

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, 13 July 2016 at 10.00am
(Day 12)

1 MR BOLSTER: Mr Commissioner, we have a problem with the
2 interpreters for the day which has necessitated a
3 reshuffling of the witnesses. Thankfully Mr Yang is here.
4 Could I call Mr Yang, we'll get his evidence out of the way
5 and deal with Mr Zraika.

6
7 THE COMMISSIONER: After Mr Zraika.

8
9 MR BOLSTER: That will be the evidence for today.

10
11 THE COMMISSIONER: Mr Francis is still unavailable,
12 Mr Cheshire?

13
14 MR CHESHIRE: That's correct, yes, Commissioner.

15
16 THE COMMISSIONER: You're going to tender that certificate
17 or short report you sent through?

18
19 MR CHESHIRE: I'm certainly intend to do it that way, I'm
20 in the hands of Mr Bolster.

21
22 THE COMMISSIONER: We might have a discussion about that
23 but we'll do that in private, just before the luncheon
24 break, just to discuss a couple of things about the report
25 but that can be a private hearing rather than in public.
26 I think that means, for everyone, we might spill over to
27 tomorrow, but if there is evidence tomorrow, it will be
28 some private hearings based on some information the
29 Commission has received recently and so that won't involve
30 anyone that's presently here, I don't think, and given
31 Mr Francis's continued unavailability, I don't think
32 there's any way we're going to be having any hearings on
33 Friday, this Friday, and we'll have to ultimately list
34 another date, but I'll have to have a discussion with
35 Mr Cheshire about that, so I don't know when that will be.
36 Before we adjourn what's left of this week, I will discuss
37 that with everyone and give everyone a possible date in the
38 future. Mr Yang.

39
40 MR BOLSTER: Yes, if the interpreter can come forward to
41 be sworn as well.

42
43 MR K SMARK SC: Kieran Smark, I appear with Ms Daher on
44 behalf of Mr Oueik. I am taking the place of Mr Wheelhouse
45 pro tem.

46
47 MS M FISHER: Commissioner, Ms Fisher, I am appearing for

1 Ms Lam. I seek authorisation to appear for her, instructed
2 by Mr Plowes.

3

4 <INTERPRETER, sworn to interpret:

5

6 <STEVEN YANG, sworn: [10.10am]

7

8 THE COMMISSIONER: In the private hearing Mr Yang
9 indicated that he understood English and there was a bit of
10 confusion as to whether we were going through the
11 translator or not. What's your procedure?

12

13 MR BOLSTER: I will start asking him some questions
14 directly without the assistance of the interpreter and see
15 how far we go.

16

17 THE COMMISSIONER: Are you comfortable with that
18 Mr Gardiner? What's your preference?

19

20 MR GARDINER: For the purposes of the transcript, given
21 the accent Mr Yang has, it's going to be much easier for
22 transcript purposes if the answer is given through the
23 interpreter.

24

25 THE COMMISSIONER: If the answers are given through the
26 interpreter, yes.

27

28 MR BOLSTER: I have a forensic purpose for doing it that
29 way and I think that will become clear.

30

31 THE COMMISSIONER: I will let you go and we'll see how we
32 go.

33

34 MR BOLSTER: I don't want to be unfair to him. If that
35 arises, my friend can point that out.

36

37 <EXAMINATION BY MR BOLSTER:

38

39 MR BOLSTER: Q. Mr Yang, you were on council from 2012
40 onwards; correct?

41

42 A. Yes, correct.

43

44 Q. When you came to council meetings, you didn't come
45 with an interpreter, did you?

46

47 A. I didn't.

48

49 Q. You dealt with all council business based on what you

1 saw and heard on the floor of the council chamber; correct?

2 A. Yes.

3

4 Q. When you received business papers for council
5 meetings, do I take it that you dealt with those business
6 papers on the basis that you read them and they weren't
7 read to you by anyone else?

8 A. By myself I writing, okay, no problem; writing, yes,
9 all of them.

10

11 THE COMMISSIONER: You might need to repeat that answer
12 and we might need to go through the interpreter for the
13 answer maybe, but it wasn't clear to me either.

14

15 MR BOLSTER: Q. Could you repeat that answer, Mr Yang?

16 A. (Interpreted). Okay. The writing and the speaking,
17 no problem, but the lawyer words or lawyer terminology --

18

19 THE COMMISSIONER: Q. Right, so, "The writing and the
20 speaking, no problem, but the lawyer words" --

21 A. -- some wrong, and the answers, the answers - because
22 depend on cultural background, different --

23

24 MR BOLSTER: Q. Please stop. Could you just wait.

25 Could you please, in Korean, give that answer to the
26 interpreter to translate into English, Mr Yang, thank you.

27 A. (Through interpreter). I'm using the interpreter

28 because sometimes I have difficulties with legal
29 terminologies or sometimes there's difference in cultural
30 nuance.

31

32 Q. Do you agree with me in a lot of the business papers
33 that you would receive as a councillor there was an
34 incredible amount of legal terminology in those business
35 papers; correct?

36 A. Correct, because my background in engineering, so
37 building and general terminology and general common
38 thinking, that is no problem, so that's why without in the
39 chamber, interpreter I didn't, I didn't need.

40

41 Q. Did you ever engage an interpreter to assist you in
42 understanding any of the business papers that you received
43 whilst you were on council?

44 A. All business papers okay, no problem, any business
45 paper and the writing or speaking because all building
46 language and our community general English, such things,
47 but the special lawyer words in case maybe not appearing

1 different, so that's why because between the lawyer words,
2 each some meaning different, that's what I'm talking about.

3
4 Q. Do you recall having any difficulties understanding
5 issues?

6
7 MR GARDINER: I object to this line of questioning.
8 I understand what my friend is trying to do here, but it
9 should be clear that the interpreter has not been sought or
10 requested by Mr Yang. The Commission staff or Mr Bolster
11 have sought the attendance of an interpreter here today to
12 assist the proceedings and it has not been requested by
13 Mr Yang on the basis he doesn't understand proceedings or
14 needs the assistance of an interpreter And if this is
15 attempt to undermine Mr Yang's credibility, I object
16 strongly.

17
18 THE COMMISSIONER: I don't think I understand the
19 objection, I'm sorry.

20
21 MR BOLSTER: There's no suggestion that I'm trying to
22 undermine Mr Yang's credibility.

23
24 THE COMMISSIONER: You proceed. So far I think Mr Bolster
25 is only making inquiries of the witness that he didn't
26 engage or need an interpreter for the purposes of
27 conducting himself and fulfilling, I presume, his
28 obligations as a councillor under the Local Government Act.

29
30 MR BOLSTER: Correct.

31
32 Q. Did you at any stage seek the assistance of someone to
33 explain to you any of the documents that you received as a
34 councillor as part of your duties before you came to a
35 meeting and voted on business of Auburn City Council?

36 A. When we received the business papers or reading before
37 starting general meeting or emergency meeting, or whatever,
38 so that one I can read the - read out all of them, then if
39 it's a problem I can asking for general manager or next to,
40 beside my fellow, then I can get clearly the meaning, then
41 I can conduct or adopt or whatever.

42
43 THE COMMISSIONER: Q. You didn't feel you needed an
44 interpreter to, first of all, understand the business
45 papers?

46 A. No, I understand, yes.

47

1 Q. And you didn't feel you needed an interpreter to
2 follow what was being said at council meetings?
3 A. (Through interpreter). No, I don't need it:
4 I didn't.
5
6 MR BOLSTER: Let's get on to something specific then.
7 Might the witness be shown a copy of exhibit PH4 opened at
8 page 28, the handwritten page 28.
9
10 THE COMMISSIONER: This is the report to the meeting of
11 council for 17 April 2013.
12
13 MR BOLSTER: It's actually the minutes of the 7 October
14 2015 council meeting.
15
16 THE COMMISSIONER: PH4?
17
18 MR BOLSTER: Yes. Page 28.
19
20 THE COMMISSIONER: Page 28, right, I'm sorry. Yes,
21 7 October 2015.
22
23 MR BOLSTER: Yes.
24
25 THE COMMISSIONER: Page 28.
26
27 MR BOLSTER: Q. At page 6 of the minute --
28 A. Which item?
29
30 Q. Do you see the word "Amendment" that's underlined?
31 A. Yes, "Amendment", yes.
32
33 Q. Do you see it says there:
34
35 *An amendment was moved by*
36 *[Councillor] Attie, seconded*
37 *[Councillor] Mehajer:*
38
39 THE COMMISSIONER: Shouldn't you start on the previous
40 page so the witness knows what the topic is?
41
42 THE WITNESS: Yes.
43
44 MR BOLSTER: Q. This was October last year and council
45 were considering the planning proposal for Grey Street,
46 Silverwater. You recall that, don't you?
47 A. Yes. I remember that, yes.

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Q. I take it when you came to council, you had read the business paper for that planning proposal - yes?

A. Yes.

Q. What do you recall the business paper having recommended, or do you need to look at the business paper itself?

A. This one, in the first year I remember that 2014, I remember at Kiama at the beginning year we have a workshop, so in that case Silverwater we open developing this area have to do or not, just a real discussion according to suggested the Auburn Council proposal. So, firstly, we put plan in the first meeting workshop, second occasion we received the agenda in case Silverwater Road that is take away in the Silverwater, so there is surround area not to take shop and also shopping area very hard in that area.

Q. Mr Yang, I'm asking you for --

THE COMMISSIONER: Q. You might be straying from the question. I know it's difficult but just listen carefully to the question. If you don't understand it, let the interpreter or me know.

A. Okay.

Q. But you were starting to talk about things that weren't directly related to the question you were asked.

A. All right. Thank you.

MR BOLSTER: Q. When you came to council on 7 October 2015, what was the proposal that you were going to consider?

MR GARDINER: I object. This is not a memory test.

(Question interpreted)

THE COMMISSIONER: Just wait a second, Mr Yang. I think that that is too general a question. I think we're better off being specific here.

MR BOLSTER: Might the witness then be given a copy of the Grey Street bundle, opened at page 524.

THE COMMISSIONER: I think it is something that has been

1 added right at the end.
2
3 MR SEAR: I think it is: I've got 523.
4
5 MR BOLSTER: It's 524.
6
7 MR SEAR: What was the actual document?
8
9 MR BOLSTER: It is the report to council for 7 October
10 2015.
11
12 THE COMMISSIONER: It may not be in that bundle; you have
13 added it.
14
15 MR BOLSTER: Take my copy. (Shown to witness).
16
17 Q. Do you remember receiving that report, that business
18 paper, before the meeting of 7 October 2015?
19 A. (Through interpreter). Yes, I remember. I recall
20 receiving this paper.
21
22 Q. When you read it, did you form a view about the
23 proposal?
24 A. (Through interpreter). Yes, as far as I remember
25 I formed my view and I said, I talk - I expressed my
26 opinion because as far as I remember, I comment regarding
27 high quality Auburn development.
28
29 Q. Mr Yang, that wasn't really my question. When you
30 read that, did you form a view as to whether you would
31 support or not support the recommendation that you see
32 there by the staff that's in bold print?
33 A. (Through interpreter). Yes, I formed a view. At that
34 time I thought of supporting the plan.
35
36 Q. Let me be clear - did you propose to support that
37 resolution that you see there on page 524.
38
39 THE COMMISSIONER: Recommendation.
40
41 MR BOLSTER: Q. Recommendation 1(a) through (h) and 2?
42 A. (Through interpreter). Yes, I said I supported those
43 recommendations.
44
45 Q. Could you just put that down and have a look, please,
46 again at exhibit PH4 which is the smaller bundle. Do you
47 have that?

1
2 THE COMMISSIONER: What page?
3
4 MR BOLSTER: Q. Do you see page 28 and page 29? Do you
5 have those?
6 A. Yes.
7
8 Q. And you'll see that these are minutes of where council
9 dealt with that planning proposal on 7 October; correct?
10 A. Yes.
11
12 Q. And you will see, if you go over the page to
13 page 28 --
14 A. The pages are different here?
15
16 Q. Do you see the word "Amendment" that is underlined?
17 Do you see that?
18 A. B1 neighbourhood centre, you mean? What this one, all
19 the one, or --
20
21 THE COMMISSIONER: Just wait until you're asked a
22 question, Mr Yang.
23
24 MR BOLSTER: Q. Mr Yang, do you see the paragraphs
25 numbered 1, 2 and 3 immediately under the word "Amendment"?
26 A. Yes.
27
28 Q. Do you recall that amendment being put forward by
29 Councillor Attie at the council meeting on 7 October?
30 A. (Through interpreter). Yes, correct.
31
32 Q. You will see further down the page, if you go over to
33 page 29, that you supported it?
34 A. (Through interpreter). Yes.
35
36 Q. And it was passed, do you recall that?
37 A. Yes.
38
39 Q. My question for you is this - having formed a view
40 that you would support the resolution or the recommendation
41 in the staff report, you ended up voting for Mr Attie's
42 motion which was quite different; correct?
43 A. What different?
44
45 Q. Well, you tell me the difference?
46 A. First, every Auburn development we looked at the
47 environment and also we hearing councillor thinking who

1 maybe some creation of the Auburn development or make a
2 good job or for employment maybe opportunities, such as
3 here, so this one I understand not only 2015, there is a
4 history I think before my first term, it's historical, the
5 proposal, this plan, so we think about it. So every
6 environment different; in that case what we best choice,
7 that's the sort of issue.

8
9 Q. Lets me ask you some more direct questions, Mr Yang.
10 The council staff had recommended a rezoning to B1
11 neighbourhood centre. Yet, Mr Attie's proposal or
12 amendment had the effect of a zoning of B2 local centre.
13 Why did you think it was more appropriate having originally
14 formed the view that you would support B1 to support B2?

15 A. Before last time I already mentioned about that area,
16 Newington and the Silverwater area, that is no shop and the
17 shopping shop, nothing there, so in that case we have put
18 maybe looks like the town centre in that area; that's why
19 we are changing space ratio and B2 local centre and height
20 I think as well.

21
22 Q. Did you appreciate that Mr Attie's amendment involved
23 amending the Auburn employment lands strategy when you
24 voted on 7 October 2015?

25 A. No, employment, at the beginning that is Auburn
26 employment land, I understand.

27
28 Q. You appreciated that it involved an amendment to the
29 employment lands strategy when you voted on October 7,
30 2015; is that correct?

31 A. Yes. I respect the employment land, but the
32 environment always changing from time to time. In that
33 case, how long year, always how can we do that Auburn
34 employment land because that is only industrial area, so we
35 need to clear show and minimise community B1 looks like the
36 town centre; that's why I agreed with his proposal.

37
38 Q. Mr Yang, did you participate in any debate about this
39 issue on 7 October 2015? Did you have any questions of
40 Mr Attie? Did you have any questions of staff? Do you
41 recall that?

42 A. (Through interpreter). Just we have discussion in the
43 chamber.

44
45 Q. Who had the discussion?

46 A. Discussion in the chamber, so that's why we need the -
47 because according to agenda - because prepared by council

1 staff, the town planners, they provide then according to
2 them, then we can talk about, we can discussion about, yes.

3

4 THE COMMISSIONER: Just before you ask the next question,
5 this was a planning proposal. Who originally initiated it?
6 It was the developers.

7

8 MR BOLSTER: The developer.

9

10 THE COMMISSIONER: They were seeking at this stage the B2;
11 correct?

12

13 MR BOLSTER: Yes. Actually, they originally sought --

14

15 THE COMMISSIONER: They originally sought B4 but they
16 changed it to B2.

17

18 MR BOLSTER: Yes.

19

20 THE COMMISSIONER: Just so the witness knows and council
21 here is recommending B1. There is enormous difference
22 between B1 and B2. I don't know whether you want to
23 explore this with the witness.

24

25 MR BOLSTER: I will.

26

27 THE COMMISSIONER: But B1, for example, an objective is
28 not high density residential where as an objective of B2 is
29 high density residential.

30

31 MR BOLSTER: Q. You appreciated the significant
32 difference between B1 and B2 when you voted on 7 October
33 2015; correct?

34 A. Yes, I understood at that time.

35

36 Q. You see, Mr Yang, the Commission has played the audio
37 recording of everything that happened at council when this
38 matter was voted upon and there was no debate and there
39 were no questions asked, certainly by you, about this
40 issue. What do you say about that?

41 A. (Through interpreter). As you already know, agenda
42 has all the recording and in addition to that, when it
43 comes to a good proposal, if you want to object to that
44 plan then you would engage in discussion or you will ask
45 questions, but if you're going to support the proposal then
46 you are just - you might as well be silent. As far as
47 I remember, because it is gateway, I think I supported that

1 proposal and as far as I remember, or as a second reason,
2 I think I said we have to do that because there are retail
3 shops in Newington and Silverwater area. I think I made
4 brief comment.

5
6 Q. Mr Yang, what happened was this - Mr Attie handed to
7 staff a document with the motion paragraphs 1, 2 and 3 on
8 it and that was put up on the screen up here.

9 A. (Through interpreter). Amendments are made through
10 multiple discussions.

11
12 Q. I want to suggest to you there was no discussion about
13 this amendment. This amendment was put up on the screen
14 or it was handed to you in the form of a piece of paper,
15 there was no debate, and you voted for it without any
16 debate.

17 A. (Through interpreter). As far as - if I'm correct,
18 then there is a proposal made by a person then the officer
19 here will type it up and put it on the screen. So when the
20 proposal is written in a paper then we read and we consider
21 if it's correct or if it's wrong, if there is any problem
22 or not and then after we read that, if there is any problem
23 and issues then we discuss, but if there is no problem, we
24 just express our opinion.

25
26 Q. You didn't have any problem with Mr Attie's amendment,
27 did you?

28 A. (Through interpreter). At that time I didn't think
29 there was any issues.

30
31 THE COMMISSIONER: Q. Can I just ask Mr Yang this - if
32 you look at the bigger bundle you've got in front of you,
33 that bigger one, if you go to page 466 of that. That's the
34 council staff's assessment of the planning proposal?

35 A. Yes.

36
37 Q. September 2015?

38 A. Yes.

39
40 Q. Would you have read that before the council meeting?

41 A. (Through interpreter). Yes, I read.

42
43 Q. All right. Would you go to page 469. This is what
44 I want your help with. Do you see there's an introduction
45 and then it's got an executive summary?

46 A. Yes.

1 Q. And the executive summary summarises what the
2 applicant wants, which is essentially, if you look at the
3 top, they want to rezone the area from B6 to a B2 local
4 centre. Do you see that?
5 A. Yes.
6
7 Q. And they want buildings up to 32 metres?
8 A. (Through interpreter). Yes, correct.
9
10 Q. And they want a floor space ratio going from one to
11 one and instead they want to increase that to 4:1?
12 A. (Through interpreter). Yes.
13
14 Q. You understood that's what the applicant wanted?
15 A. (Through interpreter). Yes, correct, yes.
16
17 Q. Further down that same page is what the council's
18 planning staff are recommending?
19 A. (Through interpreter). Yes.
20
21 Q. All right? Where as they're saying they think that
22 the proposal should be amended to a B1 neighbourhood
23 centre?
24 A. Yes.
25
26 Q. Right. Do you see that?
27 A. Yes.
28
29 Q. And they think the FSR should only be a maximum of 2.7
30 to 1?
31 A. Yes.
32
33 Q. And if you go over the page, to page 470, in a summary
34 form in dot points, the council staff are expressing their
35 view as to why the planning proposal put forward by the
36 applicant isn't appropriate and they say, for example, it
37 doesn't satisfactorily address the reasons for refusal by
38 the previous gateway, there is inconsistencies with the
39 planning proposal and relevant state and local plans and
40 strategies, they don't think B2 is suitable for that
41 location, et cetera, et cetera, and then the rest of the
42 report, or part of the rest of the report, they expand on
43 those reasons they give for their own recommendation. Do
44 you understand all that?
45 A. Yes, I understand that and --
46
47 Q. Just wait. Just wait. What I want to understand is -

1 having had that advice as to what the council planning
2 staff thought was appropriate, why did you vote the way you
3 did to support the planning proposal for a B2 rather than a
4 B1 in accordance with what was recommended? I'm not
5 suggesting for a moment you're not allowed to, but I just
6 want to understand why you adopted councillor Attie's
7 motion rather than what was being recommended to you by the
8 planning staff because, as I see it, it is a very, very
9 different recommendation?

10 A. I thought big plan, big plan, you know, what is big -
11 good Auburn development. If we develop here the bigger,
12 future generations. Just sometimes --

13
14 THE COMMISSIONER: I think we might need to go through the
15 interpreter, Mr Yang, because I'm not understanding the
16 answer.

17
18 THE WITNESS: (Through interpreter). Because we think,
19 consider big frame, big picture. And we plan for next
20 generations, so in long-term it's better to consider 10
21 years after now, 20 years in the future. And it's a fact
22 that you have changed the environment regarding the height
23 and FSR.

24
25 THE COMMISSIONER: All right.

26
27 MR BOLSTER: That's some explanation.

28
29 Q. Could we turn then Mr Yang to the South Auburn
30 planning proposal. Could the witness be given that bundle
31 and the Grey Street - put that away.

32
33 THE COMMISSIONER: And exhibit PH4 can go away?

34
35 MR BOLSTER: Yes.

36
37 THE COMMISSIONER: PH4 that's where you find the minutes
38 of the meeting of 7 October which aren't actually in the --

39
40 MR BOLSTER: Correct, yes, they missed the bundle.

41
42 Q. Mr Yang, could you open up the South Auburn bundle at
43 page 283, please.

44 A. Yes.

45
46 Q. Do you have there the coloured plan, option 1, then
47 option 2(a) and then option 2(b). Do you remember

1 receiving those, don't you?
2 A. I remember that last time you already mentioned.
3
4 Q. Option 1 was an option that you put forward back in
5 2013. You initiated the planning proposal for South Auburn
6 back in 2013, didn't you?
7 A. (Through interpreter). Yes, correct.
8
9 Q. You've given some evidence in the private hearing
10 about why you did that?
11 A. (Through interpreter). I did --
12
13 Q. I am not asking for your reasons now, but do you
14 recall giving evidence that you gave your reasons back
15 during the private hearing; correct?
16 A. (Through interpreter). Yes, that's what I did.
17
18 Q. And if you look at page 284, you will see that option
19 2(a) was a somewhat different version of the option that
20 you initially proposed, namely, option 1; correct?
21 A. Yes.
22
23 Q. And you recall that council staff in their report
24 recommended option 2(a) to councillors in advance of a
25 meeting in April 2015; correct?
26 A. Repeat again? I don't - which one, for A4, do you
27 mean?
28
29 Q. I'm sorry?
30 A. To A4 council suggested, is that you mean?
31
32 Q. Let me just show you. Open up that bundle. You will
33 see, if you could go to page 3.
34 A. Yes.
35
36 Q. Would you go to page 3 of the bundle, please?
37 A. Yes.
38
39 Q. You'll actually have to turn to page 3. Do you see
40 there there's a recommendation at the foot of page 3? Do
41 you see the recommendation has two paragraphs, paragraph 1
42 and 2?
43 A. Yes.
44
45 Q. In paragraph 2 what was being recommended was option
46 2(a) that I was just showing you; correct?
47 A. (Through interpreter). Yes, that's correct.

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Q. And you ultimately agreed to support option 2(a); correct?

A. Yes, at the beginning, yes.

Q. You did that even though option 2(a) was different from the proposal that you originally put forward; correct?

A. Yes.

Q. I take it you did that because of the recommendation of council staff; is that correct?

A. (Through interpreter). It's not because it was recommended by the council staff but I made my decision according to the recommendations made by whomever, because it was reasonable. As far as I remember, that's why I made that decision.

Q. So it was on the basis that you looked at the council staff report, formed the view that their recommendation was reasonable, and you voted in support of it - is that your evidence?

A. (Through interpreter). Yes, correct, yes, correct.

Q. I want to suggest to you that the recommendations that council staff put forward in the case of the Grey Street planning proposal were equally reasonable, Mr Yang and you voted against that, didn't you?

A. Sometimes the council say all right, but sometimes the councillor thinking very good, so which one, best choice, depend on good creation of the thinking proposal and that we can look at it and then we can have choice.

Q. I didn't mean to cut you off, had you finished?

A. Yes.

THE COMMISSIONER: Just before you ask the next question. Is my memory right, when you took the witness to 283 and 284, 283 had already been approved at gateway, hadn't it, option 1.

MR BOLSTER: His option 1.

THE COMMISSIONER: That had been approved by the department at gateway.

MR BOLSTER: Correct.

1 THE COMMISSIONER: Now as it comes to finalising the
2 proposal and changing the LEP, there's a proposal to alter
3 what had been gone through gateway by reducing the B4.
4

5 MR BOLSTER: Yes.
6

7 Q. You thought it was reasonable, back when you proposed
8 option 1 your proposal, you thought that was reasonable
9 then, didn't you?

10 A. (Through interpreter). At that time I thought it was
11 reasonable.
12

13 Q. Yes. It got through gateway, didn't it?

14 A. (Through interpreter). Yes, it has shops too.
15

16 Q. And the council's external consultants who had
17 prepared reports supported option 1, didn't they?

18 A. (Through interpreter). I cannot recall what the
19 consultant said.
20

21 THE COMMISSIONER: Q. Why did you agree to vote for a
22 reduction of the B4 zoning, if you're looking at pages 283
23 and 284, why did you think it was a good idea to cut back
24 the B4 zoning for Auburn Road to only include the
25 properties at 74 to 90 Auburn Road rather than 74 to 112?
26 What was your thinking about that?

27 A. (Through interpreter). So at first I had a business
28 mind and I involved more zone, B4 zone. (Not through
29 interpreter). So second thing is that after one years later
30 that is increase the population in the Auburn area.
31

32 Q. Yes.

33 A. So which one better.
34

35 Q. My question was you supported option 1 which would
36 have zoned the whole of that strip of Auburn Road from 74
37 to 112 from R3 to a B4 zoning which obviously allows
38 retail, commercial and high density residential. Why did
39 you, having proposed that and it got through gateway, what
40 was your reason for agreeing to cut back the B4 zoning to
41 only numbers 74 to 90 on Auburn Road?

42 A. (Through interpreter). As I told you before, I had a
43 business mind at that time, so I wanted to develop.
44

45 Q. Yes.

46 A. (Through interpreter). And after that the population
47 became larger, so environment changes all the time. You

1 have to apply things depending on the situation.

2

3 MR BOLSTER: Q. What was the situation that demanded a
4 reduction in the B4 zone that you proposed along
5 Auburn Road? What precise feature did you identify that
6 necessitated that reduction?

7 A. (Through interpreter). It's true that Auburn Road is
8 a business area but it's also true that it is concentrated
9 in - Auburn Road, that is the business area. At that time
10 it was predicted that even though there were many shops
11 near the train station, it will take long time for that
12 business area to grow into Auburn Road. And the population
13 in R4 increased, so if things are like this then this
14 option will be better. I think that was my reason.

15

16 Q. It is such a small pocket of B4 along Auburn Road made
17 no sense at all, did it, no commercial sense to have such a
18 small pocket, Mr Yang?

19 A. (Through interpreter). That was one of the reasons.

20

21 Q. It would make far more sense, Mr Yang, to have B4 all
22 the way down Auburn Road than just a third of the block;
23 correct?

24 A. (Through interpreter). At first the road was towards
25 the hospital. I thought it will be good if we develop that
26 road. That's why I suggested that option at the beginning,
27 yes.

28

29 Q. Did the fact that Mr Mehajer or a member of his family
30 had an interest in a property that retained the B4 zoning
31 have anything to do with your decision in relation to this
32 matter?

33 A. (Through interpreter). I didn't know whether Mehajer
34 had the property there or not. I didn't even think about
35 it.

36

37 Q. You knew he hadn't taken part in the debates about
38 this planning proposal, didn't you?

39 A. (Through interpreter). Yes, as far as I remember,
40 correct.

41

42 Q. You knew he did that because he declared an interest,
43 a conflict of interest in relation to the matter?

44 A. (Through interpreter). As far as I remember, it was
45 because of the conflict of interest to pecuniary interests
46 or something.

47

1 Q. Let me just read to you that the minutes of the
2 meeting of 20 May where there were votes taken on this
3 issue Councillor Mehajer declared a pecuniary interest as
4 he is an owner of a property within the precinct subject to
5 the planning proposal.
6 A. (Through interpreter). And then?
7
8 Q. Did you appreciate that the property to which his
9 interest related was in the B4 zone that was retained in
10 option 2(a)?
11 A. (Through interpreter). I didn't know it at all.
12
13 Q. Mr Attie and Mr Oueik hadn't discussed option 2(a)
14 with you before or during the meeting when this matter was
15 discussed?
16 A. No, no, never.
17
18 Q. Any other councillors discuss the matter with you
19 before or during the meeting?
20 A. Not with me.
21
22 Q. Didn't you raise with any councillors your preference
23 for your original proposal?
24 A. (Through interpreter). I'm not sure if I raised that
25 issue or not at that time.
26
27 Q. Is it something that you think you would have been
28 likely to do given that it was your proposal that was being
29 considered by council?
30 A. (Through interpreter). Yes, it could have been.
31
32 Q. You would have sought the support of your fellow
33 councillors for your proposal; correct?
34 A. (Through interpreter). Whoever makes a proposal wants
35 support from people.
36
37 Q. And that's something you've experienced throughout
38 your time on council. If someone was putting forward a
39 proposal, a councillor had an amendment to move or a
40 proposal in mind, they would seek your support, wouldn't
41 they?
42 A. (Through interpreter). Of course people want support.
43
44 Q. Did Mr Attie seek your support when he moved his
45 motion about Grey Street, Silverwater, back in
46 October 2015?
47 A. (Through interpreter). Whatever decision was made by

1 reasonable and fair thinking.
2
3 Q. Is the answer then yes or no? Did he seek your
4 support or not?
5 A. (Through interpreter). There was nothing like that.
6
7 Q. Did Mr Oueik seek your support when the issue of the
8 Marsden Street planning proposal was being considered by
9 council?
10 A. (Through interpreter). Sorry, could you repeat that
11 question?
12
13 Q. Did Mr Oueik seek your support in relation to the
14 Marsden Street planning proposal?
15 A. (Through interpreter). Where is Marsden Street?
16
17 THE COMMISSIONER: Because you've changed plans, I think
18 you're confusing the witness.
19
20 MR BOLSTER: We will come to that in some detail later.
21 We'll just pass over that for now, Mr Yang.
22
23 THE COMMISSIONER: This is where Mr Hamed's organisations,
24 if we're sticking to the South Auburn, that's where they
25 had their premises; is that right?
26
27 MR BOLSTER: Yes.
28
29 Q. Do you recall on one occasion when the matter was
30 before council a representative of the Bhanin Association,
31 Mr Sadic, came and spoke to council. Do you recall that?
32 A. (Through interpreter). I'm not sure about that but
33 whenever there was a proposal made before they open an
34 agenda, if a speaker makes an application, they can come
35 and get their opinions reflected, but I cannot recall the
36 exact name.
37
38 Q. You don't recall Mr Sadic coming along to council and
39 making a representation that the B4 zoning should extend
40 further down Auburn Road than option 2(a); is that right?
41 A. (Through interpreter). I remember - I remember he
42 spoke. I can't remember the exact name.
43
44 Q. Is that a file of documents of your own that you're
45 going through, Mr Yang?
46 A. (Through interpreter). No.
47

1 Q. What is that folder that you have in front of you?
2 A. (Through interpreter). This is my recording regarding
3 the letters you sent.
4
5 Q. Are they notes that you prepared before coming to give
6 evidence to the inquiry; is that correct?
7 A. (Through interpreter). It is correct that I record
8 tracts regarding that.
9
10 Q. Might I have access to the document?
11 A. (Interpreted)
12
13 THE COMMISSIONER: Make sure it doesn't have any legal
14 advice or anything in it.
15
16 MR BOLSTER: Does it have? Do you know what it is,
17 Mr Gardiner?
18
19 MR GARDINER: I believe it is a bundle of documents that
20 Mr Yang recorded which he submitted to the commission.
21
22 THE COMMISSIONER: In response to a notice to produce.
23
24 MR GARDINER: Yes, I think that's what's in the document.
25
26 MR BOLSTER: It seems to have some handwritten notes.
27
28 THE COMMISSIONER: He may have made some notes.
29
30 MR GARDINER: I have no objection to it being provided to
31 Counsel Assisting. Might I also look at it.
32
33 MR BOLSTER: We'll look at those over morning tea.
34
35 THE COMMISSIONER: Yes.
36
37 MR BOLSTER: Q. Mr Yang, I want to turn now to Berala.
38 A. Yes.
39
40 Q. I think you should have the Berala documents in the
41 same large folder.
42
43 THE COMMISSIONER: Yes, they are in the second tab.
44
45 MR BOLSTER: Go forward to the first tab.
46
47 THE COMMISSIONER: Mr Sear will do it.

1
2 MR BOLSTER: Q. There you go. Mr Yang, in my
3 questioning I'm dealing with the area or the land that's
4 south of York Street, Berala?
5 A. Yes.
6
7 Q. Near the railway line?
8 A. Yes.
9
10 Q. Where Mr Zraika owned some property. You know that,
11 yes?
12 A. I didn't know at that time.
13
14 Q. When do you say you first knew that Mr Zraika owned
15 land on the south side of York Street, Berala?
16 A. (Through interpreter). After this proposal was
17 approved in the chamber when Zraika declared pecuniary
18 conflict.
19
20 Q. That was in July 2014; correct?
21 A. (Through interpreter). I'm not sure about the date.
22 I think I need to check documents to be sure.
23
24 Q. Let's do that, shall we. Would you go in the bundle
25 please to page 281.
26 A. (Through interpreter). Yes, I'm looking at it.
27
28 Q. Do you see that?
29 A. Yes.
30
31 Q. Do you see that has the map showing the changes that
32 had been --
33 A. 2014, yes.
34
35 Q. -- agreed in 2014.
36 A. Yes. Yes.
37
38 Q. If you go back a few pages to page 213, you will see
39 the minutes of the meeting of 16 July?
40 A. I remember that, yes.
41
42 Q. You remember that meeting, do you?
43 A. Yes.
44
45 Q. You will see there that, if you go over to page 215,
46 which is page 33 of the actual minute --
47 A. Yes.

1
2 Q. -- you will see there the final resolution moved by
3 councillor Attie seconded by Councillor Oueik and supported
4 by you.
5 A. Yes.
6
7 Q. In substance, you agreed to the planning proposal that
8 I showed you at 281; correct?
9 A. Yes.
10
11 Q. Because the map at 281 is the notice that was given to
12 residents about what council had decided and seeking their
13 final input in relation to the matter; correct?
14 A. (Through interpreter). Yes, there was public
15 consultation.
16
17 Q. At page 215 do you see that Councillor Zraika declared
18 a pecuniary interest in the matter and left the chamber?
19 A. (Through interpreter). Yes, that's correct.
20
21 Q. Do you say that's the first time you became aware that
22 he owned property in York Street, Berala?
23 A. (Through interpreter). Yes, correct.
24
25 Q. Hadn't there been a workshop where this issue was
26 discussed in the Jack Lang Room, next door here, in June of
27 that year?
28 A. (Through interpreter). Yes, correct.
29
30 Q. And hadn't Councillor Zraika declared an interest and
31 not taken part in that workshop?
32 A. (Interpreted). He didn't attend the meeting. How can
33 you say his property or not, or his property?
34
35 Q. You went to the workshop at Bowral in February of
36 2014; correct?
37 A. (Through interpreter). That's correct.
38
39 Q. And Councillor Zraika did not take part in the
40 discussions about the Berala rezoning at that workshop, did
41 he?
42 A. (Through interpreter). That's correct.
43
44 Q. On every previous occasion where the Berala rezoning
45 proposal was before council, Councillor Zraika had declared
46 an interest and not taken part in the debate; correct?
47 A. (Through interpreter). I cannot recall accurately.

1
2 Q. The first time you say that you became aware that
3 Councillor Zraika owned land in York Street, Berala, was
4 when this matter was voted upon in July 2014. Is that your
5 honest evidence to this inquiry?
6 A. (Through interpreter). At that time I didn't know.
7 I knew - I learned of the fact that it was voted in 2015.
8
9 Q. Didn't you think then, if it was the first time that
10 you'd been told that Councillor Zraika owned land in
11 York Street, didn't you think it was odd that that land was
12 being rezoned B2?
13 A. (Through interpreter). That was on the workshop in
14 2014 and the big picture was for Berala - let's have a big
15 town centre there and then we had a discussion and then
16 after that this proposal was tabled.
17
18 THE COMMISSIONER: Councillor Yang may have always been in
19 favour of B2 in York Street?
20
21 MR BOLSTER: He may have been.
22
23 Q. Do you recall whether you proposed B2 for York Street
24 when you filled out your coloured map?
25
26 THE COMMISSIONER: That's what I was looking at.
27
28 INTERPRETER: Sorry, could you repeat that question,
29 please?
30
31 THE COMMISSIONER: It might be easiest to show him,
32 Mr Bolster.
33
34 MR BOLSTER: Yes. Might the witness be shown exhibit 01.
35
36 THE COMMISSIONER: Exhibit GEN8 has got the actual maps
37 that they --
38
39 MR BOLSTER: It's probably easier for this purpose.
40
41 THE COMMISSIONER: 01?
42
43 MR BOLSTER: 01 page 59.
44
45 THE COMMISSIONER: Yes.
46
47 THE WITNESS: That colour, you mean. Before you already

1 mentioned about.
2
3 MR BOLSTER: Q. That's the map you coloured in; correct?
4 A. Yes, that one's mine, yes.
5
6 Q. You proposed B2 --
7
8 THE COMMISSIONER: Q. The blue I take it represents B2
9 does it, Mr Yang?
10 A. Yes.
11
12 MR BOLSTER: Q. You proposed the B2 on the south side of
13 York Street; correct?
14 A. Yes.
15
16 Q. And your proposal from York Street south mirrored the
17 position that was taken by council when it came to deal
18 with the matter in July 2015; correct?
19 A. Repeat that again?
20
21 Q. I'm asking you to compare page 59 of that bundle with
22 page 75 of that bundle. You can see, when you compare
23 those two - compare the maps at 75 and 59, you see they're
24 the same, aren't they, for the land south of York Street?
25 Do you agree?
26 A. No, they're different. There is R3, B2, but here
27 I put B2, so that it different colour, John, 59 - yes. 59
28 I express, yes, L4 and also L4.
29
30 Q. And B2?
31 A. Yes.
32
33 Q. Why did you think B2 was required along York Street so
34 far from the station? Why? What was the planning purpose
35 you were seeking to give effect to in proposing a B2 zone
36 on the south side of York Street?
37 A. (Through interpreter). B2 existed already.
38
39 Q. Mr Yang, on the south side of York Street, before the
40 July proposal was adopted by council, it was an R2 zone?
41 A. (Through interpreter). Correct.
42
43 THE COMMISSIONER: That's low density residential, right?
44
45 THE WITNESS: It is, yes.
46
47 MR BOLSTER: Q. You proposed in your coloured-in map

1 that it should change, that the land south of York Street
2 should change from R2 to B2; correct?

3 A. (Through interpreter). I already told you the reason,
4 it's because I was looking at a big picture in long-term.
5 It was to improve that area as the town centre, there
6 should be buildings and it's gateway and it's close to the
7 station. That's why I proposed this development in Auburn.

8

9 THE COMMISSIONER: Q. Why do you need to extent the town
10 centre in Beralá? I've never understood that with this
11 planning proposal why there was a need to extend the B2
12 area? What was your thinking for the need to extent B2?

13 A. (Through interpreter). As you know, Beralá is a
14 village.

15

16 Q. Yes.

17 A. (Through interpreter). So after somebody made this
18 proposal, I thought if we're going to develop this area
19 anyway, we should decide if this area will remain as a
20 village or develop into a town centre; that's what I said.

21

22 Q. But I don't think anyone had actually made a proposal
23 here. If you look at that bundle you've got, right at the
24 beginning is a study that the council planners did in 2012
25 regarding Beralá, which starts at page 1.

26

27 MR BOLSTER: The other folder, Mr Yang, the folder that's
28 underneath.

29

30 THE COMMISSIONER: Were you going to come to this? Am
31 I cutting across you?

32

33 MR BOLSTER: No, that's fine.

34

35 THE COMMISSIONER: Just take that away.

36

37 Q. Go to page 1.

38 A. Page 1, yes.

39

40 Q. Did you ever read that document, that study that the
41 staff had done on Beralá in 2012? Don't worry about that
42 page. Did you ever read the document - it's about a 70
43 page document. Did you ever read that study?

44 A. (Through interpreter). The study was done in March
45 2012.

46

47 Q. That's right.

1 A. (Through interpreter). This is done before I came to
2 council.

3

4 Q. Yes, but I think it was presented as part of the
5 discussion in February 2013.

6

7 MR BOLSTER: Yes, it was.

8

9 THE COMMISSIONER: Q. Anyway my question is this, are
10 you familiar with that document or not? If you're not,
11 you're not, but I just want to know whether you have ever
12 read that document and are familiar with its contents?

13 A. (Through interpreter). I knew that development
14 include, like, 400 metre diameter circle.

15

16 THE COMMISSIONER: Wait a second Mr Yang. I'm going to
17 have the morning tea break now until five to 12. Just have
18 a look at that document, Mr Yang, it starts at page 1 and
19 goes through to 63, I think. I just want to know whether
20 you're familiar with it and read it. If you haven't, you
21 haven't, and you can tell us after the break.

22

23 MR BOLSTER: Commissioner, the interpreter has to leave at
24 20 past 12.

25

26 THE COMMISSIONER: We will come back at 10 to 12 then. We
27 will adjourn until then.

28

29 **SHORT ADJOURNMENT**

30

31 MR BOLSTER: Q. Mr Yang, I want to suggest to you that
32 when you came to colour in the sheet at Bowral in February
33 2015, you appreciated that Mr Zraika at least had an
34 interest in land in York Street where you marked the map
35 blue?

36 A. (Through interpreter). As I told you before, I didn't
37 know at that time. I learnt it in the chamber when he
38 disclosed pecuniary interest.

39

40 Q. I want to ask you now some questions about
41 John Street, Lidcombe.

42

43 THE COMMISSIONER: Just wait a moment. I asked the
44 witness before the break whether he'd read the draft
45 Berala Village centre study.

46

47 Q. Did you have a chance to look at it and see whether

1 it --
2 A. Yes, I looked at it.
3
4 Q. Had you read it before, do you think?
5 A. (Through interpreter). I think I read it one time
6 before.
7
8 Q. I'm just wondering then, if you've got any familiarity
9 with it? Just so I understand why you supported this
10 planning proposal, if you look at page 26 of the document -
11 do you have page 26 where it's got main street planning
12 controls?
13 A. (Through interpreter). Yes.
14
15 Q. And it talks about the B2 local centre in the main
16 street? Do you see that?
17 A. (Through interpreter). Yes, that's correct.
18
19 Q. It talks about Berala's main street being a small
20 traditional main street with one, two and three storey shop
21 developments. Do you see that?
22 A. (Through interpreter). Yes.
23
24 Q. Would you go to page 47 first. It starts talking
25 about the residential area?
26 A. Yes.
27
28 Q. Which, at the time of this draft report, that would
29 have included York Street which was part of the R2 low
30 density zone?
31 A. (Through interpreter). Yes.
32
33 Q. If you look at the second-last paragraph on page 47,
34 what the council planners are saying is:
35
36 *Given the expected small increase in*
37 *Berala's population over the next 10 years,*
38 *it is recommended no changes be made to the*
39 *R4 zone.*
40
41 That's high density residential. Do you see that?
42 A. (Through interpreter). Yes.
43
44 Q. Then you see on page 48:
45
46 *This study recommends no changes to the*
47 *zoning.*

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One of the reasons is because when they're factoring in population forecasts over the next 10 years, there's sufficient capacity with the current zoning to factor in that population increase. Do you see that?

A. Yes.

Q. The third bullet point. The last bullet point on 48 suggests that it is not a good idea to change the zoning of Berala because if there was a substantial increase in Berala's population, it doesn't have the community facilities to deal with that. Do you see that, Mr Yang?

A. Yes.

Q. Do you see those are the reasons for not changing the zoning? Do you understand that reasoning?

A. Yes, I understand.

Q. What I want to know is - the effect of the planner's advice, the council planner's advice to you by the time you get to Bowral in February 2013, is that there shouldn't be any zoning changes - we don't recommend any zoning changes to Berala for the reasons outlined in this report, which include that it has only got a small town street and it has got plenty of capacity over the next 10 years with the current zoning and the current controls for height and FSR. What I want to understand is, in the face of the advice you had from the planning staff here, why did you think it was a good idea to propose or vote for the changes to Berala that you did, including extending the B2 right down to what was a low density residential area at York Street?

A. We looked at the big picture, actually. Okay, I understand this all planned by consultants, but we --

Q. These aren't consultants, Mr Yang, this is a report prepared by the council staff, not external, these are council reports - sorry to interrupt you, but I heard the word "consultants". This is the Auburn planners's document.

A. (Through interpreter). It doesn't matter if it's made by the council staff or not, or if it's made by consultant engineers or not. I think we respect their ideas but we have to look into the future, we have to look at the big picture and it is gateway and it's close to station and when we think about why Berala has to be developed. As an elected member, as a governing body, we have to do essential link, but we have to consider future, like

1 20 years from now on and 30 years from now on. Why do we
2 have to restrict ourselves into only a 10-year
3 considerations, only 10 years. So the fact is it's gateway
4 because it's close to the station. I supported the plan
5 because I thought this town should be developed in the
6 future, so we don't have any regrets. They should have
7 some regular form and the zone should change and the
8 environmental plan has to change. The same goes with
9 control plans, that's what I thought.

10
11 THE COMMISSIONER: Thank you.

12
13 MR BOLSTER: Q. I want to ask you some questions now
14 about John Street. Might the witness be given a copy of
15 the John Street bundle. Mr Yang, you gave some evidence
16 about having difficulty with legal concepts and legal words
17 when it came to matters that were brought before council as
18 far as your understanding of them in English is concerned,
19 correct?

20
21 MR GARDINER: That was not the evidence of this witness.

22
23 THE COMMISSIONER: I thought he did say something like
24 that?

25
26 MR BOLSTER: He certainly did.

27
28 MR GARDINER: He said he was concerned he would have
29 trouble with legal word at this hearing, not at council.

30
31 THE COMMISSIONER: All right. That may have been a
32 translation problem too because I understood to apply to -
33 anyway, you can clarify it.

34
35 MR BOLSTER: Q. Do you agree with me you had difficulty
36 understanding legal concepts and legal words when you were
37 on council?

38 A. I don't accept.

39
40 Q. Do you say then that you have no problems
41 understanding legal words and legal concepts when you came
42 to consider legal issues that were on the agenda at council
43 meetings?

44 A. Some word maybe it's a problem, I can ask, request to
45 them what meaning, so very simple, just common --

46
47 Q. Do you recall having any difficulties understanding

1 the issues and concepts that came up when you considered
2 Mr Mehajer's purchase of 13 John Street, Lidcombe?

3

4 MR GARDINER: The evidence has to be put accurately, with
5 respect, Mr Commissioner. It is not Mr Mehajer's purchase
6 of the property, it is companies associated with
7 Mr Mehajer.

8

9 THE COMMISSIONER: Yes, that's fair enough.

10

11 MR BOLSTER: Q. You know that council sold some land to
12 a company and that the land was 13 John Street, Auburn? Do
13 you recall that?

14 A. I understand, yes.

15

16 Q. Did you have any problems with the legal concepts that
17 arose when you came to consider that contract between 2012
18 and December 2015?

19 A. (Through interpreter). I admit I had a little bit of
20 difficulty, but in general I understood everything.

21

22 Q. Did you have a difficulty understanding Mr Mehajer's
23 request to council for the release of 5 per cent, that is,
24 half of the deposit to him so that he could spend it on
25 certain things? Do you recall having problems dealing with
26 that issue?

27

28 MR DUGGAN: I made this objection before, but the precise
29 terms of the deal need to be put because it is misleading
30 otherwise.

31

32 MR BOLSTER: With respect, it isn't. I'm just getting to
33 the point.

34

35 MR DUGGAN: It is a substitution of security, it is not a
36 simple release of the deposit; that's the issue.

37

38 THE COMMISSIONER: I understand your point.

39

40 MR BOLSTER: Q. Mr Yang, when Mr Mehajer proposed the
41 return to him of half of the deposit on certain terms and
42 conditions, did you have any difficulties understanding
43 what he was asking counsel to do?

44 A. (Through interpreter). I didn't have any
45 difficulties.

46

47 Q. Why did you support the return of half of the deposit

1 to Mr Mehajer?
2 A. (Through interpreter). He revealed his financial
3 difficulties in public. And the second thing, the second
4 thing is everything should be done by negotiating with
5 council. Of course maybe legally it's at fault but because
6 it's human business, everything can be negotiated with
7 council. So the first principle should be legal and
8 secondly, council can accept terms and we discussed that it
9 can be negotiated.
10
11 Q. You knew Mr Gough who was council's solicitor gave
12 some advice about whether or not council should agree to
13 what was being proposed by Mr Mehajer; correct?
14 A. (Through interpreter). Yes, correct.
15
16 Q. What was that advice?
17 A. (Through interpreter). He said if we changed the
18 contract, it can be a bit problematic.
19
20 Q. I am not asking you about the change to the contract,
21 I'm asking you about the request from Mr Mehajer to return
22 half of the deposit on certain terms and conditions and the
23 advice that Mr Gough gave you about that. Do you recall
24 that advice?
25 A. (Interpreted)
26
27 THE COMMISSIONER: We have the advice.
28
29 MR BOLSTER: Yes.
30
31 THE COMMISSIONER: Wouldn't it be fairer to take him to
32 it?
33
34 MR BOLSTER: Q. Do you recall his advice?
35 A. (Interpreted)
36
37 MR GARDINER: What part of the advice, with respect?
38
39 THE COMMISSIONER: It is easier to take him to the advice
40 and ask him.
41
42 MR BOLSTER: All right.
43
44 Q. If the witness --
45 A. (Through interpreter). You have to be specific with
46 what kind of advice you're talking about.
47

1 MR BOLSTER: Q. Could the witness go to page 283 of the
2 bundle. Do you see there's an email there from Mr Gough to
3 Mr Goncalves and Mr Price. You'll see in the third
4 paragraph Mr Gough stated that he strongly recommended
5 against releasing any of the deposit for reasons 1 and 2.
6 A. Yes, 10 per cent, yes, deposit.
7
8 THE COMMISSIONER: Is this part of the council papers?
9
10 MR BOLSTER: No.
11
12 THE COMMISSIONER: No?
13
14 (Witness reads email)
15
16 THE WITNESS: Yes, okay.
17
18 MR BOLSTER: Q. Do you recall receiving advice in those
19 terms when you were on council, before you voted on this
20 issue?
21 A. No, we voted, so --
22
23 THE COMMISSIONER: Q. The question was do you remember
24 Mr Gough, or anyone else, giving advice recommending
25 against releasing any of the deposit for the reasons that
26 are set out in that email; do you remember that?
27 A. (Through interpreter). I don't remember receiving
28 this email.
29
30 MR BOLSTER: Q. What then do you recall of the advice
31 that you received about what council should do about
32 Mr Mehajer's request about the deposit?
33 A. (Through interpreter). I think we negotiated
34 regarding the 10 per cent holding, so we decided to return
35 5 per cent.
36
37 Q. My question was different, though, Mr Yang. Do you
38 remember any legal advice being relayed to you about what
39 council should do about Mr Mehajer's request?
40 A. (Through interpreter). I am not sure; I cannot
41 recall.
42
43 Q. Do you recall receiving any advice not to agree to the
44 release of the deposit?
45 A. (Through interpreter). I can't recall.
46
47 Q. Would you go over then please to page 325 of the

1 bundle.
2 A. (Interpreted).
3
4 THE COMMISSIONER: The vote on that issue was at 297.
5
6 MR BOLSTER: I don't think there's any issue on that.
7
8 INTERPRETER: What page did you say?
9
10 MR BOLSTER: Q. 325.
11 A. 325, yes.
12
13 Q. Do you recall seeing that letter from Mr Mehajer in
14 July 2015?
15 A. (Interpreted).
16
17 Q. Did you receive that letter at about that time?
18 A. (Through interpreter). I didn't receive an email but
19 I remember seeing the letter in the chamber.
20
21 Q. Would you go over the page please to page 328 and 329.
22 A. Yes.
23
24 Q. This is a formal letter of advice from Mr Gough. Do
25 you recall seeing that in relation to this matter?
26 A. (Through interpreter). Yes, I saw this in the
27 chamber.
28
29 Q. Did you agree with this advice or did you take any
30 issue with this advice when you saw it?
31 A. (Through interpreter). I agreed to it under the
32 condition as it was advised.
33
34 Q. What do you mean by that, Mr Yang?
35 A. (Through interpreter). The condition was it'll be
36 approved with the condition that the DA should be done within
37 18 months; the same condition, yes.
38
39 Q. By September 2015 the DA had already been lodged.
40 I want to suggest that to you. May I suggest you're
41 confusing it with an earlier contract that was entered into
42 in 2013?
43 A. (Through interpreter). As far as I remember, the
44 condition was that the consent, the development consent
45 within the 18-month period: that is under condition.
46
47 Q. That was a condition, Mr Yang, in relation to a

1 contract that was entered into early 2013. I am asking you
2 about advice that was given in September 2015, that's last
3 year, and I want to suggest to you, if you look at page 329
4 and numbered paragraph 3, council was given advice that it
5 should not enter into a new contract with the purchaser,
6 but that the public should be invited to purchase the
7 property either through a public auction process or by way
8 of an expression of interest?

9 A. (Through interpreter). That's what I understand.

10
11 Q. And you took a different view, didn't you?

12 A. (Through interpreter). Yes, I had a different view.

13
14 Q. My question is why?

15 A. (Through interpreter). Everything should be
16 considered in respect of accountability and finance and
17 delivery time is very important and at that time the
18 circumstances were that if it's not approved, there will be
19 three years delay and the community, the Lidcombe
20 community, were hoping the Auburn development. They wanted
21 more parking areas, the residents wanted more shops, they
22 needed more shops, so the condition was to place a big
23 shopping centre and extend the parking area.

24
25 Q. Mr Yang, all of that had been discussed back in 2013,
26 hadn't it? That was the term upon which or the condition
27 upon which council agreed to enter into a fresh contract
28 back in 2013; correct?

29 A. (Question interpreted).

30
31 INTERPRETER: Sorry, the interpreter needs to be excused;
32 I can't stay.

33
34 THE WITNESS: (Through interpreter). Yes, the contract
35 was entered in 2013.

36
37 THE COMMISSIONER: We might have to bring Mr Yang back
38 tomorrow with the interpreter. Mr Yang, unfortunately, the
39 interpreter has to go. We were not able to get anyone
40 beyond 12.20pm, we were told today, so we might have to
41 finish your evidence tomorrow morning. I'm sorry about
42 that but you'll have to come back tomorrow morning.

43
44 THE WITNESS: Okay.

45
46 THE COMMISSIONER: You're excused for now and come back
47 tomorrow morning.

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THE WITNESS: Yes, Commissioner.

THE COMMISSIONER: You're excused until 10 o'clock tomorrow.

THE WITNESS: Okay.

THE COMMISSIONER: Thank you.

THE WITNESS: Thank you.

<THE WITNESS WITHDREW

MR BOLSTER: I call Hicham Zraika, Commissioner.

<HICHAM ZRAIKA, sworn: [12.28pm]

<EXAMINATION BY MR BOLSTER:

MR BOLSTER: Q. Mr Zraika, the evidence you gave in the private hearing is now publicly available. I'm not going to ask you the same questions I asked you on the last occasion. You should assume that everyone has seen your evidence and that that is before the inquiry. Mr Zraika, I wanted to start off with the South Auburn planning proposal. If the witness could be given a copy of the South Auburn bundle. Mr Zraika, the issue was before council on two occasions in 2014, on 20 May and 15 April. Do you recall those occasions?

A. 20 May, which year?

Q. 2015?

A. 2015? Yes.

Q. It was shortly after the state election, do you recall that?

A. Yes.

Q. That was at the end of March?

A. Yes.

Q. Mr Oueik was the mayor at the time?

A. Can I check the minutes?

Q. Sure.

A. Is there a particular page that I am referring to?

1
2 Q. Would you go, please, to - let me find the page for
3 you - the May meeting is at page 410 and the April meeting
4 is at 406?
5 A. 406. Yes, that's the - I don't think I have got the
6 right one.
7
8 Q. On 15 April --
9 A. I don't think I have the right one here.
10
11 THE COMMISSIONER: It might have two numbers on it, down
12 the bottom; it might have 406 and 150, or 405 and 149.
13
14 THE WITNESS: I am sorry, it just doesn't say the April
15 meeting at 406.
16
17 THE COMMISSIONER: Q. At 405?
18 A. Sorry, yes.
19
20 MR BOLSTER: Q. Do you have that?
21 A. Yes, I have that.
22
23 Q. You will see at 406 there's a record of disclosures by
24 each of councillor Attie, Councillor Lam and
25 Councillor Mehajer in relation to that proposal?
26 A. Yes.
27
28 Q. Correct?
29 A. Yes.
30
31 Q. The absence of those three councillors meant that the
32 planning proposal couldn't get up; correct?
33 A. Well, once again depending on what the council will do
34 on the night when the item is before council.
35
36 Q. The only people who voted for the planning proposal on
37 that night were you and Mr Oueik; correct?
38 A. Yes, if that's what it says in the minutes, yes.
39
40 Q. Look over to page 408. You will see that?
41 A. Yes, correct.
42
43 Q. It was apparent to you, may I suggest, as soon as
44 those declarations were made on that night, that the
45 proposal was doomed to failure?
46 A. Well, not necessarily because, I'll tell you why,
47 because how I would anticipate anyone voting for or against

1 unless it was done at the meeting.

2

3 Q. You knew the position of each of councillors Campbell,
4 Oldfield, Simms and Yang in relation to that matter;
5 correct?

6 A. Well, in some instances, yes, but once again, once it
7 comes to the council meeting votes change and it has
8 happened before. Sometimes in some cases where items are
9 before the council, some councillors change their vote.
10 It's just - it's common.

11

12 Q. Do you say there was a substantive debate on this
13 issue on 15 April that might have led councillors to change
14 their minds?

15 A. There would have been a debate at some stage about
16 that particular issue because it has been going on for some
17 time. The common practice that I realise over the many
18 years that I have a been on council, and I've been on
19 council since 2004, Mr Commissioner, and not at every
20 particular meeting there would be heavy debate about a
21 particular item. If there is an intention or there has
22 been debate about a particular item in some way, it's not
23 necessarily will take place at the next meeting or the
24 following meeting or at some other time.

25

26 Q. Had you made up your mind about what you were going to
27 do for the proposal that had been recommended by staff that
28 was scheduled for debate on 15 April before you arrived at
29 council that evening?

30 A. As I said in the private hearing, Mr Commissioner,
31 this was instigated, I believe, in May 2010 and I've always
32 supported it since then and I've always had the view, as
33 I've explained before, because in the previous LEP I think
34 it was on my first term on council between 2004 and 2008
35 there was a discussion to expand, to eliminate, they've
36 actually done that believe the other side of the railway
37 line and therefore when this came later, the idea was to
38 expand the town centre this way so there was already
39 something in my mind, I'm not speaking on behalf of the
40 others, but to expand the council this way on this side of
41 the railway line because what they've done around the
42 Gallipoli Mosque, because of some angst amongst residents
43 on the other side, they didn't want the town centre to be
44 densified that way and there was an argument at some stage
45 to have it done this way and expand it that way. That's
46 why it was raised and supported I believe unanimously, if I
47 may recall, at 20 May 2010 and it has been supported at the

1 following meetings and it has been going on for some time;
2 so obviously there is the intention to support that,
3 you know, densification on this side of the railway line.
4

5 Q. Let's be clear what you were supporting. Mr Yang,
6 back in 2013, put forward option 1; correct?

7 A. Well --

8
9 Q. You know what I mean by option 1, don't you?

10 A. Can you clarify, please?

11

12 Q. Option 1 is a B4 zoning all the way down Auburn Road
13 in that block?

14 A. Yes. Yes.

15

16 Q. And that's what you supported?

17 A. Correct.

18

19 Q. Do I take it your evidence is that you had always
20 supported that?

21 A. It's a - it's a --

22

23 Q. Because of the problems --

24

25 THE COMMISSIONER: Q. From an R3, I think it was.

26 A. Definitely - it's a progression, it's a way forward,
27 yes.

28

29 MR BOLSTER: Q. One of your reasons, to paraphrase your
30 evidence, is that there had been a reduction in the town
31 centre on the northern side of the railway line?

32 A. On the other side - I don't know if that's the
33 northern: yes, where the Gallipoli Mosque is, yes.

34

35 Q. The business zoning around the Gallipoli Mosque had
36 been reduced --

37 A. I wouldn't say "business".

38

39 Q. -- or not extended?

40 A. I wouldn't say "business", I would say densification.
41 It could be just R4, it could be combination, you know,
42 residential and commercial. It was not specifically to do
43 with the business zoning, it was just the densification of
44 that area, so high density; R4 is high density and B4 is
45 high density.

46

47 Q. You took the view that because there was less density

1 on the northern side in and around the Gallipoli Mosque,
2 which is quite close to the station --
3 A. Correct.
4
5 Q. -- there there needed to be compensation on the south
6 side of the railway line into areas such as what we're
7 dealing with now?
8 A. Correct, because the argument then was to expand the
9 town centre this way. I believe that was one of the main
10 reasons why it was put forward, in that - it was actually
11 an item arising from - it was a matter arising from an
12 agenda item at that particular meeting, so it was supported
13 by the previous council.
14
15 Q. Mr Yang in 2013 had proposed this particular option 1;
16 correct?
17 A. Well, I think it's - yes, it's a continuation of what
18 has been proposed before.
19
20 Q. You'll observe from the minutes in April that he voted
21 with Councillors Campbell, Oldfield and Simms --
22 A. That's a matter for him.
23
24 Q. -- against this proposal?
25 A. That's a matter for him.
26
27 Q. Can I suggest to you that the reason he did that was
28 because it was different from his proposal?
29 A. Well, that's the way - I don't know why he voted
30 against it.
31
32 Q. It was different from the proposal you had supported,
33 wasn't it?
34 A. Well, it's still high density, so there's not much
35 difference, to be frank with you, except the fact that it's
36 still high density, it's a progression from R3 --
37
38 THE COMMISSIONER: Q. Not much between what, B4 and R4?
39 A. No, between the R3 --
40
41 Q. R3 and R4?
42 A. Yes.
43
44 Q. That's "medium high"?
45 A. Well, no, sorry, the difference between what's R3 and
46 the difference between the R4 and the B4, so there's still
47 a densification, in my opinion, and why wouldn't I support

1 it? It's not going backwards. It's not going to R3, it's
2 actually within the parameters of high densification. The
3 only difference that I thought of was the elimination of
4 the shops.

5
6 MR BOLSTER: Q. Mr Zraika, the problem I have with that
7 is that you had for years, having supported a B4 zoning
8 along Auburn Road, along the length of that block,
9 supported a recommendation from staff to pull back on that
10 zoning to R4 for only a third of that block and I don't
11 understand why. Can you tell us why?

12 A. Well, the argument, I believe it was, they stop at the
13 shops, they didn't want further shops, they didn't want
14 further commercial from where the last shop is, from, as
15 I recall, 12 Beatrice Street and I had no issue with that.

16
17 Q. Who is "they"?

18 A. The staff recommendation.

19
20 Q. The staff?

21 A. Yes.

22
23 Q. Did you raise the issue with staff and did you press
24 them on the issue, given your longstanding support for B4
25 all the way along Auburn Road?

26 A. No, I didn't.

27
28 Q. No? Not at all?

29 A. It came to council, that's the staff recommendation
30 and they probably saw fit that we should support only
31 commercial up to the shops, so I did.

32
33 Q. Did you not discuss this matter with Councillor Oueik?

34 A. No.

35
36 Q. Had you been the subject of representations from
37 anyone from the Bhanin Association?

38 A. Well, look, Bhanin organisation is an organisation, as
39 you know, located on Auburn Road. There's a lot of wakes
40 that occur there regularly, from time to time, so a wake -
41 when people from our community pass away they hold a wake
42 on the third day of the funeral and obviously members of
43 that community have come and discussed the proposal in
44 general, but nothing specific about the increase or the
45 reduction but just in general. They're more like asking
46 about the status than anything else.

1 Q. The question of what the Bhanin Association wanted was
2 not something that occurred to you or concerned you in
3 your --
4 A. They asked me about status, the status, the status
5 quo. They've always asked - members of our community have
6 always asked, you know, "What's happening?", that's about
7 it. Nothing to say, "Oh, you know, what happened?", no-one
8 has raised that with me.
9
10 Q. Are you sure about that?
11 A. I don't recall, to be frank with you.
12
13 Q. Didn't Mr Sadic come along to council on 20 May and
14 say, "We want option 2(b) because that will give us B4 and
15 that will enable us to fund our charitable works and
16 activities"?
17 A. I don't recall him speaking directly to me about it.
18
19 Q. But he spoke to all of you here. He spoke in council,
20 didn't he? Don't you recall that?
21 A. If he did, he did, yes.
22
23 Q. Might we play now, Mr Commissioner, firstly, the
24 council meeting from 20 May, from 3 minutes 40 on the tape.
25 Just before you press play, do you recall Mr Guy, a
26 Reverend Guy speaking to council?
27 A. Mr Graham Guy, yes, I recall.
28
29 Q. To be fair to him, he gave a fairly impassioned
30 submission to council?
31 A. He always does, yes.
32
33 Q. I don't think we need to hear Mr Guy, but it starts at
34 3.40 and then --
35 A. I think he was in opposition, wasn't he.
36
37 MR BOLSTER: Yes, he was, and then we can move on, once we
38 hear the matter being called.
39
40 (Audio played)
41
42 MR BOLSTER: They are the declarations of interest.
43 I think we've gone to the April one, but we'll stay with
44 that.
45
46 (Audio played)
47

1 MR BOLSTER: Could we move ahead to 9.58, please.
2
3 (Audio played)
4
5 MR SEAR: Is this the 20th of May or the 15th?
6
7 MR BOLSTER: Which tape do we have?
8
9 MR SEAR: You said the 20th.
10
11 MR BOLSTER: Which one is this? 20 May.
12
13 MR SEAR: I think the one you're talking about is
14 15 April.
15
16 MR BOLSTER: This is 20 May, yes.
17
18 MR SEAR: The 20th.
19
20 MR BOLSTER: Would you go to 43.45, please. This is
21 Mr Sadic on 20 May.
22
23 (Audio played)
24
25 MR BOLSTER: Q. That was Mr Oueik, wasn't it, speaking?
26 A. Yes.
27
28 (Audio played)
29
30 MR BOLSTER: Q. That is the end of the tape. Mr Zraika,
31 I take it you formed the view that there was no need to
32 debate the matter because you knew what the result would
33 be?
34 A. The result of what, sorry?
35
36 Q. Of the division. Firstly, you knew that your
37 rescission motion would get up; correct?
38 A. There was a rescission motion, I moved it, and if it
39 got up, it got up. It did get up at that meeting,
40 obviously, yes.
41
42 Q. If you had a rescission motion and you were unsure of
43 where the chamber was divided in relation to the matter,
44 may I suggest that you would have sought to persuade your
45 fellow councillors about why they should vote in support of
46 your motion?
47 A. Rescission motions is a common practice and they don't

1 always get up. They do get up sometimes and sometimes they
2 don't. In that case it did get up and once it got up, it
3 became planning field again and I moved the same motion
4 that was moved at the previous meeting.
5
6 Q. How about you answer my question?
7 A. Which is, sorry?
8
9 Q. If you had a motion for rescission - and I take it you
10 viewed it as an important matter, did you?
11 A. It was a rescission motion.
12
13 Q. Wouldn't you have sought to persuade your fellow
14 councillors as to why they should back it?
15 A. As I said, it has been debated before, so it has been
16 debated before. The aim of the rescission motion was to
17 rescind what was adopted at the last meeting, to rescind
18 what was there, bring it back to the planning field. Once
19 it comes back to the planning field, if it gets up, if the
20 rescission motion gets up, then, as I did, I moved the
21 recommendation that I did before.
22
23 Q. At the last meeting Mr Yang had voted the other way,
24 hadn't he?
25 A. Well, from what it shows in the minutes, yes.
26
27 Q. And at this meeting he voted your way; correct?
28 A. Well, obviously he did.
29
30 Q. Did you know he was going to do that before you moved
31 your motion?
32 A. No, I didn't.
33
34 Q. You didn't?
35 A. I didn't speak to him.
36
37 Q. So you just --
38 A. I didn't pursue --
39
40 Q. -- decided, can I suggest, that you didn't need to
41 argue your case for why this rescission motion should
42 succeed?
43 A. Let me tell you, you're asking the question to me
44 because I moved a motion. Sometimes when these items come
45 before council - and not always - you'll have some moments
46 where there'll be no mover and sometimes councillors jump
47 in to move the motion. So what I did in that instance,

1 which I did, because I actually believed in it, right, but
2 it's up to the councillors - it has been debated before, it
3 has been debated before. Now, I have not spoken to
4 Councillor Yang, as you've asked, I haven't, but I know -
5 they know my position on it, so I moved it and if it got
6 up, it got up.

7
8 Q. You knew on this occasion Councillor Attie had not
9 declared an interest and he would vote; correct?

10 A. Well, from the minutes, yes, he didn't declare an
11 interest.

12
13 Q. Let's leave aside the rescission issue --

14 A. It's a common practice, the rescission motion. At
15 every - most --

16
17 Q. Let's leave that aside. Let's look at the substantive
18 motion.

19 A. Right.

20
21 Q. That's the resolution to proceed with the zoning
22 recommendation put forward by staff; that's a substantive
23 matter?

24 A. Correct.

25
26 Q. On a previous occasion Councillor Attie hadn't even
27 been there?

28 A. Well, he knows my view on it from the meetings.

29
30 Q. How does he know your view on it?

31 A. Well, from the meetings - obviously, I've supported it
32 all along, haven't I.

33
34 Q. He didn't know from the previous meeting, did he,
35 because he wasn't there?

36 A. I don't know. You should ask him. I don't know.
37 Maybe he read the minutes, I don't know; maybe he read the
38 minutes.

39
40 Q. You discussed this with Councillor Attie before
41 20 May?

42 A. No, I haven't.

43
44 Q. Are you sure about that?

45 A. Definitely.

46
47 Q. How did he know about your position on the substantive

1 motion?
2 A. Maybe that's --
3
4 MR PRICE: I object.
5
6 THE WITNESS: You need to ask him. I don't know. Maybe
7 he read the minutes. How would I know?
8
9 MR PRICE: He has already said he doesn't know and he is
10 trying to assist by saying, "Well, he might have read the
11 minutes". We are going around in circles, aren't we.
12
13 THE WITNESS: He might have read the minutes. How would
14 I know? He knows my view on it, Mr Bolster.
15
16 THE COMMISSIONER: He is determined to answer despite your
17 objection, Mr Price.
18
19 MR BOLSTER: Q. The fact of the matter is there was no
20 need for any debate, was there, because you knew what the
21 numbers would be for both the rescission motion and the
22 substantive motion on 20 May; correct?
23 A. No, I disagree. I don't know what takes place in this
24 chamber sometimes.
25
26 Q. You just left it, a motion that you wanted to get up
27 that had important things going for it.
28 A. I support the principle.
29
30 Q. It had advantages that you wanted to --
31 A. I support the principle. I definitely agree, I do
32 support the principle. As I said, sometimes motions are
33 left there and the mayor or the general manager, or the
34 mayor of the day call the item in and sometimes it's open
35 and then councillors like myself would jump in and move the
36 motion and that's what I did, but in fact I do support the
37 principle, yes.
38
39 Q. You hadn't jumped in here, had you? You hadn't jumped
40 in with the rescission motion. You have to lodge a
41 rescission motion within a couple of days of the original
42 resolution, don't you?
43 A. I need to check with - lodge the rescission motion.
44
45 Q. It was your rescission motion, wasn't it?
46 A. Can I check? I need to check that.
47

1 Q. If you look --
2 A. I supported it, but I don't know if I lodged the
3 rescission motion.
4
5 Q. It was resolved on the motion of Councillor Zraika,
6 seconded Councillor Oueik, that the council's resolution in
7 minute 05715, et cetera, be rescinded?
8 A. Correct. Supporting a rescission motion does not mean
9 I've lodged the rescission motion.
10
11 Q. Did you lodge it or not?
12 A. I'll have to check, I don't recall. It should be
13 there, I don't know.
14
15 Q. You had moved the original motion back in April,
16 hadn't you?
17 A. I'll need to check that.
18
19 Q. Let's go back to 406.
20 A. Well, if I did, I did, yes.
21
22 Q. Page 407, actually. A foreshadowed motion was moved
23 by Councillor Zraika --
24 A. Yes, I moved it.
25
26 Q. -- seconded by Councillor Yang who curiously then
27 voted, essentially, against it?
28 A. Well, he seconded it, so obviously he supported it.
29
30 Q. You were the person, Mr Zraika, who was putting
31 forward and proposing the South Auburn planning proposal;
32 correct?
33 A. Well, at that meeting I moved the motion, yes.
34
35 Q. You were advocating option 2(a); correct?
36 A. Option - yes. As you've seen before, I've not always
37 moved the motions.
38
39 Q. You moved this motion?
40 A. At that particular meeting, yes, I did.
41
42 Q. You moved this motion?
43 A. Yes.
44
45 Q. You moved the rescission?
46 A. It was seconded by Mr Yang.
47

1 Q. And then you moved the resolution again back in May?
2 A. Correct - according to the minutes, yes.
3
4 Q. Whenever the South Auburn planning proposal was being
5 put forward --
6 A. Well, in those instances --
7
8 Q. -- it was you who was moving it?
9 A. Only in those instances, yes, but you just told me
10 before Mr Yang moved the initial motion.
11
12 Q. Back in 2013, Mr Yang moved a rezoning in accordance
13 with option 1?
14 A. Well, he seconded that option.
15
16 Q. Yes, he did.
17 A. He did, so by him seconding that option, obviously,
18 he's changed his tone, hasn't he, his vote.
19
20 Q. You changed your position too, didn't you?
21 A. Well, it was a staff recommendation and I just adopted
22 it.
23
24 Q. Just a staff recommendation. So if the staff had come
25 back with option 1, you would have supported option 1?
26 A. Option 1 is the total --
27
28 Q. Yes.
29 A. Yes, absolutely.
30
31 Q. If the staff had come back with "take no action", what
32 would you have done then?
33 A. I haven't actually thought about it. It goes against
34 my principles of expanding that town centre, it does.
35
36 Q. An expansion of the town centre by including a very
37 small pocket of B4.
38 A. It is an expansion; you can only go so far.
39
40 Q. That made no commercial sense, did it, to rezone a
41 third of the length of Auburn Road in that particular
42 block?
43 A. Well, it has been going on since 2010.
44
45 Q. A B4 zoning over such a small portion of one block,
46 can you point to another example of a B4 zoning in the
47 Lidcombe/Auburn town centres of that size?

1 A. Well, as I said, because there was an argument to
2 expand the town centre on this side, to go this way,
3 elongate it this way, simply because there was a reduction
4 on the other side, they took it off from the LEP --

5
6 Q. Can you answer my question? Do you recall a B4 zoning
7 of a portion of a block as small as that one?

8 A. If you - if we are relating that to Auburn town
9 centre, Auburn probably would be the biggest town centre in
10 this LGA, so if I want to make a comparison with the other
11 town centres or the villages within the Auburn LGA, Auburn
12 would be the biggest, so I can't make any comparison.

13
14 Q. I will ask the question again. Are you aware of - and
15 you've been on council for a very long time - any B4
16 rezoning for an area of land as small as the B4 zoning that
17 you put forward in option 2(a)?

18 A. I haven't gone outside the Auburn LGA and had a look.

19
20 Q. I just want to know in Auburn.

21 A. As I said, Auburn town centre is the largest town
22 centre in Auburn LGA and the reason it was done, simply
23 because they wanted to reduce the density on the other side
24 of the railway line and extend it on this side, to elongate
25 it, and that's why it was supported.

26
27 MR BOLSTER: I note the time, Commissioner.

28
29 THE COMMISSIONER: Very well. We will adjourn until
30 2 o'clock.

31
32 **LUNCHEON ADJOURNMENT**

33
34 MR BOLSTER: Would Mr Sear set up the next recording.
35 That is the April debate on the South Auburn planning
36 proposal. April 2015, 3.40.

37
38 (Audio played)

39
40 MR BOLSTER: Just for the record, Mr Guy starts speaking
41 at 3.40. Could you press pause, Mr Sear. I don't think it
42 is instructive to listen to everything that Mr Guy has to
43 say. Could you skip forward please to 9.58 when he has
44 finished talking.

45
46 (Audio played)

1 MR BOLSTER: Q. Could that be turned off now.
2 Mr Zraika, the position was that thereafter a rescission
3 motion was moved; correct? We've dealt with that
4 subsequent meeting in May. Did you move the rescission
5 motion?

6 A. I'm just going to check. In the following meeting?
7

8 Q. Yes. The minutes record that you moved it on the
9 floor, but did you actually prepare the document to lodge
10 with council staff?

11 A. I don't recall that at all.
12

13 Q. Do you have any memory of who did?

14 A. I actually don't recall.
15

16 Q. Mr Francis has given some evidence or has provided the
17 inquiry with a statement in which he says this:
18

19 *I have some recollection that*
20 *Councillor Zraika or Councillor Oueik may*
21 *have raised a view that the extent of B4*
22 *should be reduced, that Councillor Zraika*
23 *suggested to me that the B4 controls*
24 *namely, SFR --*
25

26 Which I think is meant to be FSR:
27

28 *-- and height should be the same as Auburn*
29 *town centre. I do not recall what was said*
30 *within the council chambers regarding the*
31 *reduction and the extent of the B4 zoning.*
32

33 He says in his examination, in his private hearing, which
34 has now been released, that that discussion occurred before
35 he authorised the preparation of the report that
36 recommended the 2A zone. Do you understand that?

37 A. Yes.
38

39 Q. Yes?

40 A. Yes.
41

42 Q. The effect of what he's saying, I want to suggest to
43 you, is that he didn't come up with the reduction in the B4
44 zone from option 1 to either option 2(a) or 2(b) himself,
45 that that came from either you or Mr Oueik. Do you agree
46 with or disagree with that?

47 A. Disagree.

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THE COMMISSIONER: That statement that you just read from it doesn't matter, but it hasn't been tendered and it is not marked. Should it be marked for identification at least?

MR BOLSTER: No, but it doesn't matter. Perhaps it could be. That's the statement of Glenn Anthony Francis, dated 30 May 2016.

THE COMMISSIONER: We will make it MFI 12 then.

MFI#12: STATEMENT OF GLENN ANTHONY FRANCIS DATED 30/05/2016

MR BOLSTER: Q. Have you read that statement or been shown it by your lawyers?

A. You mean the private hearing?

Q. No, it is a written statement.

A. I think so, yes.

Q. What was that MFI, Commissioner?

THE COMMISSIONER: I've made it 12 because the last one I've got is 11.

MR BOLSTER: Q. I want you to accept from me that the planners's evidence is to the effect that such a small B4 zone made no planning sense in that particular area. I want you to accept that assumption?

A. Yes.

Q. All right? I'm looking for other reasons why one might reduce the size of the B4 zoning in Auburn Road. I want to suggest to you that one of the reasons was a problem that you and Mr Oueik had with the Bhanin Association?

A. I disagree.

Q. You disagree?

A. Yes.

Q. Before the 2015 state election you had expressed a desire to be the Australian Labor Party candidate for the state seat of Auburn; correct?

A. Correct.

1 Q. Due to a decision made by the party, the current
2 leader of the opposition was pre-selected to that seat?
3 A. That's correct.
4
5 Q. And I take it that that fact was a matter that caused
6 you some great disappointment?
7 A. In the Labor Party, yes.
8
9 Q. No caused you?
10 A. With the decision? Yes.
11
12 Q. It is fair to say that you had been a prominent leader
13 in the Australian Labor Party in the state seat of Auburn
14 for many years, correct?
15 A. Yes. I'm an active member of the Labor Party locally,
16 yes.
17
18 Q. And the previous member, Barbara Perry, you had a
19 close working relationship with her; correct?
20 A. I wouldn't say close, but a professional relationship,
21 yes.
22
23 Q. A professional relationship?
24 A. Yes.
25
26 Q. She had been on council the same way that you'd been
27 on council?
28 A. I'm not sure - she served the term before I got on to
29 council, yes.
30
31 Q. Yes. She left council when she was pre-selected for
32 Auburn; correct?
33 A. I don't think so. I think she was pre-selected and
34 finished her term before she left.
35
36 Q. But you, whenever you ran for Auburn Council, you ran
37 on a Labor Party ticket?
38 A. Yes, I did.
39
40 Q. As a member of the Labor Party?
41 A. Correct.
42
43 Q. And you were subject to the rules and conditions of
44 the Labor Party?
45 A. Of the Labor Party, correct.
46
47 Q. That was one of the reasons why you caucused with

1 Mr Campbell after he was elected in 2012?
2 A. Yes, the rules in the Labor Party, if there are less
3 than four Labor Party councillors on council, it's not
4 caucusing, it's consulting.
5
6 Q. Consulting, yes?
7 A. There's a difference between the two, right?
8
9 Q. You certainly consulted with him from the time that he
10 came on to council in 2012, correct?
11 A. Yes.
12
13 Q. Mr Oueik was the liberal candidate against Mr Foley in
14 the state election; correct?
15 A. Yes.
16
17 Q. And you and Mr Oueik have had a good personal
18 relationship for many years; correct?
19 A. Define "personal relationship"? It's professional,
20 he's a council colleague - it's just a professional
21 relationship.
22
23 Q. It is just a professional relationship is it, there's
24 no personal links through your respective families?
25 A. Well, I am from the Zraika family. He's from the
26 Oueik family.
27
28 Q. That doesn't really answer my question.
29
30 THE COMMISSIONER: Q. I think you're being asked are you
31 friends?
32 A. Yes. I'm friends with all the councillors with the
33 exception of Mr Campbell towards the end, that's correct.
34
35 MR BOLSTER: Q. Mr Oueik's family come from a part of
36 Lebanon that your family came from?
37 A. We come from the same village, yes.
38
39 Q. From the same village, yes. Are there members of his
40 family who have married into your family?
41 A. Yes, it's a very big family. It's like the Smith
42 family, the Zraika family.
43
44 Q. Are there close relatives in your family that have
45 married into his family, close to you?
46 A. Close to me?
47

1 Q. Yes?
2 A. Not that I know of.
3
4 Q. Not that you know of?
5 A. No.
6
7 Q. When Mr Oueik was the Liberal candidate during the
8 state election, you supported him against Mr Foley, didn't
9 you?
10 A. No, I didn't.
11
12 Q. You didn't?
13 A. No. I was actually in fact supporting Labour and I
14 was helping the Labor Party in the neighbouring LGA, to be
15 frank with you, I was helping Julia Finn.
16
17 Q. Do you know a Mr Dandan of the Lebanese Muslim
18 Association?
19 A. Yes.
20
21 Q. Was it not the case that the Lebanese Muslim
22 Association wanted to have a Muslim, wanted to support
23 obviously a Muslim candidate in Auburn at the state
24 election?
25 A. It's a Muslim organisation and it had its views on who
26 they wanted to support.
27
28 Q. You were aware of their views, weren't you?
29 A. To some extent but, yes, I was.
30
31 Q. You didn't regard that as a matter of any
32 significance?
33 A. Well, they have their views, so --
34
35 Q. They were upset when you weren't pre-selected for the
36 ALP, correct?
37 A. Naturally, yes.
38
39 Q. They expressed that disappointment to you?
40 A. Not directly to me but it has been expressed widely in
41 the community, yes.
42
43 Q. And you know Mr Mustafa Hamed, don't you?
44 A. I do.
45
46 Q. It is fair to say his family, the Hamed family come
47 from the same village in Lebanon that your family came

1 from, correct?
2 A. It is on the fringe of that village, yes.
3
4 Q. How long have you known Mr Hamed?
5 A. Since I got on the council, 2004.
6
7 Q. Since 2004?
8 A. Yes.
9
10 Q. You didn't know him before that?
11 A. No.
12
13 Q. You've known Mr Hamed as a member and supporter of the
14 Australian Labor Party; correct?
15 A. I don't think he's member of the Labor Party.
16
17 THE COMMISSIONER: He said he was a communist, I think.
18
19 MR BOLSTER: Q. You knew that he was far more inclined
20 to support the Labor Party than he was to support Mr Oueik
21 as a Liberal candidate in the state election?
22 A. Well, he had left wing views on it and I know he was a
23 member of the Lebanese Communist Party, I was told, at one
24 stage, but he doesn't take party lines, most of what I've
25 seen. He's supported different individuals, particularly
26 local government, so I'm not sure about his particular
27 position on party lines, to be frank with you.
28
29 Q. Is it your evidence that you didn't support or express
30 any view in support of Mr Oueik to members of the Lebanese
31 community in the lead up to the 2015 state election?
32 A. That's correct. I was supporting - I was supporting
33 Labour during the last state election.
34
35 THE COMMISSIONER: Are we straying from the terms of
36 reference regarding --
37
38 MR BOLSTER: We're coming back to it, Commissioner.
39
40 Q. In 2015 there was a mayoral election?
41 A. Yes, there was.
42
43 Q. It took place in this room?
44 A. Yes.
45
46 Q. There was a deputy mayoral election as well, the
47 deputy mayoral election goes first, does it or does it

1 follow the mayoral election?
2 A. It follows the mayoral election, from memory, yes.
3
4 Q. You had nominated Mr Campbell for the position of
5 mayor; correct?
6 A. No, that was deputy.
7
8 Q. As deputy mayor?
9 A. Yes.
10
11 Q. Sorry, as deputy mayor. Yet, you didn't vote for him?
12 A. Correct, I didn't.
13
14 Q. You didn't tell him that you weren't going to vote for
15 him?
16 A. Can I explain that?
17
18 Q. No, if you just answer my question.
19 A. Sorry.
20
21 Q. You'll get a chance to explain. You didn't tell him
22 that you wouldn't vote for him, did you?
23 A. Not directly, no, I didn't.
24
25 Q. What happened was at the time the vote was called on,
26 you left the room; correct?
27 A. Correct.
28
29 Q. The position was, wasn't it, that you had discussed
30 with other councillors the fact that Mr Yang was not going
31 to support Salim Mehajer for deputy mayor. You were aware
32 of that fact, correct?
33 A. No.
34
35 Q. No?
36 A. No.
37
38 Q. Not at all?
39 A. Not at all. How would I know what Mr Yang was going
40 to do? I had an issue --
41
42 Q. Can I suggest to you this, Mr Zraika, that you had
43 been discussing how the votings would pan out for both the
44 mayoral position and the deputy mayoral position in the
45 lead up to that mayoral vote?
46 A. I disagree.
47

1 Q. You disagree?
2 A. Yes.
3
4 Q. You say you didn't meet with Mr Oueik to discuss what
5 was going to happen?
6 A. No.
7
8 Q. With Councillor Lam?
9 A. No.
10
11 Q. With councillor Attie?
12 A. No.
13
14 Q. You didn't discuss it with Mr Yang?
15 A. No.
16
17 Q. Is that right?
18 A. Yes, that's right.
19
20 Q. You made up your mind that you wouldn't vote for
21 Mr Campbell on the night?
22 A. Absolutely.
23
24 Q. And you say you did that --
25 A. I just couldn't bring myself to do it, to be frank
26 with you.
27
28 Q. Why did you nominate him?
29 A. That's what I was trying to explain before. He had
30 the nomination forms and he told me sign. It was on the
31 night, to nominate, which I did. In hindsight I probably
32 shouldn't have signed it and I didn't want to cause a
33 scene. Then when it came to the vote, I honestly couldn't
34 bring myself voting for him, for reasons that I've actually
35 outlined in the private hearing. I'm more than happy to
36 outline them now again.
37
38 Q. I'm sure you'll get the opportunity to give that
39 evidence later. I want to suggest to you that you didn't
40 vote for Mr Campbell because you knew that if you did, he
41 would be elected deputy mayor?
42 A. I didn't vote for him because - I disagree.
43
44 Q. Because you knew that Mr Yang would not be supporting
45 Mr Mehajer?
46 A. I disagree.
47

1 Q. That Mr Yang had made it known to other members of
2 council that fact well before the council vote?
3 A. I disagree. I didn't even know that.
4
5 THE COMMISSIONER: Are you putting to the witness that he
6 wanted Mr Mehajer to be deputy mayor?
7
8 MR BOLSTER: Yes.
9
10 THE COMMISSIONER: I don't think he went that far so maybe
11 you should --
12
13 MR BOLSTER: Q. Did you want Mr Mehajer to be
14 deputy mayor?
15 A. No.
16
17 Q. Did you prefer Mr Mehajer to be deputy mayor in
18 September 2015 over Mr Campbell?
19 A. No, absolutely not. If I wanted to I would have
20 stayed and voted for him.
21
22 Q. You knew if you voted against Mr Campbell you would be
23 expelled from the Labor Party, didn't you?
24 A. Well, no, I never had that thought for that length
25 about being expelled from the Labor Party, but I just
26 couldn't bring myself voting for George Campbell. I can
27 tell you why.
28
29 Q. All right. Why don't you tell us why?
30 A. Simply because he was undermining me in the
31 Labor Party. In the Labor Party locally and publicly,
32 leading up to my pre-selection and afterwards it became
33 more public and I found him to be disloyal, even though he
34 got elected on council, on the - with my support within the
35 Labor Party locally, and it was proven with his statement
36 to call the branch that actually supported him to be a
37 fraudulent branch and using the same numbers that actually
38 supported him to get on council. There was a pre-selection
39 against him and he relied on my support to get up. And for
40 all of those reasons, I just couldn't bring myself voting
41 for him and he wasn't leadership material because of all of
42 the - because of his behaviour during this course, so
43 that's why I really couldn't bring myself voting for him.
44
45 Q. What I want to suggest to you is that you suggested to
46 Mr Francis that the B4 zone should be reduced --
47 A. Absolutely not.

1
2 Q. -- on Auburn Road?
3 A. Absolutely not.
4
5 Q. You knew that that would harm the position of the
6 Bhanin Association, didn't you?
7 A. No.
8
9 Q. Had Mr Oueik expressed to you any dissatisfaction with
10 the Bhanin Association?
11 A. No.
12
13 Q. Not supporting him in the election?
14 A. No.
15
16 Q. Not at all?
17 A. No.
18
19 Q. Did you observe Mr Oueik to be upset with the Bhanin
20 Association on the night of the vote either in April or in
21 May last year?
22 A. No.
23
24 Q. Do you support the works of the Bhanin Association?
25 A. Well, Bhanin Association it has been an active
26 association locally and they have been very - they do a
27 variety of work locally, and I do support them, yes, I have
28 no problems with them.
29
30 Q. What was wrong, Mr Zraika, was sticking with option 1
31 that you had been behind for some years that benefited
32 Bhanin, that they wanted, what was wrong with sticking with
33 that when it came to the vote in April and May 2015?
34 A. I just supported the staff recommendation and if the
35 staff recommendation said there needs to be a reduction, so
36 be it, I supported that, and --
37
38 Q. Did you often support or follow the staff
39 recommendation when it came to matters of council?
40 A. In most cases.
41
42 Q. In most cases?
43 A. Yes.
44
45 Q. All right. Let's talk about one of those cases where
46 you didn't --
47

1 THE COMMISSIONER: There might be a distinction between
2 staff recommendation for development applications and for
3 planning proposals.
4

5 MR BOLSTER: We will just be dealing with planning
6 proposal, Mr Zraika. We're going to deal now with
7 Grey Street, Silverwater. Could the witness be given that
8 folder. He can return the other folder, please.
9

10 Q. While that is being obtained, Mr Sankari you gave some
11 evidence about being known to you personally?

12 A. I served on the board of Al Noori School for several
13 months and he was a member of that, of the board of that
14 school as well.
15

16 Q. When this matter was dealt with by council in October
17 last year, did you know Mr Sankari had an ownership
18 interest in the property?

19 A. No.
20

21 Q. Not at all?

22 A. No, not at all.
23

24 Q. Are you sure about that?

25 A. Definitely.
26

27 Q. Have you spoken to Mr Sankari at all since October
28 2015?

29 A. The last time I saw Mr Sankari is when I was on the
30 board. After I left the board, I never seen him again.
31

32 Q. When did you leave the board?

33 A. It would have been after my pre-selection, I think it
34 was after my suspension from the Labor Party, it would have
35 been probably February 2015, I think.
36

37 Q. February 2015?

38 A. I think so.
39

40 Q. You were suspended after the pre-selection, were you?

41 A. Yes.
42

43 Q. You're familiar with this proposal?

44 A. Yes.
45

46 Q. Planning proposals aren't all that common, are they,
47 in the life of a four-year council?

1 A. Planning proposals?
2
3 Q. Yes.
4 A. They have been common in Auburn.
5
6 Q. In the last council that began in 2012, the planning
7 proposals that were dealt with other than Grey Street,
8 Berala, Marsden Street and South Auburn were how many?
9 A. From memory, probably that will be it.
10
11 Q. That's it, isn't it? There are four occasions when
12 the development controls that relate to what you can build
13 on Land come before council in a four-year period, they're
14 fairly significant matters, aren't they?
15 A. Sorry, repeat that again?
16
17 Q. They're matters of some significance aren't they? It
18 is not like dealing with someone's DA?
19 A. These planning proposals, yes I agree.
20
21 Q. It has the effect of --
22
23 THE COMMISSIONER: It changes the LEP.
24
25 MR BOLSTER: Q. -- changing the LEP across either a very
26 small or a slightly larger area of the local government
27 area; correct?
28 A. Correct.
29
30 Q. I take it you're familiar with the background to this
31 proposal?
32 A. Yes.
33
34 Q. It was originally B6 industrial zone?
35 A. Yes.
36
37 Q. And the developer wanted to turn it into a B4
38 development?
39 A. From memory, yes.
40
41 Q. A fairly significant 8, 9, 10 storey residential
42 development right on Silverwater Roads?
43 A. All I know is about the usage, yes, in terms of mixed
44 residential, commercial.
45
46 Q. You knew it didn't get through gateway at the first
47 instance because it was inconsistent with the council

1 employment lands strategy; correct?
2 A. We knew afterwards, yes.
3
4 Q. You found that out, yes, because planning gave you
5 reasons for that decision. We went through that in the
6 private hearing. Do you recall that?
7 A. Yes.
8
9 Q. You observed that Mr Attie was a fairly enthusiastic
10 proponent of this planning proposal all the time it was
11 before council?
12 A. He was supportive.
13
14 Q. How did he make that support known to you?
15 A. Just from the chambers, in the chambers.
16
17 Q. Only in the chamber?
18 A. Only in the chamber.
19
20 Q. He never discussed it with you outside of the chamber;
21 is that right?
22 A. That's right.
23
24 Q. All right. In October, when the matter was before
25 council, you recall that he moved a motion in relation to
26 the proposal?
27 A. (Nods).
28
29 Q. Let's have a look at that motion. I think you'll
30 need, in order to do that, exhibit PH4 which will be handed
31 to you by Mr Sear. Could that be opened at page 27, right
32 towards the end of that smaller bundle, Mr Zraika. Do you
33 see there's a handwritten pagination at the foot of the
34 page, on the right-hand side?
35 A. Do I have the right page?
36
37 Q. It is the third last page?
38 A. 27 is it?
39
40 THE COMMISSIONER: 27, yes.
41
42 THE WITNESS: There's nothing written here.
43
44 MR BOLSTER: Q. Do you see item 22815?
45 A. Yes.
46
47 Q. Do you see the assessment there? Council has already

1 listened to audio recording of that meeting and the
2 minutes, can I suggest to you, reflect exactly what
3 occurred and Mrs Mooney spoke for some time on the matter
4 and then Councillor Simms moved that motion, fairly similar
5 to the way in which she did in relation to South Auburn.
6 Then from the floor, do you see over the page, under the
7 words "amendment", you'll see that councillor Attie,
8 seconded by Councillor Mehajer, moved that motion. Right?
9 I take it from your evidence, the first you knew of that
10 motion was when councillor Attie moved it on the floor of
11 the council?

12 A. Yes.

13
14 Q. At that time council staff had prepared a report on
15 the proposal?

16 A. Yes.

17
18 Q. I assume you read it?

19 A. From memory, to the best of my capability, yes.

20
21 Q. Let me summarise the effect of it. It was essentially
22 to change the planning proposal to make it comply with all
23 existing controls, including the employment lands strategy.
24 The existing zoning was B6, it went down to a B1
25 neighbourhood centre. It went down to a B1 neighbourhood
26 centre. You will see that if you go to 524 in the bundle.

27
28 THE COMMISSIONER: Has it been inserted in? You don't
29 know.

30
31 MR BOLSTER: I hope it has been.

32
33 THE WITNESS: Yes, I've got it.

34
35 MR BOLSTER: Q. You have got 524?

36 A. Yes.

37
38 THE COMMISSIONER: Q. The executive manager's report?

39 A. Yes. I've just got the recommendation.

40
41 Q. Yes, but the top right corner, does it say "executive
42 manager's planning report"?

43 A. Yes.

44
45 MR BOLSTER: Q. It's a B1 neighbourhood centre, it had a
46 floor space ratio of 2.7 to 1?

47 A. Yes.

1
2 Q. If you compare that to what Mr Attie was proposing, he
3 was suggesting B2, 4 to 1, the maximum height staff were
4 recommending was 20 and the height in Mr Attie's motion was
5 25 metres and the critical thing in Mr Attie's motion was
6 the amendment of the ELS to permit the residential use on
7 that particular site because the ELS, as you appreciate,
8 prohibited a development for residential purposes on that
9 site correct?
10 A. When it gets --
11
12 THE COMMISSIONER: B6 prohibits it but B1, neighbourhood
13 centre would not, but it wouldn't support high density
14 residential.
15
16 MR BOLSTER: Q. The B6 comes from the ELS, doesn't it?
17 A. Yes.
18
19 Q. So you have, I take it, read the council staff report
20 which gave the reasons why they were making that
21 recommendation?
22 A. (Nods).
23
24 Q. Before you saw Mr Attie's motion, what was your
25 intention when it came to either supporting or rejecting
26 the staff recommendation.
27 A. It was before council. This was - the intention to
28 densify that area was well before October 2015, so there
29 was an intention to put mixed residential-commercial in
30 that area. When it came back I understood the gist of it
31 and I supported that sort of - that principle.
32
33 Q. Just if you could answer my question.
34 A. Sorry.
35
36 Q. When you got the staff report and the staff
37 recommendation and you read them and you brought your
38 experience as a councillor and your knowledge of the area
39 and all of that to bear, were you going to support the
40 recommendation of staff or oppose it?
41 A. Well, when it came, when I read it, it refreshed my
42 memory about what has been proposed before and I thought it
43 was something good to support.
44
45 Q. It was something you --
46 A. Would support.
47

1 Q. You would support?
2 A. Yes.
3
4 Q. Would you support the B1 neighbourhood centre zoning?
5 A. What's being proposed by councillor Attie.
6
7 Q. By councillor --
8 A. Attie.
9
10 THE COMMISSIONER: Q. When you said it was proposed
11 before, are you referring to the original planning proposal
12 to change B6 to B4 or something else?
13 A. Yes, there was an attempt in the past to --
14
15 Q. It was refused to gateway, that one?
16 A. I don't know what happened in the past specifically at
17 gateway, but I recall specifically there was a - there was
18 an attempt to mix commercial residential years ago when I
19 was first serving on council.
20
21 Q. I think the area was zoned low density residential
22 until you brought in your LEP in 2010, at which point it
23 was zoned B6 which prohibits residential and then there's
24 this planning proposal. Was there something else you were
25 referring to or is it this planning proposal?
26 A. Initially, I recall, as I said, in the past there was
27 an attempt to - that's my understanding of when I first
28 served.
29
30 Q. That must have fallen by the way side by the time you
31 got to your LEP in 2010 because that's --
32 A. Possibly that's the zone. Before it was actually
33 zoned that way.
34
35 Q. Not permitting high density but prohibiting any
36 residential?
37 A. Yes, but with time things can change. That idea came
38 again which densified in my opinion why wouldn't we support
39 it because the locality of it, in my opinion, required that
40 mixture, it's on the main road, St Hilliers and it is close
41 to Parramatta Road and I did say in my private hearing when
42 I did my corner meetings.
43
44 Q. Your what?
45 A. Street corner meetings, I did that religiously every
46 Saturday when I was there from September 13 to September 14
47 and I did have some residents come up to me and say, "we

1 need activity here." And that's why it sort of reaffirmed
2 that when that was proposed initially to support it.

3
4 THE COMMISSIONER: Thank you.

5
6 MR BOLSTER: Q. The effect of the 2010 LEP and the
7 employment lands strategy that had been created earlier
8 that year --

9
10 THE COMMISSIONER: 2008.

11
12 MR BOLSTER: Q. In 2008 but it had been revised then in
13 2015, in May of 2015, the effect of that was that there was
14 to be no residential development on that site. You
15 appreciated that?

16 A. That's right.

17
18 Q. Do I take it then that you opposed --

19 A. It was subject to change.

20
21 Q. Well, would you go back to page 469 please in the
22 bundle. Do you recall reading this executive summary of
23 the staff report that was before you when you came to vote
24 on this matter in October last year?

25 A. Yes, to some extent I've read through the reports,
26 yes.

27
28 Q. You will see that in the first half of the page on 469
29 it summarises the effect of the proposal from the
30 developer?

31 A. Yes.

32
33 Q. And then in the second half of the page and over on to
34 page 470, there are reasons given as to why that was not
35 such a good idea; correct?

36 A. Well, according to this report, yes.

37
38 Q. The same staff, Mr Francis's planning staff, prepared
39 this report?

40 A. Correct.

41
42 Q. The same staff prepared the South Auburn
43 recommendations that you voted on in support of him in
44 April and May?

45 A. Correct.

46
47 Q. What was wrong with the advice that you were being

1 given there in 469, from your perspective?

2 A. It could be other things envisaged in that area, so
3 I did say --

4
5 Q. Say that again? Sorry I that wasn't entirely clear?

6 A. Other matters could be envisaged in that locality. So,
7 as I said, I did not necessarily support every staff
8 recommendation and obviously that's one of them; because I
9 was of the view that we need to densify that area. It
10 lacked character there and as a representative of the
11 community, which I've mingled, particularly it was
12 reaffirmed to me when I did my corner members, a lot of
13 members came up to me and said, "Look, we need something to
14 be happening here." And that's why I supported it, I mean
15 council staff can put recommendations and provide us with
16 all the reports, but at the end of the day it is the
17 councillors that decide what is in the best interests of
18 the community. In my opinion at the time, it was in the
19 best interests of the community.

20
21 Q. You're familiar with Silverwater Roads north of
22 Parramatta Road and all the way up to the river, aren't
23 you?

24 A. Yes.

25
26 Q. There's not a single high density residential
27 development at all along that road?

28 A. I would agree, yes.

29
30 Q. That roadway is an industrial zone on both sides, save
31 for a park or two close to the river, save for Dooleys Club
32 on the west side close to the river?

33 A. Correct.

34
35 Q. Which services a lot of the employment communities in
36 the area as well and it is a terrible traffic problem, the
37 whole of Silverwater Road, isn't it?

38 A. There's traffic everywhere. I wouldn't say it's
39 overly terrible, but I see that across Sydney everywhere
40 with traffic and I didn't see any issue with starting
41 somewhere there, if that's the case, increasing density in
42 that area will help the locals in that part. If you go
43 there - it's dead. We need some --

44
45 Q. It's dead, is it?

46 A. That's how I find it, you need some activity
47 happening, some shops, there are a lot of residents there,

1 currently living there, they need access to the shops. Why
2 can't we have shops in that vicinity.

3

4 Q. Didn't council take a decision in the LEP and the ELS
5 that that area was to be reserved for important employment
6 generation activities, that's why it was given an
7 industrial zoning; correct?

8 A. I agree, correct.

9

10 Q. You, do I take it, wanted to reverse that decision by
11 reference to one block, one block on Silverwater Road, you
12 wanted to turn it into a significant residential
13 development?

14 A. With the hope of having residential mixed, residential
15 across both sides of St Hilliers. It could happen because
16 there are residents living within the industrial area.
17 I mean, they need access - there are residents on both
18 sides in that - between the river and Parramatta Road.

19

20 THE COMMISSIONER: Q. You mean historically because --

21 A. They're still today.

22

23 Q. It had been a residential area at some stage?

24 A. That's right, they're still there today.

25

26 Q. They're single level dwellings?

27 A. Yes. There's no harm in having high density on
28 fronting St Hilliers in between Parramatta Road and the
29 river and that will boost the local economy there. I find
30 that to be a good idea. You've got to start somewhere, so
31 if that's --

32

33 MR BOLSTER: Q. The whole point of the employment lands
34 strategy and the economic modelling behind it was to
35 transform that area from being what was many, many years
36 ago a residential area into an employment generating area;
37 correct?

38 A. Look, I agree, but can I say by having the mixed
39 commercial you would also create employment, so --

40

41 Q. Mr Zraika, there was no debate, was there, at the
42 council meeting in October along those lines? There was no
43 give and take, there was no advocating the arguments, was
44 there?

45 A. Not necessarily at that particular meeting. There
46 could have been. I can't recall what happened at that
47 October meeting. At some point when this first started

1 there was a debate of some sort.

2

3 Q. Mr Attie didn't seek to persuade you that his
4 amendments had to pass in order to?

5 A. No.

6

7 Q. He just put up the amendment?

8 A. I've been on council since 2004 so I've seen things
9 come and go. I know what happened in the past.

10

11 Q. You didn't need any persuading about Mr Attie's
12 motion, did you, you were going to support it?

13 A. In that instance with that proposal, yes.

14

15 Q. And no-one else needed any persuading of those who
16 voted for it did they?

17 A. That's a matter that you need to ask them. I don't
18 know.

19

20 Q. It is still your evidence that Mr Attie didn't raise
21 his motion with you before he moved it from the floor of
22 the chamber?

23 A. Correct.

24

25 Q. All right. Turn now, if you may, to Marsden Street
26 which occurred whilst you were there. I would like to play
27 the tape of the consideration of the various Marsden Street
28 options in June 2014, from 1 hour, nine minutes and two
29 seconds. This goes for about 17 minutes.

30

31 (Audio played)

32

33 MR BOLSTER: Q. Mr Zraika, would you have open page 200
34 in the bundle. You'll be able to follow this.

35

36 (Audio played)

37

38 MR BOLSTER: The options are at 181, Mr Zraika.

39

40 (Audio played)

41

42 MR BOLSTER: Q. Thank you. That's the end of that.
43 Mr Zraika, the only debate on Marsden Street came from
44 Councillor Simms, Batik-Dunbar, Councillor Campbell, who
45 were trying either to understand the proposals or
46 ameliorate the effect of the preferred option (g), correct?
47 There was no debate from --

1 A. The other councillors, correct.
2
3 Q. -- the other councillor who were the proponents of
4 option (g) and who voted for option (g); would you agree
5 with me?
6 A. Correct.
7
8 Q. Are you noticing a pattern that's developed in the key
9 planning decisions made by council in the last council,
10 Grey Street, Silverwater, South Auburn and Marsden Street
11 where no-one who was proposing or pursuing or advocating
12 the greater development, the larger development, the
13 biggest change to the planning controls, was seeking to
14 argue their case at all?
15 A. Not necessarily because the difference, if you go to
16 the Grey Street, that has been going on some time, the
17 Grey Street - I think Marsden Street it has been recent and
18 the South Auburn that has been going on for some time, so
19 there has been debate in relation to that at some stage.
20
21 Q. But at Grey Street the position had changed because
22 there was an issue that arisen about the employment land
23 strategy and that hadn't been debated, correct?
24 A. Correct.
25
26 Q. In South Auburn the reduction in the B4 zone in the
27 small pocket in option 2(a) that had never previously been
28 proposed; correct?
29 A. Correct.
30
31 Q. And in the case of Marsden Street option (g) arrived
32 for councillor's consideration in the lead up to this
33 meeting; correct?
34 A. Correct.
35
36 Q. All three had significant issues that hadn't been
37 debated on the floor of council?
38 A. There were questions raised and they've been answered.
39
40 Q. Neither you nor Mr Oueik or Mr Mehajer or Mr Attie,
41 who were proponents of those proposals, leaving aside when
42 there were conflicts and people left the room, the people
43 who were advocating significant development never sought to
44 persuade councillors as to why that should happen?
45 A. Well, I would say I was supportive but - I was
46 supportive of that proposal.
47

1 Q. Why didn't you want to make a case for the change to
2 Marsden Street? Why didn't you advocate why there should
3 be a change in Marsden Street?
4 A. There had been questions about - see, Semra
5 Batik-Dunbar asked a few questions about the need to have
6 commercial on this site and the need to foresee in the
7 future why it's important to have it. I think she made a
8 valid point, plus I think Mr Francis did make some comments
9 at that meeting in relation to that. If you wanted to
10 support something you don't necessarily, each councillor
11 need to debate the point. If it's been made across and
12 it's convincing, that's sufficient.
13
14 Q. Is another way of looking at it this: you didn't need
15 to debate because you knew that you had the numbers to get
16 those proposals up?
17 A. I disagree.
18
19 Q. You see, option (g) was a staff option?
20 A. An alternative option, yes.
21
22 Q. Yes - that wasn't reflected in the consultant AECOM's
23 report as being their preferred option; correct?
24 A. Correct.
25
26 Q. Their preferred option had a significant difference
27 when it came to the properties along Mark Street; correct?
28 A. Correct.
29
30 Q. The difference between options (f) and (g) in
31 Mark Street was R4 as opposed to B4?
32 A. Correct.
33
34 Q. When you came to vote on this did you know that
35 Mr Oueik owned a number of properties on Mark Street?
36 A. I did not know how many properties he owned.
37
38 Q. How many. Okay. Did you know that he owned more than
39 one?
40 A. All I know that he had a pecuniary interest. I don't
41 look at people's pecuniary interests.
42
43 Q. Did you know that he owned more than one property on
44 Mark Street, Lidcombe?
45 A. No, I don't.
46
47 Q. Had he discussed that fact with you when he declared

1 his interest?

2 A. No, he didn't.

3

4 Q. Don't you think it is important, when a councillor has
5 disclosed an interest in relation to a planning proposal,
6 that they disclose the full extent of their interest so
7 that councillors know how many properties are --

8 A. To my knowledge, councillors declare their interest
9 before each council meeting if they have one and to my
10 knowledge they declare the details of that interest. Now,
11 it's not up - I don't normally look at other councillors's
12 details, pecuniary interest details, it's not my - I look
13 at things based on merit. Comparing it to other
14 councillors, we've seen in Mr Campbell's statement saying,
15 had he known Mr Oueik had more than one property or many
16 properties in that vicinity, he would have voted the other
17 way. Personally I find that outrageous.

18

19 Q. Wouldn't you have looked at the proposal differently
20 if you had known that Mr Oueik stood to benefit
21 considerably from a B4 zoning along Mark Street?

22 A. My job is to look at it based on its merits and how it
23 would benefit the community, not the proponents of who owns
24 what there.

25

26 Q. Do I take, it is an extension from that, that you
27 don't think disclosure of interest is significant because
28 you'll always deal with it on its merits?

29 A. No, declaring is important.

30

31 Q. Why is it important, Mr Zraika?

32 A. Because if it affects him directly the councillor, he
33 or she, should not be involved in any of the decision
34 making process, the vote or anything relating to it, but we
35 as councillors, we don't look at what Mr X owns, we look at
36 how this scenario or this proposal benefits the community
37 at large. In that instance, it does, it's across the road
38 from Lidcombe railway station, it's very close to the
39 railway line, and for the points made at that particular
40 meeting it's convincing. That's why I supported it.

41

42 Q. You heard Mr Oldfield attack AECOM for being a
43 planning consultant that did work for developers. Did you
44 have a view about AECOM's abilities as a planning
45 consultant?

46 A. I didn't.

47

1 Q. You didn't?
2 A. Well, not - I don't - I don't know where Mr Oldfield's
3 view about it, why is he bringing that to the councillors
4 saying there's a conflict of interest if these people were
5 developers and councillors, obviously these professional
6 people represent different organisations, different
7 individuals and if the council hired them, then we look at
8 it based on the report they give, simple.
9
10 Q. I'm more interested in your perception of AECOM and
11 your perception of their advice and the way you dealt with
12 their advice. Is that --
13
14 THE COMMISSIONER: Is that relevant to the terms of
15 reference? AECOM's standing. They're not here.
16
17 MR BOLSTER: They're not here.
18
19 THE COMMISSIONER: I'm not inquiring --
20
21 THE WITNESS: I've never dealt with AECOM, so I don't
22 know.
23
24 MR BOLSTER: Q. What weight did you give to their advice
25 when they recommended option (f), for example, was it a
26 persuasive case as far as you were concerned or you just
27 thought they had it wrong?
28 A. It's a good option but there's other options. They did
29 provide other options.
30
31 Q. You see, in Marsden Street and South Auburn and
32 Silverwater you supported increases from existing height
33 limits and development controls; correct?
34 A. Correct.
35
36 Q. They were examples of spot re-zonings, weren't they?
37 A. I would say so, yes.
38
39 Q. And you had, prior to winning the 2013 mayoral
40 election, agreed with Mr Oldfield that you would support
41 existing height limits and development controls within the
42 Auburn Local Government Area, correct?
43 A. Are you talking about the agreement?
44
45 Q. Yes.
46 A. The agreement was sprung on me. Yes I agreed.
47

1 Q. You agreed?
2 A. Yes, I agreed.
3
4 Q. You did commit with Mr Oldfield to oppose spot
5 re-zonings?
6 A. I can't recall the exact details of that agreement but
7 I did sign that agreement with him on the night of my
8 mayoral election, on the day leading up to it, yes, I did.
9
10 Q. Might the witness be shown a copy of exhibit 01,
11 please.
12
13 THE COMMISSIONER: 01?
14
15 MR BOLSTER: Yes, the opening bundle; page 76.
16 A. Yes the spot re-zonings specifically to Jenkins Street
17 in Regents Park.
18
19 Q. And similar re-zonings that are outside the current
20 LEP and DCP; correct?
21 A. Correct.
22
23 Q. Each of Grey Street, South Auburn and Marsden Street
24 were re-zonings outside of the current LEP and DCP;
25 correct?
26 A. Correct.
27
28 Q. You agree that you breached that agreement in
29 paragraph 2?
30 A. Yes, I did.
31
32 Q. Why did you do that?
33 A. Well, when we did the mayoral agreement it was done in
34 2012, after the council elections, and it was held, from
35 memory, at Mrs Simms house with the presence of
36 Mrs Batik-Dunbar, George Campbell, myself, Mr Oldfield, and
37 obviously Mrs Simms and, from my recollection at that
38 meeting, the deal was done in relation to the mayoral
39 elections for each year plus the deputy mayor's position
40 for each of those years.
41
42 Q. Can I just pause there. I'm going to come to that
43 agreement shortly. I'm just focusing on this agreement
44 with Mr Oldfield?
45 A. I'm coming to that, yes. What happened there, this
46 was signed on it the 26th apparently, I think it's meant to
47 be the day before because that's when the mayoral election

1 took place, the 25th.
2
3 Q. It was signed the day before, wasn't it?
4 A. I hope so, yes. And that was sprung on me on the day
5 and the reason I signed it is because I did not - initially
6 it wasn't part of the mayoral deal that took place back in
7 2012, plus I did not want to lose his vote for the mayoral
8 election that I was anticipating for that to be held on
9 that particular night.
10
11 Q. You needed his vote. If he hadn't voted for you, if
12 he'd walked out of the chamber?
13 A. I would have lost that fifty-fifty chance, yes.
14
15 Q. All right. Could the witness be shown a copy of
16 exhibit GEN6 which is the agreement he had with
17 Mr Campbell. That was signed at about the same time?
18 A. Correct.
19
20 Q. At Councillor Simms house?
21 A. No, Mr Campbell's agreement was signed in 2013,
22 leading up to my mayoral election. It wasn't at
23 Councillor Simms house.
24
25 Q. This was another document you signed because you
26 needed his vote?
27 A. Correct.
28
29 Q. For the mayoral election?
30 A. Correct.
31
32 Q. And that says one of the commitments that you gave
33 there that you would only support development consistent
34 with the LEP and DCP and will not vote to amend the LEP
35 unless there's an overwhelming public interest to do so?
36 A. Correct.
37
38 Q. You don't point, I take it, to any overwhelming public
39 interest in any one of South Auburn, Grey Street or
40 Marsden Street; correct?
41 A. Sorry, repeat that again?
42
43 Q. There was no overwhelming public interest to proceed
44 with the planning proposals in each of Grey Street,
45 Marsden Street and South Auburn, was there?
46 A. I thought there was an interest.
47

1 Q. There was, was there?
2 A. To support this for the community, yes.
3
4 Q. An overwhelming public interest?
5 A. Well, it's - how do you define overwhelming?
6
7 Q. I'm asking you.
8 A. Well --
9
10 Q. Overwhelming, Mr Zraika? It was overwhelming that in
11 South Auburn there had to be a B4 pocket the size of the
12 pocket in option 2(a)?
13 A. This has been publicly exhibited and --
14
15 Q. How about you answer my question?
16 A. Sorry.
17
18 MR PRICE: I object. My friend is putting this document
19 to the witness in terms that it's some sort of legally
20 binding document and asking him to explain every single
21 word and every little breach of it. It is clear what it
22 is. It is a document, a political document sprung on him
23 that if he doesn't sign it, he's going to lose a vote.
24 Now, the nuances are really irrelevant. He's gone back on
25 the agreement because he didn't want to sign it in the
26 first place. It is obvious from his evidence here today,
27 it is obvious from his evidence at the private hearing. To
28 go through this as some sort of a binding contract is
29 unfair, in my submission, it takes the inquiry nowhere.
30
31 THE COMMISSIONER: I agree with you. I don't think it is
32 a binding. I didn't think it was being suggested that way.
33 I'm taking it no more at the moment than you're exploring
34 with the witness what he saw as being the public interest
35 in his voting for the planning proposals.
36
37 MR BOLSTER: Exactly.
38
39 Q. What was the overwhelming public interest in
40 South Auburn for option 2(a)?
41 A. When it was exhibited, obviously, you've seen people
42 in support and we've seen people in opposition. That's
43 natural and when we did the public exhibitions for the
44 other proposals, we've seen people supporting people in
45 opposition, that's just the way it is.
46
47 Q. The fact that Mr Mehajer had declared an interest in

1 relation to property within the 2(a) area had nothing to do
2 with it?

3 A. Absolutely not.

4

5 Q. The fact that the Bhanin Association, a charitable
6 organisation, that would have benefited from option 1 which
7 you had championed for years?

8 A. Absolutely not.

9

10 Q. Had nothing to do with it?

11 A. No. Sorry for not letting you finish your question,
12 sorry.

13

14 Q. In the case of Berala, which you'll find in the same
15 bundle as the South Auburn bundle, I just wanted to ask you
16 a few quick questions about that because you didn't
17 participate in the relevant votes. You, can I suggest,
18 could have had no conflict of interest in relation to the
19 Berala rezoning until it became clear that there was a
20 change of planning control in the York Street area where
21 you owned property; correct?

22 A. Well --

23

24 Q. That's the fact, isn't it?

25 A. No. As I highlighted before in my private hearing,
26 the fact - if you refer to the draft Berala village study,
27 the April 2012, there's a radius and there's a
28 circumference of the town centre and my property is within
29 that town centre, and so based on that and the fact that
30 there is a perceived conflict of interest or a potential
31 conflict of interest, I decided to do the right thing and
32 abstain from voting and declare an interest.

33

34 Q. When that study was prepared and you read it and it
35 went to council, you appreciated that it could not possibly
36 have affected your property because it recommended no
37 change to the planning controls?

38 A. I still believe that I lived in the town centre and I
39 was trying to do the right thing by declaring an interest
40 because it's a perceived conflict of interest or a
41 potential conflict of interest because it is within the
42 town centre, 400 metres away from the railway station.

43

44 THE COMMISSIONER: Q. You're defining town centre as
45 being about 400 metres of the railway station?

46 A. That's correct. It is clearly within the April 2012
47 draft Berala Village study. As I highlighted at the

1 private hearing, I think it's on page 6, from memory, of
2 that particular bundle, I did show you where I lived, it's
3 in that circumference, and I live very close to the railway
4 line.

5

6 MR BOLSTER: Q. Have you acquired any other property in
7 the Berala town centre in York Street since this planning
8 proposal went forward?

9 A. My second property was bought before the draft
10 Berala Village study.

11

12 Q. Your second property. Is that in York Street?

13 A. It's in York Street, yes.

14

15 Q. Now I want to turn to John Street, please. Can you
16 put that away. Could the witness be given the John Street
17 file. Would you go please to that bundle at page 74. You
18 will see there there was a resolution on 26 June 2012.
19 That was the last council before Mr Mehajer came to council
20 in September.

21 A. Correct.

22

23 Q. Do you remember that?

24 A. Yes.

25

26 Q. You were on council when the original decision was
27 made to put the car park out to tender?

28 A. Yes.

29

30 Q. And to sign the contract with Mr Mehajer's company;
31 correct?

32 A. Correct.

33

34 Q. That occurred in to 2011 - yes?

35 A. Which particular meeting from memory?

36

37 Q. I'm not talking about a meeting - the very broad
38 outline is 2011?

39 A. Correct, February 2011.

40

41 Q. The original contract, he's got a period of time in
42 which to get a DA?

43 A. Correct.

44

45 Q. It is a term of the contract that he had to get a DA
46 through and approved for what he was planning to do,
47 otherwise either council or he could rescind the contract

1 and each party walk away. Do you remember that?
2 A. Correct.
3
4 Q. In June he had asked for an extra three months and 16
5 days to get his consent - yes?
6 A. Well, yes, according to the minutes here, yes.
7
8 Q. By a vote of nine to one council said no?
9 A. I think it was four, wasn't it?
10
11 Q. Sorry?
12 A. It's the other way around, they supported it.
13
14 Q. No if you have a look at it there --
15 A. Are you referring to item 120/12.
16
17 Q. Item 120/12. The only councillor?
18 A. Voted against the extension was Councillor Lam.
19
20 Q. No, no, no.
21 A. Sorry.
22
23 Q. The resolution was that the request for an extension
24 of time be refused. Do you see the last word?
25 A. Sorry, yes.
26
27 Q. You're not suggesting that Councillor Simms voted to
28 give him more time?
29 A. Well, she has in the past.
30
31 Q. We'll come to that and the reasons why. All
32 councillors except Councillor Lam refused to give him extra
33 time; correct?
34 A. Correct, from the minute --
35
36 Q. You were one of them?
37 A. Correct, yes.
38
39 Q. Why? Why did you refuse to give him time then?
40 A. Based on the information at the time, available to the
41 councillors, I can't recall exactly what happened at that
42 meeting, but obviously there was a reason for no further
43 extension as to give him time, so --
44
45 Q. You can't remember?
46 A. I can't recall exactly what happened at the JIRT
47 meeting, no.

1
2 Q. He had a meeting, you can't remember what it was, but
3 you voted to refuse his request?
4 A. Well, from the minutes, yes, I agree.
5
6 Q. He came on to council in September 2012 and as soon as
7 he had come on to council, he sought a further extension of
8 time because time had, by that stage, run out. Would you
9 go, please, to page 113 of the bundle.
10 A. Yes.
11
12 Q. You will see there the dealings in relation to this
13 matter?
14 A. Correct, yes.
15
16 Q. Councillor Lam, can I suggest, who has - just pausing
17 there, Councillor Lam has always been a significant
18 supporter of Mr Mehajer on council, hasn't she, to your
19 observation?
20 A. She has been a supporter.
21
22 Q. Yes.
23 A. I don't know about the word "significant", but a
24 supporter.
25
26 Q. Well --
27 A. Others have supported Councillor Mehajer on council,
28 so --
29
30 Q. All right. Councillor Lam's motion seconded by
31 Councillor Oueik was lost?
32 A. Correct.
33
34 Q. You voted against it?
35 A. Correct.
36
37 Q. Do you recall why you voted against it then?
38 A. Well, I think based on the information then that he
39 required - he wasn't meeting the deadline to provide a DA
40 and the contract at the time I think by the end of that
41 year was rescinded and, therefore, he lost it.
42
43 Q. Then there was a further motion, it's somewhat
44 different terms, where council unanimously voted for
45 another extension on the terms that you see set out on page
46 114. Can I draw to your attention paragraph 2 of that
47 particular resolution which seems to be the difference

1 between the one that was lost and the one that succeeded.
2 A. Was that - I don't believe that was done at the same
3 meeting though.

4
5 Q. I think you'll find that it was: the minutes
6 certainly record it as being the case. Anyway, I don't
7 want to dwell too much on that because there was that
8 extension of time. That was in October 2012. Would you go
9 to page 185 and 186.

10 A. Correct. Yes.

11
12 Q. You'll see a month later there was a resolution moved
13 by Councillor Simms, seconded by Councillor Campbell,
14 noting the applicant's requests to alter the terms of the
15 contract and rescind the contract and that no further new
16 contract be entered into?

17 A. Correct.

18
19 Q. Do you see that?

20 A. Yes.

21
22 Q. What had happened, to put it in a nutshell, back in
23 October, council staff were authorised to enter into a new
24 contract on certain terms. Mr Mehajer's company had not
25 agreed with those terms and it made a counter offer that
26 came back to council on November 21 and council said "no,
27 time's up, he hasn't got his DA, we don't agree with his
28 terms, and we're going to rescind the contract"; correct?

29 A. Yes, from the minutes, correct.

30
31 Q. You voted that way?

32 A. Yes.

33
34 Q. With councillors Simms, Oldfield, Campbell, et cetera?

35 A. Yes, from the information available, yes.

36
37 Q. But then later on a fresh contract was entered into in
38 early 2013?

39 A. March of 2013.

40
41 Q. The key reason for that was that council imposed a
42 condition about a supermarket; correct?

43 A. Well, the supermarket condition has always been part
44 of the agreement, as I understand it.

45
46 Q. It was expressly raised in the March resolution,
47 wasn't it?

1 A. Well, it was at that meeting, I believe, but to
2 clarify, when council decided to enter into negotiations
3 and authorise the general manager to enter into
4 negotiations back, I think, October 2010, the supermarket
5 was a big element of that, yes.
6
7 Q. Look at 259, if you would, please. They are the
8 minutes of the meeting on 20 March 2013?
9 A. 259?
10
11 Q. 259.
12 A. Correct.
13
14 Q. You will see there that there was a condition 1(a)
15 that was raised and that was the, may I suggest, an
16 important consideration for a number of members of council
17 when it came to supporting this motion?
18 A. Correct.
19
20 Q. That 2000 square metre shopping centre on the ground
21 floor; correct?
22 A. Correct.
23
24 Q. After that resolution, the contract was entered into,
25 a fresh contract, for \$6.5 million, and then in November
26 2013, a request came in from the purchaser to reduce or for
27 the return of half of the deposit subject to certain terms
28 and conditions about a guarantee by Mr Mehajer and other
29 people; correct?
30 A. Correct.
31
32 Q. When that first came back before council, it was
33 refused; correct?
34 A. Correct.
35
36 Q. You voted again with Councillor Simms, Campbell,
37 Oldfield, to refuse that request?
38 A. Correct.
39
40 Q. I want to ask you about the meeting that occurred when
41 that vote took place. There was a dinner after that
42 meeting in the Jack Lang Room; correct?
43 A. Correct.
44
45 Q. Mr Mehajer left that dinner and came back into the
46 council chamber; correct?
47 A. I'm not sure.

1
2 Q. You joined him in the council chamber and you had a
3 discussion with him, didn't you?
4 A. No, I didn't.
5
6 Q. Councillor Campbell says that he saw the two of you
7 alone in this room having a discussion?
8
9 MR DUGGAN: I object to that. I'm not sure that's his
10 evidence. My understanding was that all he saw was someone
11 walking past the Jack Lang Room. I don't recall any
12 evidence about witnessing a discussion.
13
14 MR PRICE: I object to it to because it is not a question,
15 it is a statement.
16
17 THE COMMISSIONER: I reckon there was a question mark at
18 the end of it, but it sounded like a statement.
19
20 MR DUGGAN: If there is any evidence of anyone
21 witnessing --
22
23 THE COMMISSIONER: You should be very precise about it,
24 I think. You might need to look at the transcript.
25
26 MR BOLSTER: All right.
27
28 Q. Did you have a discussion with Mr Mehajer following
29 the council meeting where the vote took place about the
30 return of the deposit?
31 A. No, I didn't.
32
33 Q. Did you discuss the issue with him between the time of
34 that meeting and the next meeting where a rescission motion
35 dealing with that was?
36 A. No, I didn't.
37
38 Q. Do you recall the rescission motion being dealt with?
39 A. Correct.
40
41 Q. On that occasion you changed your vote?
42 A. Correct.
43
44 Q. And you voted with Councillor Lam, Councillor Oueik,
45 councillor Attie, and Mr Yang to release the deposit?
46 A. Correct.
47

1 Q. To accede to the request to release the deposit
2 subject to certain terms and conditions; correct?

3 A. Correct.
4

5 Q. Why?

6 A. Simply because if we go back to the meeting where
7 I initially voted against it, even though, Mr Commissioner,
8 I was actually reluctant at that meeting to vote against
9 it, if you go - you would see me asking questions at that
10 particular meeting about it, trying to - trying to get
11 across the line to see if I can support it, but I wasn't -
12 I wasn't there with the - the answers weren't there for me
13 to cross the line, because I wasn't sure about the
14 5 per cent as opposed to the 10 per cent. I wasn't sure
15 whether it was doable, but bearing in mind in the back of
16 my head I have always had the thought of having that
17 supermarket because, don't forget, the council made the
18 decision in March 2013 to award the contract again and it
19 was a unanimous decision to - the unanimous decision by the
20 council to give him the contract again knowing that the
21 supermarket is a big element part of it, the community
22 wants it there, and at that particular meeting I was
23 actually reluctant to vote against. I wasn't too sure,
24 I wanted to double-check. So when the opportunity came
25 back again for the following meeting, I sort of made my own
26 inquiries about whether the 5 per cent was doable, I found
27 that it is doable, plus there was a personal guarantee
28 attached to it all and I thought if I outweighed the two
29 between the community's interests in relation to having a
30 supermarket and what it's request is, I found that the
31 other one --

32
33 THE COMMISSIONER: Q. You're using the term doable. Are
34 you using that in the sense you wanted to check whether it
35 was lawful?

36 A. I wanted to check is it a common practice or is it
37 sort of okay to put a 5 per cent as opposed to 10 per cent.
38 I wasn't too sure.
39

40 Q. Was the council at that meeting where you first voted
41 no, was the council given legal advice?

42 A. Look, I don't specifically remember a legal advice at
43 that meeting. There were discussions about it, so
44 obviously for those that supported it, obviously they saw
45 it was fit to do it. I just wasn't sure. I just wanted to
46 make sure in my mind it was doable, it was okay, and when
47 I made my own inquiries having in mind there is a need for

1 a supermarket there, so I was convinced when I came back at
2 the next meeting.

3

4 Q. When you say you made your own inquiries, who did you
5 make inquiries of?

6 A. Look, I've got friends in the legal profession and
7 I said, "Look, is it common practice?" They said, "it's
8 fine, there's nothing wrong with it."

9

10 Q. Nothing wrong with it. They were the words they used?

11 A. Well, yes, to that effect, basically saying it's like
12 buying a house, instead of arranging a 10 per cent deposit
13 you put a 5 per cent deposit. It is not like there's a
14 reduction in price in general. It's a matter of what's the
15 amount of the deposit you put in and to me that was - that
16 was sort of - that was fine.

17

18 MR BOLSTER: Q. Did you seek any legal advice through
19 council's solicitors about the matter?

20 A. Personally, no.

21

22 Q. Do you recall Mr Gough giving any advice about what
23 council should do in answer to the request?

24 A. Frankly, I don't recall the exact advice at the time,
25 no.

26

27 Q. Could you go please to page 283?

28 A. Yes.

29

30 Q. Do you see there's an email to Mr Gough to two members
31 of council staff. I'm not suggesting that you received the
32 email, but you may have been given a copy of it. Do you
33 see Mr Gough says he would strongly recommend against
34 releasing any of the deposit for those two reasons that are
35 set out there. Can you just familiarise yourself with what
36 the reasons are.

37 A. Look, that's - that's the advice given but I remember
38 that the recommendation - I think it was an open
39 recommendation. It did not specify in the recommendation
40 by our staff to say you are okay to go with the
41 10 per cent. I don't actually recall that. I think it was
42 an open recommendation from memory.

43

44 Q. When you spoke to the solicitors that you knew --

45 A. Just friends.

46

47 Q. Did they tell I anything differently from what's set

1 out there in that email?

2 A. Look I just said, if you - I think the question was
3 along the lines, "What's the difference between a
4 10 per cent deposit and 5 per cent deposit?" They said
5 there's no difference.

6

7 Q. That was the question to them, was it?

8 A. Yes.

9

10 Q. The question wasn't, "we've got a 10 per cent deposit
11 and the purchaser wants half of it back on certain terms
12 and conditions, what should we do about it?" You didn't
13 ask anyone that question, did you?

14 A. Sorry, repeat that again?

15

16 Q. You didn't ask anyone the question of whether, based
17 on this assumption, that you already have a 10 per cent
18 deposit from the purchaser and he wants you, the vendor, to
19 give half of it back subject to some guarantee in support
20 of the purchase?

21 A. I think I --

22

23 MR DUGGAN: I object. I know I've made a similar
24 objection a number of times, but there's a suggestion that
25 it is only now a 5 per cent deposit. It is still a
26 10 per cent deposit. It is just that part of it is made up
27 through a different security. This issue --

28

29 THE COMMISSIONER: Is that right?

30

31 MR DUGGAN: It is worded very badly in the deed of
32 variation, but in my submission, the effect of it is you've
33 got 5 per cent --

34

35 THE COMMISSIONER: When I say is that right I'm not
36 suggesting you're wrong, that's really a question, is a
37 guarantee a true substitute for a deposit?

38

39 MR DUGGAN: Under the contract, I'm not 100 per cent sure
40 it's in evidence or not, apparently it is part of JS1.
41 Clause 2.6 of the standard New South Wales terms say, "if
42 the vendor accepts a bond or guarantee for the deposit,
43 blah", and then 2.7, "if the vendor accepts a bond or
44 guarantee for part of the deposit then these clauses
45 apply".

46

47 THE COMMISSIONER: Is this the standard contract for the

1 sale of land in New South Wales is it for sale of land?
2
3 MR DUGGAN: Yes, it is.
4
5 THE COMMISSIONER: What clause were you on?
6
7 MR DUGGAN: 2.6 and 2.7 of stage 4.
8
9 THE COMMISSIONER: Yes. I'm with you.
10
11 MR DUGGAN: This is why I am so hot on this objecting
12 because what's really happening here you have a 10 per cent
13 cash deposit and then --
14
15 THE COMMISSIONER: In substitution a 5 per cent cash
16 deposit and a bond or guarantee to the value of 5 per cent,
17 is that what --
18
19 MR DUGGAN: Yes. The deed of variation is superfluous,
20 because the vendor was actually happy to accept part of the
21 deposit within the terms of the contract that already
22 existed. They didn't even need the variation.
23
24 THE COMMISSIONER: Yes. Look, I understand everything
25 you're saying. You want the precise terms of what's being
26 offered as a substitution to be recorded as part of --
27
28 MR DUGGAN: There's an ongoing reference to 50 per cent of
29 the deposit was returned as though my client was done some
30 great favour. Now, that's not the case, in my submission.
31 There's a substitution.
32
33 THE COMMISSIONER: It does involve the council returning
34 cash, though, in substitution for a form of contractual
35 obligation.
36
37 MR DUGGAN: And it is never going to be as good as cash in
38 the hand, I understand that.
39
40 THE COMMISSIONER: I understand your objection. I think
41 it isn't the first time you've made it. I'm sort of
42 reading in all of Mr Bolster's questions with that frankly
43 in my mind, but if you think there's unfairness with the
44 witness answering.
45
46 MR DUGGAN: There might be others here reporting this as
47 well, it is important Counsel Assisting put it in an

1 accurately way every time, that's my submission.

2

3 THE COMMISSIONER: Yes, fair enough.

4

5 MR BOLSTER: Q. Mr Zraika, you didn't put forward to the
6 lawyers you spoke to, the precise terms upon which
7 Mr Mehajer's company was seeking to have a proportion of
8 the cash that had been paid returned to it and the other
9 conditions upon which he was seeking that largesse?

10 A. I think I did to some extent, yes.

11

12 Q. Did you pass on Mr Mehajer's request to the lawyers?

13 A. No.

14

15 Q. Did you tell them that he was proposing that some form
16 of guarantee stand in place of one half of the amount that
17 had originally been agreed to be the deposit?

18 A. I didn't specify the details of the personal
19 guarantee. But in general terms I did. The fact that, if
20 the return of that half of the money goes to assisting to
21 put a DA, then that sort of convinced me to make sure that
22 DA goes through and have a supermarket in that area.

23

24 Q. Did you get any indication from council staff as to
25 Mr Gough's advice as outlined in his email of 12 May?

26 A. I honestly don't recall at that meeting. I honestly
27 don't.

28

29 Q. Mr Gough had been a longstanding solicitor of council;
30 correct?

31 A. Yes, he's provided some service for council, yes.

32

33 Q. I expect would you have seen him on a regular basis at
34 council meetings giving advice on legal matters?

35 A. I think I've only seen him a few times, not very
36 regularly, no.

37

38 Q. He came along to council every time the contract for
39 John Street was under discussion?

40 A. Yes, correct.

41

42 Q. And it is fair to say he expressed on numerous
43 occasions a negative response to a number of the things
44 that Mr Mehajer was requesting on behalf of the purchaser.
45 It is fair to say that, isn't it?

46 A. Are you making reference to any particular decision or

47 --

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Q. Do you recall Mr Gough saying that council should accede to any request from Mr Mehajer about the contract?

A. Well, yes, he did make some --

Q. Which one?

A. I think towards the end of the - at the second last meeting, I think, with his presence and the debate that took place it sounded like we shouldn't go ahead until the following meeting came along and I've seen a change in tone even with Mr Gough.

Q. On that last occasion, that was the last time you considered the matter in December 2015?

A. Correct.

Q. Council by that stage had resolved that it would give Mr Mehajer one last chance; correct?

A. If you call it that way, yes.

Q. Let's go to it.

THE COMMISSIONER: Just before you do, how much longer to finish this topic? I want to go into a private hearing to discuss with Mr Cheshire, Mr Francis's availability but that doesn't need to be public.

MR BOLSTER: I'll still be another 20 minutes I think.

THE COMMISSIONER: Do you have questions? Are you going to seek leave for any questions?

MR DUGGAN: No, I don't think.

MR PRICE: I'll have a few.

THE COMMISSIONER: No-one else. I think we're going to have to break tonight and I'll make it 9.30 tomorrow and hopefully you'll be finished by 10 or around then. And then we'll have Mr Yang back and then private hearings after that.

MR BOLSTER: Yes, and then the other matters.

THE COMMISSIONER: For everyone else's benefit, we should be probably finished some time mid-morning tomorrow. Does anyone need to raise anything before I adjourn the public

1 hearing? All right. I'll slip outside for five minutes to
2 allow people to get out of here and then at 10 past 4, it
3 should only take five minutes, if that's all right with you
4 Mr Cheshire, we'll have a private hearing regarding
5 Mr Francis.

6
7 MR CHESHIRE: Certainly, Commissioner.

8
9 THE COMMISSIONER: I will adjourn until 10 past 4.

10
11 **AT 4.00PM THE INQUIRY WAS ADJOURNED TO THURSDAY, 14 JULY**
12 **2016 AT 9.30AM**

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