OPERATION GRAND

SUBMISSIONS BY COUNSEL ASSISTING

TERMS OF REFERENCE

These submissions are based on evidence given and exhibits tendered at hearing number 5 of 2005 of the Crime and Misconduct Commission, conducted under s.176 of the *Crime and Misconduct Act 2001*.

The Commission resolved on 26 August 2005 to hold public hearings in relation to complaints relating to the Gold Coast City Council, and further resolved on 9 September 2005 to hold hearings in relation to the following terms of reference (Exhibit 1):

> The Crime and Misconduct Commission having resolved on 26 August 2005, pursuant to section 176 of the *Crime and Misconduct Act 2001* (the Act), to hold public hearings in relation to complaints relating to the Gold Coast City Council further resolved on 9 September 2005 to hold hearings with respect to the following terms of reference:
>
> (1) To investigate:
>
> (i) cases of alleged or suspected official misconduct by councillors of the Gold Coast City Council concerning:
> (a) false or misleading statements of candidates for the Gold Coast City Council election in March 2004 with respect to details of any association with other candidates or entities
> (b) electoral bribery with respect to the Gold Coast City Council election in March 2004
> (c) returns about election gifts with respect to the Gold Coast City Council election in March 2004
> (d) declaring and dealing with conflicts of interest or material personal interests since the Gold Coast City Council election in March 2004
> (e) any criminal offence involving the performance of their functions since the Gold Coast City Council election in March 2004
>
> (ii) any related cases of alleged or suspected official misconduct by other persons.
>
> (2) To examine the adequacy of existing legislation in relation to the conduct of local government elections and local government business, including provisions relating to:
>
> (a) misleading voters
> (b) electoral bribery
> (c) returns about election gifts
> (d) declaring and dealing with conflicts of interest or material personal interests by councillors.
>
> (3) To make any recommendations as may be considered appropriate in relation to (2), including recommendations for any necessary changes to current policies, legislation and practices.

> The Commission also resolved pursuant to section 177(2)(b) of the Act that it considers it would be contrary to the public interest to close the hearings and approved that any hearings be public hearings.

The hearings in relation to the first bracket of evidence, which commenced on 10 October 2005 and concluded on 15 December 2005, were investigative in character. Fifty-one witnesses were called and 328 exhibits were tendered. Issues relevant to terms of reference 2 and 3 were, on occasion, canvassed during some witnesses' evidence, but the great majority of evidence during the hearing concerned term of reference 1.

The reference to "official misconduct" in term of reference 1 means conduct that involves the exercise of a person's official powers in a way that is:

- not honest or impartial; or
- is a breach of the trust placed in the person as a public officer; or
- involves a misuse of official information or material.

The conduct in question, if proved, must also amount to either a criminal offence or a disciplinary breach providing reasonable grounds for the person's dismissal.

In the case of elected officials such as councillors, there is no regime for removal for a disciplinary breach, so to constitute official misconduct, the conduct of such elected officials must be capable of amounting to a criminal offence.

BACKGROUND TO THE INVESTIGATION

The Commission resolved to hold public hearings in this matter after reviewing information about the election provided to it from various sources, including through media reports.

The media played a pivotal role in the events that led to the establishment of this inquiry. Exhibit 3 contains a number of newspaper articles published in the Gold Coast Bulletin, the Gold Coast Sun and the Courier-Mail that raised concerns about the conduct of councillors and others before, during and after the March 2004 Gold Coast City Council Election.

A number of these articles published prior to the election reported the existence of a developer-backed fund to support certain candidates, culminating in two stories by Alice Jones published in the Gold Coast Bulletin on 25 and 26 March 2004 ("Ray Powers the Bloc" and "How a Plot Took Shape", Nos. 29 and 31 of Exhibit 3).

The first article provided some details about a "trust fund" to support candidates' campaigns, largely based on comments attributed to Brian Ray, a developer, who said that he had contributed to the fund.

The second article reported the alleged involvement of incumbent councillors David Power and Sue Robbins in the trust fund, based to a large extent on information attributed to candidate (now Councillor) Rob Molhoek and Councillor Sue Robbins.

Details about the alleged operation of the trust fund continued to emerge in the media in the months after the election, including information about sums received by specific candidates (No.33 of Exhibit 3), the role of Lionel Barden (No.34 of Exhibit 3), the role of David Power (Nos.53 and 56 of Exhibit 3) and the role of the Chambers of Commerce (No.64 of Exhibit 3).

While some of those involved were prepared to speak fairly frankly to the media (in particular, Cr Molhoek, Cr Robbins and Mr Ray), there was a complete lack of frankness from many others, which meant that the full truth about some relevant issues did not emerge publicly until evidence was given about them during this inquiry.

The print media has attracted harsh criticism by some witnesses during this inquiry. However, bearing in mind the many false and misleading comments that were made to the media by various parties about the fund and related issues (dealt with in more detail later in this submission), it is appropriate to say that the media reports on this issue have been shown to be largely accurate and were published about matters in respect of which the public had a legitimate interest in knowing the truth.

Apart from issues raised in the media, the Commission also received a number of complaints about the election calling for an investigation. Some of the complaints made to the CMC alleged that there were striking similarities between the conduct of certain parties during the Gold Coast City Council election and the conduct leading to the dismissal of the Tweed Shire Council.

As outlined in our opening comments, in the case of the Tweed Shire Council, the conduct alleged resulted in public hearings, public reports and, on 25 May 2005, the dismissal of the Tweed Shire Council by the NSW Minister for Local Government, Mr Tony Kelly.

It was against this background that the Commission resolved to hold public hearings in relation to the March 2004 Gold Coast City Council Election.

ORIGINS OF THE GROUP OF SELECTED CANDIDATES

The Role of the Chambers of Commerce

It is not easy to trace with any precision the genesis of the idea to provide support (including funding) to a group of selected candidates during the March 2004 Gold Coast City Council Election.

A number of members of the Gold Coast Chambers of Commerce have suggested that the idea had its origin in meetings they attended in the last half of 2003.

However, the evidence clearly suggests that, whatever discussions may have taken place at such meetings, the Chambers of Commerce played no active part in taking forward any plan to select a group of candidates to receive funding, or in raising any such funding.

Although candidate Brian Rowe's campaign manager, John Lang, was then President of the Coomera Chamber of Commerce and a member of the combined Chamber of Commerce (as were all Chamber presidents), the Chamber made no financial contribution to Rowe's election campaign (Page 7 of tape 1 of Lang's interview on 11/10/05, Exhibit 226).

According to Lang, apart from the 13 November 2003 meeting of the heads of various Chambers at the Islander Resort, the Chambers "kept off the political aspect" of the election campaign (Page 8), and the Coomera Chamber of Commerce did not, as a body, support Rowe.

It was through David Power that Lang heard about funding being available (page 8 of tape 2 of Lang's interview, Exhibit 226) at the time Rowe decided to stand, not through any Chamber of Commerce meeting.

Lang said that the meeting at the Islander on 13 November 2003 involved Tom Tate (President of the Surfers Paradise Chamber of Commerce), Brian Rowe (committee member of the Coomera Chamber of Commerce), Ian Solomon (President of the Southport Chamber of Commerce), and himself (T1506-7). Rowe says he was not at the meeting (T1044), and other participants do not place him there. David Power arrived late to the meeting. Lang says he was only interested in Rowe's campaign and if other candidates were discussed he was not interested. Lang recalls that Power indicated that funding was available for candidates (T1512).

According to Robert Janssen (President of the Nerang Chamber of Commerce), he was also at the Islander meeting. Janssen recalls that David Power discussed candidates with common sense (T754) and said that something should be set up to support these candidates.

Tate's memory of the Islander meeting is that Power was going to be heading a group of like-minded candidates. Tate says the idea of the group was born outside the combined Chamber of Commerce meetings, but was brought to the meeting convened for that purpose to be discussed. Rowe and Lang were behind the concept, and Power came and gave a presentation on it (pages 4-5 and 7-8 of Tate's interview, Exhibit 318). The purpose of the meeting was to get an update on the idea of like-minded candidates to see if it had momentum. Tate believes Lang invited Power to the meeting, and that Power was there to discuss whether or not he could get more support and more funding. Power spoke in general terms about momentum building and said that there were like-minded candidates running for whom there would be a pool of funds (page 10). Power gave a verbal presentation about a city vision of some candidates, but Tate could not recall which candidates (if any) were identified (page 12). At the end of the meeting, he believed Power was in agreement with the idea of supporting like-minded candidates and trying to obtain funding from the "top end of town", namely, developers (page 13).

Solomon recalls that the Islander meeting was held over lunch, and that they discussed division by division which councillors were pro-business and sensible and which were "dickheads". Power was at the meeting because they wanted to talk to him about their frustrations with the Council (pages 6-7, tape 1 of Solomon's interview, Exhibit 320). Funding for pro-business candidates who deserved support was discussed.

Overall, in our submission, the evidence shows that members of the various Chambers of Commerce were highly receptive to the idea of supporting "pro-business", sensible candidates. However, no Chamber, as a body, took any active role in selecting such candidates or raising funds for them. Scott said she asked Ian Solomon whether the Southport Chamber members would support her, but nothing eventuated (T431). Some present and former members did become involved in individual campaigns, e.g. Lang and Janssen in Rowe's campaign, but in general the Chambers had no involvement in any unified or coherent way.

The only former Chamber member who did become involved in the organised funding of the group of selected candidates was Lionel Barden and, as pointed out below, he was chosen for that role for the very reason that he no longer had any formal connection to a Chamber of Commerce.

The Role of Crs Power and Robbins

It is clear from Power's evidence that his decision to become involved in the funding of selected candidates was not the result of any action taken by the Chambers of Commerce.

Power says that, in or about November 2003, he had a number of discussions with Robbins about the "looming problem" of "wild card" new councillors being elected. They decided to approach various industry and community leaders to discuss their concerns (Power's statement, page 4), including heads of the Chambers of Commerce (T2396). Power explained in evidence that by "wild-card" candidates he meant candidates that "you weren't sure of how they were going to react" (T2396), and that he and Robbins had been discussing these issues for months before November 2003 (T2395).

Power was invited to attend the meeting at the Islander on 13 November 2003 with various heads of Chambers of Commerce, and "gave [his] feelings and [his] thoughts on the upcoming election and certainly candidates to the group" (T2391). He told them that if they wanted good candidates, they needed to "put their money where their mouth was". He also advised them that he was aware of some candidates who appeared to be good people that they could work with (T2393). He said that ".. we needed some people in there with common sense who would approach things on a professional basis and not personal" and there was a discussion on a division by division basis about which candidates were "okay" and candidates whose behaviour was of concern (T2394).

Despite these sentiments being expressed, there is no evidence that the Chambers of Commerce did "put their money where their mouth was", nor any evidence of any organised support by them for any of the candidates.

By contrast, there is ample evidence (above and referred to in more detail later) that Power took a very active role in the plan to support sensible candidates, and that the members of the Chambers of Commerce were just one of his ports of call in seeking support and funding for selected candidates.

It is also clear on the evidence that it was Power and Robbins who involved Brian Ray in the plan, when they decided to approach him for advice about a plan to support good candidates. Power stated that he and Robbins decided to seek advice on this issue from Ray because of his previous involvement in Federal, State and local elections (T2398), and said that it was Mr Ray's own decision to become more actively involved in the plan, about which Ray was enthusiastic (T2405). Power agreed that he hoped Ray's contacts in the business community would assist them to gather funds (T2405).

Power, Robbins and Ray met in November 2003 at a coffee shop at Varsity Lakes, and within a couple of weeks had a second meeting at the same venue that Mr Hickey also attended (T2398). Power's diary (Exhibit 323A) has two entries for November that may be relevant to the Varsity Lakes meetings: 3 November 2003 (12.00pm – 1.00pm Varsity Meeting – Varsity Coffee Shop) and 21 November 2003 (1.00pm – 2.30pm Lunch Sue Robbins, with no venue specified). There are no mentions in his diary of any meetings with Ray or Hickey in November 2003.

An email was sent from Sue Davies (Ray's personal assistant) to Ray's lawyer Tony Hickey (cc Power and Robbins) on 24 November 2003 rating various candidates and listing potential donors (Exhibit 18). Hickey thinks that he received this email the day after the second meeting (T608).

According to Hickey, at this meeting they discussed putting together funding for candidates (T603-4). In fact, although Ray offered to do more, it was made clear at that meeting by Power and Robbins that all that was required from Ray was assistance with fundraising. There were several councillors who were considered not reasonable and rational, namely Sarroff, Young and Crichlow. It is Hickey's evidence that it was Power and Robbins who had

identified "worthy" candidates for council, not Ray, and that the names of several candidates who would be supported were mentioned at that early stage, including Rob Molhoek, Brian Rowe, Grant Pforr and Roxanne Scott (T604-5).

There is evidence that Power had active early involvement in talking to and assessing prospective candidates, including advising them about the availability of funding.

Power's diary (Exhibit 323A) shows many contacts with Pforr from 9 October 2003 to 9 December 2003. Some appear to relate to their common interest in the Coomera Watersports Club, but two appear to relate to the election:

- On 7 November 2003, Pforr faxed Power "a short CV" (Exhibit 38). On 10 November 2003, he faxed Power a "first draft" of his CV and suggested Power and he should get together for lunch or dinner on 15 or 16 November (Exhibit 39).

- On 9 December 2003, Pforr's wife (and campaign manager) sent an email to Power enclosing Pforr's anticipated budget for election (exhibit 40). Pforr said that Power was happy to offer him advice in relation to what an actual campaign would cost, so he sent him a draft budget (T241).

Power's diary also shows a meeting with Molhoek on 13 November 2003 at the Waterlily Café. According to Molhoek, he and Power met for coffee for about 30-45 minutes (T61), and discussed the possibility of Chamber of Commerce support for candidates with a more business-like focus (page 1, Exhibit 8).

Roxanne Scott also had coffee with Power some time before the 16 December 2003 meeting at Quadrant. She had heard funding might be available, and had spoken to Chris Morgan of Quadrant but wanted to find out a little bit more about it. She was given Power's name and they had coffee. She believes they discussed funding (T384).

According to Lang, Power met with Rowe some time before 13 November 2003 (Rowe announced his candidacy on 28 November 2003), to give him advice about running for council (T1520).

Power's diary also shows a meeting with Rowe on 11 December 2003, at Luv a Coffee, Oxenford.

Rowe says that Power told him that a group of business people were getting together a fund to support people to bring about change in council and he had been speaking to those concerned (T1058). Power did not want to reveal who was involved but said he believed some reasonable funding could come through.

It appears that the only selected candidate whom Power did not personally meet with prior to the Quadrant meeting on 16 December 2003 was Betts, whom Power knew was being fostered as a candidate by Robbins (T2412).

Power also personally solicited funds for the selected candidates from several developers, including Soheil Abedian, Bill Roche, Graham Ingles, Col Dutton, Con Nikiforides and Brent Hailey of Villaworld.

According to Power, the idea of having a central fund to support the candidates came from Ray (T2405), but there is no doubt that Power embraced the idea enthusiastically and, with Ray, was largely responsible for its implementation.

In these circumstances, it is not surprising that Power agreed (at T2406) that he, along with Ray, was the dominating influence in terms of "spreading the word", asking the business community for support and trying to collect funds to support candidates**.**

In our submission, Power played a dominant role in the selection of a group of candidates to be funded. As will be seen from evidence analysed more fully later in this submission, he also played a dominant role in soliciting funds for the selected candidates and in controlling the distribution of those funds.

These were unusual roles for Power to undertake, and he could point to no comparable instance of a common fund for candidates being used at the discretion of existing councillors (T2447).

The Role of Mr Brian Ray

Brian Ray was asked by Power and Robbins to provide some advice about a plan to get good candidates for Council, and took an enthusiastic interest in the plan as it developed.

However, his active involvement seems to have been limited to soliciting funding, both before and after the election. There is no evidence to suggest that he had any significant role in selecting candidates, and he did not control the distribution of the funds received. In respect of Ray's attendance at a meeting with Morgan, Power and Robbins on 10 December 2003, it was Morgan's evidence that Ray was "definitely there in a fundraising capacity" (T831).

Ray's emails (Exhibit 89) provide a unique insight into his understanding of the project he had agreed to become part of. As he was not the instigator of the plan, but took part at the request of Power and Robbins, these emails arguably reflect what he was told by Power and Robbins about what they hoped to achieve.

It was a common theme in Power's evidence that Ray, Morgan and Hickey all got it wrong in their attempts to summarise what he was trying to achieve through assisting selected candidates.

Power's reaction to Morgan's and Hickey's evidence on this topic is dealt with later, but in respect of Ray's comments (as evidenced through various emails in Exhibit 89) Power said that Ray had a tendency to "take a proposition beyond what was suggested and run with his own ideas at some stage" (T2405).

However, Ray had two meetings with Power and Robbins to discuss their plans (the Varsity Lakes meetings) in November 2003 and attended a meeting with Power, Robbins and Morgan on 10 December 2003 to discuss the "Commonsense Candidate Resource". It is difficult to accept that Ray's views were not informed to some extent by what was discussed at those meetings.

An email from Brian Ray of 5 February 2004 to Russell McCart (part of Exhibit 89) discusses how the campaign will "help rationalise the madder elements in the Council and make negotiations easier. The two drivers behind the camp (sic) are Sue Robbins and David Power, respectively chairman of the north and south planning groups…".

Ray's email of 3 March 2004 to Matthew Banks at Macquarie Bank (Exhibit 89) show his understanding of what Power and Robbins wanted to achieve: to put together a fund for a campaign to win various wards for a caucus of like-minded candidates "with whom we can

negotiate in a similar way to the outcome achieved in the last Tweed Shire election" so as to result in predictable outcomes from the elected council.

In an email soliciting $10,000 from Austcorp on 11 March 2004, Ray noted: 'We're flat out attempting to get a coherent group of Councillors so that we may be able to get a better outcome for the City as a whole and I know David Power particularly will appreciate your assistance". (Part of Exhibit 89)

In our submission, while Ray took an active part in soliciting funds for the group of selected candidates, he played little or no part in selecting the candidates or in deciding which of them received funds.

OPERATIONS OF THE GROUP - QUADRANT

Chris Morgan's notes of his meeting with his partner Tony Scott and Ray on 3 December 2003 (Exhibit 131) show that Power and Robbins were already being named as the "clients" for the election campaign work to be done by Quadrant. Morgan believes Ray gave him that information (T869).

According to Morgan, Ray's brief to him at that meeting was that there was general dissatisfaction with the Baildon council, and that Quadrant's involvement would be:

> ..to assist in providing advertising services to individual candidates and to also basically try to achieve some sort of caucus within council so that the decision-making process that had been stalled, that could be moved forward. (T826)

According to Hickey, Ray had suggested at the second Varsity Lakes meeting in November 2003 that any funds raised should be put in Hickey's trust account. Hickey agreed but said there would have to be clients nominated and that Power and Robbins should be the clients (T604). In these circumstances, it would not be surprising that Ray had also nominated Power and Robbins as the clients for Quadrant's purposes. Power obviously knew that he and Robbins were being nominated to control the funds in Hickey's trust account, but says that he knew nothing until later in January about their being nominated as the clients for Quadrant's purposes (T2413). Morgan was obviously also confused about this issue. Although he arranged to have an account opened at Quadrant on 10 December 2003 called the "Power and Robbins Trust Account" (see below), he said in an email on 5 January 2005 to Power and Robbins (part of Exhibit 135) that Quadrant still did not have a "real client" at that time.

Meeting of 10 December 2003

Power's diary, Ray's diary and Morgan's day book and diary all record their meeting on 10 December 2003.

This meeting is important as Morgan's discussions with Power and Robbins on this day about what they hoped to achieve obviously informed the agenda/objectives document Morgan prepared for the meeting with candidates on 16 December 2003.

Morgan's day book contains notes about the meeting with Ray, Power and Robbins on 10 December 2003 headed "Commonsense Candidate Resource" (Exhibit 131), a term Morgan says he coined to describe the project being undertaken (T829). He explained that the "resource" was the services, talent and expertise that Quadrant could provided to the commonsense candidates (T887). The notes were made after the meeting as a "summary" of what was discussed, according to Morgan (T879).

Morgan's notes read:

> Extent of support req'd
> Each candidate already aware?
>
> Suggested support components
>
> - door-knocking policy
> - door hangers
> - local issues v GCCC regional issues
> - Research/Divisional issues GCB [Gold Coast Bulletin]
> - Corflutes - in bulk
> - Leaflet design / distribution
> - Agreement on key issues - joint promotion in press
> - Radio interviews
> - Pre-polling
> - Booth worker management/ Set up on day
> - Signage location strategy/ management
> - Campaign audit support – checklist.

Morgan said that the primary purpose of his daybook was to take briefs relative to client requirements (T829), and these notes represented what he understood were the key components of the support to be offered to selected candidates. "Each candidate already aware?" queried whether the proposed candidates were aware of what Quadrant could do for them (T888). Each of the support components was something that Quadrant could suggest that candidates do, or that Quadrant could do for them (T888).

According to Morgan, he left the meeting understanding that Power and Robbins were seeking to be involved in the provision of assistance to potential candidates, although he does not think he knew the names of any of the candidates at the time (T830). He also understood that the purpose of the exercise was to have some new candidates elected who would help the Council function better, and that to do that a majority on the Council would be required (T890).

It is significant that the notes in Morgan's daybook consist of suggested strategies for all of the potential candidates, dealing with the group of candidates as though they had common goals and would employ common strategies. Morgan explained in evidence that his perception that there would be "joint promotion" of the candidates in the media turned out not to be the case, as things developed (T890). However, as outlined further below, in many respects the campaigns conducted for selected candidates did proceed with common themes and strategies. In fact, the only suggested strategy on the list in Morgan's daybook that was definitely not employed by candidates was the "joint promotion in press" of their "agreement on key issues".

The material Morgan produced to the Commission also contained an agenda for the meeting on 10 December 2003 (Part of exhibit 139). Morgan did not refer to this agenda in his statement, and appeared not to have read it prior to preparing the statement. He gave evidence about the agenda at T891-8.

The agenda was prepared in advance, but has on it handwritten notes that were placed there by Morgan during the meeting (T892). These notes include a reference to the fact that "DP & SR [Power and Robbins] recognise the frustration of ratepayers and the business community".

And next to the agenda item "establish objectives", Morgan has written:

Pride, respect in, agreement on key city issues, sensible majority, professional.

Morgan agreed that "agreement on key city issues" referred to an objective for the group of candidates, and that the "sensible majority" indicated that one of the purposes of the exercise being undertaken was to have a group of candidates who could constitute a sensible majority on the Council to be elected in March 2004 (T893). As Morgan wrote these notes during the meeting with Power and Robbins, they support the view that "agreement on key city issues" was something Power and Robbins agreed with, and that the only part of the original proposed strategy in the daybook that was rejected was the idea of a joint promotion of this agreement.

Following the meeting of 10 December, Morgan arranged to have an account called the "Power and Robbins Trust Account" opened in Quadrant, as Power and Robbins seemed to him to be the drivers of the arrangement and the people who would co-ordinate it and therefore, in that sense, the clients (T835).

On 11 December 2003, Morgan sent an email to Power and Robbins thanking them for their time on 10 December 2003, and indicating he would prepare "a draft of objectives, proposed strategy and the nature and application of the resource that we discussed". He also suggested that "discussion prior to next Wednesday by email should be sufficient to ensure that there is consensus by all parties (including Ted & Bob I presume) on what is tabled on Wednesday evening" (part of Exhibit 135).

Power agreed in evidence that the reference to "Ted & Bob" in this email was a reference to La Castra and Shepherd, and that it indicated Morgan's perception that they would be part of any consensus reached about objectives and strategy. However, Power suggested that Morgan was expressing his own opinion in the email, and that it did not necessarily agree with his and Robbins' opinion (T2418). By contrast, Morgan said that he referred to Shepherd and La Castra in the email because they had been referred to by Power and Robbins during the meeting on 10 December as councillors who would have a shared interest in the project being discussed, and who would probably be at the next meeting (T833).

Emails between Power and Morgan on 15 December 2003 (part of Exhibit 135) show that Power re-organised the time for the meeting to the evening of Tuesday 16 December 2003 as a "couple of people" had problems with the originally scheduled time of the afternoon of 17 December, and also that Power gave Morgan a list of the attendees (including the names of the new candidates) for the Quadrant meeting on 16 December, advising "La Castra is away". Despite these emails, Power was reluctant to admit that he played a major role in organising the meeting on 16 December, suggesting that Robbins may have assumed La Castra was going to be at the meeting, and may also have provided the information about the availability of others to attend (T2420-1).

Meeting of 16 December 2003 at Quadrant

Sitting Councillors Power, Robbins and Shepherd attended a meeting at Quadrant on 16 December 2003 with Morgan and five prospective candidates for the election: Grant Pforr (who brought his wife/campaign manager), Rob Molhoek, Greg Betts, Brian Rowe and Roxanne Scott. According to Morgan, the meeting went about 2 hours (T843).

"The Agenda"

Morgan had produced a document for the meeting on 16 December, outlining topics such as "objectives", "strategy", "consensus on issues" and "the resource" (which, for convenience, will be called "the agenda" in the following paragraphs).

Power and several others (including Morgan himself) have attempted in their evidence to downplay the significance of the agenda, perhaps because it proceeds on the basis of "a select group of Councillors and Candidates" achieving consensus on a number of key issues. In fact, Power claims that there was no discussion at all about the agenda at the meeting, except for a private conversation between him and Morgan. In our submission, this claim should be rejected.

The version of the agenda that is Exhibit 14 has the words "common sense" underlined on the first page and the "key city issues" on page 2 have been numbered 1-7 in handwriting. Betts said in evidence that the handwriting was his, and that Morgan had asked the candidates at the meeting to prioritise the issues to focus the advertising campaigns (T493).

Morgan agreed that he distributed the agenda and asked those present to put issues listed on it in order of priority (T840). Attachment 9 to Morgan's statement (Exhibit 145) is another version of the agenda, with the "key city issues" numbered 1-8, and "Civic focus Evandale Bldg" handwritten under the list of key city issues.

Morgan mentioned in his evidence that he had several other copies of the agenda in his possession, and these have since been obtained by the Commission. They include two additional copies of the agenda with handwritten comments beside the "key city issues". One copy contains handwritten notations about "conservation", "new council chamber" and "party politics in council". The other has handwritten numbers beside the "key city issues" and a notation "Divisional & localized".

Pforr also produced a copy of the agenda in his material (not tendered), and Pforr's version of the document also has handwriting beside the "key city issue" of growth management, namely "Development. Min. 17-5m narrow street". Pforr recently confirmed in an interview with CMC officers that the handwriting was his, and that he had made the notes during the meeting.

Scott says that she was given a copy of the agenda at the meeting, glanced through it and did not disagree with any of it. She says issues raised in the agenda were discussed at the meeting, but not in any great detail. She did not take a copy of the agenda away with her (T347).

Shepherd gave evidence that the agenda was tabled at the meeting, that he glanced through it and saw it as a campaign strategy, but it was not discussed at length, if at all (T2071-2).

The version of the agenda that is exhibit 14 (with Betts' handwriting on it) was produced in Hickey's material, and is on his file next to notes he made of the meeting he had with Morgan and Ray on 17 December 2003.

Hickey gave evidence that this copy of the agenda was given to him by Morgan during that meeting (T610). According to Hickey, Morgan and Ray discussed the agenda at the meeting of 17 December, including "the appropriate key issues that affected the Gold Coast community and how they should be identified and views on making sure the candidates were aware of, you know, generally what – the candidates were aware of the need to understand what is important to the people who would be voting to them, what were the important issues…" (T611). Morgan agrees that he took the document to the meeting, for the purpose

of informing Ray and Hickey about the topics that had been discussed the day before (T847). This is inconsistent with any notion that the document was not discussed the previous day or was entirely discounted after the meeting on 16 December 2003.

In our submission, there is a substantial body of evidence that shows that there was discussion about the contents of the agenda at the meeting of 16 December 2003, and judging by the actions of the several candidates who have numbered the key city issues and handwritten comments beside them, those issues at least were discussed in some detail.

Although Power says that he challenged the whole document with Morgan (T2422), the only part of the agenda that seems to have been specifically disavowed by Power was the suggestion that there would be any public promotion of the group as a "ticket". According to Morgan, Power told him "Mate, no, that's not the intent. We are not running a ticket here" (T842). But the agenda Morgan prepared for the 16 December meeting did not suggest running a ticket, nor did it refer to a "joint promotion in the press", as his earlier proposal had. This suggests Morgan had been disabused of this idea by the time of the meeting of 16 December.

There are two items on the agenda pointing to the conclusion that, by the time of the 16 December meeting, Morgan was well aware that there would be no public acknowledgement of the group. The first is the reference on page 2 to:

> 3. an agreed media position once awareness of this resource for 'Campaign for Commonsense in Council' (working title) becomes public … .

The second is the reference on page 3, under "Next Action", to:

> - Attitude to eventual media position.

Both of these entries recognise that public comment might eventually be required, once the operations of the group become public, but there is no mention in the agenda of any intention to stage a "joint promotion" by the group.

Power obviously intended that there should not be any public acknowledgement of a connection between the candidates through funding and shared Quadrant services. In our submission, the later conduct of the candidates in falsely denying any connection with each other through common funding or otherwise makes it clear that they also understood that there was to be no public acknowledgement of the "commonsense candidate resource". All of the meeting participants have denied that these items referring to an "agreed media position" were discussed, but it could not reasonably be suggested that all of the funded candidates kept their connection with the group secret by co-incidence.

In our submission, the Commission could be satisfied that it was always intended by Power and Robbins that there should be no public acknowledgement of the group's funding arrangements, and that this was discussed at some stage with the group.

The agenda incorporates a number of the items from the handwritten notes made by Morgan at his meeting with Power and Robbins on 10 December, including referring to "pride and respect in these Councillors/candidates", "professional conduct", "consensus … on key city issues" and the fact that "these individual Councillors/candidates … recognize/understand the frustrations of rate payers and business houses alike". All of these items echo Morgan's handwritten notes of the 10 December meeting. The seven "key city issues" listed in the agenda are also all taken from Morgan's handwritten notes from the 10 December meeting.

It is submitted that the Commission should reject the suggestion that Morgan was on a frolic of his own when he created the agenda for the meeting on 16 December and should accept that Morgan's agenda accorded generally with the brief he was given by Power and Robbins when they met on 10 December.

Discussions generally at the meeting on 16 December 2003

According to Power's instructions, he addressed the meeting with words to this effect (T1104):

> We've been hitting the headlines for the wrong reason. The reason we're talking to you people is because you appear to be sensible, rational, well behaved people and we're anxious to end up with a Council that knows how to behave properly and professionally. We want to be surrounded by councillors who behave with some dignity.
>
> We're not looking at forming any sort of a ticket for alliance in Council; people on the Gold Coast expect their councillors to be independent and so it's very important that you remain independent at all times.
>
> But at the same time, you don't have to be discourteous or disruptive in the process. If you've got a different opinion to someone else, that's fine, nobody cares, but if you've got a different opinion, then you argue it logically and sensibly and politely you don't just attack your fellow councillors and grand-stand in Council for purely political reasons.

Molhoek recalls that the sitting councillors expressed their desire to see some councillors removed and replaced by "quality councillors" (T60) at the first Quadrant meeting. (He originally thought this was on 28 November 2003, but later agreed he was probably mistaken and that it occurred on 16 December 2003, as stated by all other participants.)

Molhoek said the sitting councillors at this meeting told the candidates that they should remain independent but said they (the councillors) "were committed to helping raise support and providing advice for those of us at the meeting" (T63). Robbins spoke at length about specific campaign strategies. Quadrant outlined services they could provide and Power and Morgan said that there had already been some indications of support through funding from the broader business community. Molhoek left the meeting with the clear impression that there would be a group of candidates supported by the business community (T65-66).

Shepherd gave evidence that there was a discussion at the meeting that there were other groups gathering candidates against sitting councillors, including him, and he "knew that it would follow that certainly there was a counter suggestion that some councillors were not performing and in fact were disruptive to the council process". (T2073)

Pforr recalls that there was discussion about how to run a campaign and about dissatisfaction within the community about some of the current councillors. He also recalled that he, Scott and Molhoek each produced some literature of their own, for example draft how to vote cards, and that candidates were each asked in turn what they had done to date in their campaigns (T206-7).

Betts gave evidence that each candidate at the meeting on 16 December said a little about themselves and their campaigns and what they had done so far in their divisions (T468). The sitting councillors present talked about campaign strategies such as door-knocking and press releases, and provided some examples of their own election material (T469), and Morgan talked about what services Quadrant could provide to the candidates.

Scott said most of the discussion at the meeting was generally about campaign advice, and she was happy to share her information with others there (T349).

According to Power the meeting was fairly informal, and there was a general discussion about the dos and don'ts in campaigning. There was also some discussion about the important issues as identified by the candidates during their campaigning to date (T2421).

Rowe recalls that the sitting councillors at the meeting, Power, Robbins and Shepherd, all spoke to some extent about campaign tactics, and that he was given a copy of Molhoek's business plan for the election to read (T1055).

All of this suggests a collegiate atmosphere of shared interests and shared goals, even to the extent of candidates sharing their electoral material and strategies with others at the meeting. It would indicate, at least, that the candidates were willing to give each other assistance with planning and strategy for the election.

Discussions about funding at the meeting of 16 December 2003

In our submission, Pforr was unconvincing in his evidence on the subject of funding for the Quadrant campaigns. He suggested that he would have been happy to pay for the Quadrant work himself, and that fees were not discussed at the meeting of 16 December except that Morgan said he would be preparing a spreadsheet (T214-5).

It is hard to believe that Pforr did not know that the whole concept behind the group meeting was that funds would be made available to suitable candidates because of dissatisfaction with some sitting councillors, or that he was willing to commit to work being done by Quadrant without knowing the likely cost. All other participants (except Shepherd, who left early (T2071-72) agree that at an early stage funding was discussed, and it was made clear that funds for Quadrant's work would be raised through the business community.

In his statement to the Commission (Exhibit 37), Pforr had indicated that Molhoek was "enthusiastic as to the possibilities of receiving funding" at the meeting on 16 December. Given the circumstances of the meeting, his explanation in evidence that he meant only that Molhoek was enthusiastic generally about receiving funding through his own campaign was, in our submission, less than frank. (Molhoek agreed that he was interested in the funding being offered at the meeting, and that his campaign manager later actively sought to access the funding. In the end, Molhoek received no funding. He was left with the impression that priority was given to other candidates whose campaigns were not as well organised as his, or that there was some difficulty raising funds (T70-72).

According to Scott, she was aware even before she went to the first meeting at Quadrant on 16 December that any work Quadrant did for a candidate was to be funded through "a group of business people", having been told this by La Castra and Morgan (T336). She had also been told by Morgan that there would be other candidates and councillors at the meeting, as they were trying to get a better quality of candidate into Council. Scott went to the meeting basically to see if she could get financial assistance (T345).

Betts also said that the basic purpose of the meeting was to discuss "the opportunity to get some funding" (T469). Betts thinks he was told by Robbins either at the meeting or after it that he would not know the names of the donors, so that he could remain at arm's length from them (T471).

According to Scott, Power told candidates at the meeting that they would receive funds on a confidential basis to protect them from knowledge about the source of the funds, in particular, that they would not be given the names of donors (T346).

Morgan recalls that Power and Robbins indicated that they would be willing to act as mentors for candidates, that Quadrant would be available to provide assistance to each candidate individually and that the costs incurred would not necessarily be debited to them directly but would be funded from a trust fund or a campaign fund (T838). It was also explained that the funds would be provided by the business community and would be "anonymous" (T838).

Rowe also says that he knew before he attended the meeting that funding might be available, because of a conversation he had had with Power at a meeting prior to the 16 December meeting (T1056). Power had told him then that a group of business people were getting together a fund to support people to bring about change in council. Power did not want to reveal who they were, but said reasonable funding could come through. By the end of the meeting on 16 December, Rowe was aware that the fund Power had told him about was also going to support other candidates at that meeting (T1064-5).

In our submission, the Commission could be satisfied that the candidates who attended the meeting at Quadrant on 16 December 2003 were largely motivated to do so by the prospect of campaign funding being organised through Power and Robbins or free campaign services being provided through Quadrant.

It appears that Gold Coast politics make it undesirable for a candidate to present as anything other than "independent", and that running a "ticket" is seen as political suicide. When Power was asked about the comment attributed to him in article No.18 of Exhibit 3 that "the community would not accept a 'ticket', preferring to look after themselves and their division when casting a vote", he replied (T2496):

> Absolutely correct and I stand by that today and I stood by it right through.

In our submission, the Commission could be satisfied that the "independence" of the candidates was to be for public display only: they knew that they were being assisted by a common fund organised by sitting councillors keen to secure their election and they were willing to share their campaign plans and strategies at group meetings with other selected candidates. If these facts had been known to the electorate, the candidates' frequent public claims that they were running as a "local independent candidate" would have rung very hollow in the community.

Meeting of 17 December 2003

On 17 December, the day after the Quadrant meeting, Hickey, Morgan and Ray met at Ray's office. (Although Hickey originally stated that Power and Robbins were at this meeting, he now accepts that they probably were not, and Morgan and Power also say they were not.) Hickey made some handwritten notes that day on the email and attachment of 24 November 2003 (Exhibit 18) that had previously been sent to him. Those notes refer to "supporting 8 councillors which will give a majority vote" and "Trust a/c authority by Sue and David – make them the client".

Hickey says that Ray wanted to have another meeting with Morgan and asked him to come. He described the meeting (T611):

> Okay. Brian asked me to come along to the meeting. I assumed the purpose of the meeting was to confirm how we were going to raise funds, who we were going to approach, and who was going to approach who. Chris Morgan was definitely at the meeting and was in Brian's office. I think there was some discussion between Chris and Brian about, you know, the candidates as such and what it had - might have been discussion about Chris having met with the candidates and, you know, what was his opinion of the quality of the candidates.
> Might have been some general discussion like that. I really didn't pay a lot of attention to that because I wasn't interested in it and I wasn't to be involved in it. This document [Exhibit 14] was tabled and then there was a discussion between Chris and Brian about, you know, the appropriate key issues that affected the Gold Coast City community and how they should be identified and views on making sure the candidates were aware of, you know, generally what - the candidates were aware of the need to understand what is important to the people who would be voting to them, what were the important issues, and to make sure that they researched that - that is, the candidates did it. General discussion like that and then, really, all - we talked about - I'm pretty sure that's when we went back to that email and that list of candidates [Exhibit 18] and we talked about fundamentally, well, who's going to ring who and what responses are we going to get. That was it.

In respect of his note "supporting 8 councillors which will give a majority vote", Hickey gave the following evidence (T612-3):

> The first note you have is "Supporting eight councillors which will give majority vote"?-- Mmm, hmm.
> Now what does that refer to?-- The discussion was that to be successful in bringing a commonsense group of people to the Gold Coast City Council you obviously had to be in a position to know that you would cover a majority position so that hopefully, when matters were debated and they went to a vote, the commonsense would prevail by a majority decision.
> Right. So in order to do that one would need to identify who these eight councillors were?-- Yes, yes.
> And who were the eight? Look at the list if you need to refresh your memory, on the attachment?-- Okay. Hackwood, Power, Pforr, Mulhoek, Rowe, Scott, La Castra, Shepherd - yeah. I can't - I was really making a diary note of what they were saying there. But there was at least eight that they thought that they would cover, depending on who got in and who didn't get in.

Hickey was not sure who spoke about the need to obtain a "majority vote" at the meeting, but says it was either Morgan or Ray (T683).

In respect of his note "Trust a/c authority by Sue and David – make them the client", Hickey said (T614):

> Yes. Well, the next note that you have there is trust account?-- Mmm.
> And along side it "authority by Sue and David, make them the client"?-- Correct.
> Well, explain that to us?-- I explained that to operate the trust account we needed the name - it to be in somebody's name, a client's name, and that that client would then be responsible, would be the person in charge of that account to direct us as the lawyers simply to distribute funds in accordance with their written directions.
> Right, so that was your suggestion to make them theclient?-- Well, it was my direction. I mean, the discussions had been previously and was then can we put the money in your trust account? Yes, you can but you need to have somebody in control of it because I'm not going to be responsible for who gets what and where and I said that those people would have to be Sue and David.

Morgan said that the meeting had been organised to clarify the extent of the budget that would be available for campaign expenditure by candidates and to formalise the arrangements for Quadrant to provide services (T846). At that time, the indication given to Morgan was that there would be about $300,000.00 in total available through funds raised (T847), although

Ray had originally thought that the figure could be somewhat higher. Morgan recalls that the meeting's primary focus was on the list of potential donors that had been compiled. Hickey's copy of this list of candidates and potential donors is Exhibit 18, and the copy produced by Morgan is part of Exhibit 139. Both copies have had additional prospective donors added in handwriting to the original typewritten list of 30 donors.

Hickey said that at the meeting on 17 December, the participants discussed who was going to ring which potential donor (T611). The handwriting on Hickey's copy of the list of donors (Exhibit 18) are notes he made when he returned to his office that day showing which of the donors he contacted and the results (T616). Hickey also added "PRD" and "Ariadne" to his list as potential donors, and says that Ray was going to contact them (T620). The handwritten additions to Morgan's copy of the list of donors are seven potential donors who Morgan believes were added to the list by Ray (T906).

Meeting of 8 January 2004 at Quadrant

Power and Robbins continued to play a co-ordinating role for the work being done by Quadrant, being reported to by Morgan on at least two occasions between the Quadrant meeting on 16 December 2003 and the meeting on 8 January 2004.

An email from Morgan to Ray on 19 December 2003 (part of Exhibit 89) reads:

> Met with David and Sue again today to recap and agree on activity for the New Year. We have set a next meeting date with all candidates for Thursday 8 Jan. at Quadrant

Morgan's workbook notes for 19 December 2003 (Exhibit 131) are headed "GCCC/Commonsense" and provide details about what was discussed with Power and Robbins on that date, including:

> Tuesday 8 Jan 8.30am
> Candidate get together
>
> Checklist of activity & data base
>
> Circulate prior to 8 Jan

The last entry is followed by Power's and Robbins' names and home addresses.

Power cannot recall this meeting, although he agrees that he discussed a January meeting date for candidates with Morgan at some stage (T2427), possibly on the telephone.

On 22 December 2003, Morgan sent an email to Betts, Pforr, Rowe, Scott and Molhoek (cc'ed to Power and Robbins) scheduling a meeting for 8 January 2004 "to evaluate your individual requirements, check planning notes and consider the extent of resources available…" (Exhibit 133).

Those in attendance on 8 January were (on most accounts) Power, Robbins, Morgan, Betts, Rowe, Pforr, and Scott. Molhoek also thinks that he was there (T187-8).

Betts says that Morgan spoke to each candidate "one-on-one" at the meeting of 8 January, but they were all in the same room at the same time. Morgan asked each candidate for a "wish list" of what they would want in the way of advertising (T481). Pforr also said that he was asked for a "wish list" (T321), and that the meeting involved general discussion about what candidates had been doing over the Christmas period (T228).

Morgan says the meeting on 8 January was another collective meeting, to identify specific needs of candidates (T854). Each candidate provided details on what they had done to date in the presence of the others, and also discussed which issues in their respective divisions they considered should be their main focus (T855).

According to Rowe, the candidates present on 8 January had by then some campaign material prepared and the meeting involved sharing material, "pinching ideas from each other". Morgan and Robbins did most of talking, including Robbins giving helpful hints about door-knocking strategies and Morgan giving advice to particular candidates on their pamphlets and material (T1070).

Roxanne Scott sent an email to Morgan on 9 January 2004 (part of Exhibit 134) about election issues, containing the phrase "as David suggested yesterday, [her leaflet] needs to include [certain information]." Although Power and others suggested in evidence that his attendance at the meeting was casual and brief, this email suggests that he took at least some active role in the meeting. Scott agreed (at T410) that the email suggested Power had some input into her campaign at the meeting, but said it was not significant.

The events at the meeting on 8 January 2004 once again suggest that the group of candidate present were willing to share ideas and to discuss their campaign strategies in the presence of the others. It would also have been obvious to them from invitations to present a "wish list" for funding that each of them was being offered financial assistance from a common fund, organised by Power and Robbins.

Election Campaigns of the Selected Candidates

In respect of the campaigns of the three candidates for whom Quadrant did the most work, Morgan agreed that there was some "cross-pollination" of ideas between the campaigns:

> …only to the extent of lay outs and brochures, for example. There was some commonality there in terms of design. They represented a template in some respects. But generally speaking, in terms of the thrust of what each individual candidate, those three individual candidates presented to their electorates they all differed. (T854)

He agreed that Scott, Betts and Pforr all used a logo prepared by Quadrant describing them as "your local independent candidate", and that the idea of a "common sense" candidate was incorporated into their material in various ways (T967).

Robbins continued to play a major mentoring role throughout the election for Betts. La Castra acted as a mentor for Scott, including attending meetings at Quadrant with her, assisting her with advice generally and arranging some personnel to assist her at the polling booths on election day (T969).

Following the meeting on 8 January, Morgan continued to report to Power and Robbins about issues of common interest to the candidates' campaigns. In an email from Morgan to Power (cc Robbins) on 15 January 2004 (exhibit 135), Morgan reported that he had had further meetings with Rowe and had been proceeding with work for Pforr, Scott and Betts. Morgan also asked Power and Robbins for assistance on various issues of common interest to the candidates' campaign, including legals, divisional boundaries and timing of campaigning. In evidence, Morgan said that this email was sent to report to his "clients", whom he still considered to be Power and Robbins at that time (T930).

Although it is true that the three candidates who received the most assistance from Quadrant (Betts, Scott and Pforr) focussed their election material on individual issues of relevance in their own divisions, there was also a degree of commonality in the material they used, in particular the emphasis that each placed on being "your local independent candidate", the common sense theme, and the suggestion that they could work well with others.

UNDECLARED FUNDS USED BY THE GROUP

The fact that the selected candidates received services that were paid out of a common fund resulted in substantial amounts of the funding received not being declared by any candidate after the election.

Quadrant was paid a consultancy fee of $33,000.00, including $3000.00 GST, for the services they provided generally to Scott, Rowe, Betts and Pforr over a three-month period.

On this issue, Scott said that she had no idea that Quadrant were being paid a $10000 monthly consultancy fee (T354), nor did Betts (T513).

Morgan said that he did not think it was necessary for him to inform candidates about the $33000.00 in consultancy fees, and the amount of $7011.51 spent on the Hill negative campaign against Crichlow (T957). In respect of the consultancy fees, he said it was "never really an issue as far as whether that was to be apportioned equally or in any form over the candidates themselves" (T958).

The funds in Hickey trust account were also used to pay Janssen $5200.00 for the negative campaign conducted against Young, to assist Rowe's campaign.

The negative campaigns are dealt with in more detail below, but it is clear from the reconciliation statement produced by Quadrant showing how funds were allocated between candidates (Exhibit 141), that $33,000 in consultancy fees and the expenses for the two negative campaigns were not allocated to any candidate. This resulted in these substantial amounts of funding provided by developer interests not being declared by any candidate.

Under section 427A of the *Local Government Act 1993*, if a "group of candidates" receives gifts then each candidate who is a member of the group must disclose, in the approved form, the names of the candidates forming the group, the name, if any, of the group, the total value of all gifts, how many persons made the gifts and the relevant details for each gift made by a person to the group, where the total value of gifts given by the donor is the prescribed amount of $200 or more.

For this purpose, a "group of candidates" means:

> *a group of candidates formed to promote the election of the candidates for a particular local government, but does not include a political party or an associated entity (controlled, or operated for the benefit of, one or more political parties).*

One of the evident purposes of s.427A is to avoid situations such as the present where funds are received for the benefit of a group, but no individual member of the group takes responsibility for declaring the funds. Along with s.427 (disclosure by a candidate), it also avoids the giving of gifts anonymously.

The definition of "group of candidates" is general and broad, and in our submission could apply to the factual situation outlined in the preceding sections about the selection, funding and campaigns of the candidates supported by the funds raised.

Surprisingly, no candidate or councillor who gave evidence at the hearing seemed to be aware of the provisions in the Act and the Department of Local Government and Planning handbook (Exhibit 10) on the duties of "groups of candidates". This lack of awareness is consistent with their inattention to their statutory obligations generally.

SECRECY OF THE GROUP

While all of the candidates deny that there was ever any plan to keep the operations of the selected group of candidates secret, there seems to have been a marked reluctance on the part of both sitting councillors and candidates to speak frankly about them.

Referring to the fact that they had met as a group, Roxanne Scott said in her evidence that there was "no overt decision to keep it secret, but likely no overt decision to make it public either…". (T348)

There are several emails between Shepherd and Morgan that are important on this issue, as they clearly suggest that Shepherd (and Morgan) thought that it was necessary to preserve secrecy about the "group". An email from Shepherd to Morgan on 8 January 2004 about his "Election Programme" (part of Exhibit 138) contained the following:

> Additionally, by spreading the work around, I can dis-associate myself from the other campaigns. I am nervious [sic] that too many people know who is involved. Probably I am just paranoid.

In respect of Shepherd's statement that "too many people know who is involved", Morgan took Shepherd to be saying:

> "Let's look out for the Bulletin" if they – any information that comes out with respect to the candidates would be treated as – or treated in a negative form as had been our experience in the past. (T980-1)

Morgan clearly thought that Shepherd was concerned that information about the group might become public, on the basis that the information would be dealt with unfairly by the media.

Shepherd's explanation for his statements in the email was more baffling (T2078):

> Now, you are indicating there that you want to dissociate yourself from the other campaigns. What other campaigns?-- That's precisely what I was alluding to just before. I am very concerned that other campaigns would use my promotional material that I put together with my campaign committee to be used by them. It's very important that anything that you use- any ideas that you come up with, you keep to yourself so that it benefits your own campaign and not others. Specifically what I'm associating - dissociating myself from
> is any of these prospective candidates that Chris may be working for preparing a campaign strategy. Well, I wanted to be dissociated from it.
> But it's more than that, Mr Shepherd. The next sentence is, "I am nervous that too many people know who is involved"?-- Yes.
> What's that mean?-- There are - there were candidates there that I indicated I distrusted. Now, with-----
> "Too many people know who is involved"?-- Yes. Do you want me to finish?
> Yes?-- Thank you. What I have here is a situation where if I could draw you to the level of animosity in the community generated by a select minority group against me, I am

> extremely nervous about any of these people getting information about my campaign that would affect its outcome.
> That's not what it says?-- It is exactly what it says.
> Read it. Read it. It says-----?-- It is exactly what it says, and you've got to take this into context. This is my words, not yours.
> "I am-----?-- These are my words.
> Well, yes-----?-- And I am nervous that too many people know who is involved. I am nervous that too many of these candidates that Chris Morgan is talking to are involved in his connection with me.

And later (T2079-80):

> CHAIRMAN: Could you explain that again? I'm not following it. I think what you said was a little bit different from what Mr Mulholland has just said?-- Well, Mr Mulholland is making an accusation that he'd like me to agree with.
> Just explain to me again what it is you say that was said?-- With Mr Morgan working campaign strategies for a number of candidates - and I don't know-----
> That's the people who were there on the 16th-----?-- Well, it may be that, but it may be a bit more. I am unaware of who Mr Morgan is actually talking to in regard to being a candidate.
> Well, wouldn't you just ask him?-- No.
> But did you think he might have been acting for some of these people who were campaigning in your electorate against you?-- That is a possibility.
> Goodness me, you would ask him that, wouldn't you-----?-- No.
> -----before you'd allow him to do your work?-- Because this is the way I write my emails, Mr Chair. This is the way I would say to Chris, "I don't want you to be heavily involved in my campaign because of the people that you are talking to." Now, Mr Molhoek, I already said that I had some concerns about him. Now, I don't know who Mr Molhoek would talk to. I hadn't met Pforr and Betts and Roxanne Scott and Rowe until that night. I don't know who they were aligned with, who they - what organisations they were in or who they were talking to, and-----
> But who's the - sorry, who's the "too many people" who know who is involved?-- That's them.
> Then who is involved?-- Them, again. What I'm trying - I'm sorry, Mr Chairman, what I'm trying to say there is I personally do not know the network of people that these are connected with, that these candidates are connected with. For all intents and purposes any one of those could be members of - and if I can use the organisation, Gecko, which has far reaching tentacles right across the Gold Coast. Any one of those people could be a member of Gecko and reporting back to Gecko on my campaign strategies. That's my paranoia. And if I can, I have numerous newspaper articles and emails from these people who've set up, as you've tried to investigate, pseudo organisations, Division 9 Civic Action, Residents Rally, these are all organisations that this Gecko people have put in place and I don't know who these candidates are that Chris Morgan was talking to, but I don't know his network. That's my paranoia.
> MR MULHOLLAND: Let me just put this interpretation to you and you tell me how wrong it is, that what is referred to by you here is the too many people is a reference to the public, too many of the public know who is involved and is a reference to the identity of the people present at the meeting on 16th December?-- No, I reject that totally.
> That is that this is a reference to a group of selected candidates being supported by funding and what you are saying that you're nervous that too many people are involved and you want to disassociate yourself from it?-- No, no, no. Totally no.

In our submission, Shepherd's explanations about the meaning of this email make no sense, and go against the clear meaning of the statements he made. While, as Shepherd pointed out in his response quoted above, the words used are his, that does not mean, in our submission, that the Commission has to accept whatever unlikely interpretation he chooses to place on them.

An email from Morgan to Shepherd on 10 January 2004 said, in part (part of Exhibit 138):

> Although we had set up your Campaign as a completely separate account here at Quadrant it is obvious that you are quite concerned with a possible association with other candidates. The absence of any work through Quadrant should, I hope, eliminate this possibility although continued involvement on your campaign committee could possibly be equally compromising. We possibly need to discuss that aspect as well soon.

In Shepherd's email in response to Morgan on 11 January 2004, the following appears (part of Exhibit 138):

> With regard the other campaigns and my connection with them through Quadrant and funding; firstly, our Campaign should be fully funded by the end of next week (for what we want to do) so there is no need to source any other funds … additionally, I had an interesting conversation with Max Christmas yesterday where he was aware that I was involved with the 'David Power group of eight'. I denied it but you need to be aware that somebody is talking already. I hate to think what will happen closer to the election. I am available for advice to the candidates but DO NOT want to be linked financially or politically with the other campaigns.

Shepherd said that the "other campaigns" was a reference to the fact that he was aware that Morgan was talking to the other candidates and putting together a strategy for them. The reference to Shepherd's "connection with them" meant only that Morgan was co-ordinating the other candidates' campaigns and he did not want to be associated with Morgan as the co-ordinator, only as a friend. (T2052).

He referred to his connection to the other campaigns through "Quadrant and funding" because he had become aware through comments by others that funding was started to come through for other candidates, and he wanted nothing to do with obtaining funding through Quadrant.

He explained the comment, "I denied it but you need to be aware that somebody is talking already", in the following way (T2054):

> Basically, that's a reference to the candidates. My concern was if you're going to be assisting people in campaigns, you have to keep campaigns close to your chest and that you have to keep your strategies close to your chest. Now, I said to Chris, I think, at an early stage, "I don't want to be involved in anyone else's campaigns because my ideas might be used by them. They might try and use my ideas to foster themselves but bring me into an awkward position where my own campaign needs to run its own course." So that - sorry, lost my train of thought. So basically, as I understand it, even my 10 out of 10 leaflet-----
> Yes?-- -----that we had produced through Quadrant was actually used by some of the other candidates and that's what I didn't want to see - was anything that I'm preparing, which we set in place over a period of time to be used at the right time, I didn't want any of my literature or anything that was linked to my literature in colour or size or appearance getting out before I was ready for it and I didn't want it to be used by any other campaigns. So it's very important that people don't talk about campaigns. They should be personal and kept to oneself or to one's committee. So what I was saying there, quite clearly, is - I denied any involvement in a group of 8 but Chris needed to be aware that somebody, obviously in his group, was talking about it because Max Christmas heard it from somewhere and Max was out there trying to get assistance and funding. And I just said to Chris, "You need to be aware of it because someone in your group is openly talking about campaigns."

It is difficult to reconcile the suggestion that Shepherd was only concerned that candidates were discussing their, or his, campaign tactics with the ordinary and unambiguous meaning of the comments made. In context, the reference to the fact that "somebody is talking already" could only relate to Shepherd's expressed concern that Christmas had heard that there was a Power "group of eight".

Clearly, Shepherd was expressing his concern at talk that might link him to the group of candidates being put together by Power and at his involvement becoming more widely known prior to the election. The underlying assumption is the likely adverse public reaction if details of the group's campaign gets out.

Shepherd explained the final sentence of his email of 11 January as follows (T2054-55):

> Yes. And again, I'd ask the Commission to look at the way I write my e-mails – and this is to a personal friend. For me to do a highlight of "do not" in capital letters is – that's the message that I'm trying to give him, not as has been inferred, that I was trying to hide or keep under cover any linkage financially or politically. What I am saying to him in very simply terms is, I'm available for advice to the candidates, that's fine. If you want to ring me up and ask for advice on how to run my previous election campaign, that's fine, happy to do that but I do not - I do not want to be linked in any way financially or politically with any other campaigns. I run my own campaign. My campaign committee, my wife, we run our own campaign. We don't want to be associated with, we don't want to have connections with other campaigns. Leave us alone. We've got enough to worry about in division 9. We don't want to be involved in the others.

Shepherd's email demonstrates a clear desire to distance himself from the campaigns being conducted for the new candidates that Power and Robbins were supporting. He continued this stance in his evidence before the Commission, denying that he knew anything about the candidates he met on 16 December 2003 being funded through a trust account, denying that he was the "Ted" referred to in Exhibit 139 as someone who might approach Nifsan for a donation, and denying that he knew anything at all about what Power and Robbins were doing except through what occurred at the meeting on 16 December 2003 (T2075-7).

THE FUND

Source of funds

Most of the developers who were approached for funds were contacted by Power or on behalf of Power and Robbins. According to Hickey, he explained to all of the potential donors that he contacted that Power and Robbins would be controlling the funds (T627). This is significant as Power and Robbins were not just sitting councillors but heads of the Council's then north and south planning committees. Most of the developers who donated had had some dealings with either Power or Robbins in these roles in the period preceding the election. In an email of 5 February 2004 to Russell McCart (part of Exhibit 89) seeking his help in chasing up a donation to the fund, Ray made specific reference to their roles, saying: "The two drivers behind the camp (sic) are Sue Robbins and David Power, respectively chairman of the north and south planning groups…".

The evidence of each of the donors about who approached them to donate is summarised below:

Sunland Group Ltd	Brian Ray contacted Sunland about making a general donation in favour of candidates standing for election to the Gold Coast City Council. A cheque for $10,000 was drawn in favour of Hickey Lawyers Trust Account as requested by Ray, and paid on 28 January 2004. The payment was not in support of any particular candidate and Sunland had no information about the identity of any candidate or candidates who might ultimately benefit from the donation. Scott Treasure, Director of Property Assets for Sunland, said that he and Mr Abedian had confidence in Ray, and knew that the donation

	would be going to candidates Sunland would be happy to support (T1859). Abedian agreed in his evidence that he had no idea which candidates his donation would support, but assumed Ray would decide (T1888-9).
Devine Ltd	David Devine, the Managing Director of Devine Ltd, was contacted by Ray in late January/early February 2004. Ray said that a group of developers were contributing to a fund to assist a group of councillors who can "bring some sense to the process of development application". Ray said: "There are a number of councillors who are all anti-development and the fund will support councillors who understand development". Devine was told that $10,000 was the amount being contributed by other developers, and mentioned specifically Villa World, Raptis, Sunland and the Ray Group (T1211). Devine agreed to contribute, because his company was having problems with Cr Robbins, and Ray said he would arrange a meeting for Devine with Robbins after the election (this meeting did not eventuate). The amount of $10,000 was paid into Hickey Lawyers Trust Account on 5 February 2004. (Devine's statement, Exhibit 178).
Great Southern G.m.b.H	Hickey held a power of attorney on behalf of this company. He contacted a representative of the company in Germany and asked whether they would make a donation to assist with campaign funding for the Council elections. He was then instructed to make a payment from the company to Hickey Lawyers Trust Account in the amount of $10,000, and paid that amount into the account on 23 December 2003.
Villa World Limited	At a meeting in February 2004 with Brent Hailey, the CEO of Villa World Limited, Power requested a donation of $10,000.00 for the election campaign, indicating that he was establishing a fund to assist candidates who would stand against councillors who were "not sensible" in decision-making within Council (T1181). Hailey agreed to make a donation because he considered that the election of Power and other candidates with a similar progressive approach towards the development of the Gold Coast was something the company should support, because of its involvement in land development on the Gold Coast (paragraph 5 of Hailey's statement Exhibit 170). Power told Hailey he was canvassing other developers for donations, as well as the marine industry (T1182). Hailey understood Power would be supporting a number of candidates, but did not know their names (T1183). The donation was made on 12 March 2004.
Ray Group	The Ray Group donated $10,000 to the campaign through Hickey Lawyers Trust Account on 15 January 2003. According to a statement provided by Ray's son, Mr Tom Ray, the candidates ultimately intended to benefit from the gift were Power and Robbins and/or such other candidates determined by them in their unfettered discretion. The money was to be disbursed only on the instructions of Power and Robbins. (Exhibit 88)

Rapcivic	James Raptis, the Managing Director of Rapcivic Contractors Pty Ltd (part of the Raptis Group), was contacted by Hickey prior to the election. Hickey said he was seeking donations to be placed into a trust fund that were to be allocated to candidates standing in the election. An amount of $10,000 was sought. Rapcivic agreed to provide funds, and there was no discussion about the manner in which the funds would be distributed from the trust nor any discussion about which candidates would be beneficiaries of the funds. A cheque for $10,000 was drawn payable to Hickey Lawyers Trust Account on 18 February 2004 (Raptis' statement, Exhibit 184).
Sullivan	On 18 December 2003, Philip Sullivan, CEO of City Pacific Ltd, was approached by Ray to donate to "a group of candidates [who] needed support". Ray said it was important to have a balanced Council in power. No specific councillors were mentioned, and Sullivan left it to Ray's discretion as to how candidates to receive funds were to be selected. Ray said others were donating $10,000, and Sullivan agreed to donate that amount. Although the cheque butt, internal cheque entries and the receipt all refer to the names of David Power and Sue Robbins, Sullivan does not recall a reference to these councillors by Ray. The cheque dated 28 January 2004 was drawn from an account in the name of Ronglen Pty Ltd, trading as Sullivan Constructions, and made payable to Hickey Lawyers Trust Account. (Sullivan's statement Exhibit 196, T1265).
Blue Sky Capital	Constantine Nikiforides, the CEO of the Niecon Group (Blue Sky Capital Pty Ltd is one of its companies) was telephoned by Ray, who said he was organising a fund to assist councillors and candidates who were prepared to get things done on the Gold Coast. Ray said he wanted to generate democratic debate about what should be occurring on the Gold Coast and he thought that a fund would assist Councillors and candidates who "would be supportive and positive of this approach". Ray arranged a meeting for the CEO with Power, who said that contributing to a campaign fund was one way towards assisting those who would make a positive contribution towards developing the infrastructure necessary on the Gold Coast. Nikiforides thought the fund would be controlled by Ray. After a couple of reminders from Ray, he authorised a cheque payment of $10,000 to Hickey Lawyers trust account on 23 March 2004 (Nikiforides' statement, Exhibit 175). Although the receipt that was issued for the payment referred to "Mr L Barden" as the client, Nikiforides said he knew nothing at all about Barden at that time. (T1201).
Stockland	Col Dutton, Regional Manager for Stockland Development Proprietary Limited, was contacted by Power about making a donation to some "good candidates" He trusted Power's judgement and was happy for him to distribute the money donated, and was never told the names of any of the candidates to whom it was going (T1165-70). On 5 April 2004, he paid $10,000 to "Mr David Power c/- Mr Tony Hickey" for the "Lionel Barden Common Sense Campaign Fund", having been given that name by Hickey (exhibit

167). The letter enclosing the cheque described it as a donation to "a community fund".

Roche Group

William Roche, the director of the Roche Group Pty Ltd, had a telephone conversation with Power on or about 26 February 2004 in relation to a donation to the elections. He had no knowledge about which candidates his money was going to, but later had a conversation with Hickey about the details of where to send the donation. He knew that Power wanted to back progressive candidates, and thought that Power was probably leading a group of candidates that his company would have wanted to back. The Roche Group paid $10,000 into Hickey Lawyers Trust Account on 2 March 2004 (Roche's statement, Exhibit 181, T1219, T1222).

Phillips Group

Mr Gregory Phillips, a director with a number of companies in the Phillips Group, was contacted on two occasions by Hickey in January and March 2004. He made a donation of $10,000 on 27 January 2004, and $20,000 on 11 March 2004. He understood that the funds were to be used to promote the election of a number of candidates, to break the "stupid deadlock" that existed in the Council, where the Council was "deadlocked 8/8". He did not know of the involvement of Power or Robbins in the fund raising, and knew nothing about any particular candidates the money would go to (T1275-6).

Fish Group

John Fish was approached by Hickey and told that 24 other businessmen were also being approached to donate $10,000 each to fund a campaign that would be "pro-business" (T1926-7). Hickey said the money would be paid into his trust account and would be controlled by Power and Robbins (T1929). Power told him at a later meeting the names of at least two of the candidates to whom money had been given from the "fund", but Fish gave no direction about how his donation should be used. Fish donated $10,000.00 on 13 February 2004.

Ingles Group

Graeme Ingles, Director of the Ingles Group, was approached by Hickey, acting on behalf of Ray. Ingles was told that Ray had set up a fund to assist some sensible candidates who were running against existing councillors. (T1246) Ingles' understanding was that the fund would support common sense candidates who were not " radical greens or environmentalists" (T1257). He was told who the existing councillors to be opposed were, including Young and Crichlow. He did not want to support a candidate against Crichlow, and when he gave a donation made it a condition that the funds should not be used against Crichlow (T1257). (This direction was ignored, although the funds were allocated in a way that makes it difficult to identify particular donations against disbursements from the fund). Ingles thought Ray or Hickey would be controlling who got the funds. He was told the names of the candidates the fund would support, but as he did not know them he had no opinion of them. Therefore, apart from not wanting funds to be used against Crichlow, he left it entirely to the discretion of those controlling the funds (T1257-8). Ingles donated $10,000.00 on 17 March 2004.

It can be seen that, in general terms, businessmen with development interests were approached by Ray, Hickey or Power to donate to a campaign fund to support "sensible candidates" against existing councillors. Most were not told the names of the candidates to be supported. The donors (apart from Ingles) did not seek to place any conditions on their donations, but were happy for the money to be used at the discretion of Power, Ray or Hickey, whose judgement they trusted. All of the donors seem to have been aware that, in general terms, their money would be placed in Hickey's trust account and distributed to candidates.

The Operation of Hickeys Trust Account with Power and Robbins as Clients

In his statement (Exhibit 323B), Power claimed that he was never involved in the actual receipt of funds, does not recall ever being notified by Hickey Lawyers of the actual receipt of funds or the quantum of specific contributions made to the trust or what amounts were paid to support various individuals (pages 10- 11). In our submission, these statements are disingenuous and in conflict with the documents produced by Hickey Lawyers and various emails that evidence Power approving specific sums to be paid to candidates up until March 2004, as summarised below.

Reference has already been made to Hickey's evidence about why Power and Robbins were named as the clients to control funds placed in his trust account.

In respect of the account that eventually operated under the control of Power and Robbins, Hickey said (T631):

> Now so far as this account was concerned, you've explained how the account was created within your trust account. Did you ever understand this as a trust fund?-- In what sense?
> Well, did you ever understand that there was any trust document in relation to this campaign funding?-- No, there wasn't. It was a trust account.
> It was a trust account?-- Mmm.
> And you understood that-----?-- Correct.
> -----throughout?-- Correct.
> Did anyone ever suggest to you that they understood it in any different way?-- No one ever suggested that to me but there's been plenty of suggestions in the media.
> Yes. All right. So it was just a separate account that had been created within your trust account?-- Correct.
> And the purpose of it related to the Gold Coast City Council campaign?-- Correct.

On 23 December 2003 a file was created at Hickeys Lawyers (Exhibit 287) in the name of "Sue Robbins Councillor & David Power Cou" [sic] with the matter specified as "Gold Coast City Council – Election Campaign Fund".

On 24 December 2003, Power and Robbins signed an authority (written on Power's Gold Coast City Council letterhead) to pay Brian Rowe $7500.00 (from the "common sense" trust) (Part of Exhibit 288), and on the same day Hickey sent an email to Ray reporting on the creation of the trust account in the name of Power and Robbins (Part of Exhibit 89).

Power sent an email to Hickey lawyers on 21 January 2004 about requests for draws in specific sums by candidates (Part of Exhibit 100), and a follow-up email on 22 January 2004 saying that his figures were wrong and "Sue had given you the correct ones". (Robbins' email, also in Exhibit 100, allocated $2500 less to Rowe and $2000 each more to Betts and Scott). Hickey responded by email on 23 January that a written authority was required from Power and Robbins, not an email (part of Exhibit 100).

A written authority was provided by Power and Robbins on 23 January 2004, authorising $29,000.00 to be paid directly to four candidates (part of Exhibit 288). Rowe and Pforr were each allocated $7500.00 and Scott and Betts $7000.00 each.

There is also evidence that Power exercised control over overall budget allocations for candidates, not just individual draws. In an email from Roxanne Scott to Morgan (part of Exhibit 134) of 27 January 2004, Scott stated: "David has given me a tentative figure for a campaign budget - have you heard anything definite yet?".

There were two email transmissions from Hickey on 28 January 2004 (both part of Exhibit 100). One went to Robbins, Power and Ray and indicated that Hickey held $29,000.00 in his trust account to make the payments that had been authorised by Power and Robbins on 23 January. The other went to Ray, and indicated that Power and Robbins were "getting a little bit frustrated in waiting for their money". In this last email, Hickey stressed that the only role his firm had played was to "arrange for people to commit funds which are presently held in my trust account in the name of Robbins and Power and which are only distributed in accordance with their directions".

On 6 February 2004, Quadrant's internal records were changed to record that their client was now the Lionel Barden Trust Account, instead of the Power & Robbins Trust Account. The circumstances that led to this change of name at Quadrant are dealt with in more detail in the section that follows. In respect of the name change at Quadrant, Power gave evidence that, late in January 2004, he and Robbins became concerned about their names being used, in particular about their being responsible for distributing funds. They discussed the issue that there might be a perception that the recipients were beholden to them, and that it was a mistake on their part in view of their desire to keep the candidates independent (T2446). However, despite the change of name at Quadrant, Power and Robbins continued to control the funds held in Hickey Lawyers Trust Account. Power could not explain why this was so, except that he had been very busy at the time with his own campaign, got distracted and did not get back to the issue for a couple of weeks (T2459).

Whatever the reason, it is clear that Power and Robbins continued to control the substantial sums of money that were being processed through Hickeys Trust Account until 3 March 2004.

Further, despite his own campaign commitments, Power continued to be actively involved in fund-raising for new candidates during February 2004. In an email to Morgan on 12 February 2004, Ray notes that Power is "chasing $60,000 in contributions", and on the same date Morgan emailed Ray to advise that Power was following up Villa World, as Power had been talking to Brent Hailey from Villa World earlier that day (both part of Exhibit 89). Power's diary confirms that he had a meeting with Hailey on 12 February 2004 (Exhibit 323). Hailey's statement (exhibit 170) indicates that he discussed donating to the fund at a meeting with Power on 23 February 2004, and Power's diary for 23 February 2004 records a meeting with Hailey on that date. Hailey says Power told him he was "openly canvassing all development companies who had interests on the Gold Coast and that he was campaigning on the basis of his reputation as a common sense and approachable councillor" (Exhibit 170).

On 13 February 2004 Ray responded to an email from Morgan chasing funds, saying that he had spoken to Power who had promised to ring Ray that day to confirm where he was with $80,000 worth of commitments (Part of Exhibit 89). Ray noted that he and Morgan had a meeting scheduled on 17 February with Power and noted: "we should attempt to resolve everything by that date". According to Ray's diary (exhibit 91), Power's diary (Exhibit 323) and Hickey's evidence (T642 and 651), Ray, Hickey and Power did meet on 17 February.

Hickey thinks they met at Tigerlily's café to discuss how much they had and where else they could get money from, as more funds were needed. Hickey says that the only subject of conversation was the progress made in collecting funds (Exhibit 95).

On 17 February 2004, Pforr emailed Power requesting a $5000 draw down, and said that he would have to discuss the "issue of preferences" with Power (Exhibit 48).

On 18 February 2004, Barbara Christoffel, a Rowe campaign worker, emailed Sandra Wild at Hickeys saying "Cr David Power has confirmed with us $27,000 will be made available today for the [Rowe] campaign fund"(Part of Exhibit 100), evidencing Power's continued control over the allocation of funds to candidates.

On 19 February 2004, Power and Robbins signed an authority to Hickey Lawyers to pay $33,000.00 directly to four candidates, and also authorised $20,000 to be "held and paid as invoiced by Quadrant" (part of Exhibit 97).

On the fund-raising front, on 26 February 2004 Power wrote to Bill Roche about contributing to a "community based fund" that had been established to bring back dignity to the Gold Coast and "certainty in the decision-making process" (Exhibit 181). On the same date, Power also wrote to Col Dutton of Stockland (Exhibit 167) in similar terms requesting a donation for a "community fund".

Change of Name at Hickey Lawyers

On 3 March 2004, Power and Robbins faxed a written authority to Hickeys to transfer all funds to the credit of matter number 245821/1 to the "Lionel Barden Commonsense Campaign Fund" (part of Exhibit 97).

According to Hickey (T645), he received advice from Power by telephone that Power and Robbins wanted to appoint someone other than themselves to manage the trust account. Hickey did not ask for an explanation. Hickey assumed Power wanted somebody else to manage the account so he could concentrate on his own campaign (T647).

On his instructions, Power told Barden that the fund was being handled through Hickey, and that he would let Hickey know to put Barden's name to it (T1159). Hickey confirms that he was told by Power that Barden would be the new client, and says that he never even spoke to Barden prior to changing the account to his name (T650). For his part, Barden thinks that he did contact Hickey and had a very brief telephone conversation with him about what he would have to do in respect of the trust (T1159).

Hickey's trust statement for his new client Lionel Barden, headed "Commonsense Campaign Fund", started with a trust journal transfer of $20,500.00 from "Sue Robbins & David Power – GCCC Election Campaign Fund" on 4 March 2004 (Part of Exhibit 288).

During the period from 23 December 2003 to 3 March 2004 that Power and Robbins controlled the funds held at Hickey Lawyers a total of $90,000.00 was received in donations, and a total of $69,500.00 was authorised by them to be paid directly to candidates.

Meeting with Fish, Pforr and Rowe

Power's assistance to new candidates during this period was not confined to the allocation of funds through Hickey Lawyers trust account.

On 17 February 2004, Power's secretary emailed Pforr about a meeting Power had arranged for Pforr with the developer John Fish (Exhibit 51).

According to Pforr, Power suggested he should meet Fish (T291-2), and Fish offered him funding and in kind support. He did not know that Rowe was also going to be at the meeting. According to Hickey (T651), he had some part in requesting this meeting, because Fish wanted to meet with Power. Hickey said his role in arranging the meeting was limited to telling Power that Fish may be interested in giving further funding (T2005).

Rowe said he attended the meeting with Fish, Power and Pforr, that he and Pforr were offered support and were told about problems Fish had had with Young (T1081-2). In his statement, Rowe did not refer to Power's role in his attending this meeting (T1081).

Fish said that Hickey rang him and said Power would like to come to introduce Pforr to him and for him to meet Rowe again, whom he already knew (T1929 and 1931-2). Power told Fish that he was distributing money from a trust account to candidates, including Pforr, Rowe, Betts and Scott (T1934). Fish later agreed in cross-examination that Power may not have mentioned the trust fund that day in front of Rowe and Pforr (T2002). Fish said he made no commitment at the meeting to provide further funds to Rowe or Pforr, but left it on the basis that they could contact him if they required further funding. Fish assumed that Rowe and Pforr had already received money indirectly from him through disbursements from the fund, to which he had contributed (T1933-4).

Fish was subsequently contacted directly by Pforr and Rowe seeking funds (T2000). In March 2004, he donated $10,000 to Pforr, and also $24,000.00 to Rowe's campaign.

Power's diary (Exhibit 323) records another meeting between him and Fish on 1 March 2004.

According to Power, funds were not discussed at the meeting on 23 February 2004. He agreed that his reference in an email of 9 March 2004 to the fact that a donor would be assisting Pforr and Rowe directly was a reference to Fish, but denies knowing that Fish donated $10,000 to Pforr on 9 March and $24,000 to Rowe on 10 March 2004 (T2439).

In our submission, in view of the pressure that Power was under to raise funds and his subsequent knowledge of Fish's intention to fund Pforr and Rowe directly, his evidence that he did not arrange this meeting with Fish to obtain funding for Pforr and Rowe should be rejected.

Change of Name at Quadrant

On 5 January 2004, Morgan sent an email to Power and Robbins (part of Exhibit 135) headed "Subject Power & Robbins 2004 GCCC Election Trust Fund ?", reporting on work done with the "five new candidates". Morgan said that Quadrant still did not have a "real client", and that he was still unaware of the name of the trust fund (as his question mark in the title appears to indicates).

Morgan says he was later told by Power that the name of the account held in Quadrant's office would change and, on 30 January 2004, he was advised that Lionel Barden had agreed to allow his name to be used (T852). Morgan says he was not sure why the name was changed (T922), but agreed he told CMC investigators that the name was changed because it was bound to become public at some stage (T966).

Power gave evidence that, late in January 2004, he and Robbins became concerned about their names being used, in particular about their being responsible for distributing funds. They discussed the issue that there might be a perception that the recipients were beholden to them, and that it was a mistake on their part in view of their desire to keep the candidates independent (T2446).

There are emails between Morgan and Power on 4 and 5 February 2004 concerning a draft letter of appointment for Barden. Power advised Morgan that Barden had agreed to act as "primary client" (Exhibit 135).

The letter of appointment from Barden to Quadrant produced as a result of this exercise was back-dated to 10 December 2003, the day Morgan had originally opened an account at Quadrant in the name of the "Power and Robbins Trust Account". Morgan explained that he was told by Power that the name of the account was to change to Barden's (T920), and that he had prepared the backdated letter of authority because it was "standard operating procedure with an advertising agency … to have a letter of authority relevant to the period of your contract" (T925).

Barden says Power approached him in late January to put his name to a trust (T1116). He did not know that the trust had previously been held in the names of Power and Robbins, and was not told that by Power (T1125). Power asked him to put his name to the trust, as he was independent of Council business and the Chambers of Commerce (T1116-7).

Power's diary (Exhibit 323A) shows that he met with Barden on 4 February 2004. In his statement, Power said he "believes" Lionel Barden established a trust fund known by various names after he and Robbins had originally operated as the "Power and Robbins Trust", but that he had limited knowledge of the entities (Power's statement, page 8). In our submission, this statement is disingenuous, and totally understates Power's role in the appointment of Barden, as outlined above.

There was an internal email from Morgan on 6 February 2004 (part of Exhibit 135) to change Quadrant's client name to "Lionel Barden Trust Account" instead of "Power & Robbins Trust Account". This email was also forwarded to Robbins, and she responded on 8 February noting she was "pleased" with the email and that "the change of name is essential". This message from Robbins was included in a response from Morgan that was sent on to Power on 9 February 2004. (These emails are all on the same two pages in Exhibit 135).

In our submission, there are several factors that show that Barden's appointment was a matter of window-dressing, and that he was regarded as a mere figurehead:

- Despite his appointment, Barden was never told by Power about the previous operation of the trust account at Hickey Lawyers in Power's and Robbins' names (T1115), or that funds had already been raised and paid out of the fund, or that funds had already been paid directly to the candidates being supported (T1125).

- Barden had no involvement in the Quadrant account until 30 January 2004 at the earliest, and no involvement in the Hickey Lawyers trust account until after 3 March 2004.

- Barden's involvement was limited to checking Quadrant invoices to see that the amounts being charged were reasonable (T1124). As at the date of the election, Barden's only role had been to authorise the Janssen invoice on 9 March and authorise Quadrant invoices totalling $45,000.00 on 18 March 2004.

- Unlike Power and Robbins, Barden did not authorise any payments directly to candidates. He authorised $5200.00 to be paid to Janssen for a negative campaign against Young, and $75300.00 to be paid to Quadrant for their services. Of these total Quadrant costs, $60,654.34 had already been incurred by the time Barden was appointed (including the $33,000.00 consultancy fee), and his role was simply to authorise the invoices for these costs for payment when funds were available.

- Barden never knew the names of donors to the fund until June 2004, when he put in a third party return (T1127). His only knowledge prior to that time was through media articles published in late March 2004 about Ray's and Abedian's involvement.

- Despite Barden's appointment on 6 February, Morgan continued to liaise with Power about payment and other issues after that date. On 18 February 2004, Morgan emailed Power about a prospective investor to fund, and ended: "Must talk to you tomorrow re confirmation of funds x candidate as I am pushing buttons on a range of printed material and need to ensure that we both agree on whom is getting what. Could you call me when convenient please" (Part of Exhibit 135).

  Morgan also emailed Power on 1 March 2004 (Exhibit 323B): "Just a quick note and a very concerned one to boot…" and on 3 March 2004 (Exhibit 323B) "Really appreciate your efforts to move some funds our way today." The second email also said that Quadrant were going to provide Power with a spreadsheet showing an overall summary analysis of actual campaign commitments and proposed expenditure to date per candidate. On 9 March 2004, Morgan emailed Ray on the "state of the nation" as far as funding went, noting that he had emailed the same information to Power and Robbins, copy to Barden (Part of Exhibit 89).

  There are also emails in Power's material from Morgan as late as 15 March 2004 about approving funding and the booth captains' session that, while addressed to Barden, were also cc'ed to Power. Emails on 18 March 2004 about chasing up payments and the proposed "meet the candidates" session are either addressed to or cc'ed to Power. (All in exhibit 323B)

After 3 March 2004

Power's involvement with fund-raising for the new candidates also did not end when Lionel Barden took over as the client at Hickey Lawyers on 3 March 2004.

There is an email from his personal assistant on 5 March 2004 providing what is referred to in the following email as "David Power's/Sue Robbin's guest list" for the proposed "meet the donors" function that Morgan was trying to organise, listing their potential invitees (Part of Exhibit 89), including Roche, Ingles and Col Dutton from Stockland.

On 9 March 2004, Power emailed Morgan to say he would "follow some people up" and to give him the goods news that "another donor has pledged to assist Pforr and Rowe direct so that may take them out of the equation all together" (a reference to Fish) (exhibit 135).

On 10 March 2004, Hickey reported to Power (referring to a telephone discussion they had had that morning) providing details about which funds Power was supposed to be following up personally (Part of Exhibit 100). Hickey says that he continued to report to Power, as opposed to Barden, because Power would ring up and make inquiries and he assumed Power still had involvement in the process because of his involvement from day one (T652). Hickey

said that, although Power still had some control, the only control he was interested in was who was to direct him to distribute funds (T652).

On 17 March 2004, Hickey reported to Power and Ray about the balance of the funds available, and the condition imposed on a donation by Ingles that it not be used against Crichlow (Part of Exhibit 100). When asked why he did not report these matters to Barden, the person supposedly in charge of the fund, Hickey said: "Perhaps I should have" (T655).

On 18 March 2004, Morgan emailed Power about a request from donors to meet the candidates, particularly those donors who had yet to contribute, and the proposed meeting the following Thursday, asking if they were comfortable with the concept of such a meeting. (Exhibit 135). Power responded: "Chris go ahead this is too important to let run off the rails now" (Exhibit 135).

SECRECY OF FUND

In our submission, there has been a substantial amount of evidence presented to the Commission that shows a concerted effort to conceal both the existence of the fund for selected candidates, and the involvement in that funding of Power and Robbins.

Morgan agreed that the four invoices that Quadrant issued in the name of the "Power and Robbins Trust", initialled for payment by Power, were provided to the CMC in April 2005 by his partner Tony Scott, while Morgan was overseas (T934). They were not included in the material that Morgan subsequently provided to the Commission in response to a notice to produce in August 2005, although his covering letter indicated that he was sending the Commission all of Quadrant's material, including that previously provided by Scott. In fact, the material sent by Morgan contained only the replacement invoices made out in the name of Lionel Barden, and Morgan could not explain why the earlier invoices were not included. It must be considered doubtful that the Power/Robbins invoices would ever have come to light if Morgan had not been overseas when the Commission first requested material from Quadrant.

Morgan agreed that he said in a media interview for an article on 15 April 2004 (No. 54 of Exhibit 3) that "Lionel Barden had to give the sign-off on everything, approved everything. He was the trustee" (T987). Morgan said that he had made no mention at all of the "Power and Robbins Trust" because he was not asked about the fund or the nature of the make up of it, and it "wasn't relevant to the interview at the time" (T988).

Janssen said that the fund was something "we felt should not be discussed simply because of the fact that the Bulletin was certainly backing the other side so to speak, yes. There was no word 'keep it secret' there was just no point in discussing it." (T749). As many other witnesses claimed when asked about their public statements in this matter, Janssen said he was not going to volunteer information, but if somebody had asked "the right question" he would have "owned up" to what he knew.

Lang agreed that it was untrue to say, as he did in a media article (No.10 of Exhibit 3), that "no money from developers" had been paid into Rowe's campaign account. He said that they had been getting "bad publicity" from the papers, and he was not going to give them any information at that stage (T1517).

It is obvious from this comment that Lang, like many others involved in the fund, seems to have been unable to distinguish between giving no information to the media and giving patently false or misleading information. Lang also admitted understating the amounts

received by Rowe (T1518-9), saying: "Well, they kept referring to developer's money, developer's money, all the way through and that's what they – the papers seemed to be concentrating on".

There are many other instances where candidates and sitting Councillors were disingenuous about their involvement in the raising and disbursement of funds during the election campaign, which are dealt with in more detail in the section below about media statements made by relevant parties.

As also dealt with in more detail below, Power and Robbins were not referred to at all in the third party return that Hickey prepared for Barden after the election, or in the trust statement that purported to show the operation of Hickey Lawyers trust account that was provided to the Commission in April 2005.

Barden drafted a letter of 28 June 2004, asking Hickey Lawyers to put in a return as trustees for the account, but not to reveal the names of the donors or the candidates who received funding, acting on the advice of Power (T1136).

In early February and early March 2004 respectively, the names of the accounts at Quadrant and Hickey Lawyers were changed from Power and Robbins to Lionel Barden. According to Morgan the change at Quadrant was effected because the names of the account holders were "always going to become public" (T966).

In its entirety, the evidence supports a conclusion that the operation of the fund created to support selected candidates, and the involvement of Power and Robbins in that fund, was intended to be kept secret, and would not have become public if not for media interest and this Inquiry.

NEGATIVE CAMPAIGNS

Evidence was given that, during the election, negative campaigns were conducted against sitting councillors Peter Young and Dawn Crichlow.

Robert Janssen (President of the Nerang Chamber of Commerce), conducted a negative campaign against Young, to support Rowe's campaign.

Janssen says that he discussed the negative campaign with Robbins and Lang, Rowe's campaign manager. Robbins told him funding was available, and he was paid $5200 from Hickeys Lawyers Trust Account. Janssen said that he was "unofficially" on Rowe's campaign committee. According to Janssen, Rowe knew generally that he was conducting the negative campaign, but not the details of it, as he wanted Rowe to have "credible deniability" in respect of the negative campaign (T731-40). Hickey said that he received the authority to pay Janssen from Barden without ever having spoken to him, and had no idea what Janssen was being paid for (T650). In respect of a suggestion by Janssen that he had had the negative campaign material checked by Hickey Lawyers to make sure it was not defamatory, Hickey said that it appeared Janssen had spoken to a lawyer in his office, but he had no personal knowledge of it (T680).

Rowe denies having any conversation with Janssen about the negative campaign (T1093) and says he knew nothing at all about it (T1091) until he saw one of the "drop mailers" in a letterbox. He then spoke to Michael Yarwood, a lawyer who was assisting his campaign, and told him to stop it (T1092). Lang also denies knowing anything about Janssen's negative campaign (T1510), or the receipt by Janssen of $5200 from the Hickey Lawyers Trust

Account. By contrast, Janssen says he discussed the campaign with Lang, and they jointly decided to use the name "Community Electoral Alliance" on material for the campaign (T1511). In respect of the fact that Janssen was listed as a member of Rowe's campaign committee in material provided to the Commission, Lang said that Janssen had come to some campaign committee meetings, but did not take an active role (T1513).

Janssen gave evidence that he had obtained information for use in the negative campaign against Young from Shepherd and La Castra, or checked the veracity of information he wanted to use with them. He says he may or may not have told Shepherd and La Castra why he wanted the information (T751-2). He also believes he obtained information from Power, but says that he never discussed the negative campaign with him (T768).

A negative campaign was also conducted during the election against Crichlow, to support Scott's campaign. Stuart Hill was described by Scott as someone who gave her assistance with her campaign because he wanted to see a change in her Division (T340), although she did not have a campaign committee as such. Hill was enthusiastic in his support of Scott and did letterbox drops for her, but was limited by a lack of resources in what he could do for her (T340). Morgan suggested to Scott that material should be put out about "unusual occurrences" in Division 6 over the years. Scott guessed that the material proposed to be put out could be construed as negative, and she did not really want a lot to do with it (T341). She saw the material once it was distributed around the area, but not before. The material was authorised by Hill, who had earlier been the person who authorised Scott's own election material. Scott had then picked someone else to authorise her material, and when asked why said (T342):

> Because I told Chris Morgan I didn't really want to be involved in the negative side of it and then when he and – when they put it out anyway I felt I wanted to distance myself a little bit from it.

Scott said she did not know a group called the "Southport Citizens for Change", on whose behalf Hill supposedly released the negative material but believed Hill was involved with them (T341). She suspected that the group was just started up for the purposes of the negative campaign (T343).

Hill prepared negative material to support Scott, and the accounts for this work (totalling $7011.51) were paid through Quadrant invoices addressed to Hill c/- Southport Citizens for Change. Hill said he never received any invoices, and Morgan agreed that Hill would not have been sent invoices, as they were paid from the Hickey Lawyers Trust Account (T972). Morgan did not think that Scott would have to declare the negative campaign costs, as she did not authorise it. Morgan conceded that he had no specific authority to expend the money that was paid for the Hill negative campaign, but said that Quadrant "were just acting within the terms of the brief as we understood it" (T986).

Section 427 of the *Local Government Act 1993* requires candidates to disclose, in the approved form, the total value of all gifts received, the total number of persons who made the gifts, and the name and residential or business address of each person who made a gift to the value of the prescribed amount of $200 or more either to the candidate or to their campaign committee. The term "gift" is defined in s.414 of the Act:

> ***gift*** means the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration, but does not include—
> (a) transmission of property under a will; or
> (b) provision of a service by volunteer labour.

In our submission, the provision of the services involved in producing a negative campaign (with the exception of any volunteer labour) could in some circumstances qualify as a gift to a candidate that should be declared by that candidate.

In this case, both Scott and Rowe have denied knowing anything except the vaguest details about the negative campaigns conducted in their Divisions, and neither admits giving authorisation for the campaigns.

In both cases the negative campaigns were conducted by persons who were "unofficial" members of the candidates' campaign committees, and in both cases the person against whom the campaign was directed was the only other candidate running in the division.

The Commission could, in these circumstances, be satisfied that the negative campaigns were undertaken for the benefit of Rowe and Scott. However, it is difficult to say that the service was provided to the candidates in circumstances where they claim that they did not know about the campaigns or authorise them.

CANDIDATES' RETURNS AND THIRD PARTY RETURNS

Third Party Returns

The only person connected with the fund for selected candidates who lodged a third party return after the March 2004 election was Lionel Barden.

Gifts for third party expenditure are covered by section 430 of the *Local Government Act 1993*. That section places disclosure obligations on a person (not associated with a political party registered under the Electoral Act) who receives a "prescribed gift" of $1000 or more and incurs expenditure for a political purpose related to a local government election of $1000 or more.

Hickey prepared the third party return that Barden lodged, and explained how he came to do so (T670):

> CHAIRMAN: Were you going to ask any questions about the election return - gifts returns that were put in, any knowledge that this witness has, if there is any knowledge; I don't know?
> Can I ask: did you ever feel that you, as the trustee, if I can use that term in quotes, that you were under any obligation to put in an election gifts return as the trustee of a trust fund?-- As the holder of a trust account?
> Mmm?-- Yeah, we considered that and I sought some advice from lawyers in my office asking them to research that, and the view was no, but there seemed to be some doubt as to who should put a return in relating to it, and I made the decision that I wanted to make sure that a return was put in relating to all the transactions in the trust account, and I prepared a document and I sent it to Lionel Barden saying, "Look, I've prepared this information for you. I'm not giving you any advice in respect of the matter, but if you believe it's correct, I believe, you know, you should put in a return including this information."
> All right.
> MR MULHOLLAND: So you prepared that return which Mr Barden put in?-- I took all of the information that was necessary. Well, I don't know, I didn't see the return that was put in. I prepared a return document and completed with all the information that I had.
> Right?-- And forwarded it to him. I didn't see him or talk to him about it, when it was actually put in.

In respect of the reference to advice that Hickey sought from lawyers in his office, this resulted from a "courtesy" telephone call from David Montgomery, the GCCC's city solicitor, on 14 April 2004. Montgomery spoke to Joseph Welch, a lawyer at Hickeys, and Welch recorded the details of that conversation in an email of 15 April to Stephen Hodgson, Tony Hickey and Bradley Scale (cc'ed to Jamie Bolic and Mark Lacey).

In the email, Welch said that Montgomery had suggested that Hickeys turn their mind to the obligations under the *Local Government Act 1993* for third parties to file a return.

Surprisingly, it appears that Montgomery did not express an opinion as to whether the provision applied to Hickeys, but merely said that it might be prudent for them to have a look at it (Part of Exhibit 288). This casual attitude to the Council's role in monitoring compliance with the Act is consistent with the stance taken by the Council's CEO, Dale Dickson. Although Dickson accepted that the obligation placed upon him to keep a register of electoral gifts involved an obligation to keep the register in compliance with the Act (T2304), he took a fairly limited view of what that entailed (T2305):

> From a - from a practical perspective, I take the view that the officers should be diligent in ensuring that the - that the returns are complete, that there are no obvious omissions or errors, that at the end of the day the disclosure obligation rests with the individual or the third party, not the officers concerned. They have a practical delegated responsibility to administer my responsibilities under the Act but the actual disclosure obligation rests with the other party.

Following the discussion with Montgomery, a lawyer at Hickeys, Anne Cunningham, was asked by another lawyer there, David Monaghan, to look at the issue. Cunningham produced two memoranda to file, the effect of which was that Barden, along with Robbins and Power, were required to lodge returns disclosing the names of donors. Noting the change of name, she commented:

> Should we disclose the different name on the Return? At the moment I have shown the donations but included them in the new name. Should we take the risk of a $1500 fine? The reason I am hesitant is because the 2 councillors were the trustees and they would have to disclose the names of the donors. There was no buffer between the councillors and the donors until we changed the structure.

Cunningham agreed that the two councillors she was referring to in this passage were Power and Robbins (T2135), although their names for some reason were never mentioned throughout her memoranda. In respect of the reference to her having included donations "in the new name", she said that that was a reference to Lionel Barden, and she recalls that she had at the time begun to prepare a handwritten draft third party return in Barden's name (T2136).

In the second of her memoranda, dated 20 April 2004, Cunningham said that it might be wise to inform Power and Robbins (once again referred to only as "the councillors") of their obligations to lodge a return, although she noted that "they should be aware of it". Hickey has given evidence that he did not see Cunningham's written advice until he read through the Hickey Lawyers file prior to his second appearance at the CMC (T2140). He did, however, discuss the issue of who should put in a third party return with Monaghan, the lawyer to whom Cunningham had provided the advice. Hickey does not recall their having a detailed discussion about the obligations of Barden, Power or Robbins because he was not asked to advise them, and did not want to have to give them advice on the matters raised at all (T2142).

Hickey conceded that, in retrospect, he perhaps should have contacted Power and Robbins about a third party return (T672):

> Right, thank you. Now having regard to the fact that your clients, up until early March in relation to this fund or account, were Power and Robbins did you contact them to tell them that they should put in a return?-- No.
> Well, if in one case you were suggesting to Lionel Barden that he put in a return why not Power and Robbins?-- I didn't consider it.
> You didn't consider it?-- No.
> But I'm just trying to understand why you didn't consider it because Power and Robbins are closer to you-----?-- I simply
> didn't - I simply didn't think of you.
> Didn't think of it?-- No.
> Well, on the same basis that you'd contacted Lionel Barden, wouldn't you or shouldn't you, in retrospect, have contacted Power and Robbins?-- Perhaps.

Barden received a letter from Hickey dated 10 June 2004, enclosing a third party return "incorporating details of funds received in our trust account" (T1136). Barden had contacted Hickey lawyers a couple of days before to ask if he had to put in a return, was advised that he did, and authorised Hickeys to prepare one (T1160).

Barden drafted a letter of 28 June 2004, asking Hickeys to put in a return as trustees for the account, and not to reveal the names of the donors or the candidates who received funding, on the advice of Power (T1136), but within 24 hours Power rang to advise him that the proposed course was not correct (T1139).

Barden is not sure the letter was ever sent, and says he based its contents on information provided to him by Power and unnamed others (T1136-7 and T1142). There is no evidence that the letter was sent, and Hickey said that records at his office showed no evidence of it having been received. (T2148) Power gave evidence that the only discussion he could recall having with Barden was to advise him that, in Power's view, Barden would have to put in a third party return (T2470).

Barden signed the return provided to him by Hickey that included amounts totalling $50,000 donated into Hickey's trust account prior to 3 March 2004, that is, before Barden was named as the client in control of the trust account and at a time when the trust account was controlled by Power and Robbins. Barden says he trusted Hickey and the people involved, and accepted the situation (T1145). He knew that the Quadrant account had been operating before he became involved, so he just took it for granted that the Hickey account had been operating before he put his name to the trust (T1145).

Hickey was questioned about the failure of the third party return to refer to any involvement of Power and Robbins (at T698-9) and conceded that the return could have misled an interested member of the public examining it:

> CHAIRMAN: Mr Hickey, did I understand you correctly when my belief was that it's this page that sets out the schedules of gifts, the name of the donor, the address of the donor, the date of the gift and the amount of the gift, that that was the schedule that you provided to Mr Barden?-- Yes, that's our typing, yes.
> Right. To assist him then in putting the return in?-- Yes.
> Yes.
> And after the research was done within your office the conclusion was reached that it shouldn't be your firm that put the return in-----?-- Yes.
> -----but that it should be Mr Barden?-- Yeah, we reached the conclusion that it certainly wasn't our responsibility or Hickey Lawyers Trust Account to put a return in. I'm not sure

if we specifically concluded that he must put a return in either but it seemed that he should and I was concerned to make sure that a return was put in with that disclosure.
And that being on the basis that he was the person who had control of the fund-----?-- Yes.
-----who indicated where money should go?-- Yes, yes.
Well, on that basis why did you send him a schedule that showed moneys that were received at a time when he wasn't the person who had any control over it? Why didn't you send two schedules namely one that would take it up to the 19th of February which would be during the time when David Power and Susan Robbins had control and a second one from the - you might have had to work out the 3rd of March as to whether that was Power and Robbins or Barden but you understand what I mean?-- Yes, I do. Look, I just didn't consider it. I just didn't consider it, I was concerned to just make sure there was a disclosure. I didn't go back and think about when the - there being a change of trustee or client in charge of accounts. I just didn't turn my mind to it.
All right. But then that means that any interested member of the public who looked at these returns would conclude that throughout the entire period of the receipt of these donations Mr Barden was the person who had control of the disposition of these moneys?-- Yes, yes. Possibly, yes. I didn't consider that. I thought the relevance of the return was where the money came from or where it went to.
And, of course, that again would be misleading to that interested member of the public?-- Possibly, yes.

In respect of the question of third party returns, Power was questioned in the following terms (T2494-5):

Yes. Now, can I ask you this. Do you accept that in the period the 23rd of December 2003 to the 3rd of March 2004 with your knowledge and authorisation payments were made into and out of an account in the name of yourself and Sue Robbins within the trust account of Hickey Lawyers?-- Yes.
Do you also accept that such payments were made to Brian Rowe, Greg Betts, Grant Pforr and Roxanne Scott who were candidates in the elections of the 27th of March 2004?-- Yes.
Do you also accept that in total such payments in amounted to $90,000 and such payments out amounted to $69,500?-- If that's what the evidence shows then I accept that.
Then why didn't you lodge a third party return under section 430 of the Local Government Act in relation to such payments?-- Until recently I was not aware that - that a return should be lodged specifically within our names. I'm still not entirely certain as I believe there's some dispute between opinions anyway. My understanding of the situation was a third party return needed to be submitted. That third party return was Mr Barden's and as I understand it Mr Barden's return indicated all funds in and out, which is clearly the objective of the Act anyway, to indicate where the funds had come from. As to whether or not it should have been in Sue's and my name, the best that I can tell this Commission is that I spoke to Councillor Robbins about two or three days before close of - of the declaration period asking her if things were being dealt with in accordance with the Act and she assured me it was. I didn't take the matter any further.
Mr Barden has told us that he knew nothing about direct payments to candidates?-- I can't answer what Mr Barden said or did not say.
And Mr Barden was not at all involved, even in relation to Quadrant, until the end of January 2004, was he?-- That's correct.
Yesterday, and you've said it again, that you believed that Mr Barden may have to put in a third party return. Well, if you had that opinion in relation to Mr Barden, surely that applied to you?-- Well, it - it was something that occurred after the election, as I said, and I - as far as I was aware, Mr Barden's third party return could take care of all the funds in and funds out. Now, I may have been mistaken on that. If I was-----
Did you take any advice?-- No, I did not. As I said, I spoke to Councillor Robbins as to whether she was satisfied. She told me that she was. I did not take advice on the matter.
If I am incorrect in that I will stand corrected.
Mr Power, you did not put in a third party return because you did not want it to be publicly known?-- Not correct.

The requirement for third parties who receive gifts and incur expenditure for a political purpose relating to a local government election is contained in s.430 of the *Local Government Act 1993*, which provides:

430 Gifts for third party expenditure for political purposes

(1) This section applies if, during the disclosure period for this section for an election (the ***relevant election***) relating to a local government (the ***relevant local government***)—

(a) a person (other than a political party, an associated entity or a candidate for the election) incurs or has incurred expenditure for a political purpose about an election or elections relating to the relevant local government; and

(b) the total amount of all the expenditure mentioned in paragraph (a) is the prescribed amount or more; and

(c) the person receives a gift that is a prescribed gift in relation to the relevant local government.

(2) The person must, before the end of 3 months after the conclusion of the relevant election, give to the chief executive officer of the relevant local government a return, in the approved form, stating the relevant details for all gifts that—

(a) are prescribed gifts in relation to the relevant local government; and

(b) are received by the person during the disclosure period.

(3) For subsection (1), a person does not include persons appointed to form a committee to help the campaign in an election of a candidate who has been nominated for election by the registered officer of a political party if the campaign committee is recognised by the political party as being part of the political party.

(3A) Also, for subsection (1), a person does not include a person who is a member of a candidate's campaign committee or a group's campaign committee for an election of the candidate or members of a group of candidates.

(4) Expenditure for a political purpose relating to 2 or more local governments is taken to have been incurred for a political purpose about an election relating to each local government.

(5) In this section, 2 or more gifts made, during the disclosure period for this section for an election, by the 1 person to another person are to be treated as 1 gift.

(6) In this section—

expenditure, for a political purpose, means expenditure for 1or more of the following—
(a) publication by any means (including radio or television) of election matter;
(b) public expression of views on an issue in an election;
(c) a gift to a political party;
(d) a gift to a candidate in an election;
(e) a gift to a person on the understanding that the person or someone else will apply, either directly or indirectly, the whole or a part of the gift for a purpose mentioned in paragraph (a), (b), (c) or (d).

prescribed gift, in relation to a relevant local government,means a gift—
(a) intended by the giver to be used by the receiver, either wholly or in part, to enable the receiver to incur expenditure for a political purpose or to reimburse the receiver for incurring expenditure for a political purpose; and
(b) used, either wholly or partly, for a political purpose about 1 or more elections relating to the relevant local government; and
(c) the value of which is the prescribed amount or more.

For the purposes of s.430, the "prescribed amount" is $1000.00 and the disclosure period for the section is defined in s.424. The latter section provides:

424 Disclosure period for s 430

For section 430, the disclosure period for an election—

(a) starts at the end of the prescribed period after the date of the immediately preceding quadrennial elections for the relevant local government under the section; and

(b) ends at the end of the prescribed period after the polling day for the election.

For the Gold Coast March 2004 election, the disclosure period for third party returns finished on 26 April 2004.

Under s.436 of the Act, it is an offence to give a return under Division 3 of the Act that contains particulars that are, to the knowledge of the person required to give the return, false or misleading in a material particular. A third party return is a return given under Division 3 of the Act, and it therefore comes within the scope of s.436, which provides:

436 Offences about returns

(1) A person must give a return the person is required to give under division 3 within the time required by the division.
Maximum penalty—20 penalty units.

(2) A person must not give a return the person is required to give under division 3 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.
Maximum penalty—
(a) if the person is required to give the return as a candidate—100 penalty units;
(b) if paragraph (a) does not apply—50 penalty units.

(3) A person (the *first person*) must not give to another person who is required to give a return under division 3 or section 242 information to which the return relates that is, to the knowledge of the first person, false or misleading in a material particular.
Maximum penalty—20 penalty units.

(4) A prosecution for an offence against a provision of this section may be started at any time within 4 years after the offence was committed.

(5) If a person is found guilty of an offence under subsection (1),a court may, as well as imposing a penalty under the subsection, order the person to give the relevant return within a time stated in the order.

(6) If a person is found guilty of an offence under subsection (2),a court may, as well as imposing a penalty under the subsection, order the person to pay, within a time stated in the order, to a local government an amount equal to the amount of the value of any gifts made to, or for the benefit of, the person and not disclosed in a return.

In the context of this case, the issues that arise in respect of s.436 are:

1. Was Power a person required to give a third party return under s.436(1), and if so did he fail to do so within the time required by the division?
2. Did Barden give a return under division 3 that contained particulars that were, to his knowledge, false or misleading in a material particular?

3. Did Hickey give to a person who was required to give a return under division 3, namely Barden, information to which the return related that was, to Hickey's knowledge, false or misleading in a material particular?

In considering these issues, regard must be had to the fact that Power claimed privilege against self-incrimination under s.197 of the *Crime and Misconduct Act 2001* in respect of all of his evidence, which means that none of the answers given by him is admissible in evidence in any civil, criminal or administrative proceeding.

Candidates' Returns

All candidates for local government elections are required to put in a return declaring gifts received by the candidate during the disclosure period. Section 427 of the Act provides:

> **427 Gifts to candidates**
>
> (1) This section applies to gifts received by a candidate for an election during the candidate's disclosure period for the election but not to a gift made in a private capacity to the candidate, for the candidate's personal use, that the candidate has not used, and does not intend to use, solely or substantially for a purpose related to any election.
>
> (2) Each candidate for the election must, within 3 months after the conclusion of the election, give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating—
>
> (a) whether the candidate received any gifts to which this section applies; and
> (b) if so—
> (i) the total value of all of the gifts; and
> (ii) how many persons made the gifts; and
> (iii) the relevant details for each gift made by a person to the candidate, if the total value of all gifts made by the person to the candidate during the disclosure period is the prescribed amount or more.
>
> (3) A candidate need not comply with subsection (2) if—
>
> (a) the candidate gives a return under section 242(1)(a)92 and the return states the candidate—
> (i) does not expect to receive gifts in the disclosure period for the election after giving the return; and
> (ii) will give a return under the section if gifts are received in the disclosure period for the election after giving the return; and
> (b) the candidate does not receive gifts in the disclosure period for the election after giving the return.

Gifts to "groups of candidates" are covered by s.427A of the Act, which provides:

> **427A Gifts to groups of candidates**
>
> (1) This section applies if—
>
> (a) a candidate for an election is a member of a group of candidates; and
> (b) the group, or the group's campaign committee for the election, receives gifts for the election during the disclosure period for this section for the election.
>
> (2) Within 3 months after the conclusion of the election, the candidate must give to the chief executive officer of the local government to which the election relates a return, in the approved form, stating the following—
>
> (a) the names of the candidates forming the group;
> (b) the name, if any, of the group;
> (c) the total value of all of the gifts;

(d) how many persons made the gifts;
(e) the relevant details for each gift made by a person to the group if the total value of all gifts made by the person to the group during the disclosure period is the prescribed amount or more.

(3) A candidate need not comply with subsection (2) if—
(a) the candidate gives a return under section 242(1)(a) and the return states the candidate—
(i) does not expect the group or the group's campaign committee for the election to receive further gifts in the disclosure period for the election after giving the return; and
(ii) will give a return under the section if further gifts are received in the disclosure period for the election after giving the return; and
(b) the group or the group's campaign committee for the election does not receive further gifts in the disclosure period for the election after giving the return.

Under s.428 it is unlawful for a candidate to receive a gift the value of which is the prescribed amount or more without knowing the "relevant details" for the gift.

The "prescribed amount" for gifts for the purposes of all of these provisions is $200.00.

"Relevant details" for a gift is defined in s.414, as follows:

relevant details, for a gift, means the value of the gift and when the gift was made and—
(a) for a gift purportedly made on behalf of the members of an unincorporated association—
(i) the association's name; and
(ii) unless the association is a registered industrial organisation—the names and residential or business addresses of the members of the executive committee (however described) of the association;
or
(b) for a gift purportedly made out of a trust fund or out of the funds of a foundation—
(i) the names and residential or business addresses of the trustees of the fund or other persons responsible for the funds of the foundation; and
(ii) the title or other description of the trust fund or the name of the foundation; or
(c) for a gift not mentioned in paragraph (a) or (b)—the name and residential or business address of the person who made the gift.

It was suggested by lawyers for some parties during the hearing that the trust account operated by Hickey Lawyers under the control of Power and Robbins and Lionel Barden was a "trust fund" for the purposes of the definition of "relevant details" in s.414, and that Hickey or Hickey Lawyers were the trustees of such fund.

As pointed out above, this view was rejected by Hickey (T631), who did not consider that the trust account operated by Hickey Lawyers was a trust fund of which he was the trustee.

It is also a view that is rejected in relevant sections about election returns in both the local government and the state government handbooks.

In respect of donations received through a solicitor's trust account, the handbook published for the use of candidates by the Department of Local Government and Planning ("*Disclosure of Election Gifts - Guidelines for candidates and councillors for local government elections*") (Exhibit 10) expresses the view that such donations are not received from a "trust fund", and the name of the actual donor must be ascertained and declared by the recipient of the gift.

At page 16, the handbook states:

> ***2.5.15 Gifts via solicitors' or accountants' trust accounts***
> Where a gift is made by a client through a solicitor's/accountant's trust account, the return must include the name and address of the client who made the donation. The relationship between solicitor/accountant and client is that of agent and principal. For the purposes of the Act's disclosure provisions, a gift paid by an agent at the direction of his/her principal is a gift made by the principal and not the agent.

There are similar provisions regarding declaration of donations from "trust funds" in both the State and Commonwealth government electoral provisions, as there has been a concerted effort over recent years to ensure that the Commonwealth, State and local government election provisions are as consistent as possible. The "*Election Funding and Financial Disclosure Handbook*" published by the Electoral Commission of Queensland deals with the issue of solicitors' trust accounts in the following terms (at page11):

> **Identification of real donor**
>
> Care needs to be taken when you receive gifts to establish who is the real donor, especially upon receipt of a gift from a firm of solicitors or accountants.
>
> Where the relationship between solicitor and client is that of agent and principal, then money received by the solicitor on behalf of his/her client is held by the solicitor as the client's agent and as trustee of the money in relation to the client. As the client's agent, the solicitor is bound to follow the client's directions in relation to the money. The solicitor does not, therefore, have the usual powers and discretion of a trustee. A gift paid by an agent (that is, the solicitor or accountant) at the direction of his/her principal to a candidate would, for the purposes of the Act be a gift made by the principal and not the agent.
>
> The 'person who made the gift', and thus the person whose name and address is required to be disclosed in your return, is the client. In this context, a gift by way of cheque drawn on a trust account is prima facie a gift from an undisclosed principal and not the drawer of the cheque.
>
> Gifts received from undisclosed principals are unlawful (as described below) and are forfeited to the State under section 306(5).

In cases where a one-off donation is made by a donor through a solicitor's trust account, the situation is undoubtedly as referred to in the handbooks quoted above, namely that the solicitor is acting as an agent for the donor, and that the recipient of the donation must declare the name of the donor, not the name of solicitor. This would apply, for example, in the case of the donation from Rix to Scott through Mal Chalmers' trust account.

In the case of the donations paid into Hickey Lawyers trust account, the situation is more complex because the clients, namely Power and Robbins and then Barden, were not the persons making the donations. They sought the donations and, at their direction, the donations were held and paid to selected candidates. In these circumstances, it is arguable that a trust was created within the general meaning of "trust fund" in s.414, and the trustees of that fund were Power and Robbins until 3 March 2004, and Barden after that date. These are the details that candidates were required to put in their returns.

Under section 242 of the Act, a person elected as a councillor must not act in office until he or she has given the CEO a return in an approved form. The return must state the information required under s.427 "to the extent that the person states the information is readily available when giving the return".

In this case, the successful candidates funded through Hickey Lawyers trust account (Betts and Pforr) gave an interim return prior to being sworn in, as required under s.242, and then provided a final return to comply with s.427.

The same provisions apply with respect to returns that are required by "groups of candidates" under s.427A, that is, a councillor may put in an interim return under s.242(3A) stating the information that is readily available when giving the return.

The final return must be given within 3 months after the "conclusion of the election", which for the March 2004 election required returns to be lodged by 5 August 2004.

The disclosure period to be covered in the election gift returns was 6 May 2000 to 5 May 2004 (inclusive) for sitting councillors and from the announcement of candidacy or nomination as a candidate (whichever is the earlier) to 5 May 2004 (inclusive) for new councillors.

Betts' Return

Betts claimed privilege against self-incrimination in relation to answers he gave concerning his election gift return (T359-60), which means that none of the answers given by him in respect of that topic is admissible in evidence in any civil, criminal or administrative proceeding.

Betts lodged an interim return (Part of Exhibit 4) on 6 April 2004. In it, he explained that there were "still some details outstanding from the advertising firm that did work on my campaign".

Betts listed "Hickey Lawyers" as the donor in respect of the following donations:

28/1/04	$7000
20/2/04	$5000

Prior to lodging his final return, Betts received a letter from Quadrant dated 21 June 2004 (part of Exhibit 4) advising that Quadrant had expended $24,978.97 on his campaign. It also advised that $16,978.97 was paid directly to Quadrant from the Lionel Barden Trust, and that a further $8000.00 was paid to Quadrant from Betts' campaign account.

The letter also enclosed copies of statements and invoices detailing expenditure and receipts by Quadrant on Betts' behalf. Each of the statements and invoices listed the client as:

> Lionel Barden Trust Account
> G Betts
> c/- Hickey Lawyers
> 6th Floor, Corporate Centre
> Bundall Qld 4217.

The Quadrant letter did not, of course, refer to the payments of $7000.00 and $5000.00 that had been made directly to Betts by Hickey Lawyers (part of which was used by Betts to pay $8000.00 to Quadrant). This had been discussed earlier in emails between Betts and Morgan (Exhibit 133), where Morgan explained to Betts that the amounts he had provided Betts to declare were "additional to the $8,000 payment made by you to Quadrant, drawn against the $12,000 you received directly from the L.B. Trust".

Betts lodged his final return on 1 July 2004 (part of Exhibit 4), stating that the disclosure period covered by the form was 1/10/03 to 5/5/04.

His return relevantly listed the following donors and amounts:

The Lionel Barden Trust Fund	28/1/04	$7000
The Lionel Barden Trust Fund	20/2/04	$5000
The Lionel Barden Trust Fund	Between 29/2/04-31/3/2004	$16,978.97

In each case, Betts listed the address of the donor as "c/- Hickey Lawyers, Corporate Centre, 6th Floor, Cnr Bundall Rd and Slayter Ave, Bundall".

As outlined earlier in this submission, Lionel Barden was not named as the client for Hickey Lawyers Trust Account until 3 March 2004, and had not authorised the payments of $7000.00 and $5000.00 made to Betts.

Hickey Lawyers wrote to Mrs Susan Betts, Betts' campaign manager, on 28 January 2004 (part of Exhibit 288), advising that a cheque for $7000.00 was enclosed "as directed by Councillor Robbins and Councillor Power".

They wrote in identical terms to Mrs Betts on 20 February 2004, enclosing a cheque for $5,000.00.

There was no reference in either letter to a trust fund, the only reference to any kind of trust account being a description of the cheque as a "trust account cheque".

Betts said that he was told by Robbins that he would receive funding through a "trust fund" and that he would have to put the name of the trust fund in his return but not the names of the donors, whom he would not know (T473).

Betts said that he took no legal advice about his obligations to lodge a return, but had received a booklet (Exhibit 9) when he nominated that contained some details about it (T474). Betts knew there was going to be some kind of trust fund, did not hear about Barden's involvement until some time later, but trusted Robbins to handle the matter (T479).

Robbins had told him something about Lionel Barden putting his name to the trust fund, but he thinks he first heard about the "Lionel Barden commonsense campaign fund" when he read about it in the newspaper after the election (T480).

Betts was questioned about the steps he had taken to understand his legal obligations of disclosure (T483-6):

> Did you ever consider getting any other advice apart from Sue telling you what your obligations were? Actually, did you realise that there were - that these obligations were statutory obligations?-- I did when I got the form from the Council.
> Right. So you would have carefully gone through the statutory provisions, did you?-- Well, I don't know if "carefully" is a good word but I went through it.
> Did you get any greater understanding after your official nomination of your legal obligations, apart from what you had which you've told us about from Sue?-- I - I don't believe there was

anything different in that form than - than what I assumed was the case, that I had to fill out the - the details
as far as the trust fund goes and put a trustee, and I believe that that was what was in the form that I got from Council.
Did you ever read anything to suggest that you shouldn't receive anonymous donations?-- Yes, but that wasn't an anonymous donation. That was a donation from the trust fund.
From the trust fund?-- Yeah.
This is a trust fund that you had heard about in the way in which you've described; is that right?-- Is that a question?
Yeah.
So you never at any stage asked even if there was a written document in relation to this trust fund; is that correct?-- No, I never asked for a written document.
You believed, from what you've told us, that the person who controlled this trust fund was Mr Barden; is that correct?—I don't think I said that.
Well who controlled it?-- I don't know. I mean, I – well look, there was a conversation I had with Sue about after Max Duncan had thrown his hat in the ring to run for council.
…

I'm asking you a question directed at who was controlling this trust fund?-- Yeah, okay - sorry, that's what I was getting at. So we were talking about Max Duncan running and she said to me something along the lines of "The people who are controlling the money - we may have a problem with me getting
money because the people who are controlling the money want to give it to Max Duncan."
Who's the "me", you?-- Yeah, me. Because I was assuming I was getting this money from the trust fund.
So who's saying this to you?-- This is Sue. She's telling me that when Max Duncan put his hand up that the people who were controlling the money wanted to give it to him. So she had to fight to get the money for me.
So the people controlling the money may have had a problem?-- With me, because they wanted Max Duncan.
Right. Well who were the people controlling-----?-- I don't know.
Well didn't you want to know who the people were who were controlling the money?-- I've got -----

[Interruption by Mr Webb] ….

MR MULHOLLAND: The question is, what did you believe as to who controlled the fund?-- I didn't know who controlled the fund and I think I told you that.

In relation to the issue of why he had put “Lionel Barden Trust Fund” as the source of the two cheques he received from Hickey Lawyers in January and February 2004, Betts said (T501):

I just wanted to mention that. Yes, now, the point that you are-----?-- So are you saying to me that my final return only had the Lionel Barden Trust Fund?
That's right, as a donor?-- Even for the two cheques?
Yes?-- Okay, well, I must have decided that since that was the name of the trust fund, I had to put that in.
Well, for some reason you have put Hickey Lawyers in the interim return?-- Yes, because that's all I knew.
That's all you knew?-- Yes.
But didn't you think that you had some obligation to investigate where it came from? After all, you didn't think that it was coming from Hickey Lawyers. You must have known
there was a source?-- Well, I - I didn't know who the donors were so my understanding was that it was going through Hickey Lawyers so that was my obligation to supply the name of Hickey Lawyers.
So you do agree with me that you knew that you weren't actually getting the donation from Hickey Lawyers-----?-- Correct.
-----the donation was coming from someone via Hickey Lawyers?-- Correct.

> And via Hickey Lawyers trust account-----?-- Correct.
> ----you would have known that?-- Yes.
> So you were content to do that without investigating it?-- Well, my investigation was that I put down the details as per what was on the cheque.
> Now, did you first hear of the name Lionel Barden Trust in the newspapers or when the invoices came to you?-- Oh, in the newspapers before the invoices definitely. I don't think I received the invoices until May or June.

In relation to the letters sent by Hickey lawyers that enclosed cheques for Betts "as directed by Councillor Robbins and Councillor Power", Betts said that he was not sure that he had seen the letters, although he recalled receiving the cheques (T517).

Rowe's Return

Rowe lodged a final election gift return on 21 April 2004, stating that the disclosure period covered by his return was 11 February 2004 to 6 May 2004 (Part of Exhibit 4).

In respect of funding he had received through Hickey Lawyers, Rowe's return listed the following donors and amounts:

"Common Sense Trust"	5/1/2004	$7500.00
"Common Sense Trust"	30/1/2004	$7500.00
"Common Sense Trust"	20/2/2004	$20,000.00

In each case, the address of the donor was given as "c/- Hickey Lawyers, PO Box 5559, GCMC 9726".

In respect of Quadrant, Rowe listed $1,000.00 as an in kind gift.

Rowe explained why "Common Sense Trust" was put as the donor on his return (T1078-80):

> Well, the name of the donor in relation to these amounts we've just been discussing is shown as commonsense trust. that's all it says. Commonsense trust, seven and a half thousand dollars in each case. Do you see that?-- Yes.
> And then the 20th of - sorry - yes, 20th of February - commonsense trust, $20,000. Well, was that accurate to describe it as a commonsense trust?-- I think on the first one you showed me that came through with a letter it had the term "commonsense" trust.
> But why would that not - why would that not be the donor? Why wouldn't that at the very least be the name of the account that it came from? Did you believe that there was a commonsense trust?-- Mr Chairman, can I - that very first one that was shown to me with I think-----
> CHAIRMAN: Your - yes, I just quickly looked at that, that's - it is the mention on the letter from Councillors Power and Robbins to Mr Tony Hickey. We authorise the draw up to seven and a half thousand for campaign assistance for Division 5 candidate Brian Rowe from the "commonsense" trust. Did you ever see that letter?-- I didn't see that letter but I can see why Barb would have listed it as the commonsense trust.
> You're right, the word "commonsense" trust is on that letter from the Councillors to Mr Hickey?-- Yes. And I - I would have no difficulty with the fact that Barb - and probably putting it in inverted commas she's probably taken it from there and she's duplicated it twice more. I think that's-----
> She wouldn't have seen that letter because it went to Mr Hickey?-- I don't know-----
> MR MULHOLLAND: I mean the commonsense trust doesn't tell one looking at the document too much about the identity of the donor, does it?-- It's come from that trust.
> What trust?-- The commonsense trust at Hickey Lawyers.

> Well, what - you say from a trust, what trust? Was there ever any instrument of trust that was suggested as being in existence in relation to this money?-- Not that was discussed, no.
> I mean, you knew, didn't you, that the money at some stage -and you would certainly have known it by this time - that the money had gone into the trust account of Hickey Lawyers?— At the time I-----
> Prepared this return?-- Yes.
> So you knew that the money that had come to you had come from Hickey Lawyers?-- Yes, as - yes.
> Did it occur to you whether or not you ought to include the name of the account?-- No, I thought - I wasn't unhappy with commonsense trust.
> Can you tell us this, Mr Rowe, did you understand that there was some trust that had been set up, some document, which had been prepared, some instrument of trust, in relation to these funds from which you were going to benefit?-- Not at the early stage, no.
> No, no, at any stage. I mean, you know, you speak about a trust, I'm just interested to know what sort of trust did you understand it to be? You mentioned Mr Baildon or someone else, you see, there might be an instrument of trust prepared, a deed of trust - do you follow what I mean – with beneficiaries and settlor and so on, trustee. Now, is that the sort of trust that you understood was involved here or was it some other kind of trust and if so what?-- I don't know. I just understood that through Hickey Lawyers there was a trust fund as indicated here on the form.
> Did you understand anything more than the fact that the monies had come out of the trust account of Hickeys?-- No.
> So when you speak of a trust fund, you mean it in the sense of the monies having come out of the trust account at Hickey Lawyers?-- That would've been my understanding, yes.
> Yet you never asked anyone, "Well, is there any - can I have a look at the" - or at least ask, "Is there any trust instrument-----"?-- No, I didn't ask.
> -----in relation to this. Where did you pick up first the mention of a trust fund? Who first mentioned a trust fund to you, was it Mr Power?-- I couldn't - I wouldn't know.

In respect of the records at Hickey Lawyers about payments to Rowe (Exhibit 288), there is no covering letter or memorandum about the first payment made to Rowe. There is a written authority from Power and Robbins authorising “up to $7500.00” to be paid to Rowe, and a photocopy of a cheque in that amount to Rowe dated 24/12/03.

In respect of the second payment, there is an email to Barbara Christoffel at Lang Realty, who was handling Rowe’s campaign account, from Hickey that advises:

> In accordance with your request and as directed by Councillor Power and Councillor Robbins, the sum of $7500.00 has been deposited to [Rowe’s bank account].

Perhaps because of this mention of Crs Power and Robbins, Christoffel issued all of the receipts for funds received from Hickey Lawyers by Rowe as having come from the “Gold Coast City Council”.

In respect of the final payment of $20,000.00 to Rowe, the only record of its having been paid on the Hickey file is a handwritten notation on an email from Christoffel requesting the payment that says “left message to confirm funds were deposited to above account - $20,000” and a photocopy of a deposit slip in that amount to Rowe’s account.

In respect of any research he did about his legal obligations of disclosure, Rowe said that he had largely relied on Lang and Yarwood. He said that he had read the booklet provided to candidates (exhibit 9) but not the handbook prepared by the Department of Local Government and Planning (Exhibit 10). He was not aware of the provisions in relation to a “group of candidates” (T1067).

Scott's Return

Scott claimed privilege against self-incrimination in relation to answers she gave concerning her election gift return (T359-60), which means that none of the answers given by her in respect of that topic is admissible in evidence in any civil, criminal or administrative proceeding.

Scott lodged a return on 16 April 2004, which stated the disclosure period covered by the return as 20/10/2003 to 28/4/2004 (part of Exhibit 4).

In respect of the funds she had received through Hickey Lawyers, Scott's return listed the following donors and amounts:

Tony Hickey	3/2/04	$7000
Tony Hickey	24/2/04	$3000
Chris Morgan Quadrant	Feb/Mar 2004	$18,673.72

Scott had also received gifts through the trust account of another solicitor, Mal Chalmers. In respect of these amounts, totalling $5,000.00, she put the donor as "Mal Chalmers".

On 15 June 2004, Scott wrote to the CEO of the Council to advise that it had been drawn to her attention that she had made an error on her form by listing Chalmers and Hickey as the donors (part of Exhibit 4). She wrote:

> In relation to the funds from the two law firms, these funds were, of course, provided via a trust account and were not personal donations from the person's [sic] named.

She attached a replacement page for her return that changed the two entries for "Tony Hickey" to "Hickey Lawyers Trust Account", and the entries for Chalmers to "Mal Chalmers and Co Solicitors Trust Account". She also changed the entry for "Chris Morgan, Quadrant" to "Quadrant".

Scott received her first payment from Hickey Lawyers under cover of a letter dated 2 February 2004 (marked "to be collected") that advised her that a cheque for $7000.00 was enclosed "as directed by Councillor Robbins and Councillor Power" (Part of Exhibit 288).

She received a second payment of $3000.00 under cover of a letter in identical terms from Hickey Lawyers dated 20 February 2004.

Scott was questioned in relation to the letter from Hickey Lawyers that accompanied her first cheque (T362-3):

> Did you get a copy of that letter?-- Well, I may - it may have been in the envelope. I probably just - I didn't know that I was required to keep it so I didn't keep it. I can't - don't remember it.
> You can't remember that letter at all?-- No. I just banked the cheque.
> Well, upon reading that letter now would that have stuck in your mind, the contents of that letter?-- It refers to "our trust account cheque".
> No, but it says, "as directed by Councillor Robbins and Councillor Power"?-- Oh, okay. Well, they were certainly at the meeting in December, I wasn't surprised by that.

> Well, would you have been surprised at the fact that Councillor Robbins and Councillor Power were directing that a cheque for $7,000 be given to you?-- No, because they were at the meeting. Councillor Power was really running that meeting, so I understood that he was involved in - in the trust account and sourcing the funds. I don't know to what extent but he was certainly involved.
> Well, at any stage did you think that Hickey Lawyers - well, just to get this straight, Hickey Lawyers weren't giving donations, were they?-- No.
> To your mind?-- No.
> They were getting instructions from somebody?-- Mmm-hmm.
> And according to this letter it says the direction came from Robbins and Power. Correct?-- Mmm-hmm.
> And was that your understanding that that's who they were getting their instructions from?-- As I said at the meeting, they were at the meeting, Councillor Power primarily was running that meeting so I knew that he was integrally involved in sourcing the funds. So I wouldn't have been surprised by that.

In respect of the fact that she had originally put “Tony Hickey” as the donor in her return, Scott said (T362):

> Now, why did you put Tony Hickey down?-- Well, it was a misunderstanding. When it said in the Act I had to declare the relevant details for each gift made by a person to the candidate, that was in 427, so by saying Name there I thought they were looking for the name of a person, and I thought the main point of contention would be the amount that I declared, whether I declared the right amount, and I thought the council would then verify with that person the amount that I'd received. But I did amend that later on when Tony Hickey himself pointed it out to me that I had been in error there, and I amended it straight away. Tony Hickey advised me that it should have read Hickey Lawyers Trust Account.

As to why she had put “Chris Morgan, Quadrant” as a donor in her return, Scott advised (T367):

> Now, they [Quadrant] did a significant amount of other or - well, it seems as if they would have done about $26,000 - $26,672 worth of work for you; is that right?-- Well, I declared $18,673.72 which I believe - and then there was the $8000 on top of that that I paid them.
> Right, okay. But, you see-----?-- Which is from their own invoice when you look at it. There was $18,001.03 and if you add on the 672.69, it should be the amount that I declared on my return.
> Well, yes, that's correct. But can I ask you this: do you know who paid that amount to Quadrant?-- Which amount, the remaining-----
> The eighteen thousand-----?-- -----18,600?
> Yes?-- No, I don't. I thought I had said that.
> Right. Well, I'm asking you because on your return, you listed Chris Morgan, Quadrant, as having given you a gift of 18,000, and the gift in kind you've described is artwork, copy writing, web page, signage, printing, materials, et cetera. Why did you put Chris Morgan down there when it's obvious he wasn't the person who was giving the gift. He was paid for that work?-- Because I didn't know anyone else to put down there. That was where I had received those in kind services from.
> Right?-- I didn't know who-----
> But you never understood them to be doing work free of charge for you?-- No.
> You understood that that was to be paid by somebody else?-- Yes. And I wasn't particularly trying to hide that but I didn't feel it was my responsibility to try and grill them as to the source of the funds.

Scott said that she had relied on Power and Robbins, as experts in the field, to advise her. They had told her that she would have to declare the trust fund, but “in the end I didn’t receive the money from the trust fund so I could only declare what I knew” (T368).

Scott received a statement from Quadrant (Exhibit 62) in relation to the work done for her that was headed:

> Lionel Barden Trust Account
> R. Scott
> c/- Hickey Lawyers.

Scott said she must not have looked at the statement very clearly, and that was why she originally put "Tony Hickey" on her return. As a result of that Hickey had contacted her and told her to put Hickey Lawyers Trust Account. (T370) Scott said that she believed she had only heard about Barden's involvement through a media article after Christmas 2003 (T370).

In relation to her putting "Mal Chalmers" as a donor, Scott said (at T372):

> Okay. Mal Chalmers, you've got him down there as-----?—That was the same situation; he was also a solicitor and again I thought they wanted the name of the person they could verify the funding with, so when Tony Hickey contacted me I said I had incorrectly put his name down on the form. I realised, well, yes, and I've done the same thing with Mal Chalmers, so I altered that one as well, because that was a trust account as well.

In fact, the real donor in the case of the Chalmers trust account was a developer named Rix, who provided the funds to Chalmers to be used for Scott's campaign, through a company called Family Assets Pty Ltd.

In our submission, Scott knew that Rix was the source of the donation to her, although she was evasive about it in her evidence. Scott said that Chalmers contacted her and said that funds were available (T372), but she did not ask him who the donor was. She conceded that she had "an inkling" that the donor was Norm Rix, because she had spoken to him about problems he was having with Crichlow in the area (T373). She agreed that Rix may have mentioned the sum of $5000 being donated during this discussion (T373), but denied knowing that he was a developer, despite the shop where she spoke to him having a large sign on it saying "Rix Developments" (T381). On 25 August 2005, Chalmers wrote to Scott to confirm that Family Assets Pty Ltd were the principal donor to her of the sum of $5000.00 to her campaign (part of Exhibit 4). Scott then faxed this letter to Tony Davis at the Council.

Rix said that Scott approached him and he agreed to donate $5000.00 to her campaign because she was running against Crichlow. He is not sure that he mentioned a trust account, but he told her that he did not want "every Tom, Dick and Harry" to know that he had made the donation to her (T1528). Rix put the money into Mal Chalmers trust account, and told Chalmers that he would have Scott contact him. Rix agreed that he probably told Scott to contact Chalmers, and told her that he had deposited $5000.00 into the trust account (T1529).

In our submission, Scott was well aware that the donors to her campaign were not Hickey, Chalmers and Morgan personally. She made no effort to find out who the donors were, and in the case of Hickey Lawyers and Quadrant did not correct the false information in her return even after it must have been obvious to her that she should. Scott's evidence that she did not read either of the letters Hickey Lawyers provided with her cheques or notice the reference on the statement Quadrant gave her to the "Lionel Barden Trust" is unconvincing, in our submission, and should be rejected.

Pforr's Return

Pforr claimed privilege against self-incrimination in relation to answers he gave concerning any false statements made by him in his election returns, which means that none of the

answers given by him in respect of that topic is admissible in evidence in any civil, criminal or administrative proceeding.

Pforr lodged an interim return on 5 April 2004 (part of Exhibit 4), which stated that the disclosure period for the return was 29/10/03 to 15/5/04.

In respect to the funds he received through the Hickey Lawyers Trust Account, Pforr's return listed the following donors and amounts:

Hickey Lawyers	29/1/04	$7500.00
Hickey Lawyers	20/2/04	$5000.00

In his final return, lodged on 30 June 2004, Pforr included these entries in the same terms and added:

Hickey Lawyers	21/6/04	$22,414.69

Hickey's file (exhibit 288) shows that Pforr received the first payment of $7500.00 under cover of a letter from Hickey Lawyers dated 29 January 2004 addressed to G Pforr at PO Box 1244 Paradise Point. A file note preceding the letter on the file states that Pforr had telephoned on 29 January 2004 to ask that his cheque be forwarded to that address. The letter advised Pforr that a cheque for $7500.00 was enclosed "as directed by Councillor Robbins and Councillor Power".

On 20 February 2004, a letter in identical terms was sent to Pforr from Hickey Lawyers, enclosing a cheque for $5,000.00.

Pforr agreed that, as a result of these letters, he knew that Power and Robbins were giving directions to the solicitors about who should receive payments from the trust account (T265).

On 20 May 2004, Morgan sent an email to Pforr (Exhibit 132) advising him of the balance of contributions to his campaign drawn specifically from the Lionel Barden Trust Fund, in order to assist Pforr with his election return.

On 21 June 2004, Morgan sent Pforr a letter (Exhibit 132) enclosing invoices and statements in relation to expenditure by Quadrant debited to the Lionel Barden Trust Fund. The invoices and statement are all headed:

> Lionel Barden Trust Account
> G Pforr
> c/- Hickey Lawyers.

Despite this, Pforr's final return on 30 June 2004 makes no mention of Lionel Barden, or of a trust fund of any kind. Instead, he lists "Hickey Lawyers" as the donor of the $22,414.69 that Morgan's letter advised was debited to the Lionel Barden Trust Fund.

Pforr described his state of knowledge about the source of funds at the time he received the first payment from Hickey lawyers (T252):

> …but you are being given an indication that there is a fund of some kind that you could perhaps draw upon and you indicated that you'd like seven and a half thousand dollars. Now surely at that point, Mr Pforr, it occurred to you, with your background, well hang on, I'd

> better find out just more about this fund, who set it up, who holds it, where's the money coming from, who's involved? And then you'd go and ask some questions of someone, perhaps Mr Morgan would be a good starting point, particularly since you'd had these contacts with him. Did any of this go through your mind?-- It would have.
> It would have?-- Whether I asked the question of Mr Morgan or not, I'm not aware. But I was certainly aware of at other political levels of such funding arrangements being made and I assumed that it was a good way of keeping things at arms' length.
> What, not to ask?-- Not to know if there was a trust fund. I wasn't aware that it was called the campaign for commonsense trust fund.
> So did you, not what you would have done, but did you adopt a deliberate approach of not wanting to know where the money was coming from?-- Oh, it wasn't-----
> Until you received it?-- It wasn't a deliberate approach. I received, I believe late in January some money. I think it was to the value of seven and a half thousand. And it had Hickey Lawyers Trust Fund on it.
> Right. Well, yes, and what did you do?-- I banked it.
> You banked it?-- That's correct.
> So where did it come from?-- I don't know.
> Well it didn't come from the money - there was no reason that you knew of why Hickey Lawyers would want to give seven and a half thousand dollars to your campaign fund, was there?—It was Hickey Lawyers' Trust Fund. I think I've included a copy of the attached cheque with the remittance notice on it.
> Yes. Trust Fund?-- Yes.
> All right. It was a trust fund?-- That's correct. And other political parties and other levels of government, I believe, have trust funds, on my understanding.
> So who was in control of this trust fund? Who-----?—I believe Hickey Lawyers' so to me that was a reputable person, a solicitor, or lawyers, who were dealing with a trust fund. To me that was legitimate. It means it was above board.
> It was a - well, where did the money come from though? You had responsibilities as well, didn't you? You couldn't just receive a gift and not know who was providing the gift, could you?-- I put in my return, "Hickey Lawyers Trust Fund"
> I know-----?-- I believe under the Act that was - and I'm not an expert at it and I've told you that before - that that was my requirement under the Act, to deal with it after the campaign.

Pforr sought no advice about his reporting obligations prior to the election, because he knew he would consult with his accountant after the election to prepare a return (T258). He also relied to some extent on advice from Morgan about what he would have to declare in his return.

QUADRANT INVOICES TO NINAFORD/FRAMWELGATE AND SUNLAND

Following the election, Quadrant were still owed $22,700 for work done for candidates, and Morgan gave evidence that his partner Tony Scott pursued the shortfall with Ray (T859).

Scott had not been actively involved in the production of campaign material at Quadrant during the election, and only became involved in the matter some months later when Quadrant was still owed funds for work undertaken.

Ninaford/Framwelgate Invoice

In relation to the Ninaford invoice, Scott said that he had spoken to Ray several times about the amount outstanding for work Quadrant had done, asking when they were going to be paid. He was eventually contacted by Hickey, who said: “To get you paid I need you to send me an invoice for consultancy fees for $10,000.00 plus GST made out to a company called… Framwelgate. Send the invoice to me directly and I’ll have it paid for you” (T1840). Hickey denies that he mentioned GST to Scott (T2149).

Scott sent an invoice, was paid, and applied the $11,000.00 to outstanding accounts from Betts' campaign (T1840-1).

Scott admitted that the invoice was false because it suggested that Quadrant had done consultancy work for Ninaford in the amount of $10,000.00 (T2226).

Suk-Fun Joyce Chan, director and secretary of Ninaford Pty Ltd, gave evidence that Ninaford and a company called Framwelgate were involved in a development project on the Gold Coast called The Wave (T1812). Mr Hickey acted as their local representative, and was at that time acting for them in respect of an approval application before the Gold Coast City Council. Hickey discussed a donation of $10,000 to the Council with her and her husband in about July 2004, and they agreed because the Council does work for the community. Ms Chan does not recall a donation to an election campaign being mentioned by Hickey (T1824). Her husband said they would need an invoice or receipt to raise a cheque and Hickey faxed them through an invoice (T1813). The invoice was in the name of Quadrant, but Chan did not know who or what Quadrant was. Chan could not explain why a GST component was charged on the invoice, and knew of no services that Quadrant had provided to Ninaford or Framwelgate (T1817), She said that when she saw the invoice she thought "this is only a sort of invoice or receipt so that we can keep a record, so I don't care who is Quadrant, so I just write cheque and then sent it to Tony" (T1822).

Warren Cheung, Ms Chan's husband, was also present when Hickey raised the issue of a donation in July 2004. He says Hickey asked for a $10,000.00 donation to a campaign, and they agreed because their Wave project on the Gold Coast was "very profitable". He told Hickey they would need an invoice for their books. Cheung did not know Quadrant, and knew they had not done any consultancy work for the project (T1827-8).

Sunland Invoice

In relation to the Sunland invoice, Hickey said that he became involved in trying to make up the shortfall because Ray contacted him and said Quadrant were still owed money (T661). Ray told Hickey that Power had spoken to Abedian, who had agreed that Sunland would make another contribution. Ray wanted Hickey to follow up the further contribution with Abedian, but Hickey had some business to discuss with Craig Treasure from Sunland, and said he would rather discuss it with him. Hickey said that he discussed it with Treasure, who said, "Yeah, that's fine. Just tell them to send through an invoice". Hickey rang Ray's personal assistant (Sue Davies) and passed on that message.

Davies sent an email to Tony Scott (Part of Exhibit 89) on 29 October 2004 that read:

> Hi Tony
>
> Tony Hickey spoke with Craig Treasure at Sunland. Craig requests you raise and [sic] invoice for the $7,000 (+-) + GST for "general marketing advice" or similar and he will forward a cheque straight away.

Hickey denies that he mentioned "general marketing advice" and said he simply passed on the message that Quadrant should send an invoice to Sunland (T662).

The Quadrant copy of the Sunland invoice was not originally produced to the CMC with Quadrant's material. Scott explained that a copy of that invoice was not backed up on their system, and was only kept on his secretary's personal computer. He had discovered it only a

few days before giving evidence on 17 November 2005 (T1838), and a copy of it was produced at that time (Exhibit 259).

In respect of the Sunland invoice, Scott said he was given the details of an invoice he should issue to get paid through an email from Ray's personal assistant (Exhibit 89). Scott agreed that the Sunland invoice was false insofar as it suggested that marketing work had been done by Quadrant for Sunland (T2228).

Treasure gave evidence that the Quadrant invoice to Sunland resulted from a request made for a donation by Power. Power, Treasure and Abedian met at Sunland's offices to discuss generally the fact that other developers "seemed to be taking an aggressive position on property purchases in the cane field area [at Jacobs Well]" (T1867). Sunland were concerned to find out whether the Council had any intention to change the zoning in that area, and Power was asked to come to a meeting to discuss the issue. At the end of the meeting, Power said words to the effect: "By the way, there are unpaid fees still incurred by Quadrant. Would Sunland be prepared to contribute towards those" (T1867). No specific sum was mentioned, but an indication was given to Power that Sunland would be prepared to make a further donation.

Mr Hickey later called Treasure and said something like, "I understand that Soheil has said he's going to fix up the outstanding money owed to Quadrant" (T1869). Treasure says that he and Hickey discussed that Quadrant were seeking an amount of $7000.00 and that it would need to be paid directly to Quadrant as at that stage it could no longer be paid into the trust fund that had been operating (T1870). Treasure told Hickey that someone should send Sunland an "invoice or some paperwork". Tony Scott of Quadrant then rang, and Treasure told him the same.

In relation to the email sent by Davies, Treasure denied suggesting that an invoice should be sent for "general marketing advice or similar" (T1873).

Treasure agreed that he expected after his conversations with Hickey and Scott to receive an invoice similar to the one that was received, noting:

> We were expecting to receive an invoice for that amount of money from Quadrant, for what purpose written on the invoice was not relevant. (T1874)

Although the invoice lists the client as "Sunland Group Limited", Treasure admitted that Sunland had not been a client of Quadrant in relation to this matter, and that Quadrant had not made any marketing recommendations to Sunland. He said that he had made the handwritten notation on the invoice "Discussed SA. OK to Pay CT 5/11/04". Treasure said that the handwritten notation "Donation in Kind" was written on the invoice by him a couple of days later (T1875), as a result of an inquiry from the accounts or administration sections, or possibly from his personal assistant, about what the invoice was for.

Treasure said that by the time he received the Quadrant invoice, he knew that Sunland was being asked to contribute to work done by Quadrant for candidates in the March 2004 election, but denied that the invoice was a false document (T1876). He also denied that any person looking at the invoice, for example, the Australian Tax Office, would be misled by its contents (T1878). However, he conceded that the document might, without further explanation, create the "false impression" that Quadrant had done work for Sunland (T1879).

Abedian agreed that he was approached by Treasure to approve the payment of $7700 to Quadrant, although he was not aware of the conversation between Hickey and Treasure that

led to the issue of a Quadrant invoice (T1903). He had not seen the invoice at the time, but was not surprised by its contents. He saw the reference to "marketing recommendations" in the invoice as relating to marketing recommendations that had been provided by Quadrant to the candidates, and that Sunland was now willing to pay for (T1903).

In respect of both the Sunland and Ninaford invoices, Scott said that they were properly accounted for in that Quadrant had paid GST and included the sums in their tax return (T1843).

However, insofar as both invoices were issued as tax invoices and contained a GST component, they could have been claimed by Sunland and Ninaford as business expenses, whereas election campaign donations by companies cannot be used as a tax deduction. In our submission, these issues should be referred by the Commission to the Australian Tax Office for consideration.

DOCUMENTS PRODUCED BY HICKEY LAWYERS TO THE CMC IN APRIL 2005

In April 2005, Hickey Lawyers provided a trust statement to the Commission in response to a written request for information. The trust statement was provided under cover of a letter from Mr Tony Hickey dated 13 April 2005 (Exhibit 102). The letter stated:

> I refer to your letter of 11 April and as requested we now enclose a statement with respect to the Lionel Barden Commonsense Campaign Fund. This statement records all funds paid into our trust account and all funds paid out of trust account [sic].
>
> We do not believe that there exists any trust document or terms of trust. We certainly do not hold any such documentation and we are told by Mr Barden that no such documentation exists.

There was no mention in Hickey's letter, or in the attached trust statement, to Power or Robbins, or to any inquiry that had been addressed to them about the terms of the trust.

In fact, later evidence showed that the trust statement headed "Lionel Barden Commonsense Campaign Fund" that was produced to the CMC (Exhibit 102) was a composite document that had been prepared by combining the information contained in two existing trust statement documents on the file held by Hickey lawyers for client 248311 "Mr L Barden" (Exhibit 288). One of those statements lists "Mr L Barden" as the client, is headed "Re: Commonsense Campaign Fund", and lists all payments in and out of the trust account between 4 March 2004 and 26 May 2004, the date of the last payment out of the account. This statement begins with a trust journal transfer on 4 March 2004 of $20500.00 from "MN 245821-1 Sue Robbins & David Power - GCCC Election Campaign Fund".

The other statement lists "Sue Robbins Councillor & David Power Cou" as the clients, is headed "Re: Gold Coast City Council - Election Campaign Fund", and lists all payments in and out of the trust account between 23 December 2003 and 4 March 2004. It ends with a trust journal transfer on 4 March 2004 of the balance then in the account ($20,500.00 to "MN 248311-1 L Barden - Commonsense Campaign Fund").

When Hickey was first questioned about Exhibit 102 on 18 October 2005, he agreed that he had provided it to the CMC at a time it was undertaking a preliminary investigation in this matter (T667). Hickey was asked why he had supplied a document that showed payments from 23 December 2003 as being part of the "Lionel Barden Commonsense Campaign Fund" when it had in fact been Power and Robbins controlling the funds until early March 2004. Hickey said (T668):

> Well, the Commission inquired about the Lionel Barden Trust and I thought it was important to give them a complete disclosure of all funds that were received relating to the - the campaign, so the book-keepers obviously consolidated all entries that have come through our trust account and, you know, prior to the transfer, so rather than trying to confuse the Commission which was inquiring about the Lionel Barden Trust, I wanted to make sure that we gave details of every single transaction.

Hickey said that he believed that "the best position was to consolidate everything here so that they [the CMC] knew that there was a whole series of transactions relating to this". (T669)

Hickey was also questioned about Exhibit 102 on 19 October 2005, and said that the trust statement would have been prepared on the date it bore, namely 8 June 2004. He also said that it would have come out of the accounts department and that he was not involved in the preparation of it at all (T694). Hickey said that he probably spoke to his secretary, who would have asked his office manager to produce the statement.

Sandra Wild, Hickey's personal assistant, told the Commission that she prepared Exhibit 102 in April 2005 (T2096, Exhibit 289). She prepared it by taking two trust statements dated 8 June 2004 that were on a file held in Hickey lawyers for client 248311 "Mr L Barden" (Exhibit 288). This file was opened on 3 March 2004, and the trust statements in question are located one after the other on that file, immediately behind documents relating to the third party return that was sent to Mr Barden on 10 June 2004. Wild thinks she asked the accounts section to print out the two trust statements on 8 June 2004, to provide her with information about amounts paid in by various donors that she needed for the Barden third party return, which she helped to prepare (T2121).

Wild said in evidence that the document that was produced to the Commission on 13 April 2005 (Exhibit 102) was a composite document that she created by using the existing statements on the file. She took them off the file and asked Kym in Hickey Lawyer's IT section to scan one of the documents so that she would not have to retype everything. She is not sure which trust statement she had scanned, but thinks it was likely to be the later statement in the name of L Barden (T2098). The fact that the composite document has an incorrect entry dated "15-JAN-03" instead of "15-JAN-04" supports the suggestion that the earlier dates were re-typed into the later Barden statement, one of them being mis-typed in the process.

Wild said Hickey asked her to "do a report and show everything that we received in and out of this file" (T2099), or "everything that was done in and out of our trust account" (T2100).

Wild said she did not provide the two existing statements because "one of the statements related to the old file. The –to me - I was working on this Barden file so I did one - I just did the one statement that Tony asked me to do" (T2100).

Wild said that she had never prepared a statement in the way she was asked to do it on this occasion before, although she claimed it was the firm's practice to use only the new file when an old file is closed (T2103).

Wild agreed that she removed the references to the transfer of funds from the Power/Robbins trust account to the Barden trust account on 4 March 2004 "because it related to the old file and it didn't make any difference to the balance; what I put in exactly was what went in and out of our trust account" (T2109).

The composite trust statement, unlike the earlier two statements on the Hickey file, did not have a client reference number on it. Wild could not explain why it did not, except to suggest that it may have been something to do with the scanning process (T2112). The fact that the composite statement had no reference number on it meant that there was no trail back to the Power and Robbins client number that appeared on the earlier trust statement generated on 8 June 2004. Hickey pointed out that the covering letter (Exhibit 102) did contain a reference number, but that number was the file number for the Lionel Barden file, and provided no apparent link to the Power/Robbins file.

The end result of the actions taken by Wild at Hickey's request was that the trust statement provided to the CMC gave no indication at all that Power and Robbins had ever had any control over the funds held in Hickeys trust account. If the CMC's preliminary investigation had not been taken further, that would have remained the state of its knowledge on this issue.

As outlined above in relation to third party returns, the third party return that Hickey prepared for Barden (part of Exhibit 4) also did not refer to any involvement of Power and Robbins. Hickey was questioned by the Chairman about the similarity between the misleading information in third party return and the information provided to the Commission in Exhibit 102 (at T699):

> And, is it a coincidence that [the third party return is] misleading in precisely the same way that the information that you provided to the Commission in April of this year was misleading. That it gave the impression to the reader of the document that the person throughout who had control of the disposition of these donations was Mr Barden instead of that for the largest part of the time-----?-- Mmm.
> -----the persons who had the disposition of their control was Councillors Power and Robbins. Was that just coincidental or-----?-- Yes.
> -----were you-----?-- Well, it's consistent that a-----
> -----desirous of hiding the fact-----?-- No, no-----
> ----of their involvement?-- -----not at all. I - I didn't attach, or see any relevance of that matter. I really focused only on where the money came from and where it was to go and I
> - I - I didn't consider it at any of those occasions.
> So, it's pure coincidence that both of those documents were misleading in the same way?-- Yes.

Hickey maintained in later evidence that he gave the information in the form of Exhibit 102 because he understood that the Commission wanted to know "where the money went to", and he focussed on that issue (T2144).

[Refer also to contents of Docwra's file notes and Hickey's file note, per TDM submission].

In our submission, the CMC's letter to Hickey of 11 April 2005 (Exhibit 102) makes it clear that the Commission did not have much specific information about the trust that had operated, and was seeking more details about it.

The letter stated:

> I refer to our telephone conversation today in relation to the Lionel Barden Trust (the Trust).
>
> I understand the [sic] Mr Lionel Barden is the Trust trustee.
>
> I confirm your advice that you administered the Trust in accordance with written instructions.

> The CMC is currently considering a complaint with respect to the disclosure of election gifts received by, or on behalf of, various candidates contesting the local government election/s for the Gold Coast City Council (the Council) in March 2004.
>
> I note there was a by-election for Division 14 of the Council on 22 January 2005.
>
> To assist the CMC in the:
>
> - performance of its misconduct function under the Crime and Misconduct Act 2001 (the Act) and
> - its examination and consideration of the appropriate action to take in relation to this matter,
>
> it is requested the CMC be provided with advice about, and/or a copy of the terms of the Trust, and/or any records of expenditures made from the Trust for a political purpose about an election or elections relating to the Gold Coast City Council in or about March 2004 or January 2005, if any.
>
> Your cooperation is greatly appreciated, however, you may also wish to consider whether pursuant to section 75 of the Act, the Chairperson may be entitled to require you to give the above requested information to the CMC, in any event.

In our submission, the reference in the second paragraph to the fact that the writer "understands" that Lionel Barden was the trustee of the Trust made it clear that the Commission had limited information about how the trust had operated.

It also makes it clear that the Commission is not interested only in "where the money went to", as it requests generally "advice about and/or a copy of the terms of the Trust" in addition to expenditure records. It must have been plain to Hickey that it would have been of interest to the Commission to know that Barden had not at all times been the trustee of the "trust fund". Instead, a document was prepared which fostered the Commission's apparent belief that the trust account had operated at all times since December 2003 under Barden's control.

Section 218 of the *Crime and Misconduct Act 2001* provides (relevantly):

> **218 False or misleading documents**
> (1) A person must not give the commission a document containing information the person knows is false or misleading in a material particular.
> Maximum penalty - 85 penalty units or 1 year's imprisonment.
> (2) Subsection (1) does not apply to a person if the person, when giving the document-
> (a) tells the commission, to the best of the person's ability, how it is false or misleading; and
> (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.
> (3) It is enough for a complaint for an offence against subsection (1) to state the document was 'false or misleading' to the person's knowledge, without specifying which.
> (4) A court may order that a person who contravenes subsection (1) must pay an amount of compensation to the commission, whether or not the court also imposes a penalty for the contravention.
> (5) The amount of the compensation must be a reasonable amount for the cost of any investigation made or other action taken by the commission because of the false document.
> (6)
> (7) In this section -
> "give", a document to the commission, includes cause the document to be given to the commission."

To establish an offence under s 218 (1) of the Act, it is necessary to prove:

- that a person gave, or caused to be given, a document to the Commission;
- the document contained information which was false or misleading in a material particular;
- the person knew the information was false or misleading in a material particular.

In Rv. *Kylsant (Lord)*[1] the English Court of Criminal Appeal, in dismissing an appeal by a company director convicted of a criminal offence relating to the publication of a false prospectus which stated some things while omitting others in relation to the company's financial position thereby creating a false impression, approved the trial judge' s summing up that the prosecution was required to prove "a deliberate intent to create a false impression". It said[2]:

> In the opinion of this Court there was ample evidence on which the jury could come to the conclusion that this prospectus was false in a material particular in that it conveyed a false impression. The falsehood in this case consisted in putting before intending investors, as material on which they could exercise their judgment as to the position of the company, figures which apparently disclosed the existing position, but in fact hid it.

It has been consistently held that the term "material", used in a similar statutory context to the present, requires no more and no less than that the false or misleading particular must be of moment or of significance, not merely trivial or inconsequential. [3]

As is clear *from* the passage cited, the question whether information was false or misleading in a material particular does not require that the recipient took it into account, provided such information may have been taken into account. In the *Della Cruz* case, the Full Federal Court (Black CJ, Davies and Naves JJ),in relation to s 20 (1) of the *Immigration Act* 1958 (Cth), said:[4]

> A statement will be false or misleading in a material particular if it is relevant to the purpose for which it is made ... A statement will be relevant to that purpose if it may - not only if it must or if it will - be taken into account in making a decision under the Act as to the grant of the visa or entry permit in respect of which the statement is made.

There, the statutory provision made it clear that the statement may be false or misleading in a material particular whether or not the person concerned knew that the statement had such a character.

In the present case, however, it would be necessary to establish that Hickey knew that the information provided to the Commission was false or misleading in a material particular. In considering this question, a court would be entitled to examine the surrounding circumstances in which he gave the consolidated trust statement to the Commission. These include drafting

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[1] [1932] 1 KB 442

[2] At 448

[3] *Minister for Immigration, Local Government* & *Ethic Affairs* v. *Della Cruz* (1992) 34 FCR 348 at 352; R v. *Maslen* & *Shaw* (1995) 79 A Crim R 199 (NSWCCA) at 202.

[4] At 352. See also *R* v. *Maslen* & *Shaw* at 202-203; Re *Rossfield Group Operations Pry Ltd* & *Morton Holdings (ACT) Pry Ltd* [1981] Qd R 372 at 376-377 per Connolly J.

the relevant details for the Lionel Barden Return which listed entries during the Power/Robbins period of the account. His explanation was that, after concluding that it was definitely not the responsibility of Hickey Lawyers to put a return in, he "just didn't turn my mind to it" (sending Barden separate schedules covering the *Power/Robbins* and Barden periods). (T698-9)

The document which Hickey provided to the Commission in April 2005 conveyed that all of the entries related to the Lionel Barden Commonsense Campaign Fund when, in fact, the first 18 transactions related to the earlier account. The document ignored the account named "David Power and Sue Robbins Gold Coast City Council Election Campaign Fund". Hickey was aware of the Commission's purpose being to compare the information provided by him with candidate returns. In these circumstances, it is a reasonable inference that he knew the information contained in the document was likely to mislead the Commission on significant matters, namely, the duration and details of the Lionel Barden account. It is difficult to accept that any reasonable person, let alone a solicitor of Hickey' s experience, could genuinely believe that his communications with the Commission indicated it wanted a statement that presented an erroneous impression of the Barden account. Hickey could scarcely have thought that the Commission would be uninterested in knowing that in the period ending 4 March 2004, $90,000 was donated to a fund controlled by incumbent councillors who paid out most of that money in campaign assistance for fellow candidates at the March 2004 elections.

Moreover, the circumstances relating to the production of the statement are unsatisfactory: the account number and two relevant entries were not included; the reference number on the letter dated 13 April 2005 belonged to the Lionel Barden account; and, there was no plausible reason to produce an amalgam of two documents when the latter on their own would have sufficed. Indeed it is open to regard the reason given as spurious.

The evidence could support an inference that Hickey deliberately sought to conceal from the Commission the account controlled and operated by Power and Robbins.

ALLEGATIONS OF FAILURE TO DECLARE

Mayor Clarke

Mayor Clarke certified a gifts return on 31 March 2004 (Exhibit 4). In that return he did not declare any gifts. Following a newspaper article, on 7 July 2004, Clarke sent a memorandum (Exhibit 315B) to the CEO of the GCCC (T2313) seeking to amend his return in two respects: first, to disclose that the proprietors of Darlington Park Raceway offered to provide free days to any person who volunteered to assist Clarke's campaign at polling booths on voting day (it is unknown whether any person had in fact taken up that offer (T2314)); secondly, to disclose that a person had driven him around to the various polling booths on a motor cycle. It is doubtful whether these items could be gifts as defined which would require disclosure by Clarke.

On 11 April 2005, following another newspaper article (T2315) Clarke wrote two letters to the CEO of the GCCC (Exhibit 315B). The first letter declared that there had been an in-kind gift to the value between $20,000.00 and $40,000.00 for a large mobile sign and for the time towing the sign. In the second letter Clarke clarified that he paid Mr Tony Stephens (now deceased), one of the proprietors of Darlington Park Raceway, to have a mobile sign repainted. He arranged an independent driver to drive the sign around the Gold Coast. In that letter he also stated that Stephens *"took it upon himself to drive the sign around the Gold*

Coast". It further stated that he was unaware of the extent of the support provided by Stephens.

In a letter from Clarke's solicitor in response to the CMC Notice to Discover (Exhibit 315B), further facts were submitted as to the circumstances. It was disputed the level of support given was to the value of $20,000.00 - $40,000.00. In evidence, Clarke said he saw Stephens towing the sign on Election Day and that Stephens was not doing so at his request (T2319). Following the death of Stephens, that cannot be further investigated.

The second issue in regard to Clarke related to some campaigning which was done by the Licensed Venues Association. Clarke had stated in a meeting early in March 2004 to representatives of that Association that he would support the extension of licences for the sale of alcohol from 3:00 am to 5:00 am (T2324 – 2325). On 16 March 2004 he sent an email to a representative of the Association stating that he believed in a 6:00am closing and stating his views on other related policy issues (Exhibit 217). The email did not request any support from the Association. It would appear that the Association then embarked on a negative campaign against the current Mayor Gary Baildon by advertisements and SMS messages. There were also some positive support for Clarke by suggesting he be put as No.1 on the ballot. At the meeting with Clarke there was no discussion as to the support the Association was going to give (T2328). Clarke was unaware of the discussions held between his media adviser Graham Staerk and the Chairman of the Association (T2024; 2332). When the matter received media publicity, Clarke sought the advice of Tony Davis, Manager, office of the CEO at the GCCC. He was told that he did not have to make a disclosure (T2338).

Unsolicited campaigning, whether it is positive or negative campaigning, done without the knowledge of a candidate, is not capable of amounting to a gift. For it to constitute a gift, there must be an element of acceptance on the part of the candidate. Even if a candidate was aware of the actions, it would not be possible for the councillor to quantify the benefit in the absence of volunteered information. Section 427 requires the candidate to give a return in respect of gifts 'received'. It is implicit that the benefit be accepted in some way by the candidate. That is also implied in the wording of Section 428. Here, there is no evidence that the activities of Stephens and the Association were solicited or accepted by Clarke.

The actions of Stephens in towing the sign would seem to be 'volunteer labour'. No return would therefore be necessary. If the Licensed Venues Association received gifts in the prescribed amount in order to conduct the campaign, it may be necessary for it to give a third party return pursuant to Section 430. However, the evidence does not point to any obligation on Clarke to submit a return for those gifts. In summary, there is no evidence to support referral of the matter under s.49 of the *Crime and Misconduct Act 2001*.

Councillor Young

A number of allegations have been raised in respect of Councillor Peter Young concerning his failure to properly declare gifts in his electoral return and his failure to advise the Chief Executive Officer in respect of an interest to be recorded in his register of interests. These allegations have been the subject of advice from the City Solicitor (Exhibit 235).

The first allegation is that Young has breached S.436(2) of the Act. That section provides:

> A person must not give a return the person is required to give under division 3 containing particulars that are, to the knowledge of the person, false or misleading in a material particular.

There are two elements in issue namely, knowledge and materiality. The relevant chronology is as follows:

- 5 April 2004 - interim return declared gift from Cater Corporation dated 2 March 2004 for $3,000.00;
- 20 May 2004 - return amended from $3,000.00 to $5,000.00;
- 3 July 2004 - final return declared gift from Cater Corporation dated 2 March 2004 for $5,000.00;
- 10 May 2005 memo from Councillor Young (part of Exhibit 235) amending date from 2 March 2004 to 20 February 2004.

It should be noted that as at 26 April 2005 Young was aware that he was under investigation in respect of his register of interests which appeared to relate to the disclosure of gifts from the same donor (email 26 April 2005 Young to Dickson – part of Exhibit 235). Young gave the following evidence in relation to the amount declared (T1570 – 1571):

> I received the gift of $5,000.00. I made a note somewhere at the time … I don't know how I did it but I inadvertently, in my own records then, put down $3,000.00 and that date, I probably had a few cheques come at once or something like that and just gave them a common date. Then subsequently, after the election, I realised that I'd made that error, that in fact it was $5,000.00… I was starting to review my documents a bit more closely, go through things that I'd need to be keeping and just trying to organise my records. That's when I realised that the date – sorry, that the amount was wrong and I wrote immediately to the CEO and sought to change my interim return.

In relation to the date declared he stated (T1571):

> I wrote to Cater Corporation … Cater Corporation said, "Here's the dates of the money we've given you," and they included within that information a reference to the $5,000.00 that they'd paid on the 20th of February. At that point in time I realised that the date was – that I'd always provided was wrong. It wasn't the 2nd of March, it was the 20th February, and I wrote to the CEO accordingly.

On the issue of amounts, Young appears to make the correction of his own volition before any issue had been brought to his attention. Although the amount is material, he denies he had "knowingly" declared the incorrect amount. Given that the correct donor was disclosed and a significant amount was otherwise declared, there is no basis to conclude it was other than unintentional.

The same comments apply on the issue of the different dates.

In the circumstances, this is not a matter where a report should be made under s.49 of the *Crime and Misconduct Act 2001*.

The second allegation against Young relates to his disclosure in respect of his register of interests. The CEO of a Local Government must keep a register of interests for councillors and related persons (S.247(1)). Section 247(3) provides:

> If a councillor knows –
>
> (a) of an interest that the chief executive officer must record in a register of interests kept under subsection (1) in relation to the councillor or a person who, under a regulation, is related to the councillor (a "related person"); or

> (b) that particulars of an interest recorded in a register kept under subsection (1) in relation to the councillor or a related person are no longer correct;
>
> the councillor must tell the chief executive officer of the interest, or the correct particulars, in accordance with the regulations.

The *Local Government Regulation 1994* provided:

> 17 Financial and non-financial particulars for registers – Act, s247(2)(b)
>
> (1) A register of interests of a local government councillor or related person must contain the following financial and non-financial particulars - …
>
> (j) for each gift, or all gifts totalling, more than $500.00 in amount or value received by the councillor or related person – the name and address of the person who gave the gift or gifts to the councillor or related person; …
>
> (o) particulars sufficiently detailed to identify each other financial or non-financial interest of the councillor or related person –
>
> (i) of which the councillor is aware; and
> (ii) that raises, appears to raise, or could foreseeably raise, a conflict between the councillor's duty as a councillor and the holder of the interest.

The councillor has 3 months to notify the CEO by way of statement of interest (Regulations 18 and 19).

On 1 July 2005 the 1994 Regulations were repealed. There does not appear to be any material change to the Regulations that would affect any alleged offence for failure to comply with the old Regulations prior to 1 July 2005 (see Section 24(1) and Schedule One (SS10 and 15) of the *Local Government Regulation* 2005).

Cater Corporation paid the following sums on behalf of Young in partial payment of costs for a Divisional local newsletter:-

- 22 May 2004 $ 450.00
- 01 July 2004 $ 440.00
- 23 July 2004 $ 440.00
- 25 August 2004 $ 440.00

On 17 May 2005, Young sent a memorandum to the CEO disclosing those gifts (part of Exhibit 235). As previously noted, that correction occurred after he became aware that his register was under scrutiny. He explained:

> This was one of those things that I knew I had to attend to and that I had sort of left at the bottom of the pile. I just dealt with a lot of other things and left that one lie. Finally, I approached Cater Corporation and said, "can you please give me that information, I need to update my register". (T1572)

The Council funded the first page of the newsletter and the company had agreed to pay for the cost of the second page. Young's evidence continued (T1572):

> Subsequently I received invoices from that company, the newsletter company. I would have forwarded them to Cater Corporation. They subsequently paid them. I didn't make myself aware when they had paid them, which is my failing. So I didn't amend my register within three months but I was becoming aware that I better get to this register because it's been a long time, you know, I've – I've sort of let it lie for too long. I wrote to Cater, they provided me the information. I nominated that to the CEO.

The section imposes a positive duty on councillors to ensure information is properly recorded in their register of interests. In sending invoices to Cater Corporation, Young would have been well aware that they were making payments on his behalf. His non-disclosure within the prescribed period may therefore support a charge under s.247(3). The question remains whether the matter warrants referral for consideration of possible prosecution in the circumstances.

In the July 2004 newsletter, Young stated that Gardens on Lindfield would sponsor the cost of the newsletter for the following twelve months (part of Exhibit 235). It would therefore appear that Young's failure to update the register was not out of any attempt on his part to conceal information from disclosure. Indeed, in his Divisional newsletter, he explained his reasons for accepting financial assistance. Arguably a wider publication occurred than would have been achieved by updating the register. It is submitted that, in these circumstances, the matter does not warrant referral under s.49 of the *Crime and Misconduct Act 2001*.

Additional complaints against Councillor Young

Shepherd has made a complaint against Young concerning his voting on a matter in which he had a "material personal interest" considered by Council. The full facts and circumstances surrounding the complaint are contained in Exhibit 236. Shortly, a developer lodged an appeal to the Planning and Environment Court against a Council refusal to approve a material change of use application. In March 1999, Young (prior to him being elected as a councillor) filed a notice of election to become a co-respondent in the appeal. A settlement of the appeal was considered by the City Planning Committee on 5 October 2004. It is noted in the minutes to the meeting that:

> Councillor Young declared an interest and left the room during discussion and voting on this item.

At the meeting, it was agreed to settle the appeal. The report of the City Planning Committee went to Council for consideration on 8 October 2004. The resolution was as follows:

> That the Report of the City Planning Committee's Recommendations of Tuesday, 5 October 2004, numbered CP04.1005.001 to CP04.1005.012 be adopted with the exception of Recommendation Numbers CP04.1005.004 and CP04.1005.005 which were specifically resolved.

The relevant item was CP04.1005.011. A division was called and the resolution was carried unanimously. Young voted at that time.

In his evidence Young stated (T1576):

> I completely forgot, missed that opportunity and as you can see, accurately recorded in the minutes of 8th of October, Council voted in favour of the adoption of all of the recommendations of the Committee, which included the settlement of this appeal.

Material personal interest is defined in Section 6 of the Act. That section provides:

> (1) A person has a "material personal interest" in an issue if the person has, or should reasonably have, a realistic expectation that, whether directly or indirectly, the person or an associate stands to gain a benefit or suffer a loss …
>
> (2) …
>
> (3) However, a person does not have a material personal interest in an issue
>
> (a) if the issue is about …
> (b) if the interest is merely -
> (i) as an elector, ratepayer or resident of the local government's area; or ….

Pursuant to Section 244 a councillor with a material personal interest in an issue to be considered at a meeting must disclose the interest and absent himself/herself during the consideration of the issue. A failure to do so would be an offence pursuant to Section 246 of the Act.

Young disputes that he had a "material personal interest" (T1576 – 1577). Arguably, as a respondent to the proceedings, he held an interest which was not "merely" that of an elector, rate payer or resident of the local government's area. However, he had previously disclosed his interest, and when the matter was considered by Council it was dealt with en masse with other recommendations from the Planning Committee. Further, there was no specific discussion in respect of that item at the Council Meeting which may have prompted him to the possible conflict. As a whole, the evidence does not support a conclusion that Young's vote on the relevant item was other than unintentional.

In the circumstances, this matter does not warrant a referral under s.49 of the *Crime and Misconduct Act 2001*.

John Fish, a developer, also made an allegation in respect of Young. Fish claimed that in 1998, Young (before he was elected):

> Tried to extort a million dollars from our company (T1935).

He alleged that Young said he would withdraw his appeal to the Planning and Environment Court against a development of Mr Fish's company at Oxenford providing Mr Fish bought a property owned by Young for one million dollars. Mr Fish said that the offer was tape recorded (T1937).

A CMC officer travelled with Mr Fish to his office and to a storage facility where Mr Fish thought the tape was stored and it could not be located (T1985 – 1986). The tape has not subsequently been produced and Fish's evidence as to its existence was unsatisfactory. The allegation of Mr Fish was categorically denied by Young (T1566; 1662). It is submitted that the allegation lacks substance and does not warrant further investigation. In any event, the conduct alleged is not within the terms of reference of the Inquiry, nor could it amount to official misconduct as defined under the *Crime and Misconduct Act* 2001.

Councillor Sarroff

Cr Eddie Sarroff on 7 April 2004 certified an interim return for the period 5 May 2000 to 5 May 2004. It disclosed three donations in the total sum of $4,453.50. On 28 June 2004

Sarroff certified a final return for the period 5 May 2004 to 28 June 2004. It disclosed one donation in the sum of $3,801.20. The return failed to repeat the information contained in the interim return. Obviously, the final return should relate to gifts received in the entire disclosure period. This was clarified by Sarroff in a memorandum to the Manager of the Office of the CEO of the GCCC on 24 December 2004 (T1296).

Sarroff denied receiving any donations from current developers (T1297).

No further action is warranted in regard to this matter.

CAMPAIGN FUND RAISING FUNCTIONS

An issue has arisen in relation to the obligation of candidates to make a disclosure in respect of proceeds from campaign functions. Prior to the March 2004 council elections, the Department of Local Government and Planning published guidelines for the disclosure of election gifts (Exhibit 10). Consistent with s.414, the guidelines accurately outline the election gifts to be disclosed (s.2.5.10 of the Guidelines at p12). The guidelines further state (s. 2.5.12 at p15):

> **Other items that do not need to be disclosed**
>
> The following items are not required to be reported in the return:
>
> - proceeds of raffles, dinners and other similar fundraising activities conducted by a candidate or a candidate's campaign committee …

This statement does not accord in all cases with s.414 which defines gift as follows:

> "gift" means the disposition of property or the provision of a service, without consideration or for a consideration less than the full consideration …

Rather, it is submitted that the extent to which a profit was made from guests attending the particular campaign function is relevant to the question whether any money that was received constituted a gift as being for a "consideration less than the full consideration". Functions held by Crs Power, Shepherd and La Castra were the subject of evidence.

Councillor Power

On 3 March 2004 a fundraising luncheon was held at the Windaroo Country Club. The charge was $125.00 per person. The records of the function have been destroyed by the Club except for the account totals. Councillor Power also has no other records in respect of the function (T2479). The number of people who attended the function cannot be ascertained. In his interim return dated 6 April 2004 (part of exhibit 4), Power declared that he received $47,825.00 in the period ending 3 March 2004 for "various luncheon tickets". The return would indicate that amount was paid by 76 people. In his final return, Power declared that he received $58,000.00 for those tickets from 464 people. Although Power signed the return, he said that it was completed by his campaign manager and that he was assured that it complied with the legislative requirements (T2529).

It would appear the figure of 464 attendees was chosen so as to correspond with the total funds raised of $58,000.00, given each ticket cost $125.00. There is evidence to indicate that the function room can comfortably hold about 250 people for a "stand up" lunch and about 150 for a "sit down" lunch. On the basis of the two electoral returns, it would appear that an

amount of $7, 375.00 was collected in luncheon ticket sales in the period after the lunch was held.

The food bill totalled $2, 475.00 and the alcohol sold totalled $668.00. Mr Karel Weimar, Principal Financial Investigator of the Crime and Misconduct Commission, concluded that based on the Club's menu prices a "stand up" lunch involving "finger food" may be as little as $6.00 per head up to $28.00 per head for a two course lunch (Exhibit 324).

In the circumstances, it is impossible to accept that anything like 464 people attended, or even bought tickets. The amount raised (profit of $54,857.00) would indicate that there were significant donations over and above the ticket price. Power was correct in disclosing the number and total value (Section 427(2)(b)(ii)). However, if the gift was of $200.00 or more, an obligation existed to identify the individual in the return (Section 427(b)(iii)). It can be inferred that the number of attendees was inflated to avoid that requirement. Unfortunately, no records exist to ascertain the actual number of people attending.

Councillor Shepherd

On 12 November 2003 Cr Shepherd held a campaign function at Woodchopper's Inn, Railway Street, Mudgeeraba. The requested donation was $40.00 per person. One developer company, Sunland Group Limited, paid $2,000.00 (Exhibit 263). Fifty tickets were sent on receipt of the cheque (T1884; 1920; 2039; 2083). Craig Treasure, a Director of Sunland, did not attend but believes that another staff member attended with his partner (T1884). Treasure said he believed the tickets were offered to other staff and consultants (T1885).

Shepherd said he did not rely on the guidelines contained in the handbook (Exhibit 10). He said he had received advice that he did not have to disclose funds from a fundraising function (T2084). Shepherd did not declare funds from the function in his electoral return.

Of the $5,360.00 collected from the function, $2,840.00 (or 53%) came from developers/builders/planning consultants (Sunland - $2,000, Planit Consulting - $120, Humphreys Reynolds Perkins - $40, Dredge & Bell - $80, Palmvale Homes - $80, Burchill Partners - $40, Glen Alpine Constructions - $40, CB Constructions $40, Nifsan P/l - $240, Rapcivic Constructions $160) (part of exhibit 280). The payment by Sunland Group Limited of $2,000.00 was considered by Craig Treasure to be a donation (T1885). Shepherd thought 50 tickets was reasonable in view of the size of Sunland (T2093). The issuing of 50 tickets by Shepherd would appear to have occurred in the full knowledge that they would not be used. It is submitted that the issuing of tickets in those circumstances was done to avoid reporting requirements for gifts.

Councillor La Castra

Councillor La Castra held a fundraising dinner at Royal Pines Resort on 22 March 2004. The ticket price was $100.00 and 100 people were in attendance (T2164). Of the total collection on $10,900 at least $5,900 (or 54%) came from developers, builders and/or planning consultants (Family Assets Pty Ltd - $1,500, Nifsan Pty Ltd - $1,800, Australand Holdings - $1,000, Ray Group - $800, Royal Woods - $800) (part of exhibit 301).

La Castra calculated that the cost of the dinner was $42.00 per head (T2177). He thought a declaration did not need to be made and he had referred to the handbook on that aspect

(T2165; 2196 – 2197). He did not declare the funds from the function in his electoral return. La Castra stated (T2165):

> Basically if somebody's getting a dinner and a show then they're receiving something for their money so it's clearly not a donation.

La Castra said he performed on the night and said that someone of his *"calibre"* would be worth *"somewhere in the region of $5,000 - $7,000"* (T2179). La Castra stated:

> I wouldn't go out for less than $5,000 a night. So therefore I made about $900.

It would appear that such a notional apportionment of his own entertainment value was an attempt to avoid his reporting responsibilities by understating his profit.

Conclusion

By its nature, a fundraising function would usually be an occasion where guests pay more than they receive by way of food, drinks and entertainment. If guests received consideration of less value than the amount they paid to attend the function, then there is an obligation on the candidate concerned to disclose the total value of the donations/subscriptions and the number of people who made those payments (Section 427(2)(b)(i) and (ii)). If any payment from a person or company was of $200.00 or greater, the name and address of the person/company making the donation would need to be disclosed (Section 427(2)(b)(iii)).

As to the functions mentioned, the disparity in each case between the cost of holding the function and the money received from those attending, may support a conclusion that the proceeds should have been declared. Of course, it would not avail a councillor to believe that a declaration was not required, as such belief would constitute a mistake of law even if it was supported, to a degree, by the Department's own guidelines. However, fairness militates against further action in the present circumstances.

It is therefore submitted that no further action is warranted in these matters.

STATEMENTS TO THE MEDIA

There is evidence from which it can be concluded that a number of false and misleading statements were made by candidates and others both during the election campaign and subsequent to the election being held. Attempts to explain away those statements before the Commission have been unconvincing. The media statements, when viewed with other evidence, show a concerted effort to conceal the existence of a group of candidates being funded from a common developer backed fund. Such statements are consistent with the strategy put forward in Morgan's draft agenda (exhibit 14) for the initial meeting at Quadrant on 16 December 2003:

> An agreed media position once awareness of this resource for 'Campaign for Commonsense in Council' (working title) becomes public.

Instances of this approach are set out below. They may be compared with details already given as to the manner in which the fund was organised and operated.

Councillor Power

(i) **Exhibit 3 p16 [The Gold Coast Bulletin – Friday 20 February 2004 "Planning boss forms faction with plan to rule civic roost. Power play to control council"]:**

> The Bulletin has been told Cr Power has attracted as much as $500,000 in funding from developers to spend on candidates sympathetic to the incumbent councillors' policy views. But Cr Power yesterday dismissed the claims as 'conspiracy theories' and said he would welcome any funding to help his own campaign … "I have got enough trouble paying for my own campaign without worrying about other people's…Trying to help candidates in other areas never goes down well with the community, that's why I don't get involved in campaigning for other candidates…"

Power said the quotes were accurate but that he was quoted out of context to the question posed (T2472-3). Power said he was asked about a "slush fund" which he took to mean political bribery (T2473). He said he answered the question truthfully and directly, stating (T2474):

> I would have answered a question if they had said, "Are you providing funds from a trust fund?" Then I would have answered it directly, then they would have got the answer they were after.

Power was asked by the media as to $500,000.00 being available which he said was wrong (T2472). Asked why he didn't tell them the amount he said (T2474):

> They didn't ask me.

In other words, he would have answered the question truthfully if the reporter had guessed the precise amount.

(ii) **Exhibit 3 p18 [The Gold Coast Bulletin – Monday 23 February 2004 "It's a Power backout" by Joanne Gibbons]:**

> Power said many people were making many assumptions about the campaign. "I wonder how it has been assumed that I have encouraged them in any kind of organised support," he said.

Power said that he was answering that in the context of him taking control of Council and he was not referring to the support for candidates as individuals (T2496).

(iii) Exhibit 3 p 26 [Gold Coast Sun – Wednesday – 24 March 2004 "To the Polls" by Murray Hubbard:

> Rumours persist of a 'ticket' put together by Cr David Power, along with a developer/business – white-shoe brigade – slush fund to run the campaigns. Cr Power said the rumours are just that. "I can say that I am paying my own campaign funding and there are no slush funds that I know about," he said. "I will say the business community have asked my opinion on candidates and I have told them who are okay and who are not. Some candidates I know are getting significant support, but that is nothing to do with me. That is their choice.

Power maintained he was being asked about a "slush fund which had corrupt connotations" (T2522). He stated (T2522):

> If they don't ask the right question that is the responsibility of the media, not of the councillor.

(iv) **Exhibit 3 p 29 [The Gold Coast Bulletin – Thursday 25 March 2004 "Ray powers the bloc" by Alice Jones]**:

> "I have no idea what he (Brian Ray) was planning to do … I have simply given them my opinion, that's it. What they have done from there is their own business …All I know is that the business community – and I'm not talking about developers – the combined chamber of commerce have a resolution on the books that they're going to get political and assist people. That's all I know. I'm aware that some candidates have significant support. You'd have to be blind not to see it."

Power said that the quotes were re-arranged to give a different meaning. He gave further evidence that the reference was to a combined Chamber of Commerce not to arranging or distributing funding (T2497).

(v) **Exhibit 3 p 31 [The Gold Coast Bulletin – Friday 26 March 2004 "How a plot took shape" by Alice Jones]:**

> When he was contacted by The Bulletin yesterday morning Cr Power also was vague about whether he had attended the meeting at Quadrant… He could not remember the details of all the meetings he attended…I'm not denying it. The simple fact is I'm not getting any assistance. You seem to want to make it out we're running it. We're not, we have been giving advice. The candidates have from day one handled their own campaigns.

Power said that the article was an exaggeration by the journalist and at no time was he vague as to a meeting at Quadrant. He said the reference to "it" related to the individuals own campaigns (T2497 – 2498).

(vi) **Exhibit 3 p 46 [Gold Coast Sun – Wednesday 7 April 2004 "More Crs needed on Coast: Power" by Murray Hubbard]:**

> On other issues Power said: *He did not know who was behind the so called developer slush fund, other than what he had read in newspapers …

In evidence, Power said (T2498):

> There was no question or no request to answer information about a centralised fund other than a slush fund…if he had asked – if any of the reporters had asked me, "Are you responsible or involved in a centralised fund," words to that effect, I would have said yes.

(vii) Exhibit 3 p 53 [The Gold Coast Bulletin – Thursday 15 April 2004 "I confess: the bloc really does exist. We had to stop those greenies" by Alice Jones]:

> Power said he did not actively recruit councillors to contest the election, nor did he seek funding on their behalf.

In evidence, Power said the article was "completely, utterly out of context" with the interview undertaken and he made a complaint to the managing director of the Gold Coast Bulletin (T2499). Significantly, Power gave the following evidence (T2517 – 2518):

> Q: Now, at any time before the election did you tell the electorate of this trust fund?
> A: I was never asked any questions about a trust fund and therefore did not make any comment about it.

John Lang

John Lang was the campaign manager for the unsuccessful candidate Brian Rowe.

(i) Exhibit 3 p 10 [Gold Coast Sun – Wednesday 18 February 2004 "Squaring Up. Councillors lock horns as battle reaches climax" by Murray Hubbard]:

> John Lang, his financial campaign manager, said no money from developers had been paid into a specific account for Mr Rowe's campaign.

Lang has admitted that he made this statement. He said (T1517):

> It wasn't true but as I said, we were getting bad publicity from the papers and I wasn't going to give them any information at that stage.

(ii) Exhibit 3 p 33 [The Gold Coast Bulletin – Saturday 27 March 2004 "Three admit to fund" by Alice Jones]:

> John Lang said Mr Rowe's campaign had received three cheques from the fund for a total of $20,000.00. The other $40,000.00 had come from a range of sources, including publicans, business people and developers.

Lang has admitted that they had received $35,000.00 from the fund and that the statements made were untrue (T1518 – 1519).

Councillor Pforr

(i) Exhibit 3 p 10 [Gold Coast Sun – Wednesday 18 February 2004 "Squaring Up –Councillors lock horns as battle reaches climax" by Murray Hubbard]:

> Grant Pforr, who is contesting division three, to be vacated by retiring deputy mayor Alan Rickard, said he was funding his campaign. "I am strongly of the belief that campaign funds should be open and accountable, and the public should know before the election where campaign funds have come from," he said.

Pforr has admitted making these statements. He said that he didn't trust the paper (T270**).** He agreed that at the time he made the statements he had in fact received money from Hickey Lawyers (T271):

> It was money that I received. I did not say I was solely funded. I said I was – I had been funding my own campaign.

Pforr said that he did not view the statement as misleading (T271; 273)

(ii) Exhibit 3 p 20 [The Gold Coast Bulletin – Thursday 26 February 2004 "No bloc here, say election hopefuls" by Peter Gleeson]:

> Runaway Bay candidate Grant Pforr said he was an independent funding his own campaign.….Mr Pforr said his association with Councillor Power was through the Coomera Sports Club. "I'm an individual. They won't be swaying my thoughts (but) I will be making decisions for the good

> of the Gold Coast," he said. "Being part of a 'ticket' doesn't sit comfortably. I can work with all councillors.

Pforr has said that he was uncertain of the date he made this statement and that in referring to 'ticket' he was referring to a political ticket such as political interference or political parties in local government (T290 – 291)**.** He gave evidence that he told a journalist, Peter Gleeson, on 25 March 2004 that he had been receiving money from developers (T310)**.**

(iii) Exhibit 52 [16 March 2004 letter to Peter Gleeson Gold Coast Bulletin from Grant Pforr]:

> In response to it (letter) I have funded my own campaign as I have publicly stated. I have received great in kind support from good friends and family, utilising all resources and experience available to me.

This letter was emailed and faxed to the journalist on 25 March 2004. In evidence, Pforr accepted that it was "not completely accurate" (T300), and added (T302):

> I was quite sarcastic in my letter of the 16th. There was a huge sarcasm in my response to them. I was basically telling them to go jump.

Roxanne Scott

(i) **Exhibit 3 p 20 [The Gold Coast Bulletin – Thursday 26 February 2004 "No bloc here, say election hopefuls" by Peter Gleeson]:**

> City Council election candidates allegedly linked to a so-called David Power 'ticket' have rejected claims they are part of a voting bloc….Southport candidate Roxanne Scott said she was unaware of such a ticket. "If they want to give me some money, they'd better hurry up," she said.

In evidence, Scott said she was frustrated at the time because the money wasn't coming through to pay the Quadrant accounts. She stated (T401):

> I didn't think she would publish it because it was said so flippantly, "I wish they'd give me some money".

Scott accepted that, at the time of speaking to the reporter, she had received money from the fund. She added (T402**):**

> However, I don't believe I told Alice Jones (the journalist) that I hadn't received any money to date. I don't believe I used those words. So I don't know that I was misleading in saying I wish they would give me some money.

Scott acknowledged that it was a "stupid comment" (T402).

Brian Rowe

(i) **Exhibit 3 p 16 [The Gold Coast Bulletin – Friday 20 February 2004 "Planning boss forms faction with plan to rule civic roost. Power play to control council"]:**

> Mr Rowe, who is running an expensive and high-profile campaign said he was totally independent and was funding his efforts from generous community donations.

Rowe gave evidence (T1097):

> I would be surprised if that's all I said because I was careful to say all the way through, "family, friends and business".

(ii) Exhibit 3 p 25 [The Gold Coast Bulletin – Monday 22 March 2004 "Pair driven by passion" by Brian Mossop]:

> Although he maintains he has had no funding from developers and is running as an independent ("you don't have the experience I've got and hang on to someone's coat-tails"), Mr Rowe does have substantial financial backing.

At the time of making this statement, Rowe had received money from companies including a payment of $24,000.00 from Fish Developments. He stated (T1098):

> Those donations that you're talking about with regards to the four companies and Fish Developments, I had no difficulty in placing that under the – under the topic of friends giving support.

Rowe said that he thought the statement was accurate as the money was given to him by Mr Fish as a friend and not as a developer (T1099).

Conclusion

The relevant offence provision is section 394 of the Act:

> **394 Misleading voters**
>
> (1) During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.
>
> (2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

Section 394 (1) and similar provisions under the *Electoral Act 1992* and the *Electoral Act (Cth) 1918* have been judicially considered. The ambit of the section is quite limited. It seems clear that section 394 (1) is "concerned with statements intended or likely to affect an elector when he seeks to record and give effect to the judgment which he has formed as to the candidate for whom he intends to vote, rather than with statements which might affect the formation of that judgment": see *Evans v Crichton-Browne* (1980) 147 CLR 169; Goss *v Swan* [1994] 1 Qd R 40; *Robertson v Knuth* [1997] 1 Qd R 95 and *Carroll v Electoral Commission of Queensland* (No 1) [2001] 1 Qd R 117.

It appears obvious that the quoted media statements were designed to protect the campaigns of the candidates concerned from adverse public reaction that was likely if the true facts were known. As such, the statements could not affect an elector when giving effect to the decision as to how to vote. Accordingly, no possible offence arises under sub-section 1.

In *Robertson v Knuth* (supra), the Court of Appeal decided that a statement that a candidate for election advocated a policy of no direct tax did not reflect on his "personal character and conduct", within the meaning of sub-section (2). False statements made to conceal the existence of a group and a common developer backed fund could not be a statement about the "personal character or conduct of the candidate". Accordingly, it is submitted that no offence arises under sub-section 2.

CONFLICTS OF INTEREST

There is a distinction to be drawn between a "conflict of interest" and a "material personal interest". The circumstances giving rise to a material personal interest are defined (s.6).

Essentially, a councillor has a material personal interest in an issue if the councillor has or should reasonably have a realistic expectation that the councillor (or associate) stands to benefit or suffer a loss, directly or indirectly, as a result of the resolution of the issue. The objective element might apply if the councillor takes an unreasonable (even if honest) view o his or her own situation. Importantly, if a councillor has received a donation from developer interests that is not sufficient, of itself, to create a material personal interest.

A councillor with a material personal interest in an issue to be considered at a meeting must disclose the interest and absent himself/herself during the consideration of the issue (s.244). A failure to do so would be an offence (s.246).

Under s.229 of the Act, a councillor is required to act in a manner that will represent the overall public interest of the local government area and the public interest of the division they represent. A councillor must ensure that their own personal interest and the public interest which they are required to promote do not conflict. A mere failure to deal appropriately with a conflict of interest under s.229 does not amount to an offence.

Section 229 (3) provides:

> A councillor must ensure there is no conflict, or possible conflict, between the councillor's private interest and the honest performance of the councillor's role of serving the public interest.

The use of the word "honest" in that section has been relied upon by a number of councillors in voting upon applications concerning developers from whom they have received donations. The adequacy of s.229 may require consideration at the next stage of this Inquiry.

The Tweed Shire Council Public Inquiry Second Report stated (at p938):

> In Local Government, unlike the State or Federal Government spheres, the executive arm of government and the legislative arm are not separated. The Council both makes the rules (on zoning and development control plans, for example) and makes decisions on the application of those rules.

In the case of developer donations to councillors, the potential for corruption is obvious in that the interests of those developers will not coincide, and often conflict, with the public duties of councillors to whom donations were made and who are involved in everyday decisions on planning and development matters.

There is inconsistency in approach among councillors as to whether a conflict exists in such circumstances. Some believe that having received a donation would result in a conflict if a

council decision relates to the donor, such that the councillor should not vote (Young T1557 – 1558; Crichlow T1458 – 1459; Clarke T2351, Pforr T296). Other councillors believe they can resolve the conflict in favour of the public interest and continue to vote (see the evidence of Power and Shepherd below). Several councillors who gave evidence protested at the proposition that their impartiality may be affected. It is submitted that those councillors had very little insight into what would be a reasonable perception to an outsider. As was stated in the Tweed Shire Council Public Inquiry Second Report (at p938):

> Public perceptions sit at the heart of democracy

Councillor Power

Cr Power has been a Gold Coast City councillor, and before that an Albert Shire councillor, since 1991.

Exhibit 326 lists a number of meetings Power had with donor developers in relation to council business (T2483 – 2485). He said those relationships did not give rise to a conflict of interest (T2401). He stated (T2401) –

> It's part of the normal political process. I think anyone of strong mind can separate the two quite easily.

Power said that there was no difficulty in meeting with people on council business and at the same time discussing issues of funding, providing the donation was properly declared (T2402 – 2403). He said that he believed a declaration should be made pre-poll (T2433).

Power said that there was an objective to keep candidates separated from donors (T2434 – 2435) and there was an issue of perception of the candidates supported by the fund being beholden to himself and Councillor Robbins. He said it was the intention that their independence be ensured. That lead to the transfer in the management of the trust account (T2446 – 2447; 2453 – 2454; 2467).

Power wrote to Mr Bill Roche of the Roche Group and in requesting a donation stated (Exhibit 181) –

> Your support will assist these people in bringing dignity back to the Gold Coast and certainty in the decision-making process.

He said he was referring to a decision being carried through and finalised (T2465). The statement *"certainty in the decision making process"* suggests some knowledge or belief on his part as to the voting patterns of those to be supported by the fund. However, Power denied that there was a potential for favouritism (T2485). His evidence continued (T2486):

> Q – Do you accept or not that there is always the potential that councillors who receive donations in the circumstances I've mentioned, even if perhaps unconsciously, will be influenced in their decisions? A – I don't believe so if they're strong enough mind …

Power was questioned as to his understanding of a conflict of interest. He said that if the individual can place the public interest above the private then no conflict exists. He stated (T2501):

> Matters pertaining to myself, that the conflict of interest only – can only exist within the individual's mind and therefore if the conflict – the conflict is resolved therefore

> there is no conflict. …Now the interpretation, I guess, is up to the individual. (See also T2515 – 2516)

Councillor Shepherd

Cr Shepherd has been a Gold Coast City councillor since 2000 and Chairman of the City Planning Committee since the 2004 election. He was asked questions about the issue of favouritism to donors (T2041):

> To suggest that any one Councillor could have an influence over an outcome is wrong because of the processes that we have and to suggest that any one Councillor could get away with – to use a phrase – anything of that nature is totally inappropriate because it just can't happen. There are too many checks and balances and it just can't happen but from my point of view, from a personal point of view, it's not the way I operate and I would – and have – taken offence at many of these allegations that are attacking my integrity as a Councillor.

Shepherd maintained that in his role he deals with applications fairly and evenly based on the material before him (T2059). He was asked by the Commission Chairman about fund raising functions where he invited developers, even though he held the position as Chairman of the City Planning Committee (T2059):

> – but there's that perception that can arise that, at the same time as you're dealing with these companies professionally, you are writing to them and saying, "come along to my fundraising function"? – No, Mr Chairman, I reject that. I reject that outright because people understand that someone in my position has to raise money for an election campaign. They understand that. I have had nobody come forward to me and say, "this was wrong, this was scurrilous. What are you doing?

Shepherd said that it was necessary to raise funds for election campaigns, including by way of holding functions (T2058 – 2060). On the issue of conflict of interest Shepherd stated (T2062):

> … a conflict of interest is one where if you can vote in your mind on the public interest on the public good then the conflict doesn't exist.

It is submitted that the quoted statements of Power and Shepherd reflect a fundamental lack of appreciation as to what constitutes a conflict of interest in connection with their work as councillors. The error of their approach is to prefer their own personal view as to whether a conflict exists at the expense of considering whether the circumstances give rise to a reasonable apprehension that they may not be able to act impartially in carrying out their public responsibilities.

Particular decisions of council

In the course of the Inquiry three decisions of Council since the Election in 2004 were the subject of examination.

1. Application by Yarrayne Pty Ltd for material change of use for residential development at Tamborine/Oxenford Road, Upper Coomera

Sarroff raised an allegation in respect of the process in the consideration of the application by the City Planning Committee on 3 August 2004. The council officer recommended approval subject to conditions. One of the conditions, section 40 (d), stated:

> In order to accommodate storm water quality improvement devices outside of waterway buffers the applicant shall delete lots 84 to 90 and use this area of the site for storm water management purposes (both quality and quantity).

Sarroff said that Power argued in support of storm water treatment plants being incorporated in the Council's parkland downstream of the development (T1293). The proposed development was to occur in Power's division. Such a proposal by Power would appear to favour the developer in that the lots could be used for the purposes of the development. Shepherd said that it was argued by the applicant and Power that it was unnecessary to have a detention basin on site as there was already a detention basin downstream. He said it was proposed that there would be a condition on the developer to maintain that detention area under their normal maintenance regime (T2067).

Shepherd stated (T2067):

> In this case it was decided that the officer's recommendations would be changed to reflect this detention basin off site. I could see nothing wrong in that.

Power said that he was looking for a "*whole of catchment response*" (T2492). He said that the condition as proposed treated only 40% of the actual catchment within the development. He said that a contribution from the developer could be taken to treat the whole of the catchment. He said (T2493):

> But the minutes clearly reflected the intent of the committee, which was overwhelmingly voted for.

One of the allegations by Sarroff was that the minutes did not reflect the resolution of the meeting. One of the amendments recorded in the minutes was that Section 40(d) read as follows:

> In order to accommodate storm water quality improvement devices outside of waterway buffers the applicant shall delete lots 24 to 30 and use this area of the site for storm water management purposes (both quality and quantity).

That does not seem to accord with the amendment as stated in evidence by Power and Shepherd. The development was ultimately approved by Council on 6 August 2004 with that special condition. It would appear that the minutes do not accurately reflect the resolution as moved by Power. It would also seem that the recorded resolution represents a compromised position which was ultimately approved. Unfortunately, the minutes do not record the discussions held with respect to the issue.

It is noted that Power in his final electoral return disclosed that on 13 April 2004 he received $2,000.00 from Yarrane Pty Ltd (incorrectly spelt in the return). Although Power and Shepherd believe such a proposal was appropriate, it creates an adverse perception where Power amended conditions to the advantage of the developer after receiving a donation from that developer.

2. Sunland Group

(i) Donation payment to Quadrant

Following the election, Power was involved in attempting to obtain funds to pay outstanding fees to Quadrant. Sunland had previously made a $10,000.00 donation to the fund before the election. Power asked Sunland for a further donation sometime in October 2004.

Power gave evidence that it occurred following a meeting with Mr Abedian. He stated (T2491):

> …we were leaving his office, heading towards the lifts. I mentioned to him that there was a shortfall and in what was available to pay for the campaigns; suggested that if he was of a mind, it would be lovely for him to donate some. He said that he would take under consideration and that was it. That's as far as it went.

On 1 November 2004 Sunland paid Quadrant $7,700.00. The details of this donation have been dealt with earlier in these submissions.

Abedian said he was meeting with Power in relation to a sugar cane area in Power's electorate. Power was emphatic that the area would not be developed (T1901). Following that meeting, he was asked by Power to contribute (T1902).

Craig Treasure said that they met with Power to discuss the cane fields as they were interested in development opportunities and he was aware that other developers were taking positions on property in that area (T1867). The issue of the donation was raised informally at the end of the meeting (T1867 – 1868). It would seem that Power in giving them his view on the Council position saved Sunland pursuing the purchase of property in the particular area. Following the meeting, he requested a donation. Whilst it cannot be said that there is a sufficient nexus to establish corruption, the perception created by such a situation is a cause for concern.

(ii) Attempts to purchase property at Hinkler Drive, Carrara

Desmond Campbell, a real estate sales person at Ashmore First National Real Estate stated that in August 2004 he was asked to seek out expressions of interest in respect of a property at 167 Hinkler Drive, Carrara. Campbell gave evidence that Treasure contacted him and said to him that:

> He should let the vendor know that Sunland could get the development through council, because they had contributed to the councillors' election fund. (Exhibit 124; T801).

Treasure gave evidence that he did contact Campbell, but said he did not mention anything in relation to the fact that Sunland had contributed to the councillors' election fund (T1881 – 1882). As nothing eventuated, it would seem unnecessary to determine the factual dispute. However, if such comment were made, it highlights the problem that might arise in such cases.

(iii) Rates discount

On 15 November 2004, Council resolved that the discount on a rates notice issued to Carnriver Pty Ltd be granted due to special circumstances. Carnriver Pty Ltd is part of the Sunland Group. Treasure and Abedian are two of the directors of Carnriver Pty Ltd.

On 28 January 2004, a rate notice was issued to Carnriver Pty Ltd at Level 18/50 Cavill Avenue, Surfers Paradise. The due date for payment for the rates was 2 March 2004. On 19 March 2004, the rates had not been paid and the Council issued a notice that it intended to institute legal proceedings. On 25 March 2004, the discounted amount of rates was paid. Sunland wrote several letters to the Council seeking the discount in respect of the notice,

which totalled $13,882-45. On 21 September 2004, the Falcon Group, an unrelated company, wrote to the Council in respect of the rates notice (part of exhibit 204). It stated:

> We believe the rates notice was delivered to our office but we did not recognise the name Carnriver. Unfortunately, by the time the letter was re-directed to Sunland through the internal Building Management, it arrived too late for Sunland to pay by the discount rate.

That letter was signed by Lloyd Ross as Managing Director of the Falcon Group Pty Ltd. According to ASIC records Ross ceased to be a director of the Falcon Group on 13 August 2004. Since the conclusion of the public hearings, Ross has informed the Commission that he signed the letter following a request from his secretary. He believes that a draft of the letter was sent from the Sunland Group.

A report was prepared by a council officer for the Finance and Internal Services Committee meeting on 9 November 2004. The report recommended that the Council advise the applicant that it cannot allow the discount on the subject rate notice, which was paid late. It stated (incorrectly):

> On 22 September 2004, the applicant wrote to the Mayor's office stating that it was now believed the rate notice was delivered to their office but because of an administrative mix up, the rate notice was not recognised as one of their own because they did not recognise the company name (Carnriver Pty Ltd) on the rate notice.

The council officer would appear to have thought that there was some association between the Falcon Group and Carnriver Pty Ltd.

On 8 November 2004, a memorandum was sent to Councillor Molhoek, the chair of the Finance Committee, setting out the circumstances where discounts have been allowed and not allowed (Exhibit 34). This followed a request from Molhoek for that information.

Anne Jamieson, General Manager for the Sunland Group and David Brown, National Design Director for Sunland Group attended the meeting of the finance committee (statements of those two witnesses have been provided) (Exhibits 264 and 265). Jamieson stated (para 10):

> I made the suggestion that in the circumstances, a reasonable thing would be for Sunland to contribute the amount in dispute to a charity nominated by the Gold Coast. I said that we regularly contributed to such charities including the Lady Mayoress' Ball and this sum would represent a valuable contribution to that cause. (cf Crichlow T1425)

According to the minutes of the Finance and Internal Services Committee meeting of 9 November 2004, there was a motion by Crichlow (seconded Sarroff) that the officer's recommendation that the applicant be advised that it could not allow the discount, be adopted. That motion was lost. A further motion was moved by Clarke (seconded by Power) that the discount on the subject rate notice be granted due to the special circumstances. This motion was carried. Following the granting of the discount, Sunland wrote a cheque in the sum of $15,236.28 in favour of the Gold Coast Community Fund. The cheque was handed over by Abedian.

On 22 November 2004, at the council meeting, the following motion was moved by Crichlow (seconded by Young):

> That the original officer's recommendation, as follows, be adopted: "That Council advise the applicant that it cannot allow the discount on the subject rate notice, which was paid late".

Sarroff called for a division. Six councillors voted in favour of the motion (Councillors Power, Pforr, Young, Crichlow, Douglas, Sarroff) and seven voted against the motion (Councillors Clarke, Hackwood, Molhoek, La Castra, Shepherd, Grew, Betts). The motion was lost.

At that point Councillor Betts then declared a conflict of interest and left the Chambers during further discussion and voting on the matter. A second motion was put that the Finance and Internal Services Committee recommendation be adopted. That motion was moved by Molhoek (seconded by La Castra). Sarroff called for a division. Eight voted in favour of the motion (Councillors Hackwood, Power, Pforr, Molhoek, La Castra, Shepherd, Grew and Clarke) and four Councillors voted against (Councillors Young, Crichlow, Douglas, Sarroff). The motion was carried. Pforr and Power changed their vote after the lost motion by Crichlow. Had they voted against the motion moved to allow the discount, the vote would have been six all following the departure of Betts.

The relevant provision of the *Local Government Act* 1993 relating to the allowance of a discount is Section 1021. It provides:

> **Discount if special circumstances prevent prompt payment**
>
> If a local government is satisfied that a person liable to pay a rate has been prevented, by circumstances beyond the person's control, from paying the rate in time to benefit from a discount under section 1019 or 1020, the local government may still allow the discount.

The issue is whether on the material reviewed by the committee and then ultimately the Council, there were *"circumstances beyond the person's control"*. Section 1008 of the Act provides:

> **Levying rates –**
>
> (1) A local government may levy a rate only by a rate notice given to –
>
> (a) ……
> (b) in any other case – the person recorded in the local government's land record as the owner of the land on which the rate is levied."

According to Sunland, in February 2003, they moved from Level 18 to Level 14. On 3 October 2003, a Form 24 Property Transfer Information was lodged with the Queensland Land Registry showing the address for service as Level 18/50 Cavill Avenue, Surfers Paradise. It would therefore appear that the Council correctly forwarded the rates notice to the address as required under section 1008(1)(b). It is also clear that there had been a failure to advise the correct address in the Form 24. That responsibility remains with Carnriver Pty Ltd. It therefore could not be established by Carnriver that the circumstances occurred beyond their control and, it is submitted, that the discount should not have been allowed.

Sunland had donated $10,000.00 to the fund on 28 January 2004. As mentioned earlier, Power raised with Abedian and Treasure the possibility of a further donation in October 2004. On 1 November 2004, an amount of $7,700.00 was paid to Quadrant by Sunland The matter of the rates discount was considered by the committee on 9 November 2004 and the council on 22 November 2004. Power voted at both those meetings. He must have been

aware, at least, that Sunland was going to make a further donation, and possibly knew it had already made the further donation.

Power gave the following evidence (T2493 – 2494):

> It was an issue that was clearly decided on individual opinions. I was convinced in the committee that the Mayor's argument was sufficient to vote for it. Councillor Crichlow's argument within the committee was not coherent. When we got to Council she was far better prepared, the argument she put forward on her amendment I felt had greater weight and therefore voted for it. She lost that amendment, we moved on …I believe that councillors had satisfied themselves, and certainly at the committee meeting I was satisfied that sufficient argument had been put forward that it was beyond the rate payer's control.

There is no evidence to suggest that any of the councillors, apart from Power, knew of the $7700.00 donation by Sunland. Comment has already been made in regard to Power's views on conflict of interest situations. The councillors who voted in favour of allowing the discount state they did so for genuine reasons. This may be so but, if they did, it is submitted that they failed properly to consider whether there were "circumstances beyond the person's control" in accordance with s.1008. Further, they acted against the council officer's recommendation. Evidence was given which suggested that it was wholly unprecedented for a discount to be granted in the circumstances referred to (Exhibits 34, 234 and 312). Of great concern is that, even in hindsight, the councillors who voted in favour of the discount could see nothing objectionable in their conduct. Indeed, they made it clear that, even if they knew of the Sunland donation, it would not have altered their decision.

3. Infrastructure charges

An allegation raised by Young related to infrastructure charges which were adopted by Council in January 2004. With the introduction of those charges, it substantially increased development costs. Young said this resulted in the development industry lobbying against those charges immediately prior to the 2004 election. He said that Power, in the final Council meeting prior to the election, attempted to put a moratorium on the charges. There was considerable debate although a draft motion was not put to the meeting (T1548 - 1549).

Young said that an advisory group was established after the election, consisting of members of the development industry. It was argued for a number of weeks to introduce a staged payment scheme (T1550 - 1551). Ultimately the attempt was unsuccessful. Young stated (T1551):

> … my concern and that of a few other councillors was that public interest was being subordinated to the interests of a few with, you know, vested interest. (See also Councillor Sarroff (at T1280 – 1286)

Power said that, in the lead-up to the election, he and Robbins were the responsible Chairs to ensure the appropriate implementation and enforceability through the committee process of the infrastructure charges (T2487). He said the request by the UDIA for a phased implementation was fair and followed the Brisbane module (T2487 – 2488). He said he had concerns as to the legal implications of the retrospectivity of the charges in that they would affect applications which were already underway (T2488). On 19 March 2004 at council, he sought to suspend standing orders at the meeting to permit discussion. He said that he did not attempt to move any motion (T2488 - 2489). In evidence, he was asked about the public perception in that matter given that developer interests were making payments to the fund. He said (T2490):

> The fact of the matter is that we have an obligation under the Act and by our oath to continue on with the business of council, which we did in a very professional manner.

Once again, the perception is created that Power was prepared to apply his own view as to whether a conflict of interest existed rather than the way it might appear on any objective view of the circumstances.

CORRUPTION OF ELECTORAL PROCESS

The Tweed Shire Council Public Inquiry first report cited with approval the statement made by Commissioner Temby in the Independent Commission Against Corruption Report on his investigation into North Coast land development (July 1990, p 655).

> Corruption of the system is well on the way, when it allows favours even without payment, or payment without obvious favour.

In our opening statement, we outlined similarities between the Gold Coast City Council election and the findings in the Tweed Shire Council Report. At the conclusion of evidence, those similarities have remained. The significant similar factors are as follows:

1. There was a group formed to get a pro-development council elected.
2. There was a well resourced substantial campaign conducted by the group.
3. Candidates mislead the community by promoting themselves as "independent".
4. The candidates concealed from the community information on the existence, funding base, membership and structures of the group.
5. The group funding came entirely from developer interests.
6. Councillors in receiving donations put themselves in potential position of conflict of interest in their role as councillors.
7. Candidates were not aware of the detail of donors in an attempt to avoid being compromised.
8. Parallel negative campaigns attacked other candidates running against members of the group.

Unlike the Tweed Shire Council, there is no evidence of subsequent decisions of the council in planning powers and approval processes having been made as a result of a donation being made, although several instances which have been referred to are a cause for grave concern. In the course of investigating the issue under Section (1)(i)(e) of the Terms of Reference, the CMC has requested, by way of notice to discover, a number of council files which have been the subject of complaints received by the CMC in the course of the Inquiry. The CMC has conducted a review of those matters and with the exception of the matters raised above has concluded that there is no evidence of favouritism on the part of a councillor in the exercise of council's powers to developer donors.

However, it is noted that there has been a high level of scrutiny of the actions of councillors subsequent to the election as a result of the substantial media coverage which had commenced prior to the election and the examination which was being undertaken in respect of the Tweed Heads Shire Council (which resulted in an Inquiry being convened on 10 November 2004).

It is unprovable what might have occurred if these events had not coincided, but it is appropriate to reject any notion that the lack of established corruption in relation to Gold

Coast City councillors means that proper standards of public conduct were not placed in serious jeopardy.

In our opening statement, we said (T25):

> Most people would agree that the legitimacy of an elected Council depends upon the integrity of the electoral process and that this is obtained through free and fair elections following open debate.

and posed the question whether the failure of proper conduct on the part of candidates at an election:

> could result in the corruption of the electoral process.

Candidates who received money from the fund maintained that they did not know the donors and the donors did not know who received the benefit of the funds. That was done deliberately to prevent any potential conflict issues arising in the event that the candidate was elected. Even if candidates did not know the actual donors (which is not accepted), the fact that the money came from developer interests must have been known by them. In any event, Power, one of the principal protagonists in the whole scheme, and a person who actively sought donations from developers for the fund (at a time that he was Chairman of the Planning and Development (North) Committee), appeared compromised in his role as a councillor in respect of any decisions concerning those developers. It is difficult to accept that councillors could not have become aware of the actual donors. Further it is noted that the legislation was designed to ensure that there were to be no anonymous donations (S.428).

It is clear that candidates believed that if the existence of a developer backed fund became public knowledge, their chances of election would be detrimentally affected. Candidates promoted themselves as "independent". There appeared to be a consistent desire not to disclose the existence of a group or a fund. They consistently denied the existence of a group or fund, resorting to humbug in their public statements and thereby treating electors with contempt.

Lionel Barden disclosed the source of funds he received to the value of $150,000.00 pursuant to Section 430 of the Act. He was not obliged to disclose how the funds were distributed by him. In such circumstances it is not possible to establish a connection between a donor and a candidate. It is noted that $33,000.00 in Quadrant's consulting fees has not been disclosed by any of the candidates. In addition, money paid for negative campaigns to R Janssen in the sum of $5,200.00 and the Southport Citizens for Change in the sum of $7,011.51, was not disclosed by any candidate. Money received as direct payments from Ninaford/Framwelgate and Sunland to Quadrant after the expiration of the declaration period was also not disclosed. Further, there are no return records which indicate any involvement by Robbins and Power in the fund. Given that one candidate only disclosed the "Lionel Barden Trust Fund" (in fact, Lionel Barden's return is under his own name), in circumstances where it would appear Barden originally intended to have the return lodged in the name of Hickey Lawyers, it is somewhat fortuitous that the true source of donations for the various candidates has been detected. Reference is also made on this aspect to the inaccurate information provided to the Commission in April 2005 by Hickey Lawyers.

It is submitted that public service as a councillor involves a public trust and that all councillors have an obligation to exercise, and appear to exercise, their official responsibilities honestly, impartially and disinterestedly.

REFERRAL OF MATTERS FOR CONSIDERATION OF PROSECUTION PROCEEDINGS

Under s.49 of the *Crime and Misconduct Act 2001*, the Commission may, if it has investigated a matter involving misconduct and decided that prosecution proceedings should be considered, report on its investigation to an appropriate prosecuting authority for the purposes of any prosecution proceedings that authority considers warranted.

The terms of reference in this case required the Inquiry to consider a number of possible breaches of provisions of the *Local Government Act 1993*. The evidence also raised the issue of a possible breach of s.218 of the *Crime and Misconduct Act 2001*.

In respect of the possible offences outlined in the terms of reference, consideration has been given to the following matters:

(a) False or misleading statements of candidates for the Gold Coast City Council election in March 2004 with respect to details of any association with other candidates or entities

As outlined in the section above on false and misleading statements in the media, it is our submission that it is open to the Commission to conclude that a number of candidates and their supporters made false or misleading statements during the March 2004 election process.

However, the offence provisions in the *Local Government Act 1993* in respect of false statements are fairly narrow in scope, and do not create an offence in respect of all false statements made during the election process.

The relevant provision is section 394 of the Act:

> Misleading voters
>
> 394. (1) During an election period, a person must not print, publish, distribute or broadcast anything that is intended or likely to mislead an elector about the way of voting at the election.
>
> (2) A person must not, for the purpose of affecting the election of a candidate, knowingly publish a false statement of fact about the personal character or conduct of the candidate.

In our submission, the false statements made in this matter do not come within the meaning of either s.394(1) or (2), and therefore no report should be made under s.49 of the *Crime and Misconduct Act 2001* in respect of them.

(b) electoral bribery with respect to the Gold Coast City Council election in March 2004

The relevant offence provision is s.385:

> **385 Bribery**
>
> (1) In this section—

> ***election conduct*** of a person means—
> (a) the way in which the person votes at an election; or
> (b) the person's nominating as a candidate for an election; or
> (c) the person's support of, or opposition to, a candidate or a political party at an election.
>
> (2) A person must not—
>
> (a) ask for or receive; or
> (b) offer, or agree, to ask for or receive;
>
> property or a benefit of any kind (whether for the person or someone else) on the understanding that the person's election conduct will be influenced or affected.
>
> (3) A person must not, in order to influence or affect another person's election conduct, give, or promise or offer to give, property or a benefit of any kind to anyone else.

The Commission was required to consider the equivalent bribery provisions under the *Electoral Act 1992* in its "*Report of an investigation into a memorandum of understanding between the Coalition and QPUE and an investigation into an alleged deal between the ALP and the SSAA*" (Criminal Justice Commission, December 1996). That report incorporated a joint advice from Messrs Gotterson QC and Butler SC that noted "the absurd conclusions" that would follow if the section was interpreted too broadly. Counsel advised in that matter that an interpretation of the section that prohibited "conventional democratic conduct" should be rejected.

The offence provision in s.385 of the Act includes a situation where a person asks for property or benefit on the understanding that their election conduct will be influenced or affected, and "election conduct" includes the person's nominating as a candidate for an election. It is also an offence to give or offer to give property or a benefit to a person in order to influence or affect that person's election conduct.

In the present case, the Commission had to consider whether any candidate was influenced or affected in their decision to nominate as a candidate on the basis of an offer of property or a benefit of any kind within the meaning of these provisions.

In particular, Rowe had been quoted in media articles as making comments that suggested that he would not have nominated as a candidate if it had not been for an offer of funding made to him. In No.33 of Exhibit 3, Rowe is quoted as saying that "he stood by the concept of the trust fund and without it he would not have run for council".

In evidence before the Commission, Rowe said that Lang asked him to stand "out of the blue" in about June 2003 (T1046 and 1099). Rowe said that he was always prepared to run once he made up his mind, but the issue was whether or not he would run on a shoestring budget or "do it bigger and better" (T1048). He was unaware of moneys being available from the trust prior to his candidacy being announced (T1052).

Rowe was quoted in No.29 of Exhibit 3 as saying:

> At the time I was considering that (running for council) I knew that we were going to need a budget … you don't go in with two and six. I was aware of the fact that there were monies available if I was prepared to run as a candidate.

Rowe claimed in evidence (T1051) that the reference in this article to "monies available" was a reference to funds he and Lang hoped to raise in their local area, not the trust fund.

Lang agreed that he approached Rowe about running in about July 2003 (T1504). Power wanted to see a good candidate run in Division 5 and indicated that there might be some funding at a meeting, but Rowe had already by that time decided to run (T1508).

It is not entirely clear whether s.385 of the Act would cover a situation where a candidate agreed to run because he or she was offered funding. In any case, it is the evidence of Rowe and Lang that Rowe had already made up his mind to run as a candidate prior to any offer of funding being made.

In these circumstances, this is a not a matter in respect of which a report should be made under s.49 of the *Crime and Misconduct Act 2001*.

(c) returns about election gifts with respect to the Gold Coast City Council election in March 2004

The third party return given by Barden and the election gift returns given by candidates who were funded through Hickey Lawyers trust account have been considered in detail earlier in this submission, as have the offence provisions in relation to false or misleading returns.

In our submission, it is open on the evidence in this matter for the Commission to decide that prosecution proceedings should be considered in respect of the third party return by Barden and the election gift returns given by Betts, Rowe, Scott and Pforr, and a report on the investigation of those matters should be provided to an appropriate prosecuting authority under s. 49 of the *Crime and Misconduct Act 2001* for the purposes of any prosecution proceedings that the authority considers warranted.

The persons in respect of whom such reports should be made, and the basis upon which they should be made is set out below:

1. Lionel Barden lodged a third party return dated 16 June 2004 that contained information in the section headed "Details of gifts received" that he had received gifts within the meaning of s.430 of the *Local Government Act 1993* from nine named donors between 23 December 2003 and 3 March 2004. Barden did not become the client for the Hickey Lawyers trust account into which these donations were paid until 4 March 2004.

   In our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Barden on the basis that the third party return he gave under s.430 of the *Local Government Act 1993* contained particulars that were, to his knowledge, false or misleading in a material particular under s. 436(2) of that Act.

2. Tony Hickey prepared a third party return for Barden that contained information in the section headed "Details of gifts received" that indicated that Barden had received gifts within the meaning of s.430 of the *Local Government Act 1993* from nine named donors between 23 December 2003 and 3 March 2004. Barden did not become the client for the Hickey Lawyers trust account into which these donations were paid until 4 March 2004.

In our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Hickey on the basis that he gave Barden, a person who was required to give a third party return under s.430 of the *Local Government Act 1993* information to which the return

related that was, to Hickey's knowledge, false or misleading in a material particular under s. 436(3) of that Act.

3. The third party return lodged by Lionel Barden dated 16 June 2004 contained information in the section headed "Details of gifts received" that he had received gifts within the meaning of s.430 of the *Local Government Act 1993* from nine named donors between 23 December 2003 and 3 March 2004. Barden did not become the client for the Hickey Lawyers trust account into which these donations were paid until 4 March 2004. At the time of these gifts were received, the clients for the accounts were Power and Robbins.

   Power did not lodge a third party under s.430 in respect of the gifts received between 23 December 2003 and 3 March 2004 by the Hickey Lawyers trust account. Section s.430 provides that it does not apply to a political party, an associated entity or "a candidate for the election". However, the reference to "a candidate for the election" could not have been intended to allow candidates to organise funding for candidates other than themselves without any requirement for disclosure. In context, it must be taken to mean "a candidate for the election in respect of his or her own campaign".

   In our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Power on the basis that he did not give a return he was required to give under s.430 of the *Local Government Act 1993*, contrary to s. 436(1) of that Act.

4. Greg Betts lodged his final election gifts return on 1 July 2004. His return relevantly listed the following donors and amounts:

The Lionel Barden Trust Fund	28/1/04	$7000
The Lionel Barden Trust Fund	20/2/04	$5000

   In his interim return, Betts has listed these two amounts as coming from Hickey Lawyers. The two amounts listed were provided to Betts under cover of a letter from Hickey Lawyers to Mrs Susan Betts, Betts' campaign manager, on 28 January 2004 advising that the cheques were enclosed "as directed by Councillor Robbins and Councillor Power".

   If there was any trust fund, within the definition of "relevant details" for the purposes of s. 427 of the *Local Government Act 1993* in respect of these two payments, the trustees were Power and Robbins, not Lionel Barden.

In our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Betts on the basis that he gave a return under s.427 of the *Local Government Act 1993* containing particulars that were, to his knowledge, false or misleading in a material particular under s. 436(2) of that Act.

5. Brian Rowe lodged a final election gift return on 21 April 2004, and in respect of funding he had received through Hickey Lawyers, his return listed the following donors and amounts:

"Common Sense Trust"	5/1/2004	$7500.00
"Common Sense Trust"	30/1/2004	$7500.00
"Common Sense Trust"	20/2/2004	$20,000.00

Rowe did not list any trustees for the "Common Sense Trust". At the time of the gifts referred to above being made, the Hickey Lawyers trust account was operating under the control of Power and Robbins, and they were effectively the trustees the fund.

In our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Rowe on the basis that he gave a return under s.427 of the *Local Government Act 1993* containing particulars that were, to his knowledge, false or misleading in a material particular under s. 436(2) of that Act.

6. Roxanne Scott lodged a return on 16 April 2004, and in respect of the funds she had received through Hickey Lawyers, her return listed the following donors and amounts:

Tony Hickey	3/2/04	$7000
Tony Hickey	24/2/04	$3000
Chris Morgan Quadrant	Feb/Mar 2004	$18,673.72

Scott listed gifts she had received totalling $5000 from the trust account of another solicitor, Mal Chalmers, and listed the donor as "Mal Chalmers".

On 15 June 2004, Scott provided a replacement page for her return that changed the two entries for "Tony Hickey" to "Hickey Lawyers Trust Account", and the entries for Chalmers to "Mal Chalmers and Co Solicitors Trust Account". She also changed the entry for "Chris Morgan, Quadrant" to "Quadrant".

The payments of $7000 and $3000 that Scott listed as gifts were received by her under cover of letters from Hickey Lawyers that said the payments were being made "as directed by Councillor Robbins and Councillor Power".

As these letters indicated, at the time those gifts were made, the Hickey Lawyers trust account was operating under the control of Power and Robbins, and they were effectively the trustees the fund.

The amounts listed as a gift from Chris Morgan or Quadrant, were authorised for payment through Hickey Lawyers at a time Lionel Barden was the client, and the trustee in respect of the funds.

The amounts listed as donations from "Mal Chalmers and Co Solicitors Trust Account" were in fact donations made by Norm Rix through his company, Family Assets Pty Ltd. On 25 August 2005, Chalmers wrote to Scott to confirm that Family Assets Pty Ltd were the principal donor to her of the sum of $5000.00 to her campaign. Scott then faxed this letter to Tony Davis at the Council.

In view of the fact that the record was finally corrected in respect of the donations from Rix, we do not recommend that a report be made under s.49 in respect of that matter.

In our submission, in respect of the other information listed above, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Scott on the basis that she gave a return under s.427 of the *Local Government Act 1993* containing particulars that were, to her knowledge, false or misleading in a material particular under s. 436(2) of that Act.

7. In respect to the funds he received through the Hickey Lawyers Trust Account, Grant Pforr's interim return listed the following donors and amounts:

Hickey Lawyers	29/1/04	$7500.00
Hickey Lawyers	20/2/04	$5000.00

In his final return, lodged on 30 June 2004, Pforr included these entries in the same terms and added:

Hickey Lawyers	21/6/04	$22,414.69

Pforr received the first two payments listed under cover of letters from Hickey Lawyers that indicated the payments were made "as directed by Councillor Robbins and Councillor Power".

As these letters indicated, at the time those gifts were made, the Hickey Lawyers trust account was operating under the control of Power and Robbins, and they were effectively the trustees the fund.

In respect of the final amount that lists "Hickey Lawyers" as the donor, on 21 June 2004, Morgan sent Pforr a letter enclosing invoices and statements in relation to expenditure by Quadrant debited to the Lionel Barden Trust Fund. The invoices and statement are all headed:

Lionel Barden Trust Account
G Pforr
c/- Hickey Lawyers.

The amounts of $22,419.69 listed as a gift from Hickey Lawyers were authorised for payment through Hickey Lawyers at a time Lionel Barden was the client, and the trustee in respect of the funds.

In our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Pforr on the basis that he gave a return under s.427 of the *Local Government Act 1993* containing particulars that were, to his knowledge, false or misleading in a material particular under s. 436(2) of that Act.

(d) declaring and dealing with conflicts of interest or material personal interests since the Gold Coast City Council election in March 2004

As outlined in section above on conflicts of interest, the offence provisions in the *Local Government Act 1993* do not apply to conflicts of interests, only to the specific category of conflicts of interest that amount to a "material personal interests" under the Act.

In these circumstances, none of the matters discussed in relation to conflicts of interest is a matter in respect of which a report should be made under s.49 of the *Crime and Misconduct Act 2001*.

(e) any criminal offence involving the performance of their functions since the Gold Coast City Council election in March 2004

No other matter has been identified in this category in respect of which a report should be made under s.49 of the *Crime and Misconduct Act 2001*.

Production of material by Hickey Lawyers

As outlined in detail earlier in this submission, in April 2005 Tony Hickey of Hickey Lawyers provided a trust statement to the Commission in response to a written request for information.

For the reasons outlined in that section, in our submission, a report should be made to an appropriate prosecuting authority under s.49 of the *Crime and Misconduct Act 2001* with a view to that authority considering whether prosecution proceedings are warranted against Hickey on the basis that he gave the Commission a document containing information that he knew was false or misleading in a material particular contrary to s.218(1) of the *Crime and Misconduct Act 2001*.

In view of the fact that Hickey's actions as outlined above in respect of the third party return and the giving of material to the Commission related to his role as a solicitor, a report should also be made to the Legal Services Commission (a unit of public administration) under s.60(1) of the *Crime and Misconduct Act 2001:*

60 Commission may give evidence or information to other entities

(1) …

(2) Also, the commission may give information coming to its knowledge, including by way of a complaint, to a unit of public administration if the commission considers that the unit has a proper interest in the information for the performance of its functions.