



**Report Responding to City Council's
Request for an Investigation into the
Conduct of the Board Members of the
Toronto Parking Authority and
the Emery Village Business
Improvement Area
(City Council Decision AU9.12)**

**Valerie Jepson
Integrity Commissioner**

June 10, 2019

TABLE OF CONTENTS

1. Introduction and Overview	5
2. Scope of the Inquiry	8
A. Note About Conflicts of Interest.....	9
B. Code of Conduct Obligations	9
3. Issues Considered	10
A. Councillor Mammoliti – Article VIII (Improper Use of Influence)	10
B. Councillor Mammoliti – Article IX (Business Relations).....	14
C. Councillors Mammoliti and Filion – Articles XII (Conduct Respecting Staff), XIV (Discreditable Conduct) and XV (Failure to Adhere to Council Policies and Procedures)	15
D. TPA Board Members – Article V (Confidential Information)	16
4. Investigative Steps.....	16
A. Documents Requested and Reviewed	16
B. Witnesses.....	16
C. Councillor Mammoliti's Participation in the Inquiry	17
5. Findings	20
A. Councillor Mammoliti's Idea for the Monumental Flagpole.....	20
B. The Emery Village BIA Board Supports the Flagpole.....	20
C. The EVBIA Board Hires Sutherland & Associates to Help with the Monumental Flagpole Project.....	21
D. The EVBIA Travels to Mexico to See Monumental Flagpoles	22
E. EVBIA Explores Ways to Self-Fund Construction of the Flagpole.....	22
F. Early Momentum 2008-2009 – The Finch/Arrow Land becomes the only Viable Location	22
G. Katpa Holdings and Mr. DeLuca	23
H. Request for Expressions of Interest for the Construction and Installation of North America's Tallest Flagpole and Flag	24
I. Who is National Flagpole Inc.?	25
J. EVBIA Support in 2009-2010	28

K.	The Flagpole Project Comes to City Council – August 2010.....	28
L.	Negotiations with the City Fail	30
M.	A Revised Approach	31
N.	DeLuca Redevelopment Stalls – Late 2013/Early 2014	32
O.	2014 and the Finch West LRT.....	34
P.	Summer-Fall 2015 – Toronto Parking Authority First Gets Seriously Involved.	36
Q.	March 2016 Council Direction to the TPA	37
R.	Councillor Mammoliti is Very Involved.....	42
S.	TPA Board Authorizes Staff to Proceed – May 2016	42
T.	Confidential Information Disclosure.....	43
U.	What did the TPA Board members know about the EVBIA and the Flagpole Project?	44
V.	The Development Management Agreement and Pressure on TPA Staff and Board Members	45
W.	July 28, 2016 TPA Meeting	47
X.	Mr. DeLuca Signs Back the Deal	47
Y.	TPA Begins Preparing to Develop the Land.....	47
Z.	Mr. Hoth Travels to Toronto to Meet With the TPA	48
AA.	Councillor Filion’s Conduct.....	49
BB.	Mr. Scargall and Mr. Tziretas	51
6.	Analysis and Discussion	51
A.	Councillor Mammoliti – Article VIII (Improper Use of Influence)	51
B.	Councillor Mammoliti – Article IX (Business Relations).....	57
C.	Councillor Mammoliti – Article XII (Conduct Respecting Staff).....	57
D.	Councillor Filion’s Conduct.....	58
E.	Disclosure of In-camera Information – Article V (Disclosure of Confidential Information)	60
7.	Conclusion, Observations and Recommendations.....	60
A.	Role of Councillors on Local Boards When Dealing with Matters in Their Own Wards	60

B. Recommended Amendment to the Code of Conduct to Require Participation in
Inquiries 63

Appendix 65

1. INTRODUCTION AND OVERVIEW

This report provides the outcome of an investigation requested by City Council into whether any member of the boards of the Toronto Parking Authority (“TPA”) or the Emery Village Business Improvement Area (“EVBIA”) contravened the applicable code of conduct in relation to events outlined in a June 22, 2017 report from the Auditor General¹ regarding the TPA’s potential acquisition of land at Finch Avenue West and Arrow Road (the “Land”).² This report also provides the outcome of an investigation requested by the TPA Board.³

One of the reasons that the TPA was taking steps to acquire the Land in 2015 and 2016 was to advance the long-standing objective of Councillor Giorgio Mammoliti and the EVBIA Board to develop a public space featuring a monumental flagpole in the Emery Village area. Prior to 2015, Councillor Mammoliti and the EVBIA had twice before attempted to persuade the TPA to acquire the Land for this purpose on the basis that it would also be useful for parking.

Senior staff at the TPA became convinced of the Land’s potential value in Fall 2015, attributing this to the progress of the Finch West LRT. At the same time, Councillor Mammoliti and representatives of the EVBIA were advocating with City staff to incorporate the flagpole project into the City’s priorities for public realm improvements that would accompany the construction of the Finch West LRT. These latter efforts resulted in a March 2016 direction from City Council to the TPA Board to acquire the Land. The Council direction created significant momentum and sent a signal to the Board that it was a priority.

¹ AU9.12: Auditor General's Observations of Land Acquisition at Finch Avenue West and Arrow Road by the Toronto Parking Authority – Part 2 (July 4, 2017): see <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.AU9.12>

² The Land has been frequently referred to as 1111 Arrow Road. However, the municipal address of the Land is "the Southeast Corner of Arrow Road and Finch Avenue"; 1111 Arrow Road is the municipal address of the Prayer Palace church, which is adjacent to the Land.

³ In consideration of item AU9.12, City Council made the following request:

City Council forward copies of the reports from the Auditor General and external counsel for the Toronto Parking Authority to the Integrity Commissioner with a request that the Integrity Commissioner conduct an investigation into whether current or past members of the Boards of the Toronto Parking Authority and the Emery Village Business Improvement Area contravened the Code of Conduct in dealing with this matter.

On July 5, 2017, the then-Board of the TPA requested that the conduct of Councillor John Filion (a member of the TPA Board) be reviewed because of concerns regarding the way he dealt with TPA staff. The TPA Board provided a copy of a report prepared by its external counsel in support of its request. In considering the Council request and its overlap with the TPA Board's request, I determined that I would conduct a single inquiry, and so-notified the new TPA Chair of this decision on August 4, 2017. The Chair made no objection to this decision. This report responds to both requests.

Examining the above circumstances required understanding the history of the monumental flagpole project, which dates back to at least 2002. The pages of this report describe where the idea came from, how the EVBIA became involved and the efforts undertaken by the EVBIA and Councillor Mammoliti over the years to advance the project.

The circumstances described in the Auditor General's report called for a closer review of Councillor Mammoliti's relationship with the owner of the Land, the consultant hired by the EVBIA to help with the project and the TPA's sign consultant. The investigation uncovered other individuals and companies that were involved at earlier stages of the project and who had an association to Councillor Mammoliti. The purpose of these aspects of the investigation was to determine whether Councillor Mammoliti had personal or business connections that could give rise to a contravention of Article VIII (Improper Use of Influence) of the *Code of Conduct for Members of Council*. I make no such finding.

The Auditor General's report and the TPA's request for an inquiry also required review of Councillor Mammoliti and Councillor John Filion's conduct toward staff. I examined whether either councillor contravened Articles XII (Conduct Respecting Staff) and XIV (Discreditable Conduct), respectively. I make no such findings. However, the evidence is clear that City and TPA staff were under a high amount of pressure, which was characterized by those affected as part of the ordinary course of business.

The Auditor General's report called for an examination of how a decision made at the *in-camera* portion of the May 26, 2016 TPA Board meeting was disclosed to the EVBIA Board and whether any board member was responsible for this disclosure. The investigation established that the information was officially and formally disclosed to the EVBIA by the TPA by letter and, accordingly, I make no finding that anyone disclosed confidential information in contravention of Article V (Confidential Information) of the *Code of Conduct for Members of Local Boards (Restricted Definition)*.

Finally, the Vice Chair and the Chair of the TPA were more involved than other board members in the TPA's potential acquisition of the Land and appeared to have some personal connections to Councillor Mammoliti. I examined these relationships but have made no findings that they contravened the *Code of Conduct for Members of Local Boards (Restricted Definition)*. However, what was established is that the Chair and the Vice Chair (as well as most of the TPA Board members) saw it as part of their role to keep the local councillor and their Board colleague, Councillor Mammoliti, happy.

The Auditor General's Report raised concerns about conflict of interest. The codes of conduct that govern the conduct of members of Council and the City's local boards do

not contain a standalone obligation to avoid conflicts of interest.⁴ Accordingly, the investigation that I undertook does not examine the existence of conflicts of interest.

The investigation established that for several years Councillor Mammoliti has used his influence as a councillor, member of the EVBIA Board and member of the TPA Board to advance the flagpole project. For instance, the evidence showed that the Councillor used information gained as a board member of the TPA to assist his advocacy with City staff to advance the project. The investigation also established that members of the TPA Board and TPA staff were deferential to the local councillor although they said that he received no special treatment because he was also a colleague on the TPA Board.

The *Code of Conduct for Members of Council* does not address how a councillor sitting on a City board should reconcile or prioritize competing interests when those interests are related to City business. How should a member of Council sitting on a City board participate in matters that come before the board when those matters impact their own ward uniquely or another City board on which they sit? How can a board member, who is also an elected member of Council, fulfill a fiduciary duty owed to a City board when they also have political responsibilities to advance ward-specific issues and interests? These conflicts of duty are not regulated by the *Code of Conduct for Members of Council* or the *Municipal Conflict of Interest Act*.⁵

I believe it is important to clarify and address how members of Council should reconcile these competing conflicts of duty because when it is not reconciled, the independence and neutrality of the boards on which they sit are at risk of being compromised. While the circumstances in this case have come under an enormous amount of scrutiny, one could find several other examples of similar conflicts of duty across the City.

It is for these reasons that I recommend to City Council that it request a review and seek recommendations from the City Manager, in consultation with the Integrity Commissioner, to consider and develop protocols or amendments to the *Code of Conduct for Members of Council* that would clarify how a member of Council should act when a matter comes before a local board on which they sit that uniquely impacts their ward or another local board on which they sit. A protocol or amendment to the Code

⁴ Members are, however, bound to avoid pecuniary conflicts of interest under the *Municipal Conflict of Interest Act*. Until March 2019, complaints about possible *Municipal Conflict of Interest Act* contraventions could only be made to the Court.

⁵ Winnipeg Integrity Commissioner Sherri Walsh discussed the concept of a “conflict of duty” in a December 3, 2018 advisory bulletin: see <https://www.winnipeg.ca/council/integritycommissioner/pdfs/AdvisoryBulletin-20181203-Participation-on-Boards.pdf>.

would not only assist members of Council but it would also provide much-needed clarity for citizen members of boards and the staff who support those boards.

As is described in more detail in this report, Councillor Mammoliti refused to participate in an interview in this investigation. In consideration of his actions in this matter, I recommend that City Council immediately amend the Code of Conduct to strengthen the obligation of members of Council to participate in any inquiry that involves their actions as a member of Council.

This report is organized into the following sections:

- Scope of the Inquiry
- Issues Considered
- Investigative Steps
- Findings
- Analysis and Discussion
- Conclusion, Observations and Recommendations

A large volume of evidence was gathered in this inquiry. This report contains only the information that is necessary to understand the findings. In making decisions about what information to include, I have been guided by my duties set out in sub-sections 161(1) and 162(2) of the City of Toronto Act, 2006.⁶

2. SCOPE OF THE INQUIRY

To determine the scope of the inquiry, I reviewed the Auditor General's Report (the "**AG Report**"), the report of the TPA's external counsel (the "**External Counsel Report**"), public records referred to within each of those reports, relevant Council and committee decisions, relevant prior integrity commissioner reports, and information available on the Toronto Lobbyist Registry.

Responding to the requests of City Council and the TPA required investigation into the circumstances that led to the TPA's interest in the Land starting in Summer 2015 and a March 2016 direction from City Council to the TPA to acquire the Land to develop a public square that included a monumental flagpole. One cannot fully understand the 2015 and 2016 events without also understanding the efforts by Councillor Mammoliti and the EVBIA Board to develop a public square, starting in 2002 and 2007, respectively.

⁶ See *Michael Di Biase v. City of Vaughan and Integrity Commissioner of the City of Vaughan*, 2016 ONSC 5620 at paras 120-121 regarding section 223.6 of the *Municipal Act*, which is parallel to section 162(2) of the *City of Toronto Act, 2006*.

A. Note About Conflicts of Interest

The AG Report referred to the existence of conflicts of interest. The Code of Conduct does not contain an enforceable obligation for members to avoid participating in decisions for which they have a conflict of interest.⁷ Rather, they are required by the *Municipal Conflict of Interest Act* to avoid participating in local board and Council decisions in which they have a pecuniary interest.

While there is a common law duty for members of Council to avoid conflicts of interest⁸, including non-pecuniary conflicts, it is not within my jurisdiction to make findings or comment upon whether the circumstances in this investigation amounted to a conflict of interest. My jurisdiction is limited to investigating and applying the terms of the existing Code of Conduct. City Council may wish to consider whether to amend the City's codes of conduct to bring them into line with this common law duty as other Ontario municipalities have already done, but I make no recommendation in this regard in this report.

B. Code of Conduct Obligations

Based on a review of the materials provided by City Council and the TPA, there was sufficient information to inquire into whether:

- Councillor Mammoliti contravened Articles VIII (Improper Use of Influence), IX (Business Relations) or XII (Conduct Respecting Staff) of the *Code of Conduct for Members of Council* (the “**Code of Conduct**”).⁹
- Councillor Filion contravened Articles XIV (Discreditable Conduct), XII (Conduct Respecting Staff) or XV (Failure to Adhere to Council or Local Board Policies and Procedures) of the Code of Conduct.

⁷ The key statements of principle in the Code of Conduct include the following statement, “Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of influence of their office, and conflicts of interest, both apparent and real.” However, since 2005, it has been settled that the key statements of principle cannot give rise to a stand-alone contravention of the Code of Conduct. Inaugural Integrity Commissioner recommended that a conflict of interest article be added, but the view at the time was that such a clause was not permitted because of the *Municipal Conflict of Interest Act*. Integrity Commissioner End of Term Report – 2008 (July 8, 2008): see <https://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-14756.pdf> at pp. 10-11.

⁸ Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure (October 2011) at p. 146: see https://www.mississaugainquiry.ca/report/pdf/MJI_Report.pdf

⁹ Members of Council are bound by the *Code of Conduct for Members of Council*, even when they are serving on a local board (see Article III of the *Code of Conduct for Members of Local Boards (Restricted Definition)*). The *Code of Conduct for Members of Local Boards (Restricted Definition)* in place at the time of the events examined in this report did not differ in any material way from the *Code of Conduct for Members of Council*.

- Any member of the TPA Board in attendance at the May 26, 2016 meeting of the TPA Board improperly disclosed confidential information in contravention of Article V (Disclosure and Use of Confidential Information) of the Code of Conduct (or, if applicable, the *Code of Conduct for Members of Local Boards (Restricted Definition)*).

I remained alert to the possibility that the evidence could suggest other contraventions of other board members and that if it did, I would pursue them. The investigation established that the Chair and Vice Chair of the TPA Board played a greater role than the other board members in relation to the TPA's possible acquisition of the Land, so I reviewed their actions in more detail, as will be explained below.

This investigation is about whether the Code of Conduct was contravened. It was not a value for money audit, a forensic review, or an examination of whether board members acted in accordance with corporate governance obligations. This latter issue was canvassed in a January 8, 2019 report to the City Manager from an external law firm, which was considered by City Council on January 30, 2019 (the “**governance report**”).¹⁰

3. ISSUES CONSIDERED

Before discussing the findings, I will first outline how the Code of Conduct could apply in relation to the conduct examined in this investigation. Relevant articles of the Code of Conduct are reproduced in the Appendix to this report.

A. Councillor Mammoliti – Article VIII (Improper Use of Influence)

What is the Obligation in Article VIII?

What follows is a relatively lengthy discussion about Article VIII. I have included this discussion intentionally to assist with understanding the possible application of Article VIII to the facts that follow. In addition, in July 2018, City Council requested clarification about the meaning of “friend”, one of the terms contained in Article VIII.¹¹ I understand City Council’s July 2018 request to be one that seeks clarification about Article VIII in general because the word “friend” is just one association from a non-exhaustive list of associations in Article VIII. This analysis, while mainly developed for this inquiry, is also responsive to City Council’s July 2018 request.

¹⁰ Toronto Parking Authority Governance (EX1.2) (January 30, 2019): see <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.EX1.2>

¹¹ Report Regarding the Conduct of Councillor John Filion (CC43.6) (June 15, 2019): see <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.CC43.6>

A member's actions could contravene Article VIII if he or she uses the "influence of her or his office for any purpose other than for the exercise of her or his official duties." The explanatory note in Article VIII elaborates that a contravention could occur if a member "[used his] status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, [one's family], staff members, friends, or associates, business or otherwise."

By excluding matters of general application from the definition of "private advantage", Article VIII recognizes that members of Council will exercise influence over many decisions that will coincidentally be beneficial to stakeholders, including family members, friends and associates. It is only those instances where the exercise of influence was intended or designed to benefit the private advantage of oneself or another that Article VIII can be contravened.

Article VIII has been found to have been contravened when:

- Using City-funded stationary, a member invited residents to a summer barbecue and included promotional material for a family business.¹²
- A member of Council used their influence with City staff to set up meetings with a potential vendor to the City who was also a client of the councillor's family business when there was a blurring of the councillor's roles as a representative of the family business and as a councillor.¹³
- A member used their influence as a member of council to solicit donations from stakeholders of the City for a personal charitable cause.¹⁴
- A member of Council appeared in a promotional video for a condo development that had recently obtained a City approval.¹⁵
- At the request of a friend, with whom the member had a kinship and a bond, a member of Council and his staff made numerous calls and inquiries to City staff regarding a planning application for the friend's business that was outside of the member's ward.¹⁶

¹² Complaint of Violation of Code of Conduct by Councillor Ford (November 28, 2007): see <https://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc15.1.pdf>

¹³ Report regarding the Conduct of Former Councillor Doug Ford (December 6, 2016): see <https://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-99042.pdf>

¹⁴ Report on Violation of Code of Conduct (Councillor Rob Ford) (August 12, 2010): see <https://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/backgroundfile-33227.pdf>

¹⁵ Investigation Report Regarding the Conduct of Councillor Mark Grimes (July 5, 2016): see <https://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-94815.pdf>

¹⁶ Report regarding the Conduct of Councillor Michael Thompson (June 15, 2018): see <https://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-117213.pdf>

Article VIII has not been found to have been contravened when:

- Despite an allegation to the contrary, an investigation established that the member's actions were not intended to benefit the member, or a person thought to be a campaign volunteer (which was not the case).¹⁷
- Despite an allegation to the contrary, the member of Council had no knowledge of the interests of the alleged associate when they exercised the influence of their office.¹⁸
- Despite an allegation to the contrary, an investigation established that the member did not use the influence of their office to obtain a charitable donation as a condition of support for a matter before a City tribunal.¹⁹
- Despite an allegation to the contrary, an investigation established that there was insufficient evidence to find a referral or arrangement between a member of Council and a third party.²⁰
- The actions in question of the councillor were infrequent, consistent with prior actions, and had no impact on the decision of a City staff member.²¹
- In the case of a local board, a member participated in a decision of the board that, although impacted the member directly, was also a matter of general application because it impacted the member as a part of the community and not in any unique or specific way.²²
- Despite an allegation to the contrary, an investigation established that the member's advocacy efforts with City staff were because the member sided with residents who were at odds with the complainant. The member had no personal or private interest in relation to the matter.²³

¹⁷ Unpublished dismissal report (Office of the Integrity Commissioner, 2011).

¹⁸ Investigation Report Regarding Conduct of Mayor John Tory (January 28, 2016): see <https://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-88691.pdf>

¹⁹ Office of the Integrity Commissioner Annual Report 2018 (March 21, 2019): see Case Summary 2, <https://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-131046.pdf> at p. 34.

²⁰ Report Regarding the Conduct of Councillor John Fillion (June 15, 2016): see <https://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-117174.pdf>

²¹ Report Regarding the Conduct of Councillor Jim Karygiannis (Parking Enforcement) (May 31, 2016): see <https://www.toronto.ca/legdocs/mmis/2016/cc/bgrd/backgroundfile-93880.pdf>

²² Report Regarding the Conduct of Two Members of the McCormick Playground Arena Board of Management (March 22, 2017) at pp. 16-17. (Not published, filed with Board.)

²³ Office of the Integrity Commissioner Annual Report July 2014-June 2015 (June 30, 2015): see Sample 1 – Dismissed Complaint Summary, <https://www.toronto.ca/legdocs/mmis/2015/cc/bgrd/backgroundfile-81922.pdf> at p. 11.

Taking stock of the prior considerations of Article VIII, the following factors are relevant to determining whether Article VIII has been contravened when the main issue is whether the member used their influence to prefer or advantage a third party:

- **What is the nature of the relationship between the member and the third party?** When making findings about Article VIII, it is necessary to characterize the relationship between the member of Council and the third party. If there is a current business or financial connection or there is a kinship or emotional bond between the member and the third party, a member is at a higher risk of using their influence improperly because of divided or competing loyalties that can make it difficult for elected officials to put the public interest first. However, mere professional associations or relationships that have arisen because the member has become familiar with the person as a community member may give rise to less of a risk, because of the absence of divided or competing loyalties.
- **What did the member do to use their influence to the benefit of a third party?** Contravention of Article VIII requires more than mere passive involvement in decision-making. There are many other ways that members of City Council can use the influence of their office. They can make inquiries and request information of City or board staff, other government agencies or politicians, for example. With few exceptions, members are free to use the influence in ways that they deem fit to advance ward and City initiatives.²⁴ There is no common baseline level of “service” or support that members provide to residents. Unless there is a concern that a member is doing something for the purpose of benefiting a “friend, associate, business or otherwise”, Article VIII will not be triggered. And, even if a “friend, associate, business or otherwise” stands to benefit, there is a low risk that Article VIII will be contravened if the member is providing a low level of assistance, such as providing information, referring someone to a staff member or other councillor, or putting in an occasional salutary good word.²⁵ The more involved that a member becomes to use influence for a “friend, associate business or otherwise”, the higher the risk is that Article VIII will be contravened.
- **Why was the member involved in the issue?** There will be matters that members of Council must become involved with that inevitably impact a “friend, associate, business or otherwise.” Evidence that a member is involved *because* the third party asked the member to become involved increases the risk of a finding of a

²⁴ For instance, members should not influence or interfere in the work of the City’s adjudicative boards, bylaw enforcement activity unless in cooperation with enforcement staff, certain procurement activities in accordance with the City’s policies and soliciting community benefits other than as prescribed by City policies.

²⁵ Report regarding the Conduct of Councillor Michael Thompson (June 15, 2018): see <https://www.toronto.ca/legdocs/mmis/2018/cc/bgrd/backgroundfile-117213.pdf> at p. 21.

contravention, especially if there is no other natural reason for the member to be involved.

How Could Article VIII Have Applied in This Case?

From 2002 to 2016, Councillor Mammoliti used his influence as a ward Councillor and a member of the EVBIA Board to advance the flagpole project. Although he joined the TPA Board in 2010, in 2015 he also began to use his influence as a TPA Board member to advance the flagpole project. Wearing these three hats, he was able to exert a very high level of influence over the flagpole project in 2015 and 2016. It is not a contravention of Article VIII for a member to use the influence of his or her office to advance a matter of significance to their ward or a local stakeholder group, like a BIA. This is important context in this investigation because all of Councillor Mammoliti's actions can be explained by the fact that he was a vigorous advocate for the monumental flagpole project in general. A contravention could only arise if Councillor Mammoliti was using the influence of his office with the intent of preferring or advancing his own private advantage or that of a "friend, associate, business or otherwise."

The initial scope of the investigation included a review of whether Councillor Mammoliti contravened Article VIII in relation to Paul Sutherland or his firm (the EVBIA's consultant), Frank DeLuca and his companies (the owner of the Land), and Blair Murdoch and Allvision LLC (the TPA's sign consultant). Allvision's involvement with the EVBIA is described in this report but the evidence gathered did not suggest an association between Councillor Mammoliti and Mr. Murdoch (or Allvision) that requires analysis in this report.

Other people and organizations with involvement in the flagpole project and associations to Councillor Mammoliti were also identified in the investigation. Of those people and organizations, the evidence gathered suggested an association between Councillor Mammoliti and the principals of National Flagpole Inc. that requires analysis in this report.

B. Councillor Mammoliti – Article IX (Business Relations)

What is the Obligation in Article IX?

For me to find that a member of Council contravened Article IX, I must have sufficient evidence to conclude that the member referred one of the people named above to another for a payment or other personal benefit. There have been no prior considerations of Article IX of the Code of Conduct.

How Could Article IX Have Applied in This Case?

While examining the evidence in relation to Article VIII, I was alert to evidence about whether Councillor Mammoliti had made any referrals of third parties for payment.

C. Councillors Mammoliti and Filion – Articles XII (Conduct Respecting Staff), XIV (Discreditable Conduct) and XV (Failure to Adhere to Council Policies and Procedures)

What are the Obligations in Articles XII, XIV and XV?

Article XII states that members of Council must not purport to direct City staff – only City Council as a whole can do so. Members must not “use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person’s duties...” For me to find that a member of Council contravened Article XII, I must have sufficient evidence to conclude that the member directed a member of City staff to take action.

Article XIV stipulates that members of Council must treat staff appropriately and “without abuse, bullying or intimidation.” Article XIV incorporates the City’s *Human Rights and Anti-Harassment Policy*²⁶, which defines workplace harassment and distinguishes it from rudeness, incivility, isolated comments or actions unless the comment has a serious and lasting effect.

Article XV states that members of Council must follow all City and board policies.

How Could Articles XII, XIV and XV Have Applied in This Case?

As will be seen, some members of the Toronto Public Service were under a high degree of pressure in relation to the TPA’s possible purchase of the Land. This pressure arose because of the actions of Councillors Mammoliti in certain respects and the actions of Councillor Filion in other respects. I examined whether their actions amounted to improper treatment of staff in contraventions of either Articles XII or XIV of the Code of Conduct.

In Councillor Filion’s case, because of the request from the TPA Board, it was necessary to consider whether his conduct contravened a TPA Bylaw as a possible contravention of Article XV.

²⁶ *Human Rights and Anti-Harassment Policy*: see <https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/corporate-policies/pehr-policies/human-rights-and-anti-harassment-discrimination-hrap/>

D. TPA Board Members – Article V (Confidential Information)

What is the Obligation in Article V?

Article V of the Code of Conduct for both members of Council and local boards requires that members of Council maintain confidentiality over confidential information. Confidential information includes *in-camera* discussions.

How Could Article V Have Applied in This Case?

Based on the AG Report, I was required to examine how Mr. Sutherland obtained information about the outcome of the *in-camera* decision made at the May 26, 2016 TPA Board meeting.

4. INVESTIGATIVE STEPS

I was assisted in carrying out the investigation steps by Ben Drory, the Integrity Officer in my Office. I consulted with external legal counsel as necessary. I worked in cooperation with the Office of the Lobbyist Registrar pursuant to the *Memorandum of Understanding between the City's Four Accountability Officers*. I also worked in cooperation to the extent possible with the law firm retained to investigate other issues in relation to the AG Report relating to document production.

A. Documents Requested and Reviewed

I made numerous requests for records during the inquiry. I sought records from the TPA, the EVBIA and various City divisions. As the inquiry progressed, I sought and received records from witnesses and third parties as necessary. Thousands of records were reviewed in this inquiry.

B. Witnesses

More than 40 people were interviewed in this inquiry. Witnesses included TPA Board members (including Councillor Filion) and staff, EVBIA Board members and staff, staff and former staff in the office of Councillor Mammoliti, staff in the Mayor's Office, other individuals who I believed had information relevant to events described in this report, City staff from various departments, and principals or representatives of third parties involved in the flagpole project.

Most witnesses were examined under oath and compelled to appear pursuant to a summons. When contacting a witness who was a TPA or EVBIA board member, I explained that they were a potential subject of the investigation. Detailed notices reflecting the issues above were provided to Councillors Filion and Mammoliti.

C. Councillor Mammoliti's Participation in the Inquiry

I first notified Councillor Mammoliti in February 2018 that the inquiry included a review of his conduct. Councillor Mammoliti's legal counsel responded to the notice of inquiry that I provided to him. He denied that any of his actions contravened the Code of Conduct, and he explained that his actions were just one part of the overall, historical efforts at the EVBIA, the City and eventually the TPA to bring a monumental flagpole to the Emery Village.

As per my ordinary practice, I attempted to arrange a mutually agreeable time to interview Councillor Mammoliti under oath and pursuant to a summons. Through legal counsel, Councillor Mammoliti objected to the summons stating that I lacked jurisdiction as a result of newspaper reports that there was a concurrent criminal investigation. These objections were not valid, and I told him so, but in an effort to encourage him to participate, I offered him other ways to do so. This flexibility is also a part of my ordinary practice; my goal is to obtain witness participation.

From February to May 2018, Councillor Mammoliti continued to assert that I was acting outside of my jurisdiction and that I had no authority to summons him. I provided him with written questions, which he failed to answer.

Over time, Councillor Mammoliti's objections to my jurisdiction expanded and changed. He has made complaints about my carriage of this file to City Council, Ombudsman Ontario (two times) and Ombudsman Toronto. Other than Ombudsman Toronto, who copied my office with correspondence advising that the request was outside of its jurisdiction, I have never been advised that any investigation was commenced about my inquiry by any other authority.

Councillor Mammoliti is the central figure in the events examined in this inquiry and as the investigation drew to a close, I concluded that his participation was sufficiently important that I should reconsider my decision not to issue a summons as a way of encouraging his participation. Accordingly, in December 2018, I issued and provided a summons to Councillor Mammoliti's legal counsel. In response, his counsel made new arguments about why I lacked jurisdiction and refused to acknowledge receipt of the summons. I explained why the arguments about jurisdiction were misconceived.

Councillor Mammoliti failed to attend on the date I appointed for the first summons. Councillor Mammoliti's legal counsel and I disagree about the reasons for his failure to attend.

I requested my external counsel to engage with Councillor Mammoliti's counsel to potentially address jurisdictional challenges and, it was my hope, to gain cooperation and agree on a mutually-acceptable date for an interview. Councillor Mammoliti's legal counsel continued to refuse to accept service, although he continued to represent Councillor Mammoliti to make complaints about me and the inquiry to Ombudsman Toronto and Ontario Ombudsman.

Because Councillor Mammoliti's counsel did not have instructions to accept service, I was required to arrange for personal service of Councillor Mammoliti with a second summons. Several attempts were made at known addresses, including leaving contact cards at dwellings known to be his home, phoning and emailing him, all of which were unanswered, all while fully represented by legal counsel.

After several attempts, Councillor Mammoliti was eventually personally served. He acknowledged receipt of the summons, requested that I not proceed with the summons until the outcome of the latest complaint to Ombudsman Ontario was concluded and requested an alternative date later this summer. He stated that he no longer had legal counsel. I declined to agree to any extensions because Councillor Mammoliti had been aware of my Office's interest in speaking with him since February 2018 and had been fully represented until, apparently, the time he was served with the summons.

Councillor Mammoliti attended at my Office pursuant to the summons. His attendance was somewhat unusual. He arrived and was seated in my interview room. I entered the room, sat down, thanked him for attending. I began to commence the interview and stated that I would be recording the interview using my digital recorder. He said that he would also record it and produced a digital recorder. He also had two cell phones with him that were on the table. He said that he also wished to video record the meeting. He said he had a statement to read.

My practice is not to allow people to record interviews; doing so would compromise the integrity of my inquiries. I was not prepared to change my practice in this case. I said that it was unacceptable for him to record the interview and that I would not permit it.

I took a break to obtain legal advice. I returned to the room prepared to negotiate with Councillor Mammoliti about creating a single recording that I would control and that of which he could request a copy.

When I entered the interview room, I turned on my digital recorder and told him that I was doing so. He said that he was audio-recording and he had also positioned one of his cell phones to take a video. He turned on his video recorder. I stated that this was unacceptable to me; I then asked him to turn off the video recording. He refused and

proceeded to read a lengthy written statement. I tried to interrupt him two times. He continued.

At the end of his statement, he announced that he would gather his things and leave the meeting room. He began to gather his things, turned off his recorder and phone (video). While he was packing up, I tried to open a discussion on the issue of the digital recording, but he proceeded to leave the room.

As noted, one reason Councillor Mammoliti gave for refusing to participate in the interview was a lack of legal counsel. Councillor Mammoliti has had legal counsel since March 2018. It was not until after he was served with the summons that he stated for the first time that he did not have counsel. It later emerged that he still retained the same legal counsel he had retained throughout, but only for the purpose of making complaints about me to other agencies and not, he claimed, for the purpose of responding to the summons and attending the interview.

Nevertheless, Councillor Mammoliti sent me a Microsoft Word version of the statement he read out. The metadata properties of that document indicated that the day before his attendance at my Office, a lawyer from the same firm that had represented him since March 2018 edited the document. This caused me to question the veracity of Councillor Mammoliti's assertion that he did not have legal counsel for the purpose of assisting him with the summons and the interview. I sought clarification from him and he stated that his legal counsel represented him only as it related to making complaints about me to other authorities.

I have been advised that I could commence legal proceedings to have Councillor Mammoliti held in contempt of court. I have decided not to do so and to conclude the inquiry because I do not believe it is prudent to continue to spend public funds to persuade or compel Councillor Mammoliti to answer questions when he is no longer a member of Council. Furthermore, it is in the interests of fairness to the several other people involved that this investigation come to an end.

It is unsatisfactory that Councillor Mammoliti has refused to provide evidence in this inquiry. I suspect that those many people who did will find it surprising, unfair and unjust. He has frustrated this inquiry unreasonably and in ways that have caused me to have greater skepticism about his actions than may have otherwise been the case. His refusal to participate in an interview has meant that additional investigation steps were necessary to understand his actions.

5. FINDINGS

I make the following findings of fact on a balance of probabilities.²⁷ This standard is lower than the criminal standard of proof, beyond a reasonable doubt, but it requires more than mere speculation and requires that for findings to be made, the evidence must be clear, convincing and cogent.

A. Councillor Mammoliti's Idea for the Monumental Flagpole

A monumental flagpole is a type of very large flagpole (i.e., usually over 100m tall) that happen to be common in Mexico. Due to their size, monumental flagpoles are architecturally challenging and require special technology to design and build.

Since the early 2000s, Councillor Mammoliti has advocated for building a monumental flagpole in the Emery Village area. His interest arose from spending time in Mexico on personal and City-related trips. At some point prior to 2008, Councillor Mammoliti met Salvador Alvaraz Hoth, a person with experience in designing and building monumental flagpoles.

Councillor Mammoliti and Mr. Hoth are friends. Councillor Mammoliti attended Mr. Hoth's wedding in 2013; Mr. Hoth expressed concern when Councillor Mammoliti was hospitalized in 2013. Councillor Mammoliti's former staff and Mr. Sutherland understand that the two men have been friends for many years. Mr. Hoth denies they have a business relationship, and no other witness who might know could provide me with any information to suggest that they had any business connection.

B. The Emery Village BIA Board Supports the Flagpole

The idea for a monumental flagpole in Emery Village dates back to at least 2002, prior to the establishment of the EVBIA. City records from 2002 indicate that it was proposed that a flagpole would be located on the northwest corner of Toryork Drive and Weston Road, a completely different location than the land at Finch and Arrow Road. The North York Community Council made changes to the zoning bylaw to permit the construction of a flagpole as part of a development project known as the Centrillium.²⁸

The fact that the Land at Arrow and Finch was not always the target location is relevant to my findings regarding the owner of the Land.

²⁷ *F.H. v. McDougall*, [2008] 3 SCR 41, 61; 2008 SCC 53 (SCC)

²⁸ Final Report – UD03-FW – Emery Village Zoning – Finch Avenue and Weston Road (Ward 7 – York West): see <https://www.toronto.ca/legdocs/2003/agendas/council/cc030521/ny4rpt/ci016.pdf>

The EVBIA was established in 2003 and is located within what was Councillor Mammoliti's ward. As with all BIAs, the EVBIA is managed by a board of management; the local councillor sits on the board.

The EVBIA began pursuing the idea for a monumental flagpole in the area in 2007. In October 2007, the EVBIA issued a Request for Expression of Interest for a consultant to assist with a project that would include the development of the "World's tallest flagpole". The Executive Director of the EVBIA recalled that the BIA received advice from the BIA Office (a City office that supports BIAs) that the project was too large for the EVBIA to manage without expert advice.

C. The EVBIA Board Hires Sutherland & Associates to Help with the Monumental Flagpole Project

Sutherland and Associates was the only qualified bidder to the 2007 Request for Expression of Interest. Sutherland and Associates is now known as Sutherland Corporation; it is referred to in this report as "SC".

When the decision to hire SC was presented to the EVBIA Board for decision, Councillor Mammoliti disclosed that he and Paul Sutherland, the principal of SC were former councillors together in North York. The Executive Director of the EVBIA, Sandra Farina, recalled that Councillor Mammoliti wished for the Board to know this fact when deciding to proceed with Mr. Sutherland. That he did so was recorded in the minutes.

At the time of the events in this inquiry, Mr. Sutherland was the sole owner of SC. Mr. Sutherland denies that Councillor Mammoliti has or has ever had a financial interest in SC's work for the EVBIA, and there is no indication that the disclosure Councillor Mammoliti made in 2007 was on the basis of a financial interest. Mr. Sutherland admits that he and Councillor Mammoliti have bought each other a meal or coffee over the years, that he has supported Councillor Mammoliti's political campaigns over the years and that when Councillor Mammoliti was hospitalized in 2013, he visited him. He and Councillor Mammoliti were invited to Mr. Hoth's wedding in 2013, which they both attended. Mr. Sutherland says that he is friendly with Councillor Mammoliti, but he denied that there was any sense of loyalty between them that would prevent him from telling me the truth in this inquiry. He testified that SC did not purchase tickets for a personal fundraiser²⁹ for Councillor Mammoliti in 2013 (the "**2013 personal**

²⁹ In 2014, Councillor Mammoliti was found to have contravened Article IV of the Code of Conduct for accepting gifts in the form of donations made to a personal fundraiser in his honour. Integrity Commissioner Report on Violation of Code of Conduct: Councillor Mammoliti (June 24, 2014): see <https://www.toronto.ca/legdocs/mmis/2014/cc/bgrd/backgroundfile-71097.pdf>

fundraiser”). He said that he has not attended Councillor Mammoliti’s family events, nor has he invited Councillor Mammoliti to attend his.

I have no basis to doubt Mr. Sutherland’s evidence on these points. Councillor Mammoliti is someone that Mr. Sutherland has known for more than 20 years because Councillor Mammoliti is someone that Mr. Sutherland needs to know to do his business.

Although he admitted that the EVBIA business was likely important to him in 2008, Mr. Sutherland said that for many years it has not made up a significant portion of SC’s overall business. On a handful of occasions over the past ten years, the EVBIA has discussed whether to continue its engagement with SC. There was some notable debate about it in late 2009, but, otherwise, the EVBIA has been regularly briefed (although not monthly) about SC’s work and asked for authorization to continue or change course over the years.

D. The EVBIA Travels to Mexico to See Monumental Flagpoles

In June 2008, Mr. Sutherland and two members of the EVBIA Board travelled to Mexico City to see a monumental flagpole. Both board members were interviewed in this inquiry. They met Mr. Hoth and independently formed views that the monumental flagpole was a good idea for the EVBIA.

E. EVBIA Explores Ways to Self-Fund Construction of the Flagpole

Immediately after SC was retained, the EVBIA began to explore options to finance the development of the flagpole project. One potential source of revenue was modernizing and updating billboard signage in the area by creating a sign district. The EVBIA retained Allvision LLC for this purpose on August 15, 2008.

It was in the context of the modernization project that SC encouraged the owner of the Land to work with Allvision to enter into a rental agreement with Astral Media for a billboard located on the Land. The EVBIA has never received any revenue from the sign on the Land, although it does receive some for other signs within the area.

F. Early Momentum 2008-2009 – The Finch/Arrow Land becomes the only Viable Location

Initially, the EVBIA’s preference was to build the flagpole on the City-owned Emery Yards site, which would have required the City to declare the Emery Yards surplus.

On October 22, 2008, Mr. Sutherland briefed the EVBIA that consultation with the City and other interested parties indicated that the location adjacent to the Prayer Palace at 1111 Arrow Road (the Land) should be added to the potential sites. At this point in time, the idea was that the EVBIA would lease the Land for this purpose.

In a January 2009 update to the BIA, Mr. Sutherland noted that sources of funding for the flagpole would include section 37 funds³⁰ from new development approvals in the EVBIA (subject to Council approval), new funds secured from outdoor advertising revenue, and fundraising. Mr. Sutherland noted that one of the most critical factors in the flagpole project was securing an adequate site. He noted that the Land represented the best opportunity to achieve this in a timely manner. The potential land-lease agreement was dependent on the ability to negotiate an adequate revenue stream from the proposed outdoor billboard sign.

In May 2009, the City officially informed the EVBIA that the Emery Yards site could not be used for the flagpole project. From this point forward, SC focused its efforts on the Land, the only remaining viable location for the project. Mr. Sutherland testified that Councillor Mammoliti was disappointed about this turn of events because he preferred the Emery Yards site to the Land.

G. Katpa Holdings and Mr. DeLuca

Katpa Holdings Inc. (“**Katpa**”) is a holding company that owns the Land at Finch and Arrow Road and no other assets. Frank DeLuca is an owner and the main principal of Katpa. Mr. DeLuca testified that the Land was acquired through a share purchase and that he did not change the name of the company after the transaction closed. The name “Katpa” reflects the initials of the first names of the Land's previous owners, the pastors at the Prayer Palace next door.

Mr. DeLuca identified the other shareholders of Katpa to me in his testimony, and they do not include the former owners of the Land or any other person of relevance to this inquiry. He wishes for the identity of the other shareholders to be kept confidential.

During the investigation, a witness made allegations about possible joint ownership of a restaurant by Councillor Mammoliti and Mr. DeLuca. Mr. DeLuca testified that he has never had any business relationship with Councillor Mammoliti. He said that he knows Councillor Mammoliti as the councillor of the ward in which his business is located, and he was in contact with him over the years for various proposals and initiatives that he

³⁰ “Section 37 funds” refer to the section of the *Planning Act* that allows municipalities in Ontario to require an applicant to provide a community benefit to the City when a proposed development requires a zoning bylaw amendment that allows the proposed development to be larger than allowed under the bylaw.

considered pursuing, including matters in relation to the possible use of the Land as a site for the flagpole. He said that although he has known Councillor Mammoliti for many years, he would not call him a friend. He testified that he had dinner with Councillor Mammoliti and Mr. Sutherland on one or two occasions. Mr. DeLuca also attended the 2013 personal fundraiser for Councillor Mammoliti. He said that he attended because it was the neighbourly thing to do, and he denied that it had any bearing or connection on any of his dealings with the City. I have no evidence to contradict, and I accept, Mr. DeLuca's description of his relationship with Councillor Mammoliti.

I asked other witnesses about Mr. DeLuca in general and about his relationship with Councillor Mammoliti. One witness believed that as of September 2015, Mr. DeLuca was frustrated with Councillor Mammoliti because of all the efforts that Mr. DeLuca had made to move the project along but that the project seemed to continually get stalled. However, in his testimony with me Mr. DeLuca said that it was his understanding that the Councillor did not have influence over many things.

Mr. DeLuca met Mr. Hoth once but had no specific knowledge of him.

Mr. DeLuca also owns a development company called DeLuca Homes Inc. ("**DeLuca Homes**"). DeLuca Homes is the legal entity that owns the advertising rights for a billboard located on the Land and, initially, was to receive certain development rights in relation to the Land if the TPA acquired it. I will now return to the chronology.

H. Request for Expressions of Interest for the Construction and Installation of North America's Tallest Flagpole and Flag

In October 2008, the EVBIA issued a Request for Expression of Interest seeking qualified firms for the (emphasis added) "construction and installation of North America's Tallest Flagpole and Flag, *and private flagpoles and flags for local businesses and residents in the Emery Village community*" (the "**Flagpole RFEI**"). SC conducted the Flagpole RFEI on the EVBIA's behalf.

Two firms submitted qualifying bids: National Flagpole Inc. ("**National Flagpole**") and Trident Support Corp. ("**Trident**"). The bids were reviewed and scored by Dan Bordonali, an SC consultant. Based on Mr. Bordonali's assessment, SC recommended to the EVBIA that it select National Flagpole. On December 9, 2008, the EVBIA Board accepted SC's recommendation.

Mr. Sutherland, Mr. Bordonali and Ms. Farina, (Executive Director of the EVBIA), testified in this inquiry that even though the Flagpole RFEI purported to select the builder of the monumental flagpole, a further procurement process would be needed

before the monumental flagpole was built. As is obvious, the EVBIA has never built a monumental flagpole, but one of the principals of National Flagpole, Mr. Hoth, travelled to Toronto to meet with the TPA in 2016 so it was necessary to understand his involvement.

In any case, National Flagpole's selection as the successful bidder in the Flagpole RFEI meant that it became the EVBIA's supplier of small (8 metre) flagpoles. To this day, the EVBIA streetscape manual includes specifications produced by National Flagpole for the small flagpoles.

In 2009 and 2010, the EVBIA worked with the City's BIA Office to cost-share streetscape improvements that included the installation of 30 small flagpoles. The EVBIA contracted directly with National Flagpole to supply an additional 15 flagpoles that exceeded the limits of the cost-shared program. National Flagpole was paid almost \$200,000 by the EVBIA and the City for the supply and installation of small flagpoles in 2010.

Bank records for National Flagpole indicate that the money paid to National Flagpole for these smaller flagpoles was eventually paid to Forest Contractors, already an EVBIA vendor for other purposes, and another company controlled by Domenic Gurreri (one of the directors of National Flagpole). Mr. Gurreri testified that employees of Forest Contractors completed the work arising from the small flagpole business; however, he was not able to provide documentation to explain why the payments were made from National Flagpole to Forest Contractors or his other company.

1. Who is National Flagpole Inc.?

National Flagpole was incorporated on September 2, 2008, a month before the Flagpole RFEI. The directors of National Flagpole are Mr. Hoth and Mr. Gurreri. As noted, Mr. Gurreri is also the President and sole shareholder of Forest Contractors, a large construction company based in the Greater Toronto Area and another vendor supplying services to the EVBIA.

I interviewed Mr. Gurreri and Mr. Hoth separately. Mr. Hoth lives in Mexico, so his interview was conducted by phone. I have relied more heavily on Mr. Gurreri's evidence in relation to National Flagpole because he had more information. Mr. Gurreri candidly answered all the questions I asked in this inquiry and he provided National Flagpole and Forest Contractor records including invoices and bank statements.

Although Mr. Hoth and Mr. Gurreri incorporated National Flagpole in 2008, they are not currently in contact, and have not been for several years. Mr. Hoth did not know about the revenues that National Flagpole earned for the small flagpoles.

My findings about the nature of Mr. Hoth and Councillor Mammoliti's relationship are above. To recap, they are friends and have been for many years. There is no evidence that they have any business relationship.

Mr. Gurreri and Councillor Mammoliti have known each other for several years. A former staff member of Councillor Mammoliti said that they were friends. Mr. Gurreri denied that they were close or personal friends, although he stated (as is clear from public records) that he has supported Councillor Mammoliti's various election campaigns over the years. As well, Mr. Gurreri paid for a ticket and attended the 2013 personal fundraiser for Councillor Mammoliti. When asked if he gave Councillor Mammoliti any other gifts or benefits, he stated that he may have paid for a handful of lunches or dinners over the years.

Mr. Gurreri met Mr. Hoth on a trip to Mexico arranged by Councillor Mammoliti's constituency office. The City's Economic Development Office has no record of such a trip, but there is some media coverage of a trip that occurred in 2007. I interviewed Mr. Gurreri and Mr. Hoth about this trip, as well as another attendee. Although there was some diverging evidence, I conclude that it occurred in 2007.

At some time after that single meeting, Mr. Gurreri and Mr. Hoth decided to incorporate National Flagpole. The share split between them is 50/50, and both are directors.

Mr. Gurreri and Mr. Hoth separately denied that Councillor Mammoliti had any role in relation to their decision to incorporate National Flagpole or that Councillor Mammoliti had any financial interest in National Flagpole.

Mr. Gurreri took care of the incorporation of National Flagpole. In addition to Mr. Gurreri, I interviewed two other employees of Forest who had involvement with National Flagpole; both denied having any information to suggest that Councillor Mammoliti had any role in relation to the incorporation of National Flagpole. I also asked this question of others (outside of Forest Contractors) who might have had knowledge of this, but I have uncovered no evidence to suggest that Councillor Mammoliti had any role.

Mr. Gurreri testified that National Flagpole was established to build monumental flagpoles across Canada, although he could produce no documentation to demonstrate any efforts made by National Flagpole outside of the Toronto area. Mr. Gurreri recalled preparing the bid, and he remembered that there were two possible locations for the

flagpole in Emery Village. Mr. Gurreri explained that he did not have expertise to build monumental flagpoles; Mr. Hoth brought this expertise to the company.

It seemed implausible to me that Messrs. Hoth and Gurreri formed a company solely on the basis of a single meeting. In consideration of their mutual association with Councillor Mammoliti and because they met on a trip arranged by him, I pressed Mr. Gurreri on whether Councillor Mammoliti had a role in relation to the incorporation or the company, but he steadfastly denied it. He also testified that his business venture with Mr. Hoth was not solely motivated by the Flagpole RFEI by the EVBIA; rather, it was a desire to get into the business of large flagpoles more generally.

I have no reasonable basis to doubt Mr. Gurreri's testimony.

I was also skeptical of the *bona fides* of EVBIA's selection of National Flagpole, but I have interviewed the people involved and have no basis to call into question the testimony obtained on this point. As noted, SC was responsible for administering the Flagpole RFEI, including evaluating the bids. I interviewed Mr. Sutherland and Mr. Bordonali, the SC consultant who was responsible for reviewing and scoring the bids. Both gentlemen testified that the recommendation that the EVBIA Board select National Flagpole was based on a merit-based review and was free from any influence from Councillor Mammoliti or anyone else.

I am satisfied that Mr. Sutherland intended to provide a professional service to the EVBIA, that he knew it would be improper for Councillor Mammoliti to interfere with it and that if he had, he would have addressed it because his professional reputation is important to him.

Skeptics of this conclusion may think that Mr. Sutherland would, out of a loyalty to Councillor Mammoliti, disclaim any improper preference for National, even if one existed. I was alert to this possibility, but I have concluded that Mr. Sutherland had no animating loyalty to Councillor Mammoliti that prevented him from telling me the truth or that would cause him to protect Councillor Mammoliti in this inquiry.

I have no basis to conclude that Councillor Mammoliti exerted any influence on SC's consideration of the proposals. To do so would require me to disregard both Mr. Sutherland's and Mr. Bordonali's evidence, and I have no reasonable basis to do so.

There is no evidence that Mr. Gurreri had any involvement or awareness of the flagpole project after 2010, including the TPA's eventual efforts to acquire the Land.

J. EVBIA Support in 2009-2010

The EVBIA's ongoing support for the flagpole project was debated at the EVBIA Board in December 2009, where one member openly questioned whether it should continue. This board member was supportive of the project, in general, but he was dissatisfied with the changing shape of the project and he began to doubt the plan being executed by SC. At Councillor Mammoliti's urging, the EVBIA Board decided to continue to pursue the project.

In May 2010, the members of the EVBIA approved a one-time special levy that, if implemented, would require the BIA's 2,500 business owners pay the full \$3.5-million cost of the flagpole, spread over two years. The levy has never been implemented.

K. The Flagpole Project Comes to City Council – August 2010

Throughout 2009, on the recommendation of SC, the EVBIA began negotiating with Mr. DeLuca for a memorandum of understanding and a letter of intent that would see the EVBIA enter into a long-term lease with Katpa in exchange for Mr. DeLuca's agreement to finance development of the public space, including the flagpole.

In 2009, SC also began to liaise with City of Toronto staff about the flagpole project. The Etobicoke York Community Council directed that City staff report back regarding the sustainability of the Land for a public space, including a flagpole.³¹ In June 2010, SC requested that the City support the project in a variety of ways. At this time, the EVBIA was facing uncertainty about whether as a matter of law it could enter into a lease agreement.

SC provided City officials with several documents to outline the EVBIA's efforts to develop the project including a letter from Standard Parking Canada, a private parking management service, that had been asked by the EVBIA to provide an assessment for a parking at the Land. The letter stated, "Based on the proposal to initially build approximately 100,000 square feet of commercial space, including the 'Flagpole' feature, a 200-space parking facility could generate approximately \$70,000 in net revenue." The letter contained several caveats and I have taken no steps to verify it, but it was notable to me (and corroborative of Mr. Sutherland's evidence in this inquiry) that one of the things that SC did for the EVBIA from an early stage of the project was to assess and market the property as a possible parking site.

³¹ Sign Variance Report – 1111 Arrow Road (EY28.56) (June 9, 2009): see <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.EY28.56>

In August 2010, the City's General Manager of Economic Development reported about the project to the City's Executive Committee in a report titled, "Monumental Flagpole and Public Square."³² The summary stated (emphasis added),

The Emery Village Business Improvement Area (BIA) proposes the development of North America's tallest flagpole (125 metres) and a public square on a 4.678 acre parcel of land situated at the southeast corner of Arrow Road and Finch Avenue West, west of Highway 400 (known as 1111 Arrow Road). The project is intended to create a landmark tourist destination that promotes Canada and also serves as an attraction and focal point for local community and business activities. This report seeks approval of the project concept from City Council and authorization for City staff to enter into negotiations to purchase the site conditional upon concluding financing agreements with the BIA and determination of the appropriate operating model. The City will recover any costs for the purchase and development of the site through a financial agreement with the BIA. The BIA proposes to generate project funding through the annual BIA levy, the potential use of signage and parking revenues, and possible Section 37 contributions. Project maintenance and programming costs would be covered through similar revenue sources, with the BIA taking responsibility for any shortfalls.

The report outlined how the flagpole and square were intended to be funded, including costs associated with purchasing the Land. The report also outlined a number of legal and policy issues arising from the fact that a BIA, a local board of the City, cannot purchase land.

On August 26, 2010, Council voted 30-6 to approve in principle the August 2010 staff report that recommended building the project on the Land on the condition that necessary funding be secured prior to construction.³³ There was considerable debate about the project, including some strenuous opposition.

Many members of the BIA attended Executive Committee to show support for the project and based on the speeches given at City Council, this was persuasive to some members of Council. On the other hand, many members of the BIA also signed a petition that was filed with City Council to oppose the project, and this was a significant red flag for some members of Council. Mayor David Miller, among others, spoke

³² Emery Village BIA – Monumental Flagpole and Public Square Project (August 5, 2010): see <https://www.toronto.ca/legdocs/mmis/2010/ex/bgrd/backgroundfile-32986.pdf>

³³ Emery Village Business Improvement Area (BIA) - Monumental Flagpole and Public Square Project (EX46.29) (August 25, 2010): see <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX46.29>

enthusiastically in favour of the project. As part of the 2010 Council direction, Council asked the EVBIA to consider partnering with the TPA in establishing parking lots to service the tourism potential of the installation.

In October 2010, SC was in touch again with Trident, whose principals became aware of news articles about the August 2010 City Council decision and had inquired with SC if there would be an opportunity to re-bid for the work. SC advised Trident that if the City purchased the Land, a new Request for Proposals would be issued. The evidence gathered in this inquiry was that Mr. Sutherland and his colleagues viewed Trident favourably, and as a possible contender for the eventual construction of the monumental flagpole.

I obtained contemporaneous emails demonstrating that SC was actively involved in the project at this time and, importantly, that it was most likely that if the City was to proceed with the idea approved *in principle*, the City's ordinary procurement process would unfold. Discussing an approach from Trident in 2010, Mr. Bordonali and Mary Di Mambro, another consultant working with Mr. Sutherland at SC, agreed that Trident was a strong contender. With respect to the process that would unfold, Mr. Bordonali said, "...ideally it would be great to have the BIA retain control of the process and obviously that's what we would advocate but the reality is that the city will want to ensure that the RFP follows the appropriate guidelines and procedures."

These contemporaneous records were significant to me because it corroborated the view of many witnesses that the EVBIA's selection of National Flagpole did not grant it any lasting rights and that as the project moved and evolved, other independent processes would come to bear on who would eventually construct the flagpole. In other words, it is clear to me that as of August 2010, the project was poised to proceed as a City-based project with all of the associated purchasing and project management procedures to protect the integrity of the process.

L. Negotiations with the City Fail

On October 25, 2010, a new City Council and Mayor were elected.

As provided for in the August 2010 City Council direction, City staff met with Mr. DeLuca, principal of Katpa, to negotiate a purchase. By December 2010, it was clear that the City and Mr. DeLuca were too far apart on price. At the same time, SC was working with the City to establish a funding model for the flagpole if it was built, including how revenues from the sign on the Land could be transferred to the EVBIA.

In late 2010, Ms. Di Mambro from SC and staff for the EVBIA were working to develop models, designs and a business plan to build community support. They were assisted by a landscape architect and a building architect who were introduced to the EVBIA by Councillor Mammoliti; they had previously provided similar services to him for his mayoral campaign. Neither of these individuals had any personal or business relationship with Councillor Mammoliti and they were not campaign supporters, but they did provide services to the campaign. The landscape and building architects were paid for their services by the EVBIA.

In February and March 2011, SC updated the EVBIA about the negotiations between the City and Mr. DeLuca. The EVBIA obtained an appraisal of the Land to assist the City in its negotiations.

For the balance of 2011, SC was working to understand how, if possible, the EVBIA could generate income to maintain and operate the sign. One of the issues that arose at this time, from the perspective of Mr. Sutherland, was that the EVBIA received conflicting legal opinions from the City about the site and what BIAs were allowed to do to secure revenue. Several City staff were involved in answering the EVBIA's questions on these topics.

Mr. Sutherland also met with Lorne Persiko who was the Vice President, Real Estate and Marketing for the TPA at the time. These inquiries to the TPA did not lead to anything.

Mr. Sutherland also explained that another more significant problem was that the mayor of the day, Mayor Ford, was not supportive of the City acquiring land for the flagpole project.

Councillor Mammoliti joined the TPA Board on December 8, 2010.

M. A Revised Approach

To keep the project moving, SC began exploring alternative ways forward, including encouraging the TPA or other parking companies to acquire the Land and develop the project. In April 2012, SC provided a full report to the Board taking stock of the activities leading up to and following the August 2010 Council decision. Also in April 2012, the EVBIA Board authorized SC to work with Mr. DeLuca to find a way forward that would see DeLuca Homes develop the Land.

For the first half of 2012, Ms. Di Mambro of SC was involved in connecting Mr. DeLuca with the architects who had developed the business plan and models. At this point, Mr. DeLuca became interested in incorporating a hotel, which had not been part of the

EVBIA's plans. The architects suggested that Mr. DeLuca work with another firm at Mr. DeLuca's cost who had more relevant experience. In August 2012, SC reported to the EVBIA that Mr. DeLuca had hired an architecture firm and was moving forward with the development project.

On March 4, 2013, SC reported to the Executive Director of the EVBIA that Mr. DeLuca was moving forward with a development plan for the Land that included a flagpole component. The letter from Mr. Sutherland enclosed a copy of Mr. DeLuca's development plan and stated:

As a result of previous direction given by the EVBIA, we have pursued the flagpole project with the Arrow Road landowner (De Luca) in an effort to minimize costs to the BIA and maximize the opportunity and goal of the project. ...

The strategy being pursued by the BIA contemplated a conveyance of land surrounding the flagpole by De Luca to the City through the redevelopment process that would subsequently allow the BIA to buy and maintain the flagpole via a partnership agreement.

Through several discussions with the land owner regarding the flagpole project, we were successfully able to promote the merits of the flagpole project and the benefits of the landowner's redevelopment application...

Mr. Sutherland expected that the redevelopment application approval would be completed in 2013.

For this plan to move forward, Katpa needed to obtain a variance at the Committee of Adjustment (the "CoA"). At its May 2013 meeting, the EVBIA Board directed SC to represent the EVBIA at the CoA. SC reported that they worked with Councillor Mammoliti's office to negotiate some proposed terms to present to the Committee of Adjustment. The matter was heard by the CoA in July 2013 and was deferred *sine die*, subject to Katpa submitting a complete plan application, which was never submitted.

N. DeLuca Redevelopment Stalls – Late 2013/Early 2014

On February 24, 2014, SC reported to the EVBIA Board that Mr. DeLuca had failed to re-submit the formal site plan application to the CoA and, accordingly, the momentum for the flagpole project had stalled again. The SC report stated,

The flagpole project is a noble and worthwhile initiative by the EVBIA. The flagpole presents a tremendous opportunity to promote the BIA community, the City and the country. The flagpole and Canadian flag is a symbol of the hard

work and dedication of the members of this community, many of whom are immigrants who chose Canada and the EVBIA community to build their business and raise their family.

The Arrow/Finch site is considered the ideal location within the EVBIA area to pursue the flagpole project due to its close proximity to the highway, access to public transit (including future transit improvements), unencumbered viewing angles, opportunity to incorporate additional public amenities, support from landowner, and potential to attain third party funds to subsidize the cost of the flagpole.

We have recently been informed that the landowner has received interest from other parties that may include the purchase of the property. However, the landowner has assured S&A [referred to as SC in this report] that any negotiations will include the flagpole as a component of an agreement.

The EVBIA Board accepted the following recommendations made by SC:

1. Continue to work on the DeLuca site to develop the flagpole and seek out opportunities for the management of the Emery Village square.
2. Review the Metrolinx LRT plan for Finch Ave and the proposed GO transit station in the Metrolinx Bolton Commuter Rail Feasibility Study in the context of the BIA-commissioned Cole Report and their potential impact on the development of the flagpole on the DeLuca site.
3. Provide recommendations on a government relations and public relations strategy for the BIA in order to influence decision-making that may take place around LRT that will include a detailed cost breakdown, and look for opportunities that could allow the BIA to benefit from the LRT construction on the flagpole site.

On March 1, 2014, SC presented Ms. Farina (Executive Director, EVBIA) with a new work plan based on the Board's direction. The new plan had the lengthy title, "Proposal – Emery Village Square and Flagpole Project Implementation and development of a strategic plan for the promotion of the EVBIA's vision for the flagpole project as it relates to the Metrolinx Transit Plan for the Finch Avenue Corridor." The proposal includes several activities in relation to the Finch West LRT, including writing a letter to Metrolinx (copied to Mayor Rob Ford and the top mayoral candidates in the 2014 municipal election) and arranging a public information session.

O. 2014 and the Finch West LRT

The significance of the Finch West LRT to the flagpole project

The Finch West LRT project and the EVBIA's response to it was a significant turning point in the flagpole project and the beginning of the path to the TPA's 2015/2016 involvement. The Finch West LRT is a project of Metrolinx, the provincial government transit agency, that will run from Keele Street to Humber College and through the EVBIA area. The Norfinch/Oakdale stop will be located very close to the Land. At the time of writing, the Finch West LRT is scheduled for completion in 2023.

Councillor Mammoliti is openly opposed to the Finch West LRT – he prefers subways. Although the EVBIA was aligned with Councillor Mammoliti in 2011 and 2012, the EVBIA took a more nuanced approach in 2014 and sought to participate in consultation about construction of the LRT and how it would impact business owners in the EVBIA.

Toward this end, in May 2014, Mr. Sutherland proposed a Government and Public Relations Strategy to the EVBIA regarding the Finch West LRT, which focused on truck traffic and pedestrian safety. At its May 2014 meeting, the Board discussed and agreed to proceed with the SC plan. The EVBIA's main concern at this time was how the Finch West LRT would impact traffic flow in the area.

On August 13, 2014, as part of the Finch West LRT project update, Mr. Sutherland provided the following update:

Flagpole Project

There has been no further information from Mr. Deluca regarding the sale of land and development of the Arrow Rd/Finch Ave site, which included the construction of the flagpole.

Based on a meeting with Metrolinx staff regarding the Finch West LRT, it was determined that parking is an issue staff is currently studying given that the intersection at Finch Ave and Jane St will be designated a mobility hub.

S&A [referred to in this report as SC] met with Lorne Persiko, President, Toronto Parking Authority, to discuss the possibility of using the Deluca site for parking. It was recommended that S&A meet with Metrolinx to discuss the matter further and as a result have an impending meeting with [Metrolinx].

During August and September 2014, Ms. Di Mambro of SC worked with staff of the EVBIA to prepare and participate in a working group established by Metrolinx to

address the concerns being raised by the EVBIA. The topic of the flagpole was not raised during these briefings or in the reports from SC to the board at this time.

At this time, a municipal election was underway and on October 27, 2014, a new City Council and Mayor were elected.

The Public Realm Allocation – Finch West LRT

In January 2015, SC learned from City staff that the City Council would soon be required to provide Metrolinx with priorities for public realm improvements to be built in connection with the construction of the Finch West LRT.

The agreement between Metrolinx, the City, and the TTC to build the Finch West LRT says that Metrolinx will restore the City's infrastructure, streetscape, and public realm to City standards if those assets are disrupted by construction of the line. For example, funds could be used to improve sidewalks and entrances incidental to the LRT route. In order to benefit from the public realm improvements, the City had to make a formal submission to Metrolinx outlining the City's priorities.

In March 2015, SC identified a number of conditions that the EVBIA ought to insist on in order to support the revised LRT design – including that the Public Realm Allocation (the “**PRA**”) include amounts for a public open space and “City landmark project.”

Consultants from SC met with Luke Robertson (Director of Council and Stakeholder Relations, Mayor's Office) to discuss the EVBIA's views on the Finch West LRT on May 11, 2015. Also, in May, Ms. Di Mambro was following up with City staff about timing on the PRA report.

EVBIA Public Meeting Regarding the Finch West LRT

On June 17, 2015, SC helped the EVBIA host a public meeting regarding the Finch West LRT. The meeting's objective was to inform community members about recent events and gauge their support for the conditions of support being put forward by the EVBIA. The meeting hosted several key speakers, including representatives from Metrolinx, the City, Councillor Mammoliti, and Mayor Tory. The EVBIA had invited the leaders of all three provincial parties and other local politicians.

Approximately 500 people attended. Amongst the BIA's conditions of support was “funding to develop public open space and landmark project.”

SC advised the EVBIA Board that it would be meeting with Mayor Tory and his staff to follow up on the public meeting, and they would then further discuss the BIA's conditions of support and how to move forward. As I understand Mr. Sutherland's

overall evidence in this inquiry, it is his view that for any project to have success, it helps to have the support of the Mayor.

P. Summer-Fall 2015 – Toronto Parking Authority First Gets Seriously Involved

Councillor Mammoliti Successfully Seeks On-Site Meeting at the Land with TPA and EVBIA Representatives

A week after the EVBIA public meeting on June 24, 2015, Councillor Mammoliti's office contacted TPA President Mr. Persiko to schedule an on-site meeting at the Land. The meeting occurred on July 27, 2015. Present were: Mr. Persiko, Michael Tziretas (TPA Board Chair), Paul Scargall (TPA Board Vice Chair), Marie Casista (TPA VP, Real Estate), Councillor Mammoliti, Mr. Sutherland, and Ms. Farina (from the EVBIA).

Mr. Persiko and Ms. Casista said that it was common for them to be asked by councillors to attend sites in their wards. Both Mr. Persiko and Ms. Casista said that they treated this request as they would any other member of Council, notwithstanding the fact that Councillor Mammoliti was on the TPA Board.

On August 6 and 10, 2015, Mr. Scargall and Ms. Casista exchanged emails about the Land. In the emails, Mr. Scargall offered commentary about the suitability of using the Land for parking. Mr. Scargall has expertise in commercial real estate and in this inquiry, he explained that he was willing to provide this kind of input from time to time. Councillor Mammoliti, Mr. Tziretas, and Mr. Persiko were copied on these email exchanges.

Negotiations Begin – Fall 2015

Ms. Casista was satisfied (both at the time and during this inquiry) that there was value in inquiring about the Land, and she sought to identify its owner. During Fall 2015, Mr. DeLuca and Ms. Casista met to discuss a purchase.

The Land was first included on the TPA's Real Estate Committee list of potential purchases in October 2015. The TPA's list of potential purchases often included more than 100 properties, but various testimonies established that Real Estate Committee meetings were short, and usually done immediately before a full board meeting for convenience. None of the witnesses in this inquiry recalled any discussion regarding the Land at the Real Estate Committee.

Mayor's Ward Tour

On November 13, 2015, the Mayor completed a ward tour with Councillor Mammoliti; one of the stops was the Land where the flagpole project was discussed. Mr. Tziretas, the Chair of the TPA Board, Mr. Sutherland and Mr. Robertson were also present. Mr. Tziretas testified that he attended because neither Mr. Persiko nor Ms. Casista were available. It was significant to Mr. Tziretas that the Mayor appeared supportive of the project.

Katpa CoA Application

On November 18, 2015, the CoA advised Katpa that its outstanding application (that had been adjourned *sine die*) would be closed unless submissions were made to the contrary. On December 3, 2015, Councillor Mammoliti attended at the CoA to speak to Katpa's application, asking the Committee not to close the file and these submissions were successful.

Agreement of Purchase and Sale

The first known draft of the Agreement of Purchase and Sale (the "**APS**") between the TPA and Katpa was sent by Ms. Casista to Mr. DeLuca on January 12, 2016. This version of the APS contemplated that Mr. DeLuca's development company, DeLuca Homes, would obtain certain rights to develop the property, including the flagpole. The specific terms that Mr. DeLuca would request for the development agreement were not known at this time.

Q. March 2016 Council Direction to the TPA

Initial Drafts of the Public Realm Allocation Report – Fall 2015

As noted above, representatives of the EVBIA (including consultants from SC) were in discussions with Brian Gallagher (then a Senior Planner in Toronto's City Planning division) about the PRA report to City Council that was required to set out the City's priorities for the public realm funding Metrolinx would provide in conjunction with the Finch West LRT. Mr. Gallagher was tasked with consulting with the local councillors along the Finch West corridor, and other stakeholders such as the affected BIAs.

Mr. Gallagher learned that the EVBIA and Councillor Mammoliti wished to have the monumental flagpole included in the City's list of priorities. Mr. Gallagher was concerned about whether the flagpole met Metrolinx's criteria, but thought that perhaps a gateway or public space could be valid public realm investments, and he helped to craft language to describe the project accordingly.

An early draft of the PRA report circulated among City staff on September 21, 2015 included a recommendation that the City include in its list of public realm requests “a ‘gateway’ feature along the Finch LRT in the vicinity of Highway 400, which may include a flagpole”. On September 28, 2015, Mr. Gallagher reported to Ms. Di Mambro and staff at the EVBIA, “On the positive side, senior management did include provision for a “gateway” feature (which could include a flagpole) in the list of candidate projects. It is not know [sic] for sure at this time whether Mx [Metrolinx] will allow the use of PRA fund for this element.”

Had this recommendation remained (and subsequently obtained Council approval), the flagpole would have been specifically included in the list of priorities the City was asking Metrolinx to fund.

Mr. Gallagher provided a high-level update to Ms. Di Mambro of SC, and Al Ruggero, an employee of the EVBIA who was assigned to work on this project. Mr. Sutherland provided this update to Ms. Casista on October 1, 2015, stating, “Below you will see plans to include a square (flagpole) in a report related to the Finch LRT.”

However, Mr. Gallagher recalled that this recommendation was eventually removed because either Metrolinx or City staff determined that the gateway/flagpole did not meet Metrolinx's criteria. He was not surprised when it was taken out.

With SC’s assistance, Ms. Farina (the EVBIA Executive Director) wrote to Mr. Gallagher on November 30, 2015 to summarize the EVBIA’s concerns and requests regarding the Finch West LRT. The letter stated that the TPA was considering purchasing the Land for parking and that the TPA had indicated a willingness to “to make a portion of the land available” for the public square and gateway project. The TPA Board had not yet made any decisions about the Land; however, as noted, the transaction was first listed on the Real Estate Committee agenda in October 2015. Mr. Gallagher stated, “I’m consulting with senior management and the Mayor’s office right now regarding your comments and suggestions and will be getting back to you....”

Finalizing the Report – Discussions with Councillor Mammoliti and Others (January 2016)

In January 2016, Jeffrey Climans (Director, Major Capital Infrastructure Coordination Office) was responsible for finalizing the PRA Report. His role was to coordinate various City divisions, and especially City Planning, as it related to the public realm priorities.

Mr. Climans testified there was some time pressure to complete the PRA Report because the City was already past Metrolinx's initial deadline to provide Council approval of the public realm recommendations. If the report was not completed soon, then the funding from the province was at risk.

As part of his ordinary protocol, Mr. Climans sought input from the relevant local councillors, including Councillor Mammoliti. He had two meetings with Councillor Mammoliti, including one with the Mayor at the Mayor's Office on January 15, 2016. Councillor Mammoliti requested this meeting to help him to persuade City staff of some of his requests. Mr. Robertson, Mr. Gallagher and other City staff also attended that meeting.

At that meeting, Councillor Mammoliti explained several items that he wanted to see included on the list of priorities, including the acquisition of the Land for the purpose of the flagpole. Mr. Climans understood that Councillor Mammoliti was speaking as the local councillor, but also that he had some knowledge of the particular property because of his role on the TPA Board.

Mr. Climans quickly ruled out most of Councillor Mammoliti's requests, but undertook to look into the Land and whether anything could be done to include it in the process. Mr. Climans said that although he was asked to look into the possibility, there was no expectation from Councillor Mammoliti or the Mayor (or anyone) to provide or do anything that could not be supported.

He contacted the TPA and spoke with Ms. Casista. Ms. Casista told him that the TPA was engaged in negotiations to secure the Land. Mr. Climans reported this back to Councillor Mammoliti, who again requested Mr. Climans to include the item in the report to help "accelerate" or "crystallize" the process. These are the words that Mr. Climans used to describe Councillor Mammoliti's objectives but not the words that he recalls Councillor Mammoliti using.

Mr. Climans went back to Ms. Casista, who was Mr. Climans' only substantive contact at the TPA on this matter. Ms. Casista told him it was not uncommon for the TPA to obtain direction or advice from Council through a number of possible channels, including, for example (in this case), a report to the Executive Committee. A report to the Executive Committee was a possible means to request the TPA board to advance negotiations or move forward with an acquisition.

Mr. Climans testified that based on Councillor Mammoliti's advocating to include the flagpole project in the PRA Report, and the TPA advising him that it was not inconsistent to do so through a report going to Executive Committee, "recommendation

#5” (described below) was included in the PRA Report. Ms. Casista and Mr. Climans collaborated on the language that became the recommendation (and ultimately Council direction) for the TPA to purchase the Land. Its first draft was provided by Ms. Casista to Mr. Climans on February 18, 2016.

Mr. Climans said that, in one way, Councillor Mammoliti's requests were no different from experiences he has had with other councillors seeking enhancements to City projects in their wards. But Mr. Climans also had the impression that if the TPA direction was not included, then Councillor Mammoliti was prepared to oppose the entire report (which would have been unusual). Mr. Climans was concerned by this because if the report was vigorously opposed at City Council, it could delay the City's ability to submit the priorities to Metrolinx, which was already overdue. This would put the entirety of the Metrolinx public realm funding for the Finch West LRT at risk.

It is clear that the recommendation directing the TPA to acquire the Land would not have appeared in the PRA Report if Councillor Mammoliti had not advocated for its inclusion. However, Mr. Climans said that because he had said “no” to many of Councillor Mammoliti's other requests, and after doing his own due diligence with Ms. Casista (i.e., that a recommendation through the Executive Committee could be sufficient for making the request of the TPA Board), there was no basis to turn this request down. Mr. Climans stated that if he was not able to independently obtain the information from the TPA about the status of the transaction, he would not have included the recommendation.

On February 24, 2016, the Staff Report titled “Allocation of Public Realm Amount – Finch West LRT” was finalized, and included the following language:

The Toronto Parking Authority is engaged in a process to acquire a site at the southeast corner of Finch Avenue West and Arrow Road (near Highway 400). While their primary goal is to deliver on the strategic plan and mandate of the TPA to provide parking in support of local business, this investment would have the added benefit of complementing the public realm goals set out in this report. This acquisition will contribute to public use of the Finch West LRT service, support integration of the LRT within the community, facilitate proposed Bike Share Toronto infrastructure, and permit construction of a gateway feature for the Emery Village BIA ...

Accordingly, to support the PRA initiatives, this report seeks approval from City Council to enable the Toronto Parking Authority to execute the property acquisition subject to terms and conditions negotiated by the President, including fair market value (“FMV”) and approval by the TPA Board.

And, the following recommendation:

5. In support of the PRA strategy set out in this report, City Council authorize and direct the Toronto Parking Authority to acquire a property located at the southeast corner of Finch Avenue West and Arrow Road (near Highway 400) for municipal parking and ancillary uses including proposed Bike Share Toronto infrastructure, and to permit construction of a possible gateway feature for the Emery Village BIA. Acquisition will be on terms and conditions to be negotiated by the President of the Toronto Parking Authority, at fair market value plus associated costs such as land transfer tax, title insurance and other fees, and approved by the Toronto Parking Authority Board. The City Solicitor is authorized to complete the purchase transaction, deliver any notices, pay any expenses and amend the closing and other dates, on such terms and conditions as the City Solicitor may determine.

The Executive Committee considered the PRA Report on March 9, 2016 and adopted it without debate or amendment. On March 31, 2016, City Council unanimously adopted the Staff Report, and accordingly directed the TPA to acquire the Land at fair market value.

Prior to the Executive Committee meeting, the Office of the City Solicitor requested some amendments to paragraph 5. There was a debate among City staff about whether the requested changes were technical or essential. The requested amendments were described in an email from a lawyer in the Office of the City Solicitor as follows: "This is intended to ensure that the property to be acquired is clearly identified (with a legal description) and that staff have clear authority to negotiate an appropriate deal."

Email records also indicate that Mr. Climans disagreed with the need for the amendment and he so stated to the City Solicitor, the Mayor's Office and Councillor Mammoliti. He stated that it was his view that it was, "nice to have but not essential." He stated that he would meet with Councillor Mammoliti to discuss the amendment and to convey that "it does not put his interests at risk." Mr. Climans' email to staff in the Mayor's office after meeting with Councillor Mammoliti stated, "I just spoke with Councillor Mammoliti about the timing and content of the proposed technical amendment ... He would be grateful if the advice from Legal Services is acknowledged off-line, and that no amendments are made to any recommendations in the staff report. Accordingly, please consider this message as my request to take no action with respect to the proposed technical amendment at this time."

In this inquiry, Mr. Climans testified that his emails accurately reflected *his view* that the amendment was “nice to have but not essential.”

I note that while this investigation specifically considered Mr. Climans' interactions with Councillor Mammoliti, the evidence also established that Mr. Climans was similarly engaged in seeking input and addressing requests from another member of Council impacted by the report.

Impact of Paragraph 5 in the May 2016 PRA Report

City Council's decision to adopt paragraph 5 of the May 2016 PRA Report had a significant impact on the progress of the monumental flagpole project, even though it was not the first time that City Council had supported the project (i.e. the 2010 decision).

According to several TPA Board members, the March 2016 City Council direction was the driving motivation for the TPA to pursue the Land, even though (unbeknownst to most of them) negotiations had already been ongoing for several months by that time.

R. Councillor Mammoliti is Very Involved

At this point, it can be observed that Councillor Mammoliti was using all of the levers available to him to increase the chance of the flagpole being built. He had hosted the Mayor at the site, during a meeting with the Mayor he advocated for the flagpole and other priorities, which sent a signal to staff involved that his concerns should be addressed if possible. He was able to leverage information he had as a TPA board member, and in fact, he had already been able to cause the TPA to begin seriously looking into the acquisition. As a result of the Mayor's attendance on the ward tour, there was an impression among some TPA Board members and the TPA President that the Mayor was in favour of the project. All of this created a certain amount of momentum.

The evidence is also clear, however, that the EVBIA also had a role to play in advocating for the flagpole project at earlier stages of the discussions with City staff regarding the PRA Report.

S. TPA Board Authorizes Staff to Proceed – May 2016

In a May 24, 2016 report, TPA staff formally asked the Board for approval to enter an APS for the Land at a \$12 million price, subject to satisfactory review of the terms by the President. The staff report stated,

The Vendor currently has a Development Management Agreement with DeLuca Homes who is also a major investor in KAPTA [sic]. De Luca Homes has been developing residential and commercial properties in Toronto over the last 30 years and has been successful with suburban and mixed use project. We intend to enter into a Development Management Agreement with KAPTA [sic] Holdings Inc. which will give TPA the option (but not the obligation) to have De Luca Homes develop the site. Further, TPA may grant De Luca Homes a first right to purchase the western portion of the Property at its then market value.

At an *in-camera* portion of its May 26, 2016 meeting, the TPA Board approved proceeding with the purchase, subject to completion of due diligence.

T. Confidential Information Disclosure

The AG Report raises a concern that this *in-camera* decision was shared with Mr. Sutherland who was not, and could not have been, present at the *in-camera* portion of the meeting but reported about it in his June 16, 2016 briefing note to the EVBIA Board. All TPA Board members who were interviewed were asked how this could have happened, as well as the TPA Board Secretary, Mr. Sutherland, Mr. Persiko, Ms. Casista, and Mr. DeLuca. The TPA Board members denied disclosing the information to Mr. Sutherland.

In addition, Mr. Sutherland advised that he could have gotten the information directly from Mr. DeLuca himself, with whom he had been discussing the acquisition. The fact that the matter was going to the TPA Board was known to Mr. DeLuca, and the dates of TPA board meetings were posted on the TPA's website. Mr. Sutherland testified it was either Mr. Persiko or Mr. DeLuca who told him the information. Mr. Persiko had no detailed or specific memory of the events but did not contradict in his testimony the possibility that he had advised Sutherland of this information. However, he also stated that these details were not confidential from those that were involved in the transaction, and so it did not surprise him that Mr. Sutherland knew that information.

In any event, the investigation uncovered a June 13, 2016 letter from the Chair of the TPA to the Chair of the EVBIA that conclusively resolves the issue. The letter was faxed on June 15, 2016 and states:

I am writing to advise you and the Emery BIA Board of Management that the Toronto Parking Authority is currently engaged in discussions to purchase the lands at 1111 Arrow Road. The lands in question will be used for parking, development and community purposes.

[Reference to the March 31 and April 1, 2016 City Council decision.]

We look forward to providing public parking that will be required with the onset of the Finch West LRT and working with the EVBIA and your representative in constructing and completing the square in a timely fashion.

In summary, whether it should have or not, the TPA formally notified the EVBIA of its decision by letter prior to Mr. Sutherland's report.

U. What did the TPA Board members know about the EVBIA and the Flagpole Project?

All of the TPA board members in place in 2015 and 2016 were interviewed in this inquiry, other than Councillor Mammoliti.

There was a general awareness on the TPA Board that the flagpole project was of special concern to Councillor Mammoliti. His interest was discussed at the Board meetings and there was awareness that he had brought the idea to the TPA.

The TPA secretary's notes of the May 2016 board meeting indicate that Councillor Mammoliti discussed the possibility of the project being completed in time for Canada's 150th birthday. These same notes indicate that Councillor Mammoliti told the Board that the flagpole project had been before City Council "three times" before. According to the TPA secretary's notes of a September 15, 2016 meeting, Councillor Mammoliti retold the history of the various attempts to develop the flagpole project on the Land.

Further, both the Board Chair and the Vice Chair visited the site with Councillor Mammoliti and, in the case of the Chair, the Mayor by the time the possible purchase was discussed by the Board. All of the board members had some knowledge that the local BIA was also involved in the project. Councillor Mammoliti made no secret of his special concern for this project.

Mr. Persiko, Ms. Casista, Mr. Tziretas, Chair, and Mr. Scargall, Vice Chair of the TPA Board were more involved than others. They testified that Councillor Mammoliti was advancing his interest in the project as the "ward councillor." None of these individuals found it difficult or unusual that a member of the Board would so advance a ward project. In fact, all of the TPA Board members had knowledge that this was a project of interest in Councillor Mammoliti's ward and none of the Board members thought there was anything unusual or difficult about that fact.

Mr. Persiko offered other similar examples from the past where a councillor/board member was involved in both capacities in projects in their ward. However, upon

reflection, Mr. Persiko observed that it might have been better if there was a policy, procedure or protocol to address the situation when a local councillor who is also a board member has a special project before the board.

V. The Development Management Agreement and Pressure on TPA Staff and Board Members

The Development Management Agreement

As noted, the first version of the overall transaction between the TPA and Katpa was both a land transfer *and a development management agreement* that would grant to DeLuca Homes rights to develop the Land. As will be seen, the development management component of the transaction was eliminated from the overall transaction in July 2016.

The reasons why are notable. Despite request, TPA staff were not provided with the terms of the development management agreement until late May. Mr. Persiko, Ms. Casista and the TPA's external real estate counsel, Morty Gross, had significant concerns about the requested terms. Mr. Gross testified in this inquiry. He said that the terms contained in the proposed development management agreement were notably and significantly concerning because they granted too many rights to the developer (DeLuca Homes).

Mr. Gross said that it was his impression that Mr. Persiko and Ms. Casista were under immense "political pressure" to conclude the transaction with respect to the Land. Mr. Gross testified that Mr. Persiko and Ms. Casista requested that he meet directly with Councillor Mammoliti to explain why the TPA should not accept the development management component of the agreement. Mr. Persiko had a different memory, suggesting that it was the Board as a whole who required some persuading.

In any event, Mr. Persiko invited Councillor Mammoliti, Mr. Tziretas (the TPA Board Chair) and Mr. Scargall (the Vice Chair - Real Estate) to the meeting that occurred on July 21, 2016; Mr. Scargall and Councillor Mammoliti attended from the Board.

At the meeting, Mr. Gross explained the unusual nature of the requested terms for the development agreement, and he provided his legal advice about the risks of following through with the development component of the agreement. It was Mr. Gross' advice that the TPA should not agree to the requested terms. Councillor Mammoliti told the group that business considerations should prevail over legal ones and that DeLuca Homes was a qualified builder. However, Councillor Mammoliti was quickly persuaded by the advice given, and he asked Mr. Gross what he suggested. Mr. Gross suggested

that if the TPA wished to proceed, it do so without the development management agreement. Everyone in the room agreed. Mr. Gross testified that he was surprised at how quickly Councillor Mammoliti came around to his advice.

Mr. Scargall testified that he agreed with Mr. Gross' assessment of the situation and supported him. The only thing that he could recall about Councillor Mammoliti's behaviour that day was how quiet he seemed to be.

About the meeting, Mr. Persiko also recalled that Councillor Mammoliti and Mr. Scargall advocated for the TPA to increase the offer price. Mr. Scargall has no recollection of this, although he recalled that there were general discussions about the possible value of the Land due to the fact that the Finch West LRT was to be built. Mr. Gross had no specific recollections of any discussion about price. The evidence is that Mr. Persiko remained firm on the price and, as described, with Mr. Gross' help he was able to persuade Councillor Mammoliti and Mr. Scargall against the development management agreement.

Regarding Mr. Persiko's assessment that the Board was the one requiring convincing, Mr. Scargall testified that he did not have any particular concern about the transaction proceeding but that one of his concerns was that the TPA follow the direction provided by City Council.

Were TPA Staff Under Pressure?

At initial interviews in this inquiry, neither Mr. Persiko nor Ms. Casista said that they felt any pressure at all in relation to this transaction.

I asked Mr. Persiko about Mr. Gross' impression that he and Ms. Casista were under "political pressure." Although he initially disputed it, he ultimately conceded that he was under pressure but that such pressure was not unusual in his experience and that he resisted it. He believed that Councillor Mammoliti's advocacy efforts were based on prior experiences with Mr. DeLuca and a concern that he might not follow through with the deal. He knew that the project was important to Councillor Mammoliti – everyone did. And, he also perceived the Board to be interested in proceeding with the transaction.

I pushed Mr. Persiko on his evidence that the pressure he felt was not uncommon because I was not sure whether he was testifying this way to protect Councillor Mammoliti (or the other board members) or to explain his own actions. I am satisfied that it is the latter; he expressly stated that the pressure he felt was no different than he had felt in the past and he was fully prepared to deal with it and make sure that the TPA followed its own processes as it moved forward.

The next staff report to the TPA (July 27, 2016) recommended that the TPA board move forward with the transaction without the development management component.

Was the TPA Board Under Pressure?

None of the Board members testified that they felt any particular pressure or incentive to move forward on this transaction, but they were all aware of the Council direction, and I conclude that this created some form of pressure on them to move forward. There was also a general awareness that it was important to Councillor Mammoliti. And, two of the board members (the Chair and Vice Chair) also believed that the Mayor was supportive of the initiative; the basis for their conclusions in this regard was the fact that the Mayor had attended the site. I conclude that the Board, rightly or wrongly, wished to proceed with the transaction because they thought that it was a priority to do so.

Impact of Pressure

Every witness in this inquiry who had a role to play as staff to the TPA, the City or as a TPA Board member stated that they did not let the pressure come to bear on how they discharged their professional duties.

W. July 28, 2016 TPA Meeting

As noted, shortly after the meeting with Mr. Gross, in a July 27, 2016 report, TPA staff now recommended that the Board authorize them to negotiate the APS to acquire the Land without any development management agreement and to allocate \$100,000 of TPA funds for consultant costs (including design, engineering, environmental, testing, planning, and architectural services) to support the gateway feature for the EVBIA. The Board discussed the propriety of allocating TPA funds for development work, although the staff recommendation was adopted, with Councillor Filion voting against.

X. Mr. DeLuca Signs Back the Deal

On August 19, 2016, Mr. DeLuca signed the binding Conditional APS. Mr. DeLuca had a vivid memory of the day on which he signed back the APS. He said that he, too, felt pressure from Mr. Gross positioning the offer as a “final offer” and social pressure as a community member to move the flagpole project forward, recognizing that his decision to sell was a critical component of the plan.

Y. TPA Begins Preparing to Develop the Land

In July, the same week that the TPA Board approved the staff recommendation, Ms. Casista was in touch with a Toronto-based construction company (Arup) to obtain

pricing for consulting services necessary to build the monumental flagpole. The investigation has not established any prior involvement by Arup.

On August 31, 2016, a number of TPA staff met with EVBIA staff and consultants to discuss engineering and construction issues on the site. At this point that there was significant momentum toward completing the project, and there was also hope that the monumental flagpole could be constructed in time for Canada 150 celebrations to occur in 2017.

The evidence suggests that the TPA was intent on receiving any information available about the development, including the square and flagpole, and intended to ask Mr. DeLuca to release information as part of the due diligence process or the deal would be off. There was also discussion about how the EVBIA would pay the TPA back over time for development costs.

Z. Mr. Hoth Travels to Toronto to Meet With the TPA

On Monday, September 12, 2016, Mr. Hoth travelled to Toronto to meet with Mr. Persiko and Ms. Casista. Mr. Persiko asked Mr. Sutherland to arrange the meeting. As described above, Mr. Hoth was one of the principals of National Flagpole, which had been the successful proponent from the Flagpole RFEI many years earlier for the construction of the monumental flagpole for the EVBIA. Mr. Gurreri, the other principal of National Flagpole, was not involved and did not know the meeting was occurring.

Mr. Hoth recalled the meeting in Toronto and said that he was in Toronto for approximately 24 hours; he stated that he did not meet or discuss the trip with Councillor Mammoliti. Mr. Sutherland corroborated part of this evidence, testifying that he did not meet with Councillor Mammoliti and Mr. Hoth together when Mr. Hoth was in Toronto in September 2016.

It was Mr. Sutherland's understanding that Mr. Persiko was interested to meet with Mr. Hoth as a precursor to an eventual procurement process that would be managed by the TPA. Mr. Sutherland testified candidly that he was hopeful that the TPA's development of the flagpole project would yield some work for Mr. Hoth.

Mr. Persiko testified that the meeting with Mr. Hoth was part of the TPA's efforts to prepare to develop the flagpole project, now that the development management agreement was no longer part of the transaction.

Mr. Persiko did not recall Councillor Mammoliti having any role in relation to the September 12 meeting although he and Councillor Mammoliti had had discussions about Mr. Hoth in the past. Mr. Persiko testified that he was aware that Councillor

Mammoliti and the EVBIA (whose interests were conveyed by Mr. Sutherland) wanted to ensure that the design of the square endorsed by the community would not change and that having Mr. Hoth involved would help to achieve this; however, Mr. Persiko specifically denied any memory of anyone asking him to hire or engage Mr. Hoth for this purpose.

Mr. Persiko testified that he did not form a positive impression of Mr. Hoth at the meeting and that in any case, the meeting could not have led to any sole source work because the TPA would be following its regular purchasing processes for its development work. As noted above, Ms. Casista was in touch with other firms with similar expertise at around the same time.

Other than environmental assessments on the Land, the TPA's efforts to develop the flagpole ceased in mid-September 2016.

I conclude that Mr. Persiko became aware of Mr. Hoth because he learned about his expertise from Councillor Mammoliti and Mr. Sutherland. I conclude that Mr. Persiko asked to meet with him because the TPA was beginning to do research on possible construction firms and consultants and he understood that there was interest on the part of Councillor Mammoliti and the EVBIA (as conveyed by Mr. Sutherland) that the original concept for the flagpole be maintained when developed by the TPA. I accept Mr. Persiko's testimony that no one asked him to engage Mr. Hoth's services and that he was clear with all involved that the TPA would procure services necessary in accordance with its purchasing procedures.

AA. Councillor Filion's Conduct

Councillor Filion attended Ms. Casista's office on September 1, 2016 to obtain information about the transaction. Dissatisfied with the information he received during the meeting, he told Ms. Casista that he would "call the cops" if the Land transaction went through. Mr. Persiko was aware of the meeting and Ms. Casista was trying to respond to Councillor Filion's requests for information.

Two weeks later, the TPA Board met for its regular meeting on September 15, 2016. The Auditor General attended to discuss the status of a report she was working on in relation to the potential purchase of the Land. Almost everyone who was present at the September 15, 2016 meeting was interviewed during this investigation.

At the time, the due diligence period set out in the APS was to expire on October 18, 2016, and the next scheduled Board meeting was October 20.

Councillor Filion asked more than 20 questions of Ms. Casista during the meeting. The questioning was intense and uncomfortable to those in the room. While it seemed to some that Councillor Filion was uninterested in the answers, he continued to ask his questions. Councillor Filion was uninterrupted in his questioning. The Chair testified that he was aware that Councillor Filion was concerned about what he perceived as a lack of forthcoming information, and he wanted to give him an opportunity to obtain the information he sought. Those present felt bad for Ms. Casista and believed that Councillor Filion's questions were intended to undermine or question her professional ability. The tense nature of the meeting also impacted the TPA Board secretary, who was responsible for making detailed notes of the exchanges for purposes of the minutes.

A few days later, at approximately 4:00 pm on September 21, 2016, Councillor Filion wrote to the Board secretary requesting draft minutes of the September 15 meeting. He said he was particularly interested in the minutes respecting the Land transaction. At 6:38 p.m., the Board secretary emailed her draft of the minutes to Councillor Filion and all members of the Board, indicating that they were in draft form. Councillor Filion wrote back (copying all of the Board) the next day, stating "I believe they are incorrect in several substantial ways", with respect to matters such as whether motions were appropriately private or public, the recording of votes, and whether items were properly moved *in-camera*. The Board secretary was upset by Councillor Filion's email and perceived it as a negative comment about her work.

Councillor Filion testified in this inquiry that he did not intend to show disrespect for the Board secretary.

TPA board members and staff were concerned about Councillor Filion's conduct towards Ms. Casista and the Board secretary, and Mr. Persiko arranged for both women to meet with the TPA's interim Head of Human Resources to discuss his conduct. Neither Ms. Casista nor the Board secretary personally initiated complaints about Councillor Filion's conduct.

Many of the Board members had consistent impressions that Councillor Filion, prior to his interest in the Land transaction, was disinterested in the TPA's work and that he took an unusual degree of interest in this particular transaction from the beginning. These prior impressions coloured some of the board members' perceptions of his actions on September 15, 2016.

BB. Mr. Scargall and Mr. Tziretas

The investigation has established that two of the TPA Board members had greater roles than the others in relation to the possible Land transaction, the Chair and Vice Chair, Mr. Tziretas and Mr. Scargall respectively. I, therefore, examined in more detail any association between these gentlemen and the parties who stood to gain. There is no evidence that either individual has any association to Mr. DeLuca and his companies, Mr. Sutherland and his company or Mr. Hoth.

The investigation has established that both Mr. Scargall and Mr. Tziretas were favourable to Councillor Mammoliti's view of the project, but I have concluded that this was because they simply liked Councillor Mammoliti and felt, rightly or wrongly, that the flagpole project was a priority for the City and the Mayor. They felt this way because the Mayor had attended the site in Fall 2015 and because of the eventual Council direction. In this regard, they were no different than any of the other TPA Board members.

The investigation has established that the three men socialized with each other at TPA-related conferences golfing outings at conferences and although there was one attempt to schedule a golf outing together with Mr. Persiko, Councillor Mammoliti did not attend.

The investigation has also established that one of Mr. Scargall's adult children obtained a job for a few months in Councillor Mammoliti's office in early 2017, which was after Councillor Mammoliti was on the TPA Board. Mr. Scargall denied that this job was attributable to anything other than merit. I have no reasonable basis to doubt this and moreover, it is my conclusion that Mr. Scargall worked to maintain good relations with Councillor Mammoliti while he was a TPA Board member because, as I understand it, he thought that this was what he should be doing as a board member.

6. ANALYSIS AND DISCUSSION***A. Councillor Mammoliti – Article VIII (Improper Use of Influence)******Councillor Mammoliti Wore Many City-based Hats***

Councillor Mammoliti used his influence as a ward councillor, a member of the EVBIA Board and a member of the TPA Board to advance the flagpole project. In wearing these three hats, he was able to significantly advance the progress of the flagpole project. Article VIII is not engaged when the reason for a member's use of influence is tied or connected to their official duties, be that as a representative of their ward or a member of a local board. Article VIII will only apply if there is a private advantage to be gained by the member or a third party associated to the member.

One Theory

One witness in this inquiry suggested that the only reason Councillor Mammoliti advanced this project at all was to facilitate an opportunity for someone he knew to build a flagpole at a high cost, with the potential for future payback. Although the investigation has identified two possible associates of Councillor Mammoliti who had an opportunity to build the flagpole (the principals of National Flagpole), the investigation has also established that other than the time period of 2008-2010, the decision about who would actually build the flagpole would be made by other independent processes with a separation from Councillor Mammoliti. For instance, if the City purchased the Land, a City-run procurement process would have been followed. If Mr. DeLuca developed the Land, it would be for Mr. DeLuca to decide the builder. If the TPA developed the flagpole on behalf of the EVBIA, it would have been through its own procurement process. Furthermore, the evidence is that after 2010, the flagpole project had a life no matter whether National Flagpole was to be involved or not. The most significant progress in relation to the flagpole project occurred after 2010.

I will now consider whether the evidence in relation to certain discrete incidents is sufficient for me to conclude that Councillor Mammoliti contravened Article VIII. A full discussion of Article VIII is found in section 3(A) of this report. As summarized there, the factors to be considered when assessing whether a member used improper influence for the benefit of a third party are:

- What is the nature of the relationship between the member and the third party?
- What did the member do to use their influence to the benefit of the third party?
- Why was the member involved in the issue?

Mr. Sutherland and SC

Since 2007, the EVBIA has relied on SC to provide services with respect to the flagpole project. When the EVBIA initially selected SC, Councillor Mammoliti disclosed that he and Mr. Sutherland were former Council colleagues. Although it has never re-tendered the contract, the EVBIA has continued to obtain services from SC over the years.

It has been suggested that that SC “did nothing” for the EVBIA. The documentary evidence alone does not bear this out. But for the reports written by SC over the years, it would have been impossible to understand how the flagpole project progressed. The bulk of this report describes the varied activities that SC undertook *at the direction of the EVBIA Board*. Mr. Sutherland bristled at the notion that his firm had the work for the EVBIA for any reason other than that SC provided good service. The EVBIA witnesses in this inquiry expressed satisfaction with the services SC provided.

While this investigation is not a value for money assessment of the services provided, it is clear from the evidence that SC was engaged in assisting the EVBIA in relation to the flagpole project over the years, and it is simply incorrect to state that they “did nothing.”

What is the nature of the relationship between the member and the third party?

Mr. Sutherland and Councillor Mammoliti have known each other for more than 20 years. Mr. Sutherland has supported Councillor Mammoliti in political campaigns and they are friendly, although I do not conclude that there is any emotional bond or kinship between them. Councillor Mammoliti has no financial interest in SC.

What did the member do to use their influence to the benefit of SC? Other than the initial decision to retain SC, Councillor Mammoliti participated as the local councillor on the EVBIA Board when it considered the work that SC presented. On one occasion, when the ongoing retainer was debated and there was some dissension, he advocated for the retainer to continue. Having said that, there is no evidence to suggest that the EVBIA was not acting independently when it made the decisions it did in relation to SC. Councillor Mammoliti was well-liked by the EVBIA, but the evidence includes examples when he and the EVBIA disagreed about significant issues, such as the Finch West LRT.

Why was the member involved in this issue? Councillor Mammoliti was involved in the EVBIA’s decisions about SC’s ongoing retainer because SC was the firm selected by the EVBIA to do the work in relation to the flagpole project. There is no evidence that Mr. Sutherland ever asked Councillor Mammoliti to do anything to prefer or favour him. As noted, Mr. Sutherland is adamant that the reason SC retained the work over the years was because he and his associates did a good job. In consideration of all of the evidence, Mr. Sutherland’s position is credible.

Conclusion. The EVBIA’s *ongoing* retainer of SC was a decision of the EVBIA. Although Councillor Mammoliti certainly participated in these decisions, there is no evidence to conclude that his support for SC as the ongoing EVBIA consultant was at the request of SC or motivated by anything other than the overall success and progress of the flagpole project.

National Flagpole, Mr. Gurreri and Mr. Hoth

National Flagpole was selected by the EVBIA to construct and build the monumental flagpole in 2008, when the EVBIA believed that it could independently develop the flagpole project at one of two possible sites: the Emery Yards or the Land. The EVBIA selected National Flagpole on the basis of a recommendation made by SC who

conducted the Flagpole RFEI for the work. The two directors of National Flagpole are Mr. Hoth and Mr. Gurreri.

What is the nature of the relationship between the member and National Flagpole, Mr. Hoth and Mr. Gurreri? As of 2008, Councillor Mammoliti was friendly with Mr. Gurreri. After 2008, Mr. Gurreri made donations to Councillor Mammoliti's political campaigns, and he bought a table and attended the 2013 personal fundraiser for him. They have remained friendly over the years but there is no kinship or emotional bond between them.

Mr. Hoth and Councillor Mammoliti have known each other since the early 2000s. They are good friends. Mr. Hoth denies, and there is no evidence to the contrary, that he and Councillor Mammoliti have any business relationship.

Based on the evidence before me, Councillor Mammoliti had no role in relation to the decision by Mr. Gurreri and Mr. Hoth to incorporate National Flagpole, and he had no financial interest in that company.

What did the member do to use their influence to the benefit of National Flagpole, Mr. Hoth or Mr. Gurreri? Councillor Mammoliti introduced Mr. Hoth to the EVBIA and to Mr. Sutherland. He also arranged a trip where Mr. Gurreri and Mr. Hoth met. However, according to the evidence, he did not encourage the two men to incorporate National Flagpole, and they made this decision completely independently of him.

Councillor Mammoliti voted in favour of the EVBIA's decision to select National Flagpole in 2008. The EVBIA Board adopted the recommendations of SC who independently administered the Flagpole RFEI. There is no evidence that Councillor Mammoliti did anything other than vote, including attempt to influence Mr. Sutherland or his firm in making their recommendation to the EVBIA Board.

While I can conclude that Mr. Hoth would not have become aware of the Toronto market for monumental flagpoles but for Councillor Mammoliti, there is no evidence to conclude that Councillor Mammoliti used his influence to specifically advantage Mr. Hoth. Mr. Hoth has experience building monumental flagpoles, which experience was of interest to Mr. Gurreri and a component of National Flagpole's proposal in the Flagpole RFEI.

Why was the member involved in this way? There is no evidence that Councillor Mammoliti did anything other than vote on the recommendation made by SC. He was a member of the EVBIA Board at that time and so entitled to vote.

Conclusion. Although there is a personal relationship between Councillor Mammoliti and the principals of National Flagpole, the evidence is that Councillor Mammoliti was at

arm's length from decision-making by the EVBIA to select the firm, and, accordingly, I have concluded on the basis of the evidence I have before me that Councillor Mammoliti did not contravene Article VIII in relation to the EVBIA's selection of National Flagpole in 2008.

Mr. Hoth's Re-Appearance in 2016

Mr. Hoth re-appears in 2016 when he met with Mr. Persiko and Ms. Casista at the TPA offices as the TPA began to familiarize itself with how to construct the flagpole. The evidence is that Councillor Mammoliti discussed Mr. Hoth with Mr. Persiko, but it was Mr. Persiko who requested Mr. Sutherland to arrange the meeting. This explanation is credible because the TPA was contacting other companies with experience constructing flagpoles and Mr. Hoth is one such person.

What did the member do to use their influence to the benefit of Mr. Hoth?

Councillor Mammoliti discussed Mr. Hoth and his expertise with Mr. Persiko but there is no evidence that he had any role in relation to setting up the meeting between Mr. Hoth and the TPA.

Why is the member involved in this way? The evidence is that Councillor Mammoliti openly discussed the EVBIA's efforts to build the flagpole project over the years with the TPA Board. He is a member of the EVBIA Board and the local councillor; he had knowledge of these efforts that included engaging with Mr. Hoth, although through his firm National Flagpole.

Conclusion. While it is true that Mr. Hoth and Councillor Mammoliti are friends, there is no evidence that he did anything in particular to set up the meeting. In fact, the evidence is that the meeting was requested by Mr. Persiko and arranged by Mr. Sutherland. It is true that Mr. Persiko learned about Mr. Hoth, in part, because of discussions with Councillor Mammoliti, but he also had discussions with Mr. Sutherland. The meeting took place at the same time as the TPA was researching and contacting other possible vendors. There is insufficient evidence before me to find that Councillor Mammoliti took any action at all to cause the meeting with Mr. Hoth and accordingly, there is no basis to conclude that Article VIII was contravened. Even if I could conclude that he had a role in arranging the meeting, it is not clear that this would have been improper and contrary to Article VIII when one considers all of the possible reasons why the TPA might have wanted to meet with Mr. Hoth at that time, such as: needing to understand the EVBIA's project and needing to learn about building monumental flagpoles in general.

Katpa, DeLuca Homes and Mr. DeLuca

Although it was not the preferred site, the Land at Finch and Arrow Road has been the only viable site for the flagpole since 2009. Mr. DeLuca is the principal of the holding corporation (Katpa) and of a related development company, DeLuca Homes.

What is the nature of the relationship between the member and Mr. DeLuca, Katpa and DeLuca Homes? Councillor Mammoliti and Mr. DeLuca are friendly and have known each other for many years but there is no kinship or emotional bond between them. There is no evidence to indicate that Councillor Mammoliti has any business relationship with Mr. DeLuca or has any personal interest in his companies.

What did the member do to use their influence to the benefit of Mr. DeLuca?

There is no evidence that Councillor Mammoliti had any role in relation to the original selection of the Land by the EVBIA. The evidence is that he preferred another location.

Councillor Mammoliti assisted Mr. DeLuca before the CoA in relation to Mr. DeLuca's variance applications to develop the Land.

In 2016, Councillor Mammoliti advocated with TPA staff that they increase their offer and proceed with the development management agreement component of the Land sale. After meeting with the TPA's external lawyer, he ceased his efforts to advocate for the development management agreement, and TPA staff held firm on the price.

Why is the member involved in these issues? Mr. DeLuca's CoA application was a part of the overall plan of the EVBIA to move forward with the flagpole project, and, as the local councillor, he provided a letter of support. Some members of Council routinely provide these types of letters of support, and they are entitled to do so within certain parameters.

It is less clear why Councillor Mammoliti was involved in side discussions with senior TPA staff, the Vice Chair of the Board and the TPA's external real estate legal counsel. Whether it was appropriate that he and the Vice Chair were involved in these discussions is a governance question. Nevertheless, he was involved *at the invitation* of the TPA staff.

One possible explanation for Councillor Mammoliti's advocacy to increase the price and proceed with the development management agreement is that to do so would increase the chance that the flagpole project would proceed in a timely manner because of the work that Mr. DeLuca had already undertaken. This is a plausible explanation because it would not have been the first time in the history of the flagpole file that Mr. DeLuca's actions (or inactions) derailed the momentum of the project. Although there are other

possible explanations, there is no evidence that Councillor Mammoliti advocated in this way for any personal gain or for the purpose of advantaging Mr. De Luca.

Conclusion. Although I am not able to definitively determine why Councillor Mammoliti advocated in the way that he did in July 2016, I do not have sufficient evidence to conclude that it was for any improper purpose, such as to benefit Mr. DeLuca.

B. Councillor Mammoliti – Article IX (Business Relations)

For me to find that Councillor Mammoliti contravened Article IX, I must have sufficient evidence to conclude that he referred one of the people named above to another for a payment or other personal benefit. There is no evidence to suggest that Councillor Mammoliti obtained any payment or personal benefit for any of his actions.

C. Councillor Mammoliti – Article XII (Conduct Respecting Staff)

Article XII states that members of Council must not purport to direct City staff – only City Council can do so and must not “use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person’s duties....” For me to find that Councillor Mammoliti contravened Article XII, I must have sufficient evidence to conclude that he directed a member of City staff to take any action that interfered or prevented staff from performing their duties.

No member of the TPA or City staff interviewed in this investigation claimed or alleged that Councillor Mammoliti acted improperly toward them or *directed* them to do anything. The staff understood what Councillor Mammoliti wished and brought their own professional judgement to bear in response to his requests.

Mr. Climans testified that Councillor Mammoliti was assertive and persistent, and he was concerned that if he could not find a way forward in relation to the direction to the TPA, Councillor Mammoliti would use political means to derail the PRA Report. This possibility was stressful for Mr. Climans, but it was Councillor Mammoliti’s right to advocate in this way. Helping to facilitate smooth passage of reports through City Council is the kind of thing that City staff are faced with on a regular basis.

Although Mr. Persiko initially denied feeling under pressure, he eventually admitted that Councillor Mammoliti (and from his perspective, the Board) were bringing a certain amount of pressure to this matter. Again, he said that there was nothing unusual about it and that if he criticized Councillor Mammoliti for his actions in this case, there would be a list of other councillors who should be subject to the same criticism.

While I find that Councillor Mammoliti pressured TPA staff, he did not act in a way that contravened Article XII.

D. Councillor Filion's Conduct

The TPA Board's complaint about Councillor Filion posited that the Councillor breached Article XV of the Code of Conduct by virtue of breaching two provisions of TPA Procedural By-Law (alternatively, the "**TPA By-Law No. 1**").

A central tenet of the TPA Board's request is that Councillor Filion violated two provisions of TPA By-Law No. 1 – firstly, s. 4.8(d), which mandates board members to treat other directors and any person appearing before or speaking to the board with courtesy and respect; and secondly s. 4.8(n), which says board members must not make direct demands on staff members, and queries or requests for staff services are to be placed directly through the President.

Having reviewed the TPA's enabling legislation, and the history of the TPA By-Law No. 1 (dated January 7, 1998 – one week after the City's amalgamation), I have serious questions about the applicability of the TPA By-law in light of significant inconsistencies between it and the Municipal Code provisions that establish the TPA. For instance, TPA By-law No. 1 says that "no member of the council shall be eligible to be appointed as a director." However, Chapter 179 of the Toronto Municipal Code (adopted February 6, 1998) says the TPA shall consist of 7 members, including 2 members of Council. Indeed, there have been two councillor members on the TPA board for quite some time.

Mindful of the potential inapplicability of these provisions and to address the concerns set out in the TPA Board's request, I have reviewed Councillor Filion's conduct against similar obligations in the Code of Conduct.

Article XIV (Discreditable Conduct) of the Code of Conduct requires that members of Council treat City and board staff appropriately and without abuse, bullying or harassment. Article XIV incorporates the City's *Human Rights and Anti-Harassment Policy*, which defines workplace harassment and distinguishes it from rudeness, incivility, isolated comments or actions unless the comment has a serious and lasting effect.

Councillor Filion's questions and tone caused the September 15, 2016 TPA Board meeting to be tense and difficult for all involved. That meeting followed shortly after Councillor Filion attended Ms. Casista's office on September 1, 2016, during which he said that he would "call the cops" if the Land transaction went through. The comment about "calling the cops" was obviously inflammatory, although said in private.

The questions Councillor Filion asked of Ms. Casista at the September 15, 2016 meeting were substantive questions about the transaction. Those present felt bad for Ms. Casista and believed that Councillor Filion's questions were intended to undermine or question her professional ability. However, those present also had a standing negative impression of Councillor Filion and his interest in the TPA's work, in general, that coloured their impression of his actions.

In relation to the Board secretary, the September 15, 2016 meeting was extremely stressful for her. She has been a dedicated employee at the TPA for over 25 years and was impacted by the tense tone of the meeting and questions. The situation was exacerbated a few days later when Councillor Filion contacted her to obtain an early copy of the minutes, which was an unusual request. The Board secretary responded almost immediately, copying the board. Councillor Filion then responded to the entire board with comments directly critical of her work.

When viewed in context with the other circumstances, Councillor Filion bluntly sought information from Ms. Casista and then the Board secretary that he thought was very important to obtain quickly. The deadline for the TPA to complete due diligence was October 18, 2016, and the September 15, 2016 board meeting was the only such scheduled meeting that would occur before that time.

In this inquiry, Councillor Filion explained that the purpose of his questions in September was to impress upon his fellow board members what he saw as the severity of the situation. The same perception of urgency would have also informed his emails the following week to the Board secretary and the Board about the meeting minutes. In consideration of the timing, it would have been insufficient for Councillor Filion to receive the minutes at the next meeting (October 20), as was the usual process. It is not a contravention of the Code of Conduct to question or seek to verify information provided by staff.

The Board secretary found herself in the middle of a very difficult and tense situation. The underlying message sent by Councillor Filion's emails was that he was concerned that senior TPA staff and board members were either not sufficiently scrutinizing the Land acquisition or were intentionally trying to thwart his efforts to seek fundamental information about the transaction. Whether he was right or wrong about this is not the subject of this inquiry but his concerns were genuine and I accept that he felt a certain degree of urgency in September 2016.

The Board secretary had nothing to do with the issues Councillor Filion was pursuing. Councillor Filion could have, as a matter of mere courtesy, been clearer with the Board secretary that his comments were not about her personally, but rather about a larger

issue. He also could have escalated his concern about the accuracy of the minutes specifically to Mr. Persiko alone, but instead, he addressed it to the entire Board.

Even though Councillor Filion could have chosen different words or approaches in the way he dealt with both Ms. Casista and the Board secretary, his actions fell short of discreditable conduct prohibited by the Code of Conduct.

E. Disclosure of In-camera Information – Article V (Disclosure of Confidential Information)

Article V requires that members of Council maintain confidentiality over information obtained *in-camera*. As noted, how Mr. Sutherland obtained information about an *in-camera* May 26, 2016 TPA Board decision was specifically in scope because he included an update about the TPA's decision in his report to the EVBIA Board. The investigation has established that the TPA Chair formally informed the Chair of the EVBIA Board of the decision by letter two days before Mr. Sutherland's report. This evidence calls into question whether the information was ever intended to be confidential *from the EVBIA Board* at all. Although the investigation identified other ways that the information could have been properly obtained by Mr. Sutherland, the letter from the TPA Chair to the EVBIA Chair completely disposes of this issue and I make no finding that any member of the TPA Board contravened Article V of the applicable Code of Conduct.

7. CONCLUSION, OBSERVATIONS AND RECOMMENDATIONS

After a thorough investigation, there is insufficient evidence to conclude that any member of the TPA or EVBIA boards contravened the applicable Code of Conduct. There are no more reasonable or logical steps that I could take to pursue the lines of inquiry discussed in this report that would be a prudent use of resources, warranted by the circumstances, or fair to those involved.

However, there are some things about this case that should give City Council good reason to consider whether reform is necessary.

A. Role of Councillors on Local Boards When Dealing with Matters in Their Own Wards

As is noted throughout, Councillor Mammoliti was able to exert a high level of influence on the flagpole project because of the multiple City-based hats that he wore. How a

member deals with multiple *board* roles has been commented on in the governance report.

I agree with the suggestion contained in the governance report that members should disclose prior involvement in matters that come before the Board. The investigation has established that Councillor Mammoliti *did* disclose certain things to the TPA Board. It was widely known that the flagpole project was in his ward and a long-time priority for him and the EVBIA. Perhaps there should have been more formality to his disclosure so that the TPA Board members would have been able to assess what motivated his advocacy efforts: the best interests of the TPA, the EVBIA or the ward. However, he was not required to make any such formal disclosures, and he made no secret of his interest.

In any case, such disclosure may not resolve the core of the issue that many City boards face. As noted, one of the hats that Councillor Mammoliti wore was as the local councillor for the Emery Village area. The role of the local councillor is one that has a democratic accountability to residents of the ward. Local councillors are often champions of community projects, including increased programming, new infrastructure, and creation of public space. Members of Council freely advocate for these initiatives in any way that they can.

Even if Councillor Mammoliti had made a more formal disclosure, I would still be concerned that the authority and position he held as a member of Council would make it difficult for other members of the TPA Board to disregard his point of view. The evidence in this case is that the Chair and the Vice Chair of the board were concerned with whether, and worked to ensure that, the “local councillor” was happy. Other board members and TPA staff were motivated to keep the “local councillor” happy too. The local councillor just happened to be a board colleague. This is not a unique circumstance.

It is my view that the circumstances of this case should cause City Council to establish guidelines and protocols for when a member of Council sits on a City Board that considers a question that impacts that councillor’s ward. I believe that City Council should consider reform because:

- Members of Council have power and authority over the citizen members on the boards; indeed, they appoint them. This may cause citizen members of boards to be overly deferential to members of Council, which could impair their ability to discharge their duties to the board.
- The City’s local boards provide independent decision-making and gatekeeping for significant City initiatives that help the public to have confidence in the integrity of

overall decision-making processes at the City. While operational boards are distinct from adjudicative boards, the latter of which *must* act free from political interference, there are times when it is also necessary that the City's operational boards also act independently and free from political interference. When independent decision-making is required, a councillor's dual role as a board member and "local councillor" can undermine the independence of the board. A local councillor can certainly advocate for certain issues and interests to the board as a whole; independence is only at stake if the councillor happens to also be a board member.

- Staff who interact with boards, such as the TPA President did in this case, all too often find themselves in the unenviable position of having to moderate between dealing with a member of Council as a "councillor" and then as a "board member," when there is often no functional difference to their input or priorities. Indeed, the TPA President observed with hindsight that a protocol might have been helpful in this case.
- Leaving aside the particulars of this case, during my term as Integrity Commissioner I have learned that an equally challenging situation can arise for citizen members of the City's boards when a member of Council uses their seat on a board to advance political interests. Members of Council may disagree with board decisions and not wish to be politically accountable for them, so they dissent and then use their authority as a sitting member of Council to undermine the board's decision.
- The governance report concluded that there is value to having members of Council on the City's boards. This is certainly the case. However, it is my view that the City's overall decision-making structure would benefit from clarification of the role that those members should play on the various local boards that they sit. How can a board member, who is also an elected member of Council, fulfill a fiduciary duty owed to a City board when they also have political responsibilities to advance ward-specific issues and interests? Are members there to provide oversight on Council's behalf? If so, against which standard are they measuring? Are they there to advance political priorities of individual members of Council or only of Council as a whole? Are they there to act as a liaison with the City? If so, there should be nothing objectionable about the type of sharing of information that happened in this case. Clarification of role could lead to greater consistency and improved integrity of board decision-making.

In consideration of these concerns, I recommend that City Council direct the City Manager, in consultation with the Integrity Commissioner, to provide advice and recommendations to City Council about best practices to improve and clarify the role of members of Council on the City's boards. Possible outcomes of this review could include:

- A protocol or amendment to the Code of Conduct that describes how a member of Council who is also a member of the board should interact with the board and staff about matters that are of particular interest to the councillor's ward, including permitted communications, disclosure obligations and, possibly, recusal from *Board decision-making* on such matters.
- Clarification in the City's bylaws about the role of members of Council on various boards. Do members of Council represent Council as a whole, a particular policy area or portfolio, the Mayor's views (in the case of the Mayor's representative) or their own views?

The number and diversity of City boards may mean that protocols and clarification would be helpful for certain categories of boards but not others. The goal of any review would be to enhance the integrity and independence of the City's various decision-making bodies. City Council is well-served when its boards are able to focus on good governance in the best interests of the board and City without having to also consider political implications that can be – and are better addressed – through the City Council process.

B. Recommended Amendment to the Code of Conduct to Require Participation in Inquiries

Councillor Mammoliti's response to this inquiry is described in this report. It has been reported that he, and at least one other member of the TPA Board, refused to participate in another investigation into these matters.³⁴ (Councillor Mammoliti was the only person in this inquiry that I contacted who challenged my jurisdiction or otherwise refused to participate.)

In my view, City Council should be concerned with this behaviour and take steps to minimize the risk of it happening again. Cooperation should be a requirement of the Code of Conduct and failure to do so should be subject to possible penalties under the Code. Toward this end, I recommend that City Council immediately amend the Code of Conduct to clarify and strengthen the obligation to cooperate and to provide the Integrity Commissioner with a remedy to recommend to City Council if such cooperation is not provided.

Therefore, I recommend that the City's codes of conduct be enhanced to enable City Council to respond when witnesses or subjects who are members of Council or the local

³⁴ See Toronto Parking Authority Governance (EX1.2), *supra* note 9 at p. 6.

boards fail to participate in such inquiries. Specifically relating to the *Code of Conduct for Members of Council*, I recommend that Article XVI be replaced with:

Members of Council must respect the integrity of the *Code of Conduct* and investigations conducted under it. Members of Council must cooperate in every way possible in any inquiry conducted by the Integrity Commissioner, another accountability officer or another person assigned to conduct an investigation by City Council or a City official. Members of Council must not make any threat or take any reprisal against any person for providing information to the Integrity Commissioner, another accountability officer or another person assigned to conduct an investigation by City Council or a City official. Members of Council must not obstruct the Integrity Commissioner, another accountability officer or another person assigned to conduct an investigation by City Council or a City official; examples of obstruction include: destroying records, attempting to coordinate responses, or tampering with possible evidence.

If in the course of any inquiry, the Integrity Commissioner has reason to believe that a member has contravened Article XVI in relation to the same inquiry, the commissioner may find that the member has so contravened this Article of the Code of Conduct in accordance with the procedures established by the Integrity Commissioner.

Leaving aside Councillor Mammoliti, I wish to acknowledge and thank the witnesses for their orderly participation in this inquiry. Their participation enabled me to gain necessary context and insight into these matters. In my experience, Torontonians do not expect that things always go perfectly. However, they do expect that when oversight is necessary, those who do business with the City and those who are privileged to serve the City, participate in inquiries like these to account for what happened and to hopefully help improve things for the future.

Respectfully submitted,



Valerie Jepson
Integrity Commissioner
June 10, 2019

APPENDIX

Article V (Disclosure of Confidential Information)³⁵, *Code of Conduct for Members of Council*

Confidential information includes information in the possession of or received in confidence by the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* (often referred to as “MFIPPA”), or other legislation. Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The *City of Toronto Act, 2006* allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, “confidential information” also includes this type of information.

No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

Under the Procedures By-law (passed under section 189 of the *City of Toronto Act, 2006*), a matter that has been discussed at an in-camera (closed) meeting remains confidential. No member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

³⁵ Until January 2018, Article V of the *Code of Conduct for Members of Local Boards (Restricted Definition)* contained substantially the same language as the Code of Conduct for Members of Council, quoted above.

The following are examples of the types of information that a member of Council must keep confidential:

- items under litigation, negotiation, or personnel matters;
- information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- price schedules in contract tender or Request For Proposal submissions if so specified;
- information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*; and
- statistical data required by law not to be released (e.g. certain census or assessment data).

Members of Council should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

Article VIII (Improper Use of Influence), *Code of Conduct for Members of Council*

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one’s status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one’s parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member’s supposed influence within Council in return for present actions or inaction.

For the purposes of this provision, “private advantage” does not include a matter:

- (a) that is of general application;
- (b) that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits of a member of Council.

Article IX (Business Relations), *Code of Conduct for Members of Council*

No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the Municipal Conflict of Interest Act.

A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.

Article XII (Conduct Respecting Staff), *Code of Conduct for Members of Council*

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the City Manager, staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.

Article XIV (Discreditable Conduct), *Code of Conduct for Members of Council*

All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies and if applicable, the City's Human Rights and Anti-harassment Policy, and Hate Activity Policy.

Article XV (Failure to Adhere to Council Policies and Procedures), *Code of Conduct for Members of Council*

A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, members of Council are required to observe the terms of all policies and procedures established by City Council. This provision does not prevent a member of Council from requesting that Council grant an exemption from a policy.