

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 Wednesday, 13 April 2022 at 10.05am

(Day 13)

1 THE COMMISSIONER: Yes, Mr Parish.

2

3 MR PARISH: Thank you, Commissioner. The first witness
4 this morning is Councillor Peter Nelson.

5

6 THE COMMISSIONER: Yes, thank you. While Mr Broad makes
7 his way over, there's just one transcript matter that I
8 need to address at page 1103, line 47, the question put by
9 me reads, in the transcript:

10

11 *There's a conflict of interest in the*
12 *bushfire report.*

13

14 What I said was:

15

16 *What is the conflict of interest in the*
17 *bushfire report?*

18

19 So, if that could be corrected, I'd be grateful and
20 then the corrected version can be placed on the website.

21

22 Yes, Mr Broad.

23

24 <PETER NELSON, affirmed: [10.06am]

25

26 THE COMMISSIONER: Thank you, Councillor Nelson. Yes,
27 Mr Parish.

28

29 <EXAMINATION BY MR PARISH:

30

31 MR PARISH: Q. Thank you, Councillor Nelson, can we
32 start with your vocational and personal background and your
33 connection with the shire, please.

34

35 A. Thanks very much. My career in local government
36 commenced in 1973 at Mudgee Municipal Council in the
37 position of cashier and concluded at Wingecarribee Shire
38 Council in 2012 in the position of manager, governance
39 admin.

39

40 Just a rundown: I was 73 at Mudgee Municipal Council;
41 that amalgamated into Mudgee Shire Council with the
42 position of payroll officer. The amalgamation was with
43 Cudgegong Shire and became Mudgee Shire Council. During
44 the term of Mudgee Shire Council I attended Mitchell
45 College in 1976 and 77 undertaking a course in local
46 government administration.

47

1 In 1978, roughly, Cogra Municipal Council in a
2 position of paymaster, then moved on to Sutherland Shire
3 Council in the position of committee clerk, then around
4 1983 I went to Mosman Municipal Council in the position of
5 administrative officer.
6

7 I then travelled overseas from 84 to 87 for three
8 years approximately. In 87 I joined Tamworth City Council
9 in the position of senior administrative officer. Around
10 1993 I went to Brewarrina Shire Council in the position of
11 deputy shire clerk. In 95 I went to Muswellbrook Shire
12 Council in the position of executive officer, and around
13 1997 I attended Wingecarribee Shire Council in the position
14 of manager administration which became manager
15 administration and governance.
16

17 The committees that I participated in when I was a
18 councillor - oh, I should say that I stood for election for
19 Wingecarribee Shire Council on a ticket with Duncan Gair,
20 the current mayor in position No.2 on his ticket. I was
21 duly elected as councillor in position No.9 of the nine
22 councillors.
23

24 I might say that during the 15 years I've worked at
25 Wingecarribee Shire I found Duncan Gair to be an elected
26 official who was honest, competent and caring and whose
27 integrity was beyond reproach, and for those reasons I had
28 no hesitation in standing with Duncan.
29

30 Q. Can I ask you a few questions about your time as an
31 employee of the shire council before I get to your time as
32 councillor. We had some evidence from Mr Barry Paull last
33 week who I take it you would have worked with when you were
34 working at the shire council?

35 A. Yes.
36

37 Q. He was referring to the observation of Mike Hyde, who
38 was the general manager, I think, roughly at the same time
39 you would have been there; is that correct?

40 A. That's correct.
41

42 Q. I think it was observed by Mike Hyde that that 2008
43 council, working under it was the second hardest thing
44 after Desert Storm. Can you give us your observations, if
45 you have any, about any difficult councillor interactions
46 and how councillor behaviour might have affected your time
47 as an employee in about that 2008-2012 period?

1 A. I think in the position that I was at, it was a unique
2 position in that I was an intermediary between the
3 councillors, the staff and the senior staff. So, main role
4 was to make sure that the councillors were all looked after
5 and able to interact with the staff from across the
6 divisions.

7
8 Look, I think Mayor Halstead was in the position then
9 and I think Duncan Gair was in the position as well, but I
10 didn't really have too much difficulty in that time.
11 Council meetings, they were pretty much, you kept going;
12 they were hard to manage because we didn't have the screen
13 that we have these days.

14
15 Look, I do know that Mike Hyde - I do know that one of
16 the councillors stood on a ticket in relation to the
17 collateralised debt obligations, the CDOs, and that caused
18 a great deal of difficulty and at the end of the day
19 Mr Hyde left the council.

20
21 Q. That CDO issue was after the 2008 term, is that about
22 right, or was it about the same time or was it the GFC that
23 it came to a head in about 09/10?

24 A. I can't say exactly, but I'm pretty sure around that
25 time.

26
27 Q. Mike Hyde made an observation to that effect and Barry
28 Paull seemed to agree with him, that it was an era of
29 dysfunctionality amongst the councillors in a time of
30 difficulty for the staff. Would you, generally, I take it,
31 disagree with that from the answer you've just given? From
32 your perspective, I know you can't --

33 A. The councils all blurred into one another to me, they
34 were all difficult in that respect.

35
36 Q. They were all difficult, okay.

37 A. Yeah, so my job was to - I guess I was a peacemaker.
38 I was in the situation where we'd all go to dinner
39 afterwards, it was my role to make sure that the wine was
40 on the tables, they were all looked after, and at that time
41 we'd have about 16 of us would attend dinner after
42 functions, so it was very interactive and in that respect
43 the councillors seemed to sort out their differences over
44 dinner.

45
46 Q. I think there was an observation made by one of the
47 witnesses yesterday as well that - speaking of blurring

1 things together, the witnesses are starting to blur
2 together for me - but there was a witness yesterday, a
3 councillor who observed that there was a tendency to meet
4 after meetings for a while which sometimes cleared the air
5 and that stopped at some point and that seemed to
6 exacerbate some existing problems; was that your
7 observation as well?

8 A. That definitely happened. It was good banter.
9 Unfortunately in this last council Councillor Halstead,
10 because of a health issue, didn't come to dinner,
11 Councillor Scandrett attended one dinner and then never
12 attended another dinner, and the general manager never
13 really attended any dinners, so you lost that little bit of
14 argy-bargy after dinner.

15
16 Q. I see.

17
18 THE COMMISSIONER: Just before you move on, Mr Parish.

19
20 Q. That concept of councillors dining together either
21 before or after meetings is something that I understand to
22 be fairly common or has about been fairly common over
23 history in local government; is that your experience as
24 well?

25 A. Would be very common. In fact, when I first started
26 the councillors used to break at 6.30, I used to go down
27 with the secretary, do the committee of the whole minutes
28 and they were presented when the councillors came back.
29 Sometimes the councillors would partake in one or two more
30 drinks than they should and debate went on for quite some
31 time, and at those times there wasn't an 8 o'clock finish,
32 we'd go to 11 o'clock, and because I had to lock up I'd be
33 here till 12 sometimes.

34
35 Q. Yes, well, perhaps that's a good thing that may not
36 happen any more although --

37
38 MR PARISH: I don't think anyone at the Bar should
39 criticise or stand on a high horse on that, Commissioner.

40
41 THE COMMISSIONER: That's probably right.

42
43 MR PARISH: Q. Councillor Nelson, given your
44 considerable experience at other councils, just again
45 staying within your role as an employee for a while, did
46 you see anything better, worse or about the same in the
47 culture of the way councillors interacted with staff when

1 you were a staff member?

2 A. I'd have to say, no, I didn't.

3

4 Q. It was about the same culture as you'd expect in other
5 councils?

6 A. No, look, at Mosman Council we had Barry O'Keefe QC as
7 the mayor when I was there and controlled the meeting
8 beautifully. At Tamworth City Council when I came back
9 from overseas, that was very cordial, that was pretty good;
10 we had a longstanding mayor in there and everybody got on
11 pretty well. Brewarrina Shire Council, well, that's a
12 different world altogether. Muswellbrook, that was okay
13 too, that was all right, but the people that here in the
14 council, they're very intelligent, high quality people that
15 could debate the pants off a table, and the debating was
16 excellent and very strong.

17

18 In fact, you'd go from one debater and you'd go, "Yep,
19 I'd vote that way", and then you'd hear another debater and
20 you'd go, "Gee, I'd go that way", so they were very strong.
21 And, of course, in the time when Dr Sara Murray was here,
22 she became president of the Local Government Association,
23 so - and Peter Reynolds, a very intelligent man who worked
24 on the - was on the board for the superannuation and ended
25 up the council - all councils in New South Wales got a
26 three-year waiver where they didn't have to put any money
27 into the Superannuation Board, which saved every council a
28 lot of money, so they're very smart, intelligent people.

29

30 But I did make a note to say that, with the reduction
31 of councillors from 12 to nine, I found that the quality
32 seemed to diminish, in that, it was much easier for the
33 council to form a clique of five and then take control of
34 the council and I think it was all down hill from there.

35

36 Q. As I recall, was that about 2012 that that happened or
37 are my dates - was that earlier or later?

38 A. I think I left 2012. I could actually see who was
39 coming on the council. I'd reached the age of 59, I had
40 about a year's worth of leave up my sleeve. I could see -
41 we used to have a situation where any member of the public
42 could come into the council and they could ask any question
43 on any topic, and that led to a great deal of
44 dysfunctionality in between the council and the community
45 with people asking these questions and I was forever trying
46 to get that changed.

47

1 Q. Sorry, what date was this very roughly? What time
2 period are we talking about now? When you were an
3 employee?

4 A. When I was an employee, yeah.

5
6 Q. I see. During that period 2012 where you left the
7 position at the council, and then 2016 where you were
8 elected to council, did you have occasion to attend council
9 meetings from time to time? In that 2012-2016 period do
10 you recall if you attended?

11 A. No, I didn't. That's when I worked - I had a year's
12 worth of work up at Pittwater Council helping out the
13 administration section and property section and I
14 completely left - apart from that, I left all council alone
15 and didn't get too involved or hear of anything of the
16 council apart from, it was torrid at that time.

17
18 Q. Well, that was going to be my next question. Did you
19 hear or observe anything about the 2012-16 council other
20 than it was torrid? Can you give any specific examples of
21 what you were hearing or the impression that you --

22 A. Well, with the dismissal of the general manager, I
23 understand that he was going to put a report up and the
24 mayor of the day didn't want that report put up, and that
25 led to a call of an emergency meeting and the general
26 manager was dismissed.

27
28 There was issues there I heard of about a councillor
29 doing unauthorised works on his property and that morphed
30 into a council trying to take legal action under the land
31 and environment purposes to do that but he sold the
32 property and left and no action could be taken.

33
34 There was also a lot of argy-bargy over the mayor and
35 the council vehicle and issues surrounding the use of that
36 council vehicle, and I believe that Councillor Turland was
37 an antagonist towards the mayor in that regard.

38
39 Q. Are these things you heard about before you put
40 yourself up for election in 2016?

41 A. I did.

42
43 Q. Is there anything about that --
44 A. But --

45
46 Q. Just listen to my question. Is there anything about
47 that which put you off running or was that an impetus for

1 running, that you thought you might be able to change
2 something?

3 A. No, look, I knew that there was a couple of councils -
4 councillors weren't standing and Duncan needed to have a
5 ticket to run because he'd previous - he has previously run
6 by himself, and to do that you go to the end of the ballot
7 and below the line, the ballot paper. If you've got a
8 ticket, then people come in and they only have to vote one
9 above the line, as you'd be aware, and then you could do a
10 preference deal with other groups.

11

12 Q. Turning now to your election in 2016, I'm just going
13 to ask you a few questions about the induction you received
14 and the training that you received. First of all, did you
15 have any general impressions about the information and
16 training that you received after being elected as
17 councillor?

18 A. I did, I thought it was pretty good. I've actually
19 brought along some of the documentation of the training.
20 That would have been done as an information session, would
21 have been at least a half day, could have been, you know, a
22 9 to 2 session. I had a look at it last night and it
23 was ...

24

25 Q. You actually recorded when you attended; is that
26 correct?

27 A. I might have left it behind actually.

28

29 Q. That's all right.

30 A. But one of the things when I was looking through one
31 of the new parts to the Code of Conduct was harassment, and
32 I'd written a mark against it, "New inclusion".

33

34 Q. It occurs to me that in your role at the shire council
35 you might have been involved with those inductions and
36 trainings back when you were employed; is that correct?

37 A. Look, possibly organising them; we would always get
38 facilitators in to do the training for the councillors.

39

40 Q. Do you recall whether in group sessions all the
41 councillors who had been elected attended the training
42 sessions or the induction programs?

43 A. Sorry?

44

45 Q. Do you recall if in that 2016-2017 period when you
46 were doing training or doing inductions, whether in group
47 sessions all the councillors attended?

1 A. The councillors didn't tend to go away to do specific
2 training, we would tend to - it was more to bring training
3 people in. Because the way that it had been structured for
4 many years now, the councillors had set aside every
5 Wednesday specifically because people who were working,
6 they could go to their employer and say, "Look, I can take
7 Wednesday off, I can do council stuff and then the rest of
8 the time we're fine", so that had been a longstanding
9 agreement that had worked with new councillors that had
10 come in; they knew that that's what they were up for and
11 they'd take every Wednesday off and, of course, council
12 meetings were on Wednesday.

13
14 Q. There were a few changes to the Act in 2016 shortly
15 before you were elected. Do you recall whether all
16 councillors attended sessions or was it just you new guys?

17 A. Look, my general impression is, all councillors would
18 turn up for all those training sessions. Generally it
19 would be rare that a councillor was away or they'd be
20 coming and be a bit late to an information session day or
21 at all.

22
23 The only thing in hindsight is that I thought that
24 there should have been an attendance record kept, and in
25 that regard I thought, well, they're informal and they're
26 information sessions provided by the staff, so possibly
27 not. But I was talking to one of my governance managers
28 the other day and he said, no, no, no, no, sign them in,
29 sign them out, and whenever they do training give them a
30 certificate, and I think that's what should be happening.

31
32 Q. Do I take it from your answer that that wasn't
33 happening at the time when you got trained?

34 A. No, it wasn't, you didn't get a certificate in the
35 mail or anything like that.

36
37 Q. Can I ask whether you were left with the impression at
38 the time of any councillor not doing what you thought they
39 should be doing to equip themselves with the knowledge or
40 not doing enough or not taking the training seriously; were
41 you left with any impression at the time of that?

42 A. No, everything was - everyone was pretty cordial when
43 the training sessions were on.

44
45 Q. Whether you learnt it at the time or you had a
46 pre-existing knowledge of it, can you tell us what you
47 understood the roles of a councillor were under the statute

1 once you became councillor?
2 A. Look, the main thing is we've got a set strategic
3 direction and the policy, ensure the financial viability of
4 the organisation and oversee the general manager's
5 performance, and that's sort of underpinned by the Local
6 Government Act, the legislations, regs, the Code of
7 Conduct, Code of Meeting practice, work health and safety
8 legislation and all the other legislations that go with
9 that.
10
11 Q. Do you recall what impression or knowledge you took
12 away about what the statutory roles of the governing body
13 were as distinct from being a councillor in your own right?
14 A. Yeah. Look, our role was to keep the place running
15 with the strategic direction and not interfere in staff
16 matters at all; you're only dealing with the general
17 manager or the senior staff. But there was a direction
18 given that we were allowed to go to group managers but it
19 stopped at that level, so the distinction between
20 councillor role and the operational role.
21
22 Q. On that topic, do you recall if in the 2016-2020 term
23 you saw any interactions between councillors and staff that
24 you thought were notable for their inappropriateness or
25 improper behaviour?
26 A. There were, there were, I --
27
28 Q. Can you give us some examples?
29 A. You've heard of a few examples given. Straight off
30 the top, the issue where Councillor Halstead directed that
31 another engineer come up and give him the answer on a
32 matter, and so, all work stopped and a phone call was made
33 and the officer came up from his division and the question
34 was put to him; he basically said, "Yes" and then he left
35 the room again.
36
37 Q. This was in a briefing session or in a council
38 meeting?
39 A. At a briefing session. I might say, I should dob
40 myself in, that Councillor Turland and I had a set-to and I
41 left my chair and walked to the middle of the room; we
42 exchanged words and then I sat down again.
43
44 Q. Let's stick to councillor verse staff for now, we'll
45 come to councillor verse councillor too.
46 A. Rather than dob myself in.
47

1 Q. Yeah, you didn't need to do that.
2 A. Look, there was general argy-bargy happening with - at
3 a senior level. If the general staff came up to give a
4 discussion or present a topic to us, they were well
5 received and the councillors didn't do - weren't playing up
6 in that regard.
7
8 Q. Do I take that answer to mean that they confined any
9 negative interactions to senior staff?
10 A. They did, and in that regard the senior staff didn't
11 give a lot of - didn't give a lot of presentations either,
12 so they - the general manager tended to control the
13 meeting. I guess at times she had to pull, you know,
14 "Quieten down, be quiet, control yourself" are words that
15 come to mind, but that's about all I can remember.
16
17 Q. We had some evidence yesterday about, I think it was
18 the last briefing session before the suspension which broke
19 up due to its acrimony; I think there was some evidence
20 from Councillor Andrews about that yesterday. Do you agree
21 with his impression of that meeting? I think it was
22 "disgraceful" was the word that he used?
23 A. I did have a discussion with him about it and he
24 didn't recall a lot before, I had to remind him, but if you
25 want my impression I can give it to you.
26
27 Q. Can I just ask you when you had that discussion with
28 Councillor Andrews?
29 A. McLaughlin.
30
31 Q. Pardon me. Can I ask you when you had that
32 conversation --
33
34 THE COMMISSIONER: Sorry, your question was about
35 Councillor Andrews.
36
37 MR PARISH: Yes.
38
39 THE COMMISSIONER: Now there's a different conversation
40 being referred to.
41
42 MR PARISH: I'll go back.
43
44 THE COMMISSIONER: Thank you.
45
46 MR PARISH: Q. I thought your answer just then was that
47 you had a conversation with Councillor Andrews about that

1 meeting; were you referring to Councillor McLaughlin?

2 A. Yes.

3

4 Q. When did you have that conversation with Councillor
5 McLaughlin about that meeting?

6 A. A couple of days ago before his - before his - before
7 he was in here.

8

9 Q. And you talked about your recollections and
10 potentially evidence that you might give in this inquiry?

11 A. I did, but he didn't remember a lot of what it was
12 that happened on that day.

13

14 Q. Did you talk to any other councillors about their
15 recollections of that day or indeed have any conversations
16 with them recently about evidence that you might give to
17 this inquiry?

18 A. No.

19

20 Q. Just Councillor McLaughlin?

21 A. Yeah.

22

23 Q. What was your memory of that day?

24 A. I had a better idea. What happened, we all came into
25 the room. There was a little bit of - you could feel the
26 tension in the air. Councillor Whipper had a go at
27 Councillor Scandrett and accused him that it was his fault
28 that this had all occurred. Then the - that happened
29 either before or after the mayor started the meeting. The
30 mayor started the meeting and Councillor Scandrett wanted
31 to record the meeting, which we said no. There was papers
32 presented to the meeting which one of the recommendations
33 included that - I believe it was Councillor Scandrett and
34 may have been Councillor Turland, I think it was probably
35 only Councillor Scandrett - that the recommendation that he
36 be dismissed from the council. Councillor Scandrett got
37 into a bit of a huff and then left and the councillors that
38 remained, they - we had a bit more of a discussion, we
39 thought it may have been a bridge too far and we took that
40 recommendation out that went to council. So, I think
41 Councillor Scandrett would have turned up at the meeting -
42 so he must have got a surprise when he actually saw the
43 actual recommendation.

44

45 Q. Can I ask you firstly about the staff who were in that
46 briefing session.

47 A. No, there was no staff.

1
2 Q. There were no staff. I think there was some evidence
3 yesterday that they might have drafted the proposed
4 resolution; do you have any recollection of that?
5 A. I believe that the staff, I'm not sure which staff,
6 did it. Normally there'd be - a senior staff member would
7 have presented something like that to the councillors and
8 then --
9
10 Q. But they weren't at the meeting itself, at the
11 briefing itself?
12 A. They were not at the meeting.
13
14 THE COMMISSIONER: Q. Was the mayor involved in the
15 preparation of that draft resolution, to your knowledge?
16 A. I had a feeling that he was, but I can't be
17 100 per cent sure; I just - when we got to the meeting,
18 here's the document that was presented to us.
19
20 Q. Thank you.
21 A. So, as I said, there was a lot of tension in the air,
22 so I can't remember if the mayor said that, "I've worked on
23 this with", whatever.
24
25 THE COMMISSIONER: Thank you.
26
27 MR PARISH: Q. I might come back to this briefing in a
28 moment, but can you give us any other examples of
29 inappropriate councillor behaviour towards staff that you
30 recollect in the 2016 term?
31 A. The only other time was, we were out at Mittagong
32 swimming pool and there was a briefing there about the
33 damage that had been caused to the pool, and Councillor
34 Halstead was the mayor at the time, and my recollection is
35 that he told the staff or it was the - or the contractor
36 was nearby that, you know, in no uncertain terms, you know,
37 "We were gonna get this done and get it fixed up". I
38 thought it was a little bit over-the-top to the point that
39 I apologised to the fellow that was the contractor and I
40 said, "Look, you know, that's just Ken being Ken", which
41 was, that was pretty typical of Ken through his career.
42
43 THE COMMISSIONER: Q. Is the Mittagong Pool the one
44 that's prone to flood damage or is that a different pool?
45 A. Yes.
46
47 THE COMMISSIONER: Thank you.

1
2 MR PARISH: Q. You would have known Councillor Halstead
3 from your time as an employee; is that correct?

4 A. Yes.
5

6 Q. And when you say, "That's Ken being Ken", do you mean
7 that he had a propensity to dip into operational matters
8 from time to time and get his hands dirty and --

9 A. I - sorry. I couldn't say that I had any direct
10 observation of that. The only thing I did hear was that he
11 gave direction for the backhoe to log in to the Moss Vale
12 Swimming Pool to make sure that the indoor leisure centre
13 went ahead there, because I think they - and he didn't
14 stand for council the next year, the next term.
15

16 Q. Thank you. I'll just go back to that last briefing
17 and show you tender bundle E, Volume 1. Can I take you to
18 page 4 of that document.

19 A. Yes.
20

21 Q. That's the Minister's letter to Councillor Gair and
22 Mr Paull, with the intention to issue a suspension order;
23 is that correct?

24 A. Yep.
25

26 Q. Do you recall that you had seven days to provide a
27 written response to that?

28 A. Yes.
29

30 Q. Do you recall that the meeting that you've been
31 talking about was on 9 March, I think?

32 A. Yes.
33

34 Q. Do you have a recollection of why the meeting was held
35 on the very last day available to provide a written
36 submission to the Minister?

37 A. My understanding is that, because council generally
38 met on Wednesday when everyone's available, that we would
39 meet that day because I believe that we were assured that,
40 whatever was decided on that day, would be able to be
41 forwarded to the Minister by the deadline.
42

43 Q. Do you recall why the approach taken was to have a
44 meeting and pass resolutions rather than put in writing a
45 substantive response to the issues raised by the Minister?

46 A. My understanding is that the mayor must have called
47 the meeting because of this letter and I thought that a

1 resolution was the way to go, was my understanding, at the
2 meeting.

3
4 Q. Do you recall if there was any discussion about the
5 ability of the Minister to take steps to suspend or
6 otherwise take action against who you - and I'll call you
7 in the majority for now - saw as the antagonists of the
8 council?

9 A. Yes, I thought she did have that ability.

10
11 Q. Do you recall if there was any discussion about where
12 that power came from?

13 A. We thought that through the Office of Local Government
14 they could recommend to the Minister and she could take
15 that action.

16
17 Q. Do you recall if the governing body ever sought any
18 advice on what the powers either the OLG or the Minister
19 had to suspend Ministers?

20 A. Well, my understanding was that there was - the mayor
21 was running with the action in trying to suspend the
22 councillors and the discussions with the OLG were ongoing,
23 and that the mayor and general manager had tried to have
24 meetings with the Minister to discuss the situation, and
25 there was - I think they were having difficulties trying to
26 get to the Minister was one issue, but I thought that the
27 actions being taken by the mayor and the senior staff with
28 the OLG had a handle on it.

29
30 Q. Do you recall whether there was any consideration
31 about whether, rather than try to obtain a meeting with the
32 Minister, the best course might be to just provide written
33 submissions as she requested within seven days?

34 A. Sorry, I didn't quite --

35
36 Q. Do you recall whether there was any discussion or
37 thought about, rather than seeking a meeting with the
38 Minister, simply providing a written submission as she
39 asked for within seven days?

40 A. No, there wasn't.

41
42 Q. Do you accept in hindsight that maybe the best thing
43 to have done at that point would have been to just write to
44 the Minister within seven days as she had asked?

45 A. Yes, I think in hindsight and I think that's why I
46 probably wrote to the Minister myself.

1 Q. Well, that was going to be my next question. Did you
2 think the response and the timing of the response in
3 respect to the notice of intention to issue a suspension
4 order was inadequate?
5 A. I didn't think it was inadequate, but I just wanted to
6 give the Minister my feelings on the matter as well and I
7 did get a copy of what Councillor Whipper wrote to her, and
8 I thought, well yeah, that looks pretty appropriate too. I
9 thought that, yep, she will take action.
10
11 Q. Do you have any view on whether the impression that
12 might be left when a Minister has concerns about disunity
13 and dysfunction, individual councillors writing separately
14 to the Minister might simply reinforce that view?
15 A. No, I don't.
16
17 Q. In respect of the letter itself that you wrote to the
18 Minister, I might just show it to you. It's in --
19
20 THE COMMISSIONER: Tender bundle B, page 230, Mr Broad.
21
22 MR PARISH: Q. -- tender bundle B.
23 A. Okay.
24
25 Q. Do you have page 230 in front of you?
26 A. 231.
27
28 Q. Thank you. I believe you have explained to an extent
29 your logic on the first question I'm going to ask but I'll
30 ask it anyway and you can expand on it if you need to. You
31 refer, in paragraph 2, to the suspension order being the
32 least preferred option and the, I presume, more preferable
33 option was suspending the offending councillors. Does that
34 stem from your belief that the OLG or the Minister had a
35 power to recommend such suspension?
36 A. Yes.
37
38 Q. The next paragraph down, you say:
39
40 *... it is evident that the offending*
41 *councillors are responsible for the*
42 *harassment and bullying behaviour of*
43 *Mayor ... Gair ...*
44
45 Who are the councillors you're referring to there?
46 A. Councillors Scandrett and Halstead and to a lesser
47 extent councillor - sorry, there was Councillor Scandrett

1 and Turland and a lesser extent Councillor Halstead.

2

3 Q. We've had some evidence from Councillor Scandrett, and
4 he felt he was the one who was bullied and harassed and as
5 effectively the minority there may be some logic in that
6 view. Do you have any impression or view as to whether
7 Councillor Scandrett was being bullied or harassed in these
8 meetings?

9 A. No.

10

11 Q. Of course, it's possible that the bullying and
12 harassment was going both ways; do you think there was any
13 bullying and harassment of Councillor Scandrett?

14 A. It was - it was trying to keep the meeting under
15 control, and then - possibly then the mayor would then
16 raise his voice and be more aggrieved, but Councillor
17 Scandrett could always keep a mild demeanour mostly but
18 keep niggling away underneath to, you know, get at you, was
19 my impression.

20

21 Q. Do you think that was a deliberate tactic of
22 Councillor Scandrett to disrupt the meetings?

23 A. Absolutely.

24

25 Q. Do you have any impressions or views about the way
26 Councillor Scandrett - Councillor Gair, pardon me, dealt
27 with Councillor Scandrett? Could he have done a better job
28 at managing?

29 A. He tried to keep the meeting running and keep the
30 councillors under control probably to the degree that it
31 was excessive in being nice to them. Because of
32 Councillor Gair's demeanour and because - he wasn't really
33 being a hardline mayor like you might have got with Barry
34 O'Keefe. But the respect goes both ways and, if you're
35 being agitated from the floor, then it's easier to lose
36 your temper particularly, if when a request is made, the
37 councillor doesn't take notice of it and then keeps
38 pursuing it and then that causes further interaction
39 between the two.

40

41 I did attempt to call a point of order at some - not
42 many, because there was a time where you thought, oh, this
43 is gonna finish now, and then it didn't and then it did;
44 so, and then everything moved on again, but the point had
45 already been made by Councillor Scandrett that he'd upset
46 the mayor.

47

1 Q. Having listened to some of the evidence already, I
2 take it you might be able to anticipate where I'm going
3 with my next topic, but did you have any view as to whether
4 there is a general obligation on councillors to assist or
5 take steps to help maintain order in meetings?

6 A. There was, and I think in hindsight the councillors
7 should have been more proactive. I think I should have
8 been more proactive. I think the first term councillors
9 were probably - Councillor Andrews in particular might have
10 been sitting back. Councillor Markwart, he did call a
11 point of order on a number of occasions and I was sorry to
12 see him go, or his sickness, leave the council.
13

14 The other councillors I think should have taken more
15 responsibility. I thought Councillor Whipper as the mayor
16 in hindsight, he's been in the role, he sort of - didn't
17 hear a point of order from him. So, I think Councillor
18 McLaughlin, he sort of - he might have - he would have
19 called a point of order out of exasperation of what might
20 have been said.
21

22 Q. Could I ask if you agree with the observations made of
23 some of the other councillors, and indeed staff members,
24 that there was a degradation in the behaviour and conduct
25 of council meetings and briefing sessions at about the 2018
26 mark?

27 A. It definitely changed.
28

29 Q. We've heard some evidence about some of the other
30 councillors' perceived thoughts and reasons for that
31 degradation. One was the rejection of a DA by a regional
32 planning panel, I think, of Councillor Turland, another was
33 some issues with land use on Councillor Scandrett's farm,
34 and another was the election of Councillor Gair to the
35 mayoral chair. Do you have any to add or subtract from
36 that list?

37 A. The Councillor Scandrett issue with his proposal to
38 put a shed on his land with the neighbour objecting, that
39 caused a bit of grief because we - we actually sent that
40 off to Goulburn Council to be peer reviewed, so between all
41 that happening and - yeah, there was that issue where we
42 were supposed to go on an inspection on his land but the
43 staff didn't give him proper notification, so that caused a
44 bit of angst.
45

46 With Councillor Turland, my view on that is, it's a
47 long-winded answer, in that, it all started when his

1 proposal was put up, he took it to the Land and Environment
2 Court and what was happening, he was contacting me via the
3 telephone and he'd be complaining to me about what was
4 happening with his development and particularly
5 inspections, what had happened. Nick Wilton would turn
6 up - he said Nick Wilton would turn up with a consultant
7 and Councillor Turland would turn up with his consultant,
8 and then Nick Wilton's consultants weren't briefed properly
9 or weren't across the development and then they'd postpone
10 the meeting and that was causing Councillor Turland
11 significant finance, so he was pretty upset about that.

12
13 And then he was upset with the strategic - with the
14 heritage officer, I believe, but I can remember him telling
15 me that his development was refused because it wasn't
16 Bowral-esque. Now, he didn't know what Bowral-esque meant.
17 I think he had a four-storey development and it was reduced
18 to three storeys.

19
20 The other issue that emanated out of that was that
21 Councillor Turland wanted to go to China for a conference
22 and also Hong Kong and he asked the mayor if he could go as
23 a councillor delegate. Councillor Gair rang me up feeling
24 out my thoughts on it and I said, "I didn't think it was
25 appropriate that we'd be sending a councillor delegate to
26 China". I mean, I was involved in two Chinese delegations:
27 the Chamber of Commerce here were involved with the
28 economic development officer sending a group of 10 or so
29 people to Hainan Island - to Kaifeng in Hainan - sorry,
30 I'll just have to retract that, I'm getting confused with
31 my golf trips.

32
33 Q. It's the same thing, aren't they? They sound more
34 pleasant.

35 A. It was. We went to Kaifeng, I did two trips there
36 with the councillors: one with two councillors - with two
37 trips, and one with Mayor Halstead and, as I was saying,
38 the Chamber of Commerce with the economic development
39 officer went over with about 10 delegates from the shire.
40 Unfortunately, we've got nothing to show for that
41 delegation.

42
43 Q. And those are matters which, in respect of Councillor
44 Turland, in your view, may have led to a change in the way
45 he dealt with other councillors in council meetings and
46 briefings; is that your evidence?

47 A. That's my view.

1
2 Q. What about the chairing of meetings by Mayor Gair;
3 that seems to be ascribed by some witnesses at least as a
4 cause of a change in tone or a continuation downwards of
5 the tone; do you have any opinions or insights into that?

6 A. I think, if it was a change in tone, it would have
7 been in reaction to what was copping from the floor.
8

9 Q. Did you mean by that, there was a personality clash
10 between at least Councillor Scandrett and Gair and maybe on
11 a broader level Councillor Turland and Mayor Gair?

12 A. Look, you might not put it down to a personality thing
13 as such. The way Councillor Turland would conduct his
14 business was that, whatever the item was before council, he
15 could use it as a way of being aggressive towards the chair
16 or to the council or to the staff.
17

18 Take, for instance, the Berrima bypass. Because of
19 the difficulties associated with the Berrima bypass he was
20 able to use that as an item to cause a dysfunction in the
21 council. And, if you could - my impression was that there
22 was more and more notices of motion and questions with
23 notice coming to the council for consideration and they
24 were using those as a way to cause dysfunctionality in the
25 council.
26

27 Q. Just while we're on that topic, do you have any view
28 as to whether, at least at a certain point, Councillor
29 Scandrett was taking steps at meetings to effectively blow
30 up the council or precipitate a suspension?

31 A. I don't think Councillor Scandrett was, but my belief
32 was that Councillor Turland was at the end of the day,
33 towards the end, because my view on that is that when
34 Councillor Turland stood for mayor there was a possibility
35 that it would have been a split vote, a draw from the hat
36 and Councillor Turland could have become mayor. But
37 unfortunately Councillor Whipper and Councillor Scandrett
38 didn't vote at the mayoral election, and the interesting
39 thing about that is, when we had the secret vote Councillor
40 Turland, instead of supporting Councillor Gair, actually
41 voted for Councillor Whipper, and we didn't work that out
42 until after the meeting before we actually appointed
43 Councillor Turland as deputy mayor; so it's called
44 politics.
45

46 Q. Pardon me, this is in 2018; am I recalling correctly?

47 A. No, it's the last --

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Q. Previous --

A. We had to have a mayoral election for the --

Q. 2020?

A. -- six months period.

Q. Thank you.

THE COMMISSIONER: Q. I have a recollection that Councillor Andrews became deputy mayor in 2020?

A. That's right, Councillor Andrews became deputy mayor and I actually formulated a plan which gave Councillor McLaughlin, myself and Councillor Andrews an opportunity for one of us to become deputy mayor. Unfortunately, Councillor McLaughlin messed it up --

Q. He voted for someone else instead of himself?

A. No, he voted - yes, he voted for Councillor --

Q. Yes, I remember that. Sorry, I just thought in the exchange with Counsel Assisting you were talking about a circumstance where Councillor Turland became deputy mayor and that was in 2016, was it not?

A. Yes, that's right.

Q. Sorry, I may have misunderstood.

A. But when you go to that next one that's when Councillor Turland stood with an opportunity to become mayor for that six-month period. And, I do have to defend Councillor Andrews because when he became mayor part of my plan was to say, "Councillor Gair, you just vote for Councillor Andrews all the time and Councillor McLaughlin and I will sort out the rest". But the bad press that came on Councillor Andrews was that he was the reward for Councillor Andrews becoming deputy mayor for all the - you know, backing Councillor Gair. So, there was bad press on Councillor Andrews, when really it was my plan at the end of the day that he ended up deputy mayor.

MR PARISH: Q. Did you have any thoughts as to whether it may not have been appropriate to reelect Mayor Gair to the mayoral chair in 2020 given the apparent animosity between Councillor Scandrett and him? Not suggesting it was his fault, but --

A. No, it crossed my mind, and the only person that could have done it - could have put in would have been Councillor

1 Whipper. I mean, I could have gone up there, but I think
2 that would have been inappropriate because I was No.2 to
3 Councillor Gair. But, you're right, it could have taken
4 the heat out of the meeting but we weren't - we didn't
5 really canvass that in great detail; it only just crossed
6 my mind and I don't think Councillor Gair really wanted
7 to - there'd been issues between those two councillors over
8 the years, and I don't think Councillor Gair would have
9 wanted that, so I didn't really pursue it.

10
11 Q. Can I just go back to your letter at page 231 of
12 tender bundle B if you've still got it in front of you?

13 A. Yep.

14
15 Q. You've quite rightly, if I may say so, specifically
16 addressed some of the issues that the Minister raised at
17 about the middle of the page, where you refer to the letter
18 dated 2 March and the disruption and you give an
19 explanation for that. Can I ask you, there's some
20 suggestion, and we'll come to a specific media release
21 later about the reason for the suspension having a state
22 political element to it. Is that a view you adhere to?

23 A. Yes.

24
25 Q. Do you accept, at least in this letter that you've
26 written, that the disruption and dysfunction which was part
27 of the reason for the suspension order is quite apparent
28 and indeed you even address that disruption and
29 dysfunction?

30 A. The only reason I didn't address it in the letter was,
31 I didn't know about it till after we were suspended.

32
33 Q. You're referring to the political element of it?

34 A. Yes.

35
36 Q. We'll come back to that. I've jumped a bit off topic
37 down some relevant rabbit holes, but can we go right back
38 to the roles and responsibilities as you understand them.
39 What did you understand the distinction to be between
40 public and private or your role as a councillor and your
41 role as a private citizen when you became councillor, if
42 any? Did you understand there was a distinction? Did you
43 think it was possible to distinguish between the two? Did
44 you have the view that, once a councillor, always a
45 councillor?

46 A. In the training I was perusing last night there was a
47 little section there, I'd written down, "24/7", so you're a

1 councillor 24/7, and after that there was a comment made,
2 "with the exception of family and friends".
3

4 Q. I'm not sure I understand that distinction. Does that
5 mean you're not a councillor when you're sitting around the
6 dinner table?

7 A. When you're at home with your own family, then you're
8 not a councillor, but the rest of the time 24/7 you're a
9 councillor, and that had been impressed on everybody.

10

11 Q. And that was a contemporaneous note you had written at
12 the time?

13 A. Yep.

14

15 THE COMMISSIONER: Q. Was that a concept that was well
16 familiar to you, though, given your long experience in
17 local government?

18 A. Yes.

19

20 THE COMMISSIONER: Thank you.

21

22 MR PARISH: Q. We've had some evidence both in respect
23 to the Station Street development or bypass from certain
24 witnesses who felt that there wasn't adequate consultation
25 or communication. We've also had some evidence that some
26 people thought that the 2016-2020 council had an
27 adversarial relationship with the community. Is that
28 something, on reflection, you agree or disagree with or at
29 least concede to some extent?

30 A. The adversarial relationship grew.

31

32 Q. I see.

33 A. But as the project developed the --

34

35 Q. Sorry, I've led you astray there. I'm interested in
36 your view specifically on Station Street, but I'm also
37 interested in your view more generally, if you can answer
38 that?

39 A. Definitely on Station Street, but there were a number
40 of topics out there in the community that were causing a
41 lot - a great deal of angst. So, from a general point of
42 view of - I didn't have too many problems at the golf club
43 with any of the members talking about what was going on at
44 council, but these other pockets of issues were running
45 around.

46

47 Q. Do you accept that, with a welcome or perhaps even

1 indeed correct, it was part of the role of the governing
2 body to adequately communicate and address some of the
3 issues raised by such groups?

4 A. It is.

5

6 Q. Do you think, on reflection, that the governing body
7 and councillors in the 2016-2020 term did a good job of
8 that?

9 A. In relation to Station Street I would say that I'd
10 never seen a more consultative process in my whole life
11 than what the council did with Station Street, and in that
12 respect the council actually went out of its way to hire a
13 shop front in Station Street and use it as a display room
14 so that the community - it was very close to the railway
15 station - so that the community could go in there, ask
16 questions, look at the plans, see what it was all about and
17 get a full understanding about what the Station Street
18 project was all about, and the staff that did that, they
19 took detailed notes of the people, I believe, and the
20 feedback. The feedback that we were hearing was that
21 anyone that came in there and got a briefing and an
22 understanding of what council was trying to achieve with
23 Station Street were very happy.

24

25 Q. I'm going to show you Exhibit H now.

26

27 MR PARISH: Do you have Exhibit H, Commissioner?

28

29 THE COMMISSIONER: Yes.

30

31 MR PARISH: Q. This is a bundle of correspondence that
32 was tendered in the inquiry from Mrs Wilson and it relates
33 partly to her husband as well. Do you have that?

34 A. Yeah. Yes, yes, yes, just the top header here.

35

36 Q. Can we go to the very back of it and then work
37 forward. Do you have a letter addressed 13 Belmore Street,
38 Bowral, and you're the addressee, "Dear Councillor Nelson"?

39 A. Yes.

40

41 Q. Do you recall if this was the first correspondence you
42 had from Mr Royce Wilson?

43 A. I'm not sure, but I did have some correspondence with
44 him.

45

46 Q. The first thing he refers to there is the council
47 meeting of 14 February 2018; do you see that?

1 A. Yeah.
2
3 Q. Do you recall that meeting?
4 A. Not off the top of my head.
5
6 Q. I think that's what one witness described in his own
7 view as "The St Valentine's Day massacre", in which
8 Councillor Markwart made a reference to a gavel and appears
9 to have been specifically or at least perhaps predominantly
10 about the Station Street upgrade; do you remember a meeting
11 like that?
12 A. It's coming back slowly. I remember the gavel
13 incident.
14
15 Q. Do you recall whether you addressed at that meeting or
16 whether Mr Wilson addressed at that meeting?
17 A. No, I can't remember.
18
19 Q. Can we go back a page?
20 A. I'm on the last page.
21
22 Q. Yeah, can we go forward, as it were?
23 A. Forward a page, yeah. One page, "Jan Wilson".
24
25 Q. That's dated 25 June 2020?
26 A. Yes.
27
28 Q. Is that an email that you sent to Mrs Wilson on
29 25 June 2020?
30 A. That was sent from my phone.
31
32 Q. Yes.
33
34 THE COMMISSIONER: Q. Is there a distinction?
35 A. Yeah.
36
37 Q. You didn't send it?
38 A. Yes, yes, I - but not --
39
40 Q. You just said "it was sent from my phone", do I
41 understand you to be saying someone else sent it from your
42 phone or you sent it?
43 A. No, no, I sent it from my phone rather than from my
44 laptop or my council computer.
45
46 MR PARISH: Q. I see. Well, I guess that raises one
47 question: did you think you were sending this email in a

1 personal capacity or a private capacity?
2 A. It was sent in the capacity of the argy-bargy that was
3 occurring at the time.
4
5 Q. Well, I understand that, but that doesn't quite answer
6 my question. Did you think that this was sent in a
7 personal capacity or in a private capacity?
8 A. Ah --
9
10 THE COMMISSIONER: Sorry, I think you said personal or
11 private.
12
13 MR PARISH: Yes, pardon me, they're the same thing, aren't
14 they?
15
16 THE COMMISSIONER: They are.
17
18 MR PARISH: Q. Public or private capacity?
19 A. I was sending it as a councillor.
20
21 Q. And you said a bit earlier that was the first
22 correspondence you'd received, I think, from Mr Wilson, so
23 this was the first correspondence you had sent back to
24 Mrs Wilson; is that correct?
25 A. No, there's a bit more to it than that.
26
27 Q. Do you want to explain it?
28 A. Can I get my notes?
29
30 Q. Sure.
31 A. Can I provide an explanation?
32
33 Q. Yes.
34 A. You would remember that around 25 June emotions were
35 running high in relation to Station Street and I was
36 actually BCC'd into an email to a group of people which
37 said:
38
39 *Good work X.*
40
41 Name's deleted because I GIPA'd the information
42 concerning the interactions with Station Street for a
43 period of time. So, it said:
44
45 *Good work X. Let's see what he says in*
46 *reply. His recent letter to X [name*
47 *deleted] didn't convey that he has any idea*

1 *of shelving the project. I'm inspired that*
2 *you put pen to paper or fingers to*
3 *keyboard. Best wishes, X [name deleted].*

4
5 My reply, I stated:

6
7 *I will reply to him and you're right, I'm*
8 *not changing my mind on Station Street.*
9 *Maybe I should not have received your email*
10 *but it shows how you're all working*
11 *together to attack councillors that do not*
12 *agree with your wishes.*

13
14 Then I received a reply that said:

15
16 *That's called democracy.*

17
18 My reply then stated:

19
20 *No worse than what you are doing.*

21
22 And then later I added from my phone:

23
24 *And I am the one with the vote so you don't*
25 *count.*

26
27 Q. Right, so --

28 A. So I regret that comment to Mrs Wilson.

29
30 Q. Thank you for that but --

31 A. But it goes on.

32
33 Q. Pardon me, I'll let you go on in a second, but you're
34 reading from emails here; is that correct?

35 A. Yes, that I GIPA'd.

36
37 Q. I'm not sure if we have those emails.

38
39 THE COMMISSIONER: Yes, well, I think we do.

40
41 THE WITNESS: I have the GIPA.

42
43 THE COMMISSIONER: I'm just trying to have them brought
44 up, because I think that it's appropriate that the whole
45 email chain be developed in the way that Councillor Nelson
46 is doing it. So, Mr Parish, one of two things: we can take
47 the morning tea adjournment now and that can be sorted out

1 or can you go to a different topic and come back once the
2 document's available?

3
4 MR PARISH: I think it might be appropriate if we took
5 perhaps a short, maybe 10 minutes now, if that will be
6 appropriate.

7
8 THE COMMISSIONER: Yes.

9
10 THE WITNESS: Could I finish?

11
12 THE COMMISSIONER: Yes.

13
14 MR PARISH: Yes, that would be --

15 A. That the correspondence goes on. I actually received
16 a reply from Mr Wilson dated 3 July 2020, and I'll state -
17 it states in part:

18
19 *Thank you for your letter which I picked up*
20 *from my letterbox on Monday, 29 June 2020.*
21 *I really appreciated you delivering it to*
22 *my home.*

23
24 He concludes by saying:

25
26 *Thank you for your letter, it gave me a lot*
27 *to think about. I really admire a person*
28 *who stands up for what he believes in.*

29
30 So, I'm happy to table my GIPA application that I had
31 with that information, but I also gave Mr Wilson a copy of
32 an artist's impression of what Station Street was to look
33 like (witness holds up document). I'm happy to table that
34 as well.

35
36 THE COMMISSIONER: Yes, well, in the break perhaps provide
37 whatever it is you want to provide to Mr Broad and then we
38 can deal with it.

39
40 Councillor Nelson, I would take a break at 11.30
41 anyway, so to allow this to be done in one block to ensure
42 that everything can be presented in one simple picture,
43 I'll take it now. So, I'll break until 11.30 and we'll
44 resume then, thank you.

45
46 **SHORT ADJOURNMENT**
47

1 THE COMMISSIONER: Yes, Mr Parish.

2

3 MR PARISH: Commissioner, two matters. Firstly, we've
4 received a bundle of documents from Councillor Nelson and
5 we're just collating and paginating that at the moment, so
6 that'll be a second and hopefully that will speed up
7 examination on this topic.

8

9 Secondly, we've got three witnesses today and we shall
10 have to move them back slightly as to their expected start
11 time, so I'd submit that it might be appropriate if we gave
12 ex-Councillor Halstead a marking of 1.30 and ex-Councillor
13 Turland a starting of 3 or a marking of 3.

14

15 THE COMMISSIONER: Yes, I'm happy to do that. I'd prefer
16 people not to have to wait outside if they do not wish to.
17 They are welcome to, of course.

18

19 Mr Halstead can be told not before 1.30 and Mr Turland
20 can be told not before 3. I take it from that, Mr Parish,
21 you anticipate we will sit beyond 4?

22

23 MR PARISH: Yes.

24

25 THE COMMISSIONER: And I propose then to sit until
26 Mr Turland's evidence is finished. Is there any problem
27 with that?

28

29 A. Not from this side of the table.

30

31 THE COMMISSIONER: Yes, I'll ask Ms Hewson to make
32 enquiries with those assisting us generally to make sure
33 that's all acceptable. But as long as that's acceptable, I
34 propose to sit on until Mr Turland's finished. I don't
35 think he can be here tomorrow or for whatever reason, maybe
36 he can but it's not appropriate for other reasons I think.

37

38 MR PARISH: Yes.

39

40 THE COMMISSIONER: Yes, all right. Yes, you continue when
41 you're ready.

42

43 MR PARISH: Q. I'll just deal with the provenance of the
44 documents first as we paginate. You've provided us with a
45 bundle of documents, are they documents that you obtained
46 through the council on a GIPA request; is that correct?

47

1 Q. And they deal primarily with obtaining information
2 from the email address you held when you were at council;
3 is that correct?
4 A. Yes, I asked for information from a period of time in
5 relation to Station Street, is what I gave you.
6
7 Q. Thank you. We're just working up a paginated
8 bundle at the moment, but included in the documents that
9 you've provided is the full email chain between you,
10 Mrs Nelson - sorry, pardon me, Mrs Wilson and other certain
11 persons who have been redacted; is that correct?
12 A. That's correct.
13
14 Q. And this was around 25 June 2020; is this correct?
15 A. That's correct.
16
17 Q. You also referred to a letter; is that included in the
18 bundle, are you aware?
19 A. No, I don't think so, but I think it's in one of
20 your --
21
22 Q. Thank you, yes, I understand. And it also includes
23 about three pages along, and I appreciate you might not
24 have it in front of you at this stage, emails between Mayor
25 Gair, Peter (sic) McLaughlin and other certain people; is
26 that correct?
27 A. Yes, I believe that's right.
28
29 Q. And this was all in relation to Station Street; is
30 that correct?
31 A. That's correct.
32
33 MR PARISH: I might just take a moment to receive the
34 bundle, Commissioner.
35
36 Do you have a copy of that bundle, Commissioner?
37
38 THE WITNESS: Yes.
39
40 MR PARISH: Sorry, Commissioner?
41
42 THE COMMISSIONER: No. You proceed, Mr Parish.
43
44 MR PARISH: Thank you, Commissioner.
45
46 THE COMMISSIONER: I'll follow along as best I can.
47

1 MR PARISH: Q. The first email I'd like to take you to,
2 Councillor Nelson, is on page 17 which has at the very top
3 an email from you to a redacted person dated 21 June 2020;
4 do you see that?
5 A. Yes.
6
7 Q. Then there's an email below that on 19 June 2020; do
8 you see that?
9 A. Sorry, over the page?
10
11 Q. No, no, just below. Hopefully you're looking at a
12 page that says, "Archive manager export. Email Peter
13 Nelson", copying in Duncan Gair. "Subject: Re Station
14 Street Bowral upgrade"; do you see that?
15 A. Yes.
16
17 Q. And below that immediately there's an email dated
18 19 June 2020?
19 A. Yes.
20
21 Q. That predates the correspondence we've just been
22 talking about; do you accept that?
23 A. Right, okay, when I replied to that person?
24
25 Q. Quite. Do you recall who that person was?
26 A. No, I don't.
27
28 Q. Was it Royce Wilson? Do you have any specific
29 recollection of whether he was corresponding to you before
30 25 June 2020?
31 A. No, I don't. I received a lot of letters and emails
32 from people and I took the opinion that I was going to try
33 and reply to everybody on Station Street.
34
35 Q. You took the opinion you are going to - you were going
36 to try and reply to everyone?
37 A. I pretty much applied - replied to everybody that
38 approached me about Station Street because I thought it was
39 so important.
40
41 Q. I see. Do you have any specific recollection of
42 receiving this email at the time on 19 June 2020?
43 A. No.
44
45 Q. Did you receive a large amount of correspondence like
46 this at around that time?
47 A. Yes, we were getting a lot of correspondence from a

1 number of people and, as I said, I was replying to
2 everybody that wrote on Station Street.
3
4 Q. Just going to the next email chain along, page 21 of
5 the bundle.
6 A. Yes.
7
8 Q. That's an email that's been sent from a redacted
9 address on 22 June 2020; do you see that?
10 A. Yes.
11
12 Q. To you and almost all of the councillors?
13 A. Yes.
14
15 Q. Seems to exclude Councillor Scandrett for some reason;
16 is that about right? Do you agree with that?
17 A. Yeah, that's - yep.
18
19 Q. And Councillor Halstead for some reason; do you agree
20 with that?
21 A. Agree that this is a - yep, this is sent to us, yep.
22
23 Q. And this also predated your correspondence with
24 Mr Wilson; do you see that?
25 A. Yes.
26
27 Q. And then the next email through is an email on page 23
28 dated 22 June 2020; do you see that?
29 A. 22 June?
30
31 Q. Yes?
32 A. Yes.
33
34 Q. From you to someone redacted, copying in Lisa
35 Stratford; do you see that?
36 A. Yes.
37
38 Q. And is that you giving a reply to the person who has
39 written you an email below it on 22 June 2020?
40 A. Yes.
41
42 Q. Can I just pause and ask at this stage why there was
43 such correspondence in June 2020 about the Station Street
44 upgrade? Is this a sample of what you received every month
45 or was there some particular reason that you received more
46 correspondence in June 2020?
47 A. I can't recall. There was a lot of correspondence and

1 it was a topical issue.

2

3 Q. You don't recall if there was some contentious meeting
4 or the like immediately before this correspondence in June
5 2020?

6 A. Sorry?

7

8 Q. You don't recall whether there was any particularly
9 contentious council meeting or the like immediately before
10 this correspondence in June 2020?

11 A. June. Well, it was all getting a very hot topic 2020,
12 so it was just a hot topic, Station Street.

13

14 Q. I understand. Next email along on page 24.

15 A. Yep.

16

17 Q. This is from Mayor Gair to, I presume a member of the
18 public, but including you, Mr Whipper - pardon me,
19 Councillor Whipper, and general manager Ann Prendergast
20 dated 22 June 2020?

21 A. Yes, in fact what this letter was, was the standard
22 letter that the mayor was sending out, I think, to
23 everybody.

24

25 THE COMMISSIONER: I'm sorry, Mr Parish, can you just give
26 me the page number, I now have the bundle?

27

28 MR PARISH: 24 of the bundle.

29

30 THE COMMISSIONER: Thank you.

31

32 Q. I'm sorry, Councillor Nelson, this was a pro forma
33 response, was it?

34 A. No. There was a standard response that the council
35 had developed and so the view was that anyone that - a lot
36 of people were writing in about Station Street so they got
37 a standard response which included attachments to it that
38 people could go in and see how the trees were going to be
39 developed and whatnot.

40

41 Q. And that's what we see on page 24, is it?

42 A. I'm not - I think so, it might - that's sort of a
43 pro forma letter.

44

45 Q. Thank you.

46 A. With the attachments. So, if it says, "Please see
47 attached fax sheet", yeah, that's it.

1
2 MR PARISH: Q. And that was in response to an email on
3 22 June 2020?
4 A. It appears that way.
5
6 Q. On page 25. Can I just go back a step. Was the GIPA
7 application you made specifically in respect of
8 correspondence at this precise time?
9 A. Well, as you'd be - I don't know if you know, but the
10 local newspaper, The Express, did a so-called number on me
11 in regard to, the way we went to that paper, and so they
12 did an article on me. So, I just - from that article I was
13 able to GIPA and I said I just wanted a period of time
14 either side of when that - when I sent that email.
15
16 Q. I see.
17 A. Now, I specifically asked for the Station Street
18 matter only.
19
20 Q. Was there a point in time where - I withdraw that. I
21 think your evidence before was that this wasn't particular
22 or notable, this correspondence, and that it was fairly
23 constant to you --
24 A. Yes.
25
26 Q. -- and other councillors in respect of Station Street.
27 That's your evidence?
28 A. Yes, everybody was getting the same emails from
29 everybody.
30
31 Q. Do you recall if there was any ebb or flow, peak or
32 trough, in the types of emails you were getting in respect
33 of Station Street?
34 A. It's hard to say now.
35
36 Q. Was it generally opposed to Station Street?
37 A. It was all opposed to Station Street.
38
39 Q. Page 27 of the bundle, that's the information sheet
40 that would have been attached to the email which we saw
41 before from Mayor Gair on page 24, I think; is that
42 correct?
43 A. That's correct.
44
45 Q. Then we have, at page 30, I think part of the email
46 chain you were referring to before; is that correct?
47 A. Yes, that's correct.

1
2 Q. Between you, Jan Nelson, other councillors and Barry
3 Paul?
4 A. That's right.
5
6 Q. And then, on page 32, we have a slightly different
7 email chain, it appears to contain a different answer to
8 the one before?
9 A. Yes.
10
11 Q. I might just explain that further, Commissioner. On
12 page 30 you send an email at 11.11am, 25 June 2020, and
13 receive a reply at 1.44 with, "THAT'S CALLED DEMOCRACY".
14 But then on page 32 your 11.11am email of 25 June 2020
15 received a different response at 11.57am; is that correct?
16 A. I'm not with you, if you're asking me.
17
18 Q. You're with me or you're not with me?
19 A. I'm not with you. I'm at, "THAT'S CALLED DEMOCRACY".
20
21 Q. Do you see that that comment is in response to your
22 11.11am email, page 30.
23 A. Page 30, yeah, okay.
24
25 Q. You see the very top comment, "THAT'S CALLED
26 DEMOCRACY"?
27 A. Yes, right-o.
28
29 Q. That is a response to your 11.11am email.
30 A. And where's 11 .11?
31
32 Q. If you go --
33 A. Down? Yep. Okay, right-o.
34
35 Q. You see that?
36 A. Yep.
37
38 Q. And then, if we go over to page 32, in the middle of
39 the page we have your 11.11am email there?
40 A. Yep.
41
42 Q. But that's received a different response at 11.57am?
43 A. Yes, okay, yep.
44
45 Q. And on page 34, that's another one of Mayor Gair's
46 pro forma emails dated 26 June 2020; is that correct?
47 A. That's it, yep, that's the pro forma.

1
2 Q. Responding to an email on page 35; does that sound
3 about right?
4 A. Yep, yep. "Subject: Review Environmental Factor
5 Station Street Realignment".
6
7 Q. Yes.
8 A. Yep.
9
10 Q. Then we have a letter from the Transport for New South
11 Wales deputy secretary on page 37?
12 A. 37?
13
14 Q. Yes.
15 A. Okay, yep, that's right.
16
17 Q. And then on page 38 we have an email from you to some
18 councillors?
19 A. Yes.
20
21 Q. On Sunday, 28 June 2020?
22 A. 38?
23
24 Q. Yes.
25 A. Okay. "Thank you ..."
26
27 Q. And then on page 39, another email from you to three
28 councillors; do you see that?
29 A. That's right.
30
31 Q. You say there:
32
33 *The letter I wrote to [redacted] will be*
34 *the last letter I write to anyone*
35 *complaining about Station Street.*
36
37 Do you recall who the person you wrote to was there?
38 Was that to Mr Wilson?
39 A. I don't - well, there's confusion now whether it was
40 Mrs Wilson or Mr Wilson.
41
42 Q. Quite, yes. Let's take them together for now because
43 I understand your confusion. The Wilsons, was that --
44 A. Yes, that'd be right.
45
46 Q. Over the page to page 40.
47 A. Yes.

1
2 Q. That's an email chain that starts at the top, Friday,
3 26 June 2020, and appears to include state members as well
4 as unredacted people; is that correct?
5 A. Yes, that's correct, and that's what was happening
6 which highlighted the - you know, the writing to everybody.
7
8 Q. On page 42, I'm struggling to find a date with that
9 one, that might be part of the same - that's actually part
10 of the same chain.
11 A. Okay, 42.
12
13 THE COMMISSIONER: It seems to be on the foot of 41 and
14 then carried over to 42.
15
16 THE WITNESS: So, it's 41.
17
18 MR PARISH: Yes, that appears to be part of the same
19 chain, Commissioner, that follows above it.
20
21 Q. Have you also provided a copy of the - is that the
22 photo or artist's impression that you provided to the
23 Wilsons; is that correct?
24 A. That's right, Mr Wilson I gave that to. Yes, that's
25 correct.
26
27 MR PARISH: Commissioner, I might tender that bundle of
28 documents, including the artist's impression.
29
30 THE COMMISSIONER: Yes. Bundle of documents comprising
31 material received by Councillor Nelson in response to an
32 application made by him under the Government Information
33 (Public Access) Act 2009 together with an artist's
34 impression of the Station Street upgrade will together be
35 Exhibit P.
36
37 <EXHIBIT #P - BUNDLE OF DOCUMENTS COMPRISING MATERIAL
38 RECEIVED BY COUNCILLOR NELSON IN RESPONSE TO AN APPLICATION
39 MADE BY HIM UNDER THE GOVERNMENT INFORMATION (PUBLIC
40 ACCESS) ACT 2009 TOGETHER WITH AN ARTIST'S IMPRESSION OF
41 THE STATION STREET UPGRADE.
42
43 MR PARISH: Q. Can I take you back to page 32, please?
44 A. Yes.
45
46 Q. The email we were talking about before in the middle
47 of the page, 11.11am, 25 June 2020; do you see that?

1 A. Yeah, 25 June, 11.11, yeah.

2

3 Q. That's correct, and that was a reply from you to the
4 person who had, either on purpose or accidentally, included
5 you in a reply that came at 25 June 2020, 10.46am; do you
6 see that?

7 A. Right-o, yep.

8

9 Q. And you had taken us to it before. He wrote, or she
10 wrote:

11

12 *Good work [X]. Let's see what he says in*
13 *reply. His recent letter to [Y] didn't*
14 *convey that he has any idea of showing the*
15 *project. I am inspired that you have put*
16 *pen to paper or fingers to keyboard.*
17 *Best wishes, [Z].*

18

19 Can I take you up to your reply there.

20

21 A. Yep.

22

23 Q. You've replied:

24

25 *I will reply to him and you are right, I am*
26 *not changing my mind on Station Street.*
27 *Maybe I should not have received your email*
28 *but it shows how you are all working*
29 *together to attack councillors that do not*
30 *agree with your wishes.*
31 *Regards, Peter Nelson.*

32

33 *PS: By all means send this reply to all*
34 *your members, have a laugh, coordinate your*
35 *next move.*

36

37 On reflection, do you think that was an appropriate
38 way to communicate with that person?

39

40 A. No.

41

42 Q. On reflection, is it something you should not have
43 replied to at all or do you think you should have done it a
44 different way?

45

46 A. Done it in a different way.

47

48 Q. And, the reply you received to that was:

49

50 *What an appalling email, it just gets worse*

1 *and worse. You were the only one I BCC'd*
2 *but I'll certainly convey this message to*
3 *the others.*

4
5 Do you see that?

6 A. Yes.

7
8 Q. And then you replied:

9
10 *And I am the one with the vote so you don't*
11 *count.*

12
13 Do you see that?

14 A. Yes.

15
16 Q. Do you think on reflection that was an appropriate
17 communication?

18 A. Definitely not.

19
20 Q. And, on reflection, do you think, would you have sent
21 nothing at all or just approached it in a different way?

22 A. Approached it in a different way.

23
24 THE COMMISSIONER: Q. What about at the top of that
25 page where you, it appears from page 32, you send another
26 email, this one's in GMT but it appears to be almost
27 immediately after the one that Counsel Assisting drew your
28 attention to, so they're both at 1.09pm local time:

29
30 *No worse than what you are doing.*

31
32 What's that a reference to?

33 A. It's in reference to the fact that they were all
34 sending out their letters and emails to everyone to attack
35 the councillors over Station Street.

36
37 Q. What about the communication that was received on
38 25 June 2020 at the start of this email chain constituted
39 an attack on the councillors?

40 A. The one where they said, "Let's see what he does", I
41 think there's something there that's said --

42
43 Q. What's attacking about that?

44 A. Sorry, I've just missed what you - where you're
45 getting at.

46
47 Q. Yes, so, if you have page 32.

1 A. Yes.

2

3 Q. At the very top is where I started, and you said what
4 you were referring to there was people sending emails
5 attacking councillors, and what I then asked you was, if
6 you start at the beginning of the chain as one has to go to
7 the bottom and there we have the first communication, the
8 25 June communication from - we know it to be the Wilsons -
9 and you're familiar with that communication, I take it?

10 A. Okay, yes.

11

12 Q. Then I asked you, what was attacking about that
13 communication?

14 A. I just felt that they were - because of the consistent
15 emailing of the councillors, that was no worse than what
16 they were doing, just continually approaching councillors
17 objecting to Station Street.

18

19 Q. What's objectively wrong about that?

20 A. Well, they have a right to write to councillors on any
21 matter with their concerns.

22

23 Q. So, do I take it, sitting here today, you accept that
24 there was nothing wrong with members of the public writing
25 perhaps persistently to councillors about a matter that
26 they had an interest in?

27 A. That's correct.

28

29 Q. You agree with that?

30 A. Yep.

31

32 Q. So, sitting here today, would you describe that
33 conduct as an attack on councillors?

34 A. No.

35

36 THE COMMISSIONER: Yes, thank you, Mr Parish.

37

38 Just one last before Mr Parish starts.

39

40 Q. It might be suggested to me that communications of
41 this kind, whether involving you or others, displays an
42 adversarial relationship between the governing body and the
43 community; what do you say to that suggestion?

44 A. I agree with that in this specific item on this matter
45 at Station Street, and that's why I said later on that I
46 wasn't going to reply to any more people on Station Street
47 and stick with the mayor's standard response; that was the

1 best way to handle the matter with the Station Street
2 residents.

3
4 THE COMMISSIONER: Thank you. Yes, Mr Parish.

5
6 MR PARISH: Q. Can I take you back to Exhibit H now
7 which has the subsequent correspondence in respect to the
8 Wilsons?

9 A. Sorry?

10
11 Q. H.

12
13 THE COMMISSIONER: If there's some paper that can be taken
14 from Councillor Nelson so he's not besieged by exhibits.
15 Thank you.

16
17 MR PARISH: Q. We were at the back of that dealing with
18 the more fulsome email chain that is in Exhibit P. If we
19 can then go to the next letter, if you go back towards the
20 front. I'm not sure whether you've got numbering on your
21 version but --

22 A. No. No, I haven't.

23
24 Q. We're looking for an email which says, "Station Street
25 upgrade, Mr Royce Wilson. Dear Mr Wilson, thank you for
26 your ..." ?

27 A. 30 July?

28
29 Q. I don't have a date on my one.

30
31 THE COMMISSIONER: Is this an email or a letter?

32
33 THE WITNESS: Letter.

34
35 MR PARISH: Exhibit email H?

36
37 THE COMMISSIONER: Q. Councillor Nelson, do you have a
38 document that looks like that (Commissioner holds up
39 document)?

40 A. No.

41
42 Q. Exhibit H?

43 A. This one?

44
45 Q. The first line is, "Thank you for your letter dated
46 25 June"?

47 A. Yes, "Thank you for your letter 25 June".

1
2 MR PARISH: Q. Do you recall when you sent that letter
3 to Mr Wilson?
4 A. Would have been around that date; I dropped off two
5 letters to Mr Wilson.
6
7 Q. Yes, we may as well deal with that topic now. Why did
8 you drop them off and hand-deliver them rather than post
9 them?
10 A. The post takes a long time and I'd included the map,
11 and it was on the way to Bowral where I was going, so I
12 just - it was easy just to make one turn and drop it off.
13
14 Q. Mrs Wilson gave some evidence which may be taken to
15 suggest that there was a level of intimidation in
16 hand-delivering a letter; do you have anything to say to
17 that idea?
18 A. Absolutely not.
19
20 Q. Do you think in retrospect perhaps posting letters,
21 notwithstanding the perhaps inefficiencies involved, might
22 be a better way to go about corresponding with people?
23 A. No, I don't.
24
25 Q. In respect of this letter, was this the sort of
26 pro forma letter that you had decided might be appropriate,
27 or is it --
28 A. No.
29
30 Q. -- a more customised letter?
31 A. No. I tried to write to the specific issues that they
32 were raising at the time, and you'll see that with
33 Mr Wilson he raises a number of topics, so I tried to
34 address each of those topics even though they had no
35 relevance to Station Street.
36
37 Q. Given that you felt, at least at the time, that the
38 correspondence you were receiving was something akin to an
39 attack on councillors, do you recall why you took the time
40 to provide such a fulsome response to Mr Wilson?
41 A. Well, the way he'd written the letter, it raised a
42 number of issues and I - I think that was a Sunday, I sat
43 down and thought I'd take my time to do my best response to
44 him so I covered every topic for him.
45
46 Q. Can you go back a few more pages towards the front
47 now.

1
2 MR PARISH: Does the Commissioner have a paginated
3 version?
4
5 Q. It's a letter on page 10 of those lucky enough to have
6 paginated versions, with 30 July 2020?
7 A. Yes.
8
9 Q. Is that a letter that you received from Mr Wilson
10 around that time?
11 A. Yes.
12
13 Q. Is that your handwriting on the top of it there?
14 A. Yes.
15
16 Q. And you've written:
17
18 *What game are you playing - happy to reply*
19 *again now stop!*
20
21 What was the reason that you wrote that on this
22 letter?
23 A. I just felt that he'd already written to me, and I'd
24 replied in great detail, and then he'd written another
25 letter to me requiring me to go into detail again with him,
26 and so I thought that they're just playing games with me.
27
28 Q. And, was that a letter that you replied to him by
29 hand-delivering?
30 A. Yes, I did that, it was easy to just drop it off.
31
32 Q. Do you think in retrospect that this is perhaps
33 something you should not have done?
34 A. I think the dropping of the letter off I think's fine
35 because of the post and the - it was on the way, but in
36 hindsight I wouldn't have written that on the letter again.
37
38 Q. This is 30 July 2020, the email we were looking at
39 before had you noting on about 29 June 2020 that you were
40 going to stop replying to people who were corresponding
41 about Station Street. What precipitated you breaking that
42 rule and replying, if that's what this is, at a time after
43 30 July 2020?
44 A. This was because it was that handwritten letter to me.
45
46 Q. Pardon, a handwritten letter to you?
47 A. Yeah.

1
2 Q. We're looking at the 30 July 2020 letter that is typed
3 by Mr Wilson, aren't we?
4 A. It was posted to me.
5
6 Q. I'll start again. We're looking at a 30 July 2020
7 typed letter that was posted to you?
8 A. Yes.
9
10 Q. And you just referred to a handwritten letter; is that
11 correct?
12 A. Yes.
13
14 Q. Is that not in this bundle?
15 A. Yeah. Yes, yes.
16
17 Q. Yes, it is or, yes, it isn't - no, it isn't?
18 A. Yes, I'm with you, 25 June, now he's written on 30th
19 of July, yep.
20
21 THE COMMISSIONER: Q. I think, Councillor Nelson, in an
22 earlier answer you gave reference to a handwritten letter;
23 do you mean the letter was posted to you rather than
24 written in handwriting?
25 A. No, no, it may have been typed, but it was posted to
26 me and we received it in our weekly bundles.
27
28 THE COMMISSIONER: Yes, thank you. I think you and
29 Counsel Assisting might have been at cross-purposes, so
30 thank you for that clarification.
31
32 MR PARISH: Thank you, Commissioner.
33
34 Q. Do you think scrawling a handwritten note at the top
35 of a letter and then hand-posting it to someone is an
36 effective way for a councillor to communicate with a
37 ratepayer?
38 A. No.
39
40 Q. And I take it from your previous answers that, on
41 reflection, it's not something you would do again?
42 A. That's correct.
43
44 Q. Do you have a view about whether this sort of
45 communication with people who are opposed to Station Street
46 exacerbated their concerns and activities against the
47 Station Street bypass?

1 A. Yeah, I think they did.

2

3 Q. Pardon me?

4 A. Yes.

5

6 Q. And in retrospect do you think that perhaps, if this
7 had been dealt with in a different way, a better way, there
8 may not have been so much contention about the Station
9 Street bypass, at least with respect to some interest
10 groups?

11 A. I think in retrospect we should have all agreed that
12 all correspondence come from the mayor and that all the
13 councillors not respond to anyone, but then, you know, that
14 raises other issues.

15

16 Q. I think we've had some evidence earlier to the effect
17 that there were certain interest groups who, in relation to
18 the Station Street bypass, no matter how much communication
19 or consultation there would have been would have been
20 opposed to it. Do you have any view as to whether that
21 might be correct or not?

22 A. I believe that's right.

23

24 Q. Going back through the bundle now to page 6.

25 A. Yes.

26

27 Q. Now, this is a "Letter to Mr R.C. Wilson - Station
28 Street Upgrade", where you refer to the letter dated
29 30 July 2020; do you see that?

30 A. Yes.

31

32 Q. So, is the chronology correct: you hand-wrote on top
33 of his own letter and included that in the same envelope as
34 this more formal typed letter?

35 A. Yes.

36

37 Q. And, I take it, you broke your rule of not replying to
38 such correspondence after 29 June 2020 because a letter had
39 been delivered to you from Mr Wilson; is that correct?

40 A. That's correct, yes. The other - anything that came
41 by email then could have been easily returned by email from
42 the mayor with the attachments.

43

44 Q. Do you think the perception of at least some of the
45 interest groups that the Station Street bypass issue was
46 poorly communicated has some validity?

47 A. No, I don't.

1
2 Q. Well, we've just had some examples of your
3 correspondence --
4 A. With the exception.
5
6 Q. Was that the only exception you saw, your own
7 communication?
8 A. I didn't see what other councillors were writing at
9 the time.
10
11 Q. Do you think it's generally appropriate to impute the
12 motives of community members who have an opposition to
13 something, even if you may hold it as a personal view, when
14 corresponding with them on that topic?
15 A. Hard to say because, you know, if they keep persisting
16 with the same objection there comes a point in time where
17 you can stop replying to them. There is an issue that
18 councils had previously where people have continually
19 written objecting to the position council's taken, to the
20 extent that you've had to declare them as a vexation (sic)
21 litigant and you don't reply to them any more apart from
22 saying, "Thank you for your letter", full stop. Station
23 Street was nearly - but while Station Street was not in
24 that for one particular person, that requires - needs one
25 person doing it continually.
26
27 Q. Can Councillor Nelson please be shown MFI-6. This is
28 a bundle of documents that was produced to this inquiry by
29 Ms Laurel Cheetham. I'm not sure if it's numbered, but
30 it's the last two pages fortunately, so if you could just
31 go to the back two pages.
32 A. From the back?
33
34 Q. Yes, please. This was a - if we start at the very
35 last page - an email from Laurel Cheetham to the general
36 manager enclosing a submission in respect of the draft
37 operational plan 2020/21 for full consideration by council
38 and all councillors; do you see that?
39 A. Yep.
40
41 Q. And, for whatever reason, it appears that Ms Cheetham
42 then forwarded the same submission to all councillors a few
43 days later; do you see that? Next one up?
44 A. That goes up to the top or the next one?
45
46 Q. On the 26th she's written or emailed the general
47 manager. On 30 June she's emailed councillors it appears

1 directly with the same submission; do you see that?

2

3 THE COMMISSIONER: Mr Parish, I have in mine numbers in
4 the left margin.

5

6 THE WITNESS: Yeah, I do.

7

8 MR PARISH: Q. Do you have email 2?

9 A. Yeah, No.2.

10

11 Q. Number 2 is Ms Cheetham writing to, it appears, all
12 Wingecarribee councillors?

13 A. Yes.

14

15 Q.

16 *Dear Wingecarribee Councillors. I am*
17 *forwarding my full submission to you as I*
18 *expect will be summarised in the report of*
19 *the draft budget. Please consider and*
20 *respond to the points I have made in my*
21 *submissions.*

22

23 Do you see that?

24 A. Yes.

25

26 Q. And then, you appear to have replied which is email
27 No.3:

28

29 *Dear Ms Cheetham. Thank you for your*
30 *detailed submission. I will have*
31 *considered your concerns but unfortunately*
32 *I do not agree with your assessment in a*
33 *majority of your statements.*

34

35 Do you see that?

36 A. Yeah.

37

38 Q. And, for whatever reason, that continues over the
39 page with email 4?

40 A. Yes.

41

42 Q. Which is Ms Cheetham at 10.04am, 30 June 2020, writing
43 to you:

44

45 *Thank you Peter for your prompt reply. Can*
46 *you elaborate please on the reasons why you*
47 *do not agree with my assessment?*

1
2 Do you see that?
3 A. Yes.
4
5 Q. Do you see your reply at the top there, 30 June 2020
6 at 11.01am?
7 A. Yes.
8
9 Q. This was a submission from Ms Cheetham in respect of
10 the draft plan - draft budget, I should say. Why did you
11 respond with comments about Station Street?
12 A. It must have been - was it in her submission, her
13 letter?
14
15 Q. Her submission about the draft operational plan
16 included reference to Station Street; is that your answer?
17 A. Yes.
18
19 Q. When you refer to, at the very first sentence there:
20
21 *I am pretty upset that your group has been*
22 *playing councillors by getting people to*
23 *write complaining about Station Street then*
24 *sending my replies around to other people.*
25
26 Do you see that?
27 A. Yes.
28
29 Q. What's that got to do with the draft operational plan?
30 A. In relation to, that it's Station Street in it and I
31 must have felt that she was part of the group that was
32 doing that.
33
34 Q. Do you accept that that sentence might leave her with
35 the impression that, rather than dealing with it on the
36 merits, you are taking umbrage at the tactics of the group
37 that you think she is associated with?
38 A. Yes. Yeah, I believe that would be correct.
39
40 Q. Do you think that was an appropriate thing to say in
41 retrospect?
42 A. In retrospect it wasn't the right thing to say.
43
44 Q. A couple of paragraphs down comments like:
45
46 *"Let's see what he says this time".*
47

1 And:

2
3 *"Looks like he's not changing his mind" are*
4 *a couple of comments being sent around.*
5 *That might not be democracy but it also*
6 *means that I will not be sending any more*
7 *replies to anyone else about Station Street*
8 *apart from the mayor's response.*
9

10 A. To me, it shows that I got confused between the
11 Wilsons and Laurel Cheetham.

12
13 Q. Do you think that this sort of correspondence assisted
14 in causing a lack of communication or obfuscating
15 communications between the interest groups and the council,
16 at least in respect of the Station Street issue?

17 A. I think, to a degree, because the mayor was sending
18 out correspondence to everyone with the standard reply, and
19 I think this was a hiccup in the system by councillors
20 replying separately to individuals, but the overall basis
21 of the correspondence from the council to the residents
22 that were objecting was sufficient, particularly as it had
23 the standard pro formas and was referring people to
24 different council meetings that they could see and, if they
25 didn't do that, then they weren't responding in the right
26 way as well.

27
28 Q. Do you think that this sort of correspondence possibly
29 could have contributed to the perception that councillors
30 were taking an adversarial approach to members of the
31 community?

32 A. This particular one.

33
34 Q. Do you think it could contribute to the impression
35 that either you as an individual councillor or the
36 governing body as a whole were making ad hominem attacks or
37 playing the man rather than the ball when it came to
38 certain issues?

39 A. If you look at it in isolation you could say that,
40 yes.

41
42 Q. Was that only in isolation that you did this sort of
43 thing, this wasn't a thing you did regularly?

44 A. No, I don't believe I did.

45
46 Q. Can I take you to MFI-7, please. Do you have as the
47 front page of MFI-7 a letter on the Southern Highlands

1 Chamber of Commerce and Industry letterhead?
2 A. Yes.
3
4 Q. Can I take you to the very last page of this bundle,
5 please.
6 A. Yes.
7
8 Q. Do you see that that is an email from Mr Paul Samulski
9 to all councillors dated 4 March 2021? You might need to
10 turn to the page before to see.
11 A. Yes.
12
13 Q. Do you see your reply there dated 5 March 2021, or at
14 least the forwarding of that email to some other people?
15 A. 5 March 21?
16
17 Q. That's correct, yes?
18 A. Yes, to Steve Horton and Duncan Gair.
19
20 Q. That's correct. And that's an email you sent to
21 Mr Horton, who was the president of the local Chamber of
22 Commerce about Mr Samulski's email; is that correct?
23 A. Yes.
24
25 Q. And in that letter you bring the email to the
26 attention of the chamber board and ask him to:
27
28 *take appropriate action to sack Mr Samulski*
29 *from the position of council liaison office*
30 *between the chamber and Wingecarribee Shire*
31 *Council. His email is disgusting and*
32 *inappropriate to say the least and not*
33 *worthy of a person who is supposed to be*
34 *the contact person between the chamber and*
35 *council.*
36
37 Do you see that?
38 A. Yes, I do.
39
40 Q. Do you think that was an appropriate email to send?
41 A. I do.
42
43 Q. Why do you say it's an appropriate email to send?
44 A. Because of the letters that he'd written, one to the
45 Minister for Planning and the other letter that he'd sent
46 to all the councillors.
47

1 Q. Are you writing this in your personal capacity or in
2 your public capacity?

3 A. I'm writing as a public capacity.
4

5 Q. Do you think this is an example of civic leadership,
6 to seek to have someone fired from their position because
7 they wrote an email you didn't like?

8 A. Yes, I do actually.
9

10 Q. Can you explain why?

11 A. Firstly, the letter from Mr Samulski to the Minister
12 for Planning which was complaining about the report that
13 went up to council and the issues associated with him, and
14 in that letter to the Minister for Planning not once did he
15 refer to the fact that there was a covenant on the Fairfax
16 Estate and that he'd signed a contract stating that he
17 would only build one residence on the corner block that he
18 had purchased. So, he was lying to the Minister for
19 Planning and then he followed it up with the further letter
20 which I found offensive, and --
21

22 Q. What does that have to do with his role as council
23 liaison officer between the chamber and the Wingecarribee
24 Council?

25 A. Sorry?
26

27 Q. What does that have to do with his position at the
28 Chamber of Commerce?

29 A. He was the - he'd been recently promoted as the
30 liaison officer between the chamber and council. So, I
31 believed that having Mr Samulski as the liaison officer
32 with council was the wrong move and, because I'd - I knew
33 Steve Horton, I'd worked with him through council
34 activities, I sent off that email. In hindsight I should
35 have rung Mr Horton and talked to him about the issue.
36

37 Q. Is that so there wasn't a paper trail of what you were
38 asking him to do?

39 A. No, no.
40

41 Q. Why was that?

42 A. Well, sometimes a phone call's a better way to do it
43 than put it in the email, but I don't talk to Mr Horton on
44 a regular basis, I only saw him occasionally, so I sent the
45 email drawing his attention to the fact that I didn't think
46 it was appropriate that he should be the liaison officer
47 between council and the chamber.

1
2 Q. You went further than that, you specifically asked him
3 to sack Mr Samulski. Was that a step too far perhaps?

4 A. I think, if you probably changed "sacked" to "review
5 his position" would have been better.
6

7 Q. So, do you accept that the impression left by this
8 email that you were commanding Mr Steve Horton to do
9 something was, on reflection, perhaps inappropriate?

10 A. Well, I was expecting him to take the information to
11 the chamber, to raise it with the view to discussing it
12 and, while I didn't say "possible sacking", with that idea
13 that Mr Samulski's position be reviewed and with the idea
14 that he should not be the officer, therefore, being sacked
15 is the appropriate outcome.
16

17 Q. That's all well and good, but your email goes further
18 than that, do you accept, and effectively --

19 A. It does.
20

21 Q. -- commands him to sack Mr Samulski?

22 A. Yes, it does.
23

24 Q. Do you think this is indicative of council culture, in
25 the sense that there was an adversarial approach to people
26 who disagreed with them in the community?

27 A. No, it's not the normal approach, it's a one-off, and
28 I think in hindsight I should have taken it to the mayor in
29 the first instance and had it dealt that way.
30

31 Q. That was going to be my next question. What other
32 avenues did you think, or at least have you reflected upon,
33 which may have been more appropriate? Going to the mayor
34 may have been one thing, raising it in a council meeting
35 perhaps, would that have been another?

36 A. No, no. I think it would have been taken to the
37 mayor, you would have shown him the correspondence from
38 Mr Samulski, and that could have been discussed with the
39 general manager and a formal letter could have come from
40 the mayor and the - or the general manager, because it's
41 not the council's remit to sack - they weren't in the
42 position to sack Mr Samulski.
43

44 Q. Quite. Do you accept that the impression one could
45 glean from this email is that, when someone says something
46 or does something that you don't like, you threaten them
47 with their position?

1 A. Not generally. In this instance, because of a past
2 history with Mr Samulski, the letters that he'd written to
3 the Minister and the - and the letter that he'd written to
4 us was the way I was thinking at that time.
5
6 Q. It's not something you generally did or would profess
7 to do regularly, threaten people's positions if they didn't
8 do something that you perceive they should have done or not
9 do?
10 A. No, I don't.
11
12 Q. I'll just take you to tender bundle E, Volume 1.
13 A. Before we get off that --
14
15 Q. Yes?
16 A. Did you see the last paragraph that Mr Samulski wrote
17 back to me?
18
19 Q. Yeah, I will in fairness address that now, thank you
20 for reminding me. If you can go to the next page in that
21 bundle.
22 A. On 5 March?
23
24 Q. 5 March 2021. That's a response by Mr Samulski's
25 email address; is that correct?
26 A. Yes, it is.
27
28 Q. And he's written you an email on that date using, at
29 best, colourful language. Can you tell me how - what
30 impression that left on you when you received a letter or
31 an email like this?
32 A. I thought, well, that's pretty typical of this person
33 to - shows him up for what he is and I thought, well, I
34 didn't pursue it any further and I think the timeline says
35 that, we're all sacked anyway.
36
37 Q. You're not sacked, you're suspended, but we'll come to
38 that in a second. Did that leave with you the impression
39 that, whilst as you give evidence now the choice of wording
40 may not have been appropriate, but does that fortify your
41 view that it may have been inappropriate for him to have
42 been a council liaison officer between the chamber and the
43 shire council?
44 A. That's particularly what I thought - well, that just
45 verified why he shouldn't have been the person,
46 particularly as he's a JP as well.
47

1 MR PARISH: Yes. Commissioner, I might formally tender
2 that now, it had been previous marked only.
3
4 THE COMMISSIONER: Yes, my copy of the --
5
6 THE WITNESS: Could I just --
7
8 THE COMMISSIONER: Just bear with me a moment and then
9 you'll be given an opportunity. So, it was MFI-7?
10
11 MR PARISH: That's correct.
12
13 THE COMMISSIONER: My version of MFI-7 doesn't have the
14 whole bundle. So, you want the whole bundle in, do you?
15
16 MR PARISH: Yes, please.
17
18 THE COMMISSIONER: The bundle of documents formerly
19 identified as MFI-7 will be Exhibit Q.
20
21 **<EXHIBIT #Q - BUNDLE OF DOCUMENTS FORMERLY IDENTIFIED AS**
22 **MFI-7.**
23
24 THE COMMISSIONER: Yes, I'm sorry, Councillor Nelson, I
25 cut you off?
26 A. In fairness, would it be appropriate to say that
27 Mr Samulski told me exactly what to do with his letter?
28
29 THE COMMISSIONER: Yes.
30
31 MR PARISH: That is something, we've been avoiding the
32 specifics, but you should be given the opportunity to reply
33 to that and, yes, we'll take it.
34 A. So, it's inappropriate to read out the last paragraph?
35
36 Q. Probably. I'll leave that to the Commissioner, he has
37 a higher level of propriety than me which is why he's
38 sitting there.
39
40 THE COMMISSIONER: You can take it that I've read it, it's
41 now part of the evidence in this inquiry. If there's some
42 particular reason that you want to read it onto the record
43 I'll hear from you what that is, but I've read it, it is
44 inappropriate language. I don't think there's any doubt
45 that it probably is something that should not have been
46 written on any view. What more do you --
47 A. Could it be read up to a certain point? That would

1 then allow people to gain what he did say.

2

3 Q. Well, it will be a public exhibit, but yes, if you
4 insist.

5 A.

6 *So in closing here is what I suggest you do*
7 *with my correspondence. Print the*
8 *aforementioned email out, lay it flat on*
9 *the table, roll it into a spherical long*
10 *thin shape, pick it up between your index*
11 *finger and thumb, lean forward, grit your*
12 *teeth and ...*

13

14 THE COMMISSIONER: Yes. Thank you, Mr Parish.

15

16 THE WITNESS: Thank you.

17

18 MR PARISH: Q. Did you feel threatened at all by that
19 reply or something you took --

20 A. No. No, I didn't feel threatened, I just went, "Oh
21 well, that's typical, I'll move on".

22

23 THE COMMISSIONER: I think to round out that topic,
24 Mr Parish, that reply was produced to you directly by
25 Mr Samulski, wasn't it?

26

27 MR PARISH: Yes.

28

29 THE WITNESS: Excuse me, could I just go back one, please?

30

31 THE COMMISSIONER: Q. Go back one?

32 A. To Laurel Cheetham.

33

34 Q. Yes, is it a qualification?

35 A. Well, it is a qualification.

36

37 Q. Yes.

38 A. I worked with Laurel Cheetham on the Heritage
39 Committee and I was a bit surprised that this came before
40 the inquiry. I've got - there was a couple of letters that
41 she'd sent to me detailing about Station Street back in
42 2017 and the second letter is in relation to questions and
43 comments on item 5.4 Station Street upgrade of the agenda
44 of the Heritage Advisory Committee meeting.

45

46 At that meeting we discussed having a plaque to
47 recognise the eight oak trees at Station Street being

1 placed in the adjacent park and both Councillor McLaughlin
2 and I were happy to support the suggestion at council. I
3 actually, in working with Laurel Cheetham at the Heritage
4 Committee, because she's a very intelligent person and I
5 also have a great deal of respect for Laurel, and I'd like
6 to put on the record that I'm more than happy to offer her
7 a sincere apology for any hurt that I may have caused her.

8
9 THE COMMISSIONER: Yes, thank you, that's most
10 appropriate. Mr Parish.

11
12 MR PARISH: Q. If you've got tender bundle E in front of
13 you, can you go to page 33 to start with?

14 A. I don't think it's got the numbers there.

15
16 Q. The tender bundle, it should be in the bottom in the
17 middle.

18 A. Which page number, sorry?

19
20 Q. 33.

21 A. Thank you. Yes.

22
23 Q. That's a quite heavily redacted set of emails that
24 start around 29 March 2022; do you see that?

25 A. Yes.

26
27 Q. Do you see the bottom there, there is an email from
28 governance sent Tuesday, 29 March 2022 at 1.52pm?

29 A. Yes.

30
31 Q. That states that there was an attached notice of
32 decision to an email of yours dated 1 March 2022 concerning
33 your GIPA application; do you see that?

34 A. Yes.

35
36 Q. Can I go one email further in now, if you go down one
37 further page. Again, heavily redacted, but do you see --

38 A. Sorry, what page number?

39
40 Q. It's 34.

41 A. Yes, heavily redacted.

42
43 Q. It's heavily redacted, but do you see in the middle of
44 the page it's an email from you to a member of staff on
45 Tuesday, I think it's 29 March, but that's been redacted as
46 well. Do you see that?

47 A. Yes.

1
2 Q. And you say:

3
4 *Dear [Redacted]. Thanks for that*
5 *information.*
6

7 I take it at this stage from the content of the email
8 that you had not received the GIPA information that you had
9 requested?

10 A. That's right.

11
12 Q. And you say:

13
14 *As you may know I have been called by the*
15 *Commissioner to attend the inquiry and*
16 *would like to know when I might get the*
17 *answer to my GIPA application relating to*
18 *the emails about Station Street. Otherwise*
19 *I will have to tell the Commissioner that*
20 *the general manager has failed in her*
21 *responsibility to provide me with the*
22 *information.*
23

24 Do you see that?

25 A. Yes.

26
27 Q. What term of reference into the inquiry did you
28 understand the general manager providing you with GIPA
29 information fell under?

30 A. I'd put in about five GIPA applications about
31 six months ago and I've received information on two but
32 there's still about three outstanding.
33

34 Q. Do you accept that that could be taken as a threat?

35
36 *Otherwise I will have to tell the*
37 *Commissioner that the general manager has*
38 *failed in her responsibility ...*
39

40 A. I didn't write it as a threat.

41
42 Q. Do you see how it could be taken as a threat?

43 A. Well, if you don't comply with the GIPAs in a certain
44 timeframe, then the next step is to go to the Commissioner;
45 it's the wrong Commissioner, it's the Information
46 Commissioner, not the Commissioner here.
47

1 Q. Quite. Now that makes a lot more sense. But going
2 back up to the previous email we were talking about --

3 A. Page 30 --

4

5 Q. At the bottom of page 33.

6 A. Yes.

7

8 Q. It continues:

9

10 *I note from your application form you wish*
11 *to receive a paper copy of the relevant*
12 *records. As indicated in the notice of*
13 *decision, as soon as you pay the processing*
14 *charges of \$40 the records will be posted*
15 *to you.*

16

17 Do you see that?

18 A. Yes.

19

20 Q. So, is it a simple case that you just hadn't paid the
21 fee that you needed to to receive the information?

22 A. It could, but I could have disputed that because the
23 GIPA says that the \$30 fee also includes some photocopying
24 for the application, so for the information I got they
25 charged me extra.

26

27 Q. Did that stem partly from the fact that you don't
28 appear to have read or noted the notice of decision that's
29 referred to earlier in that email?

30 A. Sorry, I didn't quite hear you.

31

32 Q. At the start of the email it says:

33

34 *Dear Mr Nelson. I have attached my email*
35 *to you dated 1 March 2022 and the notice of*
36 *decision.*

37

38 And then it refers further down to the fact that:

39

40 *As noted in the notice of decision you have*
41 *to pay the processing charges.*

42

43 Do you see that?

44 A. Yes.

45

46 Q. Had you read that notice of decision at the time you
47 sent this email?

1 A. I can't recall.

2

3 Q. You don't recall. I'm going to show you Exhibit 0
4 now. And, if you've been watching any of the inquiry or
5 observing, you might be aware that Exhibit 0 contains a
6 media release that I think you were one the councillors who
7 put their name to. And, if you'd been following it along
8 at home you might also know the gravamen of the questions
9 I'm about to ask you. Do you recall how this press release
10 came about?

11 A. Duncan Gair called me, said that, "We're going to get
12 a couple of councillors together and meet up and have a -
13 just have a yarn about what was happening".

14

15 Q. And what do you mean by "what was happening"? Are you
16 referring to the administrator's comments?

17 A. Just that, I think he said that, you know, "We've been
18 copping it a lot in the press, the public, and this was a
19 way that we could put something out to try and redress the
20 situation".

21

22 Q. And was the way to do that as proposed at that meeting
23 by way of media release?

24 A. That was the suggestion.

25

26 Q. Was it ever discussed in that meeting whether both
27 submissions and appearing at this inquiry might have been
28 the position or time to put your side of the story forward?

29 A. Sorry, in relation to what, the Commission?

30

31 Q. Quite.

32 A. No, it had nothing to do with talking about the
33 Commission at all.

34

35 Q. Did any of the people in that meeting as you
36 understood it realise that they would have an opportunity
37 to speak to the inquiry and provide submissions which would
38 be considered by the inquiry on some of the matters which
39 the interim administrator had addressed on?

40 A. Well, that's true, but that wasn't discussed at the
41 time.

42

43 Q. And I take it that you had a hand in the drafting of
44 this media release; is that correct?

45 A. Not really.

46

47 Q. Can you tell me what input you had in respect of this

1 media release?

2 A. Oh, I just received it and they said, "Have a look at
3 it and see what you think".
4

5 Q. Do you warrant or agree that the factual matters that
6 are set out in this press release are true, whether they're
7 attributed to Mr Gair or someone else?

8 A. I thought it was - they said it was okay, and I asked
9 Duncan Gair whether it was defamatory or not, and he said
10 he'd run it past his legal people and it wasn't defamatory.
11

12 Q. Do you recall if there was anyone in the meeting other
13 than the four councillors and the suspended councillor,
14 Mr Markwart - pardon me, not the suspended, the retired
15 councillor Mr Markwart?

16 A. Just one other.
17

18 Q. Who was that other person?

19 A. That was Mr Barry Paull.
20

21 Q. Do you recall whether Mr Barry Paull had any input
22 into this document?

23 A. Not really. He said, if you guys, I think, if you
24 want to do it, go ahead, but he was basically out there on
25 a social call.
26

27 Q. It's a complete coincidence that Mr Barry Paull was in
28 the same space as the five of you; is that correct?

29 A. Yes.
30

31 Q. Where were you meeting, can you remind me?

32 A. I can't recall when we were meeting.
33

34 Q. Who organised the meeting; can you remind me?

35 A. Duncan Gair rang me.
36

37 Q. Did you ask Mayor Gair whether it was a coincidence
38 that Barry Paull was there?

39 A. No, I didn't.
40

41 Q. Do you recall if you knew whether Barry Paull felt
42 like he had been subject to similar unfair criticism by the
43 interim administrator?

44 A. I don't think that was raised.
45

46 Q. Do you recall or know whether any of the factual
47 information provided in this press release was provided by

1 Mr Paull?

2 A. No, it wasn't. Not to my knowledge anyway.

3

4 Q. Going back to the substance of the document itself,
5 did you query Mayor Gair on any of the statements by him or
6 the parts of it which are not quotes attributable to him
7 but are statements of fact in this document?

8 A. No, I didn't.

9

10 Q. Are you confident that all the factual information set
11 out in these documents is correct?

12 A. Pretty close, yeah.

13

14 Q. Do you share the view of Mr Gair on the matters which
15 are opinion or comment?

16 A. I do.

17

18 Q. Can I take you to the last two sentences on page 1.

19 A. I'd just clarify, the last sentence?

20

21 Q. The last two sentences, I'll read them out for you --

22 A. I believe that that wasn't in the original draft and I
23 think Councillor Gair included that.

24

25 THE COMMISSIONER: We'd better be precise about this.

26

27 MR PARISH: I'll identify the sentence I'm talking about
28 first and then I'll ask a few questions on that.

29

30 Q. The sentence I'm referring to at the bottom of page 1
31 is:

32

33 *"The plethora of external reports he*
34 *commissioned found relatively insubstantial*
35 *issues and no smoking gun to justify the*
36 *suspension of the council".*

37

38 Do you agree with that? Is that the sentence you were
39 referring to?

40 A. No.

41

42 Q. Right. Are you referring to the last sentence of the
43 press release which is --

44 A. Which starts with --

45

46 Q.

47

1 *"Hardly the smoking ruin alleged by the*
2 *Administrator".*

3
4 A. Yes.

5
6 Q. That's the sentence that was added without - after you
7 had seen the last draft, at least?

8 A. Yes.

9
10 Q. Do you agree with the comment though?

11 A. Yes.

12
13 Q. Can you tell us when the administrator alleged that
14 the council was a smoking ruin?

15 A. From all the - from all the reports that he'd
16 undertaken and comments that were coming out in the press.

17
18 Q. He used the words "smoking ruin", did he?

19 A. The - the - no, the smoking ruin has come from what
20 was being provided in the press out to the public.

21
22 Q. This refers to allegations made by the administrator.
23 Are you saying that your impression of the import of the
24 idea of a smoking ruin was being through the press rather
25 than words directly attributable to the administrator?

26 A. No, the administrator said quite a few words that are
27 disparaging words towards former councillors and they've
28 been picked up in the press.

29
30 Q. Did the administrator ever use the phrase "smoking
31 ruin"?

32 A. No, he didn't.

33
34 Q. Do you think it's appropriate for a mayor who's being
35 criticised about his empathy for the response to the
36 bushfires in 2019-2020 to use the phrase "smoking ruin"?

37 A. I'll let him decide on that.

38
39 Q. Going back over the page to the bottom of the first
40 page, those are the words I was referring to before that I
41 was interested in your thoughts on:

42
43 *"The plethora of external reports he*
44 *commissioned found relatively insubstantial*
45 *issues and no smoking gun to justify the*
46 *suspension of the council".*
47

1 Do you see that, bottom of the first page?
2 A. Bottom of the first page, yep.
3
4 Q. Do you agree with that quote from Mayor Gair?
5 A. Sorry, are you talking about the small print there?
6
7 Q. It's all pretty small. You're on the first page which
8 starts --
9 A. Sorry, no. First page now, yep.
10
11 Q. "Sacking was political", is the way it starts.
12
13 THE COMMISSIONER: Q. The last two pages of the bundle,
14 councillor.
15 A. Oh, sorry.
16
17 Q. Do you have the second-to-last page?
18 A. Sorry, I just need to - I'm just having trouble
19 finding that.
20
21 THE COMMISSIONER: Mr Broad, could you assist the witness?
22
23 THE WITNESS: Yes, okay, that first sentence, other --
24
25 MR PARISH: Q. We'll just make sure we don't get at
26 cross-purposes again. You've got the page which says,
27 "Sacking was political, say councillors", do you have that
28 page?
29 A. I've got where, "The then Minister could have removed
30 the problem councillors" --
31
32 Q. No, no, no, let's start at the start. Do you have the
33 page which says at the very top, "Sacking was political,
34 say councillors"?
35 A. Yes.
36
37 Q. Thank you. And then the very, very last sentence on
38 that page says, "No smoking gun"; do you have that?
39 A. Yes.
40
41 Q. So, just go up one sentence, one line from there,
42 which says, "The plethora of external reports", do you have
43 that?
44 A. Yes.
45
46 Q. I'll read it out:
47

1 *"The plethora of external reports he*
2 *commissioned found relatively insubstantial*
3 *issues and no smoking gun to justify the*
4 *suspension of the council".*

6 Did you agree with that quote?

7 A. Yes.

9 Q. Had you read the reports?

10 A. Only the bushfire report.

12 Q. So you are agreeing with the fact that reports you
13 have not read disclose relatively insubstantial issues?

14 A. Yes.

16 Q. How can you do that when you haven't read the report?

17 A. No, I've only read the bushfire report.

19 Q. So, you agree with this notwithstanding that you
20 haven't read the reports that Mayor Gair is referring to?

21 A. Yes.

23 Q. And do you agree, to the extent you can, that the
24 bushfire report only disclosed relatively insubstantial
25 issues?

26 A. Yes, well, the bushfire report in that respect, none
27 of the councillors were approached or the general manager
28 were approached in regard to the bushfire report that was
29 commissioned --

31 THE COMMISSIONER: That wasn't the question. Ask the
32 question again, please.

34 MR PARISH: Q. Do you agree, having read it, that the
35 bushfire report only disclosed relatively insubstantial
36 issues?

37 A. No, they were - if I could go to my copy of the
38 report?

40 Q. We can do better than that, we can provide you with
41 the official tendered version in tender bundle B. You'll
42 find the report is at page 273 of the bundle, Councillor
43 Nelson.

44 A. 273?

46 Q. Yes.

47 A. No, they're not.

1
2 THE COMMISSIONER: The front cover is on page 272, the
3 table of contents 273 and then it continues thereon. What
4 part of it do you wish --
5
6 THE WITNESS: 273?
7
8 THE COMMISSIONER: Q. 272 is the front cover. Which part
9 of it do you want to refer to?
10 A. Yes. That's the executive summary.
11
12 Q. I'm sorry, I thought you asked to see it. Which part
13 of it do you wish to refer to? Is there some particular
14 part of it?
15 A. It's different to what I've previously seen.
16
17 Q. It's different?
18 A. Yeah.
19
20 Q. Do you have a copy of the report with you that you had
21 in mind?
22 A. It doesn't appear to be the same as that.
23
24 Q. If you have another report that you had in mind there,
25 perhaps turn it up and we'll see what it is.
26 A. This one, it just refers to the interim
27 administrator's released bushfire report findings.
28
29 Q. So, it's a media release from the administrator that
30 you had in mind?
31 A. It says, "Latest news".
32
33 Q. So, if we go to the document at page 272 and it starts
34 there, is that a report you'd ever seen before that was
35 shown to you a moment ago?
36 A. Yes, no - no, I haven't seen that.
37
38 Q. So, do you then accept that you haven't actually read
39 the bushfire report?
40 A. No.
41
42 Q. Did you make a submission to the bushfire review that
43 resulted in this report?
44 A. No, I didn't.
45
46 Q. Thank you.
47 A. But I have a view on that, if that's okay?

1
2 Q. Yes.
3 A. My view is that, because the bushfire report and the
4 consequence of the things that have been said about it, I
5 felt that the contractor, at a minimum, should have
6 contacted all the councillors and the GM and I would have
7 thought that the administrator would have at least written
8 to all the councillors advising them that a bushfire report
9 was being undertaken and that invited the councillors and
10 the mayor and the general manager, even though she's in
11 New Zealand, to make a submission. But there was no letter
12 forthcoming when I'd previously received letters from the
13 administrator, so I found that that was unfair that we
14 weren't offered the choice to meet with the contractor who
15 was going to do the bushfire review.
16
17 Q. All right. Just turn to page 290 of that bundle,
18 please?
19 A. Yes.
20
21 Q. Do you have that? 290, 2-9-0?
22 A. Yes.
23
24 Q. Do you see the heading, "Community Meetings"?
25 A. Yes.
26
27 Q. Did you go to one of those community meetings or
28 attend by - remotely, I think they were?
29 A. I did.
30
31 Q. You did?
32 A. I went to a couple of those meetings, yes.
33 The minutes, the minutes show that.
34
35 Q. I'm sorry, this is a community meeting held by the
36 consultant who prepared this report?
37 A. No.
38
39 Q. You didn't register to attend those?
40 A. No. No, I didn't know that it was on.
41
42 Q. Go to the next heading. Do you see, "Community
43 Submissions"?
44 A. Yes, 290.
45
46 Q. The second paragraph:
47

1 *The review wanted to ensure that as many*
2 *people as possible could have their say*
3 *and that submissions were as inclusive as*
4 *possible. Submissions were accepted*
5 *through the ... website.*

6
7 Do you see that?

8 A. Yes.

9

10 Q. And I take it from your earlier answer, you didn't put
11 in a submission?

12 A. I didn't, no.

13

14 Q. And that was because you didn't get a letter from the
15 administrator inviting one; is that what you say?

16 A. That would have been appropriate.

17

18 Q. It may well have been, but it didn't prevent you or
19 any other councillor from making a submission if you wanted
20 to, did it?

21 A. Not if you didn't really know about it. I only saw a
22 passing ad in the newspaper.

23

24 Q. So, you saw the ad?

25 A. I saw the ad.

26

27 Q. And didn't make a submission?

28 A. No.

29

30 THE COMMISSIONER: Thank you.

31

32 MR PARISH: Q. Is there anything you want to draw our
33 attention to in this report now that you've got it in front
34 of you or?

35 A. Yes, I'd like to make a bit of a statement about it,
36 if I could?

37

38 Q. About the bushfire response?

39 A. About the bushfire itself.

40

41 Q. Can we come back to that? Our practice has been to
42 have some topics to be addressed generally --

43 A. Okay.

44

45 Q. -- on at the end and I'll put that as something that
46 you wish to address on at the end.

47 A. Yep.

1
2 Q. Can I go back to the media release, please.
3 A. Yes, page?
4
5 Q. Second-to-last page of Exhibit O.
6 A. Sorry. It's that loose. This one? Yes.
7
8 Q. And we're back at the page which is headed, "Sacking
9 was political"?
10 A. Yes.
11
12 Q. In about four-fifths of the way down the page there's
13 a quote attributable to Councillor Gair:
14
15 *"Council has suffered its first loss in at*
16 *least 26 years of over \$700,000, entirely*
17 *due to the costs of sacking or forcing the*
18 *resignation of virtually all the senior*
19 *staff ...*
20
21 Do you say that that statement is correct?
22 A. That's pretty close to the mark.
23
24 Q. Where did you get your information from to check the
25 correctness of that in respect to the \$700,000 being
26 entirely due to the costs of sacking or forcing the
27 resignation of staff?
28 A. Well, you just have to do some simple mathematics that
29 I did.
30
31 Q. What was the maths you did, if I may ask?
32 A. Well, you take the dismissal of the two senior staff,
33 that's two times 38 weeks at \$250,000 a year; the three
34 other managers all were paid out at \$50,000; the legal
35 costs that the council have paid in respect of fighting two
36 staff members in an industrial case; the money that had
37 been given back to the business houses, 140 there; money
38 back to developers re the Ombudsman's report, which Garry
39 Turland's a beneficiary of, at least \$100,000 there, plus
40 the dismissal of the council's legal officer; my total
41 comes to about \$800,000.
42
43 Q. Wouldn't you have to know the entire operating budget
44 of the council before you could ascertain whether a deficit
45 of \$700,000 was entirely due to the costs of sacking or
46 forcing the resignation of virtually all the senior staff?
47 A. And together with the reports that had been

1 commissioned. That's all additional money that wasn't in
2 the budget.

3
4 Q. That's not my question. My question is, to attribute
5 a deficit of \$700,000 entirely due to the costs of sacking
6 or forcing the resignation of virtually all the staff,
7 wouldn't you have had to have access to the entire
8 operating budget?

9 A. Not really.

10
11 Q. You have picked out some discrete capital costs,
12 effectively; wouldn't you have to know all the assets, all
13 the revenue and all the liabilities before you could
14 point to a \$700,000 deficit and say, "It is entirely due to
15 the costs of sacking or forcing the resignation of
16 virtually all the senior staff"?

17 A. Well, these are all additional costs that were outside
18 the operating budget as I knew it.

19
20 Q. A bit further up there, there's reference to pressure
21 that had come from the two local Liberals; Minister
22 Tuckerman now and Nathaniel Smith. What is the pressure
23 that you are referring to there, or your warrant is true
24 there?

25 A. The Minister Tuckerman, she had come in to see the
26 mayor and the general manager and pressuring that the Moss
27 Vale sewerage works be open for the Coomungie development,
28 and Mr Paull had resisted that request from her because
29 sewerage works was running at about 95 per cent capacity.
30 There was also political pressure from Morris Iemma, the
31 former New South Wales Premier, who was a consultant of the
32 Coomungie development, and he was also - he came down here
33 on two or three occasions to pressure Mr Paull into opening
34 up the sewerage works at Coomungie.

35
36 Q. In the letter that you wrote to the Minister on
37 8 March 2021 you acknowledge the disruption of council
38 meetings and the notice of intention to issue a suspension
39 directly relates to misbehaviour and dysfunction. Having
40 acknowledged the very things which the Minister cited in
41 her notice of intention to issue a suspension notice as
42 occurring, do you agree that the more likely explanation is
43 that the suspension occurred for precisely the reasons as
44 set out in the notice of intention to suspend?

45 A. To a degree, but I think the feeling of the meeting
46 was that the councillors as a whole had been getting it in
47 the neck for so long now, from not only the administrator,

1 but we'd been getting it from the local press as well
2 from December 2020 down to December 2021.

3
4 I can table 16 instances where the Latte Life or The
5 Express have written articles about the council that
6 brought us into disrepute and were negative in a serious
7 way and I can quote a few of those, if you like.

8
9 Q. We might come back to that as one of the topics that
10 you wish to address us on shortly.

11
12 THE COMMISSIONER: Sorry, are you moving on from that
13 topic?

14
15 MR PARISH: Yes.

16
17 THE WITNESS: I --

18
19 THE COMMISSIONER: Just pause and Mr Parish will give you
20 an opportunity at the end.

21
22 Q. Ms Tuckerman was not the Minister who issued the
23 notice of intention to suspend, was she?

24 A. No, we're talking about --

25
26 Q. Minister Hancock?

27 A. Minister Hancock, yeah.

28
29 Q. I'm just having difficulty understanding what any
30 conversations Ms Tuckerman had about a development in the
31 electorate has to do with the actions of the then Minister
32 for Local Government. Can you enlighten me?

33 A. I'm just saying that we're drawing the line between
34 the fact that she was pressuring the council; now, that may
35 or may not have had an influence back in Parliament House.

36
37 Q. Do you still have the quotation with which I
38 understood you to express agreement in front of you? It
39 says this:

40
41 *"Councillors and staff were guilty of*
42 *resisting political pressure to approve a*
43 *major land development without the*
44 *necessary infrastructure like sewerage in*
45 *place. So, we were suspended".*

46
47 Do you have that?

1 A. Yes.

2

3 Q. And the explanation or the description you gave to
4 Mr Parish earlier was some interactions between the mayor
5 and then, I think acting general manager or perhaps he was
6 still the deputy general manager - perhaps it doesn't
7 matter - and Ms Tuckerman; correct?

8 A. Mmm-hmm.

9

10 Q. What do you say - you agree with this quote?

11 A. I do.

12

13 Q. What does the actions or interactions between the
14 mayor and Ms Tuckerman at that stage, how does that bear
15 upon the actions taken by the then Minister, Minister
16 Hancock?

17 A. Well, I can't draw a distinct line to that, so I would
18 have to say I can't.

19

20 THE COMMISSIONER: Thank you.

21

22 MR PARISH: Commissioner, I've finished with my specific
23 topics.

24

25 THE COMMISSIONER: Yes.

26

27 Q. There's just one or two matters that I wish to take up
28 briefly. You gave some evidence at the start about your
29 views about the consultation on Station Street and you
30 thought that it was well done from the beginning of the
31 project. Do you remember that?

32 A. Yes.

33

34 Q. There were some changes to the way it was going to
35 ultimately develop in about early 2020; do you remember
36 that?

37 A. Yes.

38

39 Q. There was some re-routing and then there was some
40 issues arising about five of the Pin Oak trees, and that
41 then was the subject of a council meeting in about March
42 2020; do you remember that?

43 A. I think that was the result of the minor change to the
44 roundabout.

45

46 Q. Yes. Did those changes lead to further community
47 engagement?

1 A. Right, yep.
2
3 Q. Did they? Was this further engagement with the
4 community following those changes?
5 A. No, it was just constant the whole time regardless of
6 what was happening with the development.
7
8 Q. I'm sorry, we're at cross-purposes. When the project
9 changed did it go out for further consultation or
10 information to the wider community?
11 A. Yes.
12
13 Q. In what form?
14 A. Would have been through the business papers and what
15 was happening with it and --
16
17 Q. How are the business papers consultation with the
18 community?
19 A. No, but that would have led to media release.
20
21 Q. So, telling the community this is what's happening; is
22 that what you mean?
23 A. That could be right, yeah.
24
25 Q. So, was there any consultation about the changes to
26 the project?
27 A. Well, the changes were so minor, from my recollection,
28 that it was just - was the idea that the project was still
29 on track.
30
31 Q. So, from that, do I take it that at least you're of
32 the view that there was no need to go back to the community
33 once those changes had occurred?
34 A. Not to the full consultation that we'd done before
35 with the workshop window, which was not what you'd normally
36 do anyway.
37
38 Q. Yes.
39 A. So, we did, we went back to the normal procedure of
40 community consultation.
41
42 Q. What was that?
43 A. Just the norm - advertising, media releases, getting
44 it in the paper.
45
46 Q. And saying, this is the decision that's been made?
47 A. Yeah.

1
2 Q. Do you have a view as to whether, once a council's
3 made a decision that may be unpopular, whether the
4 community just has to accept the unbiased decision and get
5 on with it? Is that a view you hold?

6 A. Yes, I do.
7

8 Q. Do you think then that, if there's a section of the
9 community that's not happy with a direction that council's
10 taking, there's no place for them to continue to express
11 their concerns or views about issues?

12 A. No, no, no - well, it depends what the project is. If
13 you're talking about Station Street --
14

15 Q. Or anything, any issue in the community.

16 A. Okay. Council wants to make changes to the Civic
17 Centre; the community can consult, but if the project is
18 worthy of pushing ahead, sometimes you have to take on
19 those objections but work through them with the community
20 to get to the end of the project.
21

22 Q. Yes, and I accept in all this that that's a role of
23 government at any level to make decisions which may not
24 necessarily be popular, so don't misunderstand me. Let's
25 take a project - I'm trying to avoid using Station Street
26 as the example but it seems to be the one that comes back.

27 A. Use the Civic Centre as an example.
28

29 Q. A project that is contentious within a section of the
30 community, once the council has made a decision, is it your
31 view that the community just needs to, whether or not they
32 like it, accept it and move on?

33 A. Well, what needs to be communicated to them why the
34 council has actually done that, but once there is a
35 resolution of council then the general manager has to act
36 on it.
37

38 Q. Yes, and if there's a project that council or an issue
39 that councillors determined will proceed in a certain way
40 and there is nevertheless a significant - I withdraw that -
41 there's nevertheless feedback within the community that
42 expresses a level of displeasure, does that tell one
43 something about the quality of communication about the
44 project?

45 A. It could do, unless - unless the action group was well
46 organised and they can apply pressure to make it feel very
47 uncomfortable for councillors and then they'll feel it in

1 the next election at the ballot box.

2

3 Q. Is there anything wrong with any of that in our
4 political system?

5 A. That's the way - that's the way it works. If people
6 make decisions, governments make decisions; if they're not
7 popular, then at the next election the people will vote a
8 different way.

9

10 Q. Yes, I think I understand. Did you ever see or read
11 the results of the community surveys that council did from
12 time to time?

13 A. We had information sessions on them.

14

15 Q. Do you remember the one that happened in the second
16 half of the 2016 term?

17 A. No, but I've been watching and I've seen that the
18 Commission has brought out about the --

19

20 Q. Did you see it at the time?

21 A. -- 65 per cent --

22

23 Q. Well, just let me ask the question. Did you see it at
24 the time?

25 A. We had an information session about it and it would
26 have been presented to us.

27

28 Q. But sitting here today you don't have a recollection
29 one way or the other; is that right?

30 A. I'd say that it was presented to us but I can't recall
31 right now and say - well, I'd say, yeah, we must have if
32 we're having information sessions.

33

34 Q. And, from an answer you gave me a moment ago, I take
35 it you're aware of one of the numbers, that is, the drop in
36 community satisfaction to 65 per cent?

37 A. Yes.

38

39 Q. Was that something that alarmed you at the time you
40 were first told about it?

41 A. No, it didn't really.

42

43 Q. Why?

44 A. Because 65 per cent is not too bad in my view and it
45 depends on other circumstances around that 65 per cent.

46

47 Q. Some evidence has been given to me that 65 per cent is

1 a rather alarming result. So, you disagree with that, do
2 you?

3 A. It depends what is happening at the time with the
4 council and when the survey was done and what was happening
5 in the shire at the time, and in our 16-20 term there were
6 a number of issues out there that were abnormal to normal
7 terms of council which could have related in a lower score.
8

9 Q. Like what?

10 A. Like what the - okay, we'll take, at the very start
11 there was the coal mine issue with the council and there
12 was a lot of negative press about the council and who was
13 for it, who was against it and we had a situation where
14 virtually the Berrima Village in the shire stopped a coal
15 mine. Then you go to Station Street, then you go to Bowral
16 Memorial Hall, then you go to Mittagong Playhouse, then you
17 go to the Berrima bypass: these were all huge contentious
18 issues that would have fallen into a lower score for
19 council.
20

21 Q. Well, that is one view. Is an open view that they
22 produced a lower score for council because the community
23 were dissatisfied with how those issues were handled?

24 A. Well, each one has a different explanation.
25

26 Q. That wasn't quite my question. You've identified a
27 number of issues which you see as being controversial and
28 significant in the 2016 term. Is an open view, when one
29 looks at the decline in overall satisfaction, that the
30 community was not satisfied with how those matters were
31 handled?

32 A. Yes.
33

34 THE COMMISSIONER: Yes, Mr Parish.
35

36 MR PARISH: Q. I'm going to deal with two specific
37 topics which you've raised. It's been our principle to ask
38 you to identify any specific topics that you want to
39 address the inquiry on and then I figure out if they fit
40 within the terms of reference and then ask you questions
41 about them. I've got bushfires and you wanted to discuss
42 some of the media information there. Are there any other
43 topics you wish to touch on?

44 A. Yeah. I'd like to discuss the Southern Highlands
45 Business Chamber, the Berrima overpass, a little bit on
46 strategic planning.
47

1 Q. Can you tell me what you wanted to discuss about the
2 subtopics on the Southern Highlands Business Chamber?
3 A. I'd like to say that it's my view that the cooperation
4 or the feeling between the business chamber and council has
5 been, I would say, low over a number of years, number of
6 terms with this - with council generally.

7
8 I could go to - and that continued - I can go to
9 Thursday, 19 July 2018 where the Southern Highlands
10 Business - we had a Southern Highlands Business community
11 roundtable that was with the chamber and the councillors,
12 and at that meeting there was open remarks from Mark
13 Bourne, Southern Highlands Food & Wine Association, Steve
14 Horton, Southern Highlands Chamber of Commerce, overview of
15 business conditions in Southern Highlands and circulated
16 issues summary paper by Adam (indistinct). And on the back
17 there's high level concerns discussed, specific concerns,
18 rural tourism, update Wingecarribee local environment plan.

19
20 Q. What does this have to do with the terms of reference;
21 was there a --

22 A. Well, it's in relation to the information that was
23 given about the feeling between what was happening with the
24 chamber and council and how council was progressing with
25 development.

26
27 Q. Yes, and what was that? What was that feedback and
28 what was that feeling?

29 A. Well, a comment that I made at that meeting was - I've
30 written on it, it said:

31
32 *If council let's Southern Highlands Food*
33 *& Wine Association loose with shire wide*
34 *development the shire in my opinion would*
35 *be stuffed in five years.*

36
37 So, they're continually pushing the council and
38 dictating to the council, and that's causing angst between
39 the council and the chamber.

40
41 And, there was another meeting organised by the
42 chamber with the Illawarra Academy. I rang up to find out
43 if I could attend that meeting, I was told it was a closed
44 meeting, and when we met that day at the council, the
45 councillors said they're all in attendance, and I said,
46 "Well, hang on, I was told it was a closed meeting". I
47 said, "What happened?" He said, "Well, we sat there, they

1 gave it to us for about however long the meeting was". I
2 said, "Well, what did you say?" They said, "We weren't
3 allowed to say anything". I said, "Well, that says it
4 all". So, I'd just like to put on the record that things
5 need to change.

6
7 When I was in Tamworth the general manager at the
8 Tamworth City Council used to attend all the chamber
9 meetings to create that liaison. Now, that's something
10 that the general manager could have done here but there
11 used to be three chambers that came into one, so --

12
13 THE COMMISSIONER: Q. Some of this rather suggests that
14 there was a breakdown in the relationship between the
15 council and various groups or bodies within the community.
16 Do you agree with that?

17 A. Could be, yes --

18
19 Q. Thank you.

20 A. -- too, but there's also the chamber too at Moss Vale
21 and Bridget - I believe it's Bridget Kennedy who got the
22 chamber running and the relationship between that body and
23 council is fine. She'd come to a couple of information
24 sessions. My opinion of her was, she was brilliant. At
25 one stage here in Moss Vale we had 13 shops that were
26 vacant and she took it upon herself with her chamber to go
27 to all the owners of those buildings, got them to decrease
28 the rent, and they were able to get people into those
29 buildings to the extent that Moss Vale is now a vibrant
30 little centre on Sundays, on the weekends.

31
32 THE COMMISSIONER: Yes, Mr Parish, the next topic.

33
34 MR PARISH: Q. Can you just tell me what the sub-topic
35 is you want to address in respect of the Berrima bypass -
36 overpass, pardon me.

37 A. Yeah.

38
39 Q. Can you just tell me what the topic is or the
40 sub-topic and I'll --

41 A. Well, the issue there is the relationship between
42 Councillor Turland and the way that he conducted himself
43 with the - with what was happening out there.

44
45 Q. Can you --

46 A. What --

1 Q. Explain what you mean by - you might have to give me a
2 bit more context on that.

3 A. Yeah, I'm just getting my thoughts together. What
4 happened at the council meeting was that Councillor Turland
5 led the charge on having the Berrima overpass sent to the
6 Audit, Risk and Improvement Advisory Committee to have it
7 peer reviewed by that committee. I attended that committee
8 meeting and if I could - the committee - the committee
9 found that the council had done nothing wrong and, while
10 they said that they are not a peer review committee, they
11 said that the way council had handled the situation was
12 appropriate, so they --

13
14 Q. We might move on from that topic then. Can you tell
15 me what specifically you want to address on in the
16 strategic planning area?

17 A. I just wanted to say that in 2016/17 extensive - the
18 way it happened with the general manager, she said:

19
20 *In 16/17 extensive community engagement*
21 *process was undertaken to ensure the new*
22 *community strategic plan.*

23
24 So, what they did there, an extensive community
25 engagement process was undertaken to ensure that the new
26 community strategic plan captured the sentiments of the
27 community as well as aspirations of residents, business
28 owners, local community groups and organisations, so this
29 required council to have - a community reference panel was
30 recruited, telephone and online surveys conducted, staff
31 workshops conducted, community workshop conducted, all done
32 over a nine-month period.

33
34 So, that was council moving towards its strategic
35 planning which was to provide responsible financial
36 management, improving our local community assets,
37 protecting our natural environment, delivery of significant
38 infrastructure projects, better service alignment and
39 delivery, a business transformation and community
40 well-being. So --

41
42 Q. Thank you. What about the bushfires, what
43 specifically do you want to address the Commissioner on in
44 respect of the bushfires?

45 A. I'd like to put it in perspective by quoting what
46 Mr Shane Fitzsimmons said recently in relation to when he
47 was talking about the floods when he said:

1
2 *The worst ever bushfire disaster, the scale*
3 *and complexity and magnitude like we've*
4 *never seen before with thousands of homes,*
5 *businesses and livelihoods completely*
6 *decimated.*

7
8 And then he went on to say that:

9
10 *The recovery, repair, rebuilding,*
11 *reconstruction and healing was the way to*
12 *go.*

13
14 So, in that respect with the bushfire, the bushfire
15 got away from a backburn at Balmoral which caused the
16 incidents there. The mayor with the staff - when that
17 happened the mayor and the staff were working with the fire
18 victims handing out cash vouchers on Christmas Eve. Our GM
19 was in New Zealand, the deputy mayor was in Sydney, and
20 they were working on Christmas Eve to get money out to
21 people who had lost their houses.

22
23 Now, the council held community meetings at Wingello,
24 Bundanoon and Hill Top to meet with those people who were
25 affected by the bushfires and they did listen to what they
26 wanted. And, at the extraordinary meeting they recognised
27 the rural bushfire fighters who had lost their lives and
28 minute No.220, the allocation of a million in Commonwealth
29 Government disaster recovery grant funding was adopted.
30 This was the meeting that was contentious with the
31 development application fees not being charged for new
32 replacement homes and businesses that were burnt down.

33
34 But I actually moved the amendment at that meeting
35 because with a discussion prior to the meeting that there
36 could be a problem resolving the waiving of DA fees, I
37 moved that:

38
39 *Following consultation with other New South*
40 *Wales councils and Department of Planning,*
41 *Industry and Environment a detail report be*
42 *brought back to council at its meeting of*
43 *12 February 2020 outlining relief options*
44 *for development applications and associated*
45 *fees for residents who have lost their*
46 *dwellinghouses in 19/20 bushfire location.*
47

1 That was the meeting where all hell broke out with the
2 audience. Now, what happened, the report never came back
3 till 12 February because it was discovered that the New
4 South Wales State Government had to amend its legislation
5 to allow council to waive DA fees because a portion of DA
6 fees go to the New South Wales Government. It would have
7 been illegal for council to waive DA fees.

8
9 So, it's my understanding of the issues of 2 March
10 2020 that - that while that was happening we had two
11 members, our two local members were out the front being -
12 well, it was on a later date to that meeting, but our two
13 local members had themselves photographed out the front and
14 calling for council to be suspended, so I felt that that
15 was inappropriate of the local members to do that. They
16 should have been talking to the mayor and the general
17 manager about all the issues that were happening at the
18 council.

19
20 Q. Thank you. On the next topic, media releases, do you
21 want to - perhaps I could take those and the ones that you
22 are referring to and copy them and either mark them and, if
23 necessary, tender them.

24 A. Please.

25
26 Q. Is there any that you want to draw our attention to as
27 a flavour of what you want to --

28 A. Well, the type of negative press that was happening to
29 council was what happened in the Sydney Morning Herald with
30 CBD, and in that paper there was comments attributed to
31 council, where council had delivered extravagant offices of
32 suites to senior officers and councillors but a library
33 that was too small to attract public funding was an issue.

34
35 And we had council here say, they were saying:

36
37 *Council accepted a contract of \$6.8m and*
38 *now the allocated funds are \$10.8m, nearly*
39 *60 per cent more. Why and how have*
40 *contract variations been handled, Mr May*
41 *asked.*

42
43 *Apart from mayors office, the general*
44 *manager's suite, locals have dubbed Moss*
45 *Vale Taj Mahal. Mr May found the library*
46 *had been overlooked. The library*
47 *reconfiguration delivers an outcome that*

1 *does not meet State Library population, the*
2 *size benchmarks which limit council ability*
3 *to attract capital funding from the State*
4 *Library of New South Wales, a huge*
5 *oversight.*

6
7 Now, the problem is that the Moss Vale Library was
8 never to attract grants; it was a refurbishment of the
9 building.

10
11 And, in respect of the upstairs building - upstairs
12 offices of the general manager and the mayor, they're
13 basically equivalent to the offices that exist at the
14 same - as they were.

15
16 There was a quote given in The Herald paper CBD that
17 said that Mr Smith had attributed the view from the mayor's
18 office to be palatial. Yet, when you have a look at it,
19 all you will see is the air conditioning units and the
20 Coles carpark. So, these were the issues that we were
21 bringing out in this embargoed letter that we had that we
22 felt that this was the sort of stuff that was happening to
23 us.

24
25 THE COMMISSIONER: Q. Just on that, was there any reason
26 why it was embargoed to 6am on 30 March, given that these
27 are issues which were happening for some time on your
28 evidence?

29 A. Well, the idea was there that, if it went out straight
30 away, it'd be started to be released and it was felt that
31 by putting it into the local newspapers it would have had
32 more effect if it had people --

33
34 Q. I understand the concept of an embargoed media
35 release, but why 30 March 2022 and not months ago when some
36 of these articles were written?

37 A. Well, we'd decided that the time had come that we were
38 trying to do something to retrieve some sort of credibility
39 from the councillors because we felt that --

40
41 Q. Yeah, I understand that. I'm just trying to
42 understand, was there any discussion about when? When was
43 the meeting that you had?

44 A. Look, I can't recall the exact day now.

45
46 Q. Was it long before this media release was put out?

47 A. Look, it must have been one and a half weeks, say, to

1 meet with the - try and get it into the paper.
2 Unfortunately, the Southern Highlands News didn't print the
3 article and The Express turned it around to turn it into a
4 bit of a joke anyway, so the whole media release sort of
5 became ineffective.

6
7 Q. Yes. Is there any reason why it happened in the last
8 week of March and not the week before or the week after?

9 A. No, I think it was just that we'd been - councillors
10 had been copping it for some time. As I said, The Express
11 had been writing negative stories about council for - you
12 know, and I - I'd like to table this list of negative
13 stories written by Councillor Arkwright, Graham Kelly,
14 people who had come here and given evidence.

15
16 THE COMMISSIONER: Yes, I think both of them disclosed
17 that they had done that but, Mr Parish, can you take that
18 list?

19
20 MR PARISH: I might do that and I might mark in due course
21 for identification a bundle of documents that Councillor
22 Nelson perceives and says is a negative or unfair
23 reflection on councillors.

24
25 THE WITNESS: Could I just table as well key facts about
26 Wingecarribee during the term of 2016? And, if I could
27 just read, say, a couple?

28
29 MR PARISH: Q. If it's briefish.

30 A. But they're two-liners.

31
32 Q. Yes.

33 A. What it is, it's a list of:

34
35 *Council adopted and delivered a balanced*
36 *budget for the general fund operations,*
37 *border operations, waste sewerage,*
38 *operations across each of the five years of*
39 *its extended term.*

40
41 *The director financial audit services,*
42 *Auditor-General office New South Wales*
43 *described Wingecarribee Shire Council as*
44 *the pearl among all of the Audit Office*
45 *local government clients for the quality*
46 *and completeness of council's financial*
47 *system and statutory reporting.*

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And it goes on.

THE COMMISSIONER: Q. Is this a document you prepared?
Is this a document you've prepared?

A. Yes.

THE COMMISSIONER: All right, Mr Parish will take a copy
of that as well.

MR PARISH: Yes, please. We should also note perhaps that
at this stage that you will as an affected person have an
opportunity for written submissions at some point in the
future after having received it.

A. There's some more topics that I didn't quite get to
here, I can write, put into the Commissioner?

MR PARISH: Absolutely.

THE COMMISSIONER: Q. What are the other topics?

A. I've got a topic here about - sorry.

Q. Mr Parish, after a short break I think we need to
resume and keep sitting.

A. I'll just tell you, it's the --

MR PARISH: It'll be a short break.

THE COMMISSIONER: Yes, a short break.

THE WITNESS: Look, it's only one item and I'm right to
go.

THE COMMISSIONER: Q. Yes. I'm conscious to give you
the opportunity to raise whatever issue you wish to, so
please do so.

A. It was just about the accusation that council had
taken \$526,657.51 from council's environment levy. So, I'd
like to raise that --

Q. Is this about the art gallery?

A. No, this is about people raising the issue that
council had taken money out of the environment levy by way
of not applying the rate valuation correctly.

Q. And you say that didn't happen?

A. Sorry?

1
2 Q. That didn't happen, according to you?
3 A. No, it didn't happen.
4
5 Q. Yes, okay.
6 A. We - that turned into full council information session
7 and a full information session to the Environment
8 Committee.
9
10 Q. Thank you. Are they all the topics you had to raise?
11 A. (Witness nods.)
12
13 Q. Yes, as Mr Parish says, you'll be given an opportunity
14 to make any written submissions in response to those of
15 Counsel Assisting you may wish to at that stage.
16 A. Okay.
17
18 THE COMMISSIONER: Yes, all right. Well, thank you,
19 Councillor Nelson, I appreciate it's been a long session
20 this morning, and there are no doubt places you'd rather be
21 and things you'd rather be doing, so I am very grateful for
22 the time you've given us this morning. You are excused
23 from further attendance under your summons and free to go
24 about your day, free to stay as a councillor if you wish,
25 free to go if you wish.
26
27 THE WITNESS: Thank you.
28
29 <THE WITNESS WITHDREW
30
31 THE COMMISSIONER: Mr Parish, we're somewhat behind.
32 That's through no criticism of anyone, it's just one of
33 those things, but we've got two more witnesses to get
34 through today.
35
36 MR PARISH: Yes.
37
38 THE COMMISSIONER: I don't think I should take a full
39 lunch.
40
41 MR PARISH: No. I would beg for at least half an hour
42 though.
43
44 THE COMMISSIONER: Half an hour?
45
46 MR PARISH: It may depend on the Bánh mì queue, but I do
47 need some time to re-arrange four witnesses as well.

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THE COMMISSIONER: Yes.

MR PARISH: And I also, if I need to plead, will note that it seems at this stage, on my view at least, that we will probably be going at least a couple of hours over.

THE COMMISSIONER: Yes, I understand. Well, if messages of apology can be sent to our next two witnesses from me. These things happen and I do appreciate that people have been put out. So, yes, I'll adjourn until 2.30.

MR PARISH: Could I just, before you do that, note that it seems to me unlikely that ex-Councillor Turland will be reached before probably 3.30 at this stage, maybe even 4.

THE COMMISSIONER: I think 3.30 is optimistic, is it not?

MR PARISH: Yes. Probably we can mark him now at 4.

THE COMMISSIONER: Mr Turland can be told 4 o'clock - not before 4 clock, again, with my sincere apologies to both of those gentlemen. Yes, 2.30.

MR PARISH: Thank you.

LUNCHEON ADJOURNMENT

1 UPON RESUMPTION:

2

3 THE COMMISSIONER: Yes, Mr Parish.

4

5 MR PARISH: Thank you, Commissioner, the next witness is
6 Mr Ken Halstead.

7

8 <KEN HALSTEAD, sworn: [12.37pm]

9

10 THE COMMISSIONER: Thank you, Mr Halstead, and I can start
11 by expressing my apologies to you for keeping you waiting
12 today. Hearings, even the best planned ones, often have
13 little hiccups in timing, so I do apologise for having kept
14 you waiting.

15

16 THE WITNESS: No worries.

17

18 THE COMMISSIONER: Yes, Mr Parish.

19

20 MR PARISH: Q. Mr Halstead, can I start with your
21 personal vocational background and your connection with the
22 shire?

23 A. As in qualifications?

24

25 Q. You don't have to go so far back as to qualifications,
26 although I do understand you have an interesting background
27 in local council?

28 A. I'm not too sure I know exactly what you're on about
29 there.

30

31 Q. How long have you been involved in local council for?

32 A. This council, three lots of four-year terms, as in
33 elected.

34

35 Q. Yes.

36 A. But then prior to that working here in staff.

37

38 Q. What years was that?

39 A. Working in staff?

40

41 Q. Yes.

42 A. Admitted on council - sorry, this council 73/4 and I
43 come back to Mittagong 78 to 82, transferred into their
44 amalgamated one which ended up till 94 --

45

46 Q. Can I just pause there and ask you to speak into the
47 microphone?

1 A. Yeah. So, I finished up here in 94 and then pursued a
2 career elsewhere. In terms of council, on council 94-99,
3 2008-2012, and a recent term 2016-2021, part of it.

4
5 Q. Thank you. Can I ask you about your general
6 impressions on that 2008-2012 term, firstly in respect of
7 councillor to councillor interactions?

8 A. I don't recall there was any major problems in
9 2008-2012 from memory. They certainly don't stand out. To
10 my way of thinking they were probably what I would consider
11 to be fairly normal.

12
13 Q. So, about normal relative to the 94-99 term; is that
14 right?

15 A. Yeah, similar, I'd say 94-99 was a similar nature,
16 they are probably typical of local government I would have
17 thought at that time.

18
19 Q. And, at a very general level at this stage, what about
20 the 2016-2020 term; was that different in the tone and
21 approach as you perceived it?

22 A. Not for the entire time.

23
24 Q. No?

25 A. I would suggest the first two years were quite
26 amenable, quite normal; in fact, I would have thought
27 conducive to very good behaviour from everybody. I came
28 into that council having made the decision the night before
29 the deadline that the previous council was, from what I
30 could ascertain, dysfunctional - I think that's the word I
31 used - and my role I figured was, and I felt, was to try
32 and bring the council together which I believe I did in the
33 first two years of the 16-21 term.

34
35 Q. How did you learn about the dysfunction in the
36 2012-2016 term? Were you attending meetings, were you
37 hearing about it through people, were you just reading
38 about it?

39 A. Sorry, sorry. I don't think I attended a meeting at
40 all, if I did it would have been one or two, and I don't
41 recall any; it would have been in the media.

42
43 Q. And what do you recall the impression you were getting
44 from the media was?

45 A. Well, the council was very argumentative and they
46 seemed to be split in terms of teams, groups, whatever.

1 Q. And that was something you thought that, if you
2 perhaps ran at the 2016 election, you might be able to
3 contribute to reducing; is that correct?

4 A. Yes, I'd agree with that - contributing - because I
5 had no idea that I'd be standing for mayor, for example.
6

7 Q. Did you form a view, after you had been elected in
8 2016, as to whether the councillors who had been elected
9 with you were going to be a continuation of the previous
10 term or it would be a matter of, at least in your
11 impression, being able to turn the page on the 2012-16 --

12 A. Well, I had to turn the page. I could only consider
13 it based upon who had been elected, trying to work out who
14 I thought was in what group, if any, and I didn't really
15 draw any conclusions there at all, and I thought the best
16 idea was to have a look at, you know, the council once
17 you're there and see what's going on.
18

19 Q. And what was your impression once you were there and
20 you saw what was going on? Did you see splits or problems
21 at that stage in 2016 from the (indistinct) that you saw?

22 A. No, I didn't, I didn't see anything whatsoever. I ran
23 without being in a group --
24

25 Q. When you say you didn't see anything whatsoever, you
26 mean the splits or the --

27 A. I didn't see any splits at all in the first - well, I
28 didn't have any opportunity until such time as I was
29 elected as mayor, and I didn't see anything then, to be
30 quite frank.
31

32 Whilst individual councillors may have been grouped
33 together or otherwise, it didn't concern me one way or the
34 other to be quite frank.
35

36 Q. Did you receive any feedback from other councillors of
37 the 2016-2020 intake as to whether the dysfunction from the
38 previous term might be at danger of recurring?

39 A. No, not that I can recall. I certainly didn't have
40 any evidence to that effect or written documentation from
41 anybody.
42

43 Q. We had some evidence, I think yesterday, that
44 appointing or electing Councillor Scandrett to the deputy
45 mayor position may have assisted in the stability that was
46 perceived in the first two years of meetings. Do you have
47 any comment or observation on that evidence?

1 A. I don't know, I - I didn't have any idea how he
2 operated in the previous council, so my conclusions and
3 opinions were being based upon the first few meetings of
4 the council and I didn't see any problem there at all.

5
6 Q. Can you remind me what the platform, if any, you ran
7 on at the 2016 elections was?

8 A. There were four basic issues:

9
10 *No coal mining or gas extraction.*
11 *Dangerous roads must be fixed. Quick*
12 *turnaround for dwellinghouse approvals, and*
13 *senior management held accountable.*
14

15 Can I ask you about No.3. What was the problem there
16 that you were identifying?

17 A. From what I could ascertain, again from media, not
18 talking to anybody, was that the council was one that
19 didn't have a quick turnaround; in fact, people were
20 complaining about the delays in terms of any applications
21 put before it were, in the opinion obviously of those that
22 had put it in, put their application in, was extensive.

23
24 Q. And how, at that stage at least, did you intend to
25 solve that problem?

26 A. Hopefully by, through the council process, having a
27 look at what was going on in terms of the process times,
28 what professional groups might have been assessing them and
29 whether they had appropriate staff to actually undertake
30 that task.

31
32 Q. And, after you became a councillor and whilst you were
33 mayor for the first two years, is that the path that you
34 took as being the way to solve it still, or did your view
35 change once you actually got into council about the best
36 way to solve it?

37 A. No, I held the view that there were delays, and in
38 fact I think very early in the piece we had a meeting with
39 a group of about 10 or 15 people across the whole sphere of
40 the development area in a meeting. There was a consultant,
41 I think, that had been employed by senior management - I
42 don't know whether that person was engaged before the
43 election or subsequent to it - to have a look at the
44 process of development control, particularly how DAs were
45 processed, and I can recall that being a fairly
46 constructive meeting and it involved people from all the
47 different sectors, and clearly at that meeting there were

1 issues that were identified, which again, if you like,
2 confirmed that there were - their concerns related to
3 delays on approvals. In terms of, fix it, that would be
4 something which the council would have to look at and that
5 committee did report back through the general manager from
6 my recollection of it - I don't remember the fine detail -
7 but would have reported back to council in terms of what it
8 considered was to be pursued.

9
10 Q. And the fourth plank of your platform, "To hold senior
11 staff accountable", I think it was. What did you mean by
12 that?

13 A. Well, I hold a pretty firm view and that is that the
14 council is administered by senior people who must be held
15 accountable to the community at large through the system,
16 and that would include obviously elected representatives in
17 terms of them as councillors being made aware of the
18 processes and that, well, clearly in my view senior staff,
19 general manager and whoever at the senior staff level, are
20 accountable for, if you like, the processes of local
21 government; in other words, producing the goods for the
22 community, and I believe that's pretty clear in terms of
23 procedures, if you like, within the Local Government Act.

24
25 Q. How did you form the view that, (a) it was a problem,
26 and (b) it needed to be one of the matters that you ran on
27 in 2016?

28 A. How, sorry?

29
30 Q. How did you form the view that senior staff, I guess
31 not being held accountable, was a problem within the shire
32 which required addressing?

33 A. Again, that would be from reading media and listening
34 to media; that it seemed to me that the senior management
35 may not have been as effective as they could have been.

36
37 Q. We might come to some specifics later, but upon
38 becoming a councillor and then becoming mayor, did your
39 view change about whether that was a problem indeed or not?

40 A. I think, in terms of early in the piece, I would have
41 held a view that I wanted to see how the senior management
42 did operate in their position and draw conclusions from
43 that rather than what I might have thought previous to
44 being elected.

45
46 Q. You received some induction training upon becoming a
47 councillor in 2016; is that correct?

1 A. I'd have to - I have to say, I don't recall that
2 being, shall we say, more than minimal. I think we did
3 receive some.
4

5 Q. Maybe my next question should be answered first, which
6 is, do you recall attending any?

7 A. I certainly didn't attend any OLG sessions if you
8 like. If terms of what occurred here, I attended
9 pre-election, since some of the meetings were held in the
10 council theatrette or whatever else. But in terms of
11 training afterwards, I would have to refer to my records to
12 be sure, but I don't remember that we received very much at
13 all.
14

15 Q. Do you recall being given any update on the changes to
16 the Local Government Act that were made in 2016?

17 A. No, I don't. Any of those I would have determined
18 myself. Being in the position I was at the time, I was
19 aware of changes to the Local Government Act continually.
20

21 Q. You use the word "would" there. Is that, you did or
22 you assume that you would have?

23 A. Would you run that one past me again? I want to be
24 accurate with the answer.
25

26 Q. There's the difference between saying you would have
27 done something and having a clear memory of doing it. Are
28 you assuming that it's something you did do or do you have
29 a clear memory of doing it?

30 A. I don't have a clear memory of what detailed training
31 we got on it. In terms of what I knew about the changes,
32 they came through in the normal way from OLG and we dealt
33 with them at council meetings.
34

35 Q. What do you understand the role of a councillor as
36 statutorily set out is?

37 A. Pretty clearly in section 223, I believe, is the role
38 of the governing body, and I subscribe to that. I am
39 concerned about, and I said so in my submission, the
40 wording of "direct and control"; I don't think that's the
41 sort of wording I'd use. But certainly what's listed on
42 223, I think, is a fairly good rundown of what's expected
43 of a governing body.
44

45 Q. What about the role of a councillor?

46 A. Well, there's certainly a tie-in with that. But
47 section 232, the role of a councillor, I agree with what's

1 written there: (a) through to (g); (1)(a) to (g) and (2),
2 and not the least of which is the last one:
3

4 *A councillor is accountable to the local*
5 *community for the performance of the*
6 *council.*
7

8 But, do you want me to go through all those others, I
9 mean, I --
10

11 Q. No, that's fine, I think you might be the first one
12 who's actually referred to the Local Government Act
13 sections. What about 8A, was that, I take it, something
14 that had been drawn to your attention too at some point and
15 the changes of 2016?

16 A. Which one was that again?
17

18 Q. 8A. Do you recall, just firstly, whether that was
19 drawn to your attention at about the time of the changes?

20 A. No, I don't, I don't recall.
21

22 Q. You've got it in front of you, you can just have a
23 look if you want.

24 A. So, what section of the Act are you talking about now?
25

26 Q. Section 8A.

27 A. No, I haven't got that in front of me.
28

29 Q. Right.

30 A. No, sorry.
31

32 Q. Mr Broad might be able to show you a copy.

33 A. 8A, yes, I'm looking at that now.
34

35 Q. Do you recall if that was brought to your attention at
36 or about the time of 2016?

37 A. 2016, um, it could have been. I remember the changes
38 that came in that year which related to more detail. For
39 example, the delegation of authority with respect to
40 tenders and that, but this probably came up around about
41 the same time, I think.
42

43 Q. Yes, yes.

44 A. So, there were quite a number of changes and a lot of
45 them, I think, tied in with the election of mayor - well,
46 it is coming much clearer now when I think about it and
47 they all come together at the same time, because it all

1 dealt with the term of mayor for two years as distinct from
2 one. There was a whole lot of issues that came up at that
3 same time.
4

5 Q. That's correct, there were multiple amendments to the
6 Act in about August 2016 or (indistinct)?

7 A. There were certain circulars that did come out, I
8 remember that from the OLG reminding councillors of what
9 the issues were.
10

11 Q. Back to my question, you don't have any clear memory -
12 or do you now have a clear memory of having this brought to
13 your attention in about September 2016 (indistinct)?

14 A. I certainly recall getting that circular myself.
15 Whether that came via council here or not: I think it did,
16 I think it did. You'll have to look at the records, but I
17 certainly - being in the other role I have which is being
18 on top of legislation, particularly the Local Government
19 Act at all times, I would have seen it elsewhere before it
20 came here, so my mind tells me that I certainly was aware
21 of it, whether it was here or ...
22

23 Q. And I take it, you'd give the same answer to 8C based
24 on the answer you've just given? 8C. Mr Broad might find
25 it for you if you need to.

26 A. Oh, yes. I mean, I'm aware of 8C, and again, I would
27 have seen it elsewhere. But look, I would say there'd be
28 no doubt that the council would have been informed about
29 those changes. I'm sort of trying to envisage now a
30 particular agenda whether - it's a fair way back to try and
31 do that. But, yes, I mean, I'm aware of that, put it that
32 way; exactly which form it came through, I don't know, but
33 I'd imagine it also came through here.
34

35 Q. Thank you. You mentioned before that you had some
36 thoughts on section 223 and in particular I think the
37 reference to "direct and control"; is that correct?

38 A. Yes, I --
39

40 Q. What are those thoughts?

41 A. Well, I don't know if they're good terminology. My
42 view is that it's something that could be looked at. I
43 figure that it --
44

45 Q. Shall we go backwards? What's the problem with the
46 terminology?

47 A. I just don't like the words "direct and control",

1 because whilst it's referred to down in (2):

2

3 *The governing body is to consult with the*
4 *general manager in directing and*
5 *controlling the affairs of the council.*

6

7 I'm comfortable with that, I think that's very
8 relevant. But I just don't know, if you look at the
9 definition of "direct and control", whether that's it. To
10 me, that gives the impression that the council's actually
11 running the show, if I can use that - or giving very firm
12 directions and therefore then controlling what happens when
13 in fact in essence it's coming in a very broad way from
14 council and implemented by the general manager.

15

16 Q. You might have heard in opening, and if you didn't I
17 don't blame you, but there was a discourse between the
18 Commissioner and I at the opening about the well-accepted
19 differentiation between "operational and strategic" and the
20 fact that those words and those precise terms do not apply
21 to the Act. Do I take it from what you've just said that
22 you prefer the distinction of "operational and strategic"
23 rather than the use of words such as "direct and control"
24 in the case of the governing body in day-to-day management
25 in respect of the general manager?

26

27 A. I think it would be a better organisation if - or a
28 better legislative way of putting it, that. I've got a
29 thing about "operational" as well, because there's no
30 reference whatsoever in the Local Government Act to
31 "operational" as in the fine terms. You know, we know
32 about an operational plan, that's one thing, but in fact
33 the Act is remiss, I think, or missing the bit about
34 ensuring that the elected people know what an operational
35 matter is, as in, fix this pothole and this is the way
36 you'll fix it type operational interference.

36

37 Q. That's an example of operational, I take it?

38

39 A. Yes, correct.

39

40 Q. Do you have in your own mind a clear understanding of
41 the difference between operational and strategic, or do you
42 feel that, even with your experience, there are some grey
43 areas between the two?

44

45 A. I don't know - I don't know that there's grey areas, I
46 just figure that - well, first of all "strategic", I don't
47 think anyone would have a problem with what that means; I
mean, that's the overall direction a way a council is going

1 and therefore falls nicely into strategic, I think, in
2 terms of the different aspects of how you get that whole
3 system up and running.
4

5 But, in terms of operational, I'm of the opinion that
6 elected people need to know what "operational" means as
7 distinct from "operational plan", which is part of the
8 strategic process. I don't know whether I'm confusing you,
9 I hope not but --
10

11 Q. No.

12 A. But I think the elected need to know, and I made that
13 clear in my submission, which I assume that you've looked
14 at or will have a chance to look at, is that, I am
15 concerned about that bit to do with operational because,
16 you know, if you have a grey area then you can have the
17 situation where the elected people don't know the
18 difference or what is expected of them.
19

20 Q. Do you recall in the 2016-2020 term any confusion
21 arising in the minds, that you know of, of your fellow
22 councillors?

23 A. No, because I - I was involved with anything from my
24 own point of view, not in terms of what another individual
25 councillor might have done or didn't do or thought, other
26 than the council meeting which was the overall decision of
27 a council. But in terms, if what you're asking me, was I
28 aware that maybe there might be others that had confusion
29 about what operational might mean or got involved in
30 operational, it's possible, but you know, I can't - I can't
31 recall any specific ones.
32

33 Q. Just to give some examples: you never had any other
34 councillor come up to you and say, "Councillor Halstead, I
35 think I'm in a grey area here, what do you think about
36 this?" Or you never saw someone across the chamber say
37 something and think, "Geez, that might be a bit more
38 operational than strategic"?

39 A. No, I didn't, but if - if someone come up to me and
40 said that I'd make it pretty clear to them what I thought
41 operational was, what I knew operational was, and that
42 would be in line with my thinking elsewhere as well.
43 Because, I presume you know, I've been training local
44 government people in this area, particularly that
45 operational, strategic and all this other stuff,
46 particularly with engineering, for a long time. So, I
47 think you need to know - well, sorry, elected people

1 needed - do need to know what that difference is and I
2 really don't think that the Act makes that clear at all,
3 and I can't speak for other councils, but certainly at no
4 stage here did anyone ever, in senior administration say,
5 "Look, this is operational or this is strategic". I mean,
6 strategic would be mentioned obviously because we know
7 we're all involved in that strategic planning process. But
8 I think it would be relevant for all councillors to be made
9 very clear or it made very clear to them as to what
10 operational was, and I think that some people would be very
11 confused.

12
13 I mean, people elected to represent their community
14 would just assume that, you know, if they saw a problem
15 somewhere they would be trying somehow to do something
16 about it. Now, unless they got the right training, I'm not
17 too sure, initially anyway, they'd all know exactly what to
18 do.

19
20 I think down the track here there were certain
21 processes that came into place particularly with respect to
22 reporting problems and people seemed to jump online with
23 that one, but I hope that didn't confuse things, but I do
24 think there's work needs to be done at the OLG level, in
25 other words, at the legislative level in terms of getting
26 it very clear what operational means.

27
28 Q. Do you think that the clarity is assisted by the suite
29 of other documents that are provided to councillors, such
30 as the Code of Conduct and the councillor's handbook?

31 A. I think the councillor's handbook's a good one. The
32 Code of Conduct, we've got too many of those, and if I can
33 do that a little bit on that one: it astounds me that in
34 this day and age we're still talking about a model code and
35 an adopted code: I think that's senseless. Because, if you
36 have any discrepancy between the two - I know one overrides
37 the other one - but, for goodness sake, you know, the fact
38 that we've got to do one every four years as a minimum in
39 the Act.

40
41 Codes of Conduct, to me, should be, here it is, this
42 is the Code of Conduct and it applies to whatever, at State
43 Government, which of course it does, and local government.
44 But not to have then an adopted one where you're really
45 confusing people where they may well have a discrepancy or
46 conflict down the track and, as I said, I know one then
47 prevails if there's an inconsistency. But codes of

1 conduct, very complicated anyway, and you virtually need a
2 law degree to ensure that you're on the money with that
3 one, in my opinion; it's very complex, the same as the
4 meeting procedure one.

5
6 Q. That's local democracy, isn't it?

7 A. Pardon?

8
9 Q. That's local democracy, isn't it? Shouldn't there be
10 an element of --

11 A. It is.

12
13 Q. -- the ability to adapt the dictates of the State
14 Government?

15 A. I just think it's an unnecessary - what you're saying
16 is probably right, but I don't know why you should make
17 something overly confusing or an opportunity made available
18 to have a confusion between an adopted and a model. I
19 agree there's a Code of Conduct needed, but it should be
20 one-off, that's it.

21
22 Q. Do I take it from that answer that you either
23 perceived or personally found the Code of Conduct used from
24 time to time in this council confusing?

25 A. I didn't find it confusing; all I'm saying is it's
26 complex.

27
28 Q. Did you think it had the ability to confuse other
29 councillors who perhaps didn't have a, at least an academic
30 background in local government or working in local
31 government?

32 A. Yeah, I get the point you're making, and I'm not
33 trying to put myself on some pedestal; I'm just fortunate
34 enough to have been aware of these things for 30-odd years.
35 But to the individual I would suggest they are very - it is
36 a very complex document, and you can read in - and quite
37 frankly, there's one suite of sections there, you have to
38 read and read and read to be sure that you get it. It's
39 very complex.

40
41 Q. And, back to the 2016-2020 council, did you ever form
42 the impression that some councillors might not have
43 understood or have the ability to understand the complexity
44 of those Code of Conduct documents?

45 A. Oh, just general discussion would have me draw the
46 conclusion that there would have been confusion.

1 Q. If I put a similar question to you about the Code of
2 Meeting conduct, would you have the same answer or --
3 A. Similar.
4
5 Q. -- that's a bit more straight forward?
6 A. Similar. Look, I've got no doubt you need it, but
7 it's like a lot of documents, you don't make them overly
8 complex, and I think both those documents are way over what
9 needs to be done. In other words, they could be made far
10 more understandable in half the amount of information
11 that's in it: that's my view. But the more complex you
12 make it, the more difficult it is for Mr Average who's
13 representing the community to understand it, because I'd
14 suggest to you there is very few would know - elected
15 people right across this state - would know how to look at
16 either of them documents without some sort of legal
17 assistance or help from a senior manager that's on top of
18 it to be able to describe what the issues are. I just
19 think they're both overly complex and confusing. And I'm
20 not trying to be negative to OLG, but I would think, if
21 there's a chance for them to review both them documents,
22 I'd do it.
23
24 Q. Do you have a view or were you left with an impression
25 at the time as to whether all the councillors in the
26 2016-2020 term understood, firstly, their statutory roles
27 and responsibilities?
28 A. I can't speak for them individually, but I'd --
29
30 Q. Just your impression.
31 A. Well, that's a good one. My impression is, no, they
32 wouldn't. No matter what training they've been given,
33 unless it's given at the local level on a regular basis and
34 it's mandatory in terms of something I've made a submission
35 on my submission to you people is, before elections it
36 should be mandatory, but certainly afterwards it should be
37 regular and it should be minimal, not verbose documents
38 which no-one can understand.
39
40 Q. What about - again only in your impression, you can't
41 look into the minds of other people, I don't think -
42 whether the councillors in the 2016-2020 term understood
43 their roles and responsibilities in respect of the Code of
44 Conduct documents from time to time?
45 A. Yeah, that's a difficult one, trying to get in the
46 minds of others, ah --
47

1 Q. Just your impression?
2 A. Well, good-o, I think that's probably a good word. I
3 would doubt they all understood the complexity of it.
4
5 Q. What about the Code of Meeting Practice, same
6 question?
7 A. Same thing.
8
9 Q. Thank you.
10 A. I mean, it's extremely complex. I mean, no matter
11 what the issue is, to try and determine what the issue is
12 or at what point you are in it, to me, is just unbelievably
13 confusing.
14
15 Q. Do I take it from the answers you've just given on
16 that topic, that you don't think that the councillors
17 received enough refresher training or update training to
18 allow them to understand the statutory roles --
19 A. Absolutely.
20
21 Q. -- the Code of Conduct roles and the Code of Meeting
22 roles?
23 A. Absolutely, I agree with you. On neither of them was
24 there sufficient training given, nor in my view the amount
25 or the occasions where it was addressed, I'm not too sure
26 those presenting it - I need to be careful here, but I'm
27 not too sure those who might have been in the invidious
28 situation of presenting it understood it.
29
30 Q. If you observed that at the time, is there any steps
31 that you took as mayor, and therefore leader of council, to
32 redress those deficiencies?
33 A. Not my role as mayor to be looking at those issues,
34 but I certainly raised them that I had concerns about the
35 complexity of documentation of that type, but I didn't go
36 on about it. And, from my recollection, the major changes
37 to occurred to that, or the most frequent changes were in
38 the second two years of the council.
39
40 But, no, I didn't make any major issues - or sorry,
41 major submissions about either of them, but again, that
42 wasn't my role I don't think as mayor to get involved in
43 that other than maybe making suggestions at another level
44 which is not to do with this council. Maybe OLG, for
45 example, you know, at that level or to a Minister for Local
46 Government which is the sort of thing I'd be inclined to do
47 occasionally.

1
2 Q. I've asked you previously and you've given me your
3 views on the first two years of the 2016 council. Can you
4 tell us your impressions of the next two years and what you
5 observed then if it was any different to the first two
6 years?

7
8 A. Over the period of the second two years it seemed to
9 get gradually more vocal in terms of the council meetings;
10 not the entire two years, but certainly a good part of it.
11 And I made it pretty clear, I think again in my submission,
12 that I don't believe the chairman of the meeting, in other
13 words, the mayor, had control of the meeting in terms of
14 just meeting procedure. I'm not talking about as in being
15 a policeman as such - not the issue: it's about being able
16 to control the meeting, or manage the meeting I think is a
17 better word, in such a way that you don't get conflict.

18
19 Q. I just pause to note that the submissions aren't made
20 public, so I --

21 A. Aren't?

22
23 Q. Are not, so I have to draw out a bit of this
24 information from you even though you've already put it in
25 writing to us.

26 A. Well, I'm just wondering then, have you seen it?

27
28 Q. Yeah, I've got it in front of me.

29 A. Okay.

30
31 Q. It's marked with highlighters and crosses. Can you
32 expand on why you were left with the impression that the
33 mayor following you wasn't able to effectively control the
34 meetings?

35 A. Not too sure that he knew all the procedures of how to
36 run a meeting: only he will know that. But, and I don't
37 want to be in any way negative towards an individual, but
38 it struck me that he seemed to lose control of the meeting
39 on a number of occasions.

40
41 Q. Other than his chairmanship of meetings, were you left
42 with the impression that there were any other factors that
43 caused a degradation in the conduct of councillors around
44 2018-2019?

45 A. Well, there was certainly more vocal sessions from
46 time to time in councils, but again, in my submission to
47 the inquiry I made it reasonably clear that councillors in

1 the council meeting are entitled to ask questions with
2 notice or move notice as a motion, and that's their right,
3 and that struck me that I wasn't sure, certainly not
4 convinced, that some of the notices of motion and questions
5 of notice were being dealt with properly.

6
7 Q. What about the behaviour of individual councillors;
8 did you observe any dissent or degradation in the behaviour
9 of some of the councillors in the second half of the 2016
10 term?

11 A. I mean, some councillors are more vocal, but --

12
13 Q. What about straight out acts of disorder and
14 misconduct?

15 A. I don't know that I'd class what I saw as misconduct.
16 What I would suggest to you is that some councillors, and
17 it was not, say, two or three all the time, for example,
18 but you know, in normal discussion in a meeting sometimes
19 it does get vocal, and some were more - I suppose, vocal
20 you could say, or concerned about issues that they had
21 concerns of or were bringing up and were not convinced that
22 they were being dealt with properly.

23
24 So, you know, I would say there were some councillors
25 that were therefore - or therefore felt that they weren't
26 being treated properly and I don't think they were; in
27 other words, some of the issues they were entitled to have
28 dealt with were not being dealt with appropriately.

29
30 THE COMMISSIONER: Q. Mr Parish will explore some of
31 that with you in a moment, but just back to general
32 behaviour in meetings. Is it ever appropriate for a
33 councillor to argue with the chair about a direction or
34 ruling the chair has made?

35 A. I don't know I'd use - well, sorry: argue, probably
36 not, but to enter into a debate with the chair if they had
37 concerns about the way in which it was being dealt with,
38 there's certainly procedures for that. In terms of whether
39 they had a different opinion, I think they could express
40 that opinion to the chair via the meeting, to be quite
41 frank, and expect to get a reasonable response.

42
43 Q. If the chair speaks, is it appropriate for a
44 councillor to continue to speak over the chair?

45 A. I would say not.

46
47 Q. If the chair asks a councillor to leave the meeting,

1 is it appropriate for a councillor to refuse to do so?
2 A. Oh, I'm not going to give an opinion on that. I think
3 that that's something that is very legal and I'd prefer not
4 to answer that one. I mean, there's many mechanisms that
5 can be applied to bringing a meeting to order, in my
6 opinion, and that would be to engage with that councillor
7 in an appropriate way, if you could, to try and resolve the
8 issue before then telling him to leave or worse.

9

10 Q. Yes, I appreciate that, there are a number of - I
11 think the idea you're driving at is, there are a number of
12 tools in a chair's toolkit to maintain order and decorum
13 during a meeting: I fully accept --

14 A. Yeah, I'm agreeing, yes.

15

16 Q. -- I accept that concept.

17 A. Yes.

18

19 Q. But I suppose what I'm - I'm not pointing to any
20 particular examples at the moment but just generally as a
21 matter of meeting practice, if a mayor or a chair, I won't
22 even say a mayor, whoever is in the chair got to the stage
23 where they asked a councillor to leave the meeting having
24 employed the procedures available under the Code of Meeting
25 Practice, would it be appropriate in your view as a mayor,
26 or ex-mayor, for that councillor to have remained in the
27 chamber?

28 A. I'll say, no.

29

30 Q. And, is the basis of your answer, because the Code of
31 Meeting Practice is something that ought to be adhered to
32 in order to maintain efficacy of meetings?

33 A. Should be, yes.

34

35 THE COMMISSIONER: Thank you.

36

37 MR PARISH: Q. I might show you Clip 11, Mr Halstead,
38 which relates to a meeting on 24 February 2021.

39

40 (Recording Clip 11 played to the inquiry)

41

42 A couple of questions on that. Firstly, did you see
43 in there any acts of disorder which, if you'd been chair of
44 the meeting, you would have acted on?

45 A. I would have not used the mute button at all.

46

47 Q. That was my second question.

1 A. Pardon?
2
3 Q. That was my second question.
4 A. Okay.
5
6 Q. My first question was, did you see any acts or observe
7 any acts of disorder there?
8 A. Oh, I saw that as vociferous debate which could have
9 been handled in a way that brought both of them into
10 line before using a mute, forgetting even about that one,
11 in terms of trying to get a resolution of the two obviously
12 diametrically opposed views dealt with in a different way.
13
14 Q. That robust debate included the chair in that
15 circumstance asking for them to stop talking and they
16 continued to talk; did you observe that?
17 A. I observed it, yeah.
18
19 Q. Is that an act of disorder in your view, given that
20 the chair takes precedence?
21 A. Debatable.
22
23 Q. And I think you answered the second question I was
24 getting at, which was - perhaps not actually. Did you ever
25 chair any of the meetings in the electronic space when it
26 was Zoom, or whatever technology used?
27 A. No.
28
29 Q. As a general principle, do you think that the mute
30 button was one of the tools available to a chair, or was
31 that inappropriate in your view?
32 A. I think it was inappropriate absolutely. I've been
33 involved in meetings elsewhere, not in council meetings,
34 but they were Zoom-type sessions where you can resolve
35 things other ways, but I was quite amazed, and in fact I
36 thought the mute business or the procedure to use or
37 process was, in my view, provocative. And I just wonder
38 whether that had the effect of annoying other councillors,
39 I don't know, or stirring them up, but I was astounded when
40 that happened and I think it continued to happen for a few
41 meetings, to my recollection.
42
43 Q. Thank you. Was there any other event or matter in
44 your impression which precipitated a degradation of the
45 behaviour in meetings and maybe briefings as well after
46 2018?
47 A. Oh, I can't recall any specific one, no.

1
2 Q. I've been asking you about council meetings. Can I
3 ask for your recollection of briefing sessions: was that a
4 similar vibe to what was happening in the council meetings
5 or was the behaviour better or worse in those briefing
6 sessions?

7 A. It was much different. I'm not too sure what was set
8 out to be achieved there was achieved in a number of them,
9 but nevertheless it was different; and again, in my
10 submission, you can read it later on as to what I thought
11 happened in there which was to circumnavigate normal debate
12 in a council, an open council meeting which I thought was
13 necessary.

14
15 But, having said that, there were occasions where one
16 particular councillor made a number of fairly
17 straightforward comments about what was going on in those,
18 and that was Councillor Scandrett which, in my view, he
19 probably had the right to make the statements he did or ask
20 questions he did; he was concerned about detail, I suppose,
21 but in general the behaviour was totally different.

22
23 Q. In a good way, you mean?

24 A. In a good way.

25
26 Q. It was better behaved?

27 A. Yeah, different, yeah.

28
29 Q. We've had some evidence about how staff felt about the
30 questioning of them in briefings, mainly post 2018. If
31 they felt distressed, harassed, bullied or put out by the
32 questioning of particular councillors, giving your answer
33 just now, do you think they were wrong to take that
34 impression away?

35 A. I think so. I didn't - nothing jumps out to me at the
36 moment that in those info sessions, that any questioning in
37 there of the staff would have been unexpected or something
38 they would have been concerned about. However, there may
39 have been issues which I'm not aware of, it's possible,
40 but, you know, if you're going to have an information
41 session and it's there to enlighten the councillors in a
42 detailed way about whatever the issues are, I would imagine
43 at senior level quite frank, in fact at any level, and it
44 was in most cases there the senior staff, they would expect
45 and should expect to be questioned in detail.

46
47 Q. The questions have got to be appropriate and relevant,

1 haven't they?

2 A. I would agree with that, I don't think --

3

4 Q. Pardon me. Do you think that there's a possibility
5 that those questions might not be appropriate and relevant
6 if certain staff members have to dread having to go to
7 those briefing sessions?

8 A. Look, I don't know what they were, but the questions
9 should be relevant; but on the same token, I'll say it
10 again, that if it's an information session and a councillor
11 needs to get background information on a particular issue
12 which is being dealt with there, then I would imagine that
13 it should be an expectation of the staff, or from the
14 staff, that at times it could be rigorous; not regularly
15 rigorous, but they'd be expected to know how to respond and
16 have the information available: it's an information
17 session.

18

19 Q. Are you confining your observations there to senior
20 staff or all staff?

21 A. Well, predominantly with senior staff. There were
22 support staff there. I think in most occasions at a part
23 of it when it came to the looking at what was going to
24 happen in the following meeting, which is usually that day,
25 there could have been others there to talk about a
26 particular issue but, to me, all staff, if they're called
27 upon by the council it would be the senior staff, or if the
28 senior staff then rely on their more junior staff, then the
29 council would expect to get an answer to a question.

30

31 Q. Do you think a councillor is entitled to hear from
32 specific staff members at their choosing, or do you accept
33 that it's primarily the role of senior staff to condense,
34 distil and present information?

35 A. It's the role of senior staff to determine who should
36 be there and who should be answered or be required to
37 answer; I think in most cases they should be doing it, but
38 if they need assistance on certain detail, again, that's at
39 the behest of the senior staff.

40

41 Q. We heard some evidence from Councillor Nelson this
42 morning that in one briefing session you requested that a
43 specific engineer, I think, be brought in to answer
44 questions: is that something that happened to the best of
45 your recollection?

46 A. Oh, it could have; might have been about a particular
47 safety issue on the road. I don't recall which one it was,

1 to be quite frank.

2

3 Q. You have no specific recollection of that event or --

4 A. No, I don't but --

5

6 Q. Is that something that you may have done from time to
7 time?

8 A. That I may, what?

9

10 Q. You may have done from time to time?

11 A. Oh, I doubt it; it would have been specific to an
12 issue where I may have been aware that individual had the
13 particular expertise.

14

15 Q. I don't want you to have to reconstruct evidence if
16 you don't have a clear memory of it. Do I take from your
17 evidence that you are assuming that that is something that
18 you may have done given a knowledge of some matter, but you
19 have no specific recollection of having done it?

20 A. M'mm, it's possible it occurred, but I don't know it
21 did.

22

23 Q. If you had, would that have been --

24

25 THE COMMISSIONER: I think the witness is accepting the
26 possibility that it might have happened but has no specific
27 recollection.

28

29 Q. Have I understood you correctly, Mr Halstead?

30 A. I don't recall asking any particular one but I may
31 have on an issue; I can think that one specific engineer
32 may well have had knowledge on a particular aspect of roads
33 that no-one else did, particularly when the senior staff
34 involved had no knowledge of roads.

35

36 THE COMMISSIONER: I think that covers it, Mr Parish.

37

38 MR PARISH: Thank you.

39

40 Q. We've had some evidence as well about a perception
41 that some councillors received preferential information or
42 there was a massaging of information to suit some
43 councillors in the 2016 council. Did you have any
44 experience, knowledge or impression of that happening?

45 A. No, not at all. It may have and I wasn't aware of it,
46 but I don't - I don't recall that.

47

1 Q. That's not something you had any direct --

2 A. No.

3

4 Q. -- experience or impression of. Another piece of
5 evidence which has recurred in this inquiry is the sense
6 from at least some parts of the community that the council
7 had stopped listening to them in the 2016-2020 term. Did
8 you ever receive that impression or feedback from the
9 community, that the council had stopped listening?

10 A. Certainly, in terms of the Station Street bypass, that
11 was made very clear to me at - by way of emails, in fact,
12 all of this would be on emails which I have no access to
13 and don't want, but certainly that was the impression I got
14 from that group of people.

15

16 I'm trying to think if there was other groups that
17 come to mind, but the general feeling was that anybody that
18 I spoke to, and now, they weren't hundreds, but at any
19 given point in time that had a concern about something, it
20 was all about the fact that they were not being treated, in
21 their opinion, properly or appropriately by staff. And, in
22 some cases the councillors well knew because they weren't
23 getting the feedback which they were expecting to get.

24

25 Now, I'm not sure whether your question's to the point
26 where, generally about communication; I don't think that's
27 where you're heading at this stage, were you?

28

29 Q. I'm interested in your view of it, I mean, it's
30 evidence that people have given about the council and
31 you're a councillor, so you're more than welcome to defend
32 or accept the position.

33 A. Okay. It became very obvious to anyone in the
34 community, and an extraordinary amount of feedback I got -
35 as I said that's not - I'm not gonna say it's, you know,
36 it's 90 per cent of what I got, but a lot of what I got was
37 about staff, quite frank, not responding to telephone calls
38 or mail or emails. In other words, they have a question or
39 phone calls, if I didn't say that; that concerned them more
40 than anything, that was without doubt the No.1 complaint
41 that I received at any time as a councillor, and that
42 seemed to get worse as time went on.

43

44 But in terms of the council, I got the impression
45 again - that's a good word you used earlier - is that,
46 community groups were being listened to less as time went
47 on; by the councillors, I'm talking about.

1
2 Q. Do you know or do you have an impression as to why
3 that might have been the case?

4 A. The only thing I can think of is that people become
5 comfortable in the position they're in and, if they're in a
6 four-year term it may be that over time they become less
7 engaged with issues.
8

9 Q. One area of communication that has continued to come
10 up is the Station Street bypass project. Do you have any
11 view or impression as to how the communication and
12 consultation was by the council with regard to the
13 community and particular interest groups at the time?

14 A. There was certainly a local interest group, Bowral
15 Matters I think was the original name, then it became
16 Highlands Matters or whatever, and they were very concerned
17 about the project, which was understandable from anybody
18 who was interested in trying to maintain particularly the
19 trees through there, which was not only an environmental
20 issue but a heritage issue from a lot of people's point of
21 view, and they had a real concern about the proposal.
22

23 Now, you as people involved in the Commission should
24 know, or may know, I'm not sure, but this is a thing that's
25 had a history of 30 or 40 years; it's gone back a long way
26 of different variations of it, including complete bypasses.
27 But by the time the 16-21 council came around, obviously a
28 position had been formed in the previous council, but that
29 this particular proposal was to proceed.
30

31 Now, I've got very strong views on it, and they were
32 that a bypass of some kind was needed for Bowral. The fact
33 that the previous council had come up with this one and
34 resolved to move towards implementing it: I didn't disagree
35 with the fact that there needed to be a bypass, with an
36 engineering background involved with roads and traffic as
37 well, I mean, there's obviously a lot of practical
38 solutions which have to be weighed up against the
39 environmental and the heritage.
40

41 But I have a real big issue on the Station Street one
42 and I suggest you read my submission, and that is, that the
43 staff of this council did not advise the elected council
44 correctly in terms of the Environmental Planning Assessment
45 Act, about the requirements for review of environmental
46 factors. I'm well aware of what the processes are.
47

1 Now, if you want the detail on it read my submission,
2 please, about that and in particular the confidential email
3 I sent to the mayor of the day about the processes that had
4 to be followed for this to be lawful to start the job.

5
6 THE COMMISSIONER: I think you can safely assume your
7 submission has been read and re-read, so don't concern
8 yourself. As Counsel Assisting said earlier, part of this
9 process is to tease out this idea in the public forum, so
10 I'll let Counsel Assisting continue.

11
12 THE WITNESS: Look, I made it very clear there that there
13 were procedures that had to be followed and the work could
14 not commence until those procedures were followed, and they
15 were ignored, full stop. And I do know what I'm talking
16 about with the Planning and Environmental Assessment Act.
17 And again, if you get a chance to read that, which I'm
18 suggesting from - agreeing or hearing what you're saying,
19 which is good, because it cannot - still not start, even if
20 it was no proposal or cancelled at the moment, because
21 things have to be followed.

22
23 And to that extent I was at the point of going to the
24 Attorney-General, New South Wales Attorney-General to have
25 this council pulled into line, because I will not be part
26 of abrogating to provisions of legislation, and certainly
27 not being part of a null and void activity approval which
28 they didn't even know about before something starts. So
29 that, to me, is the prime issue that I was very concerned
30 about during my term on council this time round:
31 unbelievable how these things could progress. Sorry about
32 going into that detail.

33
34 THE COMMISSIONER: No, not at all; it's useful.

35
36 MR PARISH: Q. I want to ask you in a second about - my
37 question about the consultation with community, but while
38 we're on the topic of the Environmental Planning and
39 Assessment Act, there was some evidence last week from
40 Barry Paull, who was the acting general manager at a
41 certain point of time, who said he had been given a letter
42 signed by Mayor Gair asking him or directing him to remove
43 the eight Pin Oak trees prior to the issuance of an REF.
44 Did you hear or know about that evidence?

45 A. Knew nothing about it.

46
47 Q. Did you --

1 A. I'm flabbergasted to hear that because at the time I
2 was involved in it - I think it might have been discussed
3 at some stage during those first two years, but there was a
4 discussion around two or three trees, and I'm staggered to
5 hear that all of a sudden out comes eight; because this was
6 a major issue which the community was concerned about. Not
7 only that, but then to have advice given by someone who I
8 have grave doubts about telling us that they're all dying,
9 and I'll go on record here now saying I don't believe that
10 at all, to try and justify the removal of these trees which
11 were, in my view, had a bit of dieback in some of them, but
12 essentially were very healthy trees. To hear that, I'm
13 astounded.

14
15 Q. I take it from the answer just then that you would
16 have viewed it as an illegal, if not unlawful act if those
17 trees had been removed prior to the issuance and approval
18 indeed in the REF?

19 A. Both, illegal and unlawful. Could not be done because
20 that - doing - taking that one step would confirm in
21 anyone's mind, particularly if it became a legal issue,
22 that the work had started. I mean, the reason for issuing
23 an instruction like that would have been to enable then the
24 roadworks to get up and away, is all I could see would be
25 the only benefit, if you could call it that, it would be a
26 disbenefit by removing eight trees. I mean, that would be
27 like a red flag to a bull. I'm sure the community knew
28 nothing about that one. I certainly didn't know anything
29 about it, and I'm sure various other councillors didn't
30 know anything about it either.

31
32 THE COMMISSIONER: Q. That last comment deals with it,
33 but I'll just put it anyway. I was going to ask you a
34 question which you've just answered, which was, I take it
35 from your evidence that you had no knowledge that the mayor
36 had given this direction to Mr Paull?

37 A. None whatsoever.

38
39 THE COMMISSIONER: Thank you.

40
41 MR PARISH: Q. Do you recall there being a motion passed
42 at council about the removal of those eight Pin Oak trees?

43 A. Not eight Pin Oak trees, no. I recall a notice of
44 motion being put about the removal of what I'd call runners
45 of elm trees on the very southern end which was - in fact,
46 I doubt they fell within the definition of a tree, but they
47 were runners - which elm trees do, they run all over the

1 place - to clear up a drainage channel, and that's the only
2 notice of motion I recall. I don't recall anything at all
3 about eight trees, elm trees, to be removed.

4
5 Q. Assume that there was such a motion passed. In your
6 view, would that in any event be subject to all the
7 necessary approvals, including an REF?

8 A. Absolutely, it would be considered to be part of the
9 job, it was - I mean, those eight trees, I just forget how
10 many there were in total, but there was quite a few, that
11 would constitute a substantial part of the commencement of
12 that job: end of issue. It would be a breach straight away
13 of the EP&A Act.

14
15 Q. Yes.

16 A. So, the fact that a notice of motion's carried doesn't
17 then legalise that Act. In fact, it confirms that the
18 whole thing is null and void.

19
20 Q. Going back to the topic of the communication and
21 consultation with the community about the Station Street
22 bypass, there was some evidence that the approach of
23 councillors specifically at times was adversarial on this
24 topic. Is that something you agree with or disagree with?

25 A. I think it could have been considered to be
26 adversarial by the residents of Bowral, and particularly
27 the interested group, I think it was Highlands Matters in
28 the finish, I just forget because they changed their name a
29 few times. But I would think they would consider it very
30 adversarial, because there were a number of meetings held a
31 year with representatives of that community across
32 different fields of expertise, and I think they got the
33 view that, as each of those meetings were held, that they
34 weren't exactly constructive. They weren't open council
35 meetings, they were sort of consultation type meetings to
36 get some sort of dialogue going between obviously these
37 groups, which are quite vociferous, and correctly so.

38
39 Q. Mr John Barrett of Friends of Bowral said you
40 admonished him in a meeting; is that something you recall?

41 A. Not really. I remember a meeting way back at the
42 beginning of the term of council where there was a public
43 meeting at - I think it was a church in Bowral, didn't know
44 who it was, I don't think I admonished anybody, but I would
45 have put the point at that time as to where the process was
46 with council, and no, I don't recall any admonishing of
47 Mr Barrett at all; in fact, I gave a lot of advice to him.

1
2 Q. Some people may take that as admonishment. Do you
3 recall any behaviour from you or any councillors at that
4 meeting at the church hall that might have been taken by
5 the people who were there as adversarial or admonishing?
6 A. No, I don't think so. What my recollection of that
7 meeting was to inform them of where the council was at at
8 that time, and that was early in the piece of the council,
9 the 16 council, 16-20 council, and I certainly as mayor had
10 to, at the conclusion of that meeting, sort of try and sum
11 up where council was at and I put the position of the
12 council at that time.

13
14 And I would believe that at that meeting there - I'm
15 not too sure the break-up, but there'd have been some on
16 side but there would have been - the majority would have
17 been the people who opposed the whole project so they
18 wouldn't have liked to have heard, presumably, what I would
19 have summed up where council was at at that time and the
20 fact that there was still a lot more work had to be done
21 with dealing with them in terms of consultants - not so
22 much consultants, I think we had an engineer that was
23 involved in the fine detail of it - Bob, I can't remember
24 his surname, he lives in Bundanoon. But there was a lot
25 more work that had to be done with them and they were told
26 about that.

27
28 Q. And you --

29 A. And my point was pretty clear, as I've said earlier
30 today, that I agreed with a bypass of some kind but not of
31 the type that was proposed to eliminate trees. So, I think
32 everyone there would have known where I stood on that one.

33
34 Q. Do you recall apologising at a subsequent council
35 meeting after that church hall meeting?

36 A. Oh, it probably would have been to Laurel Cheetham.
37 She had a particular view on EISs and REFs, et cetera, at
38 that meeting, and the view I took of that meeting would
39 have been something she didn't like to hear and I
40 apologised, and I think where you figure that you maybe
41 could have dealt with it better, that's what you should do.

42
43 Q. What precisely was the mischief that you thought you
44 were apologising for? Was it --

45 A. I don't think it was mischief, I would not like to use
46 that word, but I think I gave or I made the statement that
47 was contrary to what she thought about REFs and EISs,

1 that's the only thing I recall and she disagreed with my -
2 and she was a lady that had done a lot of work in planning
3 over the years, so she needed to be listened to, but I
4 didn't agree with her at that time on that night, but
5 obviously she took offence.
6

7 Q. I see. You gave the example before of an operational
8 and strategic distinction in respect to potholes as
9 squarely an operational matter; is that correct?

10 A. As in, if you sent an email or you - a directive of
11 some kind and said to someone, "This is how you should do
12 it" --
13

14 Q. Yes.

15 A. -- I know where you're coming to, by the way, but
16 anyway, I might be wrong.
17

18 Q. Well, I like where you're going there.

19 A. Yeah. But as to how you actually, you know, might see
20 a failed pipe somewhere and you say, "Well, look, this pipe
21 should be fixed up" and, quite frank, I wouldn't change my
22 way on that one; if I saw a problem, I'd draw it to their
23 attention. But you then wouldn't say, "And this is how you
24 fix it". I'm assuming I know where you're going so maybe
25 I'll leave that to you next.
26

27 Q. You've perhaps cleverly, or perhaps not, referred to
28 emails or directions in that form, but what about
29 physically attending somewhere to show staff how to fix
30 potholes?

31 A. Absolutely did, and dealt with that - dealt with that
32 directly through Mr Paull, told him about it, there may
33 have even been an email on the system, I don't know, and he
34 made it very clear I should speak to Dominic Lucas, which I
35 did, and did a demonstration.
36

37 And can I say this to you now, that this very thing
38 that I'm about to show you, and I want to submit this
39 because this is - what I'm going to submit to you is what I
40 did do on purpose, because I was very concerned about the
41 state of pothole repairs, and can I say even worse now, but
42 right across this state - not only here - as to how they
43 might be done and done successfully.
44

45 Now, I went out to the depot and showed a series of,
46 what, four, eight, 12, 12 slides, and then demonstrated on
47 a piece of equipment as to how you might appropriately

1 repair a pothole, and I have no regrets about doing that
2 because what I was doing was offering advice to engineering
3 staff of this council as to how they might repair a pothole
4 in a proper way; exactly the same as I do right through
5 this state in New South Wales. So, yes, I did that and I
6 would do it again tomorrow.

7
8 Q. It's not within the terms of reference to pull up
9 every piece of conduct that a councillor may have done, but
10 it is within the terms of reference to ascertain whether
11 they understand their roles and responsibilities. Did you
12 accept that in that case you may have transgressed over
13 your role and responsibility into the operation --

14 A. I might have what?

15
16 Q. You might have transgressed over strategic and into
17 operational?

18 A. If you want to get into semantics, yes, probably.

19
20 Q. I'll use the plainest language I know then: do you
21 accept that what you did was wrong in that situation?

22 A. No, I don't.

23
24 Q. Why was it not wrong if it was an operational matter
25 and you're a councillor?

26 A. I don't consider that was an operational matter in
27 terms of a specific job; this was talking about a specific
28 method of doing things --

29
30 Q. You literally gave - telling someone how to fix
31 potholes as an example of operational before. What's the
32 distinction with what you did?

33 A. Because this was general, it was not specific. I
34 mean, I consider that was offering advice, not telling
35 them, "This is how I expect you to do it", I'm saying,
36 "This is how a pothole could be repaired once and once
37 only, full stop". I consider that as a positive, a
38 positive, um, issue, a chance of the council staff doing
39 something properly and, my God, they did.

40
41 Q. Can I just explore that a bit more. Do I understand
42 the distinction in your mind to be that, if you are giving
43 a high level general piece of advice as a councillor,
44 albeit one who has experience as an engineer and as you do,
45 that is to be distinguished from instructions as to the
46 repair of specific potholes, for instance?

47 A. Correct.

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Q. Can you tell me how staff may be able to make that distinction or whether they do need to make that distinction?

A. That would be up to senior staff as to maybe advise them as to the way they saw it. Look, I make the point: I know where you're going, and I think of the two entirely different. This is not a specific, this was a general offer of assistance.

THE COMMISSIONER: Q. Part of the process, as you'll appreciate, is to give everybody the opportunity to respond to things that are suggested to us, and this is one of them, but it might be suggested to me that the distinction you draw is one without substance. What would you say to that?

A. I disagree.

Q. And, it might also be suggested to me that, as you were the mayor at the time, the only way that could be perceived by staff was a direction by you as to how to do their job: what would you say to that?

A. Interesting, interesting question. I can see that some people might think that.

Q. And, if that was the way it was received, would you then accept that it would be wrong for the mayor of the day to direct staff as to how to do their job?

A. Yes, I'd agree that that would be not correct. However, this was offering advice, not telling them how to do it; offering advice on how they might repair a pothole.

THE COMMISSIONER: Mr Broad, before Mr Halstead leaves today, can you make sure we get copies of whatever documents it is that he wishes to place before us? Thank you.

MR PARISH: Commissioner, I was going to change topics slightly and maybe another half hour to an hour with Mr Halstead. I was wondering if perhaps a five minute break now might be --

THE COMMISSIONER: Yes, all right. Given the hour, I'll take a short five minute break to stretch our legs and restore our concentration. I'll start at 4 o'clock on-the-dot, thank you, by my watch.

1 **SHORT ADJOURNMENT**

2

3 THE COMMISSIONER: Yes, Mr Parish.

4

5 MR PARISH: Q. Commissioner, the first thing I might do
6 while I've got it in my hand is tender the document
7 provided to me by Mr Halstead.

8

9 THE COMMISSIONER: Yes, all right, just hand it up.

10

11 THE WITNESS: Did you want other copies of those or?

12

13 MR PARISH: We've got copies.

14

15 THE WITNESS: Okay, there's three different things running
16 around - oh, you've done it already.

17

18 MR PARISH: He's a very efficient officer.

19

20 THE COMMISSIONER: So, I have one page of four slides,
21 then a diagram, then some photographs; is that what I
22 should have?

23

24 MR PARISH: Yes, that's correct.

25

26 THE COMMISSIONER: That bundle of documents provided by
27 Mr Halstead in his evidence will be Exhibit R. Thank you.

28

29 **<EXHIBIT #R - ONE PAGE OF FOUR SLIDES, A DIAGRAM AND THREE**
30 **PHOTOGRAPHS PROVIDED BY MR HALSTEAD.**

31

32 THE WITNESS: Just on those slides, there should have been
33 three pages of four. Did you only want the one or? It
34 doesn't worry me - matter to me.

35

36 THE COMMISSIONER: I've only got one page of four in the
37 exhibit. Was it double-sided, perhaps?

38

39 THE WITNESS: Anyway, there were 12 slides, they sort of
40 formed part of a logical process.

41

42 THE COMMISSIONER: All right, the exhibit will be
43 supplemented by, how many other pages is it, Mr Broad? Two
44 more pages of four slides each taking Exhibit R to contain
45 12 slides, one diagram and three photographs. Thank you.

46

47

1 <EXHIBIT #R - (ADDITION) ONE PAGE OF 12 SLIDES, ONE DIAGRAM
2 AND THREE PHOTOGRAPHS PROVIDED BY MR HALSTEAD.
3

4 MR PARISH: Q. Thank you, Commissioner.
5

6 Q. Mr Halstead, you refer in your submissions to what you
7 perceive to be a lack of guidance from staff during the
8 2016 term. Can you explain what you mean by that?

9 A. Whereabouts is that? Which one are you - what
10 page are you looking at there?
11

12 Q. Of your submission?

13 A. Yeah.
14

15 Q. I might be paraphrasing slightly.

16 A. Okay.
17

18 Q. I'll ask it this way.

19 A. Okay.
20

21 Q. Did you perceive there to be a lack of guidance from
22 staff during the 2016 term?

23 A. I did, I figured that there could have been more. As
24 to how much more, you know, is always a good question; is
25 there too much? But look, I personally believe that whilst
26 I might have been coming from a position of knowing a lot
27 of information about the Local Government Act anyway, for
28 obvious reasons that it might have been perceived
29 differently by others. But look, I did think that there
30 could have been better guidance initially.
31

32 Q. Do you have a specific level of staff you're thinking
33 of there? All staff or the senior executive staff?

34 A. No, just the senior executive. I don't - you know, at
35 no stage did I rely on something coming from a level other
36 than them.
37

38 Q. Did you raise such issues with the general manager or
39 a deputy general manager at any time?

40 A. No, it's not my business to do that, I didn't think;
41 that's a matter of me being able to perceive what I think
42 was required and not to be in a position to tell them how
43 to do their job. I didn't see that was my role.
44

45 Q. It's something you could have communicated to the
46 general manager, do you agree, as a councillor?

47 A. I could have. I don't think I did in any great

1 detail.

2

3 Q. Did you form the impression or were you told about any
4 feelings from any of your fellow councillors that they felt
5 there was a lack of guidance from senior staff?

6 A. No, I don't recall that at all.

7

8 Q. Did you ever consider raising it at a council meeting?

9 A. No.

10

11 Q. Did you feel that, putting aside a lack of guidance,
12 there was a good working relationship between senior staff,
13 the GM, and the councillors during the 2016 term?

14 A. I think, reasonable. I didn't see anything that was
15 overly concerning. In the early stages I didn't have any
16 problem whatsoever with the senior staff that performed, I
17 think, in accordance with what the expectations would be.

18

19 I made a particular point of that when first dealing
20 with them the day after I was elected, that whilst I had a
21 platform of which you've heard already today because you
22 asked me that, that I had every intention of working with
23 them in a productive way and that I had given a commitment
24 to the electorate that I would be interested in responsible
25 senior management. However, I did inform them that I had a
26 keen interest in their roles in those positions and made it
27 clear that I would be dealing with them in a very
28 constructive manner, and that's what I did.

29

30 Q. There's been some evidence to this inquiry that the
31 culture and the mood among staff was "toxic". Did you form
32 that impression or do you have any thoughts on that
33 impression of the staff in the 2016-2020 term?

34 A. As between staff and council or between staff and
35 staff?

36

37 Q. There's some evidence that the morale amongst staff
38 was low and predominantly caused by both councillor to
39 councillor interactions and the way councillors interacted
40 with senior staff: do you have any thoughts or views on
41 that?

42 A. No, I didn't, I didn't detect any particular fall in
43 morale, but that's possible in any organisation, I guess,
44 that we hear from time to time their morale's high or low
45 or whatever it is, but no, I didn't - I didn't - or was not
46 in receipt of anything to that extent from anybody in
47 question, any of the senior managers that's for sure, and I

1 certainly didn't make it my point, nor should I, in trying
2 to determine what that might have been with other staff; I
3 only dealt with the senior staff.
4

5 Q. Do you think that you in any way contributed to that
6 impression? You don't have to accept that but, if you do
7 accept that there was such a morale problem, do you think
8 you in any way contributed to that as a councillor?

9 A. If there was, I didn't.

10

11 Q. I'm going to show you tender bundle E, Volume 1. Can
12 you please go to page 78 of tender bundle E.

13 A. Oh, yes. Yes, I'm aware of that one.
14

15 Q. Do you have before you a page of a - what appears to
16 be a media article written by Jackie Meyers?

17 A. Certainly do.
18

19 Q. And the heading is, "Councillors call for
20 Wingecarribee Shire Council's administrative staff to take
21 a pay cut". Do you see that?

22 A. I see that.
23

24 Q. And, I'll just read the first couple of lines at
25 least:

26

27 *Two Wingecarribee Shire councillors have*
28 *called for several council staff to take a*
29 *pay cut.*
30

31 A. Correct.
32

33 Q.

34 *Deputy Mayor Garry Turland and Councillor*
35 *Ken Halstead are pushing for a 25 per cent*
36 *reduction in the salary of all couple's*
37 *administrative staff during the coronavirus*
38 *pandemic.*
39

40 Just pausing there, who are you referring to there as
41 the administrative staff?

42 A. Senior staff.
43

44 Q. Senior staff?

45 A. Yep.
46

47 Q. Following on from that:

1
2 *They said they believe that the reductions*
3 *should include the wages of the general*
4 *manager and two deputy general managers of*
5 *the Wingecarribee Shire Council.*
6

7 We're now talking about the larger group being
8 inclusive of the general manager and the deputy general
9 manager. Do I take it that what you referred to the other
10 senior staff you're referring to the group managers; is
11 that correct?

12 A. No, I was just referring to those three, the senior
13 staff.

14
15 Q. Right, so although it's inclusive which therefore
16 suggests a larger group, you're only referring to
17 specifically three people?

18 A. Correct.

19
20 Q. And then the next comment is:

21
22 *However, council's general manager, Ann*
23 *Prendergast, told the Southern Highlands*
24 *News that such a move would not be*
25 *happening as council is obligated to meet*
26 *all its legal obligations in regard to the*
27 *employment of its staff.*
28

29 Do you see that?

30 A. Yes.

31
32 Q. Do you agree with that as a proposition as reported by
33 the general manager at the time?

34 A. I guess that's the contractual situation, yes.

35
36 Q. Why 25 per cent?

37 A. Sounded like a good idea at the time.

38
39 Q. Why 25 per cent?

40 A. 25 per cent?

41
42 Q. Why that number? Why not 10 per cent, 5 per cent,
43 100 per cent?

44 A. Well, at the time I recall that there were State
45 Government Ministers of the day taking a 25 per cent pay
46 cut, and that was one of the reasons that I looked at that.
47

1 Q. And what was the rationale, at least in your mind,
2 appreciating you can't necessarily speak for Councillor
3 Turland, as to why they should have their wages cut at all?
4 A. On the basis of a - demonstrating to the community
5 that, in good faith, they would be prepared to do that.
6
7 Q. Was there to be a 25 per cent reduction in their
8 workload? Was that the intention as far as you were
9 concerned?
10 A. No.
11
12 Q. They were to continue doing the same amount of work
13 for a quarter less pay; is that right?
14 A. Correct.
15
16 Q. Did you raise this idea with the general manager
17 before this was reported?
18 A. No.
19
20 Q. Did you raise it with other councillors other than
21 Councillor Turland before it was reported?
22 A. No.
23
24 Q. Did you raise it - I take it not - in a general
25 council meeting?
26 A. No, I did not.
27
28 Q. Did you think that this was the appropriate channel to
29 ventilate issues surrounding the general manager and the
30 deputy general manager's pay and work conditions?
31 A. I didn't see why it was not that. I saw it as a
32 reasonable way of suggesting that that might occur, and we
33 made it very clear it was our opinion, not that of the
34 council.
35
36 Q. You're still acting in a role as councillor when you
37 say these sorts of things, aren't you?
38 A. You are, but you're also acting as an individual in a
39 community. The fact that you happen to be a councillor,
40 you're entitled to an opinion.
41
42 Q. You're at all times acting as a councillor; do you
43 agree with that proposition?
44 A. You're acting as a councillor and a ratepayer, not
45 just a councillor.
46
47 Q. The second paragraph of that story specifically refers

1 to you as "Councillor Ken Halstead".
2 A. Correct.
3
4 Q. Ought they have referred to you as "ratepayer Ken
5 Halstead" instead?
6 A. They could have, but this is written by an editor of a
7 newspaper, not what we wrote to the editor.
8
9 Q. What did you write to the editor?
10 A. Well, it's in my submission.
11
12 Q. Take it that --
13 A. If you have a look at it later on --
14
15 Q. I take it that this isn't going to be a public --
16 A. Pardon?
17
18 Q. Take it that this isn't going to be a public
19 submission and therefore the evidence will not be before
20 the Commissioner. In that way you'll have to, I'm afraid,
21 tell us about it. You don't have to go word-for-word, I
22 may add, but shall we deal with it this way: did you write
23 what is effectively a press release to the editor of the
24 newspaper?
25 A. Yes. I've got a letter to the editor which is about
26 one-and-a-third pages, which commenced with:
27
28 *We the undersigned call upon the Council of*
29 *the Wingecarribee Shire to bring down*
30 *temporary wage reform to assist the*
31 *ratepayers of the shire during the*
32 *coronavirus pandemic ...*
33
34 Et cetera.
35
36 THE COMMISSIONER: Mr Parish, I think the appropriate way
37 to deal with this might be for pages 40 and 41 of
38 Mr Halstead's bundle to be extracted and tendered.
39
40 MR PARISH: Yes, thank you.
41
42 THE WITNESS: So there is a page and a third there and
43 it's something I brought up in my submission too, that I
44 was hoping the Commissioner might have a look at this from
45 our point of view, because how someone might write it as an
46 editor of a newspaper isn't always exactly as you might
47 write it as a letter to the editor, and quite frank, it's

1 different. But we made it absolutely clear this was our
2 opinion. And the person that did the investigation didn't
3 even bother consulting with the newspaper to see what we
4 wrote, and yet, wrote an adverse report about the pair of
5 us which is on the record forever.

6
7 MR PARISH: Q. I've extracted two pages from
8 Mr Halstead's submissions. It's a letter to the editor
9 dated 6 April 2020, addressed to the Southern Highlands
10 News and is signed, it appears, by Deputy Mayor Garry
11 Turland and has under that "Councillor Ken Halstead OAM".

12
13 THE COMMISSIONER: Yes, the version I'm looking at doesn't
14 appear to have your signature on it, Mr Halstead, but I
15 take it - I mean, it's in your bundle, so I'm assuming
16 that's the one we should be looking at?

17 A. That is, that's my signature.

18
19 Q. Oh, that's your signature?

20 A. Yes.

21
22 Q. I'm sorry.

23 A. And I've attached another one which should be on that
24 submission as well which is Garry's copy which is very
25 dark, hard to see.

26
27 Q. Yes, I can't quite read it, but I do see it now.

28 A. Yes, I'll make sure that they're both there.

29
30 THE COMMISSIONER: No, thank you very much for that, yes.
31 Those three pages perhaps when the time comes, Mr Parish,
32 can be tendered together.

33
34 MR PARISH: Q. Can I just ask, if we take the letter to
35 the editor, how is that letter misrepresented or doesn't
36 quite represent at least your views as it translates into
37 the article itself?

38 A. We made it clear that it was our opinion, not that of
39 council for starters - which I think is important - and I
40 think if you have a look at it, whilst the general matters
41 are in what turned out to be the letter in the newspaper,
42 there are similarities quite obviously; you'd expect that.

43
44 Q. Can you just tell me where you make it clear that this
45 is your personal opinion?

46 A. Second page:
47

1 *In our opinion it is obscene that the*
2 *residents and ratepayers of the shire are*
3 *expected to carry the load whilst suffering*
4 *financial losses and associated social*
5 *disruption whereas the administrative staff*
6 *of the council collect their full wages.*

7
8 And the next one goes on to say something similar, it
9 talks about the amount.

10
11 Q. Who is the "our" we're talking about here?

12 A. Councillor Turland and myself.

13
14 Q. Deputy Mayor Garry Turland and Councillor Ken Halstead
15 OAM; is that correct?

16 A. Correct.

17
18 Q. How is the reader of this supposed to take this as a
19 personal opinion as distinct from an opinion given in your
20 role as councillor?

21 A. Well, I'm not sure that they would be 100 per cent
22 clear as to that. I mean, clearly I wrote it as a
23 councillor, but I didn't write it as an opinion of "the
24 council".

25
26 Q. Not suggesting that's an opinion of --

27
28 THE COMMISSIONER: Q. Is the distinction you're drawing,
29 these are opinions expressed by two councillors, not the
30 majority or even the whole of the governing body; is that
31 what you're saying?

32 A. That's correct, that's what we're saying.

33
34 Q. While I've interrupted Mr Parish, I'll ask this
35 question. It's obviously a matter of some concern or
36 irritation perhaps to you that the article didn't, in your
37 view, reflect the content of the letter. Is there any
38 other aspect of it you would wish to draw to my attention
39 in that?

40 A. No, I think that's basically it, I think the rest of
41 it is probably reasonably right. But I just ask you to, as
42 I'm sure you will, have a look at my article or our letter
43 to the editor and then see the differences, because I'm not
44 going to go through every line and sort of show you --

45
46 Q. No, but was the main --

47 A. I think the thrust would be right.

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Q. -- that you felt that this was being presented as you speaking for council as opposed to two individual councillors; have I understood you correctly?

A. Yeah, well, it could be perceived that way, where in actual fact, you know, we made the distinction very clearly there, it's in our opinion, we're not representing the council.

THE COMMISSIONER: Yes, all right, thank you.

THE WITNESS: You know, there's no doubt you run the risk at any time writing a letter to the editor that these sort of things can occur, but you don't have control over it and, you know, when you see it you sort of think to yourself, well, you know, it's a great pity.

THE COMMISSIONER: Q. Can I just ask: was there any reason why - these are obviously views you both held about what was appropriate in the circumstances - was there any reason why they weren't able to be broached with the general manager, firstly?

A. No, I - I mean, I had the feeling very strongly, I think Garry did too, that in the course of the pandemic that everyone should try and - try and do their bit: that was as simple as that. We, again, clearly didn't see this as something that we wanted to influence the council to be part of making that decision.

Q. And, what about the other councillors; was there any reason why before writing a letter to the editor it wasn't a matter that could be raised amongst yourselves to see whether there was some joint position?

A. I suppose it could have been done, but that's not the way I would specifically operate, I don't think. If I'm writing something about an issue, I don't then run around to everyone saying, you know, "Do you agree with that?" I could see some people may, I don't know, but I think you'd be doing that if you were trying to do it from the point of view of getting a total council decision.

Q. Yes.

A. Then it'd be different altogether, I'll bring that up with the mayor and say, "What do you think about this?"

THE COMMISSIONER: Thank you.

1 MR PARISH: Q. Did you raise this issue with the mayor?
2 A. No.
3
4 Q. Why not?
5 A. I didn't think it was my responsibility to do so, and
6 I still don't. That's a personal opinion.
7
8 Q. You're calling on the mayor to demonstrate leadership
9 and take action, and you've written that to the Southern
10 Highlands News; that suggests that you did think it was a
11 role that you had, doesn't it?
12 A. Well, it's a method of drawing attention of this to
13 the mayor. To me, I don't think that we're in a
14 circumstance in society yet where everything we do has to
15 be run through, for example, a mayor if you're a
16 councillor. Certainly if it's the official business of
17 council, some might argue this is, but to my way of
18 thinking an individual councillor is still entitled to an
19 individual opinion.
20
21 Q. Do you think that you run the risk of - having your
22 individual opinion ventilated in a newspaper runs the risk
23 of undermining or demoralising the senior staff who you are
24 calling on to have a pay cut?
25 A. I couldn't tell you what they might think or how they
26 might feel.
27
28 Q. Did you consider what they might think or how they
29 might feel when you wrote to the paper asking that they
30 received a 25 per cent cut to their pay --
31 A. Yeah, I would have --
32
33 Q. -- whilst working the --
34 A. Yes, I would have thought of that.
35
36 Q. -- the same amount that they worked beforehand?
37 A. Yes, I would have thought of that and I put myself in
38 the same position and thought, well, I wouldn't have felt
39 uncomfortable if that suggestion was made to me; in fact, I
40 probably would have in my working days done just that.
41
42 Q. Can I ask you: you mentioned before the idea that
43 everyone needed to do their bit at that time. Did I hear
44 that evidence correctly?
45 A. Something to that effect, yes.
46
47 Q. I'm just going to show you tender bundle F which is

1 actually in electronic form. Page 339.
2 A. "Notice to informing part of the financial statement",
3 is that it?
4
5 Q. No. It's a nice guess, but no.
6
7 THE COMMISSIONER: It's a different bundle, I think,
8 Mr Halstead. Something else is being brought to you.
9
10 Q. Do you have in front of you the ordinary minutes,
11 25 March 2020?
12 A. Yep.
13
14 Q. And do you have there the motion MN 105/20?
15 A. Correct.
16
17 Q. And do you see a motion that was moved by Mayor Gair
18 and seconded by Councillor Markwart?
19 A. Correct, yes, I do.
20
21 Q. Do you recall this meeting or this resolution in
22 particular?
23 A. I remember the - let me just read it, thanks.
24
25 Q. Yes, by all means.
26 A. I remember that No.1 clearly.
27
28 THE COMMISSIONER: I'm sorry, Mr Parish, could you give me
29 the page again, please?
30
31 MR PARISH: 3339.
32
33 THE COMMISSIONER: Thank you.
34
35 THE WITNESS: Yes, I remember that.
36
37 MR PARISH: Q. Do you see No.3 there, which is:
38
39 *THAT the ordinary meetings of Council*
40 *scheduled for 8 and 22 April be*
41 *cancelled ...*
42
43 A. Yeah.
44
45 Q. You moved an amendment; is that correct?
46 A. That's what it says, yes.
47

1 Q. And that amendment No.1 forwarded by you or moved by
2 you and seconded by Councillor Halstead was:

3
4 *THAT the business Of Council be conducted*
5 *by the Mayor and Deputy Mayor as*
6 *representing the whole 9 councillors from*
7 *26 March 2020.*

8
9 Do you see that?

10 A. Correct.

11
12 Q. So, your response to the coronavirus pandemic was, it
13 was to try and pass a motion whereby the mayor and deputy
14 mayor undertook the roles of you and the other councillors;
15 is that correct?

16 A. Correct.

17
18 Q. Do you see a hypocrisy in that, given that you also
19 called for senior staff to continue working their full
20 amount for a 25 per cent pay cut?

21 A. No, I don't.

22
23 Q. Why not?

24 A. I'm giving you an opinion: I don't.

25
26 Q. Do you have any reason for that opinion?

27 A. I don't know why it would be called hypocrisy.

28
29 Q. Well, some may say that calling upon senior staff to
30 take a pay cut and continue working on normal hours to do
31 their bit is a starkly different position when that same
32 person who calls for that seeks to pass a motion which has
33 the effect of excusing them from having to do their
34 business on council from 26 March 2020 onwards. Do you see
35 how one could form that impression?

36 A. Well, I don't know - I don't know how to give an
37 accurate answer to that one, but I don't resile from what I
38 did, and I don't see that that necessarily conflicts.

39
40 Q. Can I get your view on another matter that I need
41 assistance with to understand whether it's operational or
42 strategic. Tender bundle E, page 89.

43 A. Yes, I'm reading it, I've read it.

44
45 Q. I think we have to go all the way back down to
46 page 100, I think, to get to the start of that thread, but
47 one way to shortcut it might be to ask you if you recall

1 what this is about and, if you do recall, whether you could
2 give us some context about it?

3 A. So, I'm looking at page 89.

4

5 Q. Yes.

6 A. I'm just trying to put together Bloomfield
7 Development; I'm thinking this is the one - well, I think I
8 know which one it is - yeah, okay. I know which one it is,
9 yeah, I've read it, yep.

10

11 Q. Can you give us an idea of the context of what this is
12 about and how you came to be involved in email threads with
13 Mark Pepping and Duncan Gair?

14 A. Well, there were complaints received from a number of
15 residents out there, those affected by major storm flows
16 which adversely affected their properties, and it worried
17 me, looking at the extent of it, which was extraordinary
18 damage to their houses, as to what sort of assessment had
19 been done and whether the person doing the assessment was
20 appropriately qualified: that's essentially getting at the
21 issue.

22

23 Q. Is that something, on reflection, which may have
24 transgressed over from strategic into operational?

25 A. No, it's asking a question, it's not telling someone
26 how to do something. That's asking a question about it.
27 Having been out there and seen the loss to property and
28 damage to property, it was a reasonable question to ask,
29 particularly having regard to the fact that it could end up
30 in court.

31

32 Q. Do you accept that sometimes asking questions can
33 carry with it an answer that is inferred?

34 A. Could carry with it, what, an answer?

35

36 Q. A predetermined answer. It's called a leading
37 question in litigation.

38 A. No, I think it was pretty genuine there in terms of
39 just trying to find out whether it was done in-house or
40 whether it was done by a consultant; if so, was that person
41 appropriately qualified: that's what I'm trying to get at.

42

43 Q. What if you prefaced the question with, "It seems to
44 me that council staff may not have been as thorough as they
45 could have been on the processing of the development
46 application"; does that suggest a certain import into the
47 question which follows?

1 A. I think what it's saying is that, as a result of
2 what - or the end result of what's occurred, one wonders -
3 I certainly wondered - about whether in fact appropriate
4 assessment had been made of it, and I had sighted some
5 documentation from the owners, the main affected owner
6 there, that indicated that they'd - let me think about it -
7 that they had submitted information with the development
8 application; I think they were asked for further
9 information or further investigation, but it struck me that
10 that was something that we needed to be very careful of as
11 a council to ensure that we weren't going to be in
12 litigation as a result of it.

13
14 Q. Do you have an impression as to whether your
15 relationship deteriorated with senior staff and the general
16 manager Ann Prendergast in the last few years of this term?

17 A. Well, I didn't notice it. I didn't have that
18 impression.

19
20 Q. You were left with the impression that the manner in
21 which you interacted with those senior staff and they
22 interacted with you was broadly the same at the start of
23 the 2016 term as at the end; is that right?

24 A. Yeah, I wouldn't have thought there'd be any
25 difference. I didn't detect any, anyway, put it that way.

26
27 Q. That's all we can ask for, your impression. I'm going
28 to show you a clip of a meeting. I'm going to show you a
29 clip of a meeting on 26 February 2020 which is Clip 7.

30
31 (Recording of Clip 7 played to the inquiry)

32
33 What were the two places you were going to take
34 action?

35 A. I have to say, I don't recall at the moment, but they
36 were most likely going to be with the department of local
37 government, I can't recall the second one. But, quite
38 frank, I don't know exactly what the issue, what the notice
39 of motion was, to be honest. From that dialogue I
40 certainly can't work it out.

41
42 THE COMMISSIONER: I was going to ask that question. Do
43 you have bundle E still in front of you?

44 A. No.

45
46
47 THE COMMISSIONER: Perhaps Mr Halstead could have

1 bundle E. Mr Parish, could you just remind me the date of
2 the meeting? Was it 26 February?
3
4 MR PARISH: That's correct, 2020.
5
6 THE COMMISSIONER: Thank you.
7
8 Q. Page 143 is, I think, the motion or the response to
9 the notice of motion submitted by then Councillors Halstead
10 and Turland. See if that refreshes your memory and you can
11 tell me whether I've been able to identify it correctly.
12 I'm not sure that the timing works, and it's a motion put
13 forward by the two of you, and I'm wondering if this
14 refreshes your memory. Then the motion's on the next page.
15 A. I'm still having troubling grappling with what it -
16 oh, okay, I think it would be on page 145, is that it?
17
18 Q. Yes.
19 A. Oh, okay, all right.
20
21 Q. Does that refresh your memory?
22 A. Yeah. That's a telephone call.
23
24 Q. Is that the motion that was being discussed in that
25 meeting?
26 A. I assume it must be, I take it --
27
28 Q. That's the timing?
29 A. I'd say so.
30
31 Q. Thank you.
32 A. I just couldn't get it from that discussion up there
33 what that was about.
34
35 THE COMMISSIONER: No, that's perfectly reasonable, I had
36 to reconstruct it myself. Mr Parish.
37
38 THE WITNESS: Yeah, we were concerned - well, I was
39 certainly concerned, and obviously Councillor Turland was
40 as well, about the way in which that telephone call was
41 recorded.
42
43 MR PARISH: Q. Did you make a Code of Conduct complaint
44 arising out of that?
45 A. Did not.
46
47 Q. You sought to deal with it - by way of resolving do

1 you hold discussions in confidential session; is that what
2 I understand to be correct?

3 A. Well, that's obviously what happened.
4

5 Q. Having now seen that motion, does that refresh your
6 memory about what the two places of action you were
7 intending to take were?

8 A. Certainly OLG would have been one of them. I'm just
9 trying to think what the other one would have been: could
10 have been the Minister. Just don't recall, to be quite
11 frank, at this stage caught on-the-hop like that, but very
12 concerned about it and figured that - yeah, we're entitled
13 to all of the - certainly the individual was entitled to
14 that being dealt with in an appropriate manner.
15

16 Q. Was the person whose conduct you were concerned about,
17 the general manager's?

18 A. Would have been ultimately his, because that was the
19 person that was responsible. Clearly, the - the buck had
20 to stop there, I mean, he's the general manager, and
21 clearly this phone call had been taped under her watch.
22

23 Q. You used the word "hoodwinked" there and said, "The
24 general manager's heard that one before". What did you
25 mean by that?

26 A. Well, I probably used it before. But if - you know,
27 I'm of the opinion that, if someone has given me a good
28 story and I'm not exactly convinced, I probably have used
29 the word "hoodwinked", (indistinct words) hoodwinked.
30

31 Q. So you're implying, at least, that the general manager
32 was lying to you?

33 A. No, not that at all. I'm implying that the advice we
34 were given may not have been highly accurate in terms of
35 what actually occurred; I don't know, because we weren't
36 there, we did not attend the meeting that that was
37 discussed.
38

39 Q. When you referred to the fact that the report should
40 have been given to the mayor by the GM, were you implying
41 that she had done something improper there in not providing
42 it to him?

43 A. No, it was just my opinion that that's what should
44 have occurred.
45

46 Q. Well, you can have an opinion and it can still imply
47 that someone has done something wrong; do you accept that?

1 A. Yeah, could do.

2

3 Q. And do you accept that's how it could be interpreted
4 by the reasonable person listening to what you were saying?

5 A. That's possible, I suppose.

6

7 Q. And, when you said "I have no confidence in your
8 ruling", referring to the ruling of the mayor, do you
9 accept that a reasonable member of the community could have
10 had their confidence in the mayor and the council
11 undermined by a councillor saying that to the mayor?

12 A. No, I don't, that's something that could be discussed
13 in a normal council meeting, which a councillor's entitled
14 to have an opinion on the way in which something's being
15 dealt with.

16

17 Q. In your view, a councillor is allowed to say in a
18 council meeting to the mayor, "I have no confidence in your
19 ruling"; is that correct?

20 A. I don't think there's a problem with that if you
21 don't.

22

23 Q. Do you think that, heard by a reasonable member of the
24 community, might undermine the confidence in the mayor and
25 by extension the governing body?

26 A. Not necessarily. It's an opinion of one councillor.

27

28 Q. Well, you use the word "opinion" again there, and I'll
29 ask you again: do you accept that, just because it's an
30 opinion, doesn't mean that it can't give the impression to
31 someone listening to it that it has the effect of either
32 inferring something or carrying a meaning with it?

33 A. It's up to the person that perceived the comment or
34 how they would perceive the comment. I hold the view that
35 an individual councillor's entitled to have an opinion on
36 something that's been stated or said.

37

38 THE COMMISSIONER: Q. Do you think that a councillor
39 challenging a ruling by the chair is inconsistent with
40 maintaining order at the meeting?

41 A. In some cases, in fact probably in the majority of
42 cases that could be concluded. However, I don't think that
43 all members of the public would assume that that's the
44 case; that the fact that you don't agree with the chair on
45 a particular issue is therefore undermining the chair.

46

47 Q. There may well - and I accept there may well be a

1 difference between "disagreement" and "direct and overt
2 challenge"; do you agree with that?
3 A. Yeah.

4
5 Q. Is direct and overt challenge - and I'll put it
6 squarely - of the kind we saw there, that is, "I have no
7 confidence in your ruling", it might be suggested to me
8 ultimately that that is something that is inconsistent with
9 maintaining order at a meeting. What would your response
10 be?

11 A. I don't agree with that.

12
13 Q. If a councillor had done that while you were in the
14 chair, what would your response be?

15 A. It would have been probably to discuss at a later date
16 with that councillor what their concern was; if not at the
17 meeting being able to - trying - trying to ascertain
18 exactly what their concern was.

19
20 Q. Would you discuss rulings you'd made with councillors
21 regularly when in the chair?

22 A. Did I discuss them?

23
24 Q. Yes, having made a ruling, would you then enter into a
25 discussion with councillors about it after you'd made it?

26 A. Not necessarily unless the councillor wanted to
27 discuss that matter or it was a serious - such a serious
28 matter - I can't recall one - then I would, you know, would
29 probably consider that.

30
31 MR PARISH: Q. You felt that you'd been hoodwinked by
32 the general manager in this meeting; is that correct?

33 A. That was what I said, and I felt that at the time.

34
35 Q. And it's related to a motion that you and Councillor
36 Turland were attempting to have moved at the meeting; is
37 that correct?

38 A. That's correct, because we were of the opinion that
39 that could have been dealt with, even though the chair
40 ruled otherwise, that was his position to do that, but we
41 considered that it was relevant at the time to try and have
42 discussion on that matter, we considered it of such a
43 serious nature.

44
45 Q. Did that feeling of being hoodwinked have anything to
46 do with your decision to write to the paper about five
47 weeks later calling for her to have a 25 per cent pay cut?

1 A. Absolutely no connection.

2

3 MR PARISH: I have no further specific topics,
4 Commissioner.

5

6 THE COMMISSIONER: Q. Do you have page 143 there?
7 You'll have to go back. I just note, Mr Broad, that my E
8 doesn't have a page 144.

9 A. Yeah, I've got 143.

10

11 Q. And there you'll see in that email the reasons the
12 general manager determined not to include or expressed as
13 to why that motion could never have been included in the
14 agenda. Do you see that?

15 A. I can see, yeah.

16

17 Q. Just have a read of that email and let me know when
18 you're finished, if you wouldn't mind.

19 A. Yeah, I've read it, yep.

20

21 Q. Do you agree or disagree with the reasons given in
22 that email?

23 A. No, I don't necessarily agree, but I accept them; I
24 accept that the person wrote that.

25

26 Q. Yes.

27 A. I'd be wondering what - well, I'd immediately look at
28 the word "unlawful" and wonder what - how you could argue
29 it was unlawful.

30

31 Q. Well, in the middle of the page clause 3.20 is set out
32 and it says its mandatory terms:

33

34 *The general manager must not include in the*
35 *agenda for a meeting of council any*
36 *business which, if due notice has been*
37 *given, if in the opinion of the general*
38 *manager the business is or any*
39 *implementation of the business would be*
40 *unlawful.*

41

42 Then the email goes on:

43

44 *The general manager has formed the view it*
45 *would be unlawful to include the notice of*
46 *motion in the agenda as your notice of*
47 *motion implies and it specifically alleges*

1 *breaches of legislation in the Code of*
2 *Conduct.*

3
4 And then reference is given to clause 9.12 of the Code
5 of Conduct:

6
7 *You must not make allegations about or*
8 *disclose information about suspected*
9 *breaches of this code at council, committee*
10 *or other meetings whether open to the*
11 *public or not.*

12
13 Then, if we turn to the motion itself on page 145,
14 about halfway down the main paragraph, third line:

15
16 *A telephone inquiry which is a breach of*
17 *the Code of Conduct requirements*
18 *clause 8.12 and other legislation.*

19
20 A. Yeah, I can read that, yes.

21
22 Q. So, in your view, what was wrong about the conclusion
23 reached by the general manager about whether this is the
24 type of motion that can be included in the business paper?

25 A. Well, to argue that it's contrary to a clause in the
26 Code of Meeting Practice, I didn't figure and Councillor
27 Turland the same, I would assume, is that that would have
28 any precedence over other legislation which is mentioned
29 there.

30
31 Q. What, to your knowledge, status does the Code of
32 Meeting Practice and the Code of Conduct have in terms of
33 the Local Government Act?

34 A. Well, they are - they are part of it as a code, they
35 are embraced within the Local Government Act.

36
37 Q. And, does a councillor have an obligation under the
38 Local Government Act to comply with both the Code of
39 Meeting Practice and the Code of Conduct?

40 A. Correct. I'm just wondering how one would conclude
41 that something written in the Code of Meeting Practice
42 would create a situation where there may have been a breach
43 of state legislation albeit that the Code of Meeting
44 Practice is part of or an adjunct to the Local Government
45 Act. I'm finding it difficult, to be quite frank.

46
47 Q. All councillors are bound by the Code of Meeting

1 Practice; correct?

2 A. Correct, yes.

3

4 Q. The general manager's bound by the Code of Meeting
5 Practice?

6 A. Yes.

7

8 Q. The Code of Meeting Practice has status through the
9 Code of Conduct into the Local Government Act; correct?

10 A. I've got no doubt about it, yeah.

11

12 Q. Well, I'll reversed the proposition. Given that the
13 motion expressly alleges a breach of the Code of Conduct
14 and that the Code of Conduct expressly prohibits
15 allegations of that kind being made in council meetings,
16 how in your view was it that this motion could be
17 appropriately dealt with in a council meeting whether in
18 open or closed session?

19 A. I figured that was, quite frank, in the realms of
20 being able to be dealt with by the mayor in conjunction -
21 particularly the mayor - having regard to the serious
22 nature of the legislation that we believed had been
23 transgressed.

24

25 Q. It was one way to make the business amenable to be
26 dealt with to change the wording of the motion?

27 A. Say again, I'm not too sure I got that one?

28

29 Q. The general manager had identified some problems with
30 the wording of the motion that had been proposed.

31 A. Right.

32

33 Q. Was one way to have those, as you explained, serious
34 questions dealt with, to craft the motion in a way that
35 would make it - that would prevent it from offending
36 provisions of the kind identified by the general manager?

37 A. It would be difficult. I can see the point you're
38 getting at, but --

39

40 Q. Well, couldn't one - anyway, I suppose I don't need to
41 draft it on the fly. Yes, thank you. Is there anything
42 else you want to add to those answers before I hand back to
43 Mr Parish?

44 A. No, but I can see what you're getting at there, and I
45 don't disagree with it, but um, we were just very concerned
46 about the issue of --

47

1 Q. Yes, and don't get me wrong, I'm not suggesting that
2 business brought forward isn't a matter of genuine concern
3 to councillors, but what I'm trying to explore with you is,
4 well, you would accept, I take it, that it's incumbent on
5 councillors to bring business forward in a way that's
6 compliant with applicable Codes of Practice, Codes of
7 Conduct --

8
9 A. Yeah, I don't disagree with that.

10
11 Q. -- and the Act?

12 A. I'm having difficulty seeing how this one transgresses
13 that actually and, you know, a number of occasions - and
14 you'll see that in some submission later on where questions
15 with notice and notice of motions are rejected and
16 alternate suggestions as to how it might be put on an
17 agenda, and I didn't always accept them either.

18
19 I mean, I can see the point you're making, but I don't
20 think that you're always then put in a position of having
21 to reword something to satisfy somebody else's subjective
22 viewpoint on how that might comply with the code.

23
24 Q. But it's the general manager's role, isn't it, to
25 determine what goes on the business paper and doesn't, save
26 for urgent matters arising that might be brought up?

27 A. Yep. Yep, but providing it's not amended in such a
28 way or whatever that takes away from what the thrust of the
29 original position is, that's all.

30
31 Q. Sure, and part of the general manager's role in doing
32 that, I think you accept, is to ensure that the business of
33 the council complies with legislation and applicable codes?

34 A. Correct.

35
36 Q. And, in circumstances where the general manager has
37 formed a view in performing that function that it's not
38 compliant, is there to your mind a role for the councillor
39 and the general manager to work together to ensure that
40 issues of concern can be put in a way that gets it into the
41 business paper in proper form?

42 A. I would agree with that, providing the person in
43 question approached the issue in an appropriate manner;
44 that is to maybe contact you and talk about the way in
45 which it might be done, but that never occurred.

46
47 Q. What about when things were rejected like this? Was

1 there ever an occasion where you went back and said, "Okay,
2 well, what do I need to fix or how do we work through
3 this?"?

4 A. Oh, there might have been one or two occasions, but
5 there are issues, again which is in my submission, which I
6 hope you do look at and I accept the fact that you said you
7 will --

8

9 Q. I think I've read it three times so far.

10 A. Various issues in relation to safety which suggested
11 that that didn't comply with the Code of Meeting Practice
12 either and I didn't agree with that in any circumstances,
13 and that was an issue which was about road safety and
14 personal loss of life or injury as a result of the work in
15 question, and that's Old South Road, so that might ring a
16 bell with you.

17

18 Q. Yes, I think Mr Parish might take that up with you
19 shortly. Does this all highlight, to your mind, the
20 importance of a cohesive working relationship with the
21 governing body and with the general manager of the day?

22 A. Absolutely should. It's a two-way street though and,
23 you know, both sides should get together and try and
24 organise whatever it is. Now, that doesn't mean that, for
25 example, every notice of motion a councillor might put has
26 to go on and discuss, oh, I'm thinking about a notice of
27 motion with the general manager. The issue might then
28 alternatively then be, or the issue that can follow or the
29 process that might follow is to then talk about it. But,
30 you know, if you get a suggestion back that takes away from
31 the main thrust of what your notice of motion is, there's
32 no point having the notice of motion, you know.

33

34 Q. Do I take it from those answers and some you've given
35 to me in this little passage, that you didn't see the
36 working relationship between the general manager and the -
37 well, and you, I'll just deal with you - as being cohesive,
38 at least in some point in that 2016 term; have I --

39 A. I don't think so. I thought it was an extremely good
40 working relationship, particularly earlier in the piece,
41 but, you know, what transpired towards the end was
42 something which I certainly didn't pursue in terms of being
43 negative or whatever.

44

45 THE COMMISSIONER: Yes, Mr Parish.

46

47 MR PARISH: I don't have any further specific questions,

1 Commissioner, although I was going to touch briefly on the
2 topic of Old South - Old End Road, whatever it's called.
3
4 THE COMMISSIONER: Old South End Road? We're in the wrong
5 place, Mr Parish.
6
7 MR PARISH: Yes.
8
9 THE COMMISSIONER: You might be dreaming of the weekend
10 perhaps.
11
12 MR PARISH: It's where my brain is, perhaps.
13
14 Q. But I did want to touch on that topic. You said
15 before, you can take it that we've read your submissions
16 and we'll consider them carefully, but the practice that
17 we've had is, if there's any other topics you want to
18 address on that you don't feel have been adequately
19 canvassed, if you can tell me the topics and then I'll
20 determine whether they fall within the terms of reference
21 and ask you some questions about them.
22 A. I don't have any others. I'm quite happy with what
23 transpired here today. From my point of view, and I know
24 that doesn't worry you one way or the other probably, but
25 the point is, what is in my submission, as long as I know
26 that's being looked at.
27
28 Look, the main issues have probably been addressed
29 here today, to be quite frank, but what I did in my
30 submission is followed up, back it up by examples of the
31 point I was trying to make, and that's what - copies of
32 notice of motion, it's not a lot, I could have put more but
33 didn't; notice of motion, questions with notice et cetera,
34 so there's examples there all the way through and I'm
35 thinking if you - and you've already undertaken that you've
36 had a look at it already, then I'm happy with that.
37
38 THE COMMISSIONER: Mr Parish, I think I might be assisted
39 by - and those watching or reading might be assisted by
40 just some short explanation of the road safety issue that
41 Mr Halstead --
42
43 MR PARISH: Q. Yeah, I keep on getting the name wrong,
44 so I might just take the coward's way out and ask about the
45 Civil Liability Act concerns that you had that the council
46 might be exposed to due to poor road maintenance. Can you
47 expand on that topic specifically?

1 A. Yeah, it's clear. And, I don't want to seem like I'm
2 trying to tell you how to suck eggs, but I'm assuming I
3 take it from the point that you know nothing about the
4 Brodie case, is that right, in the High Court? You do or
5 you don't?

6
7 THE COMMISSIONER: The what case?

8 A. The Brodie case.

9

10 Q. Brodie?

11 A. Abolition of non-feasance.

12

13 Q. Yes.

14 A. You do or you don't?

15

16 Q. Yes, I know that case.

17 A. Okay, good.

18

19 MR PARISH: We're both familiar.

20

21 THE WITNESS: Very few people do, and the follow-up to
22 that, well, of course, Carr bought in the Civil Liability
23 Act 2002 to try and address that to give councils the
24 indemnity. Now, the point is, once a council is then made
25 aware, and there's a whole lot of cases involving,
26 including the Roman v North Sydney Council one and it's
27 going on and on - you know, once the council receives
28 information from somebody about a particular issue, then it
29 really should be looked at properly, otherwise the council
30 could be in a position, as much as it's been protected at
31 the moment, local government generally, it's only a matter
32 of time, is that, if an action is not taken following that,
33 then the council can be held liable.

34

35 That's the issue I was on about, and quite frank, you
36 can go up there today to that same road, Old South Road
37 north of Range Road and it's still in a very dangerous
38 state. That's my opinion as a civil engineer and a road
39 user, and it relates to cracking in the road, it relates to
40 deformation in the road, it relates to lack of drainage in
41 the road, it's a serious issue and it wasn't taken
42 seriously in my opinion and that's what it was about and it
43 was dismissed.

44

45 Again, I don't accept what was put in there as the
46 reason why it wasn't accepted; it should have just been, in
47 my view, looked at because, to me, following that day the

1 council's now - or has how been made aware of it, so it's
2 an invidious situation to this point. It's very simple,
3 they go and look at it and take some actions, even if
4 they're temporary actions, but you don't just let something
5 go, as it seems to me, and I'm looking at it regularly, I
6 travel it three times a week and look at it all the time
7 and I'm worried. In fact I've got to the stage now, I've
8 said to my family, "Don't go on that road any more", that's
9 what I think about it at the moment particularly after dark
10 and particularly in wet weather. It is an unsafe road.
11 And if someone wants to do a road safety audit they'll find
12 out in a hell of a hurry.

13
14 Q. Off the top of my head, one of the ways in which
15 Brodie was dealt with was through the Civil Liability Act
16 2002, and I think it's in the 40s perhaps, which --

17 A. 45.

18
19 Q. 45, not far off, which provides some protection and,
20 in part, includes the weighing up, I think, of the
21 resources and the time and the proportionality of fixing
22 the problems.

23 A. Yes. Actually you're right, it's 43 and 45 is when
24 you do or you don't have protection in that area. Yeah,
25 correct.

26
27 Q. Thank you. That being the case, has this in your
28 experience been a concern and a worry for you since 2001?

29 A. Correct.

30
31 Q. And 2002?

32 A. Correct.

33
34 Q. This has been an ongoing issue?

35 A. They've been preaching the parable ever since. It's a
36 problem right across New South Wales, so it's not just
37 here. But it's when you see one that jumps out at you and
38 you're concerned - in fact, there has been a death in the
39 last couple of months, I'm not too sure exactly where it
40 was, on that road, and I think it was a motorcycle rider
41 and I thought to myself, well, not surprising.

42
43 MR PARISH: Thank you, Mr Halstead.

44
45 THE COMMISSIONER: Thank you for that. As tempting as it
46 might be, I don't think I'll try and overturn the High
47 Court in my report.

1
2 MR PARISH: You can try.
3

4 THE COMMISSIONER: Give it a go, see what happens.
5

6 THE WITNESS: I tell you what, they're one step away from
7 a councillor going at the moment because it's a gradual -
8 they've got down to the point at the moment of the arguing,
9 has the council got actual knowledge? Has the person that
10 got the complaint, or is the person that got the complaint
11 the one responsible for doing the repairs? That's how fine
12 detail it's at now, and --
13

14 THE COMMISSIONER: We might be digressing, but issues of
15 knowledge and tradition are very difficult, as you would
16 appreciate.
17

18 THE WITNESS: There are a couple of good courses out there
19 on it.
20

21 MR PARISH: This is probably a conversation the three of
22 us could have about academic issues which no-one is
23 interested in to hear about and probably should not have
24 to.
25

26 THE COMMISSIONER: I don't know, if you've come this far
27 you may as well stay for the fun bits.
28

29 Q. One last question that I neglected to ask you, which
30 takes you back right to the beginning of your evidence
31 was - my notes may not be precisely accurate - but you
32 perceived in meetings in the 2016 term that some
33 councillors were not being heard appropriately or were
34 unable to raise issues which you thought were matters that
35 should have been raised and permitted to do so. Do you
36 remember giving that evidence? Do you remember saying that
37 at the beginning of our time?
38

39 A. Yes, yes.
40

41 Q. What did you have in mind? Can you give me some
42 examples?
43

44 A. Well, I just figured that - not figured, I'm of the
45 opinion that, whilst some people, and they were councillors
46 mainly, had an opinion about maybe one or two councillors,
47 the way in which they might have asked questions they were
entitled to ask those questions and they were entitled to
get answers to those questions. It may not have been the

1 answers they wanted, but the process is, due process should
2 follow that a question put should be answered in some form
3 or another.

4
5 Q. We may as well cut to the chase. I've been told a
6 number of times that Councillors Turland and Scandrett were
7 causing problems in meetings; are they the two you have in
8 mind in answering?

9 A. They were the two that most people complained about
10 because they were probably more vocal than the others.

11
12 Q. And do I take it then, you perceived there was some
13 difference in treatment to one or more of those two
14 councillors when they wanted to raise issues?

15 A. I - I perceived that. I perceived that both of those
16 councillors were treated in a different way, and they
17 seemed to attract attention. But I hold the view very
18 strongly that, you know, in all council meetings - I mean,
19 not all council meetings - a lot of council meetings
20 there's debate which could be argued to be a little bit
21 more vocal than the norm, or everything's not the same and,
22 I mean, that's what happens. I mean, you know, whether
23 you're in a local council or whether you're in State
24 Government, you do get sometimes quite vocal debate. I
25 mean, people admonish local government for some of the
26 debates that occur, but that's the democratic process. As
27 I mentioned earlier on it happens; you may not agree with
28 it all, but the thing you must agree with is that there's a
29 process that must be followed and, if a councillor asked a
30 question, it should be dealt with.

31
32 Q. Do you just say that any question or there has to be
33 some --

34 A. Well, it's got to be based on local government and
35 it's got to be based on some genuine concern.

36
37 Q. Yes, and it has to comply with --

38 A. Not a frivolous thing.

39
40 Q. Yes, and otherwise complies with the applicable codes;
41 you would agree with that as a general proposition?

42 A. M'mm.

43
44 Q. But assuming it's an appropriate question and
45 otherwise compliant, I think as a matter of obviousness it
46 follows, in your view, that it should be permitted?

47 A. If it's lawful and it's done in an appropriate way,

1 yes, and I can still see sometimes there's a reason why
2 someone could get vocal in that, particularly if they're --
3
4 Q. By that do you mean getting vocal when they perceive
5 that --
6 A. Maybe they're not getting an answer, yep.
7
8 Q. Or not being permitted to ask something which is
9 otherwise compliant; is that what you mean?
10 A. Correct.
11
12 Q. That being so, however, do you accept that
13 nevertheless - I withdraw that. Yes, Mr Parish, does
14 anything arise from that?
15
16 MR PARISH: No, Commissioner.
17
18 THE COMMISSIONER: Any applications? No, all right.
19
20 Mr Halstead, thank you very much for your evidence
21 today and I, once again, do apologise for having you start
22 late and keeping you later than no doubt you would have
23 thought, so my apologies for that. You're excused from
24 further attendance on your summons and free to go about
25 your evening.
26
27 THE WITNESS: I had no concern about the delay, I don't
28 have a busy day these days.
29
30 THE COMMISSIONER: Still, I do appreciate that it's an
31 inconvenience nevertheless.
32
33 THE WITNESS: Thanks.
34
35 THE COMMISSIONER: I'm sorry, before you go, are there any
36 other documents you wish to table?
37
38 THE WITNESS: No.
39
40 THE COMMISSIONER: Thank you.
41
42 THE WITNESS: I think that one correction page, that was
43 all I was concerned about.
44
45 THE COMMISSIONER: Yes, Ms Hewson has that.
46
47 THE WITNESS: Had a wrong paragraph altogether, that was

1 all. Thank you.
2
3 THE COMMISSIONER: I'll make sure that's facilitated.
4 Yes, Mr Parish?
5
6 MR PARISH: I might just tender the documents we were
7 referring to before, being the letter to the editor.
8
9 THE COMMISSIONER: Yes.
10
11 MR PARISH: The three pages, I think we referred to it and
12 identified but didn't actually tender it.
13
14 THE COMMISSIONER: Yes, very well. The letter to the
15 editor of the Southern Highlands News from then Deputy
16 Mayor Turland and then Councillor Halstead dated 6 April
17 2020 will be Exhibit S - Mr Broad, S? Thank you, S.
18
19 **<EXHIBIT #S - LETTER TO THE EDITOR OF THE SOUTHERN
20 HIGHLANDS NEWS FROM THEN DEPUTY MAYOR TURLAND AND THEN
21 COUNCILLOR HALSTEAD DATED 06/04/20.**
22
23 MR PARISH: Early start tomorrow, Commissioner. I think
24 we're intending to commence at 8.30 at this stage.
25
26 THE COMMISSIONER: I see.
27
28 MR PARISH: With ex-Councillor Turland.
29
30 THE COMMISSIONER: Yes, all right. And, do I need then to
31 give Councillor Gair a marking?
32
33 MR PARISH: Yes, please. I would suggest not before
34 10.30.
35
36 THE COMMISSIONER: Yes, all right. Well, we'll resume at
37 8.30 and Councillor Gair can be told not before 10.30.
38
39 MR PARISH: Thank you, Commissioner.
40
41 THE COMMISSIONER: Thank you everybody for sitting late, I
42 do appreciate the inconvenience to all of those here and
43 we'll adjourn until 8.30 tomorrow.
44
45 **AT 5.20PM THE INQUIRY WAS ADJOURNED TO**
46 **FRIDAY, 14 APRIL 2022 AT 8.30AM**
47

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