

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, 31 May 2016 at 9.30am
(Day 1)

1 THE COMMISSIONER: Thank you. I am going to deliver some
2 very brief opening remarks and then Mr Bolster,
3 Counsel Assisting, will make an opening statement. After
4 that, we will take organisations who are appearing.

5
6 The role of this public inquiry is to inquire into and
7 subsequently report on the existence of factual matters
8 that largely, but not exclusively, relate to the governance
9 of the Auburn City Council.

10
11 The inquiry is taking place as a result of the
12 appointment of me as Commissioner to hold a public inquiry
13 by the Minister For Local Government, the Honourable
14 Paul Toole MP. That appointment was made on 21 January
15 2016 under section 438U of the Local Government Act.

16
17 One observation that can be immediately made about the
18 appointment of a commissioner to hold a public inquiry into
19 any matters concerning the Auburn City Council is the
20 Auburn City Council no longer exists. This requires a
21 brief explanation.

22
23 Also on 21 January this year, the Minister gave notice
24 of his intention to suspend the Council under section 438K
25 of the Local Government Act. Under the relevant
26 legislative provisions, the Council was invited to make
27 submissions concerning the proposed suspension. It did so
28 and opposed suspension. The Minister, however, determined
29 to suspend the Council on 10 February. That decision had
30 the effect of suspending the governing body of the Council,
31 that is, its 10 councillors, from their civic office.
32 Mr Viv May was appointed interim administrator of the
33 Council. Under the provisions of the Local Government Act,
34 Mr May was granted all of the functions of the Council.

35
36 On Thursday, 12 May 2016, a series of Council
37 amalgamations were proclaimed. The city of Auburn and the
38 City of Holroyd had become the Cumberland Council. Mr May
39 has been appointed administrator of this new council.
40 Despite all of this, pursuant to clause 7(3) of the Local
41 Government City of Parramatta and Cumberland proclamation
42 2016, this public inquiry is to be continued and completed
43 as if the Auburn City Council had not ceased to exist.

44
45 I'll turn briefly now to discuss the terms of
46 reference, the nature of the inquiry, and certain matters
47 of procedure.

1 The terms of reference are broad. They're not even
2 confined by time. People of course are and it is not
3 possible for this inquiry to look into every matter that
4 might fall within the terms of reference. That would
5 require the expenditure of an unreasonable amount of time
6 and resources.

7
8 The terms of reference are these:

9
10 I am to inquire and report on the following matters
11 relating to Auburn City Council:

12
13 1. Whether the Council and its elected
14 representatives have complied with applicable laws, the
15 Council's adopted Code of Conduct, the procedures for the
16 administration of the Code of Conduct, relevant planning
17 legislation and Council's administrative rules and policies
18 have fulfilled its and their legislative duties, powers and
19 functions.

20
21 2. Whether the relationships between councillors are
22 conducted properly to ensure that individuals do not
23 receive favourable treatment from decisions made by the
24 elected council or by council staff.

25
26 3. Whether the governing body commands the
27 community's confidence, and will continue to be in a
28 position to direct and control the affairs of Council in
29 accordance with the Local Government Act 1993 so that
30 Council may fulfil the charter, provisions and intent of
31 the Local Government Act 1993, and otherwise fulfil its
32 statutory functions.

33
34 4. Any other matters that warrant inquiry,
35 particularly those that may impact on the effective
36 administration of Council functions and responsibilities,
37 or the community's confidence in the Council being able to
38 do so.

39
40 The terms of reference can be seen to have a direct
41 link to many of the provisions of the Local Government Act
42 and other relevant legislation concerning both the role of
43 the governing body of the Council and the role of staff,
44 including senior staff.

45
46 Councillors and staff of local councils, including
47 Auburn, obviously play a vital role in the affairs and

1 administration of local government. The councillors
2 control the affairs of Council subject to, and in
3 accordance with, the Local Government Act. Councillors
4 help create Council policies and objectives. They
5 represent the interests of residents and ratepayers, and
6 are in a position to provide leadership and guidance to
7 their communities.

8
9 Apart from matters on a local level, including
10 decisions concerning development, councils play an
11 important role in relation to planning matters. While it
12 is the relevant minister at the State Government level who
13 has the power under the Environmental Planning and
14 Assessment Act to make a planning instrument, such as a
15 Local Environmental Plan, this planning legislation grants
16 power to the councillors to initiate planning proposals to
17 rezone land by means of new or amended LEPs.

18
19 It is through these planning instruments that
20 development standards are in general set for local
21 government areas. This is how councils regulate what kind
22 of development is permissible in what areas and how they
23 set the development standards for such development,
24 including matters such as floor space ratio and height.

25
26 A number of decisions regarding planning proposals and
27 other decisions or actions of Council will be the subject
28 of this public hearing.

29
30 The staff of councils also play an important role in
31 not just the management and policy formulation at senior
32 levels, but also in relation to development, including
33 certification processing. Unsurprisingly, and this is the
34 link to all these matters in the terms of reference, the
35 Local Government Act contains an overarching provision
36 requiring that all councillors and staff act honestly and
37 exercise reasonable care and diligence in the carrying out
38 of their functions under the Act.

39
40 Further, councillors and staff of local councils must
41 comply with the Model Code of Conduct which was first
42 introduced in 2005 and has since undergone a number of
43 amendments.

44
45 Under the provisions of the Local Government Act,
46 councillors and staff of councils must comply with the
47 Model Code. The Code contains obligations requiring the

1 councillors and staff to act lawfully, honestly, and with
2 reasonable care and diligence in relation to the carrying
3 out of their functions under the Act. It contains
4 obligations against behaviour that would be unethical or an
5 abuse of power. It obliges fairness in relation to
6 development decisions and contains provisions that largely
7 mirror the obligations in the Act concerning conflicts of
8 interest and disclosure of pecuniary interest in relation
9 to decision making.

10
11 Perhaps placed on top of the system of local
12 government are the residents and ratepayers. This is
13 reflected in terms of reference 3 which authorises an
14 inquiry into whether the elected representatives of the
15 council command the confidence of the community.

16
17 It is important to briefly note some other matters
18 concerning the terms of reference and about the nature of
19 this kind of public inquiry generally.

20
21 The terms of reference are not a pleading. They are
22 not directed to any specific decisions of Auburn Council or
23 to any incident. They do not contain allegations against
24 anyone. An inquiry such as this is not set out to prove a
25 case the way that phrase might be understood in proceedings
26 before a court.

27
28 This is an administrative inquiry. In essence, it is
29 a fact-finding inquiry set up to obtain facts and not to
30 finally determine legal rights. A public inquiry such as
31 this can only make recommendations to the Minister. Any
32 findings of fact that are ultimately made are expressions
33 of opinion. They bind no-one; nor are any recommendations
34 that might ultimately be made binding on the Minister and
35 the inquiry itself cannot implement any recommendations it
36 might make.

37
38 Given that this is an administrative inquiry, the
39 rules of evidence do not apply. The rules of fairness,
40 however, do.

41
42 Additionally, there is the requirement that any
43 findings of fact must be made rationally and in accordance
44 with proper standards of satisfaction that might vary
45 depending on whether the asserted factual matters are
46 adverse to the interests of any person.

47

1 With the exception of section 13 of Division 2 of
2 Part 2, the provision of the Royal Commissions Act New
3 South Wales apply to this inquiry. Amongst other things,
4 that means that persons may be summonsed to give evidence
5 at the public hearings and also to produce documents.
6 Partly because of this, shortly after the Minister
7 appointed me as Commissioner for the inquiry, I appointed
8 Mr Darren Sear of Office of Local Government as principal
9 investigator. He is being supported by Ms Leonie Myers
10 also of the Office of Local Government.

11
12 Following this, on 2 March this year, the Minister for
13 Local Government appointed Mr Paul Bolster of the New South
14 Wales Bar as Counsel Assisting the inquiry.

15
16 A number of persons have been summonsed to appear at
17 these public hearings, including all the former councillors
18 as at the date of suspension. Mr Bolster and Mr Sear have
19 conducted interviews with a number of persons who have been
20 summonsed to appear, including some former councillors, and
21 most have been willing to provide statements. As
22 Commissioner, I have not been involved in that process.

23
24 Because the terms of reference in part direct an
25 inquiry into whether any person may have failed to comply
26 with applicable laws, the inquiry developed a general
27 practice direction which was based on similar such general
28 directions made for other inquiries.

29
30 In addition to taking witness statement, Mr Bolster as
31 Counsel Assisting is responsible for choosing the witnesses
32 that will be called to give evidence to the inquiry, and
33 the order in which those witnesses will be called.

34
35 The general practice direction contemplates the
36 granting of authorisation of legal practitioners to appear
37 for persons with sufficient interest in the inquiry in
38 order to protect the interests of those persons at the
39 public hearings. Authorisation to appear is likely to be
40 granted to those persons the inquiry has currently received
41 notice from.

42
43 Some of the persons who have been considered to be
44 potentially directly interested by the evidence of some
45 witnesses have been provided with witness statements where
46 possible.

1 It can be briefly noted in these opening remarks that
2 this inquiry is not the first investigation into Auburn
3 Council or into the conduct of its councillors.
4

5 There was a general review of the Council conducted by
6 the then Department of Local Government which resulted in a
7 report published in April 2007. There was an investigation
8 in 2008 conducted at the instigation of the then Minister
9 for Local Government and the department into the
10 development known as Auburn Central which resulted in the
11 report published in August 2008.
12

13 That report found various deficiencies in Council
14 processes concerning the development and made a series of
15 recommendations to address them, but no adverse findings
16 were made against any individual.
17

18 There was a review of the Regulatory and Compliance
19 Unit of the Council's Planning and Environment Directorate
20 which produced the report in January 2013.
21

22 As a final matter of these opening remarks, I note
23 that shortly after the Minister determined that this
24 inquiry take place, submissions were sought from the public
25 in relation to the terms of reference. A number of other
26 persons or entities were specifically invited to make
27 submissions. This approach was consistent with the nature
28 of the inquiry. It is public in nature, and active
29 community and interested group participation was to be
30 encouraged.
31

32 A number of submissions were received and the decision
33 was made not to publish those submissions on a public
34 website as was originally contemplated. That decision was
35 not made to keep the public or any interested party in the
36 dark.
37

38 I determined that it was not appropriate to put the
39 submissions on a public website. There were a number of
40 reasons for this which I will not go into now, but they
41 include that what was received was generally just
42 submissions and no more than that. In some instances they
43 contained untested assertions that alone could not
44 rationally form the basis of fact finding. Despite this,
45 I have decided that interested parties are entitled to see
46 the submissions, even if I were to pay no further regard to
47 them. That can occur today and the process will be

1 discussed later, but not otherwise in these opening
2 remarks.

3
4 Other submissions were in a different category. For
5 example, the inquiry received submissions from senior staff
6 of the Council which, rather than being directed to the
7 terms of reference, at least in a direct way, contained
8 information concerning not only the Council's policies and
9 procedures on a number of matters that have been developed
10 over time, but also in relation to what are no doubt the
11 Auburn Council's many achievements for its community,
12 including significant capital projects and also important
13 community services and facilities.

14
15 Of the matters recorded in previous investigations
16 into the Council, it is clear that the local government
17 area of Auburn contains areas within it of social economic
18 disadvantage. It has a population of about 80,000
19 residents, a large percentage of whom were born overseas,
20 and for whom English is a second language.

21
22 The evidence from previous investigations and reviews
23 is that the Council and its staff have done an excellent
24 job in providing community and specialist services for
25 residents. The submissions made about these matters, as
26 mentioned, don't appear to address the terms of reference
27 but can also be made available.

28
29 Mr Bolster?

30
31 MR BOLSTER: While that's happening, can I hand out to the
32 Bar table an opening tender bundle. Unfortunately, it is
33 not in colour. The colour version will be up on the
34 website within the next few minutes. It is a guide for
35 when you look at the coloured version. In some respects
36 the coloured version is essential, but for present purposes
37 that will do.

38
39 Can I also say these remarks will be on the website as
40 well so you don't need to write it down.

41
42 May it please the Commission, today the Commission
43 commences its public hearings. This first hearing day
44 presents an opportunity to set out in overview the
45 principal areas of focus for the inquiry and the likely
46 course of the Commission's activities over the next few
47 weeks.

1
2 This inquiry was established under Part 8 of
3 Chapter 13 of the Local Government Act which is styled "How
4 are Councils Made Accountable for their Actions."
5

6 Part 8 establishes a statutory framework for the
7 appointment of a commissioner or commissioners to hold a
8 public inquiry under section 438U and to report on the
9 various matters that are set out therein.
10

11 Section 438W empowers the Minister to suspend a
12 council whilst a public inquiry is held, in circumstances
13 where the Minister considers it is in the public interest
14 to do so. In this respect, it ought be noted that on
15 10 February the Council was suspended pending the outcome
16 of this investigation. That suspension has come to an end
17 by reason of the fact that on 12 May, the Council was
18 dismissed.
19

20 The initial suspension of Council led to the
21 appointment of Mr May as interim administrator under
22 section 438Y, and the subsequent dismissal led to Mr May
23 being appointed administrator of the new Cumberland Council
24 pending the outcome of future elections.
25

26 The dismissal of Council was brought about by a
27 proclamation which is referred to in the speaking notes
28 which I won't repeat in full. For practical purposes, that
29 proclamation had the effect of creating a new Cumberland
30 Council out of elements of each of Auburn City Council,
31 Holroyd Council and Parramatta City Council. Page 1 of the
32 bundle illustrates the boundaries of the new council.
33

34 Clause 7(3) of the proclamation was in these terms:
35

36 *A public inquiry under Part 8 Chapter 13 of*
37 *the Act into a matter relating to a former*
38 *council or the members or staff of a former*
39 *council that was commenced but not*
40 *completed before the amalgamation day may*
41 *be continued and completed as if the former*
42 *council had not ceased to exist.*
43

44 The name "Auburn" can be traced back to 1876, although
45 prior to that Officers from the First Fleet landed at and
46 explored the northern part of the local government area
47 along the tributaries of the Parramatta River soon after

1 1788. Settlers were granted land in the area from as early
2 as 1806. However, the area has a far older traditional and
3 indigenous history, and it ought be noted that it lies on
4 the border of the inland Darug lands and those of the
5 coastal Eora/Dharawal people.

6
7 The name of Auburn is attributed to a goldsmith poem,
8 "The Deserted Village", which begins with the couplet:
9 "Sweet Auburn, loveliest village of the plain."

10
11 The adjoining municipalities of Auburn and Lidcombe
12 were established, respectively, in 1891 and 1892 and were
13 amalgamated as one Council in 1949 - (Refer to page 3 of
14 the opening bundle).

15
16 The Auburn Local Government area was, at all relevant
17 times, a collection of suburbs of great diversity with
18 people from many lands and many faiths. The Council itself
19 is not a body politic, not a body corporate, with perpetual
20 succession and the legal capacity and powers of an
21 individual.

22
23 The councillors and mayor were, until their
24 suspension, holders of civic office as defined in the
25 Local Government Act.

26
27 For the purposes of an election, a Council's area may
28 be divided into wards. To vote in an election a person
29 must be a resident of the ward, the owner of rateable land
30 in the ward, or the occupier or rate-paying lessee of
31 rateable land in the ward.

32
33 This inquiry's principal areas of focus will be on the
34 conduct of the 10 councillors who were elected in 2012 in
35 respect of two wards which are shown in the map referred to
36 in the bundle.

37
38 The representatives of the first ward, the western
39 third of the local government area, encompassing
40 principally Auburn and the western parts of Silverwater
41 where Ronney Oueik, Le Lam, Semra Batik-Dunbar,
42 Salim Mehajer and Hicham Zraika.

43
44 The second ward encompassing Lidcombe, Berala,
45 Regents Park, Newington, Wentworth Point and Sydney
46 Olympic Park were Councillors Irene Simms, George Campbell,
47 Ned Attie, Tony Oldfield and Steve Yang.

1
2 The results of the elections in 2012 are included in
3 the bundle, as are the results of 2008.
4

5 At the time of suspension the Mayor was Le Lam and the
6 Deputy Mayor was Salim Mehajer. The previous Mayors are
7 set out in paragraph 21 where it is worth noting that the
8 three previous Mayors for the 2012 Council had been
9 Ned Attie, Hicham Zraika and Ronney Oueik.
10

11 Chapter 14 of the Local Government Act deals with
12 duties of disclosure on the part of councillors,
13 particularly in relation to pecuniary interests.
14

15 Under that chapter, "pecuniary interest" is defined
16 as:

17
18 *An interest that a person has in a matter*
19 *because of a reasonable likelihood or*
20 *expectation of appreciable financial gain*
21 *or loss to the person or another person*
22 *with whom the person is associated.*
23

24 The definition does not operate where a person's
25 interest is so remote or insignificant that it could not
26 reasonably be regarded as likely to influence any decision.
27

28 A councillor who has a pecuniary interest in a matter
29 with which the council is concerned must disclose the
30 nature of the interest and must be absent from the meeting
31 whilst that matter is addressed - (See section 451 of the
32 Act).
33

34 The Act extends the definition of pecuniary interest
35 beyond direct interests of a person to those of a person's
36 spouse, de facto partner or relative, and other commercial
37 interests.
38

39 Councillors are of course required to prepare and
40 submit returns of interest in accordance with section 449
41 of the Act and must disclose those interests in accordance
42 with section 451.
43

44 I won't repeat the terms of reference stated by you,
45 Mr Commissioner. However, I do note that they expressly
46 refer to Council's adopted Code of Conduct, the procedures
47 for the administration of the Code of Conduct, relevant

1 planning legislation and other matters. The Code of
2 Conduct is to be found at pages 22 to 43 of the bundle.

3
4 Section 40 of the Act requires councils to adopt a
5 Code of Conduct that incorporates and/or supplements the
6 provisions of a Model Code that is prescribed under the
7 Act.

8
9 The significance of the Code for present purposes is
10 that it introduces the parallel concept of the
11 non-pecuniary interest and how such interests are to be
12 managed.

13
14 Clause 4.10 on page 8 of the Code defines a
15 "non-pecuniary interest" to be:

16
17 *Private or personal interests the council*
18 *official has that do not amount to a*
19 *pecuniary interest as defined in the Act.*
20 *These commonly arise out of family, or*
21 *personal relationships, or involvement in*
22 *sporting, social or other cultural groups,*
23 *and may include an interest of a financial*
24 *nature.*

25
26 Clauses 4.12 to 4.19 deal with the management of those
27 interests, which I won't repeat.

28
29 Clauses 4.1 to 4.4 are, however, important. They
30 apply not only to pecuniary, they apply to pecuniary and
31 non-pecuniary interests. They state as follows:

32
33 *4.1 A conflict of interests exists where a*
34 *reasonable and informed person would*
35 *perceive that you could be influenced by a*
36 *private interest when carrying out your*
37 *public duty.*

38
39 *4.2 You must avoid or appropriately manage*
40 *any conflict of interests. The onus is on*
41 *you to identify a conflict of interests and*
42 *take the appropriate action to manage the*
43 *conflict in favour of your public duty.*

44
45 *4.3 Any conflict of interests must be*
46 *managed to uphold the probity of council*
47 *decision-making. When considering whether*

1 *or not you have a conflict of interests, it*
2 *is always important to think about how*
3 *others would view your situation.*
4

5 Can I also briefly draw attention to parts 5 and 6 of
6 the Code which deal respectively with gifts and benefits
7 and the relationship between council officials.
8

9 The hearings will commence with evidence from
10 Mr Tim Hurst, the Acting CEO of the Office of Local
11 Government, whose evidence will deal with the background to
12 the inquiry and certain matters of procedure, including the
13 issue of the supervision by council of the general manager.
14 The hearings will then focus attention on the circumstances
15 surrounding a number of particular matters, some of which
16 have already given rise to a significant degree of
17 community interest, and others which have not.
18

19 It is anticipated that all members of the former
20 council that was elected in 2012 will give evidence.
21

22 The topics that are presently the focus of the inquiry
23 may be summarised or categorised as follows: four
24 decisions of council that relate to planning proposals, one
25 of which has been gazetted; the other three of which are on
26 hold. They are as follows: the Berala Village Planning
27 Proposal, the South Auburn Planning Proposal, the Marsden
28 Street Lidcombe Planning Proposal, and the Grey Street
29 Silverwater Planning Proposal.
30

31 In addition, two instances of serious deficiencies in
32 building certification and consequent enforcement that
33 continue to have significant ramifications for a number of
34 residents will also be looked into. They arise out of a
35 certification for occupation of the residential
36 developments at 40 to 44 Station Road, Auburn, and a
37 property in Water Street, Lidcombe.
38

39 In particular, there will be a focus on the
40 circumstances surrounding the contractual dealings between
41 Council and the purchaser of council-owned land located at
42 13 John Street, Lidcombe, that is currently a council
43 carpark.
44

45 The inquiry will also look broadly, as well as by
46 reference to each of the previously mentioned matters, into
47 the relationship between councillors and council staff and

1 the extent to which staff may have been directed in their
2 work in a manner that was in breach of the Code of Conduct.

3
4 The inquiry will also look into the circumstances
5 surrounding the termination of the employment of
6 Mr John Burgess as the general manager of council in 2013
7 and the events that have flowed from it, including the
8 appointment of Mr Peter Fitzgerald Senior, as acting
9 general manager and later a consultant to the newly
10 appointed general manager Mr Brisby; a restructure of
11 council staff initiated, it would appear, by Mr Fitzgerald,
12 the appointment of Mr Brisby as general manager, reviews
13 undertaken with respect to Mr Brisby's contract pursuant to
14 council's performance management functions - in this
15 respect section 23A of the Act requires council to take
16 into consideration any guidelines issued under that section
17 before exercising any functions under the Act.

18
19 The hearings will also explore the circumstances
20 surrounding the council response to not one but two fires
21 at the premises located at 84A Auburn Road, Auburn, and
22 located within the area of the South Auburn planning
23 proposal in which former Councillor Mehajer declared a
24 pecuniary interest.

25
26 The hearing will also explore council's response to a
27 section of Frances Street, Lidcombe, at the time of the
28 former Deputy Mayor's wedding and issues regarding the
29 certification of those premises.

30
31 I now propose to outline some of the features of each
32 of the topics of the investigation so as to identify what
33 the key issues are. The first matters that I will deal
34 with are three of the four planning proposals under
35 investigation. They were all the subject of active
36 consideration by the 2012 council after it was sworn in in
37 September of that year.

38
39 Can I deal, firstly, with Berala. In 2010, council
40 resolved to prepare a planning study of the Berala Village
41 Centre and the surrounding residential centre. By April
42 2012, a draft study had been prepared and a report to
43 council recommended that the study be exhibited. The draft
44 study was prepared by council planning staff and
45 recommended no changes to existing planning control. This
46 was on the basis that the most likely type of redevelopment
47 was considered to be incremental, small-scale development

1 dispersed across the study area, all of which was
2 permissible under the existing controls.

3
4 In July 2012, council resolved to defer consideration
5 of the matter to enable consultation with non-resident
6 property owners in the area. After those consultations
7 took place, council resolved to defer the study to a
8 councillor workshop in February 2013.

9
10 In March 2013, council resolved to undertake a further
11 study of the B2 zoned area of the village and surrounding
12 area and, in June, external planning consultants were
13 engaged to undertake a further study. This study differed
14 considerably from the council planning study. It was, in
15 effect, an economic analysis of the viability of
16 redevelopment based on existing controls.

17
18 In February 2014, there was a further workshop held at
19 Bowral over the course of a weekend. Berala was one of the
20 matters discussed. If one goes to opening bundle 44
21 through 57, one will see that on that occasion a briefing
22 was prepared to councillors by a Mr Glenn Francis, then the
23 manager of planning, and maps of the Berala Village Centre
24 were handed out to those councillors present, together with
25 coloured pencils. Councillors were asked to indicate their
26 preference for what Berala should look like by colouring in
27 the map. Copies of the maps returned are in the opening
28 bundle at pages 58 to 62. The copies are black and white.
29 You will see, if you haven't seen them already, that the
30 maps show clear colouring-in in a range of colours to
31 indicate the various zonings.

32
33 Of the 10 councillors, Mr Zraika did not take part, he
34 having declared an interest in the matter given his
35 ownership of land in York Street, Berala. It is noteworthy
36 that Mr Zraika had always declared an interest and
37 abstained from voting in all matters associated with this
38 proposal. Mr Oldfield did not colour in the map as he was
39 of the view that no change was warranted. Only five
40 councillors coloured in and returned a map. One signed his
41 name to it, that is Mr Yang.

42
43 Whether by coincidence or otherwise, three councillors
44 proposed a B2 zoning in a portion of York Street which
45 encompassed the land owned by Mr Zraika and this was the
46 first indication that any rezoning should extend to that
47 location. Council staff took the maps away, analysed the

1 views of councillors, and prepared a briefing to council
2 which took place in June of 2014. That briefing was
3 accompanied by a PowerPoint presentation with a series of
4 maps, which are also included in the bundle commencing at
5 page 63.
6

7 For present purposes, I just wish to focus on two
8 maps. The first is at bundle 67. It summarises the
9 councillor position on the B2 zone distilled from the maps
10 that they had prepared. It shows that three councillors
11 proposed B2 limits on the south side of York Street and the
12 three councillors filled those relevant areas in. When
13 this is compared to existing controls, which are apparent
14 on the map on the right-hand side of the page, it is to be
15 observed that the existing control was R2.
16

17 In the map at bundle 71, staff suggested their own
18 zonings to reflect what they perceived to be the position
19 of councillors. It ought be noted that their proposal was
20 a watered down version of the zonings identified in the
21 councillor coloured maps proposing R4 as opposed to B2,
22 particularly in the pocket where Mr Zraika had an interest.
23

24 In a subsequent report to council following that
25 briefing, staff stated that the workshop at which these
26 maps were produced, discussed and considered, involved
27 further discussion and the making of verbal amendments to
28 the plan. It was on that basis that in a report to council
29 in advance of the meeting on 16 July 2014, staff proposed a
30 draft rezoning scenario that in substance reflected the
31 position of the minority of councillors, that is, the three
32 councillors who proposed a B2 zoning on the first plan.
33

34 Whilst there is some attenuation of the B2 zones in
35 the north portion of the study surrounding Crawford Street,
36 which is within a block of Berala station, the B2 pocket in
37 York Street in which Councillor Zraika owned land, was
38 maintained. Precisely how this happened, what the
39 discussions were, will be a principal focus of this
40 inquiry.
41

42 On 16 July 2015, and after considerable debate in
43 which a minority of councillors unsuccessfully sought to
44 adopt the original Berala study, the council resolved to
45 receive and note the earlier economic study by Hill PDA to
46 incorporate it into an amended draft study and adopt that
47 revised study.

1
2 The inquiry will also address issues arising out of an
3 agreement reached between then Councillors Oldfield and
4 Zraika bearing the date 26 September 2013 that was made in
5 the lead-up to the mayoral election. That agreement is
6 reproduced at opening bundle 76.

7
8 Mr Oldfield will give evidence that in the lead up to
9 that election when the issue of supporting him for the
10 mayor's position was under consideration, he met with
11 Mr Zraika and they reached that agreement. Prior to that,
12 Councillor Zraika had consistently abstained on the basis
13 of his interest in the town centre, but subsequently did
14 not take part in any further votes or discussions about the
15 matter. This inquiry will explore why it was, given that
16 commitment, Mr Zraika did not participate in the debate
17 thereafter.

18
19 A counterpoint to the Berala Planning Proposal is the
20 related spot zoning of what is known as the South Auburn
21 planning proposal. At the Ordinary Meeting of Council on
22 2 December 2015, the council resolved to adopt and make an
23 amendment to the draft Auburn LEP concerning land bounded
24 by Auburn Road and Beatrice, Susan and Helena Streets.
25 Before council at that time was a 109 page report.

26
27 The substantive effect of the changes proposed was to
28 create a mixture of zones for that block, namely B4 and R4.
29 Under existing controls the land was zoned R3, consistently
30 with all of the land surrounding it to the east, west and
31 south. Under that control there was a height limit of
32 9 metres and a floor space ratio of 0.75 to 1.

33
34 The final B4 zone approved by council comprised a
35 relatively small pocket of land on the eastern side of
36 Auburn Road between Beatrice Street and 90 Auburn Road,
37 that is 74 to 90 Auburn Road.

38
39 The difference between B4 and R4 was that B4 permitted
40 a 21 metre height limit, whereas R4 had a height limit of
41 16 metres. The FSR for B4 was 2.25 to 1; the FSR for R4
42 was 1.4 to 1.

43
44 The councillors who voted in support of the proposal
45 were Councillors Lam, Attie, Oueik, Yang and Zraika. Those
46 against were Councillors Campbell, Oldfield and Simms.
47

1 Councillor Batik-Dunbar did not take part in relation
2 to these matters because she was either away or she had a
3 client who owned property in the area and had declared an
4 interest.

5
6 Councillor Mehajer declared an interest at all times
7 arising out of his ownership of 84A Auburn Road, a property
8 located within the B4 zoning that was approved. Pages 77
9 to 79 of the bundle are maps showing the original proposed
10 zoning on page 77 --

11
12 THE COMMISSIONER: Is that better in colour as well?

13
14 MR BOLSTER: It is much better in colour. I think even
15 the black and white gives the effect.

16
17 On the left-hand side of the area adjoining
18 Auburn Road is the B4 zone and on the right is the R4 zone.

19
20 Going over three pages to page 80, it will be seen
21 that option 2A, the final zone that was adopted, appears on
22 the map in purple but I think even the black and white
23 shows the extent of it. Essentially it runs down from
24 Beatrice Street to include 90 Auburn Road, along that
25 Auburn Road side.

26
27 The original proposal for B4/R4 came from a council
28 resolution on 17 April 2013, moved from the floor by
29 Councillor Yang; seconded by Councillor Attie.
30 Councillors Lam and Mehajer did not take part in the vote;
31 Mr Mehajer, for reasons previously stated, and in the case
32 of Councillor Lam, on the basis that her company managed a
33 property that was within the planning proposal.

34
35 The proposal was submitted to the Department of
36 Planning and Infrastructure in March 2014, a Gateway
37 determination issued in May 2014, community and public
38 authority consultation occurred in July and August, an
39 urban design study commissioned by MG Planning supported
40 the proposal but suggested site specific development
41 controls, namely the 21 metre height limit and the 2.25
42 floor space ratio.

43
44 The MG Planning report did not consider options 2A
45 and 2B. They were non-existent at that time. They were
46 first put before council in April 2015 in a report to
47 council from staff which identified two further options

1 that I've already outlined.

2

3 On 15 April, Councillor Attie declared a non-pecuniary
4 interest and each of Councillors Lam and Mehajer declared a
5 pecuniary interest and they took no part in the
6 consideration of the matter. Council resolved by four
7 votes to two that no further action would be taken. That
8 was not the end of the matter.

9

10 The actual decision to adopt 2A and reduce the size of
11 the B4 zone in the proposal was made by council on 20 May.
12 On that occasion Councillor Mehajer excused himself,
13 Councillor Batik-Dunbar did the same, Councillor Lam was
14 overseas; Councillor Attie did not declare an interest
15 despite having done so at the previous meeting.

16

17 Council then resolved by four votes to three to
18 rescind the previous resolution and essentially adopt
19 Option 2A.

20

21 As a post-script, Councillors Campbell, Simms and
22 McDonald moved a rescission motion in respect of that
23 resolution in January 2016. Then on 17 February 2016,
24 Mr May resolved to take no further action in relation to
25 the proposal and that council should ensure that any
26 further planning decisions for the site are undertaken as
27 part of a comprehensive review and that this process be
28 deferred until the merger proposals then under
29 consideration were determined by government.

30

31 Significant questions arise as to why the proposal was
32 put forward in the first place and why the scope of the
33 B4 zone was reduced in the manner outlined above,
34 preserving the extension of that zone to land owned by
35 Councillor Mehajer. The inquiry will hear evidence that a
36 community organisation known as the Bhanin El Minieh
37 Association which owned land at 98 Auburn Road, just south
38 of the boundary adopted by council, had an expectation that
39 the rezoning would extend the B4 zoning to them, and were
40 deeply disappointed with council's decision. The
41 circumstances in which they obtained that expectation will
42 be explored in some detail.

43

44 The third of the spot rezonings that the Commission
45 will investigate concerns the rezoning of what is known as
46 the Marsden Street precinct in Lidcombe, just south of
47 Lidcombe, the railway line and Lidcombe Station, very close

1 to Rookwood Cemetery.

2

3 This planning proposal has proceeded and been gazetted
4 and is now in force.

5

6 The proposal was originally lodged in June 2013. It
7 came from private landowners and originally related to just
8 two parcels of land owned by them, namely,
9 21-23 James Street and 15 Raphael Street. The proposal
10 also included a council owned laneway that sat between the
11 two lots.

12

13 On receipt of the proposal, council staff carried out
14 a detailed assessment of the proposal and the matter came
15 before council on 20 November 2013. Staff recommended that
16 a planning proposal be prepared to amend the LEP in the
17 manner proposed. The land was IN2 Light Industrial and the
18 proposal was to rezone it R4 High Density Residential.

19

20 The recommendations were based on an extensive
21 assessment report by council staff that had been three
22 months in the making and which included the proposal itself
23 prepared on behalf of the landowners by CBRE Town Planning.

24

25 The proposal would have brought the subject land under
26 the same controls as applied to the adjoining R4 zone to
27 the north and west of the site.

28

29 At the 20 November 2013 meeting of council,
30 Councillor Oueik declared a non-pecuniary conflict of
31 interest in the matter and remained outside of the chamber.
32 The remaining nine members of the council unanimously
33 resolved to defer consideration of the proposal to enable
34 planning staff to undertake "a more complete" urban design
35 and planning study of the broader area bounded by Mark,
36 James, East, and Railway Streets.

37

38 At bundle 82 is a map showing the existing zoning of
39 the land. The land in question is in pay yellow box which
40 should appear immediately underneath the word "Raphael".
41 Page 82 is the proposed zoning which shows R4. Pages 84
42 and 85 are the floor space ratio and height maps of the
43 proposal.

44

45 The study that was undertaken, at the cost of council,
46 was undertaken by a firm called AECOM and was finalised on
47 28 May 2014. It included seven separate scenarios and put

1 forward a preferred scenario, Option F. Option F provided
2 for an R4 zoning to the south of Marsden Street and B4 to
3 the north. Option F appears at page 88 of the bundle. The
4 black and white doesn't reveal that all of the land to the
5 south of the crosshatched arrow that bisects the zone is
6 zoned red in Option F for R4, and the vast bulk of the land
7 to the north of it is B4.

8
9 Council considered the report of AECOM and a report
10 from staff at a meeting on 18 June 2014. The report to
11 council from staff included a further option, Option G, and
12 staff recommended it. Option G may be seen at page 90.
13 Essentially the difference between Option G and Option F,
14 you don't need a colour map to work this out, is that
15 essentially all of the Option G zone was B4.

16
17 AECOM had considered a proposal like that in
18 Scenario E which is apparent on page 90 and made
19 recommendations against it. Its consideration of Option E
20 is reproduced at pages 86 and 87. The same observations in
21 relation to the B4 zone along the James Street and
22 Marsden Street area of that proposal would apply to
23 Option G, as it would to Option E.

24
25 The matter was before council again on 18 June, not as
26 the application of the original landowners but as
27 Item 153/14, "Zoning Review - Marsden Street Review".

28
29 Just pausing there, nothing had happened, of course,
30 in relation to the original application of the residents.
31 Some considerable time had passed, yet their application
32 had not been dealt with. They were left, it would appear,
33 on a limb waiting, whilst council dealt with this broader
34 rezoning.

35
36 The staff report put forward to council on 18 June by
37 Mr Glenn Francis, then the Executive Manager of Planning,
38 was in these terms:

39
40 *AECOM has undertaken an urban design study*
41 *for the Marsden Street Precinct. The*
42 *consultant has produced a draft report*
43 *outlining the findings of the study and*
44 *presented a number of scenarios and*
45 *recommended a preferred scenario for*
46 *rezoning of the precinct. An alternative*
47 *rezoning scenario has also been included in*

1 *the report. Council may wish to consider*
2 *the alternative scenarios for the precinct.*
3 *This report recommends that Council note*
4 *the consultant's report and*
5 *recommendations, the alternative*
6 *Scenario G, and prepare a Planning Proposal*
7 *to the Department of Planning to rezone the*
8 *study area as per Scenario G.*

9
10 Scenario G was selected.

11
12 Each of Councillors Mehajer and Oueik declared a
13 pecuniary interest in the matter, Mr Mehajer on the basis
14 that he was "in the process of purchasing property in the
15 surrounding area."

16
17 Councillor Oueik, through properties owned and
18 controlled by him, owned a number of properties fronting
19 Mark Street on the western side of the Planning Proposal.

20
21 I turn now to the first of the two compliance issues
22 that will be explored during these hearings.

23
24 The first relates to 40-46 Station Road, Auburn.

25
26 An inspection of this development carried out in 2008
27 revealed that of the 41 units in that strata scheme, 24
28 that ought to have been two bedroom units, according to the
29 original development consent, had been converted to three
30 bedroom units. This was the result of what was said to be,
31 by Council's inspectors, the addition of dining rooms on
32 the relevant plans being converted into bedrooms. A copy
33 of the report is at pages 91 to 93 of the opening bundle.

34
35 One of the authors of the report, Mr Mooney, who is
36 still with Council, will give evidence in relation to this
37 matter this week.

38
39 How that came about and why nothing was done about it
40 until the appointment of Mr May as interim administrator in
41 February of this year, given that the developer,
42 BBC Constructions, was a company owned by Mr Oueik, a
43 Councillor and three-time Mayor from 2004 onwards, is a
44 matter of interest to the inquiry.

45
46 Original development consent was granted back in
47 February 2001 for 12 three bedroom and 29 two bedroom

1 units. Special condition 34 of the consent required that
2 certain walls within six units be deleted so as to ensure
3 that they were not used as bedrooms. Council was alive to
4 the issue that plans were in existence that may have
5 enabled a dining room area to be converted to a bedroom
6 right from the start.

7
8 An application for a construction certificate was
9 lodged on 15 March 2001 which was assessed by a Mr Rajendra
10 Rajbhandary, a senior health and building surveyor. He
11 wrote to the builder in April 2001 and asked for revised
12 plans that gave effect to special condition 34. A
13 file note of 4 April records him discussing the matter with
14 Mr Oueik on that day.

15
16 Plans prepared by BBC were lodged, stamped and
17 approved. However, they added new walls across the formal
18 dining areas of 12 units, different from the original six
19 picked up in condition 34. Those plans were the subject of
20 a construction certificate that issued on 11 May 2001.

21
22 Contemporaneous engineering drawings, which were also
23 the subject of consent, stamped on the same day as the BBC
24 plans, included the walls that were required to be deleted
25 by special condition 34, but did not include the walls
26 included in the BBC plans.

27
28 In May 2001, the builder applied to vary the consent
29 to increase the height of the building by 400mm to deal
30 with a ventilation issue in the basement. New plans were
31 provided. Those plans, which were approved, reintroduced
32 the walls that were the subject of special condition 34,
33 but did not include the walls across the dining rooms. The
34 plans were back to the original plans that were put forward
35 to council on the development consent and for which
36 special condition 34 operated.

37
38 A modified construction certificate was finally issued
39 in November 2001, the BBC plans for which did not include
40 any of the offending walls.

41
42 Council's certification unit undertake a final
43 inspection and granted an Occupation Certificate in
44 July 2002. That certificate was issued by Mr Malouf, then
45 a very junior compliance officer, who had been in the job
46 for roughly 12 months. He has already given evidence at a
47 private hearing in this inquiry.

1
2 Six years later, and partially in response to fire
3 safety issues arising out of the Auburn Central
4 Development, the subject of a previous inquiry under
5 section 430, the compliance officers inspected all of the
6 units and produced the report that I have referred to.

7
8 What then happened is a matter of some concern to this
9 inquiry.

10
11 Council moved promptly to seek advice from Deacons in
12 relation to the matter. Advice was given in December 2008.
13 That advice included prosecuting the builder for breaches
14 of the Act.

15
16 Mr Burgess, then General Manager, reported the matter
17 to ICAC. ICAC acknowledged a report on 8 January 2009.

18
19 Council's files have been unable to locate a copy of
20 that report and it would appear that the document has been
21 removed from council's records. By whom and in what
22 circumstances is a matter that this inquiry will be looking
23 at.

24
25 Thereafter, there was correspondence between
26 Mr Burgess and the ICAC regarding the matter, and that
27 continued until 22 June 2010, at which point ICAC indicated
28 that it would not be taking any action in relation to the
29 matter. Its focus, of course, was on the conduct of
30 Mr Malouf, not the prosecution of the builder, always a
31 matter for council. Nothing further happened in relation
32 to this matter until the appointment of the administrator
33 in 2016. Since then, prosecution proceedings have
34 commenced.

35
36 This inquiry will examine why nothing happened from
37 the receipt of the Deacons advice in December 2008 until
38 February 2016.

39
40 From the perspective of the current owners of the
41 units who have non-complying units, council is working with
42 them to regularise the unauthorised works. Council is, as
43 I understand the evidence, absorbing the cost and not
44 charging the ratepayers for that.

45
46 Dealing then with 14 to 22 Water Street, Lidcombe.
47

1 In January of this year, this four-storey building was
2 severely damaged during a Sydney summer storm. A large
3 section of the roof was blown off the supporting structure
4 and deposited on and around residential properties.

5
6 It was a 53-unit residential complex. It was
7 completed in 2008. The builder was BBC Constructions.

8
9 Development consent for the site was granted in
10 September 2001. A standard condition of the consent was
11 that the work be carried out in accordance with the
12 Building Code of Australia.

13
14 A section 96 modification was granted in 2006 under
15 delegated authority. In 2007 there were two further
16 section 96 modifications that went to an independent
17 planning consultant. Those amendments don't give rise to
18 any matters relevant to this inquiry.

19
20 However - and most significantly - in March 2008,
21 consent was granted by council to modify the design of the
22 roof. Whereas the original design had been for a box
23 gutter roof, that is a roof in the shape of a valley,
24 draining towards a central box gutter system, a new design
25 was for a more traditional pitched roof, with water
26 draining to the sides of the property. That application
27 was successful.

28
29 Interim and final occupation certificates were granted
30 in September 2009 by Mr Francis, then Acting Director of
31 Planning and Environment.

32
33 Mr Francis has conceded, in evidence given at a
34 private hearing, that no application for a construction
35 certificate was ever made, let alone considered and acted
36 upon, in respect of the changes to the plans consequent
37 upon the new roof design. His evidence is that he did not
38 pick up these facts when he issued the occupation
39 certificate. He concedes that a building certificate
40 should have been issued before the final occupation
41 certificate issued.

42
43 His stated position in both correspondence and at the
44 private hearing, to be fair to him, was to the effect that
45 these clear deficiencies arose due to error on his part,
46 what he refers to as a "genuine and honest mistake".
47

1 He points to the fact that he was a new manager at the
2 time, bearing in mind this was 2008, and that procedures
3 were then under development.
4

5 He did not inspect the building himself. He had a
6 building surveyor who worked with him in tandem in
7 considering the question of the occupation certificate, but
8 it was Mr Francis who signed off on it.
9

10 Since the storm, the insurers of the owners'
11 corporation have denied liability on the basis of an
12 engineer's report that was served on council in March of
13 this year. In that report, the expert engineer expressed
14 his opinion - and it's just an opinion - that:
15

16 (a) The roof support structure does not comply with
17 the requirements of the BCA;
18

19 (b) There was insufficient anchoring between the
20 walls, the floors and the roof to prevent uplift by wind
21 forces.
22

23 He also expresses the view that the roof failed at
24 wind speeds that were much lower than those which the BCA
25 and Australian Standards required the roof to withstand.
26

27 Obviously, the final determination of the roof will be
28 an issue resolved in the civil courts.
29

30 However, for present purposes, the significance is to
31 be found in the obvious public interest in having credible
32 certification of such buildings. This is eminently clear
33 from the earlier section 430 inquiry and report concerning
34 Auburn Central, the principal focus of which was fire
35 safety.
36

37 Further, it is obviously a matter of some considerable
38 concern that in the case of two substantial projects
39 carried out by Councillor Oueik in the Auburn Local
40 Government area, there have been significant certification
41 and compliance issues, both of which ought to have been
42 apparent at the time they occurred and which were not, in
43 one case at least, acted upon until it was too late.
44

45 The final substantive matter I wish to deal with is
46 John Street, Lidcombe.
47

1 In February 2011 the former council resolved in closed
2 session to accept a tender to purchase that land on behalf
3 of Mr Mehajer's company, Sydney Constructions Pty Limited,
4 in the sum of \$6.5 million.

5
6 Contracts were exchanged on 1 March 2011.
7 Special condition 14(1) of the contract was to the effect
8 that if the purchaser did not obtain development consent
9 for the property and the adjoining property within
10 12 months of the date of the contract, that is, March 2012,
11 then either party would be at liberty to rescind.
12

13 On 12 October 2011, the purchaser's solicitor sought
14 from council an extension of six months. The stated reason
15 was the withdrawal of the development application in order
16 to consider issues associated with the width of vehicular
17 access off Mary Street. Mary Street runs at right angles
18 to John Street. It has an access to the carpark and
19 presumably the development would have required the same
20 access. It is a very narrow access-way and that seems to
21 have been an issue from the development perspective.
22

23 Council considered a report on this issue in
24 November 2011 and granted the extension. Councillor Curtin
25 moved a motion refusing the request that was not seconded.
26 A second motion moved by Councillor Simms and seconded by
27 Councillor Curtin proposed an extension of just three
28 months, but that motion failed. Ultimately it was resolved
29 to grant a six-month extension.
30

31 Development consent was therefore required to have
32 been obtained by September 2000.
33

34 In May 2012, Mr Mehajer met with Council officers and
35 sought a further three-month extension and was told that
36 the matter would have to go to council. In the business
37 papers to council, a further extension of three months and
38 16 days was recommended, but at a meeting on 26 June, all
39 councillors voted unanimously to reject the application,
40 with the exception of Councillor Lam.
41

42 Councillor Lam did not disclose any interest in the
43 matter arising out of any business relationship with the
44 applicant. That is a matter that this inquiry will
45 consider, both in the context of this matter and in respect
46 of the broader issues already discussed.
47

1 In August 2012, Mr Francis wrote to the applicant
2 pointing out what might be thought to be fatal problems
3 with the application, that it was likely to be refused, and
4 suggesting it be withdrawn. All of that happened under the
5 2008 Council.
6

7 Then on 31 October 2012 the new council had by then
8 been sworn in. Mr Mehajer declared an interest and did not
9 vote on the matter. Councillor Lam moved a motion,
10 seconded by Councillor Oueik, to the effect that a further
11 nine-month extension be granted. Originally that motion
12 was put and defeated by five votes to four. However, after
13 some debate it was put and passed unanimously.
14

15 On 7 November 2012, Council dealt with the rescission
16 motion moved by Councillor Simms. The motion was
17 successful and the Council resolved to defer consideration
18 of the matter to the next meeting.
19

20 On 21 November 2012, Council had before it both an
21 information report concerning the development application,
22 which recommended refusal to the JRPP for a number of
23 reasons, as well as the question of the sale of the
24 question car park. The report made no recommendation on
25 the sale, other than that Council simply determine the
26 matter, having set out the same three basic options
27 previously identified.
28

29 Councillor Mehajer declared an interest at the
30 meeting. Councillors Attie and Lam declared a
31 non-pecuniary interest and did not consider the report.
32 The interest was that they were members of the Joint
33 Regional Planning Panel, the JRPP, which because
34 Councillor Mehajer was the applicant and because he was on
35 Council, was required to deal with the application in the
36 place of Council.
37

38 On the issue of the development application itself,
39 Council followed the staff recommendation and recommended
40 refusal.
41

42 In the case of the sale, a motion by Councillors Oueik
43 and Lam to give, in effect, a 14-month extension was lost
44 and in its place Council resolved to rescind the contract
45 and not enter into any further contract. That was, of
46 course, not the end of the matter.
47

1 A rescission motion by Councillors Attie, Oueik and Lam
2 was considered by Council on 5 December 2012. It was
3 defeated. On 12 March 2013 a Notice of Termination was
4 served.

5
6 On 20 March 2013, Mr Mehajer wrote to Mayor Attie on
7 behalf of the purchaser seeking, in his words, to
8 "revalidate the contract" at the previous price and with a
9 variation to extend the time in which to obtain development
10 consent to 18 months; that is, from 21 March 2013, a
11 further 18 months.

12
13 On the same day, Council dealt with the matter.
14 Council resolved to accept that request and enter into a
15 new contract at the same price that was conditional upon
16 two things:

17
18 (a) Obtaining consent within 18 months, with lodgment
19 to take place within six months; and

20
21 (b) The consent include a 2,000 square metre ground
22 floor supermarket on the site.

23
24 The business paper, prepared no doubt well before the
25 Mehajer correspondence, proposed either taking no further
26 action, inviting further expressions of interest,
27 re-advertising, or exploring other alternatives.

28
29 On 3 April 2013, a motion to rescind the previous
30 resolutions was lost on the casting vote of the Mayor,
31 Mayor Attie.

32
33 On 10 April 2013, Council's solicitors wrote to
34 Mr Mehajer informing them of the outcome of that meeting.

35
36 Nothing then happened until November 2013.
37 Mr Mehajer, on that day, wrote to Council requesting that
38 the amount of the deposit, then a standard 10 per cent
39 deposit, be varied to 5 per cent, and sought the return of
40 the balance on the basis that it had previously been paid.
41 His purpose was to amend the plans and meet the approvals
42 required under the contract.

43
44 Advice was sought from Council's conveyancing
45 solicitor, Mr Gough. His advice was, as one might expect,
46 against the request.

47

1 The matter was considered by Council in a closed
2 session on 4 December 2013. It is not entirely clear why a
3 closed session was thought necessary in the circumstances.
4 However, Council resolved by a majority, and against
5 Mr Gough's clear advice, to accede to the purchaser's
6 request.

7
8 A subsequent rescission motion moved by
9 Councillors Simms and Campbell was considered and defeated
10 in December 2013.

11
12 The next event of significance did not occur until
13 July 2015. The purchaser sought once again to amend the
14 contract. He wanted to:

15
16 (a) Substitute a new purchaser due to a new company
17 structure.

18
19 THE COMMISSIONER: What was the date you said?

20
21 MR BOLSTER: That was 10 July 2015.

22
23 THE COMMISSIONER: I've got 2013. You've amended the
24 date, have you?

25
26 MR BOLSTER: Yes, '13 was in error, it was 2015.

27
28 (b) To remove the requirement that the contract be
29 dependant upon achieving development consent for the site,
30 but providing that settlement take place in 24 months in
31 any event;

32
33 (c) The inclusion of a penalty of \$2 million in favour
34 of the Council in default of completion; and

35
36 (d) Certain personal guarantees.

37
38 Advice was sought from Storey & Gough provided in
39 September 2015. Mr Gough pointed out that the development
40 consent was lodged prior to 30 July 2015, that the 18-month
41 period in which the purchaser was required to obtain
42 consent had expired, meaning that either party was at
43 liberty to rescind there and then. He advised against the
44 variation sought. He recommended terminating the contract,
45 going to tender, and not entering into a contract with that
46 purchaser in the future.

1 On 7 October last year, Council considered the matter
2 in closed session over an extended period of time. Council
3 was addressed by Mr Gough. Councillors Simms and
4 Batik-Dunbar proposed termination. However, their motion
5 was amended by Councillors Lam and Attie so as to defer
6 consideration of the matter, so as to enable councillors to
7 assess the information provided and to enable the
8 submission of a report, including valuations of the site.
9

10 Coincidentally, on that occasion, Council also dealt
11 with the rescission motion for the exhibition of the Berala
12 Planning Proposal, as well as the Grey Street, Silverwater,
13 Planning Proposal.
14

15 On 18 November, when the matter was next considered,
16 Councillor Oueik was absent overseas. Councillor Lam
17 declared a non-pecuniary interest in the matter and was not
18 present when the matter was considered. In her place,
19 Councillor Simms chaired the meeting and Council resolved
20 unanimously to terminate the contract.
21

22 Councillors Attie and Zraika unsuccessfully moved that
23 a report be brought back to Council regarding the future
24 options for the land.
25

26 The following day, Councillors Oueik, Attie and
27 Councillor Mehajer gave notice of their own rescission motion
28 regarding the termination.
29

30 On 30 November, the solicitors for Mr Mehajer wrote
31 again seeking a new contract with a new purchaser
32 nominating a company, A-Link Technology. The new contract
33 was at the same price, with the same deposit, guarantees by
34 Mr Mehajer, Zenagh and Aysha Mehajer, up to \$2 million
35 each, and completion 12 months after development consent.
36

37 On 2 December, Councillor Lam declared a non-pecuniary
38 conflict of interest on the basis that her brother-in-law
39 was in partnership with Councillor Mehajer. She then left
40 the chamber.
41

42 Councillor Mehajer, the Deputy Mayor, assumed the
43 Chair, stating that he had legal advice that he was
44 entitled to do so. Mr Gough then gave advice that
45 Councillor Mehajer should not be present for any part of
46 the presentation.
47

1 The presentation was presentations from the architect
2 and I believe a planner on behalf of Councillor Mehajer
3 about the project, indicating what they perceived to be its
4 strengths and merits, and urging Council to accede to the
5 request.

6
7 Councillor Mehajer eventually accepted the advice and
8 left the chamber. The matter then proceeded substantively
9 in his absence.

10
11 That left eight councillors and the question arose as
12 to who should chair the meeting because Councillor Lam and
13 Councillor Mehajer were Mayor and Deputy Mayor together and
14 they were not there.

15
16 Mr Brisby indicated that nothing could happen until a
17 Mayor or Chairperson was elected, and the votes came in at
18 four all. The deadlock was resolved by Mr Brisby declaring
19 loss. Councillor Attie's name was selected to chair the
20 meeting.

21
22 Council then resolved on the casting vote of Mr Attie
23 to rescind the earlier resolution to terminate and to
24 delegate to the General Manager and Mr Gough authority to
25 negotiate a new contract with the applicant, to replace the
26 existing contract upon certain terms, and that the existing
27 contract would be terminated if those negotiations were not
28 finalised by 31 January.

29
30 The issues arising out of the John Street contract
31 include, as a bare minimum, the basis for the extraordinary
32 largesse consistently afforded to the purchaser over many
33 years against competent and reasonable legal advice, in
34 circumstances where there was little progress towards
35 obtaining development consent for the project that the
36 purchaser intended.

37
38 The largesse was not limited to concessions as to
39 time, but extended to the extraordinary concession of
40 releasing one half of the deposit, particularly in
41 circumstances where the planning advice from Council was
42 consistently negative about the proposal then on the table.

43
44 Also of interest is the fact that the attitude of
45 Council changed towards the purchaser markedly on and from
46 the election of Mr Mehajer to Council and the Office of
47 Deputy Mayor in September 2015.

1
2 Finally, it ought be said that the issues identified
3 all involved questions associated with the relationship
4 between councillors and Council staff.
5

6 Mr Brisby and Mr Francis played critical roles in
7 nearly all of the matters to which this inquiry will focus
8 attention.
9

10 Mr Francis has given evidence in a private hearing and
11 will give further evidence later this week, probably
12 tomorrow, about these and other matters.
13

14 The evidence already given by him includes the
15 following significant and troubling matters:
16

17 (a) In early 2006, Mr Francis was intending to carry
18 out renovations on a recently purchased family home at
19 Bexley. The works included the installation of a new
20 kitchen.
21

22 (b) Mr Oueik and Mr Brisby attended the house for
23 lunch one day. It was a work day but Mr Francis was
24 himself off work. Mr Oueik said he could arrange for the
25 work to be done to help Mr Francis out, as he had access to
26 tradesmen, but that Mr Francis would have to pay them
27 directly. Mr Oueik said it was all aboveboard and that he
28 would pay the tradesmen directly.
29

30 (c) The budget was about \$10,000, however, in total,
31 Mr Francis spent around \$6,500 to \$7,000.
32

33 (d) Various tradesmen attended and were paid directly
34 in cash, with the exception of the person who produced the
35 cupboards in the kitchen. This person, whose name, phone
36 number, contact details Mr Francis does not recall, was
37 arranged by Mr Oueik.
38

39 (e) He measured the site, quoted \$2,000 for the
40 cupboards, with installation through someone else. When
41 the cupboards were delivered, Mr Francis attempted to pay
42 him and he refused to accept the money.
43

44 Mr Francis does not recall the name, phone number and
45 contact details of the cupboard maker.
46

47 (f) The cupboards were installed by a third person

1 who was paid for their time by Mr Francis.
2

3 (g) Mr Francis was concerned by this and took the
4 matter up with Mr Oueik. He said to him that the tradesman
5 would not take the money. He said that he wanted to pay
6 for the cupboards and had the money. He had \$2,000 in cash
7 with him.
8

9 (h) Mr Oueik did not accept the money and became
10 agitated about it.
11

12 (i) He said to Mr Francis that it was a "gift" and
13 that he wanted to help the family out.
14

15 (j) Mr Oueik got agitated when Mr Francis asked him
16 about it.
17

18 (k) Mr Francis did not disclose these matters to
19 anyone else until 2016. In particular, Mr Francis stated
20 that he did not tell Mr Brisby about what he said was a
21 gift from Mr Oueik.
22

23 In fairness to Mr Francis, he has stated in evidence,
24 on oath, that he did not let the situation affect him in
25 his duties.
26

27 Further, Mr Francis has admitted attending the home of
28 Mr Oueik on several occasions, to be shown around the
29 grounds, and to inspect various renovations carried out by
30 Mr Oueik.
31

32 The first such visit was with Mr Brisby who drove the
33 two of them there. Mr Brisby told him in words to the
34 effect that they were "going up to see Ronney's house to
35 see what was there."
36

37 Mr Francis went on at least another occasion by
38 himself to be shown further landscaping work and IT and
39 pool improvements.
40

41 Mr Francis' recollection is that the first visit to
42 Mr Oueik's home was in October or November of last year and
43 that there had been a number of visits since then.
44

45 On one occasion, Mr Peter Fitzgerald, Mr Brisby's
46 predecessor and a consultant to him, was also present.
47

1 Mr Francis has told the inquiry that in September
2 2008, he erroneously issued a final occupation certificate
3 for a residential flat development at Water Street when
4 there was no apparent construction certificate.

5
6 He disclosed this error to Council on 21 March 2016, a
7 matter that is verified on the record.

8
9 The witnesses to be called this week will be, in a
10 rough order: Mr Hurst and Mr May, who we hope to conclude
11 today. Mr Francis tomorrow; Ms Monica Cologna, a planning
12 officer who works under Mr Francis. Mr Jason Mooney who
13 carried out the inspection of the Station Street property,
14 and then Stephanie Griffiths, together with a number of
15 rangers and parking officers who will give evidence about
16 being directed in the performance of their duties by
17 councillors, which gives rise to the question of whether
18 there has been any breach of the Code of Conduct.

19
20 If time permits, Irene Simms may also commence giving
21 her evidence.

22
23 In week 2, evidence will be given by Mr Campbell,
24 Mr Oldfield and Mr Burgess. Mr Honeyman, an investigator
25 employed by Mr May will give evidence about a number of
26 matters concerning Mr Brisby's position as General Manager.
27 Mr Brisby, himself, will give evidence, as will Mr Ocorn,
28 Semra Batik-Dunbar and, we hope, Le Lam.

29
30 In week three it is anticipated that evidence will be
31 given by Mr Oueik, Mr Yang, Mr Mehajer, Mr Zraika and
32 Mr Fitzgerald.

33
34 The inquiry of course is prepared and I am prepared to
35 meet the convenience of parties when it comes to issues as
36 to availability and clashes, but it would appreciate as
37 much notice of that as possible.

38
39 Further details as to the precise order for next week
40 will be given hopefully on Thursday of this week.

41
42 That's my opening submission, Mr Commissioner.

43
44 THE COMMISSIONER: Ordinarily I would take the morning tea
45 at 11.15 but given that concludes Counsel Assisting's
46 opening statement, we will take a break for 20 minutes now.

47

1 Just a couple of things. One thing that I forgot to
2 mention in my opening remarks is that the public hearings
3 were of course meant to commence on 20 May. Through
4 no-one's fault, we were not able to commence that day and
5 I apologise for any inconvenience that caused.
6

7 Secondly, Mr Bolster, in his opening bundle obviously
8 had some plans that were in colour that no-one else has.
9 I am told that the coloured copies and that bundle has been
10 uploaded on to the system where you are getting access to
11 statements. I do not think Council has a coloured
12 photocopier but if it does, we will see what we can do
13 there.
14

15 As I said, we will break for 20 minutes, so until
16 11.25, and I will take applications to appear then. Thank
17 you.
18

19 **SHORT ADJOURNMENT**

20
21 MR BOLSTER: Could I formally tender the opening tender
22 bundle.
23

24 THE COMMISSIONER: Yes. Do you have a copy that's got
25 colour, have you?
26

27 MR BOLSTER: This is the colour one. Perhaps Exhibit 1
28 may I suggest.
29

30 THE COMMISSIONER: I'll mark it Exhibit 01.
31

32 **EXHIBIT #01 - OPENING TENDER BUNDLE**

33
34 THE COMMISSIONER: Just before I take applications to
35 appear, it was reported to me during the break that someone
36 took a photograph of people in the hearing room while we
37 were proceeding. The media were allowed in here earlier to
38 record the opening remarks because there's a public
39 interest in this inquiry but otherwise when people give
40 evidence it is not going to be filmed. No-one should be
41 taking photographs of either the barristers that are
42 appearing here or of any potential witnesses or of members
43 of the public. I will find out more about what happened
44 but I don't expect anyone to be taking photographs of
45 people in this room. I might start from my right.
46

47 MR G WATSON SC: Commissioner, my name is Geoffrey Watson.

1 I'm instructed by New South Lawyers. We're seeking your
2 authorisation to appear for Mr Ned Attie.

3

4 THE COMMISSIONER: I grant that authorisation, Mr Watson.
5 I won't repeat it, but all of your contact details and
6 those of your solicitors are with either Mr Sear or
7 Mr Bolster.

8

9 MR WATSON: We've lodged those with Mr Sear.

10

11 THE COMMISSIONER: Thank you.

12

13 MR T GAME SC: Commissioner, my name is Game. I seek leave
14 to appear with Mr Buchen, instructed by Ms Musgrave for
15 Mr Mehajer.

16

17 THE COMMISSIONER: Authorisation is granted. Thank you.

18

19 MR GAME: I may not be here, or we may not be here all the
20 time, but I've spoken to Counsel Assisting and hopefully we
21 will be able to liaise with him.

22

23 THE COMMISSIONER: I think what Mr Bolster said was that
24 by Thursday afternoon, he will hope to have a good idea of
25 who is being called next week and the same thing the next
26 week so that people are aware generally when they've got to
27 be here.

28

29 MR GAME: Thank you. After having made my appearance and
30 been given leave, I won't stay today at least.

31

32 THE COMMISSIONER: Certainly. Actually, that reminds me,
33 since you have said that, I have to apologise to everyone,
34 I've just been told that Mr Hurst, who will be the first
35 witness, won't be available until 2 o'clock and I suspect
36 that applications to appear are going to be dealt with well
37 before that, so, unfortunately, it is going to be a long
38 lunch break because he is giving background evidence, the
39 most convenient first witness, with Mr May the second.
40 I only just found out that he is not available until two so
41 we'll just have to live with that.

42

43 MR GAME: He will just giving evidence and will be examined
44 by Counsel Assisting on the nature of --

45

46 THE COMMISSIONER: I don't think it extends much beyond
47 the submission he made which I think you have a copy of it.

1
2 MR GAME: Yes.
3
4 THE COMMISSIONER: Yes.
5
6 MR GAME: Are there any directions about cross-examination
7 or will we deal with those at the time?
8
9 THE COMMISSIONER: I won't deal with those now. We will
10 see how we go.
11
12 MR GAME: After appearances, I will be excusing myself and
13 Ms Musgrave.
14
15 THE COMMISSIONER: Thank you, Mr Game. We're working
16 around from your right. You weren't in the room
17 Mr Wheelhouse.
18
19 MR S WHEELHOUSE SC: I apologise for being late. We have
20 had a problem with the front door. My name is Wheelhouse,
21 I appear for Mr Oueik.
22
23 THE COMMISSIONER: Authorisation is granted to appear.
24 The other thing I said, your contact details and those of
25 your instructing solicitors are with Mr Sear and
26 Mr Bolster.
27
28 MR WHEELHOUSE: Yes. We've sent in a form, I hope that's
29 sufficient.
30
31 THE COMMISSIONER: Thank you.
32
33 MR WHEELHOUSE: I was going to seek some direction in
34 relation to claims for privilege and claims in relation to
35 the voluntary nature of the evidence given. Do I seek that
36 now or is it appropriate to do it later?
37
38 THE COMMISSIONER: I think when it arises we will do it
39 then. Is this in relation to when your client gives
40 evidence?
41
42 MR WHEELHOUSE: Yes.
43
44 THE COMMISSIONER: We'll do it then.
45
46 MR WHEELHOUSE: If it please the Commission.
47

1 THE COMMISSIONER: If there is some prior notice, though,
2 that you want to give us, it might be best if you have your
3 solicitors write to us outlining the nature of the claim
4 for privilege, or anything else, so we are aware of it
5 first.
6
7 MR WHEELHOUSE: The Commissioner will appreciate there are
8 civil proceedings that stand behind here and there are
9 matters that may be relevant to those proceedings.
10
11 THE COMMISSIONER: What are the civil proceedings?
12
13 MR WHEELHOUSE: We understand that there are civil
14 proceedings, as indicated by Counsel Assisting in his
15 opening, arising from the roof at Water Street.
16
17 THE COMMISSIONER: Yes.
18
19 MR BOLSTER: Likely to be, not yet in.
20
21 MR WHEELHOUSE: We are not aware, but we are conscious
22 that there is at least a possibility of that.
23
24 THE COMMISSIONER: All right. It might just be helpful
25 before we reach Mr Oueik, if you have your solicitors write
26 a letter to the inquiry indicating the nature of what you
27 think you might be raising in terms of privilege and those
28 sorts of issues. Thank you.
29
30 MR G McNALLY SC: Commissioner, my name is McNally. I'm
31 instructed by Lawson Plowes Solicitors and I seek
32 authorisation to appear for Councillor Lam.
33
34 THE COMMISSIONER: Authorisation is granted. Thank you.
35
36 MR D PRICE: Commissioner, my name is Price, I am
37 instructed by Mr Hopper; seeking authority to appear for
38 Mr Zraika.
39
40 THE COMMISSIONER: Authorisation is granted. Thank you.
41
42 MR A CHESHIRE SC: Commissioner, I seek leave to appear
43 for Glenn Francis.
44
45 THE COMMISSIONER: Thank you, Mr Cheshire. Authorisation
46 is granted.
47

1 MR J ROBSON SC: Commissioner, my name is Robson. I am
2 instructed by Colin Biggers & Paisley. I seek
3 authorisation to appear for Mr Mark Brisby. I am also
4 instructed to seek authorisation to appear for
5 Mr Hamish McNulty and Mr Ian Dencker who haven't thus far
6 been mentioned.

7
8 THE COMMISSIONER: Authorisation is granted. One of the
9 things I have asked Mr Bolster to consider is that there
10 have been some people summonsed to appear and it's a matter
11 for him but he might not call them. What I've asked him to
12 do is when he has made a decision, I will release those
13 people from their summons.

14
15 The two people you have just mentioned might be in
16 that category. It is something I have raised but I haven't
17 had confirmation back that they are not required. As soon
18 as we know, we will let you know and I will just release
19 them.

20
21 MR ROBSON: I appreciate that, Commissioner. Might I say
22 that it is obviously a matter of some anxiety.

23
24 THE COMMISSIONER: I understand. That is why I raised it.

25
26 MR M GARDINER: Commissioner, my name is Gardiner and
27 I seek leave to appear for Mr Steve Yang.

28
29 THE COMMISSIONER: Authorisation is granted, thank you,
30 Mr Gardiner. Is there anything else we can do, Mr Bolster?

31
32 MR BOLSTER: No.

33
34 THE COMMISSIONER: Do we know when Mr May is going to be
35 here?

36
37 MR BOLSTER: Two o'clock.

38
39 THE COMMISSIONER: He's here 2 o'clock as well.

40
41 THE COMMISSIONER: All right. I apologise to everyone
42 about that. As I said, I was only told at morning tea that
43 people weren't around until 2 o'clock. Unfortunately we
44 are going to have to adjourn until 2 o'clock and at 2, we
45 will have Mr Hurst first and Mr May second and we'll see
46 how we go, whether we have another witness after that, but
47 that might do it for the afternoon, even if we adjourn

1 early. Thank you.

2

3 **LUNCHEON ADJOURNMENT**

4

5 **UPON RESUMPTION**

6

7 THE COMMISSIONER: Just a couple of matters before we
8 start.

9

10 The submissions from the public that I mentioned in my
11 opening remarks are going to be made available on the
12 Objective Connect system, but unless one or more of those
13 submissions is tendered by Counsel Assisting, or by anyone
14 else, I won't be having any regard to them beyond the fact
15 that they were sent in.

16

17 We have also received a statement from Mr Francis that
18 has come through his own lawyers and that will be made
19 available in hard copy to any interested person before the
20 close of day.

21

22 Are there any more appearances?

23

24 MS CALLAN: Commissioner, my name is Callan. I seek leave
25 to appear on behalf of Mr Hurst who is the first witness.

26

27 THE COMMISSIONER: Authorisation is granted.

28

29 MS CURTIN: Commissioner, my name is Curtin. With your
30 leave, I seek leave to appear for Mr Vivian May.

31

32 THE COMMISSIONER: Thank you. Authorisation is granted.

33

34 MR BOLSTER: Mr Commissioner, could I tender the statement
35 and annexures of Mr Hurst, in the first instance. Here is
36 the original statement.

37

38 THE COMMISSIONER: Do you want me to mark the statement as
39 an exhibit?

40

41 MR BOLSTER: Yes, please.

42

43 THE COMMISSIONER: I think we should.

44

45 MR BOLSTER: Yes.

46

47 THE COMMISSIONER: I will mark the statement of Mr Hurst

1 of 17 May 2006, and are you also tendering his submission
2 and the attached documents?

3
4 MR BOLSTER: Yes.

5
6 THE COMMISSIONER: I will mark the whole thing as S1.

7
8 MS CALLAN: Commissioner, there are actually two
9 submissions.

10
11 THE COMMISSIONER: I will tell you what I have been given
12 more clearly than. I have been given a statement of
13 Mr Hurst, 17 May 2016, which has an annexure of 46 pages
14 and what I have been given is, you are right, a
15 supplementary submission of two pages dated 16 May 2016 and
16 a submission that Mr Hurst lodged which does not appear to
17 have a date on it.

18
19 MR ROBSON: It is undated, Commissioner. It is referred
20 to as 1 April in his statement.

21
22 THE COMMISSIONER: Yes. Thank you.

23
24 MS CALLAN: Yes.

25
26 MR ROBSON: That's the same thing.

27
28 THE COMMISSIONER: That's got something like 500 pages of
29 material attached to it.

30
31 MS CALLAN: The submission, according to Mr Hurst's
32 statement, which was made on 1 April 2016, is some
33 14 pages.

34
35 THE COMMISSIONER: Yes.

36
37 MS CALLAN: It is the additional submission of 16 May 2016
38 which has the attachments.

39
40 THE COMMISSIONER: I have been given it in a different
41 order, but I will take your word for that.

42
43 MR BOLSTER: I think that's it.

44
45 THE COMMISSIONER: All of that is S1.

46
47 MR BOLSTER: That's correct.

1
2 EXHIBIT #S1 - STATEMENT OF MR TIM HURST DATED 17/05/2016,
3 UNDATED SUBMISSION, SUPPLEMENTARY SUBMISSION DATED
4 16/05/2016 AND ATTACHED DOCUMENTS
5

6 MR BOLSTER: I call Mr Hurst.
7

8 <TIM HURST, sworn:

[2.03pm]

9
10 <EXAMINATION BY MR BOLSTER:

11
12 MR BOLSTER: Q. Mr Hurst, you have executed a statement
13 on 17 May of this year?

14 A. Yes, I have.
15

16 Q. Attached to that are the two submissions you had
17 previously made to the inquiry?

18 A. Yes.
19

20 Q. And relevant annexures?

21 A. Yes.
22

23 Q. I want to begin your evidence with some discussion
24 about some policy issues that arise from some of the
25 matters that the Commission will be looking into. I want
26 you to consider the position of a professional planning
27 officer/adviser in a planning department in council.
28 I want to make it very clear I am speaking hypothetically
29 at this stage. I want to draw out some principles that the
30 Office of Local Government considers ought be the way in
31 which certain conflicts should be dealt with by such
32 officers.
33

34 A planning officer has professional obligations under
35 the Local Government Act, do they not?

36 A. All officers of the council have obligations under the
37 Act.
38

39 Q. And that's section 4(3), correct me if I am wrong,
40 I don't have a copy of the Act, I believe you do. Yes,
41 please, thank you.

42 A. Yes. Section 439(1):
43

44 *Every councillor, member of staff of a*
45 *council and delegate of a council must act*
46 *honestly and exercise a reasonable degree*
47 *of care and diligence in carrying out his*

1 *or her functions under this or any Act.*

2
3 Q. An officer who is part of a planning department who
4 has given advice to Council to adopt proposition A in
5 relation to a planning proposal that Council is to
6 consider, they put forward a report, putting forward
7 proposition A. Council, by resolution, declined to make or
8 agree with or endorse proposition A. Council say, "No, we
9 would like to proceed with and instruct you to prepare a
10 variation of proposition A which is what we'll call
11 proposition B."

12
13 Proposition B is inconsistent with the staff advice,
14 the planning department advice. To what extent should the
15 original advice be pointed out to council in future
16 dealings with variations on proposal B as it is developed
17 and put forward to council?

18
19 MR CHESHIRE: Commissioner, sorry for rising at such an
20 early stage, I wish to object to this line of questioning.
21 It may be that I misunderstood or had not appreciated
22 Mr Hurst's expertise, but, as I understand it, he is being
23 asked about the duties of a planning officer. I am not
24 aware whether Mr Hurst has planning officer experience so
25 as to be able to, as it were, give quasi-expert evidence
26 about this particular area, or in the light of his previous
27 answer, when he was asked about the obligations of a
28 planning officer, his answer was that all employees have
29 duties pursuant to section 439(1) of the Act.

30
31 If he is being asked about the scope of that answer,
32 then he is being asked to give a legal opinion as to the
33 scope of section 439.

34
35 It may be there is a way of getting this evidence
36 which is helpful, but in my submission, as currently
37 presented, asking this gentleman simply for his opinion on
38 the duties of a planning officer would not give you any
39 useful evidence.

40
41 THE COMMISSIONER: Mr Bolster?

42
43 MR BOLSTER: Q. Mr Hurst, let me put it this way - does
44 the Office of Local Government have responsibility for the
45 implementation of the Local Government Act?

46 A. Yes, we do.

47

1 Q. Is it part of your responsibilities as the
2 Chief Executive of the Office of Local Government to
3 implement the terms of the Local Government Act, in
4 particular section 439?

5 A. Yes, to implement or to advise the Minister on his
6 duties.

7
8 Q. When complaints are made about the conduct of council
9 staff or delegates in respect of a breach of section 439,
10 who is the office or department that investigates and deals
11 with such complaints?

12 A. Ultimately, if not dealt with by council, the Office
13 of Local Government.

14
15 Q. If council doesn't deal with it, it is your
16 responsibility, correct?

17 A. Yes.

18
19 Q. Is the Office of Local Government responsible for the
20 oversight of the Council Code of Conduct?

21 A. Yes, the office prepares a Model Code of Conduct
22 consistent with section 440 of the Act.

23
24 Q. In your responsibilities as the head of the Office of
25 Local Government, is it part of your responsibility to
26 oversee how councillors and staff manage their obligations
27 under, amongst other things, section 439 of the Act?

28 A. Yes.

29
30 MR BOLSTER: In my respectful submission, Commissioner,
31 the witness is perfectly capable of expressing a view about
32 how a planning officer, in the hypothetical case that we're
33 dealing with, might address, consistently with their
34 obligations under the Act, their obligations.

35
36 THE COMMISSIONER: Why don't you ask the question again?

37
38 MR BOLSTER: Yes, Commissioner.

39
40 Q. Perhaps if I put it this way: assuming a council has
41 adopted an approach to a planning issue inconsistent with
42 advice provided by the planning department of that council,
43 assume that, and assume that the council has asked for a
44 proposal to be put forward that it goes in another
45 direction and that it is inconsistent with the original
46 planning proposal, from the perspective of the Office of
47 Local Government, what is the position of the planning

1 staff when it comes to acting honestly and exercising a
2 reasonable degree of skill, care and diligence in carrying
3 out their functions when they address how council should
4 progress the second option, the option that's against their
5 advice?
6

7 MR CHESHIRE: Commissioner, I am sorry, I do renew the
8 objection. It appears now it has been expanded into asking
9 this witness whether in some hypothetical example there
10 would or would not, or might or might not, be a breach of
11 section 439 and whether there might be some breach of the
12 Code of Conduct. There has been no reference to any
13 particular paragraph of the Code of Conduct to suggest in
14 what way the action or the assumptions behind it have been
15 breached and, at the end, there was a question or a
16 question led into a question about whether they would be
17 acting honestly.
18

19 In my submission, a question as to whether or not an
20 officer is acting honestly is not something which requires
21 this person's opinion. It is a matter that, Commissioner,
22 in my submission, you would be well placed to determine.
23

24 Likewise, the questioning so far as it covered the
25 reasonable care and skill of a planning officer, that is
26 not a matter that this witness can comment upon. All he
27 can say is - it is a bit like a policeman perhaps being
28 called and asked, "Well, if this thing had happened, do you
29 think that it would be a criminal offence?" It is not a
30 matter for the policeman, or here for this gentleman, to
31 give you, Commissioner, any opinion, any evidence on that.
32 It is a matter either for you or for an expert planning
33 officer to be called.
34

35 THE COMMISSIONER: I do not know that it is a matter for
36 an expert planning officer. Mr Bolster, first of all you
37 are putting to the witness that the council's staff, the
38 planning staff, put a particular proposition in in relation
39 to a planning proposal?
40

41 MR BOLSTER: Yes.
42

43 THE COMMISSIONER: And the elected body, the councillors,
44 themselves, came back with a different proposal.
45

46 MR BOLSTER: Yes.
47

1 THE COMMISSIONER: And then you're asking how should the
2 planning staff of the council have handled that?

3

4 MR BOLSTER: Consistent with their obligations under the
5 Act and consistent with their obligations under the Code of
6 Conduct.

7

8 THE COMMISSIONER: I think that's all right. Can you
9 answer that question?

10

11 THE WITNESS: Sure. So the Model Code does provide that
12 members of council staff must give effect to the lawful
13 decisions, policies and procedures of the council, whether
14 or not the staff member agrees with or approves of them.

15

16 Having said that, how they go about doing that, they
17 still have the overarching obligation to act honestly and
18 exercise a reasonable degree of care and diligence in how
19 they go about their role, and I think that in the
20 circumstances if their view as a professional planner was
21 that there was a superior alternative, they should probably
22 continue to recognise that.

23

24 MR BOLSTER: Q. Are you familiar with any practice,
25 through your experience as the head of the Office of Local
26 Government, about how these sorts of conflict issues are
27 managed in the ordinary course by council staff?

28

29 A. I'm not aware, but I think that individual councils
30 would have their own processes for dealing with this,
31 including as part of their code of meeting practice.

31

32 Q. Is this an issue that is raised by way of complaint
33 against particular planning staff from time to time?

34

35 A. I'm not aware of any particular instance of it
36 occurring, but the office does receive complaints from the
37 public, as do councils, about how the planning staff
38 undertake their roles.

38

39 Q. I want to turn then to Annexure A to your statement
40 which is attached to the statement, which are the
41 Guidelines for the Appointment and Oversight of
42 General Managers. These are, if I understand correctly,
43 non-binding guidelines issued under section 23A of the
44 Local Government Act; is that correct?

45

46 A. Yes, that's correct.

46

47 Q. Does the Office of Local Government audit the

1 adherence by individual councils to these particular
2 guidelines?
3 A. No, we don't audit compliance. However, we are able
4 to investigate non-compliance, if it's brought to our
5 attention.
6
7 Q. I think you, in your report, refer to an incident
8 where you raised compliance in relation to certain payments
9 that were made to Mr Burgess following his termination?
10 A. Yes, that's correct.
11
12 MR BOLSTER: Yes, nothing further. Thank you,
13 Commissioner.
14
15 THE COMMISSIONER: Does anyone want to seek leave to ask
16 Mr Hurst any questions about a topic?
17
18 MR CHESHIRE: Commissioner, I would. Thank you,
19 Commissioner.
20
21 **<EXAMINATION BY MR CHESHIRE:**
22
23 MR CHESHIRE: Q. Mr Hurst, you yourself --
24
25 THE COMMISSIONER: Sorry to interrupt, can you just tell
26 me what topics you are going to seek to cover?
27
28 MR CHESHIRE: I wanted to ask him whether he has
29 experience in planning, and I wanted to take up the
30 proposition that was put to him where he said that they
31 should probably continue to recognise what had been said in
32 the past.
33
34 THE COMMISSIONER: I will give that you leave.
35
36 MR CHESHIRE: Thank you, Commissioner.
37
38 Q. Mr Hurst, what is your background? Do you have a
39 background in planning?
40 A. I'm not a planner by profession. However, I am
41 eligible for professional membership of the Planning
42 Institute of Australia. This is by virtue of the more than
43 two years I spent at the Department of Planning where I was
44 responsible for the planning proposals and the rezoning
45 process across the State.
46
47 Q. Have you ever worked in a council?

1 A. I've never worked in a council.
2
3 Q. You were asked about the situation where staff had
4 given a certain recommendation and council had voted
5 differently. Just to be clear, if I give you an example,
6 are you saying that if staff, for instance, have said that
7 there should not be rezoning of a particular area but
8 council say that there should be rezoning of a particular
9 area, are you saying that in every report that the staff
10 prepare thereafter they should always record that staff
11 were against rezoning of that particular area?
12 A. I think that up until a point where a decision is made
13 to rezone the area, yes, I think so.
14
15 Q. Would you say that that is automatic or would you say
16 that it would depend upon the circumstances?
17 A. I think until such a decision is made, you could make
18 the case that in exercising a reasonable degree of care and
19 diligence, they would continue to mention, whilst
20 implementing the decision of council, that, indeed, there
21 was a different approach they were recommending until such
22 a decision is made.
23
24 Q. Even if they're dealing with the same councillors
25 going forward?
26 A. I can't see that their view would have changed --
27
28 Q. No, but the councillors --
29 A. -- as professionals.
30
31 Q. The councillors would be aware, would they not, of
32 what the view was of the department; correct?
33 A. Of the planning officer?
34
35 Q. Yes, the planning officer.
36 A. Yes, they would be aware.
37
38 Q. And therefore, they wouldn't need to be reminded in
39 every report that was prepared for them subsequently;
40 correct?
41 A. I think it's a question of whether they felt it was
42 necessary to do so, to comply with their obligation under
43 the Act.
44
45 Q. Yes. I think the answer is, is it not, that it would
46 depend upon the circumstances?
47 A. If it was held at the same meeting, for example, then

1 perhaps not, but if we're talking about a different report
2 prepared at a different time.

3

4 Q. If it is a week later, different report, same author,
5 same councillors considering, you wouldn't say there that
6 in order to be honest and to exercise reasonable care they
7 have to repeat what their previous version was and previous
8 view was, would you?

9 A. Perhaps they just needed to know that there existed
10 the previous matter, and then proceed with implementing the
11 council resolution, yes.

12

13 Q. As to whether in the circumstances council needed to
14 be reminded, that would depend on the circumstances,
15 wouldn't it?

16 A. I think it will always depend on the individual
17 circumstances.

18

19 MR CHESHIRE: Thank you very much.

20

21 THE COMMISSIONER: Does anyone else have any matters for
22 Mr Hurst?

23

24 MR WATSON: I did, Commissioner. It relates to some
25 observations made in respect of the provision of documents
26 over Mr Burgess's termination. It is page 10 of the
27 submission, page 50 of the bundle. I was going to ask just
28 a few questions.

29

30 THE COMMISSIONER: Page 10 of?

31

32 MR WATSON: Page 10 of the submission, but it is page 50
33 of the bundle.

34

35 THE COMMISSIONER: Is this the page where the second
36 paragraph starts on "18 March"?

37

38 MR WATSON: Correct. I wanted to ask some questions on
39 matters in relation to that.

40

41 THE COMMISSIONER: I will give you leave to commence and
42 we will see how we go.

43

44 <EXAMINATION BY MR WATSON:

45

46 MR WATSON: Q. Mr Hurst, just so that we have the same
47 thing, you have spoken to the one dated 17 May 2016; is

1 that right?
2 A. Yes, that's correct.
3
4 Q. It runs, with the annexures, to 569 pages. Do you
5 have that with you? Is that the document you have with
6 you?
7 A. Yes, I have that document here.
8
9 Q. I want you to turn, if you wouldn't mind, to page 41.
10 You will see that that's the first page of a submission.
11 Do you have that? It is page 41 of the bundle.
12 A. I'm sorry, my submission was put together by my team
13 and the page numbering doesn't match yours.
14
15 Q. That's unhelpful. Do you have the page numbers so
16 that they run through to 569?
17 A. They will be within the documents here.
18
19 Q. All right.
20 A. Can you tell me the title of the document?
21
22 Q. It is your submission. It ran for some 13 or 14
23 pages. It is titled "Submission of the Auburn City Council
24 Public Inquiry." Do you have that?
25 A. And does it have an individual page number?
26
27 Q. Yes, it does. It's got page 50, according to the
28 documents that we were given by the Commission.
29
30 MS CALLAN: If I could assist, Commissioner? Neither the
31 witness or I have the benefit of the compilation that was
32 distributed to the other parties, but, as I understand it,
33 Mr Watson is seeking to draw the witness's attention to
34 page 10 of the submission.
35
36 MR WATSON: That's correct.
37
38 Q. Do you have your submission?
39 A. I do.
40
41 Q. What I was trying to do is just identify it as your
42 submission. Do you accept that that's so?
43 A. Yes, it is my submission.
44
45 Q. Have a look at page 10. You will see in the third
46 paragraph, it starts with the words "The office requested";
47 do you see that?

1 A. That's correct.
2
3 Q. And you'll see between there and halfway down the page
4 where it ends with the words "in accordance with its
5 responsibilities", you will see that in those three
6 paragraphs there's some fairly trenchant criticism of
7 Mr Attie and the council. Do you see that?
8 A. Yes, I do.
9
10 Q. I want to see whether you agree with me. The first
11 criticism is that Mr Attie was uncooperative; do you see
12 that?
13 A. Yes, I see that word.
14
15 Q. The second is that there was a three-month delay in
16 compliance.
17 A. That's correct.
18
19 Q. These are your assertions to this inquiry?
20 A. Yes.
21
22 Q. If you go down further and miss a paragraph, you will
23 see that there is an assertion made, a strong one, that the
24 council was deliberately withholding information. Do you
25 see that?
26 A. Yes, I do.
27
28 Q. That's serious, isn't it?
29 A. Yes.
30
31 Q. The fourth criticism seems to suggest that there is a
32 disregard for the role of your office?
33 A. That's the conclusion that I drew.
34
35 Q. Did you ever speak to Mr Attie?
36 A. No, I didn't.
37
38 Q. Did you look at the material which was available from
39 Mr Attie?
40 A. Yes, I have.
41
42 Q. Did you look at the material which related to the
43 delay?
44 A. Yes, I've seen that material.
45
46 MR WATSON: This is very difficult, Commissioner. I am
47 working off the copies that we were given. This would be

1 page 465 of your bundle.
2
3 THE COMMISSIONER: I do not think it is page 465 of my
4 bundle. I haven't been given a paginated copy.
5
6 MR BOLSTER: We don't have a paginated bundle.
7
8 MR WATSON: Q. Well into your statement, Mr Hurst, there
9 is a submission recorded. It was a submission which was
10 signed off by Lyn Brown. Are you able to find that? In
11 terms of your statement, it would be more than three
12 quarters of the way through.
13
14 MR GARDINER: 10 pages from the back.
15
16 MS CALLAN: Does the submission bear a date?
17
18 MR WATSON: No, it is undated.
19
20 MS CALLAN: Is it also unsigned?
21
22 MR WATSON: It is unsigned.
23
24 MS CALLAN: I think it is the first document behind tab H.
25
26 THE WITNESS: Is the document ID A326290?
27
28 MR WATSON: Q. Yes, that's correct. You will see that
29 that was the submission which was put to your office.
30
31 THE COMMISSIONER: This is the thing after "Previous
32 General Manager"?
33
34 MR WATSON: Yes. Correct, Commissioner.
35
36 Q. That is a submission which suggested that information
37 should be obtained?
38 A. Yes.
39
40 Q. Do you know when that document was provided to your
41 office?
42 A. I'm not sure of the date that it was authored, but --
43
44 THE COMMISSIONER: It's got May 2013 down the bottom.
45 I don't know if that means anything.
46
47 THE WITNESS: But the letter which was signed as a

1 consequence of the then Chief Executive agreeing with that
2 minute is dated 16 May 2014.
3
4 MR WATSON: Q. All right. That submission, on its first
5 page, says that your office was advised about this issue on
6 19 March 2013. Do you see that?
7 A. Yes.
8
9 Q. Can you explain the delay between receiving that
10 information and acting upon it?
11 A. I can't explain that right now.
12
13 Q. In any event, if you go further into the bundle, there
14 is a letter from your office addressed to Mr Attie dated 16
15 May 2013. Do you have that?
16
17 THE COMMISSIONER: Is that Ross Woodward.
18
19 MR WATSON: Q. It is signed by Ross Woodward?
20 A. Yes, I have that.
21
22 Q. Did you look when you prepared your submission?
23 A. Yes, I've seen that letter.
24
25 Q. Did you look at this when you prepared your
26 submission?
27 A. No, I didn't look at the letter.
28
29 Q. You see, this is the request made of Mr Attie; do you
30 see that?
31 A. Mmm-hmm.
32
33 Q. It is dated 16 May.
34 A. Yes.
35
36 Q. Would you turn over and you should have a letter back
37 by Mr Attie dated 24 June 2013. Do you see that?
38 A. Yes, I have that letter.
39
40 Q. Did you read that letter before you made your
41 submission?
42 A. I didn't read it personally, no.
43
44 Q. You didn't read it personally? Did you think it would
45 be relevant to read it before you asserted Mr Attie was
46 uncooperative?
47 A. It was the advice of my staff.

1
2 Q. I'm sorry, I didn't ask you that. Did you think,
3 before you told this inquiry that Mr Attie was
4 uncooperative, you should have read his correspondence?
5 A. No. No, I don't.
6
7 Q. All right. Have a look at the letter from Mr Attie
8 dated 24 June 2013. You will see that the paragraph, it
9 responds to Mr Woodward's letter.
10 A. Yes.
11
12 Q. Have you read that now?
13 A. I have read that.
14
15 Q. Is that the first time you have read it?
16 A. No, it's not.
17
18 Q. Could you indicate to the Commissioner that part of
19 that letter which would suggest that Mr Attie was being
20 uncooperative?
21 A. It's not contained within that letter.
22
23 Q. That's for certain, isn't it? If anything, that's a
24 very cooperative letter, isn't it?
25 A. It's constructive.
26
27 Q. I beg your pardon?
28 A. It is constructive, yes.
29
30 Q. Yes. He says he had no hesitation in assisting; is
31 that right? Do you see that?
32 A. Yes, I see that.
33
34 THE COMMISSIONER: No hesitation fulfilling your request
35 based on a response.
36
37 MR WATSON: Q. Exactly, and he gave a reason why he
38 could not comply at that time, didn't he?
39 A. He did.
40
41 Q. Yes. Did you check up to see whether or not that was
42 a genuine reason for non-compliance?
43 A. Yes, it's not a genuine reason for non-compliance.
44
45 Q. Not a legitimate reason, is that so?
46 A. The Act requires for the remuneration of the general
47 manager, including the amount of any payment, to be

1 disclosed in the annual report.
2
3 Q. Did you look at the contract, the termination
4 contract, between the council and Mr Burgess in forming
5 that opinion?
6 A. No.
7
8 Q. You see, that's what Mr Attie was relying upon, wasn't
9 he?
10 A. I don't know what he was relying on.
11
12 Q. You can read it in the letter. Read the letter.
13 You've got it there in front of you.
14 A. He talks about a non-disclosure agreement.
15
16 Q. Yes. At page 538 of the bundle, if you can go ahead
17 to the actual termination deed - perhaps you already know
18 this - the deed did provide for confidentiality. Did you
19 know that?
20
21 THE COMMISSIONER: That is the deed of release?
22
23 MR WATSON: Yes. It is clause 6 in the first place.
24
25 Q. Mr Hurst?
26 A. I see clause 6.
27
28 Q. Have you read that before?
29 A. I have read that clause, yes.
30
31 Q. You have read it. So you did know that Mr Attie,
32 whether it was smart or not smart to do so, had agreed to
33 be bound by confidentiality provisions?
34 A. He may have believed that that overrode his obligation
35 under the Act.
36
37 Q. What he asked for, wasn't it, in his letter dated
38 24 June, is for you or your office to provide an authority
39 which wouldn't override that confidentiality provision,
40 didn't he?
41 A. Yes, he did.
42
43 Q. And that was given, wasn't it?
44 A. Yes, it was.
45
46 Q. So that was necessary, wasn't it?
47 A. That is ultimately a question for him.

1
2 Q. Sorry?
3 A. I think that's a question for him.
4
5 Q. I'm so sorry, why would your office give such a
6 direction if it was unnecessary?
7 A. Because he requested it.
8
9 Q. You don't think, then, it was an unreasonable request?
10 A. I don't think it was an unreasonable request, no.
11
12 Q. You do know that your office provided the exact
13 authority that Mr Attie wanted, you know that, don't you?
14 A. I provided an order under the Act, yes.
15
16 Q. Yes. This is page 473 of the bundle. This is a
17 letter from your office to Mr Attie, signed by
18 Ross Woodward and dated 6 August 2013, enclosing an order
19 for the production of documents?
20 A. Yes, I have that letter.
21
22 Q. Now, remember before that you said, in your submission
23 to the inquiry, that there were real questions about delay.
24 Do you remember that?
25 A. Yes.
26
27 Q. Can you explain the delay between Mr Attie's letter,
28 24 June 2013, and the issue of that order? Can you explain
29 that? Six weeks, it took.
30 A. I was not around at the time. However, I can
31 understand that there would be circumstances where orders
32 which are not issued often would require legal review to
33 ensure that they complied with the Act and the submission
34 to the chief executive in making the order talks about that
35 legal advice.
36
37 Q. It seems as though most of the delay so far has been
38 from your office, don't you agree?
39 A. Certainly there was time taken to process the order,
40 yes.
41
42 Q. You must have misunderstood my question. It seems,
43 looking at this chronology of events, most of the delay has
44 been caused by your office. Do you agree?
45 A. To this point, yes.
46
47 Q. All right. And then Mr Attie responded by supplying

1 the material, didn't he? A letter was sent on his behalf,
2 by Peter Fitzgerald, dated 27 August 2013; you know that,
3 don't you?
4 A. Yes, I have that letter.
5
6 Q. And that supplied the material which was sought; is
7 that right?
8 A. It supplied the material listed in Mr Fitzgerald's
9 letter.
10
11 Q. What we know about Mr Attie and him being
12 uncooperative is that he immediately wrote back saying that
13 he would have no hesitation in responding provided you give
14 him the authority. He did that, didn't he?
15 A. Yes, I believe it was six weeks afterwards.
16
17 Q. I am talking about his cooperation at the moment; is
18 that right?
19 A. Yes.
20
21 Q. So he cooperated at that first point; correct?
22 A. Yes, he wrote a letter.
23
24 Q. And then, when he was given the authority, he arranged
25 it so that the material was supplied; correct?
26 A. That's what Mr Fitzgerald said in his letter.
27
28 Q. What I'm asking you now is that looks as though
29 Mr Attie was cooperating, doesn't it?
30
31 THE COMMISSIONER: The order requires 14 days from
32 6 August. I don't know how relevant this is, frankly, but
33 there's a department file note where clearly what happened
34 was that the material wasn't received within the 14 days
35 and there are some phone calls made to Councillor Attie on
36 22 August, 23 August, 23 August, 27 August and documents
37 were received on 28 August, which may or may not be
38 material to this.
39
40 MR WATSON: Mr Attie was overseas.
41
42 THE COMMISSIONER: Yes, I see that, yes. Mr Fitzgerald is
43 passing on that information.
44
45 MR WATSON: Yes.
46
47 Q. In any event, Mr Attie cooperated, didn't he?

1 A. Mr Attie authorised the acting general manager to
2 provide the information.
3
4 Q. It says on behalf of Mr Attie, doesn't it? Look at
5 the bottom of the letter under Mr Fitzgerald's signature?
6 A. He says he has asked him to provide this information,
7 that's correct.
8
9 Q. Yes. So Mr Attie cooperated, didn't he?
10 A. Yes.
11
12 Q. Would you like now to withdraw your submission that
13 Mr Attie was uncooperative?
14 A. I think that the time frame is also relevant to
15 whether or not he was cooperative.
16
17 Q. We've been through the time frame. I don't want you
18 to dwell on it for too long, but it seems as though you had
19 the information on 19 March in your office and you first
20 wrote to Mr Attie on 16 May. That was a delay, wasn't it?
21 A. Yes, that was a delay.
22
23 Q. Mr Attie responded on 24 June; correct?
24 A. Yes.
25
26 Q. When he got the authority, despite the fact that he
27 was overseas for some of the period, he responded within
28 three weeks; correct?
29 A. Yes.
30
31 Q. Would you like to withdraw your submission that
32 Mr Attie was uncooperative?
33 A. I think that Mr Attie could have done more to
34 cooperate.
35
36 Q. No, I'm asking you something else; you must understand
37 that. You've told a public inquiry that Mr Attie was
38 uncooperative. Would you like to withdraw that?
39 A. No.
40
41 Q. All right. What do you base it upon then?
42 A. The fact that this was an important document, that the
43 office was at the time undertaking preliminary inquiries
44 into the circumstances of the general manager's departure
45 and that these documents that were necessary to progress
46 that were not forthcoming.
47

1 Q. But we know, from looking at the chronology, most of
2 the delay occurred within your office; correct?
3 A. And I suppose how much of that --
4
5 Q. Is that right or wrong; correct?
6 A. Much of the delay, yes.
7
8 Q. Yes, much of the delay was caused by your office. Was
9 your office being uncooperative?
10
11 MS CALLAN: I object to that.
12
13 MR WATSON: I will withdraw that.
14
15 Q. Mr Attie supplied the information which was requested;
16 is that right?
17 A. Yes, eventually he did.
18
19 Q. Would you like to withdraw your submission that the
20 information was being deliberately withheld?
21 A. My statement is that the actions gave the appearance
22 that the council was deliberately withholding the
23 information.
24
25 Q. Well, you're not suggesting that information was
26 withheld, are you?
27
28 THE COMMISSIONER: Obviously, it wasn't, ultimately.
29
30 THE WITNESS: No information was withheld, as far as I'm
31 aware.
32
33 MR WATSON: Q. Would you like to withdraw your
34 submission that information was being deliberately
35 withheld?
36
37 THE COMMISSIONER: The submission is "gave the
38 appearance". There is a slight difference.
39
40 MR WATSON: Q. Would you like to withdraw your
41 submission that this conduct gave the appearance that
42 information was being deliberately withheld?
43 A. No, I maintain the assertion that the actions gave
44 that appearance to me.
45
46 MR WATSON: Thank you.
47

1 THE COMMISSIONER: Thank you. You might prefer to stand
2 but it is not compulsory for people to stand. That might
3 be your preference. Is that all, Mr Watson?

4
5 MR WATSON: Yes, thank you.
6

7 THE COMMISSIONER: Does anyone else wish to seek leave to
8 ask any questions of Mr Hurst?
9

10 MR GARDINER: I do, Commissioner. It goes back to the
11 questions which were subject to cross-examination by my
12 friend before in relation to the actions of the officers in
13 relation to planning decisions.
14

15 <EXAMINATION BY MR GARDINER:
16

17 MR GARDINER: Q. I just wanted to ask you, Mr Hurst, you
18 indicated that your view was that council officers should
19 continue to recognise a previous planning decision was one
20 of the staff which had been rejected by council in their
21 subsequent correspondence, communication?

22 A. At this stage, the circumstances would be that no
23 decision had been made on the planning proposal.
24

25 Q. And once a decision had been made?

26 A. Then they have an obligation to implement the decision
27 of council.
28

29 Q. Has the Office of Local Government issued any
30 circulars to council officers in relation to that point?

31 A. I'm not aware of that, no.
32

33 Q. Is there a formal policy at the Office of Local
34 Government that council officers should act in that way?

35 A. I'm not aware of that either.
36

37 Q. You're not aware of whether or not the Office of Local
38 Government has a policy?

39 A. I'm not aware of whether that guidance, that specific
40 guidance has been given.
41

42 Q. Would it be reasonable for you to know that such a
43 guidance had been given?

44 A. I'm sorry, I don't have an encyclopaedic knowledge of
45 all of the information that has been provided to councils
46 in the past.
47

1 Q. What about the recent past?
2 A. If I had provided that guidance recently I would have
3 a knowledge of it.
4

5 Q. Even with your understanding of these matters and your
6 preparation for this inquiry, you haven't been so minded to
7 cause your department to issue a circular to council
8 officers?

9 A. No, I don't think so.

10
11 MR GARDINER: Thank you.

12
13 MR ROBSON: Commissioner, I have just one question.

14
15 **<EXAMINATION BY MR ROBSON:**

16
17 MR ROBSON: Q. Mr Hurst, you gave some evidence in
18 relation to what was considered or put to you, proposal A
19 and proposal B and the obligations of council and planners
20 to maintain a certain view or repeat their view. Is that
21 only in relation to planning proposals as opposed to
22 consideration of development applications?

23 A. I think it was a broad statement about where there was
24 an as yet undetermined matter by the council.
25

26 Q. But there's nothing in any of material, any of the
27 guidelines, codes of conduct or otherwise, that relates
28 specifically to a council officer's duties in relation to
29 further consideration where a council does not accept that
30 council officer's view in a report in relation to a
31 development application, is there?

32 A. Not that I'm aware of.
33

34 MR ROBSON: Thank you.

35
36 MR PRICE: I have just one matter, Commissioner.
37

38 **<EXAMINATION BY MR PRICE:**

39
40 Q. Page 10 of your submission, paragraph 4 --

41
42 THE COMMISSIONER: This is the page that Mr Watson was
43 asking questions about?
44

45 MR PRICE: Yes, it was.
46

47 Q. Paragraph 4 is the paragraph which commences,

1 "Following this, isn't it?

2 A. Yes, it is.

3

4 Q. It reads:

5

6 *Following this, further information was*
7 *requested.*

8

9 Councillor Zraika had been elected as mayor in the
10 intervening period, but it took a further five months for
11 the council to provide additional information that was
12 requested following a number of follow-up emails and phone
13 calls and so forth. That was a request not an order,
14 correct, at that time?

15 A. As I understand, there was no further order given.

16

17 Q. You were aware, were you not, that during this
18 five-month period there was a request for advice from
19 Deacons? Are you aware of that?

20 A. No, I'm not aware of that.

21

22 MR PRICE: I have nothing further.

23

24 THE COMMISSIONER: Is that everyone? Thank you, Mr Hurst,
25 you're excused. Did you have any follow-up questions?

26

27 MR BOLSTER: No, thank you, Commissioner.

28

29 <THE WITNESS WITHDREW

30

31 MS CALLAN: Commissioner, may I ask to be excused?

32

33 THE COMMISSIONER: Yes. Thank you.

34

35 MR BOLSTER: I call Mr Viv May. Do you have a copy of his
36 statement, Commissioner?

37

38 THE COMMISSIONER: Do I?

39

40 MR BOLSTER: Yes.

41

42 THE COMMISSIONER: I do.

43

44 MR CHESHIRE: Commissioner, I am not sure whether we are
45 supposed to have a copy of the statement of Mr May. In
46 relation to Mr Hurst, my instructing solicitor, in fact,
47 has been checking. He doesn't appear to have access to

1 Mr Hurst's statement through whatever the thing is. I am
2 not sure whether that's deliberate, as in that I'm not
3 entitled to it for some reason, but there appears to be
4 some difficulty at least that my team were experiencing.

5
6 THE COMMISSIONER: Given you were acting for Mr Francis,
7 it may have been thought that he wasn't directly interested
8 in Mr Hurst's evidence, which is obviously not right given
9 the questions you've asked. That will be made available to
10 you.

11
12 MR CHESHIRE: Thank you, Commissioner. As I say, if it's
13 deliberate, I'd rather know that I'm not given access.

14
15 THE COMMISSIONER: I don't think it was deliberate in the
16 sense of, "We won't let him look at it." I think it may
17 have been deliberate in the sense of, "This won't trouble
18 him."

19
20 MR CHESHIRE: What I mean by that is that I would rather
21 know if a deliberate decision not to give us something has
22 been taken so that I can at least then chase it up, if
23 necessary.

24
25 THE COMMISSIONER: It is up to Mr Bolster, but I can't see
26 any reason why you can't have access to it and I would have
27 thought the same would be in relation to Mr May, frankly.

28
29 MR CHESHIRE: Yes, thank you, Commissioner. I am not sure
30 whether anybody has got Mr May's statement.

31
32 MR BOLSTER: I have a copy for my learned friend. It has
33 not been deliberate.

34
35 MR CHESHIRE: Thank you, Commissioner. Thank you,
36 Mr Bolster.

37
38 THE COMMISSIONER: Have people not been given access to
39 Mr May's statement?

40
41 MR CHESHIRE: I think it might just be me.

42
43 MS CURTIN: I wasn't given the annexures, but I do have a
44 copy of the statement.

45
46 THE COMMISSIONER: Does everyone else have a copy of
47 Mr May's statement? Excellent.

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<VIVIAN MAY, sworn:

[2.47pm]

<EXAMINATION BY MR BOLSTER:

MR BOLSTER: Q. Mr May, you made a statement in this matter on 17 May 2016?

A. Correct.

Q. Are the contents of that statement true and correct to the best of your knowledge, information and belief?

A. Yes.

Q. I just wanted to ask you some further questions, if I may. I wanted to ask you about briefings you were provided in relation to the existing planning proposals that were on foot when you took over as interim administrator in February of this year. Did you have a briefing with anyone from the planning department about those proposals?

A. Yes. I had a briefing on three issues, in effect, and that was from the planning department.

Q. What were the three issues, as best you recall?

A. There was the car park issue, the South Auburn issue and other just general planning matters issues.

Q. Was the Berala planning proposal discussed?

A. Yes, in the third one.

Q. Was the Grey Street, Silverwater, proposal discussed?

A. Yes.

Q. Who were the briefings given by?

A. There was Mr Dencker, Mr Francis and Ms Cologna.

Q. I want to ask you about each of the planning proposals. Can we start with South Auburn?

A. Yes.

Q. Who gave you the briefing about South Auburn?

A. That would have been a mixture of Glenn and Monica.

Q. What was the advice, in a summary form, that you were given?

A. Well, in short, I was being encouraged to stop it.

1 Q. Encouraged by whom?

2 A. Mr Francis and Monica Cologna.

3

4 Q. Who had the lead, who did the talking on that
5 particular proposal, or was it an amalgam of both of them?

6 A. I think it was an amalgam.

7

8 Q. Do you recall anything of the conversation that you
9 had with them about that particular proposal?

10 A. Yes, I do. Look, I thought they were quite
11 professional briefings I got, but I must say I did think to
12 myself how has this been allowed to happen during the
13 briefing process, but the South Auburn one I do recall that
14 the area to be rezoned kept coming back. I think it was 2A
15 the staff were recommending in the end and what the staff
16 were saying to me was that really the process should be
17 stopped and this is an opportunity.

18

19 Q. Did the staff indicate where the 2A option came from?

20 A. The way I read it, it was their compromise to what the
21 council was trying to achieve, but I don't think they were
22 even happy with that compromise.

23

24 Q. What did Mr Francis say, to the best of your
25 recollection, about the 2A option when he briefed you?

26 A. I'm not sure it was Mr Francis or Monica, but they
27 were encouraging me to stop it. I don't think they were
28 comfortable with the zoning that was being presented and
29 I really think they were trying to appease the councillors.

30

31 Q. When you say that, did they say to you that that's
32 what they were doing?

33

34 THE COMMISSIONER: I don't understand the question - that
35 they were trying to --

36

37 MR BOLSTER: Q. You said that "they" - it was an
38 impression you got that they were trying to please
39 councillors?

40 A. That was the definite impression I got because they
41 were then encouraging me to stop it.

42

43 Q. Did they say words that suggested that option 2A came
44 from councillors?

45 A. That I can't recall directly because it was their
46 recommendation, which is what confused me. I mean, they're
47 saying to me stop it but this is their recommendation, and

1 look - and I actually have spoken with Monica since that
2 briefing and she has indicated to me, you know, that it was
3 - an administrator coming in was like a breath of fresh
4 air, to step back from some of what was going on.

5
6 Q. Tell me about that second conversation you had with
7 Ms Cologna. When did that occur?

8 A. The last few days because I was just trying to, again,
9 bring a context. Look, when I arrived here it was all very
10 hectic. There were a lot of briefings, a lot of planning
11 issues. I had to deal with the car park and South Auburn
12 within a few days of getting here, there was a lot of
13 reading, and I must say I thought they were quite complex
14 issues, but when I had the briefings and in effect the
15 encouragement of the staff, they were quite easy decisions
16 to make.

17
18 Q. Let's go back to that last conversation you had with
19 Ms Cologna.

20 A. Mmm.

21
22 Q. It was last week, was it?

23 A. It was early this week, actually.

24
25 Q. Early this week?

26 A. Yes.

27
28 Q. What did she say about the South Auburn proposal?

29 A. I was just asking her to refresh me why I got to this
30 decision in relation to pulling it back and she indicated
31 to me that it should have been - the whole - it was very
32 prescriptive and the whole of the area should have been
33 dealt with properly rather than just this area in isolation
34 and, you know, I said to her, "Actually, well, you know, it
35 was your recommendation, 2A", and that's when she indicated
36 to me that it was an opportunity to take a deep breath, in
37 effect, and start again.

38
39 Q. As best you can recall, what were the words she used
40 when you put to her that option 2A was an option that staff
41 had put forward to council?

42 A. She, in effect, said to me that this was a compromise
43 and a pulling back from what the council was trying to
44 achieve.

45
46 Q. Let's go back to the briefings that you had about the
47 planning proposals. Let's talk about the Berala planning

1 proposal. Who provided you with that briefing?
2 A. It would have been the same two people.
3
4 Q. Mr Francis and Ms Cologna?
5 A. Yes.
6
7 Q. And to the best of your recollection, what was the
8 extent of their briefing to you about those two proposals,
9 or that proposal?
10 A. That wasn't a big briefing and from recollection,
11 I referred that matter to the new panel to get advice on
12 it.
13
14 Q. Is that the independent panel you established --
15 A. Yes.
16
17 Q. -- that you refer to in your statement?
18 A. Correct.
19
20 Q. What is the current status of that proposal?
21 A. I have no idea. Nothing has happened because it
22 hasn't been to the panel, to my knowledge.
23
24 Q. That's the independent panel with the experts that you
25 refer to in your statement, correct?
26 A. Correct.
27
28 Q. Finally, in relation to Grey Street, Silverwater, who
29 gave the briefing on that particular proposal?
30 A. It would have been the same two because they did them
31 all and Grey Street, Silverwater, doesn't really ring a
32 bell with me.
33
34 Q. You have no clear recollection of what was said about
35 that?
36 A. No.
37
38 Q. All right. Did you get a briefing about the gazetted
39 proposal, that is, the Marsden Street, Lidcombe, proposal?
40 A. No, that was all too late.
41
42 Q. Did they tell you about it?
43 A. I think in discussions it might have been mentioned
44 that it was too late, because they were encouraging me to
45 make contact or to issue them an instruction to make
46 contact with the Department of Planning about, it was - it
47 might have been the North Cumberland - it was --

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Q. One of the proposals?

A. One of the proposals, yes, which had already gone off to the Department of Planning and I recall that I asked that they ring the Department of Planning and ask them to hold it and they said they can't, it's got to be withdrawn, and then we did a resolution to do that.

Q. On the proposal that they asked you to write to planning about and have withdrawn, did you write to planning about that?

A. They did.

Q. They did, on your instruction?

A. On my instructions. I'll give some context to this. I dealt with the first two items and then all these other planning proposals. I'm not a planning expert and that's why I wanted to get a panel to try and restore some confidence to the community in what was going on in this place.

MR BOLSTER: Yes, nothing further, Mr Commissioner.

THE COMMISSIONER: Are you tendering the statement?

MR BOLSTER: I am tendering the statement.

THE COMMISSIONER: That will be exhibit S2, Mr May's statement of 17 May 2016.

EXHIBIT #S2 STATEMENT OF VIVIAN MAY DATED 17/05/2016

THE COMMISSIONER: Does anyone want to seek leave to ask any questions of Mr May?

MR CHESHIRE: Briefly, if I may, Commissioner, concerning the conversations with Mr Francis.

<EXAMINATION BY MR CHESHIRE:

MR CHESHIRE: Q. Mr May, you would understand, would you not, that it is the duty of staff to implement the decisions of council; correct?

A. Correct.

Q. Indeed, even if those staff disagree with the decisions from a personal point of view, their duty is

1 still to implement the decisions of council; correct?

2 A. Correct.

3

4 Q. And so you received a briefing in relation to this
5 option 2A in South Auburn and I think you gained the
6 impression, I think your evidence was, that this was the
7 compromise of the staff in order to achieve what the
8 councillors wanted; is that correct?

9 A. Yes.

10

11 Q. There would be nothing untoward in staff seeking to
12 put forward a proposal on that basis; correct?

13 A. I don't agree with that. There's independence in
14 reporting for staff and a council or a mayor can request
15 advice or a recommendation. I don't recall seeing that.

16

17 Q. Did you look into that aspect or not?

18 A. No, I didn't.

19

20 Q. I think you described the briefings that you received
21 from Mr Francis and Ms Cologna. I think you described them
22 as being very professional in their briefings that they
23 gave you; is that correct?

24 A. That is correct, but I also said at the same time I
25 was wondering to myself how was this allowed to happen.

26

27 Q. Well, when you gave your evidence about their
28 briefings being professional, you were referring to all of
29 their briefings; correct?

30 A. Correct.

31

32 Q. In relation to the option 2A, it could be an
33 explanation, could it not, that in fact staff were
34 attempting to achieve what the councillors wanted; correct?

35 A. What I was - that's not the officers' role. The first
36 question you asked me was do the officers carry through
37 directions of the council staff and the answer to that is
38 yes, if it's a legal recommendation, but I think what was
39 happening here was the staff were trying to pull back a
40 recommendation to try to appease the councillors.

41

42 Q. When you used the word "appease", what are you
43 intending to mean by that?

44 A. Well, to seek to keep the council happy.

45

46 Q. Right, but if council had given certain directions to
47 their staff as to what they wanted then, in fact, it would

1 be in accordance with the job of staff, would it not, for
2 them to comply with those instructions?

3 A. If it was a legal instruction, yes.
4

5 Q. And you didn't look into, did you, the full history of
6 how this option 2A came about; that's correct, isn't it?

7 A. I might have read the files but I didn't, I must
8 admit, look very closely to see what the staff
9 recommendation was because after they were encouraging me
10 to, in effect, stop it, that was the recision motion,
11 I did.
12

13 Q. And I think your evidence was that you have no
14 experience in the area of planning; is that correct?

15 A. Correct.
16

17 Q. What is your background?

18 A. In effect, an administrator, as general manager of a
19 council.
20

21 Q. Have you ever worked in a council before?

22 A. Yes, for 30 years, 27 as general manager of Mosman.
23

24 Q. You were the general manager, were you?

25 A. Yes.
26

27 MR CHESHIRE: Thank you very much.
28

29 **<EXAMINATION BY MR BOLSTER:**
30

31 MR BOLSTER: Q. Just on that, in your 27 years as
32 general manager of Mosman did you oversee and supervise
33 planning proposals put to council by your planning
34 department comprised of expert planners?

35 A. Of course. I was the general manager.
36

37 THE COMMISSIONER: Q. When you were talking about the
38 briefings that you got from Mr Francis and Ms Cologna and
39 you mentioned that you thought they were very professional,
40 you also made the observation that in your head you were
41 saying you couldn't understand how this had been allowed to
42 happen. Can you just expand on that, what you mean by
43 that?

44 A. Well, I was getting briefings from them which was
45 outlining the process of what had happened, but at the same
46 time I'm being asked to stop it and I said to myself, you
47 know, "How has this been allowed to happen?" And then, you

1 know, there were so many of them --

2

3 Q. That was something they don't agree with as plans?

4 A. Yes, yes, correct, and there's independence in
5 reporting. Now, at Mosman if a planner didn't agree with
6 the council, they reminded the council all the time.

7

8 Q. That disagreement would be properly documented?

9 A. Correct.

10

11 THE COMMISSIONER: All right. Does anyone else wish to
12 seek leave to ask any questions of Mr May?

13

14 MR CHESHIRE: Could I just ask this, arising out of that
15 last answer?

16

17 <EXAMINATION BY MR CHESHIRE:

18

19 MR CHESHIRE: Q. Mr May, were you in this hearing room
20 when Mr Hurst was giving his evidence?

21 A. No.

22

23 MR CHESHIRE: You weren't. Thank you very much.

24

25 THE COMMISSIONER: No-one else? All right. I think
26 that's all the witnesses we've got for today, so we're
27 going to be adjourning a little bit early, unfortunately.

28

29 MR ROBSON: Before we do, Commissioner, may I just ask a
30 question in relation to --

31

32 THE COMMISSIONER: To me or to the witness?

33

34 MR ROBSON: No, to you, Commissioner, I'm sorry.

35

36 THE COMMISSIONER: Mr May, you're excused.

37

38 <THE WITNESS WITHDREW

39

40 MR ROBSON: Commissioner, I note that the list that has
41 been published for the witnesses tomorrow --

42

43 THE COMMISSIONER: I was just about to deal with that.

44

45 MR ROBSON: Thank you.

46

47 THE COMMISSIONER: This may help you. As I understand it,

1 the witnesses are Mr Francis and Ms Cologna and an outside
2 chance of Mr Mooney. In relation to Mr Francis, I think
3 I mentioned we've received a statement that has been
4 prepared by his solicitors. I understand that copies have
5 been made so they can be provided to everyone before you
6 leave today. If that hasn't happened, it will be put up on
7 the system tonight; so that's tomorrow.

8
9 MR CHESHIRE: Commissioner, might I just check then about
10 Mr Mooney, bearing in mind my difficulties of receiving
11 these statements? Has Mr Mooney prepared a statement and
12 is it on the system?

13
14 THE COMMISSIONER: He has and I would be very surprised
15 that it had any impact on your client. I will ask
16 Mr Bolster to consider that.

17
18 MR BOLSTER: Clear skies for you, Mr Cheshire.

19
20 MR WATSON: Me too?

21
22 MR CHESHIRE: Famous last words. I'll accept that
23 warranty, Commissioner.

24
25 MR BOLSTER: For you.

26
27 MS MUSGRAVE: For me?

28
29 MR BOLSTER: Not for Mr Wheelhouse.

30
31 MR CHESHIRE: May I just ask formally that we be given a
32 copy of the statement, which might avoid the issues that
33 arose in relation to both of these witnesses?

34
35 THE COMMISSIONER: The statement of Mr May?

36
37 MR CHESHIRE: I would ask for a direction that all the
38 statements be provided to all of the legal representatives,
39 because I was put at some significant disability in dealing
40 with Mr Hurst and Mr May because I was dealing with it on
41 the run.

42
43 THE COMMISSIONER: Yes, I apologise for that. I am not
44 sure that everyone has a substantial or direct interest in
45 every statement, but I'll ask Mr Bolster to --

46
47 MR CHESHIRE: Commissioner, I am just concerned about that

1 decision being made. As I say, it appears to have been
2 made in relation to these two gentleman this afternoon in
3 areas that did concern me. I make no criticism, but rather
4 than have, as it were, Mr Bolster having to do that extra
5 work of working out which person, in the light of the
6 evidence and what has been given, is in fact relevant. If
7 it is not relevant to me, in my submission, it won't hurt
8 the witness for me to read what they have to say. That is
9 why I would ask that all statements be released to all
10 legal representatives.

11
12 THE COMMISSIONER: All right. I think that can probably
13 be done but I will think about it. We will probably be
14 able to accommodate that. I've just got to check that it
15 can be done on the system first, if it can.

16
17 MR CHESHIRE: Thank you, Commissioner.

18
19 THE COMMISSIONER: In terms of Mr Francis at least and the
20 people tomorrow, as I understand it, everyone has
21 Ms Cologna statement and Mr Francis's that we've received
22 from his solicitors will be made available.

23
24 MR WHEELHOUSE: We don't have a copy of Mr Francis's
25 statement.

26
27 THE COMMISSIONER: No-one has a copy of Mr Francis's
28 because it wasn't prepared by the inquiry staff. It has
29 been prepared by his own solicitors and we only received it
30 yesterday, so it's going to be made available to you today.

31
32 MR WHEELHOUSE: Commissioner, we received a notation
33 saying that statements had been prepared confidentially.
34 Are there two statements or a single statement?

35
36 THE COMMISSIONER: There's no statement by Mr Francis that
37 has been prepared by the inquiry staff.

38
39 MR WHEELHOUSE: Thank you.

40
41 THE COMMISSIONER: He gave some evidence in a private
42 hearing and his solicitors have since prepared a statement
43 that was provided to us yesterday and that's the statement
44 I'm talking about that we have provided now, either by
45 I think a hard copy or on the system, but I'm pretty sure a
46 hard copy. Someone is nodding at me, so it looks like it's
47 a hard copy.

1
2 MR WHEELHOUSE: Thank you, Commissioner.
3
4 THE COMMISSIONER: I understand everyone that needs to has
5 Mr Mooney's statement and that only involves a very limited
6 number of people.
7
8 MR BOLSTER: Does Mr Wheelhouse have Mr Francis's
9 cross-examination in the private hearing?
10
11 MR WHEELHOUSE: I am sorry?
12
13 MR BOLSTER: Do you have the transcript of the private
14 hearing of Mr Francis?
15
16 MR WHEELHOUSE: No.
17
18 THE COMMISSIONER: I have already made an order that that
19 transcript should be released to all interested parties.
20
21 MR ROBSON: We don't have it either.
22
23 MR BOLSTER: You will need it.
24
25 MS CURTIN: I am sorry, Commissioner, I don't have a copy
26 of Mr Mooney's, if he's relevant to my client.
27
28 THE COMMISSIONER: He's not.
29
30 MS CURTIN: He's not?
31
32 THE COMMISSIONER: No.
33
34 MS CURTIN: Thank you.
35
36 THE COMMISSIONER: All right. I think we issued a letter
37 that outlined what Mr Francis had said in the private
38 hearing.
39
40 MR WHEELHOUSE: That's correct. We don't have a copy of
41 the transcript and the letters.
42
43 THE COMMISSIONER: I had made an order that the transcript
44 be made available to interested parties. I will just have
45 to follow up what has happened there.
46
47 MR WHEELHOUSE: Is that a hard copy or an electronic copy?

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THE COMMISSIONER: I am not sure by what means it will be provided to you.

MR BOLSTER: I will provide my learned friend with my copy by email within the hour.

THE COMMISSIONER: I will leave Mr Bolster and the others to make the arrangements and otherwise we will adjourn.

MR ROBSON: Mr Commissioner, I am back on my feet. Is there a daily transcript being provided?

THE COMMISSIONER: Yes, and that's going to go up on the website each night, I think. Actually, I will just clarify that. Is that each night or each morning?

MR SEAR: We will make it available to everyone tonight and it goes up on the internet tomorrow morning.

MR ROBSON: And there's no chance of Mr Malouf being available tomorrow?

MR BOLSTER: No.

THE COMMISSIONER: Does anyone else want to raise any housekeeping issues before we adjourn? All right. We will adjourn until 9.30 tomorrow.

AT 3.10PM THE INQUIRY WAS ADJOURNED TO WEDNESDAY, 1 JUNE 2016 AT 9.30AM

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