



CORRUPTION AND CRIME COMMISSION

REPORT ON A PURCHASE OF LAND IN THE AUSTRALIAN MARINE COMPLEX HENDERSON BY A SENIOR OFFICER OF LANDCORP

20 JUNE 2016

ISBN: 978-0-9943034-5-5

© 2016 Copyright in this work is held by the Corruption and Crime Commission (“the Commission”). Division 3 of the *Copyright Act 1968* (Commonwealth) recognises that limited further use of this material can occur for the purposes of “fair dealing”, for example, study, research or criticism. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968* please write to the Commission at the postal address below.

This report and further information about the Commission can be found on the Commission Website at www.ccc.wa.gov.au

Corruption and Crime Commission

Postal Address	PO Box 7667 Cloisters Square PERTH WA 6850
Telephone	(08) 9215 4888 1800 809 000 (Toll Free for callers outside the Perth metropolitan area.)
Facsimile	(08) 9215 4884
Email	info@ccc.wa.gov.au
Office Hours	8.30 am to 5.00 pm, Monday to Friday.

Special Needs Services

If you have a speech or hearing difficulty, contact the Commission via the National Relay Service (NRS) on 133 677 for assistance or visit the NRS Website, www.relayservice.com.au. NRS is an Australia-wide telephone service available at no additional charge. The Commission Toll Free number is 1800 809 000.

If your preferred language is a language other than English, contact the Translating and Interpreting Service (TIS) for assistance. TIS provides a free, national 24 hours a day, seven days a week telephone interpreting service on 13 14 50. TIS also provides on-site interpreters for face-to-face interviews on 1300 655 082.



CORRUPTION AND CRIME COMMISSION

Mr Nigel Pratt
Clerk of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Ms Kirsten Robinson
Acting Clerk of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr Pratt
Dear Ms Robinson

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption, Crime and Misconduct Act 2003* (CCM Act), the Commission hereby transmits to you a copy of its *Report on a Purchase of Land in the Australian Marine Complex Henderson by a Senior Officer of LandCorp*.

The Commission notes that under section 93(3) of the CCM 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 sincerely

A handwritten signature in blue ink that reads "John McKechnie".

John McKechnie, QC
COMMISSIONER

20 June 2016

TABLE OF CONTENTS

INTRODUCTION	1
LandCorp	3
Mr Ben McCarthy	3
Mr Ben Widdowson	3
Ms Marissa Scerri.....	4
The sale of Lot 69 Contest Link, Henderson to KRAM WA Pty Ltd	4
Mr Widdowson becomes KRAM WA's agent.....	5
A corrupt bargain is hatched.....	5
The deception begins	6
Was a conflict of interest disclosed by Mr McCarthy?	10
The contract of sale	16
Further deception	17
Mr Ben McCarthy - opinion of serious misconduct	22
Mr Ben Widdowson	23
Ms Marissa Scerri.....	23
 APPENDIX	
Mr Widdowson's draft of letter from KRAM WA to LandCorp amended by Mr McCarthy.....	27

INTRODUCTION

- [1] When a public servant or agent corruptly uses inside information for personal gain, the integrity of government is breached.
- [2] LandCorp trusted a Senior Project Manager, Mr Ben McCarthy and an agent of JLL Australia, Mr Ben Widdowson to market and sell land in the support precinct of the Australian Marine Complex at Henderson.
- [3] What follows is the story how that trust was abused. Mr McCarthy and Mr Widdowson did their best to hide involvement in the purchase of Lot 69 Contest Link, Henderson.
- [4] They breached the code of ethics by which each was bound. In the Commission's opinion Mr McCarthy engaged in serious misconduct by corruptly taking advantage of his employment to gain a benefit for Mr Widdowson, another LandCorp officer (and Mr Widdowson's then partner) Marissa Scerri and himself.
- [5] Mr Widdowson's employment was terminated the moment his Managing Director became aware of what he had done. He was not a public officer and the Commission has no jurisdiction to form an opinion of serious misconduct. His actions however are intertwined with those of Mr McCarthy.
- [6] Ms Scerri is a Marketing Manager at LandCorp. The Commission has not formed an opinion of serious misconduct about her actions.
- [7] It recommends LandCorp reinforce its conflict of interest policies with staff and contractors in case Ms Scerri's inadequate understanding is widespread.
- [8] Before finalising this report, the Commission invited submissions from persons who may be adversely affected. Where the Commission agreed with the submission the report has been amended.

LandCorp

- [9] The Western Australian Land Authority, LandCorp, has a remit to develop and market industrial land for the benefit of the State.
- [10] LandCorp's role is to seek approvals and obtain titles to land before divesting it to purchasers in the private sector. The purpose is not to landbank but to grow and utilise the land, not just leave it fallow.
- [11] To achieve this purpose, LandCorp puts conditions on land including a requirement to develop. To protect these conditions, a caveat is lodged by LandCorp.¹
- [12] The Australian Marine Complex (AMC) at Henderson has common user infrastructure provided by government to defence, shipbuilding and oil and gas industries.
- [13] JLL Australia is a commercial real estate company engaged by LandCorp to market and sell land in the AMC.

Mr Ben McCarthy

- [14] Mr Ben McCarthy commenced as a project manager at LandCorp in 2006 rising to Senior Project Manager in 2010, a position he held at the time of his private examination. He effectively represented LandCorp as vendor of land in the AMC. Mr McCarthy was project manager for the AMC under Mr John Hackett until he moved to the environmental division on 13 August 2012, thereafter reporting to Ms Sharon Clark.

Mr Ben Widdowson

- [15] Mr Ben Widdowson holds a sales representative licence. He was employed by Watchtower before joining JLL in September 2010. Mr Widdowson had some involvement in AMC while at Watchtower as Watchtower and JLL were appointed as agents by LandCorp to market and sell land in the AMC. Mr Widdowson was not involved in the original sale of Lot 69.
- [16] Mr Widdowson was familiar with the AMC.² When he transferred to JLL Mr Widdowson was the predominant liaison person with LandCorp for the AMC development.³ His counterpart was Mr McCarthy, until he moved to the environmental division.

¹ Transcript of Private Examination of J Hackett 19 April 2016, p4.

² Transcript of Private Examination of B Widdowson 19 April 2016, p9.

³ Transcript of Private Examination of B Widdowson 19 April 2016, p3.

Ms Marissa Scerri

- [17] Ms Marissa Scerri is a marketing manager at LandCorp which she joined in 2005.
- [18] Until 2015 she was Mr Widdowson's defacto partner. She did not work with Mr McCarthy on AMC although they were both involved in another project.

The sale of Lot 69 Contest Link, Henderson to KRAM WA Pty Ltd

- [19] KRAM WA Pty Ltd's main business is fabrication of piping and structural fabrication for offshore and mining industries. KRAM WA purchased Lot 69 to develop it for business. Consistent with LandCorp's remit, the sale to KRAM WA contained conditions:
 - (a) *the Purchaser shall complete the construction of certain buildings on the Land;*
 - (b) *the Purchaser shall use the Land for the Commercial Purpose (as defined);*
 - (c) *the Purchaser shall not sell assign transfer lease license or part with possession of the Land until completion of the development in accordance with the Contract; and*
 - (d) *in the event the Purchaser fails to observe any obligation under the Contract then LandCorp shall have an option to repurchase the Land.*

... the Purchaser shall not mortgage the land without the prior approval in writing of LandCorp.⁴
- [20] The conditions were designed in part to ensure development and deter speculators.
- [21] As LandCorp's policy was to have land developed and used for particular purposes, to prevent speculation, land could not be on-sold without Landcorp's consent until the conditions for development were fulfilled.
- [22] Shortly after purchase, the global financial crisis caused disruption and a tightening of access to finance and KRAM WA was unable to finance the development. KRAM WA wasn't able to commence development within 24 months⁵ and complete development within 3 years. Unless LandCorp extended these times, it had the option of repurchasing the property and could realise any potential profit from an increase in land value.

⁴ Original Contract of Sale 2007, Mortgagee's Deed of Covenant, Clause C.

⁵ KRAM WA's conditions of sale.

Mr Widdowson becomes KRAM WA's agent

- [23] Mr McCarthy told Mr Widdowson his supervisors did not want LandCorp to repurchase the land. He advised that KRAM WA should get an agent.
- [24] Through Mr Widdowson, JLL entered into an exclusive agency agreement with KRAM WA. Mr Widdowson arranged marketing. KRAM WA sent Mr Widdowson detailed plans and development costs including steel production costs. Mr Widdowson shared this information with Mr McCarthy. This was information not generally available.
- [25] Lot 69 was marketed and an advertising sign placed on the property. A potential buyer that Mr Widdowson advocated for LandCorp to approve was Relocatables Australia Pty Ltd. According to Mr Widdowson the deal just stalled.⁶ Relocatables withdrew on 1 September 2011. There seemed to be no other serious interest.

A corrupt bargain is hatched

- [26] Sometime before 22 May 2012, Mr McCarthy and Mr Widdowson agreed they would purchase Lot 69 for themselves. The arrangement was always to purchase the land (either in their own name or through a family trust).
- [27] They were in a privileged position because of information about KRAM WA's difficulties and its costings which they obtained from their respective employers.
- [28] Mr Widdowson did not obtain KRAM WA's prior written consent to sell to him. This breached the prohibition in the *Real Estates and Business Agents Act 1978*.⁷ He did not recommend that KRAM WA obtain an independent valuation.⁸
- [29] The arrangement to which each man agreed was to represent to LandCorp that KRAM WA had overcome its financial difficulties and was in a position to develop the land. This was necessary because KRAM WA was unable to meet conditions to obtain development approval and complete the development within the time limits and needed an extension.
- [30] Although Mr McCarthy and Mr Widdowson in fact engaged the builders and financed the development, they drafted letters for KRAM WA to send to LandCorp pretending that KRAM WA was the developer. They kept hidden from LandCorp, contracts of sale to purchase Lot 69 from KRAM WA until after the caveat was lifted. Mr McCarthy and Mr Widdowson deceived LandCorp into believing that KRAM WA

⁶ Transcript of Private Examination of B Widdowson 19 April 2016, p11.

⁷ Section 64 of the *Real Estate and Business Agents Act 1978* and article 12 of the *Code of Conduct for Agents and Sales Representatives 2011*.

⁸ As advised by the Real Estate Institute of Western Australia in their 'disclosure of interest and consent in real estate or business transactions' form.

eventually did develop Lot 69. They never told LandCorp about the conditional contracts of sale they entered into with KRAM WA.

- [31] Instead, they let LandCorp think that everything was above board so that it withdrew the caveat.
- [32] Who knows what LandCorp might have done if its officers (other than Mr McCarthy) had known the true situation. Mr Widdowson draws attention to a telephone conversation he had with Mr Hackett at 5.36 pm on 30 August 2012. He says the discussion was brief but clear, confirming Mr Hackett's awareness of Mr McCarthy's, Ms Scerri's and Mr Widdowson's proposed involvement and was made following-up on Mr McCarthy's meeting with Mr Hackett two days earlier.
- [33] The Commission notes that the call was only of 41 seconds duration. A later reference in this report to Mr McCarthy meeting with Mr Hackett shows that anything said to Mr Hackett was misleading.
- [34] LandCorp had a number of options. It might have repurchased the land. If the land was subsequently re-sold at a profit LandCorp would be entitled to that profit. It might have refused to allow Mr McCarthy or Mr Widdowson to be involved in such a blatant conflict of interest. It might have even allowed the arrangement to proceed. No one will ever know because Mr McCarthy and Mr Widdowson kept relevant details secret.
- [35] It became apparent during his private examination that Mr McCarthy believes that everything he did could be legitimised by approval of his conflict of interest declaration.
- [36] There is considerable doubt as to whether he made a declaration at all. Even if he did, the declaration he said he made was a lie. He never obtained written CEO approval. He "assumed" it has been given.⁹ There was no reasonable basis for him to believe he had approval to purchase Lot 69 and his conduct shows the steps he took to disguise his involvement.

The deception begins

- [37] If KRAM WA stays on the Certificate of Title as registered proprietor until the conditions are fulfilled and the caveat lifted, LandCorp will not know of Mr McCarthy and Mr Widdowson's involvement when Lot 69 is transferred to them. They embarked on a path of deception to ensure LandCorp would not find out the truth.
- [38] For example, in an email from Mr McCarthy to Ms Jane Francz the LandCorp Sales Conditions Officer, who had enquired:

⁹ Transcript of Private Examination of B McCarthy 20 April 2016, pp38-39.

Hi Jane,

The agent has indicated that the owners are nearing a deal with a third party that will enable development of the site.

I have asked for a revised programme once some certainty is available. Im happy to hold for the time being if you are.

Cheers

*Ben McCarthy*¹⁰

- [39] The third party was Mr McCarthy, Mr Widdowson and potentially a builder.¹¹ These identities were never disclosed to LandCorp.
- [40] Mr McCarthy's evidence was that the reference to third party was not a reference to himself. There were a number of parties Mr Widdowson had presented the deal to.¹² Obviously, it was a reference to Mr McCarthy and Mr Widdowson. There was no other third party.
- [41] On 11 May 2012 Mr McCarthy and Mr Widdowson arranged to meet for coffee at LandCorp Champion Lakes to discuss "Workings for lot 69 AMC precinct".¹³
- [42] Mr McCarthy and Mr Widdowson subsequently sought legal advice and always wanted to take part ownership of Lot 69 and ultimately be registered as tenants in common on the Certificate of Title.¹⁴
- [43] It was never part of the plan to invest in KRAM WA directly as this email attachment confirms:

BASIS FOR OPTION AGREEMENT LOT 69

1. PARTIES

Seller (grantor) - KRAM WA Pty Ltd

*Buyer (option holder) - Blue Sky Developments (BMc 33%
BW33% Builder 33%)*

2. LAND

Lot 69 Contest Link, Henderson

3. PRICE

Fixed at \$510,000 exclusive of GST.

4. OPTION FEE

¹⁰ Email from Ben McCarthy to Jane Francz 24 April 2012 2:55 PM.

¹¹ Transcript of Private Examination of B Widdowson 19 April 2016, p13.

¹² Transcript of Private Examination of B McCarthy 20 April 2016, p14.

¹³ Diary invitation Ben Widdowson to Ben McCarthy 11/05/2012, sent 8/05/2012 4:52:31 PM.

¹⁴ Transcript of Private Examination of B McCarthy 20 April 2016, p15.

*\$25,000 exclusive of GST paid to the buyer as a non-refundable payment (PLUS MATERIALS ~ \$50K???)
Stamp Duty (on Option Fee when Option is exercised): ~\$X*

5. *EXISTING MATERIALS*

The buyer shall transfer all intellectual property, plans, approvals and physical materials that relate to the proposed workshop shop described overleaf upon payment of the Option Fee.

6. *PERIOD*

Starting Date: 1 July 2012

Finishing Date: 30 June 2013

7. *CONDITIONS PRECEDENT TO THE GRANT OF THE OPTION*

Blue Sky Developments will be indentified [sic] on the Certificate of Title as 1st Mortgagee (with \$230,000 owing).

8. *CONDITIONS PRECEDENT TO THE EXERCISE OF THE OPTION*

- Option to be exercised at completion of building and removal of caveat from Certificate of Title.*
- The seller pass on all approval rights, intellectual property and materials (including fabricated steel components) associated with the proposed workshop and office development.*

9. *EXERCISE OF OPTION*

- The buyer is to notify the seller in writing that the option is exercised.*

10. *GENERAL CONDITIONS*

- Site possession and access to be granted to construct a workshop and office to completion.*
- As landowner, assist wherever possible in obtaining and being a signatory on all necessary regulatory development approvals.*
- The right to assign the option to a third party nominee to be the buyer under the contract prior to the exercise of the option.*

11. *SALE AGREEMENT*

Append proposed Contract of Sale (or terms).¹⁵

[44] In June 2012 a business case was prepared by Mr McCarthy. This shows the intention to purchase Lot 69 with a delayed settlement. The business case lists risks, one of which is:

¹⁵ Attachment to email from Ben McCarthy to Ben Widdowson 22 May 2012 8:31:35 AM WST.

*... LandCorp decides to repurchase property at original purchase price minus costs. This will be mitigated as demonstrating development as being enabled by the transfer of mortgage. LandCorp has never repurchased a property that is in the process of commencing construction.*¹⁶

[45] Mr McCarthy conceded that it was in his mind that the business case might be presented to a bank to arrange finance.

[46] Ms Francz emailed Mr McCarthy on 27 July 2012. He replied on 30 July 2012.¹⁷

Hi Ben

Is there any update on this?

I'm thinking we really need to show this file to Frank as the due date to build expired on 28/10/2010.

Regards

Jane Francz

...

Hi Jane,

The agent spoke to the purchaser and he has been successful in arranging finance to enable the development (as already approved by the Design Guidelines). He has a DA from City of Cockburn.

The purchaser will provide a written letter with an expedited development schedule in the next 2-4 weeks. He assures me it is going ahead.

Kind regards

*Ben*¹⁸

[47] Mr McCarthy conceded this statement was untrue.¹⁹ The purpose of the email was to buy time.²⁰ As a further part of the email chain there is an email to Mr Widdowson on 30 July 2012. Mr McCarthy refers to action to be taken to provide "breathing space". This was to prevent LandCorp from beginning the process to repurchase Lot 69.²¹

¹⁶ Business Case & Project Plan, Lot 69 Contest Link AMC Support Precinct, p5.

¹⁷ Email from Ben McCarthy to Jane Francz 30 July 2012 9:49 AM.

¹⁸ Emails from Jane Francz to Ben McCarthy 27 July 2012 4:28 PM and from Ben McCarthy to Jane Francz 30 July 2012 9:49 AM.

¹⁹ Transcript of Private Examination of B McCarthy 20 April 2016, p25.

²⁰ Transcript of Private Examination of B McCarthy 20 April 2016, p26.

²¹ Transcript of Private Examination of B McCarthy 20 April 2016, p26.

- [48] Mr Widdowson and Mr McCarthy drafted a letter which was in due course engrossed and sent to LandCorp on KRAM WA letterhead to continue the deception that KRAM WA was directly involved in developing Lot 69. (Appendix) The draft is important. It shows Mr McCarthy's active involvement in ensuring LandCorp is kept in the dark as to the true position.
- [49] The letter was to obtain an extension for development from 28 October 2010, the now expired date for commencement.
- [50] Mr McCarthy attempted to explain his removal from Mr Widdowson's draft of a reference to private funders and a builder. He said it was to "improve the readability of the document and to shorten it".²² He denied that the letter was intended to convey to LandCorp that KRAM WA was in fact developing their own land.²³ Mr McCarthy's evidence on this point is implausible to the point of unbelief.

Was a conflict of interest disclosed by Mr McCarthy?

- [51] LandCorp has conflict of interest policies:

LANDCORP POLICY MANUAL

Purchase of Land by Staff and Consultants

There is sensitivity and a need to transparently manage the land purchase process to circumvent suggestions of conflict of interest or improper conduct.

*The Board (15/6/04) meeting has determined that Board members, staff and consultants should not be precluded from purchasing land in **LandCorp projects** subject to:*

- no discount or other incentives being provided that do not apply to the general public;*
- a Conflict of Interest declaration being provided to the CEO for all proposed purchases at the time the CEO is requested to approve the offer;*
- the Board being informed via a noting item from the CEO; and*
- the declaration being registered and filed as per standard procedure.*

²² Transcript of Private Examination of B McCarthy 20 April 2016, p27.

²³ Transcript of Private Examination of B McCarthy 20 April 2016, p28.

This applies to Board members, staff, in-house consultants, selling agents and directly-related family members who reside with any of these parties.

Confidential Information

Employees must never, without LandCorp's consent, disclose any information known to them through their employment with LandCorp, which is not usually available to the public, especially in the case where there is personal benefit, or a benefit to a business acquaintance, family member or personal friend.

2. *The CEO is responsible for approving all staff conflict of interest declarations and associated management arrangements. The Chair is responsible for approving conflict of interest declarations and associated management arrangements for the CEO and Directors.*

...

4. *All employees, independent contractors and Board directors are responsible for identifying, declaring and managing any conflicts of interest and complying with actions required to manage the conflict of interest.*

...

Declaring a conflict of interest

7. *You are required to disclose any actual, potential or perceived conflicts of interest by completing the Conflict of Interest Declaration (Attachment 2) for submission to your General Manager and referral to the CEO. An e-mail containing the appropriate details about the nature of the interest would also be acceptable. You should also consider what measures should be put in place to ensure the conflict of interest does not impact on your ability to perform your role with impartiality and transparency.*

...

12. *Failure to comply with this policy, and failure to comply with LandCorp's directions in these matters, constitutes serious misconduct and may lead to disciplinary action, including suspension or termination of your employment.²⁴*

...

²⁴ LandCorp Policy Manual 7.19 A55155, pp1-2 and 8.

- [52] In Mr McCarthy's view any conflict of interest could be managed by disclosure to LandCorp. Mr McCarthy says he disclosed his conflict of interest in two written documents he gave to his superior Mr John Hackett at a meeting on 28 August 2012. He also told his then line manager, Ms Sharon Clark. Both deny this.
- [53] There are grave difficulties in accepting Mr McCarthy's evidence. An original of the handwritten document was found in his house by Commission officers during the execution of a search warrant.
- [54] The document history of the typewritten "additional details" document indicates it was created immediately following the meeting.
- [55] However, even if both documents were given to Mr Hackett, they were seriously misleading and designed to disguise the true arrangement between KRAM WA and Mr McCarthy. Either Mr McCarthy did not make any conflict of interest disclosure or he made a false disclosure. Neither avails him.
- [56] Mr Hackett is General Manager of LandCorp's industrial division. The first time he said he was made aware that Mr McCarthy had purchased Lot 69 was when interviewed by a Commission officer in 2015.
- [57] His evidence to the Commission about the meeting with Mr McCarthy was vague, probably due to the passage of time. His recollection was that he told Mr McCarthy to put his application in writing. It was up to the CEO to consider it.
- [58] Ms Clark is the Manager Environmental Services at LandCorp. Her knowledge of Mr McCarthy's interest in land:

How did you know it was an industrial property?---He must have told me.

... It was general conversation about what he did on the weekend that I became aware; you know, he said I was mowing the lawn down at the property or something like that. So I can't recall the exact date I was made aware of it at all.²⁵

- [59] Having regard to the passage of time and the imperfection of memory about what was an event of limited significance for Mr Hackett and Ms Clark, based on their evidence alone the Commission cannot determine the true position.
- [60] The provenance of the handwritten document said by Mr McCarthy to have been given to Mr Hackett at the meeting is a different matter. There is no record of it within LandCorp. An original was found at Mr McCarthy's house:

You say you gave Mr Hackett a document. Which document was that?---A conflict of interest standard template and an attachment to it.

²⁵ Transcript of Private Examination of S Clark 19 April 2016, p4.

So it was a handwritten - - -?---The cover letter would have been the handwritten template document, taken straight from our conflict of interest policy, and then there was a typed attachment.

The handwritten portion of that document, was that the original?---It should have been.

...

The written document that you provided to Mr Hackett, the verbal explanation that accompanied the document, was it in the same terms?---Yes.

So the content was the same?---Yes.

Just have a look at that handwritten declaration document first of all, Mr McCarthy, and that's document 0336 please. Is that the document you're referring to, Mr McCarthy?---Correct.

You have signed the document, the date there is on 27 August 2012. Is that correct?---Yes.²⁶

[61] Mr McCarthy gave confusing explanations as to why there would be two "original" documents in existence:

Did you present him with the original or the photocopy?---I would have printed two originals. This is my recollection: printed two originals and kept one for my file.

Sorry, I'm just having trouble with printing an original with handwriting on it?---I would have photocopied one, but the other page, the other attachment 2 - - -

I'm not talking about the attachment 2. ... I'm just curious about how you could have two originals with handwriting?---I probably wrote – I cannot recall, but I know that John Hackett had an original copy. I don't think I would have - - -

You have said that these were two originals of this document?---Because I wanted - - -

One was retrieved by commission officers in your place and the other was given to John Hackett. How can there be two originals of this document?---Because I may have written this document twice. I'm not sure.

That's not an explanation you advanced earlier?---I cannot recall if it was a photocopy I gave John, but he had this exact copy of this. The wording there, he would have been given exactly that document.

Five minutes ago you told me it was an original that you gave him?---I'm referring to the second attachment.

Counsel has not yet got to the second attachment, she has been directing your attention to this one. What is now your explanation as to this

²⁶ Transcript of Private Examination of B McCarthy 20 April 2016, p32.

*document?---I don't -- I honestly don't know if there were two handwritten originals or if there was a photocopy and can I just ask: the copy that was found on the file, is that written in pen is it?*²⁷

...

HAMMOND, MR [Counsel for Mr McCarthy]: *Mr McCarthy, you indicated to the commissioner that you may have prepared two copies of that?---Correct.*

*Can you indicate to the commissioner how you did do that?---It's possible that I wrote it out twice because it was such a short little simple document. I hated walking to the photocopier to be honest, and it took all of 30 seconds. That may have been -- may have been it.*²⁸

[62] There is an obvious explanation why Mr McCarthy said he was investing in the company KRAM WA rather than purchasing Lot 69. He knew LandCorp might say no if he was open about the real position.

[63] Mr McCarthy's explanations veered into incoherence:

It doesn't say in this declaration that you intended at any stage, whether ultimately or at this point to purchase lot 69, does it?---No.

Why did you leave that out?---I left it out because it was my understanding that after the caveat was removed from the title, that anything subsequent of that did not involve LandCorp or any capacity from LandCorp.

The caveat wasn't going to be removed for a long time. Is that right, Mr McCarthy?---Well, post the completion of the building.

So at this point that you're declaring your interest, your intention is to purchase the property?---To have part ownership in the property. Correct.

You left that part out of it because you knew that LandCorp wouldn't give you that approval. Is that right?---No, not at all. It's inferred there quite clearly ...

...

I will pick up where we left off, Mr McCarthy, by asking again: it doesn't say in this declaration, does it, that you intended to purchase lot 69. Correct?---No, it doesn't.

And why did you leave that out?---It wasn't to be totally misleading. It was simply to delineate the extent of what I anticipated LandCorp's interest, an interest in my interest in the property, so it was simply my involvement. LandCorp's involvement ceases as soon as the caveat is removed from title. It doesn't prevent you from onselling or whoever moves into the property. As soon as that caveat is lifted LandCorp's interest in the project, in that property, ceases, and I was trying to anticipate what LandCorp's level of interest would be, and it was perhaps poorly calculated. In hindsight

²⁷ Transcript of Private Examination of B McCarthy 20 April 2016, p40.

²⁸ Transcript of Private Examination of B McCarthy 20 April 2016, p63.

*I do wish I had the words "I intend to purchase" in this conflict of interest document but it was simply to try to delineate what anticipated the extent of LandCorp's interest to be, where they would be interested in a potential conflict.*²⁹

- [64] Mr McCarthy conceded he had signed the building contract. It was his and Mr Widdowson's building.³⁰
- [65] The following 'additional details' document is the document which Mr McCarthy said he gave Mr Hackett.

***Potential Conflict of Interest
Additional Details-***

I, Benjamin James McCarthy, as beneficiary of Bluesky Investments Trust intend to privately financially invest with the purchaser of Lot 69 Contest Link, AMC Support Precinct Henderson: Kram Pty Ltd.

Kram purchased Lot 69 in January 2007 from LandCorp for the purposes of building a steel fabrication workshop and office for its own occupation. Since that time, although Kram has prefabricated parts of its proposed building, and obtained planning approvals from the Local Government, Kram has struggled to finance the construction. Kram is now outside of its build obligations under its contract of sale.

My investment with the company would facilitate immediate construction of the proposed facility so the purchaser can meet its contractual obligations with LandCorp. Following investment, Kram would be seeking an extension of time for the build from LandCorp (6 months required to build).

My involvement in this matter began in approximately May 2012. Since that time, I confirm have had no involvement with any decision making process with regards to this property, nor have I used my position in LandCorp to inappropriately serve any external private interests. Although I was the LandCorp project manager responsible for the development and sale of this property, I confirm I had no interest or any relationship with the purchaser being Kram at the time of development and/or sale.

Consistent with LandCorp's Conflict of Interest Policy, in ensuring LandCorp's objectives and my position with the organisation is not compromised, the following measures are proposed:

- 1. Register my interest (intent of this letter).*
- 2. Restrict and remove my involvement from any LandCorp decision making process associated with this property.*

²⁹ Transcript of Private Examination of B McCarthy 20 April 2016, p33-34.

³⁰ Transcript of Private Examination of B McCarthy 20 April 2016, p35.

I have read and understood LandCorp's Code of Conduct, Confidentiality Policy (7.17), Conflict of Interest Policy (7.19) and Purchase of Land by Staff and Consultants Policy (7.26) and I am confident with the measures proposed, the matter in no way contravenes any LandCorp objectives or practices.

Benjamin James McCarthy
*28 August 2012*³¹

- [66] The evidence of the document history and the email to Mr Widdowson strongly suggests it was created after the meeting. It may be as a result of a request from Mr Hackett for more information.
- [67] However, the Commission cannot exclude the possibility that it had been created on another computer and forwarded to Mr McCarthy's work computer even though no such email has been found.
- [68] Not that this helps Mr McCarthy. The 'additional details' document is even more misleading than the handwritten template form. A false conflict of interest declaration cannot exonerate its maker.

The contract of sale

- [69] LandCorp was never made aware that Mr McCarthy and Mr Widdowson were purchasing Lot 69.³²
- [70] The reason the purchase was a complicated arrangement was because LandCorp typically prevented the direct on-sale of land to other individuals, a fact known to Mr McCarthy.³³ So his involvement in the purchase had to be disguised until the caveat was lifted.
- [71] Matters proceeded. In September 2012 Mr McCarthy and Mr Widdowson obtained a formal valuation of Lot 69 for mortgage finance purposes.
- [72] The valuation was for \$600,000. Mr McCarthy tried to assert in examination that the value was less because perhaps the valuer did not appreciate the limitations of the caveat and its deterrent for potential purchases.³⁴
- [73] However, on 28 November 2012 in an email to Buildcom, Mr McCarthy describes the proposed purchase price as approximately \$150,000 less than market value:

³¹ Email from Ben McCarthy to Ben Widdowson 28 August 2012 4:48:47 PM WST.

³² McCarthy's interest was as trustee for a family trust, Bluesky Investments. Mr Widdowson's interest was through a family trust, The Macoop Family Trust. Ms Scerri was secretary of the trust.

³³ Transcript of Private Examination of B McCarthy 20 April 2016, p48.

³⁴ Transcript of Private Examination of B McCarthy 20 April 2016, p50.

*It's got to be misleading, isn't it? It can't be both. Either you meant and you believed 150,000 was less than market value or you were trying to mislead the builder. Which is it?---I'm not sure. It may have been a touch of both.*³⁵

- [74] Mr McCarthy changed his email address from the end of October 2012 so that emails would not be sent to his LandCorp address.
- [75] The first contract of sale was executed on 20 December 2012. Settlement date was 28 days from the removal of the caveat.
- [76] After executing the contract, the purchasers Mr McCarthy and Mr Widdowson began paying KRAM WA's interest only mortgage repayments.
- [77] Mr McCarthy and Mr Widdowson entered into a contract with a builder, Buildcom. KRAM WA was not part of that contract.
- [78] Finance was not obtained within the 14 days specified and a second contract of sale was executed on 18 July 2013.

Further deception

- [79] Mr McCarthy continued the pretence that KRAM WA was developing Lot 69:

Hi ben [Widdowson]-

My suggested email update to Landcorp for the KRAM WA boys to send mid this week would read along the lines of-

To Landcorp conveyancing team.

Further to our last correspondence dated xxxx we wish to advise reapplying for development approval from the City of Cockburn has taken longer than anticipated. Nonetheless, we are very pleased to inform Landcorp that a builder had been appointed and is mobilising to site this week (as evidenced by the photo attached).

Based on information provided by the builder, it is expected the proposed development will be complete by 30 April 2013.

Many thanks for your assistance through this process.

Please do not hesitate to contact us should you require any further information.

Kind regards

Kram

*Ben McCarthy*³⁶

³⁵ Transcript of Private Examination of B McCarthy 20 April 2016, p51.

³⁶ Email from Ben McCarthy to Ben Widdowson 29 October 2012 7:14:23 PM AWST.

[80] At the time Mr McCarthy drafted this email for KRAM WA to send to LandCorp, construction had not commenced, although Mr McCarthy said preliminary works had started, fencing and basic grubbing around the site may have happened.³⁷ No building licence had been issued.

[81] In examination Mr McCarthy gave inconsistent responses to whether he considered development would be complete by 30 April 2013:

And at the time you wrote that did you think that it would be?---No, but we wanted to start work so there was the impression that work was about to commence.

I appreciate that but my question was: when you wrote this and I understand your answer is that you did not expect the proposed development would be complete by 30 April 2013?---Correct.

And that was information that you wished to be conveyed to LandCorp in that email?---I think we – okay, we had a lot – the contract documents with the builder were complicated and we had every intention to complete – at that stage to complete the building before 30 April 2013.

So your last two answers were wrong?---No. We wanted to start works and mobilise the site so it appears there's an active construction site, but there was every intention to have the project completed before 30 April 2013.³⁸

Mr McCarthy continued the deception.

[82] An email drafted by Mr McCarthy for KRAM WA to send to Jane Francz:

Hi Jane,

Thanks for your email.

To provide you with an update, it was our builder's intention to mobilise to site as advised in November (to commence non-structural works) however, the City of Cockburn's building services team advised they wanted a building licence before any works commence.

We have been seeking some last minute changes to the plans to improve and modernise the fascade as well as increase the size of the workshop entrances. The builder has now completed the plans and is ready to seek building licence, but he himself is concerned about the risk of commencing construction and LandCorp potentially buying the site back (mid works).

His lawyers are now asking for a "deed of approval and consent" by which LandCorp:

- 1. consents to the registration of a second mortgage (with the temporary lifting of the caveat); and*

³⁷ Transcript of Private Examination of B McCarthy 20 April 2016, p56.

³⁸ Transcript of Private Examination of B McCarthy 20 April 2016, pp56-57.

2. *agrees to not exercise its right to buy back the land during the term of the building contract (maximum of 6 months).*

We remain absolutely committed to delivering this building (it's crucial to our business plan and already incurred significant costs) but we're worried about what the potential implications of the above are (we just want to get on with the job). Can you please advise if this is something LandCorp can consider/assist with?

We can provide you with a copy of the executed building contract if that would assist.

Please let me know if there is anything you wish to discuss.

*Kind regards,*³⁹

- [83] It appears Ms Francz was not completely reassured and further email exchanges took place in March and April 2013.
- [84] On 5 April 2013 Ms Francz emailed KRAM WA requiring the building licence, signed building contract, instructions re second mortgage and evidence KRAM WA can commence immediately. If received, LandCorp was prepared to agree to a final six months extension.⁴⁰
- [85] On 17 April 2013 KRAM WA provided "the paper work you require"⁴¹ and Ms Francz quickly responded that "there is nothing new here, this has all been provided before".⁴²
- [86] Mr McCarthy then prepared an email for KRAM WA to send to LandCorp (Ms Francz).
- [87] Attached to the email was a letter dated 19 April 2013 from Buildcom Constructing confirming progress.
- [88] Also attached was a copy of the building contract. Mr McCarthy blacked out all reference to his name in the contract knowing it was being sent to LandCorp.

Hi Paddy and Mark,

*Please forward the below text and attachments to Jane at LandCorp.
Please also cc your email to [Mr McNaught's email account].*

³⁹ Email from Ben McCarthy to Ben Widdowson Tuesday 5 March 2013 4:06 PM.

⁴⁰ Email from Jane Francz to Kram WA 5 April 2013 11:16 AM.

⁴¹ Email from Kram WA to Jane Francz 17 April 2013 9:11 AM.

⁴² Email from Jane Francz to Kram WA 18 April 2013 12:35 PM.

Hi Jane-

Further to your email 5 April, we have made every endeavour to get a Building Licence from City of Cockburn before today. As per the attached letter from the builder, the drawings have been completed and are currently with the 3rd party building surveyor for review. Prelodgement meetings have been held with Mike Ward from the City of Cockburn and he has indicated a 4 week turnaround for a building licence. Nonetheless, the builder is confident we will achieve completion within 6 months.

Apologies, we didn't realise the previous building contract was missing the signing pages. Please see page 19 of the attached.

Please be advised the builder (Buildcom Construction WA Pty Ltd Limited ACN 149819072) wishes to register a second mortgage on the property (Lot 69 on DP51039 vol 2659 fol 925) before commencing construction. Could you please advise of LandCorp's timing for the temporary lifting of the caveat and any other requirements?

We are excited to finally be in a position to commence construction and we're thankful of your assistance through this process.

*Kind regards,*⁴³

- [89] Mr McCarthy gave an explanation for the email and for blacking out references to him:

You did that to conceal from LandCorp your involvement in this particular development?---Not like that, to make sure no-one's decision making ability was compromised. That was the only intent of it.

*... I certainly didn't want the conveyancing staff at LandCorp to know that I was building on a site in the AMC, so I didn't want – if my name came up, I didn't want them to compromise any of their decision making.*⁴⁴

- [90] The reason advanced is absurd.

- [91] Although Mr McCarthy claimed to have removed himself from involvement in Lot 69, the email to the builder on 3 May 2013 is instructive:

Hi Linda,

Thanks for the email. Nice to get good news on a Friday afternoon for a change!

Sounds great-

⁴³ Email from Ben McCarthy to Kram WA 19 April 2013 2:55:34 PM AWST.

⁴⁴ Transcript of Private Examination of B McCarthy 20 April 2016, p60.

1. I'll get confirmation from LandCorp's conveyancing team about the 6 month extension.

2. Attached is the LandCorp approved drawings - you're correct; Buildcom is to build on the initial plans. Kram have a letter from LandCorp endorsing the drawings. Ill forward it early next week.

3. Regarding the Rights Contract, it was previously indicated to me LandCorp are unlikely to sign given the Mortgagees Deed of Covenant does the job (they keep the process standardised). With the above, I really hope that document is sufficient.

Thanks so much for your patience and perseverance. Look forward to hearing more after the weekend.

Kind regards,

Ber⁴⁵

[92] Mr McCarthy explained this email:

"I'll get confirmation from LandCorp's conveyancing team about the six-month extension"?---Yes.

Did you obtain confirmation from the conveyancing team?---Not myself directly, no.

Point number 3, "Regarding the rights contract, it was previously indicated to me LandCorp were unlikely to sign, given the mortgage's deed of covenant does the job." Is that you, Mr McCarthy, essentially asking on behalf of LandCorp whether they will sign schedule 8 of the rights contract?---No, that's just from previous experience.

That information that was given to you as a result of your project management role?---I think I was just trying to keep everything simplified. There certainly wasn't any discussion with anyone at LandCorp about that at all. As I said, nobody except Sharon and John Hackett know about my involvement in this property, as far as I'm aware.⁴⁶

[93] Further evidence of his continued involvement appears in an email from the builder to him on 11 July 2014:

Hi Ben

Just an update with regards to Landcorp, Jane has received the Occupancy Permit but the project manager is yet to go out. When we started this project you mentioned because you worked at Landcorp you should be able to sort this out. As the caveat is an issue between the Partnership and KRAM WA and not Buildcom as our agreement is separate and we must be paid by Friday, it may be worthwhile

⁴⁵ Email from Ben McCarthy to Linda Lulich 3 May 2013 5:42:56 PM AWST.

⁴⁶ Transcript of Private Examination of B McCarthy 20 April 2016, pp60-61.

seeing what you can do so there are no hold ups which can present issues for you and Ben W. After sending off my first email to you this morning I received a call from Westpac and they are working on Friday 18/7/2014 settlement and they are aware we are not waiting past this date.

I am sure you are highly regarded at Landcorp from speaking with you and that you can sort this out with ease.

Kind regards

Linda Lulich⁴⁷

[94] Mr McCarthy denied involvement:

I don't believe I would have said anything like that. I've made it very clear that I was taking this project on in a personal capacity, and they may have inferred that, I'm not sure, but that's certainly not – even if they infer that is the case, it's certainly not what happened.

Did you reply to Ms Lulich and say, "I don't know where you got that impression from; I never said that"?---There is a lot of exchanged between Buildcom and ourselves, and this was at the point – right there, there was a lot of finger pointing and blame going on. Buildcom weren't necessarily happy with the way the project had rolled out, so I was doing everything I can to make sure the relationship was preserved, but no, I wouldn't have – less is more when dealing with Buildcom.⁴⁸

[95] Mr Cornish sent an email on 14 July 2014 saying he left a voice message and he did the inspections of the four properties in Henderson marked urgent, endorses the removal of the caveat on Lot 69 Contest Link. Mr McCarthy was copied into this email. Two years had passed since he had moved out of the AMC project.

[96] Despite his persistent assertion that he had removed himself from decision making in respect of Lot 69, the email evidence suggest he continued to involve himself when it was in his interests to do so.

[97] In due course, the development on Lot 69 was completed. Mr McCarthy and Mr Widdowson had negotiated a favourable outcome as part of the sale which involved the purchasing of steel for the building at a discount. LandCorp was satisfied and lifted the caveat. Shortly after Mr McCarthy was registered as a tenant in common with Mr Widdowson's trusts.

Mr Ben McCarthy - opinion of serious misconduct

[98] Mr McCarthy's purpose in purchasing Lot 69 with Mr Widdowson was corrupt. He used confidential information to benefit himself and Mr Widdowson. He disguised his involvement in the purchase because he

⁴⁷ Email from Linda Lulich to Ben McCarthy 11 July 2014 11:34:24 AM AWST.

⁴⁸ Transcript of Private Examination of B McCarthy 20 April 2016, p61.

knew LandCorp would be unlikely to agree. He did not have written authority from LandCorp's CEO. Not only was he in breach of LandCorp's code of conduct, he was in irreconcilable conflict between his employer's interests and his personal interests. His purpose was to enrich himself regardless of any possible interest of LandCorp.

- [99] The corrupt purpose was disguised by dishonesty. He created documents that gave a false impression that KRAM WA was the developer of Lot 69.
- [100] If he put in a conflict of interest declaration, it was knowingly false.
- [101] LandCorp employees were prevented from having an interest in land in a LandCorp project without the written approval of the CEO. Mr McCarthy never obtained approval. His attempts to explain his inaction in this regard are hollow.
- [102] An opinion of serious misconduct will not be made lightly. The Commission is always cautious about forming an opinion. Here the evidence abundantly justifies an opinion that Mr McCarthy corruptly took advantage of his employment as a public officer to obtain a benefit.

Mr Ben Widdowson

- [103] Mr Widdowson is not a public officer and the Commission has no jurisdiction to form an opinion. When his behaviour came to light he was immediately dismissed by JLL Australia.
- [104] In his response to the draft report Mr Widdowson says that there was absolutely no intention on his part to deceive LandCorp in any way. He was acting in good faith based on the information he had at the time. He relied on advice given to him by Mr McCarthy.
- [105] The Commission has sent relevant material to the Real Estate and Business Agents Licencing Board for its consideration of disciplinary proceedings against Mr Widdowson.

Ms Marissa Scerri

- [106] Ms Scerri ought to have known better. She ought to have made more enquiries. She was a LandCorp senior officer seeking finance that involved a LandCorp project.
- [107] Mr Widdowson was Ms Scerri's defacto ex-husband until they separated in 2015.
- [108] Ms Scerri did not have direct involvement in the AMC project but she and Mr Widdowson were the beneficiaries of the trustee company that purchased 50% of Lot 69.
- [109] Ms Scerri did not participate in the negotiations with KRAM WA or the builder. The Commission does not suggest she knew of Mr McCarthy's deceptive conduct. Her role was twofold: it involved facilitating the release

of funds from the equity loan attached to her and Mr Widdowson's family residence for investment into the development of Lot 69, and in an executive capacity as secretary of the trust entity that purchased the half share in the property on her and Mr Widdowson's behalf. The use of a company incidentally removed any reference to Mr Widdowson as a purchaser.

[110] The Commission accepts that the family trust was set up by Mr Widdowson and Ms Scerri for commercial reasons in 2008 and not with any intention to deceive.

[111] Ms Scerri had an active and a passive role in the enterprise. Her involvement was essential to facilitate the finance for the purchase and she was required to actively agree to this course and sign documents that allowed the release of funds. Ms Scerri was also actively involved in the purchase by her position as secretary to the trust. She was a co-signatory with Mr Widdowson on the contract of sale on behalf of the trust.

[112] Ms Scerri failed to declare her involvement through the trust in the purchase of Lot 69 to LandCorp. She also failed to declare her husband's interest. By her omission she was complicit in the deception of LandCorp. If she made the appropriate full and frank declaration of a conflict of interest on her own behalf (including naming Mr Widdowson) then LandCorp would have been alerted to the deception.

[113] The deception would have failed if Ms Scerri declared a conflict of interest.

[114] Ms Scerri knew considerable detail about the circumstances that led to the opportunity to invest presenting itself:

- (a) the purchaser was having trouble getting finance to build;⁴⁹
- (b) Mr Widdowson was attempting to get the purchaser "a financier, or find someone to tenant it and build it as part of the investment"⁵⁰;
- (c) without a build the purchaser would breach his contract; and
- (d) the purchase was to be in conjunction with Mr McCarthy.

[115] Ms Scerri also knew that it was essential to the success of the deal that finance be made available from the equity loan attached to their home:

Were those the words he used, "Maybe we could buy it"?---Yeah, because it all depended on financing. My questions were more around, you know, how were we going to do it and where's the money coming from and is it out of the house, so there were more general questions about our ability to do it rather than about the deal at hand, yeah.⁵¹

⁴⁹ Transcript of Private Examination of M Scerri 19 April 2016, p6.

⁵⁰ Transcript of Private Examination of M Scerri 19 April 2016, p6.

⁵¹ Transcript of Private Examination of M Scerri 19 April 2016, pp6-7.

- [116] Ms Scerri's evidence was that she was not aware when first presented with the proposal that LandCorp still had an interest in the land. Despite this she was alert to the potential conflict presented by the purchase and raised with Mr Widdowson the fact that he and Mr McCarthy needed LandCorp approval to proceed. This was consistent with the Conflict of Interest Policy and the Purchase of Land Policy:

What did you mean by that?---That he needed to speak to John Hackett and - - -

And who was John Hackett?--- - - - that obviously Ben needed to be- get it cleared as well.

So you - - -?---Also Ben McCarthy needed to get it cleared and Ben Widdowson needed to speak to John Hackett to ensure that it was okay to proceed.⁵²

- [117] Ms Scerri was also alive to the fact that there may be two potential issues, the purchase of land; and the development of the block prior to purchase:

So there would be a potential conflict of interest. Is that what you mean?--- Potentially, yes, that one was land and one was, yeah, the building but I wanted him to make sure that it was okay with John.⁵³

- [118] Mr McCarthy, Mr Widdowson and Ms Scerri effectively all purchased Lot 69. Ms Scerri could not satisfactorily explain why Mr McCarthy needed to "clear" his interest in the purchase with Mr Hackett but she did not. She attempted to explain it by stating that she was not directly involved with Lot 69 in her role at work. However, if this was the threshold criteria to apply before making a declaration, it does not explain her failure to declare her husband's direct interest in the purchase. She had previously made declarations to LandCorp about her husband's involvement in matters in which she had no involvement.

- [119] In her response to the draft report Ms Scerri said she did not intend to deceive LandCorp at any time. She did not make any conflict of interest declarations because she did not believe she had any actual or potential conflict of interest after Mr Widdowson told her Mr Hackett had approved their involvement in Lot 69 and she had not worked on the AMC for several years. She thought the LandCorp Purchase of Land Policy only referred to buying land from LandCorp not buying land in LandCorp developments. The Commission notes that the policy refers to "purchasing land in LandCorp projects", not "from LandCorp".

- [120] Ms Scerri failed to make a declaration of conflict in circumstances where she was aware of the relevant policy and had previously applied it by making declarations.

⁵² Transcript of Private Examination of M Scerri 19 April 2016, p9.

⁵³ Transcript of Private Examination of M Scerri 19 April 2016, p10.

- [121] There must be a corrupt element to her failure to act and it must be a deliberate action. The action must be deceptive to cover or camouflage the corrupt purpose. The failure to declare the interest to LandCorp had the effect of concealing the purchase of the interest in Lot 69. She raised the issue of a conflict of interest at the beginning of negotiations yet did nothing about it. She was given another opportunity in October 2012 and instructed to do so by her husband yet again did nothing about it.
- [122] The failure to make a conflict of interest declaration, it must be done intentionally. Inadvertence or negligence will be insufficient. There is no direct evidence that the failure to lodge a conflict of interest declaration was intentional. Although the Commission's opinions are not binding and carry no legal consequence, there are reputational and other consequences to an opinion of serious misconduct. Applying a cautious approach and mindful that Ms Scerri's involvement was essentially passive, the Commission has concluded it will form no opinion of serious misconduct in respect of her failure to declare a conflict of interest.
- [123] The Commission has no jurisdiction to form an opinion of minor misconduct.
- [124] In case Ms Scerri's misunderstanding of the conflict of interest policy and accompanying procedures is widespread, the Commission recommends that LandCorp reinforce the need for compliance.

APPENDIX

**Mr Widdowson's draft of letter from KRAM WA to
LandCorp amended by Mr McCarthy**

Dear Sir / Madam

LOT 69 - 3 CONTEST LINK, AMC, HENDERSON

As ~~previously discussed in the past,~~ since purchasing the above lot, our steel fabrication business has been impacted by the GFC and our ability ~~our original intention as buyers of the above lot, was to construct the building we already had LandCorp and Local Government approval for build and occupy the premises to operate our fabrication business from, however as our business slowed down over the last few years, we were unable to proceed on this basis~~ has been hampered.

~~With the assistance of Ben Widdowson at Jones Lang LaSalle, over the last 12—18 months we have been seeking to identify either a suitably qualified tenant or buyer to occupy the new office and workshop facility at the above address.~~

We are ~~pleased to confirm that after a lengthy period of negotiation, we have~~ are now successfully agreed in ~~a position with private funders and a builder to develop the new facility we had designed, on the basis that we are confident we will find a tenant or buyer during the construction phase and appreciate LandCorp's understanding during the lengthy delay.~~

~~We are aware that the eventual occupier will need to be approved by LandCorp and The Department of Commerce as being unsuitable occupier and we are already in discussions with a number of potential tenants already located within the AMC area.~~

~~As you may be aware, we~~ are in the process of resubmitting the ~~have~~ Development Approval for the new facility, which lapsed earlier this year, ~~however our intention is to build the property as it was originally designed and simply resubmit the DA, which means the process so we can commence of development can occur as quickly as possible. We~~ anticipate construction to commence by October and expect to have the building completed is within 64 months of commencement of receiving Development Approval and Building Licence.

~~The builder we are engaging has experience in building within LandCorp estates and we are confident of a quality finish in line with the Development Guidelines.~~

~~As part of this transaction~~ To enable development ~~we will be refinancing the property with private funding.~~ We have spoken to our legal advisors, who have confirmed that in order to do this, we will require the caveat to be temporarily lifted to allow the new funders to pay out our current bank debt and be registered on the title as first mortgagees. ~~Is this something LandCorp will agree to? We hope this is not an issue for LandCorp and will contact you shortly with further details.~~

~~We are excited by the prospect of finally finding a solution to enable us to develop the property we intended to build.~~

~~We are happy to meet with LandCorp to discuss further the above and look forward to your favourable response should you have any concerns with the above.~~

Formatted: Justified

Yours sincerely