



**CRIMINAL JUSTICE
COMMISSION**

**REPORT
ON A PUBLIC INQUIRY
INTO PAYMENTS MADE
BY LAND DEVELOPERS TO
ALDERMEN AND
CANDIDATES
FOR ELECTION TO
THE COUNCIL OF THE
CITY OF GOLD COAST**

NOVEMBER 1991

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Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989, the Commission hereby furnishes to each of you its Report on a Public Inquiry into payments made by land developers to Aldermen and candidates for election to the Council of the City of Gold Coast.

Yours faithfully

SIR MAX BINGHAM QC
Chairman

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**REPORT ON A PUBLIC INQUIRY INTO PAYMENTS MADE BY
LAND DEVELOPERS TO ALDERMEN AND
CANDIDATES FOR ELECTION TO
THE COUNCIL OF THE CITY OF GOLD COAST**

EXECUTIVE SUMMARY

1. THE GENESIS OF THE INQUIRY

In November 1989, the ABC television programme "*The 7.30 Report*" made a number of allegations concerning, amongst other things, the relationship between the land developer, Lewis Land Corporation Limited (Lewis Land) and the then State Government and an Alderman of the Council of the City of Gold Coast (Gold Coast City Council). The Alderman, Lester Hughes, subsequently denied receipt of electoral assistance from the principal of that company Bernard Lewis in an article in the Gold Coast Bulletin. This denial was noted by Elaine Muriel Todd, a former employee of the media consultancy business Newton's Pty Ltd (Newton's). Todd believed she had contrary information and took it to a Gregory Rix, a director of a Gold Coast development company. Rix¹ was a prominent public opponent of Harbourn, a Lewis Land development proposal which had benefited from a controversial ministerial rezoning.

On 13 December 1989, Rix and his Solicitor, John Henderson, approached the office of the Special Prosecutor with this and other information. They claimed they had evidence that Gold Coast politicians and political candidates on the Gold Coast had submitted their accounts for election campaign expenses to Newton's. The accounts would be met by Newton's but from funds provided by Lewis Land. They claimed further that employees of Newton's were required to keep the fact of the payments secret.

This information was forwarded by the Office of the Special Prosecutor to Sir Max Bingham QC, then Chairman of the Commission of Inquiry previously chaired by Commissioner G E Fitzgerald QC.

After the necessary investigative resources became available in October 1990, preliminary inquiries were commenced to determine whether the evidence produced warranted further investigation. During these preliminary inquiries, representations were made to the Commission that other land developers had contributed money to candidates for election to the Gold Coast City Council. It was claimed that

¹

In the interests of economy and consistency, surnames are used without the customary "Mr" or equivalents and, generally, honorifics and titles will be used only once. No discourtesy is intended.

payments had been made by the Raptis Group of Companies, as well as the Niecon Group of Companies.

Upon consideration of the preliminary evidence in the Commission's view the following questions were raised:

- What was the extent of payments made by land developers to Aldermen or candidates on the Gold Coast?
- To whom were these payments made?
- Why were they made?
- Was there an attempt to keep confidential the fact of any payments? If so, why?
- Was any benefit sought or received by any land developer for the payment of the funds?
- Was any threat made or inducement given by any of the Aldermen or candidates?
- Was any Alderman or candidate compromised by any payment?
- Was there a likelihood that a payment may have tended to compromise an Alderman or candidate?
- Were any of the payments unlawful?

On 15 April 1991, the Commission resolved to conduct hearings open to the public presided over by the Chairman of the Commission, Sir Max Bingham QC sitting alone assisted by C E K Hampson QC.

Although the Commission was primarily concerned with donations for the 1988 elections, it formed the view that some assistance in answering these questions would be derived by questioning candidates and developers in relation to other recent elections for the Gold Coast City Council.

2. EXTENSION OF THE AMBIT OF THE PUBLIC HEARINGS

As a result of the publicity generated by the public hearings, the Australian Securities Commission forwarded material which it believed was relevant to the public hearings.

During its own inquiries into the Qintex Group of Companies, the Australian Securities Commission located certain documentation which suggested that a company associated with the Qintex Group by the name of Kodogo Pty Ltd had made payments between 1986 and 1988 for the benefit of a company named Dinlex Pty Ltd, whose directors included Denis Pie, Mayor of the Gold Coast City Council from 1985 to 1988. These payments ceased shortly after Pie was defeated in the March 1988 Council election. From the papers provided, it appeared that the sum total of the payments, namely \$321,474 paid for the benefit of Dinlex Pty Ltd had been forgiven and that raised the suspicion that favours were given by Pie, in his capacity as Mayor, to the Qintex Group, which had undertaken developments on the Gold Coast at that time.

Although the material did not raise a suspicion that any payments had been made for the purpose of assisting in any election campaign, the Commission considered it to be sufficiently cognate to its current inquiries to extend the ambit of the public hearings to include the investigation of this further matter. Accordingly, on 23 May 1991, the Commission resolved to undertake the investigation of any alleged payment by Qintex Limited or any of its subsidiary companies of moneys to Gold Coast City Council Aldermen or candidates. It was also resolved that the Director of the Official Misconduct Division, Mr P M Le Grand sitting alone preside over the further matter.

3. PUBLIC HEARINGS

The Commission formed the view that the only satisfactory means of addressing the issues was by way of public hearing. The reasons for this were, inter alia:

- The provisions of the *Criminal Justice Act* imposed a prima facie obligation upon the Commission to hold open hearings;
- It was necessary to maximise the possibility of any person with direct evidence coming forward to assist in establishing the truth of any allegation or proving its falsity;
- To gain the confidence, co-operation and support of the public, the inquiry had to be as open as possible;
- The Commission is of the view that publicity generated by public hearings is of assistance in convincing people that public sector corruption is a social evil which ought not to be tolerated; and
- It considered that public hearings would raise the general level of knowledge and debate within the community concerning the

campaign and election process in the Local Government area, and the part played by donations from developers.

4. LOGISTICS OF THE INQUIRY

In all, 71 persons were called and gave evidence, either before the public or in-camera hearings. Police officers attached to the Commission interviewed a further 59 persons. A total of 2,096 pages of transcript was produced from the hearings and 279 exhibits were tendered. In excess of 3,500 work hours were expended by staff of the Commission.

5. PERJURY

The Commission was satisfied to the requisite civil standard that many witnesses (including a significant number of Aldermen) who gave evidence on oath were, at times, untruthful. However, the Commission has not taken any action with a view to any of these witnesses being charged with perjury for one or more of the following reasons:

- recognition of the difficulty in establishing, to the criminal standard, (in contrast to the civil standard applied by the Commission), the facts supporting an offence of perjury;
- lack of corroboration (which is required by the provisions of The Criminal Code before a person can be found guilty of the offence); and
- lack of "*materiality*" (which is a technical element of the offence of perjury pursuant to the provisions of The Criminal Code).

6. EVIDENCE RELATING TO ALLEGED PAYMENTS TO CANDIDATES FOR ELECTION TO THE GOLD COAST CITY COUNCIL

6.1 THE EXTENT OF THE PAYMENTS

The Commission was satisfied that Lewis Land contributed approximately \$94,000 towards the candidates for election in 1988 and \$32,500 towards the candidates for election in 1991. In relation to the 1988 election, the amount was divided between 19 candidates from all 10 divisions and the Mayoral candidacy. Six of these candidates were successful. In most cases the amount donated by Lewis Land was

the major portion of the candidates' campaign funding. Of the contributions made in 1988, the Commission was satisfied that the only cash contribution was a \$2,500 payment by the General Manager of Lewis Land, Gregor Mate to Keith Leonard Thompson, who denied the fact of the payment.

The Commission is satisfied that the Niecon Group contributed approximately \$17,000 to the benefit of candidates for the 1988 election. On the evidence before it, the Commission is further satisfied that the Group made no contributions for the 1991 elections. For the 1988 election, \$10,000 of the amount of the contributions was given to one candidate, the then Mayor Denis Duncan Pie, who was unsuccessful.

The Commission is satisfied that the Raptis Group contributed approximately \$28,000 to candidates for the 1988 election. The Commission is further satisfied that the Raptis Group made no donations for the 1991 election. Of the 12 candidates ultimately supported by the Raptis Group, four were elected to Council. Two candidates who had originally received cheques from the Group but had returned them were also elected to Council. The Commission finds that, of the money contributed by the Raptis Group, the only cash contribution was an amount of \$300 to \$400 paid by James Raptis to Kerry Terese Smith. She denied receiving the payment and claimed that she had always rejected offers from developers. She also claimed that she had never, and would never, approach developers for funding as she would feel obligated to them. Despite her assertions, the evidence before the Commission established that she had, in fact, orchestrated approaches to more than one developer for support.

6.2 WAS THERE AN ATTEMPT TO KEEP CONFIDENTIAL THE FACT OF ANY PAYMENTS?

The Commission gained the very clear impression that although there may not have been any specific requests by Mate or anyone from Newton's to keep matters involving the payment to candidates "*secret*", there would have been discussions about keeping matters as quiet as possible. There can be no doubt that it was perceived by the developer and Newton not to be in their interests for it to be publicly known that payments were being made by Lewis Land on behalf of the candidates. Indubitably, confidentiality was encouraged and perhaps stressed.

Whereas for the 1985 and 1988 elections the great majority of the Lewis Land electoral contribution was made to candidates indirectly by Newton's, for the 1991 election, the method of contribution changed. For this election, Lewis Land made payments directly to candidates or their campaign managers and, in two instances, anonymously. On consideration of the evidence, the Commission is left with the impression that the primary reason the method of payment was changed was the fact of the investigations then under way into the earlier electoral contributions

(although this was denied by Mate). The Commission is of the view that the changed mode of payments is further evidence of a general intention to keep the electoral contributions as confidential as possible.

In relation to the Niecon Group, the Commission is satisfied that the \$10,000 paid to the one candidate was made in a way to keep the nature of the payment confidential. Not only were the six cheques totalling the \$10,000 paid in response to false invoices, but in the books of account of Niecon Developments Pty Ltd the payments appeared as normal business expenses.

Although there is no evidence to suggest that Raptis took any extraordinary steps to keep the payments confidential, it is clear from his evidence that he had no desire to have the fact of them published widely as he knew such publication would cause disquiet amongst the voting public.

There is little doubt that the reason why there was an attempt to keep the payments confidential was the belief that the public would react adversely to the knowledge that developers helped the campaigns for election of the Aldermen. Notwithstanding the fact that many candidates expressed the view that they could not or would not be compromised by payments from developers, they maintained the position that public knowledge of the receipt of such payments would not enhance their election prospects as they believed the public would view such payments as having compromised them. Others claimed that they would have been compromised if they had known the source (many candidates denied they had knowledge of the source of the payments even in the face of cogent evidence to the contrary), and some claimed they refused donations from developers on the basis that they would be compromised.

6.3 WHY DID THE DEVELOPERS FINANCIALLY SUPPORT THE CANDIDATES?

The Commission heard evidence from all three developers and all but one of the Aldermen concerned. It also called evidence from Council officers and considered Council records and other relevant documentation. One purpose of this exhaustive process was to identify whether any specific favour was sought or received by any developer.

Ultimately, there appeared to be only one possibility of such conduct. Some Aldermen stated that they had received campaign contributions from the Raptis Group on the morning that a significant Raptis Group proposal was to be considered by the Council. Two of these Aldermen had also received telephone calls from Raptis relating to the proposal. However, after full consideration of this matter, the Commission formed the view that although the timing of the drawing and posting of the cheques and the manner of the delivery was monumentally

unfortunate, there was no intention on the part of Raptis to influence the particular proposal to be considered by the Council.

Although not an instance of misconduct, the Commission well understands how the incident could be seen in a sinister light, even by some of the Aldermen concerned. Two felt compelled to return the Raptis Group cheques upon the incident becoming known. If some of the Aldermen saw the incident in this light, the electorate could be forgiven for believing that a developer was attempting to buy a decision, and it underlines an urgent need for accountability with respect to electoral donations.

William Nikiforides, consultant to the Niecon Group, stated that support was given to those candidates who were regarded as *"the right people"*. These he explained were people who would make the place a lot better for tourism and development and create jobs. In the case of each donation, he stated that he did not expect anything in return from the candidates and he equated the payments to that of donations to charities. His original stated reason for giving donations was inconsistent with his later evidence that he gave donations to *"a group of Aldermen"* and it *"made no difference who they were"*.

James Raptis stated that the real basis for his selection of candidates was the fact that they had made an approach to him. He acknowledged that such a selection process meant that deserving people who didn't have the effrontery to approach him would not get assistance.

The question remains: if developers were not seeking specific favours in return for their considerable electoral contributions, what then were they seeking?

The evidence of Noel John Hodges, Manager of the Planning and Development Department of the Council, was that the Council approved about 95% of the development applications lodged and, therefore, there was little point in seeking to corrupt someone when they were going to get approval in any case. It seems that there was little need to influence a generally pro-development Council to favour either development generally or specific developments. Within this relatively congenial system of application and approval, it would appear to have been accepted that certain Aldermen would request developers to *"kick in"* to assist their electoral campaigns and that developers would so oblige. In the case of the Raptis Group and the Niecon Group, an electoral contribution was, in all but a small number of cases, the result of a request from an Alderman or candidate. In most instances, neither developer found difficulty in meeting the request or the sometimes unusual mode of payment requested.

However, electoral largesse delivered over three Local Government elections by Lewis Land would appear to go beyond any such general investment in Council goodwill. That the company did much more than respond to requests for assistance is not in dispute. Mate gave evidence that the company was seeking to

lift the standard of the Council by actively assisting candidates of "superior fairness, intelligence, honesty and perhaps courtesy". This explanation is inconsistent with the evidence. Some candidates supported patently did not meet these criteria. Further, seemingly, few adequate checks were made to establish whether prospective candidates possessed those criteria. Mate also stated that the politics of the candidates had nothing to do with their selection; however, this claim would also appear to be untenable in the face of the evidence. The predominant common element among the supported candidates was some association with the Gold Coast branch of the National Party which, along with Newton's, played an active role in nominating candidates for support from Lewis Land.

Mate also stated that Lewis Land was not seeking to determine the outcome of any of the electoral contests, however, the effect of the evidence would appear to be that in 1991, a larger than normal anonymous donation was directed to the campaign of the chief opponent of the Lewis Land critic, Alderman Alan James Rickard. There were also other individual electoral contests where, despite Mate's denials, one reasonable interpretation of the evidence would be that Lewis Land was seeking to influence the outcome.

However, the evidence does not extend to any indication that Lewis Land was seeking any influence on the Council itself. There was disputed evidence that Lewis Land enjoyed privileged access to the Planning and Development Committee, but on the evidence of Hodges, access to the Committee was not denied to any developer. In the relevant period, Lewis Land cannot be shown to have received any privileges from the Council. Indeed, on one significant development proposal, the company chose to by-pass the Council and seek State Government intervention by way of Ministerial rezoning.

A better indication of the overall purpose of the Lewis Land largesse may arise from evidence of the prior and parallel conduct of the company in respect to electoral contributions at other levels of government. Lewis, in a letter to the Commission, detailed considerable electoral contributions to the Queensland National Party² and a lesser contribution to the Queensland Liberal Party. Lewis stated that a change of government was perceived to be not in the interests of the company and the large amounts contributed to the State bodies "*require to be viewed in the context of the perceptions of the time that the Government was very much at risk of losing office.*" Lewis also detailed donations to the conservative side of politics in New South Wales. Lewis Land contributions to the Gold Coast City Council candidates appear to be in line with general company policy and

² The Ministerial rezoning of the Lewis Land proposal and Lewis Land donations to the State branch of the National Party and the company Kaldeal Pty Ltd were considered by the Commission of Inquiry. No finding of misconduct was made.

practice of funding electoral campaigns in accordance with the pro-development interests of the company.

Although the Commission was unable to establish that particular favours had been given by those Aldermen who had received donations or conversely any particular favours had been sought by developers, the Commission was concerned that the Aldermen who had received donations may have been influenced, albeit subconsciously, to vote in favour of those developers who had contributed to their campaigns. This concern was heightened by the fact that Lewis Land had organised for a number of Aldermen to attend a State of Origin football match in New South Wales (the actual expenses for travel to Sydney and overnight expenses were paid by Colgate Palmolive, who invited the Aldermen to inspect their site in Sydney). The evidence also suggested that the whole Council and the Town Planner had been on Lewis' sailing boat, "*Sovereign*".

As a result of these concerns the Commission sought the views of Professor Kenneth William Wiltshire and Doctor Paul Lincoln Reynolds, both expert in public administration. Wiltshire expressed the view that the Commission's concerns were not without foundation and explained that there had been studies in America which had shown a clear linkage between donations made and the subsequent behaviour of the donees. Such behaviour he explained was not always improperly motivated. Reynolds regarded as "*particularly sinister*" the fact that Council had a very important role in regulating the development industry which had large sums of money at its disposal. What amounted to a small fortune to a candidate seeking funds to support his election campaign, he explained, was petty cash to a developer. In these circumstances he was of the view that candidates could be compromised by donations and suggested that the present legislative proscriptions were totally inadequate.

These views are consistent with common sense. One cannot imagine that any developer would have contributed tens of thousands of dollars to campaign funds and an excursion to the State of Origin football without the expectation of something in return, even if nothing more than access to Council through familiarity with some of its members via previously mutually agreeable contact. Similarly, it cannot be accepted that the receipt of donations would have absolutely no effect upon the deliberations of an Alderman, however uninfluenced he may claim to be. (Although some candidates claimed they had insulated themselves by using campaign managers, the evidence showed that in many cases the managers were used merely as collectors and not "*insulators*").

The experts were of the view that experiences in Australia and elsewhere had shown the need to view the issue of election funding in a co-ordinated fashion. They considered that what was required was a consideration of three inter-related issues:

- the control or regulation of private donations;
- public funding of candidates and/or parties; and
- the regulation of the use of the media for political purposes.

Both were of the view that central to any co-ordinated approach was the disclosure of political donations. Each made extensive recommendations in relation to disclosure.

6.4 WERE THE PAYMENTS UNLAWFUL?

Despite the confidentiality attached to the payments, the Commission was satisfied that none of them was unlawful. It was also satisfied that no Alderman or candidate made any threat or inducement in return for funds. The Commission was further satisfied that no person was guilty of official misconduct.

6.5 RECOMMENDATIONS

The Commission is mindful that any solution to the problem of election funding involves consideration of a number of issues, such as public funding, media advertising and control over donations, which issues are currently subject to consideration by the Electoral and Administrative Review Commission (which Commission has a specific charter in this area). Although public funding and media coverage and the like do not arise for consideration in this report, the evidence before the Commission fairly and squarely raised the issue of disclosure. In view of the evidence and:

- the peculiar nature of Local Government elections (where candidates do not necessarily run on a party platform); and
- the nexus between developers and the role of Council, which enlivens the potential for purchasing influence by giving donations,

the Commission considered it appropriate that a small number of basal recommendations concerning the Local Government area be made.

These recommendations are founded on the Commission's firmly held view that the public has an entitlement to know the source of campaign funding in Local Government elections, so that the possibility of potential influence is open to public scrutiny. Long term viability of a democratic system depends on the public confidence in the probity, integrity and equity of the electoral system. Such

confidence cannot exist in a system which does not promote openness. Accordingly, the Commission recommends:

- The Electoral and Administrative Review Commission consider, pursuant to Section 2.10(b)(i) of the Electoral and Administrative Review Act 1989, the question of election funding in the Local Government electoral system;
- The introduction of legislation requiring, as part of a co-ordinated approach, compulsory disclosure of all donations made to Local Authority candidates;
- Such disclosure should not be linked solely to election campaigns, but all donations of cash or kind received by any Councillor or Alderman in the discharge of his duties; and
- The introduction of harsh and enforceable penalties for failure to disclose. (Forfeiture of the seat is likely to be the most effective sanction.)

6.6 "DUMMY" CANDIDATES

A matter of some concern to the Commission was the possible use of "dummy" candidates. To the public there would have been no indication that a number of candidates financially assisted other candidates in their division in return for their preferences. The full disclosure that the Commission recommends in relation to contributions to candidates would make it publicly known that a candidate was providing financial support to another candidate in the same division. It would also establish whether a developer was providing funds for more than one candidate in a division.

6.7 TAXATION RAMIFICATIONS

In the books of account of the developers, the donations were not universally recorded as donations to candidates. In some instances they were accounted for as ordinary business expenses. The question arose whether these companies had in any way attempted to avoid the payment of taxation. As a result the Commission formed the opinion that it was desirable and pertinent to the administration of criminal justice that the information relevant to any possible avoidance be forwarded to the Australian Taxation Office for its consideration.

7. EVIDENCE OF ALLEGED PAYMENTS (UNRELATED TO ELECTIONS) TO AN ALDERMAN OF THE GOLD COAST CITY COUNCIL - THE AUSTRALIAN SECURITIES COMMISSION MATERIAL

7.1 THE EVIDENCE

This Commission established that on 23 January 1985 Dinlex Pty Ltd, a shelf company whose directors were Denis Pie and Susan Pie, purchased a block of land near Caboolture for \$550,000. In order to finance this purchase they borrowed approximately \$672,000 from Rothwells Limited, which included a \$100,000 one-off fee paid to L R Connell & Partners. One month later Pie was elected Mayor of the Gold Coast City Council. In September 1985 the Qintex Group purchased land at Seaworld Drive on The Spit on the Gold Coast and commenced plans to build the Mirage Resort. After a series of applications to Council (which were approved) the resort opened in September 1987.

During the Qintex Group's negotiation with the Gold Coast City Council, Pie and the Chairman of the Qintex Group, Christopher Skase, met and Pie sought Skase's assistance in relation to the repayment of interest to Rothwells Limited on the land near Caboolture. On 17 April 1986 Pie accepted an appointment as consultant valuer to the Qintex Group and three months later the general manager of the Group, Ian Curtis, made an offer to Pie for the provision of funding to Dinlex Pty Ltd. Between 8 August 1986 and 9 May 1988, twenty-five cheques totalling \$321,427.60 were drawn by Kodogo Pty Ltd and recorded in its books of account under the heading of "loan Dinlex" or "Dinlex". Each of these cheques was paid to Rothwells Limited to reduce the indebtedness of Dinlex Pty Ltd.

Further examination of the balance sheet of Kodogo Pty Ltd for the year ended 31 July 1989 revealed that an account entitled "Loan - Dinlex Pty Ltd", under the assets category of "Investments", had an opening balance of \$321,427.60 and a closing balance of nil. The general journal of the company revealed that \$321,474.00 had been written off to bad debts and cancelled out the balance of the account.

Despite the assurances by Pie, Curtis and Skase that the payments made by Kodogo Pty Ltd to Rothwells Limited on behalf of Dinlex Pty Ltd were non-refundable option fees for the right of Kodogo Pty Ltd or its nominee to buy into the land at Caboolture (owned by Dinlex Pty Ltd), the documentary evidence did not support this. The documents which the Commission located were all consistent with monies being paid by way of a loan. It is clear that there were negotiations to enter into an option agreement, however no document could be located which established that an option agreement had been signed. The only option agreements which were located were unsigned drafts which would not have caused the

payments to Rothwells Limited to be regarded as non-refundable option fees. Further, the evidence of the Deputy Chairman of the Qintex Group (he was also its legal adviser) was that in his view the monies were in the nature of loans which were still outstanding, albeit written off in the books of account.

When it came to determine on what financial basis the loan was written off, the Commission was unable to locate any documentation, including company minutes or memoranda supporting the writing off of the loan or justifying it. Furthermore, none of the directors or the secretary to the company or any executive of the Qintex Group could assist the Commission in this regard. The Commission was therefore unable to reach a conclusion as to the commercial basis for writing off the debt. The Commission formed the view that not all of the witnesses were frank in this regard. It should be noted that at the same time that this loan was written off, Kodogo Pty Ltd also wrote off a number of other loans, including one of \$250,000 to a media buyer who was, in the opinion of the Deputy Chairman of the Group, capable of paying the debt. No documentation was located justifying this action either. One cannot, however, draw an inference that there was a corrupt or illegal motive simply from the fact that the loan was written off in these circumstances.

7.2 CONCLUSIONS

An examination of Council documents failed to reveal anything on the face of them which evidenced undue influence or any other impropriety by Pie (or any other Alderman). The City Town Planner gave evidence of the development and opined that Pie's conduct was not untoward in relation to it. Further, when one looks at the timing of the payments to Rothwells Limited and the ultimate writing off of the loan in the books of account in July 1989, vis-a-vis Council approval of the applications for the development on the Gold Coast, there would appear to be no temporal connection between them. In these circumstances the Commission has formed the view that there is insufficient evidence to establish that the monies were corruptly or improperly paid to the benefit of Pie in his capacity as Mayor of the Council. Further, there is insufficient evidence to conclude that the loan was corruptly or improperly forgiven as payment to Pie in his capacity as Mayor of the Council.

7.3 RECOMMENDATIONS

The Commission considered that notwithstanding Pie's position as a consultant valuer to the Qintex Group and his financial dealings with Kodogo Pty Ltd, he was not required pursuant to provisions of Section 14(4) of the Local Government Act to disclose these interests to Council or abstain from voting on any matter

involving the Mirage Resort (although he did declare an interest in a committee meeting in December 1986).

Section 14(4) of that Act requires a member of a local authority who has any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter to disclose the fact and abstain from the consideration or discussion of the matter or voting thereon. On the legal authorities, Pie did not fall within the purview of the section.

Although the Commission was of the view that Pie was not statutorily required to declare this interest, it considered that the interest which he had was capable of causing a conflict with his duties as an Alderman and, as such, ought reasonably to be of the type that should be declared before Council. It reaffirms therefore previous recommendations made in its report titled "*Complaints Against Local Government Authorities in Queensland - Six Case Studies*" furnished in July 1991. Those recommendations are:

- The Local Government Act and Regulations, as they currently stand, do not adequately address the plethora of potential conflict of interest situations which may arise regarding the administration of local government in this State. It is recommended that the Minister for Housing and Local Government conduct a review of the present legislation and direct amendments to be drafted where necessary to ensure it is clearly and unequivocally expressed that the pecuniary interests of local authority members and employees cannot be allowed to conflict with their duties. Time limits for prosecution action and penalty options should also be reviewed.
- Local authorities should be assisted in establishing a uniform and comprehensive code of conduct.

The Commission notes that consideration of these specific areas is currently being undertaken by officers of the Department of Housing and Local Government (in response to the previously referred to recommendations made by this Commission) as part of an overall review of the Local Government Act.

INTRODUCTION

1. THE GENESIS OF THE INQUIRY

On 13 December 1989, John Henderson, a Solicitor with the Gold Coast legal firm of Reichelt & Associates and Gregory Rix, a Director of Rix Developments a Gold Coast development firm, approached Robert Needham, then Counsel Assisting the Special Prosecutor, with information which they believed would be of interest to that Office. Rix, who was a representative of the Small Business Development Association on the Gold Coast, had taken action against the State Government, seeking a declaration that the recommendation to the Governor in Council with respect to a rezoning of land at Labrador was invalid. The rezoning of the land had received ministerial approval, but not the approval of the Gold Coast City Council. As part of that action the Association had carried out extensive research into connections between the developers of the land, Lewis Land, and certain politicians and political candidates.

Henderson and Rix provided information to Needham that persons by the name of Elaine Todd and Debbie Young had worked as bookkeepers for a media consultancy business on the Gold Coast named Newton's which was owned by one Kenneth Newton. They claimed that Newton's worked as public relations consultants for Lewis Land which, in addition to being the developer responsible for the rezoning application, was otherwise a significant developer of land on the Gold Coast.

Henderson and Rix stated that although they had spoken to Todd, they were unwilling to relate the information she had provided to them as an undertaking had been given to the Supreme Court not to disclose this information pending the resolution of a civil action by Newton's and Lewis Land against The Australian Broadcasting Commission, television journalist Quentin Dempster, Todd and Rix. They did, however, provide details of what Young had told them.

Rix and Henderson claimed Young had stated that Todd and she once worked as bookkeepers for Newton's and during that time various Gold Coast politicians and National Party political candidates on the Gold Coast submitted their accounts for election campaign expenses to Newton's. The accounts would be met by Newton's, but from funds provided by Lewis Land. Henderson added that Young produced copies of documents she had obtained from the offices of Newton's which indicated the payments made and codes which had been allocated to the various politicians to be used in place of their names.

This information was forwarded by the Office of the Special Prosecutor to Sir Max Bingham QC then Chairman of the Commission of Inquiry previously chaired by G E Fitzgerald QC. Shortly after, on 19 December 1989, officers of the

Commission of Inquiry interviewed Todd who stated that she was employed by Newton's as a bookkeeper/accountant from September 1987 to June 1988. She claimed that:

- Lewis Land was a major client of Newton's and that she was responsible for keeping the books on all outgoings paid on behalf of Lewis Land.
- When the Gold Coast Local Government elections were announced, large sums of money were deposited with Newton's by Lewis Land.
- The money deposited by Lewis Land was then used for paying campaign expenses for and on behalf of candidates in that election.
- These campaign expenses, such as printing and advertising costs, were paid by way of cash cheque and the costs billed to Lewis Land as "*P R services rendered*".
- The money held in a credit account by Newton's was then offset against the payments made in respect of each candidate.
- Each candidate was known by a code or file number and bills paid in respect of, for example, advertising, would then be noted against the candidate's code number.
- She noted on cheque butts the relevant code and not the name of the candidate. For example, it contained the code "*LGE*" (Local Government Election), followed by three digits referring to the particular candidate.
- In this way, the name of the candidate would not appear on the records of Lewis Land or in Newton's own accounts.

Todd claimed that she approached Rix originally because she had seen an article published in the Gold Coast Bulletin on 4 November 1989 in which Alderman Lester Hughes reportedly denied receiving donations from Lewis Land.³ She believed that this did not accurately reflect the situation as she remembered that Hughes was one of the candidates who had benefited from the Lewis Land payments to Newton's.

³

Earlier in November 1989, the ABC television programme "*The 7.30 Report*" made a number of allegations concerning, amongst other things, the relationship between Lewis Land and the then State Government and Hughes.

Having received this information further investigation was stayed pending the transition to the Criminal Justice Commission and the acquisition of necessary resources for investigation.

In October 1990 preliminary inquiries were commenced with a number of in camera hearings before the Commission to determine whether the evidence produced warranted further investigation. The original complainants were called to provide their evidence on oath and to formally produce supporting documentation.

During these preliminary inquiries, representations were made to the Commission that other land developers had contributed money to candidates for election to the Gold Coast City Council. It was claimed that Mr James Raptis and the Raptis group of companies, as well as the Niecon Group of companies involving Messrs William and Constantine Nikiforides, had similarly provided funds for the use of candidates for Gold Coast City elections. James Raptis and William Nikiforides were summoned to attend further in camera hearings and gave evidence of their companies' practices and dealings in relation to donations made to local politicians.

Upon consideration of this evidence and after an assessment of the material obtained from other preliminary inquiries, the Commission concluded that there existed prima facie evidence that moneys had, in fact, been paid by Lewis Land, the Niecon Group and the Raptis Group to candidates for the 1988 elections to the Gold Coast City Council. In the Commission's view the preliminary investigations raised the following questions:

- What was the extent of payments made by land developers to Aldermen or candidates on the Gold Coast?
- To whom were these payments made?
- Why were they made?
- Was there an attempt to keep confidential the fact of any payments? If so, why?
- Was any benefit sought or received by any land developer for the payment of the funds?
- Was any threat made or inducement given by any of the Aldermen or candidates?
- Was any Alderman or candidate compromised by any payment?
- Was there a likelihood that a payment may have tended to compromise an Alderman or candidate?

● Were any of the payments unlawful?

The Commission considered that public hearings were called for to maximise the possibility of ascertaining the answers to these questions and, ultimately, on 15 April 1991, the Commission resolved⁴ to conduct hearings open to the public presided over by the Chairman of the Commission, Sir Max Bingham QC sitting alone assisted by C E K Hampson QC.

Although the Commission was primarily concerned with donations for the 1988 elections, it formed the view that some assistance in answering these questions would be derived by questioning candidates and developers in relation to other recent elections for the Gold Coast City Council.

2. EXTENSION OF THE AMBIT OF THE PUBLIC HEARINGS

As a result of the publicity generated by the public hearings, the Australian Securities Commission forwarded to the Criminal Justice Commission material which it believed was relevant to the public hearings. This material raised the possibility that the then Gold Coast Mayor, Denis Pie, had received payments from a member of the Qintex Group of companies.

Although the material did not raise a suspicion that any payments had been made for the purpose of assisting in any election campaign, the Commission considered it to be sufficiently cognate to its current inquiries to extend the ambit of the public hearings to include the investigation of this further matter. Accordingly, on 23 May 1991, the Commission resolved to undertake the investigation of any alleged payment by Qintex Limited or any of its subsidiary companies of moneys to Gold Coast City Council Aldermen or candidates.⁵ It also resolved that the Director of the Official Misconduct Division, Pierre Mark Le Grand, sitting alone, would preside over the further matter.

3. JURISDICTION OF THE COMMISSION

Where there was a suggestion of covert payments being made to Aldermen or electoral candidates, the Commission considered it had a clear jurisdiction to investigate the matters by virtue of Section 2.15 of the Criminal Justice Act 1989 (hereinafter referred to as "*the Act*") and, in particular, sub-section (f).

⁴ See Exhibit No. 739 for a copy of the Resolution.

⁵ See Exhibit 1013 for a copy of the Resolution.

Section 2.15(f) provides that the responsibilities of the Commission include -

"...in discharge of such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police Force or other agencies of the State, undertaking -

- (i) research and co-ordination of the processes of criminal law reform;*
- (ii) matters of witness protection;*
- (iii) investigation of official corruption in units of public administration;*
- (iv) investigation of organised or major crime."*

The Commission also considered that, by virtue of Section 2.20 of the Act and, in particular, sub-sections (2)(a) and (2)(e), the investigative unit of the Commission, namely, the Official Misconduct Division, had an obligation to investigate the matter with a view to determining whether there was any evidence of "official misconduct" within the meaning of the Act.

Section 2.20 (2)(a) and (2)(e) provide:

"(2) It is the function of the Division -

(a) to investigate the incidence of official misconduct generally in the State;

.....

(e) to investigate all cases of -

(i) alleged or suspected misconduct by members of the Police Force; or

(ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration,

that come to its notice from any source, including by information from an anonymous source."

On the recommendations of Mr Fitzgerald QC the Legislature created in the Act a new "offence" - a disciplinary "offence" of "official misconduct". In broad terms,

official misconduct as it relates to a holder of an appointment in a "unit of public administration" includes behaviour which may directly or indirectly affect the honest and impartial discharge of public functions or which constitutes a breach of trust placed in an individual by reason of his appointment to the "unit of public administration" or which involves the misuse of official information. In addition, it must either be conduct which constitutes or could constitute a criminal offence or a disciplinary breach that provides reasonable grounds for the termination of employment. That is, it is concerned with the more serious acts of misconduct. One of the consequences of being convicted of an offence of official misconduct is that one is liable to dismissal.

In relation to a person who is not a holder of an appointment in a "unit of public administration", official misconduct includes conduct which adversely affects or could adversely affect the honest and impartial discharge of the public functions exercised by the holder of an appointment in a "unit of public administration". In addition, it must constitute or be such that it could constitute a criminal offence.

The term "unit of public administration" is defined by Section 1.4 of the Act to mean, inter alia, every corporate entity that is constituted by an Act or that is of a description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act.

As the Local Government Act 1936 provides that every Local Authority shall be a body corporate and authorises it to collect revenues, the Gold Coast City Council, which is a Local Authority, falls within the definition of "unit of public administration".

It should be noted that, for the purposes of the Criminal Justice Act a person holds an appointment in a "unit of public administration" if he holds any office, place or position therein, whether his appointment thereto is by way of election or selection.⁶

It should also be noted that Section 2.22(3) of the Act provides:

"Conduct engaged in by, or in relation to, a person at a time when he is not the holder of an appointment in a unit of public administration may be official misconduct, if he becomes the holder of such an appointment."

⁶

See Section 1.4(2) of the Criminal Justice Act 1989-1990.

This provision would cover the situation where a candidate for election engages in conduct which would be official misconduct if he were a holder of an appointment in a "*unit of public administration*" and then is elected to office.

4. A PUBLIC HEARING

The provisions of the Act impose a prima facie obligation upon the Commission to hold open hearings. Section 2.17(4) of the Act provides that hearings shall, as a general rule, be open to the public but if, having regard to the subject matter of the investigation, or the nature of the evidence expected to be given, the Commission considers it preferable, in the public interest, to conduct a closed hearing, it may do so. This provision recognizes the many benefits of holding hearings in public.

Commissioner Fitzgerald QC to a large extent attributed the success of his Inquiry to the fact that the hearings were held in public. He stated at Page 10 of his report that in order to gain the confidence, co-operation and support of the public, the Inquiry had to be as open as possible so the public, including people with information, could see that it was a genuine search for the truth.

In its 1990 Annual Report, the Chairman of the Independent Commission Against Corruption in New South Wales (ICAC), Mr Ian Temby QC, recognized that public hearings also have the great benefit of public education. He stated that publicity generated by hearings was of assistance in convincing people that public sector corruption is a social evil which ought not to be tolerated. He further stated that public hearings ensured public accountability without which public confidence and support would not arise.

The Commission agrees completely with these observations. In the light of these considerations and the prima facie statutory obligation to hold public hearings and in view of the matters of great public interest that were raised by the preliminary investigations, the Commission considered that it was essential that a searching public inquiry be held with the object of ascertaining the truth, attributing blame if blame was due and disposing of suspicions, rumours and allegations which were unjustified. It considered that public hearings would raise the general level of knowledge and debate within the community concerning the campaign and election process, particularly in the local government area, and the part played by donations from developers.

5. MODE OF TAKING EVIDENCE

By virtue of the provisions of Section 3.6 of the Act, the Commission is armed with coercive powers to summon witnesses and to require the production of

documents. All persons who were summoned to attend or to produce documents, gave their evidence under oath from the witness-box.⁷

However, as the provisions of Section 3.21 of the Act permit the Commission to inform itself on any matter and conduct its proceedings as it thinks proper, (it is not bound by the rules or the practice of any court or tribunal as to evidence or procedure), the Commission saw fit to accept, where appropriate, evidence by way of statutory declaration, signed statement or report.⁸

6. STANDARD OF PROOF

The very nature of an inquiry under the Act (including, in particular, the fact that the Commission is not bound by the rules of evidence applicable to litigious proceedings) raises the question as to the degree of satisfaction which should be attained before it is safe for the Commission to conclude that any of the allegations the subject of inquiry have been established. The Act is silent on the standard of proof required, however, *"the common law recognises only two standards of proof - the civil standard and the criminal standard - but the civil standard may vary according to the gravity of the finding to be made"*.⁹

Although the proceedings before the Commission were not criminal or civil in nature, after consideration of the authorities the Commission considered that the appropriate standard of proof was the civil standard which varies according to the gravity of the finding to be made. This standard is often called the Briginshaw principle or the standard of *"reasonable satisfaction"* and in applying it the Commission adopted the statement of Sir Owen Dixon in Briginshaw v. Briginshaw (1938) C.L.R. 336 at pp. 361-362 where he stated:

"Reasonable satisfaction' is not a state of mind that is attained or established independently of the nature and consequence on the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences following from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable

⁷ See Annexure "A", List of Witnesses.

⁸ See Annexure "B", List of Exhibits.

⁹ See Taylor v. L., ex parte L. [1988] 1 Qd.R. 706 at page 714.

satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect references."

The Commission is comforted in its view that the requisite standard is that of "reasonable satisfaction" by the adoption of that standard in similar inquiries such as the National Hotel Royal Commission (1963-64) and the recent Commission of Inquiry into Certain Allegations concerning Mr Justice Vasta conducted by Sir Harry Gibbs, Sir George Lush and the Honourable Michael Helsham. (There are many other examples.)

7. PUBLIC HEARING DAYS

The public hearings commenced on 16 April 1991. The Commission sat for a total of 16 days, spread over a three month period terminating on 14 June 1991.

8. APPEARANCES

For the public hearings Mr Cedric Hampson QC was appointed Senior Counsel Assisting the Commission and Mr Peter Kelly was appointed Junior Counsel Assisting. Other appearances by legal representatives are listed in Annexure "C".

9. LOGISTICS OF THE INVESTIGATION

In all, 71 persons were called and gave evidence, before either the public or in camera hearings. Police Officers attached to the Commission interviewed a further 59 persons. A total of 2,096 pages of transcript was produced from the hearings and 279 exhibits were tendered.

Eleven investigators were engaged for the majority of the investigation in the interviewing of witnesses, the serving of summonses and notices to produce and associated duties. Two support officers were engaged for the duration of the investigation in the preparation of the voluminous documentary material produced during the hearings and two financial analysts spent a considerable period of time assessing and analysing the financial material received by the Commission.

In excess of 3,500 work hours were expended by staff of the Commission.

10. ACKNOWLEDGMENTS

During the Commission's investigations, a number of Notices to Produce were served on suppliers or possible suppliers of goods and services to candidates who

had allegedly been paid by Lewis Land through the medium of Newton's. These Notices were served at a sensitive time, shortly prior to the 1991 Local Government elections in March. As part of this process, Notices were served on the Gold Coast Bulletin and Radio 97. Discussions were held between the Commission and staff of these two organizations during which the possible adverse consequences of any publication flowing from the service of the Notices to Produce were canvassed. As a result of these discussions, both organizations agreed not to publish any information relating to the Notices to Produce.

The Commission wishes to express its appreciation to the Gold Coast Bulletin and Radio 97 for acting in a manner which the Commission regards as highly responsible. The Commission recognizes that the decision to forbear from publication was not an easy one.

11. PRESENTATION OF THE EVIDENCE

The evidence before the Commission fell into the following two categories:

- A. Evidence relating to alleged payments to candidates for election for the Gold Coast City Council;
- B. Alleged payments (unrelated to elections) to an Alderman of the Gold Coast City Council - the Australian Securities Commission Material.

Each of these areas will be addressed separately in the report.

12. PERJURY

The Commission was satisfied to the requisite civil standard that many witnesses (including a significant number of Aldermen) who gave evidence on oath were, at times, untruthful. However, the Commission has not taken any action with a view to any of these witnesses being charged with perjury for one or more of the following reasons:

- recognition of the difficulty in establishing, to the criminal standard, (in contrast to the civil standard applied by the Commission), the facts supporting an offence of perjury;
- lack of corroboration (which is required by the provisions of The Criminal Code before a person can be found guilty of the offence); and

- lack of "*materiality*" (which is a technical element of the offence of perjury pursuant to the provisions of The Criminal Code).

A. ALLEGED PAYMENTS TO CANDIDATES FOR ELECTION TO THE GOLD COAST CITY COUNCIL

1. THE GOLD COAST CITY COUNCIL

The Local Government Act 1936 provides that a Local Authority shall, in relation to the functions of Local Government, be charged with the good rule and government of the area to which it relates and shall have the control of the working and business of such good rule and government. Further, that Act provides that a Local Authority (called a Council) shall be comprised of not less than five members and not more than 13 members, including a Chairman.

The Gold Coast City Council is constituted by an elected Chairman, known as the "Mayor", and 10 other members who are called "Aldermen". Every Council, including that of the City of the Gold Coast, is subject to a triennial election of the Council. The last three elections for the Gold Coast City Council were held on 13 March 1985, 19 March 1988 and 23 March 1991. For those elections, there were 3, 5 and 2 candidates respectively for the position of Mayor and 62, 51 and 35 candidates respectively for the 10 positions of Aldermen. In all three elections, each candidate ran as an independent candidate, although it is fair to say that there was an element of political patronage for some of the candidates. A list of all candidates for election for the last three elections for the Gold Coast City Council is to be found in Annexure "D".

2. THE OVERVIEW OF DEVELOPMENT BY COUNCIL

A significant function for any Local Authority is to overview development in its area. The Gold Coast area has, in recent years, seen a great influx of population. With this influx has come the need for new accommodation and facilities. Land development companies, understandably, recognized the area as one in which there were many opportunities and, accordingly, committed substantial resources to it.

The Commission heard evidence from the Manager of the Planning and Development Department of the Council, Mr Noel John Hodges, who stated that the staff in that department had increased from 4 to 28 in the previous seven years in order to cope with the burgeoning development. He outlined the basic function of the department which is to process applications for development, rezonings and subdivisions. He stated that each application would be assessed by staff from his department who would make recommendations to him. When he is satisfied with the recommendations, they are signed by him and the Town Clerk and presented to the Planning and Development Committee of the Council who consider and discuss each application and then submit them (as amended, if necessary) to the full

Council which has responsibility for the ultimate approval or rejection of any application.

3. THE DEVELOPERS

3.1 LEWIS LAND

Gregor Vale Mate gave evidence that he is the Queensland Manager of Lewis Land, which is an umbrella company for the trading company, Lewiac Pty Ltd. He stated that Lewiac Pty Ltd is a private company which he believed is entirely owned by Bernard Lewis who was also a Director of Lewis Land. He stated that Lewis Land has been responsible for two developments on the Gold Coast in the last 10 years, these being the only ones that Lewis Land had undertaken in Queensland during this period. He listed the two developments as the Sovereign Islands Development and the Pacific Waters Development, the latter involving the Harbour Town Project.¹⁰

3.2 THE NIECON GROUP OF COMPANIES

William Nikiforides gave evidence that he is a consultant to the group of companies which includes Niecon Developments Pty Ltd, Tower Construction Pty Ltd, Vanbay Pty Ltd, as well as the Niecon Group of Companies. He stated the Niecon Group of Companies had caused a number of buildings and developments to be constructed on the Gold Coast during the last 12 to 13 years. He stated that around 1988 the group had 7-8 people in the office and 2-3 permanent staff on site. Everyone else on site was employed as a subcontractor.

He indicated the principal shareholder in the company was his eldest son, Constantine William Nikiforides who gave evidence that the group of companies is a family concern and he is, in effect, its Managing Director as well as principal shareholder. Notwithstanding this, William Nikiforides stated that it was his responsibility to determine whether any candidate would receive support.

¹⁰

In a letter dated 17 June 1991 forwarded to the Commission, Lewis stated that the Corporation had commenced land subdivision on the Gold Coast 24 years ago and listed several developments which provided housing for approximately 10,000 persons. (See Exhibit No. 1515).

3.3 THE RAPTIS GROUP

James Raptis gave evidence before the Commission that he is the Director of a number of companies within the Raptis Group. One of these companies was Klingon Pty Ltd which is a private investment company under his control. The Raptis Group has been involved in significant developments on the Gold Coast over recent years.

4. THE EXTENT OF PAYMENTS MADE BY LEWIS LAND

4.1 THE EVIDENCE OF GREGOR VALE MATE

Mate, the Queensland Manager of Lewis Land, gave evidence of contributions made to candidates' election campaigns in the 1985, 1988 and 1991 elections. According to Mate, Lewis Land only once paid money directly to a candidate for the 1985 and 1988 elections, this being a cash payment of \$2,500 to sitting Alderman Keith Thompson in 1988. (Such payment was denied by Thompson).

He stated all other contributions in the 1985 and 1988 elections were made, not to the candidates, but to the media consultancy business Newton's for services it rendered to candidates. He added, however, for the 1991 elections, Lewis Land made campaign donations directly to candidates or their campaign managers.

According to Mate, for the elections in 1985, \$25,000 to \$30,000 was paid to Newton's for the benefit of candidates. (Kenneth Gilbert Newton, the principal of Newton's, believed that this amount was about \$50,000 against the campaign costs of eight or nine candidates). Mate believed that for the 1988 election, about \$91,000 was contributed by Lewis Land.

For the election in 1991, Mate said that Lewis Land had outlaid in the order of \$32,500 for the benefit of five or six candidates. Included in this sum was a \$10,000 donation to Vincent Camilleri and a \$5,000 donation to Gina Challenger, both of which were made anonymously.

Mate detailed the other 1991 donations as follows:

Denis O'Connell	\$ 500.00
Lester Hughes	\$ 5,000.00
David Childs	\$ 5,000.00
Keith Thompson	\$ 5,000.00
Gary Muller	\$ 2,000.00

4.2 THE EVIDENCE OF GEORGE SENCARIUC

In an attempt to establish the extent of payments made by Lewis Land in 1988, George Sencariuc, a Financial Analyst attached to the Commission, prepared two reports¹¹ from documents acquired pursuant to Notices to Produce served on Newton's, Lewis Land and its subsidiaries. In his reports he stated that between 8 January 1988 and 27 May 1988, Newton's presented 23 invoices for a total of \$147,045.08 to Lewis Land and these were paid by means of nine cheques drawn on the account of Lewiac Pty Ltd. Lewiac Pty Ltd charged this amount to "sales and advertising expenses" which formed part of the total \$1,022,948 sales and advertising expenses for the company for that financial year.

Of this \$147,045.08, some \$95,896 was invoiced under an account code LL015. This account related almost entirely to the publicity expenses of Gold Coast City Council candidates for election. The account LL015 was broken down into further codes under the title LGE (Local Government Election). Each LGE number related to a specific candidate and \$87,281.87 represented the total amount charged under these codes. A further \$4,246.32 was found to relate to candidate expenses, but not entered under any LGE code.

Of the total which was represented under the LGE codes, some \$56,000.87 appeared to concern work performed by other suppliers and paid by Newton's. However, only \$46,593 could be verified by reference to order forms, invoices and cheque butts. No explanation was provided for an amount of approximately \$9000. The remaining \$31,282 charged under the LGE total could be reconciled with time sheets and other records of Newton's employees as work performed by them.

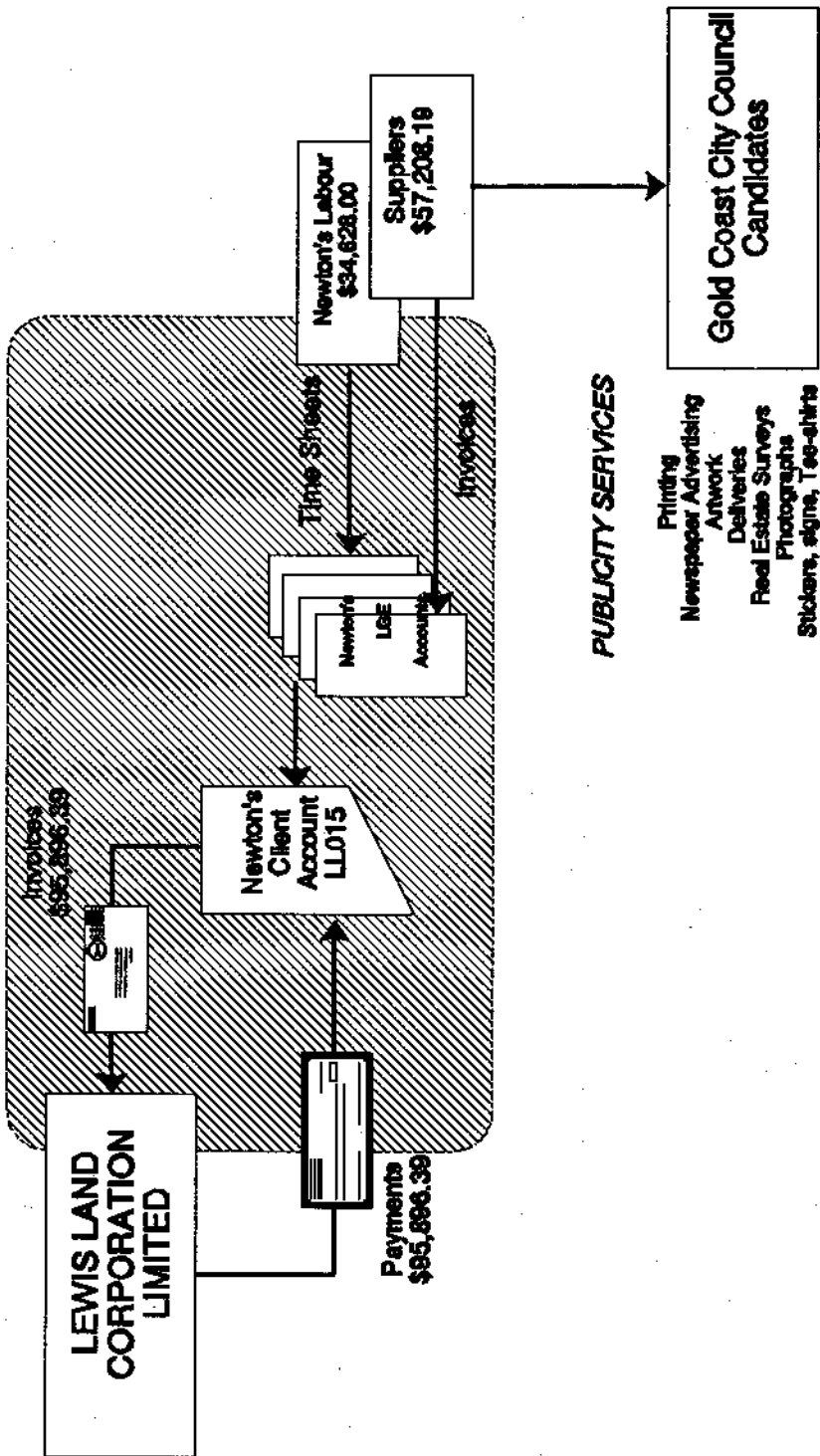
It would seem that the difference between the \$147,045.08 paid by Lewis Land to Newton's and the \$95,896 invoiced under the LLO15 account were payments made to Newton's for bona fide sales and advertising expenses (unrelated to payments for candidates) incurred by Newton's on behalf of Lewis Land.

Sencariuc prepared two charts summarizing his investigations. The first outlines Newton's role in processing payments for the candidates' publicity services in the 1988 election and the second is a full reconciliation of the accounts of Newton's and the amount expended by that organization for each candidate in the 1988 election. These two charts are set out on the following two pages.

¹¹

See Exhibit Nos. 740 and 740A

NEWTON'S ROLE IN PROCESSING PAYMENTS FOR CANDIDATES' PUBLICITY SERVICES



PUBLICITY SERVICES

- Printing
- Newspaper Advertising
- Artwork
- Deliveries
- Real Estate Surveys
- Photographs
- Stickers, signs, Tee-shirts

SUMMARY OF INVOICES, JOB COSTS & SUPPLIERS

Relating to Newton's Client Account LL015

INVOICES ISSUED TO LEWIS LAND CORP LIMITED	
No	Date
0202	16/2/88
0208	28/2/88
0214	29/2/88
0328	31/3/88
0402	27/4/88

\$95,896.39

INVOICES
ISSUED

NEWTON'S JOB COSTING LGE ACCOUNTS

Code	Name	Amount
LGE 198	O'CONNELL (MAYORAL)	\$ 5,895.00
LGE 340	HUGHES (DIV 2)	\$11,217.00
LGE 341	COOMBER (DIV 8)	\$ 5,104.31
LGE 345	CAREY (DIV 10)	7.00
LGE 348	GAMIN (DIV 6)	\$14,499.45
LGE 349	BERGIN (DIV 7)	\$ 5,688.00
LGE 480	ALLEN (DIV 7)	\$ 3,542.85
LGE 481	ALCOTT (DIV 1)	\$10,238.22
LGE 482	MCDONALD (DIV 8)	\$ 4,833.85
LGE 484	MEARES (DIV 2)	\$ 3,485.07
LGE 486	MACNELLIE (DIV 1)	\$ 2,489.34
LGE 488	MONEIL (DIV 3)	\$ 3,760.00
LGE 487	PATERSON (DIV 4)	\$ 3,349.48
LGE 488	NEWMAN (DIV 6)	\$ 5,387.20
LGE 500	TAYLOR (DIV 10)	\$ 5,282.80
LGE 501	FRASER (DIV 6)	\$ 1,571.00
LGE 505	THOMPSON (Marjorie) (Div 4)	\$ 1,158.50
-	TRAVERS (DIV 3)	\$ 898.32
-	ADMINISTRATION COSTS	\$ 3,347.00

LL015

JOB COSTS
INCURRED

\$91,836.19

SUPPLIERS

Supplier Name	Amount
Admin Lewis Bromides	\$ 10.00
Ashmore Printing	\$ 1,662.00
Australia Post	\$ 1,776.00
Burdall Printing	\$ 34.10
Concorde Printing	\$ 648.00
Daily News Gold Coaster	\$ 577.00
Designomite	\$ 3,969.90
Gold Coast & Albert	\$ 1,071.00
Brochure Distributors	\$ 1,057.90
Gold Coast Bulletin	\$ 572.00
Gold Coast Sun	\$ 500.00
Goodie & Associates	\$ 3,383.20
Heaney's Printing	\$ 1,419.00
Hinterland Leader	\$ 220.00
John Earl Paper Laminates	\$ 947.38
Just Black & White	\$ 4,058.00
Mattida Printing	\$ 1,000.00
MIMA	\$ 2,889.00
Newsen Media Marketing	\$34,628.00
Newton's Labour	\$ 3,380.00
Radio 4GG	\$ 402.80
Roger Welsh Signs	\$ 2,960.00
Stam Advertising Pty Ltd	\$ 345.18
TAK Distributors Pty Ltd	\$ 5,116.60
Tweed Newspaper Co Pty Ltd	\$ 1,520.00
Tweed Radio & Broadcasting	\$ 1,522.40
Typographx	\$ 382.40
Unourced	\$ 988.82
Reimbursement to Richard Travers	\$ 988.82

\$91,836.19

4.3 THE EVIDENCE OF THE CANDIDATES

The Commission called evidence from all but one of the candidates (Michael A Carey, who received support only to the extent of \$7) who had seemingly benefited by donations made by Lewis Land for the 1988 election and all the candidates who apparently benefited by payments from Lewis Land in the 1991 election.

4.3.1 THE 1988 ELECTION

In relation to the 1988 election, the majority of candidates did not dispute that services had been received by them to the extent claimed by Newton's as being performed. A small number were surprised at the high cost charged for those services by Newton's, but did not suggest that Newton's had in any way been dishonest in charging that amount.

On the other hand, Trevor McDougall Coomber, a former Alderman and now MLA for the seat of Currumbin, stated that Ken Newton had told him prior to the 1988 campaign that funding from the business community was available to be put towards his campaign. Coomber claimed that he had not requested the source of the funds, but suspected that they may have come from Lewis Land. On one of his visits to Newton's to discuss the election campaign costs, Coomber claimed that he saw one of his opponents apparently also being supported by Newton's and, as a result, terminated the arrangement with Newton's. He stated that he inquired how much was owed by him and then paid Newton's staff that amount. Coomber could not account for the \$5,104.31 for which Newton's had billed Lewis Land under the Coomber campaign code of LGE 341, nor for a \$2,000 credit entry which an unknown person had apparently also contributed towards the Newton's account for Coomber.

The other person to deny receiving any assistance was Keith Leonard Thompson who Mate had claimed to have paid \$2,500 in cash on 22 February 1988. Mate gave evidence that Thompson spoke to him and indicated that he needed assistance. Mate told him that his normal way of assisting candidates was to direct them to Ken Newton. However, he claimed that Thompson stated that he would run his own campaign and would like a contribution. Mate then said that he asked in what form he wanted the contribution, to which Thompson replied he wished to have it in cash. Mate then claimed that he said to Thompson that it was an unusual way to handle such a matter, to which he claimed Thompson replied that that was the way he wanted it handled. Mate then stated that he withdrew \$2,500 in cash from the bank on 22 February 1988 and took it to Thompson's house at about 4 o'clock in the afternoon and handed it to him. Mate provided the Commission with documentation supporting his drawing of a cash cheque for \$2,500 on the date in question.

Thompson was examined at length about this incident and could give no reason why Mate would fabricate such an incident and no basis for antipathy towards him by Mate. He categorically denied the incident.

4.3.2 THE 1991 ELECTION

In relation to the 1991 election, the candidates acknowledged receiving donations to the extent that Mate claimed had been made, although in the case of Gina Challenger, she took the advice of her solicitor and opened a special account and placed the donation cheque in it which, in her words, "*was gathering dust*".

Although the extent of services received by candidates for the 1988 and 1991 elections was not greatly in dispute, a number of candidates claimed that they were not aware of the source of the funds which provided these services. (This matter will be further canvassed later in the Report.)

4.4 CONCLUSION

The Commission prefers the evidence of Mate to that of Thompson on the issue of the \$2,500 payment and considers it unlikely that Mate would fabricate such an event. In the circumstances the Commission is satisfied to the requisite standard that \$2,500 was paid in cash by Mate to Thompson.

The Commission did not find Coomber a credible witness in relation to the \$5,104.31 Newton's had allegedly billed Lewis Land in respect of services provided to Coomber, and is satisfied from, inter alia, the documentary evidence that the donation was made for Coomber's benefit.

The Commission is satisfied that Lewis Land expended funds to the extent of \$94,336.19 towards the candidates for election in 1988 and \$32,500 towards the candidates for election in 1991. In relation to the 1988 election, the amount was divided between 19 candidates from all 10 divisions and the mayoral candidacy. Six of these candidates were successful.

The \$94,336.19 may, indeed, have been "*petty cash*" to Lewis Land as Mate described it, but it represented, in most cases, the major portion of the candidate's campaign funding. Indeed, in at least one instance, it was the totality of the

candidate's funding. In contrast, candidates who did not receive Lewis Land support, in general, spent far less on their campaigns.¹²

5. EXTENT OF PAYMENTS BY NIECON DEVELOPMENTS PTY LTD

5.1 THE EVIDENCE OF GEORGE SENCARIUC

Sencariuc prepared a report¹³ on his examination of the records produced pursuant to Notices to Produce served on Niecon Developments Pty Ltd and Bundall Printing. He found that between 3 September 1987 and 17 March 1988, 13 cheques were drawn on Niecon Developments Pty Ltd., apparently for the benefit of candidates for the 1988 election. Of these, six cheques totalling \$10,000 were made payable to Denis Pie & Associates. The total of all cheques was \$19,596.40. Details of the cheques are listed below. Listed beside details of the cheques are the names of those candidates for whose benefit the cheques were drawn.

03/09/87	\$1000.00	Denis Pie & Assoc. (Pie)
17/11/87	\$1500.00	Denis Pie & Assoc. (Pie)
05/02/88	\$1134.00	Longbeach Publications (Gamin)
08/02/88	\$1980.00	Bundall Printing (Hughes)
11/02/88	\$2288.40	Bundall Printing (Bergin)
11/02/88	\$1500.00	Denis Pie & Assoc. (Pie)
25/02/88	\$ 728.00	Bundall Printing (Coomber)
25/02/88	\$1274.00	Bundall Printing (Coomber)
03/03/88	\$1992.00	Denis O'Connell Enterprises (O'Connell)
08/03/88	\$ 200.00	Mayoral Campaign GCCC (O'Connell)
10/03/88	\$2500.00	Denis Pie & Assoc. (Pie)
11/03/88	\$1500.00	Denis Pie & Assoc. (Pie)
17/03/88	\$2000.00	Denis Pie & Assoc. (Pie)

Sencariuc's examination revealed that in the Niecon Developments Pty Ltd ledger, only one of these cheques, that of 8 March 1988, payable to "*Mayoral Campaign - GCCC*" was recorded as a non-deductable donation. The remainder were recorded as "*printing*", "*advertising*", "*consultancies*" or "*valuations*", and were often committed to a particular development.

¹² In his letter dated 17 June 1991 forwarded to the Commission, Lewis claimed that the budgets for contributions to candidates for the 1985 and 1988 elections were exceeded by around 100 per cent. (See Exhibit No. 1515).

¹³ See Exhibit No. 925

5.2 THE EVIDENCE OF WILLIAM NIKIFORIDES AND THE RESPONSE BY THE CANDIDATES

William Nikiforides, who is a consultant to the corporate group, gave evidence that no payments were made to or on behalf of candidates in the 1982, 1985 or 1991 elections for the Gold Coast City Council. In 1988, however, he said the company had for the first time received requests for campaign donations and had responded to those requests.

William Nikiforides claimed that the \$10,000 said by Sencariuc to have been paid to Pie was not a political donation and neither was the money paid to O'Connell. He claimed that in late 1987, Pie approached him for a donation of \$10,000, but he was unwilling to give such a large amount for electoral expenses. He then claimed that Pie said to him that he (Pie) had given him advice as a valuer and property consultant over the years which he had not charged for, and he (Nikiforides) would now be charged for that advice. He claimed that he was quite annoyed that Pie would claim that he was owed money dating as far back as 1981 and 1982, but in any event said to Pie to send the bills to him and he would pay them. He stated Pie sent him a number of invoices. In cross-examination, William Nikiforides conceded that the invoices received from Pie related to advices:

- which were stale or dated;
- which totalled in value what was originally sought by Pie as a political donation, namely, \$10,000;
- which were only verbal and for which William Nikiforides had no documentary support.

Nikiforides also conceded that over the years since 1981, Pie had done other valuation work for him, for which Pie had been paid.

Pie said he could not recall any conversation where he had asked William Nikiforides for a \$10,000 contribution and, when this was not forthcoming, suggested the raising of invoices for past services rendered. He did, however, concede in cross-examination that it may have happened as this method of raising campaign funding may have been used in relation to another developer. He was, however, adamant that the invoices that were sent by his campaign manager to William Nikiforides did not relate to any professional work he had performed for him. Pie provided a statement of contributions¹⁴ received for his campaign, which included the several amounts totalling \$10,000 from the Niecon Group. Pie stated that they were treated as campaign funds, not payments to his valuing business.

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See Exhibit No. 948

In relation to the payment made to O'Connell, William Nikiforides recalled that the lesser of the two amounts paid to O'Connell, namely \$200, was for the purchase of two tickets for a campaign fundraising function. William Nikiforides said that the \$1,992 amount was for a consultancy by O'Connell in respect of a block of land in Ferry Avenue, for which O'Connell had acted as a real estate agent, although unlicensed. William Nikiforides could not provide a bill for the consultancy service, but claimed that there must have been one for it to have been paid.

O'Connell said the consultancy related to a proposed laundry project of O'Connell's and some associates in the Whitsunday area. He conceded that no laundry was ever built and that William Nikiforides had never joined the proposed syndicate. He claimed that he had an oral agreement with William Nikiforides to be paid for this work and that he had declared and paid tax on it as income, not as a donation.

In relation to the payment of \$1,134 to Longbeach Publications on behalf of Gamin, William Nikiforides stated that he had discussed with either Judy or Paul Gamin that he would assist them in their campaign. They asked whether he would pay for some advertising and he replied that he would. He then received an account and paid it. (Judy and Paul Gamin claimed that the amount paid by the Niecon Group was approximately \$2,500.)

In relation to the cheques paid to Bundall Printing on behalf of Hughes, Bergin and Coomber, William Nikiforides assumed that the three had attended a company lunch which had also been attended by a number of other Aldermen, the names of whom he could not remember. William Nikiforides stated that at this lunch it was suggested that it would be a good idea if the Aldermen would pool any funds that they received for advertising and printing and he took that to mean that he would donate moneys to a fund which then would be distributed amongst the Aldermen. He conceded that he may have said that the company was prepared to pay a reasonable amount up to a total of something like \$8,000. He acknowledged that the money said by Sencariuc to have been paid to the three candidates had been paid by Niecon Developments Pty Ltd as political donations.

As he had done in relation to the alleged payment by Lewis Land on his behalf, Trevor Coomber also denied being the beneficiary of any moneys from Niecon Developments Pty Ltd. Despite being shown the three Bundall Printing invoices prepared for him and paid with two cheques drawn on Niecon Developments Pty Ltd, Coomber denied that he had any knowledge of it and disputed the matter. Coomber was adamant that he paid the accounts at Bundall Printing and stated that he did not believe the payments by Niecon Developments Pty Ltd were for his accounts.

The principal of Bundall Printing, Heinz John Leonhart, gave evidence that his records revealed that three invoices for a total of \$1,859.20 were prepared for services performed for Coomber. These invoices were paid for with two cheques,