

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 Tuesday, 7 June 2016 at 10.40am
(Day 5)

1 THE COMMISSIONER: I am sorry about the delay this morning
2 and about the delay yesterday. Does anyone have anything
3 they want to raise?
4
5 MS S A DUGGAN SC: I wish to seek leave to appear.
6 Ms Duggan. I appear for Edward John Burgess who goes by
7 John Burgess. Mr Sam Duggan has already announced his
8 appearance and I have volunteered to take my middle initial
9 which is A so that we can be distinguished on the
10 transcript.
11
12 THE COMMISSIONER: Thank you, Ms Duggan. Leave is
13 granted. Mr Silver?
14
15 MR SILVER: Mr Cheshire is not able to attend for the next
16 few days, so I seek leave to appear for Mr Francis.
17
18 THE COMMISSIONER: Leave is granted. Is there something
19 you wanted to raise about Mr Francis's health? If there is
20 we can do it in private.
21
22 MR SILVER: Yes, I think we should do it privately,
23 Commissioner. I have spoken to Counsel Assisting.
24
25 THE COMMISSIONER: You have a certificate or something of
26 that nature? Have you got a certificate?
27
28 MR SILVER: It is on its way.
29
30 THE COMMISSIONER: All right. We will deal with that in
31 private.
32
33 MR SILVER: Thank you.
34
35 THE COMMISSIONER: You are proposing to stay in any event,
36 though?
37
38 MR SILVER: At least for the next short while.
39
40 THE COMMISSIONER: Leave is granted.
41
42 MR WHEELHOUSE: Commissioner, may I raise two matters?
43
44 THE COMMISSIONER: Yes, certainly.
45
46 MR WHEELHOUSE: I understand Mr Burgess may be called
47 today. We were anticipating him yesterday, so --

1
2 THE COMMISSIONER: I understand that. We were going to
3 deal with Mr Francis, that is obviously not going to
4 happen. As I understand it, I think Mr Brisby is the first
5 witness.

6
7 MR BOLSTER: Yes.

8
9 THE COMMISSIONER: I think it is proposed Mr Burgess then.

10
11 MR WHEELHOUSE: I understood it was Campbell, Brisby and
12 Oldfield today.

13
14 THE COMMISSIONER: Mr Campbell may be called today, I am
15 not sure. It depends how far we get to, but that is the
16 general order, yes.

17
18 MR WHEELHOUSE: The first point is I may not be in a
19 position to complete Mr Burgess if he is called today.

20
21 The second point is this: in relation to Mr Burgess's
22 evidence, are two reports. The first report is the
23 internal report prepared by Maddocks which predated the
24 introduction into two council meetings on 13 March 2013 and
25 18 March 2013. That is the report that had a resolution
26 that the council caused to be prepared in relation to
27 various matters involving Mr Burgess. We say that is
28 essential to the conduct of the council in relation to
29 Mr Burgess.

30
31 The flavour of Mr Burgess's evidence, as the
32 Commissioner is aware, reflects somewhat on my client. We
33 are very anxious to obtain a copy of the Maddocks report.
34 We put forward the proposition that that contains a
35 reasonable basis of what council subsequently moved. It of
36 course moved on the motion of Mr Campbell.

37
38 Secondly, if your Honour goes to page 117 of
39 Mr Burgess's statement, you will see there a letter which
40 was a confidential disclosure, as he is entitled to do
41 under section 24 of the Protected Disclosures Act.

42
43 THE COMMISSIONER: Do you have a paginated statement?

44
45 MR WHEELHOUSE: Yes, I do. We have run out of space here
46 at the Council Chamber's desk, so I may not be able to read
47 it.

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THE COMMISSIONER: No, I don't need you to get it, but do you have --

MR WHEELHOUSE: It is 117 of Mr Burgess's statement. It is in the annexures. It is almost at the back.

THE COMMISSIONER: The one I have been given is not paginated.

MR WHEELHOUSE: It is the second-last document, Commissioner. It is a letter to Mr Woodward.

One of the things we wish to ultimately say about the parking officers is that they did have a channel of disclosure, pursuant to section 24 of the Disclosure Act, that being the channel that Mr Burgess availed himself of in relation to the matters with which he was concerned in relation to the conduct of the council generally and he annexes to his statement that letter.

THE COMMISSIONER: Yes.

MR WHEELHOUSE: That particularly refers to a report, an internal report, prepared by Mr Haynes, and we have not been supplied with a copy of that, although it is clearly part of Mr Burgess's evidence.

THE COMMISSIONER: Have you taken both of those things up with Counsel Assisting?

MR WHEELHOUSE: No, I haven't. I had planned to during the course of the day.

THE COMMISSIONER: All right, I see.

MR WHEELHOUSE: And there were matters which I proposed to raise with him privately.

We would wish to have that material which seems to be integral to the evidence of Mr Burgess prior to our dealing with the evidence of Mr Burgess.

THE COMMISSIONER: After we have dealt with Mr Brisby we will take a break and you can take those matters up with Counsel Assisting. I am not even aware of the first document you are talking about. If you take those up with

1 him, we will see how we go.

2

3 MS DUGGAN: I can indicate Mr Burgess is available
4 tomorrow as well if the Commission requires it.

5

6 THE COMMISSIONER: Thanks. Just before we are start --

7

8 MR ROBSON: Commissioner, before we start, may I raise a
9 matter? Whilst we are in the process of getting matters
10 off our chest, as you know, I appear in this matter and
11 have been here since the start for Mr Brisby.

12

13 THE COMMISSIONER: Yes.

14

15 MR ROBSON: We have never been given, supplied directly or
16 indirectly, the statement of Mr Burgess. Indeed,
17 Counsel Assisting may have made you aware of this. It is
18 no criticism of Counsel Assisting, we have all been working
19 in strained circumstances in the present environment. Be
20 that as it may, I am now informed by Mr Wheelhouse saying
21 that there are 120-odd pages of statement.

22

23 The reason we are aware of the second statement is
24 because one of my colleagues mentioned it this morning.
25 Secondly, we were given by Ms Duggan or, indeed,
26 Counsel Assisting by Ms Duggan what is styled as the
27 supplementary statement of Edward John Burgess to which he
28 refers to a statement dated 24 May 2016. That is some two
29 weeks ago now and a week before this commenced.

30

31 What I am concerned about is that Mr Brisby, who has
32 been slated to give evidence the last three days, and those
33 instructing him, or appearing for him and those instructing
34 me have never been given the whole of this material.

35

36 THE COMMISSIONER: Do you still not have it?

37

38 MR ROBSON: We still don't have it. I am told at 10.20
39 this morning it may have been uploaded onto the site. Be
40 that as it may. The concern I have is this, and I think we
41 can come around to it this way --

42

43 THE COMMISSIONER: I am happy to give you some time to
44 read it.

45

46 MR ROBSON: I don't want to waste time for reasons, quite
47 frankly for my own personal arrangements, but be that as it

1 may --
2
3 THE COMMISSIONER: I am happy to give you some time now if
4 you want to read it.
5
6 MR ROBSON: It may be able to be addressed, if I may say
7 so, is if we have the opportunity after he has given his
8 evidence to recall him, I think it is fair to say. I just
9 don't know whether I can spend some time with him going
10 through 120 pages of documentation and material. On the
11 other hand --
12
13 THE COMMISSIONER: I am open to both. I am open to giving
14 you some time to read it now and what you just proposed.
15
16 MR ROBSON: Perhaps I should indicate this, that is, that
17 he is very keen to give his evidence.
18
19 THE COMMISSIONER: Yes.
20
21 MR ROBSON: As I said, I am just slightly concerned that
22 he hasn't had a sporting chance to understand what my
23 learned friend may be putting to him.
24
25 THE COMMISSIONER: It sounds like an oversight, that it
26 wasn't supplied to you.
27
28 MR ROBSON: There's no innuendo in what I am saying.
29
30 THE COMMISSIONER: No, but what would you like to do?
31 Would you like some time to read it now? As I understand
32 it, a copy has been printed for you and the delay was a
33 toner. Would you like 20 minutes to read it now and also
34 with leave to recall him if you need to later?
35
36 MR ROBSON: I'm happy to do that if that is convenient.
37 I don't know how long the actual statement is it itself.
38
39 MS DUGGAN: It is 26 pages.
40
41 THE COMMISSIONER: I am keen to avoid you feeling as
42 though you are at any disadvantage at all. I would rather
43 give you 20 minutes, or such time as you need to read it
44 now, and adjourn for that period and if there is a later
45 problem that you think puts you at a disadvantage, to
46 remedy it in some way later as well.
47

1 MR ROBSON: Thank you, Commissioner.

2
3 THE COMMISSIONER: Is that the course you would like?

4
5 MR ROBSON: That would be preferable.

6
7 THE COMMISSIONER: Before we adjourn so Mr Robson can be
8 given the statement of Mr Burgess, I have taken the
9 approach of numbering exhibits according to each planning
10 proposal which has ended up with it being slightly
11 eccentric. It may have been better if I just started at
12 one and got up to where we were at. I realised on the
13 weekend we had two exhibit G#1s.

14
15 For the Grey Street Planning Proposal, I have changed
16 those exhibits to GS and if this list of exhibits can be
17 circulated so everyone has an up-to-date list. It is
18 doublesided. That is, as I see it, the exhibits that we
19 have currently. If anyone thinks I have made a mistake,
20 just raise it with me when we come back.

21
22 I will adjourn to 11.10 or any slightly further time
23 that Mr Robson needs to read Mr Burgess's statement.

24
25 **SHORT ADJOURNMENT**

26
27 MR BOLSTER: Before we begin, inquiries have been made
28 with with council's governance officer who deals with
29 council records.

30
31 In relation to Mr Maddocks report that Mr Wheelhouse
32 raised, it is not in council's system. The explanation is
33 this: it was a report that was commissioned, so we are
34 told, by the mayor at the time, Mr Attie. It was tabled at
35 the relevant council meetings and it was provided at the
36 relevant council meetings by Mr Attie. It was circulated
37 to councillors but it was taken back by Mr Attie, so it is
38 not as though it forms part of the council record in
39 relation to Mr Burgess.

40
41 Everyone will recall that the general manager was
42 initially terminated. That motion was rescinded and
43 replaced by some form of consensual separation.

44
45 The report would only have been on the council's files
46 if the council had continued with that termination, as it
47 would have formed, I expect, the basis of such a

1 termination, so we don't have it.

2

3 MR WATSON: I think I can add to that. I'm not sure,
4 I can't confirm that it's accurate to say that Mr Attie
5 took copies back, but if that is correct, then council
6 should have it because everything Mr Attie had was taken by
7 the council at the time the councillors were suspended.

8

9 I will take some instructions at lunchtime, assuming
10 it was given back. I have asked Mr Attie personally for a
11 copy of it and he said that it had been taken from him.

12

13 THE COMMISSIONER: At the moment Counsel Assisting does
14 not have it, so he does not have it to consider whether he
15 wants to tender it or not, so we don't have it.

16

17 MR BOLSTER: Thank you.

18

19 MR WATSON: I will try and help with that.

20

21 MR BOLSTER: I believe that leaves us with the next
22 witness who is Mr Mark Brisby. I call Mr Brisby.

23

24 MR ROBSON: Commissioner, thank you for the indulgence of
25 time. We have read some of the material. On the basis
26 that Mr Brisby would like to consult some of his records
27 and, indeed, council records which he doesn't have access
28 to at the moment, he will be able to in due course respond
29 hopefully more clearly to that which is being tabled. He
30 has given me instructions, as I said earlier, that he is
31 keen to give his evidence-in-chief today, but I do note my
32 concerns expressed earlier.

33

34 THE COMMISSIONER: Thank you, Mr Robson.

35

36 <MARK JOHN BRISBY, sworn: [11.25am]

37

38 <EXAMINATION BY MR BOLSTER:

39

40 MR BOLSTER: Q. Your full name is Mark Brisby, is it?

41 A. Mark John Brisby, yes.

42

43 Q. You were, until some time in May, I believe, the
44 general manager of Auburn Council?

45 A. I was formerly the general manager of Auburn City
46 Council and subsequently the interim deputy general manager
47 of Cumberland Council.

1
2 Q. I want to ask you, firstly, a series of questions
3 about the four planning proposals that are the subject of
4 this inquiry, one of the principal subjects of this
5 inquiry, Berala, South Auburn, Marsden Street and
6 Grey Street, Silverwater. We will deal with Berala first.
7 Might be the witness be given a copy of the Berala bundle.
8 Do you have that in front of you?
9 A. Yes, sir.
10
11 Q. You were appointed the general manager late in 2013;
12 I believe it was about October?
13 A. I commenced I think on 3 October, yes.
14
15 Q. 3 October. Before that, your position was as
16 executive manager planning; correct?
17 A. No, that's not correct. My position, Mr Commissioner,
18 was director of planning and environment.
19
20 Q. Director of planning and environment. Mr Francis was
21 the executive manager planning under you?
22 A. No, that's not correct. Mr Francis was the manager of
23 development.
24
25 Q. After you became general manager, Mr Francis was
26 promoted to a position in charge of planning?
27 A. That's correct.
28
29 Q. What was the title of that?
30 A. Executive manager planning, I recall.
31
32 Q. So the titles changed from before your appointment to
33 after your appointment; is that correct?
34 A. That's correct. And might I explain, Mr Commissioner,
35 that the council was restructured, so the organisational
36 structure actually changed dramatically as well.
37
38 Q. I will ask you some questions about the restructure
39 later. In terms of planning proposals that were on foot
40 whilst you were the general manager, the person who had
41 principal carriage of all of those planning proposals was
42 Mr Francis; correct?
43 A. That's correct.
44
45 Q. To what extent did Mr Francis consult with you about
46 each planning proposal?
47 A. In relation - sorry, the question?

1
2 Q. Was there a practice or procedure in your week, for
3 example, when you would see him on a regular basis to
4 discuss the status of a planning proposal before council?
5 A. No. No regular meeting other than status updates as
6 required, as we prepared for briefings, councillor
7 briefings, councillor workshops, or executive meetings
8 where we were preparing a business paper. Mr Francis --
9
10 Q. When you say - sorry, please continue.
11 A. Sorry, Mr Commissioner. Mr Francis didn't report
12 directly to me.
13
14 Q. He reported to Mr Dencker?
15 A. Yes, he was the deputy general manager.
16
17 Q. When you say briefings as needed, were they as needed
18 by you or as needed by him?
19 A. Briefings were irregular at the council and they
20 became part of an agenda for a briefing or a workshop which
21 council - we held with the councillors on an informal
22 basis, usually on Wednesday evenings on the off-week from
23 council meetings.
24
25 Q. I'm talking, though, more about briefings between you
26 and Mr Francis about planning matters. How often did they
27 happen?
28 A. Oh, they were irregular and as required.
29
30 Q. In the case of Berala, if we go back to 2010, council
31 resolved for a study to be prepared, the draft Berala study
32 as it later came to be known. You're aware of that?
33 A. I recall that, yes.
34
35 Q. At that time you were in charge of planning; correct?
36 A. I was director of planning and environment.
37
38 Q. What was the impetus for that particular study?
39 A. I'm sorry, could you clarify the question?
40
41 Q. What was the reason for it?
42 A. A council resolution.
43
44 Q. Was that part of a broader need for planning studies
45 across the entire local government area or was it a
46 specific spot study?
47 A. It was a specific - I recall a spot study for the

1 Berala Village. We'd prepared a public domain
2 upgrade/report on both the Berala Village and Regents Park
3 Village. In reporting the Berala one, after
4 representations from some property owners, council deferred
5 the matter and requested the resolution as we discussed.
6

7 THE COMMISSIONER: Q. Did that resolution predate the
8 gazettal of the LEP in 2010?

9 A. I don't recall. I'd have to check that.
10

11 MR BOLSTER: Q. Who were the property owners, do you
12 recall that?

13 A. I don't, not off the top of my head, no.
14

15 Q. You don't recall?

16 A. No.
17

18 Q. That study went ahead throughout 2011-2012, it was
19 completed sometime in late 2012, if I recall?

20 A. I don't recall. I'll --
21

22 Q. Let's have a look at the bundle. You will see that at
23 the front of the bundle for Berala, it should be behind the
24 third tab in that folder.

25 A. Yes, I've got that.
26

27 Q. Page 1, March 2012 is the date of the draft study. Do
28 you have that?

29 A. No, I'm sorry. Page 1?
30

31 THE COMMISSIONER: Q. Yes, that's the correct page.
32

33 MR BOLSTER: Q. Do you see the facing page --

34 A. Oh, okay, the contents.
35

36 Q. -- on the left-hand side of the page?

37 A. I'm sorry, yes, I apologise.
38

39 Q. It is printed doublesided. Did that draft study come
40 to you for your approval?

41 A. I didn't have the position or authority to approve a
42 draft study.
43

44 Q. Well, your staff prepared it under your direction and
45 under your control; correct?

46 A. That would be correct.
47

1 Q. They did all of the written sections of the report,
2 they carried out consultations, they prepared all the maps
3 and they gave it to you, didn't they?
4 A. At some point it would go through me to be prepared
5 for council.
6
7 Q. And you approved it to go forward to council; correct?
8 A. That's correct.
9
10 Q. Council then dealt with it and ultimately wanted
11 further people to be given an opportunity to read it;
12 correct?
13 A. That's correct.
14
15 Q. And ultimately council resolved for Hill PDA to do a
16 feasibility study; correct?
17 A. That's correct.
18
19 Q. Who was the person working under you in planning who
20 was principally responsible for that study?
21 A. Depending on the time we had - it was the
22 responsibility of the manager of strategy unit. There was
23 a change during that period which I'd need to clarify, but
24 the position is manager strategy unit.
25
26 Q. Who held those positions relevantly?
27 A. Originally it would have been Ms Alia Karaman and
28 subsequently Mr Monica Cologna.
29
30 Q. They were under Mr Francis in the hierarchy within
31 your planning department?
32 A. No, that's not correct. They reported to me.
33
34 Q. To you?
35 A. As the director of planning.
36
37 THE COMMISSIONER: March 2012 is the date you are talking
38 about?
39
40 MR BOLSTER: Yes, 2012.
41
42 Q. In March 2012, what was Mr Francis's role?
43 A. Manager, development assessment.
44
45 Q. That was still reporting to you, though?
46 A. That's correct.
47

1 Q. When did he become involved in the planning process
2 within council?
3 A. His principal role was to manage the development
4 assessment process which resolved for the assessment and
5 determination of development applications.
6
7 Q. When did that cease and when did he become involved in
8 dealing with planning issues and planning proposals like
9 this one?
10 A. In the 2013 restructure.
11
12 Q. Thank you. Did you attend a --
13
14 THE COMMISSIONER: Q. Sorry, is that the restructure
15 that took place after you became general manager?
16 A. No, it was prior, before.
17
18 Q. Before?
19 A. Yes.
20
21 MR BOLSTER: Q. Did you attend a workshop at Bowral in
22 February of 2014?
23 A. Yes, I did.
24
25 Q. Were you present when the Berala Planning Proposal was
26 considered by councillors?
27 A. Yes, I was.
28
29 Q. Had you been briefed in advance by the planning staff
30 about what was to be put to councillors at that meeting?
31 A. I'm not - my recollection is that there wasn't a lot
32 put to councillors. It was an opportunity for what we in
33 planning parlance call a charrette, to give the councillors
34 an opportunity to provide their individual input to allow
35 us to move forward. So, for example, an individual
36 councillor could say what they thought their vision for the
37 Berala Village was, the extent, what type of controls they
38 looked for, and what they did, so it's effectively what we
39 call a charrette.
40
41 THE COMMISSIONER: Q. Do you now how to spell that for
42 the transcript?
43 A. No, I'm sorry.
44
45 MR ROBSON: C-H-A-R-R-E-T-T-E.
46
47 MR BOLSTER: Q. Was that a verbal discussion?

1 A. It's what I'd describe, Mr Commissioner, as a planning
2 exercise, to engage between the senior staff and the
3 councillors who are looking for their input.
4
5 Q. Wasn't the process that was adopted by staff to give
6 councillors a blank map of the Berala Town Centre and ask
7 them to fill it in with coloured pencils?
8 A. That's correct.
9
10 Q. Were you briefed in advance about that plan?
11 A. I was aware that's the charrette style of workshop
12 that was going to be carried out.
13
14 Q. What do you recall of the meeting in which that
15 workshop took place?
16 A. Sorry, could I clarify, the meeting, the workshop?
17
18 Q. Yes, what happened?
19 A. At the workshop?
20
21 Q. Yes.
22 A. The councillors worked through - there was a lot of
23 discussion, interaction between the councillors and the
24 senior staff who were present, to come up with their
25 individual inputs. My understanding or recollection is we
26 didn't get input from everyone, but there was input from
27 the vast majority.
28
29 Q. Do you recall any discussion about York Street,
30 Berala, in that meeting?
31 A. Not with myself, no.
32
33 Q. When you say not with yourself, was there discussion
34 between other people at that meeting?
35 A. I'd say not that I was privy to.
36
37 Q. When you came back to council after that workshop, was
38 the issue dealt with in some form of recapitulation amongst
39 staff about what the next step was?
40 A. Sorry, sir, I might just clarify the --
41
42 Q. Did staff come back, talk about what happened at the
43 workshop, and figure out what they would do next with the
44 Berala proposal?
45 A. With that I'd need to check the records but the next
46 step would have been to report to council the outcome.
47

1 Q. Were you involved in preparing the report to council?
2 A. No.
3
4 Q. Were you present at the workshop in June 2014 when
5 there was discussion in the Jack Lang Room next door about
6 the proposal?
7 A. Yes, I was.
8
9 Q. What happened at that meeting?
10 A. I don't recall any detail, I'm sorry.
11
12 Q. In the bundle there's a briefing note from your staff
13 to the councillors. Would you go to page 83 of the bundle,
14 please.
15
16 THE COMMISSIONER: This is the Executive Manager's
17 Planning Report, July 16, 2014.
18
19 MR BOLSTER: Q. That's part of the business papers for a
20 council meeting on 16 July, do you agree with me?
21 A. That's correct.
22
23 Q. The executive manager planning was Mr Francis?
24 A. That's correct.
25
26 Q. When a business paper of this kind went to council,
27 would you have read it in advance?
28 A. I would have been aware of the report as I signed off
29 on the business paper which is the agenda, yes. I would
30 not be across the detail.
31
32 Q. Go over to page 85.
33
34 THE COMMISSIONER: Q. You were the general manager by
35 now, correct?
36 A. That's correct, Mr Commissioner, yes.
37
38 MR BOLSTER: Q. On page 85 you will see a table there
39 with the relevant history of the matter. Do you see for
40 the box marked "June 2014", there is reference to a further
41 discussion and verbal amendment made to the plan at the
42 June 2014 briefing. Do you see that?
43 A. Yes, I do, sir.
44
45 Q. Do you recall what verbal amendments were made to the
46 plan at the June 2014 meeting?
47 A. No, I'm sorry I don't.

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Q. Did they have anything to do with the zoning of York Street, Berala?

A. I would say I'm not clear of what those discussions were, I'm sorry to say, what the outcomes of that were.

Q. Were you across the detail of what staff had put forward at the June 2014 briefing? Did you understand the substance of the plan that they were recommending for Berala?

A. Yes.

Q. Do you recall what they were proposing in relation to York Street, Berala?

A. Other than - not necessarily, other than the fact that the town - it was proposed that the town centre be extended and would incorporate that area of Berala.

Q. Might the witness be given a copy of the opening bundle.

THE COMMISSIONER: That's Exhibit #01. I will pass that to the witness.

MR BOLSTER: Thank you.

Q. Would you turn to page 67, please.

A. Yes.

Q. This was a record, I want you to assume for present purposes, of what staff identified was the effect of the responses from councillors at the workshop earlier in February. You will see the York Street land to the south of York Street in the bottom left-hand corner of the map?

A. Yes.

Q. You will see that that's marked in blue and that the colour corresponds with three councillors having identified that as being in the future a B2 zone?

A. I accept that, yes.

THE COMMISSIONER: Q. Is that what you meant by extending the town centre?

A. That's correct.

Q. The B2 zone?

A. Yes, that's correct.

1
2 MR BOLSTER: Q. There were lots of other changes as well
3 but I just want to focus on that change for present
4 purposes. Would you go over to page 71. This was staff's
5 suggested zoning. Were you across that at the time?
6 A. I'm not sure about the term "across", but I was aware
7 of it, yes.
8
9 Q. Had their suggested zoning been raised with you before
10 the June 2014 workshop?
11 A. Not specifically about their suggestion other than the
12 general presentation they prepared for councillors.
13
14 Q. Were you aware of any issue associated with the
15 ownership of land in York Street?
16 A. Could I clarify the question?
17
18 Q. Well, did you know that one of the councillors owned
19 land in York Street?
20 A. Yes. It was well-known that Councillor Hicham Zraika
21 was the owner of the property.
22
23 Q. You were present at the council meeting on 16 July
24 2014?
25 A. Yes.
26
27 Q. You saw that a plan was put forward to the council.
28 Go back to the Berala bundle please, the larger bundle.
29 A. Yes. Have you finished with that?
30
31 Q. Yes, I have. Go to page 92 of that bundle.
32 A. Yes.
33
34 Q. This was Attachment 1 referred to in the report that
35 went to council?
36 A. Yes.
37
38 Q. Were you briefed on that attachment before the matter
39 was listed on the council agenda?
40 A. Not specifically, other than the normal process the
41 executive team would put together the business paper which
42 would include all items on the agenda.
43
44 Q. Let me put this in context. When you were head of
45 planning, the draft Berala study that went forward
46 suggested no need for up-zoning; correct?
47 A. That's correct.

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Q. The Hill PDA report, which was a report to assess feasibility of development under existing control, it didn't recommend rezoning, did it?

A. That's correct.

Q. The next step in the chain, leaving aside public consultation generally, was the workshop at Bowral in February 2014; correct?

A. That's correct.

Q. After that we have the June 2014 workshop?

A. Yes.

Q. Your staff had put forward an R4 zone in York Street?

A. Yes.

Q. Councillors, or at least three councillors, you understood, wanted a B2 zone in the same place?

A. I --

Q. Yes?

A. I would think - I don't recall that exact detail, but yes, I accept what you say.

Q. Did you seek an explanation from your staff as to why they were recommending, now in the plan which appears on page 92 and over to page 93, B2?

A. No, because they would have worked through all the detail and - all the detail, the input from councillors, the studies, the reports, and had come up with that scenario.

THE COMMISSIONER: You might need to be more precise with that question. Recommending B2 for where?

MR BOLSTER: Q. You appreciated that the B2 zoning in the plan that went forward to council and was ultimately adopted on 16 July was a B2 zoning to the south of York Street, Berala; correct?

A. That's correct. As per this page, yes.

Q. Did you not think it important to inquire from your staff why they had changed their recommendation?

A. Not at that time. It was accepted as a report from experienced planning staff who had been involved all the way through, and other than something out of the ordinary

1 in their report, it would be accepted and they would speak
2 to it and stand by it.

3

4 Q. You knew there was something out of the ordinary in
5 relation to the land on the south side of York Street,
6 didn't you?

7 A. I was aware it was land owned by the councillor, being
8 Hicham Zraika.

9

10 Q. Weren't you concerned to establish that there were
11 legitimate planning reasons for the up-zoning on the south
12 side of York Street, Berala, before you put it forward to
13 council?

14 A. I accepted the report from the staff who had the best
15 expertise in that area.

16

17 Q. Is it fair to say that you didn't carry out any
18 detailed analysis of that report, you relied on the staff?

19 A. Not as my role as general manager, no, I didn't.

20

21 Q. Thank you. Do you have any recollection of the
22 meeting itself?

23

24 THE COMMISSIONER: Which meeting are we at?

25

26 MR BOLSTER: Q. The meeting on 16 July when the issue
27 was discussed and resolved.

28 A. Not in detail. It is some time ago.

29

30 Q. All right. In the same folder, if you go back one
31 tab, you will find the documentation for the South Auburn
32 proposal. Would you just turn over to page 5. You will
33 see there that there is a time frame of key milestones
34 between May 2010 and April 2015 when this matter was before
35 council. I just wanted to ask you a couple of questions
36 about the first date in May 2010. That was a planning
37 proposal which covered two blocks; do you recall?

38 A. Could you clarify your term "two blocks"?

39

40 THE COMMISSIONER: It's not a planning proposal, is it?
41 Has it reached that stage yet?

42

43 THE WITNESS: No, I don't think it had, Mr Commissioner.

44

45 MR BOLSTER: Q. It was anticipated there would be
46 planning proposal?

47

1 THE COMMISSIONER: To undertake an analysis, that's what
2 that is.
3
4 MR BOLSTER: Let me just make it clear.
5
6 Q. If you hold open page 5 and flick ahead to page 203 --
7 A. Yes.
8
9 MR WATSON: Sorry, the page number?
10
11 THE COMMISSIONER: 203.
12
13 MR BOLSTER: 203.
14
15 MR WATSON: Thank you.
16
17 MR BOLSTER: Q. You will see there that there is a map
18 showing the layout of the area?
19 A. I've got that, yes.
20
21 Q. Was the original proposal in 2010 for a larger area
22 than that which ultimately went forward in 2014?
23
24 THE COMMISSIONER: I just do not think it is a proposal,
25 in 2010, it is an analysis.
26
27 MR BOLSTER: Right.
28
29 Q. The land that was to be analysed in 2010 was a
30 slightly larger area of land than was the subject of the
31 proposal in 2014; correct?
32 A. That's correct. It changed many times, if I do
33 recall.
34
35 Q. Ultimately, council didn't proceed with the broader
36 analysis for the South Auburn area; correct?
37 A. Oh, it did proceed but it did take some different
38 shapes and forms over time, I think.
39
40 Q. It ultimately became planning proposal 3 in 2013 which
41 you see on the table on page 5; correct?
42 A. Yes.
43
44 Q. The point I want to make is that that was a much
45 smaller parcel or collection of lands that had originally
46 been anticipated; correct?
47 A. That's correct.

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Q. As originally put forward, the analysis was to be of a much larger section of South Auburn than that which was ultimately agreed upon; correct?

A. Yes, that's correct.

Q. The resolution to prepare the current planning proposal was made in April 2013; correct; do you see about point 7 on the page, on page 5?

A. Yes, I accept that, yes.

Q. You were in charge of that proposal until your appointment later that year as general manager?

A. That would have been correct, yes.

Q. In charge of that proposal, as the relevant head of the planning department, did you have a personal professional view about the merits of that proposal, that is, B4 down Station Street and R4 on the other side of the block?

A. Yes, it didn't make sense.

Q. Why didn't it make sense?

A. Because it didn't allow enough space, primarily, for a development to occur if those zonings were realised.

THE COMMISSIONER: Is this Susan Street or Station Street?

MR BOLSTER: Susan Street.

THE WITNESS: Susan, yes.

MR BOLSTER: Q. Is this what you're saying: ordinarily one would expect a B4 development in a much larger envelope than a collection of lots on a street like Auburn Road?

A. I'd put it a different way. Within the larger footprint or larger pieces of land, to allow you to develop it, that's often a problem in older town centres.

Q. You would think you would need at least an entire block to effectively utilise a space for B4; correct?

A. That's correct.

Q. When it became clear that council wanted to proceed with a much smaller portion of B4 ultimately, later in 2014, that is, they reduced the scope of the B4 zone to effectively a third of what had originally had been

1 proposed, what was your view of that?
2 A. Well, it was a council resolution. My job was to
3 carry out council resolutions.
4

5 Q. I am asking you for your personal, professional
6 opinion as a planner of that proposal.

7 A. My opinion wouldn't change, but keeping in mind we're
8 talking about a council resolution.
9

10 Q. It still made no sense?

11 A. It made it very difficult to develop. There's also
12 another school of thought that the development never occurs
13 whatever you do with planning in that scenario.
14

15 Q. Is that theory that because it's too small, it can't
16 effectively be developed?

17 A. Appropriately, yes.
18

19 Q. Were you involved in any discussions prior to council
20 staff putting forward that reduced zone as their
21 recommendation to council?

22 A. I don't recall. It would be a matter of when, the
23 time frame we're talking about.
24

25 Q. All right. This April 15 submission commences on
26 page 3 of the bundle. Do you see the recommendations?
27 Recommendation 2:

28
29 *That Council has reviewed the alternative*
30 *rezoning options presented in this Council*
31 *report and resolves to progress reducing*
32 *the B4 Mixed Use zone on the east side of*
33 *Auburn Road to between Beatrice Street and*
34 *90 Auburn Road ... and applying R4*
35 *High Density Residential to the remainder*
36 *of the subject land ...*
37

38 If we go back to that map, would you go to pages 283, 284
39 and following, you will see on page 284 is Option 2(a).
40

41 THE COMMISSIONER: Just before you ask a question about
42 that, where do these maps come from? Are they from the
43 director's report?
44

45 MR BOLSTER: If you go back, Mr Commissioner, to page 281,
46 they're referred to as Attachment 6.
47

1 THE COMMISSIONER: Yes. So they are part of the
2 director's report?
3
4 MR BOLSTER: And if you go then to --
5
6 THE COMMISSIONER: Of what date?
7
8 MR BOLSTER: -- page 30.
9
10 THE COMMISSIONER: Page 30 of this bundle.
11
12 MR BOLSTER: It identifies Attachment 6 as the "Current
13 proposals and alternative options maps". Do you see
14 page 30?
15
16 THE COMMISSIONER: I'm on page 30. Just tell me where
17 I see that.
18
19 MR BOLSTER: "ATTACHMENTS (to be circulated to Councillors
20 under separate cover)".
21
22 THE WITNESS: Items 5 and 6, Mr Commissioner. It
23 identifies in the council reports the attachments that
24 accompany them..
25
26 THE COMMISSIONER: I can't see that on my page 30.
27
28 MR BOLSTER: It should be page 45 of the Executive
29 Manager's Planning Report.
30
31 THE COMMISSIONER: Yes.
32
33 MR BOLSTER: It says:
34
35 *ATTACHMENTS (to be circulated to*
36 *Councillors under separate cover)*
37
38 THE COMMISSIONER: Yes, I've got that.
39
40 MR BOLSTER: Attachment number 6.
41
42 THE COMMISSIONER: I just can't see Attachment 6.
43
44 MR BOLSTER: It says "Current Proposal". Do you see
45 numbered paragraph 6?
46
47 THE COMMISSIONER: "Current proposal and alternative

1 options maps", yes.
2
3 MR BOLSTER: Yes.
4
5 THE COMMISSIONER: The maps on pages 283 and 284 are part
6 of this executive manager's planning report, April 15,
7 2015; is that right?
8
9 MR BOLSTER: Yes.
10
11 Q. It was a very large report, wasn't it?
12 A. Yes. They all are.
13
14 Q. Did you get across options 2A and 2B before council
15 considered them?
16 A. Again, at that point in time I was the general manager
17 and would have been involved in preparing the business
18 paper, and I would have had an overview from the planning
19 staff of the report.
20
21 Q. Did you appreciate, though, the significance of the
22 change that was being put forward by your executive manager
23 of planning?
24 A. I'm not sure there was any significance,
25 Mr Commissioner. There was a change.
26
27 Q. Well, did you appreciate what the effect of the change
28 was?
29 A. I'm not sure what the effect is.
30
31 Q. The effect of the change was to reduce the B4 zone
32 from that which is shown on page 283, yes?
33
34 THE COMMISSIONER: As at the date of this, it is all zoned
35 R3, correct?
36
37 MR BOLSTER: It is.
38
39 THE COMMISSIONER: Right. So there is either option 1,
40 zoning Auburn Road to B4 and Susan Street to R4 --
41
42 MR BOLSTER: That was the original proposal that was the
43 subject of the motion back in 2013.
44
45 THE COMMISSIONER: Formally moved to 2A to change all of
46 it from being R3 to what is proposed on page 284.
47

1 MR BOLSTER: And then 2B was sort of an in between option.

2

3 THE COMMISSIONER: Yes. All right.

4

5 MR ROBSON: Mr Commissioner, I object to the question that
6 my learned friend put, "Did you appreciate the effect of
7 the change?" I think my friend actually means did you
8 appreciate the extent of the change. There is a subtle
9 difference.

10

11 MR BOLSTER: I'll make it clear.

12

13 Q. Did you appreciate that there was a significant change
14 from what council had originally proposed, that is, B4, all
15 the way down Auburn Road, to option 2A which was being
16 recommended by your staff which had B4 for effectively a
17 third of the length of Auburn Road?

18 A. I was aware there was a change, yes.

19

20 Q. Had you been - sorry?

21 A. It's clear in the report.

22

23 Q. Had you been involved in any discussions in the
24 lead-up to the preparation of that report?

25 A. No.

26

27 Q. Did you consider, when you put it on the agenda,
28 whether council should be recommending option 2A?

29 A. Sorry?

30

31 Q. Would you go back to the beginning of the report at
32 page 4. It is page 19 of the business paper.

33 A. Yes.

34

35 Q. They were recommending that change?

36 A. If I could just have a minute, Mr Commissioner?

37

38 THE COMMISSIONER: Sure. Mr Bolster, you used the term
39 "council recommending". This is a recommendation to
40 council.

41

42 MR BOLSTER: Council staff.

43

44 Q. Just to be clear, this was council staff, in a report
45 by the executive manager of planning making that
46 recommendation in recommendation 2.

47 A. I'm aware of the change in the recommendation, yes.

1
2 Q. You were content for your staff to recommend
3 option 2A, were you?
4 A. I had faith in the planning staff who were across all
5 these issues.
6
7 Q. Had you discussed it with staff before?
8 A. No.
9
10 Q. Before it went forward?
11 A. No.
12
13 Q. Not at all?
14 A. No.
15
16 Q. Not at all or you don't recall?
17 A. Not that I recall in any detail, no.
18
19 Q. There was an interest of a councillor involved in this
20 proposal too, you were aware of?
21 A. I am aware, yes.
22
23 Q. He consistently declared an interest in relation to a
24 property at 84A Auburn Road?
25 A. Yes.
26
27 Q. Do I take it that when this report went forward to
28 council, you understood that his, or the interest
29 associated with that piece of land would benefit from a B4
30 zoning?
31 A. If he was the property owner or had an interest, yes.
32
33 Q. Didn't you think it appropriate to raise with council
34 staff how they had come to recommending option 2A given
35 that interest?
36 A. Again, I had faith in their report, their
37 justifications in the report. Everyone was well aware of
38 the land ownership and my understanding and recollection is
39 that it was always declared and handled appropriately.
40
41 Q. Sitting here today, do you recall what the reasons
42 were for their recommendation?
43 A. I'm sorry, sir, Mr Commissioner, I'd have to go back
44 and read the report. It's two years ago - or a year ago,
45 I'm sorry.
46
47 Q. All right.

1
2 THE COMMISSIONER: There is a no difference for the
3 councillor between option 1 and option 2A, though, is
4 there?
5
6 THE WITNESS: No.
7
8 MR BOLSTER: No.
9
10 THE COMMISSIONER: The fact that R3 is changing, though,
11 creates the --
12
13 MR BOLSTER: Q. Do you recall being curious as to why
14 the change was considered appropriate?
15
16 MR ROBSON: I object to the question.
17
18 THE COMMISSIONER: Why?
19
20 MR ROBSON: I am reluctant to say relevance. What
21 difference could it make if he was curious, how would that
22 assist you, Commissioner?
23
24 THE COMMISSIONER: Yes. Perhaps you could rephrase the
25 question, if you want to drill down on this.
26
27 MR ROBSON: We know what curiosity did.
28
29 MR BOLSTER: Q. Ultimately as general manager you're
30 responsible for what all the staff do; correct?
31 A. That's correct.
32
33 Q. Wouldn't you have wanted to be satisfied that there
34 was a valid reason for reducing the extent of the B4 zone
35 in the proposal that went forward?
36 A. Yes, and they're part of this report.
37
38 Q. You simply refer to what was in the report, you don't
39 have any separate recollection of anything that stood out
40 to you as justifying that change?
41 A. No.
42
43 Q. I want to ask you some questions now about
44 Marsden Street. You will be given another bundle and be
45 shown Exhibit MS1. The applicants for the original
46 planning proposal were residents, weren't they?
47 A. My recollection, Mr Commissioner, is that a small spot

1 rezoning planning proposal was submitted to council and
2 dealt with by the staff, yes.

3

4 Q. That all occurred whilst you were in charge of
5 planning; correct?

6 A. Is there a chronology attached that may assist?

7

8 Q. I'll get that to you. Would you just go to page 184.
9 There is a report which doesn't have a chronology. Would
10 you go to page 27. This may be more helpful to you. This
11 is the introduction to your staff's --

12 A. November '13?

13

14 Q. Yes - your staff's assessment report in November '13?

15 A. Yes, okay. Thank you.

16

17 Q. By that stage you'd left planning as general manager?

18 A. Yes, that's correct.

19

20 Q. Mr Francis had taken over?

21 A. That's correct.

22

23 Q. You will see on page 27 there is a reference to the
24 Kelmans as being the owners of the site. It is the second
25 paragraph, page 27, do you see that?

26 A. Yes.

27

28 Q. Had you met the Kelmans at all?

29 A. I had.

30

31 Q. How many times had you met them?

32 A. My recollection is once.

33

34 Q. Ultimately, staff recommended approval of the report;
35 correct?

36 A. That's right.

37

38 Q. I'm sorry, the proposal; they did so in this report;
39 correct?

40 A. They did. Well, recommended that the planning
41 proposal should proceed to the gateway with the Department
42 of Planning.

43

44 Q. Things happened at the next council meeting. Council
45 didn't agree with that recommendation, did they?

46 A. That's right.

47

1 Q. Council looked for a broader proposal to be prepared,
2 or at least considered, in relation to the broader
3 Marsden Street precinct; correct?
4 A. That's right.
5
6 Q. Were you involved in the instruction of AECOM to
7 prepare their analysis of such a proposal?
8 A. No.
9
10 Q. That was left to Mr Francis?
11 A. That's correct.
12
13 Q. Did you review the AECOM report when it was ultimately
14 provided to council?
15 A. I wouldn't have in detail, no.
16
17 Q. Did you appreciate at the time the AECOM report went
18 forward to the council meeting on 18 June, if you could
19 then turn to page 184 you will see the briefing paper --
20
21 THE COMMISSIONER: What page was that, sorry?
22
23 MR BOLSTER: Page 184.
24
25 Q. Do I take it your process in relation to the report at
26 page 184 would have been the same for the other reports in
27 relation to Berala and South Auburn that went to you once
28 you became general manager?
29 A. That's correct.
30
31 Q. In relation to this report, the situation was that you
32 also appreciated Mr Oueik had an interest within the
33 Marsden Street precinct?
34 A. I think my recollection is two councillors declared
35 interest.
36
37 Q. Two councillors?
38 A. I think, but I'm certainly aware that Councillor Oueik
39 had an interest, yes.
40
41 Q. You knew that he owned land there?
42 A. He declared that he owned land.
43
44 Q. Let me ask you a question there. Is it part of your
45 job as general manager to closely review the pecuniary and
46 non-pecuniary disclosures of councillors or do you rely
47 upon the returns they provide?

1 A. I rely upon the returns. The conflicts of interest
2 pecuniary interest is a matter for the individual.

3

4 Q. You essentially accept, on face value, whatever is in
5 a disclosure or whatever is said about an interest at a
6 council meeting and leave it at that?

7 A. Generally, yes.

8

9 Q. Did you direct your attention, when you came to
10 consider this report, to the various scenarios that were
11 being proposed by AECOM?

12 A. I wouldn't have in detail.

13

14 Q. Could you just go back a few pages to page 181. Do
15 you recall seeing that document before the matter went
16 forward to council?

17 A. I don't specifically recall it, but if it formed part
18 of the report, I would have, yes.

19

20 Q. Sitting here today, having been shown that presumably
21 for the first time in some time, do you not recall that
22 there was an option G that went forward?

23 A. Oh, I accept it was there, yes.

24

25 Q. No, no. If I'd asked you about option G before you
26 looked at that bundle, would you have remembered it?

27 A. No.

28

29 Q. Do you know what option G involved, sitting there now?

30 A. Oh, if I had time to sit back and read it, I would be
31 able to.

32

33 THE COMMISSIONER: Q. You wouldn't be able to tell from
34 looking at this, would you?

35 A. I'm not sure.

36

37 MR BOLSTER: Q. Did you look at AECOM's preferred
38 scenario for Marsden Street?

39 A. At what point did I look at it? Today?

40

41 Q. No, back then. You see, page 179 is their preferred
42 scenario.

43 A. Okay.

44

45 Q. The difference between that and option G was that the
46 land bounded by Mark Street, Marsden Street and
47 James Street and to the west of the small laneway, which

1 included the applicant's site, which you will see there in
2 a black block box with an arrow pointed towards it - do you
3 have that?
4 A. Yes.
5
6 Q. Do you understand the area I am talking about?
7 A. Yes, I've got the two options, yes.
8
9 Q. Under the AECOM preferred scenario, that was all to be
10 zoned R4?
11 A. The red zoning, yes.
12
13 Q. Yes. Is it red in the copy you have?
14 A. Yes, that's correct.
15
16 Q. Good. You will see that the land to the north of
17 Marsden Street was B4?
18 A. Yes.
19
20 Q. All right. Would you go back to page 181. Do you see
21 that that scenario is scenario F, the box second from the
22 top on the right-hand side?
23 A. Scenario B is it?
24
25 Q. No, second from the top on the right. Do you see,
26 "Consultant's preferred scenario (F)"?
27 A. Yes, bottom left.
28
29 Q. I think it is the way you are looking at the page. I
30 am looking at it straight up. Above that is alternative
31 scenario G?
32 A. Yes.
33
34 Q. You will see that scenario G effectively had all B4 as
35 opposed to having an R4 section?
36 A. Yes.
37
38 THE COMMISSIONER: I haven't got a colour map. Could you
39 tell me what the difference is between preferred scenario F
40 and alternative scenario G.
41
42 MR BOLSTER: Yes. Leaving aside the East Street frontage,
43 which is not relevant for present purposes, the difference
44 between F and G is that G has all B4 zoning, whereas F has
45 B4 to the north of Marsden Street and R4 to the south of
46 it.
47

1 THE COMMISSIONER: Yes, all right.
2
3 MR BOLSTER: Q. Did you appreciate, before placing the
4 report that commences at page 184 on the agenda for the
5 council meeting on 18 June 2014, that difference?
6 A. I'm aware of the difference, yes.
7
8 Q. Did you ask your planning staff why they were putting
9 forward alternative scenario G as opposed to the
10 consultant's preferred scenario F?
11 A. I'm sure that's included in the report and, again, the
12 same scenario would have been as we prepared the business
13 paper with the executive team.
14
15 Q. When you prepared the paper, do you recall having a
16 discussion with Mr Francis about that at all?
17 A. Not specifically, no.
18
19 Q. You appreciated that the difference was of some
20 significance; correct?
21 A. I was aware there was a difference in the scenarios in
22 the options that were provided to council.
23
24 Q. Is it your evidence that you don't think you would
25 have raised it with Mr Francis?
26 A. I can't recall.
27
28 Q. You can't recall?
29 A. No.
30
31 Q. Did Mr Oueik discuss the Marsden Street Planning
32 Proposal with you at any time?
33 A. He would have on one occasion, I do recall, sought the
34 status of when it would be back before council.
35
36 Q. When did he ask you about that?
37 A. I don't have a record of that.
38
39 Q. When do you think that was in relation to this
40 particular meeting on June 18?
41 A. It would have been between the two meetings. Leading
42 up to the 18th, he did request a status.
43
44 Q. Is it likely, do you think, that he perhaps wanted to
45 know what was happening with the report that had been
46 prepared?
47

1 MR WHEELHOUSE: I object to that question.
2
3 MR BOLSTER: I'm sorry, I withdraw that.
4
5 Q. Could you please describe the relationship you had
6 with Mr Oueik whilst you were the general manager and he
7 was on council?
8 A. I had a good working relationship with him.
9
10 Q. Did you have a personal relationship with him at all?
11 A. I wouldn't define it as a personal relationship, but
12 we had a close relationship, yes.
13
14 Q. You would have seen by now that Mr Francis has given
15 some evidence to the inquiry --
16
17 THE COMMISSIONER: He has given some information.
18
19 MR BOLSTER: Q. Some information to the inquiry that
20 suggests that you visited Mr Francis at Mr Francis's home
21 in the company of Mr Oueik. What do you say about that?
22 A. I agree.
23
24 Q. That was in about 2006, was it?
25 A. I'm not sure of the date but it is some time ago.
26
27 Q. What happened on that visit, that you can recall?
28 A. My recollection is we went to visit. Mr Francis
29 purchased a new home and was commencing some renovations.
30
31 Q. What was said at that meeting about the renovations?
32 A. I can't recall.
33
34 Q. You can't recall?
35 A. No.
36
37 Q. You have been to Mr Oueik's house on a number of
38 occasions as well?
39 A. His new house, yes.
40
41 Q. When did you first go to his new house?
42 A. I think, I recall, two visits late in 2015.
43
44 Q. Did you take Mr Francis with you?
45 A. On the two occasions, yes.
46
47 Q. Did you go to his old house at all?

1 A. His old house?
2
3 Q. Yes. Didn't he live somewhere else before he bought a
4 new house?
5 A. He had a property at St Hilliers Road.
6
7 Q. Did you go there to meet him?
8 A. Yes.
9
10 Q. How many occasions did you go there?
11 A. Oh, it would have been one or two.
12
13 Q. They were social occasions, weren't they?
14 A. I generally would have picked him up there to do site
15 inspections as part of the community representative.
16
17 Q. Did Mr Fitzgerald attend Mr Oueik's property with you?
18 A. No.
19
20 MR ROBSON: Which Mr Fitzgerald?
21
22 Q. Mr Fitzgerald, either senior or junior?
23 A. No.
24
25 Q. Did Mr Oueik provide you with gifts at Christmastime
26 and on birthdays?
27 A. Yes. We exchanged gifts, yes.
28
29 Q. What sort of gifts did you receive from Mr Oueik?
30 A. Normal gifts you would receive on birthdays and
31 Christmas.
32
33 Q. Such as?
34 A. Chocolates, a tie. Generally in regard to Mr Oueik,
35 I'd purchase a Christmas gift for his two young children.
36
37 Q. What were those gifts?
38 A. Christmas toys.
39
40 Q. Did any other councillors give you gifts?
41 A. No.
42
43 Q. When did Mr Oueik start giving you gifts at
44 Christmastime?
45 A. Oh, probably during the term, his first term as mayor.
46
47 Q. When did that begin?

1 A. Late 2010, early 2011.
2
3 Q. What was Mr Oueik doing at Mr Francis's place in 2006?
4 Why did you and he go there?
5 A. Oh, it was just a personal interest that he'd
6 purchased a new home and we took an interest over that.
7
8 Q. When did the discussion come up about going? Who
9 raised the topic?
10 A. I don't recall.
11
12 Q. Who drove?
13 A. Myself.
14
15 Q. You drove Mr Oueik there?
16 A. That's correct.
17
18 Q. Did you suggest to him, "Let's go and see Mr Francis's
19 house", did you?
20 A. I don't recall who suggested to who, other than we
21 agreed we'd visit as a courtesy to have a look at his new
22 house.
23
24 Q. Have you been to any other staff members' house during
25 your time as an employee of Auburn Council?
26 A. Not that I recall, no.
27
28 Q. And you've never been to the house of any other
29 councillor other than Mr Oueik?
30 A. I have been to the house of Councillor Zraika,
31 Councillor Attie, Councillor Attie was to visit his father
32 who had just had heart surgery. Councillor Simms,
33 Councillor Selma Batik-Dunbar. Councillor Campbell.
34 Sorry, I'm just working around the room. Deputy Mayor
35 Councillor Mehajer; Councillor Lam. I think that's it,
36 I haven't been to Councillor Lam's property.
37
38 Q. You have been to their house. Was that in the context
39 of you carrying out official duties?
40 A. Primarily. Not always.
41
42 Q. Such as what?
43 A. Well, Councillor Simms and Councillor Batik-Dunbar, on
44 occasion I drove them home after a council meeting.
45
46 Q. When you'd been to their house it was to take them
47 home late at night after a council meeting; correct?

1 A. That's correct.
2
3 Q. When you went to see Mr Attie's house, it was to see
4 his father who had been unwell; correct?
5 A. He'd had heart surgery.
6
7 Q. Was that after a council meeting?
8 A. No, it was during the day.
9
10 Q. It was to visit his father, was it?
11 A. That's correct.
12
13 Q. Did you know his father?
14 A. I'd met him on the odd occasion at council functions,
15 particularly, I think, when Councillor Attie was mayor.
16
17 Q. You knew his father independently of Councillor Attie;
18 correct?
19 A. No.
20
21 Q. Mr Mehajer - what circumstances did you go to his
22 property?
23 A. I visited with Mayor Oueik at the time to have a look
24 at the house he was constructing for his home in
25 Frances Street and I recall it was myself, the Mayor,
26 Oueik, Mr Francis, there could have been one other staff
27 member to look at the progress of construction.
28
29 Q. What stage was the construction at at that time?
30 A. 80 per cent, maybe; it wasn't complete.
31
32 Q. A construction certificate had issued; correct?
33 A. I haven't got that detail ahead of me.
34
35 Q. Did you involve yourself in the day-to-day issues
36 concerning that property?
37 A. No.
38
39 Q. Who had portfolio responsibility within council for
40 dealing with certification of Mr Mehajer's property at
41 Frances Street?
42 A. Advice from the staff was that council wasn't the
43 certifier.
44
45 Q. Council wasn't the certifier?
46 A. I think, Mr Commissioner, it was a private certifier.
47

1 Q. Who in council was responsible for ensuring that
2 certification take place?
3 A. In general --
4
5 Q. Yes, in general --
6 A. -- or for Mr Mehajer?
7
8 Q. For Mr Mehajer?
9 A. Mr Francis.
10
11 Q. For Mr Francis. Was the inspection with the mayor and
12 Mr Francis to look at it from an official perspective, from
13 a council perspective or was it a social visit?
14 A. It would be hard to define. Councillor Mehajer was
15 the deputy mayor. The mayor asked us to accompany him and
16 I thought it was important that more than one of us be
17 there and have a look at the progress of his property.
18
19 Q. Why did the mayor ask you to go? What was the reason
20 for you to go?
21 A. I think that's a question for the mayor.
22
23 Q. What did you do when you got there?
24 A. We had a look around the house and left.
25
26 Q. Did Mr Mehajer show you around the property?
27 A. That's correct.
28
29 Q. You weren't there checking up on whether there had
30 been compliance with any matters?
31 A. Council wasn't the certifier.
32
33 Q. When certification became an issue with that property,
34 did you look at it yourself?
35 A. The property?
36
37 Q. Yes.
38 A. No.
39
40 Q. Did you look at the issues, did you look at the
41 paperwork, the certification paperwork in relation to that
42 property?
43 A. There wouldn't be any certification, Mr Commissioner,
44 as council wasn't the certifier; it was another person.
45
46 Q. When a certificate was issued, did council receive a
47 certificate?

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MR DUGGAN: I object. What sort of certificate are we talking about? An occupation certificate?

MR BOLSTER: I'll clarify that.

Q. The final occupation certificate, council received it?

A. Council is the record keeper where there's a private certifier and we receive it, record it and it goes on the records of the property.

Q. Did you take any interest in that certificate?

A. Not particularly, except it was raised with me by another councillor after the August meeting.

Q. Did you look into the matter?

A. I referred it to the appropriate planning staff which was --

Q. Mr Francis?

A. And the deputy general manager.

Q. What was the result of their investigation of the matter?

A. I think my recollection in the end is that the private certifier had issued the final occupation certificate.

Q. All right. I wanted to go back to the planning proposals and deal, finally, with Grey Street, Silverwater. That should be in a separate bundle. Could you return the other bundle? Would you go to page 20. You will see that there's a note prepared by one of your staff, I think it was prepared by you, of a meeting in 2008; correct?

THE COMMISSIONER: Which page, did you say?

MR BOLSTER: Page 20.

THE WITNESS: Yes.

MR BOLSTER: Q. Accepting that it was more than eight years ago, do you have any recollection of that meeting, other than what's set out in that note?

A. Again, the time frame, other than the record of it.

Q. This had a fairly lengthy history, this proposal, starting back in June 2013. If you go over to page 29, you

1 will see a proposal from APP.
2 A. Yes.
3
4 Q. Do you recall going through this proposal as part of
5 your responsibilities as the head of planning at that time?
6 A. I was aware of it, yes.
7
8 Q. Did you look into it closely or did you leave it to
9 staff to deal with?
10 A. It would have been dealt with by the strategic
11 planning staff.
12
13 Q. At that stage the strategic planner, I think you said,
14 was Ms Karaman?
15 A. Ms Karaman. I need to clarify the time frames,
16 Mr Commissioner. It doesn't seem to --
17
18 Q. I am just wondering about the date on your file note.
19 A. Yes, I agree with you.
20
21 Q. Do you think that that may have been a
22 February 2013 --
23 A. I think it would have to be because former
24 Councillor Attie was mayor from September '12 to
25 September '13, so it must be February '13.
26
27 Q. We should read 2008 as being 2013?
28 A. Yes. It confused me as well.
29
30 Q. They didn't wait five years, they only waited from
31 February through to June before they lodged the planning
32 application?
33
34 THE COMMISSIONER: Q. The correction to page 20 where it
35 says 10am, Thursday, 28 February 2008, that should read
36 2013, should it?
37 A. Yes, and I think on the email address at the top it
38 clarifies it.
39
40 Q. That's what I was thinking, yes, thank you.
41 A. Yes.
42
43 MR BOLSTER: Q. Do you recall why this proposal was
44 rejected at gateway when it went forward?
45 A. Without having all the detail, I think it was
46 generally around the lack of capability, lack of - there
47 were issues around council's employment land strategy.

1
2 Q. Yes.
3 A. I'm sorry. Capability or --
4
5 Q. Capability?
6 A. Yes.
7
8 Q. It was the employment land strategy. Sitting there,
9 as a former general manager, where does the employment land
10 strategy sit as a planning instrument?
11 A. It would be one of the assisting informing documents.
12
13 Q. An assisting informing document?
14 A. In relation to areas such as an industrial area like
15 Silverwater, it's important.
16
17 Q. And in 2013 you would have been involved in the
18 finalisation of the employment land strategy which was then
19 under review; correct?
20 A. That's right.
21
22 Q. You recall that that was ultimately adopted by council
23 in May 2015?
24 A. That's right.
25
26 Q. Council dealt with this matter on 4 December 2013.
27 Would you go to page 245. You will see the resolution. Do
28 you see that?
29 A. Yes, I do.
30
31 Q. Do you remember that resolution?
32 A. Not specifically but I accept it.
33
34 Q. When it was passed you were the general manager?
35 A. Yes.
36
37 Q. It was a resolution that was at odds with the
38 recommendation of your staff; correct?
39 A. I would need to refer to the report to confirm that.
40
41 Q. Let's have a look at the report. Would you go to the
42 report which commences at 165. You will see at 167 there's
43 an executive summary which is to the effect that the
44 proposal not be supported?
45 A. That's the planning proposal; we'd need the council
46 report.
47

1 Q. I just want you to assume for present purposes that a
2 report from council --

3 A. Yes, and that's - I do - I do recall it wasn't
4 supported.

5
6 Q. In that case, where there's a detailed planning
7 report, the recommendation would not have been any
8 different to what's in that?

9 A. I accept that.

10
11 Q. It was basically "Don't support it" and that would
12 have been the end of the matter; correct?

13 A. Well, it's then a matter for council.

14
15 THE COMMISSIONER: Is it at 289?

16
17 MR BOLSTER: 289.

18
19 THE COMMISSIONER: Recommendations regarding the planning
20 proposal, the summary.

21
22 MR BOLSTER: I think it may be, yes, that's picked up as
23 an attachment to a later report; yes, I think it is.

24
25 Q. Would you go to 285.

26 A. The meeting on the 20th - the only thing is that the
27 meeting of the 20th, that does seem to --

28
29 Q. I think it was probably adjourned until 4 December.
30 The minutes are from 4 December at 245.

31 A. I accept that scenario, yes.

32
33 Q. The resolution put forward, at 285, on November 20 was
34 that council resolved not to support the proposal for the
35 four reasons stated there; right?

36 A. Yes.

37
38 Q. Let me ask you a general question. When planning put
39 forward a report like that, it's based on their views as
40 professional planners; correct?

41 A. Yes.

42
43 Q. And they are all very qualified people; Ms Cologna,
44 Ms Southwell, Mr Francis, they've all got degrees in
45 planning, it is their area of professional expertise. They
46 put forward that report and those recommendations to
47 council and council says no. Is that an issue that you

1 would deal with as general manager, or you would address,
2 you would investigate, you would explore with the staff, or
3 how does --

4 A. I'm sorry, I'm not sure - if council resolves - it's
5 not uncommon for a council, an elected council to resolve
6 in a way that's different to council recommendations, it's
7 not unheard of.

8

9 Q. You just move on, you deal with the council
10 resolution?

11 A. Part of my job description is to implement council
12 resolutions.

13

14 Q. You don't go back to the staff and ask them about why
15 it was they put the resolution? It's not something that
16 you want to follow up in any way; is that right?

17 A. I wouldn't normally, sir, Mr Commissioner. In these
18 scenarios it's not uncommon, it's not uncommon for a
19 complete turnaround or even changes to staff
20 recommendations.

21

22 THE COMMISSIONER: Q. In relation to a planning
23 proposal?

24 A. In relation to any report that's put up, there's
25 changes. We're talking about very experienced senior
26 staff, as Counsel Assisting mentioned; they're generally
27 very accepting. Nobody likes to have their report changed
28 but will accept it in the political process.

29

30 MR BOLSTER: Q. How many times did you discuss this
31 proposal with Mr Attie?

32 A. I couldn't have an exact figure.

33

34 Q. Is it twice, is it 10, is it 50, is it 100?

35 A. Oh, it was several times. Councillor Attie sought the
36 status of when it would be back to council; again, that was
37 the general term.

38

39 Q. Is it fair to say that Councillor Attie was a strong
40 supporter of this project?

41 A. Yes.

42

43 Q. From the beginning when he was mayor, and you had that
44 meeting in 2013, in February; correct?

45 A. I didn't have the view at that time, no.

46

47 Q. When did you get the view that Mayor Attie was a

1 strong supporter of this project?
2 A. Oh, I would have generally - his interest in chasing
3 up the status as to when it would be before council for
4 decision and observing his support or not or debate during
5 the council meeting.

6
7 Q. So during the council meetings when there was debate,
8 he was an active supporter of the proposal; correct?

9 A. That's my recollection.

10
11 Q. And he moved the motion that was ultimately passed on
12 4 December 2013; correct?

13 A. I'd have to check the minutes.

14

15 Q. 245?

16 A. 245 and I apologise:

17

18 *RESOLVED on the motion of C/r Attie,*
19 *seconded C/r Mehajer.*

20

21 Q. What other things that Mr Attie said or did suggested
22 to you that he was a strong supporter of this project?

23

24 MR WATSON: Wishing to be of assistance, Commissioner,
25 Mr Attie would describe himself as a strong supporter;
26 I think he might even go so far as to say a very strong
27 supporter.

28

29 MR BOLSTER: All right. I will leave that there then.

30

31 Q. Ultimately, do you recall being briefed by Mr Francis
32 about the resolution that was passed in October 2015 which,
33 essentially, involved rewriting the employment land
34 strategy so as to make the proposal compliant with it?

35 A. I'm not sure. Could you clarify that a bit more?

36

37 MR BOLSTER: Yes. I will take it step by step then.

38

39 THE COMMISSIONER: Do you need to go back to the gateway?

40

41 MR BOLSTER: I think we've dealt with that. Would you go
42 to 522 and 523.

43

44 THE COMMISSIONER: Wasn't it reduced to gateway
45 in December 2014?

46

47 MR BOLSTER: Yes, it was. We're dealing here with the

1 second proposal.
2
3 THE WITNESS: The second.
4
5 THE COMMISSIONER: All right.
6
7 MR BOLSTER: Q. This is a letter to planning and
8 infrastructure that begins at 520 under the hand of
9 Ms Southwell, I think prepared by Ms Southwell and signed
10 by Ms Cologna. At 522 the resolution is passed. The
11 resolution that is passed is set out in full. Do you see
12 that?
13 A. There's a reference to a council resolution 7 October.
14 Is that --
15
16 Q. Yes.
17 A. And the resolution is set out --
18
19 Q. Set out --
20 A. -- in Ms Cologna's letter.
21
22 THE COMMISSIONER: 521 is probably meant to be the back of
23 523, isn't it?
24
25 THE WITNESS: It has been put in back to front.
26
27 MR BOLSTER: I think so, yes.
28
29 Q. You appreciated, didn't you, that council had resolved
30 to proceed to gateway for a second time in relation to this
31 matter; correct?
32 A. That's the resolution, yes.
33
34 Q. And the basis upon which they sought to succeed at
35 gateway on the second occasion was to amend the employment
36 land strategy to remove the barriers that were in it and
37 that led to the refusal on the first occasion; correct?
38 A. That's part of the resolution, item 1, yes.
39
40 Q. Did that not trouble you at the time that was put
41 forward?
42 A. I was aware that it was contrary to the council staff
43 report, yes, but again, it's a council resolution and --
44
45 Q. The process of council amending a planning control,
46 such as an employment land strategy, to permit a
47 development of this kind is a most unusual thing, isn't it,

1 Mr Brisby?
2 A. In my time and experience, yes.
3
4 Q. Do you recall the meeting when this issue was dealt
5 with?
6 A. The council meeting?
7
8 Q. Yes.
9 A. No, not in clear detail, no.
10
11 Q. I want to suggest to you that it was moved from the
12 floor by Mayor Attie without notice to staff, yourself and
13 a majority of the councillors present, that resolution in
14 those terms. Does that fit with your recollection of what
15 happened?
16 A. I don't have a clear recollection. The minutes and
17 the resolution are what we were looking at.
18
19 Q. I want you to assume that it was just moved from the
20 floor.
21 A. In response to the report?
22
23 Q. Yes. Would not that have been an opportunity for you
24 to suggest that the advice of staff and officers be sought
25 in relation to the matter?
26 A. Council staff's advice and information is part of the
27 report which the councillors had before them for
28 consideration.
29
30 Q. They had a report and their report proposed a way in
31 which the development could go forward by meeting the
32 existing ELS. Do you remember that?
33 A. That's correct.
34
35 Q. You're aware of that?
36 A. That's the staff recommendation.
37
38 Q. What happened is this - Mr Attie produced a motion at
39 the meeting when this matter was considered. It was in the
40 terms at page 522. He put it that no questions were asked
41 and it was passed on the casting vote of the mayor; that's
42 what happened, isn't it?
43 A. I accept what you're saying but I don't have that
44 detailed recollection without looking at the minutes.
45
46 Q. Assume for present purposes that that's what happened.
47 Is that not an issue that concerned you as the general

1 manager of council, or do you just say it is entirely a
2 matter for council, they can resolve to do what they like
3 about this proposal?
4 A. It is a matter for council. It's a planning proposal.
5 The staff had put a recommendation, advice and information
6 there and it's then a matter for council.
7
8 Q. You didn't have any preference for the way in which
9 this matter ought be dealt with?
10 A. The staff recommendation in the report?
11
12 Q. Did you discuss that motion with Mr Attie before he
13 moved it?
14 A. Not that I recall.
15
16 Q. Did you discuss the motion with him after he moved it
17 and after it was passed?
18 A. Not that I recall.
19
20 Q. Council was involved in some significant publicity
21 last year when the deputy mayor was married. Do you
22 remember that?
23 A. Yes, sir.
24
25 Q. I thought you might. It is fair to say that you
26 received numerous complaints from residents of
27 Frances Street, Lidcombe?
28 A. The council did, yes.
29
30 Q. Was the process for dealing with those complaints any
31 different from any other complaints?
32 A. No.
33
34 Q. I take it when someone complains about the closure of
35 a street in the former Auburn Council, it wouldn't land on
36 your desk?
37 A. Not normally, except that it involved the
38 deputy mayor, yes.
39
40 Q. That's why I'm asking. Did those complaints end up
41 landing on your desk?
42 A. Not specifically, as you say, a list of complaints,
43 no.
44
45 Q. Council has a media officer?
46 A. A media officer and a graduate, yes.
47

1 Q. I take it the media officer had considerable work to
2 do in the days following the wedding and the publicity that
3 it generated. I don't want to go into all of that. Did
4 the council media officer report to you about issues that
5 had been raised in relation to the wedding?
6 A. Yes.
7
8 Q. What were the reports that you were getting from the
9 media officer? What was the substance of it?
10 A. Everything from people found it serious and a concern
11 about an elected member doing such a thing, the media
12 spotlight that was put on Auburn, the extravagance and the
13 general negativity, through to people who found it straight
14 out humorous. It was unusual and particularly out of the
15 ordinary.
16
17 Q. I want to focus on issues of council responsibility,
18 though. One of the issues for council is the roads within
19 the local government area; correct?
20 A. That's right.
21
22 Q. Did you ask for a report from your staff as to what
23 had happened in relation to the closure of a section of
24 Frances Street?
25 A. Yes.
26
27 Q. Did you get a report, did you get a written report?
28 A. We had the information updated because we had by fate
29 at the time a council meeting listed for the following
30 Wednesday night and it was the topic raised by a number of
31 councillors who had concerns.
32
33 Q. I'm not worried about the council meeting. When it
34 became an issue did you ask for a report from any of your
35 staff?
36 A. Yes.
37
38 Q. Who did you ask the report from?
39 A. The deputy general manager for direct services who had
40 carriage of issuing the appropriate permit.
41
42 Q. Was that Mr McNulty?
43 A. That's correct.
44
45 Q. Did he give you a written report?
46 A. Not that I recall, no.
47

1 Q. He gave you a verbal report?
2 A. A verbal report.
3
4 Q. What did he tell you about what had happened?
5 A. That following the application - this is just my
6 recollection, Mr Commissioner, I'm not across all the
7 detail, but it was what it was. The wedding got out of
8 control. The deputy mayor, as the applicant, asked for a
9 road closure. That was refused. He asked for permission
10 to land helicopters on the oval - the name just eludes me -
11 in nearby Lidcombe and the initial response from us was,
12 "No".
13
14 Q. Just stopping there, you have, I take it, a power to
15 close a road for that purpose, if you consider it
16 reasonable and appropriate in the circumstances, do you?
17 A. To be honest, Mr Commissioner, I'm not too sure. I
18 would have to take advice from my engineers, traffic
19 engineers. I'm not sure but I presume that we could.
20
21 Q. What about closure of a council oval for the landing
22 of a helicopter? I wouldn't expect that would happen
23 often.
24 A. Not in my experience, no.
25
26 Q. Do you have a power to close a council park for that
27 purpose?
28 A. I don't think the term is "close a council park", but
29 allow --
30
31 Q. Grant a licence?
32 A. Grant a licence for that occupation for that period,
33 I think.
34
35 Q. Is this fair to say, that Mr McNulty had, prior to the
36 wedding, been approached by the deputy mayor about these
37 matters?
38 A. He made an application, yes.
39
40 Q. Did you see that application?
41 A. I think I have, yes.
42
43 Q. After the event?
44 A. After the event when I was contacted by the Office of
45 Local Government.
46
47 Q. Mr McNulty dealt with those matters in the ordinary

1 course and didn't refer them to you?
2 A. I'm sorry --
3
4 Q. Prior to the wedding?
5 A. Prior to the wedding. On the Friday it became --
6
7 Q. Everything changed after the wedding?
8 A. No, everything changed the day before the wedding.
9
10 Q. The day before the wedding?
11 A. That's when, Commissioner, the deputy mayor's
12 advocates or contractors, who were supplying and running
13 the wedding, started letterbox dropping in Frances Street
14 to the neighbours, putting out traffic cones saying, "You
15 can't park here. You can't park here." It was brought to
16 my attention by Councillor Simms and again that started,
17 that was mid-to-late Friday afternoon.
18
19 THE COMMISSIONER: Q. Doing that without authorisation?
20 A. That's right.
21
22 MR BOLSTER: Q. Let's clarify the timing, let's get this
23 right. The applications to close the road and to land the
24 helicopter, how far before the wedding were they made to
25 Mr McNulty?
26 A. I'm not too sure about the details, but it would have
27 been a week or so.
28
29 Q. Some time before?
30 A. It wasn't a lot of time, no, that I recall.
31
32 Q. And then the day before Councillor Simms raised with
33 you --
34 A. During the course of - I think it was fairly late on
35 the Friday afternoon, the day before the wedding.
36
37 Q. She raised with you that handouts had been distributed
38 in Frances Street, the practical effect of which was to
39 tell people not to leave their cars on Frances Street --
40 A. That's right.
41
42 Q. -- during the course of the wedding; correct?
43 A. Yes, that's right.
44
45 Q. What did you do about that when you received that
46 complaint?
47 A. Mr McNulty, I had him with me and through our

1 council's executive manager of operations, who looked after
2 the council's outdoor staff, we arranged for council's
3 rangers to attend and deal with the matter, ie, advise the
4 people that they didn't have permission to close the
5 street, they weren't able to close off the road and the
6 letterbox drop and the like.

7

8 Q. Do you recall who the two rangers were?

9 A. I wouldn't --

10

11 Q. Did you speak to the rangers either before or after?

12 A. No, and I wouldn't in the normal course of events.

13

14 Q. All right. Did you visit the site on the day of the
15 wedding?

16 A. No.

17

18 Q. Did you have any subsequent contact with the local
19 area command of the police about the matter?

20 A. Council did, not myself personally.

21

22 Q. Council did?

23 A. Yes. Mr McNulty had charge of it.

24

25 Q. Did he provide you with a report as to the extent of
26 his discussions with the police?

27 A. Not that I recall.

28

29 THE COMMISSIONER: We might stop there. I want to hear
30 something formally about Mr Francis and I said before we
31 started that I thought we'd do that in a private hearing,
32 but I didn't give you a chance to say whether you wanted to
33 say anything about that as counsel assisting.

34

35 MR BOLSTER: No.

36

37 THE COMMISSIONER: Are you happy with that?

38

39 MR BOLSTER: Yes.

40

41 THE COMMISSIONER: Are you in a position to update me
42 about Mr Francis's condition?

43

44 MR SILVER: We have a certificate but I don't have it in
45 my hand. I am still awaiting inquiries --

46

47 THE COMMISSIONER: Before you tell me anything what I will

1 do is I will adjourn the public hearing now and I'll direct
2 that the part of the inquiry dealing with Mr Francis's
3 wellbeing or availability to give evidence take place in a
4 private hearing. I will adjourn the public hearing and ask
5 members of the public to go. There is no difficulty with
6 the legal representatives that are currently here being
7 here, though, is there?
8

9 MR SILVER: No.

10
11 THE COMMISSIONER: We will adjourn the public hearing
12 then. I will have to ask members of the public to leave
13 for the time being. We will resume the public hearing at
14 2.05pm.
15

16 I had better formalise this. The direction I have
17 just given, that this part of the inquiry take place in
18 private, is a direction given under section 12(2) of the
19 Royal Commissions Act. Mr Brisby can be excused for the
20 time being. He can come back at five past 2.
21

22 THE WITNESS: Thank you, Commissioner.
23

24 THE COMMISSIONER: I will also direct that with respect to
25 the transcript that is about to be recorded relating to
26 Mr Francis's availability, that its publication be
27 restricted to the legal representatives of the persons
28 currently present in the hearing room.
29

30 (At 12.55pm the public hearing was adjourned to 2.05pm)
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1 **UPON RESUMPTION**

2

3 MR BOLSTER: Q. Could the witness be given a copy of the
4 Station Road bundle. Mr Brisby, when did you first start
5 at council, what year?

6 A. 2005.

7

8 Q. The position you had from 2005 onwards was?

9 A. I previously was the manager of development assessment
10 I think for a short period, probably four or five weeks,
11 and then I was appointed director of planning and
12 environment.

13

14 Q. So sometime in 2005, director of planning and
15 environment?

16 A. That's correct.

17

18 Q. Did that position involve responsibility for
19 enforcement action in respect of non-complying development?

20 A. That's correct. Through the regulatory compliance
21 service unit.

22

23 Q. Prosecutions for illegal or unauthorised building
24 work, assuming they were proposed by council, were your
25 responsibility?

26 A. That's correct.

27

28 Q. Who made the decision to prosecute in any given case?

29 A. It could depend on the level of work and where it's
30 at. It would depend but --

31

32 Q. Who are we talking about? Tell us the levels and tell
33 us the authority.

34 A. There was a manager of regulatory compliance.

35

36 Q. That was you?

37 A. No.

38

39 Q. No?

40 A. That position reported to myself as a director.

41

42 Q. Right. Are we talking there about ordinary carports
43 not complying, granny flats not complying?

44 A. It would generally sit with the manager.

45

46 Q. It would sit with the manager. Okay. What matters
47 would be dealt with at your level?

1 A. On their merits of complexity it would have been.
2
3 Q. Such as, for example? Whilst you were there, what was
4 the most significant prosecution you carried out on behalf
5 of council?
6 A. I'm not sure. I'll be honest, I'm not sure we did a
7 lot of prosecution work. The introduction of the
8 infringement notice system really changed a lot of the
9 prosecution system. We did have a number of illegal granny
10 flats. I wouldn't say they were significant or out of the
11 ordinary for a local government authority.
12
13 Q. When you were considering prosecution for illegal or
14 an unauthorised building work, did you take advice from the
15 panel or a particular firm?
16 A. Council had a legal panel.
17
18 Q. A panel?
19 A. That's correct.
20
21 Q. Prosecution work, was that seen as more specialist and
22 would go to particular members of the panel as opposed to
23 more --
24 A. The panel varied over the last 10 years, but not
25 really.
26
27 Q. When did Deacons go on to the panel?
28 A. I couldn't tell you off the top of my head.
29
30 Q. Who else was on the panel other than Deacons? I'm
31 talking now about --
32 A. In 2005, I couldn't recall.
33
34 Q. I would like you to focus, please, on 2008. Who was
35 on the legal panel that dealt with prosecutions in 2008?
36 A. I can't recall.
37
38 Q. Was Deacons regarded as being reserved for high level
39 work, low level work or medium level work?
40 A. High level.
41
42 Q. You wouldn't go to Deacons for an ordinary granny flat
43 problem?
44 A. No.
45
46 Q. You have in front of you a bundle that deals with
47 Station Street, Auburn. You're familiar with the issues in

1 relation to Station Street, Auburn, I take it?
2 A. Yes.
3
4 Q. Let's have a look at some of the documents in that
5 bundle. Could you go, please, to page 302. Do you recall
6 seeing that advice?
7 A. Yes, I do, sir.
8
9 Q. Although it is directed in the first instance to
10 Mr Burgess as general manager, you are marked as the person
11 for whom it is to come to their attention; correct?
12 A. That's correct.
13
14 Q. That's because you initiated that advice, didn't you?
15 A. No, myself and the then general manager.
16
17 Q. You raised the issue with Deacons do you say with the
18 general manager, Mr Burgess, do you?
19 A. That's correct.
20
21 Q. When you say you raised or that he was involved in the
22 process, how did he become involved in the process?
23 A. When I was as a director of planning informed by the
24 regulatory compliance staff of the matter, which would have
25 predated this by a short amount of time, it was brought to
26 my attention that the building had been constructed by a
27 builder/developer who was now an elected member of council,
28 Councillor Ronney Oueik, and obviously that's a matter for
29 the general manager.
30
31 Q. Do you recall a meeting at Deacons in relation to this
32 matter where you and Mr Burgess met with Mr Rigg, a partner
33 there?
34 A. And Ms Zoe Baker.
35
36 Q. And Ms Baker. It was unusual for Mr Burgess to attend
37 a meeting with legal advisers about a particular
38 prosecution, wasn't it?
39 A. In normal circumstances, yes, but not one involving an
40 elected member of council.
41
42 Q. Mr Burgess indicated to you that he was concerned
43 about the matter because the developer was a councillor;
44 correct?
45 A. No. I think it would be more the other way around,
46 sir. I brought it to his attention and raised that it was
47 a current elected member who had constructed the building,

1 albeit prior to him being elected.

2

3 Q. My question was about him attending the meeting. You
4 didn't have to drag him along to the meeting, did you?

5

6 MR ROBSON: I object to the question.

7

8 MR WHEELHOUSE: I object to the question.

9

10 MR BOLSTER: Q. All right. Let me put it another way.
11 Mr Burgess, once he became aware of the matter, wanted to
12 attend the meeting, didn't he?

13 A. I don't recall exactly, but it makes sense to me, yes.

14

15 Q. Can you tell the Commission why it was that there was
16 no further action in relation to this prosecution after you
17 received the advice of Deacons in December 2008?

18 A. Yes, sir. Mr Commissioner, after receipt of the
19 written advice dated December 2008 --

20

21 MS DUGGAN: I object to the question. Commissioner, the
22 bundle itself makes it apparent that there was further
23 action taken.

24

25 MR BOLSTER: Q. I will put it another way. There was no
26 prosecution launched, was there, Mr Brisby?

27 A. In December 2008, no.

28

29 Q. There was no prosecution launched in relation to this
30 matter until this year?

31 A. That's correct.

32

33 Q. I don't want to ask you about the decision to
34 prosecute this year. I want to ask you about why, as best
35 you can inform the Commission, nothing was done
36 between December 2008 and the end of 2015.

37

38 MS DUGGAN: To commence prosecution?

39

40 Q. To commence prosecution.

41 A. Mr Commissioner, following the written advice received
42 from Deacons in December 2008, I discussed the matter with
43 the then general manager, as I repeat; that we were talking
44 about an elected member of council being the
45 builder/developer, and Mr Burgess at the time informed me
46 he either was or already had referred the matter to ICAC
47 and that he would take carriage of the matter.

1
2 Q. You appreciated, didn't you, Mr Brisby, that the issue
3 that was raised with ICAC was the conduct of the certifier
4 in question, Mr Malouf; correct?
5 A. Not at that time I wasn't, no.
6
7 Q. And that it was always open to council to prosecute,
8 regardless of anything that ICAC said or did about the
9 matter, correct?
10 A. I would think it would be in normal situations,
11 Mr Commissioner, inappropriate to action anything of that
12 magnitude while ICAC were investigating.
13
14 Q. You didn't understand, did you, at any stage,
15 Mr Brisby, that ICAC were investigating whether or not
16 there were authorised or unauthorised works at
17 Station Street, Auburn, did you?
18 A. I wasn't aware of the extent of Mr Burgess's referral
19 to ICAC other than the matter was, he informed me, before
20 ICAC.
21
22 Q. The file to deal with enforcement of Station Street,
23 Auburn, was your file; correct?
24 A. I would disagree at this, and I'll explain why.
25 Again, we are talking about a member, an elected member of
26 council, and it would generally be the responsibility of
27 the general manager.
28
29 Q. Well, who had the file? Was it in your room or was it
30 in Mr Burgess's office?
31 A. I wasn't sure where the file was at that time.
32 Mr Burgess was dealing directly with the manager of
33 regulatory compliance, Mr Lawrence.
34
35 THE COMMISSIONER: Q. I'm sorry, who?
36 A. Mr Rob Lawrence.
37
38 MR BOLSTER: Q. Have you read a statement that
39 Mr Burgess has prepared in relation to this matter?
40 A. I only received it very late this morning, and with my
41 legal representatives have briefly reviewed it.
42
43 Q. He says it was his practice as general manager to have
44 weekly meetings with all directors at Auburn City Council.
45 Is that your recollection?
46 A. No, that's incorrect.
47

1 Q. He says that the purpose of those meetings was to
2 discuss issues of strategic importance and progress on work
3 programs, as well as areas of special interest. Do you
4 agree with that or disagree with that?
5 A. I agree we had meetings. They were never regular
6 weekly designated meetings.
7
8 Q. How often do you say those meetings occurred with the
9 directors?
10 A. Oh, with myself, independently from time to time.
11 They would be sometimes back-to-back and then sometimes not
12 for quite a while. It was inconsistent.
13
14 Q. You see, you had the delegated authority, may
15 I suggest, to deal with all prosecution matters on behalf
16 of council?
17 A. I would agree with that, Mr Commissioner, except in
18 relation to an elected member.
19
20 Q. Could you have a look at the document on page 307 of
21 the bundle. You will see there it is a letter that
22 Mr Burgess sent to the ICAC on 8 January 2009. When did
23 you first see that letter?
24 A. Early this year.
25
26 Q. What time this year?
27 A. I think around March this year.
28
29 Q. After the appointment of Mr May?
30 A. That's correct.
31
32 Q. Is it fair to say that you or the council received a
33 media inquiry from a journalist at the Sydney Morning
34 Herald about this particular issue?
35 A. That's correct.
36
37 Q. Steps were undertaken to retrieve the relevant
38 paperwork from council files?
39 A. That's correct.
40
41 Q. Is it your evidence that the first time you saw this
42 document was after that search had been completed?
43 A. That's my recollection.
44
45 Q. You will see that that letter refers to a report of
46 16 December?
47 A. That's correct.

1
2 Q. Were you able to obtain a copy of that report in the
3 search of the council files?
4 A. I'm not sure what the report is. I'm not aware of
5 that report being part of council files.
6
7 Q. Was there any restriction placed on access to that
8 file?
9 A. Not by myself, no.
10
11 Q. Not by yourself?
12 A. No.
13
14 Q. Was there any restriction placed on access to that
15 file by anyone?
16 A. I'm not aware.
17
18 Q. Wasn't it the case that there was a Trim restriction
19 on access to the file from which this document was found?
20 A. I'm not aware of that --
21
22 Q. You're not aware of that?
23 A. -- either way.
24
25 Q. You were the general manager when that search was
26 undertaken?
27 A. This year?
28
29 Q. Yes.
30 A. Yes.
31
32 Q. And you acquainted yourself with all of the documents
33 on the file?
34 A. To the best of our ability, yes.
35
36 Q. Did you not ask yourself, "Where is the report to
37 ICAC?"
38 A. Yes, I did.
39
40 Q. What was the result of your inquiries in that regard?
41 A. We were unable to locate it.
42
43 Q. Is it your evidence that Mr Burgess took over
44 responsibility for the prosecution of this matter from you?
45 Is that your evidence?
46 A. I wouldn't use the word "prosecution",
47 Mr Commissioner. I would say he took over the handling of

1 the matter.
2
3 Q. The carriage of the matter?
4 A. Yes, and I would have awaited instruction.
5
6 Q. It was still a prosecution within your department of
7 council, correct?
8 A. I'm sorry, could you clarify?
9
10 Q. It was a development assessment matter that you were
11 responsible for, ultimately; correct?
12 A. Correct. If I may clarify, Mr Commissioner, the
13 matter involved an elected member of council.
14
15 Q. Yes.
16 A. And required the concurrence or intervention of the
17 general manager.
18
19 Q. Did you follow the matter up with Mr Burgess at any
20 time after January 2009?
21 A. Yes. There was some further advice received in
22 October, I think, September/October 2009 from Deacons which
23 was slightly different and on the odd occasion I informally
24 raised it with Mr Burgess, and I was still well aware the
25 issue was a matter before ICAC.
26
27 Q. You were made aware of the advice in October 2009,
28 were you?
29 A. The advice - there was a second lot of advice from
30 Deacons - I think it's October 2009.
31
32 Q. Why did that come to you?
33 A. I was the point of contact for the legal
34 representatives.
35
36 Q. You spoke to Deacons, didn't you? You spoke to
37 Deacons about the matter in October to get that advice,
38 didn't you?
39 A. That's correct, I would have sought further advice.
40
41 Q. You were pursuing the matter in October 2009, weren't
42 you?
43 A. I was seeking further advice so the general manager
44 and I could resolve the matter.
45
46
47 Q. When you got that advice on 14 October 2009, what did

1 you do?
2 A. I discussed it with - I presented it to the
3 general manager and discussed it further with him.
4
5 Q. What did he say?
6 A. I don't recall. I do recall the matter had not been
7 finalised with ICAC at that point.
8
9 Q. He didn't say "sit on the report and do nothing", did
10 he?
11 A. He did not say that, I agree.
12
13 THE COMMISSIONER: Sit on the advice you mean?
14
15 MR BOLSTER: Sit on the advice.
16
17 Q. He made it clear to you that he wanted to pursue the
18 matter, didn't he?
19 A. No, that's totally incorrect.
20
21 Q. What did he tell you was his inclination about what
22 should happen in relation to this matter?
23 A. My recollection is it was a matter that he was
24 awaiting the outcome from ICAC.
25
26 Q. From ICAC?
27 A. He didn't want to prejudice it.
28
29 Q. Did you receive any further correspondence from ICAC?
30 A. I have never received correspondence from ICAC on this
31 matter.
32
33 Q. Mr Burgess dealt with ICAC, didn't he, and you dealt
34 with Deacons, didn't you? True?
35 A. That's correct.
36
37 Q. ICAC dealt with Mr Malouf; Deacons dealt with the
38 advice about the illegal works, true?
39 A. That's correct.
40
41 Q. Mr Burgess never told you not to prosecute, did he?
42 A. Sorry, could you repeat the question?
43
44 Q. Mr Burgess never told you not to prosecute Mr Oueik or
45 his companies, did he?
46 A. Never not to?
47

1 Q. Yes.
2 A. He didn't provide any advice either way.
3
4 Q. He left it to you, didn't he, Mr Brisby?
5 A. No, that's incorrect.
6
7 Q. He neither told you to prosecute or not prosecute. It
8 was your responsibility, wasn't it, Mr Brisby?
9 A. No, that's totally incorrect.
10
11 Q. That's why Deacons wrote to you?
12
13 MR ROBSON: I object to the question.
14
15 MR BOLSTER: I withdraw it.
16
17 Q. 2010, nothing had happened. Did you discuss the
18 matter with Mr Burgess in 2010?
19 A. I don't recall discussing it much past late October,
20 or October 2009.
21
22 Q. 2011, no discussions?
23 A. No.
24
25 Q. 2012?
26 A. No.
27
28 Q. By 2012 the relationship between Mr Oueik and
29 Mr Burgess had broken down, as you perceived it; true or
30 false?
31 A. By what period, sir?
32
33 Q. By the end of 2012.
34 A. By the end of 2012 it was well known that Mr Burgess
35 had some problems with the elected members, yes. I was a
36 member of the executive.
37
38 Q. My question was very different. The relationship
39 between Mr Burgess and Mr Oueik was a very difficult one
40 in December 2012; correct?
41 A. I'm not sure specifically, Mr Commissioner, about
42 Councillor Oueik, but I was aware, as a member of
43 Mr Burgess's executive team, that he was having trouble
44 with the elected council.
45
46 Q. Is it your evidence that you didn't pay any attention
47 to the relationship between Mr Oueik and Mr Burgess in

1 2012?
2 A. Oh, I'm aware that and I would agree that Mr Oueik was
3 one of the elected members and Mr Burgess was having
4 trouble as the general manager.
5
6 Q. Mr Oueik was having trouble with Mr Burgess too,
7 wasn't he?
8 A. Oh, that's a question for Mr Oueik.
9
10 Q. You had a close relationship with Mr Oueik, didn't
11 you?
12 A. Yes.
13
14 Q. It was more than professional, you were friends;
15 correct?
16 A. It was more a working relationship which is very
17 important as part of our job in a political environment.
18
19 Q. There was a council meeting where Mr Burgess was
20 terminated; do you remember that?
21 A. Terminated, yes, I think, yes.
22
23 Q. At a subsequent council meeting he was reinstated and
24 able to resign; is that correct?
25 A. That's correct.
26
27 Q. When did you become aware that Mr Burgess was to be
28 terminated at the first council meeting?
29 A. Mr Burgess called an urgent meeting of the executive
30 team mid-afternoon on that day and informed us.
31
32 Q. Had you had any discussions with Mr Oueik about the
33 matter before then?
34 A. No.
35
36 Q. None at all?
37 A. No.
38
39 Q. Mr Attie, had he discussed the matter with you?
40 A. No.
41
42 Q. No other member of council's proper council had
43 discussed that issue with you?
44 A. I wouldn't discuss matters relating to Mr Burgess with
45 elected members.
46
47 THE COMMISSIONER: Q. Who comprises the executive team?

1 There was you --
2 A. At that time, the director of planning, myself,
3 Mr Graeme Thomas was director of business. Mr Paul Donovan
4 was the director of works and services and
5 Ms Michelle Dowling was the director of community services.
6
7 MR BOLSTER: Q. When did you find out that
8 Mr Fitzgerald Senior would be joining the staff of council?
9 A. As the acting general manager? Whatever date council
10 appointed him.
11
12 Q. When did you become aware that Mr Fitzgerald Senior
13 was carrying out a review of the staffing structure at
14 council?
15 A. There was a council resolution, I understand, coming
16 out of his appointment.
17
18 Q. You say, do you, that you had no notice of that
19 restructure before the council resolved to implement it?
20 A. I'm sorry, I'm not sure --
21
22 Q. Did you know there was a restructure that had been
23 prepared, a restructuring report that had been prepared by
24 Mr Fitzgerald Senior? Did you know about that before it
25 went to council and was adopted by council?
26 A. I was aware that a restructure was going to council.
27 This is late 2013?
28
29 Q. Yes.
30 A. Yes, I was aware.
31
32 Q. You were asked for your input as to who ought be
33 considered for redundancy or termination under that
34 restructure?
35 A. No.
36
37 Q. You weren't?
38 A. No.
39
40 THE COMMISSIONER: When was the restructure to take place?
41
42 Q. It was August 2013, was it?
43 A. Yes, July/August 2013.
44
45 THE COMMISSIONER: Q. You weren't general manager then?
46 A. No.
47

1 Q. This was still when Mr Fitzgerald was acting general
2 manager?
3 A. Mr Fitzgerald was acting general manager. My
4 understanding, as part of his appointment, he was tasked
5 with carrying out the organisational review.
6
7 MR BOLSTER: Q. The day after Mr Fitzgerald arrived, did
8 you relay to him the circumstances surrounding the
9 Station Street issue?
10 A. No.
11
12 Q. You didn't?
13 A. No.
14
15 THE COMMISSIONER: The date for this would be March 2013?
16
17 MR BOLSTER: Yes.
18
19 THE COMMISSIONER: Yes.
20
21 MR BOLSTER: Q. Mr Burgess left the building after the
22 first council meeting; correct?
23 A. Oh, I couldn't recall.
24
25 Q. He wasn't there to provide a handover to the incoming
26 general manager --
27 A. No, that's correct.
28
29 Q. -- as to what would happen?
30 A. No.
31
32 Q. No. Who provided the handover?
33 A. I'm not sure. I think that would be a matter for the
34 mayor, I would have thought.
35
36 Q. The mayor. And who was the mayor?
37 A. In March --
38
39 Q. Mr Attie?
40 A. Former Councillor Attie.
41
42 Q. Do you say that you left the issue of the unresolved
43 prosecution of Mr Oueik and his companies to the mayor?
44 A. No, I didn't say that, sir.
45
46 Q. Why didn't you provide Mr Kennedy with that briefing?
47 A. Sorry --

1
2 THE COMMISSIONER: Mr Kennedy? Do you mean Mr Fitzgerald?
3
4 THE WITNESS: -- Mr Kennedy, I'm not aware of --
5
6 MR BOLSTER: Mr Fitzgerald, I'm sorry.
7
8 THE COMMISSIONER: John Fitzgerald, yes.
9
10 MR BOLSTER: An unfortunate word association, I do
11 apologise.
12
13 THE COMMISSIONER: You will have to go back further than
14 2013.
15
16 MR BOLSTER: Q. Mr Fitzgerald, he wasn't to know
17 anything of the prosecution?
18 A. He wouldn't have been aware of it, no.
19
20 Q. How was he made aware of it?
21 A. I don't think I can answer that. By then a lot of
22 time had passed and I was - I'd forgotten about it. If
23 asked I would have inquired of Mr Burgess if he'd been
24 here. If Mr Burgess wasn't here, it was a matter that had
25 been resolved.
26
27 Q. You'd forgotten about it, is that your evidence?
28 A. The matter had continued from 2008, 2009 and then by
29 then it was being handled by the then general manager,
30 which is appropriate, in relation to the prosecution of an
31 elected member. No staff member, even at director level,
32 would instigate a prosecution against them.
33
34 Q. Didn't you think it was important to inform the
35 incoming general manager about an existing potential
36 prosecution of a member of council?
37
38 MR WHEELHOUSE: I object to that. There was no existing
39 prosecution.
40
41 MR BOLSTER: I thank my learned friend. I will withdraw
42 it and put it another way.
43
44 Q. Did you not think it important to relay to the
45 incoming acting general manager the fact that there was, in
46 your area of responsibility, the possibility of a
47 prosecution against a member of council or a company

1 associated with it?

2 A. No. Again, I'd just like to clarify, Mr Commissioner,
3 I didn't see it as my area of responsibility; nor would
4 I now elected. I can only repeat: the prosecution of an
5 elected member is a difficult situation for any council.
6 I think anyone would appreciate that, and the fact that
7 that scenario was there is a matter for the CEO, the
8 general manager.

9

10 THE COMMISSIONER: Q. Is that the mayor at the time was
11 aware, do you know?

12 A. And I took the view that Mr Burgess had handled it or
13 it was still ongoing at ICAC.

14

15 MR BOLSTER: Q. The mayor at the time, in 2013 are you
16 talking about, in March 2013?

17 A. No, 2008 to 2009.

18

19 Q. The mayor then was Councillor Simms?

20 A. Councillor Irene Simms.

21

22 THE COMMISSIONER: Q. The reason you are saying it was
23 the general manager's responsibility is because it involved
24 a member of the elected council. The fact that you are
25 saying that this was the responsibility of the general
26 manager because it involved an elected member of council,
27 the potential prosecution of an elected member of council,
28 is that more like an unwritten protocol, or was there some
29 written policy about that that those matters should be
30 handled by the general manager?

31 A. I'm not aware it's written there, but I think it makes
32 a lot of commonsense in the political environment we work
33 in.

34

35 MR BOLSTER: Q. Until Mr Burgess was sacked, it was his
36 responsibility, that's your evidence?

37 A. I'm not sure if Mr Burgess was sacked.

38

39 Q. Until he left the position --

40

41 THE COMMISSIONER: Ceased employment.

42

43 MR BOLSTER: Q. -- as general manager, it was his
44 responsibility; correct?

45 A. That's my view, yes. I'd never been advised that the
46 matter had been resolved at ICAC.

47

1 Q. The day after Mr Fitzgerald was appointed to replace
2 him on an acting basis, it became Mr Fitzgerald's
3 responsibility; correct?
4 A. Correct.
5
6 Q. Despite the fact that Deacons had been writing to you
7 about it in the past; correct?
8 A. I'm no legal rep --
9
10 MR WHEELHOUSE: I object to that question. The letter of
11 14 October 2009 at page 312 is expressly addressed to
12 Mr Burgess, as we already know.
13
14 THE COMMISSIONER: Yes, but for "Attention:
15 Mr Mark Brisby". That's got to mean something; I don't
16 know what.
17
18 MR BOLSTER: Q. They are addressed to you because you
19 asked for that advice; correct?
20 A. That's correct.
21
22 Q. Because in the ordinary course, a prosecution of
23 anyone for illegal building works within Auburn Council is
24 your responsibility, correct?
25 A. Unless it involved an elected member.
26
27 Q. Where's the rule about that, Mr Brisby? Where is the
28 procedure in council about that?
29 A. I think it makes commonsense.
30
31 Q. Why didn't you go to Deacons? Why didn't you say to
32 Mr Burgess in the first instance, "Mr Burgess, we have this
33 issue, it's not my responsibility, it's yours", and then
34 walk away? Why didn't you just hand it over to Mr Burgess
35 completely?
36 A. That's how it did happen. It was handed - it wasn't
37 handed to Mr Burgess, he took carriage of the matter.
38
39 Q. You went to the briefing?
40 A. To the meeting?
41
42 Q. At Deacons, the first meeting?
43 A. That's correct.
44
45 Q. A year later you asked for follow-up advice. It was
46 addressed to you; correct?
47 A. That's correct.

1
2 THE COMMISSIONER: It was marked for his attention.
3
4 MR BOLSTER: Q. It was marked for your attention,
5 correct?
6 A. That's correct. I might, Mr Commissioner, just
7 clarify that, if I can.
8
9 THE COMMISSIONER: Yes.
10
11 THE WITNESS: I was the contact for the legal
12 representatives and had carriage with council's legal
13 instruction database, which is the way we source legal
14 advice. It is the issue of an instruction, what we were
15 looking for, and that's not uncommon to have something come
16 back and --
17
18 THE COMMISSIONER: Q. Sorry, by that answer, do I take
19 it you are saying you were formally designated as the point
20 of contact for Deacons?
21 A. That's correct.
22
23 MR BOLSTER: Q. You say you had responsibility for the
24 database about existing legal matters, do you?
25 A. That's correct.
26
27 Q. Did you give Mr Fitzgerald a briefing about all of the
28 existing legal matters on the database when he walked in
29 the door in March 2013?
30 A. No.
31
32 Q. You didn't?
33 A. No.
34
35 Q. Didn't you think it was important that he'd know about
36 all the legal matters that council was exposed to at that
37 time?
38 A. I dealt with Mr Fitzgerald on a request basis of what
39 he was looking for and I didn't deal directly with him on
40 any specific briefing, nor did he ask for any.
41
42 Q. He didn't ask for any briefing from you about existing
43 legal matters, did he?
44 A. No.
45
46 Q. Not one?
47 A. No.

1
2 Q. Whilst he was here, did you give him any briefings
3 about any other legal matters?
4 A. No, that I can recall.
5
6 Q. By October, you're the general manager?
7 A. That's correct.
8
9 Q. Is it your evidence that nothing was done about
10 Station Street, despite you being the general manager and
11 you being responsible for it, because you forgot about it?
12 A. I wasn't aware of it until it was brought to our
13 attention in March this year. I wasn't aware that it had
14 been resolved.
15
16 Q. Please answer my question. Is your explanation as to
17 why nothing happened, once you assumed the chair of
18 general manager and had actual responsibility for it, as
19 you say, that you forgot about it?
20 A. No, I'm not saying I forgot about it, no.
21
22 Q. You knew about it, didn't you?
23 A. I knew about it when it was brought to my attention
24 and --
25
26 Q. You knew about it --
27
28 MR ROBSON: Let him answer the question.
29
30 THE COMMISSIONER: I do not think he had quite finished
31 his answer.
32
33 MR BOLSTER: Q. Yes.
34 A. I knew about it, again, going back a number of years,
35 the matter was being handled by the then general manager in
36 dealing with ICAC and he was dealing directly with our
37 compliance staff. I was out of that loop and I left it at
38 that.
39
40 Q. Throughout the remainder of 2013, after you were
41 appointed, you knew about it, didn't you?
42 A. Well, I was always aware of it, brought back to my
43 attention. There was a lot of matters that --
44
45 THE COMMISSIONER: I think we might need to find out what
46 he knew about prosecution --
47

1 MR BOLSTER: Q. You knew about the fact that Deacons had
2 recommended prosecution; correct?
3 A. Deacons recommended two items. In their first advice,
4 they recommended prosecution, Mr Commissioner. The second
5 advice recommended the issue of infringement notices, ie,
6 fines.
7
8 Q. They stated in their advice that there was a strong
9 public interest in pursuing the matter either way, didn't
10 they?
11
12 THE COMMISSIONER: Which advice?
13
14 MR BOLSTER: The first advice. Let's go to it
15 particularly.
16
17 Q. The first advice --
18
19 THE COMMISSIONER: That is page 305 when you're talking
20 about strong public interest, second-last paragraph.
21
22 MR BOLSTER: Q. Yes, the second-last paragraph:
23
24 *... there is a strong public interest in*
25 *Council pursuing the BBC Developments Pty*
26 *Limited ...*
27
28 They said that, despite the defences that they had given
29 you advice about as being open to the builder/developer.
30 You appreciated that, didn't you?
31 A. I appreciated the public interest and the
32 sensitivities and, Mr Commissioner, that's why I repeat the
33 matter needed to be brought to the attention of the
34 organisation's CEO, not anyone further down the line in
35 dealing with an elected member.
36
37 Q. You knew that this was an issue that had been
38 unresolved from December 2008 right through until you were
39 appointed CEO; correct?
40 A. I wasn't aware that it had been unresolved, no.
41
42 Q. You knew that no prosecution or penalty notice had
43 been issued in relation to Mr Oueik, didn't you?
44 A. No, that's not correct, I wasn't aware of what
45 happened.
46
47 Q. You assumed that it occurred, did you?

1 A. I assumed the matter was dealt with by the then
2 general manager.
3
4 Q. You assumed that he actually initiated a prosecution,
5 do you?
6 A. No.
7
8 Q. Or that he formed the decision not to prosecute?
9 A. I wasn't aware of what he formed, but I was under the
10 assumption that he had resolved the matter.
11
12 Q. You just left it to him, did you?
13 A. That's correct.
14
15 THE COMMISSIONER: Q. You would have been told if there
16 was a prosecution, though, wouldn't you?
17 A. I would assume that I'd be aware of it.
18
19 MR BOLSTER: Q. You never followed it up with Mr Burgess
20 at any time, did you?
21 A. Yes.
22
23 Q. When did you follow it up?
24 A. In briefings and wherever we --
25
26 Q. When? When was the last time you raised this with
27 Mr Burgess?
28 A. Probably late 2009.
29
30 Q. 2009. What did he say?
31 A. He said the matter is still with ICAC and he would be
32 dealing with it.
33
34 Q. You knew that he was dealing with ICAC in relation to
35 the conduct of the relevant certifier caused by council,
36 didn't you?
37 A. I wasn't aware of what he was doing, but, yes,
38 I understand that's the pattern.
39
40 Q. He wasn't asking ICAC at all about what he should be
41 doing with BBC, was he?
42 A. I wouldn't think he would, no.
43
44 Q. Because that was precisely what he left to you;
45 correct?
46 A. No, that's not correct.
47

1 Q. In 2014, were you aware of council staff raising fire
2 safety issues in relation to a property at 84A Auburn Road?
3 A. In 2014, no.
4
5 Q. Mr Okorn's role, would that in the ordinary course --
6
7 THE COMMISSIONER: Can you just explain who Mr Okorn is,
8 please.
9
10 MR BOLSTER: Q. Mr Okorn is a member of your staff;
11 correct?
12 A. Yes.
13
14 Q. He's still with council?
15 A. Currently the manager of development assessment.
16
17 Q. He would deal with fire safety issues?
18 A. That is correct.
19
20 Q. Ms Pandzic was one of your fire safety officers?
21 A. Compliance officer.
22
23 Q. She would deal with fire safety issues if they were
24 brought to her attention, correct?
25 A. Not - depending in what context. I'm not aware that
26 she would be qualified to be dealing with fire safety.
27
28 Q. If there was a planning issue in relation to the use
29 of premises that had fire safety implications, that is, the
30 use of it perhaps as a boarding house when unapproved, that
31 would fall within her --
32 A. Yes, Mr Commissioner, in relation to illegal works or
33 illegal land use or illegal - yes, that's correct.
34
35 Q. Were you aware of any issues arising out of
36 84A Auburn Road?
37 A. Not until the fire occurred, which I can't recall at
38 the moment. The fire occurred over a weekend, I think,
39 late last year.
40
41 Q. How did you become involved in the matter then?
42 A. I had an inquiry from one of the councillors,
43 Councillor George Campbell, asking for an update of what
44 had occurred.
45
46 Q. What did you find out when you looked into the matter?
47 A. That there had been some issues around possible

1 illegal accommodation.

2

3 Q. Did the issue of enforcement arise in the discussions
4 you had after you spoke to Councillor Campbell?

5 A. No.

6

7 Q. Did you speak to Mr Okorn about the matter?

8 A. I would have - probably to Mr Okorn or Mr Francis.
9 I'm not aware of the detail of that.

10

11 Q. Did you take any action?

12 A. I can't recall. I don't have those details in front
13 of me, Mr Commissioner.

14

15 MR ROBSON: Might I just interrupt at this stage? It may
16 well be words from the witness's mouth, but in relation to
17 84A Auburn Road, it is not a matter about which we have
18 been given any assistance, information, or any other matter
19 of notice advising this witness. It may be a matter of
20 concern here. I understand, and am being told by those
21 instructing me, apparently it rears its head in the
22 statement we were provided this morning, the 123-page
23 statement.

24

25 I take some objection to this, Commissioner. The
26 witness hasn't, I will be careful with what I say in front
27 of the witness, but we, when giving advice and assisting
28 him in the preparation, have no knowledge of it.

29

30 THE COMMISSIONER: This is an inquiry and things emerge at
31 the last moment. Counsel Assisting is exploring with the
32 witness what he knows about this issue. If ultimately,
33 after he does that, you feel you are at any disadvantage
34 you can let me know and we can see what we can do to
35 accommodate that.

36

37 MR ROBSON: Thank you, Mr Commissioner. I won't cavil
38 with that because you gave me that indulgence earlier. I'm
39 not suggesting that this is in any way intentional, but I'm
40 the only one who has this disadvantage that may otherwise
41 be described at the Bar table.

42

43 THE COMMISSIONER: I can assure you, I have been told, the
44 reason you didn't get Mr Burgess's was a complete
45 oversight.

46

47 MR ROBSON: I understand that, but the fact is

1 I generally didn't know about 84A and I would be the one,
2 or we would be the ones who would be most likely to be
3 affected by it.

4
5 THE COMMISSIONER: I don't know how much I know about it
6 at the moment.

7
8 MR BOLSTER: Can I say this to assist both my learned
9 friends, they will be provided with statements relating to
10 84A shortly. I certainly have no issue, once Mr Brisby has
11 seen those statements from Ms Pandzic and from Mr Okorn, if
12 he needs to explain his involvement in relation to the
13 matter.

14
15 MR DUGGAN: Can I just say for my part, the difficulty
16 I have is that I don't know whether I can make relevance
17 objections or whether this falls within the terms of the
18 inquiry because I just simply don't know anything about it.

19
20 THE COMMISSIONER: I understand what you are saying,
21 Mr Duggan, but, again, it is an inquiry and it is a bit of
22 a moving feast and people are being spoken to or are coming
23 forward during the public hearing. We are just having to
24 roll with the punches that way. It is not a trial.
25 I think we have gone way over the top of what we need to
26 for procedural fairness on everything we have dealt with so
27 far. As I just said to Mr Robson, if there is a difficulty
28 you have at a later stage, you can let me know and if
29 I think what you are saying is reasonable, we will
30 accommodate it in some way.

31
32 MR DUGGAN: Thank you, Commissioner.

33
34 MR BOLSTER: Q. I want to move on to another topic,
35 Mr Brisby. Could you describe, please, your relationship
36 with Mr Francis?

37 A. Professional colleagues.

38
39 Q. Professional colleagues? Not friends?

40 A. Yes, I'd say we're friends.

41
42 Q. Friends.

43
44 THE COMMISSIONER: Q. How long did you work together?
45 A long time?

46 A. For the whole time at Auburn. I think he started the
47 week before me or something.

1
2 Q. For about 15 years or so?
3 A. Yes.
4
5 MR BOLSTER: Q. He has essentially followed you up the
6 chain, hasn't he, through Auburn? He came in as a
7 development officer --
8 A. He was generally seen as the second-in-charge of the
9 old planning and environment department, yes.
10
11 Q. When you were appointed general manager, he took your
12 job, effectively?
13 A. No, my old job didn't exist.
14
15 Q. Many of the features of your old job were contained in
16 that? For example, dealing with the planning proposals
17 that we discussed earlier today, he dealt with those in the
18 same way that you had dealt with them, correct, or he had
19 the same responsibilities for them that you had; correct?
20 A. Correct.
21
22 Q. How many times have you been to his house?
23 A. I've been to his house twice.
24
25 Q. Twice. Once with Mr Oueik. When was the second time?
26 A. I can't really recall. I think I may have picked him
27 up to go to a conference or just to visit his new house.
28
29 Q. Has he been to your house? Have you ever socialised
30 with him outside of work?
31 A. (No response).
32
33 THE COMMISSIONER: You might have to answer.
34 A. Sorry, Mr Commissioner. No.
35
36 MR BOLSTER: Q. Can I ask you why you took him to
37 Mr Oueik's house?
38 A. Former Councillor Oueik invited us to look at his new
39 house.
40
41 Q. What did he do when you went up. What did Mr Oueik
42 do? What did he show you?
43 A. He just showed us his new house.
44
45 Q. What did that involve?
46 A. The tour of a new house.
47

1 Q. What did the discussions involve at the house?
2 A. I'm not sure.
3
4 Q. What did you talk about? Did you talk about work?
5 A. The house, and what he liked and where it was. I did
6 make a comment it was too far away from Auburn for him and
7 I didn't expect he'd ever, ever stick it out. But other
8 than that, it was general chitchat.
9
10 Q. Did you go there on a work day?
11 A. Yes.
12
13 Q. During work hours?
14 A. Yes.
15
16 Q. The last thing I want to deal with you is the issue of
17 parking compliance within the area around Al-Faisal College
18 and other schools in the Auburn local government area. Was
19 there a period of time in 2013 where directions were given
20 by council staff to the parking officers and rangers about
21 how people ought be booked in relation to particular
22 schools?
23 A. I do recall issues around schools, but it predates
24 2013.
25
26 Q. Does it? Well, when did the issue about parking
27 enforcement in schools arise, as you recall it?
28 A. To my recollection, it would have been approximately
29 2011, maybe early 2012.
30
31 Q. How did that arise?
32 A. It was raised with myself in the previous position,
33 director of planning and environment, by the mayor and a
34 couple of other councillors.
35
36 THE COMMISSIONER: Q. Who was the mayor then?
37 A. Councillor Ray Oueik and a couple of other councillors
38 who were receiving major angst from the community that they
39 felt that the rangers were being overzealous, it was just
40 revenue raising; the real issues around schools weren't
41 being addressed and as community leaders, those - the mayor
42 and a couple of councillors asked us to look at it and deal
43 with it.
44
45 Q. Overzealous in relation to schools or overzealous
46 generally?
47 A. They always had a comment they were overzealous

1 generally, but the matter before us, Mr Commissioner, was
2 about schools.

3

4 MR ROBSON: Did the witness use the expression the real
5 issues weren't being addressed? I couldn't hear what he
6 said.

7

8 THE COMMISSIONER: When he said there was angst, when
9 there was a complaint from the community about rangers
10 being overzealous, I said was that overzealous generally or
11 in relation to the schools, and the answer was there was a
12 feeling that they were generally overzealous but this
13 context was about schools.

14

15 Q. Is that right?

16 A. That's correct, Commissioner.

17

18 MR BOLSTER: Q. Did you discuss the issue of parking in
19 relation to the two Muslim schools in the local government
20 area with Mr Oueik?

21 A. He raised them with me, yes.

22

23 Q. What did he say about parking enforcement in relation
24 to those two schools?

25 A. That he'd received feedback from the general community
26 that he felt council, through its parking rangers, were
27 being overzealous, and the real issues weren't being
28 addressed.

29

30 Q. Do you remember the exact words that he used?

31 A. No. Sorry.

32

33 Q. Did you discuss the matter with Mr Lawrence after you
34 spoke to Mr Oueik?

35 A. I would have, as Mr Lawrence was the responsible
36 manager.

37

38 Q. What did you tell Mr Lawrence?

39 A. I asked for him - I relayed the concerns of the mayor
40 and a couple of other councillors.

41

42 THE COMMISSIONER: Q. What was Mr Lawrence's position
43 again?

44 A. The manager of the regulatory group for compliance and
45 if we could - if he could go away, discuss it with his
46 staff and we'll sit down and see if we could work a further
47 way forward to try and deal with the matter as council -

1 I didn't want council to be seen in a bad light with the
2 community. I also had a real responsibility to protect the
3 rangers. The rangers are in a very difficult job. They're
4 often in dangerous situations and if situations were
5 getting overheated in the community, particularly around
6 schools, we needed to provide them some direction and
7 leadership.

8
9 MR BOLSTER: Q. Do you recall the phrase
10 "self-regulating" being raised by Mr Oueik?

11 A. Not by Mr Oueik.

12
13 Q. Do you recall that phrase being raised by anyone in
14 connection with parking and the Muslim schools?

15 A. It was a term we were all using in general as a way
16 similar to education of the drivers and parking.

17
18 Q. "Self-regulating" in that context means that you don't
19 enforce against them, you let them take care of it
20 themselves; is that correct?

21 A. It's seen more as an education process. We'd still
22 have the rangers onsite, rangers available, moving people
23 around, providing guidance, providing assistance.

24
25 Q. You told Mr Lawrence, didn't you, that the mayor,
26 Mr Oueik, said, "We don't need to fine these people, we
27 need to move them on."

28 A. I don't recall that.

29
30 Q. You don't recall that?

31 A. No.

32
33 Q. That was the gist of what you were told by Mr Oueik,
34 wasn't it, "We don't want to enforce against people
35 infringing for parking offences at these schools, you want
36 to talk to them"?

37 A. We wanted to provide education in certain areas rather
38 than - the general feel we were getting back was that the
39 issuing of fines day after day after day wasn't dealing
40 with the issue. The issue is a couple-fold. One is we
41 need good solid traffic movement around there, as well as
42 safety, but we never - the real issue was the "No Parking"
43 areas that come into play. If maybe I can explain a little
44 bit further, Mr Commissioner?

45
46 Q. Sure.

47 A. It is the "No Parking" ones that get angst. It's

1 usually mothers that have young children, kindergarten
2 kids, kindergarten, year one, year two, they often have
3 another toddler, maybe one or two in the car, in a car
4 seat. They get - the "No Parking" during the school
5 pick-up and drop-off hours relate to two things you can do
6 to drop and pick up your child, is you get - excuse me.
7 I may not be exact on this. I think you're allowed to park
8 your car and only leave your car for three metres.
9

10 THE COMMISSIONER: Three minutes.

11
12 MR BOLSTER: Q. Three minutes?

13 A. Three minutes and you can only go two metres, or it
14 could well be the other way around. A lot of - some of the
15 schools, and I know when we checked our files, require you
16 to go onsite to pick up your kindergarten, year one,
17 year two, I'm not sure where it finishes. Mothers often
18 have another toddler they can't leave in the car.
19

20 What was happening is the rangers were doing their job
21 and it was always conceded, it was never a criticism of the
22 rangers. The rangers would move in, a mother or a parent
23 would park their motor vehicle, they'd move in and chalk
24 their tyre which, in that environment, became very
25 intimidating and they were trying to handle it and it
26 wasn't achieving anything, what we were doing. We wanted
27 them to educate people, be on site, be seen, not hiding and
28 recording numbers and issuing infringements and taking
29 photos. We were trying to improve both their life, as a
30 professional group, as well as the council's image.
31

32 MR BOLSTER: Q. I want to suggest to you that Mr Oueik
33 made it clear to you that there was to be a separate
34 enforcement regime for the two Muslim schools in Auburn,
35 different from all the other schools, and that was not to
36 enforce those issues; is that correct?

37 A. Mr Commissioner, that's totally incorrect.
38

39 Q. You say you're completely unaware of any special rule
40 for the Muslim schools in Auburn compared to all the other
41 schools in Auburn?

42 A. I'm not aware of any direction, unless it was done by
43 somebody else.
44

45 Q. Mr Oueik spoke to you about his intentions in relation
46 to parking problems, didn't he?

47 A. He and a couple of other councillors raised the issue

1 of the council being seen in a very, very poor light around
2 an issue of the schools; that the rangers were seen as
3 zealot and overachieving, intimidating, and that wasn't
4 what we were about.

5
6 Q. You've seen the evidence from the rangers who say that
7 they were given directions about enforcement at
8 Al-Faisal College and the other Muslim school in Auburn
9 which suggested they be given special treatment. You've
10 seen that, haven't you?

11 A. I haven't seen where anyone spoke about special
12 treatment, but I'd say it's incorrect.

13
14 THE COMMISSIONER: Q. The feedback about the rangers
15 being overzealous, was any of that recorded in writing?
16 Were people writing in --

17 A. No. It was --

18
19 Q. -- or is it hearsay?

20 A. Just the way of explaining it a bit, Mr Commissioner,
21 about the Auburn community. The Auburn community with its
22 cultural challenges and diversity relies very heavily on
23 its elected member and generally most of the feedback we
24 get comes through the elected members depending on what
25 cultural group and background they come from. The feedback
26 from a number of the councillors, that included the mayor,
27 he was the leader of the councillors at the time, was that
28 council was seen in a poor light and the occurrence of
29 fining a driver day after day, often twice a day, for
30 something they did --

31
32 Q. This is him reporting back through his discussions
33 with residents?

34 A. A number of residents, yes.

35
36 MR BOLSTER: Q. How many times do you say the mayor,
37 Mr Oueik, raised the issue of parking?

38 A. During that period it was, as I said, a number one
39 topic.

40
41 Q. It was something that he felt strongly about, as you
42 perceived it?

43 A. I perceived he felt strongly.

44
45 Q. And he raised it, what, on a weekly or a fortnightly
46 basis?

47 A. I couldn't quantify exactly, Mr Commissioner, on where

1 that is and isn't, but it was a hot topic at the time.
2
3 Q. Were you aware of other complaints from Mr Lawrence
4 about Mr Oueik and the way that he spoke to council rangers
5 in relation to other parking-related matters?
6 A. Not other matters other than the specific construction
7 zone and his development site at Park Road.
8
9 Q. Have you seen the statement and the evidence of
10 Mr Soares as your lead ranger --
11 A. Yes.
12
13 Q. -- quite recently?
14 A. Yes.
15
16 Q. He has been with council for many, many years?
17 A. I'm not sure of his term of tenure, Mr Commissioner,
18 but I think it's split by two terms of employment.
19
20 Q. Yes. You had a high regard for Mr Soares, did you?
21 A. All the feedback and my dealings with him, yes.
22
23 Q. Never had any course to discipline or deal with
24 Mr Soares for any matter?
25 A. Not that I'm aware of; nor has any action been brought
26 to my attention.
27
28 Q. Mr Lawrence raised with you an episode in which he was
29 dealt with by Mr Oueik in quite an aggressive manner,
30 didn't he?
31 A. That's correct.
32
33 Q. What did you do about it?
34 A. We discussed the matter with Mr Lawrence and felt that
35 the best course of action was that all matters, again
36 because we're dealing with an elected member, that it's
37 very difficult for the staff and to put the staff in the
38 best position, Mr Commissioner, that all matters relating
39 to that construction zone at Park Road be relayed through
40 Mr Lawrence and we could deal with them that way. But
41 I need also to clarify, neither myself nor council's
42 HR department ever received a formal complaint.
43
44 THE COMMISSIONER: Q. From Mr Soares?
45 A. From any staff member relating to --
46
47 MR BOLSTER: Q. But you received a complaint from his

1 supervisor about the way his staff had been treated, didn't
2 you?
3 A. I wouldn't call it a complaint. Mr Lawrence brought
4 it to my attention looking for a resolution.
5
6 Q. What did Mr Lawrence relay to you as having happened,
7 that necessitated him raising the issue with you? Tell us
8 what he said to you.
9 A. I don't have an accurate record of that, other than
10 the general terms that you've pointed out, I accept, were
11 of concern.
12
13 Q. He told you that he'd received a call from Mr Oueik
14 about his construction staff being booked for parking
15 illegally in a construction zone; correct?
16 A. That's correct.
17
18 Q. He told you that he had discussed the matter with
19 Mr Oueik and he'd indicated that it was his site and he
20 wanted his workers there; correct?
21 A. He, as a developer, Mr Commissioner, had applied for
22 and been given approval for a construction zone, paid the
23 appropriate fees, and he felt that that was his right to
24 utilise.
25
26 Q. A construction zone doesn't enable the workers on a
27 site to park in the construction zone, does it?
28 A. Not literally. I'm not au fait correctly with the
29 road rules.
30
31 Q. His site was in Park Road, Auburn, wasn't it?
32 A. That's correct.
33
34 Q. Not much parking in Park Road, Auburn, is there?
35 A. I'm not too sure.
36
37 Q. You'd have to park quite a way away from a job in
38 Park Road, Auburn, if you were a worker on that site,
39 correct?
40 A. I would assume so, depending on the stage of
41 development.
42
43 Q. Yes. Mr Lawrence told you that after the complaint,
44 he went up to the site with the ranger; correct?
45 A. I accept that.
46
47 Q. Do you remember this?

1 A. Not in that detail that he went to the site.
2
3 Q. When the ranger and Mr Soares walked towards Mr Oueik,
4 Mr Oueik said, "I don't want that fucking ranger near this
5 site again." True?
6 A. I accept what Mr - that Mr --
7
8 Q. That was relayed to you by Mr Lawrence?
9 A. Not in those terms.
10
11 Q. What were the terms that he relayed them to you?
12 A. That there had been problems and confrontations
13 between Councillor Oueik and the staff, but to work a way
14 forward to deal with this properly.
15
16 Q. He didn't suggest that Mr Soares had confronted
17 Mr Oueik, did he?
18 A. I'm sorry, I'm --
19
20 Q. You said there was a confrontation between the two of
21 them. Mr Lawrence didn't suggest Mr Soares had done
22 anything wrong or confronted Mr Oueik; correct?
23 A. I accept that, yes.
24
25 Q. And he was complaining about the treatment of the
26 ranger by Mr Oueik?
27 A. No formal complaint was made by Mr Lawrence or the
28 staff member but, again, trying to be proactive, we put in
29 place the mechanism where Mr Lawrence as the senior manager
30 would deal with the site, the complaints there, rather than
31 have exposed rangers staff to an elected member.
32
33 Q. You could understand why a lead ranger wouldn't make a
34 formal complaint about this matter, don't you?
35 A. No, I don't.
36
37 Q. Are you saying you would only act in relation to the
38 matter if there was a formal complaint from the staff
39 member?
40 A. My belief, Mr Commissioner, is we did act and the best
41 way to act was not to have the interaction between those
42 level of staff, being the rangers and an elected member on
43 his site.
44
45 Q. That involved the staff being directed not to go near
46 the site; correct?
47 A. No, it was directed that all interaction in the first

1 instance complaints, that they had to be through
2 Mr Lawrence, being the manager.

3
4 Q. In other words, if someone complained about a car
5 parked in breach of the construction zone requirements,
6 they'd complain about that to the switch at council
7 downstairs, and the customer service people would in the
8 ordinary course refer back to the rangers' office; correct?

9 A. Correct.

10
11 Q. To Ms Lawrence or Mr Soares; correct?

12 A. Correct.

13
14 Q. That that would go to --

15 A. Mr Lawrence.

16
17 Q. -- Mr Lawrence; correct?

18 A. Correct.

19
20 Q. And he would make a decision about whether a ranger
21 should go up there and enforce council's obligations under
22 the parking rules?

23 A. Also, Mr Commissioner, if I could clarify, the
24 likelihood of getting a complaint in a construction zone
25 about illegal parking is very limited and it's usually
26 limited to the builder or developer who has got approval
27 for the construction zone. There was a lot of dispute at
28 the time between Councillor Oueik and the staff about who
29 and where and what was parking there, and the best way to
30 deal with it is to have the senior manager, like
31 Mr Lawrence, deal with it.

32
33 Generally we don't get complaints from the public to
34 say, "Oh, there's a car in the construction zone in
35 Park Road", or Harrow Road, or whatever, because it's
36 usually the domain of - the complaint comes from the
37 builder or a developer themselves where people are parking
38 there are not part of their work building development.

39
40 Q. Mr Brisby, you know Park Road is opposite a school,
41 don't you? Rangers are there patrolling for parking at
42 school hours when people are dropping off and picking up;
43 correct? They'd be there in the ordinary course every
44 school day; correct?

45 A. I'm not sure they would attend that school every day,
46 but they'd be fairly regular.

47

1 Q. When they see a passenger vehicle, no sign of being
2 associated with the actual construction, not delivering
3 supplies, not dropping off cement, when they see a car
4 parked there, no-one around it, they should issue a ticket,
5 shouldn't they?
6 A. If it didn't comply with the Australian road rules and
7 the construction zone approval, yes.
8
9 Q. What you were directing staff to do was to ring up
10 Mr Lawrence back at council and get his permission to do
11 that --
12 A. No.
13
14 Q. -- in the case of Mr Oueik's sites; correct?
15 A. In relation to Councillor Oueik's site, it was best
16 felt to deal with - to take out the lower level staffs'
17 interaction with an elected member which puts the staff in
18 a really difficult situation. It's very difficult to
19 control the councillor, but we can protect the staff, and
20 the situation was Mr Lawrence was well experienced and
21 versed and could deal with the matter. It made a lot of
22 sense. We didn't get a lot of complaint about the site.
23 The complaint came from the builder.
24
25 Q. The complaint came from the builder because he wanted
26 his workers to park illegally in a construction zone so
27 that they would be close to his job; correct?
28 A. I haven't established that people have parked
29 illegally in the construction zone.
30
31 Q. You see, the solution you proposed gave Mr Oueik
32 exactly what he wanted, didn't it?
33 A. No, that's incorrect.
34
35 Q. It kept -- sorry.
36 A. Any complaint we received was investigated by
37 Mr Lawrence.
38
39 Q. Why should Mr Oueik have received that special
40 treatment? Why shouldn't that treatment apply to some
41 other developer who has got a construction zone?
42 A. Well, again, the primary objective, Mr Commissioner,
43 was to protect the lower level staff, being the rangers,
44 from exposure to councillors. It's a very difficult
45 sensitive situation.
46
47 Q. Protect them from exposure to councillors. What were

1 you afraid of?

2 A. Well, it's stupid. We don't allow lower level staff
3 to have interaction with councillors, whether it's the
4 planners, the rangers. They're intimidated, they find it
5 difficult to deal with, and they may feel that way and it
6 is my responsibility as the general manager, or the
7 director of planning at the time, to protect the staff and
8 that's the best way to do it.

9

10 Q. You and Mr Francis didn't need protection after
11 Kenthurst, did you, or whatever it is?

12 A. No.

13

14 Q. Did Mr Francis need protection when you took Mr Oueik
15 to his house in 2006?

16 A. Mr Francis and myself are senior staff.

17

18 Q. Yes. But for people who needed protection, they
19 needed protection from Mr Oueik, didn't they, and they were
20 the parking rangers in 2013 and 2014; that's right, isn't
21 it?

22 A. That's correct.

23

24 Q. Because he abused them? You knew he abused them,
25 don't you?

26 A. I had one report of an abusive conversation which we
27 resolved by taking them out of that scenario, and I think
28 it makes a hell of a lot of commonsense to take lower level
29 staff out of interaction with councillors.

30

31 Q. Is it your evidence that the only matter that came to
32 your attention where staff were abused by Mr Oueik was the
33 matter involving Mr Soares?

34 A. I'm not aware at this point of any other.

35

36 MR BOLSTER: That's the examination.

37

38 MR ROBSON: One matter of clarification after my learned
39 friend's examination. We've just been given a copy of
40 Mr Lawrence's statement which I assume will be sworn in due
41 course. He sets out a conversation at paragraph 28, and
42 the last sentence thereof is what my learned friend put to
43 this witness as to what Mr Lawrence had said to him and
44 that's not Mr Lawrence's evidence. Mr Lawrence's evidence
45 is that which was in paragraph 34.

46

47 THE COMMISSIONER: I don't have the statement.

1
2 MR ROBSON: What you put to him was paragraph 28, what the
3 conversation was. My instruction is it was paragraph 34.

4
5 MR BOLSTER: I think, to make it clear, I put
6 Mr Lawrence's account of what happened to the witness
7 because Mr Lawrence's evidence in paragraph 34 is that he
8 relayed to him exactly what had occurred. I am assuming
9 that Mr Lawrence told him that Ronney said to him, in a
10 loud and aggressive voice, the words that are in
11 paragraph 28. I wanted to put that fairly to the witness,
12 that that was conveyed to him by Mr Lawrence, and I think
13 he agreed with that, or words to that effect.

14
15 MR ROBSON: The transcript will be clear. I maintain my
16 concern.

17
18 THE COMMISSIONER: Does anyone want to seek leave to ask
19 Mr Brisby any questions? If you do, have you worked out an
20 order that you would like to seek leave, or do I just turn
21 to Mr Watson again?

22
23 MR WATSON: I'm just going to seek your leave. They are
24 very general questions. There is not going to be anything
25 of sharp substance and I shan't be long.

26
27 **<EXAMINATION BY MR WATSON:**

28
29 MR WATSON: Q. Mr Brisby, I don't want to be critical of
30 Counsel Assisting, but some of the questions I felt implied
31 an idea that it was almost the duty of the councillors to
32 accept the recommendations of the planning staff. Did you
33 hear that implied by some of the questions?

34 A. It could be viewed that way, but I've been around and
35 I have experience in providing elected members in the
36 political environment support - support, information and
37 recommendations - and I'm well aware that it's up to the
38 council in a lot of matters.

39
40 Q. Is there a duty cast upon councillors in your opinion,
41 just given your experience in local government, to examine
42 the work of the council staff?

43 A. Sorry, could you --

44
45 THE COMMISSIONER: A duty of general manager to do that?

46
47 MR WATSON: Q. No, the duty of the councillors, sitting

1 in council, when they're going to move a resolution, when
2 they're going to vote on a resolution, to examine the
3 staff's work on a particular point?

4 A. I believe it's their duty to have read - at least read
5 the report and to form their own view.

6
7 THE COMMISSIONER: It might be under the Local
8 Government Act. If they are acting with reasonable care
9 and diligence, they might have to do something.

10
11 MR WATSON: That's exactly right.

12
13 Q. I suppose there is a corresponding duty that if a
14 councillor has a political view about a matter, a view
15 about a planning issue of their own, that they're free to
16 dispute the staff's recommendation, aren't they?

17 A. I'd agree with that totally and as community leaders
18 and community representatives, they're entitled to have
19 that view.

20
21 Q. They're obliged to speak out if it is their view, do
22 you agree with that?

23 A. Yes, I do.

24
25 Q. That doesn't just apply to a development application
26 where somebody is extending their patio or the like. It
27 also applies to deeper, more fundamental planning issues,
28 doesn't it?

29 A. I would agree, yes.

30
31 Q. One of the documents that you were referred to was the
32 employment land strategy document. In your experience and
33 in your opinion, you tell us what you think, if a
34 councillor disputes some element of that strategy, should
35 they speak up on it?

36 A. Oh, they're free and open public council meetings
37 provide that opportunity for them to do that. They're here
38 to represent the community.

39
40 Q. Did you ever make a decision with it in mind,
41 consciously, to benefit one of the councillors here at
42 Auburn?

43 A. No.

44
45 Q. I appear for Mr Attie, so I am going to ask you
46 specifically about him. Did you ever make a decision which
47 was designed to benefit Mr Attie?

1 A. No.
2
3 Q. Did he ever ask you to do so?
4 A. No.
5
6 Q. Were you ever, quietly, privately, influenced by any
7 of the councillors to attempt to make a decision for their
8 benefit?
9 A. No.
10
11 Q. What about influencing other staff members, did you
12 ever try to do that on behalf of any councillor?
13 A. No.
14
15 Q. And, in particular, did you ever try and do that on
16 behalf of Mr Attie?
17 A. No.
18
19 Q. I'm just asking you whether you were present on an
20 occasion when Mr Attie was mayor and when representatives
21 of the applicants in respect of Grey Street came to the
22 council. Did you go to a meeting with Mr Attie and those
23 representatives?
24 A. I think there was an initial meeting and I think --
25
26 THE COMMISSIONER: Was this with the Beirut Bank? Is that
27 the meeting you are talking about?
28
29 THE WITNESS: The initial one that commenced it, yes,
30 I was.
31
32 MR WATSON: Q. There was a discussion at that time about
33 the advantages and disadvantages surrounding the
34 development?
35 A. Oh, it wouldn't have been that specific, sir. It
36 would have been more about what they could and could not do
37 currently under the LEP and their view and whether that
38 fitted, and this is what we wanted to do. We would have
39 provided advice that currently you could not do that and
40 that what they wanted to do was not permissible.
41
42 THE COMMISSIONER: Q. They currently could not do
43 residential?
44 A. That's correct. A general question that would come in
45 any scenario like that, "Well, how do we change that?" It
46 is not an uncommon term and I think we generally worked
47 through, "You take your chances with a planning proposal",

1 to use a bit of crude language.
2
3 MR WATSON: Q. There were a couple of representatives of
4 the applicants present; is that right?
5 A. Yes.
6
7 Q. An architect and a planner, was it?
8 A. I certainly remember the architect, he took the lead.
9
10 Q. There was Mr Attie there, and you were there in your
11 capacity as general manager at the time?
12 A. No, I would have been director of planning at that
13 time.
14
15 Q. Was there anybody else there?
16 A. My understanding is Mr Francis wasn't available. He
17 would have been the normal staff member who would assist as
18 he has the best knowledge, but to check the records,
19 I think Ms Cologna was probably in Mr Francis's absence.
20
21 Q. Was there anything improper about such a meeting?
22 A. I don't think so.
23
24 Q. Is it a good idea, in your opinion?
25 A. I think in most instances it is a good idea because it
26 allows us, like, to discuss the issue, inform the
27 applicants, and do all that. In a lot of instances we can
28 provide them advice so that - one is that whatever happens
29 proceeds properly and one, if things are inappropriate, or
30 whatever, they don't proceed.
31
32 Q. I also had an impression from the questions that you
33 were asked earlier that it was being suggested that
34 acceding to the applicants about Grey Street involved -
35 this was the expression - a rewriting of the employment
36 land strategy. Do you remember questions along those
37 lines?
38 A. Yes.
39
40 Q. Well, just in those terms, the employment land
41 strategy was quite a large document, wasn't it?
42 A. That's correct.
43
44 Q. It involved a lot of land in the council, didn't it?
45 A. Yes.
46
47 Q. And a lot of areas, separately zoned; is that right?

1 A. It was LGA wide.
2
3 Q. In terms of rewriting the employment land strategy,
4 the proposal at Grey Street involved rewriting it so as it
5 applied to one block?
6 A. Yes. Mr Commissioner, my recollection is that the
7 Grey Street proposal is just one block: I think
8 Silverwater Road and Grey Street, yes.
9
10 Q. Et cetera, et cetera.
11 A. For the boundaries of that proposal.
12
13 Q. It's roughly about 100 metres long and about 75 metres
14 wide?
15
16 THE COMMISSIONER: 6,000 square metres.
17
18 THE WITNESS: Yes.
19
20 MR WATSON: Commissioner, I'm being careful, because there
21 was also one estimate which was 7,500 square metres.
22
23 THE WITNESS: It's known as the old Paley's dry cleaners.
24
25 MR WATSON: Q. It contained on it some old houses?
26
27 THE COMMISSIONER: You asked a question about this, and
28 I will just let you know. When you were asking questions
29 of Ms Cologna, by the time the Auburn LEP came in in 2010,
30 the area was zoned B6, which did not permit residential --
31
32 THE WITNESS: No.
33
34 THE COMMISSIONER: -- but in the previous LEP, I think
35 that area of residential had been permitted or was
36 permissible in the area?
37 A. Yes, the previous LEP was quite old.
38
39 Q. Yes, which is why there were residences there.
40 A. Yes.
41
42 MR WATSON: Q. And most houses were quite old?
43 A. They were old. One was burnt out and had been burnt
44 out for a while. The majority of the site was - the
45 original people that were looking at the rezoning, the
46 Paley family, which owned a big commercial well-known -
47 anyone that travels on Silverwater Road, the big blue

1 commercial dry cleaners.

2

3 Q. The point is that what Mr Attie was proposing wasn't a
4 rewriting of the employment land strategy, it only involved
5 a reconsideration of how the employment land strategy
6 applied to that one block of land in Silverwater; correct?

7 A. That's my view.

8

9 Q. There were some questions which seemed to suggest that
10 because of Mr Attie's support for this proposal, that the
11 council had been denied staff advice. Do you remember
12 questions like that?

13 A. No, I don't recall that, no.

14

15 Q. It was put to you that the motion was put by Mr Attie
16 at the meeting, with no opportunity to seek advice from the
17 staff. Assume that that was --

18 A. I do recall that, yes.

19

20 Q. Yes. The point is that by that stage the councillors
21 not only had advice from the staff, they had it in writing;
22 is that right?

23 A. They would have had a formal report in front of them.

24

25 Q. And it was detailed?

26 A. With a recommendation.

27

28 Q. And not only that, they also had the AECOM employment
29 land strategy document?

30 A. They would have had all appropriate studies that were
31 informing that report.

32

33 Q. You tell me, as an experienced man in the field, do
34 you think that that was sufficient staff advice on this
35 issue?

36 A. Oh, most certainly. I would totally agree.

37

38 Q. Was there any call for Mr Attie, for example, to say,
39 "Look, I wish to put this proposal but we need to go out
40 again and speak to the staff about it"?

41 A. Not that I recall.

42

43 Q. The point is the staff had spoken on it?

44 A. The council report that forms the business paper that
45 is the agenda for any formal council meeting is the staff
46 report.

47

1 Q. In any event, whatever happened in these Council
2 Chambers on that evening, it didn't mean that the proposal
3 succeeded, did it?
4 A. That's correct. The next step after the completion of
5 a couple of items in the resolution was to move the
6 planning proposal to the Department of Planning known as
7 the gateway process. It may also need clarifying, I'm not
8 sure, Mr Commissioner. The council doesn't have the
9 ability to approve rezoning. It only makes recommendations
10 to the department.
11
12 THE COMMISSIONER: Q. Unless it is delegated back to
13 you?
14 A. That's correct.
15
16 MR WATSON: Thank you, Commissioner.
17
18 THE COMMISSIONER: Mr Duggan, do you have any questions?
19
20 MR DUGGAN: I have no questions.
21
22 THE COMMISSIONER: Mr Wheelhouse?
23
24 MR WHEELHOUSE: One or two short questions.
25
26 **<EXAMINATION BY MR WHEELHOUSE:**
27
28 MR WHEELHOUSE: Q. Mr Brisby, I appear for Mr Oueik.
29 You were asked some questions concerning a visit to
30 Mr Francis's house in early 2006; do you recall that?
31 A. Yes.
32
33 Q. You said in your evidence you have no recollection of
34 the terms of the conversation?
35 A. Not in perfect terms, no, I wouldn't.
36
37 Q. Do you recall whether the conversation between
38 Mr Oueik and Mr Francis took place entirely in your
39 presence?
40 A. It would have.
41
42 Q. In the witness box today, do you have any recollection
43 of Mr Francis saying something improper to Mr Oueik?
44 A. No.
45
46 Q. Is it the case that if he had said something improper,
47 you would have remembered it?

1 A. Yes.
2
3 Q. And made a note of it?
4 A. That's right.
5
6 Q. Do you recall, sitting in the witness box today,
7 whether Mr Oueik said anything improper to Mr Francis?
8 A. No.
9
10 Q. If that had occurred, is that something you would have
11 remembered or made a note of?
12 A. Yes.
13
14 Q. You were asked some questions about difficulties
15 arising, particularly in 2011, concerning the issuing of
16 parking infringement notices outside schools. Do you
17 recall that?
18 A. Yes.
19
20 Q. Do you recall, during the period of time when Mr Oueik
21 was mayor, that he attempted to develop a whole parking
22 scheme for the Auburn municipality that dealt with the
23 school problem?
24 A. Yes. He had a view that he tried to move called a
25 "Kiss & Drop" off zone to replace the "No Parking".
26
27 Q. That was something that he was developing in response,
28 as you understood it, to what was being represented to him
29 by the various schools in the area?
30 A. Yes. Well, to me it was the schools and the general
31 community that - there was the feedback from Mayor Oueik
32 and a couple of other councillors from the constituents
33 that was painting the council in a bad light. It made the
34 rangers look unprofessional and just zealous and it looked
35 like they were targeting people and not achieving anything,
36 and, as community leaders, the mayor and the elected
37 councillors wanted to address that.
38
39 Q. Do you recall he developed and represented to the
40 council, that is to say the council officers, a plan to
41 cover the entire municipality, all the schools in the area?
42 A. I was aware of it, but under the old council
43 structure, that side of traffic engineering wasn't in my
44 department.
45
46 Q. You described your relationship with Mr Oueik as being
47 a good working relationship. In that regard, are you

1 directing that description of the relationship during the
2 period where Mr Oueik was mayor?
3 A. Yes.
4
5 Q. Did you have a similar relationship, as I say, a close
6 working relationship, with other persons who had been mayor
7 of Auburn City Council from time to time?
8 A. Yes.
9
10 Q. Did that include Councillor Attie?
11 A. Yes.
12
13 Q. Did that include Councillor Simms?
14 A. Yes.
15
16 Q. And did that include Councillor Zraika?
17 A. Yes.
18
19 Q. Is it your evidence that you regarded it as an
20 important part of your duties to develop such a
21 relationship with the elected councillors?
22 A. I think it's critical, yes.
23
24 Q. You've only had a small time in which to read the
25 statement of Mr Burgess; is that correct?
26 A. That's right. This morning.
27
28 Q. I was wishing to draw your attention to a document
29 that is attached to Mr Burgess's statement. It commences
30 at page 117. It is a public interest disclosure by him to
31 Mr Ross Woodward, chief executive of the Department of
32 Premier and Cabinet. Do you recall having read that
33 document by any chance?
34 A. I don't, I'm sorry.
35
36 Q. Could I just draw your attention to one of the matters
37 in it. Mr Burgess reports to Mr Woodward that the director
38 of planning and environment did not have any delegation of
39 authority on Mr Burgess to write off any debt to the
40 council. Do you recall you holding the position of
41 director of planning and environment at any time?
42 A. That's correct, yes.
43
44 Q. Was that during 2011-2012?
45 A. Yes.
46
47 Q. Did you have any authority in respect of the writing

1 off of traffic infringements?
2 A. I believe I did, yes.
3
4 Q. How did that arise?
5 A. It's part of the job description, delegation for
6 director of planning and environment.
7
8 Q. If Mr Burgess was to assert that you had no delegated
9 authority to write off any debt of council in relation to
10 what are called PINs, penalty infringement notices, that
11 would be incorrect, is that your evidence?
12 A. I think Mr Burgess had a bit of confusion around debt
13 which I would agree with him, and that would be a matter
14 for the finance people, but I don't - it's not considered a
15 PIN or a fine would be in that category.
16
17 Q. So you regarded yourself as having relevantly
18 delegated authority to cancel any penalty infringement
19 notice?
20 A. That's correct.
21
22 Q. And you draw a distinction between that and the
23 occurrence of a debt to council?
24 A. Well, Mr Burgess in - I haven't seen - I don't recall
25 that letter, if I've ever seen it, but upon him receiving a
26 response, he did raise that with me and he did make
27 adjustments to all the delegations and the full delegation
28 went from myself as director of planning to Mr Thomas as
29 the director of business and finance. We then directed all
30 representations for fines and everything to Mr Thomas.
31
32 Q. Was there a period of time when you regarded yourself
33 as having delegated authority to determine the question of
34 whether or not a PIN should be enforced or not?
35 A. Yes.
36
37 Q. What was that period of time, do you recall?
38 A. Up until the changes were made which wouldn't be long
39 after that, I think, Mr Commissioner, mid-2012, I think,
40 where Mr Burgess gave a direction that all matters relating
41 to that were transferred to Mr Thomas who was the director
42 of business and finance.
43
44 Q. And prior to that time, you were carrying out that
45 function?
46 A. That's right.
47

1 Q. There is a diary note that Mr Burgess attached to his
2 statement at page 99. Have you had an opportunity to have
3 a look at that diary note?
4 A. Again, only briefly.
5
6 Q. Might the witness be shown a copy of that diary note.
7 It is dated 22 November 2011. I just want you to take a
8 moment to read that, please.
9
10 MR WHEELHOUSE: Commissioner, do you have a copy of that
11 diary note?
12
13 THE COMMISSIONER: Yes, I have it in front of me, thanks.
14 Page 99.
15
16 MR WHEELHOUSE: Q. Do you have any recollection of that
17 conversation?
18 A. The conversation of 22 November, I do, yes.
19
20 Q. Where did the conversation occur?
21 A. In Mr Burgess's office. The general manager's office.
22
23 Q. Do you recall what he is referring to when he says
24 "[Department] out of control" and I think there are two
25 names, is it Kathina? The writing is bad.
26 A. I'm not aware of the two names.
27
28 Q. Do you remember what Mr Burgess said to you in that
29 context?
30 A. In general, the general summary, it was about his
31 major concerns of the planning and environment department.
32 He was very angry. There is a reference there with an
33 asterisk, I think, Mr Commissioner, to a staff member named
34 Jacky. My recollection is Jacky was one of our senior
35 strategic planners and had left the council, resigned, and
36 moved to another position. Mr Burgess was very concerned
37 about her exit interview and the comments that she'd made
38 and he felt they were inappropriate. I took it that he
39 seemed to be taking Ms Jacky Wilkes' exit conversation
40 interview as the view of the whole department, whereas
41 I did point out that Ms Wilkes were individual comments
42 that she made on exiting the organisation.
43
44 Q. What was the attitude --
45
46 THE COMMISSIONER: Q. Sorry to interrupt, but does this
47 have anything to do with Councillor Oueik?

1
2 MR WHEELHOUSE: It does.
3
4 THE COMMISSIONER: It does? All right.
5
6 MR WHEELHOUSE: I can indicate why.
7
8 THE COMMISSIONER: I have not seen it yet.
9
10 MR WHEELHOUSE: If one read Mr Burgess's statement, there
11 seems to be a suggestion that my client is somehow the
12 driving force behind Mr Burgess, which is something we wish
13 to challenge.
14
15 THE COMMISSIONER: I will allow it.
16
17 MR WHEELHOUSE: Q. Mr Brisby, what was the atmosphere in
18 the Department of Planning like at this particular point in
19 time?
20 A. Oh, very strong. We believed we were a very strong
21 and successful department as part of the organisation and
22 we ran on. There was a time - and I say this,
23 Mr Commissioner, just to give it a bit of context. The
24 organisation had fallen to that path where there was very
25 little communication between the departments, not animosity
26 or anything, but everybody got on with their own thing and
27 got on with it, and I'd be more than happy to defend my
28 reputation as the director and the success of that
29 department at that time.
30
31 Q. Was that being challenged by Mr Burgess at the time?
32 A. Yes.
33
34 Q. Was that creating conflict between the general manager
35 and the department?
36 A. I didn't think so because at that point I had a lot of
37 faith and trust in Mr Burgess and what he was trying to do.
38 He seemed to be genuine. I tried to point out that a staff
39 member's exit interview did not reflect the whole
40 department. I do recall that he kept repeating that that
41 was the view of the department and I kept saying, "That's
42 not the view of the department, John." You know, "Some
43 individual staff member has made some comments on an exit
44 interview and it's not the view of the department." He was
45 angry at the time; he felt that was the department.
46
47 MR WHEELHOUSE: No further questions.

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THE COMMISSIONER: Thank you. Mr Price?

<EXAMINATION BY MR PRICE:

MR PRICE: Q. You just agreed with my learned friend on the left that you had a good working relationship with Mr Zraika?

A. Yes.

Q. That relationship was an open relationship between you and him. He sought advice from you, correct?

A. That's correct.

Q. He was open with you about his thought processes and what was in the best interests of council; correct?

A. To - it would be hard to - hard for me to say, Mr Commissioner, in that context. He did - he did seek advice from me on council matters and process.

Q. You said you were well aware that he owned property in York Street?

A. I think it was quite common knowledge and I was aware of it, yes.

Q. He declared it in the appropriate way?

A. That's correct.

Q. He wasn't secretive about his business interests, was he?

A. Not in my time, no.

MR PRICE: Nothing further.

THE COMMISSIONER: Thank you. Mr McNally?

MR McNALLY: No, Commissioner.

THE COMMISSIONER: Ms Duggan?

MS DUGGAN: Thank you, Commissioner.

<EXAMINATION BY MS DUGGAN:

MS DUGGAN: Q. Mr Brisby, could I ask you some quick basic questions for the time being. In relation to how the system in council ran, what we had was a system of

1 delegations, correct?
2 A. That's correct.
3
4 Q. The council holds all power and function and the
5 council can delegate those functions to the
6 general manager?
7 A. That's correct.
8
9 Q. And then the general manager sub-delegates some or all
10 of his or her functions to appropriate nominated officers;
11 correct?
12 A. That's correct.
13
14 Q. Those delegations are in writing?
15 A. That's correct.
16
17 Q. And they're referred to as an instrument of
18 delegation?
19 A. Yes.
20
21 Q. It is the responsibility of every officer who holds an
22 delegation to be familiar with the terms of their
23 delegation?
24 A. Yes.
25
26 Q. And act within that delegation?
27 A. Yes.
28
29 Q. If there's any doubt or any concern or any
30 misapprehension as to the scope of the delegation, the
31 general manager should be consulted to see whether what
32 they're proposing do is within or without that delegation?
33 A. There was a process whereby delegations could be
34 amended, added to, reduced, like that.
35
36 Q. If you read it and you weren't sure whether or not you
37 as a council officer could do something, the way to check
38 is to go to the source and that's the general manager?
39 A. In my - in the position of director of planning,
40 that's - yes.
41
42 Q. I think you said you started at the council in 2005.
43 You indicated to one of my learned friends that the
44 delegations were changed in 2012. Is it your recollection
45 that the delegations generally to the director of planning
46 and environment were the same until they were changed in
47 2012, for the period you took that position?

1 A. Other than minor adjustments around some of the
2 planning determinations, things like the introduction of
3 certain things from the Department of Planning, the Joint
4 Regional Planning Panel and where a council made some
5 adjustments to determination, yes, the general feel and
6 gist of them was the same.

7
8 Q. During the time that you were director of environment
9 and planning, the enforcement staff came under your
10 control?

11 A. That's correct.

12
13 Q. Much like the army, or the military, there is a system
14 of reporting: you report to your immediate senior officer
15 and it goes up the chain of command?

16 A. Yes.

17
18 Q. So anyone from the lowest ranger through to Mr Francis
19 who was your 2IC, anything they did would ultimately be
20 reported through to you, if they fell under your control?

21 A. Not everything. I couldn't say I was aware of
22 everything, it wouldn't be possible. The same as
23 I wouldn't have expected either myself as the
24 general manager or Mr Burgess to be aware of everything.

25
26 Q. So at some points along that chain of command,
27 somebody has the ultimate responsibility for it? Say, for
28 example, Mr Lawrence might have a decision in relation to
29 whether or not to issue a parking fine; Mr Francis may have
30 a decision in relation to whether or not to approve a
31 development application, those sorts of things you wouldn't
32 expect to know, true?

33 A. Not unless it had some form of irregularity.

34
35 Q. In about 2008, do you recall that the council
36 instigated a proactive study of all residential flat
37 buildings in Auburn to see whether or not there had been
38 compliance of all residential flat buildings and
39 residential apartments within that residential platform?

40 A. I was aware of the program. It was a little bit
41 different to that. It was generally targeting fire safety.
42 It was a result of the Auburn Central development.

43
44 Q. Do you still have the Station Street bundle in front
45 of you?

46 A. Yes.

1 Q. Could you go to page 143. It is a letter to a
2 nominated strata plan dated 18 September 2008. You would
3 recognise that, would you not, as being the sorts of
4 letters that went out to all residential flat buildings
5 telling them what was going to happen?

6 A. Mr Commissioner, I wouldn't be aware of the letters
7 but it seems to make sense.

8

9 Q. Over on page 144, we see just above the dot points,
10 the last sentence of that paragraph, it says:

11

12 *Officers attending will inspect a number of*
13 *criteria, for example;*

14

15 And it lists some of them. Some of them were fire, some of
16 them were waste and the second dot point says:

17

18 *Illegal building works within each unit,*
19 *bedrooms, bathrooms, partitions, et cetera.*

20

21 Do you see that?

22

23 THE COMMISSIONER: It is about the middle of the page.

24

25 MS DUGGAN: Q. It is the second-last dot point, do you
26 see that?

27

28 A. Yes.

29

30 Q. You would accept that that program was not just
31 relating to fire safety, it was also looking at other
32 issues, including illegal building works?

33

34 A. That's correct.

35

36 Q. Yes.

37

38 A. Again, following out of Auburn Central.

39

40 Q. As a consequence of that program, officers under your
41 supervision, under your purview as director of planning and
42 environment, were sent out to undertake these inspections?

43

44 A. Through the manager of regulatory compliance, yes.

45

46 Q. Who reported to you; that's Mr Lawrence, yes. The
47 next page you see at page 145 is a memorandum to
48 Mr Lawrence, manager of regulatory compliance, it relates
49 particularly to Station Street, Auburn, but is it your
50 recollection that when an inspection was undertaken, if any
51 concerns were raised, this type of memorandum would be

1 given to Mr Lawrence and he would report to you?
2 A. I wouldn't be privy to that, Mr Commissioner, other
3 than, in normal circumstances it wouldn't be brought to my
4 attention.

5
6 THE COMMISSIONER: Could I just ask, is it Station Street
7 or Station Road?

8
9 MS DUGGAN: I am told Station Road. The development
10 application form says "Station Street". I will use the
11 term interchangeably.

12
13 THE COMMISSIONER: I thought the DA said "Station Road".
14 The plans say "Station Street".

15
16 THE WITNESS: It is quite a long time ago.

17
18 THE COMMISSIONER: Anyway, that might be a minor point.

19
20 MS DUGGAN: Q. When you say "irregularities", if one of
21 the officers went out there and discovered that there were
22 fire safety concerns, or illegal building works, or an
23 accumulation of waste and they wanted to do something about
24 it, it would go from Mr Lawrence to you, would it not?

25 A. No.

26
27 Q. In relation to all of the topics, I will exclude
28 Station Street for the moment, you had delegated authority,
29 did you not, to take steps, if you considered it
30 appropriate, to enforce any non-compliances with fire
31 safety orders, illegal building works, accumulation of
32 waste and the items that are listed in that letter?

33 A. That's correct.

34
35 Q. Enforcement doesn't just mean criminal prosecution, it
36 also means things like civil enforcement, taking
37 proceedings in the Land and Environment Court, for example,
38 to seek an injunction; correct?

39 A. Correct, yes.

40
41 Q. Issuing what's known as a section 121B order under the
42 Environmental Planning and Assessment Act requiring works
43 to be done?

44 A. That's correct.

45
46 Q. It also includes the criminal, such as the highest
47 level, taking proceedings in the Land and Environment Court

1 in its criminal jurisdiction where the fine is larger?

2 A. Yes, generally on environmental matters.

3

4 Q. Taking proceedings in the Local Court for the same
5 thing, with a lesser fine, for the process that we call
6 PINs, which is the penalty infringement notices?

7 A. Yes, that's correct.

8

9 Q. Out of all of that ranges of resources you have at
10 your disposal, you understand, do you not, that it's
11 ultimately a question of discretion as to whether or not
12 council takes any action at all as a consequence of fining
13 illegal work rather than there being an obligation that
14 they must take action?

15 A. I accept that, yes.

16

17 Q. That element of discretion was generally to the people
18 who had been delegated the power to decide whether or not
19 to commence proceedings?

20 A. Yes.

21

22 Q. In relation to all of your matters of delegation, with
23 the exception for the moment of matters that involved an
24 elected councillor, you accept that the decision as to
25 whether to take the proceedings, which court, how to take
26 it, whether to go to solicitors, whether to issue a PIN,
27 was within your job description?

28 A. It was within my job description.

29

30 Q. Expressly within your terms of delegation?

31 A. That's right.

32

33 Q. You indicated to the Commissioner that you were of the
34 view when you were asked you had delegated authority, you
35 said "except in relation to an elected member"; do you
36 recall that?

37 A. Yes.

38

39 Q. It is your understanding, is it, that your delegation
40 was limited so that all of those functions that you perform
41 for every other member of the community, you couldn't
42 perform those functions because they hadn't been delegated
43 to you if it was an elected councillor; is that correct?

44 A. No, that's not, and maybe I've got to clarify that,
45 Mr Commissioner. What I'm saying is in the political
46 environment we work, it would be totally inappropriate and
47 I certainly wouldn't have been game to have commenced a

1 prosecution or any enforcement action against an elected
2 member without the authority of the general manager. One,
3 I think out of respect to the general manager and by way of
4 being seen to be - things done right in the public.

5
6 Q. I have a copy of your delegation from at least the
7 last review, that was 7 April 2006, and I can show it to
8 you if you like, but it would be fair to say that there was
9 no constraint on your delegation, in the instrument of
10 delegation, that precluded you from taking action in
11 accordance with your delegations or in accordance with your
12 ordinary job description. I've tagged the page that deals
13 with the director and legal matters, but satisfy yourself,
14 where there's an elected councillor involved. Would you
15 agree with that?

16 A. I am sorry, could you repeat the question?

17
18 Q. There is no limitation in your delegation that
19 precludes you from exercising your delegations that you
20 ordinarily hold, where the subject of the concern is an
21 elected councillor?

22 A. I accept that.

23
24 Q. There are decision-making --

25
26 THE COMMISSIONER: Is that something you want to tender at
27 any stage?

28
29 MS DUGGAN: I think I should, particularly in light of
30 Mr Wheelhouse's statement. I should ask this now.

31
32 Q. Just in relation to your delegations, there is nothing
33 in there that gives you express delegated authority to
34 write off penalty infringement notices, would you agree
35 with me? There are no words that say, "The director of
36 planning and environment has delegation to write off
37 penalty infringement notices that have been issued"?

38 A. I'd have to take a study of this to say but I was the
39 appropriate officer, along with the manager of regulatory
40 compliance, in dealing with the state debt recovery and
41 have that, yes.

42
43 Q. You understood it to be the case that you had that
44 authority, is that what you're saying?

45 A. Yes.

46
47 Q. And whether or not that was expressed in the document,

1 we can look at the document and work that out for
2 yourselves?
3 A. Yes. It was something that was never ever challenged.
4
5 MS DUGGAN: I tender the document for the entire
6 department which includes Mr Brisby's delegation, when he
7 was the director at the time.
8
9 THE COMMISSIONER: Are you tendering that whole bundle?
10
11 MS DUGGAN: Yes.
12
13 THE COMMISSIONER: Do you have a copy?
14
15 MS DUGGAN: That is the only copy I we have.
16
17 THE COMMISSIONER: Why don't we defer it until tomorrow,
18 we will make copies, and you can tender it then, is that
19 all right?
20
21 MS DUGGAN: Yes. If anyone wants an electronic copy, my
22 instructing solicitor can provide that.
23
24 Q. Let's come back to Station Street for a moment. In
25 relation to Station Street, you were concerned because the
26 person who was the builder, at the time you became aware
27 through the inspection of Mr Mooney of some irregularities,
28 was an elected councillor; correct?
29 A. He was not at the time of construction but
30 subsequently.
31
32 Q. But at the time you became aware of it, he was?
33 A. Yes.
34
35 Q. You said in the political environment, you would not
36 be game enough to take proceedings against a councillor
37 without letting the general manager know?
38 A. I think out of respect to the general manager. He
39 reports to the council, specifically the mayor and the
40 councillors. He's employed by the council. I think it
41 would be very important that he knows that and I think
42 myself, I was seeking direction and leadership from him
43 about what to do.
44
45 Q. We have talked about the difference between
46 decisionmaking and process. For example, if it had been
47 decided that it was appropriate that a PIN issue to a

1 particular councillor, you wouldn't expect the
2 general manager to go down to the rangers' department, get
3 the PIN book out and write out the PIN, put it in an
4 envelope and mail it to the councillor, would you?

5 A. No.

6

7 Q. You would expect the general manager to go, "Thank you
8 for letting me know. Take the steps that are required to
9 get the PIN issued"?

10 A. That's correct.

11

12 Q. In relation to the Station Street property, you
13 indicated that it would be unusual for Mr Burgess, the
14 general manager, to attend a meeting with lawyers dealing
15 with an issue of a prosecution, or potential prosecution
16 for unauthorised building works, do you recall that?

17 A. Yes, but I need to clarify, Mr Commissioner. I said
18 it would be appropriate for the general manager, where
19 there was an elected member the subject of the matter.

20

21 Q. That is my next question. You indicated to the
22 Commissioner in this circumstance you considered it was
23 appropriate because the matter related to Councillor Oueik;
24 correct?

25 A. He was an elected member, yes.

26

27 Q. But you also knew, did you not, that Mr Burgess wanted
28 to talk to the lawyers about his concerns about Mr Malouf?

29 A. I don't recall that at that meeting but --

30

31 Q. Well, at that meeting you know that the concerns that
32 the general manager, Mr Burgess, had with Mr Malouf were
33 discussed. You know that, don't you?

34 A. Yes.

35

36 Q. And the concerns he had related to matters not
37 relating to the carrying out of the unauthorised works, but
38 a concern he had in relation to his professionalism?

39 A. I'm not sure of the detail, Mr Commissioner, but what
40 I will say is I was well aware of Mr Burgess in his time as
41 general manager, concerns with Mr Malouf's employment and
42 his actions relating to all matters.

43

44 Q. You know of that conversation at that meeting because
45 it's actually recorded in the advice from Deacons, if you
46 want to go to page 306 --

47 A. In the advice.

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Q. -- that there was a concern in relation to Mr Joe Malouf and Deacons set out there:

In our opinion there are reasonable grounds to suspect that Mr Joe Malouf (an employee of Council at the time) may have engaged in conduct that could constitute or involve a disciplinary offence or reasonable grounds for dismissal of a public official in exercising his duties as PCA in this matter.

Then he says:

There is evidence to suggest ...

Then it says:

There are reasonable grounds to suspect that Mr Malouf was aware of the breach of the conditions of consent.

Mr Rigg then says:

In these circumstances, we recommend that you notify ICAC in respect of both Mr Malouf and the builder/developer.

Do you see that?

A. Yes.

Q. So at least by the end of this meeting with Mr Rigg and Ms Baker, you were aware that the thing that Mr Burgess was wanting to raise in the meeting was the action of Mr Malouf as it related to the Station Street property?

A. That's correct.

Q. He had concerns about whether it was a matter that should be reported to ICAC? You need no answer verbally.

A. I'm sorry. I'm aware that he did refer the matter to ICAC.

Q. No, no. You were aware at that meeting that the concerns that he had in relation to Mr Malouf were concerns as to whether or not they were matters that might interest ICAC?

1 A. I'm sorry, I may need clarification.
2
3 Q. I am happy to take it one step at a time. ICAC, as
4 Mr Bolster put to you, does not deal with prosecuting
5 illegal building works, do they?
6 A. No.
7
8 Q. They deal with allegations of corruption?
9 A. Yes.
10
11 Q. What Mr Burgess was raising at this meeting in respect
12 of Mr Malouf was not prosecuting him for illegal building
13 works, but in relation to whether or not his conduct was
14 something that should be reported to the ICAC; correct?
15 A. Yes, correct.
16
17 Q. In relation to that he also raised a question as to
18 whether in light of the fact that Mr Oueik was a council
19 member at the time the council became aware of the
20 unauthorised works, he should also be the subject of a
21 referral to the ICAC?
22 A. Could you repeat that, I'm sorry?
23
24 Q. He also raised with the lawyers at that meeting
25 whether or not now Councillor Oueik should have also been
26 reported to the ICAC?
27 A. That could possibly be, but I don't recall that.
28
29 Q. They talk about the builder, and we know the builder
30 is BBC and we know that that's Councillor Oueik; is that
31 your understanding?
32 A. Yes.
33
34 Q. What Deacons did was they dealt with the two issues
35 separately. They dealt with the prosecution, that is,
36 enforcing the unauthorised building works, and they then
37 dealt with the allegations that related to the ICAC;
38 correct?
39 A. Yes.
40
41 Q. At the time of that meeting, I put it to you, or after
42 that meeting, after the receipt of that advice, at no time
43 did Mr Burgess indicate to you that he was going to take
44 care of the prosecution component of the complaint?
45 A. Just to be specific, Mr Commissioner, he did say he
46 would handle the matter and proceeded to deal directly with
47 Mr Lawrence, the regulatory compliance manager. I will

1 clarify that my view was, and recollection, is that he said
2 he would handle the matter. There was no specifics about
3 he would handle the prosecution, but he would handle the
4 matter, and that's how it proceeded.

5
6 Q. I put it to you that Mr Burgess intended to handle the
7 ICAC element of the matter, that being an area not within
8 your delegation; correct?

9 A. That's correct.

10
11 Q. He never said, and never said to you in words or
12 implied to you by action, that he was intending to take
13 over the totality of the matter, including those matters
14 that were within your delegation?

15 A. I believe he did, yes.

16
17 Q. Do you have a specific recollection or is this just a
18 feeling you have?

19 A. No, I have a recollection that he was handling the
20 matter and he dealt directly with staff who reported to me.

21
22 Q. He dealt directly with staff who reported to you in
23 relation to the ICAC component of the matter, did he not?

24 A. I'm not aware because the staff reporting to me dealt
25 directly with the general manager. I was out of the loop.

26
27 Q. You were out of the loop but you could have asked?

28 A. I did on a couple of occasions.

29
30 Q. And what were you told?

31 A. That he was handling the matter and it was still
32 before ICAC.

33
34 Q. He was handling the ICAC matter, that's what you were
35 told, weren't you?

36 A. No, that's incorrect.

37
38 Q. Were you ever told that Mr Burgess had taken steps to
39 instigate the prosecution?

40 A. That he had - I was told that he was - sorry, could
41 you just repeat that?

42
43 Q. Had you ever been told that he had taken steps to
44 instigate the prosecution?

45 A. No.

46
47 Q. It would be fair to say, wouldn't it, Mr Brisby, that

1 Mr Burgess never said to you, "I'm going to handle the
2 prosecution"?

3 A. Sorry, could you repeat that?
4

5 Q. Mr Burgess never said to you, "I am going to handle
6 the prosecution"?

7 A. No, he never said that to me, no, I agree with that.
8

9 Q. You indicated to Counsel Assisting, when you were
10 asked some questions, that you were out of the loop and
11 that the general manager, Mr Burgess, had the file. Do you
12 remember that?

13 A. When I say carriage of the file, I did not have it and
14 I understood Mr Burgess would have had it.
15

16 Q. Can I ask you to go to page 312 of the Station Street
17 bundle. There is another letter from Deacons. Do you see
18 handwritten in red there is an alphanumeric notation there?
19

20 A. Yes.

21 Q. That's what's called a Trim reference, isn't it?
22

23 A. That's correct.

24 Q. What that means is it that the file was an electronic
25 file; correct?

26 A. That's correct.
27

28 Q. What happens is a letter comes in to the council, it
29 goes to the records department, the records department
30 transfer it from a physical letter to an electronic copy, a
31 soft copy, and then they send it through to council's
32 internal email system to whomever it is directed; correct?
33

34 A. Yes.

35 Q. When you say you didn't have the file, the file was on
36 your computer, was it not?

37 A. It was on the council's record system, yes.
38

39 Q. And you could have accessed it at any time?
40

41 A. That's correct.

42 Q. In fact, just to address something Mr Wheelhouse seems
43 confused about, every piece of paper that comes into the
44 council, all correspondence to the council is addressed to
45 the general manager; correct?

46 A. It doesn't quite work that way, but that's the general
47 protocol.

1
2 Q. I think the council's letterhead says "Correspondence
3 to the General Manager" and an address?
4 A. Yes.
5
6 Q. That doesn't necessarily mean that the general manager
7 gets the letter. The records manager then directs the
8 letter to the person to whose attention the letter has been
9 directed; correct?
10 A. That's right.
11
12 Q. Or if it's just a reference for a file number, the
13 person who has been allocated carriage of the file. And
14 again, all letters from the council go out over the name of
15 the general manager?
16 A. Depending. Some staff had some delegation to do their
17 own letters, but to a certain level they go under the
18 general manager's letterhead.
19
20 Q. When somebody sees a letter that says "John Burgess,
21 General Manager" or "Mark Brisby, General Manager" and it
22 says "per" and a name, that doesn't mean the
23 general manager has seen that letter; correct?
24 A. Not necessarily.
25
26 Q. In relation to this letter to Deacons, it is fair, is
27 it not, I think you agreed, you were the one who requested
28 this advice?
29 A. I would have been the one, yes.
30
31 Q. Yes. That advice has been requested and it doesn't
32 suggest there was a meeting, so was that a telephone call
33 or a letter?
34 A. The advice was a letter, yes.
35
36 MS DUGGAN: Commissioner, I note the time. I won't be
37 much longer.
38
39 THE COMMISSIONER: Approximately how much longer will you
40 be?
41
42 MS DUGGAN: Probably 10 questions.
43
44 THE COMMISSIONER: Keep going.
45
46 MS DUGGAN: Q. That was an advice that was requested by
47 you, was it, by telephone or was it by letter?

1 A. I don't recall.
2
3 Q. It certainly wasn't a meeting that Mr Burgess had
4 attended?
5 A. No, that's right.
6
7 Q. It wasn't a letter that, unless you sent it to him,
8 would have gone to him?
9 A. I'm not too sure.
10
11 Q. It says "Attention: Mark Brisby"?
12 A. Yes. I think records --
13
14 Q. So that Trim would have sent it to you?
15 A. It could well, and there's certainly precedent where
16 they would have sent it to both of us.
17
18 Q. But they may not have; they may just have sent it to
19 you?
20 A. And they may not have and they may have sent it to
21 Mr Burgess, because it does highlight confidential advice
22 and there is a "preselect" predilection of our records
23 but --
24
25 Q. If there was a matter which you weren't in control of
26 and it wasn't something that you were worried about,
27 Mr Burgess was dealing with it, you would have made sure
28 that it was brought to Mr Burgess's attention,
29 wouldn't you?
30 A. This advice?
31
32 Q. Yes.
33 A. Yes, I did.
34
35 Q. And in relation to it, it doesn't deal with anything
36 to do with ICAC, does it? It makes the recommendation for
37 the issuing of the PINs.
38 A. It acknowledges the matters being referred to ICAC.
39
40 Q. Yes, but it's --
41 A. I'm sorry, Mr Commissioner. It highlights a different
42 bit of advice to the original one as in what it recommends
43 as a solution.
44
45 Q. Yes. The observation in the second paragraph about
46 ICAC is not the advice they're giving you; they're saying,
47 "We note this fact"?

1 A. I agree.
2
3 Q. And the substance of the letter is going to the
4 prosecution; is that correct?
5 A. That's correct.
6
7 Q. You're saying in relation to receiving that letter,
8 even though you asked for it, it was sent to you under the
9 Trim formulation; you assumed that Mr Burgess was handling
10 the matter?
11 A. I didn't assume, I was under that understanding.
12
13 Q. At any time did you access the Trim file after that to
14 make a visual inquiry as to what had been done?
15 A. I don't recall doing that, no.
16
17 Q. You also indicated that you knew that the mayor was
18 aware of the advice that was being received?
19 A. The mayor of the day, yes.
20
21 Q. Ms Simms.
22 A. I will clarify that, Mr Commissioner. I'm not sure if
23 she was aware of the advice, but Mayor Simms certainly was
24 aware of the matter on foot.
25
26 Q. How do you know that?
27 A. I was present when Mr Burgess informed her.
28
29 Q. Have you seen her statement?
30 A. Yes.
31
32 Q. When Mr Burgess informed her, she made a note of what
33 was said. Did you see that handwritten note?
34 A. I'm not sure I recall that.
35
36 Q. You are not sure? Could the witness be shown
37 Ms Simms' statement. I have lost my exhibit list,
38 Mr Commissioner, I apologise. It is S10, I'm told by my
39 learned friend, thank you very much. Could I ask you to go
40 to the annexures to that statement and it is page number
41 22. Could I ask you to read it. Let me know when you've
42 finished; take as long as you need.
43 A. Page 22?
44
45 Q. Page 22.
46 A. Page 22. Yes. I've read that.
47

1 Q. Do you see there that the mayor has noted in the
2 second-last paragraph, the last sentence:

3
4 *Mark Brisby is to prosecute for illegal*
5 *building works.*
6

7 Do you see that?

8 A. Yes.

9

10 Q. You would accept, would you not, that she would not
11 write that unless that was something she was told?

12 A. I can't - it's not my note. It's Ms Simms' note, not
13 mine.

14

15 Q. If you were standing with Mr Burgess when he told
16 Ms Simms, if he had said words to the effect of:
17 "Mark Brisby is to prosecute for illegal building works",
18 you would have said, "Hang on a second, it's not me, it's
19 you", wouldn't you?

20 A. I've never accepted, Mr Commissioner, that it wasn't
21 myself to carry out the work. Due to the matter being -
22 the subject being an elected member, I needed a direction,
23 a guidance from the general manager to say do it or don't
24 do it, or what to do. I accept that it wouldn't have been
25 his role to carry out the prosecution.

26

27 THE COMMISSIONER: Q. Once a decision was made?

28 A. I needed a decision.

29

30 MS DUGGAN: Q. When you said to the Commissioner earlier
31 that Mr Burgess said to you words to the effect of, "I'll
32 take care of it", what you're saying now is, is it not,
33 that you accept that it was your responsibility to do the
34 administrative part of the process, but you're saying now
35 that you had never been given a direction by Mr Burgess to
36 do it, is that what you're saying?

37 A. That's correct.

38

39 Q. You understand that the two are not the same thing,
40 don't you?

41 A. No, I don't.

42

43 Q. Well, earlier you told the Commissioner that you had a
44 clear recollection of a conversation where Mr Burgess said
45 to you, "I will take care of it." Do you remember giving
46 that evidence, and I don't have a transcript, that's --

47 A. I'm not sure of the recollection, but I'm clear that

1 he said he would handle the matter and I took the matter to
2 be the whole case.

3

4 Q. You took the matter to be the whole case. So you
5 believed that it was off your desk and it was Mr Burgess's
6 responsibility to do what was necessary to get the
7 prosecution up and running?

8 A. No, and I'll clarify that. I never expected not to
9 carry out the action.

10

11 Q. Okay.

12 A. What --

13

14 Q. Sorry, go on? When Mr Burgess said to the councillor,
15 if he did; "Mark Brisby is to prosecute for building
16 works", that would seem to indicate that he had made a
17 decision that a prosecution should occur and that you were
18 going to take steps to make sure it happened, that's what
19 those words would imply, would they not?

20 A. I was never given a direction to commence work.

21

22 Q. That's not what I'm asking you, Mr Brisby.

23 A. I'm just looking at the date. The date of
24 Mayor Simms' notes is 30 July.

25

26 Q. 2009, yes.

27 A. The matter was still ongoing at ICAC.

28

29 Q. Yes. The question I am asking you is that if you were
30 present when the words "Mark Brisby is to prosecute for
31 illegal building works", and those words fell from the
32 mouth of the general manager, that would imply to you,
33 would it not, that the general manager had made the
34 decision and that it was your job to implement that
35 decision?

36 A. Well, again, I can only repeat, Mr Commissioner, that
37 they're Mayor Simms' notes and the interpretation of them
38 would be hers.

39

40 Q. That's not the question I'm asking you. The question
41 I am asking you, Mr Brisby, is if you were there and if
42 those words, "Mark Brisby is to prosecute for illegal
43 building works" was said in your presence, what those words
44 were saying, I put to you, is that Mr Burgess had made the
45 decision and the decision was to prosecute and that you
46 were to take the steps necessary to make that happen?

47 A. If I got that direction, yes.

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Q. Those words, Mr Brisby, is what I am turning your attention to. If you were standing there when these words were said, there would be no doubt in your mind, if these words were said in your presence, that you would understand the decision had been made to prosecute?

A. If that direction was given to me, yes.

Q. Well, your understanding then --

MR ROBSON: I object to the question. As my learned friend knows, as I understand it, there was some confusion with Ms Simms last week. The document marked with the letter A on page 22 is the document referred to in paragraph 8 of her statement. It doesn't say that this witness was there at the time.

MS DUGGAN: No, this witness has said he was there at the time.

MR ROBSON: Ms Simms, as I understand it, doesn't put evidence before this Commission that at the time of this conversation - indeed, we have seen her give her evidence. Her evidence, and this I assume was adopted under oath, is that she had a discussion with Mr Burgess about something and that is what is being consistently put to this witness, and I am not criticising my friend, but that he was there at the time, and that is contrary to the evidence we have otherwise received, as I understand it.

MS DUGGAN: Well, with respect, I asked this witness how he knew the menu and he said he was there at the time that the general manager advised Ms Simms. Now, I know my friend doesn't want him to be there, but he has put himself there and, with respect, I repeat my question.

MR ROBSON: Can I just make a further objection. In the further statement which we were given again this morning, in the statement given to us today, this is what Mr Burgess says:

I do not recall having a conversation with Mr Brisby about taking enforcement action against the developer of the Station Road development.

It is fundamentally clear he never had a conversation with

1 him.
2
3 MS DUGGAN: No, he does not recall, he says.
4
5 MR ROBSON: "I do not recall having a conversation".
6
7 THE COMMISSIONER: My understanding, from what Ms Simms
8 said last week, was that this conversation that she made a
9 note about on 30 July 2009 was a conversation limited to
10 her and Mr Burgess.
11
12 MR ROBSON: That's my understanding.
13
14 THE COMMISSIONER: But I think Ms Duggan is correct, that
15 Mr Brisby said he was present during some discussion
16 between Mr Burgess and Ms Simms about what was happening.
17 I think Ms Duggan is just exploring, "If you were there,
18 what would your reaction have been?"
19
20 MS DUGGAN: Yes. Mr Commissioner, could I just clarify
21 one point?
22
23 THE COMMISSIONER: Yes.
24
25 MS DUGGAN: It is not he was there when a discussion was
26 had, he says he was there when Mr Burgess told her about
27 the problem, and I will make submissions on that in due
28 course.
29
30 THE COMMISSIONER: All right.
31
32 MS DUGGAN: Q. Could I go back to the question. I'm
33 asking it now I think for the fourth time, so if you don't
34 understand any part of my question, please let me know.
35 I would like hypothetically for you to pretend that you
36 were standing next to the councillor and next to
37 Mr Burgess, and Mr Burgess says to the councillor words:
38 "Mark Brisby is to prosecute for illegal building works".
39 What I am putting to you is: you would have been in no
40 doubt from those words that the general manager had made a
41 decision to prosecute?
42 A. I would accept that, yes.
43
44 Q. And you would accept from those words that the next
45 step would be for you to then go and make the prosecution
46 happen?
47 A. That's correct.

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Q. That could be the issuing of a PIN, that could be Land and Environment Court proceedings, that could be Local Court proceedings?

A. That's correct.

MS DUGGAN: Thank you.

THE COMMISSIONER: Mr Silver, is there anything?.

MR SILVER: No.

THE COMMISSIONER: Mr Gardiner, is there anything?

MR GARDINER: I have just a couple of matters, perhaps even just a couple of questions.

<EXAMINATION BY MR GARDINER:

MR GARDINER: Q. Mr Brisby, you said in your evidence that by December 2012, Mr Burgess was having trouble with the elected council?

A. Yes.

Q. This is the council that were elected in September 2012?

A. That's correct.

Q. You said that you were part of the executive team at that stage in the context of that answer?

A. That's correct.

Q. Did Mr Burgess tell the executive team that he was having trouble?

A. It was well known and discussed at executive meetings.

Q. He wasn't having any trouble with Mr Yang, was he?

A. Mr Yang - I'm not sure. Former Councillor Yang wasn't overly - I'm not sure of the term - was overly upfront with leadership within the group. I'm not sure. I might clarify, Mr Commissioner, I'm not sure of Councillor Yang's position.

Q. He had been a councillor for less than three or four months?

A. Three months.

1 Q. There had been one or two council meetings in that
2 time and maybe a committee meeting or two?
3 A. That's correct.
4
5 Q. There hadn't been any formal councillor workshops or
6 briefings by then?
7 A. I don't recall.
8
9 Q. So it would be fair to say Mr Yang was still feeling
10 his way in council?
11 A. You would expect that.
12
13 Q. That's right. Did he have one-on-one meetings with
14 you as part of his newly elected role?
15 A. Not up until that point, but as his confidence
16 developed and his representation of the Korean community,
17 he did, yes.
18
19 Q. But by December 2012, he hadn't had any direct
20 communications with you?
21 A. No.
22
23 Q. To your knowledge he had no direct communications of a
24 one-on-one nature with Mr Burgess?
25 A. I would have no knowledge.
26
27 Q. Certainly Mr Burgess hadn't said to you, "I've had a
28 meeting with Mr Yang and he is part of the trouble I'm
29 having with the elected council"?
30 A. No, he never - I'm not aware of that.
31
32 MR GARDINER: Thank, you. That's all I have,
33 Commissioner.
34
35 THE COMMISSIONER: Mr Robson, do you have any questions of
36 clarification?
37
38 MR ROBSON: Commissioner, given the time and the
39 circumstances, it would be my respectful request that we
40 adjourn to have a look at the further statements that were
41 provided today and to have an opportunity to confer with
42 Mr Burgess if we need to ask any questions we will; if we
43 don't, we don't. Is that convenient?
44
45 THE COMMISSIONER: It is. Do you have any questions? Are
46 you proposing to potentially do that tomorrow morning,
47 first thing?

1
2 MR ROBSON: It would be someone else doing it.
3
4 THE COMMISSIONER: Should I excuse Mr Brisby?
5
6 MR ROBSON: I haven't had any discussions with Mr Brisby
7 since he has been giving his evidence, but I would have
8 assumed that he may need to look up documentation to confer
9 and to read closely the statement.
10
11 THE COMMISSIONER: Why don't I leave it open as to whether
12 whoever is representing him tomorrow might want to ask him
13 some questions tomorrow morning. I am sorry, you might
14 have to come back.
15
16 THE WITNESS: Is it possible to --
17
18 THE COMMISSIONER: Your counsel is asking for some time to
19 consider some matters.
20
21 MS DUGGAN: Might I inquire, if it is not Mr Brisby, will
22 Mr Burgess be the first witness tomorrow?
23
24 THE COMMISSIONER: I think so, yes.
25
26 MR BOLSTER: Yes. Mr Burgess, Mr Campbell, Mr Oldfield.
27
28 THE COMMISSIONER: I will excuse you from coming back
29 unless you get advice that you should come back through
30 your legal representatives.
31
32 THE WITNESS: Thank you, Mr Commissioner.
33
34 **<THE WITNESS WITHDREW**
35
36 MR WHEELHOUSE: Thank you, Mr Commissioner.
37
38 THE COMMISSIONER: Mr Silver, will you be able to tender
39 whatever you need to tender tomorrow morning --
40
41 MR SILVER: I will be attending tomorrow morning.
42
43 THE COMMISSIONER: -- regarding Mr Francis. Thank you.
44 We will adjourn until 10am tomorrow.
45
46 **AT 4.17PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY, 8 JUNE**
47 **2016 AT 10AM**

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