

**Corruption Prevention Network Conference**  
**'Ethics Overboard – No Apologies'**  
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**Rockdale Council Developments**  
***Investigation Issues and Implications for Councils***

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*'Unfortunately, many police organisations around the world have only ever undergone improvement and reform following some external pressure or review. Such a process is known as the 'Scandal Reform Cycle'. A police organisation is shamed through public exposure of corruption and/or maladministration; significant reform is introduced; a period of quiet follows; and then the next scandal is uncovered' [Robinette 1991].*

My presentation today is not at all about policing. The words of Robinette have as much relevance today as they did 11 years ago in the public sector. The events surrounding the exposures suffered in the recent investigation of Rockdale Council clearly show that to be the case. Whilst Rockdale Council could have done more, it cannot bear the blame solely. What happened there could easily have happened elsewhere in New South Wales.

In organisations globally dealing with scandals, they re-invent the wheel, make dramatic system changes and draw false assumptions likened to an Australian idiom "*She'll be alright mate, it's no longer a problem, they fixed it, its gone away*" and more often than not consideration of the fallibility of human nature is lost. A similar theme prevailed post the Wood Royal Commission into the NSW Police with some dire consequences. It seems the same occurred in local government in the spectrum of integrity and will no doubt continue in some way or another, unless there are some changes. For those of us in the oversight area, the work we do can be likened to *'painting the harbour bridge'* – we finish one coat, turn around and start the next one. Local government has to understand that its job in building and maintaining integrity is also a task with *no beginning or end*.

A number of inquiries and much work had occurred for over a decade in regards to issues of integrity in local government, resulting in systems, process and legislation changes. Rockdale illustrates rather graphically that such frameworks alone do not control the behaviour of councillors and the political pressures and influences that frequently occur in development applications.

The basic tenant of the ICAC tale in this matter is that it was not that the systems necessarily failed; rather it was the fallible human element that broke them. This is despite the legislative standards imposed on councillors and the local council Code of Conduct providing for decisions to be made by them *'solely in the terms of public interest. We will not so do in order to gain financial or other benefits for ourselves or our family'*. How and why that occurred is a necessary implication for the future.

## **The Devil in Developments - a historical perspective.**

In 1991 ICAC issued a public report<sup>1</sup> on an investigation which revealed a method of business that suggested corruption concerning people seeking improperly to influence the use and development of land in the North Coast for financial gain. This included suborning, soliciting and offering of payments to public officials, at times monies were paid. At that time recommendations were made for a review of the law and practices relating to donations to political parties, and the ill-defined boundaries of propriety that surround the equally ill-defined business of lobbying.

Assistant Commissioner Adrian Roden, in the same inquiry observed rather fortuitously, in regards to political donations:

*‘But if there is a form of payment that can be made, and accepted, without fear from the law or from public opinion, then there is an obvious threat to fair and honest government. There is a risk that if nothing is done now to address the problem, donations to political parties will fill that role’*

In Mr Roden’s comments there are some distinct parallels with the exposures of the Rockdale Council and he would be justified in saying “I told you so”.

Since then the Commission has received a variety of complaints and conducted a number of investigations where like issues have been raised, some of which have resulted in public reports and recommendations for improvement and dealing with conflicts of interest<sup>2</sup>.

In 1997, the State Government rationalised the legislative control of development in NSW by placing all stages and aspects of developments within the ambit of the *Environmental Planning and Assessment Act 1979*. Prior to that the erection of buildings and structures was controlled by local government legislation. Whilst some applications maybe dealt with by the State Government the great majority of applications are dealt with and determined by councils - it was these class of applications, including those made by councils themselves, that concerned the ICAC it seems over a decade or so.

## **Corruption Prevention - Taking the devil out of Development:**

During 2000-2001 the Commission carried out extensive research into corruption risks in local government. In June 2001 a research report *‘Corruption resistance strategies – researching risks in local government’* identified corruption in development applications as one of the four major corruption risks facing local councils. The first *‘Taking the devil out of development’* discussion paper was released in November 2001. It explored the corruption risks in administration of development applications by local councils and submissions sought from the industry. ICAC identified three areas of specific corruption risk:

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<sup>1</sup> *‘Report on Investigation into North Coast of Land Development’*, Independent Commission Against Corruption, July 1991

<sup>2</sup> *‘Report on investigation concerning Neal and Mochaski’* 1991; *‘Report on investigations relating to Stait, Dainford and Waverley Council’* 1991; *‘Report on investigations into the Planning and Building Department of South Sydney Council’* 1991; *‘Report on investigation into the conduct of Peter Blackmore’*, 1992; *‘Report on investigation into local government, public duties and conflict of interest’* 1995; *Report on conduct of George Bertocello of Lane Cove Council’* 1997; *‘Under careful consideration: Key issues for Local Government’* 1997

- *Putting People in the Picture* - a need for greater pro-activity by councils to inform applicants or objectors about the council's own ethical standards and what they expect from applicants and objectors and increase knowledge about the assessment system and development proposals.
- *Systems issues* – separation of roles and responsibilities in various stages of development negotiation, assessment and determination
- *Challenges faced by councillors* – the form pressures applied when dealing with development applications, including offers of gifts, benefits and bribes or other lobbying techniques; the complexity of the many hats worn by councillors.

At around the same time as this research work was occurring the ICAC began investigating whether corrupt conduct had occurred in the Rockdale Council in the administration of development applications. By 1 May 2002, after months of intensive and successful investigation, public hearings were ready to commence. Because of the inquiry, and the submissions received in regards to the initial discussion paper, ICAC decided to issue an interim report and call for further submissions. The second paper was released in late May 2002.

### **Corruption exposed - a trophy or an aberration**

In July 2002 the Independent Commission Against Corruption released its public report<sup>3</sup> into the Operation Trophy investigation into the conduct of the certain Rockdale councillors, developers and others in the Rockdale City local government area involved in development applications. In general terms it was found that two councillors, two 'go-betweens' and two developers had acted corruptly in regards to development applications and had also given false and misleading evidence in hearings at the Commission during the investigation. ICAC has recommended that the DPP consider criminal prosecutions against those six people.

Evidence before the Commission established that the corrupt conduct within the Council was limited to the two councillors. A range of other systems issues were also raised by the Commission and encouraged councils to do more to help prevent corruption in managing development applications and made a range of suggestions<sup>4</sup>.

The system, legislation and the Code of Conduct, was in place although it was apparent that at its highest it only attracted tacit regard in a general sense. In the case of two councillors it would suggested it suffered no regard whatsoever. This again demonstrates the paucity and the false economy of assumptions occurring from systems 'presence', ultimately being poorly implemented and managed eternally.

ICAC is pleased that, in hindsight, our work exposing the 'devil in development' coincided with an investigation that underscored many of the risks we identified. But what Rockdale has done is allowed us to shift the emphasis of our corruption prevention project. The project at its conception dealt with risks at an administrative level and risks affecting councillors. But we are now giving more emphasis to the latter – corruption risks inherent in the role of councillors in the development assessment process. In this world of dollars, discretion and decisions, they are the ultimate decision makers. So we have now added to the range of

<sup>3</sup> 'Report into corrupt conduct associated with development proposals at Rockdale City Council', ICAC, July 2002

<sup>4</sup> 'Report into corrupt conduct associated with development proposals at Rockdale City Council', ICAC, July 2002 pp 60-64

issues needing attention. Included are political donations, binding caucus votes on development applications, conflicts of interest and how councillors influence staff.

### **Catching up with the devil at Rockdale**

The first indispensable element of any investigation into crime and corruption must be 'casting the net wide' and to the Commission that was a challenging one. In so much the same statement may be applied to any organisation in protecting its broader integrity. The solicitation of bribes is, by nature, a secretive process. In particular, where each party consents to the corrupt transaction, it is unlikely that evidence of corrupt nature will be readily available. It was desirable that the identity of all those engaging in such corrupt activities be established as well as the full extent of their activities and the evidence that will provide for a successful remedy. To this end ICAC was exceedingly successful by the generation of overwhelming weight of evidence gathered through a carefully planned and well-executed investigation. This investigation showcased our investigative capacity – in terms of people, methodology and technology.

ICAC made full and extensive use of a number of its powers. In particular, it was necessary to make extensive use of covert electronic surveillance.

This involved the extensive use of telephone interceptions resulting from the issue of 34 warrants, listening devices resulting from the issue of 53 warrants, deployment of physical surveillance, execution of search warrants, use of the coercive powers of the Commissioner through the service of notices to produce, private and public hearings. Being able to use these powers is not a simple process - it involves a lot of preliminary investigative work in order to develop the evidence to support authority approval.

The Commission pioneered the successful interception of Short Message Services [SMS] text messages in partnership with another agency and in the same relationship broadened its technological capacity. These improvements provided many opportunities to capture the extensive use of technological communications by those corruptly concerned. These people used codes and at other times communicated in a foreign language. Breaking the codes took some effort and time. Financial investigators and computer forensics, new additions to the Commission's skill set, were also used effectively to identify money trails and locate electronically stored data and evidence.

All of this was resource intensive and involved a contribution of many of the staff at the Commission and allowed the Commission to successfully compete against the 'secretive process' employed by those exposed in corrupt conduct and to provide the public with a greater insight into the behaviour involved. A number of other law enforcement agencies provided logistical assistance during the investigation. However, without the technological capacity it is highly probable that the corruption exposed to the extent it was would not have been so successful.

### **Challenges to the Management of the Investigation**

At various times during the investigation the ICAC had some challenges to confront in regards to the ongoing development applications subject to concern and subject to consideration by council at the same time. In that context the risks to the investigation had to be balanced against the community interests.

We were involved in tracking the progress of a number of development applications through the council. As part of our 'Taking the Devil' project, we had raised the question whether a corrupt developer should lose the benefit of their corruptly obtained development consent. What the investigation showed was that this issue was extremely important.

There is no question that the Commission, from an evidence gathering aspect, would have preferred the development applications to go forward. But this would risk the community of Rockdale having to endure a development by corrupt means. The Commission's advice was that there were real doubts over whether this consent could be set aside on the law as it stood. This single issue played a vital role in determining when the investigation moved from its overt to its covert phase. As I will discuss below, this issue has now been addressed through changes to the law.

Another challenge was to 'sort the hay from the chaff'. Local government is often a highly political environment. Persons of interest spent long periods of each day talking to each other and other parties about development issues.

There were significant challenges to us in being able to quickly identify and profile development sites and to determine if they were sites of interest. We were able to use information from Council's website, some inside information from sources within the Council and our own knowledge of local government in identifying those developments where there was a real risk that corrupt conduct was involved.

### **What are the resulting future implications for Councils?**

As indicated earlier, while Rockdale Council and its staff have had to weather the public revelations emerging from the investigation they are not alone in having to deal with corruption risks. For what happened there could well have happened at any other Council and could happen again in the future, in the absence of due diligence.

In making recommendations to deal with these risks, ICAC emphasises that meaningful reform will come about with the contribution and support of such stakeholders, including the State Government, local councils, their communities, business and professional associations.

There are some pressing issues that need further reform of the Development Control Systems, including identifying and managing conflicts of interest, caucus voting on developments, and greater transparency and scrutiny of political donations.

Whilst in raising these issues a clear case for change has been made, reality prescribes that this will only occur with the full commitment, involvement and support of interested parties. These are complex issues requiring thoughtful, considered discussion. By initiating this discussion, ICAC needs to have the benefit of the views of the interested and the involved in reaching practical, sensible proposals for reform. Following that discussion, in the coming months, the ICAC will release a series of recommendations for further reform to planning and development, and issue guidelines for councils in addressing corruption risks in the development control process.

In light of the revelations arising from the investigation, the Parliament passed legislation enabling the Commissioner, ICAC to recommend to the Minister for Local Government that consideration be given to suspending a Councillor, pending dismissal for serious misconduct.

Under the provisions the Commissioner took action in regards to one councillor. It was not necessary in regards to the other councillor who resigned during the investigation.

The same legislation now allows the Commissioner to recommend consideration of dismissal of the whole council if a view is formed that there is systemic corruption within the Council, such was not the case in regards to Rockdale. This is because, serious as the conduct was, the provision is one that we interpret to apply to councils where the whole integrity of the decision making process on the council comes into question.

Further to those provisions, the Commissioner may recommend that a planning administrator be appointed as well as the suspension of any developments granted by Council.

This provision effectively means that, in the future, the Commission will have the option of covertly investigating development applications through to the grant of consent. In the interests of fairness to staff members of the Rockdale Council there was no evidence to suggest that any of them acted improperly or unprofessionally in the discharge of their duties and there is no suggestion that they acted corruptly. The implications for councils in the future are quite simple leaving aside the systematic enhancements.

### **Some philosophical thoughts for the future<sup>5</sup>:**

If the enemy never stops, what leads the public sector to think that they can lower their guard for an instant? Integrity lapse and the growth of corruption is not a sudden aberration. It has much to do with power, decision-making, discretion, temptations and greed allowed to fester unabated. It is not a passing problem nor is it a product of our times alone. In many ways, it affects the innocent just as much as the guilty, particularly where it attracts earth-shattering public stigmatisation.

The lesson from history is clear – the misuse of public office for private advantage has been with us forever and, as long as humans are flawed and fallible, will continue from this day forward until the ending of the world. Any strategy to tackle the problem of corruption must take full account of the environment within which true corruption in the popular sense of the word flourishes. Over some twelve years, the contaminated fruits prevailing in the ever-present ‘devil in developments’ was anything but a passing phase of history and it came back to bite rather untastefully.

Commissions of inquiry identify problems and make recommendations on remedial action. They do not providing lasting solutions, if any at all in some cases. Only accountable organisations and people can do so. Reliance on chance and coincidence to bring corruption to the surface will never reveal the full truth. Often this provides some with reassurance that incidents are isolated which is a false economy. All too often leaders in the public sector have basked in this state of happy ignorance and survived by the seat of their pants, others have suffered the public humiliation.

Robust and active strategies to tackle the lack of integrity and supported with an adequate infrastructure, must be a permanent feature of any public sector organisation. The truly corrupt cannot readily ply their trade in organisations where in all cases and at all levels integrity in its widest sense is valued. The cyclical re-emergence of corruption scandals in

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<sup>5</sup> Some adaptations from ‘Perdition to probity: four steps towards ethical policing’, Sir David O’Dowd, CBE QPM [1999] – 8<sup>th</sup> Annual Internal Affairs Conference, NSW Police Service

many of the world's major cities owes much to the failure to engage in more than a spectacular pruning exercise. New South Wales is no different.

There is no room for comfort by a temporary expedience in tacit or rhetorical responses to scandals. Instead the public sector should recognise and rise to the challenge of a more fundamental and lasting approach. If it is true that the organisation environment is at least partly responsible for spawning corruption then each and every one shares that responsibility. An essential element concerns the need for pro- activity. If we do not listen we do not learn, if we do not seek we do not find and if we do not use knowledge we cannot improve integrity and manage corruption risk.

Strategies should proceed on the premise of 'never stop' rather than the basis of 'stop/start' cycle; rocks must be turned over in order to locate the lurking spider. There is no time like the present to put an end to the self-delusion of the stop-start approach. Unless integrity is the undisputed first consideration in all that leaders do and say, strategies will fail and the community will suffer.

Integrity strategies no doubt need carefully constructed audit systems and rigorous accountability mechanisms and to be professionally managed. Simply, that alone is not enough to ensure integrity. Profit from the outcomes of this event can only occur through robust, determined and effective leadership at the sector corporate level. The propensity for codes, standards, mission statements to become sterile and theoretical aspirations of 'high ideals' pinned on walls or hidden in cupboards has to be countered.

The Commission's model for building corruption resistance in local government is about building organisational integrity. So while the work we are doing to help councils adopt improved policies and procedures is vital, so too is the job of managers and councillors in valuing probity and integrity, leading according to these values and modelling good behaviour. It is the leadership responsibility to bring them to life, to drive them through and they need to be compelled to do so, constantly and visibly living up to aspirations. Leaders, including councillors, are forever under the spotlight so therefore must relentlessly pursue the ideals or pay the consequences.

To those who say they cannot afford to make such a commitment, good advice would dictate that they cannot afford not to make it, otherwise in time they maybe unexpectedly bitten by the spider, as was the case with Rockdale Council.

In Dante's words, the challenge is to provide:

*'the light that brings the long awaited storm to whirl the fleet about from prow to stern, and set it sailing a straight course again. Then from the blossom shall good fruit come forth'<sup>6</sup>*

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<sup>6</sup> *The Divine Comedy* [1308] Dante Alighieri.