

COMMISSION OF INQUIRY RELATING TO THE CRIME AND CORRUPTION COMMISSION

COMMISSIONS OF INQUIRY ORDER (NO. 1) 2022

SUBMISSIONS OF ALLAN SUTHERLAND

1. Introduction

- 1.1. I am the former Mayor of the Moreton Bay Regional Council (**MBRC**).
- 1.2. I served as Mayor from 2008 until late 2019 when I was charged with two offences of misconduct in relation to public office following an investigation by a seconded police officer at the Crime and Corruption Commission (**CCC**).
- 1.3. In January 2022, after a three-day committal which included the cross-examination of 14 Crown witnesses, the Office of the Director of Public Prosecutions (**ODPP**) offered no evidence to the charges.
- 1.4. These submissions are provided in response to the invitation for submissions by the Commission of Inquiry relating to the Crime and Corruption Commission dated 31 January 2022.
- 1.5. Based on my recent experience as the subject of a CCC investigation and prosecution, my submissions seek to address the following matters outlined in the Commission's terms of reference:
 - a. the structure of the CCC in relation to use of seconded police officers;
 - b. legislation, procedures, practices and processes relating to the charging and prosecution of criminal offences for serious crime and corruption in the context of CCC investigations; and
 - c. the adequacy and appropriateness of section 49 of the *Crime and Corruption Act 2001*.
- 1.6. I have directed my submissions to each of these terms of reference having particular regard to the conduct of the CCC's investigation in my matter and without intending to re-agitate any of the facts and issues which have already been determined by the courts.
- 1.7. As I detail below, I was charged with two offences of misconduct in relation to public office – deal with information contrary to s 92A(1)(a) of the *Criminal Code* (Qld) on 18 December 2019.
- 1.8. The charges brought an immediate and abrupt end to my decades of service in Local Government. I was arrested, treated like a criminal, and in a matter of moments, had lost not only my career but my reputation. As things subsequently transpired, and as I always knew, the charges against me were baseless and based on a complete misunderstanding of the events in question. The CCC's incompetence, and worse, their desire for political scalps in the Local Government arena, lay at the heart of their unjustified action against me. This is the story of my experience with the CCC.

2. Background and overview

- 2.1. Prior to being charged, I served in local government for over 25 years.
- 2.2. I was the Mayor of MBRC for 11 years from 2008 until late 2019. Prior to this, I was a Councillor at the former Redcliffe City Council, being a Councillor from 1994 to 1997, Deputy Mayor from 1997 to 2004 and Mayor from 2004 to 2008.
- 2.3. The charges were the result of an investigation by the CCC into alleged corrupt conduct. The investigating officer was a [REDACTED] of police who was seconded to the CCC.
- 2.4. Both charges related to a property that I have owned at [REDACTED] since 2010. The charges involved allegations that I advocated for certain things within the MBRC in order to gain a benefit for myself.
- 2.5. A committal hearing in the matter was conducted over three days in September and October 2021 in the Brisbane Magistrates Court. The prosecution's brief of evidence contained 589 exhibits and 34 witness statements. At the committal, the prosecution called 14 of the Crown witnesses for cross-examination.
- 2.6. The evidence at the committal hearing clearly revealed that the factual assumptions underpinning the allegations were entirely wrong.
- 2.7. After the evidence had concluded, that matter was adjourned to allow my lawyers to make a submission to the ODPP inviting them to discontinue the prosecution having regard to the state of the evidence.
- 2.8. The presiding Magistrate commented at the time, "I can understand why that might be the case."
- 2.9. Our submission was accepted and the ODPP agreed that the prosecution should not proceed further. On 20 January 2022, the ODPP offered no evidence to the charges which were then dismissed by the Magistrates Court.
- 2.10. I understand that it is exceedingly rare to have charges dropped at the committal stage of a proceeding given a Magistrate only has to be satisfied that a reasonable jury could convict a person in order to commit the charges for trial.
- 2.11. It is telling that the prosecution could not even get past this first hurdle.
- 2.12. In recent times, the only other notable cases in which the prosecution have not been able to get over this low bar have been other CCC prosecutions of local government councillors.
- 2.13. The ODPP's decision to offer no evidence to the charges against me at such an early stage in the proceeding represents another egregious example of the CCC, through a seconded police officer, pursuing a prosecution which was doomed to fail.

- 2.14. The CCC would have realised this at the conclusion of their investigation if they had properly considered the totality of the evidence.
- 2.15. Instead, the prosecution against me proceeded on a total misunderstanding of the legal and factual issues. This was a direct result of the CCC's deeply flawed investigation and consideration of the evidence.
- 2.16. I have detailed in this submission a summary of the following three issues with the CCC's procedures, practices and processes relating to the investigation, charge and prosecution against me:
- a. The CCC's decision to lay charges against me (including issues with the CCC's charging process and motivation for arresting/charging me in December 2019 prior to the scheduled Council election);
 - b. The CCC's analysis of the evidence and the law (including the CCC's complete misunderstanding of the timeline of events, the practical workings of local government, the role of Mayor, and the operation of the *Local Government Act 2009*); and
 - c. The CCC's evidence gathering (including the inadequacy of the CCC's practices in relation to taking witness statements and the heavy reliance on hearsay and opinion evidence).
- 2.17. These serious issues with the procedures, practices and processes of the CCC are not isolated to my matter (noting the findings of Parliamentary Crime and Corruption Committee's Report No. 108, 'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters').
- 2.18. Given the obvious pattern that has developed with CCC prosecutions, I believe that changes are necessary to the CCC's procedures, practices, processes and culture to ensure that public officials who have done nothing wrong are not subjected to the same treatment in the future.

3. Issue (a): The CCC's decision to lay charges against me

- 3.1. The charges against me were laid by a seconded QPS officer (who was the case officer for the investigation) immediately after I participated in a voluntary interview.

The CCC's charging process

- 3.2. On 18 December 2019, I attended the CCC to participate in a voluntary record of interview with the CCC's investigating officer. I attended the interview with my lawyer, Glen Cranny of Gilshenan & Luton Legal Practice.
- 3.3. The interview was conducted by the case officer for the investigation who was a [REDACTED] together with a [REDACTED]
- 3.4. I was advised by my lawyer of the risks of participating in a police interview but I was keen to cooperate with the investigation as I had nothing to hide. I participated in the interview in good

faith – attempting to give direct and detailed answers to the CCC’s questions while explaining my side of the story. In total, the interview went for some hours.

- 3.5. The CCC did not give me a fair go in responding to their questions. During the interview, it became apparent that the investigating officers were not interested in my responses to the allegations. The officers were dismissive and I was not afforded a proper opportunity to respond to many of the issues.
- 3.6. After the interview ended, the CCC officer gave me an opportunity to speak with my lawyer in a separate room. My lawyer told me that he expected the CCC officer to go away and consider my responses before deciding whether to lay any charges. This was particularly the case given my detailed responses to the allegations.
- 3.7. When I left the room, the officer advised my lawyer that they would be charging me with misconduct. [REDACTED]
[REDACTED]
- 3.8. I was shocked that the officer had charged me so quickly. I did not understand why the officer did not follow up or investigate anything I raised in the interview before charging me.
- 3.9. The CCC’s charging process was inadequate and inappropriate in the circumstances. In particular, the CCC did not take the time to properly consider my responses to the allegations and did not make any further enquiries about the matters I raised during the interview before making the decision to charge me, which matters became patently obvious during the committal proceeding which followed.

The CCC’s motivations for arresting and charging me

- 3.10. It appears the decision to charge me was not based solely on the evidence and the law.
- 3.11. [REDACTED]
[REDACTED]
[REDACTED]
- 3.12. The concern over the CCC’s reasons for charging me is supported by the timeline of events. I was charged in December 2019 (three months before the Council election scheduled for March 2020). I believe this raises a serious concern about whether the CCC was influenced by possible political factors.
- 3.13. The investigating officer also elected to arrest me (rather than just charging me). It appears he did so in order to impose harsh and unnecessary bail conditions. The conditions provided that I was to have no contact with any councillors or staff at the MBRC as well as a number of listed witnesses.
- 3.14. The basis for imposing these conditions was apparently the CCC’s observations that witnesses have been “quite distressed” and have “concerns about reprisals in the workplace”. At [REDACTED]
[REDACTED]

[REDACTED]

3.15. There was absolutely no basis for the CCC's apparent concern about reprisals. The idea that a respected politician occupying a senior public role would conduct reprisals in the workplace was absurd. The CCC's decision to arrest me resulted in the unnecessary and unedifying process of being dragged to the police station to be placed on bail and have my photograph and fingerprints taken.

4. Issue (b): The CCC's analysis of the evidence and the law

- 4.1. The CCC failed to sufficiently consider the evidence and the elements of the offence of misconduct in relation to public office.
- 4.2. It was also apparent that the investigating officer did not understand how Council business relating to planning was conducted in local government.
- 4.3. Consequently, material considerations which were fatal to the CCC's case were overlooked in the laying of the charges.

Charge 1 of 2

- 4.4. Charge 1 alleged that I advocated to bring forward planned Council works along [REDACTED] ([REDACTED] **project**) from 2025/2026 to before the 2020 election period. It also alleged that I advocated to increase the scope of the planned Council works along [REDACTED] to include the frontage of [REDACTED]
- 4.5. This effectively included two allegations, namely that I:
 - a. actively advocated a shift in the **timing** of the [REDACTED] project; and
 - b. actively advocated for the **scope** of the [REDACTED] project to include [REDACTED]
- 4.6. Each piece of advocacy was said to have occurred while having a conflict of interest in relation to any formal or informal Council business which related to [REDACTED]
- 4.7. In relation to **scope**, the evidence obtained by the CCC clearly showed that the project had – at least since 2016 – been approved and intended to encompass the whole of [REDACTED]
[REDACTED]

- 4.8. The prosecution was commenced on the mistaken understanding that the project had initially not included the whole of the road and that I somehow intervened to ensure that it would include the whole of the road. That premise was shown to be completely flawed during the committal proceedings.
- 4.9. In relation to timing, the CCC's case totally confused the evidence of timing. The development application for the Moreton Bay Central Sports Complex (MBCSC), approved by the MBRC in 2013, included as a condition that the design and construction of the [REDACTED] project would occur once 70% of the MBCSC had been constructed or when access is provided to the external road, whichever occurred first.
- 4.10. Accordingly, construction of the [REDACTED] project was factored into the capital works budget from 2014/2015. In 2015/2016, the capital works budget had the [REDACTED] project being constructed in 2018/2019.
- 4.11. I had no role in the setting of this initial timetable.
- 4.12. However, for reasons which remain unclear, and which [REDACTED] could not explain, in 2016, the [REDACTED] project was pushed out in the budget papers to 2025/2026.
- 4.13. [REDACTED] who was responsible for the works in this area, gave evidence that [REDACTED] did not know about the change.
- 4.14. Once the [REDACTED] became aware of this change, [REDACTED] alerted me to the issue. Conversations were then had regarding the issue. [REDACTED] was then tasked by [REDACTED] with investigating whether the project could be brought forward in line with the 2015/2016 capital works budget.
- 4.15. That then occurred. Had it not occurred, Council would have been in breach of its own Development Approval condition which was a resolution of Council. My role was minor and directed towards facilitating something occurring which should always have occurred.
- 4.16. Any change that occurred to the scope of the [REDACTED] project was to bring it back in line with the original scope which always included the portion outside my property.
- 4.17. I explained all these matters to the CCC during my interview and was flatly dismissed.

Charge 2 of 2

- 4.18. Charge 2 alleged that I lobbied for a change in an amendment to the local government planning scheme - namely a change to restrictions limiting the size and use of ancillary shops attached to service stations - which would allegedly benefit a development option at [REDACTED]
- 4.19. There was no basis for this charge in law or in fact.
- 4.20. In 2019, amendments were made to the MBRC planning scheme in relation to service stations. Specifically, the MBRC councillors agreed to:

- a. amend a restriction regarding the use of ancillary shops attached to service stations; and
- b. to remove any restriction regarding the size of ancillary shops attached to service stations.

4.21. These amendments were not the result of advocacy by me.

4.22. Rather, the evidence demonstrated that [REDACTED] and [REDACTED] at the MBRC encouraged the councillors to make these amendments at a workshop on 4 April 2019. There was nothing untoward, let alone criminal, about this process.

4.23. Further, there was no obligation on me under the requirements of the *Local Government Act 2009* (Qld) to disclose any conflict of interest in respect of planning scheme amendments.

4.24. This was because planning scheme amendments were regarded as an ordinary business matter and therefore not disclosable.

4.25. Division 5A of the *Local Government Act 2009* (as it applied at the time) dealt with councillors' personal interests in local government matters.

4.26. Section 175C imposed an obligation on a councillor to disclose, at a meeting of the local government or any of its committees, any relevant material personal interest except where the matter was an "ordinary business matter".

4.27. "Ordinary business matter" was defined in Sch 4 of the *Local Government Act 2009* to include at (e) "a planning scheme, or amendment of a planning scheme, for the local government area".

4.28. A fellow councillor agreed in cross-examination at the committal hearing that I was not required to disclose my interest in service stations as illustrated by the following exchange:

COUNSEL: Even if you had a material interest in an issue?

WITNESS: As long as the issue we were discussing wasn't specific about a particular say suburb or a street that you lived on or had a property on.

COUNSEL: And none of these discussions were specific to that were they?

WITNESS: No, no.

COUNSEL: This was about generalised planning scheme?

WITNESS: Service stations across the region. Yes.

COUNSEL: Exactly. And notwithstanding that position, Mayor Sutherland in fact as you described...nonetheless told everyone about the fact that he had this information because of that very site?

WITNESS: That's correct.

- 4.29. In respect of discussions concerning planning scheme amendments, another witness explained, "We all have to be involved, like we're all landholders, residents of the region irrespective of a property owner whatever you still have to be involved in the discussion".
- 4.30. I explained this issue of planning being an ordinary business matter to the CCC during my police interview. Again, the CCC told me that I was wrong and did not even consider the issue further before charging me.
- 4.31. It would have been prudent for [REDACTED] who was a seconded police officer and not a trained lawyer, to seek legal advice about the issue before proceeding with charge 2.
- 4.32. The CCC's error in bringing a charge which was wrong in fact and in law demonstrates their lack of understanding of local government and the operation of the *Local Government Act 2009*.

Other evidence ignored

- 4.33. The CCC also ignored or discounted significant evidence which undermined their allegations.
- 4.34. Firstly, the evidence obtained by the CCC showed that I was always transparent about the fact that I owned [REDACTED]
- 4.35. The fact that my wife and I owned [REDACTED] was not a secret. It was on my public Register of Interests. Nor was the fact that we had an interest in future development of the site. All of my dealings with councillors and staff over the relevant period needed to be viewed through that lens.
- 4.36. I formally disclosed my ownership of [REDACTED] on at least three occasions. I also talked openly about owning [REDACTED]
- 4.37. Secondly, the evidence demonstrated that I was upfront about the fact that I had purchased [REDACTED] for future development opportunities.
- 4.38. Thirdly, the evidence demonstrated that the timing of the project was important because of safety concerns along [REDACTED]
- 4.39. I believe that this evidence in my favour was totally discounted by the CCC when deciding to charge me.
- 4.40. Overall, I consider that the CCC did not sufficiently analyse the evidence or the law relevant to both charges.
- 4.41. The evidence at the committal hearing demonstrated that there were fundamental issues with the prosecution (which were readily apparent from the statements of the witnesses obtained prior to charging me).

- 4.42. It is also open to conclude that the CCC both ignored evidence that contradicted its allegations and made inadequate investigations into a range of issues that were central to the credibility and reliability of its witnesses and claims they made.

5. Issue (c): The CCC's evidence gathering (including inadequacies relating to witness statements)

- 5.1. The CCC's evidence gathering practices and processes were completely inadequate. This led to a significant amount of objectionable and inadmissible hearsay and opinion evidence in the witness statements obtained by the CCC.

The CCC's process of taking witness statements

- 5.2. As mentioned, the prosecution's brief of evidence contained 34 witness statements (as well as the recordings of the CCC's interviews with each witness).
- 5.3. The recordings of the interviews revealed serious issues with the CCC's process in relation to gathering evidence.
- 5.4. [REDACTED] questions were clearly aimed at extracting particular responses which would suit the CCC's narrative. He did this by asking leading questions and asking for their general opinions on matters based on wrong assumptions.
- 5.5. One witness told me that he refused to sign the CCC's draft statement because of how one-sided it was.
- 5.6. Secondly, many of the statements omitted important evidence that the witness gave during the recorded interview. The CCC, who were responsible for drafting the statements, failed to ensure that all relevant information was included in the statements.
- 5.7. Throughout the committal, it was exposed that important matters of assistance to my defence that had been said to the CCC privately had not made it into the statements.
- 5.8. For example, a key Crown witness agreed in cross-examination that she explained to the CCC that I was "quite honest and open" about the fact that I owned [REDACTED] and that I wanted to develop it to include a residential subdivision and potentially a neighbourhood hub which would include a service station.
- 5.9. However, this evidence does not make it to her statement.
- 5.10. Thirdly, the CCC hurriedly taking further statements from witnesses after the close of the evidence during the committal proceedings, in a last-ditch attempt to save their terminally ill prosecution of me.
- 5.11. It appeared that the CCC cherry-picked witnesses to interview. One witness who was only interviewed after committal was [REDACTED] and mentioned in several other witness statements. This witnesses' statement supported what I had indicated to the investigating officer at my interview.

- 5.12. I am also aware of at least one interview of a witness that resulted in a statement where the interview was neither recorded nor witnessed. There may be others.

Inadmissible hearsay and opinion evidence

- 5.13. The CCC's approach to the taking of witness statements resulted in them relying on inadmissible hearsay and opinion evidence.
- 5.14. In particular, the statements of the witnesses were littered with inadmissible descriptions of their opinions and speculative conclusions based upon things they were told.
- 5.15. All such evidence was inadmissible and could form no part of the prosecution case to be considered by any court or a jury at any trial.
- 5.16. The heavy reliance on that evidence bespeaks the fundamentally flawed nature of the charges brought by the CCC. It was reliant on inadmissible opinions that were not adequately scrutinised or investigated.
- 5.17. For example, the CCC relied on opinion evidence to allege in charge 1 that I "intentionally delayed submitting [REDACTED] DA to avoid having to pay hundreds of thousands of dollars in frontage works charges to upgrade [REDACTED] that would have been conditioned against [REDACTED] planned commercial development".
- 5.18. This allegation had its genesis in a witness statement [REDACTED]. In the statement, the witness identifies three potential benefits that I may have derived from delaying the submission of any development application for [REDACTED].
- 5.19. In cross-examination, the witness accepted that [REDACTED] did not "roll up to the [CCC] and offer that up". Those alleged benefits were the result of questions that were put to [REDACTED] in the CCC interview in the CCC's pursuit of their fixed theory of my apparent wrongdoing.
- 5.20. Critically, the witness also accepted in cross-examination that [REDACTED] was being asked in the CCC interview to deal in hypotheticals and that there was nothing to suggest that I had actually delayed making a development application for [REDACTED].
- 5.21. The allegation that I deliberately delayed the filing of a development application in order to accrue a benefit was baseless. It related to a hypothetical situation that one witness was asked to consider in [REDACTED] interview with the CCC. There was simply no evidence to suggest that I delayed the filing of my development application.

6. The impact of the charges

- 6.1. The charges have had a profound impact on me and my family.
- 6.2. I have suffered an emotional, social and financial impact as a result of the CCC's charges and prosecution.
- 6.3. The effect of the charges being laid was that I was automatically suspended as a Councillor for the MBRC. This effectively ended my 25 year career in local government under a cloud.
- 6.4. I was looking forward to the finalisation of my local government career which would have spanned 26 years if completed. There were many tasks still at hand such as: my final Australia Day after 16 years serving as Mayor; the opening of the Sunshine Coast University Moreton Bay Campus (a project that I personally championed over many years which I was prevented from attending due to bail conditions); my last Council meeting; the opportunity to thank councillors and staff including my personal staff (some of whom had worked with me for over a decade).
- 6.5. I was unable to keep my phone number which I had had for over a decade meaning that people were unable to contact me, making me isolated and leading to people thinking I had gone into hiding.
- 6.6. I have also missed out on other career opportunities while the charges were hanging over my head for the last two years.
- 6.7. It has been extremely difficult to deal with the public speculation about the matter without being able to respond.
- 6.8. However, the most challenging aspect of the matter has been the stress on me and my family of facing a prosecution and jail sentence for something I did not do. My wife on various occasions was forced to take extended periods of time off work due to the impacts of the investigation especially questioning in the "Star Chamber" and also the impacts of me facing prosecution.
- 6.9. The effect on my parents was devastating to watch, bringing my elderly mother to tears on many occasions through the last two years of her life.
- 6.10. I have had many sleepless nights and had to seek ongoing professional help to get through the last two years which I have been the hardest of my life.
- 6.11. I also still struggle with the many unanswered questions relating to my investigation.
- 6.12. What evidence was tendered by the CCC to support the recording of over 8,000 phone calls over a 6 month period including many personal phone calls. Was this recording reasonable action?
- 6.13. The CCC state publicly that they do not comment on cases which are before the courts. However, my family and staff found out about my investigation from a publicly released press

statement on 2 September 2019 from the CCC stating it was in the public interest to confirm the investigation. This effectively undermined my position as Mayor from that moment on.

- 6.14. Has the CCC raised questions as to who was in breach of the *Local Government Act 2009* by choosing to ignore a condition of approval from a Council's own DA without reference to the Council?
- 6.15. In one statement gathered by my defence team, it was indicated that it was an unwritten rule that minimal works could happen outside the Mayor's property. The witness stated, "It was considered by Council Officers that whatever construction was undertaken on [REDACTED] had to provide minimal benefit, if any benefit, to the mayor's block of land". Is this proper application of the requirements of Council? Is it appropriate for Council officers to make this decision which resulted in detriment to the surrounding residents through lack of basic pedestrian access and lighting amongst other issues? Has this been investigated by the CCC?
- 6.16. At the time of the investigation, the MBRC was in the midst of a major internal review of the operation of Council and in particular the planning department. The investigation was being undertaken by [REDACTED]
[REDACTED] This resulted in a referral to the CCC for which I have not had a response.
- 6.17. In my opinion, much of the evidence gathered by the CCC was evidence of disgruntled employees who were themselves under investigation. It does not appear that this investigation and report was considered by [REDACTED]

7. Conclusion

- 7.1. I understand that, in some circumstances, a charge which ultimately fails may nonetheless have been properly brought/laid.
- 7.2. However, the prosecution against me was not such a case.
- 7.3. The decision to bring the charges of misconduct in relation to public office against me was based on allegations that were unsupported and contradicted by the evidence obtained by the CCC during their investigation. In hindsight, it was a decision made in the furtherance of the CCC's relentless pursuit of Local Government Officials, whatever the cost. That much has been made clear by the example involving the Logan City Council, and is equally evident in my case.
- 7.4. The CCC cannot suggest that it was only through the evidence given by witnesses at the committal hearing that it was discoverable that the charges should be discontinued.
- 7.5. The evidence given by the Crown's own witnesses at committal should have come as no surprise to the CCC if they had analysed the evidence properly and impartially and made enquiries about the responses I gave during my voluntary interview.
- 7.6. The charges against me serve as another reminder that law enforcement agencies can and do get it wrong.

- 7.7. A focus of this Inquiry is seeking to uncover what may need to change to minimise the chance of such results reoccurring.
- 7.8. I agree with the findings and recommendations of Parliamentary Crime and Corruption Committee's (PCCC) Report No. 108, 'Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters'.
- 7.9. In particular, I strongly support the Queensland Government reviewing section 49 of the *Crime and Corruption Act 2001*.
- 7.10. In my view, it should be a requirement that the CCC obtain the recommendation of the Director of Public Prosecutions, or a senior independent legal advisor, before exercising (through seconded police officers) the discretion to charge serious criminal offences (including disqualification offences under the *Local Government Act 2009*) in the exercise of its corruption function. Any such review needs to be undertaken by someone with the time and skill to analyze all of the source evidence, not just statements taken by CCC officers which, as evident in my case, can be entirely skewed and biased against a defendant and in favour of the CCC preferred narrative or view of the world.
- 7.11. I believe that such a change would help minimise the chance of the CCC proceeding with similarly flawed prosecutions in the future.