



# **CORRUPTION AND CRIME COMMISSION**

## **REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT AT THE CITY OF WANNEROO**

**3 December 2009**

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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 CCC Act"), the Commission hereby transmits to you a copy of the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct at the City of Wanneroo*.

The Commission notes that under section 93(3) of the CCC 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 that reads "Len Roberts-Smith".

The Hon. LW Roberts-Smith, RFD, QC  
**COMMISSIONER**

3 December 2009



## ABBREVIATIONS AND ACRONYMS

ALP	Australian Labor Party
“the CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
CEO	Chief Executive Officer
“the City”	City of Wanneroo
“the Commission”	Corruption and Crime Commission
Cr	Councillor
DA	Development Approval
DLGRD	Department of Local Government and Regional Development <sup>1</sup>
DPI	Department for Planning and Infrastructure
DPS2	District Planning Scheme No. 2
“the EC Act”	<i>Electricity Corporations Act 2005</i>
“Eclipse”	Eclipse Resources Pty Ltd
“Garden Glow”	Garden Glow Growers Mart
“Goldrange”	Goldrange Pty Ltd
“the LG Act”	<i>Local Government Act 1995</i>
MLA	Member of the Legislative Assembly of the Parliament of Western Australia
MRS	Metropolitan Region Scheme
“the PSM Act”	<i>Public Sector Management Act 1994</i>
SAT	State Administrative Tribunal
“the SD Act”	<i>Surveillance Devices Act 1998 (WA)</i>
SD	Surveillance Device(s)
SP	Structure Plan
“the TI Act”	<i>Commonwealth Telecommunications (Interception and Access) Act 1979</i>
TI	Telecommunications Intercept (or Interception)
TPRC	Tamala Park Regional Council
WALGA	Western Australian Local Government Association
WAPC	Western Australian Planning Commission
WTPS	Wanneroo Town Planning Scheme

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<sup>1</sup> From 1 July 2009 the Department of Local Government and Regional Development (DLGRD) became the Department of Local Government, and the Department of Regional Development and Lands, [www.dlgrd.wa.gov.au](http://www.dlgrd.wa.gov.au), viewed 18 November 2009.



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# EXECUTIVE SUMMARY

## Introduction

- [1] The real gravamen of this ninth and penultimate report by the Corruption and Crime Commission (“the Commission”) in the “lobbyist” series, is not any particular allegation of misconduct by a public officer, but rather the theme of misconduct risk which it reveals.
- [2] That theme is the risk of public officers being diverted from fidelity to the public interest (or perceived to be so diverted) because of close personal or political relationships with lobbyists representing private or commercial interests. Associated with that, is the provision of assistance or favour or the prospect of advantageous exercise of influence by lobbyists to benefit the public officer at some time in the future.
- [3] Further, the events and activities described in this report show how the integrity of public officers and their agencies can be undermined by the way lobbyists representing particular interests may manipulate those relationships and portray them to others.
- [4] Non-disclosure by public officers of their active involvement with lobbyists in supporting particular proposals, or professing compliance with the requests of lobbyists even though later claiming no intention to actually comply, enables lobbyists to actually achieve, or at least convey to clients, or other public officers, a degree of influence over governmental decision-making which is subversive of the public interest.

## Mr Salvatore (Sam) Salpietro and Mr Jon William Kelly

- [5] Mr Salvatore (Sam) Salpietro had been a close friend of Mr Brian Thomas Burke for many years. During the events the subject of this report, Mr Salpietro was the Deputy Mayor of the City of Wanneroo (“the City”), having held this position since December 1999.
- [6] Mr Jon William Kelly has been the Mayor of the City of Wanneroo since December 1999. Mr Kelly gave evidence to the Commission that he has known Mr Burke for more than 10 years. Mr Kelly was re-elected as Mayor in 2003 and 2007, and his current term runs until 2011. Mr Salpietro has been Mr Kelly’s Deputy Mayor throughout his entire mayoralty.

## Eclipse Resources Pty Ltd: Flynn Drive

- [7] In September 2004 Mr Trevor John Delroy, Managing Director of Eclipse Resources Pty Ltd (“Eclipse”) retained Julian Grill Consulting, and thereby Mr Burke and Mr Julian Fletcher Grill, in relation to obtaining changes to a subdivision clearance in respect of approximately 100 hectares of land owned by Eclipse on Flynn Drive, Wanneroo. They were to be paid a monthly retainer to project manage the process and were to receive a “success fee” of \$200,000 on successful completion of all the work.

- [8] Mr Salpietro's initial involvement was in giving advice to Mr Burke on fostering local support for an increase in housing density on the Eclipse land. He had telephone and email communications variously with Mr Burke, Mr Delroy and the Eclipse planning consultant (Mr Oscar Drescher) about the proposal.
- [9] He met privately with those seeking to influence him to favour a development proposal. He attended a meeting at Mr Burke's home with Mr Burke, Mr Drescher and a town planning consultant providing assistance on the Eclipse Flynn Drive subdivision. He met the city planner and the Eclipse planner on the same subject on 11 March 2005, after which he sent an email to Mr Burke reporting that the meeting "went well". Mr Salpietro provided further advice on the submission for rezoning at a meeting with the city planner and Mr Burke in late July 2005, and he had further meetings about the Eclipse applications in October and November 2005.
- [10] In early 2006 the consultant emailed him a copy of the Eclipse submission to the City of Wanneroo Council, which was to go before it on 21 February 2006. The Council was to adopt its response to a Western Australian Planning Commission (WAPC) draft strategy document. The City's officers had not included recommendations which would have progressed the rezoning sought by Eclipse.
- [11] On the morning of the meeting Mr Burke telephoned Mr Salpietro and told him Eclipse needed an amendment to one of the recommendations proposed for the City's response to include the Eclipse Lots as "possible urban deferred". Mr Salpietro agreed.
- [12] Mr Salpietro expected to be chairing the meeting in the absence of the Mayor, Councillor Kelly. On the understanding that, as Chair, he would be moving the primary motion and could not therefore move an amendment to it, Mr Salpietro asked another member, Councillor Ian Reginald Goodenough, to do so.
- [13] Councillor Goodenough moved the amendment. Mr Salpietro voted for it, but made no disclosure of any interest affecting impartiality. The amendment was defeated.
- [14] In the Commission's assessment, the evidence does not establish that Mr Salpietro deliberately misled fellow councillors by having Councillor Goodenough move the amendment.
- [15] However, the Commission is satisfied Mr Salpietro deliberately concealed Mr Burke's involvement because he did not want his fellow councillors to know he was acting on Mr Burke's behalf.
- [16] In the Commission's opinion Mr Salpietro's conduct in this regard could have adversely affected the honest or impartial performance of the functions of the Council, and constituted the performance of his functions in a manner that was not honest or impartial and involved a breach of the trust placed in him by reason of his office. It was also conduct which, in

the circumstances, could constitute a disciplinary breach providing reasonable grounds for termination of the office or employment of a public service officer under the *Public Sector Management Act 1994* ("the PSM Act").

- [17] That test is notional – 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.
- [18] Although as a local government councillor and deputy mayor at the relevant time Mr Salpietro was a public officer, he was not a member of the public service. It is, therefore, the notional test in section 4(d)(vi) of the *Corruption and Crime Commission Act 2003* ("the CCC Act") which must be applied to his conduct.
- [19] It follows that it is the Commission's opinion that Mr Salpietro's failure to declare he had an "impartiality interest" in the circumstances constituted misconduct under section 4(d)(i), (ii), (iii) and (vi) of the CCC Act.
- [20] After the failure of the amendment on 21 February 2006 Mr Salpietro reported back to Mr Burke. Later on 3 March 2006 he and Mr Kelly attended a meeting at Mr Delroy's office to discuss Flynn Drive.
- [21] Mr Salpietro had further extensive communication and meetings with Mr Burke and others about the proposed Flynn Drive rezoning between March and September 2006. It is apparent Mr Salpietro was taking a close and active role in advising and assisting Mr Burke to obtain the rezoning sought by Eclipse that went well beyond impartial facilitation with Council processes.
- [22] On 30 January 2007 Council approved a Structure Plan for submission to the WAPC which included the recommendation which Eclipse had been seeking in respect of Lots 1 and 2 Flynn Drive. Mr Salpietro was at the meeting, but again did not declare an interest.
- [23] Whilst there is no evidence that Mr Salpietro was unduly influenced by his meetings with representatives of Eclipse to support an application he would otherwise not have supported, nonetheless, such meetings can reasonably give rise to a perception that elected members have been improperly influenced – and, indeed, can lead to them in fact being improperly influenced and engaging in misconduct within the meaning of section 4 of the CCC Act.

## **Eclipse Resources Pty Ltd: Western Power**

- [24] In September 2003 Western Power decided to construct a high-voltage transmission line linking a power station in the City of Wanneroo to the Pinjar gas turbine power station.
- [25] At that time it was intended to construct the power line along an extension or realignment of Flynn Drive towards the West, thus largely avoiding the Eclipse land. Western Power contracted with a private engineering company to do that, in June 2006. However in September 2006 Western

Power produced a public Project Update which showed the route had been changed to run alongside the Eclipse Land (“the Flynn Drive route”).

- [26] Mr Delroy and Eclipse strongly opposed the Flynn Drive route.
- [27] From September 2006 Mr Burke and Mr Grill’s consultancy to Eclipse grew to encompass Eclipse’s dispute with Western Power over the route of the transmission line. Mr Burke immediately approached Mr Salpietro about it.
- [28] On 20 September 2006 Mr Burke asked Mr Salpietro to attend a meeting with the Western Power Chief Executive Officer (CEO) and Eclipse representatives on 3 October 2006. He agreed to that, and did so.
- [29] On 6 October 2006, in an email, Mr Drescher suggested they prepare a draft letter that the City of Wanneroo may wish to send to the CEO of Western Power expressing concern about the undesirable impact of the transmission line. He attached a three-page draft letter expounding “the City’s view”.
- [30] Mr Salpietro was away at the time, so Mr Burke emailed a copy of the draft to Mr Kelly (with a copy to Mr Salpietro) noting that at the meeting the City had undertaken to write to Western Power and explaining he was forwarding a draft letter which might be of assistance to the City in framing its representation.
- [31] Mr Kelly did not respond.
- [32] On 18 October 2006 Mr Salpietro told Mr Burke he had sent the letter as requested, having amended it to reflect the view of “several elected members” rather than “the City”. Mr Salpietro emailed a copy of the letter to Mr Burke and others the following day, reiterating the change he said he had made to it.
- [33] In fact, however, the text of Mr Drescher’s draft letter was sent to Western Power unchanged, claiming to state “the City’s view”, not that of “some elected members”.
- [34] Mr Burke and Mr Grill continued their advice to and activities on behalf of Eclipse until Mr Delroy suspended their engagement in late 2006, following public hearings by the Commission in connection with their lobbying activities relating to the Smiths Beach development at Yallingup.
- [35] The question the Commission had to examine here, was whether Mr Salpietro had deliberately sent a letter falsely purporting to state the view of the City of Wanneroo.
- [36] In his evidence, Mr Salpietro maintained that he had changed Mr Drescher’s draft by removing reference to “the City’s view” and substituting reference to “the view of some elected members”. He said his error was that the draft he sent out for typing on Deputy Mayor letterhead was Mr Drescher’s draft, not his amended draft, and he had not realised the error.

- [37] In a subsequent affidavit to the Commission Mr Salpietro explained that he had made the changes directly to Mr Drescher's emailed draft, without appreciating that changes made in that way (and not saved as a separate document) may not necessarily be retained when the email was sent on.
- [38] That explanation is plausible, and in light of Mr Salpietro's contemporaneous explanations to Mr Burke and others about the changes he had made, the Commission accepts it.
- [39] In those circumstances, Mr Salpietro's conduct in sending the letter does not constitute misconduct under section 4 of the CCC Act.
- [40] Mr Kelly told the Commission that he had decided it would have been inappropriate for him either to send the letter or to ask any staff member to do so. He said, if he had thought the issue was of sufficient importance that a letter should be sent to Western Power, he would have asked the CEO of the City to draft one. In fact, Mr Kelly did nothing about it.

### **Garden Glow Growers Mart (“Garden Glow”)**

- [41] In 2006 Goldrange Pty Ltd (“Goldrange”) owned certain Lots on the corner of Wanneroo Road and Joondalup Drive. The Lots were part of what was called the “Drovers Place Precinct”, a small pocket of land that was zoned “general rural” under the City of Wanneroo District Planning Scheme No. 2 (DPS2) and “rural” under the Metropolitan Region Scheme (MRS).
- [42] One of Goldrange’s three directors, Mr Raymond (Ray) Jackson, engaged Julian Grill Consulting in the middle of 2006 to achieve the rezoning of that company’s Lots from “rural” to “urban” under the MRS, and from “general rural” to “restricted uses” under the DPS2.
- [43] One business for which Mr Jackson wanted approval in February was for a growers mart. This was a business known as Garden Glow Growers Mart (“Garden Glow”), owned by Mr Darryl Tedesco, who was a tenant of Mr Jackson’s and also a director of Goldrange. The development approval for the land allowed wholesale trade only. Retail trade was prohibited. Mr Jackson wanted to be able to conduct retail trade and was attempting to achieve that through rezoning and other means.
- [44] In March 2006, in the midst of negotiations about that process, the City discovered that Mr Tedesco was contravening his land use approvals by conducting retail, as well as wholesale, trade from Garden Glow. Contravening a land use approval was an offence under the *Planning and Development Act 2005* (WA).
- [45] Mr Burke soon involved Mr Salpietro in this matter. It is apparent they were both well aware of the retail trading prohibition in the approval, that Mr Tedesco was trading in breach of it and that City compliance officers had inspected the premises and foreshadowed prosecution. Notwithstanding the ongoing action by the City officers, Mr Salpietro continued to deal personally and directly with Mr Burke and Mr Jackson.

[46] Mr Tedesco had prepared a document intended to go to the City, in which he detailed his trading activities, including the number of employees in wholesale and retail sales (80 employees overall). Mr Salpietro pointed out to Mr Burke it would be difficult to convince the City administration that retail trading was only incidental to approved wholesale trading, if all that information was revealed. In their discussions, they agreed the document had to be recast to present the picture (which they knew to be false) that retail sales were only incidental to and no more than 26% of the wholesale trading.

[47] Mr Salpietro involved himself directly with City officers dealing with the matter. He sought to have them approve the application under delegated authority or (if they were minded to refuse it) to refer it to Council. He also had further substantial contact with Mr Burke about the drafting of Mr Jackson's response (on behalf of Mr Tedesco) to the compliance officer's correspondence, and actively assisted to progress Mr Jackson's development application through the City's processes.

[48] In the event, the prosecution never eventuated, although the reason for that is not clear.

[49] So far as Mr Salpietro is concerned, the Commission is satisfied he was clearly aware Mr Tedesco was conducting retail trade out of the premises, and which Mr Jackson knew. In the Commission's assessment, he understood it to be blatant, flourishing and far from incidental. He was well aware that was a prohibited use. The assistance he gave Mr Burke and Mr Jackson was calculated to conceal from the Council and City officers what was actually happening. This was contrary to his duty as an elected member, and particularly so as Deputy Mayor. He advised Mr Burke and Mr Jackson how best to present an appearance of compliance to circumvent the processes of the City and the planning laws, and avoid a justified prosecution. His conduct could have indirectly adversely affected the impartial performance of the functions of the City; constituted the performance of his functions in a manner that was not honest and involved a breach of the trust placed in him by reason of his office as a councillor, to act with integrity and in the public interest and not to advance some personal interest. Further, in the Commission's assessment his conduct could constitute a disciplinary breach providing reasonable grounds for termination of a person's office or employment as a public service officer under the PSM Act.

[50] It is the Commission's opinion that, in this matter, Mr Salpietro's actions constituted misconduct within the meaning of the provisions of section 4(d)(i), (ii), (iii) and (iv) of the CCC Act.

## **Chairmanship of Tamala Park Regional Council**

[51] Tamala Park is an area of some 432 hectares between Marmion Avenue and the coast in the City of Wanneroo. The land was originally purchased by three city councils in cooperation to provide a landfill site. The composition of those councils changed over the years, and at the relevant times the land was owned by seven local government authorities,

including the City of Wanneroo. Each participating council has a representative on the Tamala Park Regional Council (TPRC). That was formed in February 2006 to facilitate the rezoning, subdivision, marketing and sale of a 165 hectare part of the Tamala Park area, and to maximise the resulting financial returns for local government participants. The remainder of the area was reserved for public use.

- [52] The TPRC, constituted under the *Local Government Act 1995*, is a local government council in its own right.
- [53] The 165 hectares vested in the TPRC will potentially provide some 2,600 urban development sites comprising thousands of residential Lots.
- [54] Mayor Kelly and Deputy Mayor Salpietro attended the inaugural meeting of the TPRC on 9 March 2006 as the City of Wanneroo's representatives. One of the agenda items was the election of a Chairperson of the TPRC.
- [55] Earlier that day Mr Salpietro had telephoned Mr Burke. He first passed on some information about a local landowner's links to the Australian Labor Party (ALP) and then asked if Mr Burke knew Mr Peter Clough, who was one of the City of Joondalup's representatives on the TPRC. Mr Burke said he knew Mr Clough very well. Mr Salpietro asked if Mr Burke could do him a favour. He explained he was going to nominate for election as Chairman of the TPRC that night. Mr Burke immediately told Mr Salpietro not to worry and that he would call Mr Clough straight away. He did so. He told Mr Clough that Mr Salpietro was "a very close friend" of his, had nominated for Chairman, that he was "a strong Labor bloke" and Mr Burke would deem it "a real big favour" if he could get elected.
- [56] Mr Burke spoke to Mr Clough and subsequently told Mr Salpietro he had Mr Clough's vote.
- [57] Mr Salpietro was elected as Chairman at the meeting that night.
- [58] In a subsequent conversation with Mr Burke, Mr Clough complained about the way Mr Salpietro had run the meeting. Mr Burke agreed that was a problem, particularly with his plan to see Mr Salpietro be Mayor of Wanneroo, but he could get Mr Salpietro over the line electorally – his heart was in the right place and
  - ... he is absolutely ... one hundred percent Labor and a hundred and twenty percent Burke.*
- [59] Although there is no evidence anything further eventuated out of this, for a public officer to seek assistance of the kind Mr Salpietro did in the circumstances, and so become obligated to a friend who was a lobbyist for commercial clients, had the potential to create an obvious risk of actual or perceived conflict of interest and partiality. Mr Salpietro risked future conflicts of interest by putting himself in a position of obligation to Mr Burke.
- [60] So far as Mr Clough's involvement is concerned, the Commission acknowledges the reality that party politics play a role in every level of

government, including in local authorities. That could give rise to misconduct only where a public officer exercised his or her functions for party-political purposes contrary to the public interest or contrary to their public duty. Clearly, that line will depend on the particular circumstances and may sometimes be difficult to draw. In this instance, when Mr Burke asked him to support Mr Salpietro's nomination, Mr Clough had already come to the view that either he or Mr Nick Catania should be supported. In the circumstances for him to be persuaded to opt for Mr Salpietro because of his apparent commitment to the Labor cause does not support a conclusion that Mr Clough acted otherwise than in the public interest. There is accordingly no evidence that Mr Clough engaged in misconduct in that regard.

## **Lots 2 and 3 Kingsway, and Lot 29 Landsdale Road, Darch**

- [61] Mr Edward (Ted) Smith owned Lots 2 and 3 Kingsway Road and Lot 29 Landsdale Road, Darch ("the Darch land"). Mr Burke had been successful in securing compensation of \$7.6 million for him from the State Government in 2004. In early 2005 Mr Smith retained Mr Burke to progress his subdivision plans for the Darch land.
- [62] In February 2005 Mr Burke emailed Mr Ross Leighton, a professional land developer, about the Darch land. He explained Mr Smith was finalising the purchase of an additional 2 hectare block at Lot 4 Kingsway, and although that was zoned residential, he was confident it could be rezoned as required.
- [63] Mr Burke then emailed Mr Grill and suggested that this last site Mr Smith was purchasing might be very suitable for one of Mr Leighton's developments. He suggested Mr Grill should represent Mr Leighton and he would represent Mr Smith.
- [64] Mr Burke then asked Mr Salpietro to relay an email drafted by himself, but in the name of Mr Salpietro, to Mr Grill, for sending to a third party.
- [65] First Mr Burke told Mr Leighton that he had spoken to Mr Salpietro, the Deputy Mayor of the City of Wanneroo, who, upon Mr Leighton's call, would accompany him on the site inspection and would then advise him of the "City's attitude". Mr Burke then sent an email to Mr Salpietro asking him to consider sending a note to Mr Grill, with a copy to Mr Burke, based on the draft set out. That thanked Mr Grill for briefing him on the development possibilities for the Darch land, and expressed support and enthusiasm for them.
- [66] Mr Salpietro responded by making some changes to the text and emailing it to Mr Grill that afternoon. One change was to include a suggestion about what the first task for Mr Leighton's planners should be, and then to arrange consultation with himself, Mr Grill, Councillor Frank Cvitan, Mr Leighton and his planners and Council staff.
- [67] Mr Grill emailed the note to Mr Leighton that night, advising it was a note he had received from Councillor Salpietro, that it sounded "cautiously

promising" and suggesting he meet with Mr Grill and Mr Burke to plan the next steps.

- [68] In effect Mr Salpietro assisted Mr Burke to mislead Mr Leighton. By sending the note via Mr Salpietro and Mr Grill, Mr Burke concealed the true authorship of the note and distanced himself from the development proposal which was his idea. By supplying the email bearing Mr Salpietro's title of Deputy Mayor, it appeared the project had some official endorsement. The exchange was orchestrated to give Mr Leighton the impression of being initiated by Mr Salpietro, forwarded on by Mr Grill with Mr Burke simply copied into the correspondence. Mr Salpietro's compliance with Mr Burke's request went beyond that of simply assisting a constituent. However, in the Commission's opinion, what Mr Salpietro did in this regard could not constitute misconduct within the meaning of section 4 of the CCC Act.
- [69] By September 2005 Mr Burke was trying to have the land rezoned from R20 to R40. His preference was to have that decision made by City officers acting under authority delegated to them by the Council. That could not be done if anyone lodged an objection to the application.
- [70] On 28 March 2006 an objection was lodged by the Tilbrook family.
- [71] When the City's Director of Planning and Development told Mr Burke this, he said he would see to it the objection was withdrawn. The strategy adopted was to characterise the Tilbrook letter as a "comment" rather than an objection. In a later discussion with Mr Smith's planner, Mr Burke told him that if the Tilbrooks' stopped Mr Smith getting his R40 rezoning, he would make sure they never got R40 zoning for their adjoining land. He had subsequent discussions with the planner about how they could make things difficult for the Tilbrooks if they did not withdraw their objection. At the same time, Mr Burke had offered to assist the Tilbrooks get their rezoning, if they withdrew their objection to Mr Smith's application. During this period Mr Burke continued to discuss the situation with Mr Salpietro.
- [72] Mr Burke had a meeting with the Tilbrooks on 11 April 2006. Later that day they formally withdrew their application, apparently on the basis that in return Mr Smith would write to the City supporting their application for rezoning.
- [73] In the meantime there was another intervention which involved Mr Salpietro.
- [74] On 11 April 2006 the City received another objection to Mr Smith's application. It was lodged by Mr A [name suppressed] on behalf of the Zito family, whose property adjoined Mr Smith's. That meant the application would still have to go before Council.
- [75] Mr A and Mr Smith were involved in an ongoing legal dispute about the purchase of another Lot. Mr Burke claimed Mr A's objection was a form of harassment related to that.

[76] Mr Smith knew the Zito family. He called them. They were unaware Mr A had lodged an objection. Whilst he was developing land he had purchased from them, he had not yet paid them.

[77] Mr Burke telephoned Mr Salpietro on 12 April 2006. He told Mr Salpietro Mr A had put in an objection relating to land he did not own, and without the knowledge of the Zitos. He said they would be writing to the City to say they did not agree with it.

[78] Mr Salpietro suggested Mr Burke telephone the City officers and tell them, because if it was an objection which did not qualify as one, the application may still be able to be dealt with under delegated authority.

[79] The next day Mr Smith sent Mr Burke a letter signed by a Zito family member saying the objection was lodged without his knowledge and he had no objection to Mr Smith's proposed rezoning. Mr Burke sent that to Mr Salpietro on 13 April 2006. On the telephone, he told Mr Salpietro the objection was a type of false pretence. While he had Mr Salpietro on the line he told him to listen quietly while he also called the City's planning officer. Mr Burke read the Zito letter to the officer and said it was a clear case of misrepresentation. The officer said they had received the objection and it was official, but he would clarify the position in his report. He said he would need to check how the objection had actually been phrased; people were allowed to lodge objections whether or not they were landowners – there might be contractual arrangements.

[80] After finishing his conversation with the planning officer Mr Burke reverted to Mr Salpietro, who had listened to it all. Mr Salpietro suggested Mr Burke talk to Mr Roman Wolodymr Zagwocki, the Director of Planning and Development, as could he. Mr Salpietro said he would like to know why the application would have to go to Council if there was only one objection and it was a misrepresentation.

[81] Mr Salpietro telephoned Mr Burke on 19 April 2006 to tell him he had spoken to the Planning Services Manager at the City who said he would know by the end of the week whether the application could be decided by delegated authority or whether it would have to go to Council. Mr Salpietro said the Manager would either approve the application under his delegated authority or refer it to Council – what he would not do would be to refuse it.

[82] In fact, it was decided to refer the application to Council.

[83] In a telephone call a week later Mr Burke told Mr Salpietro "I desperately don't want to lose this one. I don't want [Mr A] to beat me on this Smith thing". Mr Salpietro assured him he wouldn't. They discussed which councillors would be supportive. That discussion was sandwiched between offers by Mr Burke to assist Mr Salpietro and the Director of Planning and Development. They talked about Mr Salpietro's wish to be Mayor, just for one term. Mr Burke said "I think we can fix that ...".

- [84] The day after a Council Briefing session on the evening of 9 May 2006 Mr Salpietro told Mr Burke the meeting had gone as expected.
- [85] On 12 May 2006 they again discussed the application. Mr Salpietro reassured Mr Burke he would not lose it because there would be only two councillors against it. Mr Burke made a point of saying he had done nothing wrong and wasn't asking for any favours.
- [86] On 16 May 2006 the proposed amendment to upcode Mr Smith's land was approved unanimously by Council.
- [87] Shortly after the meeting Mr Burke telephoned Mr Salpietro to find out the result, and having been told, he telephoned Mr Smith to tell him. He also told Mr Smith he was going to try and make sure no-one else got the same upcoding.
- [88] In a conversation with Mr Burke on 17 May 2006 Mr Salpietro told him he had "a quiet word" with another councillor before the meeting and talked him into not opposing the application. Mr Burke then floated the idea there should be no more R40 in the area. Mr Salpietro thought the argument they had used for Mr Smith's application, that his upcoding would be bringing the level of R40 to the pre-existing level, could be used. Now that had been achieved, the level of R40 was back to par.
- [89] In the Commission's assessment, Mr Salpietro's position as a long-standing friend of Mr Burke required him to declare an interest affecting impartiality whenever he dealt with matters under consideration by the Council or the City administration, in respect of which he had been dealing with Mr Burke.
- [90] In his evidence before the Commission Mr Salpietro admitted that he did not disclose to other councillors that he had been lobbied by Mr Burke about Mr Smith's application.

## **Public Officers Approached to Block an Application**

- [91] Although Mr Smith's application was successful, Mr Burke set about delaying or preventing the Tilbrooks from getting their application for R40 approved by Council, and he sought to enlist the assistance of public officers to achieve that.
- [92] On 2 June 2006 Mr Burke contacted the Tilbrooks' planner, and was told they had lodged their application two weeks previously. He said he was not "cadging for work" but suggested the planner should give some thought to retaining Mr Grill to assist them. He said while Mr Smith's application had gone through Council there was an "emerging view" that there was enough R40. He said he was sure Mr Grill would be pleased to assist.
- [93] When asked about this call, in his examination before the Commission, Mr Burke said he had asked Mr Salpietro and Mr Kelly to "slow down" the Tilbrooks' application.

- [94] In fact he had made that request of Mr Salpietro on 7 June 2006.
- [95] On 9 June 2006 Mr Burke told Mr Grill he had suggested the Tilbrooks might wish to retain Mr Grill to assist with their application as they would not have an easy time of it and he thought they would soon start experiencing delays.
- [96] Mr Burke mentioned slowing down the Tilbrooks' application to Mr Salpietro on four occasions of which the Commission is aware, between 17 May and the middle of July 2006.
- [97] He asked Mr Kelly to slow down the Tilbrooks' application, as they were leaving a meeting at a restaurant on 2 June 2006. Mr Kelly agreed. Mr Kelly told the Commission that he spoke to Mr Salpietro immediately afterwards, and they both agreed "we don't do that".
- [98] Both Mr Salpietro and Mr Kelly insisted they had not done anything to delay the Tilbrooks' application.
- [99] Both of them said they were not inclined to confront Mr Burke because he was a powerful and influential person. Their practice, they said in effect, was to appear to acquiesce but in fact do nothing.
- [100] Neither of them appear to have considered that their professed or apparent compliance with his requests (as they claimed) could have been used by Mr Burke to his advantage.
- [101] Despite Mr Burke's efforts to impede the process, the Tilbrooks' application does not appear to have taken an undue time to process. The application was lodged in late May 2006 and approved by Council on 10 October 2006. That was approximately five months, as opposed to approximately three months for Mr Smith's application.
- [102] There is no evidence to suggest either Mr Kelly or Mr Salpietro took any action to impede the Tilbrooks' application at any stage of the process.
- [103] However, their preparedness to indicate compliance with Mr Burke's requests had the potential to compromise, if not actually compromise, their integrity as public officers, when they were at the same time seeking or apparently accepting favours from Mr Burke. Their relationships with Mr Burke were more symbiotic than they portrayed to the Commission.

## **Mr Kelly and Mr Salpietro's Relationship with Mr Burke**

- [104] Mr Kelly's relationship with Mr Burke was mutually duplicitous. Despite that, Mr Burke became involved in Mr Kelly's efforts to secure a Lotto Licence for his newsagency business in Wanneroo. They gave conflicting accounts about that. Mr Kelly said that it first came up in the middle of 2006. Mr Burke told him on several occasions he could use his connections to help Mr Kelly get the Licence. Mr Kelly said he told Mr Burke that would be greatly appreciated – but he never followed it up. An unexpected problem subsequently arose with his Licence application. He thought Mr Burke was probably "messing" with it. He said he "resisted for

a number of months" and then eventually said yes. Within two weeks the problem had disappeared.

- [105] Mr Burke's evidence was that he had offered to assist Mr Kelly with his Licence application and Mr Kelly had agreed. He did not initially decline the offer. Mr Burke said Mr Kelly sent him some information which he handed on to Mr Grill. His recollection was that Mr Grill didn't do much, if anything.
- [106] The Commission accepts that it probably was the case that Mr Burke had offered to be of assistance with Mr Kelly's Lotto Licence application and that he actively pursued the idea with him over some months. On the evidence it is apparent that Mr Burke saw that as an opportunity to create in Mr Kelly's mind a sense of obligation to him. That was reflected in his conversation with a developer on 16 August 2006, set out at [658] of this report.
- [107] The same technique was explained to a client by Mr Grill on 1 September 2006, in the context of how assistance with fund-raising could be used to secure favourable treatment at a later date. That was noted in the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: The Hon. Anthony David McRae MLA and Mr Rewi Edward Lyall*, 21 November 2008, at [236]. It is an illustration of the psychological theory known as the rule of reciprocity, which says that we should try to repay, in kind, what another person has provided us. One aspect of the rule is that a person can trigger a feeling of indebtedness in another by doing that other an uninvited favour.
- [108] Although he may well have been cautious, even apprehensive, about Mr Burke's assistance in this regard, Mr Kelly certainly dealt with Mr Burke in a way which indicated he was accepting that assistance and was grateful for it. This of course enabled Mr Burke to say he was assisting the Mayor in that way. The Commission accepts that Mr Kelly continued to deal personally with the processing of his Lotto Licence application, but that was not to the exclusion of whatever assistance he thought Mr Burke could provide.
- [109] As was the case with Mr Salpietro, one of the apparent consequences of Mr Kelly's reluctance to confront or refuse Mr Burke was that Mr Burke used their tacit compliance to further promote his influence to other clients.
- [110] Discussions between Mr Kelly and Mr Salpietro belie their claim that they kept Mr Burke's lobbying at arm's length and reacted to his requests by either ignoring or subverting them. Both men were alive to the potential benefits for them if they helped Mr Burke and kept in his good graces.
- [111] The risk of a perception of partiality or lack of integrity, or of actual misconduct, is exacerbated if the lobbyist is or appears able to provide some personal benefit or advantage to the public officer, at the same time as they are discussing a proposal by the lobbyist's client.

- [112] In this instance, this was a feature of Mr Burke's relationship with both Mr Kelly and Mr Salpietro. To Mr Kelly, Mr Burke offered his assistance in getting Mr Kelly re-admitted to the ALP and securing him a chance to a seat in the Upper House of State Parliament. To Mr Salpietro, Mr Burke offered to assist him become Mayor of Wanneroo.
- [113] Both Mr Kelly and Mr Salpietro said they passively allowed Mr Burke to claim that he could assist them in those ways, but without necessarily believing that he could. However, neither of them rejected his blandishments.
- [114] Whatever these public officers subsequently professed to believe about what they were told by Mr Burke, they put their own integrity and the integrity of the public decision-making processes in which they were involved at risk by engaging with Mr Burke and his clients in the ways described in this report, on the speculative expectation – or at least possibility – that he could advance their political aspirations.
- [115] A relationship between a public officer and a lobbyist which is founded on favours or influence gives rise to a very obvious risk of misconduct by the public officer.
- [116] The inability to refuse Mr Burke, or to draw clear boundaries in dealing with him, by both these public officers exposes a high-risk culture for corruption and misconduct within the City of Wanneroo at that time.
- [117] It is intrinsic to fair decision-making processes that public officers not only actively discourage unlawful or unethical requests made of them, but also build an environment where there can be no confusion or misunderstanding that their decisions can be bought or influenced.

# CHAPTER ONE

## BACKGROUND

### 1.1. Commission's Jurisdiction

- [1] The Corruption and Crime Commission (“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 *Corruption and Crime Commission Act 2003* (“the CCC 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 CCC Act.
- [2] Under the CCC 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 CCC Act.
- [3] One of the Commission’s functions, pursuant to section 18 of the CCC Act, is to deal with allegations of misconduct regarding public officers.

#### 1.1.1 Definition of Public Officers

- [4] The term “public officer” is defined in section 3 of the CCC Act by reference to section 1 of *The Criminal Code*. Section 1 of *The Criminal Code* defines “public officer” as encompassing police officers, government officers, elected members of Parliament, “public service officers” and
  - a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law ...*

- [5] Elected members of council and professional staff of local government bodies are hence “public officers” for the purposes of the CCC Act.
- [6] Non-elected administrative and professional staff of local councils as permanent or term employees subject to the provisions of the *Public Sector Management Act 1994* (“the PSM Act”), are public officers for the purposes of the CCC Act.

#### 1.1.2 Commission Jurisdiction and Non-Public Officers

- [7] In assessing the material available to it in regard to this investigation, the Commission has necessarily examined the actions of certain people who are not public officers. This report mentions a number of private individuals who had dealings with public officers at the City of Wanneroo (“the City”). This includes land owners, applicants and their agents and lobbyists who wished to achieve certain planning and development outcomes which were subject to approval or consideration by the City.
- [8] The Commission emphasises that mention of applicants and landowners, unless otherwise stated, does not imply that these individuals had

knowledge of, or were complicit in attempts to influence a public officer or a decision about an application. Reporting on the role of non-public officers in the incidents investigated by the Commission does not indicate, nor it is intended to imply, that the Commission had concerns about their conduct. Rather, mention of individuals is included to illustrate the events and forces which can lead to allegations of misconduct by public officers.

[9] Under the CCC Act, the Commission cannot examine or report upon the actions of non-public officers except in as far as they connect with or influence public officers. However, reporting on the outcome of Commission investigations would be deficient, if not rendered impossible, if the Commission were to exclude mention of the relevant actions of individuals outside public office. The Commission also has an obligation under the CCC Act to continuously improve the integrity of, and reduce the incidence of misconduct in, the public sector.<sup>1</sup> To achieve these ends, the Commission must explain the acts of public officers in their full context. It would be unfair, as well as incomplete, to examine and assess the actions of public officers without fully explaining the actions and purposes of those who may have influenced or sought to influence them.

[10] Evaluation of the merits of all planning matters is the responsibility of the administration and planning professionals of local governments, elected councillors, and the Western Australian Planning Commission (WAPC). The Commission therefore makes no comment or judgement on the actual merits of any planning matters mentioned in this report that were being considered by the City of Wanneroo Council or proposed by land owners and developers. This report focuses on the processes followed by public officers, and their conduct when acting or failing to act on these matters.

### **1.1.3 Definition of Misconduct**

[11] The term “misconduct” has a particular and specific meaning in the CCC Act and it is that meaning which the Commission must apply when assessing and forming an opinion on the conduct of a public officer. Section 4 of the CCC Act states that:

*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).*

#### **1.1.4 Reporting by the Commission**

- [12] Under section 84(1) of the CCC 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.*
- [13] 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 CCC Act, or dealt with under section 93 of the CCC Act.

- [14] Following a public hearing of the Commission on 13 February 2007 at which Mr Salvatore (Sam) Salpietro gave evidence, on 15 October 2007 Hardy Bowen Lawyers provided a sworn affidavit by Mr Salpietro making further submissions about issues raised during the hearing.<sup>2</sup> The Commission has considered this information when drafting this report.
- [15] Mr Trevor John Delroy gave evidence at a Commission public hearing on 12 February 2007. On 15 July 2008 and in subsequent correspondence, Solomon Brothers, Barristers, Solicitors and Attorneys, made extensive submissions on behalf of Mr Delroy. The Commission reiterates that its investigation and this report are concerned with the question of whether or not public officers have engaged in misconduct as defined in section 4 of the CCC Act. The Commission has no jurisdiction to express opinions about misconduct in respect of persons who are not public officers. But the conduct of public officers does not occur in a vacuum. It frequently occurs in relation to the activities of, or approaches by, or communications with, other persons. Quite often, the relationship between a public officer and other persons, the purposes which the latter are seeking to achieve, how they are going about it and the dealings with other public officers, all form a relevant context which it is necessary to understand so as to make an assessment of the character of the public officer's response.
- [16] The Commission also emphasises that the particular planning or development issues before the City of Wanneroo are relevant to this investigation and this report only in that they were matters with which the public officers concerned were involved. Again, it is the conduct of the public officers which is the Commission's concern. The Commission reiterates that it is not concerned with, and expresses no view nor opinion about, the merits or otherwise of any planning or development issue mentioned in this report.
- [17] Section 86 of the CCC 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.
- [18] Accordingly, a number of persons were notified by letter of possible adverse matters which it was proposed to include in this report. They were invited to make representations about those matters by a particular date, and were advised that they and their legal adviser could inspect the transcript of hearings before the Commission and evidentiary material going to matters identified and any other matters about which they might wish to make representations. A number of persons provided representations and the Commission has taken those into account in finalising this report.
- [19] A list of persons who received notifications under section 86 of the CCC Act in respect of this report is detailed in Appendix 1 to this report.

### **1.1.5 Disclosure of Information**

- [20] 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 Commission.
- [21] Section 151 of the CCC 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.
- [22] Section 151(4)(a) of the CCC Act 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 CCC 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.
- [23] 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.

### **1.1.6 Telecommunications Interception Material**

- [24] The Commonwealth *Telecommunications (Interception and Access) Act 1979* (“the TI Act”) contains stringent controls and safeguards in relation to telecommunications interception and handling, and communicating information gathered from lawfully intercepted telecommunications. Section 63 of the TI Act prohibits the communication of lawfully intercepted information except in particular restricted circumstances.
- [25] Section 67(1) of the TI Act allows certain intercepting agencies, including the Commission,<sup>3</sup> to make use of lawfully intercepted information and interception warrant information for a “permitted purpose”. “Permitted purpose”, as defined in section 5(1) of the TI Act, in the case of the Commission “means a purpose connected with ....: (i) an investigation under the Corruption and Crime Commission Act into whether misconduct (within the meaning of that Act) has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur; or (ii) a report on such an investigation”.<sup>4</sup>

### **1.1.7 Privacy Considerations**

- [26] In formulating this report the Commission has considered the benefit of public exposure and public awareness and weighed this against the potential for prejudice and privacy infringements. The Commission has also complied with the strict requirements of the TI Act and the *Surveillance Devices Act 1998* (WA) (“the SD Act”) in the utilisation of intercepted information in this report.

- [27] As a result of these considerations the Commission may decide not to include names of various individuals who assisted the Commission during its investigation. Similarly, some extracts from Telecommunications Intercept (TI) material set out in this report has been edited by omitting the names of individuals or other information collateral to this investigation.
- [28] Material instructed for suppression by Commissioner Hammond during the Commission's public hearing on 20 February 2007, detailed in Suppression Order 2007/03, has been so marked where that material has been quoted in this report.

#### **1.1.8 Opinions of Misconduct: Standard of Proof**

- [29] 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.
- [30] The Commission is careful to bear these matters in mind, when forming opinions, when conducting inquiries and when publishing the results of its investigations.
- [31] 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.
- [32] 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.
- [33] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the investigation. Any expression of opinion in this report is so founded.

## **1.2 Commission Investigation**

- [34] During 2005 and 2006 the Commission investigated allegations of misconduct by public officers in connection with the proposed Smiths Beach Development at Yallingup. The investigation examined whether Canal Rocks Pty Ltd attempted to gain support for the Smiths Beach Development by influencing local council, public service officers and politicians. The investigation was initially concerned with the dealings of Canal Rocks Pty Ltd, and those of lobbyists Mr Brian Thomas Burke and Mr Julian Fletcher Grill, with local councillors and council officers in the South-West of Western Australia. However, it soon became apparent that the lobbyists' activities and strategies were multi-stranded and extended to other public officers.

[35] On 21 February 2006 Commissioner Hammond authorised an investigation into further matters emanating out of the Smiths Beach investigation.

[36] One of these matters was the conduct of public officers at the City of Wanneroo. It became apparent that Mr Burke, in particular, was in frequent contact with elected members of council and employees at the City, and that he was working on behalf of a number of clients with interests in the area. It appeared that public officers at the City may have engaged in misconduct by the manner in which they assisted Mr Burke to achieve certain outcomes for his clients.

[37] The Commission investigated this matter through analysis of telecommunications material lawfully intercepted under section 46 of the TI Act. Commission officers conducted interviews with public officers and other parties, and required the production of documents pursuant to section 95 of the CCC Act. Search warrants were obtained under section 101 of the CCC Act and relevant documents were acquired from searches of Mr Grill and Mr Burke's residential premises conducted on 8 November 2006. Surveillance devices, authorised by warrants granted under sections 13 and 19 of the SD Act, were also utilised.

[38] The Commission conducted public hearings in February 2007 which addressed this matter. Commission hearings form part of the Commission's investigative process and are not judicial proceedings. They are generally conducted in private, but may be opened to the public if the Commission determines that it is in the public interest to do so.<sup>5</sup>

[39] Commissioner Hammond, in his opening address, stated that having weighed the risk of damage to the reputations of private citizens against the public interest he had concluded that it was in the public interest for this investigative process of the Commission to be conducted publicly. Commissioner Hammond cited the benefits of a public hearing to both the Commission and the public, and affirmed that the Commission is an investigative body which may not reach conclusions or findings in respect of either civil or criminal liability.<sup>6</sup>

[40] Persons summonsed to appear and give evidence at these public hearings, pursuant to section 96 of the CCC Act, included:

- public officers from the City of Wanneroo;
- Mr Brian Thomas Burke;
- Mr Julian Fletcher Grill; and
- clients of Mr Burke and Mr Grill who had relevant dealings with the City of Wanneroo.

## 1.3 Relevant Entities

[41] This section provides a brief background on some of the people and entities whose actions are referred to in this report. Other relevant individuals will be introduced in later sections.

### 1.3.1 Mr Brian Thomas Burke

[42] Mr Burke began his career in Western Australia as a journalist and is from a family with significant links to the Australian Labor Party (ALP) (Western Australian Branch). Mr Burke entered the Legislative Assembly in 1973 as the Labor Member for Balga. Mr Burke was Leader of the Parliamentary Labor Party from 1981 to 1988, and was State Premier from 1983 until his resignation in 1988.<sup>7</sup>

[43] Mr Burke has worked as a lobbyist and consultant for at least the last 9 or 10 years, utilising his extensive contacts in politics, journalism and the public service to advance the interests of numerous clients.<sup>8</sup> He has also been extremely adept in manoeuvring within the ALP to assist political affiliates. Mr Burke's partnership with a former Minister in his Cabinet, Mr Grill (see below) and association with former Liberal Senator Mr Noel Crichton-Browne have allowed him to access both sides of State politics.

[44] Due to his political notoriety and public profile, Mr Burke's activities have been a matter of some sensitivity within the ALP. In April 2003, a perception that Mr Burke had an unseemly measure of influence over Government decision-making and the preselection of candidates led then Labor Premier, the Hon. Dr Geoff Gallop MLA, to ban Cabinet Ministers from contacting either Mr Burke or Mr Grill.<sup>9</sup> Following the resignation of Dr Gallop, the Hon. Alan Carpenter MLA was elected unopposed to the position of Premier of Western Australia by the ALP Caucus on 24 January 2006.<sup>10</sup> Later the same day, Mr Carpenter spoke to the media. He announced his wish to move away from the shadows of "WA Inc" and was reported to have lifted the ban on his Ministers dealing with Mr Burke.<sup>11</sup> Mr Carpenter said:

*Given that it's 18 years since Brian Burke retired, isn't it time we moved on? Isn't it time that we moved on with this notion that somehow he would be pulling the strings of a person like me?*

*Brian Burke is not a bogeyman ... He's a citizen of the state ... We know the history. I know the history. But let's move on.<sup>12</sup>*

### 1.3.2 Mr Julian Fletcher Grill

[45] Mr Grill, who began his career as a lawyer before moving into politics, was a member of the Legislative Assembly from 1977 to 2001. He represented several regional seats, most recently that of Eyre. Mr Grill was a Cabinet Minister from 1983 to 1990 and held senior Portfolios including Transport, the North-West, Regional Development, Economic Development and Trade, and Tourism.

[46] Since leaving politics, Mr Grill has achieved a high profile in the mining and resources sector and has been involved with several mining companies, as well as working as a lobbyist and consultant. Like Mr Burke, Mr Grill has been able to utilise an extensive network of friends and ex-colleagues in his lobbying work. Mr Grill was expelled from the ALP in 2007, after he was found to have made a donation to the National Party of Australia (on behalf of a client) in 2005.<sup>13</sup>

### **1.3.3 City of Wanneroo**

[47] The City of Wanneroo governs a district of some 685 square km of coastal land, just over 20 km north of the Perth Central Business District in Western Australia.<sup>14</sup> The City crosses the Legislative Assembly seats of Wanneroo, Girrawheen and Mindarie. Wanneroo is one of the fastest-growing local governments in Western Australia, with a population increase of 8.3% during the 2005-2006 financial year. The district of Wanneroo was first defined in 1902; the district became a Shire in 1961 and was designated a City in 1985.

[48] The City of Wanneroo was the subject of a Royal Commission in 1996-1997. That Commission had extensive terms of reference based upon allegations of criminal corruption at the City. The allegations investigated by the Commission included councillors failing to disclose pecuniary interests and conflicts of interest, councillors receiving rewards in return for securing votes of support, improper disclosure of information and improper personal expenditure.<sup>15</sup> The report of the Wanneroo Royal Commission led to the suspension of the Wanneroo Council in November 1997.<sup>16</sup> The City of Wanneroo was administered by Commissioners, appointed by the Minister for Local Government, the Hon. Paul Omodei MLA, until 1999. In 1998 the district was divided into the Shire of Wanneroo and the Shire of Joondalup. Wanneroo again became a City only a year later, in 1999. Mr Jon William Kelly was elected the inaugural Mayor of the new City of Wanneroo in December 1999.

[49] The Royal Commission into the City of Wanneroo reported on 25 September 1997 and made twelve key recommendations to improve Council record keeping, conflict of interest declaration and the prohibition on councillors receiving gifts or benefits. The Royal Commission also recommended that factionalism be discouraged, that councillors be made aware of the dangers of interfering in commercial relationships between developers and objectors, and that councillors be required to keep records of their dealings with developers.<sup>17</sup>

[50] The Wanneroo Royal Commission was also a catalyst for changes to the *Local Government Act 1995* (“the LG Act”) and its Regulations, including altered requirements for councillors to declare their interests, public access to council records and a variety of administrative changes (such as enforcement of local laws and the conduct of council meetings).<sup>18</sup>

[51] Wanneroo is currently undergoing a population and development “boom”, based on improved infrastructure from Perth, ever-increasing demand for residential land, and City efforts to diversify and develop both business

and residential projects. The City has a long history of market gardening and trading in fresh produce, but now incorporates large and varied industrial estates.

- [52] Major projects planned in and around the City of Wanneroo include the revitalisation of the Wanneroo Town Centre, the development of the suburb of Yanchep as a “satellite city”, the development of the “Saint Andrews Estate”, and subdivision and development of land known as “Tamala Park”.
- [53] The staff and councillors of the City shoulder responsibility (sometimes in partnership with other local and state government bodies) for setting and implementing policy on planning, orderly growth, environment and community infrastructure, as well as good governance for the people of Wanneroo. In addition, the City is responsible like any local government for issuing planning and development approvals for individual projects. Given the number and variety of projects in the City, its rapidly expanding population and economy and the sheer scale of developments in the area, it is inevitable that numerous large companies and individuals have significant investments in the area.
- [54] In 2006, during the time relevant to this report, the City was divided into seven wards and had a Council of 15 elected members.

#### **1.3.4 Mr Jon William Kelly**

- [55] Mr Jon William Kelly has been the Mayor of the City of Wanneroo since December 1999. Mr Kelly was a member of the ALP until 2005. In the 2005 State Election Mr Kelly sought pre-selection to stand for the Legislative Assembly seat of Girrawheen, in place of the incumbent, Ms Margaret Quirk MLA. The ALP National Executive instead decided to re-endorse all sitting members. Mr Kelly decided to run against Ms Quirk as an Independent, and was expelled from the ALP.
- [56] Mr Kelly gave evidence to the Commission that he has known Mr Burke for more than ten years. He came to know Mr Burke through ALP colleagues and Mr Burke had some involvement in Mr Kelly’s (unsuccessful) “pre-selection tactics” prior to the 2005 State Election. Mr Kelly was a member of the “Old Right” faction of the ALP (Western Australian Branch), which is associated with Mr Burke. After 2005 Mr Kelly said his contact with Mr Burke was less frequent, but in 2006 Mr Burke began to make contact once again in his role as a lobbyist.

- [57] Mr Kelly was re-elected as Mayor in 2003 and 2007, and his current term runs until 2011. Mr Salpietro has been Mr Kelly’s Deputy Mayor throughout his entire mayoralty.

#### **1.3.5 Mr Salvatore (Sam) Salpietro**

- [58] Mr Salvatore Salpietro, known as Sam Salpietro, became a Councillor of the City of Wanneroo in December 1999. Mr Salpietro represents the Central Ward. Mr Salpietro has also been the Deputy Mayor of Wanneroo

since December 1999. The 2005-2006 City of Wanneroo Annual Report states that

*Cr Salpietro has a special interest in economic development, tourism, heritage and water issues affecting both Wanneroo's unique lakes system and the City's largest industry group, the horticultural industry. Cr Salpietro has a particular interest in preserving and promoting Wanneroo's rich and varied culture and history and the development of the Wanneroo region as a major manufacturing and industrial centre.<sup>19</sup>*

[59] Prior to 1988 Mr Salpietro was a member of the ALP and sat on the ALP's State Executive, representing the Shop, Distributive and Allied Employees Union, who were factionally aligned with the Old Right. Mr Salpietro has known Mr Burke for many years and counts Mr Burke as a close friend. In his evidence to the Commission, Mr Salpietro said that:

*We've been friends for about 30 years. Our children grew up together, they went to the same school together and our families have been friends.<sup>20</sup>*

[60] Mr Salpietro served on numerous internal and external committees during his tenure as Deputy Mayor. After his election to the Council in 1999, Mr Salpietro was re-elected in 2003. Mr Salpietro ran for the position of Mayor in the October 2007 Local Government Elections, but was unsuccessful; the position was won by Mr Kelly.

### **1.3.6 Other Elected Members**

[61] Other elected members of Council at the relevant time include:

- Mr Frank Cvitan, representative of the Central Ward;
- Mr Ian Goodenough, representative of the Coastal Ward;
- Mr Brett Treby, representative of Alexander Ward;
- Mr Rudi Steffens, representative of Hester Ward;
- Mr Terry Loftus, representative of North Ward;
- Mr Alan Blencowe, representative of South Ward;
- Mr Colin Hughes, representative of South Ward; and
- Ms Glynis Monks, representative of Wanneroo Ward.

### **1.3.7 Mr Roman Wolodymr Zagwocki**

[62] In 2006 Mr Roman Wolodymr Zagwocki was the Director of Planning and Development at the City of Wanneroo, and had held this role for some five years. Prior to this he had worked as Wanneroo's Manager of Planning Services, and worked in planning in several other local government authorities.

[63] As Director, Planning and Development, Mr Zagwocki had ultimate responsibility for all reports given to councillors on Planning and Infrastructure agenda items. Mr Zagwocki also had the ability to make, or to approve, certain decisions independently of Council, in accordance with the Wanneroo *Delegated Authority Register*.

[64] The Council adopted a *Delegated Authority Register* in August, 2005.<sup>21</sup> This Register provides a detailed list of functions which the Council delegated to the Chief Executive Officer (CEO), and which the CEO might then delegate to other positions. The various functions delegated included (amongst others) authority to enforce compliance to certain local laws, to represent the City in court, payment of certain accounts, approval of donations, appointment of inspectors and various town planning and development decisions. The City's District Planning Scheme No. 2 (DPS2) also provided for delegation of various authorities to a "committee, member or officer".<sup>22</sup>

[65] Mr Zagwocki's delegated responsibilities included (providing various conditions were met) authority to require owners to comply with notices and authority to deal with planning matters under the Town Planning and Development Act and Western Australian Planning Commission Act, and the power to commence a prosecution.

### **1.3.8 Mr Rodney Malcolm Peake**

[66] Mr Rodney (Rod) Peake, Manager, Planning Services, City of Wanneroo, reported to Mr Zagwocki. Like Mr Zagwocki, Mr Peake was able to make certain compliance and planning decisions under delegated authority. Mr Peake was the direct manager of planning staff at the City.

### **1.3.9 Other City Staff**

[67] Other City employees mentioned in this report include:

- Mr Charles Johnson, Chief Executive Officer and, therefore, head of administrative staff at the City;
- Mr John Paton, Manager, Contracts and Property, responsible to Director of Corporate Services, Mr Bruce Perryman;
- Mr John Halliday, Compliance Officer, reporting to Mr Peake; and
- Mr Craig Henry, Compliance Officer, reporting to Mr Peake.

## CHAPTER TWO

# LOCAL GOVERNMENT IN WESTERN AUSTRALIA

### 2.1 Background

- [68] Government in Australia is divided into three tiers – Federal, State and local. Western Australia is divided into districts, each of which is administered by a local government. There are currently 141 local governments in Western Australia.
- [69] Local governments may be classed as shires, towns or cities depending on their population and whether they are mostly rural or urban. Each local government has an elected council as a governing body, made up of representatives elected by the local community. Some local governments are divided into wards, and elected members representing each of these wards sit on a council.
- [70] Local governments have authority, conferred under various pieces of State legislation, for a wide range of services to their local communities. These include (amongst many others) controlling planning, development and building schemes, compiling local laws, traffic management, street lighting, fire breaks, refuse disposal and recycling services and provision of public facilities such as libraries, sporting and recreation grounds and public open space. Local governments receive their funding from the State Government and from property rates.
- [71] The State body responsible for administering local governments in Western Australia during the period relevant to this report was the Department of Local Government and Regional Development (DLGRD). From 1 July 2009 the DLGRD became the Department of Local Government, and the Department of Regional Development and Lands. Information on local government functions, responsibilities and legislation is available from the DLGRD Website.<sup>23</sup>
- [72] Another important body assisting local governments is the Western Australian Local Government Association (WALGA). WALGA is an advocacy body, which lobbies and negotiates with politicians and the public sector on behalf of local government authorities who are members. WALGA also produces resources and information for local government councillors and staff.<sup>24</sup>
- [73] As well as the elected council, local governments employ professional staff such as planners, rangers, financial experts and administrative staff. Staff are not elected, but employed under contract. The roles of the staff and council are distinct, and each has a different structure: the elected council is headed by a mayor (in a city or a town) or president (in a shire), and the staff by a CEO.
- [74] The role and responsibilities of the council, mayor and staff are laid out in the LG Act (see section 2.2.1 below).

- [75] The LG Act also provides that a deputy mayor or deputy president shall be part of the council, and that the Deputy performs the functions of the mayor when the mayor is absent or otherwise unable or unwilling to perform those functions.
- [76] The council sets policy and strategy, and makes decisions via democratic voting on items raised at regular council meetings. Local government staff assess applications, provide reports to council, are responsible for implementing council policies and may provide advice to assist councillors to make decisions.
- [77] For example, at the City of Wanneroo, regular Council Briefing sessions are conducted one week before ordinary Council meetings. Council Briefing sessions are an opportunity for Council staff to present the elected councillors with reports and recommendations on the items which form the Council agenda, and for councillors to ask questions of Council staff. These reports comprise information on the history and status of each item and impartial, professional advice on issues such as compliance with policy and legislation. Such sessions allow councillors to be fully informed when discussing issues with electors and when debating and voting upon items in Council meetings. Council staff may produce recommendations as part of their reports to Council, and these recommendations can then go on to form the agenda items for Council meetings. Councillors will discuss and vote on the recommendations and can adopt the recommendations, reject them, or raise alternatives.
- [78] Local governments are important public bodies with a great deal of authority to make decisions impacting on individuals and communities. Councillors and staff are required to understand and consider complex issues such as town planning and State planning policies, maintain close links and relevance to their community, promote good communication with their constituents and still manage their ethical obligations. Local governments may also be vulnerable to lobbying and pressure from interest groups who stand to gain or lose significant amounts of money depending on the decisions of council.
- [79] It is part of the representative function of a councillor to ensure they are accessible to individuals and interest groups in their community and fully informed of community feeling. As part of their statutory role, a councillor “facilitates communication between the community and the council”.<sup>25</sup> At the same time councillors, as public officers and decision-makers, have a duty to remain professional, detached and consider ethical principles such as impartiality, conflict of interest and the wider public interest.
- [80] Lobbying by individuals or interest groups is thus an everyday fact of life in local government. Lobbying where constituents or representatives seek formal or informal meetings with councillors or council staff to make representations about the benefits of a proposal is completely legitimate. It is when approaches are made to public officers seeking favourable treatment based on considerations other than the merits of the matter at hand that lobbying becomes inappropriate.

- [81] Examples of inappropriate behaviour by public officers when they are lobbied would include accepting payment, political donations or in-kind benefits for making a particular decision; providing favourable access to one individual or group to the detriment of others; disclosing confidential information; or committing support to a proposal before participating in the complete council decision-making process.
- [82] As public officers and community representatives, councillors are also required to be aware of and alert to potential conflicts of interest – situations where a public officer's private interests may affect, or be perceived to affect, their public duty. Conflicts of interest can arise fairly frequently, particularly for officers such as local government councillors and staff who are required to assess applications or make decisions on matters arising in their own local community. Elected members are usually not employed as councillors full-time, instead maintaining employment and financial interests in that same community. Councillors often have family links, friendships and investments in the electorate over which they are required to exercise fair decision-making discretion. Local governments operate under legislation, regulations and compulsory policies which assist councillors and council staff to identify and avoid, or declare and defuse or manage, potential conflicts of interest.

## 2.2 Legislative and Regulatory Framework in Western Australia

- [83] Local governments operate within a complex statutory framework. The DLGRD has responsibility for administering 13 Acts of Parliament such as the *Local Government Act 1995*, *Regional Development Commissions Act 1993*, *Animal Welfare Act 2002*, *Dog Act 1976*, *Control of Vehicles (Off-road Areas) Act 1978*, *Caravan Parks and Camping Grounds Act 1995*, *Local Government Grants Act 1995* and the *Cemeteries Act 1986*.<sup>26</sup>
- [84] Local governments also regularly make decisions which must incorporate the requirements of other Acts such as the *Planning and Development Act 2005*, *Environmental Protection Act 1986*, *Strata Titles Act 1995* and various local Scheme Acts, among many others.
- [85] The most important of these Acts is the over-arching LG Act and its subsidiary Regulations, which detail the system of local government in Western Australia.

### 2.2.1 Local Government Act

- [86] The LG Act provides for a system of local government in Western Australia. The main function of the LG Act is “to provide for the good government of persons in its district”.
- [87] The LG Act deals with numerous areas concerning the administration of local government, from the appointment and functions of councillors and council staff, to the administration of elections and management of finances, the authority to pass and enforce local laws and conflict of interest disclosure obligations.

[88] The LG Act also defines how district and council boundaries are to be set and reviewed. Some districts are divided into wards; these are areas within the council that share characteristics or interests. In local governments that have a ward system, each ward is allocated one or more seats on council dependent on the ratio of elected members to electors. (Ward councillors are elected to represent their ward, but still have a responsibility to represent everyone in the district.)

[89] The roles of the council, mayor and councillors are laid out in the LG Act:

### **2.7. *The role of the council***

(1) *The council* —

- (a) *governs the local government's affairs; and*
- (b) *is responsible for the performance of the local government's functions.*

(2) *Without limiting subsection (1), the council is to* —

- (a) *oversee the allocation of the local government's finances and resources; and*
- (b) *determine the local government's policies.*

### **2.8. *The role of the mayor or president***

(1) *The mayor or president* —

- (a) *presides at meetings in accordance with this Act;*
- (b) *provides leadership and guidance to the community in the district;*
- (c) *carries out civic and ceremonial duties on behalf of the local government;*
- (d) *speaks on behalf of the local government;*
- (e) *performs such other functions as are given to the mayor or president by this Act or any other written law; and*
- (f) *liaises with the CEO on the local government's affairs and the performance of its functions.*

### **2.10. *The role of councillors***

*A councillor* —

- (a) *represents the interests of electors, ratepayers and residents of the district;*
- (b) *provides leadership and guidance to the community in the district;*

- (c) *facilitates communication between the community and the council;*
- (d) *participates in the local government's decision-making processes at council and committee meetings; and*
- (e) *performs such other functions as are given to a councillor by this Act or any other written law.*

[90] The functions of a CEO as defined in the LG Act have to do with administration, provision of advice to council and the actual implementation of council decisions:

**5.41. Functions of CEO**

*The CEO's functions are to —*

- (a) *advise the council in relation to the functions of a local government under this Act and other written laws;*
- (b) *ensure that advice and information is available to the council so that informed decisions can be made;*
- (c) *cause council decisions to be implemented;*
- (d) *manage the day to day operations of the local government;*
- (e) *liaise with the mayor or president on the local government's affairs and the performance of the local government's functions;*
- (f) *speak on behalf of the local government if the mayor or president agrees;*
- (g) *be responsible for the employment, management supervision, direction and dismissal of other employees (subject to section 5.37(2) in relation to senior employees);*
- (h) *ensure that records and documents of the local government are properly kept for the purposes of this Act and any other written law; and*
- (i) *perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

[91] The LG Act also allows local government authorities to “delegate” authority to council staff, allowing employees to make decisions in certain circumstances where it is not necessary for council to debate and vote on

a decision. Delegating authority for some decisions allows efficient decision-making and customer service on straightforward matters, while ensuring more complex or controversial matters are still discussed by elected representatives.

#### **5.42. Delegation of some powers and duties to CEO**

- (1) *A local government may delegate\* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.*

*\*Absolute majority required.*

- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*

#### **5.43. Limits on delegations to CEO's**

*A local government cannot delegate to a CEO any of the following powers or duties —*

- (a) *any power or duty that requires a decision of an absolute majority or a 75% majority of the local government;*
- (b) *accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;*
- (c) *appointing an auditor;*
- (d) *acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;*
- (e) *any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;*
- (f) *borrowing money on behalf of the local government;*
- (g) *hearing or determining an objection of a kind referred to in section 9.5;*
- (ha) *the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;*
- (h) *any power or duty that requires the approval of the Minister or the Governor; or*
- (i) *such other powers or duties as may be prescribed.*

#### **5.44. CEO may delegate powers and duties to other employees**

- (1) *A CEO may delegate to any employee of the local government the exercise of any of the CEO's powers or the discharge of any of the CEO's duties under this Act other than this power of delegation.*
- (2) *A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.*
- (3) *This section extends to a power or duty the exercise or discharge of which has been delegated by a local government to the CEO under section 5.42, but in the case of such a power or duty —*
  - (a) *the CEO's power under this section to delegate the exercise of that power or the discharge of that duty; and*
  - (b) *the exercise of that power or the discharge of that duty by the CEO's delegate,*

*are subject to any conditions imposed by the local government on its delegation to the CEO.*
- (4) *Subsection (3)(b) does not limit the CEO's power to impose conditions or further conditions on a delegation under this section.*
- (5) *In subsections (3) and (4) —*  
**conditions** *includes qualifications, limitations or exceptions.*

[92] The LG Act incorporates some legal requirements for public officers to follow ethical principles of transparency and integrity. For example, the LG Act includes requirements for meetings, meeting documents and certain financial returns to be open to the public except under certain circumstances, and requires officers to disclose any actual or potential conflicts of interest.

[93] Division 6 of Part 5 of the LG Act deals with the obligation to disclose a financial interest. Financial interests are defined as:

#### **5.60. When a person has an “interest”**

*For the purposes of this Subdivision, a relevant person has an interest in a matter if either —*

- (a) *the relevant person; or*
- (b) *a person with whom the relevant person is closely associated,*

*has —*

(c) a direct or indirect financial interest in the matter; or

(d) a proximity interest in the matter.

[94] A person is considered to have a financial interest in a matter if the matter will, if dealt with in any particular way by the local government, “result in a financial gain, loss, benefit or detriment for the person”. A person is considered to have a “proximity interest” in a matter if they will be affected by changes to land adjoining their own. The LG Act also defines an “indirect financial interest” as one that occurs when a person may be considered to have a financial interest in a matter if someone with whom they are closely associated holds a financial interest in the matter.

[95] The LG Act dictates how such interests are to be identified and declared. The DLGRD has also produced Guidelines and Information Handbooks which give further guidance on defining matters of interest and deciding whether or not they need to be declared.<sup>27</sup>

[96] Certain “non-financial interests” must also be declared. The LG Act requires all government bodies to prepare and make available codes of conduct, and the contents of those codes are dictated by the *Local Government (Administration) Regulations 1996* (“the LG Regulations”). It is in the LG Regulations that reference to non-financial interests, or interests affecting impartiality, are found. Such an interest is defined as:

*... 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.*

[97] Broadly, interests should be declared when an officer is part of a body or committee, or responsible for reporting on, any issue in which they might “reasonably” be perceived to have an interest. “Declaration” of a financial interest in a matter means that the officer (councillor or staff member) makes a written declaration to the meeting or committee on which they are serving, or to their management in the case of council staff; in the case of councillors, a written declaration must be followed by a verbal declaration immediately preceding discussion on the relevant item.

[98] There are situations in which financial interests do not need to be disclosed, including (for example) the situation where a person has a financial interest in a change which will affect a whole district or is common to the majority of people in the local government’s jurisdiction.

[99] Disclosures of financial and non-financial interests have different consequences. In most cases officers who declare they have a financial interest in a matter will be precluded from taking part in debate, reporting or voting on that issue. (The council or Minister for Local Government may in some cases give permission for the relevant officer to be included.) Declaration of a non-financial interest does not require the officer to be excluded from debate, voting, taking part in committees or reporting.

[100] These requirements are designed to incorporate transparency, impartiality and fully-informed decision-making as values in our system of local government.

[101] The LG Act also requires councils to prepare and abide by codes of conduct which incorporate further detail on ethical obligations.

### **2.2.2 Local Government Codes of Conduct**

[102] Section 5.103 of the LG Act as current to November 2006 requires that:

- (1) *Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.*
- (2) *A local government is to review its code of conduct within 12 months after each ordinary elections day and make such changes to the code as it considers appropriate. [This section deleted subsequent to November 2006.]*
- (3) *Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.*

[103] The LG Regulations prescribe that codes of conduct shall contain requirements preventing members and employees accepting gifts under certain circumstances, requiring the keeping of a register of token gifts, and requiring members and employees to declare conflicts of interest affecting impartiality.

[104] Apart from these provisions, the content of local government codes of conduct is not dictated by statute and is generally left to individual local governments to determine.

#### **2.2.2.1 City of Wanneroo Code of Conduct**

[105] The City of Wanneroo has adopted a code of conduct. The relevant version of this code of conduct was adopted on 9 April 2002. The 2002 version of the code was revised in April 2006 and minor amendments made. This code was replaced in March 2008 (following the adoption of new provisions in the *Local Government Act 1995* and *Local Government (Rules of Conduct) Regulations 2007*) with a *Code of Conduct for Council Members* and a *Code of Conduct for Committee Members*.

[106] The 2006 Code of Conduct<sup>28</sup> provides that:

*The over-riding obligation to observe both the spirit and letter of the code for elected members comes from the individual declaration of office:*

*... declare that I take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties of the*

*office for the people in the district according to the best of my judgment and ability, and will observe the code of conduct adopted by the City of Wanneroo. Under section 5.103 of the Local Government Act 1995.*

*This declaration imposes a strong moral obligation on elected members to observe the code.*

*The obligation for employees arises from the contract of employment and breaches can have implications for continued employment.*

...

*The community is entitled to expect that:*

- *the business of the Council is open and accountable, is conducted with efficiency and integrity and is committed to customer service;*
- *elected members and employees will accord with the spirit and letter of the law and act in accordance with all relevant legislation; and*
- *Council's duty to the community will always be given absolute priority over the private interests of elected members and employees.*

...

### ***Commitment to Good Governance***

*Elected members and employees shall at all times be mindful of their responsibility to maintain full and accurate records in the performance of their duties and unless confidentiality is essential ensure administrative and management practices are open and accountable. "Good Governance" is reliant upon:*

- *effective decision-making processes;*
- *effective communication and information sharing with the community;*
- *a strong and consistent commitment to the establishment of effective consultation processes;*
- *accountable and transparent practices and behaviour;*
- *the development and nurturing of a professional relationship between the Council and its administration, which is based on mutual trust and open communication where different roles and responsibilities are recognised and respected; and*
- *demonstrated consistent high standard of ethical conduct from elected members and employees.*

...

### ***Conflict of Interest***

*Elected members will ensure that there is no actual or perceived conflict or incompatibility between their personal interests and the impartial fulfilment of their public or professional duties, and either their personal interests or those of close associated persons ...*

- [107] The 2006 Code of Conduct goes on to deal with a range of other matters, including: Disclosure of Interest; Personal Benefit; Use of Confidential Information; Improper or Undue Influence; Gifts and Bribery; Conduct of Elected Members and Officers; and Honesty and Integrity.
- [108] Particular relevant parts of the 2006 Code of Conduct may be dealt with in greater detail in later sections of this report.

#### **2.2.3 Local Government Standing Orders**

- [109] Under the LG Act local governments have the authority to draft and adopt local laws. The Governor may cause to have “model” local laws published in the *Western Australian Government Gazette*. A model local law has to be formally adopted by a local government before it has any affect. The model provided in the Gazette may be adopted with or without modification.<sup>29</sup>
- [110] One of the current model local laws is for councils’ standing orders, which govern the conduct of local government meetings.
- [111] The model *Standing Orders Local Law*, gazetted in 1998, is a local law to cover the administration and conduct of council and committee meetings, including the calling of meetings, order of matters to be dealt with, conduct of members in meetings and managing public access to meetings.<sup>30</sup>

##### **2.2.3.1 City of Wanneroo Standing Orders**

- [112] The City of Wanneroo originally gazetted its *Standing Orders Local Law* in October 1997, but repealed this and replaced it with a new *Standing Orders Local Law* on 26 September 2000. The Standing Orders were further amended in 2001 to add provision for members to make “personal explanations” at meetings.<sup>31</sup> This is the version of the Standing Orders that was current at all times relevant to this report.
- [113] The City of Wanneroo’s Standing Orders cover “the proceedings of all Council meetings” including (but not restricted to) calling and convening meetings, defining public and confidential business at meetings, business to be conducted, ensuring attendees receive a fair hearing, reports by officers of Council and disclosure of interests.
- [114] A contravention of the Standing Orders comprises a breach of a Local Law and may be penalised by a fine of up to \$5,000.<sup>32</sup>

#### **2.2.4 Public Sector Management Act**

- [115] The PSM Act provides for administration of the public service in Western Australia and sets general principles of official conduct in the public sector.

[116] Section 9 of the PSM Act provides for:

**9. General principles of official conduct**

*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.*

[117] A Public Sector Code of Ethics for Western Australia has been established by the Office of the Public Sector Standards Commissioner (OPSSC). This Code was tabled and came into effect in 2002,<sup>33</sup> it was reviewed during 2006 and 2007, and a new Code has come into effect as of February 2008.<sup>34</sup> The 2002 Code of Ethics, which was the version in effect during the period addressed by this report, states:

*Under the “Public Sector Management Act 1994”, a breach of the code of ethics or of any code of conduct applying to an agency or an individual public sector employee, is a breach of discipline. Disciplinary action may follow.*

[118] The Code required public sector employees to (among other things):

- *Act impartially and in the public interest.*

[119] The Code’s Explanatory Notes add that:

*Impartiality requires that decisions are made scrupulously and not influenced by factors other than the community’s best interest.*

- *Refrain from using any circumstance or information connected to official duties for personal profit or gain.*

[120] The Code’s Explanatory Notes further add that:

*People close to public sector employees, such as family and friends, should not benefit from information or circumstances available to them through the employee’s work. Included in this prohibition are gifts and favours of more than token value, frequent flyer points, excessive hospitality, discounts and preferential treatment.*

*Commercially sensitive information, that could enable people to profit as a result of knowing what a member of the general public cannot know, must be kept confidential by the public sector employees trusted with it.*

- *Act without fear or favour and be open and accountable*<sup>35</sup>.

## **2.2.5 Guides to Best Practice**

[121] The DLGRD, as part of its role to provide advice and support to local government, has produced a series of *Local Government Operational Guidelines* and *Information Handbooks*. These Guidelines comprise a “guide to good practice” rather than forming a “compliance requirement”, but assist local government officers (including both elected members and employees) to interpret and abide by their legislative and ethical requirements. These Guidelines are distributed to local government bodies by the DLGRD.<sup>36</sup> Departmental and Ministerial “Circulars” also regularly provide information on changes to legislation and how local government officers can comply and/or achieve best practice.

[122] DLGRD Guidelines and Circulars do not comprise legal advice or “lawful orders” that must be complied with; they cannot be “breached” nor can non-compliance form an “offence”. Such documents do however provide a “benchmark” of reasonable standards that the public may be entitled to expect from their local government.



## CHAPTER THREE

### ECLIPSE RESOURCES PTY LTD: FLYNN DRIVE

#### 3.1 Background: Flynn Drive Planning Applications

[123] This section of the report deals with the efforts of Mr Burke on behalf of his client Eclipse Resources Pty Ltd (“Eclipse”) to achieve certain planning outcomes for a site in the City of Wanneroo in 2006. Eclipse is a Western Australian company specialising in mining, resource recovery and land rehabilitation. Eclipse wished to:

- have a site it owned on Flynn Drive, Wanneroo, re-zoned from “rural” to “urban”, or “future urban” under the Metropolitan Region Scheme (“MRS”); and
- to achieve an amendment to the Wanneroo District Planning Scheme which would allow subdivision of the site into a greater variety of lot sizes than was initially provided for.

[124] The Commission has investigated whether any public officers at the City of Wanneroo engaged in misconduct in providing assistance to Mr Burke, who was engaged by Eclipse to achieve these outcomes.

[125] A general understanding of various zoning and government approval processes is necessary to illuminate the background to Mr Burke’s contacts with the City of Wanneroo. This report expresses no view upon the merits of the various applications made by private individuals and corporations; rather, the Commission’s interest is necessarily solely in the actions of those public officers who became involved in the progress of those applications.

[126] In Western Australia any one parcel of land is defined by its “zone” under multiple Planning Schemes. The zoning of an area defines the uses to which the land may be put and the ways in which the land may or may not be subdivided.

[127] In the Perth region land is most broadly zoned under the MRS, which is administered by the Department for Planning and Infrastructure (DPI) through the Western Australian Planning Commission (WAPC).<sup>37</sup> The WAPC defines “zones” in the MRS as:

*... large areas which have been identified as being suitable for purposes such as Industry (Industrial Zone), Residential (Urban Zone), Central City Zone, etc.<sup>38</sup>*

[128] Planning Schemes are governed by the *Planning and Development Act 2005* (WA). Under this Act, local governments are required to prepare and administer smaller scale planning schemes within the provisions of the MRS. Land thus attracts another “zone” under a local Town or District Planning Scheme. Development and land use may also be guided by more specific Structure Plans, Development Plans or Precinct Plans.

[129] If an owner wants to change the restrictions on land use or subdivision of their land, they can apply for a change in zoning. A landowner application to change the zoning of their land under the MRS usually requires approval from the relevant local government followed by submission to the WAPC or Minister for Planning and Infrastructure. If the proposed change is accepted by the WAPC, the “text” of the MRS is amended. The local Town or District Planning Scheme is then amended either by the relevant local government, or as initiated by the WAPC, to ensure it complies with the MRS.<sup>39</sup>

[130] Property zones in the City of Wanneroo are currently defined by the Wanneroo DPS2, which replaced the Wanneroo Town Planning Scheme in 2001. Generally, landowner applications for amendment to DPS2 are submitted to the City’s Planning Services Department, who prepare an initial report for the Council. The Council may then approve the amendment for advertising. Amendments are publicly advertised by the City (usually for 42 days) and submissions invited. The City of Wanneroo’s planners then prepare a further report, incorporating comment on submissions received, which is again presented to Council. If the Council accepts the proposed amendment, it is forwarded (along with Council’s recommendations and submissions received) to the WAPC for final determination.

[131] Mr Delroy is and was at all relevant times the Managing Director of Eclipse. In 1995 Eclipse purchased two lots of land comprising about 98 hectares on Flynn Drive, in the City of Wanneroo. The land was zoned “rural” under the MRS, and in 1996 was zoned as “special residential” under the then Wanneroo Town Planning Scheme (TPS2).<sup>40</sup>

[132] In 1998 a policy was implemented at the WAPC requiring that all “special residential” estates be classified as “urban” under the MRS.<sup>41</sup> This policy had not been in place when Eclipse was granted approval in 1996 to subdivide the Flynn Drive land. The policy then was for such land to be zoned “rural”. Thus, when Eclipse obtained its subdivision approval, the land was fully zoning compliant with the MRS. The 1998 policy change (still extant) requiring “special residential” developments to be rezoned as “urban” under the MRS in relation to the Eclipse land is in addition to, not instead of, or as a precondition of, approval for subdivision into special residential Lots and its zoning as special residential under the DPS2 (as it now is). The new policy further stipulated that special residential zones will generally be approved only for land which is zoned urban in the MRS. There were stated categories of exceptions to that, but none of them applied to the Eclipse land. The result therefore was that MRS rezoning of the Eclipse land from “rural” to “urban” was a necessary (and as described by Mr Delroy’s lawyers) “administrative” step<sup>42</sup> to ensure that the special residential subdivision, already approved, was consistent with the WAPC policy. That rezoning accordingly had to occur at some stage. Recognising this, Eclipse began attempts to have the Flynn Drive Lots rezoned under the MRS from “rural” to “urban”, or “urban deferred” (which allows for urban development in the future).

[133] Eclipse also wished to make changes to subdivision approvals it had been granted. Land zoned “special residential” under the DPS2 can only be subdivided into Lots which fall within a particular range of sizes. In 1996 Eclipse was given approval by the WAPC to subdivide Lots 1 and 2 Flynn Drive into Lots with a minimum area of 2,000 m<sup>2</sup> and an average area of 3,000 m<sup>2</sup>.<sup>43</sup> It had not exercised this approval – that is, had not commenced subdivision and development – for a number of reasons. The company was reclaiming a quarry on the site, and was still in the process of backfilling this area to bring it to an appropriate ground level.<sup>44</sup> Rehabilitation, weed control and landscaping works had also been commenced on the property and Eclipse wanted these projects completed before it diverted resources into development.<sup>45</sup> In addition, the company did not want to subdivide the Lots into the approved standard residential Lot sizes.

[134] Eclipse wanted to mix the Lot sizes and residential densities across the property, including some “R40” high-density residential Lots in one area. Residential Design Codes, or “R-Codes”, are prepared by the WAPC and provide control over design of residential developments. R-Code designations prescribe elements such as Lot size, housing density, streetscape, building heights and open space requirements.<sup>46</sup> Council approval may be required for developments that do not match “Acceptable Development” criteria in the R-Codes or the provisions of any local planning policy.

[135] Reducing some individual Lot sizes and including areas of R40 in the Flynn Drive subdivision design would have reduced the average Lot size across the property to less than the permitted minimum. Eclipse planned to request a “scheme text amendment” to the DPS2 which would allow a reduction in average Lot size. A “scheme text amendment” is separate to the concept of “rezoning”; amendments to the scheme text can be made to allow variation for specific areas within zones. In the case of the Eclipse land, the scheme text amendment was not dependant upon Eclipse obtaining the MRS zoning.

[136] The reason for Eclipse seeking to expedite rezoning under the MRS was that because until it was done (so that the approved subdivision was fully compliant with the changed WAPC policy) there was a risk that the non-compliance could create a difficulty whenever any steps needed to be taken that would require WAPC approval. For example, the City of Wanneroo scheme text amendment to permit a reduced average Lot size from 3000 m<sup>2</sup> or an application for an extension of time (“rollover”) of the subdivision approval could be met with a WAPC requirement that in order to achieve WAPC approval the land must first be rezoned under the MRS from “rural” to “urban” in order to comply with WAPC policy.

[137] In his evidence Mr Delroy explained that when Eclipse bought the Flynn Drive land in 1995 about 20 hectares (of the approximate 100 hectares total) was a mined-out limestone quarry. The land was zoned rural under both the MRS and the City of Wanneroo TPS2. Almost immediately afterwards, the zoning under the TPS2 changed to special residential with

approval to develop Lots between 10,000 m<sup>2</sup> and 1000 m<sup>2</sup>, to a maximum of some 167 Lots. A subdivision application was subsequently sought from and approved by the WAPC. That had since been regularly extended, or “rolled over”. Mr Delroy’s initial expectation was that the quarry would take about another three years to rehabilitate and his intention was that when that was achieved there would be a “seamless” transition of staff onto the subdivision development. He explained that when Eclipse first applied for subdivision and amendment of the TPS2 in 1995, the City of Wanneroo advised that the WAPC had wanted to include the land as “urban” – which would have meant ordinary urban Lots of 600 m<sup>2</sup> or 700 m<sup>2</sup>. The City had opposed that at the time because the Carramar special rural estate located on the southern boundary of the Eclipse land had commenced only some years before and the City did not think it timely to have an urban development on the Carramar northern boundary.

- [138] By 2005 the situation had changed. State Government policy was keen to see land well-located near major infrastructure to have much higher density of development than previously, and Eclipse had conducted a number of strategic reviews. One option was to have the land zoned urban and build traditional 600 m<sup>2</sup> Lots. Allowing for the 20 hectare rehabilitated quarry (as public open space) and roads, that would allow about 1000 urban Lots. An alternative option was to leave it as special residential, and secure a scheme text amendment to reduce the average Lot size from 3000 m<sup>2</sup> to 2000 m<sup>2</sup>. That would produce some 276 Lots. A further alternative was to have pockets of high-density R40 blocks around the quarry, the rest remaining special residential (giving a total of about 376 Lots). In Mr Delroy’s view, the last option best met the criteria of government policy and sustainability, that latter taking account of the social, economic and environmental impact of the development.
- [139] According to Mr Delroy’s evidence, were Eclipse to adopt the “full urban” option, it would stand to make in the region of \$20 million to \$30 million more profit than could be expected from the option it in fact chose, which was that of the 376 Lots. He maintained there would not be a lot of difference in expected profit between the wholly “special residential” option and the “special residential” plus about 80 R40 Lots option, mainly because of the higher prices of the larger blocks.
- [140] Although a reduction in the average Lot size to 2000 m<sup>2</sup> would have required only an amendment to the City’s DPS2, a development which included R40 Lots would require a change of zoning to “urban” under the MRS.<sup>47</sup>
- [141] The Commission reiterates that its investigation was not directed to examining the financial or other merits or implications of Eclipse’s commercial development plans. The short relevant point here is that Eclipse wanted a rezoning to “urban” under the MRS and approval to reduce the average Lot size and to allow some R40 Lots around the quarry. The Commission does not suggest there was anything improper or wrong with that.

[142] Mr Delroy commenced the process of requesting clearances for the amended subdivision plan in 2004. He retained Julian Grill Consulting in September 2004, engaging Mr Grill and Mr Burke on a monthly retainer to “project manage” this process. They were also to receive a “success fee” of \$200,000 which would be paid upon:

*... successful completion of all the work, that's the review, the preparation of the strategy, the Town Planning Scheme amendments ... if they were required, and any changes to the Metropolitan Scheme ...<sup>48</sup>*

[143] Mr Delroy had used the services of Mr Burke and Mr Grill for a separate project in which he had been involved during 2004. Mr Delroy engaged them to work on the Flynn Drive plans as, he explained in his evidence at a public hearing:

*... they indicated that they could help with the strategy; the review of the current plan, the strategy, the politics; they had a good network of contacts. There was no doubt in my mind that Brian Burke and Julian Grill had good strategic minds. I had an expert planner but we had some politics involved with our - our neighbours and it was going to be important that whatever we did we maintained a harmonious relationship with the special rural - Carramar special rural development next door.<sup>49</sup>*

[144] Mr Delroy’s expert planner in 2006 was Mr Oscar Drescher. Mr Drescher was initially involved with the subdivision approvals for the property. WAPC subdivision approvals expire after a number of years and require an application for renewal. Mr Drescher was retained to oversee the process of “rolling over” (renewing) the subdivision approval for Flynn Drive. Mr Drescher subsequently became involved in Eclipse’s efforts to have the properties rezoned. Mr Drescher had in the past worked for some years as the city planner for the City of Wanneroo.<sup>50</sup>

[145] From 2004 to 2006 Mr Burke and Mr Grill worked to foster local support for an increase in the density of the subdivision of Eclipse’s Lots on Flynn Drive. They arranged, for example, for a private planning firm to conduct a review of community attitudes to rezoning in neighbouring estates. Mr Delroy stated to the Commission that the idea for this review came from Mr Salpietro, the Ward Councillor for the Flynn Drive area.<sup>51</sup> What Eclipse wanted to ascertain was the community attitude towards increasing the density of the subdivision by reducing average Lot sizes from 3000 m<sup>2</sup> to 2000 m<sup>2</sup> and introducing some higher density Lots in the already cleared perimeter of the former quarry. This was relevant to the impending scheme text amendment, to the City’s DPS2, to permit the higher density.

[146] By 2006 Mr Delroy had become concerned at the length of time it was taking to obtain approval for the Flynn Drive subdivision plan.<sup>52</sup>

### **3.2 2006: Lobbying for Zoning Changes**

[147] In early 2006 Eclipse identified an opportunity to have the Wanneroo Council make a statement of support for the rezoning of the Flynn Drive land from “rural” to “future urban”. The Council was preparing a response

to a WAPC document, the Draft East Wanneroo Land Use and Water Management Strategy (“East Wanneroo Strategy”). The East Wanneroo Strategy reviews issues of water use and appropriate development in the East Wanneroo area, in the face of:

*Community uncertainty, climate change, declining watertable levels over the Gnangara Mound, impacts on the groundwater dependent ecosystems, declining public and private water supply and changing agricultural economics ...<sup>53</sup>*

[148] The Council’s response to the draft was to comprise a list of changes and suggestions that the Council wished the WAPC to consider, incorporating the City’s views along with public submissions. In an email on 29 January 2006 Mr Drescher explained that persuading the Council to recommend the rezoning of Flynn Drive to the WAPC would be one step in a chain of necessary approvals:

*If we are successful in having the latest Land Use Concept Plan modified by deleting the Special Residential notation for Lots 1 and 2 to Urban Deferred, then we can pursue an MRS Amendment to rezone the land under the Metropolitan Region Scheme to accommodate a special residential development. Once this has occurred we can request Council to rezone the land to an Urban Development zone under its District Planning Scheme No. 2. This will then enable the preparation and adoption of a structure plan for the land.<sup>54</sup>*

[149] The City’s submission was to be discussed at a Council meeting on 21 February 2006. The WAPC had initially released the Draft for public comment between December 2005 and 27 January 2006, but granted the City an extension of time so the Council’s response could be discussed at their 21 February 2006 meeting.<sup>55</sup> On 30 January 2006 Mr Drescher emailed Mr Burke and Mr Delroy to tell them he had made arrangements for a “late submission” to the City.<sup>56</sup> Mr Drescher had made a written submission regarding the East Wanneroo Strategy to the City of Wanneroo the previous day requesting that the Council:

*... supports a change on the Land Use Concept Plan on the East Wanneroo Land Use and Water Management Strategy report from Special Residential to possible Future Urban Deferred. In doing this my client would be in a position to further negotiate with the City on the existing special residential zone with a view of either increasing the lot yield density or possibly creating a few density sites strategically located adjacent to the rehabilitated quarry which would be a unique feature within this estate.<sup>57</sup>*

[150] Mr Drescher attached to his correspondence a copy of a letter from DPI, which stated that DPI did not anticipate that the WAPC would oppose a change from rural to urban, as this would make the “special residential” zone consistent with current WAPC policy.<sup>58</sup>

[151] On 30 January 2006 Mr Burke emailed a copy of Mr Drescher's initial submission to Mr Salpietro, and Mr Salpietro replied that he "would have thought that this is a golden opportunity to have this rezoned as part of the East Wanneroo proposal".<sup>59</sup>

[152] This submission was incorporated in the briefing paper prepared for councillors prior to the 21 February 2006 meeting. The report acknowledged the "landowner submission" requesting a change to "possible urban deferred" with some medium density Lots, but concluded that it would be better for the request to be considered by the WAPC, rather than the Council.

*As the precinct designation generally reflects the current zoning, it is considered that this request should be determined by the WAPC and/or should be separately considered in the context of a detailed planning proposal (preferably incorporating the adjoining rural parcel).<sup>60</sup>*

[153] The Council Briefing session was held on 14 February 2006. Such meetings are open to the public. The Council's response to the East Wanneroo Strategy, along with public submissions, would have been discussed, and Eclipse may have become aware of the lack of support for their submission at this time. The day before the 21 February 2006 meeting, Mr Drescher emailed Eclipse's request again, this time directly to the Ward Councillor, Mr Salpietro.<sup>61</sup>

[154] His email sought Mr Salpietro's support to modify the City's recommendations in regard to the East Wanneroo Strategy, adding a recommendation to incorporate Lots 1 and 2 into a possible future urban deferred zone.<sup>62</sup> Mr Drescher acknowledged that "... in the report prepared by Administration ... they have not supported the request ..."<sup>63</sup>, but went on to argue that recommending a separate submission to WAPC was unreasonable, given that the change in zoning would have no effect on the City's DPS2 and that any actual changes to Lot sizes or subdivision plans would involve a separate application at a later date. Mr Drescher concluded by saying:

*As this current Strategy is only a guide to future land uses in the area, Council's requirement for full assessment is protected in that the Council will require an amendment to its Scheme should any change be requested on this Special Residential zone.*

*As the status quo is to remain, it would be appreciated if the recommendation to Council was modified to add a recommendation 4 which "Seeks the inclusion of Lots 1 and 2 Flynn Drive, Carramar as possible future urban deferred under the Draft East Wanneroo Land Use and Water Management Strategy".<sup>64</sup>*

[155] Mr Salpietro was already aware of the background to the Flynn Drive matter, having previously been a party to several email exchanges between Mr Burke, Mr Drescher and Mr Delroy. Mr Burke also organised at least one meeting at his own home in October 2004, which Mr Salpietro,

Mr Drescher and a representative from Creating Communities, Mr Allan Tranter, were asked to attend.<sup>65</sup> Mr Salpietro has confirmed that he was aware of (and personally supported) the Flynn Drive re-zoning by this time.<sup>66</sup>

- [156] Mr Drescher attached to his email on 20 February 2006 a copy of his correspondence with Mr Zagwocki and with DPI.
- [157] Mr Burke was also an addressee on Mr Drescher's email. Mr Burke rang Mr Salpietro at eight thirty in the morning on 21 February 2006 (the day of the meeting) and asked whether Mr Salpietro had received Mr Drescher's email. Mr Salpietro had not.<sup>67</sup>
- [158] Mr Burke called Mr Salpietro again at 12:26.

**BURKE:** *Sam it's Brian.*

**SALPIETRO:** *Oh hi Brian.*

**BURKE:** *Oh thank Christ I've got you. Sam, can you talk?*

**SALPIETRO:** *Yeah sure mate yeah.*

**BURKE:** *Sam.*

**SALPIETRO:** *...*

**BURKE:** *Yeah.*

**SALPIETRO:** *I gave you this number didn't I before?*

**BURKE:** *Yes you did.*

**SALPIETRO:** *Yeah yeah okay then.*

**BURKE:** *Sam there's a matter coming up tonight which I don't think you can amend but can you have it deferred at all so I can make some representations?*

**SALPIETRO:** *Now where was that?*

**BURKE:** *It's the East Wanneroo Strategy, the Land Use Strategy. Now*

**SALPIETRO:** *...*

**BURKE:** *Hey?*

**SALPIETRO:** *It'll probably be very very difficult to defer it.*

**BURKE:** *Well mate*

**SALPIETRO:** *Very difficult ...*

**BURKE:** We need

**SALPIETRO:** ...

**BURKE:** we need an amendment

**SALPIETRO:** ... amendments

**BURKE:** I beg your pardon?

**SALPIETRO:** A lot a lot of other councillors have got amendments to it.

**BURKE:** Are you, well we desperately need another amendment.

**SALPIETRO:** Yeah okay.

**BURKE:** Well now.

**SALPIETRO:** Which one?

**BURKE:** It's under recommendation four.

**SALPIETRO:** Yep.

**BURKE:** And it's to include lots one and two Flynn Drive Carramar.

**SALPIETRO:** Oh I see. To the to the uh

**BURKE:** As possible future urban deferred.

**SALPIETRO:** Okay.

**BURKE:** Now so its lots one and two Flynn Drive Carramar as possible future urban deferred under the draft East Wanneroo Land Use and Water Management Strategy.

**SALPIETRO:** Yep.

**BURKE:** Now that's entirely consistent Sam

**SALPIETRO:** Yeah.

**BURKE:** with the letter we sent you.

**SALPIETRO:** Yep.

**BURKE:** Now Oscar's been sending you some stuff but it's all been bounced back.

**SALPIETRO:** H-He uh emailed it to Julie now

**BURKE:** Good.

**SALPIETRO:** and and asked her to to print it and put it on my desk

**BURKE:** Ah.

**SALPIETRO:** so I should be back there in about half an hour.

**BURKE:** Oh good mate.

**SALPIETRO:** Yes yeah.

**BURKE:** This is very important to me.

**SALPIETRO:** Yep yeah.

**BURKE:** And if we can just get that amendment up

**SALPIETRO:** Yep.

**BURKE:** then it doesn't do anything it's just that possible future urban.

**SALPIETRO:** Yep. Yeah that's fine yeah yep.

**BURKE:** Okay. I'll leave that with you ...<sup>68</sup>

- [159] Mr Burke called Mr Drescher immediately afterwards and informed him that Mr Salpietro would put up the motion.<sup>69</sup>
- [160] Council meetings follow an agenda which is prepared before the meeting and contains recommendations composed by Council staff. These recommendations form the “motions” that are moved and seconded by councillors, then debated and voted upon. If a councillor wishes to alter or add to a motion, or propose an alternative motion, they move an amendment, which is then debated and voted upon. The Wanneroo Council’s response to the Draft East Wanneroo Strategy was to be raised as a motion at that night’s meeting; Mr Burke wished Mr Salpietro to raise an amendment which would add support for the Flynn Drive rezoning to the Council’s response.
- [161] Mr Drescher’s amendment was proposed at the Council meeting that evening, but not by Mr Salpietro. Mr Salpietro moved the substantive (main) motion, comprising the City’s entire response to the Draft East Wanneroo Strategy and containing numerous recommendations.<sup>70</sup> Mr Ian Reginald Goodenough, a fellow councillor of Mr Salpietro’s at the City of Wanneroo, told the Commission that prior to the meeting, Mr Salpietro approached him and asked that he put the motion forward, which he did.<sup>71</sup> The basis for this request is discussed in full at [193] of this report. Mr Goodenough raised a motion:

... to add a further sub-point to point 1 of the recommendation.  
Consider redesigning Lots 1 & 2 Flynn Drive Carramar as possible

*future urban deferred in lieu of proposed special residential as shown in the draft EWLUWMS.*<sup>72</sup>

[162] Councillor Frank Cvitan seconded the motion. Councillor Terry Loftus spoke against the motion on environmental grounds, saying an urban zoning was inconsistent with the Swan Coastal Plain Wetlands Policy; Councillor Alan Blencowe spoke against it because, he pointed out, he knew nothing about the property, he had not seen any maps or plans of the region, he knew nothing about its owners and did not know if anyone had any conflicts of interest. Mr Salpietro spoke briefly about the motion, indicating the land was already zoned special residential and that it made sense to him to have it included in the overall East Wanneroo Strategy in order to be able to control its development. Mr Goodenough, who as the mover of the amendment had the right to close the debate, stated that he had in his possession a letter from DPI supporting the urbanisation of the land.<sup>73</sup> The vote took place and the amendment was defeated.

*For: Crs Cvitan, Goodenough, Hughes and Salpietro.*

*Against: Mayor Kelly, Crs Blencowe, Pearson, Loftus, Monks, Newton, Roberts, Steffens, Stewart, Treby and Gray.*<sup>74</sup>

[163] Mr Burke rang Mr Salpietro on the morning of 22 February 2006 to find out whether the amendment was successful. Mr Salpietro told Mr Burke that Mayor Kelly had voted for the motion (where in fact he had voted against it).

**BURKE:** Brian Burke speaking.

**SALPIETRO:** Oh g'day Brian it's Sam.

**BURKE:** G'day Sam, how are you?

**SALPIETRO:** How you going?

**BURKE:** Good mate, how'd you go?

**SALPIETRO:** Oh not too good, the amendment didn't get up.

**BURKE:** Didn't it?

**SALPIETRO:** No, I, I, unfortunately I didn't have enough time to, to bloody do lobbying in the afternoon.

**BURKE:** Oh.

**SALPIETRO:** And er, and er also, bloody Jon, and his ratbags, er

**BURKE:** Opposed you did they?

**SALPIETRO:** Well yeah the the they uhm

**BURKE:** Ju-ju- Sam just hang on a minute.

**SALPIETRO:** Okay.

**BURKE:** (aside) John, I, I, I have to talk to Sam Salpietro, uhm, but I'll, give me a call after, this afternoon. Okay mate, ta.

*What did they do, did they oppose you?*

**SALPIETRO:** Yeah the, they, I, just overheard that what, what happened was that, because that, I was the one that wanted to move the substantive motion because I wanted to speak at the beginning and at the end.

**BURKE:** They said you couldn't move the amendment.

**SALPIETRO:** Well yeah, I, arranged it, they arranged for Ian Goodenough I said, but, would you, would you move it, if Frank Cvitan seconded it?

**BURKE:** Yeah.

**SALPIETRO:** And er, and if you had the people's vote on it, but, during er, just before the meeting, I overheard a little, a little discussion that that that er

**BURKE:** Why did they oppose it?

**SALPIETRO:** Because, because, because they saw it as, as a, er, Oscar Drescher and your, and your proposal.

**BURKE:** Kelly wouldn't oppose it if it was my proposal, I mean I

**SALPIETRO:** Well,

**BURKE:** would speak to him.

**SALPIETRO:** Well he he, Jon, Jon's a, Jon's a bit of a bloody, Jon's a bit two-faced.

**BURKE:** Yeah but mate he won't buck me if I talk to him.

**SALPIETRO:** No he, he uhm, he voted for it.

**BURKE:** Which way did he vote? He voted

**SALPIETRO:** He voted for it, but he

**BURKE:** *Did he?*

**SALPIETRO:** *arranged, but but he arranged for Brett and Mark and, and er, and Terry Loftus, and Rudi Steffens to vote against it.*

**BURKE:** *Yeah. So*

**SALPIETRO:** *...*

**BURKE:** *what was the vote?*

**SALPIETRO:** *Hey?*

**BURKE:** *What was the vote?*

**SALPIETRO:** *Oh the, it was, it was five, but, if it if, if Mark and Brett, if Mark and Brett had voted for it would've, if it, sorry sorry, it was six I think, with Jon, yeah, yeah if Mark and Brett had voted for it it would've been okay.*

**BURKE:** *So what can we do about it Sam?*

**SALPIETRO:** *Oh, I'd I'd, I don't really thinks it's a problem, I really don't, because I, I read, I read all that stuff that er, that er, that Oscar sent me, in fact, in fact if anything, I still think that, that er, if the City of Wanneroo tried, tried to include that in that, in that big overall plan it would probably slow things down because, y'know because DPI will probably be, fair in saying well, y'know, now it's gotta follow the*

**BURKE:** *Yeah.*

**SALPIETRO:** *it's gotta follow the, the the, y'know the ten year plan that, that ...*

**BURKE:** *And why do you think they, why do you think they thought it was mine and Droscher, Dre-oh Oscar's idea?*

**SALPIETRO:** *Oh the, I think that would have come, that would have come from some members of, of the administration.*

**BURKE:** *Well it can only be Roman.*

**SALPIETRO:** *Er, Roman, or, or some members of his staff, y'know.*

**BURKE:** *Cause I've not spoken to anything and my name's*

**SALPIETRO:** *Oh just*

**BURKE:** *not on anything ...*<sup>75</sup>

[164] Mr Burke and Mr Salpietro went on to speculate as to why particular councillors might have supported or opposed the amendment. None of these reasons were to do with the merits of the rezoning: instead, they discussed which councillors would have opposed the amendment simply because it was raised by Mr Salpietro, and which councillors may have heard that Mr Burke was involved and would have let this influence their decision. Mr Salpietro told Mr Burke that Mr Kelly was trying to deceive Mr Burke into thinking he was supportive. Mr Salpietro said he had had a "good chat" with Mr Kelly and told him to keep certain other councillors under control, and that Mr Kelly was "just about on his knees" with apology.<sup>76</sup>

[165] In any event, the defeat of this motion was not a "dead end" for Eclipse. As Mr Salpietro told Mr Burke, having the Council recommend rezoning to the WAPC as part of an "omnibus" collection of recommendations may in fact have slowed Eclipse's application down, as it could potentially be delayed by problems with any of the numerous matters included in the Council's response. In his evidence to the Commission, Mr Delroy agreed, saying that:

*... When I looked into this east Wanneroo thing I told them almost immediately to abandon it because it sounded like a pretty - a very ordinary idea to me. I couldn't see how it conferred, to be perfectly honest, any advantage whatsoever on Eclipse Resources' plans ... Attaching ourselves to this east Wanneroo area which was a controversial area due to all sorts of water issues and compensation claims, to me meant that I'd be on a - I would potentially get myself, rather unwittingly, locked up in all their problems, whereas mine was a rather - relatively simple issue.<sup>77</sup>*

[166] There remained another option: rather than submitting their rezoning amendment as part of a conglomerate, Eclipse could approach the Council directly, make a presentation on the merits of the development, and have the Council consider a text amendment to the DPS2 for this property alone.

[167] After speaking to Mr Salpietro Mr Burke left a message for Mr Drescher saying that he was confident that the Council would support an "upcoding" once an application came before them. He suggested that Mr Drescher have the application commenced by Mr Graham Meredith (a planner employed by Eclipse) as soon as possible.<sup>78</sup>

[168] Mr Delroy, having been away for much of January and February 2006,<sup>79</sup> called Mr Burke on 24 February 2006 to discuss the matter. He was unhappy with how the matter had progressed. Mr Burke assured Mr Delroy that Council would support an application for rezoning if it was made directly, and that their opposition on 21 February 2006 was due to

Council infighting rather than the substance of the application. Mr Burke at this time was still under the impression that Mr Kelly had voted for the amendment but organised other members to oppose it: he assured Mr Delroy that Mr Kelly would have been horrified if he knew he had opposed something put forward by Mr Burke. The following is a portion of that call:

**DELROY:** *Now, the thing I'm really concerned about is the way this Flynn Drive thing appears, while I gotta, been away, to have got completely*

**BURKE:** *... No, no it's fixed that's not a problem Flynn Drive. Uhm, it did get fucked up and doesn't matter, uhm*

**DELROY:** *Well I'm told, listen, let me tell you what*

**BURKE:** *Go on, you go ahead.*

**DELROY:** *I've been told yesterday.*

**BURKE:** *Yeah.*

**DELROY:** *Uhm, it was suggested to me that uhm it got off the rails at the council (sighs) because your, uh the Mayor up there uhm*

**BURKE:** *Jon Kelly.*

**DELROY:** *Kelly, Kelly voted for it but Kelly's henchmen never voted for us, so Kelly's*

**BURKE:** *Yeah that's right, that's exactly right.*

**DELROY:** *playing games.*

**BURKE:** *That's exactly right.*

**DELROY:** *Okay.*

**BURKE:** *Exactly what happened, Treby and his other bloke didn't vote for it.*

**DELROY:** *Yeah, and so Kelly could say to you no, I voted for it, but*

**BURKE:** *Yeah that's right.*

**DELROY:** *Okay lets*

**BURKE:** *He did not say, so he can say it to me, so he can say it to Sam.*

**DELROY:** *Yeah.*

**BURKE:** *But listen, let me just tell you, this isn't for repeating, as usual Oscar didn't do anything till the last fucking minute.*

**DELROY:** *Yep.*

**BURKE:** *So the amendment wasn't ready until the day of the fucking council meeting.*

**DELROY:** *Mm.*

**BURKE:** *Sam Salpietro just got back from China, that was fine, I got him to move the amendment. We just had no time to get all the ducks in a row, er and Kelly was playing funny buggers because I hadn't spoken to him you see.*

**DELROY:** *Mm.*

**BURKE:** *So he thought he was just going to do Sam in the eye.*

**DELROY:** *Yes.*

**BURKE:** *Sam, as soon as, you don't need to know it's all involved, but the upshot is this, if we put it up and I've sent a message to Graham and to, to Oscar to put in the application to up code this land to urban as soon as they can and the council will vote for it, it will then get to DPI and we know there, because we've got a letter from them saying that they will support it.*

**DELROY:** *Now, I've yeah I've heard that [suppressed], what's her fucking name, [suppressed]?*

**BURKE:** *[suppressed].*

**DELROY:** *Yeah is proving to be difficult again, [suppressed] on holidays.*

**BURKE:** *He is for five weeks.*

**DELROY:** *Yeah and its gone from, yep this should be urban because, and we need to fix up this under the MRS because all special res land is now urban, right?*

**BURKE:** *Yes that's right.*

**DELROY:** *And she's going nah nah you've got to do a full environmental review on that.*

**BURKE:** Tell her to get rooted, you don't have to worry about that. By the time you get it through the council it will take us four weeks or six weeks.

**DELROY:** Mm.

**BURKE:** I, er thingamajig will be back uhm

**DELROY:** Look I, I think Brian I better, I better get more involved than this cause I've really had hardly any involvement in it and

**BURKE:** Yeah.

**DELROY:** Oscar is fucken meant to be running with it, well you know I said to Oscar yesterday I said Oscar I've been employing you for eighteen months on this and I've had Brian helping on it and I've got Graham Meredith I said I've paid out a lot of money and the way I look at it Oscar is we're no further advanced than we were a fucken eighteen months ago.

**BURKE:** Yeah you're right there.

**DELROY:** And what the hell is going on?

**BURKE:** But Oscar's, mate I did say to you nicely previously Oscar's a bit of a problem because a few of them up there resent him a bit.

**DELROY:** Mm.

**BURKE:** But the other thing is he doesn't fucken do what I ask him to do until I have to fucken go and do it myself almost you know. Now I, I, I've sent, maybe you haven't seen the email, as soon as this happened I sent an email to him and Graham and I said, this was defeated last night, you don't need to worry about why it happened all you need to know is that if you put in an application to up code this land to urban the council will support it.

**DELROY:** Right, well why didn't they support it the other night then?

**BURKE:** Well for a range of reasons but mainly related to problems between Kelly and Sam about the mayoralty

**DELROY:** Yeah.

**BURKE:** and what's gonna happen and how quickly Kelly's gonna leave and just, just internal things.

**DELROY:** Yes, okay.

**BURKE:** So it had nothing to do with us and which quite honestly er had I had a bit more time from when Oscar sent the, Oscar sent the email to Sam and it bounced back, and I didn't learn that it bounced back until I got hold of Sam in the morning and said is everything fixed for that thing tonight? And he said what thing? And I said well for Christ sake Sam here's this email from Oscar.

**DELROY:** Yeah.

**BURKE:** He said I didn't get it, it got bounced back so he faxed it through to Julie, they copied it off and Sam got it in the afternoon with

**DELROY:** Shit.

**BURKE:** the council only about an hour to start.

**DELROY:** No chance to organise anything.

**BURKE:** No you can't you see, I mean if Sam had've gone to Kelly and just said listen this is something Brian's interested in there would be no funny buggers, you know.

**DELROY:** Okay we better, look I think

**BURKE:** Did you know that it got bounced back in the email did you?

**DELROY:** No, no, no I didn't know it either.

**BURKE:** The way you reacted

**DELROY:** No, No.

**BURKE:** I thought someone must have told you.

**DELROY:** *No all I got told was uh Kelly, our problem was Kelly. Uh Kelly's men voted against it, Kelly voted for it, but*

**BURKE:** *Yeah all, all Oscars going on is what Sam told him.*

**DELROY:** *Mm.*

**BURKE:** *And Sam was a bit splenetic about, about er Kelly as he's got every right to be and Kelly's facile and superficial. Kelly, Kelly thinks that because he voted for it, he's gonna trick Sam or trick someone else, well they haven't fucken tricked anybody y'know.*

**DELROY:** *No, nah.*

**BURKE:** *I mean Ernie Treby was his campaign manager so you think Treby's going to vote against Jon without Jon telling him to.*

**DELROY:** *Yeah course.*

**BURKE:** *You know.*

**DELROY:** *I know its fucken baby stuff.*

**BURKE:** *But see what Kelly, Kelly will die when he finds out that I'm involved.*

**DELROY:** *Mm.*

**BURKE:** *See he didn't think that I was involved because I hadn't called him.*

**DELROY:** *Okay, look, what I think we better have a meeting on this next week because I've just*

**BURKE:** *I've put it, schedule it straight after the other one or be just before it.*

**DELROY:** *Yep, yep, yep, yeah, uhm.*

**BURKE:** *Alright and I might see if I ask Sam to come along as well eh?*

**DELROY:** *Yeah because I think that you know we got to get it going its ridiculous ...<sup>80</sup>*

[169] In Mr Salpietro's section 86 representations<sup>81</sup> it is submitted that the evidence shows clearly that Mr Burke generally had no hesitation in emphasising his contacts, the powers of those contacts and the ability of Mr Burke to bend them to his will. But whether or not that was so, as a

matter of fact, is a different matter. The Commission accepts that submission, with the observation that that made it even more important for public officers to be careful that their conduct in dealing with Mr Burke did not give apparent credence to any such claims.

[170] On 1 March 2006 Mr Burke rang Mr Salpietro and left a message requesting a meeting for himself, his clients, Mr Salpietro and Mr Kelly at Mr Delroy's office.

**MESSAGE:** *Hi there. Sam Salpietro isn't available right now ...*

**BURKE:** *Sam it's Brian. Can you make a meeting at Trevor Delroy's office at ten thirty next Friday? Maybe you can ring me on [suppressed] cause I think I'm gonna ring Kelly as well, and see if he can come along or at least monster him about his decision. See ya.<sup>82</sup>*

[171] Mr Burke called Mr Kelly the same day, and Mr Kelly accepted his invitation to the meeting:

**BURKE:** *No that's fine mate that's fine. Uhm Jon I was wondering whether you might be free to have a to come to a meeting at twelve thirty on Friday?*

**KELLY:** *At twelve thirty on Friday? Yeah I can I can do that.*

**BURKE:** *... It's just with the owners of Flynn Drive but also I thought after that meeting you and I and I'm gunna ask Sam to come might have a talk too about some political matters.*

**KELLY:** *Yeah.*

**BURKE:** *Not council political matters but state government political matters because Jon I'm not sure you will be aware that that there's going to be a very very big set of opportunities when they bring down this redistribution.*

**KELLY:** *Yeah.*

**BURKE:** *Ah uh from the One Vote One Value legislation.*

**KELLY:** *Yep.*

**BURKE:** *Alright so I just wanna talk through a few things with you and with Sam*

**KELLY:** *Yep.*

**BURKE:** *uhm after this meeting. The meeting should only take half an hour the meeting's not contentious, won't be a problem I don't think because the DPI's now changed its policy in respect of this land.*

**KELLY:** *Yep.*

**BURKE:** *And it regards special residential as being urban under their MRS you know?*

**KELLY:** *Yeah. So that*

**BURKE:** *Okay?*<sup>83</sup>

[172] In Mr Kelly's section 86 representations<sup>84</sup> his lawyer submitted that Mr Burke misled him by failing to give relevant details of the meeting and saying it was "not contentious", and that Mr Kelly had no knowledge of the commercial relationship between Mr Burke and Eclipse, prior to the meeting. They submit that consequently there is no reasonable basis to suggest Mr Kelly attended the meeting with an adequate understanding of what was intended. The Commission accepts that Mr Kelly was given no detailed explanation, but he had been present at the Council meeting on 21 February 2006 at which the motion to redesignate the Flynn Drive Lots to possible urban deferred was defeated. He was told by Mr Salpietro after that meeting that that was the "Delroy" land and he understood that Mr Burke was a friend of Mr Delroy's. In a brief telephone conversation on 1 March 2006 Mr Burke said he wanted to talk to Mr Kelly about "that decision in Flynn Drive" and in the following telephone call Mr Burke specifically said the meeting would be with "the owners of Flynn Drive" and referred to the (new) DPI policy which regarded "special residential" as "being urban", under their MRS. Against that background, Mr Kelly was certainly aware of what the purpose of the meeting was, at least broadly.

[173] Mr Burke's mention of discussing "State Government political matters" is clarified by a call Mr Burke made to Mr Salpietro on 3 March 2006, in which Mr Burke confirmed their meeting with Mr Delroy and outlined a plan to raise the possibility of Mr Kelly taking a seat in the Upper House. They also discussed "rumours" Mr Salpietro had heard regarding an investigation into the Wanneroo Council, and Mr Salpietro warned Mr Burke to be careful:

**SALPIETRO:** *Hello.*

**BURKE:** *Sh Sam it's Brian.*

**SALPIETRO:** *G'day Brian.*

**BURKE:** *G'day mate I just wanted to confirm this meeting today with you and Jon.*

**SALPIETRO:** *Yeah.*

**BURKE:** *Uhm, are you by yourself?*

**SALPIETRO:** *Yeah.*

**BURKE:** *I was gunna raise with Jon*

**SALPIETRO:** *Yeah.*

**BURKE:** *him coming back into the Labor Party.*

**SALPIETRO:** *Oh yeah yeah.*

**BURKE:** *Now Graham Giffard*

**SALPIETRO:** *Mmm hmm.*

**BURKE:** *will shift from his upper house seat*

**SALPIETRO:** *Is that right?*

**BURKE:** *at the next election, and I'm quite happy to try and get that for Jon.*

**SALPIETRO:** *Oh? Gee that's good.*

**BURKE:** *So I, eh?*

**SALPIETRO:** *That's good ...*

**BURKE:** *So I thought I'd raise that with him*

**SALPIETRO:** *Yeah good.*

**BURKE:** *but I don't wanna do it unless you support it or think it's a reasonable idea otherwise we'd just kill him.*

**SALPIETRO:** *Oh mate no, d-no I uh whatever, you know, you know whatever you think is appropriate I, I'll support ...*

**BURKE:** *Well we can go either way, I mean*

**SALPIETRO:** *Yeah.*

**BURKE:** *we can just*

**SALPIETRO:** *I'll support it too.*

**BURKE:** *drop him off like, you know?*

**SALPIETRO:** *Yeah.*

**BURKE:** Or we can encour- now my or my general policy is always to try and encourage people and make something out of 'em you know?

**SALPIETRO:** Yeah that's right yeah. Uhm, Brian (stutters) you may wish to send, uhm, I know that there's all sorts bloody rumours at the City of Wanneroo of bloody investigations by the triple C and Local Government Department and all sorts of things and uh

**BURKE:** Oh is there? I haven't heard any of that.

**SALPIETRO:** Yeah th th they're bloody flying everywhere I was just thinking, if it, if it, just be

**BURKE:** Be careful will you.

**SALPIETRO:** well the no the I just thinking, I I mean th it's no rumours, it's no skin off my nose but but just in case if anybody goes out on a limb and says Jon should do this and Jon should do that.

**BURKE:** Yeah you're saying be careful.

**SALPIETRO:** Uh yeah.

**BURKE:** Yeah I understand that.

**SALPIETRO:** ... you know and then ...

**BURKE:** Well I haven't heard anything about any enquiries.

**SALPIETRO:** Well er, uhm, you know, d'you know what I'm talking about the the

**BURKE:** Yeah sure.

**SALPIETRO:** Yeah.

**BURKE:** Listen, why don't you come to my place first today? Ah can you do that and I'll drive you to the meeting and drive you back here?

**SALPIETRO:** Oh well Jon, well Jon's picking me up.

**BURKE:** Oh Jon's taking you that's right of course.

**SALPIETRO:** He's he's he's gonna pick me up at home.

**BURKE:** Well the meeting should only take twenty minutes.

**SALPIETRO:** Yeah that's alright yeah yeah ...

**BURKE:** And there's nothing contentious about it because

**SALPIETRO:** Yeah yeah.

**BURKE:** DPI policy is now changed.

**SALPIETRO:** Yeah, yeah, okay, yeah good. But

**BURKE:** You've seen the letter haven't you?

**SALPIETRO:** Yeah, a the the one from DPI yeah.

**BURKE:** Yeah well

**SALPIETRO:** Yeah.

**BURKE:** [suppressed] told us their policy now is that all special residential is urban.

**SALPIETRO:** Well uh, there you go (laughs).

**BURKE:** Yeah.

**SALPIETRO:** Yeah, amazing.

**BURKE:** They can't see any, neither, I can't see any point for

**SALPIETRO:** Yeah.

**BURKE:** special residential either.

**SALPIETRO:** Yeah yeah that's right yeah. But uh, uh, Brian just just on the other matter, you you do, uh whatever, whatever you do I'll support you.

**BURKE:** Yeah I know that

**SALPIETRO:** uhm yeah

**BURKE:** but I didn't want to do it without coming to a position we both support in advance see.

**SALPIETRO:** Yeah yeah ...

**BURKE:** I mean you're a big

**SALPIETRO:** ...

**BURKE:** part of it.

**SALPIETRO:** Yeah. Just keep in mind, as I've said that just in just in case if you, or any of your colleagues make anything public the the nature the nature of that doesn't come back

**BURKE:** Yeah.

**SALPIETRO:** to bite you.

**BURKE:** Alright well I think I I think I can work through it and we'll just uh make it sort of unofficial and confidential at the moment

**SALPIETRO:** Yeah.

**BURKE:** and then in nine or twelve months we'll just work slowly to it

**SALPIETRO:** Yeah.

**BURKE:** and in nine or twelve months everything's okay we'll make it public.

**SALPIETRO:** Yeah that'll be good yeah yeah.

**BURKE:** Alright?

**SALPIETRO:** Excellent yeah, uh

**BURKE:** Okay.

**SALPIETRO:** Uh uh uh I dunno I'm bloody uh, you know, intrigued, uh, all these bloody rumours at the moment uh I'm not sure that ... they're mainly from people like uh Glynis Monks, Alan Blencowe, uhm, all the people all the people that can't stand Jon. So I'm not really sure if there's any facts to it it's or if it if it's just bloody sour grapes, you know.

**BURKE:** Well I dunno it might be, it might be facts mate but, I mean

**SALPIETRO:** Yeah.

**BURKE:** I haven't heard squat about it, not that I would cos I've been so busy I haven't been bothering to look.

**SALPIETRO:** Yeah can imagine yeah.

**BURKE:** Uhm

**SALPIETRO:** Yeah.

**BURKE:** *but uh I mean, it is what it is I mean if people ask you questions you just answer 'em if Jon gets asked questions he just answers them*

**SALPIETRO:** *Yeah.*

**BURKE:** *and if he can't*

**SALPIETRO:** *Ah*

**BURKE:** *he can't.*

**SALPIETRO:** *Yeah exactly yeah.*

**BURKE:** *You know there's nothing nothing we can do.*

**SALPIETRO:** *Yeah.*

**BURKE:** *You know, I mean I wouldn't know what he's done you know I I've haven't had a lot to do with him*

**SALPIETRO:** *Yeah.*

**BURKE:** *but I just think that he's uhm, Jon's problem is that he's too full of himself you know.*

**SALPIETRO:** *(laughs) You're not kidding me yeah.*

**BURKE:** *Yeah. Will you make sure Roman appreciates the assistance he gives me and the fact that he returns my calls?*

**SALPIETRO:** *Sorry?*

**BURKE:** *Will you make sure that Roman knows I appreciate the fact that he, ah returns my calls and tries to assist me if he can?*

**SALPIETRO:** *Yeah th [sic] Roman Roman's good I I think I think unfortunately sooner or later we're gonna lose him I think.*

**BURKE:** *Yeah so do I*

**SALPIETRO:** *Yeah yeah.*

**BURKE:** *but if you could just let him know that I'm*

**SALPIETRO:** *Yeah I will.*

**BURKE:** *grateful*

**SALPIETRO:** *O [sic] course I will yeah.*

**BURKE:** and that my

**SALPIETRO:** Yeah.

**BURKE:** gratitude does

**SALPIETRO:** Yeah.

**BURKE:** count for something?

**SALPIETRO:** ... oh he knows that I can tell you (laughs)

**BURKE:** Yeah.

**SALPIETRO:** You know th [sic] he's got a very high opinion of you, yeah.

**BURKE:** Has he?

**SALPIETRO:** Yeah, yeah.

**BURKE:** Good.

**SALPIETRO:** Yeah.

**BURKE:** Alright mate, I'll see you at twelve thirty over at ah Delroy's office.<sup>85</sup>

[174] After the meeting Mr Burke called his business partner, Mr Grill, and told him that Mr Kelly and Mr Salpietro had agreed to accept Eclipse's presentation and that Council would then "pass" the application.<sup>86</sup> Though this implies that Mr Kelly and Mr Salpietro expressed some unreserved support, Eclipse's minutes of the meeting noted more prosaically that the company intended to continue pursuing other avenues "just in case the City of Wanneroo support does not come through".<sup>87</sup>

[175] Mr Burke and Mr Grill felt that having elected members attend a meeting with a developer was a coup that few consultants could achieve. Mr Burke and Mr Grill discussed this on 14 April 2006:

**BURKE:** That's right. Well no we settled on a plan and the plan is for larger than normal size residential blocks but of varying sizes with some R-forty around the sort of lakes being created by the pits.

**GRILL:** Mm hm.

**BURKE:** So or around, no around the open space or something.

**GRILL:** Yeah right okay.

**BURKE:** Now the Mayor and the Deputy Mayor I took 'em for lunch afterwards and they seemed quite happy about things.

**GRILL:** Right.

**BURKE:** And said they'd get it through. Now I've been on Trevor's back since then that must have been four weeks ago, to produce the plan.

...

**GRILL:** I don't know why

**BURKE:** I mean what other consultants

**GRILL:** he's so competitive with me, there's not the least bit of competition between us as far as I'm concerned.

**BURKE:** No-no I know there's not.

**GRILL:** We just here to do the fucking job.

**BURKE:** I know there's not. But I mean what other consultants could bring the Mayor and the Deputy Mayor of the fastest growing or second fastest growing municipality or city in the state to his office for a meeting?

**GRILL:** No one, no one. Absolutely fucking no one.<sup>88</sup>

[176] The application to Council required that Eclipse present completed plans for the Flynn Drive development. On 28 April 2006 Mr Burke and Mr Delroy discussed the timeline for preparing these plans. Mr Burke again implied to Mr Delroy that it was a personal commitment to Mr Burke that would ensure the matter was regarded favourably at Council.

**DELROY:** ... we should I would say by the middle of May be in a position to go back to the Mayor and the Deputy Mayor and whoever else and say look this is how we see it. Right?

**BURKE:** Yep ...

**DELROY:** So the problem's entirely at our end there.

**BURKE:** Good, the only reason I raised this, I was up there the other day and they raised it with me.

**DELROY:** *Oh course they would. I-I I told the surveyors this afternoon, I said look you're causing me grievous uhm*

**BURKE:** *Oh no it's not a, it's not a federal ...*

**DELROY:** *Well it's annoying but that's*

**BURKE:** *While they're committed to me I want them to do it.<sup>89</sup>*

- [177] The complete plans for Flynn Drive were not available until the second half of July 2006. On 24 July 2006 Mr Burke telephoned Mr Salpietro and said that the plans were now available. Mr Burke asked how he should progress the matter and Mr Salpietro suggested he organise a meeting between Mr Burke, Mr Delroy, Mr Meredith and Council planner Mr Zagwocki.<sup>90</sup> On 26 July 2006 Mr Burke informed Mr Salpietro of the meeting, which was organised for 3 August 2006, and requested that Mr Salpietro ask Mr Kelly to attend as well. Mr Salpietro readily agreed.<sup>91</sup>
- [178] An email sent by Mr Drescher following the meeting indicates that Mr Salpietro attended but Mr Kelly did not. The emailed memo states that the meeting covered the changes that would be required to the DPS2 and to the WAPC MRS.<sup>92</sup> Mr Burke told Mr Grill later that day that he had "fixed it all" for Mr Delroy at the meeting.<sup>93</sup>
- [179] Mr Burke spoke to Mr Delroy on 4 August 2006. They agreed that the meeting "up there" had gone well and that the people they met with were, in Mr Burke's phrase, on side "a thousand percent". Mr Burke urged Mr Delroy to keep working on the plans "so we can get the application in [to the Council] then it'll be through before Christmas".<sup>94</sup>
- [180] Mr Salpietro rang Mr Burke on 25 August 2006 and said that Mr Delroy's plans and rezoning application were to be assessed by Mr Zagwocki. Both Mr Burke and Mr Salpietro appeared confident that Mr Zagwocki would be supportive. Mr Salpietro then gave Mr Burke detailed advice on alternative ways to approach the Council if Mr Zagwocki's report was or was not supportive. Mr Salpietro advised Mr Burke that his client should include a paragraph in the plans stating that the developer was aware of, and would abide by, the City of Wanneroo's "Smart Growth" Policy with regards to inclusion of high-density areas in the future. Mr Salpietro said he had also given this advice to Mr Drescher.<sup>95</sup>
- [181] Mr Burke spoke to Mr Delroy and called Mr Salpietro back within the hour. Mr Burke told Mr Salpietro that Mr Burke, not Mr Drescher, was now going to be the only person to contact the Council about the Flynn Drive rezoning (as there had been some conflict between Mr Drescher and the City of Wanneroo planners).<sup>96</sup> Mr Burke spoke to Mr Meredith a few days later and advised him to contact Mr Salpietro and ask him for the form of words that they should insert in their application.<sup>97</sup>

[182] Mr Salpietro's advice to Mr Burke about the rezoning continued on 6 September 2006, when Mr Burke emailed Mr Salpietro a draft application he had received from Eclipse.

**BURKE:** ... Uhm, I'm just sending it now Sam.

**SALPIETRO:** Okay.

**BURKE:** See if it comes through. ... it's got an attachment to it might take just a second.

**SALPIETRO:** Yep, yep.

**BURKE:** What it is, is the,

**SALPIETRO:** Yep.

**BURKE:** completed Flynn Drive amendment and everything else.

**SALPIETRO:** Oh good.

**BURKE:** Now I've got 'em to do the whole lot including all the work Roman's staff will have to do about drafting the amendment and everything else.

**SALPIETRO:** Okay.

**BURKE:** And I wouldn't mind if you could have a quick look at it and send me back,

**SALPIETRO:** Yep.

**BURKE:** an email

**SALPIETRO:** Yep.

**BURKE:** Uhm, say before twenty past nine.

**SALPIETRO:** Yep.

**BURKE:** Uhm, because I've got a meeting with 'em at ten o'clock.

**SALPIETRO:** Okay, yeah.

**BURKE:** And that'll be a real big help to me.

**SALPIETRO:** Okay.

**BURKE:** But do you think you could read it and have a look?

**SALPIETRO:** Yeah, sure course I will. I've got, I'll get back to you, before nine ...<sup>98</sup>

[183] Mr Burke emailed Mr Salpietro an 18-page attachment detailing the plans for the Flynn Drive land and including a draft DPS amendment. Mr Salpietro called Mr Burke back shortly afterwards, saying he had read the email, it seemed “all right” to him and that he would run it past Mr Zagwocki.<sup>99</sup>

[184] Mr Salpietro called Mr Burke back later that morning to say he had showed Mr Zagwocki the application and that Mr Zagwocki agreed the changes correctly reflected the suggestions he had made in their 3 August 2006 meeting. Mr Burke thanked Mr Salpietro and then went on to invite him to attend a political fund-raising event that Mr Burke was organising for the Member for Wanneroo, Ms Dianne Guise MLA. Mr Salpietro offered to pay Mr Burke for the ticket, but Mr Burke refused, insisting that as the “candidate for Mayor”, he should attend for free.

**BURKE:** *Hello, Brian Burke.*

**SALPIETRO:** *... Hello, Brian, it's Sam.*

**BURKE:** *Yes, Sam.*

**SALPIETRO:** *Yeah. Roman Roman's had a look at it and he said it's it's quite it's quite, ah, it's quite good. It's as the way he had suggested he said if if there's any, ah, if there's any minor errors because because he didn't have the time to actually change, ah, to check*

**BURKE:** *Yeah.*

**SALPIETRO:** *check the proposed changes against the scheme but he said if there's any major changes that got to happen that got to happen he said that you'll deal with them when you lodge it. Go ahead and lodge it.*

**BURKE:** *(coughs) Ah, tell me,*

**SALPIETRO:** *Yeah.*

**BURKE:** *What did you discern? Sorry, I've just been cleaning me teeth. What did you discern about his attitude?*

**SALPIETRO:** *Oh, quite quite quite positive. You know, I said to him he said do you agree do you agree with the proposed changes and he said he said well he said that's what I suggested.*

**BURKE:** *Yeah.*

**SALPIETRO:** *Yeah.*

**BURKE:** Well done. Okay, Sam. I'll be in touch with you.

**SALPIETRO:** Yeah. Okay, Brian.

**BURKE:** Sam, I'm gonna have a ah fundraising dinner.

**SALPIETRO:** Oh, okay.

**BURKE:** For ah Di Guise.

**SALPIETRO:** Oh, good.

**BURKE:** Ah, on the October the twenty-sixth with the Premier and the Minister Alannah MacTiernan. Uhm, I thought I might just include you.

**SALPIETRO:** Okay.

**BURKE:** Without paying. You don't have to pay, of course, 'cause I'm charging two grand a head.

**SALPIETRO:** Are you?

**BURKE:** But I'll just include you. Uhm, I just wanted to give you time to think about it 'cause I don't want to upset Jon.

**SALPIETRO:** Oh, okay. Yeah. But I but would it be on a uhm ah uhm what evening or?

**BURKE:** In an evening. Yeah.

**SALPIETRO:** Yeah. Yeah. Thursday the twenty-sixth?

**BURKE:** Yeah. Oh, no, he may not find out about it but I'm just

**SALPIETRO:** Yeah.

**BURKE:** gonna have twelve people.

**SALPIETRO:** Oh, okay.

**BURKE:** And I'm just gonna have a very small number and I'll include our new candidate for [suppressed].

**SALPIETRO:** Oh. Yeah.

**BURKE:** And I'll include you and, ah, then I'll include just the normal suspects, Gin and KS will

*take core tickets and Australand, you know?*

**SALPIETRO:** *Yeah. But I'd but if I come I could give you something though.*

**BURKE:** *No. Why?*

**SALPIETRO:** *Well, you know, just in case just in case people say oh uhm if I'm supporting I'd I'll be quite happy to do it, you know, Brian.*

**BURKE:** *Mate.*

**SALPIETRO:** *Yeah.*

**BURKE:** *I wouldn't accept it, Sam.*

**SALPIETRO:** *Oh, alright.*

**BURKE:** *I wouldn't accept it. You're, the girl*

**SALPIETRO:** *Yeah.*

**BURKE:** *The candidate for [suppressed] won't be paying.*

**SALPIETRO:** *Oh. I see. Okay.*

**BURKE:** *You won't be paying.*

**SALPIETRO:** *Okay.*

**BURKE:** *And, ah, I mean you're the, you know, candidate for Mayor.*

**SALPIETRO:** *Yeah.*

**BURKE:** *So you won't be paying and she won't be paying and that's that.*

**SALPIETRO:** *Okay.*

**BURKE:** *Now, anyway I'll send you the details.*

**SALPIETRO:** *Okay, mate. Yeah.*

**BURKE:** *Good on ya.*

**SALPIETRO:** *Thanks, Brian.*

**BURKE:** *Ta ta, mate.*

**SALPIETRO:** *Ta ta.<sup>100</sup>*

- [185] The fund-raising dinner for Ms Guise was organised by Mr Burke for late October 2006, and Mr Salpietro did not attend. The Commission has no evidence that Mr Burke discussed the dinner with Mr Salpietro again.
- [186] Later in September 2006 Mr Burke organised for copies of Eclipse's draft application and suggested Scheme amendment to be sent from Mr Meredith directly to Mr Salpietro and Mr Kelly at their private postal addresses. Mr Burke also corresponded by email with Mr Zagwocki, and told his clients that Mr Zagwocki anticipated the matter should be discussed at the 31 October 2006 Council meeting.

*... I think this is quite satisfactory and that it is very important not to disturb Roman's position pending his return to me with any problems that he sees.*<sup>101</sup>

- [187] In the end, the Flynn Drive development did not come before the Council until a meeting on 30 January 2007.<sup>102</sup> The Commission has little evidence of discussion about the Flynn Drive rezoning in the intervening time: instead, Mr Burke and Mr Grill provided assistance to Mr Delroy and Eclipse in regard to the route of a power line, an additional problem facing the Flynn Drive subdivision (see Chapter 4).
- [188] Mr Delroy suspended Mr Burke and Mr Grill's consultancy in December 2006.
- [189] In regard to the Flynn Drive subdivision, a report from the Director, Planning Services for the 30 January 2007 Council meeting considered:

*... an amendment to the City of Wanneroo District Planning Scheme No.2 (DPS2) to amend the general provisions of the Special Residential Zone, the special provisions of Special Residential Zone No.5 relating to Lots 1 and 2 Flynn Drive, Carramar and the Scheme Map and draft Local Structure Plan No.61.*<sup>103</sup>

- [190] The report recommended that Council approve the Structure Plan (subject to several conditions) for submission to the WAPC, and that the City prepare the appropriate amendments to the DPS2.<sup>104</sup>
- [191] The recommendations were passed by a simple majority. Both Mr Salpietro and Mr Kelly were present at the meeting, as was Mr Zagwocki. There were no declarations of interest made by any councillors or Council staff in regard to the Flynn Drive matter.
- [192] The Commission has investigated whether Mr Salpietro, Mr Kelly or other public officers engaged in misconduct by:

- agreeing to move a motion at Council, without declaring an interest or the origin of the request;
- providing a lobbyist with advice on how to achieve a result at Council;
- attending meetings with developers and/or expressing support for a proposal prior to a meeting of Council; or

- causing Council staff to be influenced by elected members, in contravention of the Wanneroo Council's Code of Conduct.

At the outset, the Commission notes that according to the minutes of the 30 January 2007 Council meeting Mr Salpietro voted in favour of the motion. However, also according to the minutes, Mr Kelly vacated the Chair and left Chambers at 7:26 p.m. The Deputy Mayor acted as Chair from that time until 7:32 p.m. when Mr Kelly returned to Chambers. Hence, it seems from the minutes that Mr Kelly was not in Chambers during the time that Council voted on the Flynn Drive matter.<sup>105</sup> That being so, the evidence does not show any misconduct on his part concerning that vote – and as he was not present the question of him declaring a conflict of interest on that occasion did not arise and there is no evidence of misconduct by him in that respect either.

### 3.3 Mr Salpietro Asks a Colleague to Move an Amendment

[193] A number of reasons have been suggested for Mr Salpietro asking Mr Goodenough to move the motion on 21 February 2006, rather than moving it himself. Mayor Kelly, at a Commission public hearing in 2007, said that it was the Council's practice, if not policy, that the councillor moving a substantive motion could not then raise an amendment to it.<sup>106</sup> In this case, Mr Salpietro was moving the substantive motion, the Council's response to the WAPC Draft East Wanneroo Strategy, which contained multiple clauses and recommendations. It would therefore have been unusual for him to move an amendment further to that motion.

[194] Mr Goodenough, in an interview with Commission officers, had the impression that Mr Salpietro was anticipating chairing the meeting, as he thought that the Mayor was going to be away.<sup>107</sup> If the Mayor is absent, under the City of Wanneroo's Standing Orders, the Deputy Mayor takes the Mayor's place as Chairperson. Mr Goodenough said that it was the practice at the City that the Chairperson is prevented from moving motions or amendments, so it was not unusual for councillors acting as Chairperson to have a fellow councillor move a motion on their behalf. He agreed it would be unusual for a councillor who was not chairing a meeting to request someone else move a motion on their behalf.<sup>108</sup>

[195] Mr Salpietro also gave evidence on this point at a Commission hearing but was unable to recall the rationale behind his asking Mr Goodenough to move the motion.<sup>109</sup>

[196] In the event, Mr Kelly did attend the meeting on 21 February 2006, so it was unnecessary for Mr Salpietro to take the Chair. Mr Goodenough still moved the motion following Mr Salpietro moving the substantive motion on the City's response to the Draft East Wanneroo Strategy.

[197] Mr Salpietro had, as per Council policy, put the amendment in writing. According to Mr Goodenough amendments are generally provided to other councillors at least a few hours before a Council meeting and Mr Salpietro's amendment in this case was, as far as Mr Goodenough recalled, circulated to other members at some point prior to the meeting.

Mr Goodenough's name is included on the "Proposed Amendment to Recommendation" form as the mover of the amendment. Mr Cvitan's name is included as the seconder.<sup>110</sup>

[198] Mr Kelly suggested to the Commission in his evidence at a public hearing that Mr Salpietro told him, after the 21 February 2006 Council meeting, that the land belonged to Mr Delroy:

*What did you find out after the meeting?---After the meeting I spoke to the deputy mayor and he said, "Did you know that that was the Delroy land?". I said, "No, I didn't", and that was - I said, "Why didn't you tell us?". He said, "I didn't care whether it got up or not".<sup>111</sup>*

[199] This is somewhat contradicted by Mr Salpietro's evidence that he supported the amendment on its merits because he had "... always thought that this should be part of the East Wanneroo Land Management – Land Use and Water Management Study ...".<sup>112</sup>

[200] At a Commission hearing Mr Salpietro initially denied that he had been asked by Mr Burke to move the amendment. Once reminded of the telephone call from Mr Burke which preceded the Council meeting Mr Salpietro agreed that Mr Burke had requested the amendment. Mr Salpietro emphasised that it had always been his view that the land should be included in the East Wanneroo Strategy. Mr Salpietro was asked why, in that case, he had not prepared an amendment along these lines himself, having had the administration's briefing report and the meeting agenda for a week prior to 21 February 2006. Mr Salpietro said that he was "... not really sure why I hadn't prepared the amendment beforehand ... it's very likely that Mr Burke's call reminded me of it".<sup>113</sup> Mr Salpietro also said that though he may have felt supportive of the idea, it was not his role to prepare an amendment that a landowner had not asked for.<sup>114</sup>

[201] The notion of raising an amendment to a motion on behalf of a landowner is not in itself a compromising action for a councillor. Mr Goodenough told Commission officers that it is normal for councillors to raise motions as an "alternative to staff report" based on "feedback from [the] community". In this case, for example, Mr Salpietro was the Ward Councillor for the land in question, and had a good knowledge of the amendment's history. He was not putting forward a motion he knew nothing about. He was however willing to push for an amendment at the "last minute" to a motion that had taken the Council some months to prepare. The Council had already taken into account a considerable volume of public submissions and had requested more time from the WAPC to complete their response. In addition, Council staff had considered a request from the landowner and rejected it on the basis that it would be better dealt with by another authority.

[202] Given the uncertainty in Mr Salpietro, Mr Kelly and Mr Goodenough's recall of the 21 February 2006 meeting, and the plausibility of several possible alternative explanations, the material before the Commission does not establish that Mr Salpietro deliberately misled fellow councillors by having Councillor Goodenough move the amendment. The

Commission has given further consideration (below) to whether Mr Salpietro was under an obligation to disclose an interest in the matter.

### **3.4 Requirement to Disclose an Interest**

- [203] Elected representatives and local government staff are required to be open about any conflicts of interest that may arise when they are dealing with local government matters. This enshrines transparency as a core value in local government decision-making. A conflict of interest may arise when a public officer is required to consider or give advice on, or has some authority over, a matter in which they or someone close to them has an interest. This can be a financial interest (where an officer's actions have financial implications for the interested person) or any other type of interest which could be perceived as affecting a public officer's impartial judgement with regard to that matter.
- [204] The requirement to disclose a conflict of interest is imposed by the LG Act and attendant Regulations. The LG Act divides "interests" into two types: financial and non-financial. The requirement for disclosure of a financial interest is dealt with in detail in the LG Act.
- [205] In the matter of Mr Salpietro and Mr Goodenough raising an amendment regarding Eclipse's Flynn Drive rezoning in February 2006 neither councillor had any financial interest. The Commission has considered whether Mr Salpietro should have more openly acknowledged the history of the matter, or formally disclosed a non-financial "interest affecting impartiality" due to the lobbying he received.
- [206] A non-financial interest that may affect a public officer's impartiality could arise when members or employees are required to vote or report upon matters which involve family members, friends, adversaries, or groups or organisations with which they have some form of association.<sup>115</sup> The obligation to declare non-financial interests arose out of the 1997 report of the *Royal Commission into the City of Wanneroo*, which saw a lack of disclosure requirements for non-financial interests as a "weakness in the LG Act" which had been exploited by councillors and staff.
- [207] This requirement to disclose is incorporated in the LG Regulations, which require Council members and employees to disclose, in addition to financial interests, any non-financial interest they may have in any matters that are discussed at meetings which they attend, or upon which they have given advice. Such an interest is defined in the LG Regulations as "an interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected".<sup>116</sup>
- [208] The DLGRD issued *Local Government Operational Guidelines* and Number 01 of May 2000 entitled *Disclosure of Interests Affecting Impartiality* interprets the term "disclosure of interests" in considerable detail. Guideline Number 01 advises that when local government officers are considering whether to disclose an interest they should assess whether there would be a "likely public perception" or a "reasonable belief"

that impartiality has been affected by non-disclosure of an interest. Guideline Number 01 states “when deciding if ... an interest should be disclosed, it is helpful to establish answers to 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?*<sup>117</sup>

[209] Guideline Number 01 points out that an association which might be perceived to affect impartiality can arise from a friendship, family relationship, adversarial relationship or through association with an organisation.

[210] In addition to legislation, local government codes of conduct provide guidance on interests that are relevant for members and employees to disclose.

[211] The City of Wanneroo has developed a Code of Conduct for elected members, committee members and employees, pursuant to the LG Act and LG Regulations. The City of Wanneroo Code of Conduct requires elected members to adhere to both the letter and spirit of the LG Act, and to “disclose any interest that would give rise to a reasonable belief that their impartiality would be adversely affected”, ensuring

*... that there is no actual or perceived conflict or incompatibility between their personal interests and the impartial fulfilment of their public or professional duties, and either their personal interests or those of close associated persons.*<sup>118</sup>

[212] It is important to note that there are different consequences for declaring financial and non-financial interests. Disclosure of a financial interest usually results in an elected member being excluded from debate and voting on the relevant matter (though in some circumstances the member may be given permission to take part in debate and/or vote). Disclosure of a non-financial “interest affecting impartiality” does not preclude the member from participating in debate and voting. The DLGRD points out that “following disclosure of an interest affecting impartiality, the member’s involvement in the meeting continues as if no interest existed”. The LG Regulations thus provide for transparency, by ensuring members are aware of potential conflicts of interest for colleagues, without allowing such subjective grounds to prevent members’ full participation.

[213] At a Commission public hearing Mr Goodenough said that Mr Salpietro explained the merits of the amendment to him by saying that there were issues with water supply to the land, and that it would be beneficial if the Flynn Drive land were incorporated into the wider strategy.<sup>119</sup>

[214] In an interview with Commission officers Mr Goodenough stated that he had a pre-existing interest in the Flynn Drive area, that he supported the development of smaller residential blocks in the area, and that the amendment presented to him by Mr Salpietro “seemed logical” and was “a sensible thing”. Mr Goodenough said that prior to 21 February 2006 he had discussed the Flynn Drive industrial area:

*... with a number of Councillors including the Deputy Mayor and the issue was that there were for ... lack of services going in to Flynn Drive Industrial area and the main one being Scheme Water it was difficult to get Scheme Water into the Industrial Area. So therefore I had that interest in sort of promoting development in that area ...<sup>120</sup>*

[215] Mr Goodenough said that he believed Mr Salpietro might have raised the amendment on his own initiative, because the property was in Mr Salpietro’s Ward. At the time Mr Goodenough saw nothing unusual in how Mr Salpietro had gone about raising the amendment, or in his being asked to raise it on Mr Salpietro’s behalf. Mr Goodenough also said that if Mr Salpietro had told him that he had been approached and asked to move the motion, that he would still have supported it:

*Be a little bit uncomfortable about it, but by the same token I could see that it could be technically justified ... obviously I’d rather he’d been upfront and and said what it was and because I would have supported on technical grounds. There was no need to sort of disguise that fact if in fact it was disguised.<sup>121</sup>*

[216] When asked why he had not told the Council meeting that he was acting on behalf of a friend (who had a financial interest in the matter), Mr Salpietro argued strongly that when a council considers an application with regards to land, the ownership of that land is irrelevant and would detract from councillors’ ability to consider the issue on its merits: that is, if councillors are seen to be paying mind to ownership or to personalities involved in any particular matter, they are more, rather than less, likely to risk a perception of bias. Mr Salpietro stated in his evidence before the Commission:

*... In fact under the Local Government Act, we’re totally discouraged from considering who owns a project, who owns a piece of property that’s going to be developed or who the consultant is. It should be considered purely on the planning merits.<sup>122</sup>*

[217] Mr Salpietro said that he wanted the amendment to be considered on its merits, and this was the reason that he made no mention of Mr Burke or Mr Delroy either to Councillor Goodenough or at the Council meeting.

[218] Mr Salpietro argues that councillors’ impartiality might be called in to question if a Council decision is preceded by discussion of individuals rather than the merits of the application. However, the aim of requiring disclosure of conflicts of interest is to ensure that public officers, when receiving advice or opinions from colleagues, are fully aware of what may have coloured those views or motivated their colleague to have come to a

particular position. In the majority of cases the ownership of a piece of land would be irrelevant to Council debate on a development application. What may become relevant is not the identity of the landowner but the existence of an association between the owner, or their representative, and a decision-maker in public office. If Mr Salpietro had disclosed the ownership of the land on Flynn Drive, and/or the lobbying he had received from Mr Burke, this would not alter the merits of the amendment.

- [219] The proposition that disclosure and discussion of ownership can carry with it its own risk of creating bias is somewhat borne out by the evidence of Mr Goodenough. Mr Goodenough stated in his appearance at a Commission hearing that he was embarrassed to have moved this motion on behalf of "consultants associated with Mr Burke and Mr Grill" not because their involvement detracted in any sense from the merits of the application, but because Mr Goodenough is "a longstanding member of the Liberal Party".
- [220] The Commission accepts that the names of Mr Burke, Mr Delroy and Mr Drescher were known to other councillors, but it is untenable to argue that a debate taking place in the context of this knowledge would, for that reason, have been less impartial, less informed or less focussed on the merits of the motion.
- [221] In the Commission's opinion, Mr Salpietro deliberately concealed Mr Burke's involvement because he did not want his fellow councillors to know that he was acting on Mr Burke's behalf. It is therefore logical to conclude that Mr Salpietro felt his impartiality might be called into question if he had revealed this. If Mr Salpietro had declared an "impartiality interest", he would not have been prevented from taking part in the meeting: in the Commission's opinion, his motivation for not making such a declaration was to withhold knowledge of Mr Burke's involvement from his fellow councillors.
- [222] In his own words, Mr Salpietro did not have enough time to "lobby" on behalf of the amendment. By raising the amendment without explanation Mr Salpietro masked his involvement but still left the motion open to debate. This debate was not as well informed as it should have been, but the end result did not further the interests of Eclipse or of Mr Salpietro. If Mr Salpietro had spoken to the amendment in the Council meeting or had taken the opportunity to "lobby" fellow councillors, the effects of his concealment may have become more significant.
- [223] The Commission considers that Mr Salpietro should have declared an interest in this matter as per the LG Regulations. Mr Salpietro had an association with Mr Burke through their friendship, and was acting at Mr Burke's request and Mr Burke had a direct commercial interest in the outcome of the motion before the Council. Mr Salpietro allowed Mr Burke to "drive" his actions in putting forward the motion.
- [224] Mr Salpietro's lack of declaration constituted behaviour that fell within the following provisions of section 4(d) of the CCC Act, that it was conduct which, in the circumstances –

(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 ...<sup>123</sup>*

[225] His conduct could have indirectly adversely affected the impartial performance of the functions of the Council; constituted the performance of his functions in a manner that was not impartial; and involved a breach of the trust placed in him by reason of his office as a councillor to act with integrity and in the public interest and not to advance some personal interest.

[226] In the Commission's assessment, applying the notional test in section 4(d)(vi) of the CCC Act, the conduct could constitute a breach of a public sector standard or code of ethics contrary to section 80(b)(ii) of the PSM Act or an act of misconduct contrary to section 80(c) of the PSM Act, and hence constitute a breach of discipline under the PSM Act.

[227] Further, in the Commission's assessment Mr Salpietro's conduct could constitute a serious breach of discipline for the purposes of sections 83(1)(b) and 86 of the PSM Act. The factors which sustain that assessment include –

- his conduct was clearly deliberate: it was a calculated non-disclosure, which also involved another person (Mr Goodenough) as his unwitting instrument;
- it was done for the purpose of advancing Mr Burke's interests (that is to say, it was directed to achieving an outcome Mr Burke wanted for his paying client);
- it involved the use by Mr Salpietro of his official position to secretly advance Mr Burke's interests because of their personal relationship; and
- as Deputy Mayor and a long-standing member of Council, Mr Salpietro had a responsibility to demonstrate by his leadership, and example, a culture of integrity and compliance with public sector standards and ethics.

[228] In these circumstances, the Commission's opinion is that his conduct could constitute a disciplinary breach providing reasonable grounds for

termination of a person's office or employment as a public service officer, within the meaning of section 4(d)(vi) of the CCC Act.

- [229] For the foregoing reasons it is the Commission's opinion that Mr Salpietro's failure to declare that he had an "impartiality interest" in the circumstances constituted misconduct within the meaning of section 4(d)(i), (ii), (iii) and (vi) of the CCC Act.
- [230] In the Commission's opinion, Mr Zagwocki's meetings with Mr Delroy and his representative Mr Burke, and his role in providing advice on Mr Delroy's zoning applications, were a proper and acceptable part of his role as a City of Wanneroo planner.
- [231] Mr Salpietro's knowledge of the Flynn Drive subdivision proposal did not begin with Mr Burke's call in early 2006. He was a party to email correspondence regarding the subdivision in 2004 and on numerous occasions in 2006. The Commission is aware that Mr Salpietro attended meetings at both the City offices and the offices of Mr Delroy and gave verbal and written advice on how Mr Burke and his clients could gauge public attitudes and make persuasive applications to Council.

### **3.5 Elected Members Meeting with Developers**

- [232] Elected members of local governments are required to facilitate communication with the community whilst remaining independent decision-makers. Mr Salpietro's engagement with Eclipse illustrates the tension that exists between these two aspects of an elected member's role.
- [233] At the Commission's public hearings in February 2007, Mr Kelly, Mr Salpietro and Mr Zagwocki were asked about meetings which took place with Mr Delroy and Mr Burke in 2006. However, other meetings between Mr Delroy and the Wanneroo Council had taken place prior to 2006. Email correspondence between Mr Burke, his clients and Mr Salpietro provides evidence of at least four additional meetings during the previous two years that were attended by Mr Salpietro and Mr Zagwocki with Mr Drescher and/or Mr Burke.
  - Monday 18 October 2004: Mr Salpietro met with Mr Burke, Mr Drescher and Mr Tranter (a town planning consultant providing assistance on the Flynn Drive subdivision) at Mr Burke's home.
  - Friday 11 March 2005: Mr Salpietro met with Mr Zagwocki and Mr Drescher. Mr Salpietro emailed Mr Burke to say that the meeting "went well" and came to "a mutual understanding that Admin's view to a residential subdivision may be favourable in principle if it could be shown that the residents of Carramar Park [rural Lots] would favour their area changing to urban residential ...".
  - On or about Monday 25 July 2005: Mr Salpietro met with Mr Zagwocki and Mr Burke. Mr Burke emailed Mr Drescher and others

to say that the meeting was “excellent” and that Mr Zagwocki and Mr Salpietro provided information on what preparations Mr Burke and his clients should make for their submission to Council requesting rezoning. Mr Burke advised Mr Drescher to “... speak to Sam (not Roman) he will be able to give you further advice”.

- Friday 21 October 2005: Mr Salpietro met with Mr Burke and Mr Drescher at the Wanneroo Council Chambers to discuss a “timetable” for the Flynn Drive applications.
- Friday 25 November 2005: Mr Salpietro met with Mr Burke, Mr Drescher and Mr Zagwocki regarding an application to “uplift” Flynn Drive to the “Urban Development Zone”.

[234] On at least two occasions, Mr Salpietro attended meetings and gatherings at Mr Burke’s home at which developers in the Wanneroo region were also present. In addition to the meetings listed above, for example, Mr Salpietro and Mr Kelly attended a barbecue dinner at Mr Burke’s home in April 2006, at which representatives of a variety of development groups with an interest in the Wanneroo area (unrelated to Flynn Drive) were present. Mr Kelly made appropriate declarations with respect to those particular development applications, both before and after the barbecue and advised that he would not be taking part in the decision-making process relating to any of their applications before Council – and he did not do so.<sup>124</sup>

[235] The DLGRD *Guidelines on Elected Members’ Relationship with Developers* points out that:

*If an elected member believes there is a need to meet with a developer individually, to avoid the public perception of bias that can arise, the member should not agree to meet at a venue where it can be perceived that hospitality is being provided.*

[236] These DLGRD Guidelines were not issued until 6 April 2006 and so were not in place at the time of the meeting on 3 March that year. They were specifically directed to affording guidance to elected members in dealing with developers with applications before a council. The DLGRD Guidelines state they are to be considered in conjunction with other publications relating to the governance practices of a local government. However, the issue is not whether the DLGRD Guidelines were “breached” – the point is that they represent a distillation of recognised principles. They were a consequence of the Wanneroo Royal Commission.<sup>125</sup>

[237] Coming as they did into the City of Wanneroo soon after the Wanneroo Royal Commission, which received extensive publicity, it could be expected that Mr Kelly and Mr Salpietro would have been aware of the issue of conflicts of interest and the risks of public perceptions of bias or conflicts of interest.

[238] It is true that the DLGRD Guidelines (issued in April 2006), in referring to the pressure elected members may face when dealing with “development

applications”, and to attendance at meetings with “applicants”, suggest they are directed to situations in which there is at the relevant time an actual application before a council. But the reality is that lobbying by the proponents of a development (or persons acting on their behalf) is not limited only to activity which occurs after an application has been formally made. As is shown in this report, lobbying in respect of a particular application or proposal may importantly affect the way in which it is actually cast in the first place. Mr Kelly acknowledged that fact in his interview with Commission investigators<sup>126</sup> when he said there was little doubt in his mind from the conversation and when he saw the plan (on 3 March 2006), that at some stage, Mr Delroy would be making an application. And indeed, in response to a question why he thought the meeting with Mr Delroy had been called, he said:

*Lobbying, that was it. It was ... about answering any questions I had giving a more informed view of what happened.*<sup>127</sup>

[239] Mr Kelly also acknowledged that he was aware that lobbying of councillors can start even before an application is submitted:

*... I think people will always try to enthuse Elected Members about their projects, before they've lodged it [sic].*<sup>128</sup>

[240] In any event, in this case, as at the date of the meeting on 3 March 2006, the Flynn Drive zoning issue had already been before the Council.

[241] By attending meetings of this kind at Mr Burke's home, and accepting the hospitality of a friend who was also a lobbyist while other clients were present, Mr Salpietro risked the perception that he was biased in favour of Mr Burke and his clients and lacked impartiality.

[242] Mr Salpietro claimed in his evidence at the Commission's public hearing that he was discharging a legitimate part of his role, promoting communication with ratepayers and ensuring applications to the Council were complete and relevant. Mr Salpietro emphasised that attending a meeting with Eclipse allowed him to become:

*... as informed about an application that comes to council as possible and any information that you get, whether from the developers, their consultants, the applicant themselves, can only add to you making a good decision in council.*<sup>129</sup>

[243] Mr Kelly's evidence to the Commission echoed Mr Salpietro's recollection that such meetings with developers were a “not uncommon” part of being a councillor.<sup>130</sup> Mr Kelly told the Commission in an interview that he would not have attended the 3 March 2006 meeting if Mr Burke had not said they would discuss his political ambitions. He said he did not know that the meeting had been called to discuss Mr Delroy's application, but that he was not surprised when this turned out to be the case.

*... If you asked me did I know what was going to be on the table, no I didn't ... There was nothing there was nothing unusual in probably in my time as Mayor; I've probably been to hundreds of meetings*

*similar. I go to a meeting somebody pulls out a plan, doesn't make any difference whether it's a mum and dad or a or a Developer.*<sup>131</sup>

[244] In Mr Kelly's section 86 representations his lawyer submits<sup>132</sup> there is no reasonable basis for the Commission to conclude Mr Kelly's evidence echoed Mr Salpietro's recollection that such meetings with developers were a "not uncommon" part of being a councillor. The Commission does not accept that submission. In his interview<sup>133</sup> with Commission officers Mr Kelly said variously:

*He he brought out some plans, when we there, that's typical developer behaviour, he asked my my views on on those plans ... By enlarge [sic] it was typical developer behaviour you know nothing unusual.*<sup>134</sup>

*You know somebody wants to talk, whether it's a retaining wall or everybody asks your opinion.*<sup>135</sup>

*... lobbying is a natural occurrence of Council.*<sup>136</sup>

*... It was typical Developer behaviour, you know ... Developers ... You, you lodge an application, but it's not uncommon for developers to come in and meet with Administration ... discuss the technical issues ... people want to make sure that they get their application and their putting in a conforming application ... I don't think I've ever been to one of these [Administration] meetings, but being Mayor for eight years. It's not uncommon for, for developers and for Administration to meet dozens of times, you know before an application comes in to Council.*<sup>137</sup>

*I I went to this with Delroy. The meeting basically concluded there was my my biggest, I did a swat analysis nothing unusual in their behaviour ...*<sup>138</sup>

*... No, don't think any of them [meetings with developers] are necessary. I call them the Dog and Pony show. The more of them you can get me out of, the better.*<sup>139</sup>

*... But but I'm going to a meeting with developers I know they're going to produce plans. What they're going to say I don't know, but I know we're discussing development ...*<sup>140</sup>

[245] Mr Kelly was later aware of the existence of the subsequently promulgated DLGRD Guidelines but had not read it until just prior to the Commission's hearings in 2007. He agreed that reading the DLGRD Guidelines had given him pause for thought in regards to the practice of councillors meeting developers.

*... Have you read it now?---I have.*

*Has it caused you to review some of the practices that you have engaged in?---Can I say this whole process had caused me to review a whole heap of practices.*

*Well, that's good, isn't it? Anything in particular about attending this meeting with Mr Salpietro at the developer's premises?---It's certainly not uncommon to meet and speak to developers but if I was talking to my colleague councillors I would say "have all of your meetings in council and ensure that there is a staff member there taking notes".*

*Yes. You appreciate now that perhaps those sorts of meetings, whether there's any real exercise of improper influence, there can be a perception of that?---I think there is always a danger of that, yes.<sup>141</sup>*

[246] Mr Salpietro said that he himself:

*... did not know the total wording but I'm aware that administration or the act itself recommends that perhaps it's not wise for elected members to have contact with developers.<sup>142</sup>*

[247] In the case of the Eclipse land the Commission has no evidence that Mr Salpietro or Mr Kelly were unduly influenced by their meetings with representatives of Eclipse to support an application that they would otherwise not have supported. Nonetheless, meeting with Eclipse on a number of occasions could reasonably give rise to a perception that those meetings may have influenced Mr Salpietro to readily accept approaches such as Mr Burke's request to move an amendment to a Council motion. Elected members of council have an important role as decision-makers, not just as givers of advice on local government requirements. As decision-makers, who are able to cast a vote supporting or opposing an application, it is important that councillors avoid any situation where it could be perceived they accepted approaches from applicants which unduly influenced them. Apart from the issue of perceptions, attending private meetings in this way presents opportunities for elected members to be improperly influenced and can lead to misconduct within the meaning of section 4 of the CCC Act.

[248] Other incidents where Mr Salpietro met with developers or applicants with matters before Council will be discussed elsewhere in this report.

[249] The Commission has also considered the propriety of Mr Salpietro attending meetings at which both Eclipse representatives and City planning staff were present, and the propriety of Mr Salpietro providing Eclipse with advice and assurances of his support.

### **3.6 Elected Members Meeting with Applicants and City Staff**

[250] Local government bodies are divided between elected members and employed staff. Elected members are councillors who are elected by, and represent, the interests of constituents within the community. "Staff" are those employees who are employed on contract rather than being elected, including administrative staff and expert technical staff such as town planners.

[251] Council staff provide impartial advice and generally remain divorced from decision-making at council, although in some cases council staff sit on committees which make decisions via "delegated authority". Staff reports

to council propose recommendations on the statutory and policy implications of a matter, but councillors may take other factors (such as community pressure or other related proposals) into account and come to a resolution which differs significantly from what administration proposes.

[252] In order to create and enforce this distinction between their roles, local government codes and practices often prohibit elected members from directing administrative staff in their duties. The City of Wanneroo's Code of Conduct states, for example, that:

*Elected members and employees shall always demonstrate mutual respect and understanding ... acknowledge that Elected Members have no place or authority to individually direct employees to carry out particular functions and duties and therefore, all matters relating to Council employees must be referred directly to the Chief Executive Officer.*

*... [Elected Members should] refrain from using their position to improperly influence employees in their duties or functions or to gain an advantage for themselves or others.*

*... Elected members should recognise they do not have an "as of right" authority to give directions to employees and avoid any appearance of attempting to influence any employee.<sup>143</sup>*

[253] In short, council employees should be able to gather and assess information from the community, and to present and explain an expert conclusion and recommendation, without undue influence from elected members.

[254] This does not however imply that councillors and city employees are restricted from working cooperatively. The City of Wanneroo's Code of Conduct goes on to encourage a "partnership approach" and states that "it is essential, and in the best interests of the community, that elected members and employees work together to resolve problems".<sup>144</sup>

[255] The DLGRD Guidelines point out that if elected members attend meetings between professional staff and developers, this could:

*... entail an improper incursion by the elected members into the role of the Chief Executive Officer (CEO) and his or her professional staff*

*...*

*... Elected members should refuse an invitation they receive from developers to attend meetings between professional staff and the developer. Although the developer may suggest that it [a meeting with an elected member] is an opportunity for them to see what the issues are and they may say little or nothing, the mere presence of an elected member puts implied pressure on staff and otherwise inhibits free and frank discussion with the developer.*

*... The integrity of a local government will be improved where the role of the professional staff in assessing an application is clearly separated from the council's role of determining the application.*

[256] The DLGRD Guidelines on relationship with developers were published and distributed to all local governments by the DLGRD in May 2006.<sup>145</sup> In his evidence to the Commission, Mr Kelly confirmed that the DLGRD Guidelines were distributed via the “Councillors’ Clipboard”, though he had not read it until just prior to the hearings.<sup>146</sup>

[257] During his appearance at a public hearing, Mr Salpietro was asked whether he had in fact attended meetings at which the landowner Mr Delroy and administrative Council staff were present. Mr Salpietro agreed that a meeting took place in his offices between himself, Mr Zagwocki, a planner at the City of Wanneroo, and Mr Delroy. Mr Salpietro further said that such meetings between staff, elected members and members of the public took place on “numerous occasions”.

[258] Mr Delroy’s evidence confirmed Mr Salpietro’s recollection of a meeting between himself, Mr Salpietro and Mr Zagwocki. Mr Delroy was asked by Counsel Assisting:

*... Why was Mr Salpietro there? ---Well, Mr Salpietro was there as the ward councillor. He made it clear at the meeting to Roman that he was comfortable with the direction that the project was proposed to be taken down.*

*What relevance did that have?---Well, there's not much point in - if the ward councillor isn't going to support the project, I don't think there's a lot of chance even - even with - even if the - even if the - even if the council staff support a project, if the ward councillor is going to - is going to speak against the project my experience is they won't get up.*<sup>147</sup>

[259] Mr Zagwocki told the Commission that elected members were present on the “vast majority” of occasions on which he had met with Mr Burke or his clients, and that these meetings were normally organised by Mr Salpietro. He was asked by Counsel Assisting:

*Did you feel at all uncomfortable about that?---I don't believe I did. I have attended numerous meetings with various elected members with all manner of consultants and land owners.*<sup>148</sup>

[260] Mr Zagwocki said that staff below the level of director were not generally called to such meetings, as the City’s practice was for elected members to restrict their contact with staff to the CEO, directors and if necessary managers. Mr Zagwocki was unaware of the DLGRD Guidelines (which is in fact directed more at elected members than at professional staff).

[261] Mr Zagwocki explained in an interview with Commission officers in 2007 that different councillors tended to become involved in constituents’ applications to different degrees. This, he said, was due to a lack of clarity about how councillors perform their representative role.

*... they are publicly elected to represent their constituents and you know despite the Local Government Act, different individuals have a have their own understanding of what that representation means ... some elected members get involved at a mediation type level, others will advocate applications and proposals on behalf of their constituents.*<sup>149</sup>

[262] Mr Zagwocki said that as a Director one of his “key responsibilities” was to deal directly with elected members. In discharging this role at the City of Wanneroo he had never been pressured into making planning decisions, or felt his decisions had been compromised by elected members, applicants or lobbyists.<sup>150</sup>

[263] Mr Salpietro was also firmly of the opinion that there was no risk of perceived influence inherent in such meetings, and that his or other elected members’ presence at such a meeting would not influence the professional staff. In Mr Salpietro’s appearance before a Commission hearing, Counsel Assisting asked Mr Salpietro about:

*... a specific circumstance where the developer is present and there is you present and there is someone from administration present and there is at that time pending before administration an application. Do you not see the risk that you being there and perhaps expressing support for this particular application might be seen as an incursion into the workings of administration? ---Mr Hall - - -*

*Do you see that as a risk? ---No. Mr Hall, you’re suggesting again that my influence there would influence the officer. I categorically state that my influence there would not influence the officer. ... I cannot think - I will repeat again, sir, I cannot think of one single occasion when administration would have been influenced to change the report or view on the basis of an elected member’s opinion.*<sup>151</sup>

[264] Mr Kelly and Mr Salpietro’s evidence gives the impression that councillors at Wanneroo were willing to entertain presentations on development proposals personally, directly from developers, rather than remaining at arms length and letting the Council’s professional staff gather and report on the information.

[265] Mr Kelly and Mr Salpietro’s evidence on practices at the City of Wanneroo indicate either a lack of understanding of how such situations can compromise the public’s perception of local government impartiality; a willingness to ignore this prospect; and/or a lack of faith by elected members in the Council’s professional staff. The Commission understands that elected members being lobbied or being given information by developers or applicants is not unusual, but the practice involves potentially serious risks of actual or perceived compromise. The discharge of a councillor’s obligations as a public officer comes in their considered handling of such approaches so as to be seen to be acting in the public interest.

[266] By comparison, the Commission notes the City of Cockburn’s Code of Conduct which requires more explicitly that:

- 4.8 *Staff shall only attend meetings arranged and attended by Elected Members, to meet proponents or ratepayers concerning any application, proposal or issue, at the direction of the CEO or Director to whom any initial approach by an Elected Member shall be referred. Staff presence at such meetings will be in an advisory capacity only and shall be withdrawn in circumstances where advocacy on behalf of the ratepayers/proponents is demonstrated by Elected Members.*
- 4.9 *Staff shall report to the CEO any approaches by Elected Members who contact them on any issue in which the Elected Member has an obligation to declare an interest or if the approach is made in a manner which is directive, demanding or otherwise attempting to influence the officer in either providing information to which the Member is not entitled, or to prepare a report or recommendation to Council in a particular way, to further the interests of the Member or any other third party.*

[267] Also relevant here is the statement in the DLGRD Guidelines on relationship with developers that:

*Local governments need to be proactive in developing ethical standards for elected members when dealing with development applications. The standards could also address the ground-rules for lobbying of elected members. Applicants and objectors should be informed of those standards.*

### **3.7 Elected Members Support and Advice to Applicants**

[268] The DLGRD advises elected members not to make statements of support for proposals before council prior to council debate:

*Members may offer support or otherwise but as decision-makers they are obliged to consider all relevant facts, including the debate at the meeting, prior to making their decision. Elected members who commit their vote may be faced with claims of perceived bias.*

[269] Elected members attending meetings with developers (as discussed above) risk creating a perception of “implied support” for a particular proposal. The DLGRD Guidelines state that the “presence of elected members at such meetings may raise expectations on the part of the developer for approval”. As a matter of practical reality, this may be the case even before there is a formal application before council.

[270] Mr Salpietro and Mr Kelly’s attendance at meetings with Mr Delroy, and his representatives Mr Drescher and Mr Burke, certainly ran the risk of such a perception. Mr Burke exaggerated this risk by claiming repeatedly to his clients that councillors were “committed” to him, were amenable to his approaches, and would support a proposal merely due to his involvement, whatever the facts of the matter. Whether those claims were true or not,

by engaging with a proponent and its representatives in that way, Mr Salpietro and Mr Kelly gave them apparent credence.

- [271] When asked at a Commission public hearing about the meeting on 3 March 2006, Mr Salpietro assured Counsel Assisting that while he might on occasion offer a statement of support to proponents of a particular motion, he would never make up his mind without considering all the facts. He said that “very, very seldom would I actually say – say, “I will totally support it, I will totally reject it”. There may have been occasions, yes”.<sup>152</sup>
- [272] Like Mr Salpietro, Mr Kelly recalled being supportive of Mr Delroy’s proposed plans for the Flynn Drive land, while avoiding an explicit statement of support.

*Did you give any indication of what your position was in regard to those plans? ---Look, I recall being very supportive.*

*Very supportive? ---Very supportive.*

*What did you say? ---I raised a number of issues in regards to it but I think the - by and large I complimented them on their additional public open space. I complimented them on their ability to being consistent with the contours of the land but I don't believe I gave any indication that I would specifically vote for it. In actual fact one of the issues I raised - and if I can refer to as qualified support, and it has come up - is the issue of public consultation. ... I predicted that there would be considerable opposition to their proposal, particularly since it was non-frontal, the development. They indicated to me that they had already done a survey of the area through engaging consultants and they undertook to send it to me some days later. They did send it to me via email about three or four days later and I think if I had have given a firm indication that I had supported it and not raised those concerns then that email would not have been sent.*

*Did Mr Salpietro indicate what his views were? ---I honestly can't recall.*

*Can you recall anything that he said? ---No, not a thing.*<sup>153</sup>

- [273] Mr Burke gave a different interpretation of Mr Kelly and Mr Salpietro’s participation in the meeting when he told Mr Grill on 14 April 2006 that:

**BURKE:** *... the Mayor and the Deputy Mayor I took 'em for lunch afterwards and they seemed quite happy about things ... and said they'd get it through.*<sup>154</sup>

- [274] In his section 86 representations,<sup>155</sup> Mr Kelly contends that Mr Burke did not take him to lunch, but rather he, Mr Burke and Mr Salpietro went to a neighbouring café after the meeting and that all he had was a coffee and a soft drink, both of which he paid for himself. In the Commission’s assessment, nothing turns on this. The point was, they went to the café to discuss the “political issues” which Mr Burke had suggested to entice Mr Kelly to the meeting with the Eclipse representatives. The evidence does not establish that Mr Salpietro and Mr Kelly did in fact express the support

or commitment Mr Burke related to Mr Grill – but at the very least their conduct afforded him the opportunity to say that.

[275] In his evidence to the Commission Mr Burke said that this statement may have been less a statement of fact than an attempt to reassure Mr Grill that there was nothing to worry about. Mr Burke added the disclaimer that he always expected decisions to be debated in Council before a decision was reached.

*Is that something you come across often, Mr Burke, that elected members of local council will give you a commitment as to support for a project before the project actually comes before council?---Yes. It's always on the basis that the council debate may change the decision.*

*But it's something you're looking for, is it, a commitment from people?---I'm always trying to persuade people to support the proposal that I'm putting forward or to give me arguments that will cause me to change it.*<sup>156</sup>

[276] Representatives of Eclipse were also evidently able to distinguish between a general expression of support and a firm promise. Mr Drescher, emailing draft minutes of the 3 March 2006 meeting to his Managing Director Mr Delroy, wrote that “although it was not agreed on the day, Graeme and I believe we should still pursue [suppressed] just in case the City of Wanneroo support does not come through”. (The person named was an employee at the Western Australian Planning Commission.) The draft minutes record that “JK and SS were comfortable with supporting the inclusion of Lots 1 and 2 in the Urban Zone”.<sup>157</sup> The minutes also note that Mr Salpietro gave advice to the developers, suggesting they present further information to a Council meeting:

*SS indicated that it could be advantageous once the plan has been prepared for the matter to be informally presented to the City's Policy Forum meeting of Councillors to appraise [sic] them of the proposed changes, following which a more detailed submission would need to be presented to council seeking its support to Amendment under the Metropolitan Region Scheme.*

[277] Mr Drescher, who attended meetings with elected members as a representative of Eclipse, was asked to tell the Commission whether Mr Kelly or Mr Salpietro had expressed support for the Flynn Drive subdivision plan. Mr Drescher said there was a “general feeling” that the Mayor and Deputy Mayor “had no problem” with their proposal, but:

*Did they give any indication of whether they would support it?---Well, they had no difficulty with it but they recognised there was a process that had to be gone through in terms of a submission through the council ...*<sup>158</sup>

[278] The picture of unswerving support from Mr Salpietro which Mr Burke presented to his clients had been established for some time. Mr Burke on numerous occasions made statements that certain councillors would support “his” motions. Mr Burke claimed to a number of clients that the Wanneroo Council was easy to deal with, that the Mayor and Deputy Mayor were “committed” to him and that Mr Kelly would be horrified to find

he had opposed a motion devised by Mr Burke. Creating an impression of unswerving support and loyalty from the Wanneroo Council would undoubtedly have been to Mr Burke's advantage, as it would encourage his clients to depend upon his intervention. These claims were made in the main directly to clients and thus made without the knowledge of the relevant councillors. While councillors and staff cannot be held responsible for any elements of exaggeration in Mr Burke's communications with his clients, public officers should be aware of, and avoid, situations where a risk of such an assumption of support may arise.

- [279] Under legislation, regulations and codes of conduct, public officers have an obligation to identify and avoid situations which can lead to a perception of misconduct, as well as avoiding the commission of misconduct itself. When elected members meet directly with developers, whatever restraint they may actually exercise in the meeting, they risk a perception of committing support or of accepting undue influence. In this case, the representative of the developers (Mr Burke) also met directly with elected members and then conveyed the outcomes of those meetings to his clients.
- [280] While avoiding explicitly committing support, Mr Salpietro proved very willing to give advice to Mr Burke and Mr Burke's clients at Eclipse on how to prepare and present their application to Council. This included preparing amendments to be moved on their behalf, and dictating additional text for plans before they were submitted for consideration. He not only responded to Mr Burke's enquiries but on several occasions contacted Mr Burke himself with suggestions. This, along with Mr Burke's assurances that Mr Salpietro would support what Mr Burke put forward, could reasonably be construed by Mr Burke's clients as providing some guarantee of support.
- [281] Mr Salpietro was also clearly willing to share the details of Council deliberations and the attitudes of councillors with Mr Burke. While the voting and debate at Council meetings is public, and there would be no restriction on recounting a description of a meeting, Mr Salpietro appeared keen to discuss councillor's "behind-the-scenes" motivations, allegiances and personalities. Mr Salpietro attempted to give Mr Burke the impression that he was able to influence Mr Kelly and to demand an apology from him. In addition Mr Salpietro misled Mr Burke as to Mr Kelly's vote on the amendment, saying that Mr Kelly voted for it but had drummed up opposition to it to ensure it would not be passed. Such conversations again made it easy for Mr Burke to create the impression, when speaking to his clients, that he had an absolute knowledge of the inner workings of the Council.

### **3.8 Benefits Offered by Mr Burke**

#### **3.8.1 Mr Burke's Offers of Political Assistance to Mr Kelly and Mr Salpietro**

- [282] Mr Burke indicated to Mr Salpietro and Mr Kelly in March 2006 that they should meet to discuss "State political matters". Mr Kelly had in the past attempted to become a State Parliamentarian.

[283] Mr Kelly's membership of the ALP was terminated when he ran as an Independent in 2005. This decision to run as an Independent was prompted by the failure of the ALP to pre-select him for a winnable seat, following internal factional disputes and a decision by the National Executive to re-endorse all sitting members. Mr Kelly was defeated in the contest for Girrawheen, and Ms Quirk was returned to office. During 2006 Mr Burke appeared to feel that Mr Kelly's Parliamentary ambitions were still extant, and offered his assistance in getting Mr Kelly re-admitted to the ALP and securing him a chance at an Upper House seat.

[284] Mr Kelly claims that his re-entry to the ALP was obviously not a possibility and that he tolerated, but never believed, Mr Burke's assurances. He claims this was a continuing feature of the relationship. In relation to an offer of an Upper House seat Mr Kelly says Mr Burke made to him in October 2006, Mr Kelly told the Commission:

*... It was a poison chalice .... Firstly, I would say I don't believe Mr Burke ever had the power to deliver me a seat in Parliament. I believe he certainly had the power to stop it from occurring and that greatly affected my - the way that I - that I treated Mr Burke, but the position he offered me support for was number 3 on the north metropolitan ticket and as I'm sure the Commission is aware that with one vote one value, they are re-evaluating or they're changing the number of seats and I think that the number of seats in the upper house goes - available seats goes from six and five to five; that changes the quota and in my opinion makes number 3 unwinnable and, yes, I thanked him for his kind offer because I'm not one to confront him and left it at that.<sup>159</sup>*

[285] Mr Burke also spoke to Mr Salpietro about the possible ramifications of Mr Kelly entering Parliament. Mr Salpietro harboured an ambition to at some point become Mayor of Wanneroo, having been the longest-serving Deputy Mayor Wanneroo had ever had. If Mr Kelly was to leave the position of Mayor to enter Parliament, an opportunity would open up for Mr Salpietro to stand for Mayor. At his appearance before a Commission public hearing, Mr Salpietro was asked about how he regarded Mr Burke's assurances with regard to Mr Kelly. Mr Salpietro agreed that he had "no doubt" that Mr Burke was attempting to curry his favour by promising assistance to both Mr Kelly and himself, but that, like Mr Kelly, he was always aware that such a scheme was impossible. Mr Salpietro said:

*... there was no chance on earth that Brian Burke or anyone else - or anyone else would have been able to get Mr Kelly back into the Labor Party 12 months after he opposed in a state election a sitting Labor member, and I'm fairly sure that Mr Kelly realised that and I realised that. Now, I could have told - I could have told Mr Burke that he was just, you know, blowing hot air. I didn't. I think I made the comment, "Is that right"?*

*But do you think that's what he was trying to do?--But there was no chance, sir, there was no chance that – you would have to be a fool to believe that the Labor Party would allow somebody that had opposed a Labor sitting member as an independent in an election 12 months before.<sup>160</sup>*

[286] Both Mr Kelly and Mr Salpietro echoed other witnesses in saying that they passively allowed Mr Burke to make such claims without holding out much hope for their success. However, neither Mr Salpietro nor Mr Kelly made any attempt to disillusion Mr Burke as to Mr Kelly's political prospects, nor to demystify the impression that he was able to perform political "favours". This risked the perception that Mr Salpietro and Mr Kelly were amenable to taking any assistance Mr Burke offered, and that his promises, unlikely though they sounded, may have improperly influenced them to treat him favourably.

[287] Again, whatever these individual public officers subsequently professed to believe about what they were told by Mr Burke, they put their own integrity and the integrity of the public decision-making processes in which they were involved, at risk by engaging with Mr Burke and his clients in the ways described above, on the speculative expectation – or at least possibility – that Mr Burke could advance their personal political aspirations.

[288] The thrust of submissions made on behalf of Mr Kelly<sup>161</sup> is that he was aware Mr Burke was seeking to influence him but he distanced himself. In the Commission's assessment of the evidence, that does not quite reflect his position at the time. For example, Mr Kelly called Mr Burke to thank him for advice the latter had given him during his electoral campaign (that being to write to the relevant Minister suggesting a change to the legislation in relation to declaring an interest arising from donations). He said he wanted to give Mr Burke a "heads-up" because he knew that a person to be mentioned by the media was a client of Mr Burke's. He was grateful for Mr Burke's advice:

**KELLY:**

*... can I say one day I owe you more than a beer for this ... I think that'll probably save me (laughs) real heart strings ... I also wanted to say thanks for that piece of advice 'cos it may actually save my bacon.*

[289] He may have had doubts about what Mr Burke was offering in terms of political support, but like many others with whom Mr Burke dealt in this way, he was not sure Mr Burke could not deliver and was prepared to be (or appear to be) responsive to his approaches in case he could. The integrity risk for any public officer in these circumstances is obvious.

[290] In their discussion on 3 March 2006 Mr Salpietro told Mr Burke that rumours of an inquiry were flying about the Council. He told Mr Burke to be careful about his plans for Mr Kelly, and to;

**SALPIETRO:**

*Just keep in mind, as I've said that just in just in case if you, or any of your colleagues make anything public the the nature the nature of that doesn't come back ...<sup>162</sup>*

[291] This lends weight to the proposition that Mr Salpietro had some faith in Mr Burke's ability to work behind the scenes and influence a political

outcome. It is also a recognition that Mr Salpietro felt Mr Burke's efforts might not all have been above-board. Again Mr Salpietro took no steps to dissuade Mr Burke, other than encouraging him to make sure the scheme would not become public. A lack of belief in Mr Burke's ability to deliver on his promises is no defence to Mr Salpietro and Mr Kelly tolerating a culture of favour, counter-favour and behind-the-scenes power politics in local government.

[292] In Mr Kelly's section 86 submissions<sup>163</sup> his lawyer argues that the evidence shows Mr Burke was attempting to assist Mr Salpietro to become mayor at Mr Kelly's expense. It would certainly be open on the evidence to conclude that Mr Burke and Mr Salpietro were seeking to deceive Mr Kelly into thinking he would be helped to return to State politics when both men privately believed that was not possible. However, in the Commission's assessment of that evidence it shows both Mr Kelly and Mr Salpietro had in common the fact that they were both prepared to use their connection with Mr Burke to further their own political ends. Any plan by Mr Burke and Mr Salpietro to unseat Mr Kelly from the mayoralty does not diminish his preparedness to compromise himself by cultivating Mr Burke in order to further his own political interests.

[293] Mr Salpietro and Mr Burke's conversation on 6 September 2006<sup>164</sup> demonstrates Mr Burke offering a political incentive to Mr Salpietro. In the call, Mr Burke thanked Mr Salpietro for following up an enquiry on his behalf, then offered Mr Salpietro a free place at a \$2,000-a-head political event, saying Mr Salpietro would be attending as "candidate for Mayor". Mr Salpietro's attendance at the event would have been a beneficial opportunity for him to raise his profile with Ms Guise MLA, the Member for the Electorate of Wanneroo, the Hon. Alannah MacTiernan MLA, Minister for Planning and Infrastructure, the Hon. Alan Carpenter MLA, Premier, and prominent developers with interests in Wanneroo. Mr Burke told Mr Salpietro that he should not reveal the event to Mr Kelly – Mr Burke was clearly not offering the same assistance to Mr Kelly in his efforts to reconnect with the ALP. Mr Salpietro expressed some hesitation in accepting Mr Burke's offer, but Mr Burke easily overrode his concerns.

[294] Mr Salpietro did not, for whatever reason, eventually attend the fund-raising dinner. For a public officer to accept a benefit such as this, paid for by a lobbyist whom he or she was assisting, may constitute misconduct. In this case, the material before the Commission does not establish misconduct by Mr Salpietro in regard to accepting Mr Burke's offer.

### **3.8.2 Mr Burke's Offers of Assistance to Mr Zagwocki**

[295] In a telephone call on 3 March 2006, after discussing the progress of the Flynn Drive application, Mr Burke asked Mr Salpietro to ensure Mr Zagwocki was aware that Mr Burke was willing to assist him. The offer was couched in vague terms and shows Mr Burke attempting to establish himself as a powerful figure in Mr Zagwocki's mind.

**BURKE:** ... Will you make sure that Roman knows I appreciate the fact that he, ah returns my calls and tries to assist me if he can?

**SALPIETRO:** Yeah th [sic] Roman Roman's good I I think I think unfortunately sooner or later we're gonna lose him I think.

**BURKE:** Yeah so do I

**SALPIETRO:** Yeah yeah.

**BURKE:** but if you could just let him know that I'm

**SALPIETRO:** Yeah I will.

**BURKE:** grateful

**SALPIETRO:** O [sic] course I will yeah.

**BURKE:** and that my

**SALPIETRO:** Yeah.

**BURKE:** gratitude does

**SALPIETRO:** Yeah.

**BURKE:** count for something?

**SALPIETRO:** ... oh he knows that I can tell you.  
(laughs)<sup>165</sup>

[296] Mr Salpietro and Mr Burke discussed in several further telephone conversations during 2006 that Mr Zagwocki would in all likelihood be leaving the Council and seeking a position in private enterprise. Both Mr Burke and Mr Salpietro appeared to believe that Mr Burke would be able to use his contacts to assist Mr Zagwocki, and that Mr Zagwocki would be grateful to receive this assistance.

[297] For example, on 25 April 2006:

**SALPIETRO:** No, no at all, at all. Roman, I mean, Roman, Roman thinks a lot of you, to tell you the truth, but I didn't have a chance to talk to Rod but, but, ah, but Roman, I mean, as I've said to you, Roman's got his eye on the, you know on the private sector

**BURKE:** Yeah.

**SALPIETRO:** sometime, sometime in the future and he sees, and he sees your help as quite crucial in it so.

**BURKE:** Well drop the word to him that I mentioned if he ever does decide to go to the private sector I'm happy to talk to him

**SALPIETRO:** Yeah yeah yeah I will, I will ...<sup>166</sup>

[298] Also, on 25 September 2006:

**BURKE:** Uhm, and if you're available to come along I'd be quite anxious in a very subtle, sophisticated way to let Roman know I'm involved.

**SALPIETRO:** Yeah yeah I've uh I'd, yeah well you know it's a that I'll I'll uh I'll uh

**BURKE:** Yeah just gently tell 'im

**SALPIETRO:** let him

**BURKE:** ya know?

**SALPIETRO:** Yeah that's right yeah.

**BURKE:** Cos he'll need some help in due course.

**SALPIETRO:** Yeah, yeah of course. And uh and uh (laughs) and I think uhm, I think he's depending on it I think.

**BURKE:** Yeah, yeah well I'm ha- I'm happy to help you know that.<sup>167</sup>

[299] Mr Zagwocki denied this at a Commission public hearing in February 2007, saying that he maintained a “professional working relationship” with Mr Burke. Mr Zagwocki was asked by Counsel Assisting:

*Has your relationship with Mr Burke become a friendly one as a result of your contact with him?--No, I wouldn't say I have a friendly relationship with him. I have a professional working relationship, the same as I do with any other consultant.*

*Has he ever indicated to you that if you were minded to go into private practice that he could assist you with that?*

---I don't believe he has, no.<sup>168</sup>

[300] Since the Commission's hearings Mr Zagwocki has left the Wanneroo Council to work in private enterprise. There is no evidence before the Commission that would suggest Mr Burke did in fact directly offer, promise or provide Mr Zagwocki with assistance in his career. There is no evidence that Mr Zagwocki was “enticed” by these offers of assistance to provide favourable assistance to Mr Burke in regard to Mr Delroy's land.

## CHAPTER FOUR

### ECLIPSE RESOURCES PTY LTD: WESTERN POWER

#### 4.1 Background: Pinjar to Wanneroo Transmission Line

- [301] In September 2003 the State's energy provider, Electricity Networks Corporation (Western Power), decided to construct a high-voltage transmission line linking a power substation in Wanneroo to the Pinjar gas turbine power station ("the power line").<sup>169</sup> The new line was planned to cope with rapid residential and commercial expansion occurring in the northern suburbs.
- [302] At the times relevant to this report, Flynn Drive was a two-lane road running east-west for most of its length, but with a sharp "dog-leg" to the south, before connecting with Wanneroo Road to the west. Flynn Drive therefore bordered the Eclipse land on the northern and southern sides ("the Flynn Drive route").
- [303] Land had been reserved under the MRS for Flynn Drive to be widened to a four-lane "blue road" (designed for heavy industrial traffic/loading) and re-aligned to remove the southern "dog-leg", by continuing its east-west alignment until it met Wanneroo Road ("the Flynn Drive realignment route"). It was anticipated that the southern leg of Flynn Drive would then become a "local road"<sup>170</sup> feeding residential estates (such as Eclipse's proposed subdivision of Lots 1 and 2).
- [304] In September 2003 Western Power decided to construct the power line along the Flynn Drive realignment route.
- [305] The City of Wanneroo informed Western Power in February 2006 that road design information for the Flynn Drive realignment route would be completed in September or October that year.
- [306] In June 2006 Western Power contracted with a private engineering company for construction of the power line along the Flynn Drive realignment route.
- [307] However, by late 2006 Western Power had changed the proposed route.
- [308] In September 2006 Western Power produced a public Project Update for the Pinjar to Wanneroo line, which included a map of the proposed line route. The route:

*... travels from the existing Wanneroo substation on the eastern side of Wanneroo Road to just north of the Joondalup Drive intersection, where it crosses to the western side of Wanneroo Road. This route maximises, within the available space, the distance between the transmission line and the majority of homes in the built-up area of Carramar.*

*When the line route reaches Carramar Road, it crosses back to the eastern side of the Wanneroo Road Reserve and follows Flynn Drive*

*to the Neerabup industrial area before continuing north to the Pinjar Gas Turbine Station ...<sup>171</sup>*

- [309] This route (the Flynn Drive route) ran along the boundary of the Lots owned by Eclipse on Flynn Drive.
- [310] Mr Delroy explained in a Commission hearing that Eclipse had first heard of the “possibility” of the transmission line running along Flynn Drive in February 2006, but subsequently they heard no more about it. Eclipse expected that, as affected landowners, they would be further consulted if this proposed line route was a serious possibility.<sup>172</sup> In addition, Mr Delroy told the Commission that another landowner on Flynn Drive had communicated with Western Power in February 2006 and received the impression that if the line ran along Flynn Drive at all, it would be on the northern side of the road – that is, on the opposite side to Eclipse’s land.
- [311] In September 2006, however, Eclipse learned that Western Power had decided to adopt the Flynn Drive route, and had decided that the line would run along the south side of the road.
- [312] Mr Delroy told the Commission in his hearing evidence that he strongly believed the power line route would “... have an adverse effect on all three counts of sustainability: environmentally, socially and economically”.<sup>173</sup> The placement of a power line immediately alongside Eclipse’s proposed residential development would also very likely have had an adverse affect financially.
- [313] Eclipse felt that having the power line run along this southern-leg of Flynn Drive, on the side closest to their residential development, was illogical when other roads, gazetted for heavy industrial use, presented alternative routes.<sup>174</sup>
- [314] Mr Delroy told the Commission:

*--Just to put that into context. Western Power have got a whole lot of brochures and leaflets, public information that people rely on, that goes to great length to tell you how they adopt the principles of sustainability; they employ environmental experts, landscape experts; they consult extensively with the stakeholders. Now, none of these things had happened.<sup>175</sup>*
- [315] On 9 March 2007 Eclipse commenced an action in the Supreme Court of Western Australia against Western Power, contending that construction of the power line along the Flynn Drive route would involve a breach of section 60(4) of the *Electricity Corporations Act 2005* (“the EC Act”). That action was settled in May 2007. The settlement included agreement that Western Power would not construct the power line along the Flynn Drive route and that the question whether doing so would have involved a breach of the EC Act was referred to arbitration. In March 2008 the arbitrator held in favour of Eclipse.
- [316] From September 2006 Mr Burke and Mr Grill’s consultancy to Eclipse grew to encompass Eclipse’s dispute with Western Power over the route of the transmission line.

## 4.2 Late 2006: Lobbying to Foster Opposition to the Flynn Drive Route

[317] On 6 September 2006 Mr Burke spoke to Mr Salpietro about the Flynn Drive subdivision and mentioned that he was meeting with Mr Delroy that morning (see [182]-[184] above). Later on the same day, after meeting with Mr Burke, Mr Delroy emailed Mr Grill, saying that:

*A difficulty with Western Power has arisen from the Flynn Drive Subdivision re: proposal to install 132kva distribution lines along Flynn Drive. Roy Webley, Oscar and myself have a meeting at my office on Tuesday 12th September at 11 am with Western Power representative David Smith . Brian Burke suggests you attend ...<sup>176</sup>*

[318] Ms Jenny McGee of Eclipse followed this with another email, attaching correspondence between Eclipse and Western Power for Mr Grill's information. The attachment, a fax from Mr David Smith, Project Officer, Western Power, "Program Enablement" Branch, was in regard to the installation of an underground power cable on Wanneroo Road. The fax informed Eclipse that "... this project will be followed by the installation of an overhead steel pole transmission line in early 2007".<sup>177</sup>

[319] Mr Grill attended the meeting on 12 September 2006, as per Mr Delroy's emails. The meeting does not appear to have gone well for Eclipse. Mr Grill emailed Mr Delroy, Mr Burke, Mr Drescher, Mr Roy Webley (an engineering consultant engaged by Eclipse) and Ms McGee on 13 September 2006, saying that:

*It appeared that you were having real problems with David Smith from Western power yesterday. As you pointed out the proposed route for the transmission line is most unsatisfactory. I do not know whether Mr Smith changed his position after I left, but he was pretty adamant up until that time ...*

*I suggest that this matter needs to be handled with a combination of internal lobbying to Western Power and external lobbying by agencies like the Wanneroo City Council and local members of Parliament. Brian and I can help with both.*

*The starting point for such lobbying would be a good briefing note which sets out the problems with the proposed Western Power route and suggesting a more sensible route. This should be accompanied by a clear map showing the two alternatives, or alternatives, if there is more than one. Could you have such a briefing note prepared?*

*Your threat of legal action is one that you will no doubt discuss with [Senior Counsel]. I do not think that we need to be involved with that but we would like [sic] to be advised if you intend to go down that road as it shall have some bearing on our proposed activity ...<sup>178</sup>*

[320] Email correspondence in September 2006 shows that Mr Grill's idea of combining "internal and external" lobbying was generally accepted.

Representatives of Eclipse met with Wanneroo staff to gauge the Council's attitude to the line route. Mr Drescher emailed Mr Burke, Mr Webley, Mr Grill and Mr Delroy on 14 September 2006 saying that:

*I get the feeling that the City doesn't believe that this issue is of any great consequence. We will need to convince them otherwise if we can, to enlist their support before we launch off seeing Members of Parliament and elected members of Wanneroo.*<sup>179</sup>

[321] On 20 September 2006 Mr Burke contacted Mr Tony Monaghan, Chief of Staff to the Hon. Norman Marlborough MLA, the Minister for Small Business. He asked Mr Monaghan to organise a meeting between landowner representatives and Mr Doug Aberle, CEO of Western Power.

**MONAGHAN:** *Hi Tony Monaghan.*

**BURKE:** *Yeah it's Brian.*

**MONAGHAN:** *How are you?*

**BURKE:** *Yeah good.*

**MONAGHAN:** *Good.*

**BURKE:** *Tony will you make an appointment*

**MONAGHAN:** *Yep.*

**BURKE:** *to take some people to Doug Aberle*

**MONAGHAN:** *Yep.*

**BURKE:** *who's in charge of Western Power.*

**MONAGHAN:** *Yep.*

**BURKE:** *Now the people you'll be taking will be Trevor Delroy,*

**MONAGHAN:** *Mm hm.*

**BURKE:** *and his planner and engineer.*

**MONAGHAN:** *Yep.*

**BURKE:** *And they want to discuss a proposed transmission line*

**MONAGHAN:** *Mm hm.*

**BURKE:** *which Western Power is putting through uh a planned residential area, which is just all bullshit, you know. It's just a stupid idea. So can you, can you check with the Minister*

**MONAGHAN:** *Yep.*

**BURKE:** and then make that appointment as soon as possible and perhaps you could take them down or the Minister might even. It's just

**MONAGHAN:** I'll do it.

**BURKE:** Will you? Good.

**MONAGHAN:** Yep.

**BURKE:** Tell him it's Trevor Delroy.

**MONAGHAN:** Trevor Delroy.

**BURKE:** Okay.

**MONAGHAN:** Before I forget have you got a number for Trevor?

**BURKE:** Uh yes just a second I'll I'll give you a number.

(aside) Excuse me. Trevor what's your number here?

**DELROY:** [suppressed]

**BURKE:** [suppressed]

**MONAGHAN:** Mm hm.

**BURKE:** [suppressed]

**DELROY:** (aside) [suppressed]

**BURKE:** [suppressed]. If we could make that appointment this afternoon or today and and have it for the next week or so.

**MONAGHAN:** Okay. ... Which which uh which development is this so I can just sort of ...

**BURKE:** Uh it's on the corner of Flynn Drive and Wanneroo Road.

**MONAGHAN:** Yep.

**BURKE:** and it's a planned three hundred and four hundred ... one thirty two KV power line coming from Pinjar.

**MONAGHAN:** Okay.

**BURKE:** Alright?

**MONAGHAN:** Okay. No problems

**BURKE:** *If we could make it Thursday or Friday? This is, this is gunna blow up uhm because, and we'll want to see Logan afterwards 'cause its just, I think they get dumb people ... bridge of their nose to draw these lines you know.*

**MONAGHAN:** *Yes I think you're right.*

**BURKE:** *Because they've got all, all these alternatives.*

**MONAGHAN:** *Mm.*

**BURKE:** *Okay Tony thanks mate.*

**MONAGHAN:** *No problems.<sup>180</sup>*

[322] Mr Burke then rang Mr Salpietro and advised him that he should attend the meeting too. Mr Salpietro commented that the Council had already received "a lot of flak" from some sectors of the community, particularly with regard to the line route near Carramar.

**SALPIETRO:** *Hello.*

**BURKE:** *It's Brian again.*

**SALPIETRO:** *G'day Brian.*

**BURKE:** *Mate uhm, Western Power's planning this ah, power line from Pinjar right through sort of near Carramar and the*

**SALPIETRO:** *Yeah ...*

**BURKE:** *industrial estate and things.*

**SALPIETRO:** *Yeah we're*

**BURKE:** *Uhm*

**SALPIETRO:** *getting a lot of, a lot of flak out of it.*

**BURKE:** *Oh, there's a lot of flak mate. Now I've just made an*

**SALPIETRO:** *Yep.*

**BURKE:** *I'm making an appointment for Delroy and other people to go and see Doug Aberle the head of Western Power.*

**SALPIETRO:** *Mm hm, oh good, yeah.*

**BURKE:** *I think it would be real smart if you could go along and just listen.*

**SALPIETRO:** Okay, sure, yeah.

**BURKE:** Would you do that?

**SALPIETRO:** Yeah, yeah, I'd love to. Yeah but,

**BURKE:** Yeah, I think it'd be very important. He's the head of Western Power.

**SALPIETRO:** Mm.

**BURKE:** And there are other routes they can take, which are just much more sensible, Sam.

**SALPIETRO:** Yeah, ah well, it's a, if they'll just take from bloody western side of Wanneroo Road for a starters.

**BURKE:** Well the w- exactly right.

**SALPIETRO:** Yeah.

**BURKE:** Who's handling this at the council?

**SALPIETRO:** Well we're we're, we can't, we can't, we can't do anything it's a, it's a ah, it's an infrastructure issue and we've had delegations and ah, requests from the Carramar residence [sic] association on many occasions to say for Christ sake keep it on the west side. Diane Guise is involved in this too by the way.

**BURKE:** Yeah.

**SALPIETRO:** Yeah.

**BURKE:** Okay, anyway mate,

**SALPIETRO:** Yep.

**BURKE:** I'll, I'll let you know,

**SALPIETRO:** Okay.

**BURKE:** as soon as I've got the appointment,

**SALPIETRO:** Yeah.

**BURKE:** with Aberle set.

**SALPIETRO:** Yep.

**BURKE:** And then you might go along eh?

**SALPIETRO:** Oh great, yep.

**BURKE:** *Good on ya mate.*

**SALPIETRO:** *Thanks Brian, thanks.*

**BURKE:** *Thanks. Ta ta.*<sup>181</sup>

[323] Mr Burke then rang Mr Smith of Western Power directly, and enquired whether Mr Smith intended to go ahead with consulting local landowners. Mr Smith advised that he was currently working through the various alternatives that had recently been proposed by Mr Delroy's office, and would after that be in a position to discuss these possibilities with the interested parties. Mr Burke explained that he had arranged to meet Mr Aberle about the issue, and told Mr Smith that he did not want the line route "set in stone" until his clients and others had the chance to be heard. Mr Burke said that he was sure Mr Smith would find the majority of people involved "reasonable", as long as they were listened to.<sup>182</sup>

[324] Mr Burke then rang Mr Salpietro back and asked him to collect relevant Council documents before coming to the meeting.

**SALPIETRO:** *Hello.*

**BURKE:** *Sam?*

**SALPIETRO:** *Yes, oh hi ...*

**BURKE:** *Prior to our meeting with Western Power.*

**SALPIETRO:** *Yep.*

**BURKE:** *Uhm can we get out everything that the council's had before it on this power line?*

**SALPIETRO:** *W-we don't*

**BURKE:** *Would Rod Peake know or what?*

**SALPIETRO:** *Uhm no it would probably be Dennis Blair, I-I can follow it up.*

**BURKE:** *Dennis?*

**SALPIETRO:** *Er Dennis Blair who's the uh*

**BURKE:** *Dennis Blair.*

**SALPIETRO:** *Yeah, the director of uh Infrastructure. I can I, you know what I can do, I could tell him that uh that uhm that I've got a meeting with one of the land owners with Western Power and to give me all the y'know all the information.*

**BURKE:** *Could you do that for me?*

**SALPIETRO:** Yeah, yeah sure.

**BURKE:** Oh that'd be terrific.

**SALPIETRO:** I don't think I don't think there was much because council council has very little say because of Main Roads.

**BURKE:** Yeah.

**SALPIETRO:** Y'know being on Wanneroo Road that's a Main Road's issue.

**BURKE:** Yeah well now we're talking about another one coming across country you see.

**SALPIETRO:** Yeah yeah I'll

**BURKE:** This is one come from Pinjar

**SALPIETRO:** Uh huh

**BURKE:** right across through that industrial estate then down Flynn Drive.

**SALPIETRO:** Oh I see yeah. Oh really.

**BURKE:** Yeah.

**SALPIETRO:** Oh okay.<sup>183</sup>

...

[325] Later on 20 September 2006 Mr Burke spoke to the Member for the Electorate of Wanneroo, Ms Guise MLA. Mr Burke explained that “three or four” people had come to him with concerns about the route of the transmission line. Ms Guise was aware of the issue and explained to Mr Burke that she had already been involved in several “battles” with Western Power over the line route in Carramar. Although that dispute appeared to be resolved, Ms Guise said she was also aware that people on bigger blocks further north were now complaining. Mr Burke explained that he had set up a meeting between Mr Aberle, Mr Salpietro and interested landowners, and Ms Guise agreed to attend. Mr Burke said he would have Mr Delroy contact Ms Guise once the meeting was set.<sup>184</sup>

[326] An email of 20 September 2006 indicates that Ms McGee, of Eclipse, was to contact Mr Monaghan to follow up the appointment time, and then inform Mr Salpietro and Ms Guise.<sup>185</sup> The meeting was arranged for 3 October 2006. Mr Grill, rather than Mr Burke, attended the meeting, as Mr Burke was away.<sup>186</sup> Mr Burke emailed Mr Drescher prior to the meeting, advising him that:

*The best approach is to try to impress on Doug Aberley [sic] the depth of community and other opposition to the proposed route at the*

*same time as you put forward suggested alternatives. Remember too that political controversy is the last thing Western Power wants. In the final analysis, it may be appropriate to suggest a joint study of alternatives ...<sup>187</sup>*

- [327] Following the meeting on 3 October 2006 Mr Grill emailed a list of outcomes to various attendees. Western Power had agreed to give consideration to various alternative routes, and Wanneroo Council agreed to provide Western Power with information on the planned Flynn Drive extension. Mr Salpietro replied to Mr Grill on 5 October 2006, saying that Western Power had also agreed to provide information on the line route through Carramar. Mr Grill replied that this was correct but irrelevant to Mr Burke and Mr Grill as "this matter, as I understand it, is not directly related to Eclipse Resources".<sup>188</sup>
- [328] Ms Guise also responded, thanking Mr Burke for including her in the meeting and indicating that she was continuing discussions with Mr Salpietro and Western Power. Mr Grill replied to Ms Guise:

*Dear Dianne,*

*It was very much in our client's interest to have you along.*

*The WP performance in this area is a long way short of their reported goals. Tuesday was something of a shot across their bows and they may try to ameliorate the mess in Flynn [sic] Drive, but as you have correctly pointed out, the mismanagement is a lot wider than that thoroughfare.*

*Brian and I are very happy to help you in the wider battle, where we can.*<sup>189</sup>

- [329] On 6 October 2006 Mr Drescher emailed Mr Delroy, Mr Webley, Mr Burke and Mr Grill.

*Further to our meeting with Doug Aberley [sic] and the Western Power Corporation representatives, it has been suggested that we prepare a draft letter that the City of Wanneroo may wish to send to the WPC CEO. The view is that if this letter came from Sam or the Mayor then it might have more impact than if it came from Administration.*

*At our meeting it was highlighted that WPC was still waiting for a response from the City and we are not privy to the contents of that letter. It may be possible that the answers to the questions asked by WPC in their letter to the City can be incorporated in this draft. If this letter is of a more technical nature, then Administration may wish to answer it with the elected members expressing their concern as per the attached draft regarding the undesirable impact of this transmission line on the future community of Carramar.*

*Brian, Trevor was wondering whether the Mayor or the Deputy Mayor could be persuaded to take a more active role and action the draft letter to WPC ...<sup>190</sup>*

- [330] Mr Drescher attached a three-page draft letter addressed to "Western Power" and expounding "the City's view". It was evidently intended to be submitted as a draft which the Wanneroo Council could endorse and send to the relevant Western Power officers. The letter explains "the City's concerns" about the current proposed alignment and suggests various alternatives, concluding that the City's preferred route would take the line along Wattle Avenue. A copy of the draft letter is provided in Appendix 2 to this report.
- [331] A later email indicated Mr Drescher anticipated that the City might modify the letter before sending it.<sup>191</sup>
- [332] Mr Salpietro was, according to Mr Burke, away in Indonesia at this time.<sup>192</sup> Accordingly, on 10 October 2006, Mr Burke emailed Mr Kelly, and attached a copy of Mr Drescher's draft letter to Western Power (as above).<sup>193</sup> Mr Burke copied Mr Salpietro in on this email, and "blind copied" in Mr Drescher, Mr Grill, Mr Delroy and Mr Webley.

*Dear Jon*

*A delegation that included representatives of the Council (Sam Salpietro), Di Guise MLA and private interests met with Doug Aberley [sic] of Western Power last wee [sic] to discuss the route of the 132kv power line planned along Flynn Drive.*

*It appears that Western Power is prepared to revisit the route and a series of meetings are likely to be held. As part of the process, the City undertook to write to Western Power and I have taken the liberty of forwarding to you in Sam's absence a draft letter which might be of assistance to the City in framing its representation. I would appreciate it if you could consider this draft (attached) and forward it to the relevant officer if you think it appropriate.<sup>194</sup>*

- [333] Mr Burke followed this email with additional information on other landowners who were affected by the route, and also forwarded email correspondence to demonstrate that Ms Guise was involved and was "making representations" on the matter.<sup>195</sup>
- [334] As far as the Commission is aware, Mr Kelly did not respond to Mr Burke's email.
- [335] On 13 October 2006 Mr Burke spoke to Mr Delroy about the need to "shore up" the Mayor and Deputy Mayor, to ensure their support. Mr Burke said he had told Mr Drescher to re-write the letter with a greater emphasis on the alternative Wattle Avenue route.

**BURKE:**

*So as soon as he does that I'll give it to them and they'll give it to, they'll give it to*

*the officers and they'll sent [sic] it to Western Power.*

**DELROY:** *Right and Jon, long as Jon Kelly and Sam know that everyone's going to be ... it's the*

*...*

**BURKE:** *Yeah, it's not a problem with them mate.*

**DELROY:** *No Wattle Avenue is the line everyone, if everyone pushes for Wattle Avenue, Western Power will have to go and do it.*

**BURKE:** *Okay just make sure at the next meeting you have that you have Sam there and you get Di Guise to come along too.*

**DELROY:** *Right can you, can you let Di know that ...*

**BURKE:** *No it's better that I don't let her know.*

**DELROY:** *Okay.*

**BURKE:** *It's better that, it's better that either Oscar or you, someone who's*

**DELROY:** *Okay.*

**BURKE:** *you know rather than me, I mean I can let her know for sure*

**DELROY:** *...*

**BURKE:** *when I'm speaking to her but she need, I don't want to have to be seen to be manipulating everything.*

**DELROY:** *Okay I'll ring her on Monday.*<sup>196</sup>

[336] On 17 October 2006 Mr Burke spoke to Mr Delroy who said that they needed the letter to be received by Western Power before a meeting which had been scheduled for 20 October 2006. Mr Burke was confident that he could have Mr Kelly or Mr Salpietro take the letter to "the officers who are handling it and tell them to do it".<sup>197</sup>

[337] Mr Burke forwarded a slightly amended version of the draft letter (Mr Drescher having added a paragraph restating the desirability of the Wattle Avenue route<sup>198</sup>) to Mr Salpietro and Mr Kelly's private email addresses, copying in Ms Guise.<sup>199</sup> Later the same day, Mr Burke emailed Mr Salpietro at his City of Wanneroo email address, and asked that the letter be sent urgently:

*Would it be possible to email the letter the Wanneroo City Council is proposing to send to Western Power about the routing of the power lines proposed for Flynn Drive?*

*I sent a Draft to you today but am worried that the letter from the council will not reach Western Power in time for the meeting scheduled for Friday to discuss this matter. Accordingly, I wonder if you or John might consider sending the letter on your own behalf if it cannot be arranged from the council in time.<sup>200</sup>*

[338] Mr Salpietro spoke to Mr Burke on 18 October 2006 and said he had sent on the letter as Mr Burke requested, having amended it such that it claimed to reflect the view of “several elected members” rather than the “view of the City”.

**SALPIETRO:** Hello.

**BURKE:** Yeah, it's Brian, Sam

**SALPIETRO:** Oh g'day mate, how are you?

**BURKE:** Good, did you get my email about that letter on Flynn Drive?

**SALPIETRO:** Yeah, yeah, but, but er but, but, but it's a, it's a very, very good letter. I've changed just a couple of things, I'm going to send it myself, Brian.

**BURKE:** Good.

**SALPIETRO:** Yeah, uhm I've changed a couple of things where, where, where it says City says this or the City says that, I've, I've changed it to er several ele- elected members have said that, because until, until it actually

**BURKE:** It goes to Council.

**SALPIETRO:** goes to Council, yeah and

**BURKE:** When you send it could you send me a copy?

**SALPIETRO:** Yeah, yeah, yeah. I've, I've asked Julie to do that yeah.

**BURKE:** Good.

**SALPIETRO:** Yeah er that should be going out this morning, if fact I think yeah.

**BURKE:** That's lovely.

**SALPIETRO:** Yeah, yeah, good letter.<sup>201</sup>

[339] Mr Burke immediately passed this on to Mr Delroy.

**BURKE:** *I spoke to Sam.*

**DELROY:** *Yep.*

**BURKE:** *Uhm and because council hasn't considered the matter as a body et cetera and because it's Friday*

**DELROY:** *Mm.*

**BURKE:** *I got Sam to rewrite Oscar's letter*

**DELROY:** *Mm.*

**BURKE:** *and send it on his own behalf and on behalf of the elected representatives to Doug Aberle.*

**DELROY:** *Yep.*

**BURKE:** *So that'll be done he'll send me a copy*

**DELROY:** *Yep.*

**BURKE:** *and then he'll follow it up as soon as the council can make a decision and make it official policy.<sup>202</sup>*

[340] The Commission notes that Mr Burke here claimed he had got Mr Salpietro to rewrite the letter so that it came from him and the elected representatives, rather than the City of Wanneroo. That, of course, was not true. Mr Salpietro had his personal assistant, Ms Julie Bonnick, email the letter to Western Power on 18 October 2006. On 19 October 2006 Mr Salpietro forwarded a copy of Ms Bonnick's email to Mr Burke, and a copy to Mr John Paton, Manager, Contracts and Property, City of Wanneroo, prefacing the email by saying:

*You will note that the letter does not claim to be Council's view on issues that may reflect [sic] policy; rather the view of some Elected Members. I hope it pushes our case forward.<sup>203</sup>*

[341] The email sent to Western Power, however, does not reflect this at all. The text of Mr Drescher's draft letter was sent to Western Power unchanged, claiming to state "the City's view", not the view of "some elected members".<sup>204</sup>

[342] A follow-up hard copy was also sent to Western Power. This copy was printed on to Mr Salpietro's Deputy Mayoral letterhead and also contained, unaltered, the text of Mr Drescher's draft, claiming "the City's view".<sup>205</sup>

[343] Mr Salpietro appears not to have noticed this, or to have ignored it. Mr Burke also forwarded the correspondence on to Mr Delroy, Mr Grill, Mr

Webley and Mr Drescher, none of whom made any comment about Mr Salpietro sending the letter unaltered.

[344] The letter did evidently arrive at Western Power in time for Eclipse's meeting with them on 20 October 2006. Mr Drescher sent an email the week after, saying in part that:

*The administration of the City would be quite happy for the Wattle Avenue option and this was reinforced by the Deputy Mayor's letter to the Western Power Corporation earlier last week. Although we presented our arguments, Western Power representatives were not moved by our suggestion to use the Wattle Avenue alignment, because in their mind they felt it was too late.*<sup>206</sup>

[345] Mr Burke and Mr Grill continued their advice to Eclipse throughout the rest of 2006, though Mr Drescher and representatives of Eclipse had mostly direct contact with Western Power and Wanneroo staff throughout this period. Ms Guise also remained involved. On 23 October 2006 Ms Guise released a media statement to the *Wanneroo Times* protesting Western Power's lack of consultation over the placement of the Neerabup substation and their proposed transmission line route along Flynn Drive. She forwarded this release to Mr Burke, noting that she hoped it "sends a message to Western Power and supports the arguments being put to them in relation to looking at Wattle Ave as an alternative to Flynn Drive".<sup>207</sup> Ms Guise was also actively involved in other events: for example, she was a member of a "Stakeholder Reference Group", formed by Western Power, which held a public forum on 27 October 2006 to discuss community concerns in regards to the Neerabup substation,<sup>208</sup> and was involved with the "Carramar Residents' Association" who were opposed to the proposed power line route.

[346] Other City of Wanneroo officers also continued their engagement with the process; Western Power's "Stakeholder Reference Group" also included Mr Peake, Councillor Loftus, Councillor Laura Gray, Mr Kelly and Mr Salpietro.<sup>209</sup>

[347] On 10 November 2006 Western Power replied to the letter Mr Salpietro had sent on 18 October 2006, outlining the consultation they had so far completed and the reasons why they felt the Wattle Avenue option was undesirable. A copy of an extract from that letter is provided in Appendix 3 to this report.

[348] By this time Mr Burke's public profile had increased somewhat following the Corruption and Crime Commission's public hearings. While negotiations between Western Power, Eclipse and other landowners continued, Mr Delroy suspended his engagement of Mr Burke and Mr Grill late in 2006. On 20 December 2006 he spoke to Mr Grill and indicated that he intended to take legal action against Western Power.<sup>210</sup> That, and the outcome of it, has already been mentioned at [315] above.<sup>211</sup> The Commission is not concerned with the merit or otherwise of the Eclipse subdivision or the construction of the power line by Western Power – the

Commission's jurisdiction is confined to possible misconduct by public officers.

[349] The Commission has considered whether Mr Salpietro deliberately sent a letter that purported to reflect the views of Council, in an effort to secure an outcome for a client of Mr Burke's; or whether any other public officer acted inappropriately in response to requests from Mr Burke, in that regard.

#### **4.3 Mr Salpietro's Letter to Western Power**

[350] If Mr Salpietro deliberately sent a letter which incorrectly claimed to reflect the "view of the City", he would have been in breach of the Council's Code of Conduct, which states that:

*All aspects of communication by (including written, verbal or personal), involving City activities should reflect the status and objectives of the Council ...*

*In accordance with the "Local Government Act 1995", the spokespersons for the City and the Council are the Mayor and with the Mayor's authorisation, the Chief Executive Officer, either of whom may delegate their authority to the appropriate Director to make a statement on behalf of the City.*

[351] The City of Wanneroo's policy on "Communications" also states that while councillors may use elected member letterhead at their own discretion, "it is not to be construed as official correspondence of the City".<sup>212</sup>

[352] It would be misleading for an elected member to claim they spoke on behalf of the City when this was not the case. The distinction is between individual councillors making their personal views known, and making the "views of the City" known.

[353] Mr Salpietro's letter to Western Power repeatedly used the phrase "it is the City's view ...". Mr Salpietro told a Commission public hearing that although in his personal view putting the transmission line along Flynn Drive and Wanneroo Road was "absolute madness", the City itself had not considered any alternative routes or come to any resolution on the issue.<sup>213</sup>

[354] Mr Charles Johnson, CEO, City of Wanneroo, told the Commission that while City officers had been in discussions and negotiations with Western Power as to where they proposed to put the transmission line, the City had not yet formally adopted a position. Mr Johnson agreed that in a case such as this, where there were "significant implications" from the alignment, that the "City's position" would normally be formed via a meeting of Council, where a recommendation to Western Power could be formalised.<sup>214</sup> He said that Council administration had intended to present the matter to Council, but (at the time Mr Salpietro's letter was sent to Western Power) he considered there was further assessment to be undertaken before this could occur.

[355] The Commission notes that the Flynn Drive realignment route was not an “alternative” route. It was in fact the route originally decided upon in 2003 and for which Western Power had contracted in June 2006.

[356] In written submissions made to the Commission<sup>215</sup> the lawyers for Mr Delroy and Eclipse contended that the evidence that the City of Wanneroo had not come to any resolution on the issue of the route for the power line ought not to be accepted. They contend that the City had in fact, fully considered, and strongly supported, the Flynn Drive realignment route. They rely particularly on statements made by Mr Dennis Blair, Mr Paton and Mr Peake, all officers of the City.

[357] On 1 December 2006 Mr Paton wrote to Mr Rudy Teh of Western Power explaining that the delay in the provision of road designs for Flynn Drive had been caused by the need to incorporate the proposed line route and pole placement which, together with the contours through the proposed road reserve, created significant issues for the alignment of the road and consequential land requirements. He observed that appreciation of these difficulties had resulted in a commitment for Western Power to undertake further investigation of alternative alignments, and that the resulting revised route had certainly achieved a level of improvement. Against that background he wrote that it was the City’s view that long-term objectives would be better met by the power line remaining on the north side of Flynn Drive and that given the identified alignment for the new section of Flynn Drive through to Wanneroo Road, the City was opposed to Western Power’s proposal to remain on the existing section.

[358] In a statement dated 4 September 2007 Mr Blair, Director of Infrastructure, City of Wanneroo, said that in that role he has authority on behalf of the City to determine the City’s preferred location for service infrastructure, although in relation to particularly contentious issues he may prepare a report to Wanneroo Council and obtain the decision of Council on the issue. He referred to a meeting with Mr Paton in about late July 2006 in which Mr Paton suggested it was appropriate for a senior representative of the City’s Infrastructure Directorate to become involved with the issue of the route along Flynn Drive on which Western Power would construct the proposed power line. Mr Blair investigated and reviewed the possible routes and concluded that there were advantages, from the City’s perspective, for the power line to be on the Flynn Drive realignment route. He said an alternative which may have been suitable was along Wattle Avenue. He said the City would seek to be involved in the process of route selection and that Wattle Avenue would be likely to be given consideration by the City.

[359] Mr Blair was involved in negotiations between Western Power and a number of interested parties between July 2006 and February 2007. He maintained the position, on behalf of the City, that the Flynn Drive realignment route was preferable to the Flynn Drive route.

[360] By early 2007 Mr Blair considered that the issue had assumed a level of importance and politicisation that warranted him referring it to the Council.

He accordingly prepared a report in early March 2007 which was presented to Council on 13 March 2007. Council resolved unanimously to advise Western Power of its preference for the Flynn Drive realignment route.

- [361] On 19 February 2007, seven days after having given his evidence to the Commission, Mr Johnson wrote to the Appeals Convenor about the decisions of the Environmental Protection Authority not to assess the power line proposal. He said the City supported the initial proposal by Western Power to construct the power line along the Flynn Drive realignment route.
- [362] Having considered all the material which bears upon this issue, the Commission's assessment of the evidence is that the conflict is more apparent than real. In the Commission's opinion, Mr Johnson and Mr Salpietro were saying that the City had not come to any resolution on the issue in the sense that it had not come before Council for formal consideration and resolution. That was correct when they gave their evidence to the Commission on 12 and 13 February 2007 respectively. It did not come before Council until 13 March 2007. On the other hand, as Mr Blair explained, the City had adopted a position (at officer level), which it had maintained since at least about July 2006, preferring the Flynn Drive realignment route.
- [363] Mr Salpietro recalled that "someone" had informed him that it was important for Western Power to receive a letter in regard to the transmission line prior to a meeting scheduled for 20 October 2006.<sup>216</sup> He agreed that he knew the letter had been written by Mr Drescher, who was acting on behalf of Mr Delroy; and that therefore it was clear that this was a letter that would be beneficial to the developer. He said however that it was an "extremely good letter" and that he was happy for it to go to Western Power because it adequately addressed community concerns as well as reflecting his own concerns.<sup>217</sup>
- [364] Mr Salpietro went on to explain that he had in fact altered the electronic copy of the letter to remove references to "the City's view", but had in error not saved these changes when emailing the letter on to his assistant to be printed.

*... I really thought it was an excellent letter. It would have been a letter that I would have prepared but what I did, I changed it to make sure that the reference wasn't to the city but it was to me. I also added an additional paragraph which referred to the concerns of Carramar residents along Wanneroo Road that the power lines should have been on the west side of Wanneroo Road rather than the east side. Now, I - unfortunately, I must have done - I must have done something quite stupid and I've asked administration at the moment to get their IT people to go through my hard drive and actually find it. The only partial evidence that I have that I actually wrote that letter is that I have an email here - because what I did with the letter, sir, contrary to some evidence, I've sent a copy to Mr John Patten straight after I sent it to Western Power. I sent a copy to Mr Dennis Blair ...<sup>218</sup>*

[365] Mr Salpietro then provided as “circumstantial evidence” a copy of his email to Mr Paton. The email contained a covering paragraph stating “you will note that the letter does not claim to be Council’s view on issues that may reflect policy; rather the view of some elected members ...”.<sup>219</sup> Mr Salpietro repeated to the Commission

*--But as I say, sir, unfortunately, unfortunately, the error that I made was that the email that I sent to Julie for her to type and put onto a deputy mayor letterhead was the original that I'd received and not the one that I'd changed.*<sup>220</sup>

[366] Mr Salpietro said he did not re-read the printed copy of the letter which his assistant gave him to sign prior to it being sent to Western Power, and although he had had several opportunities to check the letter (when emailing it to other colleagues and to Mr Burke) he had not noticed his error until the day before giving evidence to the Commission. He also said he was well aware of the distinction between claiming a personal view and a City view:

*... Mr Hall, I've been in council for seven years. I know fully well - I know fully well that I did not speak for the council; I speak for myself. I'm an elected member: I don't work for council; I don't work for the CEO; I work for the ratepayers. I know fully well what my responsibilities are. I would have not deliberately sent a letter which said “the city”.*<sup>221</sup>

[367] In October 2007 Mr Salpietro sent an affidavit to the Commission seeking to clarify portions of his evidence. In his affidavit he stated again that he had “substantially changed” the letter so that it was clear it reflected his own personal view rather than the view of the Council.<sup>222</sup> In his affidavit Mr Salpietro also stated that:

*At the time I was amending and forwarding the letter I did not appreciate that if changes are made to an email following receipt, without that email having been saved as a separate document, changes made to the original email will not be forwarded when the email is sent to the next recipient.*

[368] Although no evidence has been produced from the City of Wanneroo computer system to back up Mr Salpietro’s claim, his explanation is plausible. Mr Salpietro told the Commission that he forwarded copies of the letter as it was sent (unamended) to officers in administration and to other elected members. It seems unlikely that he would have done so if the letter contained deliberate falsehoods about the City’s position. In addition Mr Salpietro sent a copy of the letter to a colleague with a covering email saying the letter did not claim to reflect the City’s view – a statement which was directly contradicted by the text that followed. Though it is strange that the recipient did not spot this irregularity, it would be stranger still for Mr Salpietro to draw attention to his changes if he was trying to conceal them.

[369] Mr Burke also received a copy of the unaltered letter that Mr Salpietro sent to Western Power, and made no comment about whose “view” it claimed to represent. To Mr Burke, of course, it may have been advantageous if

Mr Salpietro's letter spoke of the City's view, as it may have weighed more strongly in his client's favour than a letter from an individual councillor.

[370] Mr Burke and Mr Salpietro had several conversations at about the time the letter was sent. Mr Salpietro mentioned, unprompted, that he had changed the letter because the matter had not yet gone to Council; Mr Burke accepted this without comment and was relaxed about passing this on to his clients. A letter reflecting the individual views of the Deputy Mayor was, as far as Mr Burke and Mr Delroy were concerned, sufficient for the purposes of their meeting, and was all they appeared to be expecting.

[371] Mr Salpietro's apparent error was compounded by the fact that no copy of the letter was found in the City's records. Normally, an electronic copy of councillors' correspondence (as provided by councillors) is kept in the City's central records.<sup>223</sup> This does not seem to have occurred in this case, lending weight to the perception that Mr Salpietro's letter was outside normal Council practice. This is somewhat countered by the fact that Mr Salpietro sent copies of the letter to Council colleagues, but highlights the need for record keeping protocols which ensure public officers actions are transparent and reviewable if the need should arise.

[372] Mr Kelly was asked by the Commission how he responded to Mr Burke's request of 10 October 2006 to review Mr Drescher's draft letter and consider forwarding it to the relevant Council officer.<sup>224</sup> Mr Kelly said he had some slight knowledge that the Deputy Mayor was involved in discussions with Western Power, but had not paid particular attention to the matter. Mr Kelly said he had looked at the letter and decided that it would be inappropriate for him to send it. Mr Burke's covering email asked him to forward the letter to the "relevant officer", which he took to mean the relevant Council staff member. Mr Kelly said that it would be inappropriate for him to approach any member of staff with such a request, and said that if he thought the issue was of sufficient importance that a letter should be sent to Western Power, he would have approached the CEO and asked that an appropriate letter be drafted.<sup>225</sup>

[373] In an interview with Commission officers, prior to the Commission's public hearings, Mr Kelly described Mr Burke's email as "presumptuous" and laughable, saying:

*... I read the email and quite frankly did nothing with it. You know it was a presumptuous email. I didn't do anything further with that until Sam returned. I telephoned Sam and I've said have you got this email, Yes. I can't remember whether I referred to him as Brian's presumptuous or arrogant, but it was one of those 2 words I used. I said you didn't send it through did you Sam? And he said no and he said, I drafted a letter of my own.<sup>226</sup>*

[374] Mr Kelly said it would not be right for him to sign and send on a letter written by someone who did not work for the City of Wanneroo, be that Mr Burke or anyone else.<sup>227</sup> This is a contrast to Mr Salpietro's acceptance

that the letter was a good enough reflection of his own views and required only minor changes.

- [375] Under the circumstances the most probable explanation is that Mr Salpietro made changes to the draft letter so as to reflect his views and those of elected representatives, rather than the City, but then inadvertently sent the letter in its unchanged form. That was a mistake, not misconduct.
- [376] Nor could it be said to be misconduct for a councillor to write on his own behalf and that of other elected representatives, presenting an argument to Western Power for a change in the routing of transmission lines.

#### **4.4 Involvement of Mr Tony Monaghan and Ms Dianne Guise**

- [377] Mr Burke contacted Mr Monaghan, Chief of Staff to the Hon. Norman Marlborough MLA, Minister for Small Business, and asked Mr Monaghan to arrange a meeting between Mr Burke's clients and Mr Aberle, CEO of Western Power. Mr Burke explained this to the Commission in his evidence at a public hearing on 20 February 2007 by saying "that Mr Marlborough was familiar with Mr Delroy and had originally referred Mr Delroy to Julian Grill".<sup>228</sup>
- [378] Mr Burke said that he asked Mr Monaghan to arrange the meeting because it was "an effective way to make the arrangement" and that having a Ministerial Chief of Staff make the appointment may have "added some weight" and encouraged Western Power to pay attention to Mr Delroy's case. He said that Western Power would be likely to agree to a meeting arranged by Mr Monaghan, saying "... [t]hey'd probably agree if I had asked as well but I thought that would be a good way to approach it".<sup>229</sup>
- [379] While Mr Monaghan readily agreed to arrange the meeting and was agreeable to the idea of escorting Mr Delroy and others to the meeting, there is no evidence before the Commission that anyone at Western Power was intentionally misled by Mr Marlborough's office in making the appointment. Mr Burke's clients did, however, undeniably enjoy a privileged access to government officers, given Mr Burke's friendships with Ministers including Mr Marlborough and Ms Guise.
- [380] Ms Guise had taken action on her constituents' behalf with regard to the Pinjar-Wanneroo transmission line prior to Mr Burke and Mr Grill's involvement, and continued to engage with the Carramar community independently of Mr Burke and Mr Grill's consultancy to Eclipse. The outcome that Mr Burke and Mr Grill's clients wanted was not in conflict with the attitude Ms Guise had already taken in regards to the power line route.
- [381] Mr Burke was arranging a fund-raising dinner for Ms Guise during October 2006, at the same time that he and Mr Grill were corresponding with Ms Guise about the transmission line route. On 23 October 2006, for

example, Ms Guise emailed Mr Burke and Mr Grill a copy of a media release that supported Mr Delroy's position; the dinner, which Mr Delroy (amongst others) attended, was held on 26 October 2006. The Commission has observed other cases where lobbyists have used the opportunity to provide a service (such as organising a dinner) to create the perception that they were able to claim privileged access for their clients. The danger is that public officers can risk the perception that they are open to influence if they accept services from third parties and appear to be providing support in return.

## CHAPTER FIVE

### GARDEN GLOW GROWERS MART

#### 5.1 Introduction

- [382] This section will focus on the actions of public officers concerning the efforts of a landowner named Mr Raymond (Ray) Jackson to have a business use approved for his commercial land in Wanneroo.
- [383] In 2006, a company known as Goldrange Pty Ltd (“Goldrange”) owned Part Lot 2 and Part Lot 3, (Locality 1397) Wanneroo Road, on the corner of Wanneroo Road and Joondalup Drive. The area on the south-west corner of that intersection forms the Drovers Place precinct, a small pocket of land that was at the relevant time zoned “general rural” under the Wanneroo DPS2 and “rural” under the MRS. The precinct included Mr Jackson’s Lots and several other Lots owned by different individuals and organisations. Development of the precinct has been guided by environmental and landscape considerations, as the land adjoins Lake Joondalup and Yellagonga Regional Park. Part of Lots 2 and 3 have since been renamed Lots 810 and 811 Wanneroo Road, but for convenience will be referred to as “Lots 2 and 3 Wanneroo Road” in this section of the report.
- [384] The Commission has investigated whether any public officer engaged in misconduct while assisting Mr Jackson and Mr Burke to progress various applications through the Wanneroo City Council and State Government planning bodies.
- [385] Mr Jackson, one of three Directors of Goldrange, engaged the services of Julian Grill Consulting in the middle of 2004.<sup>230</sup> Mr Jackson retained Mr Burke and Mr Grill to achieve the rezoning of his land from “rural” to “urban” under the MRS, and from “general rural” to “restricted uses” under the DPS2. Removing the “rural” zoning of the land would increase the range of developments and business ventures Mr Jackson could operate on the property. Mr Burke, rather than Mr Grill, conducted the majority of contact with Mr Jackson and with the Wanneroo Council on Mr Jackson’s behalf.
- [386] The rezoning was a protracted and complex process which was contingent upon the Wanneroo Council preparing a suitable Structure Plan (SP) for the entire Drovers Place precinct. Between 2004 and 2006, however, Mr Burke was also able to assist Mr Jackson with other problems, finding a solution when Mr Jackson constructed a building without proper approval from the WAPC, and interceding on Mr Jackson’s behalf in 2006 when the Wanneroo Council threatened to prosecute him for breaching the conditions of a Development Approval (DA) and conducting retail sales of fruit and vegetables.

#### 5.2 Background: 2004-2006

- [387] From 2004 to 2006 Mr Burke exchanged regular emails with Mr Jackson. Mr Burke was obtaining information and updates from Wanneroo Council

on the status of the Drovers Place SP and on whether the SP would interfere with Mr Jackson's business activities.

[388] Mr Burke's emails also show that he worked on Mr Jackson's behalf to have a building licence and DA for a "shed" or warehouse approved by the WAPC. In his evidence to the Commission Mr Jackson explained that the City of Wanneroo had issued him with a building licence to construct a building on his land before appropriate approval had been received from the WAPC. Mr Jackson commenced construction, then had to obtain "retrospective" WAPC approval for the building.<sup>231</sup> Mr Burke emailed Mr Jackson on several occasions indicating he had communicated with an officer from DPI (Mr Neil Foley). Mr Burke claimed to have obtained agreement for Mr Jackson to be granted an interim approval until the matter could be "regularised":

*Neil Foley has now agreed (STRICTLY CONFIDENTIAL) to recommend to the Planning Commission that you should be given a conditional approval for a period of years (I have suggested 7 - 10 years) while the matter is regularised. This will take at least 3 weeks. I cannot guarantee that the commission will accept this recommendation but I am quietly confident.*<sup>232</sup>

[389] Mr Jackson's interim, retrospective approval, was eventually granted by the WAPC, and Mr Burke informed Mr Jackson of this by email on 8 September 2004:

*Neil Foley has confirmed that at its meeting yesterday the State Planning Commission considered your application.*

*The decision is:*

1. *The existing building is not approved but no action will be taken for a period of 5 years;*
2. *You may complete the remainder of the building subject to the following conditions:*
  - \* It must comply with the definition of Rural Business Purposes under the Wanneroo City Council's scheme (which is consistent with your approval in any case);*
  - \* You must provide an easement for pedestrian access; and*
  - \* The title must be recorded with this decision of the SPC.*

*Written advice about this decision will be forwarded to you by the SPC's Secretariat in due course but my view is that you may proceed on Mr Foley's advice to me to complete work on the building ...*

*Julian and I are pleased to have been of some assistance to you in this matter.*<sup>233</sup>

[390] Officers from the City of Wanneroo were contacted by Mr Burke on Mr Jackson's behalf on numerous occasions throughout 2004 to 2006.

Deputy Mayor Salpietro attended meetings in 2004 and 2005 with Mr Jackson to discuss his SP application and applications to run business ventures on the site. On some occasions these meetings were also attended by Wanneroo administrative staff.

[391] Mr Burke included Mr Salpietro and other public officers in copious email correspondence between himself and his clients, and suggested repeatedly that clients contact Mr Salpietro for advice or support. For example, following a Council meeting on 1 November 2005, Mr Burke emailed Mr Jackson and “copied in” Mr Salpietro and local Member of Parliament, Mr John Quigley MLA:

*The Drover's Place Structure Plan was adjourned at last night's meeting of the Wanneroo City Council. It will be before the council in 3 weeks.*

*You will recall that – following our meeting with DPI officers – the agreement was that Wanneroo would expedite consideration of the plan on the basis of an agreed approach to what it would encompass and that your DA for Waldecks would be progressed once the council's position had been clearly signalled ...*

*I am sorry about this but no one had any notice of the amendment until it was moved.*

*Could you please arrange to see John Quigley ASAP to seek his support by speaking to Sam Salpietro about explaining the position to Di Guise?*<sup>234</sup>

[392] Mr Burke also assisted Mr Jackson to gain approval to operate a Waldecks nursery from one of his Lots, holding a meeting with Mr Paul Frewer of DPI on 14 June 2005 to discuss Mr Jackson's proposal (as well as other clients of Mr Burke's).<sup>235</sup> Mr Jackson was eventually granted a DA from DPI to build and operate a Waldecks nursery on part of the Lot. A garden centre was a business of a type that did not fit within any one prescribed use under “general rural” zoning, and hence was approved under the banner of a “use not listed”.

### 5.3 2006: Drovers Place Structure Plan

[393] Numerous applications for development and planning proposals were submitted to the Council regarding the Drovers Place precinct during 2004 and 2005. Mr Jackson initially (during 2004) submitted a SP solely for his own Lots, proposing a rezoning from “rural” to “urban” zoning under the MRS and an amendment to the DPS2 to allow commercial, including retail, land use. This was “Structure Plan 46”.<sup>236</sup>

[394] Although this was approved by the City, the appropriate MRS amendment was refused by the WAPC. The WAPC advised the City that it would be more appropriate for the City to prepare a broader SP, encompassing the entire Drovers Place precinct, in order to prevent *ad hoc* development. In

addition, the WAPC pointed out that the proposed retail land uses were not in accordance with City strategies for commercial development.<sup>237</sup>

[395] The Council then commenced work on the Drovers Place Local SP, "Structure Plan 47". This SP made slow progress through Council and the WAPC. The City of Wanneroo's planners proposed an initial draft to Council in February 2005 but the Council decided more consultation with landowners was required; a revised plan was prepared, accepted by Council on 7 June 2005 and advertised for a period of 42 days.<sup>238</sup> This plan and public submissions came back to Council on 1 November 2005, but due to an objection raised by another landowner in the precinct, the Council referred the matter back to administration. It was resubmitted for final consideration on 22 November 2005, endorsed by Council and passed to the WAPC. The WAPC then referred it back to Council with a number of modifications. The amended SP was found satisfactory by Council and resubmitted to the WAPC on 26 April 2006, but the WAPC could not formally adopt it until a necessary amendment to the MRS had been completed. The plan was finally adopted and certified by the WAPC in August 2007.<sup>239</sup>

[396] Mr Jackson had a number of applications before various authorities at once, which made for a complicated assortment of granted and pending approvals. Mr Jackson was keen to commence some aspects of his development and frustrated by the series of delays his applications had faced. One business Mr Jackson wanted approval for was a "growers mart", which he discussed with Mr Burke in a telephone conversation on 3 February 2006.

**JACKSON:** *Uhm, my other big concern, Brian, is the grower's mart.*

**BURKE:** *Yep.*

**JACKSON:** *Uhm, if, when, y'know like, they want to open up at the beginning of next month.*

**BURKE:** *Ah they got fucken no hope.*

**JACKSON:** *Yeah, I know.*

**BURKE:** *No hope. That's three weeks.*

**JACKSON:** *Mm. Mm.*

**BURKE:** *No, there's no hope.*

**JACKSON:** *Mm.*

**BURKE:** *Y'know? I mean we'll have the DA and the Waldecks thing fixed up by then and we'll have*

**JACKSON:** *Mm mm,*

**BURKE:** started the other one,

**JACKSON:** mm.

**BURKE:** and then I reckon, oh I dunno how long cos I haven't even bothered, I didn't want to distract 'em you know?

**JACKSON:** Yeah yeah, no, no,

**BURKE:** Uhm

**JACKSON:** oh well that that's, yeah.

**BURKE:** I think we'll get it through all right, but I just dunno how long it'll take.

**JACKSON:** Mm.

**BURKE:** Uhm, nah mate, well just, you've got to be realistic with 'em,

**JACKSON:** Yeah, yep.

**BURKE:** uhm, mm.

**JACKSON:** See he gets kicked out of his other place at the end of this month, yep.

**BURKE:** Yeah but,

**JACKSON:** And ah,

**BURKE:** Well, y'know I can't help that, I can, I can

**JACKSON:** Oh no, no

**BURKE:** do what's possible,

**JACKSON:** I realise that Brian, yeah.

**BURKE:** and, we gotta this, we get the DA for this Waldecks, and then the structure plan'll come back to the council, then I can go and see Roman,

**JACKSON:** Mm.

**BURKE:** about the grower's mart. Y'know?

...

**BURKE:** I mean this structure plan, this whole thing, mate, we're having to do twelve years' work in six months, y'know? This should've all been done in 1996.

**JACKSON:** Yeah, yeah, yeah. Yeah.<sup>240</sup>

[397] The growers mart that Mr Jackson referred to was a business known as Garden Glow Growers Mart (“Garden Glow”), owned by Mr Darryl Tedesco. Garden Glow sold fresh fruit and vegetables on a mostly wholesale basis. Mr Tedesco was Mr Jackson’s tenant and also a director of Goldrange. He had operated a retail growers mart on another leased premises, but moved the entire operation to Mr Jackson’s land in February 2006.

[398] The DA which Mr Jackson had been granted in 2004 for “rural Industry” use at 1397 Wanneroo Road states:

*This Approval to Commence Development ... is subject to compliance with the following conditions:*

1. *The proposed building must only be used for purposes, which are related to the operation of a Rural Use. Under the City of Wanneroo’s District Planning Scheme No. 2 a Rural Industry is defined as:*

*means an industry handling, treating, processing or packing primary products grown, reared or produced in the locality, and a workshop used for the servicing of plant or equipment used for rural purposes in the locality ...*

2. *No retail sales are permitted from the building or site, until such time as the zoning permits and the appropriate approval is issued by the City.*<sup>241</sup>

...

[399] This approval meant that wholesale trade was permitted from Mr Jackson’s Lots, but not retail. A “rural use” permitted under the Wanneroo DPS2 General Rural zone included (for example) “stables”, “rural industry” or “intensive agriculture”. Further land uses such as “market garden sales”, “plant nursery” or “roadside stall” are permitted in the rural zone only once Council considers an application and grants approval or conditional approval.<sup>242</sup>

[400] Mr Jackson wanted, however, to be able to conduct retail as well as wholesale trade, and had been attempting to achieve this through rezoning and drafting various structure plans. As Mr Burke’s email in November 2004 reflected, Mr Jackson was able to have some of his land use proposals incorporated into the Drovers Place SP. The SP accepted by Wanneroo Council in April 2006 (as modified by the WAPC) designated Lots 2 and 3 as a “restricted use precinct”:

*Land use permissible within this precinct shall be restricted to: retail nursery with incidental café, landscape supplies and growers mart which means any land or buildings used for the wholesale, distribution and retail sale of primary products including fruit and vegetables, meat, fish and bread.*<sup>243</sup>

[401] Although this SP allowed retail trade, its acceptance by Wanneroo Council in April 2006 did not confer an immediate right to commence development and operate a retail business. The Lots were still zoned "rural" under the MRS and DPS2, and thus could only be used for purposes falling within both the local and the WAPC definition of "rural use" and Mr Jackson's DA (which expressly forbade retail trade). This would be the case until such time as the SP was adopted by the WAPC and rezoning had taken place via amendments to the MRS and DPS2.

[402] In the middle of March 2006, in the midst of negotiations over the adoption of Structure Plan 47 and the zoning of Mr Jackson's land, the City of Wanneroo found that Mr Tedesco was contravening his land use approvals by conducting retail, as well as wholesale, trade from Garden Glow. This was an offence under the *Planning and Development Act 2005* (WA). Mr Jackson subsequently sought assistance from Mr Burke and Mr Salpietro to avoid prosecution for this offence.

[403] Mr Salpietro and Mr Burke had a number of conversations (see below) which clearly demonstrate that they knew that the trade which could lawfully be conducted on Mr Jackson's premises was restricted.

[404] Mr Burke spoke to Mr Salpietro about the growers mart on 8 March 2006. Mr Salpietro had arranged to meet Mr Burke, Mr Zagwocki and Mr Jackson at the City of Wanneroo on that day, to discuss the conditions of Mr Jackson's development plans. Mr Burke was at the last minute unable to attend that meeting.<sup>244</sup> At Mr Burke's request, Mr Salpietro conducted the meeting and rang him afterwards. Mr Salpietro said that the meeting had not gone well, and that while Mr Jackson's nursery (Waldecks) development could go ahead immediately, as it was an approved land use, the "fresh food thing" would have to wait until a SP was adopted by WAPC, which would take some time. Mr Burke joked that Mr Jackson might just "go ahead with the fresh food thing and let you prosecute".<sup>245</sup> Later that day, Mr Jackson spoke to Mr Burke and confirmed that he understood he couldn't go ahead with the growers mart until his property had been rezoned. He was confident however that the Waldecks nursery DA would soon be approved.<sup>246</sup>

[405] On 9 March 2006 Mr Jackson told Mr Burke that he wanted to build showrooms on the remainder of the Waldecks Lot, as showrooms were an approved land use under the SP approved by the Wanneroo Council. Mr Burke pointed out once again that the SP had not yet been adopted by the WAPC and that retail or showroom purposes would only be allowed once rezoning occurred, which might be some months away.<sup>247</sup> Mr Burke called Mr Salpietro on 13 March 2006 to discuss the possibility of Mr Jackson getting permission to build showrooms. Mr Salpietro suggested that he might be able to apply for showrooms as an extension to the Waldecks business, saying that Mr Jackson could propose "any use which is peripheral to, to Waldecks ... even if they put bloody you know you know earthenware pots in one".<sup>248</sup> Mr Burke and Mr Salpietro again discussed the restrictions upon Mr Jackson's land use:

**SALPIETRO:** Yeah, yeah except, except at council it, it doesn't have any any discretionary power. It would be illegal for, for council to approve anything which is not say permitted in a rural zone, and this is what, this is what Roman told him, told him the other day.

**BURKE:** Yep.

**SALPIETRO:** If it, you know, if you get a DA from, from DPI for

**BURKE:** Waldecks

**SALPIETRO:** For er, for Waldecks

**BURKE:** Yep.

**SALPIETRO:** You know, he can go ahead with that. If he wants to expand the Waldecks operation say any use which is peripheral to, to Waldecks he can probably do that. For the rest, and Roman, Roman is right he said, he said the only way we can approve it, is if it goes through, if it goes through the uh, y'know the re-zoning which is going to be bloody eighteen months or ...<sup>249</sup>

[406] Mr Salpietro agreed to meet with Mr Burke and Mr Jackson at a coffee shop the next day, 14 March 2006, to discuss Mr Jackson's plans.

[407] Also on 14 March 2006 Mr John Halliday and Mr Craig Henry, Compliance Officers, City of Wanneroo, attended Mr Tedesco's Garden Glow premises, after receiving a complaint from a member of the public.<sup>250</sup> They inspected the premises and found "obvious" signs that retail trading was occurring. When Mr Halliday was asked to describe these signs to the Commission, he said:

... They were clearly retailing ... There was produce on display, there were prices on the bins. There was a sign outside the building on the facade advertising carrots at a certain price. There were checkouts and people queued up at the checkouts waiting to pay for their produce et cetera.<sup>251</sup>

[408] Under the *Planning and Development Act 2005* a person who contravenes a planning scheme commits an offence and is liable to a penalty of \$50,000 and, "in the case of a continuing offence", a further \$5,000 fine for each day that the offence continues.<sup>252</sup> Retail trading from Lot 3 would comprise such a contravention, as retailing was prohibited in a DA granted under the provisions of the DPS2.

[409] Mr Halliday explained to Mr Tedesco that afternoon that retail trading was in breach of the DA for the site, and that if he continued, he risked being

prosecuted. Mr Halliday repeated this advice in an email to Mr Tedesco on the afternoon of 14 March 2006.<sup>253</sup>

**From:** Halliday, John  
**Sent:** Tuesday, 14 March 2006 17:23  
**To:** 'Darryl Tedesco'  
**Subject:** RE: Regarding this afternoons meeting. [Scanned]

Darryl

*the point I made to you this afternoon is that the Development Approval (DA) for the site, which was approved in February 2004, listed as condition 2*

*"2. No retail sales are permitted from the building or site until such time as the zoning permits and appropriate approval is issued by the City."*

*You can only engage in the activity which has been approved and that is wholesale sales.*

*The reference to prosecution was in response to your query about what would happen if you continued to retail sell in defiance of the DA condition. Darryl, such a prosecution would be brought under the Town Planning and Development Act were maximum penalties have been set at \$50,000, plus \$5,000 per day for continuing offences.*

*I Hope this helps*

*John*

[410] Mr Halliday later told the Commission that Mr Tedesco "... indicated that he was going to be defiant ...",<sup>254</sup> so he wrote to Mr Tedesco again on 21 March 2006 requiring him to immediately cease retail trading from the site.<sup>255</sup>

*Through the City's "District Planning Scheme No 2" (the Scheme) the DA conditions obtain legal enforceability. Breaches of the conditions are a breach of the Scheme and can be prosecuted under the "Town Planning and Development Act 1928", (as amended), where maximum penalties have been set at \$50,000, plus \$5,000 per day for continuing offences.*

***It is important that you immediately cease retail trading and that you remove the display shelving and sign no later than fourteen (14) days from the date of this letter.***

*I understand that you are taking legal advice on this matter and urge you to do so as a matter of urgency as to ignore this demand will lead to prosecution. Should this matter go to prosecution, on my reading of events there is no defence to the charge of breaching the DA condition prohibiting retail sales. Therefore, I suggest it would be masochistic to continue an unauthorised activity knowing an undefendable prosecution will result.*

[411] Meanwhile, however, and independent of Mr Halliday's communications with Mr Tedesco, Mr Salpietro began liaising directly with Mr Burke and Mr Jackson about the issue. Given the discussions which had taken place between the three men as early as 8 March 2006, it is clear that they were all aware of the conditions of Mr Jackson's DA. Mr Jackson had submitted another DA (Form 1) to the Council on 20 March 2006, requesting simply a "Growers Mart Addition".<sup>256</sup> This was an application to extend the current growers mart and made no reference to the type of trading taking place.

[412] On 22 March 2006 Mr Salpietro spoke to Mr Burke and informed him of the notices Mr Jackson had received regarding his retail sales. He told Mr Burke he felt it was "nonsense" and that he would follow it up.

**SALPIETRO:** *... I just, I just spoke to Ray and I've got to follow, I got to follow this up today. Apparently he's getting hassled from uhm, from one of our officers that, who, Tedesco that, he's, he started selling veggies. Apparently there, and is allowed to sell them, to sell them (coughs) wholesale, but until he gets the approval, he's not allowed, he's not allowed to sell them at retail which is bloody nonsense, I think anyway.*

**BURKE:** *What a lot of bullshit.*

**SALPIETRO:** *Yeah, of course it is. So, I'll follow, I'll follow that up.*<sup>257</sup>

[413] On 23 March 2006 Mr Salpietro received, via facsimile from Mr Jackson, a letter that Mr Tedesco had prepared and proposed to send to Mr Halliday. The next day, Mr Burke, Mr Jackson and Mr Salpietro spoke in a three-way conference call, and Mr Salpietro encouraged Mr Jackson not to send the letter in its current form, but to re-draft it to decrease its emphasis on the scale of retail trade occurring. All three were aware that Mr Tedesco's retail trade was in fact flourishing and clearly in contravention of his current approvals.

**SALPIETRO:** *... You may have to have talk with, with Ray Jackson. He's going to have a problem with that retail sales end.*

**BURKE:** *Yeah.*

**SALPIETRO:** *I thought, I thought maybe, I thought maybe that they could have a sort of a, uhm, an incidental use. But if it means, I mean, he's, he's got twenty bloody shopping baskets, shopping trolleys outside there.*

**BURKE:** Yeah.

**SALPIETRO:** *He's got signs all over the place that say bananas that are, you know, bananas that are, you know, a dollar fifty, a dollar fifty a kilo or whatever it is.*

**BURKE:** Yeah.

**BURKE:** Yeah.

**SALPIETRO:** *And, and the uhm John, John Halliday from, from our, uhm, uhm, planning went over there, has given him, he's giving him a letter. If he can actually submit something.*

**BURKE:** *Hasn't he put in his app, DA yet?*

**SALPIETRO:** Sorry?

**BURKE:** *He's put in his DA, hasn't he?*

**SALPIETRO:** *Yeah. Yeah. But, but this is, this is about ... activities.*

**BURKE:** *About his retail activities now.*

**SALPIETRO:** Yeah. Yeah. I mean

**BURKE:** *But can we deal with his DA now?*

**SALPIETRO:** *Oh, yeah. But we're dealing, we're dealing with it.*

**BURKE:** Yeah.

**SALPIETRO:** *But this was about, I mean, he can use the place for, for wholesale but what he's doing is being very*

**BURKE:** *Yeah, he's jumping the gun.*

**SALPIETRO:** *very foolish, I think.*

**SALPIETRO:** *Yeah. He's being quite blatant.*

**BURKE:** Yeah.

**SALPIETRO:** *And the council officer's got no other choice. If Tedesco was to put in some sort*

*of er submission or application and say, see the, even, I haven't got a copy of the letter because I gave it, I gave it to, to uhm, to Raymond. Raymond, sorry, Ray Jackson faxed me a copy of the letter that this, that Tedesco*

**BURKE:** *Just hang on one sec, mate*

**SALPIETRO:** *Okay.*

**BURKE:** *and I'll get him on the line. Just a sec.*

...

*(ringing tone)*

**JACKSON:** *Hello?*

**BURKE:** *Yeah, Ray. It's Brian.*

**JACKSON:** *How are ya, mate?*

**BURKE:** *Yeah. Good, mate. I've got Sam on the line too. Can you hear us, Sam?*

**SALPIETRO:** *Yeah.*

**BURKE:** *Yeah.*

**JACKSON:** *I can, yeah.*

**BURKE:** *Now listen, Ray uhm, Sam's concerned because Tedesco is just being too blatant.*

**JACKSON:** *Mm.*

**BURKE:** *Uhm and they're going to bust him.*

**JACKSON:** *Yeah.*

**BURKE:** *Er and it may impact on your DA application.*

**JACKSON:** *Yeah. Yeah.*

**BURKE:** *So Sam's got some ideas, uh, that we have discussed which I'll let him outline. But essentially we need to have an application put in by Tedesco that sort of stalls things a bit if we can. Do you want to fill it in, Sam?*

**JACKSON:** *Yeah.*

**SALPIETRO:** *Yeah. Uhm, Ray, I, I read, I read the stuff, the stuff that you, that you faxed me.*

**JACKSON:** Yeah.

**SALPIETRO:** *I'm not sure if Tedesco would do this but, but because in that letter that he's got from Garden Grove [sic]*

**JACKSON:** Yeah.

**SALPIETRO:** *Uhm, addressed to whom it may concern, I presume that that would have been addressed to, to council, I suppose.*

**JACKSON:** No. It hasn't

**SALPIETRO:** But, but

**JACKSON:** gone anywhere.

**SALPIETRO:** But

**JACKSON:** It's just he's sent it to me.

**SALPIETRO:** *But he state, but he states in there, he's actually given a, a, a detailed list of the number of employees that he employs.*

**JACKSON:** Yeah.

**SALPIETRO:** *The number of these that are actually employed in, in wholesale and the number that are employed in retail.*

**JACKSON:** Yeah. Yeah.

**SALPIETRO:** *It's very difficult after that to, to, to convince John Halliday and administration that, that*

**JACKSON:** No. Well, that hasn't gone to council, Sam. That was just an internal document that he gave me.

**SALPIETRO:** Oh, okay, ah

**JACKSON:** And I sent it to you just to have ...

**BURKE:** So we

**SALPIETRO:** Yeah.

**BURKE:** need to rewrite this whole thing.

**JACKSON:** Yeah.

**BURKE:** *That says, look, I'm carrying out a wholesale business here. I can't help it but from time to time I get people who want to buy as part of the wholesale operation some retail purchases.*

**JACKSON:** *Mm. Mm.*

**BURKE:** *But, mate, Sam tells me he's got thirteen*

**SALPIETRO:** *But, but to do that*

**BURKE:** *Thirteen or fifteen shopping trolleys there.*

**JACKSON:** *Aah, mate.*

**SALPIETRO:** *Well, he's got, he's got shopping trolleys outside. He's got signs, signs outside saying bananas a dollar fifty a kilo, whatever it is.*

**JACKSON:** *Yeah. Yeah.*

**SALPIETRO:** *It, it*

**BURKE:** *You can't do that, mate.*

...

**SALPIETRO:** *Yeah.*

**BURKE:** *Who, who'll draft this letter, Ray?*

**JACKSON:** *Ah, well, he's in Melbourne till Tuesday.*

**SALPIETRO:** *Is he? Yeah.*

**JACKSON:** *So when he gets back I'll, I'll sit him down and rehack it out. Okay?*

**BURKE:** *Tell you what to do. Get a copy of the letter Halliday sent him. Fax it to me.*

**JACKSON:** *Yeah. I've got that here. Yeah.*

**BURKE:** *Okay. Fax that to me. Then when he does his draft*

**JACKSON:** *Yeah.*

**BURKE:** *get the draft and send it to me.*

**JACKSON:** *Yeah.*

**BURKE:** *I'll rework it and send it back to you. I'll check it with Sam and then we'll put it in.*

**JACKSON:** *Okay. Yeah.*

**BURKE:** *Alright?*

**JACKSON:** *Yeah.*

**BURKE:** *Alright, mate.*

**JACKSON:** *Okay.*

**BURKE:** *Okay. I'll see you later, Ray.*

**SALPIETRO:** *Thanks, Ray.*

**BURKE:** *Will you stay on the line, Sam?*

**SALPIETRO:** *Yeah. Okay.*

**BURKE:** *Okay. See you later, Ray.*

**JACKSON:** *Bye.*

**BURKE:** *Ta-ta, mate.*

(Hang-up signal)

*You there, Sam?*

**SALPIETRO:** *Yeah, Brian.*

**BURKE:** *Yeah.*

**SALPIETRO:** *Yeah.*

**BURKE:** *Okay. Well, that's all we can do, mate.*

**SALPIETRO:** *Yeah. I, judging, judging by the tone of that letter that, that, that Tedesco wrote I don't think, I don't think he'll do anything like this because he cites in there how good he is for the community and that he was forced out by Meathcare out of, out of Hocking Road, that he's, he employs eighty people, that he, that he was a great community supporter of Mick Nanovich, a lot of waffle.*

**BURKE:** *Well, in that case he's just going to bloody be, be prosecuted.*

**SALPIETRO:** *Yeah. Well, I hope, I hope he can see sense. Basically what he's got to do is convince Raymond that what he wants to do there is predominantly wholesale.*

**BURKE:** *Wholesale with some incidental retail.*

**SALPIETRO:** *Yeah. Exactly. Yeah.*

**BURKE:** *Okay. And I'll*

**SALPIETRO:** *Yeah.*

**BURKE:** *I'll put down, and I'll guarantee*  
**SALPIETRO:** *Yeah.*  
**BURKE:** *that my retail won't be more than, you know, twenty-two point six percent of my wholesale.*  
**SALPIETRO:** *Exactly. Exactly. Yeah.*<sup>258</sup>

[414] Mr Burke spoke to his client about the issue again on 27 March 2006 and urged Mr Jackson to understand that the Council would not be able to let the matter drop if Mr Tedesco was being too blatant with his retail trading. Mr Burke told Mr Jackson that they would be able to delay matters if a letter was submitted to Council explaining that Mr Tedesco's retail sales were only incidental to his wholesale business. Retail sales would not be an "approved use" on the site until further approvals were granted by the WAPC, but Mr Burke felt that having an active and partially approved DA before the Council would stand Mr Jackson in good stead when negotiating about his planning violation.

**JACKSON:** *So that'll just you know, and then once we get that in draft form I'll give you a look at it.*  
**BURKE:** *Send it to me, good.*  
**JACKSON:** *But I just want to go and have a talk in general with Sam tomorrow with Tedesco about it.*  
**BURKE:** *Yeah well S-look S-Sam can take it a certain level but after that, you know, there's nothing he can do.*  
**JACKSON:** *Yeah yeah yeah.*  
**BURKE:** *And if it's too blatant*  
**JACKSON:** *Mm.*  
**BURKE:** *then Sam can't, can't change it.*  
**JACKSON:** *Mm.*  
**BURKE:** *Now I can, I can be of assistance past Sam with Kelly and other people.*  
**JACKSON:** *Mm.*  
**BURKE:** *But if it's too blatant not even them will help, you know?*  
**JACKSON:** *Yeah yeah yeah. But but I think one of one of the council's gotta sort of look at a bit too is the time frame that all this has taken uhm. Just there's lots of issues that you know I, I just feel ...*

**BURKE:** Well you can raise all those but they're not relevant. You see

**JACKSON:** Yeah yeah.

**BURKE:** the council can be sued

**JACKSON:** Mm.

**BURKE:** by some of Mr Tedesco's competitors.

**JACKSON:** Opposition. Yeah yep.

**BURKE:** Now they can take the council to court.

**JACKSON:** Mm.

**BURKE:** And claim damages against the council for not enforcing.

**JACKSON:** Mm mm.

**BURKE:** So the council has to have some basis for saying well

**JACKSON:** Yeah yeah.

**BURKE:** we understood that he was only doing this or we understood he's doing that you know?

**JACKSON:** Mm mm.

**BURKE:** And we've just gotta play for time until we can get

**JACKSON:** Yeah ...

**BURKE:** The DA through.

**JACKSON:** Yeah yeah. And, or get, you know see there's the MRS has got to be organised and lodged ...

**BURKE:** Yeah but don't worry about that.

**JACKSON:** Mm.

**BURKE:** Just just make sure we've got our DA in place.

**JACKSON:** Yep yep.

**BURKE:** And then we've got a current application they can refer to

**JACKSON:** Yep yep.

...

**BURKE:** *Well all he needs to do is to write the letter saying that any retail sales are incidental to the wholesale sales.*

**JACKSON:** Yeah.

**BURKE:** *And make sure he hasn't got anything that they can claim reflects retail rather than wholesale.*

**JACKSON:** Mm mm.<sup>259</sup>

[415] Mr Burke also told Mr Jackson that Council staff were under pressure and that Mr Jackson should be understanding.

**BURKE:** *Have a have a word to Sam and Sam will do his very best to help.*

**JACKSON:** *Oh Sam's a magnificent bloke.*

**BURKE:** *You know.*

**JACKSON:** *You know he's a good guy Sam, he's always been, you know, trying. But uhm I get I get a bit frustrated, you know, I rang Roman Zagwocki uhm last Thursday*

**BURKE:** Yes.

**JACKSON:** *and you never get any calls back from these blokes and I think*

**BURKE:** No.

**JACKSON:** *that's what gets up my nose a bit Brian.*

**BURKE:** *Yeah well they never ring anyone back mate.*

**JACKSON:** *You know like, you know, they could ring up and tell ya to get fucked and I'd be happy then, you know.*

**BURKE:** No you wouldn't.

**JACKSON:** *Well but at least you've got some sort of.*

**BURKE:** *Yeah but you'd rather have a decent call back. I know what you mean exactly.*

**JACKSON:** Yeah yeah.

**BURKE:** *And all I can say is that these blokes get up 'emselves.*

**JACKSON:** *Mm.*

**BURKE:** *They uh also get very busy. W-I mean if they got one call from you they'd have fifteen from Havel and six*

**JACKSON:** *Mm mm.*

**BURKE:** *from someone else you know what I mean?*

**JACKSON:** *Mm. Oh yeah yeah yeah.*

**BURKE:** *But in the end they're pretty rooted and them I'm on their back and them someone else is and*

**JACKSON:** *Yeah.*

**BURKE:** *then Sam goes to see 'em. So I'm not excusing 'em but I am saying that they're pretty well, you know, driven to the shithouse.*

**JACKSON:** *Mm. What I'm ...*

**BURKE:** *But we're getting there mate.<sup>260</sup>*

[416] Mr Salpietro called Mr Burke on 29 March 2006 and said that Mr Zagwocki, Director of Planning and Development, City of Wanneroo, had examined relevant legislation and did not believe there was any way that retail trade could be made lawful. Mr Salpietro intended to have the matter brought before Council if it was at all possible for Council to consider the matter.

**SALPIETRO:** *Yeah to see, to see if there's some uhm, er area where, where the act may be interpreted that, that, that you know the partial retail can be, can be ah, can be*

**BURKE:** *Yeah.*

**SALPIETRO:** *operated from there. But I had another chat with Roman this morning and he says, and he says, he's got to look, he's gonna look at the, at the act himself here, at the regulations, and if, if there's any way for council to deal with it, I'll be, I'll be able to take it to council. But I thought, I thought ...*

**BURKE:** Well I'm getting him to write the letter because you've got to remember that he's got his DA in already

**SALPIETRO:** Yeah.

**BURKE:** and the structure plan is this is an approved use.

**SALPIETRO:** Yeah.

**BURKE:** It's been going on for such a long time.

**SALPIETRO:** I know.

**BURKE:** And I know legally he might have a certain position but morally

**SALPIETRO:** Yeah.

**BURKE:** everyone's now agreed he can have a grower's mart.

**SALPIETRO:** Yeah.

**BURKE:** And because Tedesco's been kicked out of his other place and if people had've handled it in a timely fashion, it'd have been okay.

**SALPIETRO:** Yeah, but, what Roman, what Roman was telling him yesterday is that, is that according, according to the regulations at the moment

**BURKE:** Yeah

**SALPIETRO:** he doesn't think that there's any possible way for us, for us to, to, even if he wanted to, to allow it but

**BURKE:** Well let's have a look at it again.

**SALPIETRO:** Yeah. What are you doing at the moment? What are you doing at the moment? He's looking at it again.

**BURKE:** Yeah.

**SALPIETRO:** When he gives me an answer, before I call Ray, I'll give you a call.

**BURKE:** Yeah give me a call first.

**SALPIETRO:** Yeah.

**BURKE:** Yeah. Yeah and we'll, even if we can just hold it off until you deal with the DA.

**SALPIETRO:** That's right, exactly, yeah.

**BURKE:** And make an in principle decision about the DA, then you can make a decision not to prosecute.

**SALPIETRO:** Exactly. And before, before any prosecution can take place, it's got to come to council anyway.

**BURKE:** Yeah.<sup>261</sup>

[417] On 30 March 2006 Mr Jackson's planners, Peter Cann Development Consultants, wrote to Mr Halliday at the Council and requested that they be allowed a further 14 days to prepare a response.<sup>262</sup> Mr Halliday informed Mr Cann by facsimile on 3 April 2006 that such a move would be impossible, given that:

*... retail sales are specifically prohibited by the DA 03/0862. The conditions in the DA were never appealed and so we see them as valid and binding.*

*To agree [to] your request [for] a fourteen day extension from tomorrow, I would need to know your underlying reasons for the request. I say this because the City has received a complaint about the current retail sales and to allow your clients to continue to breach the Scheme is provocative and not good practice. Therefore, I am loathe to agree without a good reason.*

*To say that you are investigating ways to negate the prohibition on retail sales would be laudable, from your client's perspective, but unrealistic from the City's in the light of condition 2.*

*You are unlikely to gain the extension on the basis of a "fishing expedition". However, provide something that justifies the extension and it's yours ...<sup>263</sup>*

[418] However, unbeknownst to Mr Halliday, Mr Salpietro had called Mr Burke on 30 March 2006 to say that he and Mr Zagwocki had found a possible solution for Mr Jackson, a "loophole" which would allow Mr Tedesco to conduct both retail and wholesale trade, as long as he was "seen" to be conducting wholesale.

**SALPIETRO:** Listen, ah can I suggest that you give Ray, Ray a call

**BURKE:** Yeah.

**SALPIETRO:** and tell him that that er Roman will be calling him maybe today or tomorrow or as soon as, as soon as you get the chance to,

*to, to finalise this thing. We've managed to come up with a er with a loophole that that Tedesco bloke might be able to to operate in a small way his retail together together with a wholesale, but Roman's but Roman's gonna, he's gonna call him and explain it, but I thought it would probably would be better if it came ...*

**BURKE:** Yeah, excellent mate, good on ya.

**SALPIETRO:** yeah, yeah, if it came from you ...

**BURKE:** I'll do that right now.

**SALPIETRO:** Yeah.

**BURKE:** Uhm and the other thing is we've just got to hurry his DA through as quick as we can.

**SALPIETRO:** Yeah, yeah, and but, and tell him, tell him this though.

**BURKE:** Yeah.

**SALPIETRO:** Tedesco has gotta understand that if he doesn't do any, the days that he does the retail.

**BURKE:** Yeah.

**SALPIETRO:** He's, he's gotta been seen to be operating the wholesale, in other words if on Saturday he doesn't do any wholesale.

**BURKE:** He's in trouble.

**SALPIETRO:** No, he's gotta start doing the wholesale, because I imagine his biggest his biggest business retail is gonna be Saturday and Sunday.

**BURKE:** Yeah.

**SALPIETRO:** Make sure that, that if anybody goes over there, that he's got maybe a person or two packing, packing some bloody wholesale.

**BURKE:** For wholesale

**SALPIETRO:** Yeah, but yeah, if you can tell him that.

**BURKE:** Well done Sam.<sup>264</sup>

[419] In his evidence at a Commission public hearing, Mr Halliday stated that sometime after he had sent his 3 April 2006 facsimile to Mr Tedesco, Mr Burke called Mr Henry, also a City of Wanneroo Compliance Officer, about Mr Jackson. Mr Halliday stated that Mr Burke had “asked what sort of a bloke I was and said that he was going to sort me out”. Mr Halliday reported this to the Manager of Planning Services, Mr Peake, who then took responsibility for Mr Jackson’s matter. Mr Halliday said that Mr Peake “said to me that I was to have nothing to do with Brian Burke and then I was taken off the case”.<sup>265</sup>

[420] After Mr Peake took the potential prosecution out of his hands, Mr Halliday had no further involvement. Mr Halliday said that Mr Salpietro, the Deputy Mayor, never spoke to him about the matter.<sup>266</sup>

[421] Mr Salpietro spoke to Mr Burke again on 3 April 2006, after receiving (from Mr Jackson, not from within the Council) a copy of Mr Halliday’s facsimile asking Mr Cann to justify why he should be granted a 14-day extension. Mr Salpietro thought this meant that the matter might be able to be dealt with by Council staff. He told Mr Burke that “the fact that they’re asking for questions is quite clearly that they’ve found, that they do have discretionary rights to say yes or no”.<sup>267</sup> He told Mr Burke that he intended to speak to Mr Peake about it and that Mr Jackson should take no action until Mr Salpietro called Mr Burke back.<sup>268</sup>

[422] The next day Mr Salpietro confirmed that Council planners felt they may be able to exercise “discretionary authority” allowing some retail sales if Mr Jackson was to put in a persuasive submission. Mr Salpietro said that he had suggested to Mr Peake that if he felt able to approve the submission, he should deal with the matter under delegated authority, but “if in any way he is compelled to, to refuse it, he doesn’t refuse it, then it comes to Council”.<sup>269</sup>

[423] On 5 April 2006 Mr Jackson sent Mr Burke a draft response to Mr Halliday’s correspondence. The draft had been prepared by Mr Jackson’s planner, Mr Cann. Mr Burke was unhappy with the letter as he felt it conceded too readily that retail trade was occurring and was a significant part of Mr Tedesco’s business. Mr Burke rang Mr Salpietro and Mr Jackson, and conducted another three-way conference call that ran for more than ten minutes. Mr Burke and Mr Salpietro agreed that Mr Jackson would be better off if Mr Burke drafted the letter, and Mr Salpietro made detailed suggestions as to how Mr Jackson (or Mr Tedesco) could best convince the Council that he had not significantly contravened his DA. Mr Salpietro said to Mr Jackson:

*... make sure that he [Mr Tedesco] makes it very, very clear that ... when he is using the premises for retail in, in a minor use that its at the same time as wholesale. In other words if, if he um err naturally most of his business for retail is going to be probably Saturday and Sunday but make sure if anybody goes over there on a Saturday and Sunday that he's got evidence that he's also doing wholesale*

*because whatever he does with retail it's always got to be subservient to the wholesales,*

...

*then, then, then err I mean he's, he's got to make understand that it's just about impossible and I stress the word impossible to do wholesale a hundred percent because he can't control if anybody comes in and buys and buys err, err I mean err what if he asks for bloody identification ...<sup>270</sup>*

[424] Mr Jackson made it clear that confusion had arisen because Mr Burke had spoken to Mr Salpietro rather than to Mr Halliday.

**JACKSON:** *... because if you go back to the first letter Brian we had fourteen days I think to comply to his letter.*

**BURKE:** *Mate we're already talking to Roman and Sam*

**JACKSON:** *...*

**BURKE:** *They're not going to enforce the fourteen days while those discussions are going on.*

**JACKSON:** *Halliday hasn't been told anything about that because he went back and wrote that second letter to say you know all we, all we wanted was just an extension of fourteen days so that Roman and them could all ...<sup>271</sup>*

[425] Mr Burke told Mr Jackson that Mr Salpietro was not able to "direct" Council staff, saying:

**BURKE:** *... Secondly, it is not the case that Halliday can be directly instructed by Sam or Roman or anyone else. There's a management problem there and there has to be a very persuasive case that allows Halliday to say oh well I'm willing to step aside from my previous judgement ...<sup>272</sup>*

[426] This call concluded with agreement that Mr Burke would re-draft a letter to the Council which would try to demonstrate that retailing was an insignificant and unavoidable part of Mr Tedesco's business. Shortly after completing this conference call, Mr Burke called Mr Salpietro and said he would email a letter through to him, but he wanted Mr Salpietro to "wipe it" once he had received it. Mr Salpietro agreed.<sup>273</sup>

[427] Mr Salpietro called Mr Burke back approximately half an hour later saying the letter Mr Burke had sent was "perfect". Mr Burke complained again about Mr Cann's letter and Mr Jackson's tendency to do things

“backwards”. Mr Salpietro agreed to call Mr Jackson and tell him to submit the letter as drafted by Mr Burke.<sup>274</sup>

[428] Later on 5 April 2006 Mr Burke contacted Mr Peake. They amicably discussed Mr Jackson’s recent DA and the progress of the Drovers Place SP, which was due to come to a Council meeting on 26 April 2006. Mr Peake told Mr Burke he was unsure what Mr Jackson’s most recent application was actually about, and Mr Burke explained it was for a growers mart. Mr Burke assured Mr Peake that he understood retailing was not permitted until the property was rezoned, and that any retail currently occurring was not substantial. Mr Peake said that an extension to a “currently approved use” could be supported, and that he would look into the Council’s interpretation of “incidental use”.<sup>275</sup>

[429] Mr Burke rang Mr Jackson soon afterwards and told him that they should now think of the DA currently before Council as merely an application to extend a “present approved use”, as retail would not be allowed until rezoning had occurred and the SP approved. Mr Burke also said he would draft a number of letters that Mr Jackson should make available at the growers mart for customers to sign. Mr Jackson commented that Mr Burke had an advantage in his ability to access people like Mr Peake, compared to Mr Jackson who had to make do with dealing with people further “down the chain”.<sup>276</sup>

[430] Immediately afterwards on 5 April 2006 Mr Burke called Mr Salpietro and told him he would have a “critical role” in emphasising to Mr Zagwocki and Mr Peake that the DA before the Council was only for an extension to an approved use.<sup>277</sup>

[431] Mr Burke expressed frustration about Mr Jackson in a telephone call to Mr Grill on 6 April 2006.

**BURKE:** *Terrible trials and tribulations last evening with that fucken Ray Jackson as well I can tell you.*

**GRILL:** *Ah did you?*

**BURKE:** *Ah not, not with him he’s a nice bloke he’s a really lovely bloke but he just doesn’t understand anything Julian.*

**GRILL:** *Uhm.*

**BURKE:** *You know.*

**GRILL:** *Yeah.*

**BURKE:** *Yes. Let me just explain I know you’re are busy but I just explain so you understand it. You know the big shed he built.*

**GRILL:** *Yeah.*

**BURKE:** *He had no approval to build it.*

**GRILL:** *No.*

**BURKE:** *The, the WAPC agreed because you and I represented it that they'd say well he's got five years to regularise it.*

**GRILL:** *Yeah.*

**BURKE:** *Which means in effect he can have it.*

**GRILL:** *Yeah.*

**BURKE:** *So then he has this wholesale operation going there by a man who's got a retail operation up further in Wanneroo. That retail operation gets closed down cos they build an aged persons home so all he does is shift the retail operation down to the wholesale operation.*

**GRILL:** *Yeah.*

**BURKE:** *Meanwhile we've got the thing progressed where the structure plan's going through but an inspector from the Shire comes and sees its retail and issues an order to stop under threat of very substantial penalty. So I mean I tell him what do but he goes to the council by himself he forms the view that what he has to do is to lodge an application for a change of use notwithstanding that the change of use is to a use that's not allowed legally.*

**GRILL:** *Uhm.*

**BURKE:** *Then he goes to an architect called Peter Cann who I've dismissed from the project a year ago because he's caused trouble and got Peter Cann to write this two and half page letter which showed a map with retail areas and all sorts of other things plainly disclosing all this retail and then I just luckily got him to send it to me. I fucken blew up and I got hold of Sam and the planner and I re-wrote the thing I think I sent you a copy.*

**GRILL:** *Yeah I read it.*

**BURKE:** Yeah. And you'll see I don't mention retail except in incidental because its not competent for the council to grant a change of use to to a use that's not allowed.

**GRILL:** Yeah.

**BURKE:** So now I spoke to the planner last night and I think they know cos he said oh I see. What you really want then is a permission to extend the existing building for the present approved use. And I said that's exactly what we want. So touch wood he's going to have a meeting with his, see all these planners even the head planner I was speaking to he can't simply walk into the office and order one of his other planners around you know.

**GRILL:** No I mean it is compromising them.

**BURKE:** Exactly.

**GRILL:** And I mean you, you'll wear out your welcome up there shortly.

**BURKE:** Oh mate I know I will. It's just the, the only thing is that I, that I'm helpful to them so they. But anyway you can see, I mean he's got the smarts cos he said to me after I blustered around and bumbled a bit but I'm smart enough to put in the right letter he said gosh you could be a planner.

**GRILL:** (laughs)

**BURKE:** This is exactly what I wanted. Uh

**GRILL:** Yeah.

**BURKE:** anyway

**GRILL:** No I, I saw your letter I read it and I could see exactly what you were doing.

**BURKE:** I didn't say we want retail.

**GRILL:** No no I understood that completely.

**BURKE:** Yeah, fucken Ray didn't.

**GRILL:** No you didn't need to be a genius.

**BURKE:** *Ray didn't. Ray thought and and then not only that he'd filled out a form which is called an MF1 he'd filled that out I said Ray this is the wrong form and he's, do you know what he said to me? He said y'know I thought it was but they don't have any others?*

**GRILL:** (laughs)

**BURKE:** *And I said Ray that's because you can't apply for a use that's illegal.*

**GRILL:** Yeah, yeah.

**BURKE:** *So we'll have on going trouble. Mate I don't know that we'd invest in his business.*

**GRILL:** *Oh oh I mean I'm not overly keen* (laughs)<sup>278</sup>

[432] Mr Burke continued to arrange petitions of support for the growers mart. On 6 April 2006 Mr Burke told Mr Jackson that he would prepare 30 or so different letters for people (customers) to sign; these would be signed at the growers mart and Mr Jackson could then post them in to the Council.<sup>279</sup> On 7 April 2006 Mr Burke asked Mr Salpietro to check on Mr Jackson's DA with Mr Peake. Mr Salpietro said he believed it was "all under control". Mr Burke told Mr Salpietro he planned to meet with Mr Jackson on the following Sunday, 9 April 2006, "and I'm getting all these letters, all ready there ... it'll make the fucken thing I did for [suppressed] look like a weak old effort ... I reckon you'll have 5,000 letters within a month". Mr Salpietro laughed.<sup>280</sup> Mr Jackson called Mr Burke on Saturday 8 April 2006 and asked if Mr Burke could arrange for Mr Salpietro to attend their meeting the next day, but Mr Burke said "[i]t mightn't, well, I'm just not sure how it looks publicly ... I just don't know if publicly you want him sitting down with you and me".<sup>281</sup>

[433] Mr Burke was in fact seeing Mr Salpietro on the Sunday evening, at a barbecue at Mr Burke's home. On 10 April 2006 Mr Salpietro emailed Mr Burke thanking him for his hospitality and saying that Mr Jackson's MRS amendment (rezoning from "rural" to "urban") was now in the hands of DPI.<sup>282</sup>

[434] On 24 April 2006, prior to the 26 April 2006 Council meeting which was to consider the Drover's Place SP, Mr Burke had a meeting with Mr Salpietro, Mr Peake and Mr Zagwocki at the Council offices. He rang Mr Jackson after the meeting to say that Mr Peake and Mr Zagwocki regarded all their applications positively and would meet with Mr Burke in two weeks time to "settle all the issues". Mr Burke said he had told them that he and Mr Jackson understood the Council's acceptance of the SP would not affect the legality of the land use, and they would have to wait for an MRS amendment to do that.<sup>283</sup>

[435] Mr Burke and Mr Jackson contacted Mr Salpietro infrequently about the growers mart after the SP was accepted by Council on 26 April 2006. Mr Burke was in occasional contact, for example arranging a meeting between Mr Salpietro, Mr Peake and Mr Zagwocki on 8 May 2006 to discuss Mr Jackson's DA application for Waldecks nursery and conditions regarding the Drovers Place SP, which had at that stage been finally submitted to the WAPC.<sup>284</sup>

[436] On 22 May 2006 Mr Jackson told Mr Burke that he had been informed by DPI that the rezoning of the Drovers Place land would be processed as part of an omnibus amendment (incorporating multiple amendments to the MRS at once), which could take some 18 months.<sup>285</sup> Mr Burke told Mr Jackson that he would do his best to have it taken out of the omnibus and dealt with separately.

[437] Mr Burke proposed to take this up with Mr Mike Allen, then Executive Director of Statutory Planning at DPI. Mr Burke emailed Mr Jackson on 30 May 2006, saying:

*I received your Brief about the Drovers Place Structure Plan. I will pass a copy on to Mike Allen when I meet him on Wednesday and seek that the MRS Amendment [sic] be expedited on the basis of the long history attached to this matter.*<sup>286</sup>

[438] This meeting was organised by Mr Burke and Mr Grill primarily to discuss another, unrelated, client. Mr Burke prepared a "brief" for Mr Allen regarding Mr Jackson and emailed Mr Grill on 7 June 2006, saying he had given Mr Allen a chronology of Mr Jackson's dealings with the Wanneroo Council. He sent a facsimile copy of this chronology to Mr Grill<sup>287</sup> and emailed Mr Grill on 9 June 2006, saying:

*Ray has lodged his final draft plan for his retaining wall etc around his development at Drovers Place and I am hoping the DA will issue shortly. It is a DA for an extension to the present building which is being used for an approved use which is wholesale with incidental retail. The real problem is that without an MRS Amendment [sic] which will take 18 months, the retail has to be "incidental" which it probably isn't. Anyway, I gave Mike Allen a chronology of this matter (it has taken forever) in an attempt to get him to hurry the MRS Amendment [sic] along and relieve the retail of the need to be incidental. The problem is that generally these amendment [sic] are, as you know, grouped together into an omnibus bill and that slows things down.*<sup>288</sup>

[439] Mr Burke saw Mr Allen again in August 2006, immediately prior to Mr Allen departing for an overseas holiday. Mr Grill called Mr Allen on 31 July 2006 to arrange a meeting between Mr Burke, Mr Allen and Mr Jackson. Mr Grill explained that they would like to discuss the possibility of their client's (Mr Jackson) MRS amendment being processed as a stand-alone amendment rather than as part of an omnibus.<sup>289</sup> The meeting was arranged for 2 August 2006. Mr Burke emailed Mr Allen after the meeting, saying:

*We were grateful for your sparing the time to see Ray Jackson and me this morning on the eve of your departure ... and we also appreciated your positive approach to advancing the Drovers Place Structure plan while accepting there are no guarantees and the WAPC will be the decision maker.<sup>290</sup>*

- [440] On 2 August 2006 Mr Burke told Mr Grill in a telephone call that the meeting with Mr Allen was a good one and that Mr Allen had “agreed” to have the amendment removed from the omnibus. Mr Grill said that that was “a clear win”. Mr Burke emailed Mr Eugene Ferraro on 4 August 2006, as Mr Ferraro had taken over responsibility for the Drovers Place SP while Mr Allen was away, and stated that he might contact Mr Ferraro to ask about the amendment.<sup>291</sup> Mr Burke was in regular contact with officers of DPI with regard to other clients but the Commission is not aware of any communication between Mr Burke and DPI or the WAPC after that time that indicates any officers took extraordinary or in fact any action to process Mr Burke’s request on behalf of Mr Jackson.
- [441] Mr Burke and Mr Jackson continued to discuss the progress of the MRS amendment throughout the remainder of 2006. Mr Burke discovered that Mr Jackson’s amendment was likely to proceed as part of an omnibus amendment after all, and eventually advised Mr Jackson that this might be a quicker solution than having the amendment dealt with separately. The Drovers Place precinct MRS amendment was still before the WAPC in the middle of 2008 and an “amendment report” proposing a change from “rural” to “urban” zoning was open for public comment until 18 July 2008. The amendment was not approved nor gazetted until 10 February 2009.
- [442] The prosecution of Mr Tedesco for retail trading did not proceed.

#### **5.4 Lack of Decision on Prosecution of Mr Darryl Tedesco and Mr Raymond (Ray) Jackson**

- [443] The Commission has considered the circumstances of Wanneroo Council’s apparent lack of action in regards to prosecuting Mr Jackson and Mr Tedesco for breach of their DA.
- [444] In his evidence to the Commission Mr Peake agreed with Mr Halliday’s evidence that Mr Peake took responsibility for the matter following a telephone call that Mr Halliday or Mr Henry received from Mr Burke. He was asked:

*... Did you in fact direct Mr Halliday that he was to have nothing more to do with the case?---I do recall that conversation that he spoke about earlier and it was on the nature of the discussion that he had with Mr Burke, the words that - “I’ll” you know “I’ll sort him out” or “I’ll” you know, whatever the words were that Mr Halliday used. On that basis, I suggested to Mr Halliday that I didn’t want him speaking to him that I would speak to Mr Burke, either myself or the director would speak to Mr Burke on the matter from thereon in.<sup>292</sup>*

- [445] Mr Peake said his memory was “sketchy” but that he recalled speaking to Mr Burke, discussing the definition of “incidental use” under the DPS2 and

whether Mr Tedesco's retail trading could be considered "incidental use" and thus acceptable. Mr Peake said he was left with the impression that an application along those lines was going to be sent in following his call to Mr Burke, so he made no note of the conversation at the time.

- [446] Mr Peake agreed that he had not inspected the site himself, though he had been there on one occasion around the time of his conversation with Mr Halliday. He made no "critical" assessment of the likelihood that retail trade was occurring or whether it could be considered to be "incidental use". Mr Peake said he had noted that a sign outside the shop advertising prices had been removed since Mr Halliday's inspection, and said that it would be difficult to tell whether a store had been set up for retail or wholesale trade.<sup>293</sup>
- [447] Mr Peake taking the matter over from Mr Halliday meant that it became Mr Peake's responsibility to decide whether or not the Council should proceed to prosecution. When asked why such a decision appeared to have been delayed, Mr Peake said that there were many matters brought to the administration's attention, and a decision as to whether or not to prosecute would be based on a number of things including the impact of the activities being carried out, and the likelihood of a prosecution succeeding. In this case, however, no decision was ever formally made or recorded on a Council file as to whether Goldrange should be prosecuted for retail trade. Instead, because he had expected an application to be made, he left the matter in abeyance.
- [448] A local government does retain the discretion as to whether or not to prosecute any potential transgression of planning schemes, and may legitimately prefer to achieve less acrimonious, more mutually satisfactory solutions than taking an offender to court. In this case, however, though almost a year had elapsed between Mr Halliday's inspection and the Commission's public hearings, no decision was ever made on whether to proceed to prosecution.
- [449] The officer responsible, Mr Peake, either actively decided to put the matter aside or simply neglected to follow it up. In either case this lack of action had the potential to disadvantage other members of the community and business competitors. In addition, by not resolving the matter, the Council allowed the community to see that it tolerated an allegedly unlawful activity, neither requiring compliance nor finding that the activity was insignificant and thus "clearing" a constituent's name.
- [450] There is no evidence before the Commission indicating that Mr Peake put the matter aside because of pressure, promises or undue urgings from other Council staff, elected members or representatives of Mr Jackson. Mr Peake's lack of action was not noted or followed up by any of the Council officers or members who were aware of the matter.
- [451] In September 2007 Mr Tedesco wrote to the Commission and stated that on 2 April 2007 (after the Commission's public hearings) the Wanneroo Council had served him with a "closure notice" for Garden Glow on the grounds that "we were operating illegally" and had been doing so since Mr

Halliday's inspection the previous year.<sup>294</sup> On 18 April 2007 this matter was taken to the State Administrative Tribunal (SAT).

[452] The application before the SAT sought to stay the effect of the Council's direction to cease trading, issued under section 214 of the *Planning and Development Act 2005* (WA). The applicants argued that the notice should be stayed upon two grounds. The first was that, given the history of the matter and in particular the circumstances of the failure to follow up and enforce the notice given in April 2006, there was scope for an argument that the City was estopped from enforcing it. The second ground argued was that there existed a reasonable expectation that rezoning and approval for the use would be issued in the future. Neither argument was successful. The SAT's interlocutory finding stated that:

*... the public interest, to which I am required to have regard, lies squarely with the enforcement of the planning law, to regulate what is currently an unlawful use.*

*... The challenge for the applicants is simply to identify, or have purchasers identify themselves as, wholesale purchasers, and that aspect of the business can continue unfettered.*

[453] Subsequently, in May 2007 Goldrange submitted to Council a DA to allow additional uses at Lot 810 (Lot 3). The application argued that a growers mart should be considered as a "use not listed" under the DPS2 and therefore approved as being consistent with the "rural" zoning. The Council voted to refuse the application, on the grounds that the retail component of the trade would fall into the category of a "shop", which is prohibited in a "general rural" zone.<sup>295</sup>

[454] The Council's decisive action at this later date makes their lack of action in 2006 all the more puzzling. Given the uncertain reasons for this lack of action, however, the Commission cannot conclude that any individual public officer engaged in conduct which would contravene the Council's Code of Conduct or other public sector codes, or would comprise a serious breach of the PSM Act, in order to avert the prosecution of Goldrange.

## 5.5 Benefits Offered by Mr Burke

[455] For Mr Salpietro's actions to be seen in context it is important to consider whether it could be perceived that he was acting in order to gain an advantage for himself or any other person. Mr Salpietro did act to assist Mr Jackson, but his motivation in doing so may have been directed by a desire to gain an advantage for himself, for Mr Burke's clients, or for Mr Burke, with whom he mostly dealt.

[456] The intercepted telephone calls discussed above between Mr Burke and Mr Salpietro often ranged over more than one topic and discussion of Mr Jackson's applications to Council were often preceded or followed by other conversation.

- [457] For example, on 25 April 2006 Mr Burke spoke to Mr Salpietro about his clients Mr Jackson and Mr Smith, and also Mayor Kelly and Mr Zagwocki. It was a lengthy conversation in which Mr Burke offered to assist Mr Zagwocki gain employment in the private sector, gave his opinion on Mr Kelly's political ambitions then asked for Mr Salpietro's help to get Mr Jackson's issues "off his plate".<sup>296</sup>
- [458] There is no specific proposition that a direct favour would be offered in return for Mr Salpietro assisting Mr Burke's client. However, the conversation demonstrates the reciprocal relationship that existed between the two men, with Mr Burke confidently expressing his ability to assist Mr Salpietro and others in their careers, and Mr Salpietro willing to assist Mr Burke to achieve commercial success.

## 5.6 Assistance and Advice Provided by Mr Salpietro

- [459] The Commission has considered whether Mr Salpietro's actions in providing detailed advice to Mr Burke and Mr Jackson could be considered misconduct. Mr Salpietro's advice appeared to assist Mr Jackson to avoid prosecution by knowingly presenting misleading information to the Wanneroo Council.
- [460] Mr Salpietro was asked about his knowledge of the trading at Garden Glow in some detail when he appeared before a Commission public hearing in 2007.
- [461] Mr Salpietro said he could recall little of his involvement in this matter. Mr Salpietro accepted that Mr Halliday had established that retail trade was occurring, and he understood Mr Jackson was conducting retail trade without permission.

*The trouble was he was starting retailing before he actually got permission; that's what Mr Burke meant, wasn't it?---Well, that's what he said, yes.*

*Yes, so it was evident to you that in fact from the position of Mr Burke who was acting for Mr Jackson, there was no real doubt that this was retailing; it was just a question of whether they could somehow avoid prosecution by representing that it was incidental to wholesaling?---Not - not representing that it was incidental; to change its operation so that he made it incidental.*<sup>297</sup>

- [462] Mr Salpietro had never personally investigated the site to establish whether that trade really was "incidental use".
- [463] Mr Salpietro was also asked about the suggestions that he made to Mr Burke and Mr Jackson regarding ways in which Mr Jackson and Mr Tedesco could convince the Council that their retail trade was merely "incidental". Mr Salpietro did not accept that he was assisting or encouraging Mr Jackson to make representations he knew to be substantially untrue; rather, he said, he was making clear to Mr Jackson what he would need to do in order to comply with the Council's planning requirements.

[464] On 24 March 2006, for example, Mr Salpietro had a telephone conversation with Mr Burke and Mr Jackson, and suggested to Mr Jackson that he should omit information about the extent of retail trade at Garden Glow from correspondence with Mr Halliday, in order to convince Mr Halliday that retailing was an “incidental use”. Mr Salpietro told the Commission that he was not giving advice on how to make Mr Tedesco’s retail trade “appear” incidental; instead, he was advising Mr Jackson that the retail had to be incidental, and that Mr Jackson should “fix it”.<sup>298</sup>

*I wasn’t saying it was too blatant. I was saying fix it and make sure that your retail component is incidental.*<sup>299</sup>

[465] Mr Salpietro also said that he was attempting to achieve the same end in other telephone calls with Mr Burke and Mr Jackson on 29 March 2006 and 5 April 2006, in which the men discussed a letter Mr Burke was to draft and submit to Council. Mr Salpietro said that rather than assisting Mr Jackson and Mr Burke to compose a letter which would conceal the extent of retailing that was occurring, he was assisting Mr Burke and Mr Jackson to understand what they would have to do to comply with Council requirements.

[466] Mr Salpietro said he had no further dealing with the matter after it was left in the hands of Mr Peake and Mr Zagwocki. He said it was the responsibility of the planning department to establish whether retail trading was occurring, and it was also the responsibility of that department to follow through with a prosecution if that was appropriate.

[467] He stated that for Council to proceed to prosecution is not always desirable, given that prosecution is a time consuming process, and:

*If there was a way to solve the problem and get the tenant and the owner to comply with the regulations, it was a much better way to go rather than actually go straight to prosecution.*<sup>300</sup>

[468] Mr Burke told the Commission in his evidence that he too believed Mr Jackson and Mr Tedesco would comply with the measures they had discussed, and would take steps to ensure that retailing formed only an incidental part of their business. Mr Burke said that Mr Jackson had given him an “undertaking” to do so, and that:

*... I certainly had an honest belief that Mr Tedesco and Mr Jackson would conform with the requirements of the zoning, which would mean that there would be an incidental retail use to the wholesale activity of the business.*<sup>301</sup>

[469] On 5 April 2006 Mr Burke told Mr Salpietro to read then “wipe” an email from Mr Burke containing a draft letter. Mr Salpietro could not recall receiving the letter from Mr Burke or calling Mr Burke back until he was prompted by hearing his recorded telephone calls. He also had no recollection of being asked by Mr Burke to “wipe” the letter from his email once it had been received, but accepted that Mr Burke had asked him to do so.

*Didn't the fact that he was suggesting that to you make it clear that your role in this was something that, at least from Mr Burke's perspective, should be concealed. Mr Hall, Mr Burke might have thought that and there were several occasions when Mr Burke would suggest all sorts of things. It doesn't mean that I ever agreed - I ever agreed to them.*<sup>302</sup>

[470] For Mr Salpietro to erase Mr Burke's email would be a deliberate avoidance of the Council's record keeping policies. One reason which suggests itself for such an action is that Mr Salpietro and Mr Burke wished to conceal from other Council officers that Mr Salpietro was providing improper assistance. Mr Burke could not recall asking Mr Salpietro to "wipe" the email, and strongly rejected the suggestion that this implied Mr Salpietro was providing inappropriate assistance. Mr Burke said:

*... I don't recall using those words or making that request and I don't think that anything Sam Salpietro had done on this matter had gone beyond any legitimate assistance to a rate payer to complete an application or make a submission.*<sup>303</sup>

[471] Mr Burke also acknowledged to the Commission that retail trade was going on from Mr Tedesco's mart, but did not agree that calling it "incidental" was a complete falsity.

**COUNSEL ASSISTING:** *It was quite laughable, wasn't it, that this was incidental retail?---And that I knew it.*

*Yes?---I - I wouldn't use the term "laughable". I certainly think that the business as it was being carried out gave rise to reasonable suspicion that it didn't conform to the requirement that it be a wholesale business with incidental retail, and if you refer back to my conversation with Mr Jackson and/or Mr Salpietro you will see that when Mr Salpietro said he didn't think that Mr Tedesco would make the changes that would be required to bring this matter into operation as an approved use, I said, "Well, then he'll just have to be prosecuted". So I'm not sure that I'd use the word "laughable" but I agree with you that there were reasons to think that perhaps it was more than incidental retail.*<sup>304</sup>

[472] Mr Salpietro also told Mr Burke in April 2006 that he and Mr Zagwocki had identified a "loophole" that might allow Mr Tedesco to continue trading. Mr Zagwocki recalled attending a meeting, called by Mr Salpietro, with Mr Salpietro, Mr Jackson and Mr Tedesco following Mr Halliday's initial inspection and order to cease retail trade. Mr Zagwocki said that at this meeting he explained the restrictions imposed by Mr Jackson's DA. He also recalled that on a later occasion he may have told Mr Salpietro that Mr Jackson might be able to claim that his retail trading was an "incidental use". Mr Zagwocki told the Commission that he didn't believe he would have used the phrase "loophole".<sup>305</sup>

[473] Mr Salpietro submitted an affidavit to the Commission in October 2007, seeking to clarify some of the issues that were put to him in a Commission public hearing. In this affidavit Mr Salpietro stated that:

42. *I believe and have always believed that outlets of this nature (of which there are several along Wanneroo Road) should be allowed*

*to continue to provide a service to residents, as they are popular and are supported by residents in the locality. They represent part of the character of "old Wanneroo".*

43. *I was aware that Garden Grow [sic] was operating beyond the terms of its approval (strictly, a wholesale operation but with an entitlement to conduct ancillary retail), given that the bulk of its trading was retail.*<sup>306</sup>

[474] Mr Salpietro also wrote that, further to discussions with Mr Jackson and Mr Tedesco:

47. *... I had meetings with the Director of Planning of the City, Mr Roman Zagwocki. My position in this meeting was simple - I stressed that I wanted the operation to continue and I wanted to ensure that the planning department of the City checked the statutory framework carefully to determine how that outcome could be achieved.*
48. *Mr Zagwocki responded to me in due course indicating that there may be a way to do that if the operator of the business adjusted the style of the business in a number of respects (although I cannot now recall the details, as the meetings occurred on a number of occasions and included telephone discussions).*
49. *I conveyed the advice of Mr Zagwocki to Mr Burke so that he could discuss it with his clients. It was also intended that Mr Burke or his clients would then meet with the officers of the City to ensure that the position was rectified.*

...

52. *I was of the view at the time and continue to take the view that the operation in a commercial sense was a positive benefit for residents of the locality and my intent was to ensure that the administration of the City, if possible, could find a means by which the operation could continue in accordance with the law.*
53. *Comment has been made of the fact that a prosecution did not occur. A review of the record of the City indicates that the position of the City has always been to attempt to find appropriate outcomes, with prosecution being a remedy of last resort.*<sup>307</sup>

[475] Mr Salpietro was clearly aware that Mr Tedesco was conducting retail trade out of the premises, and which Mr Jackson knew. If this trade was incidental to the predominant, permitted wholesale trade, the Council may have been able to give its approval and make the trade lawful. If it was not incidental, Mr Jackson would inarguably be in contravention of his planning permissions. In the Commission's assessment Mr Salpietro understood the retail trade on Mr Jackson's premises to be "blatant", flourishing and far from incidental. Mr Tedesco's original letter which was sent to Mr Salpietro, detailing the number of staff employed in the retail trade and the extent of the business, supports this. The Commission is of

the opinion that Mr Salpietro did not act in the best interest of the Council or community when he provided Mr Jackson with assistance on how and what to write in correspondence to the Council. For example, Mr Salpietro encouraged Mr Jackson to redraft correspondence to the Council and to omit information about the extent of retail trading at Garden Glow. This information would have ensured Council was fully informed, but would have been inimical to Mr Jackson's cause.

- [476] Mr Salpietro wanted Mr Tedesco's growers mart to succeed. To this end, Mr Salpietro was willing to overlook compelling evidence that Mr Jackson and Mr Tedesco were flouting Council planning schemes. The Commission does not accept that Mr Salpietro's advice to Mr Jackson and Mr Burke consisted of giving Mr Jackson an understanding of the Council guidelines he should follow. Instead, in the Commission's assessment Mr Salpietro gave advice on how Mr Jackson could best present an appearance of compliance to circumvent the processes of Council and avoid a justified prosecution. Mr Salpietro's actions were dishonest in that he knew the retail trade was not incidental, but still helped Mr Jackson and Mr Burke represent it as such.
- [477] While Mr Salpietro may have supported Garden Glow, he also had a responsibility to the Council, to ensure its policies and laws were kept and its decision-making was fair, and a responsibility to other ratepayers and business owners who may have been disadvantaged by Mr Jackson's retail activities. Mr Jackson's potential prosecution was prompted by a complaint from a member of the public. Mr Salpietro was within his rights to have a personal opinion on the merits of Mr Jackson's operation, but not to openly condone its unlawful operation.
- [478] Mr Salpietro agreed to Mr Burke's urging to receive, read then "wipe" an email which Mr Burke sent. Although Mr Salpietro argued that he did not always agree to Mr Burke's suggestions, in this case he certainly did nothing to indicate to Mr Burke that this might be inappropriate. Mr Salpietro was also, as an elected member, clearly committing support to Mr Jackson's business before any application was debated by Council. It also appears he was happy to encourage Council administrative staff to decide the matter under delegated authority if their decision matched the outcome Mr Salpietro had in mind.
- [479] The Commission is of the opinion that Mr Salpietro's conduct was of a sort that could have indirectly adversely affected the impartial performance of the functions of the City; constituted the performance of his functions in a manner that was not honest; and involved a breach of the trust placed in him by reason of his office as a councillor, to act with integrity and in the public interest and not to advance some personal interest.
- [480] In the Commission's assessment, applying the notional test in section 4(d)(vi) of the CCC Act, the conduct could constitute a breach of a public sector standard or code of ethics contrary to section 80(b)(ii) of the PSM Act or an act of misconduct contrary to section 80(c) of the PSM Act, and hence constitute a breach of discipline under the PSM Act.

[481] Further, in the Commission's assessment Mr Salpietro's conduct could constitute a serious breach of discipline for the purposes of sections 83(1)(b) and 86 of the PSM Act. The reasons for that include that:

- his conduct was clearly deliberate and calculated to deceive and mislead the City and its officers so as to obtain an outcome which could not have been obtained had the facts been disclosed;
- it was done for the purpose of advancing Mr Burke's interests (that is to say, it was directed to achieving an outcome Mr Burke wanted for his paying client, Mr Jackson);
- it involved the use by Mr Salpietro of his official position to secretly advance Mr Burke's interests in that way because of their personal relationship; and
- as Deputy Mayor and a long-standing member of Council, Mr Salpietro acted contrary to his responsibility to demonstrate by his leadership, and example, a culture of integrity and compliance with public sector standards and ethics.

[482] In these circumstances, the Commission's opinion is that his conduct could constitute a disciplinary breach providing reasonable grounds for termination of a person's office or employment as a public service officer, within the meaning of section 4(d)(vi) of the CCC Act.

[483] For the foregoing reasons it is the Commission's opinion that Mr Salpietro's conduct in assisting Mr Burke to advance Mr Jackson's interests, in the circumstances constituted misconduct within the meaning of section 4(d)(i), (ii), (iii) and (vi) of the CCC Act.

# CHAPTER SIX

## CHAIRMANSHIP OF TAMALA PARK REGIONAL COUNCIL

### 6.1 Background

[484] This chapter focuses on Mr Salpietro's efforts to have himself elected Chairman of the Tamala Park Regional Council (TPRC), and whether he or any public officer engaged in misconduct in their attempts to secure support, or committing support, in advance of that vote.

[485] Tamala Park is an area of some 432 hectares known as Lot 118 Marmion Avenue ("Lot 118"), between Marmion Avenue and the coast in the Coastal Ward of the City of Wanneroo. The land was originally purchased by three city councils in cooperation, in order to provide a landfill site. The composition of those councils has changed over the intervening years, and the land is currently owned by seven local government authorities: the Town of Cambridge, City of Perth, Town of Victoria Park, Town of Vincent, City of Joondalup, City of Stirling and City of Wanneroo. Each of these participating authorities holds shares in the land area; the City of Wanneroo owns a two-twelfths share of Tamala Park.

[486] Representatives from each of these local governments sit on the TPRC. The TPRC was formed in February 2006 to facilitate the "rezoning, subdivision, development, marketing and sale"<sup>308</sup> of a 165 hectare part of Lot 118, and to maximise the resulting financial returns for local government participants.<sup>309</sup> The remainder of the Lot has been reserved for future public use.

[487] The TPRC, constituted under the LG Act, is a local government council in its own right, with rules and lawful obligations including standing orders, a code of conduct and reporting requirements identical to those incumbent on other local governments. The TPRC exists under an "Establishment Agreement" which sets out the functions of the TPRC and administrative provisions including the division of costs, assets and monies from land sales between the local governments involved.<sup>310</sup>

[488] The 165 hectares vested in the TPRC will potentially provide some 2,600 "urban development sites" comprising thousands of residential Lots. Mr Lindsay Delahaunty, acting as CEO, said in an official opening speech that:

*... The Regional Council will have commercial opportunities as well as opportunities to demonstrate good social values. It will have a partnership role in providing infrastructure and housing lots so desperately needed in Perth's northern corridor while producing revenue flows for the 7 participant Councils.*

*The revenue that will flow to Councils over the years will be substantial and should facilitate a number of special projects and activities in advance of the time that they could be provided through normal Council revenue.<sup>311</sup>*

[489] The TPRC was established in February 2006 and held an inaugural meeting on 9 March 2006. Mayor Jon Kelly and Deputy Mayor Sam Salpietro attended as the City of Wanneroo's representatives. One of the matters dealt with at this inaugural meeting was the election of a Chairperson of the Council.

[490] The TPRC Chairperson presides at Council meetings, speaks on behalf of the Council, and has the right to cast a deciding second vote on any matter if the votes of members at a Council meeting are equally divided.<sup>312</sup>

[491] On 9 March 2006, the day of the TPRC's inaugural meeting, Mr Salpietro rang Mr Burke. Mr Salpietro first passed on some information about a local landowner's links to the ALP, then asked for Mr Burke's help.

**SALPIETRO:** *Do you know Peter Clough?*

**BURKE:** *Yeah, very well.*

**SALPIETRO:** *Do you?*

**BURKE:** *Yep.*

**SALPIETRO:** *Would you be able to do me a favour?*

**BURKE:** *Yeah.*

**SALPIETRO:** *I've, I've, you know the group set up a Tamala, Tamala Regional Council, Tamala Park Regional Council, this is*

**BURKE:** *Yeah.*

**SALPIETRO:** *a to, to look after the sale and development of, of the land that we own at Tamala Park.*

**BURKE:** *Yep.*

**SALPIETRO:** *And, and tonight is the first meeting and there's going to be an election, election of the chair.*

**BURKE:** *Yep*

**SALPIETRO:** *And, err, err Stirling's got four votes, Joondalup's got two, we've got two and the other smaller councils ...*

**BURKE:** *Are you going to be nominating for Chairman?*

**SALPIETRO:** *I'm nominating for chair, I've got two from City of Wanneroo. If I could get ...*

**BURKE:** *That's okay mate just don't worry I'll ring him now and ring you back, ta ta.*

**SALPIETRO:** *Thanks very much okay, thanks mate.*<sup>313</sup>

[492] At the time Mr Peter Clough was a Commissioner at Joondalup Council, and one of two representatives from the City of Joondalup on the TPRC. By virtue of his position as a Commissioner, Mr Clough was a public officer for the purposes of the CCC Act.

[493] The Council of the City of Joondalup was suspended by the Minister for Local Government and Regional Development on 5 December 2003, following controversy over recruitment of a CEO at the City. This was followed by a public inquiry during 2004 and 2005, which recommended that the Council be dismissed.<sup>314</sup> Five Commissioners were appointed by the Minister to oversee the City's administration while there was no elected Council. Mr Clough became a Commissioner and Deputy Chairperson of Commissioners for the City of Joondalup on 8 June 2004, following the resignation of the previous Deputy Chairman, Mr Allan Drake-Brockman.

[494] Previous to this appointment Mr Clough held a number of positions within the Western Australian public service, including Chief of Staff appointments to Western Australian Members of Parliament. Mr Clough is a former Director of Enhance Corporate which is part of the Enhance Group who are consultants.

[495] Mr Clough described himself to the Commission as a “government relations consultant, or lobbyist as you might prefer to call it”.<sup>315</sup> The Commission is aware that Mr Clough had occasional association with Mr Burke during 2006 when work-related matters converged. Mr Clough appeared before the Commission in a public hearing in February 2007 and agreed that he considered Mr Burke to be a friend.<sup>316</sup>

[496] Mr Burke telephoned Mr Clough immediately after concluding the above-mentioned call from Mr Salpietro on 9 March 2006.

**CLOUGH:**

*Oh, Brian.*

**BURKE:**

*Yeah, g'day Pete. How are you?*

**CLOUGH:**

*I'm good mate.*

**BURKE:**

*Mate, I'll be brief, there's a meeting of the uh, Tamala Park, sort of management committee.*

**CLOUGH:**

*Yep.*

**BURKE:**

*Uhm, a, a very close friend of mine, Sam Salpietro's nominated for chairman.*

**CLOUGH:**

*Yep.*

**BURKE:**

*He's a strong Labor bloke, and I'd deem it a real big favour if he could get elected. Now, he tells me he's got close to a majority, but it probably turns on Joondalup.*

**CLOUGH:** Yeah, mate, uhm, uhm, I was canvassing this. I was at the function with uhm, uh, uh, uh, Gary last night, you know the one?

**BURKE:** Yeah, sure, yeah.

**CLOUGH:** And, in fact, I, I had a quick chat to, to Bill about this, and I said, look, uhm, uh, I know the three candidates.

**BURKE:** Just hang on a sec mate, hang on a sec.

**CLOUGH:** Yep.

**BURKE:** Can you hear me, Pete?

**CLOUGH:** Yeah, mate, yeah.

**BURKE:** Yeah, sorry, yeah, go ahead.

**CLOUGH:** Yeah, no, so I, I canvassed just that with Bill and said, look uhm, uh, uh, clearly I'm down to one or two, it's either Nick Catania or, or, or Sam, so, uhm, which way do I go. His suggestion was Nick, but mate, I'm, I'm, gotta say I'm happy either way.

**BURKE:** Hey, mate, don't go with Nick. Sam Salpietro will be the next Mayor of Wanneroo. We're gonna knock off Kelly with him. And mate, he's as he's as solid and as loyal as the day is long, believe me.

**CLOUGH:** Okay, alright. Take your word.

**BURKE:** I'm, I've never

**CLOUGH:** Yep, alright.

**BURKE:** I've never given you a bum steer

**CLOUGH:** Mate, and look, that, that, that actually saves a problem for me.

**BURKE:** Yeah.

**CLOUGH:** Because, w-quite frankly, uhm, there's, I had a call from uhm, the Council yesterday, trying to get me to vote for Terry, and I just said you're wasting time.

**BURKE:** Yeah.

**CLOUGH:** Uhm, and, uhm, my, my only concern with uhm, with uh, with uhm, with uh

**BURKE:** Sam.

**CLOUGH:** With, with Sam, is I really wanna see Joondalup and Wanneroo cooperating a lot better than what they do. Uhm, you know, we've been trying to force that and, you know, let's ...

**BURKE:** Well mate, he

**CLOUGH:** I think it's down, I think it's down to bloody stupid Kelly, quite frankly.

**BURKE:** It is, it is silly Kelly.

**CLOUGH:** Yeah.

**BURKE:** I met with Kelly on Wednesday.

**CLOUGH:** Yeah.

**BURKE:** Uh, Tuesday at least. Listen, just accept my word on this.

**CLOUGH:** Yeah.

**BURKE:** This bloke is, he's, has been known to me for thirty-five years. I have never had an, he's quite, he's an individual, but I've never had an occasion when he's been found lacking when I've asked him to do something for the Labor party, not once.

**CLOUGH:** Mate, that's enough for me. Okay.

**BURKE:** Alright mate. Good on you.

**CLOUGH:** Yeah, no drama. See you mate.

**BURKE:** Thanks, see ya.<sup>317</sup>

[497] Mr Burke then called Mr Salpietro back and said “that's fixed, he's supporting you ... you've got his votes [sic] mate”. Mr Burke said that Mr Clough wanted Wanneroo and Joondalup to work more closely together in the future, and encouraged Mr Salpietro to call Mr Clough to “thank him and tell him you're happy to work closer”. Mr Salpietro agreed.<sup>318</sup>

[498] The meeting took place that evening and Mr Salpietro was elected as Chairman.<sup>319</sup> Mr Burke spoke to Mr Clough about Mr Salpietro's election early the next morning. Mr Clough and Mr Burke agreed that Mr Salpietro would have trouble controlling meetings and would need “guidance”.

**CLOUGH:** You you will be aware that uhm Sam got up last night?

**BURKE:** Yes I am that's the other reason

**CLOUGH:** Yeah.

**BURKE:** I was ringing you to thank you.

**CLOUGH:** Yep. No mate that was okay listen Sam rang me straight after you. When I when I talk to you about something you don't need to get him to ring me you just need to tell him that it's alright.

**BURKE:** I ring I told him he had to ring you to thank you

**CLOUGH:** Yeah no mate.

**BURKE:** and and to say to you that uh substantially he supports the closer relationship between the two local authorities.

**CLOUGH:** Yeah. Yeah no I had that discussion with him last night but mate I you know me I'm I if I just give my word that's it you know I don't

**BURKE:** No no that's right mate but there are proper forms that wasn't designed to put you under pressure that was designed to make Sam knew that he had some loyalty to you.

**CLOUGH:** Yeah yeah.

**BURKE:** Not to me.

...

**CLOUGH:** ... So uhm then what happened is [suppressed] sat next to me and he said you know you and I voted differently and I said I that's exactly right we did and he said are you gunna change your mind and I said no and he said okay it's gunna cost you lunch. I said fine. (laughs) So that's where and I told Sam that last night that's where the extra vote came from.

**BURKE:** Mm.

**CLOUGH:** 'Cause they didn't know where the sixth one came from. They just got an extra vote. In the end he won convincingly. Mate can I tell you one other thing though?

**BURKE:** Yeah.

**CLOUGH:** *Mate Sam ran the worst fucken meeting I've ever seen in my life.*

**BURKE:** Yeah he's mad.

**CLOUGH:** Mate

**BURKE:** *I I I never told you he could run a meeting.*

**CLOUGH:** (laughs)

**BURKE:** *No you think back what I told you.*

**CLOUGH:** (laughs) Yeah uhm mate uhm I I I had a ...

**BURKE:** *Stutters and stumbles and does all sorts of things.*

**CLOUGH:** Oh but mate he's uh you know he was taking fucken motions that uhm didn't even have uhm uh uhm.

**BURKE:** *Well how do we change this can we get someone to run the meetings and he just be chairman or something or?*

**CLOUGH:** *Well well mate what I was what I tried to do was talk to uhm [suppressed] who's uh the uhm acting CEO to say mate*

**BURKE:** Yeah.

**CLOUGH:** *you you need to sit on him and uhm, and uh, you know make sure that the motions are in order and that sort of shit.*

...

**CLOUGH:** Yeah but mate uh in terms of running meetings and things ...

**BURKE:** *I know mate don't tell me I know.*

**CLOUGH:** *there's a potent, there's a potential for him to look silly in the public ...*

**BURKE:** ... exactly what do you think's going right through my mind bouncin 'round my head

**CLOUGH:** Yeah ...

**BURKE:** ... do I get him up to be Mayor of Wanneroo when he can't run this fuckin meeting.

**CLOUGH:** *That's right ...*

**BURKE:** *I've gotta, I'll I'll get him over the line electorally mate I fuckin got Kelly elected,*

**CLOUGH:** *Yeah.*

**BURKE:** *with all my wogs and sprogs and market gardeners you know?*

**CLOUGH:** *Yeah.*

**BURKE:** *Uhm, anyway*

**CLOUGH:** *But*

**BURKE:** *leave that with me.*

...

**BURKE:** *uhm uh uh mate this bloke he's quite strange and everything else but his heart's in the right place and he is absolutely he's one hundred percent Labor and a hundred and twenty percent Burke.*

**CLOUGH:** *Yeah.*

**BURKE:** *You know what I mean?*

**CLOUGH:** *Nuh yeah mate he's uhm, he is uh uh, he he's always been uhm, friendly to me uh.<sup>320</sup>*

(emphasis added)

[499] Mr Burke called Mr Salpietro on 13 March 2006. Mr Salpietro was aware of the support that Mr Clough had given him and agreed with Mr Burke that it was a “close run thing”, saying “actually I was quite surprised that I won”. Mr Burke then passed on Mr Clough’s concerns about the way the meeting was run:

**BURKE:** *... Anyway mate listen Peter was very worried about how you ran the meeting, you're gonna have to be more decisive and get some some*

**SALPIETRO:** *Yeah but, with the first, with the first meeting uhm I mean, I mean, you know, at the end of the day I had six bloody mayors with all, with all their bloody egos there that I didn't want to get heavy with the first meeting but ...*

**BURKE:** *Uhm yeah but mate its part of your personality too.*

**SALPIETRO:** Yeah.

**BURKE:** You know.

**SALPIETRO:** Yeah it'll be run, in a, y'know it'll be run properly

**BURKE:** Yeah.

**SALPIETRO:** y'know at the next meeting.

**BURKE:** Anyway it's just a matter of being decisive. Listen have you got any time at about half past two today?<sup>321</sup>

- [500] Mr Burke then asked for Mr Salpietro's help on the planning problems that a client, Mr Jackson, was facing in regard to developments on his block in Wanneroo. Mr Salpietro agreed to attend a meeting with Mr Burke and Mr Jackson the next day, 14 March 2006.
- [501] As far as the Commission is aware, this is the last time that Mr Burke and Mr Salpietro discussed the TPRC.
- [502] Following his election in March 2006 Mr Salpietro chaired seven further meetings of the TPRC. Mr Clough attended only one further ordinary meeting, on 6 April 2006. The Commissioners of the City of Joondalup were replaced by elected members in May of that year, so Mr Clough no longer had a role with the TPRC. Mr Salpietro was granted a leave of absence at the TPRC's meeting on 12 April 2007 until 19 October 2007 when a new Chairperson was to be elected.
- [503] For Mr Burke, having a friend and confidante in a position of influence on the TPRC held potential commercial benefit. Mr Burke was working with several development companies during this time in 2006 with substantial interests in the Wanneroo area, and the subdivision and development of Tamala Park had the potential to provide numerous lucrative opportunities for such companies. Mr Burke took no action which crystallised this potential advantage into reality but, given the relationship between Mr Salpietro and Mr Burke, and the amount and nature of information that was shared between the two of them, Mr Burke's prompt agreement to Mr Salpietro's request for assistance is not surprising. Once again, for a public officer to seek assistance of that kind in those circumstances and so becoming obligated to a friend who was a lobbyist for commercial clients, had the potential to create an obvious risk of actual or perceived misconduct.
- [504] The Commission has considered whether the actions of Mr Salpietro or Mr Clough regarding Mr Salpietro's election as Chairman constituted misconduct.
- [505] Mr Clough told the Commission that the position of Chairman of the TPRC "really is a matter of the casting vote rather than the chairmanship because that's - this is about people making decisions in accordance with

their philosophy".<sup>322</sup> Mr Clough said that Mr Salpietro was not unknown to him prior to the TPRC meeting.

*... through the formal meetings with the City of Joondalup I'd had the opportunity to sit down and have a fairly lengthy conversation about him and I was aware of his political philosophies because of that and I was therefore aware that in terms of casting that casting vote I had confidence that he would do that in a manner consistent with the philosophies that, as I understand, both he and I believed in.*

*But it's the case, isn't it, that Mr Burke asked you to vote for Mr Salpietro as a favour?---Sir, I don't recall the words he used. What I can tell you is that I voted for Mr Sam - for Mr Salpietro on the basis of his political philosophy.*<sup>323</sup>

[506] Mr Clough said he voted for Mr Salpietro knowing that he "follows the sort of philosophy that I follow and that is a Labor philosophy", and that Mr Salpietro's actual shortcomings as a chairman were irrelevant:

*... it was very clear to me at that first meeting that Councillor Salpietro didn't do a very good job on the technical side of doing that, but my decision to vote for him is based on the ability to make the decision in relation to the casting vote, sir, because that's what this was about.*<sup>324</sup>

[507] Mr Burke told the Commission that while Mr Salpietro may have been lacking in skills required to be a chairman due to inexperience, he had always believed Mr Salpietro would make an excellent chairman. He said that the comments he made in his telephone call to Mr Clough, about the inadequate way Mr Salpietro ran the TPRC meeting, were said in order to be agreeable to Mr Clough.

[508] Mr Burke said he had supported Mr Salpietro more because he was "100 percent Labor" than because he was "120 percent Burke".<sup>325</sup>

[509] Mr Salpietro agreed that Mr Clough's vote would have been important in his success as the vote was very close. Mr Salpietro conceded that he had "perhaps" asked Mr Burke for a favour in regard to securing Mr Clough's support, and agreed that Mr Burke had "clearly" done him a favour by helping him obtain the position of Chairman.<sup>326</sup>

[510] Mr Burke disagreed, and said he had not provided Mr Salpietro with favours:

*Would it be fair to say that you have provided Mr Salpietro with favours from time to time?---No.*

*What about in relation to him becoming the chairperson of the Tamala Park Regional Council? Did you assist him in that regard?---Yes.*

*How did you do that?---I rang Peter Clough and asked him whether he would support Sam.*

*Did you ask him to do that as a favour to you?---I may have.*

*Was that not in fact, in turn, a favour that you were doing for Mr Salpietro?--No.*

*Why do you say that?---I thought - I saw it as a favour to the Labor Party but in terms of my conversation with Mr Clough, it was a favour to me from him.*<sup>327</sup>

## 6.2 Mr Salpietro Seeking Support from Mr Burke

[511] It is not inappropriate for a councillor to “lobby” other members for support when they are a candidate for an elected position. Mr Salpietro however chose to involve a third party who was not a public officer, who had no statutory role in the decision at hand, who was a personal friend and who may have been perceived as deriving a benefit from Mr Salpietro’s success.

[512] Mr Salpietro “lobbied” Mr Burke<sup>328</sup> because of Mr Burke’s ALP connection with Mr Clough. It is likely that Mr Salpietro was aware of Mr Clough’s ALP allegiance through their previous meetings; Mr Clough was a “longstanding member of the Labor Party”.<sup>329</sup>

[513] The Commission is also satisfied that Mr Salpietro knew Mr Burke worked closely with developers and associated companies that would be extremely interested in the Tamala Park land development. Mr Salpietro still however chose Mr Burke to ask for a “favour”, soliciting his support to become Chairman of the Council that had authority over that development.

[514] The TPRC adopted a code of conduct at its inaugural meeting in February 2006. This code required, in part, that members and staff should be alert to any actual or potential conflicts of interest:

### 1.1 *Conflict of Interest*

- a) *Members and staff will ensure that there is no actual (or perceived) conflict of interest between their personal interests and the impartial fulfilment of their professional duties.*
- b) *Staff will not engage in private work with or for any person or body with an interest in a proposed or current contract with the Local Government, without first making disclosure to the Chief Executive Officer. In this respect, it does not matter whether advantage is in fact obtained, as any appearance that private dealings could conflict with performance of duties must be scrupulously avoided ...*

[515] Mr Salpietro risked future conflicts of interest by putting himself in a position of obligation to Mr Burke. Mr Burke stated in a telephone call at the time, and later stated to the Commission, that he felt Mr Salpietro would have “some loyalty” to Mr Clough rather than to Mr Burke as a result of receiving his support. In either case, it is clear that securing a vote for Mr Salpietro was regarded as a favour which might one day be returned.

## 6.3 Mr Peter Clough Agreeing to Support Mr Salpietro

- [516] It is an elector's right to make a decision and cast a vote based on whatever private basis they choose. The reason for which a public officer casts their vote is not for the Commission to criticise unless or until that reason is influenced by improper or irrelevant considerations, pressure or inducements.
- [517] It appears that Mr Clough agreed to support Mr Salpietro based on Mr Burke's assurance that Mr Salpietro would replace Mr Kelly as Mayor, and Mr Burke's statements that:

**BURKE:** *He's a strong Labor bloke, and I'd deem it a real big favour if he could get elected ... I've never had an occasion when he's been found lacking when I've asked him to do something for the Labor party ...*<sup>330</sup>

- [518] While Mr Clough was only one of the members voting on the position of Chairperson, he undoubtedly had an influence on the outcome; the initial vote was tied and had to be re-taken and, as Mr Clough explained in his conversation with Mr Burke, he made comments to another member which encouraged them also to support Mr Salpietro.
- [519] Mr Clough has told the Commission that he knew Mr Salpietro well enough prior to the vote to believe that his values would make him a good chairman, and that his eventual less-than-ideal performance in the Chair was irrelevant. Both Mr Burke and Mr Clough stated that political philosophy, rather than ability to lead a meeting or otherwise perform the duties of a chairman, was most important in deciding who should receive their support. Mr Clough said that the most important aspect of Mr Salpietro's role as TPRC Chairman would be his duty to cast a deciding vote, and it was therefore important to have someone with Labor sympathies in that position. Mr Burke said he regarded it as "a favour" for the Labor Party.
- [520] Mr Clough actually agreed to Mr Burke's urging to support Mr Salpietro ahead of another Labor member of the TPRC, Mr Nick Catania, whom he thought was a candidate for the Chair. Mr Clough agreed to support Mr Salpietro based on his political position and on the personal recommendation of Mr Burke.
- [521] Party politics play a role in every level of government, including in local authorities. The TPRC's Code of Conduct (as at February 2006) requires staff (though not elected members) to be politically neutral.

### 1.1 ***Conflict of Interest***

...

- e) *Staff will refrain from partisan political activities which could cast doubt on their neutrality and impartiality in acting in their professional capacity.*

*An individual's rights to maintain their own political convictions are not impinged upon by this clause ...<sup>331</sup>*

- [522] Those with a party allegiance may believe it is important to encourage decisions at every level which are consistent with their political stance, but elected members have to balance this with their ethical obligation to be impartial and act in the best interests of the local community. Mr Clough, as a public officer, had a responsibility to consider what was best for the efficient, professional and impartial running of the TPRC. Given Mr Clough's position at that time as a Commissioner of the City of Joondalup, appointed by the Minister following the suspension of that City's Council for improper behaviour, it is reasonable to expect that Mr Clough would have been aware of his obligation to make a decision based on the public interest.
- [523] Mr Clough may not have known the skills and abilities of any of the other candidates that nominated for the position of Chairperson of the TPRC, and may have regarded a personal recommendation from a friend, and confidence about a candidate's political stance, as a sound basis for making his decision.
- [524] In this case neither Mr Burke nor Mr Salpietro appeared to offer Mr Clough inducements or promises beyond an assurance of future cooperation between their respective local governments. Mr Burke and Mr Clough were happy that a position of responsibility was won by a candidate who was malleable to what Mr Burke might represent as the Labor cause, but they did not to the Commission's knowledge act on this to ask anything of Mr Salpietro.
- [525] In the circumstances, the evidence does not support a conclusion that Mr Clough acted for any reason other than what was in the public interest, in supporting Mr Salpietro's election as Chairman of the TPRC. That being so, there is no reasonable basis upon which it could be concluded that he engaged in misconduct within the meaning of section 4 of the CCC Act, in that regard.



## CHAPTER SEVEN

### LOTS 2 AND 3 KINGSWAY, AND LOT 29 LANSDALE ROAD, DARCH

#### 7.1 Background

[526] Mr Edward (Ted) Smith was a client of Mr Burke's. Mr Smith's history with the City of Wanneroo relating to development of land he owned in Darch pre-dates the Commission's investigation into these matters by some years. In a Commission public hearing on 12 February 2007, Mr Smith explained that he had enlisted Mr Burke's help in 2004 when the Department of Education resumed a portion of land within his proposed subdivision for a school site. He said that he had attempted to get compensation and after:

*... years of trying to get paid and a number of consultants who were totally unsuccessful and ineffective ... I had to call on Brian Burke<sup>332</sup> ... In one month Brian Burke got the deal sewn up and in one more month I got paid; in May 04 I got 7.6 ... Million. Million, Yes? ...<sup>333</sup>*

[527] Mr Smith subsequently retained Mr Burke's services in order to progress his subdivision plans for Lots 2 and 3 Kingsway Road, and Lot 29 Lansdale Road, Darch. In February 2005, Mr Burke emailed Mr Ross Leighton, a professional land developer, regarding Mr Smith's land. He explained that Mr Smith was finalising the purchase of additional land at Lot 4 Kingsway. Mr Burke said that this two hectare block was zoned residential "... but I am quietly confident it could be rezoned as required".<sup>334</sup>

[528] Mr Burke then emailed Mr Grill and suggested that this last site Mr Smith was purchasing might be very suitable for one of Mr Leighton's developments. He suggested Mr Grill should represent Mr Leighton and he would represent Mr Smith.<sup>335</sup>

[529] Mr Burke then asked Mr Salpietro to perform an unusual task of relaying an email drafted by himself but in the name of Mr Salpietro to Mr Grill, for sending to a third party.

[530] First, Mr Burke told Mr Leighton that he had spoken to Mr Salpietro, the Deputy Mayor of the City of Wanneroo, who, upon Mr Leighton's call, would accompany him on the site inspection and would then advise him of "the City's attitude".<sup>336</sup> Mr Burke then sent the following email to Mr Salpietro.<sup>337</sup>

**Subject:** *Mail to Julian*  
**From:** *Brian Burke*  
**Date:** *16/02/2005 7:37:01 AM*  
**To:** *'Sam Salpietro'; Sam Salpietro*

*Dear Sam*

*Would you consider sending a note to Julian (copy to me) based on the following DRAFT, please?*

*Julian's email address is* [REDACTED]

**DRAFT STARTS**

*Dear Julian*

*Thank you for briefing me on the possibilities for the development of Lots 1 and 2 Kingsway and Lot 29 Landsdale Road in Darch. I understand that Lot 4 Kingsway will probably be added to the Development Area in the short term.*

*Cr Cvitan and I hope we made it clear to you that we are supportive of plans that will see a "St Ives" type development on the land. At the same time, there will no doubt be a formidable range of objections from commercial and other interests who will see the proposal as impacting on them and who are not obliged to take into account the broader interests of the wider community and its long term needs. For obvious reasons, the view of State Government Departments and instrumentalities will also need to be canvassed.*

*Needless to say, before anything is done, the very best model should be settled and the benefits to the community should be clearly shown. In this respect, I was very impressed by Mr Leighton's excellent understanding of and knowledge about the area of retirement living and have no doubt he will*

*When it appropriate and I am personally comfortable with what is planned, I am happy to discuss with you the approach that might be taken to successfully prosecute the proposal =with the City's Officers and with other Councillors.*

*On a personal note, it was good to catch up with you and I hope to do so again , perhaps in a social setting, before too long.*

*Yours sincerely*

*Cr Sam Salpietro*

*ACTING MAYOR of the CITY Of WANNEROO*

**DRAFT ENDS**

*Regards*

*BRIAN BURKE*

[531] Mr Salpietro responded by making some changes to the text and emailing it to Mr Grill that afternoon.<sup>338</sup>

**From:** sam salpietro  
**Date:** 16/02/2005 4:15:52 PM  
**To:** grill1@ [REDACTED]  
**CC:** brianburke@ [REDACTED]

*Dear Julian*

*Thank you for briefing me on the possibilities for the development of Lots 1 and 2 Kingsway and Lot 29 Landsdale Road in Darch. I understand that Lot 4 Kingsway will probably be added to the Development Area in the short term.*

*Cr Cvitan and I hope we made it clear to you that we are supportive of plans that will see a "St Ives" type development on the land. At the same time, there will no doubt be a formidable range of objections from commercial and other interests who will see the proposal as impacting on them and who are not obliged to take into account the broader interests of the wider community and its long term needs.*

*The extent of consultation with Government Agencies will depend on the level of changes to the existing road layout. If the changes are substantial an application to change the structure plan will be required, although I am of the view that we may avoid this procedure.*

*I would suggest that the very first task should be for Mr Leighton's planners to research to what stage development has progressed on adjoining lots, especially the ones that have roads continuing into the above lots.*

*Depending on the level of progress, it may be possible to make road changes that are to the benefit of the subject lots, as well as adjoining owners. A quick call and meeting with Roman Zagwocki will be advisable at the earliest possible time.*

*Once the required road changes, if any, are established it is then advisable to proceed to the consultation stages between yourself, myself and Cr Cvitan, Mr Leighton and his planners, and Council staff.*

*I was very impressed by Mr Leighton's excellent understanding of and knowledge about the area of retirement living and have no doubt he will present to Council a development that will be of benefit to the community.*

*On a personal note, it was good to catch up with you and I hope to do so again, perhaps in a social setting, before too long.*

*Yours sincerely*

*Sam Salpietro JP.*

*Deputy Mayor,*

*City of Wanneroo.*

[532] Mr Grill emailed the note to Mr Leighton that night with the following introductory text.<sup>339</sup>

**Subject:** FW:  
**From:** Julian Grill  
**Date:** 16/02/2005 10:04:00 PM  
**To:** Ross Leighton  
**CC:** Brian Burke (brianburke@██████████)

Dear Ross,

*Here is a note that I received from Cr Sam Salpietro. Its sounds cautiously promising.*

*Perhaps you Brian and I should meet to plan the next steps. We shall be seeing you on Friday and no doubt we can discuss then.*

Regards

Julian Grill

[533] Mr Grill then emailed Mr Salpietro with copies to Mr Burke and Mr Leighton.<sup>340</sup>

**Subject:** RE: St, Ives Type Development  
**From:** Julian Grill  
**Date:** 16/02/2005 10:19:00 PM  
**To:** 'sam salpietro'  
**CC:** 'brianburke@██████████' Ross Leighton

Dear Sam,

*Thank you for this note and for receiving Ross Leighton and myself at the Council Chambers on Tuesday. It was nice to see you again.*

*Once we are in a position to put something firmer before Council, we shall take the liberty of making further contact with you.*

*Thank you also, for involving Cr Frank Cvitan at this early stage.*

Regards

Julian Grill

[534] This series of emails illustrates one of the types of assistance that Mr Burke felt comfortable to ask of Mr Salpietro. Mr Burke stood to benefit in three ways:

- securing a developer for his client;
- ensuring his success fee from his client; and
- procuring the developer as another client for Julian Grill Consulting.

[535] In effect Mr Salpietro assisted Mr Burke to mislead Mr Leighton. By sending the note via Mr Salpietro and Mr Grill, Mr Burke concealed the true authorship of the note and distanced himself from the development proposal which was his idea. By supplying the email bearing Mr Salpietro's title of Deputy Mayor, it appeared the project had some official endorsement. The exchange was orchestrated to give Mr Leighton the impression of being initiated by Mr Salpietro, forwarded on by Mr Grill with Mr Burke simply copied into the correspondence. Mr Salpietro's compliance with Mr Burke's request went beyond that of simply assisting a constituent. However, in the Commission's opinion, what Mr Salpietro did in this regard could not constitute misconduct under any of paragraphs 4(a), (b) or (c) of the CCC Act. Nor could it constitute an offence against a written law or a disciplinary offence of the kind described in paragraph 4(d)(vi) of the CCC Act. Accordingly, nor could what he did constitute misconduct under subsection 4(d) of the CCC Act.

[536] The significance of these events lies in what they show about the relationship of reciprocal favours or benefit between Mr Burke and Mr Salpietro, as the context in which the latter's use of his public officer position on different occasions, in response to requests by Mr Burke, is to be assessed.

[537] Although Mr Smith agreed in May 2005 to the proposal to build a "St Ives" type nursing home development in joint venture with Mr Leighton,<sup>341</sup> by 30 August 2005 he had changed his mind. He wrote to Mr Burke asking that he "immediately begin the process of trying to rezone as much of the land as possible to R40 and at the same time initiate the subdivision and development of the land into residential Lots".<sup>342</sup>

## 7.2 Lobbying for Upcoding to R40

[538] In September 2005 Mr Burke contacted Mr Ian Everett at Chappell and Lambert, consultant planners, to commence the process of applying for rezoning the land from R20 to R40.<sup>343</sup> At the time the planners were completing an application for subdivision for the same land. Mr Everett advised Mr Burke that the application to upcode from R20 to R40 would run parallel to the subdivision application.<sup>344</sup>

[539] Mr Smith's land was already zoned for residential development. However, changing the code from R20 to R40 would increase the permitted density of dwellings for the area. Applications to upcode must be lodged with the

City of Wanneroo for approval. Provided there is no outright planning issue that would prohibit the change in density, the proposal is then advertised to give the community a period of time in which to comment on the decision to proceed. If there are planning issues to be considered, and public objections lodged against the proposal, the application must be referred to Council for decision. In the absence of planning issues or public submissions, the application can be decided by an employee under delegated authority rather than being referred to Council. All decisions made under delegated authority are reported to Council and recorded in the minutes.

- [540] Mr Burke's preference was to have Mr Smith's application decided by delegated authority, so his lobbying focussed on ensuring the application did not need to go to Council for decision. Mr Mike Hudson, Planning Officer, City of Wanneroo, had carriage of the application. However, Mr Zagwocki, as Director of Planning and Development, was the person to whom the authority to approve such applications was delegated.
- [541] By January 2006, after a "good" meeting with Mr Zagwocki about Mr Smith's upcoding, Mr Burke informed Mr Everett "... I am quietly confident that we will achieve our objective and that the upcoding will be done under delegated authority".<sup>345</sup> He asked Mr Everett to lodge the application and fees, saying that Mr Zagwocki had suggested that Mr Everett continue to liaise with Mr Hudson.
- [542] On 8 February 2006 Mr Zagwocki exercised his delegated authority to resolve that the proposal to upcode Mr Smith's land be advertised for a 28-day period of public submissions to close on 11 April 2006.<sup>346</sup> The information available to the Commission does not suggest that there was any improper conduct by Mr Zagwocki in his handling of this decision.
- [543] On 28 February 2006 Mr Burke told Mr Smith that the councillors had seen the proposal to upcode his land to R40, and were in agreement with that change. He said that, provided there were no public objections, the matter could be decided by delegated authority rather than by vote of the Council.<sup>347</sup>

### 7.3 Objections to Upcoding Proposal

- [544] On 28 March 2006 the City of Wanneroo received an objection to Mr Smith's proposal. The objection was lodged by planning consultants, Greg Rowe and Associates, on behalf of a client. The objector also owned land in Darch and was also proposing to apply to increase the density of zoning on their own property around the public open space on Lots 30, 31 and 32 Lansdale. The planner's letter stated that their client objected to the upcoding of the entirety of Mr Smith's land on the basis that it "... would be more efficient and sustainable to extend the R40 zoning across Lot 30 to "link up" with the proposed R40 zoned land on Lot 29 Lansdale Road rather than designating the entire landholding as R40".<sup>348</sup>

[545] Mr Hudson told Mr Burke on 5 April 2006 that because an objection had been received the application could not now be considered by delegated authority and would have to go before Council. Mr Burke's response was that he would see to it that the objection was withdrawn.<sup>349</sup>

[546] Within minutes, Mr Burke conferred with Mr Everett. Between them they decided that the submission could be considered as a "comment" rather than an "objection", and that if Mr Hudson would regard it in this light a decision could be decided by delegated authority. Mr Everett said he would speak to Mr Hudson. He later informed Mr Burke that Mr Hudson said the objection was from the Tilbrook family who owned land neighbouring Mr Smith's. He said that Mr Hudson hadn't read the objection so was unable to say what the grounds were. Mr Everett offered to "have a word" with Mr Hudson "... and I'll suggest if it's just a comment that we can resolve, to tell us and not to treat it as an objection if he can".<sup>350</sup>

## 7.4 Mr Burke and the Objector

[547] In order to place the actions of public officers in this matter in context, the Commission provides the following information gained from lawful telephone intercepts to describe the background to what occurred. The initial focus on the actions of non-public officers is therefore necessary to provide an overview of how the public officers became involved in the matter, what was occurring unbeknown to them, and the consequences and implications when they did become involved.

[548] In a telephone call on 6 April 2006 Mr Burke told Mr Smith about the objection. Because Mr Smith knew the Tilbrooks, Mr Burke requested that he speak to Mr Tilbrook to ask him to withdraw the objection.<sup>351</sup> Mr Smith and his planner, Mr Everett, met with Mr Tilbrook. Mr Everett reported back to Mr Burke on 7 April 2006 that the Tilbrook family said they were advised by their planning consultants to lodge an objection because if Mr Smith's application was successful, it might prevent them from obtaining the same upcoding later.<sup>352</sup>

[549] Mr Burke's response to Mr Everett was to the effect that he had previous knowledge of the Tilbrooks who he said were difficult to deal with and had given two other developers "a lot of trouble" over land for a "buffer zone" in another area. He suggested that Mr Everett should tell the Tilbrooks that Mr Smith was Mr Burke's client, and that in return for withdrawing their objection Mr Burke would be happy to assist them to also get R40. He warned Mr Everett to disclose his involvement very sensitively.

**BURKE:** *... make sure you don't expose me in a way that lets them accuse Smith of getting some underhanded assistance ...*<sup>353</sup>

[550] Mr Burke then said "... if they stop Mr Smith getting R40 ... I will make sure they never get R40".<sup>354</sup>

[551] In a telephone call to Mr Grill on 10 April 2006 Mr Burke explained the situation with the Tilbrooks, adding that in order to progress Mr Smith's application he had offered to help them to also get their land upcoded to R40.<sup>355</sup> None of the material available to the Commission suggests that Mr Burke discussed with Mr Grill the possibility of thwarting a future application by the Tilbrooks.

[552] Mr Everett contacted Mr Burke after speaking to the Tilbrooks' planner, Mr George Hajigabriel of Greg Rowe and Associates on 10 April 2006. He said he disclosed Mr Burke's involvement and his offer to help the Tilbrooks. He said the Tilbrooks were willing to meet to discuss this the following day, and were prepared to modify their objection if Mr Smith combined his application with theirs. The Tilbrooks, who had not yet applied for upcoding, claimed that Mr Smith had beaten their application for upcoding by two weeks.<sup>356</sup>

[553] Mr Everett also said he then got advice from Mr Hudson at the City of Wanneroo, who said the Tilbrooks' idea of linking the proposals wasn't possible, and that Council would consider each application separately.

**EVERETT:** *Uhm, he also believes that the way the delegation's written at Wanneroo, ah irrespective of whether submission objects or supports, if there is a submission it has to go up to council. Now, uhm well, Roman's got the discretion to vary that, so I think*

**BURKE:** *Yeah, I, but I can carry that at council anyway.*

**EVERETT:** *Yeah I, I think it probably will end up at council, I don't think we're going to avoid that.*

**BURKE:** *Why?*

**EVERETT:** *Simply because we've got this submission from them.*

**BURKE:** *I'll get em to withdraw the submission.*

**EVERETT:** *D'you reckon?*

**BURKE:** *Oh yeah. That's what I'm hoping for.*

**EVERETT:** *Yeah, okay. Well look if they withdraw it*

**BURKE:** *Yeah.*

**EVERETT:** *it should be dealt with under delegate. I think we still need to have a meeting with er, probably Sam and Roman, because uhm*

**BURKE:** Yeah, let me handle that, I don't think you need to have a meeting with Sam and Roman ...<sup>357</sup>

[554] Mr Burke's confidence that his influence with City of Wanneroo councillors would enable him to "carry" the application successfully through Council is also apparent in another call to Mr Everett later that day.

**BURKE:** Well that's exactly right, and when we get ours through, uhm, we're happy to cooperate with him. The process

**EVERETT:** Mm.

**BURKE:** is as follows, once the application's made, the ward councillors are asked if they have any difficulties.

**EVERETT:** Mm.

**BURKE:** Now the two ward councillors are Sam and er, thingamajig Frank Cvitan.

**EVERETT:** Yep.

**BURKE:** And of course they never have any difficulties.

**EVERETT:** Yep.

**BURKE:** Ah, er, er certainly not with anything I do because they trust me.

**EVERETT:** Mm.

**BURKE:** Uhm, now, once it comes back from the councillors, they then advertise it for a period, and this period ends tomorrow.

**EVERETT:** Mm.

**BURKE:** And, er er, on the basis of the advertising, er it either, if there's no submission, it goes str- it can be done with, on discretion.

**EVERETT:** Mm.

**BURKE:** If there is a submissions [sic], then er Hudson does believe it has to, to go to a, to to the council, but I don't think that's true.

**EVERETT:** No.

**BURKE:** Uhm, but in any case, uhm I'm not worried except for the point of view that the first council meeting you can go to is May the sixteenth.

**EVERETT:** *Mm.*

**BURKE:** *So, if the worst comes to the worst I'm sure the council will carry it*

**EVERETT:** *Mm.*

**BURKE:** *and it will go on May the sixteenth. However, if er if, they, a submiss, withdraw their submission, then what can happen is, that Roman will decide it I think in the next ten days.*

**EVERETT:** *That's right. That's right.*

**BURKE:** *So, that that's, I'm gunna now ring Roman, and see if I can have a talk to him, and Sam,*

**EVERETT:** *Mm, mm.*

**BURKE:** *and just see what I can do there.*<sup>358</sup>

[555] Mr Everett and Mr Burke, having arranged the meeting with the Tilbrooks for the next day (11 April 2006), discussed how they could make difficulties for the Tilbrooks' development if they proved uncooperative. Mr Everett said that by objecting the Tilbrooks were "shooting themselves in the foot". Mr Burke continued to threaten to prevent them getting their land upcoded:

**BURKE:** *Yeah. The other thing is, uh, I mean, I, I'm not saying this of course, but why would they upset us because I'll stop them having R40.*

**EVERETT:** *Yeah I know. I didn't, I didn't say that much*

**BURKE:** *No*

**EVERETT:** *to him but I've, I, I, I thought you could allude to that tomorrow but you're quite right, I mean in addition they need us to get services to their land because the sewer, the sewer, in fact all their, all their drainage runs through our land to our sump on Lansdale Road.*

**BURKE:** *Well we might just stop our sewerage you know two blocks from their site*

**EVERETT:** *Well that's right you know you can get, we can get nasty if we have to uhm.*<sup>359</sup>

[556] Mr Burke said he would call Mr Tilbrook (Senior) so Mr Everett gave him the telephone number. It is not certain if Mr Burke did telephone Mr Tilbrook because the Commission has no record of that call being made. Lawful intercept material shows that Mr Burke contacted Directory Services for the telephone number of the Tilbrooks' planner, Greg Rowe and Associates. However, if he did contact either Mr Tilbrook or his planners, the call was not made from either of the telephones that Mr Burke used during the two-hour period that these events took place.

[557] Mr Burke claimed, during subsequent calls to Mr Everett, Mr Hajigabriel and Mr Smith, that he had spoken to Mr Tilbrook and recounted pieces of that conversation. It is clear from the exchange between the two that Mr Burke also called Mr Hajigabriel from a telephone other than his mobile or home phone during this time frame. The Commission does not have any intercepted material to confirm this first call to the planners on 10 April 2006, however the conversation between Mr Burke and Mr Hajigabriel at 12:50 p.m. on 10 April 2006<sup>360</sup> strongly suggests it was a follow-up to a recent previous call. It is therefore possible that Mr Burke made these two calls - to Mr Tilbrook and Mr Hajigabriel, from an unmonitored telephone on that day.

[558] The Commission points this out because in this two-hour period of these communications on 10 April 2006, Mr Burke made multiple calls about this issue, in addition to other business calls, with intervals of minutes between each call. It is notable that these two calls not being intercepted are an exception. There are several possible explanations for this:

- these calls took place on another day prior to 10 April 2006 and not on 10 April 2006 as Mr Burke had claimed;
- the calls were made on 10 April 2006 between 11:23 a.m. and 11:38 a.m., but he may have used an unintercepted telephone source; or
- in the case of the alleged call to Mr Tilbrook (Senior), it is possible that what Mr Burke said about speaking to Mr Tilbrook (Senior) on 10 April 2006, was not correct.

[559] In any event, there are differences between what the Commission intercepted, Mr Burke's account of the events to others, and what Mr Tilbrook was reported in the press as saying. Mr Tilbrook is quoted as saying that this call took place a couple of weeks prior to his meeting with Mr Burke,<sup>361</sup> whilst Mr Burke claimed to have called him the day before. This discrepancy and the unrecorded telephone call are significant in terms of Mr Burke's behaviour towards Mr Tilbrook, and the implications for the subsequent withdrawal of the Tilbrooks' objection to Mr Smith's application.

[560] The Commission is satisfied that Mr Burke did telephone Mr Tilbrook prior to the meeting, however it is not certain when that call was made. The Commission is also satisfied that Mr Burke spoke to Mr Hajigabriel about

the Tilbrooks' objection prior to the meeting but it is not certain whether that call also occurred on 10 April 2006.

[561] In this two-hour span on 10 April 2006, just twenty minutes after telling Mr Everett that he would call Mr Tilbrook, Mr Burke called Mr Everett back, saying that he had just spoken to Mr Tilbrook who was unreasonable and would not agree to write to the Council saying his earlier letter was a comment, not a submission. He told Mr Everett that he said to Mr Tilbrook: "... you need to understand we should all advance together because you're gunna need Mr Smith when you subdivide because of sewerage reticulation". Mr Everett's response was:

*... if he's smart enough he'll see it as a veiled threat because you can make life difficult for them. You know you can size your pipes differently, you know there's all sorts of nasty little things you can do if you want to be nasty ... you can't tell them that but ah, that's the reality of it.*<sup>362</sup>

[562] Mr Burke then called Mr Smith to warn him not to trust the Tilbrooks, and recounted what he said he had told Mr Tilbrook and his planners.

**BURKE:**

*... make sure you don't talk to the Tilbrooks or say anything to them at all because I said if you withdraw your submission then I'm prepared to give you my best guarantees that I will do my best to help you achieve what you want ... and I said you need to understand that you need to cooperate with Mr Smith because you'll need his assistance when you come to subdivide your land ... Anyway they're very difficult people, and I said, I'm the person Mr Smith previously asked to help you to get a water licence, now maybe you don't care about that or anything else, but I said why should I bother, anyway that it doesn't matter, the main thing I don't want to do, I don't want you speaking to them and doing anything at all that tries to help them because they, until they help you ... I just don't think they're very pleasant people ... let me tell you they'll run into more problems than ... 'cos the Councillors won't appreciate this ... you know the Councillors won't appreciate them trying to take a position that causes everyone except them problems ...*<sup>363</sup>

[563] An hour and a half after Mr Burke's alleged phone call to the uncooperative Mr Tilbrook, still on 10 April 2006, Mr Hajigabriel telephoned Mr Burke to say that Mr Tilbrook was now coming around to

the idea that perhaps he should work with Mr Burke to get what he wanted. He had agreed to meet Mr Burke the next day "... just to hear a bit more about how you might be able to help him out". Mr Burke responded:

**BURKE:** *I'll certainly see Mr, Mr um, what's his name? I keep saying Tothill? ... Mr Tilbrook ... Yeah but ah, I, I mean look I'm too old and silly to do things with unpleasant people, George ... after I spoke to him I thought if I don't speak to him again I'm not going to really miss him ... he got quite aggressive with me, you know, so I, I, I'm sort of some, somehow an opponent of his, I didn't understand him at all. Anyway, I'll ring the Council, I'll speak to Rod Peake or to Roman, and I'll see what their view is about um ah the delays ...<sup>364</sup>*

## 7.5 Public Officers are Co-opted to Support Mr Edward (Ted) Smith's Proposal

[564] Mr Burke then rang Mr Salpietro. He told Mr Salpietro that he had just been speaking to Mr Hudson. The Commission also has no evidence of this call to Mr Hudson. Mr Salpietro queried if the Tilbrooks had submitted an application to recode their land. When told they hadn't, he asked Mr Burke "... can I categorically say that according to the the, to the applicant ... that the neighbour doesn't have any objection other than he wants an R40 also".<sup>365</sup> It is not clear to whom Mr Salpietro was intending to make that statement, however it seems likely that he was formulating his support for Mr Burke's position as they spoke.

[565] Mr Salpietro did express doubt that the Tilbrooks would have disclosed in their submission that their reason for objecting was simply to make sure they got their own application accepted. Mr Burke answered by saying he was simply going on what Mr Hudson had told him. Mr Burke said he would try to get the Tilbrooks to withdraw their submission. Mr Salpietro said: "Yeah but you know I wouldn't offer him anything though Brian ... He can get stuffed, really ... everybody else goes through the, through the whole bloody application process he should do the same".<sup>366</sup> By this comment Mr Salpietro seems to be accepting that Mr Burke intended to make some kind of a deal with Mr Tilbrook to induce him to withdraw his objection.

[566] The Commission's lawful telephone intercepts show that Mr Burke then telephoned Mr Hudson, to say he had arranged a meeting with the Tilbrooks, whom he thought – borrowing Mr Everett's phrase – were realising that they "might be shooting themselves in the foot ... because I said to them look if you succeed in, in dissuading people from this then

they won't agree to yours ... anyway they want to see me and ah, I think they've got a view to sort of withdrawing their submission".<sup>367</sup>

[567] The meeting was arranged for 9:30 a.m. on 11 April 2006. Later that day the Tilbrook family formally withdrew their objection, faxing a letter for the attention of Mr Hudson at the City of Wanneroo.<sup>368</sup>

[568] The tenor of that meeting is indicated by Mr Burke's call to Mr Everett on 12 April 2006.

**BURKE:** *Now the other thing I was gunna ask you. I haven't been asking, putting too much burden on with Mr Smith on you have I?*

**EVERETT:** *Nah, no, he's, Ted's fine, I mean, that's a good one*

**BURKE:** *That's good.*

**EVERETT:** *that's an easy one and ah, you know we should have the subdivision approval anyway through this week, um, no, that's, that's a good one.*

**BURKE:** *Yeah. Okay well just let me know uhm and sometimes I do push and pull a bit, you know what I'm like, but never in bad faith or anything.*

**EVERETT:** *No, no, no, that's fine, I mean ...*

**BURKE:** *And it's rare ... I mean I got a bit upset with that Tilbrook yesterday but that's very rare for me.*

**EVERETT:** *Yeah, well they are fairly obnoxious sort of people at the end of the day*

**BURKE:** *Well for him to say to me well I don't trust you enough to do it until you give me a letter in advance, you know?*

**EVERETT:** *Yea [sic], yeah, no it's pretty poor.*

**BURKE:** *Yeah I thought it was mate.*

**EVERETT:** *They got the message but, which is good.*

**BURKE:** *Yeah, yeah and they did the right thing.*

**EVERETT:** *Yeah, well he's smart enough to know what's good for them I guess at the end of the day.*

**BURKE:** *Well at the end of the day mate, it's very easy to see what would happen if they got up up everybody's nose.*

**EVERETT:** *Yeah that's right.*

**BURKE:** *No-one likes them now.*

**EVERETT:** *No, no they'd be right up shit creek.*<sup>369</sup>

[569] The Commission interviewed Mr Tilbrook (Senior) and Mr Tilbrook (Junior) about this matter. Mr Tilbrook (Senior), although he could not remember using the term “bastard”, affirmed his perception of the meeting with Mr Burke, as reported in *The West Australian* on 17 February 2007, as did Mr Tilbrook (Junior).

*John Tilbrook says he's never seen anything like it. Then again, he says, not everyone has had the dubious honour of going toe-to-toe with a fuming Brian Burke.*

*Sitting comfortably in thongs and shorts in the demountable office of his Lansdale nursery, the millionaire developer is a world away from the heated meeting eight months earlier where, by his account, the disgraced former Premier “blew his fuse”.*

*Having objected to the rezoning of an adjacent property owned by millionaire developer Ted Smith, a client of Mr Burke, Mr Tilbrook recalls the boardroom showdown being prompted by an out-of-the blue phone call a couple of weeks earlier. The conversation was short and to the point. Mr Burke was demanding Mr Tilbrook retract the letter he had sent to the City of Wanneroo opposing the rezoning of Mr Smith's land.*

*Refusing Mr Burke's request, Mr Tilbrook referred Mr Burke to his consultants, Greg Rowe and Associates. It was in the consultant's offices in June last year that things got nasty. Mr Burke offered a deal – if Mr Tilbrook withdrew the letter, he would ensure Mr Smith sent a letter to Wanneroo supporting Mr Tilbrooks' application for rezoning his own land.*

*“I said, “Look, before I withdraw anything I want that letter now”, Mr Tilbrook said. That's when he really lost it and said, “Don't you trust me”, and I said, “I don't trust any bastard”. He just stormed out of the meeting. That was it”.*

*John Tilbrook Jr, also at the meeting, says it was clear Mr Burke hadn't been used to getting “no” for an answer.*

*“He was shaking and was red with rage and was doing this”, he said, smashing the table with his fist. “The performance just blew us away”.*

*The Tilbrooks withdrew their letter in a deal that led to the council approving both rezoning applications.*<sup>370</sup>

[570] Though he had succeeded in having this objection withdrawn, as this report will show later, this was not the end of the matter for Mr Burke who continued to seek retribution against the Tilbrooks. In the interim, he was distracted by another objection to Mr Smith's recoding.

## 7.6 Second Objection to Mr Smith's Application

[571] With the Tilbrooks' withdrawal having been accepted by Council, Mr Burke anticipated that Mr Smith's application could now be decided by delegated authority. However, on the evening of 11 April 2006, the last day for public submissions, Mr Hudson advised him that the Council had received another objection.<sup>371</sup> It was lodged by [Mr A (name suppressed)] on behalf of the Zito family whose property adjoined Mr Smith's. Mr Smith's matter therefore still had to go before Council for decision.

[572] Since 2005 Mr A and Mr Smith had been involved in a legal dispute over settlement on the purchase of Lot 20. Part of Mr Burke's service to Mr Smith was to refer him for legal advice to his daughter, lawyer, Ms Sarah Burke. Against this background, Mr Burke claimed that Mr A's objection was a form of ongoing harassment of Mr Smith arising from that dispute.

[573] Mr Smith, who knew the Zito family well, contacted them. He reported to Mr Burke that a member of the Zito family said that he was unaware that Mr A had lodged a complaint, and that whilst Mr A was developing land which he purchased off them, he had not yet paid them. Mr Burke telephoned Mr Salpietro on 12 April 2006:

**BURKE:** *But you know that [Mr A] He bought lot four, next door, to*

**SALPIETRO:** *Is, is he the Weston Group?*

**BURKE:** *No, he's Zito's land.*

**SALPIETRO:** *Oh, okay.*

**BURKE:** *Anyway he's now put in an objection. He doesn't own*

**SALPIETRO:** *What, to the R forty?*

**BURKE:** *Yeah. He doesn't own the land. He put in the objection without the Zitos knowing. The Zitos support Mr Smith and they're writing in to say that they don't agree with the objection.*

**SALPIETRO:** *(laughs)*

**BURKE:** *You know, not only that, he's subdivided the land already and sold, all the blocks are under contract and he's hasn't even paid Zito.*

**SALPIETRO:** *Is that right?*

**BURKE:** *Oh mate, he's a terrible prick. Now, the problem is, I've had a word, that Mike Hudson's a good young officer.*

**SALPIETRO:** *Mm hm.*

**BURKE:** *And I've had a word to him and everything.*

**SALPIETRO:** *Yeah.*

**BURKE:** *But he doesn't support the R forty really.*

**SALPIETRO:** *Mm hm.*

**BURKE:** *So I've got a meeting with Roman, I asked Sandy to tell you about it.*

**SALPIETRO:** *Yeah, yeah.*

**BURKE:** *Uhm, because I, I don't know if it has to go to council but even if it has to go to council, I just want to make sure we don't miss out on it because [Mr A] shouldn't be allowed to get his own way, you know?*

**SALPIETRO:** *Brian?*

**BURKE:** *Mmm.*

**SALPIETRO:** *Why don't you have word with, with Roman on the telephone and tell him what you've told me.*

**BURKE:** *Yeah.*

**SALPIETRO:** *Because, just because somebody doesn't really objected to it, if it's an objection which just doesn't qualify, it counts as no objection*

**BURKE:** *Yeah.*

**SALPIETRO:** *and Roman may still be able to deal with it*

**BURKE:** *Yeah.*

**SALPIETRO:** *in his own department.*

**BURKE:** *Well, I, I thought I'd leave it until we saw Roman.*

**SALPIETRO:** *Yeah, when's that?*

**BURKE:** *On Monday week.*

**SALPIETRO:** Okay, okay.

**BURKE:** You know?

**SALPIETRO:** But that's not coming up.

**BURKE:** I might ring up anyway.

**SALPIETRO:** That's not coming up 'til next council meeting, is it?

**BURKE:** No May the sixteenth.

**SALPIETRO:** No then okay yeah, yeah.

**BURKE:** Okay.

**SALPIETRO:** But it might pay, it may pay for you to have ...

**BURKE:** Yeah.

**SALPIETRO:** You know, that objection shouldn't even be accepted.

**BURKE:** No, I don't think it should be. Although technically anyone can object. You can drive, if you live in Rockingham

**SALPIETRO:** Yeah.

**BURKE:** you can object.

**SALPIETRO:** Yeah but the ones that planning actually take, take into account.

**BURKE:** Yeah I agree.

**SALPIETRO:** You know, the relevant ones. You know?

**BURKE:** I'll ring Roman now.<sup>372</sup>

- [574] The following day Mr Smith emailed Mr Burke a signed letter from a member of the Zito family stating that the objection lodged by Mr A was done without the knowledge of the Zito family, and that they had no objections to Mr Smith's proposed rezoning.
- [575] Mr Burke telephoned Mr Salpietro on 13 April 2006, prior to faxing him this letter, saying that it was confidential and important, about a serious matter that he thought might even be an offence. He asked Mr Salpietro to call him when he received the facsimile. When Mr Salpietro rang a few minutes later Mr Burke claimed Mr A's objection was a type of false pretence. Mr Burke rang Mr Hudson whilst he had Mr Salpietro on the phone:

**SALPIETRO:** Yeah. Uh, that (laughs) have you, have you sent this to Mike, uh, uh, Brian?

**BURKE:** I'm going to do that now but just hang on.

**SALPIETRO:** Yeah, okay.

**BURKE:** And you'll, hang on and don't say anything, just listen.

**SALPIETRO:** Okay.

(Burke places a call to City of Wanneroo.)

**FEMALE:** *City of Wanneroo, this is Judy. How may I help you?*

**BURKE:** *Judy, it's, uh, can I speak to Mike Hudson please?*

**FEMALE:** *One moment, please.*

**BURKE:** *Thanks.*

(To Salpietro): *You, you there, Sam?*

**SALPIETRO:** Yep.

**BURKE:** *Yeah. Just listen.*

**SALPIETRO:** Yep.

**HUDSON:** *Mike Hudson speaking.*

**BURKE:** *Yeah, Mike, it's Brian Burke.*

**HUDSON:** *Yeah, Brian?*

**BURKE:** *Mike, uhm, look, I've just received a letter signed by the Zito's, uh, and I'll just read it to you 'cos I'd just like to get your reaction. I, I mean I respect your position on this matter so just hang on a sec, I'll get it. The Zito's say this:*

*We are informed that planners Koltasz-Smith have lodged an objection in the above matter and that the objection refers to the subdivision of land adjacent to our property which land is owned by Mr Smith. This objection was made on behalf of adjoining land we own, lot four. As owners of the land we wish to inform you that the objection was lodged*

*without our knowledge or consent and we wish to dissociate ourselves from it and if possible withdraw it. We also wish to make it clear that we support the proposed amendment.*

*Now that's a for, that's a clear case of misrepresentation.*

**HUDSON:** *Look, I, I, I will just need to, uh, we've received it. It's an official ...*

**BURKE:** *No. I understand. Yeah.*

**HUDSON:** *Uhm, and what, what I'll need to do is I'll make that, that case clear. I'll make that point clear, uhm*

**BURKE:** *I'm going to send it on to you because*

**HUDSON:** *That's fine.*

**BURKE:** *Mr Smith says this:*

*The submission shouldn't be accepted because, one, it's based on and refers to the impact on property lot four Kingsway that the objectors don't own.*

**HUDSON:** *Mm.*

**BURKE:** *Two, Koltasz-Smith have neither right nor permission to use lot four Kingsway to support their submission and, three, the owners of the property actually support the amendment.*

**HUDSON:** *Yeah.*

**BURKE:** *So their position is being misrepresented.*

**HUDSON:** *Yeah.*

**BURKE:** *You wrote to the owners and asked for the owners' views.*

**HUDSON:** *Yep. Yep. What, what I'll do, I'll, I'll, I'll clarify that in my report.*

**BURKE:** *Yeah. Oh, I'm happy with that. No, Mike, I trust you to do the right thing. I'm not worried about that. I'm just, I'm just aghast at [Mr A]. I mean, I, I don't know where you*

*live but I, I think next time there's a subdivision or, or something I'm going to write in and say, refer to your property and say, well, look now*

**HUDSON:** (laughs)

**BURKE:** I object.

**HUDSON:** *Mm. Yeah. Unfortunately the system allows it, well, allows anyone to make a comment, uhm, regardless of whether a landowner or not but if, if there's a misrepresentation in terms of Koltasz representing Zito then, then I'll clarify that otherwise Koltasz or prospective purchasers or*

**BURKE:** Uh, of course.

**HUDSON:** *people like yourself have ... already make ...*

**BURKE:** *If I live in Albany and I drive through Darch and see a sign up*

**HUDSON:** Yes, you can.

**BURKE:** I am make a thing but what I can't do is say

**HUDSON:** That you represent the landowner.

**BURKE:** Of course, and as you told me it, it came in on behalf of these, well, referring to this lot.

**HUDSON:** Yeah. I mean, if, if he's, I can't remember how he's actually phrased his submission but if he's representing the prospective purchaser or the, the person who has the land under contract then I, I'll, I'll need to represent his views or his, his ...

**BURKE:** Well, certainly the bits you read me referred to the land and the subdivision of it, do you remember?

**HUDSON:** Yep but obvious, obviously

**BURKE:** Yeah.

**HUDSON:** *there, there's agreements and contracts and all that sort of stuff which are, are binding on that landowner with, with the purchaser and there's obviously contracts*

*which are binding on prospective residential lot buyers, uhm, with, uh, [Mr A] as well. So I, I've got to network this web of, you know, contracts and agreements.*

**BURKE:** *Oh, mate, what there is, what there is is [Mr A] trying to force this old man who's seventy-six to sell him lot twenty Kingsway when, uh, he doesn't want to sell it to him and when the contract of sale is dodgy. Now, that's none of your business*

**HUDSON:** *Mm hm.*

**BURKE:** *etcetera, but what is the business of the council is that if it writes to an owner and the owner then is presented as being part of an objection when in fact the owner is, uh, uh, in a position that, uh, is opposite to the position taken by the objection then it's almost a bloody police matter in my view. I don't think that's fair.*

**HUDSON:** *Yeah. Well, what, I mean what*

**BURKE:** *Anyway*

**HUDSON:** *Yeah, what, what I'll need to do, I'll need to, it'll need to go to council, Brian. Uhm, it'll, and in, and in that I'll clarify that, you know, uh, the Koltasz submission doesn't represent the current landowner's position and in fact the current landowner supports the proposal and say whatever, you know, this letter is that you're going to give me.*

**BURKE:** *Yeah.*

**HUDSON:** *Uhm*

**BURKE:** *I'll send it in to you.*

**HUDSON:** *Yeah, and then I'll obviously get the represent*

**BURKE:** *I'm going to put a point of view to Roman that because of this it shouldn't have to go to council.*

**HUDSON:** *Yeah, yeah. Okay, well that, that's fine. You can do that with Roman, yeah.*

**BURKE:** *That's up to him, yeah.*

**HUDSON:** *But obviously I'm, I, I'm going*

**BURKE:** *Oh, yeah, I know.*

**HUDSON:** *...*

**BURKE:** *Sure.*

**HUDSON:** *Yeah.*

**BURKE:** *Okay.*

**HUDSON:** *Mm, okey doke.*

**BURKE:** *Sorry about this, Mike.*

**HUDSON:** *No, that's alright, Brian.*

**BURKE:** *See ya.*

**HUDSON:** *Okay.*

**BURKE:** *Ta ta.*

*(To Salpietro): Hello?*

**SALPIETRO:** *Brian?*

**BURKE:** *Yeah. You there?*

**SALPIETRO:** *Yeah. I, I think, I think you, I think you should talk to, to Roman and, uh, and if you want I can have a word with him too. I, I'd like to know why, why it's got to go to council. If there's only one objection and, and the one objection is a misrepresentation.*

**BURKE:** *Yeah, that's right.*

**SALPIETRO:** *And, you know, and the ward councillors are not against it, don't want it to go to council.<sup>373</sup>*

[576] Mr Salpietro rang Mr Burke on 19 April 2006 to tell him that he had spoken to Mr Peake in planning at the City of Wanneroo. Mr Peake said he was confident he would know by the end of the week whether the application could be decided by delegated authority or whether it had to go to Council.

**SALPIETRO:** *He, he's fairly confident he should have an answer by the end of this week. Uhm, and, and the answer will be as to whether he approves it under delegated authority whether, whether that cause there's some little flaw or something it's got to come to council.*

**BURKE:** Right.

**SALPIETRO:** But, what he won't do, at all, is refuse it.

**BURKE:** Good.

**SALPIETRO:** The only two things he'll be doing is either approve it, under delegated authority or come to the council.

**BURKE:** Right.

**SALPIETRO:** Yeah.

**BURKE:** Oh that sounds positive, doesn't it?

**SALPIETRO:** Yeah, yeah, yeah. It sounds good. He was uhm, ah, he was quite, he was quite positive. He spoke to me too.

**BURKE:** Good.

**SALPIETRO:** Yeah.

**BURKE:** Well I've got a meeting with Roman next Monday.

**SALPIETRO:** Okay.

**BURKE:** So maybe even if we can get to Roman and, if we can do it under delegated authority it would be good.

**SALPIETRO:** Yeah that, yeah that, if it's done that way, it, it definitely will be much better ...<sup>374</sup>

## 7.7 Mr Salpietro and Council Voting on Mr Smith's Application

[577] Eventually it was determined that the matter should in fact go to Council. A week later, during a telephone call which covered a range of issues, Mr Burke told Mr Salpietro, "I desperately don't want to lose this one, I don't want [Mr A] to beat me on this Smith thing". Mr Salpietro assured him that he wouldn't, and went on to discuss which of the councillors might be supportive.

**SALPIETRO:** The councillors that are gonna vote against

**BURKE:** Yeah.

**SALPIETRO:** the R forty will probably be [suppressed].

**BURKE:** Yeah.

**SALPIETRO:** Now I'm not sure if, if you want to talk to [suppressed] and talk to [suppressed].

**BURKE:** I'm gonna talk to [suppressed].

**SALPIETRO:** Okay, because [suppressed] tends to follow Alan.

**BURKE:** Can he influence [suppressed]?

**SALPIETRO:** No.

**BURKE:** He can't.

**SALPIETRO:** Don't even try, no, no, let, let Alan go, go because Alan is a, is a lunatic.

**BURKE:** Yeah.

**SALPIETRO:** Yeah, don't even try, try and be at the meeting but, but, but uhm, ah, [suppressed] we need.

**BURKE:** Yeah.

**SALPIETRO:** And then, then you would have, myself

**BURKE:** Yeah.

**SALPIETRO:** Brett, Mark, Frank, [suppressed], Ian, ah I'll get Rudi, that's seven ah, and, and we'll probably get Laura that's eight. You know and that's all we need.

**BURKE:** How many you've got on the council?

**SALPIETRO:** Well we got fifteen in total.

**BURKE:** Yeah.

**SALPIETRO:** Including Jon.

**BURKE:** Yeah.

**SALPIETRO:** I, the, I'm not sure if Jo-, did, did [suppressed] give Jon any money for the, that he's declared?

**BURKE:** Yeah he might have I think

**SALPIETRO:** Yeah.

**BURKE:** I don't, don't know. I, I, the answer is I don't know.

**SALPIETRO:** Yeah if he did, if he did he'd probably have to declare an interest but it wouldn't matter because it's still eight, even if, even if there's fourteen there you still need eight, if there's fifteen you still need eight.

**BURKE:** *What's [suppressed] likely to do?*

**SALPIETRO:** *Eh?*

**BURKE:** *What's [suppressed] likely to do?*

**SALPIETRO:** *I don't know he's quite ill at the moment.*

**BURKE:** *Is he?*

**SALPIETRO:** *Yeah, uhm, he should be back at work by the uhm, I, I'm not really sure if he's ill or whether, or whether it's finding, he's finding some sort of excuse at the moment not to provide this information to the freedom of, of ah, under the FOI.*

**BURKE:** *Yeah he's under a bit of pressure.*

**SALPIETRO:** *Yeah, yeah.*

**BURKE:** *Well mate I just don't want, look, it is just a very very unworthy thing for [suppressed] to be able to go and do what he's done you know.*

**SALPIETRO:** *No but, but, but uhm, what Roman, what Roman didn't say, it's one thing for ah, for people to put a, to put objections up, but normally the administration's objections, sorry, the administration's comments will, will deal with the objection and*

**BURKE:** *Yeah.*

**SALPIETRO:** *normally, normally they've been straight to the ... quite balanced and quite objective.*

**BURKE:** *Yeah.*

**SALPIETRO:** *They wouldn't take much from bloody [suppressed]. [suppressed] [has] got a terrible name at the City you know.*

**BURKE:** *Oh he's a prick [suppressed] mate.*

**SALPIETRO:** *Yeah.*

**BURKE:** *and he's, he's crucifying this old man.<sup>375</sup>*

[578] This conversation was sandwiched between Mr Burke's offers to assist both Mr Salpietro and Mr Zagwocki.

**BURKE:** *Uhm, how did Roman and Rod pull up out of our meeting? Were they resentful at all?*

**SALPIETRO:** *No, no at all, at all. Roman, I mean, Roman, Roman thinks a lot of you, to tell you the truth, but I didn't have a chance to talk to Rod but, but, ah, but Roman, I mean, as I've said to you, Roman's got his eye on the, you know on the private sector*

**BURKE:** Yeah.

**SALPIETRO:** *sometime, sometime in the future and he sees, and he sees your help as quite crucial in it so.*

**BURKE:** *Well drop the word to him that I mentioned if he ever does decide to go to the private sector I'm happy to talk to him*

**SALPIETRO:** Yeah yeah yeah I will, I will ...<sup>376</sup>

[579] Mr Burke then raised the issue of Mr Salpietro's ambition to become Mayor of Wanneroo.

**BURKE:** *Well mate all you need to do is concentrate on getting this fucking thingamajig.*

**SALPIETRO:** Yeah.

**BURKE:** *Er mayoralty under your belt for, what, how long's the term, four years?*

**SALPIETRO:** *Four years and then I, I only ...*

**BURKE:** *Well mate the next election was eighteen months away.*

**SALPIETRO:** Yeah.

**BURKE:** *That'll mean you're sixty-two and a half or whatever.*

**SALPIETRO:** Yeah.

**BURKE:** *Four years after that is sixty, rising sixty-seven, that'll do you.*

**SALPIETRO:** Yeah, yeah. I only want one term, that's all.

**BURKE:** Yeah.

**SALPIETRO:** Yeah just one term

**BURKE:** Yeah.

**SALPIETRO:** And I'll sit back and look after my grapes.

**BURKE:** *I think we can fix that, I think we can fix that alright.*<sup>377</sup>

[580] On 9 May 2006, with the Council Briefing session scheduled to occur that night to consider, amongst other business, Mr Smith's application to upcode his land in Darch, Mr Burke contacted Mr [suppressed], a Councillor at Wanneroo. Mr Burke did not identify Mr Smith as his client. He repeatedly described him as an "old man" he "tried to help", who had been firstly duped into buying land that was taken off him for a school site, and who then was made to sign an offer and acceptance by Mr A in a land deal that was now in a legal dispute. Mr Burke presented the idea that upcoding Mr Smith's current land holding in Darch was in effect a form of compensation for "the old bloke" losing the school block which had been coded for R40. Mr Burke did not mention that he had assisted Mr Smith in his successful compensation bid against the Department of Education which Mr Smith said resulted in him being paid \$7.6 million.<sup>378</sup>

[581] Mr Burke told [suppressed] that [Mr A] was using the objection to "put pressure on the old bloke over this contract to sell Lot 20", and asked for his help to get Mr Smith's application through at the meeting that night: "... anything you can do to help get this bloke through because [Mr A's] a real bastard you know".<sup>379</sup> He suggested [suppressed] call Mr Salpietro to find out the agenda item number for the matter.

[582] Beyond presenting that the upcoding would compensate Mr Smith, and that [Mr A] was a bastard, Mr Burke did not offer any grounds for [suppressed] to consider that the upcoding was in the best interests of the City of Wanneroo. [suppressed] responded by saying: "All right, yep. No probs. Yep ... All right so I'll have a ring around, Sam and call today". Mr Burke responded:

**BURKE:** *All right if you would, and anything you can do to help get it through I'd be really really grateful.*

**[SUPPRESSED]:** *Yeah not a problem Brian, I'll get do whatever I can, I'm not sure what I can but ah I'll have a word with Sam and he'll put me straight on what's going on won't he?*

**BURKE:** *Yeah, he'll put you straight and Roman's recommended it strongly too.*

**[SUPPRESSED]:** *Roman has, that's great.*

**BURKE:** *Yeah.*<sup>380</sup>

[583] Within half-an-hour Mr Burke telephoned Ms Guise MLA, Wanneroo. After a lengthy discussion about politics, and providing her with information "in strictest confidence" about the machinations of a particular union, Mr Burke then told Ms Guise that [suppressed] was a strong supporter of hers. He said that [suppressed] was often on to him to say that "if there is any fall out we've got to keep certain people and [she] was at the top of [suppressed] list". They both agreed that she could trust [suppressed]. Then Mr Burke asked for her help:

**BURKE:** ... There's one other thing I wanted to ask your help on ...

**GUISE:** Yes

**BURKE:** And that's this ... um, it's a little bit of an involved story so have you got a minute for me? <sup>381</sup>

[584] Mr Burke described Mr Smith's history in relation to the school site. This time he mentioned that he had negotiated a compensation claim for Mr Smith, however he then portrayed the situation thus:

**BURKE:** Now, Mr Smith came to see me and I negotiated the compensation for the school from the Education Dept and then what happened was that he had a block, Lot 20 in Kingsway, and I went to the council and I said look, this man has been severely disadvantaged as a result of the advice he got from the council plus some sharp real estate people...and he bought this land which has now been taken off him because the council said the school was being shifted. So I said that's all fine but what we want to do is apply for an upcoding to R40 so that the zoning on the school site can be shifted on to his land...and Roman Zagwocki said yep that's fine, it all made good sense, it's consistent with Alannah's policies and in the end what happened was that he put in a subdivision plan which only had 18% of the land at R40 anyway. Dianne the rest ...

**GUISE:** Yeah

**BURKE:** was all ... R20. So that all went fine and then I went away and he fell into the clutches of a man called [suppressed], ah, sorry, [Mr A].

**GUISE:** All right

**BURKE:** Now this [Mr A] came to see him and got him to sign an offer and acceptance to sell his land at Lot 20 and of course, I won't go into all the details but

**GUISE:** Bloody hell

**BURKE:** a matter of a court case...and Mr Smith owns other land over the road and in

*respect of that land he's he's put an application to upcode to R40 again... On the same basis that there's R40 provided for in the structure plan on the school site which isn't being used.*

**GUISE:** Yep, yeah

**BURKE:** *Now that's fine and Roman Zagwocki and every – none of the ward councillors object, and Roman Zagwocki has recommended to the meeting – they're having the informal councillors briefing meeting tonight*

**GUISE:** Yeah

**BURKE:** *and he's recommended to the meeting yes, it's perfectly proper but there's an objection been received from [Mr A]*

**GUISE:** Oh, oh, hoh!

**BURKE:** *Oh, and [Mr A's] using this objection to try and put pressure on Mr Smith to, to pull out of the court case, you see?*

**GUISE:** Oh ho oh hoh!

**BURKE:** *So I'm, I've been to Roman, I've explained to him, I've explained it to him, I've spoken to Jon Kelly, I spoke to Sam Salpietro, I spoke to [suppressed]*

**GUISE:** Yep

**BURKE:** *and I've explained it all to them and Roman as I say has recommended strongly in support of Mr Smith's application but with [Mr A], Dianne you never know what*

**GUISE:** Yeah

**BURKE:** *he gets up to you know?*

**GUISE:** No. Obviously

**BURKE:** Yeah

**GUISE:** Bloody hell.

**BURKE:** *I just wanted to ask you if you might just take ten minutes today ... to speak to any councillors you might know ...*<sup>382</sup>

[585] In the end Ms Guise agreed to “speak to some people” for him. Mr Burke told her he would be very grateful.

[586] Following the Council Briefing session on the evening of 9 April 2006, Mr Salpietro informed Mr Burke the next day that it went as he had expected, that the persons he thought might query it did. Mr Burke asked if [suppressed] had supported it and was told that he would next week at the Council meeting. Mr Burke told him that Ms Guise “was gonna speak to some people ...” for him.<sup>383</sup>

[587] On 12 May 2006 Mr Salpietro telephoned Mr Burke and they discussed Mr Smith’s application. Mr Salpietro reassured Mr Burke that he wouldn’t “lose the Smith thing” because there would only be two councillors against it. Mr Burke made a point of saying that he had done nothing wrong and that he wasn’t asking for any favours.<sup>384</sup> That evening he briefed Ms Guise, saying that the Council Briefing went well and there shouldn’t be any problems. He then went on to discuss with Ms Guise that he felt she should run for Speaker instead of Minister, and that she should start making that known now so that she could garner the support she would need, and gather the commitments that she could call on later.<sup>385</sup>

[588] On 16 May 2006 the Proposed Amendment No. 16 to upcode Mr Smith’s land was unanimously approved by Council. Shortly after the meeting Mr Burke rang Mr Salpietro to find out the result. It was a call he insisted on being secret:

**SALPIETRO:** *Hello.*

**BURKE:** *Yeah Sam, it's Brian.*

**SALPIETRO:** *G'day Brian.*

**BURKE:** *Sam ah, I, you needn't identify it's me but I just wondered how everything of Smith's went?*

**SALPIETRO:** *Yeah, no problem.*

**BURKE:** *Good on ya.*

**SALPIETRO:** *Yeah, yeah. It's gone through.*

**BURKE:** *Thanks mate.*

**SALPIETRO:** *Okay Br-*

**BURKE:** *Yeah.*

**SALPIETRO:** *I'll talk to you soon. Yeah, ta ta.*

**BURKE:** *Good on ya mate. Ta ta.<sup>386</sup>*

[589] When asked during a Commission hearing why he was concerned about being identified in this call, Mr Burke claimed that he wasn’t aware where

Mr Salpietro was so he didn't think it wise for whoever he was with to know that Mr Burke was calling. Mr Burke denied knowing that Mr Salpietro had just come out of a Council meeting, and that he wanted to make sure that the other councillors weren't aware Mr Salpietro was talking to him.<sup>387</sup>

[590] Mr Burke then rang Mr Smith after his call to Mr Salpietro to tell him the news:

**SMITH:** *Hello.*

**BURKE:** *Yeah it's Brian Burke Mr Smith.*

**SMITH:** *Oh hello Mr Burke how did it go?*

**BURKE:** *Yeah we won.*

**SMITH:** *The lot?*

**BURKE:** *Yeah.*

**SMITH:** *Did you?*

**BURKE:** *Hundred percent.*

**SMITH:** *Oh my god there's an effort. How did you get it through with those*

**BURKE:** *I don't know, we did.*

...

**SMITH:** *That's one of the major battles you've won.*

**BURKE:** *Yeah it is it's a good one.*

**SMITH:** *Oh god that's great and, and if you think nobody else will get it.*

**BURKE:** *Well I'm going to try and make sure that they don't.*

**SMITH:** *Uhm uhm.*

**BURKE:** *I don't see why we should be helping the Tilbooks for anyone.*

**SMITH:** *No, definitely not.*

**BURKE:** *Na.*

**SMITH:** *No.*

**BURKE:** *Let's see what happens with it but I'm not going to be pushed.*

**SMITH:** *Oh no no.*

**BURKE:** Mm.

**SMITH:** And how about [Mr A], has he had any land around

**BURKE:** I don't know.

**SMITH:** that he wants to get?

**BURKE:** I don't know, I don't know. I'll hear from him sooner or later he'll have a problem that he wants fixed.

...

**SMITH:** But err I just thought that he might I, I don't know how powerful he is with the council.

**BURKE:** Not at all.

**SMITH:** City of Wanneroo?

**BURKE:** Not all.

**SMITH:** Is he not?

**BURKE:** Nah.

**SMITH:** Wouldn't you think he's have have the

**BURKE:** Oh he's tried but we've been able to

**SMITH:** ...

**BURKE:** occupy that position and err one of the reasons we got this through tonight was because they wanted to tell him that he shouldn't be carrying on the way he does.

**SMITH:** That is good.

**BURKE:** He'll be very upset.

**SMITH:** Mm.

**BURKE:** Anyway, I'm pleased.

**SMITH:** Having, having had their objection and, and having lost on that it might tell him something.

**BURKE:** Yeah, hope so.<sup>388</sup>

[591] When they spoke on 17 May 2006 Mr Salpietro discussed how the meeting went:

**BURKE:** *Secondly thanks for Mr. Smith last night, was there much opposition?*

**SALPIETRO:** *Nothing, no.*

**BURKE:** *Good.*

**SALPIETRO:** *What I did, I had a quiet word with [suppressed] before hand to talk to Alan Blencowe and, and err we talked him into not, not er opposing it. Jon, Jon wasn't there and that probably convinced Alan Blencowe not to say anything against. If Jon had been there he would voted against it.*

**BURKE:** *Yeah, good. Well the other thing is this, that uhm maybe, I'll talk to you later, but maybe that's the end of the R Forty in that area I think.*

**SALPIETRO:** *Er, yeah. I mean, er th-that to me I suppose from the, from an infrastructure point of view that that wouldn't worry me but ...*

**BURKE:** *No, me either.*

**SALPIETRO:** *Yeah but, but if we*

**BURKE:** *But nasty bastards who object to other people shouldn't be comforted.*

**SALPIETRO:** *Yeah, Yeah, I think, I think the argument that we used for this one which was basically a replacement of bringing it up at par again*

**BURKE:** *Yeah.*

**SALPIETRO:** *would hold, would hold for the additional applications anyway.*

**BURKE:** *Yeah.*

**SALPIETRO:** *Say well you know we, we're back to the same level that we were when we approved the ...*

**BURKE:** *That's right.<sup>389</sup>*

[592] Two issues arise from Mr Salpietro's conduct in this aspect of the processing of Mr Smith's application:

- Mr Salpietro contravened the City of Wanneroo's Code of Conduct by indicating how he would vote prior to Council's deliberations; and
- Mr Salpietro failed to disclose his association with Mr Burke.

## 7.8 Mr Salpietro: Code of Conduct

[593] The City of Wanneroo Code of Conduct, as with all local government authorities, is informed by the DLGRD *Local Government Operational Guidelines*, Number 01 of May 2000, entitled *Disclosure of Interests Affecting Impartiality*. Guideline Number 01 provides an explanatory rationale and definitions of the issues that local councils should address in their respective codes of conduct.

[594] The issue of impartiality must by law, be addressed in each council's code of conduct. The City of Wanneroo acknowledges this. Its Code of Conduct which relates to the matters discussed in this report was adopted on 9 April 2002. It states that the obligation for employees to adhere to the Code of Conduct arises from "the contract of employment and breaches can have implications for continued employment".

[595] For elected members the obligation to "observe both the spirit and letter of the Code" comes from the individual declaration of office:

*... declare that I take the office upon myself and will duly, faithfully, honestly, and with integrity, fulfil the duties of the office for the people in the district according to the best of my judgment and ability, and will observe the code of conduct adopted by the City of Wanneroo. Under section 5.103 of the "Local Government Act 1995".<sup>390</sup>*

[596] The Code of Conduct describes the declaration as imposing "a strong moral obligation on elected members to observe the Code".<sup>391</sup> The Code does not address what action is to be taken if elected members breach the Code.

[597] Guideline Number 01 defines an interest affecting impartiality as an:

*interest that would give rise to a reasonable belief that the impartiality of the person having the interest would be adversely affected but does not include an interest as referred to in Section 5:60.*

It is then stated at [8] in the Guideline that:

*The important element of the above definition is the likely public perception as to whether there may be an interest.<sup>392</sup>*

[598] The Guideline recommends that two questions be asked to decide if such an interest should be disclosed.

- *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?*<sup>393</sup>

[599] The Guideline states that the existence of an interest affecting impartiality is dependent on:

- *the member or employee having an association with a person or organisation that has a matter being discussed at a council or committee meeting; and*
- *the type of matter being discussed at a council or committee meeting.*<sup>394</sup>

[600] The rationale offered by the Guideline is that the Regulations were developed to address the concerns raised by the Royal Commission into the City of Wanneroo that identified "... a weakness in the Act [LG] which meant that members and employees of the City were not required to disclose interests of a non-financial nature which arose when they voted or made reports on applications put forward by family, friends or groups with which they had some form of association ...".<sup>395</sup>

[601] The Guideline goes to some extent to describe situations where friends and associates would be considered to affect impartiality, either negatively or positively. Mr Salpietro's position as a long-standing friend of Mr Burke leaves no doubt that he should have declared an interest affecting impartiality whenever he dealt with matters that were under consideration by the Council or the City Administration, in respect of which he had been dealing with Mr Burke.

[602] Guideline Number 12 addresses elected members' relationships with developers.

*This guideline is to be considered in conjunction with other publications relating to the governance practices of local government that need regular and detailed understanding by, and reinforcement with, elected members.*<sup>396</sup>

[603] It is stated in this Guideline that to "protect the openness and transparency and perceived probity of council's decision-making, elected members must understand the limitations on their decision-making role in relation to development applications" and that "they should also avoid situations where they become too close to a development proposal, an applicant or objectors". The purpose of the Guideline is to "alert elected members to the risks associated with their role as a decision-maker on development applications and to provide guidance on those areas of risks".<sup>397</sup> It warns that any "involvement that an elected member has with a development application during its assessment has the potential to damage the integrity of the final determination. It is therefore important that elected members

refrain from public comments that could be construed as support or opposition of an application".<sup>398</sup>

- [604] While the Guideline encourages opportunities for developers to present their case to council staff and elected members, it states that a clear distinction must be made between "the task of staff assessing an application and the task of council determining an application ... and also ensure that those determining applications are not able to direct or unduly influence those carrying out the assessment and vice versa".<sup>399</sup>
- [605] Similarly, contact with lobbyists is accepted and encouraged as a part of the democratic process. The Guideline points out that problems arise when members are asked to consider factors other than the appropriate matters that need to be considered, and therefore elected members need to "understand the difference between appropriate and inappropriate lobbying and the risks associated if they fail to resist inappropriate lobbying".<sup>400</sup>
- [606] Crucial when considering the actions of Mr Kelly and Mr Salpietro are [15]-[16] of Guideline Number 12:

*The occasion may arise when two or more elected members are approached by a developer or applicant to meet in an informal manner to discuss the proposal and gauge their reaction to certain aspects of the development. Such meetings risk the independence of those elected members as impartial decision-makers and can lead to the developer or applicant adopting the view that what was agreed at the meeting had the approval of council. Modifications "agreed" to at such meetings can form part of the process for determining the application thus allowing for the impartiality of the elected members at the meeting to be questioned and hence the integrity of the final determination of council to be challenged.*

*Information gained by the elected members at such meetings should be made available to the professional staff and other members as soon as practical. To use such information in a way designed to compromise the debate or contradict staff reports would be improper and could jeopardise the eventual decision.*<sup>401</sup>

- [607] It is also stated in the Guideline that the "holding of informal meetings by councillors and staff with developers, especially where the developer or applicant provides hospitality, can ... allow for elected members to be accused of receiving inappropriate gifts or benefits". It is suggested in the Guideline that "attendance by [elected] members at such meetings [i.e., meetings between professional staff and developers] could be considered highly inappropriate and entail an improper incursion by the elected members into the role of the Chief Executive Officer (CEO) ...". The Guideline indicates that "[a]pproval of elected members attending such meetings needs to be at the discretion of the CEO ...".<sup>402</sup>
- [608] In addition, "[e]lected members should refuse an invitation they receive from developers to attend meetings between professional staff and the

developer" because, even if the elected member doesn't participate in discussion at meetings "... the mere presence of an elected member puts implied pressure on staff and otherwise inhibits a free and frank discussion with the developer". The Guideline states that the "integrity of local government will be improved where the role of the professional staff in assessing an application is clearly separated from the council's role of determining the application".<sup>403</sup>

- [609] The City of Wanneroo's Code of Conduct was developed from the DLGRD Operational Guidelines in the years following the Royal Commission into the City. Because Mr Kelly and Mr Salpietro were elected to the positions of Mayor and Deputy Mayor respectively post Royal Commission, it would be expected that they would have had knowledge of the problems about how the City conducted its business which prompted setting up of the Royal Commission. It is reasonable to expect that the recommendations of the Royal Commission and the publicity surrounding that Commission would have given them a heightened awareness of the need for transparency and ethical conduct.
- [610] Mr Kelly said he had not read the Guideline on relationship with developers until a week and a half before the Commission's public hearing on 13 February 2007.<sup>404</sup>
- [611] Mr Salpietro told the hearing that he couldn't remember when he became aware of the Guideline, but said he was aware that the Guideline stated that it was unwise for councillors to meet with developers.<sup>405</sup> He said he was aware of the issue of inappropriate lobbying, admitted that Mr Burke had lobbied him, but denied that Mr Burke had offered him benefits or that he was influenced by those benefits when making his decisions. He was dismissive of the notion that Mr Burke's support would help him win the Mayoral election, stating that in fact he would probably lose him votes. When questioned why that would be so given Mr Salpietro had never hidden that Mr Burke was his good friend, Mr Salpietro said: "... just because he's a friend ... doesn't mean he's a vote-getter".<sup>406</sup>
- [612] Mr Salpietro said he was aware that indicating to a proponent how he would vote was contrary to the Guideline and admitted that he often indicated to developers how he would vote on their proposal before it was debated by Council. He equated this practice with "showing support", stating that it was a common practice at the City of Wanneroo. He also claimed this was done with full knowledge of the City's Administration. He seemed unconcerned that this was in conflict with the Guideline, and was dismissive of any implication this would have for a fair decision-making process, stating: "I'm sure if any knowledge or evidence or other factors come before them during the debate then naturally they probably have every right to change their votes".<sup>407</sup>
- [613] Mr Salpietro admitted in a Commission hearing that he did not disclose to other councillors that he had been lobbied by Mr Burke. When asked why he said: "... councillors decide any application on the merit of the development not who owns it, not who the consultant is ...".<sup>408</sup>

## 7.9 Public Officers are Approached to Block the Tilbrooks' Application

[614] Although Mr Smith's application was successful, Mr Burke continued to hold a grudge against the Tilbrook family and to carry out his threat to prevent them from getting their application for R40 approved by Council. In a Commission hearing Mr Burke was asked to clarify that conversation with Mr Salpietro on 17 May 2006:

**COUNSEL ASSISTING:** *Mr Burke, you were trying to influence Mr Salpietro to a view that that should be the end of the R40 in the area, weren't you?---Well, I was telling him that that was my view, certainly.*

*Yes, but you thought that view in fact might well become the council's view, didn't you?---I think it might have already been the council's view.*

*There's nothing to suggest that Mr Salpietro shared that view. He was saying, from an infrastructure point of view, it wouldn't worry him. Do you see that?---Yes, but you're incorrect.*

*In what regard?---The R40 that Mr Smith had succeeded in having on his land was R40 which was transferred under the structure plan of the city from the high school site which had been shifted onto Mr Smith's land.*

*I understand that?---And if you look at the transcript, you'll see there's a reference to "replacement".*

*I understand that?---That's replacement R40.*

*Yes?---So it was my view that we'd come to the end of the available R40 to replace that which was taken in the school site, or may have.*

*So the fact that, "Nasty bastards who object to other people shouldn't be comforted", had nothing to do with your position?---Yes, it did.*

*Well, what does that mean?---Well, that means I was really angry with the Tilbrooks for the way in which they had stood over Mr Smith.*

*Yes, and for that reason, you wanted to try and put impediments in their way of getting R40, didn't you?---Yes.*

*That's why you were suggesting this to Mr Salpietro?---Yes, that's true.*

*Clearly, there was nothing meritorious about resisting further R40, from a planning perspective?---Well, I'm not sure that's true.*

*Mr Salpietro wasn't giving you any reason to believe that. From an infrastructure point of view, it wouldn't worry him?---That's his view.*

*You didn't advance any point of view on merit. You only advanced a view that they were "nasty bastards"?---Well, I advanced that view but I'm not sure that I was presenting some comprehensive position.<sup>409</sup>*

[615] On 2 June 2006 Mr Burke contacted Mr Hajigabriel, the planner for the Tilbrook family, and was told that they had lodged their application for upcoding of their land to R40 about two weeks previously. Mr Burke had a suggestion:

**BURKE:** *Alright, well, you should, I'm not sort of cadging for work.*

**HAJIGABRIEL:** *No.*

**BURKE:** *But you should give some thought to perhaps retaining Julian Grill to assist you.*

**HAJIGABRIEL:** *Okay.*

**BURKE:** *The reason is this: that Mister Smith's went through*

**HAJIGABRIEL:** *Yep.*

**BURKE:** *But it wasn't without some uh, emerging view on the part of the Council that that was sort of enough R forty*

**HAJIGABRIEL:** *Is that right?*

**BURKE:** *Yeah.*

**HAJIGABRIEL:** *Yeah, I was afraid of that.*

**BURKE:** *I'm not saying, I'm not saying that, that, and there's no percentage in me telling you this, but*

**HAJIGABRIEL:** *Nah.*

**BURKE:** *I'm not saying they'll reject the application.*

**HAJIGABRIEL:** *Mmm.*

**BURKE:** *But perhaps your client should make sure he, in a belts and braces fashion.*

**HAJIGABRIEL:** *Yep.*

**BURKE:** *Tries to uh, ensure success of the application.*

**HAJIGABRIEL:** *Yeah*

**BURKE:** *So, I'll leave that with you.*

**HAJIGABRIEL:** *Okay*

**BURKE:** *Uh, and you can discuss it with Mister Tilbrook, but I'm sure Julian would be pleased to assist.*

**HAJIGABRIEL:** *Okay.*

**BURKE:** Uh, depending only on, on coming to some arrangement with Mister Tilbrook.

**HAJIGABRIEL:** Sure, of course.<sup>410</sup>

[616] Mr Burke was asked about this call in the Commission's hearing on 20 February 2007.

*Indeed, you believed you had in fact put an obstacle in the way of the Tilbrooks' application, didn't you?---When?*

*Well, on 2 June you had this call, 334, with the Tilbrooks' planning consultant.*

...

**COUNSEL ASSISTING:** *Can we bring the transcript of 334 up please?*

*Now, Mr Burke, you clearly understood that Mr Hajigabriel was the planning consultant for the Tilbrooks?---Yes.*

*You rang him on this day, 2 June, and that follows the call that I previously played you with Mr Salpietro on 7 May where you had said objectors should not be rewarded. In this call then on the second page, you can see that you say, "George, re the Tilbrooks, if you haven't already - when will you be lodging their application for R40"? "We've lodged it", and then you say at the foot of the page, "All right. Well, you should - I'm not sort of cadging for work but you should give some thought to perhaps retaining Julian Grill to assist you", and then, over the page you say, "The reason is this, Mr Smith's went through but it wasn't without some emerging view on the part of the council that that was, sort of, enough R40". Isn't it the fact that that was in fact a view that you had encouraged Mr Salpietro to come to?---Well, I'd certainly asked Mr Salpietro to slow down the Tilbrooks' application.*

*Yes. You clearly, by this stage, had some belief that was going to be the case, that it would take longer, that there was an emerging view at least that R40 perhaps was - that there was enough R40 and that might pose some difficulties?---I don't recall using the words, "There's an emerging view", but I do recall asking Sam Salpietro and John [sic] Kelly to slow down the application.*

*Yes. Mr Kelly has told us you spoke to him as you were finishing a lunch. Do you recall that occasion?---Only very vaguely.*

*And that you asked him to slow down or defer the application of the Tilbrooks. Is that right?---Yes.*

*He said that he indicated to you that he would but that afterwards outside, privately to Mr Salpietro, he said to Mr Salpietro, "That's something that we will not do". Now, do you recall that Mr Kelly said to you that he would do what you were asking him to do?---I don't really recall that, no.*

*Did you speak to Mr Salpietro on any other occasions than the one I have played you about the deferring or delaying the Tilbrook application?---I may have, Mr Hall, but I can't immediately recall that.*

*Can we listen to 339 please which is you speaking to Mr Salpietro on 7 June?*

*Start of TI transcript, exhibit 339:*

**BURKE:** *And listen mate, er I don't think that that R forty application that uhm, er, Tilbrooks have put in should be advanced quickly.*

**SALPIETRO:** *Yeah, I'd, I, uhm, it didn't come to council last night, anyway, that that*

**BURKE:** *They only put it in two weeks ago.*

**SALPIETRO:** *Ah, okay*

**BURKE:** *So, they'll be writing to the neighbours.*

**SALPIETRO:** *Yeah, yeah ah yeah, yeah, that, that's gonna be, that's gonna be quite a long time.*

**BURKE:** *I think so yeah.*

**SALPIETRO:** *Yeah, yeah.*

**BURKE:** *Okay.*

**SALPIETRO:** *Okay Brian.*

**BURKE:** *Good on ya Sam, thanks mate.*

**SALPIETRO:** *Right.*

**BURKE:** *Ta ta.*

*End of TI transcript, exhibit 339.*

**COUNSEL ASSISTING:** *Why did you think it should not be advanced quickly?---As I've explained before, the Tilbrooks had in effect blackmailed and stood over Mr Smith. They had said directly to me that they saw no objection to him having R40 except that they believed that they should first have R40 for their land and they said, "Our objection will persist unless you support our application for R40".*

*I understand that - - -?---And on that basis I became angry with the Tilbrooks and thought that they shouldn't succeed in standing over Mr Smith.*

*So there was no meritorious reason why you were saying these things to Mr Salpietro?---I hadn't looked at their application, Mr Hall.*

*No?---But I didn't think that - that I should be assisting them by conceding to their demands to support them.*

*Mr Smith had already got his R40 application through by this time. This is 7 June?---I think so, yes.*

*Yes, it happened on 16 May?---Yes.*

*It would seem that your anger in respect of the Tilbrooks was persisting over many weeks?---Well, they were associated with Mr [suppressed] - in my mind at least - and Mr [suppressed] was involved in a legal action that's continuing against Mr Smith.*

*What has that got to do with the Tilbrooks?---Well, my understanding - I always had the view that they and [suppressed] had certain designs or ambitions on development in that area and that if they could buy Mr Smith's land or somehow or other force him out of the scene, their ambitions would be advanced.*

*Did you believe as a result of these calls that you had with Mr Salpietro that your objective of having the Tilbrooks' application delayed or deferred was being achieved?---I didn't know.*

*Did you ever advance any reasons why - to Mr Salpietro - as to why that application could properly be delayed or deferred?---Beyond what's being played back today and the other today, I may have at some other time with Jon Kelly and Sam Salpietro at the time when you say lunch was held - I think it was a cup of coffee, not a lunch - I may have said to them then that, as I've said to you now, the Tilbrooks and [suppressed] had in my mind together, and certainly separately, taken steps to disadvantage Mr Smith.*

*I can understand why you say that, Mr Burke - - -?---Yes.*

*- - - and I can understand why you may have an adverse view?---Yes.*

*But that's not a proper thing for Mr Salpietro or Mr Kelly to take into account in considering the Tilbrooks' application, is it?---I don't know.*

*You don't punish people because you think that they have behaved improperly in the past, do you? Or do you?---Well, I certainly think that the Tilbrooks had applied to Mr Smith what was now being applied to them, but I don't know whether your view is that that's proper or Mr Tilbrook should be encouraged to do that. I - I don't know.*

*But you thought that was an illegitimate tactic on the part of the objectors, didn't you? You thought it was quite unfair that that had been done to Mr Smith?---To black - yes, to stand over Mr Smith; yes, I did.*

*Yes, but now you are saying that this was - to turn the tables back on them was an appropriate thing to do?---Well, I thought it was entirely appropriate in my mind not to reward their forcing of Mr Smith to support their project, which is what they did.*

*And that was an outcome that you thought you could achieve through your influence over Mr Salpietro?---I don't know that I thought that I could achieve it or not achieve it. I certainly put it forward.*

*Yes.<sup>411</sup>*

[617] Mr Burke certainly projected confidence that the Tilbrooks would have difficulty in getting their land changed to R40. When he told Mr Everett on 7 June 2006 that they had applied, he said that he thought they were going to have trouble. He asked Mr Everett not to say too much if he heard anything about the Tilbrooks' application.<sup>412</sup>

[618] He advised Mr Grill on 9 June 2006 that he had suggested that the Tilbrooks might wish to retain Mr Grill to assist with their application as “[t]hey will not have an easy time of it ... I think they'll start experiencing delays before too long”.<sup>413</sup>

[619] Mr Burke's confidence in his ability to influence the outcome of the Tilbrooks' application was arguably shored up by the apparent willingness of both the Mayor, Mr Kelly, and the Deputy Mayor, Mr Salpietro, to delay or impede the Tilbrooks' application. As evidenced in his phone calls with Mr Burke, at no stage did Mr Salpietro decline his request to delay the application, in fact he appeared to be offering the grounds on which the application could be declined by Council in his call on 17 May 2006 when he said "... I think the argument that we used for this one [Mr Smith's application] which was basically a replacement of bringing it up at par again ... would hold, would hold for the additional applications anyway ... [s]ay well you know we, we're back to the same level that we were when we approved the ...".<sup>414</sup> By this the Commission understands that Mr Salpietro was saying that Council could justify rejecting the Tilbrooks' application because Mr Smith's R40 effectively restored the number of R40 Lots in that area back to its original level before the Department of Education resumed Mr Smith's land for the school. Any further R40 would therefore increase the number of R40 Lots over what was originally planned for that area.

[620] Mr Burke mentioned preventing the Tilbrooks from obtaining R40 to Mr Salpietro on four occasions of which the Commission is aware. The first two were in the telephone calls that have been detailed above, on 17 May and 7 June 2006. In the third call on 13 July 2006, Mr Burke said, "... and Sam, can you remember to slow that Tilbrook thing down" to which Mr Salpietro replied, "Yep ... I think, I've gotta check, when is it going to advertising". Mr Burke and Mr Salpietro then agreed to talk about it prior to a meeting they were attending the following Monday.<sup>415</sup> The Commission does not have any evidence of what transpired during that discussion.

[621] Mr Kelly, in his evidence at a Commission public hearing on 13 February 2007, said he attended a meeting arranged by Mr Burke at a restaurant where Mr Salpietro was also present. Mr Kelly could not recall the exact date. However, his recall was that Mr Burke raised the issue of the Tilbrooks' application after the meeting where Mr Burke had introduced him to a client who was seeking to locate a retail business in Wanneroo. If Mr Kelly's recall is correct, according to information available to the Commission, this meeting most likely took place on 2 June 2006.<sup>416</sup>

[622] Mr Kelly said that as they left that meeting Mr Burke asked if he could do something for him:

... He said "The Tilbrook application, I want you to slow it down".

*I said "yes", and I walked out the door. The deputy mayor and I were parked on the western side of Villa Bianchi. We stopped and we talked and I said to the deputy mayor, "We don't do that". In fact I said that three*

*times. "We don't do that" The deputy mayor agreed that we didn't. A few weeks later I was approached by the deputy mayor again and I can't remember whether it was on telephone or in person but he said that he had had Brian on the phone to him and he was "off his rocker" in regards to the Tilbrook matter and I repeated to him that no, we don't do that, and to the best of my knowledge nobody has made any effort to slow down the Tilbrook application.<sup>417</sup>*

[623] Mr Salpietro didn't appear to recollect the incident at Villa Bianchi as described by Mr Kelly. His evidence at the hearing was:

**COUNSEL ASSISTING:** *We heard from Mayor Kelly that subsequently there was a discussion at a restaurant where Mr Burke said to Mr Kelly that he wanted Mr Kelly to delay the Tilbrook application. Now, you know who the Tilbrooks are of course, they are objector's to Mr Smith's application?---Yes.*

*Were you present when that was said?---I was at the restaurant but I cannot recall if I actually heard it from Brian there but I think Brian - I think Brian was talking to Jon a few feet away from me but Mr Burke did say the same thing to me on a different occasion.*

*In a telephone call?---Yes.*

*We have heard Mayor Kelly say that subsequently you came to him and said that Mr Burke was - I can't remember the exact words that he used but he was ---?---I think I said he was off the rails again or something.*

*Off the rails. All right. By that you meant what?---He was totally out of order and what I said to Jon that – that this simply should not happen.<sup>418</sup>*

[624] Mr Salpietro went on to say that he thought Mr Burke's reasons for wanting to delay the Tilbrooks' application were "nonsense", that he always looked at applications on their merit and had conveyed that to Mr Kelly:

**COUNSEL ASSISTING:** *It's pretty clear that Mr Burke wanted you in fact to delay it, to take some action to delay it?---Sorry?*

*It's pretty clear that that's what he wanted you to do, to delay it?---Yes.*

*And not for any good reason but because, in his words, these people shouldn't be rewarded for objecting to Mr Smith?---I think his reasons were nonsense. I would always look at any application based on the merit of the development and I made that view clear to John.*

*Well, they're not just nonsense, they are actually quite improper, aren't they?---Well, it's an improper suggestion, yes.*

[625] When describing how he dealt with Mr Burke's requests Mr Kelly said he was not inclined to confront Mr Burke<sup>419</sup> and it was his practice to ignore Mr Burke's emails.<sup>420</sup> Mr Kelly's response to Mr Burke's request to slow down the Tilbrook application appears to be an example of this.

[626] Mr Salpietro was asked why he did not refuse Mr Burke's request to interfere with the Tilbrooks' application. Mr Salpietro said he didn't tell Mr Burke his request was improper:

*Yes. Why didn't you say that to Mr Burke?---Because – I think I made the comment before and other people have made the same comment - Mr Burke is a very, very, very powerful figure within politics as well as business. I didn't think it would achieve any objective to actually argue with him. My best course of action when I didn't agree with something that Brian wanted was to totally ignore it.*<sup>421</sup>

[627] This seems to have been a common feature of dealings individual public officers had with Mr Burke, characterised by them acquiescing with his requests or agreeing to do things to support or advance his (client's) interests, yet later telling the Commission they did so only to mollify him and that they never had any intention of actually doing so.<sup>422</sup>

[628] From his response to the suggestion that Mr Burke took his silence on the matter as compliance and used it to his advantage, Mr Salpietro appeared not to have considered this as a factor:

*Well, you see, he made a highly improper suggestion to you and you say the approach was to ignore it but in this conversation he is left with the impression, by you not saying no, that in fact you might be going along with it. You say, "That's going to be quite a long time", and he says, "I think so, yeah?".---Well, if I can say that I probably - I'd probably be happier, you know, him thinking that something was happening and not do any more in any other direction, just leave it.*

*But you see by leaving him with that impression he might think that that has given him some power to use to his advantage in respect of other people?--*  
*-Well, Mr Hall, if in retrospect you are asking me as to whether that was the best thing I could have done perhaps in retrospect it wasn't. I should have told him to drop on his head.*

*I can tell you why it wasn't a good thing and, yes, there was something better for you to do, because Mr Burke in fact did use it to his advantage?---*  
*I'm sorry?*

*Mr Burke did use it to his advantage. He in fact rang the planning consultant working for the Tilbrooks ... this is between those two calls on 2 June 2006. This is what he did.*<sup>423</sup>

[629] Counsel Assisting requested that that telephone call be played (as at [615]).

[630] Despite Mr Burke's efforts to impede the process, the Tilbrook family's application to upcode does not appear to have taken an undue amount of time to be processed. The application which was lodged in late May 2006 was discussed in the Council Briefing session on 3 October 2006. There were two public submissions about the proposal, one in favour and one against. The briefing report included the recommendation of planning staff that the objection be dismissed at Council.

[631] On 10 October 2006 the Tilbrooks' application was passed by Council by a majority of 11 votes for and one against. The Mayor, Mr Kelly, chaired the meeting, Mr Salpietro was not in attendance. The Tilbrooks' application therefore took approximately five months to be decided by Council as compared to Mr Smith's which took about three months. It was approved by the WAPC on 29 December 2006.

[632] There is no evidence to suggest that either Mr Kelly or Mr Salpietro took any action to impede the Tilbrooks' application at any stage of the process. However, their acquiescence to Mr Burke's requests for their assistance to block the Tilbrook application raises serious concern about their ability to conduct themselves in a manner which is mindful of the possible consequences and ramifications of agreeing to do something which is improper if not more, even if they did not intend to carry out Mr Burke's request. Self, rather than public interest motivated their reluctance to refuse any request from Mr Burke.

[633] In addition, whilst claiming to appease Mr Burke, Mr Salpietro and Mr Kelly both nevertheless looked to Mr Burke for assistance and favours that would benefit them when the occasion arose. Given the long standing friendship between Mr Salpietro and Mr Burke it was not unreasonable for Mr Salpietro to turn to him for advice, or to discuss issues relating to Mr Burke's clients. The expectation on Mr Salpietro as a public officer was that he conduct those discussions mindful of his public responsibilities and without conducting himself in any way which could be seen to compromise that position. It is untenable that any public officer agrees to act unlawfully or unethically either overtly or tacitly out of fear of the consequences of refusing to do so.

[634] It also strains credibility for both men to claim that they always maintained an ethical boundary with Mr Burke, albeit an unspoken and secretive one, to ensure that they did not support his attempts to manipulate fair process or to carry out retribution, when the Commission's investigation shows that at the same time Mr Burke was making these requests, Mr Salpietro and Mr Kelly were also asking him for advice or help to achieve their goals. Rather than going to any lengths to avoid being compromised, or avoid the perception of being compromised, their relationships with Mr Burke were more symbiotic than they portrayed.

[635] One of the consequences of Mr Kelly's conduct was that he became one of the prominent public officers whose name Mr Burke used to further his influence, and to create the impression of having extensive contacts and influence within government agencies. By failing to overtly refuse to take part in thwarting the Tilbrooks' application, whilst seeking his help and advice for his personal goals, Mr Kelly's conduct created conflicting perceptions about how susceptible he was to engaging in, or at the minimum, condoning, misconduct or unlawful conduct.

[636] Whilst espousing that he was wary and reluctant to be a party to Mr Burke's discussions and strategies, Mr Kelly sought his assistance to resolve personal issues. In the same time frame that Mr Kelly said he was

avoiding furthering Mr Burke's vendetta against Mr Tilbrook, Mr Kelly sought Mr Burke's help to obtain a Lotto Licence for his private business.

## 7.10 Mr Kelly's Application for a Lotto Licence

[637] Mr Kelly's relationship with Mr Burke was mutually duplicitous. Mr Kelly described his attitude towards Mr Burke as one of caution and fear, and Mr Burke in turn voiced his poor opinion of Mr Kelly to Mr Salpietro and various others including members of the ALP – although that was certainly not how he presented himself to Mr Kelly. Notwithstanding the derogatory remarks he made about Mr Kelly to other people, all the calls between himself and Mr Kelly were courteous, with Mr Burke portraying himself as being helpful and willing to assist Mr Kelly where he could. At the same time he was not hesitant to use Mr Salpietro to impress upon Mr Kelly the danger of antagonising him. Both men sought to conceal or share information according to what each thought he could gain from the other.

[638] When Mr Salpietro telephoned Mr Burke for advice about a conflict between Mr Kelly and an ALP member, Mr Burke advised Mr Salpietro to tell Mr Kelly "before you threaten [suppressed] have a word to Brian because you wouldn't want to do something that made Brian angry with you because you'd have every fucken reporter in town up your arse with a microscope ... say to him ... I wouldn't do that er if I was you Jon, ah 'cos if you think [reporter's name] bad enough wait until you get fucken [second reporter's name] out there".<sup>424</sup>

[639] In spite of their mutual suspicions, Mr Burke became involved in Mr Kelly's efforts to secure a Lotto Licence for his private business which was a newsagency in a shopping centre in the City of Wanneroo. The two men offered contradictory accounts on how Mr Burke became involved, and the nature of that involvement.

[640] Mr Kelly, when asked about the Lotto Licence during a Commission public hearing, said that the issue came up at a meeting with Mr Burke at the restaurant Villa Bianchi in June or July 2006. He said that Mr Burke told him on several occasions that he could use his connections to assist Mr Kelly to get the Licence. Mr Kelly said that he had mixed feelings about whether Mr Burke had helped or obstructed him, and significantly, he believed that if his application had been obstructed it was most likely connected to the Tilbrook matter.

*All right. Can I ask you was there some interest of yours at this time in obtaining a Lotto licence for a newsagency?---Not at this time, no, but the issue of the Lotto licence arose at Villa Bianchi some time later in June or July.*

*Did Mr Burke indicate that he might be able to assist you in that regard?---He indicated on a number of occasions he may be able to assist me.*

*Did he say how he could do that?---He said he knew people and that he could be of assistance.*

*Was he?---I have mixed views on that. Initially I thought that may have been the case, but having followed the process through the answer is probably no.*

*Did he tell you whether he had in fact done anything to further your licence application?---No, he didn't. I probably need to explain a couple of things in regards to - regards to this and it probably also links to the Tilbrook issue which you will - you will raise later, but Mr Burke did offer to be of assistance and I said, "Yes, that would be" - you know, it'd be greatly appreciated, and I never followed it up. He offered again on a number of occasions and he never followed it up. Before commencing the process I had actually to [sic] Lottery West [sic] and had got some indication of the possible likelihood of success and what problems lay ahead of me. Soon after probably the second or third offer of assistance from Mr Burke, a problem arose with my lottery licence which I hadn't entirely expected. I had absolutely no evidence to prove it was the case but if you - you probably know my views - I took the view that perhaps Mr Burke was messing with my Lotto licence. I resisted for a number of months and then I eventually said yes. Within two weeks of the - me saying yes, the problem which had existed before had gone and we were back on the path we were before he had made his offer of assistance.<sup>425</sup>*

(emphasis added)

[641] Mr Burke's response to questions about Mr Kelly's Lotto Licence was:

*Mr Burke, Mr Kelly told us in evidence that you had offered to assist him with a lotto licence. Is that correct?*

---Yes.

*He also said that he declined your offer initially. Is that right?---Not to my recollection, no.*

*He said that after declining the offer some problems arose that he subsequently accepted the offer and those problems seemed to disappear. Do you know what he's talking about?*

---No.

*What did you do to assist him?---Mr Kelly sent me some information which I handed on to Julian Grill and I'm not sure what was done but I played no part in making any representation about that matter.*

*All right, but were you aware of what Mr Grill had done?*

---My recollection is that he hadn't done much, if anything.

*So there wasn't anything that you needed to advise Mr Kelly of in that regard?---I discussed it with Mr Kelly and Mr Kelly indicated that things had improved or his reception at lotto had improved, Lotteries West and I said, "Well, that's good", or words to that effect but I don't recall asking Mr Kelly to do any more except that he sent me some information and I replied to him and said, "After three months trading figures available then we will renew the representation", and that was on the basis I recall of him having been told by Lotteries West that they would need some trading performance.*

*I take it that the efforts that you put in or Mr Grill put in for Mr Kelly were not charged to Mr Kelly?---I don't know, I didn't do the charging.*

*All right, but what is your understanding? Was this a favour to Mr Kelly that you were doing?---I didn't have any understanding of that nature.<sup>426</sup>*

- [642] The Commission's investigation shows that Mr Salpietro first made Mr Burke aware that Mr Kelly owned a newsagency in their telephone call on 25 April 2006.<sup>427</sup> During this call, which covered a range of issues including Mr Kelly's political aspirations, there was no mention of the Lotto Licence.
- [643] Two days later, on 27 April 2006, Mr Burke, during a call about other issues, asked Mr Salpietro in a brief aside where Mr Kelly's newsagency was located.<sup>428</sup>
- [644] Mr Kelly's recollection of the discussion about the Lotto Licence was that it was first raised by Mr Burke after a meeting at the restaurant Villa Bianchi where he was introduced to one of Mr Burke's clients who had a current application before Council. The Commission is aware of two meetings attended by Mr Burke, Mr Kelly, Mr Salpietro and others at that restaurant, one on 12 May 2006, and the other on 2 June 2006. Given that Mr Salpietro discussed problems related to Mr Kelly's application for a Lotto Licence with Mr Burke on 7 June 2006, and the client Mr Kelly referred to had also been at that meeting, Mr Kelly appears to be referring to the second meeting. However, the following transcript of a telephone call from Mr Salpietro to Mr Burke on 7 June 2006 indicates that the matter may have been discussed at the earlier meeting on 12 May 2006.
- [645] Mr Kelly told the Commission that Mr Burke offered to assist him. The transcript below indicates that Mr Kelly had asked Mr Burke for his help:

**SALPIETRO:** ... Oh hi Brian, it's Sam

**BURKE:** Gidday Sam

**SALPIETRO:** Can you talk?

**BURKE:** Yeah I can

**SALPIETRO:** Yeah I just had a call from ah, from ah, from Jon Kelly

**BURKE:** Yep

**SALPIETRO:** all upset. Apparently the, the Lotteries Commission have told him that that ah they're bloody doing a review, of the shopping centres around the Brighton area, and they won't give him his his lotto lotto licence until until they give this bloody review. It sounds very it sounds very strange, they're saying they are considering the shopping centre at bloody Alkimos and

*bloody Alkimos isn't going to be built for about bloody ten years. Can you ...*

**BURKE:** *What's the matter with him? Why would he go, he asked me to do this for him*

**SALPIETRO:** *Did he?*

**BURKE:** *And now he's gone off doing it*

**SALPIETRO:** *Oh no, he's had the application in for months, when did he speak to you about it?*

**BURKE:** *He asked me about um, oh when we met with Graham Giffard and Quigley that time*

**SALPIETRO:** *Oh, oh I see, oh right yeah, yeah*

**BURKE:** *and he promised to send me some details*

**SALPIETRO:** *oh he, reckons*

**BURKE:** *now this has happened.*

**SALPIETRO:** *he said to me, he said to me he said look if you are going to have a word with Brian but tell him my computer's crashed or something and I've been trying to bloody send him ..you know send him some stuff, I'd I, all right should he give should he give you a call? Can you ...*

**BURKE:** *Oh I'm going away on Saturday Sam I, I won't be able to do it til I get back now anyway*

**SALPIETRO:** *That's right yeah*

**BURKE:** *but I did ask him three weeks ago you know?*

**SALPIETRO:** *yeah yeah*

**BURKE:** *I mean his computer can't have crashed for three weeks*

**SALPIETRO:** *that's right, yeah, typical, typical Jon Kelly so yeah*

**BURKE:** *I think he just thought he'd get the application, it'd probably go out okay and everything'd be all right*

**SALPIETRO:** *yeah yeah, I, I yeah I'll get him to bloody have a word with you, make a bloody arrangement for something when you come back that's all*

**BURKE:** yeah that's all right

**SALPIETRO:** yeah

**BURKE:** mm

**SALPIETRO:** okay Brian yep

**BURKE:** yeah just tell him to give me a ring if you want to, whatever's easiest for you and I'll just tell him that when I get back, if he sends me the gear when I'm away I'll try and sort it out for him

**SALPIETRO:** yeah, yep, Okay Brian.<sup>429</sup>

[646] In Mr Kelly's section 86 representations<sup>430</sup> it is submitted by his lawyer that Mr Kelly contacted Mr Salpietro to accuse Mr Burke (and to a lesser extent Mr Salpietro) of interfering with his Lotto Licence application. It is said that was why he was "all upset". Had that been his complaint to Mr Salpietro, there is no reason why Mr Salpietro would not have said that to Mr Burke. Further, Mr Salpietro said to Mr Burke that Mr Kelly had told him he had been trying to send something to Mr Burke when the latter mentioned Mr Kelly had promised to send him details. Neither the terms of this conversation nor Mr Kelly's subsequent interaction with Mr Salpietro and Mr Burke with regard to his Lotto Licence application support the submission.

[647] The Commission accepts that it probably was the case that Mr Burke had offered to be of assistance with Mr Kelly's Lotto Licence application and that he actively pursued the idea with him over some months. On the evidence it is apparent that Mr Burke saw that as an opportunity to create in Mr Kelly's mind a sense of obligation to him. That was reflected in his conversation with the developer on 16 August 2006, set out at [658] below. The same technique was explained to a client by Mr Grill on 1 September 2006, in the context of how assistance with fund-raising could be used to secure favourable treatment at a later date. It was discussed in the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: The Hon. Anthony David McRae MLA and Mr Rewi Edward Lyall*, 21 November 2008, at [236]. It is an illustration of the psychological theory known as the rule of reciprocity, which says that we should try to repay, in kind, what another person has provided us. One aspect of the rule is that a person can trigger a feeling of indebtedness in another by doing that other an uninvited favour.<sup>431</sup> The rule has been described<sup>432</sup> as one of the most powerful norms in all human cultures and one which applies to all behaviours within cultures. Particularly apposite to the present context is the example of a person who "... initially gives something to the target person, thereby causing the target to be more likely to give something in return. Often this "something in return" is the target person's compliance with a substantial request".<sup>433</sup>

[648] Although he may well have been cautious, even apprehensive, about Mr Burke's assistance in this regard, Mr Kelly certainly dealt with Mr Burke in a way which indicated he was accepting that assistance and was grateful for it. This of course enabled Mr Burke to say he was assisting the Mayor in that way. The Commission accepts that Mr Kelly continued to deal personally with the processing of his Lotto Licence application, but that was not to the exclusion of whatever assistance he thought Mr Burke could provide.

[649] A month later, on 3 July 2006, in a call to Mr Burke, Mr Salpietro mentioned to Mr Burke that Mr Kelly was spending time fitting out the newsagency and that he was upset about the delays in getting the Lotto Licence. Mr Burke asked Mr Salpietro to tell Mr Kelly to send him an email.<sup>434</sup>

[650] On 17 July 2006 Mr Burke telephoned Mr Kelly and asked him for information about the Lotto Licence issue.<sup>435</sup> A week later, on 24 July 2006, Mr Kelly emailed Mr Burke to thank him for his help.<sup>436</sup>

**From:** Jon Kelly [REDACTED]  
**Sent:** Monday, 24 July 2006 4:06 PM  
**To:** brianburke [REDACTED]  
**Subject:**

*Hi Brian,*

*Very sorry for the delay I must have used the wrong email address and it bounced back a few times.*

*Many thanks for your help. The most significant development in recent times is that the Merriwa Newsagency has recently purchased a non-performing lottery licence from another outlet. I do not see this as much of an issue as Merriwa is an inbound centre catering to a small local catchment. Interesting though, at the end of 2005 lotterywest did access [sic] Merriwa of having the potential for \$14000pw in lottery sales (\$16900 p/w is the magic figure). By implication Brighton which is located within the same main trade area and has the advantage of a significantly better location and one of the major supermarkets (Coles) must be accessed [sic] as having a much higher sales probability.*

*Many Thanks*

*Jon*

[651] Attached to this email was Mr Kelly's summary of details relating to the newsagency business, its competitors and trading figures.

[652] Mr Burke forwarded that email to Mr Grill for his advice the same day.

*Dear Julian*

*See this email from Jon Kelly, the Mayor of Wanneroo. I'm afraid this is a love job but I would appreciate your advice about his position*

*...*

[653] Mr Grill's email in response asked if they could discuss it later that morning.

[654] The Commission takes the reference to it being a "love job" as reflecting the fact Mr Burke saw a longer-term advantage to be gained from creating in Mr Kelly a sense of obligation towards Mr Grill and himself.

[655] The Commission's lawfully intercepted telephone calls show that Mr Grill was assisting another client with a Lotto Licence in April 2006, and had organised to meet with a representative from Lotterywest (Lotteries Commission) to resolve those issues on 2 May 2006.<sup>437</sup> Other telephone calls indicate that Mr Burke did not discuss this matter with Mr Grill until 20 July 2006 when he was present during a meeting at Mr Grill's house with Mr Grill's Lotto Licence client.<sup>438</sup>

[656] From the email exchange between Mr Kelly, Mr Burke and Mr Grill on 24 and 25 July 2006, it is apparent that although Mr Kelly was thanking Mr Burke for his help, Mr Burke had not yet done anything, and was referring the matter to Mr Grill for his advice, as a favour at no cost to Mr Kelly. On 25 July 2006 after Mr Grill's email to Mr Burke suggesting they discuss Mr Kelly's Lotto Licence issue, Mr Burke and Mr Grill met at Mr Grill's house. Mr Burke asked Mr Grill to call Mr Kelly about the Lotto Licence issue because it would be good "PR", and gave Mr Grill Mr Kelly's mobile telephone number.<sup>439</sup> The Commission has no information to suggest that Mr Grill contacted either Mr Kelly or Lotterywest in relation to this matter.

[657] Mr Burke continued to give the impression that he and Mr Grill were assisting Mr Kelly with the Lotto Licence.

**SALPIETRO:** *Hello.*

**BURKE:** *Yeah Sue- Sam?*

**SALPIETRO:** *Oh g'day Brian. How are ya?*

**BURKE:** *Did you, yeah good mate, did you ring me?*

**SALPIETRO:** *Yeah I-I was just wondering as to whether I- I'd ask Roman t-to uh ...*

**BURKE:** *Yeah it's all fixed.*

**SALPIETRO:** *Oh okay that's alright. Yeah.*

**BURKE:** *Yeah it's all fixed*

**SALPIETRO:** Yep yeah.

**BURKE:** and Sandy's gunna let you and Jon Kelly know. Can you see if Jon'll come to?

**SALPIETRO:** Oh yeah w-I'm with Jon now.

**BURKE:** Oh good.

**SALPIETRO:** I'll ask him. Yeah yeah yeah I'll ask him in a minute yeah. Oh good.

**BURKE:** Okay well I think uhm

**SALPIETRO:** That's that's

**BURKE:** I think Julian's been in touch with uhm Julian's been in touch with uhm the Lotteries Commission so I might have some news there shortly.

**SALPIETRO:** Oh good I'll tell him yeah, yeah.

**BURKE:** Yeah.

**SALPIETRO:** Okay, thanks Brian.<sup>440</sup>

[658] Transcripts of lawfully recorded conversations at a meeting on 16 August 2006 at Mr Grill's house between Mr Grill, Mr Burke and a prospective client demonstrates how Mr Kelly's acceptance of this favour from Mr Burke compromised Mr Kelly's professional reputation and the reputation of the City of Wanneroo. The developer appeared to be reluctant to contract a lobbyist to help progress his proposal through the City of Wanneroo Council because he felt he had established a good rapport with several of the councillors. Mr Grill and Mr Burke set about selling the idea of retaining them for the task, using several methods of persuasion, including the notion that Mr Burke had special relationships within the Council, including with the Mayor. In the first part of this conversation Mr Burke addresses comments to Mr Grill about the client in the third person, even though the client was present.

**LESLEY GRILL:** [suppressed] would you like tea?

**BURKE:** Well I just want to say ...

**CLIENT:** Ah black tea please. Thank you.

**BURKE:** Uhm. This is not a straightforward or easy case. [suppressed] belief that he's entitled to certain concessions as a result of things that happened in the past, are no more than a minor, minor moral persuasion on the situation. So that when I speak to [suppressed] or when I speak [suppressed]

as I've done, I did yesterday, ah to [suppressed], uhm I think we can achieve some success, but it won't be based on any legal entitlement that [suppressed] and his family have as a result of contributions or other things that they made during ah, previous years. The next thing is this, pumping this through the City of Wanneroo is not as straightforward as [suppressed] seems to think it is.

**GRILL:** Well [suppressed] when I spoke to him last week thought that that would be the easiest part of the drive.

**BURKE:** I think, well it will be the easiest part, but the degree of difficulty is still substantial in my view.

**GRILL:** Mm hm.

**BURKE:** How do I know that? I've spoken to four or five of the councillors [sic]. There are at least four councillors whose minds will not change unless their arms are nearly broken. Now I don't mean that literally I just mean

**GRILL:** No, no.

**BURKE:** you'll have to, I'll have to argue and persuade them. So that's four. Now, there are two or three that I wouldn't know about and then there are four or five who are guaranteed.

**GRILL:** Cos you thought there were about five or six at the wrong time.

**CLIENT:** Ah, I look at, at least six to seven. But I know the four which would be Wanneroo Central and ah, Southport [sic: South Ward]

**BURKE:** Southport, they're

**CLIENT:** Hard.

**BURKE:** ... structured now I might be able to get two of them.

**CLIENT:** And that's I've spoken to good block of the rest of them and they're all, very supportive.

**BURKE:** Yep. Let me give you, let me check this through. People like [suppressed] comes along to me and says now Brian I'd like to be a member of parliament. I said very good [suppressed] I think you'd be a very good member. You need to go and talk to all the people on the State Executive Labor Party. There's one hundred and one people. So [suppressed] goes off and he speaks to them and he comes back and say [suppressed] how did you go? And [suppressed] says, Brian I can't believe this. I have ninety-six out of one hundred and one promised. Promised.

**LESLEY GRILL:** (laughs)

**CLIENT:** Might still ...

**BURKE:** And I say [suppressed], I say [suppressed]

**GRILL:** (laughs)

**BURKE:** This is a true story.

**CLIENT:** ...

**BURKE:** I say [suppressed], are you sure they've promised? In ...

**GRILL:** (laughs)

**BURKE:** On their father's ... When the election came, do you know how many blokes [suppressed] got? Six.

**CLIENT:** Six?

**BURKE:** Six out of one hundred and one. That's, that's not a make-up story that's happened to a candidate. The story the lesson is this, people don't want to be rude.

**CLIENT:** No. No, no I understand. I understand what you are saying and it's always a surprise.

**BURKE:** When I spoke to [suppressed], [suppressed] who's a protégé of mine, okay? [suppressed] says Brian, I'm happy to talk to you about it but it will take a lot of arguments to change my mind. She didn't say I won't.

**CLIENT:** Mm.

**BURKE:** She just gunna say it's gunna have to be important to you to change my mind. So but Sam will tell you Sam, I, I'm not sure what Sam says cos I haven't discussed this with him.

**CLIENT:** No.

**BURKE:** But, on my, of my reading of the council is that there are at least four very difficult.

**CLIENT:** Yes.

**BURKE:** Five I think are positive and the others will require some work by Dianne Guise and some other people like this. That's what I think.

**CLIENT:** Yeah. I, I feel you are right on that form.

**BURKE:** You know.

**CLIENT:** And I mean Sam's advice to me is, I'll be wasting my time trying to convince all ...

**BURKE:** You want to bet me? I guarantee you'll get two of the four. If, if it's necessary.

**CLIENT:** Ah.

**BURKE:** If it's not necessary, then we'll let them be themselves.

**CLIENT:** Yeah.

**BURKE:** But if it's necessary to get two of their votes

**CLIENT:** Sure.

**BURKE:** you'll get two.

**CLIENT:** Sure. And, and I know that you're able to see.

**GRILL:** Oh this is the fax [suppressed] wrote on uhm, what we were talking about last week, because I, I think you were contemplating that would, we wouldn't be required to work on the council.

**CLIENT:** That's correct.

**GRILL:** *And that we may not be required to do any work ah for say two months. And is that right?*

**CLIENT:** *If, if there's no work required on the council yes two months there as I explained earlier was the explained to Julian was that if, assuming I got the numbers or, getting through for advertising.*

**BURKE:** *Yeah.*

**CLIENT:** *Advertising would take as a minimum twenty-eight days up to forty-five days.*

**BURKE:** *More likely to be forty-two days but*

**CLIENT:** *Yeah.*

**BURKE:** *twenty-eight days is the minimum I foresee yeah.*

**CLIENT:** *And that's gunna be, and officers might not write their report*

**GRILL:** *Oh.*

**CLIENT:** *and sit on the report for a month or so.*

**BURKE:** *Yeah.*

**CLIENT:** *Depending, I guess that's*

*...*

**CLIENT:** *And I, probably want to, ah I guess it's ready once we got the report now. Then I will have a better view on, how things that go in terms of I don't know how long will Roman and Rod Peake sit there before they start getting that ...*

**BURKE:** *Well, that's up to you. I'm not, my, first of all no one retains me as I've told you.*

**CLIENT:** *Yes.*

**BURKE:** *You have to do that arrangement with Julian*

**CLIENT:** *Yes.*

**BURKE:** *and, and I don't even need to be present when you do that. That's up to you two*

**CLIENT:** Yes.

**BURKE:** *you work that out. However, it is not in your interests to try to save whatever money you can save by presuming you can get to the stage of a council approval and advertising, unless you're one thousand percent guaranteed because*

**CLIENT:** *No, no there's no guarantee*

**BURKE:** *Well, in that case why, why would this*

**CLIENT:** *No, no. Let me explain to you where I'm coming from. The reason I said that was because I, I know both of you are busy.*

**BURKE:** Sure.

**CLIENT:** *I don't wish to interrupt or inconvenience you unnecessarily.*

**BURKE:** Yes.

**CLIENT:** *But it is good I mean if, if you reckon that you can go in, into play now. You know*

**BURKE:** Yes.

**CLIENT:** *by, by all means I think it's a good idea. At least then I can be the other players know that, you know.*

**BURKE:** *Well my advice to you is that we should be retained as soon as possible, on a monthly basis*

**CLIENT:** Yep.

**BURKE:** *so that, we can make sure firstly, Roman and Rod Peake don't sit on the report.*

**CLIENT:** Yes.

**BURKE:** *Secondly that they write the reports favourably as possible. And thirdly, that the council votes as strongly as possible in support.*

**CLIENT:** Sure.

**BURKE:** *Now that's important from [suppressed] point of view, because if the officers don't agree even if the council votes in favour, the officers ring up to DPI*

**CLIENT:** Yeah sure.

**BURKE:** and they say this stupid council

**CLIENT:** Yeah.

**BURKE:** has done against what we said.

**CLIENT:** ... helpful.

**BURKE:** Oh we had this sort of thing on the Drover's Place structure plan where ah, where that man called uhm Ray Jackson and ah ah

**CLIENT:** Sixth ... one, thank you. (laughs)

**BURKE:** The council voted in favour of the structure plan, and then the DPI caused all the problems and I found out because Roman and Rod Peake rang the council, rang the DPI.

...

**GRILL:** But I know this area you're relying, largely on as I mentioned the other day, largely on Brian's influence.

**CLIENT:** Oh yes.

**GRILL:** Yeah.

**CLIENT:** That's really his area.

**GRILL:** No if Brian doesn't want to do the job [suppressed], I couldn't do it.

**CLIENT:** Yeah I appreciate it.

**BURKE:** The other thing you've got to you remember, the problem that Jon Kelly's come to see us about?

**GRILL:** Yeah.

**BURKE:** We need to bring him in to talk about his problem we'll talk about this as well you see.

**GRILL:** Okay.

**BURKE:** So we fix up his problem for him and then ask his support on this on a fair basis you know.

**GRILL:** Mm. Okay ...

**BURKE:** Jon Kelly, he's got this ...

**CLIENT:** Is ...

**BURKE:** taking over a newsagents, this is confidential. Taking over a newsagency I think at Clarkson.

**CLIENT:** Brighton I think.

**BURKE:** Brighton, Brighton. He wants a lotto licence. It's very hard to get and we've been successful for some people, so he comes and asks us can we help him get a lotto licence. I'm just saying to Julian, yes we can ah, we can do our best we can't promise but, when he comes then we'll ask him about this.

**CLIENT:** Yeah. And I spoke to him before he's also, Jon is, is very supportive.

**BURKE:** I think he will be.

**CLIENT:** Yes.

**BURKE:** But, first thing is to be supportive second thing is to get him off his backside and do some work.

**CLIENT:** Yeah. (laughs) Work.

**BURKE:** ...

**CLIENT:** No, no I agree I mean you, you guys played in the game long enough you know how

**BURKE:** Too old.

**CLIENT:** things work and, what moves and what don't move and.

**BURKE:** Yeah. We get the best possible result from council, then when it goes to advertising, we need to organise a very, very strong support.

**CLIENT:** To the Rate Payer's Association?

**BURKE:** Rate Payers. What we do is to, we've got a man who goes and writes letters. So he goes to the shopping centre and if he spent two days in the shopping centre he would have six hundred different letters.

**CLIENT:** Six hundred.

**BURKE:** Yeah because he types it all on his computer

**CLIENT:** Oh okay.

**BURKE:** and he then sends them all in. So

**GRILL:** But they're all different letters.

**BURKE:** All proper letters. All different.

**GRILL:** They're all signed by different people.

**BURKE:** See if you take ...

**GRILL:** And they're all mainly all their own thoughts.

**BURKE:** Yeah.

**GRILL:** But if you feel it's a bit tough for him Brian we should really think about bringing in Creating Communities or someone like that.

**BURKE:** Yeah. Do you know Creating Communities?

**CLIENT:** No. Who are they?

**BURKE:** Yeah. Well we'll talk to you about that but, that's all expense but Julian's right. If we get strong opposition then we should look at making sure we get a maximum result which means using the best people we can. Creating Communities is a group that we use, Satterley uses, Australand uses to try to get in the community the support for what we want to do.

**CLIENT:** Okay.

**BURKE:** So they do that. At High Wycombe for instance, we have in three weeks we had a total of about two thousand four hundred letters, and we sent one copy to the council the original, the CEO and then a copy to every councillor so one councillor in one day got four hundred and fifty letters in a letter box. All copies. But we, we won. In the end we won because people believe me [suppressed], they want to be re-elected.

**CLIENT:** *Sure I agree with you I know it's that simple.*

**BURKE:** *Julian I'll take my leave and I'll leave you to talk to [suppressed] about any business arrangements. Is that okay?*

**GRILL:** *That's fine.*

**BURKE:** *Now you just let me know and I'll, I'll start uhm, anyway I'll talk to you about it and I'll give you a bit of a strategy but I'll start with [suppressed] and [suppressed] and a few of those and just sort it out.*<sup>441</sup>

(emphasis added)

- [659] Similarly, Mr Burke told another client, who was also seeking a Lotto Licence, that, although the Mayor of Wanneroo wasn't the sort of person who would retain either him or Mr Grill, he was making preliminary enquiries to help Mr Kelly get his Lotto Licence.<sup>442</sup>
- [660] On 31 August 2006 Mr Burke told Mr Salpietro that he could tell Mr Kelly that Mr Burke and Mr Grill had spoken to the Lotteries Commission (Lotterywest), and that Mr Grill would call Mr Kelly so they could plan their strategy to get a result.<sup>443</sup>
- [661] Mr Burke telephoned Mr Kelly on 4 September 2006 to discuss an application of one of Mr Burke's clients that appeared to be in dispute. Mr Burke asked Mr Kelly to "sort it out". They then discussed the Lotteries Commission and agreed that since Mr Kelly's first contact they appeared to have softened their stance.<sup>444</sup>
- [662] Mr Burke confirmed that telephone conversation in an email to Mr Kelly on 10 September 2006.<sup>445</sup>

*Dear Jon*

*This is to confirm my discussion with you re the Lotto License [sic]. As soon as you feel you have sufficient trading figures to underpin an official approach (say 3 months) please contact me to arrange a meeting at which you Julian and I can plan the application.*

*Regards*

*BRIAN BURKE*

- [663] In Mr Kelly's section 86 representations<sup>446</sup> it is said, by his lawyer, that relevantly, at the conclusion of the three-month period, Mr Kelly did not provide Mr Burke with the trading figures he had requested. However, the Commission notes that its public hearings in relation to the Smiths Beach investigation commenced the month after this discussion.

[664] Despite Mr Burke's assertions to Mr Kelly that he and Mr Grill were liaising with the Lotteries Commission on his behalf, the Commission has no information which suggests that either Mr Burke or Mr Grill took any action in relation to Mr Kelly's Lotto Licence. Mr Burke's evidence at a Commission public hearing on 20 February 2006 was that he had referred the Lotto Licence matter to Mr Grill,<sup>447</sup> who had not done much, if anything.

## 7.11 Mr Kelly Seeks Advice about the Media

[665] On 23 March 2006 Mr Salpietro telephoned Mr Burke saying that Mr Kelly asked him to seek Mr Burke's advice on how to handle an approach by a reporter. Mr Burke's advice relayed through Mr Salpietro was that Mr Kelly should tell the reporter he was happy to answer questions provided they were faxed to him in advance, otherwise he should not speak to the reporter.<sup>448</sup>

[666] Five days later Mr Kelly rang Mr Burke to give him a "heads-up" on a media article that was to be published about donations Mr Kelly received from a developer. He told Mr Burke that he thought he should let him know as the article would mention people who Mr Kelly knew were clients of Mr Burke's. Mr Burke sounded annoyed that Mr Kelly had spoken to reporters against his advice. Mr Kelly then thanked Mr Burke profusely for his advice during his electoral campaign for State Government office to write to the relevant Minister suggesting changes to legislation to require declaration of donations similar to those required by local government elected members. He said that he owed Mr Burke "more than a beer for this" because the Minister's letter of response "may actually save my bacon".<sup>449</sup>

[667] Mr Kelly's concern was that the media article was focussed on the appropriateness of donations he received from developers during his election campaign.<sup>450</sup> The Commission's reference to this matter is not intended to indicate that there was anything improper about either the donations to Mr Kelly, or whether he properly declared his interest in matters before Council involving these donors. Rather, that Mr Kelly sought Mr Burke's advice and then contacted him to discuss the article, highlights the contradictory nature of Mr Kelly's relationship with Mr Burke. It strengthens the perception that Mr Kelly was not simply a fearful participant in discussions with Mr Burke as he claimed, but that he used the relationship, however uncomfortable it was, to his own benefit when it suited him. Again in this example as in the matter of the Lotto Licence, Mr Salpietro acted as a go-between for Mr Kelly to approach Mr Burke.

[668] It was submitted on behalf of Mr Kelly<sup>451</sup> that throughout 2006 Mr Burke would threaten and use the media against Mr Kelly, and that he suspected Mr Burke was behind a media attack on him. It is said that Mr Kelly's contact on 23 March 2006 was "no more than a ruse intended to confirm or contradict Mr Kelly's suspicions". It is put on the basis that, if Mr Burke gave useful advice he would not have been behind the attack; if his advice would have made Mr Kelly's predicament worse, then Mr Kelly could conclude some level of involvement by Mr Burke in the attack on him.

Finally it is said that in light of Mr Burke's advice (which he did not take) Mr Kelly concluded Mr Burke had been involved, and his second call was "dripping with sarcasm".

[669] The Commission is unable to accept these submissions. Although Mr Kelly may well have suspected Mr Burke was using the media against him, it could only have been a suspicion. He did not know of the contents of the telephone calls between Mr Salpietro and Mr Burke at the time. The Commission does not have any record of a telephone conversation between Mr Kelly and Mr Burke on 23 March 2006. This is probably intended to be a reference to the call from Mr Salpietro to Mr Burke. The advice Mr Burke gave was sound – acting on it could not have made Mr Kelly's "predicament" worse. The recorded conversation of 28 March 2006 belies the assertion that Mr Kelly's voice was "dripping in sarcasm". Neither the content nor his tone of voice supports that. Mr Burke's tone and content evinced disinterest about his clients being mentioned. He said he thought Mr Kelly should ignore the media interest because it would blow over in a couple of days. He seemed puzzled why it was an issue in the first place and sounded relaxed, apart from his annoyance that Mr Kelly had not followed his advice about not speaking to the reporter.

## CHAPTER EIGHT

### MR KELLY AND MR SALPIETRO'S RELATIONSHIP WITH MR BURKE

#### 8.1 Background

[670] Mr Salpietro and Mr Kelly portrayed their relationships with Mr Burke as being determined by his influence and ability to either negatively or positively affect their political and professional lives. They both said that at times they were dishonest with him in order to avoid conflict or incur his anger. It was easier, they said, to agree with him, or agree to do his bidding and then either actively work against him as Mr Kelly claimed, or just ignore his request as Mr Salpietro claimed.

[671] Notwithstanding the difference in the relationships that Mr Burke had with Mr Kelly and Mr Salpietro, their responses were strikingly similar to the way Mr John Robert Quigley MLA told the Commission he responded to approaches or requests from Mr Burke. His explanation, and the misconduct risks to which such response gives rise, were discussed by the Commission in its report to the Procedure and Privileges Committee of the Legislative Assembly, tabled in State Parliament on 10 June 2008.<sup>452</sup> A similar explanation was given by Mr Marlborough who, when asked about his response to a request by Mr Burke to have someone appointed to a statutory commission, said the position he took was to say it would be okay and move on and do nothing.<sup>453</sup>

[672] When interviewed on 23 January 2007, prior to the Commission's public hearing, Mr Kelly explained that it was not his practice to engage in "... any bitter war with Brian. It's not one that I can win, you know I smile I say yes Brian and if I think I need to I undermine him later".<sup>454</sup> Mr Kelly's apprehension about Mr Burke's influence was clear.<sup>455</sup>

**KELLY:** *You know and and I don't think it makes any difference who who they are.*

**INVESTIGATOR:** *So if I was to say to I assume from that you feel a sense of obligation, would I be incorrect there or?*

**KELLY:** No.

**INVESTIGATOR:** No.

**KELLY:** *A sense of caution.*

**INVESTIGATOR:** *Why's that?*

**KELLY:** *I don't trust Brian. You listen to the tapes you'd know that.*

**INVESTIGATOR:** *All right and why don't you trust him?*

**KELLY:** *Why don't I trust Brian?*

**INVESTIGATOR:** Yeah.

**KELLY:** *Because I because Brian can make things happen. Okay I've been on the receiving end of a few political beatings from Brian in my time.*

**INVESTIGATOR:** Okay.

**KELLY:** *Yeah. So I I think that's you know yep.*

**INVESTIGATOR:** *So that's that's the caution?*

**KELLY:** *That's the caution. I mean if you asked me I'm I'm not trying to be evasive, I'm just trying to not engage in gossip.*

**INVESTIGATOR:** *No that's.*

**KELLY:** *Yeah. I'm a member of the Labor Party. Notionally I'm a member of I was a member of the Labor Party. Notionally I'm a member of the old right of the Australian Labour Party. That is regarded at least the media reported as being the same faction as as Brian. You know Brian will have some influence, even if that influence is the Right of Veto, over things in my life and I've got people who who I like. You know that's that's a fact. Not annoying him, you know openly.*

**INVESTIGATOR:** Okay.

**KELLY:** Yep.

**INVESTIGATOR:** *So given that in his position, he could have some.*

**KELLY:** Yep.

**INVESTIGATOR:** *Positive or negative.*

**KELLY:** Yep.

**INVESTIGATOR:** *Influence over.*

**KELLY:** Yeah.

**INVESTIGATOR:** *Your position.*

**KELLY:** Yep.

**INVESTIGATOR:** *This appears to be almost a form of fear?*

**KELLY:** *No. Look yes this is very complex to explain.*

**INVESTIGATOR:** *Okay.*

**KELLY:** *But I don't believe Brian could've been caught doing anything bad to me.*

**INVESTIGATOR:** *Okay.*

**KELLY:** *Without risking offending other people within the Labor Party, who had, who liked me.*

**INVESTIGATOR:** *All right.*

**KELLY:** *So, so if you were saying to me could he have done anything bad to me he can and he has tried, but he can't get caught doing it. Equally, providing he can't prove that I do anything negative to him, he can't overtly do anything bad to me. Does that make sense? No probably not, I, I say yes Brian.*

**INVESTIGATOR:** *Yep.*

**KELLY:** *But I can but then I go yes Brian and then I'll put the pieces in place, that mean that whatever Brian wants doesn't work. You know and I go isn't that terrible Brian. You know providing he can't prove it's me.*

**INVESTIGATOR:** *Okay.*

**KELLY:** *I'm good.*

**INVESTIGATOR:** *So do do you think he he wouldn't be able to work that out?*

**KELLY:** *He'd work it out.*

**INVESTIGATOR:** *Yeah.*

**KELLY:** *Yep.*

**INVESTIGATOR:** *And I mean has he discussed the the fact that you're undermining him.*

**KELLY:** *No he hasn't.*

**INVESTIGATOR:** *In some cases?*

**KELLY:** *No he hasn't. He's never raised it; he's too clever to raise it.*

**INVESTIGATOR:** *All right.*

**KELLY:** *Yeah he wouldn't yeah.*

[673] Mr Kelly said he didn't give Mr Burke special treatment, but he admitted that while most of his meetings were in his Mayoral office, "Brian was different", in that he met him out of his office rather than Mr Burke coming to see him. Mr Kelly said this was done as a courtesy in acknowledgement of Mr Burke's status as a former Premier, that he would have extended to any former Premier or Mayor.<sup>456</sup> Mr Kelly said his tactic was to agree to anything Mr Burke proposed and then "find a way to get out of it".<sup>457</sup>

[674] In the Commission's public hearing on 13 February 2007, in regard to Mr Burke, Mr Salpietro said:

*... and, Mr Hall, can I say, sir, that Mr Burke - Mr Burke is a very, very - very, very powerful political figure and at no stage - at no stage have I ever - have I ever actually decided to - to - how can I say? - oppose him deliberately. What I would normally do, if I wanted my own way, I would just ignore his wishes ...*<sup>458</sup>

[675] The Commission's investigation reveals that the relationships between Mr Kelly, Mr Salpietro and Mr Burke were much more complex than they portrayed. Mr Salpietro and Mr Burke are long standing friends. Mr Salpietro, an ex-ALP member, was a fellow Labor Party supporter, he shared confidences with Mr Burke about his ambition to become Mayor, he discussed with Mr Burke how he might attain that post, he was privy to Mr Burke's knowledge and reflections on Labor Party members and business, and they shared investment information. In addition to the personal aspects of their relationship, the men met and spoke frequently about matters pertaining to Mr Salpietro's professional role as a public officer and Deputy Mayor. The majority of these professional interactions were instigated by Mr Burke in relation to issues involving his clients.

[676] Mr Burke and Mr Kelly had a mutually duplicitous relationship. Mr Burke often expressed his dislike and lack of respect for Mr Kelly to others, including Mr Salpietro, apparently arising for the most part, from his history with the ALP. To Mr Kelly's face he claimed he could persuade the ALP to readmit him and thus help him realise his ambitions for State politics. Mr Burke claimed he could help Mr Kelly secure a seat in the Upper House by ensuring he was preselected for a particular seat. However, when speaking to others, Mr Burke agreed that it would be hard, if not impossible, for Mr Kelly to be accepted back into the ALP, admitting that his purpose in suggesting this to Mr Kelly was to remove him from his role as Mayor of the City of Wanneroo.<sup>459</sup> His preference was for Mr Salpietro to be Mayor instead because he would be more "helpful" and "he won't cause us any problems at all".<sup>460</sup>

## **8.2 Example of Relationship Between Mr Kelly, Mr Salpietro and Mr Burke**

[677] Conversations between Mr Kelly and Mr Salpietro intercepted by the Commission illustrate the extent to which Mr Kelly and Mr Salpietro's various spheres of interest overlapped with their roles as public officers and determined their responses and interdependency on Mr Burke. These conversations occurred after they met with Mr Burke at the City of Wanneroo on 13 October 2006. Some background to the meeting and excerpts of topics raised need to be discussed to place the conversations in question into the broader scope of the trading for favours that features in the relationships between Mr Kelly, Mr Salpietro and Mr Burke. A relationship between a public officer and a lobbyist which is founded on favours or influence gives rise to a very obvious risk of misconduct by the public officer.

### **8.2.1 Purpose of the Meeting**

[678] Mr Burke said he had three issues to discuss with Mr Kelly and Mr Salpietro:

- resolving a dispute between Mr Kelly, Mr Salpietro and a local Member of Parliament;
- the forthcoming mayoral elections; and
- the need for urgent approval for one of his client's retail trades. (that was discussed but it is not pertinent to this report).

After these were covered he added a fourth:

- to ask for Mr Salpietro and Mr Kelly's assistance to ensure that a portion of another client's land zoned for "industrial use" would remain so until Mr Burke had sold that land to another developer. He said he would then apply to have it rezoned to "urban residential". The three of them agreed that the best way to present the case to the CEO of Wanneroo would be for Mr Burke's client to contribute to a "Developers Fund". Mr Burke suggested an amount of \$250,000, on the understanding that the money was being paid to ensure the land remained as it was, not to value add to the land.<sup>461</sup>

### **8.2.2 Prior to the Meeting: Mr Kelly and Mr Burke Discuss Mr Kelly's Newsagency Business**

[679] Prior to the meeting, as they waited for Mr Salpietro to join them, Mr Burke asked Mr Kelly about his newsagency business, and his application for a Lotto Licence. The issue of Mr Kelly accepting assistance from Mr Burke about his Lotto Licence has been covered above.

[680] Mr Burke's conversation with Mr Kelly was peppered with claims of how Mr Burke had used his influence to achieve such things as getting the Liberal Party to adopt the extension of Marmion Avenue as policy via his contact with Mr Crichton-Browne, and how he had "switched preferences to [Mr

Matthew] Birney" to stop another candidate from winning the seat of Kalgoorlie. Mr Burke also mentioned that he had intended to "do a bit of a job on a local government electoral candidate because he had "just found out about his background ... It's not all that savoury", but said he wouldn't have to do that now because Mr Kelly said this candidate wasn't planning to run for election again. This self promotion as "all influential" could not have been ignored by Mr Kelly, and no doubt contributed to his perception of Mr Burke as someone whom he would not wish to overtly cross.

### 8.2.3 First Issue

[681] After Mr Salpietro joined them, Mr Burke's first issue was the importance of Mr Kelly and Mr Salpietro resolving animosity between themselves and a prominent ALP Member of Parliament. He stressed why it was crucial for them to come to a compromise, addressing first Mr Kelly and then Mr Salpietro:

**MR BURKE:** *[to Mr Kelly] But if you want to get back into the Party and run for the Upper House for example, and Giffard moves on and something else happens it's important ... [to Mr Salpietro] And if you want to become Mayor after Jon leaves it's important mate. You win these elections not when people go and vote, you win when you choose your opposition.*<sup>462</sup>

### 8.2.4 Second Issue

[682] Previous to this meeting Mr Burke and Mr Salpietro had discussed Mr Salpietro replacing Mr Kelly as Mayor, and how Mr Burke could secure the position for him. Mr Burke's second issue for this meeting was:

**BURKE:** *The second thing I, I wanted to say, doesn't make any comment uhm, is that you need now to start thinking, in my view, about the Mayoral team and what you are going to do?*

**KELLY:** *Mm*

**BURKE:** *What you are going to do and, and I'm not asking to discuss because err, err its not necessary but if you want to retain it and, and, and make sure that we don't get any other Labor person putting their hand up and we try to if were going to get an opponent get an opponent that suits us now is the time to start planning not next, when is it? October.*

**KELLY:** *Late late October depending.*<sup>463</sup>

### 8.2.5 Side Issue: Mr Kelly's Personal Political Aspirations

[683] At one point in the meeting Mr Salpietro left the room. Mr Kelly raised the subject of re-entering the ALP again:

**KELLY:** *While Sam's away*

**BURKE:** *Mmm.*

**KELLY:** *realistically, I mean, do you think there's any, any hope of me going back to the Labor Party?*

**BURKE:** *Yeah. It's not going to be easy and I try, I know you're close to Joe.*

**KELLY:** *Yeah.*

**BURKE:** *Joe's not always the best judge of things.*

**KELLY:** *Yep.*

**BURKE:** *Joe gets too fucking angry and then just oh fuckin kill em. You ... mate*

**KELLY:** *I do like that sometimes.*

**BURKE:** *You know?*

**KELLY:** *I do like that sometimes.*

**BURKE:** *Yeah.*

**KELLY:** *Yeah.*

**BURKE:** *But, but we're not in a position to be able to do it.*

**KELLY:** *No.*

**BURKE:** *We've gotta trade off your re-entry and your endorsement for something someone else wants.*

**KELLY:** *Yeah.*

**BURKE:** *Now when it comes up, I'll do it.*

**KELLY:** *Yep.*

**BURKE:** *You know? That's my strength. My strength is, I'm not a genius or anything I've just been around a long time.*

**KELLY:** *Yeah.*

**BURKE:** *I know Giffard wants to go across to*

**KELLY:** *Yeah.*

**BURKE:** *to Maylands, right?*

**KELLY:** *Yep.*

**BURKE:** *I know also that Adele Farina, who's in the Centre, has a seat that we gave her in South West province.*

**KELLY:** *Yep.*

**BURKE:** *So, why wouldn't you take Giffard's? So, just ... in the back of my mind.*

**KELLY:** *I think from my perspective and I know I annoy a lot of people and do a lot of things but in the same token, in eight years here I've learnt some things which*

**BURKE:** *You're bit bull at a gate mate.*

**KELLY:** *Oh yeah, I, I accept, I accept my weaknesses.*

**BURKE:** *But you're not without ability, no and that's why*

**KELLY:** *Yep.*

**BURKE:** *I've never given up on ya and that's why I'll work it out. And the upper house will be better for you, particularly while you're establishing this business.*

**KELLY:** *Yep.*

**BURKE:** *Because you don't have a constituency mate.*

**KELLY:** *Yeah.*

**BURKE:** *You know, so you can roam across the whole area.*

**KELLY:** *Yeah.<sup>464</sup>*

[684] Mr Kelly pointed out that he was thirty-one when he became Mayor, and now, having been Mayor for eight years he wasn't planning to contest the position next time. He said he also saw vacating the seat and leaving it open for Mr Salpietro to contest as a way to repay Mr Salpietro's loyalty to him over the years. Mr Burke used that opportunity to make a veiled

swipe at Mr Kelly's earlier run for the seat of Girrawheen which was still a sore point in the Labor Party:

**BURKE:** ... don't worry. I've known Sam

**KELLY:** Oh yeah

**BURKE:** *A long time, but mate the other thing is this. Always keep this in mind. This is what I said to [suppressed] but he was too stupid to listen. I said [suppressed], you cause all this trouble over Ballajura and you will regret it.*

**KELLY:** Mm, mm

**BURKE:** Anyway, now they ring you up and say Jeez, you were right. Just listen to what I say now. If you go to the Upper House and you become a Minister which is easier in the Upper House than in the Lower House, you can then have your choice of Lower House seats, and the Party's policy is that you can't be opposed.

**KELLY:** Yeah

**BURKE:** Just remember. I told him that.<sup>465</sup>

### 8.2.6 After the Meeting

[685] It was a long meeting, after which Mr Kelly and Mr Salpietro had the following conversation:

**KELLY:** I was talking to Brian

**SALPIETRO:** Yeah?

**KELLY:** I was talking to Brian and I don't know how serious he was, and he goes look it's not easy, but Giffard wants to go to bloody Maylands, he said I reckon I could get you into the upper house. ... you know?

**SALPIETRO:** Mate if you've got anything I can do for Brian let me know

**KELLY:** Mate

**SALPIETRO:** I'd love to be CEO of Perth.

**KELLY:** I I I'd still want to go to parliament but if I get up, 'cause I said, I said to Brian, I said for all my brashness and that I've actually

*learnt something around here in the last eight years, it would be a waste not to go. . . Yep look I'm not as interested, I'm not as active as I used to be but you know I'm good at what I do*

**SALPIETRO:** *Mate, you've got to get your foot in the door there.*

**KELLY:** *Yeah*

**SALPIETRO:** *Once you've got your bloody foot in the door ...*<sup>466</sup>

[686] And:

**KELLY:** *Mate, eight years of parliament will just about, just about fix me.*

**SALPIETRO:** *Mm?*

**KELLY:** *I said eight years of Parliament would just about fix me*

**SALPIETRO:** *Oh mate that would be the, yeah mm*

**KELLY:** *Mm*

**SALPIETRO:** *that would be the right, that that would be the right thing*

**KELLY:** *Yeah*

**SALPIETRO:** *fucken right thing to happen.*

**KELLY:** *Yeah.*

**SALPIETRO:** *And er, if Brian delivered that, would make all the bullshit and bloody, and er,*

**KELLY:** *Yeah*

**SALPIETRO:** *and er crap, and er, and er,*

**KELLY:** *Yeah*

**SALPIETRO:** *You know, ... the last few years worthwhile.*

**KELLY:** *Yeah.*<sup>467</sup>

### 8.3 Analysis of Relationship Between Mr Kelly, Mr Salpietro and Mr Burke

[687] These exchanges between Mr Kelly and Mr Salpietro belie their claim that they kept Mr Burke's lobbying at arm's length and reacted to his requests

by either ignoring or subverting them. It is clear from the discussions on this day that both men were alive to the potential benefits for them if they helped Mr Burke and kept in his good graces. Mr Salpietro is heard to actively seek from Mr Kelly any opportunities that might further increase his favour with Mr Burke because he would "love to be CEO of Perth".

[688] Both men told the Commission that they did not believe Mr Burke could deliver what he offered. In a Commission public hearing Mr Salpietro gave these responses to questions about the benefits Mr Burke offered:

*... When you are speaking to Mr Burke, does the possibility that he can benefit you - insofar as your ambition to be mayor is concerned - influence you at all when you are responding to his lobbying?---Mr Hall, Mr Burke on occasions has - has thanked me for doing something and he has said, "When you - when you stand for mayor I'll support you". Can I say that probably over the last three years on average I would probably get about one person per week that I support, whether it's to fix up their rubbish problems or a broken footpath, all sorts of reasons, they say, "Sam, thanks very much for your support. When your election comes up I'll support - I'll support you". In a case - in a case of anyone that offers me that sort of help, I thank them for their generosity; in the case of Mr Burke I've done the same, but can I say to you, sir, that the last thing that I would want or need would be Brian Burke's help should he - should he try and get me votes. Mr Burke would lose me votes, not get me votes.*

*But you have never - - -?---But he's a friend and I wouldn't say to him, "Brian, thanks but no thanks". I would just say, "Thanks, I appreciate it".*

*Why would he lose you votes? You have never hidden the fact that he's a good friend of yours?---I'm sorry?*

*Why would it lose you votes? You have never hidden the fact that he's a good friend of yours?---Well, just because he's a friend of mind, it doesn't mean that politically and publicly he's a - at present he's a vote-getter.*

*The lady who you helped with the dustbin problem is hardly likely to be in a position to help you become mayor in the same practical way that Mr Burke could?---I don't believe that Mr Burke, in any practical way, could help me any more than anybody that would say, "I will vote for you".<sup>468</sup>*

.....

*Given that this is something that was being said to you on the morning before the meeting, did it not occur to you that Mr Burke was trying to curry your favour?---Curry my favour?*

*Yes, by suggesting to you that he was in a position to assist not only Mr Kelly but therefore you because that would open up the position of mayor for you?---Mr Hall, there was no chance on earth that Brian Burke or anyone else - or anyone else would have been able to get Mr Kelly back into the Labor Party 12 months after he opposed in a state election a sitting Labor member, and I'm fairly sure that Mr Kelly realised that and I realised that. Now, I could have told - I could have told Mr Burke that he was just, you know, blowing hot air. I didn't. I think I made the comment, "Is that right?".*

*But do you think that's what he was trying to do?---But there was no chance, sir, there was no chance that – you would have to be a fool to believe that the Labor Party would allow somebody that had opposed a Labor sitting member as an independent in an election 12 months before.*

*Do you think that's what he was trying to do?---Do what, sir?*

*Curry you a favour?---I have no doubt.<sup>469</sup>*

- [689] In the Commission's assessment, this meeting on 13 October 2006 is only one of many examples in which the symbiotic relationship between Mr Burke, Mr Salpietro and Mr Kelly was played out. Whilst Mr Kelly in particular said he was wary and fearful of Mr Burke's power to jeopardise his future plans, he nonetheless continued to engage in discussions where he divulged personal information to Mr Burke and sought his advice when it suited him. Mutual currying of favours was a tacit feature of the relationships between the three men. Whatever their reservations about dealing with Mr Burke, both Mr Kelly and Mr Salpietro sought his assistance in business and career matters.
- [690] This inability to say no, or to draw clear boundaries in dealing with him, by both of these public officers exposes a high-risk culture for corruption and misconduct within the City of Wanneroo at that time. It is in the public interest, and indeed expected by the public, that all public officers have the ethical stamina and personal integrity to withstand the types of pressures brought to bear on them by lobbyists, developers or any stakeholders seeking to secure their interests or profits within the local government sphere of decision-making. Policies, codes of conduct, ethical standards and Legislative requirements are not in and of themselves sufficient to ensure that public officers will uphold the trust placed in them. Their personal commitment to ethical behaviour must be evident in their words and actions. It is intrinsic to fair decision-making processes that public officers not only actively discourage unlawful or unethical requests made of them, but also build an environment where there can be no confusion or misunderstanding that their decisions can be bought or influenced.

## CHAPTER NINE

### CHANGES TO LEGISLATION AND POLICY SINCE 2006

[691] In August 2007 new legislation was introduced into the Local Government statutory pantheon. Changes to the LG Act made via the *Local Government (Official Conduct) Amendment Act 2007*, introduced new law regarding the conduct of local government officials. In addition to the requirement for local governments to prepare codes of conduct, a new section 5.104 was inserted:

#### **5.104. Other regulations about conduct of council members**

- (1) *Regulations may prescribe rules, to be known as the rules of conduct for council members, that council members are required to observe.*
- (2) *The rules of conduct for council members apply, to the extent stated in the regulations, to a council member when acting as a committee member.*
- (3) *The rules of conduct may contain provisions dealing with any aspect of the conduct of council members whether or not it is otherwise dealt with in this Act.*
- ...
- (6) *The rules of conduct do not limit what a code of conduct under section 5.103 may contain.*
- (7) *The regulations may, in addition to rules of conduct, prescribe general principles to guide the behaviour of council members.*

[692] This is followed by a section defining serious and minor breaches of the regulations and how complaints of breaches are to be dealt with, with the institution of a new “standards panel” for local government. These changes provide a means by which action may be taken against individual councillors who have engaged in misconduct without necessitating action against the entire council. Prior to August 2007 there existed no legislative mechanism for disciplinary action against an individual council member.

[693] The *Local Government (Rules of Conduct) Regulations 2007*, which accompany the changes to the LG Act, provide further detail on principles of conduct for council members, use of government resources and handling confidential information; they also prohibit elected members from undertaking tasks that are the responsibility of council administration, and provide for disclosure of interests and declaration of gifts from parties undertaking (or planning to undertake) activities involving a “local government discretion”.

[694] The *Local Government (Rules of Conduct) Regulations 2007* provide the following, in relation to disclosure of interests affecting impartiality:

### **11. Disclosure of interest**

(1) *In this regulation —*

*interest means 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.*

[695] Information on changes to the LG Act and its Regulations can be found on the DLGRD Website.<sup>470</sup>

[696] In 2008 the City of Wanneroo adopted a *Code of Conduct for Council Members*, coming into operation on 11 March 2008. This Code replaced the 2002 Code of Conduct. In fact, the City of Wanneroo now has two Codes of Conduct; one for Council Members and one for Committee Members.<sup>471</sup>

[697] The *Code of Conduct for Council Members 2008* has specific references to the *Local Government (Rules of Conduct) Regulations 2007* for general principles of behaviour. The Code prohibits elected members from improperly “securing personal advantage or disadvantaging others” and has a new section on “dealing with proponents”.

### **2.12 Dealing with Proponents**

(1) *The provisions of this clause are in addition to, and do not derogate, from the other provisions of this Code.*

(2) *In this clause:*

**“Proponent”** means a proponent of a *Proposal* and includes a person who represents the interests of a Proponent;

**“Proposal”** means:

(a) a proposed subdivision of land;

(b) a proposed development of land;

(c) a proposal involving the exercise of discretion under a planning scheme or under a planning policy or structure plan adopted under a planning scheme;

(d) a proposed change to a planning scheme including a proposed change to the zoning of land; or

(e) a proposed change to a planning policy or structure plan adopted under a planning scheme.

(3) *This clause 2.12 applies where a *Proposal* is, or is likely, to be considered by the council.*

(4) *A member must:*

- (a) *not make any statements or express any views to a Proponent or a person interested in a Proposal which purports to be on behalf of the council or the City;*
- (b) *be alert to the motives and interests of a Proponent;*
- (c) *be aware of which person, organisation or company that the Proponent is representing;*
- (d) *not give any undertaking to a Proponent or any person interested in the Proposal;*
- (e) *not do or say anything which could be viewed as giving a Proponent preferential treatment;*
- (f) *ensure that persons interested in a Proposal are treated fairly and consistently;*
- (g) *be alert to attempts by Proponents and parties interested in a Proposal to encourage members to consider matters which are extraneous or irrelevant to the merits of the decision under consideration; and*
- (h) *be careful in dealings with a Proponent or a person interested in a Proposal who is a former member or former employee of the City and make sure that the person is not given or appear to be given favourable or preferential treatment.*

[698] These changes strive to make elected members aware of their responsibilities in dealing with proponents and third parties. Pointing out elected members' obligations to be alert for the possible motivations of proponents reduces the risk of members "unthinkingly" agreeing to a request. In addition, elected members are prohibited from giving any undertakings to persons with an interest in a proposal: this goes towards removing the oft-used defence that public officers act properly if they agree with overbearing proponents to their face, and then do nothing.

[699] It must be emphasised again, however, that laws, regulations and policies alone can never create an ethical public sector without a commitment from the people that work within them. Public officers are responsible for their own decisions, and while statute can define an offence and impose a punishment, and policy can provide guidance on what the public and an employer expect, only individuals can decide to adhere to principles which advance the public interest. Leaders and experienced public officers have a particular responsibility to foster ethical behaviour and to ensure the "culture" of their organisation is one which encourages transparency and impartiality. This is not a responsibility created by any law but one which grows naturally for any officer to whom others might look for guidance. In local government, where there will always exist "grey areas" between reasonable and conflicting engagement with the local community, and between proper and improper lobbying, the culture created by leaders is particularly important.



## **APPENDICES**



## **APPENDIX 1**

### **Notifications of Adverse Matters Under Section 86 of the *Corruption and Crime Commission Act 2003***



## Notifications of Adverse Matters

No.	Recipient of Section 86 Notification	Date of Notification	Date of Representations	From
1.	Mr Julian Fletcher Grill	1 May 2009	No Response	-
2.	Mr Jon William Kelly	1 May 2009	16 June 2009 (Received on 17 June 2009.)	Patti Chong Lawyer
3.	Mr Salvatore (Sam) Salpietro	1 May 2009	29 May 2009	Hardy Bowen Lawyers
4.	Mr Trevor John Delroy (Eclipse Resources Pty Ltd)	13 May 2009	29 May 2009 (Received on 2 June 2009.)	Solomon Brothers Barristers, Solicitors, Attorneys
		-	3 June 2009 (Received on 4 June 2009.)	Mr Malcolm McCusker QC
5.	Mr Brian Thomas Burke	1 May 2009	29 May 2009 (No substantive representations.)	Fairweather and Lemonis Lawyers



## **APPENDIX 2**

**Draft Letter of 5 October 2006 from the City of Wanneroo  
to Western Power Corporation re  
*Pinjar to Wanneroo Transmission Line***



LETTER FROM CITY OF WANNEROO TO WESTERN POWER CORPORATION

**DRAFT**

5 October 2006

Western Power Corporation

Dear Sir

**PINJAR TO WANNEROO TRANSMISSION LINE**

I refer to previous correspondence and discussions dealing with the Pinjar to Wanneroo transmission line and would like to make the following comments in relation to the alignment. It is appreciated the matter has been ongoing for a considerable amount of time and Western Power are now anxious to proceed as quickly as possible to have the line constructed.

As you will appreciate, this matter has been under discussion for some time and changes have been introduced as a result of community input to the re-routing of the line from Joondalup Drive where it was originally intended in order to supply the Wanneroo sub station. The more recent route promotes the Pedrick Road, Mather Drive, Flynn Drive and Wanneroo Road option, and this has, in recent times, become extremely controversial as some of the affected land owners had only been consulted at an extremely late stage.

Although the City appreciates that transmission lines are required to service the rapidly increasing community of Wanneroo, it has always been the City's view that the positioning of these lines should take into consideration community views, visual impact and environmental requirements.

The City's view is also that the placement of the transmission lines should be carefully thought out so that there is not the long term need to have them relocated. In other words, consideration should be given to the final alignment, not the easiest alignment.

As this matter has now been discussed by a number of affected land owners, all expressing concern and dissatisfaction with the alignment, it would seem that an alternative alignment may have been a better solution, one that will not have its long term impact on any residential community. In this regard, a much better alignment may have been for the Pinjar to Wanneroo Road transmission line to have been re-routed along Wattle Avenue to Wanneroo Road then down to the Wanneroo sub station, with a spur line accessing the Pedrick Road sub station to service that locality.

The City is particularly concerned that these transmission lines will have an impact on the adjacent residential community and this is undesirable. The transmission lines traversing the Neerabup industrial area use existing road reserves and within an industrial area this is quite acceptable. It is unacceptable that these transmission lines move westward from the industrial area along Flynn Drive and are placed in a location that will have a long term impact on future communities. The transmission lines on the alignment proposed will possibly require additional road widening in order to accommodate their placement.

It is the City's view that the 132K transmission line along Flynn Drive should be located along the northern alignment of Flynn Drive and then extended through to Wanneroo Road at the future junction of Neerabup Drive and Flynn Drive. From this location these transmission lines should be extended southwards on the western alignment of Wanneroo Road, taking into consideration the future widening. With this alignment there will be less impact on the proposed residential community of Carramar between Wanneroo Road and Flynn Drive.

The current alignment, as presented on the plans, shows the zig zagging of the transmission lines along the east west section of Flynn Drive which then turn southwards along Flynn Drive within a road that is to be a minor subdvisional road servicing the future residential estate to the west and to the east. This would be a highly undesirable situation as these power lines would have a devastating affect on this future residential community.

I am confident that with the co-operation of all parties a better alignment could be achieved that would not necessitate future relocation.

I would also like to refer to the section of Flynn Drive where the existing pavement crosses the road reserve boundary into the Neerabup National Park, which impinges on the normal power line service alignment. Although the road pavement extends beyond the road reserve, there is a substantial sway of cleared land along the northern alignment of the existing pavement. Within this clearing the transmission lines could be adequately placed without affecting too much significant vegetation. This option should be pursued as it would result in the relocation of the transmission lines northwards away from the future community.

It has also been suggested that there will possibly need to be additional widening on the southern alignment of the widening shown on the Metropolitan Region Scheme to accommodate the transmission lines where Western Power intend to place them. This additional widening adjacent to the quarry would result in the road reserve being partially established over quarry filled area and hence could be unstable. Apart from this instability there lies the other question, that of possible additional land acquisition by a public authority for the redesigned Flynn Drive. This is not a position that the City of Wanneroo would want to get itself involved in, as the current road reserve requirements have previously been determined and reserved under the Metropolitan Region Scheme.

In the City's view the most desirable alignment for this transmission line is along Wattle Avenue. Although this may not be the preferred alignment the Corporation may wish to consider at this stage, it would seem that this would provide a better longer term alignment in a more desirable location as it would have minimal impact on any future residential areas.

If the Flynn Drive and Wanneroo Road option is to be maintained by the Corporation then the City would request that the transmission lines be located along the northern alignment of the existing and future Flynn Drive, right through to Wanneroo Road then down the western alignment of Wanneroo Road to the Wanneroo substation.

It is hoped that the Corporation will take these comments into consideration and place the transmission lines in a more desirable location than currently planned.

Yours sincerely



## **APPENDIX 3**

**Extract from Letter of 10 November 2006 from Western Power Corporation to Mr Salpietro re *Proposed Pinjar to Wanneroo 132kV Double Circuit Transmission Line***





Our Ref: EM/115/TLS241(37A)V2  
Enquiries: [REDACTED]  
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363 Wellington Street Perth WA 6000  
GPO Box L921 Perth WA 6842  
T: (08) 9326 4911 F: (08) 9326 4595  
[www.westernpower.com.au](http://www.westernpower.com.au)  
ABN: 18 540 492 861

10 November 2006

Sam Salpietro  
Deputy mayor  
City of Wanneroo  
Locked Bag 1  
WANNEROO WA 6946

Dear Mr Salpietro

**Proposed Pinjar – Wanneroo 132kV Double Circuit Transmission Line**

Thank you for your letter of 17 October 2006 regarding the above transmission line. I would also like to take this opportunity to pass on our thanks for the help recently provided by City of Wanneroo officers John Paton, Rob Korenhof, Dennis Blair, and Graeme Budge on this project.

You were correct to mention that Western Power has been involved in stakeholder consultation associated with the planning of this transmission line for a considerable time, and has been in communication with the City of Wanneroo (the City) since March 2003. As with all projects of this type all attempts are made to minimise the effects of the transmission line on affected parties and to consult with those potentially affected parties.

Where a transmission line is located in road reserve and does not directly affect adjoining landowners, those adjoining landowners would not necessarily be consulted about the location of the transmission line. There are many existing transmission lines located in road reserves within urban areas throughout the metropolitan area. The southern section of Western Power's proposed transmission line has been located entirely within road reserves and therefore does not directly affect existing properties.

Western Power's process of selecting transmission line routes does take into account community views, visual impact and a range of other social, environmental, economic and technical issues. Seven potential line route options were investigated prior to the selection of the currently proposed route. Those route options that were rejected were rejected primarily because of impacts upon people or the environment or technical constraints.

Western Power has considered a range of options and has certainly not gone for the "easy option". There never are easy transmission line options.

Western Power has noted that the City's preference is the Wattle Avenue alignment. However, investigations conducted by Western Power indicate that:



1. This option would affect an additional 29 landowners (35 properties) in Wanneroo Road north of Flynn Drive;
2. Two landowners in Wattle Avenue would be adversely affected, as their houses would be in close proximity of the transmission line, one within 10 m;
3. A significant number of mature trees would need to be cleared in Wanneroo Road;
4. Proposed widening of this section of Wanneroo Road was strongly opposed by these residents and further clearing of mature trees would prove unpopular;
5. There would be a requirement to clear native vegetation in the unmade section of Wattle Avenue, some of which is in Bushforever land;
6. Some level of environmental approval and delay to the transmission line project would result from this option;
7. This option would require an additional 3.2 km of 132kV double circuit transmission line to connect to the future Western Power Neerabup Substation on Pederick Road, to service the Neerabup Industrial Area and future residential developments such as that proposed by Eclipse Resources;
8. The cost of this option is conservatively estimated as \$4.5M more than the Flynn Drive Option, ignoring cost likely to arise from contract penalties and overruns; and
9. This option would undoubtedly cause delays to the completion of the transmission line project, hence jeopardising power supplies to the northern metropolitan region.

We also note your preference for the line to be located on the northern side of Flynn Drive should the Flynn Drive option adopted. Western Power would welcome your support in achieving such an outcome and understands that this would be of benefit to the City, as it would allow it to develop Flynn Drive within the current MRS road alignment.

We have recently been informed that the landowner who would be potentially affected by locating the transmission line on the northern side of Flynn Drive, Cockburn Cement, is opposed to such a proposal because of implications on its current operations and on a lease it has with Readymix Concrete. However, if the City could secure an agreement with Cockburn Cement for the transmission line to be located on the north side of Flynn Drive, Western Power would be prepared to relocate its current line route to the north side.

It is regrettable that despite numerous requests by Western Power for road design data for the proposed extension of Flynn Drive to Wanneroo Road, the City did not provide this information to Western Power until 2<sup>nd</sup> November 2006. Given the late delivery of such information it is unlikely that Western Power could adjust the line route because of the additional costs involved. These costs are mainly associated with the transmission line construction contract, i.e. cost of additional poles and penalties to bring the contract back on track.

## ENDNOTES

All references to telephone intercepts are references to lawfully intercepted telephone intercepts.

<sup>1</sup> Section 7A(b) of the *Corruption and Crime Commission Act 2003*.

<sup>2</sup> Letter from Hardy Bowen Lawyers to the Corruption and Crime Commission, 15 October 2007, with attached *Affidavit of Salvatore Salpietro Sworn on 15 October 2007* [CCC 50011].

<sup>3</sup> State legislation (the *Telecommunications (Interception) Western Australia Act 1996* ("the Western Australia Act") gives the Corruption and Crime Commission ("the Commission") its status as an intercepting agency. The Western Australian Act is an Act to enable the Commission to be declared an agency for the purposes of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth and for related purposes.

<sup>4</sup> *Telecommunications (Interception and Access) Act 1979* (Commonwealth), p.17.

<sup>5</sup> Section 139 and 140 of the *Corruption and Crime Commission Act 2003*, *op cit*.

<sup>6</sup> Transcript of Proceedings, Public Examination, Opening Address by Commissioner Hammond on 12 February 2007, pp.3-5.

<sup>7</sup> Australian Labor Party, Western Australian Branch, *History*, available online at <http://www.wa.alp.org.au/about/index.php#History>, viewed 19 May 2008.

<sup>8</sup> *Ibid.*

<sup>9</sup> ABC News, *WA Govt bans ministers from meeting former premier*, posted 10 April 2003, 12:38 p.m., available online at AEST, <http://www.abc.net.au/news/stories/2003/04/10/829055.htm>.

<sup>10</sup> Government Media Office, Ministerial Media Statements, *Alan Carpenter to be sworn in on Wednesday*, Monday 23 January 2006.

<sup>11</sup> ABC News Online PM: *Carpenter elected WA Labor Leader*, Tuesday 24 January 2006, 6:18 p.m.

<sup>12</sup> *Ibid.*

<sup>13</sup> *The Australian* newspaper 26 June 2007: *Labor dumps Grill over Nationals* donation, available online at <http://www.theaustralian.news.com.au/story/0,20867,21970828-2702,00.html>, viewed 22 April 2008.

<sup>14</sup> City of Wanneroo, *Annual Report 2006-2007*.

<sup>15</sup> Wanneroo Royal Commission, 25 September 1997, *Complete Report*, available online at <http://www.slp.wa.gov.au/publications/publications.nsf/inquiries+and+commissions?openpage>.

<sup>16</sup> Legislative Assembly of Western Australia for 12 November 1997, Statement – Minister for Local Government, *Royal Commission into the City of Wanneroo*.

<sup>17</sup> Wanneroo Royal Commission, 25 September 1997, *Complete Report*, *op cit*, p 1061.

<sup>18</sup> Refer the *Local Government (Amendment) Act No. 2, 1998*.

<sup>19</sup> City of Wanneroo, *Annual Report 2005-2006*, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/CECAE8FEFA464ED188698F1C917EAB4F.pdf>, viewed 18 September 2008.

<sup>20</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, p.57.

<sup>21</sup> City of Wanneroo Delegated Authority Register , 29 August 2006 [E 10766].

<sup>22</sup> City of Wanneroo *District Planning Scheme No. 2*, s8.6.

<sup>23</sup> <http://www.dlgrd.wa.gov.au>, viewed 18 November 2009.

<sup>24</sup> Information on WALGA is available from the WALGA Website, <http://www.walga.asn.au>.

<sup>25</sup> *Local Government Act 1995*, section 2.10

<sup>26</sup> Department of Local Government and Regional Development, [www.dlgrd.wa.gov.au](http://www.dlgrd.wa.gov.au).

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<sup>27</sup> A DLGRD Website for “Support and Development” of local government provides links to useful information and handbooks: <http://www.dlgrd.wa.gov.au/LocalGovt/SupportDev/Default.asp>.

<sup>28</sup> City of Wanneroo Policy Manual, *Code of Conduct*, adopted 9 April 2002, reviewed 26 April 2006, [E 10765], *op cit*.

<sup>29</sup> *Local Government Act 1995*, *op cit*, section 3.9.

<sup>30</sup> Western Australian Government Gazette No. 73, 3 April 1998: *Model Local Law (Standing Orders) 1998*, available online at [http://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/132D503F2D0E5961482567BC0006BFD0/\\$file/gg073.pdf](http://www.slp.wa.gov.au/gazette/gazette.nsf/searchgazette/132D503F2D0E5961482567BC0006BFD0/$file/gg073.pdf), viewed 10 September 2008.

<sup>31</sup> City of Wanneroo, *Standing Orders Local Law Amendment*, 28 August 2001, available online at <http://www.wanneroo.wa.gov.au/cproto/870/3/Standing%20Orders%20Amendment%202001.pdf>, viewed 1 October 2008.

<sup>32</sup> City of Wanneroo, 26 September 2000: *City of Wanneroo Standing Orders Local Law 2000*. <http://www.wanneroo.wa.gov.au/cproto/872/3/Standing%20Orders%20Local%20Law%202000.pdf>.

<sup>33</sup> Office of the Public Sector Standards Commissioner (2002), *Western Australian Public Sector Code of Ethics 2002*, available online at <http://www.opssc.wa.gov.au/documents/ethicsintegrity/codeofethicsbooklet.pdf>, viewed 9 September 2008.

<sup>34</sup> Office of the Public Sector Standards Commissioner (2008), *Code of Ethics*, available online at <http://www.opssc.wa.gov.au/documents/ethicsintegrity/Code%20of%20Ethics%2008.pdf>, viewed 9 May 2008.

<sup>35</sup> Office of the Public Sector Standards Commissioner (2002), *Western Australian Public Sector Code of Ethics 2002*, *op cit*.

<sup>36</sup> Guidelines available at <http://www.dlgrd.wa.gov.au/LocalGovt/SupportDev/Guidelines.asp?Return=True>. A complete set of Guidelines was issued to all Western Australian local governments prior to August 2006. Refer Department of Local Government and Regional Development, August 2006: *Local Government Update* Issue 59.

<sup>37</sup> Western Australian Planning Commission, 21 June 2004, *Your Property and the Metropolitan Region Scheme*. Department for Planning & Infrastructure, available online at [http://www.planning.wa.gov.au/Users\\_Login.aspx?ReturnUrl=%2fProperty%2band%2bland%2bmanagement%2fYour%2bproperty%2band%2bregion%2bschemes%2fUsers\\_Login.aspx%3fReturnUrl%3d%252fProperty%252band%252bland%252bmanagement%252fYour%252bpro](http://www.planning.wa.gov.au/Users_Login.aspx?ReturnUrl=%2fProperty%2band%2bland%2bmanagement%2fYour%2bproperty%2band%2bregion%2bschemes%2fUsers_Login.aspx%3fReturnUrl%3d%252fProperty%252band%252bland%252bmanagement%252fYour%252bpro), viewed 24 June 2008.

<sup>38</sup> Western Australian Planning Commission, 21 June 2004, *Your Property and Region Schemes*. Western Australian Planning Commission, available online at <http://www.wapc.wa.gov.au/Property+and+land+management/Your+property+and+region+schemes/default.aspx>, viewed 24 June 2008.

<sup>39</sup> City of Wanneroo, *Amendments to City of Wanneroo District Planning Scheme No. 2 (DPS2)*, available online at [http://www.wanneroo.wa.gov.au/scripts/viewoverview\\_contact.asp?NID=14761](http://www.wanneroo.wa.gov.au/scripts/viewoverview_contact.asp?NID=14761), viewed 26 July 2008, and <http://www.wanneroo.wa.gov.au/cproto/563/3/Amendments%20to%20City%20of%20Wanneroo%20DPS2.pdf>, viewed 1 October 2008.

<sup>40</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, p.32.

<sup>41</sup> Western Australian Planning Commission, June 1998: *Policy No. DC 2.5 Special Residential Zones*, available online at <http://www.wapc.wa.gov.au/Publications/228.aspx>; viewed 25 August 2008.

<sup>42</sup> Letter to Commissioner LW Roberts-Smith, QC, of 7 February 2008, from Solomon Brothers Solicitors.

<sup>43</sup> *Ibid.*

<sup>44</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit*, pp.32-33.

<sup>45</sup> Record of Corruption and Crime Commission Interview of Mr Trevor John Delroy, Exchange Plaza, Perth WA 6000, on 24 January 2007, p.17.

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<sup>46</sup> Western Australian Planning Commission, October 2002: *Residential Design Codes (R-Codes) 2002*, available online at <http://www.wapc.wa.gov.au/Publications/37.aspx>, viewed 26 August 2008.

<sup>47</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit*, p.36.

<sup>48</sup> *Ibid*, p.41.

<sup>49</sup> *Ibid*, p.39.

<sup>50</sup> Transcript of Proceedings, Public Examination of Mr Oscar Gustav Drescher on 13 February 2007, p.2.

<sup>51</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit*, p.42.

<sup>52</sup> *Ibid*, p.37.

<sup>53</sup> Quote taken from the final version of the East Wanneroo Strategy, Western Australian Planning Commission, August 2007 - *The Future of East Wanneroo: Land Use and Water Management in the Context of Network City*, available online at <http://www.wapc.wa.gov.au/Publications/1470.aspx>, viewed 15 August 2008.

<sup>54</sup> Email to Mr Delroy of 29 January 2006, 9:41:42 p.m., copied to Mr Meredith and Mr Burke, from Mr Drescher subject: *Lots 1 & 2 Flynn Drive, Carramar, Proposed MRS Rezoning from Rural to Urban*.

<sup>55</sup> Planning and Development, City of Wanneroo, *Late Report Draft East Wanneroo Land Use and Water Management Strategy*, part of City of Wanneroo Briefing Agenda 14 February 2006, available on line at <http://www.wanneroo.wa.gov.au/scripts/viewarticle.asp?NID=12342&SID=Wanneroo-Internet>, viewed 24 June 2008.

<sup>56</sup> Email to Mr Burke of 30 January 2006, 11:29:29 p.m., copied to Mr Delroy and Mr Meredith, from Mr Drescher subject: *Re: Lots 1 & 2 Flynn Drive, Carramar, Proposed MRS Rezoning from Rural to Urban*.

<sup>57</sup> Letter from Mr Drescher to CEO, City of Wanneroo, *Submission on the East Wanneroo Land Use and Water Management Strategy, Lots 1 and 2 Flynn Drive, Carramar, Eclipse Resources Pty Ltd*. Attachment to email to Mr Salpietro of 20 February 2006 1:09 p.m., copied to Mr Meredith, Mr Burke and Mr Delroy, from Mr Drescher [E 12198].

<sup>58</sup> *Ibid*.

<sup>59</sup> Email to Mr Burke of 30 January 2006, 08:19 a.m., from Mr Salpietro subject: *RE: Lots 1 & 2 Flynn Drive, Carramar, Proposed MRS Rezoning from Rural to Urban*.

<sup>60</sup> Planning and Development, City of Wanneroo: *Late Report Draft East Wanneroo Land Use and Water Management Strategy*, *op cit*.

<sup>61</sup> Email to Mr Salpietro of 20 February 2006, 01:09 p.m., copied to Mr Meredith, Mr Burke, Mr Delroy, from Mr Drescher subject: *East Wanneroo Land Use and Water Management Strategy, Lots 1 & 2 Flynn Drive, Carramar* [E 12198], *op cit*.

<sup>62</sup> Letter from Mr Drescher to CEO, City of Wanneroo, *Submission on the East Wanneroo Land Use and Water Management Strategy, Lots 1 and 2 Flynn Drive, Carramar, Eclipse Resources Pty Ltd*. Attachment to email from to Mr Salpietro of 20 February 2006 1:09 p.m., copied to Mr Meredith, Mr Burke and Mr Delroy, from Mr Drescher [E 12198], *op cit*.

<sup>63</sup> *Ibid*.

<sup>64</sup> *Ibid*.

<sup>65</sup> Email to Mr Salpietro of 14 October 2004, 12:34:00 p.m., copied to Mr Tranter, Mr Drescher, Mr Delroy, from Mr Burke subject: *Meeting*.

<sup>66</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.90 and p.94.

<sup>67</sup> Telecommunications Intercept, 21 February 2006.

<sup>68</sup> Telecommunications Intercept, T 0280, 21 February 2006.

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<sup>69</sup> Telecommunications Intercept, 21 February 2006.

<sup>70</sup> City of Wanneroo Minutes of Ordinary Council Meeting held on 21 February 2006 [E 10770].

<sup>71</sup> Transcript of Proceedings, Public Examination of Mr Ian Reginald Goodenough on 13 February 2007, pp.29-30.

<sup>72</sup> City of Wanneroo *Proposed Amendment to Recommendation*, 21 February 2006 [E 12190].

<sup>73</sup> City of Wanneroo Minutes of Ordinary Council Meeting held on 21 February 2006.

<sup>74</sup> *Ibid.*

<sup>75</sup> Telecommunications Intercept, T 0281, 22 February 2006.

<sup>76</sup> Telecommunications Intercept, T 0282, 22 February 2006.

<sup>77</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit*, p.48.

<sup>78</sup> Telecommunications Intercept, 22 February 2006.

<sup>79</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit*, p.45.

<sup>80</sup> Telecommunications Intercept, T 0283, 24 February 2006.

<sup>81</sup> Section 86 representations on behalf of Mr Salpietro under cover of letter dated 29 May 2009 from Hardy Bowen Lawyers, p.2.

<sup>82</sup> Telecommunications Intercept, T 0291, 1 March 2006.

<sup>83</sup> Telecommunications Intercept, T 0495, 1 March 2006.

<sup>84</sup> “Response to Report into Alleged Public Sector Misconduct: City of Wanneroo”, letter from Patti Chong Lawyer dated 16 June 2009 (“Mr Kelly’s section 86 representations, 16 June 2009.”).

<sup>85</sup> Telecommunications Intercept, T 0294, 3 March 2006.

<sup>86</sup> Telecommunications Intercept, 3 March 2006.

<sup>87</sup> Email to Mr Delroy of 9 March 2006, 3:30 p.m., from Mr Drescher subject: *Minutes of Meeting 3 March 2006* and attachment *Memo of Project Meeting at Eclipse Resources, Station Street, Subiaco, on 3 March 2006 at 12.00 p.m.* [E 12199].

<sup>88</sup> Telecommunications Intercept, T 0273, 14 April 2006.

<sup>89</sup> Telecommunications Intercept, T 0322, 28 April 2006.

<sup>90</sup> Telecommunications Intercept, 24 July 2006.

<sup>91</sup> Telecommunications Intercept, T 0519, 26 July 2006.

<sup>92</sup> Email to Mr Meredith of 8 August 2006, 12:57:51 p.m., copied to Mr Delroy and Mr Burke, from Mr Drescher subject: *Rezoning Lots 1 & 2 Flynn Drive, Carramar*.

<sup>93</sup> Telecommunications Intercept, 3 August 2006.

<sup>94</sup> Telecommunications Intercept, T 0520, 4 August 2006.

<sup>95</sup> Telecommunications Intercept, 25 August 2006.

<sup>96</sup> Telecommunications Intercept, 25 August 2006.

<sup>97</sup> Telecommunications Intercept, several days after 25 August 2006.

<sup>98</sup> Telecommunications Intercept, T 0522, 6 September 2006.

<sup>99</sup> Telecommunications Intercept, 6 September 2006.

<sup>100</sup> Telecommunications Intercept, T 0524, 6 September 2006.

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<sup>101</sup> Email to Mr Delroy of 26 September 2006, 6:11p.m., copied to Mr Grill, Mr Drescher and Mr Meredith, from Mr Burke [E 10759]

<sup>102</sup> City of Wanneroo Minutes of Ordinary Council Meeting held on 30 January 2007.

<sup>103</sup> City of Wanneroo Elected Members Briefing Session, 23 January 2007, p.6, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/8706AAE21E0649C3AFA1AA7CDCBEB21D.pdf>, viewed 25 August 2008.

<sup>104</sup> *Ibid.*

<sup>105</sup> City of Wanneroo Minutes of Ordinary Council Meeting held on 30 January 2007, *op cit*, pp.15-19, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/3772D1BEA0F34E04902B9300C4B5D800.pdf>, viewed 25 August 2008.

<sup>106</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, p.40.

<sup>107</sup> Record of Interview of Mr Ian Reginald Goodenough at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 18 January 2007, p.4.

<sup>108</sup> *Ibid.*, p.11.

<sup>109</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2006, *op cit*, p.90. *Loc cit.*

<sup>110</sup> City of Wanneroo *Proposed Amendment to Recommendation*, 21 February 2006 [E 12190], *op cit*.

<sup>111</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, p.40, *loc cit.*

<sup>112</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.94. *Loc cit.*

<sup>113</sup> *Ibid.*

<sup>114</sup> *Ibid.*, p.95.

<sup>115</sup> Department of Local Government and Regional Development, May 2000, *Disclosure of Interests Affecting Impartiality*, Local Government Operational Guidelines Number 01, available online at <http://www.dlgrd.wa.gov.au/LocalGovt/SupportDev/Guidelines.asp>, viewed 25 August 2008 [E 10764].

<sup>116</sup> *Local Government (Administration) Regulations, 1996*; s34C (1).

<sup>117</sup> Department of Local Government and Regional Development, May 2000, *Disclosure of Interests Affecting Impartiality*. Local Government Operational Guidelines Number 01 [E10764], *op cit.*

<sup>118</sup> City of Wanneroo Policy Manual, *Code of Conduct*, adopted 9 April 2002, reviewed 26 April 2006, [E 10765], *op cit.*

<sup>119</sup> Transcript of Proceedings, Public Examination of Mr Ian Reginald Goodenough on 13 February 2007, *op cit*, p.30.

<sup>120</sup> Record of Interview of Mr Ian Goodenough at the Corruption and Crime Commission, 186 St Georges Terrace Perth WA 6000, on 18 January 2007, *op cit*, p.3.

<sup>121</sup> *Ibid*, p.14.

<sup>122</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.90. *Loc cit.*

<sup>123</sup> *Corruption and Crime Commission Act 2003*, section 4(d)(i) to 4(d)(iii), *op cit*.

<sup>124</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit*.

<sup>125</sup> Final Report of the Royal Commission into the City of Wanneroo, 11 November 1997, at 35.2.

<sup>126</sup> Record of Interview of Mr Jon Kelly at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 23 January 2007, pp.7-8.

<sup>127</sup> *Ibid*, p.15.

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<sup>128</sup> *Ibid*, p.50.

<sup>129</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.86.

<sup>130</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit*, p.46.

<sup>131</sup> Record of interview of Mr Jon Kelly at the Corruption and Crime Commission, 186 St Georges Terrace Perth WA 6000, on 23 January 2007, *op cit*, p.6.

<sup>132</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit*, p.6.

<sup>133</sup> Record of Interview of Mr Jon Kelly at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 23 January 2007, *op cit*.

<sup>134</sup> *Ibid*, p.5.

<sup>135</sup> *Ibid*, p.6. *Loc cit*.

<sup>136</sup> *Ibid*, p.11.

<sup>137</sup> *Ibid*, p.12.

<sup>138</sup> *Ibid*, p.13.

<sup>139</sup> *Ibid*, p.15.

<sup>140</sup> *Ibid*, p.31.

<sup>141</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit*, pp.45-46.

<sup>142</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.77.

<sup>143</sup> City of Wanneroo Policy Manual, *Code of Conduct*, adopted 9 April 2002, reviewed 26 April 2006, [E 10765], *op cit*.

<sup>144</sup> *Ibid*.

<sup>145</sup> Department of Local Government and Regional Development, August 2006: *Update*, Issue 59, *op cit*, p.5.

<sup>146</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit*, p.45.

<sup>147</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit*, p.55.

<sup>148</sup> Transcript of Proceedings, Public Examination of Mr Roman Wolodymr Zagwocki on 13 February 2007, *op cit*, p.17.

<sup>149</sup> Record of interview of Mr Roman Wolodymr Zagwocki at the Corruption and Crime Commission, 186 St Georges Terrace Perth WA 6000, on 16 January 2007, p.25.

<sup>150</sup> *Ibid*, pp.45-48.

<sup>151</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.89.

<sup>152</sup> *Ibid*, p.85.

<sup>153</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, p.45, *loc cit*.

<sup>154</sup> Telecommunications Intercept, T 0273, 14 April 2006.

<sup>155</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit*, pp.9-10.

<sup>156</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 19 February 2007, p.257.

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<sup>157</sup> Email to Mr Delroy of 9 March 2006, 3:30 p.m., from Mr Drescher subject: *Minutes of Meeting 3 March 2006* and attachment *Memo of Project Meeting at Eclipse Resources, Station Street, Subiaco, on 3 March 2006 at 12.00 p.m.* [E 12199], *op cit.*

<sup>158</sup> Transcript of Proceedings, Public Examination of Mr Oscar Drescher on 13 February 2007, *op cit.* p.9.

<sup>159</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit.*, p.44.

<sup>160</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro, on 13 February 2007, p.106.

<sup>161</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit.*

<sup>162</sup> Telecommunications Intercept, T0294, 3 March 2006.

<sup>163</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit.*

<sup>164</sup> Telecommunications Intercept, T0524, 6 September 2006.

<sup>165</sup> Telecommunications Intercept, T0294, 3 March 2006.

<sup>166</sup> Telecommunications Intercept, T0299, 25 April 2006.

<sup>167</sup> Telecommunications Intercept, T0548, 25 September 2006.

<sup>168</sup> Transcript of Proceedings, Public Examination of Mr Roman Wolodymr Zagwocki on 13 February 2007, pp.16-17.

<sup>169</sup> Western Power (2006) *Pinjar to Wanneroo Transmission Line: Project Update #1*, available online at <http://www.westernpower.com.au/documents/currentProjects/pinjar/projectUpdate.pdf>, viewed 16 September 2008.

<sup>170</sup> Letter to Commissioner LW Roberts-Smith, QC, of 7 February 2008, from Solomon Brothers Solicitors, *op cit.*

<sup>171</sup> Western Power (2006) *Pinjar to Wanneroo Transmission Line: Project update #1*, *op cit.*

<sup>172</sup> Transcript of Proceedings, Public Examination of Mr Trevor John Delroy on 12 February 2007, *op cit.*, p.56.

<sup>173</sup> *Ibid.* p.56.

<sup>174</sup> *Ibid.* pp.56-57.

<sup>175</sup> *Ibid.* p.57.

<sup>176</sup> Email to Mr Grill of 6 September 2006, 10:37:02 a.m., copied to Mr Webley, Mr Burke and Mr Drescher, from Ms McGee subject: *19 Mile – Flynn Drive Subdivision*.

<sup>177</sup> Facsimile from Mr David Smith to Mr Richard Kerr, 31 August 2006 subject: *Re Installation of Underground Power Cable - Wanneroo Rd*, attached to email to Mr Grill of 6 September 2006, 2:18:39 p.m., from Ms McGee subject: *19 Mile*.

<sup>178</sup> Email to Mr Delroy of 13 September 2006, 5:44 p.m., copied to Mr Burke, Mr Drescher, Mr Webley, Ms McGee and Mrs Grill, from Mr Grill subject: *Transmission Line-Flynn Drive* [A 224724].

<sup>179</sup> Email to Mr Webley and Mr Delroy of 14 September 2006, 2:11 p.m., copied to Mr Burke and Mr Grill, from Mr Drescher subject: *Western Power Transmission Lines, Lots 1 & 2 Flynn Drive* [A 224880].

<sup>180</sup> Telecommunications Intercept, T 0525, 20 September 2006.

<sup>181</sup> Telecommunications Intercept, T 0526, 20 September 2006.

<sup>182</sup> Telecommunications Intercept, 20 September 2006.

<sup>183</sup> Telecommunications Intercept, T 0527, 20 September 2006.

<sup>184</sup> Telecommunications Intercept, 20 September 2006.

<sup>185</sup> Email to Mr Delroy of 20 September 2006, 12:21:00 p.m., copied to Ms Guise, Mr Salpietro, and Mr Drescher, from Mr Burke subject: *Western Power*.

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<sup>186</sup> Email to Ms McGee, Mr Grill, Mr Drescher, Mr Salpietro, Mr Webley, Ms Guise and Ms Schmidt of 26 September 2006, from Mr Burke subject: *RE: Meeting with Doug Aberley (CEO) Western Power*.

<sup>187</sup> Email to Mr Drescher of 27 September 2006, 2:48 p.m., copied to Mr Webley and Mr Grill, from Mr Burke, subject *RE: Western Power*.

<sup>188</sup> Email to Mr Salpietro, Ms McGee, Mr Burke, Mr Drescher, Mr Webley, Ms Guise, Ms Schmidt and Mr Delroy of 5 October 2006, 8:38:42 a.m., copied to “Doug”, Mr Monaghan and Mrs Grill, and appended email correspondence, 4 October 2006 to 5 October 2006.

<sup>189</sup> Email to Ms Guise of 5 October 2006, 10:46:39 a.m., copied to Mr Burke, from Mr Grill subject: *RE: Meeting with Mr Doug Aberley (CEO) Western Power* and appended email correspondence between Mr Grill, Mr Burke, Ms Guise, Mr Salpietro, Ms McGee, Mr Drescher, Mr Webley, Ms Schmidt, Mr Delroy, Mr Monaghan and “Doug”, 4 October 2006 to 5 October 2006.

<sup>190</sup> Email to Mr Delroy, Mr Webley, Mr Burke and Mr Grill of 6 October 2006, 11:02 a.m., from Mr Drescher subject: *Draft Letter for Consideration* [E 12200].

<sup>191</sup> Email to Mr Burke of 9 October 2006, 11:12 a.m., copied to Mr Grill, Mr Webley and Mr Delroy, from Mr Drescher subject: *RE: Draft Letter for Consideration*.

<sup>192</sup> Email to Mr Drescher, Mr Delroy, Mr Webley and Mr Grill of 6 October 2006, 11:19 a.m., from Mr Burke, subject *RE: Draft Letter for consideration*.

<sup>193</sup> Email to Mr Kelly of 10 October 2006, 5:01:00 p.m., copied to Mr Salpietro, blind copied to Mr Drescher, Mr Grill, Mr Delroy and Mr Webley, from Mr Burke, no subject, attachment *Draft Ltr from COW to WPC.DOC*.

<sup>194</sup> *Ibid.*

<sup>195</sup> Email to Mr Kelly of 10 October 2006, 5:04 p.m., copied to Mr Salpietro, blind copied to Mr Drescher, Mr Grill, Mr Delroy, Mr Webley and Mr Kerr, from Mr Burke subject: *FW: Flynn Drive Power Line*.

<sup>196</sup> Telecommunications Intercept, T 0533, 13 October 2006.

<sup>197</sup> Telecommunications Intercept, T 0535, 17 October 2006.

<sup>198</sup> Email to Mr Burke and Mr Grill of 17 October 2006, 1:01 p.m., copied to Mr Delroy and Mr Webley, from Mr Drescher subject: *Modified Draft Letter Pinjar to Wanneroo Transmission Line* [E 12201].

<sup>199</sup> Email to Mr Salpietro and Mr Kelly of 17 October 2006, 1:58 p.m., copied to Ms Guise, from Mr Burke subject: *Flynn Drive Power Lines* [E 12202].

<sup>200</sup> Email to Mr Salpietro of 17 October 2006, 5:32 p.m., copied to Mrs Grill, Mr Grill and Mr Delroy, from Mr Burke subject: *Power Lines Along Flynn Drive* [E 10760].

<sup>201</sup> Telecommunications Intercept, T 0536, 18 October 2006.

<sup>202</sup> Telecommunications Intercept, T 0538, 18 October 2006.

<sup>203</sup> Email to Mr Paton of 19 October 2006, 10:04 a.m., from Mr Salpietro subject: *FW: Pinjar to Wanneroo Transmission Line* [E 11536].

<sup>204</sup> Email to Western Power Customer Contact Centre, (attention: Mr Aberley) of 18 October 2006, 1:57 p.m., from Ms Bonnick subject: *Pinjar to Wanneroo Transmission Line* [E 12550].

<sup>205</sup> Letter to Mr Aberley of 17 October 2006, from Mr Salpietro subject: *Pinjar to Wanneroo Transmission Line*, stamped “received” by Western Power “24 October 2006” [E 11071].

<sup>206</sup> Email to Mr Delroy, Mr Webley, Mr Burke and Mr Grill of 26 October 2006, 5:46 p.m., from Mr Grill subject: *Western Power Corporation Transmission Lines, Flynn Drive*.

<sup>207</sup> Email to Mr Burke and Mr Grill of 23 October 2006, 3:09 p.m., from Ms Guise subject: *Western Power*.

<sup>208</sup> Meeting Notes, *Western Power Neerabup Terminal Substation Stakeholder Reference Group (SRG) Meeting #1*, 27 October 2006, available online at <http://www.wpcorp.com.au/documents/currentProjects/neerabup/meeting.pdf>, viewed 15 September 2008.

<sup>209</sup> *Ibid.*

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<sup>210</sup> Telecommunications Intercept, 20 December 2006.

<sup>211</sup> Refer [315] in this report.

<sup>212</sup> City of Wanneroo Policy Manual, *Communications* as reviewed 26 April 2005, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/ACB0972972184631A100B65A432B565.pdf>, viewed 15 August 2008.

<sup>213</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.107.

<sup>214</sup> Transcript of Proceedings, Public Examination of Mr Charles Ross Johnson on 12 February 2007, pp.72-73.

<sup>215</sup> Letter to Commissioner LW Roberts-Smith, QC, of 7 February 2008, from Solomon Brothers Solicitors, (amongst others), *op cit*.

<sup>216</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.108.

<sup>217</sup> *Ibid*, p.109.

<sup>218</sup> *Ibid*, p110.

<sup>219</sup> Email to Mr Paton of 19 October 2006, 10:04 a.m., from Mr Sam Salpietro subject: *FW: Pinjar to Wanneroo Transmission Line [E 11536]*, *op cit*.

<sup>220</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.110.

<sup>221</sup> *Ibid*, p.113.

<sup>222</sup> Letter from Hardy Bowen Lawyers to the Corruption and Crime Commission, 15 October 2007, with attached *Affidavit of Salvatore Salpietro Sworn on 15 October 2007 [CCC 50011]*, *op cit*.

<sup>223</sup> Transcript of proceedings, Public examination of Mr Charles Ross Johnson on 12 February 2007 p.75.

<sup>224</sup> Email to Mr Kelly of 10 October 2006, 5:01:00 p.m., copied to Mr Salpietro, blind copied to Mr Drescher, Mr Grill, Mr Delroy and Mr Webley, from Mr Burke, no subject, attachment *Draft Ltr from COW to WPC.DOC*, *op cit*.

<sup>225</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit*, p.47.

<sup>226</sup> Record of Interview with Mr Jon Kelly at the Corruption and Crime Commission, 186 St Georges Terrace Perth WA 6000, on 23 January 2007, *op cit*, p.20.

<sup>227</sup> *Ibid*, pp23-24.

<sup>228</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, p.261.

<sup>229</sup> *Ibid*.

<sup>230</sup> Transcript of Proceedings, Public Examination of Mr Raymond John Jackson on 12 February 2007, p.92.

<sup>231</sup> *Ibid*, p.90.

<sup>232</sup> Email to Mr Jackson of 1 August 2004, 12:57, copied to Mr Quigley MLA and Mr Grill, from Mr Burke subject: *Your Shed*.

<sup>233</sup> Email to Mr Jackson of 8 September 2004, 5:06 p.m., copied to Mr Grill and Mr Quigley, from Mr Burke subject: *Rural Shed*.

<sup>234</sup> Email to Mr Jackson of 2 November 2005, copied to Mr Salpietro and Mr Quigley MLA, from Mr Burke, subject: *Drover's Place: Structure Plan*.

<sup>235</sup> Email to Mr Jackson of 13 June 2005, 8:43:28 a.m., copied to Mr Grill, from Mr Burke subject: *Meeting*.

<sup>236</sup> According to the City of Wanneroo Website, a Structure Plan is "... a document consisting of maps and text which identifies how land is intended to be developed or is being developed ... [it] provides a broad framework to guide Council when it considers subdivision and development proposals".

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<sup>237</sup> City of Wanneroo, Briefing Papers, Elected Members' Briefing Session 7 December 2004, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/8A3A277F45DB48F087EED52688642DD6.pdf>, viewed 26 August 2008.

<sup>238</sup> City of Wanneroo Minutes of Ordinary Council Meeting held on 7 June 2005, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/46217FC863CF45E18BC4630073BB2D24.pdf>, viewed 26 August 2008.

<sup>239</sup> Western Australian Planning Commission, *Metropolitan Region Scheme Amendment 115/57: Drovers Place Precinct*, p.1.

<sup>240</sup> Telecommunications Intercept, T 0266, 3 February 2006.

<sup>241</sup> Letter to Peter Cann Development Consulting of 16 February 2004, from Mr Bairstow, Senior Planning Officer, City of Wanneroo, subject: *City of Wanneroo Approval to Commence Development* [E 11576].

<sup>242</sup> Wanneroo DPS2, online, viewed 27 August 2008.

<sup>243</sup> City of Wanneroo Minutes of Ordinary Council Meeting held on 26 April 2006, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/7B9723280E7C4ADDAE7E0806A3326CAC.pdf>, viewed 26 August 2008.

<sup>244</sup> Telecommunications Intercept, T 0301, 8 March 2006.

<sup>245</sup> Telecommunications Intercept, 8 March 2006.

<sup>246</sup> Telecommunications Intercept, 8 March 2006.

<sup>247</sup> Telecommunications Intercept, 9 March 2006.

<sup>248</sup> Telecommunications Intercept, T 0268, 13 March 2006.

<sup>249</sup> *Ibid.*

<sup>250</sup> Transcript of Proceedings, Public Examination of Mr John Charles Halliday on 12 February 2007, p.106.

<sup>251</sup> *Ibid.* p.107.

<sup>252</sup> *Planning and Development Act 2005*, section 218 and 223.

<sup>253</sup> Email to Mr Tedesco of 14 March 2006, 5:23 p.m., from Mr Halliday subject: *RE: Regarding this Afternoon's Meeting* [E 12085].

<sup>254</sup> Transcript of Proceedings, Public Examination of Mr John Charles Halliday on 12 February 2007, *op cit.* p.109.

<sup>255</sup> Letter to Mr Tedesco of 21 March 2006 from Mr Halliday, Development Liaison Officer, City of Wanneroo [E 12193].

<sup>256</sup> *Application for Approval to Commence Development* of 20 March 2006, Re *Growers Mart Addition* [E 11571].

<sup>257</sup> Telecommunications Intercept, T 0271, 22 March 2006.

<sup>258</sup> Telecommunications Intercept, T 0276, 24 March 2006.

<sup>259</sup> Telecommunications Intercept, T 0278, 27 March 2006.

<sup>260</sup> *Ibid.*

<sup>261</sup> Telecommunications Intercept, T 0309, 29 March 2006.

<sup>262</sup> Letter to Mr Halliday, City of Wanneroo, of 30 March 2006, from Mr Peter Cann, Peter Cann Development Consulting, subject: *Lot 3 (1397) Wanneroo Road, Wanneroo* [E 12083].

<sup>263</sup> Facsimile to Peter Cann Development Consulting of 3 April 2006, from Mr John Halliday, City of Wanneroo, subject *Unauthorised Land Use – Lot 3 (1397) Wanneroo Road, Wanneroo* [E 12192].

<sup>264</sup> Telecommunications Intercept, T 0311, 30 March 2006.

<sup>265</sup> Transcript of Proceedings, Public Examination of Mr John Charles Halliday on 12 February 2007, *op cit.* p.111.

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<sup>266</sup> *Ibid*, p112.

<sup>267</sup> Telecommunications Intercept, T 0312, 3 April 2006.

<sup>268</sup> *Ibid*.

<sup>269</sup> Telecommunications Intercept, T 0314, 4 April 2006.

<sup>270</sup> Telecommunications Intercept, T 0285, 5 April 2006.

<sup>271</sup> *Ibid*.

<sup>272</sup> *Ibid*.

<sup>273</sup> Telecommunications Intercept, T 0316, 5 April 2006.

<sup>274</sup> Telecommunications Intercept, T 0505, 5 April 2006.

<sup>275</sup> Telecommunications Intercept, 5 April 2006.

<sup>276</sup> Telecommunications Intercept, 5 April 2006.

<sup>277</sup> Telecommunications Intercept, 5 April 2006.

<sup>278</sup> Telecommunications Intercept, T 0269, 6 April 2006.

<sup>279</sup> Telecommunications Intercept, 6 April 2006.

<sup>280</sup> Telecommunications Intercept, 7 April 2006.

<sup>281</sup> Telecommunications Intercept, T 0508, 8 April 2006.

<sup>282</sup> Email to Mr Burke of 10 April 2006, 11:50 a.m., from Mr Jackson, Stonewall Construction subject: *Lots 810 & 811 Wanneroo Road, Wanneroo* [E 11310],

<sup>283</sup> Telecommunications Intercept, 24 April 2006.

<sup>284</sup> Telecommunications Intercept, 24 April 2006.

<sup>285</sup> Telecommunications Intercept, 22 May 2006.

<sup>286</sup> Email to Mr Jackson of 30 May 2006, 8:59 p.m., from Mr Burke subject: *Drover's Place Structure Plan*.

<sup>287</sup> Telecommunications Intercept, 5 June 2006.

<sup>288</sup> Email to Mr Grill of 9 June 2006, 7:45 a.m., from Mr Burke subject: *General Brief*.

<sup>289</sup> Telecommunications Intercept, 31 July 2006.

<sup>290</sup> Email to Mr Allen of 2 August 2006 10:42 a.m., copied to Mr Grill and Mr Jackson, from Mr Burke subject: *Meeting*.

<sup>291</sup> Email to Mr Ferraro of 2 August 2006, 10:44 a.m., copied to Mr Grill, from Mr Burke subject: *Swan etc*.

<sup>292</sup> Transcript of Proceedings, Public Examination of Mr Rodney Malcolm Peake on 12 February 2007, p.125.

<sup>293</sup> *Ibid*, p.127.

<sup>294</sup> Letter to the Corruption and Crime Commission of 6 September 2007, from Mr Darryl Tedesco [CCC 49045].

<sup>295</sup> City of Wanneroo Elected Members' Briefing Session 10 July 2007, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/EA7E5044829B4827BAECCCBF7ED9E193.pdf>, viewed 23 August 2008, and City of Wanneroo Minutes of Ordinary Council Meeting held on 17 July 2007, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/74377F583D954314B95302A343B98FDF.pdf>, viewed 23 August 2008.

<sup>296</sup> Telecommunications Intercept, 25 April 2006.

<sup>297</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.141.

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<sup>298</sup> *Ibid*, p.148.

<sup>299</sup> *Ibid*, p.141.

<sup>300</sup> *Ibid*, p.149.

<sup>301</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, p.341.

<sup>302</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.164.

<sup>303</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, p.344.

<sup>304</sup> *Ibid*, p.352.

<sup>305</sup> Transcript of Proceedings, Public Examination of Mr Roman Wolodymr Zagwocki on 13 February 2007, *op cit*, p.26.

<sup>306</sup> Letter from Hardy Bowen Lawyers to the Corruption and Crime Commission, 15 October 2007, with attached *Affidavit of Salvatore Salpietro Sworn on 15 October 2007* [CCC 50011], *op cit*.

<sup>307</sup> *Ibid*.

<sup>308</sup> Tamala Park Regional Council was established by proclamation in the *Government Gazette*, 3 February 2006, p.535, available online at <http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Item%209.1%20Attachment%20%20-%20Government%20Gazette%20Extract%203%20February%202006%20page%20535.pdf>, viewed 5 September 2008.

<sup>309</sup> Tamala Park Regional Council *Establishment Agreement*, 3 January 2006, available online at [http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Establishment\\_Agreement\\_Signed.pdf](http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Establishment_Agreement_Signed.pdf), viewed 8 September 2008.

<sup>310</sup> *Ibid*.

<sup>311</sup> Tamala Park Regional Council, Minutes of Inaugural Meeting held on 9 March 2006, *Official Opening*, [http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Minutes\\_9\\_March\\_2006.pdf](http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Minutes_9_March_2006.pdf).

<sup>312</sup> Tamala Park Regional Council *Establishment Agreement*, 3 January 2006, *op cit*.

<sup>313</sup> Telecommunications Intercept, T 0302, 9 March 2006.

<sup>314</sup> McIntyre (2005), *Enquiry Into the City of Joondalup*, State Law Publisher, Western Australia.

<sup>315</sup> Transcript of Proceedings, Public Examination of Mr Peter Michael Clough on 13 February 2007, p.33.

<sup>316</sup> *Ibid*.

<sup>317</sup> Telecommunications Intercept, T 0304, 9 March 2006.

<sup>318</sup> Telecommunications Intercept.

<sup>319</sup> Tamala Park Regional Council, Minutes of Inaugural Meeting held on 9 March 2006: *Official Opening*, *op cit*.

<sup>320</sup> Telecommunications Intercept, T 0496, 10 March 2006.

<sup>321</sup> Telecommunications Intercept, T 0268, 13 March 2006, *op cit*.

<sup>322</sup> Transcript of Proceedings, Public Examination of Mr Peter Michael Clough on 13 February 2007, *op cit*, p.35.

<sup>323</sup> *Ibid*.

<sup>324</sup> *Ibid*, p.36.

<sup>325</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, p.287.

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<sup>326</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.169.

<sup>327</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, p.277.

<sup>328</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.167.

<sup>329</sup> Transcript of Proceedings, Public Examination of Mr Peter Michael Clough, 13 February 2007, p.35, *loc cit*.

<sup>330</sup> Telecommunications Intercept, T 0304, 9 March 2006, *op cit*.

<sup>331</sup> Tamala Park Regional Council, February 2006, *Tamala Park Regional Council Code of Conduct for Elected Members and Staff*, available online at [http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Agenda\\_9\\_March\\_2006.pdf](http://www.tamalapark.wa.gov.au/Documents%20for%20hyperlinking/Agenda_9_March_2006.pdf), viewed 8 September 2008.

<sup>332</sup> Transcript of Proceedings, Public Examination of Mr Edward Patrick Smith on 12 February 2007, p.81.

<sup>333</sup> *Ibid*, p.83.

<sup>334</sup> Email to Mr Grill of 13 February 2005, 3:10:39 p.m., from Mr Burke subject: *FWD: Land at Darch*, and appended email to Mr Leighton of 13 February 2005, 2:52 p.m., from Mr Burke subject: *Land at Darch*.

<sup>335</sup> *Ibid*.

<sup>336</sup> Email to Mr Leighton of 14 February 2005, 8:46:17 a.m., copied to Mr Grill and Mr Salpietro, from Mr Burke subject: *RE: Land at Darch*.

<sup>337</sup> Email to Mr Salpietro of 16 February 2005, 7:37:01 a.m., from Mr Burke subject: *Mail to Julian*.

<sup>338</sup> Email to Mr Grill of 16 February 2005, 4:15:52 p.m., copied to Mr Burke, from Mr Salpietro, no subject.

<sup>339</sup> Email to Mr Leighton of 16 February 2005, 10:04 p.m., from Mr Grill, no subject.

<sup>340</sup> Email to Mr Salpietro of 16 February 2005, 10:19 p.m., copied to Mr Burke and Mr Leighton, from Mr Grill subject: *RE: St. Ives Type Development*.

<sup>341</sup> Email to Mr Grill of 16 May 2005, 6:57:54 p.m., from Mr Burke, no subject.

<sup>342</sup> Email to Mr Leighton of 31 August 2005, 8:05:38 a.m., copied to Mr Grill, from Mr Burke subject: *Mr Smith* and attachment, letter to Mr Burke of 30 August 2005, from Mr Smith subject: *Lots 2 & 3 Kingsway Rd, Darch and Lot 29 Landsdale Rd, Darch*.

<sup>343</sup> Email to Mr Everett of 5 September 2005, 7:35:19 a.m., copied to Mr Grill, from Mr Burke subject: *Mr Smith's Land*.

<sup>344</sup> Email to Mr Burke of 12 December 2005, 12:00 p.m., copied to Ms Smith, Mr Johnson and Mr Conti, from Mr Everett subject: *Ted Smith's Land Darch*.

<sup>345</sup> Email to Mr Everett of 12 January 2006, 10:26 a.m., copied to Ms Smith, from Mr Burke subject: *Mr Smith's Land - Lots 2 and 3 Kingsway and Lot 29 Landsdale*.

<sup>346</sup> City of Wanneroo Elected Members' Briefing Session 9 May 2006, p.2, available online at <http://www.wanneroo.wa.gov.au/upload/Wanneroo-Internet/333F752AA2E241A39709B2220053C4FD.pdf>.

<sup>347</sup> Telecommunications Intercept, 28 February 2006.

<sup>348</sup> Letter to City of Wanneroo of 28 March 2006, from Greg Rowe and Associates [E 11553].

<sup>349</sup> Telecommunications Intercept, 5 April 2006.

<sup>350</sup> Telecommunications Intercept, 5 April 2006.

<sup>351</sup> Telecommunications Intercept, 6 April 2006.

<sup>352</sup> Telecommunications Intercept.

<sup>353</sup> Telecommunications Intercept, T 0506, 7 April 2006.

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<sup>354</sup> *Ibid.*

<sup>355</sup> Telecommunications Intercept, 10 April 2006.

<sup>356</sup> Telecommunications Intercept, T 0317, 10 April 2006.

<sup>357</sup> *Ibid.*

<sup>358</sup> Telecommunications Intercept, T 0319, 10 April 2006.

<sup>359</sup> Telecommunications Intercept, 10 April 2006.

<sup>360</sup> Telecommunications Intercept, 10 April 2006.

<sup>361</sup> *The West Australian* newspaper, “The developer who stood up to a ‘fuming’ former premier”, 17 February 2007, p.9.

<sup>362</sup> Telecommunications Intercept, 10 April 2006.

<sup>363</sup> Telecommunications Intercept, 10 April 2006.

<sup>364</sup> Telecommunications Intercept, 10 April 2006.

<sup>365</sup> Telecommunications Intercept, T 0289 10 April 2006.

<sup>366</sup> *Ibid.*

<sup>367</sup> Telecommunications Intercept, 10 April 2006.

<sup>368</sup> Facsimile to Mr Hudson, City of Wanneroo, of 11 April 2006, from Ms Richards, Greg Rowe & Associates, subject: *Request for Withdrawal of Submission* [E 11551].

<sup>369</sup> Telecommunications Intercept, 12 April 2006.

<sup>370</sup> *The West Australian* newspaper, “The developer who stood up to a ‘fuming’ former premier”, *op cit.*

<sup>371</sup> Telecommunications Intercept.

<sup>372</sup> Telecommunications Intercept, T 0545, 12 April 2006.

<sup>373</sup> Telecommunications Intercept, T 0292, 13 April 2006.

<sup>374</sup> Telecommunications Intercept, T 0321, 19 April 2006.

<sup>375</sup> Telecommunications Intercept, T 0297, 25 April 2006.

<sup>376</sup> Telecommunications Intercept, T 0299, 25 April 2006.

<sup>377</sup> Telecommunications Intercept, T 0295, 25 April 2006.

<sup>378</sup> Transcript of Proceedings, Public Examination of Mr Edward Patrick Smith on 12 February 2007, p.83, *loc cit.*

<sup>379</sup> Telecommunications Intercept, 9 May 2006.

<sup>380</sup> Telecommunications Intercept, 9 May 2006.

<sup>381</sup> Telecommunications Intercept, 9 May 2006.

<sup>382</sup> *Ibid.*

<sup>383</sup> Telecommunications Intercept, T 0327, 10 May 2007.

<sup>384</sup> Telecommunications Intercept, 12 May 2006.

<sup>385</sup> Telecommunications Intercept, 12 May 2006.

<sup>386</sup> Telecommunications Intercept, T 0329, 16 May 2006.

<sup>387</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit.*, p.307.

<sup>388</sup> Telecommunications Intercept, T 0308, 16 May 2006.

<sup>389</sup> Telecommunications Intercept, T 0330, 17 May 2006.

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<sup>390</sup> City of Wanneroo Policy Manual, *Code of Conduct*, adopted 9 April 2002, reviewed 26 April 2006, [E 10765], *op cit.*

<sup>391</sup> *Ibid.*

<sup>392</sup> Department of Local Government and Regional Development, May 2000, *Disclosure of Interests Affecting Impartiality*. Local Government Operational Guidelines Number 01 [E10764], *op cit*, [7]-[8].

<sup>393</sup> *Ibid*, [9].

<sup>394</sup> *Ibid*, [25].

<sup>395</sup> *Ibid*, [26].

<sup>396</sup> Department of Local Government and Regional Development, April 2006, *Elected Members' Relationship with Developers*. Local Government Operational Guidelines Number 12 [E 10170].

<sup>397</sup> *Ibid.*

<sup>398</sup> *Ibid.*

<sup>399</sup> *Ibid.*

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.*

<sup>402</sup> *Ibid.*

<sup>403</sup> *Ibid.*

<sup>404</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, p.45, *loc cit.*

<sup>405</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.77. *Loc cit.*

<sup>406</sup> *Ibid*, p.83.

<sup>407</sup> *Ibid*, pp. 83–84.

<sup>408</sup> *Ibid*, p.118.

<sup>409</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, p.317.

<sup>410</sup> Telecommunications Intercept, T 0334, 2 June 2006.

<sup>411</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, pp.318-323.

<sup>412</sup> Telecommunications Intercept, 7 June 2006.

<sup>413</sup> Email to Mr Grill of 9 June 2006, 7:45 a.m., from Mr Burke subject: *General Brief*, *op cit.*

<sup>414</sup> Telecommunications Intercept, T 0330, 17 May 2006, *op cit.*

<sup>415</sup> Telecommunications Intercept, 13 July 2006.

<sup>416</sup> Telecommunications Intercept, 2 June 2006.

<sup>417</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit*. p.55.

<sup>418</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.126.

<sup>419</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, p.44, *loc cit.*

<sup>420</sup> *Ibid*, p.48.

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<sup>421</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, pp.127-128.

<sup>422</sup> See for example the explanation given by Mr John Quigley, MLA, discussed in the *Corruption and Crime Commission Report on Behalf of the Procedure and Privileges Committee of the Legislative Assembly: Inquiry Conducted Into Alleged Misconduct by Mr John Edwin McGrath MLA, Mr John Robert Quigley MLA and Mr Benjamin Sana Wyatt MLA*, 10 June 2008, at [151] – [164].

<sup>423</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.128.

<sup>424</sup> Telecommunications Intercept, T 0277, 24 March 2006.

<sup>425</sup> Transcript of Proceedings, Public Examination of Mr Jon William Kelly on 13 February 2007, *op cit*, pp.43-44.

<sup>426</sup> Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 20 February 2007, *op cit*, p.259.

<sup>427</sup> Telecommunications Intercept, T 0296, 25 April 2006.

<sup>428</sup> Telecommunications Intercept, 27 April 2006.

<sup>429</sup> Telecommunications Intercept, T 0340, 7 June 2006.

<sup>430</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit*, pp.26-30.

<sup>431</sup> For a useful discussion of this rule, see *Influence – The Psychology of Persuasion* by Robert v Cialdini, The Business Library, 1984, Chapter 2.

<sup>432</sup> It was so described in *The Handbook of Social Psychology* by Gilbert, Fiske and Lindzey 4<sup>th</sup> edition (1997), Oxford University Press, Volume 2 at p.175.

<sup>433</sup> *Ibid*, p.176.

<sup>434</sup> Telecommunications Intercept, 5 July 2006.

<sup>435</sup> Telecommunications Intercept, 17 July 2006.

<sup>436</sup> Email to Mr Burke of 24 July 2006, 4:06 p.m., from Mr Kelly, no subject.

<sup>437</sup> Telecommunications Intercept, 26 April 2006.

<sup>438</sup> Surveillance Device Tape, 20 July 2006, residence of Mr Grill.

<sup>439</sup> Surveillance Device Tape, 25 July 2006, residence of Mr Grill.

<sup>440</sup> Telecommunications Intercept, T 0519, 26 July 2006, *op cit*.

<sup>441</sup> Transcript of Surveillance Device Tape, residence of Mr Grill, T 0264, 16 August 2006.

<sup>442</sup> Surveillance Device Tape, 20 July 2006, residence of Mr Grill, *op cit*.

<sup>443</sup> Telecommunications Intercept, 31 August 2006.

<sup>444</sup> Telecommunications Intercept, 4 September 2006.

<sup>445</sup> Email to Mr Kelly of 10 September 2006, 5:45 p.m., copied to Mr Grill, from Mr Burke subject: *Lotto*.

<sup>446</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit*, p.32.

<sup>447</sup> See the extract set out at [597] above.

<sup>448</sup> Telecommunications Intercept, 23 March 2006.

<sup>449</sup> Telecommunications Intercept, 28 March 2006.

<sup>450</sup> Telecommunications Intercept, 28 March 2006.

<sup>451</sup> Mr Kelly's section 86 representations, 16 June 2009, *op cit*, pp. 34-36.

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<sup>452</sup> *Corruption and Crime Commission Report on Behalf of the Procedure and Privileges Committee of the Legislative Assembly: Inquiry Conducted Into Alleged Misconduct by Mr John Edwin McGrath MLA, Mr John Robert Quigley MLA and Mr Benjamin Sana Wyatt MLA, op cit*, see particularly [124], [151]-[152] and [155]-[169].

<sup>453</sup> The State of Western Australia v Norman Richard Marlborough, District Court trial transcript, p.181-182, 20 October 2009.

<sup>454</sup> Record of Interview of Mr Jon Kelly at the Corruption and Crime Commission, 186 St Georges Terrace Perth WA 6000, on 23 January 2007, *op cit*, p.30.

<sup>455</sup> *Ibid*, pp.34-36.

<sup>456</sup> *Ibid*, p.43.

<sup>457</sup> *Ibid*, p 46.

<sup>458</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, p.104.

<sup>459</sup> Telecommunications Intercept, T 0301, 8 March 2006, *op cit*.

<sup>460</sup> Telecommunications Intercept, 18 August 2006.

<sup>461</sup> Transcript of Surveillance Device Tape, City of Wanneroo, T 0541, 13 October 2006.

<sup>462</sup> *Ibid*.

<sup>463</sup> Transcript of Surveillance Device Tape, City of Wanneroo, T 0489, 13 October 2006.

<sup>464</sup> Transcript of Surveillance Device Tape, City of Wanneroo, T 0491, 13 October 2006.

<sup>465</sup> Transcript of Surveillance Device Tape, City of Wanneroo, T 0541, 13 October 2006, *op cit*.

<sup>466</sup> *Ibid*.

<sup>467</sup> Transcript of Surveillance Device Tape, City of Wanneroo, T 0606, 13 October 2006.

<sup>468</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, pp 82-83

<sup>469</sup> Transcript of Proceedings, Public Examination of Mr Salvatore Salpietro on 13 February 2007, *op cit*, pp.106-107.

<sup>470</sup> <http://www.dlgrd.wa.gov.au/Legislation/LocalGovtOCAmendAct.asp>.

<sup>471</sup> Available online at <http://www.wanneroo.wa.gov.au/cproto/1540/3/Code%20of%20Conduct%20-%20Council%20Members.pdf>, viewed 28 November 2009.