

OP GRAND

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S O L I C I T O R SEXHIBIT No. 344  
*[Signature]* CLERK

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YOUR REF:

6 February 2006

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Dear Mr Boyle

RE: **CMC PUBLIC INQUIRY - GOLD COAST CITY COUNCIL**

I refer to your correspondence of 25 January 2006 enclosing the submission of Counsel Assisting in this matter. This submission was not received by my office until Friday 27 January 2006 because it became available well after 5.00 pm on 25 January 2006. I was absent from my office on Friday 27 January and further I was absent from my office on Monday 30 January.

I have had other Court commitments during the week of 30 January and accordingly I appreciate the extension of time that was granted to me by Ms T Hamilton, Counsel Assisting this Inquiry, to deliver Mr Clarke's response to Mr Mulholland's submission on Monday 6 February.

The only issue that I seek to address in Mr Mulholland's submission is the issue of the Sunland rates discount which is covered at page 80-83 of the submission of Counsel Assisting. Relevantly Mr Mulholland QC in relation to this issue concludes his observations as follows:-

- "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 Section 1008. Further, they acted against the Council officers' 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."<sup>1</sup> [emphasis added]

Counsel Assisting, as appears from the above extract, appears to accept that the Councillors who voted in favour of allowing the discount did so for genuine reasons.

This submission is addressed primarily to the comment of Counsel Assisting that "Of great concern is that, even in hindsight, the Councillors who voted in favour of the discount could see nothing objectionable in their conduct."

It is submitted that this assertion by Counsel Assisting is an incorrect reflection of the facts as they apply to Mayor Clarke.

In this regard, I seek to draw attention to various aspects of the oral evidence in relation to this topic as the submission of Counsel Assisting concentrates significantly on Exhibits 34, 234 and 312 but does not give appropriate weight to the actual evidence given in the hearing in relation to the rates discount issue.

#### **Evidence of Councillor Molhoek (Page 130-131 of Transcript)**

Councillor Molhoek said:-

- "(I was seeking to ascertain) if there had been any precedent for rebating a rates discount ... did Council have a liberal attitude towards that. Did they give people the benefit of the doubt." (page 131/10-20)
- As to the question that there wasn't any precedent for a discount being given in these circumstances, Councillor Molhoek answered "That wasn't my understanding of the memorandum ... my understanding was that there were precedents where consideration was given". (page 131/25-30)
- As to the suggestion that the "circumstances here showed that it went to the correct address", Councillor Molhoek answered "Yes. It's my understanding though that they had moved two floors up and it had been delivered to the wrong floor. ... My view at the time (was) that we were probably being a bit tough. I was prepared to be a little more generous with the interpretation." (page 131/45-55)

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<sup>1</sup> See page 83 of the submission of Counsel Assisting

**Councillor Sarroff (Page 1286-1290 / Page 1313-1326)**

When asked by Mr Mulholland QC whether "you were aware that the statutory provision required a discount be allowed in circumstances where the Council was satisfied the circumstances were beyond the person's control", Mr Sarroff replied "I'm aware of that" and he went on to say that he was satisfied that there were not such circumstances in this case. (page 1288/25-30)

Councillor Sarroff went on to say that he informed the Council of his view that "I don't recall granting this discount to pensioners who have come forward during my time as Chairman and allowed that discount". The reference to Chairman was Chairman of the relevant Finance Committee. (page 1289/40)

Councillor Sarroff was asked "In your experience had any circumstances comparable to the circumstances in which the discount was granted on this occasion been allowed previously" and he replied "My experience would be that if Council was at fault, then the discount would be allowed and there's obviously certain circumstances where that could happen". (page 1290/25-35)

Further, Councillor Sarroff was asked "But in circumstances comparable to the circumstances in which the discount was allowed on this occasion, had you any experience of a discount being allowed in those circumstances" to which Councillor Sarroff replied "No. To the best of my recollection." (page 1290/40)

Councillor Sarroff went on to say in questioning by Mr La Castra that "They (Sunland) felt that the circumstances in issuing the rates notice was exceptional and should be in that of a Councillor's discretion to deal with". (page 1313/60 to 1314/1)

Councillor Sarroff went on to say that in a memo from Graham Finlayson to Councillor Molhoek dated 3 December 2004, Finlayson said that "over a thousand requests have been received in the 5 month period from 1 July 2004 to December 2004 (in relation to discounts) and that 953 of those requests were granted (but) the same officer explained to Council that he did not believe that this particular one, the Sunland one, falls under that special circumstances." (page 1317/35-45)

Councillor Sarroff referred to a letter from the Falcon Group in relation to the rates notice addressed to Carn River at Level 18/50 Cavill Avenue where it was said "We believe the rates notice was delivered to our office but we did not recognise the name Carn River. Unfortunately by the time the letter was redirected to Sunland through the internal building management, it was too late for Sunland to pay the discount rate." (page 1322/35-45)

It appears that at this stage the Chairman (Mr Needham) misunderstood the answers that were being given by Councillor Sarroff.

The Chairman said:-

- “Are you suggesting the fact that the company didn't recognise the name of its own company is a circumstance beyond the control of the Sunland Group?”
- Mr Radcliff replied “No ... the Falcon Group is not associated with the Sunland Group. It's a neighbour. It's on the same floor. ... It was in no way related to any of the Sunland companies. ... It received the rate notice, not any of the Sunland companies.” (page 1323/30-50)

The Chairman went on to note that “It's a perfectly appropriate address for the Council to send the rates notice to, the address that is given by Carn River when it notifies the Council that it has purchased a property.” (page 1325/5)

Relevantly, after a quite a bit of time of the CMC hearing was taken up with this issue, the Chairman had a telling point which we adopt in this submission, namely:-

- Chairman: “But anyway, look, it's \$13,000.00 or something. I don't want to spend a lot of time on it. .... I don't think we're going to die in a ditch over this matter.” (page 1326/1-10)

### **Submission**

It is our submission that this comment by the Chairman appropriately reflects the proper emphasis that should be given to this matter, namely that it involved only a small amount of money which was, in any event, fairly quickly returned to a charity and in the scheme of things it is not a highly significant matter.

### **Crichlow Evidence (page 1431-1432 and 1483-1484)**

Ms Crichlow in her evidence has referred to Mr Finlayson's memo where he says, among other things:-

- “As you are aware, Council has a broad discretion under Section 1021 of the Local Government Act 1993 in relation to allowing discount for rates where Council is satisfied that a person has been prevented from paying on time due to circumstances beyond the person's control. ...” [emphasis added] (page 1432/50-55)

The significance of this reference to Mr Finlayson's memo is the reference to Council having a “broad discretion”.

It is submitted that the relevant Councillors who supported the rates discount clearly acted on the basis that they did have a broad discretion to exercise.

**Councillor Young (page 1562-1566)**

After Mr Mulholland QC read to Councillor Young what appears to have been the entirety of Exhibit 234, Mr Young observed:-

- "I am sure it seems like a small amount of money in the scheme of the millions of dollars that Council gets through its rates payments each year but the fact is that this was an exceptional matter brought before the Committee and it was dealt with in an exceptional way which I don't think can be substantiated." (page 1566/15)

Clearly Councillor Young disagreed with the decision of the Finance Committee and the decision of the Full Council to allow the rates discount but his comment that it is a small amount of money (against the background of the overall Council budget and finances) reflects the observation made by the Chairman, Mr Needham, in the evidence of Councillor Sarroff at page 1326, as extracted above.

**Sunland Evidence, Mr Treasure (page 1879-1885)  
and Mr Abedian (page 1905-1918)**

Mr Treasure's evidence is probably of little weight in that he indicated that "most of my knowledge about this has come in the last three or four weeks in discussions about this hearing and what I have read in the media". (page 1879/45)

However, Mr Treasure makes the point that the Falcon Group "has nothing to do with Sunland. They are a tenant on the same floor of the building on Level 18. ... They are an unrelated company." (page 1880/25-30)

The thrust of Mr Abedian's evidence was that "all the correspondence from Gold Coast City Council goes to our PO box ... The location of the office is different to the PO box which is for the correspondence of the company." (page 1906/35-50)

Mr Abedian adopted the position that "... If you go through that, you will see every correspondence went to PO box except the rate notices. ... That shows that they know where the area is that they have to send every correspondence to - to Sunland office." (page 1907/25-30)

To the question by Mr Mulholland QC "... In accordance with Council obligations, the rates notice went to the address that it was supposed to go to", Mr Abedian replied "Usually - is always the postal address and it is the address of the company." (page 1907/42)

Mr Abedian agreed with the contention of Mr Mulholland QC that his main point is that "We relocated from Level 18 to Level 14 in February 2003 which unfortunately made it even more difficult to obtain a notice. We normally receive

Council correspondence to our PO box address including rates notices for all other properties." [emphasis added] (page 1909/40-50)

Mr Abedian went on to say "... Every single correspondence from Gold Coast City Council in any of our project comes to our PO box address ... And even in regard of Carn River, many of the approvals previous to the rate notice came to our PO box except the one that you are referring to. ... Every correspondence from the Gold Coast City Council went to our PO box. For some reason, except they sent it to Level 18. They even gave it to the wrong company. ... All our addresses are PO box." (page 1910/1-45)

It is to be observed that Counsel Assisting in questioning of Mr Abedian and other witnesses sought to elevate the importance of the rates discount decision to a higher level than it factually deserves by linking it to the \$7,700.00 payment made by Mr Abedian to the election campaign fund. This is demonstrated by the following exchange:-

- **Mr Mulholland:** "What I'm suggesting to you is the perception created by the fact that in the middle of this decision making by Committee and Council (concerning the rates discount), you donated \$7,700.00 to an election campaign fund and I'm asking you, did it not occur to you the perception that that would create if it was publicly known?"
- **Mr Abedian** answered: "I do not believe the full Council meeting was even aware of the \$7,700.00. How could they make that connection if they are not aware of that?" (page 1914/15-25)

### **Submission**

It would appear that Counsel Assisting, at least in questioning of relevant witnesses at the hearing, attached much more significance to the rates discount decision than might otherwise have been the case because of the fact that at about the time that that decision was made, Mr Abedian made a donation of \$7,700.00 to the election campaign fund.

In respect of Counsel Assisting's suggestion to Mr Abedian that there was a quite simple explanation as to what occurred, namely that the relevant Form 24 was not correctly completed at the time the property owned by Carn River was purchased, Mr Abedian persisted with his fundamental position, namely "... Every correspondence in respect of Carn River went to PO box except one which is the rates notice." (page 1916/35)

This exchange is illustrative of the diametrically opposed position taken by Counsel Assisting during the hearing in respect of the rates position and Mr Abedian. Counsel Assisting emphasised the perhaps technically correct point that the relevant form for the Carn River property had the rates address as Level 18 but

Mr Abedian maintained the constant position that all correspondence including rates notices went to the Sunland PO box address and that he was therefore entitled to proceed on the basis that if all other correspondence, including other rate notices, went to the Sunland PO box address then it was the mistake of the Council in sending the disputed rates notice to Level 18 as opposed to the PO box address.

#### **Councillor Grew evidence (page 1955-1964)**

Councillor Grew was asked "So you knew that in making this decision, you had to be satisfied that it was beyond the control of Carn River. Did you apply yourself to that in voting on the issue?" Councillor Grew answered "Certainly. We were given notice in the meeting that the rates notice had been sent to the wrong address and that they were not aware of it going there and I certainly relied very heavily on the Chair of the Finance and the fact that the Finance Committee had had a full briefing in that it had now come before Council and it was their view that the discount should be allowed." (page 1956/20-30)

Effectively, Councillor Grew said that he voted in the Full Council on the basis of what the Finance Committee had determined. (page 1957/35)

#### **Councillor Shepherd (Page 2066-2086)**

Mr Shepherd said that he believed there was grounds for Council to use its discretion. He went on to say that "It has come to my attention on many occasions where, with grounds, Council has given rebates or at least given the discount on a rate notice for mitigating circumstances ... there was a discretionary ability to grant the refund of the discount. We weren't refunding the rates in any way. All we were doing was refunding the discount." (page 2066/49-60 and page 2067/91-5)

As to the proposition that the Council officers' recommendation was that a discount was not to be granted, Mr Shepherd said that he believed the argument was that the Council officers felt they had fulfilled their duty by sending it (the rates notice) to the address they had on their records, there was some discrepancy about the address being accurate ... "what I am aware of is that other rate notices that had gone to this organisation which is a large organisation had in fact gone to the PO Box numbers whereas this one went to a floor of a building, corporate building." (page 2086/5-40)

As to the proposition that the rates notice went to Level 18/50 Cavill Avenue, which was the address on the notice which had been given to the Council the previous year and that (therefore) in those circumstances it could not be beyond Carn River's control, Mr Shepherd said that he was led to believe that there were different company names associated with this so that there was in general a tremendous amount of confusion.

It is our submission that Mr Shepherd's observation in this regard is probably closer to the reality of what went on in relation to the Council decision to rebate the discount. Cr Shepherd's answer that "I am led to believe that there were different company names associated with this so that there was in general a tremendous amount of confusion" is, in our submission closer to the reality of what transpired as opposed to the attempts by Counsel Assisting during the hearing to tie the rates discount in with the payment by Sunland of \$7,700.00 towards the campaign fund.

**Councillor La Castra (page 2171-2172 and Page 2202-2204)**

Mr La Castra was asked what he based his vote on in respect of this issue and he answered "basically this was an organisation which had always taken advantage of the rate discount. They'd never actually missed the rate discount. This was the first one they've missed. Clearly the fact they've missed it meant that there was a reason for that and that reason was that they didn't receive their rates notice, it went to the wrong address so it seemed to me to be patently clear and patently fair that they should receive the discount. You can't get a discount if you don't receive the notice." (Page 2172, 95-15)

Relevantly, when asked whether he was aware at the time he voted for the rates rebate that Section 1021 of the Local Government Act provided that the rebate should occur where the failure to pay a notice has been prevented by circumstances beyond the persons control, Councillor La Castra indicated he was not aware of the exact wording of that section. Councillor La Castra went on to say "well, the fact that they'd always taken advantage of the rates discount and this time they hadn't because they hadn't got it, it seemed quite fair and reasonable that there was a reasonable - look, Mr Mulholland, quite honestly, the whole thing is a nothing issue. It's actually a nothing issue ... they are entitled to receive a discount if the majority of Councillors vote that they should do it because they believe it was beyond their control. I believe and still believe that it was on their control, beyond their control and if this situation came up next week I would vote exactly the same way ... the reason I say it's a nothing issue, the reason I say it's a nothing issue is because in the end there was no benefit received. They didn't receive a benefit. They made it clear that it wasn't about the money anyway. The money was going to be donated to a charity ... if any other resident is in that situation where they say I do not reside at that address, you have sent it to an address and I have notified them and it hasn't been changed, then I would vote the same way to give them that discount if they had always actually got their discount before. If there was a history of the fact that they hadn't always done it, I probably wouldn't ..."

(Page 2204/5 - 50)

Counsel assisting in its submission of 25 January 2006 notes in this regard that it is "of great concern that, even in hindsight, the Councillors have voted in favour of the discount could see nothing objectionable in their conduct. Indeed they made it



clear that even if they knew the Sunland donation it would not have altered their decision" (Page 83, 25 January 2006 Submission of Council Assisting).

It is clear that this not the position as expressed by Councillor La Castra. His answers evidence a broad brush approach based on fairness and he certainly did not say that he would vote the same way again if he had been aware of the Sunland donation.

### Mayor Clarke (Page 2338 – 2345)

Mayor Clarke said that he was aware at the time of the relevant finance committee meeting of the provisions of Section 1021 of the Local Government Act requiring the Council to be satisfied that a person liable to pay rates had been prevented by circumstances beyond the persons control from paying on time in order to grant a discount. (Page 2339/930)

When asked what the circumstances were beyond Sunland's control from paying on time, Mr Clarke answered that "there were quite a few ... enquiries – I found out that the DNR document is filled in by the vendor ... and because those documents had been filled in some time before the transaction and had taken some two years to complete and although technically the responsibility was with the purchaser's solicitors to check, that had slipped through to the wrong postal address". (Page 2339/45-60)

Mr Clarke candidly admitted that Carn River in relation to the Form 24 had not taken steps to ensure that the rates notice went elsewhere. Further, Mr Clarke admitted that if a party wants to provide a new address, that can be done through a change to that (DNR) form. (Page 2340/5-25)

Mr Clarke went on to say that a second reason for his voting for the rebate of the discount was "... we had checked out, and found that the Council itself had been corresponding with Carn River at the correct Post Office Box 1301 since 2002. So far as the rate payer was concerned, the Councillors' did know of the correct address albeit a different department." (Page 2340/30-35)

Additionally, Mr Clarke went on to say that there was a responsibility by Falcon to (send on) the rates notice and not hang on to it for the time they evidently did. (Page 2341/5)

Further, Mr Clarke went on to say "... all those factors combined with the fact that I knew Sunland and I knew Sohil Abedian ... had a fetish for paying all his rate notices on time and the fact that in the last five years he'd paid 1,779 rates notices on time to receive his discount ... I believe its not just black and white. I believe that if you're operating a business such as the Council, you look at other circumstances ... there's nothing I know of that says specifically you have to notify the rates department of your Post Office address, you advise Council of your

Post Office address ... if I was in the rate payers position and I was corresponding on 22 different occasions with Council with the right Post Office address, I would have thought that that would have been sufficient". (Page 2341/10-50)

Mr Clarke went on to say "... if you've got 1779 occasions on which you pay your rates on time and gain the discount over a number of years, I believe – and the fact that you did not receive the notice on time – and I believe they were circumstances beyond their control – in that normally anybody who receives a letter which is not part of their organisation would immediately if they didn't return it – if they didn't know it was going to be one of – make a guess it was one of Sunland who used to be on the same floor as them would at least return it to send it to get it back to the Council ... (also) it was a rate notice that already a considerable sum of the general rate already paid." (Page 2342/5-22)

Mr Clarke went on to say "... when these postmen – post notices do go astray we checked also and we found on a number of occasions in the period of 1 July 2005 for example that 425 – before that the six months previous was 465 and the six month period before that was 543, so on a number of occasions Council do understand if they do go astray through no fault of the payer – that we can do something about it and I believe that this is an instant that fell under those circumstances ... I didn't say that it came within the criteria, it came within if you make a judgement with all the other circumstances as well. I think that was the important factor you should look into it ... I would still recommend a discount whether they were making the donation or not. I just think that would help their case to show – really help their case to show the genuineness of the fact that it went astray in circumstances beyond their control and that it wasn't a matter of money in any way shape or form. ... It was a matter of the principal (sic) of the fact." (Page 2342/55-60 and Page 2343/1-40)

The donation referred to by Mayor Clarke is not the \$7,700.00 but the donation of the discount to charity.

Mr Clarke went on to say that the Council Officers "were still of the understanding. There was still the thought that Falcon was a subsidiary of Sunland". (Page 2344/5)

As to Counsel Assisting's proposition that the officers thought Falcon was a subsidiary of Sunland and that that did not make a scrap of difference to the question that the Council had to decide on Section 1021 of the Act, Mr Clarke replied, "I think it does because if it had have been their office that accepted the invoice and they couldn't trace it, I think its very clearly their mistake, but when their office didn't get it and through no fault of theirs the people who received it didn't send it back either to the Post Office or to the Council, I think it does make a big difference because it was a huge difference being a part of your organisation receiving it and not your organisation receiving it". (Page 2344/15-25)

**Conclusion**

A considerable amount of time, effort and resources during the course of this Inquiry has been devoted to the issue of the payment of the \$13,000 rate rebate back to Sunland in circumstances where it became clear to CMC investigators early in the piece that the \$13,000 was in fact donated back to charity by Sunland.

As indicated above, the Chairman's comment at page 1326 of the Inquiry transcript is, in our submission reflective of the fact that this whole issue has been overblown and overstated.

The Chairman said, "but anyway, look, its \$13,000 or something. I don't want to spend a lot of time on it ... I don't think we're going to die in a ditch over this matter." (Page 1326 Transcript)

We have taken the trouble to extract the detail of each of the relevant witnesses' evidence on this topic in order to demonstrate that the payment of the rates discount generated a momentum of its own during the course of the enquiry which was totally disproportionate to its lack of significance.

So far as we can ascertain from the transcript, Mayor Clarke did not say in his evidence that he would have made the same decision if he knew about the \$7,700.00.

Yours faithfully

**ROBERTSON O'GORMAN**



**TERRY O'GORMAN**

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