

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)
Mr Angus Broad (Officer Assisting)
Ms Bron Hewson (Officer Assisting)**

On Monday, 11 April 2022 at 10.03am

(Day 11)

1 THE COMMISSIONER: Yes, we'll resume. Mr Parish.
2
3 MR PARISH: Thank you, Commissioner. Our first witness
4 this morning is Councillor Larry Whipper.
5
6 THE COMMISSIONER: Yes, just come forward, sir, please.
7
8 <LARRY WHIPPER, sworn: [10.03am]
9
10 THE COMMISSIONER: Thank you. Take a seat. Yes,
11 Mr Parish.
12
13 <EXAMINATION BY MR PARISH:
14
15 MR PARISH: Q. Councillor Whipper, are you a current
16 member of the suspended councillors; is that correct?
17 A. Correct.
18
19 Q. Can you please start by giving us a bit of background
20 as to your connection with the shire and your experience as
21 a councillor in previous terms as well?
22 A. I've lived in Robertson for the last 30, 31 years. In
23 that time I served on Wingecarribee Shire Council for
24 approximately 21 years, I was elected in 1999. I am an
25 Independent. Basically, I came on to council to represent
26 environment sort of, so I guess my values revolved around
27 environment: social, cultural, animal justice, those sorts
28 of things that I believe didn't really get a voice on local
29 council, along with Aboriginal issues, and I would just
30 like to acknowledge that we are meeting on the land of the
31 Gundungurra people today and I would like to pay my
32 respects to Elders past, present and future as well.
33
34 Q. Thank you.
35 A. Thank you.
36
37 Q. That encompasses quite a few terms of council?
38 A. A lot.
39
40 Q. And the Commissioner and I are interested in your
41 views about how it may have evolved or changed over time.
42 Appreciating the reasonably large span of history, did you
43 pick up any underlying trends, both good and bad, in
44 respect of the behaviour of the councillors in particular
45 over those terms?
46 A. Look, council's a strange beast; it's certainly
47 changed, local government's changed in the last 21 years

1 that I've served on council. I must say that I've never
2 really experienced party politics on council, not until
3 probably the council of 2012-16, I think was probably the
4 most party political that I've experienced. Although we've
5 had representatives from different political parties,
6 everyone's really, I believe, been sort of focused on
7 community and working for the benefit of community.

8
9 There's been ups and downs obviously, there's been
10 personality clashes, value clashes all the way through, but
11 for the best part I think that there's always been a
12 commitment to serving community and the residents of the
13 community.

14
15 The last two terms of council, I think, have become
16 quite volatile; I've seen a bit of a decline in those last
17 two terms, which is unfortunate. I think sort of why we're
18 here today is because of the behaviour of, I'd say, two or
19 three councillors that have really put us into the minds of
20 the community in a negative way, which I regret. After
21 serving for 21 years as an Independent, I must say that
22 it's very - it's not the way I wanted to leave council,
23 that's for sure.

24
25 Q. Can I ask you about that 2012-2016 term; you referred
26 to it as party political. Can you expand on that? What
27 made it that way? Was it the election of certain
28 councillors affiliated to more traditional political
29 parties, or is that partisanship in a broader sense?

30 A. Probably in a broader sense but I think, you know, it
31 certainly snuck in a little bit which I hadn't experienced
32 before, but that's the name of the game; as I said, council
33 is a moving beast, it certainly changes and, depending on
34 the make-up and the values of the councillors that are
35 elected democratically by the community, we're there to
36 represent in a broader scale and we have to understand and
37 appreciate that there will always be differences of opinion
38 and different values as well. Unfortunately, mine were
39 generally in the minority so it was always a bit of a hard
40 slog to try to bring those things to the fore.

41
42 Q. Did you see the broader party political problems or
43 the partisanship seep over into the 2016-2020 term as well?

44 A. I think some of the animosity crept over; I wouldn't
45 say it's party politics, but certainly some of the
46 personalities, some of the agendas.

1 One of the things I regret on council is that people
2 have very big egos and very small agendas and I think that
3 is to the detriment of the community, and I think that's
4 played out well and truly in the last term of council where
5 egos and agendas have just gotten way out of hand; aided
6 and abetted, I believe, by some people in the community,
7 some interest groups that have their own agendas, their own
8 barrows to push and coming up - well, at the time into an
9 election year, I think people took advantage of that and I
10 think there was some manipulation of that process: that's
11 my gut feeling anyway.

12
13 Q. At least one of the councillors who has been ascribed
14 responsibility for that antagonism in the 2016-2020 term
15 was not in the previous term - I'm thinking of Councillor
16 Scandrett here. Who are the other councillors from --

17
18 THE COMMISSIONER: Perhaps Halstead.

19
20 MR PARISH: Pardon me?

21
22 THE COMMISSIONER: Councillor Scandrett was here from
23 2012-2016.

24
25 THE WITNESS: He was.

26
27 THE COMMISSIONER: Did you have in mind another
28 councillor?

29
30 MR PARISH: Scandrett was 2012-2016.

31
32 THE COMMISSIONER: Yes, Councillor Halstead was not. I
33 think you may have misspoke.

34
35 MR PARISH: Pardon me, yes, I was. Yes, thank you.

36
37 Q. I was exploring who came onto the body in 2016-2020
38 who may have added to the antagonism that came from the
39 personalities of the previous council?

40 A. So, certainly there were two councillors: Councillor
41 Scandrett and Councillor Turland, I think a lot of that
42 animosity just developed over time. Certainly there was
43 Councillor Arkwright from the previous council who never
44 stood in the last term as well. There was quite volatile -
45 some of the interactions between Councillor Turland and
46 Councillor Arkwright, but it seems that Councillor Turland
47 carried on some of that animosity, you know, for - I don't

1 know why - but, sort of, he had a set with the processes of
2 council, I believe, and some of the personalities on staff,
3 the GM, so there were some issues around that that I think,
4 sadly, crept over into that council.

5
6 Q. Can I ask you about your induction training and how
7 you perceived that. You received induction training after
8 you're election in 2016, around the end of September I
9 think initially. Do you have a recollection of whether
10 that was informative and sufficient in your view?

11 A. I had a lot of training over the years.

12
13 Q. Well, that was going to be my next question. Can you
14 give us an idea of how it compared to previous training
15 that you'd had, and induction that you'd had in previous
16 terms?

17 A. I think it was adequate. You know, people can be
18 educated but whether they learn anything through that
19 education is up to the individual, isn't it? Their
20 aspirations, I guess, their motivations and their agendas.
21 I think everybody took an oath of office, obviously that
22 meant more so some than others, but I think certainly the
23 training was adequate. As I said, people had their own
24 agendas unfortunately and all the training and all the
25 education in the world's not going to change that.

26
27 Q. There were some changes to the Local Government Act in
28 about 2016. Do you think you and perhaps some of the other
29 more experienced councillors were able to sufficiently
30 appreciate and get given the right information you needed
31 to understand the changes to the Act in the 2016-2020 term?

32 A. Probably - I think it probably - in hindsight it
33 probably could have been more appropriately delivered to
34 councillors, yeah.

35
36 Q. There's a considerable suite of documents and powers
37 and procedures that you have to get your head around as a
38 councillor. Were you provided after the 2016 election with
39 sufficient documentation, in your view, such as copies of
40 the Code of Conduct, Code of Meeting Practice and even
41 legislation?

42 A. I believe so, yeah.

43
44 Q. Did you hold on to a copy of documents such as the
45 Code of Conduct and the Code of Meeting Practice yourself
46 in hard copy?

47 A. I did, I've recently thrown them out, but I have.

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Q. That's a bit pessimistic. Was that something, given the complex nature of those documents and the volume of those documents, that you had to refresh yourself with occasionally?

A. Oh, occasionally, definitely; I mean, you'd be sort of - you wouldn't be doing your job properly if you didn't refresh yourself with the changes, yeah.

Q. Did you have any impression, positive or negative, about any of the other councillors in the 2016-2020 term and their willingness to stay appraised and refreshed themselves with procedures and conduct and responsibilities?

A. Probably some were, what can I say, more ready to take, you know, those changes, those codes and those values on than others. As I said, you know, you can educate, but whether or not people want to take that on is up to them, and I can't speak for any other individual other than myself.

Q. Did you gain any impression of any other individual, of whether they either took the time to properly understand their obligations or not?

A. Well, clearly some didn't because I don't think it really mattered to them, that wasn't their agenda.

Q. One of the things that the Commissioner is probably going to have to grapple with is whether at least some of the quite obviously bad behaviour, especially in meetings, was the product of councillors who didn't understand their obligations or just purposely chose to ignore them. Did you gain any impression at least, we'll start with councillor meetings, about whether some or any of the councillors didn't understand their obligations or just chose to ignore them?

A. My belief is that all councillors understood their obligations I think, and some chose to disrupt purposely for their own - what can I say - for their own agendas, their own purposes, yeah.

Q. What do you understand the statutory obligations are on you as a councillor?

A. Well, things like integrity, truth, respect, you know, they're values I think every individual holds and one of the things I noticed, that there was from some councillors a total lack of respect and that I think has been to our

1 detriment because we need to inspire the confidence of the
2 community that we represent. I think the behaviour of some
3 of the councillors deliberately unwound that confidence of
4 the community, and here we are as a result of that, you
5 know, being thrown out in an embarrassing way as well.
6

7 Q. One of the statutory roles of a councillor at least
8 under section 232 of the Local Government Act is to:
9

10 *Uphold and represent accurately the*
11 *policies and the decisions of the governing*
12 *body.*
13

14 Do I take it that you're aware that a decision of the
15 governing body is defined as any resolution passed with a
16 majority becomes a decision of the governing body?
17

18 A. Absolutely.
19

20 Q. That being the case, can you give me your
21 understanding of what upholding and representing accurately
22 means after a decision is made?
23

24 A. Well, once a decision is made, whether we have
25 differing opinions or not, that's the decision of the
26 elected body of council.
27

28 Q. In your understanding does that mean that, once that
29 decision is made even if you've spoken against it quite
30 passionately and vociferously, after the decision is made,
31 you have an active obligation to uphold that decision?
32

33 A. Well, I think, believe it or not, you can have your
34 own personal opinion, your own personal view, but that's
35 the resolution of council, that's in place and that's a
36 given, yeah.
37

38 Q. I'm also interested in the converse of that positive
39 obligation. In your view, do you think that that means
40 that a councillor must not undermine a decision after it's
41 been made?
42

43 A. That would be my understanding.
44

45 Q. Did you see any of that sort of behaviour in the
46 2016-2020 council where, even if a councillor may have been
47 in a minority, they nevertheless, rather than uphold the
48 decision, went out and sought to undermine it?
49

50 A. I did.
51

52 Q. And I take it from your previous answers that you
53

1 would regard that, at least, as a breach of the statutory
2 obligations under section 232?

3 A. That's the way I interpret that.

4
5 Q. Can you give me some examples, if you can recall any,
6 where in your impression a councillor took steps to
7 undermine a decision after it had been made by council?

8 A. One that comes to mind is Station Street, that's one
9 that I think brought us to one of the - the position we're
10 in now where it was very vocal where at least one
11 councillor, and ultimately towards the end of our term
12 three councillors, certainly were very vocal about
13 decisions that were made by council: so, that's one.

14
15 Q. Any others which strike you as particularly important?

16 A. To tell you the truth, I've moved on a lot since this
17 and it seems like ancient history in a lot of ways. I'm
18 very disappointed in the behaviour of councillors and, you
19 know, how they've cheapened the role of a councillor and,
20 as I said, I'm processing that in my own way. I'm not
21 about, you know, sort of grinding axes and, look, taking
22 scalps either; it's just that I think we could have done so
23 much better, it's disappointing and, as I said, I'm trying
24 to move on.

25
26 So, there has been, those councillors that I have
27 mentioned, Turland and Scandrett, I think have been
28 certainly instrumental in council - the label that's been
29 put on council and I think there was a deliberate intent to
30 bring dysfunction into the council chamber. And,
31 irrespective, you know, I'm not part of any faction, but
32 there's a certain respect I think needs to be employed in
33 council meetings and for the position of mayor and for
34 fellow councillors, that I don't think we saw a lot of that
35 towards the end.

36
37 Q. While we're talking about grindings axes, are you
38 aware of a press release that was initially put out under
39 the name of Mayor Gair and a few others and which found its
40 way into the media a couple of weeks ago?

41 A. Yeah, as I said, I don't read the paper a lot but I
42 did see that one.

43
44 Q. You did see that one?

45 A. It grabbed my attention, yeah.

46
47 Q. There was some evidence last week from ex-Councillor

1 Markwart that he'd received a phone call from, I think it
2 was Mayor Gair and had attended a meeting. You don't seem
3 to have your fingerprints over any of this.

4 A. No.

5
6 Q. Did you receive a phone call at least from Mayor Gair
7 about such a thing?

8 A. Nothing. In fact, because of the current state of the
9 roads I had to go through Fitzroy Falls to get to
10 Robertson, which is a very, very long journey from Tahmoor
11 where I work and I went past Grandpa's Shed and I thought
12 I'd call in and see Duncan, which I did, and that's the
13 time I've seen him or spoken to him and that was, oh, two
14 or three weeks ago and it wasn't even mentioned then, so we
15 didn't discuss it at all.

16
17 Q. It seems like you're out of the loop on that idea?

18 A. I've always been out of the loop actually, and I'm
19 sort of happy about that.

20
21 Q. When you stopped in to see the mayor did you talk
22 about the evidence him or you may give at this inquiry at
23 all?

24 A. It was just generally, how are you going, you know;
25 like, I just obviously bitched a little bit about some of
26 the behaviours of councillors and the discredit they've put
27 on us and how it's I think not serving the community at
28 all. Had a bit of a side swipe at the administrator, you
29 know, things like that, just letting a bit of steam off but
30 it was nothing more than that and that was the last time.
31 In fact, I haven't spoken to any of the councillors except
32 I think once or twice maybe Councillor Markwart might have
33 sent an email, but as I said that's something that I prefer
34 just to - yeah.

35
36 Q. Thank you. Can I just ask you, before I got diverted
37 slightly, what you understood the role of the governing
38 body was statutorily? Can you give us your impressions of
39 what --

40 A. Is to set policy for council and to represent the
41 community's view; that's basically what I was about, you
42 know, particularly bringing a minority view to council and
43 doing the best I could as working as part of a team and to
44 uphold those policy decisions.

45
46 Q. The setting of policy: we've had some evidence go both
47 ways about the sufficiency of the policies being set by

1 council. Can you give me your impressions about whether
2 the conduct and the way that the governing body operated in
3 the 2016-2020 term impacted on the ability to do the core
4 job of the governing body, which is to set policy?

5 A. I think some of the behaviours of council sort of
6 probably did have an impact on the council, the executive,
7 the staff being able to carry out some of those policies,
8 yeah, and I think that there was a bit of - at councillor
9 briefing sessions there was certainly, what can I say, some
10 psychological abuse of council staff and I think that was
11 taken to heart by some of the executive team and did impact
12 on some of their ability to, yeah, carry out that policy.

13
14 Q. Can we start there with the councillor briefing
15 sessions. Can you give us your impressions about whether
16 the way they operated and the behaviour of the councillors
17 in the 2016-2020 term was any better, worse, same, than
18 previous terms of council?

19 A. Well, apart from the 2012-16, there was some
20 volatility in those meetings as well, some of those
21 meetings, but I think that repeated itself in part in the
22 last term of council due to some of those people still
23 being there and carrying on in the same fashion.

24
25 Q. What was the behaviours that you're referring to there
26 as being carrying on in the same fashion?

27 A. Some of it was really rude, abusive; you know, some of
28 it was very undignified behaviour: attacks on staff at
29 times, certainly a lot of hostility, a lot of anger and,
30 you know, that got out of hand I believe and impacted on
31 everybody in the room, so I think that was very
32 unfortunate.

33
34 Q. Were there particular councillors who were guilty of
35 that or was it --

36 A. There was two: I keep repeating the same names.

37
38 Q. I'll take it as Councillors Scandrett and Turland?

39 A. Yes.

40
41 Q. In respect of that interaction with staff, did you see
42 or did you have any impression about what effect that was
43 having on staff?

44 A. Yeah, it was impacting in a very negative way. I
45 mean, it certainly - I think it was demeaning. One of the
46 things: our staff have always been very professional and
47 I've assured them that any decision I made against them

1 wasn't to question their professional standards but as a
2 councillor I had a different role and I'd advocate for
3 community, but when it gets to a point where there's
4 disrespect and abuse and sort of, I think elements of
5 bullying that are associated with that attitude, it has to
6 have a negative impact on staff and the whole morale, you
7 know, that creates a wave of negative through not only
8 council, the executive, but through staff itself and seeps
9 out into the community obviously and that's part of the
10 reason we're here today.

11
12 Q. Did you see any functional or perhaps dysfunctional
13 outcomes caused by that treatment of staff, and I'm not
14 talking here about simply morale, but did the quality of
15 the briefings get affected? Did the information or the way
16 they were able to provide you with information change? Did
17 you perceive any of that?

18 A. On some occasions probably; I don't think the staff or
19 the people presenting, particularly the GMs, deputy GMs,
20 felt competent enough to be honest, yeah.

21
22 Q. Was that at least partly in your impression caused by
23 the behaviour of councillors?

24 A. Definitely, yeah.

25
26 Q. Was that behaviour that you saw both in briefings and
27 in council meetings, or one or the other?

28 A. It did, yeah; eventually that was replicated in
29 council meetings and just that challenging of authority,
30 disrespect shown to the chair. I mean, the mayor himself
31 would get flustered as times as some other councillors did
32 as well, but I think some of the councillors, at least one
33 of the councillors deliberately sort of created an
34 environment where there was antagonism and I think that
35 that's very unfortunate.

36
37 Q. We've had some evidence that relates to interference
38 with staff functioning, as in, the stepping over that
39 strategic operational line.

40
41 THE COMMISSIONER: Just before you proceed.

42
43 Q. Councillor Whipper, can you tell me your understanding
44 of that distinction between the councillor role as being
45 strategic and staff as being operational; how did you see
46 that line?

47 A. We always had a policy that most of us abided by,

1 where we would deal only with executives, so with the
2 general manager, with the DGMs. If we chaired a committee
3 we would have sort of interaction with the manager of that
4 department but it stopped there, there was no involvement
5 beyond that. So, ours was a role of governance, setting
6 policy, operational matters rested definitely with the GM,
7 so that's the way I certainly applied myself.

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

10
11 MR PARISH: Thank you.

12
13 Q. The Commissioner's quite nicely set me up there for
14 the next question, which is, did you see councillors
15 overstep that line or did you witness or hear anything
16 about councillors overstepping that line in the 2016-2020
17 term?

18 A. Yeah. As you can appreciate, I was never really part
19 of the clique, so I didn't sort of have a lot of direct
20 experience of that, but I did hear of some councillors, you
21 know, maybe stepping into territory that they shouldn't.
22 So, look, I have a feeling that that did happen, but again,
23 to what degree I'm not sure.

24
25 Q. Can you tell us about the councillor request system in
26 the shire council and how that worked? It's not something
27 we've had a lot of evidence on so far.

28 A. Councillor request system?

29
30 Q. Was there a system whereby councillors could make
31 requests in a formalised, say, email or a form that allowed
32 you to put requests through either the GM or the DGMs and
33 seek information that way?

34 A. Yeah, there was a councillor request email set up and
35 the process was to filter any requests through that
36 process; they were then distributed to the appropriate
37 department or manager for a response and then that was
38 generally feedback through the councillor request system,
39 yeah.

40
41 Q. Is that a system that you often used?

42 A. I did. Other times I would talk directly to managers,
43 you know, but for the best part I would use that system,
44 yeah.

45
46 Q. Did you hear of any complaints from staff or gain any
47 impression about councillors using that system in a way

1 that might have crossed into haranguing or pestering staff?
2 A. Nothing really comes to mind, no.

3
4 Q. In council meetings specifically how did you perceive
5 the interactions of staff in the 2016-2020 term: was it
6 better, worse, the same as previous terms?

7 A. Apart from the 2012-16 where it certainly got a little
8 more personal, I think it did go a step further in that the
9 last term of council definitely - yeah. There was almost,
10 what I can say, concerted military strategy around, you
11 know, getting into the council meetings and disrupting
12 them.

13
14 Q. You've observed that there were some influence,
15 perhaps in a malign way, to use my words, of lobby groups
16 such as Friends of Wingecarribee or the Friends of Bowral
17 or the Southern Highlands key stakeholders group: what
18 influence are you talking about there, is that in respect
19 of Station Street specifically or did it go beyond that?

20 A. Yeah, and bigger than that as well. So, Station
21 Street, I think, was led by the Friends of Bowral, I think
22 that was a lobby group that had some influence on where we
23 are today. Key stakeholders group was bigger; I think
24 there was some influence from some of the business groups
25 in the shire, and the Friends of Wingecarribee were a group
26 that were set up more or less on Facebook and they had a
27 specific purpose.

28
29 Again, these are just things that I've observed over
30 the years and certainly the field that I work in I'm sort
31 of not unacquainted to how people use processes to achieve
32 certain ends and those games - psychological games people
33 play. So, yeah, I think there was some influence and I
34 think some of that influence directed the intervention of
35 our local members as well; I think, again, I have no direct
36 experience of that, but you do hear things and know people
37 who talk to people and some of those influences obviously
38 attracted the interest of our local members.

39
40 And I've never had - as I think I've said in my
41 submission - we've had a very good relationship with all
42 our state and federal members, there's never been this
43 amount of intervention at all before and I find that very
44 peculiar after serving 21 years on council to see, without
45 any discussion with councillors or the mayor at all, so I
46 find that very, very peculiar that that step was taken
47 without any discussion directly with council or

1 councillors.

2

3 Q. I might come back to that topic in a moment, but just
4 on the lobby groups and their use of social media which
5 seemed to be almost exclusively Facebook. Councillor
6 Markwart, ex-Councillor Markwart observed that in his
7 opinion there was a change of sentiment or tactics perhaps
8 in the last few years as attributable to both the use of
9 Facebook by some of these groups and the live-streaming of
10 meetings. Do you have any view on that, whether that's
11 correct in your opinion, or at least explicable in part, or
12 unrelated?

13 A. Look, and again, I don't really go onto Facebook much
14 these days, I don't really have a desire to do that, but I
15 know it's a method. Over 21 years I've seen a lot of lobby
16 groups come and I've seen how they've operated, but
17 Facebook just gives permission for everybody to be an
18 expert and have their say.

19

20 The live-streaming, I think, is something that
21 probably suited at least one councillor who used that as a
22 means of self-promotion; so, yeah, I really haven't got an
23 opinion beyond that.

24

25 THE COMMISSIONER: Q. Just before Mr Parish moves on,
26 Councillor Whipper, I'm detecting in your evidence that you
27 see there's a vice in the involvement or the actions of
28 some of these - I'll call them interest groups, to find a
29 neutral term for the purposes of my question - in the way
30 they pursued their goals. Have I understood you correctly?
31 Do you see a vice in the way that happened or their
32 involvement in that way?

33 A. Yeah, look, a lot of these groups, they cross over,
34 they know each other, and I think there's been some
35 strategic way that they've utilised social media to put
36 discredit on this council. I believe that at least one of
37 those councillors is very well-known to a lot of those
38 people in those social media groups and that has been
39 something that I believe has been manipulated in a way to
40 raise certain profiles and discredit other people, yeah.

41

42 THE COMMISSIONER: Thank you.

43

44 MR PARISH: Q. One of the problems that the Commissioner
45 might have, and I take it a problem you've had, is trying
46 to reconcile whether or not a well organised, vocal,
47 articulate group of 300 people is a well organised,

1 articulate group of 300 people or represents something that
2 actually does speak to a larger concern in the community.
3 Is that something you had to grapple with and, if so, how
4 did you reconcile that as a councillor, if at all?

5 A. That's very difficult; I mean, the more you sort of
6 get involved in the world of Facebook, the more you start
7 to discredit yourself because there's no winners, you know,
8 unfortunately some people believe what's being said, others
9 don't, others are more discerning, they discriminate more.
10 But for a large part this is part of a strategy, I think it
11 was designed to put discredit on individuals within
12 council, and again, some of that behaviour that was almost
13 scripted for the camera, I think, reinforces the fact that
14 there's been some strategic way - even some of the people
15 who would sit in the gallery and heckle in the gallery were
16 people that have been involved directly in those Facebook
17 groups and been very vocal in opposition of council and
18 certain councillors.

19
20 Q. Just taking the Station Street bypass as an example,
21 appreciating it's not the only issue that a council has to
22 deal with --

23 A. No.

24
25 Q. -- but is one of the ways to reconcile with vocal
26 groups to make sure that any process undertaken is
27 transparent and that the communication is good?

28 A. (Witness nods.)

29
30 Q. You'd better say "yes" for the microphone; I know
31 you're nodding.

32 A. Yes.

33
34 THE COMMISSIONER: Sorry, it's just for the transcribers
35 who are sitting elsewhere, they can't necessarily see your
36 nods.

37
38 MR PARISH: Q. Do you think on reflection - we've had
39 some evidence in this inquiry that suggest it wasn't the
40 best communicated and, whether true or not, that it might
41 have helped some of these interest groups if it had been.
42 On reflection, do you think that the communication in
43 respect of the Station Street bypass was open and
44 transparent and well done?

45 A. Well, Station Street's been something that's been on
46 the book for decades, it's not anything that's just been
47 plucked out of the air. I think the communication strategy

1 was, you know, was adequate. As I said, when certain
2 groups have certain expectations, you know, they don't
3 always want to hear or they don't always agree with,
4 therefore they'll continue to make a noise and I think that
5 is one case in point, definitely.

6
7 THE COMMISSIONER: Q. What about - the date has just
8 immediately escaped me, but there were some changes made in
9 early, was it 18 or 19, to the way the project was going to
10 look; there was some re-routing of directions and --

11 A. Okay, yes.

12
13 Q. Do you recall - the date probably doesn't matter, but
14 do you recall that there were changes to the project?

15 A. Which impacted on some trees?

16
17 Q. Yeah, there was some trees and how the road was going
18 to be positioned and some car parking moving to, I think,
19 Mittagong perhaps. Do you recall that happening?

20 A. Yep, yep, I do.

21
22 Q. Did that lead to some more consultation with the
23 community before those were approved, do you recall?

24 A. Well, probably - sorry.

25
26 Q. That's all right.

27 A. Probably that communication could have been done
28 better, I think that, you know, those changes could have
29 been articulated better, it was something - and I remember
30 meeting with a group from representatives from Friends of
31 Bowral as well, I was happy for that to go on exhibition
32 again and go back to the community for more communication,
33 but that wasn't the feeling of council, yeah.

34
35 THE COMMISSIONER: Yes. No, I appreciate that. Yes,
36 thank you.

37
38 MR PARISH: Q. One thing you mentioned was the political
39 interest taken perhaps by state members in the council
40 which you saw as different from previous terms; is that
41 fair?

42 A. Yeah, it's true.

43
44 Q. And, in your view, had something to do potentially
45 with the suspension order: is that a fair observation?

46 A. It's a fair observation, yes.

1 Q. What about the Performance Improvement Order, is that
2 a fair observation?

3 A. Well, my understanding is that we went through that
4 process and, you know, the majority of councillors would
5 have I think applied themselves to that performance order:
6 some didn't, and that was one of the things that was
7 raised. I mean, we know that under the Act that the
8 Minister has the ability to cherry-pick trouble makers: why
9 that didn't happen, even now I'm gobsmacked that that
10 wasn't a consideration.

11
12 Q. That's something which has troubled both the
13 Commissioner and I. This idea that there was a power to
14 cherry-pick and suspend councillors, where does that power
15 come from? And it's a power that neither I nor the
16 Commissioner have been able to find yet.

17 A. It's under the Local Government Act, there's a
18 Councillor Misconduct Order in 2015 --
19

20 Q. That's the one you're referring to?

21 A. -- it's quite clear that --
22

23 Q. The Director-General is able to take steps for an act
24 of misconduct.

25 A. Yeah. And our correspondence with the Minister did
26 raise that. I believe that there was a resolution of
27 council to meet with the Minister, a request to meet with
28 the Minister. There was no discussion and that's one of
29 the things I find a little bit insulting to the role of
30 local government, that we didn't have the opportunity to
31 meet directly with the Minister, and nor those state
32 members that raised the issue, there was never any approach
33 to council, councillors, before that action was taken, so I
34 just find that undemocratic.
35

36 Q. I think there's a process that can be executed in the
37 question of misconduct that I don't think - correct me if
38 I'm wrong - comes from the Minister, him or herself. Did
39 the councillors ever discuss about taking steps of their
40 own to bring a misconduct complaint against some of the
41 councillors?

42 A. There may have been some discussion over the years,
43 but there was nothing formal, certainly not in the last
44 council.
45

46 THE COMMISSIONER: Q. Was there ever any discussion for
47 the council putting a motion to censure any particular

1 councillor or councillors for misconduct in accordance with
2 the Act?

3 A. I think there was discussion around that; I'm terrible
4 with dates and times, yeah.

5
6 Q. That's all right. Do you think that happened in the
7 2016 term or in the 2012 term?

8 A. There was in the 2016 term. There may have been some
9 discussion around certainly one of the councillors leaking
10 confidential information; that was something that was
11 discussed as well, I think in the last council, so yeah.

12
13 THE COMMISSIONER: Thank you.

14
15 MR PARISH: Q. Are you aware that there is a provision
16 for the formal censure of a councillor for misconduct that
17 can be passed by resolution of the council?

18 A. Well, yes.

19
20 Q. Is that something that you recall was ever discussed
21 by councillors or even indeed used in the 2016-2020 term?

22 A. My memory, no.

23
24 Q. If you don't recall, it's perfectly fine to say "I
25 don't recall"?

26 A. No, no.

27
28 Q. My point being is, do you agree with the proposition
29 that any steps taken to censure a councillor for misconduct
30 lay with you as the governing body rather than the
31 Minister? Do you agree or disagree with that?

32 A. Well, partially. I think ultimately the Minister does
33 make the decision and did make the final decision, so
34 again, that communication that the council is accused of
35 not entering into, I think, goes beyond the chambers and
36 communication with the Minister and our state members I
37 think could have been conducted in a much more meaningful
38 way as well.

39
40 Q. One other point you raise is, you don't feel like
41 there was procedural fairness in the way that the
42 Performance Improvement Order and the suspension was dealt
43 with; is that a fair characterisation of your evidence?

44 A. So, specifically in what aspect of the performance?

45
46 Q. I think you are referring to it in the context of the
47 issuance of the Performance Improvement Order and the

1 issuance of the suspension order, but if I'm misreading
2 your submission then by all means correct me. Is that your
3 position, that there was a lack of procedural fairness from
4 the department or the Minister in that respect?

5 A. Well, in as much as that I did send an email to the
6 Minister and didn't get a response, I guess there's no
7 procedural fairness in that because we didn't get the
8 chance to put a case alternate to that opposing - that
9 opposition to the current sitting council.

10

11 Q. I'm just going to show you tender bundle B for a
12 moment. The very first page of tender bundle B is
13 hopefully the letter from the Minister to Councillors Gair
14 and Paull. Councillor Gair and Mr Barry Paull who was at
15 the time acting general manager; is that right?

16 A. Yep.

17

18 Q. And that is a notice of intention to issue a
19 Performance Improvement Order to Wingecarribee Shire
20 Council under section 438A of the Local Government Act
21 1993. Do you see that?

22 A. Yep.

23

24 Q. If you turn over the page, it sets out there, at the
25 very top in bold:

26

27 *The reasons why I, as Minister, propose to*
28 *issue a performance improvement order.*

29

30 And then the section. Do you see that?

31 A. Yep.

32

33 Q. Then it's got four reasons below; do you see that?

34 A. Yep.

35

36 Q. If you take it from me that that was what was set out
37 in Schedule 1 which was the draft PIO which was attached to
38 this; do you agree with that?

39 A. Mmm-hmm. So, this is on page 836, is it?

40

41 Q. Yeah, I think that's right, yes. I think Mr Broad has
42 diligently brought up page 836 to ensure it's
43 chronologically in the right spot. Yeah, that's right.

44

45 THE COMMISSIONER: Sorry, Mr Parish, 835 is the order as
46 issued.

47

1 THE WITNESS: It's out of order.
2
3 THE COMMISSIONER: Do you want the witness to have the
4 draft or the one that was attached to the notice?
5
6 MR PARISH: The one that was attached to the notice, it
7 may have been in electronic form only.
8
9 THE COMMISSIONER: I see. Perhaps the witness could just
10 assume that what's in the letter is in the draft and then
11 that will either be correct or - I think it is, so rather
12 than ...
13
14 MR PARISH: Yes.
15
16 THE WITNESS: Okay, so what page are we on now?
17
18 MR PARISH: Q. Well, hopefully we're still on page 2. I
19 ask you to assume for a moment that the four reasons which
20 are set out at the top of page 2 are reflected in
21 Schedule 1?
22 A. Yep.
23
24 Q. Thank you. Then down the bottom there, there's an
25 invitation to make submissions regarding the proposed
26 Performance Improvement Order; do you see that?
27 A. Yep, I do.
28
29 Q. The Minister gave the council seven days from the date
30 upon which the notice is served if it chooses to make
31 written submissions; do you see that? Do you see that?
32 A. Yes.
33
34 Q. If you turn the next page, hopefully to page 4 --
35 A. Yes.
36
37 Q. -- that's a letter from the Office of the Mayor to the
38 Minister dated 25 August 2020; do you see that?
39 A. Yep, I do.
40
41 Q. He refers to the extraordinary meeting of council on
42 24 August 2020; do you see that?
43 A. Yes.
44
45 Q. That's the first paragraph?
46 A. Yep.
47

1 Q. Can I get your recollection or understanding of why
2 the way that the governing body sought to provide
3 submissions to the Minister was by way of a motion? Did
4 you have no specific recollection or --

5 A. It was a motion that came to council and we voted
6 accordingly. I don't know why the mayor chose to do that.

7
8 Q. Do you recall whether anyone raised the possibility of
9 providing a set of written submissions rather than a motion
10 with resolutions?

11 A. No, I can't recall that.

12
13 Q. You don't recall?

14 A. No.

15
16 Q. You'll see prayer 2 of the motion which states:

17
18 *THAT Council advise the Minister that it*
19 *accepts the "Reasons for the Order" as*
20 *detailed in Schedule 1, accepts the "Action*
21 *required to improve performance" in*
22 *Schedule 2, and accepts the proposal for*
23 *"Appointment of temporary advisors" in*
24 *Schedule 3, as proposed in the Draft Order.*

25
26 Did you, when you were voting on this at least, take
27 that to mean that the governing body was accepting that the
28 reasons as set out that I've taken you to were correct?

29 A. Well, I wouldn't agree that the reasons were correct,
30 personally, but --

31
32 Q. Can you recall what you understood the phrase
33 "Council ... accepts the 'Reasons for the Order'" to mean?
34 Is it that you didn't have a specific recollection at the
35 time or?

36 A. I don't, no. It was probably more for convenience
37 from my point of view, we just wanted to get on and get
38 through the process; but I don't know whether I would
39 accept that the reasons were correct, but that's an
40 individual.

41
42 Q. Do you accept that, while none of us can put ourselves
43 in the mind of the Minister, a reasonable person reading
44 that motion might think that it means, yeah, you're right,
45 the reasons that you've set out are correct?

46 A. Yeah, a reasonable person might, yeah, might read it
47 that way.

1
2 Q. Just going back to --
3

4 THE COMMISSIONER: Q. Sorry, is there another way it
5 could be read in your view, if I look at paragraph 2 of
6 that resolution? I just sensed some qualification in your
7 last answer, I just wanted to make sure I understand you
8 correctly?

9 A. I'm just reading it again to make sure. No, no.
10

11 THE COMMISSIONER: Thank you.
12

13 MR PARISH: Q. Just specifically dealing with reasons
14 (1) and (2) back on page 2, that there is at least in the
15 mind of the reasonable person reading the resolution an
16 acceptance that there are reputational and work health and
17 safety risks facing councillors as a consequence of the
18 behaviour of some councillors, and there is evidence of
19 hostility and acrimony between councillors that, if
20 unaddressed, is likely to lead to dysfunction?

21 A. Mmm-hmm. So, I think the point there is, some
22 councillors - I think I would have made that point that
23 those councillors were never identified, but it gives the
24 impression that that dysfunction is holistic through
25 council, when I certainly don't believe that's the case.
26

27 Q. There was a similar line of inquiry I'm interested in
28 in respect of the notice of intention to suspend as well
29 but that's in a slightly different tender bundle. If I can
30 show you tender bundle E, which I don't think has been
31 tendered, Commissioner.
32

33 THE COMMISSIONER: Yes, do you wish to tender it now?
34

35 MR PARISH: Yes, please. The first one.
36

37 THE COMMISSIONER: Exhibit E will be a bundle of documents
38 comprising 1,351 pages and marked tender bundle E.
39

40 **<EXHIBIT #E - BUNDLE OF DOCUMENTS COMPRISING 1,351 PAGES.**
41

42 THE COMMISSIONER: Which page do I need?
43

44 MR PARISH: Volume 1.
45

46 Q. If you can go four pages in, councillor.
47

A. Go to page 4?

1
2 Q. Yes, please. That's the letter from the Minister to
3 Councillors Gair and Mr Barry Paull, and it's titled,
4 "Notice of Intention to Issue a Suspension Order"; do you
5 see that?

6 A. Yep.

7
8 Q. Do you see, three paragraphs down it states:

9
10 *Allegations of harassing and bullying*
11 *behaviour towards council staff have been*
12 *made. Concerns have been raised by both*
13 *councillors and staff about the impact of*
14 *these behaviours on the health and*
15 *well-being of staff and council. These*
16 *concerns have been ongoing for some time.*

17
18 *The office of local government has*
19 *previously attempted to work with council*
20 *to improve the underlying behaviours that*
21 *gave rise to disruption at council meetings*
22 *and on council premises, including warning*
23 *letters providing observers to meetings and*
24 *conducting workshops with councillors and*
25 *senior staff.*

26
27 *Finally, as a result of these concerns and*
28 *about these issues continuing I issued the*
29 *Performance Improvement Order.*

30
31 In your view, if the behaviours identified in the
32 Performance Improvement Order which council appeared to
33 agree with continued during the PIO time period, was the
34 Minister within her rights to issue the notice of intention
35 to issue a suspension order?

36 A. I guess you would have to rely on the conscience of
37 the Minister to answer that question, because again, there
38 were a minority of councillors in my opinion that continued
39 to disrupt above and beyond any attempts that council made
40 to abide by those improvement orders. So, I think therein
41 for mine, that's the whole problem, that those councillors
42 were never singled out and made accountable for their
43 behaviours and continued to disrupt the orderly functioning
44 of council meetings.

45
46 Q. I'm asking you to agree with the logic, and feel free
47 to disagree with it if you wish to, but if council believes

1 that there's certain behaviours going on which leads to a
2 Performance Improvement Order and those behaviours
3 continue, it almost follows that the Minister must take the
4 next available step to her; do you agree with that?
5 A. Well, again, my opinion is, given that was the only
6 option that the Minister had, I believed that there were
7 other options available that weren't pursued.
8
9 Q. Are you referring there to the misconduct provisions;
10 is that correct?
11 A. That's right, yep.
12
13 THE COMMISSIONER: Q. Do you see that as being a step
14 available to the Minister?
15 A. I do, yep.
16
17 Q. You see the Minister and the Departmental Chief
18 Executive as one and the same, do you, in those provisions?
19 A. I think the Minister is there responsible.
20
21 Q. What, through some direction to the departmental Chief
22 Executive; is that what you have in mind?
23 A. Yeah, well, there'd be those lines definitely.
24
25 THE COMMISSIONER: Right, yes.
26
27 MR PARISH: Q. Do you think that was a view shared by
28 some of your fellow councillors as well.
29 A. Absolutely.
30
31 THE COMMISSIONER: Q. Were any representations made to
32 the Departmental Chief Executive to engage the misconduct
33 provisions?
34 A. I certainly remember having the discussions and I
35 thought that we did, in a motion, make a request to meet
36 with the Minister to discuss those issues, but I can't
37 remember the dates or the timing of that, but there was
38 certainly discussion, I don't know if anything more formal
39 was put in place.
40
41 THE COMMISSIONER: Thank you.
42
43 MR PARISH: I might just show you tender bundle B while
44 we're on that topic.
45
46 THE COMMISSIONER: Do you still want Councillor Whipper to
47 have E?

1
2 MR PARISH: Yes, please.
3
4 Q. I think you've already got B. If you could turn to
5 page 233.
6 A. Yep.
7
8 Q. Is that the letter you wrote to the Minister through
9 the New South Wales Government customer service web portal?
10 A. Yeah, yep, okay, it's on page 234.
11
12 Q. Yes, that's right?
13 A. Yep, that was the email I sent, that's right.
14
15 Q. On page 2, which is page 235, about halfway down you
16 say:
17
18 *I know there are powers available to*
19 *yourself as Minister for Local Government*
20 *and respect your position [as] an authority*
21 *as Minister for Local Government.*
22
23 Are you referring there to those misconduct powers you
24 were just talking about?
25 A. That's right, yep.
26
27 Q. Did you or any other councillor have discussions about
28 this time about making separate representations to the
29 Minister?
30 A. We had discussions about those powers but I don't
31 believe we had discussions about making separate
32 representations now.
33
34 Q. Did you write this, at least in part, because you
35 didn't have confidence that the response from the governing
36 body was going to be sufficient?
37 A. I think I did it just because my conscience demanded
38 that I do it, yeah. As I said before, council decisions
39 didn't always reflect my own personal values or beliefs, so
40 this was just a personal approach to express those
41 feelings.
42
43 Q. I understand. Can I take you to page 20 of tender
44 bundle E now.
45
46 THE COMMISSIONER: Have you finished with B for the
47 moment?

1
2 MR PARISH: I have.

3
4 THE COMMISSIONER: Perhaps that can be taken from
5 Councillor Whipper so he's not burdened with paper like we
6 all are from time to time.

7
8 THE WITNESS: So, page 20?

9
10 MR PARISH: Q. Yes, please.

11 A. Okay, yep.

12
13 Q. That's the 9 March letter to the Minister?

14 A. Correct.

15
16 Q. And I take it that this is what the governing body
17 decided was the written submission that was going to be
18 provided to the Minister in answer to her request for
19 written submissions within seven days?

20 A. Okay, yeah.

21
22 Q. The same question as with respect to the PIO: was
23 there any discussion about whether this was the appropriate
24 way to make a submission to the Minister in respect of the
25 notice of intention to issue a suspension notice?

26 A. I think it just procedurally went forward as a motion;
27 there wasn't any discussion around how we should or
28 shouldn't do it, no.

29
30 Q. Indeed, paragraph 1 of that resolution seems to be the
31 note that what the Minister requested was that the council
32 was invited to make a submission within seven days; do you
33 see that?

34 A. Yep.

35
36 Q. And then the second paragraph down appears to note the
37 achievements of the council during the term. Do you recall
38 the logic or reason behind including that in a submission
39 about concerns of councillor behaviour and work health and
40 safety issues?

41 A. Well, probably just to point out that there was some
42 functionality with council, we were achieving, you know,
43 some things, yeah, so apart from that.

44
45 Q. In respect of (h) on that list, there's been some
46 evidence from some witnesses in this inquiry expressing
47 dismay at the response of the council in respect of the

1 2019-2020 bushfires. Is that (2)(h):

2

3 *Exemplary response to the 2019/20 black*
4 *summer bushfires, drought, floods and the*
5 *COVID-19 pandemic and continuation of*
6 *service delivery and support to the*
7 *community during this period.*

8

9 Is that accurate in your view?

10 A. So, what page are we referring to there?

11

12 Q. 2(h). It goes over the page to the top of page 21.

13 A. Okay, (h).

14

15 THE COMMISSIONER: Q. Councillor Whipper, we have
16 paragraph 2 starting on page 20 and then the last
17 subclause which is over on 21.

18 A. Thank you.

19

20 THE COMMISSIONER: Feel free to read the whole if you need
21 the context.

22

23 THE WITNESS: So, yeah, so your question again?

24

25 MR PARISH: Q. Either if you recall your thoughts at the
26 time or upon reflection, do you think the council had
27 provided an exemplary response to the bushfires of the
28 2019/2020 summer?

29 A. Well, I don't know if I would say "exemplary", but we
30 did provide a response.

31

32 Q. Well, those are the words used there.

33 A. Yeah.

34

35 Q. Do you have a recollection at the time of this motion
36 whether there was anything perhaps inaccurate about that
37 phrase?

38 A. Well, I don't think it was ever debated, no.

39

40 Q. And paragraph 5 there is the request to send a
41 delegation of the mayor and the deputy mayor and one other
42 nominated councillor to meet with the Minister; do you see
43 that?

44 A. Yep.

45

46 Q. Do you recall the reasoning or logic behind that
47 resolution?

1 A. I think that's consistent with what I've been saying,
2 you know, to actually have that communication directly with
3 the Minister to, yeah, open up lines of communication so
4 that we would at least know that the Minister was hearing
5 the other side of the story.

6
7 Q. That takes us to the next paragraph, a resolution
8 that:

9
10 *The Council seek an extension for its*
11 *submission to the notice of intention to*
12 *issue a suspension order until 17 March in*
13 *order for a meeting with the Minister.*

14
15 Do you recall the logic or the reason behind that
16 resolution?

17 A. I do, and that was actually to give us an opportunity
18 to talk to the Minister, so that extension would have given
19 us time to at least get a response and hopefully the
20 invitation to meet with the Minister.

21
22 Q. Why didn't the governing body just write a submission
23 within the seven days given to them?

24 A. Because, I might be a bit bloody-minded, but I really
25 wanted to meet with the Minister, and I think I - certainly
26 there is a few points in this that I can see that I had
27 some input into, and that was basically just communication;
28 as I said, communication I think is critical and I don't
29 believe that we had the opportunity to communicate; I think
30 there was only one side of a story being told and I was
31 really hopeful that that respect would have been shown to
32 council, so that's why.

33
34 Yeah, we can write whatever we like, we went through a
35 mediation process which I didn't think was really as
36 effective as it could have been, so talking to the Minister
37 I think could have cleared a lot of these - the mythology
38 around this that was growing.

39
40 Q. On reflection, might it have been an idea to have
41 actually made a submission within the seven days first and
42 then perhaps taken other steps?

43 A. Well, that may have been the case, that would have
44 been up to the mayor to make those suggestions, I think.

45
46 THE COMMISSIONER: Sorry to interrupt.
47

1 Q. The notice of intention to issue the suspension
2 order was dated 2 March - you don't have to go to the
3 document, just take it from me - and it required a
4 response, a written response within seven days, and this
5 meeting that Mr Parish is referring you to was held on
6 9 March, being the day that it was due. Do you have any
7 recollection of why it was that the meeting wasn't held
8 until the day, the very day the response was due?

9 A. No, I'm sorry.

10
11 THE COMMISSIONER: No, no, it's perfectly an acceptable
12 answer if it's the accurate one; that's fine, thank you.

13
14 MR PARISH: Q. You might have either heard about or,
15 perhaps secondhand, heard some evidence on Friday about a
16 direction made from Mayor Gair to Mr Barry Paull about the
17 Pin Oaks; do you know about that?

18 A. (Witness shakes head.)
19

20 Q. On Friday Mr Paull gave some evidence that he received
21 a written order to remove the Pin Oaks from Mayor Gair
22 prior to the finalisation or issuance of a review of
23 environment factors; did you know about that?

24 A. No.
25

26 Q. Do you have an immediate reaction to whether such a
27 matter would have been appropriate?

28 A. It wouldn't have been a wise thing to do.
29

30 Q. That's very diplomatically put. Can I just show you a
31 document. Forgive me, I'm going to have to pull it up on
32 my computer.
33

34 THE COMMISSIONER: Can you just describe the document?
35

36 MR PARISH: It is a resolution of council in relation to
37 the Pin Oaks.
38

39 THE COMMISSIONER: Yes. Is this --
40

41 MR PARISH: In relation to a date that I'm currently
42 waiting to come up on my screen.
43

44 THE COMMISSIONER: Is this in Exhibit F?
45

46 MR PARISH: It is, it's at page 3342 of Exhibit F.
47

1 THE COMMISSIONER: Thank you.

2

3 MR PARISH: And the numerical identification of the minute
4 is MN 106/20.

5

6 THE COMMISSIONER: I think it's in 24 or 25 March 2020; is
7 that the date?

8

9 MR PARISH: Q. Hopefully you have the document that I've
10 just referred to in front of you, Councillor Whipper?

11 A. Yep.

12

13 Q. That's a motion moved by you and seconded by
14 Councillor McLaughlin in the minutes of 25 March 2020?

15 A. Mmm-hmm.

16

17 Q. The second paragraph states:

18

19 *That the council proceeds with the removal*
20 *of eight existing Pin Oak trees from the*
21 *western alignment of Station Street with*
22 *the adoption of the "Pin Oak Avenue*
23 *succession plan" and replanting of five*
24 *super-advanced Pin Oak trees within the new*
25 *median strip and that council prepares a*
26 *replacement strategy in the event that the*
27 *trees on the eastern side of Station Street*
28 *deteriorate.*

29

30 Do you see that?

31 A. I do.

32

33 Q. Do you recall why that motion was passed at that time?

34 A. There are a number of modifications that came about
35 and this was one. I think there was a presentation from a
36 consultant arborist in relation to that strategy and this
37 probably came about as a result of that presentation.

38

39 Q. As the mover of that motion, did you understand that
40 prayer 2 allowed council to remove the existing Pin Oak
41 trees prior to the receiving or issuance of the REF?

42 A. No, I would have thought that process would have had
43 to sort of be underway, but this was a design, more or less
44 around the design for that proposal.

45

46 Q. The first words are, "That the Council proceeds with
47 the removal". Are you saying that you didn't take it, as

1 the mover of that motion, to be a direction for the staff
2 to remove the trees?

3 A. Not an immediate direction, no.

4

5 Q. And at the very least do I take your evidence that the
6 appropriate environmental factor reports and other
7 regulatory matters would have to be dealt with before any
8 action could be taken?

9 A. That would be my understanding, that's the normal
10 process, yeah.

11

12 Q. I take it from your evidence then that any direction
13 by Mayor Gair to the acting general manager at the time to
14 remove the trees prior to the issuance of such an
15 environmental factor report would be, in your words,
16 unwise?

17 A. Unwise.

18

19 Q. Would you use any other words upon reflection?

20 A. Not that I could be held accountable for.

21

22 MR PARISH: I don't have any other further specific
23 questions.

24

25 THE COMMISSIONER: Q. Just on that, do I take it then
26 that this motion was really directed to the design concept
27 rather than things being done immediately?

28 A. Yeah.

29

30 Q. Such that, if the project hadn't been given the final
31 tick off to start work, then nothing would happen in
32 relation to the trees; is that how you see it?

33 A. That's the way I would see it, exactly, yeah.

34

35 THE COMMISSIONER: Mr Parish, I see the time, is that a
36 convenient moment for the morning break?

37

38 MR PARISH: Could I ask - I don't have any further
39 specific questions, but perhaps what I could do at this
40 stage, Councillor Whipper, what we've been doing is asking
41 whether there are any other specific topics that you wish
42 to address the Commissioner on in respect of any of the
43 terms of reference, and perhaps if you could give me those
44 topics, I can then figure out whether to ask you some
45 questions about it and figure out whether they'll assist
46 the Commissioner on the terms of reference?

47 A. No, I --

1 Q. Or alternatively say you have nothing further to add?
2 A. I think I said in my submission that I didn't really
3 ask for leave to make a spoken submission, so I'm here just
4 to answer any questions that you may have to the best of my
5 ability. So, there's nothing specifically that I wanted to
6 raise, no, other than what's written in my submission.
7

8
9 MR PARISH: Thank you. Nothing further from me,
10 Commissioner.
11

12 THE COMMISSIONER: Yes, all right. Councillor Whipper,
13 that completes your evidence, thank you very much for your
14 attendance this morning. I do appreciate answering your
15 summons takes you away from things you would rather no
16 doubt be doing, but I'm very grateful for the time you've
17 taken this morning.
18

19 Mr Parish, can Councillor Whipper be excused?
20

21 MR PARISH: Yes, Commissioner.
22

23 THE COMMISSIONER: Yes, you're excused from further
24 attendance on your summons and free to go about your day.
25

26 THE WITNESS: Thank you very much. Thank you everybody,
27 thank you.
28

29 **<THE WITNESS WITHDREW**
30

31 THE COMMISSIONER: When's the next witness?
32

33 MR PARISH: Councillor Scandrett is listed at midday at
34 this stage. If that procedure is appropriate, we've only
35 got --
36

37 THE COMMISSIONER: Right, well, we'll take the morning tea
38 and we'll resume at midday.
39

40 MR PARISH: Please the court.
41

42 THE COMMISSIONER: Yes, thank you.
43

44 **SHORT ADJOURNMENT**
45

46 THE COMMISSIONER: Mr Parish.
47

1 MR PARISH: Commissioner, the next witness is Councillor
2 Ian Scandrett.
3
4 THE COMMISSIONER: Thank you.
5
6 <IAN SCANDRETT, sworn: [12.04pm]
7
8 THE COMMISSIONER: Thank you. Take a seat. Mr Parish.
9
10 <EXAMINATION BY MR PARISH:
11
12 MR PARISH: Q. Thank you, councillor, can I start with
13 your personal and vocational background and your connection
14 to the shire?
15 A. Yes, good afternoon. I moved here in 2006 from Sydney
16 and, with my family, we live in Werri. I am 64 and my
17 background is a business background. Mr Parish, I had a
18 large footwear business in Sydney. I was involved in
19 marketing and advertising. I could read out a little bio
20 if you'd like me to that covers that?
21
22 Q. Probably not necessary for now, we might come back to
23 that. Can you tell me how you became involved in local
24 government politics in the shire?
25 A. When we arrived here in the Southern Highlands I said
26 to my wife that I would not get involved in council here as
27 I've done many years of community in Sydney, and I soon
28 changed that view because what I was watching was simply
29 amazing, it was the operation of the Wingecarribee Shire
30 Council.
31
32 Q. At what point in time was this?
33 A. This would be in 2007 going into 2008.
34
35 Q. And what struck you at that period as being amazing?
36 A. I was aghast at how the council had put the majority
37 of its cash reserves into Lehman Brothers, a high risk
38 strategy, and I had become quite interested in how that had
39 taken place and who was the people who moved on that.
40 There was one councillor who had been against that that
41 whole time; his name was Councillor Jim Major.
42
43 Q. They weren't the only council that put money into
44 CEOs, was it?
45 A. I can't quite hear you, if you could - thanks.
46
47 Q. They weren't the only council who put money into CEOs

1 around this time, were they?
2 A. They weren't, there were others, but I think they were
3 by far the most substantial council in terms of quantum and
4 in terms of percentage of their assets.
5
6 Q. Was it that quantum and the risk taken on that struck
7 you as remarkable about that?
8 A. More than remarkable, Mr Parish, just incredible that
9 you would, as a public authority, move away from careful
10 risk strategies.
11
12 Q. And this prompted you to run for council; is that
13 correct?
14 A. Well, it led to me coming to meetings and sitting up
15 the back and observing what was going on, and it led to me
16 meeting like-minded people who were also being drawn to
17 observe the council. The colloquial term, Mr Parish, was
18 "council watchers" and from that I met a number of the
19 councillors and - including Councillor Jim Major, who's a
20 farmer - I'm a farmer down here, I'm the only farmer on
21 council - and we developed an affinity, so I joined with
22 Councillor Major and ran in 2008.
23
24 Q. And, were you elected in 2008?
25 A. I was not elected in 2008, but I was elected in 2012
26 in the - as they say in the middle of the pack, and I
27 repeated that in 2016.
28
29 Q. Did you continue to be a council watcher in the
30 2008-2012 term notwithstanding you hadn't been elected?
31 A. Yes, I continued to be active. I attended a majority
32 of meetings during that period and sat up the back as we
33 used to and I became increasingly involved in community
34 issues, ranging from roads to provision of services, to
35 facilities in and around the towns and villages, and I
36 became quite networked in that regard.
37
38 Q. What was your impression of the conduct of meetings in
39 that 2008-2012 period?
40 A. Generally a reasonable council, however, I thought at
41 times they were a bit disconnected from the community in
42 terms of effective communication and accordingly I - well,
43 I had a background in promoting communication, I'd been in
44 marketing and advertising and I focused on that
45 particularly in my running for council.
46
47 Q. Do you have any recollections in that 2008-2012 term

1 about how you saw at council meetings councillors interact
2 with staff?

3 A. Look, generally it was pretty standard; of course, the
4 council was changing from 12 to nine councillors. I do
5 recall Councillor Gair at one point saying that he
6 regretted he had supported that change, because I think it
7 changed the balance of the council.

8

9 Q. How did that have anything to do with the staff?

10 A. I'm sorry, could you repeat your question?

11

12 Q. The question I asked was whether you perceived
13 anything about how councillors interacted with staff and
14 you then gave me an answer about the reduction from 12
15 councillors to nine councillors; is that related to the
16 interaction with staff or is that a separate question?

17 A. No, not particularly; I guess what I was getting at
18 there is that the set-up in this council was, as I was to
19 learn, very traditional, very rural if you wish; how the
20 meeting table was laid out and how the processes went, and
21 at the time I became aware of a Four Corners special from
22 1974 about a fictitious rural town and it was called
23 Bradstow and I became aware by watching that episode that
24 this council had been researched by a University of Sydney
25 researcher and --

26

27 THE COMMISSIONER: Q. Councillor, I'm not sure this is
28 responsive to the question. I think, just listen carefully
29 to the question and answer the question --

30 A. Yep, okay.

31

32 Q -- and you'll be given plenty of opportunity to say
33 what it is you want to say, but we're going to get off the
34 rails pretty quickly unless we just stick to the questions
35 for the moment. --

36 A. Thank you, Commissioner.

37

38 THE COMMISSIONER: -- so, Mr Parish will put the next
39 question.

40

41 THE WITNESS: It was a traditional council --

42

43 THE COMMISSIONER: Mr Parish, put the next question.

44

45 MR PARISH: Q. How about you just wait until I ask the
46 question. Did your reference there to the Four Corners
47 report have anything to do with how you perceived

1 councillor interaction with staff in the 2008-2012 term?
2 A. To a point and also with the community, but of course
3 that was a story from 50 years ago.
4

5 Q. Yeah, quite, and how did that story relate to the
6 interaction between councillor and staff (indistinct) --

7 A. It was a very traditional council and it was
8 traditionally run by the big end of town.
9

10 Q. And how did that relate to a question about the
11 interaction you perceived between councillors and staff in
12 the 2008-2012 term?

13 A. I don't think much had changed, Mr Parish, I think
14 that the council and the staff, the executive staff, still
15 saw themselves in that traditional role.
16

17 THE COMMISSIONER: Q. Sorry, I'm just not following
18 this. Did you observe interactions between councillors and
19 staff in the 2008-2012 term?

20 A. Yes, there was --
21

22 Q. One question at a time, it'll help me. This is all
23 about helping me understand your evidence, so one question
24 at a time. As I've said, you'll be given plenty of
25 opportunity to say what it is, as long as it's relevant, of
26 what you want to say. What were your observations of those
27 interactions between staff and councillors in the 2008-2012
28 term?

29 A. Very traditional interactions, Commissioner, where the
30 staff, if anything, didn't raise any issues in council and
31 provided - that you would have expected them to have
32 raised, for example, efficiencies of equipment and other
33 things.
34

35 Q. What's traditional about that?

36 A. Well, when councillors are asking questions about the
37 use of equipment or availability of services I would
38 expect, and did expect, reasonable detail to be provided or
39 the question to be taken on notice, but often that didn't
40 take place.
41

42 Q. And these are your observations in the 2008-2012 term:
43 yes?

44 A. As I say, it was a - it was a - it was an arrangement
45 that seemed to work in a traditional sense.
46

47 Q. Yes. My question is: these observations are directed

1 to the 2008-2012 period; have I understood you?

2 A. I'm focusing on that, yeah.

3

4 THE COMMISSIONER: Yes, Mr Parish.

5

6 MR PARISH: Q. We might move on then to the 2012-2016
7 period where you were elected, and seeing we're on the
8 topic, how did you perceive the councillors interacted with
9 staff, positive or negative, in that period?

10 A. Well, the structure of council changed, Mr Parish. It
11 had been three directors and it moved to a two directorate
12 basis, so the interaction was more tightly funneled, if you
13 wish, through the top end of the structure. There was an
14 opportunity at the time for people in the gallery to ask
15 questions of council and of the staff, which I thought was
16 useful and certainly did use that, but the interaction was
17 very measured, it was tightly controlled.

18

19 Q. Did you perceive that to be a positive thing or a
20 negative thing?

21 A. At times a negative thing because I think there was a
22 lot of information there but it wasn't forthcoming.

23

24 Q. Can you give some examples of that in the 2012-2016
25 term?

26 A. Well, certainly I asked questions which related to
27 better communication and there was almost a resistance to
28 consider an improvement in communication. I came from the
29 inner west of Sydney, Mr Parish, where communication in my
30 local council was absolutely superb.

31

32 Q. Communication between whom? Councillors and staff?

33 A. Councillors and staff, workshops, and with the
34 community; lots of public meetings, lots of on site
35 hearings, and definitely consultation; consultation.

36

37 Q. Where did that resistance come from that you're
38 referring to in the 2012-2016 term?

39 A. Well, I guess it comes from the governing body who
40 are, you know, in charge of the way that council operates;
41 ultimately the GM.

42

43 Q. Pardon me: "ultimately the GM". Can you explain to me
44 the process you were going through to attempt to improve
45 communications in the 2012-2016 term?

46 A. Mr Parish, I called my 2012 campaign, "The Just Fix It
47 team". I ran nine candidates as I did with Councillor

1 Major previously and in 2016 again, and I did that because
2 there was a groundswell of people wanting better
3 communication, more responsive council, listening to
4 issues; people were tired of constantly saying the same
5 thing. And I note in the last year, and particularly at
6 the budget meeting last Monday, that there is finally a lot
7 of listening going on.

8
9 THE COMMISSIONER: Councillor, none of this is responsive
10 to the question you're asked. I've said twice now you'll
11 have the opportunity --

12 A. Well --

13
14 Q. No, don't interrupt me, please. You'll have plenty of
15 opportunity to say what it is as long as it's relevant.
16 Mr Parish's question was quite direct.

17 A. Right.

18
19 THE COMMISSIONER: Please take a moment, listen carefully
20 to the question, answer only that question. Mr Parish will
21 give you another question.

22
23 THE WITNESS: Mr Parish, could you re-ask it please?

24
25 MR PARISH: Q. What steps were you taking in the
26 2012-2016 term to seek to improve communication?

27 A. I actively campaigned with my fellow - to my fellow
28 councillors --

29
30 Q. That's before the term commences. I'm talking, within
31 the term itself, what mechanical steps did you take?

32 A. I'm being quite precise, sir. In the term I actively
33 lobbied, worked with my fellow councillors, to improve
34 communication.

35
36 Q. And did that take the form of out-of-council meetings
37 and steps like that?

38 A. That would be part of it and certainly attending site
39 meetings, village meetings and the like. I actively
40 promoted that as part of what we should be doing and I
41 continued to ask questions about how we could improve
42 communication.

43
44 Q. You referred before to the communications coming from
45 the GM at that time, I think. What steps did you take to
46 elicit better communications from the GM in that 2012-2016
47 term?

1 A. Well, I spoke to the GM in briefings and in council
2 about possible improvements of communication, particularly
3 with the community; for example, having more information
4 sheets on our website so people could ascertain simply what
5 is required of them, example tree lopping, removal,
6 reporting issues in the street and so on, but there was a
7 general reluctance to have a high level of information on
8 the website.

9
10 Q. Do you recall whether there were in place any or at
11 least sufficient policies in that respect in the 2012-2016
12 term?

13 A. I have over six big lever arch files of policies and
14 training at home, but not all of them were actively
15 followed.

16
17 Q. Do you agree with the proposition that the way for a
18 councillor to ensure that the communications framework is
19 improved in council is to seek to pass or put in place
20 policies which allow staff to do that?

21 A. I endeavoured to do that with not so much success.

22
23 Q. And, how did you endeavour to do that?

24 A. I'm sorry?

25
26 Q. How did you endeavour to do that?

27 A. Talking in our workshops about more effective
28 communication, just even the simplest things like putting
29 up Corflute signs a week prior in the villages for when we
30 were having village visits and that was resisted. There
31 were opportunities to have a stronger media policy using a
32 broad range of media, but there was a - appeared to be an
33 arrangement in place that just stayed with just certain
34 media.

35
36 Q. You've mentioned there putting up Corflutes: that's
37 operational rather than strategic, isn't it?

38 A. Well, we had a communications policy, Mr Parish,
39 interaction with the community and like, and it was
40 relevant suggested in the context of that, so I did.

41
42 Q. What I was asking you before was what steps you took
43 to change or influence communication at a strategic or
44 policy level?

45 A. Yes, as I said, in those workshops and interactions in
46 the chamber, and I also made a point of making some
47 submissions at times to presentations made to us about

1 policies and development of new policies.

2

3 Q. What was your impression of the councillor to
4 councillor conduct in the committee meetings and briefings
5 and council meetings in the 2012-2016 term?

6 A. Look, I think it's fair to say that most things were
7 civil with the exception of some fairly energetic activity
8 by two councillors generally, but it was fine. There was a
9 councillor who stopped coming to briefings, not council
10 meetings but briefings, because of that interaction
11 directed primarily at him: there's been evidence on that
12 already.

13

14 Q. Having dealt with the Inner West councils before, I'm
15 assuming you mean Leichhardt, was it at that time?

16 A. Yes.

17

18 Q. Did it strike you as - the conduct between councillors
19 I'm talking about now in the 2012-2016 term - as more
20 civil, less civil, about the same as the councils you'd
21 previously had experience with?

22 A. Well, it often depends on the circumstances and the
23 issues at the time. It was in many ways a more
24 consultative council at Leichhardt; it had had its issues
25 previously. I'd certainly been around that area for
26 some years and had been very active in - I founded the
27 Chamber of Commerce and so on. But substantively at times
28 it was difficult.

29

30 Q. We're talking about the 2012-2016 term?

31 A. It was becoming difficult, Yes.

32

33 Q. What did you ascribe those difficulties to? What was
34 the cause of them?

35 A. I was uncomfortable with the actions of a couple of
36 councillors in terms of pressure, which eventually I
37 decided was bullying, which was taking place.

38

39 Q. What sort of pressure was that?

40 A. Attacks, Codes of Conduct, information being
41 improperly interpreted. Caucusing of a block. Harassment.
42 Hostility.

43

44 Q. This was between councillors; is that correct?

45 A. Not only between certain councillors but also on some
46 occasions I felt the executive were - some of the
47 executive - were acting improperly. I have an example if

1 you want.

2

3 Q. Sure.

4 A. In one briefing session I was attacked by Deputy
5 General Manager Barry Paull verbally and I had to turn to
6 the GM, and the words were most inappropriate,
7 Commissioner - most - he was clearly exasperated with what
8 was going on, and I asked the GM to - politely as I always
9 do - to bring her DGM under control. He apologised.

10

11 Q. What about, again, confining ourselves to the
12 2012-2016 term for the minute, what about other
13 councillors' interactions or other staff members'
14 interactions with other councillors? Did you have any
15 impressions or were any events witnessed by you which left
16 a favourable or a negative impression in that term?

17 A. I think, as I say, there were a couple of councillors
18 who were always on my case, if you wish. One of them
19 particularly went after Councillor Uliana to the point
20 where he stopped coming to briefings. And the other one
21 was constantly in, how can I say it, early warning radar
22 mode for anything that might affect future elections and
23 his place in the scheme of things.

24

25 Q. Could I ask you about inductions in the 2012-2016
26 period. Can you give me your general impressions about
27 whether you felt you were given proper training at
28 inductions to understand your roles and responsibilities,
29 starting with 2012 for now?

30 A. Yes, I thought the training was - for the induction
31 and ongoing - as I say, I've got six folders worth of
32 material at home - I thought that training was reasonable
33 and the same for 2016. As to whether people followed it is
34 a separate matter.

35

36 Q. Those six folders, were they given to you or is that
37 something you took the time to print out yourself?

38 A. The majority of them were given to us. There was an
39 induction folder, for example, in 2016. There was numerous
40 training. I attended training, Mr Parish, with OLG,
41 LG NSW, the Australian Institute of Company Directors, and
42 of course all our internal training here. It's very
43 substantial and I think I've got all the notes still there
44 with my notes on them.

45

46 Q. In the 2016 training or induction you were one of
47 several councillors who were returned. Did you have any

1 impression left upon you, favourable or negative, about the
2 diligence in the way other returning councillors treated
3 the induction or the training at the start of the 2016
4 term?

5 A. I formed an impression that some new councillors
6 weren't fully engaged with the induction and the training.

7
8 Q. Was it the new councillors rather than the returning
9 councillors who were not fully engaged; is that correct?

10 A. The returning councillors already had set the mould on
11 how they were going to act.

12
13 Q. There were changes to the Local Government Act shortly
14 before you were returned in 2016; do you remember being
15 appraised of those changes?

16 A. Yes, I remember those changes and I do recall prior to
17 that. And I do recall, for example, a very good discussion
18 when Mike Baird was Premier, where councillors were asked
19 to respond to various issues from government such as the
20 length of term and accountability and issues - election
21 issues and the like which led into some of those changes.

22
23 Q. Do you recall what those changes were, at least
24 insofar as they affected your role as part of the governing
25 body?

26 A. Well, there certainly was a discussion about
27 live-streaming, or in those days it was audio, but that
28 didn't progress at a state level. There were certainly
29 improvements in disclosure, conflicts of interest. There
30 were discussions in that survey about people such as
31 developers and real estate agents being on council; again,
32 some of those didn't come through in the new legislation.

33
34 Q. What about 8A, do you remember some of the changes --

35 A. Can you speak up.

36
37 Q. Do you remember section 8A of the Local Government
38 Act?

39 A. No, I don't specifically, I would refer to my
40 paperwork, but if you want to elaborate I can comment on
41 it.

42
43 Q. I'm wondering at this stage whether you recall being
44 given information about 8A, being a section that was
45 introduced in 2016 shortly before you were returned?

46 A. Could you remind me what 8A primarily is?
47

1 Q. It's the guiding principles for councils.

2 A. Yes.

3

4 Q. Do you recall what those principles were, to
5 paraphrase; you don't have to know them off by heart?

6 A. Well, I can certainly see that they talked about the
7 unity of a council and the council supporting decisions,
8 whether majority or unanimous, of the council. Some of
9 those matters were in there.

10

11 Q. That might be a slightly different section but we'll
12 go to that one now. Can I just ask you what you understood
13 - and by all means if it changed over time, let us know -
14 what the core roles and responsibilities were for
15 councillors firstly in the Local Government Act?

16 A. Well, we were the strategic arm of the council, we
17 were not the operational; there's quite a clear
18 line between them, Mr Parish.

19

20 Q. And that is something which comes through in the Local
21 Government Act; is that your understanding?

22 A. Well, it was - yes, and it was repeated within here
23 too.

24

25 Q. Any other statutory roles and responsibilities that
26 you remember from the Local Government Act as they
27 pertained to councillors?

28 A. Well, if you give me a minute, I'll just open my notes
29 on this.

30

31 Q. I'm just wondering what your understanding is without
32 taking you to the specific legislation for now.

33

34 THE COMMISSIONER: Just in general terms, I think,
35 councillor, is what's being asked, not for you to recite
36 the section, so perhaps just close up your notes for the
37 moment and, if there's a need to clarify we can. I think
38 Mr Parish is exploring this with you at a general level
39 rather than a specific perhaps.

40

41 THE WITNESS: An increasing responsibility on various
42 aspects of being an elected official, and I think an
43 increasing focus on financial planning and things like that
44 were coming through in those workshops.

45

46 MR PARISH: Q. And again, at just a general level, what
47 did you understand the statutory roles were for the

1 governing body in the legislation?
2 A. Well, we had to be quite precise in our role and our
3 responsibilities and our actions. Now, for example, it was
4 very clear bullying was on the table as a discussion
5 point regularly and was coming through and changes in the
6 Code of Conduct internally and externally, so yes, there
7 was an increasing focus I guess on how council operated in
8 the community and how we were to be efficient.
9
10 Q. You refer there to the Code of Conduct. Do you recall
11 being given a hard copy of the Code of Conduct at an early
12 stage? You can start with 2012 if you want?
13 A. I've got all of them.
14
15 Q. They were given to you in hard copy; is that right?
16 A. Yes, that's correct. (Witness holds up document.)
17
18 Q. You obviously then kept them?
19 A. I carried them at times with me to council meetings
20 and I occasionally quoted them in correspondence to the
21 mayor and to the GM.
22
23 Q. Did you ever have sessions or training, do you recall,
24 when there were changes to the Code of Conduct?
25 A. Oh, there were quite a number, I think 13, 16.
26 12 months into 16, of course, was an update; we also did
27 council expenses policies and others like that. It was
28 hard at times actually to - there was no published calendar
29 of when things were going to be reviewed, I'm sure the
30 staff had such a thing, but we had to keep our own notes on
31 that. I would have preferred a public calendar on the
32 website showing what policies, in table form, and what
33 stage they were at and when they were due for renewal, just
34 a one shot.
35
36 Q. In respect of the Code of Meeting Practice, did you
37 receive that in hard copy as well?
38 A. Yes.
39
40 Q. A similar situation to the Code of Conduct; is that
41 correct?
42 A. That's correct.
43
44 Q. Can I take you to a specific Code of Conduct
45 clause that we might need to show you in one of the tender
46 bundles actually. Tender bundle A.
47

1 THE COMMISSIONER: Q. Just perhaps look at the versions
2 you're being shown, Councillor Scandrett, so there's no
3 confusion, so perhaps put those papers to one side for the
4 moment and you'll be given something to look at.

5 A. Thank you.

6
7 THE COMMISSIONER: Which page of Exhibit A, Mr Parish?

8
9 MR PARISH: Page 748.

10
11 Q. I might start you with page 741 just to show you what
12 the document is.

13 A. Yes, 741, I'm on that.

14
15 Q. This is a document that says, "Code of Conduct", do
16 you see that?

17 A. Yes, I do.

18
19 Q. This is the 9 September 2020 version which is not
20 actually marked anywhere on it but you might have to take
21 our word for it for now. Although, by all means, if
22 there's something about this document that you recognise as
23 being from another time, please tell us.

24
25 Can I take you to page 748. Do you have clause 3.22
26 there?

27 A. Yes, I do.

28
29 Q. It says:

30
31 *If you are a councillor, you must not*
32 *engage in any acts of disorder or other*
33 *conduct that is intended to prevent the*
34 *proper or effective functioning of the*
35 *council, or of a committee of the council,*
36 *without limiting this clause, you must*
37 *not ...*

38
39 Then it sets out:

40
41 *(a) leave a meeting of the council or a*
42 *committee for the purposes of depriving the*
43 *meeting of a quorum, or*

44
45 *(b) submit a rescission motion with respect*
46 *to a decision for the purposes of voting*
47 *against it to prevent another councillor*

1 *from submitting a rescission motion with*
2 *respect to the same decision, or*

3
4 *(c) deliberately seek to impede the*
5 *consideration of a business at a meeting.*

6
7 Do you see that?

8 A. Yes, I read that.

9
10 Q. How did you understand that interacted with the
11 regulations, if at all?

12 A. Well, it's the regulation. I'm probably a fairly
13 energetic councillor/person anyway, Mr Parish, but that was
14 the regulations there, m'mm, that we were working under.

15
16 Q. Sorry, this is the Code of Conduct that we're looking
17 at at the moment --

18 A. Yes.

19
20 Q. -- and the question I'm asking you is, how did you
21 understand this interacted with the regulations, if at all?

22
23 THE COMMISSIONER: Perhaps identify the regulations in
24 more precise terms. I think you may be at cross-purposes.

25
26 MR PARISH: Q. I was referring specifically at the time
27 to Local Government (General) Regulation 2005?

28 A. Generally, I tried to follow the regulations as they
29 were contained in the Act and our local policies.

30
31 Q. I'll maybe refresh your memory. The definition of
32 "acts of disorder" were set out in the Local Government
33 (General) Regulation 2005; does that sound about right?

34 A. And consequent, yes.

35
36 Q. Do you have the Local Government (General) Regulation
37 2005 with you there?

38 A. No, I don't, Mr Parish.

39
40 Q. You should have it somewhere hopefully, just a piece
41 of paper by itself.

42 A. Oh, this piece, right. Yes. Section 182, "acts of
43 disorder".

44
45 Q. Yes, I think this is a section or clause of the Local
46 Government (General) Regulation 2005, or I know it is,
47 which --

1
2 THE COMMISSIONER: Sorry to stop you, Mr Parish.
3 Mr Broad, might I be favoured with a copy? Thank you.
4

5 MR PARISH: Q. Which had the same words in the 2021
6 regulations?

7 A. Well, essentially, yeah.
8

9 Q. Did you understand that these put meat on the bones,
10 effectively, of the definition of "act of disorder" in the
11 Code of Conduct?

12 A. Yes; well, I was threatened with an assault at one
13 point.
14

15 Q. Who was that by?

16 A. Commissioner, could I just ask for a point of
17 clarification?
18

19 THE COMMISSIONER: Q. Yes.

20 A. Understanding that the powers of this inquiry is as
21 I've read about them, do they extend to protection from
22 defamation and so on?
23

24 Q. There are provisions in the Royal Commissions Act that
25 deal with the rights and protection of witnesses. Bear
26 with me.
27

28 MR PARISH: Q. If you'd rather not say, Mr --

29 A. No, I'm perfectly happy to say, I'm a very open
30 person, Mr Parish, but I just want to be precise. If I was
31 worried I'd write it on a bit of paper, but I'm not.
32

33 THE COMMISSIONER: Mr Parish, perhaps come back to it, I
34 need to find the precise provision.
35

36 MR PARISH: Yes.
37

38 THE COMMISSIONER: And then you can return to it if you
39 wish to pursue it.
40

41 MR PARISH: Q. We've just been talking about your
42 familiarity with the Code of Conduct and the Code of
43 Meeting Practice. Were these sorts of statutory
44 obligations something that you had cause to refresh your
45 memory on from time to time?

46 A. From time to time, but I will say this: there was an
47 enormous amount of information coming down the line and we

1 met all day for three or four Wednesdays a month plus
2 additional information and business papers of 300 or 400
3 pages arrived on a Friday night for a meeting on the
4 following Wednesday; an enormous amount of information.

5
6 Q. Do I take it from that answer that what you're saying
7 is it wasn't practical or even possible to have a leisurely
8 read of this information given the quantity of information
9 that you had to deal with in your job as a councillor?

10 A. I'm just saying at times, Mr Parish, it was quite -
11 quite onerous, but I do believe that I worked through
12 pretty much all the information that was given to us.

13
14 Q. Did you feel overwhelmed by the information you had to
15 process?

16 A. In some sessions it was difficult because the
17 information, in my view, wasn't well presented and I'll say
18 that in terms of the draft operational budget sessions;
19 that's why I was particularly impressed with the one here
20 last week.

21
22 Q. Clause 3.22 that I took you to earlier in tender
23 bundle A is that a clause that, in your view, you adhered
24 to in your time in the 2016-2020 term?

25 A. Generally speaking I'd like to think that I did.
26 However, the cut and thrust of being a councillor and
27 engaging with other councillors in a meeting sometimes
28 tested that.

29
30 Q. You're not suggesting there's an escape clause for
31 behaviour when it's in the cutting and thrusting of council
32 meetings, are you?

33 A. I believe that I was, generally, a polite and
34 communicable councillor, but there are times when
35 provocative acts unfortunately get the best, and there were
36 times like that.

37
38 Q. Do you agree with the proposition that one could be
39 polite and still transgress clause 3.22?

40 A. Well, one would want to stay on track. I was
41 described by a person who supported me for election as
42 "being like a dog with a bone", so I was certainly
43 persistent on various issues and certainly to the pledges I
44 made to the community that elected and re-elected me.

45
46 Q. Not in the sense that you wandered off and buried
47 things in the garden?

1 A. I'm sorry, I didn't hear that.

2

3 Q. No, don't worry.

4

5 THE COMMISSIONER: It was a poor attempt at humour,
6 Councillor Scandrett, don't worry about it.

7

8 MR PARISH: Q. You'll read it on the transcript. You'll
9 laugh.

10 A. Yes, thank you.

11

12 Q. But can you tell me if you agree with the proposition,
13 for instance, that one can prevent the proper or effective
14 functioning of the council but in a polite way?

15 A. I think you're going to acts of disorder again as we
16 were a while ago and some comments in that space. I didn't
17 set out to commit acts of disorder to disrupt the council.
18 I set out to represent the community that elected me and,
19 if there were - how can I put it - if there was no
20 listening on that I would speak - I'd raise my voice a bit
21 or whatever to pursue a point. I was energetic in that
22 regard.

23

24 THE COMMISSIONER: Q. Thank you. Try not to pre-empt
25 questions or pre-empt questions that may or may not be
26 coming and just focus directly on the question.

27 A. Yes.

28

29 THE COMMISSIONER: Which I think was slightly different.

30

31 MR PARISH: Q. My question was whether you agree with
32 the proposition that one could prevent the proper or
33 effective functioning of the council but still do that in a
34 polite way; do you agree with that?

35 A. Not precisely, Mr Parish, no.

36

37 Q. Why don't you agree with that?

38 A. Because I think there were actions taking place in
39 that chamber that weren't polite and were very aggressive
40 and they weren't - they weren't me; I'm not an aggressive
41 person.

42

43 Q. I'm just asking as a general proposition for now
44 rather than in respect to specific behaviour of
45 councillors, and I guess the way to deal with it is to ask
46 the converse of the proposition that you just put, which
47 is, that the proper, effective functioning of council can

1 be prevented in an aggressive way, but do you agree that it
2 can also be done in a polite way?

3 A. Well, to a point that is correct from both my
4 perspective and from others in the room in regards to me.

5
6 Q. Again, I was asking at a higher level than specific.

7 --

8 A. Well, I certainly am, I'm in a way naming the mayor.

9

10 Q. Well, again --

11

12 THE COMMISSIONER: Councillor, please. You will be given
13 an opportunity, as long as it's relevant, to say what it is
14 you wish to say but it does not assist me, and ultimately
15 that's what we're here for, if the questions that are asked
16 are not answered in the way that they're asked.

17 A. Okay.

18

19 Q. You won't be prevented from saying --

20 A. I guess --

21

22 Q. Please, don't interrupt me. And you've seen multiple
23 witnesses at the end of their evidence have the opportunity
24 to identify topics that they have not yet addressed and
25 would wish to, and you will be given that same opportunity.
26 So, ask again please for my benefit. Just listen carefully
27 to the question and answer the question and if there's some
28 particular qualification that needs to be given then by all
29 means give it, but just direct yourself to the question as
30 asked please.

31

32 MR PARISH: Q. Back to the general high level
33 proposition that I'm asking you. Do you agree or not agree
34 that one can prevent the proper or effective function of
35 council in a polite way?

36 A. No, I don't think I do.

37

38 Q. You think, do you, that if one is polite then, even if
39 it prevents the proper or effective functioning of council,
40 then it does not transgress the Code of Conduct and in
41 particular clause 3.22?

42 A. The operation of the council in the chamber is at
43 times not a pleasant place, polite or not. I think there
44 are a number of ways that councillors can be obstructive in
45 that sense. I hope that answers that.

46

47 Q. Well, not really. And one of those ways, do you

1 accept, is that one can be perfectly civil and perfectly
2 polite, but one can also transgress clause 3.22 of the Code
3 of Conduct because, notwithstanding their demeanour, they
4 are preventing the proper or effective functioning of the
5 council?

6 A. I think that, if you've got a council that has got
7 elements of dysfunctionality in it, Mr Parish, I don't know
8 whether I can give a straight answer to that, a simple
9 answer to that. It's - there was a heated element to this
10 council and I'll address that when the Commissioner has
11 time to respond to my question.

12
13 Q. I wasn't talking about this council specifically, I
14 was referring to your understanding of clause 3.22 of the
15 Code of Conduct as it relates to whether one's demeanour
16 bears upon whether one has transgressed the Code of Conduct
17 or not. So, do you want me to ask it one more time?

18 A. I think that demeanour, as you put it, can come in a
19 number of forms, as can people's dress in the chamber, for
20 example, or their interaction with community at meetings.
21 So, if you're asking me if I was a polite --

22
23 Q. No, I'm not, I'm not asking you that at all. I'm not
24 asking about you specifically at all. I was asking at a
25 general proposition level whether you accept - what are you
26 looking at there?

27 A. With some limitations, yes.

28
29 Q. Thank you. In your experience in the 2016-2020
30 council did you witness acts of disorder and, if so, can
31 you give some examples?

32 A. The answer is, yes, I did witness acts of disorder,
33 both open acts of disorder and others that were probably
34 less than observed.

35
36 Q. How were those generally dealt with in your
37 impression, in your view, by the chair? And, if you need
38 to distinguish between either of the mayors or anyone else
39 who was in the chair at the time, by all means do so?

40 A. There was nine councillors, Mr Parish, and for a very
41 significant amount of time I felt that I was on my own.
42 The media reported it regularly as the 8:1 sort of
43 situation. So, at times I think certain acts of disorder
44 were, shall I say missed, being generous; or ignored, being
45 a bit more precise or, you know, in the context of 8:1.

46
47 Q. And was that in respect of Councillor Halstead when he

1 was mayor or Mayor Gair when he was mayor, or anyone other
2 than you sitting in the chair?

3 A. If I may give a slightly longer answer to that. I was
4 the deputy mayor in 2012-2016 to Councillor Whipper and I
5 was the deputy mayor to Councillor Halstead in 2016-2018
6 when Councillor Gair became mayor. I'd like to expand on
7 that to say that the council was generally very settled,
8 I believe due to the efforts of both those mayors and
9 myself during those three years. I was re-elected as
10 deputy mayor in 2016 for two years as the Act had changed.

11
12 Q. Well, that hasn't answered my question. What I'm
13 asking is how you perceived the chair dealt with acts of
14 disorder that you've just identified in the 2016 --

15 A. (Indistinct.)

16
17 Q. -- let me finish - to the 2020 term, and by all means
18 distinguish between chairs if you need to.

19 A. I'm happy to do that. I think Councillor Whipper was
20 quite focused on that, but I don't think there was much in
21 the way of acts of disorder; as I say, I think it was
22 reasonably settled. When Councillor Halstead became mayor
23 very, very firm management of the meeting, but again, it
24 wasn't - you know, there was a fairly settled council.
25 Things changed in 2018.

26
27 Q. Can you give the Commissioner your view on why things
28 changed in 2018, if you have a view?

29 A. I think the election of Councillor Gair changed the
30 climate there, Commissioner, in the meetings, and I think
31 the public commented on that and noted that who were
32 attending tuned in. I think it became a bit more of a, how
33 can I put it, combative council at times and certainly acts
34 of disorder towards me were either not acted on or they
35 were ignored, and I include - I'll answer that much, m'mm.

36
37 Q. What was it about the election of Councillor Gair to
38 the mayoral chair that changed the mood or is it the way he
39 managed meetings? Was it the 8:1 split that you've
40 previously referred to? Was it a combination of factors?

41 A. Yes, the way that Councillor Gair chaired the meetings
42 with the 8:1 block meant that I was often being held out or
43 bullied.

44
45 MR PARISH: I note the time, Commissioner.

46
47 THE COMMISSIONER: Yes, all right. The relevant provision

1 of the Royal Commissions Act to which I was directing my
2 attention to earlier is 11(3) which provides:

3
4 *A witness summoned to attend or appearing*
5 *before the commission shall have the same*
6 *protection, and shall in addition to the*
7 *penalties provided by this Act be subject*
8 *to the same liabilities in any civil or*
9 *criminal proceeding as a witness in any*
10 *case tried in the Supreme Court.*

11
12 Mr Parish, those protections are wide, are they not?

13
14 MR PARISH: They are. It's the usual qualified privilege.

15
16 THE COMMISSIONER: Correct. So, it's not my place to give
17 you legal advice, but that's a protection, you have the
18 same protection provided for by the Act as a witness in any
19 case in the Supreme Court, but I think I can short-circuit
20 this particular issue by saying, as I said at the very
21 outset, I'm not traversing into allegations of criminal
22 conduct.

23
24 If that is a matter that goes to the management of the
25 Code of Conduct, Mr Parish, perhaps it can be explored in a
26 way that does not require particular allegations of
27 criminality to be made in this forum.

28
29 MR PARISH: Yes.

30
31 THE COMMISSIONER: I'm hamstrung in my terms of reference
32 as well as wider issues. I don't know what it is, what it
33 was, what if anything happened, all those sorts of things
34 which it's not appropriate in an administrative inquiry
35 like this to get embroiled into.

36
37 So, at the moment the witness has made a statement but
38 I don't know whether you will pursue it but, if you do, can
39 you bear those limitations in mind?

40
41 MR PARISH: I'll reflect over lunch, Commissioner.

42
43 THE COMMISSIONER: Yes, thank you. All right, I'll
44 adjourn until 2 o'clock, thank you.

45
46 **LUNCHEON ADJOURNMENT**
47

1 **UPON RESUMPTION**

2
3 THE COMMISSIONER: Yes, Mr Parish.

4
5 MR PARISH: Thank you, Commissioner.

6
7 Q. We were discussing before the break, Councillor
8 Scandrett, some impressions you had about feeling bullied
9 by other councillors in the 2016-2020 term. I might just
10 start with the Code of Conduct and we'll lay a base from
11 there to deal with some specific instances of bullying that
12 you recalled. Do you have Volume 1 of tender bundle A?

13 A. Yes, I do.

14
15 Q. If you can turn to page 702. I'm working here off
16 the June 2019 Code of Conduct, but if there are instances
17 you want to refer to before or after that date in
18 subsequent volumes, let me know. That aspect doesn't
19 change too much but we'll deal with that on a case-by-case
20 basis. Page 702.

21 A. Yes, I have that.

22
23 Q. There's a set of general conduct obligations; do you
24 see that?

25 A. Yes.

26
27 Q. Can you just have a read through 3.1 for your own
28 benefit and let me know when you're finished.

29 A. Yes, I've read that.

30
31 Q. Is some of the conduct that you referred to as being
32 bullying before the break conduct which would fit within a
33 breach of those general conduct obligations?

34 A. Yes.

35
36 Q. In your view at least?

37 A. In my view, absolutely.

38
39 Q. And 3.8 there down the bottom has a general injunction
40 against bullying behaviour towards others, and then it has
41 some specific instances of behaviour at 3.9, 3.10; if you
42 want to have a read of those and just refresh your memory
43 of them.

44 A. I've read those.

45
46 Q. In your impression or view at least, were the
47 instances you were referring to before the break acts which

1 would transgress those clauses of the Code of Conduct?

2 A. Absolutely, yes, in a number of ways.

3
4 Q. Can you give us some examples of the bullying conduct
5 you were referring to before the break, and I appreciate it
6 may be difficult to remember specific dates, but if you can
7 give us any time markers on when you recall it was, that
8 might be of assistance as well.

9 A. Well, from two thousand - during 2018 there was some
10 bullying behaviour; in fact there was --

11
12 Q. Can you give examples?

13 A. I'm sorry?

14
15 Q. Can you give examples, please?

16 A. Oh, harassment is part of bullying and aggressive
17 action in the chamber, threatening action in the chamber,
18 spreading malicious rumours, and involving third parties.
19 Displaying offensive material, pressuring me to behave in a
20 certain - well, inappropriate, in my view, manner as
21 examples; that was in relation to 16-20 and certainly in
22 recent times.

23
24 Q. Can you elaborate on the instance you referred to
25 involving inappropriate materials?

26 A. There was questions regularly asked in the chamber by
27 one or more councillors, particularly one or two, relating
28 to my own home, my own business, my own actions in terms of
29 community involvement. And I should comment, if I may,
30 that I set out to serve the community and to be open and
31 transparent about that, I was proud to be a councillor.

32
33 There was exclusion from work-related events --

34
35 Q. Just before you move on, can we just expand on the
36 question I asked you about inappropriate materials; can you
37 explain what that incident was?

38 A. There was material introduced. One example was,
39 Councillor Turland had Google Maps on his iPad prior to a
40 council meeting and made me aware that it was Google Maps
41 of our farm and was pointing out to other councillors that
42 we allegedly had done illegal works on the farm and the
43 threat, implied threat, was that he was going to bring that
44 to council which I took as being bullying and threatening
45 behaviour.

46
47 Q. So, the inappropriate materials in that respect was

1 Google Maps but it was the threat that was implied that
2 came with that; is that correct?
3 A. Yes.

4
5 Q. And, going back to the reference to spreading
6 malicious rumours that you referred to, can you give us an
7 example of that?

8 A. Yes. Well, he would spread malicious rumours about my
9 involvement with the community, he branded me a developer
10 in a number of council sessions and meetings. For the
11 record, I'm not a developer, Mr Parish, I own one - my wife
12 and I own one other property in the Highlands and I've
13 never been a developer. But that was the sort of spreading
14 of information that went on.

15
16 THE COMMISSIONER: Q. You put that in the context of
17 spreading malicious rumours; what particular offence did
18 you take at having been described as a developer, just so I
19 can understand the importance of that in your mind?

20 A. Well, in the context, Commissioner, of - and I
21 referred to the previous Premier, Mike Baird, questioning
22 the 2012-2016 council about developers and real estate
23 agents, you know, their opinions on that. Councillor Gair
24 sought to make comments that I - just bear with me a
25 minute, I'm trying to answer your question precisely.
26 Well, for example, there were rumours that I owned the
27 general store in New Berrima which were promoted by
28 Councillor Turland and his affiliates on social media and
29 referred to occasionally that was malicious.

30
31 Q. What was it?

32 A. I don't, have never.

33
34 Q. I see, but in what context? I'm just trying to
35 understand the types of behaviour that you're drawing my
36 attention to. So, you say Councillor Turland spread
37 rumours that you owned a store in New Berrima: have I
38 understood you correctly?

39 A. He assisted with that process through intermediaries,
40 yes.

41
42 Q. Yes, and why was that in the quality of 3(10)(c), I
43 think you --

44 A. It was an assassination on my character because he was
45 alleging I hadn't declared that ownership.

46
47 Q. I see.

1 A. And this sort of thing went on regularly.

2

3 Q. I see.

4 A. And I'm scrupulous about all of those returns and
5 right down to expenses; in fact, I voted for nil - nil
6 gifts, nil value gifts all the way through council.

7

8 THE COMMISSIONER: Yes, thank you.

9

10 THE WITNESS: On my own.

11

12 MR PARISH: Q. So, that was in the context of inferring
13 or implying that you had conflicts of interest, that you
14 were perhaps being a hypocrite and --

15 A. I think it would be fair --

16

17 THE COMMISSIONER: Just wait for the question.

18

19 THE WITNESS: I think that --

20

21 THE COMMISSIONER: Wait for the question.

22

23 MR PARISH: Q. That you had a conflict of interest, that
24 you were a hypocrite perhaps and that you were not
25 conducting yourself properly; is that how I understand your
26 evidence?

27 A. Yes. If I may add: he sought to cast aspersions on my
28 character in doing that.

29

30 Q. And this was in open council meetings or --

31 A. Yes, as well as sessions.

32

33 THE COMMISSIONER: Wait for the question. Wait for the
34 question.

35

36 MR PARISH: Q. Taking that specific example for a
37 moment, do you recall when that was?

38 A. Not precisely. It came up on my Facebook feed as
39 well.

40

41 Q. Can you give me a year perhaps, appreciating that
42 these sorts of matters may require Mr Broad to trundle
43 through years of meetings?

44 A. With apologies to Mr Broad, but I think it might be in
45 the area of 2015-2017 and then occasionally thereafter, and
46 there was some instances of building tradespeople laying
47 into the same sort of argument, making allegations about

1 paying bills.

2

3 Q. I take it that, from your evidence given just then,
4 that this was a recurring theme over a period of time in
5 respect of Councillor Turland saying things about you; is
6 that correct?

7 A. Yes, in a number of guises; it was relentless,
8 Mr Parish.

9

10 Q. Do you recall any specific incidences of how that was
11 dealt with by the chair of a meeting when these matters
12 were raised?

13 A. It was never dealt with by the chair of the meeting.

14

15 Q. Did you bring points of order?

16 A. Yes.

17

18 Q. And were those ignored or simply not dealt with in a
19 way that was to your satisfaction?

20 A. Both. And I may add that I also engaged with
21 Ms Prendergast on a couple of occasions in the chamber and
22 not in the chamber requesting that she intervene as general
23 manager and in terms of her responsibilities and nothing
24 happened.

25

26 Q. Do you mean intervene in respect of how she assisted
27 or consulted in chairing the meetings with whoever was in
28 the chair at that time or were you --

29 A. Yes, I --

30

31 Q. -- expecting the general manager to take independent
32 steps?

33 A. I firstly expected her to give some guidance to the
34 mayor or the chair of the day, it was important, and as a
35 secondary area I thought that it was inappropriate in the
36 highest way according to our Code of Meeting Practice and
37 Code of Conduct, so I asked her to act. I also asked her
38 to act on a couple of matters that deserved a Code of
39 Conduct but she declined to or gave a nil action response.

40

41 May I make a comment, Commissioner?

42

43 Q. If it's relevant to the question I just asked.

44 A. Only that we, from suspension, have not had access to
45 our council email accounts or records which makes it a
46 little bit difficult to bring out some of these things,
47 which I did generally put in writing.

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47

Q. Thank you.

THE COMMISSIONER: Q. Did you make formal Code of Conduct complaints about this behaviour?

A. No --

Q. No?

A. No, I didn't, Commissioner. I have a personal view on the Code of Conduct system.

Q. You may as well tell me what it is.

A. I think it's weaponised, I don't think it's effective, and of course you would be aware that we had nearly \$200,000 in Code of Conducts and we were leading - it's terrible to say - leading the state and an examination of the records will find that a significant number of those were mischievous and thrown at me and mostly dismissed.

Q. Well, at the moment I don't necessarily think it's my role to re-litigate past Code of Conduct complaints but what I was interested in, and I think you've answered the question, is whether the Code of Conduct being the applicable procedure, whatever one's views about its efficacy, you didn't initiate formal Code of Conduct complaints about the type of behaviour you've been describing to Mr Parish; is that right?

A. Yes, I never initiated any but I did call on the general manager on a couple of occasions to take action which the Act provides and our Code of Meeting Practice provides that the GM has the capacity to act on a Code of Conduct on behalf of all.

Q. Sorry, which part of the Act do you have in mind, what are you talking about?

A. The Code of Meeting Practice, without looking at the section.

Q. And what was your understanding of the general manager's obligation about the Code of Meeting Practice?

A. My understanding is that, in relation to behaviour that is not appropriate, that she as the general manager might have an obligation to look at that; certainly in the first instance to talk to the person that is of concern and possibly the chair of the meeting.

Q. When you say "might have an obligation", can you just

1 help me with understanding what you're driving at?
2 A. It's a bit subjective in there with the terms of
3 reference. There is one in there which she considered and
4 responded to me and said that she wasn't going to pursue it
5 and that she had, you know, looked into it and so on. In
6 the circumstances I felt that was just whitewashing it
7 away.

8
9 Q. And this is arising under the Code of Meeting Practice
10 or the Code of Conduct?

11 A. Out of the - well, both, it was a meeting instance and
12 it deserved a Code of Conduct because no action was taken
13 on it, but I --

14
15 Q. Deserved a Code of Conduct that the general manager,
16 to your mind, had the obligation to pursue; is that what
17 you're saying?

18 A. That is what I was saying, yes.

19

20 THE COMMISSIONER: Thank you.

21

22 MR PARISH: Q. I don't think we've touched on yet
23 examples of harassment or aggressive actions in the chamber
24 that you referred to before; can you give some examples of
25 that in which you were harassed or subject to aggressive
26 actions and if you can provide any timeframes around that
27 as well?

28 A. Particularly after 2018 when Councillor Gair became
29 mayor I felt I was subjected to a fair bit of pressure,
30 sometimes often an 8:1 block. I also had some fairly sharp
31 comments being thrown at me which distracted me from asking
32 questions which I'm charged to do as a councillor
33 representing the community. I had one councillor in
34 particular whispering and trying to distract me to push me
35 off. It wasn't a pleasant experience, but anyway, we got
36 through it.

37

38 Q. In your view did that transgress the usual cut and
39 thrust of politics and --

40 A. To my, what, politics?

41

42 Q. Did it transgress the line where the usual cut and
43 thrust of politics ends and bullying and acts of disorder
44 begin?

45 A. Yes.

46

47 Q. Are there any other specific examples you want to give

1 us at this stage of bullying or harassment which
2 particularly stuck out in your mind and that you were
3 subjected to?

4 A. Yes. We've seen in parts of these sessions mentions
5 of action taken on members of the community: I would have
6 thought that was just horrendous.

7
8 THE COMMISSIONER: Q. I think Mr Parish's question is
9 directed at conduct directed at you.

10 A. At me, okay.

11
12 THE COMMISSIONER: Leave the rest for us to consider.

13
14 THE WITNESS: For example, on Station Street, I was
15 constantly attacked by quite a number of councillors for
16 continuing to suggest that we needed to update the
17 community and review various aspects and update the
18 costings on it, which I believed to be way out of order;
19 so, yes, I was harassed, I was bullied for the purpose of
20 trying to get me to stop asking questions on behalf of the
21 community which I'm charged to do.

22
23 THE COMMISSIONER: Q. What form did that conduct take?
24 When you were saying you were bullied to stop you asking
25 questions on behalf of the community --

26 A. Oh, just throw away --

27
28 Q. Just let me finish. How did that happen?

29 A. Just throw away lines for example from across the room
30 just saying, "Get real. Sit down", that sort of thing. I
31 mean, I was within my rights to speak.

32
33 Q. You also earlier mentioned the 8:1 divide on council.
34 How did that manifest into bullying and harassment in your
35 mind?

36 A. Oh, well, again, comments within the chamber saying,
37 "Let's get on with the rest of the business" and I'm asking
38 questions which I'm entitled to do of the staff or moving
39 motions or whatever. Often there was support, you know,
40 for a seconder if I had something on the table, but often
41 despite having sought a seconder prior to the meeting, that
42 seconding was withdrawn; so I take that, well, with a grain
43 of salt because it's part of the politics, but it was
44 unreasonable to not be heard for the sake of - I mean, the
45 term is, Commissioner, that "I'll second it for the benefit
46 of debate", and often that just disappeared. It's a
47 courtesy that's often afforded within a --

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Q. Is it the fact that the courtesy was afforded to others and not you; is that what you're driving at?

A. Well, there were instances of that.

Q. Is that what you're driving at?

A. Not particularly, but there were instances of that. It was mostly - and it was noted by the community; the community would say that was, you know --

Q. I just want your views at the moment.

A. My view is, it was mostly for me.

THE COMMISSIONER: Yes, thank you.

MR PARISH: Q. You've twice referred in the last few minutes to this concept that you are charged as a councillor to ask questions on behalf of the community. Where do you understand that charging power comes from? Is that a legislative --

A. I'll just refer to --

Q. Sure, if you need to refresh your memory.

A. We have an oath of office, Mr Parish. I've brought the original in actually. That's a photocopy but the original is framed, it's in my bag there, something you --

THE COMMISSIONER: It's in section 233A of the Act.

MR PARISH: It's in the actual Act.

THE WITNESS: That's what it looks like. (Witness shows document in frame.)

THE COMMISSIONER: I don't think that's necessary, councillor, I can read the wording of the Act, that's in the Act. I accept that you took it. Yes, Mr Parish.

MR PARISH: Q. Could you just assist me in understanding where this notion of being charged to ask questions on behalf of the community comes from?

A. Yes. Reading from this, it says:

I ... swear that I will undertake the duties of the office of councillor in the best interests of the people of [Wingecarribee Shire].

1
2 There's other references in there about - in our
3 various codes - about the right to and the obligations to
4 ask questions; it's particularly about financial matters,
5 Mr Parish.

6
7 Q. Can you tell me where those are?

8 A. Generally?

9
10 Q. Yes.

11 A. Yeah, Code of Meeting Practice.

12
13 Q. I can probably show you a copy of the Code of Meeting
14 Practice if that assists, Mr Scandrett. Do you have tender
15 bundle A, volume 2, with you at the moment?

16
17 THE COMMISSIONER: I think he has Volume 1.

18
19 THE WITNESS: I have bundle 1, I think.

20
21 THE COMMISSIONER: Have you finished with Volume 1 or
22 would you like Councillor Scandrett just to have --

23
24 MR PARISH: I don't think I am finished with that
25 actually.

26
27 THE COMMISSIONER: Yes, all right. Mr Broad, perhaps
28 just - I know Mr Parish might go back to it, but if you
29 just - yes, just park it there, yes, so the councillor is
30 not besieged by paper, thank you.

31
32 MR PARISH: Q. But perhaps the most convenient version
33 of the Code of Meeting Practice is the 12 June 2019 one
34 which is at page 1037 of the tender bundle, but if you have
35 a recollection that the charging obligation that you're
36 referring to is somewhere else, then by all means we should
37 be able to find it.

38 A. Whilst I'm looking for this, the word "charge" is my
39 word.

40
41 Q. Yes.

42 A. And it also arises from my election platforms.

43
44 Q. I understand. But, to help you out syntectically
45 then, you at least say there are some obligations
46 somewhere, either in a Code of Conduct or a piece of
47 legislation, which requires you to ask questions on behalf

1 of community?

2 A. Yes, and also in the statement of ethics. Shall I
3 still look for this?

4

5 Q. Yes, if it's not - you know as well as anyone that
6 there's a lot of paper here and things which have to be
7 borne in mind and, if you can assist us in pointing it out,
8 it will assist us too.

9 A. Well, can I say that it relates to, for example,
10 motions requiring the expenditure of funds; you must relate
11 that back to where the funds are going to come from, it's a
12 reference to the finance committee type scenario. You are
13 entitled to, as a councillor, drill into matters such as
14 financial matters. I don't think we did that particularly
15 well. I always asked for a qualification and I thought it
16 was incumbent upon me to do so. And you can talk about
17 planning committee and planning meetings as well and
18 planning matters, but --

19

20 Q. What I'm interested in at the moment is the
21 legislative or Code of Conduct basis for an obligation to
22 ask questions on behalf of the community.

23 A. Well, again, I'd like to, whilst I'm looking for this,
24 I'd like to refer you back to the oath of office, but
25 anyway.

26

27 THE COMMISSIONER: Perhaps we might come back to this in a
28 different way, Mr Parish.

29

30 MR PARISH: Q. Yes, I was going to say, perhaps if the
31 specific section doesn't immediately spring to mind,
32 councillor, I'll take that as your answer and if it occurs
33 to you later you can bring it to our attention.

34 A. All right.

35

36 Q. Mr Broad might take that tender bundle away from you.
37 We've had evidence from several people in this inquiry
38 about a toxic culture in the council amongst the staff, and
39 at least some of that toxicity stemming from the behaviour
40 of councillors; is that something you observed in the
41 2016-2020 term?

42 A. Yes.

43

44 Q. Can you give me examples of what you witnessed or
45 impressions you were left with which fortified that
46 impression?

47 A. Very aggressive behaviour by one or more councillors

1 at times towards other councillors, towards members of the
2 public who were speaking or, when we used to have questions
3 from the public, who were speaking via that mechanism.
4 Hostile behaviour at times just in the manner, we talked
5 about politeness before, the other end of the scale.

6
7 It's been recorded numerously that at times the
8 meetings were, um, dysfunctional. Yes; I mean, there were
9 passionate people there. I'd probably include myself in
10 that, Mr Parish, but ...

11
12 Q. On reflection do you think your behaviour towards
13 staff contributed to that toxic culture?

14 A. What behaviour towards staff, please?

15
16 Q. Behaviour of persistent - firstly, I'm asking your
17 reflection, if any behaviour of yours, looking back on it
18 now, may have contributed to that culture?

19 A. I don't believe so. I believe that I always acted
20 reasonably and within the general codes in relation to our
21 staff and in particular I have to say that I respected the
22 staff in the organisation totally, they're the frontline of
23 what we do.

24
25 There were times, as I detailed before when I was
26 sworn at by an Executive Member of staff in briefings or
27 aggressively spoken to in council.

28
29 Q. It may be put against you that your approach to
30 persistent questioning was something which caused a
31 lowering of morale or an exasperation amongst staff: do you
32 have anything to say in that respect? Do you agree or
33 disagree with that?

34 A. I disagree with that. I believe that I'm certainly
35 passionate, I certainly was trying to do a job that at
36 times the council executive were not doing, and I would
37 refer to the councillor request system on that, Mr Parish.

38
39 THE COMMISSIONER: Q. So, you were trying to do a job
40 that the executive weren't doing; can you just explain to
41 me what you mean by that?

42 A. Commissioner, I ran on a ticket, as I said, called,
43 "Just fix it" and we coined it that name because just
44 things weren't happening. People were coming to me,
45 particularly after I ran with Councillor Major, with just
46 examples of constant non or inaction on matters that were
47 important: matters of drainage, matters of DAs and

1 responses and so on that just were way past any reasonable
2 timeline and they were there. So I would use the
3 councillor request system which was a mechanism that was
4 brought in by Ann Prendergast to, I guess, provide a formal
5 channel for those. I supported it, I half-suggested it, I
6 said, "Can we have a point of reference where we can put
7 those and they go out to the staff and get answered?" So,
8 the council request system was a very good system, but the
9 trouble is, if you look at the evidence - and as I say,
10 I've got some here but I can't get to the rest of it
11 because I'm blocked into the email system, of course. But,
12 you know, there were things I put up in there which were
13 five, six, seven years old, and some things that took half
14 a year to get an answer, repeated questions from me. If
15 that's harassment - well, I don't believe it is - it's me
16 just saying, "Could I have an answer", and I was always
17 polite about that.

18
19 Q. My question was, in your answer before the previous
20 one you said you were trying to do a job that the executive
21 wasn't doing. What was the job that you were trying to do
22 that the executive wasn't doing?

23 A. I was trying to get answers for the community; not
24 unreasonable answers/requests, m'mm.

25
26 MR PARISH: Q. How do you think that approach was
27 perceived by staff who had a clear protocol from their
28 point of view about how councillors ought to action
29 requests through the GM or from senior staff?

30 A. Well, I wasn't doing action requests per se, I was
31 asking questions about matters.

32
33 Q. How do you think that affected staff when you were
34 taking steps which you saw as something that their senior
35 managers were not doing?

36 A. I often phrased the questions in the council request
37 system as, you know, "Are you aware this hasn't been dealt
38 with and could you give me an update?", those sort of
39 polite words. I never was rude, I was always polite.

40
41 Q. How did you think it affected staff?

42 A. Yep, I'm getting to that. I don't think it should
43 affect staff to have - because I was following the
44 protocols the general manager had put in and I was doing it
45 politely. I was asking questions on behalf of ratepayers,
46 so I don't think - I don't think, Mr Parish, it should have
47 affected staff at all. If they were also following the

1 guidelines set by the GM in terms of responses and
2 everything, then all I was doing was pointing out that
3 these things were over time or whatever. Some matters were
4 not even over time, they were just things that were brought
5 to me and - I used to phone the council regularly just to
6 check the answering time on the switchboard, for example,
7 just as a service thing; it's where I come from, retail,
8 but in summary, I don't think it should have been anything
9 other than an information source to the staff and to the
10 general manager that there was increasing dissatisfaction
11 in the community.

12
13 THE COMMISSIONER: Q. What part of that - I'm just at
14 the moment not sure I understand, when you said earlier you
15 were trying to do a job that the executive wasn't doing; if
16 what you were doing was asking for information, what was
17 being done? I must say, I have some difficulty with this
18 passage of evidence, I'm not sure I'm understanding what
19 you're driving at.

20 A. Our customer service charter - I actually think
21 they're shareholders, but anyway - our customer service
22 charter required certain response times and the like, and
23 on quite a number of matters they weren't being met,
24 therefore I say I was having to chase up things often on
25 behalf of the ratepayers.

26
27 I remember on a couple of instances, Commissioner, Ann
28 Prendergast in front of councillors said, "You've won" - or
29 words to the effect, "You've won the number of council
30 requests competition again, councillor", and she was
31 talking about the fact that I was, you know, submitting a
32 volume of requests, and I think Councillor Whipper was
33 named regularly as the No.2 but somewhat behind. But
34 these - if you want to read those, that's the sort of
35 document that was provided (holds up document), everything
36 from grass cutting, to weekly bulletins, to shop signage
37 and so on. Just, quite frankly --

38
39 Q. Why is it the role of the council or governing body to
40 get involved in those sorts of issues?

41 A. Because in many - in a number of cases, Commissioner,
42 they weren't - they were long-standing issues and they
43 weren't being dealt with.

44
45 Q. So do I understand it, you understand the obligation
46 of a councillor, if there is some issue in the operational
47 part of the council that's not being dealt with

1 appropriately, that it's the job of the councillor to
2 intervene?
3 A. Only after it's been not answered or not dealt with
4 for a considerable time. And "dealt with" might mean just
5 saying "no", but people were frustrated, and this came
6 through in all of the customer service surveys which of
7 course came back to the GM in terms of her performance.
8 But it's not a role I set out to do but I sort of attracted
9 those questions in many cases, so I referred them through
10 the proper channels, precisely through the channel.
11
12 MR PARISH: Q. Can I ask you about a specific section of
13 the Local Government Act, and I appreciate you might not
14 have it in front of you, but Mr Broad might be able to show
15 you section 232.
16 A. I have that, I believe. I have that, Mr Parish.
17
18 Q. I don't know if you were here this morning when I was
19 asking similar questions of Councillor Whipper, but if you
20 look at section 232(1)(f), it says that the role of a
21 councillor is as follows, and it includes:
22
23 *To uphold and represent accurately the*
24 *policies and decisions of the governing*
25 *body.*
26
27 Do you see that?
28 A. Yes.
29
30 Q. You can take it from me, either an assumption or if
31 you agree with it, that a decision of the governing body is
32 any time that a resolution is passed with the majority of
33 council; do you accept that?
34 A. Yes. It's not to say, by qualification --
35
36 Q. Pardon me?
37 A. Yes, I recognise majority decision and I represent - I
38 recognise the upholding of that, but it's not to say that a
39 councillor can't have a conscience or an alternative - the
40 view that they had in that vote.
41
42 Q. Where is that in this paragraph?
43 A. Oh, I'm just making comment, sir.
44
45 Q. Where does that comment come from? Is there a
46 legislative basis for that comment or is that something
47 that you have decided?

1 A. It's a comment on (f), item (f).
2
3 Q. Right. So, I don't see those words that you qualified
4 with in (f) --
5 A. It's my personal --
6
7 Q. Okay, it's your personal opinion, is it, untethered
8 from your legislative obligations; is that fair?
9 A. Yes.
10
11 Q. It says, "uphold and represent accurately". What do
12 you understand "uphold" means once the decision of a
13 governing body is made?
14 A. Well, what you've just said; it's a majority decision,
15 a council is a majority-based organisation.
16
17 Q. Quite, but it's your role as a councillor to uphold
18 that decision once it's made; do you take that to mean
19 that, even if you might disagree with that decision, you
20 have an obligation to uphold it?
21 A. Yes, and I often expressed my personal opinion which
22 often was my opinion when the matter came to the chamber.
23
24 Q. And what about after that decision is made? Just
25 asking what your impression or understanding of this
26 specific subsection is. Did you have to uphold it no
27 matter what you thought about it and even if you were on
28 the wrong side of it?
29 A. I would make reference often to, that was the majority
30 decision, but I might qualify it by saying that I was not
31 one of the majority, such as that, m'mm.
32
33 Q. Do you agree with the proposition that it doesn't
34 matter if you are part of the majority, or indeed it
35 doesn't matter if you agree it, you've got an obligation
36 once the decision is made to uphold it?
37 A. Yes, but often a role as a councillor involved
38 communicating with the - as per item (e) there - to
39 facilitate community, communication between local community
40 and the governing body, and often there was an interpretive
41 element to that; people might come to you with questions
42 after a majority decision of council. Having said that, a
43 lot of the decisions of council were unanimous on general
44 run-of-the-mill matters, governing matters. We don't keep
45 a record of votes on other than planning things, though I
46 pursued that at times.
47

1 Q. Do you accept that the converse of your role in
2 232(1)(f) is that you must not undermine decisions of the
3 governing body once they've been made?
4 A. Yes.
5
6 Q. And you must not misrepresent those policies and
7 decisions of the governing body once they've been made?
8 A. Yes.
9
10 Q. Did you feel you upheld the role that's set out in
11 232(1)(f)?
12 A. Yes, with the qualification that often I felt that
13 there was more detail to be dealt with, or people would ask
14 me, and for example in the case of Station Street the
15 budget, I from day one couldn't see that working and I had
16 various people approach me about that. So, yes, I stated
17 that that was the decision of council but I would then
18 qualify it by saying, but the numbers don't just look
19 right, and I would ask questions in council about the
20 numbers.
21
22 Q. I'm going to show you a clip now, it's Clip 13 that we
23 have.
24
25 (Recording of Clip 13 played to inquiry)
26
27 I think you might have received 433 first preference
28 votes; does that sound about right?
29 A. I'm sorry?
30
31 Q. I said, I think you received about 433 first
32 preference votes; does that sound about right?
33 A. Yes. I had a very good mid-range performance
34 throughout my elections.
35
36 Q. Do you think, in criticising the matters that you
37 criticise there --
38
39 THE COMMISSIONER: Sorry, Mr Parish, could you just lay a
40 bit of groundwork about what we just saw?
41
42 MR PARISH: Yes, pardon me.
43
44 Q. Could you tell us where that meeting was and the date
45 that that meeting occurred?
46 A. Yes. It was on the public road outside our Resource
47 Recovery Centre. There were two meetings.

1
2 Q. When was that meeting, the one that you're pictured in
3 there, do you recall?
4 A. Not directly, but when I say there were two meetings,
5 there was a meeting convened by the union which involved
6 workers, and then there was a - well, not even a meeting,
7 but there was a postscript to it which is that vision you
8 have there. I was not involved in the meeting with the
9 workers.
10
11 Q. And I don't think you've given me a date yet; can you
12 give us any sort of time range for that meeting? A year
13 ago, two years ago, five years ago?
14 A. No, Mr Parish, it's in that 2018-19 area and it
15 related, as you've heard evidence before, to council
16 supporting the Regional Art Gallery at the expense of the
17 environment levy and basic services at the RIC in terms of
18 opening hours.
19
20 Q. Was that a decision of council?
21 A. Um, yes, it was, and as you heard me say there, I
22 qualify quite precisely that it was a majority decision of
23 council.
24
25 Q. Do you think you were upholding the decision of the
26 governing body when you were criticising it in that vision?
27 A. I don't believe I was criticising the decision; what I
28 was criticising was the lack of information about that
29 decision such as the lack of consultation with our
30 frontline. I mean, the Resource Recovery Centre and
31 associated facilities are a basic service, and also, I went
32 to the fact that there was no business case with the art
33 gallery and it's a good example of me questioning decisions
34 that didn't have full provenance.
35
36 Q. Right, so instead of undermining the decision itself
37 you undermined the basis of the information that makes the
38 decision; is that --
39 A. With respect, Mr Parish, I didn't undermine, I
40 communicated with the ratepayers, I was faithful to my
41 pledges for the ratepayers, and the ratepayers include
42 workers. So, I upheld the decision but I raised matters
43 arising from it such as the lack of a business case, and I
44 was able in a subsequent meeting of council to insert into
45 the final decision for the art gallery a business case
46 requirement.
47

1 Q. Those ratepayers you're just referring to are
2 employees of the council; is that correct?
3 A. Generally, yes.
4
5 Q. How do you understand you were addressing them? As a
6 councillor or as a private citizen?
7 A. I - Mr Parish, with respect, I made it quite clear in
8 that tape that I was there as a citizen, and I know you're
9 going to ask me about being a councillor 24/7, but I made
10 it quite clear.
11
12 Q. You made it clear at the end after a question from
13 Latte Life, but what I'm interested in is, can any private
14 citizen attend the Resource Recovery Centre and address
15 council workers?
16 A. I guess so, it was on the road outside, but have you
17 reviewed the tape of the whole meeting?
18
19 Q. That's not a question that --
20
21 THE COMMISSIONER: Don't argue with Counsel Assisting
22 please.
23
24 THE WITNESS: Were one to review the tape of the whole
25 meeting one would find that the organiser of the meeting,
26 the union people, didn't involve me in the main - the stop
27 work meeting; it was, I was invited after to - whether I
28 would like to speak to the crowd and answer questions,
29 which I did in my own right.
30
31 THE COMMISSIONER: Q. Who invited you?
32 A. The organiser of the meeting.
33
34 Q. Who was?
35 A. Mr Oppitz.
36
37 Q. Mr Who?
38 A. Mr Oppitz, the union fellow there.
39
40 Q. He invited you to attend the meeting or --
41 A. No, he invited me to - would I like to speak now that
42 the meeting is over, words to that effect.
43
44 MR PARISH: Q. How did you end up at the meeting in the
45 first place?
46 A. Oh, I became aware that it was being held, it was in
47 the news.

1
2 Q. So, you weren't invited to the meeting itself?
3 A. I was not invited to speak at the union meeting, it
4 was on, as I said, a public road verge, so I attended, as
5 did, as you saw there, other people, media, et cetera.
6
7 Q. Did you tell the general manager that you intended to
8 address council workers?
9 A. Well, I didn't know I was going to address that
10 gathering, and I certainly, as I say, was not invited prior
11 to the gathering to speak to it; I turned up and I wore my
12 safety vest for - which I kept in the car - um, no, I
13 didn't tell the general manager in this instance.
14
15 Q. In retrospect, do you think you ought to have asked
16 the general manager before you addressed council workers on
17 a specific decision of council?
18 A. Well, one might argue that, Mr Parish, but I wasn't
19 addressing the meeting, I was making comments and answering
20 questions after the meeting had clearly finished and that's
21 in the full video.
22
23 THE COMMISSIONER: Q. Is there a different group of
24 people who were at the meeting and to whom your comments
25 were directed?
26 A. Yes, as it so happens one of the executive turned up
27 and parked up on the hill to observe it, so yes, there was
28 a difference.
29
30 Q. Was that executive in the group of people who we see
31 in the video or where they observing from a distance?
32 A. No, they were out of that camera shot.
33
34 Q. That wasn't quite my question. Was that executive in
35 the group of people or were they observing from a distance?
36 A. Observing from a distance would be the answer.
37
38 Q. Whether or not it was part of the meeting or the
39 postscript to the meeting, what role do councillors have to
40 address staff on any decision of council outside the
41 councillor interaction policy?
42 A. That's why I stood aside at the back of the meeting
43 and observed it when it was on, and then it concluded and
44 some people left. Is there a role for a councillor there?
45 It was certainly a learning experience for me to get more
46 truth, more of the truths about what was happening at the
47 RIC. And I have to say here, Commissioner, there was an

1 information block which many councillors thought, in terms
2 of things happening at the RIC, such as asbestos, animal
3 shelter, et cetera. So, I went out to watch and learn;
4 that was my primary objective.
5

6 MR PARISH: Q. What did you intend the impression to be
7 left with when talking to these council workers? What was
8 the impression you were intending to leave by - I'll try
9 and use a neutral word - critiquing the information which
10 underlined a decision of council?

11 A. Well, I don't know that I set out to leave any
12 impressions, Mr Parish, I went out there to find
13 out/observe what was going on and why this stop work
14 meeting was happening, and that I came away with a number
15 of concerns and I dutifully raised some of those inside the
16 council.
17

18 Q. You raised concerns to council workers --

19 A. In here, in the council.
20

21 Q. No, the footage we just saw you raised concerns
22 critiquing the information underlining a decision of a
23 governing body to council workers. What did you intend the
24 effect to be of raising those concerns in front of them?

25 A. Sir, I didn't set out to do that; I - in speaking
26 after the stop work meeting finished and some people left I
27 expressed my concerns in terms of the lack of information
28 such as the business case.
29

30 Q. Yes, we saw that. What was the intended effect of
31 that on the people who you were addressing?

32 A. I had no intention in affecting them at all, I just
33 said to them that they were my concerns and I did go and
34 pursue them as I thought was appropriate.
35

36 Q. Did you raise these concerns with someone at the
37 supermarket or a bus driver? Why did you specifically
38 address those concerns to this group of people?

39 A. Well, Mr Parish, they were losing hours and there was
40 no business case for the money being taken away from the
41 budget that operated that, and certainly I felt that that
42 had to be ventilated and I came back to council and I
43 ventilated that.
44

45 Q. Were you seeking to comfort them then; was that your
46 intended effect?

47 A. Often the role of an elected official is to be a

1 communication point to - yes, to - I saw that as being an
2 indirect function and that is to pacify people at times
3 when they're upset. That meeting, clearly many of those
4 workers were upset because they were losing Sunday
5 afternoon shifts at the RIC, it was going to close at
6 1 o'clock, and they were losing an hour every other day
7 which was going to be at the expense of the tradespeople
8 across the shire because it was in the morning.

9
10 THE COMMISSIONER: Q. How was referring to the lack of a
11 business case for the art gallery going to pacify those
12 people in that context?

13 A. I didn't actually see it as being pacifying them, I
14 just said that I felt that the information needed to be got
15 as to the business case that led to the decision to reduce
16 the hours, but I didn't specifically set out to try and
17 pacify them with that comment.

18
19 Q. Why --

20 A. Often you just have to listen to them, to residents
21 and ratepayers, Commissioner; it helps with people who are
22 frustrated.

23
24 Q. I can certainly understand that view. Why did you
25 take up the invitation to speak at, as you put it, the
26 postscript of the meeting?

27 A. I was standing behind the meeting with the media and
28 others and a couple of people when the meeting finished
29 came over, they obviously recognised me, and asked me
30 questions and then I was asked by Mr Oppitz whether I'd
31 like to speak and take questions, which I agreed to do as a
32 private citizen.

33
34 Q. My question was, why did you agree to that invitation?

35 A. I felt it was not unreasonable in a public place for
36 me to be asked and for me to accept.

37
38 Q. As a private citizen?

39 A. Yes, and I was cautious in that regard.

40
41 MR PARISH: Q. How do you distinguish between when you
42 are speaking as a private citizen and when you are speaking
43 as a councillor?

44 A. It's very difficult, Mr Parish, we know that.

45
46 Q. What are you doing now? Are we talking to
47 Mr Scandrett or are we talking to suspended Councillor

1 Scandrett at the moment?
2 A. I've been quite clearly a suspended councillor for the
3 last 12 months. I've stopped wearing my badge in public.
4 I've changed - made sure I changed my Facebooks to
5 recognise that we were suspended and I was suspended, and
6 whenever the media or people want to address me or
7 interview me or whatever, I instantly make sure that it's
8 "suspended councillor", I'm quite conscious of that.

9

10 Q. Those are admirable ostensible steps but how, for
11 instance, in the period when you were still a councillor,
12 are you able to set out to someone else the role in which
13 you are talking?

14 A. It's a movable feast, Mr Parish, because you've got
15 people who see you and know you to be a councillor when
16 you're out at the supermarket, as you say; other times
17 you're in a more formal situation where you might have been
18 invited to attend a gathering or a group or whatever and
19 you just focus on making the point as to your role at that
20 time. Mind you, I recognise that we've had some training
21 on this, that it is a 24/7 job in the public's eye.

22

23 Q. Do you accept that that is particularly difficult when
24 you may be dealing with a council matter, for instance,
25 something entirely personal unconnected to any role of the
26 council as something slightly different to a situation even
27 as simple as trees or bins which someone who you're talking
28 to may be left with the impression that you have a power to
29 influence something?

30 A. I heard most of that; what was it, tree bins or
31 something?

32

33 Q. There are examples where it's very obvious that you're
34 not talking in a councillor capacity, but there are
35 circumstances where, even if you are intending to speak in
36 a personal capacity, it may relate to a matter which is
37 unable to be disconnected from your role as councillor; do
38 you accept that?

39 A. Yep, it is --

40

41 Q. Would you put talking to council staff about a
42 decision of the governing body in that latter category?

43 A. As the meeting had concluded and they were on break I
44 didn't quite perceive it that but I made clear at the
45 beginning that I was not there as a councillor, I was there
46 as a private citizen, and that is in that situation the
47 best you can do, is to repeat that.

1
2 I think in the supermarket or rubbish bin example,
3 whatever, people recognise you and they want to engage with
4 you maybe because it's something that's been bugging them
5 for a while, maybe it's just because they've seen you and
6 they want to ask you; and it's incumbent, I think, to be
7 gracious, courteous and, if there's some further contact, I
8 would normally give them a business card and invite them to
9 write to me so that I could put it into the council request
10 system, and on that basis I went through thousands and
11 thousands of business cards, I was prolific in re-ordering
12 my business cards over the last 10 years.
13

14 Q. That's not quite my question but we'll move on. Can I
15 take you to the regulations again, if you've got the piece
16 of paper in front of you.

17 A. 232?

18
19 Q. No. Do you have the Local Government (General)
20 Regulation 2005 in front of you?

21 A. Yes, 182, "Acts of Disorder".
22

23 Q. That's the one. Do you see (e) there:

24
25 *Says or does anything that is inconsistent*
26 *at the present time with maintaining*
27 *order at the meeting or is likely to bring*
28 *the council or committee into contempt.*
29

30 A. Yes.
31

32 Q. In your view, did you adhere to that injunction at all
33 times?

34 A. Generally.
35

36 Q. Are there any examples which, on reflection, you may
37 have transgressed?

38 A. If a valid point of order was not recognised I would -
39 whilst I was still on my feet, because I always spoke on my
40 feet, I would respond to that and suggest or ask that the
41 decision be explained. If the point of order was just
42 ignored, I guess I was questioning that.
43

44 Q. Do I take your answer to be, "Yes, I adhered to that
45 injunction except when I had a decision on a point of
46 order that I didn't agree with"?

47 A. Generally, yes.

1
2 Q. Do you have tender bundle A, volume 2, I think it is,
3 in front of you?
4
5 THE COMMISSIONER: I'm sorry, Mr Parish, I didn't catch
6 that reference?
7
8 MR PARISH: Tender bundle A, volume 2.
9
10 THE COMMISSIONER: Thank you.
11
12 MR PARISH: Q. Can you go to page 1069.
13 A. It starts with 11.23?
14
15 Q. No.
16
17 THE COMMISSIONER: 1069?
18
19 MR PARISH: Yes.
20
21 THE WITNESS: Oh, 69, my apologies. Starts with (b)?
22
23 THE COMMISSIONER: Yes.
24
25 MR PARISH: Q. Yes. Those are the acts of disorder as
26 set out in the Code of Meeting Practice.
27 A. Yep.
28
29 Q. And for reasons best known, probably neither to you or
30 I, it repeats the regulations but then also uses slightly
31 different wording. So, for completeness can I take you to
32 (e) which is at the top of page 1069 which says:
33
34 *A councillor commits an act of disorder if*
35 *the councillor, at a meeting of the council*
36 *or a committee of the council ... says or*
37 *does anything that is inconsistent with*
38 *maintaining order at the meeting or is*
39 *likely to bring the council or the*
40 *committee into disrepute.*
41
42 Do you see that?
43 A. Yes, I see that.
44
45 Q. You notice it use's a slightly different phrase from
46 the regulations; the regulations says "contempt".
47 A. I think that's often the case; there's minutiae.

1
2 Q. Yes, maybe. Do I take it your answer to my question,
3 "Did you ever feel, on reflection, like you might have
4 transgressed that injunction", is the same as your answer
5 to what you referred to before in the regulations?

6 A. As I said, generally, yes.
7

8 Q. We've had some evidence about the response to the
9 bushfires in 2019 and 2020 and, amongst other things, a
10 view from some witnesses expressing dismay about the role
11 of the governing body at that time and some of the comments
12 made by Mayor Gair at the time. Can you give me your
13 impression, whether you agree with their views or whether
14 you thought the council did better than was --

15 A. With who's views?
16

17 Q. With some of the witnesses' views that the behaviour
18 of Mayor Gair in respect of the bushfire response was
19 inadequate at best, and the view of some witnesses that the
20 governing body's response was inadequate at best?

21 A. Yes, both the mayor and the governing body were
22 criticised by many, including the community and, quite
23 frankly, I don't think we showed much - we, councillors
24 were hardly involved in the bushfire area because we were
25 barred from it by the mayor - but I think this council
26 showed a dearth of empathy, absolutely terrible.
27

28 Q. In the aftermath of the bushfires, and I'll try and
29 phrase this question at about mid-to-early January 2020,
30 were you getting a sense from the community at that stage,
31 mid-January 2020, about how the governing body or the
32 council was assisting?

33 A. I was getting a sense, as the fires approached
34 particularly and then into January, that we weren't on the
35 job. It was quite critical, and can I say that in the
36 Southern Villages when the fires swung around and came up
37 the escarpment, that our own house had black ash falling on
38 it the fires were that close.
39

40 Q. Did you attend any of the meetings, I think they were
41 on about the 20th and 21st of January, the community
42 meetings?

43 A. Once I became aware the community meetings were being
44 held I started attending them as a councillor and
45 representative. I will say that there was a meeting in
46 Hill Top which we were not - we collectively - were not
47 advised of; I believe most councillors were not advised of

1 that meeting in Hill Top, and I received a number of calls
2 from the community going, "You're always up here, always
3 looking after us, why weren't you at that meeting?" And
4 one caller said, "You were here last time", 2013, when we
5 had a big meeting up in Hill Top and the mayor of the day,
6 that was Councillor Arkwright, presided over that and was
7 most inclusive.

8
9 There was another meeting, Mr Parish, which I became
10 aware of. I was at my desk and I saw a live-stream coming
11 out of Avoca Hall for a public meeting about the bushfires,
12 and again, I wasn't aware of it and I was an elected
13 councillor. There was no inclusiveness whatsoever. After
14 that I made it my business to find out where every one of
15 those meetings were and people were telling me and all that
16 sort of thing.

17
18 Q. Did you attend either the 20 or 21 January meetings?
19 I think one was in the Northern Villages - it was called
20 the Northern Villages meeting and one was called the
21 Southern Villages meeting?

22 A. If you'll just let me check my diary?

23
24 Q. Yes, sure.

25 A. I believe the answer's going to be yes. So, the first
26 date was, please?

27
28 Q. I think the 20th was the Southern meeting, at which
29 Ms (indistinct words - multiple speakers) spoke?

30 A. Yes, Bundanoon Soldier's Memorial Hall--

31
32 Q. Yes.

33 A. -- I remember it quite well, because we were totally
34 unprepared for it in terms of the turnout, we had to have
35 the meeting twice. There was the first round and then
36 everyone left the hall and all the others who were standing
37 outside with no PA or any thought of the possible crowd
38 that would turn up, we then re-ran the meeting for the
39 second time.

40
41 Q. Was that the Northern Villages meeting perhaps the
42 next day, or was that the same meeting in the same hall?

43 A. No, it was the right - it was - Bundanoon finished and
44 it had MPs and so on there, and all the crowd outside who
45 couldn't hear it because there was no provision for
46 external speakers or video or anything, quite a number of
47 people, probably as much as 100, then came in and we re-did

1 the meeting for them. It was unbelievable. And, just for
2 the record, I had said that I - to staff I think - that I
3 felt there would be a huge turnout from the Southern
4 Villages because there was a lot going on.

5
6 Now, on the next day, the 21st I think you asked
7 about?

8
9 Q. No, pardon me, sorry, you said there was going to be a
10 massive turnout; when did you say that?

11 A. I'm sorry, I can't hear you.

12
13 Q. You just gave an anecdote of saying that you had
14 warned that there would be a massive turnout in the
15 Southern Villages; when did you warn of that massive
16 turnout, and to whom did you send that warning?

17 A. It would have been to the staff in the - probably in
18 the day prior, and I may have done it via an email, I can't
19 recall.

20
21 Q. I thought you didn't know about this meeting until it
22 was being held?

23 A. I was very aware of this one, Mr Parish.

24
25 Q. Oh, it was the previous meeting that --

26 A. Yes, the Avoca, and prior to that the Hill Top, I was
27 very aware because people were talking to me; lots of
28 communications.

29
30 Q. So, you emailed staff, is that correct, about the
31 (indistinct - multiple speakers) turnout?

32 A. To the best of my recollection that's probably what I
33 would have done, I often documented things so that they
34 were in writing.

35
36 Q. Do you recall who you emailed about the conduct of
37 these meetings?

38 A. I probably would have emailed the executive
39 secretaries.

40
41 Q. And if I can put it this highly, the mood in the
42 Southern Villages meeting, can you tell me what the mood
43 was like from your impression?

44 A. Very tense, very worried, very scared. They were
45 worried about the lack of preparation, they were worried
46 about things like access to water and the like. The
47 meeting encompassed all down to Wingello and somewhat

1 picked up the skirts of Sutton Forest and the like.
2
3 Q. How do you think Mayor Gair chaired the meeting in the
4 Southern Villages?
5 A. Candidly.
6
7 Q. I don't want you to lie.
8 A. No, I never do. Terribly. He was not connected to
9 the people; that's a pattern that kept on showing. He had
10 no empathy of their concerns and so on and he didn't want
11 to entertain various discussions. I think our MP for that
12 area, Wendy Tuckerman, was just - I recall looking at her
13 face as the mayor spoke variously and I didn't get a sense
14 of anything positive about his performance from - and let
15 me tell you, people came up to me when we broke that
16 meeting, I went out the door whilst everyone left and
17 people came up to me and were quite disparaging about how
18 the mayor was - the meeting was chaired.
19
20 Q. So, at least as at about 20 or 21 January 2020 would
21 you say that the mood in the community in respect of how
22 the bushfire response was being handled was tense?
23 A. Yes, and --
24
25 Q. What about worried? Would you say there was a worry
26 in the community?
27 A. Well, that - every - nothing was happening: we weren't
28 responsive, we weren't involved and so on. I know the
29 middle staff were doing all the things that they, you know,
30 were able to do and they were doing it to the best of their
31 endeavours and I applaud that, but in terms of senior
32 planning, look, our response plans were questionable.
33
34 Q. Do you think there was a lack of confidence in the
35 governing body or at least the mayor at about that
36 20-21 January 2020 point in time?
37 A. A dramatic escalation in that space; I think we
38 already had that view just in various things that had been
39 taking place in previous years.
40
41 Q. And this was subsisting, do you say, a week later when
42 an extraordinary general meeting was held on 29 January
43 2020?
44 A. Well, that meeting was hostile and it was terrible
45 that it was hostile, and it shouldn't --
46
47 Q. I'm talking about the mood in the community.

1 A. Yes.

2

3 Q. The mood you just described from about 20-21 January,
4 was that still in the air a week later roughly?

5 A. And rising, Mr Parish.

6

7 Q. I'm just going to show you Clip 12 unless --

8

9 THE COMMISSIONER: Just before you do, just before I lose
10 this.

11

12 Q. You say at that time nothing was happening or words to
13 that effect. What should have been happening that wasn't
14 as at 20 January 2020?

15 A. We had no lack of ability to fund immediate remedial
16 works such as removing trees in quantum from the Southern
17 Villages and the Northern Villages and branches that were
18 obstructing side roads. There was a lot of concern about
19 the fact that we weren't out there making the area safe,
20 and we appeared to be waiting for funding announcements,
21 yet we had \$180m in the bank of which I estimate, because I
22 never got the answer out of staff, about \$20m was
23 uncommitted. In other words, we should have just got off
24 the back - off our backside and got contractors and our
25 staff out there dealing with that as one issue.

26

27 THE COMMISSIONER: Thank you. Sorry, Mr Parish.

28

29 MR PARISH: Q. I'm going to show you a clip, Clip 12
30 from the meeting of 29 January 2020.

31

32 (Recording Clip 12 played to inquiry)

33

34 Q. Do you accept that you didn't give Mayor Gair
35 precedence as the chair in that? Do you need to think
36 about that?

37 A. No, I just want to make sure I cover that precisely.

38

39 Q. I'll provide you with the appropriate section of the -
40 it's page --

41 A. I'm aware.

42

43 Q. -- it's page 1052. It says, clause 7.9:

44

45 *When the chairperson rises or speaks during*
46 *a meeting of the council any councillor*
47 *then speaking or seeking to speak must*

1 *cease speaking and, if standing,*
2 *immediately resume their seat and every*
3 *councillor present must be silent to enable*
4 *the chairperson to be heard without*
5 *interruption.*

6
7 Do you see that?

8 A. Yes.

9
10 Q. Do you accept that you breached that clause in the
11 clip we just saw?

12 A. Any observer of that --

13
14 Q. That's really a yes or no question.

15 A. I wasn't --

16
17 Q. Do you accept that you breached that clause in the
18 clip we just saw?

19 A. Mr Parish, I would like to qualify my answer, if I
20 may, please.

21
22 THE COMMISSIONER: Q. First of all, do you accept or
23 disagree with the proposition, and then if there's an
24 explanation to be given I'll permit you to give it.

25 A. All right, on that basis, yes.

26
27 Q. And what is your explanation?

28
29 MR PARISH: Q. Would you like to qualify that?

30 A. Thank you. My seconder was not accepted. It was a
31 valid motion, it was a public meeting and it's quite a
32 legitimate process to call for the suspension of standing
33 orders for a reason, and there was no opportunity - there
34 was no due process there; it was, dare I say, my way or the
35 highway from the chair and, as you saw, there were people
36 in the audience who were horrified.

37
38 Q. He's the chair, isn't he? The whole purpose of
39 clause 7.9 is that it's his way or the highway; do you
40 disagree with that?

41 A. With the greatest of respect, I am entitled to have a
42 seconder read into the minutes.

43
44 Q. Where does it say that in clause 7.9?

45 A. It doesn't, sir, it's in our general Code of Meeting
46 Practice, all right, that you make a - move a motion and
47 immediately the mayor will say, "Who's your seconder?" In

1 this case that was denied and that's why things got a bit
2 heated, and yes, ask me now, I certainly in many ways
3 regret that it got that way, but I was there for the people
4 and they wanted to be heard.

5
6 Q. Can you just point me out before we go on the
7 provision for the suspension of standing orders in the Code
8 of Meeting Practice, because it wasn't something that was
9 immediately evident to me, that there was a procedure for
10 the suspension of standing orders in the Code of Meeting
11 Practice.

12 A. You've got me on-the-hop there, Mr Parish.

13
14 Q. Do you want to think about it and we'll come back to
15 it if we need to?

16 A. Look, it's - yes, but it is a practice that normally -
17 that did happen in this council on a regular - not
18 frequent - but on a regular basis.

19
20 Q. Perhaps even if it's not in the document here, it was
21 a --

22 A. Look --

23
24 Q. -- procedure followed from time to time?

25 A. Meeting procedure. Look, Joske's and other bibles, if
26 you wish/guides on meeting practice go to that. It's
27 often - I remember councillor - a couple of councillors
28 were - would regularly propose this and it would be
29 supported in the interests of transparency.

30
31 Q. Did you give notice of the notice of motion to anyone
32 before you stood up at the start of this meeting?

33 A. I don't recall, Mr Parish, but I - often my habit was
34 to type these things out prior for a regular meeting, a
35 scheduled meeting. Now, this was an extraordinary general
36 meeting, so I may have handwritten it on the appropriate
37 form at the time.

38
39 Q. Did you discuss with Councillor Gair, or Mayor Gair,
40 the idea that you put when you stood up, i.e. opening it up
41 to the public to talk for three minutes?

42 A. I don't believe I did but I do believe that I had
43 ensured that I had a seconder, in fact more support than
44 that, as you saw.

45
46 Q. Did you talk to any of the other councillors prior to
47 this meeting about your idea to open the floor for the

1 public to speak for three minutes?

2 A. Yes, I believe I talked to Councillor Turland,
3 possibly to Councillor Halstead, possibly to Councillor
4 Whipper.

5

6 Q. But not to the mayor. Do you recall if you talked to
7 the general manager or perhaps the deputy general manager
8 at the time?

9 A. Mr Parish, the circumstances of that meeting were that
10 we arrived for it and, of course, the large community
11 contingent immediately started talking to all and every
12 councillor that came into the room. It was downstairs, it
13 wasn't a formal room, it was not laid out formally, and I
14 certainly was approached by quite a number of people who
15 had concerns about what was going to be discussed. There
16 was one particular lady there who had lost her home and she
17 definitely wanted to speak and had some, in my view, some
18 very instructive things that she needed to relay.

19

20 Q. Do you think, on reflection, it would have been a good
21 idea to talk to Mayor Gair about your idea before you stood
22 up?

23 A. I don't think it was practical the way the meeting -
24 the doors just opened, everyone came in and so on - and I
25 will in later evidence make comment about the communication
26 process from Mayor Gair to me.

27

28 Q. Why was it not practical? I mean, what would have
29 been so insurmountable to have a one minute conversation
30 with Mayor Gair about your idea?

31 A. Well, for starters the mayor and the executive and
32 other councillors were all engaged - we were all engaged
33 with everyone, it was quite turbulent, including the
34 community.

35

36 Q. You described before the mood in the community at this
37 time as tense, worried, and lacking in confidence of the
38 governing body; do you recall that evidence?

39 A. Yes.

40

41 Q. Do you think that standing up and moving a suspension
42 of standing orders without giving a heads-up to the mayor
43 was something which would instill confidence in the
44 community in their governing body when you did that?

45 A. The motion definitely instilled confidence in the
46 community because that's what they wanted to do, they
47 wanted to address a public meeting and, as it transpired,

1 they were generally not allowed to. With local government
2 often it's on the fly, often it moves quite fast, and
3 sometimes in a general meeting which has had an agenda
4 published and everything else something arises that might
5 require a councillor to stand up and move. That's - I
6 don't think that's unusual.

7
8 Q. This is quite literally an extraordinary meeting, is
9 it not?

10 A. Precisely so.

11
12 Q. And you've just described, have you not, the tense,
13 febrile mood in the community including a lack of
14 confidence in the governing body, have you not?

15 A. Yes, I have.

16
17 Q. Do you agree that on reflection this would have been
18 one of the situations where some consultation with the
19 mayor, or whomever was going to chair the meeting,
20 beforehand may have assisted in instilling confidence in
21 the community?

22 A. Mr Parish, of course it might have but it wasn't
23 practical because otherwise there would have been an
24 opportunity to discuss it. The doors to the theatrette
25 were opened and the crowd came in and the meeting started,
26 right. There was a brief interchange between members of
27 the public, councillors, councillors and staff and all that
28 sort of thing, but it wasn't like a traditional meeting up
29 here where the crowd, you know, sort of shuffles in and has
30 a dialogue. Normally I would get to a council - into the
31 chamber of a council meeting 10 to 15 minutes prior because
32 people would want to have a chat with you about various
33 things.

34
35 Q. The mood in the community at this time meant it was
36 particularly important to be careful about how matters were
37 dealt with at council meetings; do you agree with that?

38 A. Yes.

39
40 Q. In retrospect, do you think it was reckless or
41 inappropriate the way you dealt with the motion that you
42 moved?

43 A. Not my initial approach, sir. I do think that the
44 emotion of the day probably intervened and it intervened
45 for not only councillors but for the public who were in the
46 room. I mean --

1 Q. Do you agree with the proposition that staying on your
2 feet and not giving precedence to the chair served only to
3 enhance your own reputation at the expense of the mayor's?

4 A. Not in the least, it was not about me, it's never been
5 about me, I am there for the community, I have a
6 conscience, I have pledges to the community to represent
7 them and act in their best interests as per our oath and
8 others, and no, I don't agree with that.

9

10 Q. You have an obligation, don't you, to the governing
11 body?

12 A. We've talked about that, yes, we do.

13

14 Q. You have an obligation, for instance, not to bring the
15 council into disrepute?

16 A. I think the council going into disrepute: I think the
17 mayor was doing a fine job with that.

18

19 THE COMMISSIONER: Q. That wasn't the question. Ask the
20 question again, please.

21

22 MR PARISH: Q. Do you accept that you have an obligation
23 not to bring the council into disrepute?

24 A. I have already said yes to that, Mr Parish.

25

26 Q. Do you --

27 A. As I say, I think the meeting was difficult and there
28 were very worried people in there and they wanted to be
29 heard. So, yes, in looking back it might have been better
30 to have not responded to the mayor as I did, but that was
31 the emotion at the time in the hall.

32

33 Q. And, is that an excuse, do you say, for the failure to
34 observe the Code of Meeting Practice and giving precedence
35 to the chair?

36 A. We're all human, Mr Parish, and whilst I don't resile
37 from my raising that motion, I did feel I was entitled to
38 read into the minutes the name of the seconder.

39

40 Q. Well, I guess the same question applies as I asked
41 before: is that an exception, as you understand it, to
42 clause 7.9 of the Code of Meeting Practice?

43 A. I understand that the Code of Meeting Practice
44 requires a seconder before a motion is dealt with by the
45 mayor.

46

47 THE COMMISSIONER: Q. Does that apply if the mayor rules

1 the motion out of order?
2 A. Well, that's a separate decision to whether it's got a
3 seconder, Commissioner.
4
5 Q. On proposing a motion, if the mayor has resolved that
6 the motion is out of order, does the mayor still need to
7 permit a seconder to be identified?
8 A. I believe that the mayor, in this case, didn't accept
9 the motion; he didn't actually rule it out of order per se
10 and quote why he was ruling it out.
11
12 Q. I think he said it wasn't permitted.
13 A. Well, we were having an extraordinary general meeting
14 with the public, and yes, you heard him say "the public are
15 not going to be involved".
16
17 THE COMMISSIONER: Yes.
18
19 MR PARISH: Q. Sorry, what was that last part? "And he
20 said the public weren't going to be involved"?
21 A. Yes. Can we replay the tape, it's quite
22 extraordinary, he said it. It's a public meeting, or I --
23
24 THE COMMISSIONER: Yes, we should replay it.
25
26 MR PARISH: I think in fairness we should, yes.
27
28 THE COMMISSIONER: Sorry, Mr Vong, that was unfair to you.
29 What number was it, Mr Parish?
30
31 MR PARISH: Clip 12, could we replay Clip 12, please.
32
33 THE COMMISSIONER: Yes. My apologies.
34
35 (Recording Clip 12 played to inquiry)
36
37 MR PARISH: Q. I don't think they were the exact words
38 but I think we all saw them, the part you were talking
39 about there. Just out of interest because I couldn't quite
40 see it, who was the seconder?
41 A. I believe it was Councillor Turland.
42
43 Q. Who was to your immediate left at that time?
44 A. Yes, for the whole terms on councillor he sat to my
45 left.
46
47 Q. Thank you.

1 A. Which has not been very good, quite honestly, as I've
2 said to mayors.

3

4 Q. I'm going to show you another clip and it's Clip 2.

5

6 THE COMMISSIONER: Just before you do that, Mr Parish. I
7 take it, we're going to extend beyond 4 o'clock at least
8 for some time?

9

10 MR PARISH: Yes.

11

12 THE COMMISSIONER: I might just take five minutes. The
13 witness has been answering questions for about an hour and
14 45, I find it's often useful just to have a short five
15 minute break to stretch your legs so that we can maintain
16 our concentration into the afternoon, so I'll just adjourn
17 for five minutes until 10 to four. Thank you.

18

19 **SHORT ADJOURNMENT**

20

21 THE COMMISSIONER: Yes, Mr Parish.

22

23 MR PARISH: Thank you, Commissioner.

24

25 Q. I'm going to show you a clip of a meeting from a
26 10 July 2019 ordinary meeting, it's Clip 2.

27

28 (Recording of Clip 2 played to inquiry)

29

30 A couple of questions to ask out of that. Firstly, do
31 you accept that there were several cases in there of you
32 not giving precedence to the chair? Stopping speaking and
33 sitting down?

34

35 A. Not really.

36

37 Q. Not really?

38

39 A. No.

40

41 Q. There were multiple instances there when you continued
42 to speak over Mayor Gair; do you accept that?

43

44 A. When he finally stood I responded.

45

46 Q. So, it was him having to stand, was it, which led you
47 to give him precedence?

48

49 A. It's often difficult to understand if - Mayor Gair
50 often spoke during an item or part of an agenda. The
51 normal protocol is that, if the chair - the chair would

1 normally speak at the end of a meeting if they wanted to
2 address a particular item and so on. Unfortunately, Mayor
3 Gair was in the habit of, in my view, of speaking before I
4 even got a word out literally. And on the second matter
5 there, Mr Parish, I answered "page 34" I think three times
6 and he kept on asking for the page number. It was
7 obsessive.

8
9 Q. I'll come to that in a second, I just want to get your
10 impression for now. Is it your view that it was
11 permissible to speak over the chair or ignore his direction
12 to sit down because that was his propensity to talk at the
13 end of meetings or during meetings?

14 A. I don't think that the mayor had made it clear that he
15 was - initially - that he wanted me to sit down, so
16 therefore I was answering his question again and again,
17 "Page 34".

18
19 Q. Well, we can replay it if we have to. I recollect him
20 quite clearly telling you to sit down. Do you accept that
21 or shall we replay it?

22 A. Look, for the purpose of the exercise I'll accept it.
23 All I can say is that I seem to be being asked to find the
24 information in such a haste that was not practical, you
25 know, just normally there.

26
27 Q. Wasn't that something you prepared beforehand?

28 A. Um, look, yes, sometimes you do and sometimes you -
29 your papers get a little bit confused and so on, but had I
30 prepared the actual declaration in the context you're
31 saying? No, because we just read it into the meeting, it's
32 not a form you pass up or ...

33
34 Q. What about the challenge to the minutes, I think it
35 was, which is the first issue in that tape? What did the
36 issue you had to raise in respect of, it appeared, a
37 planning decision about a property that you had an interest
38 in have to do with the correctness of the minutes?

39 A. As I recall, Mr Parish: (1) I wasn't in the meeting
40 that I was challenging the minutes on, and (2), and I
41 didn't get to it, but it was a technicality in there which
42 I wasn't allowed to show.

43
44 Q. How can you challenge the minutes of a meeting that
45 you weren't at?

46 A. It's the correctness of the meeting.
47

1 Q. How can you challenge the correctness of the minutes
2 at a meeting you weren't at?
3 A. Well, you watch it or listen to it.
4
5 Q. Oh, I see, you'd watched it back?
6 A. Yeah, sure. I was an advocate for public broadcasting
7 from day one on council in 2012; never moved away from it.
8
9 Q. The, to put it neutrally perhaps, exasperated tone
10 that Mayor Gair addresses you with in this meeting, was
11 that commonplace in your experience?
12 A. Yes. Mayor Gair had a particular way about him and I
13 think this was an example of that. It at times - well, in
14 one of the training sessions we had a discussion about
15 behaviour, and it wasn't about me; training session.
16
17 Q. I'm trying to get your impression of how Mayor Gair
18 behaved towards you in meetings?
19 A. I think he had some cognitive bias.
20
21 Q. Cognitive bias?
22 A. Yes.
23
24 Q. Can you explain what you mean by cognitive bias?
25 A. Behaviour - when his behaviour becomes dictated by his
26 construction of reality instead of facts.
27
28 THE COMMISSIONER: Q. What are you reading from?
29 A. I'm reading from my notes, Mr Parish -
30 Mr Commissioner - which form part - that forms part of the
31 training for - after the Performance Improvement Order by a
32 LG NSW representative who worked with us for two days,
33 30 October and 7 October 20. I think you'll find that in
34 tender bundle B, page 26.
35
36 MR PARISH: Q. Thanks for the reference.
37
38 Q. Was it commonplace for these sort of interactions to
39 take place between you and Mayor Gair when he was in the
40 chair: he speaking to you in an exasperated tone and you
41 not allowing him to take precedence?
42 A. I think it would be fair to say, Mr Parish, that he
43 generally was in exasperated tone mode before an issue
44 arose with me; as I say, this cognitive bias was coming
45 through.
46
47 Q. What about the second part of my question? Was it

1 commonplace for you not to give the chair precedence when
2 Mayor Gair was in the chair?

3 A. I think it happened occasionally under what we've
4 discussed, but I think he was often not in the demanding
5 the chairmanship, he just didn't want me to speak when I
6 had reasonable matters to ask.

7

8 Q. That doesn't really answer the question as to why you
9 would not give the chair precedence unless your view was
10 that you had an entitlement to speak regardless?

11 A. Thank you, Mr Parish. No, I'm not saying that, sir,
12 I'm not saying that, and I don't think these were dozens of
13 moments, I just think that Mayor Gair had a preconceived
14 view of me, as I say this cognitive bias that's been
15 tendered already, and it impacted upon his ability to chair
16 equitably in relation to me on any matter, not just calling
17 to order, I think just generally he was impatient,
18 frustrated, urgent and the like. It didn't make for a nice
19 meeting and anyway, that's as you heard in the Bundanoon
20 meeting, he didn't see it as being a public meeting yet it
21 was called as a public meeting, I mean ...

22

23 Q. Well, that's slightly off topic, but if we just move
24 along I'm going to show you --

25

26 THE COMMISSIONER: Q. Just before you do, would you and
27 Mayor Gair cavil with each other regularly during meetings
28 while he was in the chair?

29 A. What was the word?

30

31 Q. Would you and Mayor Gair cavil with each other
32 regularly when he was in the chair?

33 A. I didn't set out to engage in a negative sense with
34 Mayor Gair, but if I felt that he wasn't accurately
35 listening to whatever matter I was talking about and was
36 trying to drive over the top of me - and this is not points
37 of order and so on - it was difficult at times, yes, it
38 was.

39

40 I will say that in that training session I just
41 mentioned, if I may digress a little bit?

42

43 MR PARISH: Q. No.

44 A. I'll come back to that.

45

46 Q. We'll see how we go. I'm going to show you a clip
47 from another meeting from 14 August 2019. It's Clip 4.

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(Recording Clip 4 played to inquiry.)

Do you accept that there's a few situations in that video where you failed to give precedence to Mayor Gair?

A. I don't recall him calling for precedence in there. I recall/observe that he asked questions in the context of that.

Q. Shall we refresh your memory perhaps of clause 7.9:

When the chairperson rises or speaks during a meeting of the council any councillor then speaking or seeking to speak must cease speaking and, if standing, immediately resume their seat.

A. Yes, and then he addressed me back and I spoke again.

Q. There are at least two examples in that clip that we just saw of you talking over the top of the mayor rather than resuming your seat; do you accept that?

A. And then I resume - was allowed to resume the discussion, Mr Parish.

Q. Where is that set out in clause 7.9, that if you just stay on your feet and keep on speaking long enough then you can resume your discussion?

A. Mr Parish, it's not there but Mayor Gair made his point and then determined to go ahead. Okay, I respect that, that's fine.

Q. Well, that sounds like a debate between two people rather than one person chairing a meeting and another person observing the Code of Meeting Practice; do you agree with that?

A. There was interjection from another councillor with maybe a bit of a chorus that was tied up in all that, so was it actually the mayor seeking precedence or was it the councillor's interjection in asking to be removed from that minute? It's an example of less than clear chairing of the meeting, and there's been a number of discussions in this regard.

Q. That's an example of you not complying with the code of practice by giving precedence to the chair, isn't it?

A. Yes, in part, that's correct.

1
2 Q. And any other possible breaches of the Code of Meeting
3 Practice that you saw from yourself in that clip just then?
4 A. Well, there was interjection from another councillor,
5 so we were already sort of sailing off but he failed -
6 Councillor Gair failed to manage that. I would say to you
7 that, viewing various meetings - and the community are
8 probably better to judge than anyone --
9
10 Q. Sorry, where is that in the Code of Meeting Practice?
11 Is there some sort of final arbitration of all Code of
12 Meeting Practice matters with the community?
13 A. Councillor Gair received special training as a result
14 of the Performance Improvement Order on chairing meetings,
15 and yet the reports that were provided back about that were
16 less than positive as to the outcome of that training. In
17 fact, I think it was said in --
18
19 Q. That doesn't answer my question. In your view, is
20 there some sort of overriding community judgment applied to
21 the Code of Meeting Practice?
22 A. No, there's not but the community has a view and they
23 do express it externally.
24
25 Q. And --
26
27 THE COMMISSIONER: I'm sorry to cut you off.
28
29 Q. Is it appropriate for a councillor to argue with a
30 mayor or a chair - let's just call it, whoever is in the
31 chair, is it appropriate for a councillor to argue with the
32 directional ruling of a chair of a council meeting in your
33 view?
34 A. I think I had special treatment, Commissioner.
35
36 Q. I'm speaking generally?
37 A. Okay. I don't --
38
39 Q. I just want to explore with you your understanding of
40 meeting practice. Is it appropriate for a councillor to
41 argue with the chair of a council meeting in relation to a
42 ruling or direction given by the chair?
43 A. No, but I might qualify.
44
45 Q. Do you seek to qualify?
46 A. Qualify, please.
47

1 Q. Yes, in what way?
2 A. I think that it's a common observance that I was
3 singled out for special treatment and the words "8:1" often
4 came into play here.
5
6 MR PARISH: Q. Can you explain what you mean by the
7 words "8:1"?
8 A. There was a voting pattern in the 16-20 council,
9 Mr Parish, which generally amounted to eight councillors
10 versus one councillor, and when I - we don't record the
11 vote often, Commissioner, which I always thought we should,
12 so I asked to have that read and those votes recorded,
13 which begrudgingly was done; of course, that shrunk to 7:1
14 with Councillor Markwart retiring. But it was just a
15 standard pattern, it was remarked on variously right - you
16 know, media, public, et cetera, and it seemed to start with
17 Station Street.
18
19 Q. What's that got to do with your adherence to the Code
20 of Meeting Practice and the Code of Conduct?
21 A. I, again, just say that I think I was singled out,
22 Mr Parish.
23
24 Q. I understand that could be a valid feeling you have,
25 but I'm trying to tie that back to acts of disorder and
26 breaches of the Code of Conduct and the Code of Meeting
27 Practice; can you tie it back to that?
28 A. I've already answered and agreed with you that, yes,
29 there were some problems there but, as I've also said, you
30 know, certainly I was trying to be energetic and so on in
31 the heat of the moment, particularly, for example, in that
32 bushfire and particularly here which related to attacks on
33 my family home.
34
35 Q. Can I just ask about that. Clause 16.11(1)(d)
36 prohibits councillors from:
37
38 *Insulting or making personal reflections on*
39 *or imputing or making improper motives to*
40 *any other council official, or alleges a*
41 *breach of the council's Code of Conduct.*
42
43 We saw there in that clip you refer to three
44 councillors, I think one of whom, perhaps Councillor
45 McLaughlin, took umbrage with it. Is that a breach of
46 clause 16.11(d) in your understanding?
47 A. Let me find the clause, sir.

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Q. Yes, by all means.

THE COMMISSIONER: Page 1069 of bundle A.

THE WITNESS: Okay, I have the page, and which clause are you focused on?

MR PARISH: (d):

Insults or makes personal reflections on or imputes improper motives to any other council official, or alleges ...

A. Sorry, Mr Parish, I do have a slight hearing problem.

Q. Sorry, I'll speak up:

Insults or makes personal reflections on or imputes improper motives to any other council official, or alleges a breach of the council's Code of Conduct.

Do you see that?

A. Yes.

Q. Did you see any behaviour of yours in that clip we just saw which might breach that?

A. I stated at the time it was a matter of fact because it was something that had already happened and was in our meeting minutes.

Q. Does that make it okay if it's factually true? Is that what you're saying?

A. Well, I think part - I mean, part of our oath and everything and religious prayer at the beginning of every meeting goes to the heart of truth, so I read that in, it was already a thing that had happened. To be perfect I should have been able to hold up a bit of paper and say, this is the minutes that I'm talking about.

Q. Do I understand correctly that any of these five prohibitions can be qualified with the rider "unless it's true"?

A. I didn't say that, Mr Parish.

1 Q. Well, can you explain what you understand the
2 rationale to be for making the statements you made in that
3 clip just then not being a breach of (d) on the basis, as
4 you said, it's factually true?

5 A. I think that it's important that accuracy in relation
6 to property matters is top of the list and --

7

8 Q. Where's that? Is that your own view or is that
9 somebody else's views?

10 A. You asked for my view, sir, and I'm responding to
11 that, that it must be - property matters, of course, are
12 very critical, and we heard previously about real estate
13 agents and the like. So, it's not specified in this
14 clause 16.11, but I did believe I was speaking factually.

15

16 Q. Well, I'll just go back to my original question. Is
17 it your understanding that the prohibitions in (d)
18 specifically or more generally in this clause are qualified
19 by the fact that it's okay if you're telling the truth?

20 A. I didn't insult, I didn't make a personal reflection,
21 nor did I impute improper motives, Mr Parish; that's my
22 view of my action at the time. Maybe there was a better
23 way to have done it but that's in hindsight.

24

25 Q. Do you think you ever crossed the line in respect
26 of sub-paragraph (d)?

27 A. Well, I think we would - I would have to say that
28 occasionally I did and it may have been a matter of me
29 seeing my duty as a councillor and to get information and
30 to question - ask the questions on behalf of the community.

31

32 THE COMMISSIONER: Q. Does the duty of a councillor
33 extend to compliance with the Code of Meeting Practice and
34 the Code of Conduct, in your view?

35 A. Yeah, of course, Commissioner, and as I say, I think
36 occasionally I may have overstepped the mark there, strayed
37 a little bit; maybe it was the thrust and so on of the
38 meeting, but I would then say, well, did we need to have
39 meetings that were that lively/turbulent? Is it a matter -
40 and it's been examined at length by Mr Turkington and other
41 consultants, as to the mayor's chairing.

42

43 Q. Do you accept, in addition to the way meetings are
44 chaired, that the participants of the meeting have a role
45 in the efficacy of meetings?

46 A. Can I say that Councillor Whipper and Councillor
47 Halstead, as I've attended previously, chaired very well

1 meetings: they were settled, they weren't turbulent, there
2 was never any of this challenging from anyone, including
3 the chair, they just got on with it.

4
5 MR PARISH: That's you challenging the chair, Mr --

6
7 THE COMMISSIONER: Q. Can you not return to my question?
8 Do you recall my question?

9 A. Would you like to restate it?

10
11 Q. If I can remember it.

12 A. We're all human.

13
14 Q. Yes. Do you accept that, in addition to effective
15 chairing of meetings, that participants have a role to play
16 in ensuring their efficacy?

17 A. I think that would apply - yes, and I think that would
18 apply to all those who are in the meeting.

19
20 THE COMMISSIONER: Yes, I think that's what my question
21 was. Thank you.

22
23 MR PARISH: Q. It was you challenging the mayor in the
24 clips we've just seen. Do you accept that you bear
25 responsibility for the disruption of the efficacy of
26 meetings, at least some responsibility?

27 A. It's your definition of "some", I think, Mr Parish --

28
29 Q. Well, we can start at the end: do you bear any
30 responsibility?

31 A. Yes, but if we look at these meetings, and they were
32 long meetings, three and a half, four hours, I don't think
33 I was the only person that comes into that - into that
34 question. I think there was a general dysfunction in many
35 of the council meetings and it was a range of people into -
36 in that scene.

37
38 Q. Multiple witnesses to this inquiry have singled out
39 you and Councillor Turland in particular; do you accept
40 that view from those witnesses?

41 A. I think the witnesses that have singled Councillor
42 Turland and myself - and I note Councillor Halstead at some
43 points, and I notice there was a reference to another
44 councillor that moved around at times - I think you're
45 hearing from one side of the argument there. And we heard
46 previously there was a meeting out at the mayor's - I think
47 at the mayor's business of six councillors in the last

1 three weeks.

2

3 Q. What's that got to do with my question? Do you on
4 reflection --

5 A. I'm separating, Mr Parish, that it's - you said there
6 were a number of mentions of myself and I say that you're
7 hearing that from one side of a room, if you wish; maybe a
8 select group.

9

10 THE COMMISSIONER: Q. I think the purpose of Counsel
11 Assisting's question is to give you an opportunity to
12 respond to those suggestions?

13 A. I don't accept that on the basis that I think it's a
14 bit of a group.

15

16 Q. What does that mean, "a bit of a group"?

17 A. I believe that the majority of that evidence we've
18 heard where it's mentioned me in a negative sense, as
19 opposed to an observing sense, has been from a select group
20 and I fully expect to see more of that over the next few
21 days.

22

23 Q. Again, what do you want me to take from that
24 observation? When you say it comes from a select group,
25 who is the group, why would --

26 A. Well, I'm just saying to you as this inquiry has been
27 finding out there are divisions in this council, in this
28 organisation, one manifest of that was the 8 :1 scene that
29 I was dealing with for some years which made it very
30 difficult to represent the community: everything was thrown
31 at me non-stop. So, there's your answer, if I may,
32 Commissioner, and that is, I don't think it's
33 representative.

34

35 Q. What is the countervailing view that you would wish to
36 advance to me?

37 A. Commissioner, there's 28 - sorry, last figures there's
38 28,000 residents of voting age in this shire. I believe a
39 lot of them were very frustrated, I believe I was seen as a
40 representative of a lot of those people for asking the
41 questions, I certainly campaigned on that basis to ask
42 questions and so on, and I think there was a rearguard
43 action from a small group who didn't like that sort of open
44 and transparent efforts. If that translates into this
45 inquiry into a number of speakers who are throwing stones,
46 sticks and stones at me, well, so be it.

47

1 But I stand on my record, I stand on the fact that I
2 represented the community with flaws, Mr Parish - agreed,
3 with flaws, and maybe I erred in a number of situations in
4 terms of procedure. But my heart was always there for the
5 community, my conscience was always there for the community
6 and my outcomes were all about getting outcomes for the
7 community. I had no personal interest in this whatsoever.

8
9 THE COMMISSIONER: Yes, Mr Parish.

10
11 MR PARISH: Q. I don't think anyone who gives up the
12 amount of time for the rather meagre remuneration that
13 people do would ever doubt that you have a commitment to
14 your community but I need to explore with you with respect
15 to the terms of reference whether you understood your roles
16 and whether or not, if you are returned, you'll continue to
17 perform the roles that you understand.

18
19 If you are returned and the suspension is lifted the
20 problems you ascribe to the now 7:1 split formally - it's
21 even less now, I would say.

22
23 THE COMMISSIONER: Yes, it'll be 5:1, if it were to follow
24 the same lines or assuming it was, yes.

25
26 MR PARISH: Q. You are still in a minority. To put it
27 simply, what's going to change in the way you observe
28 matters of Code of Meeting Practice and Code of Conduct if
29 you are still in a minority of one?

30 A. I'll handle that in two responses. I'm quite aware
31 that I could have in some instances managed that better,
32 but there's been a lot of bullying behaviour take on - take
33 place. But more importantly, this - were this council to
34 be returned, it's already changed, it's already not a block
35 of 8:1, 7:1. I don't know which way it would go,
36 Commissioner, in a new form; but frankly, the question's
37 largely irrelevant in my mind. We are so close to the next
38 round of statewide council elections, and I think Mr May
39 touched on this quite firmly, but this council should be
40 held off the - the council election should be held off
41 until September 2024.

42
43 MR PARISH: Q. Put that aside for a second because it is
44 quite literally Term 3; an assessment of whether or not
45 this governing body can perform their roles and
46 responsibilities if returned. If you can focus on that
47 question and put aside questions of, for instance, how long

1 it will be or whether there will be a further extension of
2 the suspension. To the extent that you being in a minority
3 is a reason for some admitted breaches of the Code of
4 Conduct or the Code of Meeting Practice, what will have
5 changed when you return?
6

7 A. I don't think it - in this question it's about
8 majority/minority, Mr Parish. I was elected by -
9 re-elected by a sizeable number of people in this shire, so
10 I don't think I'm in a minority situation. In the chamber,
11 yes. And I think if we're looking at councillor
12 performance, I don't think I'm the only one that probably
13 could have done it a bit better. So, the question really
14 goes to the heart of, if this council were to be returned
15 or re-elected would the behaviour change? And the answer
16 is, I'm not sure it would, and I'm not talking about me,
17 I'm talking about all. That's why I think 2024 is a good
18 thing, but I'm diverging.
19

20 THE COMMISSIONER: Yes, I think we got there in the end
21 Mr Parish.
22

23 MR PARISH: Q. Well, I was interested in whether your
24 behaviour would change, but I appreciate your insights into
25 the other councillors.

26 A. Sure. Well, it is about all, it is, but in terms of
27 improvement, constant improvement, that's why we have the
28 training and the like. But there are some personalities in
29 this and there are some chairmanship issues which have been
30 well and truly documented.
31

32 THE COMMISSIONER: Q. I take it, you accept the
33 assessment that the council had become beset by a
34 dysfunction, at least from 2018 onwards; do you agree
35 generally with that?

36 A. I think that's quite precise.
37

38 Q. Do you think that is a matter that is irretrievable
39 given the current circumstance?

40 A. Would depend under what conditions, I guess,
41 Commissioner, as to whether --
42

43 Q. Well, let's just assume for the purposes of my
44 question that tomorrow I walk out of here and you're all
45 back in the chamber the following day for a meeting. I
46 think Counsel Assisting's question is driven to the issue
47 of, what's going to change from when the Minister sought

1 fit to intervene? Do you have any insight into that? I
2 appreciate it involves a bit of prediction on what others
3 might do which is perhaps not always easy.
4 A. No, it's not.
5
6 Q. Do you think it would return to the same, do you think
7 there'd be a period of slight improvement or would it just
8 go back? What do I take from this?
9 A. All of the above.
10
11 Q. Yes.
12 A. And I'll reference you to something that Councillor
13 Gair said when we were on the cusp of a decision coming up
14 from the Minister as to what was going to happen with this
15 council, he made it quite clear on ABC radio that, were the
16 council to come back, he would unwind most of what the
17 administrator had done. Now, I think Viv May's done a
18 fabulous job, a really good job, he's listened and he's
19 brought in all the changes that need to happen. So, I'm
20 not sure it's going to be plain sailing if we were to be
21 returned in that context.
22
23 Q. Out of interest, did you hear that interview?
24 A. I'm sorry?
25
26 Q. Did you hear that interview?
27 A. I heard a replay of it.
28
29 Q. Did you?
30 A. But only the day prior I was having coffee across the
31 road and Councillor Gair was in the coffee shop and as -
32 maybe not the day prior, but just prior anyway - and as he
33 left he slapped me on the back and said, "We're gonna be
34 back in there soon, see ya", and he was sort of quite cocky
35 about it. I didn't say a thing. I just said, "Hi Duncan"
36 or something.
37
38 THE COMMISSIONER: Yes, thank you, Mr Parish.
39
40 MR PARISH: Q. What about at least your interactions or
41 how you perceive council interactions to be with staff?
42 How is that going to improve if you are returned?
43 A. Mr Parish, I - with the greatest respect, sir, I don't
44 particularly think that I've had any negative or poor
45 interaction generally with staff. I've always - you took
46 me down the line of politeness and respect and so on
47 before, I've always done that. I've tried to document my

1 actions, I have extensive notes in my possession of all of
2 those briefings, all of the votes that were not legal but
3 took place, the nod if you wish, whatever, I think I've
4 done that there.

5
6 I've never attacked the character of any staff, senior
7 staff, and I've always been most respectful and mindful of
8 that, and general staff. But if you were to ask about the
9 executive staff I would have to say Mr Paull was a
10 continuing problem; he had a - it's on the record, he had
11 an anger management type problem; that is there, I can find
12 the notes if I was tasked to do it as to when those
13 instances took place. And, as we know, one of our
14 stenographers was forced out of a bushfire meeting by
15 strong interaction from certain councillors. So, I think
16 sadly it has become quite a terrible workplace, certainly
17 for all the bullying and the like, and in answer to your -
18 again, to your question, you just don't know whether that's
19 recoverable.

20
21 Q. Can I show you Clip 8 which is a meeting of 11 March
22 2020. I think this one's about 9 or 10 minutes long but I
23 might try and stop it if I get to the point which I need
24 to.

25 A. Sorry, what clip number is it?

26
27 Q. It's Clip 8 and it's 11 March 2020.

28 A. Thank you.

29
30 (Recording of Clip 8 played to the inquiry.)

31
32 Q. Can I just get an idea of the questions you were
33 asking there? Were you implying that the staff had lied
34 about getting information back to you or lying about not
35 getting information back to you?

36 A. I didn't use the word "lying" in any context
37 whatsoever.

38
39 Q. I'm not suggesting that you did but --

40 A. Could I ask you to rephrase that, please, Mr Parish?

41
42 Q. No, no --

43 A. I don't want to answer a question where I'm accused of
44 attacking the staff, I just don't want to do that.

45
46 THE COMMISSIONER: Just listen carefully to the question.
47 The word that you object to was not in the question.

1 Mr Parish will - well, sorry, the question wasn't framed in
2 the way that I think you took it, so Mr Parish will re-put
3 it.

4
5 MR PARISH: Q. No, I'm not suggesting that you outright
6 said "they lied", I'm just trying to understand what the
7 purpose of the questioning was, because it appeared - and
8 that's why I'm asking you to explain it - that you were
9 saying that the staff had done one thing when in fact they
10 hadn't; is that what that questioning was about?

11 A. In a sense, Mr Parish. I think there was some
12 information that just wasn't coming out, and I don't know
13 where the impetus for that information not coming out came
14 from, but we had had a workshop just prior to that which
15 would be very revealing if you allow me to say a few words.

16
17 Q. No. Was the reference to an impetus for it not to
18 come out, was the import of your question then that there
19 were some staff concealing information from you?

20 A. Information only came out in this workshop that said
21 that they - the inspection process had been known about
22 a year prior to the cancellation of the booking and the
23 closing of the building on the night before the play. As
24 to why that information, which came out of a consulting
25 engineer in that workshop which was to my mind quite
26 explosive, and I think other - some other councillors
27 agreed with me; why that hadn't come out in the discussions
28 and the reports and so on prior was quite mystifying.

29
30 Q. Forgive me, I don't think you asked why information
31 had come out, you observed a discrepancy between what the
32 staff said they were going to do and what they had done;
33 isn't that --

34 A. Well, I think that's right, Mr Parish, because I
35 wasn't going to in any way point bones at anyone, whether
36 staff or an external contractor; what I was concerned about
37 was, was the executive aware of this inspection and
38 engineer's report one year prior because I felt that it had
39 had taken one year to act on it, and other councillors felt
40 the same; we were just aghast that this had been rolling
41 around in the ether, and bookings and plays and everything
42 else. I mean, there were kids in that building for the
43 weeks prior as part of that production, and the actors and
44 the staff, the backroom staff and so on --

45
46 Q. Well, that slipped out of the question really --

47 A. I just don't know how that could have - sorry?

1
2 Q. This really slipped out of the question that I asked
3 you. I'm trying to give you the opportunity to explain
4 what the purpose of your question was where, on one view,
5 the question may be taken as an allegation that staff are
6 concealing something from you or not telling you the truth?
7 A. Well, I don't think I'd use the word "allegation", I
8 was just asking, looking into the process bearing in mind
9 that the ultimate person who's responsible for this side of
10 things, the operational side of things, is the general
11 manager and there just appeared to myself and certainly
12 Councillor Turland and certainly Councillor Halstead that
13 there was a major question mark in here as to the efficacy
14 of our inspection process.

15
16 As I say, there were a lot of people rehearsing that
17 play in that building and there we went the night before
18 and shut it down: what if something had happened in that
19 period, let alone the whole year? There was just
20 questions, just questions.

21
22 Q. That's a slightly different matter from the question
23 that was put; do you accept that?

24 A. I recognise what you're asking me, Mr Parish.

25
26 Q. What is it you think I'm asking you?

27 A. I think you're asking me if I was thinking there was
28 some inappropriate activity in the staff that led to this
29 information possibly being withheld - my words - and I'm
30 saying I was asking to find out what the scenario and the
31 chain of events was.

32
33 Q. I don't know if you heard some evidence a few days ago
34 from a Mr Samulski. One of the matters he raised in
35 evidence was a circumstance in which he observed, he says,
36 you - I think he used the phrase "chasing" but I'll just
37 use the word "followed" a group of objectors out of the
38 chamber after a DA was rejected and you, to try and put it
39 neutrally, were congratulatory about that rejection. Do
40 you know anything about that evidence?

41 A. I do recall that meeting. I do recall Mr Samulski's
42 activities in that. Generally when we finish an item us
43 older blokes rush for the toilet, and I did, without a
44 doubt; and I imagine, if I go and look at the minutes, it
45 will show that I went there. If you're asking me about the
46 allegation I was seeking accolades, I think were the words
47 Mr Samulski used: definitely not. I had to go through a

1 crowd out there who had emptied from the seating in here to
2 get to that bathroom. So --

3
4 Q. Was there any sort of interaction with the objectors
5 outside?

6 A. Oh, I'm sure there was, people talk to you, you know,
7 that's how it is, but I would have pushed on to go to the
8 bathroom to get back to the meeting as a matter of urgency
9 because the meeting will continue.

10
11 Q. Do you recall what was said between those objectors
12 and you?

13 A. Not particularly, but I imagine that there was -
14 because there was a large group of residents from that
15 estate there who had all signed a petition, they'd had a
16 representative speak who spoke quite eloquently on the
17 matter, I imagine that the discussion or the comments
18 coming from those people as I went to the bathroom - and
19 you've got to go right through the throng of people outside
20 that door - would have been somewhat along the lines of,
21 "That was good" or a good outcome, so on. Not a good
22 outcome for me, I don't give a damn about that, it's about
23 a proper process dealing with a planning matter and dealing
24 with objectors and the - well, that one was particularly
25 difficult, Mr Parish, for a number of reasons.

26
27 Q. Do you appreciate the need to, at least in respect of
28 planning matters, give the impression that there is no
29 favour being given to one side or the other?

30 A. Always, Mr Parish, but I also recognise the fact that
31 we are meant to fully inform ourselves from all parts of
32 the community on a matter, to be - to listen, to ask
33 questions, and then to form our opinion inside the chamber
34 as the debate progresses; quite clear on that. But this
35 one, I should just point out, was a multiple matter in the
36 chamber, there were some issues within it, so - that led to
37 such a big turn out on that night and again this petition -
38 in fact, I think there might have been two petitions over
39 the time of the life of this matter.

40
41 Q. You accepted my proposition, and then said "but", and
42 then gave several qualifications to that. Do you accept as
43 a base proposition that as part of the Code of Conduct you
44 must ensure that land use planning, development, assessment
45 and other regulatory decisions are promptly made and that
46 all parties are dealt with fairly, and you must avoid any
47 occasion for suspicion of improper conduct in the exercise

1 of land use planning, development, assessment or other
2 regulatory functions?

3 A. Yes. Can I comment?

4
5 Q. Do you want to add a butt or a qualification to the
6 plain words of that?

7 A. Yes. James Fairfax, who was the owner of Retford Park
8 who came up with the concept of selling off part of it to
9 fund the ultimate outcome, which was, he gave Retford Park
10 to the National Trust, had a clear vision for that estate,
11 very clear vision, and a number of councillors were
12 involved in the formulation, presentation and so on of that
13 vision by Mr Fairfax and his team. It was a very precise
14 thing and it didn't involve multiple buildings on a
15 thousand metre - or certainly didn't involve subdivision
16 into 500 metre blocks.

17
18 Q. What's this got to do with the clause in the Code of
19 Conduct I just took you to, because I don't see anything
20 about James Fairfax in there?

21 A. Well, you were taking me to the need for councillors
22 to consider everything in a planning matter.

23
24 Q. No, I wasn't. I was asking you whether you accepted
25 the proposition in the clause of the Code of Conduct that I
26 just took you to?

27 A. Well, I'm going to have to ask you to restate that,
28 please.

29
30 Q. Of course, I can give you a page number.

31
32 THE COMMISSIONER: Yes, perhaps the witness should be
33 shown it in fairness.

34
35 MR PARISH: Q. It's tender bundle A, if you've got it,
36 page 703.

37
38 THE COMMISSIONER: So, is that Volume 1, bundle 1?

39
40 MR PARISH: Q. Can I just suggest at this stage,
41 Councillor Scandrett, something that we always tell
42 witnesses when we're acting on behalf of witnesses, which
43 is that, if you just listen to the question and answer the
44 question rather than try and figure out where I'm going, it
45 goes a lot quicker.

46 A. Indeed, thank you.

1 Q. Which is probably the best thing that can be said.
2 A. Okay, I have page 703.
3
4 Q. Yes. In answer to your question, I believe that I
5 have fully acted in - as per 3.13 and --
6
7 Q. Is there any qualifications you wish to make to - not
8 your conduct - but how you understand that operates?
9 A. The state plan there which was dealt with by the
10 previous council, two councils, and then finally locked in
11 by our council was the result of an immense amount of
12 planning and interaction with our own staff, our own
13 planning staff, to design the estate and work out the
14 levies and everything, and those levies are actually pretty
15 good because the staff got those right. I think it's been
16 observed before that we were - previous councils and we -
17 were less than efficient. So, I believe that there has
18 been efficacy in this, and in 3.14 --
19
20 Q. Sorry, 3.13.
21 A. Yeah, I was just going to segment - segue to 3.14.
22
23 Q. Well, just stick to the question that I asked.
24 A. I believe I equitably heard all sides, and there were
25 three sides in this, Mr Parish.
26
27 Q. What I'm interested in is whether, in your view, there
28 was any reason for Mr Samulski to think that you had acted
29 in a way which gave the suspicion of improper conduct or in
30 respect of 3.14, to convey any suggestion of a willingness
31 to improperly provide concessions or preferential or unduly
32 unfavourable treatment?
33 A. Well, certainly I'd reject that.
34
35 Q. Thank you.
36 A. Mr Samulski --
37
38 Q. That was my question and I was interested in your
39 thoughts on that.
40
41 THE COMMISSIONER: Mr Parish, I propose to sit on until
42 Councillor Scandrett's evidence is finished unless there's
43 some reason not to. I've made enquiries with those
44 assisting the inquiry and it's acceptable.
45
46 MR PARISH: Thank you.
47

1 THE COMMISSIONER: Q. Councillor, I'd prefer to have
2 your evidence completed in one block if we can for
3 logistical reasons for us and also, no doubt, you would
4 prefer to have it over and done with, but if we get to a
5 stage where you're having some - if there's any difficulty
6 with continuing, please let me know and we'll do what we
7 can to address it.

8 A. Commissioner, I have no time constraints, I want all
9 of this there, and if that means coming back at a different
10 time, I'm more than prepared to do so.

11
12 THE COMMISSIONER: Thank you, I think we'll proceed and
13 see how we go, but I'd prefer to continue at the moment,
14 and if we get to a point where we need to return earlier
15 tomorrow morning, then we'll do so. Thank you.

16
17 THE WITNESS: If I may proceed with that response,
18 Mr Parish. I think there were three parties involved in
19 this matter: there was Mr Samulski and obviously the
20 council or, if you wish, the community, but the third party
21 was in fact the estate of the late James Fairfax, and James
22 Fairfax had carefully and diligently designed this estate
23 with his staff and advisors. I think by any count, if you
24 drive around out there, it's quite a good result; it's a
25 Hamptons style development, as we call it. So, it was a
26 red flag to a bull for the residents out there to see that
27 they were going to go to subdivide corner blocks through a
28 loophole in the planning for that estate.

29
30 THE COMMISSIONER: Q. Can I just ask you about the use
31 of the word "loophole". Either something can be done or it
32 can't be done. What's a loophole about it?

33 A. Well, interesting you should mention that.
34 Mr Samulski's view was that it was black and white, but of
35 course there were estate guidelines which had been accepted
36 by council and there was a, essentially a caveat
37 opportunity which had been missed by Mr Fairfax advisors.
38 In other words, you know, sometimes you have slate roof
39 only or tiled roof only or whatever, I think it was
40 Section 66(e), and there was this little gap in there which
41 allowed corner blocks to be subdivided, but if you overlaid
42 it with the design guidelines that we as a council had been
43 involved in and had accepted and signed off on, it was a
44 very grey situation. And, as I say, there were three
45 parties along that basis involved in this matter even
46 though it was an application by just Mr Samulski.

1 Mr Samulski made certain representations to me,
2 Commissioner.

3
4 Q. What does that mean?

5 A. He wrote me an email, or he sent various people to
6 talk to me about it, he tried to influence me through third
7 parties lobbying, and then he wrote me an email saying,
8 "What do I have to do" --

9
10 Q. I don't want to hear any more about this --

11 A. No, I don't want to, sir.

12
13 Q. Mr Samulski's not part of my terms of reference, I
14 don't propose to hear any more evidence about it.

15 A. But if we've raised it as a criticism of my
16 performance I have to admit that to you.

17
18 MR PARISH: Q. We actually haven't raised it as a
19 criticism of your performance, I was asking you about --

20
21 THE COMMISSIONER: Don't argue with Counsel Assisting
22 please.

23
24 MR PARISH: -- 10 minutes ago to give you an opportunity
25 to respond to --

26 A. His accusations.

27
28 Q. -- a specific event which Mr Samulski perceived --

29 A. Yes.

30
31 Q. And --

32 A. I've rejected that.

33
34 Q. Thank you, how about we move on. You talked before
35 about being the winner in the total number of requests by
36 council in the 2016-2021 term; do you recall that evidence
37 earlier?

38 A. Yes, but it was not my claim.

39
40 Q. No, it was an award given to you.

41 A. Ann Prendergast's claim.

42
43 Q. Were you proud of that award?

44 A. No. I think it's a sad reflection on how council as a
45 whole were progressing, there was that level of complaints
46 and requests coming through. A lot of them could have been
47 dealt with and the change in the last year was stunning.

1
2 Q. Can I ask you to assume for a moment that there will
3 be evidence to this inquiry that the feedback from staff,
4 at least in 2017-ish, was that a large number of requests
5 by councillors meant that they were diverted from their
6 day-to-day tasks which led to work dissatisfaction and
7 stress and problems. Do you accept that as a by-product of
8 a large amount of requests that might be made by
9 councillors?

10 A. Well, if a bus driver, Mr Parish, was to complain that
11 polishing the bus was distracting him from his main duty of
12 driving the bus, I would say that he's lost track of his
13 main mission.

14
15 Q. In that analogy, is the main mission to polish the
16 bus?

17 A. No, the main mission is to drive the bus and deal with
18 the community and his obligations in public transport.

19
20 THE COMMISSIONER: Mr Parish, would you put the question
21 again, I'm not sure that answer helped me understand quite
22 where Councillor Scandrett was coming from.

23
24 MR PARISH: Quite.

25
26 Q. I don't mean to criticise your answer, but analogies
27 are problematic for everyone, especially --

28 A. Sorry, there's been a bit of talk about buses lately,
29 but anyway.

30
31 Q. Fair enough. I just wonder if you agree with the
32 proposition that I ask you to assume for a moment will come
33 through in the evidence in this inquiry, that processing a
34 large number of councillor requests took staff away from
35 their day-to-day duties and caused them stress and
36 dissatisfaction; do you agree with that as a proposition
37 or?

38 A. No. I think it's evidence of a melee within the
39 council, that there was that level of discomfort out in the
40 community on many of the matters that came to me, and I
41 should say that Viv May has, in his two village visits,
42 he's been around the community twice, Commissioner - has
43 just remarked on the fact that - my words - of the
44 overwhelming dissatisfaction. And if you look at the
45 general manager's performance review, and I have kept all
46 the papers for that, there's an extraordinary dive in this
47 community's satisfaction index as well as the staff

1 satisfaction and there's a big void in there.

2

3 THE COMMISSIONER: Q. The issue that's being explored
4 with you is the effect on staff that many --

5 A. Yep, I reject --

6

7 Q. No, I haven't asked you the question yet so I'm not
8 sure that you can reject it. The effect on staff that a
9 large number of councillor requests can have; do you reject
10 the proposition that that is a legitimate concern on behalf
11 of staff?

12 A. I believe the GM should have responded by allocating
13 more staff.

14

15 Q. That's not quite the question I asked you, you
16 answered. The question is --

17 A. I'm sort of trying to answer it in my words.

18

19 Q. I'm not asking you to answer it in anybody else's, but
20 at the moment it seems to me you reject the proposition
21 that it's legitimate for staff to express a concern that a
22 large number of councillor requests takes them away from
23 why their day-to-day duties leading to stress and
24 dissatisfaction; do you reject that proposition?

25 A. Well, I'll have to reject it in these terms,
26 Commissioner, and that is, what is the function of the
27 council if it's not to actually serve the community under
28 the appropriate guidelines, and if we had a backlog of
29 matters that were choking up the system then why didn't we
30 allocate additional staff to that? We did that in planning
31 when Mr Wilton faced a whole lot of additional
32 applications, they formed a special unit to deal with
33 those, and that's the sort of response I would have
34 thought. I don't think - I don't think for the record that
35 they were being taken away from their other duties. I
36 think that we should have resourced.

37

38 Q. Sorry, if staff have expressed that view you think
39 that they're not accurately reporting their experience; is
40 that what you're saying?

41 A. No, I have no doubt they were under the pump there,
42 Commissioner.

43

44 Q. And when you say you don't think they were taken away
45 from their normal duties, what did you mean?

46 A. Well, their normal duties were to deal with councillor
47 requests in this case.

1
2 Q. Staff's normal duties are to deal with councillor
3 requests; is that what you mean?

4 A. Well, there's two levels to this: one was the
5 secretarial element of the staff who dealt with the
6 councillor requests and then farmed it out around the
7 organisation, but isn't it telling that there were these
8 levels of dis - query and dissatisfaction out there on
9 certain matters? Some matters were three, four, five years
10 old.

11
12 Q. What was your approach when a member of the community
13 raised a question with you? Did you exercise any
14 discretion as to whether you put in a request or would you
15 action everything that came to you?

16 A. No, I did, I did turn some away. I, first of all,
17 encouraged the community to put it in writing to me so that
18 I would have an evidence of that approach. I then might
19 have said to them, "I've had a look at it myself and from
20 my understanding", blah, blah, blah. But in the case of
21 matters that had been there for a very long time or made no
22 sense --

23
24 I mean, quite often there were matters to do with tree
25 removal, Commissioner, which is a central thing to building
26 a house. I remember we gave an approval to one house only
27 to say that they couldn't take down the trees in the middle
28 of the block where the house was going to sit; things like
29 that.

30
31 Another tree one for that matter is in Moss Vale where
32 a branch without a doubt was going to fall, its sister had
33 already fallen on the infrastructure of that house and we
34 were going through a period of high winds, and we just
35 seemed to run around in circles.

36
37 Q. Do you accept that when a councillor request is
38 received it may carry with it a, at least perceived need to
39 action it, if not immediately, urgently?

40 A. Oh, in the example I just gave, obviously --

41
42 Q. Generally. More generally, my question was not
43 directed to that example.

44 A. Well, there's varying levels of response. But look,
45 I - an examination of my email account into that will find
46 that I always politely requested information and an update
47 and this sort of thing. You won't see me demanding action,

1 that is not my role nor my authority, but I might have
2 phrased it in the words that said, "Is this something that
3 we can get moving on" or whatever, but I'm very careful
4 about that line between operational and a governing body.
5

6 Q. Thank you. I think I'll rephrase my question, I think
7 it was perhaps not clear. Do you accept that when staff
8 receive councillor requests that there could be a
9 perception, whether or not it's expressed in the email or
10 not, that it's a matter that needs to be addressed, if not
11 immediately, at least urgently? Do you accept that general
12 proposition?

13 A. "Urgently if not immediately", is that what you're -
14 I'm having trouble hearing again.
15

16 Q. Do you accept that when a councillor request is
17 received by staff it can give rise to the perception,
18 whether or not stated expressly in the request itself, that
19 it is a matter that should be addressed, if not
20 immediately, at least urgently?

21 A. No. No, because the way some of these were written
22 that I - and I often included the email from the resident
23 or business or whatever in there, I would cut and paste
24 that in, whatever, and I would normally cc that resident or
25 business back into the email so they knew that it had gone
26 in, but I don't agree with that proposition,
27 Mr Commissioner.
28

29 THE COMMISSIONER: Thank you.
30

31 THE WITNESS: I might add that I would normally take up,
32 re-email that request if nothing had been heard for a
33 reasonable period and, if the staff wrote back and said
34 that's probably a matter for council, then I'd go down that
35 path obviously with the council meetings and briefings.
36

37 MR PARISH: Q. Can I ask you now about the media and
38 communications policy of the council, and I might just try
39 and show you tender bundle D, if I can do that. We might
40 only have --
41

42 THE COMMISSIONER: I don't think you've tendered it yet.
43

44 MR PARISH: No, it's only in electronic form.
45

46 THE COMMISSIONER: I see.
47

1 MR PARISH: And, for formality, that's something I ought
2 tender now.

3
4 THE COMMISSIONER: So, can you just describe it onto the
5 record and I'll mark it?

6
7 MR PARISH: Yes. Tender bundle D is a bundle of policies,
8 induction materials, you know, the miscellaneous council
9 documents?

10
11 THE COMMISSIONER: The bundle described by Counsel
12 Assisting will be Exhibit D.

13
14 **<EXHIBIT #D - BUNDLE OF POLICIES, INDUCTION MATERIALS AND**
15 **OTHER MISCELLANEOUS COUNCIL DOCUMENTS.**

16
17 MR PARISH: We might just try and show it to you,
18 Mr Scandrett, we've only got it in electronic form because
19 of its size. Hopefully Mr Broad will be able to bring up
20 page 4341 for you.

21
22 THE WITNESS: Commissioner, may I speak?

23
24 THE COMMISSIONER: Q. On what?
25 A. Just to ask you a question. I'm just looking at my
26 preparation for today and, to be quite honest, I think when
27 we get to the bit where you say - or Mr Parish says, "Have
28 you got any other matters you wish to raise?"

29
30 Q. Yes.

31 A. I think the clock's going to spin.

32
33 Q. Well, that may be but I propose to sit on for a little
34 while at least.

35 A. Of course, I just wanted to flag that to you.

36
37 Q. Yes, I'm grateful for that, thank you. What I think
38 I'll do at any time when we adjourn, even if we do have to
39 come back earlier in the morning, is to ask you to identify
40 the topics so that Counsel Assisting can consider overnight
41 which of them appropriately, perhaps all of them, perhaps
42 some of them, are captured by the terms of reference and
43 then that will streamline things tomorrow if we resume a
44 bit earlier.

45 A. We can do that.

46
47 THE COMMISSIONER: Yes, we will, thank you.

1
2 THE WITNESS: I have the media policy.
3
4 MR PARISH: Q. Do you have in front of you the media
5 policy which has hopefully a page number about "431" on it?
6 A. The next page is 434, I don't --
7
8 Q. Well, try going backwards.
9
10 THE COMMISSIONER: Are you talking about the PDF
11 bundle page or the marking on the bottom?
12
13 MR PARISH: The marking on the bottom.
14
15 THE COMMISSIONER: Q. Councillor, if you have a look at
16 the bottom of the document, there should be some printed
17 page numbers rather than the PDF.
18
19 MR PARISH: It might be 432 or 431 and it should commence
20 with, "Media Policy".
21
22 THE COMMISSIONER: All right, Mr Broad will find it.
23
24 MR PARISH: Q. Do you have that document in front of
25 you?
26 A. I believe I do.
27
28 Q. Can I take you through to point (5) on page 433
29 probably, which deals with the personal views of elected
30 members.
31 A. Yes, I have that.
32
33 Q. Do you see:
34
35 *The policy does not inhibit the right of*
36 *individual councillors to express their own*
37 *views with the media so long as they cannot*
38 *be perceived to be an official comment or*
39 *view on behalf of the council and it does*
40 *not place the council in a position of*
41 *liability. The statements made by*
42 *councillors are to be identified as their*
43 *opinions only and as such do not*
44 *necessarily represent the council.*
45
46 A. Yes.
47

1 Q. Is that something which, in your view, you adhered to?
2 A. Yes.
3
4 Q. And it continues over the page:
5
6 *When engaging with the media councillors*
7 *must provide high quality leadership to the*
8 *council and community and must serve the*
9 *overall public interest of the shire.*
10
11 Do you see that?
12 A. Yes.
13
14 Q. Pausing there. When we were dealing with the clip of
15 you outside the Resource Recovery Centre earlier on and you
16 were fielding questions from Latte Life, do you say that
17 you were complying with that high quality of leadership to
18 the council and community then?
19 A. I stated I was there as a private citizen; in fact I
20 would imagine I stated that a number of times.
21
22 Q. Does that mean that this policy does not apply to you
23 when you are somewhere as a private citizen?
24 A. No. As I have said, we are 24/7, but I made it quite
25 clear that they were my private views, it wasn't part of
26 the union's meeting there.
27
28 Q. But my question is, firstly, do you accept that this
29 policy applies to you even when you are, in your own view,
30 giving comment as a private citizen?
31 A. Yes.
32
33 Q. Do you say that, in dealing with questions from Latte
34 Life at that meeting at the Resource Recovery Centre or on
35 the pavement outside, you were providing a high quality of
36 leadership to the council and community?
37 A. I think where it says in paragraph 1, section 5:
38
39 *As long as they cannot be perceived to be*
40 *an official comment or view on behalf of*
41 *the council and it does not place council*
42 *in a position of liability.*
43
44 I --
45
46 Q. Listen to the question.
47 A. I have, Mr Parish.

1
2 Q. My question is, do you think that that
3 encounter/meeting, whatever you've been calling it, you
4 provided a high quality leadership to the council and
5 community and served the overall public interests of the
6 shire at that meeting?

7 A. Well, being pushed to give a yes or no: yes.
8

9 Q. Thank you.

10 A. Because I was there --
11

12 Q. I didn't ask because --

13 A. Can I add --
14

15 Q. I just asked you a yes or no question and you've given
16 me an answer.
17

18 THE COMMISSIONER: I think the witness wants to qualify,
19 so as long as the qualification's relevant, I'll permit it.
20

21 THE WITNESS: Thank you. Yes, because I was there as a
22 council - as a councillor 24/7 and all that, I qualified
23 myself quite carefully but I wanted to get feedback on what
24 was going on out there and that information had not been
25 coming through the system.
26

27 MR PARISH: Q. I didn't hear a lot of questions in that
28 clip earlier from you, it was mainly you speaking. You
29 referred earlier to getting feedback and listening. That
30 clip involved you talking to people about predominantly
31 what you said was information that was faulty that a
32 decision had been made on.

33 A. That may be the case, Mr Parish, but as the - during
34 the gathering there people had come over and asked me
35 things after it broke up and before it started. I stood
36 clearly to one side to make sure it was quite clear that I
37 wasn't involved in the meeting.
38

39 Q. Okay. Focusing on the clip specifically now, do you
40 need to qualify that at all, or do you say there was a high
41 quality of leadership to the council and community serving
42 the overall public interest of the shire?

43 A. I always thought I delivered my role as councillor in
44 the best possible way and the community seemed to give me
45 very strong feedback as to their appreciation for my
46 efforts, and I always made a point of making sure I could
47 see what the community was on about; the meeting for

1 Station Street a perfect example.

2

3 Q. And I think we've already covered this, but the next
4 part down:

5

6 *As a courtesy the council should notify the*
7 *media and coordinations coordinator prior*
8 *to providing comment to the media.*

9

10 I think we've already covered that but you didn't do
11 that in the circumstance, did you?

12 A. And may I add that we had a number of Land and
13 Environment Court matters down here over these last
14 10 years and I always wrote, Commissioner, in writing to
15 the general manager advising that I will be attending but
16 not speaking. Now, other councillors did attend some of
17 those, they didn't or they did tell the general manager and
18 they did speak inappropriately, but I --

19

20 Q. I'm talking about this specific circumstance.

21 A. Well, you were asking about notification so, okay.

22

23 Q. And the answer is no; is that correct?

24 A. Correct.

25

26 Q. Do you accept that --

27

28 THE COMMISSIONER: Councillor, these questions are
29 directed to giving you an opportunity to respond to matters
30 so we have your fulsome response. You can be assured that
31 I've heard evidence and will continue to hear evidence
32 about a number of other issues. So, I think the answers,
33 if they're directed to the question, will help me to get
34 your response to these particular points and then allow me
35 to take them into account. So, rest assured I have heard
36 and will continue to hear evidence involving a range of
37 other topics and people, but for the moment please just try
38 and direct your attention to Counsel Assisting's questions.
39 Thank you.

40

41 THE WITNESS: Thank you and I apologise.

42

43 MR PARISH: Q. Do you accept the last paragraph there in
44 clause 8 which says:

45

46 *Councillors are reminded of their*
47 *obligations under the Local Government Act*

1 1993 and the relevant provisions of the
2 Code of Conduct and the Model Code of
3 Conduct for local councils.
4

5 Do you see that?

6 A. Absolutely.
7

8 Q. And do you take that to mean that you shouldn't
9 transgress those when you're dealing with the media?

10 A. Yes.
11

12 Q. And do you take those to mean that you shouldn't
13 transgress those when you are dealing with social media?

14 A. Yes.
15

16 Q. Do you accept that that includes, for instance, the
17 section 232(1)(f) obligation to uphold and to accurately
18 represent decisions made to council?

19 A. Well, it's that - Mr Parish, it's that line between
20 personal opinion versus what might be described as a number
21 of other things, and my Facebook quite clearly has the
22 disclaimers on it and I generally wrote, I think, in the
23 capacity of, these are my opinions, but I certainly --
24

25 Q. Do you agree that this media policy doesn't make any
26 distinction between a personal capacity and a councillor
27 capacity and, if it did so, it would make a nonsense of the
28 entire policy?

29 A. Yes, it's the 24/7 comment.
30

31 Q. Do you agree that the obligations under section 232
32 make no distinction between public and private citizens
33 and, if it did, it would make an absolute nonsense of those
34 roles and obligations?

35 A. Yes.
36

37 Q. So, you agree that it's a completely facile
38 distinction when dealing with your obligations under 232 or
39 the Code of Conduct or indeed this media policy?

40 A. Yes, I'd like to make a comment having said that.
41

42 THE COMMISSIONER: If it's a qualification to the answer,
43 yes.
44

45 THE WITNESS: Yes.
46

47 MR PARISH: Q. What's that qualification?

1 A. The qualification is that I found myself in a
2 situation where I was constantly answering questions from
3 the public - it's a bit like the councillor requesting - so
4 as a public elected figure people ask you those things; you
5 try and work within the parameters of that.
6
7 Q. Can I take you to some Facebook posts that you've
8 done?
9 A. Yeah, sure.
10
11 Q. You'll need tender bundle E, the last volume there.
12
13 THE COMMISSIONER: Can some of the other material be taken
14 back from Councillor Scandrett?
15
16 MR PARISH: Yes, it can.
17
18 THE COMMISSIONER: Whatever's not yours there, councillor,
19 we'll take off you.
20
21 THE WITNESS: It's all done.
22
23 THE COMMISSIONER: Such as Mr Broad's laptop that's left.
24
25 Q. While that's coming to you, councillor, from those
26 answers do I take it that the line as you described it
27 between personal capacity and councillor capacity is, in
28 truth, illusory?
29 A. It's challenging, Commissioner, to walk the line.
30
31 Q. Well, is there such a line?
32 A. I think others would argue there is and I wouldn't
33 disagree with that, and look, it's a matter of the
34 interpretation of the reader surely.
35
36 Q. How does that sit with your answers to Counsel
37 Assisting a moment ago?
38 A. Well, as I say - well, I'll say that it's not a
39 perfect science.
40
41 MR PARISH: Q. I think I asked you whether it was a
42 facile distinction given that there is no qualification in
43 the regulations, Code of Conduct or legislation, and you
44 agreed with me with that.
45 A. Yes.
46
47 Q. Thank you.

1 A. What am I looking at here, please?
2
3 Q. The very, very last page of this bundle, which is
4 tender bundle E, page 1351.
5 A. Mr Broad, I don't think I have 1351 tender bundle. I
6 go to 1050.
7
8 THE COMMISSIONER: Volume 3. Mr Broad, I've got it open,
9 you can give this to the witness.
10
11 THE WITNESS: It says "Part 3" on the front.
12
13 THE COMMISSIONER: Mr Broad, just take mine, I haven't
14 drawn on it.
15
16 MR PARISH: Q. Do you have a Facebook page extract there
17 from you dated 5 March 2020?
18 A. Yes, I do.
19
20 Q. You referred before to being met on the street with
21 enquiries by interested community members and the
22 difficulty that caused in making a distinction between your
23 personal and public role. This is just a Facebook post.
24 Did someone require you to do it or was this of your own
25 volition?
26 A. My Facebook posts are initiated by me.
27
28 Q. And, do you accept that the media policy, the Code of
29 Conduct, the Code of Meeting Practice probably to a lesser
30 or no extent, and the roles and responsibilities and the
31 legislation still govern what you post on Facebook?
32 A. I have - I use the word carefully, Mr Parish -
33 reported here to the community, had they been watching the
34 meeting or listening to the meeting or sitting in the
35 meeting, they could have perceived this but this is for the
36 people who weren't here.
37
38 Q. Why do you put, in the first sentence in quotations:
39
40 *Station Street upgrade not a bypass*
41 *project.*
42
43 Was that a phrase used in the meeting?
44
45 A. It's a phrase that I have used regularly because
46 this - the scope of the project from when I first came on
47 council changed dramatically and it was changed - the name

1 was changed three times - two times and it became Station
2 Street upgrade.
3
4 Q. So this is a phrase that you have used, this wasn't a
5 phrase that was used in the meeting?
6 A. No, it's --
7
8 Q. Is that correct?
9 A. No, it's my description.
10
11 Q. So you're not reporting, in that first sentence, at
12 least, you're giving an editorial gloss or opinion on the
13 briefing; is that correct?
14 A. No. It's my way of putting a title on the article.
15
16 Q. That's an article, is it, a title, that first --
17 A. Well, that's what I see it as, I'm briefing back to
18 the community through social media.
19
20 Q. You then say:
21
22 *Again I said it could not be confidential*
23 *but all councillors and GM stated that it*
24 *was.*
25
26 A. Watch the tape, it was there.
27
28 Q. Is that a decision --
29
30 THE COMMISSIONER: Councillor, I'm not sure that's
31 ultimately helpful. Perhaps just listen to the question.
32
33 THE WITNESS: Sorry, okay.
34
35 MR PARISH: Q. Is that a decision of council which you
36 are undermining there?
37 A. No, because there had not been a deliberation and vote
38 in this council chamber to make briefings confidential, and
39 I touch on that in the third-last paragraph where I say:
40
41 *The GM advised yesterday that she's*
42 *bringing a change to our meeting code of*
43 *practice on 25 March to make councillor*
44 *briefings confidential.*
45
46 Q. Do you think, by dealing with that issue in this way,
47 you are attempting to undermine the decision of the council

1 and the GM?
2 A. No, because there'd been no decision made, Mr Parish.
3
4 Q. That's not what I'm asking you --
5 A. What I said is "no", okay?
6
7 Q. -- what I'm asking you is, do you think nevertheless,
8 whether it is a decision or not, undermines what took place
9 in respect of the GM and the council in the meeting?
10 A. Mr Parish, with respect here, if there's not a
11 decision I can't be undermining that process.
12
13 Q. Well, you can; do you want me to take you to the
14 section which explains how you can?
15 A. Well --
16
17 Q. I'll take you to the section.
18
19 THE COMMISSIONER: Just pause everybody. Everybody just
20 pause. I think, Mr Parish, I'd be assisted if you just
21 re-put the proposition about what is being undermined, and
22 then, councillor, I'd be assisted if you would just
23 directly answer it and then Mr Parish can take the course
24 because I think that's the best way I'm going to grapple
25 with this passage.
26
27 MR PARISH: Thank you.
28
29 Q. I'll try and take it in little bits. In sentence 2
30 you say:
31
32 *Again I said it could not be confidential*
33 *but all councillors and the GM stated it*
34 *was.*
35
36 Do you see that?
37 A. Yes.
38
39 Q. And you've given evidence that it wasn't a decision of
40 council; that's correct?
41 A. Yes.
42
43 Q. And my next question was, can it nevertheless be seen
44 as undermining something that took place at council?
45 A. No. And I'd like to qualify that by saying, we've
46 heard evidence in this inquiry of non-conforming practices
47 taking place in the NAATI Room over there where a show of

1 hands was meant to be a decision of council and, of course,
2 any reading of the Code of Meeting Practice is quite clear
3 on that, I think Viv May's been quite clear on it, that you
4 must bring a decision to council in the chamber where there
5 are minutes where votes are recorded if the case may be.
6 We weren't doing that.

7
8 Q. I'm not suggesting that you're not correct even. What
9 I'm asking you is whether it could be said that you were
10 undermining - whether it was a decision or not in the
11 technical sense - something that had been determined by all
12 councillors except you and the GM?

13 A. Mr Parish, those that would not have me here, who I
14 may call detractors, some might call them 7181 or
15 whatever - would put that proposition that you've just
16 mentioned but I would reject that.

17
18 Q. I have no idea what you meant by the first part of
19 that. Who does not want you to be here?

20 A. Well, I continue to say I had problems with the
21 collective block, and in this case the block was 8:1;
22 Station Street was 8:1, 8:1, 8:1.

23
24 Q. By not want you to be here, do you mean not give
25 evidence in this inquiry?

26 A. I'm just - I'm sorry, I'm trying to answer your
27 question, but if you feel, did I undermine by making this
28 statement on Facebook council in regards to an unofficial,
29 illegal vote, one might argue, no: no, no, no.

30
31 Q. Can I take you to the third paragraph down which says:

32
33 *Some 8 minutes was spent on "discussing"*
34 *this with Mayor Duncan Gair trying to get*
35 *me to leave.*

36
37 Why is "discussing" in quotations?

38 A. Well, as I say, it wasn't a formal council meeting
39 which this discussion should by any normal reading of the
40 Act should have taken place in there. Viv May has given
41 evidence to how much - and others who have looked at our
42 records - how much was happening informally over there,
43 decisions being made that should be minuted and recorded as
44 a decision of the governing body. So, yes, "I am
45 discussing", in inverted commas; was simply saying that we
46 were trying to have a Clayton's meeting, a meeting that you
47 have when you haven't got one.

1
2 Q. And that is a theme which runs through this entire
3 Facebook post, is it not, the idea that this was just a
4 Clayton's meeting?

5 A. Well, that's how it was looking, Mr Parish.
6

7 Q. If you thought it was a Clayton's meeting, in your
8 view, did you think perhaps on reflection at least that a
9 Facebook post was the best way to go about addressing what
10 you saw as a meeting irregularity or problem with it?

11 A. It's one of the mechanisms that, as an elected
12 councillor by many thousands of people I used. I also
13 spent a fortune on coffee in this shire which stopped with
14 the suspension of the council, because I would meet with
15 constituents and groups and interested parties, businesses,
16 the like, and often I was trying to just inform them on
17 what was going on.
18

19 Q. Did you consult with the media and communications
20 coordinator before you made this Facebook post?

21 A. No.
22

23 Q. In your view, was that necessary each and every time
24 you made a Facebook post, about council business at least?

25 A. No.
26

27 Q. Was there a line, in your view, where you needed to as
28 a matter of courtesy notify the media policy person and
29 when you didn't?

30 A. I think a couple of times I spoke to Dave Summers to
31 say that I might be attending something or other, but I
32 can't give you the detail, Mr Parish, I just - it's
33 some years now, but not as a matter of course, no.
34

35 Q. Can I take you one page back. Do you have page 1350?

36 A. Yes.
37

38 Q. You appear to have made a comment in response to the
39 media release from the Minister; do you see that?

40 A. Yes.
41

42 Q. And your response is in capitals:

43
44 *WINGECARRIBEE SHIRE COUNCIL FACES*
45 *SUSPENSION. This is really good news.*
46 *I am delighted as the community will*
47 *finally come first and see change. The*

1 *real big challenge is now to change the*
2 *culture. I remain committed to that, I*
3 *continue to call for a public inquiry into*
4 *the council and the organisation. A public*
5 *inquiry is the only way to ensure a*
6 *refreshed gene pool throughout the*
7 *organisation, the elections will assist*
8 *with that reset.*

10 This is you as a member of the governing body
11 applauding the pending suspension of the governing body; is
12 that right

13 A. I regret to read here that I actually wrote the words
14 "CLR" in front of my name.

16 Q. I don't understand --

17 A. That is an error.

19 Q. I don't understand what your point is there.

20 A. Well, as I say, this - my Facebook was ultimately
21 something that I did as a resident ratepayer who happened
22 to be a councillor, I tried to walk that line, but here I
23 note inadvertently that I have put the initials "CLR" in
24 front of my name.

26 Q. I thought you agreed before that there was no
27 distinction to be made between private and public, at least
28 in terms of your obligations under the Code of Conduct and
29 the --

30 A. Certainly did and --

32 Q. So do you agree that it wouldn't make a difference?

33 A. No, I'm saying it's inadvertent here, Mr Parish,
34 normally I would not have done that. If you look up the
35 top at the header, which is the Facebook header, it is not
36 "Councillor Ian Scandrett", it is just "Ian Scandrett".
37 So, sometimes - we're all human - sometimes that crept in,
38 I guess, and I'm acknowledging that.

40 Q. I'm not asking you questions about the use of
41 "Councillor Ian Scandrett", I'm asking you, do you accept
42 that you are a member of the governing body as at 3 March
43 2021; do you accept that?

44 A. Yes, absolutely.

46 Q. And do you accept that the import of your Facebook
47 post is that you are delighted that the governing body that

1 you are a part of is about to be suspended?

2 A. I have a personal view and I expressed it.

3

4 Q. Well, I think we're going round in circles now. I'll
5 ask you again: do you agree that there's no distinction to
6 be made between your obligations in the legislation and in
7 the Code of Conduct and in the media policy between your
8 personal and your public role?

9 A. Yes, that's correct. If I was in the street and
10 somebody said, "What do you think of this announcement"
11 which I cut and paste there, I would say the same sort of
12 things, "I'm personally very delighted with this, a step in
13 the right direction", you know, da-da-da. I have a view.

14

15 Q. And do you agree that, in giving that view, you would
16 still be bound by the Code of Conduct, the media policy and
17 the legislation?

18 A. I would think, Mr Parish, that this rabbit hole that
19 we might be going down would, across the shire with other
20 councillors, have not dissimilar conflicts; it's just the
21 environment in which they might have expressed their views.
22 But, for example, if there was a heritage matter and a
23 councillor expressed a very strong view on the heritage
24 matter, then they are in the same position. I mean, if a
25 councillor stood up at a Land and Environment Court hearing
26 on site for a heritage matter and expressed his opinion
27 there, I think that would be also of great concern. It's a
28 fine line, I have to say.

29

30 THE COMMISSIONER: Mr Parish, unless you can convince me
31 otherwise, I think I'm going to adjourn.

32

33 MR PARISH: I want to ask a few more questions and then
34 that may deal with --

35

36 THE COMMISSIONER: Then, can you finish this topic and
37 we'll see where we get to.

38

39 MR PARISH: Yes.

40

41 Q. Do you accept as a member of the governing body being
42 delighted that that body is about to be suspended, that
43 that is bringing the council into disrepute?

44 A. I wrote it there, Mr Parish, so you're correct in that
45 and --

46

47 Q. I'm giving you the opportunity to agree or disagree

1 that a member of the governing body, chairman of the
2 governing body being suspended, amounts to bringing the
3 council into disrepute?

4 A. Not in that context. I mentioned before Mike Baird,
5 the Premier at the time, served --
6

7 Q. That's not relevant, is it, to the question.

8 A. If you'll bear with me. Questioning council about
9 reforms and so on in the term, previous term, and we all
10 expressed a diversity of views on that, and there was
11 discussion in the community and so on about this; that
12 doesn't bring the council into disrepute, it was just us
13 expressing our personal opinions on change.
14

15 For example, I was very firmly of the view that a
16 maximum of three terms should take place, and that was
17 expressed in there, and popularly the directly elected
18 mayor was an area - so, I didn't bring the council into
19 disrepute, I engaged in dialogue with my own opinion.
20

21 If this had been a matter that had come out of a
22 confidential part of this Council Chambers that'd be a
23 different matter.
24

25 Q. Do you accept that you have at least some part to play
26 in the dysfunction of the council in 2016-2020?

27 A. You'd have to be more specific, Mr Parish, as to what
28 that was and --
29

30 THE COMMISSIONER: Well, I think the question - what is
31 the difficulty with the question? Let's put it at a
32 general level. Just repeat the question, Mr Parish. Have
33 another go.
34

35 MR PARISH: Q. Do you accept that you had at least some
36 part to play in the dysfunction of the council between
37 2016-2020?

38 A. Yes, and I think all councillors --
39

40 Q. I'm asking about you.

41 A. Okay. Yes.
42

43 Q. Do you think, therefore, as someone who contributed to
44 the suspension reasons, that it is appropriate to be
45 congratulating the Minister on the suspension of the
46 governing body?

47 A. Seeing I stood on a platform of reform and

1 accountability, Mr Parish, the "Just Fix It" team [holds up
2 document] and --

3

4 Q. Can you answer the question?

5 A. I am answering the question, sir, if you'll bear with
6 in. There's no argument as to my views, they are detailed
7 here. If you've not looked at my election material, maybe
8 you should and I invite you to.

9

10 THE COMMISSIONER: Q. Councillor, comments like that are
11 not helpful --

12 A. Sorry, I didn't mean to --

13

14 Q. -- you've been given an opportunity --

15 A. Sorry, you're welcome to --

16

17 THE COMMISSIONER: No, just stop. You are responding to
18 matters which have been suggested to us, it's part of the
19 process. So, please don't argue or direct comments to
20 Counsel Assisting who is giving you that opportunity in
21 this forum.

22

23 THE WITNESS: My answer, Mr Parish, is I am well
24 recognised as having had a position for resetting this
25 council for the terms I've been elected and prior; it's not
26 a new bit of information.

27

28 MR PARISH: Q. And you've achieved that by contributing
29 to the dysfunction which led to the suspension of the
30 council; what do you say to that?

31 A. One could say that. One could say that we all
32 contributed towards that.

33

34 THE COMMISSIONER: Q. But accepting that one could say
35 that, I'm interested in your response to the suggestion
36 that you achieved the - I think "reset" was your word - by,
37 as Counsel put it, contributing to the dysfunction in
38 council; what do you say to that express proposition? I'm
39 very interested to have your response.

40 A. I don't see it as a badge of honour particularly,
41 Commissioner, but I do see it as an outcome that came from
42 me continuing to look at how to be a better council for the
43 community and the push-back that I got from other
44 councillors on that improvement.

45

46 Q. In answer to a couple of questions ago you accepted
47 the proposition that you had some part to play in the

1 dysfunctionality of the council as it came to be in the
2 2016 term. You accepted that; correct?

3 A. Yes.

4
5 Q. And what, to your mind, was your contribution to that
6 state of affairs? How did you contribute to the council
7 becoming dysfunctional in the 2016 term?

8 A. I think my continual representation for the community
9 and the issues that concerned them and the way in which
10 certain issues were not being dealt with, yes, ultimately
11 it did lead to some dysfunction in there.

12
13 Q. And, by that, do I understand you to be accepting that
14 the way those issues were pursued by you was not always in
15 accordance with either the legislation or the Code of
16 Conduct or the code of meeting practice? Is that what
17 you're saying?

18 A. Commissioner, I accept that on occasions I
19 inadvertently overstepped the mark; I would put that down
20 to my enthusiasm to serve my community, for example. I did
21 receive a Code of Conduct, you're aware of that.

22
23 THE COMMISSIONER: That wasn't my question, but I think
24 you answered it in the first part.

25
26 Yes, Mr Parish.

27
28 MR PARISH: Commissioner, I'm pretty much done with
29 specific topics, so I was wondering whether, rather than
30 simply adjourn now, I might be able to get Mr Scandrett's
31 topics that he wishes to raise so I can --

32
33 THE COMMISSIONER: Yes. What we'll do now, councillor, is
34 I'll have you identify the topics that you wish to explore
35 further in your evidence. I don't necessarily want a
36 detailed recitation of the issues at this stage, Counsel
37 Assisting will take a note of them and then I propose to
38 resume at 9am tomorrow.

39 A. At 9am?

40
41 Q. 9am, and if we're not finished by 10, then we'll have
42 to interpose the other witnesses who have been confirmed,
43 as I understand it, or have been told they're coming at 10
44 and 12 and we'll resume in the afternoon until it's
45 finished.

46 A. I have a number of - thank you, Commissioner - I have
47 a number of matters that I'll be seeking to address. They

1 include --
2
3 Q. No, not "include", let's start, let's list them.
4 A. I have two separate sources of these.
5
6 Q. That's all right, let's go to your first source and
7 let's deal with them numerically.
8 A. Okay. Dare I say, Station Street.
9
10 MR PARISH: Q. Could you be more specific, please,
11 that's not --
12 A. Heritage Committee minutes altered, petitions, costing
13 continued to explode but no change, cost-benefit analysis.
14
15 Q. Next topic?
16 A. Mittagong Pool. Renovation favours --
17
18 Q. Sorry to interrupt, have you provided these in your
19 submission already?
20 A. This part I have, sir.
21
22 Q. Do you want to perhaps just note that the first topics
23 are the ones that are already addressed in your
24 submissions.
25 A. Okay.
26
27 Q. Are there any that you don't wish to broach?
28 A. Okay. If I may for the record, in that document I've
29 raised 11 points numerically, with subsets.
30
31 Q. Yes.
32 A. I've raised personal matters (a) through (f) in there.
33
34 Q. Sorry - oh, yes, I see them, yep.
35 A. Have you got those?
36
37 Q. Yes.
38 A. Okay. In there I said I could have prepared detailed
39 submissions, et cetera. Just bear with me.
40
41 Q. Are there any of these you don't want to address?
42 A. No, sir, I want to address them all. Some of them
43 will be quite quick. And, I wanted to follow through on
44 some of the matters raised here in the inquiry with me and
45 with others, and I'll just read the titles, if I may?
46
47 Q. Yes.

1 A. Attendance, art gallery.

2

3 THE COMMISSIONER: Q. What's attendance?

4 A. Ah, because the governing body was constantly not
5 here, there were people - sorry, councillors constantly not
6 here; in fact, we had one session where we didn't have a
7 mayor and a deputy mayor in attendance, we had to elect a
8 mayor from the floor, it was the most extraordinary thing.

9

10 MR PARISH: Q. I think you might have just covered that
11 topic. What's your next topic?

12 A. Not quite because --

13

14 Q. What's your next topic?

15 A. There was information taken overseas as a consequence
16 of that absence and representation made by that
17 councillor --

18

19 Q. What is your next topic?

20 A. Okay. Code of Conduct, so I wanted to just go into
21 there a bit. I wanted to talk about the general manager on
22 a couple of points and Councillor Gair on a couple of
23 points. I think we've covered meeting procedures pretty
24 well, but I just might want to review that overnight. And
25 the PIO process, I do want to drill into that because there
26 were some revelations in there that --

27

28 Q. I can tell you right now that's probably outside the
29 terms of reference, but I'll consider it overnight.

30 A. Well, it goes to the conduct. Commissioner, you asked
31 previously about communication between the mayor and
32 myself: it goes right to the heart of that. There's a --

33

34 THE COMMISSIONER: Q. Anyway --

35 A. Okay, sir.

36

37 Q. -- I understand the topic.

38 A. Thank you.

39

40 Q. I think Counsel Assisting's point is that no part of
41 the ministerial side of the intervention falls within our
42 terms of reference. There may be some limited scope to
43 explore the other side, that is, the council's side.

44 A. I called it PIO but it's actually interrelationship
45 between councillors, especially the mayor and myself.

46

47 MR PARISH: Okay.

1
2 THE WITNESS: A little bit more matter on Station Street,
3 but I've already mentioned that, and then there's also
4 Councillor Turland versus Councillor Gair, some matters
5 there. That is the majority of it there, sir.

6
7 THE COMMISSIONER: No, not majority; I want all of the
8 topics, please.

9
10 THE WITNESS: Okay.

11
12 THE COMMISSIONER: Q. If something occurs to you
13 overnight, that's in a different category, but I want all
14 of them now because Counsel Assisting is going to have to
15 prepare himself to deal with this in an efficient way in
16 the time we have tomorrow.

17 A. Indeed. Well, I have prepared all of this in terms of
18 my records, so --

19
20 Q. Well, you may, but this is for the benefit of Counsel
21 Assisting. So, are there any other topics you haven't yet
22 mentioned that you would wish to address tomorrow?

23 A. Councillor's expenses claims and director's costs.

24
25 Q. What's that got to do with any of my terms of
26 reference?

27 A. It's whether the governing body acted correctly. It
28 relates to, for example, the fact that I had my internet
29 allowance taken off me, which meant I had my phone subsidy
30 removed; there was a constant gagging going on, it wasn't
31 consistent with the treatment of all other councillors.
32 It's not a winge, I can easily afford it, it's just a
33 statement of the pressures that were being applied.

34
35 Q. I see, yes.

36 A. Thank you.

37
38 THE COMMISSIONER: Well, I'll resume at 9 and we'll
39 continue with Councillor Scandrett until 10, where I
40 propose to interpose, I think it's Councillor Andrews,
41 followed by Councillor McLaughlin at - with a time - at 12,
42 and then on the conclusion of Councillor McLaughlin's
43 evidence we'll continue, if we have to, with Councillor
44 Scandrett and we will sit until it is done. Okay?

45
46 Anything else I need to deal with today?
47

1 MR PARISH: No, Commissioner.

2

3 THE COMMISSIONER: All right, I'll adjourn until --

4

5 MR PARISH: Excuse me, I think possibly tender bundle E I
6 haven't formally tendered yet.

7

8 THE COMMISSIONER: I have it on my list that you did.

9

10 MR PARISH: Okay.

11

12 THE COMMISSIONER: But we'll check the transcript
13 overnight. I think you have.

14

15 My sincere thanks to the transcription service and the
16 staff who have facilitated this late sitting, I do
17 appreciate that sitting until 6pm will cause inconvenience
18 to everybody and I'll adjourn until 9am tomorrow. Thank
19 you.

20

21 **AT 5.59PM THE INQUIRY WAS ADJOURNED TO**
22 **TUESDAY, 12 APRIL 2022 AT 9.00AM**

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