



INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

MEDIA RELEASE

Attention: News Director/Chief of Staff/Program Producer

9/07/02

Six found corrupt in Rockdale investigation – ICAC refers to DPP to consider prosecution

The Independent Commission Against Corruption (ICAC) has found six men, including two councillors engaged in corrupt conduct and will ask the Director of Public Prosecution to consider laying criminal charges.

In a report released today, '*Report into corrupt conduct associated with development proposals at Rockdale City Council*', ICAC Commissioner Irene Moss AO made findings that councillors Andrew Smyrnis and Adam McCormick; developers Con (aka Costa) Chartofilis and Terry Andriotakis, and 'go betweens' Manuel Limberis and Tony Retsos engaged in corrupt conduct.

The Commissioner also expressed the opinion that the Director of Public Prosecution gives consideration to charging the men with bribery offences and giving false and misleading evidence under the ICAC Act.

During the course of the investigation the Government introduced legislation to enable the removal of councillors from office following an ICAC recommendation.

The Commissioner has recommended the suspension of Cr Adam McCormick from civic office, with a view to dismissal for serious corrupt conduct.

No such recommendation was made in respect of Councillor Symrnis, as he resigned from Rockdale City Council during the course of the ICAC hearings.

The Commissioner also said evidence did not indicate the level of systemic corruption within Rockdale City Council (RCC) to warrant an ICAC recommendation for its dismissal, the appointment of an environmental planning administrator or that development consents or modifications subject to this investigation be suspended.

"There was also no evidence that any staff member of council acted other than professionally and properly in the discharge of their duties and no suggestion that any staff member had acted corruptly," Commissioner Moss said.

A number of issues have been canvassed in the report for further reform of development control systems, including conflict of interest, caucus voting and the need for more transparency of political donations.

"I wish to raise these issues to stimulate discussion before settling on further recommendations for reform," Commissioner Moss said.

"Whilst advocating for more transparency of political donations, a bipartisan approach at the State level is necessary to adequately review the way political donations operate in the State, specifically at a local government level.

"Any reform to the system of making political donations should embrace principles of maximising openness, transparency and accountability through disclosure and scrutiny," she said.

In the coming months the ICAC will release a series of recommendations for further statutory reform to planning and development, and issue guidelines for councils on how to address corruption risks.

Full report is available on the ICAC website – www.icac.nsw.gov.au

...ENDS

The ICAC's primary functions under the Independent Commission Against Corruption Act 1988, are to investigate and prevent corruption in the NSW public sector, which includes government departments, statutory authorities, local councils and public officials; including politicians and the judiciary.

L21, 133 Castlereagh
Street, Sydney 2001.
Telephone 02 8281 5999
Facsimile 02 9264 5364
www.icac.nsw.gov.au

FACT SHEET 1. – FINDINGS AND RECOMMENDATIONS

FINDINGS

Findings are made that Councillor Andrew Smyrnis, Councillor Adam McCormick, Manuel Limberis, Tony Retsos, Con (aka Costa) Chartofilis and Terry Andriotakis engaged in corrupt conduct.

RECOMMENDATIONS

Recommendations are made that the Director of Public Prosecutions give consideration to the prosecution of:

1. ANDREW SMYRNIS

Soliciting or receiving (or agreeing to receive) a corrupt reward or benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery and giving false and misleading evidence contrary to s.87 of the *ICAC Act 1988*.

2. CR ADAM MCCORMICK

Soliciting (or agreeing to receive) a corrupt reward or benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery and giving false and misleading evidence contrary to s.87 of the *ICAC Act 1988*.

3. TERRY ANDRIOTAKIS

Offering a corrupt reward or benefit contrary to s.249B (2) of the *Crimes Act 1900* or conspiracy to commit bribery.

4. CON CHARTOFILLIS

Giving a corrupt reward or benefit contrary to s.249B (2) of the *Crimes Act 1900* or conspiracy to commit bribery and giving false and misleading evidence contrary to s.87 of the *ICAC Act 1988*.

5. MANUEL LIMBERIS

Aiding, abetting and procuring an offence under Part 4A of the *Crimes Act 1900* contrary to s.249F of the *Crimes Act 1900*, or conspiracy to commit bribery and giving false and misleading evidence contrary to s.87 of the *ICAC Act 1988*.

FACT SHEET 1. CNT – FINDINGS AND RECOMMENDATIONS

6. TONY RETSOS

Aiding, abetting and procuring an offence under Part 4A of the *Crimes Act 1900* contrary to s.249F of the *Crimes Act 1900*, or conspiracy to commit bribery and giving false and misleading evidence contrary to s.87 of the *ICAC Act 1988*.

Commissioner Moss recommends that the Minister for Local Government consider the suspension of Councillor Adam McCormick from civic office under s440C of the *Local Government Act 1993* with a view to his dismissal for serious corrupt conduct.

No such recommendation is made in respect of Andrew Symrnis as he resigned from RCC during the course of the ICAC hearings.

FACT SHEET 2. – 2-4 PARKER STREET, ROCKDALE

A DA for site 2-4 Parker Street, Rockdale was submitted to Rockdale City Council (RCC) on 11 June 1999 for an eight storey mixed residential and commercial development. RCC issued a Notice of Determination refusing consent in December 1999. The developer Robert Britt unsuccessfully appealed to the Land and Environment Court. A modified DA was submitted to RCC on 6 November 2000. RCC approved a DA for a four storey mixed residential and commercial development in January 2001.

FINDINGS OF FACT –

Based on the evidence before her, Commissioner Moss has made the following findings of fact:

1. On 10 October 2000 Manuel Limberis, at the request of Andrew Smyrnis, met with Robert Britt. During the meeting he told Britt that in return for him lobbying Andrew Smyrnis to obtain support for Britt's DA for 2-4 Parker Street, Rockdale, it would cost Britt \$150,000 to obtain approval for a five level development and \$90,000 for a four level development.
2. Limberis sought money from Britt on behalf of Smyrnis knowing that in return Smyrnis would give favourable consideration as an RCC councillor to Britt's DA for 2-4 Parker Street, Rockdale.
3. On his own admission, Smyrnis instructed Limberis to contact Britt with the intention of seeking money from Britt in return for Smyrnis giving favourable consideration as an RCC councillor to Britt's DA for 2-4 Parker Street, Rockdale.
4. No monies were paid or agreed to be paid by Britt to Limberis or Smyrnis.

CORRUPT CONDUCT

In relation to this development, Commissioner Moss finds that both Limberis and Smyrnis engaged in corrupt conduct in relation to seeking monies in return for Smyrnis giving favourable consideration to Britt's DA.

FACT SHEET 2. – 2-4 PARKER STREET, ROCKDALE (CONTINUED)

RECOMMENDATIONS

The finding of corrupt conduct in relation to this matter is largely based on evidence given by the principals under objection. Generally, this objection makes the evidence inadmissible in further criminal proceedings (other than in relation to offences against the ICAC Act), and consequently there appears to be insufficient admissible evidence in relation to this matter. Accordingly, Commissioner Moss does not make any recommendation that consideration be given to the prosecution of Smyrnis or Limberis in relation to the soliciting of money from Britt.

Commissioner Moss has formed the opinion that the DPP should give consideration to the prosecution of Smyrnis and Limberis for offences of giving false or misleading evidence contrary to s.87 of the *ICAC Act* in relation to their initial denials that Limberis approached Britt on behalf of Smyrnis for the purpose of soliciting a bribe.

The cooperation of Smyrnis and Limberis will be brought to the attention of the DPP at the time the relevant evidence is referred for consideration.

FACT SHEET 3. – 2-4 FREDERICK STREET, ROCKDALE

A DA was submitted to Rockdale City Council (RCC) on 16 November 2001 for redevelopment of property at 2-4 Frederick Street Rockdale. The site is owned by Con (aka Costa) Chartofilis who operates a tailor's business known as Meraklis Tailors from this site. The DA was for an eight storey mixed commercial and residential development.

FINDINGS OF FACT –

Based on the evidence and her assessment of that evidence, Commissioner Moss has made the following findings of fact:

1. In or about July/August 2001 Manuel Limberis and Con Chartofilis entered into an agreement whereby Chartofilis agreed to pay to Limberis \$40,000 if he obtained approval for a four level development at 2-4 Frederick Street, Rockdale, and an additional \$70,000 per floor for each additional floor.
2. This agreement was a sham to disguise the payment of money by Chartofilis to Andrew Smyrnis, a RCC councillor, in return for Smyrnis giving favourable consideration to the DA and organising support from other councillors for the DA.
3. Limberis sought and obtained money from Chartofilis on behalf of Smyrnis knowing that the purpose of the money was to influence Smyrnis in relation to Chartofilis' DA and for Smyrnis to organise support from other councillors for the DA.
4. Smyrnis instructed Limberis to deal with Chartofilis with the intention of seeking money from Chartofilis in return for giving favourable consideration to Chartofilis' DA and organising support from other councillors for the DA.
5. Chartofilis agreed to pay and paid money to Limberis knowing that the money would ultimately be paid to Smyrnis in return for Smyrnis giving favourable consideration to his DA and assisting his DA to get RCC approval.
6. Between 28 August 2001 and 14 January 2002 Chartofilis made payments to Limberis, through Limberis' company, Strategies and Management Pty Ltd, totalling \$54,500. Of this sum some \$49,500 was transferred to Smyrnis through his company A & S Smyrnis Pty Ltd. The balance was retained by Limberis.

FACT SHEET 3. CNT – 2-4 FREDERICK STREET, ROCKDALE

7. Smyrnis agreed with Councillor Adam McCormick to pay McCormick \$70,000 in return for McCormick supporting the Chartofillis DA and obtaining the support of other ALP RCC councillors. Later, McCormick sought to renegotiate this agreement for the purpose of obtaining a larger sum of money.
8. No monies were paid by Smyrnis to McCormick in relation to the Chartofillis DA.

CORRUPT CONDUCT

In respect of the conduct associated with this development application, Commissioner Moss has found that each of Smyrnis, McCormick, Chartofillis and Limberis engaged in corrupt conduct in relation to the giving and receiving (or agreeing to give or receive) monies as an inducement or reward in return for Smyrnis and McCormick showing favour to Chartofillis' DA and obtaining RCC councillor support for the DA.

RECOMMENDATION

In these circumstances, Commissioner Moss has recommended that the DPP give consideration to prosecuting:

- (a) Andrew Smyrnis in relation to the soliciting and receiving of a corrupt reward or benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery.
- (b) Adam McCormick in relation to the agreeing to receive a corrupt reward or benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery.
- (c) Con Chartofillis in relation to the offering or giving of a corrupt reward or benefit contrary to s.249B (2) of the *Crimes Act 1900* or conspiracy to commit bribery.
- (d) Manuel Limberis in relation to aiding, abetting and procuring the commission of an offence under Part 4A of the *Crimes Act 1900* contrary to s.249F of the *Crimes Act 1900* or conspiracy to commit bribery.

FACT SHEET 3. CNT – 2-4 FREDERICK STREET, ROCKDALE

Commissioner Moss is also of the opinion that the DPP should give consideration to the prosecution of Smyrnis, Limberis, Chartofillis and McCormick for offences of giving false or misleading evidence contrary to s.87 of the *ICAC Act*.

In relation to Smyrnis, Limberis and Chartofillis the offences would relate to their denials that Limberis was obtaining money from Chartofillis on behalf of Smyrnis for the purposes of soliciting a bribe.

In relation to McCormick, the relevant evidence is his denials that he was to receive any monies from Chartofillis or that he was aware of the nature of the corrupt agreement with Chartofillis.

RECOMMENDATION FOR SUSPENSION OF McCORMICK

Councillor Adam McCormick remains a councillor of RCC. The conduct in which he has been found to have engaged constitutes serious corrupt conduct for the purposes of the *Local Government Act*.

In these circumstances Commissioner Moss has recommended that the Minister for Local Government give consideration to the suspension of Councillor Adam McCormick from civic office, pursuant to s.440C of the *Local Government Act*, with a view to his dismissal from that office by the Governor.

FACT SHEET 4. – SITE 1

A DA was lodged by R1 with Rockdale City Council (RCC) on 2 November 2000, to build 18 units at Site 1. To be approved, the DA would require RCC to rezone the site. Ultimately, RCC refused to rezone due to potentially unacceptable aircraft noise impacts from Sydney Airport.

FINDINGS OF FACT –

Based on the evidence before her and following assessment of that evidence, Commissioner Moss has made the following findings of fact:

1. On 17 October 2001 Anthony Retsos, at the request of Andrew Smyrnis, met with R1. During the meeting he sought from R1 a payment of \$90,000 and an additional payment of \$150,000 to be paid to Retsos and held by him, in trust, until such time as R1's DA for Site 1 was approved by RCC.
2. Retsos sought this money from R1 on behalf of Smyrnis knowing that in return Smyrnis would give favourable consideration as an RCC councillor to R1's DA for Site 1.
3. On his own admission, Smyrnis instructed Retsos to contact R1 with the intention of seeking money from R1 in return for Smyrnis giving favourable consideration as an RCC councillor to R1's DA for Site 1.
4. On 3 December 2001 Retsos spoke with R1, on behalf of Smyrnis, and told R1 the amount of money required was now \$250,000.
5. At all times Retsos understood that in return for dealing with R1 on behalf of Smyrnis he could expect to receive a payment of money of between at least \$20,000-\$25,000.
6. Smyrnis agreed with Councillor Adam McCormick to pay McCormick \$70,000 in return for McCormick supporting R1's DA for Site 1, and obtaining the support of other ALP RCC councillors.
7. No monies were paid by R1 to Retsos, Smyrnis or McCormick, either directly or indirectly.

FACT SHEET 4. CNT – SITE 1

CORRUPT CONDUCT

In respect of the conduct associated with this development proposal, Commissioner Moss has found that Smyrnis, McCormick and Retsos engaged in corrupt conduct in relation to seeking monies from R1 in return for Smyrnis and McCormick giving favourable consideration to his DA for Site 1.

RECOMMENDATION

Commissioner Moss has recommended that the DPP give consideration to prosecuting:

- (a) Andrew Smyrnis in relation to the soliciting of a corrupt reward or benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery.
- (b) Anthony Retsos in relation to aiding, abetting and procuring the commission of an offence under Part 4A of the *Crimes Act 1900* (the soliciting of a corrupt reward or benefit) contrary to s.249F of the *Crimes Act 1900*, or conspiracy to commit bribery.
- (c) Adam McCormick in relation to agreeing to receive a corrupt reward or benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery.

Commissioner Moss is also of the opinion that the DPP should give consideration to the prosecution of Smyrnis, Retsos and McCormick for offences of giving false or misleading evidence contrary to s.87 of the *ICAC Act*.

In relation to Smyrnis and Retsos the relevant evidence is their initial denials that Retsos approached R1 on behalf of Smyrnis for the purpose of soliciting a bribe.

In relation to McCormick the relevant evidence is his denial of having an arrangement with Smyrnis whereby he could expect to receive money in return for supporting R1's DA and arranging for other ALP councillors to support the DA.

FACT SHEET 4. CNT – SITE 1

RECOMMENDATION FOR SUSPENSION OF McCORMICK

Councillor Adam McCormick remains a councillor of RCC. The conduct in which he has been found to have engaged constitutes serious corrupt conduct for the purposes of the *Local Government Act*.

In these circumstances Commissioner Moss has recommended that the Minister for Local Government give consideration to the suspension of Councillor Adam McCormick from civic office, pursuant to s.440C of the *Local Government Act*, with a view to his dismissal from that office by the Governor.

FACT SHEET 5. – LUSTY STREET, ARNCLIFFE

Terry Andriotakis is a director of a company that is part of a group that has a Development Control Plan (DCP) proposal before Rockdale City Council in relation to a property at Lusty Street, Arncliffe.

FINDINGS OF FACT –

Based on the evidence and her assessment of that evidence, Commissioner Moss makes the following findings of fact:

1. On 31 January 2002 and subsequently on 18 March 2002 Terry Andriotakis offered to provide benefits to Councillor Andrew Smyrnis by way of free advice in relation to property deals (which Andriotakis said was worth a lot of money), referring potential customers to a mortgage business in which Smyrnis said he was involved, and assisting Smyrnis in joint ventures, including the possibility of Smyrnis becoming a beneficiary in a development. These offers were made by Andriotakis and accepted by Smyrnis with the intention that Smyrnis would, in his capacity as a councillor of RCC, lobby other RCC councillors to ensure that Andriotakis' DCP for Lusty Street, Arncliffe, was approved by RCC as soon as possible.
2. Terry Andriotakis was anxious to get RCC approval for his DCP as soon as possible in order to avoid the risk of potential objections from a neighbouring development and to maintain his work crew in work.
3. Smyrnis agreed to the offers made by Andriotakis both in his conversation of 31 January 2002 and in a subsequent conversation on 18 March 2002.

CORRUPT CONDUCT

In respect of the conduct associated with this development proposal, Commissioner Moss finds that both Terry Andriotakis and Smyrnis engaged in corrupt conduct in relation to the offering and agreeing to accept benefits to be provided to Smyrnis by Andriotakis in return for Smyrnis using his position as an RCC councillor to assist Andriotakis get his DCP approved by RCC in a timely manner.

FACT SHEET 5. CNT – LUSTY STREET, ARNCLIFEE

RECOMMENDATION

Commissioner Moss recommends that the DPP give consideration to prosecuting:

- (a) Terry Andriotakis in relation to offering a corrupt reward or benefit contrary to s.249B (2) of the *Crimes Act 1900*, or conspiracy to commit bribery, and
- (b) Andrew Smyrnis in relation to agreeing to receive a corrupt benefit contrary to s.249B (1) of the *Crimes Act 1900* or conspiracy to commit bribery.