

AUBURN PUBLIC INQUIRY

Before the Commissioner: Mr Richard Beasley SC
Counsel Assisting: Mr Paul Bolster
Officer Assisting: Mr Darren Sear

Held at the Civic Precinct Centre
1 Susan Street, Auburn NSW

On Wednesday, 8 June 2016 at 10.00am
(Day 6)

1 THE COMMISSIONER: Mr Silver, do you have a document you
2 want to tender regarding Mr Francis?

3

4 MR SILVER: May I refer that matter to my learned friend,
5 Mr Hodges?

6

7 MR P HODGES: Commissioner, my name is Hodges. I seek
8 leave to appear for Mr Francis today.

9

10 THE COMMISSIONER: Leave is granted.

11

12 MR HODGES: I have a certificate of Dr Nielssen, together
13 with a resumé --

14

15 THE COMMISSIONER: You don't need to read it. What I will
16 do is I will mark it as an exhibit for the private hearing
17 yesterday. Would you hand it up. This is the same one
18 that was emailed?

19

20 MR HODGES: It is the same one that was emailed to you
21 yesterday.

22

23 THE COMMISSIONER: I will make the document I have been
24 given that is dated 7 June 2016 Exhibit PH3, "PH" for
25 "private hearing", as part of the private hearing yesterday
26 concerning Mr Francis.

27

28 **EXHIBIT #PH3 CERTIFICATE OF DR OLAF NIELSSEN**
29 **DATED 07/06/2016**

30

31 THE COMMISSIONER: I will just put this on the public
32 record. Mr Glenn Francis, who is employed as the executive
33 manager of planning at the council, has been served with
34 a summons to appear at the public hearing to the inquiry
35 and was due to give evidence last week. Mr Francis has
36 previously provided information to the inquiry.

37

38 While not presently excused from his obligations to
39 appear pursuant to the summons, I accept, on the evidence
40 available to me, that Mr Francis is presently too unwell to
41 appear at the public hearing to answer questions.

42

43 MR HODGES: Thank you, Commissioner.

44

45 MR SILVER: Commissioner, may I interrupt by announcing
46 that Mr Robson will not be appearing today. I then will
47 seek leave to appear for Messrs Brisby, McNulty and

1 Dencker.

2

3 THE COMMISSIONER: Thank you, Mr Silver. Ms Duggan, do
4 you want to tender the delegations that you announced?

5

6 MS DUGGAN: I have provided a paper copy to Mr Bolster
7 that he will be tendering and an electronic copy has been
8 forwarded to those who assist you and I understand it will
9 be circulated electronically.

10

11 THE COMMISSIONER: You can tender it when you are ready.

12

13 MR BOLSTER: I tender it now, Commissioner. There is
14 a flag on the relevant page for the Department of Planning
15 and Environment's relevant delegations for your assistance.

16

17 THE COMMISSIONER: The bundle of documents that consists
18 of various delegations to staff at the Auburn City Council,
19 it is a general exhibit, so it can be marked as GEN2.

20

21 **EXHIBIT #GEN 2 BUNDLE OF DOCUMENTS CONSISTING OF VARIOUS**
22 **DELEGATIONS TO STAFF AT THE AUBURN CITY COUNCIL**

23

24 THE COMMISSIONER: The first witness is Mr Burgess, isn't
25 it?

26

27 MR BOLSTER: Yes.

28

29 THE COMMISSIONER: Just before we deal with Mr Burgess,
30 yesterday afternoon Counsel Assisting requested of me that
31 I make an order that some of the evidence to be given by
32 some of the persons summonsed to appear take place in
33 private in the first instance. I am going to make that
34 direction. I will not make a formal direction now, but
35 just so everyone is aware, I am going to make a direction
36 pursuant to section 12B(2) of the Royal Commissions Act
37 that part of the questioning of some witnesses take place
38 in private tomorrow and Friday.

39

40 I am going to direct that the persons present when
41 that evidence is given will be limited to counsel assisting
42 and the inquiry staff and the legal representatives of the
43 witness and until I make a further direction, I will also
44 direct that the publication of any transcript of the
45 private hearing be restricted to those persons who were
46 present when the private hearing takes place.

47

1 I will read out the order that counsel assisting
2 proposes for the private hearings. I don't want to have
3 any debate about this now. If there needs to be a debate,
4 that can take place at morning tea between council and
5 counsel assisting, but the proposed order is that we start
6 at 9.30 tomorrow morning with Mr Attie, at 11am Mr Oueik,
7 at 1.15pm, after taking an early lunch, Mr Zraika, at
8 2.45pm, Mr Mehajer, and on Friday morning, at 9.30am,
9 Mr Yang and then it is proposed that we go back to public
10 hearing at 11am tomorrow.

11
12 The fact the private hearings are taking place will
13 not excuse any of those persons I have just read out from
14 their summons to further appear at the public hearing. The
15 times I have indicated are approximate, obviously, so we
16 would request that the witnesses and their legal
17 representatives be available 15 minutes before the time
18 I have indicated so that we are not waiting around with
19 no-one available. I think counsel assisting has a document
20 that he can circulate that will have these times on it that
21 I have just read out.

22
23 When we recommence tomorrow and Friday at 11 for the
24 public hearings, it is proposed the first witness will be
25 former Councillor Lam.

26
27 MR WATSON: Can I just come back to something I raised
28 yesterday?

29
30 THE COMMISSIONER: Yes.

31
32 MR WATSON: These are my instructions as a result of some
33 exchanges yesterday. There was a report prepared by a law
34 firm, Maddocks.

35
36 THE COMMISSIONER: I was going to raise that, thank you.
37 Just so you know - and then you can tell me what you want
38 to tell me - counsel assisting is going to tender that
39 document. It is going to be made available to everyone.
40 We have not wanted to put anything up until it is tendered
41 but it is being photocopied now.

42
43 MR WATSON: That's great.

44
45 THE COMMISSIONER: Does that help you?

46
47 MR WATSON: Yes. I was just going to say that Mr Attie

1 said that if worst came to worst, of course, the law firm
2 would have a copy.

3

4 THE COMMISSIONER: Counsel assisting told me this morning
5 he thought that on balance he had to tender it, so that is
6 going to happen.

7

8 MR WATSON: Thank you.

9

10 THE COMMISSIONER: Hopefully, within a short period of
11 time, you are going to be given a copy of it.

12

13 MR WATSON: Thank you, that's excellent.

14

15 THE COMMISSIONER: Does that bring us to Mr Burgess?

16

17 MR BOLSTER: Yes, I think it does.

18

19 THE COMMISSIONER: How far away are we with those copies?
20 It is happening right now.

21

22 MR SEAR: It is happening as we speak.

23

24 MR BOLSTER: I call Mr Burgess.

25

26 MR WHEELHOUSE: Commissioner, can I raise a matter in
27 relation to Mr Burgess' statement before we deal with his
28 evidence, without interrupting his evidence? There are
29 a number of matters we would seek not to have put on the
30 public record in relation to Mr Burgess' statement. The
31 statement appears to be a submission made by him, not by
32 communicating formal information. It contains a number of
33 matters which, in our respectful submission, are not
34 consistent with procedural fairness. Of course,
35 Commissioner, I am conscious of the fact that you are not
36 bound by the rules of evidence and that you can proceed as
37 you think fit. I am not suggesting otherwise.

38

39 There are a number of paragraphs in this statement
40 which have so little probative value and have such capacity
41 to do harm, public harm, they ought not be included as part
42 of the record. I will take you to a number of those, if I
43 may.

44

45 THE COMMISSIONER: I have to say this is the sort of thing
46 you should have raised with counsel assisting so we are not
47 dealing with this now. It could have been brought to

1 Mr Bolster's attention and he could have had a discussion
2 with you about it.

3
4 The practice note we sent out did indicate that that
5 is the best procedure for the way things should happen.
6 What I might do is I will adjourn for 10 minutes and you
7 can raise these matters with Mr Bolster to see whether any
8 agreement can be reached. He might decide not to read
9 certain paragraphs in this statement. If he does, he does.
10 If he doesn't, I will have to deal with it when we come
11 back. Will 10 minutes be enough for you to raise --

12
13 MR WHEELHOUSE: I think so, Commissioner, yes. I don't
14 want to hold matters up unnecessarily.

15
16 THE COMMISSIONER: I will adjourn for 10 minutes and we
17 will see if we can get some agreement on this, otherwise
18 I will deal with it when I come back.

19
20 **SHORT ADJOURNMENT**

21
22 MR BOLSTER: There are some portions of Mr Burgess'
23 statement I do not wish to read but I will seek to clarify
24 certain matters that arise from the matters that --

25
26 THE COMMISSIONER: When you seek to tender it we will just
27 deal with that then, shall we?

28
29 MR BOLSTER: I was going to seek to tender it now.

30
31 THE COMMISSIONER: All right. Shouldn't he be sworn
32 first?

33
34 MR BOLSTER: Perhaps yes. Mr Burgess, if you would come
35 forward.

36
37 **<EDWARD JOHN BURGESS, sworn: [10.35am]**

38
39 **<EXAMINATION BY MR BOLSTER:**

40
41 MR BOLSTER: Q. Mr Burgess, your full name is Edward John
42 Burgess?

43 A. Correct.

44
45 Q. You prepared a statement in relation to this inquiry
46 and executed that on 24 May 2016?

47 A. Yes.

1
2 Q. Subsequently, you prepared a supplementary statement
3 on 6 June 2016?
4 A. Yes, I did.
5
6 Q. Are the contents of those two statements true to the
7 best of your knowledge, information and belief?
8 A. Yes.
9
10 MR BOLSTER: Mr Commissioner, by agreement with
11 Mr Wheelhouse, I will not be reading - would you go to
12 page 10?
13
14 THE COMMISSIONER: I am sorry, just bear with me. I will
15 mark the actual exhibit. Page what?
16
17 MR BOLSTER: Page 10, paragraph 87, the second sentence.
18
19 THE COMMISSIONER: That is not being pressed?
20
21 MR BOLSTER: No. Paragraph 112 is not being pressed.
22
23 THE WITNESS: I am sorry, that is paragraph 112?
24
25 THE COMMISSIONER: So the whole of paragraph 112?
26
27 MR BOLSTER: Yes.
28
29 THE COMMISSIONER: Right.
30
31 MR BOLSTER: In the case of paragraph 125, I don't read
32 the first sentence.
33
34 THE COMMISSIONER: The first sentence goes right down to
35 the end of the page, does it?
36
37 MR BOLSTER: No.
38
39 THE COMMISSIONER: The first two lines.
40
41 MR BOLSTER: It says "In attendance", the first two lines.
42 I am not reading paragraph 126.
43
44 THE COMMISSIONER: Paragraph 126 is out.
45
46 MR BOLSTER: I am not reading paragraph 195 and 201. They
47 are on page --

1
2 THE COMMISSIONER: The one that I have been given is all
3 over the place in terms of pagination.
4
5 MR BOLSTER: It is a double-sided document.
6 Unfortunately, it has been photocopied in the wrong order,
7 so if you just go back a page.
8
9 THE COMMISSIONER: Which paragraph did you want me to go
10 to?
11
12 MR BOLSTER: Page 19, paragraphs 195 and 201.
13
14 THE COMMISSIONER: You are not pressing or you are not
15 reading 195 and 201?
16
17 MR BOLSTER: No.
18
19 THE COMMISSIONER: Yes.
20
21 MR BOLSTER: And then over to page 23, the first sentence
22 of paragraph 236 and then all of paragraphs 237 to 240.
23 I tender the statement in that form.
24
25 THE COMMISSIONER: All right. And the supplementary
26 statement?
27
28 MR BOLSTER: And the supplementary statement.
29
30 THE COMMISSIONER: The statement of Edward John Burgess
31 dated 24 May 2016 will be exhibit S11
32
33 **EXHIBIT #S11 STATEMENT OF EDWARD JOHN BURGESS**
34 **DATED 24/05/2016**
35
36 THE COMMISSIONER: The supplementary statement of Edward
37 John Burgess dated 6 June 2016 will be exhibit 112
38
39 **EXHIBIT #S12 SUPPLEMENTARY STATEMENT OF EDWARD JOHN BURGESS**
40 **DATED 06/06/2016**
41
42 MR BOLSTER: I have an original copy of S12.
43
44 MR WHEELHOUSE: Can I raise something there? In respect
45 of the supplementary statement, the agreement covers
46 Annexure A. That is paragraph 112. All Annexure A does is
47 annex the missing document from paragraph 112.

1
2 THE COMMISSIONER: You are not tendering Annexure A?
3
4 MR BOLSTER: I am not tendering Annexure A.
5
6 THE COMMISSIONER: All right. Annexure A is not in.
7
8 MR WHEELHOUSE: It is paragraph 4 of the supplementary
9 statement, for clarification.
10
11 THE COMMISSIONER: That is not pressed either?
12
13 MR BOLSTER: No.
14
15 THE COMMISSIONER: All right. I will take that out.
16
17 MR BOLSTER: There is nothing to link that particular
18 document and the assertions there to anything falling
19 within the terms of reference, at this stage.
20
21 THE COMMISSIONER: All right. Thank you.
22
23 MS DUGGAN: Might I inquire on just a practical matter?
24 When the statements are tendered and go on to the website,
25 are the parts not read redacted?
26
27 THE COMMISSIONER: That can be done.
28
29 MR BOLSTER: That is the first time we have had to deal
30 with it. We will get instructions.
31
32 MS DUGGAN: I have given my friend notice of another
33 statement. I just wanted to make sure that when they are
34 not read, they are not published.
35
36 MR BOLSTER: That statement has not yet gone up because it
37 hasn't been tendered. This one will not go up without the
38 redactions taking place.
39
40 Q. Mr Burgess, I wanted to ask you some questions by way
41 of elaboration in relation to your statement. I want to
42 take you through it in a bit of detail. Do you have it
43 there in front of you?
44 A. Yes, I do.
45
46 Q. If you go to page 3, paragraph 14 --
47 A. Yes.

1
2 Q. -- you make a very general statement there about
3 attacks on staff. For the purpose of this inquiry, where
4 very few of the people who were on the council in 2005 are
5 still on the council, were there any attacks made by any of
6 the current councillors or the councillors who were
7 suspended in February of this year?

8
9 MR WHEELHOUSE: I object to that question.

10
11 THE WITNESS: Yes. The only councillor that I --

12
13 THE COMMISSIONER: Wait a moment, there is an question.

14
15 MR WHEELHOUSE: Commissioner, "attacks" is a very
16 pejorative word. If some particular word was said or some
17 action done, that is the relevant material, not the
18 restrictive and inclusionary word "attacks".

19
20 MR BOLSTER: I was introducing the topic generally and
21 I was going to ask the witness to be quite specific about
22 what he meant by "attacks." I think if my learned friend
23 just gives me a little bit of time, I will be able to do
24 that.

25
26 THE COMMISSIONER: Yes, go ahead.

27
28 MR BOLSTER: I am certainly not relying on the word
29 "attack" in a general sense in any way, shape or form.

30
31 Q. Paragraph 14, page 3. Any particular instances where
32 you recall one of the 2012 councillors, who were elected in
33 2012, making comments about staff back when you were first
34 engaged as general manager?

35 A. Yes. There is one councillor and that is
36 Councillor Campbell.

37
38 Q. It was Councillor Campbell?

39 A. Yes, Campbell.

40
41 Q. What did he have to say about staff in a particular
42 context, please?

43 A. It was always associated with planning reports and
44 planning issues where the staff were challenged about the
45 content and quality of their reports. They were derided in
46 public and there was often a great amount of conflict
47 within the council chambers between the councillors, the

1 chairperson, myself, causing what I would determine to be
2 at that stage an unworkable council.

3
4 Q. What were the particular problems that were expressed
5 about the way in which reports had been prepared back when
6 you started as general manager?

7 A. There was a paucity of information in some of those
8 reports which was later corrected. Some of the assumptions
9 and conclusions of staff about a particular application
10 were challenged.

11
12 Q. Are we dealing with planning proposals or development
13 applications?

14 A. They were development applications in the main. There
15 were very few planning proposals at that point in time.

16
17 Q. Were there personal attacks on the staff or were these
18 attacks or criticisms directed to what was inside the
19 reports that came up to council?

20 A. It was a combination of both.

21
22 Q. Did you form a view that there were inadequacies in
23 the reporting procedures that were adopted?

24 A. Yes.

25
26 Q. Did you undertake steps to rectify that situation?

27 A. Yes.

28
29 Q. Did any other members of the 2012 council criticise
30 staff at about that time?

31 A. My apology, 2005? Sorry, I need clarification. Are
32 you saying those councillors in 2012, in 2005?

33
34 Q. I am not concerned about people who were not on the
35 council in 2012. I am concerned about councillors who were
36 on the council in 2012 and who were critical of staff that
37 you observed when you took over as general manager.

38 A. Yes. Can you put the question again, please?

39
40 Q. Which of the members of the 2012 council criticised
41 staff in 2005, 2006, 2007, after you were appointed general
42 manager?

43 A. Thank you. There was only one councillor who was in
44 that term and that's Councillor Campbell.

45
46 Q. In 2005 Mr Tomasetti prepared a report on the probity
47 of Auburn Central that you refer to in paragraph 22 of your

1 report. In substance, what were the key recommendations
2 that Mr Tomasetti raised with you in his report?
3 A. In principle, he was raising concerns about the
4 adequacy of the council inspections by the council
5 inspectors and the process which council had arrived at to
6 sell some land for airspace and compensation associated
7 with that.
8
9 Q. Did his conclusions ultimately appear in the report of
10 the 430 inquiry into Auburn Central?
11 A. Yes, it did.
12
13 Q. Is there any substantial difference what Mr Tomasetti
14 had to say about Auburn Central and the 430 inquiry?
15 A. Not to a great extent, no.
16
17 Q. Would you go to paragraph 33 on page 4. You say there
18 that you have raised the issue of the fire risk in Auburn
19 Central with the then Mayor Councillor Lam?
20 A. Yes.
21
22 Q. You say there that Councillor Lam was initially
23 reluctant to act on your advice. What was her position?
24 What did she think should happen to Auburn Central at that
25 time when you gave her your advice?
26 A. As I recall, Councillor Lam was of the view that we
27 should try and work with the developer to improve the fire
28 safety within that building.
29
30 Q. What was your position, in very short compass?
31 A. My position was that could not be achieved.
32
33 Q. Why was that?
34 A. Because the defects were so substantial and the
35 potential loss of life was so high that I did not believe
36 that we could leave the matter unresolved and deal with the
37 developer locally.
38
39 Q. You might need to speak up a little bit, Mr Burgess.
40 Just move it a little bit closer. When you say the defects
41 were substantial, can you briefly give us a summary of what
42 you mean by "substantial defects" and "fire safety"?
43 A. The problem with fire safety was that there were
44 panels that were not correctly wired, so there were
45 a number of fire defects, if there was a fire, that
46 wouldn't sound. There had been smoke testing in the
47 Woolworths leased area. Instead of the exhaust fans

1 sucking smoke, they blew smoke and the building had been
2 built in such a way that it left a gap between the bricks
3 and the next slab of approximately, let's say, 5-10mm and
4 in the event of a fire, there would be - smoke would travel
5 between all of those units unimpeded. There were water
6 issues where most of the water sealing within bathrooms had
7 not been completed.

8
9 There were issues associated with illegal habitation,
10 which wasn't a problem with the development itself, by the
11 occupation and there were also problems with structural
12 issues where the concrete was falling at the front of the
13 building and dropping into the streets, sometimes three,
14 six, eight floors down.

15
16 Q. Do I take it that fire safety became an issue for you
17 of some significance in your position as general manager?

18 A. Extremely.

19
20 Q. After that, after the experience with Auburn Central
21 and after the 430 report came down, did you instruct the
22 audit of all strata schemes within the Local Government
23 area?

24 A. Yes, I did.

25
26 Q. Who did you task with carrying that out?

27 A. Mr Lawrence and Mr Mooney.

28
29 Q. I will come back to that in a moment. There was also
30 a fire issue, do I take it, in relation to a property at
31 New Street, Lidcombe, which was a function centre?

32 A. Yes, there was, yes, sir.

33
34 Q. In paragraph 49 of your statement you refer to
35 a discussion with yourself, Mr Brisby and Mr Francis about
36 a wedding that was to have taken place. Do you recall
37 that?

38 A. I am sorry, could I get clarification on that? That
39 was in respect of a number of other weddings that I was
40 told had been booked at that particular place.

41
42 Q. It wasn't a singular wedding, it was a number of
43 weddings?

44 A. There was a number of weddings.

45
46 Q. Do I take it the position was this: a building had not
47 yet been certified?

1 A. Correct.
2
3 THE COMMISSIONER: This is 3 New Street?
4
5 MR BOLSTER: Q. 3 New Street, Lidcombe; correct?
6 A. Correct.
7
8 Q. You had received information that there were
9 significant fire safety issues in relation to that
10 building; you tasked Mr Lawrence and Mr Brisby and
11 Mr Francis with dealing with the matter?
12 A. I did.
13
14 Q. In general terms?
15 A. I did.
16
17 Q. Do I take it that there was no consensus between you
18 and the other gentlemen about the approach that should be
19 adopted in terms of enforcement of those issues; is that
20 right?
21 A. (No answer).
22
23 Q. In paragraphs 56 and 57 you refer to Mr Kattah,
24 Mr Brisby, Mr Francis and Councillor Oueik meeting in the
25 mayor's office. Did you see them actually in the mayor's
26 office yourself?
27 A. Yes, I did.
28
29 Q. In what circumstances did you come to see them in the
30 mayor's office?
31 A. I had business to transact with Mr Oueik, or
32 Mayor Oueik at that time, and I walked down to see if he
33 was available and found Mr Brisby, Mr Francis and Mr Kattah
34 in the mayor's outer office discussing what I called the
35 new estate.
36
37 THE COMMISSIONER: I am sorry, you might have to keep your
38 voice up. I missed the last bit of that too.
39
40 MR WHEELHOUSE: What was that answer? I missed that last
41 answer.
42
43 THE WITNESS: I am sorry, I will repeat it. I walked into
44 the mayor's office and I found I had business to transact
45 there. I walked into the mayor's office and I found
46 Mr Brisby, Mr Francis and Mr Kattah and I found the mayor,
47 Councillor Ronney Oueik, in discussions about 3 New Street.

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MR BOLSTER: Q. In paragraph 59 you refer to a memorandum that you sent to Mr Francis on 21 August 2012. You will see that on page 29 of your statement. When in relation to that memorandum did you observe this meeting to be taking place?

THE COMMISSIONER: I am sorry, I just missed the spot you were referring the witness to.

MR BOLSTER: The memorandum is at paragraph 29.

THE COMMISSIONER: I see, it's a paragraph.

MR BOLSTER: Page 29, I am sorry.

MS DUGGAN: The paragraph is 59, is it not?

MR BOLSTER: I am sorry, yes, paragraph 59.

Q. In other words, does the timing of the memorandum assist you with the timing of the meeting?

A. Yes, it does. It is dated 21 August and it was around that time that I would have walked into the meeting.

Q. The issue of the Auburn Town Centre upgrade, just so that we can understand the context of that better, are we talking about the streetscape in the central part of Auburn that was to be renovated or modified or improved?

A. It was a major project that council had on its books for a number of years. It involved traffic changes and the rerouting of traffic as it now exists around what the locals call "The Three Ways". That also included upgrades to foot paving, street dining areas, landscaping and other associated works, including renewal of some of the underground services and the identification of where they actually were, and at the same time ensuring that shopkeepers were able to trade during when the works were being undertaken.

Q. Right.

A. It was a very large project.

MR WHEELHOUSE: I am sorry, we are having difficulty hearing the evidence at this part of the room.

THE COMMISSIONER: Q. You are going to have to keep your

1 voice right up, Mr Burgess, I am sorry.
2 A. Yes, Commissioner.
3
4 MR BOLSTER: Can I make an inquiry? Is there any chance
5 of slightly increasing the volume on Mr Burgess's
6 microphone?
7
8 THE COMMISSIONER: It is a fine balancing act.
9
10 THE WITNESS: Mr Commissioner, could I comment? I do have
11 hearing aids, so on occasion when I think I'm speaking
12 loud, maybe I am not speaking loud.
13
14 MS DUGGAN: That volume that you are using now is perfect.
15
16 THE WITNESS: Thank you.
17
18 MR BOLSTER: Q. Don't assume you are speaking loud,
19 please.
20 A. Okay. Thank you.
21
22 MR WHEELHOUSE: I am indebted. Thank you.
23
24 MR BOLSTER: Q. In relation to the upgrade, you had
25 significant concerns that you relay in your affidavit about
26 the probity of that process; correct?
27 A. Yes, I did.
28
29 Q. The breach of confidentiality that you refer to in
30 123, I just want to make it clear, is that the breach that
31 you say arises from your discussions with Mr Chamas, the
32 internal auditor?
33 A. Correct.
34
35 Q. I think you set out in your annexures an email from
36 Mr Chamas to you?
37 A. Yes, I do.
38
39 Q. You also have the conversation with Mr Oueik in
40 March 2012 that you refer to in paragraph 124?
41 A. Correct.
42
43 Q. What else did you discuss with Mr Oueik on that
44 occasion? Was that the extent of your discussion with him?
45 A. That's very much the extent of the discussions we had
46 on that day.
47

1 Q. All right. I wanted to turn, Mr Burgess, to the issue
2 of Station Road. By 2012 you had reached the point where
3 Mr Oueik had that discussion with you about Sam the Paving
4 Man, but between 2012 and 2008 when you instructed
5 Mr Mooney and Mr Lawrence to carry out the inspection of
6 all the strata schemes in the Local Government area for
7 fire safety purposes, a report came to you about one of
8 Mr Oueik's developments in Station Street, Auburn.
9 I should say Station Road. Mr Commissioner, I checked the
10 street sign last night: it is Station Road.

11
12 MR WATSON: That is if the street sign is right.

13
14 MR BOLSTER: Q. Do you recall getting that report --

15
16 THE COMMISSIONER: That means that the plans are wrong
17 when they say "Station Street", but the DA says
18 "Station Road".

19
20 MR BOLSTER: Ultimately, I think we all know what we are
21 talking about.

22
23 THE COMMISSIONER: Very well.

24
25 MR BOLSTER: Q. You received that report from Mr Mooney?
26 A. I received that report through Mr Brisby as the
27 director of planning.

28
29 Q. How did that report come to you? When did you first
30 hear about that as being a problem?

31 A. Look, I don't specifically recall the date and time,
32 but can I say that it would have been raised with me in
33 discussions between Mr Brisby and myself at that point in
34 time.

35
36 Q. What was your reaction to it when you found out about
37 it?

38 A. My reaction was one of concern for the simple reason
39 that, as I set out in my supplementary statement, that
40 those concerns went more to the issue of the council
41 officer who had issued the occupation certificate and who
42 had been involved in the inspections in Auburn Central, and
43 that was Mr Malouf.

44
45 Q. I think there were some findings about Mr Malouf in
46 the final report of the 430 inquiry; correct?

47 A. That's correct.

1
2 Q. I take it when you saw that Mr Malouf had issued the
3 final occupation certificate, the 430 inquiry and what was
4 set out there was fresh in your mind; is that correct?
5 A. Very much so.
6
7 Q. Do I take it then that that was the impetus for you to
8 raise Mr Malouf's involvement with the ICAC?
9 A. That's correct.
10
11 Q. Could the witness be given a copy of the Station Road
12 bundle, please, Exhibit SS1. Do you recall being provided
13 with Mr Mooney's report?
14 A. I would have seen Mr Mooney's report.
15
16 Q. Could you go to page 145 of that bundle; it is behind
17 the second tab.
18 A. Yes.
19
20 Q. Do you recall reading that report?
21 A. I recall reading the memorandum.
22
23 Q. Did you discuss it with Mr Mooney and Mr Brisby?
24 A. I discussed it with Mr Brisby.
25
26 Q. At that time who had the responsibility for
27 enforcement action in relation to unauthorised works of
28 that kind?
29 A. The director of planning and environment at that time,
30 Mr Brisby.
31
32 Q. You heard Mr Brisby's evidence yesterday?
33 A. Yes.
34
35 Q. He says in the ordinary course work of that kind,
36 litigation work or prosecution work of that kind, would
37 have been a matter that fell within his areas of
38 responsibility; correct?
39 A. Correct.
40
41 Q. You heard what he had to say, in that because the
42 possible defendant in the matter was a councillor, that he
43 passed the issue of enforcement on to you?
44
45 MR SILVER: That is not what he said; I object to that.
46 He said that it was taken over, not that it was passed on.
47

1 MR BOLSTER: Let me withdraw that question and put it this
2 way.

3

4 Q. The substance of his evidence was that you took over
5 the issue of the enforcement of any defects associated
6 with --

7

8 MR WHEELHOUSE: I object to that. I don't know the page,
9 but there is a particular phrase that Mr Brisby used,
10 Mr Commissioner.

11

12 MR SILVER: Yes, and it was not "taking over"; that is not
13 the evidence.

14

15 MR BOLSTER: Q. All right. Mr Burgess, did you assume
16 responsibility for the prosecution and any enforcement
17 action in relation to Station Street?

18

19

20 Q. Did you discuss that issue with Mr Brisby?

21

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1 A. I don't recall that I gave any written directions.
2 I had meetings with the directors and we updated each other
3 on issues and I would have made it abundantly clear my
4 expectations were that he had the responsibility and the
5 carriage of that process and he should carry out his
6 duties.

7

8 Q. At that time were you aware of any relationship
9 between Mr Brisby and Mr Oueik?

10 A. Only that, I guess, Mr Oueik was a councillor, was
11 a fairly larger-than-life sort of a character and most of
12 us had dealings with him in some way or another.

13

14 Q. You were not aware of any personal relationship
15 between the two of them?

16

A. No.

17

18 Q. Were you aware that in 2006 Mr Francis says Mr Oueik
19 and Mr Brisby attended Mr Francis' home? Are you aware of
20 any relationship along those lines?

21

A. No.

22

23 Q. Did you observe Mr Oueik and Mr Brisby meet in the
24 mayor's office prior to the meeting that I asked you about
25 a moment ago, in 2012?

26

A. Do you mean - can you clarify that - in respect of
27 New Street?

28

29 Q. Did they, to your knowledge, meet together, Mr Brisby
30 and Mr Oueik, in the mayor's office, or anywhere else,
31 prior to that meeting you refer to in 2012 concerning the
32 Westella?

33

A. Mr Brisby met with the mayor regularly in respect of
34 development matters and met with the mayor over other
35 issues quite regularly, and they had coffee together in the
36 mayor's office or off-site.

37

38 Q. Is that normal, for the director of planning or the
39 person in charge of the planning department to meet on
40 a regular basis with the mayor in the absence of either the
41 general manager or the deputy manager of council?

42

A. That is not irregular because the principal issues in
43 Auburn were always based around development-type issues or
44 housing issues, or whatever the case may be. Until later
45 in time I trusted Mr Brisby but I lost that trust towards
46 the end of 2011 and became very suspicious of those issues.

47

1 Q. All right. My question for you is at the end of 2011,
2 when you lost that trust, did it occur to you that there
3 had been no follow-up action in relation to Station Street?
4 A. No.
5
6 Q. Can you explain why you did not follow the matter up
7 with Mr Brisby in 2011 or 2010 or 2009?
8 A. I had assumed that the action had been taken.
9
10 Q. Mr Burgess, if action had been taken against Mr Oueik,
11 any action that involved going to court, surely you would
12 have known about that as general manager?
13 A. I would have known if it had gone to court, yes, but
14 if it had been dealt with otherwise with PINs, no.
15
16 Q. You see, you pursued the issue with the ICAC over
17 an extended period of time right through until June 2010;
18 correct?
19 A. Correct.
20
21 Q. In a letter that you sent to the ICAC on 19 May 2010,
22 which is at page 316 of the bundle - do you see there the
23 second paragraph of that letter? The legal advice that you
24 had received was the advice from Deacons; correct?
25 A. Correct.
26
27 Q. Deacons were principally advising council on the way
28 in which to deal with the unauthorised works at BBC;
29 correct?
30 A. Correct.
31
32 Q. When you sent that letter, didn't you think to inquire
33 from Mr Brisby what had happened in relation to potential
34 prosecution of BBC and Mr Oueik?
35 A. No. I'm sorry, at the time I wrote that letter
36 I don't recall whether I raised that with Mr Brisby or
37 anybody else.
38
39 Q. My concern is this: the issue had been taken most
40 seriously by council in its approach to Deacons; correct?
41 They gave you substantial legal advice; correct?
42 A. Correct.
43
44 Q. Deacons were a top-tier planning firm; correct?
45 A. Yes.
46
47 Q. The seriousness of the matter bore a relationship to

1 the fact that Deacons were employed to do the work;
2 correct?
3 A. Yes.
4
5 Q. Mr Rigg was a leading practitioner in the field;
6 correct?
7 A. Correct.
8
9 Q. And you were at pains in your dealings with the ICAC
10 to tell them what had been going on in relation to the
11 matter; correct?
12 A. Yes.
13
14 Q. But you don't, can I suggest, inform them of the
15 disposition of the potential prosecution?
16 A. Sorry, I don't follow you.
17
18 Q. Nowhere in the correspondence with the ICAC after the
19 Deacons advice of 14 October 2009 is there any reference,
20 any report, any indication to the ICAC, that the issue of
21 the possible prosecution had been followed up and
22 determined one way or the other?
23 A. Mr Commissioner, I don't recall that that was of issue
24 at that particular time. I had tasked the directors who
25 reported to me to undertake the tasks that were given to
26 them to carry out and would have assumed that given the
27 advice from Deacons in October of 2009, that Mr Brisby
28 would have initiated the recommendations of that particular
29 firm as contained in their letter.
30
31 Q. Can you go back please to page 307.
32 A. Yes.
33
34 Q. You have seen that this is the response from the ICAC
35 to your first report of the matter and they refer to your
36 report dated 16 December 2008. Do you see that in the
37 first line of the letter?
38 A. Yes.
39
40 Q. You may not know this, but the governance officer of
41 council and Mr Okorn carried out a search of all the
42 council files and their evidence will be to the effect that
43 there was a restricted access directive placed in relation
44 to the file from which these documents were obtained. Do
45 you understand what I am saying there?
46 A. Yes, I do.
47

1 Q. They will also say that there is no trace on council's
2 files of your report of 16 December 2008. Do you have any
3 explanation for either of those matters?
4 A. No.
5
6 Q. Did you remove the report from the council's files?
7 A. I beg your pardon?
8
9 Q. I am sorry, I have to ask you that question,
10 Mr Burgess. Was that report removed by you?
11 A. I didn't have administrator access to Trim and would
12 be unable to remove a record from Trim.
13
14 Q. And could you set up a Trim access restriction
15 according to your entitlements or privileges under the Trim
16 system?
17 A. No. That was done - would have been done by the
18 records' manager.
19
20 Q. And who was the records' manager in December 2008,
21 January 2009?
22 A. My memory escapes me as to who it was, but it could
23 have been a staff member who left prior to that or it could
24 have been Mrs Meehan who was my previous personal assistant
25 before taking up the job as a records manager.
26
27 Q. Don't you agree with me that if the potential
28 prosecution of BBC and/or Mr Oueik was such an important
29 issue at the end of 2008 and the beginning of 2009, there
30 ought to have been a transparent directive about what was
31 to happen so that you or the director, Mr Brisby, would
32 know exactly what had been decided?
33 A. In terms of transparent directive, if a verbal
34 directive is not sufficient then I'm afraid in that
35 situation a written directive would have made little
36 difference.
37
38 Q. You had raised the issue with the mayor, didn't you?
39 A. The mayor of the day? The mayor of the day at that
40 time was Councillor Simms and I did, yes.
41
42 Q. You told her what was to happen. Do you recall the
43 conversation you had with Councillor Simms, sitting there
44 today?
45 A. Yes, I do.
46
47 Q. What did you say to Councillor Simms that you recall?

1 A. In general terms, I said - when she asked me about the
2 process of taking action against any member of council,
3 I drew no distinction between what member of council it may
4 have been, I treated everybody equally, and I told her that
5 Mr Brisby would, in fact, prosecute the issue.
6

7 Q. Was Mr Brisby present at any meeting that you had with
8 Ms Simms when you discussed the matter?

9 A. There Councillor Simms met with senior staff on
10 a weekly basis and we discussed a whole range of issues.
11 I don't recall those issues because they were broad ranging
12 and I would have expected that Station Road would have been
13 one of those issues.
14

15 Q. Sitting there, do you have any recollection either way
16 as to whether Mr Brisby was present when you discussed this
17 issue, that is, the issue of who would carry out the
18 prosecution, with --

19 A. I would expect that at the time he would have been in
20 attendance. Whether it was at that specific meeting or not
21 I don't recall, but he may well have been there.
22

23 Q. Can I ask you why the issue wasn't raised at council
24 level in any event? Why not let the councillors of the day
25 know as well?

26 A. There were a whole host of issues confronting the
27 council at that stage that were far bigger issues, like the
28 contract associated with this building, damages issues
29 associated with Auburn Central, issues associated with the
30 development of Sydney Olympic Park. It was a matter that
31 should have been dealt with under delegated authority. It
32 was an authority that I'd issued and I expected that it
33 would have been done.
34

35 Q. Mr Burgess, Auburn Central had been resolved by then;
36 correct?

37 A. It was still ongoing.
38

39 Q. The Auburn Central 430 inquiry had already reported by
40 October/November 2008; correct?

41 A. That part is true.
42

43 Q. Yes. The Auburn town upgrade didn't arise until 2012?

44 A. Correct.
45

46 THE COMMISSIONER: Q. I think there were some
47 recommendations to follow up with Auburn Central. Is that

1 what you are referring to it as being done?
2 A. That's correct and there was legal action that was
3 commenced against the strata holders and there were further
4 inspections and there were a whole host of premises that
5 were occupied by 8(12) people and then also legal
6 connections to a whole host of units that were converted
7 from two bedders into 6, 8, 10 high density.

8
9 MR BOLSTER: Q. Auburn Central issues associated with
10 prosecutions for unauthorised use and unauthorised
11 variations, were they reported to council?

12 A. No. They were dealt with by the staff and Mr Brisby.

13
14 Q. Was there a policy or a direction in place at council
15 at the time as to why prosecution matters would not be
16 raised at council level?

17 A. No, there was no policy position at that stage in
18 terms of council. There was one subsequent but not at that
19 time.

20
21 Q. Essentially, it was up to you to decide whether or not
22 to inform council about what had happened in relation to
23 Station Road; correct?

24 A. And any other issue.

25
26 Q. The same position applied in relation to
27 Auburn Central, did it?

28 A. No. Because of the issues associated with
29 Auburn Central and the gravity of the issues associated
30 with that and the potential liability of the council, that
31 was an issue that I would have, in the ordinary course of
32 business, reported.

33
34 Q. Your office was on this level, on level 1 of
35 Council Chambers?

36 A. Correct.

37
38 Q. And Mr Brisby's office was where?

39 A. Level 2.

40
41 Q. Mr Francis' office was on level 2?

42 A. Level 2.

43
44 Q. You say in your statement at paragraph 196, on
45 page 19, that you informed Councillor Oueik that he could
46 not enter Mr Brisby's office or direct council staff;
47 correct?

1 A. I am sorry, Mr Commissioner, could I have that
2 reference again, please?
3
4 Q. I am sorry. Paragraph 196 on page 19.
5
6 THE COMMISSIONER: Paragraph 196 on page 19. I think it
7 really starts at paragraph 195, doesn't it?
8
9 MR WHEELHOUSE: That is the part that's not --
10
11 THE COMMISSIONER: Oh, it's out is it? I am sorry, I have
12 not marked up my own copy. Apologies.
13
14 MR BOLSTER: Q. Do you see that?
15 A. On item 196?
16
17 Q. Yes.
18 A. That's correct.
19
20 Q. Did you observe Councillor Oueik attending Mr Brisby's
21 office?
22 A. Yes.
23
24 MR SILVER: The question is when? What time are we
25 talking about?
26
27 MR BOLSTER: Q. When did you see that happen and on how
28 many occasions?
29 A. That happened on a regular basis.
30
31 Q. What do you mean by "regular"?
32 A. Possibly daily, possibly weekly.
33
34 Q. Were you regularly on level 2 to see staff?
35 A. Yes, I was.
36
37 Q. How often did you make it a practice to attend upon
38 level 2 and see the staff up there?
39 A. Regularly. I made it my business to walk around the
40 organisation as often as I could and be available to the
41 staff.
42
43 Q. Did you see Mr Oueik in Mr Francis's office at any
44 time?
45 A. Mr Francis? I didn't see him, Councillor Oueik, in
46 that office, no. It was always in Mr Brisby's office.
47

1 Q. I would like you to be as specific as you possibly can
2 be about when you saw Mr Oueik in Mr Brisby's office. When
3 was the first time you saw him in Mr Brisby's office?
4 A. From memory, it was when he - during his first term as
5 mayor which I recall to be, I think, 2010-2011.
6
7 Q. And how many times did you see him there after that
8 before you told Councillor Oueik, as you say in
9 paragraph 196, that he could not enter that office?
10 A. I would have seen him at least a dozen times.
11
12 Q. When do you say it was that you told Councillor Oueik
13 he could not enter that office?
14 A. I don't specifically, although I think it's in my
15 diary notes that we had a very loud meeting and I told him
16 he could not access staff areas.
17
18 Q. Was it in 2012, 2013?
19 A. Just give me a moment, please.
20
21 Q. How long before you were terminated, Mr Burgess, that
22 might be the easiest way, did you give Mr Oueik that
23 direction?
24 A. It would have been in 2000. If you could just give me
25 an opportunity, I can check my diary, please.
26
27 THE COMMISSIONER: Yes.
28
29 THE WITNESS: That was on 31 October when I had that
30 meeting with Councillor Oueik in respect of that issue.
31
32 MR BOLSTER: Q. Of what year? 2011?
33 A. 2011, yes.
34
35 Q. So between some time in 2010 and October 2011, you saw
36 Mr Brisby in Mr Oueik's office about 10 or 11 times; is
37 that correct?
38
39 MS DUGGAN: I think it is the other way around. You said
40 Mr Brisby in Mr Oueik's office, I think. You mean Mr Oueik
41 in Mr Brisby's office.
42
43 MR BOLSTER: Thank you.
44
45 Q. You saw Mr Oueik in Mr Brisby's office?
46 A. Correct.
47

1 Q. Did you form a view about their relationship based on
2 that?

3 A. I formed the view that it was inappropriate for the
4 mayor to be in a staff work area, that was a breach of the
5 code of conduct, and I discussed with Mr Brisby why
6 Councillor Oueik was in his office and he said he always
7 was associated with developments that Mr Oueik had before
8 the council.

9

10 Q. Did he name any particular developments?

11 A. No. Mr Oueik had a number of proposals before the
12 council at any given time.

13

14 Q. When you had concerns about that sufficient to give
15 Mr Oueik a direction not to attend, was your mind drawn
16 back to the outstanding issue of Station Road?

17 A. No.

18

19 Q. If you could go over to page 23, I just want to ask
20 you some questions about parking at school zones within the
21 Local Government area.

22

23 THE COMMISSIONER: Mr Burgess still has the Station Road
24 bundle in front of him. Should that be removed?

25

26 MR BOLSTER: He does not need that bundle any more.

27

28 Q. Paragraph 235. When was the issue of parking raised
29 by Mr Oueik with you when you were general manager?

30 A. On May 9.

31

32 Q. What was the substance of what Mr Oueik said about
33 parking?

34 A. The substance of his approach to me was that he didn't
35 want the council rangers to - he wanted to leave the school
36 zoning, in particular, Al-Faisal, alone.

37

38 Q. What did you tell him in response?

39 A. I told him that that was not a matter that I would
40 impose; the staff would do their job.

41

42 Q. What did he say in response?

43 A. I think he might again have had terse words, but that
44 wasn't unusual.

45

46 Q. Did he express to you at any stage while you were
47 general manager a broader issue about parking across all of

1 the schools in all of the Local Government area?
2 A. The only time that the councillors generally expressed
3 a view about parking across the whole of the area was when
4 the council rangers didn't do their job. There was a
5 debate amongst the councillors as well about the staff
6 being too zealous. There was also a debate among the
7 councillors, particularly when Mayor Attie was elected,
8 that the rangers were derelict in not pursuing people that
9 were doing the wrong thing.

10
11 THE COMMISSIONER: Q. I am sorry, I just missed one of
12 those words. Was that "derelict"?

13 A. Derelict. Derelict in their duty.
14

15 MR BOLSTER: Q. There were two sides of the parking
16 debate, is that fair to say? Some councillors were wanting
17 rangers to be more proactive?

18 A. Yes.
19

20 Q. Presumably, they were receiving complaints from
21 parents about not being able to drop off their children
22 outside a school because there were cars illegally parked;
23 is that the gist of it?

24 A. That's some of the gist of it. The other gist was
25 there was an expectation the staff would book people who
26 were doing the wrong thing and in Auburn there were a lot
27 of people doing the wrong thing in terms of road rules.
28

29 Q. Did Mr Oueik raise those sorts of concerns with you
30 about school zones?

31 A. Not directly with me. He was more likely to deal with
32 Mr Brisby because the regulatory process was under
33 Mr Brisby's control.
34

35 Q. You will see in paragraph 236 of your statement there
36 is a reference, in the second sentence, to signage being
37 erected directing staff in a particular way. Do you recall
38 when that signage was prepared?

39 A. It would have been in May of 2012.
40

41 Q. What was the substance of that signage?

42 A. The substance of the signage was to change the normal
43 regulatory signs to allow people to stay for a short time
44 outside the drop-off and pick-up.
45

46 Q. I take it that at the school there would be a
47 no standing zone or a no parking zone?

1 A. That's correct.
2
3 Q. Was this signage some sort of variation on the
4 standard signage that one might see?
5 A. It was for that particular school because it wasn't
6 applied at any other school.
7
8 Q. Which school was this?
9 A. Al-Faisal.
10
11 Q. Just while we're on the topic of parking, your office
12 looks out on to Auburn Road; correct?
13 A. No.
14
15 Q. Your former office?
16 A. Queen Street.
17
18 Q. Yes, Queen Street, sorry. In Queen Street there is
19 a block of flats immediately opposite your former office?
20 A. Sorry, I correct that. It wasn't Queen Street, it's
21 Susan Street and I can see a part of Queen Street to the
22 east.
23
24 Q. That is purely a private residential complex; correct?
25 A. That's correct.
26
27 Q. I believe former Mayor Curtin had a unit in that
28 block?
29 A. That's correct. He overlooked my office.
30
31 Q. How convenient. Was there an issue about a council
32 sign being affixed to the entrance to the carpark in that
33 building? Do you recall that arising?
34 A. No, I don't recall that. I do recall other issues
35 associated with that building.
36
37 Q. Do you recall any issue ever being raised about
38 council parking officers being directed in relation to
39 enforcing a parking limit in that private residential
40 carpark? Has that ever come up at all?
41 A. Not to my knowledge. Sorry, can I just get
42 clarification of that again? Are you suggesting the
43 council was to police private parking on private property?
44
45 Q. Yes. You have never heard of that?
46 A. No, nor would I have agreed to that.
47

1 Q. If you walk down - I forget the name of the street --
2 A. Queen Street.
3
4 Q. Yes, Queen Street.
5 A. Going east.
6
7 Q. If you walk down to the end of that building you will
8 see there is a sign there, an Auburn Council sign, with the
9 name of the general manager underneath, or the title of the
10 general manager underneath imposing a time limit as though
11 it were a council carpark. Has anyone ever raised that
12 issue with you?
13 A. No.
14
15 Q. Do you know how the sign got there?
16 A. No.
17
18 Q. When the issue of your termination was raised at the
19 extraordinary meeting in March 2013, there was before the
20 council a bundle of documents that included an advice from
21 Maddocks Solicitors; do you recall that?
22 A. No, because I'd never seen the document until it was
23 shown to me last night.
24
25 Q. Well before then you were given the opportunity,
26 though, to put information to Maddocks in response to
27 matters that had been put against you by Mr Attie; correct?
28 A. My recollection was that I responded initially to
29 a request from Councillor Oueik. The council then carried
30 a resolution. The information that was prepared and
31 provided to Maddocks was prepared by Graeme Thomas, the
32 then director of corporate services. As the issue was
33 associated with me, for probity reasons, I had nothing to
34 do with the responses.
35
36 Q. Didn't you provide information in response to
37 questions of Mayor Oueik, yourself?
38 A. I did to Mayor Oueik, yes.
39
40 Q. Did you know at the time you provided those responses
41 to the mayor that they would be put forward to a firm of
42 solicitors who would provide advice to council pursuant to
43 a resolution that was passed in 2012?
44 A. No.
45
46 Q. And you never saw that advice?
47 A. No.

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MR BOLSTER: That is the examination.

THE COMMISSIONER: We might have a 20-minute break until five to 12 and resume then. Just before we adjourn, if there is any change to the agreed order about the private hearings, or any need for me to deal with that, we can do that either when we come back from the break at five to 12 or at 2 o'clock, if it's still ongoing.

MR BOLSTER: There is one suggested change but it depends on the availability of an interpreter.

THE COMMISSIONER: We will see what happens with that. We will adjourn until five to 12.

SHORT ADJOURNMENT

MR BOLSTER: I did want to ask a few more questions of Mr Burgess.

THE COMMISSIONER: Mr Burgess, could you take your chair back, please.

MR BOLSTER: Can Mr Burgess be given a copy of the Water Street bundle, please?

THE COMMISSIONER: I am not sure you have tendered this yet.

MR BOLSTER: No, I haven't.

MS DUGGAN: Can I indicate that I have not been given access to the Water Street bundle and therefore, neither has Mr Burgess.

THE COMMISSIONER: I see. We will see how we go.

MR BOLSTER: It is a very small line of inquiry.

THE COMMISSIONER: Would you end up with any disadvantage?

MR WATSON: I don't have it either, so does it involve me?

MR BOLSTER: No, it definitely doesn't involve you. It only involves Ms Duggan and Mr Francis. The issue was raised, though, in the private hearing transcript.

1
2 Q. Mr Burgess, were you familiar with this development at
3 14-22 Water Street, Lidcombe?
4 A. Sorry, Mr Bolster, I didn't quite hear you.
5
6 Q. Were you familiar with Mr Oueik's development at
7 14-22 Water Street, Lidcombe?
8 A. Broadly.
9
10 Q. Could I ask you to turn up in the bundle, behind the
11 second tab of that bundle --
12
13 MS DUGGAN: What page?
14
15 THE COMMISSIONER: It is the first in mine. Are you sure
16 it is the second tab?
17
18 MR BOLSTER: The first tab I have is "Marsden Street" and
19 the second I have is "Valuations".
20
21 THE COMMISSIONER: Q. What does that say, Mr Burgess?
22 What does that say on the cover?
23 A. Mr Commissioner, it says --
24
25 THE COMMISSIONER: No, it's the first tab in the witness's
26 too.
27
28 MR BOLSTER: Q. At the time that this development was
29 considered by council in 2005, the matter was referred to
30 an external planning consultant; do you recall that?
31 A. That was the standard practice for any development
32 application lodged by any councillor, so that would have
33 applied in this case.
34
35 Q. The report from the external planner you will find at
36 page 25 of the bundle.
37 A. Yes, I've found that.
38
39 Q. That continues for some considerable period of time
40 through until the recommendations at page 45. That was put
41 forward to a council meeting in August 2005?
42 A. Yes.
43
44 THE COMMISSIONER: The recommendation is refusal.
45
46 MR BOLSTER: The recommendation was refusal.
47

1 Q. Do you recall that particular matter and that
2 particular report?
3 A. I recall the matter. I don't specifically recall this
4 report.
5
6 Q. When the matter was dealt with at council, the matter
7 was referred to you for approval; do you recall that?
8 A. Not specifically, no.
9
10 Q. Do you recall issuing the consent in relation to the
11 matter?
12
13 MS DUGGAN: I hate to interrupt my friend. Could I have a
14 copy or access to a copy of this report, just so that I can
15 follow what is going on?
16
17 THE COMMISSIONER: Yes.
18
19 MS DUGGAN: Thank you.
20
21 THE COMMISSIONER: I think, in fairness, we have to wait
22 until Ms Duggan has a copy.
23
24 MS DUGGAN: I have asked both of those sitting either side
25 of me and they do not have one either, so I am resorting
26 to --
27
28 THE WITNESS: I am sorry, Mr Bolster, I would not have
29 issued the consent --
30
31 THE COMMISSIONER: I am sorry, just wait until Ms Duggan
32 has a copy.
33
34 MS DUGGAN: I have one now, thank you, Commissioner.
35
36 THE COMMISSIONER: Which page are we on, Mr Bolster?
37
38 MR BOLSTER: Page 47. Just for Ms Duggan's benefit, the
39 external planner's report goes from page 25 through to
40 page 45. The recommendations are at page 45. The result
41 is at pages 47 to 48, particularly paragraph (b).
42
43 MS DUGGAN: I am looking for the minute where it sent them
44 to the --
45
46 MR BOLSTER: There is no minute there, the letter reports.
47

1 MS DUGGAN: Thank you, I have it.

2

3 MR BOLSTER: And then the determination is at 49. The
4 critical subparagraph in the minute is (b) --

5

6 MS DUGGAN: I've got it, thank you.

7

8 MR BOLSTER: -- where it was referred to the general
9 manager for determination.

10

11 Q. Sitting there today, do you have any recollection of
12 this matter, bearing in mind that all of this happened in
13 August 2005 and not long after you were appointed?

14 A. No, sorry, I don't have any specific recollection of
15 this development, other than at the time Sydney Electricity
16 were requiring large developments like this to have
17 substations.

18

19 Q. You deal with this in your statement, I believe.
20 There was an issue about waste disposal in your statement.
21 I'm not really worried about that. I just want to make
22 sure that you are aware of the development and I want to
23 take you to something that happened in 2008. If you just
24 bear with me, we'll get there. Mr Burgess, were you aware
25 of an application to vary the development consent in
26 relation to the roof in March of 2008?

27

28

29 Q. If you could go please to page 247 of the bundle, you
30 will see there Mr Cockayne, who I take it was responsible
31 for organising the business papers for all council
32 meetings?

33

34

35 Q. He has circulated to you and councillors a late
36 item for a meeting that night?

37

38

39 Q. It was a section 96(1)(a) application to vary the form
40 of the roof.

41

42

43 Q. Do you recall that issue being dealt with at council
44 that night?

45

46

47

A. No, I don't, but if it was on the business paper
the minutes would reflect whether it was dealt with by the
council on that night.

1
2 Q. Do you recall the reasons for the urgency associated
3 with listing the matter so promptly on 19 March 2008?
4 A. No.
5
6 Q. Was it a matter that Mr Oueik had raised with you --
7 A. No.
8
9 Q. -- as to the urgency of that matter?
10 A. No.
11
12 Q. Thank you. That is all I wanted to ask you about.
13
14 THE COMMISSIONER: Does anyone want leave to ask
15 Mr Burgess any questions and, if you do, is there any
16 agreed order?
17
18 MR WATSON: I'd like to. I think there is no agreed
19 order.
20
21 THE COMMISSIONER: Right. Go ahead.
22
23 MS DUGGAN: By default, it is agreed Mr Watson goes first
24 unless he declines to do so.
25
26 MR WATSON: Yes, that's right.
27
28 **<EXAMINATION BY MR WATSON:**
29
30 MR WATSON: Q. Mr Burgess, I want to ask you some
31 questions about the terms of your termination. It is
32 obvious from your statement that you were troubled by the
33 offer which was made to you by Bob Howe; is that right?
34 A. Correct.
35
36 Q. Would you have a look at your statement. If you look
37 at page 14, you will see where it starts. It starts really
38 at paragraph 143.
39 A. Thank you.
40
41 Q. That describes, through to paragraph 146, what had
42 eventually happened and then it also describes your
43 dealings with Mr Howe?
44 A. Yes.
45
46 Q. Background dealings, in any event?
47 A. Sorry?

1
2 Q. Your background with Mr Howe.
3 A. Yes.
4
5 Q. Then you have to go forward because of a problem with
6 the page numbering, but if go forward to page 16, you will
7 see the real complaint you make contained in paragraphs 147
8 and 148. Just read those quietly to yourself and tell me
9 when you have done so.
10 A. Yes, I've read those.
11
12 Q. Tell me, Mr Burgess, are you telling the Commissioner
13 that you did not know that Mr Howe was involved in this
14 matter until you had that meeting?
15 A. Correct.
16
17 Q. Are you sure of that?
18 A. Correct.
19
20 Q. In paragraph 148 you describe yourself as feeling
21 anger and disgust. Do you see that?
22 A. Yes, I do.
23
24 Q. They're strong words.
25 A. Yes, they are.
26
27 Q. Why? Why did you feel anger and disgust?
28 A. I guess to go to a meeting and be confronted with
29 a statement that was made to me at that time would have
30 caused anybody to be angry and have a feeling of disgust.
31
32 Q. Well, hold on. How did you think it should be done?
33 This was really advising you that the council was
34 considering terminating your employment. It had to be put,
35 didn't it?
36 A. It was news to me.
37
38 Q. The point is that it was always going to be news to
39 you. What could have reduced your anger or reduced your
40 disgust?
41 A. I would suggest that the mayor would have - could have
42 approached me and put his issues and problems to me direct,
43 not Mr Howe.
44
45 Q. You realise now Mr Howe had been retained as
46 a consultant?
47 A. Not at that point in time, no.

1
2 Q. No, but you realise now that Mr Howe had been retained
3 as a consultant?
4 A. Yes.
5
6 Q. And you knew that he was a specialist in this area?
7 A. I don't know that.
8
9 Q. Well, hold on. Back at page 14, paragraph 145 I think
10 it is, you met him in these kinds of circumstances,
11 that is, his role in considering employment of senior
12 council staff. Do you see that?
13 A. Yes, and that was in relation to a position as
14 Strathfield Council's recruitment person.
15
16 Q. Good. You knew that was Mr Howe's job, he was
17 a consultant in this very area; correct?
18 A. I accept what you're saying.
19
20 Q. Why did you think you were going to meet with him?
21 A. I had no idea.
22
23 Q. Why did you go?
24 A. Because I was going to a meeting at Canada Bay.
25
26 Q. But why did you go to meet Mr Howe?
27 A. Because he was aware that I was going to Canada Bay to
28 meet with the staff there and he rang me and asked me if he
29 could have a cup of coffee with me.
30
31 Q. Why did you think he was doing that?
32 A. I don't know.
33
34 Q. You see this is the way these things are handled, is
35 that experts in the field make difficult arrangements
36 with senior staff; you know that, don't you?
37 A. That's not the way I do it, no.
38
39 Q. All right, not the way you do it but you do know that
40 others do it, don't you?
41 A. I don't agree with the way they do it, no.
42
43 Q. You knew at the time you were meeting with Mr Howe
44 that your relations with some of the councillors had
45 deteriorated; you were aware of that, weren't you?
46 A. I was aware of the deterioration with councillors,
47 yes; not all councillors.

1
2 Q. Mr Howe explained to you, didn't he, that he was
3 meeting with you because he'd been retained for the council
4 for this particular purpose?
5 A. No, he did not.
6
7 Q. What, you just thought he made an offer out of the
8 blue?
9 A. He made no reference to the facts that he was meeting
10 with me under any direction from anyone.
11
12 Q. During the meeting - are you saying that you still
13 didn't know during the meeting, you didn't ask him what was
14 his authority?
15 A. Correct, I did.
16
17 Q. Why not?
18 A. I did ask him his authority.
19
20 Q. What did he say?
21 A. He said words to the effect that he had - he was aware
22 that the mayor was after me.
23
24 Q. No, you asked him about his authority. He put the
25 offer and you asked him what was his authority. What did
26 he say to that?
27 A. I think if you go on and read my statement --
28
29 Q. No, you answer my question. What did he say to it?
30
31 MS DUGGAN: With respect, I think the witness is trying to
32 answer the question.
33
34 MR WATSON: No, he asked me to read his statement; that
35 cannot be an answer to my question.
36
37 MS DUGGAN: I object to my friend putting this question.
38
39 THE COMMISSIONER: He might have been trying to answer by
40 giving a reference to his statement, in any event.
41
42 MR WATSON: Q. I am not asking you to refer to your
43 statement, I am asking you to tell us now. When you asked
44 him about his authority what did he tell you?
45 A. He didn't venture because I put it to him what power
46 did he have to present that to me.
47

1 Q. He remained just silent, did he?
2 A. That's my recollection, yes.
3
4 Q. He just sat there silently?
5 A. We continued to chat over coffee.
6
7 Q. What did you chat about?
8 A. All sorts of things but not that.
9
10 Q. So you left there thinking, "I wonder why that man put
11 that offer?"
12 A. Correct.
13
14 Q. But you found out, didn't you?
15 A. Later, yes.
16
17 Q. You put a counter offer, didn't you?
18 A. To Mr Howe? No.
19
20 Q. Did you put a counter offer at all?
21 A. No.
22
23 Q. You deny that, do you?
24 A. No, I do not deny that.
25
26 Q. Right. Did you put a counter offer?
27 A. To?
28
29 Q. Did you put a counter offer?
30 A. Excuse me, but to who, would you clarify?
31
32 Q. I am asking you, first of all, did you or did you not
33 put a counter offer?
34 A. No.
35
36 Q. You didn't?
37 A. No.
38
39 Q. Never?
40 A. No.
41
42 Q. You deny putting a counter offer?
43 A. Yes, I do.
44
45 Q. Did you ever request a \$120,000 payout?
46 A. I wish I had. No.
47

1 Q. Sorry, you didn't do that? You deny that, do you?
2 A. I deny that, yes.
3
4 Q. I am putting to you now that you did make the
5 counter offer?
6 A. No, I did not.
7
8 Q. Why did you ask me before for me to tell you to whom
9 you had made such a counter offer? Why did you ask me
10 that?
11 A. I wanted to know from your point of view, your
12 questioning, as to what line of questioning you were going
13 to put to me.
14
15 Q. Why?
16 A. I'm a naturally suspicious person.
17
18 Q. Why couldn't you just say, "No, I never put
19 a counter offer"?
20 A. I subsequently did.
21
22 Q. You subsequently did put a counter offer?
23 A. I subsequently answered your question and said I did
24 not.
25
26 Q. All right. You did put a counter offer. You wanted
27 \$120,000, didn't you?
28 A. No.
29
30 Q. You deny that, do you?
31 A. Yes, I do.
32
33 Q. You put that through Mr Howe, didn't you?
34 A. No, I did not.
35
36 Q. You told him that you would be happy to go, but you
37 wanted \$120,000 on top of your other entitlements,
38 didn't you?
39 A. No, that's not my recollection.
40
41 Q. Tell me, the offer was ultimately accepted by you, the
42 \$40,000 offer?
43 A. Yes.
44
45 Q. Why?
46 A. I had got to the stage with my fight within the
47 council, the council was divided, the council made me

1 an offer which I considered reasonable and I left.
2
3 Q. Mr Howe had formulated precisely the same offer,
4 hadn't he?
5 A. That was his initial offer.
6
7 Q. Right. And that was the offer you eventually
8 accepted?
9 A. Yes.
10
11 Q. You know that the council resolution specifies that
12 you were leaving the council, you were resigning "due to
13 health reasons"; you know that, don't you?
14 A. I do now but I didn't then.
15
16 Q. Was that true or was it false?
17 A. No, it's not true.
18
19 Q. Did you tell anybody at the council that you wanted it
20 dealt with that way?
21 A. I was approached by one councillor who I had met and
22 we had a discussion and I didn't confirm it one way or the
23 other.
24
25 Q. I am sorry, who was that councillor?
26 A. Councillor Lam.
27
28 Q. Councillor Lam. And what did she say?
29 A. We had discussions about the fact that --
30
31 Q. You must have misunderstood me. What did she say,
32 what words did she use?
33 A. She said that - as I recall, we met at McDonald's and
34 she said, "They have got the numbers tonight. What do you
35 want to do?"
36
37 Q. What did you say to that?
38 A. I said to her that I would expect that my contract
39 would be honoured and I would receive payments under that
40 contract.
41
42 Q. When was there any discussion with Councillor Lam
43 regarding health?
44 A. I didn't discuss my health with Councillor Lam.
45
46 Q. I did ask you earlier about this matter and you
47 volunteered a discussion with a councillor that ended up

1 being Councillor Lam. Did you discuss with any councillor
2 issues relating to your resignation upon health grounds?
3 A. I didn't resign.
4
5 Q. Did you discuss with any councillor you leaving the
6 council, or terminating employment, on health grounds?
7 A. No.
8
9 Q. No? Never?
10 A. Never.
11
12 Q. Is that what you say?
13 A. No, never.
14
15 Q. That evidence is untrue, isn't it?
16 A. No, it's not true - sorry, that is true.
17
18 Q. All right. When did you discover that the councillors
19 had passed a resolution which specified that you'd left the
20 council due to health reasons? When did you discover that
21 fact?
22 A. When I received a bundle of documents for this
23 hearing.
24
25 Q. You would have noticed that on that occasion all 10
26 councillors were present?
27 A. Correct.
28
29 Q. And that they voted unanimously in those terms, that
30 is, that you were leaving due to health reasons?
31 A. I wasn't in the chamber; I can't tell you what they
32 did.
33
34 Q. But you would have seen that from the same document
35 you looked at to see the terms of the motion?
36 A. I didn't frame the minutes. That was council's role.
37
38 Q. Look, you would have read that it was moved and that
39 it was passed unanimously, didn't you?
40 A. I read the minutes of the meeting which was the first
41 time I saw those people in attendance.
42
43 Q. You saw that it was a unanimous resolution of council;
44 is that right?
45 A. That's correct.
46
47 Q. What did you think of that?

1 A. It wasn't the terms of my separation; I was
2 terminated.
3
4 Q. I didn't ask you that. I said what did you think of
5 that when you saw it?
6 A. Surprised.
7
8 Q. Surprised. Do you know why or how it could be that
9 apparently each and every member of the council voted for
10 a resolution in those terms?
11 A. It's a matter for the councillors.
12
13 Q. You do know that the suggestion is that you resigned;
14 you do know that, don't you?
15 A. No, I didn't resign.
16
17 Q. I am not suggesting that at the moment. The terms of
18 the resolution were conveying that you had resigned?
19 A. The terms of the resolution, yes.
20
21 Q. Yes, that's right. And so you are saying now you
22 didn't resign.
23 A. I don't believe there is any signed resignation on my
24 personnel file.
25
26 Q. That is not my question, you see. Are you saying now
27 that you did not resign?
28 A. I did not, I was terminated.
29
30 Q. You were terminated; is that right?
31 A. Correct.
32
33 Q. Did you sign a deed of release?
34 A. Yes, I did.
35
36 Q. Why did you sign that deed of release?
37 A. It was to protect the interests of the council and
38 myself in terms of any disparaging future comment.
39
40 Q. The terms of that deed of release conveyed that you
41 had resigned?
42 A. It says it was terminated.
43
44 Q. All right. The point is that if you were being
45 terminated, under the terms of your contract you were not
46 entitled to the \$40,000, isn't that right?
47 A. It's a matter for the council.

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Q. No, I am asking you, you see.

A. It's a matter for the parties.

Q. It is a matter for the parties and you were one of the parties; is that right?

A. Correct.

Q. So do you agree that under the terms of your contract if you were terminated, you would not entitled to the \$40,000?

A. Again, that's a matter for the parties.

Q. I am asking you, you see, and eventually the Commissioner will direct you, I think, to answer my question. Why did you think you were getting \$40,000? Did you think you were getting it under the contract?

A. It would be a payment outside the contract terms.

Q. Why did you think you were getting a payment outside the strict terms of the contract?

A. To cover the cost of my contribution towards a novated leased car that I had taken while I was an employee.

Q. That might be the way that the sum was calculated, but why did you think you were getting that sum outside the terms of your contract?

MS DUGGAN: I object. The witness has answered the question. He said he thought it was as a consequence of the novation of the lease.

THE WITNESS: Yes.

MR WATSON: I don't think that's an answer to my question.

MS DUGGAN: My friend can put another question, but he has answered the question he was asked.

MR WATSON: All right, I will.

Q. You see, you were getting paid \$40,000 in addition to any sums you were entitled to under your contract?

A. Correct.

Q. That was part of a settlement with you under which there would be an amicable separation between you and the

1 council, wasn't it?
2 A. That's correct.
3
4 Q. This separation occurred following a number of clashes
5 between you and council; correct?
6 A. Basically, it was between me and members of the
7 council, not with the council.
8
9 Q. That is precisely what I put. There were clashes
10 between yourself and some of the councillors; correct?
11 A. Correct.
12
13 Q. One of the clashes centred upon whether or not you had
14 correctly or properly novated the lease of that motor car,
15 wasn't it?
16 A. That was not one of the major issues, no.
17
18 Q. Was it an issue at all?
19 A. That was an issue.
20
21 Q. Another issue was the way in which you had been
22 running up expenses on your council credit card; correct?
23 A. I hadn't run up any unreasonable expenses on my credit
24 card, no.
25
26 Q. I didn't ask you that. Another one of the issues
27 between you and some of the councillors was the way in
28 which expenses were being incurred by you; correct?
29 A. No.
30
31 Q. You are saying not at all; is that your answer?
32 A. I'm saying the expenses were reasonably incurred under
33 the terms of the contract.
34
35 Q. That wasn't my question. You see, some of the
36 councillors were querying the way in which you were
37 incurring expenses, weren't they?
38 A. They may have been but they didn't make that clear to
39 me.
40
41 Q. You were running up expenses on a reasonably regular
42 basis, charging to the council your accommodation at
43 a hotel in the Olympic Park?
44 A. I don't recall that.
45
46 Q. The answer is "Yes" or "No"?
47

1 MS DUGGAN: Just hold on a second. My friend should allow
2 the witness to at least attempt to answer before he cuts
3 in.
4
5 MR WATSON: All right, I am so sorry, I will ask the
6 question again.
7
8 Q. Were you incurring expenses on a regular basis by
9 staying at a hotel in the Olympic Park?
10 A. Only for council business.
11
12 Q. Right. So the answer is, yes, you were doing that?
13 A. If it was associated with my job, yes.
14
15 Q. Did any of the councillors dispute your entitlement to
16 do that?
17 A. No.
18
19 Q. No? Never?
20 A. No.
21
22 Q. Did you know about the inquiry conducted by Maddocks
23 into your expenses?
24 A. I have already answered that question earlier. Yes,
25 I was aware but I took no part in the process.
26
27 Q. You have read that report now, have you?
28 A. I read it briefly last night.
29
30 Q. All right. You know that there were queries made of
31 you regarding those very expenses, don't you?
32 A. Not directly, no.
33
34 Q. You don't know that? Not even now?
35 A. Not even now.
36
37 Q. Not even now. There were other things, they might
38 seem trivial. The authority you had as general manager
39 enabled you to buy flowers from time to time; is that
40 right?
41 A. Yes, I did.
42
43 Q. Did you buy those from your daughter?
44 A. No. I bought them from my daughter-in-law's shop.
45
46 Q. I am sorry, daughter-in-law?
47 A. Yes.

1
2 Q. Right. I take it her shop is here in Auburn?
3 A. No, it's on the Central Coast.
4
5 Q. It's on the Central Coast?
6 A. And I brought those flowers down of a Monday morning.
7
8 Q. You know that there were travel expenses which were
9 contested by some of the councillors, some of your travel
10 expenses?
11 A. No.
12
13 Q. You didn't know that?
14 A. No.
15
16 Q. Are you saying to the Commissioner you didn't know
17 that the councillors were interested in overseas travel
18 expenses which appeared on your credit card?
19 A. No.
20
21 Q. You didn't know that?
22 A. No.
23
24 Q. It's a surprise to you that I am raising it now, is
25 it?
26 A. Yes, it is.
27
28 Q. Did you incur overseas travel expenses on your credit
29 card, your Auburn City Council credit card?
30 A. Yes, I did, when I attended a Metropool conference in
31 the UK.
32
33 Q. Did you refund that money to Auburn City Council?
34 A. I was not asked to, nor did I.
35
36 Q. So you didn't refund that money. Did it include --
37 A. It was part of my duties.
38
39 Q. Did it include car hire?
40 A. Yes, it did.
41
42 Q. And where were you?
43 A. We were, from memory, in Swansea.
44
45 Q. Swansea. And so the hotel was at the same place that
46 the conference was conducted?
47 A. Yes.

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Q. Tell me, why did you need a car in those circumstances?

A. Because we were travelling between different council areas, such as Manchester and other locations, to undertake risk management studies.

Q. Did anybody travel with you?

A. Yes.

Q. Who?

A. Councillor Simms.

Q. Anybody else?

A. My wife.

Q. Right. Was she staying in accommodation with you?

A. Yes, she was.

Q. Was that accommodation cost being charged back to Auburn City Council?

A. No.

Q. Not at all?

MS DUGGAN: Commissioner, I am not entirely sure where this is going and I object on the grounds of relevance.

THE COMMISSIONER: Neither am I. I am just wondering myself, to help you, we are not conducting an inquiry into --

MS DUGGAN: No, what we also know is that in relation to the material we've received from Maddocks, none of these matters were matters the subject of their investigation.

MR WATSON: I am quite happy to say where I am going.

THE COMMISSIONER: I am just wondering, how does this assist you in representing Mr Attie's interests?

MR WATSON: There seems to be some criticism raised in respect of Mr Attie, and other councillors, that Mr Burgess was terminated. I seek to demonstrate - and I believe there will be evidence from other councillors, apart from Mr Attie, along these lines - that a number of members of the council were deeply concerned about these issues.

1 I will put them briefly. I shan't harp on about it.

2

3 Q. You knew that some of the councillors were deeply
4 troubled because of the arrangements that you had with
5 Graeme Thomas to approve your expenses; you knew that,
6 didn't you?

7 A. No.

8

9 Q. You didn't know that?

10 A. No.

11

12 Q. You knew that several of the councillors had lost
13 confidence in you?

14 A. I think that's fair to say, yes.

15

16 Q. Were you the one who selected Mr Howe as a consultant
17 for the council?

18 A. Sorry, can you rephrase that?

19

20 Q. We spoke earlier of Mr Howe. Do you remember
21 Bob Howe?

22 A. Yes.

23

24 Q. Do you remember you say you had a discussion with him?

25 A. Yes.

26

27 Q. Had you appointed Mr Howe to oversee your review, your
28 performance review?

29 A. No.

30

31 MR WATSON: Thank you.

32

33 THE COMMISSIONER: Mr Duggan?

34

35 MR DUGGAN: I have no questions.

36

37 THE COMMISSIONER: Mr Wheelhouse?

38

39 MR WHEELHOUSE: I have one or two questions. I won't deal
40 with termination. I would like to ask some questions about
41 the paving man issue and some questions about the parking
42 discussion. If the Commissioner pleases.

43

44 <EXAMINATION BY MR WHEELHOUSE:

45

46 MR WHEELHOUSE: Q. I wish to ask you some questions
47 concerning the tender to do with the provision of paving at

1 the Auburn Centre. Do you recall that that particular
2 issue became a very contentious issue both in council and
3 amongst the council officers themselves?
4 A. Yes, it did.
5
6 Q. Do you recall the circumstances under which it blew up
7 as an issue in 2012?
8 A. Yes, I do.
9
10 Q. To try and put some of the information you provided
11 the Commissioner in a chronological sequence, I invite you
12 to go, first of all, to the diary note you made on
13 20 February 2012, page 110.
14 A. Is that 20 February?
15
16 Q. Yes. That is a diary note you say you made
17 contemporaneously with the conversation?
18 A. Yes, I do.
19
20 Q. Did you make that note as a consequence of having
21 a conversation with a Mr Chamas?
22 A. Yes, I did.
23
24 Q. Is this --
25
26 THE COMMISSIONER: I am sorry, my page 110 is blank. Is
27 that the page you said?
28
29 MR WHEELHOUSE: Page 101, my apologies, Mr Commissioner.
30
31 THE COMMISSIONER: Thank you.
32
33 MR WHEELHOUSE: Q. We only have selected pages from your
34 diary, Mr Burgess. Does your diary exist in its totality
35 somewhere?
36 A. Yes, it does.
37
38 Q. You will see, "Mayor met Sam the Paving Man",
39 something or other, "shopping". Do you see that?
40 A. Yes.
41
42 Q. You don't, when you make this note, make any record
43 between whom the conversation occurred?
44 A. No, that's correct.
45
46 Q. You claim at paragraph 124 of your affidavit that you
47 had a conversation with Mr Oueik, for whom I am appearing.

1 A. Yes.
2
3 Q. At paragraph 124 you set out the terms of the
4 conversation that you say you had with Mr Oueik?
5 A. Correct.
6
7 Q. And at paragraph 123, you make a reference to
8 a relayed conversation that he had with Mr Oueik?
9 A. Yes.
10
11 Q. Are you saying that there are two separate
12 conversations?
13 A. Yes, that's correct.
14
15 Q. Can you identify in your diary where you have recorded
16 the conversation with Mr Oueik?
17 A. I'm sorry, just give me a moment, please.
18
19 Q. You say in your statement that it occurred some time
20 in March.
21
22 MS DUGGAN: Commissioner, he just asked for a moment. He
23 has papers that he is going through to assist you.
24
25 THE WITNESS: My diary note of 20 February said that,
26 "Mayor met with Sam the Paving Man shopping." I then had
27 a conversation with Councillor Oueik some time in March
28 where he told me he had a conversation with Sam the Paving
29 Man and he reiterated the conversation that I've recorded
30 on 20 February.
31
32 MR WHEELHOUSE: Q. The question I asked you is where in
33 your diary did you record the conversation you had with
34 Mr Oueik?
35 A. Sorry, that was the first conversation I had with
36 Mr Oueik on 20 February in 2012.
37
38 Q. This wasn't the conversation you had with Mr Chamas,
39 this is the conversation you had with Mr Oueik, is that
40 what you are saying?
41 A. That's correct.
42
43 Q. But you say "sometime in March 2012", in
44 paragraph 124. You just made a mistake in your affidavit,
45 did you?
46 A. No, I don't believe so. I believe that some time in
47 March, Councillor Oueik again raised those tender processes

1 with me. He raised it many times.
2
3 Q. You are just making that up, aren't you, Mr Burgess?
4 A. No.
5
6 Q. On 26 March, you sent an email to Mr Chamas and you
7 refer to that at paragraph 129 of your document.
8 A. Yes.
9
10 Q. That email is contained in paragraph F of your
11 statement.
12 A. Yes.
13
14 Q. Could I take you to that page, please.
15 A. Yes.
16
17 THE COMMISSIONER: I am sorry, what page was that?
18
19 MR WHEELHOUSE: Page 65.
20
21 THE COMMISSIONER: Thank you.
22
23 MR WHEELHOUSE: Q. Just read that to yourself. There is
24 no reference in your email of 27 March, is there, to the
25 conversation you had with Mr Chamas in February? Do you
26 agree with that?
27 A. At the top of the email you will find a reference:
28
29 *Re: Conversation in the basement.*
30
31 Q. You say that is the conversation that is recorded on
32 20 February, do you?
33 A. That's correct.
34
35 Q. And further, there is no reference there to the
36 conversation you had with Mr Oueik, is there?
37 A. No, nor should there be.
38
39 Q. The next --
40
41 THE COMMISSIONER: Q. Why do you say that, "nor should
42 there be"?
43 A. Mr Commissioner, I was dealing with a staff member and
44 I was concerned at that stage that there had been a major
45 breach of confidentiality and I went back to the internal
46 auditor who had been one of the people I'd dealt with
47 throughout the process of determining whether there was

1 a breach or not, and it was inappropriate for me to suggest
2 there was any reason why I should mention to him any
3 conversations with Councillor Oueik. That would have
4 clouded the issue of the power I acted and that would have
5 been inappropriate to divulge that.
6

7 MR WHEELHOUSE: Q. What this refers to, would you agree,
8 is a conversation between Mr Chamas and Mr Habib who is Sam
9 the Paving Man; is that correct?

10 A. That is correct.

11
12 Q. The last paragraph.

13 A. Sorry?

14
15 Q. Which is the last paragraph that you refer to?

16 A. It's the whole of the conversation because it was
17 a record of a conversation between Mr Chamas, the internal
18 auditor, and the gentleman that I know as Sam the Paving
19 Man about that process of the tender.
20

21 Q. The next thing that happens is that on 20 April 2012
22 the council passed a resolution on your recommendation that
23 it retain Norton Rose to investigate the release of
24 confidential information, do you recall that?

25 A. That's correct, sir.
26

27 Q. Although we don't have a copy of the resolution, it is
28 certainly referred to in your material at Annexure E. This
29 is you contacting the person at Norton Rose, correct, at
30 page 61?

31 A. Yes, that's correct, sir.
32

33 Q. Norton Rose were expressly charged with investigating
34 whether there had been some breach of confidentiality or
35 there was some level of impropriety in the tender process;
36 correct?

37 A. It was a combination of the breach of probity and
38 confidentiality and also to ensure that the tender
39 documents were appropriate.
40

41 Q. So even though at this point in time the council had
42 passed a resolution that you retain Norton Rose to
43 investigate breach of confidentiality, you sought to
44 involve in the inquiry ICAC; correct?

45 A. Yes, I did.
46

47 Q. And on 18 May you contacted ICAC, which is Annexure G,

1 page 69.
2 A. Yes, I did.
3
4 Q. And you spoke to a Mr Thomas?
5 A. Correct.
6
7 Q. And sent him a letter?
8 A. Correct.
9
10 Q. Was this prior to you having had a response from
11 Norton Rose in relation to their investigation?
12 A. Yes, that's correct.
13
14 Q. Was part of your motivation to involve ICAC a concern
15 by you that your position at the council was in some way
16 under threat?
17 A. It was twofold. One was it was as a result of the
18 consideration of the tenders. I believe there was
19 potential for corrupt conduct. The second was it was clear
20 from Councillor Oueik that I was receiving threats from him
21 about my employment with the council, yes.
22
23 Q. You were using this mechanism as a means of protecting
24 yourself, were you?
25 A. No, I was not. I was making ICAC aware that whilst in
26 carrying out my requirements and legal obligations under
27 section 11, that I was also being threatened at the same
28 time.
29
30 Q. What I put to you was that what you were doing was
31 seeking a mechanism to discredit Mr Oueik --
32 A. No, I was --
33
34 Q. -- so as to avoid his involvement in any legitimate
35 determination of your contract?
36 A. No.
37
38 Q. On 28 May you again wrote to ICAC, which is
39 Annexure H - I put that incorrectly. Yes, the 28th. This
40 is delivering to ICAC, is it, the content of an anonymous
41 text?
42 A. Yes.
43
44 Q. You will see at the bottom:
45
46 *Council solicitors Norton Rose have made*
47 *contact with Sam Harb, the principal of Sam*

1 *the Paving Man, with a view to interviewing*
2 *him about the breach of confidentiality*
3 *associated with confidential council*
4 *reports ...*

5
6 Do you see that?

7 A. Yes.

8
9 Q. The question here is, isn't it, that at this point in
10 time Norton Rose have not reported back to council?

11 A. That's correct.

12
13 Q. It transpires that the Independent Commission Against
14 Corruption investigates the matters that you raised with
15 them; correct?

16 A. Correct.

17
18 Q. And they complete their report by 18 June?

19 A. Correct.

20
21 Q. 2012?

22 A. Correct.

23
24 Q. At page 77 is the letter?

25 A. Correct.

26
27 Q. There is only one of the two pages that would have
28 been written to you by the Independent Commission Against
29 Corruption. Where is the second page?

30 A. The second page is on the back.

31
32 MS DUGGAN: Not on my copy.

33
34 THE WITNESS: It may not have copied.

35
36 MR WHEELHOUSE: Q. Could I have access to the second
37 page?

38 A. By all means.

39
40 MR BOLSTER: What was the page number again?

41
42 MR WHEELHOUSE: Page 77.

43
44 THE COMMISSIONER: Page 78 is blank on mine. It may have
45 been a copying problem. I am just wondering, with the
46 attachments behind the statements, whether there are a lot
47 of pages missing, because I have a lot of blank pages in

1 what has been given to me.
2
3 MR BOLSTER: I think there are. I will check if it's on
4 the Objective Connect version.
5
6 MR WATSON: No, it is not.
7
8 MR BOLSTER: It's not? There is no problem with that?
9
10 MS DUGGAN: Could I have a copy of that?
11
12 MR WATSON: It is a blank page on the 2015 version as
13 well.
14
15 MS DUGGAN: If I could have a copy of that over the
16 luncheon adjournment, it would be appreciated.
17
18 THE COMMISSIONER: Sure, and I will need a copy.
19 Mr Watson, page 78 is blank on Objective Connect, right?
20
21 MR WATSON: Mr Commissioner, I am looking at it at the
22 moment. Just excuse me.
23
24 THE COMMISSIONER: Can someone just tell me - the letter
25 that you were referring to, Mr Wheelhouse, of 18 June 2012
26 from ICAC, there is meant to be a second page that none of
27 us have?
28
29 MR WHEELHOUSE: Yes.
30
31 THE COMMISSIONER: What we might do then is take lunch now
32 and come back at 1.45 because you might want to proceed
33 with a complete copy.
34
35 MR WHEELHOUSE: I would appreciate that, Mr Commissioner,
36 yes, seeing the second page.
37
38 THE COMMISSIONER: We will adjourn now, which is 12.45,
39 come back at 1.45, and hopefully by then everyone has
40 a complete copy of Mr Burgess's statement.
41
42 MR WHEELHOUSE: Commissioner, could I do one thing before
43 you adjourn?
44
45 Q. Mr Burgess, I am going to ask you to look at some
46 documents that were produced to this Commission through
47 Councillor Simms but they are documents of

1 Stephanie Griffiths. I am going to put to you
2 the proposition that the documents produced by
3 Stephanie Griffiths do not evidence your claim that the
4 majority of the penalty infringement notices that
5 were - I will try and use a neutral word - not pursued did
6 not relate to my client. What I am going to ask the
7 Commission to do is to supply you with pages - and I will
8 give you the precise pages --

9
10 THE COMMISSIONER: Why don't you just tell
11 counsel assisting this?

12
13 MR WHEELHOUSE: I will certainly do that, Commissioner,
14 yes.

15
16 THE COMMISSIONER: Yes, do that, and I will adjourn.

17
18 **LUNCHEON ADJOURNMENT**

19
20 **UPON RESUMPTION**

21
22 MR BOLSTER: Mr Commissioner, I can indicate that the
23 running sheet for the private hearings for tomorrow and
24 Friday has been circulated. There is only one change.
25 Mr Yang and Mr Zraika are going to swap places.

26
27 THE COMMISSIONER: I don't have that. What places were
28 they?

29
30 MR BOLSTER: Mr Yang is coming forward from Friday to
31 1.15 pm tomorrow.

32
33 THE COMMISSIONER: And that means that Mr Zraika is coming
34 on Friday. Mr Burgess, could you have a seat again,
35 please. You are on your oath from before.

36
37 THE WITNESS: Yes, Commissioner.

38
39 THE COMMISSIONER: You still have some further questions,
40 do you, Mr Wheelhouse?

41
42 MR WHEELHOUSE: Yes, I do. I don't have much, though.

43
44 Q. Mr Burgess, before the luncheon adjournment I was
45 asking you some questions about the letter which is dated
46 18 June 2012 and is found at page 77 of your statement.
47 Could you go to that document, please?

1
2 THE COMMISSIONER: I am sorry, that reminds me, I think
3 the witness's statement might be being retrieved, but the
4 one you tendered has pages missing.
5
6 MR BOLSTER: Yes. What we are doing in relation to that,
7 we have been through it and we have found the pages that
8 are missing. They are being copied and have been made
9 available. Have they been handed out?
10
11 MR WHEELHOUSE: I have page 66 which I didn't have before.
12
13 MR BOLSTER: You have them? Things are running ahead of
14 you, that's good.
15
16 THE COMMISSIONER: But does the witness have them?
17
18 MR BOLSTER: I don't know whether the witness has them or
19 not. Darren, do you have a set of the amendments to
20 Mr Burgess' statement?
21
22 MS DUGGAN: The witness's statement had them in it.
23
24 THE COMMISSIONER: He has lost it.
25
26 THE WITNESS: I haven't got the statement,
27 Mr Commissioner.
28
29 MS DUGGAN: Whilst Mr Bolster is doing that, could I
30 return to those instructing him the Water Street bundle
31 that I was provided. I have been provided them
32 electronically.
33
34 MR BOLSTER: Commissioner, I formally tender the bundle as
35 amended.
36
37 THE COMMISSIONER: This is the Water Street bundle?
38
39 MR BOLSTER: No, I am sorry, Mr Burgess's statement.
40
41 THE COMMISSIONER: I don't have it. When you have it,
42 tender it.
43
44 MS DUGGAN: It became S11. The statement became S11, did
45 it not?
46
47 THE COMMISSIONER: Yes.

1
2 MR BOLSTER: As soon as I get a copy, I will provide it.
3
4 THE COMMISSIONER: Are we able to proceed, though?
5
6 MR WHEELHOUSE: It may be better to have the statement.
7
8 THE COMMISSIONER: Just see how we go.
9
10 MR WHEELHOUSE: Q. I will just rewind it, Mr Burgess.
11 I was asking you some questions before the luncheon
12 adjournment about the letter dated 18 June 2012 from the
13 Independent Commission Against Corruption, which I will
14 call ICAC for short, which is found at page 77 of your
15 statement.
16 A. I am sorry, I don't have page 77. My pages are not
17 numbered. Could you point me in the direction of the --
18
19 MR BOLSTER: Do you have page 77?
20
21 MS DUGGAN: It is the ICAC letter of 18 June.
22
23 MR BOLSTER: I have a set, Mr Burgess, of the documents
24 that need to go into that folder. Might I approach? It
25 might be the easiest way.
26
27 THE COMMISSIONER: Yes, go ahead.
28
29 THE WITNESS: Yes, I have that letter now.
30
31 THE COMMISSIONER: He has it.
32
33 MR WHEELHOUSE: Q. If you go to the paragraph which
34 commences with the words, "I note ", at the bottom of the
35 page, you will see what the Commission is doing is
36 summarising the matters that have been referred to it for
37 investigation. They were matters that you had referred to
38 it?
39 A. Sorry, I missed that, I apologise.
40
41 Q. They were matters that you had referred to it?
42 A. Yes, that's correct.
43
44 Q. First:
45
46 *I note that you, in the wake of receipt of*
47 *information of leaks of confidential*

1 *information to Mr Hassan (Sam) Harb, the*
2 *various instances of contact by Mr Harb to*
3 *staff during the tender process, and*
4 *an allegation received from C/r Attie that*
5 *a staff member may have failed to disclose*
6 *a conflict of interest in the tender*
7 *process, referred the matter to Norton Rose*
8 *for review and advice.*

9
10 Of course, as my learned friend said yesterday, although
11 the letter was addressed to you, it was, in fact, addressed
12 to you in your capacity as general manager of council and
13 that is not a question of you having personally referred
14 the matter to Norton Rose, but the council referred the
15 matter to Norton Rose under a resolution; that's correct,
16 isn't it?

17 A. That's correct.

18
19 Q. Yes. The Commission goes on:

20
21 *The Commission took into account the*
22 *following factors in our determination:*

23
24 - *That Norton Rose's review found no*
25 *evidence to suggest that Mr Matthew Gapp,*
26 *procurement officer, influenced the*
27 *recommendation of the Tender Evaluation*
28 *Panel for the ATSU ...*

29
30 Do you see that?

31 A. Yes.

32
33 Q.

34 - *Staff involved in the ATSU Evaluation*
35 *Panel complied with Council's policies and*
36 *procedures relating to procurement;*

37
38 - *The matter has been reviewed by Norton*
39 *Rose.*

40
41 What the allegation was concerning Mr Gapp was
42 an allegation made by Mr Attie that he may have felt
43 disclosed a conflict of interest; correct?

44 A. Yes.

45
46 Q. That was Mr Attie's allegation, wasn't it?

47 A. I am - I am - I am unsure and I'm sorry, I don't

1 recall, but it was either Mr Attie or Mr Oueik.

2

3 Q. This is a reference to what you had referred to ICAC,
4 a very serious thing to do, don't you agree?

5 A. Yes, it is.

6

7 Q. You had specifically referred Mr Attie's allegation,
8 hadn't you?

9 A. Yes, I did.

10

11 Q. Mr Attie's allegation was that some of the staff
12 members dealing with the tender process were biased?

13 A. Yes.

14

15 Q. In particular, Mr Gapp who it was plain had been a
16 previous employee of a company associated with the
17 successful tenderer?

18 A. Yes.

19

20 Q. That was Mr Attie's allegation, wasn't it?

21 A. Yes.

22

23 Q. It had nothing to do with Mr Oueik?

24 A. Sorry, I don't understand. Did I reference Mr Oueik
25 in the document?

26

27 Q. Would you go to paragraph 124 of your affidavit?

28 A. The number please, sir?

29

30 THE COMMISSIONER: Paragraph 124.

31

32 MR WHEELHOUSE: Q. At paragraph 125 you say:

33

34 *Councillor Oueik claims staff were biased*
35 *against the tender of Sam the Paving*
36 *Man ...*

37

38 Mr Burgess, it was Mr Attie who made that claim, wasn't it?

39 A. I am sure Mr Attie and Mr Oueik were making claims of
40 staff bias.

41

42 Q. That's completely untrue what you've just said,
43 isn't it?

44 A. No.

45

46 Q. It was exclusively Mr Attie allegation, wasn't it?

47 A. No.

1
2 Q. You were very bitter about the termination of your
3 employment with the council, weren't you?
4 A. Yes.
5
6 Q. And you remain so, don't you?
7 A. No.
8
9 Q. You lay at the feet of my client, Mr Oueik, part of
10 the cause for your termination, don't you?
11 A. Yes.
12
13 Q. You point the finger at him?
14 A. No.
15
16 Q. What I want to put to you is that at the time when you
17 wrote your statement, paragraph 125, you knew that Mr Attie
18 was the councillor who was claiming that the council
19 officers were biased and you knew it wasn't Mr Oueik;
20 correct?
21 A. That's not true.
22
23 Q. And what you put there is completely incorrect,
24 isn't it?
25 A. That's not true.
26
27 Q. You also involved the chief executive of the
28 Department of Premier and Cabinet --
29 A. Yes.
30
31 Q. -- in the question of Mr Attie's allegations of bias,
32 didn't you?
33 A. Yes, I included letters to Mr Woodward, yes.
34
35 Q. You made a protected disclosure to that senior person,
36 didn't you?
37 A. Yes, I did.
38
39 Q. Taking advantage of the Protected Disclosure Act?
40 A. No.
41
42 Q. If you go Annexure B to your affidavit, on my page it
43 is page 59 --
44 A. Yes.
45
46 Q. -- about halfway down the page, "I also had
47 discussions", do you see that?

1 A. Sorry, is that Annexure B?

2

3 Q. Annexure B. On my page it's 57. I meant to say 57,
4 I beg your pardon --

5

6 THE COMMISSIONER: It is an email from Mr Burgess to
7 Mr Woodward, 16 April 2012. I have that.

8

9 MR WHEELHOUSE: Q. He is the chief executive, Department
10 of Premier and Cabinet, isn't he?

11 A. Yes.

12

13 Q. Making a disclosure to that person is a very serious
14 matter, isn't it?

15 A. It was - as the head of the Department of Local
16 Government at that time, I thought it was appropriate that
17 Mr Woodward be aware of the actions that were occurring at
18 Auburn City.

19

20 Q. So the answer to my question is, yes, it was a very
21 serious matter?

22 A. Yes.

23

24 Q. Certainly, you were conscious of the fact that you
25 needed to make sure all the allegations that you were
26 making were correct?

27 A. Yes.

28

29 Q. You will see, if you go halfway down the page, it
30 says:

31

32 *I also had discussions with*
33 *Councillor Attie the mover of the motion*
34 *ruled out of order intimating strongly that*
35 *staff involved in the process were biased*
36 *against Sam the Paving Man and one staff*
37 *member had worked for the recommended*
38 *tenderer.*

39

40 Do you see that?

41 A. Yes.

42

43 Q. That is Mr Attie's allegation, isn't it?

44 A. That's correct, that is Mr Attie's allegation.

45

46 Q. Yes. And nowhere in this correspondence is there
47 a reference to the fact that it was Mr Oueik's allegation?

1 A. That's correct.
2
3 Q. That's because Mr Oueik was not involved in that
4 allegation?
5 A. No, that's not correct.
6
7 Q. Do you wish to withdraw paragraph 125 of your
8 statement?
9 A. No.
10
11 Q. We have just been handed some documents a couple
12 of minutes ago which relate to the topic about which I was
13 asking you some questions. Just give me a moment to look
14 at them. Do you have them? They are page 66 from your
15 statement.
16 A. Again, sir, I apologise, I don't have my pages
17 numbered.
18
19 THE COMMISSIONER: You will have to describe the document.
20
21 MR WHEELHOUSE: At the moment mine is blank.
22
23 Q. It seems to be an email from yourself of 27 March 2012
24 to Mr Chamas.
25
26 MS DUGGAN: It is the second page of Annexure F.
27
28 MR WHEELHOUSE: I may be clumsy about this,
29 Mr Commissioner, but I am clearly asking it at the same
30 time, I apologise.
31
32 Q. Have you found that document now, Mr Burgess? I am
33 not trying to confuse you by that?
34
35 THE COMMISSIONER: Is that the one at the top that has got
36 "Conversation in the basement"?
37
38 MR WHEELHOUSE: Yes. It is the second page of that
39 document.
40
41 THE WITNESS: Is that my Annexure F? Yes.
42
43 MR WHEELHOUSE: Q. On the second page you refer to
44 a conversation on Monday, 26 March 2012. Do you see that?
45 A. Yes.
46
47 Q.

1 *I had this conversation with you in the*
2 *basement and you confirmed to me that*
3 *Matthew had nothing to do with the*
4 *decision.*

5
6 A. Yes.

7
8 Q.
9 *I alluded to the allegation of Sam the*
10 *Paving Man regarding inside information and*
11 *you said this will be investigated.*

12
13 A. Yes.

14
15 Q. That's the conversation in the basement, isn't it?

16 A. Yes.

17
18 Q. And it is not the conversation that you've referred to
19 in your diary note?

20 A. No, it's a conversation I had with Mr Chamas.

21
22 Q. Give me a moment. Do you have your diary for 26 March
23 there?

24 A. Sorry?

25
26 Q. If you go to your statement, my paginated page is 101
27 for 20 February 2012.

28 A. Is that an annexure, sir?

29
30 Q. Yes. It is part of your diary entries, starting with
31 Annexure K. It is a bit hard to track down, I am sorry.

32 A. Which date was that, please, again?

33
34 Q. It is 20 February 2012.

35 A. Yes.

36
37 Q. In the email there is a reference to a conversation on
38 26 March 2012.

39 A. Yes.

40
41 Q. What I want to suggest to you is that there was no
42 conversation on 20 February with Mr Chamas?

43 A. I had many conversations with Mr Chamas about the
44 whole tender process as the internal auditor.

45
46 Q. In fact, the conversation you had with him is the one
47 that is recorded in the email, namely, 26 March?

1 A. No.
2
3 Q. I am going to take you to a different topic now. I am
4 going to ask you some questions about the parking.
5 A. Sorry, I missed that.
6
7 THE COMMISSIONER: So did I.
8
9 MR BOLSTER: Parking.
10
11 MR WHEELHOUSE: Parking.
12
13 THE COMMISSIONER: Parking. Thank you.
14
15 THE WITNESS: Maybe I should turn my hearing aids up a bit
16 more.
17
18 MR WHEELHOUSE: Q. You are aware, aren't you, that during
19 the time where Mr Oueik was mayor in the period from 2010
20 to 2012, he attempted to put together a composite,
21 all-embracing parking plan for the schools in the
22 Auburn municipality?
23 A. Yes, I'm aware of that.
24
25 Q. With the assistance of officers from the council, he
26 developed an entire plan?
27 A. I'm not aware of that but I understand he worked with
28 the traffic staff that were involved in the traffic
29 engineering, yes.
30
31 Q. He worked with the head of planning, Mr Brisby, in
32 that regard, didn't he?
33 A. I don't know about that.
34
35 Q. He had many meetings to produce that plan?
36 A. I can't - I don't know that.
37
38 Q. Would you agree that if Mr Oueik was producing
39 a composite plan with the assistance of the officers of
40 council, it would be appropriate for him to meet and
41 discuss that matter with Mr Brisby as the head of planning?
42 A. No, I don't.
43
44 Q. I am just showing you a document. I ask you whether
45 you have seen this document before.
46 A. (Handed to witness)
47

1 Q. Just take a moment to look at it.
2 A. (Witness reads document)
3
4 Q. Mr Burgess, is that a document you have ever seen
5 before?
6 A. No.
7
8 Q. Do you agree with me that your observation of Mr Oueik
9 in the 2010-2012 period was that he took the question of
10 parking at schools very seriously?
11 A. Yes, as did the council staff.
12
13 Q. As you sit in the witness box, are you completely
14 unaware that with the assistance of council officers who
15 have expertise in relation to these matters, Mr Oueik
16 sought to develop an entire parking plan for the
17 Auburn municipality?
18 A. I understand that this is a document prepared by the
19 engineers and that would seem to address the historical
20 situation and potential avenues to fix the problem.
21
22 Q. And it deals with every school in the municipality,
23 not just Al-Faisal, doesn't it?
24 A. Yes, it does.
25
26 Q. You said in your evidence you are a suspicious person;
27 is that correct?
28 A. Correct.
29
30 Q. Do you think your suspicion may have been overly
31 excited when you saw Mr Brisby talking with Mr Oueik,
32 thinking the worst rather than the positive of such
33 a meeting?
34 A. I never laid doubt until I was sure.
35
36 Q. I want to suggest to you that it is completely
37 consistent with Mr Oueik and Mr Brisby meeting that
38 Mr Oueik was trying to work on the very plan that you are
39 looking at there and that was something initiated by him?
40 A. No, I don't agree with that. The whole process that
41 I can see in this area relates to the engineering matters
42 which would have been handled by a former employee,
43 Mr George Stamatakos who was council's representative on
44 the traffic committee.
45
46 Q. Mr Oueik, as a councillor, was able to talk to people
47 at a management/director level, wasn't he?

1 A. Yes. In this instance he would have spoken to
2 Mr Donovan.
3
4 MS DUGGAN: Mr who, sorry?
5
6 THE WITNESS: Mr Donovan. I apologise.
7
8 MR WHEELHOUSE: Q. I want to suggest to you that he
9 spoke to Mr Brisby, as head of planning, for the purpose of
10 developing his overall plan. What do you say about that?
11 A. I had no knowledge of that.
12
13 MR WHEELHOUSE: Commissioner, I meant to tender the plan
14 in due course. How do you want me to handle that?
15
16 THE COMMISSIONER: The way it should happen is you should
17 give it to counsel assisting. He will look at it and he
18 will make a decision whether he tenders it. If he doesn't
19 want to tender it and you do then you apply to me.
20
21 MR WHEELHOUSE: Yes, Commissioner. Could I have the
22 document marked in some way?
23
24 THE COMMISSIONER: That can be MFI-3. It is not stapled
25 together; is that right? I will give it back to you,
26 though.
27
28 MR WHEELHOUSE: It is just so the evidence makes sense,
29 Commissioner, that's all.
30
31 THE COMMISSIONER: How do you want me to describe it?
32
33 MR WHEELHOUSE: Just describe as MFI-3, if you wish.
34
35 THE COMMISSIONER: What is MFI-3 though?
36
37 MR BOLSTER: Mr Oueik's parking plan.
38
39 THE COMMISSIONER: Mr Oueik's parking plan.
40
41 MR WHEELHOUSE: It's an excellent parking plan.
42
43 **MFI-3 MR OUEIK'S PARKING PLAN FOR AUBURN MUNICIPALITY**
44
45 MR WHEELHOUSE: Q. If you go to page 117 of your
46 statement, Mr Burgess, you will come across a letter
47 written on 31 January 2013 to Mr Woodward. That is the

1 person I referred to before as the chief executive of the
2 Department of Premier and Cabinet?

3 A. That is a protected disclosure, sir?
4

5 Q. That is a protected disclosure under the Protected
6 Disclosure Act and clearly making such a disclosure is
7 a matter of some considerable seriousness?

8 A. Yes, it is.
9

10 Q. It is not a disclosure that you would make an error of
11 fact in; correct?

12 A. Correct.
13

14 Q. If you go to page 2 you will see there this paragraph:
15

16 *The Director of Planning does not have any*
17 *delegation of authority.*
18

19 Do you see that?
20

21 THE COMMISSIONER: I am sorry to interrupt, I just saw
22 Mr Sear walk back in. Do you have full copies of
23 Mr Burgess's statement now? That will help you follow what
24 you're --
25

26 MR WHEELHOUSE: If it helps, Commissioner, I am at
27 page 119, page 2, of a letter dated 31 January 2013. It is
28 Annexure H to the witness's statement.
29

30 THE COMMISSIONER: What I might do is substitute this for
31 what was exhibit S11 so that we now have a full copy of
32 what is supposed to be the exhibit. I have that page,
33 thank you.
34

35 MR WHEELHOUSE: Q. I was taking you to page 2. The
36 relevant director of planning and environment was
37 Mr Brisby, was it not?

38 A. That's correct.
39

40 Q. You were saying to Mr Woodward that he had no
41 authority or delegated authority from you to write off any
42 debt to council?

43 A. That's correct.
44

45 Q. In fact, by cancelling a PIN, Mr Brisby was not
46 writing off a debt, was he, he was cancelling a PIN, which
47 is something quite different?

1 A. No, he was writing off a debt.
2
3 Q. You were present when Mr Brisby gave evidence to that
4 effect yesterday, weren't you?
5 A. Yes, I was.
6
7 Q. And you disagree with his evidence on that score?
8 A. Yes, I do.
9
10 Q.
11 *Further investigations are to follow and*
12 *any investigation may be impeded if Council*
13 *were to terminate my employment.*
14
15 May the Commissioner take it that this letter, this public
16 disclosure to Mr Woodward, was written in the context where
17 you were at fear of losing your employment?
18 A. I was, but I also had a public responsibility to raise
19 the issue with the Office of Local Government.
20
21 Q. But the context, 31 January 2013, was that you were in
22 fear of losing your employment, weren't you?
23 A. The context of the public disclosure was that there
24 were large amounts of public money that had been written
25 off without due process.
26
27 Q. Answer my question. The context was a fear by you
28 that you may lose your employment?
29 A. No.
30
31 THE COMMISSIONER: I think he said what he thought the
32 context was. He is just not agreeing with you.
33
34 MR WHEELHOUSE: If the Commissioner pleases.
35
36 Q. At this point in time, of course, the Maddocks review
37 had not been received, had it, by council?
38 A. I didn't know anything about the Maddocks report at
39 that time.
40
41 Q. But you knew it had been instigated, didn't you?
42 A. I was aware that council had resolved to provide
43 information to Maddocks.
44
45 Q. You had been requested by Maddocks to provide
46 information?
47 A. The council had been requested and I previously said,

1 in answer to an earlier question, that I had - because of
2 my interest in that matter the issue was dealt with by
3 Mr Thomas.
4

5 Q. You personally had been requested for information, do
6 you say, or only Mr Thomas?

7 A. Mr Thomas dealt with the entire process.
8

9 THE COMMISSIONER: Q. What was Mr Thomas's position?

10 A. Mr Thomas was the director of corporate and community
11 services.
12

13 MR WHEELHOUSE: Q. You say the majority of the funds
14 written off were provided to the director by the then
15 Mayor Oueik, is that what you say?

16 A. Yes.
17

18 Q. And the director there you refer to is Mr Brisby?

19 A. Yes.
20

21 Q. What document did you have to support that sentence?

22 A. I had a detailed review prepared by my personal
23 assistant.
24

25 Q. Did you have a document prepared by
26 Stephanie Griffiths?

27 A. There were also documents prepared by
28 Stephanie Griffiths.
29

30 Q. You refer to those documents elsewhere, don't you?

31 A. Yes.
32

33 Q. The document that you had prepared by
34 Stephanie Griffiths was the document that she sent to ICAC,
35 correct, by Councillor Simms?

36 A. I believe so.
37

38 Q. Just have a look at that document for a moment.

39 A. I have the document in --
40

41 Q. It commences at page 5 of Ms Griffiths' statement.

42 A. Yes.
43

44 Q. I withdraw that. It is at page 4 of Ms Simms's
45 statement and she there provides a list of the various PINs
46 that she says were cancelled; correct?

47 A. Yes.

1
2 Q. This was the list that you had, wasn't it?
3 A. It's the list I had, yes.
4
5 Q. If you go to - commencing at page 7 --
6 A. Yes.
7
8 Q. -- what Ms Griffiths does is refer to PINs by number.
9 A. Yes.
10
11 THE COMMISSIONER: Is that page 7 of Ms Simms' statement?
12
13 MR WHEELHOUSE: Ms Griffiths' statement, Commissioner?
14
15 THE COMMISSIONER: My page 7 has a photograph of
16 Ms Griffiths' statement.
17
18 MR WHEELHOUSE: The list is actually 4 to 5 and the first
19 number is 33 --
20
21 THE COMMISSIONER: Yes, pages 4 and 5 have a whole series
22 of numbers.
23
24 MR WHEELHOUSE: Yes.
25
26 Q. It commences with a reference to a PIN number
27 3033568048. Do you see that?
28 A. Yes, I do.
29
30 Q. To make life hard for us all, the documents attached
31 to Ms Griffiths' statement do not match up to the list.
32 A. I cannot assist you there.
33
34 Q. But if you go to the second number on her list, you
35 will see that particular number 303356048. I am just
36 asking you to agree that what Ms Griffiths is doing is
37 attaching the documents that relate to the numbers on the
38 list and the numbers on the list are the penalty
39 infringement notices that she says have been cancelled?
40 A. I would have to accept that.
41
42 Q. Just take a moment to have a look at it. If you go to
43 page 4, you will see 3033568048 which is the second one.
44 If you go to page 11, you will see that is a reference to
45 the same number and then you will see the number
46 3033559522.
47 A. Yes.

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Q. You had a chance to look at these documents over lunch?

A. Yes, I did.

Q. Could you identify for me the "fines", we call them writing off penalty infringement notices, that were provided to the director by the then Mayor Oueik?

A. I can't identify that from this document, no.

Q. Because there are none there, are there?

A. I can see no references to who the PIN - who gave the director the PINs.

Q. Take the first one, 3033568048.

A. Yes.

Q. You will see that is accompanied by a letter of Mr Murray Kairouz. Do you see that? I am sorry if I have mispronounced that incorrectly. That is K-A-I-R-O-U-Z?

A. Yes.

Q. That is plainly, would you agree with me, a representation made by Mr Kairouz?

A. It is from the affidavit, yes.

Q. And it has nothing to do with Mr Oueik?

A. I don't know that from this affidavit. You'd have to ask the writer of the document.

Q. These are the documents that you used to make the statement:

The majority of the fines were written off by the Director, by the then Mr Mayor Oueik.

Correct?

MS DUGGAN: I object to that. That is not what the witness said.

THE COMMISSIONER: I don't think he has said that. I am just getting confused as to what you are seeking to achieve in asking him questions about someone else's statement.

MR WHEELHOUSE: What I seek to achieve is to demonstrate

1 that the assertion made to Mr Woodward is plainly incorrect
2 and this witness would have known it because these are the
3 documents that he had.

4
5 MS DUGGAN: I will be plain. The witness said he had not
6 only this document but a document that had been prepared by
7 his personal assistant.

8
9 THE COMMISSIONER: Yes. Anyway, keep going. Keep going.

10
11 MR WHEELHOUSE: I press the question.

12
13 THE COMMISSIONER: The witness might need it again,
14 I think.

15
16 THE WITNESS: Would you repeat that question, please?

17
18 MR WHEELHOUSE: Q. This is the document that you had that
19 lay behind the statement in the last sentence of the
20 paragraph commencing with the words, "The Director of
21 Planning", isn't it?

22 A. That's correct, but my PA did far more research to
23 identify where the source of the request came from.

24
25 Q. The research that she did established that it came
26 from Stephanie Griffiths, the parking manager; correct?

27 A. That's not true, no.

28
29 Q. What I want to suggest to you, Mr Burgess, was that to
30 make a statement of the type that you have made to
31 Mr Woodward under the benefit of the Protected Disclosure
32 provisions was a very, very serious allegation and
33 statement to make?

34 A. Correct.

35
36 Q. And it simply is not supported by the documents that
37 I have placed before you, which are the documents generated
38 by the ranger Stephanie Griffiths?

39 A. I don't agree.

40
41 Q. I again invite you to identify any documents there
42 that support the proposition that the majority of the fines
43 that were written off were provided to the director by
44 Mr Oueik?

45 A. That's a matter you should have put to
46 Stephanie Griffiths.

47

1 Q. I will assist you. I will show you two that might be
2 of interest. It is 302334386, it is the last one in the
3 bundle.

4 A. Is that page 95, sir?

5

6 Q. Page 93. This is one of those parking infringements
7 that takes place outside a school, isn't it, and it is in
8 the driveway of the Al-Faisal College.

9

10 THE COMMISSIONER: Are we on page 93 of Ms Stephanie --

11

12 MR WHEELHOUSE: It starts at page 93 and goes right
13 through to page 95.

14

15 THE COMMISSIONER: Of Stephanie Griffiths' statement?

16

17 MR WHEELHOUSE: Yes.

18

19 Q. To assist you, Mr Burgess, that identifies that the
20 mayor received a call from Lisa Moubayed. Do you see that
21 on page 95?

22 A. Yes.

23

24 Q. You will see on the previous page, page 94:

25

26 *Rob,*

27

28 *I have spoken to Diana about this*
29 *infringement as she was the issuing*
30 *officer for the offence.*

31

32 There was a debate. What the parents are saying is that
33 there was somebody in the car and the parking officer is
34 saying that there was not; correct?

35 A. Just give me a moment, please, to read the rest of
36 that email. It seems to me, sir, that the Matthew Andrews
37 response to Mr Lawrence suggests the vehicle was parked in
38 a driveway and it wasn't reversing.

39

40 Q. Would you agree with me all that is happening here is
41 that a parent has been issued with a PIN, she has made
42 representations to the mayor, and the mayor has carried
43 forward those representations on her behalf as
44 a constituent to the council?

45 A. I'd accept that.

46

47 Q. And there is nothing sinister in that?

1 A. I don't see anything sinister in that, no.
2
3 Q. In fact, he would be doing his job as an elected
4 representative to do so, wouldn't he?
5 A. All elected representatives do that from time to time.
6
7 Q. If you go to page 15 --
8
9 MS DUGGAN: Griffiths or Burgess?
10
11 MR WHEELHOUSE: Griffiths, sorry.
12
13 Q. You will see you, yourself, have been involved in the
14 cancellation of one of these parking infringement notices?
15 A. That's, I think, the only one in the bundle that
16 I could identify that I had any involvement with, and if I
17 cancelled one it had reasons to be cancelled.
18
19 Q. Yes. That is number 3033647440?
20 A. Yes.
21
22 Q. In the period of time over lunch what you did was to
23 check to see whether you were involved in any of them,
24 didn't you?
25 A. Sorry?
26
27 Q. When you were looking at the documents in the lunch
28 break that is what you did, you went through to see if your
29 name appeared on any of these infringements?
30 A. Yes. I think, from memory, that is the only one
31 I could find that had my involvement.
32
33 Q. Yes. You couldn't find any from Mr Oueik, could you?
34 A. No. Mr Oueik doesn't have power to write them off.
35
36 Q. If you go to page 15 --
37 A. Yes.
38
39 Q. -- you address Mark - that is Mark Brisby?
40 A. Yes.
41
42 Q.
43 *Please review the request and determine it.*
44 *I have to agree with the writer of the*
45 *letter to send a ticket without a letter is*
46 *most unprofessional.*
47

1 That is you writing to Mr Brisby, isn't it?
2 A. Yes, it is.
3
4 Q. That is you specifically requesting him to determine
5 whether or not the PIN should be written off; correct?
6 A. Yes, and I also said to Mr Brisby I had previously
7 raised this practice with Rob after an earlier comment that
8 I was assured a form letter would be prepared and the
9 ticket attached.
10
11 Q. But what I am putting to you is this: you are
12 specifically giving to Mr Brisby authority to write off the
13 PIN, aren't you?
14 A. I have referred the issue to Mr Brisby with a request
15 to determine it, yes.
16
17 Q. To determine it. In other words, you gave him the
18 authority to do so?
19 A. Yes, I did on that occasion.
20
21 Q. And this was the procedure you adopted, wasn't it, you
22 left it to him?
23 A. He then had to comply with the internal procedures of
24 ensuring that any write-offs went through the finance
25 division because he didn't have the authority to do so.
26
27 Q. Mr Burgess, what this demonstrates, would you agree
28 with me, that you specifically gave to Mr Brisby the role
29 to determine whether or not the PIN should be cancelled;
30 correct?
31 A. In accordance with the internal procedures and his
32 delegations.
33
34 Q. You don't say that there, do you?
35 A. No, but I trained the staff in that process.
36
37 Q. You wrote that email in those terms, didn't you,
38 because that was your understanding of the procedure?
39 A. No.
40
41 Q. He was to consider, that is to say Mr Brisby, and
42 determine whether to cancel a PIN?
43 A. No.
44
45 Q. Can you give any explanation for why that procedure
46 was adopted on this occasion?
47 A. Sorry, I missed that. I apologise.

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Q. Can you give any other explanation as to why that procedure was adopted on this occasion?

A. The procedure clearly required that Mr Brisby would determine the matter and then would go through the internal process of having the fines written off in accordance with the council's internal procedures.

Q. You see what you don't say, do you, is, "Because you don't have a delegated authority, you make a recommendation back to me and I will do the final determination", you don't say that, do you?

A. I don't have to.

Q. You don't have to because you quote here the relevant administrative authority?

A. No.

MR WHEELHOUSE: The Metropool conference that my learned friend Mr Watson asked you some questions about - I would just seek the Commission's authority to ask one or two questions about that.

THE COMMISSIONER: I don't want the same cross-examination. Is this going to be a different topic?

MR WHEELHOUSE: I just want to determine from the witness who was responsible and what authority he had to go on in terms of the council.

THE COMMISSIONER: All right.

MR WHEELHOUSE: I am happy just to put those two questions.

Q. Who was the sponsor of the conference?

A. I'm sorry?

Q. The Metropool conference?

THE COMMISSIONER: The one at Swansea.

THE WITNESS: Metropool. It was an annual tour that was organised by Metropool to understand the process of pooling internationally and each of the member councils would take a turn in going to visit a country, whether it was the US or the United Kingdom, and at the United Kingdom pool

1 meeting there were presentations about how Metropool
2 operated within Australia.

3
4 MR WHEELHOUSE: Q. Did they sponsor you, that is to say,
5 did Metropool sponsor you?

6 A. Yes, they did, Metropool sponsored me.

7
8 Q. And they paid for you?

9 A. Yes, they did.

10
11 Q. Notwithstanding Metropool sponsored you and paid for
12 you, you still used your credit card issued by the council?

13
14 MS DUGGAN: I object. He asked leave to ask two
15 questions. That question was already asked by Mr Watson.

16
17 THE COMMISSIONER: I think it was.

18
19 MR WHEELHOUSE: I don't think the first question was
20 asked.

21
22 MS DUGGAN: The first and second questions were. The last
23 question is the one I object to.

24
25 MR WHEELHOUSE: I won't pursue that.

26
27 Q. I just want to ask you some questions about access to
28 staff areas. This is your paragraph - the evidence you
29 gave this morning that was part of the deletion paragraph.
30 To get to a staff area you require a swipe card?

31 A. Yes.

32
33 Q. And Mr Oueik didn't have a swipe card?

34 A. I don't - I don't believe he had a swipe card but
35 that's not to say he didn't have one. The systems of
36 control in the council with the issue of swipe cards was
37 particularly loose, yes.

38
39 Q. You know he was never issued a swipe card, don't you,
40 or there would be a record of that?

41 A. Sorry, I don't know. I didn't control swipe cards.

42
43 Q. You gave evidence that you overheard - you had
44 a conversation with Mr Brisby that what Mr Oueik was
45 speaking to him about was Mr Oueik's developments; correct?

46 A. Correct.

47

1 Q. Do you now have any precise recollection of when that
2 conversation took place?

3 A. No. As I said, there were a whole host of
4 conversations because the engineering staff --

5
6 Q. I just asked you a simple question. Do you have any
7 recollection when that conversation took place?

8 A. No, I don't.

9

10 Q. Do you have any recollection of the precise words that
11 were spoken?

12 A. No.

13

14 MR WHEELHOUSE: I have no further questions.

15

16 THE COMMISSIONER: Thank you. Mr McNally.

17

18 <EXAMINATION BY MR McNALLY:

19

20 MR McNALLY: Q. Mr Burgess, I want to ask you some
21 questions about Auburn Central. You gave some evidence
22 earlier today about the fire risks that you were aware of
23 and your concern in relation to those and also that you
24 spoke to Councillor Lam about that. You said that
25 Councillor Lam didn't agree with your advice initially;
26 That's correct, isn't it?

27 A. That's correct.

28

29 Q. In fact, it's not unusual for councillors not to agree
30 with your advice, is it?

31 A. Correct.

32

33 Q. She thought that the problems or the fire risks would
34 be best dealt with by the developer at that stage, didn't
35 she?

36 A. Correct.

37

38 Q. In normal circumstances that wouldn't be
39 an unreasonable attitude to have, would it?

40 A. Yes, it would be.

41

42 Q. It would be a reasonable attitude to say that
43 a developer should fix the risks that they created?

44 A. Absolutely.

45

46 Q. But your view was in this case this was a little bit
47 more extraordinary than most?

1 A. Absolutely extraordinary.
2
3 Q. And then after there was a further discussion
4 involving a gentleman who was a solicitor called
5 Mr Bingham?
6 A. Yes.
7
8 Q. Eventually then Councillor Lam came around to your
9 point of view?
10 A. I think Councillor Lam, after having heard Mr Bingham,
11 was satisfied that the risks were too great for her to
12 leave unattended to and she agreed to see the Minister.
13
14 Q. She eventually did take your advice?
15 A. Yes, she did.
16
17 MR McNALLY: Yes, I have nothing further.
18
19 MS DUGGAN: Can I come back after --
20
21 THE COMMISSIONER: Yes, you are last.
22
23 MR PRICE: I have no questions.
24
25 MR HODGES: I have three questions regarding New Street,
26 Lidcombe, Commissioner.
27
28 **<EXAMINATION BY MR HODGES:**
29
30 MR HODGES: Q. At paragraph 59 of the statement,
31 Mr Burgess, you speak to a memorandum, which is Annexure A,
32 which is a memorandum where Ms Barker was posing questions.
33 Mr Francis responded to that memo promptly, didn't he?
34 A. Yes, he did, but I don't have access to his response.
35
36 Q. Can I show you a document, please.
37 A. (Handed to witness).
38
39 THE COMMISSIONER: What is the witness being shown?
40
41 MR HODGES: Commissioner, the witness is being shown
42 a memorandum from Mr Francis to Mr Burgess dated 23 August
43 2012.
44
45 THE COMMISSIONER: Is it in the evidence anywhere?
46
47 MR HODGES: It's not as yet. Once it is identified,

1 I would seek to provide it to Counsel Assisting to tender
2 it.
3
4 THE WITNESS: Yes, I confirm that's Mr Francis's response
5 to myself.
6
7 MR HODGES: Q. And that responds to each of the
8 subheadings raised in the document that is Annexure A to
9 your statement, doesn't it?
10 A. Yes.
11
12 MR HODGES: Thank you. The document can be returned.
13
14 THE COMMISSIONER: Should that be marked?
15
16 MR HODGES: If you could mark it for identification,
17 Mr Commissioner.
18
19 THE COMMISSIONER: Ms Duggan, do you have MFI-3? Do you
20 have a copy of that?
21
22 MS DUGGAN: No, I don't. Mr Wheelhouse's instructing
23 solicitors --
24
25 THE COMMISSIONER: I don't want it tendered after the
26 witness has gone in case you wanted to --
27
28 MS DUGGAN: I looked at it and I have no questions in
29 relation to it.
30
31 THE COMMISSIONER: Excellent.
32
33 MS DUGGAN: Could it be provided on the --
34
35 THE COMMISSIONER: Council assisting might need to see it
36 to make sure he does not want to ask a question about it.
37 I just want to make sure with these MFIs, with this
38 witness, that he doesn't go and then someone says, in
39 fairness, something has to be put.
40
41 MFI-4 is a memorandum from Glenn Francis, who was then
42 manager, development assessment, to John Burgess, then
43 general manager, dated 23 August 2012.
44
45 **MFI#4 MEMORANDUM FROM GLENN FRANCIS TO JOHN BURGESS**
46 **DATED 23/08/2012**
47

1 MR HODGES: I have nothing further to ask, thank you.

2

3 THE COMMISSIONER: Mr Silver.

4

5 <EXAMINATION BY MR SILVER:

6

7 MR SILVER: Q. My name is Silver and I appear on behalf
8 of Mr Brisby. I have some questions for you. Mr Burgess,
9 when you were appointed the general manager, as
10 I understand it you were confronted with, as you described
11 it, many irregularities; correct?

12 A. Correct.

13

14 Q. Do I understand correctly that you learnt of more
15 during your term of office?

16 A. I am sorry, I am having difficulty hearing.

17

18 Q. Do I understand that you learnt of more during your
19 term of office?

20 A. Yes, I certainly did.

21

22 Q. As general manager of the council, one of your
23 responsibilities was to make sure that the irregularities
24 that you observed were addressed in the appropriate manner?

25 A. Yes.

26

27 Q. You regarded that as important from a governance point
28 of view, for example?

29 A. Yes, I did.

30

31 Q. And also because it was important as a matter of
32 public interest to do so?

33 A. Yes, I did.

34

35 Q. You were interactive in carrying out that role in
36 dealing with matters, for example, by reporting matters to
37 ICAC or referring matters to ICAC?

38 A. Yes.

39

40 Q. And making protected disclosure to, for example, the
41 Office of Local Government?

42 A. Yes.

43

44 Q. From time to time unauthorised works conducted by
45 a builder or developer came to the attention of particular
46 council officers; correct?

47 A. Yes.

1
2 Q. Notices, orders or fines might have to be issued?
3 A. Yes.
4
5 Q. In regard to unauthorised works, for example,
6 Mr Brisby had delegated authority to issue notices and
7 orders and fines?
8 A. Yes, he did.
9
10 Q. Where an officer had such delegated authority to
11 determine whether to commence proceedings, in the normal
12 course it was the practice for them to make this decision
13 and follow it up without reference to you?
14 A. Yes.
15
16 Q. As general manager, as far as I understand your
17 statement, you did not get involved in day-to-day decisions
18 about ordinary operational matters of that sort?
19 A. Rarely did I get involved, if ever.
20
21 Q. But there was nothing in the delegated authority rules
22 and regulations that prevented you from becoming involved,
23 was there?
24 A. No, there was not.
25
26 Q. There was nothing to prevent you keeping an eye on
27 matters and following things up?
28 A. That's correct.
29
30 Q. And in fact it was your duty to do so on important
31 matters?
32 A. Yes.
33
34 Q. You could, for example, make a decision about the
35 prosecution of persons where someone else had the delegated
36 authority to do so?
37 A. I could but I was rarely called upon to ever do so.
38
39 Q. But you could do so; correct?
40 A. Yes, I could.
41
42 Q. And that would only rarely happen if it was not
43 a day-to-day operational issue?
44 A. That's correct.
45
46 Q. Turning to the irregularities at 40-46 Station Road,
47 the irregularity we have heard about involved unauthorised

1 works conducted by a builder or developer; correct?
2 A. Correct.
3
4 Q. And that builder/developer was not a public official
5 at the time that the offence took place?
6 A. Correct.
7
8 Q. But that owner, the owner of that company, Mr Oueik,
9 became a councillor later on?
10 A. As I understand it, yes.
11
12 Q. That was the subject matter of a complaint that you
13 heard about I think it was in 2008?
14 A. Yes.
15
16 Q. That was something that you did not regard as
17 an ordinary run of the mill, day-to-day operational matter,
18 was it?
19 A. Yes, it is.
20
21 Q. Was it not something that was out of the ordinary in
22 the sense that it involved a councillor?
23 A. No, I never made - it involved a company of which
24 a councillor was a director. I never differentiated.
25
26 Q. I see. So you do not regard that in any way as
27 something out of the ordinary?
28 A. No.
29
30 Q. When you took the initiative to approach - well, let's
31 put it this way. You accept that the matter, because it
32 involved a councillor through a company, it was a matter of
33 public interest?
34 A. Yes.
35
36 Q. In fact, a matter of strong public interest?
37 A. Yes.
38
39 Q. Many of the irregularities about unauthorised works
40 would not have that element, would they?
41 A. No.
42
43 Q. But this one did, didn't it?
44 A. Yes, it did.
45
46 Q. Therefore, it was out of the ordinary, wasn't it?
47 A. Yes.

1
2 Q. So you did consider it a matter that was out of the
3 ordinary?
4 A. I did consider the matter but the interests - the
5 issue that I considered of absolute importance was the role
6 of the council inspector who issued the occupation
7 certificate, as I previously put on record.
8
9 Q. I didn't ask you about that. I asked you about
10 Mr Oueik's company and the involvement because he was
11 a councillor. You answered the question that you regarded
12 that as a matter of strong public interest?
13 A. Yes.
14
15 Q. Correct. And that is not an ordinary day-to-day
16 operational matter, is it?
17 A. Yes, it is.
18
19 Q. But it had the overlay of having something different,
20 didn't it?
21 A. It had an overlay of something different --
22
23 Q. Yes.
24 A. -- but it was a similar outcome.
25
26 Q. You went and saw Deacons; correct?
27 A. Yes.
28
29 Q. One of the things you saw Deacons about was this exact
30 topic, wasn't it?
31 A. Yes, it was.
32
33 Q. The reason you saw Deacons, who I have read dealt with
34 matters at a high level, was because this was
35 a matter - Mr Oueik's company - of strong public interest;
36 correct?
37 A. Yes.
38
39 Q. In fact, Deacons described it to you in that way,
40 didn't they?
41 A. Yes.
42
43 Q. And they recommended that this particular infringement
44 and/or wrongdoing, or potential wrongdoing, be referred to
45 ICAC, didn't they?
46 A. Yes.
47

1 Q. Did you refer this particular matter to ICAC?
2 A. Yes.
3
4 Q. Did you follow it up with ICAC, Mr Oueik's
5 involvement?
6 A. Yes.
7
8 Q. You took the running of that, didn't you?
9 A. I took the running of the ICAC matter, yes, but not
10 the prosecution matter.
11
12 Q. I didn't ask you that question. You took the running
13 of the ICAC matter, didn't you?
14 A. Yes.
15
16 Q. And another matter which indicates that this was
17 an extraordinary matter was the very fact that you went to
18 Deacons and discussed this topic with them; correct?
19 A. Yes.
20
21 Q. This was not an everyday run-of-the-mill matter, it
22 had an extraordinary element. You broke your usual routine
23 of not going to the lawyers by going to Deacons yourself;
24 correct?
25 A. Yes.
26
27 Q. Which was different from normal?
28 A. Yes.
29
30 Q. You were the one who wanted the meeting; correct?
31 A. Yes, I was.
32
33 Q. You went along and Mr Brisby accompanied you; correct?
34 A. We both went together, yes.
35
36 THE COMMISSIONER: Q. This is the 2008 meeting?
37 A. 2008, yes, Commissioner.
38
39 MR SILVER: Q. You were the driving force of that
40 meeting; correct?
41 A. Yes.
42
43 Q. At the end of that meeting you said to Mr Brisby,
44 "I will handle the matter", didn't you?
45 A. I said to Mr Brisby, I would handle the ICAC matter;
46 he would handle the prosecution matter.
47

1 Q. Mr Burgess, you know that before you came to give
2 evidence today, this was a topic of interest, did you not?
3 A. Yes.
4
5 Q. You in fact made a supplementary statement dealing
6 directly with this topic, didn't you?
7 A. Yes, I did.
8
9 Q. With the question of who followed up the prosecution;
10 correct?
11 A. Correct.
12
13 Q. In that supplementary statement, you put in everything
14 that you thought was important; correct?
15 A. Correct.
16
17 Q. Do you remember what you said about what you told
18 Mr Brisby about this topic? You don't have to look at your
19 statement. I am just asking you if you remember what you
20 said in your supplementary statement. You may not have
21 because you nodded.
22 A. Yes, I did probably.
23
24 Q. Sorry?
25 A. Yes, I did probably.
26
27 Q. Do you broadly recall saying:
28
29 *I do not recall having had a conversation*
30 *with Mr Brisby about taking enforcement*
31 *action against the developer on the*
32 *Station Road development.*
33
34 A. Yes.
35
36 Q. Ie, you did not have a conversation with Mr Brisby
37 directing him to prosecute this action?
38 A. No, that's not correct.
39
40 Q. I am only reading your words, Mr Burgess.
41 A. To the best of my knowledge, I did.
42
43 Q. What you say in the statement that you made under
44 oath, dealing deliberately with this topic, carefully,
45 trying to record everything you thought was important, is
46 false?
47 A. I apologise. That's my recollection, yes.

1
2 Q. So this is false?
3 A. No.
4
5 Q. Do you recall saying:
6
7 *I do not recall having had a conversation*
8 *with Mr Brisby about taking enforcement*
9 *action against the developer.*
10
11 A. Yes.
12
13 Q. Is that false or is it correct?
14 A. No, that's correct.
15
16 Q. It is correct? So, in other words, you did not tell
17 Mr Brisby at the end of the meeting with Deacons anything
18 about the enforcement action?
19 A. I would - when Mr Brisby and I returned to Auburn, we
20 would have discussed all sorts of things and frankly, at
21 the moment, I don't recall.
22
23 Q. Yes. In other words, you don't actually recall what
24 you said; correct?
25 A. I don't recall, after we left Deacons, what we said,
26 no.
27
28 Q. In fact you don't have a recollection - and once again
29 I can take you to what you have said, but I will just put
30 it to you straight so we can get to the point. You don't
31 have a recollection ever of saying to Mr Brisby, "You are
32 responsible for the prosecution of this matter"?
33 A. I don't have specific recall of saying specifically
34 that.
35
36 Q. And if you had said to Mr Brisby, "I am going to be
37 handling the ICAC matter", or words to that effect, you
38 don't remember exactly the words you would have used, do
39 you?
40 A. It was - no, I don't.
41
42 Q. No. It could well have been that, "I'll be handling
43 the matter", could it not have been?
44 A. I doubt that I would have said that, but I accept what
45 you're saying.
46
47 Q. In regard to following up the prosecution - I am going

1 to leave aside the ICAC matter for now - the prosecution,
2 as I understand it, you learnt about it in 2008, the
3 wrongdoing, and you went to see Deacons?
4 A. Yes.
5
6 Q. You had a personal responsibility to ensure that that
7 prosecution took place, did you not?
8
9 MS DUGGAN: I object.
10
11 MR SILVER: Q. In your understanding --
12
13 THE COMMISSIONER: You are rephrasing the question, are
14 you?
15
16 MR SILVER: I will rephrase the question.
17
18 MS DUGGAN: It is going to be equally objectionable
19 because I know where he is going.
20
21 THE COMMISSIONER: I don't know that yet.
22
23 MR SILVER: Q. In your understanding did you have
24 an obligation to follow up this prosecution?
25
26 MS DUGGAN: I object.
27
28 MR SILVER: I press the question.
29
30 MS DUGGAN: It is wrong in law. There is no obligation to
31 prosecute, it is a discretion. There is a Court of Appeal
32 authority and I can give my learned friend and
33 Counsel Assisting a reference in due course. There is no
34 duty or obligation to prosecute.
35
36 MR SILVER: I don't think that is a legitimate objection
37 to the question --
38
39 MS DUGGAN: Well, it is, because it is not fair to the
40 question.
41
42 MR SILVER: If I can finish, because I am asking what the
43 witness's understanding was at the time. He may have a
44 wrong understanding of the law.
45
46 THE COMMISSIONER: I think you can ask his understanding
47 and you can make a submission to me about the matter that

1 you are raising as to whether - yes.

2

3 MS DUGGAN: Thank you, Commissioner.

4

5 MR SILVER: Q. You understood at the time that as
6 general manager it was your duty, once a prosecution had
7 been advised by Deacons, to follow that up and make sure it
8 happened; correct?

9 A. That would have been my full intention, yes.

10

11 Q. No. The question was: that was your duty as you
12 understood it; correct?

13 A. No, I disagree.

14

15 Q. Oh. So as general manager, when a very serious matter
16 of public interest was drawn to your attention by a high
17 level firm of solicitors, it was not your function to make
18 sure that it happens?

19 A. The role of the solicitors, no matter who they are,
20 was to provide the advice to the general manager or the
21 council. It is up to the general manager and the council
22 to then decide how they would apply that advice.

23

24 Q. Sir, are you disagreeing with what I said?

25 A. Yes.

26

27 Q. So, do you remember there was a conversation that you
28 refer to where you were in a discussion with the mayor,
29 Councillor Simms?

30 A. Yes.

31

32 Q. Have you read her note of the conversation?

33 A. Yes.

34

35 Q. You said that that broadly reflects what was said on
36 the day?

37 A. Yes.

38

39 Q. Do you stick to that?

40 A. Yes.

41

42 Q. What was broadly said, and Councillor Simms is quoting
43 you:

44

45 *Assures that Mr Oueik will be treated as*
46 *any other applicant. That Brisby is to*
47 *prosecute the illegal building works.*

1
2 That is what is recorded here.
3 A. That's correct.
4
5 Q. You said, "Assures Mr Oueik will be treated"; you gave
6 that assurance?
7 A. Yes, I did.
8
9 Q. How can you give an assurance if you are not going to
10 make sure that something happens?
11 A. To the best of my ability, I did.
12
13 Q. Sorry?
14 A. I said to the best of my ability, I did.
15
16 Q. So you did have a responsibility, in your view, of
17 assuring that it happened?
18 A. I gave an assurance to the mayor of the day that that
19 was going to be the outcome.
20
21 Q. No, not the outcome, that it would take place, the
22 prosecution. In other words, you assured her that you
23 would be responsible for that; correct?
24 A. I assured her that Mr Brisby would take the action.
25
26 Q. How could you make that assurance without following up
27 with Mr Brisby?
28 A. I had no - no recollection of that particular process,
29 but at some point in time I would have, otherwise I don't
30 understand why Deacons were asked to provide a further
31 advice in 2009.
32
33 Q. Let's just get back to the question. You understood
34 that by assuring that something would happen - you are
35 making an assurance to the mayor - that you would be
36 responsible to make sure that that happened; correct?
37
38 MS DUGGAN: I object. That is not what the note says.
39 That is not what the witness has said. The assurance is in
40 relation to the treatment of a councillor.
41
42 MR SILVER: I am asking about the witness's understanding.
43
44 MS DUGGAN: If that question is put, that is fine, but
45 that is not what the note says.
46
47 THE COMMISSIONER: Put it on the basis of his

1 understanding.

2

3 MR SILVER: Q. You understood when you were
4 communicating to the mayor that your assurance would be
5 backed up with action by yourself to make sure that it
6 happened; correct?

7 A. Correct.

8

9 THE COMMISSIONER: The note does actually say:

10

11 *Assures that Mr Oueik will be treated as*
12 *any other applicant. Mark Brisby is to*
13 *prosecute for illegal building works.*

14

15 MR SILVER: The witness, I think, has answered that
16 question.

17

18 Q. The fact of the matter is that from 2008 until the
19 matter raised its head - how many years later when you
20 discovered it had not been prosecuted on your description
21 of events? Five years later?

22

23 MS DUGGAN: I think it is better put when he left in 2013.

24

25 MR SILVER: Q. That is about five years, 2008 to 2013?

26

27 THE COMMISSIONER: I thought he said he did not know
28 anything about it until very recently in 2016.

29

30 MR SILVER: Q. I put it to the extent that until you
31 left, Mr Burgess, you did not satisfy your promise to the
32 mayor to ensure that the prosecution took place, did you?
33 That assurance was made in 2009, as I've discovered.

34

35 MS DUGGAN: I object.

36

37 THE WITNESS: I don't agree with you.

38

39 THE COMMISSIONER: I take it the objections are based on
40 the assurance is about how Mr Oueik was going to be
41 treated?

42

43 MS DUGGAN: In what context the carriage of the matter was
44 going to be, yes.

45

46 MR SILVER: Let me rephrase it.

47

1 THE COMMISSIONER: Yes. We keep saying "Mr Oueik." It
2 is, of course, a company that is involved.
3
4 MR SILVER: Yes. I am quoting --
5
6 THE COMMISSIONER: It may be his company but --
7
8 MR SILVER: -- something that was said by this witness to
9 the mayor.
10
11 MR WHEELHOUSE: It wasn't his company. There was three of
12 them.
13
14 THE COMMISSIONER: Yes.
15
16 MS DUGGAN: He was one of the directors.
17
18 THE COMMISSIONER: Yes.
19
20 MR SILVER: Q. If anyone failed to ensure that this
21 prosecution took place, it was you, wasn't it?
22 A. No.
23
24 Q. Did you take the step of inquiring on the outcome of
25 the prosecution, any prosecution?
26 A. As I said I had - went off my radar. As I said, until
27 recently I had completely forgotten about the matter
28 entirely, until I read documents here in the court.
29
30 Q. I'm sorry, I don't wish to be rude, but could you just
31 repeat that?
32 A. I'm sorry, I can't hear you; you can't hear me. Until
33 recently I, I was - there was contact with me, it had
34 completely gone off my radar. So in terms of follow-up,
35 yes, there would have been some informal follow-ups but
36 when, I don't recall.
37
38 Q. When you say there would have been, the fact is you
39 don't recall them; right?
40 A. I don't recall the follow-ups, but I can assure you
41 there would have been.
42
43 Q. No. You can't give any evidence of any particular
44 follow-up, can you?
45 A. No, I can't.
46
47 Q. No. If you had heard there had been a successful

1 prosecution, you would have remembered that, it would have
2 been important?

3 A. If it was prosecuted in the terms of that process,
4 yes, but given that the later advice provided for PINs,
5 I wouldn't - if the PINs were issued and paid, I would not
6 have known.

7

8 Q. Having the matter raised with the mayor, having
9 a councillor involved, having a serious issue involved,
10 I put it to you that if you had really believed that
11 Mr Brisby was solely responsible for this job, you would
12 have followed it up and made sure you found out one way or
13 another whether it was a fine, a prosecution, a PIN, or
14 an unsuccessful prosecution; correct?

15 A. Yes.

16

17 Q. And you did not do that?

18 A. I'm not aware - as I said I'm not aware, but
19 I certainly - I certainly informally would have followed
20 up.

21

22 MR SILVER: Thank you, Mr Commissioner.

23

24 THE COMMISSIONER: Mr Gardiner?

25

26 MR GARDINER: I have no questions.

27

28 THE COMMISSIONER: Ms Duggan is next.

29

30 <EXAMINATION BY MS DUGGAN:

31

32 MS DUGGAN: Q. Mr Burgess, you have some copies of your
33 diary annexed to your statement and you indicated to
34 Mr Watson that there is a full copy of your diary. Do you
35 have access to that?

36 A. I have full access to my diaries from, I think, June
37 2010 forward through to 2012.

38

39 Q. The earlier diaries, where are they?

40 A. They were left in a cupboard at Auburn City Council in
41 the general manager's office.

42

43 Q. Since you ceased working for Auburn City Council, do
44 you have access to the council files?

45 A. No.

46

47 Q. As far as your recollection in relation to what

1 happened at Station Street or Water Street, or any other
2 street, have you relied solely upon your memory where you
3 don't have documents dealing with that area?

4 A. Yes, I have.

5
6 Q. Thank you. You answered some questions of Mr Watson
7 in relation to your separation from the council. You
8 indicated to Mr Watson that there was a deed of release.
9 Might the witness be shown the statement of Mr Hurst?

10
11 MR WATSON: I checked it. I accept that it refers to
12 a termination.

13
14 MS DUGGAN: I am referring to page - they are unnumbered,
15 but it is about an eighth of the way in from the back, deed
16 of release, and I think Mr Watson is accepting that at
17 paragraphs B and C of the recitals, it refers to a
18 termination.

19
20 Q. That is your evidence, Mr Burgess?

21 A. Yes, it is.

22
23 MR WATSON: I accept I was quite wrong on that.
24 I apologise.

25
26 THE COMMISSIONER: Thank you.

27
28 MS DUGGAN: Q. You were also asked in relation to the
29 issue of the Maddocks letter by Mr Bolster, in the Maddocks
30 letter there is a reference to responses by the general
31 manager. Could you indicate to the Commissioner how that
32 process occurred? Maddocks asked some questions. What
33 happened at council so that your answers would be relayed
34 to Maddocks?

35 A. The questions asked by Maddocks were referred directly
36 to Mr Thomas. Mr Thomas then interviewed the individuals
37 that might be concerned in that process, including myself.
38 He then prepared responses to that and he sent those off to
39 Maddocks as part of that process.

40
41 Q. Apart from being interviewed by Mr Thomas, did you
42 have any involvement in the process of preparing a response
43 and forwarding it to Maddocks?

44 A. No, I did not.

45
46 Q. I hate to bring it up but parking fines, writing them
47 off, you have the view and have held the view for the

1 entire time you were at the council as general manager,
2 that the director of environment and planning did not have
3 delegation to write off debts, including parking fines;
4 correct?

5 A. That is absolutely correct.

6
7 Q. You indicated to the Commissioner that if somebody was
8 asked to make a decision as to whether or not to write off
9 a parking fine, they had to do it in accordance with their
10 delegations and the processes of the council?

11 A. That's correct.

12
13 Q. Could you indicate quickly if you were looking at
14 writing off a parking fine, what was that process that had
15 to be followed under a delegation?

16 A. Yes, thank you. The internal process was that the
17 individual who was writing off the particular funds, it
18 didn't matter whether it was parking fines or anything
19 else, was required to provide a summary to Mr Thomas as the
20 director of corporate and community services. He alone had
21 the internal delegation, apart from myself, to write off
22 any funds that were owing to the council.

23
24 Q. I think you might have heard me ask Mr Brisby
25 yesterday questions about decision-making as distinct from
26 process. Is it the case that somebody who didn't have
27 delegation to write off funds could make a decision
28 recommending they be written off, and the process was then
29 they couldn't be written off until they went through the
30 finance department?

31 A. That's correct.

32
33 Q. Mr Brisby also yesterday took issue with your
34 description of the frequency of your meetings with senior
35 staff during the time you were general manager. Can you
36 indicate to the Commissioner what your recollection was and
37 what your practice was in relation to meetings with senior
38 staff?

39 A. Sure. Mr Commissioner, every Tuesday I set aside in
40 my diary the entire day to deal with staff-related issues,
41 commencing with the directors. We would have meetings
42 about that whole process. If it ran across into the day we
43 would - my personal assistant would provide us with lunch
44 and, once it was completed, the officers would go away and
45 do what was agreed at those meetings.

46
47 Q. Did you have a similar standing meeting time with the

1 mayor of the day?

2 A. It depended on the mayor of the day, but certainly in
3 the case of Councillor Lam, Councillor Curtin,
4 Councillor Simms, Councillor Zraika was less formal but
5 certainly Councillor Oueik made himself available if
6 I walked down the corridor, but Councillor Simms and
7 Councillor Cassidy both would set times aside and that time
8 was always attended; particularly in the case of
9 Councillor Simms the executive members attended and she
10 also organised meetings with the local members at which
11 some of the executive members, such as the directors,
12 attended as well.

13

14 Q. When you say "executives", does that include the
15 director of environment and planning?

16 A. Yes, it certainly does.

17

18 Q. You were asked some questions by Mr Wheelhouse in
19 relation to what I will call Councillor Oueik's parking
20 fine which has become MFI-3. You were asked whether
21 Mr Brisby, as director of environment and planning, would
22 be involved in the planning of parking areas and you
23 indicated, no, it would be somebody else; I think you said
24 the engineers' department. Why is that?

25 A. The process of traffic management and parking was left
26 to the works and services division which was headed then by
27 Mr Paul Donovan, because the engineers were dealing with
28 the traffic committee on a regular basis and most issues
29 involving a change to traffic signs and traffic flows, and
30 the like, were normally considered by the traffic
31 committee.

32

33 Q. In relation to the enforcement of those decisions once
34 they'd been made, that fell within Mr Brisby's delegation?

35 A. Yes.

36

37 Q. Can I also ask you some questions about Mr Lawrence.
38 You have seen a statement that has been prepared by
39 Mr Lawrence?

40 A. Yes.

41

42 Q. In the statement prepared by
43 Mr Lawrence - I understand it has not been tendered
44 yet - at paragraph 10, Mr Lawrence says:

45

46 *When the Renaissance Centre was being dealt*
47 *with by Council, John Burgess expressed to*

1 *me concern that the Planning Unit of*
2 *Council were not being open with him about*
3 *the true situation in regards to the*
4 *certification of that site.*

5
6 Do you agree with that statement?

7 A. Yes, I do.

8
9 Q.

10 *I recall that he employed an outside*
11 *consultant and that he was a private*
12 *detective to check on the certification*
13 *process. This created difficulties with*
14 *the staff who perceived that they were not*
15 *trusted.*

16
17 Do you recall if in relation to the Renaissance Centre,
18 there was somebody who was sent out to check on the
19 certification?

20 A. Yes, that's correct, and that was Mr Mamouselos, at
21 the time the internal ombudsman, who had experience
22 collecting evidence, and so forth, from his previous
23 employment.

24
25 THE COMMISSIONER: Can we just get that name?

26
27 MS DUGGAN: It is spelt M-A-M-O-U-S-E-L-O-S.

28
29 THE COMMISSIONER: Thank you.

30
31 MS DUGGAN: Q. At the time of the Renaissance Centre,
32 Mr Mamouselos was an employee of the council?

33 A. Yes, he was.

34
35 Q. Did you ever use Mr Mamouselos before he was an
36 employee of the council in the role as a private detective
37 or private investigator?

38 A. Yes, I did. We had an aggressive - the council
39 adopted a policy of ensuring there were no illegal
40 activities in Auburn. At the time there was a plethora of
41 legal and illegal brothels and Mr Mamouselos and other
42 staff members, particularly Mr Derek O'Toole and others,
43 went to a number of illegal brothels and proceeded to close
44 them down. Mr Mamouselos at a later time, about six months
45 later, joined the council staff and we - sorry, the same
46 program continued, including inspections and the closure of
47 the two legal brothels in Lidcombe and Earlwood.

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Q. Apart from your retaining him in relation to the brothels in that program generally, did you ever employ him as a private investigator otherwise?

A. Much earlier in the piece, sometime probably late 2010, before he joined council in late 2011, early 2012.

Q. What did that investigation relate to?

A. Those investigations principally related to, as I said, to brothels but it also involved illegal developments and the one before the Renaissance, you know, was operating illegally, to undertake some - a collection of evidence to support processes in the courts for a large wedding that was to occur at the Renaissance and he organised for that to be filmed. He also organised for filming of a garbage truck driver who went around the block a number of times to remove waste from a site which included asbestos.

Q. At any time did you instruct Mr Mamouselos to tell Mr Lawrence not to share the investigation he was undertaking with Mr Brisby or anybody else?

A. Yes, I did. That was in relation to the operation and closure of the brothels.

Q. And why was that?

A. Because the - at the time the Taylors brothel in Lidcombe I think was closed before the Bledisloe Cup, I think, in 2010-11 maybe, I forget the exact date, but the owner of that brothel made allegations that the brothel had recently been inspected and he had named a member of council staff as being the person who inspected those brothels.

Q. Could you find any record of such an inspection?

A. No, I could not.

Q. Was the person that was named Mr Brisby?

A. Yes.

Q. Thank you.

MS DUGGAN: Thank you, Commissioner.

THE COMMISSIONER: Do you have any questions?

MR BOLSTER: No, Mr Commissioner. Perhaps the Maddocks

1 bundle --

2

3 THE COMMISSIONER: You said you were going to tender that.

4

5 MR BOLSTER: Yes. I will tender the Maddocks bundle.

6 I call it the Maddocks bundle because whilst it appears
7 predominantly to be a letter of advice with attachments,
8 there are some documents attached to the front of it that
9 do not appear to come from Maddocks, but we will explore
10 their provenance.

11

12 THE COMMISSIONER: How do you spell Maddocks?

13

14 MR BOLSTER: M-A-D-D-O-C-K-S.

15

16 MS DUGGAN: Can I indicate, Mr Commissioner, I have asked
17 for the provenance of the non-Maddocks documents. Could
18 I reserve my position in relation to them until their
19 provenance is determined?

20

21 THE COMMISSIONER: Yes. The Maddocks bundle will be
22 Exhibit GEN #3. What about MFI-3 and MFI-4?

23

24 **EXHIBIT GEN#3 MADDOCKS BUNDLE OF DOCUMENTS**

25

26 MR BOLSTER: Can I reserve my position on those overnight?

27

28 THE COMMISSIONER: You can.

29

30 MS DUGGAN: Can I see just be passed what has become MFI-3
31 as I haven't seen that.

32

33 THE COMMISSIONER: I want to be able to excuse the
34 witness, that is the only --

35

36 MR BOLSTER: I will pass that down to Ms Duggan. I don't
37 have a problem with MFI-3, if that could be tendered,
38 Mr Oueik's parking plan. I think most of his documentation
39 has been produced on summons, hasn't it? I have seen it.

40

41 THE COMMISSIONER: Are you tendering that?

42

43 MR BOLSTER: I am tendering MFI-3.

44

45 THE COMMISSIONER: MFI-3 which is Mr Oueik's parking plan
46 will become Exhibit GEN-4.

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EXHIBIT GEN#4 PARKING PLAN OF MR OUEIK

MR BOLSTER: Subject to what Ms Duggan has to say --

MS DUGGAN: I have nothing to say in relation to MFI-4.

MR BOLSTER: All right. I tender MFI-4.

MS DUGGAN: Could I have a copy of it in due course?

THE COMMISSIONER: MFI-4 which is the memorandum from Mr Francis to Mr Burgess of 23 August 2012 will now become Exhibit GEN#5.

EXHIBIT GEN#5 MEMORANDUM FROM MR FRANCIS TO MR BURGESS DATED 23/08/2012

THE COMMISSIONER: Is that all?

MR BOLSTER: That is all, Mr Commissioner, yes.

THE COMMISSIONER: Thank you for coming. You are excused, Mr Burgess.

<THE WITNESS WITHDREW

MR BOLSTER: The next witness is Mr Campbell and I call him.

MR PRICE: Mr Commissioner, can I just ask my friend whether he has had an opportunity to consider my two objections?

MR BOLSTER: I have been given a raft of objections by the entire bar table. I will go through and indicate my position.

MS DUGGAN: Not me. I don't have his statement.

MR BOLSTER: Hopefully I am able to make people happy.

<GEORGE COLIN BEDE CAMPBELL, affirmed: [3.13pm]

<EXAMINATION BY MR BOLSTER:

MR BOLSTER: Q. Mr Campbell, your full name is George Campbell; is that correct?

1 A. There is a little bit more to it if you'd like?
2
3 Q. Yes, please.
4 A. George Colin Bede - B-E-D-E - Campbell.
5
6 Q. You have prepared a statement in relation to this
7 matter on 29 May 2016?
8 A. Yes.
9
10 Q. That statement is true to the best of your knowledge,
11 information and belief?
12 A. Yes.
13
14 MR BOLSTER: Mr Commissioner, there are a number of
15 matters that I wish to deal with. I would ask if we could
16 turn firstly to paragraph 8.
17
18 THE COMMISSIONER: Are you going to tender this?
19
20 MR BOLSTER: I am going to tender it, subject to these
21 matters.
22
23 THE COMMISSIONER: Not reading some matters?
24
25 MR BOLSTER: Subject to not reading a number of matters.
26
27 THE COMMISSIONER: I will need a copy.
28
29 MR BOLSTER: You don't have a copy?
30
31 THE COMMISSIONER: I have one but it can't be the exhibit.
32 You can move on and I will use my copy that has been given
33 to me and the one that is coming can be the exhibit.
34
35 MR BOLSTER: Paragraph 8, the second sentence, I don't
36 read it as a statement of fact but as a statement of
37 submission by Mr Campbell, a submission alone. Will that
38 satisfy my learned friends? The evidence may bear that out
39 in due course.
40
41 THE COMMISSIONER: I would let it in. We have to remember
42 the rules of evidence do not apply in this inquiry.
43
44 MR BOLSTER: In that case I would take the same position
45 about paragraph 9 and paragraph 10.
46
47 Paragraph 21, the words after the word "association"

1 in line 3, "but" to the end, I don't read that.
2
3 THE COMMISSIONER: Yes. Fair enough. I will cross that
4 out.
5
6 MR BOLSTER: Paragraph 37, I don't read that.
7
8 THE COMMISSIONER: You are really not reading that?
9
10 MR BOLSTER: Yes.
11
12 THE COMMISSIONER: All right.
13
14 MR BOLSTER: Some questions might be asked, though, about
15 it, but I am not reading it.
16
17 THE COMMISSIONER: All right.
18
19 MR BOLSTER: Paragraph 45, the last five words.
20 MR DUGGAN: Sorry, Counsel Assisting, there was
21 an objection to paragraph 39. I am not sure if you have
22 referred to that.
23
24 THE COMMISSIONER: The whole of paragraph 39?
25
26 MR DUGGAN: Yes.
27
28 MR BOLSTER: I would have thought there is an element of
29 the obvious there.
30
31 MR DUGGAN: Well, not obvious to us, actually.
32
33 MR BOLSTER: Okay.
34
35 MR DUGGAN: There seems to be a detriment regarding
36 rezoning applications, but my client has a benefit either
37 way so we don't understand why it is there.
38
39 MR BOLSTER: I won't read it.
40
41 MS DUGGAN: Is that the whole of 39?
42
43 MR BOLSTER: Yes.
44
45 THE COMMISSIONER: With paragraph 39, are you proposing to
46 leave in the evidence of that, a windfall for that
47 property?

1
2 MR BOLSTER: No.
3
4 THE COMMISSIONER: It is probably a reasonable objection.
5
6 MR WATSON: You were up to paragraph 45, the last five
7 words.
8
9 THE COMMISSIONER: Yes.
10
11 MR BOLSTER: Paragraph 45, the last five words I don't
12 read.
13
14 Going back to 42, I press that, subject to what
15 Mr McNally has to say.
16
17 MR McNALLY: Mr Commissioner, if his understanding is of
18 no relevance to the Commission, in that sense it is
19 a matter that should be redacted, in my submission, from
20 any document that goes on the public record.
21
22 MR BOLSTER: I would take out then the first three words
23 of the second-last --
24
25 THE COMMISSIONER: Is that an objection or --
26
27 MS DUGGAN: Well, it was an assault.
28
29 THE COMMISSIONER: You're emphasising.
30
31 MS DUGGAN: It is very intimate at this end of the table.
32
33 MR McNALLY: Ms Duggan disagrees with my submission.
34
35 THE COMMISSIONER: I think there is something to the
36 objection to 42 in that without something more, I could not
37 make a finding of fact about any of that.
38
39 MR BOLSTER: It is not a matter that I am wedded to.
40 I won't read it, Mr Commissioner.
41
42 MR WHEELHOUSE: You are not reading the whole of
43 paragraph 44?
44
45 MR BOLSTER: Which one?
46
47 MR WHEELHOUSE: 44.

1
2 MR BOLSTER: I am not worded to 44 either, it will be
3 dealt with in other ways.
4
5 THE COMMISSIONER: Sorry, just 42, I can understand you
6 are not pressing the first or the second sentence. The
7 third and the fourth sentences, are you not reading those
8 as well? That is just his observation about voting.
9
10 MR BOLSTER: I am not reading them because there will be
11 a record of the way she has voted.
12
13 THE COMMISSIONER: Okay. That's fine.
14
15 MR BOLSTER: It will be a matter that I will explore with
16 Ms Lam in some detail in due course.
17
18 THE COMMISSIONER: Yes. Okay.
19
20 MR BOLSTER: There are better ways to get that evidence.
21
22 THE COMMISSIONER: Okay. Where are we up to then?
23
24 MR BOLSTER: I think that's it, unless anyone else has any
25 objection? There is one other - two others, actually.
26 Paragraph 57, I don't press the sentence about "windfall"
27 in the third line, but I keep the rest.
28
29 MR SILVER: The last three words of 89?
30
31 MR BOLSTER: Let me deal with 86 first.
32
33 THE COMMISSIONER: I am still on 57. The sentence in the
34 third line that commences, "This would be a massive"?
35
36 MR BOLSTER: "... windfall", yes.
37
38 THE COMMISSIONER: You are not reading that?
39
40 MR BOLSTER: I am not reading that. Then paragraph 86,
41 the last --
42
43 THE COMMISSIONER: There is other evidence in the bundle
44 about that, but I think you are right, it does not come
45 through this witness. Paragraph 86?
46
47 MR BOLSTER: Paragraph 86, "From CBRE", where it first

1 appears in the fourth line to the end of the paragraph,
2 I don't read.
3
4 THE COMMISSIONER: Where it says, "CBRE's valuation was
5 13 million", you are not reading that or the rest of the
6 paragraph?
7
8 MR BOLSTER: Correct. The valuations will speak for
9 themselves.
10
11 THE COMMISSIONER: Yes.
12
13 MR BOLSTER: Is there anything else?
14
15 MR SILVER: The last three words of paragraph 89.
16
17 MR BOLSTER: I won't read the last three words of
18 paragraph 89.
19
20 THE COMMISSIONER: All right. That is being tendered now,
21 is it?
22
23 MR BOLSTER: Yes. Thank you, Commissioner.
24
25 THE COMMISSIONER: The statement of George Campbell dated
26 23 May 2016 will be Exhibit S#13.
27
28 **EXHIBIT S#13 STATEMENT OF GEORGE COLIN BEDE CAMPBELL**
29 **DATED 23/05/2016**
30
31 MR BOLSTER: I have some other questions for Mr Campbell
32 about a range of matters. They may take probably until the
33 end of the hearing today. I will endeavour to finish them
34 by the end of today.
35
36 THE COMMISSIONER: Does that mean Mr Campbell will have to
37 be asked to come back?
38
39 MR BOLSTER: It does. Hopefully that would mean Friday
40 but, if not, it will be Tuesday.
41
42 THE COMMISSIONER: Tuesday, because Monday is a public
43 holiday, that is why he is saying that. Is that --
44
45 THE WITNESS: No problem.
46
47 THE COMMISSIONER: Thank you.

1 MR BOLSTER: Q. Mr Campbell, I think there has been some
2 evidence about a grouping of five councillors that caucused
3 after the 2012 election, not in any formal sense, but met
4 to discuss matters on council agenda after that 2012
5 election and you were one of that five. Who were the other
6 members of that loose, very loose, caucus of five?
7 A. Irene Simms, Tony Oldfield, Semra Batik-Dunbar.
8
9 Q. Mr Oldfield?
10 A. Yes, Tony Oldfield. Is that five?
11
12 Q. Was Mr Zraika in that five?
13 A. That's right, yes, he was.
14
15 Q. Prior to the election, had there been, again, a loose
16 arrangement between the five of you and some other
17 candidates about the way in which you would exchange
18 preferences at that election?
19 A. That's correct.
20
21 Q. That broader group would include some other candidates
22 obviously who were unsuccessful?
23 A. Well, one other.
24
25 Q. Was there any discussion or agreement reached amongst
26 the six of you about the way in which that group would
27 approach mayoral and deputy mayoral elections in the new
28 council?
29 A. There may have been some discussion before the
30 election. There certainly was after the election.
31
32 Q. After.
33 A. Yes.
34
35 Q. After the election did the loose caucus of five
36 discuss the approach to be taken at the election?
37 A. Yes, we did. There was a meeting very soon after the
38 election where we drew up an agenda for who our candidates
39 should be for the mayoral and deputy mayoral positions for
40 each of the four years.
41
42 Q. You, of course, are a successful Labor candidate, you
43 were endorsed by the Australian Labor Party; correct?
44 A. Yes.
45
46 Q. The only other successful ALP candidate for the
47 council election was Mr Zraika; correct?

1 A. Yes.
2
3 Q. You both came from separate wards?
4 A. Yes.
5
6 Q. Let me show you a document.
7 A. (Handed to witness).
8
9 Q. Is that a document that you and Mr Zraika prepared in
10 the lead-up to the mayoral election?
11 A. I prepared this in the lead-up to the second mayoral
12 election, the one for which Hicham Zraika was the
13 candidate.
14
15 Q. This is an agreement that was made before the first
16 election, but you recorded the terms of it in the lead-up
17 to the second election?
18 A. That's right, yes.
19
20 Q. Why was that?
21 A. Well, it was done verbally initially and there was
22 some concern amongst the group as to whether or not
23 Hicham Zraika would adhere to the agreement once he got to
24 be mayor.
25
26 Q. Right.
27 A. And I guess it was impressed upon me that this
28 was - there was a likelihood of him leaving the group, so
29 I thought I should put this in writing and ask him to sign
30 it before the election took place.
31
32 Q. I notice this is an agreement between you and he and
33 not the loose coalition of five.
34 A. That's right.
35
36 Q. Is that because you and he were the two Labor Party
37 councillors?
38 A. That's right. And it may also have had something to
39 do with the time available between when I decided to do
40 this and the actual mayoral election meeting.
41
42 Q. Did you provide a copy of that to the other members in
43 the group of five?
44 A. I think I did. I wouldn't swear to it, though.
45
46 Q. Just a little bit of history here. For the 2012
47 mayoral election, your group of five proposed Ms Simms as

1 the mayor and Mr Zraika as the deputy mayor; correct?
2 A. That's correct, yes.
3
4 Q. In 2013 Mr Zraika was proposed as the mayor and
5 Semra Batik-Dunbar was proposed as the deputy mayor;
6 correct?
7 A. That's correct.
8
9 Q. In 2014 you were a candidate for mayor and Irene Simms
10 was the candidate for deputy mayor?
11 A. Yes.
12
13 Q. And in 2015 it was Councillor Batik-Dunbar who was
14 proposed as mayor and you, again, were proposed as the
15 deputy mayor; correct?
16 A. Yes.
17
18 Q. In relation to each of those elections, the only
19 occasion where one of your group was successful, do I take
20 it, was the occasion in 2013 when Mr Zraika stood as mayor?
21 A. That's correct.
22
23 Q. What was the vote on that vote? How many votes did he
24 achieve for mayor?
25 A. It was five/five.
26
27 Q. The matter was determined on the drawing of lots; is
28 that correct?
29 A. That's right. Well, if I can explain that. Two names
30 were put into a box and the general manager pulled one out.
31
32 Q. On each of the other occasions, the mayoral elections
33 in 2012, 2014 and 2015, the numbers were tied five-all as
34 well?
35 A. In 2012, 2013 and 2014 for both the mayoral and
36 deputy mayoral elections it was five/five. In 2015 the
37 mayoral election, it was five/five.
38
39 Q. On each case the mayoral position was determined on
40 the drawing of lots; correct?
41 A. That's correct.
42
43 Q. On each occasion the deputy mayoral election was
44 determined on the drawing of lots?
45 A. Yes.
46
47 Q. Deputy Mayor Councillor Mehajer had the benefit of the

1 lot drawn for four straight years; is that correct?
2 A. That's correct, yes.
3
4 Q. I wanted to ask you about some discussions you had in
5 the lead-up to the 2015 mayoral election with Mr Oueik. Do
6 you recall having any discussions with him about the vote
7 in the lead-up to that election?
8 A. Did you say 2015?
9
10 Q. 2015, yes.
11 A. I am just trying to recall.
12
13 Q. Did you discuss with him who the candidate was from
14 the other group, the group of Mr Attie, Mr Mehajer,
15 Mr Oueik, Mr Zraika and Councillor Yang - not
16 Councillor Zraika, sorry, Councillor Yang?
17 A. Oh, yes. In relation to the other group, yes.
18
19 Q. What did he tell you about the way in which that group
20 would deal with the nomination of a mayor for the 2015
21 election?
22 A. I think it may have been after the election that we
23 had some good discussion about this.
24
25 Q. What did he tell you about the process that led to
26 Ms Lam being nominated as the mayoral candidate
27 in September 2015?
28 A. Well, their group met and I think it was in the
29 mayor's office, I might be wrong there, but I think it was
30 in the mayor's office and he basically said, "Oh, you
31 people are lucky on your side that you have one candidate.
32 In our group everyone wants to be mayor." He told me that
33 he had been - he had a nomination form signed by Le Lam for
34 himself. He said that Ned Attie was trying very hard to be
35 mayor and in fact he broke down and cried about it and --
36
37 Q. Was there any discussion about anyone else being
38 present in that group meeting in the lead-up to --
39 A. Actually, I asked him if Hicham Zraika had been
40 present at that meeting because I'd been told by
41 Irene Simms that Ron Oueik had told her that he was there.
42
43 Q. What did Mr Oueik tell you about that?
44 A. He shrugged his shoulders and laughed. He didn't use
45 any words.
46
47 Q. For that election you were put forward as the

1 deputy mayor candidate for the group?
2 A. That's correct.
3
4 Q. Correct?
5 A. Yes.
6
7 Q. Did Mr Zraika attend that vote?
8 A. No, he didn't. Before the meeting started he signed
9 my nomination form, so nominated me for the position, and
10 after the result of the mayoral election and before the
11 deputy mayoral election took place, he left the room rather
12 hastily.
13
14 Q. Was there a need for lots to be drawn in the case of
15 your election in 2015?
16 A. Yes, there was.
17
18 Q. There was still a deadlock of five-all?
19 A. No, four-all. Councillor Yang had - he was in the
20 room but he refrained from voting.
21
22 Q. Did you have any discussion with Councillor Yang in
23 the lead-up to the 2015 mayoral and deputy mayoral
24 elections?
25 A. I vaguely recall that I did. Certainly at an earlier
26 date I understood that he was disgusted with Salim Mehajer
27 and wouldn't be supporting anything to do with him.
28 Ron Oueik told me in the same conversation that I referred
29 to a minute ago that Steve Yang had told their group well
30 in advance that he wouldn't be voting for Salim Mehajer in
31 that election. I think it might have been one or two weeks
32 of advance of the votes that ran here.
33
34 Q. Do you recall when you had that discussion with
35 Mr Yang?
36 A. The discussion that I had with him was more about the
37 vote coming up for the council carpark, although it was
38 a bit more general than that.
39
40 Q. Did he tell you at any stage prior to the mayoral
41 election that he wasn't supporting Mr Mehajer?
42 A. I don't recall him saying that but I think he probably
43 did, but I can't swear to that.
44
45 Q. Is it fair to say that you and he had a number of
46 discussions about the way in which Mr Yang perceived
47 Mr Mehajer --

1 A. Yes.
2
3 Q. -- after the publicity and the dramas surrounding the
4 wedding?
5 A. Yes, we did.
6
7 Q. Is it fair to say that the view that he expressed to
8 you of Mr Mehajer was essentially a negative view?
9 A. Yes.
10
11 Q. And that he no longer supported Mr Mehajer for
12 deputy mayor?
13 A. Yes.
14
15 Q. Now, the next thing --
16 A. Could I just clarify that?
17
18 Q. Yes.
19 A. Perhaps I said "yes" a little hastily. I don't think
20 that - I don't think - I can't remember when I became aware
21 that Salim Mehajer would be the candidate for the
22 deputy mayor, so I'm not quite sure of the sequence in
23 which that happened or I ascertained his attitude towards
24 it.
25
26 Q. When Mr Zraika left the chamber at the mayoral and
27 deputy mayoral election, did you discuss the matter with
28 him afterwards?
29 A. Yes. He left the chamber after the mayoral election,
30 before the deputy mayoral election.
31
32 Q. Before the deputy mayoral election.
33 A. Immediately afterwards, after the meeting, I don't
34 think I did.
35
36 Q. When did you raise the issue with him?
37 A. I don't recall raising it with him directly, actually.
38
39 Q. I wanted to --
40 A. We certainly have - it has come up since then, but
41 probably not on that occasion.
42
43 Q. Have you confronted him about it and, if so, when?
44 A. I guess I confronted him about it insofar as I sought
45 his expulsion from the Labor Party for breach of the
46 Labor Party rules, and so I outlined everything about it in
47 writing and that went along to a tribunal hearing which did

1 decide to expel him.
2
3 Q. Right.
4 A. So there certainly was some discussion on that
5 occasion.
6
7 Q. Is there a provision in the ALP rules that required
8 him to vote in support of and not abstain in respect of
9 another Labor candidate who was standing for an office such
10 as deputy mayor or mayor?
11 A. That's a fair summary of it. A crucial piece of
12 evidence in that hearing was that paper which demonstrated
13 that there was an agreement in place, a comprehensive
14 agreement.
15
16 Q. I want to ask you some questions now.
17
18 THE COMMISSIONER: This document, is it in the evidence?
19
20 MR BOLSTER: It is not yet. I tender that document.
21
22 THE COMMISSIONER: Are you doing that now?
23
24 MR BOLSTER: Yes.
25
26 THE COMMISSIONER: Does everyone have a copy?
27
28 MR WHEELHOUSE: Yes.
29
30 MR McNALLY: Yes.
31
32 MR WATSON: And the attachment?
33
34 MR BOLSTER: Can I tender with it the nomination form
35 dated 25 September 2015 in which Mr Zraika nominates
36 Mr Campbell for that position.
37
38 Q. That is the case, isn't it, Mr Campbell?
39 A. For nomination, yes.
40
41 THE COMMISSIONER: Do we have that?
42
43 MR BOLSTER: Yes.
44
45 THE WITNESS: I might add that was done immediately before
46 the meeting started.
47

1 THE COMMISSIONER: I see. So you are adding in - the
2 front page is the same?

3

4 MR BOLSTER: Yes.

5

6 THE COMMISSIONER: How do we describe this document? The
7 document signed by Hicham Zraika and George Campbell dated
8 25 September 2013 concerning circumstances prior to the
9 mayoral election in September 2012 and the Auburn City
10 Council nomination form for George Campbell proposed by
11 Hicham Zraika, stamped 24 September 2015, together will be
12 Exhibit GEN#6.

13

14 **EXHIBIT GEN#6 DOCUMENT SIGNED BY HICHAM ZRAIKA AND**
15 **GEORGE CAMPBELL DATED 25/09/2013 CONCERNING CIRCUMSTANCES**
16 **PRIOR TO THE MAYORAL ELECTION IN SEPTEMBER 2012 AND THE**
17 **AUBURN CITY COUNCIL NOMINATION FORM FOR GEORGE CAMPBELL**
18 **PROPOSED BY HICHAM ZRAIKA STAMPED 24/09/2015**

19

20 MR BOLSTER: Q. Do you have the agreement there in front
21 of you?

22 A. Not at the moment.

23

24 Q. Have a look at numbered paragraph 1. You will see
25 there a reference to a commitment about not voting to amend
26 the LEP unless there was an overwhelming public interest to
27 do so.

28 A. Yes.

29

30 Q. Was any particular planning proposal contemplated by
31 you - by you - when you came to prepare that note or was
32 that a general Auburn-wide matter that you wanted to set
33 out in writing?

34 A. This was a decision of the Auburn Municipal Assembly
35 held by the Labor Party which was attended by those
36 candidates. People have to be candidates on a local party
37 ticket for that election. The purpose of it was to
38 demonstrate what Labor candidates stood for and to ensure
39 that Labor candidates were all saying the same thing.

40

41 Q. So it is pre-election policy --

42 A. Pre-election policy.

43

44 Q. -- that you sought to confirm in this document?

45 A. Yes.

46

47 Q. I want to take you back in time to the --

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THE COMMISSIONER: Are you done with that document?

MR BOLSTER: I am done with that document.

THE COMMISSIONER: Thank you.

MR BOLSTER: Q. I want to take you back in time to a consideration of one of the issues that arose in relation to the John Street, Lidcombe, property contract. There was a request by Councillor Mehajer for a portion of the \$650,000 deposit to be returned to him; do you recall that?

A. Yes, I do.

Q. My recollection from the documents is that the stated reason in the letter from him was that he needed the money to comply with the planning requirements that had been previously imposed upon the applicant by council --

A. Yes.

Q. -- in earlier resolutions?

A. Yes.

Q. Do you recall there was a resolution that imposed a 2000 square metre supermarket on the development?

A. Yes.

Q. Originally when that request came to council, what was Mr Zraika's position in relation to that request and that resolution? Did he vote with your loose group of five or did he vote in support of Mr Mehajer?

A. He voted with our group of five to reject that request.

Q. After that meeting there was a dinner in the Lang room which is fairly customary after council meetings; is that correct?

A. That's correct.

Q. Every council meeting, you all get together and have a bite and a catch-up?

A. Yes, the room next-door.

Q. What happened between Mr Zraika and Mr Mehajer after that meeting that you observed, that you saw?

A. I recall that Councillor Zraika sat either next to me or very close to me at dinner and left pretty quickly and

1 later on, maybe 30, 40, 45 minutes, something like that,
2 Hicham Zraika and Salim Mehajer were seen walking together
3 past the door of the Jack Lang room, talking.

4

5 Q. Did you conclude from that that they had spent that
6 time discussing something?

7 A. Yes.

8

9 Q. Subsequently there was a rescission - I will go back
10 a step. The request was rejected by council?

11 A. That's right.

12

13 Q. The vote in that respect, do you recall what the
14 margin was?

15 A. I can't remember exactly. If you have the minutes
16 handy, that will tell you.

17

18 Q. It wasn't unanimous, it was a closely --

19 A. Oh, yes. Yes, indeed.

20

21 Q. Subsequently there was a rescission motion moved by
22 a number of councillors; correct?

23 A. Yes.

24

25 Q. Before that rescission motion came to a vote, did you
26 have a discussion with Mr Zraika about that?

27 A. Yes. Fairly soon after the original vote, not the
28 same night but maybe one or two days later, he told me that
29 he was supporting rescission and we had a little discussion
30 about that and he gave his reason.

31

32 Q. What was his reason?

33 A. Well, his reason was he thought that we were wrong to
34 have discriminated against Councillor Mehajer because he
35 was a councillor.

36

37 Q. All right. I wanted to ask you some questions about
38 the councillor briefing in June 2014.

39 A. Sorry, might I just add?

40

41 Q. Yes.

42 A. With that rescission motion, that was successful
43 because Hicham Zraika changed his vote.

44

45 Q. So the only change from the original vote which went
46 in the way of the loose group of five --

47 A. Yes.

1
2 Q. -- was that it was now a loose group of four?
3 A. Yes.
4
5 Q. And someone voted the other way and that was
6 Mr Zraika; is that correct?
7 A. Yes, he was the mayor.
8
9 Q. Thank you for that. I wanted to turn now to the issue
10 of --
11 A. Sorry, he wasn't the mayor.
12
13 Q. Sorry?
14 A. I just made a mistake. He wasn't the mayor.
15
16 Q. I wanted to turn now to the issue of Berala and the
17 councillor briefing in June 2014 in the Jack Lang room.
18 I think you have already given some evidence about what you
19 saw on the table when the maps were prepared in your
20 statement.
21 A. Yes.
22
23 Q. Did you discuss your agreement with Mr Zraika when you
24 saw those maps?
25 A. 2014, I think I pretty well had given up on
26 Councillor Zraika being part of that group.
27
28 Q. You didn't discuss it with him?
29 A. I don't recall discussing it with him in - you said
30 June 2014?
31
32 Q. Yes.
33 A. No, I'd had discussions with him at earlier times, but
34 I don't recall discussing it with him then.
35
36 Q. Were you aware of the agreement that's in evidence
37 between he and Mr Oldfield about the way in which Mr Zraika
38 said he would deal with any zoning proposals in the
39 Berala town centre?
40 A. Yes. Tony Oldfield told me about that around about
41 the time that Hicham Zraika was elected mayor; he told me
42 that he had such an agreement. I hadn't seen it in writing
43 until very recently.
44
45 Q. Do I take it you didn't confront Mr Zraika about
46 either the Oldfield agreement or the terms of your
47 agreement, at any stage, once it became clear that there

1 was to be a rezoning in York Street that might benefit him?
2 A. No. We had discussed it on previous occasions but not
3 at this stage.

4
5 Q. When was the last time you discussed the Berala
6 rezoning with Councillor Zraika?

7 A. Well, the first time the Berala Village study report
8 came to council - and I just forget when that was. It
9 would have been in early 2013.

10
11 THE COMMISSIONER: There was one in 2012, March 2012.

12
13 MR BOLSTER: March 2012.

14
15 THE WITNESS: I wasn't on council at that time, so I mean
16 the first time after the 2012 election.

17
18 MR BOLSTER: Q. What was the substance of your discussion
19 with Mr Zraika at that time?

20 A. The group of five met, as we did before each council
21 meeting in those days, and --

22
23 Q. Where did you have those meetings?

24 A. In the atrium, just down here.

25
26 Q. That is on the ground floor underneath the mayor's
27 office, where you make that entry into council?

28 A. Yes, that's right.

29
30 Q. Please continue.

31 A. What was I saying?

32
33 Q. The substance of the discussions between the five when
34 you discussed Berala.

35 A. Yes. Well, when it was coming up, our group was of
36 the opinion that we should support the staff report, the
37 Berala Village study report, and I think there were very
38 strong reasons to do that. Councillor Oldfield I think
39 made the point very strongly, he always spoke very strongly
40 about that, and Hicham Zraika expressed the view that he
41 would have to be out of the chamber because he had
42 a conflict of interest, and I expressed the view that,
43 "This has got nothing to do with the area where you live,
44 it's well away from it", and I tried to persuade him it was
45 not necessary for him to declare a conflict of interest, he
46 didn't have one, and he should be in the chamber to support
47 our policy on Berala.

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Q. What did he say about that?

A. Basically, "Oh well, you know, best be on the safe side", something like that, and it did come up again probably the next occasion that it came to council; certainly on a second occasion we had a similar conversation.

Q. Let me ask you this: when you went down to Bowral and you were handed out the maps of the Berala town centre and asked to colour in what you perceived should be the relevant zonings for the relevant areas, did you take part in that process?

A. Well, I was in the room. I would have taken part in any discussion that took place, but I'm not absolutely certain, but I don't recall putting the coloured pencils on the paper.

Q. Did you gain any appreciation at that time that there was a move to upzone the area around York Street, Berala?

A. I think by then we knew what they were up to.

Q. When you say "they", who do you mean?

A. The developer group.

Q. Who precisely?

A. Oh, certainly Ned Attie, Ronney Oueik, Hicham Zraika. Salim Mehajer wasn't in attendance on that occasion at Berala, but that group had generally voted for each others' interests.

MR WATSON: I object to that. The implication is that Mr Attie is in that, but this witness has got to put it on the table.

MR BOLSTER: I accept that and I think it needs to be spelt out clearly, Mr Campbell.

Q. At that meeting was there discussion about a B2 zoning or an R4 zoning, or any form of upzoning for York Street, Berala? I think you need to be specific. Was it specifically discussed?

A. I don't think that B2 was discussed at that meeting, but I couldn't swear to it because a lot of ideas were thrown around, but I don't recall it being discussed.

Q. Did you discuss with any of the other councillors what

1 they put on their maps?

2 A. I don't think I saw their maps after they coloured
3 them in. I think they were collected.

4

5 Q. Isn't this possible, that you didn't gain
6 an appreciation of York Street as being a candidate for
7 rezoning or upzoning until the workshop in June when staff
8 reported on the results of the Bowral workshop?

9 A. That'd be correct. Certainly in relation to B2, that
10 was never on the agenda at that stage.

11

12 Q. The first you heard of B2 being on the agenda for
13 York Street was the June workshop. Are you sure about
14 that?

15 A. The June workshop here, yes, in the council building.

16

17 Q. Yes. In a council report that was prepared for
18 the July meeting in which the issue of the zoning for
19 Berala was finally determined --

20 A. Yes.

21

22 THE COMMISSIONER: July?

23

24 MR BOLSTER: July 2014.

25

26 Q. There is a reference to that workshop involving
27 further discussion and verbal amendments being made to the
28 plan. Do you recall any amendments being made to the plan
29 by members of council at the June workshop in 2014?

30 A. In June, yes.

31

32 Q. You do?

33 A. In June, yes, here.

34

35 Q. Who suggested amendments to the zoning at that
36 meeting?

37 A. Well, actually, I'm pretty sure it was at that
38 briefing in June that I first saw the map - you know, the
39 large-scale map there with B2 for York Street.

40

41 Q. Was there discussion from councillors about B2 being
42 an option, or being the preferred option, or being dictated
43 to as the option?

44 A. It was presented to us by the staff on a large map and
45 I think my understanding was that that arose out of the
46 Bowral discussions.

47

1 Q. You are aware, though, that the staff didn't propose
2 B4 for York Street in their --
3 A. B2.
4
5 Q. I am sorry, B2 for York Street in their papers
6 prepared for that briefing?
7 A. If it wasn't at the June briefing then it must have
8 been on the table immediately before the July meeting.
9
10 Q. I think we should clarify this. Can you please have a
11 look at the opening bundle?
12
13 THE COMMISSIONER: The opening bundle, not the Berala
14 bundle?
15
16 MR BOLSTER: Yes, the opening bundle.
17
18 THE COMMISSIONER: I have that here, yes, Exhibit 01.
19
20 MR BOLSTER: I am sorry, Commissioner, I don't have my
21 copy.
22
23 THE COMMISSIONER: You can use mine.
24
25 MR BOLSTER: Thank you. I am indebted.
26
27 THE COMMISSIONER: I think it is on the website, so I will
28 just --
29
30 MR BOLSTER: Q. If you could go, please, Mr Campbell, to
31 pages 71 and 72. You will see page 71 was the suggested
32 zoning from staff?
33 A. Mmm-hmm.
34
35 Q. That was at R4 for York Street?
36 A. Yes.
37
38 Q. The councillor workshop results, if you go back to
39 page 69, you will see there that three people had marked B2
40 for York Street; correct? Do you see the blue rectangle on
41 the south --
42 A. Yes. It doesn't tell me how many people marked it,
43 but I see --
44
45 Q. You see by the colour of it, Mr Campbell, when you
46 match that colour to the B2 table immediately to the right
47 of it --

1 A. Oh, I see, yes. Yes.
2
3 Q. And it matches the colour, the number 3. Do have you
4 that?
5 A. Yes, I do.
6
7 Q. The purpose of my question is this: the staff were
8 recommending R4, three councillors had recommended B2 --
9
10 THE COMMISSIONER: Recommending R4 where?
11
12 MR BOLSTER: For the area south of York Street.
13
14 THE COMMISSIONER: Right.
15
16 MR BOLSTER: That is the only land I am talking about.
17
18 Q. Staff had recommended R4. Three councillors, so the
19 report said, had marked down B2 for that same area.
20 A. Yes.
21
22 Q. The subsequent report to council put forward B2 for
23 that area?
24 A. Yes.
25
26 Q. Council staff say that there were discussions and
27 verbal amendments made to the plan at the June workshop?
28 A. Yes.
29
30 Q. Do you recall what those discussions involved?
31 A. At the June workshop?
32
33 Q. Yes. Who made any changes to the staff recommendation
34 at the June workshop?
35 A. My recollection as to times isn't perfect, but I do
36 think that B2 was on the map presented by the staff at the
37 June workshop. If I'm wrong about that then it was
38 certainly done at a briefing before the July meeting.
39
40 Q. They were certainly recommending it --
41 A. Yes.
42
43 Q. -- for the July meeting, take that. It was completely
44 established that it was for the land south of York Street.
45 A. Yes. My recollection is I saw it on the map on the
46 table.
47

1 THE COMMISSIONER: The map at page 69 is the
2 Bowral workshop, right, February?
3
4 MR BOLSTER: At 69 is the result of the Bowral workshop.
5
6 THE COMMISSIONER: What that shows is two councillors
7 contending for a B2 south of York Street.
8
9 MR BOLSTER: Three.
10
11 THE COMMISSIONER: Three, is it?
12
13 MR BOLSTER: Yes.
14
15 THE COMMISSIONER: I am not quite following the shading
16 there. You say it is three.
17
18 MR BOLSTER: No, it's three. I think Ms Cologna's
19 evidence is that it's three and I don't think there is any
20 issue about that.
21
22 Q. At the workshop the staff were presenting R4; by July
23 they were putting B2.
24 A. Yes.
25
26 Q. Were they directed to do that by anything that
27 a councillor said at any briefing, either in June or in
28 advance of the July council meeting, that you observed?
29 A. I don't recall anyone saying that it was B2, that it
30 should be B2, before I actually saw it on the map. It
31 looked like being and people seemed to be pushing for B4.
32
33 MR BOLSTER: There is another matter I would like to just
34 deal with briefly.
35
36 THE COMMISSIONER: Sure, go ahead.
37
38 MR BOLSTER: It might take five to 10 minutes, but I think
39 in view of what is going to happen with the private
40 hearings tomorrow, some people need to know about this.
41
42 THE COMMISSIONER: Yes, all right, go on.
43
44 MR BOLSTER: Q. You refer in your statement to
45 conversations that you had with a Mr Mustafa Hamid;
46 correct?
47 A. Yes.

1
2 Q. Since you made your statement have you looked for
3 a note that you made at the time you had that conversation?
4 A. Yes.
5
6 Q. Could I show you this document.
7 A. (Handed to witness)
8
9 MR BOLSTER: There is a working copy for the Commissioner
10 and I show you the original.
11
12 THE COMMISSIONER: Thanks.
13
14 MR BOLSTER: Q. Mr Hamid is an officer of the
15 Bhanin El Minieh Association?
16 A. Yes, he's the head of it.
17
18 Q. And you had a conversation with him in March of this
19 year; correct?
20 A. Yes, I did.
21
22 Q. Did you make this note at the time of that
23 conversation?
24 A. When I got home I did.
25
26 Q. This was a face-to-face meeting with him?
27 A. Yes.
28
29 Q. Who organised the meeting?
30 A. Oh, I was at a yoga class at the Auburn Community
31 Centre and he was involved in some other function outside.
32 He was over at the barbecue and I went and said hello and
33 the conversation started there; so there was no formal
34 meeting.
35
36 Q. He is involved in the Labor Party organisation, is
37 that fair to say?
38 A. No, he's not.
39
40 Q. He is a Labor Party, Labor supporter?
41 A. I understand that in the Liberal/Labor spectrum he's
42 at the Labor end.
43
44 Q. You have known him for a number of years; correct?
45 A. I've seen him from time to time, yes.
46
47 Q. Have you seen him in a political context at meetings,

1 at rallies, handing out how to votes, electioneering on
2 behalf of people?
3 A. No, I haven't, actually.
4
5 Q. If you just go through the note with me, LMA is
6 a reference to the Lebanese Muslim Association?
7 A. That's correct.
8
9 Q. And Mr Samier Dandan is a representative of that
10 organisation?
11 A. He's the president.
12
13 Q. He is known to you?
14 A. I've never met him but I've come close to it.
15
16 Q. Do I take it that your note says that Mr Dandan came
17 to Mr Hamid and said that the Association had a \$100,000 to
18 spend in Auburn if Ronney Oueik is the candidate because
19 Labor failed to support Hicham?
20 A. Yes.
21
22 Q. Steve Yang was going to run against Hicham. Mr Yang,
23 of course, is a Liberal councillor; correct?
24 A. Yes.
25
26 Q. Is he either the president or the secretary of the
27 Lidcombe Branch of the Liberal Party?
28 A. I have been told that he is president of the
29 Lidcombe Branch.
30
31 Q. Did he tell you that the Libs wanted Ronney to run
32 because of Luke Foley's candidature?
33 A. Yes, and Ronney Oueik has told me that also.
34
35 Q. And Mr Oueik has a higher profile in the Auburn state
36 electorate than Mr Yang would have; correct?
37 A. Very much higher, he was mayor at the time.
38
39 Q. I think that Auburn, as a seat, is considered as one
40 of the most Labor seats in the State; correct?
41 A. Yes.
42
43 Q. Was it your understanding from this conversation that
44 Mr Oueik was seen as a better candidate for the Liberal
45 Party than Mr Yang?
46 A. Yes. Well, Ronney Oueik told me himself that if
47 Barbara Perry or Hicham Zraika had been the Labor Party

1 candidate then Steve Yang would be the Liberal candidate,
2 but when Luke Foley became the candidate, he had to come
3 and take him on because he was Leader of the Opposition.
4

5 Q. You will see here the next line:
6

7 *Mustafa will confirm B4 to R4 was*
8 *punishment.*
9

10 What were his words in that regard?

11 A. He told me that - he was talking about the
12 South Auburn planning proposal.
13

14 Q. Yes.

15 A. There was - it's a long story but there was a point at
16 which the proposal was that the eastern side of Auburn Road
17 between Beatrice Street and Helena Street would be zoned B4
18 and in fact this was approved by council and it went to
19 gateway and gateway approved it and it came back to
20 council. And when it came back to the council, to cut
21 a long story short, it was amended on a motion by
22 Hicham Zraika that B4 only go down to a certain
23 length - I just forget the number - I think down to about
24 90.
25

26 Q. Bhanin is about two blocks past 90; is that correct?

27 A. Yes, it would stop short of Bhanin and R4 would extend
28 for the rest of the street, so he was referring to that,
29 that they were being punished for not falling into line
30 against Luke Foley.
31

32 Q. When you say "not falling into line", what were his
33 exact words about what the punishment was for?

34 A. That we were being punished - as far as I can
35 remember, that we were being punished for not supporting
36 Ronney Oueik in the state election, words to that effect.
37

38 MR WATSON: I just want to alert my learned friend that
39 I do object to that next line being read out or there being
40 any reference to that in public. It's just too awful and
41 too poorly --
42

43 MR BOLSTER: Yes, I don't read the next line. I can
44 perfectly understand where Mr Watson is coming from at this
45 stage.
46

47 MR WATSON: Yes, of course.

1
2 MR BOLSTER: At this stage, but I have been --
3
4 THE COMMISSIONER: You are just going to have this marked
5 for identification for the time being, I take it?
6
7 MR BOLSTER: For the time being, yes.
8
9 MR WATSON: I may have interrupted you; I did that as
10 a caution.
11
12 MR BOLSTER: No, I understand. I understand, thank you.
13
14 Q. If you look at the next line beginning with the word
15 "Hicham", do you recall what the conversation was there?
16 A. Well, simply what it says there, that he believed that
17 Hicham Zraika wanted to maximise the vote for Ronney Oueik
18 in order to punish the Labor Party for not selecting him as
19 the candidate, as the Labor candidate.
20
21 Q. Did he stand as the Labor candidate?
22 A. Hicham Zraika?
23
24 Q. Yes.
25 A. No, he didn't.
26
27 THE COMMISSIONER: Can I just interrupt you? Are you
28 proposing to call Mr Hamid?
29
30 MR BOLSTER: Mr Hamid has been spoken to. We have taken
31 a very draft statement from him and he is expected to give
32 evidence on Tuesday of next week to this effect.
33
34 THE COMMISSIONER: Right, okay.
35
36 MR BOLSTER: Q. The next sentence or the next four lines
37 beginning "Mustafa said", I take it that is a fairly direct
38 quotation of what he told you?
39 A. It would be very close to his precise words, or
40 something of it.
41
42 MR BOLSTER: Mr Commissioner, I note the time. I may have
43 some further questions for Mr Campbell when we get back to
44 his evidence.
45
46 THE COMMISSIONER: All right.
47

1 MR BOLSTER: Could this document be marked for
2 identification?

3
4 THE COMMISSIONER: Yes. That will be MFI-5. This is
5 Mr Campbell's note?

6
7 MR BOLSTER: Yes, it is.

8
9 THE COMMISSIONER: Mr Campbell's handwritten note of
10 15 March 2016 will be MFI-5.

11
12 **MFI-5 MR CAMPBELL'S HANDWRITTEN NOTE OF 15/03/2016**

13
14 THE COMMISSIONER: This is the original, is it,
15 Mr Campbell?

16
17 THE WITNESS: Yes.

18
19 THE COMMISSIONER: Perhaps counsel assisting can keep the
20 original.

21
22 MR BOLSTER: Yes, I think that's safe - I hope. I have
23 had it for a number of days now and haven't lost it.

24
25 THE COMMISSIONER: That is MFI-5. You are excused for the
26 day, thank you, Mr Campbell. You are not released from the
27 summons to appear, so you will come back either on Friday
28 afternoon or Tuesday. It could be Friday afternoon, we
29 will let you know. Thank you.

30
31 **<THE WITNESS WITHDREW**

32
33 THE COMMISSIONER: Just so that I put this on the record,
34 there have been some statements tendered where parts of
35 them have not been read by counsel assisting. I would just
36 ask to make sure that when they are put on the website,
37 that the parts that have not been read are redacted.
38 I think you were interrupted when you were tendering the
39 Water Street bundle. Do you still want to tender that?

40
41 MR BOLSTER: I do, yes.

42
43 THE COMMISSIONER: The Water Street bundle can be marked
44 as exhibit WS1

45
46 **EXHIBIT #WS1 BUNDLE OF DOCUMENTS RELATING TO WATER STREET**

47

1 THE COMMISSIONER: The inquiry is temporarily, for
2 a restricted purpose, going into private hearings tomorrow,
3 or the hearings tomorrow will be in private, and the public
4 hearings will recommence not before but probably at 11am
5 Friday.

6
7 MR BOLSTER: Yes.

8
9 THE COMMISSIONER: And the order is being worked out.

10
11 MR BOLSTER: It has been sorted out.

12
13 THE COMMISSIONER: All right. We will adjourn until
14 9.30am tomorrow.

15
16 **AT 4.12PM THE COMMISSION WAS ADJOURNED TO 9.30AM ON**
17 **THURSDAY, 9 JUNE 2016 IN PRIVATE SESSION**

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