

NSW Independent Commission Against Corruption, "[Investigation into NSW Liberal Party electoral funding](#) for the 2011 State election campaign and other matters", August 30 2016

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On Monday, 22 November 2010, Mr Roozendaal acted consistently with the "Joe" undertaking. He requested Mr Webb to provide him with a copy of the NPC board agenda for the meeting on Thursday, 25 November 2010. The Commission finds that Mr Roozendaal did this to ascertain whether the NPC proposed dealing with the NSC arrangements was going before the NPC board at that meeting (it was). There is then evidence that Mr Roozendaal called Mr Webb into his office for a meeting on Wednesday, 24 November 2010, and instructed him that he did not wish the NPC to deal with the NSC proposal "until Treasury had reviewed the process". The minutes of the meeting of the NPC on 25 November 2010 show that, in accordance with the ministerial direction, the issue was deferred. In that respect, Buildev's short-term objective had been secured.

Mr Roozendaal told the Commission that he felt "it would be premature for NPC to move forward on the issue of the container terminal until I'd had proper time to gather further advice from Treasury on both the container terminal proposal and the Intertrade land proposal".

On 8 December 2010, Dominic Schuster of NSW Treasury attended a meeting with Mr Roozendaal. Mr Roozendaal instructed him to undertake a review and prepare a report on that review. To do so, Mr Roozendaal provided Mr Schuster with materials that had come from Buildev. Mr Schuster was also put in contact with Mr Williams and Mr Sharpe. Given that Christmas was approaching and the Treasury report would take some time to produce, Mr Roozendaal had, in effect, made certain that the NPC could not make an agreement with the NSC in the ongoing short term.

Meanwhile, Mr Roozendaal did something that had the effect of securing Buildev's middle-term objective – preservation of the viability of its coal terminal proposal. Sometime before 7 February 2011, Mr Schuster was asked to prepare a draft letter for Mr Roozendaal granting approval for the NPC to commence formal commercial negotiations with the NSC but subject to a condition. The letter read:

*In its negotiations, Newcastle Port Corporation should make provision for an easement across the Mayfield site for a coal conveyor. This will provide the option for the development of a coal loading terminal in the event that the Government made such a decision in the future.*

The minutes of the NPC board meeting, held on 8 February 2011, recorded the approval for commencing formal commercial negotiations but noted that:

*...in those negotiations, Newcastle Port Corporation should make provision for an easement across the Mayfield site for a coal conveyor. It was understood that the Minister was to make announcement to this effect but would not refer to the easement.*

There are three points to be made about the proposal to create an easement. The first point is that it is precisely what Buildev wanted and the Commission finds that, in this respect, Mr Roozendaal was aware that he was doing just as Buildev wanted. The proposal to create such an easement should not be brushed aside as merely a precaution to keep options open; the proposed creation of the easement created a burden on the Mayfield site that could have the effect of restricting its use and its attractiveness for use as a container terminal. It is not clear whether the NSC would have been willing to

engage in further commercial negotiations once it became aware that the subject land was to be burdened with such an easement.

The second point to be made arising out of Mr Roozendaal's action is that, in effect, the only party who could take a benefit from the creation of such an easement was Buildev. In substance, the proposed easement created access from the Intertrade site to the waterfront. The only beneficiary of this would be the owner or controller of the Intertrade site – that is, Buildev. Buildev already had the contract with the HDC, which the HDC could not escape without paying Buildev damages. If Buildev wanted to on-sell the project on the Intertrade site, it could do so knowing that the value of the site had been enhanced by the creation of the easement.

The third point that arises from the proposal to create an easement comes from the note made in the NPC minutes that indicated the Minister "would not refer to the easement" when making his announcement. In light of all of the other evidence, the Commission infers that Mr Roozendaal did not wish his actions to come to light lest they identify the benefit that he was conferring on Buildev.

In any event, Mr Roozendaal's permission for the NPC to commence commercial negotiations with the NSC was quickly withdrawn. Sometime before 15 February 2011, Mr Roozendaal instructed that a further letter be sent to the NPC directing it not to commence commercial negotiations. The ostensible reason for this was an announcement made on 8 February 2011 by the minister for planning, Tony Kelly, that the public consultation period in respect of the concept plan for the Mayfield site would be extended. Although Mr Roozendaal was advised that the extension of the consultation period did not affect the commencement of commercial negotiations, he directed Mr Schuster to draft a letter for his signature issuing a further instruction to the NPC, directing it not to commence commercial negotiations. Mr Schuster prepared a draft, which, at the request of Mr Roozendaal, had to be re-done to incorporate the following words: "I am advised by NSW Treasury it is not appropriate for Newcastle Port Corporation to progress commercial discussions until the outcome of this consultation process has been considered by Cabinet". This effectively killed off any chance of advancing the container terminal before the NSW state election on 26 March 2011.