WINGECARRIBEE SHIRE COUNCIL PUBLIC INQUIRY

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

Before: **Mr Ross Glover (Commissioner)**

Mr David Parish (Counsel Assisting)
Mr Angus Broad (Officer Assisting)
Ms Bron Hewson (Officer Assisting)

On Monday, 4 April 2022 at 10.06am

(Day 6)

THE COMMISSIONER: Yes, we'll resume. Apologies for that short delay. Mr Parish.

MR PARISH: Thank you, Commissioner. My first witness this morning is Dennis McManus.

THE COMMISSIONER: Yes, come forward, please, sir. That's a salient reminder to us all to have all devices to mute throughout the day, please. And a reminder to those watching that there's to be no recording of these proceedings whether by video, audio or still image. Thank you.

<DENNIS MCMANUS, sworn: [10.07am]

THE COMMISSIONER: Thank you, sir, please have a seat. In Parish.

<EXAMINATION BY MR PARISH:

MR PARISH: Q. Mr McManus, could I start by asking for some details about your personal and vocational background?
A. Sure, that's fine. Commissioner, I had a 40-year career in Planning and Heritage with the New South Wales Government until I retired in 2006. Between 1981 and 2006 - one second - I was a senior heritage officer with the New South Wales Heritage. In my role there I developed with colleagues best practice guidelines and services for local government, but I was during that whole time the grants officer, so, in a positive position, as I said, in 2006 I retired.

I should also say, sorry, of course I have degrees in Planning and Heritage and Australian history, and I currently call myself an honorary heritage consultant, that means you don't give advice and you don't get paid. I am a community rep on council's Wingecarribee Heritage Advisory Committee, and I've been there since 2011, and last year I was appointed as a community rep on council's local planning panel and also the southern region planning panel.

Q. When did you move down to the shire?
A. I moved here in 1999.

Q. Can you tell the Commissioner a little bit about the Heritage Advisory Committee.
A. Okay.

Q. Start with who constitutes it, who makes it up?
A. I'm sorry, I missed your point there?

Q. Who sits on it?
A. Oh, okay, good. Look, with the Heritage Advisory Committee it's well to say perhaps in advance that when I first came down here I was impressed with the council set-up because they seemed to have all of the things that we talked about back in the heritage office in place for good heritage management. They'd done a heritage study, they had a heritage committee, they had a heritage advisor, they had a local fund to assist projects, they had a heritage advisor who would come once a month and that's continued since, and they also had promotion, and importantly they also looked after their own buildings. Now, they have a lot of heritage buildings, because in 1981 it was the amalgamation of three councils.

So far as the committee is concerned, I'm not sure exactly what year that started; it certainly was there before I joined in 2011, and the committee structure in recent times has had two councillors on the committee and six representatives from the community. Now, three of those represent the three major bodies involved in heritage in the area: the Berrima District Historical Society, the Australian Garden History Society and the National Trust. Do you need to know the names of those people?

Q. No.
A. I'm happy to say who they are. As well as those three bodies the other three, and I'm one of them, are nominated as community reps. I'm pleased to say that of those six representatives of the community five of those have had extremely long experience in heritage, including myself; all of them, we're talking about a couple hundred years of experience, so it is a very professional body and I think the council's been well served; of course, we've been very happy that the council has had that committee and it has continued.

Q. You were first nominated in 2011; is that correct?
A. That's correct.

Q. Do you know who nominated you?
A. Well, look, I probably nominated myself actually. I think the procedure then and probably since has been that

council calls for nominations. I guess since, once you're on the committee you're asked, do you wish to stand again? So, I think the first time round, yes, I - I think council advertised for people, so you can nominate yourself.

Q. How often does the committee meet? Or shall I say at this stage, if it's changed over the time you've been involved, by all means --
A. Yes, it has changed over time a bit. When I first joined my memory was every two months, then it moved to four times a year. We asked - we said this was not enough and we went back to six times a year. Of course, since COVID there really have been no meetings, so the current situation is, currently any connection with the committee is by email. So, we haven't - I'm not sure the date when the last four meetings ended. I will touch on, either now or later, the committee has had since 2020 a major task which has been to review heritage and in relation to that we have had three important all day workshops to go through those items. But so far as the committee meeting on a regular basis, that hasn't happened, and I guess it's probably true of the other committees of council as well.

Q. In broad compass to start off, what does the Heritage Committee do? What is their role?
A. Okay. Well, its role essentially is to provide advice to council in general terms in relation to heritage. I would see that an important role would be to major sure it's got good forward planning in place for heritage. And the heritage review which we conducted and submitted the report on last year would be a classic case of that, to get in front of problems. It has been a major exercise.

In relation to development applications, the committee has - is supplied with advice, is advised on matters touching on heritage items. Excuse me a second - a very dry throat, sorry. So, again, these are typically circulated by email and advice then given in relation to those items if it's something we've taken the view it's a matter where we are adding value. If it's something that looks as though it's been handled quite well by the officer and the heritage advisor we will usually make no comment on that. But if it's something that we feel as though this is a disturbing item, we will make comment on that, and that will be registered.

Q. How do the DAs which you consider come before the

committee?
A. Okay. So, an officer and council, they would be seen by the council's heritage officer, but typically the DA assessors realise that there's a standing arrangement whereby anything involving a heritage item or impacting on a heritage item will be referred to us, and typically we would receive what a neighbour would get. So, if a neighbour gets advice, typically a couple of pages, a brief mention of what the item is, a map of the item, and of course importantly the DA number. So, the council doesn't supply us with information, but we can then go to the DA tracker and see what it is that's being proposed, and typically on a heritage item you would have the full architectural drawings, you would have a heritage impact statement, you'd have the statement of environmental effects, so we've got fairly good access to that. But the key point, as you rightly ask, is that we are advised.

Now, occasionally things might go wrong and we wouldn't hear about it or it comes another way and we would ask and we can then make comment.

Q. If I use the phrase, "Schedule 5 heritage items", would that make sense to you?
A. Well, Schedule 5 is all the items on the LEP, and the LEP we're talking about here is the 2010 LEP?

Q. Yes.
A. Yes, that's right.

Q. Do matters outside heritage items in Schedule 5 come before the committee?
A. Yes, they do.

Q. Why?
A. Because they might be considered to be of heritage interest, or they are items possibly known to a council officer in relation to 251 items that were deferred by council in 2012. But there would be items - yeah, that's right, so anything that's of potential interest from a heritage point of view would come to us.

Q. Do you advise - by "you" I mean the committee - does the committee advise on whether items should be added to Schedule 5?
A. Yes, and in fact that was entirely the reason for the review that we presented to the council last year. And to

say now, and I'm happy to expand on that, but the reason for this review was that back in 2012 the council, wrongly in my opinion, decided in relation to a consultant report to only list a small number of items compared to those that had been recommended.

And, just to say, Commissioner, the consultant report was 2009, it was looked at and reported on to council in 2012. The report from the council and the consultants recommended that 400 items be listed and be placed on public exhibition and this is what happened.

In November of that year, we're talking 2012, the council decided that it would only list the items that it owned and any items that people were happy to have listed. So, this was totally contrary to best management practice which was, of course, to list on the basis of heritage significance. So, as a result of those 400, only 80 went forward. The council on the same meeting in November 2012 deferred 251 items.

Now, these have been a complete thorn in the side ever since because, although they deferred them for further consideration, they did nothing; neither the staff nor the council, did nothing to bring them back, look at them again.

In 2020 the committee raised this matter a number of times. In 2020, as I perhaps alluded to already, the matter was brought before the council. Now, we're talking about 13 May 2020, a motion was put by Councillor Graham McLaughlin and seconded by Peter Nelson. Now, Graham McLaughlin was the chair of the committee, Peter Nelson was deputy chair, and that motion was, if I can just read my words:

> *That a report on the items deferred in 2012 be brought back to council for a resolution to progress these items.*

Now, I did speak to the council on that occasion on behalf of the committee, and I did confirm again that best practice heritage management across New South Wales in dealing with heritage items was to list them on the basis of heritage significance, meaning that they meet the seven established criteria, or some of those criteria, and to manage them in a professional and practical way and with

respect for owners. And I did note at the time that the proper processing of those deferred items would provide for transparency and certainty for current and future owners in the community and that such transparency does not currently exist.

Now, I did sight three examples that had come up and they were Welby Park Manor in Mittagong, Rochester Park at Bundanoon and the (indistinct) tower at Exeter. Now, all these three properties were on the 2012 proposal to go forward knocked by the council, this deferral; they were all subject to subdivision development, and in the case of Welby Park and Rochester Park expensive, time-consuming and stressful litigation for the owners, the community and council officers.

And, I might say, this same thing continues. Last year in relation to a project Karingal in Moss Vale, also on the 2012 list deferred by council - that is a sort of a time bomb waiting to happen - there's a six lot subdivision. Now, it's been subject to an interim order and also to litigation. So, the concern of the committee here is that, of course, there will be more unless there's proper listing of heritage items.

Now, even though the council resolved to agree with that motion to go back and look at the items, nothing happened: no action was taken and the stated reason was lack of staff and financial resources. Because of the importance of this project the members of the Heritage Advisory Committee said that they would help the heritage officer to do this. Now, we're talking again about experienced and professional people to do it, and that review was in fact commenced in September 2020 and completed last year. And I am pleased to say - I mean, we were pleased to do it because we felt, if it wasn't done, it was never gonna be carried out, we were never gonna have this proper resolution.

The review was assisted by nine local experienced researchers from across the shire and it did include - it involved the inspection of every site and also the application of the heritage criteria to every item. There was a nine-paged report, a covering report, and it was backed by a massive 1,450-plus page reporting, and you can imagine over 4,000 photographs on the 251 items that I have spoken about. As a result of that, by the way, the review

did recommend that 220 of those items proceed to heritage listing.

Now, it may be appropriate, Commissioner, if I also say what else the report had to say because it is cogent, I think, to my comments about heritage management. So, the first abiding concern of the committee has been those 251 items there as a bit of a time bomb not being addressed.

The second one was, what about all the items that have been identified since 2012 which were also not addressed, and so, the review took the opportunity to look at these as well. There were in fact another 338 items that we looked at and 15 conservation areas. So again, we're talking about a major part of the exercise.

The review has recommended that 244 items and 13 new or extended conservation areas proceed to listing. Now, when we say "proceed to listing", the proposal is that the review goes on public exhibition and then consequently a proper LEP listing.

But I'd like to say that the problem with these items, and they're really bringing the council up to speed, as it were, on what it should be managing, is the same as the 251 items; until such time as they're on public exhibition they remain non-transparent to owners, potential owners and the general public, and already we've had a proposal for a demolition on one of the items recommended last year.

The third, if I might say, there's really just a third concern here. The third concern that the committee has had in relation to heritage management has been the issue of, what is permissible in heritage conservation areas? Now, the game has changed in many ways in relation to heritage as a result of state policies, and one can argue whether that's good or not, but of course the impact on our own shire in relation to conservation areas is quite important.

The main issue - well, a main contender here is that the Local Environmental Plan allows medium density seniors housing in all residential zones including all of the conservation areas. In 2019 the Minister for Planning placed a moratorium on seniors medium density housing in greater Sydney and in doing that he said it was:

... to balance the demand for seniors

housing with the need to protect local character and to give councils time to ensure seniors housing provisions align with their local strategic plans.

Now, the moratorium ended November last year but it never extended to Wingecarribee, we are not in Greater Sydney, but more to the point is that Wingecarribee Shire did nothing about it, it's taken no action to ensure there are adequate controls in the conservation areas.

State policy, I mentioned medium density housing but the other thing that's been quite contentious and it's certainly been a problem here, is that, the state policy allows a whole lot of things in residential areas previously not the case: aged care facilities, health facilities, dental facilities, boarding houses, childcare.

Now, although there are good examples of all these being integrated into the conservation areas, they do need well-informed advice and management, and council staff have recognised for years the inadequacies of the current development control plans to give proper guidance, but they've done nothing about that, nothing to correct the situation.

In 2018, there will be other examples, but in 2018 two houses were approved for demolition to allow for a large hospice and medical centre in a Bowral conservation area, and it was a clear example of the failure of the DCP to protect the heritage values in the area.

THE COMMISSIONER: I'm just going to have you pause there. Mr Parish, which of my terms of reference is all of this coming to?

MR PARISH: I will come to all that in a second.

THE COMMISSIONER: Thank you for all of that, that's been very illuminating for me?
A. I thank you, Commissioner.

Q. But I think in order for it to be targeted to my particular terms of reference, we'll get back into a more traditional question and answer flow.
A. Thank you.

Q. So, Mr Parish will direct your attention to the issues that he thinks fall within my purview, thank you.

MR PARISH: I might come to that now, Commissioner.

Q. Mr McManus, are you aware of why the council did not act on the heritage items identified in the 2012 report?
A. Well, I'm not specifically aware of that, I wasn't - I'd only newly come onto the committee, I wasn't even aware of that particular process, so I can't answer that except to say, it seemed to be that they've taken the notion that heritage is an option, you can just decide yourself whether you list it or not and it's not based on significance, which is what should have happened.

Q. Did the 2012 recommendations ever come up in the Heritage Committee?
A. Yes, they did, at later times and we asked several times about what is happening about the reconsideration of these items and of course over time, as I've mentioned, there were applications lodged for development on these sites without any - without the public being aware that they had been recommended for heritage listing.

Q. Did Councillors McLaughlin or Nelson ever articulate reasons why those items had not been listed as heritage from the 2012 recommendations?
A. No. Well, you'll have to understand, Councillor Peter Nelson wouldn't have been on the council at that time, It was only Graham McLaughlin and a number of other councillors there.

THE COMMISSIONER: Yes, I think that highlights the difficulty, perhaps some time parameters, given that the report is 2012.

MR PARISH: Yes.

THE COMMISSIONER: And, as I understood the witness's earlier evidence, the position persisted through that term into the next term.

THE WITNESS: Commissioner, I'm sorry, I didn't quite catch what you were saying there?

THE COMMISSIONER: That's all right, I'm engaging with Mr Parish, asking him to put some time parameters around

perhaps his questions.

MR PARISH: Perhaps I'll ask the question this way.

Q. Between 2016-2020 were there ever discussions in the Heritage Committee about agitating or taking steps to bring to that council's attention the failure to list the recommendations from the 2012 report?
A. Well, they clearly needed to do something about it and that's what happened, in February - sorry, in May 2020.

THE COMMISSIONER: Q. Was that the first time that became an issue at the committee?
A. Well, it had been an issue; the exact years and months when we raised it, I don't remember, but certainly it was one of these things, as I say, a time bomb waiting to happen; it shouldn't have happened.

THE COMMISSIONER: Yes, thank you.

MR PARISH: Q. Can I put this question in the bounds of your larger experience of heritage matters, which is considerable. What do you say to the proposition that heritage items need to go through the governing body and, if the governing body does not vote for those matters to be listed, then that's local democracy and, tough bikkies? What do you say to that proposition?
A. Can you put that question again, I'm not sure what you're meaning there?

Q. Well, the reason that the heritage items, the recommended items were not listed, was because the governing body, the councillors, had not passed a resolution to do so; is that correct?
A. That's correct.

Q. And, if a resolution is not passed, then there isn't a majority; is that correct?
A. Correct, but you'd have to go and say, they did address them by saying they would be deferred; that is, they didn't say they weren't heritage items, they were simply taking the view that only some of these are gonna go forward, and in fact we're talking about just the 80 items, 24 which were owned by council and which would presumably be non-contentious, we're talking about parks and roads and things like that.

Q. And it's that deferral which created the uncertainty which you were giving evidence about before?
A. Definitely. And in my opinion - I mean, put it in plain - well, for many years by the way, those items were referred to on council's website as being a non-disclosed document, so how would you feel coming down from Sydney to buy a heritage building, a building that had been identified as a heritage item, but you couldn't see that anywhere? Your solicitor would only see it if it's on the Schedule 5 list of the LEP. So, it's a failure of transparency in my opinion.

Q. In your 40-year career in Planning and Heritage was that unusual for a council to defer the matter rather than deal with it one way or another?
A. Well, I can't say about every council, but it certainly wasn't accepted practice. Accepted practice was to list things on the basis of heritage significance and then, as I said, you manage them with common sense and with a professional touch: that's what should happen. It's either a heritage item or it's not; it's not somewhere in the ether.

THE COMMISSIONER: Q. In answer to an earlier question you were highlighting the difficulty that a purchaser may have in buying a building that was on the deferred list and the purchaser's solicitor not being able to identify that before the sale had completed. What sort of issues might that present for the ultimate buyer of that property down the track?
A. Well, there are a number of things. Firstly, for someone who - I suppose the extreme example is for developers. Now, there might be this culture, well, we're not really happy about developers, but I do feel sorry for developers in buying a place and not knowing it: that is not correct in my opinion. They should have a clearer idea about what it is that they've got. They sometimes, you know, bought them with goodwill to do a development and then they find, gosh, this item was identified way back in 2009 by the consultants, recognised by the council in 2012, but never put on the list. So, there are those --

Q. Sorry to cut you off, just to continue that line. If then the purchaser put in a development application to do something, perhaps doesn't matter what, would the potential heritage significance of that site then be a matter that would be taken into account although it was never disclosed

in the schedule when assessing that particular application?
A. That's right, and so, what then happens is this - you know, they're probably quickly told, "Well look, we're talking about a heritage item here even though it's not listed", and all sorts of things happen. In the first instance if the council's really worried about it they'll put in an interim heritage order, but this is sort of like the band aid approach rather than having some transparent process up-front. Yes, that's exactly, that's it, and I mentioned a couple of --

Q. Well, it sets up a potential arena for conflict between the purchaser and the council, does it not?
A. Absolutely, that's right. Now, it's not --

Q. And I take it, you would have some sympathy for the purchaser in that position --
A. Well, I do --

Q. Even though you have a commitment to heritage matters, if I can put it that way?
A. That's right. Now, on probably a lesser scale, say with - talking in the case of residential properties, people could also be buying a property thinking, well look, I will - I'm going to demolish this house and build a new house, I've just come down from Sydney, I've got the money, I'd like a new house on the site, the house is a bit run down: so again, they're not forewarned, well look, this is an item with heritage interest, so that can be a problem as well.

Q. Yes, thank you.
A. Now, that's somewhat a lesser problem because typically the buildings we're talking about are of interest to the general public and they are by and large looked after and restored.

THE COMMISSIONER: Thank you. Mr Parish.

MR PARISH: Q. Mr McManus, do you agree with the proposition that there will quite often be a tension between development and heritage as a broad scope of (indistinct) --
A. I'm sorry, I missed the?

Q. Do you agree with the proposition that there may always be a tension between heritage and development?

A. Oh, exactly right, and again, I think it's fair to say - that's right, you would be - it would be totally unrealistic to think that heritage is the main player. I think here there is a case for saying that - I mean, the area's very important in terms - I've actually made the statement, if I can say this:

> *I'm confident saying that the Wingecarribee shire has perhaps the greatest range of natural and man made landscapes and quality built heritage items of any local government area in New South Wales.*

And I've also reflected how much we owe to good planning and heritage management for what the Highlands is today. It's a legacy of the care of past councils, council officers, community and individuals and it's not the result of chance or serendipity.

But counsellor, to go back to your question, yes, of course, the heritage concerns won't always prevail. What you're realistically asking, I think, in the case of my committee or the community at large, is that it will be properly heard, it will be properly addressed, there will be a balance. And I've already made mention of the fact that the Heritage Committee took the view about adding value to the process of development applications by providing advice to the officers dealing with it at council, "Look, have you considered this? Is there another option? How might that be handled? How might the subdivision on a heritage site be handled, and so on.

So, yes, I agree with you, and of course occasionally you would have - and the hospice I referred to in Bowral that went ahead, that was, you know, totally against what the committee had to say. The committee opposed that development, the council took the view that the - and I'm sure it was to do with the hospice itself, the argument that they took the wider view of the community that it should proceed.

The sad thing about that one, of course council weren't to know necessarily, that the hospice failed about three weeks later, nothing happened, and yet the proposed demolition has been approved by the council, and my argument would be, they perhaps could have done something there, including a medical centre that would have respected

the conservation area, but the application didn't.

Q. By and large --
A. In my view that's a failure of a decent development control plan.

Q. In terms of the tension that may arise from time to time between people who want to development and people who want to maintain or conserve heritage, in your experience at least in the 2016-2020 term, do you have a view as to whether that tension was well managed by the governing body, the councillors?
A. Yes, sorry, can you just state that again just so that I'm clear about it?

Q. I'm trying to understand if you have a view on whether the perhaps inevitable tension between conservation and heritage on the one hand and development on the other was - the tension caused by that was well handled by the governing body or the council?
A. Yes, well look, this is a slightly difficult area but I would have to say that I didn't feel as though it was a council that was positive about heritage. Now, we're talking in the broad not about every councillor sitting on that council, but I didn't feel as though it had that positive air.

And I've reflected that that wasn't the case in earlier years, there was a more positive attitude, and the reason why so many of the things about management that I've referred to were in place. But you can have some of those things in place but they're not operating simply because you've got a culture at the council level which is, well, we're not gonna talk too much about heritage, it's not front of mind. That was my perception.

Q. Thank you. Can I ask you how you arrived at that perception? I mean, I think you've raised some issues already, but is there anything else which led you to that view during the 2016-2020 term?
A. Well, I did speak to the council a number of times; typically you get a three minute ability to talk to matters, and I was always a bit conscious that, although I appreciated the chance to talk to it, that that opinion wasn't always respected or my position there respected.

And one councillor, you know, said - which either it

was quite inappropriate given the fact that I'm a volunteer on the committee and served for many years - "Oh, here we go again", and I get three minutes to say something. So, I didn't feel as though that was a very good position to be in.

Q. Which councillor was that?
A. Can we do this on a piece of paper?

Q. I'm fine with that.

THE COMMISSIONER: Q. What meeting was that at, do you know?
A. No, I don't have - the particular item, and I do not have the full details there, it was a proposal for a motor company in relation to Argyle Street, Moss Vale.

MR PARISH: Q. In this 2016-2020 term?
A. Yes, it was. It possibly was 2019.

Q. Thank you.

THE COMMISSIONER: Does that satisfy your inquiry at least for the moment?

MR PARISH: Yes.

Q. If you'd rather not say we'll just leave it --
A. I think so.

Q. -- we can just move on. Can you give any other examples where you felt there was an air of disrespect or a lack of listening at council meetings? Any other specific examples?
A. Well, the other concern I have, it wasn't - I must say, it was not a major issue for the Heritage Committee, and you have to understand again we're talking about basically hundreds of items that have been dealt with by the committee over the years and coming through at an increasing rate; we did express an opinion on Station Street, and I know Station Street has been an issue for the --

Q. Yes.
A. -- I don't wish to say a lot about it except that the committee did express the view that, if it was to proceed, it ought to be in relation to Stage 2 only and we were

concerned about what the impact would be. Now, of course, the upshot of that was that the council didn't agree.

Q. Having heard your evidence, I take it you've attended multiple council meetings in the 2016-2020 term?
A. Yeah. Well look, again, I should make it clear; that's not - I wasn't a big sitter in of council meetings. I must say I've got - you know, it's not something I particularly enjoy, but I did - I have - I probably in that time probably would have attended, I think, about three or four occasions to give a presentation on behalf of the committee. And probably in total, from 2011, probably six or seven times, so I wasn't here a lot and I was more to do with a specific item that would come up. So, as to behaviour of council, I don't really have a view of that because I didn't spend enough time in this chamber to draw - you know, to have an impression on that.

Q. Why didn't you enjoy the council meetings when you did go to them though?
A. Did I enjoy them?

Q. No, I think you said just a minute ago that you did not enjoy going to them; was there a specific reason why?
A. No, I didn't actually say that, I think I was saying it's not something I would look forward to going to.

Q. Yes.
A. And I didn't as a matter of policy, I didn't go along, I didn't observe council meetings. My only real contact with them was when an issue came up and then I would speak to them, and typically probably I was the only person on the committee who would then speak to those items.

Q. Can I ask for your perception of the councillors who you interacted with on the Heritage Committee?
A. Oh, yes. Well, if we're talking - and we can be quite specific here in relation to --

Q. Yes, please.
A. -- 2016-2020. The two councillors on that committee, the chair and vice chair were Graham McLaughlin and Peter Nelson, and I felt very highly of them in particular, and of course it's in my submission, I very much appreciated the interest and concern of Graham McLaughlin.

Q. Thank you. I have no further --

A. Perhaps I should, if I may --

Q. Yes.
A. -- add in relation to Councillor McLaughlin, that to my knowledge he was the only one who ever stood up in relation to any of the heritage items. Now, whether these were items that I spoke to or not, he would be speaking to them and he did this consistently, so in that way he was, you know, very much representing the committee and, as I've said in my submission, perhaps to some extent a lone voice.

Q. Thank you.

MR PARISH: Commissioner, I don't have any further specific questions.

THE COMMISSIONER: Yes, thank you. You proceed.

MR PARISH: Q. Are there any other matters you wish to raise, Mr McManus, in respect of the terms of the inquiry?
A. Thank you, counsellor. Look, there are some other items I'd like to touch on. I have given to the officer some additional notes and I'm not sure - you might advise me whether or not these will be tabled, but they --

Q. They will be read and considered?
A. Thank you for that.

Q. May I also say, we have already covered some of these matters already.
A. We have, exactly right. So, I get --

THE COMMISSIONER: Before you go on, just for the transcript I think I should mark them.
A. Yes.

THE COMMISSIONER: The notes provided by Mr McManus this morning will be at the moment MFI-3.

#MFI-3 - NOTES PROVIDED BY MR MCMANUS.

THE WITNESS: My additional comments will be to say that, and I think the matters I have set out in that additional submission we have mostly covered so I'm respectful of that. But I would like to say that importantly, I think, although I feel as though that time bomb event that I referred to and the consequent one about - well, separate

but related issue about the items identified since: all of these were addressed by this massive effort on the part of the committee and researchers to do the work, but my concern now is - and this is coming up to modern times, but you know there's a relationship back to that council and the previous councils - is that those findings of the committee, working closely with the heritage officer and I appreciated her involvement, and the ability by the way to work with councillors which has been important, we were let into that exercise.

I might say, by the way in relation to that, and I've touched on already, that in fact the council put no money into these exercises; in fact, the three studies in the last five years in relation to heritage have all been funded by the community. There was a $25,000 study of Sutton Forest, Exeter and Berrima landscape that was funded by the Berrima Residents Association; a $10,000 Berrima public spaces project, heritage public spaces, which was funded by the Australian Garden History Society, and the review I've been speaking about which the council officers themselves admit - we're talking about the monetary value of that was over $100,000. But the council put no money into these exercises.

But the concern now is that - that report went in in June, undertakings have been given by senior staff that priority would apply, including the presentation to the February meeting of the local planning panel this year, but it hasn't happened, and there's no serious progress to exhibit the review.

I would only add that sometimes it's said by council officers, of course, well, this is a fault of the past, this past time bomb. But you know really, it can't be left as that because the current council, the administrator and the council staff, they've got the means to ensure better and transparent management and they need to get on with it and that, I think, is the problem here.

THE COMMISSIONER: I think some of those latter things probably extend beyond my terms of reference but it's a very useful context.

A. It may be, but they come as a consequence of that earlier. Thank you, Commissioner.

Q. Thank you. One thing that I wanted to ask you about

is the local planning panel; you're now a representative on that, have I understood that correctly?
A. That's correct, and the regional planning panel.

Q. In terms of the local planning panel, you're one of how many members?
A. Now, that's a good question. I think there probably - there are two other planners, probably planning background. I'm a community rep.

Q. I see.
A. These other people get paid in large part, and the chair, so a committee would be - the panel would be four or five, and I'm the community rep.

Q. Aside from the three, how many members in total, did you say?
A. Sir, I think in total - now, I've only been by the way - I only will be called once or twice a year at most.

Q. Yes.
A. I've only been to one. I have to think about this for a second. There's the chair of the panel, there are typically two experts and then the community rep. In this case I'm an expert as well.

Q. You've been to one meeting, did you say?
A. I have been to one meeting.

Q. Was there another representative from the community?
A. No, there's only ever one.

Q. I see, I understand.
A. And by the way, they draw - they have a pool, possibly five or six pool, and by the way that's important because I'm very conscious and so is the chair of the panel that - of my role here in terms of heritage. So, there would be panels on which I wouldn't be called because there would be a conflict of interest.

Q. Yes, I understand.
A. And in relation to any particular item, I have to declare that and not attend.

Q. Yes, of course, I understand. All right. Mr Parish, anything arising?

MR PARISH: No questions arising out of that.

THE COMMISSIONER: Are there any applications?

CR McLAUGHLIN: Yes, Commissioner, if I could.

THE COMMISSIONER: Just come forward, Councillor McLaughlin. What topics do you seek leave to ask questions about?

CR McLAUGHLIN: Thank you, Mr Commissioner. Just with regards to asking Dennis McManus with regards to his service on the committee.

THE COMMISSIONER: Which committee?

CR McLAUGHLIN: The Heritage Advisory Committee.

THE COMMISSIONER: I think that's been well covered. Is there some particular point of clarification you seek?

CR McLAUGHLIN: I think so. Basically the continuing service and if that was interrupted and why.

THE COMMISSIONER: Okay, ask your question and we'll see how we go.

<EXAMINATION-IN-CHIEF BY CR McLAUGHLIN: [10.58am]

CR McLAUGHLIN: Q. Thank you. Mr McManus, given your time on the Heritage Committee was there a period of time when you left the committee and can you tell this hearing why you did that and why you came back?

THE COMMISSIONER: Well, there's three questions there.
A. Yes.

Q. The first one, was there a period where you were off the committee?
A. Yes.

Q. When was that?
A. 2018.

Q. Yes, until?
A. Well, that was just for a number of months in that year.

Q. I see, and was there a particular reason why?
A. Well, I was not happy about the arrangements that were being made for committee meetings.

Q. In what way?
A. Well, in particular the council had decided not to send development applications to the committee.

Q. Were you ever told why?
A. No.

THE COMMISSIONER: Councillor.

CR McLAUGHLIN: Thank you.

THE COMMISSIONER: That's it?

CR McLAUGHLIN: Q. I might ask Mr McManus why he returned to the committee?
A. Well, and this is because of the intervention of Graham McLaughlin with the mayor to say that a person of my - the loss of a person of my calibre on the committee was to be regretted and that the committee had a good view in relation to development applications and that they were - should be referred, and that was then reinstated, there were certain undertakings given also in relation to how the meetings would take place and the information provided to the committee, and I rejoined.

THE COMMISSIONER: Thank you.

THE WITNESS: Prior to that I thought it was a waste of time going along.

CR McLAUGHLIN: Can I have one more, Mr Commissioner?

THE COMMISSIONER: Depends what it is.

CR McLAUGHLIN: Basically, it's in reference to the Heritage Advisory Committee and what stance we took on Station Street. I think it's quite relevant to you.

THE COMMISSIONER: You're going to have to - I think that's too broad a question. What is the issue that it goes to?

CR McLAUGHLIN: Okay, the recommendation that went to council from the Heritage Advisory Committee in regards to Station Street.

THE COMMISSIONER: How is that relevant to my terms of reference?

CR McLAUGHLIN: Probably the last one, the last reference.

THE COMMISSIONER: Yes, well, I'm going to need a little bit more assistance than that. So, the Heritage Committee made a recommendation about Station Street, yes?

CR McLAUGHLIN: That went to full council.

THE COMMISSIONER: So, that recommendation will be recorded in the business papers?

CR McLAUGHLIN: It is, but there was a certain part of it that was taken out by the then mayor. It was not accepted by the council, should I say.

THE COMMISSIONER: Okay. At the moment I'm still struggling to see precisely what the relevance is to my terms of reference.

CR McLAUGHLIN: Given that Station Street was a very difficult thing for this council and the heritage entrance into Bowral, the Heritage Advisory Committee did have an opinion on that and we did put that as an advisory committee to full council in our minutes.

THE COMMISSIONER: I understand. My terms of reference don't require me to form a view on the merits of Station Street one way or the other. What is the precise question you want to ask the witness?

CR McLAUGHLIN: "What was the recommendation that the Heritage Committee" --

THE COMMISSIONER: That'll be in the business papers, won't it? You'll be able to draw my attention in submissions to the business paper?

CR McLAUGHLIN: Yes, I'd have to look it up, certainly I could.

THE COMMISSIONER: Well, you tell me: is it recorded in the business paper?

CR McLAUGHLIN: It would be, yes, sir.

THE COMMISSIONER: All right. Well, I think rather than asking the witness to recall a precise recommendation that's in documentary form --

CR McLAUGHLIN: Sure.

THE COMMISSIONER: -- I think I'll be more aided, should you wish to refer to it in submissions --

CR McLAUGHLIN: Thank you, I'm sure he would know that.

THE COMMISSIONER: Well, he may well, but this is about assisting me.

CR McLAUGHLIN: Sure.

THE COMMISSIONER: -- if it's in a documentary form then I'll be able to see the full council's response to it, so I don't think that particular question is going to ultimately help me too much. Is there any other question you would seek to ask?

CR McLAUGHLIN: No thanks, Commissioner.

THE COMMISSIONER: Mr Parish, is there anything arising?

MR PARISH: Yes, one matter arising.

Q. You gave some evidence, Mr McManus, on questioning from Councillor McLaughlin that you returned to the committee upon an intervention made by councillors McLaughlin and Mayor Gair; is that correct?
A. That's correct.

Q. And that was to ensure the provision of certain development applications to the committee; is that correct?
A. Correct, yes, which had been the case, of course. We had previously been receiving them and, as I've said to you, commenting on those ones that we thought where we could make, you know, relevant and practical consideration.

Q. Do you know who Mayor Gair and/or Councillor

McLaughlin talked to in the council staff to restart that process?
A. No, I don't know who that would have been, no.

Q. Where did your information come from that that was an intervention that Mayor Gair and Councillor McLaughlin had made within the staff?
A. Well, simply - well, Graham - well, I knew this had happened because we went to see the mayor at that time; Graham arranged the meeting. I hadn't asked for that but he arranged the meeting with Mayor Gair to talk about those issues.

Q. And what was discussed at that meeting?
A. Well, again, we're going back a few years, but it was basically about a better - better working - the best practice management for a Heritage Committee and we felt that it was very important that knew was happening in relation to DAs in relation to heritage items.

Q. And did Mayor Gair and/or Councillor McLaughlin in that meeting assure you that the previous practice would be restored; is that correct?
A. Well, I don't recall whether it happened at the meeting but certainly soon afterwards it happened; sometime afterwards it happened, and I said - and my memory is that Graham McLaughlin said this had happened and I was then happy to rejoin. It seemed to be - would be churlish of me not to join the committee if the things that I had asked for had been met.

MR PARISH: Yes, quite. No other questions.

THE COMMISSIONER: Is there any reason why the witness ought not be excused?

MR PARISH: No, Commissioner.

THE COMMISSIONER: Thanks for your attendance, you are free to go and you are excused from further attendance under your summons.
A. Thank you.

THE COMMISSIONER: Thank you for your time.

<THE WITNESS WITHDREW

THE COMMISSIONER: Mr Parish, the next witness?

MR PARISH: The next witness is Graham Kelly.

<GRAHAM KELLY, affirmed: [11.05am]

THE COMMISSIONER: Thank you, sir. Mr Parish.

<EXAMINATION BY MR PARISH:

MR PARISH: Q. Mr Kelly, could I start with some background: your personal connection with the shire and your vocation?
A. Yes. I should say, I've lived, not initially full-time, but for about 33 years in the shire and about, I guess, 12 or 14 of that have been full-time. By way of my personal background I began my career as a lawyer, at first as an academic at the ANU and then with the Commonwealth Attorney-General's Department providing advice to various departments and often directly to Ministers, mostly in connection with public law issues such as constitutional issues during the life of the Whitlam and Fraser Governments, often directly to Ministers, and often my work included reviewing cabinet submissions for constitutional or other legal issues.

I became Australia's legal attache to the United States and Canada in the late 70s based in Washington DC. My remit often included representing Australia on committees of the United Nations and the OECD.

I then joined one of the Australia's largest corporate law firms, then known as Freehills, practising mainly in regulated industries, eventually becoming its managing partner.

I served on the board of the old state Bank of New South Wales and then later the board of Colonial State Bank for some 14 years in total, becoming then Australia's longest serving bank director.

I then transitioned my career to becoming a professional non-executive director about 25 years ago. I became the chairman of quite a few public listed companies, I think of the order of 10 in all, something like that, including Tab Limited, a company called Infigen Limited which was the third largest wind farm operator in the world

and Australia's largest wind farm operator, and also finally a company called GDI Limited, a listed public company and a major Australian commercial property company.

Finally, I was the inaugural inspector of the ICAC responsible for receiving complaints about it and for monitoring its performance.

I should disclose I have in recent times written extensively on the council as well as other things in the Southern Highlands Express. I should say, mostly critically of the council.

Q. Mr Kelly, about three dozen questions occur to me, that of which have nothing do with the inquiry, so I'll save those for another time.

THE COMMISSIONER: I was having much the same thought. Washington in that period would have been a fascinating time.

A. It was indeed.

Q. Unfortunately nothing that I have the power to ask you today.

MR PARISH: I'll buy the book when it comes out.

Q. Do you belong to any of the friends of groups around this area or?

A. No. On occasions I have been invited to attend meetings of the Friends of Bowral, but I am not a member of any group. In fact, I have only purely recreational memberships of anything, I think now only two photographic clubs.

Q. Thank you. Have you had occasion to attend council meetings from time to time?

A. One of the biggest regrets of my career is that on one occasion I did attend a meeting of this council, and I say one of the biggest regrets of my career is that I was appalled and embarrassed about the proceedings.

Q. Can I ask when that was, was that in this 2016-2020 term?

A. Yes, it was in connection with the approval of the operating plan for 2019-20. The reason that I was so appalled was that, as was the then practice of the council,

they had invited a young, I think, Anglican Minister, obviously a devout and thoughtful person who prayed that people should show respect for one another, which I thought was apposite. I'm not a believer, I took an affirmation as you can well have perceived, but I do have respect for people of faith.

As the meeting came to unfold one of the councillors stood up with a point and the mayor told him to, "Shut up and sit down". That I found appalling enough in itself, but then the mayor smiled at the councillor - at the man of religion, or maybe I should say "smirked", and said, "I suppose we've got a way to go". I thought that was insulting and devaluing and disrespectful.

Q. Do you recall who the mayor was at the time that that event happened?
A. Most definitely Duncan Gair.

Q. You were at that meeting in respect of the annual draft operating plan 2019-2020; is that correct?
A. Yes, that's right.

Q. Can you give the Commissioner any impressions or views on the consultation process to that plan?
A. Yes, most definitely, but I don't want to limit my views to that consultation only --

Q. Yes?
A. -- because I also responded to various other consultation requests but in connection particularly with the following operating plan.

In respect of the 2019-20 operating plan there had been a proposal to raid the environmental reserve to apply part of it to support a contribution that the council had entered into to the art gallery. That was, to my mind, completely inappropriate. There were a couple of meetings, one of which I attended and at which I spoke. The opposition to that proposal was so great that the council withdrew it, however, it also intended to support the contribution to the art gallery by reducing the operating hours of the Resource Recovery Centre.

Now, one of the things that I had been involved with in my Commonwealth Attorney-General days was the development of a series of environmental laws. So, even

though one might expect with a background like mine I'd be a very conservative person, probably not someone terribly concerned about the environment, the operation of the Resource Recovery Centre was a prize in this council, in fact, I think the council was awarded prizes for it, and I've used it over the time for various things, so it disturbed me that its operating hours should be reduced. That would have not only an impact on the citizens of the shire but would have an impact on the way in which various trades used the Resource Recovery Centre.

So, my submission included opposition to reducing the hours. I think there were, but this is going from memory only, a total of five submissions that opposed the reduction of the hours. Some others that I did not see and had nothing to do with proposed an increase in the operating hours.

Now, the response that went to the council in respect of the proposals to increase the operating hours was that it was not commercially feasible to increase them and, you know what, exactly the same response was given to the council in respect of the five proposals merely to maintain and not reduce them. Now, how you can turn a submission not to reduce something into a comment that is uneconomic to increase absolutely leaves me stunned. Now, that came out in the papers which no doubt are accessible to the Commission. That, however, was in my experience not uncommon in the way in which community consultation was turned back to the council.

Now, who do I blame for that? Both lots. I blame most of the council's councillors who failed to supervise the nonsense that was often served up in response to community consultation and I blame the senior executive who allowed those things to go forward. Any competent senior executive should have picked up such nonsense and made sure it didn't occur.

Not only that - not only that - in connection with, I think, the 2020-21 operating plan, as was the normal practice of the council it sent people who had commented on it the summary of comments that had gone to the council as well as the council's ultimate resolutions. I went through the summary and mine had been misrepresented on a number of occasions - some were accurately shown but others were misrepresented; others were merely noted.

Anyway, I wrote back in connection with the ones that had been misrepresented and I got a polite email back saying that they'd been passed to the relevant people. Like almost everything else that I ever raised with this council, it was totally ignored.

So, to my mind their behaviour was disrespectful and tainted with a determination to achieve what they wanted to achieve despite any community consultation.

Q. Are you referring there to your experience with the senior executives or the councillors or both?
A. With the senior executives, I had very little correspondence, but those which I did have were unsatisfactory in my view, and the only councillor with whom I had any direct communication at that stage was the mayor.

Q. You referred to, in your view, a failure of the councillors to properly scrutinise the information that they were provided. Where did your experience of that come from?
A. Look, it's very difficult - I mean, I couldn't go through all the papers that I've kept over the years, but particulars buried the big picture. The big picture is, I've extensively read council's submissions and some of them on their face are verging - or were verging on, in my view, stupid.

Now, it's not as if I haven't had a lot of experience - a heap of years of my life has been spent reviewing papers. As I said in my opening, in my younger life I regularly reviewed - for input, not, you know, in a final reviewing sense - cabinet submissions. Now, these are pretty important documents for all sorts of things, including submissions that led to changes to the constitution itself, so I'm not a novice in these things.

The documents that have gone to council over the years have been inadequate in my view in lots of ways. The first and very simple is that almost every meeting the total number of pages exceeds 300. Now, how can - how can part-time representatives of the community possibly digest that amount of drivel every fortnight? It's impossible. It's a task that is calculated, in my view, to inhibit their capacity to perform their basic function of

supervising the council.

Now, it's made worse by the fact that there's a whole formulaic litany of stuff that simply doesn't need to be there and it's repeated time and time again, and it's debased. For example, the acknowledgment of country and whatever kind of prayer it might happen to be ought to be things on the cheat sheet of the mayor, not part of the council every fortnight. And then when you get to the individual papers there's a litany of stuff at the end, most of which is said to be irrelevant, and it's on every single submission that goes forward.

And, what's more, that ticking off often misses critical points. For example, I saw not many but two in particular documents that clearly raised conflict of interest issues, though they weren't impediments to the ultimate determination of the issues by the council, but under the heading of governance there wasn't a single reference to the fact that these proposals raised any kind of conflict of interest. So, what should have been checklists for competent senior executives became this stereotypical treatment of issues at the end of every single paper that went to the council.

Now, I do not know, as I sit here, I do not know whether that is general local government practice, but in my mind if we are trying to attract good, young people who live difficult and complex and busy lives onto councils we've got to sharpen up what - an old colleague of mine with a military background used to call the staff work. That's one side of the coin, that's laying the blame fairly and squarely at the senior executives, but the blame also lies with most of the elected councillors who never put a hand up about the drivel that was sent up to them.

And also, as the interim administrator has noted, so many things were dealt with in secret and they were dealt with perversely in secret. I'll give you an example. During the black summer bushfires the council tip caught on fire. The mayor was driving past and rang the local ABC radio station in excitement, saying that he's seen the tip on fire and had reported it. Well, I thought that was pretty perverse in itself. He might have reported it and all the rest, but he shouldn't have been ringing up the local radio station when people's houses were being burnt. But anyway, he did. So, the tip, what happened was that

the green waste that had been composted spontaneously combusted.

Ages went on and nothing happened except that the fire eventually got put out and green waste was received and mulched but not processed into compost. Then eventually several councillors - I should say, regarded by the mayor as the dissidents - asked for a report on the fire. The acting general manager stood up and effectively refused to give a report and instead the mayor brought a compromise where there would be a briefing, confidential, certainly not disclosed to the public.

Then some while later there was an item for it to be dealt with in closed council about an outsourcing contract. Then, when it got to the open council to be confirmed, it was a contract for a company to take away the mulched green waste and no doubt turn it into valuable compost. But the public account of what had happened didn't say whether the council was paying to have it taken away or was being paid for this valuable resource. So, how can a citizen like me believe that we are being properly governed when we don't know whether a valuable resource and a valuable service to citizens is being paid to be disposed of or they - we are receiving proper remuneration?

Q. Can I ask, from your time on company boards, are you familiar with the general distinction between the direct in control aspect of a board versus the day-to-day management of a CEO, or strategic first operational is another way to put it?
A. Oh, absolutely, and I should say I was a pretty, I suppose, a pretty determined chairman because particularly with new boards I always said, "If you want access to anyone other than three people: (1) the chef executive, (2) the chief financial officer and (3) the general council, then you have to get approval from the managing director and if he or she won't give it you come and ask me for approval to talk to the people down the line".

Now, I believe - I understand, I should say, that that was a rule that was habitually breached in this council. Now, the blame has been sought to be laid by some groups on the council on the behaviour of some other councillors. That wasn't quite right at all. The interference was quite extensive as I understand it, and I understand that from the staff point of view some of that was most unwelcome and

I also understand that it led to distorted relationships, a bit like I read in the newspaper in connection with a tribute to the late Senator Kitching, "Politics is transactional", meaning in the context, you scratch my back and I'll scratch yours. Now, that in a publicly listed company is an absolute no-no, an absolutely no-no.

But there are all sorts of other rules. For example, I always said to a new director on a board that I chaired, "Now, listen, I want you to understand one thing and one thing very clearly: there is no such a thing as a stupid question, only stupid answers", and that meant that you had a cohesive group of people who felt able to ask whatever they wanted to know in board meetings and they respected you as chairman and you respected them as individuals contributing from whatever perspective. And, you know something, you wouldn't believe how many seemingly stupid questions uncovered a problem in a company, and that was something that was acutely missing in this council, particularly the last few years.

THE COMMISSIONER: Q. Can I just ask you, from your experience, why is that demarcation so important?
A. I think it's important for a whole bunch of reasons. I think, from the board perspective, once you step beyond the controlling function, the supervisory function, and you start to get into the heat of battle, so to speak, you've lost the respect, you've lost the aura of standing off and looking at the big picture.

From the point of view of the organisation, if it's a good organisation, and it's a hard-working organisation, and they've got big jobs to do, they don't want the interference and the interference also distorts them. And it also means, particularly with good professionals, they feel inherently somewhat constrained by even a question that's asked of them, so I think from their point of view it inhibits the delivery of the services that they should - now, these comments, Commissioner, are highly generalised.

Q. No, and that's the basis of my question, I appreciate that. It has been suggested to me, and I think to another Commissioner elsewhere, that councillors would benefit from the type of course run by the AICD: whether or not that particular course is the one, but do you think that incoming councillors from your observation would benefit from some form of education that company directors would

get?
A. Commissioner, the reason I'm laughing is not at you but with you. The particular reason is that I have a weekly column in the Southern Highlands Express and my column last week wrote very much about the recommendation of your fellow Commissioner, and I think in connection with that recommendation I simply said, "Hip, hip, hooray".

Q. I see.
A. Now, I should say that I was a Fellow of the AICDC many years ago and I resigned, and I resigned because I thought it became too much of a speakers' bureau and not enough of a representative organisation for directors, but the courses that it created were magnificent, particularly under the leadership of my former partner, John Colvin, who was an excellent lawyer or is an excellent lawyer and was also an academic at the Australian Business Management School at the University of New South Wales, so he created absolutely top quality courses.

Now, your colleague did also recommend a course of similar stringency or status particularly tailored to local government. I think that wouldn't be a bad idea, but I don't think it should be developed like The New South Wales Police Academy where people are sort of inbred as a result of it, it should have a much broader application. So, I'm sure that there are organisations - universities for example, University of Wollongong maybe, would be only too happy to develop appropriate courses.

Now, a lot of things are said about local government. One of the things that's said about local government is that the fixing of rates is extraordinarily complex. Well, that's not true, not true if you apply yourself properly and if you have a knowledge of the way the system works. You do have to make a few calculations, but nothing out of the ordinary at all.

And I think one of the other things that's often said about local government is that it's crook. When I was inspector of ICAC, ICAC used to get about 33,000 complaints a year; about a third of them related to local government. So, 10,000 or 11,000 complaints a year about local government: that doesn't indicate a good level of acceptance in the community to me. And, you know, a lot of the complaints about local government weren't taken up by ICAC simply as a matter of priority. Some notable ones

were, like Wollongong Council, but a lot of the people who had complained to ICAC then complained to me that ICAC hadn't taken up the complaint. And you know what they all used to say, invariably every one of them used to say, "We've got the worst council in the state". Well, I had first thought they were right until I had a close look at Wingecarribee. Now, I'm not suggesting corruption but I am suggesting a level of incompetence extending through the organisation for all sorts of reasons.

I think, for example, yeah, I suppose I've said enough on that but I think there is a very strong case for a high quality course after people are first elected and I think there is a case for much better briefing of what's involved before people stand.

Q. Does that extend to skills needed by a chair of a meeting, do you think?
A. Look, I'm gonna digress a bit. I've had a very fortunate career, mainly because I've been the beneficiary of some of the very best mentors you could possibly imagine, and one of them was a mentor called - a former chairman of the TAB before I was chairman - and Gary was an extraordinary mentor because he used to take the board to the critical issues quickly and he used to bring out the discussion about the critical issues, and you'd suddenly think, "My goodness, I'm thinking about this and I'm dealing with this in a way that I didn't get from the papers", and out of it would come decisions that were superb, almost from left field but superb, and you'd think, this has got nothing to do really with the agenda that we're looking at in front of us. And after about three or four hours you'd suddenly realise every single thing on that agenda had been dealt with in detail and incisively.

Now, that is a skill in a chairman that is hard to inculcate, but you can't expect a person to walk into the chairmanship of an organisation like this, responsible for tens of millions of public dollars, and a whole variety of functions, and do it from nowhere. They have to be trained, I think, there's not much scope for mentoring, but they have to be trained in the basic analytical skills that are needed to unravel the issues.

Q. Finally from me, earlier in your answer to one of, I think Mr Parish's questions, you gave evidence about an understanding about the crossing between roles that is

councillors getting involved in the operational: how did you come to that understanding?
A. I suppose by osmosis, by watching, and by seeing the way in which good organisations performed even better. And I suppose because, look, I was a simple country boy from the bush, and I like to still pretend that I am a simple country boy from the bush, but one of the things when you're a simple country boy from the bush is that you respect hierarchies - not in a kowtowing way, but you respect them because you expect that the people that exercise important functions do it honestly and apply themselves the best they can and so they deserve respect. And, when you come from a point of view of respecting a hierarchy, then you know what roles are and you also know the performance of a role.

I like to tell a story about chairmanship that's a bit contrary to what I've been saying but nevertheless emphasises the importance of appearance in these things, and that is that I heard a fellow on a radio the day after Sir Laurence Olivier died. He'd written a book on Olivier and he said he thought that Olivier was the greatest actor ever. He said he thought that because Olivier acted the whole of his life. He'd mentioned that he'd once been invited by Olivier to his country estate in England for a family Sunday lunch and he said, "Olivier acted the role of the host perfectly". He said, "Then he decided to look at Olivier's chairmanship of the National Theatre", and he went through, he interviewed all the directors that had served with Olivier as chairman and they all said, "Oh, Larry was the best chairman we ever had". Then he reviewed the minutes and discovered that they hadn't done anything at all. So, he concluded that all that Olivier had done had been, acted the role.

Now, I tell that story because I love it but I tell it because I think it shows that in hierarchical organisations respect is tremendously important and that respect has to flow both ways: it has to flow up because you have to be able to realise that when someone says to you, "Look, I don't think that's the way to do it, it should be done this way, or, have you thought of that?", you should respond positively to it, but it also means that respect has to go down. You shouldn't bully people, you shouldn't harass people, you shouldn't treat people as idiots. If they are, you should sack them, that's the proper thing to do.

Now, that brings me to one other thing I'd like to say about this organisation. When the former general manager left it was said by the mayor and some others that it was due to harassment and the suggestion was harassment from - I'll call them, some of the dissident councillors. I am by no means sure that that's right, but I think there may well have been harassment of Ann Prendergast by people working under her. I don't suggest physical harassment but I do suggest disparagement, and I do suggest lack of cooperation, lack of responsiveness.

Now, one thing I noticed in reading council papers time and time again was that it'd say, "Author so and so", "Authorised by so and so", and Ann Prendergast's name virtually never appeared. Now, if I hark back to my company director roles, that would have been unthinkable because you expect the chief executive to take responsibility for every single thing that comes to a board with very narrow exceptions: audit reports, for example or something like that. But leave that to one side, you expect the chief executive to take the responsibility.

Now, something had gone wrong in this council that led to that as a practice. I've got my suspicions, but I would prefer not to say them publicly.

Q. No, and as you'll appreciate ultimately it won't help me resolve the issues, I think, just on a suspicion basis, yes. I did say my last question was the last one but something else popped into my head so I'll ask it while I'm here. You gave some evidence earlier about having an understanding that the councillors in this organisation had involved themselves in operational matters. What's the basis of that understanding?
A. Oh, it includes some of the reports that the interim administrator has brought forward and what I've been told around the traps. I didn't have very much dealings with the council myself at all; in fact, I deliberately avoided dealings with the council.

Q. Was there a reason for that?
A. Yes.

Q. What was it?
A. Well, many years ago, so far ago that --

Q. Is it anything to do with the 2016-2020 term?

A. -- it's beyond criminality. We decided we wanted a gazebo built in our front yard and I contracted a gazebo builder in Dural who'd I'd never seen and I'd never physically seen his work but we'd seen pictures of them in a magazine. And at the end I said, "Now, listen, you have to understand one thing: I'm having nothing to do with the council, that's going to be part of your deal". He said, "I've installed gazebos all around Sydney and I've never had to get council approval for any of them". I said, "I don't care what your experience is, I want to make sure that anything that is done is not contrary to council rules".

So, a couple of weeks later he rang back and he said, "Can you measure how far from the street the gazebo's going to be?" I'll truncate this story, but I told him and he rang back and he said, "They said it's got to be set back 50 metres". I said, "Well, that would be on the front verandah, in which case forget the job". So, then he rang back and he said, "I spoke to another person in the planning area and she said, 'You have to show special circumstances'". And he said, "I said to her 'How do you show that?'" And she said, "You know what I mean". And I said, "Now listen, son, you have to understand, I told you at the beginning, I'm having nothing to do with the council and I certainly do not want to engage in any kind of corrupt conduct." So, then he rang and he said, "I've got an appointment at the council next Tuesday". So, he came all the way from Dural and went up to the counter and said, "I've got an appointment with so and so", and the woman went out the back and came back and said, "No, you don't". He said, "I do, I've got it in my book, I've driven all the way from Dural, can you tell me whether Mr So-and-So is out there?" She said, "Yes, he is but you don't have an appointment with him", and he said to me, "You've never seen me but my skin is rather dark", and the area was full and he said I said at the top of my voice, "Are you refusing to deal with me because I'm an Aboriginal?" He said, "I walked out 10 minutes later with the approval". Now, that seemed to me at the time to be an appalling - an appalling circumstance. The contractor was superb, I should say, he did the job on time for money, the precise amount he quoted. But, you know --

THE COMMISSIONER: Yes, I think I understand. Mr Parish?

MR PARISH: No further questions, Commissioner.

THE COMMISSIONER: Are there any applications?

CR McLAUGHLIN: No, Commissioner.

THE COMMISSIONER: No, I take it?

THE WITNESS: Well, I hope I haven't bored you, thank you for the opportunity.

THE COMMISSIONER: No, not at all. Thank you for your time this morning, it's much appreciated and you're released from further attendance under your summons. Thank you.

<THE WITNESS WITHDREW

THE COMMISSIONER: We might just take 10 minutes, Mr Parish, before the next witness.

MR PARISH: Thank you, Commissioner.

THE COMMISSIONER: We'll adjourn for 10 minutes.

SHORT ADJOURNMENT.

THE COMMISSIONER: Yes, we'll resume. Mr Parish.

MR PARISH: Thank you, Commissioner. My next witness is Dr Warren Marks.

<WARREN MARKS, sworn: **[12.09pm]**

Thank you, Dr Marks. Mr Parish.

<EXAMINATION BY MR PARISH:

MR PARISH: Q. Thank you, Dr Marks. Can you start by giving us a bit of personal background, your vocation, how long you've lived in the shire?
A. Certainly. Lived in the Hill Top area within the shire since 2005. My career was in education as a school principal, and I retired from that position in about 2005. Since then in retirement I run a small educational business consultancy.

Q. You're the president of the Hill Top Community

Association; is that correct?
A. That's correct, yes.

Q. Can you tell us a little bit about the Hill Top Community Association?
A. Certainly. The Hill Top area initially had a progress association, and apparently it was the oldest and first formed in New South Wales. In early 2000s that association was closed down and replaced by the Hill Top Community Association, which is basically a voluntary association of community members who work together to improve the conditions and amenity of their local village.

Q. How many members do you have?
A. There's approximately 70 members on our books at the moment and around about 30 to 35 that attend monthly meetings.

Q. Can you give us some examples of the issues that you engage the community and council with?
A. Right. I took over the presidency in September 2020 and the sort of things that we engage in mainly are looking to improve conditions in relation to the - maybe the roads around the area, the general services around the area, the level to which the village is cared for and looked after, either by voluntary help or with cooperation with council; line marking in areas, general improvement to playgrounds, say, conditions and park conditions, those sort of issues are the main ones.

Q. How do you go about engaging on those issues? Is it to council staff that you make approaches, councillors?
A. Yes, the main approach definitely to council staff to ascertain who would seem to be the appropriate person for the issue and then to make direct contact with that section or department.

Q. You have made some observations about improvement in attitude and communication after the appointment of the interim administrator.
A. Yes.

Q. But can I start by getting an idea of the communication and engagements that you were having prior to the interim administrator and some examples of it?
A. Certainly, yep. And I suppose, from my personal perspective from the time I became president in September

2020, about a month later we decided to try to do something to improve the entry and general amenity for the village.

The village is on the northern end of the shire and residents have a feeling that it has traditionally been rather ignored. So, the idea was to make the entrance to the village much more attractive, signage much more attractive, to get rid of fallen, dead debris and replace that with gardens and an attractive entry to the village.

So, in doing that we lodged a submission to the council around November, and between November and March it was for us a fairly frustrating time because we had difficulty progressing the scheme. Although the submission to the council had been for a joint scheme, the work we were seeing as coming from us in a voluntary capacity, and the financial commitment was also coming from us, so we were seeking council support initially to do the work on council land.

So, we had a series of delays around issues to do with environmental concerns, endangered species concerns, environment assessments, problems with voluntary people working on council land, problems with traffic control being required which would be very expensive and beyond our capacity, problems with clearing of endangered species, potentially problems with getting support from indigenous communities.

So, there were a wide number of issues that were coming through when we had meetings or consultations or emails or phone calls, and the majority of those meant that we were engaging with a wide variety of people from different sections, so it was difficult to get a consistent support or approach. I suppose what we were seeing was, it appeared, looking at it from a systems point of view, there seemed to be a lack of role clarification from the people who were trying to support us. Certainly there seemed to be a lack of confidence with those officers to take responsible decisions, and there seemed to be more an attitude of caution and being careful, ultra careful, rather than being action or client actioned.

Now, having worked in public service of one type or another across my career, I'm very well aware of the need for protocols and procedures to be followed, but it did seem like the people were enacting with - I think with the

best intentions of the world, I don't think they were in any way personally trying to delay, but they seemed to be caught up in processes and systems that simply were not allowing a fairly simple project to move forward.

Q. Did you ever approach councillors in respect of the project?
A. We worked with one councillor --

Q. Who was that?
A. Larry Whipper, who was very supportive and helped us considerably and actually made many of the contacts for us to council officers when we were having trouble getting through to those people. That was the only councillor that we worked with.

Q. Did Councillor Whipper give you the details of certain council officers or did he contact them directly, do you know?
A. Yes, usually he would contact them directly and then arrange for us to make contact, and sometimes that was with people who we had previously had difficult contacting one way or another.

Q. Did you perceive at all any different attitude in those council staff after they interacted with you after they had been contacted by Councillor Whipper?
A. Not noticeably, no.

Q. Did you ever attend council meetings?
A. No.

Q. Have you ever viewed a council meeting online?
A. Yes, parts of.

Q. Do you have any impressions or views or anything to say about those that you did see?
A. They were somewhat more volatile than I had been used to in other - looking in other circumstances.

Q. Can you tell us roughly when the timeframe of those meetings that you observed were?
A. It would have been late 2020 or early 2021, somewhere across that time.

Q. Can you give any examples of why you say it was more volatile than you were used to? Was there any specific

behaviour which stuck in your mind?
A. There seemed to be a fair degree of noise and cross-talk.

Q. You've observed that the change in attitude and communications with you have been dramatically better since the appointment of the interim administrator; can you describe why that is?
A. Yes, and it has been - it was quite dramatic for us. There was a meeting that we attended, and I think it was in March at the council here which were the main office bearers of the association. It's a meeting that had been previously set up with the previous mayor, but by the time the meeting came on the administrator had taken up duties. And at that meeting the administrator made it very clear to everyone in the room that he wanted to hear from us and he wanted the council officers to listen to what we were asking.

From that meeting onwards there was certainly a significant change in that some of the issues that had been holding us up were resolved or disappeared, and I could maybe reference something like, there was difficulty previously with voluntary workers working on council property. It was then explained to us that there is a thing called a three metre rule where, if you're beyond three metres from the carriageway you're able to carry out that voluntary work. That had never been explained to us.

There was an issue around traffic control, where initially it appeared that that was going to be a cost to us when we were working adjacent to a major carriageway. Now the shire council are saying they would attend to any traffic control issues and we'd worked together on that one.

We were suddenly offered a plan moving forward which involved the shire using manpower and heavy machinery to help us prepare areas that previously we'd been - been indicated that we couldn't go on to or couldn't touch, and there were offers to clear wasteland, there were offers to bring in mulch. The project moved forward quite quickly because, as I said, initially it wasn't a really big project, but it was just that it wasn't going anywhere.

Q. What conclusions did you draw from the dramatic improvement following the appointment of the interim

administrator?
A. The council officers that we were working with appeared to be far more confident, far more ready to make decisions, and I don't know if that meant taking risks, I'm not sure, I'm not party to the internal workings of the shire; certainly far more positive and open in their communication, and much more focused on an association like us as clients to the shire.

Q. Were you by and large dealing with the same council officers and staff pre-interim administrator?
A. Yep. Basically, yes, although some new ones came on board too, but by and large probably 70 per cent of them were the same people.

Q. Do you have a view as to why there was a change in that attitude among, at least, the 70 per cent who you'd been dealing with beforehand?
A. I really don't, I honestly don't. We all noticed it, we all commented on it, we all went along with it very positively because it enabled us - and it's had a kind of very positive effect on a small community, because one of the things that we've been able to do - and this is sort of answering your question in another way - is develop a much more positive attitude amongst the local community towards the shire. It certainly wasn't there previously and so we've been able to point to all the things from the shire and the shire officers and departments have been doing to support us, and that's been a way that we can change that attitude.

THE COMMISSIONER: Q. In that last answer you described the community's attitude to the shire before the improvements that you've described. What was the community - at least in respect that your association can speak to it - attitude to the shire prior to that period?
A. So, I mean, I'm answering this as my perception of the community.

Q. Yes.
A. And in taking up that position - I was involved in an association before but became president at that point - that there was always the comment, "Well, what would you expect? They don't care, they don't do anything, we can't get anything done. Phone calls aren't returned, emails aren't answered", that sort of ...

Now, when I often would engage those people in deeper conversation, many times it wasn't their personal experience but it was the urban story, but it was so widespread that it obviously had elements of truth, in my view.

THE COMMISSIONER: Yes, I understand. Yes, thank you.

MR PARISH: Q. I understand Hill Top was affected by the bushfires in 2019-2020; is that correct?
A. The village?

Q. Yes.
A. Yes.

Q. We've heard some by and large critical evidence about the way that councillors behaved, the mayor led at that time. Do you have any impressions or views from your own experience about how the governing body at least reacted to the bushfires?
A. Not a lot. I mean, our property was affected by the bushfires, so we got - 70 per cent of our block was burnt out. We were away when the bushfires hit, we were back on the day after. All our communication and negotiation was with the local RFS, who like everyone else, I'm sure, we couldn't speak highly enough of. So, I didn't have any personal or direct communication or interface with the shire in relation to the bushfires.

Q. Did you gain any impression or hear anything from other members of the Hill Top Community Association?
A. It wasn't - that really wasn't a topic of great discussion. The fires themselves were and the responses and what went on around the village, but there wasn't a lot in relation to the shire. There was - there were meetings; I attended a meeting well before when the fire was starting to move in a general direction, and shire representatives were at that meeting and spoke at that meeting. I'm not aware of any other direct involvement. Now, maybe my lack of awareness of lack of involvement might be saying something in itself.

Q. That's all right. Do you have any other interactions or impressions with the 2016-2020 councillors and governing body that you wish to share with the Commissioner?
A. Not really because I didn't really have any - we had, the previous mayor came and spoke at one of our Association

meetings and that was just before the change to the interim administrator, and at that meeting the mayor was quite open and talkative and verbally supportive of what we were doing. There was no other direct communication outside of Councillor Whipper for the Hill Top Community Association.

MR PARISH: Thank you. Commissioner, do you have any more specific questions?

THE COMMISSIONER: No.

MR PARISH: Q. Is there anything else you wish to address the Commissioner on in respect of the terms of reference?
A. No, I think that probably really covers it. I suppose generically what we noticed was a systems issue, there seemed to be a systems problem that we got caught up in into a minor degree, major if you're living in Hill Top but minor in the shire, but if that was indicative of the wider operation, and if the change has been indicative of the wider operation across the shire, then I think it would seem that the systems that have been set in place as far as ratepayers are concerned are much more workable and much more positive.

MR PARISH: Thank you, doctor.

THE COMMISSIONER: Yes, are there any applications?

CR McLAUGHLIN: No, Commissioner.

THE COMMISSIONER: No? All right.

Thank you, Dr Marks, thank you for your time today. You're excused from further attendance under your summons and you're free to go, thank you.

THE WITNESS: Thank you very much.

<THE WITNESS WITHDREW

THE COMMISSIONER: Mr Parish, your next witness is at 2 o'clock?

MR PARISH: My next witness is at 2 o'clock, Mr Les McMahon. I'm not sure whether we can get him here any earlier.

THE COMMISSIONER: No, that's fine, there's plenty of work to be done in the background. Yes, I'll adjourn until 2 o'clock. Thank you.

LUNCHEON ADJOURNMENT

UPON RESUMPTION

THE COMMISSIONER: Yes, we'll resume. Mr Parish.

MR PARISH: Thank you, Commissioner. My next witness is James McMahon, known as Les McMahon.

THE COMMISSIONER: Thank you.

<JAMES (LES) MCMAHON, sworn: [2.02pm]

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

<EXAMINATION BY MR PARISH:

MR PARISH: Q. Mr McMahon, can we start with a bit of background, personal and vocational background?
A. Yes, certainly. I started in 1971 as a cadet engineer, so my qualifications is a Diploma of Technology at the then Institute of Technology. I have a Bachelor of Engineering Honours. I have a Local Government Engineer's Certificate which you're required to get in local government prior to the Act changing in 1993.

I've got a Bachelor of Business in local government and then I've got my town clerk certificate. Worked as an engineer in local government for 20-something years until I left there and ran a professional association called the Institute of Municipal Management which gave me access to a lot of the GMs and deputy GMs in local government as part of the association.

Left there, came back as the shire engineer, director of works, at Wollondilly Council for seven years. Left there, worked for the State Government running one of the regional waste boards for five years until the government suspended all waste boards. Then I went to private enterprise for a couple of years, back to the Botany City Council, and then I came back at GM of Wollondilly; did that for nearly 10 years, retired in 2014, and was asked whether I'd like to come in as the acting general manager at Wingecarribee by the interim administrator.

Q. And you were the acting GM between about 22 March 2021 and about 11 June 2021; is that correct?
A. Correct, I did 12 weeks. Originally I was told by the

administrator that it would be somewhere between four and six weeks, expecting the new general manager to come, but unfortunately with the applications that applied for the position, they then recommenced the applications again, so that's why I came out at 12 weeks.

Q. One of your first acts upon being appointed was to meet with staff; is that correct?
A. Correct. That first day I - in this room I asked the staff to come in and talk to me. First of all, understanding the background to me I tried to explain my openness as a general manager and did that over two occasions here on that day, and then I went out to various outposts and spoke to them during the week.

Q. Can you give me your impressions that you gleaned from talking to staff?
A. Look, there was a toxic culture here, they were very apprehensive to open up to me initially, then over time they did. The culture basically came from council and from senior staff, and it was sad really, because there were some very, very good workers, some very good people here in the organisation, they were thrown to their depths because of the way the council and the staff - the senior staff - worked together.

Q. Can you describe what you mean by toxic?
A. As a general manager joining this shire, there was a lot of hearsay about how the council/councillors related to each other, how they ran the council. In my period of running the waste board on behalf of Wingecarribee, Wollondilly-Camden and Campbelltown as the regional waste board and in my period as director of works and general manager, I experienced six new general managers in that period of time and basically every term of council they seemed to have a new general manager, there was no consistency. So, there was this feeling inside the organisation that things weren't going well and, if it starts at the head, it runs all the way through the organisation then.

Q. Do I take it that one of the pieces of feedback you got was that decisions being made by management were not being objectively made, but rather, were being made on political grounds? Can you explain, (a) what you mean by that and (b) how you came to that conclusion?
A. Yes. There's a number of issues that have come up as

the acting general manager that I had seen in writing or seen - I've been told that by some of the staff. The biggest issues seemed to be from management, they seemed to have worried about what the councillors wanted rather than manage the staff, and that's where the staff felt very, very threatened by the whole arrangements.

From what I heard, senior executive, especially the general manager, seemed to worry about every quarter her performance report, and to get the best of her performance report she had to jump hurdles for the council to accept that and that had repercussions inside the organisation, so basically she was worried about her own performance compared to the organisation's structure and operation, and it seemed to be doing things on political grounds rather than being as objective as you should be as a general manager.

Q. Did you gain any insight, either through your own impressions or from feedback you were getting about why the general manager may have behaved in that way?
A. The question of bullying is an issue. If you're bullied enough, you succumb to the realisation you may not beat people above, so it's best to adhere to them and try and relate to their issues and wishes. And I think that's what happened here. I think, not only the GM but the deputy GMs were bashed around enough to realise that they couldn't win in standing up to some of the issues and decided to run with the flow and run with the organisation, run with the councillors on whatever the issues they were running with without giving their proper direction of where the organisation should go.

Q. That bullying, where did that bullying come from?
A. I think it's a repercussion of what happened between councillors. I think the councillors fought between each other so much they then carried that through to the organisation, and the way it happens in an organisation unfortunately it hits to the senior executive, and I'd see that's where it's happened, and I saw that on the outside with the general managers.

I saw the interaction between the councillors and the general managers, there were six of them from Michael Mostyn down to Ann; there was a lot of friction. Either you had to live in the shire or there was a lot of feeling about, they're not happy with the questions - the answers

you were given, and so, there was a bit of bullying associated with that individually and collectively.

Q. How far back does that go?
A. 1993, at least. I started in - yeah, 1993, because I had that with the waste boards. I used to come in and see Michael Mostyn, and then Wright, the other deputy shire clerk was here at that stage, became McGowan, and then you had the litany of people coming straight after that.

Q. I take from that answer that, in your experience the treatment of councillors between each other and towards the GM was not something confined to the 2016-2020 term?
A. No, it happened all the way through, and it could be - you know, maybe there was personality issues associated with it, but there was a lot of infighting associated with the councillors, and that certainly reflected onto the general manager, and once it hits the general manager you've got to be a very good GM to be able to sustain those hits, and I think it went down to the executive and then it went down to certain staff beneath them.

Q. Did you have occasion to either attend in person - I assume not, but tell me if you did - the council meetings in the 2016-2020 term?
A. No. No, I thankfully had retired properly --

Q. They were off your radar until --
A. My radar, which meant that I - I do communicate - I knew a few of the councillors here and I had heard from them, and I know a lot of the councillors from Wollondilly and they reflected some of the things that were happening here.

Q. Did you have occasion to go back and view any of the meetings that were online after you became involved?
A. I think I only looked at one before I came here after Mr May asked me to come, I think I looked at one, the last council meeting, and that was enough for me to feel quite upset about the - and I was quite happy to take on the role of acting general manager with the understanding that I was doing it with the administrator, not with the councillors.

THE COMMISSIONER: Q. What was it about that meeting that gave you that impression?
A. Commissioner, I saw the interaction between councillors, between themselves, between the mayor and the

councillors, and the look on the faces of the staff that were around the council chambers, and you could see the acting general manager and you could see - I'm just trying to remember who was sitting on the other side - but you could see their reaction, they were sitting back reasonably pale-faced about the operations, and yet, the interaction between the councillors was quite toxic and it was quite terrible. They were fighting over issues that any other council I've been to, and I've been to a lot of councils - I'm actually in nearly, I should be starting next Monday an interim GM at Cootamundra-Gundagai, and I've been experienced with that and I know when there's so much to go and you've got so many good things to do, and they seem to be fighting between each other. So, I saw them fighting over meeting procedure which is such a waste of time when there's so many things to be done, so it was mainly meeting procedures I watched.

Q. When the governing body is occupying themselves in that way, just not necessarily reflecting on this organisation but just generally in your experience how does that affect the wider organisation?
A. Look, as I said, if there's infighting - and I experienced that at Wollondilly in 1996, I think, or might have been 1994, where there was so much infighting within the council, it just reflected within the organisation. And, no matter how good you are as a general manager or executive team, it's hard to control it because it does emanate into the community, and you hear about it through the radio, you hear about it through the press, you hear about it from communication when you live locally, so it does reflect back inside the organisation. And that's the sad part, when there are so many - you're talking about a $100m enterprise and when I was at Wollondilly it was a $40m enterprise, and they weren't making decisions for the good of the community, they were making decisions on play acting between them at a council meeting, and it does affect you.

I remember at the time I said, look, I gave up at Wollondilly and ran as general manager of a waste board, I got out, which I wasn't thinking about doing. Another friend of mine became the director of community services at Camden council because of this interaction, and it does run through the organisation; the rest of the staff really feel it, and that's what I felt when I first came here. When I spoke to the staff and looked around the room I could see

their heads down, they were - looked like little puppies that had been hit on the head a few too many times, and I spent a bit of time talking to them getting around to find out why they were doing certain things and it was mainly because of the operation from the top-down and that's why I made some big changes inside the organisation.

THE COMMISSIONER: Thank you. Mr Parish.

MR PARISH: Q. Can I just pick up on an observation there that you had of the meeting that you witnessed and the time spent on meeting procedures and matters like that. Obviously, or at least tell me if this proposition is wrong, council should be planning strategically at the governing body level and using the integrated planning and reporting framework. When you came on board as acting GM, in your impression or view was that framework in place to allow you to do your job as GM?
A. Yes. Look, the organisation was well run. I had an understanding - there were a number of issues that, you know, presented itself to me, like Station Street and this building, but generally the organisation was structured well enough to withstand the changes that needed to be done in meeting its objectives in the four-year strategy and 10-year plan, and I didn't have any hindrance that way. I just found the information was hard to find and I was lucky, I had a very good administrative assistant and very good acting deputy GMs who worked with me to try and uncover a lot of that information.

So, the place was well run; they had let things down. And I think, because of the interaction of the councillors and senior staff a lot of that information wasn't getting down properly enough to the staff.

Q. In terms of that information being a little bit hard to find, did you gain an impression as to whether the previous GM had that sort of information available to her and whether she was able to access the roadmap and the blueprint that she needed to?
A. To run a good organisation you've got to understand how it operates from the bottom up and lead from the top down. I think there was a problem in this organisation of understanding what it was like from the bottom up, and because of that I found there were a lot of decisions made without communication properly with the affected staff to get the right conclusions.

So, in answer to your question, there were some deficiencies, there were actions made from the top - I can't really tell you which ones there were, but there were things made from the top - all right, I'll give you one example.

The building here when I first looked at it and I saw that works had been done here inside the chambers and we started building on the outside, I then walked around the building and saw how bad and abysmal it was for the work staff - the staff that were here to work in this environment in the back, and when I looked at the money I realised what we were actually getting was a nice Council Chambers, a nice facility for the executive, a nice entrance, but that's it.

So, the organisation itself, and that's where I say from a general manager you make certain you understand what the organisation needs and requires, what the community require through their councillors, and sit together and try and find a cohesive way of understanding and building, and this place here, we have all the outside people stuck in little boxes where they probably now need something like about $4m or $5m to fix up after spending that amount of money on this building, so that's where I think the mistakes have been made. Things haven't been communicated properly inside the organisation, be it reasons of, the organisation was so bound itself in this culture, they couldn't get the information out or couldn't hear the information out, and we made mistakes because of that.

Q. Do you have any thoughts as to where that deficiency that you were just talking about came from, was it at governing body level or executive level?
A. Executive. Absolutely, there's no question; the executive have to be the responsible people that communicate up and down and I don't think it was done properly.

THE COMMISSIONER: Q. Before Mr Parish moves on I'll just have you shown Exhibit A, Volume 1, page 5. Do you have page 5? Is that an organisational structure which I think was in place the day you arrived?
A. Yes.

Q. I just want to explore with you your views about the

structure of the organisation in that way, appreciating your answers earlier that your general impression was it was well run, but the two streams - I'm not sure whether they were actually called directorates or not - but that idea, they were under two deputy GMs rather than perhaps spread across three or more; do you have a view about a structure like this?
A. I can tell you, they sort of adopted what I had at Wollondilly first, only because there were two deputy GMs instead of four directors that I had at Wollondilly, and there were reasons I did that, so they've used the same one.

I couldn't work out the difference between a group manager and a manager, and I found that very hard to deal with. I think it needed to be flatter. To run with a $100m organisation I think it needs to be a bit flatter, and some of these managers report directly through to a director rather than a deputy GM. So, I think I've got a feeling that Jason used the structure that I used at Wollondilly, because it was working at Wollondilly, but here --

Q. Is that Mr - what was his surname?
A. Jason Gordon.

Q. Yes, thank you.
A. Jason Gordon used that, and I think for the right reasons he used it, but I think over time he would have seen that the structure itself wasn't working, and I couldn't work out the difference between a group manager - I know it was on expenditure and level of staff, but the difference between a manager and a group manager didn't make sense. I would probably make it two or three to a four structure. In fact, at the end of my time here the administrator asked me my opinion about structure and I came up with three.

Q. Do you think that the structure impacts the easy flow of information you were describing in Mr Parish's answer earlier?
A. Yes, it does, it does. If you've got a system where communication is more effective, a flatter structure of communication does improve. And I think, if you looked at the people we had inside, they were very competent inside the organisation; it just wasn't effective. And I think you could get this to work if you had the right deputy GMs

and the right GM: that's all I want to say.

Q. Yes, I understand the theory that there's no one set structure across local government areas, I was just interested to see your views on --
A. I'm doing that at the moment at Gundagai and Cootamundra, I've been asked to come in next week for three months to come and work with them and I'm looking at that structure.

Q. So much for retirement?
A. Beg your pardon?

Q. So much for retirement?
A. It keeps my brain active at the moment.

THE COMMISSIONER: Mr Parish.

MR PARISH: Q. Can I just pick up on something you said just then about the need for a particular type of GM or deputy GM. Does that tie back to your observations, even prior to your position as acting GM, about the culture within the - is that, to quote Liam Neeson, does someone need a particular set of skills to do this job?
A. I was about to present to a seminar a couple of weeks ago about what makes a good GM and what makes a good relationship between a GM and the mayor and the council, and the one thing - there are two things: one is effective communication to the councillors, to the mayor, to the community, to the staff: that's pretty important.

The next best thing is, understand the politics, and a lot of GMs are not political and I don't want it to be political, but understanding the politics inside an organisation. In private enterprise you understand the politics, in local government you should understand the politics, without getting your fingers caught in the political side, and I think they're the two attributes of a good GM.

Well, there is a third one, an understanding that - understanding the culture and the organisation, which means therefore good GMs work through the system and understand what it's like to be from the bottom up, because that's pretty important. I worked as a cadet engineer all the way through to a GM and I understood what it's like to be on the other side of the executive, and that's pretty

important to have that understanding as well.

So, the three. You don't need the technical background, you just need to understand the culture as you go through the organisation.

Q. What responsibility, in your experience, does a governing body have to ensure that a GM isn't hamstrung by perhaps not being the most adroit political operator?
A. It's interesting. Every four years we have a new council; every four years the GM is responsible, with the staff, to induct those councillors into their rightful role as governing the organisation. The GM runs the administration, the council sets policy and direction. That has to be the fundamental truth to run an organisation. So, that starts with the induction process, that starts with the executive sitting down with councillors, new councillors and existing councillors, explaining to them their role.

There's always a problem of hands-on involvement by councillors in the administration of the organisation, the implementation, because they're the first ones the community has to approach to understand what's going on. Just explaining to them their role and having conduits where they can actually communicate directly with the appropriate staff is pretty important, but it starts from the induction. If you don't induct them properly, then you've got problems. I don't know whether that was done properly here, I have to say that. I don't know whether the induction was set for a governing body to run properly, but I don't have any physical evidence of that.

Q. Do I take it from that answer that your experience as acting general manager led you to believe that the councillors didn't have a proper appreciation of their roles and responsibilities?
A. Yes. Yes, there's no question. I don't think they were inducted properly in understanding their role and therefore I put it back to the executive, that's their responsibility to do it. There's certainly a number of councillors have got very strong views about how they perceive local government: some have got views of local government as it was in the 70s and 60s; some have views of what it should be like in 2010, 15, 20, and I think that interaction was always going to be a problem, so they've got strong views on that. But I don't think - yeah, I

don't think they were probably given the proper training and, if they did have the training, I don't think they were listening because they spent too much time in fighting between each other than producing what's needed out there for the community.

Q. Just on that topic about what they were producing, at least in respect of the integrated planning and reporting principles, I don't want to put you on-the-spot or give you a test --
A. Oh, don't.

Q. -- but do you have a broad working memory of 8(c) of the Local Government Act? We can get you a copy of it if you need to?
A. Yeah, keep going.

Q. Mr Broad's got it on his laptop.
A. I've been eight years retired.

Q. I'm just interested, you're one of the few people who can actually tell us, as the acting GM, whether or not you had the tools in place that you needed from an integrated planning and reporting point of view. If you've got 8(c) in front of you, when you came on board was it your view that the governing body had identified and prioritised key local community needs and aspirations and regional priorities? And by all means, if you didn't have the chance or have the ability --
A. No, it's an interesting question, because I think internally they did. I don't think it was communicated properly via - through the community through to the councillors. It's an interesting question because when I came in here the openness of this organisation was pretty bad. I think the administrator and I felt absolutely that there were things that are kept in-house that should have gone out to the community, and we tried to rectify that when we were there for that three months period and I know that Mr May's doing that still now.

But I think the community was telling staff through community groups, through their interaction via communication via emails and letters, what was needed out there; I just don't think it was being compiled enough to get it back to the councillors for them to make the proper decisions and I think this is where I call the political side: they were playing politics at that level rather than

giving all of the information and recommendations through to the councillors to make the proper judgments.

THE COMMISSIONER: Q. Does that tie back to an answer you gave earlier, that you felt that some in the organisation were worried about delivering what they thought the council wanted rather than what might be described - my words, not anyone else's, and you disagree with them if you wish - frank and fearless advice?
A. Yeah, I think that's exactly the way I saw it, because I know that staff had some really good recommendations, good information from community and from their own background being technical expertise - experts, but it was being filtered by certain hierarchy inside this organisation, so it wouldn't probably get to the councillors. And I don't know whether the mayor at the time was closely associated with that - I don't know - all I can say is that I think - I know that there were things that were done by the organisation --

Q. Just bear with us, that's our transcription microphone, it's taken a couple of hits last week --
A. Sorry.

Q. -- last week. We'll just get it reinstated.
A. But I know there were a lot of staff that were - filtered, I'll use the word filtered again, before it got to council. And I think that's where the councillors get upset, because they know from the community there are certain things that need to come up. The hearing staff and the staff put the reports up, and then all of a sudden there's this filtering in the middle so it's all hunky-dory, no problems, and I saw that; in fact, I saw a recommendation that was changed by a senior staff that didn't even go back to the change - to the staff, it was changed by the person - I had to go to the ICAC over it - and that person went to council and it was all approved, yet it would have been rejected.

Q. Were you ever able to identify why that was happening?
A. It wasn't corruption by the staff. I think it was the number of times the staff, senior staff were hit over the head over certain issues and they gave up, and I think they gave up by saying, well, I'll let this go through, it's not gonna cause that much of a problem, I've got to change it myself, rather than bring it back to staff, let's get it up.

Q. When you say "hit over the head" you're describing the relationship between the --
A. Yeah, between council --

Q. And the executive, is that what you --
A. Yeah, mainly, and also I think the GM and the executive within that organisation, even the three of them, there was a lot of problems there. Certain, one was supported compared to the other and there was a lot of friction from what I heard, and I know the individuals, each one I've worked around, and I could see that that's what was happening. So, there's a real dichotomy of issues that you're hitting.

Q. Does that highlight though, in your view, the importance of a positive or strong relationship between the executive, firstly amongst themselves: would you agree with that?
A. Absolutely and --

Q. Sorry, I'll let you expand on that in a moment, but secondly, the executive team and the governing body?
A. Oh, yeah.

Q. Does that then enable this free flow of ideas in a constructive way backwards and forwards?
A. Yeah, and you can --

Q. When was that happening?
A. Definitely wasn't happening. Definitely there was a problem with the executive between themselves; I don't think they could trust each other, from what I saw and what I heard. And definitely between the councillors and the executive; the relationship might have been on the surface okay, they might have, you know, said nice things and platitudes to each other, but generally it wasn't happening and I think again the acceptance by their governing body, the councillors, the reports were set up so it always favoured what they wanted --

Q. Yes, thank you.
A. -- without being out there.

THE COMMISSIONER: Mr Parish.

MR PARISH: Q. Does it follow from that, that it was

quite important that the councillors have confidence in the GM?
A. Oh, absolutely. If you look at what's happening over the last couple of months in local governments since the new elections in December, a lot of GMs were asked to leave and it's because they don't have confidence in the general manager.

Q. Is it fair to say at least in respect of whether or not there's confidence in a GM, it's not something which is unique - or the lack of confidence is not something which is unique to the shire council?
A. It's not unique. As I said to you, I think we've got probably 12 or 13 general managers out of a job in the last couple of months in New South Wales local government, but inside normal organisations you should - a GM should have at least three terms in 10 years, and that's mainly because you need a couple of years to set the organisation the way you want to run it, the organisation, and then have another couple of years to run it to make certain (indistinct), and then I think - I was gonna say this at the seminar I was going to be at, I think there's a time limit for GMs and I think the time limit is 10 years, so anything over that I think your exceeding your time. And I think in retrospect, when you have six GMs in a period of 16 years, it's not good; not good at all.

Q. Can I just come back to 8(c) for a second? Mr Broad might have to show his face or his fingerprint or something. No? The use of the phrase "identify or prioritise" is used about six times each, I think, in those sub-paragraphs. Properly identifying and prioritising needs, aspirations, strategic goals, actions, activities, does that reduce the friction between governing bodies, GMs and the general staff in your experience?
A. My experience, we didn't have anything like this when I first started. It developed, I had developed something similar to this and then the government put in the IP&R strategy. Yes, if you can identify, you can actually program it, you can - well, identify the actions, program it, fund it, and set it in a sequence so you know when it's gonna be done, it sets the community in a certain direction, sets the council in a direction, sets staff in a direction.

When I first started in local government there were yearly plans, and yearly plans were yearly for the

first year of a new council you're trying to get your feet on the ground and the councillors didn't understand what's going on so they let staff run with it. The second and third year they manipulated and they got reactions that they particularly wanted, and the fourth year is a political year so nothing's really done to challenge the status quo.

Now, with the 4-10-year strategy you can actually start planning properly. So, yes, you set the goals of the organisation. First of all, you understand why you're there, and then you try and interpret that into actions by communicating to the community, with the councillors and with staff and develop programs from that.

Q. We had some evidence on the very first day from Mr Steve Horton about particular frictions that may occur from time to time between industry and friends of groups or community groups that have certain views on development. To paraphrase him, he said that if there was a well set out structure in place with sufficient detail and priorities around it, even if those sorts of community groups who may have differing views on things disagreed, at least they'd know why there was a decision made in a certain way and that would assist. Is that your experience as a GM and somebody who's involved in local government for a long time, do these things help?
A. Definitely helps, definitely helps. I remember I had a councillor who was put in by a by-election came to see me and said - years and years ago - said that, "I would like this road to be resealed". And I said, "Well, it's not in the program but, if it is, it's probably 15 years down the track to get it in". And I said, "Not only is it outside the 15 years or within the 15 years, to put yours up there you're gonna have to drop something back, and there's reasons why a certain program was developed to put priorities on these schemes". So, generally, if you don't have the background from developing a plan, and there are three components of that: community, councillors and staff in developing a program, so the three components of it develop a program - sorry.

THE COMMISSIONER: Just pause just a moment.

THE WITNESS: Sorry, sir.

THE COMMISSIONER: That's all right.

THE WITNESS: So, you have three components of it to develop a program. Once the program's in there and there's explained why they got the program the way it is, by empirical measurements or by community actions, then you can run that program.

You can make variations to it depending on emergencies, you know, like we've had with the floods or the bushfire, certain things change but generally they follow that precedents. And also from the staff point of view, to start developing a program takes a year or two to develop it, and the last thing you'll want to do is have the staff sitting there developing a program for two years and then it changes, because then they've got two more years to try and pull that program in to develop it, so you've lost four years. So, from a staff point of view you've got to make certain that they've got the right information criteria to make that judgment and run with it.

MR PARISH: Q. One more question on that topic of strategic planning, although it might be an operational issue, you can tell me if it is; your observation that staff did not return emails or calls from the community in any sort of timescale. Did you pick up any policies or systems in place that set parameters around communications?
A. It's a good question. We had - at Wollondilly we had a 14 day, a seven day and one day turn around: one day for phone calls, seven days for emails and 14 days for letters, so there was this strategy that we put inside the organisation that was accepted by the organisation and council.

I didn't know if there was one here. All I knew was, when I came here all I got was complaints from the residents that every time they rang someone up they never got a return, or they - they never got an email, they never got a phone call, and I think - I think that it was due to the culture of the organisation more than the administration side. I think there was enough administrative people here to be able to do that, I think the organisation was just - it wasn't functioning. And the people are good, just it wasn't functioning, and that's why I try and impress upon them the importance of communicating back out there to the community.

Q. Assume that there wasn't a policy in place or a

direction: would you expect such a policy or direction to come from the GM at executive level?
A. Absolutely, there's no question.

Q. Is that something which the governing body should or could involve themselves in in setting a direction or a strategy or asking for reports about whether such communication was in place?
A. I think it's appropriate for the governing body to understand the process that the organisation - whether it needs a policy, it was more operational than a policy. I think it's good to have - and I tried to do that at Wollondilly, give a feedback to the community and the councillors about how things were going. Certainly, it's not due to one council; all the councils have the same problem. Staff are more involved in trying to get outcomes rather than communicating back to the residents and, it's not that they don't want to do it, sometimes they just find that their time is taken up in developing programs rather than communicating back out.

THE COMMISSIONER: Q. Is that communication back though an important part of the process of council operations?
A. Absolutely, there's no question, and I think I have to say from an engineer, engineer's do this all the time: they don't communicate. That's what I try to say to my staff whenever I go to a place, "You've gotta be able to communicate back and explain to people why they're not getting things or why they're doing things or why we're doing this". A lot of people accept that certain things aren't done as long as you're communicated to.

Q. Do you think it's that part of the communication process that was lacking here?
A. Yes.

Q. That is, going back out and explaining why a decision had been made, as opposed to just saying, "We've made it, accept it"?
A. I think there were a number of departments where this was - we were communicating well to. There were a number of departments that were terrible and that's are the ones that have been hit: development and planning and engineering were two areas that really needed to communicate back out there and I think they failed, in that, because they don't have that structure inside their brain, they're very right-lobed thinkers and they don't

think about, oh, we should be communicating back to them.

Q. What about at the governing body level for significant decisions that may be made at that level? Does the governing body have a role to play in that process?
A. No, I don't think - there's a communication tool that the councillors can use; that communication tool is to get out there to the community and explain certain things: you know, why they're doing certain roads, why they're building certain structures, and that's a role the councillors should have in understanding it, because you can't have a councillor that doesn't know what's going on.

But it can be done with a staff member there or staff member can go directly, so I think the council has a role, the councillors should be aware of the issues that are facing them, and I think it's - and really, it could be more of a workshop where you try and explain to the councillors, we have a problem because of this, and then the councillors are aware, the problem is; rather than trying to non-communicate or just put some blanket up there, and that's one thing the community doesn't like, to see a blanket put up there and they think straight away there's something underhand going on and it's not.

Q. And that affects - well, does it affect trust in the organisation?
A. Yes.

Q. I take it, you see that the organisation being trusted in the community is important?
A. If the community can't trust the council, the council shouldn't exist.

THE COMMISSIONER: Yes, thank you. Mr Parish.

MR PARISH: Q. Can I just ask you about the planning department? Can you tell us about your findings or discoveries when you analysed the time taken for development applications and similar issues within that department?
A. It's an interesting - when I looked at the organisation I noticed that they had two things running through it: (1) they had very competent staff who were doing the right thing; they had a lot of consultants that they brought in, a very costly exercise, because they seemed to rather bring in a consultant - I think they were

spending $3m a year on consultants inside this organisation rather than go out and try and replace them with staff, and they kept saying, "Oh, they don't have the technical expertise", well, I question that especially in this environment so close to Sydney.

But what I found, the leadership of that section wasn't working properly and that's why I made big changes, so there's a lot of issues that came out from the review that was undertaken. I did three reviews and the review of the development area by Ernest Consulting showed that there's a lot of problems emanating from one person and that one person controlled what was going in and controlled what was going out that caused that backlog of information. Instead of delegating the responsibility back to the managers beneath that group manager, it was all homing back into one person and you can't do that, you've got to delegate the responsibility and get the people working at the right level. They're all professional, they're all paid well, they're the ones that should be making the decisions, not up here, and that up here was so close to the hierarchy it became very, very problematic, and so, that's why I made the decision at that stage.

Q. We heard some evidence earlier in the inquiry about a radical improvement in the timing of processing of the DAs. When you came on board was it your view that the time was still too long?
A. Oh, not only long, they went into a system of rejecting them and leaving them up to the legal process to find solutions instead of trying to find it themselves. This was always an issue in the councils I've been to where the staff say, well, we're going to reject that and let the legal process come back at a later stage. And I'm thinking, well, that's wasting resources, wasting council resources, the developer's resource, there must be a better way of doing it.

So there's two ways of answering this: one is delegating it down to the right level, that improves the DA processing time. And secondly, stopping the idea that you had to go to legal representation to fight an issue. You can sit down without being - always a planner would say, "I don't want to be compromised by a decision that I'm making indirectly with a developer", but you could sit down and talk about the issues without defining the concurrence, and by doing that you can sort out solutions. Rather than, "Oh

well, we're going to reject it, throw it back to the legal representation to come back and fight us", and that was wasting so much time and resources.

Q. There were DAs that were called up to council; you're aware of that?
A. Yes.

Q. Do you have any impressions about how that process took place at council or governing body level and whether that was an efficient and effective use of time?
A. It's funny, if you've got the right policies you don't - we had a policy at Wollondilly that 95 per cent of all DAs was processed by the staff; 5 per cent were called up for particular reasons, and they've got the right to call them up. I think Mr May made the right decision of trying to put it at arm's-length the approval process, but in that 5 per cent there are things that are called up for various reasons, and we tried to work with the councillors to understand, by setting the right policies and procedures you can actually get a lot of those sorted out. And, 5 per cent's not bad for an organisation that's putting in about - I think we were putting in about 1,800 DAs a year, so it wasn't that bad. So, there is a process you can, the council's got the right to bring them up, it depends on the policies you set up. If you've got the right policies, a lot of those don't need to be called up.

Q. Can I just ask about your knowledge of the call up process in this council and, if you know about it, and more generally how that compares to the call up process in other councils you've been involved in?
A. I couldn't tell you. I'm sorry, I didn't really get into - I knew things were being called up but there might have been particular reasons they were called up. All I can say is that a lot of the call-ups don't need to come up if you've got the right policy.

Q. Could I ask you a few questions about meeting procedure more generally. You observed, you said, a use of points of order and Code of Meeting Practice that you observed being used.
A. Yeah.

Q. Could I just ask you specifically about rescission motions; did you see those used?
A. A lot.

Q. In your experience, was that an inappropriate use of rescission motions, if you have any specific recollection of them?
A. A rescission motion needed, in the council I was in, three councillors, to be signed by 12 noon the next day. So, it had to reach the GM by 12 noon the next day and three signatures on it. I probably had in my 10 years, probably three rescission motions in 10 years, and it was only because they were contentious. And one in particular, one councillor couldn't attend the meeting, so I think there was a feeling that that one councillor might change the vote in the meeting.

So, I only had, I think, three, and a lot of them - you've got to explain the process, but three signatures by 12 o'clock the next day into my hand slows the process down - sorry, stops the abuse, I think, and it can be abuse. I'm not even sure what the procedure was here, because I'd never - I wasn't sure.

Q. Yes, but you observed them in the meeting that you saw use of the rescission or?

THE COMMISSIONER: No, I think you're at cross-purposes perhaps.

MR PARISH: Okay.

THE COMMISSIONER: I think the witness is speaking of his prior experience and you have a particular meeting in mind, so I'm not sure --

THE WITNESS: No, I'm not aware.

MR PARISH: Q. Did you observe them being used by this shire council?
A. No, I didn't, no, sorry.

MR PARISH: Okay. Just excuse me. I was going to move on from my specific topics, Commissioner, unless you had had any more?

THE COMMISSIONER: Q. In an answer to Mr Parish a little while ago you said that you thought that the administrator had made the right decision by moving, I think planning decisions at arm's-length; I take it that's a reference to

the local planning panel?
A. Yes.

Q. Why do you have that view?
A. My feeling, and I've seen this occur in various other councils, a lot of decisions are put into hands of the technical people who understand the issues, but also representatives of council that understand the community view, but I think the decisions are pretty good. And, in fact, the involvement I have of the planning panels shows that most of the decisions are pretty smart and correct. I've seen the other thing happen at councils, where things aren't followed by recommendations, for various reasons, but not on pure planning grounds. So, my feeling is, yes --

Q. But it removes that element that matters are being decided --
A. It does remove that element, and I think it's fairly straightforward, the people are professional, technical people who make decisions; they listen to the community's points of view too, which is no dissimilar to councils - councillors, where they've actually got a chance of the community coming in or a developer coming in explaining the the background to the report, but I think it's much better to have it at arm's-length.

Q. And, is that an observation about councils generally or is that limited to this organisation?
A. Um --

Q. Or that may - I appreciate you going into --
A. No, no, generally for the metropolitan area, I've got no question about that. I'll have to take some - I'm not sure about - I'm just about to go in as an interim GM --

Q. I was about to say, if you think that answering that question may compromise that next position, I won't press you for an answer.
A. Well, I don't want to say anything yet until I see it actually functioning.

Q. No, I understand, I understand. It's not a fair question in that way and I won't persist with it.

THE COMMISSIONER: Yes, Mr Parish.

MR PARISH: Q. Do you have any further general comments that we haven't covered that you'd like to make in respect of the terms of reference?
A. All I can say is that, from my feeling of the council, the senior management seemed to spend most of the time working with the council and not working with the staff, and I think that was their failings from what I saw.

THE COMMISSIONER: Q. Just one final thing. The interim administrator has made an observation - and I may be misquoting him, but something to the effect that "the council had stopped listening to the community". Do you have a view about that observation?
A. No, I don't have a view. Mr May's been around with the community, I think he's done the second run: he's listened to the community and saw that there were some barriers put up there. I heard there were some barriers but I can't say whether that's due to the community - of the councillors putting barriers up or staff not given the information properly.

Q. I understand.
A. So, I don't know which way (indistinct).

THE COMMISSIONER: Thank you. Mr Parish, anything arising from that?

MR PARISH: No, Commissioner.

THE COMMISSIONER: Yes, all right. Are there any applications? Do you have an application?

CR McLAUGHLIN: Yes.

THE COMMISSIONER: Yes, come forward. What's the topic?

CR McLAUGHLIN: Just going to Mr McMahon's comment about the organisation being well run; it was a question - and that there was no corruption, I was just going to ask some questions along the lines of that.

THE COMMISSIONER: Yes. What's the first question?

CR McLAUGHLIN: The first question was: Mr McMahon, why did you, after being in the acting general manager's role for only three weeks, seek the resignation of senior staff?

THE COMMISSIONER: I reject that question.

CR McLAUGHLIN: Okay. Second question: did you offer $50,000 incentives to the others --

THE COMMISSIONER: I reject that question.

CR McLAUGHLIN: Okay. The third one is: were you directed to get rid of senior staff and by who?

THE COMMISSIONER: I reject that question.

CR McLAUGHLIN: Thank you.

THE COMMISSIONER: None of those matters arise on my terms of reference. None of them seem to have anything to do with the topic that you foreshadowed.

Are there any other applications.

CR SCANDRETT: Yes.

THE COMMISSIONER: Come forward. Leaving aside the obvious privacy problems with all of these.

Yes, what's your topic?

CR SCANDRETT: It relates to Mr McMahon's comments on bullying of the general manager; just qualifying something there, please.

THE COMMISSIONER: What's the question?

CR SCANDRETT: Mr McMahon, you say, and I quote that, "The bullying came from councillors, between councillors". Would you like to comment on why you thought the general manager reapplied for her position in that climate?

THE COMMISSIONER: Well, there's a problem with that question. There's a proposition in it with which Mr McMahon may or may not agree.

As I said to you last week, if there's a proposition in your question the witness needs to be given an opportunity to answer it. So, in that form I'm not going to permit it, but you may be able to get there by asking whether Mr McMahon agrees with the proposition that's built

into it.

CR SCANDRETT: Mr McMahon, in relation to the tenure of the GM, Ann Prendergast, can I put to you that there was some comment and concern as to why she renewed her contract in the climate of bullying - alleged bullying?

THE COMMISSIONER: I'm sorry.

CR SCANDRETT: I'm not doing that very well.

THE COMMISSIONER: What is the issue that you want to explore with the witness?

CR SCANDRETT: Was the witness aware as to why the general manager renewed her contract with the support of --

THE COMMISSIONER: When? At what time? This is before Mr McMahon's appearance?

CR SCANDRETT: Yes, it was.

THE COMMISSIONER: Q. Do you have any understanding of anything to do with the previous general manager's tenure? A. No.

CR SCANDRETT: Thank you, that's the answer.

THE COMMISSIONER: Mr Parish, anything arising from any of that?

MR PARISH: No, Commissioner.

THE COMMISSIONER: Mr McMahon, thank you for your attendance today.

THE WITNESS: Thank you.

THE COMMISSIONER: You are released from further attendance under your summons and free to go on your way.

THE WITNESS: Thank you very much.

<THE WITNESS WITHDREW

THE COMMISSIONER: Mr Parish, what's next?

MR PARISH: No further witnesses for today, Commissioner.

THE COMMISSIONER: All right, and tomorrow we have Mr May?

MR PARISH: Yes.

THE COMMISSIONER: And, as I understand it, currently scheduled Ms Miscamble, but I have been informed, and the message may not have reached you, that Ms Miscamble is in isolation as of today and can't be here tomorrow, so I imagine that will need some reshuffling of the witness list.

So, we'll definitely have Mr May in the morning and there will have to be some work done to see if we can schedule someone in for the afternoon.

MR PARISH: Yes, Commissioner.

THE COMMISSIONER: So, as I said to anybody observing the proceedings some time ago, witness lists are always a guide because things like this inevitably happen and it appears that we've had our first instance of isolation affecting the inquiry.

So, for those watching, I don't think we'll be in a position to tell you who else is coming tomorrow afternoon, if anybody, until first thing tomorrow morning. That may, obviously I think, Mr Parish, influence the witness list for the rest of this week?

MR PARISH: Yes.

THE COMMISSIONER: All right. We'll try and keep people informed first thing in the morning of whoever else may be coming in the afternoon but, aside from that, anything else I need to deal with today?

MR PARISH: No, Commissioner.

THE COMMISSIONER: Yes, all right. I'll adjourn until 10am tomorrow, thank you.

AT 3.08PM THE INQUIRY WAS ADJOURNED TO TUESDAY, 5 APRIL 2022 AT 10.00AM

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