

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 Thursday, 14 April 2022 at 8.35am

(Day 14)

1 THE COMMISSIONER: Yes, Mr Parish.
2
3 MR PARISH: Thank you, Commissioner. We have two
4 witnesses today, the first of which is Mr Garry Turland.
5
6 THE COMMISSIONER: Yes, thank you. While Mr Broad makes
7 his way over, we will be taking a break at 10am. The
8 transcription service, who do a very fine job, because
9 we'll be sitting long today, need a couple of extra breaks,
10 so I propose to take 15 minutes at 10am. If there is a
11 convenient point either just before that, keep that in mind
12 and we'll take a break then. Yes.
13
14 MR PARISH: Thank you, Commissioner.
15
16 <GARRY TURLAND, sworn: [8.35am]
17
18 THE COMMISSIONER: Thank you, Mr Turland, and thank you
19 for making yourself available early this morning. I know
20 you were expected to get a start yesterday afternoon,
21 sometimes hearings run long as they did yesterday, so I do
22 appreciate it.
23
24 THE WITNESS: Thank you.
25
26 THE COMMISSIONER: Mr Parish.
27
28 MR PARISH: Thank you, Commissioner.
29
30 THE WITNESS: Before we start, I had a whole pile of
31 information that I presented to - do I have that anywhere
32 that I might need to ...
33
34 THE COMMISSIONER: Yes, Mr Broad, has those documents, do
35 you not?
36
37 MR BROAD: I've gone through them overnight, Commissioner,
38 and have extracted some that would appear relevant.
39
40 THE COMMISSIONER: Have you got all of Mr Turland's?
41
42 MR BROAD: I've got them in the anteroom.
43
44 THE COMMISSIONER: All right, perhaps bring all of
45 Mr Turland's papers in here in case he wishes to refer to
46 something in particular as we go.
47

1 THE WITNESS: Thank you.

2

3 <EXAMINATION BY MR PARISH:

[8.37am]

4

5 MR PARISH: Q. Thank you, Mr Turland, can we start with
6 your personal and vocational background and your connection
7 to the shire?

8 A. As it says in my submission, I'm fourth generation in
9 our family, we've lived here all our life. I've got four
10 children, five grandchildren. I'm a builder/developer, if
11 you want to call it a developer who puts DAs in every now
12 and again, and I've worked in this shire only for my whole
13 career of 40 years.

14

15 Q. I'll just let you know at this stage something that I
16 observed, and I think the Commissioner observed with
17 Mr Halstead yesterday, we don't intend to publish the
18 submissions, so this job will be to extract submission --

19 A. I understand that, I picked that up, yep.

20

21 Q. -- material out of you, unfortunately for you. And,
22 when did you first get elected to the shire council?

23 A. In 2012 I stood for council and then again in 2016.
24 Thank you.

25

26 Q. Had you observed council meetings before you ran and
27 were elected in 2012?

28 A. Yeah, I'd been in the chamber here a few occasions to
29 watch the process and see how it went and, to be honest
30 with you, I would say to you now that over the 2008 and
31 then back into 2012 and then 16, nothing has changed; it's
32 what the process was.

33

34 Q. Over those periods 2008, 2012, 2016, at a very general
35 level for now at least, did it get worse at least or did
36 you, in your view at least, think it stayed roughly the
37 same?

38 A. Yeah, look, I think if I can just stretch a little bit
39 from that point? There was major issues we were facing
40 which was Hume coal back in the 2008-2012 term and it was
41 tearing the community apart, a bit like Station Street, it
42 was all over the place. And to try and - you could see the
43 councillors in 2008 trying to engineer their best position
44 on the Hume coal for whatever reason, and then when we got
45 into the 2012 year that extended the frustration again
46 where we had some councillors against others; for instance,
47 Gair, me and McLaughlin. I started a defamation case

1 against Whipper and Scandrett for a public meeting where
2 they denigrated us for no reason at Hume coal. So, what we
3 got was the same, and then got into Station Street and it
4 all just blew up again, so you had people with strong views
5 of how they thought things should be done, but people had
6 forgotten what I believe - democracy at that stage.

7
8 Q. We had some evidence yesterday from Councillor Nelson
9 who observed that there would be dinners post meeting which
10 allowed people to --

11 A. Is that - I'm a bit deaf, is that dinners?

12
13 Q. Pardon me, I'll speak up.

14 A. Sorry, I'm not - yeah.

15
16 Q. You're partially deaf and I'm partially a kiwi, so I
17 think that's a bad combination.

18 A. I'm getting older.

19
20 Q. Dinners: he gave some evidence that there used to be
21 dinners post meeting --

22 A. Yep.

23
24 Q. -- which, in his evidence, diffused or allowed people
25 to decompress after meetings if they were a bit tense. Do
26 you recall when that dinner process ended?

27 A. Oh, I can't directly remember, but I believe that
28 when - possibly when Halstead finished as mayor the whole
29 thing started to break down and then we weren't invited to
30 those dinners - that's Halstead, myself and Gair. We
31 didn't know where they were going, it was - I think it was
32 an unwritten rule that we were going to dinner after
33 council if it went for four hours. I don't know if it was
34 ever - I should turn this way, sorry.

35
36 THE COMMISSIONER: You engage with Council Assisting,
37 that's fine.

38
39 THE WITNESS: And so, it was an unwritten rule and we
40 followed that process because I was just a new councillor
41 back in 2012, and that's what happened right back over the
42 term, so if - but again, it broke down where we weren't
43 invited pretty well at the end of it because things
44 deteriorated to the point that we weren't welcome.

45
46 MR PARISH: Q. We're talking about, broadly, the period
47 post 2018 after the election of Mayor Gair to the mayoral

1 chair; is that correct?

2 A. True.

3

4 Q. Just going back to those 2008-2012 terms, and picking
5 up on Councillor Nelson's observations, was there a
6 robustness in the debate in council meetings but a
7 decompression afterwards which didn't occur in the later
8 part of the term?

9 A. Look, every now and again we'd go out and, you know,
10 leave it in the chamber, leave it on the field is good.
11 But then it got to a point when, I think we all started to
12 distrust each other, and once you lose trust it's very hard
13 to gain it back again.

14

15 Q. And that point was around the 2008 mark; is that a
16 fair observation?

17 A. 2018?

18

19 Q. 2018, pardon me, yes?

20 A. Yeah, once - yeah. Look, Councillor Halstead would
21 ring all councillors and involve us in different functions
22 and invite us to those functions and that was good. But
23 when Gair came in here - and I grew up with Duncan over
24 the years and McLaughlin, but we were never invited, never
25 got a phone call. And I'll go back to when I became deputy
26 mayor when you're ready to ask me that question when the
27 whole thing fell over then for me and him.

28

29 Q. Thank you. We've had quite a bit of evidence
30 suggesting that the 2012-2016 term was at least as
31 rancorous and dysfunctional as the 2016-2020 term. You
32 don't have to agree with that proposition, but in terms of
33 the trends, did you see that it was as --

34 A. It was as toxic. I mean, I've got information here
35 where the mayor of the day, Arkwright, was censured for
36 lying to the community under 440 of the Act, I think it is,
37 and I've got here where Gair's attacking her in a council
38 meeting; but then it seemed to reverse around that it
39 wasn't okay when he was sitting up there, but it was all
40 right for him to be involved in attacks to the previous
41 mayor, Arkwright, who was found guilty on multiple things.
42 So, anyway, the truth is that it was about the same, but
43 Hume coal tore us apart and also Lot 11 and Lot 12 Range
44 Road. Councillor Uliana became a councillor and there was
45 protectionism there if you wanted to be mayor and deputy
46 mayor. I've got the file here: from here it goes to ICAC
47 as far as I'm concerned.

1
2 Q. Can I just ask you a few questions about induction and
3 the training you received. Do you recall, do you have any
4 recollection, about the nature and extent of the training
5 you received in 2012?

6 A. Yeah, yeah, very much so, 2012 and in 2016 we all had,
7 and probably a couple of times through those years, to be
8 honest with you, would be with Dr Lindsay Taylor, lawyer;
9 good bloke, came down and explained the process to us. As
10 a new councillor in 2012 it was all brand new, I had to
11 learn pretty quickly, and that was okay, you actually
12 followed your peers and you learnt from them pretty well
13 how the system worked, you know, and that's probably what I
14 did and maybe that was wrong in some cases. But I've seen
15 in 2008 at the end when I was thinking about standing for
16 council, the same sort of reaction from parties and then
17 back into 2012-16, you know, we had, you know, Whipper and
18 Gair grandstanding me following what they were doing
19 because that's what they did; and yes, it's probably wrong,
20 but you learn from watching others.

21
22 Q. Do you have a general impression, either looking back
23 now or any memory you have at the time about whether the
24 training was sufficient and --

25 A. Oh, Dr Linda Taylor was pretty good, yep.

26
27 Q. Can you tell us what you understand your roles as a
28 councillor to be as prescribed in the legislation?

29 A. Yeah, I've got the two documents here, these are the
30 current ones, but from the previous it's been changed a few
31 times; pretty well, I understand clearly we're not to
32 involve ourselves in operational matters, and I did, and
33 you can ask me questions on that later. But we're not
34 involved - we're not to direct staff to do anything; we can
35 put notices of motions in and questions with notice, which
36 allows you to ask the questions you want on behalf of the
37 community, or what you think is needed to be answered by
38 the senior staff. I never really ever, and as you can
39 probably see in the records, never sent any emails to
40 anybody below the level that we were allowed to. And, I
41 never spoke to them because I figured, if I didn't get it
42 in writing, it wasn't worth having, and that's how I
43 believed it should be.

44
45 Q. Can you tell me what you understood from the induction
46 training the role as statutorily prescribed of the
47 governing body was?

1 A. Yeah, to long - the long-term strategies of council,
2 financial strategy, the community 34 program to make sure
3 that we were looking for the future in the process, all
4 those standard documents every year would be either up -
5 changed, business would change every couple of years, not
6 every year, but every couple of years. Also the other
7 thing is, every five years we'd have the LEP to be reviewed
8 and then the housing strategies, that's normal process.
9

10 One thing we fell down behind was the DCPs,
11 development control plans. You know, the Bowral
12 development control plan is 271 pages thick and it's
13 antiquated, it's ridiculous, let alone Moss Vale and
14 Mittagong.
15

16 Q. I might come to that shortly and get your views on
17 that because we've had some evidence about the DCPs.
18 Something which has been a recurring theme in this inquiry
19 is the understanding of councillors and ex-councillors of
20 the operational strategic demarcation or split. Can you
21 give us your understanding of what that meant for you and
22 any impressions you are left with from trainings or
23 inductions?

24 A. It's quite clear that the councillors only employ or
25 have direct control, in theory, of the general manager, she
26 has the control further down the ladder and it's up to her
27 to do whatever - or the general manager, whoever it might
28 be, to do whatever they need to do to allow this business,
29 and it should be a business, classed as a business to move
30 forward, it's the biggest employer in the shire, and we
31 could only basically contact her if we wanted something
32 done, because that's the general manager's position; from
33 there down it was their job.
34

35 Q. Can you give us your general recollections of the way
36 councillors interacted with each other, firstly at the
37 council meeting level during the 2016-2020 term?

38 A. How we reacted against each other?
39

40 Q. Yes, your interactions with each other; was it cordial
41 or was it --

42 A. Look, 2016-18 when Ken, totally qualified and as we
43 heard last night of his qualifications, and he was very
44 strong, he could control a meeting correctly. What
45 happened after that the mute button started to become into
46 play, so then we started to fall apart because some
47 councillors were muted, mainly me and Scandrett. And, I

1 can tell you now, I've no alliance to Scandrett at all as
2 has been said, that's not the case, and I don't want to be
3 and wouldn't be. But the mayor of the day, Gair, would use
4 the mute button and I didn't even know it existed at the
5 table up there, didn't even know it existed. So, if you
6 didn't like debate, didn't like what was being said, he had
7 the right under the Code of Meeting Practice to stand or to
8 interrupt through debate, that's his control, but when the
9 interruption was brought for no good reason but to stifle
10 debate, it frustrates the process again.

11
12 THE COMMISSIONER: Q. Are you speaking of a button
13 somewhere up here in the chamber?

14 A. I didn't know it existed. There was a button he'd put
15 his hand up and push and the speakers would go dead and
16 people who were listening to it couldn't hear it.

17
18 Q. I see.

19 A. From outside.

20
21 Q. Yes.

22 A. And so, what you had was somebody stifling debate.
23 Now, in that notion I actually put a - not a Code of
24 Conduct - I said - I put a notice of motion forward, it's
25 probably in the system here, "Why does he use the mute
26 button?" I didn't even know it existed, the staff told me.
27 I went to the OLG. Under the Code of Meeting Practice it's
28 illegal, but he continued to use it because he had the
29 power at the seat. Frustrated the process.

30
31 THE COMMISSIONER: Thank you.

32
33 MR PARISH: Q. I think the Commissioner might have been
34 regretting the fact he hasn't found that button sooner.

35 A. You probably wouldn't now because it's a new system,
36 but anyway.

37
38 Q. We might come to it in due course, but during some of
39 the clips we've shown in the inquiry so far one may assume
40 that it's the video quality and it's cutting out; it seems
41 like from the evidence you've just given, is it possible
42 that it wasn't the video quality cutting out --

43 A. No, it wasn't, no.

44
45 Q. -- it was the chair pushing a --

46 A. Before we went into COVID and Zoom, and I'll make the
47 point also, none of us were trained on Zoom, we were thrown

1 into Zoom like the rest of the world on iPads in our own
2 properties in theory, with no training. So, there was
3 definitely mistakes made through the process of the Zoom,
4 and there was no correction under the Code of Meeting
5 Practice to explain it to us, because we couldn't get
6 together I suppose. But, for whatever reason, that
7 complicated the process as well and the aggravation between
8 the parties was the Zoom meetings, and we'll come to that.

9
10 What was the other part of the question there, sorry,
11 I missed my train of thought then?

12
13 Q. I was asking you about your general impression of the
14 interactions between councillors at the 2016-2020 term?

15 A. Yep, and I've seen some of the videos you played, and
16 yes, I'm part of that process you played and I'll be very
17 keen to answer some of those videos, if you play them to
18 me, of why they became very heated discussions in relation
19 to those videos you played.

20
21 Q. We will give you an opportunity to explain --

22 A. Thank you.

23
24 Q. -- and give your version of events on the videos we've
25 shown so far in due course. And, can I just ask you about
26 the briefings and the interactions between councillors that
27 you saw or perceived or were left with impressions of
28 during the 2016-2020 term?

29 A. Yeah, I picked up, because I watched a bit of it when
30 I had time between grandkids and everything else, but I
31 watched some of the statements. Councillor Scandrett was a
32 prolific note taker on every briefings - he had every right
33 to do it, and that's fine. And the mayor of the day,
34 either Ken or Duncan, would also keep very strong notes in
35 relation to what was said and what was the intent of the
36 briefing sessions. So, there was information there all the
37 time, so they both, all three of them, kept all very
38 detailed diaries and I'm sure - not that you'll want them -
39 but I'm sure they've got them if you needed them, to show
40 that they kept control of what was being said and trying to
41 keep the meeting under - in the briefing sessions under
42 control. Well, most of the briefing sessions were pretty
43 good because it was asking what was in the business paper
44 prior to the council meeting. Just to let you understand a
45 little bit of the - we - business paper has to come out on
46 a Friday afternoon and then we've gotta have our questions
47 of notice and notice of motion on the Monday before then so

1 it can be - to give council staff time to research what
2 we're asking and put it in the business paper; that's the
3 rules under the Code of Meeting Practice, we learned that
4 pretty quickly.

5
6 Then we get the paper on a Friday afternoon at
7 4 o'clock, if you're lucky, because the poor delivery man
8 had to go from Fitzroy Falls to Mittagong, all over the
9 place, it's a long draw, probably 150Ks he had to drive or
10 she had to drive, and I get that, that's fine. Then we had
11 the weekend to understand and read those business papers,
12 and then two days to react to them - that's also the
13 finance papers as well, the same deal, Friday, back in on
14 Wednesday for the finance meetings and I'll come to that in
15 a minute. So, we basically had two days to deal with it to
16 prepare ourselves for what's going to happen on the
17 Wednesday night in the briefing sessions, prepare, write
18 notes, whatever we needed to do. That's if you didn't have
19 something else to do in your private life, and I'm a very
20 busy person, I've got lots to do in my private life without
21 having to spend 24 /7 reading business papers, and you do
22 your best to control - and I prepare myself pretty well
23 every time for every business paper that I was on top of
24 what I thought was going to happen.

25
26 So, as for the briefings, the briefings were pretty
27 good because we were relating to the stuff which was in the
28 business paper. I can't remember any briefing sessions
29 that really lost their way except for maybe when Scandrett
30 was just being antagonistic again and again and again, and
31 all of us would pick on him sort of, and just "that's
32 ridiculous, don't go down that path", and it could be about
33 the RIC, and the other one that was controversy, the
34 regional art galley, I mean, that was --.

35
36 Q. That's the environmental levy which gave the
37 perception or the issue that money had been diverted from
38 the RIC to --

39 A. Yeah, that was Whipper's program, he was pushing that
40 path. Markwart had resigned by then. And, you know, the
41 staff did a great job explaining it to all councillors how
42 the environmental levy works, so you're either comfortable
43 with it or not, but I think what was happening is - and as
44 it is, its democracy, we had people in the back, residents
45 making statements that either they didn't understand it or
46 Whipper didn't understand it, or he needed the votes for
47 the next election, so he went down that path; he didn't

1 want to listen to the staff of what they were explaining
2 about the environmental levy, and I was pretty clear, I
3 understood what the staff were saying and was quite happy
4 with it.
5

6 Q. Can you give some examples of antagonistic questioning
7 or behaviour from Councillor Scandrett in briefings that
8 you were referring to just then? What sort of things did
9 that behaviour manifest itself as?

10 A. On briefings it's - well, none of them are videoed so
11 you can't recall back and check.
12

13 Q. No.

14 A. We can now because we're now into the new streaming
15 system which is fantastic. Look, it would be anything that
16 he thought that he could grandstand on. The other thing
17 that we found very upsetting - and some of those briefing
18 sessions were confidential, and he would release the
19 information or put it on his Facebook page, and again, all
20 councillors will pull him into line by saying, "Your
21 Facebook page is not to be used to denigrate the system,
22 the council and council staff", but he was prolific at it.
23 And I'm not on Facebook so I don't even listen to it, but
24 others do, and we were pulling him into line again and
25 again. And, as I said, he released confidential
26 information on his Facebook page that should never have
27 been let out. One was about the general manager and her
28 contract, ended up in the paper. Nobody else was gonna do
29 it but him. He was found - not found guilty, because the
30 system didn't take him on, but he should have been taken
31 on.
32

33 Q. How did you perceive, if you perceived it at all, the
34 effect on staff of the sort of antagonistic behaviour of
35 councillors, primarily Scandrett by the sounds of your
36 evidence, in these briefing sessions?

37 A. Look, it probably was because the staff were coming in
38 and explaining what was in the business paper on the
39 developments or, they just mentioned environmental levy or
40 whatever was in the business paper at the time, so we would
41 be pretty educated before the council meeting, which is a
42 very wise thing to do and I think it's a good thing. You
43 don't have to accept what you've been told but you need to
44 learn and listen to what you've been told. And, if you
45 want to use that in the next step when you come into the
46 chamber, that's fine, but if you don't listen to what
47 you've been told all the time, and probably I didn't listen

1 to some of the stuff we were told, I have a different view,
2 but I have a right to. But I can't remember ever being -
3 me denigrating anybody in the briefing sessions except for
4 one occasion back in the 2008-2012 year where Arkwright was
5 the mayor and we were going through the papers, and she
6 jumped up and said, "Councillor Turland, your intelligence
7 level is the lowest I've ever seen". I followed her down
8 the hallway, it was part of the Code of Conduct, but she
9 failed to apologise to me; that was probably the only time
10 I lost my position being attacked by the mayor of the day
11 Arkwright.

12
13 Q. We have had some evidence that some staff members felt
14 close to nauseous and apprehensive about the idea of even
15 attending briefing sessions in the 2016-2020 term. Was
16 there any behaviour or impressions you were left with which
17 would give credence or throw light on that perception?

18 A. Look, it's all about the business papers; you can't go
19 too far wrong without the business paper, that's what
20 you're there to be preparing yourself for the day - that
21 night 's meeting. They might have felt anxious about it.
22 Major issues that the business paper went through once a
23 month was the development side, so there was a lot of
24 questions in relation to those because, as councillors,
25 you've heard McLaughlin and others, they got involved too
26 close to the development side which they shouldn't have
27 done and made commitments to residences where under the
28 Code of Meeting Practice and the Code of Conduct you're not
29 allowed to show that you've got an alliance with or against
30 until you've held it in the chamber and got all the
31 information.

32
33 So, some of those meetings in relation to building
34 issues were always causing trouble within the system here.
35 I mean, Scandrett was also getting involved too closely
36 with requests of residents, but that was just to improve
37 his image, not because he believed that he did the wrong
38 thing. A few of them did the wrong thing by - if staff
39 recommended approval, it should have been approved because
40 they were the people qualified to make the decisions.
41 There's only two other people in this Council Chambers that
42 had any idea how the system worked and that was Ken and
43 myself because of my education through the process, and Ken
44 because he lectured in it. You know --

45
46 Q. Can I just go back --

47 A. The Independent Planning Assessment Panel is

1 fantastic.

2

3 Q. I might come back to that in a second but I just want
4 to close out this line of questioning. If you just put
5 yourself in the shoes of the staff member for a second --

6 A. Oh of the staff, yep.

7

8 Q. Was there any behaviour or general theme within the
9 council briefing sessions at least which would lead you to
10 think that their anxiety or dread was justified?

11 A. I really can't remember a lot of the - in the briefing
12 sessions, unless there's actually notes taken by the mayors
13 of the day, and they probably would have it, Scandrett
14 would have it definitely.

15

16 Q. I'm just asking your impression.

17 A. I think they were pretty good. Staff might have felt
18 intimidated because they wouldn't be coming back into the
19 chamber here to face whatever might go on in the chamber at
20 the time in relation to the issue that they were
21 explaining, whatever the staff were. I think under the
22 companies directors course we did, or some of us did, we
23 were enforced that we need to ask questions. I think
24 Graham Kelly said something in here about it, he said,
25 "Even a dumb question can be a good question", I think are
26 the words he used which, I've never heard that before, but
27 a question that could bring out some issues that might come
28 to light later on. So, questions were asked that might not
29 be - they might have felt that they were a little bit sort
30 of left wing, and that either if you didn't understand what
31 the issue was or you wanted to ask a question. But as per
32 the staff being intimidated, I - look, the committees that
33 I chaired and were involved in were always really cordial,
34 no big problem. Every now and again the Environmental
35 Committee would go on a tangent about whatever reason, but
36 that gets back to possibly the Hume coal issue tearing us
37 apart and the environmental levy being, in theory, funding
38 the regional gallery, which wasn't the case.

39

40 THE COMMISSIONER: Q. Accepting that asking questions is
41 appropriate, were there any occasions that you can recall
42 where questions were asked in a manner that may impugn the
43 competence of staff in briefing sessions or in council
44 meetings?

45 A. Oh, probably did, probably did come up every now and
46 again, but I don't think I ever did it.

47

1 Q. Is that the sort of, sitting here today, the sort of
2 line of questioning that you could see how it might have an
3 effect on staff coming in?

4 A. No, I agree with you. Yeah, I can understand nine
5 councillors, or eight at the end of the process, all having
6 their bit to question about whatever it might be, the issue
7 that's in the business paper, because that's all you can
8 deal with in there, or any extraordinary thing that the
9 general manager might wish to bring in at the end of the
10 briefing session.

11
12 Q. Yes.

13 A. I can understand they'd be a bit apprehensive because
14 every two weeks we'd be facing this barrage again in here
15 and probably in there - not as much in there but out here,
16 of issues that either each councillor had a passion for.
17 But as for the staff, yeah, I can understand it. The good
18 thing is it's now monthly and not fortnightly and gives
19 them a chance to have a rest.

20
21 Q. I might come back to that later, it's something that I
22 have some interest in. It's been described to me that on
23 certain issues, perhaps controversial issues, briefing
24 sessions could become caustic between the councillors; that
25 is, that there'd be arguing and tension between councillors
26 at briefings. Would you agree with that?

27 A. Yeah, no, I agree with that between councillors. It
28 probably is because we're a diverse group of people in
29 theory, and some had a different view against others and
30 they would make that point.

31
32 Q. Do you see that as robust debate or did it cross the
33 line into inappropriateness?

34 A. Look, the general manager is very quick and also the
35 mayor of the day would pull us into line saying, "You're
36 now getting into debate, stop", and that happened quite
37 often when we were dragged on - interfacing each other
38 where we shouldn't have been, it should have been in the
39 chamber the debate. This is a learning exercise, we're
40 here to learn what the business paper is saying from these
41 qualified people; you don't have to agree with them but
42 they're the qualified people who wrote the reports and you
43 have a chance to ask questions.

44
45 Q. So, from that do I understand that, as between
46 councillors in briefing sessions from time to time there
47 would be some heat and tension?

1 A. Yes, true, and that would also put tension into the
2 staff because they'd be seeing our performance in there,
3 there's no doubt, yeah.
4
5 THE COMMISSIONER: Yes, thank you.
6
7 THE WITNESS: As I said, the mayor of the day usually
8 pulled it up pretty quickly, and the GM, which was good.
9
10 Q. Did councillors heed those directions or did it take a
11 bit of work to get things back into line?
12 A. Well, depends on how passionate about the issue it
13 might be, and so, it eventually cooled down because we
14 moved onto the next item, it was dead.
15
16 Q. Would you agree with the general proposition that, no
17 matter how passionate one might be about a particular
18 issue, there's still a need to conduct one's self in
19 accordance --
20 A. Yes, I agree.
21
22 Q. -- with the Codes of Conduct and Code of Meeting
23 Practice?
24 A. Yes, I agree.
25
26 THE COMMISSIONER: Thank you.
27
28 MR PARISH: Q. We had some evidence from Councillor
29 Scandrett a few days ago about what he suggested was
30 caucusing or the taking of something akin to binding votes
31 in briefing sessions. Did you ever witness or were you
32 ever left with the impression that that's what was a
33 happening in any briefing sessions?
34 A. Most definitely. You're not allowed to under the Code
35 of Meeting Practice and Code of Conduct. Definitely
36 caucuses going on.
37
38 Q. What about binding votes being taken?
39 A. Binding votes mean they've determined their position
40 before we came into here?
41
42 Q. Quite.
43 A. Very much so.
44
45 Q. One example he gave - Councillor Scandrett gave, was
46 the Wattle Street carpark. Do you have any recollection of
47 that issue specifically?

1 A. Um, the Wattle Street carpark was in binding votes?

2

3 Q. Yes, in briefing sessions in particular?

4 A. In briefing sessions? Well, to be honest with you, I
5 found it for sale and brought it to council and said we
6 should buy it, as council, to extend the carpark, it was a
7 good decision to move forward. So, and it was a logical
8 decision. As for the binding vote, he's probably looking
9 at me as being - involving myself in operational matters,
10 but I brought it to council's attention that it was up for
11 sale.

12

13 Q. I don't think he was making any allegations
14 specifically against you, actually.

15 A. Oh, okay.

16

17 Q. It was a more general piece of evidence.

18 A. Okay.

19

20 Q. Although I'm by all means interested if you've got
21 something to say about it, but it was a more general
22 observation as to an example from Councillor Scandrett's
23 point of view of the 8:1 bullying majority and
24 inappropriate behaviour. Do you have any specific
25 recollection, at least in respect of Wattle Street?

26 A. Back on the Wattle Street bit, then I'll move into
27 that. I've got no idea why Wattle Street would be an issue
28 for controversy in eight - it was a logical decision, a
29 sound decision to move forward on it for the community. We
30 were short of parks.

31

32 And as for the binding vote, I think Markwart left
33 possibly - you've probably got a date there somewhere - he
34 had a couple of months off and he came back for - I don't
35 know why he came back for the general manager, and then he
36 resigned the day after it. But anyway, the long and short
37 of it, it was really - look, the 8:1 will probably be
38 issues that we all believed were right back in those days.
39 Scandrett had made it clear to me on a couple of occasions
40 that he was prepared to make the council mayor - Gair, not
41 Halstead because he was too strong - look as big a fool as
42 he could get.

43

44 Q. We'll come to that soon.

45 A. And he made those statements to me.

46

47 Q. We'll come to that soon. But just concentrating on

1 the concept that there were binding votes or decisions
2 being made in the briefing sessions, is that I take it
3 something you're agreeing with did happen from time to
4 time?

5 A. Yeah, and look, I'm sure though the diaries of council
6 mayors and also Scandrett would show that it was put to us
7 in the briefing sessions, "What do you think about this
8 issue? Staff are going to prepare another report for the
9 meeting. Show of hands if you agree with it or not", and
10 that happened quite often. Now, probably that was not
11 correct under the code, we were making decisions in there
12 before we entered here on a correction to a Mayoral Minute
13 or a correction to something that might come to council in
14 relation to the business paper or emergency item; we were
15 voting in the room there where in retrospect we probably
16 shouldn't have been, to be honest with you.

17

18 THE COMMISSIONER: Q. On those occasions do you recall
19 whether the vote in the briefing then led to staff taking
20 action on what council had indicated was to happen?

21 A. Oh, yeah, the staff would then go and prepare a report
22 really quickly for the night's meeting. It might even be a
23 business statement in the Mayoral Minute that the mayor
24 wanted to show us beforehand, and it might have been
25 controversy and some of them were no doubt. Hume coals,
26 when Larry Whipper was the mayor, it was controversy what
27 he wanted to put forward and that was - and I've got
28 motions in here that show that Gair would grandstand when
29 Larry Whipper was the mayor, but then when he became the
30 mayor he didn't want to see any grandstanding.

31

32 Q. Yes. What I'm, I suppose, driving at is whether there
33 were decisions taken in briefing sessions that were then
34 acted upon by staff. Did that happen?

35 A. True.

36

37 Q. Do you have any particular examples that come to mind?

38 A. Oh, look, again, the mayors would have their notes and
39 I would assume - and I know Scandrett made a deal about the
40 general manager taking notes, so I can't - she probably
41 did, she did, I didn't take note, but there would be issues
42 voted in there 8:1 and he would grandstand and say he
43 wouldn't accept it. Look, I can't remember what they were,
44 it might have been a bit about Station Street or a tree or
45 whatever it might have been, and in reflection it was
46 probably the wrong thing to do, but we were led by what we
47 were supposed to - we were in there, the staff were telling

1 us, the mayors allowed it, they're the ones that are more
2 educated - me in this process, both of them, they've been
3 here a long time. So, yeah, you're probably right, we
4 shouldn't have done, but we did.

5

6 Q. Thank you.

7 A. And then that would reflect straight back into here,
8 the motion would go up, we all approved it, he would knock
9 it back, because he was always on the right, and it would
10 just be - and then he'd want to speak to it even though it
11 had already been done and dusted, in theory, in there which
12 it shouldn't have been.

13

14 MR PARISH: Q. Thank you, can I go back to something we
15 were talking about a little while ago now, the DCP.

16 A. Sorry?

17

18 Q. The DCP?

19 A. Oh, yep.

20

21 Q. And whether it was fit for purpose or not, and we've
22 had some evidence that it wasn't. Just at a general level
23 first off, do you think that the governing body in
24 2016-2020 acquitted themselves well in their strategic
25 planning role?

26 A. The 2016-18?

27

28 Q. 2016-20, pardon me?

29 A. Sorry?

30

31 Q. 16-20?

32 A. Yeah, that's our term, okay. Yeah, that's the terms
33 of reference, so I get that. No, they didn't. They had
34 plenty of years to correct the DCPs. They're actually now
35 getting on the process of the three and villages, so four
36 DCPs to clean them up, bring them into the 21st Century.
37 They're antiquated some of the statements in there, and
38 then that frustrated the developer industry, and I've told
39 you I'm part of that process. And so, you had planners
40 that were just scratching their head from Sydney, they
41 would read the DCP, saying this is just so far antiquated.
42 And this is the platform, it's only a guide, but it's the
43 platform that the shire is a hanging their hat on for
44 moving forward. And I must have brought it up probably two
45 or three times that they needed to look at the DCP.

46

47 And I can state a couple issues in there: (1) it was

1 just horrible for a young bloke on the signage on the DCP,
2 it cost them 11 grand for no reason, and then we changed it
3 because it was antiquated, but that was just one. But even
4 the development industry were pulling their hair out
5 because we weren't keeping up to the 21st Century. And, we
6 probably had an obligation to do it, but we didn't.

7
8 Q. What about the housing strategy, was that another
9 strategic planning document which perhaps wasn't dealt with
10 as quickly or as thoroughly as it should have been?

11 A. Correct. We were instructed by the planning Minister,
12 we have to have a planning strategy and we were put on
13 notice two or three times and for whatever reason it just
14 kept coming back. You know, the staff would come to us
15 with a folder this thick and we'd do the education, drive
16 around in buses, look at the issues and they'd explain it
17 to us, two people in the strategy planning - good kids,
18 well, one's a kid, one's female - and you know, you trusted
19 what they said to a point, but they weren't also correct
20 all the time.

21
22 And the reason why I say that is that Airlie Dale in
23 Colo Vale had been on the strategy by the government, on
24 ours, for probably 25 years. If the developer doesn't want
25 to develop it, it doesn't matter, it just sits there. So,
26 the community, when we go out to the community, they would
27 say, "We don't want this coming into Colo Vale to have all
28 these houses", and I think that's where the staff said, "We
29 want it", and we were saying, "No, the community doesn't
30 want it, we need to look at it", so that tied it in a bit
31 of (indistinct).

32
33 So, Robertson: Whipper didn't want to have any small
34 blocks in Robertson because that's where he lived, and he
35 was totally wrong because the people needed a change there
36 to get the services they need. You need to have the
37 people, the doctors, the dentists, and if you've only got
38 1,500 people you're never gonna grow to get those services.
39 They had to drive 40Ks to fuel the car up.

40
41 Q. Can I ask --

42 A. (Indistinct) get the chemist or the food or whatever
43 they needed. Sorry.

44
45 Q. That's all right. One specific example that we've had
46 before us in this inquiry is Mr Samulski's attempt to, I
47 think, split a corner block in the James Fairfax Estate --

1 A. He did too.

2

3 Q. Do you recall that?

4 A. Oh, terrible.

5

6 Q. Can I just ask: there's this perception and reference
7 by several councillors who have given evidence that that
8 was an issue of him exploiting a loophole. Can you --

9 A. Oh, no.

10

11 Q. -- can you just give us your impression of what
12 constitutes a loophole in terms of planning laws, and we're
13 also interested in what you say can be done at a governing
14 body level if such allowances exist which the governing
15 body doesn't like; what ought they do about it?

16 A. Well, firstly, the Planning Assessment Panel is a
17 motion I put forward two years earlier, knocked back by
18 council, and also an internal Ombudsman: both those things
19 have been put in place by Viv May now which allows the
20 internal Ombudsman for people in the street to go to that
21 person, not councillors, which is fantastic because we get
22 involved in things we shouldn't - to hear the problems and
23 then retract those back up to the system; that's the
24 internal - I don't know who it is.

25

26 The second part was the Independent Planning
27 Assessment Panel is the only way to go. It's only in the
28 CBD or the metropolitan area, it's never been in the
29 country areas. And, I've got in the file here one of the
30 2017 commissioned development industry report, and I will
31 bring it up again and again, and in that report - Dobson
32 report, I think it is - it's recommended that we go down
33 the path of an independent Planning Assessment Panel.

34

35 Q. Can I ask --

36 A. And I put the motion forward and knocked back by
37 councillors, they didn't want to let go.

38

39 As for the Samulski one, one of the issues there was,
40 it was approved by staff five or four times, whatever it
41 was. And we had councillors that were denigrating him in
42 this chamber that should have been caught to defamation by
43 saying he's tried it on, he's milking the system. Whipper
44 and McLaughlin were making these statements. Again, they
45 got to a point - and Scandrett - they got to a point where
46 they got involved in breach of the Code of Conduct by
47 giving their weight to those objectors before seeing the

1 information. Totally out of line. It's clear in the
2 documents.

3
4 McLaughlin had been here for three terms, Whipper the
5 same, Scandrett for two: they were getting involved in
6 things they shouldn't have been. It was clear the staff
7 had made the decisions, and this is one of many that they
8 got involved with, and the mayor of the day, Gair, also
9 voted against it three times even though it was approved.

10
11 Q. What, in your view, ought they have done if they
12 disagreed with the fact that Mr Samulski, for instance, was
13 able to do something like develop his block of land to dual
14 occupancy when it was legal and complying but they didn't
15 think it fit with the overall amenity or plan? What do you
16 say ought to have been done by the governing body or
17 councillors, if that's the issue?

18 A. The LEP is the overriding document, the DCP's a guide.
19 Any other private covenant does have little weight in
20 relation to what the government body should be ticking off
21 and approving - this is the staff, I mean, not us, the
22 staff.

23
24 The other issue they've got is that, with the LEP it's
25 clear, and state SEPs, that you can build - and I'll come
26 back to this - that you can build dual occupancies on
27 corner blocks.

28
29 The other thing you haven't been told is, we've had
30 extensive training by staff, Mark Pepping and the staff,
31 explaining to councillors what the dual occupancy was and
32 what the rules were and how they would be interpreted to
33 trainers. And the three of them still would not listen
34 after the training of the dual occupancy, it had to be
35 1,000 square metres on a corner block with services, which
36 basically complied to the government SEP and also the LEP.
37 And, we had councillors that would not listen to what the
38 government had put in place to allow small houses to be
39 built in corner blocks. It wasn't - you could still build
40 a dual occupancy but it had to be attached to any other
41 block. But if you wanted to subdivide it - not strata -
42 subdivide it, it had to be on a 1,000 square metre corner
43 block.

44
45 Now, from the documents I believe we all got from
46 Samulski from the Fairfax Estate clearly says - we all got
47 them - this is why it was very frustrating and why they - I

1 couldn't get why the councillors couldn't get their head
2 around it. The body of Fairfax wrote to Samulski, or PJ
3 Design, whatever it was, and said, "If you get council
4 approval, come back and see us", because the overriding
5 body is the council for a subdivision on a corner block.
6 That was in writing.

7
8 THE COMMISSIONER: Q. Can I just explore this with you,
9 and I'm just going to take it away from Mr Samulski's
10 example into the general for the moment.

11 A. Yep.

12
13 Q. And, if you disagree with any of these propositions,
14 don't be shy about telling me, but do I understand from
15 that passage of evidence that you would agree that the way
16 that the governing body can influence planning matters and
17 the development or progression of areas in the shire is
18 through the LEP and the DCP --

19 A. And the housing strategy.

20
21 Q. -- and the housing strategy?

22 A. True.

23
24 Q. What about the proposition that it might be suggested
25 to me that, even with those levers available to
26 councillors, there's still a role for the governing body to
27 manage development and progression of the shire through
28 considering individual development applications?

29 A. Yeah, no, I get that, but that's where your DCP comes
30 into place; if it was up to scratch we would all know the
31 ground rules, and we didn't have that up to scratch.

32
33 Q. So, from that do I understand you're of the view that
34 the way in which the governing body should influence
35 planning development, amenity in the shire, is through
36 those overarching plans rather than getting involved in
37 individual development applications that are otherwise
38 compliant?

39 A. Very much so, that's the rules we're following, but
40 when you've got personal positions coming in from mates,
41 friends, objectors in the street or their opinion with no
42 basis to it, take us to court, it's in the public interest:
43 well, wait a minute, if it complies, it gets approved; you
44 might not like it but it should get approved, and to tie it
45 in knots and tear that person down publicly, you know,
46 greedy, it's unacceptable.

1 Q. Did you ever observe an attitude in the chamber where
2 a development application that had been recommended for
3 approval by staff but was nevertheless not finding favour
4 with councillors, that "oh well you can sort it out in the
5 Land and Environment Court"?

6 A. Very much so. I'll tell you another example.

7
8 Q. Yes.

9 A. Mayor Gair sits in the chair, I'm in Ethiopia building
10 a hospital for the Ethiopians, and I could read the
11 business paper over there, and it was about a 455 variation
12 to Gibraltar Park up here back in Mittagong Road, Old
13 Mittagong Road. And the DA was approved by Uliana, he
14 owned the property back 15 years ago and sold it on - this
15 is a bit of an explanation because you'll need to
16 understand the process.

17
18 Q. Yes.

19 A. And in that the old DA said they had to have
20 4,000 litre tanks beside every one of the apartments or
21 something along those lines. When it started to be
22 developed in the first stage there was a few problems
23 within the system, and I'll come back to that in a minute
24 to explain because you need to get the full picture. The
25 Sydney Water, New South Wales Water said, we don't want the
26 small tanks under our previous DA, under the 455 variation
27 we want one big 500,000 litre concrete tank to collect the
28 stormwater, take it back to the toilets and then hose down,
29 that was the logical thing under the new public guidelines
30 that they were following back from the antiquated DA.

31
32 That 455 came here three times. Gair knocked it back
33 three times, and this is where it gets really quite
34 controversial. He said in a briefing session there about a
35 hospice to be built on that site, that this developer will
36 need to get more brownie points before he would support
37 him. This is about a hospice for our shire, that's what he
38 said in that chamber in there, with consultants who took
39 notes on it.

40
41 When the 455 came back again to, I think it's what's
42 called an 82A review, you review it and then you go - I
43 think the consultants came to see Mayor Gair in his room -
44 and I'm told this by one of the consultants who I know
45 well, I've employed him, and I've conflict - every time he
46 came I put a conflict, not a - anyway, non-pecuniary. It
47 was explained to Gair that it was an update to what

1 Sydney - New South Wales Water wanted, but he'd already had
2 a denigrated view of this bloke, or the development, and
3 from what I'm told from the meeting from the consultants
4 who were there, or the one consultant who I've used, it was
5 agreed that the developer take us to court and we will roll
6 over when it goes to court on the change to the tanks.
7 That should never have happened.

8
9 When I was in Ethiopia I was reading the business
10 paper and I got caught over there taking an ultrasound
11 through the - not caught, but the process was very slow in
12 Ethiopia in Africa as you would know. And I extended - I
13 was going to have one week missing of council, and so I had
14 that time to do the work that I needed to do for the place
15 to fit-out the hospital, all donated material, surgery
16 tables and everything. And I seen what happened on the
17 internet, it was very slow but I finally got to it, and I
18 had to spend another week, so I was two weeks over there
19 because of the time period I lost.

20
21 When I came back I seen Gair and I said, "Why did you
22 do that? Why would do that?" And I actually threw my
23 badge on the table and said, "I'm going to resign from
24 deputy, this is rubbish. You've often said that you would
25 approve". If staff said it was going to be approved it
26 should be approved, and there's two occasions: the 455 on
27 the water tanks, and Paul Samulski's one, again he voted
28 against it, and eventually they had to go with it, so why
29 did they put that person, or both of them through, for
30 personal reasons? Gair, "That developer has to get more
31 brownie points", what is that? It's a nothing. It's,
32 again, it's personal coming into the issues where staff are
33 saying approve it.

34
35 I might not like what's been put and I have an
36 opinion, but I've got the ability to try and help the
37 applicant, and I've done it here in this chamber on a place
38 in Oxley Drive; the neighbour's worried about solar aspect,
39 high pitch. I'm sitting there, I drew a picture and said
40 to the applicant's architect, "Now, could you do something
41 like this?" That makes them happy, even though yours is
42 complying, but it softens the issue.

43
44 Q. Do I understand your view to be that on occasions
45 issues of personality came into the assessment of
46 applications by some councillors?

47 A. Oh, yeah, for sure. The other problem is, McLaughlin

1 owns a dual occupancy.

2

3 Q. Yes. You've identified Mayor Gair as being in that
4 category. Was anyone else, in your view, allowing issues
5 of personality to come into their assessment of development
6 applications?

7 A. Scandrett. I look to my right each time. He would
8 run out, I was sitting pretty well where I am now, and pass
9 his cards out - he lied to you the other day - pass his
10 cards out to the objectors when one of - the first or
11 second time they knocked back his DA. Staff recommended
12 approval three or four or five times and he runs out and
13 passes his cards out.

14

15 Q. Anyone else?

16 A. Mainly - well, and Councillor Whipper would also sue
17 him, tie him up. There was another big project which was
18 called Southern Highlands Wise, if I can just quickly take
19 you there. It was a \$20 million project and it was at - it
20 complied under what's called SP3 zoning, so it complied
21 with the zoning to have a hotel next to the winery. The
22 owner was - I never met him, didn't intend to, but I
23 downloaded who he was off the net, TA somebody - Hong Kong
24 businessman, architect, had a degree from Harvard
25 University in town planning and architecture, he had a
26 thousand people working for him, all around the world he
27 would design. He owned the horse stud across the road
28 called The Chase, I know these places because I've lived
29 here all my life. And he wanted to build a hotel there, I
30 think it was 80 rooms or whatever it was.

31

32 This is where it gets really curly. The staff member,
33 a lady by the name of Ellie Varga, wrote in her report to
34 councillors that she didn't like the colour of the tiles on
35 the roof and it was Italian style in a winery. She didn't
36 think it was appropriate. But it complied: the zoning,
37 SP3, setbacks, the water he was going to bring in from Moss
38 Vale, it's about 2 kilometres, not a big deal, and it had
39 100 acres so it complied with the sewer issues or whatever
40 is needed. But because the town planner had made a
41 statement, didn't like the colour of the roof tiles and the
42 issue about - the roof tiles, there was something else she
43 made a statement about - oh, the style of the building is
44 an Italian winery and not an Australian winery building: I
45 don't know what that means but that's the statement made.

46

47 Scandrett, Whipper and McLaughlin got involved in

1 pulling it apart and saying, "We want this developer to
2 come and see us and we will talk to him and tell him we
3 want him to change his drawing". This is a guy who's got
4 a degree in town planning at Harvard and built buildings
5 all around the world, multi storey fantastic buildings if
6 you downloaded his name, and they thought they knew better?
7

8 But Ellie Varga also then misled the developer. He
9 came in, they lodged a DA, what's called a Stage 1 DA,
10 whatever they're called, Stage 1 DA, concept DA. And, the
11 RMS out here in Albury Road had given a document to council
12 and it was never passed on to the developer, and one of the
13 reasons why we knocked it back, because there was no
14 information for the RMS, but they actually had the document
15 downstairs. She was found that she didn't provide the
16 evidence and left the council and went and worked somewhere
17 else.
18

19 So what you've got is staff also having a few problems
20 with their personal view on what they think is reasonable,
21 on tiles and style of a building, maybe they're allowed to
22 do that, I don't know. But then you have Whipper saying
23 that he would rather a - what was his words - like, a
24 playground for, you know, the shows we have, merry-go-round
25 with wheels and that sort of stuff. Do you think that's an
26 appropriate way to approach a developer with that sort of
27 ilk? It's not on.
28

29 THE COMMISSIONER: Sorry to take you off course,
30 Mr Parish.
31

32 THE WITNESS: I think you just asked the question, I just
33 want to go back to one thing about Gibraltar Park. It blew
34 up, there was 16 or 20 units being built under the approval
35 with a private certifier that did, once the DA was approved
36 back in the previous years, and there was a big issue about
37 sewer. This is critical to understand why Gair went on his
38 path about, you know, he needs to get more brownie points.
39

40 I knew some of the people that had bought those units
41 and they were older people that I'd known in the area, I
42 did know some of them. They had put their furniture in
43 those units waiting for council to tick-off the final
44 occupation certificate, and then there was issues of what's
45 called a section 68 certificate which is a drainage water
46 certificate. And, the issue was, how are we gonna deal
47 with the sewer? Now, the sewer original was to - I'm not

1 quite sure where it was to go, but the council argued the
2 point and we had the briefing sessions in here - and then
3 back in here - that the section 68 had never been paid. It
4 had been paid, and the reason why it had been paid, because
5 you can't do drainage work on the property without a
6 section 68 from the private certifier. But you can't do
7 work on the road reserve without it. Half the sewer
8 line was brought up - what's the name of the road - anyway,
9 back street of Mittagong back into Old Mittagong Road and
10 into it; half of it was already installed, certified and
11 ticked by council inspectors looking at it, and this is in
12 the Main Road.

13
14 And so, it became a stumbling block because council
15 didn't inform the ARTC to go under the bridge, because
16 you've got to get approval from three services: railways,
17 RMS, Sydney Water, maybe another one, environmental. It's
18 the standard system you've got to go through, you've got to
19 get permission from them, in 40 days it's supposed to come
20 back and say, yes, we agree or change, whatever. Council
21 never put the documents to ARTC.

22
23 MR PARISH: Q. Can I --

24 A. So, the sewer main stopped at that point for nearly
25 three months, so then these people are trying to move into
26 their houses, their furniture - and they were going back to
27 live somewhere else till they go there during the day and
28 then bugger off.

29
30 Q. Can I take you to a slightly different spot --

31 A. Sorry?

32
33 Q. Can I take you to a slightly different spot?

34 A. But can I just finish one bit here first?

35
36 Q. If it's quick.

37 A. The sewer main was finally completed up the main road,
38 the council changed the design of it, had a \$200,000 bond
39 for the work to be done: nobody could understand why it was
40 up the main road and not tearing the middle of the road
41 apart, not on the side of the road, which would be logical
42 so you don't lose the structure of the road, and then
43 council connects to it from a neighbour across the road,
44 and then the road had collapsed.

45
46 Q. Can I just ask you about whether or not, in your view,
47 the need for the governing body to make determinations on

1 specific DAs contributed to the dysfunction, the rancour,
2 the relationship, degradation, between councillors?

3 A. Yes, definitely.

4
5 Q. Will that be, in your opinion, resolved at least in
6 part by the local planning panel?

7 A. As I said, I put a motion forward to - or a year and a
8 half earlier than that to implement an independent Planning
9 Assessment Panel and an Ombudsman, and they knocked it
10 back.

11
12 Q. I'll take that as a "yes". And, in your view, did the
13 need to determine specific DAs mean that meetings were
14 perhaps longer or more inefficient than they needed to be?

15 A. Oh, very much so, we --

16
17 Q. And do you think that matter will be resolved by the
18 local planning panel?

19 A. Yes, I hope the planning Minister or the OLG Minister
20 will implement that if the shires want and put it in place.

21
22 Q. Do you think dealing with individual DAs and the sorts
23 of behaviour you witnessed such as Councillor Scandrett
24 handing out cards to objectors led to the perception in the
25 community that some people were favoured or given
26 unfavourable treatment in respect of DAs?

27 A. I agree, Gair, Scandrett --

28
29 Q. Do you think that will be solved by the implementation
30 of this local planning panel?

31 A. Oh, very much so; fantastic, good idea.

32
33 Q. On that topic of what weight and how a council deals
34 with individual people and whether, in your mind, you
35 resolve whether this is a genuine sentiment of a community
36 or cranks or squeaky wheels, one of the matters which has
37 come up continually has been Station Street and the way
38 that that was communicated/dealt with, and unfortunately
39 sometimes we even have to deal with the merits of it, but
40 can you give us your impressions about, firstly,
41 specifically whether in your view the Station Street
42 communication and consultation process was appropriate as a
43 starter?

44 A. Firstly, make it clear I have a conflict, I have a
45 property across the road in Station Street but I --

46
47 Q. Even more reason to confine it to your perceptions of

1 communication and --

2 A. Yep, but I needed to make clear that you understood.

3

4 Q. Thank you.

5 A. And I made it clear in most of the council meetings I
6 had, except for the last few where I just thought, this is
7 off the rails.

8

9 THE COMMISSIONER: Q. Yes, Mr Turland, I've seen all of
10 those declarations?

11 A. Thank you.

12

13 Q. And actually they're in evidence as part of
14 the minutes.

15 A. Thank you, that's good, I'm happy about that.

16

17 No, look, we did a good job to a point and then we
18 lost it. I have a document in --

19

20 MR PARISH: Q. Can you explain --

21 A. Sorry?

22

23 Q. Can you explain what you did well to what point and at
24 what point it went --

25 A. Because I had a conflict I had to nearly step back a
26 bit but still understand it.

27

28 Q. Yes.

29 A. So there's a document in here at the early stage where
30 it says clearly the project is a \$9.5m project, and I've
31 got it here to show you if you want it. A brochure was put
32 out. And it says - it says - and then further down it says
33 the allocated funds, there's 9.5. Now, that indicated to
34 the public it was a \$9.5m project, but it was never a 9.5,
35 it kept changing. And where we failed was to explain to
36 the community that it was changing all the time, and we
37 didn't want to tell the community that - not me, I'm quite
38 happy to tell the community because they owned the road,
39 not me. The community owns the road and the trees is even
40 more important.

41

42 Q. Can I ask you whether you have a view on the fact
43 that, even at the start of the current project's iteration
44 in 2017 where the cost was, what it was at that point
45 before the escalation of those, there seemed to be a fair
46 amount of opposition in the community at that stage before
47 there were evolutions in the cost structure.

1 A. Yep.

2

3 Q. Can you give us your views on whether the
4 communication and consultation at that early stage was well
5 handled or appropriate?

6 A. I've got all the drawings, the folder's this thick;
7 not because I have an interest in it, because I was a
8 councillor.

9

10 Q. You can assume that most of these documents we've got
11 in some way, shape or form.

12 A. Probably right, but the issue is this, is that, we all
13 thought it was a \$9.5m project because that's what it was
14 sold to the community in the early days, probably back when
15 I was a councillor in 2012 and onwards. And then there was
16 only to be two trees taken down, and then that grew to
17 eight, and the communication wasn't coming out to the
18 community in relation to the REF, environmental impact
19 statements, cost-benefit analysis. Some of it was coming
20 out but not in a clear form, it was restricted by staff
21 because it was a moving target.

22

23 And so, even though I had to step out, and I did on
24 most occasions except for the last bit because I just
25 thought, this is just off the rails, there was no reason
26 not to provide any information, and only in our financial,
27 four times a year we'd have a breakdown on the costs, and
28 that was colourful accounting, and I've said that in
29 council as well and in the briefing sessions in relation to
30 the finance meetings.

31

32 When you have a total project as a builder, it's a
33 full project, it's not just a bit here for Station Street,
34 but then we're not going to put the water main of
35 \$1.6 million that we have to replace in the cost of Station
36 Street, because that's a water main renew but it happens to
37 be in Station Street, and then it just goes on and on, to
38 Kirkham Road, same thing. So, they would put little bits
39 over here in the finance meeting and say, no, that's not
40 Station Street. And I'm going in the finance meeting, yes,
41 it is part of Station Street. If you're going to do the
42 work on it because you're working over the top, the stuff
43 underneath becomes the project for Station Street. So,
44 what was happening is, the dollars were changing but the
45 colourful accounting was to suit possibly Mayor Gair and
46 the staff, not to explain the true costs. Warts-and-all, I
47 would say, tell the community warts-and-all, good bad or

1 indifferent, not half bits. Sorry.

2

3 THE COMMISSIONER: That's quite all right.

4

5 Q. Can I put a series of propositions to you --

6 A. Please.

7

8 Q. -- that might be suggested to me flow from the
9 evidence so far, and you can tell me just firstly whether
10 you agree or disagree and if we need to expand, we can.

11

12 The overall picture that might ultimately be suggested
13 to me is that when the project was first consulted and
14 advertised to the community with the shop front, which I
15 think was 2017, I might have the date wrong, but in that
16 time period, and as the project then stood the level of
17 consultation and advertisement and information going out
18 was of a, if not --

19 A. It was good.

20

21 Q. -- good quality, at least acceptable.

22 A. It was reasonable, yes.

23

24 Q. And thereafter as changes started to happen to the
25 project and costs changed, and delays through government
26 agencies and different demands and however large or small,
27 and I accept that it may be a matter of subjective view
28 about whether those were big or small changes perhaps, but
29 that is where on one view of the evidence that I've heard -
30 and it's only one view I accept for the moment - but of one
31 view where the communication and consultation started to --

32 A. Break down.

33

34 Q. -- break down. Would you agree with that overall
35 impression?

36 A. Yeah, no, I agree. We had the meeting at the Uniting
37 Church, I think it was.

38

39 Q. Yes.

40 A. That was one of the briefing sessions or a meeting we
41 had, and I heard from one bloke where, you know, our back
42 was to them. Well, firstly, we were told we weren't
43 allowed to speak at that meeting and, secondly, it was an
44 information for the public. And so, they were in some
45 sense trying to bring forward, but when things change, the
46 whole thing changes, it's got to go back to the community,
47 and we were restricting that information because they were

1 hell-bent on trying to build a road for 920 metres for
2 \$33,000, and now it's a \$38m project.

3
4 Q. It also might be suggested to me that there was a
5 view, at least among some councillors, that because of the
6 presence of the grant, that this thing had to go through --
7 A. Right or wrong.

8
9 Q. -- because we had the grant, it had to be used?
10 A. Would be \$7.5m.

11
12 Q. Yes, would you agree with that observation?
13 A. Oh, goodness sake, we had the same problem with the
14 Berrima overpass. We had \$4.6m from the Federal Government
15 to do the overpass there, and it turned out to be a \$15m
16 job and we had to give the grant back. You're better off
17 giving the grant back than wasting time and money, we spent
18 two-and-a-half million on stuff that we didn't need to
19 spend money on.

20
21 Q. Would you agree with the proposition that, if it comes
22 between funding a project that doesn't have a funding
23 source and returning a grant that can't be used, what's the
24 best course of action in your view?
25 A. Return the grant.

26
27 THE COMMISSIONER: Yes, thank you.

28
29 MR PARISH: Q. There's been evidence from various people
30 at the inquiry that there was a perception in the community
31 that there was an adversarial relationship between
32 council - the councillors, I should say, and members of the
33 community. Do you agree or disagree with that observation.
34 A. I agree with it. It became clear that Mayor Gair
35 would not meet with the Friends of Wingecarribee - which
36 I've never been to any of their meetings, I knew a few of
37 them because they live here, I didn't agree with everything
38 they were putting forward - but he would not meet with them
39 and they have a right to be heard, but also a right to have
40 the information.

41
42 Q. What about broader than just say friends of groups,
43 we've had some evidence that goes beyond just those groups;
44 did you get a general impression or do you have any
45 recollection of what the community sentiment was like in
46 respect of whether there was or was not an adversarial
47 relationship between councillors and the community itself?

1 A. Again, this is when I get into the conflict side, I'm
2 not supposed to do - but it's not a DA so I probably don't
3 to council --

4
5 Q. I'm just asking a more general impression at the
6 moment, you don't necessarily have to give me specific
7 examples.

8 A. Okay. There was horrible, horrible, lack of respect
9 to the community on what they were asking for, and I don't
10 know if it was the staff hiding it because it was running
11 off the rails, but we had councillors who were pushing this
12 project with no good grounds to move forward; no good - the
13 finances were off - I mean, I've got the finance papers
14 here, and I'm afraid I was a bit blunt in some of the
15 council finance meetings because I was asking questions,
16 but that's another story.

17
18 Q. You seem to generally agree with the proposition that
19 there was an adversarial approach from councillors towards
20 the community?

21 A. Yep, very much so, in relation to Station Street.

22
23 Q. And more generally?

24 A. Yeah, I think it probably was in some of the issues.
25 I mean, the Hume coal issue was another one where we were
26 caught up in personalities of councillors, and then there
27 was the issue about the Uliana issues and the golf course,
28 that blew out as well, where we were missing the community,
29 not informing them of what was going on: Station Street,
30 the Berrima overpass, please ask me questions about that,
31 it was a dog's breakfast from day one.

32
33 Q. Can I just stick to the community sentiment for the
34 moment and ask you if you recall community surveys being
35 shown to you from time to time?

36 A. Yeah, committee surveys were done; there were a couple
37 of occasions they were wrong, they had to correct them.

38
39 Q. Can I ask you whether you're aware of the 2021
40 community survey which tracks a drop from about 2010 to
41 2020/21 of about 20 per cent from roughly 80 to roughly
42 60 per cent. Is that, in your view, an accurate reflection
43 of what you got an impression from the community was the
44 mood?

45 A. Yeah, no, and it's not just Station Street, there are
46 multiple areas --

1 Q. That's what I wanted to ask you, what do you attribute
2 that 20 per cent drop over a period of roughly 10 years to?

3 A. Oh, well, Hume coal was one of them, the Berrima
4 overpass failure, which we were never told for five months,
5 even though Gair knew about it and I'll come back to that
6 if I can if you ask me the questions. The Mittagong
7 swimming pool flooded, it's flooded again twice in the last
8 two weeks. We built - we spent \$6 million in a creek?
9 When I grew up as a kid, that was the only pool we had, it
10 was logical we had to get it out of the creek. Under the
11 New South Wales flood management plan, what's called the
12 PMF, predicted maximum flood, and we had done all the
13 studies. I was part of the committee that ran the flood
14 studies, so I knew where the floods were coming because it
15 was part of the process, and then we went and spent \$6m in
16 a creek: madness.

17
18 The playhouse. We've got \$100,000 worth of props
19 there holding up a solid sandstone 450 wide, my grandfather
20 moved it there, and it's moved this much (indicates)
21 because they didn't - but this is where the community
22 started losing faith. Those props are up there holding
23 nothing that's moved this much. Councillors didn't have
24 the ability to understand they could have hired the props
25 for \$100 a week, whatever it was, but anyway.

26
27 Then there's the - the other ones were the \$2m worth
28 of asbestos on the roads came from the RRC: absolutely mess
29 again. So, all those things started - and Station Street,
30 there's probably others I can't think of at the moment --

31
32 Q. That's okay.

33 A. -- those things started frustrating the public because
34 they just kept coming back and back and back as failures.

35
36 Q. What about councillor behaviour both in council
37 meetings and what they said in the media; do you think that
38 played a part in the --

39 A. Yeah, look, I - Councillor Scandrett using his
40 Facebook page to denigrate us, all of us right, wrong or
41 indifferent just because he could.

42
43 Q. What about you, did you play a role in that
44 perception, do you think?

45 A. Probably did, because I was what I believe was trying
46 to do the right thing. You can hear I'm fairly passionate
47 about what I think is right and wrong.

1
2 Q. Shall we maybe turn to those in a second, but what
3 about councillor behaviour in respect of staff? I've asked
4 you about specific recollections before, but - in briefing
5 sessions at least, but do you think councillor behaviour
6 contributed to a decline in the culture and satisfaction of
7 staff --
8 A. (Indistinct.)
9
10 Q. -- at WSC?
11 A. I didn't mention the bushfires; that was one of the
12 most dramatic issues this shire to hit, and probably the
13 worst issue we hit, and that took us down, and we handled
14 it so badly.
15
16 Q. Just coming back to the councillor behaviour towards
17 staff, do you think that councillor behaviour in the
18 2016-2020 term contributed to a loss of morale or the rise
19 of a toxic culture amongst staff at the WSC?
20 A. Yes I would do because these issues were coming back
21 into the community arena and in the public arena, which
22 then reflected back on staff.
23
24 Q. Do you think you contributed to that on reflection?
25 A. Yes, probably did.
26
27 Q. Can I show you Clip 5, which is of a meeting on
28 28 August 2019.
29
30 THE COMMISSIONER: Mr Parish, how long does that clip go
31 for, I just see the time?
32
33 MR PARISH: This clip is only 3 minutes long.
34
35 THE COMMISSIONER: Shall we do this one and then break?
36
37 MR PARISH: Sure.
38
39 THE COMMISSIONER: Yes.
40
41 (Recording Clip 5 played to the inquiry)
42
43 THE WITNESS: I can't hear that, sorry.
44
45 THE COMMISSIONER: Just pause, Mr Vong. Is that as loud
46 as the volume --
47

1 MR VONG: (Inaudible words.)

2

3 THE COMMISSIONER: Yes, please.

4

5 (Recording Clip 5 played to the inquiry)

6

7 MR PARISH: Q. I think we can end it there. You accuse
8 the staff of misleading you there in the briefing session.
9 On reflection, do you think that was an appropriate thing
10 to do in a committee meeting - in a council meeting, I
11 should say?

12 A. Well, I think this is relating to a briefing session
13 the week before, two weeks before, it wasn't that day.

14

15 Q. Yes.

16 A. And I'm correcting the minutes of the meeting on my
17 memory of what happened two weeks earlier or a month
18 earlier. Those trees, if I'm allowed to expand on the
19 issue about those trees --

20

21 Q. Can we stick to firstly whether you think it was
22 appropriate to criticise staff or allege that they'd misled
23 you in a council meeting?

24 A. Yep, they did.

25

26 Q. Do you think there was a more appropriate way of doing
27 it than to state on record in the public council meeting
28 that staff had misled you?

29 A. Yeah, you're probably right, but at the same time he's
30 correcting in the minutes trying to remember and the
31 documents they had in place on the (indistinct) street
32 trees.

33

34 Q. Do you accept that councillors ought not criticise
35 staff in council meetings?

36 A. Yes, you're right under the Code of Meeting Practice
37 it's quite clear in our guidelines, I understand what
38 you're saying, but in the heat of the moment trying to
39 correct what I believe was a failure of the minutes from
40 the previous meeting.

41

42 Q. Does that mean that, if it's in the heat of the
43 moment, you're allowed to breach the Code of Meeting
44 Practice?

45 A. Well, one would say that in the heat of the moment on
46 lots of these issues you can't remember everything that
47 you're supposed to be - you know, I'm sure as lawyers as

1 you guys know, it's not easy when you're standing up trying
2 to refresh your memory, only using very small amount of
3 documents, and your memory of what happened two weeks
4 earlier or a month earlier. And, maybe the terminology is
5 right, you are correct, it was a bit tough; council had no
6 way of defending themselves - council staff, I mean.

7
8 Q. Do you accept that that can contribute to a loss of
9 morale or the rise of a toxic culture when councillors are
10 alleging that they are being misled by staff in open
11 council meetings?

12 A. That depends on which issue it was.

13
14 MR PARISH: I might leave it there for now.

15
16 THE COMMISSIONER: 15 minutes, Mr Parish?

17
18 MR PARISH: Yes.

19
20 THE COMMISSIONER: Does that mean you want 20?

21
22 MR PARISH: Yes.

23
24 THE COMMISSIONER: Q. I appreciate you're shuffling a
25 few things today, so, yes. Mr Turland, we're just going to
26 take the morning break to give our transcribers a break and
27 allow us to stretch our legs and refresh our concentration,
28 so if you'd be kind enough to be ready to go again at
29 10.20.

30 A. Yeah, I'll come back. I'll just go and get a coffee
31 and come back.

32
33 THE COMMISSIONER: Yes, 10.20, thank you.

34
35 **SHORT ADJOURNMENT**

36
37 THE COMMISSIONER: Yes, Mr Parish.

38
39 MR PARISH: Thank you, Commissioner.

40
41 Q. We were just shown a clip where you alleged staff had
42 misled you. Is that something that had happened from time
43 to time, that you had made that allegation of staff?

44 A. Can I reflect a little bit on the Mary Street issue so
45 you understand what was going on?

46
47 Q. Well, you ought to and shall have now a chance to

1 explain the context of it.

2 A. Yeah, good, yeah.

3

4 Q. But, without hopefully descending too much into the
5 merits.

6 A. No, I understand that, and yes, it's probably the
7 wrong thing to do, but as far as I'm concerned we were
8 misled; those trees were dangerous, they needed to come
9 down, and eventually council put \$50,000 to remove those
10 trees. They were affecting those property owners and the
11 numbers of trees were incorrect, because Mary Street goes
12 for about a kilometre. It was only four or five lots, it
13 was about seven trees - whatever the tree number, I can't
14 remember now.

15

16 And, what they were, they were left by the planning
17 department for a koala path running for a 1,500 lot
18 subdivision at Renwick to nowhere, but the developer had to
19 leave them under the council requirements, and they were
20 affecting those four owners who built houses there and were
21 trying to build houses, and so, I was defending the rights
22 of the people in those houses to save life and property --

23

24 Q. Does that --

25 A. And branches had fallen on houses and cars.

26

27 Q. Does that, in your mind, justify transgressing Codes
28 of Conduct to make allegations that staff misled you in
29 open council meetings?

30 A. Look, I think you're probably right, but at the same
31 time under the briefing session and the amount of trees by
32 memory - this is the same one, and it's gotta be Mary
33 Street, they didn't gel together, they weren't right.

34

35 Q. Was the Mary Street issue the only time that you can
36 recall in which you accused staff of misleading you?

37 A. Probably in public like that would be the only time;
38 maybe again in Station Street, but I don't think I ever
39 did, because we were basically on Zoom by then and Zoom was
40 a nightmare for us.

41

42 Q. I see. Can I show you Clip 6, which is a meeting of
43 12 February 2021 - pardon me, 2020.

44 A. February 20.

45

46 (Recording Clip 6 played to the inquiry)

47

1 Q. "You knew", you said. Were you referring to the staff
2 there?
3 A. Knew?
4
5 Q. You said at the very start, you seemed to point in a
6 direction and say, "You knew".
7 A. Oh, yeah.
8
9 Q. Were you referring to staff?
10 A. On my oath the general manager had the ability and the
11 right as her contract to make sure that place was safe for
12 staff and it was horrible; it's still horrible today.
13
14 Q. Were you therefore alleging that the general manager
15 had neglected her role; is that what you were trying to say
16 there?
17 A. Yeah. That's her duty to make sure that the workplace
18 of the staff in this council was safe for the purpose, and
19 it wasn't; it's still horrible today and still doesn't
20 comply. And I think Viv May has made that statement as
21 well in his reports that he's had done today.
22
23 Q. "I hold the staff responsible": who are you referring
24 to there --
25 A. General manager.
26
27 Q. -- specifics? Again, was it the general manager?
28 A. Sorry. Yep.
29
30 Q. Did you think it was appropriate to criticise the
31 general manager like that in an open council meeting?
32 A. Well, I can tell you, the general manager also abused,
33 after that meeting, Debbie Barnes in relation to the animal
34 shelter at the end of the meeting.
35
36 Q. Can we just concentrate on your behaviour for a
37 moment.
38 A. Sorry, that's the truth, anyway. Yeah, no, it is.
39 How do I bring an issue - was that a question with notice
40 that I put forward? I can't remember.
41
42 Q. You can tell us.
43 A. Sorry?
44
45 Q. You can tell us if you recall.
46 A. Well, it must have been on the business paper for me
47 to bring it forward in some form, and it was probably

1 because of the issues that the animal shelter were facing.
2 For 20 years they had been promised to have a new facility
3 built, and it just went around and around in circles at the
4 cost of the staff and the animals.

5
6 Q. Does that justify criticising the GM in an open
7 council meeting?

8 A. Well, I believe it is. She was told, as the GM by the
9 staff, probably reports that were being brought forward
10 showing the place didn't comply with the occupational and
11 safety health and neglected to do anything. And Councillor
12 Whipper and I on a few occasions got on the same page and
13 we were hoping to get something done properly, as promised,
14 over years and years to protect the animals and the staff
15 on the property out there. Go and have a look at it, it's
16 horrible.

17
18 Q. You referred there to - I'll get the quote, "This
19 wouldn't be acceptable in the corporate world I think". Do
20 you recall that?

21 A. Yep.

22
23 Q. How many staff do you or your company employ?

24 A. Oh, I had about 40 people work for me for about
25 30 years on different buildings sites, we had to comply
26 with the occupational and safety health issues and it was
27 always - in the building industry it's a little bit
28 different because things are moving. On a place that's
29 been sitting there, as it is, with containers that were
30 rotten, kitchens that - you just - it was horrible for the
31 people working there.

32
33 Q. Would you, in the corporate world, criticise a manager
34 of yours in a public forum?

35 A. I would make - well, there is never a public forum in
36 a corporate world. My corporate world was: I was the boss.

37
38 Q. What about a newspaper?

39 A. I can't remember, they might have written something
40 like that.

41
42 Q. No, I'm just asking for a hypothetical. What if
43 hypothetically I suggested to you that you criticised a
44 manager or a senior staff member of your organisation in
45 the media; do you think that would be an appropriate thing
46 to do as a director of a - or a CEO of a company?

47 A. Oh, I think it's done all the time; if they're not

1 prepared to implement the proper processes, platforms to
2 comply with the law: occupation safety health.

3
4 Q. It might have been done all the time; do you think
5 it's appropriate? Do you think it is appropriate - do you
6 think it is appropriate for a director or a CEO of a
7 company to publicly criticise senior staff or managers of
8 that organisation?

9 A. I think it probably is if you want things to be done.

10
11 Q. Was that something you often did, publicly criticise
12 the general manager, Ann Prendergast at council meetings?

13 A. If she failed to comply with the regulations and her
14 contract obligations, I probably did.

15
16 Q. Did you understand that that might be a breach of the
17 Code of Conduct?

18 A. No, it's not; as far as I'm concerned her job
19 description is to do the certain things to make safe
20 workplace for her staff.

21
22 Q. Well, that's a slightly different issue. What I'm
23 asking you is, the way you go about criticising her, in
24 your understanding, doing it in the public forum of a
25 council meeting, is that appropriate or is that in breach
26 of the Code of Conduct as you understand it?

27 A. No, I don't think it's a breach of the Code of
28 Conduct. There would have been a notice of motion or a
29 question with notice and gave time for the staff to reply
30 upon it, I don't have it in front of me, and if I wasn't
31 happy with those explanations the next place to bring it up
32 is in the council meeting, as per my notice of motion
33 question with notice.

34
35 Q. Do you think it undermines the trust and confidence of
36 the council, in the mind of the community, for a councillor
37 to criticise the GM at a council meeting?

38 A. I think it's a duty that I needed to do to protect the
39 people working there, but also the people who were
40 volunteers coming into that place, volunteers, and the
41 animals. So, where do you get to a point of where you can
42 bring it to attention for something to be done, and it's
43 still not done to date? Viv May's now working on it, thank
44 God, but it dragged on for too many years. I'd suggest
45 that, if an audit was done today, and there probably has
46 been audits done in the last 20 years, it would show that
47 it was unsafe under the Occupational Health and Safety Act,

1 and let alone the Companion Animals Act.

2

3 Q. And that, therefore in your mind, justifies any breach
4 of the Code of Conduct in respect of criticising the
5 general manager in a council meeting; is that correct? Is
6 that how I understand your evidence?

7 A. Well, I think what you're saying is - but the general
8 manager had every opportunity if it wished so to take a
9 Code of Conduct and that would have gone down its path of
10 investigation, and failed to do so far as I know.

11

12 Q. I'm going to show you another video, Clip 8.

13

14 (Recording of Clip 8 played to the inquiry)

15

16 A. Can I answer that now?

17

18 Q. Yes?

19 A. Very good, thank you. This relates to the bushfires,
20 and it gets back to Sara Haslinger, who lost her house, and
21 it would seem that a phone call from her architect had come
22 in in relation - you know, I can see you've got some
23 documents there, that's good. And the issue was that, I
24 think she made a statement in the newspaper and then the
25 newspaper contacted me a day later, but the newspaper
26 article said that council were going to charge her
27 \$10,000-odd by memory - I'm going by memory now - for a DA
28 for a house that's been burned down. And the issue was
29 that it mentioned a phone call from the architect, I think
30 by memory.

31

32 Mayor Gair then gets on the radio and says that he's
33 going to - and I've got to show you, I think you've got
34 them over there - clearly says on 2ST he's going to report
35 the malicious phone call - malicious and some other
36 statement, it's probably there somewhere - to the police.
37 So, what I was bringing up there is that, once we had known
38 that Gair had listened to the tape, that he had no right
39 under the New South Wales Privacy Act and the Surveillance
40 Act. When you ring up here in council, it says the phone
41 calls are recorded for quality purposes and training, not
42 for a mayor to be used - to use it on the radio as a
43 malicious phone call in a relation to a media outlet of
44 Sara's house that burnt down: that's how it connected. The
45 day after that, or a day or two later Gair calls a meeting
46 in here, and I refused to go to it, to listen to the tape.
47 They had no right to play the tape; illegal playing the

1 tape to seven councillors and staff.

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The point I was bringing up is that council didn't follow its own due process of protecting confidential information that had nothing to do - it was Gair making a mistake on the radio, and I asked him the question in an email, "Did you report it to the police as you made a statement on the radio?" He said, no, he didn't. It's in writing, I've got it, you've probably got it here too. But what it did, poor Sara was torn apart, she's just lost her house, and her mother - I've listened to it here but I've spoken to her many times - her mother had to tell her that this mayor was on the radio reporting a malicious phone call which related to an article in the paper, in the telly or whatever it was, earlier --

Q. We've had that evidence at the inquiry already, it's on the transcript. Can I ask what that's got to do with your question about whether the council follows its own GIPA guidelines and makes requests through GIPA of its own information?

A. Correct, because everybody has to go through the right process.

Q. Quite, what's that? Sorry, can you please tie your question about the GIPA process to your answer about the bushfires and Ms Haslinger's situation?

A. Yep. Firstly, you're not allowed to play a tape to a third party under the Surveillance Act. I had two barristers --

Q. What's that got to do with the GIPA?

A. Because they had broken the rules.

Q. What's that got to do with GIPA?

A. Well, council isn't following their standard rules or government rules of playing a tape to third - staff and councillors that they had no right to listen to.

Q. That's in respect of the Surveillance Devices Act --

A. Correct.

Q. -- and there's various nuances in that Act. What's that got to do with the GIPA question that you asked?

A. Because council didn't follow its own process, the law. They had broken it.

1 THE COMMISSIONER: Q. Is what you are saying that
2 council didn't apply, under GIPA, for access to the
3 recording?

4 A. Correct, as I would have to do and you would do too
5 under discovery. But this was to get the mayor out of
6 trouble for the day before by making silly statements,
7 absolutely silly statements on it - he'd already listened
8 to it, he must have listened to it because he made comment
9 to it: malicious phone call.

10
11 MR PARISH: Q. When you said at the end there in that
12 tape "you will", how do you think the staff, I think it was
13 in that case Ms Lidgard, would have taken that? Do you
14 think it was fair if she took that as a threat?

15 A. Oh, look, I think you'd have to talk to them but I
16 think they --

17
18 Q. I'm asking what your impression of how she might have
19 taken it would be?

20 A. I think they would all be feared because they were
21 part of listening to the tape, and they knew it was wrong,
22 I would suggest to you.

23
24 Q. Do I take from that answer that you do accept that it
25 could be taken as a threat by her?

26 A. Well, when the process is broken and the
27 administration allowed it to happen to protect the mayor
28 from a stupid statement that he'd made, they should be
29 concerned.

30
31 Q. That doesn't answer my question. The question I asked
32 was, do I take it from your previous answer that you do
33 accept what you said there could be taken as a threat?

34 A. Yep, probably right.

35
36 Q. Do you think it's appropriate to be threatening staff
37 at all, let alone in an open council meeting?

38 A. I wasn't threatening the - Ms Lidgard, I was
39 threatening the general manager for allowing that process
40 to happen.

41
42 Q. Right, okay then. Do you think it's appropriate --

43 A. The general manager spoke to Ms Lidgard.

44
45 Q. Do you think it's appropriate to be threatening the
46 general manager at all --

47 A. That's right.

1
2 Q. -- let alone at a council eating?
3 A. They had broken the law. Broken the law.
4
5 Q. Does that justify you threatening the general manager
6 at a council meeting?
7 A. I don't think it's threatening, it's bringing to a
8 point - the mayor had made a statement on the radio --
9
10 Q. Well, you just said it was --
11 A. -- the day before he had listened to the tape that he
12 had no right to listen to without going through the GIPA
13 process. I can't, you can't.
14
15 Q. Can I ask you to assume you're wrong about the
16 Surveillance Devices Act for a moment?
17 A. Yep.
18
19 Q. If you are wrong about the Surveillance Devices Act
20 and you use that as a justification for saying something
21 which could be perceived as a threat, do you accept on
22 reflection that you ought not have said it?
23 A. I had legal advice that I was correct.
24
25 Q. I'm asking you to assume then that the legal advice is
26 wrong.
27 A. As a person in the industry of building, when you're
28 in doubt you get the proper advice on all issues.
29
30 Q. I'm asking you to assume that as someone in my
31 industry that sometimes legal advice is wrong; if you
32 assume that the legal advice is wrong and if you assume
33 that you are wrong, and the breach as you saw it was the
34 justification for the comments which could be taken as a
35 threat, on reflection do you think that ought not to have
36 been done? That follows, doesn't it?
37 A. I was quite comfortable with the advice I'd got and
38 the information I had in relation to the Surveillance Act.
39 If I'm wrong, please show me.
40
41 THE COMMISSIONER: Q. I think the issue might be a
42 broader one.
43 A. Sorry, mate?
44
45 Q. The issue might be a broader one. Let's just assume
46 for the moment the advice was right, and I accept that you
47 having received advice you're entitled to assume it's

1 right; even if the advice was right, it might be suggested
2 to me ultimately that even if your position was undoubtedly
3 correct, that it was nevertheless inappropriate to use
4 language which a reasonable observer might take to be a
5 threat against the general manager in an open council
6 meeting; what would you say to that proposition?

7 A. Look, I think with the - the problem with the fires
8 that we had here and the communication coming out of Gair
9 and this council was just horrible. So, in this issue the
10 mayor exposed it, he'd listened to the tape in relation to
11 the media outlet of The Telegraph the day or two days
12 before. If he'd not made those stupid statements, none of
13 us would have been wise that they listened to the tape, so
14 this whole backtrack was to bring councillors in to show
15 what the mayor had seen to make that stupid statement on
16 the radio and then decline from getting, as he threatened,
17 legal advice on the tape.

18
19 Q. Perhaps I'll approach it in this way, just bear with
20 me just a moment. Could Mr Turland have tender bundle A,
21 Volume 1, please.

22 A. Is there a page?

23
24 Q. Yes, just bear with me, I'm just trying to find it
25 myself.

26 A. Sorry.

27
28 Q. No, no, that's quite all right.

29 A. I thought I missed it with my hearing.

30
31 Q. No, no, I'm just trying to turn it up myself; just
32 bear with me a moment. If you turn to page 740.

33 A. Code of Conduct?

34
35 Q. Yes. So, this is the version from September 2020, and
36 I appreciate there are different versions from time to
37 time, but I'll just use this one as the general concepts
38 perhaps don't change too much, and if you turn to page 745.

39 A. Yep.

40
41 Q. Do you have there 3.1, "General conduct"?

42 A. Yep.

43
44 Q. Just have a read of 3.1 for me and let me know when
45 you're finished, please.

46 A. Is the number (a) - you want me to read them?

1 Q. No, no, read them to yourself just to refresh your
2 memory, and when you've read 3.1, let me know when you've
3 read 3.1.

4 A. Yep, yep.

5

6 Q. On reflection, do you think that the passage we just
7 saw on the video would contravene any part of 3.1?

8 A. Well, I think in the first one it says.

9

10 *... is likely to bring the council or other*
11 *council [officers] into disrepute.*

12

13 But the mayor had done that by listening to the tape
14 and playing it, so --

15

16 Q. You can be assured that I'm very interested in the
17 mayor's comments --

18 A. Okay, very good, okay.

19

20 Q. -- you can be rest assured I'm interested in the
21 mayor's comments about the tape.

22 A. Yep, good.

23

24 Q. Part of this process, as you will have appreciated, is
25 to give you an opportunity in this forum to respond to
26 things that might have been suggested to me.

27 A. Yep, no, I understand that.

28

29 Q. And it might be suggested to me that your engagement
30 with either Ms Lidgard or the general manager about that
31 issue would contravene one or more provisions of 3.1. If
32 that suggestion was ultimately made to me, what would you
33 say to it?

34 A. Yeah, there's probably a few in there that would
35 class, people could consider, but under the issue that was
36 brought up I was passionate that the law had been broken.

37

38 Q. Yes. Yes, Mr Parish.

39 A. How else do I bring it up? That's the problem. What
40 lever do I have? The mayor has abused the system as far as
41 I'm concerned with two legal opinions; the general
42 manager's running around and played the tape without going
43 through the proper process. I have to go through that
44 process, and then the mayor writes to us and says he hadn't
45 reported it. Well, why did he get on the radio to start
46 with? It was so unfair for a lady who had lost her house,
47 let alone the other 70-odd people in the shire.

1
2 Q. Well, fortunately for me and unfortunately for you, I
3 don't have to answer questions at the moment, so I'll pass
4 back to Mr Parish.

5 A. Okay, sorry.

6
7 THE COMMISSIONER: No, no, that's quite all right.

8
9 MR PARISH: Q. Can I show you Clip 9, which is the
10 meeting of 24 February 2021, I think.

11
12 (Recording Clip 9 played to the inquiry)

13
14 Is that referring to an incident which took place here
15 at this building just outside in which you turned up for
16 the meeting and --

17 A. Yep, happy to explain.

18
19 Q. -- there was, to use a neutral word for the moment, an
20 incident?

21 A. I don't believe so, and I can tell you why if I can
22 explain the whole situation there?

23
24 Q. Yep.

25 A. Firstly, in the requirements of the business paper,
26 which I've got an old one here, it's to give you time, date
27 and place.

28
29 Q. You can assume we are aware of that.

30 A. Yep, I figured you would be, but the issue happened
31 here, is that, I was busy all morning and it said in the
32 business paper to arrive here at 2 o'clock. I got here, I
33 sat in my seat that was here, and Mr Paull came in and
34 said, "What are you here for?" And I've gone, "The
35 business paper says to be here at 2 o'clock" or 1 o'clock
36 or whatever it might be. And he said, "But this is a
37 building site", and I've gone, "Why is it a building site?
38 There's no sign on the door, the door was open as per I'm
39 supposed to come in and sit down waiting for others". And
40 he goes, "Didn't you get the email?" "I don't know what
41 you're talking about".

42
43 And the issue was this: the point was that the screens
44 weren't put up to hold the meeting here in the chamber, and
45 they weren't put up because they were in the shed across
46 the road, and they weren't put up because they were
47 instructed, I believe, by Mr Paull and the mayor of the

1 time to not put them up because McLaughlin was on his boat,
2 his yacht on the south coast and couldn't make the meeting,
3 so they decided not to put the screens up.
4

5 Now, I can't prove that, but what I can say to you is,
6 I know that was the case because on the Zoom meeting he's
7 on his boat, but three days earlier in the business paper
8 he had to be here, and the issue was, we were being misled
9 by the staff and the mayor for the screens. They could
10 have been put up. The Minister gave us an order, we had to
11 be back in this chamber by Christmas, I think that year,
12 and we weren't.
13

14 Q. Can I ask you to reflect on your own behaviour in that
15 incident. Do you think you behaved appropriately?

16 A. I believe I behaved appropriately because - and I
17 think if you've got your records, and you probably do - the
18 OLG agreed with me that the meeting should have been
19 disbanded because it wasn't three days' notice --
20

21 Q. Can I just ask you about your behaviour and ask you to
22 reflect on your behaviour outside the council chamber here;
23 do you think you behaved appropriately --

24 A. It wasn't outside, it was sitting here.
25

26 Q. -- towards Mr - okay, well, do you think you behaved
27 appropriately, we'll start with, towards Mr Barry Paull in
28 that incident?

29 A. We were being misled by Gair and Mr Paull in relation
30 to the screens.
31

32 Q. Do you think - do you think you were behaving
33 appropriately --

34 A. Yep, I do.
35

36 Q. Do you recall if there was any other staff member
37 involved or any other staff member who may have come into
38 the room beside from Mr Barry Paull?

39 A. I think Mr Mooney came in, didn't say much, he was
40 just behind Mr Paull. The mayor came in and basically
41 said, "You've got a mental problem, Mr Turland", and I
42 said, "Mr Mayor, you're the one who can't remember what he
43 said two weeks ago", and he left.
44

45 Q. If Mr Paull and Mr Mooney have a recollection that
46 your behaviour was intimidating and aggressive, would they
47 be wrong about that, do you think?

1 A. I've been forthwith.
2
3 Q. Pardon me?
4 A. I've been forthwith, strong.
5
6 Q. Forthright?
7 A. Forthright, sorry, yeah.
8
9 Q. Would they be wrong if they held the impression that
10 you were being aggressive and intimidating?
11 A. Well, they probably do, but that's my nature.
12
13 Q. And, after you left the chamber here, did you go into
14 a back area of the building site, the Civic Centre was at
15 that time?
16 A. I'd been informed by - the screens were in the shed
17 across the road.
18
19 Q. Yes.
20 A. And I won't tell you who told me that, and they were.
21
22 Q. Did you go and look for yourself, did you?
23 A. I went over to see the - the site shed with our
24 project manager by the name of, Ned I think he is, so I had
25 a staff member with me.
26
27 Q. Do you think that was appropriate to --
28 A. Sorry?
29
30 Q. Do you think that was appropriate to go and do that?
31 A. Well, I think it is because we weren't being told the
32 truth and the process. It was all to make sure Gair had
33 the numbers on the night in relation to Station Street,
34 because he needed the numbers, whatever else was on the
35 business paper, but I remember 9th of - 9 December, was it,
36 9 December, the meeting?
37
38 Q. I think it was 24 February.
39 A. February, okay.
40
41 Q. Does that ring a bell?
42 A. Oh ...
43
44 Q. It was around that time?
45 A. Yeah.
46
47 Q. Do I take it then that, at least on your evidence,

1 because the underlying reason in your view was justified,
2 then any behaviour which may have been outside the ordinary
3 levels of appropriate behaviour were justified?
4 A. Um, as far as I'm concerned I was - I was strong
5 enough to ask the questions that needed to be answered
6 because nobody else would bother. In relation to work
7 screens --
8
9 Q. What about the tone in which you did it?
10 A. Well, I think you can hear that I'm fairly bold in the
11 way that I control my actions.
12
13 Q. I'm just asking you to concentrate on 24 February at
14 this stage.
15 A. Yep.
16
17 Q. Do you think the tone which you used was appropriate
18 at the time?
19 A. It's the tone that I would use every day in the week,
20 as I am now.
21
22 Q. I'm going to show you tender bundle E.
23
24 THE COMMISSIONER: Yes, can the other folders be taken
25 from Mr Turland.
26
27 THE WITNESS: I think this - is this the one?
28
29 THE COMMISSIONER: No, I'll have some of that paper that's
30 ours taken back so you're not surrounded by folders. E,
31 Volume 1, Mr Parish?
32
33 MR PARISH: Yes.
34
35 THE WITNESS: Oh, it is the one, yeah.
36
37 MR PARISH: Q. On reflection, whether it's just your
38 nature and general demeanour or not, do you think there
39 were times where the way you conducted yourself towards
40 staff may have been - may have constituted bullying or
41 harassment?
42 A. Well, obviously they - they - they do, and that's
43 their right under the Code of Conduct and the Code of
44 Meeting Practice.
45
46 Q. Sorry, I'm not sure you quite got my question. My
47 question was, do you on reflection think that perhaps from

1 time to time the way you conducted yourself may have
2 constituted bullying or harassment towards staff?
3 A. No.
4
5 Q. Can I take you to page 57 of the bundle.
6 A. This relates to?
7
8 Q. That should say "The Wingecarribee Shire Council
9 Initial Incident Report".
10 A. Never seen it before.
11
12 Q. Pardon me?
13 A. I've never seen it.
14
15 Q. Okay. Well, that answers my first question. Do you
16 see that there's the words, "Psychological" at the top
17 there?
18 A. What was that again, sorry?
19
20 Q. The word "Psychological" at the top there. It says,
21 "Wingecarribee Shire Council Initial Incident Report", and
22 the next words down are, "Psychological"?
23 A. Yeah, yeah, sorry, yeah I'm looking further down.
24
25 Q. No, no, just stick with me.
26 A. Yeah, "Tick illness", yep, got it.
27
28 Q. "Tick illness" --
29 A. By Danielle, yeah, got it, yep.
30
31 Q. No, no, just let me take you through it bit by bit,
32 don't read ahead, you'll spoil the surprise. And then it's
33 got, "Employee", do you see that?
34 A. Yep.
35
36 Q. And then it says, "Danielle Lidgard", do you see that?
37 A. Yep.
38
39 Q. And then it says, "Supervisor", do you see that?
40 A. Yep.
41
42 Q. And it's reported on 11 March 2020, do you see that?
43 A. Yep.
44
45 Q. And on the right-hand side do you see, "Psychological
46 injury: harassment/bullying/abuse". Do you see that?
47 A. Yep, I think it's said on here, yep, got it, and

1 bullying and abuse, yep.

2

3 Q. Then down the bottom there there's an event
4 description which says:

5

6 *What happened: inappropriate behaviour*
7 *displayed by Councillor Turland at*
8 *councillor briefing session.*

9

10 *I was present with my coordinator community*
11 *development, Kath Brennan, for discussions*
12 *in bush fire community resilience and*
13 *economy/recovery funds \$2,000/\$50,000.*

14

15 *During this discussion Councillor Turland*
16 *displayed intimidating and aggressive*
17 *behaviour, becoming verbally aggressive,*
18 *raising his voice and throwing papers at*
19 *the mayor.*

20

21 Just pausing there, do you recall this event?

22

23 A. Yeah, I do.

24

25 Q. Around 26 February 2020?

26

27 A. Yep.

28

29 Q. Do you agree that you threw papers at the mayor?

30

31 A. No, this is --

32

33 Q. So, this is a lie --

34

35 A. No, no.

36

37 Q. -- or incorrect if it says that in here?

38

39 A. I can explain the situation.

40

41 Q. Well, just, can we confine it firstly to the question
42 of whether you threw papers at the mayor?

43

44 A. I passed the papers and he threw them on the floor.

45

46 Q. Okay. Well, next part down:

47

48 *Following this the business paper run*
49 *through commenced during which time the*
50 *councillors began speaking aggressively and*
51 *intimidating the general manager.*
52 *Councillors were yelling at the general*
53 *manager. At this point I asked all report*

1 *writers present at the business paper run*
2 *through to leave the room. I did this to*
3 *protect the mental health of staff and also*
4 *so that staff weren't witnessing how the*
5 *general manager was being treated. I felt*
6 *stressed and intimidated and very concerned*
7 *about the welfare of the general staff.*

8
9 What is your recollection of that briefing on
10 26 February 2020?

11 A. If I'm correct in my memory it related to the
12 attorney - not the Attorney-General, the Governor-General
13 turning up at Balmoral and we were, as councillors, I found
14 out after. I drove all the way out there, because that's
15 what we were supposed to do, then to find out that - so, we
16 were invited out there. So, I'd driven out to see and do
17 the processes I was supposed to do as a councillor and the
18 deputy mayor. And another email had come through which I
19 didn't check, and I checked it when I'm sitting in the car
20 out there, it says, "No councillors now are involved or
21 invited", and the Governor general didn't want - he wanted
22 the people affected, not councillors. But the original
23 invitation was to drive out there, and I did. I then
24 checked the email sitting in the car, as you can while
25 you're waiting, and it says don't turn up.

26
27 When I came back to this meeting, it might have been a
28 couple of days later, I said to the mayor, "You asked us
29 out there, and I drove all the way there. Can't you
30 remember the email?" He threw it on the floor. I can't
31 remember what he said, but something to the effect, "You
32 weren't invited", but this was the invitation inviting me
33 to go all the way out there.

34
35 Q. Did you become agitated in that briefing session?

36 A. Very much so.

37
38 Q. Do you accept that that could have been taken as
39 bullying, harassment or intimidation by staff members who
40 were there?

41 A. No, it wasn't to the staff, it was to the mayor,
42 because the mayor was the one that threw it on the floor
43 after I gave it to him.

44
45 Q. What about the general manager? Do you recall whether
46 any conduct of yours in that meeting could be taken by the
47 general manager as being bullying or harassment?

1 A. I can't remember, I knew the document was thrown on
2 the floor and some words to the effect of, um - oh, I don't
3 know, "You weren't invited" or something like that.

4
5 Q. I'll take you to the next document at page 59. The
6 same sort of document; do you see that?

7 A. Yep. Michelle Richardson, yep, same document, same
8 date, the whole thing, yep.

9
10 Q. This seems to relate to the council meeting itself --

11 A. Yep.

12
13 Q. -- in the evening.

14 A. Yep.

15
16 Q. Do you recall your conduct in that meeting?

17 A. Yep.

18
19 Q. Do you agree that you were yelling at council staff
20 and potentially made staff members feel uncomfortable at
21 your tone and volume?

22 A. Although I think the issue there was that the motion
23 that was put up, we were putting up an amendment, and I
24 think it was Halstead and I were putting up an amendment to
25 that motion - I'd have to check to see if it was or not,
26 you've probably got the documents here - and it kept on
27 being wrong the way it was presented on the screen and we
28 were trying to correct it - and you've probably got the
29 tape here anyway - and it became very frustrating because
30 it just wasn't happening the way it should have done. And
31 so, what I'm trying --

32
33 Q. That justified --

34 A. Sorry?

35
36 Q. That justified your tone and volume, did it?

37 A. I'm trying to correct the information, but we had
38 everybody over the top of each other instead of just - if I
39 was the mover of the motion, let me complete what I'm
40 trying to get on the screen, but you had others intervening
41 trying to do the same thing and that just confused it and
42 made it a horrible meeting, and you've probably got it on
43 tape anyway.

44
45 Q. If you go to the next document at page 60.

46 A. 12/3, yep.

47

1 Q. Correct. Same meeting, same briefing session that
2 day?
3 A. I thought the other one was the 3rd.
4
5 Q. They've all been 26 February so far, I think.
6 A. No, no, that date was 3/3, this one's the 12th of --
7
8 Q. No, they're reported on different dates but the --
9 A. Oh, up the top right-hand corner, I got it, okay, got
10 it, yep.
11
12 Q. -- event date is 26 February for each one.
13 A. Yeah, got it now, yep.
14
15 Q. That's another staff member making a complaint about
16 your behaviour in the briefing sessions; is that right?
17 A. Well, that's what it says, m'mm.
18
19 Q. Do you think or on reflection do you have any
20 recollection of whether your behaviour in that meeting may
21 have been taken to be intimidatory or aggressive?
22 A. Oh look, obviously it's related to the bushfire issues
23 and how stressful we all were about the 70 houses, two
24 lives and 200 buildings and millions of acres.
25
26 Q. Does that justify behaviour which staff members
27 perceived to be intimidatory, bullying or harassing?
28 A. Well, you've got these incidence reports. Was there
29 any Code of Conducts taken against me in relation to these?
30
31 Q. I'm not answering questions, I get to ask them.
32 A. Well, I don't know because I've never seen these
33 reports, so I don't know.
34
35 Q. Well, I'm asking you for your recollection, giving you
36 the opportunity to explain, if you recall, what you
37 understood or recollected happened at that meeting?
38 A. Well, these are all on the 26th. It's all to do with
39 the same issues.
40
41 Q. Does that make it okay?
42 A. Everybody was under so much pressure and stress, what
43 was going on with the bushfires; it was blowing up.
44
45 Q. Well, these complaints are made specifically about
46 you.
47 A. Yep, that's fine, yep.

1
2 Q. What do you have to say to the suggestion that
3 therefore your behaviour may have been of a different tone
4 to other councillors?
5 A. Again, these were briefing sessions so there'd be no
6 tape to prove the fact if I was or I wasn't, but at this
7 point of time as far as I'm concerned we were all under a
8 lot of pressure, we were in a room downstairs, it was half
9 baked, the screens weren't good, it just wasn't coming up,
10 it became very, very frustrating for where we were; and
11 you're saying did my behaviour constitute threatening and
12 bullying? Well, obviously it has in relation to these
13 people making those complaints. I think it was a very,
14 very stressful and unruly time, yeah, we were all under so
15 much pressure.
16
17 Q. On reflection, do you think you could have perhaps
18 handled it differently?
19 A. I think if it was a different situation, and I haven't
20 seen any more of these, but a different situation it might
21 not have been that outstanding; there's obviously more, I
22 can see them coming through at the moment, but as far as
23 I'm concerned at that time we were under so much pressure
24 it was becoming, from the public's point of view, showing
25 that we really had done everything for the bushfire people.
26
27 Q. Do you think it assists in that sort of situation to
28 behave in a way which leaves staff members with the
29 impression that they're being bullied or harassed or
30 intimidated?
31 A. Well, obviously they filled the forms in and so be it
32 but, no, I don't think so. As far as I'm concerned, the
33 situation was that, in relation to this issue here, this is
34 in a briefing session. So, this wasn't in the council
35 meeting, that was in the briefing session, is that what
36 you're telling me? It says it there.
37
38 Q. There's a few in the briefing session and there's
39 one --
40 A. From the councillors there, okay.
41
42 Q. -- from the council meeting.
43 A. Well, I can't remember the briefings but I can
44 definitely remember the council meeting because you've got
45 it on screen and you've showed us. And it was all to
46 correct what the motion was we were trying to get forward
47 and mistakes kept on being made, and then - if you have a

1 look at it again you'll see other councillors jumping in;
2 it was just, they all want a bite of it, which then puts
3 pressure on the staff.
4
5 Q. Why don't we show that clip now, it's Clip 7.
6
7 (Recording Clip 7 played to the inquiry)
8
9 Can I just pause there for a second. You gave
10 evidence before that it was a particularly febrile or tense
11 situation at that time?
12 A. Mmm-hmm.
13
14 Q. What do you say to the proposition that the other
15 councillors at that stage were looking pretty relaxed and
16 unvexed by the situation?
17 A. Yeah, I think you played that one yesterday too, I
18 remember, yep.
19
20 Q. Well, not quite sure that answers my question.
21 A. Okay, yep.
22
23 Q. What do you say to the proposition that it's only you
24 who seems to be agitated at this stage at least?
25 A. Well, you know, that's your perception about the
26 agitation, but my issue was that we'd put a motion forward,
27 it was done in the right time, and only the council staff
28 and you, the Commissioner and yourself, could find out what
29 actually happened to those motions that were put in the
30 right time, in the right order, and we get a letter or an
31 email the day before the council meeting: where is it? And
32 I think I sent an email once I got the business paper
33 saying, "Where is it" to the mayor.
34
35 Q. Well, not quite my question again, but I think you've
36 answered it at least at the start, which is that "that's
37 only my perception" or whoever put the proposition to you,
38 so we'll continue if that's okay?
39 A. Please, yeah.
40
41 (Recording Clip 7 played to the inquiry)
42
43 Q. What do you think a member of the public watching that
44 for the first time would think about the behaviour of you
45 and the other councillors in that meeting?
46 A. Rowdy.
47

1 Q. Do you think the behaviour was inappropriate?
2 A. As far as I was concerned, I met the timelines and
3 somebody within the system --
4
5 Q. I'm not talking about the substance or the merit of
6 the motion that you're talking to, I'm talking about the
7 behaviour; do you think the behaviour was appropriate in
8 that --
9 A. In reflection, probably not.
10
11 Q. -- clip that we just saw?
12 A. Probably not, but at the same time under the heat of
13 the moment and what was going on we were not getting proper
14 service from the general manager as far as I was concerned.
15
16 Q. Does that therefore, in your view, justify the
17 inappropriateness of the behaviour?
18 A. Who do I go to? Who do I go to?
19
20 Q. Well, how do you understand the process would work if
21 you had concerns about a matter not being included in the
22 business papers?
23 A. Well, we didn't know until the day before, and that
24 was the problem. We got an email the day before the
25 council meeting, and to be honest, I probably didn't even
26 read it, but the question was, it wasn't in the business
27 paper; it met the timeline - I can't even remember what it
28 was about, but the issue was, if it was going to be
29 disallowed council staff had plenty of time to let us know,
30 not the day before the council meeting. And that, in my
31 view, and probably Mr Halstead's, is that they were waiting
32 for advice probably from the OLG for whatever the motion
33 was, I can't remember, or they were just holding off so it
34 didn't get the business paper.
35
36 Q. What if I told you or refreshed your memory and
37 suggested that it might have had something to do with the
38 Surveillance Devices Act issue again?
39 A. Okay, I didn't realise that.
40
41 Q. I'm just asking if that refreshes your memory?
42 A. If it was, it would also have been the way that I
43 believed the process of protecting the mayor had broken the
44 law.
45
46 THE COMMISSIONER: Are you going to go to the
47 document now, or are you moving to something else?

1
2 MR PARISH: I was going to move to something else.
3
4 THE COMMISSIONER: Q. Do you still have bundle E there?
5 A. Yep.
6
7 Q. Can you turn to page 143, please.
8 A. Yes, I have it.
9
10 Q. Just have a read of that email and, if you turn the
11 page you'll find what I understand to be the very notice of
12 motion that was just the subject of that clip. So, refresh
13 your memory on those two and then I'll ask you a couple of
14 questions.
15 A. Okay, so this is the motion that relates to that
16 video?
17
18 Q. As I understand it, yes.
19 A. Yep, okay.
20
21 Q. That's --
22 A. And that date then is what you're showing me is the -
23 excuse me - the date that --
24
25 Q. So, the clip as I understood it was played from the
26 meeting on 26 February and this is an email --
27 A. Sent the day before.
28
29 Q. -- sent on the afternoon of the 25th.
30
31 THE COMMISSIONER: Mr Parish, have I got the date right of
32 the clip?
33
34 MR PARISH: You've got your dates right, Commissioner,
35 that's correct.
36
37 THE COMMISSIONER: Thank you.
38
39 THE WITNESS: Yeah, because on the motion we put forward
40 it shows the 26th, yeah, you're right.
41
42 THE COMMISSIONER: Yes.
43 A. Sorry?
44
45 Q. You've had a chance to have a look at that?
46 A. Yeah.
47

1 Q. Do you see in the email, after the introduction that
2 says:

3
4 *I refer to the notice of motion attached*
5 *which was received in time but not actioned*
6 *until yesterday.*

7
8 Do you see that?

9 A. Yep.

10
11 Q. So, there was no doubt that the motion was received in
12 time, but for some reason it hadn't been actioned until the
13 Monday: see that?

14 A. Yep.

15
16 Q. Do you accept that sometimes people doing the best
17 they can, occasionally things get missed and aren't dealt
18 with in time?

19 A. But this is on the Tuesday, not the Monday.

20
21 Q. Sure. So, the email was sent on the Tuesday, but
22 there's an acknowledgment that it wasn't actioned until
23 yesterday, being the Monday, so there's an acknowledgment
24 there that it wasn't dealt with in time. Do you accept the
25 base proposition though that generally people doing the
26 best they can occasionally things can get missed and not
27 dealt with in time?

28 A. Oh, could have been a rostered day off too, I don't
29 know.

30
31 Q. Yes. Yes, all right. Then we go further down and
32 then there's an explanation as to why, even if it had been
33 actioned in time, it still wouldn't have made it onto the
34 business paper; do you see that?

35 A. Yep.

36
37 Q. Was that something you were aware of during the
38 meeting on the Wednesday?

39 A. Well, I would have read this email the day before at
40 1.36, if I'd read it at 1.30 - I might not have got it
41 until that night or even the next morning.

42
43 Q. Yes, but do you have a recollection of having read
44 this before going into the meeting?

45 A. Yes.

46
47 Q. And do you see there that Ms Lidgard is really the

1 conduit for the reasons of the general manager, that is,
2 she's passing on the general manager's reasons as to why,
3 even if it had been actioned in time, it wouldn't have made
4 it onto the business paper: do you see that?

5 A. Yeah, I see that.

6

7 Q. And, do you accept that, for things to make it onto
8 the business paper, it's not just a matter about them being
9 lodged in time, there are other requirements of the Code of
10 Meeting Practice that have to be followed?

11 A. Yep.

12

13 Q. Do you see there that the general manager has said
14 that the motion that you proposed, together with then
15 Councillor Halstead, would not have been appropriate in
16 that form by reason of clause 9.12 of the Code of Conduct,
17 that is, you must not make allegations about or disclose
18 information about suspected breaches of the code: do you
19 see that?

20 A. Yep.

21

22 Q. Was that something that you were aware of at the time?

23 A. Yep.

24

25 Q. Then, if you go to the motion on page 145 --

26 A. Yep, got it here, yep.

27

28 Q. -- third line --

29 A. Yep, I see what it says.

30

31 Q.

32 *Information in respect of a telephone*
33 *inquiry which is in breach of Code of*
34 *Conduct requirements clause 8.12.*

35

36 Do you see that?

37 A. Yep.

38

39 Q. Looking back at it now, do you accept that the motion
40 expressly alleged a breach of the Code of Conduct?

41 A. Yes, you're correct.

42

43 Q. Do you, sitting back now, do you accept that the
44 general manager's position was correct, that a motion like
45 that shouldn't be included in the business paper?

46 A. Yep, because it mentioned the Code of Conduct and I
47 understand that clearly.

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Q. Yes.

A. The other thing I might point out to you: yes, correct what you're saying, but if we were given more time we would have taken that out. To be honest with you, I think Ken Halstead actually wrote this because he's more attuned to this process, but notwithstanding that it's not his fault, but where we wanted to go was in confidential session. So it wasn't to expose it in the public arena, it was so that we could discuss the issue that hadn't been talked about prior.

Q. I understand.

A. So you're right, shouldn't have mentioned it, but in hindsight we know that now, but the process, the communication lines, but also probably in my mind the protection of the mayor for playing the tape just grew and grew and grew and grew and --

Q. So this seems to have become quite a controversial issue, and one thing I wanted to explore with you is whether there was - what the quality of the working relationship between the executive staff and the councillors was in general but in particular in the latter part of the 16 -20 term.

A. In the latter part in the - probably since the mayor came into power in 2018 - can I go back a little bit to explain why it started to break down?

Q. Yes.

A. Okay. In the mayor election and deputy mayor election, I threw my hat in as deputy mayor just for the heck of it to see - I mean, I really had no interest in being mayor or deputy mayor, that's not my goal here, never has been. But the mayor had came and told the group that he wanted Andrews as mayor, and I went, "Wait a minute. You don't instruct me or others who you might want, it's the process of democracy", so in the fun of it I threw my name in the hat, and for whatever reason they voted me in, which was a shock because I didn't expect that that would happen. The next day I'm called into the mayor's office up here, and he says, "I can't trust you". This is a guy I grew up with and I knew, and I go, "What do you mean, Duncan?" He said, "You knew I didn't want you, I wanted Andrews", and I've gone, "What's that got to do with anything?" And straight away we were starting to break down from that point, because he didn't want me as deputy

1 mayor, he wanted who he wanted: that's not how it works,
2 anybody had the right to put their name in the system.
3

4 And so, things started to break down from there right
5 through, and if I get time if you allow me I'll explain a
6 little bit more of where it even got worse, but in relation
7 to this issue, this should not have happened.
8

9 Q. Do you think that the working relationship between the
10 executive staff and the governing body was a good one
11 throughout the 2016-2020 term?

12 A. I think the staff were more happy to work with Mayor
13 Gair than they were with Halstead and you can tell that
14 straight away. Halstead knew his stuff because he lectured
15 local government law. Myself and other councillors were
16 learning on the run if you could say or through experience
17 over time, but --
18

19 Q. Do you think the working relationship between the
20 governing body and the executive team throughout the 2016
21 term was effective?

22 A. No.
23

24 Q. Why?

25 A. When you look back over history you could see that
26 Mayor Gair or Councillor Gair at the time over the 18 -
27 sorry, the 2008-2012 and then so on was very close to
28 Mr Paull and, therefore, where there should have been - and
29 you're supposed to have a close relationship with the
30 general manager, but it was too close; it was too close.
31 And so, I could see even Mr Paull was - how could I say
32 it - educating the general manager on the process of New
33 South Wales local government law because he's a New
34 Zealander - nothing wrong with New Zealanders, but I'm just
35 saying, you know --
36

37 Q. You might not say that at the end.

38 A. I didn't mean that at the end, you know what I mean,
39 like, it's New South Wales, it's not - and the issue was
40 that I believed that there's been too many issues from
41 before that showed their close relationship where there
42 should have been a distance, where Halstead had that
43 distance between the parties.
44

45 Q. What about the trust levels between the elected body
46 and the executive team throughout that 2016 term? You said
47 earlier that you thought there was a breakdown of trust

1 between councillors in that term --

2 A. True.

3

4 Q. -- what about the trust levels between the executive
5 staff and the councillors in that term?

6 A. In the first two years I think it went quite well and
7 there wasn't too many issues and we weren't having the
8 bushfire issues at that stage; it started up in 19/20, I
9 think 19 December 2019 the fires hit Balmoral and then on
10 the 4th it hit the Southern Villages.

11

12 Q. So, was that a catalyst for a breakdown in trust?

13 A. And the Station Street bypass, but also, one of the
14 issues that - and I flagged it quite clearly and it is the
15 truth is, and it's on record, which the mayor denies he's
16 ever said - the Berrima overpass which I've got here in the
17 documents, but the Berrima overpass started at \$9.6m. We'd
18 already put 200,000 tonnes of dirt on Boral's land - and
19 I'll come back to that in a minute.

20

21 So, the general manager's contract was asked to be
22 reviewed before December 2018, it must have been. Mayor
23 Gair came in in September. I think I picked up from here
24 that council knew in August that it had fallen over, up to
25 \$15 million, from 9.6 to 15. We'd already put 200,000
26 tonnes of dirt on Boral's land without approval, with no
27 boundary re-adjustment, and that came through from the
28 first finance meeting in 2019, by memory. And, to me, it
29 showed that we weren't getting the information as
30 councillors to protect the community in relation to this
31 sort of behaviour.

32

33 And I asked the mayor in the February meeting -
34 remember the general manager had every right to bring a
35 contract forward in December, so the mayoral election
36 in September, she has every right to do it under the
37 contract, no doubt; in December, renew her contract. And
38 our first meeting in council in February, finance meeting,
39 was shown and told that the Berrima overpass had failed by
40 an extraordinary amount, up to \$15m, and we had to give
41 back 4.6 to the Federal Government; I think we got 2m back
42 over time for the work we'd spent on it. Then we had a
43 briefing session by memory in April that year, because
44 that's what was the resolution of the finance meeting.

45

46 And so, the question to me was, how did we get
47 ourselves in so much strife where we put dirt on somebody

1 else's land without a boundary re-adjustment and at the
2 same time Mr Paull's telling us he hasn't even got an
3 easement for the other side of the road and we were
4 preparing it? So --

5

6 Q. Just so I understand, do I understand your evidence to
7 be, you felt the lack of trust at least from your
8 perspective between the governing body and the staff
9 developed from just beyond the midway of the 2016 term and
10 was informed by issues such as --

11 A. 18 and onwards.

12

13 Q. 18, thank you, 18 and onwards; and arose from examples
14 where you felt information that should have been
15 forthcoming was not coming --

16 A. Correct.

17

18 Q. -- or was coming in a delayed rate?

19 A. Yep, and the reason I say that is because in
20 the February meeting I asked, it's on tape, so you've
21 probably got it there; I asked the mayor, when did he find
22 out about the Berrima overpass failure, and he said he
23 found out just after he became mayor. And, why weren't we
24 told until five months later?

25

26 THE COMMISSIONER: Yes, I understand. Yes, Mr Parish.

27

28 MR PARISH: Q. Was the lack of trust with senior staff
29 also caused by your behaviour, do you think, on reflection?

30 A. Oh, this is the start of the downfall of trust, was
31 the Berrima overpass.

32

33 Q. Well, that's not the question I asked. Do you think
34 your own behaviour contributed to a lack of trust that
35 developed between the council --

36 A. No, not at all --

37

38 Q. -- and the executive?

39 A. I'm here representing the community to get best value
40 for their money and to uphold proper process and protocol
41 and platform. What I might say, we spent \$200,000 on
42 what's called PRINCE2: it's a project management system and
43 it failed.

44

45 Q. I've just --

46 A. We then had another one now, to try and correct the
47 problems.

1
2 Q. I've just taken you to some incident reports before in
3 which staff members felt intimidated, threatened, harassed,
4 bullied, by the tone of your questioning or your
5 behaviours.
6 A. Yep.
7
8 Q. Do you accept, on reflection, that that may have led
9 to a lack of trust between staff or the executive level and
10 councillors?
11 A. Well, this is - this is in February 2020.
12
13 Q. Yes.
14 A. Yep, that's what - you know, I was talking back.
15
16 Q. Did it contribute to it --
17 A. -- to 18/19.
18
19 Q. Did it contribute to a lack of trust?
20 A. Look, I think by the time we got to the Berrima
21 overpass and then all the other things started coming
22 through, the trust had broken; it lost it.
23
24 Q. And you contributed to that; do you accept that?
25 A. Oh, I was asking questions that should have been asked
26 and we weren't getting the information we should have.
27
28 Q. What about the tone you were using, do you think the
29 tone you were using --
30 A. I'm afraid that's just --
31
32 Q. -- contributed to --
33 A. -- the way I am and I apologise if I'm blunt, but
34 that's the way I am.
35
36 THE COMMISSIONER: Q. Mr Turland, you'll be given an
37 opportunity to qualify an answer, but Mr Parish is just
38 putting some direct propositions to you --
39 A. Do you want yes or no?
40
41 THE COMMISSIONER: And, if there needs to be a
42 qualification, I'll permit you to give it, but just perhaps
43 direct yourself to the question, thank you.
44
45 MR PARISH: Q. Do you want to give an answer to that?
46 A. Can you ask the question again, please?
47

1 Q. Do you think the tone or the way you behaved
2 contributed to a loss of trust or a lack of trust between
3 the councillors and senior staff?
4 A. They might have that view but I don't.
5
6 Q. Do you recall an incident in which Barry Paull might
7 have said certain towards to you and you entered the
8 mayoral area and banged on the general manager's door?
9 A. Oh, yes, very much so.
10
11 Q. Do you think that sort of behaviour might have
12 contributed to a loss of or a lack of trust between senior
13 staff and councillors?
14 A. Oh, definitely lost trust between me and Mr Paull, but
15 that trust had already been broken. Do you want me to
16 explain what happened in that process.
17
18 Q. Well, you can give your version of events, yes, that's
19 fair.
20 A. Well, there's documents that I provided to the - and
21 you've got them over there, have you --
22
23 Q. Yep --
24 A. I provided yesterday.
25
26 Q. If you want to address us on anything.
27 A. Basically we had a motion to bring the general
28 manager's contract to a point - I forget what date it was,
29 and the - as it complies with the Code of Meeting Practice,
30 no staff member should be a member - a part of - because
31 it's a staff matter. The mayor of the day believed he
32 wanted to Mr Paull in the room, which he shouldn't have
33 been, it should have been just the minute taker or one of
34 us could have taken the minutes; it didn't need to have any
35 staff there, and in that - sorry, I'll --
36
37 THE COMMISSIONER: You continue.
38
39 THE WITNESS: Okay, yeah. And in that meeting it was
40 quite clear that Mr Paull was going to be part of the
41 meeting regardless of what others believe he shouldn't have
42 been, and in that meeting I was making a statement that we
43 should be looking for a new general manager through the
44 process - I had every right to ask those questions - and we
45 should have done it in December when we had the chance to
46 put it out into the marketplace, and we might have
47 re-employed her, but we should have gone out to the market

1 place at that stage: that's how my point of view was
2 because of knowing now the Berrima overpass and all the
3 other things that had started to go downhill in this
4 council, and I'll list them in a minute.

5
6 So, in that meeting, this is where it became very
7 uncomfortable for Mr Paull, because I listed all the things
8 that had gone wrong with this council in that term: Berrima
9 overpass, swimming pool, playhouse, the Civic Centre here,
10 \$2m worth of asbestos on the roads.

11
12 Q. You've already named those, you don't have to go
13 through them all now.

14 A. But it gets worse, there's the fire and the RIC and
15 I'll come back to that in a minute, but basically he
16 shouldn't have been in the room and I exposed those things
17 because, as we all know, I can only control, as
18 councillors, the general manager, not Mr Paull. But all
19 these issues were Mr Paull's failures, not Ann
20 Prendergast's because --

21
22 Q. How does this relate to your behaviour after the
23 meeting?

24 A. After the meeting? This is during the meeting, isn't
25 it?

26
27 Q. Well, is there some point that you went into --

28 A. Okay.

29
30 Q. -- the mayor suite or area and --

31 A. Okay, the meeting's finished. Markwart's come back
32 for one meeting after three months off, back for the
33 mayoral - the general manager's approval. It was actually
34 4:5, not what was actually said the other day, I believe.

35
36 Anyway, re-engaged the general managers, accept
37 majority rule, having gone downstairs, all councillors have
38 gone their own ways ready for the council meeting later
39 that night, and I've walked up these stairs, and while
40 walking up these stairs Mr Paull, who I've actually just
41 listed all the items that had been failures in his business
42 portfolio, and I won't tell you what he said because you've
43 already got it in writing and there's witnesses to the
44 fact.

45
46 I was coming up for a cup of coffee within the
47 kitchenette that we all had rights to go and get coffee,

1 and I heard what he said about myself. I went through the
2 door, I spoke to the staff in the room on the left. I
3 said, "Did you hear what was just being said about me?"
4 And they all said yes.

5
6 I then passed, I think it was Markwart or McLaughlin
7 in the hallway, and I asked the staff in the room, "Where
8 is Mr Paull?" Mr Paull had gone straight back into the
9 general manager's office to explain what had happened
10 downstairs. So, I knocked on the door and I said to him,
11 "Did you just call me? [Dut-dut]", and he looked at me and
12 said, "Oh", you could see he was shocked that I was at the
13 door. The general manager then pushed me out the door and
14 he said, "Don't talk to that horrible man". And I'm going,
15 "Wait a minute, we've just had a confidential meeting about
16 your contract and Mr Paull's coming up, running up to tell
17 you what's happened down there, on a confidential meeting,
18 and calling me as he goes in a public arena what he thought
19 was unreasonable". That was unacceptable.

20
21 Q. Does that suggest to you that there was an
22 irretrievable or dysfunctional relationship between senior
23 staff and councillors at that time?

24 A. Some of the councillors, I wouldn't say all.

25
26 Q. What about that meeting that we watched just a while
27 ago, if a member of the public was watching that for the
28 first time, do you think they would perceive that the
29 governing body of this council was dysfunctional?

30 A. It depends if they knew what the issue was; if they
31 knew what the issue was --

32
33 Q. Let's just ignore the issue --

34 A. Enable.

35
36 Q. Let's look at the behaviour of grown men at a meeting
37 when they're representing the community, do you think --

38 A. Yep.

39
40 Q. -- their behaviour, if it was being watched, was
41 dysfunctional?

42 A. Yep, I agree with you, I agree with you.

43
44 MR PARISH: That was going to be all the specific topics I
45 was going to touch on.

46
47 THE WITNESS: Sorry?

1
2 THE COMMISSIONER: Yes, you proceed.
3
4 MR PARISH: Q. The process we've been undertaking here
5 is, if you wish to address us on any specific matters
6 you're to give me your list of topics and then I will
7 figure out whether they will fit within the terms of
8 reference and then I'll ask you questions about them.
9 A. I haven't prepared them, um --
10
11 Q. Do you want to just flick them off the top of your
12 head if you've --
13 A. I've got a lot of notes through the process, but it
14 would seem you don't want to go back from the 16 year
15 back --
16
17 Q. No?
18 A. -- but you've asked other councillors --
19
20 Q. We've been interested in the impression of other
21 councillors, and we've been interested in whether or not
22 there was a continuation of past behaviours, that that was
23 the purpose of that.
24 A. Yep.
25
26 Q. Is there anything you want to say about your
27 observations of previous terms?
28 A. Oh, yeah, for sure. The Hume coal issue where we
29 had --
30
31 Q. If we can put aside the merits or the specificities of
32 the particular matters --
33 A. Yep.
34
35 Q. -- and talk at perhaps a higher level about the
36 general behaviour --
37 A. The behaviour --
38
39 Q. -- conduct and the understanding of their roles and
40 responsibilities which, after all, is the core issue that
41 the Commissioner and I have to deal with.
42 A. Okay. The Berrima Road overpass, that Station Street
43 not providing information in the REF and a pile of
44 information to the community. The issue about the
45 Mittagong swimming pool, the \$2m on asbestos on the roads:
46 again, it's probably too much for you to drag into the
47 situation. Another one was the way that some of the

1 development issues were held by the mayor and --

2

3 THE COMMISSIONER: Q. Can I address it in this way: as
4 Counsel Assisting has said, it's not part of my terms of
5 reference to review the merits of all of these, but do I
6 understand you want to highlight these to show that there
7 were deficiencies in process over a long period of time?
8 Is that what you're driving at?

9 A. Yeah, you've nailed it, it's exactly what's happened.

10

11 Q. I understand, and is that something that you observed
12 from the 2012-16, as well as the 16-20?

13 A. Yes.

14

15 Q. And did the position remain the same or did it get
16 better at times, worse at times, or was it a slow steady
17 decline?

18 A. No, I think as information started to come in - you've
19 got to remember we got a special rate variation that
20 brought in millions of dollars, and the issue is, we didn't
21 have enough staff to control that work schedule. We had
22 failed information in relation to project management, it
23 was clear to me - I mean, that's what I have done all my
24 life. And it was basically the project management system
25 came in and when I made a complaint about the aquatic
26 centre: we were a million dollars over budget and they
27 couldn't tell me as a councillor who sat on that committee
28 where the million dollars had been spent.

29

30 Q. Yes?

31 A. So Ann Prendergast brought that in place, which was
32 fantastic, but they never used it.

33

34 Q. Yes, I understand.

35 A. The other issue was, you know, in the development
36 arm - I've got the Dobson report here, it's 217 by memory -
37 and it indicated exactly the same things that Mr - your ex
38 - O'Neill, was it? No, not O'Neill, the bloke who did the
39 review for Viv May.

40

41 MR PARISH: Malcolm Ryan.

42

43 THE COMMISSIONER: Q. Malcolm Ryan.

44 A. Met him once over at Mittagong and he nailed it as
45 well, he was right on the mark.

46

47 Q. I understand. What about, I think Counsel Assisting's

1 already explored councillor to councillor behaviour and
2 councillor to staff, so I understand the general issue.
3 A. Yeah, and look, I apologise for being blunt and hard,
4 but you know in business you have to make decisions that
5 you believe are correct, and what was happening here, I
6 could see it clearly, that things were being - preferential
7 treatment to some councillors and not others. I've always
8 said, give me the warts-and-all in business, give me all
9 the documents and we will make the decision, but when you
10 only get bits and pieces - and then when the Civic Centre
11 here, it was an example here, again, it was colourful
12 accounting on the total cost here.

13
14 Q. You just mentioned preferential treatment to some
15 councillors: as succinctly as possible, what do you mean by
16 that?

17 A. Oh, look, you could obviously see that others were
18 getting information that others weren't, because they had
19 already done a block caucus debate.

20
21 May I also, I just noticed what you played a minute
22 ago, and you could see that the mayor put his hand up and
23 was pushing a button: he was clearly breaking and
24 frustrating the process.

25
26 Q. After you mentioned that earlier I did observe that
27 because I, like counsel Mr Parish, thought it was a quality
28 issue.

29 A. And I wrote to the OLG and it's not in the Code of
30 Meeting Practice.

31
32 Q. I understand.

33 A. And no other councillors used that, so the frustration
34 came in on my point of view because I wasn't being heard in
35 the way that I should have been heard as an elected member.

36
37 Q. It's been suggested to me that perhaps you and
38 Councillor Scandrett came in for treatment that was
39 different to the others in meetings in the sense that you,
40 both of you at times, would be pulled up when leeway might
41 have been given to others; is that a perception you had?

42 A. Yeah, very clear. I don't want to speak for Scandrett
43 because he's not what I would call - anyway, you can make
44 your own determine - but I have no alleviation with him at
45 all. But you could see clearly that we were copping it, no
46 doubt.

1 For instance, in Zoom meetings, and again, we've never
2 been trained on Zoom, everybody in the world was thrown
3 into it, and with all the issues that were building up, the
4 stress, and in the Zoom you'd be watching on your iPad,
5 this big, and you'd have one councillor drinking a beer and
6 eating chips, so the sound was going crazy. But the
7 problem was, that was allowed, and interaction from the
8 group of four or three were, as soon as we jumped up on
9 Zoom we were muted. So, frustration came in because we
10 couldn't have that one-to-one.

11
12 Q. Do you think that the frustrations that you've
13 described both in council meetings in the chamber,
14 briefings and when things went online, was a symptom of a
15 dysfunctional governing body?

16 A. Oh, I think COVID made it hard for everybody, and it
17 was --

18
19 Q. What about before some of these things we've seen
20 before COVID?

21 A. Well, at least we could one-to-one talk or have the
22 issues or talk about it in the briefing sessions; we didn't
23 have that opportunity. In Zoom was it was hard to do
24 briefing sessions and even harder to do in the council
25 meetings, and that's no reflection of council, that's just
26 the way we were thrown into it.

27
28 Q. Does that not then highlight the need for a cohesive
29 and collegial governing body --

30 A. Correct.

31
32 Q. -- to put their best foot forward --

33 A. Correct.

34
35 Q. -- in trying circumstances?

36 A. And I would thank Viv May for coming into place here
37 because he was desperately needed to bring a process into
38 place that allows the new council to come in and be
39 hopefully not hamstrung with career councillors that really
40 should move on.

41
42 THE COMMISSIONER: Yes, Mr Parish.

43
44 MR PARISH: Q. Are there any other topics that you want
45 to raise and I'll figure out whether it's --

46 A. Yep, can I - the night that we had to do the --
47

1 Q. Just tell me what the topic is and I'll figure out
2 whether I want to ask you questions about it.
3 A. The performance order where the minister wrote, I
4 think it was 9 March or something two thousand - basically
5 said we had to produce evidence why we shouldn't be
6 removed. And in my amendment, you can see in my
7 amendment - I've got it here, you've probably got it as
8 well, I've got it here - I listed all the things exactly
9 what did in the general manager's review of all the issues
10 that I thought were failures.
11
12 Q. Can you just give me topics, give me the topics that
13 you want --
14 A. Okay.
15
16 Q. No, no, give me the topics that you want to address on
17 and then I will determine whether to ask you questions
18 about them.
19 A. Okay. Topics - also what I'd like you to address is
20 dinners after Zoom meetings.
21
22 Q. Yes.
23 A. I've heard a couple of councillors say that my
24 development was unhappy and that's what's turned my view
25 and I don't think it is because the development was
26 approved by the local Land and Environment Court, so I
27 never spoke to them about it, so you need to ask me
28 questions on that so it's clear.
29
30 Q. Just give me the topics and then I'll figure out --
31 A. My development, I want that cleared up, that the
32 truth's been told. Councillor Arkwright said that - and I
33 think you asked a question about 404 of the Act about
34 censure motions?
35
36 Q. Yes, 440.
37 A. 440 of the Act. Arkwright was the mayor in 2012-13,
38 she had a censure motion to lying to the community. We all
39 knew what the process was, and you asked that question I
40 think to others and they all denied they knew. In the 2012
41 she was censured for lying to the community and council.
42
43 Q. Okay, that might be more than a topic, you might just
44 answered --
45 A. Well, it's outside the terms of reference, but we all
46 knew the process.
47

1 Q. No, no. Give me the topics, please. Can you please
2 give me the topics that you want to address on?

3

4 THE COMMISSIONER: Q. I think that last passage
5 highlights Councillor Turland's disagreement with evidence
6 of others who have come who have --

7 A. Correct.

8

9 Q. -- who have said that 440 was - censuring motions was
10 not a process that was known to them, so I think that
11 covers that.

12

13 MR PARISH: Q. Thank you. Are there any other topics
14 that you wish to address on ?

15 A. I think you've taken me through a lot of the issues on
16 buildings at the moment. Just one thing: I notice you
17 bringing up a few times in relation to what was operational
18 and what wasn't.

19

20 Q. Yes.

21 A. This building you see at the moment, I climbed on the
22 roof, in the roof, measured it and drawn up a plan, under
23 the approval of the staff --

24

25 Q. Sounds operational?

26 A. Sorry?

27

28 Q. Sounds operational?

29 A. And you're right, and so then I thought, you know, you
30 need to know that I did this under the direction of staff
31 and councillors, and I performed a drawing to take to the
32 arc - and met the architect three or four times in Sydney
33 on this building and so what you see is a working building
34 that I had done building over a building. I want to try
35 and say, yes, I broke - I shouldn't have been doing it,
36 but --

37

38 Q. You don't have to confess every potential sin here.

39 A. Well, no, but I have to, because look what we have
40 here and that was just one of two buildings. The Exeter
41 hallway I actually redrew to bring it into budget, because
42 every year they could not afford it. I then drew a plan in
43 one of the council meetings, took it to - with the approval
44 of staff and councillors - took it to the committee at
45 Exeter. We'd unwound a \$3.6m section 94 contribution and
46 some monies were going out. We built that building that I
47 helped design out at Exeter for the community.

1
2 Q. Thank you.
3 A. So, yes, I'd broken the rules but with the approval of
4 the system.
5
6 Q. Thank you. Unless there's any other topics at a high
7 level, I'll go back to the topics you've already given me
8 and I'll ask you some questions about that.
9 A. Please.
10
11 Q. Last chance to add any more topics to the list.
12 A. You don't want to go back into 2008 and beyond.
13
14 Q. Nope.
15 A. Which is a bit of a shame, because this is what I've
16 brought here to have in my last hearing in this chamber. I
17 don't intend to come back again.
18
19 THE COMMISSIONER: Q. You'll be given, if you wish, the
20 opportunity to put in some written submissions if you wish?
21 A. I appreciate that and you said that yesterday too, and
22 I appreciate what you offered, but I think I'm exhausted --
23
24 Q. Just give me a one line, what is it about 2008 and
25 beyond that you wanted to say? One sentence.
26 A. Well, I have in the bag there a motion put forward by
27 Councillor Arkwright and Whipper to prosecute Lot 11 and 12
28 Range Road, which was Uliana. When he became a councillor
29 less than a year later they stopped the prosecution again
30 in the Land and Environment Court and we took one of the
31 parties on.
32
33 Q. I think this relates to some evidence that fell from a
34 witness last week which suggested that you might have
35 unfairly targeted that particular councillor?
36 A. Yeah, I understand that.
37
38 Q. You reject that?
39 A. I reject it totally --
40
41 Q. I think it's fair for you to --
42 A. Can I give one more example?
43
44 Q. A brief one.
45 A. On 24 July Mr Paull and Mayor Gair at the time signed
46 a lease on the golf course of 2009, I think it was, I've
47 got the copy here, you can get it off the website because

1 it's a retail lease. And in that clearly it was to collect
2 the bond of \$66,000 for a lease, which every bond has to be
3 paid. And there was a schedule of special conditions of
4 work that had to be complied with. When he became a
5 councillor he owed council \$25,000 in rent. The bond had
6 never been collected on or before the signing of the
7 contract four years later by Mr Paull, and none of the work
8 schedule and the special conditions were completed. That
9 showed me again that these two did not understand what they
10 were there for, to protect the community's assets, and it
11 went back, and that - when you had a councillor here sign a
12 declaration that he didn't owe money but owed the council
13 money, how can that be?

14
15 Q. I think that's well beyond my terms of reference.

16 A. That's out of your terms of reference, I understand.

17
18 Q. But I do accept that it was appropriate for you to
19 respond to some evidence that fell from another witness so
20 I was happy for that to happen. These topics will have to
21 be tightly confined, Mr Turland.

22 A. I understand.

23
24 THE COMMISSIONER: So, just address Counsel Assisting's
25 questions, thank you.

26
27 MR PARISH: Q. Can I go back to the first topic that you
28 raised which was the meeting, and you referred to the PIO,
29 but I think it might have been a notice of intention to
30 suspend --

31 A. Yep.

32
33 Q. -- in about March 2021; is that the one you're
34 referring to?

35 A. Yep.

36
37 Q. What precisely do you wish to address us on there?

38 A. Well, I think you've already heard from - you've seen
39 the original, because I've heard you talk about it, of the
40 original 2 o'clock meeting we were called to in here. I
41 have no --

42
43 Q. Can I just pause there. I'll be controlling this, I'm
44 afraid in the questioning department, but can I just pause
45 there and ask: do you have any idea of why the meeting was
46 called on that last day?

47 A. No, again, that was the direction of the mayor to call

1 that meeting, not me; I mean, we didn't communicate very
2 well at all. He never communicated in the bushfires let
3 alone at any other time with us.

4
5 Q. You may continue with what you were saying?

6 A. Sorry?

7
8 Q. You may continue (indistinct).

9 A. So, we arrived here at 2 o'clock, and you've obviously
10 seen - you've seen the draft that was drawn, and we walk in
11 there, and the mayor throws it down and says, "I want you
12 and Scandrett to resign", and I've gone, "You're the one
13 that should resign, not me", and he goes, "No, no, we want
14 you to resign to save the council". And I've gone, "You've
15 dragged us in at 2 o'clock and the first thing you throw on
16 the table is, 'We don't like you and him'" - I don't care
17 about him, but as far as I'm concerned I'd done enough in
18 protecting my community as best I could in the finances -
19 as best I could through the whole process, and I found that
20 very offensive. As you see it changed when it came to the
21 council, because it was just ...

22
23 And then when you read what his achievements that they
24 believe they made, let alone it was right on the last day
25 which was really a failure of the process again, and you
26 read some of the things that they'd successfully done.
27 Sound financial: well, we don't owe \$184m in banks,
28 fantastic, kids did pretty good, the finance guys. But
29 where we failed was, we had - the special rate variation
30 was, I think \$54m coming in over five years, something to
31 that effect, plus the normal rate base of \$150m, and we had
32 two deputy general managers. We needed, and I spoke this to
33 the mayor of the time being Ken and so on, we needed to
34 have a bigger structure to get through that work
35 schedule that we promised the community, and it wouldn't
36 change. And so what we had was one person having, I think
37 it's called infrastructure, finance and risk, trying to do
38 all this work and then I could see why we had all these
39 failures. We needed more, a tower situation, spreading the
40 load over more people.

41
42 Q. Can I stop you there and ask you what you understood
43 the Minister was looking for when she'd given you seven
44 days to provide a submission?

45 A. Yeah, which is what - I didn't put this together, had
46 nothing to do with it, this is Gair and Whipper. I think I
47 ran out of that meeting and told them what I thought of

1 them.

2

3 Q. Do you recall whether you understood or anyone else in
4 that meeting understood that what the Minister was looking
5 for was a list of your achievements?

6 A. Well, this is what the mayor drew up, I didn't, I --

7

8 Q. No, no, I'm asking what your impression and
9 recollection was?

10 A. Oh, no, no, well, I don't - look, to be honest with
11 you, I would have thought that would have been involved in
12 it, but you know, to say that we want another 10 days or
13 whatever it was to have a delegation to go and see them
14 would have to - you know, we'd given a chance, we'd had the
15 time to perform as a working group, and that was never
16 gonna happen because this was thrown on to us on the last
17 day, we had to perform, and some say we're all working
18 together.

19

20 But what really broke down, let alone these issues
21 that they think they were fantastic: Merrigang Street, it
22 had been on the plan for 20 years. Kirkham Road, they
23 would never use Kirkham Road --

24

25 Q. Again, can we just confine ourselves to not going
26 through the particulars of every merit.

27 A. Yep.

28

29 Q. Save one. Did you agree that the listing of the
30 exemplary response to the bushfires was appropriate?

31 A. No.

32

33 Q. Do I take it from your evidence that you'd not think
34 the response in the meeting was either timely or
35 appropriate or what the Minister was actually looking for?

36 A. No, the Minister would be looking for something more
37 in-depth than this.

38

39 Q. Thank you. Is there anything else you want to touch
40 on on that topic?

41 A. Where it says exemplary - well, you've seen my
42 response in my amendment next door to it.

43

44 Q. Yes.

45 A. And it lists clearly, and I could have added to it, so
46 many more issues that - that have let us down.

47

1 Q. Thank you.
2 A. But in the mediation sessions, and I can't bring this
3 up because it is confidential --
4
5 Q. It probably is confidential.
6 A. Sorry?
7
8 Q. It probably is confidential.
9 A. It is confidential. No, the biggest problem here,
10 after that meeting the group went across to the pub, and I
11 won't say what happened over there, but what I will say to
12 you, I was over there for a 4k charity meeting - I raise
13 money for kids with disability - and I had not expected
14 these guys to come over and sit over there in the pub on
15 the ratepayers' money on the last day, we're good blokes,
16 we've done a good job. And in there I told them what I
17 thought of them on the meal ticket of council. They
18 shouldn't have been there, it wasn't a council meeting in
19 the sense of, we're here for four hours. The unwritten
20 rule was, after 6.30 we would go out to dinner. This was
21 4 o'clock or whatever it was. We started at 3.30, half an
22 hour later we'd done the dash, and they're over there
23 having a free meal on ratepayers. And I walk in there and
24 McLaughlin goes, "Just put it on the tab". I wasn't there
25 for them, I was there for my community meeting, 4K charity
26 meeting, and I told them what I thought of them.
27
28 Q. Can we move on from that topic and bring it --
29 A. But what I'm trying to say is, if they didn't go
30 across the road and the incident happened there we probably
31 would not have gone into administration and it would have
32 gone through its process election in September last year
33 and we would have all moved on. That's what broke the
34 camel's back.
35
36 Q. Can I move on to the next topic --
37 A. The premier knew the next day that happened.
38
39 Q. Can you listen to me --
40 A. Pardon?
41
42 Q. Can you please listen to me and answer my questions?
43 A. Yep.
44
45 Q. The next topic is, "Dinners after", what is it
46 precisely that you want to address us on in that respect?
47 A. Oh, this is really interesting. You know, we're

1 all --

2
3 Q. Just tell me what precisely?

4 A. Well, Zoom meetings we're supposed to be home in our
5 little pockets in our own office doing our own thing,
6 because it's COVID. And I know for a fact, because I know
7 the public and he's on my 4 charity committee - not my, the
8 committee for the kids with disability. Councillors would
9 arrive from their houses after a COVID meeting at home to
10 have a free dinner on ratepayers across at the pub. Why
11 was the councillor saying, we're here in COVID, we're on
12 Zoom, and I'll drive from Bowral to have a free meal or
13 walk from across the road and have a free meal, let alone
14 the staff?

15
16 Q. I don't think that's within our terms of reference and
17 I'm going to move on from that.

18 A. But you asked about meals, that's what it was.

19
20 Q. No, no, no, I get to choose what's within the terms of
21 reference --

22 A. Sorry, fair enough.

23
24 Q. -- and if not I'll not ask questions about it. I
25 think you've already given us an answer in respect of the
26 knowledge of censure motions that was used in respect of
27 Mayor Arkwright.

28 A. Correct.

29
30 Q. Is there anything else you want to say in that
31 respect?

32 A. Well, I've got it here if you want it, but I can give
33 it to you, but it was just to clear up - the issues grew
34 all the way through from 2008 and 2012 and 2016, and I must
35 say to be honest with you, my performance might have been -
36 but I was led from what was already being taught by
37 watching, and that's a shame.

38
39 THE COMMISSIONER: Q. Does that suggest to you, with
40 some distance, that there was a culture of dysfunction at
41 the governing body level over a long period of time?

42 A. Yeah, I'd have to say that, but with external issues
43 like Hume coal and then, you know, the Uliana --

44
45 Q. If there's a dysfunctioning governing body over a
46 large period of time --

47 A. Correct.

1
2 Q. -- would you accept the proposition that it affects
3 the ability of the governing body to deal with significant
4 community issues?
5 A. Correct, yep.
6
7 THE COMMISSIONER: Yes, Mr Parish.
8
9 MR PARISH: No further questions, Commissioner.
10
11 THE COMMISSIONER: Yes. Thank you, Mr Turland.
12
13 THE WITNESS: Can I just answer the question about my
14 development because it said that I was upset about it?
15
16 THE COMMISSIONER: Yes, I think that's fair.
17
18 MR PARISH: Q. Pardon me, I did miss the topic: unhappy
19 about development, can you tell us what --
20 A. Yeah, look. When I lodged the DA on my property,
21 which I grew up on as a kid, that's where the bees are if
22 you drive - if you come this way - I went through the
23 process: never spoke to staff about it, always stepped out
24 when the issues came in, never made a part of it in there
25 or in here, and always declared an interest in relation to
26 whatever was coming forward.
27
28 But the problem was because councillors didn't know it
29 was approved by the court on an agreed position over two
30 years, so what they were saying is that - it was totally
31 untrue. It was, the truth of the matter was, it got
32 approved through the process, but they didn't know that.
33
34 THE COMMISSIONER: Q. I'll put the proposition to you
35 and you can either accept it or reject it, but I think the
36 force of those evidences - I withdraw that - the force of
37 the evidence from those witnesses who have raised the issue
38 of your personal DA is that, after whatever happened with
39 it your attitude to staff and other councillors somehow
40 changed and you became - my word, not theirs --
41 A. Aggravated.
42
43 Q. -- aggravated and a troublemaker; do you reject that
44 proposition?
45 A. I reject it. It all started from the Berrima overpass
46 in 2018 and it broke down from there, because then all
47 these things started coming forward to us.

1
2 THE COMMISSIONER: I understand. Mr Parish.
3
4 MR PARISH: Thank you, Commissioner, no further questions.
5
6 THE COMMISSIONER: Mr Turland, thank you very much for
7 your time this morning and I do appreciate that you were
8 inconvenienced in the sense you thought you'd be here
9 yesterday and you made yourself available early.
10
11 You will be given an opportunity to make written
12 submissions and, in doing so, if you think there are any
13 other documents you would wish to provide to us, feel free
14 to do so.
15
16 THE WITNESS: Thank you.
17
18 THE COMMISSIONER: I'll make some announcements later
19 today about that process.
20
21 THE WITNESS: Thank you.
22
23 THE COMMISSIONER: Thank you for your time, you are
24 excused under your summons, free to go about your day, free
25 to go if you wish, free to stay if you wish.
26
27 THE WITNESS: Thank you very much.
28
29 <THE WITNESS WITHDREW.
30
31 THE COMMISSIONER: Should I break briefly, Mr Parish?
32
33 MR PARISH: Half an hour perhaps.
34
35 THE COMMISSIONER: Do you want to take lunch now?
36
37 MR PARISH: Yes.
38
39 THE COMMISSIONER: Yes, all right.
40
41 MR PARISH: Subject to the transcribers, of course, if
42 we've got any feedback about whether they need more time.
43
44 THE COMMISSIONER: Yes, I'll adjourn until 12.45, thank
45 you.
46
47 **LUNCHEON ADJOURNMENT**

1
2 THE COMMISSIONER: Yes, Mr Parish.
3
4 MR PARISH: Thank you, Commissioner. The next witness is
5 Councillor Duncan Gair.
6
7 THE COMMISSIONER: He can be called outside.
8
9 MR PARISH: I call upon the summons.
10
11 <DUNCAN GAIR, sworn: [12.52pm]
12
13 THE COMMISSIONER: Thank you, Councillor Gair, take a
14 seat. Mr Parish.
15
16 <EXAMINATION BY MR PARISH:
17
18 MR PARISH: Q. Councillor Gair, can we please start with
19 your personal and vocational background and your connection
20 with the shire?
21 A. Thank you. I was born in Bowral, raised at Fitzroy
22 Falls, attended Avoca primary and then Moss Vale High,
23 completing Year 12. I went back to the family farm and
24 guest house, worked there. Built a squash centre in the
25 early 80s in Moss Vale. Returned back to the land and then
26 bought a business at Fitzroy Falls.
27
28 Q. When did you first become a councillor for the shire?
29 A. 1995, 96.
30
31 Q. Have you been a councillor continuously for each of
32 the elected terms?
33 A. Sorry?
34
35 Q. Have you been a councillor continuously for each of
36 the elected terms since then?
37 A. I have, I'm the longest serving councillor and the
38 second longest serving mayor.
39
40 Q. Can you tell us which terms you were mayor?
41 A. 2008 till 10, 14 and 2018 to the present time.
42
43 Q. We've had a bit of evidence at this inquiry in respect
44 of previous terms and the way councillors perceived the
45 behaviour and conduct of other councillors in previous
46 terms. At a very high level can you give us your
47 impression of whether the conduct of councillors over the

1 various terms you were elected was good, better, about the
2 same?
3 A. The first term that I attended the council was
4 extremely good and the second term, I remember there was no
5 inductions back then and I rang a councillor that I
6 respected and said, "What do I do?" He said, "You take
7 along two toothpicks and a couple of Panadol". So, 2024
8 was good --
9
10 Q. Sorry, 2024, that may be true but it's sometime in the
11 future.
12 A. Sorry, 21 - I'm trying to remember the - the election
13 cycle. But it started to break down really badly in the
14 2012-16, and then continued to the present day.
15
16 Q. Can you give me your impressions of what it was that
17 you witnessed or heard that left you with the impression
18 that the behaviour in the 2012-2016 was really bad?
19 A. In the present, in the present council?
20
21 Q. No, no, in the 2016 --
22 A. 2016?
23
24 Q. No, sorry, I'll call the 2012-2016 council the 2012
25 council and maybe we'll call the 2016-2020 council
26 the 2016 --
27 A. It started to break down possibly towards the middle
28 of it, and that was with the election then of Juliet
29 Arkwright - no, sorry. Who was mayor then? Ken Halstead.
30 I was --
31
32 Q. It might not have been Ken --
33 A. There 20 --
34
35 Q. Pardon me, it might not have been Ken Halstead in the
36 2012-2016 term; might it have been Arkwright and Whipper
37 possibly?
38 A. Yeah, I was mayor on 2014.
39
40 Q. Yes.
41 A. And then Councillor Whipper 2015.
42
43 Q. Yes.
44 A. And 2016 - boy - 2016 mayor was - wasn't me.
45
46 Q. Might it have been Arkwright?
47 A. Yeah, she might have come back in for the last term

1 maybe; I can't remember I'm sorry.

2
3 Q. That's okay, it's not a memory test, we're just
4 getting your general impressions at this stage about what
5 behaviours you saw which led you to the conclusion, or left
6 you with the impression that the 2012-2016 term was
7 particularly bad?

8 A. As I say, toward the end of the term one of what
9 really sort of set the scene was the Liberal endorsed
10 candidate, Holly Campbell, relinquishing her support for
11 Juliet Arkwright and voting for me for mayor in 2014. That
12 was a bold step and a very brave step and that had happened
13 in the previous council with Juliet Arkwright's No.2
14 deserting her because of her behaviour and voting for me
15 for mayor.

16
17 So, that set the scene for, in my opinion, a decision
18 by Councillor Arkwright to make it extremely difficult for
19 Holly Campbell, to the point that there was alleged
20 physical bullying; again, I didn't witness that. And then
21 there was false statements made by Juliet Arkwright in this
22 chamber in relation to rorting her travel allowance and
23 making a pre-recorded television interview before an
24 official announcement had been made by council in relation
25 to the termination of the general manager, and then her
26 political interference or her personal interference with
27 the appointment of the further GM in relation to her direct
28 involvement speaking to an applicant. So, it was not a
29 pleasant council. I feel that in some regards was even
30 worse than where we are at the moment, but there has been
31 comment, "Well, she was an endorsed Liberal and nothing
32 would happen".

33
34 So, there were Codes of Conduct flying all over the
35 place; I have never put a Code of Conduct on anyone in my
36 26 years, but I'm aware of the amounts of Codes of Conduct
37 that had been placed on people.

38
39 The other thing is, there was then disharmony with
40 Councillor Arkwright and myself; she totally resented me
41 being mayor, and I can understand that in relation to her
42 No.2 not supporting her.

43
44 Q. How did that manifest itself?

45 A. I would suggest Councillor Arkwright's behaviour.

46
47 Q. What sort of behaviour? Can you give me an example?

1 A. Well, the way she treated her No.2.

2

3 Q. What about the behaviour towards you; can you give me
4 an example?

5 A. When she was first elected I was mayor, and after
6 about six months - I'd been a councillor then for
7 12 years - she visited my business and suggested to me
8 rather strongly that, because the Liberty Party had
9 received more votes than I had, then I should resign and
10 relinquish the chairmanship or the mayorship to her, and my
11 response was, "Well, if you've got the numbers, then that's
12 a fair enough way to do it".

13

14 So, from there, there was a general animosity that
15 there was a feeling that, because of her - the Liberal
16 Party vote, which was high, and allowed her No.2 to come on
17 as second, since then the distribution of preferences has
18 altered and you would have to get a large amount of votes
19 now to get your No.2 on as a second vote. But then, as I
20 say, that manifested itself; she then had a falling out
21 with one of the other councillors.

22

23 Q. Can I just pause you there and ask what ways that
24 might have manifested itself in the chamber or in briefing
25 sessions?

26 A. Um, everywhere.

27

28 Q. Can you give me an example, in the chamber for
29 instance?

30 A. Briefing sessions. It's hard - oh, it's 10 years ago,
31 very hard to give an example, but there was interference in
32 the chamber and there was also a relationship breakdown, as
33 I say, with one of the other councillors. There was an
34 incident at the Moss Vale Swimming Pool where there seemed
35 to be a physical altercation between herself and her No.2,
36 or was then No.2, and the alleged was that there was an
37 attempt to try and push her into the swimming pool. So,
38 that animosity, as I say, just continued on in a regular
39 basis.

40

41 Q. Do you have the view that the 2012-2016 council was
42 dysfunctional?

43 A. In certain - at certain stages, yes.

44

45 Q. Do you have the view as to whether the conduct of
46 council, or at least certain councillors, was below the
47 standard expected of them by the community?

1 A. Look, the community - we didn't have live-streaming
2 then and didn't have social media as such, so the community
3 to a degree were absolved from knowing or protected from
4 seeing the actions of councillors. I think they would have
5 been aghast at the actions of some councillors as that
6 manifested itself in the 2016-20 council, and I believe it
7 was put in evidence by a former councillor that the social
8 streaming or social media and live-streaming allowed
9 particular councillors to play to their audience and, as
10 such - but that's a different topic which no doubt you will
11 cover.

12
13 Q. No doubt. Can I just ask you about the 2012-2016
14 council for a second again. Is it fair to say from the
15 evidence you've just given that it was fortunate for the
16 councillors that the public were by and large spared the
17 spectacle of having to - or seeing the live-streaming of
18 council meetings in that 2012-2016 --

19 A. I totally agree with that. I think the community, if
20 they had have been aware of the conduct of particular
21 councillors would have been - would have been - well, even
22 now, as you've seen with what's been shown now, the
23 community confidence in elected representatives that they
24 thought and respected when they voted for them, to see how
25 it's degenerated, I think, is - you know, it's a blight on
26 the council.

27
28 Q. Do you have a view as to whether perhaps the 2012-2016
29 council were lucky that they didn't receive a Performance
30 Improvement Order?

31 A. Well, we had the representatives to - the answer to
32 that is, yes, and then the OLG came up on a number of
33 occasions to sit in the meetings to see the behaviour, and
34 also, we had counselling or training from the OLG to try
35 and restore some form of peace, and every session worked
36 for a short space of time and then councillors just
37 reverted to previous behaviour, leopards don't change their
38 spots, and that was the way - that's the way it carried on.

39
40 Q. Could I ask you to cast your mind back, if you can, to
41 2016 and your election in September of that year. After
42 you learned of the make-up of the nine councillors who had
43 been elected for the 2016-2020 term, did you recall having
44 a view on whether that behaviour and dysfunction in the
45 2012-2016 term may continue in the new term?

46 A. There are different dynamics in the 2016-20 council.
47 On a regular voting pattern there is normally three to four

1 new councillors each term. Some councillors don't get
2 re-elected, some councillors have decided they have had
3 enough and they retire, and the three or four new
4 councillors who may come on come on with their eyes wide
5 open and probably wonder what the heck hit them when they
6 come into this place on certain times.

7
8 Did I think the council would settle down? Councillor
9 Arkwright wasn't on that council and that made a big
10 difference. Councillor Holly Campbell stood but did not
11 get re-elected. So, the dynamics were changed to a degree
12 there, and then you had two - three new councillors being
13 Councillors Nelson, Andrews and Markwart. Those
14 councillors, I believe, were extremely valuable to the
15 community for their input and were good councillors.

16
17 In saying that, having listened to evidence that's
18 been presented, we all make mistakes, and I have made
19 mistakes and no doubt I will be led to those mistakes that
20 I have made, but in general I believe the 2016-2020 council
21 was there, in general, by the vast majority of councillors,
22 and there was one councillor who I believe, it wouldn't
23 matter what you did, how you tried to pacify or do things
24 for, he would - he would test the chair, he would test
25 every chair, every meeting, every briefing session, every
26 inspection, and just - just slowly but surely wear
27 everybody down, and that was Councillor Scandrett.

28
29 Q. We'll come to that shortly. Can we turn now to your
30 recollection of the induction and training you received in
31 2016. Do you have any clear memory of the training you
32 would have received shortly after you were re-elected in
33 2016?

34 A. Look, by that stage I'd - although I didn't receive
35 any training or induction when I was first elected, you
36 pick up - you pick up a lot of things over 20-odd years or
37 so.

38
39 Q. Dare I say, you pick up bad habits as well as good
40 ones?

41 A. Sorry, sir?

42
43 Q. Is it fair to say you pick up bad habits as well as
44 good habits?

45 A. Um, I don't know whether I can agree with that, but I
46 think the answer might be, you learn how to roll with the
47 punches and, if I have picked up bad habits - again, I have

1 no doubt that will be brought forward at the appropriate
2 time.

3

4 THE COMMISSIONER: Q. Perhaps, councillor, just listen.
5 Perhaps don't anticipate the question or other questions
6 that might come and focus your attention on Counsel
7 Assisting's questions. Thank you.

8 A. Thank you.

9

10 MR PARISH: Q. I might be more specific. We had some
11 evidence from ex-Councillor Turland this morning that he -
12 and he didn't use these words but I'm paraphrasing - learnt
13 a lot just on the tools, as it were, rather than perhaps in
14 induction training sessions --

15 A. Yes, I apologise, I apologise for deviating. Yes, I
16 felt the inductions were adequate. With the change in the
17 Local Government Act or the Code of Conduct rules later on,
18 that was very - I was very impressed with that, I think a
19 lot more could have been done and should be done, but the
20 training I think was adequate. I think the councillors
21 also have a responsibility. You can't spoon feed all the
22 time and there was adequate time for councillors who felt
23 they may have been struggling to approach staff, and there
24 were other training areas as well that councillors could
25 attend, so I think the opportunity to learn was there.

26

27 Q. Do you have any specific recollections of the training
28 you received in the start of the 2016 term?

29 A. Well, the big one is the councillors' responsibilities
30 and roles to represent the community honestly and
31 diligently, to --

32

33 Q. I'm just asking you about whether you've got a
34 recollection of the training that you received in that
35 term, at the start of that term?

36 A. In a hazy manner, yes. Specifically, no. It's --

37

38 Q. Tell me - pardon me.

39 A. Sorry?

40

41 Q. No, I cut across you. Continue.

42 A. But that's, we had a series of workshops, and most of
43 those - we only came back into the council chambers in the
44 last couple of years. We used to have our training
45 sessions externally and that - that sort of changed the
46 mould of council, you were in a different facility. So,
47 the memories of going to a different facility at a

1 different time was a little bit different from the
2 trainings that we received in-house.

3
4 Q. I see. I think you were answering a question perhaps
5 you anticipated from me, which is, what you understood the
6 statutory roles of a councillor were. Can you take us
7 through those if you have any recollection of them?

8 A. Well, first one: as I say, the first is to set policy
9 and direction; to represent the community in an honest and
10 open manner; to not delegate yourself or try and enter into
11 the operational situations of council; to set the rate for
12 the shire; to bring to the attention of the mayor or the
13 governing body issues that you feel are important, but to
14 uphold the Code of Conduct in a proper and correct manner.

15
16 Q. What about the governing body? Do you have any
17 recollection or can you tell us what your understanding is
18 of what the roles of the governing body are as statutorily
19 prescribed?

20 A. The big one is strategy, policy and direction, and
21 that is normally done through a series of workshops to set
22 different plans or different ideas that are being brought
23 forward by staff into a productive form. So, policy
24 direction and strategy is what the governing body was
25 doing.

26
27 Q. Do you recall if, in 2016 after you were re-elected,
28 you were given any information on the recent changes to the
29 Local Government Act?

30 A. Yeah, again, I - I had a look, my latest - the last
31 one I had, and I think it must have been left here in the
32 mayoral rooms, is the - mine goes back to 2013. So, the
33 changes to the Local Government Act: one of them, I think
34 the biggest was, the bullying was introduced, I think, and
35 that must have taken a - for that to be put in place there
36 must have been an issue as seen by the OLG and not just
37 with Wingecarribee Shire but with other councils throughout
38 the state if there was part of that in previous, but I
39 think bullying was one of the ones that came in. The --

40
41 Q. Do you recall what section or what area of the Act --

42 A. No, I don't.

43
44 Q. -- prescribes (indistinct) --

45 A. No, I don't, mine is so far out of date it's not
46 funny.

1 Q. That's okay. Do you recall any discussion or training
2 in respect of the new part at 8A, 8B or 8C?
3 A. Capital?
4
5 Q. 8A, 8B or 8C.
6 A. I don't have a copy.
7
8 Q. I see. Mr Broad might be able to provide you with
9 copy of 8A now. Do you have 8A in front of you?
10 A. Yes.
11
12 Q. Do you recall receiving any information, training or
13 induction on the changes to the Act in 2016 that included
14 this section?
15 A. Yes, that's correct, yes.
16
17 Q. Do you have a recollection of this being drawn to your
18 attention in an induction training session, someone telling
19 you about it?
20 A. I am a dinosaur on --
21
22 Q. Technology or the Local Government Act, or both?
23 A. I appreciate, um --
24
25 THE COMMISSIONER: Q. Is that a section you've seen before
26 now?
27 A. Yes, I think I've seen this in - as I say, I - I
28 wouldn't have read it for a while.
29
30 MR PARISH: Q. Could we perhaps get Mr Broad to take you
31 to 8C.
32 A. "Council should use strategically" --
33
34 Q. Perhaps for completeness and chronological
35 consistency, we'll go to 8B next.
36 A. "The following principles of sound financial
37 management"?
38
39 Q. Yes, same question as before, do you recollect being
40 shown, inducted into, trained in respect of this section as
41 it was introduced in 2016?
42 A. We would have gone through this, but as in the detail
43 that's being presented here, it would have to be a - it
44 would be good to have a revision of it.
45
46 Q. Sure. When you say you would have gone through this,
47 do you have a clear recollection of it or are you assuming

1 or reconstructing that --
2 A. Well, with certain sections --
3
4 Q. Just let me finish the question.
5 A. Sorry.
6
7 Q. Or are you assuming or reconstructing that that may
8 have happened?
9 A. No, there are sections there that I recognise more
10 than other than - I remember them all, but in, "Council
11 spending should be responsible and sustainable", well, that
12 was sort of drilled into you on a continual or regular
13 basis. So, have I seen it and do I recognise it? The
14 answer is, yes. Do I - am I familiar with the wording of
15 it as such, the answer is probably, no.
16
17 Q. We'll just go to 8C.
18 A. Yes, we had training on integrated planning and
19 reporting principles.
20
21 Q. Do you recall having this drawn to your attention
22 during any induction or training after you were elected
23 as - re-elected in 2016?
24 A. We had a full session on this, now whether it was --
25
26 Q. On 8C specifically?
27 A. Yeah, whether it was just after that time, but there
28 was a session on 8C.
29
30 Q. Thank you. Can I now get Mr Broad to show you
31 section 232. That's the role of a councillor, do you see
32 that?
33 A. Yes.
34
35 Q. Can you go down to subparagraph (f)?
36 A. Sorry, we've lost it.
37
38 Q. Mr Broad will conjure it up again.
39 A. "To uphold and represent accurately policies and
40 decisions of the governing body".
41
42 Q. I take it, you know that a decision of the governing
43 body is defined as a resolution passed with a majority?
44 Rather than scan through, as tempting as it is, can you
45 answer my question? Do you know that a decision of the
46 governing body is defined as a resolution passed --
47 A. Yes.

1
2 Q. -- by a - okay, thank you.

3 A. Yes, sorry.
4

5 Q. Can you assist the Commissioner and I get an
6 understanding of what precisely you think that that means,
7 and in particular whether "to uphold" means that, once a
8 decision of the majority is made a councillor, even if in
9 the minority, even if passionately opposed to the decision,
10 must not take steps to undermine that decision?

11 A. Yes, I agree with that.
12

13 Q. Thank you. While we're on that topic - Mr Broad can
14 take the computer away - but while we're on that topic, in
15 the 2016-2020 term do you recall any instances, given the
16 answer you've just given, where that subsection was
17 breached and councillors did undermine the decision of the
18 governing body?

19 A. Regularly, continually and often.
20

21 Q. Can you give us some examples, please?

22 A. Well, the longest - the longest campaign to undermine
23 the council decision was Station Street. There were other
24 issues, and that's, I suppose, where a rescission motion
25 comes in and there is a chance for that councillor who
26 feels aggrieved and their arguments have not been listened
27 to may be able to get that decision overturned. So, up
28 until a rescission motion comes in and is voted on, then my
29 belief is the councillor has the right to continue to
30 express that view because he's signed - or she has signed a
31 rescission motion. But once the rescission motion comes
32 forward and then is debated and if the rescission motion is
33 lost, then that is council policy, cannot be altered for
34 three months, I think, unless it's acted upon and the
35 councillor has to expect that they have lost the fight, and
36 I have lost many fights over the years, but I do not and
37 did not undermine the council decision that I can recall
38 that would have brought the council into disrepute or
39 voting against the majority of councillors.
40

41 Q. Do I take it from that answer that you would agree
42 with me that it is not undermining the decision of council
43 if you use a proper recognised procedure such as a
44 rescission motion?

45 A. That's correct, that's my belief, that there is a
46 timeframe that you can still continue to hold that point of
47 view. I might be wrong, but that is - I would think that

1 after that time. And usually a rescission motion has to be
2 put in at the, I think, the following - I think by the
3 following Monday, if it serves me right, before - or the
4 Thursday? I can't remember. Thursday or the following day
5 or - and we had rescission motions coming in late and then
6 councillors objecting strongly to the fact that their
7 rescission motion was not on the business paper and that
8 created angst, but there was a timeframe with the setting
9 of the business paper and then the printing of the business
10 paper and then that had to be, as I say, a prescribed
11 procedure was put in place.

12
13 Q. Yes, you've given the example of Station Street as an
14 instance of councillors contravening subsection (f) and
15 undermining a council decision. Can you give us some more
16 details about instances that you recall where that
17 undermining took place?

18 A. There was various DA positions and decisions that
19 created an issue within the community.

20
21 Q. So, I'm talking about the Station Street bypass
22 specifically?

23 A. There were other DAs.

24
25 Q. Thank you.

26 A. So, there was one out at Colo Vale where a DA was
27 - I'm not sure if that came back as a rescission motion or
28 the developer withdrew the DA and then re-submitted it;
29 either or either there were councillors who were actively
30 promoting disunity of the council decision.

31
32 Q. Can you give us any other examples that you witnessed
33 in the 2016-2020 term of councillors undermining the
34 decisions?

35 A. I suppose the other one that comes to mind, and it has
36 been raised in this inquiry, and that was one at Retford
37 Park and that was controversial. When I say controversial,
38 it was controversial to that community, not to the wider
39 community but to that community, and that created fairly
40 strong councillors' opinions and there were rescission
41 motions and new DA lodgements or resubmissions and
42 eventually it was passed but there was a level of dissent
43 until that happened.

44
45 Q. Thank you. Can you tell me what you understand the
46 statutory responsibilities in respect of the mayor are?

47 A. The mayor's the mayor.

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Q. Could you be more specific?

A. If the mayor behaves and follows the codes then that's fine. If the mayor breaks the code and is then accountable to the governing body for their actions then that's - that's - that's another level. But I believe that the mayor, and I have been under numerous mayors over the years, and on an annual basis if the mayoral position became vacant or whatever then you had the right to nominate. But, you know, I never actively undermined a mayor.

Q. No, let's de-couple those two themes for a moment, I'm not suggesting that you ever did and I wasn't attempting to link subsection (f) about undermining with what your understandings of what the mayor's role was. Can I perhaps just ask you again, what do you understand the statutory role of the mayor was?

A. Oh, right. Well, the same as councillor, and then above and beyond that, that the mayor works in general with the general manager, chairs the review performance - the performance of the general manager, chairs council meetings, is spokesman for the council on the official position of council, represents the community at various functions or wherever they are invited to attend, and in general hopefully shows leadership.

Q. What do you understand showing leadership entails?

A. Probably all of the above that I just mentioned. Leadership is perceived by some as - there is a perception within sections of the community and sections of a governing body that they don't agree with the leadership being shown and, as such, there will be a - could be an attempt to undermine that leadership for whatever political purpose or for whatever personal purpose, but to do that I think is wrong and brings the council into dysfunction.

Q. Do you have a view as to whether, at least in the examples you have just given, the mayor ought to stand above the fray a bit to promote community cohesion and be a leader in the local community?

A. Yes. Again, there will be always a section of a community who do not like the mayor, and I have been subject to that over the last two weeks. You can never be popular with all and, if you do, you lose your credibility, in my opinion. So --

1 Q. Not quite my question. My question was, do you have a
2 view as to whether or not the mayor ought to stand above
3 the fray slightly --

4 A. Yes, I do.

5

6 Q. When you said just then "subject to criticism in the
7 last few weeks" are you referring about witnesses to this
8 inquiry?

9 A. Yes.

10

11 Q. In your view, was that something which was unique or
12 different to you, or was that something which --

13 A. There were certain speakers who have misrepresented me
14 and have misled this inquiry in my opinion.

15

16 Q. We'll certainly try and give you a chance to have
17 procedural fairness and answer any of those allegations
18 that you wish to answer, but can I ask whether some of the
19 themes raised by witnesses in this inquiry came as a
20 surprise to you or were you aware that there was discontent
21 in certain circles already?

22 A. It did not surprise me one little bit with the
23 witnesses that have addressed this inquiry.

24

25 Q. Do you mean by that, that certain witnesses came along
26 to this inquiry with an axe to grind in respect of you?

27 A. Certain ones, yes.

28

29 Q. You're not suggesting this inquiry handpicked or
30 selected --

31 A. No.

32

33 Q. Thank you. Part of your --

34 A. May I just say something there?

35

36 Q. Sure, if it's to qualify your answer.

37 A. The people who have given evidence here, even though
38 they've spoken against me or against council in general, I
39 don't dislike. There are people who have a passionate view
40 on an item or a situation or whatever, but they handle it
41 with the dignity of themselves and they don't attempt to
42 bring the person who they're criticising down and they're
43 allowed that opinion: it's called democracy.

44

45 So, if somebody disagrees with me and if they do it in
46 a manner that is the criteria that is for debate, that's
47 fine, I can - I quite easily live with that. It is when

1 people, because they disagree with your decision, that they
2 take it upon themselves to be vindictive, to be bullying,
3 to denigrate, to lie about the decision you have made, and
4 that is when it hurts. And, with this inquiry and as we've
5 found in council meetings, you can't stop the person from
6 saying something immediately, it's out there, and once it's
7 said it can't be retracted. So, an apology can be given
8 and can be retracted but not the statement.

9
10 So we hear through this inquiry people making
11 statements on the record against various people, and not
12 just myself, that are - that are unnecessary. You have a
13 point of view, you put it and you've gotta live with it.

14
15 THE COMMISSIONER: Q. By that do I understand your
16 position to be that, it's okay for people to disagree with
17 you, as long as they do it in a manner that's acceptable to
18 you?

19 A. Yeah, I - you know, the - Mr Barrett who spoke to
20 the --

21
22 Q. No, just answer my question. You agree with the
23 proposition I put, do you?

24 A. Yes.

25
26 MR PARISH: Q. Do you think using the media, if someone
27 has access to the media, is an appropriate way of
28 ventilating disagreements with people?

29 A. If it's done - it all depends how it's done. If it's
30 done against a council resolution that has been passed and
31 endorsed and is part of the overall policy of council, then
32 that is not correct. If it is a debate that is going to
33 enter the chamber in a certain amount of time and there is
34 an amount of lobbying or trying to gain or support or
35 otherwise, then that is permissible in my opinion. But if
36 it is used as a weapon to denigrate someone, to lower their
37 standing in the community because they're in a position of
38 power and they can denigrate other people who can't
39 respond, then that is an abuse of power.

40
41 Q. Can I show you a document. That's a Highlands News
42 2ST headline, "Mayor to seek advice about mischievous phone
43 call".

44 A. Yes, recognise all of this.

45
46 Q. Can you tell us how this article came about?

47 A. It was on Australia Day 2020 and I was having lunch

1 with Mr Brendan Nelson and his wife who I'd asked to be
2 ambassadors for Australia Day, and we were in the middle of
3 lunch and my phone went off and I made the error of looking
4 at it; I should have had it off. And it was a Mitchell
5 from The Daily Telegraph, I didn't know it was Mitchell
6 from The Daily Telegraph, I thought it was Mitchell from
7 our local radio station who I know and respect quite -
8 quite a lot. And he made the comment that we - he had
9 information to say that council was going to charge a lady
10 whose house had been burnt down, DA fees and all associated
11 costs, and that was disgraceful. And, I mean, I was - I
12 was broad-sided, totally broad-sided. I said, "I don't
13 know anything about this". I said, "We wouldn't have
14 received a DA in the last couple of weeks on a house that
15 has been burnt down". I mean, people were still in
16 emotional shock and, as such, the community was still
17 suffering a great deal.

18
19 Anyway, I said, "Look, there's a policy there and I
20 can't change the policy" or whatever. And, as I say, it's
21 Australia Day 2020 and I said, "Look, I've got to go", and
22 hung up. And the next day I think the headlines of the
23 papers say, you know, it said something "housewreckers" or
24 "homewreckers", "Council homewrecker. Mayor said they're
25 going to keep charging" or whatever, I can't remember now,
26 I don't know the headline.

27
28 Q. Can you tell me about the "devious, mischievous and
29 intentional phone call" you're referring to?

30 A. I was told by staff, after enquiring to the general
31 manager, what had transpired.

32
33 Q. When did you do that? During the phone call?

34 A. No. No, no, no, this was - oh, to be honest, I - the
35 general manager was in New Zealand, had been in
36 New Zealand - no, she was home then on the 4th. This was
37 26th. I don't know, it may have been - I can't remember
38 what day, Australia Day was on - in 2020.

39
40 Q. I think it's on the 26th every year.

41 A. Sorry?

42
43 Q. I think it's on the 26th every year?

44 A. 26th, yeah, but I don't know what day --

45
46 Q. Pardon me.

47 A. -- what day of the week it was, so I don't know

1 whether I was back into the office the following day; as I
2 say, I don't have that date and I can't remember. So, the
3 general manager, I queried, "What's happened here? We've
4 been held up on the front page of The Telegraph, I don't
5 know anything about it, can you tell me?" So --

6
7 Q. Can we go back a step, sorry, I don't mean to cut you
8 off but I think it'll be a bit more efficient. The article
9 that I'm showing you is 3 February 2020? Do you see that?

10 A. Yes.

11
12 Q. The headline is, at least?

13 A. Yeah, "The mayor seeks advice from mischievous" --

14
15 Q. You refer to a conversation that you had with Mitchell
16 on the 26th; was that the date that you're referring to,
17 the phone conversation?

18 A. Yes.

19
20 Q. Can you tell me what dates you're talking about when
21 you say you had a conversation with the general manager?

22 A. That's what I'm saying, sir; I cannot remember what
23 the day - I don't know what day of the week Australia Day
24 was --

25
26 Q. I think it was a Sunday according to my --

27 A. Then I may have come in on the Monday. I don't have
28 my diary and I don't have my diary notes. I have a feeling
29 when during lockdown of last year I've tossed out - I've
30 got one diary left. I was prolific on diaries.

31
32 THE COMMISSIONER: Q. Anyway, sometime after the phone
33 call from Mitchell from The Daily Telegraph you had a
34 conversation with the general manager; is that right?

35 A. Yes, but I - Mr Commissioner, I can't remember the day
36 and the time when I would have had that conversation.

37
38 THE COMMISSIONER: That's fine. Yes.

39
40 MR PARISH: Q. Who or when did you discuss the
41 mischievous phone call with? Was this on the 26th with
42 Mitchell from the Daily Telegraph?

43 A. No.

44
45 Q. When was that?

46 A. Because I didn't know - I mean, I - I didn't know
47 anything about this.

1
2 Q. You didn't know anything about the mischievous,
3 devious and intentional phone call?
4 A. Not at that stage, no.
5
6 Q. At what stage did you learn about it?
7 A. Again, I'd have to try and check my dates that I was
8 in the council, they'd be on record because my PA who
9 arranged my calendar, she would have - that would have been
10 on my diary and - but I would assume, I would assume it
11 would be fairly shortly after that, seeing that press
12 release of council wrecker or homewreckers.
13
14 Q. The press release dated 3 February 2020 has a quote
15 from you, if you turn over to page 2.
16 A. Yes.
17
18 Q. Do you know where Mitchell or someone else got that
19 quote from?
20 A. I don't know if I spoke to Mitchell again. I know I
21 hung up on him on another occasion, I said, "You are
22 misrepresenting council, you haven't got your facts right",
23 and I hung up on him. I don't know what that date was.
24
25 Q. Can I suggest that perhaps this quote here is from a
26 conversation you had with 2ST?
27 A. Could very well have been, yes.
28
29 Q. Well, if you look down the bottom of page 2, it says,
30 "2ST in the Highlands 102.9FM" and --
31 A. Yes, I would have used that - I probably used that
32 term, because when I spoke to the general manager she
33 assured me that, before I would say this I would have
34 been - checked my facts to make sure that what council had
35 done was correct.
36
37 THE COMMISSIONER: Q. When you say "would have", sitting
38 here today, do you have a recollection of doing any of
39 that?
40 A. Checking?
41
42 Q. Yes. You just said "I would have checked" --
43 A. Yes, I wouldn't have - I would not have said --
44
45 Q. Sitting here today do you have a recollection --
46 A. Sorry sir.
47

1 Q. Please don't speak over me. Do you have a
2 recollection of doing that?

3 A. Oh, for sure.

4

5 THE COMMISSIONER: Mr Parish.

6

7 MR PARISH: Q. Do you have a recollection of having a
8 conversation on the radio with someone from 2ST about an
9 architect phone call at some point?

10 A. I received a phone call from 2ST wanting comment in
11 relation to this and, having spoken to the general manager
12 - I didn't know who this person was at that stage --

13

14 Q. Sorry, are you referring to who, being the subject of
15 the --

16 A. Whoever rang, whoever rang council.

17

18 THE COMMISSIONER: Please, Councillor Gair, wait for the
19 question. Wait for the question and answer the question,
20 don't speak over each other.

21

22 THE WITNESS: Thank you.

23

24 MR PARISH: Q. You received a phone call from 2ST but
25 you were not sure who it was that was ringing from 2ST. Is
26 that correct?

27 A. No. No, that's not correct. I would have known that
28 it was whoever from 2ST or --

29

30 Q. Right.

31 A. -- what I was, did not know, was who had made the
32 application to council and in what capacity. And on the
33 information that I was given and seeing the headline in The
34 Telegraph, and being assured by the general manager that
35 all due process had been followed by staff, I believed it
36 was a mischievous phone call.

37

38 Q. Can you explain to me why you believed it's a
39 mischievous phone call?

40 A. I was told that the person who had dealt with that
41 phone call had done it in a professional manner and had
42 followed all procedure and, as such, was doing his job -
43 because it was a young fellow - was doing his job in
44 answering a ratepayer's - ratepayer's questions in relation
45 to what was required for a DA for the construction of a new
46 house.

47

1 Q. If the young council worker was just doing his job,
2 that's all fine and good, but what therefore makes the call
3 devious, mischievous and intentional?

4 A. That after getting the advice that the - whoever
5 contacted The Telegraph, and I don't know who contacted The
6 Telegraph - had said the council was making them pay DA
7 fees for a house that had been burnt down, and both of
8 those didn't correlate and I just felt that that was - that
9 was mischievous to go to a newspaper and say the council
10 was a homewrecker and the policy was plain. I was just a
11 little bit - well, there's the policy; I didn't know the
12 house had been burnt - a house had been burnt down.

13
14 Q. You're referring there to the subsequent act following
15 the phone call of going to the media; is that what you're
16 referring to as mischievous, devious and intentional rather
17 than the actual phone call itself?

18 A. Probably a little bit of both because subsequent to
19 that conversation with the general manager, I think about
20 two or three weeks later - not sure when and I'm not gonna
21 put a finger on it - we had done a site inspection as we
22 formally did on a Wednesday prior to a council meeting, and
23 there were about five, six councillors who were on that bus
24 or had returned to the Council Chambers, and we went into
25 the NAATI Room and we were - normally at that time we'd
26 have lunch, and the general manager said, "I would like all
27 councillors to hear this conversation that was made in
28 relation to the complaints that council were homewreckers".

29
30 Q. So, this is the point in time at which you and some of
31 the other councillors listened to the recorded phone call?

32 A. Yes.

33
34 Q. And this is the recorded phone call which is the
35 subject of some motions, rancour division and problems a
36 bit later in time where there was a suggestion that perhaps
37 the Surveillance Devices Act was breached; is that the
38 right phone call?

39 A. That's the one, and I remember --

40
41 Q. Excuse me. At that point did you know that the person
42 making the phone call was an architect ringing on behalf of
43 Sara Haslinger?

44 A. At that time, and until I started hearing the phone
45 call, I was unaware.

46
47 Q. You realised that after that?

1 A. Yes, I did, and I didn't --
2
3 Q. Pardon me, I'll deal with it one question at a time --
4 A. Well --
5
6 Q. Pardon me, we'll deal with it one question at a time,
7 it'll make it a lot quicker.
8 A. Yes, I thought you'd finished.
9
10 Q. That's all right. And, did you know that the
11 architect was ringing on behalf of Ms Sara Haslinger --
12 A. I --
13
14 Q. -- when you talked to 2ST?
15 A. I apologise. I'm not sure when I was aware that it
16 was on behalf of someone's property who had been burnt
17 down. It was clear by the end of the conversation with
18 the - our planning - sorry, our - whoever took the
19 conversation - whoever took the phone call in relation to
20 this development application request, at that stage it was
21 just a request, "What is required?", and I queried the
22 general manager, "Has this been legally checked? Are we
23 permitted to listen to it?" And the answer came back, "I
24 have sought legal advice", and I'm not sure who with, we
25 had a series of legal firms who we dealt with, "And it has
26 been ascertained that it is not a breach for councillors to
27 listen to this recording".
28
29 Q. Not quite my question. What I'm trying to figure out
30 is whether you knew, before you went on radio, that it was
31 on behalf of Sara Haslinger?
32 A. I don't know whether that name was mentioned at that
33 time.
34
35 Q. Can I try and refresh your memory perhaps?
36 A. Yes.
37
38 Q. I'm going to read out some evidence from Ms Haslinger
39 in this inquiry and you can give me your impressions of it,
40 whether you disagree or agree with it afterwards.
41 A. Yes.
42
43 Q. Ms Haslinger said:
44
45 *The other event, I don't know the exact*
46 *timing, but I came home. So, the crisis*
47 *accommodation we had after the fires was my*

1 *mother's house, we're still there. And I*
2 *came home one day to mum's house, and mum*
3 *was markedly upset, and I said to her,*
4 *"What's happened?" And she said, "I've*
5 *received some phone calls today that the*
6 *mayor has been on radio defaming you". And*
7 *I said, "What are you talking about?" And*
8 *she said, "Well, I've had some friends,*
9 *local people, just ringing me saying that*
10 *the mayor was on 2GB" - is it 2GB? No, the*
11 *local radio station, I never remember, I*
12 *don't listen to it.*

13
14 And then we clarified that it was 2ST. That evidence
15 suggests that you mentioned Ms Haslinger by name on 2ST.
16 Does that jog your memory?

17 A. No.

18
19 Q. Your memory is not jogged or you disagree that you
20 mentioned Ms Haslinger by name on 2ST?

21 A. Correct, the latter. I don't think, I do not believe
22 I would have used her name on radio. I would not - if I
23 did, then I am truly and apologetic and sorry that I did,
24 but I do not believe I did.

25
26 Q. Accepting that you haven't accepted the proposition,
27 but if you had, would you think it inappropriate for a
28 mayor to go on radio and single out a specific person?

29 A. No, not at all.

30
31 Q. No, you wouldn't think that's inappropriate?

32 A. No, it was not - would not be appropriate and I - it
33 is not in my nature to do that; I would have said a
34 consultant or an architect, I would not use somebody's
35 name. If I did, I - I need a whack over the head because I
36 just would not - that's - that's totally against my
37 principles.

38
39 Q. Have you had any run-ins with Ms Haslinger before the
40 architect phone call?

41 A. I'm not - no, I think I've only ever met Ms Haslinger
42 once.

43
44 Q. When was that?

45 A. That was after we had an extraordinary meeting to
46 change the policy to remove all DA'ing and associated costs
47 with council, and I walked out of the - it was a very

1 traumatic meeting, there were a lot of emotions running
2 high, I believed - anyway, we'll answer that question. And
3 she was talking to Nathaniel Smith, and I went over to her
4 and I said, "Hello, Sara, I'm Duncan", and she turned on me
5 and gave it to me. She was going to run for council, I was
6 a disgrace and I shouldn't be a councillor and everything
7 else. To the point, I said, "Look, I'm just leaving", so I
8 probably said a total of about 15 words.

9
10 Q. Of those 15 words were some of them, "Just remember I
11 have lots of friends in this town"?

12 A. No.

13
14 Q. You deny ever saying that to Ms Haslinger?

15 A. I would - if I had said that, it would have - "I have
16 friends", not lots of friends, "I would have had some
17 friends or whatever who had damage done". You've got to
18 remember, on that night that that house burnt down, or the
19 houses burnt down in Exeter, Sutton Forest and Exeter,
20 Bundanoon and Wingello, my house was under direct threat
21 and I evacuated at half past 2 in the morning, I came out
22 at half past 2 and it sounded like half a dozen helicopters
23 coming through the bush, and my house is in the National
24 Park or virtually in the National Park, and the fire was
25 coming directly toward me, and I evacuated. My fire plan
26 was, I'd stay and fight, I had sprinklers on the roof and
27 everything else, so I got out at half past 2. And then
28 when I came out to drive away - and I didn't come into the
29 emergency centre, I stayed up the road - the noise had
30 gone, and in that time the fire - the wind had shifted and
31 instead of blowing it to Fitzroy Falls from the south - and
32 you'll never get a fire from the south, I mean, that's the
33 thing about this catastrophe, the weather pattern was so
34 different - and it blew over and, luckily for me, I didn't
35 get burnt out, neither did Fitzroy Falls, but Exeter,
36 Bundanoon and Wingello suffered 30-odd losses. So, I have
37 very much empathy for those people; I know what I was going
38 through and the trauma that I was going through, so for
39 anybody to say that I would abuse them, it's not my nature,
40 I'm not that sort of person.

41
42 Q. Can I shortcut it by putting the following proposition
43 to you: if you did say, "Just remember I have lots of
44 friends in this town" --

45 A. I never said that.

46
47 Q. -- your evidence would be that that was said in the

1 sense of, you can empathise because you have people with a
2 connection who are in a similar position, rather than a
3 Mafioso-like threat?
4 A. Yeah, look, I can't remember what I said, but it
5 wouldn't have been inflammatory. As I say - and Nathaniel
6 Smith was so concerned - (a) he heard the conversation, but
7 (b) he rang me up two hours later and he said, "Are you all
8 right?" --

9

10 Q. Sorry, are you --

11 A. If I may, sir?

12

13 Q. Pardon.

14 A. He said, "Are you all right?" I said, "What do you
15 mean?" He said, "The amount of abuse you copped after that
16 council meeting and in that council meeting, he said, "Are
17 you okay?" And I said, "Yes, I'm okay", and he said - I
18 won't tell you what he said, that's up to Nathaniel Smith,
19 but he was there, he was a witness, and I have nothing to
20 be ashamed of.

21

22 Q. And specifically, he witnessed your conversation with
23 Ms Haslinger; is that correct?

24 A. That's correct.

25

26 MR PARISH: Thank you. I see the time, I think we might
27 need to give the transcribers a rest.

28

29 THE COMMISSIONER: Yes, councillor, we're having quite a
30 long sitting today, so our transcribers who aren't here
31 need some breaks, so I'm going to take a 15 minute
32 adjournment and we'll resume at 20 past 2. Thank you.

33

34 **SHORT ADJOURNMENT**

35

36 THE COMMISSIONER: Yes, Mr Parish.

37

38 MR PARISH: Thank you, Commissioner.

39

40 THE COMMISSIONER: Are you moving to a different topic?

41

42 MR PARISH: Yes.

43

44 THE COMMISSIONER: Do you want to do something with this?

45

46 MR PARISH: I'll tender it.

47

1 THE COMMISSIONER: Yes. Article from the 2ST website
2 headed, "Mayor to Seek Advice About Mischievous Phone Call"
3 dated 3 February 2020 will be Exhibit T. Thank you.

4
5 <EXHIBIT #T - ARTICLE FROM THE 2ST WEBSITE HEADED, "MAYOR
6 TO SEEK ADVICE ABOUT MISCHIEVOUS PHONE CALL" DATED
7 03/02/20.

8
9 MR PARISH: Q. Councillor Gair, you'd been mayor in
10 previous terms; is that correct?

11 A. Correct.

12
13 Q. And therefore you'd chaired meetings in previous
14 terms; is that correct?

15 A. I've chaired many meetings, many, many meetings.

16
17 Q. Did you receive any training on chairing meetings in
18 the 2016 term when it commenced?

19 A. No.

20
21 Q. Were you given training at the start of the 2016 term
22 in respect of the Code of Meeting Practice?

23 A. Well, sorry, in relation to your first question, I'm
24 sorry, Mr Ian Reynolds --

25
26 Q. Sorry, I'm not talking about that later. I am not
27 talking about that.

28 A. Right.

29
30 Q. I'm talking about earlier in the term, prior to the
31 Performance Improvement Order?

32 A. No, not - there was virtually never training for
33 councillors to chair a meeting, it was done in the manner
34 of councillors being given the opportunity, and this was
35 WSC in their Code of Meeting Practice, and I say WSC after
36 the Code of Meeting Practice that on a revolving basis in
37 alphabetical order councillors would chair the meeting of
38 the whole from, probably the mayor would open the meeting
39 and then would - a councillor would take the chair until
40 half past 5, and that would allow the councillor to gain
41 experience in the chair. In general the councillors were
42 very respective (sic) of a councillor in the chair,
43 especially new councillors and they were given helpful
44 advice without any animosity usually from another
45 councillor in relation to their chairing of the meeting.
46 So, no, I - it was something that I picked up over
47 the years.

1
2 Q. What about the Code of Meeting Practice; do you recall
3 any training or induction in respect of the Code of Meeting
4 Practice in the 2016 term?

5 A. Yeah, the Code of Meeting Practice altered in relation
6 to, again to WSC, and that is questions from the general
7 public, and the Office of Local Government objected to
8 councillors allowing questions from the floor because that
9 allowed a member of the public - or from the gallery, I
10 should say - would allow questions that weren't on the
11 business paper to be directed to a councillor or council
12 official without due notice and, as such, could create a
13 "gotcha" moment, so that altered.

14
15 Q. Sorry, not quite my question. I was wondering if you
16 had a recollection of receiving training or an induction in
17 respect of the Code of Meeting Practice in 2016?

18 A. It would have been - do I remember it specifically?
19 As I say, not particularly, I have attended so many
20 training sessions to differentiate between one and another
21 is - I'd be - I'd be misleading if I said, yes, I can
22 remember.

23
24 Q. That's okay. But you, while not remembering perhaps
25 specific trainings, you were given some training from time
26 to time --

27 A. Yes, as I say, there was --

28
29 Q. -- in respect of the Code of Meeting Practice?

30 A. -- a day dedicated to going through the procedures of
31 council: Code of Conduct, Code of Meeting Practice, you
32 know, integrated planning and assessment, whatever.

33
34 Q. You may remember that there were significant amounts
35 of amendments or changes to the Code of Meeting Practice
36 between perhaps about 2013 and 2020 even. Do you recall if
37 you were given updates or copies of the Code of Meeting
38 Practice when it was updated?

39 A. Yes, we were, and that's the one I was just referring
40 to where there were changes to the meeting procedure in
41 relation to business arising. Councillors used to be able
42 to question a particular motion after it had been adopted
43 by council before the adoption, final adoption, and start a
44 completely new debate on business arising; that was
45 stopped. Questions, as I say, questions from the gallery,
46 we limited the speaking of councillors from 5 minutes to 3.
47 Wow, in some respects that's too long, but that's - you

1 know, people are allowed to play to the audience sometimes
2 if they wish, but in general they were the major that I can
3 remember off the top of my head that affected us.

4
5 Q. Did you keep a copy of the Code of Meeting Practice
6 with you when you were chairing meetings?

7 A. I did.

8
9 Q. Can you give us your understanding of what tools you
10 had available to you to keep order at meetings?

11 A. Well, if I can preface this by saying 2016-2020 and
12 21, beginning of, was the most difficult term that I've
13 ever experienced in chairing meetings. And, just to answer
14 your question, trying not to go into too much detail, this
15 building was commencing renovations in 2020 - well, it was
16 earlier than that, but in the beginning of 2020 this area
17 became a workplace and as such we had to move to the
18 theatrette. The technology that we had - and I note a
19 council employee here who was part of that - and the job
20 they did with the available tools at their disposal was
21 excellent.

22
23 But you go from here to a formal area and you go to a
24 hall, the acoustics are different, the live-streaming - we
25 were on Facebook then - ah, that was the other thing in the
26 Code of Meeting Practice - we were on Facebook, people
27 would be writing comments during the meeting, the staff
28 would be deleting them because they were offensive, and
29 that went on until March and then we went into lockdown
30 for April, we didn't have a meeting in April.

31
32 Q. Can I just go back to my question: what tools can you
33 tell us you in your --

34 A. Okay.

35
36 Q. -- tool belt for maintaining order at meetings?

37 A. I appreciate that. The where I was leading, is that,
38 here if somebody's out of order you can stand as I could
39 downstairs. So, you could stand, you could bang a gavel,
40 you could ask the councillor in question to resume their
41 seat, you could expel under extreme circumstances, you
42 could close the meeting for 15 minutes. And there was - on
43 the councillor's microphones there is a mute button that
44 could be used as extreme.

45
46 Now, I know that has been mentioned and I'd like to
47 say that I have - before I introduced, when we went into

1 Zoom meetings which were extraordinarily difficult - I rang
2 the office of local government to say, "How do I control
3 council meetings on Zoom?" Because, to me, this is rather
4 important. I said, "I can't stand", because we didn't have
5 the technology here where it's overhead cameras and big
6 screen and everybody was on a computer, so if I stood then
7 it was a fairly personal viewing position. So, the only
8 tool that I had if councillors were disorderly and they
9 were 30 kilometres away and maybe in Sydney, maybe in Port
10 Stephens, maybe on a sailing boat, that I could mute them
11 which I didn't want to do but the meetings got to a stage
12 that that was the only tool, other than expelling or what
13 we call "put in the waiting room" where you could
14 physically turn off their camera. But the problem was that
15 some councillors unmuted themselves and then continued
16 allowing the chair to - or follow the orders of the chair,
17 and they did that.

18
19 Q. Would that be the time to expel them from the meeting,
20 do you think?

21 A. At that stage we were on Facebook and this is where
22 social media is an impediment to democracy in my opinion.
23 Facebook, like any social platform, if used correctly can
24 be of major benefit. If it is abused - and certain
25 councillors misbehaved in that and played to the social
26 platform. But the meeting I - looking at some of these
27 clips, I was too soft. I put my hand up. I should have
28 had a short - short night stick in my back pocket, but I
29 didn't, hindsight's a great tool to learn from. So, I am
30 one of these people who try to give people a fair go, and
31 perhaps that's one of my weaknesses, that I allowed too
32 much leniency by the disjointed debate that some
33 councillors enjoyed, so as such there was at occasions
34 times when the meeting sort of got a bit out of control
35 so --

36
37 Q. Do you think that contributed to the impression of
38 dysfunction in the governing body?

39 A. Oh, totally. Look, councillors at the time that this
40 council and councillors should have put their personal
41 differences to one side who should have been representing
42 the community in a time of crises were using the community
43 to work against council itself and against fellow
44 councillors. Councillors, in my opinion, inflamed the
45 community. We did a great job for the bushfires, I don't
46 give a darn what anybody says. With the resources we had
47 we did a great job and I'm extremely proud of our staff,

1 the way they conducted themselves.

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1 lacked empathy for bushfire victims. What do you wish to
2 say about that, do you agree with that?
3 A. No.

4
5 Q. Do you think you would have done things differently?

6 A. Look, I - I object to this bushfire report that was
7 done, totally, and I haven't even read it. I read the
8 summary; I wouldn't bother, I wouldn't put it in the bottom
9 of a cocky's cage, it'd die of constipation. Honestly and
10 truly, to write a report without consultation of the mayor,
11 without consultation of the general manager acting, without
12 consultation of the former general manager or the deputy
13 general manager in relation to handle all this, and write a
14 report and then present it to council and saying, "This is
15 a fair and honest documentation of what happened", without
16 a councillor having an input? So, to answer your question,
17 did we handle it? John Klepczarek, chief inspector now --

18
19 Q. My question was, on reflection, do you think
20 criticisms specifically of you lacking empathy --

21 A. No.

22
23 Q. -- at the time were fair? Not fair?

24 A. I think that is justly unfair. On the day - and, can
25 I please, Mr Commissioner, give you a brief history on how
26 we handled this bushfire?

27
28 Q. Can we come to that soon? It'll be a topic that you
29 will get a chance to speak on and I will ask you some
30 questions about it, but we will come to that later and if
31 for any reason we don't you can hold me to that.

32
33 You referred before to giving everyone a fair go. We
34 heard some evidence this morning from Mr Councillor Turland
35 that he felt that he was given less leeway than some of the
36 other councillors in respect of meeting practice. Do you
37 have any thoughts, impressions or responses to that
38 observation?

39 A. I don't know what Councillor Turland's referring to.

40
41 Q. Let's go through some videos perhaps and we'll see if
42 anything turns up. Can I show you Clip 2 which is from a
43 meeting of 10 July 2019.

44
45 (Recording of Clip 2 played to the inquiry)

46
47 Now, there's a couple of things to unpack there.

1 Firstly, did you see as you observed that then multiple
2 acts of disorder from Councillor Scandrett?
3 A. No - no different from 90 per cent of the other
4 meetings.
5
6 Q. Not quite my question. Did you see --
7 A. Yes, I did, sorry, I did see acts of disorder.
8
9 Q. And primarily, if not solely, failing to give you
10 precedence when you spoke or sat down when you asked him to
11 sit down; do you accept that?
12 A. I do.
13
14 Q. And are these examples of times where perhaps, on
15 reflection, you perhaps should have been harder on --
16 A. Yes.
17
18 Q. -- some of them or, if necessary, expel them or take
19 other steps? Can you give me your thoughts on whether you
20 would agree with the proposition that the tone that you
21 used with Councillor Scandrett may be seen at times as
22 impatient or sarcastic?
23 A. I probably at times had my buttons pushed, to
24 metaphorically speak, that I reacted in a manner that maybe
25 was a bit impatient, yes.
26
27 Q. Do you think on reflection that that was confined to
28 Councillor Scandrett and perhaps Councillor Turland, or in
29 your view were you fair across all of the councillors to
30 the extent that your patience was tried from time to time?
31 A. I'll answer it this way: I had four children, I was a
32 single father. There were times they tried my patience,
33 and at times councillors in my opinion were similar in
34 behavioural attitude to children. And at times I raised my
35 voice with my children and at times I raised my voice with
36 councillors, and it's not a perfect world, we'd like it to
37 be a perfect world, we'd like all meetings to be run in an
38 orderly and conducive and obedient manner --
39
40 Q. Can we just focus on particularly the interactions
41 between you and Councillor Scandrett and Turland for now.
42 In your view, is there any truth or veracity to the
43 proposition that you gave them less leeway than perhaps the
44 other councillors?
45 A. No, I don't believe that until - but I'll clarify -
46 until they kept testing the chair and then, yes, but other
47 councillors didn't do that; other councillors were

1 councillors, they didn't react and argue and carry on, they
2 accepted the chair was running the meeting and they sat
3 down whenever asked, but when you have a continual - and
4 may I say, I chaired, I think it was a total of 27 or 30
5 council meetings by Zoom and you're sitting in the chair
6 watching a screen from half past 3 until half past 7,
7 8 o'clock, you're not moving, you've got the screen divided
8 into seven squares and you can't take your eyes off the
9 screen because a councillor who is watching will take
10 advantage of your lack of attention and create a situation
11 that disrupts the meeting in other ways. Those meetings
12 were extremely difficult in general.

13
14 And may I also say that up until the end of the
15 business paper most councillors behaved themselves. Yes,
16 there were - there was loud debate and whatever. It was
17 after the business paper, and the OLG is very strict on
18 this, they want the business paper finished: notices of
19 motion, questions with notice, whatever, that's council's
20 stuff. The business of council is to be dealt with, and
21 most of the time we got - we would have had quite
22 reasonable meetings with business with no - with normal
23 business papers.

24
25 When we got on to questions with notice and whatever,
26 which a lot of questions and notices of motion were put in
27 there, in my opinion, to inflame, to intimidate, to bully,
28 to harass staff and were put there for that exact purpose -
29 not all the time, and I'll say that, not all the time - but
30 during normal debate I think everybody was tolerable
31 towards each other and I was tolerable towards councillors.

32
33 Q. Questions without - pardon me, questions with notice
34 making it onto the agenda which were calculated to bully or
35 harass staff, it would be the job of the general manager to
36 ensure that those didn't make it to the agenda; is that
37 correct?

38 A. That's correct.

39
40 Q. Do I take it from your evidence then that you don't
41 think the general manager did her job in preventing such
42 questions with notice motions being made on the agenda?

43 A. No, I don't believe that, I think she did. There
44 were - and I think, and I did ask in my submission that all
45 emails and correspondence that was forwarded to the OLG be
46 presented to the Commissioner. Within that there should be
47 - and I don't know if there is and I don't know how it

1 would have been presented - the number of times that the
2 general manager sought legal counsel or rang the Office of
3 Local Government for their advice on some of the motions
4 and notices of motion - not - notices of motion - questions
5 with notice, that was being - wanted to be on the business
6 paper.

7
8 Q. Can I just double-back to an issue we touched on
9 shortly before, the use of the mute button during the Zoom
10 meetings, and I recall your evidence that you sought advice
11 on whether or not the use of that was appropriate or not.
12 Do you think your use of the mute button from time to time
13 inflamed the situation or made things worse?

14 A. That's a good question. Of course, when you're - if
15 somebody's in full flight and they're wanting to knock your
16 proverbial head off, and your only recourse is to mute them
17 and quieten the meeting to allow people to conduct their -
18 or get their composure in order, that's appropriate. To
19 just use the mute button because I want to upset someone,
20 that's inappropriate use.

21
22 I believe I was very tolerant as a chairman but, as I
23 say, as the meetings wore on and you're sitting in front of
24 that screen for four hours, you can't look away, by the end
25 of that session you're a little bit - little bit sort of
26 square-eyed. So, to answer your question, I used it as
27 sparingly as I could and there were times when I have seen
28 video clips of the use of the mute button and that was
29 deemed appropriate by the Office of Local Government, and
30 remembering, the chair has precedence.

31
32 Q. Do you feel in a general sense that the observation of
33 that part of the Code of Meeting Practice was well observed
34 in the 2016-2020 term?

35 A. The first section, the first part of it, until these
36 chambers were vacated, as I say, the situation then
37 changed. The, and I'll say it again, the formality of this
38 room gives a different atmosphere to those who are in here.
39 If we were to move this meeting down to the theatrette or
40 hold it by Zoom - and I note in the terms of - with the
41 Commissioner's comment that he wanted people face-to-face,
42 and I can understand that, that he was not conducive of
43 running a Zoom meeting.

44
45 So, to answer your question, the use of the mute
46 button on a sparing basis was the only way that I could
47 control the meeting.

1
2 Q. The Commissioner would rule this Commission with an
3 iron fist no matter how it was constituted,
4 Councillor Gair, but can we move on to your recollections
5 of how you saw interaction between councillors and staff
6 and senior staff in particular during the 2016-2020 period.
7 A. Depending who was at the briefing sessions and what
8 the topic was, the briefing sessions usually ran well.
9 There was - there is always differences of opinion. If a
10 DA has come forward for councillors to be briefed on, there
11 was certain questions from councillors to staff that maybe
12 could inflame a situation either by a question or a
13 reasoning that the staff gave.

14
15 There were councillors that would start debating the
16 aspects of the proposal and would have to be, "You are in
17 debate, councillor, you should be here asking a question
18 and getting briefed". There were councillors who, you
19 could tell - you didn't have to have a show of hands - you
20 could tell by the flavour of the questions being asked to
21 staff whether they are in support of a proposal or not.
22 From that, some councillors would embark on - in a process
23 to try and get the staff to change their mind.

24
25 Q. In your view, was that the purpose of a briefing
26 session?

27 A. No, that's not the purpose; the purpose is to - is to
28 hear the reasoning, not to try and point score against
29 staff because that's the recommendation that's before you,
30 councillors, we have done our process, and that's the -
31 that is the information. Now, from there it comes into the
32 chamber for determination.

33
34 Q. Quite. Did you have an impression of how it affected
35 staff to be advocated against or persuaded in respect of
36 their position rather than simply gleaned information?

37 A. I know there were times when staff - I'm surprised
38 some staff have still got teeth in their head because they
39 would have been grinding them away trying to hold and
40 restrain themselves from making come-backs at certain
41 councillors. Can I give you - can I give you instances?
42 Not really, other than, it was common practice for certain
43 councillors to, in my opinion, create a situation that put
44 staff under stress and was in one way a sense of
45 harassment, in other ways (indistinct) --

46
47 Q. Did you do anything to intervene, stop, prevent, raise

1 it?

2 A. The general manager chaired the briefing sessions. I
3 was not the chair of the briefing session. Did I
4 intervene? I think at some stage everybody had a bit of an
5 intervention, "Come on councillor", whatever, "Fair go, the
6 staff are just doing their job". One councillor would
7 berate a council staff quite openly and question their
8 judgments, and I know - I know having - because I - because
9 you're mayor you're meeting with senior staff where other
10 councillors are not, because I was in here, say, three or
11 four days a week and you would be speaking to senior staff
12 and they would say, "Gee, that's - you know, that was out
13 of order yesterday. That just wasn't right to question
14 some junior member of the staff who was there to present".
15 It wasn't - I didn't say it happened every - every briefing
16 session and, as I say, it depends on who was there, what
17 councillors.

18

19 Q. Do you think that's indicative of a dysfunctional
20 council?

21 A. Any lack of cohesion between staff and councillors to
22 the level of bullying - and that is my worst aspect of
23 anyone is that they're a bully - to me, is not warranted
24 and as such should not be tolerated.

25

26 THE COMMISSIONER: Mr Parish --

27

28 THE WITNESS: And, to answer your question, yes, and if it
29 gets out into the community - briefing sessions, they were
30 prior, but you'd see councillors do a "gotcha" moment to
31 staff when they could have asked that question in a
32 briefing session, they could have picked up the phone to
33 the deputy general manager and say, "Hey, in this report it
34 says A, B and C. Why?" So when they come into the chamber
35 they don't get a gotcha moment on staff, there's no need
36 for that.

37

38 MR PARISH: Q. Do you think that staff having a sense of
39 dread or anxiety in appearing at briefing sessions is
40 indicative of a dysfunctional governing body?

41 A. It would be part - definitely part of it, yes.

42

43 Q. We have multiple instances of incident reports
44 detailing bullying, harassment and intimidation by
45 councillors in the 2016-2020 term. Do you think that makes
46 for a safe workplace?

47

A. No.

1
2 Q. Do you think the governing body and councillors have
3 an obligation to ensure that the shire council is a safe
4 workplace?

5 A. Yes.

6
7 Q. Do you think the governing body of 2016-2020 failed
8 therefore?

9 A. Yep, um, some. And this is the thing with our
10 suspension, and I remember sitting where the Commissioner
11 sits and saying to the councillors, "If we get suspended
12 we're all going to get tarred with the same brush, it's
13 going to be a collective 'we', and the community will not
14 differentiate between who was responsible and who was not
15 responsible; it is the collective", and to me that was
16 extremely unfortunate, because you have just used the word
17 "the governing body", and as such it wasn't the governing
18 body as a whole, it was parts of the governing body that
19 brought this council into disrepute.
20

21 Q. You seem to accept there that, because of the nature
22 of the governing body, that even if it is only one or two
23 councillors, the entire governing body is tarred with the
24 same brush; is that how I understood your evidence?

25 A. You know, I came into town yesterday and three people
26 came up to me, they didn't know anything about this and I
27 said, "G'day" and I've known them for decades, and they
28 were unaware of what is happening here today, or yesterday,
29 the last couple of weeks, but they gave me a very strong
30 opinion of what they thought of certain councillors.
31

32 Q. I'm interested in your opinion and the evidence you
33 gave in the previous answer rather than their opinion,
34 although maybe we'll come to that. Do I take it from your
35 previous answer that you accept that, because of the nature
36 of the governing body, the actions of a few councillors can
37 tar the whole governing body?

38 A. I agree totally.
39

40 Q. Do you agree with the proposition therefore that it is
41 incumbent upon individual councillors to take steps and
42 ensure, in things such as briefing sessions or even through
43 the normal channels, to raise issues such as harassment,
44 bullying, threatening or intimidating behaviour?

45 A. I do totally.
46

47 Q. And do I take it from your previous answer that you

1 accept that the councillors individually and as a whole
2 failed to do so?

3 A. I don't know whether I can agree with the last bit.

4

5 THE COMMISSIONER: Q. Well, you've given some evidence
6 of things you say you saw constitute bullying and
7 harassment; what did you do about it?

8 A. As I say, there is a litany of complaints to the OLG.
9 I rang the Minister directly with the then Minister - then
10 GM, Ann Prendergast, we spoke to the Minister directly and
11 asked her intervention: nothing happened. We approached
12 with the general manager and the governance officer, group
13 manager. We arranged a meeting at Nowra, I think it was
14 2018, November. We went down to the Office of Local
15 Government in Nowra and we put our case before them and we
16 were told, "There is due process to be followed, follow due
17 process". Now, due process is codes of conduct,
18 admonishments, whatever, and I know that there is sections
19 for - there for censuring of councillors. Look, the Code
20 of Conduct was reviewed and it was reviewed from hitting a
21 councillor with a duck feather to reviewed to hit them with
22 a wet lettuce leaf.

23

24 Q. So, having got that advice from the OLG, do I take it
25 then you determined not to take the course they suggested
26 to you?

27 A. Well, we did at that stage, I think there was a Code
28 of Conduct placed on a councillor by - signed by seven -
29 seven councillors - six councillors; that Code of Conduct
30 was proved. And because six councillors had signed that
31 Code of Conduct it ruled them out of order to when it came
32 to council for consideration the advice was, you have
33 signed a Code of Conduct, a bit like the Minister signing a
34 letter of support for our dismissal --

35

36 Q. Just stick to the question.

37 A. -- and as such we could not rule on it, so we sent it
38 back to the Office of Local Government for their
39 determination.

40

41 Q. Was that in a Code of Conduct complaint about bullying
42 behaviour?

43 A. It was in relation to confidential information, I
44 can't remember the actual wording of the Code of Conduct.

45

46 Q. In any event, what I was interested in is examples of
47 steps taken in relation to what you described as bullying

1 and intimidatory behaviour having received the advice from
2 the OLG to follow, I think you said due process, an
3 available process. Did you take any steps within that
4 process about that type of behaviour?
5 A. I think the - the general manager was still the
6 general manager at that time.
7
8 Q. Is the answer to my question, no?
9 A. I believe that the - there was general conversation of
10 councillors to behave themselves. At that stage there were
11 no - I don't think there was any further training at around
12 that time by staff, I don't think.
13
14 Q. I'm just going to bring you back to my question --
15 A. Yeah, sorry.
16
17 Q. Just let me finish. You gave some evidence that the
18 OLG told you these things were to be dealt with in due
19 process, that is the available process including the Code
20 of Conduct; correct?
21 A. Correct.
22
23 Q. Having received that advice did you take any steps
24 under that Code of Conduct process or any other process
25 available to councillors in relation to what you considered
26 bullying or intimidatory behaviour?
27 A. At that point of time, nay.
28
29 THE COMMISSIONER: Thank you.
30
31 MR PARISH: Q. You've been giving us some observations
32 about the Code of Conduct, but I just want to show you a
33 clip, Clip 5, from a meeting dated 28 August 2019.
34
35 (Recording of Clip 5 played to the inquiry)
36
37 Councillor Turland in that video, in a somewhat casual
38 manner, accused the staff of misleading him. Do you accept
39 that that would be an act of disorder?
40 A. To denigrate staff in public is not allowed, and yes,
41 should I have admonished him and asked for an apology?
42 Yes, I should, but that --
43
44 Q. I just don't want to focus on you for a second, I want
45 to focus on the staff who would have heard that.
46 A. Yes.
47

1 Q. And there were six councillors in the meeting, you
2 were chairing the meeting and there were five councillors
3 sitting there: none of you took a point of order, none of
4 you raised an act of disorder. How do you think staff
5 would feel, watching that video, watching Councillor
6 Turland in a somewhat casual manner denigrate staff with no
7 action being taken either by you or by any of the other
8 councillors sitting in that meeting?

9 A. Not good, shouldn't have happened, shouldn't have been
10 allowed. Did the councillors as a whole handle the actions
11 of certain councillors in a manner that we could have
12 handled it? The answer is, probably no. Have we learnt
13 from it? I'd like to think so, but --
14

15 Q. Do you think the staff would be comforted by the idea
16 that you have learnt from casual acts of disorder
17 denigrating them in public meetings?

18 A. I would hope they would, and in saying that, I have a
19 very good, I believe, working relationship with staff and
20 I believe I have their respect - maybe I'm wrong - but I
21 appear to have a good working relationship with them, so --
22

23 Q. Can I ask, do you think it's acceptable --

24 A. No.
25

26 Q. -- that any person working anywhere should be
27 subjected to casual smears about being misleading to people
28 who they are accountable to and who are in a position of
29 higher power than them?

30 A. I pre-empted the question, I'm sorry, the answer is,
31 no.
32

33 Q. Can I take you to the next clip which is 12 February
34 2020.

35 A. Just before that is played. To me, that clip is a
36 gotcha moment. That question could have been asked in the
37 briefing session, that was said, "We have just had it",
38 that was said in the chamber, and yet that question was, in
39 my opinion, waited until we got in here and - gotcha. And
40 that is what brings staff to their knees, when there is
41 appropriate methods, means and avenues to address a
42 problem, and they wait until they get in the chamber to - I
43 don't know - make out that they're - they've just found
44 this out, and it's an amazing revelation, when it's been
45 there before them all the time.
46

47 THE COMMISSIONER: Q. What tools are available to you as

1 a chair when you perceived that that was happening to stop
2 it?

3 A. Mainly just what you said, Commissioner, it's
4 perception and I can't prove that.

5
6 MR PARISH: Q. What about a censure motion, for
7 instance, for an act of misconduct?

8 A. Censure motions, we've put censure motions on - I
9 think it was on Councillor Arkwright. Again, until the
10 Office of Local Government is given powers that are
11 substantial and they return to the division of local
12 government where they are recognised and they have a set of
13 powers that says, you do this and you're out for
14 three months, you know, no mucking around.

15
16 THE COMMISSIONER: Q. Do I understand that point, one
17 which I observe you've made repeatedly in your submission,
18 is advanced to say, well, although there were procedures
19 available to you, you did not think they were worth being
20 pursued?

21 A. To a huge degree, yes, Commissioner: huge degree. We
22 had gone through, and I think it was pointed out - I'm not
23 sure by which councillor - that in the 2012-16 we topped
24 the state with 70 codes of complaint costing the community
25 hundreds of thousands of dollars, and what was achieved out
26 of it? Nothing, really nothing.

27
28 MR PARISH: Q. May it have been cheaper to simply move a
29 motion of formal censure of the councillor for misconduct
30 under section 440G of the Local Government Act?

31 A. Not really.

32
33 Q. Why not?

34 A. Because the Office of Local Government with the -
35 seemed to be very reluctant to - to uphold a council
36 resolution in relation to actions to be taken. I have
37 something here to show the inquiry from a councillor who
38 interfered with the process of employment and the response
39 back from the Office of Local Government:

40
41 *There would now appear to be no impediment*
42 *to council dealing with any associated*
43 *conduct issues.*

44
45 In other words, we could do it, we gave them the
46 evidence, and it's thrown back to us and it's --
47

1 THE COMMISSIONER: I'm not sure that's answering Counsel
2 Assisting's question. Perhaps re-put the question.

3
4 MR PARISH: Q. I asked you whether a simpler or more
5 streamlined way to deal with it might be a resolution moved
6 under section 440G of the Local Government, and you said it
7 wouldn't be, and I asked you, "Why not?", and I'm not sure
8 I quite understood your answer to that.

9 A. Because I provide evidence here that, "Accordingly
10 this office proposes no further action", and that's a
11 direct intervention of the council with the employment of a
12 senior staff member. I --

13
14 Q. Can I just --

15 A. Sorry.

16
17 Q. Can I just ask, in the example we just saw, and
18 putting yourselves in the shoes of the staff of this shire
19 council, whether pulling Councillor Turland up for his
20 allegations against staff, bringing a point of order,
21 dealing with the act of disorder and, if necessary, moving
22 a resolution for a formal censure for misconduct, whether
23 anything happened out of that would at least give staff a
24 feeling like they were protected from attacks in council
25 meetings?

26 A. That is a - a good suggestion and --

27
28 Q. Did it ever occur to you the effect this sort of
29 behaviour may have on the staff who worked at the shire
30 council?

31 A. I had major concerns with it and, as I've just tried
32 to explain, my feeling is that, until there is
33 strengthening of the Local Government Act in relation to
34 Codes of Conduct, and immediate action, then to me it is
35 virtually a waste of time and the length of time that a
36 Code of Conduct takes, and you put in a Code of Conduct --

37
38 THE COMMISSIONER: Q. I'm sorry, councillor, this
39 resolution under section 440G(1), that's nothing to do with
40 a Code of Conduct complaint; do you accept that?

41 A. I don't, I haven't seen the - I haven't seen the ...

42
43 MR PARISH: Q. Are you aware of 440G of the Local
44 Government Act?

45 A. I know there is room for censure and formal censuring.

46
47 THE COMMISSIONER: Q. To your understanding does that

1 process require there to have been a Code of Conduct
2 complaint?
3 A. I don't know the finer details of it, Commissioner.

4
5 MR PARISH: Q. I'm going to take you to another clip,
6 Clip 6, which is from 12 February 2020.

7
8 (Recording of Clip 6 played to the inquiry)

9
10 Do you agree that was another act of disorder there
11 which involved Councillor Turland attacking staff?

12 A. Yes.

13
14 Q. Do you agree that it may look to the observer, and
15 perhaps a staff member, like you were more concerned about
16 defending your own voting record than pulling him up on an
17 act of disorder which criticised staff?

18 A. Yes.

19
20 Q. I'll take you to the next clip, it's Clip 7, it's the
21 26 February 2020 meeting.

22
23 (Recording of Clip 7 played to the inquiry)

24
25 There's more on a similar theme in that meeting, but I
26 just want to take you to tender bundle E, page 59, if that
27 could be shown to you.

28 A. May I say: they're a disgrace, absolute disgrace.

29
30 THE COMMISSIONER: Perhaps just wait for the question,
31 you'll be given an opportunity in a moment.

32
33 I'm sorry, Mr Parish, I missed the page number?

34
35 MR PARISH: Page 59.

36
37 THE COMMISSIONER: Thank you.

38
39 MR PARISH: Q. Tender bundle E, do you have an incident
40 report there, Councillor Gair?

41 A. I think I am aware - I am --

42
43 Q. I'll take you through it bit by bit. Can we start
44 with just making sure we're on the same page, literally.

45 A. (Inaudible).

46
47 Q. Do you have page 59 and the "Wingecarribee Shire

1 Council Initial Incident Report" in the top left-hand
2 corner?

3 A. Yes, I see the name.

4
5 Q. It's a psychological illness incident report --

6 A. Yes.

7
8 Q. -- from a member of staff; do you see that?

9 A. Yes.

10

11 Q. And it refers to psychological injury; do you see
12 that?

13 A. Yes, I'm aware of it.

14

15 Q. Then do you see down in the, "Event description", it
16 says:

17

18 *What happened? I am employed as the minute*
19 *taker for council meetings during the*
20 *ordinary council meeting of 26 February*
21 *2020. Councillor Turland was yelling at*
22 *council staff and I felt uncomfortable at*
23 *his tone and volume. I felt worried for my*
24 *safety. He refused the mayor's direction*
25 *to sit down on a number of occasions and*
26 *spoke loudly over-the-top of staff.*

27

28 *On a number of occasions during the meeting*
29 *he interrupted others that were speaking.*
30 *Councillor Scandrett supported Councillor*
31 *Turland's outbursts by agreeing with his*
32 *claims and stating the same had been done*
33 *to him [Councillor Scandrett] and I felt*
34 *unsafe in the room. Councillor Scandrett*
35 *then called the mayor a coward and I was*
36 *very distressed at the level of*
37 *unprofessional behaviour that I was*
38 *witnessing.*

39

40 *I was fearful of Councillor Turland's*
41 *temper and feared the incidents might*
42 *escalate. I was nervous leaving the*
43 *building and walking to my car after the*
44 *meeting was closed prematurely at 7pm.*
45 *This was very stressful and I'm worried*
46 *about the same scenario that will be*
47 *repeated at the next council meeting on*

1 11 March 2020.

2
3 Did you read that too? Do you agree that that is a
4 valid reaction to the behaviour of the councillors in that
5 meeting on 26 February 2020?

6 A. That was a disgraceful show and disrespect of council
7 staff. That lady was my PA on occasions, she was extremely
8 professional and I gave her a reference, she asked me for a
9 reference, and I was only too proud to give her one.

10
11 Q. What, if anything, was done about that behaviour by
12 you or any of the other councillors following the meeting,
13 or indeed during the meeting?

14 A. I was - at this stage the - nothing at that time.

15
16 Q. I'm going to show you another clip, it's the next
17 meeting, 11 March 2020, and the meeting, I ought note the
18 subject of worry by the staff member who says:

19
20 *I am worried the same scenario will be*
21 *repeated at the next council meeting on*
22 *11 March 2020.*

23
24 And that is a clip we're about to see now, Clip 8.

25
26 (Recording of Clip 8 played to the inquiry)

27
28 You, quite rightly, identified the comments made by
29 Councillor Turland there directed either to Ms Lidgard or
30 Ms Prendergast as a threat; did you see that?

31 A. Yes.

32
33 Q. What, if any, action was taken in the meeting about
34 that threat?

35 A. No action as far as I'm aware.

36
37 Q. Do you recall what, if any, action was taken
38 afterwards?

39 A. No.

40
41 Q. You've given some evidence about the Code of Conduct
42 and you've given some evidence about the Office of Local
43 Government. That was, I think, eight men of a certain age
44 sitting there while another man of a certain age made
45 threats to a staff member. Do you think as an act of
46 common decency something should have been done about that
47 by one of you?

1 A. Hindsight says, and looking as I say at the video
2 clips, I'd say, yes.

3

4 Q. Would you find it acceptable if someone talked to one
5 of your four children like that in their workplace?

6 A. That's a valid point.

7

8 Q. Do you think that more could have been done outside
9 the Code of Conduct, outside complaints or representations
10 to the Minister of the OLG on a simple human level to
11 prevent bullying, harassment or threatening behaviour by
12 members of the governing body towards staff?

13 A. I do. On hindsight, I do.

14

15 Q. Do you agree with the proposition that, if someone,
16 perhaps a young woman of the age of Ms Lidgard, watched
17 that video they would not in their wildest dreams thinking
18 of working in such a workplace?

19 A. Wingecarribee has some very nasty councillors, I would
20 have to agree with that.

21

22 THE COMMISSIONER: Q. What role, if any, did you see
23 yourself playing in addressing those - that state of
24 affairs at the time?

25 A. I'm not sure whether I - from those meetings, as I
26 say, there was emails and requests for assistance from the
27 OLG. I spoke with the group manager of governance --

28

29 Q. Sorry, I'm not asking what you did, I'm asking what
30 did you understand your role to be in addressing the state
31 of affairs as existed in early 2020?

32 A. As I say, we - whether we had communicated looking for
33 assistance from the OLG at that stage, again, I do not
34 know.

35

36 Q. Sorry, perhaps my question's not clear. I'm not
37 asking what you did or did not do. I'm asking what you saw
38 your role as being in addressing the state of affairs that
39 had emerged by early 2020?

40 A. Oh, yes, I --

41

42 Q. As mayor, what was your role in dealing with that?

43 A. My role in theory is - well, not in theory - my role
44 is to communicate with the general manager to see what
45 further actions could be taken or should be taken.

46

47 Q. Is that the extent of it?

1 A. Well, that's what - then it prefaced into what the -
2 whether we did after that incident or other incidents
3 contact the OLG in conjunction with the general manager.
4

5 Q. Okay, so far as you understood the position in 2020,
6 you're role as mayor in addressing that state of affairs
7 was to seek the input of the general manager about what
8 could be done; is that right?

9 A. We had continual --

10

11 Q. Sorry, is that right? Have I understood you
12 correctly?

13 A. I'd have to agree, yes.
14

15 Q. Well, you don't have to if it's not right. I want
16 your truthful answer. Is that what you thought your role
17 was, to consult the GM and see what could be done?

18 A. Yes.
19

20 Q. Did you have any wider role than that?

21 A. Um, there would have been or could have been the
22 opportunity to speak, and I did over - I think on three or
23 four occasions trying to placate Councillor Turland in
24 his - in his way he operated, whether we can sit down and
25 talk about it, where - what had gone wrong, um, I did that
26 on more - and I have many a witness to say that I did this
27 sort of - that I made that effort: that was all rejected.
28 So, to answer your question, further down the track the
29 state of affairs just slowly degenerated.
30

31 THE COMMISSIONER: Yes, Mr Parish.
32

33 MR PARISH: Q. Did you direct Mr Barry Paull in writing
34 to remove the eight Pin Oak trees?

35 A. I did.
36

37 Q. Do you have a copy of that letter?

38 A. No.
39

40 Q. Do you recall what the letter said?

41 A. Um, I - off memory I would have said that I would like
42 the Pin Oaks in Station Street to be removed forthwith.
43

44 Q. Was this ahead of the issuance or approval of the
45 review of environmental factors?

46 A. I was made aware by Mr Paull that it couldn't be done
47 because that hadn't been completed.

1
2 Q. At that point did you withdraw your direction?
3 A. Yes. Can I make the comment that I was under a bit of
4 pressure from our local member who had supported this
5 proposal right up until somewhere in early 2020, and he was
6 very supportive, his children were going to grow up and
7 they'd have to have a safe passage through Bowral and
8 whatever, and then he slowly changed his position.
9

10 So, I don't know the date of that letter, but I do
11 know that there was pressure from Nathaniel Smith, "When
12 are you going to cut those Pin Oaks down" and words to that
13 effect, and stronger language to Barry Paull, so I wanted
14 to be able to get a definitive answer and the Local
15 Government Act says, you shall not direct council staff in
16 operational matters unless - as a mayor, that is - unless
17 there has been a resolution passed by council. And the
18 resolution had been passed and it was not challenged by
19 council until our suspension. And there is a second part
20 of that, that of the - and that says that, in relation to
21 directing that be done:
22

23 *Councils or administrators must not in any*
24 *public forum or private forum direct or*
25 *influence or attempt to direct or influence*
26 *any other member of the staff of council or*
27 *delegate.*
28

29 So, if I had have just had a conversation with
30 Mr Paull and said, "I want you to cut those trees down",
31 then there is an opportunity for members of the public or
32 certain councillors to say, you just had a quiet word with
33 him in the office. If I was going to have these trees
34 removed, which was a condition that the council had
35 resolved to be done, then I wanted direct - a direct
36 result - correspondence from the general manager that
37 reasons why he could or he could not.
38

39 Now, this conversation lasted about 3 minutes, and he
40 just said, "Can't do it", he said, you know, "There's still
41 further works to be done before this can be approved", so
42 that gave me the answer I needed and it wasn't raised
43 again.
44

45 And the other thing is, people were saying, "Oh,
46 they'll cut them down in the middle of the night", and
47 this, that and the other: no, it would have to have been a

1 work site anyway, it would have to have been notified -
2 make the notification because heavy machinery would have
3 been used and that requires a three-day notification
4 period. So, this - yes, I - I wanted the project to start
5 and, if the removal of the Pin Oaks - and, I'd love to be
6 able to give the inquiry the history on this and the truth
7 of it all because there has been so many mistruths and
8 stories told by certain members of the community that are
9 just - just outlandish.

10
11 Q. We'll try as best we can to give you that opportunity,
12 although we're obviously constrained by time, I think in
13 fairness there are matters which have been raised against
14 you and the council and you will have that opportunity as
15 much as we can facilitate it.

16
17 Do I understand your evidence to be that the local
18 member directed you to cut the trees down prior to the
19 obtaining of the necessary approvals? Was that your
20 evidence?

21 A. No, I would suggest that Nathaniel Smith accepted the
22 answer that I gave him at a - later on or whatever I saw
23 him, from that I had - and I can't remember even if I said
24 I formally asked Mr Paull to cut these trees down, he may
25 be able to, but that's where the issue ended, and basically
26 from there on his - his enthusiasm waned hugely for the
27 project and he would not arrange a meeting with Paul Toole
28 to facilitate the shortening of the project or the road
29 distance, to the point I wrote to the Premier asking her to
30 facilitate that meeting. Mr Commissioner, this is - this
31 is - will take a bit of time, so it's ...

32
33 Q. We might be able to facilitate something in the way of
34 either submissions or written --

35 A. To me, it's very, very important. There is --

36
37 THE COMMISSIONER: I think it's important that
38 Councillor Gair be able to have a forum to say what he
39 wants to say as long as it's directly relevant.

40
41 THE WITNESS: I'll try and circumnavigate it to a
42 huge degree.

43
44 THE COMMISSIONER: Well, why don't we - Mr Parish, is this
45 a convenient moment to deal with this topic or shall we
46 deal with it at the end?

1 MR PARISH: No, it's something that naturally follows
2 about now in examination anyway, so ...

3
4 THE COMMISSIONER: Yes, okay. Yes, feel free to say what
5 it is you wish to say.

6
7 MR PARISH: Q. I'll ask you, although I'm scared to, to
8 just give us a general overview and say what you want to
9 say, but I might pull you up and try and direct you if I
10 need to --

11 A. Okay.

12
13 Q. -- but I'll give you some rope to start with, if that
14 helps?

15 A. Let's try this. The project started in 1985
16 approximately, 40 years. It went through every successive
17 council since then till now, every council supported the
18 Bowral bypass, distributor road, whatever you wish to call
19 it. We had purchased the land and that land was first
20 purchased in, I think, 1985 or thereabouts. At the Oxley
21 Motel as you come into Bowral on the left-hand side
22 opposite Osborne Road. It then deviated around into
23 Station Road and then council successfully bought corridors
24 right up until the edge of the railway line until what is
25 commonly known as The Igloo, and then it would move around
26 to the - and continue on.

27
28 Now, it was done for a purpose and the purpose was to
29 approach the RMS or the Transport New South Wales now to
30 have the main road, Bong Bong Street, downgraded and turn
31 it into a pedestrian safe access, re-modify it, we're not
32 allowed to landscape it, it's a main road. We had the RMS
33 up here years ago and they said, "If you upgrade Station
34 Street to main road standard we will consider downgrading
35 Bong Bong Street to make it and give it to council and you
36 can do with it what you want". At the moment it's not our
37 road, semi-trailers can drive up and down it, bulldozers,
38 whatever. So, that is the underlying - one of the main
39 underlying pins of this project.

40
41 The other is, I chaired the Traffic Committee from
42 2004-2008, and during that time there was no safety
43 barriers - traffic control at the intersection of Station
44 Street and Bong Bong Street: there was nothing, you took
45 your run. There were 28 incidents in a single year at that
46 intersection. We put in for black spot funding and we got
47 something like, I think, \$180,000 just off the top of my

1 head. The traffic count at that intersection is
2 approximately, back then it was 19,000; it'd probably be
3 24,000, 25,000 traffic movements a day.
4

5 So, I got up, proudly announced we were going to put
6 traffic lights up at that intersection and save people.
7 The community were up in uproar, some of them. "Oh, it's
8 an iconic entrance to Bowral, people wouldn't come into
9 Bowral if you put in traffic lights. It's changing the
10 landscape of Bowral" and they called a public meeting.
11 They hauled me along and I had to explain my reasoning --
12

13 Q. Who's "they"?

14 A. Chair of traffic - very - I'm getting it very quickly.
15 Eventually we got the traffic lights in, they worked
16 perfectly, but what did they want there? They wanted a
17 roundabout. Talk about deja vu. But that's it in a
18 nutshell. And the statistics say that we will - that
19 roundabout will serve the community for the next 18 years.
20 At the moment it's going to be absolute nothing, and there
21 will be an action group who will form to do something with
22 that intersection: not about stopping it but about getting
23 it going.
24

25 The other thing is, when we got the \$7.5m, and this
26 project should have stopped then, we put in for \$13.5m. We
27 got 7.5, so right from the get-go it was \$6m behind. There
28 was no costing, there was no design. The grant scheme for
29 these projects has to be re-looked at, that councils cannot
30 accept a grant from a high-flying or very generous
31 politician until a design costing and scoping has been
32 done - the same out here as Berrima. Once the design
33 construction has been done, then you apply for the grant
34 because you know what it's going to cost. This was an
35 evolving monolith of a project to the point, when we asked
36 for a meeting with Paul Toole to try and get that remaining
37 money that we had, \$22.5m --
38

39 Q. What year are we talking about roughly now?

40 A. This is 20 - 2020, 2021. We wanted to - and we had a
41 private session and this information got leaked, we had a
42 private information session that I along with the general
43 manager and whoever approached Paul Toole to re-allocate
44 those funds because grants are very specific - re-allocate
45 those funds from Boolwey Street to the Station Street and
46 Bong Bong Street intersection.
47

1 So, we shortened the project so we could utilise the
2 money available to get this roundabout built, because that
3 is the cork in the bottle and, unless that's built, it
4 doesn't matter whether you seal - put down nice new paving
5 on Station Street, it's not going to stop the traffic
6 issue; it's not going to do anything for the traffic
7 calming in Bong Bong Street. And we have just come to a
8 standstill, I feel very sorry for the business community of
9 Bowral, they weren't made aware that this money was going
10 to be taken away, it was done at the administrator's
11 discretion, totally inappropriate I believe, it should have
12 waited until the new council came in.

13
14 So, Mr Commissioner, Bong Bong Street is dead in the
15 water, the community have no knowledge or satisfaction that
16 their traffic conditions will improve, and the delays in
17 traffic movements through Bowral will continue to be
18 exacerbated as the district expands, because for us now to
19 find \$30m - and I'm not even on council - is going to be
20 extraordinary difficult, especially when you've got a local
21 member who won't support.

22
23 Q. Can I just explore a few of these issues, but if
24 you've got problems with generous amounts of money being
25 dished out by politicians with no costings and no design,
26 don't turn on the TV for the next six weeks.

27
28 Can I just deal with perception from some parts of the
29 community, evidence from people we've heard in this inquiry
30 that there wasn't appropriate levels of communication and
31 consultation in respect of the project, at least from 2017?

32 A. I've given Ms Hewson a folder I asked to be
33 photocopied on the amount of correspondence or information
34 that was distributed to the community.

35
36 Q. Yes.

37 A. If it's been copied I'd like a copy back, but I'll
38 table that.

39
40 Q. Yes.

41 A. Because that shows the level of communication that was
42 presented to the community on a regular basis. Now --

43
44 THE COMMISSIONER: Q. In 2017, that document, is it not?

45 A. And forward. Now, all this stopped. It took six
46 years for council to get agreement from Sydney Trains to
47 allow us to remove the carpark to a point that they would

1 accept. Now, it's our land that we're doing this on, but
2 we had to negotiate with Sydney Trains to purchase a
3 slither - a slither - so the design of the road could come
4 around the railway station, through the existing carpark,
5 and then join onto the roundabout.
6

7 The problem that that created was that instead -
8 because the State Rail would not let us take any more land
9 from them, the staff came back to council and said, look -
10 say there's 11 trees there, I'm not sure how many, "We're
11 going to have to remove eight to get this to work, but what
12 we'll do, we'll replace them with 7 metre high Pin Oaks at
13 a cost of \$7,000 each and, once the roadworks are finished
14 we'll plant this avenue of trees and they will be a new
15 avenue for the people of Bowral".
16

17 We got an arborist in and the arborist said, "Look if,
18 you look at these trees the ones on the left if you're
19 looking down Station Street, the ones on the left are lower
20 than the ones on the right". The reasoning being that the
21 compaction of the carpark has created a dis - anyway, a
22 damage to the tree roots that is causing this dieback.
23

24 Now, the arborist said, you can remove eight trees and
25 you'll have three and you can keep them, you can - they'll
26 probably stay, get a heavy wind and the roadworks and
27 whatever and they'll blow over but, he said, you can keep
28 them. So, council decided that, look, if we're going to do
29 this job, let's do it properly, let's get rid of the avenue
30 and not one councillor wants to see those trees go. The
31 Friends of Bowral, and my understanding is when they
32 signed - got 2,000 signatories or whatever - I don't know,
33 I haven't seen it - but my understanding of it is, do you
34 want the Pin Oaks removed for the Station Street upgrade?"
35 Well, what do you think the community are going to do? Of
36 course they don't, I don't, I'll put my hand up. But
37 sometimes somebody's got to make a decision, somebody's got
38 to try and take this district forward to meet the community
39 expectation of a decent road network. There is no other
40 option. The RMS would not - well, the Transport New South
41 Wales would not sign-off on anything else other than the
42 design that we presented to them.
43

44 Consultation had finished. It's not that I didn't
45 want to meet with them, there was no point; all they were
46 going to do was belt me over the head and say you can't do
47 it. Well, somewhere along the line you've got to - you've

1 just got to say, council's made a decision, it's been a
2 project for 40 years, we're going ahead.

3

4 THE COMMISSIONER: Q. The project changed though, did it
5 not, between 2017 and 2020?

6 A. It did.

7

8 Q. And, was there consultation with the community about
9 those changes?

10 A. As much as I'm aware that - that staff did, and --

11

12 Q. What was it?

13 A. Look, to be fair, Mr Commissioner, I am unaware of the
14 correspondence that was --

15

16 Q. Was there any consultation with the community before
17 the resolution passed on 24 or 25 March 2020 to remove
18 eight Pin Oak trees?

19 A. Yes.

20

21 Q. What was that consultation?

22 A. That was conducted with what is before you now, I
23 understand.

24

25 MR PARISH: Q. I might deal with that now, perhaps if I
26 could have it identified first.

27

28 THE COMMISSIONER: Can you hand it up?

29

30 MR PARISH: Yes.

31

32 THE COMMISSIONER: Mr Broad.

33

34 Q. While that's happening, at the beginning of 2021 there
35 was a significant funding shortfall for the project, was
36 there not?

37 A. There was, yes.

38

39 Q. How was that going to be resolved?

40 A. Well, the resolving of that was for us to shorten the
41 project, and that was to remove about 300 metres of the
42 road works to be undertaken and that the component, the
43 main component, would be for Boolwey Street instead of
44 Bowral Street, and that we would meet with the Premier -
45 the Minister responsible, Paul Toole, to ask him to allow
46 us to vary the terms of the grant to utilise the 22 - or
47 their \$7.5m which had been now down to 4.1 to do that part

1 of the roadworks.

2

3 Q. That was another change to the project, was it not?

4 A. The change to the project was caused by - you're
5 right.

6

7 Q. It was?

8 A. Yes.

9

10 Q. Was it consulted with the community?

11 A. At that stage there was - as far as I'm aware we were
12 waiting response back from Sydney Trains to get a
13 commitment after six years of negotiation, and we were
14 waiting for the RMS or Transport New South Wales to approve
15 the design which was not a standardised - was not a
16 standard roundabout design.

17

18 Q. So, by the beginning of 2021 there was a still a
19 significant state of flux about the ultimate form this
20 project would take; is that right?

21 A. Yeah, it was getting to the very - yes, correct.

22

23 Q. Given that, why did you direct Mr Paull to remove the
24 eight Pin Oak trees immediately?

25 A. No, he couldn't.

26

27 Q. Why did you give this direction if the project was in
28 a state --

29 A. Because I didn't.

30

31 Q. Just let me finish. Why did you give him that
32 direction if the project was in such a state of flux in
33 early 2021?

34 A. I wanted a definitive answer because I was getting
35 pressure and I didn't know the REF hadn't been complete
36 and, as I say, Mr Paull said, "No, I can't do it", and I
37 said, "Well, that's fine".

38

39 Q. What would be the purpose of removing the eight Pin
40 Oak trees prior to the final project being approved?

41 A. It would have definitely given a direction that
42 commencement had - the project had commenced.

43

44 Q. Even though it hadn't - the final form of it hadn't
45 been approved?

46 A. No, I would not have given that direction unless all
47 processes had been complete; I don't operate that way.

1
2 Q. I'm sorry, perhaps I'm misunderstanding you. I
3 thought you had agreed with the proposition that by - let's
4 say March 2021 the project was still - the final form the
5 project would take was still in a state of flux; do you
6 agree with that?

7 A. Yes.

8
9 Q. The final project had not been approved for
10 commencement; do you agree with that?

11 A. Yes.

12
13 Q. Then, what was the purpose of giving Mr Paull the
14 direction to remove the eight Pin Oak trees immediately?

15 A. Because I wanted a definitive - and I - at that stage,
16 Mr Commissioner, I wanted reasons why it could not have
17 commenced and --

18
19 Q. You were aware that the project hadn't been finally
20 approved, were you not?

21 A. Um, well, I - that was up to the general manager to -
22 or acting general manager to advise, that's his position,
23 to advise councillors and myself on projects and where they
24 were up to and whether what was being requested was legal.
25 He said, "It's not legal, it can't be done".

26
27 Q. Wasn't it ultimately a matter for the governing body
28 to give the project the final tick before it would
29 commence?

30 A. No, the resolution was already there.

31
32 Q. The resolution to commence the Station Street project
33 in a form that had not been finalised?

34 A. The resolution - sorry. The resolution to remove the
35 Pin Oaks was a resolution of council.

36
37 Q. I've had some evidence from other councillors who were
38 of the view that resolution was merely about the design and
39 would not have been implemented until the overall Station
40 Street project had been finalised and approved. What do
41 you say to that?

42 A. That that's a fair comment and I couldn't - I couldn't
43 get a - I couldn't argue with the general manager when he
44 said, "I can't do that", so ...

45
46 THE COMMISSIONER: Yes, all right. Perhaps I'll mark this
47 and let Mr Parish resume. This is a bundle of documents

1 provided by Councillor Gair during his evidence in relation
2 to the Station Street upgrade, all of which are
3 dated August 2017. Do you want them marked or tendered?

4
5 MR PARISH: I'll tender them.

6
7 THE COMMISSIONER: They will become Exhibit U and copies
8 will have to be made.

9
10 **<EXHIBIT #U - BUNDLE OF DOCUMENTS PROVIDED BY**
11 **COUNCILLOR GAIR IN RELATION TO THE STATION STREET UPGRADE,**
12 **DATED AUGUST 2017.**

13
14 THE COMMISSIONER: Do you want it back, Mr Parish?

15
16 MR PARISH: Yes.

17
18 Q. Was there other material that was provided to the
19 community for consultation, given that the material you
20 provided is only 2017?

21 A. I am unaware - I think there was, Mr Parish, but I'm
22 unaware.

23
24 Q. Thank you. We've had evidence from some witnesses
25 that they perceived that the approach of councillors
26 towards the community in respect of Station Street, but not
27 only in respect of Station Street, was adversarial. Do you
28 have a view on that? Do you accept that there was an
29 element of that?

30 A. I don't know, I don't use the word "adversarial" --

31
32 Q. They used the word "adversarial", would you agree to
33 that?

34 A. No, I'm not going to agree to that.

35
36 Q. What, if anything, do you have to say to the
37 perception of those people that the councillors and the
38 governing body treated the community, at least on some
39 matters, in an adversarial manner?

40 A. That's a matter of opinion, I never treated anybody as
41 an adversary, I treated them with a respect and a
42 difference of opinion. If people perceived, when you
43 disagree with someone as adversarial, that is a perception
44 on their behalf, but I don't believe I was ever adversarial
45 and I don't know other councillors were - that were
46 particularly.

1 Q. I'll give you an example. The meeting in respect of
2 Station Street in a church hall at either the end of 2017
3 or the start of 2018, I think it was; in that meeting
4 Councillor Halstead made certain comments that prompted him
5 to apologise to Laurel Cheetham. Do you recall that?

6 A. I do now that you - yes, I do.

7
8 Q. Was that an instance of adversarial behaviour to a
9 member of the community?

10 A. It was - it was unneeded, unacceptable. I don't see
11 it - I don't see it's adversarial, I just see it as being
12 downright rude.

13
14 Q. Did you see other instances of downright rudeness
15 between councillors and members of the community?

16 A. Not - not as - as that one was. There were - I -
17 there was a meeting at a rally held near the - opposite the
18 Osborne Road intersection on the area that the road was to
19 go, and I said to senior staff, "I believe senior staff
20 should be there", they were unaware of it. So, they - I
21 went over and, to John Barrett's credit, he gave me my
22 right to address, which I did, and tried to use my most
23 convincing reasons as to why this project should go ahead.
24 They politely said, "Thank you", and at that stage there
25 was - I don't think this sort of - you say adversarial -
26 but it hadn't lowered to, where people were saying to make
27 bitter complaints. It was, they just were against the
28 project.

29
30 Q. What about the perception that members of the
31 community have told us about in this inquiry that the
32 council had stopped listening in the 2016-2020 term; do you
33 agree with that or have any impressions on that?

34 A. I think some members of the community say you stop
35 listening when you stop agreeing with them. So, I don't
36 say I stopped listening at all but somewhere, as I said
37 before, a decision has to be made; you've presented all the
38 evidence that you can and possibly can to them, and they
39 still don't want the project to go ahead.

40
41 Q. Can I just explore that idea that there's a small but
42 vocal element of the community who disagree with something
43 and if they don't get their way, then that's you not
44 listening. Can I show you tender bundle B, and can I take
45 you to page 485.

46 A. It's not easy.
47

1 Q. They're not easy to read, Councillor Gair, at a
2 certain point they become landscape and the numbering turns
3 to custard.
4 A. Yeah, 6034, and then you go to page 1.
5
6 Q. No, there's some numbering down the bottom.
7
8 THE COMMISSIONER: Mr Broad, could you assist?
9
10 THE WITNESS: 485.
11
12 MR PARISH: I think you're close, Mr Broad.
13
14 THE WITNESS: How did you get that? Sir.
15
16 MR PARISH: Q. We have before us a Wingecarribee Shire
17 Council Community Research Report dated February 2021, do
18 you see that?
19 A. Yes.
20
21 Q. There was some evidence or suggestion that this
22 document was not released on time when it ought to have
23 been; do you know anything about that?
24 A. Can you just - I moved the jug?
25
26 Q. Sure. There was some suggestion or evidence that this
27 report was not released when it ought to have been; do you
28 know anything about that?
29 A. Not really at that stage.
30
31 Q. At what stage?
32 A. Well, I can't remember being totally absorbed in this
33 at the time, there was still a huge amount going on with
34 the bushfires, and --
35
36 Q. This is 2021 --
37 A. And look, by the sounds of it, Mr Parish, I don't have
38 knowledge of this in any detail, I'm sorry.
39
40 THE COMMISSIONER: Q. This is dated February 2021?
41 A. Yes.
42
43 Q. Have you ever seen it before?
44 A. That's what I'm saying, I - I --
45
46 MR PARISH: Q. You just don't recall?
47 A. Yeah, I don't recall if I have or if I haven't.

1
2 THE COMMISSIONER: Q. Are community research surveys
3 important to the operation of council?
4 A. Sorry.
5
6 Q. Are community research surveys/reports important to
7 the operation of council?
8 A. I think the continuing consultation and the - where
9 the community sees council's delivery program, I think
10 that's got to be definitely measured. So, to answer your
11 question, yes.
12
13 MR PARISH: Q. Can I take you to page 15 of the report.
14 It becomes at this stage a bit easier to use the numbering
15 of the actual report rather than the tender
16 bundle numbering.
17 A. "Overall satisfaction", sir?
18
19 Q. That's the one. Do you see in 2010 there's an overall
20 satisfaction rating of 85 per cent and in 2021 there's an
21 overall satisfaction rating of 65 per cent?
22 A. Yes.
23
24 Q. That's a drop of roughly or exactly 20 per cent; do
25 you agree with that?
26 A. Yes.
27
28 Q. Does that suggest to you that it is more than just a
29 small portion of the community that is dissatisfied with
30 certain decisions being made by the governing body?
31 A. Yes.
32
33 Q. What do you attribute this 20 per cent drop in overall
34 satisfaction to?
35 A. A whole series of things, and I've heard these
36 questions before to other councillors, so I can go to that,
37 and that is councillor --
38
39 THE COMMISSIONER: I just want your answer.
40
41 THE WITNESS: Okay. What - we had the COVID, we had
42 bushfires, we had lockdowns, we had community engagement
43 that was not at this stage satisfied with council's Station
44 Street, and I think people were probably stressed, and I
45 think COVID and the bushfires affected everybody, affected
46 me, and I would think that sometimes subconsciously when
47 you've been under stress and you really don't recognise it,

1 that you may not be totally and completely - what's the
2 word - cognisant of the fact of the - of what you're
3 actually looking at, but I think there is further - there
4 are other reasons for this fall.

5

6 MR PARISH: Q. Does that include council dysfunction?

7 A. I think council dysfunction, you know, I'd walk down
8 the street - yes.

9

10 Q. Do you think it includes or does it validate at least
11 some in the community's view that there is a sense that the
12 council has stopped listening or were adversarial in
13 approach?

14 A. I'll answer that, if I may, by saying the amount of
15 people who I spoke to saying, "What the heck's going on
16 over there?", you know, "What do these idiots think they're
17 trying to achieve?", and as I say, the introduction of
18 social media and our live-streaming, I think, had a
19 detrimental effect, not a positive effect and as such
20 whether that is directly attributable to this level of
21 decline, I don't think so, but there would be a percentage
22 there that this would have affected but I think there are -
23 were other major issues within the wellbeing of the shire
24 in relation to what had transpired that also caused this.

25

26 THE COMMISSIONER: Q. Do I understand from your earlier
27 answer that you perceive that people were stressed by the
28 bushfires and COVID and weren't able to accurately record
29 their satisfaction levels with the council in this survey?
30 Is that what you say?

31 A. No, they could but, as I say, if you've gone through a
32 traumatic experience you may not be in a good frame of mind
33 to give a positive response to a questionnaire, so --

34

35 Q. Well, you might be if you were satisfied with the
36 performance of the council, mightn't you?

37 A. I don't think anybody could have been totally happy -
38 the --

39

40 Q. Whether or not you're totally happy --

41 A. The governing body --

42

43 Q. Well, the figures Mr Parish took you to are the
44 satisfaction with the overall performance of the council.

45 A. Oh well, the overall of the council? Yes, I think the
46 overall of the council, we were doing not a bad job under
47 the circumstances.

1
2 Q. You think 65 per cent satisfaction is a not a bad
3 result, do you?
4 A. Well, that's what I'm saying, Mr Commissioner, I think
5 other things then come into play. I would liked to have
6 seen this being held off and presented in, say, July.
7
8 Q. Why?
9 A. Or before the bushfires, say.
10
11 Q. Well, this is 12 months after the bushfires.
12 A. Yeah, this is after the bushfires.
13
14 Q. Right. I'm just not following you, I'm sorry.
15 A. Well, my feeling is that people when they are in an
16 unstressed situation, in a good frame of mind, are likely
17 to give a stronger reaction to a satisfaction survey than
18 if they've just gone through a bushfire and were still
19 under stress, or the whole community was still under
20 stress. Is this a true reflection? I've gotta say it must
21 be because this is the final result, but there are factors
22 at play and the dysfunctionality of the governing body as
23 opposed to the functionality of council.
24
25 Q. Do you accept that, granted that people had been
26 through stressful times, bushfires, controversial council
27 issues, COVID et cetera, that these survey results reflect
28 the fact that the community was not satisfied with how the
29 council dealt with those matters. What do you say to that?
30 A. Well, these - this is the first time I can say that
31 I've really seen this; I can't remember viewing it before,
32 and I - to give an off the top comment without going
33 through where we have been seen to have fallen down, it may
34 be not a true reflection of my opinion. I'm not trying to
35 dodge the issue, I'm just trying to be positive on it.
36
37 MR PARISH: Q. Just on your logic, if we look at 2010
38 which is about a year and a half out of the global
39 financial crisis, where the satisfaction rating is
40 85 per cent --
41 A. Yep.
42
43 Q. -- do you accept that not necessarily the logic you
44 were applying before, external events which stress people,
45 impact on the overall satisfaction of the council?
46 A. What? I'm trying to process that question, please.
47

1 Q. By your logic there was an inability of people to
2 properly record their satisfaction with the council due to
3 external stressful events.

4 A. Yes.

5

6 Q. Do you agree with that logic? And I'm taking you to
7 an example of another external stressful event, the global
8 financial crisis.

9 A. Yes.

10

11 Q. Which was, I think, about 2009 when it hit home. In
12 2010 there was an overall satisfaction rating of
13 85 per cent. How do you square that with your logic that
14 external stressful events lead to a lower overall
15 satisfaction rating of council's?

16 A. The GFC does not affect people directly, going
17 outside --

18

19 Q. So the answer is, it's different?

20 A. The answer is, it's different.

21

22 THE COMMISSIONER: Are you leaving this report?

23

24 MR PARISH: I was going to ask one more question.

25

26 THE COMMISSIONER: Sorry, yes, you do that, then I've got
27 a couple of pages I'd like to go to.

28

29 MR PARISH: Q. Mr Malcolm Ryan formed the view that a
30 65 per cent overall satisfaction rating was remarkably low;
31 do you agree or disagree with that assessment?

32 A. I don't - I saw part of his report. I - my knowledge
33 of staff and when I was here and what I believe staff
34 satisfaction levels were does not reflect at that stage --

35

36 THE COMMISSIONER: That's not the question, councillor.
37 Re-ask your question please, Mr Parish.

38

39 MR PARISH: Q. My question was, an observation made by
40 Malcolm Ryan about this satisfaction survey of the
41 community in particular, in his observation at 65 per cent,
42 was remarkably low. Do you have any observations, comments
43 to make on that?

44 A. That's for Mr Ryan to comment on, I think I've given
45 my reasoning.

46

47 THE COMMISSIONER: Q. Before we leave that report,

1 councillor, could you turn to page 20, internal page 20 of
2 the report, it's page 503 of the bundle.
3 A. Sir, "Performance of Elected Councillors".
4
5 Q. Yes, "Overall". Do you see that?
6 A. Overall two point - mean rating 2.41?
7
8 Q. Yes, and you'll see the graphs down below?
9 A. Yes.
10
11 Q. And you see that 23 per cent were not at all
12 satisfied?
13 A. Yes.
14
15 Q. 28 per cent not very satisfied?
16 A. Yes.
17
18 Q. So, just over half of all respondents to this survey
19 rated - were not at all satisfied with the performance of
20 the elected councillors; do you see that?
21 A. I do.
22
23 Q. That would be an alarming result, do you agree?
24 A. It's not good, um --
25
26 Q. Is that, again, down to external stressors of
27 bushfires and COVID?
28 A. Um, I can't comment whether that is - I don't - as I
29 say, I do not know the minds of the people who did the
30 survey and where they felt that - I mean, this is being
31 presented to me now and I can't really make comment on
32 something that has been on a performance review, so to
33 speak, on a minute's - a minute's observation.
34
35 Q. Yes, all right.
36 A. But I make the cynical comment, is there a tank half
37 full or is there a tank half empty? Because you could say,
38 well, 34, 14, 48, 48 per cent, 49 per cent are very
39 satisfied.
40
41 Q. I'm not sure that's right.
42 A. No, well, 34 --
43
44 Q. 1 per cent were very satisfied.
45 A. Very satisfied, up the top.
46
47 Q. 34 per cent gave a score of 3, in the middle?

1 A. Yes.

2

3 Q. So, only 14 or only 15 per cent of respondents said
4 they were satisfied or very satisfied?

5 A. Well, yes, to get a very satisfied result you probably
6 live in a very nicely paved street with wide footpaths --

7

8 Q. Be that as it may, but my question was, did you think
9 that a 51 per cent response rate of people being not very
10 satisfied or not at all satisfied is an alarming result?
11 And I think you've said you can't really answer that
12 question, so I won't press it.

13 A. Yes, I prefer to leave it as until I were to look at
14 it and make a merited judgment.

15

16 MR PARISH: Q. You referred before to one of the factors
17 that may lead to the decline in the satisfaction rating of
18 the council being social media and the live-streaming of
19 meetings; do you recall that evidence just before?

20 A. Um, we are now on - we - council is now on YouTube --

21

22 Q. No, no, do you recall the evidence from before --

23

24 THE COMMISSIONER: Listen carefully to the question.

25

26 THE WITNESS: Well, I --

27

28 THE COMMISSIONER: Stop please, everybody. Listen
29 carefully to the question and answer the question. Yes,
30 Mr Parish.

31

32 MR PARISH: Q. Do you recall your evidence before
33 attributing the lower satisfaction ratings to social media
34 and the live-streaming of meetings?

35 A. Ah, yes, sorry.

36

37 Q. Do you accept the proposition that the live-streaming
38 of meetings brought the behaviour of councillors into the
39 living rooms and studies of your ratepayers which then led
40 to a lower overall satisfaction score?

41 A. I would believe a contributing factor of some
42 councillors.

43

44 Q. And, therefore, the behaviour of councillors, at least
45 at meetings, contributed to this lower overall satisfaction
46 rating score?

47 A. May have.

1
2 Q. And, in respect of social media, I take it you mean
3 that the amplification of certain views of certain
4 councillors post meeting or at other times led to a decline
5 in satisfaction in respect of the governing body at least
6 as well?
7 A. I can only say, Mr Parish, maybe: I don't know.
8
9 Q. I think I also recall some evidence before, that you
10 said you hadn't lodged a Code of Conduct violation in
11 26 years; is that correct?
12 A. As far as I'm aware, and if I have been miss - misled
13 the inquiry by me saying I hadn't, I haven't and I had,
14 then I would apologise, but to my --
15
16 Q. You don't have to apologise, I'll just refresh your
17 memory and you can tell me if perhaps it wasn't quite
18 correct before. Do you recall making a Code of Conduct
19 complaint against Councillor Scandrett about an ongoing
20 pattern of behaviour with an escalation during 2019?
21 A. I don't think --
22
23
24 Q. If you don't recall it, I can just show it to you.
25 A. No - well, I don't recall. So, if I did, then I'm
26 going to be shown.
27
28 Q. Tender bundle C will be shown to you. At page 453.
29 A. Sir.
30
31 Q. Do you have page 453?
32 A. Yes.
33
34 Q. Do you see the words "Councillor Duncan Gair" at the
35 top?
36 A. Yes.
37
38 Q. Does that refresh your memory?
39 A. Well, if my signature's on it, then it is - it is true
40 and correct and I apologise to the inquiry.
41
42 Q. I don't actually see your signature on it,
43 Councillor Gair, does that mean it's not yours?
44 A. As I say, I didn't think that I had done a Code of
45 Conduct on any councillor, but this says that I had, so if
46 this is correct, and I assume it is, then I have to put my
47 hand up.

1
2 Q. Is it possible that you directed someone to prepare
3 that on your behalf?
4 A. Is it, what?
5
6 Q. Is it possible that you directed someone to prepare
7 that on your behalf and that's why you don't have a clear
8 memory of it?
9
10 THE COMMISSIONER: I think I might be able to help.
11
12 Q. If you turn the page to page 455?
13 A. Yes.
14
15 Q. Second paragraph, starting, "Councillor Scandrett", do
16 you see that? "Councillor Scandrett has also made",
17 et cetera, do you see that? Do you see that?
18 A. Yes, I do.
19
20 Q. Second sentence:
21
22 *As mayor and therefore chair I have ...*
23
24 So, does that refresh your memory that this was yours?
25 A. No, sir. But, as I say, if - it should be on record
26 with my signature on something somewhere and I will - but
27 it still doesn't refresh my memory.
28
29 MR PARISH: Q. I'm going to show you Exhibit O,
30 Councillor Gair.
31 A. Sir.
32
33 Q. If you'll give me a second, I have found my version.
34 If we can go to the last two pages.
35 A. Thank you.
36
37 Q. This is a press release that was embargoed until 6am,
38 Wednesday, 30 March 2022.
39 A. Yes.
40
41 Q. Can you give us your recollection of how this
42 document came to be created?
43 A. I received a phone call and --
44
45 Q. From who?
46 A. Councillor McLaughlin, I believe has told the inquiry.
47

1 THE COMMISSIONER: I want your evidence, not Councillor
2 McLaughlin's evidence. Your evidence.
3 A. Councillor McLaughlin.

4
5 THE COMMISSIONER: I want your evidence, thank you.

6
7 MR PARISH: Q. Then what happened?

8 A. We discussed the - he felt, and I, that we had been
9 wronged over a period of time and he --

10
11 Q. By who?

12 A. Sorry?

13
14 Q. By who?

15 A. By the administrator.

16
17 Q. Sorry, carry on?

18 A. And, as such, would I support the joint - a press
19 release in relation to the allegations made by the
20 administrator on the councillors, and I said, well, one of
21 the - my reasoning to support this, if we were to go ahead,
22 would be that we have five councillors because - to sign it
23 or as many as possible, and I wouldn't have taken any less
24 than the councillors who have signed it, for the simple
25 fact that Mr May had called us above the law, not worthy of
26 re-election, and that the culture in council was too toxic
27 for councillors to be returned. Now --

28
29 Q. Can I just pause there and ask about that comment
30 specifically. You appeared to have agreed with us on a
31 number of propositions, that there was bullying in the
32 workplace by councillors, that there was dysfunction at
33 council level, that it affected staff, and that it was
34 inappropriate. Do you disagree with the proposition that,
35 for staff, it was a toxic workplace and that was
36 attributable at least in large part to councillor conduct?

37 A. No, I will support your observations with the - that
38 it was a - very much a minority number of councillors. I
39 did not see bullying, harassment or whatever by the
40 councillors that signed this, um, that signed this letter.

41
42 Q. I'm not suggesting you did, but I'm just asking at
43 this point in time whether you disagreed with the
44 administrator's observations and the persons who undertook
45 surveys, that there was indeed a toxic culture caused by
46 the conduct of councillors?

47 A. Some.

1
2 Q. Pardon me, I interrupted your recount of how this came
3 to be. What happened after you had the conversation with
4 Councillor McLaughlin?
5 A. M'mm?
6
7 Q. What happened after you had the conversation with
8 Councillor McLaughlin?
9 A. I rang, I think I rang Gordon Markwart, Grahame
10 Andrews, Peter Nelson, and suggested that - the proposition
11 to them, and they felt that it would be appropriate to be
12 part of it as they were quite aggrieved, very aggrieved, on
13 the nature of what they believed was bullying by the
14 general manager - ah, the administrator.
15
16 Q. And, did you have a meeting to discuss this?
17 A. That, we did.
18
19 Q. Who was at the meeting?
20 A. Well, there was four - ah, Councillors Markwart,
21 Councillor Andrews, Councillor McLaughlin, Councillor Gair,
22 Councillor Nelson and Mr Barry Paull.
23
24 Q. Why was Barry Paull there?
25 A. I don't know, to be honest.
26
27 Q. Where was the meeting?
28 A. It was at my premises, Victoria Falls.
29
30 Q. You didn't know why Barry Paull was at your premises?
31 A. Sorry?
32
33 Q. You didn't know why Barry Paull was at your premises?
34 A. Well, my understanding is that he had been invited by
35 a councillor, but I don't know whom.
36
37 Q. Did he partake in the conversation about this press
38 release?
39 A. No, he wasn't there that long.
40
41 THE COMMISSIONER: Q. Which councillor invited him?
42 A. I'm not sure.
43
44 Q. You're unsure who invited Mr Paull to your house?
45 A. Yes, I have an assumption but I believe that that
46 councillor would - would make - I'm not going to say
47 because I'm not exactly sure.

1
2 MR PARISH: Q. Did you ask anyone what Barry Paul was
3 doing there?

4 A. Oh, I have seen - Barry called in occasionally on his
5 bike, and so I asked, um, just asked how he was and how he
6 was going and how he was coping, and he is still hurting
7 tremendously from the treatment of this council.
8

9 Q. How often would he call in on his bike?

10 A. I think in the last six months he'd probably been
11 twice, or 12 months, I should say, since his termination.
12

13 Q. Did you discuss the evidence he would give at this
14 inquiry prior to him giving evidence?

15 A. No way. As I said to councillors, and it was the same
16 with the submissions, I said, "I do not want to see any
17 submission, I do not want to discuss what you're going to
18 say, because when I get to the inquiry I want to be able to
19 look at the - Mr Parish in the eye and say I didn't", and
20 that is my answer, sir.
21

22 Q. What was discussed at the meeting at your house?

23 A. Well, the contents of the letter here basically give
24 what was discussed. Some councillors had a level of
25 interest that they needed to explain or, um, give their
26 opinion on and, as such, the letter was - the notes were
27 taken and the letter was formulated.
28

29 Q. If the purpose was to defend yourself from what you
30 saw as unfair attacks by the interim administrator, why is
31 there repeated reference to the local Liberal MPs and the
32 Minister in this press release?

33 A. Because I believe there was political involvement.
34

35 Q. So, the purpose of this media release evolved from
36 merely defending councillors against what they perceived to
37 be unfair comments by the interim administrator and
38 included after some point in time also certain comments
39 made by the local MPs and the Minister; is that correct?

40 A. That's correct.
41

42 Q. And we'll come to your thoughts on the political
43 interference in due course. But how did the drafting of
44 this document then take place?

45 A. I have a friend who is a little bit better at
46 wordsmithing than I and he worked through the letter and
47 did the draft. It was then circulated to councillors,

1 there was - you know, minor adjustments and comments, and
2 councillors were prepared to sign off it as such. As I
3 say, to a degree there were differing opinions within
4 councillors on different issues, but the common theme was
5 the interference by government against the wishes of the
6 OLG and the inference of the general - of the administrator
7 that we were not worthy of being a council, which all
8 councillors present took exception to, as I do, and
9 acknowledging that we were not perfect, we'll make more
10 mistakes as everybody will, but we felt that that was cheap
11 pot shots from, we believe, is really defamation.
12

13 Q. I take it that, upon putting your name to this
14 document, that you carefully read it?

15 A. It was passed by legal counsel and it was deemed by
16 legal counsel as being acceptable.
17

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

21 THE WITNESS: Well, sorry.
22

23 THE COMMISSIONER: That wasn't the question. Listen
24 carefully to the question.
25

26 MR PARISH: Q. I take, in putting your name to this
27 document, that you carefully read it; is that true?

28 A. The actual final draft, there was a timeline that had
29 to be given for it to be distributed, and I probably --
30

31 Q. Who gave that timeline?

32 A. The wordsmith.
33

34 Q. Who's the wordsmith?

35 A. A member of the community.
36

37 Q. Give me a name, please?

38 A. I prefer not to.
39

40 Q. Is that wordsmith in any way involved in the media in
41 the Southern Highlands or the shire area?

42 A. No.
43

44 Q. Is that person in any way involved in local government
45 in the area?

46 A. No.
47

1 Q. Why did the wordsmith give you a timeline, do you
2 know?

3 A. Mainly for distribution. We knew that the - from
4 previous, and I have dealt with media before myself, and
5 they need a guideline, they want - want, for a Wednesday
6 publication, they need it on about I think a Monday and
7 then that was then embargoed as agreed until the Wednesday
8 where both publications, the Southern Highlands News and
9 the Southern - the Highlands Express --

10

11 Q. Express --

12 A. Would be, come out and then that would be given to the
13 other media.

14

15 Q. Was there any discussion about why the Wednesday that
16 you intended to have this published was the second day of
17 this inquiry?

18 A. No, it was, there was a feeling that councillors
19 needed to respond to the accusations. I'd responded in a
20 previous time when the administrator said that we were - we
21 had built a palatial wing, and Nathaniel Smith said it was
22 one of the best mayoral offices he had seen and it
23 denigrated the council's decision to build this and
24 renovate this. My father's name 's on the plaque down
25 there, he served 11 years here, he was instrumental in
26 building this with other councillors back in the late 60s,
27 70s.

28

29 And I take great exception - great exception - from a
30 man who's waltzed in from Northern Beaches, who has never
31 dealt with water, sewer, rubbish, saleyards, half a - four
32 towns, 14, 15 villages or whatever, emergency services,
33 RFS, animal shelter: comes in here, turns the place totally
34 upside down, destroys what has been achieved, and will
35 leave the place in, I believe, smoking ruins.

36

37 Q. Why was this designed to be published on the second
38 day of the inquiry?

39 A. There was no design, sir.

40

41 Q. Do you recall any discussion about the timing of this
42 press release?

43 A. Not really, it was something that should have been
44 done six months ago.

45

46 THE COMMISSIONER: Q. Why wasn't it then?

47 A. Mainly because I - I had done my own press release, I

1 had not been approached by anybody to do a joint press
2 release, and I thought that, because five councillors or
3 all councillors, but the councillors who I believe have not
4 been part of this dysfunction and were willing to tell the
5 community their side of the story and not the
6 administrator's, or Nathaniel Smith or Wendy Tuckerman's,
7 then we have that democratic right under the Australian
8 constitution; it's our opinion, it's our belief and it's
9 the freedom that we're allowed to enjoy.

10
11 Q. Well, it may be, but there's some judgment required by
12 you as the suspended mayor, isn't there, to consider when
13 that opinion is going to be expressed?

14 A. I have made my opinion.

15
16 Q. Did you exercise any judgment about when this response
17 to the interim administrator's comments ought to be made?

18 A. Ah, as soon as possible.

19
20 Q. Well, that would have been six months ago, wouldn't
21 it?

22 A. Sorry?

23
24 Q. That would have been six months ago, wouldn't it?

25 A. As I say, I hadn't been approached by councillors at
26 that stage to do a joint press release and I, as I said
27 before, I have done a couple of comments to the
28 administrator where I believe he has misled the community.

29
30 Q. Can I just go back to something that we were
31 discussing before I took us off track at least a little
32 bit. The wordsmith drafted this. Can you just give me
33 your evidence as to how closely you read this, how closely
34 you fact-checked it, how aware you were of the final cut?

35 A. I have faith in the gentleman who wrote this and I
36 read it - the - oh, there was a couple of things that I
37 wanted toned down, um, and I felt were probably maybe one
38 step too far.

39
40 Q. Why did you put your name to it then?

41 A. Sorry?

42
43 Q. Why did you put your name to it if you thought matters
44 were taken a step too far?

45 A. Because I agreed with this.

46
47 Q. Is this the watered down version?

1 A. To a degree. There is - there is something in there
2 about sacking as opposed to suspended but, as I say, it's
3 opinions, it is what we believe and it's in The Telegraph,
4 or The Herald or The Guardian every day of the week and --
5
6 Q. It goes a lot further than opinion; do you agree with
7 that?
8 A. It goes - what?
9
10 Q. It goes a lot further than opinion, do you agree with
11 that, at times?
12 A. Ah, I'll leave it as opinion.
13
14 Q. Well, it makes several statements of fact, does it
15 not?
16 A. Well, if those facts are not correct, then I will be
17 corrected by the person who is - who is going to or would
18 respond.
19
20 THE COMMISSIONER: Q. I am unclear. Did you or did you
21 not read this carefully and check it?
22 A. The final - the final session, no. There was a
23 timeframe.
24
25 Q. If there was no significance in having this published
26 on 30 March, why was there a timeframe?
27 A. Because it had to go to the press by the Sunday.
28
29 Q. Why couldn't it wait a week, two weeks, three weeks?
30 A. It could, it could : no reason.
31
32 MR PARISH: Q. Do you agree that, if this is supposed to
33 be a reply to the interim administrator taking cracks at
34 you about the way you conducted the council, not reading
35 the final draft is a pretty sloppy way to do it?
36 A. Well, as I say, I had faith in the wordsmith and, as
37 such, I didn't see the actual one that was finally sent,
38 but there it is, I agree with it and I'm not going to throw
39 the - the journalist or man or wordsmith who wrote this
40 under the bus.
41
42 Q. Sorry, the person was a journalist, is that your
43 evidence now?
44 A. Um, I think he was a journalist at some stage in his
45 previous life.
46
47 THE COMMISSIONER: Q. Didn't you tell me earlier this

1 person had nothing to do with the press?

2 A. Sorry?

3

4 Q. Didn't you tell me earlier that the person who wrote
5 this had nothing to do with the press?

6 A. No, not local. I mean, he's nothing to do with the
7 press now.

8

9 MR PARISH: Q. I think the question was about the
10 Southern Highlands area, Commissioner.

11 A. No. No, he's - look, please, I have given - I give
12 confidence to people and, as such, that confidence I will
13 (indistinct) with.

14

15 THE COMMISSIONER: That might be right, but you're here to
16 answer questions and I'm not going to press it any further.

17

18 MR PARISH: Q. No, I'm not going to ask for that
19 person's name, Mr Gair. Do you stand by all the quotes in
20 this document attributed to you?

21 A. I signed them, I put my hand up.

22

23 Q. Do you stand by all the quotes in this
24 document attributable to you?

25 A. I'll say, yes.

26

27 Q. Good. Can I take you to the last two lines of page 1.

28 A. Yes.

29

30 Q.

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

35

36 Quotations attributed to you; do you see that?

37 A. Say the last words again, sir, please?

38

39 Q. Certainly:

40

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

45

46 A. Well --

47

1 Q. Do you see those words?
2 A. I do, sir.
3
4 Q. You didn't read the reports, did you?
5 A. Yes - no, well, I went to page 2, I'm sorry.
6
7 Q. You didn't read the reports, did you, Councillor Gair?
8 A. Oh, no, I read the summary of the - of the, ah, the
9 administrator's community address on a monthly basis and I
10 thought, if that's - if that's what he is saying about
11 council and, as I said, with the bushfire report --
12
13 Q. You didn't read the report, did you, Councillor Gair?
14 A. No.
15
16 Q. So how can you know whether those reports found
17 relatively insubstantial issues?
18 A. Because the administrator did a summation of them on
19 his community addresses and I just felt they were
20 incomplete, and I also have other information that is --
21
22 THE COMMISSIONER: Q. That's not what you say here
23 though, is it?
24 A. What's that?
25
26 Q. You don't say here the summary of the external reports
27 given by the administrator suggest these were relatively
28 insubstantial issues. The words attributed to you refer to
29 the reports, do they not?
30 A. Yes, if you want - wish to --
31
32 Q. No, these are your words, I'm asking you what your own
33 words mean. Is there any other reasonable way to read that
34 line as anything other than a reference to the actual
35 reports commissioned by the administrator?
36 A. That is my opinion.
37
38 MR PARISH: Q. That's an opinion formed by not actually
39 reading the reports; is that correct?
40 A. I won't answer that.
41
42 Q. Why not, it's a question I'm asking you.
43 A. Because I've said that's mine --
44
45 THE COMMISSIONER: Q. What's the basis for your refusal
46 to answer.
47 A. -- my opinion.

1
2 Q. The question was, you formed an opinion without
3 reading the reports. What's the basis for your refusal to
4 answer?

5 A. Because I've already answered that the general
6 manager - the administrator did summaries of these as a
7 mayoral - um, Mayoral Minute, yeah.
8

9 Q. If a council staff member had given you an opinion
10 about reports that the council staff member hadn't read,
11 would that be an acceptable opinion in your view?

12 A. Whichever way you turn it, I will be maintaining the
13 position. I didn't think the reports, having seen the
14 Commission - the administrator's comments to the community,
15 were worth reading anyway.
16

17 MR PARISH: Q. Do you agree that, in that quote that
18 we've been referring to, the statement, "The plethora of
19 external reports he commissioned found relatively
20 insubstantial issues", is a statement of fact, not opinion?

21 A. Well, they found as far as I'm aware, and what I as -
22 saw on his - ah, saw on his addresses to the community, to
23 me, I think - I think those reports could be questioned.
24

25 Q. Do you agree that the phrase "the external reports he
26 commissioned found relatively insubstantial issues" is a
27 statement of fact, not opinion?

28 A. I can't see that here. Doesn't say - it says here:
29

30 *"The plethora of external reports he*
31 *commissioned found relatively insubstantial*
32 *issues and no smoking gun ..."*
33

34 Q. No, that's the sentence I'm referring to. Do you
35 agree that that's a statement of fact?

36 A. It's my opinion.
37

38 Q. Do you agree that you are warranting that that is what
39 is to be found as truth in those reports?

40 A. It is my opinion.
41

42 Q. Is it your opinion that the reports were commissioned
43 to find smoking guns to justify the suspension of council?

44 A. I have that belief, yes.
45

46 Q. Do you think that the suspension of council was
47 driven, for instance, by the response to the bushfires?

1 A. One of the reasons.
2
3 Q. Am I going to find any document, whether in a
4 Performance Improvement Order or a notice of intention to
5 issue a suspension, that refers to your response to the
6 bushfire as the reason for suspension?
7 A. I don't know what you're talking about, Mr Parish.
8
9 Q. You've just told me that the reports were commissioned
10 to justify the suspension of council.
11 A. Oh, I think the --
12
13 Q. Yes or no? That was evidence you just gave.
14 A. Don't know.
15
16 Q. You don't know what, sorry? You don't know whether or
17 not the reports were commissioned to justify the suspension
18 of council?
19 A. Maybe they were, maybe they weren't, sir, I don't
20 know.
21
22 Q. You are stating, are you not, in that last sentence
23 that the purpose of the reports was to justify the
24 suspension of council?
25 A. I think it was part of it.
26
27 Q. And my next question along that train was, am I going
28 to find any reference to the bushfire response in either
29 the Performance Improvement Order or the notice of
30 intention to suspend or any other document related to the
31 suspension of council?
32 A. I don't - I don't think so.
33
34 Q. Is that because it was not a reason that the council
35 was suspended?
36 A. I think there - I don't know, I haven't spoken to the
37 Minister. We sought a meeting with the Minister to discuss
38 the reasoning why we shouldn't be disbanded, or suspended,
39 and no response, so I can't answer that question.
40
41 Q. Well, you are purporting in that last sentence there,
42 are you not, that the reports, including the bushfire
43 report, were commissioned to justify the suspension of
44 council; is that a fair reading of that last sentence?
45 A. On page 2?
46
47 Q. No, we're dealing with the same sentence we've been

1 dealing with for the last 10 minutes. It's at the bottom
2 of page 1, it says:

3
4 *"The plethora of external reports he*
5 *commissioned ..."*

6
7 A. Yes. Yes, yes.

8
9 Q.
10 *"... found relatively insubstantial issues*
11 *and no smoking gun to justify the*
12 *suspension of the council".*

13
14 Do you agree with me that it can be read, from that,
15 that the purpose of the external reports was to justify the
16 suspension of council?

17 A. No.

18
19 Q. You do not think that's a fair reading of that
20 sentence.

21 A. I don't agree with what you're saying. I don't think
22 that the - because we didn't put in - or they - a
23 submission wasn't put in, I don't think that is a reason
24 that council was suspended; I don't know.

25
26 Q. Can I take you up a few paragraphs to the quote
27 attributed to you:

28
29 *"Council has suffered its first loss in at*
30 *least 26 years of over \$700,000, entirely*
31 *due to the costs of sacking or forcing the*
32 *resignation of virtually all the senior*
33 *staff, and the administrator has flagged*
34 *another deficit of \$800,000 for 2022/23 and*
35 *an extraordinary rate increase".*

36
37 And I'll take you to the second part of that in a
38 second, but do you warrant that to be factually true?

39 A. As far as I'm aware, I - that's all I can say; if it's
40 not correct, then it'll be corrected by council, I would
41 assume.

42
43 Q. Did you take steps to fact-check this before you put
44 your name to it?

45 A. Well, as far as I'm aware and listening to the
46 administrator, then that is the figure I believe that was -
47 was put before the community, and whether the sacking and

1 forcing of resignations is attributable to all of that, I
2 don't know, but by gee, I reckon there's going to be a
3 bigger deficit than \$800,000 next year.
4

5 Q. Where did you get your information from in that
6 sentence?

7 A. The \$700,000?
8

9 Q. Yes?

10 A. That was, I believe I read it in the paper, I heard it
11 from Mr May.
12

13 Q. Was that before or after grants were taken into
14 account?

15 A. I don't know, I heard the figure from Mr May.
16

17 Q. Did Mr May use the words "entirely due to the costs of
18 sacking or forcing the resignation of virtually all the
19 senior staff"?

20 A. No, that's my opinion.
21

22 Q. Where does that opinion come from? It's got to be
23 based on fact, hasn't it?

24 A. Well, if you go through the amount of staff that have
25 left here, and I think since Mr May's taken over there's
26 about 170, 180 vacancies have left. There is major staff
27 shortages in critical areas; the DAs are climbing, I hear
28 of 200, without being looked at, all of that - the money
29 that had to be paid to the staff that have left has to come
30 from somewhere. There is - and we set it up in about 2002,
31 we set up a superannuation or severance area plan, but that
32 did not take into account, as far as I know - as I say, I
33 haven't been here for 12 months - does not take into
34 account unexpected staff redundancies or sackings or
35 whatever, and so, the money has to come somewhere. If I'm
36 wrong, I'm wrong, it'll be pointed out.
37

38 THE COMMISSIONER: Q. I'm sorry, you said that there
39 were 180 vacancies, is that what you said?

40 A. That is what I've been led to believe.
41

42 Q. By who?

43 A. Various members of the community who have knowledge of
44 working staff. I have not spoken to any - and that is one
45 thing that I have not done, and that is, I have spoken to a
46 couple of staff members, I do not want to intimidate or
47 have staff get into trouble because I believe I have a very

1 good relationship with staff and I have their trust, and I
2 mean trust, that I do not throw them under buses or stand
3 them up or make a fool of them, and as such they would
4 speak to me, but I won't do that.

5

6 MR PARISH: Q. That's very admirable. Can you answer my
7 question now?

8 A. Thank you, Mr Parish.

9

10 Q. What is the factual basis for your opinion that the
11 \$700,000 loss is entirely due to the costs of sacking or
12 forcing the resignation of virtually all the senior staff?

13 A. That is what I have said and that is what I - is my
14 opinion --

15

16 Q. That's not any question.

17

18 THE COMMISSIONER: Q. But what's the opinion based on?
19 Opinions don't just form from nothing. What's the opinion
20 based on?

21 A. The \$700,000, I believe, was in Mr May's address --

22

23 Q. Let's assume that Mr May has said \$700,000. What
24 Mr Parish is drawing your attention to are the next words
25 attributed to you, that is, "entirely due to the costs of
26 sacking or forcing the resignation of virtually all the
27 senior staff". Is that something you have knowledge of?

28 A. Um, I don't know entirely due, but I would imagine
29 there are costs to the sacking and forcing the resignation.

30

31 Q. So, sitting here now, do you think the words "entirely
32 due" shouldn't be there?

33 A. Well, I don't know, it is my opinion, Mr Commissioner.
34 If I am wrong, I am wrong, it is my opinion. If you want
35 me to base it on fact, it is my opinion: I'm sorry.

36

37 THE COMMISSIONER: There's no need to apologise, you give
38 your evidence how you see fit. Mr Parish, we might move to
39 another --

40

41 MR PARISH: Well, I'd like to ask a few more questions,
42 Commissioner.

43

44 Q. I'm just wondering, do you see yourself as the
45 suspended councillor and formerly the mayor as still being
46 bound by Code of Conduct and other matters?

47 A. Yes, I do, I do, but you have raised an interesting

1 comment.

2

3 Q. No, no, I would just like a yes or no to my question
4 for now?

5 A. Yes, I do.

6

7 Q. Do you think it is appropriate to leave people reading
8 this with the impression, from someone who is a leader in
9 the community, that the number put there, \$700,000, is
10 entirely due to the costs of sacking or forcing the
11 resignation of virtually all the staff?

12 A. My opinion.

13

14 Q. Where in this sentence does the word "my opinion"
15 appear?

16 A. Um, everything that is written is the opinion of the
17 person who's writing it, I would have thought.

18

19 Q. Does that mean we can dismiss anything in here which
20 purports to be a statement of fact as simply your opinion?

21 A. You can draw your judgment on that yourself,
22 Mr Parish --

23

24 Q. No, I'm interested in what you say the import of this
25 document is. Is that correct, everything attributed to you
26 in here is merely your opinion?

27 A. At the end of the day, I have - I believe that, yes.

28

29 Q. And, therefore, it is only worth whatever someone
30 would ascribe to anyone's opinion; is that fair?

31 A. Well, I suppose that's correct. I mean, I read
32 articles in press statements given by people and that's
33 their opinion.

34

35 Q. Does that mean that the statement that pressure had
36 come from two local Liberal MPs, Wendy Tuckerman, who is
37 now Minister for Local Government, and Nathaniel Smith, is
38 merely your opinion?

39 A. No, I believe in that one --

40

41 Q. Oh, okay.

42 A. -- yes, I know, Mr Parish --

43

44 Q. This is a statement of fact.

45 A. -- you say I am recounting (sic), but you have raised
46 a very interesting point, and that is a response from the -
47 in relation to our dismissal, and I believe that was

1 (indistinct) --

2

3 Q. You haven't been dismissed. Are you saying that this
4 is a statement of fact, the sentence:

5

6 *Pressure had come from the two local*
7 *Liberal MPs, Wendy Tuckerman, who is now*
8 *the Minister for Local Government, and*
9 *Nathaniel Smith.*

10

11 A. No, I believe it's come - it's come further than that.

12

13 Q. Is that sentence a statement of fact in your view?

14 A. I think it needs an investigation, it needs an
15 inquiry.

16

17 Q. Is that sentence a statement of fact? Let's take this
18 bit by bit. Is that sentence, in contradistinction to the
19 rest of this document which is apparently an opinion, a
20 statement of fact?

21 A. Hang on, I've lost the page, sorry. So, how far down
22 are we?

23

24 Q. We are probably about a quarter down.

25 A. "Pressure"?

26

27 Q. Yes, that's correct?

28 A. Yes.

29

30 Q. That's a statement of fact, that sentence?

31 A. I believe that.

32

33 Q. Any other statements of fact or is everything else in
34 this document just your opinion?

35 A. I believe that is, um - the first sentence:

36

37 *Pressure has come from the two local*
38 *Liberal MPs, Wendy Tuckerman, who is now*
39 *the Minister for Local Government, and*
40 *Nathaniel Smith. Both had called for*
41 *council to be sacked.*

42

43 That is an incorrect word, it should be suspended, I
44 acknowledge.

45

46 Q. Is that the only statement of fact, everything else is
47 opinion, or do you want to point me to any other statements

1 of fact in this statement?
2 A. Well, no, I think the next one that, as Wendy
3 Tuckerman signed the letter, and as did Nathaniel Smith for
4 our dismissal or suspension, that they have now got a
5 non-pecuniary interest and I do not believe they have the
6 right to vote on this when it goes to the Minister or the
7 State Parliament.
8
9 Q. Is the purpose of that statement to undermine the
10 legitimacy of any response to the report that the
11 Minister - that the Commissioner will write?
12 A. It is to make the Minister aware that there could be
13 an objection to the Ombudsman or whatever authority, and no
14 good going to the - or the Speaker of the House or whatever
15 in relation to her putting herself in a position to
16 adjudicate on this matter.
17
18 Q. And in your view the appropriate way to do that was a
19 press release that was released on the second day of the
20 inquiry?
21 A. The inquiry didn't have the - the - wasn't the
22 reasoning for us to say that.
23
24 Q. I think you've agreed with me previously that there
25 was dysfunction at council; do you accept that?
26 A. Yes.
27
28 Q. I think you've agreed with me previously that there
29 were issues about whether this was a safe workplace due to
30 the behaviour of councillors; do you accept that?
31 A. Some councillors. I believe, Mr Parish, to tarnish
32 the entire council is unfair, and I would like to think
33 that when I answer questions I answer them in the minority
34 as opposed to majority.
35
36 Q. We'll come to that in a second. Do you agree that
37 there were reputational risks caused by the conduct of
38 councillors, in particular at council meetings?
39 A. Again, minority.
40
41 Q. And, indeed, a resolution was passed in response to
42 the Performance Improvement Order agreeing with the reasons
43 in the Performance Improvement Order; do you agree with
44 that?
45 A. Yes.
46
47 Q. And, when the notice of intention to suspend was

1 issued, it identified reputational risks, dysfunction and
2 safe workplace issues; do you accept that?
3 A. To a large extent, yes, I do.
4
5 Q. And, do you agree that they were subsisting at the
6 time that the notice of intention to suspend was issued to
7 the council?
8 A. Yes, that's correct.
9
10 Q. And, therefore, do you accept that the reasons set out
11 for the suspension did in fact exist?
12 A. No, I don't.
13
14 Q. I thought you've just agreed with the three or four
15 propositions?
16 A. I agreed with your statement but I don't think it's a
17 reason to suspend the entire council. There was
18 correspondence to the Minister that she had the power
19 through the OLG to remove offending councillors --
20
21 THE COMMISSIONER: Q. Where's the power of the Minister
22 to do that?
23 A. The Minister. I heard the Minister say, she was
24 questioned on radio, did she have the power to remove
25 councillors individually, and she said, "Definitely".
26
27 Q. Where is the power in the Local Government Act for the
28 Minister to remove individual councillors?
29 A. Well, when I say Minister - thank you,
30 Mr Commissioner. Through the Minister of the office of the
31 OLG, the Minister is, in my understanding, is the consent -
32 is the authority over the OLG and, as such, she can direct
33 the OLG to dismiss councillors.
34
35 Q. Did you ever seek advice about that?
36 A. Um, that is my understanding and --
37
38 Q. Where does it come from?
39 A. No. Where did it come from? Well, it's come from the
40 Minister herself?
41
42 MR PARISH: Q. And something that you heard the Minister
43 say on the radio; is that correct?
44 A. That's correct.
45
46 Q. Do you recall when that statement was on radio?
47 A. It was at the time, and this is an appropriate time

1 for you to raise that question, Mr Parish, because I'm
2 going to table this, and this is why I believe it's
3 political (witness holds up document.) And I'm going to
4 table it because it is a postponement of the 21 - 2021
5 local government elections frequently asked questions. And
6 at the bottom - and it's been issued by the State
7 Government, and it says on the back page, and I will read
8 if I may:

9
10 *Balranald Shire Council, Central Coast*
11 *Council and Central Darling Council will*
12 *continue under administration despite the*
13 *postponement of the elections.*

14
15 *Wingecarribee Shire Council suspension*
16 *expires on 10 September 2021 and councils*
17 *who continue to hold their civic office in*
18 *that council will resume their offices from*
19 *that date to 4 December 2021 when their*
20 *civic offices expires.*

21
22 Now, that came from the Office of Local Government. I
23 got a phone call from 2ST saying, "Wow, you're going back,
24 going back to office". I said, "That's terrific". And
25 they said, "Well, what do you intend to do?" And I said,
26 "Well, we've got restore the faith of the community and to
27 work with the local members to garner their support and
28 their involvement". And then the ABC rang me and one of
29 the questions was, "Will you accept the administrator's
30 changes that he has put in place?"

31
32 Now, Councillor Scandrett here said to say I was going
33 to unwind them: I never said that. What I said was, as
34 mayor I will look at the administrator's decisions closely.
35 Never used the word "unwind", never used the word "change",
36 never used the word to say "I don't accept all the changes"
37 or whatever: "I will look at the decisions closely" and I
38 want that on the record.

39
40 Q. You can be assured that we have that article that
41 you're referring to and it does broadly reflect what you've
42 just paraphrased there, but --

43
44 THE COMMISSIONER: Mr Parish, sorry to cut across you.
45 We've been going some time, I am conscious of the
46 stenographers at the other end.
47

1 THE WITNESS: I can stay here all night if you wish, sir.
2 I'm starting to get wound up. Anyway, I table those.
3
4 THE COMMISSIONER: Thank you for that observation, I think
5 it's an appropriate time to take a short break. Mr Parish,
6 I'm conscious of the stenographers and indeed everybody in
7 the room.
8
9 How much - this is not - you tell me how much longer
10 do you think you need?
11
12 MR PARISH: Half an hour.
13
14 THE COMMISSIONER: Yes, all right.
15
16 THE WITNESS: (Witness makes a noise.)
17
18 MR PARISH: Q. Pardon me, what was that?
19 A. (Witness makes a noise.) Sorry. I said last night,
20 somebody rang me from - and I said, "You live in Moss Vale,
21 can you see a big red bull's-eye on my forehead?" Sorry,
22 Mr Parish.
23
24 THE COMMISSIONER: In any event I think, Mr Parish,
25 everyone might benefit from 10 minutes. I know it's late
26 in the day, but I think it's important for everybody to
27 have Councillor Gair's evidence finished. I'll adjourn
28 until 20 to 6.
29
30 **SHORT ADJOURNMENT**
31
32 THE COMMISSIONER: Yes, Mr Parish.
33
34 MR PARISH: Thank you, Commissioner.
35
36 Q. You've provided us with a document, Councillor Gair,
37 which states:
38
39 *Postponement of the 2021 Local Government*
40 *Elections Frequently Asked Questions.*
41
42 Is that the document you've provided us with?
43 A. Yes.
44
45 Q. Comprising 10 pages?
46 A. As far as I'm aware, yes, I just read the back.
47

1 Q. Do you have any recollection of when this was issued?
2 I don't think I could find a date on it?
3 A. Yeah, that's a good question, Mr Parish. I'm battling
4 to find out myself. I can remember the - the --

5
6 THE COMMISSIONER: I'm sorry, councillor, we just had an
7 issue with the microphone. Mr Vong, is it on now? Yes,
8 I'm sorry: continue.

9
10 THE WITNESS: Yes, that's what I had to put up with 10
11 months, Mr Commissioner, was things going wrong in the
12 meeting.

13
14 I got a phone call, and again, it would have to be
15 around about July because they would have had to have given
16 six weeks' notice for the September 2021 elections to - for
17 people to register. So, it's somewhere - somewhere in
18 between our three months' suspension and six, but for the
19 life of me, I can't remember

20
21 MR PARISH: Q. And what do you say this document proves,
22 shows or evidences?

23 A. Because the radio commentary the day after that was
24 announced was very interesting.

25
26 Q. That was a commentary that you were involved with
27 where you were asked questions as to --
28 A. No, I made my comment the night before - and we'll
29 just say it was the Monday, I don't know - I made my
30 commentary at about 5 o'clock that evening and the 2ST
31 played it as well as down the coast. And then on the
32 Monday morning on the ABC Talkback in the morning a former
33 leader of the Liberal Party rang up and said that he was
34 actively involved in seeing us being suspended, and
35 indicated that, "In my opinion it's not over yet". And
36 then there was another phone call from a local member, not
37 state, just a member of the community, who said, "This is
38 not over yet", and I think either that night of the second
39 day, whenever it was, or the third, the Minister overturned
40 her advisor's decision and we stayed suspended.

41
42 Now, I believe, and I firmly believe, that the
43 pressure has been applied to the Minister by certain
44 factions within the Liberal Party; I believe it needs a
45 full and thorough investigation to see whether there were
46 breaches of Code of Conduct by exerting undue pressure on
47 the Office of Local Government. I don't know, and I'm not

1 asserting anything, but we have been accused of many things
2 which I believe are untrue, and I believe that this now
3 needs a full airing and a full recognition by the State
4 Government on who was involved in the decision-making
5 process because it just seems to be coincidental that
6 Ms Wendy Tuckerman is now Minister for Local Government and
7 Nathaniel Smith is whip of the House, and neither of them
8 have done more than two and a bit years - or three years in
9 state Parliament.

10
11 Q. Is it your evidence that they were politically
12 rewarded for what --

13 A. I'm not suggesting that, no, sir.
14

15 Q. Then what were you suggesting?

16 A. I am suggesting that it needs an investigation as to
17 the processes that related to the Minister not taking her
18 own advisor's advice and - and that was that we be
19 reinstated.
20

21 Q. Are you aware that a council suspension for
22 three months can only be extended twice?

23 A. That's correct.
24

25 Q. And then after that there has to be a public inquiry;
26 are you aware of that?

27 A. I think it can be --
28

29 Q. Or returned, I should say.

30 A. Yeah, it's up - then up to the administrator,
31 I believe, to call or to advise, and again, I have very
32 strong reasonings to my - which I will not make public - as
33 to why the administrator is still here.
34

35 Q. Well, the administrator gave a report during the
36 suspension period in which he suggested that work needed to
37 be done and that progress was being made; do you accept
38 that?

39 A. No.
40

41 Q. And you say, do you, that this document that you've
42 presented to us now is evidence of a political
43 interference --

44 A. No.
45

46 Q. -- with the suspension; is that what you say?

47 A. I'm not saying that. I am saying it needs

1 investigation. I'm not saying there was an interference.
2 I believe that there needs to be a full inquiry on to who
3 was associated with the continuing suspension of this
4 council for what purposes, and it's also coincidental that
5 Mr May's - after I sent a - and I know the Commissioner and
6 you have it - a confidential memo which I have also
7 presented to the Minister, who never responded to it, and I
8 also asked for a meeting with her on the conduct of the
9 administrator, and after receiving that advice he was given
10 a position on the council Remuneration Tribunal.

11
12 Q. Do you agree with me that saying "it just needs
13 investigation, I'm just asking the question", is a fairly
14 unsophisticated way of trying to imply that something
15 improper has happened?

16 A. I would suggest my opinion and my thought is that
17 there may be some evidence to show that there has been
18 political interference.

19
20 Q. So, you are making that allegation; is that correct?

21 A. It's not an allegation.

22
23 Q. Can you just explain to me again, because I'm not sure
24 I quite followed the logic, how it is that this document,
25 if at all, evidences political interference with the - or
26 political pressure with the suspension of the council?

27 A. Well, I'll let you draw your own conclusion,
28 Mr Parish, I'll draw mine --

29
30 THE COMMISSIONER: Q. No, you'll answer the question,
31 please. Is that what you say?

32 A. I believe I have answered the question.

33
34 THE COMMISSIONER: Ask the question again.

35
36 MR PARISH: Q. Can you please explain to me how this
37 document evidences political pressure or interference with
38 the suspension of this council?

39 A. I don't, I say - all I say is that it just seems very
40 coincidental that the Office of Local Government suggests
41 that we - and published it, not just gave it a memo to the
42 Minister, published it on a State Government document that
43 we were going to be reinstated, and my understanding is,
44 the Minister said, "Oh, I don't know anything about this".
45 Well, that's the advice of your state body.

46
47 THE COMMISSIONER: Q. That document is the advice you

1 say the Minister got, which she then overrode; is that what
2 you say?

3 A. That's my understanding.

4

5 MR PARISH: Q. This is a frequently asked questions
6 flyer given to anyone presumably who wants to read it of 10
7 pages related to the postponement of the 2021 local
8 government elections; is that how a Minister receives
9 advice in your opinion?

10 A. I happen to agree with you because the people who rang
11 me, they were as surprised as whatever that this
12 document had that recommendation and, as such, we thought
13 we were going back, it was announced over ABC and 2ST that
14 we were going to be reinstated, and then the Minister
15 changed - reversed that decision and --

16

17 THE COMMISSIONER: Q. Where in that document does it say
18 the Minister has made a decision one way or the other about
19 what would happen at the end of the suspension period?

20 A. The - well, the State Government being - and I would
21 assume, that is the OLG - would have issued that document.

22

23 Q. Just remind me, what date do you think that is?
24 About July, did you say? Working back from the election,
25 it would have had to have been about July; is that right?

26 A. Yeah, in between March and July, I would think.

27

28 Q. Do you know the date on which the administrator
29 recommended a public inquiry?

30 A. Probably after about the third week, I think, and then
31 he kept hammering away at it.

32

33 Q. Well, I'll help you. It was on 10 August, after that
34 document. Does that change your views about it?

35 A. No, I believe the administrator was making it quite
36 clear that he was looking for a public inquiry. Again, I
37 don't have the administrator's notes before me on his
38 address to the community.

39

40 Q. If you assume that on 10 May the administrator said,
41 "Winge" - win --

42 A. Winge-carribee.

43

44 Q. My apologies:

45

46 *The Winge-carribee Shire Council in my view*
47 *has failed its community and needs a fresh*

1 *start in the September 2021 elections.*

2

3 If he said that in May, do you still say that he was
4 pushing for a public inquiry from March?

5 A. I believe the - the tone from that comment then was
6 working towards a public inquiry --

7

8 Q. The tone that the council needed a fresh start in
9 the September 2021 elections, to which that
10 document refers --

11 A. I believe that's a red herring.

12

13 Q. You believe that Mr May has misled the Minister, do
14 you?

15 A. I'm not saying that, I am saying --

16

17 Q. Well, what does it mean to say it's a red herring?

18 A. Then I just say I believe that Mr May was making
19 observations that this - that he was pushing for an
20 inquiry. If that was his response to the Minister, I will
21 accept it.

22

23 MR PARISH: Q. Is the other proposition that you were
24 seeking to explain that the Minister ought to have accepted
25 the advice in a "frequently asked questions" flyer over the
26 recommendation of the interim administrator?

27 A. I can't answer that.

28

29 Q. Well, I was giving you the opportunity to accept or
30 not accept that that was the logic you were applying to
31 this document.

32 A. My submission in, as you pointed out in the press
33 statement, and in my submission to this inquiry is that the
34 Minister, in my opinion, had the authority to direct the
35 OLG to remove the minority number of councillors who were
36 causing disruption and, as such, we could be reinstated as
37 a council.

38

39 THE COMMISSIONER: I'm not sure that was the question.
40 Mr Parish.

41

42 MR PARISH: Q. I was seeking to understand, if the logic
43 you are drawing from these two documents and the reason
44 that you tabled this frequently asked questions flyer, was
45 because you were of the belief that the Minister ought to
46 have accepted the advice of the frequently asked questions
47 flyer over the recommendations of the interim

1 administrator?

2 A. Yes, I believe that the Office of Local Government had
3 reviewed all the information that the council had forwarded
4 to the office, and that the office as a professional body,
5 as advisors to the Minister, made that recommendation and
6 the Minister didn't take that recommendation and, as such,
7 I believe there is political pressure placed on her to
8 overturn her decision.

9

10 THE COMMISSIONER: Q. Do you still have the press
11 release in front of you?

12 A. No, I handed it up, sir.

13

14 Q. Mr Broad, could Councillor Gair have the press
15 release.

16

17 MR PARISH: It's Exhibit O.

18

19 THE COMMISSIONER: While that's happening, not the
20 frequently asked questions, Mr Broad, Exhibit O. Are you
21 going to tender that?

22

23 MR PARISH: Yes.

24

25 THE COMMISSIONER: Yes, once Mr Broad has taken Exhibit O
26 to the witness, he can hand it up.

27

28 MR BROAD: Councillor Gair's still got a copy of it.

29

30 THE WITNESS: Oh, sorry.

31

32 THE COMMISSIONER: Q. That's all right. Do you have it
33 there?

34 A. Is that the one?

35

36 Q. That second-last page.

37

A. Yes.

38

39 Q. Do you see about halfway down there's the paragraph,
40 "Then the Minister could have ", do you have that?

41

A. Yes.

42

43 Q. And then the second sentence:

44

45 *"The Minister rejected her own department's*
46 *advice to maintain the elected council*
47 *after it had met her performance*

1 *improvement conditions and she ordered a*
2 *costly public inquiry as the only legal way*
3 *of keeping us out of office".*
4

5 Do you see that?

6 A. Yes.

7
8 Q. Is that the frequently asked questions document, the
9 advice to which you refer in that paragraph?

10 A. No.

11
12 Q. Well, what advice are you talking about?

13 A. In my opinion.

14
15 Q. Sorry. What advice did the Minister - where the words
16 attributed to you say:

17 *"The Minister rejected her own department's*
18 *advice ..."*
19

20
21 A. Oh, yes, sir. Yes, sir.

22
23 Q. That's the frequently asked questions document, is it?

24 A. That was the - I didn't have a copy of that until
25 today --

26
27 Q. Well, what are you talking about in this --

28 A. -- and I'm relying on my memory when I heard the, um,
29 it played over the radio when we were trying to find this
30 date, that the OLG with that document had recommended we go
31 - we be reinstated.

32
33 Q. That --

34 A. That paragraph relates to that, yes.

35
36 Q. That paragraph is you referring to a media report
37 about the frequently asked questions document; is that
38 correct; is that right?

39 A. That's correct.

40
41 THE COMMISSIONER: Yes. Mr Broad, could you bring the
42 frequently asked questions document up?

43
44 MR PARISH: Q. If you'd not seen that document until
45 today --

46 A. Yes.

1 Q. -- do I take it that did not form part of the
2 suggested political pressure at least referred to at the
3 start of this document, media release?
4 A. I had not seen the document in its entirety until
5 today. I had seen the - an excerpt in a press release.
6
7 Q. In this press release?
8 A. Well, when I say "a press release", whether it was an
9 article - it could be an article in a publication, I don't
10 know whether it was Southern Highlands News or Southern
11 Highlands Express, I don't know; all I do know is that I
12 was aware of that, and also aware because the radio
13 stations may - read the statement out to me and that's when
14 I commented and said I would not - I would look at the
15 administrator's changes closely. I happened to agree with
16 some of them.
17
18 Q. When the radio station read it out to you, did they
19 make it clear that it was a frequently asked questions
20 flyer?
21 A. Um, they said it was a press - press statement - no, I
22 can't recall, can't recall.
23
24 Q. And, do I take it from your evidence and your opinion
25 that the failure to give effect to what was in the
26 frequently asked questions flyer showed political pressure;
27 is that --
28 A. I can't answer that.
29
30 Q. I think that's been your evidence for about the last
31 half hour, but nevertheless. The council was suspended at
32 the time of that flyer; do you accept that?
33 A. No, it was - I would suggest we were suspended on
34 12 March, I think, of something last year --
35
36 Q. Correct, and the flyer was, you said, something
37 like July 2021?
38 A. That's what I believe; as I say, until it's verified I
39 can't --
40
41 Q. But you were suspended.
42 A. I don't know, Mr Parish.
43
44 Q. Well, it's pretty easy to figure out, Councillor Gair,
45 because it refers to the fact you were suspended in the
46 flyer. Do you accept therefore --
47 A. Yes, oh, yes, yeah.

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Q. -- that you had been suspended at the time of the flyer?

A. Yes, it says within the flyer that the councillors who were suspended were - and until 2021 will be returned and (indistinct).

Q. So, the actions that came from the political pressure that you're referring to or insinuating from the flyer must be the continued suspension and the public inquiry; is that correct?

A. My - I am just saying, in my opinion, that the Minister did not take her advice from her own department and I believe without any evidence, and I'm not alleging, that there was political pressure placed on the Minister of the day to reverse the decision of the Office of Local Government: that's all I can say.

Q. And you accept, therefore, that the reversal of that amounted to this public inquiry?

A. I can't answer that either.

Q. It must follow, mustn't it?

A. I don't know, the public inquiry was announced, again, I don't know the actual date; I think it was in about August --

Q. 1 September --

A. September.

Q. 31 August or 1 September.

A. Yeah, so I don't know --

THE COMMISSIONER: Don't you say that very thing in --

THE WITNESS: -- I don't know whether the - as I say, the Minister can only answer these questions, or the then Minister, and um --

THE COMMISSIONER: Q. But isn't that what you say in this press release:

"The Minister rejected her own department's advice to maintain the elected council after it had met her performance improvement conditions and she ordered a costly public inquiry as the only legal way

1 *of keeping us out of office".*

2

3 A. That's my belief, yes.

4

5 Q. And what's the belief based on?

6 A. We're going around here.

7

8 Q. Try it this way: it might be suggested to me that a
9 belief held without any evidence is not a reasonable
10 belief: would you agree with that?

11 A. To a degree, yeah. As I say, it's - it is all
12 subjective, Commissioner, as far as I am aware. I cannot -
13 I cannot make statements and stick by them, and that's why
14 I have put - done what has been put here, and that's my
15 opinion, and until it is investigated I don't deviate from
16 it.

17

18 Q. So, is it the case that in your view the matters of
19 opinion you hold should be investigated even though you
20 don't have any evidence to support the opinion?

21 A. I - I think I do, yes.

22

23 Q. It might be suggested to me that an opinion held
24 without any evidence to support it is not a reasonable
25 opinion; what would you say to that?

26 A. That is my opinion.

27

28 Q. That's not the question.

29 A. Well --

30

31 Q. It might be suggested to me --

32 A. Sir.

33

34 Q. It's a general proposition, I'm not asking you about
35 any opinions you've expressed today.

36 A. I - I --

37

38 Q. This is an opportunity for you to respond to things
39 that might ultimately be submitted to me. It might
40 ultimately be submitted to me that an opinion that is
41 expressed without any basis in evidence for it is not a
42 reasonable opinion; do you agree or disagree?

43 A. I might disagree with your assumption there, sir.

44

45 THE COMMISSIONER: Thank you.

46

47 MR PARISH: Q. Doesn't it follow from the evidence

1 you've just given that your belief is that this inquiry is
2 a political fix as well?
3 A. Oh, no. No, no, no, no, no. I supported this
4 inquiry, I'm on the record as saying I support the inquiry,
5 but there was a caveat on it, and the caveat was it would
6 be short, it would be sharp, and that it would - a response
7 would be forwarded to the Minister as soon as possible so
8 elections could be held and democracy could be returned to
9 the Highlands. I think that is basically --

10
11 THE COMMISSIONER: Q. Were you not quoted in the media
12 shortly after the announcement of the public inquiry saying
13 you didn't want it and it was a waste of time? Words to
14 that effect?

15 A. Um, at that particular point of time I was not very
16 impressed with the thought of a public inquiry, but my
17 views altered and to the point that - well, to clear the
18 air, to get this over and done with, let the community get
19 on and elect a new council, it was going to be held, and -
20 but I did put those caveats on it, so I didn't try and
21 white ant it, I supported it at the finish, and as such I
22 support what you gentlemen want to do.

23
24 Q. It's perfectly acceptable for people to change their
25 mind about things; I just was giving you the opportunity to
26 explain the change of position that I had perceived?

27 A. That's my - that's my reasoning.

28
29 THE COMMISSIONER: Yes, thank you.

30
31 MR PARISH: Q. Have you been emailing this inquiry with
32 some suggestions as to how we should run this inquiry?

33 A. Um, I think I sent Mr Broad a - a text in relation to
34 a councillor who was making various, I think it's called
35 witness, or is there any - whatever the terminology, at the
36 end of a witness giving evidence, there was a councillor
37 who commenced having a series of questions with various
38 witnesses, and I sent an email to Mr Broad suggesting that,
39 or to the Commissioner through Mr Broad, that this
40 gentleman will turn this place into a farce if he can and
41 he will not let go.

42
43 Q. Do you think that was appropriate to, through email,
44 through Mr Broad or otherwise, to give directions how you
45 thought the inquiry should be run?

46 A. No, I didn't give direction, I just said I thought
47 that he was being given - he will take advantage of being

1 given airtime.

2

3 Q. I'll just read it out for you. Email from another
4 email address, it appears, to Angus Broad, subject, "Public
5 Inquiry":

6

7 *Dear Mr Broad. I wish to object to the way*
8 *Ian Scandrett is questioning witnesses by*
9 *leading the witnesses, the number of*
10 *questions being allowed, and the relevance*
11 *of them. Is this the Ian Scandrett show?*
12 *I know, give him an inch and he will take a*
13 *mile and he will test the Commissioner to*
14 *get his own way. He will turn this inquiry*
15 *into a farce.*

16

17 Is that what you wrote?

18

A. That's what I wrote.

19

20 Q. Did you consider coming along yourself to ask
21 questions or take part in the inquiry at an earlier stage?

22

A. No, I think there is enough expertise in the room to
23 take the questions that I would ask.

24

25 Q. But not so much expertise that we needed your
26 assistance to handle Councillor Scandrett; is that correct?

27

A. I think - I think you probably learned a little bit
28 about Councillor Scandrett over a period of eight hours,
29 and I have really no reason to change the comments that I
30 made in that regard about him.

31

32 Q. Can you throw any light on why the deliberations as to
33 a response in respect of, firstly, the Performance
34 Improvement Order and then secondly the notice of intention
35 to issue a suspension order was dealt with on the very last
36 day available to provide submissions to the Minister?

37

A. Yeah, that's a fair question. When I received that
38 letter, or council received that letter, I rang councillors
39 and - or sent an email to councillors, I can't remember
40 how - suggesting that - and Councillor Whipper rang me and
41 he said, "I would like to have a meeting with councillors",
42 and he suggested that we meet in the Nati Room, and that we
43 try and come to an agreement so that when we come into the
44 chamber we don't turn it into a circus and --

45

46 Q. But why on the last day available to do it?

47

A. Well, for no particular reason other than it was a

1 normal meeting day. We checked with the, I'm sure, I'm
2 sure we checked with the Office of Local Government to make
3 sure that that would be totally in order, and it was, and
4 as such we set it for that Wednesday afternoon; not to run
5 the, you know, the eleventh-hour gauntlet, but to - to,
6 rather than call an extraordinary meeting we would have
7 that meeting on the off Wednesday, I think it was, and as
8 such that was it, there was no ulterior motive, no.

9
10 Q. I'm not suggesting there was, I'm just trying to
11 explore why you left it to the eleventh-hour gauntlet to
12 deliberate on a response to the Minister?

13 A. That was why.

14
15 Q. Did you think that passing resolutions was a
16 sufficient way to respond to the requests that the Minister
17 made of you?

18 A. Well, I sought advice from our governance team, and
19 was this - you know, was this the way to go? And my
20 response was that, "Yes, the reasoning is that you show
21 cause", so part of the resolution that was finally passed
22 with the first part was that I believe - and I haven't got
23 it - that council meet - request a meeting with the
24 Minister to discuss the areas of concern or words to that
25 effect.

26
27 Q. How is that responsive to what the Minister was
28 actually asking for?

29 A. Well, we were looking for trying to get a face-to-face
30 meeting with her.

31
32 Q. How is that responsive to what she was actually asking
33 for?

34 A. Well, that was the resolution of council.

35
36 Q. How is that actually responsive to what she was asking
37 for?

38 A. There was a second part of the question - a second
39 part of the recommendation that I don't - that I don't
40 have.

41
42 Q. Pardon me. I can get it for you but --

43
44 THE COMMISSIONER: Yes, in fairness, perhaps
45 Councillor Gair should see it.

46
47 MR PARISH: I think it's in Exhibit E at the start.

1
2 Q. Do you have page 4 of tender bundle E in front of you?
3 A. I do, that is, "Is untenable" the first two words.
4
5 Q. No. Page 4, tender bundle E.
6 A. Page 2, page 3, page 4.
7
8 Q. Page 4.
9 A. Yes, yes, "Notice of intention to issue a suspension
10 order".
11
12 Q. That's the document we're talking about. Do you see
13 there:
14
15 *I am aware there have been long-standing*
16 *divisions within council which have lead to*
17 *numerous Code of Conduct complaints and*
18 *complaints about poor meeting practice.*
19
20 Do you accept that?
21 A. Yes.
22
23 Q.
24 *There have been ongoing requests for*
25 *intervention by me and the Office of Local*
26 *Government to address behavioural issues at*
27 *council and the effectiveness of council*
28 *decision-making.*
29
30 Do you see that?
31 A. Yes.
32
33 Q. Do you accept that?
34 A. Yes.
35
36 Q. Next paragraph:
37
38 *Allegations of harassing and bullying*
39 *behaviour towards council staff have been*
40 *made, concerns have been raised by both*
41 *councillors and staff about the impact of*
42 *these behaviours on the health and*
43 *well-being of staff at the council.*
44
45 Do you see that?
46 A. Yes.
47

1 Q. Do you accept that both those allegations and concerns
2 were raised?

3 A. Yes.

4

5 Q. And I take it from your evidence this afternoon that
6 you accept that those concerns were valid and present?

7 A. Yes, I believe so.

8

9 Q. In the next paragraph:

10

11 *The OLG has previously attempted to work*
12 *with council to improve the underlying*
13 *behaviours.*

14

15 Do you agree with that?

16 A. Yes.

17

18 Q. And then there's some procedural history which I take
19 you don't cavil with; is that fair?

20 A. Mmm-hmm, yes, sir.

21

22 Q. Then there is reference to certain meetings at the
23 22 February 2021 finance committee meeting and the ordinary
24 meeting on 24 February 2021, which I think we've had
25 multiple views of, at least in short form; do you accept
26 that?

27 A. Yes.

28

29 Q. The Minister then says that she's:

30

31 *... formed the view that the PIO was*
32 *unsuccessful in effecting cultural change.*
33 *These are serious matters.*

34

35 And then over the page:

36

37 *In circumstances where relationships*
38 *between the councillors themselves and*
39 *between the councillors and key officers*
40 *has broken down that position is untenable.*

41

42 And the Minister notes that she's:

43

44 *... formed the preliminary view that there*
45 *are significant reputational work, health*
46 *and safety risks.*

47

1 Do you see that?

2 A. M'mm, yes.

3

4 Q. Just skipping to the bottom now, she invites the
5 council to make a submission in respect of the proposed
6 suspension.

7

8 She says:

9

10 *I invite council to provide its written*
11 *response within seven days of the date of*
12 *this notice.*

13

14 Do you see that?

15 A. Yes.

16

17 Q. Do you accept that what the Minister was seeking was a
18 written response within seven days of the date of this
19 notice?

20 A. Yes.

21

22 Q. Do you think in retrospect that perhaps a meeting on
23 the seventh day was cutting things a bit fine?

24 A. I took advice and that was seen to be that the - that
25 was quite in order.

26

27 Q. And, given that the invitation is for a written
28 response within seven days, do you think that a set of
29 resolutions passed noting certain matters at the
30 extraordinary meeting sufficed to meet this request?

31 A. I did, but I - going to the top of the page - and I'm
32 not - I make a comment and it will probably be considered a
33 cynical comment: I believe the decision had been made. I
34 went to the ABC or 2ST, someone rang me, and I said, "Look,
35 I" - after we'd done that resolution that we asked for a
36 meeting, I said, "Reading the letter from the Minister I -
37 don't matter what we do, I believe we were going to be
38 suspended", but I said, "We have sent a submission
39 requesting that we be allowed to meet her", and that's it.

40

41 Q. Can I just take you back to your press release,
42 Exhibit 0 for a second. Just quoting from you, I think,
43 maybe this is a quote attributed to - no, it's attributed
44 to you:

45

46 *"Councillors and senior staff were guilty*
47 *of resisting political pressure to approve*

1 *a major land development without the*
2 *necessary infrastructure like sewerage in*
3 *place. So, we were suspended".*
4

5 Do you see that?

6 A. Yes.

7
8 Q. So you draw a direct link, do you, between the
9 political pressure to approve a major land development and
10 your suspension; is that correct?

11 A. That is the inference here.

12
13 Q. And, just a little bit further down you say that:

14
15 *The pressure had come from the two local*
16 *Liberal MPs, Wendy Tuckerman, who is now*
17 *the Minister for Local Government, and*
18 *Nathaniel Smith.*
19

20 Do you see that?

21 A. I do.

22
23 Q. Are you suggesting there that the political pressure
24 was specifically from Wendy Tuckerman and Nathaniel Smith?

25 A. Not so much Nathaniel on this. Nathaniel Smith was
26 very keen to see, in my opinion, see the shire paved and
27 built on.

28
29 Q. Right, so you're just referring to Wendy Tuckerman in
30 this respect?

31 A. So, he - and this was a position that a councillor
32 took and I believe that has been espoused in this chamber.

33
34 Q. I understand that, but just trying to get an idea of
35 what you're talking about here. You refer to the political
36 pressure in respect of this land development, and it
37 followed therefore that you were suspended; that's correct?

38 A. That's correct.

39
40 Q. And the pressure was from Wendy Tuckerman; that's
41 correct?

42 A. Wendy Tuckerman came and saw me and Barry Paull in
43 relation to --

44
45 Q. I'm not asking that, I'm asking if you are referring
46 to Wendy Tuckerman in this press release as the person --

47 A. Yes, yes, yes.

1
2 Q. -- who was placing that pressure?
3 A. Yes.
4
5 Q. And is it fair to read that as meaning that you are
6 attributing Wendy Tuckerman as the person who got you
7 suspended?
8 A. Ah, one of, and many more.
9
10 Q. Are you suggesting there that Wendy Tuckerman was one
11 of the people who took steps to get you suspended?
12 A. To keep us suspended I can't answer. To get us
13 suspended, definitely, she did two press statements with
14 Nathaniel Smith, and both of those said that they wanted us
15 suspended, and I am so disappointed Wendy Tuckerman did
16 that. I spent the previous week, we were together at an
17 opening and I took her on a photo shoot, and she rang me
18 and said what was my feeling, and then, she does this. I
19 mean, just --
20
21 Q. What precisely did she do, sorry?
22 A. She then stood on the front steps out here or wherever
23 and got her photo taken saying she supports us - wants us
24 suspended and I --
25
26 Q. She wasn't the person that made the decision about the
27 suspension, though, was she?
28 A. No, sir.
29
30 Q. She wasn't the Minister at the time, was she?
31 A. She wasn't.
32
33 Q. Can I just ask: we've seen multiple clips in this
34 inquiry where you had to grapple with antagonistic
35 councillors --
36 A. Yes.
37
38 Q. -- to try a use a neutral term, enthusiastic, perhaps
39 councillors. What effect did that have on you as the mayor
40 and chair of these meetings?
41 A. I was suffering a fair bit. The bushfires and the
42 time and effort that I put in there, the comments from the
43 administrator that I had not performed well in relation to
44 leading this shire, denigrating my reputation, and I went
45 to the Supreme Court on a bloke who tried to defame me and
46 I'm owed \$108,000: I'll never get it. But that had a
47 definite effect on me, I know that. And then the

1 continuing - I mean, I was lucky that I still have a house.
2 I have had every chance of losing my house and business.
3 And then I took a break, I just was over it, I just got
4 away, and then these - then, as I've said before, at a time
5 when the council should have put their animosities to one
6 side and said, "We're in a COVID, we're in a lockdown,
7 we've had a bushfire, we've had the worst national
8 catastrophe in fires in the history of this nation but, no,
9 councillors still wanted to fan the flames, entice the -
10 encourage the community in some sections to denigrate and
11 bully and harass council, council staff: it was just
12 deplorable.
13

14 And, as much as the suspension of council is - is a
15 very sad indictment on this community and we have let them
16 down so badly for the actions of a few, and the poor
17 reporting that was done in relation to the bushfire: you
18 know, nobody said about us getting buses on the Monday
19 after and getting people back down to Balmoral and having
20 councillors and going to the emergency meetings and John
21 Klepczarek, what the work he did. It was the RFS Fire, I
22 attended all the emergency meetings, I went to the
23 evacuation centres, I went to the RFS sheds, I went to all
24 the community meetings, and then to be told that, "Yeah,
25 you're not much of a leader", you know, that's merely a
26 defamation derogatory statement.
27

28 Q. We've had three weeks of evidence now and seen
29 multiple clips of you attempting to wrangle councillors.
30 Do you think some member of the public who would want to
31 become involved in public life and contribute to their
32 community would want your job if they'd been watching this
33 inquiry and seeing the role that you have to undertake?

34 A. You know, the biggest dissension in my opinion was the
35 councillors wanted my job, and if they couldn't have it,
36 they'd try and destroy me. They missed out on it, so there
37 is always somebody who wants to be mayor, that will always
38 be the case, and there will always be people who want to
39 try and help the community and lead the community.
40

41 To answer your question, I approached three ladies to
42 run on my ticket and they all said, "I wouldn't, not a hope
43 in the world, not with the people who you've got on there".
44 So, we've been criticised for an all male council; that's
45 the reason because, as you pointed out regularly through
46 today of the bullying and harassment by certain
47 councillors.

1
2 I mean, the general manager, you know, she's - they
3 beat her into the ground; they beat her into the ground,
4 and they can walk away, "Ah, we achieved what we aimed to
5 do, we brought the council down. We got rid of the general
6 manager. We're good people". No you're not.

7
8 Q. Is that suggestive to you of the need for a change in
9 culture in this council?

10 A. The culture was introduced in 2012-2016. To a degree
11 in the later stages of the 2008-2012 council, but was
12 introduced in 2012-2016. It then expanded, bloomed and
13 flowered in the 2016-2020 session and, as I say, it's going
14 to take years to community to restore the confidence in
15 regards to sections of the council operations, if
16 councillors who run and get elected come on with the
17 correct intent, and I will say this quite publicly, that
18 certain councillors have run on a ticket to get rid of the
19 general manager when they've got on here, and they have:
20 Mike Hyde was one and David McGowan back in the turn of the
21 century was another. I have supplied referees for all of
22 those general managers and I still talk to them - not all
23 of them - to this day, and I always had a good
24 relationship.

25
26 So, to your question, it can be done, but people have
27 to look at it that they're being elected for the right
28 reason and not for their own personal satisfaction. And,
29 in saying that, the minority of councillors - Councillor
30 Nelson: I got 20 per cent of the vote, which is three and a
31 half - 5,000-something votes, which means one in five voted
32 for me, but the level there is, four in five didn't. But
33 three of the councillors who have been named in this
34 inquiry didn't get quota; the three of them combined didn't
35 get as many as I got, all of them combined, so --

36
37 THE COMMISSIONER: Q. I think you were the only one,
38 were you? Were you the only one to get quota?

39 A. Oh, no, no, no. I think six got - five got quota.

40
41 Q. Only after redistribution.

42 A. Yeah --

43
44 Q. You were the only one to get it first round; is that
45 right?

46 A. I topped the poll --
47

1 Q. Yes.

2 A. I mean, I don't take political donations, I self-fund
3 so nobody can ring me up and say, "Remember that \$500 I
4 gave you?", so I can hold my head high on that. But the
5 culture of the people who run has to be for the community
6 and not for their social position or their political
7 advancement.

8

9 MR PARISH: Q. Pardon me. Are you broadly optimistic if
10 either the councillors returned or there is an election,
11 that there will be a change in culture?

12 A. That's a rhetorical question and I can't answer that.
13 I would like to think so. We could say the same thing
14 about the State Government, we could say the same thing
15 about the Federal Government.

16

17 THE COMMISSIONER: That's probably fair.

18

19 THE WITNESS: It's up to the community to vote for who
20 they wish, it's democracy, and sometimes you get a good
21 bunch, sometimes you don't, and it's ...

22

23 THE COMMISSIONER: Q. Given the development of what
24 might be described as a dysfunctional culture over three
25 terms of council, I appreciate you have strong views on the
26 administrator and what he said and perhaps what he's done,
27 but it's been suggested to me that we've come to a point
28 where the relationship between the community and the
29 council, and between the governing body and the community,
30 so both between at the organisational elected body levels
31 needed a circuit breaker, something to stop the culture,
32 strengthen the organisation and then move forward together?

33 A. Well, that's got to start right at the very top here,
34 and I don't believe it is. I think the --

35

36 Q. Well, just, I won't cut you off from saying what you
37 want to say, but what about the concept?

38 A. I believe that the councillors who are here have
39 remained and not resigned, and all save one, I believe we
40 work together and have shown that we work together. It's
41 not block voting, you know --

42

43 Q. Sorry, I thought you'd agreed on a number of occasions
44 that there was a dysfunctional culture developing over
45 three terms of council; do you agree?

46 A. I said that with minorities and I tried to get that
47 message across.

1
2 Q. Sure, but minorities are part of the whole, are they
3 not?
4 A. Sorry?
5
6 Q. Minorities are part of the whole?
7 A. Yes, well, that's what I believe.
8
9 Q. And your view is that the minorities in each of those
10 terms have had a pretty significant effect on the whole,
11 isn't it?
12 A. Yes, sir.
13
14 Q. So, do you see some logic in the idea that the
15 continuation of that sort of culture and that sort of
16 effect on the governing body and the organisation couldn't
17 continue?
18 A. Oh, that's why we're in this situation, I believe. I
19 still have faith in the human race --
20
21 Q. I'm not suggesting you shouldn't, but do you think
22 that, you know - would you agree with the proposition that
23 it just couldn't continue the way it was?
24 A. It - you're correct, Commissioner, it needed the
25 circuit breaker. I didn't want to see a suspension, I --
26
27 Q. I fully accept that. But now that we are where we
28 are --
29 A. I don't support where we are, I don't support the
30 organisation to where it is, and I believe it was handled
31 very, very poorly.
32
33 MR PARISH: I have no further specific questions,
34 Commissioner.
35
36 Q. Councillor Gair, the approach we've been taking is to
37 ask you for any further topics that you wish to address on
38 and, once you tell me what those are, I'll determine
39 whether they fall within the terms of reference and ask you
40 questions about them.
41 A. In the terms of reference I have - I have made in my
42 submission certain suggestions.
43
44 Q. Yes.
45 A. And one of them is that you never have one
46 administrator, you have two. The powers of the
47 administrator should be reviewed so as to stop this slash

1 and burn approach.

2

3 Q. Can I just pause there. I have read, as has the
4 Commissioner several times, your submission and we will
5 give it careful consideration, but I'm not totally sold on
6 the idea that the conduct of the administrator falls within
7 Term 4.

8 A. Yes, I can see that, it hasn't been - questions
9 haven't been asked in that relation, but in relation to the
10 bushfire report, that to me is a false document in the
11 respect that I wasn't - I didn't know we had to make a
12 submission: I didn't know, nobody told me. I live 20Ks out
13 of town, and because of COVID I didn't come into town. So,
14 for a document of that importance - that importance - not
15 to speak to the five people who were so critically and
16 closely involved, and if that story were to be told, there
17 may be the attitude of the community towards council and
18 what we did actually do, may have altered so --

19

20 THE COMMISSIONER: Q. What criticisms do you think the
21 bushfire report level?

22 A. Oh, I think, Mr Commissioner, that it left a - it has
23 left a justification to the community by those naysayers
24 and critics that their comments are justified. There's
25 been no - but every report you read: I'd like to see how
26 the brief reads, not with the terms of reference, and were
27 any of the reports vetted or sanitised before they were
28 released? I just believe that (indistinct) --

29

30 Q. Sorry, were they sanitised before they were released?
31 Are you suggesting they've been changed before --

32 A. I don't know, I don't know.

33

34 Q. So, what's the point of raising it?

35 A. Because I don't know and I am so disappointed that the
36 community has been led down a path by a report that didn't
37 contain all the information. And John Klepczarek, who's
38 now superintendent down on the southern zone, I mean, he
39 rang me at 3 o'clock or 4 o'clock on Friday afternoon and
40 said, "I want you to call an emergency meeting, and you
41 can't come down to the fire ground, it's still active,
42 you'll have to wait until Sunday - on the Monday".

43

44 And on the Monday we had an emergency meeting here, we
45 had a \$140,000, we opened up the Mayoral Relief Fund, we
46 gave everybody \$500 who was affected, we've given all
47 landowners affected \$1,000, and the community say we

1 handled it badly. We didn't handle it badly. There are
2 improvements that can be made, it was the greatest
3 catastrophe Australia's ever seen, and everybody was caught
4 short, including Wingecarribee Shire, as was the State
5 Government, and I think the criticisms that have been
6 levelled at us is totally, totally unfortunate.

7
8 MR PARISH: Q. Are there any other topics you wish to
9 address us on?

10 A. I could go on but I'm going to stop there.

11
12 Q. You can take it we have read your submissions and
13 we'll give them consideration and you'll have an
14 opportunity to provide written submissions in response in
15 due course.

16 A. Okay. This Graham Kelly: he's made a defamed
17 statement against me.

18
19 Q. I'm going to call that one outside the terms of
20 reference, I'm afraid.

21 A. That was the one that he had a go at me that I rang
22 for some perverse pleasure at the - when the RRC went up -
23 that I had got perverse pleasure in ringing the radio
24 stations. The roads were closed, the tip was closed. I
25 rang the radio station to advise the community, "Don't come
26 to the RRC, you can't get there. If you're coming from
27 Mittagong, stay at home". No, he says I'm perverse. I
28 mean, they're sick people, some people.

29
30 THE COMMISSIONER: Q. Are there any other matters you
31 wish to draw to my attention?

32 A. No, thank you very much, Mr Parish, I thank you for
33 your - you and the Commissioner's handling of it. I hope
34 that there can be a positive outcome for the community.
35 And again, I just apologise to the community to see their
36 representative behave and carry on in the manner that is
37 not befitting of this shire.

38
39 THE COMMISSIONER: Yes. Are there any applications? No.

40
41 Yes, thank you, Councillor Gair, I do want to express
42 my thanks to you, I know you thought you would be starting
43 earlier today and you were kept waiting, and then I know
44 we've had a very long day when, no doubt, you would rather
45 be doing something else on this day before the long
46 weekend. So, none of that is lost on me and I do
47 appreciate your patience with us in getting you started and

1 then being willing to sit late so we could complete your
2 evidence today, so I thank you for that.

3
4 As I've said to everyone who's come here, I do accept
5 that answering a summons and coming to answer questions is
6 a matter of not insignificant inconvenience, so my
7 appreciation to you and every other witness who has done
8 so. You are excused from further attendance on your
9 summons and free to go.

10
11 THE WITNESS: Thank you very much, and thank you to the
12 staff and that gentleman over there, he looked after me.

13
14 THE COMMISSIONER: Yes, I'll be coming to Mr Vong shortly.
15 Yes, I'm sorry, did you wish to say something else?

16
17 THE WITNESS: Yes, just thank you and I hope you all have
18 a safe break and enjoy the Christmas holiday - ah,
19 Christmas, Easter.

20
21 MR PARISH: You too.

22
23 <THE WITNESS WITHDREW

24
25 THE COMMISSIONER: Mr Parish, I'm going to mark as
26 Exhibit V, V for victor, the document headed "Postponement
27 of the 2021 Government Elections".

28
29 <EXHIBIT #V - THE POSTPONEMENT OF THE 2021 GOVERNMENT
30 ELECTIONS.

31
32 THE COMMISSIONER: Mr Broad, there's the original. Are
33 there any other documentary matters?

34
35 MR PARISH: Not for now, there may be some tenders, but we
36 still have one witness to go.

37
38 THE COMMISSIONER: Yes, what is the proposal?

39
40 MR PARISH: The proposal at this stage is to have our last
41 witness, Lisa Miscamble, general manager, examined on
42 26 April.

43
44 THE COMMISSIONER: Yes.

45
46 MR PARISH: That at this stage may well be done by Zoom or
47 some other form of technology, and there will also be a

1 considerable amount of tidy up tenders at the same time at
2 this stage.
3
4 THE COMMISSIONER: All right. Well, shortly when I
5 adjourn, I'll adjourn until the 26th, is it?
6
7 MR PARISH: Yes.
8
9 THE COMMISSIONER: At what time?
10
11 MR PARISH: About midday.
12
13 THE COMMISSIONER: Noon. Yes, all right. I'll do that
14 and then, whether it's by Zoom or in person, we'll make
15 that announcement on the inquiry web page.
16
17 MR PARISH: Yes.
18
19 THE COMMISSIONER: Before I adjourn, I was proposing to
20 make some directions about written submissions, I don't
21 think that should await Ms Miscamble's evidence.
22
23 MR PARISH: No.
24
25 THE COMMISSIONER: Do you agree?
26
27 MR PARISH: I agree.
28
29 THE COMMISSIONER: I'll read out what I'm going to propose
30 and then, if you don't have any difficulty with it, then
31 I'll have it reduced to writing and placed on the website
32 and sent to those persons who are affected by the terms of
33 reference, but my proposed direction as to written
34 submissions will be as follows:
35
36 1. Counsel Assisting is to provide written
37 submissions with reference to the evidence by 9 May 2022.
38
39 2. Any suspended councillor, former councillor over
40 the 2016 term, the Council or the Interim Administrator who
41 wishes to make written submissions, including in response
42 to those of Counsel Assisting, is required to provide those
43 to me, including references to the evidence, by 23 May
44 2022.
45
46 3. Counsel Assisting is to provide any written
47 submissions in reply to the submissions received in

1 accordance with direction No.2 by 30 May 2022.

2

3 Does any of that pose you any difficulty, Mr Parish?

4

5 MR PARISH: No, Commissioner.

6

7 THE COMMISSIONER: All right. I'll make that direction
8 but I'll reduce it to writing and place it on the web page.

9

10 Mr Broad, once that's done on Tuesday, I'd ask that
11 you or Ms Hewson make arrangements for that direction to be
12 sent to the suspended and former councillors of the 2016
13 term, the Council, and the Interim Administrator and also
14 have it published on the website.

15

16 Councillor Gair, did you wish to say something?

17

18 CLR GAIR: No, I'm just listening to you.

19

20 THE COMMISSIONER: That's fine.

21

22 Finally, before I adjourn, there's a few people I wish
23 to thank given that our appearance on the next occasion may
24 well be of shorter duration, it seems appropriate to do it
25 now.

26

27 Firstly, can I thank the transcription service, Epiq,
28 some of them who aren't here but I expect they'll be
29 listening down the line as well as those who have been
30 here, I do appreciate their excellent service as always,
31 but also for being flexible to juggle some unusual sitting
32 times such as those that we have here.

33

34 Secondly, I should thank the Council for making this
35 facility available to us, not only the hearing room but
36 some additional office space; it has enabled these
37 proceedings to be streamed to a very large number of
38 people. I haven't done a recent check, but the streams
39 have been receiving hundreds of views per day, which on any
40 view is far more people than can be packed into here. So,
41 I appreciate, as I said on day one, there was some concerns
42 about the public nature of this inquiry, and I think that
43 has well and truly shown those to be concerns that we have
44 been able to address.

45

46 To, in particular, staff of the Council, although I
47 appreciate there are many, many other people behind the

1 scenes who have assisted with the matters for this inquiry.
2 Mr Vong, who has provided exceptional IT support to us all,
3 including enabling us to have the live stream go off for
4 14 days without a single hiccup. My gratitude to him.

5
6 Ms Racomelara: again, she was appointed as the liaison
7 point between the Inquiry and Council. Her industry in
8 responding to requests at short notice, I accept with no
9 doubt support from other staff, has been of great
10 assistance to the Inquiry. Many requests for documents
11 have been made over the last three weeks and they've been
12 responded to promptly. My thanks go to her, not only for
13 those too during these three weeks, but also in the lead-up
14 to the hearing.

15
16 Mr Parish, my thanks to you. Your assistance to the
17 conduct of the Inquiry so far, and no doubt into the
18 future, has ensured that it's been able to be conducted
19 efficiently, openly and thoroughly.

20
21 And, finally, to the officers assisting the Inquiry,
22 Ms Hewson and Mr Broad, the work that goes in behind the
23 scenes to enable a hearing of this kind to run in the
24 efficient manner in which it has cannot be underestimated.
25 Many, many months of work have gone into what has been
26 produced over the last 14 days, and my sincere thanks to
27 them for their unwavering efforts and support to both
28 Counsel Assisting and myself since the Inquiry was
29 announced and, no doubt, over the next few weeks until the
30 conclusion of it with the ultimate delivery of my report.

31
32 It is my desire to finalise the report as quickly as
33 possible after the closure of written submissions, but at
34 the moment I am unable to predict when that might be, but
35 it is something I propose to and will try to do as soon as
36 is possible.

37
38 Mr Parish, is there anything else I need to do at the
39 moment?

40
41 MR PARISH: No, I'd like to repeat your thanks as well to
42 all the staff as well as my family for putting up with my
43 absence and, through you, I'd also like to ask that my
44 daughter stop watching this live stream and either go to
45 bed or watch anything else.

46
47 THE COMMISSIONER: That may say something about the

1 excitement levels in your household if she's still
2 watching.

3
4 MR PARISH: Quite, and my absence perhaps.

5
6 THE COMMISSIONER: And your absence, indeed, yes.

7
8 Thank you to all those who have sat late, I appreciate
9 the significant inconvenience it must have caused you given
10 this is a Thursday before the long weekend.

11
12 That's enough from me, I'll adjourn until 12 noon on
13 26 May, thank you.

14
15 **AT 6.48PM THE INQUIRY WAS ADJOURNED TO**
16 **THURSDAY, 26 MAY 2022 AT 12 NOON**
17
18
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