

WINGECARRIBEE SHIRE COUNCIL PUBLIC INQUIRY

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

Before: Mr Ross Glover (Commissioner)

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

On Wednesday, 6 April 2022 at 10.04am

(Day 8)

1 THE COMMISSIONER: Yes, we'll recommence. Mr Parish,
2 what's on the agenda for today?

3
4 MR PARISH: Thank you, Commissioner. I foreshadowed
5 yesterday that there was some witness shuffling going on
6 due to unavailabilities. Our first witness today will be
7 Ian Reynolds and, thanks to the hard work of Ms Hewson and
8 the convenience of Jim Clark, he will be our next witness;
9 he's kindly agreed to be moved up to today.

10
11 THE COMMISSIONER: Yes, I do appreciate that, I understand
12 the inconvenience of all witnesses who are summonsed to
13 come along, so that's appreciated. So, do you think we'll
14 finish by lunchtime?

15
16 MR PARISH: It appears that way at this stage, yes.

17
18 THE COMMISSIONER: All right. Yes, proceed.

19
20 MR PARISH: I call Mr Ian Reynolds.

21
22 <IAN REYNOLDS, sworn: [10.06am]

23
24 THE COMMISSIONER: Thank you, Mr Reynolds. Yes,
25 Mr Parish.

26
27 MR PARISH: Thank you, Commissioner.

28
29 <EXAMINATION BY MR PARISH:

30
31 MR PARISH: Q. Mr Reynolds, can we start with your
32 background, both personal and vocational?

33 A. I've worked for probably, let me see, 30 or 40 years
34 in the public sector, both state and local. I was at
35 Blacktown Council for 21 years, culminating in five or six
36 years as general manager, prior to going back to the state
37 public sector in senior executive positions.

38
39 I retired from the state sector in 2012 and set up my
40 own consulting practice concentrating on the areas of
41 strategic land use planning and local government and state
42 governance process reviews and those sorts of things. In
43 that capacity I was approached by the government to oversee
44 some of the merger inquiries for the councils in 2015/16
45 and subsequently I was appointed as an administrator of the
46 newly merged Central Coast Council. Subsequent to that I
47 have done some specialist temporary advising at councils

1 like Blue Mountains and ultimately at Wingecarribee.

2

3 Q. Yes, you were appointed temporary advisor on the same
4 day as the Performance Improvement Order was issued; is
5 that correct?

6 A. Yes, that's correct.

7

8 Q. Is that December 2020?

9 A. Yes, that's true.

10

11 Q. You provided a report on what you had done as
12 temporary advisor on 18 December 2020; is that correct?

13 A. I think that's the date, yes.

14

15 Q. I'll show you a copy of that. I'll ask you some
16 questions about it and, if you've got it in front of you,
17 it'll make it a bit easier. It's page 215 of tender
18 bundle B.

19

20 THE COMMISSIONER: Sorry, Mr Parish, Exhibit B, 215?

21

22 MR PARISH: 215.

23

24 THE COMMISSIONER: Thank you.

25

26 THE WITNESS: I have it here.

27

28 MR PARISH: Q. Thank you. The first page in sets out
29 the recommendations on page 216.

30 A. Yes.

31

32 Q. We might come back to those. Can I start by taking
33 you to page 4 which is at page 219 of the bundle.

34 A. Yes.

35

36 Q. Can you tell us what your role was as temporary
37 advisor?

38 A. My role, at the request of the Minister, was to attend
39 and observe council meetings and advise on meeting process,
40 and monitor the council's compliance with the Performance
41 Improvement Order in that respect.

42

43 It was indicated at the outset that I should attend at
44 least three meetings: in the ultimate I attended the
45 mayoral electoral meeting, the special meeting, and I
46 attended six meetings - six meetings - yes, and also had
47 one-on-one phone interviews with a number of the

1 councillors who wished to speak with me.

2

3 Q. Did you have occasion to review any of the previous
4 meetings that were online either prior to you physically
5 attending them or digitally attending the actual meetings?

6 A. No, I didn't, partly because of just circumstances at
7 the time, and also, it wasn't really - I didn't feel in a
8 position to be able to pick and choose meetings that I
9 might want to see, so I thought I should approach the job
10 de novo, as it were.

11

12 Q. Did you meet with the mayor and the acting general
13 manager and the deputy general manager of corporate
14 strategy and development prior to those first meetings or
15 was that after the first meeting?

16 A. I did attend here to introduce myself to the mayor,
17 the acting general manager and the deputy general manager
18 on the day before the mayoral meeting, as I recall,
19 22 September I think it was --

20

21 Q. Yes.

22 A. -- just to introduce myself and to gain an
23 understanding from their perspective of the nature and the
24 origins of where the council was at at the time.

25

26 Q. Can you give me your impressions of those first three
27 meetings that you attended?

28 A. I don't know that I kept detailed records and in my
29 report either. Generally speaking I was after a bit of a,
30 I suppose, a bit of an impression from each of the three as
31 to how they saw their role going in the council. The
32 overall impression I got I would summarise as, certainly a
33 strong sense of disunity in the elected body; also,
34 probably a sense of a disjoint between the senior staff and
35 at least some of the elected body, and as events
36 subsequently played out I think those observations were
37 sustained, I suppose would be the right word.

38

39 Q. If you go over to page 5 of the report, there's some
40 observations arising from those first three meetings there.
41 Can you explain --

42 A. Can I just clarify, those first three meetings were
43 council meetings rather than those staff --

44

45 Q. Pardon me.

46 A. Sorry, yes.

47

1 Q. So your evidence just then was your general
2 impressions from meeting with the mayor, the acting general
3 manager and the group manager of governance; is that
4 correct?

5 A. Yes, in the ultimate, even though the request for my
6 services related to seeing three meetings, I felt that
7 wasn't going to be enough, so I ended up, as I say, looking
8 at six or seven. So, I made observations out of the first
9 three, subsequently met with the mayor and the acting
10 general manager to advise them of the outcome of my
11 observations and some recommendations for improvement, and
12 then in my own mind I wanted to see how those suggestions
13 for improvement played out in the next few meetings that I
14 observed. So, that page there summarises the observations
15 I made at those first three council meetings.

16
17 Q. The first of your observations from those first three
18 meetings is that there was:

19
20 *A lack of clarity around process which*
21 *enabled 'game playing' and 'facilitated*
22 *unhelpful verbal exchanges'.*
23

24 Can you explain to the Commissioner what you mean by
25 "game playing"?

26 A. Some of my comments, I guess, are in the context of,
27 the meetings I observed were online. Two circumstances:
28 (1) this chamber was being remodelled I understand so they
29 couldn't meet here, but also because of COVID. The mayor
30 was the only councillor in attendance physically at the
31 council. There were - my understanding is that some of the
32 other councillors were "in the council building" but not in
33 the chamber, so they were also online.

34
35 There were at odd times some quite substantial
36 technical difficulties which didn't help the running of the
37 meetings, there were particular circumstances, and some of
38 the - the council had given a direction at some stage, I
39 can't recall when but it would have been before my
40 starting, that councillors shouldn't use a digital
41 background because it was interfering with the - you know,
42 the voting process, for example. Despite that direction,
43 one councillor, during my whole time I think, insisted on
44 having a digital background and because of that - I don't
45 understand the technicalities, but any time he wanted to
46 raise his hand or put up a voting card it flared. I could
47 see what the mayor was seeing, so the mayor was not in a

1 position to actually know that that councillor wished to
2 speak or had voted a particular way. My observation at the
3 time was that that councillor felt that he was being
4 victimised or not paid due regard by the mayor, when in
5 fact it was a technical difficulty.

6
7 So, there were issues like that, but one of the
8 difficulties I found with their process, which I did talk
9 to the mayor and the GM about, the acting general manager,
10 was there was a very loose or opaque process around the
11 actual moving of motions. Items would come up for
12 discussion, there'd be discussion, there might be a public
13 speaker come in, then they would have the council staff
14 talk about the issue. During discussion councillors would
15 indicate very loosely that they wanted to move something;
16 they wouldn't formally move.

17
18 So, when it actually got to the discussion about
19 moving the mayor would call for a motion and then there
20 would be disagreements and the councillor who mentioned it
21 in passing would say, "Well, I've already moved something",
22 so then there'd be a debate about who had the right of
23 moving and seconding. That difficulty arose because of the
24 "messy process" around the actual introduction of
25 individual items. I felt that, for example, if council
26 staff were to brief councillors on a business paper item,
27 that briefing ought to be held separately to the actual
28 determination meeting, the meeting where it was deliberated
29 on; that briefing can be public if the council wants it to
30 be, but it gets that advice and discussion process out of
31 the debate process and I felt that that would have been
32 helpful.

33
34 So, that's the sort of issue that was behind my
35 comment there, and the mayor, obviously as chair of the
36 meeting whenever there was an issue or a disagreement, he
37 has to intervene, so it just encouraged - increased the
38 need for the mayor to intervene where otherwise, if the
39 process had been more formalised, cut and dried, it
40 wouldn't have happened, in my view.

41
42 Q. Do I take it from the word "game playing" in that
43 context, you formed the impression that some councillors
44 were using that lack of clarity to intentionally make it
45 messy?

46 A. I did form that impression, yes.

1 Q. In respect of that messiness, was that in any way
2 caused by a gap or uncertainty in the Code of Meeting
3 Practice, or was that a matter of, the Code of Meeting
4 Practice was sufficiently clear and it was not being
5 followed?

6 A. I think it would be more the latter.
7

8 Q. We might talk a bit more about that in due course.
9

10 THE COMMISSIONER: Are you moving to a different topic?
11

12 MR PARISH: I was moving to a different topic in the sense
13 that I was moving to the next sentence.
14

15 THE COMMISSIONER: While I've interrupted you I may as
16 well ask my question.
17

18 Q. One thing that can be seen in some of those meetings,
19 and it I think relates to the issue of loose procedure
20 about motions, there being debates about who would move and
21 who would second a motion; did you observe things like
22 that?

23 A. I did.
24

25 Q. Is that something that happens in councils in your
26 experience?

27 A. No, not generally.
28

29 Q. Does it tell one something about the processes and the
30 efficiencies of meetings?

31 A. I suppose the answer is, yes, it does.
32

33 Q. What's your view about that?

34 A. My view is, the lack of process - processes are there
35 to help an outcome be achieved efficiently, fairly and
36 transparently. The fact that there was that lack of
37 process around the procedure enabled the debate to
38 concentrate on non-issues, like who had the right of moving
39 and who was a seconder, those sorts of things, rather than
40 the nub of the issue that they might have been talking
41 about.
42

43 I'm a person who likes process by my nature, by my
44 training, by my background because it serves a good outcome
45 and, if it's not observed in practice, then the outcomes
46 can be either messy, delayed, protracted, et cetera.
47

1 Q. And is it a shared responsibility of all councillors
2 to adhere to proper process in a meeting?
3 A. Yes, I think so, in my view, and the staff.
4
5 Q. Does the chair have a particular role to play in that?
6 A. Yes, the chair does, in my view, as the controller of
7 the meeting; assisted, I think - in local government the
8 role of chair, being the mayor, in my mind and in my
9 experience involves a good working relationship with the -
10 in this case the acting general manager and, you know, in
11 normal times the general manager working together to chair
12 the meeting effectively.
13
14 THE COMMISSIONER: Thank you. Sorry to interrupt.
15
16 MR PARISH: Q. The second sentence of your first
17 observation you refer to the conflation of questions,
18 statements and moving motions; is that effectively the same
19 observation you were talking about in respect of the
20 debates that were being had about who was going to move
21 something?
22 A. Yes.
23
24 Q. The second observation that you had was that:
25
26 *On occasion, the Mayor contributed to*
27 *debate without vacating the Chair which*
28 *compromised his ability to chair the*
29 *Meeting at those stages.*
30
31 Can you explain why it's necessary to vacate the chair
32 and what effect there is if it's not done?
33 A. The mayor is - in the context of a council meeting the
34 mayor is chairing the meeting. In my view it's not
35 appropriate for the chair of a meeting to be entering the
36 debate, one side or another, whilst in the chair. In my
37 normal experience, if the mayor felt the need to contribute
38 to a debate, he or she would vacate the chair in favour of
39 the deputy mayor usually to sit in the chair and then have
40 their say, so the meeting could be chaired by somebody else
41 while the mayor was contributing to the debate. It's
42 difficult to do both. If you're intervening to speak in a
43 partisan way on an issue it's difficult to maintain the
44 appearance of impartiality as chair, so in my view the
45 roles ought to be kept separate. So, if the mayor needs to
46 speak, then he or she should vacate the chair.
47

1 I did raise that issue, I recall, with the mayor and
2 the acting general manager and the general response I got
3 was, "Well, that's the way we do it here". I got the
4 understanding that that had been a longstanding practice,
5 so it was embedded in the way the meeting was normally run.
6

7 Q. Is there a good reason why the mayor as chair ought
8 not to contribute to the debate whilst sitting in the
9 chair?

10 A. I think it - well, it just - the mayor's role in the
11 meeting is to chair the meeting. If he wishes to speak,
12 then he takes himself out of the chair, someone else then
13 chairs the meeting while he speaks, that's my view as the
14 proper procedure.
15

16 Q. Did you have occasion to observe in the meetings that
17 you saw councillors asking the mayor when he was in the
18 chair how he intended to vote on a certain issue prior to
19 the debate or the vote on it being conducted?

20 A. Thinking back, I can't remember that being raised,
21 although I would say that the fact that the mayor spoke on
22 an issue several times was a clear indicator of the way he
23 was going to vote anyway. There may well have been
24 discussions before meetings that I wasn't party to where
25 that was made known, but where there were split votes it
26 was usually the same split. So, my observation was that
27 people would generally have a view - have some
28 understanding of the way voting might go.
29

30 Q. If I asked you to assume therefore that on occasion
31 councillors did ask, prior to the vote, how the mayor
32 intended to use a casting vote, would that be appropriate
33 in your view, in the meeting procedure context?

34 A. I wouldn't favour that practice. The voting is the
35 process that shows where you're voting.
36

37 Q. Your third observation was that there was:

38
39 *... no use made of en bloc motion process*
40 *in any observed meeting resulting in the*
41 *need to separately consider all items ...*
42

43 A. That's correct.
44

45 Q.

46 *... even when there was no debate or*
47 *difference of views between councillors on*

1 an issue.

2

3 Can you explain what an en bloc motion is?

4 A. Yes, en bloc is where all councillors are of the same
5 mind about an issue, then most councils that I've observed
6 or been in will move that portion of the business paper in
7 one motion, so it's adopted, usually at the beginning of
8 the meeting.

9

10 A council I was involved in - at Blacktown for example
11 - they would do it slightly differently, they would call
12 for extractions, so councillors would nominate which item
13 they wanted to speak on and by default all the rest were
14 then passed as a single motion. It's really an efficiency
15 process in terms of the meeting time, particularly if there
16 are public involved watching the meeting to be able to deal
17 with items that are not contentious in that way as an
18 efficiency measure.

19

20 I did raise that with the mayor and the AGM as a
21 potential improvement measure and the response, if I recall
22 correctly, was along the lines of, "We may well spend more
23 time arguing about what we agree on than actually debating
24 them", so they didn't do it.

25

26 Q. That was going to be my next question. Does using the
27 en bloc process require some planning, preparation and to
28 an extent cooperation prior to the meeting?

29 A. Look, it is a cooperative practice, yes. One of my
30 suggestions that I recall to the mayor and the general
31 manager was that, if there were issues - if the councillors
32 wished to have briefings on things they would have them
33 before the meeting and during that process they might form
34 a view that they're all of one mind, so that the
35 recommendation can be moved as part of a block motion, so
36 it does require an effective working relationship between
37 the councillors yes, in my view.

38

39 THE COMMISSIONER: Q. Not only - well, tell me if this
40 is right: the en bloc motion process is one that requires
41 cooperation, but shouldn't cooperation be part of the
42 meeting process in any event?

43 A. Desirably, yes.

44

45 Q. Does the en bloc motion process - no, I withdraw that,
46 thank you, you've already answered that?

47

1 MR PARISH: Q. In your opinion and experience is there
2 an obligation on councillors to be cooperative and take
3 steps to ensure the efficient conduct of a meeting both in
4 the meeting itself and in the run-up or preparation to a
5 meeting?

6 A. In my experience cooperation is a good thing, yes,
7 both within and before, yes.

8

9 Q. Number (4) of your observations, I think, we've
10 covered the digital background issue?

11 A. Yes, we have, yes.

12

13 Q. You also observed at (5) that:

14

15 *On occasion, the Mayor appeared unsure as*
16 *to the process and needed to be assisted by*
17 *the acting general manager as to the*
18 *order of proceedings, correct process.*

19

20 Et cetera.

21

22 A. Yes.

23

24 Q. Can you explain what you mean by that?

25 A. Well, if I take the first meeting I observed, for
26 example, was the mayoral election. The council had
27 previously resolved the method of voting but it needed to
28 re-resolve that at the meeting to comply with the
29 regulations, so it was to be by open voting. So, that
30 needed to be done, that was clearly set out in the business
31 paper.

32

33 The mayor, I feel, in response to I think an issue
34 raised by one of the councillors absent from the building
35 raised the issue about some of the councillors being in the
36 building but online and how that impacted on proceedings.
37 The mayor proceeded to say how the voting was going to
38 happen, which wasn't actually the way the council had
39 previously resolved nor was recommended in the business
40 paper, so the acting general manager had to, after the
41 mayor had given his explanation of how things were going to
42 go, the AGM had to intervene and say, "Well, actually no,
43 this is the way it's going to happen", and that was - I
44 recall that sort of event happening in a number of
45 occasions, not as specifically as that one because that
46 really stuck in my mind given the singular nature of the
47 meeting.

1
2 Q. In your experience when one is chairing a meeting and
3 there might be a doubt or even a temporary brain fade as to
4 what the appropriate process is, how in your view should
5 that be dealt with?

6 A. Well, I've chaired a number of meetings myself, if I'm
7 not sure I'll just say, "I'm not sure, I'll ask so and so".
8 The general manager is there, and councillors are members
9 of the community, I don't think it's necessarily fair to
10 expect them to be across all the details of how things
11 ought to run, but you would expect the staff to be across
12 those details.

13
14 So, as we've talked about cooperation, I think there
15 needs to be a good working relationship between the mayor
16 and the general manager/acting general manager in this
17 case. If I am unsure as mayor I would defer to the general
18 manager, I would openly say, "I ask the general manager to
19 respond". Or, if I'm the general manager and I see that
20 the mayor is in "difficulty" I would actively intervene
21 myself and say, "Mr Mayor, maybe I can enlighten the
22 situation", or something like that. I know when I was
23 general manager with my mayor - I had several mayors - we
24 had a cooperative working relationship at the head of the
25 meeting and I could just give a signal to the mayor that
26 I'll take this one, I'll take this answer, to assist the
27 running of the meeting. So, we talked about cooperation
28 with councillors, it's cooperation with the staff as well.

29
30 Q. Is there a concomitant code or signal back from the
31 mayor to you as general manager when he or she thought --

32 A. It's a two-way street.

33
34 Q. Quite.

35 A. Yes.

36
37 Q. Did you see any evidence of such a signal code or
38 understanding between the mayor and the acting general
39 manager in these meetings?

40 A. No.

41
42 Q. Do you think it would have been useful if there had
43 been such a pre-planned relationship --

44 A. Yes, do.

45
46 Q. -- so that they could deal with it?

47 A. My recollection is, we spoke about that in my meeting

1 with the two of them.

2

3 Q. What is the effect, in your view, on a meeting where
4 there isn't such a streamlined working relationship and
5 there is an element of --

6 A. Well, you run the risk of error if the chair,
7 regardless of who - you know, whichever meeting we're
8 talking about, if the chair is not aware of the legal
9 requirement or whatever, then you run the risk of error,
10 and you also run the risk of procedural disruption.

11

12 My observation of Wingecarribee Council was that a
13 couple of the councillors were very well versed in local
14 government procedure and perhaps more so than the mayor,
15 was my observation, and that did give rise to a discussion
16 about the mayor's chairing of the meeting at times.

17

18 Q. I might raise an issue with you now. Each councillor
19 has the ability, if they see an act of disorder, to make a
20 point of order; that's pretty standard meeting practice
21 and, as I understand it, it's in the Code of Meeting
22 Practice itself. Is there an obligation, in your view, on
23 a councillor who observes that act of disorder to do
24 something about it, or are they perfectly within their
25 rights to sit there and say in your own mind at least,
26 that's the mayor's problem or the chair's problem?

27 A. Anyone is entitled to raise a point of order at any
28 stage; the function of the chair then is to rule on the
29 point of order, then the meeting can debate whether they
30 agree or wish to dissent from the mayor's opinion in this
31 case; in my view that's the proper process.

32

33 You know, I'm not - I don't think it's incumbent if a
34 councillor considers something might have been incorrectly
35 done, for example. My own view is, it's not incumbent on
36 them to raise a point of order. They may wish to do so and
37 then it gets ruled on and dealt with under the proper
38 process. My own view is, it's not incumbent on them to
39 raise that point.

40

41 THE COMMISSIONER: Q. I suppose there might be a scale,
42 Mr Reynolds, where minor matters that could potentially be
43 a point of order can be --

44 A. I guess that's so, yes.

45

46 Q. -- let through to the keeper. Part of, I think,
47 Mr Parish's question is driving at an issue of, if there

1 are acts of disorder that destabilises a meeting, should it
2 just be left to the mayor to try and deal with them from
3 the chair or should the councillors who are there
4 participating in a meeting that might be thought to be
5 going off the rails taking points --

6 A. In certain circumstance - sorry to over-speak.

7
8 Q. No, you're quite all right.

9 A. In those sort of circumstances I would say that that
10 is not the sort of minor thing that I would pass over if
11 I'm a councillor. Again, it gets back to the cooperative
12 running of the meeting. Yes, the mayor is the chair, but
13 he or she is not - they're not an island, they exist in the
14 context of the meeting and other councillors are perfectly
15 within their right to raise a point of order like that,
16 yes, I would think so.

17
18 THE COMMISSIONER: Yes, thank you.

19
20 MR PARISH: Q. The first obligation under section 232(1)
21 of the Local Government Act - I might show it to you.

22 A. That would be excellent.

23
24 Q. If Mr Broad can scramble. I'll read it out and then
25 let you digest it.

26
27 THE COMMISSIONER: Do you want mine, Mr Parish?

28
29 MR PARISH: Mr Broad is --

30
31 THE COMMISSIONER: He's saved the day.

32
33 THE WITNESS: I haven't yet committed the Local Government
34 Act to memory, I'm sorry.

35
36 MR PARISH: Q. I don't think anyone has. I think you
37 were just answering a question from the Commissioner in
38 circumstances where we're not just talking about
39 run-of-the-mill disagreements or grumblings, but there's a
40 danger that the meeting might run off the rails or there be
41 serious inefficiencies.

42
43 In respect of section 232(1)(a):

44
45 *The role of the councillor is to be an*
46 *active and contributing member of the*
47 *governing body.*

1
2 And I appreciate you're not a lawyer and require
3 statutory interpretation, but you are a man of immense
4 experience, in your opinion is part of that role set out in
5 1(a) to ensure that the meeting is not completely run off
6 the rails using the tools available to councillors
7 observing the meeting?

8 A. I suppose the answer is, yes. If I'm a councillor, I
9 mean, one way I might think of contributing is to raise
10 points of order if I think something has gone awry, so that
11 is - I guess that would come under their heading.

12
13 Q. Is it fair to say, from your answer to the
14 Commissioner before, that it is a matter of degree though?

15 A. Well, I think so, yes, but in the sort of circumstance
16 the Commissioner was raising, if the disorder is
17 sufficiently marked like that, then it needs to be dealt
18 with one way or another to avoid the whole meeting being
19 derailed.

20
21 THE COMMISSIONER: Q. Do I sense the cautiousness in
22 your answer to guard against the prospect that minor
23 procedural matters which have no impact on the business of
24 the meeting shouldn't be bogged down in points of order for
25 the sake of points of order; is that --

26 A. Well, I think, yes, I suppose that's in summary. When
27 I was at Blacktown, I don't know, I went to council
28 meetings for 15 years, I suppose, and every now and again a
29 councillor would interject and another councillor would
30 raise a point of order and the mayor would deal with it
31 saying, "Well look, it's not a point of order but you, just
32 behave yourself", so it's dealt with on the run rather than
33 by a formal process. When you get into formal issues, you
34 know, significant disagreement, then you need to deal with
35 it procedurally correctly and have it dealt with.

36
37 THE COMMISSIONER: Yes, thank you, I understand.

38
39 MR PARISH: Q. Your next observation was that:

40
41 *On occasion, a motion needed to be "word*
42 *smithed" during the Meeting. The Mayor*
43 *became involved in this process on occasion*
44 *which compromised his ability to chair the*
45 *Meeting at those stages.*

46
47 Can you explain, firstly, what "word smithed" means?

1 A. Yes, I should be more correct when I write things,
2 shouldn't I?

3
4 Q. No.

5 A. I observed on a number of occasions where there was
6 debate around an issue that there was probably what you
7 would call a general understanding of where the council
8 wanted to go with a resolution, but it wasn't as per the
9 business paper which had been presented by the staff, so
10 there was a very loose process then of re-writing the thing
11 on-the-run so that they would vote on a thing.

12
13 On occasion the mayor got involved in trying to figure
14 out the wording, what it would be, and whilst that's
15 happening, and again, we're in the context of an online
16 meeting, so there were six or seven councillors not in the
17 room, somewhere else, and the mayor is working on a thing
18 with the AGM or a staff member. It's just a very - it just
19 acts to undermine the due process of the meeting.

20
21 In my view and my advice to them was that, if they
22 held briefings on these issues with the staff beforehand
23 they might actually come to a view on what the council
24 might move on this matter, and there'd be a chance to
25 actually craft a substitute resolution that one of the
26 councillors could have moved, rather than doing it in the
27 meeting.

28
29 In the extreme, if you get to a stage where something
30 does have to be done in the meeting, probably better to
31 call a short adjournment and have the staff work on the
32 wording and call the meeting back to order and present the
33 new wording rather than trying to do it in the middle of a
34 debate on items, in my view.

35
36 Q. Your next observation, I think we've already dealt
37 with, that:

38
39 *... the mayor responded to procedural*
40 *questions/issues where it may have been*
41 *more appropriate for the matter to be*
42 *referred to the acting general manager.*

43
44 A. Yes, we have alluded to that. My approach to those
45 sorts of circumstances as general manager would be to
46 indicate to the mayor that, "I'll take this question",
47 because I wouldn't necessarily assume that the mayor is

1 across the relevant procedural - or whatever; better for a
2 staff member to answer that sort of detailed question, I
3 think. But it does again, as we've alluded to before, it
4 relies on an interplay between the mayor and the general
5 manager to manage those circumstances.

6
7 Q. Your last observation of those first three meetings
8 was that:

9
10 *On one occasion, a suggestion arose from*
11 *the floor which appeared to contravene*
12 *policy. The Mayor and staff attempted to*
13 *deal with the matter during the meeting*
14 *where it may have been preferable to call*
15 *for a report on ways of achieving an*
16 *outcome rather than "conceding" on the spot*
17 *which ... encourages that sort of activity*
18 *in [the] future.*

19
20 Can you explain the procedure or the preferable
21 procedure for going away and calling for a report to deal
22 with that one?

23 A. Sitting here today I'm actually struggling to remember
24 the details of that circumstance.

25
26 Q. If you don't remember the specific circumstance, we
27 can at least deal with it at a higher level?

28 A. In principle, yes.

29
30 Q. Yes.

31 A. Where that's the case, my method of working and
32 experience in the past, if you get to a stage like that,
33 rather than trying to resolve quite competing different
34 points of view as part of a discussion/debate in the
35 council, it is actually better to call for a report on that
36 matter. So, in my experience, the mayor might ask for a
37 motion from a councillor to seek a report and then that
38 gets voted on. If it's passed, then the matter passes on
39 and it can come back to the council in a considered fashion
40 with both sides of an argument, if there were such, dealt
41 with in the form of a considered report, rather than trying
42 to resolve potentially contentious issues in the floor of
43 the meeting as part of a - well, it's not actually a - I
44 don't think it's envisaged in the Code of Meeting Practice,
45 it's just, it very much interferes with the flow of the
46 meeting and doesn't help a good outcome.

1 Also, because you - my observation at the time I
2 remember was, well, by the way it was dealt with it
3 encouraged the particular councillor to, if they wished to
4 disrupt proceedings, to try that again because there was
5 experience in how that was going to be managed which wasn't
6 particularly helpful to an outcome for the whole meeting.

7
8 Q. Thank you. After those first three meetings you held
9 coaching sessions; is that correct?

10 A. Yes, I had a detailed meeting with the mayor and the
11 acting general manager.

12
13 MR PARISH: Commissioner, I don't intend to ask questions
14 about that, it doesn't really go within any term of
15 reference and, as I understand it, there may be
16 confidentiality attached to those meetings and I just don't
17 think it's necessary to traverse those areas unless you
18 have a different view.

19
20 THE COMMISSIONER: Q. Without going into the detail of
21 what I understand from Mr Parish's proposition were
22 confidential discussions, and tell me if this would impugn
23 that confidentiality, do the observations - I withdraw
24 that. Can you describe the general topics that were the
25 subject of those coaching discussions, or does that cause
26 some difficulty with confidentiality?

27 A. No, I don't think so.

28
29 Q. I think, just some general topics might at least put
30 some parameters around what they were about, without going
31 into the detail of who said what about what.

32 A. Yes. Look, we spoke at some length about the role of
33 the mayor as chair versus a participant in debate, we spoke
34 about that. We spoke about things I mentioned before,
35 process issues like vacating the chair if you wish to
36 speak, working relationship between the GM and the mayor.
37 Briefings before the meeting on issues; being confident
38 enough to defer items, calling for reports, that sort of
39 thing, so the things I've been talking about before we
40 spoke about.

41
42 There were issues we spoke about as well in terms of -
43 if I call it the demeanour of the council, in terms of
44 respect for the chair, and there may well have been
45 personal issues which I didn't delve into, but the mayor is
46 chair of the meeting and needs to be shown due respect in
47 that position; and respect for each other as elected

1 representatives albeit with different views. Also a need
2 to show respect for staff and vice versa, we spoke of those
3 sorts of issues.

4
5 I talked about process stuff like using the en bloc
6 motion and issues like that. That was on the afternoon
7 prior to a council meeting that night, and at that meeting
8 the practices and the changes we spoke about were carried
9 out and the mayor's parting words to me afterwards, because
10 I was in attendance at that meeting, the mayor's parting
11 words were, "That's the best meeting we've had", and I
12 think I might have said, "See, it can be done", or words to
13 that effect. So, the discussion was generally around those
14 sorts of issues we spoke about before and how they might be
15 better managed on the floor of council, and prior to the
16 council meeting some of the issues needed to be dealt with
17 outside the meeting, not in the meeting itself.

18
19 The other contextual thing there was that the
20 councillors, it was my understanding, had already not long
21 before undertaken some mediation training with
22 Mr Turkington who was employed under the Performance
23 Improvement Order as well, so it may well be that some of
24 the training had some results in that respect as well, I
25 suspect.

26
27 THE COMMISSIONER: Yes, thank you. Yes, Mr Parish.

28
29 MR PARISH: Q. Can I take you to page 222 of the tender
30 bundle. Those are the process improvements identified
31 20 April 2020?

32 A. That's correct, yes.

33
34 Q. They are broadly the improvements and the matters that
35 you've identified that you just spoke about?

36 A. That's correct.

37
38 Q. Can I ask you about No.6 --

39
40 THE COMMISSIONER: Sorry, before we move on just so I
41 understand that answer.

42
43 Q. Does Attachment 3 effectively repeat the summary that
44 I just asked you for about the improvements that were
45 discussed?

46 A. Effectively, yes.

1 Q. So, that's different to your observations of that
2 meeting which are dealt with back on page 220; have I
3 understood that correctly?

4 A. The observations at the bottom of 220 were my
5 observations of the council meeting held that night after
6 we had that session.

7
8 THE COMMISSIONER: Yes, thank you.

9
10 MR PARISH: Q. Number 6 there you observe or identify:

11
12 *Council should conduct briefings on matters*
13 *on the business papers prior to the*
14 *meeting. In this way, issues can be*
15 *clarified where necessary and the*
16 *question/answer component would be removed*
17 *from the agenda. This would avoid council*
18 *staff potentially being the focus of debate*
19 *and avoid "politicking" as part of the*
20 *question/answer session. This would save*
21 *time in the formal meeting and enable the*
22 *business to move straight to the putting of*
23 *a motion and debate on the motion, avoiding*
24 *confusion over mover/seconder identities*
25 *and rights.*

26
27 As I understood it there were briefing sessions prior
28 to the meetings, at least on the day of the meeting. Can
29 you explain what you mean by, I think, the content perhaps
30 of the briefings?

31 A. Yes, what I observed in the council meetings where
32 these issues happened, and significantly around development
33 issues is my recollection, planning issues: the matter
34 would come up for debate - this is just a general
35 sequence - the matter would come up for debate, there may
36 well be speakers from the public brought in speaking for
37 and against. Then a council staff member might be asked to
38 step forward and explain effectively what's in the report,
39 which is a public document anyway, but they were there and
40 were then able to be questioned by councillors about issues
41 in the report. To my mind that - I was going to use the
42 word "embroiled", I'm not sure if that's too strong, but
43 they became a participant, you know, not by their own
44 volition, in the actual to and fro on the debates around an
45 issue.

46
47 In my experience, if there were briefings - and some

1 councils do have them, some don't - a council like this, I
2 think, would - they apparently did have briefings but what
3 the content was and how they - what the result was I wasn't
4 privy to. But, my view, in a council setting, the
5 councillors are there, the mayor's chairing, the general
6 manager is there and usually there are senior officers, in
7 this case it would be Mr Pepping, the deputy general
8 manager and one or two others I suspect. My experience of
9 an efficiently run meeting is that questions are directed
10 through the chair to one of the senior officers of council
11 about the report rather than getting into the nitty-gritty
12 with an author.

13
14 This process was not helped by councillors being able
15 to, as part of their question and answer or whatever
16 process, alluding to the fact that they were going to move
17 something, then that became in their mind, I have moved,
18 and the mayor I think correctly in this regard; there had
19 not been a motion moved at all so when he then subsequently
20 called for a motion and a mover and a seconder, that led to
21 further issues. So, it was just a very - it was a stage in
22 the meeting that was trying to do too many things rather
23 than deal with the issue and debate the issue.

24
25 If the report falls deficient, in terms of
26 information, then in my view the correct process would be
27 to defer the matter and call for further information on
28 issue X, whatever that issue is, and have it debated fully
29 later rather than trying to discern facts in the middle of
30 a debate.

31
32 Q. Do I take it from that answer that, if the staff were
33 reporting on, for instance, DA issues beforehand and there
34 was an amount of nitty-gritty in the briefing beforehand,
35 that for that to come up at a council meeting as well was
36 an unnecessary duplication perhaps of a process?

37 A. Well, I think so, yes. Not that I was privy to those
38 earlier briefings, but if there was a duplication, then
39 yes.

40
41 Q. Did you gain any impression from the council meetings
42 about whether briefings, if held, were sufficient and fit
43 for purpose?

44 A. The prior briefings?

45
46 Q. Yes.

47 A. The role - the council officers, my recollection is,

1 that when they were asked to speak they were generally just
2 providing a précis of what the report said anyway, so I
3 didn't actually see that it added too much information to
4 the meeting that wasn't already there. I would have
5 thought that those sorts of issues ought to have been dealt
6 with in prior briefings if they were to be dealt with
7 there.

8
9 Q. Do I take it from that answer that the procedure you
10 observed in council meetings surrounding this was not
11 efficient or effective?

12 A. Neither of those, no.

13
14 Q. Can I go back a couple of pages to get your
15 observations from the meeting held after the 28 October
16 coaching sessions, that's at the bottom of page 220 of the
17 tender bundle. Your first observation was that:

18
19 *Participants generally exhibited an*
20 *improved regard to meeting process*
21 *immediately following training ... pursuant*
22 *to Mr Turkington's engagement ...*

23
24 I think that's the mediation and other matters
25 Mr Turkington was dealing with?

26 A. Yes.

27
28 Q.
29 *... however some "passive/aggressive"*
30 *behaviour was still evidenced by some*
31 *councillors and civility declined over the*
32 *second tranche of meetings observed.*

33
34 Can you give us an example of your recollections of
35 that behaviour, if you can remember?

36 A. Yes, my meeting with the mayor and acting general
37 manager about process improvements was on 28 October.
38 Subsequently they had a meeting that night, which is the
39 one the mayor observed had gone really well, in his view.
40 I subsequently sat through another two or three council
41 meetings and my observation was that the sort of behaviours
42 declined from that high point, if you like to call the 28th
43 the high point, and some of the civility declined over
44 those remaining meetings.

45
46 When I use the term "passive/aggressive", what I was
47 referring to was the calling of points of order around

1 process when, as I mentioned before, a couple of the
2 councillors were very proficient in council process and
3 procedure, but when they called a point of order it wasn't
4 in a, what I would call a constructive - this is my
5 observation, anyway - it didn't appear to be a constructive
6 calling a point of order, it was more a point of scoring.
7

8 Q. That first meeting, was the improvement in your
9 impression caused by the more assertive, effective chairing
10 of the meeting by the mayor or a conscious effort on behalf
11 of the newly-mediated councillors to behave better, or a
12 bit of both?

13 A. Look, we've mentioned before these council meetings,
14 they're a cooperative effort, and my observation was that
15 across the board there was a better feeling in the meeting.
16 The mayor was certainly more assertive in chairing. One of
17 the benefits, I suppose, of being online was, if there was
18 a bit of a banter going on, then the mayor actually had a
19 mute button which he used and that pretty much called
20 people to order once they all realised they'd been muted;
21 so, you can't do that in a physical meeting so that's one
22 of the benefits of online. So he chaired that, in my view,
23 that was the best meeting that I saw chaired.
24

25 The councillors as a whole were more cooperative and
26 contributory. In fact I made a note, I can't remember if I
27 put it in my report, but I made a note to myself that there
28 was actually - the only time in my period of observation
29 there was actually, what I would call friendly banter
30 between the councillors before the live meeting started;
31 everyone's online until it's clicked on, so there was a bit
32 of friendly flow of, you know, just chat between the
33 councillors which I hadn't observed before and, to my
34 recollection, didn't observe again. So, the meeting on the
35 28th was the high point, I think, in terms of process and
36 cooperation.
37

38 Q. And then the two subsequent meetings you observed,
39 there was a wearing off of the goodwill or --

40 A. A slow decline, yes, in my observation.
41

42 Q. So, like a family Christmas dinner or something,
43 just --

44 A. I finished before Christmas, so I can't comment on a
45 Christmas dinner, although mine was very satisfactory at
46 home, thank you.
47

1 Q. Oh, good. The reference to the muting of councillors
2 in the Zoom or the Teams or the online context, was that an
3 appropriate tool to use in your context?

4 A. I think in the online context, yes. I felt for the
5 council, I felt for the mayor in the circumstance of having
6 to meet online.

7
8 Q. Yes.

9 A. Whatever the circumstances were with the councillors
10 and their views of each other, the actual technological
11 requirement to meet online was - didn't help engender a
12 good outcome in my view; partly the reason for my
13 recommendation that, once this chamber was functional, that
14 the council ought to be let run - under observation,
15 granted - but to see if the improved behaviour actually
16 manifested itself once they got back in chambers.

17
18 I did mention at the outset that one of the additional
19 things I did was, I think I spoke to six out of the eight
20 councillors, two didn't avail themselves of the
21 opportunity, but six did. One of them in particular
22 commented that he was of the view and hopeful that when
23 they got back meeting in person that things would improve
24 and that was part of my thinking behind my recommendation.

25
26 Q. That observation may not engender a lot of sympathy
27 with the rest of the population who spent two years having
28 meetings online. Do you think that the councillors had an
29 obligation to try harder, be more patient, in that online
30 context? I appreciate you're not making excuses for them,
31 you're observing?

32 A. No, I'm observing. I think, you know, given the
33 requirements of a council, you know, as we've observed in
34 the Act, it's incumbent on the councillors and the staff to
35 work within the parameters that they've got to be as civil
36 and as cooperative as possible. The online environment was
37 difficult but not impossible if people had been of goodwill
38 and cooperative, but I did think that meeting in person
39 might make a difference potentially.

40
41 THE COMMISSIONER: Q. Tell me if you are unable to
42 express a view about this, but the difficulties that might
43 have been experienced in the online environment, were they
44 a legacy of the difficulties that were already existing and
45 perhaps amplified by having to move online?

46 A. I would say amplified, yes. I alluded to it before,
47 there were technical issues from time to time which

1 certainly didn't help at all, but I think there were - the
2 online environment served to provide a platform, if that's
3 the right word, for previous behaviours to be more manifest
4 I think.

5
6 THE COMMISSIONER: Thank you.

7
8 MR PARISH: Q. I think over the page your observations
9 (3), (4) and (5) we've discussed in various ways, unless
10 you want to make any further observations?

11 A. No.

12
13 Q. In respect of your observations from subsequent
14 individual discussions - and again, if anything to your
15 mind is confidential and ought not be exposed, please let
16 us know - but I think you've dealt with No.1, that the
17 return to a physical meeting will facilitate an improvement
18 in the conduct of the meetings.

19 A. Yes.

20
21 Q. I might skip over No.2 because I think that's an issue
22 that we might all have. In respect of the third one:

23
24 *There appears to be an intractable*
25 *interpersonal conflict between several*
26 *Councillors which impacts both Council*
27 *Meeting process and relations between some*
28 *Councillors and Council Staff. Ongoing*
29 *counselling to Councillors including the*
30 *Mayor, (such as [the] ... [EAP] program);*
31 *may be desirable to manage this*
32 *circumstance on an ongoing basis.*

33
34 Can you tell me about how you came to that impression,
35 without having to detail individual conversations that you
36 had?

37 A. Yes, my general impression across the time that I was
38 there was that there were - there appeared to be
39 significant levels of mistrust between two groups of
40 councillors, four on one "side", three on the other with
41 one a floater. Not helped by the fact, I suppose, there
42 were nine councillors before and the extension of the
43 council term, I understand, had led to one councillor
44 resigning, which left eight and quite often an even split
45 of voting. So that, my observation was that there appeared
46 to be a level of distrust between the two groups of
47 councillors.

1
2 There appeared to be a level of distrust between some
3 of the councillors and the staff, the senior staff, and my
4 observation was that that apparent level of distrust was
5 also expressed by the staff of that group of councillors,
6 so there appeared to me to be a bit of a disjoint between
7 some of the councillors and staff and vice versa and
8 certainly between the two groups of councillors. And that,
9 whilst there'd been mediation training and I commented on
10 process improvements for them, neither of those
11 initiatives, if I can use that word, appeared likely to
12 address that underlying level of distrust.
13

14 Q. Appreciating that that is not necessarily a problem
15 caused by the chair of a meeting, how can a chair of a
16 meeting deal with those sorts of circumstances in your
17 opinion?

18 A. Well, I think the chair of the meeting is - it's an
19 important role but it's several hours out of a week. Those
20 sort of interpersonal relationships grow over time with
21 continuing interaction, not just in the council meeting;
22 the council meeting, you know, is a public manifestation of
23 things, but the rest of the year goes on not in a public
24 forum, so those sorts of ongoing relationship issues need
25 to be dealt with and growing over time.
26

27 Q. Just to tie that to your very first observation in
28 your report this morning, does clarity around process help
29 to reduce the prospect that interpersonal conflicts might
30 derail, disrupt or cause problems in a meeting?

31 A. Yes, I think so.
32

33 MR PARISH: Commissioner, I was going to move on from
34 specific topics in that report.
35

36 THE COMMISSIONER: Q. Yes, just on meeting procedure
37 generally, I appreciate your observations earlier that one
38 may not expect a mayor or any councillor to be an expert on
39 meeting procedure and the intricacies of finer points, but
40 do you think that it's incumbent on any councillor to
41 familiarise themselves, at least to a solid working degree,
42 with meeting procedure?

43 A. Look, that would be helpful, but I think in practice
44 expecting councillors to do that off their own bat is not
45 reasonable.
46

47 Q. Well, that's my next question.

1 A. I would be thinking that, let us say with the election
2 of a new council, then there ought to be some reasonably
3 specific training which is a cooperative effort between the
4 staff and the councillors, the new councillors, on meeting
5 procedure and the Code of Meeting Practice, that sort of
6 thing. Whether that had happened at Wingecarribee in the
7 life of this council, I don't know, but I would have
8 thought, yes, training, but it ought - that ought to be
9 initiated by the administration calling councillors
10 together, and giving that --

11
12 Q. And --

13 A. Sorry to interrupt you, and giving that training as a
14 group rather than individually, because they're going to
15 need to work together as a group so they need to be able to
16 see each other asking questions, you know, and clarifying
17 issues.

18
19 Q. Yes.

20 A. So I would think that's the best approach.

21
22 Q. If one assumes that training of that kind is given in
23 the induction process, then - what I'm trying to explore
24 with you is, councillors are participants in a meeting
25 that's covered by a set of procedures.

26 A. Correct.

27
28 Q. And, tell me if you disagree with the proposition, but
29 there must be some requirement of those who are
30 participating in the meeting that's governed by such
31 procedures which feed into a Code of Conduct, which feed
32 into an Act, to have some knowledge and appreciation of
33 them. Do you disagree with that?

34 A. Yes, I would agree with you, but how that works in
35 practice would be, I think, education sessions facilitated
36 by the staff.

37
38 Q. Yes. There may be a need to provide councillors with
39 tools or better tools perhaps to achieve that?

40 A. That's right, Yes.

41
42 Q. But as a fundamental premise you don't disagree --

43 A. No, I don't disagree and I think, you know, those
44 sorts of things, you know, councils except in - I was going
45 to say "extraordinary circumstances", but we've had a
46 fairly extraordinary circumstance in local government for
47 the last 10 years in New South Wales, councillors come in

1 every four years: probably not sufficient to have one
2 session, you know, in week one when councillors may well be
3 experiencing being a councillor for the first time and not
4 in practice. So, my preferred position would be to
5 certainly have those education sessions early and then
6 perhaps review them at a time agreed with the councillors
7 so that they can just reflect on how things have gone in
8 practice, and they might actually then observe, well, you
9 know, paragraph 3 of the Code of Conduct is actually
10 problematic for us and they might come up with a different
11 way of operating.

12
13 Q. Almost a continuing professional development program
14 for councillors?

15 A. Yes.

16
17 Q. What about mayors and deputy mayors? Do you think
18 that there's a need for particular or additional training
19 around chairing a meeting?

20 A. I think that would be a very good idea. I mean,
21 mayors - people who chair meetings for a living or, you
22 know, as part of their normal job, but if you're coming
23 into it without that experience, I think specific training
24 around the chairing, the role of a chair versus "an
25 ordinary councillor", I suppose they were the sorts of
26 things I was talking to the mayor about during the process.

27
28 Q. And, in that context, does a mayor or a deputy mayor
29 require a greater level of understanding and knowledge of
30 meeting procedure, even if not to the extent of being an
31 expert in its finer points?

32 A. Look, I think that would be helpful. And probably if
33 there are - not all councils have a deputy mayor, but those
34 that do, both the mayor and the deputy ought to be across
35 those generalities in case the deputy is called on to
36 chair.

37
38 Q. From your observations of meetings at this council do
39 you have a view about whether, at a base level, the
40 councillors had an adequate understanding and working
41 knowledge of the Code of Meeting Practice?

42 A. I suspect some did, but I could only judge on
43 observation --

44
45 Q. Yes.

46 A. -- and perhaps not in observation but in practice.
47

1 Q. What about the mayor, were you able to form a view
2 about, from your observations, his level of knowledge and
3 appreciation of the Code of Meeting Practice?
4 A. He would not have been the most experienced person in
5 the room in terms of meeting practice and codes of conduct.
6
7 Q. Yes. Was it an adequate level of knowledge in your
8 view? Or did he display an adequate level of knowledge - I
9 appreciate you're not able to get inside his head, but from
10 what you saw?
11 A. No, not really.
12
13 THE COMMISSIONER: Thank you. Mr Parish.
14
15 MR PARISH: Excuse me, Commissioner.
16
17 THE COMMISSIONER: Mr Parish, should I just adjourn for
18 10 minutes?
19
20 MR PARISH: Yes, that will be quite useful at this stage.
21
22 THE COMMISSIONER: Yes, Mr Reynolds, I'm just going to
23 take the mid-morning break for 10 minutes to allow us to
24 all stretch our legs, and we'll resume at 25 past.
25
26 MR PARISH: Thank you.
27
28 **SHORT ADJOURNMENT**
29
30 THE COMMISSIONER: Yes, Mr Parish.
31
32 MR PARISH: Q. Thank you, Mr Reynolds. At this time I'm
33 going to take advantage of your significant experience and
34 ask a few questions that hopefully will enlighten me, the
35 Commissioner, and any poor soul watching. Can you explain,
36 generally speaking, what the rules of debate are, the
37 process around that?
38 A. Well, how long have we got? Look, rules of debate --
39
40 Q. Just the general process that --
41 A. So, the chair is - the chair is the chair, they will
42 call for a motion. In the context of a council meeting,
43 the council will move something, the mayor will ask for a
44 seconder. If there's no seconder the motion lapses. If
45 there is a seconder the motion is moved. Then the mayor
46 would call for speakers, so the mover and the seconder
47 would speak, and depending on where you're at there's a

1 time limit set for how long people can speak for. Then
2 generally there would be speakers for and against in
3 sequence, depending on how many wished to speak. At any
4 point in time someone can call for the motion to be put and
5 then that motion has to be debated on-the-spot. If that
6 gets up, then the motion is put. If you proceed through to
7 the end of debate the mayor would then give the mover the
8 right of reply and then the motion would be voted on, in
9 general terms.

10
11 Q. Yes, thank you. Can you explain how the amendment
12 process may work if there is a motion for amendment within
13 that?

14 A. You can have someone foreshadow an amendment and that
15 would then come up if the motion is lost. If an amendment
16 is moved and seconded, then the amendment is voted on
17 first; and then, if the amendment gets up, that becomes the
18 motion and is then voted on as the motion. If the
19 amendment lapses or is lost then the debate returns to the
20 original motion.

21
22 Q. Thank you.

23 A. So, the procedure tries to be really cut and dried
24 with a fairness and transparency in the debate.

25
26 Q. Thank you. Can you explain what questions on or with
27 notice are?

28 A. Questions with notice, or there are questions without
29 notice --

30
31 Q. I'll come to those in a second.

32 A. Questions with notice.

33
34 Q. Deal with questions with notice.

35 A. Generally speaking councils will have a process where
36 a councillor can lodge a notice of motion or a question
37 prior to the meeting. There is generally a time limit, so
38 that it doesn't happen on the day so that the
39 administration can include it in the business of the
40 meeting. Some councils may put rules around that, like
41 have to be more than one councillor - I'm not sure, I can't
42 recall what the process was here. Those questions with
43 notice then go on the business paper and they can be -
44 sometimes there are notices of motion as well where a
45 councillor might want something to go on the business
46 paper, which will then get dealt with as a motion.

1 So, the key with the question with notice is that it's
2 known beforehand.

3
4 Q. And it seems obvious when you put it that way, but can
5 you explain what a question without notice is? Same thing?

6 A. Yes, that's right; it's a question. In my experience,
7 and particularly given my experience at Blacktown, it's
8 generally to be expected that there will be questions
9 without notice; things that have arisen on the day of the
10 meeting: a constituent has contacted a councillor, wants
11 information, or there's a footpath that needs to be fixed,
12 whatever.

13
14 At Blacktown we used to have a specific part of the
15 meeting which was allocated to questions without notice,
16 and the mayor would go around the room and each
17 councillor - my recollection is, had the ability to ask two
18 questions without notice, so we had 15 councillors, so at
19 the maximum there'd be 30 questions without notice; that'd
20 either be questions to staff about an issue, in which case
21 they'd go to the general manager and I as the general
22 manager would either answer or defer to the planner or the
23 engineer; or sometimes they were more in the light of a
24 motion requesting work to be done and they were dealt with
25 as urgent matters.

26
27 So, the process we used was to recognise that, yes,
28 questions without notice are right and proper, and there is
29 a portion of the meeting specifically allocated to those,
30 so it sort of corals that process from the rest of the
31 debate in the meeting, which we found quite efficient.

32
33 Q. Do you have an impression of how questions without
34 notice were dealt with in the shire council meetings that
35 you observed in this council?

36 A. My recollection is, there were a number of notices of
37 motion and questions on notice. My recollection again is
38 that some of those might have been dealt with before quite
39 exhaustively but came up again, so that the debate would be
40 revisited with the same outcome, which is not particularly
41 helpful.

42
43 Beyond that, I'm thinking: a lot of the questioning
44 actually occurred as part of a debate on a particular
45 report or a development matter, so the questions would be
46 asked backwards and forwards there rather than confining
47 that discussion to a debate process.

1
2 THE COMMISSIONER: Q. Is that an appropriate procedure
3 in your view?
4 A. I don't think it's very efficient and not - not one
5 that I would favour.
6
7 Q. Is there a particular reason why you wouldn't favour
8 it?
9 A. Well, again, getting back to my - maybe my
10 preference - I think the time for questioning and debate -
11 and exploring in detail issues about a matter is in a
12 briefing outside the debating process.
13
14 Q. Can it also lead to confusion about what part of the
15 meeting we're in and what we are doing?
16 A. There was - certainly did give rise to confusion in
17 the meetings I observed, yes.
18
19 THE COMMISSIONER: Thank you.
20
21 MR PARISH: Q. Did you witness any rescission motions
22 being moved upon in the meetings you observed?
23 A. Look, I can't recall; I may have, I just can't recall,
24 I'm sorry.
25
26 Q. Can you explain what a rescission motion is?
27 A. Yes, a rescission motion is, where a motion's been
28 passed by the council, councillors are entitled to lodge
29 what's called a rescission motion which is effectively to
30 negate that resolution, and normally it's associated with a
31 notice of motion that says, get rid of that one and we move
32 this. There's a time limit on when they have to be lodged:
33 some can be lodged at the meeting, some can be - some
34 councils have a process where it can be a couple of days
35 after the meeting. So, yes, basically it's to negate
36 what's been moved and then substitute an alternate motion,
37 which then gets dealt with as part of the business paper
38 the next time round. Although my recollection is, if it's
39 lodged in the meeting - I stand corrected - but I think you
40 can debate the rescission motion at that meeting and have
41 the matter dealt with.
42
43 Q. Can you explain what the committee of the whole is?
44 A. A committee of the whole is, the council would move a
45 motion to adjourn to a committee of the whole, which is
46 effectively confidential. Normally, there are provisions
47 under the Act where certain matters are confidential, like

1 property issues or staff or things like that which are
2 dealt with in private, in closed session. So when the
3 matter is being dealt with in the closed session it goes
4 back to the open meeting of council and a report is made of
5 the decision made in the committee of the whole.

6
7 Q. Thank you. I'm going to show you a couple of
8 documents now. These are just examples of certain
9 procedures that have been undertaken by this council that
10 we'd be interested in your opinion on.

11
12 The first document you should have is an email from
13 Duncan Gair which says:

14
15 *Subject: Re objecting to spending funds on*
16 *bypass in Bowral.*

17
18 Do you see that?

19 A. I see that.

20
21 Q. Do you see there is an email about two-thirds of the
22 way down in which duncan.gair@wsc.nsw.gov.au is writing to
23 Ms Armstrong?

24 A. Yes, I see that.

25
26 Q. It's slightly indented?

27 A. Yes, I see that.

28
29 Q. Can I start by asking: clearly you're going to be
30 familiar with the distinction between operational and
31 strategic, that dichotomy often used in the local
32 government space between the role of the governing body and
33 the role of the GM and the staff?

34 A. Yes.

35
36 Q. And the strategic is the provenance and domain of the
37 governing body and the operational is the provenance and
38 domain of the GM and the staff; is that about right?

39 A. Yes, a difference between strategic and operational
40 issues; generally the Act is structured around the policy -
41 the elected council, being the policy-making body, and the
42 staff being the administration body, in general terms.

43
44 Q. Can I take you to the motion that's referred to in
45 this email, motion 392/19 moved by Deputy Mayor Turland and
46 seconded by Councillor Halstead that:

1 *Council staff commence the cleaning up and*
2 *removal of the regrowth and overgrown weeds*
3 *and rubbish in the drain from Bowral Street*
4 *and the northern council carpark.*
5

6 My question's broken up into a few parts, I guess.
7 Firstly, (a) whether you see this as strategic or
8 operational; (b) whether this is the sort of thing that
9 ought to be dealt with at all by the governing body, and
10 (c) whether it's something that in your experience would be
11 appropriately dealt with by a motion like this?

12 A. Can you give me (a) again? I'll deal with them in
13 sequence, my short - my old --

14
15 THE COMMISSIONER: Perhaps break them up.

16
17 MR PARISH: Yes.

18
19 THE WITNESS: Thank you so much.

20
21 MR PARISH: Q. Is the subject matter of this motion
22 something you would regard as operational or strategic?

23 A. I would regard it as generally operational.

24
25 Q. Number 2, is that the sort of matter that you would
26 expect the governing body to involve themselves with?

27 A. My normal experience of that would be that, if an
28 issue like that had arisen, it would be dealt with not as
29 part of a council meeting, it would be dealt with as part
30 of "correspondence" between the councillors and the staff.

31
32 For example, if that was a resident issue, you know, a
33 resident had contacted either of these councillors and
34 drawn attention to the issue, in my experience the normal
35 sort of daily way of operating would be that a councillor
36 would ring me as the GM and say, "Look, I've got a problem
37 reported to me about X, can you have a look", you know,
38 just a general thing included in the normal operation of
39 council and not normal - that that would come up, in my
40 experience, in a council meeting.

41
42 Not to say that, you know, when I mentioned before
43 questions without notice at my previous council, if there
44 was an urgent matter that was significant then they could
45 ask a question about an issue like that, but it would be
46 dealt with, rather than a motion to direct council staff to
47 do a particular thing, they would ask a question about, can

1 something happen, and in our case for this sort of issue it
2 would have been the engineering director will say, "I take
3 that on notice and get on to it", something like that.

4
5 Q. Yes.

6 A. So, in the general run of things.

7
8 THE COMMISSIONER: Q. Just before Mr Parish asks his
9 next question. In that last answer you used the words
10 "direct council staff"; that's a matter solely within the
11 purview of the general manager, is it not?

12 A. That's correct.

13
14 Q. Would you agree or disagree with the proposition that
15 it's not a matter that is appropriate to be done by a
16 governing body through a resolution like this?

17 A. Oh, I think I'd agree with that proposition in this
18 case, yes.

19
20 Q. And, the fact that the governing body did so - I
21 withdraw that. I can't tell from this document whether the
22 motion was passed; it seems to have been from the context
23 of the email, but let's just assume for the moment that it
24 was and that can be checked in the documents, but assume
25 that this was passed, does that inform one's understanding
26 of how the councillors saw their role or is that too
27 general a question for you?

28 A. Look, it's a bit hard sitting here now to comment on
29 that. It may have been that councillors felt the only way
30 they could get action on something was to raise it in
31 council; it may have been that sort of circumstance, I'm
32 not sure, I don't know.

33
34 THE COMMISSIONER: Yes, I understand. Yes, thank you.
35 Mr Parish.

36
37 MR PARISH: I think Mr Reynolds answered the third
38 question there about whether it would be an appropriate way
39 to do it. I might just put that document aside for now and
40 mark the second document that I'm going to refer to as
41 well, if that's appropriate, as a bundle or I can do it
42 separately?

43
44 THE COMMISSIONER: Perhaps do it separately so that, if we
45 come back to it. So, you just want me to mark this for the
46 moment?

1 MR PARISH: Yes, please.

2

3 THE COMMISSIONER: The document referred to in
4 Mr Reynolds' evidence which includes an email from Duncan
5 Gair of 7 May 2020 at 10.43am referring to motion N93924/19
6 will be MFI-4.

7

8 **#MFI-4 - DOCUMENT REFERRED TO IN MR REYNOLDS' EVIDENCE**
9 **INCLUDING AN EMAIL FROM DUNCAN GAIR OF 07/05/20 AT 10.43AM**
10 **REFERRING TO MOTION N93924/19.**

11

12 MR PARISH: Thank you, Commissioner.

13

14 THE COMMISSIONER: Mr Broad, I'll just return the MFI to
15 you for the moment. Yes, proceed, Mr Parish.

16

17 MR PARISH: Q. Mr Reynolds, the second document you may
18 have there is a notice of business, notice of motion form?
19 A. Yes.

20

21 Q. And that's dated 26 February 2020, just under the
22 notice of motion?

23 A. That's right, yes, it is.

24

25 Q. Can you just take your time and read the proposed
26 resolutions?

27 A. I've read the motion.

28

29 Q. Thank you, and just for the transcript I'll read them
30 out. The first motion, prayer 1 or proposed
31 recommendation 1 is:

32

33 *That the mayor explain in detail how he*
34 *believes he had the power at the EGM*
35 *29 January 2020 to refuse to accept my*
36 *motion to suspend standing orders to allow*
37 *members of the public to address council or*
38 *ask questions.*

39

40 And, prayer or resolution 2:

41

42 *The mayor detail that power with the*
43 *relevant extracts and references from our*
44 *Code of Meeting Practice and the Local*
45 *Government Act and advise how the statement*
46 *"it is not permitted" accords with the*
47 *policy.*

1
2 Number 3:

3
4 *That the mayor advise how his ruling*
5 *accords with "our mission, from our vision,*
6 *from our values", statement that appears in*
7 *every agenda paper (below).*
8

9 Number 4:

10
11 *That the mayor advise why his second*
12 *refusal of my motion ("it is disallowed")*
13 *did not appear in the draft minutes?*
14

15 Can I get your impressions of that both in respect of
16 whether this is an appropriate way to deal with it at a
17 procedural level and whether the issues raised within it
18 are appropriate to be dealt with in this way?

19 A. I'd firstly comment that I don't think I've seen
20 something like that elsewhere before, and before today. I
21 would have thought, if a councillor is dissatisfied with an
22 outcome of a process, regardless of who was right or wrong
23 at the time, there are abilities to refer matters
24 elsewhere, for example, Office of Local Government,
25 Ombudsman, you know, in extreme circumstances ICAC, in
26 fact, there's responsibilities in terms of ICAC-able
27 "issues". I would have thought they might have been a more
28 appropriate process than what's set out here; one of those,
29 perhaps in first instance OLG perhaps.
30

31 Q. One way to read the proposed prayers in this notice of
32 motion is that it seeks to cavil with a previous decision
33 made of the chair --

34 A. It does appear so.
35

36 Q. -- by use of the notice of motion process.

37 A. Yes, it does.
38

39 Q. Do you think that's appropriate in - well, in any
40 circumstance?

41 A. Well, I think, whatever the issue was at the council,
42 I presume it was dealt with at the council, and if there
43 was dissent from the mayor's ruling at the time, ought to
44 have been debated at the time as a dissent - as a motion of
45 dissent from the chair's ruling and the matter dealt with
46 and put to bed then, rather than raised again.
47

1 Q. So, the appropriate procedure, if there was any
2 dissatisfaction, would have been a dissent motion at the
3 time that the ruling was made?

4 A. That's my view.

5

6 MR PARISH: Could I get that document also marked for
7 identification?

8

9 THE COMMISSIONER: Yes.

10

11 Q. Before I do that, Mr Reynolds, is the concept of
12 suspension of standing orders something that arises out of
13 the Code of Meeting Practice?

14 A. Look, I can't recall the specifics.

15

16 Q. That's all right.

17 A. It's not - suspension of standing orders is not - is
18 not - it's not abnormal in local government practice.
19 Normally, for example in - if I use Blacktown as an example
20 - standing orders might be suspended to bring a matter
21 forward in the debate process rather than leave it till
22 later in the debate, particularly if there were members of
23 the public who were interested in the outcome of an item.

24

25 Q. Yes.

26 A. So, for those sorts of circumstances a suspension of
27 standing orders is quite "routine practice", so I'm
28 presuming, and I just can't recall, I'm presuming the code
29 of practice here would allow for suspension, I suppose so;
30 I can't recall.

31

32 Q. My question was perhaps badly framed and you've
33 answered it in the appropriate way, which is, is it
34 something that happens?

35 A. It does.

36

37 Q. I think you've answered that, yes. The notice of
38 motion dated 17 February 2020 which Mr Reynolds was taken
39 to by Counsel Assisting will be MFI-5. Mr Broad, I'll just
40 return that to you.

41

42 **#MFI-5 - NOTICE OF MOTION DATED 17/02/20 WHICH MR REYNOLDS**
43 **WAS TAKEN TO BY COUNSEL ASSISTING.**

44

45 MR PARISH: Thank you, Commissioner.

46

47 THE COMMISSIONER: Yes, Mr Parish?

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MR PARISH: Commissioner, I don't have any further questions at this stage.

THE COMMISSIONER: Yes, all right. Are there any applications? No.

Mr Reynolds, that completes your evidence, thank you for your attendance this morning, you're excused from further attendance under your summons and free to go on your way.

<THE WITNESS WITHDREW

THE COMMISSIONER: Mr Parish, your next witness is Mr Clark?

MR PARISH: That's correct, Mr Jim Clark.

THE COMMISSIONER: Given that Mr Clark has been re-organised, do you need a short time to get yourself organised or are you ready to go?

MR PARISH: Ready to go, Commissioner.

THE COMMISSIONER: Yes, thank you. Mr Clark, come forward, please.

<JIM CLARK, affirmed: [11.52am]

THE COMMISSIONER: Thank you, Mr Clark, have a seat. Mr Parish.

<EXAMINATION BY MR PARISH:

MR PARISH: Q. Thank you Mr Clark. Could I start with your personal and vocational background and your connection with the shire?

A. Yeah, okay. Just to raise that I have a hearing issue that's arisen recently, so you may need to speak up a little bit.

Q. Of course, and let us know if you can't understand the question.

A. Okay. So, I've lived in Bundanoon, I've been a resident in the shire for 32 years. My profession was a telecommunications technical officer specialising in

1 exchange installation and optical fibre. I had a
2 redundancy from Telstra in 2002 after 30 years and, after
3 that, I worked part-time for Australia Post and I did quite
4 a bit of bush care volunteer work for council.

5
6 I am a member of the Greens. I was a candidate for
7 the state seat of Southern Highlands in 1999 and 2003. I
8 was elected as a Green for Wingecarribee Shire Council in
9 2004. I served three terms on council and was re-elected
10 in 2008 and 2012, and also incidentally I was a Greens
11 candidate for Hume in 2007 Federal election.

12
13 So, I stood down in the 2016 council election, and
14 Gordon Markwart was my replacement candidate who was
15 elected for the Greens. I chaired the Heritage Committee
16 from 2008-2016. I also co-chaired the Environment
17 Committee in 2004-2016 and I felt both of these committees
18 were very productive for council.

19
20 Also, in finishing, I was the general manager's
21 nominee on the GM's performance review committee for most
22 of that time for a couple of general managers.

23
24 Q. Thank you. And bearing in mind that you weren't a
25 councillor in the 2016-2020 term, did you have occasion to
26 see meetings or experience the conduct and behaviour of
27 councillors in that 2016-2020 period?

28 A. So, in that later term I didn't have a great deal of
29 overview of council matters. I hadn't actually attended a
30 meeting, I only attended one meeting to get a service award
31 after I left council, but I did keep in touch with my
32 following councillor, Gordon Markwart, and obviously the
33 media, and I did get an impression that things weren't
34 great.

35
36 Q. Can I start by asking about your experience on the
37 previous councils when you were a councillor. There has
38 been some evidence that there was a culture in previous
39 councils that in some ways just followed through to the
40 present suspended council; do you have a view on that or an
41 impression?

42 A. Yeah, a number of the councillors were returned and I
43 think that - my last council term up to the election of the
44 new council was - also had some troubling features in it,
45 yes.

46
47 Q. Can you tell me specifically from your recollection

1 what some of those troubling features were?

2 A. I think there were - well, there were several
3 councillors who were hard to deal with in council meetings
4 and also the senior staff had had a lot of problems in
5 dealing with some of those councillors.
6

7 Q. Do I take it from that answer that in your experience
8 there was a troubling relationship between senior staff and
9 some councillors in that 2012-2016 term?

10 A. Some of the councillors, yes.
11

12 Q. Do you have a view about what the cause of that
13 problematic relationship was?

14 A. Well, there were a couple of councillors elected on
15 that term who were fairly strong-minded people who took the
16 view that their opinions were going to be heard in a
17 forthright manner and sometimes that disrupted the
18 meetings.
19

20 Q. Do I take it from that answer that from time to time
21 there were disruptions caused by the way councillors
22 interacted with or treated staff who were at that meeting?

23 A. Yes, it had degenerated to that some times and I also
24 think there was a bit of an adversarial approach by
25 councillors towards the mayor of the day. I remember
26 Councillor Juliet Arkwright came in for some quite rough
27 treatment when she was elected for the first two years of
28 that council, yeah.
29

30 Q. In your view was that within the bounds of the cut and
31 thrust of local government politics, or in your view was it
32 beyond the bounds of what was (indistinct) --

33 A. Look, I understand that people from time to time
34 possibly got a bit heated or upset, and I mean, there is an
35 amount of give and take that you can give, but there were
36 councillors who were - on an ongoing basis they were
37 disruptive.
38

39 Q. In respect of your experience on the heritage and
40 environmental committees, did any of the disruption or
41 disrespect carry over into those meetings or were they --

42 A. No, it didn't seem to. I mean, I was on a couple of
43 committees that I felt ran very well and that was one of
44 them, the Heritage Committee and the Environment Committee,
45 and they were largely immune from that disruption at the
46 council meetings and they actually achieved some very good
47 outcomes for council, I believe.

1
2 Q. Can I ask you about your experience of the way the
3 governing body interacted with the public; firstly, during
4 at least the last term that you were involved, 2012-2016?

5 A. Well, there had been some community members who were
6 regularly attendees at council and some of them actually
7 didn't help the meeting process at all: they interrupted
8 the meeting, they got up and made comments about
9 councillors, and I think that possibly led to some
10 restrictions on the question time that members of the
11 public enjoyed.

12
13 Q. Can I just start with the 2012-2016 term for a start?

14 A. Yep.

15
16 Q. Did you detect, as a councillor and as a member of the
17 community, any particular dissatisfaction with the way that
18 councillors were interacting with the community in that
19 2012-2016 period?

20 A. Just to be clear, did I express, is that --

21
22 Q. Did you experience --

23 A. Oh, did I experience.

24
25 Q. -- either personally or did you pick up a general vibe
26 in the community in that term about community
27 dissatisfaction with council meetings?

28 A. Yeah, I think meetings were not - council didn't put
29 its best face on at the meetings, they were - there were
30 meetings where I felt quite dispirited and almost ashamed
31 to be sitting in the room as a councillor because some of
32 the behaviour was - was very poor, I thought.

33
34 THE COMMISSIONER: Q. What sort of things? What sort of
35 behaviour do you have in mind in giving that answer.

36 A. Well, one councillor, when he was elected on that
37 term, first elected on that term, he took it upon himself
38 to constantly question, attack, make points of
39 order against, asked questions with notice. This other
40 particular councillor, Councillor Uliana, and I thought it
41 was a pointless exercise because it didn't advance any
42 council matter, it just appeared to be a personal - oh, I
43 won't use the word "attack", but it was a personal campaign
44 against this other councillor, so I thought that was
45 entirely a waste of time for all of us to have to endure,
46 and it went on from meeting to meeting to meeting and it
47 was never resolved right to the end of that term.

1
2 MR PARISH: Q. In your experience in that 2012-2016
3 term, did you generally feel like the meetings were well
4 chaired, or did the lack of resolution of behaviour that
5 you were just talking about feed into the sense that there
6 wasn't effective chairing of meetings?

7 A. Depending on the subjects; some of the meetings were
8 well chaired, but I did gain the impression that, you know,
9 there were alliances on council as you might expect and
10 there was probably given leeway to some councillors who
11 were in alliance with the person chairing the meeting, and
12 that was - you know, that was a bit disappointing to see
13 that someone would be given more leeway than someone else;
14 I always found that a bit dispiriting.

15
16 Q. You've mentioned a couple of times now a sense of
17 being dispirited; did that play into your role - your
18 decision, I should say, to not contest a fourth term in
19 2016?

20 A. Yes, it did.

21
22 Q. More generally - and by all means if you don't feel
23 like you can answer, tell me - but more generally did you
24 feel that the conduct of council deterred people from
25 putting themselves up as candidates at elections4q?

26 A. Well, before I was elected in 2004 I attended council
27 meetings for a couple of years, and I might have asked the
28 occasional question from the floor, but I didn't - sorry,
29 back to your question, I've lost myself here.

30
31 Q. That's all right.

32 A. Can you repeat that?

33
34 Q. Sure. Do you have any impression or knowledge as to
35 whether the conduct of councillors, which led to your sense
36 of being dispirited, deterred other people from running as
37 candidates in local government elections?

38 A. Well, that was my point, I went to council meetings
39 and I observed the council meetings and I thought, I might
40 have a role here, I might be able to contribute. And I had
41 cause to reflect on what a person who came to a meeting
42 might think in that last term, and I - if I had been coming
43 to the meetings with a view to being on council I don't
44 think I would have run for council after that: it was very
45 adversarial and quite a rough environment.

46
47 Q. Can you tell the Commission whether you had any

1 experience in the behaviour of councillors in committee
2 meetings during the 2016-2020 term?

3 A. When you say "committee meetings", do you mean like
4 finance committee?

5

6 Q. Yes.

7 A. Yeah. There was, yes, there definitely was instances
8 of even briefings where it got quite heated, and I couldn't
9 understand why it got so heated about these briefings, you
10 know, it was like quite unnecessary for people to get upset
11 to that extent over a briefing and, you know, there was
12 anger shown towards council staff, which I thought was
13 quite unfair: you know, don't shoot the messenger if you
14 don't like the message, that was my feeling, so yeah,
15 especially in that last term things were not ideal, the
16 atmosphere was not ideal, and yeah, I think it detracted
17 from the way council performed. Even though, I think we -
18 council had performed well financially and, you know,
19 development applications got through, but council was
20 battling against this sort of headwind of people not
21 helping the situation, like causing problems. To me, it
22 was quite remarkable that individuals would choose to
23 behave that way and disrupt council operation really.

24

25 Q. I was referring there to the 2016-2020 term; I take it
26 you're giving your experience of the 2012-2016 term?

27 A. I wasn't referring to the 16-20, I was referring to my
28 last term.

29

30 Q. Thank you, that's still useful evidence. The conduct
31 of councillors that you've described in meetings in
32 2012-2016 and in briefing sessions in 2012-2016, did some
33 of those councillors get re-elected in 2016?

34 A. They did, I think six of the nine got re-elected, so
35 that, some of the problems remained there and continued on,
36 I believe.

37

38 Q. Just going back to my question before; did you
39 experience any - did you have any experience of behaviour
40 in committee meetings in the 2016-2020 term, or were you
41 not involved at that stage as a member of public in any of
42 those meetings?

43 A. No, I wasn't involved any more in committees and that
44 sort of thing, so I couldn't really comment on what
45 happened in that term.

46

47 Q. Okay, thank you. You made the observation that the

1 process of dealing with misbehaviour on council was poorly
2 handled and that individuals were not sanctioned for their
3 disruptive behaviour at the time. Are you referring there
4 to your experiences in 2012-16 or things you heard and
5 things you experienced in the latest term, 2016-2020?

6 A. Well, I think that last term of council, for me, was
7 the one that I refer to there. I think - if I said "poorly
8 handled", I think it was - I think there was an amount of
9 leeway shown, not by the staff, but by perhaps some of the
10 mayors there, earlier on particularly.

11
12 As I said before, I think some of those councillors
13 were given leeway because - perhaps because they were
14 supporters, I don't know; that was my opinion. You know,
15 at a meeting they could misbehaviour and perhaps not get
16 sanctioned by the mayor of the day because they were, you
17 know, on the - in the faction that the mayor might have
18 been part of, so it was kind of in a sense allowed, that
19 behaviour.

20
21 So I didn't think staff - I thought staff handled it
22 as well as they could, because they couldn't really
23 intervene in political matters, so it's quite a quandary to
24 be a manager and have to deal with that at meetings, so
25 quite a dilemma for them.

26
27 MR PARISH: Commissioner, I didn't have any other specific
28 questions at this stage.

29
30 THE COMMISSIONER: Q. Mr Clark, do I take it from your
31 evidence that problems of this kind persisted from your
32 very first term on council?

33 A. Well, it was different. My first term was - there was
34 12 councillors and one councillor had a group of five
35 councillors, so - and they had supporters as well, so they
36 fairly well had the numbers on council, so they pretty much
37 controlled the meetings, and the mayor was a supporter of
38 theirs, so it was a clear delineation; no other group had
39 the numbers. I mean, I felt I was treated fairly by the
40 mayor in that first council, and I felt I got a say, so
41 even though that first council was - had its moments as
42 well, things got resolved, I think.

43
44 Q. So, do I take it then that the issues that you saw
45 first started to appear in the 2008 council?

46 A. Yeah, I'm just trying to think. Sometimes you forget
47 who was on the council and I've written myself a little

1 cheat sheet here to remember.

2

3 Q. I might ask you to send it to me.

4 A. Yeah, um. Well, as I said, I've just spoken about the
5 first term, and the second term, by then it had gone down
6 to nine councillors, and there were - there was some
7 characters on that council who were - well, they were
8 eccentric but they were - generally the meetings got
9 conducted reasonably well, you know, even though we did
10 have our problems at times. I just felt that the last
11 council I was on it deteriorated and I didn't feel - I
12 didn't feel that it was fair really that that should
13 happen, and I think --

14

15 Q. Not fair not just to councillors, but what about the
16 community?

17 A. Well, indeed the community. I've always felt that the
18 council managed to run despite some of this behaviour by
19 councillors and --

20

21 Q. Yes.

22 A. -- and I sort of pay tribute to the staff for making
23 sure that council managed to be ticking over despite some
24 of the problems, but I don't know --

25

26 Q. I don't think you put it in this way, but the fact
27 that the staff were able to keep the council ticking over,
28 in spite of the behaviour, is perhaps a testament to the
29 staff working solutions around what was happening at
30 council level; is that --

31 A. Well, that depends what you mean: are you talking
32 about senior staff or are you talking about - I was talking
33 about council in general, like operations probably below
34 the senior management level.

35

36 Q. I understand. I was picking up your reference to the
37 staff, so when you're speaking of staff you're speaking
38 below senior management level?

39 A. Yeah, not the executive. I think it's probably good
40 that council separated in that respect in their - you know,
41 the operational staff managed to work despite all those
42 problems, but the senior staff were sort of besieged by,
43 certainly in that last term, I felt like they were besieged
44 by councillors.

45

46 Q. In 2012-16?

47 A. Yeah, sorry to jump backwards and forwards, but yeah,

1 in that council the executive were besieged by councillors;
2 I mean, the demands which some councillors put on the
3 executive were quite extraordinary.
4

5 Q. The fact that this had persisted through, to your
6 observation, or from the 2012 term and ultimately it's a
7 matter for me to determine --

8 A. From talking to my colleagues, yeah, I understand that
9 it did, yeah.
10

11 Q. Doesn't that tell one that something had to change
12 here?

13 A. Sorry, could you repeat that?
14

15 Q. The fact that you're describing these observations
16 from the 2012 term and you've had some reports from your
17 colleagues about similar issues in the 2016 term, doesn't
18 that indicate that something had to change here?

19 A. Well, yes, it did indicate that, but I'm not sure that
20 some of the councillors were fit for purpose really and
21 that's a matter for the community to decide that.
22

23 Q. It is.

24 A. But when councillors get returned and they were
25 disruptive on one council, and they return again and are
26 still disruptive, it becomes very difficult for senior
27 staff to cope with that: how do you cope with it? Do you,
28 you know - surely the political side of it has to operate
29 and, I don't know, we had officials from the OLG come into
30 a lot of meetings and I think there was a kind of
31 expectation that they would somehow resolve the issues, you
32 know, come up with a magic solution, but - and I think even
33 my expectations were that, if there was a problem, that an
34 individual councillor could be dismissed but - and I
35 probably thought that in the term after mine, that that
36 should have happened, but from what's been said I
37 understand that it was very difficult if - as you said, I
38 think one out, all out, well --
39

40 Q. I don't think they were my words, but I have raised in
41 my opening, if someone can point me to the provision of the
42 Act that would allow the Minister to take action like that,
43 I'd be very interested to have that assistance.

44 A. Yeah.
45

46 Q. It seems to be a view that's been expressed but at the
47 moment I'm not sure where that view is coming from.

1 A. Okay.

2

3 Q. I think the passage, the phrase "one out, all out" was
4 something that was said by a witness.

5 A. Well, I may have misunderstood that.

6

7 THE COMMISSIONER: Yes. No, no, no, it's quite all right.
8 Yes, I think I have the understanding of your evidence.

9

10 Mr Parish, does anything arise from that?

11

12 MR PARISH: One thing, Commissioner.

13

14 THE COMMISSIONER: Yes.

15

16 MR PARISH: Q. I would be interested to know, if you
17 have a view, whether you think the appointment of a local
18 planning panel has and will assist in the functioning of
19 the governing body by taking planning matters, some
20 planning matters, most planning matters out of the hands
21 of --

22 A. Yes, I certainly have a view on that and it's probably
23 not a majority view. We dealt with a lot of controversial
24 developments in my time on council, and a lot of them were
25 resolved after much wrangling and toing and froing, and I
26 give an example of the Big W development in Mittagong, that
27 was in my first term of council, that was very problematic
28 and took - and there was a kind of a view by the majority
29 of the council as it turned out that that development
30 should be approved. I probably had a different view but, I
31 mean, the majority vote is what wins out and that proposal
32 was approved. I think, it was resolved, maybe not to my
33 ideal satisfaction, but it was resolved, and there were a
34 number of other projects, I mean, large projects like the
35 indoor pool here and, prior to that, there was - they
36 wanted to have a regional leisure centre: they were
37 resolved on council; it was a difficult process, but we
38 went through and resolved it.

39

40 I was a bit disappointed, to get back to your
41 question, I guess, the planning panels: I was disappointed
42 that - well "disappointed" maybe not the word, it's an
43 overused word, isn't it "disappointed" - that there was no
44 consultation with the community when the local planning
45 panel was introduced; it was - to me, it was a retrograde
46 step and I didn't feel that there was any consultation with
47 the community. Okay, in the short term development

1 applications had to continue and be dealt with, but I feel
2 that the community really needed a say on planning panels,
3 and I'm assuming that the planning panel will remain and
4 that council will not be determining those applications.
5

6 So, I think the community really needs some input to
7 that. I mean, okay, we have some local representatives who
8 might - or a pool of representatives who might appear from
9 time to time, but their largely not dealt with by
10 councillors from that community and I felt that was a
11 backward step. And, I don't believe the community should
12 have to suffer not having this personal representation
13 from - as a direct result of the behaviour of what I
14 considered to be a relatively small group of councillors.
15 I mean, that's probably an oversimplification, but that's
16 my view.
17

18 Q. We've had some evidence that there was a perception at
19 least that the 2016-2020 council was bogged down on
20 individual DAs and that prevented the effective conduct of
21 meetings, and we've also had some evidence that there is a
22 perception from at least some in the community that the
23 handling of DAs by council led to a capricious approach
24 where you could lobby or know someone and that would help
25 get your DA through. At least from a procedural sense
26 rather than the consultation sense, do you think there is
27 some value in a local planning panel? I'm interested in
28 your experience as a councillor who sat through three terms
29 dealing with --

30 A. Well, I think some of the senior staff were still
31 there on the development side of it, and I think there was
32 a difference of opinion on - even within council staff
33 about planning panels. The community needs to be heard on
34 development applications, but I was at a bit of a loss to
35 explain why favouritism was raised by some complainants. I
36 didn't really experience favouritism being given towards
37 applicants and, I don't know, do they mean from staff or do
38 they mean from councillors?
39

40 THE COMMISSIONER: Q. I think the issue is not
41 necessarily that it happened, but perhaps because of the
42 processes adopted in considering DAs at council meetings
43 there was a perception - not actual - a perception that
44 that might be happening because of what was perceived to be
45 inconsistencies in approach when DAs came to be dealt with
46 at council level. And I think what Counsel Assisting is
47 seeking to explore with you, acknowledging your earlier

1 evidence is, do you think as a matter of process and form
2 that a local planning panel can go some way to addressing
3 those issues of perception? Do you follow?

4 A. Well, I guess, a planning panel takes councillors out
5 of the equation, but it doesn't - it doesn't address the
6 issue that the council - that the community doesn't have
7 councillor representation. I live at Bundanoon, if there
8 was going to be a development there people would approach
9 me and ask me about it to give them some information on how
10 they should approach it. Sure, there is steps that the
11 community can make submissions, but to me it's - and I've
12 made submissions since I've left council on proposals out
13 my way, but it's just a bit like, you're putting in a
14 submission, you get minimal information, you go online and
15 have a look at the plans, and you put in a submission and
16 that's pretty much it, you don't really - you don't get the
17 involvement that you would get going to a council meeting
18 and seeing who's voting for what and the debate about it.
19 I mean, you can go to a planning panel, I guess, but I just
20 think it removes the local from local government to be
21 doing that.

22
23 Q. Yes, I understand.

24 A. So, as far as the State Government is concerned, sure,
25 it's a lot neater, you know, it gets development
26 applications through quicker, but it's not just about the
27 speed of getting development applications through, it's
28 about good developmental outcomes. So, yeah, I guess I
29 have my reservations and we'll see how it goes, but that
30 was a great disappointment to me; the consultation with the
31 community about that, I think, should have been much more -
32 much greater and further teased out because council got -
33 the previous council's been criticised for not consulting
34 with the community, and here we have a situation where, you
35 know, a planning panel's imposed and there's no debate in
36 the community. I guess that was part of the package,
37 wasn't it, you know? So, anyway, I'll leave that.

38
39 THE COMMISSIONER: Yes, thank you. Mr Parish.

40
41 MR PARISH: Q. Thank you, Mr Clark. Are there any other
42 matters you wish to address the Commissioner on within the
43 terms of reference?

44 A. Yeah, my comments or conclusion I suppose, call it
45 what you will, related to the fourth terms of reference and
46 also a personal reflection. I had 12 years on council and
47 I learnt quite a lot on council. I was quite dismayed when

1 it was put into administration. I had a good relationship
2 with the staff and the executive of council and I thought -
3 initially I thought the administration period would be -
4 reasonable would be limited to six months and not drag on
5 indefinitely.

6
7 I felt the community needed some - needs
8 representation from council, even though some of those
9 councillors had been problematic, this council has been
10 removed and the next council hopefully will perform better,
11 but I believe that the community does need that local
12 representation.

13
14 It's not just about - I mean, you know, a number of
15 people came and said that their DAs, you know, they weren't
16 dealt with quickly. Well, it's not just dealing with a
17 development quickly, it's also getting a good outcome,
18 development outcome that suits the whole community, not
19 just that individual applicant. So, that's a comment I've
20 got there.

21
22 The other thing is, I feel that - I feel for the
23 council staff having to cope with council going into
24 administration; it's a great reputational stain on a
25 council to have that, and to me a handful of councillors
26 really served themselves, put themselves in front of the
27 community and put themselves ahead of the community, and
28 that was a pretty bad outcome. I don't believe the
29 community should suffer from that and, yeah, I think --

30
31 THE COMMISSIONER: Q. In saying that though, the
32 community deserves effective community leadership, do they
33 not?

34 A. Sorry?

35
36 Q. That's all right, it's quite all right. In making
37 that observation you'd agree with the proposition, I take
38 it, that the community needs and is entitled to effective
39 civic leadership from the governing body?

40 A. Oh, yes, certainly, they are entitled to that, but you
41 know, in life, as is often the way, the lowest common
42 denominator determine how people are treated and, if people
43 make a nuisance of themselves at council meetings, well,
44 that has an effect on the whole community and I'm just
45 pretty sad that it should come to this, and I think
46 hopefully an elected council will be restored sooner than
47 later but I have a feeling it may be later rather than

1 sooner.

2

3 MR PARISH: Yes, I understand those views, some of them
4 fall outside my terms of reference, but --

5 A. Yeah, I guess that's just a personal observation.

6

7 Q. No, that's quite all right. Had you finished?

8 A. I have finished, thank you for the opportunity.

9

10 THE COMMISSIONER: Yes, are there any applications? No.

11

12 Mr Clark, thank you for your attendance this morning
13 and thank you for reorganising yourself to be here today.

14

15 THE WITNESS: Not a problem.

16

17 THE COMMISSIONER: It's very much appreciated. You're
18 excused from further attendance under your summons and free
19 to go.

20

21 Mr Parish, I take it that ends our witnesses for
22 today?

23

24 MR PARISH: Yes, it does for today.

25

26 THE COMMISSIONER: Are we back on a more normal footing
27 from tomorrow as far as you're aware as of this moment?

28

29 MR PARISH: Yes, Commissioner.

30

31 THE COMMISSIONER: All right, and updated lists can be
32 posted to the website today?

33

34 MR PARISH: Yes.

35

36 THE COMMISSIONER: Is there anything else I need to deal
37 with?

38

39 MR PARISH: No, I'd just like to reiterate and echo your
40 thanks to Mr Clark for rearranging his schedule for us.

41

42 THE COMMISSIONER: Yes. As I've said a number of times,
43 taking people away from their ordinary business to answer a
44 summons is something that I appreciate is of inconvenience
45 to them, so particularly for someone who was expecting to
46 come later and has come today, that's very much
47 appreciated.

1
2 All right, if there's nothing further, I'll adjourn
3 until 10am tomorrow.
4

5 MR PARISH: Thank you, Commissioner.
6

7 THE COMMISSIONER: Thank you.
8

9 **AT 12.32PM THE INQUIRY WAS ADJOURNED TO**
10 **THURSDAY, 7 APRIL 2021 AT 10.00AM**
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