

AUBURN PUBLIC INQUIRY

Private Hearing - Mr Glenn Francis

On Tuesday, 10 May 2016

Before the Commissioner: Mr Richard Beasley SC

Counsel Assisting: Mr Paul Bolster

Officer Assisting: Mr Darren Sear

.10/05/2016

1

*Transcript produced by DTI
Transcript-in-Confidence*

1 THE COMMISSIONER: Mr Francis, you understand why you are
2 here? You have been summonsed to attend a private hearing
3 of the Auburn City Council inquiry.

4
5 MR FRANCIS: Yes.

6
7 THE COMMISSIONER: And to answer some questions from
8 Mr Bolster, the counsel assisting. It is easier if you say
9 "yes" rather than nod, because the transcript won't
10 collect --

11
12 MR FRANCIS: Apologies.

13
14 THE COMMISSIONER: Just so you know, unless I make
15 a different order, we're making a record of the transcript
16 of today, but the transcript won't be made public, at the
17 moment, unless I make an order that it should be --

18
19 MR FRANCIS: Yes.

20
21 THE COMMISSIONER: -- for the requirements of the
22 Commission. There's just a couple of things I've got to do
23 by way of formalities first. This is an inquiry that has
24 been set up where I was appointed Commissioner on
25 21 January 2016 by the relevant minister to conduct
26 a public inquiry into Auburn Council under section 438U of
27 the Local Government Act. That section provides that
28 various provisions of the Royal Commissions Act apply to
29 this inquiry. One of those provisions, which is
30 section 12, authorises the conduct of a private hearing.

31
32 For the purposes of today I give a direction under
33 section 12B(2) that today's hearing take place in private.
34 I make another direction under section 12B(1) that the
35 evidence that is going to be transcribed today be
36 restricted from publication to anyone, with the exception
37 of the Commissioner and people acting for the public
38 inquiry or at the direction of the public inquiry, unless
39 I otherwise make a different direction, and I make
40 a direction that, for the purpose of today, the persons
41 allowed to be present at this private hearing are
42 Mr Darren Sear, who is the chief investigator for the
43 inquiry, Mr Paul Bolster, counsel assisting, and obviously
44 Mr Glenn Francis, who is here in answer to the summons to
45 attend today.

46
47 So that is the formal part of what I had to do. You

1 understand everything I have just said?

2

3 MR FRANCIS: Yes.

4

5 THE COMMISSIONER: Your evidence is to be given under
6 oath. Would you prefer to swear on a Bible or give an
7 affirmation?

8

9 MR FRANCIS: A Bible.

10

11 <GLENN FRANCIS, sworn:

12

13 THE COMMISSIONER: Mr Bolster is going to ask you some
14 questions. Just before he starts, though, can I make this
15 clear: if you don't understand a question you are asked,
16 please let us know.

17

18 THE WITNESS: Yes.

19

20 THE COMMISSIONER: Because it is important that we only
21 take evidence from you in relation to questions - and this
22 may not arise; you may understand every question perfectly,
23 but if you don't, please let us know, because we want
24 evidence from you where you understand what's being asked.

25

26 THE WITNESS: Yes.

27

28 THE COMMISSIONER: Thank you.

29

30 MR BOLSTER: And may it please the Commission I appear as
31 counsel assisting, for the record. My name is Bolster,
32 B-O-L-S-T-E-R.

33

34 <EXAMINATION BY MR BOLSTER:

35

36 MR BOLSTER: Q. Mr Francis, you are currently the
37 executive manager/planning at Auburn Council?

38 A. Yes, executive manager of planning.

39

40 Q. And you have held that position since September 2013?

41 A. That is correct.

42

43 Q. Could you give us a concise summary of your
44 responsibilities in that role?

45 A. Yes. Within that role I am directly responsible for
46 three units, one being the development assessment and
47 compliance unit - they deal with development applications,

1 building applications, construction certificates and
2 notices and orders, including any associated PINs; the
3 strategic unit, which is the land use strategy unit; also
4 the environmental unit; and there is a corporate
5 governance - not governance, sorry, corporate unit where we
6 do IP&R work for the council in terms of making sure that
7 we comply with all our targets.

8
9 Q. "IP&R" meaning?

10 A. Integrated planning network - framework. It's an
11 integrated reporting system that the council uses so that
12 we can report on targets and goals in terms of making sure
13 that we meet those goals. And then --

14
15 Q. Who do you report to?

16 A. Sorry, there is another unit.

17
18 Q. Sorry.

19 A. That's the engineering unit. They look at flooding,
20 traffic.

21
22 Q. Who do you report to?

23 A. I report to Ian Dencker, deputy general manager -
24 indirect.

25
26 Q. And he in turn, I take it, reports to Mr Brisby, who
27 is the current general manager?

28 A. He is the general manager, that's correct.

29
30 Q. And you have, I assume, teams that work under you with
31 various council officers who report directly to you?

32 A. That's correct. Each one of those units has
33 a manager.

34
35 Q. Is there a current organisational structure chart that
36 shows who all of those managers are?

37 A. There is.

38
39 Q. I won't waste time with asking you all of that. Now,
40 from 2005 to 2013 you were the manager of development
41 assessment.

42 A. That's correct.

43
44 Q. I take it the current manager of development
45 assessment reports to you?

46 A. That's correct.

47

1 Q. Now, the development assessment role - does that
2 involve dealing with applications for development consent?
3 A. Yes.
4
5 Q. Construction certificates?
6 A. Yes.
7
8 Q. Occupation certificates?
9 A. Yes.
10
11 Q. Did that have any responsibility for the Auburn Local
12 Environmental Plan?
13 A. No.
14
15 Q. But now you have responsibility for the Auburn LEP;
16 correct?
17 A. As one - yeah, as supervising manager, yes.
18
19 Q. And so you have had that role since September 2013?
20 A. That's correct.
21
22 Q. When you were the manager of development assessments,
23 who did you report to?
24 A. Mr Mark Brisby.
25
26 Q. And I take it that he held your current role, or
27 something like it, until September 2013 when he was
28 appointed general manager?
29 A. That's correct.
30
31 Q. Before Auburn you were at Botany for two years, from
32 '03 to '05?
33 A. That's correct.
34
35 Q. And City of Sydney, prior to that, from 1990 to 2003?
36 A. That's correct.
37
38 Q. And you were a town planner at each of those councils?
39 A. I was a team leader at Botany.
40
41 Q. Team leader at Botany, yes.
42 A. And at the city had various roles, from customer
43 service up to planner.
44
45 Q. In front of you there are two folders. The nearest
46 one to you, if you could just grab that and have a look at
47 it, is a bundle of documents that relate to a development

1 site at 14-22 Water Street, Lidcombe. You are familiar
2 with that site?
3 A. Yes.
4
5 Q. Now, if you could go right towards the back of that to
6 page 385 - it should be fairly well towards the back - do
7 you see there a memorandum that you prepared on 21 March
8 this year?
9 A. Yes.
10
11 Q. Now, that memorandum followed an incident where there
12 had been a storm that had damaged a property - the property
13 we are talking about now, 14-22 Water Street, Lidcombe?
14 A. Yes.
15
16 Q. You are familiar with that storm damage? And if you
17 look at the photograph there on page 385 you can see an
18 indication of the damage to the roof of that property?
19 A. Yes.
20
21 Q. When did you become aware of that storm?
22 A. I'd say the Monday, when I returned to work on the day
23 of that storm - after that storm, I think it was the --
24
25 Q. On the Monday?
26 A. I think it was then. I think it was the Saturday?
27
28 Q. Yes, it was a Saturday.
29 A. Oh, and actually, we had some requests from the police
30 to have a building inspector attend the site and I had to
31 arrange for that.
32
33 Q. On the Saturday or the Sunday?
34 A. It may have been the Sunday. It may have been the
35 Sunday.
36
37 Q. So that would have been the 31st?
38 A. Yes.
39
40 Q. The storm was on the 30th?
41 A. In the afternoon; that's correct.
42
43 Q. Who told you about the storm?
44 A. I think I had a phone call for a request for
45 a building surveyor to attend the site just to make sure
46 that the site wasn't - was safe or --
47

1 Q. Did a surveyor attend on the 30th or the 31st?
2 A. I believe they - I'd have to check the records.
3 I think they attended on the Sunday, yes.
4
5 Q. Did you get a report from them?
6 A. No, I didn't receive a report, but I did get a verbal
7 report that they attended the site.
8
9 Q. What did they tell you?
10 A. That simply the roof had gone off, there was no
11 injuries on site and the police had taken control of the
12 site.
13
14 Q. What did you do about that?
15 A. On the Monday we organised emergency orders on the
16 building to make sure that the site was secure and to make
17 sure that there was - that the building would be reinstated
18 as per the original drawings.
19
20 Q. Did you speak to any members of council - that is, the
21 elected members of council - about the damage?
22 A. I may have mentioned it - from memory, I may have
23 mentioned it to Ronney Oueik, as the storm damage was his
24 building.
25
26 Q. When did you mention it to Ronney Oueik?
27 A. It may have been the Monday or the Tuesday.
28
29 Q. How did you do that?
30 A. I think he was in a - he was in the board room
31 downstairs in the general manager's office, and I may have
32 seen him there. The building surveyor had mentioned that
33 one of the engineers from the department or - who was
34 managing the crisis there said that the units weren't fire
35 protected. They didn't - they believed that they weren't
36 fire protected and the roof wasn't built correctly, and
37 I mentioned that to him.
38
39 Q. So this was a meeting at the council offices on either
40 the Monday or the Tuesday?
41 A. Mmm, yes.
42
43 Q. Is that the best of your recollection?
44 A. I think so, yes.
45
46 Q. You don't think you would have spoken to him sooner,
47 sooner after the event on the weekend, on the 30th or the

1 31st?
2 A. Not that I'm aware. I may - I don't know. I'd have
3 to check my phone. I've got - I've got it there.
4
5 Q. What's your best recollection?
6 A. I'm not sure.
7
8 Q. You are not sure?
9 A. I'm not sure, sir.
10
11 Q. Leave aside when it was and how it was. When you
12 first spoke to Mr Oueik about it, what did you say to him?
13 A. I said - I simply just restated what the building
14 surveyor had told me about the construction of the building
15 and the fire separation between units, and he was quite
16 upset at the fact that - that the building - that I'd
17 mentioned that the building was perhaps defective and said
18 that from the accounts that he'd heard from the residents
19 that they were - it was like a tornado.
20
21 Q. He said he'd spoken to the residents?
22 A. Some residents had spoken to him.
23
24 Q. And that they had told him that it was like a tornado?
25 A. Yeah, the noise.
26
27 Q. Do I take it from your answer that he took offence to
28 any suggestion that there may have been a defect in the
29 building?
30 A. Yes.
31
32 Q. Did he express any anger at you about that allegation?
33 A. Only probably about raising it, not realising that -
34 you know, that he'd built the building correctly and I'd
35 raised it.
36
37 Q. Now, if you just go over the page, please, to 387, you
38 will see there that you have set out the history of the
39 development and construction approvals on the site?
40 A. Yes.
41
42 Q. And you, I take it, included that - that particular
43 history had appeared in previous council documentation, and
44 I take it you took it from one of the existing reports and
45 put it in this particular report to Mr Brisby?
46 A. Yes. When the accident happened, I sent that to our
47 insurers - well, Barry Cockayne and our insurers - to make

1 sure that they had a chronology of what had happened on the
2 site.

3

4 Q. You see in the fourth-last box for DA-157/2005/D, you
5 have used italics and underlining to record the March 2008
6 consent that changed the roof. Do you see that?

7 A. Yes.

8

9 Q. If you go over the page to 388, when you identify the
10 critical issue there in the last quarter of that page, let
11 me paraphrase what you are saying there and you tell me if
12 I'm wrong or I'm right. The change to the roof that was
13 approved from a development perspective - that is, just
14 96(1A) of the Act; that was just a development consent or
15 a variation to the development consent - would not have
16 authorised the construction of those particular changes,
17 would it?

18 A. No.

19

20 Q. What was needed after that development consent was
21 either a fresh construction certificate or an amended
22 construction certificate which made reference to
23 construction plans for the roof; correct?

24 A. Correct.

25

26 Q. So at the time of that approval in March 2008, there
27 had been an approval for the roof as it was originally
28 intended, but there had been no construction approval for
29 the roof that was proposed in March 2008?

30 A. That's correct.

31

32 Q. You now recognise that that was a deficiency in the
33 supervisory processes that council had to apply to this
34 development?

35 A. Yes.

36

37 Q. And you say that it was an oversight on your part?

38 A. Yes.

39

40 Q. What were the procedures that were in place in March
41 of 2008 for issuing interim and final occupation
42 certificates? Was there a written procedures manual for
43 that?

44 A. No. No, there wasn't.

45

46 Q. In your experience of working for this council and two
47 others, is there ordinarily such a procedure or manual?

1 A. No, not - not really. It is contained within the Act
2 and the regulations, and normally it's left to the building
3 surveyor to go ahead. The peer review system that was set
4 up was designed so that the peer reviewer, not being an
5 expert in the field, but would check, you know,
6 non-statutory things like addresses, making sure that the
7 paperwork's all correct and in line, everything's been
8 recorded and attached.
9
10 Q. You were the peer reviewer in this case?
11 A. That's correct.
12
13 Q. Mr O'Neill was a building surveyor?
14 A. Correct.
15
16 Q. And it was his job, do I take it, to make sure that
17 the construction certificate conditions were complied with?
18 A. That's correct.
19
20 Q. And most significantly for a large commercial property
21 development of this kind, where 50-odd people, couples,
22 families, are going to be living for the next few years,
23 whatever, he's got to make sure that that complies with the
24 BCA, doesn't he?
25 A. That's correct.
26
27 Q. Now, does Mr O'Neill have any planning expertise or is
28 he just a building surveyor?
29 A. My recollection is he's just a building surveyor.
30 A very experienced building surveyor.
31
32 Q. But you had the planning expertise in this case?
33 A. That's correct.
34
35 Q. Now, I just want to make sure that we know what roof
36 we're talking about. If you can just have a look at these
37 plans, and if you could just go to the last four pages,
38 please - so that's pages 6, 7, 8 and 9. You will see the
39 pagination in the bottom right-hand corner. Have you got
40 6?
41 A. Oh, oh, they are numbered at the bottom. Okay.
42
43 Q. Yes, yes, have you got that?
44 A. Yes.
45
46 Q. You see each of them have the 27 March 2008 stamp on
47 them?

1 A. That's correct.
2
3 Q. Which means that they were the plans that were put
4 forward in the context of the changes to the development
5 consent. Now, if you just leave page 6 open, go to the
6 folder, please, to page 231, this is the section 96(1A)
7 application for the roof change?
8 A. Yes.
9
10 Q. If you go over the page to 236, although it's fairly
11 smudged - if you go by reference to 237 you will find it.
12 Do you see there the four drawing numbers?
13 A. Yes.
14
15 Q. And if you look at page 6 of the plans, you will see
16 on the bottom right that we are dealing with the same
17 plans - 3538 CCA:07/E, from page 6 onwards. One more page?
18 A. That's 07.
19
20 Q. No, no?
21 A. 05 - so that's referring - CCA:07/E --
22
23 Q. If you just go over one page?
24 A. Oh, right. That's 09.
25
26 Q. That's 09. If you go over the page, you will get to
27 CCA - they are just not in order.
28 A. Sorry.
29
30 Q. CCA:08, then there's CCA/10 and CCA/07.
31 A. Yes.
32
33 Q. They are the four plans that were the subject. Just
34 have a look at them with me. You will see on page 6 at the
35 foot of the plans - you will see the roof structure on the
36 north elevation, and you can see that's shaded in grey
37 along the top of the building?
38 A. Yes.
39
40 Q. And that shows a pitched roof - that is, pointing
41 upwards. Do you recall that?
42 A. That's correct, yes.
43
44 Q. What was in place before was a - what's the word -
45 a box gutter?
46 A. A butterfly gutter.
47

1 Q. A butterfly box gutter, where the sides of the
2 building were the high points of the roof and they drained
3 to a lower sort of valley in the middle?
4 A. That's correct.
5
6 Q. Where there was a box gutter that drained away. Now,
7 if you go over to page 9, you will see that clearly marked
8 out there. You see the peaks in the roof. You see those
9 squares, those two squares show the high line of the roof,
10 don't they?
11 A. Yes.
12
13 Q. And all the drainage here is along the gutters along
14 the edge of the roof in a more traditional sense?
15 A. That's correct.
16
17 Q. Those four drawings aren't construction drawings, are
18 they?
19 A. No, they are not.
20
21 Q. And if I was a builder and I wanted to make sure that
22 what I was going to build met with BCA, I would say to the
23 architect or the engineer or both of them, "That's not
24 enough. You need to give me a drawing that shows me
25 exactly how I fix the roof to the rest of the building";
26 correct?
27 A. That's correct.
28
29 Q. Do you recall seeing any such building drawings in
30 relation to this development?
31 A. No.
32
33 Q. Do you recall seeing any certificate from any engineer
34 or a builder to the effect that the roof as constructed met
35 BCA?
36 A. No.
37
38 Q. Would you go back in time, please, to page 106 of the
39 bundle - 105 and 106.
40 A. Yes.
41
42 Q. So 105 and 106, paragraphs 1 through 16, set out the
43 plans for which the construction certificate was issued
44 back in April 2006.
45 A. Yes.
46
47 Q. Did you familiarise yourself with any of those plans?

1 A. No.
2
3 Q. Was there not a roofing construction plan amongst
4 those, that you can recall?
5 A. Not that I can recall.
6
7 Q. Who would ordinarily do that? Would that be done by
8 the architect or by the engineer?
9 A. It's usually coordinated through the architect.
10
11 Q. In the ordinary course, wouldn't you want, before you
12 issued the construction certificate, some form of
13 certificate or proof from either architect or engineer to
14 the effect that the roof had been built in accordance with
15 those plans and met BCA?
16 A. Yes.
17
18 Q. Now, if you could please go over to --
19
20 THE COMMISSIONER: So was that prior to the issue of
21 a construction certificate?
22
23 MR BOLSTER: Of the occupation certificate.
24
25 Q. That's right, isn't it?
26 A. That's right.
27
28 Q. The occupation certificate certifies habitability,
29 doesn't it - people can live there?
30 A. It sets out a number of conditions.
31
32 Q. If you just go to page 125, you will see there an
33 eleven-page document begins, which is a BCA cheat sheet for
34 this development dated 31 March '06. Now, you are familiar
35 with that document?
36 A. No.
37
38 Q. Have a look at it, please, if you could. I don't
39 think page 126 forms part of it. I think that's just
40 a double-sided error. So I think it goes 125 then 127, and
41 if you use the pagination at the foot of each page, it
42 makes that clear.
43
44 THE COMMISSIONER: Sorry, is 124 part of it, or - no?
45
46 MR BOLSTER: No. 124 is --
47

1 THE COMMISSIONER: So 125 - I see, yes, okay.
2
3 MR BOLSTER: Q. Have you seen that document before?
4 A. No. Or I - I haven't - I never peer-reviewed that
5 document.
6
7 Q. So the construction certificate was issued by - who
8 signed off on that?
9 A. Joe Malouf.
10
11 Q. Joe Malouf. So was he reporting to you at that time?
12 A. He was.
13
14 Q. He's in engineering?
15 A. He's a building surveyor.
16
17 Q. Building surveyor - like Mr O'Neill?
18 A. Not as qualified. Well, at that time --
19
20 THE COMMISSIONER: Q. Sorry, is he private or employed
21 by the council?
22 A. He was employed by the council.
23
24 MR BOLSTER: Q. Do you recognise that as being his
25 handwriting?
26 A. I can only recognise his signature at the back.
27
28 Q. On what page is that?
29 A. I'm not - 136.
30
31 Q. Okay, that's his signature?
32 A. That seems to be his signature, I think.
33
34 Q. You see on page 128, which is page 3 of the document,
35 it seems, to my reading, to be the checklist that's most
36 applicable to the roofing situation, and you'll see what
37 he's handwritten there?
38 A. Mmm.
39
40 Q. Of course, this document seems to have been prepared
41 well before occupation. Is it the case that this was not
42 a mandated check sheet within council? It seems to be,
43 from what I understand your evidence to be, that it's just
44 something that Mr Malouf's employed himself?
45 A. I'm not aware of the check sheets. When I came -
46 became manager of the section, we had a few issues with how
47 the unit was running, in terms of the building unit, and so

1 we were in the - in a transition phase of trying to get
2 some procedures in and work towards getting a more cohesive
3 building unit.

4
5 Q. Can you appreciate the value and importance, can
6 I suggest, of a check sheet?

7 A. Oh, definitely, yes.

8
9 THE COMMISSIONER: What does this say, "Engineer to
10 certify and" - is that "plans to be submitted", on 128?

11
12 MR BOLSTER: "Plans to be submitted" - "to certify and
13 plans to be submitted".

14
15 THE COMMISSIONER: Including the roof.

16
17 MR BOLSTER: Yes.

18
19 THE COMMISSIONER: All right.

20
21 MR BOLSTER: Q. I've been through the file and I can't
22 find a check sheet or anything like that being used at the
23 time of the OC.

24 A. No. There was no - that looks like a check sheet for
25 the issue of construction certificate, and that staff
26 member, as well as the other staff member, had left, and we
27 had a series of contractors that we'd have to use, and
28 Mr O'Neill was a contractor that came in and used that.

29
30 Q. I want to ask you about that process now. Before I do
31 that, I want to ask you some questions about how the
32 section 96(1A) for this development was dealt with. If you
33 go to 237, you will see there that you wrote to the
34 developer saying that the matter had been allocated to you.
35 A. That's a form letter that's produced.

36
37 Q. Now --

38 A. In all of the applications, well, involving
39 councillors, they are assigned to the manager and then the
40 manager themselves would coordinate with the consultant.

41
42 Q. Sure. Could you go over the page, please, to 241.
43 This seems to be a blank document to you from works and
44 services. It doesn't really purport to do or say anything;
45 do you agree with me about that?

46 A. Yes.

47

1 Q. If you go over the page to 243, this seems to be
2 a referral to the engineers to look at the section 96(1A)
3 application.
4 A. Yes.
5
6 Q. It doesn't really engage the roof issue at all, does
7 it?
8 A. No.
9
10 Q. And you'll see that it's dated 19 March 2008?
11 A. That's correct.
12
13 Q. And you will see that it calls for comments within
14 14 days?
15 A. That's correct.
16
17 Q. Who would have been the engineer at that time?
18 A. Could have been George Stamatakis or Siva Sivakumar.
19
20 Q. Do you remember getting any form of report back from
21 them about the roof?
22 A. No. Not that I recall, but being so many years ago --
23
24 Q. I mean, if you went to the council's files, would you
25 be able to find any engineering report between 22 February,
26 when you got this task, and when it was considered by
27 council?
28 A. No.
29
30 Q. You don't think so?
31 A. No.
32
33 Q. Why is that?
34 A. Well, everything that you have before you has been
35 scanned into the system, so you'd have a complete file.
36
37 Q. Yes. I'm not an expert in files. You might be able
38 to find it. If you were given the file, would you be able
39 to find any such report?
40 A. Well, I'd have to look at the file.
41
42 Q. I can't find one, myself.
43 A. If you can't find it, then it's not in the file, then
44 it's not in the file.
45
46 Q. Right. If you go to 245, on the same day that you
47 asked for comments from the engineer within 14 days you

1 wrote to Mr Oueik and said that the matter would be
2 considered by council that night. Do you see that, at 245?
3 A. Yeah.
4
5 Q. If you go over the page to 247 - just stay on 247 for
6 a moment?
7 A. Sure.
8
9 Q. Mr Cockayne sent around a report to councillors saying
10 that this matter would be before council that night.
11 A. Mmm-hmm.
12
13 Q. Why the rush?
14 A. It may be a situation where - in our system, if you
15 start - I may have started - I may have done it, I may have
16 started and completed a task within it, and that
17 automatically generates a referral on both sides, but if
18 the council report has in it comments from me - from the
19 engineer - no, it doesn't.
20
21 Q. No.
22 A. Okay.
23
24 Q. Why was it put on seemingly with no notice?
25 A. At the time - well, the - the general manager
26 determines what goes on the business paper.
27
28 Q. Did you ask him why? Did you say, "Look, there's
29 still been no engineering analysis of this roof"?
30 A. Well, in terms of the analysis of the roof, the roof
31 area never changed. It's simply the outlets where they
32 were changed. So I'm not sure whether an engineer would
33 talk about - it's not talking about any engineering in
34 terms of it being structurally adequate; it would be
35 looking at, if anything, whether the gutter capacity could
36 handle it - handle an excess volume of water.
37
38 Q. You obviously thought it was important enough to task
39 the development engineer to consider eight separate dot
40 points the same day --
41 A. Those eight separate dot points, that's just
42 pro forma.
43
44 Q. Is it?
45 A. These are pro forma responses and initiations for any
46 sort of referral, and what's designed to happen is as the
47 referring officer - you are supposed to take out what is

1 applicable or what is not applicable so you can guide the
2 engineer into what you are actually asking them to take
3 into consideration.
4
5 Q. Well, what were you asking this engineer to take into
6 consideration about this roof?
7 A. I believe I may have started and finished a task in
8 error.
9
10 Q. Did the developer complain about not being given much
11 notice that the matter was on that evening?
12 A. I can't recall.
13
14 Q. Did you speak to Mr Oueik on 19 March and say, "I just
15 wanted to make sure you get this letter. Your
16 section 96(1A) application is on at council tonight?
17 A. I can't recall.
18
19 Q. Well, if that had been any other applicant - and when
20 I say "any other applicant", any other applicant who wasn't
21 on council - you would have rung them up, wouldn't you?
22 A. Myself?
23
24 Q. Yes.
25 A. No.
26
27 Q. You would have made sure that they knew that their
28 matter was on at council that night, wouldn't you?
29 A. Well - yes, well, the organisation would, if it was
30 a late item.
31
32 Q. At that time, 2008, you were the manager for
33 development assessment. This was your responsibility,
34 wasn't it?
35 A. That's correct.
36
37 Q. Wouldn't you have told Mr Brisby, "We have an
38 applicant who's probably not expecting this thing to be in
39 council tonight, don't you think we'd better let them
40 know?" Do you see the --
41
42 THE COMMISSIONER: Was Mr Brisby the GM?
43
44 MR BOLSTER: Mr Brisby at the time was the executive
45 manager of planning.
46
47 THE COMMISSIONER: I see.

1
2 MR BOLSTER: Who was the GM in 2008? Mr Burgess.
3
4 THE COMMISSIONER: Mr Burgess.
5
6 MR BOLSTER: Q. How did this matter get such
7 preferential treatment on 19 March 2008?
8 A. I'm not sure.
9
10 Q. Do you know why? Was there some urgency in relation
11 to the development at that time?
12 A. I'm not sure. The only stipulation was that the
13 general manager at the time basically would say that no
14 items go on the business paper unless it has his
15 authorisation, so it's been through those channels and it
16 was decided that it was a late item report.
17
18 Q. All right. Now, if you could just go forward, please,
19 to page 269.
20
21 THE COMMISSIONER: Is this a new topic?
22
23 MR BOLSTER: No, no, we're nearly finished with this
24 topic.
25
26 Q. Do you see that?
27 A. Yes.
28
29 Q. Who is "Harry", at the top left?
30 A. I believe that's the site foreman on the site.
31
32 Q. So this is a note to the site foreman about what
33 Mr O'Brien had picked up --
34 A. O'Neill.
35
36 Q. -- at his - O'Neill. Sorry.
37 A. Sorry, I don't mean to interrupt you.
38
39 Q. No, no, that's fine - had picked up in his examination
40 and inspection on 18 August 2008?
41 A. So - yes, so he - it's ticked there as "preliminary
42 final", so there's a number of works that need to be done
43 before a final could be considered.
44
45 Q. Did you talk to Mr O'Neill about what he discovered?
46 A. Talk to - well, we were in communication, yes.
47

1 Q. Was your task to peer review his inspection?
2 A. No.
3
4 Q. Did you review his notes that appear on page 271?
5 A. No.
6
7 Q. You see that you sent out a letter, based upon those
8 notes, at 273 to 275?
9 A. That was a letter - a letter sent by Mr O'Neill under
10 my signature.
11
12 Q. So he drafted it based on his inspection and you
13 signed off on it?
14 A. That's correct.
15
16 Q. Did you go through it at all?
17 A. No.
18
19 Q. There was a site meeting, then - if you go to 277,
20 there was a site meeting on 25 August with Mr Oueik --
21 A. Yes.
22
23 Q. -- his foreman, Harry, and Mr O'Brien *[sic]*, but not
24 yourself?
25 A. I may have - I may have been there.
26
27 Q. And they went through each of the 14 items in your
28 letter?
29 A. The letter prepared by Mr O'Neill, yes.
30
31 Q. Yes, yes. And then on 18 September, page 279, you
32 will see a further inspection result?
33 A. Yes.
34
35 Q. Which indicates it was okay to issue the interim
36 occupation certificate?
37 A. Subject to those three --
38
39 Q. Subject to some minor defects. And then, if we just
40 go forward - some of the pages here aren't in order, but
41 I think you will see - on page 297 you will see the interim
42 occupation certificate?
43 A. Yes.
44
45 Q. And if you go back to pages 291 and 292, you will see
46 the final occupation certificate?
47 A. Yes.

1
2 Q. I don't want to labour the point, but I take it that
3 before that was issued, the point that there had been no
4 construction certificate for the amended roof proposals
5 simply did not arise?
6 A. That's correct.
7
8 Q. Did you visit the site from the time of the
9 application for that modification of the development
10 consent until the time of the issue of the final occupation
11 certificate?
12 A. I think - I do recall going out with the building
13 surveyor, just because it was a councillor and the building
14 surveyor, understandably, was, you know, a bit - not
15 concerned but, you know, the protocols for that, so I went
16 with him. I do recall that.
17
18 Q. He was nervous about it, was he?
19 A. Well, just the fact that he wanted to make sure that
20 there was no - he wanted to have that buffer between -
21 between the councillor, who was the developer.
22
23 Q. At that point in time, what was your relationship like
24 with Mr Oueik?
25 A. Quite good.
26
27 Q. What sort of relationship was it? Did he talk to you
28 often at council?
29 A. Yes.
30
31 Q. Did you regularly go to council meetings?
32 A. Yes.
33
34 Q. And he would engage with you there?
35 A. After meetings, yeah.
36
37 Q. Would staff have dinner with the councillors after
38 meetings?
39 A. Yes, we did.
40
41 Q. That was after every meeting, council laid on
42 sandwiches, I take it, or --
43 A. Sometimes they finished late, so it would be 10 or 11
44 at night.
45
46 Q. So that was fairly regular for you to attend council
47 meetings in those roles, I take it?

1 A. Yes.
2
3 Q. Was this the only Oueik development that you ever had
4 anything to do with at council?
5 A. No, there's another one in Hall Street.
6
7 Q. Hall Street. Roughly when did consent for that --
8 A. It was about a year later.
9
10 Q. A year later. And when was it built?
11 A. About that time.
12
13 Q. Is there anything you want to tell us about your
14 relationship with Mr Oueik?
15 A. Mr Oueik and I had a sort of - a colleague, work
16 colleague relationship. It was - I had coffee with him and
17 Mr Brisby.
18
19 Q. Regularly?
20 A. A fairly regular basis. Not - not by timetable,
21 but --
22
23 Q. What do we mean by "fairly regularly"?
24 A. Maybe three, four times a month. Sometimes more,
25 sometimes less.
26
27 Q. What did you talk about when you had coffee with
28 Mr Oueik?
29 A. Oh, just politics, the council, kids.
30
31 Q. Footy?
32 A. No, he wasn't a football person.
33
34 Q. Did he talk about zoning-related matters?
35 A. Not directly. Sometimes he would talk about illegal
36 works, rubbish that seemed to affect the area.
37
38 Q. How would illegal works - would he make a complaint
39 about a particular site or a particular house?
40 A. No, more about just some of the people, the residents
41 in Auburn, are sort of non-English-speaking background,
42 there is a bit of a problem with illegal works. They
43 don't - just giving an understanding about what happens
44 with people from that background. Sometimes he would raise
45 things like if there was an illegal works or something,
46 that he'd like something checked, which we'd go back and
47 check that information for him, but - yeah. Generally very

1 casual.

2

3 Q. When you were having coffee with him, did he ever talk
4 about the Water Street development?

5 A. Sometimes. I think, you know, we had - he had
6 problems with tradesmen and things like that, just general
7 building - building works.

8

9 Q. Was he under any time constraints or pressures in
10 relation to that development as a --

11 A. I think all developers are. They borrow money from
12 the bank, they need to get it finished and completed.

13

14 Q. Did he express urgency to you in relation to the
15 Water Street development?

16 A. Not - not that I can recall, but, you know, when any
17 developer comes for an occupation certificate there is
18 always an urgency to get it completed.

19

20 Q. Did he talk to you about the occupation certificate
21 for Water Street?

22 A. Some - at some point he must have, because there was
23 outstanding issues with those, and he wouldn't talk
24 directly to the building surveyor, but he may have asked
25 some clarification on some of the dot points, but I can't
26 recall specifically because --

27

28 Q. You can't recall, okay?

29 A. But it would have - it would have come up in
30 conversation.

31

32 Q. Did he call you on your mobile phone?

33 A. I don't know if it - he would - he did. He did call
34 on the mobile.

35

36 Q. As regularly as you had coffee with him?

37 A. Sometimes, yeah. Sometimes more.

38

39 Q. Sometimes more?

40 A. Sometimes more. Raising various issues, as
41 councillors would. He had a - he had his role as
42 a councillor and then he had his role as a developer, and
43 the majority of the time it was more on the role of the
44 councillor, in terms of raising things.

45

46 Q. When he rang you as a developer, what did he say?
47 What did he want done?

1 A. Mainly just to ask questions, really.
2
3 Q. Do you recall when he rang you to ask you questions
4 about Water Street?
5 A. No.
6
7 Q. If you could just turn over that - we have finished
8 with that folder now.
9 A. Oh, sorry.
10
11 Q. We're moving on to this one. It's a different topic.
12 The second folder that you have in front of you, it's got
13 a divider in between and the two things we're going to talk
14 about now are the Berala Village study and rezoning and the
15 and the South Auburn rezoning as well. Now, I think we
16 will deal with Auburn first, which is behind the second
17 tab. You will see there there is a report to council
18 in April, on April 15, 2015.
19 A. Yes.
20
21 Q. That's the executive manager of planning's report -
22 that's you?
23 A. That's it.
24
25 Q. You prepared that report?
26 A. No.
27
28 Q. Your staff did and you approved it?
29 A. Under title - as checked and titled, yeah.
30
31 Q. See page 5. You will see there there is a history of
32 how the planning proposal for South Auburn had developed?
33 A. Yes.
34
35 Q. We will come to the location in a minute, but the
36 purpose of this report was to deal with the recommendation
37 that's at pages 3 and 4. Do you recall those?
38 A. The recommendations to council, yes.
39
40 Q. Just refresh your memory with those, if you could,
41 please.
42 A. Yes.
43
44 Q. The detail of 2 is important, in the first five lines:
45
46 *That Council has reviewed alternative*
47 *rezoning options presented in this Council*

1 report and resolve to progress reducing the
2 B4 Mixed Use zone on the east side of
3 Auburn Road to between Beatrice Street and
4 90 Auburn Road (comprising all lots from
5 74-78 to 90 Auburn Road, inclusive) and
6 applying R4 High Density Residential to the
7 remainder of the subject land ...

8
9 A. Yes.

10
11 Q. Who in council resolved that that should be council's
12 recommendation to the members of council?

13 A. That was my recommendation.

14
15 Q. That was your recommendation?

16 A. That's correct.

17
18 Q. Could you please tell the Commission why it was that
19 you made that recommendation?

20 A. I just want to get the --

21
22 Q. Let me provide you with attachment 6. I think you
23 will have a very poor copy of it in there. This is
24 a replacement copy, if you could work off that. So they
25 were the options at the end of this report. Do you
26 remember that?

27 A. Yes, yes.

28
29 Q. So let's work off those. And you recall that original
30 zoning --

31 A. Was half/half. So half B4/half R4.

32
33 Q. Yep.

34 A. And my concern as a town planner was that the finger
35 of B4 that extends from the Beatrice Street boundary, from
36 whenever the original - 2010 --

37
38 Q. Yep.

39 A. -- presented itself with a problem in terms of having
40 a finger of B4 outside a clear definable boundary on
41 Beatrice Street. My preference as a planner would be to
42 have it as all R4. However, given that the council had
43 mandated that it should be half/half, I wanted to give the
44 option of reducing that area to a small finger of B4, and
45 that correlates to some of the retail tenant uses in that
46 strip.

47

1 Q. It is the fact, isn't it, that the B4/R4 split - we
2 will call it B4, Auburn Road, and R4, Susan Street --
3 A. Mmm-hmm.
4
5 Q. That had been put to a design study carried out by
6 MG Planning, which you will see commences at page 55.
7 A. Yes.
8
9 Q. You are familiar with that?
10 A. Yes.
11
12 Q. It goes from 55 through to 134 of the bundle. Now,
13 how much did that design study cost?
14 A. I'm not aware.
15
16 Q. Give me a rough idea?
17 A. Without the figures in front of me, I wouldn't know.
18
19 Q. Well, you wouldn't get any change out of \$30,000 or
20 \$40,000, would you, for that sort of design study?
21 A. No, that's probably correct.
22
23 Q. And it was only directed to B4 all the way down
24 Auburn Road and R4 all the way down Susan Street; correct?
25 A. As per the council resolution.
26
27 Q. And as far as you were concerned, council only wanted
28 what had originally been proposed?
29 A. That's correct.
30
31 Q. And you say your personal preference - I assume that
32 that comes from your experience as a town planner over many
33 years and being the executive manager of planning at the
34 time - would have been to have R4 for the entire block?
35 A. Only historically there are some - a number of
36 schedule 7 flat buildings already in that block, so from
37 that perspective, it probably would lean itself better to
38 an R4 zone.
39
40 THE COMMISSIONER: Q. What does schedule 7 mean -
41 residential --
42 A. Old flat buildings.
43
44 THE COMMISSIONER: Old flat buildings, right.
45
46 MR BOLSTER: Q. I think you get a sense of the flats,
47 Mr Commissioner, from the aerial photo at page 31, at the

1 front of the proposal in March of 2014. I think you have
2 a colour version of that.
3
4 THE COMMISSIONER: Q. So R4 - what is the maximum height
5 in that zone?
6 A. It is four stories.
7
8 Q. Nine metres or something, isn't it?
9 A. This particular zone --
10
11 Q. Oh hang on, it might be - it might tell me on --
12 A. -- 16 metres.
13
14 Q. I don't know if this means anything, I'm looking at
15 105 of the consultant's report, saying R4 is 9 metres,
16 I think.
17
18 MR BOLSTER: The existing - yes, I think it was 9 metres.
19
20 THE COMMISSIONER: And B4 is 21, is it, or 27?
21
22 MR BOLSTER: Ordinarily, B4 is 27.
23
24 THE COMMISSIONER: Oh, I see, they are recommending
25 a modified B4.
26
27 MR BOLSTER: The B4 that was ultimately recommended here
28 was down to 21.
29
30 THE WITNESS: It was reduced in height.
31
32 THE COMMISSIONER: Sorry, go on, yes.
33
34 MR BOLSTER: Q. Are you sure, Mr Francis, that it was
35 your idea to propose the limited section of B4 along
36 Auburn Road that was ultimately adopted by council?
37 A. I'd like - I would have liked it to be - to have it
38 removed into R4, but reducing it was put up as an option
39 towards it. There was some talk within the chamber about
40 having it reduced, but --
41
42 Q. Was that before or after you put forward your proposal
43 to the meeting of April 15?
44 A. Probably before.
45
46 Q. Before?
47 A. There was some --

1
2 Q. Who wanted it reduced?
3 A. There was a number of councillors talking about it.
4
5 Q. Did Mr Oueik discuss that reduction with you before
6 you did your report for 15 April?
7 A. He was - he and Ned Attie and Hicham Zraika, they
8 were, I think, concerned about the amount of B4 in that
9 area, but they certainly didn't influence my
10 recommendation.
11
12 Q. What were their concerns about there being too much B4
13 in that area?
14 A. I think it - I think, from their perspective, it may
15 have been just too far away from the town centre. Probably
16 with the exception of Hicham Zraika, I think. From memory,
17 I don't think he had an issue with that.
18
19 Q. Do you recall discussing a reduction of the B4 area
20 with Mr Oueik at any stage prior to doing your report for
21 15 April?
22 A. Not that I can recall, but certainly I was not happy
23 with it and I probably mentioned it to him in passing or -
24 that I wasn't happy with it.
25
26 Q. You weren't happy - what did you mean by you were "not
27 happy with it". You weren't happy with any B4?
28 A. I just think that that B4 zone in that area extends
29 past a clear definable boundary in Beatrice Street, and
30 having come into the job after, I mean, a lot of it had
31 already been completed and on its way, I had a chance to
32 look at it and address it.
33
34 Q. Well, correct me if I'm wrong: you say your personal
35 preference, based on your experience as a town planner over
36 many years, was no B4 in the block; correct?
37 A. That would be, yes.
38
39 Q. Why didn't you propose that?
40 A. Because we had a valid council resolution that said to
41 have the split between the two, and I thought as a - the
42 median way to do it was to try and reduce the amount of B4
43 but still comply with that initial resolution. In
44 hindsight, it probably - I should have put it up as an
45 option, a secondary option, but the council at that stage
46 could actually put forward that they don't want it at all.
47

1 Q. You put up all the options, didn't you?
2 A. I put up all the options.
3
4 Q. Proposal 1 was - the colouring is not clear, but if
5 you just look at proposal number 1 behind attachment 6,
6 that was for B4 all the way down to 100; correct?
7
8 THE COMMISSIONER: Yes, that's called "option 1", isn't
9 it, in the report?
10
11 MR BOLSTER: Yes.
12
13 Q. Is that right, Mr Francis?
14 A. I don't have a - oh, the old (indistinct) site, sorry.
15 Yes, sorry.
16
17 Q. Yes. So you have "Option 1, proposed zoning", it
18 seems to be B4 down to 100?
19 A. Yes.
20
21 THE COMMISSIONER: This is on page 25 of the report as
22 well, if you look in the bundle, it's got "Option 1".
23
24 MR BOLSTER: Thank you. That's helpful. Why don't we do
25 that, because that's going to be the clearest.
26
27 THE COMMISSIONER: Yes, page 25, it's got --
28
29 MR BOLSTER: Q. Just go to page 25. Option 1 is "The
30 current proposal is the existing B4/R4 split"?
31 A. Yes.
32
33 Q. That's 50:50?
34 A. Yes.
35
36 THE COMMISSIONER: Q. What does "PP" stand for there,
37 "as described in existing" - is that planning proposal?
38 A. Planning proposal.
39
40 MR BOLSTER: Q. Option 2A was the option ultimately
41 adopted - that is, only B4 from up to 90 Auburn Road?
42 A. Yes.
43
44 Q. Have a look at the words, I think it will make it
45 clearer?
46 A. Yes.
47

1 Q. Because I think the colouring on that is problematic.
2 Do you see that on page 26?
3 A. Yes.
4
5 Q. 2A, "Reduce B4 from Beatrice Street to
6 90 Auburn Road", and the 2B option was basically the
7 two-thirds option - you go down to 100 Auburn Road?
8 A. Yes.
9
10 Q. And there was, of course, option 2C, which was R4
11 everywhere; and there was probably an option 2D, do nothing
12 at all; correct?
13 A. Well, that's not shown on the table there.
14
15 Q. No, no.
16
17 THE COMMISSIONER: These are hypotheticals, aren't they?
18
19 MR BOLSTER: They are the hypothetical options, aren't
20 they, that weren't put forward to council --
21
22 THE COMMISSIONER: Q. 2C being another name for your
23 preference that it all stays R4?
24 A. Well, that - yes, if you wanted to call it that.
25
26 MR BOLSTER: Q. Did the fact that Mr Salim Mehajer owned
27 land that would have benefited by the 2A proposal have
28 anything to do with it going forward?
29 A. He owned 100.
30
31 Q. He owned - I believe it's 84.
32 A. So he would have benefited from option 1.
33
34 Q. Oh, his sister owned 84. But he declared an interest.
35 He'd declared that interest all along when this was being
36 discussed, hadn't he?
37 A. Well, he declared an interest in it, but it's not
38 within our powers to go and map out who owns what and --
39
40 Q. Did you know that his sister owned a property
41 inside --
42 A. I didn't know his sister owned that, but, in that
43 case, option 1 and 2A --
44
45 Q. They all would have benefited him.
46 A. -- all would have benefited from it.
47

1 Q. But he wouldn't have benefited from the "do nothing"
2 option or your preferred option?
3 A. That - as a planner, yes.
4
5 Q. Did you feel intimidated about putting up your
6 preferred option to council?
7 A. Intimidated?
8
9 Q. Yes.
10 A. No.
11
12 Q. No?
13 A. No.
14
15 Q. You knew there was a block of councillors who were of
16 the mind to do nothing and leave the zoning as it was;
17 correct?
18 A. Yes.
19
20 Q. You knew what the dynamics were on the council, where
21 the numbers lay, didn't you?
22 A. Yes.
23
24 Q. Were you made aware of any representations by
25 residents who were in the area from 90 to 100 Auburn Road -
26 that is, the middle third on Auburn Road - about what they
27 wanted?
28 A. What are their - do you know their names, or?
29
30 Q. Well, the did the Bhanin Association, who have
31 a community centre in that area - did they make
32 a representation?
33 A. I think they did, actually, and they've made
34 subsequent representations when the administrator stepped
35 in and put it off the - took it off the agenda.
36
37 Q. And the Church of Christ own a building in that area
38 as well?
39 A. That's the large church, yes.
40
41 Q. They were in favour of it because they wanted to
42 obtain the benefit of a B4 rezoning to sell the land and
43 use the money for their various purposes. That was made
44 clear to you, wasn't it, during this process?
45 A. If they'd made an objection and they were summarised
46 in there, that was in there, but, I mean, sometimes we need
47 to look at the overall picture, not the individuals.

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Q. Yes. Okay why did you choose the dividing line - the dividing lines for each of your 2A and 2B options? Why the border between 88 and 90; why the border between 100 and 102?

A. There was a grouping of shops in the first group, up to a certain point; and then the second group I think fell just before a - before the church, I think, so large landholdings, and just looking at parcels that could be developed, sufficiently developed, of a size, so if there was a - I think there was a video shop and a falafel shop, and there's a dwelling house next to that. The falafel shop is sort of the boundary and then there was this house that stood out next to the church. The church could develop by itself, if it went to a flat building, but the house was by itself. Then it would need to amalgamate with one or the other, and there's a difficulty and concern there.

Q. If you could just please go to 75, that may assist the Commission in identifying that particular feature of the site. Do you agree with me? Does that accord with what you have just said?

A. Yes, in terms of the grouping of the retail.

Q. All right, if you go back to the start of that bundle, we will talk about Berala, now.

THE COMMISSIONER: Do you need a break?

THE WITNESS: Oh, no, that's --

THE COMMISSIONER: We've been going for an hour 20. Are you sure?

THE WITNESS: Unless you need one.

THE COMMISSIONER: No, I'm fine, but I'm just --

MR BOLSTER: We've broken the back of it, and this won't be as long as the other two topics.

THE WITNESS: Oh, that's fine.

THE COMMISSIONER: Are you happy to keep going?

THE WITNESS: No, that's fine. I'm happy, if you're

1 happy.
2
3 MR SEAR: We do have to change the tapes in seven minutes.
4
5 MR BOLSTER: In seven minutes. Well, perhaps --
6
7 THE COMMISSIONER: All right. We might have a five-minute
8 break, then, I think --
9
10 MR BOLSTER: And we will change the tapes.
11
12 THE COMMISSIONER: -- just to let people - sorry, you are
13 changing the tape now, are you?
14
15 MR SEAR: I'm just going to stop the recording.
16
17 **SHORT ADJOURNMENT**
18
19 THE COMMISSIONER: Okay, we're just continuing on with
20 your oath, Mr Francis, thanks.
21
22 THE WITNESS: Yes.
23
24 MR BOLSTER: Q. Now, I want to ask you some questions
25 now about the Berala Village Centre study --
26 A. Yes.
27
28 Q. -- and the planning proposal that has emanated from
29 that. I really only wanted to ask you about a few things.
30 The first was a councillor workshop in Bowral in February
31 of 2014. Did you attend that?
32 A. Yes, I did.
33
34 Q. Was that a weekend workshop?
35 A. Yes, it was.
36
37 Q. Was it a stay-down-there-overnight affair?
38 A. Yes.
39
40 Q. And which councillors attended?
41 A. I think all the councillors except for
42 Councillor Mehajer, from memory. I can get that detail.
43
44 Q. Where did it take place?
45 A. It was in a - on a golf course. There was
46 a hotel/resort on a golf course.
47

1 Q. And staff and councillors were staying at the same
2 resort?
3 A. Yes.
4
5 Q. Did you go down there on a Friday night?
6 A. It was a - it was a Friday - I think, from memory, it
7 was a Friday, then Friday night and then a Saturday, and
8 then I think that was it - or maybe a Sunday. It went
9 over --
10
11 Q. A couple of nights --
12 A. A couple of nights.
13
14 Q. -- in Bowral?
15 A. Yes. Sorry.
16
17 Q. Now, the workshop was not just about the Berala
18 Village study, was it?
19 A. No, there was a number - there was an agenda of items;
20 that's correct.
21
22 Q. And how much time was devoted to Berala?
23 A. There was an agenda put forward. I'm not sure of the
24 time. Probably more - an hour?
25
26 Q. And were you in charge of dealing with the Berala
27 agenda item?
28 A. Yes, yes.
29
30 Q. Was the general manager there?
31 A. Yes.
32
33 Q. By that stage it was Mr Brisby?
34 A. Mr Brisby.
35
36 Q. So what other staff, other than yourself and
37 Mr Brisby, were there?
38 A. I think - well, there was Ian Dencker; I think Hamish
39 was there.
40
41 THE COMMISSIONER: Q. That's Mr McNulty, is it?
42 A. Hamish McNulty, sorry. We had minutes of those - that
43 workshop, so forgive me if I forget someone.
44
45 MR BOLSTER: Q. Right. Well, I'm going to show you some
46 documents in a minute and we'll see if that helps you with
47 your recollection. Now, what was the purpose of the

1 workshop, as far as the Berala study was concerned?
2 A. The purpose was really to try and get a firm position
3 from the councillors about where the boundary for the town
4 centre should start and finish.
5
6 Q. Why was that?
7 A. Well, just to get some feedback from them, some
8 council - council had been - it's been a little bit chaotic
9 with rezonings and we'd like to see - try and get all their
10 positions across to see where they see, as the community
11 leaders - where they see the town centre is.
12
13 Q. Until that point in time, though - that was about
14 18 months after the council spent quite a lot of time and
15 money doing the village centre study?
16 A. Yes.
17
18 Q. Was that something that you had oversight of?
19 A. No.
20
21 Q. Who had oversight of that?
22 A. It would have been Alia Karaman, the previous
23 strategic manager, and Mr Brisby.
24
25 Q. So she looked after this and reported to Mr Brisby,
26 not you?
27 A. That's correct.
28
29 Q. But by the time of the workshop in February, it was
30 your issue?
31 A. That was my issue, yes.
32
33 Q. Now, the study recommended "do nothing"; correct?
34 A. It did.
35
36 Q. I want to show you some documents from the workshop.
37 I'm sure you have seen these before. This is a sketch
38 coloured in by individual councillors during the workshop.
39 Do you remember that?
40 A. Yes.
41
42 Q. Now, whose idea was it to have an exercise such as
43 this --
44 A. I think - I think it was a collective idea by the
45 executive to get these thoughts out and give the
46 councillors some input into the zones.
47

1 Q. You had a personal position in relation to Auburn:
2 did you have a personal position in relation to Berala?
3 A. Not as much. Other than - the key thing for Berala
4 and any sort of centre for around a railway station is just
5 the walking distance to the station. I think as long as it
6 is not too far out from that central arc, which you can
7 probably see there on the zones there, 400 metre radius,
8 that's - that's distance to the train station.
9
10 Q. But why is that important?
11 A. So if you have high density development, that they can
12 gain access to public transport.
13
14 Q. Did the councillors ask the executive for their advice
15 about zoning in that area?
16 A. Not that I recall, no.
17
18 Q. If you just open up that document, do you see that's
19 a five-page - five different coloured zones. I take it you
20 handed those out to the councillors?
21 A. They were handed out, yes.
22
23 Q. What did you say when you handed them out?
24 A. I think we gave a briefing on it, on the - there's
25 some slides that we had and we just sought their input into
26 what they thought the future of the Berala town centre was
27 and where they see the zones would lie.
28
29 Q. Are you able to identify whose maps they are? There
30 is only one that has a name on it, the second one, it has
31 Councillor Steve, and I assume that's Steve Yang?
32 A. That would be correct.
33
34 Q. Do you know who prepared the other four?
35 A. No. I do know that Councillor Oldfield did not
36 participate. He wanted it left as the zone was, so he
37 didn't - he didn't submit, I think, a sheet.
38
39 Q. So we have five coloured sheets and there are
40 10 councillors?
41 A. There may have been nine.
42
43 Q. And Mehajer wasn't there?
44 A. From memory, I think, yes.
45
46 Q. So did Hicham Zraika take part in this process?
47 A. I don't know whether he stayed in the room or not.

1 I've got a feeling that he left the room.
2
3 Q. What gives you that - was there any discussion about
4 the fact that he lived within - owned property within the
5 400 metre radius?
6 A. Yeah, I'd say that's probably what he - that sticks in
7 my mind.
8
9 Q. Do you have a recollection of that?
10 A. Yeah - no, I can't state it as a thing, a fact, but
11 that sticks in my head.
12
13 Q. All right. So who prepared the first document, or
14 can't you say?
15 A. I'm not sure who prepared them. We didn't get them to
16 write it in. Some - they did group together, some did
17 a group set in a group together, and some, like I said,
18 didn't participate.
19
20 Q. Who were the groups? Who was in the groups?
21 A. I think Ned Attie and Ronney Oueik were together. And
22 I think Semra and Irene may have been together. But that -
23 you know, I'm speculating there, because it's been a while,
24 so - I can't recall.
25
26 Q. What was the reason behind not recording the names?
27 Was that because you wanted it - some sort of secret
28 ballot; you didn't want there to be any attribution back to
29 whoever the author of the --
30 A. Oh, I don't think that was the case, I just don't
31 think we wrote people's names on it. It was done in an
32 open room. It wasn't done in a closed situation, so each
33 of the councillors saw what each one was doing. Because we
34 were in a horseshoe sort of shape. I don't know, we just
35 didn't plan for it.
36
37 Q. We've only got five here. Let's assume there were
38 nine people there and let's assume that Hicham Zraika left,
39 so there's only eight. We only have five here. Is the
40 difference of three attributable to the fact that people
41 didn't participate?
42 A. One didn't - I know - I'm pretty confident that
43 Tony Oldfield didn't participate. Well, he was happy with
44 the zones as they were. And the rest, like I said, did
45 group in some groups, paired together, and not, so --
46
47 Q. And you don't have any explanation for where the other

1 three might be?
2 A. No. No, I couldn't - I'd be guessing.
3
4 Q. After they were handed back to the staff, what did you
5 do with them?
6
7 THE COMMISSIONER: Is this what we are looking at?
8
9 MR BOLSTER: Yes, yes.
10
11 THE COMMISSIONER: Just for clarity, this doesn't actually
12 mark York Street, but it is that street that runs into
13 Elizabeth and Hyde Park, is it?
14
15 MR BOLSTER: It is, yes. It runs towards the railway
16 line, to the left of Elizabeth Street.
17
18 THE COMMISSIONER: Q. That's right, Mr Francis?
19 A. That's correct.
20
21 MR BOLSTER: Q. Did the executive collect them and have
22 a discussion amongst themselves about it at some later
23 stage?
24 A. I think the strategic manager grouped it together and
25 then made an analysis from it.
26
27 Q. And the strategic manager was at that time?
28 A. Monica Cologna.
29
30 Q. Was that then used to produce a councillor briefing
31 in June of 2014, which I'm showing you now?
32 A. Yes.
33
34 THE COMMISSIONER: Is that that document?
35
36 MR BOLSTER: Yes.
37
38 THE COMMISSIONER: Q. Just so that I know something, on
39 the document that Mr Bolster was asking you about before,
40 1 February 2014, is that red box - is that the railway
41 station?
42 A. That's Berala Railway Station.
43
44 Q. And is the 400 metre area - is that chosen from, like,
45 a state planning policy or --
46 A. It is around - it is the distance from a railway
47 station based on the B2 - it's the walkable distance

1 between that --
2
3 Q. Sorry, so that's from the council's own LEP, is it,
4 not from, like, a state planning policy in relation to
5 zonings from railway stations or --
6 A. From memory, I think it might be from the state code.
7 I'd have to check that.
8
9 Q. Yeah, I just wanted to - all right.
10 A. I know that Lidcombe and Auburn have an 800 metre
11 radius which rings true, so Berala's not as frequent but
12 still has a fairly good service, and I think just for
13 clarity, I think that was put in just to show that there's
14 a - a 400 metre radius is equivalent to a five-minute or
15 three-minute walk to the station.
16
17 Q. Right. Okay.
18 A. In terms of travel, walking distance.
19
20 MR BOLSTER: Right.
21
22 THE COMMISSIONER: Sorry, I interrupted. You were going
23 on to this June 2014 briefing.
24
25 MR BOLSTER: Q. Yeah. Who had responsibility for
26 preparing this further study?
27 A. That was the strategic manager.
28
29 Q. And the strategic manager reported to?
30 A. To myself.
31
32 Q. To you? So you signed off on this?
33 A. Yes.
34
35 Q. And this went forward to council in June?
36 A. As a - as a briefing. So we have a briefing on the
37 second Wednesday and a council meeting on the fourth, or
38 one of the two. So it's - we have a briefing once a month
39 and a council meeting once a month.
40
41 Q. If you could just go to the bundle at 279, that's in
42 the Berala side of the bundle, so there is separate
43 pagination. It's two blue fact sheets.
44
45 THE COMMISSIONER: You may not see the number 279, because
46 it's in blue, but --
47

1 MR BOLSTER: Q. Yes, I think you have got it. You have
2 got that?
3 A. Yes.
4
5 Q. And just go over to the second page. I think that's
6 probably the most useful comparison. You have the existing
7 zoning on the left and the proposed zoning on the right.
8 A. By council resolution.
9
10 Q. Yes, this is what council have resolved. Now, before
11 council resolved that, a zoning map was prepared in July.
12 I want to show you that. I ask you to focus on the area
13 marked (d) on York Street?
14 A. Yes.
15
16 Q. What does (d) signify?
17 A. York Street?
18
19 Q. Do you see the (d) in the - do you see York Street?
20 A. Oh, they are blocks, sorry.
21
22 Q. Do you see block (d)?
23 A. Yes, block - they were segregated into blocks so they
24 were easier to identify in the report, in case there were
25 changes or --
26
27 Q. All right. So the first of those maps --
28
29 THE COMMISSIONER: Can you identify that so we've got
30 a record of it?
31
32 MR BOLSTER: This is a series of attachments. It is an
33 eight-page series of colour maps. They are not in the
34 folder, and we will mark them as an exhibit shortly.
35
36 Q. Do you have those?
37 A. Yes.
38
39 Q. So if you look at page 1, that's the existing zoning?
40 A. Yes.
41
42 Q. And the "Existing LSZ" is - "LSZ" means what? On
43 page 2, "Existing LSZ Map"?
44 A. Lot size.
45
46 Q. Lot size. Page 3 is the "HOB" - what does that
47 signify?

1 A. Height of building.
2
3 THE COMMISSIONER: Height of buildings.
4
5 MR BOLSTER: Thank you.
6
7 Q. Then the "Floor Space Ratio" is page 4. Then at
8 page 5 we have the "Proposed Zone". Do you see that?
9 A. The council approved zone, yes.
10
11 Q. It is the case, isn't it, that the executive and the
12 planning staff took the councillor workshop maps and
13 analysed them to come up with that zoning proposal that you
14 see on page 5; correct?
15 A. No.
16
17 Q. No?
18 A. That's the analysis there.
19
20 Q. The analysis occurs, you say, in the further study?
21 A. Well, the presentation from Bowral had suggested
22 height and FSR.
23
24 Q. Yes.
25 A. You will see the map that is back there.
26
27 Q. Yes.
28 A. That was one of the --
29
30 Q. Let's just identify which map we're talking about.
31 It's on page - which page?
32 A. The second-last page.
33
34 Q. The second-last page?
35 A. Titled "Suggested Height and FSR". That was the
36 analysis from Bowral put back --
37
38 THE COMMISSIONER: This is the councillor briefing in June
39 2014?
40
41 MR BOLSTER: Q. So this is based upon what councillors
42 put on their coloured-in maps. The staff went away and
43 came up with this plan, which is on the second-last page of
44 the document?
45 A. It was an amalgam, yes. So that was the suggested
46 position for that.
47

1 Q. All right. So then what's ultimately approved is
2 somewhat different; correct?
3 A. There's - yes.
4
5 Q. In the case of --
6 A. And that's in the council report.
7
8 Q. Yes, I understand that. All right. When council
9 staff were preparing the further study, was it apparent to
10 them that Councillor Zraika owned a parcel of land on
11 York Street in area (d)?
12
13 THE COMMISSIONER: Two parcels.
14
15 MR BOLSTER: Q. Two parcels - that he had any interest
16 in (d)?
17 A. He had his - well, everyone in the chamber knew that
18 he lives in there.
19
20 Q. But did council staff know that?
21 A. I knew he lived there. I'd done a - we'd done DAs in
22 there for his physiotherapy clinic. But, you know, again,
23 it's not based on who owns what, it's based on whether it
24 fits the planning mould. So within that concentric circle
25 is 400 metres, it's still a walking distance to the
26 station. But the council resolved to move that way. It's
27 not a kilometre away from the station.
28
29 Q. Can you see the suggested zoning scenario on the
30 third-last page?
31 A. Yes.
32
33 Q. Do you see the area to the south of Hyde Park Road?
34 A. Yes.
35
36 Q. And you will see there five and the edge of six blocks
37 of R2 land?
38 A. Yes.
39
40 Q. Many of which were much closer to Berala station than
41 Councillor Zraika's land at the end of York Street, and
42 they stayed at R2 on the suggested zoning, and on the
43 council approved zoning.
44 A. Yes.
45
46 Q. Don't you think, as a planner, that there's something
47 odd about that fact?

1 A. Well, not if you look at the block size pattern. The
2 R2 blocks there are long and elongated. So in order to get
3 separation for a town centre zone, you need some sort of
4 definable boundary. You've got very long blocks there from
5 Hyde Park Road down to - I don't see - Kingsland, Seventh,
6 Sixth, Fifth, Fourth - they're very long blocks. So in
7 order to perform the scenario that you suggest, we would
8 have to split those blocks and have a split zone in there
9 due to its proximity to the station. And given Berala has
10 a - sort of a good side and a poor side, the poor side is
11 on that side, on that southern-eastern side, and the
12 north-western side is sort of the more developed side, the
13 more prosperous side. I can see that there is some
14 validity in sort of maintaining the bulk of the B2 on that
15 northern side, but I can hear what you are saying.
16

17 Q. I just wanted to close with a couple of questions on
18 a slightly different topic. Have you had the assistance of
19 Mr Oueik in carrying out any building work that has been
20 for your benefit?

21 A. Personally?

22
23 Q. Yes.

24 A. In terms of that question, I - I'm not sure whether
25 I can answer that, in terms of it being under direction
26 from the ICAC.
27

28 Q. What's the direction from the ICAC?

29 A. It's not to disclose an interest of - an interest -
30 a disclosure made by myself to the ICAC. Unless - unless
31 you think it is, and --
32

33 MR BOLSTER: I don't know.
34

35 THE COMMISSIONER: I think for the purposes of the
36 Commission, unless I had something from the ICAC, I think
37 you have got to answer the questions that you are asked
38 here.
39

40 THE WITNESS: Sure. Then I have made a disclosure to the
41 ICAC regarding a kitchen that was installed at my house,
42 when I --
43

44 MR BOLSTER: Q. When did that happen?

45 A. When I first bought it.
46

47 Q. When was that?

1 A. The date I think was 2006 - early 2006. April 2006.
2
3 Q. You had a kitchen installed at your home?
4 A. I had - I'd recently bought a house and it needed some
5 works done to it and I was in the process of getting quotes
6 for works, electrical works and the like, and this -
7 Mark Brisby and the councillor came to see the house, have
8 a look at it, together.
9
10 Q. Who was the councillor?
11 A. Councillor Oueik, and he said to me that he had access
12 to tradesmen, but you'd have to pay them directly, and they
13 would - they could come, do some work, and then you'd pay
14 them directly. So we had some carpenters come and paid
15 them directly; we had an electrician come and he did the
16 house, and paid him directly; I had a kitchen man come and
17 he put in cupboards; I had an installer come for the
18 cupboards. The kitchen man didn't take the money that he
19 quoted.
20
21 Q. What was the name of the kitchen man?
22 A. I'm not sure. I didn't get his name.
23
24 Q. Do you have his phone number?
25 A. I don't have his phone number.
26
27 Q. Did you ever send him text messages?
28 A. No.
29
30 Q. Did you send him a mobile phone - did you call him on
31 his mobile phone?
32 A. No.
33
34 Q. How did you arrange for him to come to the site?
35 A. Ronney Oueik sent him to the site. He measured it up
36 and said, "It will be \$2,000 for the cupboards and the
37 install is separate through another person." And the
38 installer came and installed the cupboards. When the
39 cupboards came, they wouldn't take the money.
40
41 Q. Did they say why?
42 A. No. Just wasn't going to take it.
43
44 THE COMMISSIONER: Q. Was there an invoice?
45 A. There was no invoice. Everything was cash.
46
47 MR BOLSTER: Q. Were there any invoices for any of the

1 work that was done on your house --
2 A. No.
3
4 Q. -- through Mr Oueik?
5 A. No, that was all done through cash.
6
7 Q. But I take it that you paid significantly less than
8 you would otherwise have had to pay to get the work done?
9 A. Yes.
10
11 Q. What was the budget for the work, before you saw
12 Mr Oueik? What were you looking at spending on the house?
13 A. About 10 - 10,000.
14
15 Q. And what did you end up spending, actually, on the
16 house?
17 A. I guess it's - probably six and a half, seven.
18
19 Q. Do you still own the property?
20 A. Yes. Well, it's mortgaged, but --
21
22 Q. Yes, is it your residence?
23 A. It is my residence.
24
25 Q. Is it in Kogarah?
26 A. It's in Bexley, but it is near Kogarah.
27
28 THE COMMISSIONER: Q. Sorry, I missed the date when this
29 occurred - was it '06, did you say?
30 A. '06. Early '06.
31
32 MR BOLSTER: Q. And what was the basis upon which you
33 asked Mr Oueik for assistance?
34 A. It wasn't - it wasn't that I was intending to ask him
35 anything. He came to the house for a visit and then said
36 he'd - he could do these things to help us out, to - and
37 it - "And it's all above board and you pay these people
38 directly."
39
40 THE COMMISSIONER: Q. Sorry, why did he come to the
41 house for a visit? Was that - you invited him, or --
42 A. I think I invited Mr Brisby, but he came as well.
43
44 MR BOLSTER: Q. What did you invite Mr Brisby for - was
45 it a barbecue or a social function?
46 A. It was at the lunchtime. So he just came over at
47 lunchtime.

1
2 Q. On a work day, or --
3 A. I think it was - yeah, it was a work day, because
4 I was off trying to sort my house out.
5
6 Q. In your profession you would know a whole range of
7 builders who could do that sort of work for you?
8 A. Well, yes. At that time, being new to the position as
9 well - it was a stupid thing to do.
10
11 Q. When the tradesmen who you offered to pay refused to
12 take the money, did you raise that issue with Mr Oueik?
13 A. Yes.
14
15 Q. What did you say to him?
16 A. "They wouldn't take the money and I've got the money
17 here. I want to pay you for the cupboards."
18
19 Q. What did he say?
20 A. "No". He became quite agitated about it.
21
22 Q. What else did he say?
23 A. That - that it's a gift and it's - there's no strings
24 attached, he just wants to see the family - help the family
25 out. And then he got quite agitated about me asking about
26 it.
27
28 Q. Did he raise the topic with you at any time in the
29 future?
30 A. No. He never raised it again and I never raised it
31 either.
32
33 Q. How many times has Mr Oueik been to your house?
34 A. Once.
35
36 Q. How many times have you been to his house?
37 A. Several.
38
39 Q. Several? Is this his property out at Kenthurst?
40 A. I've been out there about six times.
41
42 Q. For what purpose?
43 A. Just to see the house. He was showing the grounds and
44 the works that he's been doing.
45
46 Q. It's fairly palatial. Was that for the purpose of
47 having a barbecue or --

1 A. No.
2
3 Q. -- a social event or was he just showing you what had
4 been built?
5 A. Just what had been built.
6
7 Q. What did he --
8 A. And the grounds.
9
10 Q. Who else was there when you went to Mr Oueik's place?
11 A. Sometimes I went up - I went with Mark Brisby.
12 Sometimes I went by myself.
13
14 Q. When you went with Mr Brisby, who drove?
15 A. Mr Brisby.
16
17 Q. Did he say, "Come on up, we're going to Ronney's"?
18 A. Sometimes.
19
20 Q. Something like that?
21 A. Sometimes.
22
23 Q. Did you say "Why"?
24 A. No, didn't question it.
25
26 Q. Didn't ask?
27 A. No. It was just going to see the house, "Come up to
28 see Ronney's house. See what's happening."
29
30 Q. He showed you around. What else did you do when you
31 went up there?
32 A. That's basically it. We did have - he went to
33 a coffee shop near his house, coffee there, once - once or
34 twice, and then we had a lunch thing there, a burger. But
35 I'm - I had one - I think I had a burger once with him,
36 lunch up there.
37
38 Q. When you went by yourself, why did you go?
39 A. Oh, just he'd said to come and see the house. Some
40 more work had been done.
41
42 Q. What, in particular, work did he want to show you?
43 A. Oh, some landscaping work. He had some IT stuff put
44 in. He had a pool that was - you know, a new filter on the
45 pool.
46
47 Q. When was the first of these visits to his house?

1 A. Oh, only fairly recently.
2
3 Q. Recently, what - when are we talking?
4 A. I'm not sure, probably November or October.
5
6 Q. November last year?
7 A. Last year.
8
9 Q. 2015?
10 A. Yes.
11
12 Q. The first time you went to his house was in November
13 2015?
14 A. Oh, well, I can't tell you a specific date. I don't -
15 I'm not sure, but he'd only just bought the house and,
16 I guess, was fitting it out.
17
18 Q. And there have been a number of visits since then?
19 A. That's right.
20
21 Q. With you either alone or with Mr Brisby?
22 A. Mr Brisby, and I think one with Peter Fitzgerald.
23
24 Q. Peter Fitzgerald?
25 A. Yes, senior - junior.
26
27 Q. When you went there with Peter Fitzgerald junior, what
28 was discussed about council-related matters?
29 A. Not much, really. It's really just talking about the
30 house and what he's been doing. I mean, sometimes, talking
31 about rubbish and trees and stuff like that.
32
33 THE COMMISSIONER: Q. Is Mr Brisby aware of the gift in
34 relation to the cupboards?
35 A. Not that I'm aware of.
36
37 Q. You haven't discussed it with him?
38 A. No, and when he made that offer - I don't - he wasn't
39 around.
40
41 Q. Is anyone, any other member of staff at the council,
42 past or present, aware of the gift?
43 A. No. No-one at all.
44
45 MR BOLSTER: Q. You don't think the gift had anything to
46 do with any of your advice to council in relation to the
47 South Auburn zoning?

1 A. No, sir.
2
3 Q. And the way in which the Berala Village zoning issue
4 was discussed or raised or determined?
5 A. No.
6
7 Q. Or anything to do with the way in which you dealt with
8 the section 96(1A) application for Water Street?
9 A. No, just - I should have been a bit more careful and
10 diligent in checking things, rather than signing things
11 off.
12
13 Q. We have your mobile phone records for a limited period
14 of time - we will be getting all of them in due course -
15 but I wanted to squarely raise with you a call you made to
16 Councillor Oueik on 31 January this year, which was the day
17 after the storm. It shows that you spoke to him for 10 and
18 three-quarter minutes. What can you tell us about that
19 conversation, bearing in mind what you have told us you
20 discussed with him on the first occasion after you found
21 out about the damage to the property?
22 A. Probably it was about the storm, and that's probably -
23 I'm not sure. I don't know why - it was probably that or
24 something else. He did - we did talk a lot on the phone,
25 and text as well.
26
27 Q. That followed a conversation from Mr Fitzgerald, about
28 a half an hour beforehand, where you spoke to him for eight
29 minutes. Do you remember what that was about?
30 A. It may have been about the storm.
31
32 Q. What was Mr Fitzgerald's role at the time?
33 A. He's the manager for outdoors, so he would have had to
34 have outdoor staff barricade the site, or something.
35
36 Q. Right. Now, this inquiry was announced on 21 January
37 and council was suspended - on what date in February?
38
39 MR SEAR: It was later. It was 14 days --
40
41 MR BOLSTER: I've got the precise --
42
43 THE COMMISSIONER: Some time in February '16.
44
45 MR BOLSTER: Some time - oh, no, the date is important.
46 The date is important. Suspended on 10 February, which was
47 nine days after the inquiry was announced.

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THE COMMISSIONER: I think I got appointed on 21 January. It must have been announced not long after that.

MR BOLSTER: Q. There is a record of you calling Mr Oueik on his mobile on 19 February. It's only 53 seconds?

A. Yes.

Q. Do you remember what that was about?

A. Yes.

Q. What was that call about?

A. Oh, sorry. He needed the laptop and his IT equipment picked up and the general manager sent me up there to pick that up because he didn't want the rangers to go up and pick it up. So he sent me up there to pick it up.

Q. Why didn't he want the rangers to pick it up?

A. In case there was conflict between him and the rangers.

Q. Why would there be conflict between him and the rangers?

A. Well, he didn't want to send just regular staff up, because they were suspended at the time and there's an instruction by the administrator that no staff are to have any contact, and so I was given permission to go up.

Q. You haven't had any contact with him since?

A. Zero. I did see one councillor after an appointment in Fairfield. I was returning to my car and he was having coffee at an outdoor table, and I've got that documented in the system. But I never spoke to him, we just nodded.

MR BOLSTER: I think that's all I wish to ask at this stage, Mr Commissioner.

THE COMMISSIONER: Q. All right. Thank you for coming, Mr Francis. As I said, unless I make a different order, the transcript today will be restricted in the manner I said at the start.

A. Yes.

Q. It may well be that there is a reason that we either have to give parts of the transcript to other people, or the substance of what was said, but that hasn't been

1 determined yet. It may also be that we will require you to
2 attend to give evidence at the public hearings. A final
3 decision about that hasn't been made, but as an abundance
4 of caution you will receive a summons and a letter
5 concerning that. Is there anything else that you feel you
6 should tell us in relation to any of the matters that you
7 have been asked about today or in relation to the inquiry
8 generally?
9 A. Yes. I've got - I just wanted to clarify two
10 issues --
11
12 Q. Sure.
13 A. -- in talking with Mr Sear. In relation to Station
14 Road --
15
16 Q. Let's get some context. Station Road was
17 a development of apartments by one - was it one of
18 Mr Oueik's companies?
19 A. Mr Oueik's company (indistinct).
20
21 Q. And there was a development approval, development
22 consent in relation to a certain number of three-bedroom,
23 certain number of two-bedroom units?
24 A. That's correct.
25
26 Q. All right, go ahead. What do you want to tell us
27 about that?
28 A. There were six outstanding that were - during our
29 conversation with Mr Sear, I have had time to reflect, and
30 naturally it's a long time, but Rob Lawrence at the time
31 did tell me he was working with John on some illegal works
32 on that building.
33
34 Q. All right. Just let's just start - Mr Lawrence is
35 who?
36 A. Oh, sorry. Rob Lawrence is the compliance manager for
37 the --
38
39 Q. For the council?
40 A. For the council.
41
42 Q. Right. So his duties would be what?
43 A. Regulatory compliance, rangers.
44
45 Q. By "regulatory compliance", what do you mean?
46 A. Development control officers, the ones that are now
47 under the development manager at the present time.

1
2 Q. All right. So --
3 A. He had told me that he had been working with
4 John Burgess, the general manager - the then general
5 manager - on illegal works within the 40 to
6 46 Station Road, and --
7
8 Q. By "illegal works", what does that mean?
9 A. In terms of the works undertaken for the bedrooms, the
10 additional bedrooms.
11
12 Q. Increasing bedrooms?
13 A. The increase in bedroom size.
14
15 Q. So by that you mean development consent for
16 a particular two-bedroom unit being illegally changed to
17 a three-bedroom unit?
18 A. That's correct.
19
20 Q. Right.
21 A. And he'd told me that he's been working with John
22 directly and he'd asked me what he should do about the
23 situation, and my advice to him was to comply with the
24 general manager's direction and report directly to him on
25 all such matters. I had had a --
26
27 Q. When did you have this conversation with Mr Lawrence?
28 A. Oh, I can't recall. I just remember saying --
29
30 Q. Well, ballpark. Was it recently or a long time ago?
31 A. No, a long time ago.
32
33 Q. So was it back - the development consent for Station
34 Road was - tell me if I'm wrong, but that was - might have
35 been back in 2002, wasn't it?
36
37 MR BOLSTER: Perhaps I might be able to help you.
38
39 THE COMMISSIONER: All right. You go ahead.
40
41 MR BOLSTER: Q. Did this follow Mr Mooney's inspection
42 and report?
43 A. Probably a little bit later than that.
44
45 THE COMMISSIONER: That's 2008, is it?
46
47 MR BOLSTER: Q. 2008. So --

1 A. It would have been about, guessing, 2010, 2009.

2

3 Q. Between 2008 and twenty- --

4 A. '10. And that - and he was quite concerned about it,
5 and we had a good discussion, Mr Sear and I, and I'd just
6 forgotten to say it - to mention that to Mr Sear, because
7 we've had a - there was a - two-plus hours of discussion
8 and --

9

10 THE COMMISSIONER: Q. So when Mr Lawrence told you that
11 he was working with Mr Burgess on illegal works for this
12 development site at 40 to 46 Station Road, did he say why
13 Mr Burgess was involved in this?

14 A. No, I don't - I could only assume that it was because
15 it was a councillor, Mr Burgess was trying to keep it
16 within himself - keep the matter with himself so he could
17 investigate it. But I do remember Mr Lawrence being quite
18 upset about it and asking for advice. And I simply told
19 him to - that he should keep with John's instruction.

20

21 Q. I'm not quite sure I understand what you are saying
22 Mr Lawrence told you that Mr Burgess had asked him to do?

23 A. He was working with Mr Burgess directly and not - and
24 not with Mr Brisby. Mr Brisby is our - was our direct
25 manager. Mr Lawrence and I were on the same level. And
26 Mr Burgess was working directly with Rob and not with --

27

28 Q. Mr Brisby was out of the loop?

29 A. -- Brisby. Out of the loop. And that was upsetting
30 for him because he'd - he wanted to keep it all level. And
31 I - I hadn't told - told you that because I'd - you know,
32 we'd just run out of time and it was quite long. I don't
33 know if that's --

34

35 THE COMMISSIONER: Is there anything else you want to ask
36 arising from that?

37

38 Q. And there's another matter you wanted to raise?

39 A. The other matter I wanted to raise was in 2008 or '9
40 I received a parking fine for parking somewhere near Auburn
41 hospital, and it was for a JRPP meeting. We met the JRPP -
42 that's a state planning panel --

43

44 Q. Yes.

45 A. -- out on site. And I received - came back from the
46 inspection with the panel and received a ticket. I then --

47

1 Q. You were there on work duties?
2 A. I was on work duties, and my vehicle was ticketed.
3
4 Q. Where were you parked - in a meter or --
5 A. No, it was out in the street somewhere, and I don't
6 recall --
7
8 Q. There was a time restriction, was there, on the
9 parking area?
10 A. No, I just think it may have been - I'd be guessing.
11
12 Q. All right.
13 A. I received a ticket. And at the time the compliance -
14 the rangers were under a bit of scrutiny for their actions
15 and I was under the impression that I was ticketed because
16 of that. I then approached Rob Lawrence, the regulatory
17 compliance manager, explained the situation to him. He
18 said he'd look into it.
19
20 Q. When you say you explained the situation, you said,
21 "I was out, I was on a work duty"?
22 A. "I was on a work duty, I received a fine. I thought
23 it was unfairly issued because of the actions that they
24 were taking against the rangers in terms of it may have
25 been a" --
26
27 Q. Why would it have been unfairly issued?
28 A. I don't - I'm not --
29
30 Q. Do you think that they know your car?
31 A. Well, they do. They know the cars.
32
33 Q. Right, I see.
34 A. Sorry, I probably didn't explain that. It was a work
35 car.
36
37 Q. It's got something identifying Auburn Council on it,
38 does it?
39 A. They were all the same vehicles.
40
41 Q. Right. I see.
42 A. And then he'd said he had cancelled the fine.
43
44
45 Q. Right.
46 A. Which I thought, okay, that - I remember at the time
47 that was a bit surprising, because, you know, I thought it

1 might have been cancelled just because it was incorrectly
2 issued, but he then said that it was cancelled because of
3 illness, which I wasn't ill on the day.
4

5 Q. Right. I see.

6 A. And I'd told him it wasn't acceptable, to give the
7 ticket back and I will go and pay it, and he advised that
8 it was done and in the system, there was nothing he could
9 do, and he wasn't going to change a thing. Then I've
10 accepted that and not forced that issue up and made that -
11 reported that higher, and said, "Look, no, this ticket
12 needs to stand", because obviously if it was correctly
13 issued, and it looked - it may have been correctly issued,
14 and it looks like it was correctly issued, then I should
15 have just paid the fine.
16

17 Q. What was the fine, do you remember?

18 A. I'm not sure. Back then - it might have been \$80.
19

20 Q. Do you know whether it was within Mr Lawrence's
21 discretion to cancel fines or not or --

22 A. He had discretionary powers to do it.
23

24 Q. But was it circumscribed, the circumstances that he
25 could cancel a ticket?

26 A. Yes, the circumstances was that he cancelled it based
27 on illness, and I wasn't ill at the time.
28

29 Q. Sure. Is there some sort of council policy or manual
30 or procedure that --

31 A. Yes, you shouldn't do it.
32

33 Q. Right. They are the two matters you wanted to raise
34 with us?

35 A. They are the two matters that I wanted to raise.
36

37 THE COMMISSIONER: All right. Thank you for that. Well,
38 we won't adjourn, we will just pause, because you might
39 want to tender some of the material we've been through, but
40 Mr Francis --
41

42 MR BOLSTER: I don't think we need to tender that on the
43 record.
44

45 THE COMMISSIONER: You can tender it any time, I think.
46 But Mr Francis wouldn't need to be here for that anyway.
47 So we might adjourn the hearing now. Thank you for coming

1 again.

2

3 THE WITNESS: Thank you.

4

5 THE COMMISSIONER: Just hold on for a second after --

6

7 MR BOLSTER: You'll get the tapes.

8

9 MR SEAR: The time is 4.22

10

11 **THE PRIVATE HEARING WAS ADJOURNED ACCORDINGLY**

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