

AUBURN PUBLIC INQUIRY

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

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

On Wednesday, 15 June 2016 at 10.00am
(Day 9)

1 THE COMMISSIONER: Just before we start, we did not get
2 through as many witnesses as we hoped yesterday.

3
4 As I understand it, today is Mr Alvarez, Mr Okorn,
5 Mr McNulty, Mr Wearne and Mr Hamed. Some of those
6 witnesses will be hopefully much shorter than others.

7
8 It is proposed, as I understand it, for Thursday in
9 the morning Mr Oueik, then Mr Attie. Mr Mehajer is the
10 next witness. I think we will know by lunchtime Thursday
11 whether he is going to be reached Thursday afternoon or
12 whether it is going to be Friday morning. Then Mr Zraika
13 Mr Yang and Mr Fitzgerald.

14
15 We listed this for three weeks. Unfortunately, we
16 lost a day with an electrical blackout and because we
17 started a week later, we have run into the public holiday.
18 It has occurred to me that we may not finish that list of
19 witnesses this week. Hopefully we will but we may not.
20 There is also Mr Francis who from the date of his medical
21 report has indicated he would need at least a month before
22 he would be able to give evidence, so we are going to need
23 a day later on at least for him. It may well be, though,
24 that we need more than one day.

25
26 I am not relisting the matter right now because, as
27 I say, it is not clear whether we will get through all of
28 the current witnesses yet or not. If the matter is
29 relisted, though, and I'm not opening this up for debate at
30 the moment, but I am considering 7 or 8 July or some time
31 in the week of 11 July, just so people know, but there is
32 no point in fixing it yet or fixing a certain number of
33 days, whether it is one day or two days or whatever, until
34 we know what we have got through this week. That is just
35 so people know that is what I am considering at the moment.

36
37 I was supposed to deliver a report by the end of July.
38 I don't think that is going to be possible, but that is a
39 constraint I have in terms of any flexibility for relisting
40 the matter. Anyway, that is my thoughts at the moment in
41 relation to that.

42
43 Can I just have handed out, I printed out what I hope
44 is an accurate current list of the exhibits for people.
45 I will just have those distributed. There should be enough
46 copies for everyone.

1 MR WATSON: I was just going to offer this, Commissioner -
2 I had a look at the statements by the various witnesses
3 being called today. It just occurred to me there is a
4 chance that they will go very swiftly, that there will be
5 very limited examination. If you would like, I'll have
6 contact made with Mr Attie to say that he could be
7 available from 2, just in case. There is a real chance we
8 will get through these five witnesses before lunch.

9
10 THE COMMISSIONER: I think you are right about what you
11 say there. The issue about Mr Attie is whether
12 Counsel Assisting is ready for him and also I think in
13 relation to Mr Hamed, we didn't realise until this morning
14 that he has made a request for an interpreter. Even
15 though, I think, Counsel Assisting has had a conversation
16 with him and so has another member of staff and an
17 interpreter wasn't used, he has requested an interpreter,
18 which was only made clear to us this morning. One won't be
19 available until at least two, I think. I think it has been
20 confirmed for two, so we are going to have him for part of
21 the afternoon. If it is through an interpreter, it might
22 take longer than we all anticipated.

23
24 MR WATSON: I offer it and, Commissioner, can I just say
25 this, although normally it is addressed to you, I am
26 essentially looking at Mr Bolster as I know he has a big
27 say in it.

28
29 THE COMMISSIONER: Thank you, Mr Watson. Is there
30 anything else you need to do before you call the witness?

31
32 MR BOLSTER: The only things that need to be done before
33 we call the first witness are to formally tender the
34 transcripts of the private hearings.

35
36 THE COMMISSIONER: They have been circulated to everyone?

37
38 MR BOLSTER: Yes. They will go up on the website.

39
40 THE COMMISSIONER: Can you just run through what they are
41 so I can --

42
43 MR BOLSTER: Firstly, we have, in order --

44
45 THE COMMISSIONER: Mr Attie was first, wasn't it?

46
47 MR BOLSTER: Mr Attie.

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THE COMMISSIONER: The private hearing transcript of Mr Attie from 9 June 2016 will be PH5.

EXHIBIT #PH5 PRIVATE HEARING TRANSCRIPT OF NED ATTIE DATED 09/06/2016

THE COMMISSIONER: I think we had Mr Oueik after Mr Attie.

MR BOLSTER: Yes.

THE COMMISSIONER: The private hearing transcript for Mr Oueik from 9 June to 2016 will be PH6.

EXHIBIT #PH6 PRIVATE HEARING TRANSCRIPT FOR RONNEY OUEIK DATED 9/06/2016

MR BOLSTER: We then had Mr Yang and then Mr Zraika.

THE COMMISSIONER: The private hearing transcript of Mr Yang will be Exhibit PH7.

EXHIBIT #PH6 PRIVATE HEARING TRANSCRIPT OF STEVE YANG DATED 10/06/2016

THE COMMISSIONER: The private hearing transcript of Mr Zraika will be Exhibit PH8.

EXHIBIT #PH8 PRIVATE HEARING TRANSCRIPT OF HICHAM ZRAIKA DATED 10/06/2016

THE COMMISSIONER: The private hearing transcript of Mr Mehajer of 10 June 2016 will be PH9.

EXHIBIT #PH9 PRIVATE HEARING TRANSCRIPT OF SALIM MEHAJER DATED 10/06/2016

THE COMMISSIONER: Was Mr Zraika on 10 June as well?

MR BOLSTER: He was.

THE COMMISSIONER: PH8 involving Mr Zraika was 10 June 2016, as was PH9. Mr Mehajer was 10 June 2016.

MR BOLSTER: That's the only formal matter I needed to deal with. The next witness is Mr Alvarez.

1 THE COMMISSIONER: Just while Mr Alvarez is coming,
2 Mr McNulty needs to be at 12, does he, for a particular
3 reason, or do I have that wrong?
4

5 MR BOLSTER: I believe so. How long has he got?
6

7 MR CHESHIRE: Certainly until lunchtime.
8

9 <JORGE ALVAREZ, affirmed: [10.08am]

10
11 <EXAMINATION BY MR BOLSTER:

12
13 MR BOLSTER: Q. Mr Alvarez, would you please just state
14 for the Commission your full name?

15 A. Jorge Alvarez.
16

17 Q. Jorge is spelt J-O-R-G-E; is that right?

18 A. That's right.
19

20 Q. Yes. And the surname is spelt A-L-V-A-R-E-Z. You
21 made a statement on 10 June in relation to matters that are
22 the subject of the Commission's inquiry; correct?

23 A. Yes, I did.
24

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

27 A. Yes, they are.
28

29 Q. I want to ask you some questions about, firstly, the
30 Marsden Street Planning Proposal. If the witness perhaps
31 could be given a copy of the Marsden Street bundle, please.
32 Do you have that?

33 A. Yes, I do.
34

35 Q. The original proposal was a proposal by the owners of
36 three properties in Raphael Street. Do you recall that?

37 A. That's right, yes.
38

39 Q. Is it fair to say that the situation that was in place
40 at that time is disclosed in the map which appears at
41 page 63 of the bundle?

42 A. Yes.
43

44 Q. The subject site is in a box. What colour is the box
45 on your map?

46 A. This is a black and white version.
47

1 Q. You can see, though, the box is on the western side of
2 Raphael Street?
3 A. That's right, yes.
4
5 THE COMMISSIONER: What page are you at?
6
7 MR BOLSTER: Page 63.
8
9 THE COMMISSIONER: I think I will swap with the witness so
10 he has a colour version.
11
12 THE WITNESS: Yes. So the subject site or the property
13 has a yellow outline.
14
15 MR BOLSTER: Q. Yes.
16 A. It's an R4 zone.
17
18 Q. It was to be zoned R4, the property?
19 A. That's right.
20
21 Q. That was the subject of the application: turn it into
22 R4 --
23 A. That's right.
24
25 Q. -- make it consistent with the residential lands to
26 the west and to the north?
27 A. That's right, yes.
28
29 Q. That is, those lands that front Mark Street and the
30 other street to the south?
31 A. James Street.
32
33 Q. James Street?
34 A. James Street.
35
36 Q. Correct. The existing zone of the property was an
37 industrial zone?
38 A. That's right. IN2, from memory.
39
40 Q. That was consistent with the land to the east which --
41 A. That's right, yes.
42
43 Q. -- is separated from Rookwood Cemetery by East Street?
44 A. That's right, yes.
45
46 Q. In paragraph 8 of your report, you refer to amenity
47 conflicts. Whilst there are a number of us here who

1 practise in the Land and Environment Court for whom
2 "amenity" is a very well understood term, could you explain
3 for those of us who don't what an amenity conflict is?
4 A. Well, amenity is basically - I guess you could call it
5 quality of living. It's probably more a standard term. So
6 amenity is like the enjoyment that you have from a
7 particular use. So in a residential context an amenity is:
8 is it a pleasant place to live? So if a very noisy
9 industrial use were to move next door, your amenity would
10 be compromised because you have constant noise and
11 emissions. It reduces basically your quality of enjoyment
12 of the land.

13
14 Q. If you could explain the amenity conflict here. You
15 are talking about an amenity conflict in the context of a
16 B4 zoning for the land we were just looking at on page 63;
17 correct?

18 A. Did you say page 8 of my report?

19
20 Q. No, paragraph 8 of your report.

21 A. Oh, paragraph 8.

22
23 THE COMMISSIONER: The statement.

24
25 MR BOLSTER: Q. Of your statement, yes.

26 A. But this - paragraph 8 relates to the later
27 Marsden Street precinct planning proposal, whereas the one
28 I'm looking at now is the earlier one.

29
30 Q. No, I understand that, but what you are talking about
31 is an amenity conflict between R2 low density residential
32 zoned to the south of James Street --

33 A. That's right, yes.

34
35 Q. -- if there was a B4 zone in that precinct, that
36 Mark Street, James Street, Raphael Street, Marsden Street
37 precinct; correct?

38 A. Yes. The amenity conflict, I guess, in the R2 zone on
39 the south side of James Street there is mostly single
40 detached dwellings, so very low scale and low density
41 residential. If a B4 zone was to be implemented on the
42 north side of James Street --

43
44 MR WATSON: Could you speak up.

45
46 THE WITNESS: Oh, sorry.

47

1 MR WATSON: I don't think you should touch those
2 microphones.

3

4 THE WITNESS: So on the - if there was - if a B4 was to go
5 into the north side of the James Street they might
6 include - they might constitute a redevelopment of 7, 8
7 storey residential apartment buildings with shops at the
8 bottom which could include a restaurant, cafe, et cetera,
9 which would actually increase traffic movements, it might
10 increase noise; more people in the street. Therefore, the
11 people who are living in the single detached dwellings and
12 they have an expectation of living in a sort of quiet
13 environment, are all of a sudden impacted. Their amenity
14 is impacted by higher uses, more movements, more people, so
15 that's what I was referring to.

16

17 MR BOLSTER: Q. Perhaps if you could turn to page 176.
18 A. Yes.

19

20 Q. That's the AECOM sketch plan of a B4 streetscape in
21 the planning proposal; correct?

22 A. Yes. It's block modelling, yes.

23

24 Q. Is the point you're making about amenity essentially
25 the differential between the buildings marked with 32 metre
26 heights on the north side of James Street and the lower
27 level residential --

28 A. That's right, yes.

29

30 Q. -- neighbourhood to the south; is that correct?

31 A. That's right. And as you can see from that diagram as
32 well, the overshadowing impacts are potentially much
33 greater with the taller buildings on the north side of
34 James Street, that they would actually overshadow the
35 single dwellings on the south side.

36

37 Q. Yes. If you go over the page to page 180, you will
38 see there the same style drawing but with an R4 zone?

39 A. That's right, yes.

40

41 Q. What do you say about the difference between the
42 amenity conflicts between that particular scenario and the
43 B4 scenario?

44 A. Well, they're lessened because the development is not
45 as intense in the R4 zone. As you can see from this
46 diagram, the white buildings in the middle are existing
47 residential flat buildings built on R4, on an R4 zone. So

1 the other buildings would be more consistent with that and,
2 therefore, there would be smaller, lower intensity
3 development and would create - would have a lessened
4 amenity impact on the property on the south side of
5 James Street.

6
7 Q. Could I just take you back to paragraph 7. You say
8 that AECOM provided council with a draft version of the
9 study?

10 A. Yes.

11
12 Q. What did that entail? Did that entail some sort of
13 presentation or some sort of slideshow or did it deliver a
14 hard copy?

15 A. From memory, they would have delivered - they would
16 have emailed a PDF version of their report at that stage,
17 but I believe if they did what I'd refer to as a
18 presentation, they probably would have come in to meet us
19 in the office and would have just run through the report
20 and just talked about it basically.

21
22 Q. When in relation to that presentation did Mr Francis
23 give you the direction that you refer to in paragraph 7?

24 A. From looking at my notes, it appears to be the next
25 day. So we would have sat down with AECOM, it would have
26 been myself and my team leader at the time, Mitch Noble,
27 either Mitch or Monica.

28
29 MR CHESHIRE: I'm sorry, I don't think I am catching all
30 the words that are being said.

31
32 THE COMMISSIONER: We might move the microphone a little
33 bit closer.

34
35 THE WITNESS: Is that better?

36
37 MR CHESHIRE: A little bit, not very much.

38
39 THE WITNESS: Sorry I'm rather softly spoken.

40
41 MR BOLSTER: Q. Could you recap that answer, please.

42 A. From the day that AECOM came in and we had a talk
43 about it, in that meeting there would possibly have been
44 myself, maybe my team leader at the time, Mitch Noble, and
45 possibly even my manager, Monica Cologna. So we would have
46 run through what was in the report at the time. From
47 memory, scenario E was not in that initial draft, so then

1 I believe either Monica - well, it would have been Monica
2 would have briefed Glenn and from my notes it appears as
3 though the next day Monica and I were called into
4 Glenn Francis's office and he requested that we include a
5 scenario with more B4 - oh, that we direct AECOM to include
6 a scenario that had more B4 zoned land within the precinct.
7

8 Q. What was your reaction to that when he gave you that
9 direction?

10 A. Well, Glenn was actually - I'd have to say Glenn is a
11 planner, he understands planning, so, from memory, he
12 actually did a fairly good argument to us. I think it was
13 something along the lines of it would be more consistent
14 with what the initial council resolution was. He also - he
15 also mentioned - he also pointed out that in the preferred
16 scenario from AECOM there was no IN2 buffer zone along
17 East Street and that should be re-implemented, but he
18 also - I distinctly remember him saying something along the
19 lines of he could envisage in the future that land to the
20 south of James Street was likely to be rezoned for R4 uses
21 for a more intense use and, therefore, there would not need
22 to be a buffer or amenity type buffer between the B4 land
23 to the north of James Street and the R2 land to the south
24 of James Street because it would no longer be R2.
25

26 Q. Did you go back to the resolution and --

27 A. I believe the resolution, from memory, actually is
28 very - is quite prescriptive. It says that the IN2 zone
29 along East Street is to be preserved.
30

31 Q. But didn't the resolution indicate a maximum height of
32 16 metres, if you go to page 14 of the bundle.

33 A. Page 14. That's right, 16 metres.
34

35 Q. That's not a B4 height, is it?

36 A. Well, height and FSR, as most of you know, is not
37 actually attached to a zone. A height and FSR control can
38 be whatever it likes to be. A zone is about land use and
39 not necessarily about intensity. So, that's why I believed
40 this resolution actually came up with - actually prescribed
41 a height and an FSR.
42

43 Q. The actual resolution that was passed you will find at
44 page 185, I just want to draw that to your attention.

45 A. 185.
46

47 Q. You will see that has been extracted in a planning

1 report that, I take it, you prepared for Mr Francis to
2 sign?
3 A. That's right.
4
5 Q. You will see there that the study involved AECOM being
6 asked for any recommendations with a view to either
7 extending the B4 zone with an appropriate floor space ratio
8 height and parking controls --
9 A. That's right.
10
11 Q. -- or amended R4 zone to allow a better scale of
12 transition?
13 A. Mmm-hmm.
14
15 Q. Did you understand the AECOM report to be responding
16 to the request in 2(b) --
17 A. Yes.
18
19 Q. -- by its recommended proposal that later became
20 option (f)?
21 A. Yes, because there's a transition there. B4, closer
22 to the town centre along the railway track and then an R4
23 zone south of Marsden Street, so that's a transition.
24
25 Q. They weren't being asked to give council a B4 rezoning
26 proposal, were they?
27 A. No.
28
29 Q. They were being asked for their recommendations about
30 whether B4 or R4 ought to be adopted in that area; correct?
31 A. That's right, yes.
32
33 Q. In that context I'm interested in what Mr Francis said
34 to justify his direction to you to ask for a B4 proposal by
35 reference to that resolution.
36 A. I note that in my statement I said that he talked to -
37 I think in a lot of cases he would brief somebody, I'm not
38 sure who, "This is the direction I had", so he would
39 probably go away and brief somebody or get direction from
40 his superiors that they wanted to see something slightly
41 different. So his direction to us would be, "There should
42 be more B4 on there", but sometimes - but I can't - I can't
43 exactly - I can't recall his exact words and I don't think
44 he would have ever said, "Council said this", because he
45 wouldn't have had had time to go back to the full council,
46 but he might have talked to maybe the general manager or
47 individual members of the council, I'm not quite sure.

1
2 Q. You don't know?
3 A. No.
4
5 Q. In paragraph 12, you say there was an unusual
6 turnaround in relation to this matter.
7 A. Mmm.
8
9 Q. Could you explain how fast it was compared to other
10 similar matters that you have dealt with in the past?
11 A. Well, it was - it was fairly quick. The turnaround
12 period that I mentioned there in, what, is it paragraph 12?
13
14 Q. Yes.
15 A. It's basically - from the end of the exhibition period
16 to the council meeting was two weeks. Council met once a
17 month. Our internal reporting deadline for a council
18 report to go up to council was two weeks beforehand,
19 generally, which means that the report would have had to
20 have been written on the day that the exhibition period
21 finished. So that's --
22
23 Q. They're the theoretical rules that apply to preparing
24 reports that go to council; correct?
25 A. They're internal. They were internal deadlines, yes.
26
27 Q. How long did it actually take you to do the report
28 after the public consultation?
29 A. To actually do that, I would have had to be writing
30 the report during the exhibition period.
31
32 Q. And you were doing that?
33 A. I believe so.
34
35 MR CHESHIRE: I'm sorry, Commissioner.
36
37 THE COMMISSIONER: He said to do that he would have --
38
39 MR BOLSTER: His answer was --
40
41 THE COMMISSIONER: I am sorry, I think Mr Cheshire is
42 having trouble hearing you, Mr Alvarez.
43
44 MR BOLSTER: -- "I would have been writing the report
45 during the exhibition period".
46
47 MR CHESHIRE: Thank you.

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THE WITNESS: That's not unusual if you're directed that it's going to have to be a quick turnaround time or there's an urgency on it. From memory, this was a priority, given a priority, so that I would have had to prepare this as a priority. So, when you prepare a report in advance, you probably fill in the blanks. You start preparing the background information and all that sort of thing.

MR BOLSTER: Q. Yes. Did you ask why it was a priority and did anyone tell you why?

A. I don't believe so. It's just a direction. If management says, "This one's a priority", then you prioritise it.

THE COMMISSIONER: Q. When you say "management", you are talking about?

A. Well, most of my direction would have come from Monica rather than from Glenn, but obviously Glenn would have been briefing Monica.

MR BOLSTER: Q. Can I ask another question about AECOM. Who chose AECOM? Was that Mr Francis's decision or --

A. AECOM --

Q. -- Mr Brisby?

A. Well, AECOM were engaged because they were - they were selected through a tender process to do the residential development strategy which had been completed the year before. So to do this as a fast turnaround priority, we actually engaged them to do this smaller study as a variation to the residential development strategy engagement.

Q. They did a broader strategy for - how big was the area of the other strategy?

A. The residential development strategy was for the whole of the local government area, the whole of council, looking at future opportunities for increasing - well, looking at areas where residential development could be intensified.

Q. I take it a decision was made that because they had that broader experience, it would be more economical and more efficient for them to do this report?

A. That's right, and there wouldn't have been any need to go out to a tender, another tender.

1 Q. That decision was made by Mr Francis or Mr Brisby?
2 A. I've had no operational dealings with Mr Brisby, so --
3
4 THE COMMISSIONER: Q. When were AECOM engaged to do the
5 broader LGA --
6 A. The residential development strategy?
7
8 Q. Yes.
9 A. It was - I think it was 2013, possibly. I can check.
10
11 Q. The LEP came in in October 2010?
12 A. Yes, yes.
13
14 Q. And then AECOM were engaged, what was the specific
15 engagement?
16 A. We were - because the Auburn LEP has a 2010 date on
17 it, we were looking at doing some preliminary work to do
18 a - to - what's the word I'm looking for? To update the
19 LEP on a five-year recurring basis, so this was the
20 preliminary work leading into it, and also the employment
21 land studies which I believe has been discussed at this
22 inquiry was part of that process.
23
24 THE COMMISSIONER: I see, thank you.
25
26 MR BOLSTER: Q. Just another question about this
27 particular proposal which started off as a very narrow
28 proposal under three lots privately held. In your
29 experience, how common is it for planning proposals like
30 that to be held up and deferred pending consideration of a
31 broader spot zoning planning proposal?
32 A. I would have to say - look, I would have to say in
33 this case it probably made sense because the earlier
34 employment land study, which was prior to the one that has
35 been the subject of this inquiry, actually nominated that
36 precinct to the north, the IN2, or that entire IN2 zone
37 within the precinct for, I think what they said - I think
38 it said something along the lines of, "Could be looked at
39 in the future for redevelopment due to its proximity to the
40 town centre."
41
42 Q. Your answer deals with the industrial zone, correct?
43 A. Industrial zone, that's right, yes.
44
45 Q. Do you have the same view about the R4 zone that was
46 then in place for the rest of the Marsden Street precinct?
47 A. Well --

1
2 Q. The employment land study wouldn't have dealt with
3 that, would it?
4 A. No, it wouldn't have, it wouldn't have. But - yes.
5 I would have - I think at the time, being such a small spot
6 rezoning, that seemed to actually make sense because it
7 was - it would split - it would actually create a buffer
8 down Raphael Street or it would be a natural boundary
9 between the industrial zone - Raphael Street would form
10 like a natural boundary between the IN2 zone along
11 East Street and the R4 zone which was predominantly on Mark
12 and James Street, so it kind of made sense and I think
13 that's why I recommended that that would be approved by
14 council, although that wasn't the case.
15
16 Q. All right. I want to ask you now some questions about
17 South Auburn. Do you have the South Auburn bundle? Would
18 you turn to Marsden Street. You will be given now a copy
19 of South Auburn.
20 A. Yes.
21
22 Q. MG Planning carried out the first feasibility;
23 correct?
24 A. The planning study, yes.
25
26 Q. The planning study?
27 A. Yes. Urban design study, I think they called it.
28
29 Q. You needed that to go to gateway; correct?
30 A. I don't know if we needed it but I think it was seen
31 as prudent. Oh - or maybe we - I think it was the subject
32 of a previous gateway determination that had been refused,
33 that recommended that we provide a traffic study and an
34 urban design study as part of any process going forward, or
35 we anticipated that the department would actually need that
36 type of study to justify - as part of the justification
37 statement for the planning proposal.
38
39 Q. Who chose MG Planning?
40 A. That was a tender as well.
41
42 Q. In paragraph 14 you say you were tasked with preparing
43 the proposal. Who directed you to prepare the planning
44 proposal for South Auburn?
45 A. It would have been Monica, our manager.
46
47 Q. When did you leave council?

1 A. October - October --
2
3 Q. 2015?
4 A. 2015, yes, that's right.
5
6 Q. So after the South Auburn proposal was voted on at
7 council in April and May 2015?
8 A. Yes.
9
10 Q. All right. In paragraph 16 you refer to an 800,
11 I presume, metre radius?
12 A. That's right, yes.
13
14 Q. What is the significance of the 800 metre radius? If
15 you could just bear this in mind. We have seen a radius of
16 400 metres in Berala and --
17
18 THE COMMISSIONER: From the train station.
19
20 MR BOLSTER: Q. From the train station, yes.
21 A. From the train station, yes.
22
23
24 Q. And we've seen an 800 metre radius in South Auburn.
25 What's the significance of 800 metres in the Auburn
26 context.?
27 A. All of these radius radii tend to originate from
28 metropolitan strategy and general planning principles, but
29 I believe the reason why 800 metres is considered more
30 appropriate in the Auburn context is that Auburn is a
31 larger town centre than the Lidcombe town centre and it -
32 the Auburn train station has better services, although
33 either one is fine, it's just that when you're within
34 400 metres it's quick, it's approximately a five-minute
35 walk for an adult, but with 800 metres it's more like a
36 10-minute walk for an adult, so it's still considered
37 within that catchment radius that is good planning practice
38 and the department also advocates.
39
40 Q. All right.
41 A. It is kind of, you know, pushing to the furthest
42 extent that you can go. Well, I wouldn't say that. You
43 can walk any amount of distance. It's just the convenience
44 of the distance.
45
46 Q. The significant walking distance or the standard
47 walking distance depends upon the size of the town centre,

1 correct?
2 A. Yes. It doesn't have to, but yes, generally, yes.
3
4 Q. Auburn and Lidcombe are to be contrasted with Berala?
5 A. That's right, yes.
6
7 Q. The difference between Berala and the other two is
8 that it is a village, classified as a village, under the
9 relevant state planning criteria?
10 A. That's right, yes. Yes, that's right.
11
12 Q. In paragraph 20 you refer to a conversation you had
13 with Mr Francis. Sitting there today, as best you can,
14 what were the words that Mr Francis said to you?
15
16 MR CHESHIRE: Commissioner, if the witness is going to be
17 asked that, he presumably shouldn't be looking at his
18 statement at the same time, otherwise it is rather --
19
20 THE COMMISSIONER: I thought his statement does have his
21 best recollection.
22
23 MR BOLSTER: Q. Do you recall any other conversation
24 with Mr Francis on that day?
25 A. Sorry, is this point 20 of the statement?
26
27 THE COMMISSIONER: Paragraph 20.
28
29 THE WITNESS: Of my statement?
30
31 THE COMMISSIONER: Q. You have recorded there that
32 Mr Francis said to you words, "I have spoken to the
33 councillors and we should provide further options for the
34 council to consider." I think what Counsel Assisting is
35 asking you is: is there anything further that you recall
36 from that conversation?
37 A. No. Just about the - how we were going to determine
38 the further options. I think that was all part of the
39 same - when the option 2(a) and 2(b) came around, I think
40 that was all part of the same conversation.
41
42 MR BOLSTER: Q. Yes. All right. And he specifically
43 asked you to prepare options 2(a) and 2(b), did he?
44 A. Yes, I think in my statement there he actually - he
45 came along and said we should reduce the size of the B4
46 zone along Auburn Road to the last shop.
47

1 Q. The last shop.
2 A. Because the planning proposal - the B4 zone on Auburn
3 Road seemed to be an extension of the Auburn Town Centre.
4 So there was a lot of - there was some objection and there
5 was a lot of - there was community objection in particular
6 from the school about extending the B4 zone and the reasons
7 why the B4 zone needed to be extended. So his
8 justification or his reasoning was, well, if you just
9 extend it to where the existing shops are, as far down as
10 the existing shops are on Auburn Road, then it would be a
11 better fit, and that's when I had the discussions about
12 where he thought the last shop was, where the actual last
13 shop was, and that's why two options came up and then
14 they're coming up, which is all explained in my statement.
15 I'm sorry, it's a bit - it's a bit - it's kind of a bit
16 convoluted the way that - you know, it takes a while to try
17 and describe it.

18
19 Q. Did he mention the issue of the school as being
20 significant for the reduced B4 zone, did he?

21 A. I think apart from - I don't know if he specifically
22 mentioned the school. The school put in a really
23 comprehensive, quite well constructed objection statement,
24 but I think there was a general perception in the
25 community --

26
27 THE COMMISSIONER: Q. The school is on the other side of
28 the road, isn't it?

29 A. It is, but they made an objection - they object to
30 mostly anything that's high-rise because they have a --

31
32 Q. A privacy consideration?

33 A. That's right, yes.

34
35 MR BOLSTER: Q. The school is on the western side of
36 road, but it's also on the north side of Beatrice Street,
37 isn't it?

38 A. That's right, yes.

39
40 Q. It covers two blocks?

41 A. That's right, yes.

42
43 Q. The B4 zone in 2(a) was adjacent the school on the
44 north side of Beatrice Street and adjacent the school on
45 the western side of Auburn Road; correct?

46 A. That's right, yes.

47

1 Q. If you wanted to pick a site that was as close to the
2 school as possible for B4, it was option 2(a), wasn't it?
3 A. True, yes.
4
5 Q. I just wanted to clarify this, if you could just
6 please go to pages 283 and 284 of the South Auburn bundle.
7 A. Yes.
8
9 Q. On page 284 you see the extent of the B4 as going down
10 to and including 90 Auburn Road?
11 A. That's right.
12
13 Q. Is that the last shop?
14 A. No, it's not.
15
16 Q. Where is the last shop?
17 A. I believe the last shop is at 98, which is more in
18 line with the option 2(b) which is over the page.
19
20 THE COMMISSIONER: Q. Oh, I see, which includes 100,
21 yes.
22 A. That's right. 100 --
23
24 THE COMMISSIONER: That is page 285.
25
26 MR BOLSTER: Yes.
27
28 Q. When Mr Francis said "Go down to the last shop", he
29 was telling you about option 2(b), correct?
30 A. No, because I think he was under the misapprehension
31 that there were no further - there were no more shops
32 beyond I think the butcher down there. He didn't realise
33 that further down there's actually a semi side-by-side and
34 one's got a clothes shop and one's got something else in
35 it.
36
37 THE COMMISSIONER: Q. I didn't quite catch what you said
38 then, one has got a?
39 A. One's got a clothes shops, I believe.
40
41 Q. A clothes shop?
42 A. Yes, and there's another shop next door to it or
43 something.
44
45 Q. This is somewhere in the 90s on Auburn Road?
46 A. That's right, yes.
47

1 MR BOLSTER: Option 2(a) extends to and includes
2 90 Auburn Road?
3 A. That's right.
4
5 Q. Who determined that line in the sand?
6 A. It would have been Glenn Francis.
7
8 Q. When did he do that and in what circumstances, please?
9 A. That would have been when he came to --
10
11 MR CHESHIRE: I object at this stage. The previous answer
12 was, "It would have been Glenn Francis". When he was asked
13 about what were the circumstances, his response commenced
14 "That would have been". Put that way, both answers sound
15 like speculation and not actually real evidence.
16
17 THE WITNESS: To my recollection, it was Glenn Francis.
18
19 THE COMMISSIONER: Thank you.
20
21 MR BOLSTER: Q. When do you recall that he told you 90?
22 A. It was - did I give an exact date? Was that that
23 meeting?
24
25 Q. I think, Mr Alvarez, you are going to have to speak up
26 a bit louder --
27 A. Yes, sorry.
28
29 Q. -- because we having to backtrack.
30 A. Yes, sorry.
31
32 MR WATSON: It is in the statement at paragraph 19.
33
34 THE WITNESS: 19. 4 March, 4 March 2015.
35
36 MR BOLSTER: All right.
37
38 THE COMMISSIONER: Q. Can I just ask you a question as
39 an expert planner so that I understand something.
40 A. Yes.
41
42 Q. Looking at option 1 on page 283 and option 2(a) and
43 2(b) on pages 284 and 285, as I understand it, before the
44 proposals, Auburn Road and Susan Street, the two blocks,
45 are both zoned residential 3, R3?
46 A. R3, that's right.
47

1 Q. So option 1 proposes R4 for Susan Street, which is a
2 high density residential zoning?
3 A. That's right, yes.
4
5 Q. The proposal of B4 for Auburn Road is obviously a
6 commercial-type zoning?
7 A. Yes. Mixed use zone.
8
9 Q. I can see that the proposal there is for 74 right
10 through to 112 Auburn Road to be rezoned as B4.
11 A. Yes.
12
13 Q. Option 2(a), though, proposes a rezoning of 74 to
14 90 Auburn Road as B4 and then from 90A to 112 as R4. In
15 your experience as a planner, is a proposed zoning like
16 that common in the sense of changing just a small number of
17 lots to a commercial zoning and leaving a still relatively
18 small but slightly larger number of lots in the same small
19 section of street to a residential zoning; is that common
20 or would you say it's unusual?
21 A. It's unusual, particularly in the context. There
22 might - you might see zones like that off part blocks from
23 an historical point of view. That's a --
24
25 Q. Yes. I am talking about in terms of a rezoning, using
26 a relatively new LEP, would that be unusual?
27 A. I would say yes, very unusual.
28
29 Q. Very unusual?
30 A. Yes.
31
32 Q. All right. It would equally still be quite unusual,
33 option 2(b)?
34 A. Yes.
35
36 Q. Which only varies at B4 to an R4 by a few lots, as you
37 said?
38 A. That's right.
39
40 THE COMMISSIONER: That is all I wanted to ask,
41 Mr Bolster.
42
43 MR BOLSTER: Q. Finally, I just wanted to ask you some
44 questions about paragraph 33 of your statement, the last
45 paragraph.
46 A. Yes.
47

1 Q. The planning staff are on level 2 of the council
2 building?
3 A. That's right, yes.
4
5 Q. Are there any councillor offices or mayoral offices on
6 level 2?
7 A. No, they're on level 1.
8
9 Q. How often do you say you saw Mr Attie in
10 Glenn Francis's office?
11 A. Sometimes more than not, but I would have to say
12 possibly at least once a month.
13
14 Q. Once a month?
15 A. Or maybe - maybe less than that.
16
17 Q. All right.
18 A. But I would never see any other - the only councillors
19 I ever saw entering Glenn Francis's office while I was
20 there was Councillor Oueik and Councillor Attie, and no
21 other councillors.
22
23 Q. From your experience - I think you have worked at
24 Sydney Council and you now are at Woollahra Council. Have
25 you ever come across councillors attending the offices of
26 planning staff, or someone in the position of Mr Francis at
27 the time, the executive manager of planning, is that
28 something that you have seen in any other council?
29 A. No, because it's - it's sort of contrary to that
30 separation of power so - I'm just trying to think. No,
31 I don't think I've ever seen it. I've only worked at two
32 other councils, Woollahra and Sydney, and I don't think
33 I ever saw it in either of those workplaces. I'm fairly
34 certain.
35
36 Q. What sort of frequency did you see Mr Oueik in
37 Mr Francis's office?
38 A. I think only a few times, three or four times
39 possibly.
40
41 Q. Over what period of time are we talking about?
42 A. Two and a half years.
43
44 Q. Over two and a half years?
45 A. Yes.
46
47 MR BOLSTER: Thank you, nothing further. I tender the

1 statement.

2

3 THE COMMISSIONER: All right. The statement will become
4 Exhibit S17. The statement of Jorge Alvarez dated 10 June
5 2016 will be Exhibit S17.

6

7 **EXHIBIT #S17 STATEMENT OF JORGE ALVAREZ DATED 10/06/2016**

8

9 THE COMMISSIONER: Q. Could I just ask you a follow-up
10 question, I think I need to, Mr Alvarez, to complete the
11 picture.

12 A. Yes.

13

14 Q. You described options 2(a) and 2(b) to me on pages 284
15 and 285 of the South Auburn bundle as very unusual from a
16 planning perspective. Can I just ask you this: as an
17 expert planner, if you were making an argument to support
18 either option 2(a) or 2(b) as a change to the LEP, is there
19 something you would say to support it? If there's not,
20 there's not, but if there is --

21 A. I wouldn't have supported even option 1, to be honest.

22

23 Q. And my follow-up question was: all right, option 1
24 wouldn't have been supported, in your view, as a planner
25 because?

26 A. Well, for want of - in common terms it just - from my
27 point of view, it doesn't make sense.

28

29 Q. You will have to explain why it doesn't make sense.

30 A. Okay. So the town centre, the Auburn Town Centre
31 which finishes roughly at Beatrice Street, in that
32 location, is - so Beatrice Street is almost like - it's
33 almost like a natural watershed, like --

34

35 Q. To residential?

36 A. -- a slight ridge. No, it's actually physically a
37 slight ridge.

38

39 Q. I see.

40 A. Auburn Road goes down the hill on the north side
41 towards the train station.

42

43 Q. Sorry, so it's going downhill towards Helena Street?

44 A. Downhill north and also downhill south.

45

46 Q. Oh, I see.

47 A. Beatrice Street is almost like a natural tiny

1 ridge line.
2
3 Q. Oh, I see.
4 A. And the B4 - the town centre of Auburn at the moment
5 is actually quite large and has several development
6 opportunities already present, so extending the town centre
7 didn't seem to - it didn't seem to warrant - it didn't seem
8 to be a necessity.
9
10 Q. Tell me if I am wrong then: your answer in relation
11 to option 1 seems to be that, as a planner, you just view a
12 B4 zoning for this part of Auburn Road to be unnecessary?
13 A. That's right, yes.
14
15 Q. Was it inappropriate as well?
16 A. Oh, planning is very subjective and what's appropriate
17 and inappropriate. I wouldn't say it was inappropriate.
18 I just would say that --
19
20 Q. Unnecessary?
21 A. --it was unnecessary, yes.
22
23 Q. If you had to say something additionally against
24 option 2(a) what would you say, again, as a planner?
25 A. Well, I would --
26
27 Q. It's related to the unusualness of having two zones in
28 the one space?
29 A. I'd say splitting that B4 even further it just, again,
30 adds another layer of "doesn't make sense", type argument
31 to me. Why extend it to a certain property and not extend
32 it further? It seems to be an arbitrary cut off.
33
34 Q. In relation to the views you have just expressed to
35 me, did you have any discussions with either Mr Francis or
36 anyone else on the council staff about the matters you have
37 just expressed to my or were you just given a directive?
38 A. I think it was - I've discussed with my colleagues
39 that we were of pretty much the same opinion, that we
40 didn't really understand how this particular planning
41 proposal had come about, why the council had recommended
42 this particular planning proposal, but it stems back from
43 2010 I believe.
44
45 Q. When you say your colleagues, you are talking about?
46 A. Other planning staff.
47

1 Q. Who are?
2 A. At my level.
3
4 Q. At your level?
5 A. Yes.
6
7 Q. So not Mr Francis?
8 A. No.
9
10 Q. Not Ms Cologna?
11 A. Ms Cologna only on a personal level, though.
12
13 Q. I see.
14 A. We are - I mean, we are friends after all.
15
16 Q. I see, all right.
17
18 MR CHESHIRE: Sorry, I didn't catch that, Commissioner?
19
20 THE COMMISSIONER: He said he and Ms Cologna are friends.
21
22 MR CHESHIRE: Thank you. Meaning this witness and
23 Ms Cologna?
24
25 THE COMMISSIONER: Yes. Mr Bolster, did anything arise
26 out of anything I have discussed with the witness?
27
28 MR BOLSTER: No, thank you.
29
30 THE COMMISSIONER: Thank you for that. I think Mr Watson
31 has some questions for you.
32
33 **<EXAMINATION BY MR WATSON:**
34
35 MR WATSON: Q. Mr Alvarez, you said you're a friend of
36 Ms Cologna?
37 A. That's right.
38
39 Q. Would you agree with this, that she is an impeccably
40 qualified, very solid planner?
41 A. Yes, I'd say so.
42
43 Q. And completely honest?
44 A. I believe so, yes.
45
46 Q. I now want to ask you some questions in relation to
47 Frances Street. I want to start with this proposition: do

1 you say there is anything wrong with a person in the
2 position of Mr Francis speaking to a person like you and
3 suggesting that an additional scenario be provided to
4 councillors?

5

6 THE COMMISSIONER: Just hang on, you said Frances Street,
7 did you mean --

8

9 MR WATSON: I'm so sorry.

10

11 THE COMMISSIONER: You said Mr Francis after but you said
12 Frances Street first. I am assuming you mean Auburn Road.
13 I don't know what you mean, but I don't think it is
14 Frances Street, whatever it is.

15

16 MR WATSON: Q. I'm so sorry. What I wanted to ask you
17 about is Marsden Street.

18

19

20 Q. It's age, that's my excuse. I'll ask about
21 Marsden Street. Is there anything wrong with somebody in
22 Mr Francis's position coming to somebody like you in your
23 position and saying, "Look, I want you to include another
24 scenario for consideration of the council"?

25

26

27 Q. That's perfectly ordinary, isn't it?

28

29

30 Q. Because Mr Francis has got his own skills and
31 experience?

32

33

34 Q. And his opinion is valuable?

35

36

37 Q. Were you aware that in the end, in relation to
38 Marsden Street, the council resolved that the entire
39 question be remitted back to the planning department of
40 council, the zoning issue? Did you know that?

41

42

43 Q. The whole question of that precinct be remitted back
44 to the planning department to you guys at council, did you
45 know that?

46

47

1 Q. This is the actual resolution: rather than approve
2 any particular application, they wanted your further input
3 on the development of the whole precinct?
4 A. From my recollection they resolved that it should go
5 forward as a planning proposal to the Department of
6 Planning.
7
8 Q. All right. Just assume for the moment that the
9 council resolved that the area should be looked at as a
10 whole again, just assume that for the moment.
11 A. Mmm-hmm.
12
13 Q. Would there be anything wrong with the council doing
14 that?
15 A. No, absolutely not.
16
17 Q. And if that happened down in the area of
18 Marsden Street, if one of the reasons was that, "We should
19 give consideration to better utilising that area across the
20 road from that corner of Rookwood Cemetery", there would be
21 nothing wrong with that either?
22 A. No.
23
24 Q. In fact, I think in your statement you said that you
25 agree with it?
26 A. I agree with - yes, that B4 is appropriate in the area
27 because it's so close to the railway station.
28
29 Q. Well, it's close to the railway but the area which
30 actually overlooks that section of the cemetery is just
31 like overlooking a lovely park?
32 A. Yes, the IN2, yes.
33
34 Q. That's an old section of the cemetery which hasn't
35 been used for many, many moons?
36 A. That's right, yes.
37
38 Q. I know there are some cultural problems, that there
39 may be certain groups that don't want to look at a
40 cemetery, perhaps because they are superstitious,
41 I appreciate that, but generally speaking there is nothing
42 wrong with the idea of opening that area for further
43 development for those people who are not similarly
44 superstitious, do you agree?
45 A. Yes, I do agree with that.
46
47 Q. I just want to ask you a couple of questions about

1 South Auburn, not many. I get the impression from your
2 evidence that when you look at the three scenarios,
3 scenario 1, scenario 2(a) and scenario 2(b), you didn't
4 agree with any of them?
5 A. No, I didn't.
6
7 Q. You thought scenario 1 was no good for the reasons you
8 have given?
9 A. Mmm-hmm, that's right.
10
11 Q. And you thought that scenario 2(a) and scenario 2(b)
12 were also no good?
13 A. Correct.
14
15 Q. Scenario 1 had been selected by the independent
16 authority, AECOM - when I say "authority", planners.
17 A. MG Planning;
18
19 THE COMMISSIONER: They were Marsden Street.
20
21 MR WATSON: Q. Yes. So, I'm getting everything wrong so
22 far.
23 A. That's all right.
24
25 Q. But, in any event, independent planners have had a
26 look at that and come up with scenario 1?
27 A. That's right, yes.
28
29 Q. And then scenario 2(a) --
30 A. But they were - they were directed to look at that.
31
32 Q. Yes.
33 A. But as part of the brief, the scope of their
34 engagement.
35
36 Q. Scenario 2(a), as was suggested to you, was simply a
37 different consideration, an alternative; is that right?
38 A. Yes.
39
40 Q. Similarly 2(b)?
41 A. Yes.
42
43 Q. In other words, they were options the councillors
44 might be able to take if they didn't support the mixed use
45 zoning down the whole of the street, down the whole of
46 Auburn Road?
47 A. Correct.

1
2 Q. The point is that there was a loose basis given to you
3 by Mr Francis on what you understand was his
4 misunderstanding about where the shops started and
5 finished?
6 A. That's right, yes.
7
8 Q. But still, in planning terms, what he had to say was
9 quite reasonable insofar as if he was saying rezone but
10 only applying it to those existing shops, that's quite
11 reasonable, isn't it?
12 A. Possibly, except they weren't all shops.
13
14 Q. Well, the point is that it did have a reason behind
15 it?
16 A. There was a - yes, there was a justification behind
17 it.
18
19 Q. And if the desire was there for some sort of rezoning,
20 this was a plan, it was an implementable plan?
21 A. That's correct.
22
23 MR WATSON: Thank you.
24
25 THE COMMISSIONER: Q. Can I just ask you something that
26 flows from what Mr Watson has said that I don't quite
27 understand. The fact that there have historically been a
28 few shops in the section of Auburn Road we are looking at,
29 is that a planning justification to change the zone?
30 A. No, because they enjoy existing use rights anyway.
31
32 Q. Exactly, yes.
33 A. And the rezoning doesn't mean that you have to shut
34 down your shop.
35
36 Q. Sure.
37 A. So, no. It's not a strong argument.
38
39 THE COMMISSIONER: No. Thank you. Mr Duggan, do you have
40 any questions?
41
42 MR DUGGAN: No questions.
43
44 THE COMMISSIONER: Mr Wheelhouse?
45
46 MR WHEELHOUSE: No questions.
47

1 THE COMMISSIONER: Mr McNally?

2
3 MR McNALLY: No questions.

4
5 THE COMMISSIONER: Mr Price?

6
7 MR PRICE: No questions, Commissioner.

8
9 THE COMMISSIONER: Mr Cheshire?

10
11 **<EXAMINATION BY MR CHESHIRE:**

12
13 MR CHESHIRE: Q. Mr Alvarez, you were employed at
14 Auburn Council for two and a half years; is that right?

15 A. Yes, that's right, approximately.

16
17 Q. Approximately two and a half years. Were you engaged
18 initially as their senior strategic planner?

19 A. I was, yes.

20
21 Q. How many of those were there?

22 A. Two at any one time.

23
24 Q. You and one other?

25 A. That's right.

26
27 Q. Underneath you, how many planners were there?

28 A. Two strategic planners.

29
30 Q. And other non-strategic planners?

31 A. There were no others below that.

32
33 Q. Does the title "strategic planner" as opposed to
34 "planner", does that denote some difference between the
35 two?

36 A. It just is - yes, it's a senior role. That senior
37 role is generally considered to be more expert, more
38 experienced in the work that they do. They take on the
39 more difficult cases.

40
41 Q. Is that the use of the word "strategic" that denotes
42 you being more senior or is that the "senior"?

43 A. "Senior".

44
45 Q. What about "strategic", what does that mean?

46 A. It's a distinction between strategic and development
47 control planners. Development control planners typically

1 do your DA assessment. A strategic planner typically does
2 your planning proposals, policies, interpreting, Department
3 of Planning work, and things like that.

4
5 Q. And for reporting lines, above you, I think you said
6 you had a team leader; is that correct?

7 A. That's right.

8
9 Q. Who was your team leader?

10 A. Mitchell Noble.

11
12 Q. Sorry?

13 A. Mitchell Noble.

14
15 THE COMMISSIONER: Q. Perhaps spell his last name.

16 A. N-O-B-L-E. Mitchell Noble.

17
18 MR CHESHIRE: Q. Was he the team leader of strategic
19 planning?

20 A. Of the strategic planning team, yes.

21
22 Q. And then above him was?

23 A. Ms Cologna.

24
25 Q. And then above Ms Cologna was?

26 A. Glenn Francis for part of - not for the entire time
27 though, because Mark Brisby used to be the director of
28 planning.

29
30 Q. Was that another level or was that instead of
31 Mr Francis?

32 A. When I first started, Mark Brisby was the director of
33 planning. While I was there he was elevated to the role of
34 general manager and Glenn Francis was then appointed into
35 his role but with a new title. He was executive manager
36 rather than director.

37
38 Q. It is right, is it not, that the reports that went to
39 council, for instance, in relation to South Auburn, were
40 the reports in the name of Mr Francis; correct?

41 A. I believe most of them were actually initialled by
42 Ms Cologna.

43
44 Q. All right. If I put it this way: they weren't your
45 personal reports to council, were they?

46 A. No, they - well, no. No, they weren't.

47

1 Q. I think you say in your statement you worked on six
2 planning proposals; is that correct?
3 A. Yes, I believe that's about right. Did I say that in
4 my statement?
5
6 Q. You do in paragraph 4.
7 A. It must be true then.
8
9 Q. You say I think that you did a small amount of work on
10 Grey Street in Berala.
11 A. That's right.
12
13 Q. But you were not the principal planner.
14 A. No.
15
16 Q. You say that you were the principal planner on
17 James Street, Raphael Street, Marsden Street and
18 South Auburn, so that's four planning proposals where you
19 were the principal planner; correct?
20 A. James Street and Raphael Street were actually --
21
22 THE COMMISSIONER: They're all part of one.
23
24 THE WITNESS: That's one planning proposal.
25
26 MR CHESHIRE: Oh, sorry.
27
28 THE COMMISSIONER: That's the Marsden Street --
29
30 MR CHESHIRE: Q. So that's three in which you were the
31 principal planner; is that correct?
32 A. That's correct.
33
34 THE COMMISSIONER: Q. Isn't James Street and
35 Raphael Street all part of what is called the
36 Marsden Street Precinct Planning Proposal?
37 A. It is now but it was - that was the one that started
38 off as its own spot rezoning.
39
40 THE COMMISSIONER: Thank you.
41
42 MR CHESHIRE: Q. In your statement when you say "21 to
43 23 James Street and 15 Raphael Street, Lidcombe,
44 Marsden Street", is that two or three developments or one?
45 A. That's two.
46
47 Q. Two?

1 A. It's a bit of a - the Raphael and James Street site is
2 a bit of a complicated site and that's why it needs three
3 addresses to describe it properly.
4
5 Q. All right. I am right, am I not, that you did not
6 attend council meetings; correct?
7 A. That's correct.
8
9 Q. Were you always made aware of what had happened at
10 council meetings?
11 A. Mostly, yes. Ms Cologna would report back to us
12 generally if she had time. She was very stretched in her
13 role.
14
15 Q. Ms Cologna was manager of strategic planning; is that
16 correct?
17 A. That's right, yes.
18
19 Q. To your knowledge, did she attend council meetings?
20 A. Yes, I believe she did.
21
22 Q. So there was a strategic planner available at council
23 meetings if councillors wished for a particular briefing to
24 raise particular issues; correct?
25 A. That's right.
26
27 Q. As between the various planning staff, it would occur
28 on occasions that there were differing views as between the
29 planners; correct?
30 A. On what matters?
31
32 Q. As to how particular rezoning maps should be drafted,
33 what recommendations should or shouldn't be made to
34 council, those sorts of issues.
35 A. I guess as in everything in life, everyone has their
36 own opinion.
37
38 Q. You would be aware also that there were differences of
39 opinion between councillors; correct?
40 A. That's right, yes. I believe so.
41
42 Q. So it would follow that there could be differences
43 between councillors and planners as well; correct?
44 A. Correct, yes.
45
46 Q. All of that would be perfectly normal; correct?
47 A. Yes.

1
2 Q. And you were aware that ultimately the decision-making
3 power resided in the councillors; correct?
4 A. That's right.
5
6 Q. And so ultimately in preparing reports, it could well
7 be that you were preparing a report recommending a
8 development which, from a planning point of view, you did
9 not support but the councillors wished to go ahead;
10 correct?
11 A. That's correct, yes.
12
13 Q. In preparing your reports, commonly you would prepare
14 a number of different scenarios; correct?
15 A. Only if that particular matter had differing --
16
17 Q. Warranted it?
18 A. That's right, yes.
19
20 Q. And that wouldn't be unusual, would it?
21 A. No. No.
22
23 Q. Having raised a number of scenarios, it would also be
24 common practice for staff to make a recommendation to
25 councillors as between the various scenarios; correct?
26 A. Yes, that's correct.
27
28 Q. I think you said in relation to the South Auburn
29 matter that you discussed the issues of 2(a) and 2(b) with
30 your colleagues at your level. I think from that you would
31 mean from your level or below; is that correct?
32 A. Yes.
33
34 Q. I'll withdraw that and ask it this way: which
35 individuals did you discuss 2(a) and 2(b) with?
36 A. I imagine it possibly might have been the entire team.
37
38 Q. When you say "the entire team", how many people would
39 that have been that were involved in relation to that
40 particular project?
41 A. Well, I - entire - well, it wouldn't - it wouldn't
42 have necessarily been just people involved in that project.
43 It would have been within the team because we rely on each
44 other's opinions within the team.
45
46 Q. How many people are there in what you call that team?
47 A. Well, in these zones, the strategic planning team

1 there were six people.

2

3 Q. Sitting there today, do you have a specific
4 recollection of discussing the merits or otherwise of 2(a)
5 and 2(b) with anybody in that team?

6 A. Not specifically.

7

8 Q. When you drafted the report, which included 2(a) and
9 2(b), it is right, isn't it, that you didn't include any
10 narrative that said, effectively, 2(a) and 2(b) can't be
11 supported; correct?

12 A. No, but my report was not - the report that went to
13 council, the recommendations were not my recommendations.

14

15 Q. Right. But you were asked to put in to your report,
16 you say, options 2(a) and 2(b); correct?

17 A. That's right, yes.

18

19 Q. Part of your role then is in relation to each of the
20 options, to set out the pros and cons; correct?

21 A. That's right, yes.

22

23 Q. So if you had been vehemently opposed to 2(a) and
24 2(b), you would have said so at least in your initial
25 draft, wouldn't you?

26 A. From my recollection of this particular matter?

27

28 Q. Yes.

29 A. My recommendations were that council should choose an
30 option. My recommendation was: here are the options,
31 you've got the merits, the pros and cons of each one, make
32 a choice. But the recommendation was changed to be 2(a)
33 should be adopted.

34

35 Q. But in relation to, for instance, 2(a) and 2(b) when
36 you set out the cons, you didn't say, for instance, "Well,
37 they're all cons, there's no pros, these options should not
38 be adopted"; correct?

39 A. That's correct, yes.

40

41 Q. So may we take it from that that it was not the case
42 that you thought 2(a) and 2(b) had no justification
43 whatsoever; is that correct?

44

45 MR BOLSTER: I object. I don't think it follows.

46

47 MR CHESHIRE: I'm asking the question. The witness can

1 answer it, in my submission.

2

3 THE WITNESS: Well, considering it was already a
4 resolution from council that they wanted to do this
5 particular option, and having talked to MG Planning when
6 they were doing their report, they actually said to me, "We
7 don't have such a problem with this zoning." So that was
8 somebody else's professional opinion but I thought, okay,
9 well, if another planner looks at this proposal and doesn't
10 think it's as crazy or as - oh, unwarranted as I do, then
11 there might be some merit to the case.

12

13 Q. Ultimately, if you had been of the strong view that it
14 was crazy or unwarranted, you would have said something to
15 Ms Cologna or Mr Francis, correct?

16 A. I think I probably did say that many times off the
17 record, that I didn't agree with --

18

19 Q. Sorry, many times?

20

21 THE COMMISSIONER: He said he thinks he did say many times
22 off the record that he didn't think - but he didn't finish.

23

24 THE WITNESS: Yes, that I wasn't - well, that I didn't
25 really agree with the purpose of it.

26

27 MR CHESHIRE: Q. Mr Alvarez, you were asked a question
28 by Counsel Assisting, I think it was, as to whether you
29 raised - I'll just try and find it.

30

31 THE COMMISSIONER: Q. Just while Mr Cheshire looks for
32 that question, can I ask you this and I think it flows from
33 what you have already said: you have mentioned
34 MG Planning. They were given a specific brief to look at
35 option 1, were they?

36 A. That's right, yes.

37

38 Q. Outside of them, in your discussions with any other
39 planner at the council, did anyone else with relevant
40 expertise support any of these options for South Auburn?

41 A. I think - oh, support them. Support them --

42

43 Q. Justifying them from a planning perspective?

44 A. I wouldn't say definitively that nobody agreed with
45 them, but I think it was generally regarded as being
46 something that wouldn't have been supported.

47

1 Q. You've used the words "unwarranted" and "crazy" in
2 some questions from --

3 A. Sorry.
4

5 Q. No, that's all right, I just want to explore your
6 view. Do you think that from an expert planner's point of
7 view, option 2(a), in your opinion, is unwarranted and
8 crazy?

9 A. As to - to the extent that option - all the options
10 were.
11

12 Q. All of them?

13 A. I believe so because they're just - from - if you were
14 looking at it from a - if you were looking at this from a
15 best practice type of scenario, council would say,
16 "Strategic planning should go ahead and find appropriate
17 sites for the extension of the town centre", but the
18 council resolution for this was, "The strategic planners
19 are to look at this particular site to zone it in this
20 particular way" and come out with a recommendation. So
21 it's not what I would have called best practice the way
22 that it came about and I think a lot of people were of the
23 opinion that it just doesn't, you know, seem like a good
24 planning proposal.
25

26 THE COMMISSIONER: Thank you.
27

28 MR CHESHIRE: Commissioner, I've found the reference.
29

30 Q. The Commissioner asked you some questions about
31 Options 2(a) and 2(b) being unusual and you gave an answer
32 which was that you discussed that with staff at your level,
33 but not with Mr Francis or Ms Cologna. May we take it from
34 the answer that you've just given as well that the position
35 was that you thought all of the options were crazy and
36 unwarranted and you probably discussed that with everybody
37 in the department, but you didn't discuss anything specific
38 about 2(a) and 2(b) with Mr Francis or Ms Cologna; is that
39 correct?

40 A. Only in the meeting that we - only with Mr Francis
41 when he was actually proposing the options and Ms Cologna,
42 she was involved in the process as well.
43

44 Q. And you have set out your recollection of that
45 meeting, insofar as you have a recollection, in your
46 statement; is that right?

47 A. Yes, I believe so.

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Q. I think you said earlier that you have some notes on which you have relied in preparing your statement; is that right?

A. Just my personal diary.

Q. Your personal diary has in it, does it, meetings that you had or didn't have with Ms Cologna or Mr Francis; is that the sort of thing that you have recorded?

A. No, it's just generally milestone dates, usually. I would - I've added this particular meeting into the notes because that was the origin of the options, so I included a date and just along the lines of, "Met with Glenn Francis and Monica".

Q. If I can put it this way, what you've put in your diary has some narrative rather than just simply being, "Meeting with Ms Cologna." Is that right?

A. Yes, it does, but it was just basically - it was, "Meeting with Glenn Francis. Discuss new options." I think it was something along those lines.

Q. You keep looking down. Do you have your diary with you?

A. I do.

THE COMMISSIONER: That was his statement he was looking at. It is his statement, the witness has his statement open.

MR CHESHIRE: Q. I'm sorry.

A. I do have my notes but I can --

Q. Insofar as you have refreshed your memory from your diary, you have that diary here; is that correct?

A. That's right, yes.

Q. You would be able to provide that, if necessary, to this inquiry; correct?

A. Well, it's personal and it's - but if it was summonsed or subpoenaed I would hand it over, yes.

Q. You would have no objection in relation to specific dates and specific meetings, would you?

A. No. I have to say I don't get everything exactly 100 per cent right sometimes on this, so I'd have to caveat that, but generally it's fairly accurate, I believe.

1
2 MR CHESHIRE: Thank you very much.
3
4 THE COMMISSIONER: Mr Latham?
5
6 MR LATHAM: Nothing, Commissioner.
7
8 MR GARDINER: Nothing, Commissioner.
9
10 MR BOLSTER: I have nothing further, Commissioner.
11
12 THE COMMISSIONER: Thank you for coming, you're excused.
13
14 THE WITNESS: Thanks.
15
16 THE COMMISSIONER: Just leave the material you've been
17 given here and take anything that is yours, obviously.
18
19 **<THE WITNESS WITHDREW**
20
21 THE COMMISSIONER: Who is the next witness?
22
23 MR BOLSTER: The next witness is Mr Wearne.
24
25 THE COMMISSIONER: We might have him before morning tea
26 and we will take morning tea after Mr Wearne.
27
28 **<MICHAEL WEARNE, sworn: [11.20am]**
29
30 **<EXAMINATION BY MR BOLSTER:**
31
32 MR BOLSTER: Q. Mr Wearne, you have made a statement in
33 this inquiry on 7 June this year?
34 A. Yes, that's correct.
35
36 Q. Do you have a copy of it with you?
37 A. Yes, I do, yes.
38
39 Q. Is the evidence contained in it true to the best of
40 your knowledge, information and belief?
41 A. Yes, it is.
42
43 Q. Since you have prepared that statement, I think you
44 are able to update it in relation to some materials that
45 have been returned to the council by Mr Attie; is that
46 correct?
47 A. Yes, that's correct, yes. He's returned a printer and

1 a tablet.
2
3 Q. What was returned and when was it returned?
4 A. He has returned a Brother printer and an Apple iPad
5 Mini which on the statement - on the table on page 4 were
6 the bottom two items under Councillor Ned Attie.
7
8 THE COMMISSIONER: Q. I was just struggling to find your
9 statement then. What were you referring to?
10 A. On page 4 there is a table.
11
12 Q. With this small handwriting, sorry, small typing?
13 A. Yes. Mr Attie has returned the last two items which
14 was the printer and the Apple iPad Mini.
15
16 Q. I see. All right. When were they returned?
17 A. Yesterday.
18
19 Q. Yesterday?
20 A. Yes.
21
22 MR BOLSTER: I have no further questions.
23
24 THE COMMISSIONER: Q. On that table I should cross out "
25 not returned", should I, for Mr Attie?
26 A. Yes, that's correct.
27
28 Q. Does that mean everything has been returned then?
29 A. If you see - if you go to his letter, although we have
30 "not returned" on our list, he has indicated the other two
31 items, the laptop --
32
33 MR BOLSTER: On page 31, I think, you'll find the letter.
34
35 THE COMMISSIONER: All right. Thank you. Did you have
36 something more?
37
38 MR BOLSTER: No, that was just for your assistance,
39 Commissioner. His explanation for other matters perhaps
40 being returned is set out on page 31 and I don't wish to
41 take the matter any further.
42
43 THE COMMISSIONER: I see, that's Mr Attie's letter.
44
45 MR BOLSTER: Yes. It's all there in black and white.
46
47 THE COMMISSIONER: I see. All right. Thank you for

1 drawing that to my attention. All right. Are you
2 tendering that statement?

3
4 MR BOLSTER: Yes, I am.

5
6 THE COMMISSIONER: That will be exhibit S18. Exhibit S18
7 is the statement of Michael Wearne dated 7 June 2016.

8
9 **EXHIBIT #S18 STATEMENT OF MICHAEL WEARNE DATED 07/06/2016**

10
11 THE COMMISSIONER: Do you have any questions, Mr Watson?

12
13 MR WATSON: No, thank you, Commissioner.

14
15 THE COMMISSIONER: Mr Duggan?

16
17 MR DUGGAN: No, I have no questions.

18
19 MR McNALLY: Just very briefly, Mr Commissioner.

20
21 **<EXAMINATION BY MR McNALLY:**

22
23 MR McNALLY: Q. Mr Wearne, I think you say that the
24 letter was sent out to various councillors requesting the
25 return of certain equipment on 11 February 2016; is that
26 right?

27 A. Yes, that's correct, yes.

28
29 Q. Was that sent by email or post?

30 A. It was hand delivered to their residential addresses
31 that were given to us, yes.

32
33 Q. I see. I think that was a Thursday. Does that accord
34 with your recollection, 11 February?

35 A. Yes, that was the day of the announcement, yes, of the
36 suspension, yes.

37
38 Q. I think by the Monday, Councillor Lam had returned all
39 of the equipment that you requested she return; is that
40 right?

41 A. Yes, that's correct.

42
43 Q. And she cooperated fully?

44 A. Yes, she cooperated fully, yes.

45
46 MR McNALLY: Yes, nothing further.

47

1 MR MANTEI: Nothing.
2
3 MR PRICE: Nothing.
4
5 MR CHESHIRE: No, thank you.
6
7 MR GARDINER: Nothing, thank you, Commissioner.
8
9 THE COMMISSIONER: Thank you very much for coming, you're
10 excused.
11
12 THE WITNESS: Thank you, Commissioner.
13
14 <THE WITNESS WITHDREW
15
16 THE COMMISSIONER: I am just wondering, rather than taking
17 morning tea, there is Mr Okorn and Mr Hamed.
18
19 MR BOLSTER: Mr Hamed is not until 2 and Mr McNulty is not
20 until 12.
21
22 THE COMMISSIONER: I see. Is Mr Okorn --
23
24 MR BOLSTER: Mr Okorn is in a meeting with the new general
25 manager until 11.30.
26
27 THE COMMISSIONER: We will have morning tea then. We will
28 adjourn until a quarter to 12.
29
30 **SHORT ADJOURNMENT**
31
32 MR BOLSTER: The next witness, Commissioner, is Mr Karl
33 Okorn.
34
35 <KARL OKORN, sworn: [11.47am]
36
37 <EXAMINATION BY MR BOLSTER:
38
39 MR BOLSTER: Q. Mr Okorn, is your full name Karl Okorn?
40 A. Yes, Karl Okorn.
41
42 Q. K-A-R-L, surname O-K-O-R-N, for the record?
43 A. Yes, that's correct.
44
45 Q. You made a statement of 14 June in relation to this
46 matter?
47 A. I did.

1
2 Q. Are the contents of that statement true and correct to
3 the best of your knowledge, information and belief?

4 A. Yes.

5
6 MR BOLSTER: Mr Commissioner, I don't read paragraphs 12
7 to 21 of that statement.

8
9 THE COMMISSIONER: I don't have it. What is date of the
10 statement?

11
12 MR BOLSTER: I have 14 June.

13
14 THE COMMISSIONER: Yes. I don't have it, so that's not
15 going to help us. I have it now. Yes. What aren't you
16 reading?

17
18 MR BOLSTER: I am not reading anything in relation to
19 40 to 46 Station Road: that is, from 12 right through to
20 21.

21
22 THE COMMISSIONER: Paragraphs 12 to 21 aren't read?

23
24 MR BOLSTER: That's correct.

25
26 THE COMMISSIONER: All right. Do you have any questions
27 for Mr Okorn?

28
29 MR BOLSTER: I do have some questions.

30
31 Q. Might the witness be given a copy of the folder that
32 has the South Auburn, Berala and BASIX certificate files.
33 You will see there there is a bundle of documents in
34 relation to a BASIX certificate for 36 to 44 John Street,
35 Lidcombe.

36
37 MR DUGGAN: Commissioner, I have an issue with this topic,
38 questions being asked about this topic. Firstly, there's
39 nothing in Mr Okorn's statement about this, so I don't know
40 exactly where it is going but I can make assumptions on the
41 basis of the documents. My understanding is that the BASIX
42 process is if you want a BASIX certificate, you go on to
43 the website, I assume it's managed by the Department of
44 Planning, you punch in some information, it spits out a
45 certificate. It is clear from the documents that the
46 Department of Planning engaged in some sort of
47 investigation in relation to the particular BASIX

1 certificate that is in question.

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Ordinarily, what happens is the certifier will apply for that certificate. In this circumstance, at least on its face, it is a private certifier that is involved. There is an administrative inquiry that has been made by the Department of Planning of Mr Okorn - that appears from the documents - and there has been some correspondence about that.

My submission is that none of that is relevant to the terms of this inquiry. It is simply an inquiry that is made of the council. It is not anything that falls within the terms of reference, looking at whether or not people have received favourable treatment, whether the councillors have complied with the law and so on. In my submission, this topic is irrelevant to this inquiry.

THE COMMISSIONER: I don't agree with you. Where I would agree with you is that I don't think it's any part of the terms of reference to explore whether or not the BASIX certificate was or wasn't fraudulent, or anything to do with that, I agree, but I do think that how the council itself handled the information that was given by the Department of Planning is broadly relevant to the terms of reference. I think Mr Bolster is entitled to explore that.

MR DUGGAN: If it please the Commission.

MR CHESHIRE: May I just clarify, Commissioner, if 12 to 21 are not being read, is it just then paragraphs 1 to 11 that is left on the statement?

THE COMMISSIONER: I would imagine so.

MR BOLSTER: Yes.

MR CHESHIRE: Only because there is an earlier statement which was different and it sort of stopped at number 2 as if there might be a number 3, so I just wanted to make sure.

THE COMMISSIONER: I have thrown that other statement away. I have only got one that's 14 June 2016; is that right?

MR BOLSTER: I only have one dated 14 June. The one that

1 I have finishes at 11.

2

3 Q. Mr Okorn, do you have that bundle in front of you?

4 A. Yes, I do.

5

6 Q. I think it operates reverse chronologically. Could
7 you go to the back of that particular bundle. Perhaps if
8 you start off at page 158.

9

10 MR WHEELHOUSE: Are these on the website anywhere, these
11 documents?

12

13 MR BOLSTER: Yes.

14

15 THE WITNESS: Yes.

16

17 MR BOLSTER: It shouldn't worry you, on the basis of what
18 we currently know.

19

20 Q. You will see there at 158 there is a notice of
21 determination of development application for a property at
22 36 to 44 John Street, Lidcombe. That was a large
23 residential 12-storey development, 153 residential units,
24 16 commercial units, four levels of basement parking,
25 et cetera. If you go to page 170, you will see a condition
26 of the consent. Do you see Condition 27?

27 A. Yes.

28

29 Q. A BASIX certificate - correct me if I'm wrong - is a
30 certificate that's required by planning to assess the
31 sustainability of significant development proposals;
32 correct?

33 A. Broadly speaking, that's my understanding.

34

35 Q. It essentially involves an audit of the plans and
36 what's being proposed and essentially calculates the
37 environmental footprint of a development; correct?

38 A. Yes.

39

40 Q. Perhaps if you could give us a summary of the way you
41 see a BASIX certificate operating, it might give us a
42 better idea of it than that?

43 A. It's perhaps not dissimilar to the way that you've
44 described it. It is basically an assessment of the
45 building as designed in terms of its insulation properties,
46 amongst other things, water savings, solutions, which
47 collectively it needs to achieve a certain standard, in

1 which case it's eligible to receive a BASIX certificate, is
2 my understanding of the process.

3
4 Q. The BASIX certificate is necessary under the
5 Environmental Planning and Assessment Regulation, that's
6 set out there in paragraph 27, in order for the development
7 to proceed?

8 A. Yes, that's correct.

9
10 Q. You can't get a construction certificate unless you
11 have a complying BASIX certificate; correct?

12 A. Indeed, it is a matter to be submitted with a
13 development application.

14
15 Q. With the development application, correct. All right.
16 If you go back in the bundle to page 107, you can see there
17 that the records department received an email from Mr Holt
18 at planning on 15 December last year.

19 A. Yes.

20
21 Q. I take it that email came to you because it falls
22 within your particular areas of responsibility; correct?

23 A. Eventually it would have come to me, yes.

24
25 Q. And there was a concern about a particular BASIX
26 certificate that had been issued for the site we've been
27 talking about, 36 to 44 John Street?

28 A. Yes, that's correct.

29
30 Q. If you go over the page to 106 - we're going forwards
31 in time but backwards in the bundle - you will see there
32 that you responded promptly the following day to Mr Wilson
33 to the particular queries that he asked you, 1, 2 and 3 on
34 page 107; correct?

35 A. Yes, that's my response.

36
37 Q. You didn't do it on the following day, you did it on
38 6 January. I take it that Christmas intervened?

39 A. That's correct.

40
41 Q. When you received the email from Mr Holt, what was
42 your immediate impression? Was it a matter of some great
43 significance or was it a matter of, "Well, it's something
44 that I can deal with in the fullness of time"? Was it
45 urgent? Was it a serious matter? Can you please explain
46 that?

47 A. I don't think it was particularly urgent nor was it

1 something that could be dealt with later. As I say, it was
2 certainly 15 December that request was made. It was
3 usually a few days in the information coming to me. From
4 that point, as you rightly point out, it was certainly the
5 Christmas period, so I sought to simply answer the question
6 that was asked by the department.

7
8 Q. Yes. Would you go over to 104 and 105. You will see
9 there that you sent letters both to the developer and his
10 certifier; correct?

11 A. Yes.

12
13 THE COMMISSIONER: Q. You're just going a bit fast for
14 me. Who is Mr Basiri of Eco Certificates? What's the
15 relevance of them, 107? This is planning saying:

16
17 *We have been contacted by Mr Manuel*
18 *Basiri ...*

19
20 MR BOLSTER: Q. Who is Mr Basiri, Mr Okorn?

21 A. I don't know Mr Basiri. From what I could make out
22 from the department's email is that he perhaps was
23 responsible for generating, or perhaps had some role in
24 generating the certificate on behalf of the applicant, is
25 my understanding. I only have the email that's here.

26
27 Q. All right. Would you just go forward in the bundle to
28 108, you will see the certificate in question; correct? It
29 was certificate 58717C and you see that on the left-hand
30 side of page 108 under the heading "Multi Dwelling". Do
31 you see the certificate number?

32 A. Yes.

33
34 Q. Going over to the right-hand side of that page, you
35 see that it was said to have been prepared by
36 Eco Certificates Pty Limited? Do you see that?

37 A. Yes.

38
39 Q. Just moving back in the bundle to 104 and 105, I take
40 it in an endeavour to respond to planning, you sent the
41 letters at 104 and 105 on 6 January?

42 A. It was - basically, the letters were to perhaps seek
43 clarification of the applicant and the certifier as to what
44 information they could provide to council regarding the
45 allegation of the falsification of the BASIX certificate.

46
47 THE COMMISSIONER: Q. Is Dix Gardner the private

1 certifier, is it?
2 A. Yes, that's correct, yes.
3
4 Q. And Sydney Project Group is the applicant?
5 A. That's correct.
6
7 MR BOLSTER: Q. If you go over to 102 and 103, you will
8 see that the same day as you sent the letter to the
9 developer, Mr Mehajer replied?
10 A. Yes.
11
12 Q. I take it you read his response carefully?
13 A. At the time, yes, I would have, yes.
14
15 Q. And you'll see your response to him copied to both
16 Mr Brisby and Mr Francis the following day, the first thing
17 in the morning?
18 A. Yes.
19
20 Q. I presume you got into work at about 7am and saw
21 Mr Mehajer's email?
22 A. I can only assume, yes, if that's relevant, yes.
23
24 Q. What did you do after that about the issue of the
25 certificate? Was the matter referred to anyone for any
26 disciplinary action for any investigation or for any other
27 purposes?
28 A. Well, the matter was being investigated by the
29 Department of Planning and Environment who were the
30 appropriate regulatory authority.
31
32 THE COMMISSIONER: It couldn't have been disciplinary
33 action because there's no --
34
35 MR BOLSTER: Q. Why is it planning's issue, Mr Okorn?
36 A. Because planning - the Department of Planning and
37 Environment, it's state government legislation, they
38 administer the website, they have full control over the
39 BASIX process.
40
41 THE COMMISSIONER: Q. They administer the website where
42 you apply for a BASIX certificate?
43 A. Correct, yes. All council sees is the certificate
44 once generated. From what I understand, there's an
45 inquiries line set up specifically by the department in
46 response to inquiries regarding BASIX, so it really is
47 their area of responsibility and they'd indicated to

1 council in correspondence that they were investigating the
2 matter, so I provided the information to them to assist in
3 their investigation.
4

5 MR BOLSTER: Q. Could you turn back in the bundle to
6 page 5, please. You will see there a letter to the
7 administrator from --

8 A. Sorry, which page?
9

10 Q. Page 5. It is a letter from a deputy secretary in
11 planning responsible for policy and strategy. Do you have
12 that?

13 A. No.
14

15 Q. You don't have that?

16 A. Page 5 of the full bundle?
17

18 THE COMMISSIONER: No, you've gone right to the very front
19 of the bundle instead of staying in the tabs.
20

21 THE WITNESS: Yes.
22

23 THE COMMISSIONER: You should have a letter to Mr Viv May,
24 Administrator, Auburn City Council.
25

26 MR BOLSTER: Q. Have you seen that letter before?

27 A. Yes, I have.
28

29 Q. Do you see the last paragraph on the first page of it?

30 A. Yes.
31

32 Q. If the certificate - and I'm not saying whether it was
33 or it wasn't - was a falsity and it was lodged with a
34 development application to Auburn City Council to obtain
35 development consent, it is entirely a matter for
36 Auburn City Council as to dealing with that particular
37 breach; correct?

38 A. No, I think the Department of Planning and Environment
39 are the appropriate regulatory authority.
40

41 Q. Is there a policy or procedure that you can go to
42 inside Auburn City Council, or was there in January,
43 February, March of this year, that enables you to answer
44 that question more definitively? Is there a clear
45 delineation of the responsibility for a prosecution of that
46 kind?

47 A. Well, we did - more recently legal advice was sought

1 on this and that actually confirmed the view that we took,
2 was that the department is the appropriate regulatory
3 authority to investigate the matter.
4

5 Q. You obtained that advice, did you, after the Frame
6 letter to Mr May?

7 A. Yes, that's correct.
8

9 Q. Can I ask you why that issue wasn't pursued back in
10 January when you were --
11

12 THE COMMISSIONER: It's December, isn't it?
13

14 MR BOLSTER: Q. -- December and January when the issue
15 was squarely raised with council at that time?

16 A. I was firmly and remain firmly of the view that the
17 appropriate regulatory authority is the Department of
18 Planning and Environment. The advice that was subsequently
19 received confirmed that, but I always held that view
20 through the entire process.
21

22 THE COMMISSIONER: In fairness to the witness, I think the
23 letter you took him to, that's addressed to Mr May, of
24 6 April, while it says "it is a matter for Council to seek
25 its own advice on what actions should be taken in regard to
26 any prosecution for this offence", assuming there is one,
27 it does also say that, "The Department will also carry out
28 an investigation into the matter."
29

30 MR BOLSTER: Let me clarify that.
31

32 Q. There are two issues here, aren't there, Mr Okorn?
33 There's an issue as to whether a planning certificate has
34 been lodged with the Department of Planning and whether it
35 is false, correct, and planning were investigating that;
36 correct?

37 A. Planning have advised council that on two separate
38 occasions, here and in the original correspondence, that
39 they were investigating the matter.
40

41 Q. Yes.

42 A. So from my perspective, again, all I can say is that
43 the BASIX certificate is issued and fully administered and
44 looked after by the Department of Planning and Environment
45 and they are conducting an investigation for which they
46 sought some information from council to assist in their
47 investigation and I provided that information to them.

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Q. It is a completely different investigation, though, isn't it, for council to satisfy itself whether or not the development consent process, which is within council's responsibility, has been compromised; correct?

A. I think the important thing is that the department, at the conclusion of their investigation, would notify council of the results of that investigation and if it were proven that the BASIX certificate was falsified then it probably would be the responsibility for council to pursue, but we didn't have that information and to get to the point where you determine whether it was false or otherwise is a matter for the department.

Q. Between 6 January and the --

THE COMMISSIONER: Q. I am sorry, just so it is clear, is this what you're saying, so I understand you: the issue of whether or not the BASIX certificate was falsified is a matter for planning. If they conclude it was falsified then it comes back to being a council responsibility because you're the planning authority that issued the development consent?

A. Well, I think that's - I mean at this stage I've not been advised by the department as to whether there is a result in the investigation.

Q. No.

A. If there is a result and the result is that the certificate was falsified then I think council would - may well pursue that as a separate matter, potentially.

Q. But you're saying it is only at the stage of there being a concluded view by planning about the certificate, that council has a role?

A. That is correct and certainly they are absolutely best placed to determine that, being the appropriate - being the body that looks after the BASIX process.

MR BOLSTER: Q. Is there a lack of clarity between council and planning about who has responsibility for what in relation to these sorts of issues?

A. I don't believe there is. It was made fairly clear that the department is investigating it.

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

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THE COMMISSIONER: It is a strange letter when it says that council should seek its own advice about prosecutions while it's still investigating whether there's something to prosecute. Anyway, I'm thinking out loud there. Does anyone have any questions for Mr Okorn?

MR WATSON: No, Commissioner.

MR DUGGAN: No.

<EXAMINATION BY MR WHEELHOUSE:

MR WHEELHOUSE: Q. Can I take you to paragraph 11 of your statement, please, Mr Okorn. My first question is - just to put a time frame on this - you left Auburn Council in mid 2013; is that correct?

A. Sorry, I left Auburn Council?

Q. Yes.

A. But I'm still here.

Q. You say in your statement you were there for 10 years but you have been in your current position for approximately two years. I am just trying to ascertain precisely when it was that you were with Auburn City Council?

A. I've been with Auburn City Council since around March 2006. In my current role was a more recent appointment. My role prior to that was as a supervisor of sorts within the planning department.

Q. Thank you. I misread your statement. Your statement in paragraph 11 covers the entire time you were at Auburn Council, is that correct, from 2006 to the current period?

A. No, I probably couldn't make that statement. In terms of the time within which - in my role as manager of the development assessment unit, certainly any applications lodged by councillors during that time were assessed by external independent planning consultants.

Q. I am just trying to put a time frame on what you've said there, that's all, I'm trying to do that at the moment. During the period of time you were at Auburn Council where there were development applications lodged by councillors or development applications where

1 councillors may have had an interest, those applications
2 were dealt with by external independent consultants;
3 correct?

4 A. So far as I'm aware, yes.

5

6 Q. Did you have a role in choosing the consultant?

7 A. For which particular project?

8

9 Q. In respect of those ones that were transferred to
10 external consultants; that's a process question, that's
11 all?

12 A. Yes. No, I understand. There is a pool of
13 consultants that council has available to it and within
14 that pool, yes, I would have perhaps selected the various
15 consultants for a range of different projects from that
16 available pool.

17

18 Q. Is there some system of selection or is it just
19 something you exercise your discretion in relation to
20 choosing?

21 A. There is some element of discretion I suppose. We
22 generally try to ensure that not one particular consultant
23 is dealing with all of those applications, so it's fairly
24 well spread across the pool of consultants. Generally, if
25 there's an application lodged for a modification, the
26 consultant that dealt with the original proposal would more
27 likely than not be engaged to deal with the modification,
28 for example.

29

30 Q. Is the reason for this process, so far as you're
31 aware, to separate the decision making process in relation
32 to development applications in which councillors have an
33 interest from the planning department of the council
34 itself; is that correct?

35 A. Yes.

36

37 Q. So as to avoid the possibility of influence in
38 relation to the planners employed by the council?

39 A. Yes, that's correct, both real and perceived.

40

41 Q. As far as you are aware, in the period that you were
42 at the council there was no exception to that policy?

43 A. Not so far as I'm aware, no.

44

45 MR WHEELHOUSE: I have no further questions.

46

47 MR McNALLY: No questions.

1
2 MR MANTEI: No, Commissioner.
3
4 MR PRICE: No, Commissioner.
5
6 MR MANTEI: No, Commissioner.
7
8 MR CHESHIRE: No, Commissioner.
9
10 MR LATHAM: No, Commissioner.
11
12 MR GARDINER: No, Commissioner.
13
14 THE COMMISSIONER: No-one else? Thank you for coming.
15 You're excused, Mr Okorn. You didn't tender the statement?
16
17 MR BOLSTER: No, I didn't tender the statement.
18
19 THE COMMISSIONER: The statement of Karl Okorn dated
20 14 June 2016 is exhibit S19.
21
22 **EXHIBIT #S19 STATEMENT OF KARL OKORN DATED 14/06/2016**
23
24 **<THE WITNESS WITHDREW**
25
26 MR BOLSTER: I call Mr McNulty.
27
28 **<HAMISH MURRAY McNULTY, sworn: [12.14pm]**
29
30 **<EXAMINATION BY MR BOLSTER:**
31
32 MR BOLSTER: Q. Your full name is Hamish McNulty?
33 A. Hamish Murray McNulty.
34
35 Q. McNulty is spelt M-c-N-U-L-T-Y, for the record.
36 Mr McNulty, you prepared a statement yesterday in relation
37 to this matter?
38 A. That's correct.
39
40 Q. That deals with the circumstances surrounding the
41 aerial and ground transport arrangements that were put in
42 place in relation to the deputy mayor's wedding last year?
43 A. It deals with the hire of a ground at Phillips Park
44 and a partial road closure application, yes.
45
46 Q. I want to take you through the documents and ask you
47 some questions about them. Could you have the bundle of

1 documents open before you. It may assist if you separate
2 the chronology from the bundle.
3 A. Sure.
4
5 Q. You may be referring to both at the same time.
6 A. Yes.
7
8 Q. If you could first open up the documents to page 8,
9 you'll see there an email from Mr Mehajer to you and others
10 of 26 May last year?
11 A. Yes.
12
13 Q. In that he refers to his requirement for helicopter
14 landings on council owned and controlled property. When
15 you read that, did you appreciate that there would be one
16 or more helicopters employed by Mr Mehajer?
17 A. One helicopter.
18
19 Q. One. At any time, between 26 May and the day of the
20 wedding, did it occur to you or was it suggested to you
21 that four helicopters were to be involved?
22 A. Council became aware on 14 August that four
23 helicopters were involved when the executive manager of
24 operations had a discussion with the helicopter operator
25 and was told that there would be four helicopters involved.
26
27 Q. We'll get to that in due course.
28 A. But that was the first time we knew about it.
29
30 Q. That was the first time you knew about it?
31 A. Correct.
32
33 Q. All right. Thank you. Could you go to page 20 of the
34 bundle.
35 A. I apologise, my pages aren't numbered.
36
37 Q. We will give you a paginated copy, yes.
38 A. Sorry. (Shown to witness).
39
40 Q. You will see there that your first substantive
41 response was on 16 July. Do you have that?
42 A. Yes.
43
44 Q. I see there in the third line you refer to
45 "helicopter"; correct?
46 A. Yes, correct.
47

1 Q. You suggested either Wyatt Park or Phillips Park?
2 A. Correct.
3
4 Q. Mr Mehajer hadn't suggested any particular location,
5 had he?
6 A. No. Look, for reasons which I can't explain now,
7 given that this happened some time ago, we were of the view
8 that he actually wanted to land the helicopter in the
9 street and our advice to him was, "You can't do that. If
10 you want to land a helicopter it's going to have to be in a
11 park", and Wyatt Park and Phillips Park were the two
12 closest parks we had available.
13
14 Q. He hadn't nominated a particular venue, had he?
15 A. No.
16
17 Q. You inferred he wanted to land something in
18 Frances Street, Lidcombe?
19 A. Yes.
20
21 Q. You made it clear to him, "That's not on"?
22 A. Yes.
23
24 Q. You didn't think CASA would permit that in any event?
25 A. No, that's exactly right.
26
27 Q. Was that the context in which you suggested Wyatt Park
28 or Phillips Park?
29 A. Correct.
30
31 Q. Could I ask you why you thought they were suitable
32 venues from a single helicopter landing?
33 A. They were large open spaces in close proximity to
34 Frances Street.
35
36 Q. If you had thought that there were four helicopters to
37 be involved, would you have suggested that Wyatt Park or
38 Phillips Park be adopted?
39 A. Difficult to say. If we knew there were four
40 helicopters involved, we would have sought - and this is
41 speculation obviously - probably sought some advice on what
42 area would be required. That's all I can say.
43
44 Q. What were the other alternatives in the local
45 government area? Is there land out at Homebush Bay,
46 for example, that might be more suitable, might be more
47 spacious for that purpose?

1 A. Not that council controls, no.
2
3 Q. Why did it have to be somewhere that council
4 controlled?
5 A. We can't issue approval on land that we don't control.
6
7 Q. Wouldn't it have been better to suggest to Mr Mehajer
8 that he think about other more suitable locations for a
9 helicopter to land?
10 A. Look, in dealing with the request we had before us, we
11 dealt with it on its merits and made decisions based on
12 those merits.
13
14 Q. All right. Would you go over please to page 24 of the
15 bundle. Do you see there an email from Mr Mehajer to you
16 and Mr Fitzgerald Junior on 23 July? Did you take it from
17 that email that Mr Mehajer wanted everything to be dealt
18 with correctly and what did you understand him to mean by
19 "correctly"?
20 A. We understood that he was asking what the requirements
21 would be to get an approval to land a helicopter in a park.
22
23 Q. You had previously sent him or Mr Fitzgerald had sent
24 him and copied to you, on page 19, the relevant CASA
25 requirements?
26 A. That was an email from Mr Fitzgerald to me and
27 Mr Francis.
28
29 Q. I do apologise. Did you forward that on to Mr Mehajer
30 at all?
31 A. Not at the time, no.
32
33 Q. Thank you. Just pausing there, by 23 July - which is
34 within three weeks of the actual wedding - had Mr Mehajer
35 spoken to you personally about this, or had all of the
36 dealings with him been by email?
37 A. From recollection, it had all been by email. I can't
38 recall a telephone conversation with Mr Mehajer.
39
40 Q. About the wedding at all?
41 A. About the wedding at all. I had had discussions - no,
42 that was later on, sorry.
43
44 Q. Yes, just up to 23 July.
45 A. Yes.
46
47 Q. Would you go over to page 29.

1 A. Yes.
2
3 Q. Do you see that you sent Mr Mehajer the CASA
4 requirements for a helicopter landing?
5 A. Yes.
6
7 Q. Can I ask you why you did that?
8 A. So he was fully aware of what the requirements were.
9
10 Q. Wasn't that a matter that really he ought to take his
11 own advice about?
12
13 MR DUGGAN: I object to that.
14
15 THE COMMISSIONER: Why? Why is it a matter for him to --
16
17 MR BOLSTER: I will put it another way.
18
19 Q. Why did you think it was your job to give Mr Mehajer
20 advice on that topic?
21
22 MR CHESHIRE: I object to that. It is not a fair question
23 to ask him whether it was his job to give that advice.
24
25 MR BOLSTER: I will put it another way.
26
27 Q. Why did you see it as being necessary for you to
28 provide Mr Mehajer with advice on that topic?
29
30 MR CHESHIRE: I object to that.
31
32 THE COMMISSIONER: Is he giving advice or is he just
33 providing a link to the Civil Aviation Safety Authority
34 requirements? Is that advice? I'm not sure it's advice.
35 It might be advice to go to the website, but beyond that --
36
37 MR BOLSTER: Q. Why did you tell Mr Mehajer to go to the
38 website?
39 A. On the basis that he asked us a question about what
40 the requirements were to enable for the operation to be
41 conducted properly.
42
43 Q. I take it you haven't had much experience of residents
44 of the local government area asking for this sort of
45 permission from council in the past?
46 A. That's correct.
47

1 Q. It was a bit of education on your side as well as on
2 his side?
3 A. We were dealing with a new request, definitely.
4
5 Q. Yes. Thus far we've dealt with what was happening
6 about the helicopters. Could you go over please to
7 page 35. You will see that Mr Fitzgerald commences some
8 emails - that we'll see develop over time shortly - with a
9 Mr Yaseen who is described as a project manager at Sydney
10 Building and Construction Pty Limited?
11 A. Yes.
12
13 Q. In your chronology I think you referred to
14 Ahmad Yaseen as Mr Mehajer's PA. Did you speak to Mr or
15 Ms Yaseen during the course of these events?
16 A. I believe I had one telephone conversation with him,
17 maybe two.
18
19 Q. Did he introduce himself to you as a project manager
20 or as a PA?
21 A. He introduced himself to me as Mr Mehajer's PA.
22
23 Q. PA. All right. Thank you. At pages 37 and 38 you
24 will see a traffic control plan, the draft traffic control
25 plan that Mr Yaseen sent to you on 4 August.
26 A. Correct.
27
28 Q. Did you deal with that personally or did you refer
29 that to council's relevant traffic officers and engineers?
30 A. That would have been referred to council's traffic
31 engineers.
32
33 Q. Was there anything about the traffic plan that caught
34 your eye at that time?
35 A. I think the full road closure was always going to be
36 problematic.
37
38 Q. A full road closer was being asked for; correct?
39 A. Correct.
40
41 Q. Do I take it, just cutting towards the end for present
42 purposes, council would never have approved of a complete
43 road closure?
44
45 MR CHESHIRE: I object to that when the question is
46 "council would never have approved". From this witness it
47 should be clarified whether it was his decision, whether he

1 would have approved it.

2

3 THE COMMISSIONER: That is probably fair enough.

4

5 MR BOLSTER: Q. In your position, you were ultimately
6 the person who would give approval or not to this request
7 for the road closure; correct?

8 A. No. The approval for the road closure was in the
9 other division of the council. My division, if you like,
10 was acting as a conduit at this point with the applicant.

11

12 Q. What was council's policy in relation to a complete
13 road closure?

14 A. Council's consistent advice was that there would have
15 to be - access to traffic would always have to be
16 maintained.

17

18 Q. You're not aware of any deviation from that in
19 relation to this matter at all?

20 A. That's correct.

21

22 Q. And the final terms and conditions of the approval
23 don't permit a road closure as such, do they?

24 A. That's correct.

25

26 Q. The particular person at the engineering unit that had
27 the carriage of the matter, do you recall who that was?

28 A. Mr Sivakumar.

29

30 Q. I take it it is within his ordinary sphere of --

31

32 THE COMMISSIONER: Do we need a spelling of that name?

33

34 MR BOLSTER: Q. It appears in the bundle and I don't
35 think we need to go there. It is within his ordinary
36 sphere of responsibility to deal with road closures for the
37 purpose of building construction; correct?

38 A. I believe so. I'm not fully conversant with his
39 delegations.

40

41 Q. If someone was making a movie in the --

42 A. He's responsible for all traffic related matters in
43 council, yes.

44

45 Q. Just moving through the bundle, could you go please to
46 page 58. Do you see there, beginning at page 56 and going
47 through to 58, there is an email from Ms - it is Mr Yaseen?

1 A. Mister.
2
3 Q. Mr Yaseen?
4 A. Yes.
5
6 Q. There is an email from Mr Yaseen of 5 August and this
7 is just over a week out from the wedding?
8 A. Yes.
9
10 Q. He is responding to some questions from Mr Fitzgerald
11 he read which you see over page 57?
12 A. Correct.
13
14 Q. And he attaches a photograph showing a configuration
15 for landing. Did you see that photograph?
16 A. I don't believe I saw that at the time but I may have;
17 I can't recall.
18
19 Q. Would you agree with me that it indicates four
20 helicopters?
21 A. It indicates sites for four helicopters, but our
22 understanding at the time was that at that point we were
23 still talking about one helicopter.
24
25 Q. Mr Fitzgerald never raised with you prior to the
26 wedding that in fact there were four helicopters?
27 A. Mr Fitzgerald spoke to me, when I was driving home on
28 the 14th, to say he'd just spoken with the pilot or the
29 operator of the helicopters and was advised at that time
30 there were four helicopters.
31
32 THE COMMISSIONER: Q. Is that a sports field?
33 A. It is, yes.
34
35 MR BOLSTER: Q. There are actually three sports fields
36 there, aren't there, 1, 2 and 3?
37 A. Correct.
38
39 Q. For 2 and 3 a local sporting group had them booked up
40 until 11; correct?
41 A. Correct.
42
43 Q. There was a third oval that it was thought would be
44 free at 11, correct?
45 A. I believe so, yes, yes.
46
47 Q. But unfortunately, the applicant decided that he

1 wanted the helicopters to come at 10?
2 A. I believe there was an oval that was available which
3 was deemed unsuitable for the helicopters, it was too
4 rough. You're correct, the fields were booked by a soccer
5 club and the initial application to hire the field was
6 rejected on that basis. We then got advice that the soccer
7 club had agreed that they could move their games and their
8 approval was considered.
9
10 Q. All right. Would you go please to page 70. You will
11 see the road occupancy licence that was provided to council
12 by the applicant. I am sorry, this is the draft version,
13 the clean copy, at paragraph --
14 A. That's the form that was provided to the applicant.
15
16 Q. That's the standard form?
17 A. Correct.
18
19 Q. With standard conditions?
20 A. I believe so. Once again, this is out of my area of
21 control but I believe so.
22
23 Q. Would you have a look at paragraph 5 of the
24 conditions?
25 A. Yes.
26
27 Q. You will see there in bold it's stated that full
28 closure of the road will not be allowed?
29 A. Correct.
30
31 Q. If you go back to 70, the officer in charge of this,
32 Siva Sivakumar, is the person who sent that email on the
33 5th at 4.36pm?
34 A. Correct.
35
36 Q. It is the case, isn't it, that Mr Yaseen sent through
37 the executed application on 6 August and the documents
38 appear at 73 through to 77?
39 A. Correct.
40
41 Q. Signed by Mr Mehajer?
42 A. Correct.
43
44 Q. And then moving forward, if you could, to page 93 and
45 page 94, you will see a further email from Mr Sivakumar
46 clarifying the timing of the road closure?
47 A. Correct.

1
2 MR CHESHIRE: Could you give the time and date of that?
3
4 MR BOLSTER: The time is 4.10pm on 6 August.
5
6 THE COMMISSIONER: There is obviously a typo in there,
7 isn't there? On 93, "Requested commencement date
8 15 August. Requested completion date 15 August", but then
9 it has got, "Requested time 14 August". It's, like,
10 24 hours. Anyway.
11
12 MR BOLSTER: Q. Could I draw your attention to
13 paragraph 4 on page 94?
14 A. Sorry, on which page?
15
16 Q. 94.
17 A. Yes.
18
19 Q. You will see Mr Sivakumar raises with Mr Ahmad a
20 concern that a road closure for the purposes of a wedding,
21 or what's referred to there as a public celebration,
22 doesn't fall within the road occupancy criteria.
23 A. Correct.
24
25 Q. Is it your understanding that from that point on the
26 matter was dealt with as a road closure for filming
27 purposes?
28 A. I'm aware that's the approval that was issued. The
29 exact point at which that changed I'm not familiar with.
30
31 THE COMMISSIONER: Q. Is "public celebration" a defined
32 term or is that just the term that has been used by the
33 applicant?
34 A. I believe that's probably just used by the applicant.
35
36 Q. I see, right.
37 A. But, once again, I wasn't involved, it's hard to
38 comment.
39
40 MR BOLSTER: If you go, Mr Commissioner, to page 93, the
41 type of work specified in the application which
42 Mr Sivakumar is questioning is simply "public celebration".
43 It doesn't say "wedding" or anything more.
44
45 Q. All right. Would you just go forward to page 130.
46 You will see there there's an email from Ms Willingham.
47 I take it she was the officer who was doing the paperwork?

1 A. She did the parks bookings, yes.
2
3 Q. She dealt with the booking of the oval --
4 A. Correct.
5
6 Q. -- and assisted in resolving the dispute with the
7 other users of the oval?
8 A. The applicant dealt with the soccer club and then we
9 confirmed the - I think Ms Willingham confirmed with the
10 soccer club that they were happy with the arrangement.
11
12 Q. My copy of that invoice there that she attaches in her
13 letter to Mr Fitzgerald is not entirely clear. Does your
14 copy of that indicate a reference to a single helicopter
15 and, if so, could you assist the inquiry by pointing out
16 where that is?
17 A. It's the copy I have with the numbers on it, so I'll
18 just get my own copy, if you like.
19
20 Q. Yes, if you could, that would be helpful.
21 A. Yes. I have it here. There's a section in the table
22 called "Activity Name", which is, if you like, the - do you
23 see a box with a black line in it? Two boxes above that
24 says, "Landing of helicopter for wedding celebratory
25 purposes".
26
27 Q. Yes. I take it that that was an entry in a council
28 computer by Ms Willingham, the person responsible?
29 A. Correct.
30
31 Q. She has forwarded that to you, I take it, because the
32 matter had some sensitivity all along, but it was
33 time critical at that stage?
34 A. It was time critical and it was an unusual activity
35 for the council.
36
37 Q. Was there any contact from Mr Mehajer about this
38 matter at all by this stage, that is, 9 August, the week
39 before the wedding?
40 A. My recollection is by that stage we were dealing
41 almost exclusively with Mr Yaseen.
42
43 Q. With Mr Yaseen. One of the issues, an important
44 issue, was that Mr Fitzgerald required details of who would
45 be looking after the ground, that is, the soccer field, and
46 preparing it and making sure it was safe for when this
47 helicopter arrived?

1 A. He was concerned about who was going to be securing
2 the site to make sure no-one entered the site during the
3 helicopter operations, correct.

4
5 Q. You're familiar with these documents. He made an
6 inquiry and who was he told was going to look after it?

7 A. I cannot answer who he was told. I do recall that he
8 was satisfied that appropriate arrangements had been made.

9
10 Q. I want to suggest to you that it was indicated that
11 Mr Yaseen was the person who was going to secure the ground
12 location for the helicopters. Does that come as a surprise
13 to you?

14 A. It does.

15
16 Q. I will find that for you. Had that been conveyed to
17 you, would that have caused you some concern?

18 A. I would be surprised because I think it would need
19 more than one person to secure a site to stop people
20 getting on to a site that a helicopter was landing.

21
22 Q. Let me compare the situation where you close a road,
23 for whatever purpose, you'll have licensed traffic
24 controllers who have done a course and who have an
25 accreditation?

26 A. Yes.

27
28 Q. Presumably they have been tasked and trained in safety
29 issues and probably know a bit of first-aid as well just in
30 case things go wrong. Was there any provision in council's
31 requirements - and I'm accepting it is a very unusual
32 situation - for there to be a similar sort of safeguard
33 here?

34 A. We were concerned to be sure that the ground was going
35 to be suitably secured to ensure the helicopter could
36 operate safely.

37
38 Q. There was a problem on the day, wasn't there, because
39 the call came through that it was four and not one?

40 A. The call came through the Friday night, it was four
41 not one.

42
43 THE COMMISSIONER: Whose responsibility is it, is it
44 CASA's or the council's?

45
46 MR BOLSTER: Q. The council had given approval for one
47 helicopter; correct?

1 A. No, we'd given approval for the hire of a ground to
2 land a helicopter on.
3
4 Q. To land a helicopter?
5 A. Yes.
6
7 Q. It was a condition of the approval of the ground that
8 it was a helicopter?
9 A. Correct. The activity which - for which the
10 applications was sought was to land a helicopter.
11
12 Q. Let's go forward to page 203. You will see there the
13 formal approval in relation to the park. You will see that
14 there is a reference to a single helicopter?
15 A. Correct.
16
17 Q. You will see there that the council has received
18 documentation, SWMS, what's that?
19 A. Safe Work Method Statement.
20
21 Q. For the landing of a helicopter. And then wasn't
22 there a problem on the day? Weren't the helicopters meant
23 to arrive at 10am but were delayed by an hour because of a
24 problem with the oval?
25 A. My understanding is and, once again, this is
26 second-hand, I was advised that the helicopters were due to
27 arrive at 10. When - at that time the safety measures
28 hadn't been implemented on the ground so the helicopters
29 were delayed until the safety measures that were intended
30 to be implemented had been implemented.
31
32 Q. You received a report about that failure to implement
33 safety measures as it was happening, correct?
34 A. By telephone, yes.
35
36 Q. Who gave you that report?
37 A. Mr Fitzgerald. He was onsite.
38
39 Q. What were the particular safety measures that he was
40 concerned about?
41 A. The safety measures that were outlined in the Safe
42 Work Method Statement.
43
44 Q. Are you able to assist in what you mean by the Safe
45 Work Method --
46 A. A Safe Work Method Statement is a document which is
47 prepared to say how an activity has been conducted, to

1 ensure safety of all involved.
2
3 Q. All right. I don't recollect seeing that in your
4 bundle. Have you --
5 A. I don't believe I've ever seen it.
6
7 Q. You haven't seen it?
8 A. No.
9
10 Q. All right. I want to just turn and deal now with the
11 road closure.
12 A. Sure.
13
14 THE COMMISSIONER: Where does the power come to close a
15 public road? Is that the Roads Act or --
16
17 THE WITNESS: I believe it's the Roads Act, yes.
18
19 MR BOLSTER: Q. Would you go to page 201 in the bundle,
20 please.
21 A. Sure.
22
23 THE COMMISSIONER: Q. Is it the minister who delegates
24 it to the council to make the decision, is that how it
25 works? If you don't know, say you don't know.
26 A. I believe that's the case but I'm not - I couldn't be
27 100 per cent sure.
28
29 MR BOLSTER: Q. Do you see there at 201 a yellow flyer?
30 A. Yes.
31
32 Q. My understanding of your evidence it that council
33 became aware one or two days before the wedding that these
34 flyers were being distributed in Frances Street, Lidcombe;
35 correct?
36 A. Correct.
37
38 Q. You became aware of that through complaints by
39 residents?
40 A. Correct.
41
42 Q. And through a query from a journalist?
43 A. And a councillor, I believe, yes.
44
45 Q. And, sorry?
46 A. And a councillor.
47

1 Q. Which councillor was that?
2 A. Councillor Simms.
3
4 THE COMMISSIONER: She wasn't invited to the wedding,
5 obviously.
6
7 MR BOLSTER: Q. The emails, I don't want to take you to
8 them, but I take it you regarded those flyers with a degree
9 of concern?
10 A. Absolutely.
11
12 Q. Why was that?
13 A. The information in them isn't correct, and I think it
14 mentions "Council" at some point.
15
16 THE COMMISSIONER: Q. This isn't a council document?
17 A. Absolutely not.
18
19 Q. Oh, I see.
20 A. No.
21
22 MR BOLSTER: Q. When it came to your attention, do you
23 see there was an emergency contact number on it?
24 A. Correct.
25
26 Q. Did you ring that?
27 A. No, I didn't.
28
29 Q. Did anyone from council ring it and say, "Who are you?
30 Why is this" --
31 A. I don't know. I don't know. I can't answer the
32 question.
33
34 Q. I take it, though, that you communicated with
35 residents who raised the issue with you and essentially
36 told them to ignore it?
37 A. We did, and we had a meeting with Mr Yaseen on the
38 Friday at 1 o'clock and told him that they were not
39 appropriate and should be withdrawn, and the residents
40 should be --
41
42 Q. What was Mr Yaseen's reaction to that?
43 A. My recollection is he agreed to do that.
44
45 Q. Did you raise the matter at all with Mr Mehajer?
46 A. I didn't, no.
47

1 Q. Do I take it that you regarded the assurances from
2 Mr Yaseen as being sufficient in the circumstances?
3 A. Correct.
4
5 Q. Given you had been dealing with him throughout?
6 A. Correct.
7
8 Q. All right. The final documentation in relation to the
9 road occupancy licence - that's the particular phrase that
10 is used to describe the licence; correct?
11 A. Correct.
12
13 Q. That appears at 209 through to 211?
14 A. Correct.
15
16 Q. That was the approval that was granted on - what date
17 is it there?
18
19 THE COMMISSIONER: This is 209. It's got 14/8/15. It's
20 in handwriting and it has a little typed date of 13 August.
21
22 MR BOLSTER: Yes.
23
24 Q. It was issued on the 14th, the following day?
25 A. I believe that's the case.
26
27 Q. There's just one or two other things that I wanted to
28 ask you about. Was it raised with you by Mr Fitzgerald
29 whether or not you should proceed with a four helicopter
30 landing given the, can I suggest, significant change in
31 circumstances that were only brought to your attention
32 very, very late in the piece?
33 A. My recollection of that is that I received a telephone
34 call from Mr Fitzgerald saying that he had spoken to the
35 operator of the helicopter, was advised that there were
36 four helicopters involved, but that the area that had been
37 hired by the applicant was sufficient to accommodate the
38 four helicopters and on that basis he - because they'd
39 hired the space anyway it didn't seem a problem, and the
40 safety measures were still appropriate, the area was still
41 secure, that the thing could proceed.
42
43 Q. Do you recall what the particular safe work --
44 A. Method statement.
45
46 Q. What the particular safe work issues were on the day
47 of the wedding that delayed the landing by an hour?

1 A. No. I was advised that the precautions that were
2 outlined in the Safe Work Method Statement hadn't been
3 implemented, that's as much as I know.

4
5 Q. All right.

6
7 MR BOLSTER: Those are my questions, Mr Commissioner.

8
9 THE COMMISSIONER: Are you going to tender Mr McNulty's
10 statement?

11
12 MR BOLSTER: I tender the statement and the annexures to
13 it.

14
15 THE COMMISSIONER: The statement of Hamish McNulty dated
16 14 June 2016 is Exhibit S20.

17
18 **EXHIBIT #S20 STATEMENT OF HAMISH MCNULTY DATED 14/06/2016**

19
20 MR DUGGAN: Commissioner, I only received this bundle this
21 morning. The concern I have is that there's a number of
22 mobile phone numbers and some private details in it.
23 I haven't had a chance to review it.

24
25 THE COMMISSIONER: We will have a look at that as to
26 whether they should be redacted before it goes on any
27 public website.

28
29 MR DUGGAN: Thank you, Commissioner.

30
31 MR BOLSTER: I am happy to accommodate that.

32
33 THE COMMISSIONER: Do you have any questions?

34
35 MR WATSON: I don't.

36
37 MR DUGGAN: I do.

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

40
41 MR DUGGAN: Q. Mr McNulty, you described it as an
42 unusual request but there is nothing inherently wrong with
43 someone seeking permission from the council to land a
44 helicopter in a public space?

45 A. We didn't believe so.

46
47 Q. Again, where someone anticipates that there may be

1 traffic issues that are caused by their private event that
2 may affect road users, it is entirely appropriate, isn't
3 it, for that person to liaise with council?
4 A. Yes.
5
6 Q. In fact there may be circumstances where people don't
7 pre-empt that and it causes difficulties for councils, do
8 you accept that?
9 A. Yes.
10
11 Q. In relation to helicopter safety requirements you have
12 referred, I think, to requirements imposed by CASA?
13 A. I've referred to a document from the CASA website
14 which specified their requirements for a helicopter landing
15 site.
16
17 Q. Were you aware as to whether CASA imposed formal
18 requirements in relation to this specific landing on this
19 particular day?
20 A. I'm not aware.
21
22 Q. So you have never seen any of the requirements?
23 A. No.
24
25 Q. Did you see some requirements from the CASA website
26 that you thought were applicable?
27 A. Well, we saw the document that we supplied to
28 Mr Mehajer, that was what we were aware of. And we were
29 also advised that it was the helicopter operators'
30 responsibility to make sure he complied with those
31 requirements.
32
33 Q. Did they include ground safety requirements, if I can
34 put it that way?
35 A. I can't recall.
36
37 Q. The safe work document, the SWMS --
38 A. Safe Work Method Statement, yes.
39
40 Q. Do you have a copy of that? Do you know where one can
41 find it?
42 A. No. I don't have a copy, no.
43
44 Q. You reviewed it, presumably --
45 A. I commented I haven't seen it.
46
47 Q. You've never seen it?

1 A. I've never seen it.
2
3 Q. Could I take you to page 56 of the bundle, please,
4 your statement.
5 A. Yes.
6
7 Q. This is an email from Mr Yaseen to Mr Fitzgerald. You
8 were copied in on it, do you see that?
9 A. Yes.
10
11 Q. Do you see there that it has attachments and it's got
12 some letters and numbers and then dot PDF?
13 A. Yes.
14
15 Q. Do I understand that page 58 is the attached PDF to
16 the email?
17 A. It would either be that or the insurance policy
18 document, I'm not sure which.
19
20 Q. Is it possible that this happened: you were copied in
21 on this email and that you didn't open page 58 of the PDF,
22 is that possible?
23 A. It's possible.
24
25 Q. Just looking at page 58, given your understanding of
26 the circumstances surrounding this helicopter landing
27 application or perhaps more accurately, permission to use
28 the oval from the council for that purpose, what do you
29 understand H1, H2, H3 and H4 to mean?
30 A. Well, with the hindsight I now have, I understand what
31 it is. At the time if I'd seen that, and I can't recall
32 whether I did or not, I would have thought they were
33 potential landing sites for a helicopter because our
34 discussion all along had been about a helicopter.
35
36 Q. I suggest to you that a possible explanation for H1 to
37 H4 is that there would be four helicopters as a possible
38 explanation?
39 A. It is, but we had only ever discussed one.
40
41 Q. But you are saying you didn't open this attachment?
42 A. No, I didn't say - I said I don't recall whether I did
43 or not.
44
45 MR DUGGAN: No further questions, Commissioner.
46
47 THE COMMISSIONER: Does anyone else have any questions for

1 Mr McNulty?

2

3 MR McNALLY: Yes, thank you, Mr Commissioner.

4

5 <EXAMINATION BY MR McNALLY:

6

7 MR McNALLY: Q. Mr McNulty, how long were you at the
8 Auburn City Council for?

9 A. I started I believe in November 2013.

10

11 Q. I see. When you finished there was your position the
12 deputy manager direct services?

13 A. The whole - well, I left Auburn City Council when it
14 was amalgamated to form Cumberland City Council and my
15 position the whole time I was at Auburn was deputy general
16 manager direct services.

17

18 Q. What does that entail?

19 A. It had responsibility for community services,
20 libraries, and all the outdoor stuff.

21

22 Q. So from your position you were able to oversee what
23 general achievements had been achieved by the council that
24 had been elected in 2012; is that correct?

25 A. Well, from November 2013, yes.

26

27 Q. Certainly. I think in your view there were quite a
28 number of significant achievements of that council that you
29 observed, is that correct?

30 A. That's correct.

31

32 Q. In fact, there were some major capital projects that
33 were undertaken during the course of that council which you
34 observed; correct?

35 A. That's correct.

36

37 Q. One of those major capital projects was a major
38 upgrade of the Auburn Town Centre?

39 A. Correct.

40

41 Q. And that occurred in mid-2014?

42 A. Correct. It was completed then, yes, I believe.

43

44 Q. Was that successful?

45 A. Yes it was.

46

47 Q. What did it bring to the town centre?

1 A. It brought a great - a significantly higher level of
2 amenity to the town centre in terms of foot paving,
3 landscaping.
4
5 Q. I see. That improved the amenity for both residents
6 and visitors; is that right?
7 A. Absolutely.
8
9 Q. It was regarded throughout the community as a very
10 significant improvement of the town centre?
11 A. Well, the council certainly considered that.
12
13 Q. Right. But you have spoken to residents as well and
14 many residents were of that view?
15 A. I've never spoken to anybody who was disappointed with
16 the outcome.
17
18 THE COMMISSIONER: Q. It must be near here, is it?
19 A. It's just - yes, there.
20
21 MR McNALLY: Q. As one walks from the railway station up
22 to these council premises, it is the whole streetscape?
23 A. Auburn Road, yes, correct.
24
25 Q. It is that grey paving and --
26 A. Grey paving.
27
28 Q. -- places to sit and little areas for the kids to
29 play, all that sort of thing?
30 A. Yes.
31
32 Q. There was also a Berala Community Centre that was
33 completed in September 2015?
34 A. Correct.
35
36 Q. What was that?
37 A. It's a community centre which has a number of - a
38 large main hall, several smaller rooms for meetings and
39 activities and it's --
40
41 Q. That filled a need for what you regarded as an
42 underprivileged area of the council?
43 A. An under-served area of the council, yes.
44
45 Q. There was also a proposed redevelopment of the
46 Ruth Everuss Aquatic Centre?
47 A. It is more than proposed. It is about 50 per cent

1 complete.

2

3 Q. I see. It was commenced under the present or the
4 recently dismissed council?

5 A. Yes, it was commenced late last year, or August last
6 year.

7

8 Q. These were all infrastructure projects that were
9 implemented for the benefit of the community?

10 A. Correct.

11

12 Q. As well as those infrastructure projects, there were a
13 number of large traffic projects that were also in the
14 process of being undertaken when the council was dismissed?

15 A. Sorry, could you be a bit more specific?

16

17 Q. There were significant traffic delays that had been
18 occurring in Regents Park?

19 A. Oh, the Regents Park Railway Bridge project, yes.

20

21 Q. I think you were also of the view that Auburn City is
22 one of the most culturally diverse areas in Australia?

23 A. I believe that to be the case.

24

25 Q. That presents a special challenge to the council,
26 doesn't it?

27 A. It does.

28

29 Q. I think you're of the view that the council has
30 responded very well in respect of those difficulties?

31 A. Correct.

32

33 Q. I think it is the case, isn't it, that the council has
34 won a number of awards in recent years?

35 A. That's correct.

36

37 Q. What sort of awards are they?

38 A. Oh, I haven't got the document in front of me, but we
39 won a number of awards for The Refugee Camp in my
40 Neighbourhood project. I believe our community bus loop
41 won an award and were highly commended. There's a range of
42 them. I just don't have them at my fingertips, I'm sorry.

43

44 Q. And all of the matters we have discussed are matters
45 that council staff have to work with the elected
46 councillors in order to progress those matters, that's
47 correct, isn't it?

1 A. The projects? Definitely, yes.
2
3 Q. I think most recently, in 2015, the Auburn City
4 Council won the Excellence in Diversity award in the
5 New South Wales Government Excellence awards; is that
6 correct?
7 A. I believe that's the case, yes.
8
9 MR McNALLY: Nothing further.
10
11 THE COMMISSIONER: Thank you. Mr Mantei?
12
13 MR MANTEI: No, thank you, Commissioner.
14
15 MR PRICE: No.
16
17 THE COMMISSIONER: Mr Cheshire?
18
19 MR CHESHIRE: I only have one question.
20
21 **<EXAMINATION BY MR CHESHIRE:**
22
23 MR CHESHIRE: Q. You gave evidence, Mr McNulty, about a
24 telephone conversation with Mr Fitzgerald where you
25 discovered for the first time that there were four rather
26 than one helicopter?
27 A. Correct.
28
29 Q. When you had that telephone conversation with
30 Mr Fitzgerald, did he tell you that he had already approved
31 the increase from one to four helicopters, or was he
32 calling you for the two of you to make the decision?
33 A. My recollection is it had been approved.
34
35 Q. By?
36 A. Mr Fitzgerald.
37
38 MR CHESHIRE: Thank you very much. Thank you,
39 Commissioner.
40
41 MR LATHAM: No questions.
42
43 THE COMMISSIONER: Anything further?
44
45 MR BOLSTER: No, Commissioner.
46
47 THE COMMISSIONER: Thank you very much for coming. You

1 are excused, Mr McNulty. We will adjourn until 2 o'clock.

2

3 <THE WITNESS WITHDREW

4

5 LUNCHEON ADJOURNMENT

6

7 UPON RESUMPTION

8

9 MR BOLSTER: Thank you, Commissioner. Mr Hamed is
10 present. With an interpreter, Mr Hamed has indicated to me
11 that he has an objection to giving evidence today. He is
12 not at the moment legally represented. He has a solicitor;
13 his solicitor is apparently not able to be here today.

14

15 THE COMMISSIONER: His solicitor is not here?

16

17 MR BOLSTER: No. I think he needs to come forward.

18

19 THE COMMISSIONER: Have a seat, Mr Hamed, and
20 Madam Interpreter, if you can.

21

22 <MUSTAFA HAMED, called: [2.05pm]

23

24 (All answers in this proceeding is through
25 Interpreter unless otherwise indicated)

26

27 THE COMMISSIONER: Mr Hamed, you don't want to give
28 evidence today?

29

30 MR HAMED: (Through interpreter) I would like to have a
31 solicitor present with me.

32

33 THE COMMISSIONER: Why?

34

35 MR HAMED: (Through interpreter) Because the managers in
36 my - in the association, they ask me not to give evidence
37 unless I have a lawyer.

38

39 THE COMMISSIONER: No, that is not a reason that I would
40 accept. Is there any other reason why you feel as though
41 you need to be legally represented here to be a witness?

42

43 MR HAMED: (Through interpreter) Because I'm not aware of
44 all the laws.

45

46 THE COMMISSIONER: What laws?

47

1 MR HAMED: (Through interpreter) Any laws. I might give
2 some information which are not true.
3
4 THE COMMISSIONER: Perhaps we better explain it this way.
5 This is a public inquiry into the Auburn City Council. You
6 understand that?
7 MR HAMED: (Through interpreter) Yes.
8
9 THE COMMISSIONER: What we are inquiring into, in broad
10 terms, is the conduct or acts of the former councillors of
11 Auburn City Council. Understood?
12
13 MR HAMED: (Through interpreter) Yes.
14
15 THE COMMISSIONER: And some of the council staff.
16 Understood?
17
18 MR HAMED: (Witness nods).
19
20 THE COMMISSIONER: The inquiry is not inquiring into your
21 conduct or any other organisation, including the
22 organisation you mentioned. Is that the Bhanin
23 Association, have I said that right?
24
25 MR HAMED: Yes.
26
27 THE COMMISSIONER: You, I know, have had some
28 conversations with Mr Bolster, Counsel Assisting, and
29 another member of the inquiry staff?
30
31 MR HAMED: (Through interpreter) Yes.
32
33 THE COMMISSIONER: That may have been on the phone.
34 I don't know whether they were face-to-face or --
35
36 MR HAMED: (Through interpreter) I had an interview with
37 him and I spoke both to them.
38
39 THE COMMISSIONER: All right. And as a result of that
40 I know that you have given some information to the inquiry.
41
42 MR HAMED: (Through interpreter) General information.
43
44 THE COMMISSIONER: Yes.
45
46 MR HAMED: (Through interpreter) This is the information
47 that I have.

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THE COMMISSIONER: Yes. As a result of giving that information, that is why you have received a summons to appear today. The summons requires you to answer questions unless you have a reasonable excuse not to. Understood?

MR HAMED: (Nods).

THE COMMISSIONER: What I don't understand at the moment is why, as a witness, you would require your own lawyer here to be authorised to represent you.

MR HAMED: (Through interpreter) Because I own - I'm responsible for this association and this association owns lots assets in the area where they were doing the rezoning.

THE COMMISSIONER: There is no inquiry into the conduct of that association. The inquiry is into the Auburn City Council, its former councillors and staff. I don't presently see why Mr Hamed needs to be legally represented or why I would grant authorisation for him to have legal representation today.

MR HAMED: (Through interpreter) Because I represent this community, I'm not representing myself as an individual.

THE COMMISSIONER: There is no inquiry into the community either. What I would be prepared to do, though - you have a solicitor?

MR HAMED: A solicitor - sorry.

THE COMMISSIONER: Is there another solicitor?

MR HAMED: Yes; not Mr Zreika, another solicitor.

THE COMMISSIONER: You have heard and understood that I don't believe there is a proper ground for me, or it is necessary for me to grant a lawyer authorisation to appear for you. Do you understand that?

MR HAMED: (Through interpreter) Okay.

THE COMMISSIONER: And I don't want to hold the inquiry up while we wait for a lawyer, but what I would be prepared to do - would you like some time, I would be happy to give you some time now to make a phone call to your lawyer to

1 explain what I have just said.
2
3 MR HAMED: (Through interpreter) No, that's fine. We can
4 go ahead.
5
6 THE COMMISSIONER: All right. Thank you. Before we go
7 ahead, in relation to your evidence, do you want to give
8 your oath on a book or by affirmation?
9
10 MR HAMED: (Through interpreter) Affirmation.
11
12 THE COMMISSIONER: Could I ask you what you would like?
13
14 INTERPRETER: The same.
15
16 <RITA MEHME, affirmed to interpret: [2.09pm]
17
18 THE COMMISSIONER: Could I have your name, please?
19
20 INTERPRETER: Rita Mehme - R-I-T-A, M-E-H-M-E.
21
22 <MUSTAFA HAMED, affirmed: [2.10pm]
23
24 <EXAMINATION BY MR BOLSTER:
25
26 MR BOLSTER: Q. Mr Hamed, is your full name
27 Mustafa Hamed?
28 A. Yes.
29
30 Q. Spelt M-U-S-T-A-F-A?
31 A. Yes.
32
33 Q. H-A-M-E-D? You're currently the secretary of the
34 Bhanin El Minieh Association?
35 A. (Through interpreter) Yes.
36
37 Q. The association owns property in Auburn Road, Auburn;
38 correct?
39 A. (Through interpreter) Four properties.
40
41 Q. Four properties. What are the street addresses of the
42 four properties?
43 A. 94, 96, 98, 100.
44
45 Q. The association is a not-for-profit organisation;
46 correct?
47 A. Yes.

1
2 Q. Could you tell the Commissioner what sort of
3 activities the association does for people who come and see
4 it and ask for its help?
5 A. (Through interpreter) We have assistance for the
6 youth, family support for women and single mothers,
7 assistance for the aged and community development program.
8
9 THE COMMISSIONER: We are having a problem with the mic,
10 are we? Move a a bit closer, please.
11
12 MR BOLSTER: I think the interpreter needs to move closer.
13
14 THE WITNESS: (Through interpreter) Community development
15 programs and we have a few other projects and we give
16 services for quick emergency relief. Okay. And in case of
17 death, they can use, families could use the help for the -
18 you know, for the funeral.
19
20 MR BOLSTER: Q. You work there on a voluntary basis?
21 A. (Through interpreter) Yes.
22
23 Q. Mr Faydi Sadic, he is a director of the organisation?
24 A. (Through interpreter) Yes.
25
26 Q. Mr Hamed, how long have you known Mr Oueik, Mr Ronney
27 Oueik?
28 A. (Through interpreter) I know him since he was young
29 and then I saw him again when he came back to Australia in
30 1994.
31
32 Q. Did you know him back in Lebanon?
33 A. (Through interpreter) I used to know him when he was
34 three, four years old.
35
36 Q. You come from the same town in Lebanon?
37 A. Yes.
38 A. (Through interpreter) Yes.
39
40 Q. How long have you known Mr Attie, Ned Attie?
41 A. (Through interpreter) Since about 10 years ago.
42
43 Q. 30 years ago?
44
45 INTERPRETER: 10 years ago.
46
47 MR BOLSTER: Q. Does his family come from the same town

1 in Lebanon?
2 A. (Through interpreter) Yes.
3
4 Q. What is that town?
5 A. (Through interpreter) Markabta.
6
7 Q. Is that a large town or a small town?
8 A. (Through interpreter) Okay. I don't know that town
9 much but this town has its own council.
10
11 MR WATSON: I think it should be spelt.
12
13 MR BOLSTER: Q. If you could spell it, please, I think
14 that would be very helpful.
15
16 THE INTERPRETER: M-A-R-K-A-B-T-A.
17
18 MR BOLSTER: Markabta, is that it?
19
20 THE INTERPRETER: Yes.
21
22
23 MR BOLSTER: Q. What size of town are we talking
24 about? Are we talking about a city of a million people,
25 are we talking about 100,000 people, or are we talking
26 about something a bit smaller?
27 A. (Through interpreter) Okay. Now, there's Al Minie
28 area which has Al Minie, it's another - it's the name of
29 the Governorate and it has five councils. One of these
30 councils is Markabta.
31
32 THE INTERPRETER: But he can't say a number. He can't
33 give a number of population.
34
35 THE WITNESS: (Through interpreter) I've only been to
36 Markabta when I was seven years old.
37
38 MR BOLSTER: Q. How long have you known Mr Zraika,
39 Hicham Zraika?
40 A. (Through interpreter) I know him when he was with the
41 Labor Party with Mr Chris Cassidy. I don't know him before
42 that.
43
44 Q. How long has that been that you have known Mr Zraika?
45 A. (Through interpreter) About three - when Hicham --
46
47 THE WITNESS: Not exactly but I know him from --

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MR BOLSTER: Roughly. Roughly.

INTERPRETER: 10 years.

MR BOLSTER: Q. 10 years, thank you. Each of Mr Oueik, Mr Attie and Mr Zraika, do they take part in functions at the association premises in Auburn Road?

A. (Through interpreter) If you can see all these photos on the wall there, all of them they have been to functions in the Bhanin Association.

Q. All of the mayors have supported this --

THE COMMISSIONER: Not the Queen.

THE WITNESS: (Through interpreter) All of them. Since 1979. 1978 in the case of Tom Uren. All the State and Federal councillors, they all go to Bhanin Association.

MR BOLSTER: Q. Is it fair to say that each of Mr Oueik, Mr Attie and Mr Zraika have been supporters of the organisation right through until, say, the middle of last year; is that correct?

MR WHEELHOUSE: I object.

THE COMMISSIONER: Let me hear the objection first.

MR WHEELHOUSE: It is a composite question and it contains a word which is unclear.

THE COMMISSIONER: I didn't hear the word. What's the word?

MR WHEELHOUSE: "Supporters".

MR BOLSTER: We will do it another way.

Q. Mr Hamed, in the case of Mr Oueik, has he been someone who has over, say, the last five years, shown, to your knowledge, an interest in what the association has been doing and supported it?

A. (Through interpreter) Never. Once I have applied for something in this council and he - and Mr Oueik was the mayor and I lost the application. I didn't get the grant. I wasn't granted.

1
2 Q. Was that for your own personal property, was it?
3 A. (Through interpreter) It wasn't for a property. A
4 grant.
5
6 THE COMMISSIONER: Q. A grant for the association?
7 A. Yes.
8
9 MR BOLSTER: Q. What sort of grant was that?
10 A. (Through interpreter) Once we asked for cooking.
11
12 Q. For?
13 A. (Through interpreter) Cooking. Cooking, for cooking.
14
15 Q. Funding for cooking classes?
16 A. (Through interpreter) Funding for cooking classes.
17
18 Q. Who do you say rejected that application?
19 A. (Through interpreter) The committee and the council.
20 What I'm saying, what I'm trying to say, that when Mr Oueik
21 was the mayor we didn't - we weren't granted or given
22 anything. We didn't get any benefit.
23
24 Q. All right.
25
26 MR WHEELHOUSE: I didn't understand the evidence. I'm
27 trying to hear it.
28
29 THE COMMISSIONER: Which bit didn't you understand?
30
31 MR WHEELHOUSE: The words that were spoken.
32
33 MR WATSON: He didn't get everything he wanted, in
34 essence.
35
36 THE COMMISSIONER: No, he didn't get any grant at all, or
37 he didn't get anything when Mr Oueik --
38
39 THE WITNESS: We got the grant from council, we got the
40 grant from the council, yes, but Ron Oueik, the --
41
42 THE COMMISSIONER: Not when Mr Oueik was mayor?
43
44 THE WITNESS: Yes, it's refused because not a matter that
45 - (Through interpreter) Because we didn't meet all the
46 terms and conditions, so we didn't get the grant while
47 Mr Oueik was the mayor.

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THE COMMISSIONER: Thank you.

MR BOLSTER: Q. Do you describe Mr Oueik as a personal friend of yours?

A. (Through interpreter) They're all my personal friends. They're all from the same village. They come from the same town. We have to be friends.

Q. I want to take you back to a period of about a month before the 2015 state election. Did Mr Oueik come to see you and talk to you about his candidature for the state seat of Auburn?

A. (Through interpreter) He came and visited me, yes.

Q. What did he say to you?

A. (Through interpreter) He asked me, he said, "What's your opinion, what do you think if I do" - you know, "if I do enter into this election as a candidate?"

Q. And what else did he say to you?

A. (Through interpreter) I asked him and I said, "What do you think?" And he said that "My heart is saying that I should but my mind is saying I shouldn't", and I told him, "Well, use your mind. Follow your mind."

Q. How many times did Mr Oueik discuss his candidature with you?

A. He come second time.

MR WHEELHOUSE: I object on the grounds that my client's conduct seeking election to New South Wales State Parliament is outside the terms of reference.

THE COMMISSIONER: It might be leading up to something so I'll let it go.

THE WITNESS: (Through interpreter) He came and visited me again another time.

MR BOLSTER: Q. How long before the election did he visit you on the second occasion?

A. (Through interpreter) About a month.

Q. About a month.

A. (Through interpreter) Can't remember exactly. Okay. I asked him the same question and he said, "My wife didn't

1 want me", doesn't - "she need" - I asked him, "What does
2 your wife think, Fatun?", "What does your wife Fatun think
3 about you going into the election? Does she want you to
4 run or not?", and he said "No." And I told him, "Well,
5 I agree with Fatun", like, "don't run".
6

7 Q. And what did he say?

8 A. (Through interpreter) He didn't say anything.
9

10 Q. Did he ask you to support him at the election?

11 A. (Through interpreter) No, but he knows where I stand.
12 I'm with Labor.
13

14 Q. You have always known that he is involved with the
15 Liberal Party, I take it?

16 A. (Through interpreter) I know that he was in the
17 Liberal Party from, you know, before the elections, in the
18 '90s.
19

20 Q. You have made no secret of the fact that you support
21 the Labor Party?

22 A. (Through interpreter) All the Arabic community in
23 New South Wales, they all know that I stand and support the
24 Labor Party, the left wing.
25

26 Q. During the election campaign did you discuss
27 Mr Oueik's candidature with him on any other occasion?

28 A. (Through interpreter) I only saw him on the day of the
29 election in Auburn Central.
30

31 Q. What happened on the day of the election when you saw
32 him?

33 A. (Through interpreter) I spoke to him and I told him,
34 "You're doing a good job", because he had a good team with
35 him.
36

37 Q. What did he say to you?

38 A. (Through interpreter) "I leave it up to God".
39

40 Q. At that time, the Bhanin Association had made
41 representations to council about a rezoning for
42 Auburn Road; correct?

43 A. (Through interpreter) It happened on two stages. For
44 a while we knew that there were changes happening and
45 rezoning.
46

47 Q. Those changes involved a B4 zoning over the

1 association's properties in Auburn Road; correct?
2 A. (Through interpreter) Okay. What I know that when
3 they want to do changes and rezoning from Beatrice Street
4 all the way to Helena Street, they should be all the same.
5 It should include the whole place.

6
7 THE COMMISSIONER: Q. The same zone?

8 A. Yes.

9
10 MR BOLSTER: Q. Had you discussed those changes?

11 A. (Through interpreter) At first - at that time, at
12 first, we didn't discuss anything with anyone.

13
14 Q. You didn't discuss it with anyone?

15 A. (Through interpreter) At first, no. But when we knew
16 later that the rezoning only included up to number 92, only
17 included up to 92 where they are allowed to have nine
18 levels and our - the properties owned by our association
19 and the church were only allowed to have four levels, this
20 is when we discussed the matter.

21
22 Q. When you found out that difference, that change, what
23 was your reaction?

24 A. (Through interpreter) Okay. It's not only my
25 reaction but the reaction of the association and the whole
26 community, as we are a non-profit organisation where the
27 business people, like Mohamed Mehajer, and where the petrol
28 station are allowed to have, to build nine levels, when the
29 church and the Bhanin Association, which is the community
30 welfare, non-profit, will only - are only allowed to have
31 four levels.

32
33 Q. Were you upset by that?

34 A. (Through interpreter) Of course, because we are a
35 community. Because we are a non-profit organisation, the
36 money we make or we take we use it - we put it again in the
37 community and we use it for people while the other people
38 are business people.

39
40 Q. How were you going to make money out of the B4 zoning?

41 A. (Through interpreter) If you ask me questions about
42 the B4 or B9 or whatever, I don't understand much, but
43 personally, my personal opinion, I'm against any high-rise
44 anywhere.

45
46 Q. You were disappointed when it went from B4 down to
47 something else; correct?

1 A. (Through interpreter) Okay. If the rezoning was all
2 across the board on the whole street, it was like four
3 levels, that's fine, we wouldn't mind that.
4
5 THE COMMISSIONER: Q. At one stage there was a proposal
6 that the Auburn Road go to a commercial zoning the whole
7 way, but ultimately your association building was left with
8 a residential zoning.
9 A. (Through interpreter) Okay. Even if I do accept
10 this, the people in - the rest of the people in the
11 association which I am representing them, they're not going
12 to agree on this, they're not going to be happy with it.
13
14 Q. They were unhappy that the commercial zoning didn't go
15 right down the street?
16 A. (Through interpreter) Because at first it was going
17 to include all of them.
18
19 Q. Yes.
20 A. (Through interpreter) As if they're - we are being
21 punished. As a punishment.
22
23 MR BOLSTER: Q. You had a conversation with Mr Campbell
24 who was on council, who is sitting at the back of the room
25 today?
26 A. Yes.
27
28 Q. You have known Mr Campbell for many years as well
29 through the Labor Party; correct?
30 A. Yes.
31
32 Q. You spoke to him on 15 March this year, didn't you
33 A. I don't remember the date, but I spoke with him, yes.
34 We have community - we have a group in Auburn, a committee
35 in Macquarie Street, meetings there.
36
37 Q. When you saw Mr Campbell, you told him that the shift
38 from B4 to R4 was punishment for the association, didn't
39 you?
40
41 THE COMMISSIONER: Just wait for the answer.
42
43 MR WHEELHOUSE: He said he couldn't remember having a
44 conversation, so putting a leading question to him in that
45 form --
46
47 THE COMMISSIONER: No, he didn't say that at all.

1
2 MR BOLSTER: He said he couldn't remember the precise
3 date.
4
5 THE COMMISSIONER: He said he couldn't remember the date.
6 Sorry, we interrupted. You can give the answer now.
7
8 MR WHEELHOUSE: Perhaps the witness could be asked a
9 non-leading question.
10
11 THE COMMISSIONER: Does Mr Hamed need the question again
12 or does he know what he was asked? He was asked about a
13 conversation.
14
15 MR WHEELHOUSE: It is a leading question.
16
17 THE COMMISSIONER: What he was asked --
18
19 THE INTERPRETER: No, no, I've got it.
20
21 THE COMMISSIONER: You've got it? Okay, great.
22
23 THE WITNESS: (Through interpreter) Yes, I told him, it's
24 a punishment for the church and for the association.
25
26 MR BOLSTER: Q. What were your exact words to
27 Mr Campbell as best you can recall?
28
29 MR WATSON: I object to that. Could I just explain as it
30 is a slightly different objection?
31
32 THE COMMISSIONER: Certainly.
33
34 MR WATSON: I can only trust Counsel Assisting's judgment
35 on this, but what we have heard so far is that plenty of
36 people are thrilled and others disappointed, depending upon
37 planning decisions. With due respect, this should not be
38 put unless there is a substantial basis for it. If it is
39 only an expression of one person's disappointment, then it
40 is inappropriate, given that no doubt it will be picked up
41 and reported as though it was punishment being meted by
42 specific people.
43
44 THE COMMISSIONER: I think you are right that it needs to
45 be explored whether the perception of punishment is based
46 on knowing some facts and then speculating as to the final
47 conclusion, or whether Mr Hamed, when he is talking about

1 punishment, has a view based on something that was said to
2 him by a particular person. I agree with you there and
3 that would, no doubt, be something that you would clarify
4 if it is not clarified by Counsel Assisting, but I would
5 expect him to do that.

6
7 MR WATSON: Yes.

8
9 THE COMMISSIONER: I partly agree with you. I think he is
10 allowed to pursue the line of questioning, but I agree it
11 needs to be clarified.

12
13 MR WATSON: I should not have put it the way that I did.
14 I didn't wish to stop the questioning. I sort of wanted to
15 make a point.

16
17 THE COMMISSIONER: The point you are making is reasonable
18 about whether the sense of punishment is based on
19 speculating because something has happened, that this must
20 have happened, or whether it is based on something
21 additional.

22
23 MR WATSON: Thank you.

24
25 MR BOLSTER: I think the witness said the word
26 "punishment" first.

27
28 MR WATSON: That might be right. I'm sorry, I'm not --

29
30 MR BOLSTER: Q. When you used the word "punishment", why
31 did you use that word?

32 A. (Through interpreter) Because at the beginning we
33 were included in that zoning where we could have eight or
34 nine levels, but then when they changed it, as a community
35 we felt as we are being punished. It's normal to feel like
36 that.

37
38 Q. Do I understand it this way: because of the change,
39 you felt that someone was punishing you, punishing the
40 organisation?

41 A. (Through interpreter) Yes.

42
43 Q. Was that the only way in which the decision made any
44 sense to you as the secretary of the association?

45 A. (Through interpreter) Not only me. The whole
46 community understood it that way.

47

1 Q. That is the way you perceived the community felt; is
2 that right?

3 A. (Through interpreter) All the people from the
4 community, when they come to the association to get any
5 services, they used to say, "How come they did this to
6 you?"

7

8 THE COMMISSIONER: Q. Were you ever given an explanation
9 as to why originally it was proposed to have a commercial
10 B4 zoning down the entirety of Auburn Road, which included
11 the association's building, and why it was changed to leave
12 you with a residential zone?

13 A. (Through interpreter) Okay. We didn't discuss any of
14 this with Ronney or Hicham after this happened, but we
15 spoke with Tony and with George. Not only us, even the
16 church people and the people in Susan Street.

17

18 Q. This is Tony Oldfield and George Campbell?

19 A. Yes.

20 A. (Through interpreter) And Faydi was a person who
21 represented us and they told him we are against the whole
22 thing.

23

24 Q. They were always against any change to zoning?

25 A. Yes.

26

27 Q. Yes. But did anyone explain to you why it ended up -
28 instead of being a B4 zoning for Auburn Road, why it was
29 partly B4 and partly residential and you were stuck in the
30 residential bit, did anyone ever explain that to you?

31 A. (Through interpreter) No, no-one explained.

32

33 Q. Did you or anyone from the association, outside of
34 asking former Councillors Campbell and Oldfield, ask any of
35 the council staff why that had happened?

36 A. (Through interpreter) We got the consultant, we got a
37 lawyer and there are some correspondence and letters
38 between the council and the association.

39

40 Q. Asking for an explanation?

41 A. (Through interpreter) Asking for explanation and we
42 were ready to go to the minister even and talk to him. We
43 had a big meeting for the whole Susan Street.

44

45 Q. Yes.

46 A. (Through interpreter) There were about 50 people in
47 that meeting and we had decided to take an action against

1 them and even to go to court.

2

3 THE COMMISSIONER: All right. I might leave it there.
4 Thank you.

5

6 MR BOLSTER: Q. Before the change when you thought a
7 proposal was just B4 along Auburn Road, had anyone led you
8 to believe that they would support you in relation to that
9 proposal going forward - anyone on council?

10 A. (Through interpreter) We didn't spoke with the other
11 people, we only spoke with Irene, George and Tony, I think.

12

13 Q. Irene, George and Tony made it clear all along that
14 they were against it?

15 A. (Through interpreter) Correct.

16

17 Q. You say you didn't approach any of the other
18 councillors?

19 A. (Through interpreter) You mean me personally or
20 someone else?

21

22 Q. You personally.

23 A. (Through interpreter) Maybe I spoke with Ned at the
24 coffee shop and it was an argument.

25

26 THE COMMISSIONER: I think Mr Hamed said he didn't speak
27 to anyone. He became aware through a notification from the
28 council that this proposal was being proposed.

29

30 MR BOLSTER: Q. You say you may have had a conversation
31 with Ned. When was that? Was that before the state
32 election or after?

33 A. (Through interpreter) After.

34

35 Q. And after the change from B4 to R4?

36 A. (Through interpreter) Yes.

37

38 Q. You say you had a fight with him.

39 A. (Through interpreter) Argument.

40

41 Q. What was the argument about?

42 A. (Through interpreter) He was defending and saying,
43 "No, it was still B4", but we didn't understand the
44 decision.

45

46 Q. He said it was still B4?

47 A. (Through interpreter) Meaning that before it's a

1 high-rise, yes. Yes, he said we still can do high-rise.
2
3 Q. He said you can still do high-rise but you couldn't do
4 a high-rise at a B4 level; is that right?
5
6 INTERPRETER: At a B4 level?
7
8 MR BOLSTER: Q. At a B4 level.
9 A. (Through interpreter) You're making me - you're
10 getting me lost.
11
12 Q. I don't want you to get lost.
13 A. (Through interpreter) Okay. All I understand is that
14 it was supposed to be nine levels from the - to the end of
15 the street and then they did the change and they stopped it
16 where our properties are and I think they're doing it on
17 purpose.
18
19 Q. All right. Did you discuss that with Mr Attie?
20
21 THE COMMISSIONER: Sorry, I missed that last bit. And you
22 thought they were doing it?
23
24 INTERPRETER: They did it on purpose.
25
26 MR WATSON: Sorry, I didn't catch that?
27
28 THE COMMISSIONER: They were doing it on purpose. They
29 did it on purpose.
30
31 MR WATSON: He thought they did it on purpose, right.
32
33 MR BOLSTER: Q. Did you have a meeting with Mr Attie
34 where you discussed that?
35 A. (Through interpreter) It wasn't a meeting. I was
36 walking in Auburn and I saw him having coffee at, in 'Mado'
37 and I stopped, spoke with him, and it was an argument.
38
39 Q. What did you say to him?
40 A. (Through interpreter) I told him, "Why have you done
41 this to us?" He told me, "It's got nothing to do with me.
42 I'm out". He said, "I left the meeting, I went out."
43
44 THE COMMISSIONER: Q. What, didn't vote?
45 A. Yes. (Through interpreter) This is what he told me;
46 this is what he told me.
47

1 MR BOLSTER: Q. You spoke to him because you had been
2 made aware that the proposal had changed; correct?
3 A. (Through interpreter) Of course. Why would I talk
4 him then?
5
6 Q. Why were you upset with Mr Attie?
7 A. (Through interpreter) I'm not only upset with him,
8 I'm upset with all of them. Everyone.
9
10 Q. All 10 councillors?
11 A. No.
12
13 Q. Okay. Who were you upset with?
14 A. (Through interpreter) Ronney, Hicham and Ned.
15
16 Q. Why were you upset with Mr Attie?
17 A. (Through interpreter) Because Ronney, Hicham and Ned,
18 they all know the services that this association are
19 offering for the community. For 30 years they know what we
20 do.
21
22 Q. Is there any other reason why you were upset with
23 them?
24 A. (Through interpreter) No, there's no other reason.
25 And because I support them in the council elections.
26
27 Q. You said you saw Ned and you had a conversation with
28 him. Have you seen Mr Oueik since the decision?
29 A. No. The last time I saw him in election day, 27 April
30 or March, I think.
31
32 THE COMMISSIONER: The state election --
33 A. State election.
34
35 Q. -- 28 March 2013?
36 A. Yes, 2 o'clock - midday, 2 o'clock in Auburn Central.
37 The last time I saw him is two days ago.
38
39 MR BOLSTER: Q. What about Mr Zraika, have you seen him
40 and discussed this issue with him since the decision was
41 made?
42 A. Never ever discuss it with Hicham. I saw him twice
43 when his cousin passed away.
44
45 INTERPRETER: He saw him twice in the funeral of his
46 cousin.
47

1 THE WITNESS: Not the funeral.
2
3 INTERPRETER: Sorry. The cousin passed away in Lebanon
4 but they had, like, a memorial funeral here.
5
6 MR BOLSTER: And he went --
7
8 INTERPRETER: And I went to pay my condolences.
9
10 THE WITNESS: (Through interpreter) After the elections
11 Ronney, Hicham and Ned, they never contacted me and I never
12 spoke with them.
13
14 MR BOLSTER: Commissioner, that is the examination.
15
16 THE COMMISSIONER: A few of the other barristers here and
17 legal representatives are going to ask you some questions.
18
19 MR WATSON: I don't wish to.
20
21 THE COMMISSIONER: You don't. All right. Mr Duggan?
22
23 MR DUGGAN: No.
24
25 THE COMMISSIONER: Mr Wheelhouse?
26
27 MR WHEELHOUSE: No.
28
29 THE COMMISSIONER: Mr McNally?
30
31 MR McNALLY: No, thank you, Commissioner.
32
33 THE COMMISSIONER: Mr Cheshire?
34
35 MR CHESHIRE: No, Commissioner.
36
37 MR MANTEI: No, Commissioner.
38
39 MR PRICE: No, Commissioner.
40
41 MR LATHAM: No, Commissioner.
42
43 THE COMMISSIONER: No-one wants to ask you anything.
44 Thank you very much for coming. You are excused
45
46 THE WITNESS: Thank you and good luck to you.
47

1 <THE WITNESS WITHDREW
2
3 MR BOLSTER: Commissioner, that is the witness list for
4 today.
5
6 THE COMMISSIONER: Then we will have to adjourn.
7
8 MR BOLSTER: We will have to adjourn.
9
10 THE COMMISSIONER: We might come back at 9.30 or
11 10 tomorrow?
12
13 MR BOLSTER: I'm easy.
14
15 THE COMMISSIONER: We will make it 10. Who is the first
16 witness tomorrow?
17
18 MR BOLSTER: We have Mr Oueik.
19
20 THE COMMISSIONER: Mr Oueik, then?
21
22 MR BOLSTER: Then Mr Attie.
23
24 THE COMMISSIONER: All right.
25
26 MR WHEELHOUSE: What are you going to do with MFI-5, might
27 I inquire?
28
29 MR BOLSTER: I'm going to talk to Mr Oueik about it too,
30 tomorrow.
31
32 MR WHEELHOUSE: Mr Campbell's note.
33
34 MR BOLSTER: Yes.
35
36 THE COMMISSIONER: If you are worried, at the moment
37 I can't see how I would let all of it in because some of it
38 has not been the subject of any questioning.
39
40 MR WHEELHOUSE: My position is that it is inconsistent
41 with Mr Campbell's affidavit, paragraph 35.
42
43 THE COMMISSIONER: No-one has tried to tender it yet, it
44 is only marked for identification. If there is an attempt
45 to tender, we will see what happens.
46
47 MR BOLSTER: Do you want me to tender it?

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MR WHEELHOUSE: I will just wait and see. It was delivered with such a flurry, I thought something was happening.

MR PRICE: Could I just ask, will we potentially get to Mr Zraika tomorrow afternoon?

THE COMMISSIONER: At a push we had Mr Mehajer pencilled in for tomorrow afternoon and, for his convenience, we will probably know by lunchtime at the latest.

MR BOLSTER: Can I indicate a change to that? If we do finish Mr Oueik and Mr Attie, I think there is a chance we may deal with Mr Fitzgerald, but I can't do Mr Fitzgerald until I have done Mr Attie.

THE COMMISSIONER: All right. You sort all that out.

MR BOLSTER: I think you can take it, Mr Duggan, that your client won't be needed tomorrow.

MR DUGGAN: Can we ask for a not before two marking?

MR BOLSTER: Not before two.

THE COMMISSIONER: Certainly. Because we are pushed for time, I will make it 9.30 tomorrow. I am sorry if that is inconvenient but we are running out of time, but I want to see if we can get through. We will adjourn until 9.30 tomorrow morning.

AT 2.53PM THE INQUIRY WAS ADJOURNED TO THURSDAY, 16 JUNE 2016 AT 9.30AM

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