

WINGECARRIBEE SHIRE COUNCIL PUBLIC INQUIRY

**At Wingecarribee Shire Council Chambers, Civic Centre,
Elizabeth Street, Moss Vale, NSW 2577**

Before: Mr Ross Glover (Commissioner)

Mr David Parish (Counsel Assisting)

Ms Bron Hewson (Officer Assisting)

Mr Angus Broad (Officer Assisting)

On Monday, 28 March 2022 at 10.02am

(Day 1)

1 THE COMMISSIONER: Good morning, this is the first day of
2 the hearings, the public hearings for the Wingecarribee
3 Shire Council Public Inquiry. I'll just take appearances
4 before we commence.

5
6 MR PARISH: Commissioner, Parish, I appear as Counsel
7 Assisting and I am assisted by Ms Bron Hewson and Angus
8 Broad, and I might just enquire if we can turn down that
9 feedback we've got there. That's sorted, thank you.

10
11 THE COMMISSIONER: Mr Riley.

12
13 MR RILEY: Commissioner, Riley, I appear for various staff
14 members who will be called to give evidence --

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16 THE COMMISSIONER: I'm sorry to cut over you. I've been
17 given a list. I understand that there may be an
18 application by one or more to be dealt with in private
19 sessions; is that still the case?

20
21 MR RILEY: Yes, Commissioner.

22
23 THE COMMISSIONER: All right. I grant you that leave to
24 appear for those, I have four on my list; is that all that
25 I should have at the moment?

26
27 MR RILEY: At this stage, yes, sir.

28
29 THE COMMISSIONER: All right, I grant you leave to appear
30 for those witnesses. Is it the case that there may be more
31 as we go?

32
33 MR RILEY: That's possible, Commissioner.

34
35 THE COMMISSIONER: That's possible, right. None of those
36 people are due to give evidence today. Do you have any
37 other application to make to me this morning?

38
39 MR RILEY: No, Commissioner, only to sit in for the rest
40 of the day because I'm here, just to be able to report and
41 then --

42
43 THE COMMISSIONER: Yes, you're welcome to stay for the
44 openings, I think that'll occupy most of today, so you're
45 welcome to stay for those.

46
47 Before we formally commence the proceedings I

1 acknowledge the Gundungurra and Tharawal people as the
2 traditional custodians of the land described as the
3 Wingecarribee Shire. I pay my respects to Elders both
4 past, present and emerging. I would also like to extend
5 that respect to all Aboriginal and Torres Strait Islanders
6 present here today or watching.

7
8 I'm going to make some opening remarks and then I'll
9 hand to Mr Parish to make his opening address.

10
11 On 31 August 2021 the then Minister for Local
12 Government, The Honourable Shelley Hancock MP appointed me
13 to hold a public inquiry into the Wingecarribee Shire
14 Council pursuant to section 438U of the Local Government
15 Act. Section 438U of the Local Government Act relevantly
16 provides that the Minister may establish an inquiry in
17 relation to:

18
19
20 *(a) any matter relating to the carrying out*
21 *of the provision of the Local Government*
22 *Act or any other Act conferring or imposing*
23 *functions on a council and;*

24
25 *(b) any act or omission of a member of a*
26 *council, any employee of a council or any*
27 *person elected or appointed to any office*
28 *or position under this or any other Act*
29 *conferring or imposing functions on a*
30 *council, being an act or omission relating*
31 *to the carrying out of the provisions of*
32 *the Act concerned, or to the office or*
33 *position held by the member, employee or*
34 *person under the Act concerned ...*

35
36 In the lead-up to the establishment of the inquiry
37 there's been a series of ministerial interventions with
38 this council. I don't propose to explore them in detail in
39 these remarks and I expect that they'll be the subject of
40 some attention during the evidence but in general terms
41 they were as follows.

42
43 On 19 August 2020 the then Minister issued the council
44 with a notice of intention to issue a Performance
45 Improvement Order. The reasons for that notice being
46 issued were identified by the Minister as being
47 reputational and work health and safety risks facing the

1 council as a consequence of the behaviours of some
2 councillors, that there was evidence of hostility and
3 acrimony between councillors which, if unaddressed, was
4 likely to lead to dysfunction; the presence of behaviours
5 that indicate some councillors may not understand their
6 obligations under the Code of Conduct when dealing with
7 staff, and the presence of behaviours that indicate that
8 some councillors may not understand their obligations under
9 the Code of Conduct when dealing with each other.

10
11 On 24 August 2020 an extraordinary meeting of the
12 council was held to consider the Minister's notice. At
13 that meeting a resolution was passed that accepted the
14 reasons for the imposition of the Performance Improvement
15 Order that had been identified by the Minister.

16
17 On 8 September 2020 the Minister issued the council
18 with a Performance Improvement Order pursuant to
19 section 438A of the Local Government Act. The Performance
20 Improvement Order required all councillors to undergo
21 particular training, the mayor to undergo training in the
22 effective chairing of meetings, and all councillors to
23 participate in the structured mediation process. For that
24 purpose two independent advisors were appointed to assist
25 the council.

26
27 On 2 March 2021 the Minister issued the council with a
28 notice of intention to issue a suspension order. That
29 notice stated that the Minister had formed the preliminary
30 view that the Performance Improvement Order had been:

31
32 *Unsuccessful in effecting cultural change*
33 *in the behaviour of some councillors and in*
34 *improving relationships at the council.*

35
36 The notice called for a response by 9 March 2021. In
37 responding to that notice an extraordinary meeting of
38 council was held on 9 March 2021. At that meeting a
39 resolution was passed which, amongst other things, sought a
40 meeting between the Minister, the mayor, the deputy mayor,
41 and an additional council representative to:

42
43 *Discuss alternative options to the*
44 *suspension of all councillors.*

45
46 It also sought an extension of time to provide a
47 submission in response to the notice until 17 March and

1 resolved that:

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The Minister take decisive action against those councillors identified by the majority of this democratically elected council who continue not to adhere to the requirements of the Performance Improvement Order.

The content of that resolution was then conveyed to the Minister in correspondence later that same day.

Three days later, on 12 March 2021, the Minister made an order suspending the council, in substance the governing body, for three months and appointing Mr Viv May PSM as interim administrator. On 24 May 2021 the Minister extended that suspension and with it Mr May's appointment until 10 September 2021. And, as I opened, on 31 August the Minister established this inquiry; in so doing the suspension of council was extended along with Mr May's appointment.

In establishing this inquiry the Minister specified four terms of reference. They are:

1. Whether members of the council's governing body fully understand their roles and responsibilities and have adequately, reasonably and appropriately carried out their roles and responsibilities during the current term of council.

2. Whether during the current term of council there has been improper interference by the elected body of council or by individual councillors in operational matters with particular reference to staffing and planning functions.

3. Whether members of council's governing body have been and will continue to be in a position to direct and control the affairs of council in accordance with the Local Government Act and to otherwise fulfil its statutory obligations.

4. Any other matter that warrants inquiry, particularly those that may impact on the effective administration of council's functions and responsibilities or the community's confidence in the council being able to

1 do so.

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1 reasons, they include but are not limited to, if I were to
2 construe Term of Reference 4 literally and without
3 reference to the context in which it appears it would
4 seemingly require me to conduct a wide-ranging search for
5 issues of any kind which may impact on the effective
6 administration of the council's functions and
7 responsibilities or the community's confidence in the
8 council being able to do so over an undefined period in the
9 history of the council. Obviously enough, that would lead
10 to an enquiry of indeterminate size and length. Not only
11 would that not be an efficient use of public resources but
12 it would also result in a considerable delay to the
13 resolution of Terms of Reference 1, 2 and 3.

14
15 Having outlined the terms of reference, I now turn to
16 make some observation about the nature of this inquiry.
17 Obviously enough, it is an administrative inquiry; that
18 means that the inquiry has a number of features but also
19 some limitations that must be kept in mind. They include
20 the following:

21
22 First, the inquiry is confined to the terms of
23 reference. I do not have the power to inquire into matters
24 which, on a reasonable reading of the terms of reference,
25 are not within their terms.

26
27 Secondly, the purpose of this inquiry is to make
28 findings of fact and, if necessary, an appropriate
29 recommendation to the Minister for her consideration.

30
31 Thirdly, any findings of fact made by me are
32 ultimately expressions of my opinion as to what the
33 evidence that may be placed before me reveals. Any
34 findings of fact I make cannot and do not determine legal
35 rights.

36
37 Fourthly, any recommendations I may make are not
38 binding on the Minister. It is a matter for the Minister
39 whether any of the findings or recommendations I may make
40 are to be accepted. I also note that the Minister has
41 powers available to her under the Local Government Act
42 which do not require any specific recommendation by me in
43 order to be exercised.

44
45 Fifthly, and importantly, it must be understood that I
46 have no power to implement any of the recommendations I may
47 make, impose any sanction or take any other action based on

1 the facts as I may find them to be. My role is to make
2 findings and recommendations to the Minister for her
3 consideration. It is the Minister's function to determine
4 what steps, if any, should be taken following a
5 consideration of my report.
6

7 Finally, the rules of evidence do not apply to this
8 inquiry, accordingly I may inform myself as I see fit.
9 However, the rules of procedural fairness do apply.
10 Findings of fact should be made rationally and in
11 accordance with proper standards of satisfaction. That may
12 well vary depending upon whether the asserted factual
13 matter is adverse to the interests of any particular
14 person.
15

16 Save for section 13 and Division 2 of Part 2 the
17 provisions of the Royal Commissions Act 1923 apply to this
18 inquiry. Amongst other things, that means persons may be
19 summonsed to give evidence at the public hearings and also
20 to produce documents to the inquiry. Both of those things
21 have happened.
22

23 To that end, shortly after the Minister appointed me
24 as Commissioner I appointed Mr Angus Broad and Ms Bron
25 Hewson of the Office of Local Government as officers
26 assisting the inquiry. Mr David Parish of the New South
27 Wales Bar was later appointed as Counsel Assisting.
28

29 Shortly after the inquiry was established a call for
30 submissions directed to the term of reference was issued.
31 Some individuals were also directly invited to make a
32 submission. In response to that call the inquiry received
33 many submissions. Consistent with the approach adopted in
34 other enquiries established under section 438U of the Local
35 Government Act I have determined not to make the
36 submissions publicly available. There are a number of
37 reasons for that; again they include but are not limited to
38 the fact that a number of them raise matters which simply
39 fall outside the terms of reference. A number, for
40 example, raise concerns with the merits of particular
41 developments or development applications. It is not the
42 role of this inquiry to examine the merits of individual
43 applications of that kind unless those are matters which
44 fall within the wider context to which the terms of
45 reference are directed. Some authors have, for various
46 reasons, requested anonymity.
47

1 Finally, some submissions raise matters which are
2 outside the powers of this inquiry to lawfully consider or
3 raise matters which are not appropriate to be explored in
4 an administrative inquiry of this kind and accordingly are
5 matters that ought be taken up with other agencies and not
6 this inquiry.
7

8 None of that, however, is intended to detract from the
9 utility and assistance gained are from all of the
10 submissions received to date; they have been helpful in
11 identifying the issues to be explored, documents to be
12 examined and witnesses to be called during these hearings.
13

14 As will be seen by keen observers to these
15 proceedings, there are very many issues that will be
16 explored in the evidence, both in oral evidence and in
17 documentary form. To that end the submissions are an
18 important and integral part of the inquiry process and, as
19 is both desirable and appropriate, they provide an
20 opportunity for the wider community to have input into the
21 issues that will be explored. I express my thanks to each
22 of those who took the time and effort to provide the
23 inquiry with a submission.
24

25 It may be that some individuals who made a submission
26 will be called by Counsel Assisting to give evidence during
27 these public hearings, others may not. To those who made a
28 submission but are not called by Counsel Assisting to give
29 oral evidence, I say this: the fact that you are not called
30 to give evidence should not be taken as an indication that
31 your submission has been overlooked or ignored. It may be
32 that your submission identified lines of inquiry that will
33 be explored with one or more other witnesses or identified
34 relevant documents that the inquiry has sought to obtain.
35 Every submission that has been received has been given due
36 consideration. In that respect I am confident that the
37 substantive issues raised in submissions and which properly
38 fall within the terms of reference will be explored in the
39 evidence both in oral testimony and documentary form.
40

41 In cases where I have been satisfied that it is
42 appropriate I have exercised my power under section 12B of
43 the Royal Commissions Act to permit some witnesses to give
44 oral evidence to the inquiry in private session. The
45 reasons for that are varied and relate to the individual
46 circumstances of particular witnesses. That I have done so
47 is part of the ordinary process of an inquiry of this kind.

1 Neither the identity of those witnesses nor a transcript of
2 their evidence will be made public, however, there is
3 nothing secretive or improper about that. That evidence
4 forms part of the overall matrix which I will consider in
5 reaching my findings.
6

7 On 5 March 2022 I issued a practice direction that
8 sets out the procedure that I propose to adopt for these
9 public hearings. A copy of the practice direction was sent
10 to each of the suspended councillors, those councillors who
11 had resigned prior to the suspension, the interim
12 administrator of the council, the general manager of the
13 council, and it has also been placed on the inquiry's web
14 page.
15

16 That practice direction provides that Mr Parish, as
17 Counsel Assisting who is responsible for choosing the
18 witnesses that will be called to give evidence to this
19 inquiry and the order in which those witnesses will be
20 called. He is responsible for determining which documents
21 are to be tendered and when they are to be tendered.
22

23 Any person who may be called to give evidence during
24 these public hearings should acquaint themselves with that
25 practice direction. Needless to say, I expect it to be
26 complied with.
27

28 During the evidence I may ask questions of some of the
29 witnesses from time to time. It may be that I ask no
30 questions of a particular witness. That is an ordinary
31 function of the fact-finding process. That I may ask or
32 not ask a particular question should not be understood by
33 anyone observing these proceedings to indicate that I have
34 formed a view about an issue one way or the other. I come
35 to this inquiry with an open mind and final views cannot and
36 will not be formed by me prior to the conclusion of the
37 evidence and a consideration of any final submissions that
38 may be made.
39

40 In order to mitigate against the risks that these
41 public hearings will be interrupted - and I pause here to
42 note, any further - by the ongoing effects of COVID-19 I
43 have determined that it is appropriate to limit those
44 categories of persons who may be present in the hearing
45 room, in addition to those who are assisting this inquiry,
46 to those who are most directly affected by the terms of
47 reference or the evidence that may be given. The

1 categories of persons who are permitted to be present in
2 the hearing room were set out in the notice of hearings and
3 further detail is contained in the practice direction.
4

5 The practice direction also sets out the procedure
6 that applies to attendance at these hearings by persons
7 falling within those categories. Any person who believes
8 that they fall in the categories of persons who are
9 permitted to be present in person and who wishes to attend
10 should familiarise themselves with the requirements of the
11 practice direction. It should not be assumed that I will
12 permit a delay to these proceedings caused by a failure to
13 comply with the terms of the practice direction in this or
14 any other respects.
15

16 I have today received an application from two members
17 of the press to attend in person on the basis that their
18 attendance is required to ensure a fulsome and accurate
19 coverage of these proceedings. I have granted that
20 request. If there are any other members of the press who
21 also feel that they are unable to accurately and fully
22 cover these proceedings by viewing the live stream they
23 should forward their application to the officer assisting
24 the inquiry and I will deal with it promptly.
25

26 To ensure that as many members of the public who may
27 wish to view these hearings are able to do so, they are
28 being live-streamed. That live stream is accessible on the
29 enquiry's web page. Ultimately, it may be by
30 live-streaming these proceedings many more members of the
31 public will be able to view them than would have otherwise
32 been the case if the only way to observe them was to be
33 here and attend in person.
34

35 It is not always the case that members of the public
36 are able to attend hearings in person and in that respect I
37 thank the council for making the chambers, the associate
38 technology and staff available for the duration of the
39 hearings to enable that to occur. Quite frankly, this is
40 probably the only venue that could accommodate us and allow
41 us to get this out to the wider public in this form. That
42 assistance has assured that these proceedings are now
43 available to be viewed by any member of the public wherever
44 they may be at whatever time they may wish to come in and
45 out of the proceedings should they wish to do so.
46

47 If we encounter difficulties with the live stream, and

1 I don't expect we will, I intend to pause the proceedings
2 until they are rectified. The technology has been
3 thoroughly tested and I am confident we will be able to
4 proceed without interruption. If, however, a break in
5 transmission does occur I ask that members of the public
6 who may be viewing the hearings to remain patient.
7 Sometimes technology fails us through no fault of anybody.

8
9 Rest assured, if that occurs, those assisting the
10 inquiry will be working hard to restore the stream as soon
11 as possible and those that are observing the hearings will
12 not miss anything as I will not proceed until the screen is
13 restored.

14
15 The live stream is not to be recorded whether by image
16 or sound and no still pictures are to be taken. The same
17 restriction applies to those who may be present in the
18 hearing room. There is to be no recording of these
19 proceedings whether by audio recording device or video and
20 there are no photographs to be taken.

21
22 The proceedings are being transcribed and a
23 transcript will be made available on the inquiry's website
24 once it's available.

25
26 Standard sittings times will be from 10am until 1pm
27 and 2pm until 4pm. There will be a mid-morning break at
28 about 11.30 for 15 to 20 minutes. During each of those
29 breaks, and of course overnight, the live stream will be
30 paused. The standard times are subject to change at my
31 discretion to ensure the efficient conduct of the
32 proceedings.

33
34 Vast experience in the conduct of hearings tells one
35 that sometimes times don't quite line up and witnesses
36 can't quite be there at the appointed time. We will manage
37 those things to ensure, as best we can, as little
38 disruption to people's lives who have been summonsed here
39 today. I do appreciate that answering the summons takes
40 people out of their ordinary activities, be it work or
41 family commitments, and we are endeavouring to minimise the
42 inevitable disruption if that were to occur.

43
44 In the event that I am satisfied that some part of the
45 public hearings should be conducted in private session,
46 consistent with my remarks earlier, the live stream will be
47 paused and no transcript of that part of the proceedings

1 will be made available.

2
3 These hearings are currently scheduled to conclude on
4 14 April 2022. In the event that the evidence is not
5 complete by that time I intend to list the hearings for
6 such further days that are required to complete the
7 evidence at the first available opportunity after 14 April.

8
9 As set out in the practice direction, at the
10 conclusion of the evidence I propose to make directions for
11 final written submissions, that is, by those who are most
12 directly affected by the terms of reference or any of the
13 evidence given in these proceedings. Unless I am satisfied
14 that good reasons exists, I do not propose to admit oral
15 submissions following the conclusion of the evidence.

16
17 Having made those opening remarks, I now invite
18 Mr Parish to make his opening address.

19
20 MR PARISH: Thank you, Commissioner. As you have just set
21 out, this is an inquiry into the Wingecarribee Shire
22 Council, in particular the conduct of its governing body.
23 The shire covers approximately 2,700 square kilometres and
24 is comparable in size to urban Sydney and it comprises four
25 main urban centres, Mittagong, Bowral, Moss Vale and
26 Bundanoon, smaller villages such as Robertson, Berrima and
27 Exeter, as well as a mix of rural and semi-rural areas. I
28 commend to you, Commissioner, the excellent map on the
29 council website to fill in that extremely brief
30 geographical survey.

31
32 The traditional custodians are the Gundungurra and
33 Tharawal people. The population of the shire is
34 approximately 52,000 people and the median age is 10 years
35 higher than the state and national medians.

36
37 The council itself was an amalgamation of the
38 Mittagong, Bowral and former Wingecarribee Councils in
39 1981. It presently employs approximately 495 full-time
40 equivalent staff and elects nine councillors. It does not
41 have wards and the mayor is elected by the governing body
42 with a two-year tenure. I will take you to the two mayors
43 who were elected during the 2016-2020 term shortly.

44
45 This council, like all councils in New South Wales,
46 has 121 regulatory functions. It has 309 separate
47 regulatory roles that emanate from 67 state Acts

1 administered by 31 state agencies. You can find that,
2 Commissioner, in the IPART Report Into Local Government
3 Compliance and Enforcement. The primary state at
4 regulating the council - and I interpolate to note that,
5 Commissioner, you forgot the standard admonition about
6 turning one's phone off prior to commencement.

7
8 THE COMMISSIONER: I did. Mr Broad, failing to do so has
9 reminded me that I should have said to anybody who may be
10 here or may be coming in the future that mobiles should be
11 switched to silent and that having occurred once, I'm
12 hopeful it won't happen again, although experience tells me
13 that it's likely to happen more than it ought to.

14
15 MR PARISH: The primary state Act regulating the council
16 is the Local Government Act 1993, and the Local Government
17 Act 1993 is the Act I am most likely to lapse into
18 referring to simply as "the Act" throughout this inquiry.
19 That Act sets out the parameters of the role and conduct of
20 both the governing body and the staff in some detail and
21 that's something I will be taking you to shortly.

22
23 THE COMMISSIONER: Do you want me to take it up now or are
24 you coming to it?

25
26 MR PARISH: No, I'll come to it shortly.

27
28 THE COMMISSIONER: Yes.

29
30 MR PARISH: The extent and sometimes complexity of the
31 council's roles and functions is something that should be
32 borne in mind when the inquiry deals with the council's
33 role as a whole, governing body's role and the staff and
34 the management's role.

35
36 As you've set out, Commissioner, this inquiry in
37 particular focuses on the elected body or the governing
38 body that was elected in 2016 until their time of
39 suspension in March 2021.

40
41 The nine councillors were elected in the local council
42 elections held statewide on 10 September 2016. There were
43 a total of 56 candidates over eight groups, with six of
44 those 56 candidates ungrouped. For a tender
45 bundle reference, that's tender bundle A, page 6.

46
47 There were 36,813 enrolled voters with a turn out of

1 80.2 per cent. While you have tender bundle A in front of
2 you, Commissioner, if I could take you to page 8.
3
4 THE COMMISSIONER: Yes. Do you want to tender this?
5
6 MR PARISH: I will tender it now.
7
8 THE COMMISSIONER: Do you want to do it now or at the end?
9
10 MR PARISH: I'll do tender bundle A now and I'll do tender
11 bundle B when I come to refer to it. So, for now I will
12 formally tender what I have marked tender bundle A.
13
14 THE COMMISSIONER: That bundle of documents, the two
15 volumes covering 1,502 pages, that's the accurate one?
16
17 MR PARISH: Yes.
18
19 THE COMMISSIONER: Will be Exhibit A.
20
21 **<EXHIBIT #A TENDER BUNDLE A TWO VOLUMES COMPRISING 1,502**
22 **PAGES.**
23
24 THE COMMISSIONER: Mr Parish, I propose to make
25 documentary exhibits available publicly on the website. Is
26 there anything in tender bundle A that ought not be made
27 publicly available?
28
29 MR PARISH: Not in tender bundle A. I'll deal in due
30 course with some possibilities in tender bundles B and C,
31 but not tender bundle A at this stage.
32
33 THE COMMISSIONER: Yes, and I include in that private
34 contact details?
35
36 MR PARISH: There may be some private contact details. If
37 I could seek leave to perhaps deal with anything in that
38 respect?
39
40 THE COMMISSIONER: What I think I'll ask those assisting
41 the inquiry to do is to review tender bundle A, mask
42 private contact details. As is commonplace in inquiries of
43 this kind, those sorts of details are not usually splashed
44 across the internet, and then they will be placed on the
45 inquiry's web page. I'll ask that to be done as promptly
46 as it can be. Thank you.
47

1 MR PARISH: Thank you, Commissioner. At page 8 of tender
2 bundle A we have the results of that election. The
3 councillors elected and the governing body the subject of
4 this inquiry were as follows: Mr Duncan Gair, Independent,
5 received 1,296 first votes. Mr Graham McLaughlin, Labor,
6 received 609. Mr Graham Andrews, Independent, received
7 638. Mr Gordon Markwart, Greens, received 314.

8
9 THE COMMISSIONER: Sorry to interrupt you, these are
10 individual votes, they don't take account of the group vote
11 though, do they?

12
13 MR PARISH: No, that's correct. I'm giving you,
14 Commissioner, the first individual votes.

15
16 THE COMMISSIONER: Thank you.

17
18 MR PARISH: Mr Larry Whipper, Independent, 836 votes.
19 Mr Garry Turland, Independent, 287 votes. Mr Ken Halstead,
20 Independent, 909 votes. Mr Ian Scandrett, Independent, 433
21 votes. Mr Peter Nelson, Independent, 37 votes. Those nine
22 councillors have been summonsed and most have made
23 submissions too.

24
25 You will be taken to council meetings that were
26 streamed in due course and, to assist with your
27 identification of the relevant identities, I can commend to
28 you page 18 of the tender bundle A which has photos of the
29 councillors in the 2016/17 report. That will somewhat help
30 you pick out who is who in the meetings that might be
31 addressed before you, although of course you will be
32 hearing from these councillors in due course and will no
33 doubt quickly become familiar with them.

34
35 At the first meeting on 28 September 2016 Councillor
36 Ken Halstead was elected mayor and Councillor Ian Scandrett
37 was elected his deputy. That information is found in an
38 electronic tender bundle of the meetings of council during
39 the term which I'll tender now in electronic form as tender
40 bundle F.

41
42 THE COMMISSIONER: The gap from A to F suggests that
43 there's B-E to come.

44
45 MR PARISH: There will.

46
47 THE COMMISSIONER: Shall I marked the electronic

1 bundle Exhibit F?

2

3 MR PARISH: You should.

4

5 THE COMMISSIONER: Yes, all right. Exhibit F will be the
6 electronic tender bundle of minutes of meetings of council
7 in the period 2016 to 2021. Is that accurate, Mr Parish?

8

9 MR PARISH: Yes, Commissioner.

10

11 THE COMMISSIONER: Thank you.

12

13 <EXHIBIT #F ELECTRONIC TENDER BUNDLE OF MINUTES OF MEETINGS
14 OF COUNCIL IN THE PERIOD 2016 TO 2021.

15

16 MR PARISH: Mayor Halstead and Deputy Mayor Scandrett held
17 those offices until 26 September 2018, at which time
18 councillor Duncan Gair was elected mayor and Councillor
19 Garry Turland was elected as his deputy.

20

21 The general manager at the time of the election was
22 Ann Prendergast who held the position until she resigned
23 in July 2020. Two other personnel matters to note at this
24 stage in opening, Commissioner. Councillor Markwart
25 resigned for health reasons in August 2020 and Councillors
26 Halstead and Turland resigned at or about the time of the
27 suspension in March 2021.

28

29 THE COMMISSIONER: When you say "at or around", do I
30 understand that to be prior to?

31

32 MR PARISH: I think Halstead was prior to and Mr Turland
33 may have been the day after.

34

35 THE COMMISSIONER: I see, thank you.

36

37 MR PARISH: So, we're dealing with six suspended
38 councillors out of the original nine elected councillors.

39

40 If I can just expand slightly on the procedural
41 history that culminated in the suspension order and then
42 the inquiry that, Commissioner, you have dealt with in some
43 detail already. The inquiry is held pursuant to an order
44 made by Minister Hancock on 31 August 2021 under
45 section 438U of the Act, and it was gazetted on 1 September
46 2021. That order is at page 1 of tender bundle A and I'll
47 come back to go into some more detail about the actual

1 terms of references shortly.

3 The inquiry followed a set of procedures that are set
4 out in Chapter 13 of the Local Government Act, and in
5 particular Parts 6, 7 and 8. In respect of Part 6, a
6 Performance Improvement Order was issued on 8 September
7 2020 under section 438A of the Act that was preceded by an
8 intention to issue such an order on 14 August 2020. That
9 is at page 1 of tender bundle B.

11 THE COMMISSIONER: Do you tender that now?

3 MR PARISH: Yes.

5 THE COMMISSIONER: Exhibit B will be a bundle of documents
6 marked "Tender Bundle B", page 1.

8 <EXHIBIT #B BUNDLE OF DOCUMENTS MARKED "TENDER BUNDLE B"
9 PAGE 1.

21 MR PARISH: That is the letter enclosing the intention to
22 issue a Performance Improvement Order that is signed by
23 Minister Hancock on 19 August 2021, and that was done under
24 Chapter 13, Part 6 of the Act, which required a notice of
25 intention to be issued before a Performance Improvement
26 Order was issued.

28 THE COMMISSIONER: That's a method of affording procedural
29 fairness as well.

MR PARISH: Quite, and I just might take you to some of those matters now. The notice was required to, and it did, specify the terms of the proposed Performance Improvement Order, the reasons why it is proposed, and the actions that may be taken if the order is not complied with.

At page 2 of tender bundle B, noting correctly as the Minister does that these are mandatory criteria, the reasons set out proposed under section 438A(3)(a) of the Act are as follows.

There are reputational and work, health and safe risks facing council as a consequence of the behaviours of some councillors. There is evidence of hostility and acrimony between councillors that, if unaddressed, is likely to lead to dysfunction.

1 There are behaviours that indicate that some
2 councillors may not understand their obligation under the
3 Code of Conduct when dealing with staff of the council.
4

5 Then, No.4, there are behaviours which indicate some
6 councillors may not understand their obligations under the
7 Code of Conduct when dealing with each other.
8

9 The next proposal down under section 438G was
10 foreshadowing in the Minister's opinion the need for a
11 temporary advisor with requisite professional
12 qualifications to bring councillors together to address
13 acrimony and hostility that is apparent and with the
14 requisite skills and meeting procedure required to provide
15 advice and assistance with the conduct of the council
16 meetings.
17

18 The next mandatory matter that needed to be canvassed
19 by this letter was the terms of the proposed Performance
20 Improvement Order, including the period for compliance.
21 This is in fact found in the electronic tender bundle B at
22 the back, the draft proposed orders that might not be in
23 front of you at the time.
24

25 THE COMMISSIONER: I see, thank you.
26

27 MR PARISH: But just until the hard copies make its way
28 into tender bundle B --
29

30 THE COMMISSIONER: It's just a draft of the order, is it?
31

32 MR PARISH: It's just a draft which matches with the
33 orders that were eventually issued, which is just a point I
34 wanted to draw your attention to at this stage.
35

36 THE COMMISSIONER: Thank you.
37

38 MR PARISH: There was then an invitation to make
39 submissions to the Minister regarding the proposed
40 Performance Improvement Order which was required under
41 sections 438C(3) and (4), and the Minister did so
42 stipulating that they were to be provided no later than
43 seven days from the date upon which the notice was served.
44

45 What the council did in respect of that draft notice
46 Performance Improvement Order and the intention notice was
47 to hold an extraordinary meeting of council on 24 August

1 2020 and passed resolutions. Those resolutions are found
2 at page 11 of tender bundle B. The council moved and
3 passed motions that the council acknowledges the Minister's
4 correspondence dated 19 August 2020 notifying the council
5 of the Minister's intention to issue a Performance
6 Improvement Order on council under section 438 of the Act.

7
8 The second motion was, the council advise the Minister
9 that it accepts the reasons for the order as detailed in
10 the schedule and accepts the action required to improve
11 performance in Schedule 2 and that it accepts the proposal
12 for the appointment of temporary advisors under Schedule 3.

13
14 The third motion passed was that the council provide
15 all necessary assistance to the proposed temporary advisor
16 when appointed, including access to relevant documents and
17 video files for the term of the council.

18
19 4. The motion passed was that the Wingecarribee Shire
20 Council agrees with the intent of the proposed Performance
21 Improvement Order to be issued under the relevant sections,
22 with particular emphasis being placed upon A, the
23 legislative responsibilities.

24
25 And finally, that the Minister ensure that any
26 investigation undertaken by any representative of her be
27 comprehensive and include both elected representatives of
28 the shire and members of staff and council.

29
30 THE COMMISSIONER: Can I just interrupt you? Point (5) of
31 that motion, "that the Minister ensure that any
32 investigation undertaken", is that what the Minister was
33 proposing, a draft Performance Improvement Order, that
34 there'd been an investigation or was it something else at
35 that stage?

36
37 MR PARISH: No. Commissioner, as you can see, going back
38 to the initial letter, what was called for was written
39 submissions in respect of the proposed performance order to
40 be provided within seven days. That will be the subject of
41 some examination and exploration throughout but --

42
43 THE COMMISSIONER: All right, I just wanted to know, I'm
44 not missing anything?

45
46 MR PARISH: No, you're not missing anything.

1 THE COMMISSIONER: Thank you.

2

3 MR PARISH: And the response, both substantively and the
4 form of the response, being the passing of the resolution
5 at council, is something that I will be seeking to make
6 submissions to you on in due course and will be explored
7 perhaps whether this response was possibly inadequate and
8 indicative of a lack of understanding of the governing
9 body's obligations.

10

11 You have already dealt with in some detail the 9 March
12 2021 seeking of the extension of the time for the
13 suspension and a meeting with the Minister which also may
14 be indicative of a lack of appreciation of what was really
15 being sought by the Minister.

16

17 THE COMMISSIONER: Yes, I understand, thank you. Sorry to
18 interrupt.

19

20 MR PARISH: No, at the very least it is something that
21 will be explored with the relevant persons.

22

23 And so it was that the Performance Improvement Order
24 was issued on 8 September 2020 and that is found at
25 page 835 of tender bundle B. You dealt with it in brief
26 compass, Commissioner, but I might just go through it again
27 because there's not only on the terms of reference
28 obviously, but given the public nature of this inquiry it
29 is also important for members of the public to understand
30 the process that was undertaken.

31

32 THE COMMISSIONER: Indeed.

33

34 MR PARISH: So, that commences at page 835 of tender
35 bundle B and it by and large reflects the proposed reasons
36 for order that were addressed in the intention letter set
37 out in Schedule 1 and Schedule 3 on page 837, it deals with
38 the appointment of temporary advisors. Those advisors were
39 Mr Norm Turkington appointed as a temporary advisor and
40 Mr Ian Reynolds also appointed as a temporary advisor both
41 under section 438G of the Local Government Act.

42

43 You've dealt in some detail, Commissioner, with the
44 events surrounding 9 March 2021. That was followed by the
45 suspension by Minister Hancock of the council on 12 March
46 2021.

47

1 THE COMMISSIONER: Just so I have it referenced: the
2 9 March response to the notice of intention to suspend, is
3 that material contained in what is now Exhibit B?
4
5 MR PARISH: Yes, it is, but I'll find you the reference in
6 due course, Commissioner.
7
8 THE COMMISSIONER: Thank you.
9
10 MR PARISH: The next document I want to take you to,
11 Commissioner, was at page 838 of tender bundle B to flag up
12 for the moment.
13
14 THE COMMISSIONER: Yes.
15
16 MR PARISH: That is the 12 March order under section 438I
17 of the Local Government Act suspending the council and
18 appointing Mr Viv May PSM as the interim administrator of
19 the council for the period during which the council is
20 suspended.
21
22 It's probably an appropriate time to note that there
23 is reference at time to Council, capital "C", which is
24 really referring to the governing body, and the phrase
25 "elected body" or "elected council" is also used from time
26 to time. I tend to prefer "governed body" and we'll try to
27 use that as consistently as possible, being the phraseology
28 used in the Act.
29
30 THE COMMISSIONER: Yes.
31
32 MR PARISH: Although from time to time we may trespass
33 into other Acts such as the Environmental Planning and
34 Assessment Act which uses different nomenclature again.
35
36 THE COMMISSIONER: Quite. So, just for ease of following,
37 do you propose to refer to "council" in general terms as
38 the organisation and, as distinct from that, the governing
39 body as the elected representatives? Is that how you're
40 going to proceed?
41
42 MR PARISH: Quite.
43
44 THE COMMISSIONER: Thank you.
45
46 MR PARISH: And I'll then, I should also say, distinguish
47 the staff as either the executive, the senior management or

1 their staff and management.

2

3 THE COMMISSIONER: Yes. Sometimes distinctions of that
4 kind are not easy to discern from the Act.

5

6 MR PARISH: No, and that's something I'm going to come to
7 in a second, the use of some of the phraseology under the
8 Act as distinct - for what is colloquially used.

9

10 Following the appointment of Mr Viv May as the
11 administrator, under section 438M Mr May provided reports
12 to Minister Hancock, who extended the suspension for a
13 further three months twice until the orders made for the
14 inquiry on 31 August 2021, gazetting it the next day and
15 also including the terms of reference which I've already
16 taken you to at the commencement of tender bundle A.

17

18 The powers you have been given, Commissioner, to
19 conduct this inquiry under Section 43U come from
20 Division 1, Part 2 of the Royal Commissions Act 1923. You
21 have the powers generally of a Royal Commissioner but none
22 of the special powers.

23

24 You do not have powers to make findings of corrupt or
25 criminal conduct, although you do have a power under
26 section 12A of that Act to communicate any information to
27 law enforcement agencies, including the ICAC, if material
28 relates to a breach of law or of a State or Commonwealth
29 Act. That's something I will address you on if I need to
30 and make recommendations for. It's something that's
31 already come up in one context, but I pause to note for now
32 that that is a relevant necessary constraint on your powers
33 and obviously a relevant and necessary constraint on this
34 inquiry.

35

36 There are some guideline sections and documents that I
37 ought to draw your attention to at this time and in
38 particular the way some of the documents which govern the
39 conduct of the governing body interact with sections of the
40 Local Government Act.

41

42 I understand, Commissioner, you have a copy of the Act
43 with you?

44

45 THE COMMISSIONER: Yes.

46

47 MR PARISH: Can I start at section 8A of the Act. This

1 was an amendment to the Local Government Act shortly before
2 the election of the governing body in about, I
3 think, August 2016.

4
5 THE COMMISSIONER: There were quite a number of amendments
6 about at that time, is that right?

7
8 MR PARISH: Yes, and I'll deal with some of them as we go
9 throughout the morning, Commissioner. It sets out at 8A
10 guiding principles for councils, small "c." The following
11 general principles apply to the exercise of functions by
12 council.

13
14 I won't read out all of them, they go from A to I, but
15 I should note the requirement for councils to provide
16 strong and effective representation, leadership, planning
17 and decision making, to plan strategically using the
18 integrated planning and reporting framework for the
19 provision of effective and efficient services and
20 regulation to meet diverse needs of the local community,
21 and to apply the integrated planning and reporting
22 framework in carrying out their functions so as to achieve
23 desired outcomes and continuous improvements.

24
25 Councillors should work co-operatively with other
26 councils and the State Government to achieve desired
27 outcomes for the local community and it should work with
28 others to secure appropriate services for local community
29 needs. Councillors should act fairly, ethically and
30 without bias in the interests of the local community, and
31 should be responsible employers and provide a consultative
32 and supportive working environment for council.

33
34 There is also, in subsection (2), the following
35 principles in respect of decision-making by councils:
36 Councillors should recognise diverse local community needs
37 and interest. It should consider social justice
38 principles, it should consider the long-term and cumulative
39 effects of action on future generations. It should
40 consider principles of ecologically sustainable development
41 and the decision-making should be transparent and
42 decision-makers are to be accountable for decisions and
43 omissions.

44
45 I'll skip over 8B for the moment and go to 8C. That
46 is the integrated planning and reporting principles that
47 apply to councils and which are referred to in some of the

1 functions and principles set out in 8A.

2

3 The following principles for strategic planning apply
4 to the development of the integrated planning and reporting
5 framework: councils should identify and prioritise key
6 local community needs and aspirations and consider regional
7 priorities. Councils should identify strategic goals to
8 meet those needs and aspirations and develop activities and
9 prioritise actions to work towards those strategic goals.

10

11 Councils should ensure that strategic goals and
12 activities to work towards them may be achieved within the
13 council resources and should regularly review and evaluate
14 progress towards achieving those goals. Councils should
15 maintain an integrated approach to planning, delivering and
16 monitoring as well as reporting on these strategic goals,
17 and councils should collaborate with others to maximise
18 achievement of these.

19

20 Councils should manage risks in the local community or
21 area or to the council effectively and proactively, and
22 councils should make appropriate evidence-based adaptations
23 to meet the changing needs and circumstances.

24

25 I am going to deal a little bit more with that shortly
26 when we begin to talk about the demarcation between
27 operational and strategic, Commissioner.

28

29 While I am in the low numbers of the Local Government
30 Act I might just pause to point out to you --

31

32 THE COMMISSIONER: We're not going to the 700s?

33

34 MR PARISH: We may do. We may touch briefly, though, upon
35 section 10.

36

37 THE COMMISSIONER: Yes.

38

39 MR PARISH: Which, while not directly relevant to the
40 matters I'm talking about right now, I should note the
41 powers set out in subsection (2) where:

42

43 *A person, whether a council or other*
44 *person, is not entitled to be present at a*
45 *meeting of the council or of such committee*
46 *if expelled from the meeting either by*
47 *resolution of the meeting or by the person*

1 *presiding at the meeting that the council*
2 *has by resolution authorised the person*
3 *presiding to exercise the power of*
4 *expulsion.*

5
6 Now turning to subsection (3):

7
8 *A person may be expelled from a meeting*
9 *only on the grounds specified or in the*
10 *circumstances prescribed by regulations.*

11
12 I just raise that now because conduct of meetings will
13 be something which is not only a subject I anticipate of
14 community oral evidence but also something that will need
15 to be explored with the councillors themselves.

16
17 Chapter 9 of the Local Government Act, Part 2 in
18 particular, then sets out the roles of the governing body,
19 the councillors and the general manager.

20
21 If I can take you then to section 223 of the Act.

22
23 THE COMMISSIONER: Yes.

24
25 MR PARISH: This is now dealing with the role of the
26 governing body. Subsection (1) states that the role of the
27 governing body is as follows:

28
29 *to direct and control the affairs of the*
30 *council in accordance with this Act to*
31 *provide effective civic leadership in the*
32 *local community;*

33
34 *to ensure as far as possible the financial*
35 *sustainability of the council;*

36
37 *to ensure as far as possible that the*
38 *council acts within the principles set out*
39 *in Chapter 3 and the plans, programs,*
40 *strategies and policies of the council;*

41
42 *to develop and endorse community strategic*
43 *plans, delivery programs and other*
44 *strategic plans, programs, strategies and*
45 *policies of the council;*

46
47 *to determine and adopt rating and revenue*

1 *policy as well as operational plans that*
2 *support the optimal allocation of*
3 *resources;*

4
5 *to implement strategic plans, including the*
6 *community strategic plan of the council for*
7 *the benefit of the local area;*

8
9 *to keep under review the performance of the*
10 *council, including service delivery, and to*
11 *make decisions necessary for the proper*
12 *exercise of the regulatory functions;*

13
14 *to determine the process for appointment of*
15 *the general manager and to monitor that*
16 *person's performance;*

17
18 *to determine senior staff positions within*
19 *the organisational stricture of the*
20 *council;*

21
22 *to consult regularly with community*
23 *organisations and other stakeholders and*
24 *keep them informed of the council's*
25 *decisions and activities.*

26
27 *[Finally], to be responsible for ensuring*
28 *that the council acts honestly, efficiently*
29 *and appropriately.*

30
31 The governing body, this is subsection (2):

32
33 *... is to consult with the general manager*
34 *in directing and controlling the affairs of*
35 *the council.*

36
37 That phrase "directing and controlling" is something
38 that I will come back to in a moment, Commissioner.

39
40 Section 232 deals with the role of the councillors in
41 their individual capacity as distinct from as the governing
42 body. Subsection (1) states that they are to be:

43
44 *... an active and contributing member of*
45 *the governing body; to make considered and*
46 *well formed decisions as a member of the*
47 *governing body; to participate in the*

1 *development of the integrated planning and*
2 *reporting framework; to represent the*
3 *collective interests of residents,*
4 *ratepayers and the local community to*
5 *facilitate communication between the local*
6 *community and the governing body; to uphold*
7 *and represent accurately the policies and*
8 *decisions of the governing body; and to*
9 *make all reasonable efforts to acquire and*
10 *maintain skills necessary to perform the*
11 *role of councillor.*

12
13 And then subsection (2):

14
15 *A councillor is accountable to the local*
16 *community for the performance of council.*

17
18 THE COMMISSIONER: Can I just ask you about
19 section 232(1)(f)?

20
21 MR PARISH: Sure.

22
23 THE COMMISSIONER:

24
25 *To uphold and represent accurately the*
26 *policies and decisions of the governing*
27 *body.*

28
29 MR PARISH: Yes.

30
31 THE COMMISSIONER: How do you say that works if a
32 councillor disagrees with a decision taken by the majority?

33
34 MR PARISH: Well, a decision taken by a majority is a
35 decision of the council.

36
37 THE COMMISSIONER: Yes.

38
39 MR PARISH: And therefore I say that it is a statutory
40 obligation to uphold and represent accurately that
41 decision. Even if one is a member of the minority, even if
42 one does not agree with the decision passed, there is a
43 statutory obligation under section 232(1)(f) to uphold and
44 represent accurately the decision of the governing body.

45
46 THE COMMISSIONER: Would it prevent such a councillor
47 maintaining their opposition to the path taken by that

1 particular resolution?

2

3 MR PARISH: Commissioner, my submission in that respect I
4 anticipate will be that there are some shades of grey
5 there, and one may have certain views, and perhaps they may
6 express certain views; whether that transgresses into
7 failing to uphold and represent accurately that decision
8 may be something that is in a grey area and may be
9 something that needs to be explored.

10

11 THE COMMISSIONER: You say, as I understand it, "uphold
12 and represent accurately" are fairly clear terms?

13

14 MR PARISH: Yes.

15

16 THE COMMISSIONER: Whether that can be done consistently
17 with the statutory obligation in a way whilst maintaining
18 overall opposition to a course that's taken may depend on
19 how it's done.

20

21 MR PARISH: Quite.

22

23 THE COMMISSIONER: Do I understand you correctly?

24

25 MR PARISH: Quite.

26

27 THE COMMISSIONER: Thank you. Sorry to interrupt.

28

29 MR PARISH: And, of course, noting the terms of inquiry
30 which we'll come to soon, it's as much a question of what
31 the councillors understood that to mean as it is perhaps
32 coming to a final view on what the outer boundaries of that
33 is.

34

35 THE COMMISSIONER: I understand.

36

37 MR PARISH: So, I briefly turn to section 335 which is in
38 Chapter 11.

39

40 THE COMMISSIONER: Sorry, just before you leave
41 section 232, I recollect that was part of the 2016
42 amendments; is that right?

43

44 MR PARISH: I think it was.

45

46 THE COMMISSIONER: Yes, you can come back to it if you
47 need to.

1
2 MR PARISH: Yes, if you wouldn't mind I'll come back to
3 that, I think you're right.

4
5 THE COMMISSIONER: Yes, sorry, where are you going now?

6
7 MR PARISH: One thing I might just refer to you also at
8 this point in time is, while we have it in front of us, the
9 next subsection down, subsection (g), states:

10
11 *The necessarily to make all reasonable*
12 *efforts to acquire and maintain the skills*
13 *necessary to perform the role of*
14 *councillor.*

15
16 I just flag that for the moment, it's something that
17 will be explored, that the councillors did, it appears,
18 have induction sessions upon becoming councillors. Some of
19 the councillors had previously been elected, and I am not
20 suggesting in opening that they did not do it, but it is
21 something that will be explored --

22
23 THE COMMISSIONER: Thank you.

24
25 MR PARISH: -- in examination, and I only raise it now
26 because it is a section which perhaps scoots under the more
27 substantive sections, it is nonetheless important and is a
28 statutory obligation on the councillor.

29
30 I was going to take you to section 335 next,
31 Commissioner, which is in Chapter 11 of the Act.

32
33 THE COMMISSIONER: Yes, I have that.

34
35 MR PARISH: That addresses the functions of the general
36 manager of council and it states that:

37
38 *The general manager of council has the*
39 *following functions: to conduct day-to-day*
40 *management of the council in accordance*
41 *with the strategic plans, programs,*
42 *strategies and policy of the council;*

43
44 *To implement without undue delay lawful*
45 *decisions of the council; to advise the*
46 *mayor and the governing body on the*
47 *development and implementation of the*

1 *strategic plans, programs, strategies and*
2 *policies of the council; to advise the*
3 *mayor and the governing body on the*
4 *appropriate form of community consultation*
5 *on the strategic plans, programs,*
6 *strategies and policies of the council and*
7 *other matters related to the council; and*

8
9 *to prepare in consultation with the mayor,*
10 *governing body and the council's community*
11 *strategic plan, community engagement*
12 *strategies, resourcing strategy, delivery*
13 *program and operational plan and annual*
14 *reports;*

15
16 *to ensure that the mayors and other*
17 *councillors are given accurate and timely*
18 *information and advice and the*
19 *administrative and professional support*
20 *necessary to effectively discharge their*
21 *functions;*

22
23 *to exercise any of the functions that the*
24 *council delegates to the general manager;*
25 *to appoint staff in accordance with the*
26 *organisation's structure determined under*
27 *this chapter and the resources approved by*
28 *council;*

29
30 *the directors and staff to implement the*
31 *workforce management strategy and then any*
32 *other functions.*

33
34 Now, the reason I've done it in the order that I've
35 done it there, Commissioner, is because there's some lack
36 of clarity at least in the mind of Counsel Assisting as to
37 the use of some of the terms that are used, for instance,
38 "operational and strategic". Those terms are not terms
39 necessarily used in the Act in the way in which they are
40 used in some of the materials.

41
42 The way that these sections interact, in my
43 submission, it appears that it is the role of the governing
44 body to set the planning and strategic direction of the
45 council and it is the role of the staff, management and the
46 general manager to implement it, and that's something I'll
47 come back to shortly in respect of the terms of reference.

1
2 But for now the next thing I want to draw your
3 attention to is the conduct, regulations and documents
4 which regulate and govern the behaviour of both the elected
5 body - the governing body, I should say, and at least
6 senior staff and other staff as well.
7

8 In that respect I anticipate we will deal extensively
9 with the codes of conduct and the codes of meeting
10 practice. There are various iterations of those which are
11 in tender Bundle A and which I don't intend to take you to
12 right now.
13

14 THE COMMISSIONER: Okay.

15
16 MR PARISH: Section 440 of the Act requires that the
17 council must adopt a Code of Conduct that applies to
18 councillors, members of staff of councils and delegates.
19

20 THE COMMISSIONER: Yes, I have that.

21
22 MR PARISH: Further through that, at section 440F, is a
23 section which deals with misconduct. Can we just pull that
24 up?
25

26 THE COMMISSIONER: Yes.

27
28 MR PARISH: Misconduct of a councillor means any of the
29 following:
30

31 *A contravention by the councillor of this*
32 *Act or regulations; a failure by the*
33 *councillor to comply with the applicable*
34 *requirement of a Code of Conduct; a failure*
35 *by a councillor to comply with an order*
36 *issued by the departmental Chief Executive*
37 *under this section; an act of disorder*
38 *committed by the councillor at a meeting of*
39 *the council or a committee of the council;*
40 *an act and omission of the councillor*
41 *intended by the councillor to prevent the*
42 *proper or effective functioning of the*
43 *council or a committee of the council.*
44

45 So, we have there, by section 440F(1)(b) at least, a
46 statutory recognition that failure to comply with the Code
47 of Conduct is an act of misconduct under the Act.

1
2 Section 360, going backwards, states that the
3 regulations may prescribe acts of disorder for meetings or
4 committees. I take that to mean that, once a regulation
5 sets those matters out, it is then incorporated into
6 (1)(a), thereby meaning that there are both codes of
7 conduct which address norms of behaviour as well as
8 statutory obligations in the regulations which also deal
9 with norms of behaviour.

10
11 THE COMMISSIONER: Sorry, just stepping back, which part
12 of 360 did you wish to take me to?

13
14 MR PARISH: Pardon me, 360 prescribes the model Code of
15 Conduct, which is conduct of meetings.

16
17 THE COMMISSIONER: Yes, that requires the council to adopt
18 at least the model code and they can have more but they
19 can't be inconsistent with the model code.

20
21 MR PARISH: Yes. It may contain both mandatory and
22 non-mandatory provisions and must not later than 12 months
23 after an election adopt that code.

24
25 THE COMMISSIONER: Yes.

26
27 MR PARISH: Must not contain provisions inconsistent with
28 the mandatory provisions, and a council and a committee of
29 the council of which all the members are councillors must
30 conduct its meetings in accordance with the code of the
31 meeting.

32
33 THE COMMISSIONER: Yes.

34
35 MR PARISH: So, there we go, we've got another statutory
36 obligation imposed.

37
38 THE COMMISSIONER: So your submission is, section 360(5)
39 would then fit into section 440F(1)(a) if there was a
40 contravention of the Code of Meeting Practice, it may
41 constitute misconduct as defined, being a contravention of
42 the Act. Is that how you put it?

43
44 MR PARISH: Yes, Commissioner.

45
46 THE COMMISSIONER: Thank you.
47

1 MR PARISH: I'm unsure whether you've got the regulations
2 in front of you.
3
4 THE COMMISSIONER: I can pull them up.
5
6 MR PARISH: Yes, I don't have them in hard copy either.
7
8 THE COMMISSIONER: That's all right. Just give me a
9 moment. They were almost entirely replaced.
10
11 MR PARISH: Yes.
12
13 THE COMMISSIONER: So it'll be 2015. Is it 2015?
14
15 MR PARISH: I'm working off the 2021.
16
17 THE COMMISSIONER: I see.
18
19 MR PARISH: But I'll draw it back to the ones that were in
20 substantially the same form at the time.
21
22 THE COMMISSIONER: So, I can look at the current
23 regulation?
24
25 MR PARISH: You can look at the current regulations for
26 the moment.
27
28 THE COMMISSIONER: Thank you.
29
30 MR PARISH: There have been a couple of regulations --
31
32 THE COMMISSIONER: The local government general
33 regulation, is that the one?
34
35 MR PARISH: Yes, that's the one.
36
37 THE COMMISSIONER: Yes, I have that, thank you.
38
39 MR PARISH: 2021.
40
41 THE COMMISSIONER: Yes. Which clause?
42
43 MR PARISH: Can I start with 232 of the regulations, which
44 states that the model code is published in the Gazette on
45 29 October 2021 prescribed for the purposes of the Act, and
46 I'll draw you back and cross-reference to the relevant one
47 at the time in due course. I just want to go through the

1 architecture of the regulations at the moment.

2

3 THE COMMISSIONER: Yes.

4

5 MR PARISH: 233 sets out the ability of the chairperson to
6 expel a councillor. It says that:

7

8 *The chairperson may require a councillor to*
9 *apologise without reservation for an act of*
10 *disorder referred to in section 182 [I'll*
11 *bring you to that in a second,*
12 *Commissioner] to withdraw a motion or an*
13 *amendment referred to in section 182C and*
14 *where appropriate will apologise without*
15 *reservation. (c) retract and apologise*
16 *without reservation for any statement that*
17 *constitutes an act of disorder referred to*
18 *in section 182D or E.*

19

20 At (2):

21

22 *A councillor may as provided by 10A, 2A or*
23 *B of the Act [which is what I took you to*
24 *before] be expelled from a meeting of a*
25 *council or, having failed to comply with a*
26 *requirement under subsection (1), the*
27 *expulsion of councillor from the meeting*
28 *for that reason does not prevent any other*
29 *action being taken against the councillor*
30 *for the act of disorder concerned.*

31

32 At (3):

33

34 *A person other than a councillor may, as*
35 *provided by 10(2)(a) or (b) of the Act be*
36 *expelled from a meeting of a council for*
37 *having engaged in disorderly conduct.*

38

39 That puts some meat on the bones of section 10A(2)
40 and, in my submission, is also consonant with the model
41 Code of Meeting Practice.

42

43 That's probably the appropriate time then to take you
44 to regulation 182 in the same regulation which sets out the
45 relevant acts of disorder as facilitated by section 490A of
46 the Act.

47

1 THE COMMISSIONER: I have that.

2

3 MR PARISH:

4

5 *A councillor commits an act of disorder if*
6 *a councillor at a meeting of a council or a*
7 *committee of a council contravenes this*
8 *Act, this regulation or any provision of*
9 *the Code of Meeting Practice adopted by the*
10 *council under section 363 of the Act*
11 *including any provisions incorporated in*
12 *the adopted code that are prescribed by*
13 *this regulation as mandatory provisions of*
14 *the model Code of Meeting Practice, or*
15 *assaults or threatens to assault another*
16 *councillor or person present at the*
17 *meeting, or moves or attempts to move a*
18 *motion or an amendment that has an unlawful*
19 *purpose, or that deals with a matter that*
20 *is outside the jurisdiction of the council*
21 *committee, or address or attempts to*
22 *address the council or committee on such a*
23 *motion, amendment or matter.*

24

25 Now subsection (d):

26

27 *Consults, makes unfavourable impersonal*
28 *remarks about or imputes improper motives*
29 *to any other councillor or member of staff*
30 *or delegate of council; or says anything*
31 *that is inconsistent with maintaining*
32 *order at the meeting or is likely to bring*
33 *the council or committee into contempt.*

34

35 And, a couple of reasons I wanted to draw this to your
36 attention at this stage, Commissioner: it appears to
37 interact with the statutory prescriptions in respect of
38 misconduct in section 440F. It appears to tie in with the
39 Code of Meeting Practice adopted by the council under
40 section 363, and it then adds to those other matters
41 several, I would submit, rather obvious norms of behaviour
42 that ought to take place at councils. So, there are
43 multiple avenues under the statute and its regulations
44 regulating the behaviour of councillors and that's
45 something that will form part of your inquiry and on which
46 there will be oral questioning.

47

1 The other point to note is that this interaction of
2 the various regulations, statutes and sections is not
3 necessarily straightforward, there is some complexity to
4 the way they interact and, of course, that should be borne
5 in mind when both oral questioning is taking place and
6 final submissions are made to you, Commissioner.
7

8 So, with that short overview of the Act and its
9 regulation, I might now turn to the terms of inquiry
10 itself. The scope of the terms of reference were made
11 under Section 43U, W and Y by Minister Hancock. I have
12 referred to them a few times, they're at the first two
13 pages of tender bundle A.
14

15 You have given some opening remarks, Commissioner,
16 about how you see those terms to define the scope of your
17 role. I shall now both give you my submission on what I
18 say that means and also make a few further comments.
19

20 The first term is whether members of council's
21 governing body fully understood their roles and
22 responsibilities and have adequately, reasonably and
23 appropriately carried out their roles and responsibilities
24 during the current term of council.
25

26 In my submission, that has two paths: firstly to
27 determine whether the nine councillors fully understood
28 their roles and responsibilities and, secondly, to inquire
29 whether they fulfilled those roles during the 2016 term.
30

31 The first part has an element of subjectivity that
32 will need to be explored with each of the individual
33 councillors and will also be informed by the training and
34 induction procedures that took place at the time and
35 manifest themselves most obviously in the council meetings
36 themselves.
37

38 The second part, that is, did they fulfil those
39 obligations, roles and responsibilities, is a wider
40 question that will be informed by the evidence received not
41 only from council records and submissions but the community
42 themselves and how the councillors projected their roles
43 and responsibilities and perception that that was received
44 with in the wider community. Of course, the evidence of
45 councillors will also be relevant to the second part of
46 that wider question as well.
47

1 Term of Reference 2 states:

2
3 *Whether during the current term of council*
4 *there has been improper interference by the*
5 *elected body of council ...*
6

7 Pausing there, I think we both take that to mean the
8 governing body:
9

10 *... or by individual councillors in*
11 *operational matters with particular*
12 *reference to staffing and planning*
13 *functions.*
14

15 In my submission, it is necessary to understand this
16 question within the context of the legislation I have just
17 taken you to. You may hear through the course of the
18 inquiry this distinction between operational and strategic.
19 This gives effect to the fact that the role of the elected
20 councillors is to, in my submission, set the strategic
21 direction of the council and it is the management and the
22 staff who are responsible for the operational day-to-day
23 administration of the council.
24

25 I should note that this operational/strategic
26 distinction is therefore more colloquial than technical
27 because the Act does not demarcate the roles in those
28 words. I have already taken you to section 223 of the Act
29 which deals with the role of the governing body, that is,
30 the councillors as a body politic, and that states that
31 their role is to direct and control. I take that to be
32 synonymous with strategic as distinct from operational, but
33 I will also be exploring what the councillors understood
34 that to mean.
35

36 Section 232, which deals with individual council
37 roles, is more high-level and aspirational than
38 section 223. But you can take it that the role set out in
39 232 cannot rise above 232 roles and the body that they are
40 part of, nor intrude onto the functions of the general
41 manager, which is the reason I took you to section 335 at
42 this time.
43

44 Section 335 sets out the functions of the general
45 manager and the first of which, I note, is the conduct of
46 the day-to-day management of the council in accordance with
47 the strategic plans, programs, policies of the council and

1 the second is the implementation of the decisions of the
2 council.

3

4 Can I pause there briefly to take you to page 446 of
5 tender bundle A.

6

7 THE COMMISSIONER: I have 446.

8

9 MR PARISH: Pardon me, can I take you to page 461.

10

11 THE COMMISSIONER: Yes, I have that.

12

13 MR PARISH: That's what is referred to from time to time
14 as the hourglass model which sets out the council's
15 structure.

16

17 THE COMMISSIONER: This is a page from the councillor
18 handbook, is it?

19

20 MR PARISH: Yes, that's correct. That document, that
21 hourglass, and how both that sits with 223, 232 and 335 of
22 the Act and what the councillors understood that
23 interaction to be, whether there was any distinction, is
24 something I'll explore in due course.

25

26 But what you can see from both phraseologies such as
27 operational versus strategic, this implementation of
28 frameworks, with reporting to council on activities and
29 outcomes, as well as the phraseology in the first two
30 subsections of section 335, is that, there is - I wouldn't
31 put it as high as confusion - there is some areas in which
32 there are different words used to mean the same thing which
33 don't necessarily match up with the word used in the Act.

34

35 My submission I anticipate, however, will be that
36 while the Act doesn't make a clear demarcation between the
37 words "operational" versus "strategic", it is clear that
38 there is a distinction between "direct and control", which
39 is for the governing body, and "implement and manage" which
40 is for the general manager and staff.

41

42 My submission will be that when one goes back to those
43 guiding principles at A and C in section 8 which we started
44 with it's quite clear, in my submission, that what 8C does
45 is flesh out both 8A(1)(c) and (d) and also makes it clear
46 when one then reads 232, 223 and 235, that the governing
47 body's role is to come up with, identify, priority and then

1 set strategic goals as part of the integrated planning and
2 reporting framework, and that it is the staff and the
3 general manager's role to implement that.

4
5 THE COMMISSIONER: Yes, just on 335, I understand what you
6 say, that the Act doesn't use these words, one has to get
7 there through a combination of an analysis of various
8 sections to get to what is ultimately represented in the
9 diagram in the councillor handbook. Have you got 335?

10
11 MR PARISH: Yes, Commissioner.

12
13 THE COMMISSIONER: Do you also say that subsection (i) is
14 also relevant to that demarcation, that it is solely within
15 the purview of the general manager to direct and dismiss
16 staff?

17
18 MR PARISH: Yes.

19
20 THE COMMISSIONER: Do you read "direct" in that context to
21 direct in the performance of their day-to-day role?

22
23 MR PARISH: Yes.

24
25 THE COMMISSIONER: And the only staff member that's
26 actually engaged by the governing body is the general
27 manager, him or herself; correct?

28
29 MR PARISH: Yes. And conveniently touching on my next
30 point, and I thank you for the segue, Commissioner, is that
31 their roles don't interact or overlap in that respect, that
32 of the governing body and the general manager. If there is
33 a role set out for the general manager or a function at
34 335, that does not mean that there is some grey area which
35 the governing body may involve themselves with; it is the
36 intention, I say, of the Act that there is a bright
37 line between those activities.

38
39 THE COMMISSIONER: Yes. Perhaps there may be - confusion
40 is not the right word - but where issues might arise is
41 what is within each of those categories rather than that
42 they exist?

43
44 MR PARISH: Quite.

45
46 THE COMMISSIONER: I see the time. Is that a convenient
47 moment to have the morning adjournment?

1
2 MR PARISH: Thank you, Commissioner.

3
4 THE COMMISSIONER: Yes, all right. We'll adjourn until 10
5 to 12.

6
7 **SHORT ADJOURNMENT**

8
9 THE COMMISSIONER: Yes, thank you, Mr Parish.

10
11 MR PARISH: Thank you, Commissioner. I was just dealing
12 before the break with the distinction between operational
13 and strategic and the slightly different wording and
14 slightly different conceptual use of the words in the Act
15 itself, but just to tie up that proposition that the roles
16 of the general manager and ergo the staff below her and the
17 governing body on the other hand are distinct ones that do
18 not overlap, can I just take you to page 1280 of tender
19 bundle A volume 2.

20
21 THE COMMISSIONER: Volume 2, yes.

22
23 MR PARISH: This is page 1280 from a meetings practice
24 note August 2009 which has some use as an aid and which
25 also there hasn't been significant changes of the Act since
26 then.

27
28 At page 1280 there is a reference to clause 8.1.2 and
29 what should be the relationship between councillors and
30 council staff, and it says:

31
32 *The Act makes the general manager*
33 *responsible for the efficient and effective*
34 *operation of the council's organisation and*
35 *for implementing decisions of the council.*

36
37 And then refers to the section we have been talking
38 about in the Act, section 335. It then says:

39
40 *The general manager therefore is in charge*
41 *of council's management. Councillors are*
42 *required as a group to direct and control*
43 *the council's affairs ...*

44
45 We've seen that word come up a few times this morning:

46
47 *... allocate resources and determine and*

1 *review the council's policy and*
2 *performance.*

3
4 Section 232 of the Act:

5
6 *Councillors should not involve themselves*
7 *in the day-to-day administration of the*
8 *council, this is the responsibility of the*
9 *general manager.*

10
11 So, I just wanted to take your attention to that to
12 close the loop on my analysis in the various sections of
13 the Act in regard to both the distinction between direct
14 and control on the one hand and day-to-day management and
15 administration on the other, and also the use of this term
16 "operational" versus "strategic".

17
18 THE COMMISSIONER: Thank you.

19
20 MR PARISH: While we're here, I should also note that it
21 says that:

22
23 *Councillors and staff have responsibility*
24 *to behave professionally and maintain*
25 *constructive working associations. This is*
26 *based on the principle that all public*
27 *officials have a duty to act with*
28 *integrity, honesty impartiality and in the*
29 *public interest and that the councillors*
30 *must not make personal attacks upon staff*
31 *at meetings. If a councillor has a*
32 *complaint about a member of staff, that*
33 *complaint should be addressed in writing to*
34 *the general manager. If the complaint is*
35 *about the general manager that should be*
36 *addressed in writing to the mayor.*

37
38 Then it deals with section 9 of the model code. We'll
39 come to a more up-to-date version of that in due course
40 given that this is something from 2009, but makes the very
41 obvious point that councillors should familiarise
42 themselves with those provisions and use them as a guide to
43 their conduct.

44
45 Can I now take you to examples of the meeting Code of
46 Conduct and the Code of Conduct? It's something I don't
47 want to spend a lot of time on right now but I should both

1 flag up what they are and deal with at least a few things
2 that may be of some relevance.

3

4 Can I start with an example of the Code of Meeting
5 Practice which is at same volume, page 1037.

6

7 THE COMMISSIONER: Yes.

8

9 MR PARISH: Can you just flag that up for now,
10 Commissioner, as something. I just wanted to draw your
11 attention to one relevant part of it. If I could take you
12 to page 1052, describing the chairperson, cross-referencing
13 to the Act that:

14

15 *The mayor or at the request of or in the*
16 *absence of the mayor the deputy mayor, if*
17 *any, presides at the meeting ...*

18

19 That's 7.1:

20

21 *... if the mayor and the deputy mayor are*
22 *absent a councillor elected to the chair*
23 *may chair the meeting by councillors*
24 *present.*

25

26 Then there's the reference to the election. Just down
27 the bottom there, 7.9:

28

29 *Chairperson to have precedence. When a*
30 *chairperson rises or speaks during a*
31 *meeting of the council any councillor then*
32 *speaking or seeking to speak must cease*
33 *speaking and, if standing, immediately*
34 *resume their seat and every councillor*
35 *present must be silent to enable the*
36 *chairperson to be heard without*
37 *interruption.*

38

39 That's something that may arise in the examination of
40 councillors in respect to some conduct in meetings which,
41 it appears I may say in opening, at the very least failed
42 to comply with that aspect of the code. And, as I've
43 already taken you to, the way that the code interacts with
44 the Act, the roles and responsibilities in respect of the
45 code are also statutory obligations under the Act.

46

47 I apologise in advance, I'm going to jump between

1 Volumes 1 and 2 of tender bundle A for a second.
2
3 THE COMMISSIONER: Yes. I have Volume 1.
4
5 MR PARISH: Can I take you to page 740 and just ask you to
6 flag up an example of the Code of Conduct.
7
8 THE COMMISSIONER: Yes.
9
10 MR PARISH: There were multiple iterations of this
11 document over the term, none of which contained significant
12 differences, but it's something I'll have to deal with in
13 due course, Commissioner; there are slight differences in
14 various versions of this document.
15
16 THE COMMISSIONER: Yes.
17
18 MR PARISH: Things to note at the moment are effectively
19 the table of contents and the parts of the Code of Conduct.
20 There are general conduct obligations, there are specific
21 provisions in respect of pecuniary interests, specific
22 provisions in respect of non-pecuniary interests, personal
23 benefit. There is another section in there in Part 7 about
24 the relationship between council officials, access to
25 information and council resources, and the vitality of
26 maintaining the integrity of this code. So, I just wanted
27 to flag that up for now.
28
29 THE COMMISSIONER: Sorry, Mr Parish, I've done my usual
30 trick and spilt the water. Bear with me for just a moment.
31
32 MR PARISH: My hard work down the drain, Commissioner.
33
34 THE COMMISSIONER: It wouldn't be a hearing without me
35 doing this.
36
37 MR PARISH: Well, that's probably a convenient place for
38 me to leave the Code of Conduct for now.
39
40 THE COMMISSIONER: Yes, you continue.
41
42 MR PARISH: But I just wanted to bring you back to tender
43 bundle B, page 1280 that I dealt with a second ago.
44
45 THE COMMISSIONER: Yes.
46
47 MR PARISH: This framework of improper interference which

1 comes through in Terms of Reference 2, there is a statutory
2 delineation of roles, there are multiple explanations of
3 that delineation in the documents I've just taken you to,
4 and it is something which will be explored in due course
5 with both staff members and councillors in respect of Term
6 of Reference 2.

7
8 Term of Reference 3 states whether members of
9 council's governing body have been and will continue to be
10 in a position to direct and control the affairs of council
11 in accordance with the Local Government Act 1993 and to
12 otherwise fulfil its statutory obligations. Here we see
13 the use of that phrase "direct and control", Commissioner.

14
15 This aspect of the terms has a past tense and a future
16 tense component to it. The past tense of it overlaps, in
17 my submission, with the second limb of the first term, but
18 this term should be read as a way to identify the position
19 of the governing body to direct and control in the past and
20 to therefore inquire whether there are any problems;
21 i.e. if you term that there were such problems, whether
22 they can be or have been fixed. We need to know the former
23 to be able to inquire and determine the latter.

24
25 I take this term of reference, especially in the
26 future tense, to pay attention to the governing body as a
27 whole. It is not constructive or, in my view, within the
28 terms of reference to pick out individual councillors and
29 to make findings or determinations that place specific
30 weight on a positive or negative role as a whole.

31
32 There is no power that I can ascertain that would
33 allow the Minister to dismiss or suspend a single
34 councillor, nor is your recommendation sought on that in
35 this inquiry. Nor do I say that you would have any such
36 power to do so.

37
38 What, in my submission, you need to focus on within
39 this term, Commissioner, is whether the six councillors as
40 a whole are in a position going forward to direct and
41 control and to otherwise fulfil their statutory obligations
42 under 8A, section 223, for the balance of this term.

43
44 Does the Commissioner have any questions on that in
45 particular, because I might move to Term 4 now unless you
46 do?
47

1 THE COMMISSIONER: No, I understand what you put. Do you
2 say that, when construing Term of Reference 3, it also sits
3 in distinction to Term of Reference 2 that points to
4 individual councillors?

5

6 MR PARISH: Yes. Yes, quite. There is a quite distinct
7 use of terms between individual councillors in 2 and in 3,
8 and of course what is being asked in Term 3 is whether the
9 governing body will continue to be in a position to direct
10 and control the affairs.

11

12 THE COMMISSIONER: It has to be understood in the context
13 of what this inquiry is and the legislation in which it is
14 established.

15

16 MR PARISH: Yes.

17

18 THE COMMISSIONER: I understand the import of your
19 submission about the Minister seemingly lacking power to
20 take any particular action against any particular
21 individual councillors; that seems to be a power that rests
22 with someone else, as I read the Act.

23

24 MR PARISH: Yes.

25

26 THE COMMISSIONER: But I'd be interested to hear any
27 contrary view about that should there be one.

28

29 MR PARISH: Yes. That's not to say that the conduct of
30 individual councillors might not be important for the
31 factual matrix that we have to undertake.

32

33 THE COMMISSIONER: Yes, quite.

34

35 MR PARISH: Nor as a way of explaining matters that may
36 occur; that is a wholly different issue as to whether Term
37 of Reference 3 is answered in a certain way.

38

39 THE COMMISSIONER: Yes. Your point is, there's not much
40 point in me saying 1 and 2 can, 2 and 3 can't, 1 can, that
41 doesn't aid the Minister in her consideration of what to do
42 going forward, to drill it down to that level. Is that how
43 you put it?

44

45 MR PARISH: Yes.

46

47 THE COMMISSIONER: Thank you, I understand.

1
2 MR PARISH: And in what is the autumnal way of the land --

3
4 THE COMMISSIONER: I understand - sorry to cut you off,
5 when I say "I understand", I understand the submission. I
6 haven't closed my mind to the issue, but I understand what
7 you put.

8
9 MR PARISH: Yes. I was going to embark on a tortured
10 analogy there, councillor, which I might therefore skip,
11 but to cut short the analogy, we're not looking in Term 3
12 to identify bad apples, we are looking at the whole tree
13 and whether in the factual matrix certain behaviour might
14 come up - that's one thing - but it's not the scope of
15 Term 3 to identify or make recommendations about
16 individuals.

17
18 THE COMMISSIONER: Yes, thank you.

19
20 MR PARISH: Term 4 states that:

21
22 *Any other matter that warrants inquiry,*
23 *particularly those that may impact on the*
24 *effective administration of council's*
25 *functions and responsibilities or a*
26 *community's confidence in the council to be*
27 *able to do so.*

28
29 That is something that has been addressed by you,
30 Commissioner, and what you say that means and how you read
31 it. I will just add briefly in the negative what this
32 inquiry therefore is not about.

33
34 THE COMMISSIONER: Just before you do that, do you advance
35 a different approach to Term of Reference 4 than the
36 preliminary view I expressed in my remarks?

37
38 MR PARISH: No. Term 4 is obviously broader than the
39 previous three but it does, of course, have to be read in
40 the context of the other three terms, the powers that you
41 have, the purpose of this inquiry, but in any event to note
42 that the term states that it is to focus particularly those
43 that may impact on the effective administration of
44 council's functions and responsibilities or the community's
45 confidence in the council being able to do so; I say that
46 is consonant with the previous three terms and when the
47 specific informs the general it's quite clear that what

1 Term 4 is asking is to deal with any other matters which
2 may arise out of the previous three terms and it should be
3 read in that context.

4
5 THE COMMISSIONER: Thank you.

6
7 MR PARISH: Although it does allow the inquiry to have
8 some flexibility and move wider than the other three terms,
9 it still must be informed by both councillor conduct and
10 the roles within this term of council.

11
12 THE COMMISSIONER: Do you wish to be heard against the
13 proposition that what Term of Reference 4 doesn't require
14 me to do is to go on a search for things that might fall
15 within its terms?

16
17 MR PARISH: Quite.

18
19 THE COMMISSIONER: That is, it falls to be considered as
20 issues arise in the consideration of Terms of Reference 1,
21 2 and 3?

22
23 MR PARISH: Yes. I wouldn't want to be heard against
24 that.

25
26 THE COMMISSIONER: Thank you.

27
28 MR PARISH: But in that context both to set out the
29 parameters of what my closing submissions will be,
30 Commissioner, and also to articulate for members of the
31 public who might be listening to this inquiry, I'm just
32 going to take a second to address what this inquiry is not
33 about in my submission.

34
35 This inquiry will not be addressing, certainly from my
36 side as Counsel Assisting, the merits of any specific
37 planning decisions - that's something you referred to -
38 that is something which I embrace as well. We will not be
39 relitigating approved or rejected DAs.

40
41 As I've already said, this inquiry does not have the
42 power to address general allegations of corrupt conduct,
43 and I have already set out the powers you do have to refer
44 them to the appropriate law enforcement body should
45 information come to light which you deem it fit to refer to
46 them.

47

1 Likewise, other non-planning decisions made by council
2 will not be subject to a merits review. It is not our job
3 to second-guess each and every one of the council's
4 decisions, notwithstanding they have been brought to our
5 attention, some in the submissions and it is something
6 we'll of course consider in the wider matrix of what we are
7 doing within Terms 1 to 4.

8
9 THE COMMISSIONER: Can I just ask you about that? The
10 terms of reference you put don't require reconsideration of
11 the merits of decisions. By that do I understand you to
12 say that they focus on processes rather than outcomes?

13
14 MR PARISH: Yes.

15
16 THE COMMISSIONER: But if there was something that was
17 devoid of process and therefore which may have led to a bad
18 outcome, do you see that as being a matter appropriately to
19 be explored or is it just a function of the process, again,
20 that leads to the particular outcome whatever that may be?

21
22 MR PARISH: Well, it's a function of the process insofar
23 as I may ask questions, especially in the first two weeks
24 of, I expect, members of the community and matters may come
25 out of that which will bear on your ultimate
26 determinations.

27
28 THE COMMISSIONER: Yes.

29
30 MR PARISH: And the example I was going to give was not so
31 much in defective processes but one of the abiding themes
32 which has been raised both by Mr Viv May, the documents I
33 intend to in due course take you to, there's a feeling
34 amongst the community that the council has stopped
35 listening.

36
37 Now, we have submissions which wholly focus on the
38 merits of individual DAs, but sometimes within that process
39 there are themes which match with wider pieces of evidence
40 that we have such as the communication between members of
41 the public and the community and how the community
42 perceives and feels that that communication is being
43 provided to them.

44
45 So, that's the example I was going to use of a
46 situation where individual DAs may not be relevant for
47 their individual merits but may fit into wider themes

1 within this inquiry.

2

3 THE COMMISSIONER: Yes.

4

5 MR PARISH: And that is why it's important, of course,
6 Commissioner, that we read and consider all of the
7 submissions and not discard or ignore them simply because
8 they might not necessarily immediately fall within the
9 bounds of this inquiry.

10

11 Just on that point, we've received something in excess
12 of 120 submissions and all of them have been and will be
13 considered even if they fall outside the specific terms of
14 reference and, as I said, there will be themes which come
15 through.

16

17 Lastly, in my submission, this inquiry's aim is not to
18 necessarily apportion blame, find scapegoats or otherwise
19 justify the Minister's suspension. My examination of
20 witnesses will recognise evidence of matters where there is
21 an understanding of roles where there is positive
22 interaction between councillors and staff, and that may
23 bear on matters which both evidence that the councillors
24 were meeting their obligations, it also may point the way
25 towards future constructive behaviours within the council.

26

27 But in saying that I do expect we may see some
28 recurring themes from the evidence that will bear on the
29 terms of reference that may be more negative than positive,
30 and I'll foreshadow a few of those now because I think it's
31 important that you, Commissioner, understand some of the
32 issues which will come up in a recurring theme which will
33 better help you understand the context of them when they
34 come up.

35

36 Firstly, I expect you will hear evidence of a blurring
37 of the line between some councillors acting in their
38 personal capacity and them acting in their capacity as
39 councillor. There are submissions and evidence which I
40 expect will show that there were some times where there was
41 a blurring of this line and that's something that I intend
42 to explore with councillors both in their understanding of
43 their roles and obligations and within the wider context of
44 how they interacted with council staff.

45

46 The second theme that is likely to come up both from
47 the documentary evidence, the streamed meetings we will

1 see, and from members of the public, is the behaviour of
2 councillors in some meetings. The meetings were live
3 streamed and are available to be viewed. I will take you
4 to some of them in due course, Commissioner, and some of
5 them will be the subject of examination.

6
7 Members of the public in submissions frequently
8 expressed concerns about the tone and behaviour of some of
9 the councillors, and there were some particularly memorable
10 occasions where members of the public felt that the
11 behaviour was, to borrow a colloquialism, "tone deaf", for
12 instance, the first extraordinary general meeting after the
13 bushfires in 2020.

14
15 The third theme that I expect will recur is about the
16 culture within the executive and the staff at the council.
17 The interim administrator found that there were significant
18 representational, work and safety risks facing the council
19 and I expect that will be a theme that comes up both from
20 ex-staff and some members of the community as well.

21
22 Fourthly, there is a sense from some members of the
23 community that the council was unresponsive and had stopped
24 listening to its constituents. This was a strong theme
25 that came through when the interim administrator was
26 conducting his investigations and it's a theme that comes
27 through in some submissions from the members of public.

28
29 I can commend to you, Commissioner, some of the
30 satisfaction surveys which were commissioned by the interim
31 administrator. In tender bundle B at page 484, if I could
32 just flag it for you at the moment.

33
34 THE COMMISSIONER: 484?

35
36 MR PARISH: 484, yes, let's try 484.

37
38 THE COMMISSIONER: Yes, I have that. This is the
39 community research survey of February 2021?

40
41 MR PARISH: This is the February 2021 one.

42
43 THE COMMISSIONER: Yes.

44
45 MR PARISH: There are others. It is part of the council's
46 framework that they have to undertake these and it's a
47 metric by which they judge themselves and we'll deal with

1 that in due course.

2

3 THE COMMISSIONER: Yes.

4

5 MR PARISH: But the reason I take you to the 2021 one is
6 because it does provide a useful comparison over
7 previous years in it as well.

8

9

10 If I can take you to page 489, the high-level
11 summaries there that we have with the little high chart, it
12 seems to be, doughnut chart, has overall satisfaction of
13 the Shire Council in the last 12 months at 65 per cent,
14 where it says they were at least somewhat satisfied with
15 the performance of the council.

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On the right-hand side, council's communication:
68 per cent of residents were at least somewhat satisfied
with council's level of communication.

THE COMMISSIONER: Are the words "somewhat satisfied" part
of the scoring metric used in this?

MR PARISH: Yes.

THE COMMISSIONER: Yes, I see it, thank you.

MR PARISH: 25 per cent rated the council image as good to
excellent, and 55 per cent were at least somewhat satisfied
with the overall performance of councillors.

And while it can sometimes be difficult to understand
the results in isolation, we're assisted in that by the
numbers at page 518 of this bundle.

THE COMMISSIONER: Yes.

MR PARISH: That gives us a benchmark index in respect of
the satisfaction scores, and helpfully on the right there
are variants. So, as at this survey, the council were
ahead of the curve, as it were, in respect of cleanliness
and functionality of public toilets and community
safety/crime prevention. They were within a variance in
respect of reliability of town water resource recovery
centre, support for tourism, dog control, health and
natural urban streams and creeks but not rivers and
protecting heritage values and buildings. Then we slip
below the curve, I should say, at "Health and natural urban

1 streams", and the council is performing lower than the
2 benchmark in respect of the balance of those issues.
3
4 THE COMMISSIONER: Just going back earlier to page 498, do
5 you have that?
6
7 MR PARISH: Yes.
8
9 THE COMMISSIONER: At the top of that page there's a
10 series of scores?
11
12 MR PARISH: Yes.
13
14 THE COMMISSIONER: Do I understand those to be the scores
15 of similar surveys in the past?
16
17 MR PARISH: Quite, and that's why, as I foreshadowed when
18 I first took you to this, the reason I'm showing you the
19 2021 version is that it quite nicely gives us an
20 extrapolation of the previous scores.
21
22 THE COMMISSIONER: So, if we're looking at "overall
23 satisfaction", it was 77 per cent in 2019 and 65 per cent
24 two years later.
25
26 MR PARISH: Yes. Going even further back, we've got
27 85 per cent in 2010, 81 per cent in 2012, 82 per cent in
28 2015, 76 per cent in 2017.
29
30 THE COMMISSIONER: And below that one sees the scoring
31 system, if I can put it that way?
32
33 MR PARISH: Yes.
34
35 THE COMMISSIONER: "Somewhat satisfied" is 3 out of 5.
36
37 MR PARISH: Yes.
38
39 THE COMMISSIONER: Okay, thank you, I understand how that
40 works.
41
42 MR PARISH: I'm drawing your attention to that partly
43 because it integrates with the strategic documents, but
44 also because it's part of a theme that comes up in a sense
45 that the council was unresponsive and it had stopped
46 listening to the constituents; a theme, I should say, that
47 comes through in the submissions.

1
2 Can I also draw your attention to the Ernest
3 Consulting report in the same volume, tender bundle B, at
4 page 434.

5
6 THE COMMISSIONER: Yes, I have it.

7
8 MR PARISH: This is one of the reports that was
9 commissioned by the interim administrator, Mr Viv May.
10 Part of this report interviewed staff members about the
11 culture, which sets out on the right-hand side there themes
12 arising from interviews with staff members. I won't read
13 through them all at the moment save to note a few and also
14 note that these are themes which come through in some of
15 the submissions:

16
17 *Interference by councillors to*
18 *predetermined recommendations especially on*
19 *planning proposals.*

20
21 *Poor or no leadership from senior staff and*
22 *the elected council which manifests in a*
23 *lack of trust in their decision making and*
24 *a lack of authority to make decisions.*

25
26 *Poor and outdated development control*
27 *plans.*

28
29 Bearing in mind, that's a role of the governing body
30 to set, amongst other things, DCPs:

31
32 *Inconsistency between various strategic*
33 *policies of council such as council's*
34 *position to promote tourism in the context*
35 *of the LEP.*

36
37 That's Local Environmental Plan that effectively
38 prohibits those land uses, and then there are some other
39 operational matters which arise as well.

40
41 Something which will be explored, Commissioner, is the
42 way in which both the senior staff and executive interacted
43 with the governing body and the effect that that had on the
44 staff further down, and that's again a recurring theme that
45 will come up.

46
47 I also just want to flag, Commissioner, some specific

1 events which will be relevant and which a bit of context
2 now may improve the efficient conduct of this inquiry.
3

4 You will see references to bushfires and the bushfire
5 response. This refers to bushfires in the shire at the end
6 of 2019 and the commencement of 2020. There is a good
7 summary of the bushfire response and recovery review
8 commissioned by the interim administrator which is at
9 tender bundle B, page 272.

10
11 THE COMMISSIONER: I have that.

12
13 MR PARISH: In those fires, 68 residences were destroyed,
14 18 damaged, 197 outbuildings destroyed, 69 damaged.
15 24 per cent of the shire was subject to burn scars. This
16 is an event which had, as you would expect, an obvious
17 effect on the community and some people in particular were
18 affected in severe and traumatic ways. There were
19 submissions made in respect of that response and you will
20 be hearing from witnesses who give their experience of that
21 response.

22
23 Secondly, you will see reference to the Station Street
24 or Bowral Bypass. This was a proposed bypass to the west
25 of Bowral alongside the train line that caused, in my
26 submission, significant animosity and tension within the
27 community, between the community and some councillors and
28 within the council.

29
30 We will not be examining the merits of the project
31 which was discontinued by the interim administrator, but
32 members of the community seem to feel, at least some of
33 them, that the consultation process was unprofessional, at
34 times obfuscatory, and closed the community. That is
35 something I'll be examining and how that perception came to
36 be within some members of the community.

37
38 THE COMMISSIONER: I'm obviously aware of that project.
39 Is there a document that gives a - and you may not be able
40 to answer this immediately, but is there or will there be
41 in evidence a document which gives a convenient summary of
42 what it was and what was proposed?

43
44 MR PARISH: Yes, there will be but I won't take you to it
45 now.

46
47 THE COMMISSIONER: No, that's fine, thank you.

1
2 MR PARISH: Next in respect of specific matters, the Civic
3 Centre where we now sit. The interim administrator
4 identified irregularities in the process of approving the
5 spending and the DA process. Again, it's not within the
6 terms of reference to inquire into the merits of this
7 project, but it may be relevant in the context of whether
8 the councillors and the executive properly understood their
9 statutory obligations and that is something which may arise
10 in examinations.

11
12 That is by no means an exhaustive list of recurring
13 issues or specific matters, but I just wanted to draw your
14 attention to those things which may come up within the
15 community, staff and councillors when they're being
16 examined.

17
18 Can I just I speak roughly about the timetable that we
19 intend to canvass in the next three weeks? I expect I'll
20 be calling approximately 52 witnesses at this stage. They
21 can conveniently be broken up into three groups and I am
22 endeavouring at this stage to call each of the three groups
23 within the three weeks.

24
25 The first week I anticipate calling members of
26 community organisations and members of the public who have
27 made submissions to this inquiry.

28
29 In the second week I intend to deal with any remaining
30 witnesses from this week and then call the current interim
31 administrator, Mr Viv May, a witness from the Office of
32 Local Government and the present general manager,
33 Ms Campbell, first followed by the other present and
34 ex-staff members who will be giving evidence. Then, in the
35 third and final week, I intend to call the councillors.

36
37 I should state at this stage that our choice of
38 witnesses, in particular for the first week, were based on
39 the fact that we received over double the amount of
40 submissions from members of the public than those who will
41 actually be called as witnesses.

42
43 The members of the public who will be examined were
44 selected based on several factors, none of which were
45 intended to exclude or diminish the submissions made by the
46 others who have not been called.

1 Of the members of public who made submissions and will
2 not be called, some of them provided comprehensive and
3 detailed submissions that stand on their own as evidence
4 and no further elaboration is necessary in person given the
5 constraints we have on time. Some dealt with specific DA
6 issues which I've previously discussed and which I have
7 noted fall outside the terms of reference, and again, as
8 discussed by both you and I, will be considered insofar as
9 they draw out themes and commonalities that I did not
10 determine were necessary to call as witnesses for oral
11 evidence.

12
13 Another concern is the fact that some members have
14 expressly asked not to be called as witnesses or were
15 simply not available within the time we had. We also had
16 some who were unable to attend for health reasons. Of the
17 remaining, given that we are constrained by only three
18 weeks of inquiry time, we have endeavoured to call
19 witnesses who have a direct experience insofar as possible
20 and at times may be able to represent parts of the
21 community or allow us, both you as the finder of fact and
22 me as the person providing submissions, to infer that
23 certain themes represented by this person existed in the
24 wider community.

25
26 When I have determined that a person may be called but
27 was unavailable we have tried our best to find someone who
28 has a similar level of representation within the community.
29 I anticipate at this stage that, as we call the councillors
30 in the third week, I will attempt to call the two mayors
31 last as that appears to be the natural process of doing
32 things, but again, it will be subject to availability and
33 timing and I state all these things to emphasise that we
34 have not given any preference to the order of witnesses
35 other than convenience and logical theme.

36
37 THE COMMISSIONER: Yes, it makes sense, it seems to me,
38 for the elected body to be called last once the body of
39 evidence is well formed for obvious procedural reasons.
40 Yes, I understand.

41
42 MR PARISH: Well, I'll just extrapolate on those obvious
43 procedural reasons, it's to ensure that any matters which
44 arise in the first two weeks can be put to councillors and
45 they can have an opportunity to fully explain it.

46
47 THE COMMISSIONER: Yes.

1
2 MR PARISH: In dealing with that, I should note that the
3 first witness will be Mr Steve Horton. He is currently
4 scheduled to come at 2pm today and he'll be the only
5 witness we hear this afternoon.
6

7 THE COMMISSIONER: In terms of witnesses generally, I
8 appreciate that there's a lot of organisation that goes in
9 the background to line up people's availabilities, but will
10 there be a list of who is expected the following day or the
11 following two days that can be made available?
12

13 MR PARISH: We will endeavour to be providing that to be
14 made available as soon as possible.
15

16 THE COMMISSIONER: All right. For those who may be
17 interested, a list of who may be coming on Tuesday and
18 Wednesday can be put on the website sometime this
19 afternoon; is that feasible?
20

21 MR PARISH: Yes.
22

23 THE COMMISSIONER: Yes. I think the answer to that is
24 "yes". For those keen observers, obviously, it must be
25 understood that things change for various reasons at short
26 notice, so it's not a guaranteed timetable, but it gives
27 some indication of what might be happening in the days
28 coming.
29

30 MR PARISH: Yes, Commissioner. Unless there's any further
31 questions you have at this stage, that's my opening.
32

33 THE COMMISSIONER: No. Are there any other documentary
34 tenders you wish to deal with now?
35

36 MR PARISH: I'll formally tender bundle C, which I think
37 is the bundle which has not been formally tendered as yet.
38

39 THE COMMISSIONER: Yes.
40

41 MR PARISH: That has confidential material, I anticipate
42 that will need to be dealt with, more so than the other two
43 bundles.
44

45 THE COMMISSIONER: All right. Exhibit C will be a bundle
46 of documents headed, "Code of Conduct Complaints" and that
47 won't be made a public document at the moment. I can see

1 various confidential matters in there, so that one won't be
2 placed on the website just yet. If it can be put into a
3 form that's appropriate for publication, it will be, but
4 can I ask that that be looked into as soon as possible and
5 I be kept updated as to the status of whether that will
6 become a public document?

7
8 <EXHIBIT #C (CONFIDENTIAL) BUNDLE OF DOCUMENTS HEADED,
9 "CODE OF CONDUCT COMPLAINTS".

10
11 MR PARISH: Yes, Commissioner.

12
13 THE COMMISSIONER: I have Exhibit F. Are there D and E to
14 be tendered?

15
16 MR PARISH: Not now, but they will be in due course.

17
18 THE COMMISSIONER: Okay. Mr Riley, I perhaps cut you off
19 earlier. I understand your application was to seek leave
20 to represent, what, during the course of evidence or more
21 generally?

22
23 MR RILEY: Commissioner, given the uncertainty about which
24 witnesses I'll be appearing for, I thought I should seek
25 leave to appear individually as those witnesses are called.

26
27 THE COMMISSIONER: Yes, that's fine. The reason why I'm
28 asking was, if you were seeking leave to appear more
29 generally in the inquiry I was going to deal with that now
30 and then, if I granted that leave, ask you whether you had
31 anything you wanted to put to me now, but as I understand
32 it --

33
34 MR RILEY: I would seek that leave, Commissioner, but I
35 won't be here every day. If that's possible I would seek
36 that leave.

37
38 THE COMMISSIONER: Yes. All right, well, you have leave
39 to appear for whichever witnesses may seem fit to instruct
40 you, I'll leave it to you to manage that in the usual
41 course of your obligations. Ordinarily that wouldn't
42 necessarily come with an opportunity to be heard at the
43 moment. Do you seek to be heard at the moment on anything?

44
45 MR RILEY: I don't seek to be heard at the moment.

46
47 THE COMMISSIONER: All right, thank you.

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All right, if there's nothing further for the moment,
I'll adjourn until the first witness at 2pm.

MR PARISH: Thank you, Commissioner.

LUNCHEON ADJOURNMENT

1
2 **UPON RESUMPTION:**

3
4 THE COMMISSIONER: Are you ready to resume, Mr Parish?

5
6 MR PARISH: Yes, Commissioner.

7
8 THE COMMISSIONER: Before you do there's a matter that I
9 addressed in my opening this morning which I need to return
10 to.

11
12 Over the luncheon adjournment some contact that has
13 occurred with those assisting the inquiry was brought to my
14 attention and I want to address it in more fulsome terms
15 than I did this morning, and that is the direction I have
16 made about who can be present in the hearing room.

17
18 When the hearings were announced I made it clear that
19 my intention was to limit the categories of persons who may
20 be in the hearing room in order to give priority to those
21 who were most directly affected by the terms of reference
22 and to manage the risks that would be posed to the orderly
23 progression of these hearings by COVID. Those categories
24 were set out again in much more detail in the practice
25 direction, so this has been well-known for some time.

26
27 I perhaps should have made my reasons for doing that
28 more clear but I'll do it again now. It's not just the
29 risk that someone may contract COVID-19 as to why I did
30 that but the self-isolation requirements are a very real
31 and significant risk for this inquiry.

32
33 Significant time and resources have been expended in
34 organising these hearings. It is a very large and
35 significant endeavour to organise more than 50 witnesses to
36 come to give evidence over a three-week period. It is a
37 costly exercise utilising significant public resources, not
38 just monies, but staff time. It also, thanks to the
39 assistance that the council has given us, would put a
40 burden on them in terms of making facilities available
41 again.

42
43 It is in the obvious public interest that these terms
44 of reference be resolved as promptly as they can.
45 Therefore, I am very concerned to ensure that these
46 hearings to not become interrupted any more than they
47 already have by the effect of COVID-19. COVID-19, and in

1 particular the self-isolation requirements, has already had
2 an effect on the orderly conduct of inquiry.
3

4 If one of the inquiry team members was to contract
5 COVID-19 and self-isolate it would almost inevitably lead
6 to these hearings having to be at least delayed for, not
7 just a matter of a week, but to reorganise would take a
8 number of weeks. I do not wish that to happen.
9

10 It is for those reasons, and primarily directed to the
11 self-isolation ones - although I would not wish anybody to
12 contract COVID-19 - that I made that direction and it's for
13 those reasons that I propose to maintain it.
14

15 It was brought to my attention over the luncheon
16 adjournment that a member of the public has informed the
17 inquiry of their displeasure with that ruling and that a
18 television news channel intends to be here tomorrow to
19 report on what is seen to be the issue of public attendance
20 at the inquiry. None of that alters my consideration of
21 the issue for the reasons I've just given.
22

23 I welcome the attendance of any television news
24 channel and, as I have made clear this morning, I will be
25 willing to hear from them if they wish to be present in the
26 hearing room.
27

28 It has also been drawn to my attention that it's been
29 suggested that the matter will be referred somehow to the
30 Minister. Again, I welcome the Minister's interest in
31 these proceedings but ultimately it's a matter for me to
32 determine the procedures for this inquiry. I am determined
33 to ensure these hearings are completed without interruption
34 and, in so doing, I have adopted procedures that are
35 consistent with those that have been adopted by courts and
36 other tribunals throughout the state over the last two
37 years.
38

39 Finally, I am aware that a view has been expressed to
40 the officers assisting the inquiry that, by streaming the
41 proceedings with limitations on those who may be present in
42 the hearing room, is anything but public. That is wrong.
43 The public can view the proceedings, they are being
44 live-streamed, and nothing will happen during these public
45 hearings unless that stream is live and active.
46

47 A written transcript is being made available and as

1 soon as it is available to the inquiry will be published on
2 the inquiry's website. Exhibits as they are tendered and,
3 if appropriate to be made public, will also be placed on
4 the inquiry website. The public, therefore, have a much
5 greater access to proceedings of this kind than they do of
6 court proceedings, so to suggest that the proceeding in
7 this way is anything but public, in my respectful view, is
8 misguided.

9
10 The directions I have made are given to ensure that
11 the most directly affected by the terms of reference, being
12 council of certain categories of staff to the council
13 itself, the administrator, the current general manager,
14 et cetera, can come and go as they please as they should be
15 able to.

16
17 I well appreciate that some may disagree and will be
18 disappointed with my direction in this regard. That is
19 their right. However, I have to balance that level of
20 dissatisfaction - and I must say, it is very small, at
21 least that's been brought to my attention - against what I
22 see as my obligation to ensure the orderly and efficient
23 conduct of this inquiry.

24
25 I will not be addressing this issue again. I said
26 this morning that I would not permit the public hearings to
27 be delayed through non-compliance with the practice
28 direction and this has already diverted me from that but I
29 felt it important to put on the record given the approaches
30 made to the officers assisting the inquiry over the
31 luncheon adjournment.

32
33 Given that apparently it's a matter of some
34 significance that this issue will be taken up with the
35 Minister, I direct that the transcript of these remarks be
36 forwarded to the Minister for her information in the event
37 that that referral, whatever form it may take, actually
38 takes place.

39
40 Mr Parish.

41
42 MR PARISH: Thank you, Commissioner. I call as my first
43 witness Steve Horton.

44
45 THE COMMISSIONER: Yes, Mr Horton is in the witness box.

46
47 <STEVE HORTON, called:

1
2 MR HORTON: Thanks Commissioner, I just ask your
3 permission to refer to the submission put in by the Chamber
4 of Commerce, who I am representing, because I've been given
5 clear directions by the board that I need to adhere to what
6 we wrote in the submission.

7
8 THE COMMISSIONER: All right. Well, shortly you will be
9 asked to take an oath or an affirmation and your obligation
10 here is to answer the questions of Counsel Assisting and me
11 in accordance with that oath. So, I'm sure that will
12 accord with the wishes of your board, but that is your
13 obligation today.

14
15 MR HORTON: Thank you, Commissioner.

16
17 THE COMMISSIONER: So, Mr Broad is just to your left and
18 he'll help you take the oath or an affirmation.

19
20 <STEVEN HORTON, sworn: [2.11 pm]

21
22 THE COMMISSIONER: Thank you, Mr Horton. Mr Parish.

23
24 <EXAMINATION BY MR PARISH:

25
26 MR PARISH: Q. Mr Horton, just as a matter of formality,
27 could you please spell your name for the transcript?

28 A. My name is spelt S-t-e-v-e-n, and Horton is
29 H-o-r-t-o-n.

30
31 Q. And I hope for your sake you've never had to give
32 evidence in a court before but one of the problems we
33 sometimes face is people nodding when there's a transcript,
34 so if I could just ask you to ensure that you give verbal
35 answers, I'm sure you will --

36 A. I will.

37
38 Q. -- but it's worth remembering at the start. Can I
39 just ask firstly for your own background, both in respect
40 of the small business, the Southern Highlands Chamber of
41 Commerce and Industry, and your residency in this council?

42 A. My wife and I have lived in this area for over
43 40 years and we've had businesses in this area for 35 of
44 those 40 years. Before that, I was a business development
45 and improvement manager at a senior level for the New South
46 Wales Government.

1 Q. Thank you. What sort of businesses have you run over
2 those 35 years that you were just referring to?
3 A. So, we've run a secretarial service, we've run a
4 retail outlet over in Berrima, and we've run an art gallery
5 and retail outlet in Berrima as well.
6
7 Q. During that time have you had occasion to interact
8 with the Shire Council and its predecessors from time to
9 time?
10 A. I have.
11
12 Q. Would it be fair to say that you have an experience of
13 these councils stretching back 35 years?
14 A. Yes.
15
16 Q. In respect of the Southern Highlands Chamber of
17 Commerce and Industry of which you are the chair, can you
18 give us some history of that organisation?
19 A. Approximately nine years ago a group of people met
20 from the different chambers in the area and we managed to
21 amalgamate all but one so that we had a stronger voice in
22 the area for the chamber. I was part of that group and
23 initially I became the vice chairman, and after four years,
24 after I'd run for the last council elections, I resigned
25 from the chamber to do that, and then I took over as the
26 chair after that, been there for the last five years.
27
28 Q. When you say you amalgamated all but one, does that
29 mean there's one other group or organisation which
30 represents similar interests to you and the shire?
31 A. The Moss Vale Chamber of Commerce and Rural is still
32 in effect continue basically looks after the Moss Vale
33 area. There are numerous other groups in the area that
34 represent businesses. I couldn't name them all,
35 Commissioner, I'm sorry, but there are numerous.
36
37 Q. I wouldn't ask you to name them all, but can you give
38 me the names of a few of the other in your view significant
39 groups who have a similar role to yours?
40 A. Are you asking me for registered groups?
41
42 Q. That would be preferable, yes?
43 A. Registered groups, we've got people like the
44 Businesswomen's Network. We've got Robertson Chamber of
45 Commerce is a new chamber, they've only been registered for
46 about 12 months, and really the others, a lot of the others
47 are not registered as such, they're just groups of people,

1 most of them lobby groups.

2

3 Q. Do you, at a general level, have occasion to share
4 information or views with those other groups from time to
5 time?

6 A. We do.

7

8 Q. Can you describe for me the types of businesses and
9 industries that your members are engaged in?

10 A. We represent all levels of business in the area,
11 particularly groups in the service industries, lawyers. We
12 look after quite a number of accountants, financial
13 services. We have a number of retail groups, we have a
14 number of cafés, so we look after the broad spectrum of
15 businesses in the area.

16

17 Q. Thank you. Did your group take part in the Small
18 Business Commissioner's report and the small business
19 consultation of the Wingecarribee Shire Council last year?

20 A. We did. We actually worked with Illawarra Business
21 Chamber at that time to help commission that report.

22

23 Q. I might just show you that report to both refresh your
24 memory and to take you to parts of it.

25

26 THE COMMISSIONER: Just before you do, Mr Parish.

27

28 Q. Mr Horton, when you say you worked with that other
29 organisation to help commission the report, what do you
30 mean by that?

31 A. Illawarra Business Chamber, or they're called Business
32 Illawarra these days, I'm a member of their regional
33 advisory council and I spoke to their executive director
34 when things started to sort of blow up in the area. We
35 thought it was a good idea for us to get a higher level of
36 research done into the area about how people felt, so Adam
37 and myself and the two boards got together and we actually
38 asked the Small Business Commissioner if he'd do that piece
39 of work.

40

41 Q. And when you say "things in the area started to blow
42 up", that could cover a number of issues. About what time
43 do you direct that comment to?

44 A. It was probably - and I really can't be quoted on
45 this --

46

47 Q. That's all right.

1 A. -- but I'm sure it was just before the Minister made
2 the decision to stand the council down.

3
4 THE COMMISSIONER: Thank you. Mr Parish. Exhibit B?

5
6 MR PARISH: Yes, Commissioner.

7
8 Q. Could I just ask, and I put this question either in
9 your own view or that of your organisation, what you took
10 to be the issues that were blowing up at that time that you
11 were referring to just then, either in your own impression
12 or what you were getting feedback from, and you can
13 distinguish it if you need to if you want to.

14 A. We had a number of businesses that were coming to us
15 and talking to us about an inability to get development
16 applications across the line, inability to make contact
17 with certain members of the staff. There was a lot of talk
18 in the area about infighting between the councillors, and
19 it's not up - wasn't up to us to make decisions on that,
20 these were just things working through our membership. So
21 that, we felt, that was enough for us to start looking to
22 get - we needed to get an outside view so that - because
23 sometimes it's difficult to get inside views, you know, it
24 can be tainted because you're too close to it, and the
25 Small Business Commissioner was the obvious choice for us
26 because that's his gig, that's what he does.

27
28 Q. Thank you. If I can take you to page 461 of that
29 tender bundle. There should be numbers in the bottom
30 middle which say "Tender Bundle B" and then give reference
31 to a page.

32 A. Yep. Sorry, can you repeat --

33
34 Q. 461 is the page.

35 A. I've got it. Sorry.

36
37 Q. Thank you. No, no, take your time. That's the paper
38 wrangling we all have to deal with. But just for the
39 purposes of identification, do you have in front of you the
40 document which starts, "Small Business Consultation:
41 Wingecarribee Shire Council". Is that the document?

42 A. I do.

43
44 Q. And that's the document you were referring to before?

45 A. Yes.

46
47 Q. You've just given some evidence before that you were

1 involved in the implementation of this report. Can you
 2 explain to the Commissioner how you and your members were
 3 involved in the consultation?
 4 A. So, the Small Business Commissioner did a number of
 5 interviews and did some public sittings in the area, and we
 6 were involved through that and also through Business
 7 Illawarra.
 8
 9 Q. Were you happy with that process? Did you feel like
 10 you were given sufficient space and ability to provide your
 11 feedback?
 12 A. We were.
 13
 14 Q. Was there any other consultation prior to the
 15 suspension of either your organisation or, as you knew,
 16 small business in respect of a survey like this? Had this
 17 been done before?
 18 A. Sorry, could you repeat that?
 19
 20 Q. Sure. What I want to know is, at any other
 21 point during that 2016-2020 term was there any other type
 22 of consultation or report like this that you knew of or
 23 that you can recall?
 24 A. No.
 25
 26 Q. Just very generally from your members' point of view,
 27 how did they view the level of consultation of yours and
 28 similar groups in the 2016-2020 term of council?
 29 A. Sorry, I'm not understanding some of these questions.
 30 Are you asking what my members thought about our
 31 consultation with the council or their consultation with
 32 the council?
 33
 34 Q. Their consultation with council at a general level.
 35 A. The feedback we were getting from members was that it
 36 was very poor.
 37
 38 Q. Was this something that was unique to that 2016-2020
 39 term or had there been an existing feedback that was
 40 similar, do you recall?
 41 A. Feedback we were getting is that this had been going
 42 on for quite some time.
 43
 44 THE COMMISSIONER: Q. Just going back a question.
 45 Mr Parish asked you a question about satisfaction with
 46 consultation. He may be coming to it, I may be jumping
 47 ahead of myself, but in what context was this consultation

1 happening; that is, about what issues were your members
2 expressing concern about consultation?

3 A. We run networking meetings every month and we were
4 having a lot of our members come to those networking nights
5 and we were getting consultation through that, we were
6 getting consultation via email, consultation by telephone
7 calls. So, our members - we worked really hard to get the
8 membership to understand they could ring and talk to us and
9 tell us about the issues they are having. We didn't go
10 seeking these things because we thought that really wasn't
11 our role, it's actually, we felt it was better for them to
12 come to us and so we did.

13
14 We had a couple of small workshops where we actually
15 invited people to come to talk about some issues that were
16 happening in the area: we did one with the Food & Wine
17 Association around a food and wine event and there was a
18 lot of people that came to that meeting and they were all
19 jumping up and down about lots of different things, and I
20 can't remember everything that was said, but they were
21 complaining about communications at that stage too.

22
23 Q. So, from that answer I understand that you were able
24 to get a wide range of views from the membership as to
25 their views about how the council was performing at the
26 time; is that fair?

27 A. Yeah, as wide as you can get from a community like
28 this.

29
30 Q. Quite, I understand. I may have misunderstood an
31 earlier answer, but I thought you said that the feedback
32 from your membership about consultation with the council
33 was that it was poor; did I understand you correctly?

34 A. That's right.

35
36 Q. Are you able to recall any particular examples or
37 issues that were driving those comments?

38 A. Most of the comments we were getting at the time were
39 about development applications. There were a few other
40 things, but development applications was the big issue. As
41 you know, businesses when they first start to try and put a
42 business together they can't operate until that DA goes
43 through in a lot of instances and that's money for them,
44 and so, of course, when you start hitting that money nerve
45 people will speak out, and so, we were getting quite a few
46 calls about that, but not just from a business perspective,
47 some of our members also had personal DAs in for buildings

1 and they were having the same level of problems.

2
3 THE COMMISSIONER: Thank you. Sorry to interrupt.

4
5 MR PARISH: No. Thank you, Commissioner.

6
7 Q. Can I just go back to this document and specifically
8 the consultation that was involved with that. Am I right
9 in thinking that there was both face-to-face consultations
10 as well as written submissions both with your members and
11 members of other similar registered organisations?

12 A. That's my understanding, yes.

13
14 Q. Can I take you to page 5 of that document. I'll start
15 using the pages of the actual document rather than the
16 tender bundle because they've got problems on the black
17 background. The page that starts, "List of
18 Recommendations". Do you see that?

19 A. Yes, I have it.

20
21 Q. That goes over the page as well; do you see that?

22 A. Yes.

23
24 Q. That has been dealt with under three focus areas and
25 those three focus areas are also reflected in your
26 submission to the inquiry; do you agree with that?

27 A. That's correct.

28
29 Q. Can you tell me if you know how those focus areas were
30 arrived upon as topics, as it were, to address the issues
31 which were addressed?

32 A. It was done by means of interviews and submissions.

33
34 Q. Were you involved with the Small Business Commissioner
35 in coming up with these areas, or was that something which,
36 after you had commissioned the report, that was something
37 which was left in their hands?

38 A. We were provided with the categories which we agreed
39 with.

40
41 Q. Thank you. Can I just take you to that first category
42 which is the focused area of improved communications and
43 customer service. Do you see that?

44 A. I do.

45
46 THE COMMISSIONER: Mr Parish, before you go on, I think
47 you have to press a button to be seen on screen.

1
2 MR PARISH: Right. I've got my red light, Commissioner,
3 which I thought was sufficient, but if that helps?
4

5 THE COMMISSIONER: I think that's done the job.
6

7 MR PARISH: Okay.
8

9 Q. So, we're dealing with this first focus area,
10 "Improved communications and customer service", do you see
11 that?

12 A. I do.
13

14 Q. Can you tell me what the Southern Highlands Chamber of
15 Commerce and Industries' opinion of that focus area is, by
16 reference to your submission if you need to refresh your
17 memory?

18 A. I don't need to refer to my application on this one.
19 We've actually since spoken to the new management here
20 about this. We believe that the single most important
21 issue for this area is that there's a very clearly written
22 down document that talks about how the council engages with
23 its stakeholders, not one stakeholder, not some
24 stakeholders, all stakeholders, so that everybody has to
25 play off the same song sheet. That's what the chamber had
26 requested, we've requested it since, and we believed that
27 that's what the Commissioner was trying to say here: have a
28 clear strategy for how you're gonna engage, because up till
29 that stage there was a feeling that senior management here
30 was playing favourites.
31

32 Q. Do I take it from that answer that, as far as you were
33 concerned, there was no such strategy; is that correct?

34 A. We'd never seen one.
35

36 Q. So, even if there was one, from your point of view it
37 wasn't implemented; is that fair to say?

38 A. I can only say I've never seen one.
39

40 Q. What was the effect on your members of this perception
41 that there was a preference for some groups and no
42 overriding strategy?

43 A. Well, when it comes to DAs, it was just simply a
44 matter that, if people had applications in, a lot of the
45 time there was nobody to talk to.
46

47 Q. Thank you. You say in your submission that:

1
2 *To date there has been a loose series of*
3 *meetings with no formal structures put in*
4 *place.*

5
6 Is that what you mean when you say that, in your view,
7 there was a preference for some people and no overriding
8 strategy, or is that a separate issue?

9 A. No, I believe that's a separate issue.

10
11 Q. Okay. Can you explain to me what you mean by "there
12 was only a loose series of meetings with no formal
13 structures put in place"?

14 A. One of the - whether it's a misconception or not, one
15 of the conceptions here or views here was that council were
16 meeting with people that were forming lobby-type groups and
17 that that was actually having an impact on things that -
18 development applications and other things that were
19 happening in the area. Now, again, I can't state that
20 that's true or not, that's a perception that we were
21 getting through the chamber.

22
23 Q. You then state in your submission that:

24
25 *Members cited it has been difficult to*
26 *maintain effective communications with*
27 *council, senior staff, and councillors due*
28 *to them not wanting to work with some and*
29 *only prepared to work with others. Council*
30 *should give their time to all sectors of*
31 *the community and business.*

32
33 Has that been covered off by what you've just said or
34 is there anything you want to add to what you've previously
35 just said about that?

36 A. I believe I've just covered that off.

37
38 Q. Okay, thank you. In your view, was there anything in
39 respect of the communications and customer service that the
40 council did well or was notable as a strength of the
41 council in this communications and customer service regard?

42 A. For me personally as the chairman of the chamber, I
43 did have access to senior management when I needed from
44 time to time. I tried not to have too much access with
45 those guys because I work for the government and knew how
46 difficult time is to give up. But there were issues that
47 we were trying to face at the time that we believed we were

1 having difficulty getting people to listen to us, yes.

2

3 Q. Thank you. A second recommendation on the list, which
4 I think was covered off to some extent already, is the
5 focused area of enhancements to DA and other approval
6 processes. Can you just explain what the chambers'
7 position is in respect of that focus area, and feel free to
8 refer to your submission if you need to?

9 A. Again, I don't need to refer to the submission on this
10 one. I heard as late as two days ago, I had somebody
11 wander into my wife's shop and tell me they still can't get
12 DAs through, so that's a problem in this area, it has been
13 for a long time, and it still is.

14

15 And it's just stopping people from building, it's
16 stopping people from putting businesses in place, and so,
17 our stance on that as a business chamber is, as an advocacy
18 group for business, that's just not good enough; I'm sorry,
19 we need these businesses to be able to get up and running,
20 we need jobs in this area, and that's our focus and so we
21 totally agree with the Commissioner on this one because
22 we've had people come to us about the fact that DAs
23 couldn't get through and, as I said, I'm still seeing it
24 even today.

25

26 Q. Do your members have a view on whether the local
27 planning instruments are sufficient to at least provide
28 certainty and growth for your sector?

29 A. Commissioner, I can't respond to that because I've had
30 no communications with my members about that particular
31 issue, sorry.

32

33 Q. One of the recommendations was that, and you can
34 follow along if this would be of assistance, it's No.7 on
35 the recommendations:

36

37 *That council review both its governance and*
38 *operational processes to ensure that these*
39 *are separate and transparent. Where there*
40 *are reasonable delays it should be evident*
41 *whether these relate to governance or*
42 *operations. In such circumstances the*
43 *applicant should be advised in writing of*
44 *the reasons for the delay and the next*
45 *steps and the timeframe associated with the*
46 *assessment.*

47

1 Do your members have a view on that, do you know, or
2 do you have a personal view on that recommendation in
3 particular?
4 A. I don't have a personal view on it. Again, I can only
5 say that we're still hearing that there's issues.
6
7 Q. Is there anything in this DA planning approval space
8 that you thought the council did well or it was a strength
9 of the council over the, at least 2016-2020 term?
10 A. I really can't answer that. Unless I was actually
11 part of that team I would find it difficult to answer what
12 they were doing well and not well; all I know is that we
13 weren't getting DAs through.
14
15 Q. Thank you.
16
17 THE COMMISSIONER: Sorry to interrupt.
18
19 MR PARISH: No.
20
21 THE COMMISSIONER: Q. Perhaps the import of Mr Parish's
22 question is, we've heard from you there was a general
23 perception that it was difficult to get DAs through. Were
24 you hearing anything about what the council was doing well
25 in the planning space?
26 A. I wasn't.
27
28 THE COMMISSIONER: Thank you.
29
30 MR PARISH: Thank you, Commissioner.
31
32 Q. On page 6 of the report we have the third focus area,
33 which is "Initiatives to build opportunity and small
34 business development". Can you tell the Commissioner about
35 the chambers' view on that focus area and again, if
36 necessary, please refer to your submission?
37 A. Unfortunately for me, I was actually part of the
38 economic development and tourism committee for the council
39 over three terms, I'm pretty sure it's three terms, and I'm
40 sure that if you looked up in the minutes you would see me
41 being very boisterous about the fact that we hadn't had an
42 economic development plan in place for a number of years.
43
44 That's a very important instrument in these areas for
45 economics and it leads - it allows the chamber then to
46 build on that with economic growth, because our area is not
47 so much to supply the area with that level of

1 documentation, our area is to help with economic growth
2 with the businesses. But we need to have a plan that
3 actually allows that to happen and it was very unclear and
4 there was a whole bunch of lobby groups that were pushing
5 particular issues at the time about what should be in
6 economics, and we were as a chamber disagreeing with those
7 things because they were - they weren't things that were
8 going to offer the level of employment we needed in this
9 area, or housing and all of those other things that go
10 along with economic development plans.

11
12 So, we totally agreed with what the Commissioner was
13 saying here, because I'm pretty sure that the previous -
14 the previous document was completed in 2016, and so - no,
15 it was earlier than that, 2010 I think it was, and we
16 needed a new plan and we just didn't have one. Now,
17 there's a plan in place now and I'm sure the council's
18 working towards it.

19
20 Q. You said you were a member of the Economic Development
21 and Tourism Committee for a number of years; do I take it,
22 therefore, that the lack of an operational plan predated
23 2016 and was a problem with previous terms of council as
24 well?

25 A. The plan that we had in place was actually coming to
26 an end, but it was also outdated. Areas like this, you
27 know, as your area grows you need to be reviewing these
28 types of documents and just because a document's in place
29 from 2006, say, to 2010, you need to be reviewing those
30 documents, and the chamber had been pushing that for a
31 number of years and it just was not happening.

32
33 Sorry, can I just add to that?

34
35 Q. Of course.

36 A. We didn't have an economic development officer here
37 for a number of years, for whatever reason, they've had
38 trouble employing people to certain roles here: that was
39 one of them, and I'm pretty sure that position was vacant
40 for a minimum of at least five years.

41
42 Q. Thank you. One of the things which the Small Business
43 Commissioner concluded was that many businesses did not
44 understand council processes or how decisions were made at
45 council. Is that something which your members would agree
46 with, do you know?

47 A. I would say most of our members would agree with that.

1
2 Q. If I can take you to another couple of matters noted
3 by the Small Business Commissioner which might not have
4 been specifically addressed in your submission. Can I take
5 you to page 18 of the Small Business Commissioner's report.
6 A. I have it.

7
8 Q. You will see the second significant paragraph down
9 begins:

10
11 *Several businesses in consultations*
12 *expressed concern regarding the role and*
13 *decisions of council's previous*
14 *administration with councillors. It was*
15 *noted that council staff would make*
16 *recommendations in accordance with an*
17 *established strategy or policy only for*
18 *those to be overturned or rejected by*
19 *councillors without reasons or advice to*
20 *the applicant or the community. Further*
21 *concerns were raised by businesses*
22 *regarding role clarity, purpose and*
23 *functions of council and councillors*
24

25 I don't think it was expressly addressed in your
26 submission, do your members agree with that broadly, are
27 you able to tell the Commissioner?

28 A. I have had members talk to me about that particular
29 issue, where they've actually seen something go through a
30 council meeting only to be later overturned and then
31 they've questioned that. I think my membership - I'm
32 pretty sure my membership believes that, if we meet all the
33 criteria of the development plan, and we meet all the
34 criteria of the local Environmental Plan, that these things
35 should just go through: that's their understanding. So,
36 whether that's right or wrong, that's what they believe.
37

38 Q. Thank you.

39
40 THE COMMISSIONER: Q. And just on that page that
41 Mr Parish took you to, page 18 and that very paragraph, the
42 second sentence:

43
44 *It was noted that council staff would make*
45 *recommendations in accordance with an*
46 *established strategy or policy only for*
47 *those to be overturned or rejected by*

1 councillors without reason or advice ...

2

3 Et cetera, do you see that?

4 A. Yes.

5

6 Q. Leaving aside the examples of whether it did or didn't
7 happen in that way, but if that was occurring does that
8 have an effect on the confidence that your membership might
9 have in the council's processes?

10 A. Not just my membership, Commissioner, the whole
11 community.

12

13 Q. Yes, and what effect would that have?

14 A. They have no confidence because the tools are there
15 for a reason, and if people believe they're not being used
16 correctly or people are actually changing things to suit
17 whatever, I guess lobby groups or whatever it may be, the
18 public loses confidence.

19

20 Q. Do I understand from that answer that part of the
21 thing that gives confidence in what's happening is some
22 sort of predictability or certainty in processes and
23 decision outcomes?

24 A. I'm gonna have to agree with that because I come from
25 an area in the government where that was my job, to put
26 that level of stability within the government, to have
27 proper procedures in place so that people knew exactly
28 where we were going. And I know there's times when that
29 can't happen, but you need to give people some level of
30 confidence that people are following a process.

31

32 THE COMMISSIONER: Thank you. Thank you, Mr Parish.

33

34 MR PARISH: Q. I think you have observed that your
35 members saw an ugly politicisation of the previous council;
36 can you just explain to me what is meant or what your
37 members feel is meant by "an ugly politicisation"?

38 A. I don't think I can answer that, I'm sorry, I -
39 everybody would have a different interpretation of that,
40 unless I spoke to my members directly about that.

41

42 Q. Well, what about your personal view?

43 A. I believe, and I've said this a few times already,
44 I believe that there are lobby groups within this area that
45 have very set agendas and they're lobbying towards anybody
46 that they don't feel is agreeing with them and they're
47 lobbying against them. So, to say it was politicised, I'd

1 say that's probably true, but not by the chamber; that's
2 not our job.

3
4 Q. Quite. Do you mean, I take it, politicisation in the
5 alignment of interests sense rather than specific, small
6 registered political parties that might (indistinct)?

7 A. Yes.

8
9 Q. Can you describe to me any other concerns or problems
10 that your group identified with the processes of council
11 outside what was addressed by either the Small Business
12 Commissioner or in your submission? This is your
13 opportunity to identify any other concerns that you or your
14 membership had.

15 A. We were very happy with the work that the Commissioner
16 did. We believed that it wasn't a political document, we
17 believe that it was actually tried - the Commissioner did
18 the best he could to base it on fact, and we totally agreed
19 with that document. And, having spoken to my members - and
20 look, this is just beyond the record, I've actually stood
21 down as the chair in the last 48-hours to let some younger
22 people come in and take that role over.

23
24 We'll get a lot more information back on this in the
25 next few months now that COVID's over and we can actually
26 start having our network meetings again, and I'm sure
27 they'll come back, by at this stage I'd say that we just
28 totally agree with what the Commissioner's written down
29 there and as a chamber we'd like to see us move forward
30 now.

31
32 Q. Is there anything else you'd like to bring to the
33 Commissioner's attention or anything that the Small
34 Business Commissioner omitted that you think might be
35 constructive in terms of the inquiry?

36 A. No, not at this stage, we're just very, very grateful
37 that we were given an opportunity to come and testify today
38 and that we were given an opportunity to put a submission
39 in and voice our opinion around the fact that we've got a
40 great piece of work here and we really would like to see
41 that piece of work actually implemented.

42
43 MR PARISH: Thank you, Mr Horton. I don't have any
44 further questions, Commissioner.

45
46 THE COMMISSIONER: Q. Just before you finish I have a
47 couple of extra questions. If you have the Small Business

1 Commissioner's report still in front of you; do you still
2 have that document?
3 A. Yes.
4
5 Q. If you go to page 11 of that report, it's Exhibit B,
6 page 471.
7 A. Yes.
8
9 Q. At the top of that page the Commissioner identifies
10 some themes from feedback; do you see that?
11 A. Yes.
12
13 Q. I just want to ask you about some of the themes. When
14 answering this, if it's an answer that takes into account
15 feedback from your members or indeed in your own personal
16 experience, just tell me which view you're giving and it
17 may be a combination.
18 A. Yes.
19
20 Q. But I just want to ask you about some of these things.
21 The very first one:
22
23 *Council took an adversarial approach when*
24 *dealing with small businesses.*
25
26 Do you see that?
27 A. Yes, I do.
28
29 Q. Is that something either through discussions with your
30 membership or your own personal experience came to your
31 attention?
32 A. In some cases, yes.
33
34 Q. And in what context?
35 A. In the context that, when people were questioned on
36 why changes were made, that wasn't always met with probably
37 the respect that it should have been.
38
39 Q. And changes to --
40 A. So, when there was decisions made and then there was
41 changes made afterwards --
42
43 Q. I understand.
44 A. -- and when people then approached management,
45 councillors, you know, people were - either didn't want to
46 give an answer or basically just fobbed people off.
47

1 Q. I think you answered, my follow-up question was,
2 that's a senior management interaction, or a councillor
3 interaction, or both?

4 A. Both.

5
6 Q. All right, the next one:

7
8 *Councillors and council staff have their*
9 *own agenda which is different to*
10 *ratepayers.*

11
12 Is that something --

13 A. I can't comment on it personally but, as I said
14 earlier, that was a perception that our membership had,
15 yes.

16
17 Q. The third one:

18
19 *Local economic development was not valued*
20 *or its commercial assets appreciated.*

21
22 This perhaps ties in with some of your answers earlier
23 about the plan; is that the context in which --

24 A. We totally agree with that statement, totally.

25
26 Q. And, apart from the lack of plan, was there anything
27 else happening or not happening which, to your mind,
28 supported a view that local economic development was not
29 valued?

30 A. As I stated earlier, there's a lot of lobby groups in
31 this area that are pushing for different types of
32 industries to move here. One of the things that an
33 economic plan does, it actually gives you a balanced view
34 of what should happen within an area that can actually
35 seriously happen within an area. I mean, there's
36 limitations like transport, accommodation, all of those
37 things play a factor on, so really at the end of the day
38 that plan, we have to have that plan because it gives
39 people an understanding of where we're heading, it allows
40 chambers to actually go and chase those sorts of businesses
41 to see if we can bring them here and then help how we can
42 actually grow them in this area.

43
44 Things like, at the regional level it's an opportunity
45 for us to take - when the council actually say, "Okay,
46 we're going to have this amount of business in this area",
47 but if the roads don't cater for it we can take that down

1 to the advisory council, it then goes to the state body and
2 we can petition the State Government to give us additional
3 funding to actually fix the roads up. I mean, that's
4 working together, and we need to see more of that.

5
6 Q. You've mentioned a couple of times the presence of a
7 number of lobby groups. Do you have a view about how those
8 lobby groups have affected decision-making in the council
9 from 2016 onwards?

10 A. Some of those groups are very, very aggressive, and
11 they are continually on the phone to the council staff, and
12 Commissioner, I don't know whether you've ever been in a
13 position like that, but when the people are continually
14 ringing you, it can wear you down. So, I'm believing that
15 that's happening a lot in this area, and they are very
16 aggressive some of these lobby groups.

17
18 Q. The fourth dot point, "DAs were required for minor
19 activities", is that something that affected your
20 membership?

21 A. We've just been through this in the last week. We're
22 trying to run a number of functions with the council staff
23 and the amount of documentation we have to go through to
24 get anything done is ridiculous. Even little things like
25 running an event in one of the plazas, the amount of
26 documentation: so that's the sort of stuff and it's a DA
27 that's required.

28
29 I suppose, from small business's point of view, the
30 margins to make any money on any of these things are very
31 small, and if you're actually spending a huge amount of
32 time doing DAs and all that sort of - trying to get that
33 stuff ready, it's difficult enough to get insurances for a
34 lot of these things without that. So, one of the things
35 that we actually did say to the Commission is that we'd
36 like to see these things streamlined, so we'd like to see
37 some pre-approved DAs to certain things if you know there's
38 going to be events in areas, so that's the sort of thing we
39 were talking about in there.

40
41 Q. And, although you give an example of as recently as
42 weeks ago, was that something that was persisting for a
43 long time?

44 A. Yes. One of the things I remember vividly in my mind,
45 because I had businesses in Berrima, was when we tried to
46 put the food and wine festival on in Berrima, and the
47 rigmarole we had to go through there and in the end we just

1 basically gave up.

2

3 Q. Did the chamber ever approach council to say, this has
4 got to be done in a better way?

5 A. Yeah, we were working with the Food & Wine Association
6 at the time and, yes, we did approach and there was just,
7 it wasn't gonna happen, the logistics around it were just
8 too complicated.

9

10 Q. And was that an approach through the senior
11 management?

12 A. It was a personal approach, and that's that meeting I
13 said that we had with the Food & Wine Group and, yeah, it
14 got very nasty and we hope to never have another meeting
15 like that.

16

17 Q. Who was there from the council, do you recall?

18 A. We had one of the assistant general managers, we had
19 at least three of the councillors, yeah, but we hadn't
20 invited council to that meeting because that was a meeting
21 that we wanted to have before we went to them.

22

23 Q. When you say "uninvited council" --

24 A. We hadn't invited any council staff to that meeting,
25 but yes, we had had meetings about it because the whole
26 idea of that meeting was to get our information together
27 and then take it to council but --

28

29 Q. When was this meeting, do you recall?

30 A. Oh, this was --

31

32 Q. As best you can, it's not a memory exam.

33 A. It's 2022 now. That would have been around 2019.

34

35 Q. So, at least one senior staff member and some
36 councillors?

37 A. There was at least three councillors there, yes.

38

39 Q. Do you remember who they were?

40 A. I think Ian Scandrett was there. I can't, I seriously
41 can't remember who the other ones were, sorry, and I could
42 be wrong about Ian too.

43

44 Q. That's okay. I think I picked up at the tail of your
45 answer you hope never to have a meeting like that again;
46 why do you say that?

47 A. Well, because our members got really, really upset and

1 they were saying things that I would rather that they
2 didn't say in front of the councillors, and that doesn't
3 help. You see, I don't believe that that confrontation is
4 the thing that helps. I think we've got to collaborate on
5 these things and work together through them, and just
6 because you're disagreeing with somebody, that shouldn't
7 stop things from happening, you should be able to go and
8 have a cup of coffee with them at the end of the day, and
9 so, I was very disappointed with that meeting, and Adam
10 (indistinct), the ED from Illawarra, was there and it just
11 got very messy.

12
13 Q. I think you've covered the fifth point, the delays in
14 response. The next one:

15
16 *Council was generally unprofessional and*
17 *not effective in planning for the future.*
18

19 A. This is a very interesting - that's a very interesting
20 topic, I wouldn't like to answer that because I've been at
21 the other end of that and I think that's unfair, but
22 anyway: that's a personal opinion, not the chamber's
23 opinion.

24
25 Q. No, no, I appreciate that. What I was going to direct
26 your attention to is the planning for the future. Did you
27 see the lack of the economic development plan, I think you
28 described it as, or an up-to-date one in any event as part
29 of that?

30 A. That's a big document and it's part of the future
31 because your traffic plan, your housing plans, all those
32 plans run off the sorts of things that you're gonna be
33 bringing into the area, that's a planning process. And
34 I've actually been involved in a couple of the council's
35 planning processes, the one around the strategic community
36 plan which was a very, very well run event, and it was
37 interesting that we only ever - that was the only time I
38 think that everybody, business and the community, actually
39 agreed on one thing and that was to keep the green in
40 between. That was the only thing I've ever heard those
41 guys all agree on in, you know, a planning meeting ever and
42 I was stunned, I went back to the chamber and said, "Well,
43 at least we've got them to agree on something", which was
44 great, you know.

45
46 Q. Two points further down:
47

1 *Council kicked the can down the road on*
2 *important challenges that needed to be*
3 *addressed.*
4

5 Is that something that you were aware of through your
6 membership or your own personal experience?

7 A. There are members that would agree with that. I don't
8 believe that I ever saw that. I believe that they did take
9 the challenges on, maybe not the way we wanted them to and
10 not as effectively as we would have liked them to have, but
11 I don't believe that they just turned their back on it.

12
13 Q. The last point:

14
15 *High staff turnover in some instances and*
16 *an inexperience of council staff had a*
17 *negative impact on small business.*
18

19 Is high staff turnover in council something that your
20 membership was attune to over a period of time?

21 A. We certainly were.

22
23 Q. Doing the best you can, how long had that been the
24 case?

25 A. That's been a problem in this area for many years, and
26 it's one of the reasons that the DA processes were going
27 off the rails, because we were having to hire contract
28 people to come in and then contract people that don't know
29 the area well were making decisions based on their
30 understanding rather than people that actually are involved
31 in the process regularly, and I don't think things are
32 changing. I mean, we know, you go and look in any business
33 in the Highlands at the moment and they've all got "Wanted"
34 - "Work wanted" posters in their window, so we're all
35 struggling with getting enough staff, but that's a definite
36 agreement on that one, yes.

37
38 Q. Just over the page, onto page 12.

39 A. Yes.

40
41 Q. This is some more in-depth commentary on feedback.
42 Under the heading, "Transparency", do you see that?

43 A. Yes.

44
45 Q. The first paragraph. Just have a read of that first
46 paragraph to yourself and let me know when you've finished,
47 please.

1 A. Yes.

2

3 Q. So we've touched on some of those issues in terms of
4 consistency and east of things to happen, but what I wanted
5 to ask you about was the comment:

6

7 *A lack of transparency and consistency led*
8 *to businesses speculating there was*
9 *favouritism in the prioritisation process.*

10

11 Do you see that?

12 A. Yes.

13

14 Q. Is that something that your members had expressed?

15 A. The members did express that, yes.

16

17 Q. What to your mind was the lack of transparency?

18 A. Seeing DA decisions turned over, not getting an
19 understanding of why that happened; decisions about, you
20 know, why certain things couldn't happen in certain areas;
21 you know, why you can have a festival in that area but you
22 can't have it in that area, those sorts of things, and
23 there's got to be reasons for those things, you just can't
24 say no basically. I mean, when you work for the government
25 you've got to be transparent on those particular issues.

26

27 Q. Do you think that an explanation of why particular
28 decisions are made, or not made as the case may be, if
29 explanations of that kind were given would it be an aid to
30 restore the confidence in decision making?

31 A. I believe that that would go a long way towards
32 actually helping restore confidence, yes.

33

34 Q. Because, tell me if you agree or disagree with this,
35 but if a small business is sitting there wondering why they
36 can't do something, at least if they're told why, they may
37 not agree with it, but at least they've got the opportunity
38 to try and understand it; is that right?

39 A. There's that, but there's also, it allows us to plan
40 and actually help these businesses overcome some of those
41 things if they disagree with them, but you can't when you
42 don't know why.

43

44 Q. Yes. The next heading, "Decision Making", and this is
45 a similar theme but just have a read of that first
46 paragraph and let me know when you've finished, please.

47 A. Yep.

1
2 Q. So, the first example given is:
3

4 *It could be that councillors didn't like an*
5 *idea despite staff seeming supportive and*
6 *the application satisfying the relevant*
7 *requirements.*
8

9 Do you see that?

10 A. We had a number of members who had come to us that had
11 been to council meetings and had actually seen
12 recommendations go through and then they weren't accepted,
13 and they - and so, our members were questioning some of
14 those things and saying, well, why? And not just again at
15 a business level but at a residential level, so they were
16 coming back and saying, "Well, we just don't get it".
17

18 Q. And that happening and then not being able to discern
19 why, if I can put it that way, does that have an effect on
20 business confidence operating in this area?

21 A. It does.
22

23 Q. In what way?

24 A. Again, businesses don't want to put applications in if
25 they think that the leadership is going to say, "It's okay,
26 you've followed all the processes", and then when they get
27 to the council meeting and it gets rejected, well, where's
28 the level of confidence there? So, what happens straight
29 away, you actually get a position where businesses don't
30 want to go and go to the trouble of putting applications
31 in, and that's not the answer for areas that are looking
32 for - to have work to keep our young people engaged.
33

34 Q. The second-to-last point I wanted to raise with you
35 was, on page 13, do you see the heading, "Communication and
36 Engagement"?

37 A. Yes.
38

39 Q. There the Commissioner says:

40
41 *Businesses characterised communication from*
42 *council as too little, too late.*
43

44 Do you see that?

45 A. Yes.
46

47 Q. Is this something your members have expressed

1 agreement with or agreement with that concept?

2 A. Yes.

3

4 Q. Are you able to give some examples of where that's
5 manifested itself?

6 A. Again, it comes - again, a lot of it is perception,
7 and I said earlier in my testimony that people were feeling
8 that there was a level of favouritism in the area, and that
9 all boils - it's all part of that process. And I think
10 that single document would knock this thing out: one
11 document that actually says, this is how we will engage
12 with stakeholders, not key stakeholder, stakeholders, so
13 that means every stakeholder which is every resident
14 basically, and it's a clear document then that should be
15 made public and the public should know what they've got to
16 do to be able to be engage with the council, and then they
17 know the process. So, whether it's actual or perceived,
18 it's still there.

19

20 Q. And finally, on page 14, there's a heading there,
21 'Strategic Planning'.

22 A. Yep, got that Commissioner.

23

24 Q. And:

25

26 *Stakeholders advised their view that*
27 *council's strategic plans do not deliver*
28 *clear thinking about the future, outline*
29 *how outcomes will be achieved and give*
30 *appropriate focus to small businesses which*
31 *are rarely mentioned in strategic*
32 *documents.*

33

34 Do you see that?

35 A. I have that.

36

37 Q. We've discussed one type of overarching plan, were
38 there any other shortcomings in strategic planning that you
39 would draw attention to?

40 A. This is the one that affected us the most, so that's
41 the one that I would suggest that our members were focused
42 on. But to see how all of those plans linked together,
43 because the strategic community plan, which is a blueprint
44 for this place and how this thing fit together, you see,
45 that's the other level of confidence that the businesses
46 need in this area, to know that the residents of this area
47 actually agree with what's happening.

1
2 Q. Yes.
3 A. And when you see some of the --
4
5 Q. Well, okay.
6 A. -- well, some of the small villages for example.
7 Berrima is a good example, there's a very, very active
8 residents' association over there and we don't always
9 agree, but we've now found a common project and we're
10 working on that common project and that's made a huge
11 difference, so that's the sort of thing that we need to
12 see, how the villages and the residences and the businesses
13 - because most of the businesses are residents anyway, but
14 it's just about, you know, how they think. And so, seeing
15 how those documents all stitch together would be quite
16 important to businesses in particular for business
17 confidence.
18
19 Q. Do you think the community's divided in some respects
20 between associations and business?
21 A. Absolutely, has been for many years.
22
23 Q. Is that just a feature of life in the shire, if I can
24 put it that way?
25 A. Basically, that's life in the Southern Highlands, and
26 we've had to learn to live with that, and it's got more
27 complicated over the last 10 years as we're seeing more
28 people drift back in from the city and the way people
29 think. So, a lot of people come here and they just don't
30 want anything to happen, and that's fine, but when you're
31 in business you can't, life's not that simple. But I would
32 suggest that most people in the area still get on, they
33 just have differing opinions.
34
35 Q. No, "Divided" perhaps was the wrong word to use but I
36 think you understood the import of my question, that there
37 are people with divergent views about how things should be
38 done here and those views are very strongly held --
39 A. Very.
40
41 Q. -- and common ground may not be easy to find; is
42 that --
43 A. You're correct in what you say Commissioner.
44
45 THE COMMISSIONER: Anything arising, Mr Parish?
46
47 MR PARISH: One thing, Commissioner.

1
2 Q. I want to take you back to the very start of the
3 Commissioner's questioning, just back to page 11. The very
4 first issue that the Commissioner dealt with you on was the
5 council's adversarial approach when dealing with small
6 business. You described some disrespectful - I think you
7 described it as interactions. I apologise if I didn't hear
8 your answer properly, but are you talking about councillors
9 there or senior staff or staff?

10 A. Both.

11
12 MR PARISH: Thank you. Thank you, Commissioner.

13
14 THE COMMISSIONER: Mr Horton, that completes your
15 evidence. Before you go, is there anything else you would
16 wish to draw to my attention or say before we excuse you?

17 A. Just to thank the Commissioner for giving us the
18 opportunity to come and speak today and good luck to you
19 guys in getting all this stuff done, you know, it's a big
20 job over three weeks.

21
22 THE COMMISSIONER: Thank you. Mr Parish, is there any
23 reason Mr Horton ought not be excused from his summons?

24
25 MR PARISH: No, Commissioner. Thank you, Mr Horton.

26
27 THE COMMISSIONER: Mr Horton, that completes your
28 evidence, you are free to go and you're excused from the
29 summons, thank you.

30
31 THE WITNESS: Thanks, Commissioner.

32
33 (Witness excused)

34
35 <(THE WITNESS WITHDREW)

36
37 THE COMMISSIONER: Mr Parish, does that complete the
38 evidence for today?

39
40 MR PARISH: For today. No other witnesses today,
41 Commissioner.

42
43 THE COMMISSIONER: Who's coming tomorrow?

44
45 MR PARISH: If I can just consult my officer for a second?

46
47 THE COMMISSIONER: Yes.

1
2 MR PARISH: And I think both as a matter of buying time
3 while he limps out of the room and also to give effect to
4 something I said earlier on, we will be publishing this on
5 the website, this list on the website shortly after we rise
6 here today.

7
8 THE COMMISSIONER: Thank you.
9

10 MR PARISH: At 10am, Commissioner, we have Sara Haslinger
11 who's giving a submission on behalf of the Friends of
12 Wingecarribee, followed by John Barrett, who's giving a
13 submission on behalf of the Friends of Bowral, followed by
14 Nick Wilton in the afternoon.

15
16 THE COMMISSIONER: So, we have three witnesses tomorrow,
17 and then Wednesday? Do we have a settled list for
18 Wednesday?
19

20 MR PARISH: Currently the list for Wednesday, which I
21 anticipate is settled, will be Jan Wilson, followed by
22 Eleanor Sheehan, followed by Alan Olsen, followed by Mark
23 Bourne.
24

25 THE COMMISSIONER: All right, thank you. As Mr Parish has
26 indicated, those details will go up on the website shortly
27 this afternoon. The transcript will go up once it's
28 available for those who are interested. It does take some
29 little time to get to us, so it may not be there by the end
30 of today but it'll be there, I hope, very early tomorrow
31 morning if it can't go up tonight.
32

33 If there's nothing further, I'll adjourn until 10am
34 tomorrow.
35

36 MR PARISH: Thank you, Commissioner.
37

38 **AT 3.11PM THE INQUIRY WAS ADJOURNED TO**
39 **TUESDAY, 29 MARCH 2022 AT 10.00AM**
40
41
42
43
44
45
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47

	1993 [3] - 14:16, 14:17, 45:11 1pm [1] - 12:26	232(1)(f) [2] - 28:19, 28:43 233 [1] - 35:5 235 [1] - 39:46 24 [4] - 4:11, 5:16, 19:47, 55:15 25 [1] - 52:27 2576 [1] - 1:20 26 [1] - 17:17 272 [1] - 55:9 28 [2] - 1:38, 16:35 287 [1] - 16:19 29 [2] - 34:45, 90:39 2A [1] - 35:22 2pm [3] - 12:27, 58:4, 60:3	438G [2] - 19:9, 21:41 438I [1] - 22:16 438M [1] - 23:11 438U [4] - 3:14, 3:15, 8:34, 17:45 43U [2] - 23:19, 37:11 440 [1] - 32:16 440F [2] - 32:22, 36:38 440F(1)(a) [1] - 33:39 440F(1)(b) [1] - 32:45 446 [2] - 39:4, 39:7 461 [3] - 39:9, 67:28, 67:34 471 [1] - 79:6 48-hours [1] - 78:21 484 [4] - 51:31, 51:34, 51:36 489 [1] - 52:9 490A [1] - 35:45 495 [1] - 13:39 498 [1] - 53:4 4pm [1] - 12:27	8 8 [7] - 4:17, 15:2, 16:1, 18:5, 18:6, 21:24, 39:43 8.1.2 [1] - 41:28 80.2 [1] - 15:1 81 [1] - 53:27 82 [1] - 53:27 835 [2] - 21:25, 21:34 836 [1] - 16:18 837 [1] - 21:37 838 [1] - 22:11 85 [1] - 53:27 8A [4] - 23:47, 24:9, 25:1, 45:42 8A(1)(c) [1] - 39:45 8B [1] - 24:45 8C [2] - 24:45, 39:44
'Strategic [1] - 87:21	2	3	5	9
1	2 [29] - 4:27, 5:32, 6:8, 6:12, 6:17, 6:28, 7:13, 8:16, 18:37, 20:11, 23:20, 24:34, 25:41, 26:17, 27:31, 28:13, 35:20, 38:1, 41:19, 41:21, 44:1, 45:1, 45:6, 46:3, 46:7, 46:40, 48:21 2,700 [1] - 13:23 2.11 [1] - 64:20 20 [1] - 12:28 2006 [1] - 75:29 2009 [2] - 41:24, 42:40 2010 [3] - 53:27, 75:15, 75:29 2012 [1] - 53:27 2015 [3] - 34:13, 53:28 2016 [14] - 6:11, 6:22, 6:30, 14:38, 14:42, 16:35, 17:7, 17:14, 24:3, 29:41, 37:29, 75:14, 75:23, 81:9 2016-2020 [5] - 13:43, 68:21, 68:28, 68:38, 74:9 2016/17 [1] - 16:29 2017 [1] - 53:28 2018 [1] - 17:17 2019 [3] - 53:23, 55:6, 82:33 2020 [12] - 3:43, 4:11, 4:17, 17:23, 17:25, 18:7, 18:8, 20:1, 20:4, 21:24, 51:13, 55:6 2021 [25] - 3:11, 4:27, 4:36, 4:38, 5:13, 5:16, 5:18, 14:39, 17:7, 17:14, 17:27, 17:44, 17:46, 18:23, 21:12, 21:44, 21:46, 23:14, 34:15, 34:39, 34:45, 51:39, 51:41, 52:5, 53:19 2022 [5] - 1:38, 10:7, 13:4, 82:33, 90:39 223 [6] - 26:21, 38:28, 38:38, 39:21, 39:46, 45:42 232 [9] - 27:40, 29:41, 34:43, 38:36, 38:39, 39:21, 39:46, 42:4	3 [21] - 5:38, 6:8, 6:12, 6:19, 6:28, 7:13, 20:12, 21:37, 26:6, 26:39, 35:32, 45:8, 46:2, 46:7, 46:8, 46:37, 46:40, 47:11, 47:15, 48:21, 53:35 3.11PM [1] - 90:38 309 [1] - 13:46 31 [5] - 3:11, 5:18, 14:1, 17:44, 23:14 314 [1] - 16:7 335 [10] - 29:37, 30:30, 38:41, 38:44, 39:21, 39:30, 40:5, 40:9, 40:34, 41:38 35 [3] - 64:43, 65:2, 65:13 36,813 [1] - 14:47 360 [3] - 33:2, 33:12, 33:14 360(5) [1] - 33:38 363 [2] - 36:10, 36:40 37 [1] - 16:21	5 [4] - 10:7, 20:30, 53:35, 70:14 50 [1] - 61:35 518 [1] - 52:33 52 [1] - 56:20 52,000 [1] - 13:34 55 [1] - 52:28 56 [2] - 14:43, 14:44	9 [7] - 4:36, 4:38, 21:11, 21:44, 22:2, 26:17, 42:38 909 [1] - 16:20
		4	6	A
1 [23] - 1:41, 5:26, 6:8, 6:11, 6:19, 6:28, 7:13, 17:45, 17:46, 18:9, 18:16, 18:19, 21:37, 23:20, 26:26, 27:42, 35:26, 44:1, 44:3, 46:40, 48:20, 49:7 1(a) [1] - 33:6 1,296 [1] - 16:5 1,502 [2] - 15:15, 15:21 10 [6] - 5:18, 13:34, 14:42, 25:35, 41:4, 88:27 10(2)(a) [1] - 35:35 10.00AM [1] - 90:39 10.02am [1] - 1:38 1037 [1] - 43:5 1052 [1] - 43:12 10A [1] - 35:22 10A(2) [1] - 35:39 10am [3] - 12:26, 90:10, 90:33 11 [5] - 20:2, 29:38, 30:31, 79:5, 89:3 11.30 [1] - 12:28 12 [8] - 5:13, 21:45, 22:16, 33:22, 41:5, 52:12, 65:46, 84:38 120 [1] - 50:12 121 [1] - 13:46 1280 [4] - 41:18, 41:23, 41:28, 44:43 12A [1] - 23:26 12B [1] - 9:42 13 [4] - 8:16, 18:4, 18:24, 86:35 14 [4] - 13:4, 13:7, 18:8, 87:20 15 [1] - 12:28 17 [1] - 4:47 18 [4] - 16:28, 55:14, 76:5, 76:41 182 [2] - 35:10, 35:44 182C [1] - 35:13 182D [1] - 35:18 19 [3] - 3:43, 18:23, 20:4 1923 [2] - 8:17, 23:20 197 [1] - 55:14 1981 [1] - 13:39	2 [29] - 4:27, 5:32, 6:8, 6:12, 6:17, 6:28, 7:13, 8:16, 18:37, 20:11, 23:20, 24:34, 25:41, 26:17, 27:31, 28:13, 35:20, 38:1, 41:19, 41:21, 44:1, 45:1, 45:6, 46:3, 46:7, 46:40, 48:21 2,700 [1] - 13:23 2.11 [1] - 64:20 20 [1] - 12:28 2006 [1] - 75:29 2009 [2] - 41:24, 42:40 2010 [3] - 53:27, 75:15, 75:29 2012 [1] - 53:27 2015 [3] - 34:13, 53:28 2016 [14] - 6:11, 6:22, 6:30, 14:38, 14:42, 16:35, 17:7, 17:14, 24:3, 29:41, 37:29, 75:14, 75:23, 81:9 2016-2020 [5] - 13:43, 68:21, 68:28, 68:38, 74:9 2016/17 [1] - 16:29 2017 [1] - 53:28 2018 [1] - 17:17 2019 [3] - 53:23, 55:6, 82:33 2020 [12] - 3:43, 4:11, 4:17, 17:23, 17:25, 18:7, 18:8, 20:1, 20:4, 21:24, 51:13, 55:6 2021 [25] - 3:11, 4:27, 4:36, 4:38, 5:13, 5:16, 5:18, 14:39, 17:7, 17:14, 17:27, 17:44, 17:46, 18:23, 21:12, 21:44, 21:46, 23:14, 34:15, 34:39, 34:45, 51:39, 51:41, 52:5, 53:19 2022 [5] - 1:38, 10:7, 13:4, 82:33, 90:39 223 [6] - 26:21, 38:28, 38:38, 39:21, 39:46, 45:42 232 [9] - 27:40, 29:41, 34:43, 38:36, 38:39, 39:21, 39:46, 42:4	3 [21] - 5:38, 6:8, 6:12, 6:19, 6:28, 7:13, 20:12, 21:37, 26:6, 26:39, 35:32, 45:8, 46:2, 46:7, 46:8, 46:37, 46:40, 47:11, 47:15, 48:21, 53:35 3.11PM [1] - 90:38 309 [1] - 13:46 31 [5] - 3:11, 5:18, 14:1, 17:44, 23:14 314 [1] - 16:7 335 [10] - 29:37, 30:30, 38:41, 38:44, 39:21, 39:30, 40:5, 40:9, 40:34, 41:38 35 [3] - 64:43, 65:2, 65:13 36,813 [1] - 14:47 360 [3] - 33:2, 33:12, 33:14 360(5) [1] - 33:38 363 [2] - 36:10, 36:40 37 [1] - 16:21	6 [5] - 14:45, 18:5, 18:24, 74:32 609 [1] - 16:6 638 [1] - 16:7 65 [2] - 52:12, 53:23 653 [1] - 1:19 67 [1] - 13:47 68 [2] - 52:17, 55:13 69 [1] - 55:14	A abiding [1] - 49:31 ability [2] - 35:5, 68:10 able [22] - 2:40, 5:47, 6:45, 7:8, 11:27, 11:31, 11:36, 12:3, 45:23, 47:27, 47:45, 55:39, 57:20, 63:15, 69:23, 69:36, 73:19, 76:27, 83:7, 86:18, 87:4, 87:16 Aboriginal [1] - 3:5 absence [1] - 43:16 absent [1] - 43:22 absolutely [1] - 88:21 accepted [3] - 4:13, 7:40, 86:12 accepts [3] - 20:9, 20:10, 20:11 access [5] - 20:16, 44:24, 63:5, 72:43, 72:44 accessible [1] - 11:28 accommodate [1] - 11:40 accommodation [1] - 80:36 accord [1] - 64:12 accordance [11] - 5:40, 8:11, 26:30,
			7	
			7 [2] - 18:5, 44:23 7.1 [1] - 43:19 7.9 [1] - 43:27 700s [1] - 25:32 740 [1] - 44:5 76 [1] - 53:28 77 [1] - 53:23	

<p>30:40, 31:25, 33:30, 38:46, 45:11, 64:11, 76:16, 76:45</p> <p>accordingly [2] - 8:8, 9:4</p> <p>account [2] - 16:10, 79:14</p> <p>accountable [2] - 24:42, 28:15</p> <p>accountants [1] - 66:12</p> <p>accurate [4] - 11:18, 15:15, 17:7, 31:17</p> <p>accurately [7] - 11:21, 28:7, 28:25, 28:40, 28:44, 29:7, 29:12</p> <p>achieve [2] - 24:22, 24:26</p> <p>achieved [2] - 25:12, 87:29</p> <p>achievement [1] - 25:18</p> <p>achieving [1] - 25:14</p> <p>acknowledge [1] - 3:1</p> <p>acknowledges [1] - 20:3</p> <p>acquaint [1] - 10:24</p> <p>acquire [2] - 28:9, 30:12</p> <p>acrimony [3] - 4:3, 18:44, 19:13</p> <p>Act [73] - 3:15, 3:22, 3:28, 3:32, 3:34, 4:19, 5:41, 7:41, 8:17, 8:35, 9:43, 14:15, 14:16, 14:17, 14:18, 14:19, 17:45, 18:4, 18:7, 18:24, 18:40, 20:6, 21:41, 22:17, 22:28, 22:34, 23:4, 23:8, 23:20, 23:26, 23:29, 23:40, 23:42, 23:47, 24:1, 25:30, 26:17, 26:21, 26:30, 30:31, 31:39, 32:16, 32:32, 32:47, 33:42, 34:45, 35:23, 35:35, 35:46, 36:8, 36:10, 37:8, 38:27, 38:28, 39:22, 39:33, 39:36, 40:6, 40:36, 41:14, 41:25, 41:32, 41:38, 42:4, 42:13, 43:13, 43:44, 43:45, 45:11, 46:22</p> <p>act [11] - 3:25, 3:30, 24:29, 32:37, 32:40, 32:47, 35:9, 35:17, 35:30, 36:5, 42:27</p> <p>acting [2] - 50:37,</p>	<p>50:38</p> <p>action [6] - 5:3, 7:47, 20:10, 24:39, 35:29, 46:20</p> <p>actions [2] - 18:34, 25:9</p> <p>active [3] - 27:44, 62:45, 88:7</p> <p>activities [7] - 12:40, 25:8, 25:12, 27:25, 39:28, 40:37, 81:19</p> <p>Acts [2] - 13:47, 22:33</p> <p>acts [4] - 26:38, 27:28, 33:3, 35:45</p> <p>actual [3] - 17:47, 70:15, 87:17</p> <p>Adam [2] - 66:36, 83:9</p> <p>adaptions [1] - 25:22</p> <p>add [3] - 47:31, 72:34, 75:33</p> <p>addition [1] - 10:45</p> <p>additional [2] - 4:41, 81:2</p> <p>address [11] - 3:9, 13:18, 19:12, 23:29, 33:7, 36:21, 36:22, 48:32, 48:42, 61:14, 70:30</p> <p>addressed [11] - 16:31, 21:36, 42:33, 42:36, 47:29, 61:9, 70:31, 76:4, 76:25, 78:11, 84:3</p> <p>addresses [1] - 30:35</p> <p>addressing [2] - 48:35, 63:25</p> <p>adds [1] - 36:40</p> <p>adequately [2] - 5:28, 37:22</p> <p>adhere [2] - 5:6, 64:5</p> <p>adjourn [3] - 41:4, 60:3, 90:33</p> <p>ADJOURNED [1] - 90:38</p> <p>adjournment [4] - 40:47, 61:12, 62:16, 63:31</p> <p>ADJOURNMENT [2] - 41:7, 60:7</p> <p>administered [1] - 14:1</p> <p>administration [9] - 5:46, 6:43, 7:6, 38:23, 42:7, 42:15, 47:24, 47:43, 76:14</p> <p>administrative [3] - 7:17, 9:4, 31:19</p> <p>administrator [13] - 5:16, 10:12, 22:18, 23:11, 51:17, 51:25,</p>	<p>51:31, 54:9, 55:8, 55:31, 56:3, 56:31, 63:13</p> <p>admit [1] - 13:14</p> <p>admonition [1] - 14:5</p> <p>adopt [5] - 10:8, 26:47, 32:17, 33:17, 33:23</p> <p>adopted [6] - 8:33, 36:9, 36:12, 36:39, 62:34, 62:35</p> <p>advance [2] - 43:47, 47:34</p> <p>adversarial [2] - 79:23, 89:5</p> <p>adverse [1] - 8:13</p> <p>advice [4] - 19:15, 31:18, 76:19, 77:1</p> <p>advise [3] - 20:8, 30:45, 31:2</p> <p>advised [2] - 73:43, 87:26</p> <p>advisor [4] - 19:11, 20:15, 21:39, 21:40</p> <p>advisors [4] - 4:24, 20:12, 21:38</p> <p>advisory [2] - 66:33, 81:1</p> <p>advocacy [1] - 73:17</p> <p>affairs [6] - 5:40, 26:29, 27:34, 41:43, 45:10, 46:10</p> <p>affected [8] - 10:46, 13:12, 55:18, 61:21, 63:11, 81:8, 81:19, 87:40</p> <p>affirmation [2] - 64:9, 64:18</p> <p>affording [1] - 18:28</p> <p>afternoon [4] - 58:5, 58:19, 90:14, 90:27</p> <p>afterwards [1] - 79:41</p> <p>age [1] - 13:34</p> <p>agencies [3] - 9:5, 14:1, 23:27</p> <p>agenda [1] - 80:9</p> <p>agendas [1] - 77:45</p> <p>aggressive [2] - 81:10, 81:16</p> <p>ago [4] - 44:43, 65:19, 73:10, 81:42</p> <p>agree [16] - 28:42, 70:26, 73:21, 75:45, 75:47, 76:26, 77:24, 78:28, 80:24, 83:41, 83:43, 84:7, 85:34, 85:37, 87:47, 88:9</p> <p>agreed [4] - 70:38, 75:12, 78:18, 83:39</p> <p>agreeing [1] - 77:46</p>	<p>agreement [3] - 84:36, 87:1</p> <p>agrees [1] - 20:20</p> <p>ahead [2] - 52:40, 68:47</p> <p>aid [3] - 41:24, 46:41, 85:29</p> <p>aim [1] - 50:17</p> <p>Alan [1] - 90:22</p> <p>alignment [1] - 78:5</p> <p>allegations [1] - 48:42</p> <p>allocate [1] - 41:47</p> <p>allocation [1] - 27:2</p> <p>allow [4] - 11:40, 45:33, 48:7, 57:21</p> <p>allows [4] - 74:45, 75:3, 80:39, 85:39</p> <p>almost [2] - 34:9, 62:5</p> <p>alongside [1] - 55:25</p> <p>alternative [1] - 4:43</p> <p>alters [1] - 62:20</p> <p>amalgamate [1] - 65:21</p> <p>amalgamated [1] - 65:28</p> <p>amalgamation [1] - 13:37</p> <p>amendment [4] - 24:1, 35:13, 36:18, 36:23</p> <p>amendments [2] - 24:5, 29:42</p> <p>amount [5] - 56:39, 80:46, 81:23, 81:25, 81:31</p> <p>analogy [2] - 47:10, 47:11</p> <p>analysis [2] - 40:7, 42:12</p> <p>Andrews [1] - 16:6</p> <p>Angus [3] - 1:32, 2:7, 8:24</p> <p>animosity [1] - 55:26</p> <p>Ann [1] - 17:22</p> <p>announced [2] - 6:4, 61:18</p> <p>annual [1] - 31:13</p> <p>anonymity [1] - 8:46</p> <p>answer [16] - 55:40, 58:23, 64:10, 69:23, 69:31, 71:32, 74:10, 74:11, 77:20, 77:38, 79:14, 79:46, 82:45, 83:20, 86:31, 89:8</p> <p>answered [2] - 46:37, 80:1</p> <p>answering [2] - 12:39, 79:14</p> <p>answers [2] - 64:35, 80:22</p> <p>anticipate [8] - 26:13,</p>	<p>29:4, 32:8, 39:35, 56:25, 57:29, 58:41, 90:21</p> <p>anyway [2] - 83:22, 88:13</p> <p>apart [1] - 80:26</p> <p>apologise [5] - 35:9, 35:14, 35:15, 43:47, 89:7</p> <p>apparent [1] - 19:13</p> <p>appear [7] - 2:6, 2:13, 2:24, 2:29, 59:25, 59:28, 59:39</p> <p>appearances [1] - 2:3</p> <p>appearing [1] - 59:24</p> <p>apples [1] - 47:12</p> <p>applicable [1] - 32:33</p> <p>applicant [2] - 73:43, 76:20</p> <p>application [7] - 2:18, 2:37, 11:16, 11:23, 59:19, 71:18, 86:6</p> <p>applications [9] - 8:41, 8:43, 67:16, 69:39, 69:40, 71:44, 72:18, 86:24, 86:30</p> <p>applies [3] - 11:6, 12:17, 32:17</p> <p>apply [7] - 8:7, 8:9, 8:17, 24:11, 24:21, 24:47, 25:3</p> <p>appoint [1] - 31:25</p> <p>appointed [10] - 3:12, 3:27, 4:24, 8:23, 8:24, 8:27, 12:36, 20:16, 21:39, 21:40</p> <p>appointing [2] - 5:15, 22:18</p> <p>appointment [6] - 5:17, 5:21, 20:12, 21:38, 23:10, 27:14</p> <p>apportion [1] - 50:18</p> <p>appreciate [4] - 12:39, 58:8, 63:17, 83:25</p> <p>appreciated [1] - 80:20</p> <p>appreciation [1] - 21:14</p> <p>approach [9] - 8:33, 25:15, 47:35, 79:23, 82:3, 82:6, 82:10, 82:12, 89:5</p> <p>approached [1] - 79:44</p> <p>approaches [1] - 63:29</p> <p>appropriate [15] - 7:28, 9:3, 9:19, 9:42, 10:43, 22:22, 24:28, 25:22, 31:4, 35:14,</p>
---	--	---	--	---

<p>35:43, 48:44, 59:3, 63:3, 87:30</p> <p>appropriately [4] - 5:28, 27:29, 37:23, 49:18</p> <p>approval [2] - 73:5, 74:7</p> <p>approved [3] - 31:27, 48:39, 81:37</p> <p>approving [1] - 56:4</p> <p>April [2] - 13:4, 13:7</p> <p>architecture [1] - 35:1</p> <p>area [52] - 25:21, 27:7, 29:8, 40:34, 64:42, 64:43, 65:20, 65:22, 65:33, 66:10, 66:15, 66:34, 66:36, 66:41, 67:18, 68:5, 69:16, 70:42, 71:9, 71:15, 71:21, 72:19, 73:5, 73:7, 73:12, 73:20, 74:32, 74:35, 74:46, 74:47, 75:1, 75:9, 75:27, 77:25, 77:44, 80:31, 80:34, 80:35, 80:42, 80:46, 81:15, 83:33, 84:25, 84:29, 85:21, 85:22, 86:20, 87:8, 87:46, 88:32</p> <p>areas [11] - 13:27, 39:31, 70:24, 70:25, 70:29, 70:35, 74:44, 75:26, 81:38, 85:20, 86:31</p> <p>argument [1] - 6:34</p> <p>arise [8] - 6:40, 40:40, 43:39, 48:2, 48:20, 54:39, 56:9, 57:44</p> <p>arising [2] - 54:12, 88:45</p> <p>arrived [1] - 70:30</p> <p>art [1] - 65:4</p> <p>articulate [1] - 48:30</p> <p>ascertain [1] - 45:32</p> <p>aside [1] - 77:6</p> <p>aspect [2] - 43:42, 45:15</p> <p>aspirational [1] - 38:37</p> <p>aspirations [2] - 25:6, 25:8</p> <p>assault [1] - 36:15</p> <p>assaults [1] - 36:15</p> <p>asserted [1] - 8:12</p> <p>Assessment [1] - 22:34</p> <p>assessment [1] - 73:46</p> <p>assets [1] - 80:20</p> <p>assist [2] - 4:24, 16:26</p>	<p>assistance [6] - 9:9, 11:42, 19:15, 20:15, 61:39, 73:34</p> <p>assistant [1] - 82:18</p> <p>assisted [2] - 2:7, 52:32</p> <p>assisting [8] - 8:26, 10:45, 11:23, 12:9, 15:40, 61:13, 62:40, 63:30</p> <p>Assisting [9] - 1:29, 2:7, 8:27, 9:26, 9:28, 10:17, 31:36, 48:36, 64:10</p> <p>associate [1] - 11:37</p> <p>associated [1] - 73:45</p> <p>Association [2] - 69:17, 82:5</p> <p>association [1] - 88:8</p> <p>associations [2] - 42:25, 88:20</p> <p>assumed [1] - 11:11</p> <p>assured [2] - 11:42, 12:9</p> <p>AT [2] - 90:38, 90:39</p> <p>attacks [1] - 42:30</p> <p>attempt [1] - 57:30</p> <p>attempts [2] - 36:17, 36:21</p> <p>attend [5] - 11:9, 11:17, 11:33, 11:36, 57:16</p> <p>attendance [4] - 11:6, 11:18, 62:19, 62:23</p> <p>attention [23] - 3:40, 6:10, 6:21, 19:34, 23:37, 32:3, 36:36, 42:11, 43:11, 45:26, 49:5, 53:42, 54:2, 56:14, 61:14, 62:15, 62:28, 63:21, 78:33, 79:31, 83:26, 87:39, 89:16</p> <p>attune [1] - 84:20</p> <p>audio [1] - 12:19</p> <p>August [13] - 3:11, 3:43, 4:11, 5:18, 17:25, 17:44, 18:8, 18:23, 19:47, 20:4, 23:14, 24:3, 41:24</p> <p>authorised [1] - 26:2</p> <p>authority [1] - 54:24</p> <p>authors [1] - 8:45</p> <p>autumnal [1] - 47:2</p> <p>availabilities [1] - 58:9</p> <p>availability [1] - 57:32</p> <p>available [19] - 6:3, 7:41, 8:36, 11:38, 11:43, 12:23, 12:24, 13:1, 13:7, 15:25,</p>	<p>15:27, 51:3, 57:15, 58:11, 58:14, 61:40, 62:47, 63:1, 90:28</p> <p>avenues [1] - 36:43</p> <p>aware [3] - 55:38, 62:39, 84:5</p>	<p>between [23] - 4:3, 4:40, 18:45, 25:26, 28:5, 38:18, 39:36, 39:38, 40:37, 41:12, 41:29, 42:13, 43:47, 44:24, 46:7, 49:40, 50:22, 50:37, 54:32, 55:27, 67:18, 83:40, 88:20</p> <p>beyond [1] - 78:20</p> <p>bias [1] - 24:30</p> <p>big [3] - 69:40, 83:30, 89:19</p> <p>binding [1] - 7:38</p> <p>bit [2] - 25:25, 55:1</p> <p>black [1] - 70:16</p> <p>blame [1] - 50:18</p> <p>blow [2] - 66:34, 66:41</p> <p>blowing [1] - 67:10</p> <p>blueprint [1] - 87:43</p> <p>blurring [2] - 50:36, 50:41</p> <p>board [2] - 64:5, 64:12</p> <p>boards [1] - 66:37</p> <p>body [57] - 5:15, 5:26, 5:33, 5:38, 6:9, 6:17, 6:18, 13:22, 13:41, 14:20, 14:37, 14:38, 16:3, 22:24, 22:25, 22:26, 22:39, 23:39, 24:2, 26:18, 26:26, 26:27, 27:31, 27:42, 27:45, 27:47, 28:6, 28:8, 28:27, 28:44, 30:46, 31:3, 31:10, 31:44, 32:5, 37:21, 38:5, 38:8, 38:29, 38:30, 38:39, 39:39, 40:26, 40:32, 40:35, 41:17, 45:9, 45:19, 45:26, 46:9, 48:44, 54:29, 54:43, 57:38, 81:1</p> <p>body's [3] - 14:33, 21:9, 39:47</p> <p>boils [1] - 87:9</p> <p>boisterous [1] - 74:41</p> <p>bones [1] - 35:39</p> <p>borne [2] - 14:32, 37:4</p> <p>borrow [1] - 51:11</p> <p>bottom [2] - 43:27, 67:29</p> <p>boundaries [1] - 29:32</p> <p>bounds [1] - 50:9</p> <p>Bourne [1] - 90:23</p> <p>Bowral [5] - 13:25, 13:38, 55:24, 55:25, 90:13</p> <p>box [1] - 63:45</p> <p>breach [1] - 23:28</p>	<p>break [3] - 12:4, 12:27, 41:12</p> <p>breaks [1] - 12:29</p> <p>Briars [1] - 1:19</p> <p>brief [2] - 13:29, 21:25</p> <p>briefly [4] - 25:34, 29:37, 39:4, 47:31</p> <p>bright [1] - 40:36</p> <p>bring [6] - 19:12, 35:11, 36:32, 44:42, 78:32, 80:41</p> <p>bringing [1] - 83:33</p> <p>Broad [3] - 1:32, 2:8, 8:24</p> <p>broad [4] - 6:33, 14:8, 64:17, 66:14</p> <p>broader [1] - 47:38</p> <p>broadly [1] - 76:26</p> <p>broken [1] - 56:21</p> <p>Bron [3] - 1:31, 2:7, 8:24</p> <p>brought [4] - 49:4, 61:13, 62:15, 63:21</p> <p>build [2] - 74:33, 74:46</p> <p>building [1] - 73:15</p> <p>buildings [2] - 52:46, 69:47</p> <p>bunch [1] - 75:4</p> <p>Bundanoon [1] - 13:26</p> <p>bundle [42] - 14:45, 15:1, 15:10, 15:11, 15:12, 15:14, 15:26, 15:29, 15:31, 15:41, 16:2, 16:28, 16:38, 16:40, 17:1, 17:6, 17:46, 18:9, 18:15, 18:37, 19:21, 19:28, 20:2, 21:25, 21:35, 22:11, 23:16, 37:13, 39:5, 41:19, 44:1, 44:43, 51:31, 52:33, 54:3, 55:9, 58:36, 58:37, 58:45, 67:29, 70:16</p> <p>Bundle [3] - 18:16, 32:11, 67:30</p> <p>BUNDLE [5] - 15:21, 17:13, 18:18, 59:8</p> <p>bundles [2] - 15:30, 58:43</p> <p>burden [1] - 61:40</p> <p>burn [1] - 55:15</p> <p>Burradoo [1] - 1:20</p> <p>bushfire [2] - 55:4, 55:7</p> <p>bushfires [3] - 51:13, 55:4, 55:5</p> <p>business [22] - 64:40,</p>
---	---	---	---	--

64:44, 66:10, 66:18, 68:16, 69:42, 69:46, 72:31, 73:17, 73:18, 74:34, 80:46, 83:38, 84:17, 84:32, 85:35, 86:15, 86:20, 88:16, 88:20, 88:31, 89:6 Business ^[16] - 66:18, 66:20, 66:31, 66:38, 67:25, 67:40, 68:4, 68:6, 70:34, 75:42, 76:3, 76:5, 78:11, 78:34, 78:47 business's ^[1] - 81:29 businesses ^[26] - 64:43, 65:1, 65:34, 66:8, 66:15, 67:14, 69:41, 73:16, 73:19, 75:2, 75:43, 76:11, 76:21, 79:24, 80:40, 81:45, 85:8, 85:40, 86:24, 86:29, 86:41, 87:30, 87:45, 88:12, 88:13, 88:16 Businesswomen's ^[1] - 65:44 button ^[1] - 70:47 buying ^[1] - 90:2 BY ^[1] - 64:24 Bypass ^[1] - 55:24 bypass ^[1] - 55:24	category ^[1] - 70:41 cater ^[1] - 80:47 caused ^[2] - 11:12, 55:25 cease ^[1] - 43:32 cent ^[12] - 15:1, 52:12, 52:17, 52:27, 52:28, 53:23, 53:27, 53:28, 55:15 centre ^[1] - 52:44 Centre ^[1] - 56:3 centres ^[1] - 13:25 certain ^[11] - 29:5, 29:6, 46:37, 47:13, 57:23, 63:12, 67:17, 75:38, 81:37, 85:20 certainly ^[2] - 48:35, 84:21 certainty ^[2] - 73:28, 77:22 cetera ^[2] - 63:14, 77:3 chair ^[5] - 43:22, 43:23, 65:17, 65:26, 78:21 chairing ^[1] - 4:22 chairman ^[2] - 65:23, 72:42 chairperson ^[6] - 35:5, 35:8, 43:12, 43:29, 43:30, 43:36 challenges ^[2] - 84:2, 84:9 Chamber ^[8] - 64:3, 64:40, 65:16, 65:31, 65:44, 66:21, 66:31, 71:14 chamber ^[14] - 65:22, 65:25, 65:45, 71:25, 72:21, 72:42, 73:17, 74:45, 75:6, 75:30, 78:1, 78:29, 82:3, 83:42 chamber's ^[1] - 83:22 chambers ^[3] - 11:37, 65:20, 80:40 chambers' ^[2] - 73:6, 74:35 change ^[3] - 4:32, 12:30, 58:25 changes ^[4] - 41:25, 79:36, 79:39, 79:41 changing ^[3] - 25:23, 77:16, 84:32 channel ^[2] - 62:18, 62:24 Chapter ^[5] - 18:4, 18:24, 26:39, 29:38, 30:31 chapter ^[2] - 26:17, 31:27	characterised ^[1] - 86:41 charge ^[1] - 41:40 chart ^[2] - 52:10, 52:11 chase ^[1] - 80:40 Chief ^[1] - 32:36 choice ^[2] - 56:37, 67:25 choosing ^[1] - 10:17 circumstances ^[4] - 9:46, 25:23, 26:10, 73:42 cited ^[1] - 72:25 city ^[1] - 88:28 civic ^[1] - 26:31 Civic ^[1] - 56:2 clarity ^[2] - 31:36, 76:22 clause ^[2] - 34:41, 41:28 cleanliness ^[1] - 52:40 clear ^[13] - 29:12, 39:36, 39:37, 39:44, 39:45, 47:47, 61:18, 61:28, 62:24, 64:5, 71:28, 87:14, 87:28 clearly ^[1] - 71:21 close ^[2] - 42:12, 67:24 closed ^[2] - 47:6, 55:34 closing ^[1] - 48:29 co ^[1] - 24:25 co-operatively ^[1] - 24:25 CODE ^[1] - 59:9 code ^[11] - 33:18, 33:19, 33:23, 33:30, 34:44, 36:12, 42:38, 43:42, 43:43, 43:45, 44:26 Code ^[20] - 4:6, 4:9, 19:3, 19:7, 32:17, 32:34, 32:46, 33:14, 33:40, 35:41, 36:9, 36:14, 36:39, 42:45, 42:46, 43:4, 44:6, 44:19, 44:38, 58:46 codes ^[3] - 32:9, 33:6 coffee ^[1] - 83:8 collaborate ^[2] - 25:17, 83:4 collective ^[1] - 28:3 colloquial ^[1] - 38:26 colloquialism ^[1] - 51:11 colloquially ^[1] - 23:8 combination ^[2] - 40:7, 79:17	coming ^[11] - 14:10, 14:24, 29:32, 58:17, 58:28, 67:14, 68:46, 70:35, 75:25, 86:16, 89:43 commence ^[2] - 2:4, 2:47 commenced ^[2] - 6:11, 6:22 commencement ^[4] - 6:25, 14:6, 23:16, 55:6 commences ^[1] - 21:34 commend ^[3] - 13:28, 16:27, 51:29 comment ^[3] - 66:43, 80:13, 85:5 commentary ^[1] - 84:41 comments ^[3] - 37:18, 69:37, 69:38 Commerce ^[6] - 64:4, 64:41, 65:17, 65:31, 65:45, 71:15 commercial ^[1] - 80:20 Commission ^[1] - 81:35 commission ^[2] - 66:21, 66:29 commissioned ^[4] - 51:30, 54:9, 55:8, 70:36 Commissioner ^[102] - 1:25, 2:6, 2:13, 2:21, 2:33, 2:39, 8:24, 13:20, 13:28, 14:2, 14:5, 14:36, 15:2, 16:1, 16:14, 17:9, 17:24, 17:42, 20:37, 21:26, 21:43, 22:6, 22:11, 23:18, 23:21, 23:42, 24:9, 25:27, 27:38, 29:3, 30:31, 31:35, 33:44, 35:12, 36:36, 37:6, 37:15, 40:11, 40:30, 41:2, 41:11, 43:10, 44:13, 44:32, 45:13, 45:39, 45:44, 47:30, 48:30, 50:6, 50:31, 51:4, 51:29, 54:41, 54:47, 58:30, 59:11, 59:23, 59:34, 60:5, 61:6, 63:42, 64:2, 64:15, 65:35, 66:38, 67:6, 67:25, 68:2, 68:4, 70:5, 70:34, 71:2, 71:27, 73:21, 73:29,	74:30, 74:34, 75:12, 75:43, 76:3, 76:27, 77:10, 78:12, 78:15, 78:17, 78:34, 78:44, 79:9, 81:12, 86:39, 87:22, 88:43, 88:47, 89:4, 89:12, 89:17, 89:25, 89:31, 89:41, 90:10, 90:36 COMMISSIONER ^[181] - 2:1, 2:11, 2:16, 2:23, 2:29, 2:35, 2:43, 14:8, 14:23, 14:28, 15:4, 15:8, 15:14, 15:19, 15:24, 15:33, 15:40, 16:9, 16:16, 16:42, 16:47, 17:5, 17:11, 17:29, 17:35, 18:11, 18:15, 18:28, 19:25, 19:30, 19:36, 20:30, 20:43, 21:1, 21:17, 21:32, 22:1, 22:8, 22:14, 22:30, 22:36, 22:44, 23:3, 23:45, 24:5, 25:32, 25:37, 26:23, 28:18, 28:23, 28:31, 28:37, 28:46, 29:11, 29:16, 29:23, 29:27, 29:35, 29:40, 29:46, 30:5, 30:23, 30:33, 32:14, 32:20, 32:26, 33:11, 33:17, 33:25, 33:33, 33:38, 33:46, 34:4, 34:8, 34:13, 34:17, 34:22, 34:28, 34:32, 34:37, 34:41, 35:3, 36:1, 39:7, 39:11, 39:17, 40:5, 40:13, 40:20, 40:25, 40:39, 40:46, 41:4, 41:9, 41:21, 42:18, 43:7, 44:3, 44:8, 44:16, 44:29, 44:34, 44:40, 44:45, 46:1, 46:12, 46:18, 46:26, 46:33, 46:39, 46:47, 47:4, 47:18, 47:34, 48:5, 48:12, 48:19, 48:26, 49:9, 49:16, 49:28, 50:3, 51:34, 51:38, 51:43, 52:3, 52:20, 52:25, 52:35, 53:4, 53:9, 53:14, 53:22, 53:30, 53:35, 53:39, 54:6, 55:11, 55:38, 55:47, 57:37, 57:47, 58:7, 58:16, 58:23, 58:33, 58:39, 58:45, 59:13, 59:18, 59:27, 59:38, 59:47,
--	--	--	--	---

61:4, 61:8, 63:45, 64:8, 64:17, 64:22, 66:26, 67:4, 68:44, 70:3, 70:46, 71:5, 74:17, 74:21, 74:28, 76:40, 77:32, 78:46, 88:45, 89:14, 89:22, 89:27, 89:37, 89:43, 89:47, 90:8, 90:16, 90:25 Commissioner's [6] - 66:18, 76:5, 78:28, 78:33, 79:1, 89:3 Commissions [3] - 8:17, 9:43, 23:20 commitments [1] - 12:41 commits [1] - 36:5 committed [1] - 32:38 committee [9] - 25:45, 32:39, 32:43, 33:28, 36:7, 36:21, 36:22, 36:33, 74:38 Committee [1] - 75:21 committees [1] - 33:4 common [3] - 88:9, 88:10, 88:41 commonalities [1] - 57:9 commonplace [1] - 15:42 Commonwealth [1] - 23:28 communicate [1] - 23:26 communication [7] - 28:5, 49:40, 49:42, 52:16, 52:18, 86:35, 86:41 communications [7] - 69:21, 70:42, 71:10, 72:26, 72:39, 72:41, 73:30 community [47] - 9:20, 24:20, 24:27, 24:28, 24:30, 24:36, 25:6, 25:20, 26:14, 26:32, 26:42, 27:6, 27:22, 28:4, 28:6, 28:16, 31:4, 31:10, 31:11, 37:41, 37:44, 49:24, 49:34, 49:41, 51:20, 51:23, 51:39, 52:41, 55:17, 55:27, 55:32, 55:34, 55:36, 56:15, 56:26, 57:21, 57:24, 57:28, 69:27, 72:31, 76:20, 77:11, 83:35, 83:38, 87:43 community's [6] -	5:47, 6:44, 7:7, 47:26, 47:44, 88:19 comparable [1] - 13:24 comparison [1] - 52:6 compass [1] - 21:26 complaining [1] - 69:21 complaint [3] - 42:32, 42:33, 42:34 Complaints [1] - 58:46 COMPLAINTS [1] - 59:9 complete [3] - 13:5, 13:6, 89:37 completed [2] - 62:33, 75:14 completes [2] - 89:14, 89:27 complexity [2] - 14:30, 37:3 Compliance [1] - 14:3 compliance [2] - 19:20, 63:27 complicated [2] - 82:8, 88:27 complied [2] - 10:26, 18:35 comply [6] - 11:13, 32:33, 32:35, 32:46, 35:25, 43:42 component [1] - 45:16 comprehensive [2] - 20:27, 57:2 comprises [1] - 13:24 COMPRISING [1] - 15:21 concept [1] - 87:1 conceptions [1] - 72:15 conceptual [1] - 41:14 concern [3] - 57:13, 69:2, 76:12 concerned [5] - 3:32, 3:34, 35:30, 61:45, 71:33 concerns [5] - 8:40, 51:8, 76:21, 78:9, 78:13 conclude [1] - 13:3 concluded [1] - 75:43 conclusion [3] - 10:36, 13:10, 13:15 conduct [27] - 7:4, 12:31, 12:34, 13:22, 14:19, 19:15, 23:19, 23:25, 23:39, 26:12, 30:39, 32:3, 32:9, 33:7, 33:15, 33:30,	35:37, 38:45, 42:43, 43:40, 44:20, 46:29, 48:9, 48:42, 55:2, 62:2, 63:23 Conduct [14] - 4:6, 4:9, 19:3, 19:7, 32:17, 32:34, 32:47, 33:15, 42:46, 44:6, 44:19, 44:38, 58:46 CONDUCT [1] - 59:9 conducted [1] - 12:45 conducting [1] - 51:26 conferring [2] - 3:22, 3:29 confidence [16] - 5:47, 6:44, 7:7, 47:26, 47:45, 77:8, 77:14, 77:18, 77:21, 77:30, 85:30, 85:32, 86:20, 86:28, 87:45, 88:17 confident [2] - 9:36, 12:3 confidential [2] - 58:41, 59:1 CONFIDENTIAL [1] - 59:8 confined [1] - 7:22 confrontation [1] - 83:3 confusion [2] - 39:31, 40:39 consequence [2] - 4:1, 18:43 consider [9] - 4:12, 9:2, 10:4, 24:37, 24:38, 24:40, 25:6, 49:6, 50:6 considerable [1] - 7:12 consideration [11] - 6:26, 6:39, 6:40, 7:29, 8:3, 8:5, 9:36, 10:37, 46:41, 48:20, 62:20 considered [4] - 27:45, 48:19, 50:13, 57:8 consistency [2] - 85:4, 85:7 consistent [3] - 8:33, 12:46, 62:35 consistently [2] - 22:27, 29:16 consonant [2] - 35:40, 47:46 constituents [2] - 51:24, 53:46 constitute [1] - 33:41 constitutes [1] - 35:17 constrained [1] -	57:17 constraint [2] - 23:32, 23:33 constraints [1] - 57:5 constructive [4] - 42:25, 45:27, 50:25, 78:35 construe [1] - 7:2 construing [1] - 46:2 consult [3] - 27:22, 27:33, 89:45 Consultation [1] - 67:40 consultation [19] - 31:4, 31:9, 55:33, 66:19, 68:3, 68:14, 68:22, 68:27, 68:31, 68:34, 68:46, 68:47, 69:2, 69:5, 69:6, 69:32, 70:8 consultations [2] - 70:9, 76:11 consultative [1] - 24:31 Consulting [1] - 54:3 consults [1] - 36:27 contact [5] - 15:34, 15:36, 15:42, 61:12, 67:16 contain [2] - 33:21, 33:27 contained [3] - 11:3, 22:3, 44:11 contempt [1] - 36:33 content [1] - 5:10 contents [1] - 44:19 context [21] - 6:13, 6:26, 6:33, 7:3, 8:44, 23:31, 38:16, 40:20, 46:12, 47:40, 48:3, 48:28, 50:33, 50:43, 54:34, 55:1, 56:7, 68:47, 79:34, 79:35, 80:23 continually [2] - 81:11, 81:13 continue [6] - 5:6, 5:39, 44:40, 45:9, 46:9, 65:32 continuous [1] - 24:23 contract [5] - 61:29, 62:4, 62:12, 84:27, 84:28 contrary [1] - 46:27 contravenes [1] - 36:7 contravention [3] - 32:31, 33:40, 33:41 contributing [1] - 27:44 control [13] - 5:40,	26:29, 38:31, 39:38, 41:42, 42:14, 45:10, 45:13, 45:19, 45:41, 46:10, 52:44, 54:26 controlling [2] - 27:34, 27:37 convenience [1] - 57:35 convenient [3] - 40:46, 44:37, 55:41 conveniently [2] - 40:29, 56:21 conveyed [1] - 5:10 copies [1] - 19:27 copy [3] - 10:9, 23:42, 34:6 correct [6] - 16:13, 39:20, 40:27, 70:27, 71:33, 88:43 correctly [4] - 18:37, 29:23, 69:33, 77:16 correspondence [2] - 5:11, 20:4 corrupt [2] - 23:24, 48:42 costly [1] - 61:37 COUNCIL [2] - 1:12, 17:14 council [197] - 3:23, 3:26, 3:30, 3:38, 3:43, 4:1, 4:12, 4:17, 4:25, 4:27, 4:34, 4:38, 4:41, 5:6, 5:14, 5:20, 5:30, 5:32, 5:34, 5:40, 5:47, 6:10, 6:45, 7:8, 7:9, 10:12, 10:13, 11:37, 13:29, 13:37, 13:45, 14:4, 14:15, 14:41, 16:25, 16:38, 17:6, 18:43, 19:3, 19:15, 19:45, 19:47, 20:2, 20:3, 20:4, 20:6, 20:8, 20:14, 20:17, 20:28, 21:5, 21:45, 22:17, 22:19, 22:25, 22:37, 24:12, 24:32, 25:13, 25:21, 25:43, 25:45, 26:1, 26:30, 26:35, 26:38, 26:40, 26:45, 27:6, 27:10, 27:20, 27:28, 27:35, 28:16, 28:35, 30:36, 30:38, 30:40, 30:42, 30:45, 31:2, 31:6, 31:7, 31:24, 31:28, 31:45, 32:17, 32:39, 32:43, 33:17, 33:28, 33:29, 35:25, 35:36, 36:6, 36:7, 36:10,
---	--	---	---	---

<p>36:20, 36:22, 36:30, 36:33, 36:39, 37:24, 37:35, 37:41, 38:3, 38:5, 38:21, 38:23, 38:36, 38:46, 38:47, 39:2, 39:28, 41:30, 41:35, 42:8, 43:31, 44:24, 44:25, 45:10, 47:26, 47:45, 48:10, 49:1, 49:34, 50:25, 50:44, 51:16, 51:18, 51:23, 52:14, 52:27, 52:39, 53:1, 53:45, 54:22, 54:33, 55:28, 61:39, 63:12, 64:41, 65:24, 66:33, 67:2, 68:28, 68:31, 68:32, 68:34, 69:25, 69:32, 71:22, 72:15, 72:27, 72:29, 72:40, 72:41, 73:37, 74:8, 74:9, 74:24, 74:38, 75:23, 75:44, 75:45, 76:15, 76:23, 76:30, 76:44, 77:35, 78:10, 79:23, 80:8, 80:45, 81:1, 81:8, 81:11, 81:22, 82:3, 82:17, 82:20, 82:23, 82:24, 82:27, 83:16, 84:1, 84:16, 84:19, 86:11, 86:27, 86:42, 87:16</p> <p>Council [8] - 2:3, 3:14, 13:22, 20:20, 22:23, 52:12, 65:8, 66:19</p> <p>Council" [1] - 67:41</p> <p>council's [29] - 5:26, 5:38, 5:46, 6:43, 7:6, 14:31, 14:32, 27:24, 31:10, 37:20, 39:14, 41:34, 41:41, 41:43, 42:1, 45:9, 47:24, 47:44, 49:3, 51:45, 52:16, 52:18, 54:33, 75:17, 76:13, 77:9, 83:34, 87:27, 89:5</p> <p>Councillor [4] - 16:35, 16:36, 17:18, 17:24</p> <p>councillor [35] - 17:18, 28:11, 28:15, 28:32, 28:46, 30:14, 30:28, 32:28, 32:31, 32:33, 32:35, 32:38, 32:40, 32:41, 35:6, 35:8, 35:22, 35:27, 35:29, 35:34, 36:5, 36:6, 36:16, 36:29, 39:17, 40:9, 42:31, 43:22, 43:31, 43:34, 45:34, 47:10, 48:9,</p>	<p>50:39, 80:2</p> <p>councillors [92] - 4:2, 4:3, 4:5, 4:8, 4:20, 4:22, 4:33, 4:44, 5:4, 5:34, 6:10, 10:10, 13:40, 14:41, 16:3, 16:22, 16:29, 16:32, 17:38, 18:44, 18:45, 19:2, 19:6, 19:12, 24:25, 24:29, 24:36, 26:15, 26:19, 27:40, 29:31, 30:17, 30:18, 30:19, 31:17, 32:18, 33:29, 36:44, 37:27, 37:33, 37:42, 37:45, 38:10, 38:20, 38:30, 38:33, 39:22, 41:29, 41:41, 42:6, 42:23, 42:29, 42:41, 43:23, 43:40, 45:5, 45:28, 45:39, 46:4, 46:7, 46:21, 46:30, 50:22, 50:23, 50:37, 50:42, 51:2, 51:9, 52:29, 54:17, 55:27, 56:8, 56:15, 56:35, 57:29, 57:44, 67:18, 72:27, 76:14, 76:19, 76:23, 77:1, 79:45, 80:8, 82:19, 82:36, 82:37, 83:2, 86:4, 89:8</p> <p>Councillors [1] - 17:25</p> <p>Councils [1] - 13:38</p> <p>councils [16] - 13:45, 24:10, 24:15, 24:26, 24:35, 24:47, 25:5, 25:7, 25:11, 25:14, 25:17, 25:20, 25:22, 32:18, 36:42, 65:13</p> <p>Counsel [9] - 1:29, 2:6, 8:27, 9:26, 9:28, 10:17, 31:36, 48:36, 64:10</p> <p>couple [7] - 34:30, 36:35, 69:14, 76:2, 78:47, 81:6, 83:34</p> <p>course [29] - 12:29, 15:30, 16:26, 16:31, 16:32, 21:6, 22:6, 29:18, 29:29, 34:47, 37:4, 37:44, 38:17, 39:24, 42:39, 44:13, 45:4, 46:8, 47:39, 49:6, 49:33, 50:5, 51:4, 52:1, 59:16, 59:20, 59:41, 69:44, 75:35</p> <p>court [2] - 63:6, 64:32</p> <p>courts [1] - 62:35</p>	<p>cover [2] - 11:22, 66:42</p> <p>coverage [1] - 11:19</p> <p>covered [4] - 72:33, 72:36, 73:4, 83:13</p> <p>covering [1] - 15:15</p> <p>covers [1] - 13:23</p> <p>COVID [1] - 61:23</p> <p>COVID's [1] - 78:25</p> <p>COVID-19 [6] - 10:42, 61:29, 61:47, 62:5, 62:12</p> <p>creeks [1] - 52:45</p> <p>criminal [1] - 23:25</p> <p>criteria [3] - 18:38, 76:33, 76:34</p> <p>cross [2] - 34:46, 43:12</p> <p>cross-reference [1] - 34:46</p> <p>cross-referencing [1] - 43:12</p> <p>culminated [1] - 17:41</p> <p>cultural [1] - 4:32</p> <p>culture [2] - 51:16, 54:11</p> <p>cumulative [1] - 24:38</p> <p>cup [1] - 83:8</p> <p>current [8] - 5:29, 5:32, 34:22, 34:25, 37:24, 38:3, 56:30, 63:13</p> <p>curve [2] - 52:40, 52:47</p> <p>custodians [2] - 3:2, 13:32</p> <p>customer [4] - 70:43, 71:10, 72:39, 72:41</p> <p>cut [4] - 2:16, 47:4, 47:11, 59:18</p>	<p>days [8] - 5:13, 13:6, 19:43, 20:40, 58:11, 58:27, 66:32, 73:10</p> <p>DCPs [1] - 54:30</p> <p>deaf [1] - 51:11</p> <p>deal [15] - 11:24, 15:29, 15:37, 24:8, 25:25, 32:8, 33:8, 43:1, 44:12, 48:1, 51:47, 56:29, 58:34, 59:29, 67:38</p> <p>dealing [11] - 4:6, 4:9, 17:37, 19:3, 19:7, 26:25, 41:11, 58:2, 71:9, 79:24, 89:5</p> <p>deals [8] - 14:32, 21:37, 27:40, 32:23, 36:19, 38:29, 38:36, 42:38</p> <p>dealt [10] - 2:18, 17:42, 21:11, 21:25, 21:43, 44:43, 57:5, 58:42, 70:24, 89:4</p> <p>decision [17] - 24:17, 24:35, 24:41, 24:42, 28:32, 28:34, 28:35, 28:41, 28:42, 28:44, 29:7, 54:23, 67:2, 77:23, 81:8, 85:30, 85:44</p> <p>decision-makers [1] - 24:42</p> <p>decision-making [3] - 24:35, 24:41, 81:8</p> <p>decisions [22] - 24:42, 27:11, 27:25, 27:46, 28:8, 28:26, 30:45, 39:1, 41:35, 48:37, 49:1, 49:4, 49:11, 54:24, 67:19, 75:44, 76:13, 79:40, 84:29, 85:18, 85:19, 85:28</p> <p>decisive [1] - 5:3</p> <p>deem [1] - 48:45</p> <p>defective [1] - 49:31</p> <p>define [1] - 37:16</p> <p>defined [1] - 33:41</p> <p>definite [1] - 84:35</p> <p>delay [4] - 7:12, 11:12, 30:44, 73:44</p> <p>delayed [2] - 62:6, 63:27</p> <p>delays [2] - 73:40, 83:13</p> <p>delegate [1] - 36:30</p> <p>delegates [2] - 31:24, 32:18</p> <p>delineation [2] - 45:2, 45:3</p> <p>deliver [1] - 87:27</p>	<p>delivering [1] - 25:15</p> <p>delivery [3] - 26:43, 27:10, 31:12</p> <p>demarcate [1] - 38:27</p> <p>demarcation [3] - 25:26, 39:36, 40:14</p> <p>democratically [1] - 5:5</p> <p>departmental [1] - 32:36</p> <p>depth [1] - 84:41</p> <p>deputy [5] - 4:40, 16:37, 17:19, 43:16, 43:21</p> <p>Deputy [1] - 17:16</p> <p>describe [2] - 66:8, 78:9</p> <p>described [4] - 3:2, 83:28, 89:6, 89:7</p> <p>describing [1] - 43:12</p> <p>desirable [1] - 9:19</p> <p>desired [2] - 24:23, 24:26</p> <p>despite [1] - 86:5</p> <p>destroyed [2] - 55:13, 55:14</p> <p>detail [8] - 3:38, 11:3, 14:20, 17:43, 17:47, 21:11, 21:43, 61:24</p> <p>detailed [2] - 20:9, 57:3</p> <p>details [5] - 15:34, 15:36, 15:42, 15:43, 90:26</p> <p>determinations [2] - 45:29, 49:26</p> <p>determine [10] - 7:34, 8:3, 26:47, 27:14, 27:18, 37:27, 41:47, 45:23, 57:10, 62:32</p> <p>determined [5] - 8:35, 10:43, 31:26, 57:26, 62:32</p> <p>determining [1] - 10:20</p> <p>detract [1] - 9:8</p> <p>develop [2] - 25:8, 26:42</p> <p>development [19] - 8:41, 24:40, 25:4, 28:1, 30:47, 54:26, 64:44, 67:15, 69:39, 69:40, 72:18, 74:38, 74:42, 75:10, 75:36, 76:33, 80:19, 80:28, 83:27</p> <p>Development [1] - 75:20</p> <p>development" [1] - 74:34</p>
---	--	---	---	--

<p>developments ^[1] - 8:41</p> <p>device ^[1] - 12:19</p> <p>devoid ^[1] - 49:17</p> <p>diagram ^[1] - 40:9</p> <p>difference ^[1] - 88:11</p> <p>differences ^[2] - 44:12, 44:13</p> <p>different ^[11] - 22:34, 39:32, 41:13, 41:14, 46:36, 47:35, 65:20, 69:19, 77:39, 80:9, 80:31</p> <p>differing ^[1] - 88:33</p> <p>difficult ^[7] - 52:31, 67:23, 72:25, 72:46, 74:11, 74:23, 81:33</p> <p>difficulties ^[1] - 11:47</p> <p>difficulty ^[1] - 73:1</p> <p>diminish ^[1] - 56:45</p> <p>direct ^[20] - 5:39, 6:10, 6:21, 26:29, 38:31, 39:38, 40:15, 40:20, 40:21, 41:42, 42:13, 45:10, 45:13, 45:19, 45:40, 46:9, 57:19, 63:35, 66:43, 83:25</p> <p>directed ^[3] - 8:30, 8:45, 62:10</p> <p>directing ^[2] - 27:34, 27:37</p> <p>direction ^[16] - 10:7, 10:9, 10:16, 10:25, 11:3, 11:5, 11:11, 11:13, 13:9, 31:44, 38:21, 61:15, 61:25, 62:12, 63:18, 63:28</p> <p>directions ^[3] - 13:10, 63:10, 64:5</p> <p>directly ^[8] - 6:42, 8:31, 10:46, 13:12, 25:39, 61:21, 63:11, 77:40</p> <p>director ^[1] - 66:33</p> <p>directors ^[1] - 31:30</p> <p>disagree ^[3] - 63:17, 85:34, 85:41</p> <p>disagreeing ^[2] - 75:6, 83:6</p> <p>disagrees ^[1] - 28:32</p> <p>disappointed ^[2] - 63:18, 83:9</p> <p>discard ^[1] - 50:7</p> <p>discern ^[2] - 23:4, 86:18</p> <p>discharge ^[1] - 31:20</p> <p>discontinued ^[1] - 55:31</p> <p>discretion ^[1] - 12:31</p> <p>discuss ^[1] - 4:43</p>	<p>discussed ^[3] - 57:6, 57:8, 87:37</p> <p>discussions ^[1] - 79:29</p> <p>dismiss ^[2] - 40:15, 45:33</p> <p>disorder ^[7] - 32:37, 33:3, 35:10, 35:17, 35:30, 35:45, 36:5</p> <p>disorderly ^[1] - 35:37</p> <p>displeasure ^[1] - 62:17</p> <p>disrespectful ^[1] - 89:6</p> <p>disruption ^[2] - 12:38, 12:42</p> <p>dissatisfaction ^[1] - 63:20</p> <p>distinct ^[6] - 22:38, 23:8, 27:41, 38:32, 41:17, 46:6</p> <p>distinction ^[7] - 38:18, 38:26, 39:23, 39:38, 41:12, 42:13, 46:3</p> <p>distinctions ^[1] - 23:3</p> <p>distinguish ^[2] - 22:46, 67:13</p> <p>divergent ^[1] - 88:37</p> <p>diverse ^[2] - 24:20, 24:36</p> <p>diverted ^[1] - 63:28</p> <p>divided ^[2] - 88:19, 88:35</p> <p>Division ^[2] - 8:16, 23:20</p> <p>document ^[23] - 22:10, 39:20, 44:11, 44:14, 55:39, 55:41, 58:47, 59:6, 67:40, 67:41, 67:44, 70:7, 70:14, 70:15, 71:22, 75:14, 78:16, 78:19, 79:2, 83:30, 87:10, 87:11, 87:14</p> <p>document's ^[1] - 75:28</p> <p>documentary ^[5] - 9:17, 9:39, 15:25, 50:47, 58:33</p> <p>documentation ^[3] - 75:1, 81:23, 81:26</p> <p>DOCUMENTS ^[2] - 18:18, 59:8</p> <p>documents ^[18] - 8:20, 9:11, 9:34, 10:20, 15:14, 18:15, 20:16, 23:36, 23:38, 32:3, 45:3, 49:32, 53:43, 58:46, 75:28, 75:30, 87:32, 88:15</p>	<p>dog ^[1] - 52:44</p> <p>done ^[16] - 9:46, 15:45, 18:23, 29:16, 29:19, 31:34, 31:35, 44:29, 66:36, 68:17, 70:32, 71:5, 81:24, 82:4, 88:38, 89:19</p> <p>dot ^[1] - 81:18</p> <p>double ^[1] - 56:39</p> <p>doubt ^[1] - 16:33</p> <p>doughnut ^[1] - 52:11</p> <p>down ^[17] - 2:8, 19:9, 30:9, 43:26, 44:32, 46:42, 54:44, 67:2, 69:19, 71:22, 76:8, 78:21, 78:28, 80:47, 81:14, 83:46, 84:1</p> <p>draft ^[5] - 19:22, 19:30, 19:32, 19:45, 20:33</p> <p>drain ^[1] - 44:32</p> <p>draw ^[12] - 19:34, 23:37, 32:2, 34:19, 34:46, 36:35, 43:10, 54:2, 56:13, 57:9, 87:39, 89:16</p> <p>drawing ^[1] - 53:42</p> <p>drawn ^[1] - 62:28</p> <p>drift ^[1] - 88:28</p> <p>drill ^[1] - 46:42</p> <p>driving ^[1] - 69:37</p> <p>due ^[17] - 2:36, 9:35, 15:29, 16:26, 16:32, 21:6, 22:6, 34:47, 39:24, 42:39, 44:13, 45:4, 49:33, 51:4, 52:1, 59:16, 72:27</p> <p>Duncan ^[2] - 16:4, 17:18</p> <p>duration ^[1] - 11:38</p> <p>during ^[19] - 3:40, 5:29, 5:32, 9:12, 9:26, 10:23, 10:28, 12:28, 13:43, 16:38, 22:19, 37:24, 37:29, 38:3, 43:30, 59:20, 62:44, 65:7, 68:21</p> <p>duty ^[1] - 42:27</p> <p>dysfunction ^[2] - 4:4, 18:46</p>	<p>economic ^[10] - 74:38, 74:42, 74:46, 75:1, 75:10, 75:36, 80:19, 80:28, 80:33, 83:27</p> <p>Economic ^[1] - 75:20</p> <p>economics ^[2] - 74:45, 75:6</p> <p>ED ^[1] - 83:10</p> <p>effect ^[11] - 38:19, 54:43, 55:17, 61:47, 62:2, 65:32, 71:40, 77:8, 77:13, 86:19, 90:3</p> <p>effecting ^[1] - 4:32</p> <p>effective ^[13] - 4:22, 5:45, 6:42, 7:5, 24:16, 24:19, 26:31, 32:42, 41:33, 47:24, 47:43, 72:26, 83:17</p> <p>effectively ^[5] - 25:21, 31:20, 44:18, 54:37, 84:10</p> <p>effects ^[2] - 10:42, 24:39</p> <p>efficient ^[6] - 7:11, 12:31, 24:19, 41:33, 55:2, 63:22</p> <p>efficiently ^[1] - 27:28</p> <p>effort ^[1] - 9:22</p> <p>efforts ^[2] - 28:9, 30:12</p> <p>eight ^[1] - 14:43</p> <p>either ^[9] - 22:47, 25:46, 34:6, 67:8, 67:11, 68:15, 78:11, 79:29, 79:45</p> <p>elaboration ^[1] - 57:4</p> <p>Elders ^[1] - 3:3</p> <p>Eleanor ^[1] - 90:22</p> <p>elected ^[26] - 3:27, 5:5, 5:33, 6:17, 13:41, 13:43, 14:37, 14:38, 14:41, 16:3, 16:36, 16:37, 17:18, 17:19, 17:38, 20:27, 22:25, 22:39, 30:19, 32:4, 38:5, 38:19, 43:22, 54:22, 57:38</p> <p>election ^[5] - 16:2, 17:21, 24:2, 33:23, 43:26</p> <p>elections ^[2] - 14:42, 65:24</p> <p>electronic ^[5] - 16:38, 16:39, 16:47, 17:6, 19:21</p> <p>ELECTRONIC ^[1] - 17:13</p> <p>elects ^[1] - 13:40</p> <p>element ^[1] - 37:31</p>	<p>email ^[1] - 69:6</p> <p>emanate ^[1] - 13:47</p> <p>embark ^[1] - 47:9</p> <p>embrace ^[1] - 48:38</p> <p>emerging ^[1] - 3:4</p> <p>emphasis ^[1] - 20:22</p> <p>emphasise ^[1] - 57:33</p> <p>employee ^[2] - 3:26, 3:33</p> <p>employers ^[1] - 24:31</p> <p>employing ^[1] - 75:38</p> <p>employment ^[1] - 75:8</p> <p>employs ^[1] - 13:39</p> <p>enable ^[2] - 11:39, 43:35</p> <p>enclosing ^[1] - 18:21</p> <p>encounter ^[1] - 11:47</p> <p>end ^[10] - 8:23, 9:17, 15:8, 55:5, 75:26, 80:37, 81:47, 83:8, 83:21, 90:29</p> <p>endeavour ^[2] - 58:13, 61:35</p> <p>endeavoured ^[1] - 57:18</p> <p>endeavouring ^[2] - 12:41, 56:22</p> <p>endorse ^[1] - 26:42</p> <p>enforcement ^[2] - 23:27, 48:44</p> <p>Enforcement ^[1] - 14:3</p> <p>engage ^[4] - 6:38, 71:28, 87:11, 87:16</p> <p>engaged ^[4] - 35:37, 40:26, 66:9, 86:32</p> <p>Engagement ^[1] - 86:36</p> <p>engagement ^[1] - 31:11</p> <p>engages ^[1] - 71:22</p> <p>enhancements ^[1] - 73:5</p> <p>enquire ^[1] - 2:8</p> <p>enquiries ^[1] - 8:34</p> <p>enquiry ^[1] - 7:10</p> <p>enquiry's ^[1] - 11:29</p> <p>enrolled ^[1] - 14:47</p> <p>ensure ^[17] - 11:18, 11:26, 12:31, 12:37, 20:25, 20:31, 25:11, 26:34, 26:37, 31:16, 57:43, 61:45, 62:33, 63:10, 63:22, 64:34, 73:38</p> <p>ensuring ^[1] - 27:27</p> <p>entirely ^[1] - 34:9</p> <p>entitled ^[1] - 25:44</p> <p>environment ^[1] - 24:32</p>
E				
<p>early ^[1] - 90:30</p> <p>ease ^[1] - 22:36</p> <p>east ^[1] - 85:4</p> <p>easy ^[2] - 23:4, 88:41</p> <p>ecologically ^[1] - 24:40</p>				

Environmental [3] - 22:33, 54:37, 76:34 equivalent [1] - 13:40 ergo [1] - 41:16 Ernest [1] - 54:2 especially [3] - 45:25, 49:23, 54:18 establish [1] - 3:16 established [6] - 5:19, 8:29, 8:34, 46:14, 76:17, 76:46 establishing [1] - 5:23 establishment [1] - 3:36 et [2] - 63:14, 77:3 ethically [1] - 24:29 evaluate [1] - 25:13 event [9] - 12:44, 13:4, 47:41, 55:16, 63:36, 69:17, 81:25, 83:28, 83:36 events [5] - 6:23, 6:26, 21:44, 55:1, 81:38 eventually [1] - 19:33 evidence [50] - 2:14, 2:36, 3:40, 4:2, 7:33, 8:7, 8:19, 9:16, 9:26, 9:29, 9:30, 9:39, 9:44, 10:2, 10:3, 10:18, 10:23, 10:28, 10:37, 10:47, 13:4, 13:7, 13:10, 13:13, 13:15, 18:44, 25:22, 26:14, 37:40, 37:44, 49:39, 50:20, 50:23, 50:28, 50:36, 50:39, 50:47, 55:41, 56:34, 57:3, 57:11, 57:39, 59:20, 61:36, 64:32, 67:47, 89:15, 89:28, 89:38 evidence-based [1] - 25:22 evident [1] - 73:40 ex [2] - 51:20, 56:34 ex-staff [2] - 51:20, 56:34 exactly [1] - 77:27 exam [1] - 82:32 examination [5] - 20:41, 30:25, 43:39, 50:19, 51:5 EXAMINATION [1] - 64:24 examinations [1] - 56:10 examine [1] - 8:42 examined [3] - 9:12, 56:16, 56:43 examining [2] - 55:30,	55:35 example [9] - 8:40, 43:4, 44:6, 49:30, 49:45, 81:41, 86:2, 88:6, 88:7 examples [4] - 42:45, 69:36, 77:6, 87:4 excellent [2] - 13:28, 52:28 exceptionally [1] - 6:32 excess [1] - 50:11 exclude [1] - 56:45 excuse [1] - 89:16 excused [3] - 89:23, 89:28, 89:33 executive [5] - 22:47, 51:16, 54:42, 56:8, 66:33 Executive [1] - 32:36 exercise [5] - 24:11, 26:3, 27:12, 31:23, 61:37 exercised [2] - 7:43, 9:42 Exeter [1] - 13:27 exhaustive [1] - 56:12 Exhibit [9] - 15:19, 17:1, 17:5, 18:15, 22:3, 58:45, 59:13, 67:4, 79:5 EXHIBIT [4] - 15:21, 17:13, 18:18, 59:8 exhibits [2] - 15:25, 63:2 exist [1] - 40:42 existed [1] - 57:23 existing [1] - 68:39 exists [1] - 13:14 expand [1] - 17:40 expect [11] - 3:39, 10:25, 12:1, 49:24, 50:27, 50:36, 50:40, 51:15, 51:19, 55:16, 56:19 expected [1] - 58:10 expel [1] - 35:6 expelled [4] - 25:46, 26:8, 35:24, 35:36 expended [1] - 61:33 experience [8] - 12:34, 14:12, 55:20, 57:19, 65:12, 79:16, 79:30, 84:6 explain [5] - 57:45, 68:2, 72:11, 73:6, 77:36 explaining [1] - 46:35 explanation [1] - 85:27	explanations [2] - 45:2, 85:29 exploration [1] - 20:41 explore [3] - 3:38, 39:24, 50:42 explored [16] - 9:3, 9:11, 9:16, 9:21, 9:33, 9:38, 21:6, 21:21, 26:15, 29:9, 30:17, 30:21, 37:32, 45:4, 49:19, 54:41 exploring [1] - 38:33 express [3] - 9:21, 29:6, 85:15 expressed [6] - 47:36, 51:8, 62:39, 76:12, 85:14, 86:47 expressing [1] - 69:2 expressions [1] - 7:32 expressly [3] - 6:12, 57:14, 76:25 expulsion [2] - 26:4, 35:27 extend [1] - 3:4 extended [3] - 5:17, 5:20, 23:12 extension [2] - 4:46, 21:12 extensively [1] - 32:8 extent [3] - 6:23, 14:30, 73:4 extra [1] - 78:47 extraordinary [4] - 4:11, 4:37, 19:47, 51:12 extrapolate [1] - 57:42 extrapolation [1] - 53:20 extremely [1] - 13:29	factors [1] - 56:44 facts [1] - 8:1 factual [3] - 8:12, 46:31, 47:13 failed [2] - 35:25, 43:41 failing [2] - 14:8, 29:7 fails [1] - 12:7 failure [4] - 11:12, 32:32, 32:34, 32:46 fair [3] - 65:12, 69:26, 71:37 fairly [2] - 24:29, 29:12 fairness [2] - 8:9, 18:29 fall [8] - 8:39, 8:44, 9:38, 11:8, 48:14, 50:8, 50:13, 57:7 falling [2] - 6:41, 11:7 falls [1] - 48:19 familiar [1] - 16:33 familiarise [2] - 11:10, 42:41 family [1] - 12:41 far [3] - 26:34, 26:37, 71:32 fault [1] - 12:7 favourites [1] - 71:30 favouritism [2] - 85:9, 87:8 feasible [1] - 58:19 feature [1] - 88:23 features [1] - 7:18 February [2] - 51:39, 51:41 feedback [10] - 2:9, 67:12, 68:11, 68:35, 68:39, 68:41, 69:31, 79:10, 79:15, 84:41 felt [5] - 51:10, 63:29, 66:36, 67:21, 69:11 festival [2] - 81:46, 85:21 few [11] - 37:12, 37:18, 41:45, 43:1, 50:30, 54:13, 65:38, 69:39, 69:45, 77:43, 78:25 fifth [1] - 83:13 fifthly [1] - 7:45 files [1] - 20:17 fill [1] - 13:29 final [6] - 10:35, 10:37, 13:11, 29:32, 37:6, 56:35 finally [6] - 8:7, 9:1, 20:25, 27:27, 62:39, 87:20 financial [2] - 26:34, 66:12 finder [1] - 57:21	findings [9] - 7:28, 7:31, 7:34, 7:39, 8:2, 8:10, 10:5, 23:24, 45:29 fine [3] - 55:47, 59:27, 88:30 finish [1] - 78:46 finished [2] - 84:46, 85:46 fires [1] - 55:13 first [31] - 2:1, 7:22, 13:7, 16:5, 16:14, 16:35, 37:12, 37:20, 37:31, 38:45, 39:29, 45:17, 49:23, 51:12, 53:18, 56:25, 56:33, 56:38, 57:44, 58:3, 60:3, 63:42, 69:41, 70:41, 71:9, 79:21, 84:45, 85:45, 86:2, 89:4 firstly [3] - 37:26, 50:36, 64:39 fit [6] - 8:8, 33:39, 48:45, 49:47, 59:39, 87:44 five [2] - 65:26, 75:40 fix [1] - 81:3 fixed [1] - 45:22 flag [8] - 22:11, 30:16, 43:1, 43:9, 44:6, 44:27, 51:32, 54:47 flesh [1] - 39:45 flexibility [1] - 48:8 fobbed [1] - 79:46 focus [15] - 6:29, 45:38, 47:42, 49:12, 49:37, 70:24, 70:25, 70:29, 71:9, 71:15, 73:7, 73:20, 74:32, 74:35, 87:30 focused [3] - 70:42, 73:5, 87:41 focuses [1] - 14:37 follow [2] - 73:34, 80:1 follow-up [1] - 80:1 followed [9] - 18:3, 21:44, 56:33, 86:26, 90:12, 90:13, 90:21, 90:22 following [13] - 7:20, 8:4, 13:15, 22:36, 23:10, 24:10, 24:34, 25:3, 30:39, 32:29, 58:10, 58:11, 77:30 follows [4] - 3:41, 16:4, 18:40, 26:27 Food [3] - 69:16, 82:5, 82:13 food [2] - 69:17, 81:46
---	--	--	--	--

<p>foreshadow ^[1] - 50:30</p> <p>foreshadowed ^[1] - 53:17</p> <p>foreshadowing ^[1] - 19:10</p> <p>forgot ^[1] - 14:5</p> <p>form ^[10] - 9:17, 9:39, 11:41, 16:39, 21:4, 31:4, 34:20, 36:45, 59:3, 63:37</p> <p>formal ^[2] - 72:3, 72:12</p> <p>formality ^[1] - 64:26</p> <p>formally ^[4] - 2:47, 15:12, 58:36, 58:37</p> <p>formed ^[5] - 4:29, 10:34, 10:36, 27:46, 57:39</p> <p>former ^[2] - 13:38, 45:22</p> <p>forming ^[1] - 72:16</p> <p>forms ^[1] - 10:4</p> <p>forward ^[4] - 11:23, 45:40, 46:42, 78:29</p> <p>forwarded ^[1] - 63:36</p> <p>four ^[4] - 2:24, 5:24, 13:24, 65:23</p> <p>fourth ^[1] - 81:18</p> <p>fourthly ^[2] - 7:37, 51:22</p> <p>framework ^[7] - 24:18, 24:22, 25:5, 28:2, 40:2, 44:47, 51:46</p> <p>frameworks ^[1] - 39:28</p> <p>frankly ^[1] - 11:39</p> <p>free ^[2] - 73:7, 89:28</p> <p>frequently ^[1] - 51:7</p> <p>Friends ^[2] - 90:11, 90:13</p> <p>front ^[7] - 15:1, 19:23, 30:8, 34:2, 67:39, 79:1, 83:2</p> <p>fulfil ^[4] - 5:41, 37:38, 45:12, 45:41</p> <p>fulfilled ^[1] - 37:29</p> <p>full ^[1] - 13:39</p> <p>full-time ^[1] - 13:39</p> <p>fully ^[5] - 5:27, 11:21, 37:21, 37:27, 57:45</p> <p>fulsome ^[2] - 11:18, 61:14</p> <p>function ^[5] - 8:3, 10:31, 40:33, 49:19, 49:22</p> <p>functionality ^[1] - 52:41</p> <p>functioning ^[1] - 32:42</p>	<p>functions ^[24] - 3:23, 3:29, 5:36, 5:46, 6:43, 7:6, 13:46, 14:31, 24:11, 24:22, 25:1, 27:12, 30:35, 30:39, 31:21, 31:23, 31:32, 38:13, 38:40, 38:44, 47:25, 47:44, 76:23, 81:22</p> <p>funding ^[1] - 81:3</p> <p>future ^[9] - 14:10, 24:39, 45:15, 45:26, 50:25, 83:17, 83:26, 83:30, 87:28</p>	<p>25:11, 25:14, 25:16, 40:1</p> <p>gonna ^[4] - 71:28, 77:24, 82:7, 83:32</p> <p>Gordon ^[1] - 16:7</p> <p>govern ^[2] - 23:38, 32:4</p> <p>governance ^[2] - 73:37, 73:41</p> <p>governed ^[1] - 22:26</p> <p>governing ^[47] - 5:14, 5:26, 5:38, 6:9, 6:18, 13:22, 13:41, 14:20, 14:33, 14:37, 16:3, 21:8, 22:24, 22:38, 23:39, 24:2, 26:18, 26:26, 26:27, 27:31, 27:41, 27:45, 27:47, 28:6, 28:8, 28:26, 28:44, 30:46, 31:3, 31:10, 31:43, 32:5, 37:21, 38:8, 38:29, 39:39, 39:46, 40:26, 40:32, 40:35, 41:17, 45:9, 45:19, 45:26, 46:9, 54:29, 54:43</p> <p>government ^[5] - 34:32, 72:45, 77:25, 77:26, 85:24</p> <p>Government ^[25] - 3:12, 3:14, 3:15, 3:21, 4:19, 5:41, 6:5, 7:41, 8:25, 8:35, 14:2, 14:16, 18:4, 21:41, 22:17, 23:40, 24:1, 24:26, 25:29, 26:17, 45:11, 56:32, 64:46, 81:2</p> <p>Graham ^[2] - 16:5, 16:6</p> <p>grant ^[2] - 2:23, 2:29</p> <p>granted ^[2] - 11:19, 59:30</p> <p>grateful ^[1] - 78:36</p> <p>great ^[2] - 78:40, 83:44</p> <p>greater ^[1] - 63:5</p> <p>green ^[1] - 83:39</p> <p>Greens ^[1] - 16:7</p> <p>grey ^[3] - 29:4, 29:8, 40:34</p> <p>ground ^[1] - 88:41</p> <p>grounds ^[1] - 26:9</p> <p>Group ^[1] - 82:13</p> <p>group ^[8] - 16:10, 41:42, 65:19, 65:22, 65:29, 66:17, 73:18, 78:10</p> <p>groups ^[23] - 14:43, 56:21, 56:22, 65:33,</p>	<p>65:39, 65:40, 65:43, 65:47, 66:1, 66:4, 66:11, 66:13, 68:28, 71:41, 72:16, 75:4, 77:17, 77:44, 80:30, 81:7, 81:8, 81:10, 81:16</p> <p>grow ^[1] - 80:42</p> <p>grows ^[1] - 75:27</p> <p>growth ^[3] - 73:28, 74:46, 75:1</p> <p>guaranteed ^[1] - 58:26</p> <p>guess ^[2] - 49:3, 77:17</p> <p>guide ^[1] - 42:42</p> <p>guideline ^[1] - 23:36</p> <p>guiding ^[2] - 24:10, 39:43</p> <p>Gundungurra ^[2] - 3:1, 13:32</p> <p>guys ^[3] - 72:45, 83:41, 89:19</p>	<p>44:34, 55:20, 61:16, 61:20, 62:26, 62:42, 74:5, 74:24</p> <p>hearings ^[27] - 2:2, 8:19, 9:12, 9:27, 10:9, 10:24, 10:41, 11:2, 11:6, 11:27, 11:36, 11:39, 12:6, 12:11, 12:34, 12:45, 13:3, 13:5, 61:18, 61:23, 61:34, 61:46, 62:6, 62:33, 62:45, 63:26</p> <p>heart ^[1] - 6:27</p> <p>held ^[8] - 3:33, 4:12, 4:38, 14:42, 17:16, 17:22, 17:43, 88:38</p> <p>help ^[9] - 16:29, 50:33, 64:18, 66:21, 66:29, 75:1, 80:41, 83:3, 85:40</p> <p>helpful ^[1] - 9:10</p> <p>helpfully ^[1] - 52:38</p> <p>helping ^[1] - 85:32</p> <p>helps ^[2] - 71:3, 83:4</p> <p>heritage ^[1] - 52:46</p> <p>herself ^[1] - 40:27</p> <p>Hewson ^[3] - 1:31, 2:7, 8:25</p> <p>high ^[6] - 38:37, 39:31, 52:9, 52:10, 84:15, 84:19</p> <p>high-level ^[2] - 38:37, 52:9</p> <p>higher ^[2] - 13:35, 66:35</p> <p>Highlands ^[5] - 64:40, 65:16, 71:14, 84:33, 88:25</p> <p>hire ^[1] - 84:27</p> <p>history ^[3] - 7:9, 17:41, 65:18</p> <p>hitting ^[1] - 69:44</p> <p>hold ^[2] - 3:13, 19:47</p> <p>honestly ^[1] - 27:28</p> <p>honesty ^[1] - 42:28</p> <p>Honourable ^[1] - 3:12</p> <p>hope ^[4] - 64:31, 82:14, 82:45, 90:30</p> <p>hopeful ^[1] - 14:12</p> <p>Horton ^[12] - 58:3, 63:43, 63:45, 64:22, 64:26, 64:28, 66:28, 78:43, 89:14, 89:23, 89:25, 89:27</p> <p>HORTON ^[4] - 63:47, 64:2, 64:15, 64:20</p> <p>hostility ^[3] - 4:2, 18:44, 19:13</p> <p>hourglass ^[2] - 39:14,</p>
G				
<p>gained ^[1] - 9:9</p> <p>Gair ^[2] - 16:4, 17:18</p> <p>gallery ^[1] - 65:4</p> <p>gap ^[1] - 16:42</p> <p>Garry ^[2] - 16:19, 17:19</p> <p>Gazette ^[2] - 6:5, 34:44</p> <p>gazetted ^[1] - 17:45</p> <p>gazetting ^[1] - 23:14</p> <p>general ^[37] - 3:40, 10:12, 17:21, 22:37, 24:11, 26:19, 27:15, 27:33, 30:35, 30:38, 31:24, 31:46, 34:32, 38:40, 38:44, 39:40, 40:3, 40:15, 40:26, 40:32, 40:33, 41:16, 41:32, 41:40, 42:9, 42:34, 42:35, 44:20, 47:47, 48:42, 51:12, 56:32, 63:13, 66:3, 68:34, 74:22, 82:18</p> <p>generally ^[6] - 23:21, 58:7, 59:21, 59:29, 68:26, 83:16</p> <p>generations ^[1] - 24:39</p> <p>geographical ^[1] - 13:30</p> <p>gig ^[1] - 67:26</p> <p>given ^[25] - 2:17, 9:35, 10:47, 13:13, 21:28, 23:18, 31:17, 37:15, 42:40, 57:4, 57:17, 57:34, 59:23, 61:39, 62:21, 63:10, 63:29, 63:33, 64:4, 67:47, 68:10, 78:37, 78:38, 85:29, 86:2</p> <p>Glover ^[1] - 1:25</p> <p>goals ^[6] - 25:7, 25:9,</p>				
H				
<p>H-o-r-t-o-n ^[1] - 64:29</p> <p>Halstead ^[5] - 16:19, 16:36, 17:16, 17:26, 17:32</p> <p>Hancock ^[6] - 3:12, 17:44, 18:23, 21:45, 23:12, 37:11</p> <p>hand ^[5] - 3:9, 41:17, 42:14, 52:16, 54:11</p> <p>handbook ^[2] - 39:18, 40:9</p> <p>hands ^[1] - 70:37</p> <p>happy ^[2] - 68:9, 78:15</p> <p>hard ^[5] - 12:10, 19:27, 34:6, 44:32, 69:7</p> <p>Haslinger ^[1] - 90:10</p> <p>headed ^[1] - 58:46</p> <p>HEADED ^[1] - 59:8</p> <p>heading ^[5] - 80:39, 84:42, 85:44, 86:35, 87:20</p> <p>health ^[5] - 3:47, 17:25, 18:42, 52:44, 57:16</p> <p>Health ^[1] - 52:47</p> <p>hear ^[7] - 6:34, 38:17, 46:26, 50:36, 58:5, 62:25, 89:7</p> <p>heard ^[9] - 43:36, 48:12, 48:23, 59:42, 59:43, 59:45, 73:10, 74:22, 83:40</p> <p>hearing ^[12] - 10:44, 11:2, 12:18, 16:32,</p>				

39:21 housing [2] - 75:9, 83:31 huge [2] - 81:31, 88:10	importantly [1] - 7:45 impose [1] - 7:47 imposed [1] - 33:36 imposing [2] - 3:22, 3:29 imposition [1] - 4:14 impression [1] - 67:11 improper [5] - 5:33, 10:3, 36:28, 38:4, 44:47 improve [2] - 20:10, 55:2 improved [2] - 70:42, 71:10 improvement [1] - 64:45 Improvement [17] - 3:45, 4:14, 4:18, 4:20, 4:30, 5:7, 18:6, 18:22, 18:25, 18:33, 19:20, 19:40, 19:46, 20:6, 20:21, 20:33, 21:23 improvements [1] - 24:23 improving [1] - 4:34 imputes [1] - 36:28 IN [1] - 17:14 in my submission [11] - 31:42, 35:40, 37:26, 38:15, 38:20, 39:44, 45:16, 45:38, 48:33, 50:17, 55:25 in-depth [1] - 84:41 inability [2] - 67:15, 67:16 inadequate [1] - 21:7 include [5] - 7:1, 7:19, 8:37, 15:33, 20:27 including [7] - 19:20, 20:16, 23:15, 23:27, 27:5, 27:10, 36:11 inconsistency [1] - 54:32 inconsistent [3] - 33:19, 33:27, 36:31 incorporated [2] - 33:5, 36:11 indeed [2] - 21:32, 79:15 Independent [7] - 16:4, 16:6, 16:18, 16:19, 16:20, 16:21 independent [1] - 4:24 indeterminate [1] - 7:10 index [1] - 52:37 indicate [5] - 4:5, 4:7, 10:33, 19:1, 19:5 indicated [1] - 90:26	indication [2] - 9:30, 58:27 indicative [2] - 21:8, 21:14 indistinct [2] - 78:6, 83:10 individual [17] - 5:34, 8:42, 9:45, 16:10, 16:14, 27:41, 37:32, 38:10, 38:36, 45:28, 46:4, 46:7, 46:21, 46:30, 49:38, 49:46, 49:47 individually [1] - 59:25 individuals [3] - 8:31, 9:25, 47:16 induction [2] - 30:18, 37:34 industries [3] - 66:9, 66:11, 80:32 Industries' [1] - 71:15 Industry [2] - 64:41, 65:17 inevitable [1] - 12:42 inevitably [1] - 62:5 inexperience [1] - 84:16 infer [1] - 57:22 infighting [1] - 67:18 inform [1] - 8:8 information [9] - 16:37, 23:26, 31:18, 44:25, 48:45, 63:36, 66:4, 78:24, 82:26 informed [5] - 27:24, 37:33, 37:40, 48:9, 62:16 informing [1] - 6:25 informs [1] - 47:47 initial [1] - 20:38 Initiatives [1] - 74:33 Inn [1] - 1:19 input [1] - 9:20 inquire [6] - 6:9, 7:23, 37:28, 45:20, 45:23, 56:6 inquiries [1] - 15:42 inquiry [80] - 3:13, 3:16, 3:36, 5:19, 5:23, 5:44, 6:30, 7:16, 7:17, 7:18, 7:22, 7:27, 8:8, 8:18, 8:20, 8:26, 8:29, 8:32, 8:42, 9:2, 9:4, 9:6, 9:18, 9:23, 9:32, 9:34, 9:44, 9:47, 10:19, 10:35, 10:45, 11:24, 12:10, 13:21, 14:18, 14:32, 14:36,	15:41, 16:4, 17:42, 17:43, 18:3, 21:28, 23:14, 23:19, 23:34, 29:29, 36:45, 37:9, 38:18, 45:35, 46:13, 47:22, 47:32, 47:41, 48:7, 48:31, 48:32, 48:35, 48:41, 50:1, 50:9, 55:2, 56:27, 57:18, 59:29, 61:13, 61:31, 62:2, 62:4, 62:17, 62:20, 62:32, 62:40, 63:1, 63:4, 63:23, 63:30, 70:26, 78:35 INQUIRY [2] - 1:12, 90:38 Inquiry [1] - 2:3 inquiry's [6] - 6:5, 10:13, 12:23, 15:45, 50:17, 63:2 inside [1] - 67:23 insofar [3] - 49:22, 57:8, 57:19 instance [2] - 31:37, 51:12 instances [2] - 69:43, 84:15 instruct [1] - 59:39 instrument [1] - 74:44 instruments [1] - 73:27 insurances [1] - 81:33 integral [1] - 9:18 integrated [7] - 24:18, 24:21, 24:46, 25:4, 25:15, 28:1, 40:1 integrates [1] - 53:43 integrity [2] - 42:28, 44:26 intend [8] - 12:1, 13:5, 32:11, 49:33, 50:41, 56:19, 56:29, 56:35 intended [3] - 9:8, 32:41, 56:45 intends [1] - 62:18 intent [1] - 20:20 intention [11] - 3:44, 4:28, 18:8, 18:21, 18:25, 19:46, 20:5, 21:36, 22:2, 40:36, 61:19 interact [6] - 23:39, 31:42, 36:37, 37:4, 40:31, 65:7 interacted [2] - 50:44, 54:42 interaction [5] - 37:1, 39:23, 50:22, 80:2, 80:3	interactions [1] - 89:7 interacts [1] - 43:43 interchangeably [1] - 6:18 interest [4] - 24:37, 42:29, 61:43, 62:30 interested [3] - 46:26, 58:17, 90:28 interesting [3] - 83:19, 83:37 interests [7] - 8:13, 24:30, 28:3, 44:21, 44:22, 65:30, 78:5 interference [4] - 5:33, 38:4, 44:47, 54:17 interim [11] - 5:16, 10:11, 22:18, 51:17, 51:25, 51:30, 54:9, 55:8, 55:31, 56:3, 56:30 internet [1] - 15:44 interpolate [1] - 14:4 interpretation [1] - 77:39 interrupt [6] - 16:9, 20:30, 21:18, 29:27, 70:3, 74:17 interrupted [2] - 10:41, 61:46 interruption [3] - 12:4, 43:37, 62:33 interventions [1] - 3:37 interviewed [1] - 54:10 interviews [3] - 54:12, 68:5, 70:32 intrude [1] - 38:40 investigation [3] - 20:26, 20:32, 20:34 investigations [1] - 51:26 invitation [1] - 19:38 invite [1] - 13:17 invited [4] - 8:31, 69:15, 82:20, 82:24 involve [2] - 40:35, 42:6 involved [7] - 68:1, 68:3, 68:6, 70:8, 70:34, 83:34, 84:30 IPART [1] - 14:2 irregularities [1] - 56:4 Islanders [1] - 3:5 isolate [1] - 62:5 isolation [4] - 52:32, 61:30, 62:1, 62:11 issue [19] - 3:44, 4:28, 10:34, 18:8, 18:22,
---	---	--	---	--

20:5, 46:36, 47:6, 62:19, 62:21, 63:25, 63:34, 69:40, 71:21, 72:8, 72:9, 73:31, 76:29, 89:4 issued [13] - 3:43, 3:46, 4:17, 4:27, 8:30, 10:7, 18:6, 18:25, 18:26, 19:33, 20:21, 21:24, 32:36 issues [26] - 6:27, 6:37, 6:40, 7:5, 9:11, 9:15, 9:21, 9:37, 40:40, 48:20, 50:32, 53:2, 56:13, 57:6, 66:42, 67:10, 69:1, 69:9, 69:15, 69:37, 70:30, 72:46, 74:5, 75:5, 85:3, 85:25 it [1] - 86:16 it'll [2] - 34:13, 90:30 iterations [2] - 32:10, 44:10 itself [5] - 13:37, 37:10, 41:15, 63:13, 87:5	L Labor [1] - 16:5 lack [10] - 21:8, 21:14, 31:35, 54:23, 54:24, 75:22, 80:26, 83:27, 85:7, 85:17 lacking [1] - 46:19 land [3] - 3:2, 47:2, 54:38 lapse [1] - 14:17 large [2] - 21:35, 61:34 Larry [1] - 16:18 last [12] - 52:12, 57:31, 57:38, 62:36, 65:24, 65:26, 66:19, 78:21, 81:21, 84:13, 86:34, 88:27 lastly [1] - 50:17 late [2] - 73:10, 86:42 latter [1] - 45:23 law [3] - 23:27, 23:28, 48:44 lawful [1] - 30:44 lawfully [1] - 9:2 lawyers [1] - 66:11 lead [5] - 3:36, 4:4, 7:9, 18:45, 62:5 lead-up [1] - 3:36 leadership [4] - 24:16, 26:31, 54:21, 86:25 leads [2] - 49:20, 74:45 learn [1] - 88:26 least [22] - 21:20, 31:36, 32:5, 32:45, 33:18, 43:1, 43:41, 52:13, 52:17, 52:28, 55:32, 62:6, 63:21, 73:27, 74:9, 75:40, 82:19, 82:35, 82:37, 83:43, 85:36, 85:37 leave [13] - 2:23, 2:29, 15:37, 29:40, 44:38, 59:19, 59:25, 59:28, 59:30, 59:34, 59:36, 59:38, 59:40 leaving [1] - 77:6 led [2] - 49:17, 85:7 left [2] - 64:17, 70:37 legal [1] - 7:34 legislation [2] - 38:16, 46:13 legislative [1] - 20:23 length [1] - 7:10 LEP [1] - 54:35 letter [4] - 18:21, 19:19, 20:38, 21:36	level [22] - 38:37, 46:42, 52:9, 52:18, 57:28, 63:19, 64:45, 66:3, 66:35, 68:27, 68:34, 70:1, 74:47, 75:8, 77:26, 77:29, 80:44, 86:15, 86:28, 87:8, 87:45 levels [1] - 66:10 life [2] - 88:23, 88:25 life's [1] - 88:31 light [2] - 48:45, 71:2 likely [6] - 4:4, 14:13, 14:17, 18:45, 36:32, 50:46 likewise [1] - 49:1 limb [1] - 45:17 limit [2] - 10:43, 61:19 limitations [3] - 7:19, 62:41, 80:36 limited [2] - 7:1, 8:37 limps [1] - 90:3 line [7] - 12:35, 40:37, 50:37, 50:41, 55:25, 58:9, 67:16 lines [1] - 9:32 linked [1] - 87:42 list [11] - 2:17, 2:24, 13:5, 56:12, 58:10, 58:17, 70:17, 73:3, 90:5, 90:17, 90:20 listen [1] - 73:1 listening [4] - 48:31, 49:35, 51:24, 53:46 literally [1] - 7:2 live [12] - 11:22, 11:28, 11:30, 11:47, 12:15, 12:29, 12:46, 51:2, 62:44, 62:45, 88:26 live-streamed [2] - 11:28, 62:44 live-streaming [1] - 11:30 lived [1] - 64:42 lives [1] - 12:38 lobby [9] - 66:1, 72:16, 75:4, 77:17, 77:44, 80:30, 81:7, 81:8, 81:16 lobby-type [1] - 72:16 lobbying [2] - 77:45, 77:47 local [18] - 14:41, 24:20, 24:27, 24:28, 24:30, 24:36, 25:6, 25:20, 26:32, 27:7, 28:4, 28:5, 28:15, 34:32, 73:26, 76:34, 80:19, 80:28 Local [22] - 3:11, 3:14,	3:15, 3:21, 4:19, 5:40, 7:41, 8:25, 8:34, 14:2, 14:16, 18:4, 21:41, 22:17, 23:40, 24:1, 25:29, 26:17, 45:11, 54:37, 56:32 logical [1] - 57:35 logistics [1] - 82:7 long-term [1] - 24:38 look [6] - 34:22, 34:25, 66:12, 66:14, 78:20, 84:32 looked [2] - 59:4, 74:40 looking [5] - 47:11, 47:12, 53:22, 67:21, 86:31 looks [1] - 65:32 loop [1] - 42:12 loose [2] - 72:2, 72:12 loses [1] - 77:18 low [1] - 25:29 lower [1] - 53:1 luck [1] - 89:18 LUNCHEON [1] - 60:7 luncheon [3] - 61:12, 62:15, 63:31	41:16, 41:32, 41:40, 42:9, 42:34, 42:35, 56:32, 63:13, 64:45 manager's [1] - 40:3 managers [1] - 82:18 mandatory [6] - 18:38, 19:18, 33:21, 33:22, 33:28, 36:13 manifest [1] - 37:35 manifested [1] - 87:5 manifests [1] - 54:22 map [1] - 13:28 MARCH [1] - 90:39 March [14] - 1:38, 4:27, 4:36, 4:38, 4:47, 5:13, 10:7, 14:39, 17:27, 21:11, 21:44, 21:45, 22:2, 22:16 margins [1] - 81:30 Mark [1] - 90:22 marked [3] - 15:12, 16:47, 18:16 MARKED [1] - 18:18 Markwart [2] - 16:7, 17:24 mask [1] - 15:41 match [2] - 39:33, 49:39 matches [1] - 19:32 material [3] - 22:3, 23:27, 58:41 materials [1] - 31:40 matrix [4] - 10:4, 46:31, 47:13, 49:6 matter [17] - 3:20, 5:44, 7:38, 8:13, 19:18, 36:19, 36:23, 47:22, 49:18, 61:8, 62:7, 62:29, 62:31, 63:33, 64:26, 71:44, 90:2 matters [28] - 5:34, 6:9, 6:24, 6:37, 7:23, 8:38, 8:43, 9:1, 9:3, 9:5, 17:23, 18:32, 25:40, 31:7, 33:5, 36:40, 38:11, 46:35, 48:1, 49:24, 50:20, 50:23, 54:39, 56:2, 56:13, 57:43, 59:1, 76:2 maximise [1] - 25:17 may's [2] - 5:17, 5:20 Mayor [1] - 17:16 mayor [16] - 4:21, 4:40, 13:41, 16:36, 17:16, 17:18, 30:46, 31:3, 31:9, 42:36, 43:15, 43:16, 43:21	
J	Jan [1] - 90:21 job [5] - 49:2, 71:5, 77:25, 78:2, 89:20 jobs [1] - 73:20 John [1] - 90:12 judge [1] - 51:47 July [1] - 17:23 jump [1] - 43:47 jumping [2] - 68:46, 69:19 jurisdiction [1] - 36:20 justice [1] - 24:37 justify [1] - 50:19	K keen [2] - 9:14, 58:24 keep [4] - 27:9, 27:24, 83:39, 86:32 Ken [2] - 16:19, 16:36 kept [2] - 7:19, 59:5 key [2] - 25:5, 87:12 kicked [1] - 84:1 kilometres [1] - 13:23 kind [8] - 7:5, 8:43, 9:4, 9:47, 15:43, 23:4, 63:5, 85:29 knock [1] - 87:10 known [1] - 61:25	list [11] - 2:17, 2:24, 13:5, 56:12, 58:10, 58:17, 70:17, 73:3, 90:5, 90:17, 90:20 listen [1] - 73:1 listening [4] - 48:31, 49:35, 51:24, 53:46 literally [1] - 7:2 live [12] - 11:22, 11:28, 11:30, 11:47, 12:15, 12:29, 12:46, 51:2, 62:44, 62:45, 88:26 live-streamed [2] - 11:28, 62:44 live-streaming [1] - 11:30 lived [1] - 64:42 lives [1] - 12:38 lobby [9] - 66:1, 72:16, 75:4, 77:17, 77:44, 80:30, 81:7, 81:8, 81:16 lobby-type [1] - 72:16 lobbying [2] - 77:45, 77:47 local [18] - 14:41, 24:20, 24:27, 24:28, 24:30, 24:36, 25:6, 25:20, 26:32, 27:7, 28:4, 28:5, 28:15, 34:32, 73:26, 76:34, 80:19, 80:28 Local [22] - 3:11, 3:14,	M main [1] - 13:25 maintain [6] - 25:15, 28:10, 30:12, 42:24, 62:13, 72:26 maintaining [4] - 28:47, 29:17, 36:31, 44:26 majority [4] - 5:5, 6:30, 28:32, 28:34 makers [1] - 24:42 manage [5] - 12:36, 25:20, 39:39, 59:40, 61:22 managed [1] - 65:20 management [15] - 22:47, 23:1, 30:40, 31:31, 31:45, 38:21, 38:46, 41:41, 42:14, 71:19, 71:29, 72:43, 79:44, 80:2, 82:11 management's [1] - 14:34 manager [25] - 10:12, 17:21, 26:19, 27:15, 27:33, 30:36, 30:38, 31:24, 31:46, 38:41, 38:45, 39:40, 40:15, 40:27, 40:32, 40:33,	mask [1] - 15:41 match [2] - 39:33, 49:39 matches [1] - 19:32 material [3] - 22:3, 23:27, 58:41 materials [1] - 31:40 matrix [4] - 10:4, 46:31, 47:13, 49:6 matter [17] - 3:20, 5:44, 7:38, 8:13, 19:18, 36:19, 36:23, 47:22, 49:18, 61:8, 62:7, 62:29, 62:31, 63:33, 64:26, 71:44, 90:2 matters [28] - 5:34, 6:9, 6:24, 6:37, 7:23, 8:38, 8:43, 9:1, 9:3, 9:5, 17:23, 18:32, 25:40, 31:7, 33:5, 36:40, 38:11, 46:35, 48:1, 49:24, 50:20, 50:23, 54:39, 56:2, 56:13, 57:43, 59:1, 76:2 maximise [1] - 25:17 may's [2] - 5:17, 5:20 Mayor [1] - 17:16 mayor [16] - 4:21, 4:40, 13:41, 16:36, 17:16, 17:18, 30:46, 31:3, 31:9, 42:36, 43:15, 43:16, 43:21

<p>mayors [3] - 13:42, 31:16, 57:30</p> <p>McLaughlin [1] - 16:5</p> <p>mean [16] - 6:22, 29:31, 33:4, 38:7, 38:34, 39:32, 40:34, 65:29, 66:30, 72:6, 72:11, 78:4, 80:35, 81:3, 84:32, 85:24</p> <p>meaning [1] - 33:6</p> <p>means [8] - 7:18, 8:18, 32:28, 37:18, 47:30, 56:12, 70:32, 87:13</p> <p>meant [2] - 77:36, 77:37</p> <p>meat [1] - 35:39</p> <p>median [1] - 13:34</p> <p>medians [1] - 13:35</p> <p>mediation [1] - 4:23</p> <p>meet [5] - 24:20, 25:8, 25:23, 76:32, 76:33</p> <p>meeting [43] - 4:11, 4:13, 4:37, 4:38, 4:40, 16:35, 19:14, 19:47, 21:13, 25:45, 25:46, 25:47, 26:1, 26:8, 32:9, 32:38, 33:31, 35:24, 35:27, 35:36, 36:6, 36:17, 36:32, 42:45, 43:17, 43:23, 43:31, 50:24, 51:12, 69:18, 72:16, 76:30, 82:12, 82:14, 82:20, 82:24, 82:26, 82:29, 82:45, 83:9, 83:41, 86:27</p> <p>Meeting [6] - 33:40, 35:41, 36:9, 36:14, 36:39, 43:4</p> <p>MEETINGS [1] - 17:13</p> <p>meetings [23] - 4:22, 16:25, 16:30, 16:38, 17:6, 19:16, 26:12, 33:3, 33:15, 33:30, 37:35, 41:23, 42:31, 43:40, 50:47, 51:2, 69:3, 72:3, 72:12, 78:26, 82:25, 86:11</p> <p>member [13] - 3:25, 3:33, 11:43, 27:44, 27:46, 28:41, 36:29, 40:25, 42:32, 62:16, 66:32, 75:20, 82:35</p> <p>members [70] - 2:14, 5:26, 5:38, 11:16, 11:20, 11:26, 11:30, 11:35, 12:5, 20:28, 21:29, 32:18, 33:29, 37:20, 45:5, 45:8, 48:30, 49:24, 49:40,</p>	<p>51:1, 51:7, 51:10, 51:20, 51:22, 51:27, 54:10, 54:12, 55:32, 55:36, 56:25, 56:26, 56:34, 56:40, 56:43, 57:1, 57:13, 62:4, 66:9, 67:17, 68:2, 68:30, 68:35, 69:1, 69:4, 69:7, 69:47, 70:10, 70:11, 71:40, 72:25, 73:26, 73:30, 74:1, 75:45, 75:47, 76:26, 76:28, 77:35, 77:37, 77:40, 78:19, 79:15, 82:47, 84:7, 85:14, 85:15, 86:10, 86:13, 86:47, 87:41</p> <p>members' [1] - 68:26</p> <p>membership [14] - 67:20, 69:8, 69:24, 69:32, 76:31, 76:32, 77:8, 77:10, 78:14, 79:30, 80:14, 81:20, 84:6, 84:20</p> <p>memorable [1] - 51:9</p> <p>memory [3] - 66:24, 71:17, 82:32</p> <p>mentioned [2] - 81:6, 87:31</p> <p>merits [9] - 8:40, 8:42, 48:36, 49:2, 49:11, 49:38, 49:47, 55:30, 56:6</p> <p>messy [1] - 83:11</p> <p>met [2] - 65:19, 79:36</p> <p>method [1] - 18:28</p> <p>metric [2] - 51:47, 52:21</p> <p>mid [1] - 12:27</p> <p>mid-morning [1] - 12:27</p> <p>middle [1] - 67:30</p> <p>might [23] - 2:8, 6:37, 16:30, 18:31, 19:22, 21:26, 25:30, 30:7, 37:9, 40:40, 45:45, 46:30, 47:10, 47:13, 48:14, 48:31, 50:8, 58:27, 66:23, 76:3, 77:8, 78:6, 78:34</p> <p>mind [11] - 7:19, 10:35, 14:32, 30:2, 31:36, 37:5, 47:6, 54:29, 80:27, 81:44, 85:17</p> <p>minimise [1] - 12:41</p> <p>minimum [1] - 75:40</p> <p>Minister [43] - 3:11, 3:16, 3:43, 3:46, 4:15, 4:17, 4:27,</p>	<p>4:29, 4:40, 5:3, 5:11, 5:13, 5:16, 5:19, 5:23, 6:4, 7:29, 7:38, 7:40, 8:2, 8:23, 17:44, 18:23, 18:38, 19:39, 19:41, 20:8, 20:25, 20:31, 20:32, 21:13, 21:15, 21:45, 23:12, 37:11, 45:33, 46:19, 46:41, 62:30, 63:35, 63:36, 67:1</p> <p>Minister's [7] - 4:12, 8:3, 19:10, 20:3, 20:5, 50:19, 62:30</p> <p>ministerial [1] - 3:37</p> <p>minor [1] - 81:18</p> <p>minority [1] - 28:41</p> <p>MINUTES [1] - 17:13</p> <p>minutes [3] - 12:28, 17:6, 74:40</p> <p>misconception [1] - 72:14</p> <p>misconduct [5] - 32:23, 32:28, 32:47, 33:41, 36:38</p> <p>misguided [1] - 63:8</p> <p>miss [1] - 12:12</p> <p>missing [2] - 20:44, 20:46</p> <p>misunderstood [1] - 69:30</p> <p>mitigate [1] - 10:40</p> <p>Mittagong [2] - 13:25, 13:38</p> <p>mix [1] - 13:27</p> <p>mobiles [1] - 14:10</p> <p>model [8] - 33:14, 33:18, 33:19, 34:44, 35:40, 36:14, 39:14, 42:38</p> <p>moment [19] - 2:25, 22:12, 24:45, 27:38, 30:16, 34:9, 34:26, 35:1, 40:47, 44:18, 44:30, 51:32, 54:13, 58:47, 59:43, 59:45, 60:2, 84:33</p> <p>Monday [1] - 1:38</p> <p>money [3] - 69:43, 69:44, 81:30</p> <p>monies [1] - 61:38</p> <p>monitor [1] - 27:15</p> <p>monitoring [1] - 25:16</p> <p>month [1] - 69:3</p> <p>months [6] - 5:15, 23:13, 33:22, 52:12, 65:46, 78:25</p> <p>morning [11] - 2:1, 2:37, 12:27, 24:9, 40:47, 41:45, 61:9,</p>	<p>61:15, 62:24, 63:26, 90:31</p> <p>Moss [4] - 1:19, 13:25, 65:31, 65:32</p> <p>most [15] - 2:44, 10:46, 13:11, 14:17, 16:22, 37:35, 61:21, 63:11, 66:1, 69:38, 71:20, 75:47, 87:40, 88:13, 88:32</p> <p>motion [7] - 20:8, 20:14, 20:19, 20:31, 35:12, 36:18, 36:23</p> <p>motions [1] - 20:3</p> <p>motives [1] - 36:28</p> <p>move [5] - 36:17, 45:45, 48:8, 78:29, 80:32</p> <p>moved [1] - 20:2</p> <p>moves [1] - 36:17</p> <p>MP [1] - 3:12</p> <p>multiple [3] - 36:43, 44:10, 45:2</p> <p>must [14] - 6:12, 6:33, 7:19, 7:45, 32:17, 33:22, 33:27, 33:29, 42:30, 43:32, 43:35, 48:9, 58:24, 63:20</p>	<p>67:22, 72:43, 75:8, 75:16, 84:2</p> <p>needless [1] - 10:25</p> <p>needs [7] - 24:20, 24:29, 24:36, 25:6, 25:8, 25:23, 29:9</p> <p>negative [4] - 45:30, 47:31, 50:29, 84:17</p> <p>Nelson [1] - 16:21</p> <p>nerve [1] - 69:44</p> <p>Network [1] - 65:44</p> <p>network [1] - 78:26</p> <p>networking [2] - 69:3, 69:4</p> <p>never [5] - 64:31, 71:34, 71:38, 82:14, 82:45</p> <p>New [4] - 6:4, 8:26, 13:45, 64:45</p> <p>new [3] - 65:45, 71:19, 75:16</p> <p>news [2] - 62:18, 62:23</p> <p>next [15] - 19:9, 19:18, 22:10, 23:14, 30:9, 30:30, 32:2, 40:29, 56:2, 56:19, 73:44, 78:25, 80:6, 83:14, 85:44</p> <p>nicely [1] - 53:19</p> <p>Nick [1] - 90:14</p> <p>nights [1] - 69:4</p> <p>nine [6] - 13:40, 14:41, 16:21, 17:38, 37:27, 65:19</p> <p>No.4 [1] - 19:5</p> <p>No.7 [1] - 73:34</p> <p>nobody [1] - 71:45</p> <p>nomenclature [1] - 22:34</p> <p>non [4] - 33:22, 44:22, 49:1, 63:27</p> <p>non-compliance [1] - 63:27</p> <p>non-mandatory [1] - 33:22</p> <p>non-pecuniary [1] - 44:22</p> <p>non-planning [1] - 49:1</p> <p>none [6] - 2:35, 9:8, 23:21, 44:11, 56:44, 62:20</p> <p>nonetheless [1] - 30:27</p> <p>Norm [1] - 21:39</p> <p>norms [3] - 33:7, 33:9, 36:41</p> <p>notable [1] - 72:40</p> <p>note [19] - 6:16, 7:40,</p>
--	---	---	--	--

<p>10:42, 14:4, 17:23, 22:22, 23:31, 24:15, 25:40, 37:1, 38:25, 38:45, 41:24, 42:20, 44:18, 47:41, 54:13, 54:14, 58:2</p> <p>noted [4] - 57:7, 76:2, 76:15, 76:44</p> <p>nothing [4] - 10:3, 60:2, 62:44, 90:33</p> <p>notice [16] - 3:44, 3:45, 4:12, 4:28, 4:29, 4:36, 4:37, 4:47, 11:2, 18:24, 18:32, 19:43, 19:45, 19:46, 22:2, 58:26</p> <p>notifying [1] - 20:4</p> <p>noting [2] - 18:37, 29:29</p> <p>notwithstanding [1] - 49:4</p> <p>NSW [1] - 1:20</p> <p>number [20] - 6:47, 7:18, 8:36, 8:38, 8:39, 24:5, 62:8, 66:12, 66:13, 66:14, 66:42, 67:14, 68:4, 74:42, 75:21, 75:31, 75:37, 81:7, 81:22, 86:10</p> <p>numbers [3] - 25:29, 52:33, 67:29</p> <p>numerous [2] - 65:33, 65:35</p>	<p>obvious [7] - 36:41, 42:41, 55:16, 57:39, 57:42, 61:43, 67:25</p> <p>obviously [8] - 7:9, 7:17, 21:28, 23:33, 37:35, 47:38, 55:38, 58:24</p> <p>occasion [2] - 65:7, 66:3</p> <p>occasions [1] - 51:10</p> <p>occupy [1] - 2:44</p> <p>occur [4] - 11:39, 12:5, 12:42, 46:36</p> <p>occurred [3] - 6:24, 14:11, 61:13</p> <p>occurring [1] - 77:7</p> <p>occurs [1] - 12:9</p> <p>October [1] - 34:45</p> <p>OF [6] - 17:13, 17:14, 18:18, 59:8, 59:9</p> <p>offer [1] - 75:8</p> <p>Office [2] - 8:25, 56:31</p> <p>office [2] - 3:27, 3:32</p> <p>officer [3] - 11:23, 75:36, 89:45</p> <p>officers [3] - 8:25, 62:40, 63:30</p> <p>offices [1] - 17:17</p> <p>officials [2] - 42:27, 44:24</p> <p>Olsen [1] - 90:22</p> <p>omission [3] - 3:25, 3:30, 32:40</p> <p>omissions [1] - 24:43</p> <p>omitted [1] - 78:34</p> <p>once [5] - 12:24, 14:11, 33:4, 57:38, 90:27</p> <p>one [67] - 2:18, 6:32, 9:33, 10:34, 12:34, 15:15, 23:31, 28:41, 28:42, 29:5, 30:7, 34:33, 34:35, 34:46, 39:42, 39:46, 40:6, 42:14, 43:11, 46:27, 47:14, 49:3, 49:31, 51:41, 52:5, 53:30, 54:8, 59:1, 62:4, 64:32, 65:21, 65:28, 65:29, 69:16, 71:18, 71:23, 71:34, 71:36, 71:38, 72:14, 73:10, 73:21, 73:33, 75:16, 75:39, 75:42, 79:21, 80:6, 80:17, 80:32, 81:25, 81:34, 81:44, 82:18, 82:35, 83:14, 83:28, 83:35, 83:39, 84:26, 84:36, 87:10, 87:37, 87:40, 87:41,</p>	<p>88:47</p> <p>one's [1] - 14:6</p> <p>ones [4] - 34:19, 41:17, 62:11, 82:41</p> <p>ongoing [1] - 10:42</p> <p>onwards [1] - 81:9</p> <p>open [1] - 10:35</p> <p>opened [1] - 5:18</p> <p>opening [10] - 3:8, 3:9, 13:17, 13:18, 17:24, 30:20, 37:15, 43:41, 58:31, 61:9</p> <p>openings [1] - 2:44</p> <p>operate [1] - 69:42</p> <p>operating [1] - 86:20</p> <p>operation [1] - 41:34</p> <p>operational [16] - 5:34, 25:27, 27:1, 31:13, 31:38, 38:11, 38:18, 38:22, 38:32, 39:27, 39:37, 41:12, 42:16, 54:39, 73:38, 75:22</p> <p>operational/strategic [1] - 38:25</p> <p>operations [1] - 73:42</p> <p>operatively [1] - 24:25</p> <p>opinion [6] - 7:32, 19:10, 71:15, 78:39, 83:22, 83:23</p> <p>opinions [1] - 88:33</p> <p>opportunity [11] - 9:20, 13:7, 57:45, 59:42, 74:33, 78:13, 78:37, 78:38, 80:44, 85:37, 89:18</p> <p>opposition [2] - 28:47, 29:18</p> <p>optimal [1] - 27:2</p> <p>options [1] - 4:43</p> <p>oral [9] - 9:16, 9:29, 9:39, 9:44, 13:14, 26:14, 36:46, 37:5, 57:10</p> <p>order [20] - 4:28, 5:14, 7:43, 10:19, 10:40, 17:41, 17:43, 17:46, 18:8, 18:35, 19:30, 20:9, 20:39, 21:36, 22:16, 31:34, 32:35, 36:32, 57:34, 61:20</p> <p>Order [17] - 3:45, 4:15, 4:18, 4:20, 4:30, 5:8, 18:6, 18:22, 18:26, 18:34, 19:20, 19:40, 19:46, 20:6, 20:21, 20:33, 21:23</p> <p>orderly [3] - 61:22, 62:2, 63:22</p> <p>orders [3] - 19:22,</p>	<p>19:33, 23:13</p> <p>ordinarily [1] - 59:41</p> <p>ordinary [3] - 9:47, 10:30, 12:40</p> <p>organisation [8] - 22:38, 41:34, 58:8, 65:18, 65:29, 66:29, 67:9, 68:15</p> <p>organisation's [1] - 31:26</p> <p>organisational [1] - 27:19</p> <p>organisations [3] - 27:23, 56:26, 70:11</p> <p>organise [1] - 61:35</p> <p>organising [1] - 61:34</p> <p>original [1] - 17:38</p> <p>otherwise [5] - 5:41, 11:31, 45:12, 45:41, 50:18</p> <p>ought [6] - 9:5, 14:13, 15:26, 23:37, 36:42, 89:23</p> <p>outbuildings [1] - 55:14</p> <p>outcome [2] - 49:18, 49:20</p> <p>outcomes [6] - 24:23, 24:27, 39:29, 49:12, 77:23, 87:29</p> <p>outdated [2] - 54:26, 75:26</p> <p>outer [1] - 29:32</p> <p>outlet [2] - 65:4, 65:5</p> <p>outline [1] - 87:28</p> <p>outlined [1] - 7:15</p> <p>outside [7] - 8:39, 9:2, 36:20, 50:13, 57:7, 67:22, 78:11</p> <p>overall [5] - 10:4, 29:18, 52:11, 52:29, 53:22</p> <p>overarching [1] - 87:37</p> <p>overcome [1] - 85:40</p> <p>overlap [2] - 40:31, 41:18</p> <p>overlaps [1] - 45:16</p> <p>overlooked [1] - 9:31</p> <p>overnight [1] - 12:29</p> <p>overriding [2] - 71:42, 72:7</p> <p>overturned [3] - 76:18, 76:30, 76:47</p> <p>overview [1] - 37:8</p> <p>own [8] - 57:3, 64:39, 67:9, 67:11, 79:15, 79:30, 80:9, 84:6</p>	<p>P</p> <p>page [52] - 6:6, 10:14, 11:29, 14:45, 15:2, 15:45, 16:1, 16:28, 17:46, 18:9, 18:16, 18:37, 20:2, 21:25, 21:34, 21:37, 22:11, 39:4, 39:9, 39:17, 41:18, 41:23, 41:28, 43:5, 43:12, 44:5, 44:43, 51:31, 52:9, 52:33, 53:4, 53:9, 54:4, 55:9, 67:28, 67:31, 67:34, 70:14, 70:17, 70:21, 74:32, 76:5, 76:40, 76:41, 79:5, 79:6, 79:9, 84:38, 86:35, 87:20, 89:3</p> <p>PAGE [1] - 18:19</p> <p>pages [3] - 15:15, 37:13, 70:15</p> <p>PAGES [1] - 15:22</p> <p>paper [1] - 67:37</p> <p>paragraph [5] - 76:8, 76:41, 84:45, 84:46, 85:46</p> <p>parameters [2] - 14:19, 48:29</p> <p>pardon [2] - 33:14, 39:9</p> <p>Parish [23] - 1:30, 2:6, 3:9, 8:26, 10:16, 13:18, 15:24, 17:7, 41:9, 44:29, 61:4, 63:40, 64:22, 66:26, 67:4, 68:45, 70:46, 76:41, 77:32, 88:45, 89:22, 89:37, 90:25</p> <p>PARISH [164] - 2:6, 13:20, 14:15, 14:26, 14:30, 15:6, 15:10, 15:17, 15:29, 15:36, 16:1, 16:13, 16:18, 16:45, 17:3, 17:9, 17:16, 17:32, 17:37, 18:13, 18:21, 18:31, 19:27, 19:32, 19:38, 20:37, 20:46, 21:3, 21:20, 21:34, 22:5, 22:10, 22:16, 22:32, 22:42, 22:46, 23:6, 23:47, 24:8, 25:34, 25:39, 26:25, 28:21, 28:29, 28:34, 28:39, 29:3, 29:14, 29:21, 29:25, 29:29, 29:37, 29:44, 30:2, 30:7, 30:25, 30:35, 32:16,</p>
<p>O</p> <p>oath [3] - 64:9, 64:11, 64:18</p> <p>obfuscatory [1] - 55:34</p> <p>obligation [9] - 19:2, 28:40, 28:43, 29:17, 30:28, 33:36, 63:22, 64:9, 64:13</p> <p>obligations [15] - 4:6, 4:8, 5:42, 19:6, 21:9, 33:8, 37:39, 43:45, 44:20, 45:12, 45:41, 50:24, 50:43, 56:9, 59:41</p> <p>observation [1] - 7:16</p> <p>observe [1] - 11:32</p> <p>observed [1] - 77:34</p> <p>observers [2] - 9:14, 58:24</p> <p>observing [2] - 10:33, 12:11</p> <p>obtain [1] - 9:34</p>				

<p>32:22, 32:28, 33:14, 33:21, 33:27, 33:35, 33:44, 34:1, 34:6, 34:11, 34:15, 34:19, 34:25, 34:30, 34:35, 34:39, 34:43, 35:5, 36:3, 39:9, 39:13, 39:20, 40:11, 40:18, 40:23, 40:29, 40:44, 41:2, 41:11, 41:23, 42:20, 43:9, 44:5, 44:10, 44:18, 44:32, 44:37, 44:42, 44:47, 46:6, 46:16, 46:24, 46:29, 46:35, 46:45, 47:2, 47:9, 47:20, 47:38, 48:7, 48:17, 48:23, 48:28, 49:14, 49:22, 49:30, 50:5, 51:36, 51:41, 51:45, 52:5, 52:23, 52:27, 52:37, 53:7, 53:12, 53:17, 53:26, 53:33, 53:37, 53:42, 54:8, 55:13, 55:44, 56:2, 57:42, 58:2, 58:13, 58:21, 58:30, 58:36, 58:41, 59:11, 59:16, 60:5, 61:6, 63:42, 64:24, 64:26, 67:6, 70:5, 71:2, 71:7, 74:19, 74:30, 77:34, 78:43, 88:47, 89:12, 89:25, 89:40, 89:45, 90:2, 90:10, 90:20, 90:36</p> <p>Parish's [1] - 74:21</p> <p>part [26] - 9:18, 9:47, 10:4, 12:44, 12:47, 29:41, 33:11, 36:45, 37:31, 37:38, 37:45, 38:40, 40:1, 43:11, 51:45, 52:20, 53:44, 54:10, 65:22, 66:17, 74:11, 74:37, 77:20, 83:28, 83:30, 87:9</p> <p>Part [6] - 8:16, 18:5, 18:24, 23:20, 26:17, 44:23</p> <p>participate [2] - 4:23, 27:47</p> <p>particular [30] - 4:21, 5:35, 8:13, 8:40, 9:46, 10:30, 10:32, 13:22, 14:37, 18:5, 20:22, 23:38, 26:18, 29:1, 38:11, 45:45, 46:20, 49:20, 55:17, 56:38, 62:1, 69:36, 73:30, 74:3, 75:5,</p>	<p>76:28, 85:25, 85:27, 88:16</p> <p>particularly [5] - 5:45, 47:23, 47:42, 51:9, 66:11</p> <p>parties [1] - 78:6</p> <p>partly [1] - 53:42</p> <p>Parts [1] - 18:5</p> <p>parts [3] - 44:19, 57:20, 66:24</p> <p>passed [7] - 4:13, 4:39, 20:1, 20:3, 20:14, 20:19, 28:42</p> <p>passing [1] - 21:4</p> <p>past [5] - 3:4, 45:15, 45:16, 45:19, 53:15</p> <p>path [1] - 28:47</p> <p>paths [1] - 37:26</p> <p>patient [1] - 12:6</p> <p>pause [6] - 6:16, 10:41, 12:1, 23:31, 25:30, 39:4</p> <p>paused [2] - 12:30, 12:47</p> <p>pausing [1] - 38:7</p> <p>pay [2] - 3:3, 45:26</p> <p>pecuniary [2] - 44:21, 44:22</p> <p>people [44] - 2:36, 3:1, 12:40, 13:33, 13:34, 55:17, 64:33, 65:19, 65:43, 65:47, 66:36, 69:15, 69:18, 69:45, 71:44, 72:7, 72:16, 73:1, 73:15, 73:16, 73:22, 75:38, 77:15, 77:16, 77:27, 77:29, 77:30, 78:22, 79:35, 79:44, 79:45, 79:46, 80:39, 81:13, 84:28, 84:30, 86:32, 87:7, 88:28, 88:29, 88:32, 88:37</p> <p>people's [2] - 12:38, 58:9</p> <p>per [12] - 15:1, 52:12, 52:17, 52:27, 52:28, 53:23, 53:27, 53:28, 55:15</p> <p>perceived [1] - 87:17</p> <p>perceives [1] - 49:42</p> <p>perception [7] - 37:43, 55:35, 71:40, 72:20, 74:23, 80:14, 87:6</p> <p>perform [2] - 28:10, 30:13</p> <p>Performance [17] - 3:44, 4:14, 4:18, 4:19, 4:30, 5:7, 18:6, 18:22, 18:25, 18:33,</p>	<p>19:19, 19:40, 19:46, 20:5, 20:20, 20:33, 21:23</p> <p>performance [9] - 20:11, 20:39, 27:9, 27:16, 28:16, 40:21, 42:2, 52:14, 52:29</p> <p>performing [2] - 53:1, 69:25</p> <p>perhaps [12] - 6:41, 15:37, 21:7, 29:5, 29:31, 30:26, 40:39, 59:18, 61:27, 74:21, 80:22, 88:35</p> <p>period [6] - 7:8, 17:7, 19:20, 22:19, 61:36, 84:20</p> <p>PERIOD [1] - 17:14</p> <p>permission [1] - 64:3</p> <p>permit [5] - 6:27, 6:39, 9:43, 11:12, 63:26</p> <p>permitted [2] - 11:1, 11:9</p> <p>persisting [1] - 81:42</p> <p>person [20] - 3:27, 3:34, 8:14, 10:23, 11:7, 11:9, 11:17, 11:33, 11:36, 25:43, 25:44, 25:47, 26:2, 26:8, 35:34, 36:16, 57:4, 57:22, 57:23, 57:26</p> <p>person's [1] - 27:16</p> <p>personal [12] - 42:30, 44:22, 50:38, 69:47, 74:2, 74:4, 77:42, 79:15, 79:30, 82:12, 83:22, 84:6</p> <p>personally [2] - 72:42, 80:13</p> <p>personnel [1] - 17:23</p> <p>persons [7] - 8:18, 10:44, 11:1, 11:6, 11:8, 21:21, 61:19</p> <p>perspective [1] - 69:46</p> <p>Peter [1] - 16:21</p> <p>petition [1] - 81:2</p> <p>phone [2] - 14:6, 81:11</p> <p>photographs [1] - 12:20</p> <p>photos [1] - 16:28</p> <p>phrase [3] - 22:24, 27:37, 45:13</p> <p>phraseologies [1] - 39:26</p> <p>phraseology [3] - 22:27, 23:7, 39:29</p> <p>pick [2] - 16:30, 45:28</p>	<p>picked [1] - 82:44</p> <p>pictures [1] - 12:16</p> <p>piece [3] - 66:38, 78:40, 78:41</p> <p>pieces [1] - 49:39</p> <p>place [15] - 36:42, 37:5, 37:34, 44:37, 45:29, 63:38, 72:4, 72:13, 73:16, 74:42, 75:17, 75:25, 75:28, 77:27, 87:44</p> <p>placed [6] - 7:33, 10:13, 15:44, 20:22, 59:2, 63:3</p> <p>plan [22] - 24:17, 27:6, 31:11, 31:13, 74:42, 75:2, 75:16, 75:17, 75:22, 75:25, 76:33, 80:23, 80:26, 80:33, 80:38, 83:27, 83:31, 83:36, 85:39, 87:37, 87:43</p> <p>Plan [2] - 54:37, 76:34</p> <p>planning [24] - 5:35, 24:16, 24:18, 24:21, 24:46, 25:3, 25:4, 25:15, 28:1, 31:44, 38:12, 40:1, 48:37, 49:1, 54:19, 73:27, 74:7, 74:25, 83:17, 83:26, 83:33, 83:35, 83:41, 87:38</p> <p>Planning [1] - 22:33</p> <p>Planning [1] - 87:21</p> <p>plans [15] - 26:39, 26:43, 26:44, 27:1, 27:5, 30:41, 31:1, 31:5, 38:47, 54:27, 75:10, 83:31, 83:32, 87:27, 87:42</p> <p>play [2] - 71:25, 80:37</p> <p>playing [1] - 71:30</p> <p>plazas [1] - 81:25</p> <p>pm [1] - 64:20</p> <p>point [19] - 19:33, 20:30, 25:30, 30:8, 37:1, 40:30, 42:41, 46:39, 46:40, 50:11, 50:24, 68:21, 68:26, 71:36, 81:18, 81:29, 83:13, 84:13, 86:34</p> <p>points [2] - 46:3, 83:46</p> <p>policies [8] - 26:40, 26:45, 28:7, 28:26, 31:2, 31:6, 38:47, 54:33</p> <p>policy [5] - 27:1, 30:42, 42:1, 76:17, 76:46</p>	<p>politic [1] - 38:30</p> <p>political [2] - 78:6, 78:16</p> <p>politicisation [3] - 77:35, 77:37, 78:4</p> <p>politicised [1] - 77:47</p> <p>poor [4] - 54:21, 54:26, 68:36, 69:33</p> <p>population [1] - 13:33</p> <p>posed [1] - 61:22</p> <p>position [13] - 3:28, 3:33, 5:39, 17:22, 45:10, 45:18, 45:40, 46:9, 54:34, 73:7, 75:39, 81:13, 86:29</p> <p>positions [1] - 27:18</p> <p>positive [3] - 45:30, 50:21, 50:29</p> <p>possibilities [1] - 15:30</p> <p>possible [10] - 2:33, 2:35, 12:11, 22:27, 26:34, 26:37, 57:19, 58:14, 59:4, 59:35</p> <p>possibly [1] - 21:7</p> <p>posters [1] - 84:34</p> <p>power [10] - 7:23, 7:46, 9:42, 23:25, 26:3, 45:32, 45:36, 46:19, 46:21, 48:42</p> <p>powers [10] - 7:41, 9:2, 23:18, 23:21, 23:22, 23:24, 23:32, 25:41, 47:40, 48:43</p> <p>Practice [6] - 33:40, 35:41, 36:9, 36:14, 36:39, 43:5</p> <p>practice [13] - 10:7, 10:9, 10:16, 10:25, 11:3, 11:5, 11:11, 11:13, 13:9, 32:10, 41:23, 61:24, 63:27</p> <p>pre [1] - 81:37</p> <p>pre-approved [1] - 81:37</p> <p>preceded [1] - 18:7</p> <p>precedence [1] - 43:29</p> <p>predated [1] - 75:22</p> <p>predecessors [1] - 65:8</p> <p>predetermined [1] - 54:18</p> <p>predictability [1] - 77:22</p> <p>prefer [1] - 22:26</p> <p>preferable [1] - 65:42</p> <p>preference [3] - 57:34, 71:41, 72:7</p> <p>preliminary [4] - 4:29,</p>
--	---	--	---	---

<p>6:35, 6:47, 47:36 Prendergast [1] - 17:22 prepare [1] - 31:9 prepared [1] - 72:29 prescribe [1] - 33:3 prescribed [3] - 26:10, 34:45, 36:12 prescribes [1] - 33:14 prescriptions [1] - 36:37 presence [3] - 4:4, 4:7, 81:6 present [15] - 3:4, 3:6, 10:44, 11:1, 11:9, 12:17, 25:44, 36:16, 43:24, 43:35, 56:32, 56:33, 61:16, 62:25, 62:41 presently [1] - 13:39 presides [1] - 43:17 presiding [2] - 26:1, 26:3 press [3] - 11:17, 11:20, 70:47 pretty [4] - 74:39, 75:13, 75:39, 76:32 prevent [3] - 28:46, 32:41, 35:28 prevention [1] - 52:42 previous [10] - 47:39, 47:46, 48:2, 52:7, 53:20, 75:13, 75:14, 75:23, 76:13, 77:35 previously [3] - 30:19, 57:6, 72:34 primarily [1] - 62:10 primary [2] - 14:3, 14:15 principle [1] - 42:26 principles [10] - 24:10, 24:11, 24:35, 24:38, 24:40, 24:46, 25:1, 25:3, 26:38, 39:43 priorities [1] - 25:7 prioritisation [1] - 85:9 prioritise [2] - 25:5, 25:9 priority [2] - 39:47, 61:20 private [6] - 2:18, 9:44, 12:45, 15:33, 15:36, 15:42 proactively [1] - 25:21 problem [3] - 73:12, 75:23, 84:25 problems [6] - 45:20, 45:21, 64:32, 70:1, 70:16, 78:9</p>	<p>procedural [5] - 8:9, 17:40, 18:28, 57:39, 57:43 procedure [3] - 10:8, 11:5, 19:14 procedures [5] - 18:3, 37:34, 62:32, 62:34, 77:27 proceed [3] - 12:4, 12:12, 22:40 proceeding [1] - 63:6 proceedings [20] - 2:47, 9:15, 10:33, 11:12, 11:19, 11:22, 11:30, 11:42, 11:45, 12:1, 12:19, 12:22, 12:32, 12:47, 13:13, 62:31, 62:41, 62:43, 63:5, 63:6 process [21] - 4:23, 9:18, 9:47, 10:31, 21:30, 27:14, 49:17, 49:19, 49:22, 49:38, 55:33, 56:4, 56:5, 57:31, 68:9, 77:30, 83:33, 84:31, 85:9, 87:9, 87:17 processes [11] - 49:12, 49:31, 73:6, 73:38, 75:44, 77:9, 77:22, 78:10, 83:35, 84:26, 86:26 produce [1] - 8:20 professional [2] - 19:11, 31:19 professionally [1] - 42:24 program [1] - 31:13 programs [7] - 26:39, 26:43, 26:44, 30:41, 31:1, 31:5, 38:47 progress [1] - 25:14 progression [1] - 61:23 prohibits [1] - 54:38 project [5] - 55:30, 55:38, 56:7, 88:9, 88:10 projected [1] - 37:42 promote [1] - 54:34 promptly [3] - 11:24, 15:45, 61:44 proper [4] - 8:11, 27:11, 32:42, 77:27 properly [3] - 9:37, 56:8, 89:8 proposal [2] - 19:9, 20:11 proposals [1] - 54:19 propose [7] - 3:38,</p>	<p>10:8, 13:10, 13:14, 15:24, 22:37, 62:13 proposed [12] - 18:33, 18:34, 18:39, 19:19, 19:22, 19:39, 20:15, 20:20, 20:39, 21:35, 55:24, 55:42 proposing [1] - 20:33 proposition [2] - 41:15, 48:13 protecting [1] - 52:46 provide [12] - 4:46, 6:26, 9:19, 9:22, 19:14, 20:14, 24:15, 24:31, 26:31, 52:6, 68:10, 73:27 provided [8] - 19:42, 20:40, 23:11, 35:22, 35:35, 49:43, 57:2, 70:38 provides [2] - 3:16, 10:16 providing [2] - 57:22, 58:13 provision [3] - 3:21, 24:19, 36:8 provisions [10] - 3:31, 8:17, 33:22, 33:27, 33:28, 36:11, 36:13, 42:42, 44:21, 44:22 PSM [2] - 5:15, 22:18 PUBLIC [1] - 1:12 public [48] - 2:2, 3:13, 7:11, 8:19, 9:27, 10:2, 10:9, 10:24, 10:41, 11:26, 11:31, 11:35, 11:41, 11:43, 12:5, 12:45, 21:28, 21:29, 42:26, 42:29, 48:31, 49:41, 51:1, 51:7, 51:10, 51:27, 52:41, 56:26, 56:40, 56:43, 57:1, 58:47, 59:6, 61:37, 61:43, 62:16, 62:19, 62:42, 62:43, 62:44, 63:3, 63:4, 63:7, 63:26, 68:5, 77:18, 87:15 Public [1] - 2:3 publication [1] - 59:3 publicly [4] - 6:3, 8:36, 15:25, 15:27 published [2] - 34:44, 63:1 publishing [1] - 90:4 pull [2] - 32:23, 34:4 purpose [5] - 4:24, 7:27, 36:19, 47:41, 76:22 purposes [2] - 34:45,</p>	<p>67:39 pursuant [3] - 3:14, 4:18, 17:43 purview [1] - 40:15 pushing [3] - 75:4, 75:30, 80:31 put [24] - 33:42, 39:31, 46:1, 46:43, 47:7, 49:10, 53:31, 57:44, 58:18, 59:2, 59:31, 61:39, 63:29, 64:3, 67:8, 69:41, 72:3, 72:13, 77:25, 78:38, 81:46, 86:19, 86:24, 88:24 puts [1] - 35:39 putting [2] - 73:16, 86:30</p>	<p>36:41, 40:41, 49:12, 70:15, 78:5, 83:1, 84:30 rating [1] - 26:47 rationality [1] - 8:10 reached [1] - 6:47 reaching [1] - 10:5 read [16] - 6:13, 6:16, 6:33, 6:36, 6:39, 24:14, 40:20, 45:18, 46:22, 47:30, 47:39, 48:3, 50:6, 54:12, 84:45, 85:45 reading [1] - 7:24 reads [1] - 39:46 ready [2] - 61:4, 81:33 real [1] - 61:30 really [11] - 21:14, 22:24, 65:46, 66:44, 69:7, 69:10, 74:10, 78:40, 80:37, 82:47 reason [10] - 31:34, 35:28, 38:41, 52:5, 53:18, 59:27, 75:37, 77:1, 77:15, 89:23 reasonable [4] - 7:24, 28:9, 30:11, 73:40 reasonably [2] - 5:28, 37:22 reasons [25] - 3:45, 4:14, 7:1, 8:37, 8:46, 9:45, 13:14, 17:25, 18:34, 18:39, 20:9, 21:35, 36:35, 57:16, 57:39, 57:43, 58:25, 61:27, 62:10, 62:13, 62:21, 73:44, 76:19, 84:26, 85:23 received [12] - 8:32, 9:10, 9:35, 11:16, 16:5, 16:6, 16:7, 37:40, 37:43, 50:11, 56:39 recently [1] - 81:41 recognise [2] - 24:36, 50:20 recognition [1] - 32:46 recollect [1] - 29:41 recommendation [5] - 7:29, 7:42, 45:34, 73:3, 74:2 recommendations [12] - 7:37, 7:39, 7:46, 8:2, 23:30, 47:15, 54:18, 73:33, 73:35, 76:16, 76:45, 86:12 Recommendations [1] - 70:18</p>
Q				
<p>qualifications [1] - 19:12 questioned [2] - 76:31, 79:35 questioning [4] - 36:46, 37:5, 86:13, 89:3 questions [9] - 10:28, 10:30, 45:44, 49:23, 58:31, 64:10, 68:29, 78:44, 78:47 quickly [1] - 16:33 quite [24] - 11:39, 12:35, 12:36, 18:31, 22:36, 22:42, 24:5, 29:21, 29:25, 39:44, 40:44, 46:6, 46:33, 47:47, 48:17, 53:17, 53:19, 66:12, 68:42, 69:30, 69:45, 78:4, 88:15 quoted [1] - 66:44</p>				
R				
<p>rails [1] - 84:27 raise [7] - 8:38, 8:40, 9:1, 9:3, 26:12, 30:25, 86:34 raised [3] - 9:37, 49:32, 76:21 range [1] - 69:24 ranging [2] - 6:37, 7:4 rarely [1] - 87:31 rated [1] - 52:27 ratepayers [2] - 28:4, 80:10 rather [8] - 6:38,</p>				

reconsideration ^[1] - 49:10 record ^[2] - 63:29, 78:20 recorded ^[1] - 12:15 recording ^[2] - 12:18, 12:19 records ^[1] - 37:41 recovery ^[2] - 52:43, 55:7 rectified ^[1] - 12:2 recur ^[1] - 51:15 recurring ^[4] - 50:28, 50:32, 54:44, 56:12 red ^[1] - 71:2 refer ^[10] - 15:11, 22:37, 30:7, 48:43, 48:45, 64:3, 71:18, 73:8, 73:9, 74:36 Reference ^[21] - 6:8, 6:11, 6:12, 6:17, 6:19, 6:28, 6:32, 6:36, 6:39, 7:2, 7:13, 38:1, 45:1, 45:6, 45:8, 46:2, 46:3, 46:37, 47:35, 48:13, 48:20 reference ^[41] - 5:24, 5:35, 6:3, 6:16, 6:21, 6:29, 6:41, 7:3, 7:15, 7:23, 7:24, 8:30, 8:39, 8:45, 9:38, 10:47, 13:12, 14:45, 21:27, 22:5, 22:23, 23:15, 31:47, 34:46, 37:10, 38:12, 41:28, 43:26, 45:25, 45:28, 49:10, 50:14, 50:29, 55:23, 56:6, 57:7, 61:21, 61:44, 63:11, 67:30, 71:16 referenced ^[1] - 22:1 references ^[2] - 18:1, 55:4 referencing ^[1] - 43:12 referral ^[1] - 63:37 referred ^[8] - 24:47, 35:10, 35:13, 35:17, 37:12, 39:13, 48:37, 62:29 referring ^[5] - 14:18, 22:24, 65:2, 67:11, 67:44 refers ^[2] - 41:37, 55:5 reflected ^[1] - 70:25 reflects ^[1] - 21:35 refresh ^[2] - 66:23, 71:16 regard ^[3] - 42:13, 63:18, 72:41	regarding ^[3] - 19:39, 76:12, 76:22 regional ^[3] - 25:6, 66:32, 80:44 registered ^[6] - 65:40, 65:43, 65:45, 65:47, 70:11, 78:6 regularly ^[3] - 25:13, 27:22, 84:31 regulate ^[1] - 32:4 regulating ^[3] - 14:4, 14:15, 36:44 regulation ^[9] - 24:20, 33:4, 34:23, 34:33, 35:44, 36:8, 36:13, 37:9 regulations ^[12] - 26:10, 32:3, 32:32, 33:3, 33:8, 34:1, 34:25, 34:30, 34:43, 35:1, 36:43, 37:2 regulatory ^[3] - 13:46, 13:47, 27:12 rejected ^[4] - 48:39, 76:18, 76:47, 86:27 relate ^[2] - 9:45, 73:41 related ^[1] - 31:7 relates ^[1] - 23:28 relating ^[3] - 3:20, 3:30, 6:9 relation ^[1] - 3:17 relationship ^[2] - 41:29, 44:24 relationships ^[1] - 4:34 relevance ^[1] - 43:2 relevant ^[19] - 6:26, 6:28, 9:34, 16:27, 20:16, 20:21, 21:21, 23:32, 23:33, 25:39, 34:46, 35:45, 37:45, 40:14, 43:11, 49:46, 55:1, 56:7, 86:6 relevantly ^[1] - 3:15 reliability ^[1] - 52:43 relitigating ^[1] - 48:39 remain ^[2] - 6:28, 12:6 remaining ^[2] - 56:29, 57:17 remarks ^[8] - 3:8, 3:39, 12:46, 13:17, 36:28, 37:15, 47:36, 63:35 remember ^[4] - 69:20, 81:44, 82:39, 82:41 remembering ^[1] - 64:38 reminded ^[1] - 14:9 reorganise ^[1] - 62:7 repeat ^[2] - 67:32,	68:18 replaced ^[1] - 34:9 report ^[17] - 2:40, 8:5, 16:29, 54:3, 54:10, 62:19, 66:18, 66:21, 66:23, 66:29, 68:1, 68:22, 70:36, 74:32, 76:5, 79:1, 79:5 Report ^[1] - 14:2 reporting ^[8] - 24:18, 24:21, 24:46, 25:4, 25:16, 28:2, 39:28, 40:2 reports ^[3] - 23:11, 31:14, 54:8 represent ^[11] - 28:2, 28:7, 28:25, 28:40, 28:44, 29:7, 29:12, 57:20, 59:20, 65:34, 66:10 representation ^[2] - 24:16, 57:28 representational ^[1] - 51:18 representative ^[2] - 4:41, 20:26 representatives ^[2] - 20:27, 22:39 represented ^[2] - 40:8, 57:23 representing ^[1] - 64:4 represents ^[1] - 65:30 reputational ^[2] - 3:47, 18:42 request ^[2] - 11:20, 43:15 requested ^[3] - 8:46, 71:26 require ^[6] - 6:8, 7:4, 7:42, 35:8, 48:13, 49:10 required ^[11] - 4:20, 11:18, 13:6, 18:24, 18:32, 19:14, 19:40, 20:10, 41:42, 81:18, 81:27 requirement ^[3] - 24:15, 32:34, 35:26 requirements ^[5] - 5:7, 11:10, 61:30, 62:1, 86:7 requires ^[2] - 32:16, 33:17 requiring ^[1] - 6:36 requisite ^[2] - 19:11, 19:14 research ^[2] - 51:39, 66:36 reservation ^[3] - 35:9,	35:15, 35:16 residences ^[2] - 55:13, 88:12 residency ^[1] - 64:41 resident ^[1] - 87:13 residential ^[1] - 86:15 residents ^[4] - 28:3, 52:17, 87:46, 88:13 residents' ^[1] - 88:8 resigned ^[5] - 10:11, 17:22, 17:25, 17:26, 65:24 resolution ^[8] - 4:13, 4:39, 5:10, 7:13, 21:4, 25:47, 26:2, 29:1 resolutions ^[2] - 20:1 resolved ^[2] - 5:1, 61:44 resource ^[1] - 52:43 resources ^[8] - 7:11, 25:13, 27:3, 31:27, 41:47, 44:25, 61:33, 61:37 resourcing ^[1] - 31:12 respect ^[30] - 3:5, 9:36, 11:36, 15:38, 18:5, 19:45, 20:39, 24:35, 29:3, 31:47, 32:8, 36:37, 40:31, 43:40, 43:44, 44:21, 44:22, 45:5, 52:37, 52:40, 52:43, 53:2, 55:19, 56:2, 64:39, 65:16, 68:16, 72:39, 73:7, 79:37 respectful ^[1] - 63:7 respects ^[3] - 3:3, 11:14, 88:19 respond ^[1] - 73:29 responding ^[1] - 4:37 response ^[12] - 4:36, 4:47, 8:32, 21:3, 21:4, 21:7, 22:2, 55:5, 55:7, 55:19, 55:21, 83:14 responsibilities ^[14] - 5:27, 5:29, 5:46, 6:44, 7:7, 20:23, 37:22, 37:23, 37:28, 37:39, 37:43, 43:44, 47:25, 47:44 responsibility ^[2] - 42:8, 42:23 responsible ^[6] - 10:17, 10:20, 24:31, 27:27, 38:22, 41:33 rest ^[2] - 2:39, 12:9 restore ^[3] - 12:10, 85:30, 85:32	restored ^[1] - 12:13 restriction ^[1] - 12:17 rests ^[1] - 46:21 result ^[1] - 7:12 results ^[2] - 16:2, 52:32 resume ^[2] - 43:34, 61:4 RESUMPTION ^[1] - 61:2 retail ^[3] - 65:4, 65:5, 66:13 retract ^[1] - 35:15 return ^[1] - 61:9 reveals ^[1] - 7:33 revenue ^[1] - 26:47 review ^[7] - 15:41, 25:13, 27:9, 42:1, 49:2, 55:7, 73:37 reviewing ^[2] - 75:27, 75:29 Reynolds ^[1] - 21:40 ridiculous ^[1] - 81:24 right-hand ^[2] - 52:16, 54:11 rights ^[1] - 7:35 rigmarole ^[1] - 81:47 Riley ^[3] - 2:11, 2:13, 59:18 RILEY ^[8] - 2:13, 2:21, 2:27, 2:33, 2:39, 59:23, 59:34, 59:45 ring ^[1] - 69:8 ringing ^[1] - 81:14 rise ^[2] - 38:39, 90:5 rises ^[1] - 43:30 risk ^[2] - 61:29, 61:31 risks ^[6] - 3:47, 10:40, 18:42, 25:20, 51:18, 61:22 rivers ^[1] - 52:45 road ^[1] - 84:1 Road ^[1] - 1:19 roads ^[2] - 80:47, 81:3 Robertson ^[2] - 13:26, 65:44 role ^[29] - 8:1, 8:42, 14:19, 14:33, 14:34, 26:25, 26:26, 27:40, 28:11, 30:13, 31:43, 31:45, 37:17, 38:19, 38:29, 38:31, 38:38, 39:47, 40:3, 40:21, 40:33, 45:30, 54:29, 65:39, 69:11, 76:12, 76:22, 78:22 roles ^[22] - 5:27, 5:29, 13:47, 14:31, 26:18, 37:21, 37:23, 37:28, 37:29, 37:39, 37:42,
---	--	---	---	--

38:27, 38:37, 38:39, 40:31, 41:15, 43:44, 45:2, 48:10, 50:21, 50:43, 75:38 room [8] - 10:45, 11:2, 12:18, 61:16, 61:20, 62:26, 62:42, 90:3 Ross [1] - 1:25 roughly [1] - 56:18 Royal [4] - 8:17, 9:43, 23:20, 23:21 rules [2] - 8:7, 8:9 ruling [1] - 62:17 run [9] - 65:1, 65:3, 65:4, 65:24, 69:3, 81:22, 83:32, 83:36 running [2] - 73:19, 81:25 Rural [1] - 65:31 rural [2] - 13:27	search [3] - 6:37, 7:4, 48:14 seat [1] - 43:34 second [18] - 20:8, 23:7, 35:11, 37:38, 37:45, 39:1, 44:1, 44:43, 45:17, 48:32, 49:3, 50:46, 56:29, 73:3, 76:8, 76:42, 86:34, 89:45 second-guess [1] - 49:3 second-to-last [1] - 86:34 secondly [3] - 7:27, 37:28, 55:23 secretarial [1] - 65:3 secretive [1] - 10:3 Section [2] - 23:19, 37:11 section [54] - 3:14, 3:15, 4:19, 8:16, 8:34, 9:42, 17:45, 18:7, 18:39, 19:9, 20:6, 21:41, 22:16, 23:11, 23:26, 23:47, 25:35, 26:21, 27:40, 28:19, 28:43, 29:37, 29:41, 30:26, 30:30, 32:16, 32:22, 32:23, 32:37, 32:45, 33:2, 33:38, 33:39, 35:10, 35:13, 35:18, 35:39, 35:45, 36:10, 36:38, 36:40, 38:28, 38:36, 38:38, 38:41, 38:44, 39:30, 39:43, 41:37, 41:38, 42:4, 42:38, 44:23, 45:42 sections [9] - 19:41, 20:21, 23:36, 23:39, 30:27, 31:42, 37:2, 40:8, 42:12 sector [1] - 73:28 sectors [1] - 72:30 secure [1] - 24:28 see [44] - 8:8, 17:35, 19:25, 20:37, 34:17, 37:16, 39:26, 40:46, 45:12, 49:18, 50:27, 51:1, 52:25, 55:4, 55:23, 58:47, 63:22, 70:18, 70:21, 70:43, 71:10, 74:40, 76:8, 77:3, 78:29, 78:40, 79:10, 79:26, 80:41, 81:4, 81:36, 83:3, 83:27, 84:42, 85:11, 86:9, 86:35, 86:44, 87:34, 87:42, 87:44,	88:3, 88:12 seeing [4] - 73:23, 85:18, 88:14, 88:27 seek [7] - 15:37, 59:19, 59:24, 59:34, 59:35, 59:43, 59:45 seeking [5] - 21:5, 21:12, 43:32, 59:28, 69:10 seem [2] - 55:32, 59:39 seeming [1] - 86:5 seemingly [2] - 7:4, 46:19 sees [1] - 53:30 segue [1] - 40:30 selected [1] - 56:44 self [4] - 61:30, 62:1, 62:5, 62:11 self-isolate [1] - 62:5 self-isolation [3] - 61:30, 62:1, 62:11 semi [1] - 13:27 semi-rural [1] - 13:27 senior [13] - 22:47, 27:18, 32:6, 54:21, 54:42, 64:45, 71:29, 72:27, 72:43, 80:2, 82:10, 82:35, 89:9 sense [4] - 51:22, 53:44, 57:37, 78:5 sent [1] - 10:9 sentence [1] - 76:42 separate [4] - 13:46, 72:8, 72:9, 73:39 September [8] - 4:17, 5:18, 14:42, 16:35, 17:17, 17:45, 18:6, 21:24 series [4] - 3:37, 53:10, 72:2, 72:12 seriously [2] - 80:35, 82:40 served [1] - 19:43 service [7] - 27:10, 65:3, 66:11, 70:43, 71:10, 72:39, 72:41 services [3] - 24:19, 24:28, 66:13 session [2] - 9:44, 12:45 sessions [2] - 2:19, 30:18 set [21] - 11:2, 13:9, 13:20, 14:36, 18:3, 18:39, 21:36, 25:1, 25:41, 26:38, 31:44, 38:20, 38:38, 40:1, 40:33, 48:28, 48:43, 54:30, 61:24, 77:45	sets [11] - 10:8, 11:5, 14:19, 24:9, 26:18, 33:5, 35:5, 35:44, 38:44, 39:14, 54:11 settled [2] - 90:17, 90:21 seven [2] - 19:43, 20:40 several [3] - 36:41, 56:44, 76:11 severe [1] - 55:18 shades [1] - 29:4 shall [2] - 16:47, 37:17 share [1] - 66:3 Sheehan [1] - 90:22 sheet [1] - 71:25 Shelley [1] - 3:12 SHIRE [1] - 1:12 shire [7] - 13:23, 13:33, 20:28, 55:5, 55:15, 65:30, 88:23 Shire [9] - 2:3, 3:3, 3:13, 13:21, 20:19, 52:12, 65:8, 66:19, 67:41 shop [1] - 73:11 SHORT [1] - 41:7 short [3] - 37:8, 47:11, 58:25 shortcomings [1] - 87:38 shortly [12] - 8:23, 8:29, 13:43, 14:21, 14:26, 18:1, 24:1, 25:25, 31:47, 64:8, 90:5, 90:26 show [2] - 50:40, 66:23 showing [1] - 53:18 side [3] - 48:36, 52:16, 54:11 signed [1] - 18:22 significance [1] - 63:34 significant [10] - 41:25, 44:11, 51:17, 55:26, 61:31, 61:33, 61:35, 61:37, 65:38, 76:8 silent [2] - 14:11, 43:35 similar [8] - 53:15, 57:28, 65:30, 65:39, 68:28, 68:40, 70:11, 85:45 simple [1] - 88:31 simply [5] - 8:38, 14:18, 50:7, 57:15, 71:43 single [3] - 45:33,	71:20, 87:10 sit [2] - 2:39, 56:3 sits [2] - 39:21, 46:2 sitting [1] - 85:35 sittings [2] - 12:26, 68:5 situation [1] - 49:46 six [3] - 14:43, 17:37, 45:39 size [2] - 7:10, 13:24 skills [3] - 19:14, 28:10, 30:12 skip [2] - 24:45, 47:10 slight [1] - 44:13 slightly [3] - 17:40, 41:13, 41:14 slip [1] - 52:46 small [16] - 24:10, 63:20, 64:40, 66:18, 68:16, 69:14, 74:33, 78:5, 79:24, 81:29, 81:31, 84:17, 85:35, 87:30, 88:6, 89:5 Small [12] - 66:17, 66:38, 67:25, 67:40, 68:4, 70:34, 75:42, 76:3, 76:5, 78:11, 78:33, 78:47 smaller [1] - 13:26 social [1] - 24:37 solely [1] - 40:14 someone [3] - 46:22, 57:27, 61:29 sometime [1] - 58:18 sometimes [8] - 12:7, 12:35, 14:30, 23:3, 49:38, 52:31, 64:33, 67:23 somewhat [6] - 16:29, 52:13, 52:17, 52:20, 52:28, 53:35 song [1] - 71:25 soon [5] - 12:10, 29:30, 58:14, 59:4, 63:1 sorry [21] - 2:16, 16:9, 21:17, 29:27, 29:40, 30:5, 33:11, 44:29, 47:4, 65:35, 67:32, 67:35, 68:18, 68:29, 70:3, 73:18, 73:31, 74:17, 75:33, 77:38, 82:41 sort [7] - 65:1, 66:34, 77:22, 81:26, 81:32, 81:38, 88:11 sorted [1] - 2:9 sorts [4] - 15:43, 80:40, 83:32, 85:22 sought [5] - 4:39,
S				
safe [1] - 18:42 safety [2] - 3:47, 51:18 safety/crime [1] - 52:42 sake [1] - 64:31 sanction [1] - 7:47 Sara [1] - 90:10 satisfaction [6] - 8:11, 51:30, 52:11, 52:38, 53:23, 68:45 satisfied [8] - 9:41, 12:44, 13:13, 52:13, 52:17, 52:20, 52:28, 53:35 satisfying [1] - 86:6 save [2] - 8:16, 54:13 saw [2] - 77:35, 84:8 Scandrett [4] - 16:20, 16:36, 17:16, 82:40 scapegoats [1] - 50:18 scars [1] - 55:15 schedule [1] - 20:10 Schedule [4] - 20:11, 20:12, 21:37 scheduled [2] - 13:3, 58:4 scoots [1] - 30:26 scope [3] - 37:10, 37:16, 47:14 scores [4] - 52:38, 53:10, 53:14, 53:20 scoring [2] - 52:21, 53:30 screen [2] - 12:12, 70:47				

4:46, 9:34, 21:15, 45:34 sound [1] - 12:16 South [4] - 6:5, 8:26, 13:45, 64:45 Southern [4] - 64:40, 65:16, 71:14, 88:25 space [3] - 68:10, 74:7, 74:25 speaking [2] - 43:32, 43:33 speaks [1] - 43:30 special [1] - 23:22 specific [12] - 7:42, 44:20, 44:21, 45:29, 47:47, 48:36, 50:13, 54:47, 56:2, 56:13, 57:5, 78:5 specifically [2] - 70:7, 76:4 specified [2] - 5:23, 26:9 specify [1] - 18:33 spectrum [1] - 66:14 speculating [1] - 85:8 spell [1] - 64:27 spelt [1] - 64:28 spend [1] - 42:47 spending [2] - 56:5, 81:31 spilt [1] - 44:30 splashed [1] - 15:43 spoken [2] - 71:19, 78:19 square [1] - 13:23 stability [1] - 77:26 staff [58] - 2:13, 4:7, 11:38, 13:40, 14:20, 14:33, 19:3, 20:28, 22:47, 23:1, 27:18, 31:25, 31:30, 31:45, 32:6, 32:18, 36:29, 38:22, 39:40, 40:2, 40:16, 40:25, 41:16, 41:30, 42:23, 42:30, 42:32, 45:5, 50:22, 50:44, 51:16, 51:20, 54:10, 54:12, 54:21, 54:42, 54:44, 56:15, 56:34, 61:38, 63:12, 67:17, 72:27, 76:15, 76:44, 80:8, 81:11, 81:22, 82:24, 82:35, 84:15, 84:16, 84:19, 84:35, 86:5, 89:9 staffing [2] - 5:35, 38:12 stage [15] - 2:27, 15:31, 17:24, 19:34, 20:35, 36:36, 56:20,	56:22, 56:37, 57:29, 58:31, 69:21, 71:29, 78:27, 78:36 stakeholder [3] - 71:23, 87:12, 87:13 stakeholders [7] - 27:23, 71:23, 71:24, 87:12, 87:26 stance [1] - 73:17 stand [2] - 57:3, 67:2 standard [3] - 12:26, 12:30, 14:5 standards [1] - 8:11 standing [1] - 43:33 start [10] - 23:47, 34:43, 43:4, 64:38, 67:21, 69:41, 69:44, 70:14, 78:26, 89:2 started [3] - 39:43, 66:34, 66:41 starts [2] - 67:40, 70:17 State [3] - 23:28, 24:26, 81:2 state [11] - 13:35, 13:47, 14:1, 14:3, 14:15, 56:37, 57:33, 62:36, 72:19, 72:23, 81:1 statement [2] - 35:16, 80:24 states [11] - 26:26, 27:42, 30:9, 30:36, 33:2, 34:44, 38:1, 38:30, 45:8, 47:20, 47:42 statewide [1] - 14:42 Station [1] - 55:23 status [1] - 59:5 statute [1] - 36:43 statutes [1] - 37:2 statutory [14] - 5:41, 28:39, 28:43, 29:17, 30:28, 32:46, 33:8, 33:35, 36:37, 43:45, 45:1, 45:12, 45:41, 56:9 stay [2] - 2:43, 2:45 staying [1] - 86:16 stepping [1] - 33:11 steps [2] - 8:4, 73:45 Steve [2] - 58:3, 63:43 STEVE [1] - 63:47 STEVEN [2] - 64:20, 64:28 still [12] - 2:19, 12:16, 48:9, 65:31, 73:11, 73:13, 73:23, 74:5, 79:1, 87:18, 88:32 stipulating [1] - 19:42	stitch [1] - 88:15 stood [1] - 78:20 stop [1] - 83:7 stopped [3] - 49:34, 51:23, 53:45 stopping [2] - 73:15, 73:16 straight [1] - 86:28 straightforward [1] - 37:3 Strait [1] - 3:5 strategic [30] - 25:3, 25:7, 25:9, 25:11, 25:16, 25:27, 26:42, 26:44, 27:5, 27:6, 30:41, 31:1, 31:5, 31:11, 31:44, 38:18, 38:20, 38:32, 38:47, 39:27, 39:37, 40:1, 41:13, 53:43, 54:32, 83:35, 87:27, 87:31, 87:38, 87:43 strategic [2] - 31:38, 42:16 strategically [1] - 24:17 strategies [6] - 26:40, 26:44, 30:42, 31:1, 31:6, 31:12 strategy [8] - 31:12, 31:31, 71:28, 71:33, 71:42, 72:8, 76:17, 76:46 stream [8] - 11:22, 11:28, 11:47, 12:10, 12:15, 12:29, 12:46, 62:45 streamed [5] - 11:28, 16:26, 50:47, 51:3, 62:44 streaming [2] - 11:30, 62:40 streamlined [1] - 81:36 streams [2] - 52:45, 53:1 Street [1] - 55:23 strength [2] - 72:40, 74:8 stretching [1] - 65:13 stricture [1] - 27:19 strong [2] - 24:16, 51:24 stronger [1] - 65:21 strongly [1] - 88:38 structure [2] - 31:26, 39:15 structured [1] - 4:23 structures [2] - 72:3, 72:13	struggling [1] - 84:35 stuff [3] - 81:26, 81:33, 89:19 stunned [1] - 83:42 subject [9] - 3:39, 12:30, 16:3, 20:40, 26:13, 49:2, 51:5, 55:15, 57:32 subjectivity [1] - 37:31 submission [30] - 4:47, 8:32, 9:23, 9:25, 9:28, 9:31, 9:32, 9:35, 29:3, 33:38, 37:17, 39:35, 39:42, 46:19, 47:5, 64:3, 64:6, 70:26, 71:16, 71:47, 72:23, 73:8, 73:9, 74:36, 76:4, 76:26, 78:12, 78:38, 90:11, 90:13 submissions [35] - 8:30, 8:33, 8:36, 9:1, 9:10, 9:17, 9:37, 10:37, 13:11, 13:15, 16:23, 19:39, 20:39, 21:6, 37:6, 37:41, 48:29, 49:5, 49:37, 50:7, 50:12, 50:39, 51:7, 51:27, 53:47, 54:15, 55:19, 56:27, 56:40, 56:45, 57:1, 57:3, 57:22, 70:10, 70:32 submit [1] - 36:41 subsection [12] - 24:34, 25:41, 26:6, 26:26, 27:31, 27:42, 28:13, 30:9, 35:26, 36:25, 40:13 subsections [1] - 39:30 substance [1] - 5:14 substantially [1] - 34:20 substantive [2] - 9:37, 30:27 substantively [1] - 21:3 sufficient [3] - 68:10, 71:3, 73:27 suggest [3] - 63:6, 87:41, 88:32 suggested [1] - 62:29 suggesting [1] - 30:20 suggests [1] - 16:42 suit [1] - 77:16 summaries [1] - 52:10 summary [2] - 55:7, 55:41	summons [3] - 12:39, 89:23, 89:29 summonsed [3] - 8:19, 12:38, 16:22 supply [1] - 74:47 support [3] - 27:2, 31:19, 52:44 supported [1] - 80:28 supportive [2] - 24:32, 86:5 suppose [1] - 81:29 surrounding [1] - 21:44 survey [4] - 13:30, 51:39, 52:39, 68:16 surveys [2] - 51:30, 53:15 suspend [2] - 22:2, 45:33 suspended [3] - 10:10, 17:37, 22:20 suspending [2] - 5:14, 22:17 suspension [13] - 4:28, 4:44, 5:17, 5:20, 10:11, 14:39, 17:27, 17:41, 21:13, 21:45, 23:12, 50:19, 68:15 sustainability [1] - 26:35 sustainable [1] - 24:40 switched [1] - 14:11 sworn [1] - 64:20 Sydney [1] - 13:24 synonymous [1] - 38:32 system [1] - 53:31
T				
table [1] - 44:19 tail [1] - 82:44 tainted [1] - 67:24 talks [1] - 71:22 team [2] - 62:4, 74:11 technical [1] - 38:26 technology [3] - 11:38, 12:2, 12:7 telephone [1] - 69:6 television [2] - 62:18, 62:23 temporary [6] - 19:11, 20:12, 20:15, 21:38, 21:39, 21:40 tend [1] - 22:26 tender [43] - 14:44, 14:45, 15:1, 15:4,				

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<p>57:27 uncertainty ^[1] - 59:23 unclear ^[1] - 75:3 undefined ^[1] - 7:8 under ^[39] - 3:28, 3:34, 4:6, 4:8, 7:41, 8:34, 9:42, 17:44, 18:7, 18:23, 18:39, 19:2, 19:6, 19:9, 19:40, 20:6, 20:12, 20:21, 21:41, 22:16, 23:7, 23:11, 23:19, 23:25, 27:9, 28:43, 30:26, 31:26, 32:37, 32:47, 35:26, 36:10, 36:39, 36:43, 37:11, 43:45, 45:42, 70:24, 84:42 undergo ^[2] - 4:20, 4:21 understood ^[11] - 7:45, 10:32, 29:31, 37:21, 37:27, 38:33, 39:22, 46:12, 56:8, 58:25, 88:36 undertake ^[2] - 46:31, 51:46 undertaken ^[3] - 20:26, 20:32, 21:30 undue ^[1] - 30:44 unfair ^[1] - 83:21 unfavourable ^[1] - 36:27 unfortunately ^[1] - 74:37 ungrouped ^[1] - 14:44 uninvited ^[1] - 82:23 unique ^[1] - 68:38 unlawful ^[1] - 36:18 unless ^[7] - 8:43, 13:13, 45:45, 58:30, 62:45, 74:10, 77:40 unprofessional ^[2] - 55:33, 83:16 unresponsive ^[2] - 51:23, 53:45 unsuccessful ^[1] - 4:32 unsure ^[1] - 34:1 up ^[47] - 3:36, 9:5, 12:35, 14:23, 22:11, 23:31, 32:24, 34:4, 39:33, 39:47, 41:15, 41:45, 42:39, 43:1, 43:9, 44:6, 44:27, 47:14, 50:32, 50:34, 50:46, 51:19, 53:44, 54:45, 56:14, 56:21, 58:9, 63:34, 66:34, 66:42, 67:10, 67:19, 69:19, 70:35, 71:28,</p>	<p>72:46, 73:19, 74:40, 80:1, 81:3, 82:1, 82:44, 83:28, 90:26, 90:27, 90:31 up-to-date ^[2] - 42:39, 83:28 updated ^[1] - 59:5 uphold ^[6] - 28:6, 28:25, 28:40, 28:43, 29:7, 29:11 UPON ^[1] - 61:2 upset ^[1] - 82:47 urban ^[4] - 13:24, 13:25, 52:45, 52:47 useful ^[1] - 52:6 uses ^[2] - 22:34, 54:38 usual ^[2] - 44:29, 59:40 utilising ^[1] - 61:37 utility ^[1] - 9:9</p>	<p>80:28, 80:33, 81:7, 81:29, 87:26 viewed ^[2] - 11:43, 51:3 viewing ^[2] - 11:22, 12:6 views ^[10] - 10:35, 29:5, 29:6, 66:4, 67:23, 69:24, 69:25, 72:15, 88:37, 88:38 villages ^[3] - 13:26, 88:6, 88:12 vitality ^[1] - 44:25 Viv ^[6] - 5:15, 22:18, 23:10, 49:32, 54:9, 56:31 visually ^[1] - 81:44 voice ^[2] - 65:21, 78:39 volume ^[4] - 41:19, 41:21, 43:5, 54:3 Volume ^[1] - 44:3 volumes ^[1] - 15:15 Volumes ^[1] - 44:1 VOLUMES ^[1] - 15:21 vote ^[1] - 16:10 voters ^[1] - 14:47 votes ^[8] - 16:5, 16:10, 16:14, 16:18, 16:19, 16:20, 16:21</p>	<p>56:19, 56:23, 57:18, 57:44, 62:8, 81:42, 89:20 weight ^[1] - 45:30 welcome ^[4] - 2:43, 2:45, 62:23, 62:30 well-known ^[1] - 61:25 west ^[1] - 55:24 whichever ^[1] - 59:39 whilst ^[1] - 29:17 Whipper ^[1] - 16:18 whole ^[8] - 14:33, 45:27, 45:30, 45:40, 47:12, 75:4, 77:10, 82:25 wholly ^[2] - 46:36, 49:37 wide ^[4] - 6:37, 7:4, 69:24, 69:27 wide-ranging ^[2] - 6:37, 7:4 wider ^[12] - 8:44, 9:20, 11:41, 37:39, 37:44, 37:46, 48:8, 49:6, 49:39, 49:47, 50:43, 57:24 wife ^[1] - 64:42 wife's ^[1] - 73:11 willing ^[1] - 62:25 Wilson ^[1] - 90:21 Wilton ^[1] - 90:14 window ^[1] - 84:34 Wine ^[3] - 69:16, 82:5, 82:13 wine ^[2] - 69:17, 81:46 WINGECARRIBEE ^[1] - 1:12 Wingecarribee ^[9] - 2:2, 3:3, 3:13, 13:21, 13:38, 20:19, 66:19, 67:41, 90:12 wish ^[10] - 11:27, 11:44, 11:45, 33:12, 48:12, 58:34, 62:8, 62:11, 62:25, 89:16 wishes ^[2] - 11:9, 64:12 withdraw ^[1] - 35:12 WITHDREW ^[1] - 89:35 witness ^[7] - 10:30, 56:31, 58:3, 58:5, 60:3, 63:43, 63:45 WITNESS ^[2] - 89:31, 89:35 Witness ^[1] - 89:33 witnesses ^[27] - 2:30, 9:12, 9:33, 9:43, 9:46, 10:1, 10:18, 10:19, 10:29, 12:35,</p>	<p>50:20, 55:20, 56:20, 56:30, 56:38, 56:41, 57:10, 57:14, 57:19, 57:34, 58:7, 59:24, 59:25, 59:39, 61:35, 89:40, 90:16 wondering ^[1] - 85:35 word ^[4] - 39:33, 40:40, 41:45, 88:35 wording ^[1] - 41:13 words ^[6] - 38:28, 39:32, 39:37, 40:6, 41:14, 52:20 workforce ^[1] - 31:31 works ^[2] - 28:31, 53:40 workshops ^[1] - 69:14 worth ^[1] - 64:38 wrangling ^[1] - 67:38 writing ^[3] - 42:33, 42:36, 73:43 written ^[6] - 13:11, 20:38, 62:47, 70:10, 71:21, 78:28 wrote ^[1] - 64:6</p>
	<p>V</p>			<p>Y</p>
<p>vacant ^[1] - 75:39 Vale ^[4] - 1:19, 13:25, 65:31, 65:32 valued ^[2] - 80:19, 80:29 values ^[1] - 52:46 variance ^[1] - 52:42 variants ^[1] - 52:39 varied ^[1] - 9:45 various ^[10] - 2:13, 8:45, 32:10, 37:2, 40:7, 42:12, 44:14, 54:32, 58:25, 59:1 vary ^[1] - 8:12 vast ^[1] - 12:34 venue ^[1] - 11:40 verbal ^[1] - 64:34 version ^[2] - 42:39, 53:19 versions ^[1] - 44:14 versus ^[3] - 39:27, 39:37, 42:16 via ^[1] - 69:6 vice ^[1] - 65:23 video ^[2] - 12:19, 20:17 view ^[34] - 4:30, 6:32, 6:35, 6:47, 10:34, 11:27, 11:31, 29:32, 45:27, 46:27, 47:36, 62:39, 62:43, 63:7, 65:38, 67:9, 67:22, 68:26, 68:27, 71:36, 72:6, 72:38, 73:26, 74:1, 74:2, 74:4, 74:35, 77:42, 79:16,</p>		<p>Wales ^[4] - 6:5, 8:27, 13:45, 64:46 wander ^[1] - 73:11 wards ^[1] - 13:41 warrants ^[2] - 5:44, 47:22 WAS ^[1] - 90:38 watching ^[1] - 3:6 water ^[2] - 44:30, 52:43 ways ^[1] - 55:18 wear ^[1] - 81:14 web ^[4] - 6:5, 10:13, 11:29, 15:45 website ^[10] - 12:23, 13:29, 15:25, 58:18, 59:2, 63:2, 63:4, 90:5, 90:26 Wednesday ^[4] - 58:18, 90:17, 90:18, 90:20 week ^[9] - 56:25, 56:29, 56:30, 56:35, 56:38, 57:30, 61:36, 62:7, 81:21 weeks ^[8] - 49:23,</p>	<p>W</p>	
				<p>year ^[2] - 13:42, 66:19 years ^[19] - 13:34, 52:7, 53:24, 62:37, 64:43, 64:44, 65:2, 65:13, 65:19, 65:23, 65:26, 74:42, 75:21, 75:31, 75:37, 75:40, 84:25, 88:21, 88:27 yes ^[1] - 58:24 young ^[1] - 86:32 younger ^[1] - 78:21 yourself ^[1] - 84:46</p>