.
- ²⁶⁹ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.5 (CCC51696), *loc cit*.
- ²⁷⁰ *Ibid*.
- ²⁷¹ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.205, *loc cit*.
- ²⁷² Transcript of Proceedings, Public Examination of Mr Christopher Lewis 15/02/07, p.107, *loc cit*.
- ²⁷³ *Ibid*, p.109. *Loc cit*.
- ²⁷⁴ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.5 (CCC51696), *loc cit*.
- ²⁷⁵ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.147, *loc cit*.
- ²⁷⁶ Transcript of Proceedings, Public Examination of Mr Peter James Owens 14/02/07, p.79, *loc cit*.
- ²⁷⁷ *Ibid*.
- ²⁷⁸ Transcript of Proceedings, Private Examination of Mr Peter James Owens 24/04/08, p.91, *loc cit*.
- ²⁷⁹ *Ibid*, p.11.
- ²⁸⁰ Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, p.5 (CCC51696), *loc cit*.
- ²⁸¹ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p.140, *loc cit*.
- ²⁸² City of Cockburn minutes of ordinary council meeting 16/03/04 (E12476).
- ²⁸³ City of Cockburn minutes of ordinary council meeting 09/06/05 (E10928).
- ²⁸⁴ City of Cockburn minutes of ordinary council meeting 11/08/05 (E10936).
- ²⁸⁵ City of Cockburn minutes of ordinary council meeting 08/09/05 (E10927).
- ²⁸⁶ City of Cockburn minutes of special council meeting 25/07/06 (E10924).

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- ²⁸⁷ *Ibid.*
- ²⁸⁸ Section 5.62(1)(ea).
- ²⁸⁹ Section 5.62(2).
- ²⁹⁰ Regulation 30C and section 2.29.
- ²⁹¹ Due to the interaction of section 5.62(1)(ea), section 5.62(2), and regulation 30C.
- ²⁹² Submissions for Mr Lee by Hardy Bowen Lawyers 19/11/07, Attachment 15, p.5 (CCC51696), *op cit.*
- ²⁹³ Former regulation 34C(2), *Local Government (Administration) Regulations 1996.*
- ²⁹⁴ Former regulation 34C(1).
- ²⁹⁵ Former regulation 34C(4).
- ²⁹⁶ City of Cockburn Code of Conduct for Elected Members, at 2.4 (E10920).
- ²⁹⁷ *Ibid.*, at 3.5 (E10920).
- ²⁹⁸ *Ibid.*, at 3.7 (E10920).
- ²⁹⁹ DLGRD publication *Disclosure of Interests Affecting Impartiality*, May 2000, paragraph 5 (E10764).
- ³⁰⁰ *Ibid.*, paragraph 8 (E10764).
- ³⁰¹ *Ibid.*, paragraph 9 (E10764).
- ³⁰² Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit.*, p.185.
- ³⁰³ *Ibid.*, p.186.
- ³⁰⁴ Section 86 representations, 31 July 2008, *op cit.*, paragraph [390].
- ³⁰⁵ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, *op cit.*, pp.189-190.
- ³⁰⁶ Corruption and Crime Commission *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup*, *loc cit.*
- ³⁰⁷ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p161, *loc cit.*
- ³⁰⁸ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lee 21/03/05 (E10996), *op cit.*
- ³⁰⁹ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p163, *loc cit.*
- ³¹⁰ *Ibid.*, p165.
- ³¹¹ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lewis and Mr Lee, Headed "Campaign" 22/03/05 (E10960), *op cit.*
- ³¹² Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p174, *loc cit.*
- ³¹³ Email from Mr Burke to Mr Owens and Mr Herkenhoff, copied to Mr Lee and Mr Lewis 23/03/05 (E10991), *op cit.*
- ³¹⁴ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p175, *loc cit.*

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- ³¹⁵ Email from Mr Peter Herkenhoff to Mr Lewis, Mr Burke and Mr Grill, copied to Mr Lee, Mr Owens and Mr Riley, of 29/03/05, 2:11 p.m., headed "From Website Contact Page" (E10984), *op cit.*
- ³¹⁶ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p179, *loc cit.*
- ³¹⁷ Email from Mr Lewis to Mr Herkenhoff, copied to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley, headed "PCN Campaign Recommendations" 01/04/05 (E10992), *op cit.*
- ³¹⁸ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p184, *loc cit.*
- ³¹⁹ Email from Mr Owens to Mr Lee, copied to Mr Herkenhoff, headed "Invite – Lunch on 26 April 2005" 22/04/05 (E10988), *op cit.*
- ³²⁰ Transcript of Proceedings, Public Examination of Mr Stephen Lee 19/02/07, p150, *loc cit.*
- ³²¹ Email from Mr Owens to Mr Lee 10/05/05 (E10989).
- ³²² Conceptual Internet Australia access log for Mr Lee (E16033), *op cit.*
- ³²³ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lee 21/03/05 (E10996), *op cit.*
- ³²⁴ Email from Mr Burke to Mr Herkenhoff, copied to Mr Lewis and Mr Lee, Headed "Campaign" 22/03/05 (E10960), *op cit.*
- ³²⁵ Email from Mr Lee to Mr Owens, copied to Mr Burke, headed "Candidate profiles" 23/03/05 (E10982), *op cit.*
- ³²⁶ Email from Mr Owens to Mr Lee, copied to Mr Burke and Mr Herkenhoff, headed "Candidate profiles" 23/03/05 (E10982), *op cit.*
- ³²⁷ Email from Mr Burke to Mr Owens and Mr Herkenhoff, copied to Mr Lee and Mr Lewis, headed "Candidate profiles" 23/03/05 (E10991), *op cit.*
- ³²⁸ Email from Mr Herkenhoff to Mr Lewis, copied to Mr Burke, Mr Lee, Mr Owens and Mr Riley, headed "Campaign" 24/03/05 (E10993), *op cit.*
- ³²⁹ *Ibid.*
- ³³⁰ Email from Mr Owens to Mr Jakovich and Mr Lee, copied to Mr Burke and Mr Herkenhoff, headed "Stephen Lee draft letter" 24/03/05 (E10983), *op cit.*
- ³³¹ Email from Mr Lee to Mr Owens, copied to Mr Burke, headed "Stephen Lee draft letter" 24/03/05 (E10983), *op cit.*
- ³³² Email from Mr Peter Herkenhoff to Mr Lewis, Mr Burke and Mr Grill, copied to Mr Lee, Mr Owens and Mr Riley, of 29/03/05, 2:11 p.m., headed "From Website Contact Page" (E10984), *op cit.*
- ³³³ Email from Mr Owens to Mr Lewis, copied to Mr Burke, Mr Herkenhoff, Mr Lee and Mr Riley, headed "The Stephen Lee Election Campaign" 31/03/05 (E10986), *op cit.*
- ³³⁴ Email from Mr Lewis to Mr Herkenhoff, copied to Mr Burke, Mr Grill, Mr Lee, Mr Owens and Mr Riley, headed "PCN Campaign Recommendations" 01/04/05 (E10992), *op cit.*