

OP GRAND

CMC Inquiry into the Gold Coast City Cour

EXHIBIT No. 341
Clare Newman CLERK

Submissions by Councillor Peter Young

I agree substantially with the submissions of Counsel Assisting and make the following submissions as supplementary thereof.

Power's evidence

The evidentiary material submitted by Power is considerably lacking in completeness or accuracy. I submit that this was a deliberate attempt to thwart the thoroughness of the CMC's investigations and in itself warrants serious consideration by the Commission. I submit the following as examples of these deficiencies and misleading or inaccurate statements.

List of documents.

Power tendered a list of 49 documents (Exhibit 323). All but three of these documents are emails, sent or received by Power at his private email or Gold Coast City Council email addresses, between the dates 11 December 2003 and 31 March 2004.

Of these, 31 were emails between himself and his media manager at Promedia. Despite the prolonged period of the operation of the 'Common Sense' endeavour and the leading role Power played **just fourteen** of Power's documents are correspondences between himself and persons involved in that scheme. The dates of these 14 correspondences range between 11 December 2003 and 26 March 2004. Some interesting omissions from Power's tendered documents that were tendered just by Morgan (Exhibit 135) for this same period of time include:

- 15 December 03, email Power to Morgan, list of attendees intended at Quadrant meeting on 16 December;
- 5 January 04, email from Morgan, re setting up a client for Quadrant work;
- 9 February 04, email Morgan to Power, re campaigns of Betts and Scott;
- 18 February 04, email Morgan to Power, re possible donor of \$10,000;

- 19 February 04, letter Power to Morgan, authorising payment for candidates and Quadrant;
- 9 March 04, email Morgan to Power, candidate expenditure spreadsheet summaries;
- 9 March 04, email Power to Morgan, reporting another donor's pledge to Pforr and Rowe;
- 18 March 04, email Power to Morgan, advising Morgan that the proposed meeting between potential donors and candidates should 'go ahead this is too important to let run off the rails now';
- 22 March 04, email Morgan to Power, re funding for Molhoek;
- 22 March 04, Power to Morgan, re funding for Molhoek.

Furthermore, whereas Power evidently continued to be involved in the solicitation of funds and in other aspects of the 'Common Sense' endeavour for many months *after* the March 2004 election, no records of his meetings or correspondence with interested parties subsequent to the election has been submitted. Examples of significance (subsequent to the election) include correspondences to Power that were tendered by Hickey (Exhibits 97, 100).

I submit Power has failed to comply with the terms of the Notice To Discover, which clearly stipulates the nature and extent of material required of him including written statements and documents. I submit Power was deliberately selective in the provision of documents to the Commission.

Sworn Statement

Power's statement dated 6th September 2005 (Exhibit 323) contains numerous falsehoods or misleading statements including:

- Claiming (para 20) that "a further fund or funds was established by Mr Lionel Barden", when of course Power knew that the fund supposedly controlled by Barden was in fact just the successor to the Power and Robbins Trust Fund and he knew that the funds were transferred from one entity to another (page 2406). He also claims "I believe that Mr Barden established the Lionel Barden Commonsense Campaign Fund, the Lionel Barden Commonsense Trust, the Common Sense

Trust, and the Lionel Barden Trust, but I have limited knowledge of these entities" whereas of course he knew only a single fund existed, with all funds remaining under his (and Robbins') direct control (page 2456, 2463 etc);

- Claiming (para 21) "I believe that Hickey Lawyers was the firm retained to set up and administer this Trust or Trusts" whereas Power knew this fact having actually organised that the trust under Hickey be established in his own name (page 2443);
- Claiming (para 25) that "Apart from a brief period when my name was used for the Power and Robbins Trust, I believe that my discussions with Tony Hickey were limited to efforts to source sufficient funds to support candidates." Power knows he had discussions with Hickey about sourcing funding, about the candidates to be supported (page 2444), and about the distribution of funds (page 2450). He knows that the period during which his name was associated with the trust was not brief, and more importantly Power knows that he directed the distribution of funds until at least early March 2004 (page 2456). He furthermore claims "although I believe I may have been told by one or more persons that they intended to make contributions to the fund, I do not believe that I was ever involved in the actual receipt of funds, nor do I recollect ever being notified by Hickey Lawyers or anyone else of the actual receipt of funds or the quantum of specific contributions made to the trust or what amounts were paid out to support the various individual candidates." This statement is a blatant mistruth. As has been demonstrated by evidence and testimony throughout the hearings, Power was constantly aware of the status of receipts, the identity of donors, the distribution of funds, and indeed took an active and prominent role in gathering those funds through personal contact, telephone calls, and letters or Council letterhead.

I submit Power has failed to comply with the terms of the Notice To Discover, which clearly stipulates the nature and extent of material required of him including written statements and documents. I submit Power's statement contains numerous misleading and false statements.

Fundraising function

Further to the analysis prepared by CMC officers in respect of Power's fundraising function at the Windaroo Country Club, it is submitted that at least \$30,000 of the \$58,000 raised was paid by six entities that each 'purchased' \$5,000 worth of tickets (40 tickets).

The election gift register does not include sums that relate to these payments. The payments are:

- 1 March. Bank record shows credit \$5125. Stub reveals no details related to \$5000 payment.
- 4 March. Bank record shows credit \$6000. Stub reveals \$5000 from 'streiwals p/l' (?)
- 4 March. Bank record shows credit \$8500. Stub reveals \$5000 'NAB bank cheque' – no identity recorded.
- 4 March. Bank record shows credit \$13150. Stub reveals \$5000 'insight asset' (?) and \$5000 'fraser scott'.
- 4 March. Bank record shows credit \$16875. Stub reveals \$5000 'property solutions'.
- 26 March. Bank record shows credit \$7000. Stub reveals \$5000 'asset 1 coomera'

it is my submission that these payments for tickets were made as a means to avoid proper registration of election gifts.

Conflicts of Interest - Section 229

It is my submission that the actions of Power in soliciting funds and support for candidates before and after the election are illegal, in contravention of Subsection 229(3) of the Local Government Act.

This subsection requires that *a councillor must ensure there is no conflict or possible conflict between the Councillor's private interests and the honest performance of the councillor's role of serving the public interest.*

While the other provisions of Section 229 state that a councillor must serve the public interest and that if a conflict arises between the public interest and the councillor's private interest or the private interest of another person, the councillor must give preference to the public interest, subsection 3 is the primary provision because it mandates councillors to ensure that no conflict or possible conflict arises in the first place.

In the circumstances which apply to Power, his private interest comprises:

- where he is soliciting funds for his own campaign, his re-election as a candidate, and
- where he is soliciting funds for other candidates, his private interest is the fact that outside his role as a councillor he is assisting/promoting the cause of a select group of potential future councillors in order to create a dominant faction, indeed a faction that he might lead.

(In relation to the second point above, Section 229(2)(b) specifically refers to the private interest of "another person" meaning that a councillor must give preference to the public interest not only when there is a conflict between his private interest and the public interest but also where there is a conflict between the private interest of "another person" and the public interest.)

Power was at the relevant times Chair of Council's Planning (North) Committee as well as Chair of Council's Planning Scheme Review Committee (which established the Planning Scheme that directs all future development of the City). He actively and successfully solicited campaign donations from developers (including by letter on Council stationary). The funds were not only for his own re-election campaign but also for a group of candidates who would receive financial, logistical and strategic support in order to achieve a majority. Those who provided the funds for the trust trusted Power to exercise his discretion as to who should receive the benefit. It was under his authority and at his direction that monies from the developer funded trust were disbursed in favour of candidates whom he and Robbins selected. There is every likelihood those candidates, if successful, might be beholden to Power as they recognised his predominant and dominating role and influence in acquiring those funds and distributing them.

As pointed out by Counsel Assisting (eg, page 85) it was fundamental to the success of the scheme to keep it hidden from the public. Power and the others involved knew that if their activities became public their chances of re-election or election would have been detrimentally affected. There can be no greater evidence of these councillors putting their own private interests ahead of the public interest.

But their deliberate efforts to keep the enterprise secret had a far more sinister objective. By not admitting their involvement, indeed by publicly denying knowledge of the fund, by failing to lodge a third party return in respect of the funds of which he was trustee, by suggesting to Lionel Barden that he should put in the third party return, all these actions had the consequence that it would be far more difficult to link the donations to the candidates and therefore almost impossible for the public to be aware that these councillors had conflicts of interest arising out of the donations made.

The test under Subsection 229(3) is simply – did or could Power's actions have created a conflict or possible conflict between his private interests and his obligation to serve the public interest? This is an objective test, not a subjective one. It does not depend on what Power thought or what he personally considered to be the case in his own mind. The test is to be assessed by reference to objective criteria. It does not have to be an actual conflict; it is sufficient if a "possible conflict" could arise.

If we are to consider even basic fundamentals, e.g.:

- Funds for Power's own campaign and for the trust were almost exclusively sourced from development interests;
- Power continued to solicit money for the trust fund from development interests *after* the election, by which time he had his group successfully elected, and was able to demonstrate he had a workable 'team' that could deliver the right outcomes;
- Development interests do not necessarily reflect the best interests of the community at large;
- There were both prior to and following the election issues that generated considerable public debate and conjecture, including the newly introduced infrastructure charges and proposed dramatic increases to the development intensity in localities such as Hope Island,

there can be no doubt that there was and is potential for conflict between Power's private interest and the public interest.

As such I submit that Power's involvement in the creation of the trust fund, his solicitation of funds, and his decisions as to how those funds were disbursed are a direct and blatant contravention of Section 229(3). It follows that the whole enterprise that he and Robbins embarked upon was beset fundamentally with illegality from its inception.

There can be no quarrel with the observation of Counsel Assisting at page 78 of his submissions that Power and Shepherd's view of the conflict of interest "reflect a fundamental lack of appreciation as to what constitutes a conflict of interest in connection with their work as councillors".

Furthermore, the Local Government Act directs that a Councillor cannot hold office until he or she makes a solemn declaration. Of all the legal requirements stipulated in the Act, it is most notable that the declaration of office (section 242(4A)) makes specific reference to just one section - section 229, viz:

The declaration of office for a councillor of another local government must be in the following form—

'I,, having been elected/appointed as a councillor of the Council of the City/Town/Shire of, declare that I will faithfully and impartially fulfil the duties of the office, including perform the role of a councillor under the *Local Government Act 1993*, section 229, to the best of my judgment and ability.'

Given the significance of section 229 and the scale of Power and Robbins activities, it is unbelievable that the relevant section does not provide a penalty appropriate to and commensurate with the scale of the contravention of Section 229(3) evident in this case. The absence of a penalty commensurate with the extent of the wrong does not however change the conclusion that the whole enterprise was fraught with fundamental illegality from its inception.

Bribery – Section 385

In respect of bribery the submissions of Counsel Assisting are confined to a consideration as to whether any candidate was influenced or affected in their decision to nominate for election (page 87 of Counsel Assisting's submissions, para 6). However section 385 is not confined in its operation to nominations for election. While nominations are specifically

mentioned in para (b) of subsection (1) of 385, and para (a) refers to "the way in which a person votes at an election", para (c) of 385(1) encompasses a far broader range of activities.

In my submission Power has committed a breach of subsection 385(2) in terms of para (c) of Section 385(1).

Subsection 385(2) states that a person "must not ask for or receive (or offer or agree to ask for or receive) property or a benefit of any kind (whether for the person or someone else) on the understanding that the person's election conduct will be influenced or affected". "Election conduct" is defined as including "the person's support of or opposition to a candidate ... at an election".

To prove a contravention of 385(2) by Power it must be established that:

1. Power asked for property or benefit of some kind.
2. It was asked for himself or someone else.
3. The ask was "on the understanding" that Power's support of or opposition to a candidate would be influenced or affected.

As set out in the submissions of Counsel Assisting, Power clearly asked for donations in satisfaction of (1) above. Also it was clear to those involved in the solicitation process (Ray, Hickey, the representatives of the several Chambers of Commerce with whom Power met, and various developers such as Dutton, Fish and others) that the donations were for the purpose of benefiting various specific candidates selected by Power. That satisfies (2) above.

The third requirement that there be an "understanding that the person's election conduct would be influenced or affected" is satisfied because:

- As stated in paras 12, 19 and 24 of his sworn statement dated 6th September 2004, Power clearly and obviously intended that the funds received as a result of his solicitations would be used to further the electoral prospects of certain candidates which he played a principal role in selecting. Power's direction/approval of the

disbursement of the funds for this purpose was the manifestation of this intention.

- Had the monies not been solicited and the donations made, Power would not have been in a position to allocate the funds in this manner; his role would have been confined to mentoring and assisting and advising such candidates. By virtue of his solicitation of the funds he was able to provide a further substantial dimension to his support for those candidates so his election conduct (his support of the selected candidates) was thereby "influenced or affected".
- Even if this was not an understanding that could be attributed to Power, others involved in the funds solicitation activities were of the clear opinion that the purpose of the enterprise was to seek a majority on Council by supporting selected candidates and opposing certain others (for example, Ray and Hickey). Although he sought to resile from it, Power's e-mail to Bill Roche (exhibit 181) evidences a similar intention ("certainty in the decision making process" - see the submissions of Counsel Assisting at page 77). In other words, the requisite understanding was held by others involved in the solicitation process. That they had this understanding is sufficient for the purposes of Section 385 because the section does not require that Power necessarily had to have the understanding, nor does it require that the understanding had to be common between Power and the donors, ie it is sufficient for the purposes of 385(2) if the persons from whom Power sought the donations had the relevant understanding.
- In my submission it would also be sufficient if this understanding was one that was reasonably open to them in the circumstances.
- Further, it would be relevant that Power had not told them or taken other steps to disabuse them of holding that understanding.
- 385(2) specifically encompasses the situation where the money being requested is ultimately directed to third persons.
- The donors Power solicited and those who donated were nearly all developers with current or likely prospective interests as developers which would in some way or another require Council involvement or determination.
- At the relevant time Power was Chairman of the Planning (North) Committee and Planning Scheme Review Committee and in the minds of those he solicited thereby likely to have some considerable influence over development matters of theirs dealt with by Council.

- Power was clearly leading the 'Common Sense' endeavour and in terms of candidate selection and determination of the level of support it would have been clear in the minds of those solicited that he was thereby likely to have some influence over the candidates should they be elected;
- Power's mantra to the prospective donors was that they needed to "put their money where their mouth was" (Transcript 2393).

As set out in the previous section on Conflicts of Interest, Power's actions in soliciting funds were in breach of Section 229(3) so it can be fairly and factually said that his requests for money were to further a corruption of his duties as a councillor. As such his actions qualify as briborous conduct within the Macquarie Dictionary definition of bribe ("any valuable consideration given or promised for corrupt behaviour in the performance of official or public duty") in the context of "corrupt" meaning dishonest. Power's strenuous public denials of his involvement in the fundraising and final allocation, and his unconvincing attempts in the CMC hearing to explain away those denials as justifiable, establish his dishonesty and thereby prove the corrupt nature of his actions.

Power's funds solicitation can be characterised as follows:

Power in effect said to his targets "put some money at my disposal and I will make sure the money is spent to support specific selected candidates whom I consider to be sympathetic to "our" cause".

As established in the Ray e-mails and Hickey's evidence the "cause" was wresting control of the Council. It was a common cause, one shared by Power (and Robbins) with the donors and in every sense therefore an "understanding". But for the solicitation efforts of Power, the extensive financial support that became available to the "like minded candidates" which Power selected would not have been forthcoming.

The evidence shows that the developers solicited saw an opportunity for the development industry to get control of the Council by a group which they (the developers) must have believed, because they were instrumental in getting them elected, would be sympathetic to their views and cause, all legitimised by a sitting senior councillor. In the language of the Daly Report into the Tweed election, the action of Power and the developer donors show

how one person, or group, could "buy" a council. There were no policies or set of principles expressed by Power as the basis for his "like-minded" personally selected team, just a bold intent to gain control.

It needs to be remembered that those solicited would have no logical or rational reason to make any donation but for two factors. The first is that they were being requested to make the donation by the very person who at the time, and in reasonable likelihood in the future as well, would be discharging a senior planning committee role and thereby in a position of significant influence over applications of the developer donors to Council. The second is that, but for their activities as developers and their development interests in the Gold Coast region, there was absolutely no reason for them to make any donation. Importantly, Power obviously knew this. These two factors are what make Power's activities highly objectionable. He was using his position and influence over planning matters within the Council to extract sums of money from those whom he knew were most directly affected by the performance of his public duties as a councillor. Not only was he putting himself in breach of his duty under 229(3) to avoid the conflicts that this conduct created, but he was clearly and unambiguously using his position in Council to further his own personal interests, ie his re-election and personal standing within the ranks of councillors. These activities are a clearly dishonest performance of public duties by Power as they put Power's personal interests above the public interest which he is by law required to serve ahead of his private interests. Taken together these matters establish the briborous nature of Power's activities.

Counsel Assisting at page 87 in his submissions states that an interpretation of Section 385 that prohibits "conventional democratic conduct" should be rejected. It could not be contended that Power's activities were "conventional democratic conduct". To use the terminology of Counsel Assisting at page 7 of his submissions, "these were unusual roles for Power to undertake". In the context that the group disclosure obligations of the Local Government Act were ignored and where, as has been established, there was a deliberate deception of the public about the existence and operation of the relevant group by Power and others, it must be concluded that the transparency of the election process which the various sections of the Local Government Act canvassed by Counsel Assisting are intended to achieve, was corrupted. In such circumstances it would be appropriate to find a breach of Section 385 without fear of the "absurd conclusions" mentioned by Counsel

Assisting at page 87 of his submissions.