

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 Friday, 3 June 2016 at 10.00am
(Day 4)

1 THE COMMISSIONER: There is another appearance?
2
3 MR S DUGGAN: Commissioner, my name is Duggan, with
4 authorisation to appear for Mr Mehajer.
5
6 THE COMMISSIONER: Authorisation is granted. Thank you,
7 Mr Duggan. Mr Cheshire, Mr Francis is unwell?
8
9 MR CHESHIRE: He is, yes, Commissioner. My instructing
10 solicitor and I have formed that firm view. My instructing
11 solicitor is with him at the moment trying to get some
12 antibiotics.
13
14 THE COMMISSIONER: I still think in relation to the
15 submission you have made that we got last night, I should
16 expose my thinking on that.
17
18 There are a number of matters where I agree with both
19 Mr Wheelhouse and Mr Zraika's submission and also in
20 relation to your submission, particularly in relation to
21 the legislative provisions.
22
23 MR CHESHIRE: Yes.
24
25 THE COMMISSIONER: We may as well deal with that.
26 Ultimately, I'll tell you my current state of thinking as
27 to the approach we should take. At that point, if
28 Mr Francis is unwell, he is unwell.
29
30 MR CHESHIRE: Yes.
31
32 THE COMMISSIONER: And we will have to move on with
33 something else if he is unavailable.
34
35 MR CHESHIRE: Yes. I have asked my instructing solicitor
36 to keep me informed and I will let you know,
37 Mr Commissioner, if I hear anything.
38
39 MR COMMISSIONER: Yesterday afternoon we received a
40 submission from Mr Wheelhouse SC and Mr Zreika on behalf of
41 Mr Oueik and we also received last night a submission from
42 Mr Cheshire SC on behalf of Mr Francis. Mr Bolster, do you
43 wish to make some submissions?
44
45 MR BOLSTER: I have circulated amongst my friends at the
46 Bar table some submissions. I have a copy for you,
47 Mr Commissioner.

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THE COMMISSIONER: I have a copy of your submissions. Do you want to say anything orally?

MR BOLSTER: No, I don't.

MR ROBSON: Before my learned friend starts, could I make a comment with your leave in relation to Mr Brisby?

We haven't put a submission on, but our position will be guided to some extent by your findings in relation to these matters. I wish to put that formally because one warmly embraces the submissions made on behalf of the other witnesses but we will be guided by the Commissioner.

MR HOPPER: I take the same position, Commissioner.

MR WHEELHOUSE: As do I, Commissioner.

THE COMMISSIONER: I will just read out my determination about how I propose to proceed regarding the submissions made by Mr Wheelhouse SC and Mr Zreika relating to privilege made on behalf of Mr Oueik and Mr Cheshire SC and Counsel Assisting relating to the same matter.

This is a public inquiry set up under statute. Section 438U of the Local Government Act provides the power to the Minister to appoint a Commissioner to hold a public inquiry into matters that are described in section 438U(1)(a) and (b). The subsections provide as follows:

(a) any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council; and

(b) any act or omission of a member of a council, any employee of a council or any other person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.

1
2 Pursuant to section 438U(4) of the Local Government Act,
3 the provisions of the Royal Commissions Act 1923 apply to
4 the inquiry and in respect to any witness or persons
5 summoned to appear.
6

7 Importantly, section 13 and Division 2 of Part 2 of
8 the Royal Commissions Act do not apply to this inquiry.
9 I say "importantly" because section 17(1) of the
10 Royal Commissions Act, which is in Part 2 of Division 2,
11 provides as follows:
12

13 *(1) A witness summoned to attend or*
14 *appearing before the commission shall not*
15 *be excused from answering any question or*
16 *producing any document or other thing on*
17 *the ground that the answer or production*
18 *may criminate or tend to criminate the*
19 *witness, or on the ground of privilege, or*
20 *on the ground of a duty of secrecy or other*
21 *restriction on disclosure, or on any other*
22 *ground.*
23

24 Further, section 17(2) of the Royal Commissions Act
25 provides:
26

27 *An answer made, or document or other thing*
28 *produced by the witness to or before the*
29 *commission shall not, except as otherwise*
30 *provided in this section, be admissible in*
31 *evidence against that person in any civil*
32 *or criminal proceedings.*
33

34 As stated, these provisions do not apply to this public
35 inquiry.
36

37 Section 11 of the Royal Commissions Act, however,
38 does. It is relevantly in the following terms under the
39 heading "Answers and documents". Section 11(1):
40

41 *A witness summoned to attend or appearing*
42 *before the commission shall not be*
43 *entitled, except as otherwise provided in*
44 *this section and section 127, (Religious*
45 *confessions) of the Evidence Act 1995, to*
46 *refuse:*
47

1 (a) to be sworn or to make an affirmation,

2
3 (b) to answer any question relevant to the
4 inquiry put to the witness by any of the
5 commissioners,

6
7 (c) to produce any document or other thing
8 in the witness's custody or control which
9 the witness is required by the summons to
10 produce.

11
12 (2) Nothing in this section shall make it
13 compulsory for any witness:

14
15 (a) to answer any question or produce any
16 document or other thing if the witness has
17 a reasonable excuse for refusing,

18
19 (b) to disclose any secret process of
20 manufacture.

21
22 (3) A witness summoned to attend or
23 appearing before the commission shall have
24 the same protection, and shall in addition
25 to the penalties provided by this Act be
26 subject to the same liabilities in any
27 civil or criminal proceeding as a witness
28 in any case tried in the Supreme Court.
29

30 Clearly the text of section 11(2) of the Royal Commissions
31 Act indicates that I cannot compel a witness to answer a
32 question if the witness has a "reasonable excuse" for
33 refusing. The term "reasonable excuse" is defined in
34 section 4 of the Act in the following terms:

35
36 "Reasonable excuse" in relation to any act
37 or omission by a witness or a person
38 summoned as a witness before a commission
39 means an excuse which would excuse an act
40 or omission of a similar nature by a
41 witness or a person summoned as a witness
42 before a court of law.
43

44 Among the matters that I would interpret the term
45 "reasonable excuse" to cover would be the circumstances
46 where a witness is entitled to claim a privilege against
47 self-incrimination. That is, where they can satisfy me

1 that the answer to a question could expose them to a real
2 risk based on reasonable grounds of being prosecuted or
3 convicted of a criminal offence.
4

5 As to section 11(3), when it talks about witnesses
6 having the same protection as a witness in a case tried in
7 the Supreme Court, or being subject to the same liabilities
8 in civil or criminal proceedings as a witness in the
9 Supreme Court, it may be that this section is directed to
10 such matters as defamation and perjury. Perhaps when it
11 talks about protection, it also includes the privilege
12 against self-incrimination. It is not a section, however,
13 that provides any statutory warrant for me to make up
14 procedure where I could purport to give some kind of
15 immunity equivalent to a certificate under section 128 of
16 the Evidence Act.
17

18 In summary, in my view, the position is this: if
19 I become satisfied upon challenge by a witness that they
20 have a reasonable excuse for not answering a question, such
21 that it might incriminate them, I cannot compel the witness
22 to answer. If they choose to answer in such circumstances,
23 however, it is important to note that section 17(2) of the
24 Royal Commissions Act does not apply to their answer.
25

26 Further, if I am not satisfied a reasonable excuse is
27 exists for not answering a question, section 20 of the
28 Royal Commissions Act does apply, as does section 438U(3)
29 of the Local Government Act.
30

31 That is all I intend to say for that determination.
32 I am going to move on to some specific matters relating to
33 the submission made on behalf of Mr Oueik and then
34 Mr Francis.
35

36 Dealing with your submission first, Mr Wheelhouse,
37 I think what I have just said really means that we are in
38 agreement in relation to (a) of your submission.
39

40 In relation to (b) and (c), I do not think we need to
41 make any ruling today about the matters you have raised
42 about the development at 14-22 Water Street, Lidcombe, but
43 I will just expose my thinking about that now so you can
44 take it on board and know what it is.
45

46 In relation to subparagraphs (b) and (c) of the
47 submission made on behalf of Mr Oueik, my current thinking

1 is this: the Minister, when ordering this inquiry, was
2 bound by the provisions of section 438U, or the inquiry is
3 instructed as to what it can do by that provision and the
4 terms of reference which flow from section 438U of the
5 Local Government Act.
6

7 Unless someone convinces me otherwise, and there may
8 not be an attempt to, my view is the inquiry cannot
9 lawfully inquire into the cause of a roof coming off a
10 building built or developed by a corporate entity. By that
11 I mean it is a very unfortunate fact that a roof of an
12 apartment block came off, which was obviously a very
13 distressing event for the owners and residents, but I am
14 presently of the view, because of the provisions of
15 section 438U of the Local Government Act, the inquiry
16 cannot inquire into, for example, whether or not the roof
17 of that building came off because of any alleged breach of
18 the Building Code of Australia.
19

20 My current view is that I could not lawfully make any
21 finding about that. My present view would be that Mr Oueik
22 could not be relevantly asked questions about that issue.
23

24 Equally, as an example, the issue of whether or not an
25 insurer has or has not properly denied indemnity in
26 relation to the event cannot be inquired into by this
27 inquiry.
28

29 What is relevant to the inquiry, in the sense that it
30 falls directly within section 438U and the terms of
31 reference, is what members of council staff may or may not
32 have done in relation to the development at
33 14-22 Water Street. That is a very distinct matter as to
34 what BBC Developments did or did not do.
35

36 MR WHEELHOUSE: I agree with that. I couldn't make any
37 submission contrary to that.
38

39 THE COMMISSIONER: That is my current thinking in relation
40 to (b) and (c) of your submission.
41

42 MR WHEELHOUSE: In relation to the Station Street matter,
43 there is the --
44

45 THE COMMISSIONER: There may be something similar in
46 relation to that.
47

1 MR WHEELHOUSE: The current state of the evidence, which
2 I derive from the Station Street bundle, is that
3 proceedings have either been commenced or are contemplated
4 to be commenced.

5
6 We have the letter of advice in a redacted form. My
7 position in relation to Station Street will be the same in
8 relation to Water Street, but I will add to that that it
9 comes within clause (a).

10
11 THE COMMISSIONER: If proceedings are commenced it could
12 even make contempt relevant as a consideration in terms of
13 what the Commission can do, but I don't think we will need
14 to get into that at the moment. It may just never arise.

15
16 MR WHEELHOUSE: My current instructions are that
17 proceedings have been commenced, in that some form of
18 penalty notice has either been served or a letter
19 indicating that one will be served. Our position in
20 relation to that is that we would take the relevant claim.

21
22 THE COMMISSIONER: You know from what I have just said
23 that I take the view that we can only lawfully inquire into
24 the matters that section 438U says we can that flow into
25 the terms of reference. We have to be guided by that
26 rather than any other matters.

27
28 MR WHEELHOUSE: As the Commission pleases.

29
30 THE COMMISSIONER: In relation to the further matters
31 dealing specifically with Mr Francis that were subject to
32 the submissions from both Mr Cheshire and
33 Counsel Assisting, I make the following additional
34 determination.

35
36 There is obvious agreement between us that Mr Francis
37 cannot be compelled to give evidence if I am satisfied that
38 he has a reasonable excuse under section 11(2) of the
39 Royal Commissions Act, such as the answer might tend to
40 incriminate him.

41
42 In relation to what Mr Cheshire says about the
43 potential offence of misconduct in public office, I accept
44 that in his position of Executive Manager of Planning at
45 the council, there is at least a real risk that Mr Francis
46 is a public officer or public official for the purposes of
47 such an offence. Arguably, he is in a position of public

1 trust, or is someone who discharges public duties. He has
2 certainly brought obligations of honesty in performance of
3 his functions under section 439 of the Local Government
4 Act.

5
6 Apart from the authorities mentioned in Mr Cheshire's
7 submission, which is dated 2 June 2016, there is some
8 English authority at least that employees of local
9 government authorities are public officers for the purpose
10 of the offence of misconduct in a public office.

11
12 At the moment, though, I am not inclined to accept
13 that Mr Francis faces any real risk of conviction of
14 potential offences outlined or listed at paragraph 23 of
15 his submission.

16
17 I am also not inclined to rule on any claim Mr Francis
18 may wish to make in relation to reasonable excuse under
19 section 11(2) of the Royal Commissions Act in a global or
20 topic by topic manner as Mr Cheshire proposes.

21
22 Mr Francis has already answered questions on many of
23 the topics or matters the inquiry has given notice to
24 parties that it is inquiring into. He has also provided to
25 the inquiry his own statement dated 30 May 2016 in which he
26 gives information in a manner analogous to evidence in
27 chief. Those matters include Mr Francis's involvement in
28 various planning proposals such as the Berala Village
29 Planning Proposal, the Marsden Street Planning Proposal,
30 the role he played in issuing an occupation certificate in
31 relation to the development at 14-22 Water Street,
32 Lidcombe, and various interactions he has had with the
33 former councillor of the Auburn Council, Mr Oueik. That
34 statement is part of the information that has been made
35 available to the inquiry to consider.

36
37 I am not convinced that it is appropriate for me to
38 rule on the issue of reasonable excuse on a topic by topic
39 basis. There may be questions Counsel Assisting asks by
40 way of seeking comment or clarification about certain
41 factual matters, including matters Mr Francis has already
42 provided information on, that provide no real risk of
43 self-incrimination and, hence, no reasonable excuse not to
44 answer. In other words, the risk in answering them might
45 be remote at worst.

46
47 In relation to some questions, even if a risk exists,

1 because of the information Mr Francis has already given,
2 the answer to the question might not increase such risk
3 which, in my view, would mean the claim of reasonable
4 excuse would not be made out - (see *Brebner v Perry [1961]*
5 *SASR 117*) and the other cases referred to in Mr Bolster's
6 submission at paragraph 12.

7
8 Examples of questions that may not pose a risk to
9 Mr Francis in relation to self-incrimination might be
10 questions of what he recalls other people saying, including
11 staff, about particular planning proposals. Or he might be
12 asked questions about what guidelines the local council or
13 state government applied to particular planning proposals.
14 There would be other examples.

15
16 There may, however, be questions where if a claim for
17 reasonable excuse is made on the grounds that the answer
18 might tend to incriminate, where I decide that such a
19 reasonable excuse does exist and hence, the witness cannot
20 be compelled to answer, it might become frustrating at some
21 stage to approach it in this way, but on my view the best
22 way of approaching the matter is on a question-by-question
23 basis.

24
25 That is my determination in relation to those matters.
26 I do not think we can go any further without Mr Francis.

27
28 MR CHESHIRE: I was going to say I don't think we can do
29 anything more.

30
31 THE COMMISSIONER: You wanted some time?

32
33 MR BOLSTER: I'll need some time to speak to Mr Francis.

34
35 THE COMMISSIONER: We planned Mr Francis will be giving
36 evidence. That is not going to happen because he is
37 unwell. Counsel Assisting wants to have a short chat to
38 the next witness. Unfortunately, we will have to take an
39 adjournment of how long roughly?

40
41 MR BOLSTER: A quarter to 11.

42
43 THE COMMISSIONER: We will say a quarter to 11. Is there
44 anything else --

45
46 MR BOLSTER: Ms Simms.
47

1 THE COMMISSIONER: I will adjourn until a quarter to 11.

2

3 **SHORT ADJOURNMENT**

4

5 THE COMMISSIONER: Thank you.

6

7 MR BOLSTER: Thank you, Commissioner. I'm ready to
8 proceed with the next witness, Irene Simms.

9

10 THE COMMISSIONER: Mr Cheshire, this isn't said with any
11 pressure at all, but when you are in a position to let us
12 know about Mr Francis - I am actually anticipating now he
13 may not be well enough to give evidence today, but I don't
14 know, that's a guess.

15

16 MR CHESHIRE: I suspect that's going to be right. I don't
17 yet know but I know that he is with my instructing
18 solicitor still.

19

20 THE COMMISSIONER: When you know, let us know. I think it
21 was anticipated by Counsel Assisting that most of the
22 morning would be Mr Francis and then what's left of the
23 afternoon would be Ms Simms.

24

25 MR CHESHIRE: We will see how things work out.

26

27 THE COMMISSIONER: Thank you.

28

29 <IRENE SIMMS, sworn: [11.11am]

30

31 <EXAMINATION BY MR BOLSTER:

32

33 MR BOLSTER: Mr Sear, could the witness be given a copy of
34 her statement in the folder with the annexures and if you
35 could have the bundle referable to Berala available.

36

37 THE COMMISSIONER: The Berala bundle?

38

39 MR BOLSTER: Yes. Mr Sear, could you also have the colour
40 copy of Ms Cologna's annexures handy.

41

42 Q. Ms Simms, you prepared a statement in this matter on
43 23 May?

44

A. Yes, I did.

45

46 Q. Do you have that in front of you?

47

A. Yes, I do.

1
2 Q. Have you been through that statement before coming to
3 the inquiry today?
4 A. Several times, yes.
5
6 Q. Is there anything in the statement that you want to
7 correct or that you are not happy with?
8 A. No, it's fine, thank you.
9
10 Q. The statement is true to the best of your knowledge,
11 information and belief; is that correct?
12 A. It is.
13
14 Q. I want to ask you some questions about a number of
15 topics before those at the Bar table ask you some
16 questions. The first matter I wanted to ask you about
17 concerns the comment you make in paragraph 24 of the
18 statement about the relationship that you observed between
19 Mr Burgess and Mr Oueik until about the middle of 2012.
20 Could you please expand upon that? What did you observe in
21 terms of that relationship when you saw the two gentlemen
22 together?
23 A. Prior to things changing, John and Ronney would often
24 - they both were smokers. Anything we did at council,
25 they'd go down to the basement and have a smoke afterwards.
26 It's just - they were very relaxed in each other's company,
27 would joke, and just - there was no friction between them.
28
29 Q. You didn't see them have any harsh words with one
30 another, either in council or at workshops, or anything
31 like that?
32 A. No, it was quite relaxed between the two of them.
33
34 Q. The relationship with Mr Brisby, after Mr Brisby was
35 appointed as general manager, how would you describe that
36 relationship?
37 A. Ronney's and Mr Brisby?
38
39 Q. Yes.
40 A. Ronney has been a good friend of Mr Brisby for quite a
41 well. Ronney was ecstatic about Mr Brisby getting general
42 manager.
43
44 MR WHEELHOUSE: I object to that. That is such a general
45 answer that it is unfair, in my respectful submission.
46
47 THE COMMISSIONER: It is a question of what weight I give

1 it, I think.
2
3 MR BOLSTER: Q. Was there an occasion when Mr Oueik
4 discussed the appointment of Mr Brisby with you that you
5 recall?
6 A. No. When Mark was appointed, though, at the meeting,
7 Ronney had a very large grin on his face. He was obviously
8 very pleased about the decision.
9
10 Q. I wanted to ask you now about the Berala Planning
11 Proposal. Could you open up a bundle which should be in
12 front of you which contains the documentation for that
13 proposal. Do you have that?
14 A. Yes.
15
16 Q. You went to the workshop in Bowral in February 2014?
17 A. I did.
18
19 Q. You refer to that in your statement. In your
20 statement you attach a copy of the map that you were handed
21 and which you coloured in?
22 A. I did, yes.
23
24 Q. That's attached to your statement?
25 A. Yes.
26
27 MR ROBSON: What page?
28
29 THE WITNESS: 104.
30
31 MR BOLSTER: Q. Page 104 of your statement?
32 A. 104 in my book, yes.
33
34 MR ROBSON: This is in colour?
35
36 MR BOLSTER: Is there a colour copy in front of you?
37 A. It's black and white on mine.
38
39 MR BOLSTER: There is a colour copy available --
40
41 THE WITNESS: In the Berala one?
42
43 MR BOLSTER: -- of what the witness coloured in.
44
45 THE WITNESS: It's available?
46
47 MR BOLSTER: We will endeavour to locate that for my

1 learned friend.

2

3 Q. The copy that you coloured in, you did colour it in in
4 coloured pencils, didn't you?

5 A. Yes.

6

7 Q. It is not entirely clear from the photograph in the
8 bundle, we will get the original or coloured copy promptly,
9 but you zoned the land south of York Street as R2 or R3?

10 A. I can't see properly. Probably R2.

11

12 Q. You didn't zone it --

13 A. However it currently was was how I left it.

14

15 Q. You left it how it was, is that right?

16 A. As it was currently zoned.

17

18 Q. Why did you do that?

19 A. Because if you go to Berala, the main street of Berala
20 is Woodburn Road. If you follow it through - the
21 commercial centre of Berala goes back only a few shops in
22 all of the side streets, Crawford Street, Elizabeth Street
23 and it only goes back a very short way. When you come to
24 the end of Berala, there's a large roundabout and it does a
25 very large dog-leg up towards Park Road and that's where
26 York Street is, and to me it was just not an obvious
27 expansion of the town centre and really not what I would
28 call the town centre.

29

30 Q. When the maps were produced and the councillors were
31 colouring them in, was there any discussion that you recall
32 about the process and particular locations on the map?

33 A. No, it was really - I think from memory we were just
34 given the map and it was basically, you know, using the
35 different colours: "Can you indicate basically what you
36 envisage the town centre should look like".

37

38 Q. Was everyone there?

39 A. No. Councillor Zraika certainly wasn't there. He was
40 never there when we discussed that.

41

42 Q. Were the other eight councillors there?

43 A. I think they were all in attendance. Whether they
44 were in the room. We had a number of different things at
45 that time. I know that Councillor Batik was there,
46 Councillor Oldfield, Councillor Campbell, Councillor Yang,
47 councillor - the others, I think they were there, I'm not

1 definite.
2
3 Q. Someone stated there was a workshop in the Jack Lang
4 Room in June. Do you remember that workshop?
5 A. Not specifically.
6
7 Q. Do you remember when the matter came before council
8 when the final decision was made about the zoning for
9 Berala?
10 A. I remember that it became B2 and it was quite a lively
11 meeting.
12
13 Q. All right. Did you notice that council had previously
14 proposed, or council staff had previously proposed, an R3
15 zoning for the York Street land that we are talking about?
16 Had you appreciated that in your following of the subject
17 prior to that meeting in July 2014?
18 A. No, I don't think I did, from memory. Every time
19 Berala came up, it was a very robust discussion because it
20 was a thing that came backwards and forwards, but I don't
21 remember - I don't recall that the staff said that.
22
23 Q. In front of you there is a statement from Ms Cologna.
24 Don't look at the text of what she says, but at the end of
25 that, commencing on page 24 --
26 A. Page 24?
27
28 Q. Yes. Do you see there a document "Berala Village
29 Further Study"?
30 A. Yes.
31
32 Q. Do you recall receiving that at the briefing in
33 June 2014?
34 A. Yes.
35
36 Q. If you go over the page to page 27, do you see that
37 the briefing referred to the maps that had been prepared by
38 councillors?
39 A. Yes.
40
41 Q. Did you get any understanding of what other
42 councillors had put on their maps?
43 A. No, not really.
44
45 Q. Did you not discuss it with them at all?
46 A. No. When we did the mapping exercise, from memory, we
47 filled in the maps and we handed them up.

1
2 THE COMMISSIONER: The maps that you are talking about are
3 in your opening bundle.
4
5 MR BOLSTER: They are. Perhaps I could have access to
6 that. Thank you, Commissioner.
7
8 THE COMMISSIONER: Were coloured copies of the maps in the
9 opening bundle provided to everyone?
10
11 MR WATSON: Yes.
12
13 THE COMMISSIONER: Coloured copies were? All right. This
14 is Exhibit #01 which is council's tender bundle. I am
15 handing that back to Counsel Assisting
16
17 THE COMMISSIONER: My copy of that is still missing.
18 Whoever has it, if it could be returned I would appreciate
19 it.
20
21 THE COMMISSIONER: Your copy may be the exhibit.
22
23 MR BOLSTER: No, it's not.
24
25 Q. Do you have that?
26 A. Page 58 is open in front of me, yes.
27
28 Q. Can I see that?
29 A. It's not my one, but it's one --
30
31 Q. No. (Shown to Counsel Assisting).
32
33 THE COMMISSIONER: Do you need your exhibit?
34
35 MR BOLSTER: No, I don't.
36
37 THE COMMISSIONER: Because I know where a copy is.
38
39 MR BOLSTER: Q. Would you have a look at page 61.
40 That's the map you coloured in, isn't it?
41 A. Yes.
42
43 Q. And that's a colour copy of it?
44 A. Yes.
45
46 Q. What are the three colours that you've used: yellow
47 for --

1 A. Well, R3 rolled over to --
2
3 Q. Just listen to my question. What colour did you use
4 for R3?
5 A. It's hard to read my thing down the bottom so I'm
6 trying to look. Red is R4, blue is B2, I'm guessing, and
7 yellow is R3.
8
9 Q. R3.
10
11 THE COMMISSIONER: Can I just ask a question? Has this
12 opening bundle been put on the website, because if it has
13 I can follow the evidence.
14
15 MR BOLSTER: Yes, it has.
16
17 THE COMMISSIONER: All right. Just give me a second.
18
19 MR BOLSTER: Could I have that bundle, please, Mr Sear?
20
21 Q. If you could have a look at Ms Cologna's statement and
22 that document we were looking at, you will see there that
23 she produces a document which has a map on it which says
24 "Suggested zoning scenario". Can you see that? It is
25 about seven or eight pages in?
26 A. Page 32.
27
28 Q. Yes, page 32 of her statement. Do you have that?
29 A. Yes.
30
31 Q. Do you see that suggested zoning scenario which has R4
32 in the land south of York Street?
33 A. Yes.
34
35 Q. Do you recall seeing that?
36 A. I probably noticed it.
37
38 Q. What was your reaction when you saw that?
39 A. Well, I don't remember. I don't recall what
40 I thought.
41
42 Q. When the plan came back to council in July and it had
43 B2 for that area, was that the source of much of the debate
44 at that July council meeting?
45 A. It was, yes.
46
47 THE COMMISSIONER: Could you tell me what page of the

1 opening bundle the witness's map was?
2
3 MR BOLSTER: The witness's map was at page 61. The
4 suggested zoning map is at page 71.
5
6 THE COMMISSIONER: Yes.
7
8 MR BOLSTER: And the final map, the final plan, is at
9 page 75.
10
11 Q. You don't recall, do I take it, any discussion from
12 any other councillor about the R4 zone that was on the
13 briefing map back in June?
14 A. I can't recall one from the other because we had so
15 many workshops about Berala in the end.
16
17 Q. All right. Thank you.
18
19 MR ROBSON: I am sorry, I didn't hear the end of the
20 answer, "So many workshops about" what?
21
22 THE COMMISSIONER: "About Berala in the end."
23
24 MR BOLSTER: Q. I wanted to ask you some questions about
25 your statement.
26 A. Do you want me to leave the Berala thing still out?
27
28 Q. No, you can close that up but just leave the folder
29 there. The next matter I wanted to deal with is
30 South Auburn.
31 A. Right.
32
33 Q. Do you recall being given a briefing by council staff
34 about the South Auburn Planning Proposal?
35 A. Yes, I recall we had a briefing, yes.
36
37 Q. Was that in relation to the fresh options that were
38 suggested, namely, options 2A and 2B before the final vote?
39 A. I'd have to look to recall. Ideally, I would like to
40 see it to recall it, but we had a few about South Auburn as
41 well.
42
43 Q. If you open up that same bundle in front of you, the
44 same folder that the Berala material is in.
45 A. Yes, South Auburn is in the front.
46
47 Q. It's in the front of it.

1 A. Yes.
2
3 Q. You will see, if you go to page 283, the original
4 proposal on page 283?
5 A. Yes.
6
7 Q. Option 2A is on page 284.
8 A. Yes.
9
10 Q. And option 2B is on page 285?
11 A. Yes.
12
13 Q. Do you recall receiving a briefing about those three
14 options together?
15 A. I recall that we had a briefing and I recall there was
16 a lot - there was an amount of discussion about it.
17
18 Q. All right.
19 A. I can't recall if it was at the briefing or at the
20 council meeting itself.
21
22 Q. I'd like to ask you about what staff were recommending
23 to you about options 1, 2A and 2B. Do you have any
24 recollection of being briefed on that by either Ms Cologna
25 or Mr Francis?
26 A. No, I don't remember a lot of it being sort of
27 suggested by one way or the other. It was - mostly when
28 the briefings were done it was more given as, "This is an
29 option", or, "You could do this, depending on how this one
30 is to happen".
31
32 Q. Did anyone that you can recall propose the status quo
33 as an option for South Auburn in those briefings?
34 A. No, not that I'm aware of. I supported the status
35 quo. I supported the status quo but it wasn't an option.
36
37 Q. Did staff not present the status quo as an option, as
38 you recall it?
39 A. As I recall, no.
40
41 Q. Was Mr Brisby present during the briefings for
42 South Auburn?
43 A. I would have to check. I'm not sure.
44
45 Q. Do you have a recollection of it?
46 A. Not that I can recall.
47

1 THE COMMISSIONER: Is this near here? Is this
2 Susan Street near here?
3
4 MR BOLSTER: Yes, it is just a block that way.
5 (Indicates)
6
7 THE COMMISSIONER: All right.
8
9 MR BOLSTER: Q. Once again, when that issue was
10 resolved, it was a fairly heated meeting, I take it?
11 A. It was, yes.
12
13 Q. Were you the recipient of any representations by an
14 association called the Bhanin El Minieh Association?
15 A. I did have a call from them only after the decision
16 was made. I was not approached by anyone prior to any
17 council decision.
18
19 Q. Who from that association called you?
20 A. I'm not sure. A lady rang me afterwards and invited
21 me - after the council made the decision and it was already
22 done, asked me to come up and see the work that they did
23 and said that they were not happy and hoped we would change
24 our mind and I said the council had determined it and that
25 I supported it not being up-zoned, but I was happy to come
26 and see the work that they did if that's what they wanted,
27 but I heard no more. I do have a note at home. I'll have
28 a note in my diary of the call or who rang me, but I don't
29 have it here.
30
31 Q. The person you spoke to, was there any particular
32 complaint given about the decision?
33 A. No, just that they really believed that their area
34 should have been - that they did good work, they really
35 wanted the extra zoning, but I wasn't lobbied before the
36 event by anyone.
37
38 Q. I wanted to ask you now about Grey Street. If you
39 could perhaps be given the folder for Grey Street, which is
40 a different one to South Auburn and Berala. I would like
41 to ask you about the role as you observed it about this
42 proposal going through council of Mr Attie in support of
43 this particular proposal.
44 A. Okay.
45
46 Q. What can you tell the Commission about Mr Attie's
47 attitude that you observed towards Grey Street?

1 A. Every time there was a discussion on Grey Street, the
2 person who was pushing for increases for changes was
3 Councillor Attie.
4

5 Q. Do you recall that the project was initially knocked
6 back at gateway?

7 A. Yes.
8

9 Q. Do you recall that?

10 A. For this particular project, yes. It was knocked back
11 by the Department of Planning, yes.
12

13 Q. Do you recall why it was knocked back by the
14 Department of Planning?

15 A. No. It was not - it didn't meet the requirements.
16 There were concerns about it because it was employment
17 land, things like that.
18

19 Q. What is the council's employment land strategy, as you
20 understand it?

21 A. Well, as we did it, when council originally zoned this
22 land in the LEP, we zoned it to be B6, as far I remember,
23 "enterprise zoning", and the idea of it was it was
24 employment land, that we wanted to retain it. One of the
25 advantages, big advantages of Auburn, was that we did have
26 some good employment land and part of the employment land
27 strategy was that it encouraged council to proactively
28 maintain that wherever possible, because we provided good -
29 you know, there were good employment sites and that was one
30 of the assets of the area.
31

32 Q. Go back to my question.

33 A. Yes.
34

35 Q. What is a council employment land strategy, as far as
36 you're concerned, as a councillor of some years experience?

37 A. It's a study that's been done. It's a strategy that
38 council uses and refers to when it deals with things that
39 pertains to land that has been covered in that strategy.
40

41 Q. How long has council had an employment land strategy?

42 A. There was an employment - certainly - I don't know
43 when the first one was done. I know that when we did the
44 2009 LEP review, the employment land strategy was a
45 significant part of the works that were done to formulate
46 the new LEP in 2009.
47

1 Q. When the matter came back from a gateway refusal, if
2 you could just go to the bundle, please, the gateway
3 refusal was in December I think of 2013. Do you recall
4 that?

5 A. Yes.

6
7 Q. Do you have any recollection of what happened at
8 council after that gateway determination was made?

9 A. Well, from what I remember, it came back to council
10 with the gateway determination put there and then it was
11 put to council that council had to decide what we were
12 going to do next.

13

14 Q. Yes.

15 A. The staff recommendation, as I recall, was to reduce
16 what was being applied for.

17

18 Q. There was a report to council in relation to that
19 matter. Do you recall being taken through that report by
20 staff?

21 A. If it was done in a council meeting - anything that
22 happened in a council meeting that wasn't done in a
23 briefing, we weren't walked through the reports of staff.
24 Reports - anything that came to a council meeting, we were
25 given the paperwork beforehand. It wasn't dealt with as in
26 a discussion that's by staff during the council meeting
27 itself; that happened at briefings.

28

29 Q. Do you recall being present at the briefing for
30 Grey Street after the matter was refused at gateway?

31 A. Yes, I was there.

32

33 Q. Was Mr Attie present during those meetings?

34 A. I'm not sure. I actually did keep a diary because
35 attendance of a lot of the councillors at the briefings was
36 so poor that I actually started keeping a little book where
37 I wrote down who turned up, so I do have attendances for
38 '13 and '14 with me. I haven't looked that one up - you
39 know, I didn't know you wanted it.

40

41 Q. All right. Could you open the bundle to page 340,
42 please.

43

44 MR WATSON: The Grey Street bundle?

45

46 MR BOLSTER: The Grey Street bundle.

47

1 Q. Do you recall that report?
2 A. Yes.
3
4 Q. After that, council adopted that report. Could you
5 have a look at page 363. Do you have that?
6 A. Yes.
7
8 Q. Then in May 2015, if you go over to page 365, the
9 employment land strategy was back before council; the draft
10 was up for consideration?
11 A. This is 365?
12
13 Q. Page 365, yes.
14 A. Okay.
15
16 Q. Do you see the "Review of Auburn LEP 2010 - Outcomes
17 of Community Consultation and Way Forward."
18 A. Yes.
19
20 Q. You will see paragraph 2 is the endorsement of the
21 changes to the exhibited versions of the draft Auburn
22 employment land strategy?
23 A. Yes.
24
25 Q. Correct?
26 A. Yes.
27
28 Q. After that, a fresh proposal was made on behalf of the
29 relevant developers. You'll see that beginning at page 367
30 of the bundle.
31 A. Yes.
32
33 Q. Do you have that?
34 A. Yes.
35
36 Q. That then came back to council with council's report
37 or assessment of it. Would you go to page 466.
38 A. Yes.
39
40 Q. Do you recall going to a briefing about that
41 assessment of the fresh proposal?
42 A. Not particularly, but I remember - recall having this.
43
44 Q. There was a council meeting on 7 October 2015.
45 A. Yes.
46
47 Q. Would you go to page 524. You will see there the

1 recommendation from staff in relation to that meeting.
2 A. Yes.
3
4 Q. Do you have any recollection of the discussion at the
5 October 2007 council meeting last year?
6 A. Is that where it was moved to take it back to what
7 happened before?
8
9 Q. I'll show you. If you go back a few pages to
10 page 522, you will see what council actually resolved.
11 A. That helps because a lot of these things we had many
12 times, sorry.
13
14 Q. Council didn't accept the staff advice?
15 A. No.
16
17 Q. The staff advice sought to amend the proposal, if you
18 look at page 524 - do you recall that?
19 A. Yes. Yes.
20
21 Q. Right?
22 A. This basically took it back - what this proposed, if
23 this is the meeting, is that it basically resubmitted to
24 the Department of Planning what the Department of Planning
25 had rejected at gateway.
26
27 Q. That's right.
28 A. It reinstated the same thing.
29
30 Q. What I would like to ascertain from you, because you
31 were there and none of us were, the meeting where that
32 decision was made, what's your recollection of what was put
33 forward at that meeting by anyone in particular? I am
34 thinking in particular about Mr Attie. Was he an advocate
35 at that meeting?
36 A. Oh, absolutely.
37
38 Q. Did he talk about this proposal at that meeting?
39 A. Well, because I was - the recommendation of staff
40 I had read and that was okay. I was astounded at the
41 meeting that Councillor Attie recommended to go to the
42 other one because it was what had already been rejected and
43 so it was just - there was not a lot of reason given, from
44 memory.
45
46 Q. Were staff present at that meeting?
47 A. Staff - yes, that was a council meeting, yes.

1
2 Q. Were staff asked for their advice at that meeting of
3 the implications of Mr Attie's resolution that he put
4 forward?
5 A. No, not that I can recall now. It was - from my
6 recollection, all I remember from the debate was that it
7 came from the floor, there was no knowledge - I had no
8 knowledge that this was going to be moved. I was astounded
9 it was moved and more surprised that the vote went to do
10 this, because there was discussion amongst the councillors,
11 of course, that this was what had been refused.
12
13 Q. Was there discussion about the interplay between this
14 resolution and the council's employment land strategy?
15 A. No, not really.
16
17 Q. Was that relayed to councillors, that there was an
18 issue with council's employment lands strategy that needed
19 to be resolved here?
20 A. No, because, what happened at council meetings, as
21 I said was, whatever information was going to be presented
22 by staff was put in the report. When it came to council
23 meetings generally, there was no interjection from staff or
24 the general manager, unless it was asked for by a
25 councillor.
26
27 Q. Did you appreciate at the time that what was being
28 proposed in Mr Attie's resolution would effectively mean
29 that council was seeking to amend the employment land
30 strategy so as to accommodate this proposal?
31 A. That was not something that I considered at the time.
32 There was a lot of other reasons why I was worried about
33 it.
34
35 Q. Do I take it you dealt with the matter from the merits
36 as you perceived it as a planning proposal?
37 A. Yes.
38
39 Q. You didn't look at it in terms of the effect this
40 resolution might have on the employment land strategy?
41 A. It's not something that I thought at the time, "Well,
42 that's not that now".
43
44 Q. Were you given any opportunity to consider the
45 implications of changing the employment land strategy at
46 that time?
47 A. No.

1
2 Q. Did any other councillor seek information from staff
3 about that issue?
4 A. I don't believe so.
5
6 Q. How long have you been a councillor?
7 A. Since 1999.
8
9 Q. Has the employment land strategy ever been amended so
10 as to allow a development proposal or a planning proposal
11 to go ahead that was inconsistent with it, to start?
12 A. No, and I assumed that the employment land strategy,
13 really, from my perception, is just a reference document
14 that council refers to and considers; when it does
15 anything, it takes it into consideration.
16
17 Q. You understood, didn't you, that this proposal had to
18 be consistent with that strategy or it would never get
19 through gateway?
20 A. When it came the second time particularly, I never
21 even considered because I just thought there was no way
22 that this is going to get through gateway because it's the
23 same thing that's just been rejected.
24
25 Q. All right. Could you have a look, please, at the
26 second half of that bundle, that's the Station Street
27 bundle.
28 A. Yes.
29
30 Q. In your statement you refer to, and attached,
31 I believe, is --
32 A. My notes?
33
34 Q. -- a note of a conversation you had with Mr Burgess --
35 A. Yes.
36
37 Q. -- about something he told you in 2008.
38 A. Correct.
39
40 Q. Sitting there today, do you have any recollection of
41 that conversation itself?
42 A. No.
43
44 THE COMMISSIONER: 2008 or 2009?
45
46 MR BOLSTER: It is 2009, I'm sorry. It was 2009.
47

1 THE WITNESS: 2009 it would be.
2
3 MR BOLSTER: Q. That is at page 22 of your statement.
4 Do you have that?
5 A. Yes.
6
7 Q. When did you make that note?
8 A. I made it on the day.
9
10 Q. At the time you were mayor; is that correct?
11 A. I was the mayor, yes.
12
13 THE COMMISSIONER: 30 July 2009.
14
15 THE WITNESS: That's the note I would have made that day
16 after the conversation with Mr Burgess.
17
18 MR BOLSTER: Q. All right. When did your term as mayor
19 end?
20 A. September 2009.
21
22 Q. Was this a matter that you conveyed to the person who
23 replaced you as mayor?
24 A. No.
25
26 Q. Who did replace you as mayor?
27 A. Councillor Zraika.
28
29 Q. Can I ask whether you ever followed this up with
30 Mr Burgess as to what was happening in relation to this
31 matter?
32 A. No, I didn't. To be honest, I came across this in my
33 notes and I don't recall it.
34
35 Q. You don't recall that?
36 A. But it definitely took place, and what's there was
37 from my diaries that I made as mayor.
38
39 Q. Do you have any explanation as to why you didn't
40 follow the matter up?
41 A. So in this issue it says that Mr Burgess said to me
42 that what had happened about the conversion, the discovery
43 of the two bedrooms converted to three bedroom units, but
44 he also said that - and this is what's important to me, he
45 said that discussions were ongoing with Deacons about the
46 conversion issue, particularly because it was a staff
47 member that had certified the building. And it also says

1 that he had instructed Mr Brisby - yes:

2

3 *Assures that Mr Oueik will be treated as*
4 *any other applicant. Mark Brisby is to*
5 *prosecute for illegal building works.*
6

6

7 MR ROBSON: Which page?

8

9 MR BOLSTER: Page 22.

10

11 THE COMMISSIONER: You might just be reading a little bit
12 quickly.

13

14 MR BOLSTER: Could you slow right down.

15

16 THE WITNESS: Sorry.

17

18 THE COMMISSIONER: Q. This is your handwriting, is it?

19

20 A. It is.

21

22 THE COMMISSIONER: It might be best if the witness just
23 reads out what is recorded.

23

24 MR BOLSTER: Q. Thank you. Could you?

25

26 A. Do you want me to read the whole thing?

26

27 Q. Yes, please.

28

29 A. It was a confidential meeting with John Burgess, who
30 was the general manager, re the illegal building works for
31 Councillor Oueik on 30 July 2009.

31

32 THE COMMISSIONER: Q. Could you just slow down, please.

33

34 A. Sorry.

34

35 *John raised with me the issue re illegal*
36 *building works. He was told of these a few*
37 *months ago. Two bedders converted to three*
38 *bedders at Station Road prior to the*
39 *sign-off by council. Section --*
40

40

41 THE COMMISSIONER: Sorry, don't add in words. Just read
42 the words - I know you're trying to make it more
43 grammatical but just reads what is there.

44

45 THE WITNESS: Okay.

46

47 *Paid section 94 as 2 bedroom and then built*

1 *and fit-out as 3 bedroom. GM says*
2 *discussions are ongoing with Deacons re*
3 *legals considering conversions were done*
4 *apparently prior to sign-off by council.*
5 *Assures that Mr Oueik will be treated as*
6 *any other applicant. Mark Brisby is to*
7 *prosecute for illegal building works.*
8 *Reminded GM that 1) level playing field -*
9 *2) message sent to compliance staff if law*
10 *is different for a mate/councillor than*
11 *anyone else.*

12
13 MR BOLSTER: Q. All right. Thank you. When did you
14 next hear about the matter?

15 A. When I read it in the paper a few months ago.

16
17 Q. Didn't it occur to you as an issue in the six or seven
18 years that followed?

19 A. No, because it was not - we were not necessarily told
20 if a councillor was served. I assumed, I guess - I assumed
21 that whatever had to take place had taken place.

22
23 Q. Isn't there a regular process for briefing councillors
24 on litigation that's underway or contemplated involving the
25 council, including prosecutions?

26 A. Not necessarily - not necessarily the small stuff.
27 Only in the last few years I think we've had a list of
28 legals that were paid out.

29
30 Q. This wasn't a small matter, though, was it?

31 A. Well, I didn't know how many there were. I've just
32 written "two bedders to three bedders".

33
34 Q. Well, what sort of matters did you routinely get
35 briefings on that involved ongoing litigation for the
36 council?

37 A. In the early days, Auburn --

38
39 THE COMMISSIONER: Q. Sorry, just to correct you, just
40 in case this refreshes your memory, in your note you do
41 actually have a record of the number 94; is that right?

42 A. No, "section 94".

43
44 THE COMMISSIONER: Oh, section 94, right, my apologies.
45 Right, I'm with you. Sorry, I interrupted you.

46
47 MR BOLSTER: Q. Do you want me to repeat that question?

1 A. Yes, please.
2
3 Q. What sort of litigation did you get briefings about?
4 A. Okay. In the early days we had a lot of briefings
5 about Auburn Central. I'm just trying to think. We also
6 had briefings on a regular basis because there was action
7 with council with Austin's about the building of this
8 building. We had a number of things, briefings about that.
9 I can't think just straight off the top of my head of any
10 other major things that we had regular briefings about.
11
12 Q. Finally, I want to ask you some questions about
13 Marsden Street. Could you be given the Marsden Street
14 bundle.
15 A. Behind Water Street?
16
17 Q. Yes. Would you go to the first part of that.
18 A. I have it.
19
20 Q. Do you have that?
21 A. Yes, I do.
22
23 Q. At page 181 you should have in front of you the
24 "Scenario Summary" document?
25 A. Yes.
26
27 Q. Do you that?
28 A. Yes.
29
30 THE COMMISSIONER: Have you tendered this bundle yet?
31
32 MR BOLSTER: Maybe I haven't. Perhaps we could tender
33 that.
34
35 THE COMMISSIONER: There is Grey Street, there is Berala,
36 there is South Auburn and there is Station Street. I am
37 not sure you've got around to this one.
38
39 MR BOLSTER: I tender the Marsden Street bundle.
40
41 THE COMMISSIONER: You have tendered Grey Street. Do you
42 want to tender this?
43
44 MR BOLSTER: Yes.
45
46 THE COMMISSIONER: I'll make the Marsden Street bundle
47 Exhibit MS1.

1
2 **EXHIBIT #MS1 BUNDLE OF DOCUMENTS RELATING TO MARSDEN STREET**
3

4 MR BOLSTER: Q. You have there the scenario?

5 A. The scenario, yes, I do.
6

7 Q. Was it apparent to you, when you were briefed on this
8 matter --
9

10 MR WHEELHOUSE: What page is that, Mr Bolster?
11

12 MR BOLSTER: Page 181.
13

14 Q. Was it apparent to you when you were briefed on this
15 before council made a decision that scenario G was a
16 scenario being put forward by staff?

17 A. I think this was only given to us relatively - just
18 before we were voting on it.
19

20 Q. Was there a briefing for the Marsden Street proposal?

21 A. I'm not sure. There may have been, I'm not sure. We
22 had so many DAs and so many briefings, I - yeah.
23

24 Q. It was a contentious matter when it was before the
25 council, wasn't it?

26 A. It was probably a matter that I think out of the
27 10 councillors, there may have been five or six different
28 opinions as to what should happen.
29

30 Q. What was your preferred option?

31 A. I was not happy with any of the scenarios that were
32 put to us because Marsden Street while itself - Mark Street
33 is not a particularly busy street, but it's - it was an
34 industrial area mostly and as a local resident there's a
35 street down there, James Street, that runs alongside that
36 site, and it is a bottleneck for traffic, so I didn't agree
37 with anything that uplifted development at that site
38 because of the implications.
39

40 THE COMMISSIONER: Q. Does that mean you were in favour
41 of the scenario that was existing?

42 A. It would have been to retain the existing.
43

44 THE COMMISSIONER: Yes, right.
45

46 MR BOLSTER: Q. Originally, it started out as a resident
47 planning proposal in that they wanted to convert two

1 factory buildings and a laneway into R4 consistent with the
2 other R4 that was on the block?
3 A. Yes.
4
5 Q. Did you have a problem with that?
6 A. No. I was going to support that because adjacent to
7 that there were two small commercial properties, 21 and
8 23 James Street, facing James. Behind it they had - there
9 was the laneway they wanted to purchase and there was one
10 little old residential house, 15 Raphael Street, that was
11 already zoned R4. But adjacent to that building, coming
12 back towards Mark Street, were two relatively new large
13 developments and they were flat developments. So it seemed
14 to me consistent to, as it was already there, to keep
15 that - to tidy up that section.
16
17 Q. It came to council, that proposal came to council;
18 staff recommended approval. Council made a decision to
19 look at a broader review of that whole precinct.
20 A. Yes.
21
22 Q. Do you recall that?
23 A. Yes.
24
25 Q. Who proposed that broader review?
26 A. I think it was Councillor Attie.
27
28 Q. Do you recall the debate about whether you should deal
29 with the simple proposal before you, or whether you should
30 defer that and deal with a broader planning proposal for
31 that precinct?
32 A. Well, I think Councillor Attie's argument was that he
33 believed that because it was near the station, that there
34 was an opportunity for council to look at the whole site.
35
36 Q. Did that motion come from the floor?
37 A. Yes.
38
39 Q. Had you had any notice of that at the time it was
40 moved?
41 A. No. No.
42
43 Q. Did you have any opportunity to get advice from staff
44 about that before it went to the vote?
45 A. No. I don't think that they were asked.
46
47 Q. Were staff asked at the time questions about the need

1 for that sort of spot rezoning in that area?
2 A. Well, I guess in fairness, the motion that was put to
3 the council was not to proceed and do it, to do an uplift,
4 but to investigate the area.

5

6 Q. Yes.

7 A. Yes.

8

9 Q. At that time, were you aware of the extent of any
10 councillor interest in that Marsden Street block?

11 A. I knew that - I paid a lot of attention to who put
12 conflict notice - conflict of interest notes in.
13 Councillor Mehajer said that he was looking to purchase
14 property in the area, but I was aware that Councillor Oueik
15 owned land at, I think, 4, 6, 8, 10, 14 Mark Street.

16

17 Q. Let me ask you a question about the disclosure
18 procedure. When a councillor discloses that they own land
19 that may be affected by a planning proposal or a
20 development consent, do they have to identify the
21 residential address of that property?

22 A. No, they don't. If it is a single parcel of land,
23 it's obvious when they say they're the owner. If they use
24 the 451 legislation, they would have to identify the
25 properties that they owned. In a normal council situation,
26 if you declare a conflict of interest, all you have to say
27 is that you have a pecuniary/non-pecuniary interest in the
28 land.

29

30 Q. For example, if a planning proposal comes for a spot
31 rezoning of a section of Lidcombe and I owned four
32 properties in that block, all I have to do is say, "I have
33 an interest and I'm not going to vote", and I leave the
34 chamber?

35 A. Yes.

36

37 Q. And those in the chamber may not gain an appreciation
38 of the extent of that interest, is that what you're saying?

39 A. That's true. The only thing that's added to a
40 declaration is whether it's a pecuniary or a non-pecuniary
41 interest, and also usually the reason is given why as in,
42 like, it's a family member, "I own property in the area",
43 so there's usually some explanation as to why you're
44 declaring it, that's all.

45

46 Q. You say that when Mr Oueik made the declaration before
47 this vote, that you had an appreciation of the properties

1 that he owned in Mark Street; is that right?
2 A. Yes.
3
4 Q. You didn't gain that from any disclosure or any
5 documentation that he had filed under his register of
6 interests?
7 A. Well, I did know about them because I have been
8 someone who was very interested in council declarations,
9 and every time that they've been tabled I have gotten -
10 yes.
11
12 Q. Sorry, I didn't mean to cut you off.
13 A. So I was aware of it because of Councillor Oueik's
14 declaration, and I knew he owned properties in Mark Street.
15
16 Q. You obtained that information from previous
17 declarations; is that right?
18 A. From previous declarations in which he had written
19 physical addresses. They were from earlier declarations,
20 not current ones.
21
22 Q. Ms Simms, you provided to the inquiry this morning the
23 minutes of the general manager's performance review
24 committee meeting on 6 August?
25 A. Yes.
26
27 Q. And a follow-up meeting on the --
28 A. The same night.
29
30 Q. The same night?
31 A. Yes.
32
33 Q. That's right, on 6 August.
34 A. Following the committee meeting.
35
36 MR BOLSTER: Do you have a copy of those documents,
37 Commissioner? Could one be provided to the witness and one
38 to the Commissioner?
39
40 Q. I think you were in the hearing the other day when
41 I was asking Mr Honeyman about this issue and that
42 questioning prompted you to search your records and you
43 found these documents; is that right?
44 A. Yes. I heard the discussion that there didn't seem to
45 be any paperwork and I had come across it the other day
46 when I was looking for something, so I thought I would
47 bring it in and provide it to you.

1
2 Q. Would you go to the first document, that is, the
3 thicker of the two documents.
4 A. The committee meeting?
5
6 Q. The committee meeting.
7 A. Yes.
8
9 Q. If you go to the last five or six pages of that, you
10 will see there the first page is a page headed "Performance
11 Agreement 2014, General Manager, Mr Brisby". Do you see
12 that?
13 A. Yes.
14
15 Q. And following that, there's a document headed
16 "Community Strategic Plan"?
17 A. Yes.
18
19 Q. And then after that there's a series of pages that
20 have boxes on them?
21 A. Yes.
22
23 Q. What happened at that performance review meeting?
24 A. Okay. Peter Fitzgerald Senior came in as the
25 facilitator and he ran the review, so we had a general
26 discussion. This handout was given to all councillors.
27
28 Q. I'm sorry, I was distracted.
29 A. Do you want me to continue?
30
31 Q. Please continue.
32 A. Okay. Peter Fitzgerald came in, the handout was given
33 to councillors and then what we used to do would be
34 individually fill them in and then compare notes. What
35 happened on this night was - and it was a different person
36 conducting it - Peter walked through all the different
37 performance criteria, they were discussed, and then the
38 council as a whole, overall thing, gave, you know, how many
39 As, how many Bs, a vote was taken, and what's recorded
40 there is the vote of the council collectively, not my own.
41
42 Q. You recorded that as it went through; is that correct?
43 A. That's right.
44
45 Q. Before this, when Mr Burgess was reviewed, you each
46 filled out the form yourselves?
47 A. Yes.

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Q. And then you discussed it jointly?

A. Yes.

Q. Do I take it?

A. So the consultant would hand it out. We would each - we'd have a general talk, which we did here as well, I think. We would each complete it as we saw, give it our own rating. Then we would get together, the consultant would walk through each thing, we would discuss and see if there was some consensus about, you know, on the day if someone had said, "Well, overall, will we give it a B?"

Q. Then at the subsequent council meeting later that evening, the extraordinary meeting, the view was, essentially, adopted; is that correct?

A. Yes, and then - yes.

MR BOLSTER: I tender those two documents.

THE COMMISSIONER: What about the witness's statement?

MR BOLSTER: I tender the witness's statement.

THE COMMISSIONER: Why don't we mark all of them combined. The statement of Irene Simms, dated 23 May 2016, and its various attachments, together with the general manager's performance review committee meeting for 6 August 2014 and the extraordinary meeting for 6 August 2014 will all be exhibit S10.

EXHIBIT #S10 STATEMENT OF IRENE SIMMS DATED 23/05/2016 AND VARIOUS ATTACHMENTS, TOGETHER WITH GENERAL MANAGER'S PERFORMANCE REVIEW COMMITTEE MEETING FOR 06/08/2014 AND EXTRAORDINARY MEETING FOR 06/08/2014

MR BOLSTER: I have nothing further, thank you, Commissioner.

THE COMMISSIONER: Have counsel agreed on an order or should I just start from the right?

MR WATSON: I assumed I was in the gun.

THE COMMISSIONER: I was asking this time whether there was an agreed order. If there was I was going to not go to you, but I will turn to my right.

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MR WATSON: I will start it. I won't be terribly long, Ms Simms.

<EXAMINATION BY MR WATSON:

MR WATSON: Q. I want to go back, really, to talk about Grey Street to start. You were asked questions by Counsel Assisting about the employment land strategy.

A. Yes.

Q. I know nothing about planning law but as best I can work it out, the concept of employment land in that is a reference to land within the council precincts where people are at work, people are employed; is that right?

A. Fairly much. It looked - when - from memory, when the study was done it looked at what existed and it was really a discussion about what should be retained, what should be expanded and why.

Q. If we want to draw a distinction, what you're trying to do is look at the land-use areas where people are in employment, factories and the like, as opposed to the residential areas. Is that one way of looking at the difference in the strategies, the applicable strategies?

A. I think it also looked at whether any residential land should be converted to employment as well. It was a holistic thing of the local government area.

Q. Would you look at the Silverwater bundle, the Grey Street bundle for me. Could you open it up at page 474. We can get a feel for the particular block of land which was affected by this debate on Grey Street, Silverwater.

A. Yes.

Q. You're at a disadvantage to me because I've got a colour version.

A. I do know the land quite well.

Q. But you know the land quite well and I think it is apparent from the black and white version that it is a block there and the northern end is Carnarvon Street. Do you see that?

A. Yes.

Q. And a lot of that area south of Carnarvon Street, as

1 we can see from that photo, is residential; is that right?
2 A. Yes.
3
4 Q. There are also parklands over there on the western or
5 left-hand side of the picture?
6 A. Well, that's as you get closer to the M4.
7
8 Q. Of course.
9 A. There's a little park there.
10
11 Q. Yes. This is the point that I want to make about
12 this. You were asked some questions about a council
13 meeting in December 2015. Do you remember those questions?
14 A. Yes.
15
16 Q. As part of that the suggestion was that Mr Attie had
17 promoted a particular approach to this area of land?
18 A. Yes.
19
20 Q. You were asked questions about that?
21 A. Yes.
22
23 Q. As I recall, your answer was that you didn't have a
24 very clear recollection of Mr Attie's arguments to support
25 his contention?
26 A. Yes.
27
28 Q. I want to try and remind you about some of those. The
29 picture there at page 474 of the Silverwater bundle is
30 helpful. One of the points that he made was, do you agree,
31 that the area south of Carnarvon Street was zoned
32 separately and differently to the major industrial area
33 north of Carnarvon Street. That was one point he made,
34 wasn't it?
35 A. I think so, yes.
36
37 Q. Allied to that point he had also suggested that the
38 area south of Carnarvon Street taking in this proposed
39 development was actually enterprise zone; correct?
40 A. Yes, council had zoned it B6 enterprise.
41
42 Q. The purpose of that zoning was to allow a mixture of
43 industrial, residential and commercial?
44 A. No, I don't agree.
45
46 Q. All right. The fact is that the enterprise zoning
47 would, in practical application, allow some commercial

1 development; is that right?
2 A. Commercial, yes, residential, no.
3
4 Q. If we look at it it's very plain from that photograph
5 that there were residences in that very area, don't you
6 agree?
7 A. Yes.
8
9 Q. So there was some residential development in this
10 affected area already; correct?
11 A. Correct.
12
13 Q. What Mr Attie was arguing for, another one of his
14 arguments, I want to suggest to you, was that that part of
15 Silverwater had no retail commercial outlet at all. Do you
16 remember him saying that?
17 A. Yes. Well, I know it doesn't, yes.
18
19 Q. It doesn't and the thing is it is separate from the
20 rest of the town centres by some fairly major roads;
21 correct?
22 A. Yes.
23
24 Q. What Mr Attie was doing when he promoted a rezoning
25 was to encourage the bringing into that area of some sort
26 of respected retail or commercial tenant such as
27 Woolworths. Do you remember that?
28 A. I wouldn't say "such as Woolworths", but yes.
29
30 Q. Woolworths was the name which was being bandied about
31 at the meeting as a potential retail tenant in that area?
32 A. Well, we had a few times names like Woolworths and
33 Coles were thrown around, but there was no expression of
34 interest that council was aware of from --
35
36 Q. Of course not because the land hadn't been rezoned for
37 that purpose at that time; is that so?
38 A. Yes, but --
39
40 Q. Mr Attie's argument was that he was suggesting that if
41 this rezoning could take place then that kind of tenant
42 might be able to be attracted; is that right?
43 A. Well, he was talking about that we could have shops
44 but he was also promoting that there should be - there
45 should be residential.
46
47 Q. That was his next point. Mr Attie said if you want to

1 attract a major retail tenant like Woolworths, you're going
2 to have to increase the number of people who reside in the
3 immediate area. He was linking the two, wasn't he?
4 A. Yes, but can I say something?
5
6 Q. At the moment - I'm sure Mr Bolster will take that
7 opportunity up, but --
8 A. Okay.
9
10 Q. What I want to do is I'm dealing with why Mr Attie was
11 pushing this forward. What he was saying is that if you're
12 going to attract a decent, a respectable, respected retail
13 or commercial tenant, you're going to need to increase the
14 number of people living in that immediate area. That was
15 the argument he was making, wasn't it?
16 A. Well, he was saying that there was a need for some
17 shops.
18
19 Q. Yes. He also supported his arguments by expressing
20 the view that this area was separate to the major
21 industrial area to the north and hence was right for
22 rezoning. He said that, didn't he, or words like that?
23 A. Not that I recall, but anyway.
24
25 Q. But that was the argument, you knew that; you knew
26 that it was separately zoned from the north?
27 A. Yes.
28
29 Q. His argument was, "Well, this is already separate from
30 the major industrial area to the north and so it's right
31 for rezoning." That was like his argument on the night,
32 wasn't it?
33 A. I'm not - I'm not sure about that.
34
35 Q. I'm not trying to get you to agree to it.
36 A. No. Yes.
37
38 Q. What I'm trying to say is this is what he was
39 promoting as an idea. Mr Attie also pointed out
40 intensification of residential development in that
41 immediate area was made more attractive by the availability
42 nearby of some open space or parkland. Do you remember him
43 arguing along those lines?
44 A. No.
45
46 Q. All right. In any event, each of those points could
47 be validly made, could they not? I'll list them again for

1 you if you need to hear them?
2 A. No, they're fine.
3
4 Q. Each of them represented, if you like, a kind of
5 planning philosophy?
6 A. A planning philosophy but then it was a matter of the
7 context.
8
9 Q. Of course, but the thing is that each of these
10 arguments could be justified, depending upon your
11 philosophy or politics, they could be justified by somebody
12 trying to do their best in the interests of Auburn City
13 Council?
14 A. Yes, they could be.
15
16 Q. Another point on this - the employment land strategy
17 had been prepared by a fairly sophisticated outfit, AECOM;
18 is that right?
19 A. Yes, I think we had one and then we had another one,
20 so which one --
21
22 Q. The point I want to make about it is that they might
23 be good, they may be excellent at their job, but ultimately
24 the decision as to the employment land strategy to be
25 adopted by Auburn City Council was a decision for the
26 councillors, wasn't it?
27 A. Correct.
28
29 Q. Again, depending upon your philosophy or your
30 politics, you may or may not agree with AECOM?
31 A. Correct.
32
33 Q. Again, it was an entirely valid measure to be adopted
34 by a councillor, in this instance, Mr Attie, to challenge
35 the AECOM report, don't you agree?
36 A. I don't think that he challenged the AECOM - that that
37 was part of the debate, to challenge the report. It was
38 just to - when he spoke was to the merits of what he was
39 doing, but whether he did it at that meeting or on a
40 previous occasion, some of the things we were saying, yes,
41 he has said.
42
43 Q. It is something a councillor should turn his or her
44 mind to in the discharge of their duties as a councillor?
45 A. Yes.
46
47 Q. In other words, you may not agree with Mr Attie's

1 philosophy or politics, but you've got to respect his right
2 to have advanced the arguments which he did?

3 A. Well, he had the right to have an opinion.
4

5 Q. Yes. And just getting to that, there's no bad blood
6 between you and Mr Attie, you get along well, respecting
7 your different approaches to planning?

8 A. Yes.
9

10 Q. And let's face it, Mr Attie has always been pretty
11 open about the fact that he's pro-development?

12 A. Well, his voting has been.
13

14 Q. Another point to make about Grey Street, Silverwater,
15 is that you actually felt, as I understand your evidence,
16 that the whole of the debate was a little bit in the sense
17 of a waste of time because it was the same idea that was
18 going to be sent back to the same authority, the gateway
19 authority, and was likely to be declined on the same basis
20 as the earlier proposal had been declined?

21 A. Yes, the problem was that it was presented and we only
22 dealt with it when we were presented with it on the night.
23

24 Q. You felt that the whole thing was a futility because
25 it was likely to be declined by gateway?

26 A. It wasn't that as much as that I was astounded. I was
27 astounded that it would be put back on the table, given who
28 it was that had rejected it.
29

30 Q. I want to ask you some questions about Marsden Street
31 and I shan't be long.
32

33 THE COMMISSIONER: Are you moving off Grey Street?
34

35 MR WATSON: Yes.
36

37 THE COMMISSIONER: Could I just ask a question so I
38 understand something?
39

40 Q. When you were asked about the enterprise zoning, is
41 that the enterprise corridor zone?

42 A. The B6 enterprise zone, yes.
43

44 Q. The way I read it, residential development is
45 prohibited in that, isn't it; is that right?

46 A. I think so, yes.
47

1 Q. If there were residential houses there, they just
2 predated the LEP?

3 A. Yes, and if anything else was to happen to it going
4 forward - can I explain?

5
6 Q. Yes, go ahead.

7 A. When council did the LEP council made a conscious
8 decision to rezone the land, with the strategy in 2010, to
9 B6 enterprise and we did that even though there was housing
10 there, we did it on the opposite side of Silverwater Road
11 as well because of the fact that council as a body decided
12 that Silverwater Road was not a good position to have
13 residential, it was very poor amenity, a very busy street,
14 the roundabout is one of the highest black spots for
15 traffic, the pollution from that many vehicles, so it was
16 deemed by council, when we made a B6, that it was not a
17 suitable place to ask residents to live.

18
19 THE COMMISSIONER: Thank you. I am sorry to interrupt
20 you, but did anything arise out of that?

21
22 MR WATSON: Only this, that it is only just put on to show
23 my lack of knowledge of planning law, I apologise.

24
25 THE COMMISSIONER: No, I've said before I think we should
26 introduce the LEP into evidence so everyone has got it if
27 they need it. I think that will be done.

28
29 MR BOLSTER: That will be done.

30
31 MR WATSON: Q. I will go back to Marsden Street. With
32 Marsden Street, that area, by the time this debate was
33 being had, had older industrial operations; correct?

34 A. The East Street frontage fronts the cemetery. A lot
35 of that is some older industrial. Railway Street, fronting
36 the railway station, has a number of businesses associated
37 with the cemetery, the CFMEU and things like that.

38
39 Q. Monumental masons, that sort of thing?

40 A. Yes, things to do with the cemetery. When you come
41 down to Mark Street and turn the corner, there we have a
42 petrol station on the corner, an old industrial building, a
43 little bit of housing and then when you're turning up
44 James Street, which is the other end, there were some new
45 residential flats in there and the rest was bits and
46 pieces.

47

1 Q. A couple of point arise about that particular area,
2 that small precinct. It is pretty potentially attractive
3 for a couple of reasons: the first, its proximity to the
4 railway station; would you agree with that proposition?

5 A. Yes.

6
7 Q. The second is that, well, it's a cemetery but that
8 corner of the cemetery was a particularly attractive
9 corner, it's heavily treed, very old, it hadn't been
10 developed for graves in recent times, and it actually
11 presented a reasonably nice aspect out over what didn't
12 look so much as a cemetery but rather as a lovely parkland.
13 Do you agree with that?

14 A. Yes and no. Yes, in as much as the frontage isn't
15 bad; no is that - and I don't think there was ever a
16 recommendation to make that, even in the final scenario to
17 make that frontage residential. The demographics of the
18 people who live in that area, there are a lot of people who
19 are new arrivals who would not be comfortable --

20

21 Q. With its proximity to a cemetery?

22 A. Which is part of the discussion.

23

24 THE COMMISSIONER: This is Rookwood.

25

26 MR WATSON: Rookwood Cemetery.

27

28 THE COMMISSIONER: That's under "Special Activities", for
29 some reason.

30

31 MR WHEELHOUSE: The expression is "Crook as Rookwood",
32 Commissioner.

33

34 MR WATSON: Q. I think you made this point pretty clearly
35 to Counsel Assisting - you put him right back in his box,
36 I think - Mr Attie wasn't saying, "Hey, let's rezone this
37 precinct." What he was actually saying is, "Let's take
38 another broader look at this particular area"; isn't that
39 right?

40 A. Yes.

41

42 Q. And it wasn't a case where you needed urgently to draw
43 on the expertise of council staff because Mr Attie's
44 proposal was, in effect, to remit it to that same council
45 staff so that they could take a broader view of that
46 precinct; is that right?

47 A. It was to investigate the potential.

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Q. And again, could I ask you, that's a pretty valid proposition to put, don't you agree?

A. I think you'll find that I supported that.

Q. I was about to ask you. I think that you actually thought Mr Attie's proposal was a good one and supported it?

A. No, not necessarily, no, I didn't think it was a good one. I actually agreed with the staff proposal to rezone, the original proposal that came because that included a small parcel of land with it. I actually supported the staff recommendation on that, but I didn't think it was fair in a way. The request seemed reasonable. It seemed unreasonable to try to interfere with it, so I supported it.

MR WATSON: Thank you.

MR DUGGAN: I have no questions for this witness, Commissioner.

MR WHEELHOUSE: I have one or two questions.

<EXAMINATION BY MR WHEELHOUSE:

MR WHEELHOUSE: Q. Ms Simms, you are, of course, aware that I act and appear for Councillor Oueik?

A. I'm having trouble hearing you, sorry, but I do know who you appear for.

Q. I want to take you to paragraph 18 of your statement, if I may.

A. Can I put this other - you don't want - I can put the planning proposal away for now?

Q. You can put the proposal away and Marsden Street away. We're in heated agreement about Marsden Street.

A. Page 18.

Q. Yes.

A. Yes.

Q. Paragraph 18, sorry, page 4?

A. Oh, paragraph 18, okay. Yes.

Q. There you provide some evidence in relation to a

1 particular development application concerning my client,
2 Development Application 16/2013/A. Do you see that?
3 A. 16/2013?
4
5 Q. Yes. "A"?
6 A. Yes.
7
8 Q. You say in the second line that my client had lodged
9 applications on a currently approved but as yet unbuilt
10 development to increase the basements. Do you see that?
11 A. Yes.
12
13 Q. What do you mean by that, increase the depth?
14 A. It was to increase the size of the basement.
15 I thought it was to increase the depth and also it took,
16 apparently, the lower basement, it took it further back
17 into the site.
18
19 Q. You were present in the council chamber when the
20 resolution with respect to that development application
21 came up, were you not?
22 A. Yes.
23
24 Q. And you had an opportunity to look at the relevant
25 development application plans?
26 A. Yes.
27
28 Q. You, in fact, voted in favour of the section 96, did
29 you not?
30 A. To increase the basement?
31
32 Q. Yes.
33
34 Q. I'm looking at DA16 --
35 A. Yes.
36
37 Q. Could I just pass you the resolution to remind you of
38 that.
39 A. Yes, I did vote in favour, that's right.
40
41 Q. Just have a look at that for a moment. Is there any
42 reason why you didn't point out in your statement that
43 you'd in fact voted in favour of that resolution?
44 A. No. The resolution was it was going to the Joint
45 Regional Planning Panel. We were not the decision maker.
46 There was no reason to vote against the basement. It was
47 the fact that it was in anticipation of the planning

1 proposal, that's what my statement - that's the point of my
2 statement.

3

4 Q. The point of your statement is to suggest that in some
5 way my client was taking advantage of his early lodgment of
6 the development application to anticipatorily increase the
7 size of the basement; that's what you're saying there,
8 isn't it?

9 A. From memory, the statement of environmental effects
10 for this development application actually stated in it, it
11 said - and it said on it and I think the wording I have
12 somewhere else. It said "in anticipation of this planning
13 proposal being gazetted".

14

15 Q. What I'm suggesting to you is that the only reason
16 that you put this particular paragraph in your statement is
17 to in some way reflect upon my client, otherwise, it has no
18 purpose in being there?

19 A. The point that I was trying to make was, one of the
20 questions was whether councillors took, as it were,
21 advantage by decisions made by the council. It was
22 councillors who had put the planning proposal in the first
23 place. Planning proposal PP3/2010 was councillor driven,
24 it wasn't driven by a resolution, by a recommendation of
25 staff, it was done from the floor on a councillor
26 resolution.

27

28 Q. What I'm going to put to you is that DA16/2013/A was
29 merely to modify the layout of the car park and not
30 increase its size?

31 A. Well, I believed it to be that it was to make the
32 car park larger, the basement car park larger, in
33 anticipation, obviously, then of having more vehicles and
34 then down the track when the planning proposal was
35 approved --

36

37 Q. I'll just show you the notice of modification. You
38 will see the proposed modification.

39 A. Yes. This is to modify basement.

40

41 Q. Yes.

42 A. Yes.

43

44 Q. No, it doesn't say that; read it properly, please.

45 A. It says --

46

47 Q. "Modify the layout" --

1 A. -- to modify basement layout and reduce floor height
2 of the ground floor.
3
4 Q. It says nothing about increasing its size, does it?
5
6 THE COMMISSIONER: Modification can be an increase.
7 I don't know that that's --
8
9 MR WHEELHOUSE: Q. Modification of the basement layout.
10 A. Modification of the basement layout, but I'm pretty
11 sure that this is the one that actually said in the
12 statement of environmental effects it was likely that that
13 was in anticipation of the planning proposal.
14
15 Q. What I am suggesting to you, Ms Simms, is that if
16 you'd been careful about the preparation of your statement,
17 you would have described precisely what it was that was
18 being dealt with in relation to the development application
19 that you refer to, do you agree?
20 A. Well, I - okay, maybe my wording isn't as good. Yes,
21 my understanding of the modification was to increase the
22 basement capacity.
23
24 Q. Ms Simms, I will show you again the resolution that
25 you actually passed.
26 A. Yes, I can see that.
27
28 Q. It says, "Application to modify basement layout",
29 that's what you said?
30 A. Yes.
31
32 Q. And that's the very thing you're referring to there.
33 Why have you exaggerated the position in relation to my
34 client?
35 A. Because I believed that the modifications - my
36 understanding of it was that it was to increase the
37 capacity of the parking in the modifications.
38
39 Q. Even though the precise wording of the resolution that
40 you passed contains the words "application to modify
41 basement layout and not increase size"?
42 A. Yes.
43
44 THE COMMISSIONER: Do you want to tender that document,
45 Mr Wheelhouse?
46
47 MR WHEELHOUSE: I do. Commissioner, do you want the plans

1 as well? I can just --

2

3 THE COMMISSIONER: It is up to you.

4

5 MR WHEELHOUSE: I tender both the minute and the --

6

7 THE COMMISSIONER: It is difficult for me to make much of
8 paragraph 18 without the underlying documents. Are you
9 tendering it as one bundle?

10

11 MR WHEELHOUSE: Yes. It contains both the resolution of
12 the council that was voted for --

13

14 THE COMMISSIONER: The section 96.

15

16 MR WHEELHOUSE: The section 96. And you will see two
17 things in relation to that: first of all, my client was
18 not present when the resolution was passed and Ms Simms
19 voted in favour of it. The resolution is quite different
20 in terms to paragraph 18.

21

22 THE COMMISSIONER: What I am looking at is different in 21
23 and 14. There are four councillors - Mehajer, Batik,
24 Campbell and Simms - voting against on that one.

25

26 MR WHEELHOUSE: Yes.

27

28 THE COMMISSIONER: 6 to 14 Park Road and that's the 96.

29

30 MR WHEELHOUSE: That's the 96 that's referred to by
31 number.

32

33 THE COMMISSIONER: All right. I will identify that, given
34 it is Park Road, as exhibit PR1.

35

36 THE COMMISSIONER: Which is a notice of modification of a
37 development application under section 96(2) of the
38 Environmental Planning and Assessment Act for a property at
39 6 to 14 Park Road, Auburn, and the exhibit includes an
40 extract of the minutes of the ordinary meeting of council
41 held on 16 April 2014 regarding that section 96
42 application.

43

44 **EXHIBIT #PR1 NOTICE OF MODIFICATION OF A DEVELOPMENT**
45 **APPLICATION UNDER SECTION 96(2) OF THE ENVIRONMENTAL**
46 **PLANNING AND ASSESSMENT ACT FOR 6-14 PARK ROAD, AUBURN**
47 **AND EXTRACT OF THE MINUTES OF THE ORDINARY MEETING OF**

1 **COUNCIL HELD ON 16/04/2014 REGARDING THAT SECTION 96**
2 **APPLICATION**

3
4 MR WHEELHOUSE: Q. Could I take you now to paragraph 85
5 of your statement.

6 A. 85?

7
8 Q. Yes, it's on 16.

9 A. Yes.

10
11 Q. On 18 August 2014 you were visited by two council
12 compliance officers?

13 A. Yes.

14
15 Q. Viola Azer and Diana, I think she's now Laing, or is
16 that a different person?

17 A. No, Laing, L-A-I-N-G, now.

18
19 Q. And they wanted to come and talk to you about
20 something?

21 A. Yes.

22
23 Q. And you understood at the time that they were council
24 employees?

25 A. Yes.

26
27 Q. If you go down further to paragraph 86, you will see
28 you were visited again by some council rangers?

29 A. Yes.

30
31 Q. And then at paragraph 88, on 4 September 2015 you were
32 visited by council officers?

33 A. Yes.

34
35 Q. In relation to the meeting on 18 August, were you
36 contacted directly by the officers?

37 A. Yes, I was.

38
39 Q. Did they telephone you or talk to you in person when
40 you were in the council chambers?

41 A. No, no, no, not the council chambers. I was visited
42 at home.

43
44 Q. Who made the arrangement for the meeting?

45 A. I can't remember whether Viola rang me or whether they
46 came - I assume that they rang me and asked - that Viola
47 rang me and asked to speak to me.

1
2 Q. What happened in relation to the meeting on
3 11 September?
4 A. Well, on the 18th, after they spoke to me, we talked
5 about what to do and they asked who to take it to and we
6 discussed preparing something for ICAC, and I said, "It's
7 probably best if you all do your own thing and put it
8 together." So on 11 September they came and they brought
9 me the information and their submission to ICAC.
10
11 Q. And you read the submission because it was attached to
12 your statement?
13 A. Yes.
14
15 Q. And you retained those documents?
16 A. Well, I provided them to ICAC and I kept a copy of
17 some of them.
18
19 Q. You made the submission to ICAC, not the rangers
20 themselves?
21 A. I contacted ICAC and with ICAC's agreement I submitted
22 some of their information and then later more of it on
23 their behalf.
24
25 Q. You had at that point in time a substantial amount of
26 material that had been supplied to you by officers of
27 council?
28 A. Yes.
29
30 Q. You kept hold of that material that's attached to your
31 statement?
32 A. Yes.
33
34 Q. On 4 September you had a further meeting, you say?
35 A. 4 September 2015, a year later.
36
37 Q. A year later?
38 A. Yes.
39
40 Q. And at that stage you still had the material?
41 A. Yes. They brought other material.
42
43 Q. What did they bring on that subsequent meeting?
44 A. Oh, just similar things and a further statement,
45 I believe.
46
47 Q. And of course between the two meetings, the one on

1 11 September 2014 and 4 September 2015, had you heard back
2 from ICAC?
3 A. Yes.
4
5 Q. The advice you'd received from ICAC was that they
6 didn't propose to take the matter any further?
7 A. Correct.
8
9 Q. You still retained the documents that had been
10 supplied to you by the rangers?
11 A. Yes. I didn't share them anywhere, but yes.
12
13 Q. You kept them in your possession?
14 A. Yes.
15
16 Q. You retained them in your possession even though ICAC
17 had informed you that they were not interested in pursuing
18 the matter that you had reported; correct?
19 A. Correct.
20
21 Q. You certainly had them in your possession when you
22 prepared your statement?
23 A. Correct.
24
25 Q. The documents that you had in your possession included
26 internal emails between Robert Lawrence and the rangers?
27 A. Yes.
28
29 Q. You might want to look, please.
30 A. Yes, which page?
31
32 Q. 52, 55, 56, 61 and 66.
33 A. Yes.
34
35 Q. That's a document created by an internal officer of
36 the council, isn't it?
37 A. Correct.
38
39 Q. Mr Lawrence?
40 A. Yes.
41
42 Q. It is his document?
43 A. Yes.
44
45 THE COMMISSIONER: This is page 52 you're looking at?
46
47 MR WHEELHOUSE: 52, yes, I'm sorry, Commissioner, yes, 52.

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Q. You certainly had no authority from Mr Lawrence to keep his document, did you?

A. No.

Q. What that document contains, would you agree, was a directive issued by Mr Lawrence in relation to an operational matter of council?

A. Yes.

Q. When you received that document did you tell the person who gave it to you that, "This is a document that as a councillor I should not have possession of. Please don't give it to me."

A. No.

Q. Because that would have been the correct thing to do, wouldn't it?

A. I was aware of the circumstances under which the ladies came to me. Under normal circumstances - I had been contacted by Viola I think in 2012, that she had an issue. She rang me as a councillor and said - I can't remember what it was about, it was something she was concerned about, wasn't sure who to speak to at the time. I referred her - I recommended that she make an appointment to speak to John Burgess, who then was the general manager, and that she was entitled to make a protected disclosure. What she wanted to talk about I don't know because that was the thing. When the ladies came to me, by this stage, they came to me probably, if you look - I can look at the notes - within a fortnight of my submission to ICAC and so I just had alarm bells ringing. There was no-one in council that I believed I could refer them to. There was no internal Ombudsman, the general manager was part of this, the supervisor was part of it, so I took the information and I did what I thought was right and referred them to the authorities. They seemed the most likely place to deal with it.

Q. Could I invite you to look at the code of conduct, please? The officer might perhaps assist by giving you a copy of that.

A. (Shown to witness)

THE COMMISSIONER: Is that in evidence?

MR BOLSTER: It is in the Opening Bundle.

1
2 MR WHEELHOUSE: Q. It is in the Opening Bundle.
3 A. I'm aware of it anyway.
4
5 MR WHEELHOUSE: It is 22 in the Opening Bundle. Thank you
6 very much.
7
8 THE COMMISSIONER: What page are you going to,
9 Mr Wheelhouse?
10
11 MR WHEELHOUSE: It's page 15.
12
13 THE WITNESS: Yes.
14
15 MR WHEELHOUSE: Q. Do you see the heading
16 "Inappropriate interactions"?
17 A. Yes.
18
19 Q. Paragraph 6.7.
20 A. Right.
21
22 Q. Take your time, there's no hurry.
23 A. It's all right, I've just got there. Yes.
24
25 Q. It says:
26
27 *You must not engage in any of the following*
28 *inappropriate interactions.*
29
30 Do you see that?
31 A. Yes.
32
33 Q. Then it says:
34
35 *Council staff approaching councillors and*
36 *administrators to discuss individual or*
37 *operational staff matters other than*
38 *broader workplace policy issues.*
39
40 Do you see that?
41 A. Yes.
42
43 Q. What I'm suggesting to you is that if you look at
44 page 52 of your statement, the document from Mr Robert
45 Lawrence, that's clearly, would you agree with me, an
46 operational staff matter?
47 A. I would - I was given a bundle of documents.

1
2 Q. Would you answer my question. The document I'm
3 drawing your attention to at page 52, would you agree, is
4 clearly an operational staff matter?
5 A. Yes, I agree it is, but I don't think it applies as it
6 is in 6.7, in this instance.
7
8 Q. Thank you for that extra paragraph. The question
9 I put to you was limited to this proposition: It is
10 clearly an operational staff matter?
11 A. Yes.
12
13 Q. Because it is a direction by Mr Lawrence to members of
14 his staff, the rangers?
15 A. Correct.
16
17 Q. The first matter is this: Did you advise Mr Lawrence
18 you had a copy of this document?
19 A. No.
20
21 Q. Secondly, did you discuss with the rangers the content
22 of the document?
23 A. No.
24
25 Q. You must have because you took their instructions to
26 report the matter to ICAC?
27 A. I took the whole document. We didn't sit down and go
28 to page by page and discuss everything in there. They
29 brought a bundle as arranged. I was the person who went as
30 the intermediary.
31
32 Q. Why didn't you say to them, "If you want to" --
33
34 THE COMMISSIONER: Just to be fair, 6.7 that you're
35 referring to talks about councillors approaching staff.
36 Ms Simms' evidence is that they approached her. There may
37 be a distinction in that, I don't know.
38
39 THE WITNESS: Can I give my interpretation?
40
41 THE COMMISSIONER: Q. I am sure Mr Bolster will allow you
42 to give your interpretation of 6.7, so that will come up --
43 A. Thank you.
44
45 Q. -- but I'll let Mr Wheelhouse to continue for the time
46 being.
47 A. Yes.

1
2 MR WHEELHOUSE: Q. You didn't say to the staff members,
3 "It's not appropriate that you contact me."
4 A. Under normal circumstances that's what I would have
5 done. Under the circumstances that were explained to me,
6 I met with them, we discussed what should be done,
7 I recommended it should go to the authorities, and
8 I facilitated that. That was exceptional circumstances.
9
10 Q. Did you not also appreciate that the document you had
11 possession of was a confidential document of the council?
12 A. No.
13
14 Q. It is an internal memorandum reporting on an
15 operational matter; correct?
16 A. Yes.
17
18 Q. It was clearly, on its face, directed to particular
19 persons, namely, the rangers, would you agree?
20 A. Correct. Yes.
21
22 Q. It wasn't directed to you?
23 A. No.
24
25 Q. It wasn't directed to the general public, it wasn't
26 directed to councillors, was it?
27 A. No.
28
29 Q. I suggest it was plain, by its nature, that it was a
30 confidential internal document of the council?
31 A. Well, I don't - it doesn't - I don't think it was
32 necessarily confidential, but yes, it was clearly an
33 internal document of council.
34
35 Q. It is plain on its face, wouldn't you agree, it is not
36 a public document?
37 A. Yes.
38
39 Q. And it contains an operational directive?
40 A. Yes.
41
42 Q. Wouldn't you not accept what I've just said, that it
43 is plain on its face that it's a confidential document?
44 A. No, I don't accept it's confidential, but yes, it's an
45 internal document.
46
47 Q. What you did, in fact, was not pass on the material to

1 ICAC and say, "You deal with the matter", what you did was
2 to pass on the material and keep a copy, didn't you?
3 A. Yes.
4
5 Q. You have maintained those copies until this very day,
6 haven't you?
7 A. Yes.
8
9 Q. Until providing the statement to the Commission, you
10 informed no-one at the council, including Mr Lawrence, that
11 you had possession of the document?
12 A. No-one at the council, correct. I did advise the
13 Office of Local Government that I had it.
14
15 Q. Could I take you to clause 7.9 of the code of conduct.
16 A. Yes.
17
18 Q. It says:
19
20 *Use and security of confidential*
21 *information.*
22
23 Do you see that?
24 A. Yes.
25
26 Q. I just want you to take a moment to read it.
27 A. Yes.
28
29 Q. Do you see, in addition to your general obligations
30 relating to the use of council information, you must (a)
31 protect confidential information, do you see that?
32 A. Mmm-hmm.
33
34 Q. And (b), only release confidential information if you
35 have authority to do so. Do you see that?
36 A. Yes.
37
38 Q. Please explain to the Commissioner what your authority
39 was from Mr Lawrence to release this document, either to
40 ICAC --
41 A. Do you want me to explain to the Commissioner?
42
43 Q. Yes.
44 A. I'm happy to do that. I didn't have an authority to
45 do it. I had people come to me, tell me that there were
46 serious concerns. What they raised gave me great concern
47 and it needed to go somewhere. It could not be taken

1 internally because of the allegations raised, so I went to
2 the people I thought most responsible to deal with the
3 information and to make - and to deal with it and that was
4 what I did and I would do it again tomorrow.

5
6 Q. Yes, because you have no regard to the code of
7 conduct; correct?

8 A. No, because I had regard to Auburn City Council and
9 its residents.

10
11 Q. You say that, but the fact of the matter is that the
12 regard that you had for the Auburn City Council and its
13 residents is governed and affected by the code of conduct,
14 isn't it?

15 A. Yes, it is an overriding thing in the normal course of
16 events. These were allegations of conduct that I
17 believed --

18
19 Q. I think the answer to my question is "yes". It is a
20 matter that overrides all other responsibilities, don't you
21 agree?

22 A. Corruption I think overrides this.

23
24 Q. What I want to suggest to you is that your obligation
25 was, first of all, to advise the persons who gave you the
26 document, being employees, that they had that material in
27 their possession, it was for them to take such steps as
28 were available to them to deal with that matter and not
29 yours because the documents were communications by them and
30 to them concerning operational matters of council.
31 Secondly, I put it to you that once the documents were in
32 your possession, because they were council documents, the
33 appropriate course for you was to return the documents to
34 the council?

35
36 MR BOLSTER: I think there are two propositions there,
37 with respect to my friend, there are two different
38 propositions that have both been put. They should be split
39 up and put separately.

40
41 THE COMMISSIONER: I am sure Mr Wheelhouse can do that.

42
43 MR WHEELHOUSE: Q. I will put to you, first, that your
44 first obligation was not to have taken possession of the
45 material itself. Do you agree with that?

46 A. No, because of the circumstances.

47

1 Q. And your second obligation, I put to you, was to
2 return the material, so long as it was in your possession,
3 to the council who was its rightful owner. Do you agree
4 with that?
5 A. No.
6
7 Q. You have contact with a journalist from the Sydney
8 Morning Herald concerning the affairs of Auburn Council
9 from time to time, don't you?
10 A. Yes.
11
12 Q. Would you go to your statement?
13 A. Yes.
14
15 Q. Would you go to page 51. I may have the incorrect
16 page there, Ms Simms. I'll just --
17 A. Sorry, I've got the wrong folder out. Page 51? Yes.
18
19 Q. I think I may have the wrong page, I'm sorry. It
20 should be 44.
21 A. Are you talking about the email?
22
23 Q. It's 44, yes.
24 A. Page 44?
25
26 Q. Yes. It is a chain of emails and it starts at 43.
27 A. Yes.
28
29 Q. And then the page I wish to direct your attention to
30 is 44.
31 A. Yes.
32
33 Q. At page 44 you will see that it is an email from
34 Leesha McKenney to you. Do you see that?
35 A. Yes.
36
37 Q. And she refers to you as, "Hi, Irene"; correct?
38 A. Correct.
39
40 Q. That's because you were on close and first-name terms
41 with Leesha at that stage, weren't you not?
42 A. Yes. Well, I don't know her personally as a friend
43 but we had - she had done a number of stories on councils
44 and I - yes.
45
46 Q. And you supplied her with information for that
47 purpose?

1 A. Yes. Well, I've always - staff was allowed to give --
2
3 Q. What the previous pages show is that what you've done
4 is contact officers within the council to obtain
5 information so you could respond to requests from the
6 journalist; correct?
7 A. Yes.
8
9 Q. You will see, most particularly, you were making
10 inquiries of Mr Dencker --
11 A. Dencker, yes.
12
13 Q. -- in relation to the PCA applying to Frances Street?
14 A. Yes.
15
16 Q. Did you have other contacts on other topics with this
17 journalist?
18 A. Yes. I had a lot of journalists contact me around
19 this time. Leesha McKenney did a number of articles
20 regarding the section 451 legislation.
21
22 Q. Yes. You also had continuing contact with journalists
23 in the earlier part of this year too, 2016, didn't you?
24 A. Yes.
25
26 Q. And in particular, around about March; correct?
27 A. I've had - since Councillor Mehajer's wedding I have
28 had a very significant number of people from the media
29 contact me.
30
31 Q. Did you obtain from Mr Burgess a copy of any of the
32 documents that related to the Station Street property?
33 A. No.
34
35 Q. You had quite a close relationship with Mr Burgess
36 yourself, did you not?
37 A. Yes.
38
39 Q. Indeed, you'd travelled overseas with him, had you
40 not?
41 A. We travelled overseas when we went to London for
42 Metropool.
43
44 Q. When was that?
45 A. 2010.
46
47 Q. You had quite a close relationship with him yourself?

1 A. We became - well, we didn't socialise but we travelled
2 together as delegates for Metropool with other delegates
3 from Westpool and UIP.

4
5 THE COMMISSIONER: Q. What is Metropool?

6 A. Metropool is - some of the councils have formed
7 together to buy, to purchase insurance, so it's a
8 conglomerate of councils that work together and use the
9 power of the bulk to get a better deal for buying
10 insurances.

11
12 THE COMMISSIONER: I see, thank you.

13
14 MR WHEELHOUSE: Q. And you became quite good friends
15 with him as a consequence of that, didn't you?

16 A. We became fairly good friends. I didn't know a lot
17 about Mr Burgess. When I was the mayor and he was the
18 general manager, a friendship grew out of respect.

19
20 Q. I'm not saying there's anything wrong with that.

21 A. I know. I know there's nothing wrong --

22
23 Q. I'm trying to describe the basis of the relationship.

24 A. -- but that's where it stood. Before I was the mayor,
25 I didn't have a lot of dealings with mayors. I had daily
26 dealings with the general manager.

27
28 Q. Just to clarify the position, the trip to Metropool
29 was a trip that the Auburn Council agreed to and you
30 applied in the usual way to obtain permission to take that
31 trip?

32 A. No, I didn't because I didn't go as a delegate of
33 Auburn City Council, Auburn Council, I went as a delegate
34 of Metropool. Metropool sent me, not Auburn Council.

35
36 Q. I see. You went, paid for by the insurer, who was
37 Mr Burgess?

38 A. Paid for by the pools.

39
40 Q. Mr Burgess went as the --

41 A. Mr Burgess was also a member of the pools. What
42 happened is - he told me they had elected representatives
43 from both Metropool and Westpool went, then they had staff
44 level and it was common practice apparently for someone
45 from the same council to go, so John went, as did others
46 from other levels in other councils, as did Metropool
47 staff. There was probably about 12 to 14 people on that

1 delegation.
2
3 Q. After Mr Burgess agreed to terminate his position as
4 general manager of the council, did you continue to have
5 conversations with him?
6 A. Yes.
7
8 Q. He in fact sought out your ear to talk about the
9 problems he had with council, didn't he?
10 A. In - I'm sorry, I don't know what --
11
12 Q. Post the time when he agreed that his position at the
13 council would be terminated.
14
15 THE COMMISSIONER: March 2013, I think.
16
17 MR WHEELHOUSE: Q. After March 2013 - thank you,
18 Commissioner - he sought you out to have discussions about
19 his views on what had happened; correct?
20 A. Not that I recall.
21
22 Q. Did you have conversations with him after March 2013?
23 A. I have, at various times after March 2013.
24
25 Q. Did those conversations include discussions about
26 council business?
27 A. Not confidential council business.
28
29 Q. Did he talk to you about, for example, Station Street?
30 A. No.
31
32 Q. In an article written by Leesha McKenney, published on
33 15 March 2016, there is a reference to an internal report.
34 Do you remember reading the article?
35 A. I read the article, yes.
36
37 Q. I just want you to have a look at it.
38
39 THE COMMISSIONER: The witness has been going for about
40 two hours now.
41
42 MR WHEELHOUSE: I'd better stop.
43
44 THE COMMISSIONER: Finish this question but then I want to
45 give her a break.
46
47 THE WITNESS: Do you want me to do the bit that's hatched?

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MR WHEELHOUSE: Well, why don't we stop at this moment and the witness can read it. It is quite a large article.

THE COMMISSIONER: We will adjourn until two then.

LUNCHEON ADJOURNMENT

UPON RESUMPTION

THE COMMISSIONER: Come forward, please. You are still on your oath.

THE WITNESS: Yes.

THE COMMISSIONER: Still going, Mr Wheelhouse?

MR WHEELHOUSE: Yes, Commissioner.

Q. Ms Simms, could I return to you the newspaper article that I asked you to read, please.

A. Yes.

MR WHEELHOUSE: I will hand a copy to you, Commissioner, as well.

Q. Ms Simms, if you wouldn't mind going down to the bottom part of the first page, do you see it says:

An Auburn spokesman said on Friday that the council's lawyers had commenced legal action against the developer ...

Do you see that paragraph there?

A. Yes, I do.

Q. It goes on to refer to a 2012 internal report. Do you see that?

A. Yes.

Q. Then it says:

A 2012 internal report, seen by Fairfax Media, reveals Auburn sought legal advice in 2008 ...

A. Yes.

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Q. *... when it became aware of
"irregularities" ...*

A. Yes.

Q. That piece of information, would you agree, that is to say, that Auburn City Council had sought legal advice in 2008 would be a piece of information confidential to the council?

A. Correct.

Q. Further, it says:

*The 2008 legal advice obtained by the then
general manager John Burgess recommended
prosecuting ...*

Do you see that?

A. Yes.

Q. That again is clearly information that is confidential to the council, wouldn't you agree?

A. Yes.

Q. We have been served, as part of this commission of inquiry, with a bundle of documents described as the Station Street documents. In amongst those documents, I have to inform you, there is no such document as a 2012 internal report. I am proceeding on the basis that no such document exists.

A. Did you want me to answer to that now?

Q. I'm putting it on the basis that no such report --

A. I have no idea if it does or not.

Q. In our discussion previously, we've ascertained that you have been in reasonably frequent contact with

Leesha McKenney involving the affairs of Auburn Council?

A. Generally, yes.

Q. As the document at page 44 reveals, you and she had reached the point where you were referring to each other by your first names?

A. Yes.

1 Q. Because she says, "Hi Irene", and signs off "Cheers
2 Leesha". She doesn't refer to you as "Councillor Simms",
3 does she --
4 A. No.
5
6 Q. -- she refers to you by your first name which suggests
7 a degree of familiarity, wouldn't you agree?
8 A. As I said, Leesha was predominant in bringing to the
9 attention of people about the 451 legislation.
10
11 Q. I want to suggest to you that you were her point of
12 contact in that regard?
13 A. No.
14
15 THE COMMISSIONER: Just before you continue,
16 Mr Wheelhouse, I am trying to be fair to everyone and I may
17 be going overboard in that. As I see it, your role here is
18 to protect your client's interests, and I will certainly
19 give you leave to ask questions to protect your client's
20 interests, but the line of questions you are directing
21 towards Ms Simms at the moment, I am not sure I understand
22 how that is protecting your client's interests, in asking
23 her about her relationship with journalists, or whether
24 she, herself, has breached the code or not.
25
26 MR WHEELHOUSE: I propose to make some submissions about
27 that, so I thought it was fair that I put questions to the
28 witness.
29
30 THE COMMISSIONER: Just so I understand, how is this line
31 of questioning --
32
33 MR WHEELHOUSE: As to the principles in *Browne v Dunn*,
34 I've done sufficient, but I propose to make submissions
35 about it.
36
37 THE COMMISSIONER: Have you finished with that topic?
38
39 MR WHEELHOUSE: Could I continue? I've got four more
40 questions. What I want to put to this witness should be
41 covered by --
42
43 THE COMMISSIONER: What is your next question about?
44
45 MR WHEELHOUSE: I'll put it directly.
46
47 Q. What I am going to put to you, Ms Simms, is that it

1 was you who supplied the information contained in the
2 article.

3
4 THE WITNESS: I'm happy to answer.

5
6 THE COMMISSIONER: There's an answer.

7
8 THE WITNESS: I'm more than happy to answer it. No, I'm
9 not. I'm totally unaware of anything. I'm happy to
10 explain.

11
12 THE COMMISSIONER: No, you have answered the question.
13 I don't think that line of inquiry is - I personally, for
14 the moment, cannot see how that is protecting your client's
15 interests. Anyway, you have put the question; it has been
16 answered.

17
18 MR WHEELHOUSE: I need to put the second question to be
19 fair.

20
21 THE COMMISSIONER: All right.

22
23 MR WHEELHOUSE: Q. If you go to the document, Annexure A
24 to your statement, Ms Simms, the information contained in
25 Annexure A that you obtained from Mr Burgess, which you
26 described as "confidential", is mirrored by what appears in
27 the Sydney Morning Herald article?

28 A. Well, with respect, no, it isn't. I had no
29 recollection of how many apartments there were.

30
31 Q. That is a point of difference, isn't it? Your note
32 doesn't say that it's apartments?

33
34 THE COMMISSIONER: Well, that's not a question for you.

35
36 THE WITNESS: Pardon?

37
38 THE COMMISSIONER: That wasn't a question to you.

39
40 THE WITNESS: Right.

41
42 THE COMMISSIONER: You can make a submission about it.

43
44 MR WHEELHOUSE: I'm under the rulings of the Commissioner,
45 so I have to be careful with regards to my questions.

46
47 THE COMMISSIONER: You have put that to her. You can make

1 a submission about it.

2

3 MR WHEELHOUSE: I won't persist, Commissioner,
4 I understand. They are the questions.

5

6 THE COMMISSIONER: Thank you, Mr Wheelhouse. Mr McNally?

7

8 <EXAMINATION BY MR McNALLY:

9

10 MR McNALLY: Q. Ms Simms, my name is McNally and
11 I appear in the interests of Councillor Lam. I just have a
12 couple of questions in respect of the declaration of
13 interests, or conflicts of interest that you referred to
14 earlier in your evidence.

15 A. Yes.

16

17 Q. I take it that the room we are in is actually the
18 Council Chambers where the meetings are held?

19 A. Yes.

20

21 Q. A few days ago during a lull in the proceeding, or
22 perhaps during Mr Watson's cross-examination, I bumped into
23 a little drawer and I found a bundle of documents that was
24 in that drawer that's headed "Blank Forms"?

25 A. Correct.

26

27 Q. As a councillor, are you familiar with the blank forms
28 that are available to councillors during the course of
29 meetings?

30 A. There's one in front of each councillor seat.

31

32 Q. I see. One of those forms is a document headed
33 "Declaration of Interest", do you recall that?

34 A. Yes.

35

36 Q. If a councillor does have an interest that needs to be
37 declared, what the councillor does is to complete fully the
38 declaration of interest and provide it to the
39 general manager who is sitting at the council meeting?

40 A. It's usually before the commencement of the meeting.

41

42 Q. I see. Similarly, there is also a form which is
43 entitled "Form of Special Disclosure of Pecuniary
44 Interest".

45

46 THE COMMISSIONER: I can follow this because I have it in
47 my drawer, I've got the stuff.

1
2 THE WITNESS: That's the 451 form.
3
4 MR McNALLY: Q. Yes. In the 451 form there is special
5 provision made for the identification of interests in land,
6 is there not?
7 A. Yes.
8
9 Q. Could I just show you a copy of each of those two
10 forms, if you would have a look at those, please.
11 A. Yes.
12
13 Q. Those two forms are the forms you've referred to,
14 being the declaration of interest and the form of special
15 disclosure of pecuniary interest?
16 A. Correct.
17
18 Q. And they're the ones that were available to every
19 councillor at the start of every meeting?
20 A. Yes.
21
22 Q. I notice that in respect of the form of declaration of
23 interest, there seems to be a date down at the foot of the
24 page. Do you see the figure "2006"?
25 A. The - okay. The ordinary declaration of interest
26 form, yes.
27
28 Q. It is 2006.
29 A. Yes.
30
31 Q. I think you said you commenced on the council --
32 A. 1999.
33
34 Q. Right. Does that date suggest to you that this is a
35 form that was at least available from about 2006?
36 A. There was something like that available from the
37 start, from when I first commenced.
38
39 Q. Thank you. I don't intend to tender that but
40 Counsel Assisting may wish to tender it, Mr Commissioner.
41
42 THE COMMISSIONER: Thank you, Mr McNally.
43
44 MR BOLSTER: I will tender the documents.
45
46 THE COMMISSIONER: You want to tender them?
47

1 MR BOLSTER: Yes, I think they should be tendered.

2

3 THE COMMISSIONER: The Declaration of Interest Form with
4 the date 2006 at the bottom, Auburn City Council
5 Declaration of Interest Form and Auburn City Council Form
6 of Special Disclosure of Pecuniary Interest, they are
7 general exhibits, so they can be exhibit G1.

8

9 **EXHIBIT #G1 DECLARATION OF INTEREST FORM WITH THE DATE 2006**
10 **AT THE BOTTOM, AUBURN CITY COUNCIL DECLARATION OF INTEREST**
11 **FORM AND AUBURN CITY COUNCIL FORM OF SPECIAL DISCLOSURE OF**
12 **PECUNIARY INTEREST**

13

14 THE COMMISSIONER: MR McCann?

15

16 MR McCANN: Thank you, Commissioner.

17

18 <EXAMINATION BY MR McCANN:

19

20 MR McCANN: Q. Ms Simms, I appear for Mr Fitzgerald
21 Senior. If I can refer you back to your statement,
22 page 12, you refer there to the restructure undertaken by
23 council in 2013?

24

25

26 Q. And that that was following any general election, a
27 restructure should take place within 12 months from that
28 election; is that your understanding?

29

30

31

32

33

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55

56

1
2 Q. Were you aware of a number of proposals arising from
3 that restructure review from the consultant?
4 A. No.
5
6 MR McCANN: No further questions. Thank you,
7 Commissioner.
8
9 THE COMMISSIONER: Mr Cheshire.
10
11 MR CHESHIRE: Thank you, Commissioner.
12
13 **<EXAMINATION BY MR CHESHIRE:**
14
15 MR CHESHIRE: Q. Ms Simms, you were asked some questions
16 earlier about the South Auburn development.
17 A. Yes.
18
19 Q. You said that you supported the status quo but it was
20 not an option?
21 A. Basically, yes.
22
23 Q. When you say it was --
24 A. Not an option in as much as it was not what was
25 proposed by councillors.
26
27 Q. If you had thought that it was an option that might
28 have gained support from other councillors, then you would
29 have proposed it; correct?
30 A. Yes.
31
32 Q. You are aware that this inquiry commenced this
33 Tuesday; correct?
34 A. Yes.
35
36 Q. Did you speak to anybody at the Herald on Tuesday
37 about the inquiry?
38
39 MR BOLSTER: I object. How does this arise,
40 Mr Commissioner?
41
42 MR CHESHIRE: Commissioner --
43
44 MR BOLSTER: It may be about something else.
45
46 THE COMMISSIONER: This is the same point I think I raised
47 with Mr Wheelhouse. I am trying hard to give everyone a

1 fair go to represent their clients' interests, but is that
2 question directed to your client?

3

4 MR CHESHIRE: It is directed very much in relation to my
5 client because you saw what was published on the Herald
6 website on Tuesday evening. That is specifically why I am
7 asking this question to this witness.

8

9 THE COMMISSIONER: Yes.

10

11 THE WITNESS: I did.

12

13 THE COMMISSIONER: Just a second, Ms Simms. I am still
14 not quite sure how asking the witness about a Herald
15 article is advancing or protecting your client's interests.

16

17 MR CHESHIRE: Well, there are comments made about my
18 client in that article that are certainly critical of him
19 and if this witness - and it appears to be consistent with
20 the way Mr Wheelhouse was going - was the source, that
21 might put her evidence and what she has said in a
22 particular light.

23

24 THE COMMISSIONER: I will give you a very small amount of
25 leave.

26

27 MR CHESHIRE: Yes. I don't intend to take it very far and
28 I have not put it, I've asked the question.

29

30 Q. Ms Simms, did you speak to anybody at the Herald on
31 Tuesday of this week?

32

33 A. No, I don't think I did.

34

35 MR CHESHIRE: Thank you very much. Thank you,
36 Commissioner.

37

38 THE COMMISSIONER: Mr Robson?

39

40 MR ROBSON: I will be particularly brief.

41

42 <EXAMINATION BY MR ROBSON:

43

44 MR ROBSON: Q. Ms Simms, you have no planning
45 qualifications, do you?

46

47 A. No, I don't.

48

49 Q. Indeed, in relation to the Berala matter, and in

1 relation to the South Auburn matter, I think, to use your
2 expression, you were in both those matters in favour of
3 maintaining the status quo, would that be fair?

4 A. Fairly much, yes.

5
6 Q. I don't mean this disrespectfully, but you have a
7 predisposition in relation to a number of the matters
8 before council in relation to a number of matter before
9 this inquiry to preserve the status quo, that's correct,
10 isn't it, and I don't put that critically, Ms Simms.

11 A. I think you'll find when you look at my marking on the
12 map for Berala that I marked the B2 zone to go further into
13 Campbell Street and on to Woodburn Road.

14
15 Q. I thought your evidence earlier was that in supporting
16 the status quo, you were supporting that there be no
17 change?

18 A. Well, for the --

19
20 THE COMMISSIONER: Q. No change for York Street; is that
21 right?

22 A. Yes, but in answer to your question, yes, I'm
23 conservative as far as development goes.

24
25 MR ROBSON: Q. In relation to Berala, I think you said,
26 and I might be misquoting you, there were so many
27 workshops - do you remember using those words?

28 A. Yes.

29
30 Q. There were a number of workshops and, to be fair,
31 there was much detail given to councillors?

32 A. There was - well, we had the Berala study done quite
33 early in the piece. It was done --

34
35 Q. Would you agree with me that there was much detail
36 given to the councillors to consider and, to be fair, there
37 would be much disagreement amongst them?

38 A. Yes, there was.

39
40 Q. Different views were expressed by different people?

41 A. With the Berala one particularly, there was basically
42 two viewpoints in the chamber.

43
44 Q. In relation to South Auburn, the same could be said?

45 A. For South Auburn, I think there was a bit more
46 variety.

47

1 Q. Thank you. You might have been asked this before - in
2 paragraph 8, you refer to some matters and you refer to a
3 note. You have no recollection --
4 A. Of my statement?
5
6 Q. I'm sorry, paragraph 8 of your statement of
7 23 May 2016.
8 A. Yes.
9
10 Q. You refer to a note you made at the time and you say
11 you have no recollection of the conversation. The note is
12 an annexure marked "A" at page 22.
13 A. Yes.
14
15 Q. That was the document that recorded a conversation of
16 30 July 2009 with Mr Burgess.
17 A. Yes.
18
19 Q. You were aware at that time, were you not, that
20 Mr Burgess - well, were you aware that this had been
21 referred somewhere, this particular problem?
22 A. No. I only found out that day, in that conversation.
23
24 Q. Is it the fact - well, first of all, you don't
25 remember that conversation apart from that note; is that
26 correct?
27 A. No, I don't remember the conversation.
28
29 Q. So, yes, it is correct?
30 A. The note is - the conversation - as a mayor, I had a
31 lot of people come to visit more than would normally occur,
32 so I made a habit after meetings to make notes of what
33 happened at the meeting.
34
35 THE COMMISSIONER: Q. I think you were asked, absent the
36 note, you have any independent recollection of that
37 conversation?
38 A. No, I have no recollection of that conversation at
39 all.
40
41 MR ROBSON: Q. I certainly wasn't being critical of you.
42 The fact that you don't remember the conversation, could
43 there have been other conversations at the time you don't
44 remember?
45 A. Possibly.
46
47 Q. Indeed, when you say that you heard no more about this

1 particular matter until this year, that was your evidence,
2 was it not?
3 A. I was --
4
5 Q. Is that your evidence?
6 A. I - I knew nothing about the litigation with
7 Station Road apart from that which I had forgotten until
8 Mr Bolster asked me about if I knew - had any knowledge of
9 Station Road. I found the note by accident when I was
10 looking for other things to use. Until I saw the article
11 in the Herald, I had no knowledge of what had happened.
12
13 Q. Can I just put this to you: it may have been the case
14 that you had some knowledge of it but you no longer have
15 that knowledge, just as you don't remember the conversation
16 that took place on 30 July 2009?
17 A. Well, I will say that I'm astounded that I didn't
18 remember this conversation.
19
20 Q. Thank you.
21 A. I assume I put it in the "It's been dealt with"
22 basket, but I'm very confident to say to you that there has
23 been no other discussion since then that I am aware of.
24
25 Q. Go to paragraph 86 of your statement at page 16.
26 A. 86?
27
28 Q. Yes, paragraph 86 on page 16.
29 A. Yes.
30
31 Q. I won't repeat what you have been asked before, but
32 you were given some material, a folder of information, that
33 was put together for the ICAC, you say, and a copy of which
34 is incomplete is annexure marked D. Now, D is at page 38,
35 as I see it, of your statement.
36 A. No. The ICAC stuff starts at 51.
37
38 Q. That's not marked D, is it?
39
40 THE COMMISSIONER: Page 38 does have the letter D on it.
41
42 THE WITNESS: 38 --
43
44 MR ROBSON: Q. You refer to annexure --
45 A. No, 38 is the Francis - no, that wasn't - that
46 didn't - that wasn't for ICAC.
47

1 Q. When you were preparing this statement, did you look
2 at the annexures?
3 A. The annexures - if annexures were agreed to, the
4 annexures were added after the statement was done.
5 I provided the information but the information I provided
6 for the annexures was added after I signed the statement.
7
8 Q. When you refer in your statement to Annexure D, you
9 actually mean something marked F; is that correct?
10 A. Actually, yes.
11
12 Q. What were you referring to for that which is marked D?
13 Is that your marking, "D"?
14 A. No, I haven't marked them. Mr Bolster's marked them.
15 The one marked D --
16
17 Q. At page 38, just so I understand what this is, this is
18 one page of three. This is a series of emails between
19 Mr Francis and you which apparently, looking at the top of
20 page 38, you have forwarded directly to Ms McKenney; is
21 that correct?
22 A. To Ms McKenney?
23
24 Q. Yes. Look at the top of page 38.
25 A. Yes.
26
27 Q.
28 *From: Irene Simms*
29 *To: Leesha McKenney*
30
31 *FYI*
32
33 *Irene*
34
35 And you've given to that recipient each of the emails
36 underneath there for three pages, I assume. Is that --
37 A. If you follow the email trail --
38
39 Q. Is that correct?
40 A. Yes, but the email begins at page 40.
41
42 Q. Yes, I understand that. Did you tell Mr Francis that
43 you were sending this off to the press?
44 A. Yes. Mr Dencker, I did.
45
46 Q. The question was did you tell Mr Francis, you were
47 sending this off to the press?

1 A. No, because it didn't happen in February 2014, it
2 didn't go to the press.
3
4 Q. Pardon?
5 A. Could I just please read it through?
6
7 Q. Yes.
8 A. No, I don't know if I did tell him I would send it to
9 the press, but there's nothing confidential in it.
10
11 Q. When you sought information from the council officer,
12 just so I understand, you were content, without discussing
13 it with him further, to provide that directly to the press;
14 is that right?
15 A. No, but you'll notice that I start --
16
17 Q. Is that right?
18 A. Pardon?
19
20 Q. Is that right?
21 A. Yes.
22
23 Q. That was in 2014 that it was sent. On Saturday,
24 15 February 2014, you communicated with the press. My copy
25 is a little unclear, Ms Simms. The email from you says
26 "Saturday, 15 February" - is that 2014?
27 A. 2014.
28
29 Q. Thank you. I don't put this with disrespect, but that
30 was a pattern of behaviour of yours of providing material
31 such as that to the press?
32 A. No, it wasn't. On 11 February 2014, and you'll notice
33 it's well before other things happened in council, I said
34 I received an inquiry from the site. The inquiry that I
35 received was actually a request from Leesha McKenney about
36 it. I'm not sure why that part of the email isn't there.
37
38 Q. It's there.
39 A. The inquiry was from Leesha McKenney asking me about
40 this site in Lidcombe that she'd been told about.
41
42 Q. Do you remember the question I asked you, Ms Simms?
43 A. No.
44
45 Q. What were you answering?
46 A. Pardon?
47

1 Q. What were you talking about if you don't remember the
2 question?
3 A. I know it was a specific question, so --
4
5 Q. It was a specific question. Do you remember what it
6 was?
7 A. Which one? No.
8
9 Q. Part of a pattern of behaviour that you'd adopted was
10 providing information to the press, is that correct or not?
11 A. No. In that case, in February '14, no.
12
13 MR ROBSON: Thank you.
14
15 THE COMMISSIONER: Mr Gardiner?
16
17 MR GARDINER: Thank you.
18
19 **<EXAMINATION BY MR GARDINER:**
20
21 MR GARDINER: Q. Ms Simms, my name is Gardiner.
22 I appear for Mr Steve Yang. Ms Simms, did you coin the
23 terms the "super six" and the "poor four"?
24 A. No. In an interview one day someone asked me about
25 how things were in council. I said there's the six - it
26 was a throwaway line, the "super six", that got reported
27 and apparently that stuck. The "poor four" came - was
28 Mr Mehajer's line.
29
30 Q. Nonetheless, you have been a councillor since 1999?
31 A. Yes.
32
33 Q. In that time you've dealt with, and quite properly
34 with, very many planning applications before the council?
35 A. Yes.
36
37 Q. Many development applications?
38 A. Yes.
39
40 Q. Section 96 modifications?
41 A. Yes.
42
43 Q. And some very broad planning proposals, such as the
44 redevelopment of the LEP for the Auburn Council area back
45 in 2009?
46 A. Yes.
47

1 Q. And you dealt with various aspects touching upon the
2 DCP at various stages, I would imagine?
3 A. Yes.
4
5 Q. In that time you would have seen countless planning
6 expert reports?
7 A. Yes.
8
9 Q. And you would have reviewed countless reports from
10 staff regarding planning matters?
11 A. Yes.
12
13 Q. It is not uncommon, is it, to disagree with
14 recommendations from staff?
15 A. It's not unheard of. More often than not we'd agree
16 but, yes.
17
18 Q. Quite often within the Council Chamber there would be
19 different views expressed?
20 A. Yes.
21
22 Q. And quite often one or more councillors would take a
23 view which is contrary to the planning staff report?
24 A. Correct.
25
26 Q. And that's normal and appropriate in the course of a
27 council meeting?
28 A. Yes.
29
30 Q. From time to time you would take a different view,
31 either you personally, or various councillors in the
32 chamber, would take a different view to that expressed by
33 planning experts?
34 A. Yes.
35
36 Q. Those retained by applicants for planning proposals
37 and those retained by opponents of proposals?
38 A. Yes.
39
40 Q. That was quite normal and appropriate in the normal
41 course of council activities?
42 A. Yes.
43
44 MR GARDINER: Thank you, no further questions.
45
46 THE COMMISSIONER: Mr Hopper?
47

1 MR HOPPER: Thank you.

2

3 <EXAMINATION BY MR HOPPER:

4

5 MR HOPPER: Q. Ms Simms, my name is Hopper. I appear
6 for Mr Zraika. I have a few questions for you. Firstly,
7 you have probably been the most experienced councillor
8 during the period of the last council up until it was
9 suspended in February, would you agree?

10 A. No, Councillor Lam has been here since 1995.

11

12 Q. Thank you for that.

13 A. Or '91, I'm not sure.

14

15 Q. But it's fair to say that you are a very experienced
16 councillor and you understand the history of what the
17 dynamics of a council over a period of time are?

18 A. Yes.

19

20 Q. In a general sense, you would understand the role of
21 the council/councillors is to develop policy and through
22 the general manager, that is implemented via directions to
23 the staff and delegation to the staff?

24 A. Correct.

25

26 Q. In a sense, the Code of Conduct sets out the rules of
27 how interactions between councillors and staff should occur
28 and what's appropriate or what's not appropriate?

29 A. Yes.

30

31 Q. And other things such as conflicts of interest and how
32 they should be dealt with and what should be declared and
33 so forth; do you agree with that?

34 A. Yes.

35

36 Q. There has been discussion about a number of
37 development applications in your evidence and some planning
38 proposals but, in particular, Berala; do you agree with
39 that?

40 A. Sorry, just that last bit?

41

42 Q. The Berala Planning Proposal was one proposal of
43 significance in your evidence?

44 A. Absolutely, yes.

45

46 Q. You would agree that that came about via a motion in
47 council in around 2010 to initiate a study of the area?

1 A. Yes.
2
3 Q. Around March 2012, a study had been completed?
4 A. Yes.
5
6 THE COMMISSIONER: By the council?
7
8 MR HOPPER: Yes.
9
10 Q. That study was then put before council and there was a
11 motion about exhibiting that draft; do you remember that?
12 A. Well, it happened.
13
14 Q. Yes. From that point of time, or at that meeting you
15 would recall that Mr Zraika declared a pecuniary interest
16 in that proposal?
17 A. Yes.
18
19 Q. From thereon in, he absented himself from council
20 meetings in relation to when that topic was before council?
21 A. And briefings, yes.
22
23 Q. And briefings?
24 A. Yes.
25
26 Q. And voting?
27 A. Yes.
28
29 Q. When he did that, he complied with the code of
30 conduct?
31 A. Yes.
32
33 Q. I think there was a change in the law soon after that
34 where it was still possible for someone who had an
35 interest, if it was declared, to participate in council?
36 A. If it was the holder of a significant part of the
37 local government area that was being discussed.
38
39 Q. Notwithstanding that law, if Mr Zraika considered it
40 was okay for him to participate or not, he chose not to.
41 Do you agree with that?
42 A. Yes.
43
44 Q. He absented himself from any discussion about that
45 proposal?
46 A. Yes, he did.
47

1 Q. Yes. That was quite proper, wasn't it?
2 A. Yes, it was.
3
4 Q. Yes. Have you ever made representation on behalf of
5 your constituents to council?
6 A. Of course I have.
7
8 Q. You've made representations on behalf of constituents
9 to the general manager from time to time?
10 A. I may have sent them to the general manager. Well, to
11 me putting it to the general manager is me putting it
12 council.
13
14 Q. I am sorry, I missed that?
15 A. Putting it to the general manager - to me, forwarding
16 the information to the general manager is forwarding it to
17 the council.
18
19 Q. The general manager has some power to deal with some
20 issues via representation, you would agree with that?
21 A. Yes.
22
23 Q. For instance, with fines, the general manager has a
24 power under the Local Government Act to deal with issues
25 about prosecuting fines or not; they have a discretion?
26 A. Yes.
27
28 Q. You would agree that under the Fines Act,
29 representations can be made to the issuing body which would
30 be the council of a parking fine by a ranger?
31 A. I'm not familiar with the Crimes Act, but, yes, I do
32 know you can make representations to various avenues.
33
34 Q. And it is quite appropriate for a councillor to make
35 such representations, you would agree?
36 A. Yes, I have done it, but I probably would have done it
37 differently.
38
39 Q. As long as they don't exert undue influence on the
40 decisionmaker, then everything would be appropriate; you
41 would agree with that proposition?
42 A. Yes, correct.
43
44 Q. If someone made a representation to a general manager
45 that involved a relative and they stated that, and declared
46 that they were doing it on behalf of a relative, that would
47 be appropriate too?

1 A. I wouldn't advise - I wouldn't have done it because in
2 the sphere of influence it's too close. I don't know --
3
4 Q. Just wait. I'll ask a question to expand on that.
5 What I am saying is that if someone had put it out in the
6 open, then everybody would be able to see that record who
7 may have an interest in it?
8
9 MR BOLSTER: Put what out there?
10
11 MR HOPPER: Q. Put out in the open that they were doing
12 it on behalf of a relative, for example.
13 A. Right.
14
15 Q. It wasn't happening in a hidden way or an underhanded
16 way, you would agree with that?
17
18 MR BOLSTER: I am having trouble understanding what the
19 question is about, Mr Commissioner.
20
21 THE COMMISSIONER: I think I understand what is being put.
22 I think Mr Hopper is trying to ask a question to the
23 witness along the lines: if a councillor is making a
24 representation about a fine for a relative, as long as he
25 gives full disclosure about who the relative is and that
26 they are a relative, and that that is publicly known, that
27 that's okay. That is what you are putting to the witness,
28 isn't it?
29
30 MR HOPPER: Yes, in essence. You do it much better
31 than I, Commissioner.
32
33 THE COMMISSIONER: Q. Anyway, do you understand what was
34 being asked?
35 A. I do, except that the disclosures to the
36 general manager are not public in that way I guess.
37
38 MR HOPPER: Q. Well, someone can go and make a Freedom
39 of Information request and that information can be known;
40 you would agree with that?
41 A. Yes.
42
43 Q. Or if council got together and made a resolution that
44 the general manager table all representations from
45 councillors, then that information would be known?
46 A. Yes.
47

1 Q. You would agree that it wasn't an issue that
2 representations were being made to the general manager in
3 regard to whether fines should be in force or otherwise?
4 A. The information was passed on - if the question - no,
5 I guess - no, I have no issue with it.
6
7 Q. You were quite concerned with the events leading up to
8 John Burgess leaving the council?
9 A. Yes.
10
11 Q. I think in your statement you have said something
12 about you were about to catch an aeroplane flight somewhere
13 and when you came back you were very concerned, something
14 to that effect?
15 A. Yes. I was on a holiday overseas when I got a text
16 message.
17
18 Q. When you came back, you wanted to find out more
19 information about what was going on?
20 A. Yes.
21
22 Q. And you spoke to various people on the council about
23 that, council staff?
24 A. Yes, I spoke to - I didn't speak to the
25 general manager. I spoke to Graeme Thomas, I think.
26 I spoke to several of the councillors first and asked them
27 what was going on and I asked the local paper because -
28 Kim Palmer, I think I said, from the Local Review, because
29 she attended all the meetings.
30
31 Q. But wasn't the discussion about a potential dismissal
32 of Mr Burgess done in a closed session?
33 A. Well, I wasn't here. The question to put it into
34 closed session, the item number for the council came up
35 after I - it must have been the day of the meeting.
36
37 Q. Yes.
38 A. So I was unaware of it.
39
40 Q. In regard to the motion to dismiss Mr Burgess, that
41 didn't come before council while you were overseas. Did it
42 come after you returned or when you were overseas?
43 A. No, apparently there was something on the business
44 paper about the general manager's contract, or the
45 performance of the general manager, the night of the
46 council meeting after I left. It didn't get dealt with
47 because I understand council - there was no quorum.

1
2 Q. No quorum, did you say?
3 A. No quorum.
4
5 Q. Thank you. On page 31 of your statement it has a
6 motion for extraordinary meeting of council on 13 May --
7 A. March.
8
9 Q. March, sorry - thank you for that - 2013?
10 A. Yes.
11
12 Q. And it's got George Campbell's name down the bottom.
13 A. Yes.
14
15 Q. How did you come into possession of that document?
16 A. It was given to me. It was tabled on the bench,
17 I think, when I came to council and it was being dealt
18 with.
19
20 Q. Are you aware whether that document was authored by
21 George Campbell?
22 A. I assumed, from reading it, that the author was
23 George Campbell.
24
25 Q. Did you speak to Mr Campbell about that?
26 A. I don't think so.
27
28 Q. You were obviously against the dismissal of
29 Mr Burgess, that's fair to say?
30 A. Yes, I was.
31
32 Q. Are you aware if anybody else held a similar position
33 to you in that regard?
34 A. I was not the only person who voted against it.
35 I think Councillor Oldfield voted against his dismissal,
36 Councillor Batik-Dunbar voted against his dismissal.
37 Councillor Mehajer voted against his dismissal.
38 Councillor Lam voted against his dismissal. There was a
39 lot of debate, I think, around the room. Councillor Zraika
40 was not necessarily in favour, but he said he believed that
41 it may be the resolution of, you know, that unpleasantness
42 in the council, between the councillors and general
43 manager.
44
45 Q. That's what I wanted to get to.
46 A. Right.
47

1 Q. It's fair to say that Councillor Zraika had a neutral
2 position in relation to Mr Burgess in the weeks leading up
3 and before this decision was made by council, would that be
4 fair to say?
5 A. Well, we only had - we only had two meetings that
6 dealt with this. All the other meetings I was away, and
7 people walked out or whatever happened.
8
9 Q. But don't you --
10 A. I wasn't here for those.
11
12 Q. Don't you share views amongst councillors about, you
13 know, how things are going with, you know, a manager's
14 performance or what you think of so and so?
15 A. No.
16
17 Q. Don't you have those informal discussions?
18 A. When I came back from overseas, I have notes before
19 I went away, Councillor Zraika was one of the people
20 I spoke to, but he said he wasn't aware of what was going
21 on, he was just going to see what happened.
22
23 Q. Yes.
24 A. Other than that, no, we didn't all have discussions
25 outside of the chamber.
26
27 Q. Councillor Zraika has been on council since 2004 and
28 you have been on council before. In 2004, you certainly
29 would have had quite a number of dealings with Mr Zraika
30 until the council was suspended?
31 A. Yes.
32
33 Q. You would have had quite a number of dealings with
34 Mr Zraika up until this point in time in March 2013?
35 A. Yes, in the course of our time on council, yes.
36
37 Q. Did he proffer any views one way or the other about
38 whether Mr Burgess should stay on or leave or was he,
39 indeed, neutral?
40 A. I think he said that --
41
42 Q. The question goes a period from 2004 upwards.
43 A. No, there was - I heard - there was no discussion
44 about Mr Burgess going with Councillor Zraika. The only
45 time that I was aware of the comments he made was the night
46 of the meeting.
47

1 Q. Are you aware that Mr Burgess spoke to Mr Zraika
2 either on the day of the meeting or the day before the
3 meeting asking him what he was going to do?

4 A. Only because at the meeting Mr Zraika,
5 Councillor Zraika at the time, said that he had spoken to
6 John that afternoon and told him how he was going to vote.

7
8 Q. And that was along the --

9 A. That's all I knew of it.

10

11 Q. That was along the lines, from what you understand,
12 that Mr Zraika wanted to try and end some trouble within
13 the council, and he thought the best way to do that was to
14 agree with the people who wanted to --

15 A. No, he didn't say, from my recollection, that that was
16 the discussion. He just said he had talked to John and
17 told John what his position was going to be. When we
18 talked about it he said that one of his comments, which
19 I noted, was that he said that he thought he had no issue
20 but it would perhaps settle things within the council.

21

22 Q. Yes. All right. Thank you for that. There have been
23 times during the period Mr Zraika has been on the council
24 since 2004, up until the present time, that both you and he
25 have been on reasonably good terms?

26 A. Yes.

27

28 Q. In fact, when you became mayor in 2008, Mr Zraika
29 supported your candidacy?

30 A. Well, I - it was - yes, he did vote for me. It was an
31 arrangement that was made between the Labor and the Liberal
32 councillors, not me.

33

34 Q. And Ronney Oueik supported you?

35 A. Yes.

36

37 Q. There has been a lot of deals done on the council over
38 the course of time, would you agree with that, between the
39 councillors?

40 A. For the position of mayor and deputy mayor?

41

42 Q. Yes.

43 A. Yes.

44

45 Q. Maybe in the last five years there have been periods
46 where the candidates have a tied vote of five a piece and
47 the successful candidate has his name drawn out of a hat?

1 A. That's happened for the position of mayor or deputy
2 mayor many times in the last eight or nine years.
3
4 Q. Yes. Prior to Mr Zraika becoming mayor in 2013,
5 I believe it was, you became mayor in September 2013?
6 A. He became mayor in September 2013, yes.
7
8 Q. Prior to him becoming mayor, yourself, Mr Campbell,
9 Mr Zraika and two other councillors used to meet before
10 council meetings and run through the business papers?
11 A. Yes. Councillor Zraika didn't come that often. We
12 used to meet beforehand and talk about things that were on
13 the paper and if there were issues.
14
15 Q. You would discuss the issues amongst yourselves?
16 A. Yes.
17
18 Q. And then sound out each other's view on it?
19 A. Yes.
20
21 Q. Then when Mr Zraika became mayor, he only attended
22 about three of those meetings?
23 A. He didn't attend very regularly from the word go.
24
25 Q. I'd suggest to you that when he became mayor in 2013,
26 from September 2013, that he only attended around three
27 meetings with yourself and Mr Campbell and two other
28 councillors during that period that he was mayor?
29 A. It's possible, yes.
30
31 Q. In paragraph 51 on page 8 of your statement - would
32 you just have a look at that.
33 A. Paragraph 51, sorry.
34
35 Q. Paragraph 51, page 8. This is the issue about
36 friends.
37 A. Yes.
38
39 Q. You have asserted in your evidence that Ronney Oueik,
40 Ned Attie, Izzet Anmak, Jack Au and Hicham Zraika
41 socialised regularly?
42 A. Yes.
43
44 Q. They regularly played cards, smoked the hookah, with
45 the possible exception of Jack Au and often attended
46 functions together?
47 A. Yes.

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Q. Did you ever attend any of those card playing meetings?

A. No.

Q. You have no direct knowledge that any of these people attended card playing meetings together?

A. Well, only in as much as that Ronney told me they played cards, and that when Ronney became mayor, he got a van and he had - he told me that a table was put in for the boys to play cards at.

Q. You never asked Mr Zraika whether he did that?

A. I didn't ask him, no.

Q. You don't know for sure whether that happened or not, that would be fair to say?

A. Well, I only went on anecdotal evidence of what was said - Mr Oueik said.

Q. And the same with them socialising regularly, you have no direct knowledge of that, do you?

A. I went to a couple of functions where I was invited along with that group that Jack Au did some fundraising for at the Marigold restaurant in the city, and I went twice with them.

Q. All right. So you socialised with them as well?

A. I went twice. It was a Lion's Club fundraiser. Yes, I didn't socialise as in I didn't play cards or go out on the weekends with them. I went to two functions with them.

Q. Did you do the hookah with them?

A. No. No, I didn't.

THE COMMISSIONER: If you open your drawer there's one in there.

MR HOPPER: Sorry?

THE COMMISSIONER: No, keep going.

MR HOPPER: Q. But you're not suggesting anything untoward? Even if they may have socialised from time to time, you're not suggesting anything untoward?

A. I'm just saying they were quite a close-knit group is what I'm implying, yes.

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Q. You would agree when proposals or development applications come before council, various councillors may take different views on the development application for various reasons?

A. Yes.

Q. Over the course of time, you know, often, particularly large development applications won't just come before council once and get the rubber stamp from council and off it goes, there's usually a process involved? A development application will come before council a number of times and things will change in relation to issues in that development application?

A. Depending on the - a lot of development applications were approved as they were. Those that were given deferred commencement usually were not brought back to council, they were given the green light, if you like, at the council meeting and then the work that was done to bring it to construction certificate was done in-house. It wasn't necessarily brought back to a council meeting.

Q. But sometimes that would happen? There would be some issues and then some things would change and it would have to come back and then it would be reconsidered?

A. Yes.

Q. Then sometimes councillors may change their mind over the development application to the original view they took?

A. Yes.

Q. And that's a normal sort of thing?

A. Yes.

Q. In relation to the Berala Planning Proposal, that happened as well; would you agree with that?

A. Yes, some councillors changed their minds, but it expanded it more than anything else.

Q. You heard from Mr Watson, he asked you some questions about some councillors have a philosophy being more pro-development and some a philosophy that maybe about preserving certain things about their community and although they may disagree, they may come to a compromised position at some point. Do you agree with that?

A. It's possible, yes.

1 Q. Planning staff from council come in and offer advice
2 on certain pros or certain cons about a planning proposal
3 and council members consider it; do you agree with that?
4 A. Not usually in a council meeting but outside of that,
5 yes.
6
7 Q. Such as a workshop?
8 A. A workshop or where the councillor specifically asks a
9 question in a meeting.
10
11 Q. Just to clarify one thing - using coloured pencils in
12 relation to zoning areas, and things like that, there's
13 nothing untoward about that, is there?
14 A. No.
15
16 Q. It is just about making or expressing your ideas about
17 what should happen in a particular area in a way that can
18 be easily interpreted by someone on staff?
19 A. Yes.
20
21 Q. That is fair to say, isn't it?
22 A. Yes.
23
24 Q. You would agree then that in relation to a number of
25 planning proposals that have been before council, such as
26 Regents Park, Lidcombe, Berala, for example, it is an
27 organic process? The process grows in relation to the
28 information and the exchanges between council and staff,
29 and an idea grows from that. It might not be the original
30 position, it might not be what the two extreme positions
31 were at the beginning, but it may grow into a third
32 position in a rather organic way?
33 A. It can happen.
34
35 Q. Yes. You would agree that you have no knowledge of
36 anything done by Mr Zraika that was untoward in relation to
37 the Berala planning process; would you agree with that?
38 A. No, that's right.
39
40 Q. And that he always acted properly in council meetings
41 in relation to that proposal?
42 A. Every time we've dealt with Berala Council, Zraika
43 declared - whether it was a briefing or a workshop - a
44 workshop he didn't declare anything, he just didn't come in
45 for that part of the briefing.
46
47 Q. And you agree that that's entirely appropriate --

1 A. Absolutely.
2
3 Q. -- and commendable behaviour?
4 A. He absolutely followed the protocol where Berala was
5 concerned, yes.
6
7 Q. You were asked some questions before about this term
8 "super six"; do you remember that?
9 A. Mmm.
10
11 Q. It is not the case that Mr Zraika voted with various
12 councillors all the time on particular issues, is it?
13 A. Sorry?
14
15 Q. It is not true, is it, that Mr Zraika voted in a block
16 with people?
17 A. Not on every occasion, but there developed a pattern.
18 So things were - if we're talking about Councillor Zraika
19 where he sometimes voted against, at the next meeting he
20 might vote for. Towards the last couple of years of
21 council there seemed - there was a change in fact where he
22 often voted "no", against, then he started voting pro for a
23 lot of things.
24
25 Q. There certainly was, and let me just give you some
26 information. I have tallied up the number of votes on
27 development applications and planning proposals since
28 between 2008 and 2016, and does it sound right that the
29 total decisions between that time were around 276?
30 A. I would have no idea, sorry. That's something
31 I didn't count.
32
33 Q. Take it from me that over that time - and you're free
34 to take it on notice and perhaps if you disagree come back
35 and let my friend know - that around that time, he voted
36 with you on issues in 80 instances, which works out to be
37 29 per cent.
38 A. Right.
39
40 Q. He voted against you, sorry, on 80 instances,
41 29 per cent?
42 A. Yes.
43
44 Q. And he voted with you in 196 instances which total
45 71 per cent.
46 A. Right.
47

1 Q. Let's just break up from the time before he was
2 mayor --
3
4 THE COMMISSIONER: That's over 100. Does that make any
5 sense?
6
7 MR HOPPER: No, 71 per cent and 29 per cent add up to 100.
8
9 THE COMMISSIONER: I thought you said 29 twice.
10
11 MR HOPPER: I made a mistake the first time, so I do
12 apologise.
13
14 THE COMMISSIONER: No, that's okay.
15
16 MR HOPPER: I got all excited and read it a little bit too
17 quickly.
18
19 Q. Before Mr Zraika became mayor, he voted against you in
20 46 instances, which works out to be 25.7 per cent, and he
21 voted with you in 133 instances which worked out to be
22 74.3 per cent.
23
24 THE COMMISSIONER: You are not going to ask the witness if
25 she can --
26
27 THE WITNESS: That's before he became mayor?
28
29 THE COMMISSIONER: -- remember this precisely?
30
31 MR HOPPER: Q. If you have an issue with this, as I say,
32 bring it up with Counsel Assisting. I am just reading this
33 to you because there are some questions that come from it.
34
35 After Mr Zraika became mayor in September 2013, he
36 voted against you in 34 instances, which is 35 per cent in
37 this period, and then he voted with you in 63 instances
38 during that period, which is about 65 per cent.
39
40 What I want to put to you, and take it from me that
41 that's close to accurate in relation to development
42 application and planning proposals, that there was a shift
43 of only about 10 per cent on those figures?
44 A. But many of the applications - many of the development
45 applications I think, if you took out the ones that were
46 unanimous --
47

1 Q. We did that, they're not the unanimous ones.
2 A. Right.
3
4 Q. They're the ones where they weren't unanimous.
5 A. Okay.
6
7 Q. So there's only a 10 per cent difference. Does that
8 ring a bell? Does that sound true to you or possibly true?
9 A. It's possible that there's a "but" here.
10
11 Q. What I am suggesting to you, and I invite you to have
12 a look at these things for yourself, is that there was a
13 slight difference against the way you were voting but it
14 wasn't that significant?
15 A. Well, we had a - can I add?
16
17 Q. You can just comment on the figures that I've given
18 you. You can say subject to those figures it is either yes
19 or no, subject to those figures being right.
20
21 MR BOLSTER: I think the witness wanted to say something.
22
23 THE WITNESS: I do want to say something but that's --
24
25 MR HOPPER: Q. Please, go ahead.
26 A. Can I?
27
28 THE COMMISSIONER: Yes.
29
30 THE WITNESS: Okay. We had a - and I'll just use one
31 example. We had an evening one night where we had two
32 matters before the council where some people were in the
33 gallery, an observation, and it was interesting to have two
34 community members pick it up that were not regular
35 attendees at the council. We had a matter for - one was a
36 block of units in Union Street at Lidcombe, if I remember,
37 and another one was - the other person that spoke to me was
38 here for something to do with a mention, it was a rezoning,
39 but it was interesting to notice that the people - the
40 community picked up from the one meeting that where there
41 were matters where Councillor Zraika's vote didn't matter
42 which way he voted, he voted with us. Where the vote made
43 a difference, he voted with the other side.
44
45 MR HOPPER: Q. But that's certainly a political decision
46 that someone is entitled to make?
47 A. I know, but you're quoting figures at me, so --

1
2 Q. I will just give you an example of a situation where
3 someone may change their mind on something. You would
4 agree that there's no supermarket in Lidcombe?
5 A. Well, there is now, and there used to be. There was a
6 time when there wasn't.
7
8 Q. There was a time over the last period of council when
9 there wasn't and it was a bit of an issue?
10 A. Yes.
11
12 Q. There was an issue about a car park?
13 A. Yes.
14
15 Q. And a particular development, and a car park being
16 sold to someone at less than a market value rate. You're
17 aware of that issue?
18 A. Yes, but not - originally that wasn't the case. It
19 was later on it was the case.
20
21 Q. In regard to that, when a development application was
22 first put in for that site, Mr Zraika was against that
23 development application?
24 A. Right.
25
26 Q. Do you agree with that?
27 A. I don't remember. I do know that there was one
28 recommended going to the JRRP and it was recommended for
29 refusal.
30
31 Q. But over the course of time, there was a condition put
32 on that particular development application that there be a
33 car park in there that has spaces open to the public?
34 A. Yes.
35
36 Q. Do you agree with that? Another condition was that it
37 would have a supermarket in it?
38 A. That was the prime condition.
39
40 Q. Yes. It's open to a councillor to say, "Okay, maybe
41 we're selling the car park at less than the market value,
42 but there's a net gain to the community in that there will
43 still be a car park in that area open to the public and a
44 supermarket", and that would be one reason where a
45 councillor may change their mind; you would agree with
46 that?
47 A. Maybe, but I don't know if that was the circumstances

1 of the case here.

2

3 Q. But what I'm trying to get across to you is that there
4 are circumstances where a development application will
5 change, and the conditions in relation to that development
6 application will change, that may then give a councillor
7 who has considered all of these things, or may persuade a
8 councillor who has considered all of those things, to
9 change their mind on the development as --

10

11 THE COMMISSIONER: Just before you answer that question,
12 Ms Simms, is it really for you or me or the inquiry to ask
13 the witness that? That is just something you can make a
14 submission about, isn't it? Do you need to explore it with
15 this witness?

16

17 MR HOPPER: My concern was, and I have allayed that
18 concern in some respects from the thoughtful answers this
19 witness has given, but there seemed to be an inference that
20 my client may be voting in a particular way on something
21 just because it is a certain group's view on a development
22 application rather than his own consideration.

23

24 THE COMMISSIONER: I guess what I am saying to you is that
25 what you have just said, rather than being really a
26 question, is a submission pointing out something about the
27 nature of being a councillor, or dealing with development
28 applications.

29

30 MR HOPPER: I can't take it any further.

31

32 THE COMMISSIONER: Yes.

33

34 MR HOPPER: I think I am almost finished, I just want to
35 check my notes.

36

37 THE COMMISSIONER: No, take your time.

38

39 MR HOPPER: Q. Certainly there was no instance when
40 Mr Zraika said to you, "I'm going to vote with these people
41 and support their development applications regardless of
42 the merits", or anything along those lines?

43

44

45 A. No.
46 Q. And you had no information that he had caucused with
47 these other five councillors, or anybody else, in relation
to how he was going to vote?

1 A. No. On the car park?

2

3 Q. On any issue.

4 A. No. No.

5

6 Q. To your mind, Mr Zraika hadn't acted in any way to
7 contravene the Code of Conduct?

8 A. No.

9

10 MR HOPPER: No further questions.

11

12 THE COMMISSIONER: Thank you.

13

14 MR ROBSON: Commissioner, could I just clarify some matter
15 I put to the witness? It may help you in the dark lonely
16 hours when you are looking at the material.

17

18 In the statement of views, we accept the annexures
19 don't reflect the statement, but at page 38, the annexure
20 is D. I probably should put this to the witness first.

21

22 **<EXAMINATION BY MR ROBSON:**

23

24 MR ROBSON: Q. Ms Simms, when you answered a question
25 from me earlier, I suggesting to you that you didn't tell
26 Mr Francis that you were providing his responses to the
27 press and I think you agreed with me. If you go to page 40
28 of your document, this is the email of Tuesday, 11 February
29 at 11.15pm to Mr Francis, you said:

30

31 *I've received an inquiry.*

32

33 Who was the inquiry from?

34 A. Leesha McKenney from the Herald.

35

36 Q. Thank you. When you forwarded that, you didn't tell
37 Mr Francis, of course, that it was an inquiry from the
38 Sydney Morning Herald, did you?

39 A. I don't recall if I had any verbal discussion with
40 Mr Francis at any stage in it, but, no, I didn't, but it
41 was a general inquiry. I didn't know what the answer was
42 when I asked the question.

43

44 Q. In any event, you had had previous intercourse with
45 Ms McKenney, hadn't you?

46 A. Yes.

47

1 Q. Just so the record is clear, you didn't tell him at the
2 time that the inquiry was from the Herald?
3 A. No, I can't answer that definitively yes or no.
4
5 Q. There's no document. If he relied upon what you'd
6 sent him, including your follow-up some day or so
7 afterwards, "No answer to date", that's your pithy email,
8 is it, further up the page, "No answer to date"?
9 A. Yes. No, it doesn't look like it.
10
11 Q. I beg your pardon?
12 A. It may have been a verbal request from her, yes, and
13 I don't remember if I told him, no.
14
15 Q. In fact the request was in relation to a call that
16 you'd had from the Sydney Morning Herald specifically in
17 relation to a development for Mr Mehajer, was it? Do you
18 want me to ask the question again?
19 A. Yes, I want to know which one you're referring to
20 specifically.
21
22 Q. I'm suggest that the inquiry --
23 A. This one?
24
25 Q. At page 40.
26 A. Yes. Sorry?
27
28 Q. That email that you sent to Mr Francis, just so it is
29 clear, not telling him it was from anyone from the Herald
30 to start with --
31 A. Right.
32
33 Q. -- you didn't tell him that it was in relation to a
34 particular property in which Mr Mehajer had an interest?
35 A. Well, I didn't know it was a particular property in
36 which Mr Mehajer had an interest when I asked the question.
37
38 Q. Are you sure about that?
39 A. Yes.
40
41 Q. You say at paragraph 76:
42
43 *On 8 February ... I received a telephone*
44 *call from SMH querying approval for the*
45 *development of this building by Mr Mehajer.*
46
47 The fact is you knew it was an inquiry in relation to

1 Mr Mehajer's building, didn't you? I don't appear for
2 Mr Mehajer, just so you understand that, but you knew it
3 was an inquiry in relation to a building which Mr Mehajer
4 had an interest, you knew it was in the Sydney Morning
5 Herald, and you didn't tell that to Mr Francis at all,
6 that's correct isn't it?

7 A. No. I knew it was the Sydney Morning Herald.
8 I didn't know at that stage it was Mr Mehajer's
9 development. When I wrote my submission - at the time of
10 writing the submission, I knew that that inquiry related to
11 something about Mr Mehajer which is why I said it related
12 to that. When I made the inquiry about 14 Frances Street,
13 I was not aware that Mr Mehajer was the applicant or, you
14 know --

15
16 THE COMMISSIONER: Q. What you are telling Mr Robson,
17 that at the time there was the inquiry from the Herald --
18 A. Yes.

19
20 Q. -- back in February 2014, you didn't know it involved
21 Mr Mehajer?

22 A. No.

23
24 Q. But you have subsequently learnt it involved
25 Mr Mehajer and you have put that in paragraph 76 of your
26 statement?

27 A. Correct. That's what I'm saying. I just got a
28 question saying, "Can you tell me about - can you find out
29 something about this, or can you tell me about this place
30 at Frances Street", because apparently she'd had
31 representations from people.

32
33 MR ROBSON: Q. You had gone out and had your own
34 inspection?

35 A. No. I went out and had a look at it after this.

36
37 Q. You went out and had your own inspection?

38 A. I went out and had a look, yes.

39
40 Q. You would regard it as a massive building - in
41 upper case?

42 A. Yes, and it is.

43
44 MR ROBSON: Annexure D on 38 should be B.

45
46 THE COMMISSIONER: Thank you.

47

1 <EXAMINATION BY MR BOLSTER:

2

3 MR BOLSTER: Q. Just briefly on that topic, would you
4 turn over to page 39. Would you have a look at the four
5 paragraphs at the top of the page.

6 A. Page 39 of my statement?

7

8 Q. Yes. Your statement, yes.

9 A. I'm sorry.

10

11 Q. Do you have that?

12 A. That same one?

13

14 Q. Yes.

15 A. Okay, yes.

16

17 Q. Do you see the questions you were asking to
18 Mr Francis, "Who is the applicant owner?"?

19 A. Yes.

20

21 Q. Why did you ask those questions?

22 A. Because I didn't know who the applicant owner was,
23 sorry.

24

25 Q. Thank you.

26 A. Yes.

27

28 Q. When you were being cross-examined by Mr Watson some
29 time ago now, you wanted to say something about a question
30 that he raised with you about the need for a large retailer
31 in the Grey Street precinct.

32 A. Yes.

33

34 Q. Do you recall what it was that you wanted to say?

35 A. Because - well, I did actually get to say it when I
36 was asked to address it to the Commissioner which was about
37 the fact that I wanted to say that it was made B6 by the
38 council, and B6 allowed commercial things - events to
39 happen.

40

41 THE COMMISSIONER: Clarification.

42

43 THE WITNESS: It was the residential that was the problem.

44

45 MR BOLSTER: Thank you. That's all, thank you
46 Commissioner.

47

1 THE COMMISSIONER: I know there is still 48 minutes to go
2 but I am not going to make Counsel Assisting call another
3 witness.
4
5 MR BOLSTER: I think we have reached the end today,
6 Mr Commissioner.
7
8 MR DUGGAN: There is one issue that relates to this
9 witness.
10
11 THE COMMISSIONER: You want leave to ask some questions?
12
13 MR DUGGAN: No, I don't need to ask any questions. If
14 I recall, she said that in relation to this email chain
15 that she has been asked many questions about, and the
16 inquiry from the Herald, there was an answer I think that
17 suggested there was an email from the Herald that generated
18 this.
19
20 THE WITNESS: It wasn't - sorry.
21
22 THE COMMISSIONER: I thought it was a phone call --
23
24 MR BOLSTER: Yes.
25
26 THE COMMISSIONER: -- from the Herald. I may have missed
27 that.
28
29 MR DUGGAN: I'm not 100 per cent sure myself, but if there
30 is an email, we would like to --
31
32 THE COMMISSIONER: We have got a transcript, if there is
33 an email. I thought the witness's evidence was it was
34 responding to a phone call.
35
36 THE WITNESS: I did say that I might have an email, but
37 I'm mixing up the two things. I had an email about the
38 occupation certificate. This one, I think, was a phone
39 call and it was just a general, "What can you tell me about
40 that site?"
41
42 MR DUGGAN: If it was a phone call, it was a phone call.
43
44 THE WITNESS: I'm sorry for my --
45
46 THE COMMISSIONER: That's all right. No-one has anything
47 further?

1
2 MR ROBSON: I would like to present one matter for your
3 attention and Counsel Assisting to be fair. Page 38, the
4 email from Mr Francis to Ms Simms, the one she passed on to
5 the Herald, could I just ask you to look at the second-last
6 dot point.
7
8 THE COMMISSIONER: What am I looking at now?
9
10 MR ROBSON: Page 38.
11
12 THE COMMISSIONER: Starting, "The development
13 application"?
14
15 MR ROBSON: Page 38 is the email of 14 February at 4.48.
16
17 THE COMMISSIONER: There's two dot points.
18
19 MR ROBSON: Could I just ask you, Commissioner, to note
20 the third dot point.
21
22 MR BOLSTER: It is responsive to the question.
23
24 THE COMMISSIONER: That is what Mr Francis is telling her.
25
26 MR ROBSON: No, that is what was passed on to the Herald.
27 That's my point, Commissioner.
28
29 THE COMMISSIONER: Sorry, that email was subsequently
30 passed on by Ms Simms to the Herald?
31
32 MR ROBSON: Yes.
33
34 THE COMMISSIONER: Thank you. Monday?
35
36 MR BOLSTER: The intention is - and people can assume this
37 will be the case unless they hear something differently -
38 we will have Mr Campbell.
39
40 THE COMMISSIONER: Before you go through that list, we
41 will get some form of update regarding Mr Francis on
42 Monday.
43
44 MR CHESHIRE: I can give you an update now, such as I know
45 it.
46
47 THE COMMISSIONER: Do you want to do that in private

1 rather than public?
2
3 MR CHESHIRE: I think I would rather.
4
5 THE COMMISSIONER: If it involves his health, I don't
6 think that should be in the public hearing.
7
8 MR CHESHIRE: Thank you.
9
10 THE COMMISSIONER: We will just wait on that. Leaving
11 aside Mr Francis, you go through what you want to say.
12
13 MR BOLSTER: Mr Campbell, then Mr Brisby. We hope to have
14 the statement from Mr Oldfield this evening to serve on
15 people, and my intention would be to call him immediately
16 after Mr Brisby.
17
18 THE COMMISSIONER: That's Monday. All that can be done on
19 Monday?
20
21 MR BOLSTER: That would be Monday and probably going into
22 Tuesday I think. The aim is to definitely finish Mr Brisby
23 by the end of Tuesday.
24
25 THE COMMISSIONER: Is there anyone else? Who is after
26 that? You can think about it.
27
28 MR BOLSTER: We'll play that by ear. Things are moving.
29 Ideally I would like to get Mr Francis out as well.
30
31 THE COMMISSIONER: All right.
32
33 MR WHEELHOUSE: For my own complete self-interest, is the
34 target date for submissions still 17 June?
35
36 THE COMMISSIONER: The target date is definitely to finish
37 all the evidence before then. It looks like that is going
38 to happen well before that, and then I was contemplating
39 there would be written submissions, but I am open to hear
40 any suggestions about that, I don't have a firm view.
41
42 MR WHEELHOUSE: I'm trying to sort out travel
43 arrangements, Mr Commissioner.
44
45 THE COMMISSIONER: It looks like the evidence will be
46 complete before that date.
47

1 MR WHEELHOUSE: Thank you.

2

3 THE COMMISSIONER: We will discuss that as the week goes
4 on next week. By the end of Monday or the end of Tuesday
5 we will know a lot more.

6

7 Is there any objection, rather than sending the
8 gallery out and still staying here, that I have a private
9 conversation with Mr Cheshire about Mr Francis just about
10 his health? We might do that privately. All right.

11

12 We will adjourn until 9.30am on Monday.

13

14 <THE WITNESS WITHDREW

15

16 AT 3.17PM THE INQUIRY WAS ADJOURNED TO MONDAY, 6 JUNE 2016
17 AT 9.30AM

18

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#	16/04/2014 [1] - 365:1 16/2013 [1] - 361:3 16/2013/A [1] - 361:2 17 [1] - 417:34 17(1) [1] - 319:9 17(2) [2] - 319:24, 321:23 18 [8] - 360:32, 360:39, 360:44, 360:45, 364:8, 364:20, 365:11, 365:35 181 [2] - 345:23, 346:12 18th [1] - 366:4 1923 [1] - 319:3 196 [1] - 406:44 1961 [1] - 325:4 1995 [2] - 319:45, 394:10 1999 [3] - 341:7, 383:32, 392:30	402:4, 402:5, 402:6, 402:25, 402:26, 407:35 2014 [16] - 328:16, 330:17, 330:33, 350:11, 351:28, 351:29, 364:41, 365:11, 367:1, 391:1, 391:23, 391:24, 391:26, 391:27, 391:32, 413:20 2015 [6] - 338:8, 338:44, 353:13, 365:31, 366:35, 367:1 2016 [9] - 316:28, 324:7, 324:25, 351:26, 375:23, 377:33, 388:7, 406:28, 418:16 21 [2] - 347:7, 364:22 22 [4] - 342:3, 343:9, 369:5, 388:12 23 [5] - 324:14, 326:43, 347:8, 351:26, 388:7 23/05/2016 [1] - 351:32 24 [3] - 327:17, 330:25, 330:26 25.7 [1] - 407:20 27 [1] - 330:36 276 [1] - 406:29 283 [2] - 334:3, 334:4 284 [1] - 334:7 285 [1] - 334:10 29 [4] - 406:37, 406:41, 407:7, 407:9 2A [3] - 333:38, 334:7, 334:23 2B [3] - 333:38, 334:10, 334:23	338:11, 338:13 367 [1] - 338:29 38 [12] - 389:34, 389:40, 389:42, 389:45, 390:17, 390:20, 390:24, 411:19, 413:44, 416:3, 416:10, 416:15 39 [2] - 414:4, 414:6	6 6 [8] - 348:15, 349:24, 349:33, 351:28, 351:29, 364:28, 364:39, 418:16 6-14 [1] - 364:46 6.7 [4] - 369:19, 370:6, 370:34, 370:42 61 [3] - 331:39, 333:3, 367:32 63 [1] - 407:37 65 [1] - 407:38 66 [1] - 367:32
#S10 [1] - 351:32			4 4 [8] - 316:29, 320:34, 348:15, 360:44, 365:31, 366:34, 366:35, 367:1 4.48 [1] - 416:15 40 [3] - 390:40, 411:27, 412:25 43 [1] - 374:26 438U [6] - 318:27, 322:2, 322:4, 322:15, 322:30, 323:24 438U(1) [1] - 318:29 438U(3) [1] - 321:28 438U(4) [1] - 319:2 439 [1] - 324:3 44 [6] - 374:20, 374:23, 374:24, 374:30, 374:33, 379:43 451 [5] - 348:24, 375:20, 380:9, 383:2, 383:4 46 [1] - 407:20 466 [1] - 338:37 474 [2] - 352:32, 353:29 48 [1] - 415:1	7 7 [1] - 338:44 7.9 [1] - 372:15 71 [3] - 333:4, 406:45, 407:7 74.3 [1] - 407:22 75 [1] - 333:9 76 [2] - 412:41, 413:25
0	2 2 [9] - 319:7, 319:10, 320:12, 324:7, 338:20, 343:47, 344:9 20 [1] - 321:27 2004 [4] - 400:27, 400:28, 400:42, 401:24 2006 [5] - 383:24, 383:28, 383:35, 384:4, 384:9 2007 [1] - 339:5 2008 [7] - 341:37, 341:44, 378:45, 379:10, 379:16, 401:28, 406:28 2009 [12] - 336:44, 336:46, 341:44, 341:46, 342:1, 342:13, 342:20, 343:30, 388:16, 389:16, 392:45 2010 [4] - 338:16, 358:8, 375:45, 394:47 2012 [6] - 327:19, 368:21, 378:37, 378:43, 379:30, 395:3 2013 [15] - 337:3, 377:15, 377:17, 377:22, 377:23, 384:23, 384:36, 399:9, 400:34,	3 3 [3] - 316:28, 320:22, 344:1 3.17PM [1] - 418:16 30 [5] - 324:25, 342:13, 343:30, 388:16, 389:16 31 [1] - 399:5 32 [2] - 332:26, 332:28 34 [1] - 407:36 340 [1] - 337:41 35 [1] - 407:36 363 [1] - 338:5 365 [3] - 338:8,	4 5 51 [6] - 374:15, 374:17, 389:36, 402:31, 402:33, 402:35 52 [6] - 367:32, 367:45, 367:47, 369:44, 370:3 522 [1] - 339:10 524 [2] - 338:47, 339:18 55 [1] - 367:32 56 [1] - 367:32 58 [1] - 331:26	8 8 [6] - 348:15, 388:2, 388:6, 402:31, 402:35, 412:43 80 [2] - 406:36, 406:40 85 [2] - 365:4, 365:6 86 [4] - 365:27, 389:25, 389:26, 389:28 88 [1] - 365:31
1			6 6 [12] - 389:34, 389:40, 389:42, 389:45, 390:17, 390:20, 390:24, 411:19, 413:44, 416:3, 416:10, 416:15 39 [2] - 414:4, 414:6	8 9 9.30AM [1] - 418:17 9.30am [1] - 418:12 94 [3] - 343:47, 344:41, 344:44 94" [1] - 344:42 96 [8] - 361:28, 364:14, 364:16, 364:28, 364:30, 364:41, 365:1, 392:40 96(2) [2] - 364:37, 364:45
13 [1] - 337:38 14 [2] - 337:38, 392:11 91 [1] - 394:13			4 4 [8] - 316:29, 320:34, 348:15, 360:44, 365:31, 366:34, 366:35, 367:1 4.48 [1] - 416:15 40 [3] - 390:40, 411:27, 412:25 43 [1] - 374:26 438U [6] - 318:27, 322:2, 322:4, 322:15, 322:30, 323:24 438U(1) [1] - 318:29 438U(3) [1] - 321:28 438U(4) [1] - 319:2 439 [1] - 324:3 44 [6] - 374:20, 374:23, 374:24, 374:30, 374:33, 379:43 451 [5] - 348:24, 375:20, 380:9, 383:2, 383:4 46 [1] - 407:20 466 [1] - 338:37 474 [2] - 352:32, 353:29 48 [1] - 415:1	A a [1] - 323:9 able [2] - 354:42,
06/08/2014 [2] - 351:34, 351:35			5 51 [6] - 374:15, 374:17, 389:36, 402:31, 402:33, 402:35 52 [6] - 367:32, 367:45, 367:47, 369:44, 370:3 522 [1] - 339:10 524 [2] - 338:47, 339:18 55 [1] - 367:32 56 [1] - 367:32 58 [1] - 331:26	
1			5 51 [6] - 374:15, 374:17, 389:36, 402:31, 402:33, 402:35 52 [6] - 367:32, 367:45, 367:47, 369:44, 370:3 522 [1] - 339:10 524 [2] - 338:47, 339:18 55 [1] - 367:32 56 [1] - 367:32 58 [1] - 331:26	
1 [4] - 316:26, 319:13, 334:23, 344:8 10 [4] - 346:27, 348:15, 407:43, 408:7 10.00am [1] - 316:28 100 [3] - 407:4, 407:7, 415:29 104 [3] - 328:29, 328:31, 328:32 11 [9] - 319:37, 325:41, 325:43, 326:1, 366:3, 366:8, 367:1, 391:32, 411:28 11(1) [1] - 319:39 11(2) [3] - 320:30, 323:38, 324:19 11(3) [1] - 321:5 11.11am [1] - 326:29 11.15pm [1] - 411:29 117 [1] - 325:5 12 [4] - 325:6, 376:47, 384:22, 384:27 127 [1] - 319:44 128 [1] - 321:15 13 [2] - 319:7, 399:6 133 [1] - 407:21 14 [7] - 348:15, 364:23, 364:28, 364:39, 376:47, 413:12, 416:15 14-22 [3] - 321:42, 322:33, 324:31 15 [5] - 347:10, 369:11, 377:33, 391:24, 391:26 16 [4] - 364:41, 365:8, 389:25, 389:28			5 51 [6] - 374:15, 374:17, 389:36, 402:31, 402:33, 402:35 52 [6] - 367:32, 367:45, 367:47, 369:44, 370:3 522 [1] - 339:10 524 [2] - 338:47, 339:18 55 [1] - 367:32 56 [1] - 367:32 58 [1] - 331:26	

<p>397:6 absent [1] - 388:35 absented [2] - 395:19, 395:44 absolutely [4] - 339:36, 394:44, 406:1, 406:4 accept [6] - 323:43, 324:12, 339:14, 371:42, 371:44, 411:18 access [1] - 331:5 accident [1] - 389:9 accommodate [1] - 340:30 accurate [1] - 407:41 Act [29] - 318:27, 318:33, 318:34, 318:41, 318:44, 318:46, 319:2, 319:3, 319:8, 319:10, 319:24, 319:37, 319:45, 320:25, 320:31, 320:34, 321:16, 321:24, 321:28, 321:29, 322:5, 322:15, 323:39, 324:4, 324:19, 364:38, 396:24, 396:28, 396:31 ACT [1] - 364:46 act [5] - 318:37, 318:42, 320:36, 320:39, 360:28 acted [2] - 405:40, 411:6 action [2] - 345:6, 378:32 activities [1] - 393:41 Activities [1] - 359:28 add [4] - 323:8, 343:41, 407:7, 408:15 added [3] - 348:39, 390:4, 390:6 addition [2] - 320:24, 372:29 additional [1] - 323:33 address [2] - 348:21, 414:36 addresses [1] - 349:19 adjacent [2] - 347:6, 347:11 adjourn [3] - 326:1, 378:5, 418:12 ADJOURNED [1] - 418:16 adjournment [1] -</p>	<p>325:39 ADJOURNMENT [2] - 326:3, 378:7 administrators [1] - 369:36 admissible [1] - 319:30 adopted [5] - 338:4, 351:16, 356:25, 356:33, 392:9 advanced [1] - 357:2 advancing [1] - 386:15 advantage [2] - 362:5, 362:21 advantages [2] - 336:25 advice [10] - 323:6, 339:14, 339:17, 340:2, 347:43, 367:5, 378:44, 379:9, 379:16, 405:1 advise [4] - 370:17, 372:12, 373:25, 397:1 advocate [1] - 339:34 AECOM [4] - 356:17, 356:30, 356:35, 356:36 aeroplane [1] - 398:12 affairs [2] - 374:8, 379:40 affected [4] - 348:19, 352:33, 354:10, 373:13 affirmation [1] - 320:1 afternoon [3] - 317:39, 326:23, 401:6 afterwards [3] - 327:25, 335:20, 412:7 ago [4] - 343:37, 344:15, 382:21, 414:29 agree [54] - 317:18, 322:36, 346:36, 353:30, 353:44, 354:6, 355:35, 356:30, 356:35, 356:47, 359:4, 359:13, 360:3, 363:19, 368:6, 369:45, 370:3, 370:5, 371:19, 371:35, 373:21, 373:45, 374:3, 379:8, 379:24, 380:7, 387:35, 393:15, 394:9,</p>	<p>394:33, 394:38, 394:46, 395:41, 396:20, 396:28, 396:35, 396:41, 397:16, 397:40, 398:1, 401:14, 401:38, 404:2, 404:36, 404:45, 405:3, 405:24, 405:35, 405:37, 405:47, 409:4, 409:26, 409:36, 409:45 agreed [8] - 351:40, 351:46, 360:10, 376:29, 377:3, 377:12, 390:3, 411:27 agreement [4] - 321:38, 323:36, 360:38, 366:21 Agreement [1] - 350:11 ahead [3] - 341:11, 358:6, 408:25 aim [1] - 417:22 alarm [1] - 368:32 allayed [1] - 410:17 allegations [2] - 373:1, 373:16 alleged [1] - 322:17 allied [1] - 353:37 allow [4] - 341:10, 353:42, 353:47, 370:41 allowed [2] - 375:1, 414:38 almost [1] - 410:34 alongside [1] - 346:35 amend [2] - 339:17, 340:29 amended [1] - 341:9 amenity [1] - 358:13 amount [3] - 334:16, 366:25, 386:24 analogous [1] - 324:26 AND [5] - 351:32, 351:34, 364:46, 364:47, 384:11 anecdotal [1] - 403:18 Anmak [1] - 402:40 annexure [5] - 388:12, 389:34, 389:44, 411:19, 413:44 Annexure [3] - 381:23, 381:25, 390:8 annexures [8] - 326:34, 326:40, 390:2, 390:3, 390:4,</p>	<p>390:6, 411:18 answer [30] - 319:17, 319:27, 320:3, 320:15, 320:31, 321:1, 321:22, 321:24, 323:39, 324:44, 325:2, 325:17, 325:20, 327:45, 333:20, 353:23, 370:2, 373:19, 379:33, 381:4, 381:6, 381:8, 387:22, 410:11, 411:41, 412:3, 412:7, 412:8, 415:16 answered [4] - 324:22, 381:12, 381:16, 411:24 answering [5] - 319:15, 321:20, 321:27, 324:44, 391:45 answers [2] - 319:39, 410:18 antibiotics [1] - 317:12 anticipated [1] - 326:21 anticipating [1] - 326:12 anticipation [4] - 361:47, 362:12, 362:33, 363:13 anticipatorily [1] - 362:6 anyway [4] - 355:23, 369:3, 381:15, 397:33 apart [3] - 324:6, 388:25, 389:7 apartment [1] - 322:12 apartments [2] - 381:29, 381:32 apologies [1] - 344:44 apologise [2] - 358:23, 407:12 apparent [3] - 346:7, 346:14, 352:42 appear [9] - 317:4, 319:5, 360:28, 360:30, 382:11, 384:20, 392:22, 394:5, 413:1 appearance [1] - 317:1 appearing [3] - 319:14, 319:41, 320:23 applicable [1] - 352:25</p>	<p>applicant [5] - 343:4, 344:6, 413:13, 414:18, 414:22 applicants [1] - 393:36 application [22] - 353:47, 361:1, 361:20, 361:25, 362:6, 362:10, 363:18, 363:40, 364:37, 364:42, 404:4, 404:12, 404:14, 404:29, 407:42, 409:21, 409:23, 409:32, 410:4, 410:6, 410:22, 416:13 Application [2] - 361:2, 363:28 APPLICATION [2] - 364:45, 365:2 applications [12] - 361:9, 392:34, 392:37, 394:37, 404:3, 404:9, 404:15, 406:27, 407:44, 407:45, 410:28, 410:41 applied [3] - 325:13, 337:16, 376:30 applies [1] - 370:5 apply [5] - 319:3, 319:8, 319:34, 321:24, 321:28 applying [1] - 375:13 appoint [1] - 318:28 appointed [3] - 318:39, 327:35, 328:6 appointment [2] - 328:4, 368:25 appreciate [3] - 331:18, 340:27, 371:10 appreciated [1] - 330:16 appreciation [2] - 348:37, 348:47 approach [3] - 317:27, 325:21, 353:17 approached [2] - 335:16, 370:36 approaches [1] - 357:7 approaching [3] - 325:22, 369:35, 370:35 appropriate [1] - 324:37, 371:3, 373:33, 393:26,</p>
--	---	---	--	--

<p>393:40, 394:28, 396:34, 396:40, 396:47, 405:47 approval [2] - 347:18, 412:44 approved [3] - 361:9, 362:35, 404:16 April [1] - 364:41 area [33] - 332:43, 335:33, 336:30, 346:34, 348:1, 348:4, 348:14, 348:42, 352:28, 352:47, 353:17, 353:31, 353:32, 353:38, 354:5, 354:10, 354:25, 354:31, 355:3, 355:14, 355:20, 355:21, 355:30, 355:41, 358:32, 359:1, 359:18, 359:38, 392:44, 394:47, 395:37, 405:17, 409:43 areas [3] - 352:22, 352:24, 405:12 arguably [1] - 323:47 arguing [2] - 354:13, 355:43 argument [6] - 347:32, 354:40, 355:15, 355:25, 355:29, 355:31 arguments [5] - 353:24, 354:14, 355:19, 356:10, 357:2 arise [4] - 323:14, 358:20, 359:1, 385:39 arising [1] - 385:2 arranged [1] - 370:29 arrangement [2] - 365:44, 401:31 arrangements [1] - 417:43 arrivals [1] - 359:19 article [10] - 377:32, 377:34, 377:35, 378:3, 378:20, 381:2, 381:27, 386:15, 386:18, 389:10 articles [1] - 375:19 ascertain [1] - 339:30 ascertained [1] - 379:38 aside [1] - 417:11 aspect [1] - 359:11</p>	<p>aspects [1] - 393:1 asserted [1] - 402:39 Assessment [1] - 364:38 assessment [2] - 338:37, 338:41 ASSESSMENT [1] - 364:46 assets [1] - 336:30 assist [1] - 368:41 Assisting [14] - 316:19, 316:20, 318:24, 323:33, 324:39, 325:37, 326:21, 331:15, 352:9, 359:35, 383:40, 407:32, 415:2, 416:3 Assisting [1] - 331:31 associated [1] - 358:36 association [2] - 335:14, 335:19 Association [1] - 335:14 assume [4] - 365:46, 389:21, 390:36, 416:36 assumed [5] - 341:12, 344:20, 351:43, 399:22 assures [2] - 343:3, 344:5 astounded [5] - 339:40, 340:8, 357:26, 357:27, 389:17 AT [3] - 384:10, 418:16, 418:17 attach [1] - 328:20 attached [4] - 328:24, 341:30, 366:11, 366:30 attachments [1] - 351:27 ATTACHMENTS [1] - 351:33 attempt [1] - 322:8 attend [5] - 319:13, 319:41, 320:22, 402:23, 403:2 attendance [2] - 329:43, 337:35 attendances [1] - 337:37 attended [5] - 398:29, 402:21, 402:26, 402:45, 403:7 attendees [1] - 408:35 attention [5] - 348:11,</p>	<p>370:3, 374:29, 380:9, 416:3 Attie [17] - 335:42, 336:3, 337:33, 339:34, 339:41, 347:26, 353:16, 354:13, 354:24, 354:47, 355:10, 355:39, 356:34, 357:6, 357:10, 359:36, 402:40 Attie's [9] - 335:46, 340:3, 340:28, 347:32, 353:24, 354:40, 356:47, 359:43, 360:7 attitude [1] - 335:47 attract [2] - 355:1, 355:12 attracted [1] - 354:42 attractive [3] - 355:41, 359:2, 359:8 Au [3] - 402:40, 402:45, 403:24 AUBURN [4] - 316:12, 364:46, 384:10, 384:11 Auburn [36] - 316:26, 324:33, 333:30, 333:34, 333:40, 333:45, 334:33, 334:42, 335:40, 336:25, 338:16, 338:21, 344:37, 345:5, 345:36, 356:12, 356:25, 364:39, 373:8, 373:12, 374:8, 376:29, 376:33, 376:34, 378:30, 378:44, 379:9, 379:40, 384:4, 384:5, 385:16, 387:1, 387:44, 387:45, 392:44 August [6] - 349:24, 349:33, 351:28, 351:29, 365:11, 365:35 Austin's [1] - 345:7 Australia [1] - 322:18 author [1] - 399:22 authored [1] - 399:20 authorisation [2] - 317:4, 317:6 authorities [4] - 324:6, 324:9, 368:37, 371:7 authority [7] - 324:8, 357:18, 357:19, 368:2, 372:35,</p>	<p>372:38, 372:44 availability [1] - 355:41 available [9] - 324:35, 326:35, 328:39, 328:45, 373:28, 382:28, 383:18, 383:35, 383:36 avenues [1] - 396:32 aware [22] - 334:34, 348:9, 348:14, 349:13, 354:34, 360:27, 368:19, 369:3, 379:3, 384:44, 385:2, 385:32, 388:19, 388:20, 389:23, 399:20, 399:32, 400:20, 400:45, 401:1, 409:17, 413:13 Azer [1] - 365:15</p>	<p>Beasley [1] - 316:18 became [14] - 330:10, 376:1, 376:14, 376:16, 379:3, 401:28, 402:5, 402:6, 402:21, 402:25, 403:9, 407:19, 407:27, 407:35 become [2] - 321:19, 325:20 becoming [2] - 402:4, 402:8 bedders [3] - 343:37, 343:38, 344:32 bedders" [1] - 344:32 bedroom [3] - 342:43, 343:47, 344:1 bedrooms [1] - 342:43 beforehand [2] - 337:25, 402:12 beg [1] - 412:11 beginning [2] - 338:29, 405:31 begins [1] - 390:40 behalf [12] - 317:40, 317:42, 318:13, 318:23, 321:33, 321:47, 338:28, 366:23, 396:4, 396:8, 396:46, 397:12 behaviour [3] - 391:30, 392:9, 406:3 behind [2] - 345:15, 347:8 belief [1] - 327:11 bell [1] - 408:8 bells [1] - 368:32 bench [1] - 399:16 Berala [30] - 324:28, 326:35, 326:37, 328:10, 328:41, 329:19, 329:21, 329:24, 330:9, 330:19, 330:28, 333:15, 333:22, 333:26, 333:44, 335:40, 345:35, 386:47, 387:12, 387:25, 387:32, 387:41, 394:38, 394:42, 404:35, 405:26, 405:37, 405:42, 406:4 best [7] - 325:21, 327:10, 343:21, 352:12, 356:12, 366:7, 401:13 better [3] - 376:9,</p>
			B	
			<p>b) [1] - 318:30 B2 [4] - 330:10, 332:6, 332:43, 387:12 B6 [7] - 336:22, 353:40, 357:42, 358:9, 358:16, 414:37, 414:38 backwards [1] - 330:20 bad [2] - 357:5, 359:15 banded [1] - 354:30 Bar [2] - 317:46, 327:15 based [1] - 321:2 basement [14] - 327:25, 361:14, 361:16, 361:30, 361:46, 362:7, 362:32, 362:39, 363:1, 363:9, 363:10, 363:22, 363:28, 363:41 basements [1] - 361:10 basis [7] - 324:39, 325:23, 345:6, 357:19, 376:23, 379:31, 379:35 basket [1] - 389:22 Batik [3] - 329:45, 364:23, 399:36 Batik-Dunbar [1] - 399:36 BBC [1] - 322:34</p>	

<p>377:42, 397:30 between [16] - 323:36, 327:18, 327:27, 327:32, 340:13, 357:6, 366:47, 367:26, 390:18, 394:27, 399:42, 401:31, 401:38, 405:28, 406:28, 406:29 Bhanin [1] - 335:14 big [1] - 336:25 bit [8] - 343:11, 357:16, 358:43, 377:47, 387:45, 394:40, 407:16, 409:9 bits [1] - 358:45 black [3] - 328:37, 352:42, 358:14 Blank [1] - 382:24 blank [1] - 382:27 block [9] - 322:12, 335:4, 347:2, 348:10, 348:32, 352:32, 352:43, 406:15, 408:36 blood [1] - 357:5 blue [1] - 332:6 board [1] - 321:44 body [2] - 358:11, 396:29 Bolster [1] - 316:19 bolster [5] - 317:42, 346:10, 355:6, 370:41, 389:8 BOLSTER [65] - 317:45, 318:5, 325:33, 325:41, 325:46, 326:7, 326:31, 326:33, 326:39, 328:3, 328:31, 328:36, 328:39, 328:43, 328:47, 331:5, 331:23, 331:35, 331:39, 332:15, 332:19, 333:3, 333:8, 333:24, 335:4, 335:9, 337:46, 341:46, 342:3, 342:18, 343:9, 343:14, 343:24, 344:13, 344:47, 345:32, 345:39, 345:44, 346:4, 346:12, 346:46, 349:36, 351:19, 351:23, 351:37, 358:29,</p>	<p>368:47, 373:36, 383:44, 384:1, 385:39, 385:44, 397:9, 397:18, 408:21, 414:1, 414:3, 414:45, 415:5, 415:24, 416:22, 416:36, 417:13, 417:21, 417:28 bolster's [2] - 325:5, 390:14 book [2] - 328:32, 337:36 bottleneck [1] - 346:36 bottom [4] - 332:5, 378:28, 384:4, 399:12 BOTTOM [1] - 384:10 bound [1] - 322:2 Bowral [1] - 328:16 box [1] - 359:35 boxes [1] - 350:20 boys [1] - 403:11 breach [1] - 322:17 breached [1] - 380:24 break [2] - 377:45, 407:1 Brebner [1] - 325:4 brief [1] - 386:39 briefed [3] - 334:24, 346:7, 346:14 briefing [15] - 330:32, 330:37, 333:13, 333:33, 333:35, 334:13, 334:15, 334:19, 337:23, 337:29, 338:40, 344:23, 346:20, 405:43, 405:45 briefings [14] - 334:28, 334:33, 334:41, 337:27, 337:35, 344:35, 345:3, 345:4, 345:6, 345:8, 345:10, 346:22, 395:21, 395:23 briefly [1] - 414:3 bring [4] - 349:47, 366:43, 404:19, 407:32 bringing [2] - 354:25, 380:8 Brisby [14] - 318:8, 327:34, 327:37, 327:40, 327:41, 328:4, 334:41, 343:1, 343:4, 344:6,</p>	<p>417:13, 417:16, 417:22 Brisby" [1] - 350:11 broad [1] - 392:43 broader [6] - 347:19, 347:25, 347:30, 359:38, 359:45, 369:38 brought [6] - 324:2, 366:8, 366:41, 370:29, 404:17, 404:21 Browne [1] - 380:33 Bs [1] - 350:39 building [15] - 322:10, 322:17, 342:47, 343:5, 343:29, 343:36, 344:7, 345:7, 345:8, 347:11, 358:42, 412:45, 413:1, 413:3, 413:40 Building [1] - 322:18 buildings [1] - 347:1 built [2] - 322:10, 343:47 bulk [1] - 376:9 bumped [1] - 382:22 bundle [31] - 323:2, 326:35, 326:37, 328:11, 329:8, 331:3, 331:9, 331:14, 332:12, 332:19, 333:1, 333:43, 337:2, 337:41, 337:44, 337:46, 338:30, 341:26, 341:27, 345:14, 345:30, 345:39, 345:46, 352:30, 352:31, 353:29, 364:9, 369:47, 370:29, 379:28, 382:23 BUNDLE [1] - 346:2 Bundle [3] - 368:47, 369:2, 369:5 Burgess [27] - 327:19, 341:34, 342:16, 342:30, 342:41, 343:28, 350:45, 368:26, 375:31, 375:35, 376:17, 376:37, 376:40, 376:41, 377:3, 379:17, 381:25, 388:16, 388:20, 398:8, 398:32, 398:40, 399:29, 400:2, 400:38,</p>	<p>400:44, 401:1 business [4] - 377:26, 377:27, 398:43, 402:10 businesses [1] - 358:36 busy [2] - 346:33, 358:13 buy [1] - 376:7 buying [1] - 376:9 BY [11] - 326:31, 352:5, 360:25, 382:8, 384:18, 385:13, 386:41, 392:19, 394:3, 411:22, 414:1</p> <p style="text-align: center;">C</p> <p>Campbell [10] - 329:46, 364:24, 387:13, 399:21, 399:23, 399:25, 402:8, 402:27, 416:38, 417:13 Campbell's [1] - 399:12 candidacy [1] - 401:29 candidate [1] - 401:47 candidates [1] - 401:46 cannot [8] - 320:31, 321:21, 322:8, 322:16, 322:26, 323:37, 325:19, 381:14 capacity [2] - 363:22, 363:37 car [9] - 362:29, 362:32, 409:12, 409:15, 409:33, 409:41, 409:43, 411:1 card [2] - 403:2, 403:7 cards [4] - 402:44, 403:9, 403:11, 403:30 careful [2] - 363:16, 381:45 Carnarvon [5] - 352:43, 352:47, 353:31, 353:33, 353:38 carrying [2] - 318:32, 318:43 case [13] - 320:28, 321:6, 344:40, 359:42, 384:40,</p>	<p>389:13, 392:11, 406:11, 409:18, 409:19, 410:1, 413:41, 416:37 cases [1] - 325:5 catch [1] - 398:12 caucused [1] - 410:45 Cemetery [1] - 359:26 cemetery [7] - 358:34, 358:37, 358:40, 359:7, 359:8, 359:12, 359:21 cent [12] - 406:37, 406:41, 406:45, 407:7, 407:20, 407:22, 407:36, 407:38, 407:43, 408:7, 415:29 Central [1] - 345:5 centre [4] - 329:21, 329:27, 329:28, 329:36 Centre [1] - 316:25 centres [1] - 354:20 certain [5] - 324:40, 404:43, 405:2, 410:21 certainly [13] - 324:2, 329:39, 336:42, 367:21, 368:2, 380:18, 384:35, 386:18, 388:41, 400:28, 406:25, 408:45, 410:39 certificate [4] - 321:15, 324:30, 404:20, 415:38 certified [1] - 342:47 CFMEU [1] - 358:37 chain [2] - 374:26, 415:14 challenge [3] - 321:19, 356:34, 356:37 challenged [1] - 356:36 chamber [6] - 348:34, 348:37, 361:19, 387:42, 393:32, 400:25 Chamber [1] - 393:18 Chambers [1] - 382:18 chambers [2] - 365:40, 365:41 change [13] - 335:23, 387:17, 387:20, 395:33, 404:13, 404:24, 404:28, 406:21, 409:3,</p>
--	--	--	---	---

<p>409:45, 410:5, 410:6, 410:9 changed [1] - 404:37 changes [2] - 336:2, 338:21 changing [2] - 327:23, 340:45 chat [1] - 325:37 check [2] - 334:43, 410:35 Cheers [1] - 380:1 Cheshire [9] - 317:7, 317:42, 318:23, 323:32, 323:42, 324:20, 326:10, 385:9, 418:9 CHESHIRE [18] - 317:9, 317:23, 317:30, 317:35, 325:28, 326:16, 326:25, 385:11, 385:13, 385:15, 385:42, 386:4, 386:17, 386:27, 386:34, 416:44, 417:3, 417:8 Cheshire's [1] - 324:6 chief [1] - 324:27 choose [1] - 321:22 chose [1] - 395:40 circulated [1] - 317:45 circumstances [10] - 320:45, 321:22, 368:19, 368:20, 371:4, 371:5, 371:8, 373:46, 409:47, 410:4 city [1] - 403:25 City [8] - 356:12, 356:25, 373:8, 373:12, 376:33, 379:9, 384:4, 384:5 CITY [2] - 384:10, 384:11 Civic [1] - 316:25 civil [3] - 319:31, 320:27, 321:8 claim [5] - 320:46, 323:20, 324:17, 325:3, 325:16 clarification [2] - 324:40, 414:41 clarify [3] - 376:28, 405:11, 411:14 clause [2] - 323:9, 372:15 clear [4] - 329:7, 353:24, 412:1, 412:29 clearly [8] - 320:30,</p>	<p>359:34, 369:45, 370:4, 370:10, 371:18, 371:32, 379:23 client [10] - 361:1, 361:8, 362:5, 362:17, 363:34, 364:17, 386:2, 386:5, 386:18, 410:20 client's [5] - 380:18, 380:19, 380:22, 381:14, 386:15 clients' [1] - 386:1 close [7] - 333:28, 374:40, 375:35, 375:47, 397:2, 403:46, 407:41 close-knit [1] - 403:46 closed [2] - 398:32, 398:34 closer [1] - 353:6 Club [1] - 403:29 code [6] - 368:40, 372:15, 373:6, 373:13, 380:24, 395:29 Code [3] - 322:18, 394:26, 411:7 coin [1] - 392:22 Coles [1] - 354:33 collectively [1] - 350:40 Cologne [2] - 330:23, 334:24 Cologne's [2] - 326:40, 332:21 colour [8] - 326:39, 328:34, 328:36, 328:39, 329:3, 331:43, 332:3, 352:38 coloured [9] - 328:21, 328:43, 329:3, 329:4, 329:8, 331:8, 331:13, 331:40, 405:11 colouring [1] - 329:31 colours [2] - 329:35, 331:46 combined [1] - 351:25 comfortable [1] - 359:19 coming [3] - 322:9, 327:2, 347:11 commenced [8] - 323:3, 323:4, 323:11, 323:17, 378:31, 383:31, 383:37, 385:32</p>	<p>commencement [2] - 382:40, 404:17 commencing [1] - 330:25 commendable [1] - 406:3 comment [4] - 318:8, 324:40, 327:17, 408:17 comments [3] - 386:17, 400:45, 401:18 commercial [9] - 329:21, 347:7, 353:43, 353:47, 354:2, 354:15, 354:26, 355:13, 414:38 commission [6] - 319:14, 319:29, 319:42, 320:23, 320:38, 379:27 Commission [4] - 323:13, 323:28, 335:46, 372:9 Commissioner [40] - 316:18, 317:3, 317:9, 317:37, 317:47, 318:14, 318:16, 318:18, 318:28, 326:7, 331:6, 349:37, 349:38, 351:38, 359:32, 360:21, 363:47, 367:47, 372:38, 372:41, 377:18, 378:18, 378:24, 381:44, 382:3, 383:40, 384:16, 385:7, 385:11, 385:40, 385:42, 386:35, 397:19, 397:31, 411:14, 414:36, 414:46, 415:6, 416:19, 416:27 commissioner [1] - 417:43 COMMISSIONER [154] - 317:1, 317:6, 317:14, 317:25, 317:32, 317:39, 318:2, 318:20, 322:39, 322:45, 323:11, 323:22, 323:30, 325:31, 325:35, 325:43, 326:1, 326:5, 326:10, 326:20, 326:27, 326:37,</p>	<p>327:47, 331:2, 331:8, 331:13, 331:17, 331:21, 331:33, 331:37, 332:11, 332:17, 332:47, 333:6, 333:22, 335:1, 335:7, 341:44, 342:13, 343:11, 343:18, 343:21, 343:32, 343:41, 344:39, 344:44, 345:30, 345:35, 345:41, 345:46, 346:40, 346:44, 351:21, 351:25, 351:40, 351:45, 357:33, 357:37, 358:19, 358:25, 359:24, 359:28, 363:6, 363:44, 364:3, 364:7, 364:14, 364:22, 364:28, 364:33, 364:36, 367:45, 368:45, 369:8, 370:34, 370:41, 373:41, 376:5, 376:12, 377:15, 377:39, 377:44, 378:5, 378:11, 378:16, 380:15, 380:30, 380:37, 380:43, 381:6, 381:12, 381:21, 381:34, 381:38, 381:42, 381:47, 382:6, 382:46, 383:42, 383:46, 384:3, 384:14, 385:9, 385:46, 386:9, 386:13, 386:24, 386:37, 387:20, 388:35, 389:40, 392:15, 393:46, 395:6, 397:21, 397:33, 403:36, 403:41, 407:4, 407:9, 407:14, 407:24, 407:29, 408:28, 410:11, 410:24, 410:32, 410:37, 411:12, 413:16, 413:46, 414:41, 415:1, 415:11, 415:22, 415:26, 415:32, 415:46, 416:8, 416:12, 416:17, 416:24, 416:29, 416:34,</p>	<p>416:40, 416:47, 417:5, 417:10, 417:18, 417:25, 417:31, 417:36, 417:45, 418:3 commissioners [1] - 320:5 Commissions [10] - 319:3, 319:8, 319:10, 319:24, 319:37, 320:30, 321:24, 321:28, 323:39, 324:19 COMMITTEE [1] - 351:34 committee [5] - 349:24, 349:34, 350:4, 350:6, 351:28 common [1] - 376:44 communicated [1] - 391:24 communications [1] - 373:29 Community [2] - 338:17, 350:16 community [4] - 404:43, 408:34, 408:40, 409:42 company [1] - 327:26 compare [1] - 350:34 compel [2] - 320:31, 321:21 compelled [2] - 323:37, 325:20 complaint [1] - 335:32 complete [4] - 351:8, 382:37, 417:33, 417:46 completed [1] - 395:3 compliance [2] - 344:9, 365:12 complied [1] - 395:29 compromised [1] - 404:44 compulsory [1] - 320:13 concept [1] - 352:13 concern [3] - 372:46, 410:17, 410:18 concerned [7] - 318:44, 318:46, 336:36, 368:23, 398:7, 398:13, 406:5 concerning [3] - 361:1, 373:30, 374:8 concerns [3] - 327:17, 336:16, 372:46 condition [3] - 409:31, 409:36, 409:38 conditions [1] - 410:5</p>
--	--	--	---	--

<p>conduct [6] - 368:40, 372:15, 373:7, 373:13, 373:16, 395:30</p> <p>Conduct [2] - 394:26, 411:7</p> <p>conducting [1] - 350:36</p> <p>conferring [2] - 318:34, 318:41</p> <p>confessions [1] - 319:45</p> <p>confident [1] - 389:22</p> <p>confidential [14] - 343:28, 371:11, 371:30, 371:32, 371:43, 371:44, 372:20, 372:31, 372:34, 377:27, 379:10, 379:23, 381:26, 391:9</p> <p>conflict [3] - 348:12, 348:26</p> <p>conflicts [2] - 382:13, 394:31</p> <p>conglomerate [1] - 376:8</p> <p>cons [1] - 405:2</p> <p>conscious [1] - 358:7</p> <p>consensus [1] - 351:11</p> <p>consent [1] - 348:20</p> <p>consequence [1] - 376:15</p> <p>conservative [1] - 387:23</p> <p>consider [4] - 324:35, 340:44, 387:36, 405:3</p> <p>consideration [4] - 323:12, 338:10, 341:15, 410:22</p> <p>considered [5] - 340:31, 341:21, 395:39, 410:7, 410:8</p> <p>considering [1] - 344:3</p> <p>considers [1] - 341:14</p> <p>consistent [4] - 341:18, 347:1, 347:14, 386:19</p> <p>constituents [2] - 396:5, 396:8</p> <p>construction [1] - 404:20</p> <p>consultant [4] - 351:6, 351:9, 384:39, 385:3</p> <p>Consultation [1] - 338:17</p> <p>Consulting [1] -</p>	<p>384:45</p> <p>contact [8] - 371:3, 374:7, 375:4, 375:18, 375:22, 375:29, 379:39, 380:12</p> <p>contacted [3] - 365:36, 366:21, 368:21</p> <p>contacts [1] - 375:16</p> <p>contained [2] - 381:1, 381:24</p> <p>contains [5] - 328:12, 363:40, 364:11, 368:6, 371:39</p> <p>contemplated [2] - 323:3, 344:24</p> <p>contemplating [1] - 417:38</p> <p>contempt [1] - 323:12</p> <p>content [2] - 370:21, 391:12</p> <p>contention [1] - 353:25</p> <p>contentious [1] - 346:24</p> <p>context [1] - 356:7</p> <p>continue [6] - 350:29, 350:31, 370:45, 377:4, 380:15, 380:39</p> <p>continuing [1] - 375:22</p> <p>contract [1] - 398:44</p> <p>contrary [2] - 322:37, 393:23</p> <p>contravene [1] - 411:7</p> <p>control [1] - 320:8</p> <p>conversation [15] - 341:34, 341:41, 342:16, 388:11, 388:15, 388:22, 388:25, 388:27, 388:30, 388:37, 388:38, 388:42, 389:15, 389:18, 418:9</p> <p>conversations [4] - 377:5, 377:22, 377:25, 388:43</p> <p>conversion [2] - 342:42, 342:46</p> <p>conversions [1] - 344:3</p> <p>convert [1] - 346:47</p> <p>converted [3] - 342:43, 343:37, 352:27</p> <p>conveyed [1] - 342:22</p> <p>convicted [1] - 321:3</p>	<p>conviction [1] - 324:13</p> <p>convinced [1] - 324:37</p> <p>convinces [1] - 322:7</p> <p>copies [3] - 331:8, 331:13, 372:5</p> <p>copy [23] - 317:46, 318:2, 326:33, 326:40, 328:20, 328:36, 328:39, 329:3, 329:8, 331:17, 331:21, 331:37, 331:43, 349:36, 366:16, 368:42, 370:18, 372:2, 375:31, 378:24, 383:9, 389:33, 391:24</p> <p>corer [1] - 358:42</p> <p>corner [3] - 358:41, 359:8, 359:9</p> <p>corporate [1] - 322:10</p> <p>correct [48] - 327:7, 327:11, 338:25, 341:38, 342:10, 344:39, 350:42, 351:16, 353:39, 354:10, 354:11, 354:21, 356:27, 356:31, 358:33, 367:7, 367:18, 367:19, 367:23, 367:37, 368:17, 370:15, 371:15, 371:20, 372:12, 373:7, 374:37, 374:38, 375:6, 375:26, 377:19, 379:12, 382:25, 383:16, 385:29, 385:33, 387:9, 388:26, 388:29, 390:9, 390:21, 390:39, 392:10, 393:24, 394:24, 396:42, 413:6, 413:27</p> <p>corridor [1] - 357:41</p> <p>corruption [1] - 373:22</p> <p>COUNCIL [3] - 365:1, 384:10, 384:11</p> <p>council [168] - 318:35, 318:38, 318:42, 322:31, 323:45, 325:12, 327:24, 327:30, 330:7, 330:13, 330:14, 332:42, 332:44,</p>	<p>333:33, 334:20, 335:17, 335:21, 335:24, 335:42, 336:21, 336:27, 336:35, 336:38, 336:41, 337:8, 337:9, 337:11, 337:18, 337:21, 337:22, 337:24, 337:26, 338:4, 338:9, 338:36, 338:44, 339:5, 339:10, 339:14, 339:47, 340:20, 340:22, 340:29, 341:14, 343:39, 344:4, 344:25, 344:36, 345:7, 346:15, 346:25, 347:17, 347:18, 347:34, 348:3, 348:25, 349:8, 350:38, 350:40, 351:14, 352:14, 353:12, 353:40, 354:34, 358:7, 358:11, 358:16, 359:43, 359:44, 361:19, 362:21, 364:12, 364:40, 365:11, 365:23, 365:28, 365:32, 365:40, 365:41, 366:27, 367:36, 368:8, 368:33, 369:35, 371:11, 371:30, 371:33, 372:10, 372:12, 372:30, 373:30, 373:32, 373:34, 374:3, 375:4, 376:45, 377:4, 377:9, 377:13, 377:26, 377:27, 379:11, 379:24, 382:39, 383:31, 384:23, 387:8, 391:11, 391:33, 392:25, 392:34, 393:27, 393:41, 394:8, 394:17, 394:47, 395:6, 395:10, 395:19, 395:20, 395:35, 396:5, 396:12, 396:17, 396:30, 397:43, 398:8, 398:22, 398:23, 398:34, 398:41, 398:46, 398:47, 399:6, 399:17,</p>	<p>399:42, 400:3, 400:27, 400:28, 400:30, 400:35, 401:13, 401:20, 401:23, 401:37, 402:10, 404:3, 404:10, 404:12, 404:17, 404:18, 404:21, 405:1, 405:3, 405:4, 405:25, 405:28, 405:40, 406:21, 408:32, 408:35, 409:8, 414:38</p> <p>Council [18] - 324:33, 356:13, 356:25, 373:8, 373:12, 374:8, 376:29, 376:33, 376:34, 379:9, 379:40, 382:18, 384:4, 384:5, 392:44, 393:18, 405:42</p> <p>council's [6] - 331:14, 336:19, 338:36, 340:14, 340:18, 378:31</p> <p>council/councillors [1] - 394:21</p> <p>Councillor [28] - 329:39, 329:45, 329:46, 336:3, 339:41, 343:30, 347:26, 347:32, 348:14, 349:13, 360:28, 375:27, 380:2, 382:11, 394:10, 399:35, 399:36, 399:38, 400:1, 400:19, 400:27, 400:44, 401:5, 402:11, 406:18, 408:41</p> <p>councillor [37] - 324:33, 329:47, 333:12, 336:36, 340:25, 341:2, 341:6, 342:27, 344:20, 348:10, 348:13, 348:18, 356:34, 356:43, 362:25, 368:13, 368:22, 382:27, 382:30, 382:36, 382:37, 383:19, 392:30, 394:7, 394:16, 396:34, 397:23, 399:37, 399:39, 405:8,</p>
---	---	--	---	---

<p>409:40, 409:45, 410:6, 410:8, 410:27 councillors [40] - 329:30, 329:42, 330:38, 330:42, 337:35, 340:10, 340:17, 344:23, 346:27, 350:26, 350:33, 356:26, 362:20, 362:22, 364:23, 369:35, 370:35, 371:26, 382:28, 385:25, 385:28, 387:31, 387:36, 393:22, 393:31, 394:27, 397:45, 398:26, 399:42, 400:12, 401:32, 401:39, 402:9, 402:28, 404:3, 404:28, 404:37, 404:41, 406:12, 410:46 councils [4] - 374:43, 376:6, 376:8, 376:46 counsel [1] - 351:40 Counsel [14] - 316:19, 318:24, 323:33, 324:39, 325:37, 326:21, 331:15, 331:31, 352:9, 359:35, 383:40, 407:32, 415:2, 416:3 count [1] - 406:31 countless [2] - 393:5, 393:9 couple [5] - 359:1, 359:3, 382:12, 403:23, 406:20 course [17] - 340:11, 353:8, 354:36, 356:9, 360:27, 366:47, 373:15, 373:33, 382:28, 393:26, 393:41, 396:6, 400:35, 401:38, 404:8, 409:31, 411:37 Court [3] - 320:28, 321:7, 321:9 court [1] - 320:42 cover [1] - 320:45 covered [2] - 336:39, 380:41 Crawford [1] - 329:22 created [1] - 367:35 Crimes [1] - 396:31 criminal [4] - 319:32, 320:27, 321:3, 321:8 criminate [2] - 319:18</p>	<p>criteria [1] - 350:37 critical [2] - 386:18, 388:41 critically [1] - 387:10 Crook [1] - 359:31 cross [2] - 382:22, 414:28 cross-examination [1] - 382:22 cross-examined [1] - 414:28 current [7] - 317:26, 321:47, 322:20, 322:39, 323:1, 323:16, 349:20 custody [1] - 320:8 cut [1] - 349:12</p>	<p>394:32, 398:46, 399:17, 400:6, 405:42 debate [8] - 332:43, 340:6, 347:28, 352:33, 356:37, 357:16, 358:32, 399:39 December [2] - 337:3, 353:13 decent [1] - 355:12 decide [2] - 325:18, 337:11 decided [1] - 358:11 decision [15] - 328:8, 330:8, 335:15, 335:17, 335:21, 335:32, 339:32, 346:15, 347:18, 356:24, 356:25, 358:8, 361:45, 400:3, 408:45 decisionmaker [1] - 396:40 decisions [2] - 362:21, 406:29 Declaration [3] - 382:33, 384:3, 384:5 declaration [8] - 348:40, 348:46, 349:14, 382:12, 382:38, 383:14, 383:22, 383:25 DECLARATION [2] - 384:9, 384:10 declarations [4] - 349:8, 349:17, 349:18, 349:19 declare [2] - 348:26, 405:44 declared [6] - 382:37, 394:32, 395:15, 395:35, 396:45, 405:43 declaring [1] - 348:44 declined [3] - 357:19, 357:20, 357:25 deemed [1] - 358:16 defamation [1] - 321:10 defer [1] - 347:30 deferred [1] - 404:16 defined [1] - 320:33 definite [1] - 330:1 definitely [3] - 342:36, 417:22, 417:36 definitively [1] - 412:3 degree [1] - 380:7 delegate [2] - 376:32, 376:33</p>	<p>delegates [2] - 376:2 delegation [2] - 377:1, 394:23 demographics [1] - 359:17 Dencker [3] - 375:10, 375:11, 390:44 denied [1] - 322:25 Department [4] - 336:11, 336:14, 339:24 depth [2] - 361:13, 361:15 deputy [2] - 401:40, 402:1 derive [1] - 323:2 describe [2] - 327:35, 376:23 described [4] - 318:29, 363:17, 379:28, 381:26 detail [2] - 387:31, 387:35 determination [6] - 318:20, 321:31, 323:34, 325:25, 337:8, 337:10 determined [1] - 335:24 develop [1] - 394:21 developed [3] - 322:10, 359:10, 406:17 developer [1] - 378:32 developers [1] - 338:29 Development [1] - 361:2 development [49] - 321:42, 322:32, 324:31, 341:10, 346:37, 348:20, 353:39, 354:1, 354:9, 355:40, 357:11, 357:44, 361:1, 361:10, 361:20, 361:25, 362:6, 362:10, 363:18, 364:37, 385:16, 387:23, 392:37, 394:37, 404:2, 404:4, 404:9, 404:11, 404:14, 404:15, 404:29, 404:42, 406:27, 407:41, 407:44, 409:15, 409:21, 409:23, 409:32, 410:4, 410:5, 410:9, 410:21, 410:27,</p>	<p>410:41, 412:17, 412:45, 413:9, 416:12 DEVELOPMENT [1] - 364:44 developments [2] - 347:13 Developments [1] - 322:34 Diana [1] - 365:15 diaries [1] - 342:37 diary [2] - 335:28, 337:34 difference [5] - 352:25, 381:31, 408:7, 408:13, 408:43 different [18] - 329:35, 329:44, 335:40, 344:10, 346:27, 350:35, 350:36, 357:7, 364:19, 364:22, 365:16, 373:37, 387:40, 393:19, 393:30, 393:32, 404:4 differently [3] - 353:32, 396:37, 416:37 difficult [1] - 364:7 direct [3] - 374:29, 403:6, 403:22 directed [7] - 321:9, 371:18, 371:22, 371:25, 371:26, 386:2, 386:4 directing [1] - 380:20 direction [1] - 370:13 directions [1] - 394:22 directive [2] - 368:7, 371:39 directly [5] - 322:30, 365:36, 380:45, 390:20, 391:13 disadvantage [1] - 352:37 disagree [3] - 393:13, 404:44, 406:34 disagreement [1] - 387:37 discharge [1] - 356:44 discharges [1] - 324:1 disclose [1] - 320:19 discloses [1] - 348:18 Disclosure [2] - 382:43, 384:6 disclosure [6] - 319:21, 348:17, 349:4, 368:27, 383:15, 397:25</p>
D				
	<p>DA16 [1] - 361:34 DA16/2013/A [1] - 362:28 daily [1] - 376:25 dark [1] - 411:15 Darren [1] - 316:20 DAs [1] - 346:22 date [8] - 383:23, 383:34, 384:4, 412:7, 412:8, 417:34, 417:36, 417:46 DATE [1] - 384:9 dated [3] - 324:7, 324:25, 351:26 DATED [1] - 351:32 days [3] - 344:37, 345:4, 382:21 DCP [1] - 393:2 Deacons [2] - 342:45, 344:2 deal [12] - 317:25, 333:29, 347:28, 347:30, 368:38, 372:1, 373:2, 373:3, 373:28, 376:9, 396:19, 396:24 dealing [4] - 321:36, 323:31, 355:10, 410:27 dealings [4] - 376:25, 376:26, 400:29, 400:33 deals [2] - 336:38, 401:37 dealt [12] - 337:25, 340:35, 357:22, 363:18, 389:21, 392:33, 393:1,</p>			

<p>DISCLOSURE [1] - 384:11</p> <p>disclosures [1] - 397:35</p> <p>discovery [1] - 342:42</p> <p>discretion [1] - 396:25</p> <p>discuss [7] - 330:45, 351:10, 369:36, 370:21, 370:28, 402:15, 418:3</p> <p>discussed [7] - 328:4, 329:40, 350:37, 351:2, 366:6, 371:6, 395:37</p> <p>discussing [1] - 391:12</p> <p>discussion [21] - 329:31, 330:19, 333:11, 334:16, 336:1, 337:26, 339:4, 340:10, 340:13, 349:44, 350:26, 352:18, 359:22, 379:38, 389:23, 394:36, 395:44, 398:31, 400:43, 401:16, 411:39</p> <p>discussions [6] - 342:45, 344:2, 377:18, 377:25, 400:17, 400:24</p> <p>dismiss [1] - 398:40</p> <p>dismissal [6] - 398:31, 399:28, 399:35, 399:36, 399:37, 399:38</p> <p>disrespect [1] - 391:29</p> <p>disrespectfully [1] - 387:6</p> <p>distinct [1] - 322:33</p> <p>distinction [2] - 352:21, 370:37</p> <p>distracted [1] - 350:28</p> <p>distressing [1] - 322:13</p> <p>Division [2] - 319:7, 319:10</p> <p>document [43] - 319:16, 319:27, 320:7, 320:16, 330:28, 332:22, 332:23, 341:13, 345:24, 350:2, 350:15, 363:44, 367:35, 367:42, 368:3, 368:6, 368:11, 368:12, 369:44, 370:2,</p>	<p>370:18, 370:22, 370:27, 371:10, 371:11, 371:30, 371:33, 371:36, 371:43, 371:45, 372:11, 372:39, 373:26, 379:30, 379:32, 379:43, 381:23, 382:32, 388:15, 399:15, 399:20, 411:28, 412:5</p> <p>documentation [2] - 328:12, 349:5</p> <p>documents [19] - 349:36, 349:43, 350:3, 351:19, 364:8, 366:15, 367:9, 367:25, 369:47, 373:29, 373:31, 373:32, 373:33, 375:32, 379:28, 379:29, 382:23, 383:44</p> <p>DOCUMENTS [1] - 346:2</p> <p>documents" [1] - 319:39</p> <p>dog [1] - 329:25</p> <p>dog-leg [1] - 329:25</p> <p>done [30] - 322:32, 334:28, 335:22, 336:37, 336:43, 336:45, 337:21, 337:22, 344:3, 352:17, 358:27, 358:29, 362:25, 371:5, 371:6, 374:43, 375:3, 380:34, 387:32, 387:33, 390:4, 396:36, 397:1, 398:32, 401:37, 404:19, 404:20, 405:36, 417:18</p> <p>dot [3] - 416:6, 416:17, 416:20</p> <p>down [13] - 327:25, 332:5, 337:37, 343:14, 343:32, 346:35, 358:41, 362:34, 365:27, 370:27, 378:27, 383:23, 399:12</p> <p>draft [3] - 338:9, 338:21, 395:11</p> <p>draw [2] - 352:21, 359:42</p> <p>drawer [4] - 382:23, 382:24, 382:47,</p>	<p>403:36</p> <p>drawing [1] - 370:3</p> <p>drawn [1] - 401:47</p> <p>driven [2] - 362:23, 362:24</p> <p>DUGGAN [6] - 317:3, 360:20, 415:8, 415:13, 415:29, 415:42</p> <p>Duggan [2] - 317:3, 317:7</p> <p>Dunbar [1] - 399:36</p> <p>Dunn [1] - 380:33</p> <p>during [11] - 334:41, 337:26, 337:33, 382:21, 382:22, 382:28, 384:36, 394:8, 401:23, 402:28, 407:38</p> <p>duties [2] - 324:1, 356:44</p> <p>duty [1] - 319:20</p> <p>dynamics [1] - 394:17</p>	<p>416:29</p> <p>emails [4] - 367:26, 374:26, 390:18, 390:35</p> <p>embraces [1] - 318:13</p> <p>employed [1] - 352:15</p> <p>employee [2] - 318:38, 318:45</p> <p>employees [3] - 324:8, 365:24, 373:26</p> <p>employment [25] - 336:16, 336:19, 336:24, 336:26, 336:29, 336:35, 336:41, 336:42, 336:44, 338:9, 338:22, 340:14, 340:18, 340:29, 340:40, 340:45, 341:9, 341:12, 352:9, 352:13, 352:23, 352:27, 356:16, 356:24</p> <p>encourage [1] - 354:25</p> <p>encouraged [1] - 336:27</p> <p>end [13] - 329:24, 330:24, 333:15, 333:19, 333:22, 342:19, 352:43, 358:44, 401:12, 415:5, 417:23, 418:4</p> <p>endeavour [1] - 328:47</p> <p>endorsement [1] - 338:20</p> <p>engage [1] - 369:27</p> <p>English [1] - 324:8</p> <p>enterprise [8] - 336:23, 353:39, 353:40, 353:46, 357:40, 357:41, 357:42, 358:9</p> <p>entirely [3] - 329:7, 356:33, 405:47</p> <p>entitled [5] - 319:43, 320:46, 368:27, 382:43, 408:46</p> <p>entity [1] - 322:10</p> <p>environmental [2] - 362:9, 363:12</p> <p>Environmental [1] - 364:38</p> <p>ENVIRONMENTAL [1] - 364:45</p> <p>envisage [1] - 329:36</p> <p>equally [1] - 322:24</p> <p>equivalent [1] -</p>	<p>321:15</p> <p>essence [1] - 397:30</p> <p>essentially [1] - 351:16</p> <p>evening [4] - 351:15, 386:6, 408:31, 417:14</p> <p>event [5] - 322:13, 322:26, 335:36, 355:46, 411:44</p> <p>events [3] - 373:16, 398:7, 414:38</p> <p>evidence [24] - 319:31, 323:1, 323:37, 324:26, 325:36, 326:13, 332:13, 357:15, 358:26, 360:47, 368:45, 370:36, 382:14, 386:21, 387:15, 389:1, 389:5, 394:37, 394:43, 402:39, 403:18, 415:33, 417:37, 417:45</p> <p>Evidence [2] - 319:45, 321:16</p> <p>exaggerated [1] - 363:33</p> <p>EXAMINATION [11] - 326:31, 352:5, 360:25, 382:8, 384:18, 385:13, 386:41, 392:19, 394:3, 411:22, 414:1</p> <p>examination [1] - 382:22</p> <p>examined [1] - 414:28</p> <p>example [8] - 322:16, 322:24, 348:30, 377:29, 397:12, 405:26, 408:31, 409:2</p> <p>examples [2] - 325:8, 325:14</p> <p>excellent [1] - 356:23</p> <p>except [3] - 319:29, 319:43, 397:35</p> <p>exception [1] - 402:45</p> <p>exceptional [1] - 371:8</p> <p>exchanges [1] - 405:28</p> <p>excited [1] - 407:16</p> <p>excuse [16] - 320:17, 320:32, 320:33, 320:36, 320:39, 320:45, 321:20, 321:26, 323:38, 324:18, 324:38,</p>
E				
<p>ear [2] - 377:8, 417:28</p> <p>early [4] - 344:37, 345:4, 362:5, 387:33</p> <p>easily [1] - 405:18</p> <p>East [1] - 358:34</p> <p>ecstatic [1] - 327:41</p> <p>effect [3] - 340:39, 359:44, 398:14</p> <p>effectively [1] - 340:28</p> <p>effects [2] - 362:9, 363:12</p> <p>eight [3] - 329:42, 332:25, 402:2</p> <p>either [8] - 323:3, 323:18, 327:30, 334:24, 372:39, 393:31, 401:2, 408:18</p> <p>EI [1] - 335:14</p> <p>elected [2] - 318:39, 376:42</p> <p>election [2] - 384:26, 384:28</p> <p>Elizabeth [1] - 329:22</p> <p>email [18] - 374:21, 374:33, 390:37, 390:40, 391:25, 391:36, 411:28, 412:7, 412:28, 415:14, 415:17, 415:30, 415:33, 415:36, 415:37, 416:4, 416:15,</p>				

<p>324:43, 325:4, 325:17, 325:19 excused [1] - 319:15 Executive [1] - 323:44 exercise [1] - 330:46 exert [1] - 396:39 EXHIBIT [4] - 346:2, 351:32, 364:44, 384:9 Exhibit [2] - 331:14, 345:47 exhibit [6] - 331:21, 331:33, 351:30, 364:34, 364:39, 384:7 exhibiting [1] - 338:21 exhibiting [1] - 395:11 exhibits [1] - 384:7 exist [1] - 325:19 existed [1] - 352:17 existing [2] - 346:41, 346:42 exists [3] - 321:27, 324:47, 379:32 expand [2] - 327:20, 397:4 expanded [2] - 352:19, 404:38 expansion [1] - 329:27 experience [1] - 336:36 experienced [2] - 394:7, 394:15 expert [1] - 393:6 expertise [1] - 359:43 experts [1] - 393:33 explain [4] - 358:4, 372:38, 372:41, 381:10 explained [1] - 371:5 explanation [2] - 342:39, 348:43 explore [1] - 410:14 expose [3] - 317:16, 321:1, 321:43 expressed [3] - 387:40, 393:19, 393:32 expressing [2] - 355:19, 405:16 expression [3] - 354:33, 359:31, 387:2 extent [3] - 318:11, 348:9, 348:38 extra [2] - 335:35, 370:8 extract [1] - 364:40 EXTRACT [1] - 364:47</p>	<p>extraordinary [3] - 351:15, 351:29, 399:6 EXTRAORDINARY [1] - 351:35 extreme [1] - 405:30</p> <p style="text-align: center;">F</p> <p>face [5] - 328:7, 357:10, 371:18, 371:35, 371:43 faces [1] - 324:13 facilitated [1] - 371:8 facilitator [1] - 350:25 facing [1] - 347:8 fact [17] - 322:11, 353:46, 357:11, 358:11, 361:28, 361:43, 361:47, 371:47, 373:11, 377:8, 388:24, 388:42, 401:28, 406:21, 412:15, 412:47, 414:37 factories [1] - 352:23 factory [1] - 347:1 factual [1] - 324:41 fair [16] - 360:14, 370:34, 380:16, 380:27, 381:19, 386:1, 387:3, 387:30, 387:36, 394:15, 399:29, 400:1, 400:4, 403:17, 405:21, 416:3 Fairfax [1] - 378:43 fairly [6] - 335:10, 352:16, 354:20, 356:17, 376:16, 387:4 fairness [1] - 348:2 falls [1] - 322:30 familiar [2] - 382:27, 396:31 familiarity [1] - 380:7 family [1] - 348:42 far [5] - 336:22, 336:35, 384:41, 386:27, 387:23 favour [7] - 346:40, 361:28, 361:39, 361:43, 364:19, 387:2, 399:40 February [1] - 328:16, 391:1, 391:24, 391:26, 391:32, 392:11,</p>	<p>394:9, 411:28, 412:43, 413:20, 416:15 felt [2] - 357:15, 357:24 few [9] - 329:21, 333:40, 339:9, 343:36, 344:15, 344:27, 354:32, 382:21, 394:6 field [1] - 344:8 figure [1] - 383:24 figures [5] - 407:43, 408:17, 408:18, 408:19, 408:47 filed [1] - 349:5 fill [1] - 350:34 filled [2] - 330:47, 350:46 final [5] - 330:8, 333:8, 333:38, 359:16 finally [1] - 345:12 findings [1] - 318:11 fine [4] - 327:8, 356:2, 396:30, 397:24 fines [3] - 396:23, 396:25, 398:3 Fines [1] - 396:28 finish [3] - 377:44, 417:22, 417:36 finished [2] - 380:37, 410:34 firm [3] - 317:10, 384:44, 417:40 first [23] - 321:36, 327:16, 336:43, 345:17, 350:2, 350:10, 359:3, 362:22, 364:17, 370:17, 373:25, 373:43, 373:44, 374:40, 378:28, 379:45, 380:6, 383:37, 388:24, 398:26, 407:11, 409:22, 411:20 first-name [1] - 374:40 firstly [1] - 394:6 fit [1] - 344:1 fit-out [1] - 344:1 Fitzgerald [4] - 350:24, 350:32, 384:20, 384:41 five [5] - 346:27, 350:9, 401:45, 401:46, 410:46 flat [1] - 347:13 flats [1] - 358:45 flight [1] - 398:12 floor [5] - 340:7,</p>	<p>347:36, 362:25, 363:1, 363:2 flow [2] - 322:4, 323:24 folder [6] - 326:34, 333:28, 333:44, 335:39, 374:17, 389:32 follow [7] - 329:20, 332:13, 342:40, 349:27, 382:46, 390:37, 412:6 follow-up [2] - 349:27, 412:6 followed [3] - 342:29, 344:18, 406:4 following [8] - 319:38, 320:34, 323:33, 330:16, 349:34, 350:15, 369:27, 384:26 follows [2] - 318:30, 319:11 foot [1] - 383:23 FOR [3] - 351:34, 351:35, 364:46 force [1] - 398:3 forgotten [1] - 389:7 form [11] - 323:6, 323:17, 350:46, 382:42, 383:2, 383:4, 383:14, 383:22, 383:26, 383:35, 416:41 Form [4] - 382:43, 384:3, 384:5 FORM [3] - 384:9, 384:11 formally [1] - 318:12 formed [2] - 317:10, 376:6 former [1] - 324:33 Forms [1] - 382:24 forms [5] - 382:27, 382:32, 383:10, 383:13 formulate [1] - 336:45 forth [1] - 394:33 fortnight [1] - 368:31 forward [6] - 339:33, 340:4, 346:16, 355:11, 358:4, 378:11 Forward [1] - 338:17 forwarded [2] - 390:20, 411:36 forwarding [2] - 396:15, 396:16 forwards [1] - 330:20 four [6] - 348:31,</p>	<p>364:23, 380:39, 392:23, 392:27, 414:4 Frances [3] - 375:13, 413:12, 413:30 Francis [36] - 317:7, 317:28, 317:42, 321:34, 323:31, 323:36, 323:45, 324:13, 324:17, 324:22, 324:41, 325:1, 325:9, 325:26, 325:33, 325:35, 326:12, 326:22, 334:25, 389:45, 390:19, 390:42, 390:46, 411:26, 411:29, 411:37, 411:40, 412:28, 413:5, 414:18, 416:4, 416:24, 416:41, 417:11, 417:29, 418:9 Francis's [1] - 324:27 free [1] - 406:33 Freedom [1] - 397:38 frequent [1] - 379:39 fresh [3] - 333:37, 338:28, 338:41 friction [1] - 327:27 Friday [2] - 316:28, 378:30 friend [6] - 318:7, 327:40, 329:1, 373:37, 374:42, 406:35 friends [4] - 317:45, 376:14, 376:16, 402:36 friendship [1] - 376:18 front [10] - 326:46, 328:12, 328:36, 330:23, 331:26, 333:43, 333:45, 333:47, 345:23, 382:30 frontage [3] - 358:34, 359:14, 359:17 fronting [1] - 358:35 fronts [1] - 358:34 frustrating [1] - 325:20 full [1] - 397:25 fully [1] - 382:37 functions [7] - 318:34, 318:41, 318:47, 324:3, 402:46, 403:23, 403:31 fundraiser [1] -</p>
---	--	---	--	---

<p>403:29 fundraising [1] - 403:24 futility [1] - 357:24 FYI [1] - 390:31</p>	<p>335:39, 337:25, 339:43, 340:44, 345:13, 346:17, 348:41, 350:26, 350:32, 357:27, 364:33, 369:47, 387:31, 387:36, 389:32, 390:35, 399:16, 404:16, 404:18, 408:17, 410:19 global [1] - 324:19 GM [2] - 344:1, 344:8 governed [1] - 373:13 Government [8] - 318:27, 319:2, 321:29, 322:5, 322:15, 324:3, 372:13, 396:24 government [4] - 324:9, 325:13, 352:28, 395:37 Graeme [1] - 398:25 grammatical [1] - 343:43 granted [1] - 317:6 graves [1] - 359:10 great [1] - 372:46 green [1] - 404:18 grew [1] - 376:18 Grey [15] - 335:38, 335:39, 335:47, 336:1, 337:30, 337:44, 337:46, 345:35, 345:41, 352:8, 352:31, 352:33, 357:14, 357:33, 414:31 grin [1] - 328:7 ground [5] - 319:17, 319:19, 319:20, 319:22, 363:2 grounds [2] - 321:2, 325:17 group [2] - 403:24, 403:46 group's [1] - 410:21 grow [1] - 405:31 grows [2] - 405:27, 405:29 guess [6] - 326:14, 344:20, 348:2, 397:36, 398:5, 410:24 guessing [1] - 332:6 guided [3] - 318:11, 318:14, 323:25 guidelines [1] - 325:12 gun [1] - 351:43</p>	<p style="text-align: center;">H</p> <p>habit [1] - 388:32 half [1] - 341:26 hand [3] - 351:6, 353:5, 378:24 handed [2] - 328:20, 330:47 handing [1] - 331:15 handout [2] - 350:26, 350:32 handwriting [1] - 343:18 handy [1] - 326:40 happen" [1] - 334:30 happy [8] - 327:7, 335:23, 335:25, 346:31, 372:44, 381:4, 381:8, 381:9 hard [2] - 332:5, 385:47 harsh [1] - 327:29 hat [1] - 401:47 hatched [1] - 377:47 head [1] - 345:9 headed [4] - 350:10, 350:15, 382:24, 382:32 heading [2] - 319:39, 369:15 health [2] - 417:5, 418:10 hear [6] - 317:37, 333:19, 344:14, 356:1, 416:37, 417:39 heard [6] - 335:27, 349:44, 367:1, 388:47, 400:43, 404:40 hearing [3] - 349:40, 360:29, 417:6 heated [2] - 335:10, 360:38 heavily [1] - 359:9 height [1] - 363:1 held [4] - 318:45, 364:41, 382:18, 399:32 Held [1] - 316:25 HELD [1] - 365:1 help [1] - 411:15 helpful [1] - 353:30 helps [1] - 339:11 hence [3] - 324:43, 325:19, 355:21 Herald [2] - 374:8, 381:27, 385:36, 386:5, 386:14,</p>	<p>386:30, 389:11, 411:34, 411:38, 412:2, 412:16, 412:29, 413:5, 413:7, 413:17, 415:16, 415:17, 415:26, 416:5, 416:26, 416:30 herself [1] - 380:24 Hi [2] - 374:37, 380:1 Hicham [1] - 402:40 hidden [1] - 397:15 highest [1] - 358:14 himself [2] - 395:19, 395:44 history [1] - 394:16 hmm [1] - 372:32 hold [2] - 318:28, 366:30 holder [1] - 395:36 holiday [1] - 398:15 holistic [1] - 352:28 home [2] - 335:27, 365:42 honest [1] - 342:32 honesty [1] - 324:2 Honeyman [1] - 349:41 hookah [2] - 402:44, 403:33 hope [1] - 417:13 hoped [1] - 335:23 HOPPER [2] - 318:16, 394:1, 394:3, 394:5, 395:8, 397:11, 397:30, 397:38, 403:39, 403:43, 407:7, 407:11, 407:16, 407:31, 408:25, 408:45, 410:17, 410:30, 410:34, 410:39, 411:10 Hopper [2] - 393:46, 394:5 hopper [1] - 397:22 hours [2] - 377:40, 411:16 house [2] - 347:10, 404:20 houses [1] - 358:1 housing [2] - 358:9, 358:43 hurry [1] - 369:22</p>	<p>366:19, 366:21, 367:2, 367:5, 367:16, 368:31, 370:26, 372:1, 372:40, 389:33, 389:36, 389:46 ICAC's [1] - 366:21 idea [6] - 336:23, 355:39, 357:17, 379:36, 405:29, 406:30 ideally [2] - 333:39, 417:29 ideas [1] - 405:16 identification [1] - 383:5 identify [3] - 348:20, 348:24, 364:33 illegal [4] - 343:5, 343:29, 343:35, 344:7 imagine [1] - 393:2 immediate [3] - 355:3, 355:14, 355:41 immediately [1] - 417:15 immunity [1] - 321:15 implemented [1] - 394:22 implications [3] - 340:3, 340:45, 346:38 implying [1] - 403:47 important [2] - 321:23, 342:44 importantly [2] - 319:7, 319:9 imposing [2] - 318:34, 318:41 in-house [1] - 404:20 inappropriate [2] - 369:16, 369:28 inclined [2] - 324:12, 324:17 include [2] - 324:27, 377:25 included [2] - 360:11, 367:25 includes [2] - 321:11, 364:39 including [5] - 324:41, 325:10, 344:25, 372:10, 412:6 incomplete [1] - 389:34 inconsistent [1] - 341:11 incorrect [1] - 374:15 increase [14] - 325:2, 355:2, 355:13,</p>
<p style="text-align: center;">G</p> <p>G1 [2] - 384:7, 384:9 gain [3] - 348:37, 349:4, 409:42 gained [1] - 385:28 gallery [2] - 408:33, 418:8 Gardiner [2] - 392:15, 392:21 GARDINER [4] - 392:17, 392:19, 392:21, 393:44 gateway [1] - 336:6, 337:1, 337:2, 337:8, 337:10, 337:30, 339:25, 341:19, 341:22, 357:18, 357:25 gazetted" [1] - 362:13 General [1] - 350:11 GENERAL [1] - 351:33 general [39] - 327:35, 327:41, 327:44, 340:24, 343:29, 349:23, 350:25, 351:7, 351:27, 368:26, 368:34, 371:25, 372:29, 376:18, 376:26, 377:4, 379:17, 382:39, 384:7, 384:26, 394:20, 394:22, 396:9, 396:10, 396:11, 396:15, 396:16, 396:19, 396:23, 396:44, 397:36, 397:44, 398:2, 398:25, 398:44, 398:45, 399:42, 411:41, 415:39 generally [2] - 340:23, 379:41 generated [1] - 415:17 gentlemen [1] - 327:21 George [3] - 399:12, 399:21, 399:23 given [28] - 324:23, 325:1, 326:33, 329:34, 333:33, 334:28, 335:32,</p>	<p style="text-align: center;">I</p> <p>ICAC [15] - 366:6, 366:9, 366:16,</p>			

<p>361:10, 361:13, 361:14, 361:15, 361:30, 362:6, 362:30, 363:6, 363:21, 363:36, 363:41 increases [1] - 336:2 increasing [1] - 363:4 incriminate [3] - 321:21, 323:40, 325:18 incrimination [4] - 320:47, 321:12, 324:43, 325:9 indeed [4] - 375:39, 386:47, 388:47, 400:39 indemnity [1] - 322:25 independent [1] - 388:36 indicate [1] - 329:35 indicates [2] - 320:31, 335:5 indicating [1] - 323:19 individual [1] - 369:36 individually [1] - 350:34 industrial [8] - 346:34, 353:32, 353:43, 355:21, 355:30, 358:33, 358:35, 358:42 inference [1] - 410:19 influence [2] - 396:39, 397:2 inform [1] - 379:30 informal [1] - 400:17 information [36] - 324:26, 324:34, 324:42, 325:1, 327:11, 340:21, 341:2, 349:16, 366:9, 366:22, 368:36, 372:21, 372:30, 372:31, 372:34, 373:3, 374:46, 375:5, 379:8, 379:10, 379:23, 381:1, 381:24, 389:32, 390:5, 391:11, 392:10, 396:16, 397:39, 397:45, 398:4, 398:19, 405:28, 406:26, 410:45 Information [1] - 397:39 informed [3] - 317:36, 367:17, 372:10</p>	<p>initiate [1] - 394:47 inquire [3] - 322:9, 322:16, 323:23 inquired [1] - 322:26 inquiries [1] - 375:10 inquiring [1] - 324:24 INQUIRY [2] - 316:12, 418:16 inquiry [38] - 318:26, 318:29, 319:4, 319:8, 319:35, 320:4, 322:1, 322:2, 322:8, 322:15, 322:27, 322:29, 324:23, 324:25, 324:35, 327:3, 349:22, 379:28, 381:13, 385:32, 385:37, 387:9, 391:34, 391:39, 410:12, 411:31, 411:33, 411:37, 411:41, 412:2, 412:22, 412:47, 413:3, 413:10, 413:12, 413:17, 415:16 inspection [2] - 413:34, 413:37 instance [4] - 356:34, 370:6, 396:23, 410:39 instances [7] - 406:36, 406:40, 406:44, 407:20, 407:21, 407:36, 407:37 instructed [3] - 322:3, 343:1, 384:45 instructing [4] - 317:9, 317:10, 317:35, 326:17 instructions [2] - 323:16, 370:25 insurance [1] - 376:7 insurances [1] - 376:10 insurer [2] - 322:25, 376:36 intend [3] - 321:31, 383:39, 386:27 intensification [1] - 355:40 intention [2] - 416:36, 417:15 interactions [4] - 324:32, 369:16, 369:28, 394:27 intercourse [1] - 411:44</p>	<p>Interest [4] - 382:33, 384:3, 384:5, 384:6 interest [23] - 348:10, 348:12, 348:26, 348:27, 348:33, 348:38, 348:41, 354:34, 382:13, 382:36, 382:38, 383:14, 383:15, 383:23, 383:25, 394:31, 395:15, 395:35, 397:7, 412:34, 412:36, 413:4, 417:33 INTEREST [3] - 384:9, 384:10, 384:12 Interest" [1] - 382:44 interested [2] - 349:8, 367:17 interesting [2] - 408:33, 408:39 interests [11] - 349:6, 356:12, 380:18, 380:20, 380:22, 381:15, 382:11, 382:13, 383:5, 386:1, 386:15 interfere [1] - 360:15 interjection [1] - 340:23 intermediary [1] - 370:30 internal [11] - 367:26, 367:35, 368:34, 371:14, 371:30, 371:33, 371:45, 377:33, 378:37, 378:43, 379:31 internally [1] - 373:1 interplay [1] - 340:13 interpret [1] - 320:44 interpretation [2] - 370:39, 370:42 interpreted [1] - 405:18 interrupt [1] - 358:19 interrupted [1] - 344:45 interview [1] - 392:24 introduce [1] - 358:26 investigate [2] - 348:4, 359:47 invite [2] - 368:40, 408:11 invited [2] - 335:20, 403:23 involved [5] - 344:35, 396:45, 404:11, 413:20, 413:24 involvement [1] - 324:27</p>	<p>involves [1] - 417:5 involving [2] - 344:24, 379:40 Irene [6] - 326:8, 351:26, 374:37, 380:1, 390:28, 390:33 IRENE [2] - 326:29, 351:32 irregularities [1] - 379:4 issue [22] - 322:22, 322:24, 324:38, 335:9, 340:18, 341:3, 342:41, 342:46, 343:35, 344:17, 349:41, 368:21, 398:1, 398:5, 401:19, 402:35, 407:31, 409:9, 409:12, 409:17, 411:3, 415:8 issued [1] - 368:7 issues [9] - 369:38, 396:20, 396:24, 402:13, 402:15, 404:13, 404:24, 406:12, 406:36 issuing [2] - 324:30, 396:29 item [1] - 398:34 itself [5] - 334:20, 337:27, 341:41, 346:32, 373:45 izzet [1] - 402:40</p>	<p>JRRP [1] - 409:28 July [7] - 330:17, 332:42, 332:44, 342:13, 343:30, 388:16, 389:16 June [6] - 316:28, 324:7, 330:4, 330:33, 333:13, 417:34 JUNE [1] - 418:16 justified [2] - 356:10, 356:11</p>
K				
<p>keep [6] - 317:36, 337:34, 347:14, 368:3, 372:2, 403:41 keeping [1] - 337:36 kept [3] - 366:16, 366:30, 367:13 Kim [1] - 398:28 kind [3] - 321:14, 354:41, 356:4 knit [1] - 403:46 knocked [3] - 336:5, 336:10, 336:13 knowledge [11] - 327:10, 340:7, 340:8, 358:23, 389:8, 389:11, 389:14, 389:15, 403:6, 403:22, 405:35 known [3] - 397:26, 397:39, 397:45</p>				
J				
<p>Jack [4] - 330:3, 402:40, 402:45, 403:24 James [4] - 346:35, 347:8, 358:44 job [1] - 356:23 John [10] - 327:23, 343:28, 343:35, 368:26, 376:45, 379:17, 398:8, 401:6, 401:16, 401:17 Joint [1] - 361:44 jointly [1] - 351:2 joke [1] - 327:27 journalist [3] - 374:7, 375:6, 375:17 journalists [3] - 375:18, 375:22, 380:23</p>				
L				
<p>Labor [1] - 401:31 lack [1] - 358:23 ladies [2] - 368:20, 368:29 lady [1] - 335:20 Laing [2] - 365:15, 365:17 LAING [1] - 365:17 Lam [3] - 382:11, 394:10, 399:38 land [40] - 329:9, 330:15, 332:32, 336:17, 336:19, 336:22, 336:24, 336:26, 336:35, 336:39, 336:41, 336:44, 338:9, 338:22, 340:14, 340:29, 340:40, 340:45, 341:9,</p>				

<p>341:12, 348:15, 348:18, 348:22, 348:28, 352:9, 352:13, 352:14, 352:22, 352:26, 352:33, 352:39, 352:41, 353:17, 354:36, 356:16, 356:24, 358:8, 360:12, 383:5 land-use [1] - 352:22 lands [1] - 340:18 laneway [2] - 347:1, 347:9 Lang [1] - 330:3 large [7] - 328:7, 329:24, 329:25, 347:12, 378:3, 404:9, 414:30 larger [2] - 362:32 last [12] - 317:15, 317:41, 339:5, 344:27, 350:9, 394:8, 394:40, 401:45, 402:2, 406:20, 409:8, 416:5 law [6] - 320:42, 344:9, 352:12, 358:23, 395:33, 395:39 lawfully [3] - 322:9, 322:20, 323:23 Lawrence [9] - 367:26, 367:39, 368:2, 368:7, 369:45, 370:13, 370:17, 372:10, 372:39 lawyers [1] - 378:31 layout [7] - 362:29, 362:47, 363:1, 363:9, 363:10, 363:28, 363:41 leading [2] - 398:7, 400:2 learned [2] - 318:7, 329:1 learnt [1] - 413:24 least [3] - 323:45, 324:8, 383:35 leave [8] - 318:8, 333:26, 333:28, 348:33, 380:19, 386:25, 400:38, 415:11 leaving [2] - 398:8, 417:10 Leesha [10] - 374:34, 374:41, 375:19, 377:32, 379:40,</p>	<p>380:8, 390:29, 391:35, 391:39, 411:34 Leesha" [1] - 380:2 left [5] - 326:22, 329:13, 329:15, 353:5, 398:46 left-hand [1] - 353:5 leg [1] - 329:25 legal [4] - 378:31, 378:44, 379:9, 379:16 legals [2] - 344:3, 344:28 legislation [3] - 348:24, 375:20, 380:9 legislative [1] - 317:21 LEP [8] - 336:22, 336:44, 336:46, 338:16, 358:2, 358:7, 358:26, 392:44 less [2] - 409:16, 409:41 letter [3] - 323:6, 323:18, 389:40 level [2] - 344:8, 376:44 levels [1] - 376:46 liabilities [2] - 320:26, 321:7 Liberal [1] - 401:31 Lidcombe [7] - 321:42, 324:32, 348:31, 391:40, 405:26, 408:36, 409:4 light [2] - 386:22, 404:18 like" [1] - 329:36 likely [4] - 357:19, 357:25, 363:12, 368:37 limited [1] - 370:9 line [6] - 361:8, 380:20, 380:30, 381:13, 392:26, 392:28 lines [4] - 355:43, 397:23, 401:11, 410:42 linking [1] - 355:3 Lion's [1] - 403:29 list [3] - 344:27, 355:47, 416:40 listed [1] - 324:14 listen [1] - 332:3 litigation [4] - 344:24, 344:35, 345:3, 389:6</p>	<p>live [2] - 358:17, 359:18 lively [1] - 330:10 living [1] - 355:14 lobbied [1] - 335:35 local [6] - 324:8, 325:12, 346:34, 352:28, 395:37, 398:27 Local [9] - 318:27, 319:2, 321:29, 322:5, 322:15, 324:3, 372:13, 396:24, 398:28 locate [1] - 328:47 locations [1] - 329:32 lodged [1] - 361:8 lodgment [1] - 362:5 London [1] - 375:41 lonely [1] - 411:15 look [36] - 329:36, 330:24, 331:39, 332:6, 332:21, 333:39, 338:5, 339:18, 340:39, 341:25, 347:19, 347:34, 352:22, 352:30, 354:4, 359:12, 359:38, 361:24, 361:41, 367:29, 368:30, 368:40, 369:43, 377:37, 383:10, 387:11, 390:1, 390:24, 402:32, 408:12, 412:9, 413:35, 413:38, 414:4, 416:5 looked [4] - 337:38, 352:16, 352:17, 352:26 looking [11] - 332:22, 348:13, 349:46, 352:24, 361:34, 364:22, 367:45, 389:10, 390:19, 411:16, 416:8 looks [2] - 417:37, 417:45 lovely [1] - 359:12 lower [1] - 361:16 lull [1] - 382:21 LUNCHEON [1] - 378:7</p>	<p>maintain [1] - 336:28 maintained [1] - 372:5 maintaining [1] - 387:3 major [6] - 345:10, 353:32, 354:20, 355:1, 355:20, 355:30 maker [1] - 361:45 manager [25] - 327:35, 327:42, 340:24, 343:29, 368:26, 368:34, 376:18, 376:26, 377:4, 382:39, 394:22, 396:9, 396:10, 396:11, 396:15, 396:16, 396:19, 396:23, 396:44, 397:36, 397:44, 398:2, 398:25, 398:45, 399:43 Manager [2] - 323:44, 350:11 MANAGER'S [1] - 351:33 manager's [4] - 349:23, 351:27, 398:44, 400:13 manner [3] - 324:20, 324:26, 379:17 manufacture [1] - 320:20 map [11] - 328:20, 329:32, 329:34, 331:40, 332:23, 333:1, 333:3, 333:4, 333:8, 333:13, 387:12 mapping [1] - 330:46 maps [6] - 329:30, 330:37, 330:42, 330:47, 331:2, 331:8 March [10] - 375:26, 377:15, 377:17, 377:22, 377:23, 377:33, 395:3, 399:7, 399:9, 400:34 Marigold [1] - 403:25 Mark [9] - 328:6, 343:4, 344:6, 346:32, 347:12, 348:15, 349:1, 349:14, 358:41 mark [1] - 351:25 marked [9] - 387:12, 388:12, 389:34, 389:38, 390:9, 390:12, 390:14,</p>	<p>390:15 market [2] - 409:16, 409:41 marking [2] - 387:11, 390:13 MARSDEN [1] - 346:2 Marsden [13] - 324:29, 345:13, 345:39, 345:46, 346:20, 346:32, 348:10, 357:30, 358:31, 358:32, 360:37, 360:38 masons [1] - 358:39 massive [1] - 413:40 mate/councillor [1] - 344:10 material [13] - 333:44, 366:26, 366:30, 366:40, 366:41, 371:47, 372:2, 373:26, 373:45, 374:2, 389:32, 391:30, 411:16 matter [43] - 318:24, 318:32, 322:33, 322:42, 325:22, 326:42, 327:16, 330:7, 333:29, 337:1, 337:19, 337:30, 340:35, 342:22, 342:31, 342:40, 344:14, 344:30, 346:8, 346:24, 346:26, 356:6, 367:6, 367:18, 368:8, 369:46, 370:4, 370:10, 370:17, 370:26, 371:15, 372:1, 373:11, 373:20, 373:28, 386:47, 387:1, 387:8, 389:1, 408:35, 408:41, 411:14, 416:2 matters [24] - 317:18, 318:12, 318:29, 320:44, 321:10, 321:32, 321:41, 323:24, 323:26, 323:30, 324:23, 324:27, 324:41, 325:25, 344:34, 369:37, 373:30, 387:2, 387:7, 388:2, 393:10, 408:32, 408:41 mayor [26] - 342:10, 342:11, 342:18,</p>
		M		
		M4 [1] - 353:6 main [1] - 329:19		

<p>342:23, 342:26, 342:37, 376:17, 376:24, 388:30, 401:28, 401:40, 402:1, 402:2, 402:4, 402:5, 402:6, 402:8, 402:21, 402:25, 402:28, 403:9, 407:2, 407:19, 407:27, 407:35</p> <p>mayors [1] - 376:25</p> <p>McCann [5] - 384:14, 384:16, 384:18, 384:20, 385:6</p> <p>McKenney [11] - 374:34, 375:19, 377:32, 379:40, 390:20, 390:22, 390:29, 391:35, 391:39, 411:34, 411:45</p> <p>McNally [6] - 382:6, 382:8, 382:10, 383:4, 383:42</p> <p>mean [8] - 322:11, 325:3, 340:28, 346:40, 349:12, 361:13, 387:6, 390:9</p> <p>means [2] - 320:39, 321:37</p> <p>measure [1] - 356:33</p> <p>media [1] - 375:28</p> <p>Media [1] - 378:44</p> <p>meet [3] - 336:15, 402:9, 402:12</p> <p>meeting [61] - 328:6, 330:11, 330:17, 332:44, 334:20, 335:10, 337:21, 337:22, 337:24, 337:26, 338:44, 339:1, 339:5, 339:23, 339:31, 339:33, 339:35, 339:38, 339:41, 339:46, 339:47, 340:2, 343:28, 349:24, 349:27, 349:34, 350:4, 350:6, 350:23, 351:14, 351:15, 351:28, 351:29, 353:13, 354:31, 356:39, 364:40, 365:35, 365:44, 366:2, 366:34, 366:43, 382:39, 382:40, 383:19, 388:33, 393:27, 395:14, 398:35,</p>	<p>398:46, 399:6, 400:46, 401:2, 401:3, 401:4, 404:19, 404:21, 405:4, 405:9, 406:19, 408:40</p> <p>MEETING [3] - 351:34, 351:35, 364:47</p> <p>meetings [17] - 337:33, 340:20, 340:23, 366:47, 382:18, 382:29, 388:32, 395:20, 398:29, 400:5, 400:6, 402:10, 402:22, 402:27, 403:3, 403:7, 405:40</p> <p>Mehajer [14] - 317:4, 348:13, 364:23, 399:37, 412:17, 412:34, 412:36, 412:45, 413:2, 413:3, 413:11, 413:13, 413:21, 413:25</p> <p>Mehajer's [4] - 375:27, 392:28, 413:1, 413:8</p> <p>member [5] - 318:37, 318:45, 342:47, 348:42, 376:41</p> <p>members [5] - 322:31, 370:13, 371:2, 405:3, 408:34</p> <p>memorandum [1] - 371:14</p> <p>memory [7] - 329:33, 330:18, 330:46, 339:44, 344:40, 352:16, 362:9</p> <p>mention [1] - 408:38</p> <p>mentioned [1] - 324:6</p> <p>merely [1] - 362:29</p> <p>merits [3] - 340:35, 356:38, 410:42</p> <p>message [2] - 344:9, 398:16</p> <p>met [1] - 371:6</p> <p>Metropool [9] - 375:42, 376:2, 376:5, 376:6, 376:28, 376:34, 376:43, 376:46</p> <p>middle [1] - 327:19</p> <p>might [24] - 321:21, 323:39, 324:44, 325:2, 325:9, 325:11, 325:18, 325:20, 340:40, 343:11, 343:21, 354:42, 356:22,</p>	<p>367:29, 368:41, 385:27, 386:21, 387:26, 388:1, 405:29, 405:30, 406:20, 415:36, 418:10</p> <p>mind [8] - 335:24, 356:44, 378:27, 404:28, 409:3, 409:45, 410:9, 411:6</p> <p>minds [1] - 404:37</p> <p>mine [1] - 328:37</p> <p>Minieh [1] - 335:14</p> <p>Minister [2] - 318:28, 322:1</p> <p>minute [1] - 364:5</p> <p>minutes [3] - 349:23, 364:40, 415:1</p> <p>MINUTES [1] - 364:47</p> <p>mirrored [1] - 381:26</p> <p>misconduct [2] - 323:43, 324:10</p> <p>misquoting [1] - 387:26</p> <p>missed [2] - 396:14, 415:26</p> <p>missing [1] - 331:17</p> <p>mistake [1] - 407:11</p> <p>mixing [1] - 415:37</p> <p>mixture [1] - 353:42</p> <p>mmm-hmm [1] - 372:32</p> <p>modification [7] - 362:37, 362:38, 363:6, 363:9, 363:10, 363:21, 364:36</p> <p>MODIFICATION [1] - 364:44</p> <p>modifications [3] - 363:35, 363:37, 392:40</p> <p>modify [6] - 362:29, 362:39, 362:47, 363:1, 363:28, 363:40</p> <p>moment [9] - 317:11, 323:14, 324:12, 355:6, 361:41, 372:26, 378:2, 380:21, 381:14</p> <p>MONDAY [1] - 418:16</p> <p>Monday [7] - 416:34, 416:42, 417:18, 417:19, 417:21, 418:4, 418:12</p> <p>months [3] - 343:37, 344:15, 384:27</p> <p>monumental [1] - 358:39</p>	<p>Morning [6] - 374:8, 381:27, 411:38, 412:16, 413:4, 413:7</p> <p>morning [2] - 326:22, 349:22</p> <p>most [5] - 326:21, 368:37, 373:2, 375:9, 394:7</p> <p>mostly [2] - 334:27, 346:34</p> <p>motion [6] - 347:36, 348:2, 394:46, 395:11, 398:40, 399:6</p> <p>move [2] - 317:32, 321:32</p> <p>moved [4] - 339:6, 340:8, 340:9, 347:40</p> <p>moving [2] - 357:33, 417:28</p> <p>MR [202] - 317:3, 317:9, 317:23, 317:30, 317:35, 317:39, 317:45, 318:5, 318:7, 318:16, 318:18, 322:36, 322:42, 323:1, 323:16, 323:28, 325:28, 325:33, 325:41, 325:46, 326:7, 326:16, 326:25, 326:31, 326:33, 326:39, 327:44, 328:3, 328:27, 328:31, 328:34, 328:36, 328:39, 328:43, 328:47, 331:5, 331:11, 331:23, 331:35, 331:39, 332:15, 332:19, 333:3, 333:8, 333:19, 333:24, 335:4, 335:9, 337:44, 337:46, 341:46, 342:3, 342:18, 343:7, 343:9, 343:14, 343:24, 344:13, 344:47, 345:32, 345:39, 345:44, 346:4, 346:10, 346:12, 346:46, 349:36, 351:19, 351:23, 351:37, 351:43, 352:2, 352:5, 352:7, 357:35, 358:22, 358:29, 358:31, 359:26, 359:31,</p>	<p>359:34, 360:18, 360:20, 360:23, 360:25, 360:27, 363:9, 363:47, 364:5, 364:11, 364:16, 364:26, 364:30, 365:4, 367:47, 368:47, 369:2, 369:5, 369:11, 369:15, 371:2, 373:36, 373:43, 376:14, 377:17, 377:42, 378:2, 378:18, 378:24, 380:26, 380:33, 380:39, 380:45, 381:18, 381:23, 381:44, 382:3, 382:8, 382:10, 383:4, 383:44, 384:1, 384:14, 384:16, 384:18, 384:20, 385:6, 385:11, 385:13, 385:15, 385:39, 385:42, 385:44, 386:4, 386:17, 386:27, 386:34, 386:39, 386:41, 386:43, 387:25, 388:41, 389:44, 392:13, 392:17, 392:19, 392:21, 393:44, 394:1, 394:3, 394:5, 395:8, 397:9, 397:11, 397:18, 397:30, 397:38, 403:39, 403:43, 407:7, 407:11, 407:16, 407:31, 408:21, 408:25, 408:45, 410:17, 410:30, 410:34, 410:39, 411:10, 411:14, 411:22, 411:24, 413:33, 413:44, 414:1, 414:3, 414:45, 415:5, 415:8, 415:13, 415:24, 415:29, 415:42, 416:2, 416:10, 416:15, 416:19, 416:22, 416:26, 416:32, 416:36, 416:44, 417:3, 417:8, 417:13, 417:21, 417:28, 417:33, 417:42, 418:1</p>
---	---	--	---	--

<p>MS1 [2] - 345:47, 346:2 must [4] - 369:27, 370:25, 372:30, 398:35</p>	<p>398:45, 400:45, 408:31 nine [1] - 402:2 no-one [4] - 368:32, 372:10, 372:12, 415:46</p>	<p>375:28, 385:2, 387:7, 387:8, 387:30, 394:36, 398:34, 400:29, 400:33, 404:12, 405:24, 406:26</p>	<p>391:11 officers [6] - 324:9, 365:12, 365:32, 365:36, 366:26, 375:4 official [1] - 323:46</p>	<p>ongoing [3] - 342:45, 344:2, 344:35 open [14] - 328:11, 331:26, 333:43, 337:41, 352:31, 355:42, 357:11, 397:6, 397:11, 403:36, 409:33, 409:40, 409:43, 417:39 Opening [3] - 368:47, 369:2, 369:5 opening [4] - 331:3, 331:9, 332:12, 333:1 operational [8] - 368:8, 369:37, 369:46, 370:4, 370:10, 371:15, 371:39, 373:30 operations [1] - 358:33 opinion [1] - 357:3 opinions [1] - 346:28 opponents [1] - 393:37 opportunity [5] - 340:44, 347:34, 347:43, 355:7, 361:24 opposed [1] - 352:23 opposite [1] - 358:10 option [10] - 334:7, 334:10, 334:29, 334:33, 334:35, 334:37, 346:30, 385:20, 385:24, 385:27 options [4] - 333:37, 333:38, 334:14, 334:23 orally [1] - 318:3 order [2] - 351:40, 351:46 ordering [1] - 322:1 ordinary [2] - 364:40, 383:25 ORDINARY [1] - 364:47 organic [2] - 405:27, 405:32 original [5] - 329:8, 334:3, 360:11, 404:29, 405:29 originally [3] - 336:21, 346:46, 409:18 otherwise [5] - 319:29, 319:43, 322:7, 362:17, 398:3 Oueik [17] - 317:41, 318:23, 321:33,</p>
N				
<p>name [9] - 317:3, 354:30, 374:40, 380:6, 382:10, 392:21, 394:5, 399:12, 401:47 namely [2] - 333:38, 371:19 names [2] - 354:32, 379:45 nature [3] - 320:40, 371:29, 410:27 near [3] - 335:1, 335:2, 347:33 nearby [1] - 355:42 necessarily [8] - 344:19, 344:26, 360:9, 371:32, 384:29, 399:40, 404:21 Ned [1] - 402:40 need [13] - 321:40, 323:13, 325:33, 331:33, 347:47, 355:13, 355:16, 356:1, 358:27, 381:18, 410:14, 414:30, 415:13 needed [3] - 340:18, 359:42, 372:47 needs [1] - 382:36 net [1] - 409:42 neutral [2] - 400:1, 400:39 never [5] - 323:14, 329:40, 341:18, 341:20, 403:13 new [4] - 336:46, 347:12, 358:44, 359:19 newspaper [1] - 378:20 next [9] - 325:38, 326:8, 333:29, 337:12, 344:14, 354:47, 380:43, 406:19, 418:4 nice [1] - 359:11 night [10] - 317:15, 317:41, 349:28, 349:30, 350:35, 355:31, 357:22,</p>	<p>non-pecuniary [1] - 348:40 none [1] - 339:31 nonetheless [1] - 392:30 normal [8] - 348:25, 368:20, 371:4, 373:15, 393:26, 393:40, 404:32 normally [1] - 388:31 north [4] - 353:33, 355:21, 355:26, 355:30 northern [1] - 352:43 note [16] - 321:23, 335:27, 335:28, 341:34, 342:7, 342:15, 344:40, 381:31, 388:3, 388:10, 388:11, 388:25, 388:30, 388:36, 389:9, 416:19 noted [1] - 401:19 notes [8] - 341:32, 342:33, 348:12, 350:34, 368:31, 388:32, 400:18, 410:35 Nothing [1] - 320:12 nothing [7] - 351:37, 352:12, 363:4, 376:21, 389:6, 391:9, 405:13 NOTICE [1] - 364:44 notice [12] - 323:18, 324:23, 330:13, 347:39, 348:12, 362:37, 364:36, 383:22, 391:15, 391:32, 406:34, 408:39 noticed [1] - 332:36 notwithstanding [1] - 395:39 now" [1] - 340:42 NSW [1] - 316:26 number [23] - 317:18, 327:14, 329:44, 344:41, 345:8, 355:2, 355:14, 358:36, 364:31, 374:43, 375:19,</p>	<p>O1 [1] - 331:14 oath [1] - 378:12 object [2] - 327:44, 385:39 objection [1] - 418:7 objective [1] - 384:45 obligation [3] - 373:24, 373:44, 374:1 obligations [2] - 324:2, 372:29 observation [1] - 408:33 observe [1] - 327:20 observed [3] - 327:18, 335:41, 335:47 obtain [3] - 375:4, 375:31, 376:30 obtained [3] - 349:16, 379:16, 381:25 obvious [3] - 323:36, 329:26, 348:23 obviously [4] - 322:12, 328:7, 362:33, 399:28 occasion [3] - 328:3, 356:40, 406:17 occupation [2] - 324:30, 415:38 occur [3] - 344:17, 388:31, 394:27 October [2] - 338:44, 339:5 OF [12] - 346:2, 351:32, 364:44, 364:45, 364:47, 384:9, 384:10, 384:11 offence [4] - 321:3, 323:43, 323:47, 324:10 offences [1] - 324:14 offer [1] - 405:1 office [5] - 318:40, 318:44, 318:47, 323:43, 324:10 Office [1] - 372:13 Officer [1] - 316:20 officer [4] - 323:46, 367:35, 368:41,</p>	<p>often [8] - 327:23, 393:15, 393:18, 393:22, 402:11, 402:45, 404:8, 406:22 old [3] - 347:10, 358:42, 359:9 older [2] - 358:33, 358:35 Oldfield [3] - 329:46, 399:35, 417:14 Ombudsman [1] - 368:34 omission [4] - 318:37, 318:42, 320:37, 320:40 ON [1] - 365:1 once [3] - 335:9, 373:31, 404:10 one [67] - 318:12, 323:19, 327:29, 328:41, 331:29, 333:14, 334:27, 334:29, 335:40, 336:24, 336:29, 336:43, 337:38, 339:42, 345:37, 347:9, 349:37, 352:24, 353:30, 353:33, 354:13, 356:19, 356:20, 358:14, 360:7, 360:10, 360:23, 362:19, 363:11, 364:9, 364:24, 366:47, 368:32, 372:10, 372:12, 382:30, 382:32, 387:41, 390:15, 390:18, 392:7, 392:24, 393:22, 394:42, 400:19, 400:37, 401:18, 403:36, 405:11, 408:30, 408:31, 408:35, 408:37, 408:40, 409:27, 409:44, 412:19, 412:23, 414:12, 415:8, 415:38, 415:46, 416:2, 416:4 ones [5] - 349:20, 383:18, 407:45, 408:1, 408:4</p>	<p>opening [3] - 368:47, 369:2, 369:5 opening [4] - 331:3, 331:9, 332:12, 333:1 operational [8] - 368:8, 369:37, 369:46, 370:4, 370:10, 371:15, 371:39, 373:30 operations [1] - 358:33 opinion [1] - 357:3 opinions [1] - 346:28 opponents [1] - 393:37 opportunity [5] - 340:44, 347:34, 347:43, 355:7, 361:24 opposed [1] - 352:23 opposite [1] - 358:10 option [10] - 334:7, 334:10, 334:29, 334:33, 334:35, 334:37, 346:30, 385:20, 385:24, 385:27 options [4] - 333:37, 333:38, 334:14, 334:23 orally [1] - 318:3 order [2] - 351:40, 351:46 ordering [1] - 322:1 ordinary [2] - 364:40, 383:25 ORDINARY [1] - 364:47 organic [2] - 405:27, 405:32 original [5] - 329:8, 334:3, 360:11, 404:29, 405:29 originally [3] - 336:21, 346:46, 409:18 otherwise [5] - 319:29, 319:43, 322:7, 362:17, 398:3 Oueik [17] - 317:41, 318:23, 321:33,</p>

<p>321:47, 322:21, 324:33, 327:19, 328:3, 343:3, 343:30, 344:5, 348:14, 348:46, 360:28, 401:34, 402:39, 403:19</p> <p>Oueik's [1] - 349:13</p> <p>Outcomes [1] - 338:16</p> <p>outfit [1] - 356:17</p> <p>outlet [1] - 354:15</p> <p>outlined [1] - 324:14</p> <p>outside [2] - 400:25, 405:4</p> <p>overall [2] - 350:38, 351:12</p> <p>overboard [1] - 380:17</p> <p>overrides [2] - 373:20, 373:22</p> <p>overriding [1] - 373:15</p> <p>overseas [6] - 375:39, 375:41, 398:15, 398:41, 398:42, 400:18</p> <p>own [10] - 324:25, 348:18, 348:42, 350:40, 351:9, 366:7, 410:22, 413:33, 413:37, 417:33</p> <p>owned [5] - 348:15, 348:25, 348:31, 349:1, 349:14</p> <p>owner [4] - 348:23, 374:3, 414:18, 414:22</p> <p>owners [1] - 322:13</p>	<p>369:8, 369:11, 369:44, 370:3, 370:28, 374:15, 374:16, 374:17, 374:19, 374:24, 374:29, 374:33, 378:28, 379:43, 383:24, 384:22, 388:12, 389:25, 389:28, 389:34, 389:40, 390:17, 390:18, 390:20, 390:24, 390:40, 399:5, 402:31, 402:35, 411:19, 411:27, 412:8, 412:25, 414:4, 414:5, 414:6, 416:3, 416:10, 416:15</p> <p>pages [6] - 332:25, 339:9, 350:9, 350:19, 375:3, 390:36</p> <p>paid [5] - 343:47, 344:28, 348:11, 376:36, 376:38</p> <p>Palmer [1] - 398:28</p> <p>Panel [1] - 361:45</p> <p>paper [4] - 344:15, 398:27, 398:44, 402:13</p> <p>papers [1] - 402:10</p> <p>paperwork [2] - 337:25, 349:45</p> <p>paragraph [25] - 324:14, 325:6, 327:17, 338:20, 360:32, 360:44, 360:45, 362:16, 364:8, 364:20, 365:4, 365:27, 365:31, 369:19, 370:8, 378:34, 388:2, 388:6, 389:25, 389:28, 402:31, 402:33, 402:35, 412:41, 413:25</p> <p>paragraphs [1] - 414:5</p> <p>parcel [2] - 348:22, 360:12</p> <p>pardon [5] - 381:36, 391:4, 391:18, 391:46, 412:11</p> <p>Park [5] - 329:25, 364:28, 364:34, 364:39, 405:26</p> <p>PARK [1] - 364:46</p> <p>park [10] - 353:9,</p>	<p>362:29, 362:32, 409:12, 409:15, 409:33, 409:41, 409:43, 411:1</p> <p>parking [2] - 363:37, 396:30</p> <p>parkland [2] - 355:42, 359:12</p> <p>parklands [1] - 353:4</p> <p>Part [2] - 319:7, 319:10</p> <p>part [17] - 324:34, 336:26, 336:45, 345:17, 353:16, 354:14, 356:37, 359:22, 368:34, 368:35, 375:23, 378:28, 379:27, 391:36, 392:9, 395:36, 405:45</p> <p>participate [2] - 395:35, 395:40</p> <p>particular [28] - 325:11, 325:13, 329:32, 335:31, 335:43, 336:10, 339:33, 339:34, 352:32, 353:17, 359:1, 359:38, 361:1, 362:16, 371:18, 375:26, 384:44, 386:22, 388:21, 389:1, 394:38, 405:17, 406:12, 409:15, 409:32, 410:20, 412:34, 412:35</p> <p>particularly [10] - 317:20, 338:42, 341:20, 342:46, 346:33, 359:8, 375:9, 386:39, 387:41, 404:8</p> <p>parties [1] - 324:24</p> <p>pass [3] - 361:37, 371:47, 372:2</p> <p>passed [7] - 363:25, 363:40, 364:18, 398:4, 416:4, 416:26, 416:30</p> <p>pattern [3] - 391:30, 392:9, 406:17</p> <p>Paul [1] - 316:19</p> <p>PCA [1] - 375:13</p> <p>pecuniary [5] - 348:27, 348:40, 383:15, 395:15</p> <p>Pecuniary [2] - 382:43, 384:6</p> <p>PECUNIARY [1] -</p>	<p>384:12</p> <p>pecuniary/non [1] - 348:27</p> <p>pecuniary/non-pecuniary [1] - 348:27</p> <p>penalties [1] - 320:25</p> <p>penalty [1] - 323:18</p> <p>pencils [2] - 329:4, 405:11</p> <p>people [27] - 325:10, 352:14, 352:15, 352:22, 355:2, 355:14, 359:18, 372:45, 373:2, 375:28, 376:47, 380:9, 387:40, 388:31, 398:22, 400:7, 400:19, 401:14, 403:6, 406:16, 408:32, 408:39, 410:40, 413:31, 416:36, 417:15</p> <p>per [12] - 406:37, 406:41, 406:45, 407:7, 407:20, 407:22, 407:36, 407:38, 407:43, 408:7, 415:29</p> <p>perceived [1] - 340:36</p> <p>perception [1] - 341:13</p> <p>Performance [1] - 350:10</p> <p>PERFORMANCE [1] - 351:34</p> <p>performance [7] - 324:2, 349:23, 350:23, 350:37, 351:28, 398:45, 400:14</p> <p>perhaps [8] - 321:10, 331:5, 335:39, 345:32, 368:41, 382:22, 401:20, 406:34</p> <p>period [9] - 384:36, 394:8, 394:17, 400:42, 401:23, 402:28, 407:37, 407:38, 409:8</p> <p>periods [1] - 401:45</p> <p>perjury [1] - 321:10</p> <p>permission [1] - 376:30</p> <p>Perry [1] - 325:4</p> <p>persist [1] - 382:3</p> <p>person [15] - 318:39, 318:45, 319:31,</p>	<p>320:37, 320:41, 335:31, 336:2, 342:22, 350:35, 365:16, 365:39, 368:12, 370:29, 399:34, 408:37</p> <p>personally [3] - 374:42, 381:13, 393:31</p> <p>persons [3] - 319:4, 371:19, 373:25</p> <p>persuade [1] - 410:7</p> <p>pertains [1] - 336:39</p> <p>Peter [3] - 350:24, 350:32, 350:36</p> <p>petrol [1] - 358:42</p> <p>philosophy [7] - 356:5, 356:6, 356:11, 356:29, 357:1, 404:41, 404:42</p> <p>phone [5] - 415:22, 415:34, 415:38, 415:42</p> <p>photo [1] - 353:1</p> <p>photograph [2] - 329:7, 354:4</p> <p>physical [1] - 349:19</p> <p>pick [1] - 408:34</p> <p>picked [1] - 408:40</p> <p>picture [2] - 353:5, 353:29</p> <p>piece [4] - 379:8, 379:10, 387:33, 401:46</p> <p>pieces [1] - 358:46</p> <p>pithy [1] - 412:7</p> <p>place [10] - 342:36, 344:21, 354:41, 358:17, 362:23, 368:37, 384:27, 389:16, 413:29</p> <p>plain [4] - 354:4, 371:29, 371:35, 371:43</p> <p>plan [2] - 332:42, 333:8</p> <p>Plan [1] - 350:16</p> <p>planned [1] - 325:35</p> <p>planning [36] - 324:28, 325:11, 325:13, 340:36, 341:10, 346:47, 347:30, 348:19, 348:30, 352:12, 356:5, 356:6, 357:7, 358:23, 360:35, 361:47, 362:12, 362:22, 362:23, 362:34, 363:13,</p>
P				
<p>page [81] - 328:27, 328:31, 330:25, 330:26, 330:36, 331:26, 331:39, 332:26, 332:28, 332:47, 333:3, 333:4, 333:9, 334:3, 334:4, 334:7, 334:10, 337:41, 338:5, 338:8, 338:13, 338:29, 338:37, 338:47, 339:10, 339:18, 342:3, 343:7, 343:9, 345:23, 346:10, 346:12, 350:10, 352:32, 353:29, 360:39, 360:44, 367:30, 367:45,</p>				

<p>386:43, 392:34, 392:43, 393:5, 393:10, 393:23, 393:33, 393:36, 394:37, 405:1, 405:2, 405:25, 405:37, 406:27, 407:42 PLANNING [1] - 364:46 Planning [13] - 323:44, 324:29, 328:10, 333:34, 336:11, 336:14, 339:24, 361:45, 364:38, 394:42, 404:35 plans [2] - 361:25, 363:47 play [3] - 403:11, 403:30, 417:28 played [3] - 324:30, 402:44, 403:9 playing [3] - 344:8, 403:2, 403:7 pleased [1] - 328:8 pleases [1] - 323:28 point [25] - 317:27, 353:11, 353:33, 353:37, 354:47, 356:16, 356:22, 357:14, 359:1, 359:34, 361:42, 362:1, 362:4, 362:19, 366:25, 379:44, 380:11, 381:31, 385:46, 395:14, 400:34, 404:45, 416:6, 416:20, 416:27 pointed [1] - 355:39 pointing [1] - 410:26 points [3] - 353:30, 355:46, 416:17 policy [2] - 369:38, 394:21 political [1] - 408:45 politics [3] - 356:11, 356:30, 357:1 pollution [1] - 358:15 pools [2] - 376:38, 376:41 poor [4] - 337:36, 358:13, 392:23, 392:27 pose [1] - 325:8 position [24] - 318:10, 318:16, 318:40, 318:44, 318:47, 321:18, 323:7,</p>	<p>323:19, 323:44, 323:47, 326:11, 358:12, 363:33, 376:28, 377:3, 377:12, 399:32, 400:2, 401:17, 401:40, 402:1, 404:45, 405:30, 405:32 positions [1] - 405:30 possession [12] - 367:13, 367:16, 367:21, 367:25, 368:13, 371:11, 372:11, 373:27, 373:32, 373:44, 374:2, 399:15 possible [6] - 336:28, 395:34, 402:29, 402:45, 404:46, 408:9 possibly [2] - 388:45, 408:8 post [1] - 377:12 potential [5] - 323:43, 324:14, 354:31, 359:47, 398:31 potentially [1] - 359:2 power [4] - 318:27, 376:9, 396:19, 396:24 PP3/2010 [1] - 362:23 PR1 [2] - 364:34, 364:44 practical [1] - 353:47 practice [1] - 376:44 precinct [6] - 347:19, 347:31, 359:2, 359:37, 359:46, 414:31 Precinct [1] - 316:25 precincts [1] - 352:14 precise [1] - 363:39 precisely [2] - 363:17, 407:29 predated [1] - 358:2 predisposition [1] - 387:7 predominant [1] - 380:8 preferred [1] - 346:30 preparation [1] - 363:16 prepared [4] - 326:42, 330:37, 356:17, 367:22 preparing [2] - 366:6, 390:1 present [10] - 322:21, 334:37, 334:41,</p>	<p>337:29, 337:33, 339:46, 361:19, 364:18, 401:24, 416:2 presented [4] - 340:21, 357:21, 357:22, 359:11 presently [1] - 322:14 preserve [1] - 387:9 preserving [1] - 404:43 press [9] - 390:43, 390:47, 391:2, 391:9, 391:13, 391:24, 391:31, 392:10, 411:27 pressure [1] - 326:11 pretty [5] - 357:10, 359:2, 359:34, 360:2, 363:10 previous [5] - 349:16, 349:18, 356:40, 375:3, 411:44 previously [3] - 330:13, 330:14, 379:38 prime [1] - 409:38 principles [1] - 380:33 private [2] - 416:47, 418:8 privately [1] - 418:10 privilege [4] - 318:23, 319:19, 320:46, 321:11 pro [3] - 357:11, 404:42, 406:22 pro-development [2] - 357:11, 404:42 proactively [1] - 336:27 problem [4] - 347:5, 357:21, 388:21, 414:43 problems [1] - 377:9 procedure [2] - 321:14, 348:18 proceed [3] - 318:21, 326:8, 348:3 proceeding [3] - 320:27, 379:31, 382:21 proceedings [5] - 319:32, 321:8, 323:3, 323:11, 323:17 process [7] - 320:19, 329:32, 344:23, 404:11, 405:27, 405:37 produce [3] - 320:7,</p>	<p>320:10, 320:15 produced [2] - 319:28, 329:30 produces [1] - 332:23 producing [1] - 319:16 production [1] - 319:17 proffer [1] - 400:37 prohibited [1] - 357:45 project [2] - 336:5, 336:10 promoted [2] - 353:17, 354:24 promoting [2] - 354:44, 355:39 prompted [1] - 349:42 promptly [1] - 329:8 proper [1] - 396:1 properly [5] - 322:25, 329:10, 362:44, 392:33, 405:40 properties [5] - 347:7, 348:25, 348:32, 348:47, 349:14 property [7] - 348:14, 348:21, 348:42, 364:38, 375:32, 412:34, 412:35 proposal [38] - 328:13, 334:4, 335:42, 335:43, 338:28, 338:41, 339:17, 339:38, 340:30, 340:36, 341:10, 341:17, 346:20, 346:47, 347:17, 347:29, 347:30, 348:19, 348:30, 357:20, 359:44, 360:7, 360:10, 360:11, 360:35, 360:37, 362:1, 362:13, 362:22, 362:23, 362:34, 363:13, 394:42, 395:16, 395:45, 405:2, 405:41 Proposal [6] - 324:29, 328:11, 333:34, 394:42, 404:35 proposals [12] - 324:28, 325:11, 325:13, 385:2, 392:43, 393:36, 393:37, 394:38, 404:2, 405:25, 406:27, 407:42</p>	<p>propose [5] - 318:21, 334:32, 367:6, 380:26, 380:34 proposed [9] - 330:14, 339:22, 340:28, 347:25, 353:38, 362:38, 385:25, 385:29 proposes [1] - 324:20 proposition [4] - 359:4, 360:3, 370:9, 396:41 propositions [2] - 373:36, 373:38 pros [1] - 405:2 prosecute [2] - 343:5, 344:7 prosecuted [1] - 321:2 prosecuting [2] - 379:18, 396:25 prosecutions [1] - 344:25 protect [3] - 372:31, 380:18, 380:19 protected [1] - 368:27 protecting [3] - 380:22, 381:14, 386:15 protection [3] - 320:24, 321:6, 321:11 protocol [1] - 406:4 provide [6] - 318:30, 324:42, 349:47, 360:47, 382:38, 391:13 provided [12] - 319:30, 319:43, 320:25, 324:24, 324:42, 331:9, 336:28, 349:22, 349:37, 366:16, 390:5 provides [4] - 318:27, 319:11, 319:25, 321:13 providing [4] - 372:9, 391:30, 392:10, 411:26 provision [2] - 322:3, 383:5 provisions [7] - 317:21, 318:33, 318:43, 319:3, 319:34, 322:2, 322:14 proximity [2] - 359:3, 359:21 public [17] - 318:26, 318:28, 319:34,</p>
---	---	--	--	--

<p>323:43, 323:46, 323:47, 324:1, 324:9, 324:10, 371:25, 371:36, 397:36, 409:33, 409:43, 417:1, 417:6</p> <p>PUBLIC [1] - 316:12 publicly [1] - 397:26 published [2] - 377:32, 386:5 purchase [3] - 347:9, 348:13, 376:7 purport [1] - 321:14 purpose [6] - 324:9, 353:42, 354:37, 362:18, 374:47, 384:39 purposes [1] - 323:46 pursuant [1] - 319:2 pursuing [1] - 367:17 pushing [2] - 336:2, 355:11 put [58] - 318:10, 318:12, 320:4, 330:42, 332:12, 337:10, 337:11, 339:32, 340:3, 340:22, 346:16, 346:32, 348:2, 348:11, 357:27, 358:22, 359:35, 360:3, 360:34, 360:37, 362:16, 362:22, 362:28, 366:7, 370:9, 373:31, 373:38, 373:39, 373:43, 374:1, 380:27, 380:40, 380:45, 380:47, 381:15, 381:18, 381:47, 386:21, 386:28, 387:10, 389:13, 389:21, 389:33, 391:29, 395:10, 397:5, 397:9, 397:11, 397:21, 398:33, 403:10, 407:40, 409:22, 409:31, 411:15, 411:20, 413:25 putting [5] - 379:35, 396:11, 396:15, 397:27</p>	<p>325:43, 326:1 querying [1] - 412:44 question-by- question [1] - 325:22 questioning [2] - 349:42, 380:31 questions [41] - 322:22, 324:22, 324:39, 324:47, 325:8, 325:10, 325:12, 325:16, 327:14, 327:16, 333:24, 345:12, 347:47, 352:8, 353:12, 353:13, 353:20, 357:30, 360:20, 360:23, 362:20, 380:19, 380:20, 380:27, 380:40, 381:45, 382:4, 382:12, 385:6, 385:15, 393:44, 394:6, 404:40, 406:7, 407:33, 411:10, 414:17, 414:21, 415:11, 415:13, 415:15 quickly [2] - 343:12, 407:17 quite [22] - 327:32, 327:40, 330:10, 352:39, 352:41, 364:19, 375:35, 375:47, 376:14, 378:3, 386:14, 387:32, 392:33, 393:18, 393:22, 393:40, 396:1, 396:34, 398:7, 400:29, 400:33, 403:46 quo [8] - 334:32, 334:35, 334:37, 385:19, 387:3, 387:9, 387:16 quorum [3] - 398:47, 399:2, 399:3 quoting [1] - 408:47</p> <p style="text-align: center;">R</p> <p>R2 [2] - 329:9, 329:10 R3 [6] - 329:9, 330:14, 332:1, 332:4, 332:7, 332:9 R4 [6] - 332:6, 332:31, 333:12, 347:1, 347:2, 347:11 Railway [1] - 358:35</p>	<p>railway [2] - 358:36, 359:4 raised [6] - 321:41, 343:35, 372:46, 373:1, 385:46, 414:30 ran [1] - 350:25 rang [6] - 335:20, 335:28, 365:45, 365:46, 365:47, 368:22 ranger [1] - 396:30 rangers [7] - 365:28, 366:19, 367:10, 367:26, 370:14, 370:21, 371:19 Raphael [1] - 347:10 rate [1] - 409:16 rather [8] - 323:26, 359:12, 405:32, 410:22, 410:25, 417:1, 417:3, 418:7 rating [1] - 351:9 re [3] - 343:29, 343:35, 344:2 reached [2] - 379:44, 415:5 reaction [1] - 332:38 read [15] - 318:20, 332:5, 339:40, 343:25, 343:41, 344:15, 357:44, 362:44, 366:11, 372:26, 377:35, 378:3, 378:21, 391:5, 407:16 reading [4] - 343:11, 377:34, 399:22, 407:32 reads [2] - 343:22, 343:43 ready [1] - 326:7 real [4] - 321:1, 323:45, 324:13, 324:42 really [12] - 321:37, 329:27, 329:33, 330:43, 335:33, 335:34, 340:15, 341:13, 352:7, 352:17, 410:12, 410:25 reason [7] - 339:43, 348:41, 359:29, 361:42, 361:46, 362:15, 409:44 reasonable [16] - 320:17, 320:32, 320:33, 320:36, 320:45, 321:2,</p>	<p>321:20, 321:26, 323:38, 324:18, 324:38, 324:43, 325:3, 325:17, 325:19, 360:14 reasonably [3] - 359:11, 379:39, 401:25 reasons [3] - 340:32, 359:3, 404:5 received [8] - 317:39, 317:41, 367:5, 368:11, 391:34, 391:35, 411:31, 412:43 receiving [2] - 330:32, 334:13 recent [1] - 359:10 recipient [2] - 335:13, 390:35 recollection [14] - 334:24, 334:45, 337:7, 339:4, 339:32, 340:6, 341:40, 353:24, 381:29, 388:3, 388:11, 388:36, 388:38, 401:15 recommendation [6] - 337:15, 339:1, 339:39, 359:16, 360:13, 362:24 recommendations [1] - 393:14 recommended [7] - 339:41, 347:18, 368:25, 371:7, 379:17, 409:28 recommending [1] - 334:22 reconsidered [1] - 404:25 record [3] - 344:41, 397:6, 412:1 recorded [4] - 343:22, 350:39, 350:42, 388:15 records [1] - 349:42 red [1] - 332:6 redacted [1] - 323:6 redevelopment [1] - 392:44 reduce [2] - 337:15, 363:1 refer [13] - 328:19, 341:30, 363:19, 368:33, 378:37, 380:2, 384:21, 384:22, 388:2, 388:10, 389:44,</p>	<p>390:8 reference [6] - 322:4, 322:31, 323:25, 341:13, 352:14, 377:33 referrable [1] - 326:35 referred [8] - 325:5, 330:37, 364:30, 368:24, 368:36, 382:13, 383:13, 388:21 referring [5] - 363:32, 370:35, 379:44, 390:12, 412:19 refers [4] - 336:38, 341:14, 374:37, 380:6 reflect [2] - 362:17, 411:19 refreshes [1] - 344:40 refusal [3] - 337:1, 337:3, 409:29 refuse [1] - 319:46 refused [2] - 337:30, 340:11 refusing [2] - 320:17, 320:33 regard [9] - 373:6, 373:8, 373:12, 380:12, 398:3, 398:40, 399:33, 409:21, 413:40 regarding [5] - 318:21, 364:41, 375:20, 393:10, 416:41 REGARDING [1] - 365:1 regardless [1] - 410:41 regards [1] - 381:45 Regents [1] - 405:26 Regional [1] - 361:45 register [1] - 349:5 regular [4] - 344:23, 345:6, 345:10, 408:34 regularly [4] - 402:23, 402:41, 402:44, 403:21 reinstated [1] - 339:28 rejected [4] - 339:25, 339:42, 341:23, 357:28 related [3] - 375:32, 413:10, 413:11 relates [1] - 415:8 relating [6] - 318:22, 318:24, 318:32, 318:42, 321:32,</p>
Q				
<p>qualifications [1] - 386:44 quarter [3] - 325:41,</p>				

<p>372:30 RELATING [1] - 346:2 relation [61] - 317:14, 317:20, 318:8, 318:11, 320:36, 321:38, 321:40, 321:46, 322:26, 322:32, 322:39, 322:42, 322:46, 323:7, 323:8, 323:20, 323:30, 323:42, 324:18, 324:31, 324:47, 325:9, 325:25, 333:37, 337:18, 339:1, 342:30, 360:47, 363:18, 363:33, 364:17, 365:35, 366:2, 368:7, 375:13, 386:4, 386:47, 387:1, 387:7, 387:8, 387:25, 387:44, 395:20, 400:2, 404:13, 404:35, 405:12, 405:24, 405:27, 405:36, 405:41, 407:41, 410:5, 410:46, 412:15, 412:17, 412:33, 412:47, 413:3, 415:14 relationship [8] - 327:18, 327:21, 327:34, 327:36, 375:35, 375:47, 376:23, 380:23 relative [6] - 396:45, 396:46, 397:12, 397:24, 397:25, 397:26 relatively [2] - 346:17, 347:12 relaxed [2] - 327:26, 327:32 relayed [1] - 340:17 release [2] - 372:34, 372:39 relevant [6] - 320:3, 322:29, 323:12, 323:20, 338:29, 361:24 relevantly [2] - 319:38, 322:22 relied [1] - 412:5 Religious [1] - 319:44 remember [33] - 330:4, 330:7, 330:10, 330:21, 332:39, 334:26,</p>	<p>336:22, 337:9, 338:42, 340:6, 353:13, 354:16, 354:27, 355:42, 365:45, 368:22, 377:34, 387:27, 388:25, 388:27, 388:42, 388:44, 389:15, 389:18, 391:42, 392:1, 392:5, 395:11, 406:8, 407:29, 408:36, 409:27, 412:13 remind [2] - 353:28, 361:37 reminded [1] - 344:8 remit [1] - 359:44 remote [1] - 324:45 repeat [2] - 344:47, 389:31 replace [1] - 342:26 replaced [1] - 342:23 report [15] - 337:18, 337:19, 338:1, 338:4, 338:36, 340:22, 356:35, 356:37, 370:26, 377:33, 378:37, 378:43, 379:31, 379:35, 393:23 reported [2] - 367:18, 392:26 reporting [1] - 371:14 reports [4] - 337:23, 337:24, 393:6, 393:9 represent [1] - 386:1 representation [4] - 396:4, 396:20, 396:44, 397:24 representations [8] - 335:13, 396:8, 396:29, 396:32, 396:35, 397:44, 398:2, 413:31 representatives [1] - 376:42 represented [1] - 356:4 request [5] - 360:14, 391:35, 397:39, 412:12, 412:15 requests [1] - 375:5 required [1] - 320:9 requirements [1] - 336:15 reside [1] - 355:2 residences [1] - 354:5 resident [2] - 346:34, 346:46</p>	<p>residential [16] - 347:10, 348:21, 352:24, 352:26, 353:1, 353:43, 354:2, 354:9, 354:45, 355:40, 357:44, 358:1, 358:13, 358:45, 359:17, 414:43 residents [4] - 322:13, 358:17, 373:9, 373:13 resolution [17] - 340:3, 340:14, 340:28, 340:40, 361:20, 361:37, 361:43, 361:44, 362:24, 362:26, 363:24, 363:39, 364:11, 364:18, 364:19, 397:43, 399:41 resolved [3] - 335:10, 339:10, 340:19 respect [8] - 319:4, 357:1, 361:20, 373:37, 376:18, 381:28, 382:12, 383:22 respectable [1] - 355:12 respected [2] - 354:26, 355:12 respectful [1] - 327:45 respecting [1] - 357:6 respects [1] - 410:18 respond [1] - 375:5 responding [1] - 415:34 response [1] - 384:35 responses [1] - 411:26 responsibilities [1] - 373:20 responsible [1] - 373:2 responsive [1] - 416:22 rest [2] - 354:20, 358:45 restaurant [1] - 403:25 restriction [1] - 319:21 restructure [7] - 384:22, 384:27, 384:29, 384:35, 384:40, 384:42, 385:3 resubmitted [1] -</p>	<p>339:23 RESUMPTION [1] - 378:9 retail [5] - 354:15, 354:26, 354:31, 355:1, 355:12 retailer [1] - 414:30 retain [2] - 336:24, 346:42 retained [6] - 352:18, 366:15, 367:9, 367:16, 393:36, 393:37 return [3] - 373:33, 374:2, 378:20 returned [2] - 331:18, 398:42 reveals [2] - 378:44, 379:43 REVIEW [1] - 351:34 review [11] - 336:44, 347:19, 347:25, 349:23, 350:23, 350:25, 351:28, 384:30, 384:32, 384:46, 385:3 Review [2] - 338:16, 398:28 reviewed [2] - 350:45, 393:9 rezone [3] - 358:8, 359:36, 360:10 rezoned [1] - 354:36 rezoning [7] - 348:1, 348:31, 354:24, 354:41, 355:22, 355:31, 408:38 Richard [1] - 316:18 rightful [1] - 374:3 ring [1] - 408:8 ringing [1] - 368:32 risk [8] - 321:2, 323:45, 324:13, 324:42, 324:44, 324:47, 325:2, 325:8 Road [11] - 329:20, 329:25, 343:38, 358:10, 358:12, 364:28, 364:34, 364:39, 387:13, 389:7, 389:9 ROAD [1] - 364:46 roads [1] - 354:20 Robert [2] - 367:26, 369:44 Robson [2] - 386:37, 413:16 ROBSON [23] - 318:7, 328:27, 328:34, 333:19, 343:7,</p>	<p>386:39, 386:41, 386:43, 387:25, 388:41, 389:44, 392:13, 411:14, 411:22, 411:24, 413:33, 413:44, 416:2, 416:10, 416:15, 416:19, 416:26, 416:32 robust [1] - 330:19 role [4] - 324:30, 335:41, 380:17, 394:20 rolled [1] - 332:1 Ronney [8] - 327:23, 327:40, 327:41, 328:7, 401:34, 402:39, 403:8, 403:9 Ronney's [1] - 327:37 roof [3] - 322:9, 322:11, 322:16 Rookwood [3] - 359:24, 359:26, 359:31 room [3] - 329:44, 382:17, 399:39 Room [1] - 330:4 roughly [1] - 325:39 roundabout [2] - 329:24, 358:14 routinely [1] - 344:34 Royal [10] - 319:3, 319:8, 319:10, 319:24, 319:37, 320:30, 321:24, 321:28, 323:39, 324:19 rubber [1] - 404:10 rule [2] - 324:17, 324:38 rules [1] - 394:26 ruling [1] - 321:41 rulings [1] - 381:44 run [1] - 402:10 runs [1] - 346:35</p>
S				
<p>S10 [1] - 351:30 SASR [1] - 325:5 satisfied [3] - 321:19, 321:26, 323:37 satisfy [1] - 320:47 Saturday [2] - 391:23, 391:26 saw [5] - 327:21, 332:38, 351:8, 386:5, 389:10 SC [5] - 316:18,</p>				

<p>317:40, 317:42, 318:22, 318:23 scenario [7] - 332:31, 346:4, 346:5, 346:15, 346:16, 346:41, 359:16 Scenario [1] - 345:24 scenario" [1] - 332:24 scenarios [1] - 346:31 Sear [4] - 316:20, 326:33, 326:39, 332:19 search [1] - 349:42 seat [1] - 382:30 second [9] - 332:17, 341:20, 341:26, 359:7, 361:8, 374:1, 381:18, 386:13, 416:5 second-last [1] - 416:5 secondly [2] - 370:21, 373:31 secret [1] - 319:20 secret [1] - 320:19 SECTION [2] - 364:45, 365:1 section [42] - 318:27, 318:29, 319:2, 319:7, 319:9, 319:24, 319:30, 319:37, 319:39, 319:44, 320:12, 320:30, 320:34, 321:5, 321:9, 321:12, 321:15, 321:23, 321:27, 321:28, 322:2, 322:4, 322:15, 322:30, 323:24, 323:38, 324:3, 324:19, 343:39, 343:47, 344:42, 344:44, 347:15, 348:31, 361:28, 364:14, 364:16, 364:37, 364:41, 375:20, 392:40 security [1] - 372:20 see [55] - 325:4, 326:25, 327:29, 329:10, 330:28, 330:36, 331:28, 332:22, 332:24, 332:31, 333:40, 334:3, 335:22, 335:26, 338:16, 338:20, 338:29, 338:47, 339:10, 350:10, 350:11,</p>	<p>351:10, 352:44, 353:1, 361:2, 361:10, 362:38, 363:26, 364:16, 365:27, 369:15, 369:30, 369:40, 372:23, 372:29, 372:31, 372:35, 374:33, 374:34, 375:9, 376:12, 376:36, 378:28, 378:34, 378:38, 379:20, 380:17, 381:14, 382:32, 382:42, 383:24, 389:35, 397:6, 400:21, 414:17 seeing [1] - 332:35 seek [1] - 341:2 seeking [2] - 324:40, 340:29 seem [1] - 349:44 self [5] - 320:47, 321:12, 324:43, 325:9, 417:33 self-incrimination [4] - 320:47, 321:12, 324:43, 325:9 self-interest [1] - 417:33 selling [1] - 409:41 send [1] - 391:8 sending [3] - 390:43, 390:47, 418:7 Senior [2] - 350:24, 384:21 sense [5] - 322:29, 357:16, 394:20, 394:26, 407:5 sent [7] - 344:9, 357:18, 376:34, 391:23, 396:10, 412:6, 412:28 separate [3] - 354:19, 355:20, 355:29 separately [3] - 353:32, 355:26, 373:39 September [12] - 342:20, 365:31, 366:3, 366:8, 366:34, 366:35, 367:1, 402:5, 402:6, 402:26, 407:35 series [2] - 350:19, 390:18 serious [1] - 372:46 serve [1] - 417:14 served [4] - 323:18, 323:19, 344:20,</p>	<p>379:27 session [2] - 398:32, 398:34 set [1] - 318:26 sets [1] - 394:26 settle [1] - 401:20 seven [2] - 332:25, 344:17 several [2] - 327:4, 398:26 shall [6] - 319:14, 319:29, 319:42, 320:12, 320:23, 320:24 shan't [1] - 357:31 share [2] - 367:11, 400:12 shift [1] - 407:42 shops [3] - 329:21, 354:43, 355:17 short [2] - 325:37, 329:23 SHORT [1] - 326:3 show [6] - 339:9, 358:22, 362:37, 363:24, 375:3, 383:9 shown [1] - 331:31 Shown [1] - 368:43 side [4] - 329:22, 353:5, 358:10, 408:43 sign [2] - 343:39, 344:4 sign-off [2] - 343:39, 344:4 signed [1] - 390:6 significance [1] - 394:43 significant [4] - 336:45, 375:28, 395:36, 408:14 signs [1] - 380:1 Silverwater [7] - 352:30, 352:34, 353:29, 354:15, 357:14, 358:10, 358:12 similar [4] - 320:40, 322:45, 366:44, 399:32 similarly [1] - 382:42 Simms [36] - 325:46, 326:8, 326:23, 326:42, 349:22, 351:26, 352:3, 360:27, 363:15, 363:24, 364:18, 364:24, 374:16, 378:20, 378:27, 380:2, 380:21,</p>	<p>380:47, 381:24, 382:10, 384:20, 385:15, 386:13, 386:30, 386:43, 387:10, 390:28, 391:25, 391:42, 392:21, 392:22, 394:5, 410:12, 411:24, 416:4, 416:30 SIMMS [2] - 326:29, 351:32 Simms' [1] - 370:36 simple [1] - 347:29 single [1] - 348:22 sit [1] - 370:27 site [8] - 346:36, 346:37, 347:34, 361:17, 391:34, 391:40, 409:22, 415:40 sites [1] - 336:29 sitting [2] - 341:40, 382:39 situation [2] - 348:25, 409:2 six [7] - 344:17, 346:27, 350:9, 392:23, 392:25, 392:26, 406:8 size [5] - 361:14, 362:7, 362:30, 363:4, 363:41 slight [1] - 408:13 slow [2] - 343:14, 343:32 small [6] - 344:26, 344:30, 347:7, 359:2, 360:12, 386:24 SMH [1] - 412:44 smoke [1] - 327:25 smoked [1] - 402:44 smokers [1] - 327:24 socialise [2] - 376:1, 403:30 socialised [3] - 402:41, 403:28, 403:44 socialising [1] - 403:21 sold [1] - 409:16 solicitor [4] - 317:10, 317:11, 317:35, 326:18 someone [15] - 322:7, 324:1, 330:3, 349:8, 351:12, 376:44, 392:24, 395:34, 396:44, 397:5,</p>	<p>397:38, 405:18, 408:46, 409:3, 409:16 sometimes [3] - 404:23, 404:28, 406:19 somewhere [4] - 362:12, 372:47, 388:21, 398:12 soon [1] - 395:33 sophisticated [1] - 356:17 Sorry [1] - 343:16 sorry [31] - 333:19, 339:12, 341:46, 343:33, 343:41, 344:39, 344:45, 349:12, 350:28, 358:19, 360:29, 360:44, 367:47, 374:17, 374:19, 377:10, 388:6, 394:40, 396:14, 399:9, 402:33, 403:39, 406:13, 406:30, 406:40, 412:26, 414:9, 414:23, 415:20, 415:44, 416:29 sort [8] - 334:26, 344:34, 345:3, 348:1, 354:25, 358:39, 404:32, 417:42 sought [6] - 339:17, 377:8, 377:18, 378:44, 379:9, 391:11 sound [3] - 402:18, 406:28, 408:8 source [2] - 332:43, 386:20 south [5] - 329:9, 332:32, 352:47, 353:31, 353:38 South [12] - 333:30, 333:34, 333:40, 333:45, 334:33, 334:42, 335:40, 345:36, 385:16, 387:1, 387:44, 387:45 space [1] - 355:42 spaces [1] - 409:33 Special [3] - 359:28, 382:43, 384:6 special [2] - 383:4, 383:14 SPECIAL [1] - 384:11 specific [3] - 321:32,</p>
--	--	---	--	---

<p>392:3, 392:5 specifically [6] - 323:31, 330:5, 386:6, 405:8, 412:16, 412:20 sphere [1] - 397:2 split [1] - 373:38 spoken [1] - 401:5 spokesman [1] - 378:30 spot [2] - 348:1, 348:30 spots [1] - 358:14 staff [53] - 322:31, 325:11, 330:14, 330:21, 333:33, 334:22, 334:37, 337:15, 337:20, 337:23, 337:26, 339:1, 339:14, 339:17, 339:39, 339:46, 339:47, 340:2, 340:22, 340:23, 341:2, 342:46, 344:9, 346:16, 347:18, 347:43, 347:47, 359:43, 359:45, 360:10, 360:13, 362:25, 369:35, 369:37, 369:46, 370:4, 370:10, 370:14, 370:35, 371:2, 375:1, 376:43, 376:47, 393:10, 393:14, 393:23, 394:23, 394:27, 398:23, 405:1, 405:18, 405:28 stage [6] - 325:21, 366:40, 368:29, 374:41, 411:40, 413:8 stages [1] - 393:2 stamp [1] - 404:10 start [8] - 341:11, 351:41, 352:2, 352:8, 383:19, 383:37, 391:15, 412:30 started [3] - 337:36, 346:46, 406:22 starting [1] - 416:12 starts [3] - 318:7, 374:26, 389:36 state [3] - 317:26, 323:1, 325:13 statement [57] - 324:25, 324:34,</p>	<p>326:34, 326:42, 327:2, 327:6, 327:10, 327:18, 328:19, 328:20, 328:24, 328:31, 330:23, 332:21, 332:28, 333:25, 341:30, 342:3, 351:21, 351:23, 351:26, 360:32, 361:42, 362:1, 362:2, 362:4, 362:9, 362:16, 363:12, 363:16, 365:5, 366:12, 366:31, 366:44, 367:22, 369:44, 372:9, 374:12, 381:24, 384:21, 388:4, 388:6, 389:25, 389:35, 390:1, 390:4, 390:6, 390:8, 398:11, 399:5, 402:31, 411:18, 411:19, 413:26, 414:6, 414:8, 417:14 STATEMENT [1] - 351:32 station [4] - 347:33, 358:36, 358:42, 359:4 Station [11] - 322:42, 323:2, 323:7, 341:26, 343:38, 345:36, 375:32, 377:29, 379:29, 389:7, 389:9 status [8] - 334:32, 334:34, 334:35, 334:37, 385:19, 387:3, 387:9, 387:16 statute [1] - 318:26 statutory [1] - 321:13 stay [1] - 400:38 staying [1] - 418:8 steps [1] - 373:27 Steve [1] - 392:22 still [14] - 317:14, 326:18, 331:17, 333:26, 366:40, 367:9, 378:11, 378:16, 386:13, 395:34, 409:43, 415:1, 417:34, 418:8 stood [1] - 376:24 stop [2] - 377:42, 378:2 stories [1] - 374:43 straight [1] - 345:9 Strategic [1] - 350:16</p>	<p>strategies [2] - 352:25 strategy [21] - 336:19, 336:27, 336:35, 336:37, 336:39, 336:41, 336:44, 338:9, 338:22, 340:14, 340:18, 340:30, 340:40, 340:45, 341:9, 341:12, 341:18, 352:9, 356:16, 356:24, 358:8 Strategy [1] - 384:44 Street [72] - 316:26, 321:42, 322:33, 322:42, 323:2, 323:7, 323:8, 324:29, 324:31, 329:9, 329:22, 329:26, 330:15, 332:32, 335:2, 335:38, 335:39, 335:47, 336:1, 337:30, 337:44, 337:46, 341:26, 345:13, 345:15, 345:35, 345:36, 345:39, 345:41, 345:46, 346:20, 346:32, 346:35, 347:8, 347:10, 347:12, 348:10, 348:15, 349:1, 349:14, 352:8, 352:31, 352:33, 352:43, 352:47, 353:31, 353:33, 353:38, 357:14, 357:30, 357:33, 358:31, 358:32, 358:34, 358:35, 358:41, 358:44, 360:37, 360:38, 375:13, 375:32, 377:29, 379:29, 387:13, 387:20, 408:36, 413:12, 413:30, 414:31 STREET [1] - 346:2 street [4] - 329:19, 346:33, 346:35, 358:13 streets [1] - 329:22 structure [1] - 384:46 stuck [1] - 392:27 Study [1] - 330:29 study [6] - 336:37, 352:17, 387:32, 394:47, 395:3, 395:10</p>	<p>stuff [3] - 344:26, 382:47, 389:36 subject [6] - 320:26, 321:7, 323:31, 330:16, 408:18, 408:19 submission [26] - 317:15, 317:19, 317:20, 317:40, 317:41, 318:10, 321:33, 321:36, 321:38, 321:47, 322:37, 322:40, 324:7, 324:15, 325:6, 327:45, 366:9, 366:11, 366:19, 368:31, 381:42, 382:1, 410:14, 410:26, 413:9, 413:10 submissions [10] - 317:43, 317:46, 318:2, 318:13, 318:21, 323:32, 380:26, 380:34, 417:34, 417:39 submitted [1] - 366:21 subparagraphs [1] - 321:46 subsections [1] - 318:30 subsequent [2] - 351:14, 366:43 subsequently [2] - 413:24, 416:29 substantial [1] - 366:25 successful [1] - 401:47 sufficient [1] - 380:34 suggest [8] - 354:14, 362:4, 371:29, 373:24, 380:11, 383:34, 402:25, 412:22 Suggested [1] - 332:24 suggested [6] - 332:31, 333:4, 333:38, 334:27, 353:37, 415:17 suggesting [8] - 354:40, 362:15, 363:15, 369:43, 403:43, 403:45, 408:11, 411:25 suggestion [1] - 353:16 suggestions [1] - 417:40</p>	<p>suggests [1] - 380:6 suitable [1] - 358:17 summary [1] - 321:18 Summary [1] - 345:24 summoned [6] - 319:5, 319:13, 319:41, 320:22, 320:38, 320:41 summons [1] - 320:9 super [3] - 392:23, 392:26, 406:8 supermarket [3] - 409:4, 409:37, 409:44 supervisor [1] - 368:35 supplied [4] - 366:26, 367:10, 374:46, 381:1 support [5] - 335:42, 347:6, 353:24, 385:28, 410:41 supported [11] - 334:34, 334:35, 335:25, 355:19, 360:4, 360:7, 360:12, 360:15, 385:19, 401:29, 401:34 supporting [2] - 387:15, 387:16 Supreme [3] - 320:28, 321:7, 321:9 surprised [1] - 340:9 Susan [2] - 316:26, 335:2 suspect [1] - 326:16 suspended [2] - 394:9, 400:30 sworn [2] - 320:1, 326:29 Sydney [6] - 374:7, 381:27, 411:38, 412:16, 413:4, 413:7</p>
T				
<p>table [5] - 317:46, 327:15, 357:27, 397:44, 403:10 tabled [2] - 349:9, 399:16 talks [3] - 321:5, 321:11, 370:35 tallied [1] - 406:26 target [2] - 417:34, 417:36 telephone [2] - 365:39, 412:43</p>				

<p>tenant [5] - 354:26, 354:31, 354:41, 355:1, 355:13</p> <p>tend [3] - 319:18, 323:39, 325:18</p> <p>tender [12] - 331:14, 345:32, 345:39, 345:42, 351:19, 351:23, 363:44, 364:5, 383:39, 383:40, 383:44, 383:46</p> <p>tendered [3] - 345:30, 345:41, 384:1</p> <p>tendering [1] - 364:9</p> <p>term [4] - 320:33, 320:44, 342:18, 406:7</p> <p>terminate [1] - 377:3</p> <p>terminated [1] - 377:13</p> <p>terms [12] - 319:38, 320:34, 322:4, 322:30, 323:12, 323:25, 327:21, 340:39, 364:20, 374:40, 392:23, 401:25</p> <p>terribly [1] - 352:2</p> <p>text [3] - 320:30, 330:24, 398:15</p> <p>THAT [1] - 365:1</p> <p>THE [185] - 317:1, 317:6, 317:14, 317:25, 317:32, 318:2, 318:20, 322:39, 322:45, 323:11, 323:22, 323:30, 325:31, 325:35, 325:43, 326:1, 326:5, 326:10, 326:20, 326:27, 326:37, 327:47, 328:29, 328:41, 328:45, 331:2, 331:8, 331:13, 331:17, 331:21, 331:33, 331:37, 332:11, 332:17, 332:47, 333:6, 333:22, 335:1, 335:7, 341:44, 342:1, 342:13, 342:15, 343:11, 343:16, 343:18, 343:21, 343:32, 343:41, 343:45, 344:39, 344:44, 345:30, 345:35, 345:41,</p>	<p>345:46, 346:40, 346:44, 351:21, 351:25, 351:40, 351:45, 357:33, 357:37, 358:19, 358:25, 359:24, 359:28, 363:6, 363:44, 364:3, 364:7, 364:14, 364:22, 364:28, 364:33, 364:36, 364:45, 364:47, 367:45, 368:45, 369:8, 369:13, 370:34, 370:39, 370:41, 373:41, 376:5, 376:12, 377:15, 377:39, 377:44, 377:47, 378:5, 378:11, 378:14, 378:16, 380:15, 380:30, 380:37, 380:43, 381:4, 381:6, 381:8, 381:12, 381:21, 381:34, 381:36, 381:38, 381:40, 381:42, 381:47, 382:6, 382:46, 383:2, 383:42, 383:46, 384:3, 384:9, 384:10, 384:14, 385:9, 385:46, 386:9, 386:11, 386:13, 386:24, 386:37, 387:20, 388:35, 389:40, 389:42, 392:15, 393:46, 395:6, 397:21, 397:33, 403:36, 403:41, 407:4, 407:9, 407:14, 407:24, 407:27, 407:29, 408:23, 408:28, 408:30, 410:11, 410:24, 410:32, 410:37, 411:12, 413:16, 413:46, 414:41, 414:43, 415:1, 415:11, 415:20, 415:22, 415:26, 415:32, 415:36, 415:44, 415:46, 416:8, 416:12, 416:17, 416:24, 416:29, 416:34, 416:40, 416:47, 417:5, 417:10, 417:18, 417:25,</p>	<p>417:31, 417:36, 417:45, 418:3, 418:14, 418:16</p> <p>themselves [1] - 366:20</p> <p>thereon [1] - 395:19</p> <p>they've [1] - 349:9</p> <p>thicker [1] - 350:3</p> <p>thinking [6] - 317:16, 317:26, 321:43, 321:47, 322:39, 339:34</p> <p>third [2] - 405:31, 416:20</p> <p>Thomas [1] - 398:25</p> <p>thoughtful [1] - 410:18</p> <p>three [9] - 331:46, 334:13, 342:43, 343:37, 344:32, 390:18, 390:36, 402:22, 402:26</p> <p>throwaway [1] - 392:26</p> <p>thrown [1] - 354:33</p> <p>tidy [1] - 347:15</p> <p>tied [1] - 401:46</p> <p>TO [2] - 346:2, 418:16</p> <p>today [5] - 321:41, 326:13, 327:3, 341:40, 415:5</p> <p>together [12] - 327:22, 334:14, 351:9, 351:27, 366:8, 376:2, 376:7, 376:8, 389:33, 397:43, 402:46, 403:7</p> <p>TOGETHER [1] - 351:33</p> <p>tomorrow [1] - 373:4</p> <p>took [11] - 339:22, 342:36, 361:15, 361:16, 362:20, 368:35, 370:25, 370:27, 389:16, 404:29, 407:45</p> <p>top [4] - 345:9, 390:19, 390:24, 414:5</p> <p>topic [7] - 324:20, 324:38, 380:37, 395:20, 414:3</p> <p>topics [3] - 324:23, 327:15, 375:16</p> <p>total [2] - 406:29, 406:44</p> <p>totally [1] - 381:9</p> <p>touching [1] - 393:1</p> <p>towards [5] - 329:25, 335:47, 347:12,</p>	<p>380:21, 406:20</p> <p>town [4] - 329:27, 329:28, 329:36, 354:20</p> <p>track [1] - 362:34</p> <p>traffic [2] - 346:36, 358:15</p> <p>trail [1] - 390:37</p> <p>transcript [1] - 415:32</p> <p>travel [1] - 417:42</p> <p>travelled [3] - 375:39, 375:41, 376:1</p> <p>treated [2] - 343:3, 344:5</p> <p>treed [1] - 359:9</p> <p>tried [2] - 320:28, 321:6</p> <p>trip [3] - 376:28, 376:29, 376:31</p> <p>trouble [3] - 360:29, 397:18, 401:12</p> <p>true [5] - 327:10, 348:39, 406:15, 408:8</p> <p>trust [1] - 324:1</p> <p>try [3] - 353:28, 360:15, 401:12</p> <p>trying [15] - 317:11, 332:6, 343:42, 345:5, 352:21, 355:35, 355:38, 356:12, 362:19, 376:23, 380:16, 385:47, 397:22, 410:3, 417:42</p> <p>Tuesday [8] - 385:33, 385:36, 386:6, 386:31, 411:28, 417:22, 417:23, 418:4</p> <p>turn [4] - 351:47, 356:43, 358:41, 414:4</p> <p>turned [1] - 337:37</p> <p>turning [1] - 358:43</p> <p>twice [3] - 403:25, 403:29, 407:9</p> <p>two [31] - 327:21, 327:32, 342:43, 343:37, 344:32, 346:47, 347:7, 347:12, 350:3, 351:19, 355:3, 360:23, 364:16, 365:11, 366:47, 373:36, 373:37, 377:40, 378:5, 383:9, 383:13, 387:42, 400:5, 402:9, 402:27,</p>	<p>403:31, 405:30, 408:31, 408:33, 415:37, 416:17</p>
				U
				<p>UIP [1] - 376:3</p> <p>ultimately [2] - 317:26, 356:23</p> <p>unanimous [3] - 407:46, 408:1, 408:4</p> <p>unavailable [1] - 317:33</p> <p>unaware [2] - 381:9, 398:38</p> <p>unbuilt [1] - 361:9</p> <p>unclear [1] - 391:25</p> <p>uncommon [1] - 393:13</p> <p>UNDER [1] - 364:45</p> <p>under [18] - 318:26, 318:40, 318:46, 319:38, 321:15, 323:38, 324:3, 324:18, 349:5, 359:28, 364:37, 368:19, 368:20, 371:4, 371:5, 381:44, 396:24, 396:28</p> <p>underhanded [1] - 397:15</p> <p>underlying [1] - 364:8</p> <p>underneath [1] - 390:36</p> <p>understood [2] - 341:17, 365:23</p> <p>undertake [1] - 384:45</p> <p>undertaken [2] - 384:22, 384:36</p> <p>underway [1] - 344:24</p> <p>undue [1] - 396:39</p> <p>unfair [1] - 327:45</p> <p>unfortunate [1] - 322:11</p> <p>unfortunately [1] - 325:38</p> <p>unheard [1] - 393:15</p> <p>Union [1] - 408:36</p> <p>units [2] - 342:43, 408:36</p> <p>unless [3] - 322:7, 340:24, 416:37</p> <p>unpleasantness [1] - 399:41</p> <p>unreasonable [1] - 360:15</p> <p>untoward [4] - 403:44, 403:45, 405:13,</p>

<p>405:36 unwell [4] - 317:7, 317:28, 325:37 up [39] - 318:26, 321:13, 328:11, 329:25, 330:19, 330:47, 333:28, 333:43, 335:22, 335:25, 337:37, 337:38, 338:10, 342:29, 342:40, 347:15, 349:27, 352:31, 355:7, 358:43, 361:21, 364:3, 370:42, 373:39, 394:8, 398:7, 398:34, 400:2, 400:34, 401:24, 406:26, 407:1, 407:7, 407:32, 408:34, 408:40, 412:6, 412:8, 415:37 up-zoned [1] - 335:25 update [2] - 416:41, 416:44 uplift [1] - 348:3 uplifted [1] - 346:37 UPON [1] - 378:9 upper [1] - 413:41 upwards [1] - 400:42 urgently [1] - 359:42 uses [1] - 336:38 usual [1] - 376:30 utilised [1] - 384:39</p>	<p>via [3] - 394:22, 394:46, 396:20 view [19] - 317:10, 321:18, 322:8, 322:14, 322:20, 322:21, 323:23, 325:3, 325:21, 351:15, 355:20, 359:45, 393:23, 393:30, 393:32, 402:18, 404:29, 410:21, 417:40 viewpoints [1] - 387:42 views [7] - 377:19, 387:40, 393:19, 400:12, 400:37, 404:4, 411:18 Village [2] - 324:28, 330:28 Viola [4] - 365:15, 365:45, 365:46, 368:21 visit [1] - 388:31 visited [4] - 365:11, 365:28, 365:32, 365:41 vote [17] - 333:38, 340:9, 347:44, 348:33, 348:47, 350:39, 350:40, 361:39, 361:46, 401:6, 401:30, 401:46, 406:20, 408:41, 408:42, 410:40, 410:47 voted [23] - 361:28, 361:43, 364:12, 364:19, 399:34, 399:35, 399:36, 399:37, 399:38, 406:11, 406:15, 406:19, 406:22, 406:35, 406:40, 406:44, 407:19, 407:21, 407:36, 407:37, 408:42, 408:43 votes [1] - 406:26 voting [7] - 346:18, 357:12, 364:24, 395:26, 406:22, 408:13, 410:20</p>	<p>350:36, 400:7 wants [1] - 325:37 warmly [1] - 318:13 warrant [1] - 321:13 WAS [1] - 418:16 waste [1] - 357:17 Water [5] - 321:42, 322:33, 323:8, 324:31, 345:15 WATSON [12] - 331:11, 337:44, 351:43, 352:2, 352:5, 352:7, 357:35, 358:22, 358:31, 359:26, 359:34, 360:18 Watson [2] - 404:40, 414:28 Watson's [1] - 382:22 website [2] - 332:12, 386:6 wedding [1] - 375:27 week [3] - 386:31, 418:3, 418:4 weekends [1] - 403:31 weeks [1] - 400:2 weight [1] - 327:47 western [1] - 353:4 Westpool [2] - 376:3, 376:43 Wheelhouse [13] - 317:19, 317:40, 318:22, 321:36, 363:45, 369:9, 370:45, 373:41, 378:16, 380:16, 382:6, 385:47, 386:20 WHEELHOUSE [44] - 318:18, 322:36, 322:42, 323:1, 323:16, 323:28, 327:44, 346:10, 359:31, 360:23, 360:25, 360:27, 363:9, 363:47, 364:5, 364:11, 364:16, 364:26, 364:30, 365:4, 367:47, 369:2, 369:5, 369:11, 369:15, 371:2, 373:43, 376:14, 377:17, 377:42, 378:2, 378:18, 378:24, 380:26, 380:33, 380:39, 380:45, 381:18, 381:23, 381:44, 382:3, 417:33,</p>	<p>417:42, 418:1 white [2] - 328:37, 352:42 whole [7] - 343:25, 347:19, 347:34, 350:38, 357:16, 357:24, 370:27 wish [5] - 317:43, 318:12, 324:18, 374:29, 383:40 WITH [2] - 351:33, 384:9 WITHDREW [1] - 418:14 witness [49] - 319:4, 319:13, 319:19, 319:28, 319:41, 320:4, 320:9, 320:13, 320:16, 320:22, 320:27, 320:31, 320:32, 320:37, 320:38, 320:41, 320:46, 321:6, 321:8, 321:19, 321:21, 325:19, 325:38, 326:8, 326:33, 328:43, 343:21, 349:37, 360:20, 368:43, 377:39, 378:3, 380:28, 380:40, 386:7, 386:14, 386:19, 397:23, 397:27, 407:24, 408:21, 410:13, 410:15, 410:19, 411:15, 411:20, 415:3, 415:9 WITNESS [26] - 328:29, 328:41, 328:45, 342:1, 342:15, 343:16, 343:45, 369:13, 370:39, 377:47, 378:14, 381:4, 381:8, 381:36, 381:40, 383:2, 386:11, 389:42, 407:27, 408:23, 408:30, 414:43, 415:20, 415:36, 415:44, 418:14 witness's [6] - 320:8, 333:1, 333:3, 351:21, 351:23, 415:33 witnesses [2] - 318:14, 321:5 Woodburn [2] - 329:20, 387:13</p>	<p>Woolworths [5] - 354:27, 354:28, 354:30, 354:32, 355:1 word [1] - 402:23 wording [3] - 362:11, 363:20, 363:39 words [8] - 324:44, 327:29, 343:41, 343:42, 355:22, 356:47, 363:40, 387:27 workplace [1] - 369:38 works [7] - 336:45, 343:5, 343:29, 343:36, 344:7, 406:36, 407:20 workshop [7] - 328:16, 330:3, 330:4, 405:7, 405:8, 405:43, 405:44 workshops [5] - 327:30, 333:15, 333:20, 387:27, 387:30 worried [1] - 340:32 worst [1] - 324:45 writing [1] - 413:10 written [4] - 344:32, 349:18, 377:32, 417:39 wrote [2] - 337:37, 413:9</p>
V				Y
<p>valid [2] - 356:33, 360:2 validly [1] - 355:47 value [2] - 409:16, 409:41 van [1] - 403:10 variety [1] - 387:46 various [12] - 324:28, 324:32, 351:27, 377:23, 393:1, 393:2, 393:31, 396:32, 398:22, 404:3, 404:5, 406:11 VARIOUS [1] - 351:33 vehicles [2] - 358:15, 362:33 verbal [2] - 411:39, 412:12 version [2] - 352:38, 352:42 versions [1] - 338:21</p>	W			
	<p>wait [2] - 397:4, 417:10 walk [1] - 351:10 walked [3] - 337:23,</p>			<p>Yang [2] - 329:46, 392:22 year [5] - 339:5, 366:35, 366:37, 375:23, 389:1 years [6] - 336:36, 344:18, 344:27, 401:45, 402:2, 406:20 yellow [2] - 331:46, 332:7 yes" [1] - 373:19 yesterday [1] - 317:39 York [5] - 329:9, 329:26, 330:15, 332:32, 387:20 yourself [5] - 375:36, 375:47, 402:8, 402:27, 408:12 yourselves [2] - 350:46, 402:15</p>

Z

zone [6] - 329:12,
333:12, 353:39,
357:41, 357:42,
387:12

zoned [9] - 329:9,
329:16, 335:25,
336:21, 336:22,
347:11, 353:31,
353:40, 355:26

zoning [11] - 330:8,
330:15, 332:24,
332:31, 333:4,
335:35, 336:23,
353:42, 353:46,
357:40, 405:12

Zraika [34] - 329:39,
342:27, 394:6,
395:15, 395:39,
399:39, 400:1,
400:19, 400:27,
400:29, 400:34,
400:44, 401:1,
401:4, 401:5,
401:12, 401:23,
401:28, 402:4,
402:9, 402:11,
402:21, 402:40,
403:13, 405:36,
405:42, 406:11,
406:15, 406:18,
407:19, 407:35,
409:22, 410:40,
411:6

Zraika's [2] - 317:19,
408:41

Zreika [2] - 317:40,
318:22