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 Friday, 8 April 2022 at 10.02am

(Day 10)

1   THE COMMISSIONER: Thank you. Mr Parish.
2
3   MR PARISH: Thank you, Commissioner, the first witness
4   this morning is Laurel Cheetham.
5
6   THE COMMISSIONER: Yes.
7
8   **<LAUREL CHEETHAM, affirmed:**   **[10.03am]**
9
10   THE COMMISSIONER: Thank you. Mr Parish.
11
12   **<EXAMINATION BY MR PARISH:**
13
14   MR PARISH: Q.   Thank you, Ms Cheetham. Can I start by
15   asking a bit of a background, your connection with the
16   shire?
17   A.   Certainly.
18
19   Q.   Can you give us that background, please? You might
20   have to speak into the microphone, it's probably a bit --
21
22   THE COMMISSIONER: Yes, if you just come closer to the
23   microphone. Just bear with us for a moment.
24   A.   It's fine, it's just that I was facing you.
25
26   THE COMMISSIONER: Yes, we're going to fix that right now,
27   we'll get that closer. Yes, thank you.
28
29   THE WITNESS: Thank you. I have lived in the shire since
30   1980. I have been - my family went to school here, my
31   children went to school here. I have served on quite a few
32   council advisory committees. I have been council's
33   community representative on the Regional Assessment Panel
34   for development applications, major development
35   applications. I'm still on council's Heritage Advisory
36   Committee.
37
38   MR PARISH: Q. And, you were a town planner, is that
39   correct, before you retired?
40   A.   Yes, that's correct.
41
42   Q.   When were you on the advisory committees at the
43   council, can you give us some timeframes around that?
44   A.   Yes. I retired in 2008. I joined - I'm not quite
45   sure the exact year, but it would have been around about
46   2010 or 2011 that I was on the advisory - I joined the
47   advisory panel for demographic and housing and flood plain

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 1    management, and I was also on a peak committee which
 2    managed council assets.  Then, in 2011, I became the
 3    Australian Garden History Society's representative on the
 4    Heritage Advisory Committee.
 5
 6    Q.   Thank you, and --
 7    A.   And until the councillors were suspended and
 8    committees were suspended I was on the Flood Plain
 9    Management Committee and the Heritage Advisory Committee
10    and the Demographic and Housing Committee.
11
12    Q.   And in those roles you were interacting with perhaps
13    two or three councillors per committee; is that about
14    right?
15    A.   That's correct, yes.
16
17    Q.   Can you give me your experience of those interactions,
18    by and large positive, by and large negative, between about
19    2010 and 2016?
20    A.   They were generally positive.
21
22    Q.   And what about the interactions you saw with the
23    community between councillors and the community during that
24    period in time?
25    A.   During that period, again, they were generally
26    positive.  Council was fairly consultative at that stage.
27    There were a number of strategic matters that, planning,
28    that the community was involved in and I think the
29    community felt - the community accepted that this was a
30    good move on the part of the council and responded to the
31    opportunity to become part of the strategic planning for
32    the shire.
33
34    Q.   As I understand it, you perceived that there was a
35    change in that attitude and interaction with the community
36    in the 2016-2020 term; is that correct?
37    A.   I did.
38
39    Q.   Can you tell us about your experience with that and
40    why you had that impression?
41    A.   There no longer was involvement by the community in
42    making strategic planning recommendations to the council,
43    there were no longer workshops involving community members.
44    The number of meetings of community advisory - of advisory
45    committees was reduced and tightly controlled.  The
46    business of those meetings changed.  Those who were on
47    those committees felt that they were being fed information,
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 1      given information, but that they really had very little
 2      opportunity to have meaningful input.
 3
 4      Q.    Do you have any insight into why there was that
 5      change?  Was it a staff level, policy level, council level
 6      change?
 7      A.    I would imagine it came from the top.
 8
 9      Q.    And, do I take it from the evidence you've just given,
10      therefore, that there was a reduction in the committee
11      meetings and advisory roles that you were involved in in
12      the 2016-2020 term?
13      A.    There definitely was.  There were very few meetings of
14      the Flood Plain Management Advisory Committee, there were
15      only a few meetings of Demographic and Housing Advisory
16      Committee; that was limited I think to three or four
17      a year.  The Heritage Advisory Committee got some special
18      treatment and we were able to have more meetings and we
19      certainly had a lot more day-to-day contact with the
20      heritage planner and we were able to make submissions on
21      heritage issues, so we felt a lot more involved, those who
22      were on the Heritage Advisory Committee, than those who
23      were on the other committees.
24
25      Q.    You were in the rather unique position of being on
26      other committees so you had the perspective that perhaps
27      other people didn't about --
28      A.    Yes, I did.
29
30      Q.    Did that leave you with the impression, for instance,
31      that heritage was more important to the council than
32      perhaps flood plains management, for instance?
33      A.    Not necessarily.  I felt that there are requirements
34      financial - there were financial incentives to council to
35      run its Heritage Advisory Committee and various projects
36      and various plans in heritage that it needed to do with
37      community input.
38
39      Q.    What do you mean or can you explain what you mean by
40      "financial incentives"?
41      A.    The State Government provided heritage - the local
42      council with financial support to deal with heritage
43      properly.
44
45      Q.    And, in respect of how councillors in this 2016-2020
46      term interacted with the community, we'll start with on the
47      committees that you were involved in: did you notice any
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1   change there positive or negative?
2   A.   The number of - as I said before, the number of
3   meetings declined. We were presented with a whole series
4   of reports, we did not have the background to those
5   reports, but we were - we expected, I guess, to give
6   meaningful - a meaningful response to them, and that was
7   fairly difficult for those who were not kept in the loop
8   and did not know the background; to just have papers
9   presented to you and a presentation provided to you, and
10   you were involved for two hours once every four months.
11
12   Q.   Thank you. What about the behaviour of councillors?
13   Did you notice any change, positive or negative, in the
14   2016-2020 term, for now just concentrating at the committee
15   level?
16   A.   I tried to keep everything separate, I know the
17   councillors generally tried to keep everything separate as
18   well, or they appeared to be doing that. On the whole I
19   didn't notice a huge difference between the way the
20   councillors operated in a committee after 2016.
21
22   Q.   What about outside the committees? In the community I
23   understand you had particular involvement in the Station
24   Street bypass, for instance. Can you give us your
25   impressions about how council interacted with the community
26   in that respect?
27   A.   Well, the first thing that happened was the public
28   meeting and the submissions. The public meeting, it was -
29   the public meeting was attended by over 100 people.
30   Councillors sat with their backs to the community; that was
31   not a good look. The submissions, the way the council
32   handled the submissions was - did not instill confidence
33   that the council took - had any regard to the way the
34   community thought about this. There was quite a difference
35   in the way the council appeared to be interacting with the
36   community, particularly on that aspect; other aspects I'm
37   not going to comment on, but certainly I noticed quite a
38   difference.
39
40   Q.   You attended that meeting, I think it was on about
41   28 September 2017.
42   A.   Yes.
43
44   Q.   Did you feel yourself personally attacked by the mayor
45   at that time, Mayor Halstead?
46   A.   Yes, I was.
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 1      Q.    Can you explain what was said or the impression that
 2      you're left with in respect of what you say was that
 3      attack?
 4      A.    The mayor at the end of the meeting, when he was
 5      called on to thank those who had attended and participated,
 6      instead said how disappointed he was with the - with two
 7      presentations in particular, that we had not got our facts
 8      right.  He said, "And I am very disappointed and surprised
 9      that Laurel Cheetham", and he named me, "a person who has
10      had a lot of planning experience, should get her facts
11      wrong".  I didn't know what he was talking about.
12
13           I spoke to Mark Pepping after and I said, "Mark, I
14      don't think I said anything wrong", and he said, "No, you
15      didn't".  And then I wondered what it was, so I wrote - I
16      contacted the Office of Local Government and asked, "What
17      should I do about it?", and I was told, "Well, you should
18      put in a formal complaint", which I did, I wrote to the
19      general manager of the council and I asked for, if what I
20      had said was wrong; I said, "I wanted to know so that I
21      would not make that mistake in the future, but if the mayor
22      was wrong then I expected an apology, I expected a public
23      apology, and I expected an apology in the council chambers
24      and in a local press, in the local press and to me
25      personally", and that is what I got.  I have got copies of
26      that correspondence.
27
28      Q.    Thank you.  Without descending into too much detail,
29      what was the presentation, what was the gist of the
30      presentation that you gave at that meeting?
31      A.    I talked about the environmental assessment process
32      under Part 5 of the Environmental Planning Assessment Act.
33      This project is an infrastructure project, so it doesn't
34      fall within Part 4 of the Act.  Council or whoever, a
35      public authority, is required to carry out an environmental
36      assessment before it proceeds to develop an activity, which
37      includes a road.  There are two parts: there is the four
38      EIS process, environmental impact statement, or there is
39      the shorter review of environmental factors.  I urged the
40      council to err on the side of a full environmental impact
41      statement.  I did not say that they had to do it, but I
42      urged them to do it, that way the process would be
43      transparent: their decisions that they made about the road
44      would be transparent, there would be an opportunity for
45      community consultation on the project, and the project
46      would be assessed at arm's-length, not by the council.  And
47      I felt that this would - the community confidence in the
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1   process and in the project would be very much increased if
2   the council went down that path.
3
4   Q.   Thank you. Can I just look a bit more broadly at the
5   Station Street bypass project for a second. How did you
6   feel generally the consultation was over the course of the
7   entire proposed project, in your view?
8   A.   Well, the mayor kept on saying to us, "This is a
9   project that has been - the community has known about for
10   37 to - over 40 years", and it was both mayors said this.
11   What had started off was the idea of a bypass to Bowral;
12   the bypass required a road starting much further south than
13   Bowral Street, and in fact in 1985 the council acquired
14   land for the bypass section of that road. So, when the
15   council, the mayors kept on saying, "The community has
16   known about this for a long time", they'd known about the
17   idea of a bypass, they hadn't known about the detail; they
18   only found out about the detail when the concept design
19   went on exhibition in August.
20
21   The community kept asking questions, they were not
22   satisfied with the council's answers. There was no
23   opportunity for two-way communication except a couple of
24   times and, of course, the first one was at that meeting
25   in September 2017. Friends of Bowral had a meeting with
26   the mayor and some senior staff in 2019 and that was
27   productive, in that, we were able to ask questions, but
28   before that no-one had been able to ask questions, and
29   after that no-one had been able to ask questions.
30
31   We were fed information, we were told what the council
32   wanted us to know, not what we wanted to know. We were
33   provided with a standard response no matter what questions
34   we asked the council. Issues we raised, the response came
35   back the same, it referred us to a website, it referred us
36   to YouTube clips.
37
38   Q.   Do you accept that neither you specifically nor
39   Friends of Bowral and perhaps no-one in the community more
40   generally has a carte blanche entitlement to just ask
41   questions and expect answers on every single topic?
42   A.   The council needs to be transparent.
43
44   Q.   Yes.
45   A.   It has a responsibility to its ratepayers, its
46   residents, and its general community. Yes, we do have,
47   particularly when our money is involved and when our

environment is affected and the things that we value are
affected, we certainly have - we should be given the
opportunity to ask questions as to how council is going to
ensure that those values that we have about the area that
we live in are not compromised.

Q.   Do I take it, you'd agree with the proposition that,
if the council is clear and transparent and communicates
well, then there isn't necessarily the need to ask lots of
questions?
A.   There wouldn't be the need to ask lots of question.
We just kept asking the same questions because we didn't
get the answers.

Q.   And I take it --
A.   We were ignored, our questions were ignored.

Q.   Yes. I take it from that answer that, as a general
statement, you didn't think that the communication from
council in respect of the Station Street bypass at least
was clear and transparent and well communicated?
A.   It was not, it was one-sided; council told us what
they wanted to know.

THE COMMISSIONER: Just before you go on, Mr Parish.

MR PARISH: Sure.

THE COMMISSIONER: Q.   At about that time do you perceive
there had developed somewhat of a lack of trust between the
community and the council organisation?
A.   There was, there was definitely.

Q.   And, do you have a view as to why that situation had
arisen?
A.   It arose, to start with - I'll go back to the
submissions. Council, when it put the concept design on
exhibition, it called for submissions. The report that
went to council on the submissions was misleading and
inaccurate; it painted a picture that there was more
support for the proposal than there was.

Q.   I see.
A.   If we proceed then on to the 14 February meeting in
2020, the design changed: there was no community
consultation. There were proposals in it that the
community knew couldn't proceed. For instance, a ramp and

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 1      stairs from Kirkham Road onto platform 1 so that people who
 2      were parking in Kirkham Road would be able to access the
 3      other side of Wingecarribee Street and the platforms there
 4      by using rail property.  People knew this was not going to
 5      be something that was going to be tenable.
 6
 7      Q.   Yes.  Leaving aside Station Street, I accept fully
 8      that Station Street was a significant issue in the region
 9      for a number of people, but leaving aside how Station
10      Street developed over time, were there any other matters to
11      your observation that led to the lack of trust between the
12      community and the council?
13      A.   Certainly the way the council handled the bushfires
14      was one major issue.
15
16      Q.   Yes, any others?
17      A.   I believe the way it handled some of the grants that
18      it was given as well.  I'm not going to be too specific
19      about that.
20
21      THE COMMISSIONER:   I understand.  Yes, thank you,
22      Mr Parish.
23
24      MR PARISH:   Q.   I understand you observed some
25      interference by some councillors to pressure others not to
26      raise concerns about the project; is that correct?
27      A.   That's correct.
28
29      Q.   Can you give us the example of what you witnessed that
30      led to that observation?
31      A.   Well, as I said before, I was on the Heritage Advisory
32      Committee.  The Heritage Advisory Committee should have
33      been consulted on this proposal, but it wasn't, so we had
34      put it on as an agenda item in - I'll have to refer to my
35      notes as to when.
36
37      Q.   Of course, yes.
38      A.   8 December 2017.  And, in relation to the Station
39      Street upgrade public exhibition:
40
41          All the members of the committee, including
42          the chair of the committee who was a
43          councillor, recommended that, due to the
44          impact upon the northern entrance to Bowral
45          with the redesign of Stage 1 of the
46          proposed Station Street upgrade, minimal
47          work be undertaken to reduce the impact on
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1   *the unique character of the northern*
2   *gateway by not realigning the road and*
3   *re-routing Station Street with the creation*
4   *of a service road in the vicinity of*
5   *Boolwey Street. The building of Stage 2 be*
6   *undertaken now.*
7
8   So, the committee was recommending that there be
9   changes made to the plans at the northern end and that
10   stage 2 be undertaken rather than stage 1.
11
12   All committee minutes go to council, and this one went
13   to council on --
14
15   Q.   Was that about February 2018?
16   A.   In February 2018, yes. At that meeting it was moved
17   by Councillor Graham McLaughlin and seconded by Councillor
18   Garry Turland that the recommendations as detailed in
19   the minutes of the Heritage Advisory Committee meeting be
20   adopted with the exception of recommendation No.4, which is
21   the one I have just read to you.
22
23   When I questioned Graham McLaughlin about this, he
24   said to me pressure had been applied to him by other
25   councillors. I am not aware who those other councillors
26   were.
27
28   Q.   Thank you. And, I think you also observed from your
29   experience that there were reports put up to council that
30   contained inaccurate information and were generally not
31   challenged by councillors. Can you tell us how you came to
32   that impression or what you witnessed?
33   A.   Yes. Well, the first report that I've already
34   mentioned, the one on submissions --
35
36   Q.   Yes.
37   A.   -- which gave the impression that there were more
38   people who supported the proposal than actually did. The
39   second one was the February 2014 - 2018 report that went -
40   at council meeting and the report that went to council
41   there. And, I'll just refer to that.
42
43   It did not mention the results of community
44   consultation except to say that changes made to the design
45   were in response to issues raised, but not all issues
46   raised, just those that would save the council money or
47   easy to fix. It noted that:

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A review of environmental factors would be
finalised and the draft would be exhibited
to the public for information.

Further work was required to determine how many Pin Oak trees would be retained. Obtain approval for the required acquisition of part of the Station Street site for the road alignment as well as agreement for the use of station property on the southern side of a pedestrian link. No estimate of cost was provided.

There was no reference to the cost of revised plan. Councillors at that stage did not have all the relevant material and facts to enable them to make a decision to proceed to tender, though that was part of the recommendation.

I believe that councillors failed to act responsibly in doing this. They did not uphold their earlier decision to exhibit the environmental assessment. The decision to go to tender lacked transparency and justification. They did not question whether the decisions they made were consistent with existing council plans, policies and strategies.

There was a town centre master plan 2014 still available on council's website. It showed that - there was a little roundabout and it stated that, rather than removing trees, more trees should be planted in that area as this was a real entrance feature.

It did not address council's strategic plan except to say work - one of the objectives was to work collaboratively to improve and revitalise town and village centres: I thought that was rather an interesting one for it to be consistent with, because I did not believe that was true.

Missing was any reference to leadership goals. There was no - place goals were not related. Parking accessibility, town character, such as managing change to ensure the unique qualities of a town are retained and enhanced, especially those where heritage contributes to that character. There was no mention of heritage, so that was the 2018 report.

1   Q.   You observed that, in your view, the community's
2   confidence in the council had reached an all time low. Can
3   you give us a time period for that or put some time around
4   that?
5   A.   The confidence reduced over time.
6
7   Q.   Yes.
8   A.   I would think, probably when the council did the
9   following report which went to council in 2020, when it was
10   obvious that the council wasn't taking any notice of what
11   the community wanted. They had one goal: that was to
12   proceed with this project by hook or by crook, it didn't
13   matter what happened to the environment, it didn't matter
14   what - how it affected the community, it did not matter how
15   it affected the environment, what it did to Bowral, what it
16   cost, they were going to pursue that relentlessly and that
17   attitude led to much more mistrust and community concern
18   about the way the council was acting.
19
20   Q.   Thank you. We've had multiple pieces of evidence from
21   people who had been left with the impression that, about
22   that time the council had stopped listening; was that your
23   impression as well?
24   A.   The council had definitely stopped listening. They
25   didn't want to hear what we had to say. Any letters that
26   went to the council were answered with a standard response.
27   On the council's website there was a whole series of, "Your
28   say", and, "Your say". Ironic rather that it was entitled
29   "Your say" because we were given no say: it was, we were
30   told what the council wanted us to hear.
31
32   Q.   One of the themes which the Commissioner might have to
33   grapple with in his report is whether the Station Street
34   bypass issue was a cause of these types of perceptions or
35   whether it was simply a symptom or endemic of a larger
36   attitude or problem. Do you have any views on that?
37   A.   I believe it was probably one of the causes. It was
38   the way the councillors operated, acted, dealt with this
39   project, was certainly something that the community was
40   most concerned about and certainly led to more and more
41   loss of confidence that the council could operate in a
42   responsible way. If they could act that way over one
43   project, what was happening behind the scenes?
44
45   Q.   Yes, thank you.
46
47   MR PARISH: Commissioner, I don't have any more specific

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 1      questions, unless you do?
 2
 3      THE COMMISSIONER:   No, thank you.
 4
 5      MR PARISH:   Q.   Ms Cheetham, is there anything else you
 6      want to address the Commissioner on in respect of the terms
 7      of reference?
 8      A.   I've got some --
 9
10      Q.   We do have your submission and we'll carefully
11      consider it, but if you have any other --
12      A.   Yes, I have a summary for you of the decisions and
13      what happened with Station Street.
14
15      Q.   Yes.
16      A.   And with the financial changes that happened to it as
17      well to show that councillors made decisions --
18
19      THE COMMISSIONER:   Is that a document?
20      A.   Yes.
21
22      Q.   Have you got it there?
23      A.   Yes.
24
25      THE COMMISSIONER:   Ms Hewson, would you mind retrieving
26      it?
27
28      THE WITNESS:   That councillors made decisions without
29      knowing the financial implications of them.  I also have
30      included in that some examples of how I believe the terms
31      of the inquiry relate to what happened with Station Street,
32      and I have included in that another thing about - from
33      Peter Nelson.  Now, Peter Nelson was on our Heritage
34      Committee.
35
36      MR PARISH:   Q.   Yes.
37      A.   But this isn't in relation to that.  I took - would
38      respond to budget reports, and there was a budget report
39      that I wrote a letter to the general manager and I sent a
40      copy to councillors, and Peter Nelson responded to that,
41      and he attacked - in that he attacked, he said, "My group".
42      Now, I don't know who he was referring to and I would just
43      like that also to be --
44
45      Q.   If you could provide it to Ms Hewson, I might be able
46      to ask you a few questions about it.
47
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 1    THE COMMISSIONER:   Before it goes to Mr Parish, could I
 2    just familiarise myself with the document and then I'll let
 3    you ask whatever questions you want to ask about it.
 4
 5    MR PARISH:   Yes, thank you.
 6
 7    THE COMMISSIONER:   Yes, thank you.  If that could go to
 8    Mr Parish.
 9
10    MR PARISH:   Commissioner, I might mark it for
11    identification for now.
12
13    THE COMMISSIONER:   Yes.  Bundle of documents provided by
14    Ms Cheetham in her evidence will be MFI-6.
15
16    #MFI-6 - BUNDLE OF DOCUMENTS PROVIDED BY MS CHEETHAM IN HER
17    EVIDENCE.
18
19    THE COMMISSIONER:   Mr Parish, do you need five minutes to
20    read any of that?
21
22    MR PARISH:   Probably two minutes is sufficient,
23    Commissioner.
24
25    Q.   Mrs Cheetham, do you have sort of a working memory of
26    this email or do you need it in front of you for me to ask
27    some questions about it?
28    A.   I've got a copy here, I'll just get it.  Yes, I've got
29    it now.
30
31    Q.   Just going to the last page of the emails, you wrote
32    to the councillors with a full submission on the draft
33    budget in about June 2020; is that correct?
34    A.   Yes, that's correct.
35
36    Q.   And, Mr Nelson initially replied on 30 June 2020 at
37    10am and said:
38
39         *Thank you for your detailed submission.  I*
40         *will have considered your concerns but*
41         *unfortunately I do not agree with your*
42         *assessment of a majority of your*
43         *statements.*
44
45    A.   Yes.
46
47    Q.   Did you feel there was something inappropriate about
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1       that email in particular?
2       A.   I didn't expect anyone to respond, I just - I was
3       sending it to them because quite often in a report to
4       council the submissions are summarised, and I felt the
5       points in my submission or in my letter would be summarised
6       and the meaning not get through, but I didn't really expect
7       anyone to respond to me at that point.
8
9       Q.   Was this a good thing or an inappropriate thing, in
10      your view, to respond by email?
11      A.   I thought it was inappropriate on his part.
12
13      Q.   Why did you think it was inappropriate?
14      A.   It's not the essence of the - of what it was all
15      about; he obviously didn't know what the essence was.
16
17      Q.   You then replied on 30 June 2020 at 10.04:
18
19           *Thank you, Peter, for your prompt reply.*
20           *Can you elaborate please on the reasons why*
21           *you do not agree with my assessment?*
22
23           And he then provided you with a response at 11.01am.
24      A.   Yes.
25
26      Q.
27           *Dear Laurel.  I am pretty upset that your*
28           *group "has been playing" councillors by*
29           *getting people to write complains about*
30           *Station Street then sending my replies*
31           *around to other people.*
32
33           Do you know who he is referring to there when he says
34      "your group"?
35      A.   I assume it's Friends of Bowral, but I'm not
36      completely sure, because later on he goes on to say -
37      mentioned the Bowral Garden Club.
38
39      Q.   Yes, quite.  So, he then mentions something about an
40      email from Royce Wilson and then says:
41
42           *I provided him with a detailed reply but*
43           *put it in a letter and dropped it off at*
44           *his address.  No email to be spread to*
45           *other members.*
46
47           Do you know what he was referring to there?
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```
 1      A.   I didn't know at the time.
 2
 3      Q.   Then he says:
 4
 5           Comments like "let's see what he says this
 6           time" and "looks like he's not changing his
 7           mind" are a couple of comments being sent
 8           around.
 9
10           Do you know what Councillor Nelson is referring to
11      there?
12      A.   No, I have to idea.
13
14      Q.   He then says:
15
16           That might be "democracy" but it also means
17           that I will not be sending any more replies
18           to anyone else about Station Street apart
19           from the mayor's response.
20
21           I take it from your previous answers that that's a
22      good thing that he wouldn't be replying personally?
23      A.   Yes.
24
25      Q.   And then goes on to say:
26
27           Obviously the eight oak trees coming down
28           is not supported by the Bowral Garden Club
29           replaced by five mature oak trees and while
30           I can understand that and it is unfortunate
31           but having regard to the specialist
32           engineering staff advice and the fact that
33           six of the nine councillors (remember
34           Turland and Halstead previously supported
35           the Station Street project) agree with the
36           project.  It will be going ahead.
37
38           What impression were you left with in that
39      (indistinct)?
40      A.   I was left with the impression that, did Peter really
41      know what he was talking about?  And, this was nothing to
42      do with my submission.  He was not answering my question.
43      What actually was he concerned about?
44
45      Q.   By that you mean, you provided a submission about the
46      draft budget and you got a reply about Station Street?
47      A.   That's right.
```

```
 1
 2     MR PARISH:   Thank you, Commissioner.
 3
 4     THE COMMISSIONER:   Yes, are there any applications?
 5
 6     MR PARISH:   No.
 7
 8     THE COMMISSIONER:   No, all right.
 9
10     Q.   Thank you very much for coming along this morning and
11     providing your evidence.  I appreciate that answering a
12     summons takes people away from their ordinary activities,
13     so it's very much appreciated.
14     A.   Thank you for giving me the opportunity.
15
16     THE COMMISSIONER:   Mr Parish, you will look at MFI-6 and
17     then tender any part of it or all of it in due course?
18
19     MR PARISH:   Yes.
20
21     THE COMMISSIONER:   Thank you.
22
23     <THE WITNESS WITHDREW
24
25     THE COMMISSIONER:   Yes, your next witness?
26
27     MR PARISH:   My next witness is Mr Paul Samulski.
28
29     THE COMMISSIONER:   Yes, come forward, sir.
30
31     <PAUL SAMULSKI, sworn:                          [10.48am]
32
33     THE COMMISSIONER:   Yes, have a seat, sir, thank you.  Yes,
34     Mr Parish.
35
36     <EXAMINATION BY MR PARISH:
37
38     MR PARISH:   Q.   Mr Samulski, can we please start with
39     some personal background, your vocation and your connection
40     with the shire?
41     A.   Yeah, certainly, Mr Parish.  I am a licensed builder
42     with a carpentry trade background.  I'm a chartered
43     building designer and hold accreditation with the Building
44     Designers Association of Australia.  I'm a Justice of the
45     Peace and provide a service to the community in that
46     capacity.  I'm the proprietor of my company, PS Design &
47     Constructions, trading name Highlands Homes, and I've been
```

1   engaging the council meetings for the past four years.
 2   I've been residing in the shire since 2016/2017, and I've
 3   had a connection to the area basically throughout my whole
 4   life.
 5
 6   Q.   Thank you. And you've had some particular experience
 7   around a development application on Sir James Fairfax Drive
 8   in Bowral; is that correct?
 9   A.   That's correct.
10
11   Q.   Could you provide, perhaps, the Commissioner with a
12   bit of context and background as to the Sir James Fairfax
13   Drive and the development around that area?
14   A.   Yes, certainly. Basically as per my submission the
15   application was first lodged to council in May 2019.
16   Subsequently, the application was deemed for approval by
17   senior planning staff. However, due to the fact that all
18   submissions are circulated in the council agenda that have
19   been submitted the month prior, my application was called
20   up by certain councillors and was referred to the ordinary
21   general meeting of 9 October 2019, where it was
22   subsequently refused by the council notwithstanding the
23   recommendations for approval by planning staff.
24
25   Q.   Could I pause there. Just on that first refusal, do
26   you recall the reasons given by any councillors as to why
27   it was refused?
28   A.   I do.
29
30   Q.   Can you please tell us?
31   A.   If I can refer to my --
32
33   Q.   Yeah, sure.
34   A.   -- if that's okay. Basically, Mr Parish, the
35   application was refused on grounds not based - on any
36   planning grounds, it was basically objections and lobbying
37   by residents in the surrounding vicinity of the property.
38
39   The issues which were raised by the council in the
40   first meeting for refusal was bulk and scale of the
41   development. Number 2 being "out of character with the
42   surrounding development"; (3) "not in the public interest";
43   and (4) not - "Inconsistent with the aims and objectives of
44   the original developer of the subdivision". All these
45   issues were unsubstantiated by council planning staff.
46   Subsequent meetings they added on some reasons to those
47   refusals, recycling the first four.

```
 1
 2     Q.    I take it from the evidence you've just given,
 3     therefore, that in your perception at least that some
 4     councillors had been lobbied by certain people in the
 5     community and they'd taken up that sector of the
 6     community's concerns?
 7     A.    Correct.
 8
 9     Q.    What happened after the refusal at that first meeting?
10     A.    Well, during the first meeting when the refusal was
11     imminent and the voting was pre-empted by the mayor, that
12     notwithstanding the fact that it is - I'm paraphrasing
13     here - it is permissible, he will vote against it.  And you
14     had Councillor McLaughlin branding me an exploiter of
15     loopholes and engaging in a money-making scheme, resulting
16     in him being - resulting in a Code of Conduct being placed
17     on him due to those remarks.
18
19     Q.    How did that leave you feeling, being accused of those
20     things?
21     A.    Well, Mr Parish, it's an attack on my credibility as a
22     chartered building designer, a Justice of the Peace, as a
23     licensed builder.  I try to hold my credibility in high
24     regard.  I'm on a few community organisations as well, so I
25     took offence to being attacked in that nature.
26
27     THE COMMISSIONER:   Q.   Sorry, do you remember the date of
28     the meeting?
29     A.    I do, it's part of my submission in the timeline of
30     events.
31
32     Q.    Yes.
33
34     MR PARISH:   Q.   Was it 9 October 2019?
35     A.    Yeah, 9 October.
36
37     THE COMMISSIONER:   Sorry, 9 October?
38
39     MR PARISH:   2019.
40
41     THE WITNESS:   2019.
42
43     THE COMMISSIONER:   Thank you.
44
45     MR PARISH:   Q.   Can I just --
46     A.    Sure.  There was a review of that application a couple
47     of weeks after as well which relates to that first
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 1    application.
 2
 3    Q.   Do you understand what Councillor McLaughlin was
 4    talking about when he referred to you as an "exploiter of
 5    loopholes"?  Do you know what loopholes he was talking
 6    about, or indeed what loopholes are?
 7    A.   Yes, exactly, I do know what it's about.  It's the
 8    same purported loopholes which he pursued and being a
 9    beneficiary of a dual occupancy development himself, which
10    he failed to declare at that meeting, until at the second
11    meeting he made a declaration at the start of the meeting
12    that he has a pecuniary interest, that he has a dual
13    occupancy on a 1,000 square metre corner block nearby.  He
14    failed to mention that at the first meeting, hence the
15    reason why I put a Code of Conduct on him, as being one of
16    the reasons for that Code of Conduct.
17
18         Loopholes, basically he's referring to the local
19    environmental plan which is state legislated which permits
20    across the shire the development of a dual occupancy on a
21    1,000 square metre corner lot, it's been the case for
22    decades, and basically with me pursuing that clause, 7.2 in
23    the LEP, I was branded an exploiter of loopholes.
24
25    Q.   Can I just explore that a tiny bit more.  Loopholes is
26    possibly one of the most hated phrases amongst lawyers,
27    because you can either do something or you can't.
28    A.   It's black and white.  It's black and white, that's
29    what (indistinct) --
30
31    Q.   That's what you understood Councillor McLaughlin was
32    talking about?
33    A.   (Witness nods.)
34
35    Q.   You may just have to say "yes", because the
36    transcriber doesn't - I think you nodded.
37    A.   Sorry?  Yes.
38
39    Q.   I think you nodded and the transcription doesn't pick
40    up nods.
41    A.   Yes, Mr Parish.
42
43    Q.   Can I just ask that the similar procedure you say
44    Councillor McLaughlin had used to do a dual occupancy, was
45    that also in the Sir James Fairfax estate or area?
46    A.   No, it was in Bowral.  Basically the Fairfax estate is
47    what the people refer to in East Bowral, it's the newer
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1   estate within East Bowral. Mr McLaughlin's dual occupancy
    2   is in East Bowral, within a close proximity - I would say
    3   less than a kilometre away. The key thing is, he too was
    4   also a beneficiary of the same controls which I applied in
    5   my proposal.
    6
    7   Q.   I think I have a memory of viewing that particular
    8   meeting, that there was reference to some particular
    9   controls or heritage matters about the Fairfax Estate; do
   10   you recall something similar?
   11   A.   The estate itself is not subject to any heritage
   12   orders. The adjoining Fairfax homestead is subject to a
   13   heritage order. However, there is estate guidelines for
   14   the Fairfax Estate which did not cover dual occupancies to
   15   be built. There was no prohibition of dual occupancies,
   16   however, the estate's guidelines which are exactly that,
   17   only guidelines and subordinate to the DCP and the
   18   prevailing LEP, did not make mention of dual occupancies.
   19   However, I did make contact with the estate, with the
   20   actual executors of the Fairfax Estate, and told them what
   21   my intentions were, and they said their - that my proposal
   22   is outside of the guidelines, however, I would not need to
   23   rely upon the council controls in order to get a consent
   24   and they'll need to make advice - take my own advice in
   25   that regard. I'll just try and remember.
   26
   27   Basically, it states here, this is a letter dated
   28   14 March 2019 from the estate, just quoting:
   29
   30   *Of course a subdivision of the existing*
   31   *allotment would be first subject to*
   32   *council's approval under its current*
   33   *planning codes at the time of lodgement.*
   34   *We are aware the council allows subdivision*
   35   *of corner allotments in certain*
   36   *circumstances. Mr Samulski will need to*
   37   *take his own advice in relation to the*
   38   *proposition and its likelihood of success.*
   39
   40   This email was circulated to all councillors prior to
   41   the meetings of October and November which was tabled at
   42   the meeting.
   43
   44   Q.   Thank you. So --
   45   A.   If I can just add, Mr Parish: estate guidelines are
   46   not a consideration for council, they are subordinate to
   47   the, as I mentioned earlier, the DCP and the LEP.

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 1
 2    Q.    Yes, I think you might be right there.  You then had a
 3    review of determination and that was refused as well.
 4    A.    Mmm-hmm.
 5
 6    Q.    As I understand it, you then put in a new DA
 7    in December 2019; is that correct?
 8    A.    That's correct, Mr Parish.  If I may just go back to
 9    that review meeting --
10
11    Q.    Yes.
12    A.    -- on 14 October 2019.  Mr McLaughlin amplified his
13    attack on me during that council meeting and at that
14    meeting Councillor Scandrett joined him in this attack.
15    Following the actual refusal of the application I recall
16    Councillor Scandrett chased the objectors out of the
17    chamber, out of this chamber, seeking compliments and
18    accolades from the objectors, shaking hands outside the
19    door saying words to the effect, "Great result folks, glad
20    I could help", shaking hands, handing out business cards.
21    I heard it with my own ears when I walked outside the
22    chamber.
23
24    Q.    Can you explain what you mean by "chased"?  Do you
25    mean followed?
26    A.    Literally followed.  There was a gallery - the gallery
27    was full of residents, objectors; I can't quote you the
28    number of people, but it's on video, and Mr Scandrett
29    chased the people out of the chamber, saying, "Glad I could
30    help", words to that effect, so I walked out as well in
31    disgust, and I stood at the stairs outside listening to
32    some of the comments that Councillor Scandrett was making
33    while he was fraternising with the objectors.
34
35    Q.    What impression did that leave on you as to the
36    process being undertaken in respect of planning and
37    council?
38    A.    Well, it was about personality politics, nothing to do
39    with policy, and I feel sorry for the council staff having
40    to be, yet again, required to report on a matter that they
41    previously gave recommendations for approval to.  And, what
42    happens, each time an application gets submitted or
43    reviewed, a new fresh set of eyes have to look at the
44    application and a report has to be written again.
45
46        We all know that council staff were inundated with
47    significant workloads, and because councillors, which are
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 1      unqualified in planning, are making decisions undermining
 2      council recommendation, I think, erodes from council staff
 3      morale as well and the confidence in the planning system.
 4
 5          I think the public should have confidence in the
 6      planning system when they rely upon the council policies as
 7      outlined in a DCP and the LEP.
 8
 9      Q.   That was then refused, the next one?
10      A.   Correct.
11
12      Q.   You brought class 1 proceedings at about the same
13      time; is that correct?
14      A.   Correct, yeah.
15
16      Q.   And then, happily for you, on 24 June 2020 the DA was
17      approved; is that correct?
18      A.   It was approved.
19
20      Q.   Was that --
21      A.   Basically, on the fourth attempt it was approved,
22      although I already commenced class 1 actions with the Land
23      and Environment Court and I did put councillors on notice
24      that I will be pursuing that route of action.  The
25      application - to give councillors an opportunity to
26      maintain a fiduciary duty to the ratepayers of the shire, I
27      decided to re-submit the exact same application in December
28      2019 concurrently with the class 1 actions.
29
30      Q.   Can you tell me what happened in that class 1
31      proceeding?  Was that determined by a Commissioner or?
32      A.   No, it wasn't determined.  The indication I got from
33      my legal counsel was that it would take approximately
34      12 months.  There was some preliminary hearings and
35      basically the vibe was that the application did have
36      compliance with the DCP and LEP with no departures, so it
37      was going to be quite difficult for council to challenge
38      these refusals, especially when council staff recommended
39      approvals on each occasion.
40
41      Q.   And, do I take it that on that chronology the approval
42      on 24 June 2020 overtook and rendered otiose the class 1
43      proceedings?
44      A.   Yeah, I rescinded that and relinquished those actions
45      and, as I mentioned in my presentation, that I wouldn't - I
46      would basically cease class 1 actions if councillors
47      maintained a duty of care to the ratepayers and approved
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 1      something which staff recommended on each occasion.  It was
 2      approved initially but it was rescinded and - yeah, it was
 3      rescinded by Councillors Whipper, McLaughlin and
 4      Scandrett --
 5      Q.   So, just going through that --
 6      A.   -- on 24 June, yeah.
 7
 8      Q.   -- the next day after it was passed there was a
 9      rescission motion; is that correct?
10      A.   Correct, by Councillors Whipper, McLaughlin and
11      Scandrett signed the rescission motion and submitted it to
12      council to rescind the council resolution of 24 June.
13
14      Q.   And that rescission motion was defeated; is that
15      correct?
16      A.   Correct, on 9 July.  It was tabled at the ordinary
17      meeting and it was discussed and it was defeated.  My issue
18      is and my grievance with councillors McLaughlin and
19      Scandrett in particular is the fact that they had Code of
20      Conducts placed on them and they didn't recuse themselves
21      from engaging in debate and voting on this particular
22      application.
23
24      Q.   Can you explain why you say Councillor Scandrett ought
25      to have recused himself?
26      A.   Why he would have to recuse himself?
27
28      Q.   Yes.
29      A.   Because he had a Code of Conduct put in because of his
30      bizarre behaviour in 2019.
31
32      Q.   Well, that was put in by you, was it?
33      A.   Correct.
34
35      Q.   So, your evidence is that you should be able to
36      disqualify a councillor from voting on a motion merely
37      because someone's put in a Code of Conduct complaint about
38      them?
39      A.   That's correct.  There is a --
40
41      Q.   That's a bit of a boot strap argument, isn't it?
42      A.   Sorry?
43
44      Q.   That's a bit of a boot strap argument, isn't it?  You
45      just make the complaint and then that's a good way to blast
46      out a councillor from doing something?
47      A.   Well, it's not a vexatious complaint when people
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 1        clearly are involved with the objectors, that should
 2        preclude them from taking part in the debate.  A layman
 3        will look at it --
 4
 5        THE COMMISSIONER:   Just pause.  That might be a slightly
 6        different issue.  Mr Parish, is that an issue that brings
 7        all this within my terms of reference?
 8
 9        MR PARISH:   Yes, that's the next matter I was just going
10        to touch on.
11
12        THE COMMISSIONER:   Yes.  When you're engaging with Counsel
13        Assisting, just try and wait for the question and answer
14        the question, you'll be given an opportunity to say what it
15        is that you wish to say.
16        A.   Yes, certainly.
17
18        Q.   But it helps me to follow the flow if we just do it in
19        a question and answer type format.
20        A.   Sure.
21
22        THE COMMISSIONER:   Yes, Mr Parish.
23
24        MR PARISH:   Q.   Can you just explain to the Commission
25        what the substance of the Code of Conduct complaint against
26        Councillor Scandrett was?  I can ask it in a closed way,
27        perhaps.  Was it --
28        A.   No, I'm happy to disclose it, there's no issues, I'm
29        just trying to --
30
31        Q.   Just listen to me first and we'll go from there.  Was
32        it the events you described before of Councillor Scandrett
33        chasing objectors out of the room and having a
34        congratulatory conclave with them outside?
35        A.   Correct, yes, that's correct.
36
37        Q.   Thank you.  This is something which the Commissioner
38        might have to grapple with the grey areas around, conflicts
39        of interest and non-pecuniary interests.  I take it from
40        your complaint that in your view a councillor who picks up
41        and runs with a cause on behalf of objectors, or perhaps
42        even on behalf of the development applicant, ought to
43        excuse themselves from a vote?
44        A.   No.  The only reason he should excuse himself from
45        taking part in debate and a vote on a matter is if he
46        already has been the subject of a Code of Conduct which has
47        been acknowledged by council staff and referred to - for
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Transcript produced by Epiq

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 1    further investigation, because it's the public perception,
 2    Mr Parish, that a councillor might seek retribution to the
 3    individual which put the Code of Conduct on that
 4    councillor.
 5
 6    Q.   Thank you.  I might approach the question one step
 7    earlier as well.  In your view, clearly perhaps, picking up
 8    and running with the cause of an objector is grounds for a
 9    Code of Conduct complaint, that's self-evident from the
10    fact you put in a complaint; is that correct?
11    A.   Correct.
12
13    Q.   What part of the Code of Conduct do you say is
14    offended by a councillor picking up and running with the
15    cause of objectors?
16    A.   I refer to the standards of conduct for councillors
17    which was circulated at a council meeting which I was
18    present in on 27 February, the standards of conduct of
19    councillors.  One of the issues is directly:
20
21         Councillors are reminded they must not
22         directly become involved in planning
23         matters such as development application and
24         the associated outcomes; and being
25         overbearing or threatening to council
26         staff; direct pressure or attempt to
27         influence council staff in relation to
28         operational matters; and make personal
29         attacks.  This is obviously including
30         directing personal questions, making
31         allegations of suspected breaches of Code
32         of Conduct at meetings or in other public
33         forums.
34
35    So --
36
37    Q.   I take it from that, that in your view councillors who
38    become or pick up the cause of an objector or indeed an
39    applicant in some cases amounts to becoming directly
40    involved in the planning process?
41    A.   Correct.
42
43    Q.   And that's a perception you have gained or an
44    impression you have gained from this process that you were
45    involved in here?
46    A.   Correct.
47
```

1   Q.   I take it --
2
3   THE COMMISSIONER: Sorry, Mr Parish.
4
5   Q.   You were just reading from a document, were you, the
6   standards of conduct. Was that a document you'd been given
7   at a council meeting?
8   A.   It's available online, I can take - I can furnish --
9
10   Q.   I appreciate that. Just listen to my question, just
11   listen to my question. Was that a document you received
12   when you were present at a council meeting? I thought
13   you'd said --
14   A.   I extracted it online. Just for the purpose of this
15   inquiry, the agenda for a council meeting is circulated a
16   few days prior to a council meeting which is available
17   online.
18
19   Q.   Yes.
20   A.   As are the minutes following the meeting.
21
22   Q.   Yes.
23   A.   Sometimes they're handed out in person, sometimes
24   they're circulated mainly online.
25
26   Q.   And was that passage you were reading from part of the
27   material circulated prior to the meeting; is that what
28   you're saying?
29   A.   Correct.
30
31   Q.   I see, thank you, I understand.
32   A.   I can furnish that to the Commissioner.
33
34   THE COMMISSIONER: Yes, please, if you produce that to
35   Mr Broad. Thank you. Sorry, Mr Parish.
36
37   MR PARISH: Q.   As someone with a building company and
38   your experience in this DA and others, we've heard some
39   evidence that there's a perception that some people receive
40   favourable treatment in respect to planning matters - not
41   in any matter of corruption - but if they are able to find
42   someone who can push their cause, a councillor who can push
43   their cause forward at a meeting or vice versa, then they
44   get better treatment than someone who just blandly complies
45   with an LEP and a DCP. Do you have a view or an impression
46   from your experience of whether that perception exists and
47   whether you have that perception indeed?

Transcript produced by Epiq

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1       A.    Are you referring, Mr Parish, to the councillors or
2       the council body?
3
4       Q.    The councillors?
5       A.    The councillors.
6
7       Q.    The evidence has been the perception that --
8       A.    Not necessarily.
9
10      Q.    -- that if you can find a councillor who can push the
11      cause, then those sorts of people are going to get better
12      treatment than --
13      A.    Not necessarily.  I've had - personally I've had -
14      being a builder which undertakes some speculative
15      developments for myself, I have only had two of my own
16      applications which were called up by councillors, which
17      were submissions and assessments undertaken by council
18      staff.  Look, I don't believe there is a council -
19      councillor which is the go-to person.  As far as getting an
20      application approved or pushed through, the way I look at
21      it is, councillors review material that forms part of the
22      report for the actual application and makes determinations
23      on that basis whether or not an application complies to the
24      relevant planning policies.
25
26      Q.    Thank you.  I take it, from your experience at least,
27      that you're in favour of the local planning panel which has
28      been put in place by the interim administrator?
29      A.    I'm on record trying to push for a local planning
30      panel to make determinations on applications which require
31      third parties to make such determinations.  I've written to
32      the Planning Minister requesting the implementation of a
33      planning panel as senior metropolitan councils, and I would
34      like to commend the interim administrator for implementing
35      a planning panel.
36
37          The only issue I have with the planning panel is, I
38      don't have specific examples to cite, but there has been
39      examples where the planning panel has refused applications
40      which staff have recommended approval, but it is still the
41      better option of having qualified people making decisions
42      on planning matters than unqualified councillors.
43
44      Q.    Thank you.  Can I just show you a document.  I'm
45      showing you a chain of emails which - does the Commissioner
46      have a copy?  No.
47
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 1          I'm showing you a chain of emails which you provided
 2     the Commission with.
 3     A.   I think I've got a copy of that here in my documents,
 4     but thank you, yep.
 5
 6     Q.   Hold on to that copy because I'm going to tender it in
 7     a second.  Can I just take you to page - I'll formally
 8     identify it first.  It's an email which commences from you
 9     to the inquiry email letterbox, and it contains three
10     pages including correspondence --
11     A.   Yep, I did write that.
12
13     Q.   -- between you and the councillors and one councillor
14     in particular; is that correct?
15     A.   Correct.
16
17     Q.   Could I take you to page 2.  You wrote an email to
18     Mayor Gair and the councillors on about 4 March 2021;
19     that's correct?
20     A.   Correct.
21
22     Q.   That's when there was a notice of intention to suspend
23     but the suspension hadn't occurred yet; do you agree with
24     that?
25     A.   That's correct.
26
27     Q.   Can I just ask: I've been asking your impressions
28     about your particular DA experience, but you've obviously
29     got more broader thoughts on the council which are
30     expressed in this email.  Can you tell me what led you to
31     come to the view that the public had lost confidence in the
32     council - sorry, that the Minister had lost confidence in
33     the council and that the council was toxic, dysfunctional
34     and had been residual for far too long?  Was that purely
35     your DA experience which led you to that impression --
36     A.   No.
37
38     Q.   -- or wider impression from other things you
39     experienced?
40     A.   Look, I'm a member of the Southern Highlands Chamber
41     of Commerce, known as business - Southern Highlands
42     Business, and I was a board member as the liaison officer
43     for local government matters.  I speak to a lot of people
44     in the community in my professional capacity and also when
45     I was on the board on the chamber and also I'm the
46     secretary of the Southern Highlands branch of the National
47     Party, so I talk to a broad spectrum of people, and I have
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1      gauged the public opinion of the councillors, and I
2      basically relayed that to the council because I believe
3      council had lost its way.
4
5          If you refer to some of the past meetings of council,
6      the last few meetings which I attended in person and on
7      Zoom; to me, having watched many other council meetings
8      over the last 20 years mainly in Sydney metropolitan area,
9      some of the behaviour during the council meetings and the
10     stewardship, the way the council was chaired, to me,
11     appeared to be a fiasco, to put it politely, a sideshow,
12     which resonated - my views resonated with many people in
13     the community, hence the reason why I sent that email to
14     council, basically paraphrasing, they should do the
15     honourable thing and just resign.
16
17         And, in response to that email which I sent to
18     council, which was actually an open letter which was
19     circulated in print media, I believe, aspects of that
20     letter, Councillor Peter Nelson --
21
22     Q.   I'll come to that in a second.
23     A.   Yeah, sure.
24
25     Q.   I just want to concentrate on your letter first - your
26     email first, I should say.
27     A.   Yep.  This is in response to the - Mr Parish, if I may
28     interrupt you, firstly, the Performance Improvement Order.
29
30     Q.   Yes.
31     A.   And the notice of intent to suspend the councillors.
32
33     Q.   Yep, quite.  Your next paragraph:
34
35              *Trapped in the ideology of the 1980s and*
36              *the hypocrisy of the 1970s and the public*
37              *transparency of the 1960s never has a*
38              *community been more embarrassed of its*
39              *elected members than of this council.*
40
41         Was that feedback you were getting from the community
42     or is that your own view, or was that something that was
43     shared within the Chamber of Commerce?
44     A.   Oh, look, it wasn't - it was written in my own
45     capacity, not as a board member of the Chamber of Commerce,
46     and I undersigned it as such.  It was basically my general
47     feeling of the councillors, not the council as a whole but
```

1   the councillors. Basically I believed some of the
2   councillors had been there too long and have taken the
3   community - become complacent and taken the community for
4   granted and stopped listening as well, hence the reason I
5   wrote that email.

7   Q.   You then say in your email:

9   *Mr Mayor, It is hardly fair when I watch*
10   *the reporting on mainstream media that you*
11   *are still shaking your head and blaming but*
12   *a few.*

14   Can you explain to me the media that you're talking
15   about there, what you perceive the mayor, Mr Gair, was
16   saying in the media?
17   A.   Look, there is councillors which - this was evident
18   especially during the Zoom meetings when he was utilising
19   the mute button when certain councillors were trying to
20   speak, as well as the meetings which were held downstairs
21   while this chamber was being renovated. The impression
22   that I got from Mayor Gair, he had somewhat of a - how do I
23   put this politely - a dictatorial type of approach chairing
24   meetings and I believe when the mayoral - this could have
25   all been avoided, all these ministerial interventions, if
26   the mayor at the time did not stand for the mayoral
27   elections in November 2020, because I think that would have
28   pressed the reset button on the council and allowed a fresh
29   mayor, a new stewardship, to be presiding over the council
30   meetings and that potentially would have avoided a lot of
31   the toxicities which were seen in the early parts of 2021.

33   Q.   Do I take it from that answer that your impression
34   from having seen some of these meetings was that Mayor Gair
35   was not an effective chair of the meetings?
36   A.   Correct, and I gauged that opinion, that in comparison
37   to the former mayor, Ken Halstead, that if you referred to
38   some of his meetings that he chaired, they were run a lot
39   better; there was more order within the meetings, which
40   goes down to his - obviously his local government
41   experience, but I believe that Councillor Gair when he
42   assumed the role of mayor in 2018, I think he was out of -
43   to put it in the most polite terms, I think he was out of
44   his depth, especially dealing with the bushfire crisis and
45   the COVID pandemic and all that issue.

47   Q.   Thank you. Can you tell me about the response --

```
1
2    THE COMMISSIONER:   Q.   Sorry, I'm not sure I understood
3    the answer to the primary basis of the question, which was,
4    what was the media coverage that was being referred to?
5
6    MR PARISH:   Oh, yes, thank.
7
8    THE COMMISSIONER:   Could you just take that up?
9
10   MR PARISH:   Yes, thank you.
11
12   Q.   I'll just go back a step.  You referred to the things
13   you saw in the mainstream media that you attributed to
14   Mayor Gair.  Can you just tell us what media you are
15   referring to, what interactions or announcements that Mayor
16   Gair made that had you shaking your head?  Pardon me,
17   you're suggesting Mayor Gair was shaking his head: that you
18   heard in the media?
19   A.   Look, I can't recall specific dates and meeting
20   occurrences, however, it was widely circulated on news
21   outlets such as WIN News, where you can see the council
22   erupting, the gallery erupting, and you could see Mayor
23   Gair's behaviour, telling councillors basically to shut up
24   and things along that way.  I recall being at one meeting
25   where the meeting, there was a representative from the OLG,
26   where the meeting really erupted during the bushfire -
27   following the bushfire situation, where members of the
28   public were outraged that applicants would have to pay DA
29   lodgement fees on houses, on their own primary residences
30   which had burnt down.  I just thought that was a lack of
31   compassion on the mayor's part.
32
33   THE COMMISSIONER:   Q.   I think the question was "what was
34   the media", so from your answer I understand you're talking
35   about media reports from the council meetings in that
36   period?
37   A.   Yes, correct.
38
39   THE COMMISSIONER:   Thank you.
40
41   MR PARISH:   Q.   Can we now turn to the response you got
42   to this email from one particular councillor.  Can you
43   explain what happened?
44   A.   I certainly can.  Councillor Peter Nelson - I just
45   note, the councillors did not respond to my email.
46
47   Q.   Yes.
```

1   A.   However, it is my understanding that only one
2   councillor responded to this email to a third party, not
3   directly to me. He took it upon himself to contact the
4   chairman of the Chamber of Commerce demanding that I be
5   sacked from my position as the council liaison director
6   between the council and the Wingecarribee Shire Council and
7   the chamber.
8
9   Q.   When you say it's your understanding, you're referring
10   to the email that you're looking at right now?
11   A.   Yeah, correct.
12
13   Q.   And that wasn't from --
14   A.   What I'm saying is, I was not carbon copied into that
15   email, but the chairman of the board forwarded me that
16   email out of courtesy that, "One of the councillors has
17   contacted me in response to your email".
18
19   Q.   And that email was addressed to Steve Horton; is that
20   correct?
21   A.   Correct.
22
23   Q.   Who was actually our first witness in this inquiry.
24   A.   Correct.
25
26   Q.   And the mayor, Duncan Gair, had also been copied in;
27   is that correct?
28   A.   Correct, he was.
29
30   Q.   In the email Councillor Nelson --
31   A.   Made some remarks in that email, yeah.
32
33   Q.   Tell me if this is correct: he said:
34
35   *I respectfully request that as president of*
36   *the local Chamber of Commerce [presumably*
37   *meaning Mr Horton] that you bring*
38   *Mr Samulski's email to the attention of the*
39   *chamber board and then take appropriate*
40   *action to sack Mr Samulski from the*
41   *position of council liaison office [officer*
42   *presumably] between the chamber and the*
43   *Wingecarribee Shire Council.*
44
45   Did you take from that, that he was trying to get you
46   fired effectively?
47   A.   I did.

```
 1
 2      Q.    And Councillor Nelson goes on:
 3
 4            His email is disgusting and inappropriate
 5            to say the least and not worthy of a person
 6            who is supposed to be the contact person
 7            between the chamber and the council.
 8
 9            Do you know what action Mr Horton took in regard to
10      this email, other than to --
11      A.    None.
12
13      Q.    -- forward it to you?
14      A.    Just sent it to me out of courtesy after a quick phone
15      call conversation we had.  No, there was no action taken.
16      I thought it was cowardly of Peter Nelson to contact
17      somebody on the Chamber of Commerce, the chair, requesting
18      that I be sacked.  If he had a grievance with me, he should
19      have responded to the email --
20
21      THE COMMISSIONER:   Q.    Whether or not it was cowardly, do
22      I take it that your evidence is that you don't consider it
23      appropriate for a councillor to whom was one of the
24      recipients, all councillors, of an email where you
25      expressed your displeasure with the performance of the
26      council over some time to respond by seeking to have you -
27      I'll just find the word, bear with me - "sacked" --
28      A.    That's correct.
29
30      Q.    -- from a position that you hold with the local
31      Chamber of Commerce.  Is that your evidence?
32      A.    Correct.
33
34      THE COMMISSIONER:   Thank you.
35
36      MR PARISH:   Commissioner, I don't have any further
37      specific questions, unless you --
38
39      THE COMMISSIONER:   What do you want to do with this?
40
41      MR PARISH:   I'll just mark it for identification now.
42
43      THE COMMISSIONER:   Yes.  The whole thing?
44
45      MR PARISH:   Yes, please.
46
47      THE WITNESS:   And there was another email which you --
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1
2      THE COMMISSIONER:    Bear with me.  Wait for the question.
3
4      THE WITNESS:    Sorry.
5
6      THE COMMISSIONER:    Mr Parish, the front page is part of a
7      different email chain, is it not?  It appears to be.
8
9      MR PARISH:    I might just --
10
11     THE COMMISSIONER:    Do you want me to mark them separately?
12
13     MR PARISH:    I might just mark a cleaner version, I think
14     that would be the best way to deal with it.
15
16     THE COMMISSIONER:    Yes.  Thank you.  The email chain
17     commencing with an email from Mr Nelson to Mr Horton of
18     5 March 2021 will be MFI-7.
19
20     #MFI-7 - EMAIL CHAIN COMMENCING WITH AN EMAIL FROM
21     MR NELSON TO MR HORTON OF 05/03/21.
22
23     THE COMMISSIONER:    Mr Broad, I'll return the MFI to you.
24     Yes, Mr Parish.
25
26     MR PARISH:    Q.   You say you have another email,
27     Mr Samulski?
28     A.    Yes, that's the email.  I don't have the dates but
29     that was only a few days ago which I conveyed to the
30     Commissioner's representatives, I think it was to.
31
32     THE COMMISSIONER:    Q.   Is this the email that was on the
33     front page of that bundle?
34     A.    Correct, yes, where I originally sent that email.
35
36     MR PARISH:    Q.   Yes, I won't mark that one, thank you.
37     A.    If you just refer to the bottom paragraph as well,
38     there's a key issue there.
39
40     THE COMMISSIONER:    Yes, Mr Parish, do you see that?  I
41     think the witness is referring to another reference about
42     halfway down.
43
44     MR PARISH:    Yes.
45
46     Q.    There was another response from your email; is that
47     correct?
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1      A.   That's correct, Mr Parish.
2
3      Q.   And that was from Councillor McLaughlin; is that
4      correct?
5      A.   That's correct.
6
7      Q.   Can you explain what happened there?
8      A.   Councillor McLaughlin contacted the former chairman of
9      the Southern Highlands branch of the National Party
10     demanding that my membership be revoked.  This was not in
11     written form, this was verbal, but obviously that request
12     was not taken seriously, but that was relayed to me in
13     regards to my email which was sent to all councillors.
14
15     Q.   Who told you about the approach that Councillor
16     McLaughlin apparently made to the --
17     A.   Valentine Tyson.
18
19     Q.   Is he or she someone within the National Party?
20     A.   Yeah, it's - he is a former chairman.  From my
21     understanding, Mr Tyson and Mr McLaughlin have some -
22     they're not friends but they do have some type of rapport,
23     where Mr McLaughlin could ring him up and demand my
24     resignation.  There was actually another email which I
25     sent, I'm not sure if I attached that to the email which I
26     sent a few days ago.
27
28     Q.   Do you want to just hand it to me?
29     A.   There was issues because of the correspondence, yeah.
30
31     THE COMMISSIONER:   Mr Broad, I think the witness has
32     another email that he wishes to produce during his
33     evidence.
34
35     THE WITNESS:   There's actually two.
36
37     THE COMMISSIONER:   Yes, provide that to Mr Parish.
38
39     MR PARISH:   Q.   Have you heard of any other person who
40     has been critical of this term of council having their jobs
41     threatened or councillors approaching their employers or
42     organisations that they're associated with and --
43     A.   I do not.
44
45     Q.   Just you?
46     A.   I can only speak on my behalf.
47
```

1   MR PARISH: I think I might just mark these for
2   identification now and not take them further.
3
4   THE COMMISSIONER: Yes, all right, just hand them up.
5
6   MR PARISH: Q.   Have you got something else there,
7   Mr Samulski, as well?
8   A.   I do.
9
10   THE COMMISSIONER: Q.   I see the time. Why don't I break
11   for five minutes? Mr Samulski, you can then show Counsel
12   Assisting whatever other documents?
13   A.   Sure.
14
15   MR PARISH: And I can mark them as a bundle, yes.
16
17   THE COMMISSIONER: You can do it as a bundle or take
18   whatever course you deem appropriate.
19
20   MR PARISH: Yes.
21
22   THE COMMISSIONER: So, I'll adjourn. Why don't I take -
23   five is never long enough, I'll adjourn until quarter to.
24   Thank you.
25
26   MR PARISH: Thank you, Commissioner.
27
28   **SHORT ADJOURNMENT**
29
30   THE COMMISSIONER: Yes, Mr Parish.
31
32   MR PARISH: Q.   Mr Samulski, I might just conclude by
33   getting you to identify some documents that you've provided
34   us that I will then mark for identification. Do you have a
35   bundle in front of you there?
36   A.   I do.
37
38   Q.   Is the first document a letter on Southern Highlands
39   Chamber of Commerce and Industry letterhead dated
40   8 February 2021?
41   A.   Correct.
42
43   Q.   Is the next document a press release from the Southern
44   Highlands branch of the Nationals dated 9 March 2021?
45   A.   Correct.
46
47   Q.   Is the next document an email that you sent to

1   Councillor Peter Nelson on 5 March 2021 at 11.30am?
2   A.   Correct.
3
4   Q.   Is the last document the email we referred to earlier
5   today, being your email to all councillors dated 4 March
6   2021 and Mr Nelson's reply to - or forwarding to Steve
7   Horton, copying in Duncan Gair, dated 5 March 2021?
8   A.   Correct, Mr Parish.
9
10   MR PARISH: Thank you. Commissioner, I'll ask for that to
11   be marked for identification.
12
13   THE COMMISSIONER: Marked?
14
15   MR PARISH: Yes.
16
17   THE COMMISSIONER: Bundle of documents just identified
18   through Mr Samulski will be MFI-7. Mr Broad, I will return
19   the MFI to you. MFI-7.
20
21   **#MFI-7 - LETTER ON SOUTHERN HIGHLANDS CHAMBER OF COMMERCE**
22   **AND INDUSTRY LETTERHEAD DATED 08/02/21; PRESS RELEASE FROM**
23   **THE SOUTHERN HIGHLANDS BRANCH OF THE NATIONALS DATED**
24   **09/03/21; EMAIL SENT BY MR SAMULSKI TO COUNCILLOR PETER**
25   **NELSON ON 05/03/21 AT 11.30AM; EMAIL TO ALL COUNCILLORS**
26   **DATED 04/03/21 AND MR NELSON'S FORWARDING TO STEVE HORTON**
27   **COPYING IN DUNCAN GAIR DATED 05/03/21.**
28
29   THE COMMISSIONER: Mr Parish.
30
31   MR PARISH: Q.   Mr Samulski, is there anything else you
32   wish to address the Commissioner on that comes within the
33   terms of reference?
34   A.   Look, within the terms of reference in particular with
35   my submission to the Commissioner, I would just like to
36   highlight the fact that councillors - basically, the views
37   and opinions of the councillors in relation to my actual
38   submission at Bowral and a prior one was basically not in
39   harmony with the local housing strategy.
40
41   One of the planning priorities, Mr Parish, was:
42
43   *To promote infill development in increased*
44   *densities in appropriate locations and*
45   *facilitate a greater mix of housing types*
46   *to ensure our housing stock is reflective*
47   *of the needs of our community.*

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2   That's planning priority 1. Planning priority 2 is:
3
4   *Provide a greater mix of price points in*
5   *the housing market to improve housing*
6   *affordability, and work with the community*
7   *housing providers to increase stock of*
8   *social and community housing throughout the*
9   *shire.*
10
11   I believe a few of my proposals, a few of my projects
12   which I have undertaken in the shire is consistent with the
13   objectives of the local housing strategy as I outlined in
14   my presentations to the full council, the councillors, when
15   presenting my - pleading my case, I should say, seeking an
16   approval of a staff endorsed application.
17
18   I think it's quite disappointing where you've got
19   councillors which - councillors' views which are not
20   consistent with some of these objectives and the reporting
21   of planning staff, especially certain comments aimed at me
22   by a third councillor which I didn't mention, Councillor
23   Whipper, suggesting that I should take my "developments to
24   Campbelltown". I find that offensive. Why is Campbelltown
25   seen as being inferior to our area, especially when I
26   resided in Campbelltown as I was growing up? He referred
27   to that in the meeting of March 2021 and also in the 2019
28   meetings when I had a Renwick development in front of
29   council, that I should - just paraphrasing - "take my
30   developments to Campbelltown, we don't want our shire to
31   become like Campbelltown". Well, unfortunately that's
32   contrary to what the local housing strategy has outlined in
33   the planning priorities as I have read out earlier. I just
34   want that to be put on the record.
35
36   Q.   Were you left with the impression from such comments
37   that some councillors at least didn't even - didn't
38   understand their own housing strategy documents?
39   A.   That's what I'm alluding to, yes.
40
41   MR PARISH: Thank you. No further questions.
42
43   THE COMMISSIONER: Yes, thank you, Mr Parish. Are there
44   any applications? No.
45
46   Thank you for coming along today, thank you for taking
47   time out to give this evidence. As you may have, if you've

1   been here watching, I acknowledge that answering a summons
2   takes people away from their ordinary activities, and it is
3   an inconvenience and I'm very grateful.
4
5   Mr Parish, can Mr Samulski be excused?
6
7   MR PARISH: Yes, Commissioner.
8
9   THE COMMISSIONER: Yes, you are excused from further
10   attendance on your summons and free to go on your way.
11
12   THE WITNESS: Thank you kindly and thank you for the
13   opportunity as well.
14
15   **<THE WITNESS WITHDREW**
16
17   THE COMMISSIONER: Mr Parish, I think the next witness is
18   at 12.20?
19
20   MR PARISH: Yes.
21
22   THE COMMISSIONER: Well, I'll just adjourn generally and,
23   if we can start slightly earlier, so be it; if not, we'll
24   resume at 12.20.
25
26   MR PARISH: Yes. I foreshadow at this stage, subject to
27   your convenience, that it might be worth batting on through
28   until we finish the next witness rather than take a break
29   at one.
30
31   THE COMMISSIONER: Yes, that's the only witness for today?
32
33   MR PARISH: That's the only witness.
34
35   THE COMMISSIONER: If we can finish the day's proceedings
36   earlier and people can get about their business, I'm happy
37   to facilitate that.
38
39   MR PARISH: Thank you, Commissioner.
40
41   THE COMMISSIONER: So, subject to the witness's comfort,
42   of course, we'll sit through. Thank you.
43
44   MR PARISH: Thank you.
45
46   **SHORT ADJOURNMENT**
47

```
1      THE COMMISSIONER:   Yes, Mr Parish.
2
3      MR PARISH:   My next witness is Mr Barry Paull.
4
5      <BARRY PAULL, affirmed:                         [12.26pm]
6
7      THE COMMISSIONER:   Thank you, Mr Paull.  Mr Parish.
8
9      <EXAMINATION BY MR PARISH:
10
11     MR PARISH:   Q.   Thank you, Mr Paull.  Can we start with
12     your personal and vocational history and your connection to
13     the shire and indeed in this case the shire council?
14     A.   Okay.  I've been a resident of Wingecarribee Shire
15     since December 2001.  I have worked in local government for
16     a little over 40 years.  32 years of that 40 years have
17     been in a senior management role at various councils.
18
19          I commenced employment with Wingecarribee Shire
20     Council on 7 January 2002 and I worked here until 7 April
21     2021.  In that time at Wingecarribee I have worked for five
22     elected councils, so the council of 2000, 2004, 2008, 2012
23     and 2016.  I have worked for four different general
24     managers in that time, and I have worked with, I believe,
25     six different mayors in that time as well.
26
27     Q.   Thank you.  I might just show you tender bundle 1 for
28     a moment.
29
30     THE COMMISSIONER:   A.
31
32     MR PARISH:   A.
33
34     THE COMMISSIONER:   Which volume, Mr Parish?
35
36     MR PARISH:   Volume 1.
37
38     Q.   Could you go to page 4.  Do you have the shire council
39     organisational structure as at 30 September 2016?
40     A.   I believe it is.
41
42     Q.   Does that look about right to you from your
43     recollection?
44     A.   Looks about right, I mean, that's not something I've
45     looked at in quite some time obviously, but it looks about
46     right, yes.
47
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 1      Q.   And in there you're the deputy GM operations, finance
 2      and risk?
 3      A.   That's correct, yep.
 4
 5      Q.   If we pop over the page, you remain in that chart the
 6      deputy general manager, operations, finance and risk; do
 7      you see that?
 8      A.   On page 5?
 9
10      Q.   Yes?
11      A.   Well, that was my substantive role when I left
12      council, yes.
13
14      Q.   Does that structure look broadly right to you probably
15      about the time of the interim administrator, I think it
16      was?
17      A.   It does.
18
19      Q.   Were you acting GM for a time as well?
20      A.   I was.  Oh, I need to clarify that: I was acting
21      general manager from July 2005 to January - no - yeah, July
22      2005 to January 2006, and I was also acting general manager
23      from July 2020 to March 2021.
24
25      Q.   Thank you.  Could I ask you whether - I withdraw that.
26      I'll start by asking you what your role as deputy general
27      manager operations, finance and risk, generally involved on
28      a day-to-day basis?
29      A.   Well, obviously I managed a very large portfolio
30      across the council and I had a management team to assist me
31      to do that.  I reported directly to the general manager.
32      In that role I had a role to provide professional advice to
33      the council and the mayor and to the general manager, to
34      vet the reports that were presented to council on a broad
35      cross-section of matters, whether it be - well, across the
36      portfolios that I manage: finance, governance at some
37      stage, all the operational part of council, saleyards, RIC,
38      water, sewer, organisational development, all the parts of
39      the business that I managed.
40
41      Q.   How many staff did you have under you?
42      A.   Ah --
43
44      Q.   I appreciate it will be different at different times.
45      A.   Look, approximately 300-plus.  It depended.  I mean,
46      in the build season it actually increased significantly,
47      but it could drop 350 in the build season with casuals and
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 1      temporaries.
 2
 3      Q.   Can I take the period prior to the 2016 term, just
 4      focus on the 2012-2016 term, can you give me your general
 5      impressions about the conduct of councillors in meetings
 6      and the conduct of councillors insofar as they interacted
 7      with you and other staff?
 8      A.   Just clarification: in the term of the 2012 council?
 9
10      Q.   2012 council, yes?
11      A.   Look, my frank response is that the 2012 council was
12      probably the most dysfunctional council I've ever worked
13      for.  It really didn't function from day one.  It was, what
14      you've seen in the last 18 months of the council of 2016
15      pretty much went on for the entire term of that council.
16
17           I believe at various times that we topped the state in
18      terms of Code of Conduct matters.  We had incurred several
19      hundred thousand dollars in consultant fees et cetera in
20      dealing with those Code of Conduct matters.
21
22           From the point of view of the staff: it was
23      challenging.  Was it more challenging than towards the end
24      of the 2016 council?  Probably not.
25
26      Q.   Can you give me some examples which led to your
27      impression of the sort of dysfunction that was occurring in
28      the 2012 term of council?
29      A.   Personal animosity between councillors, it spilled
30      over into the chamber.  Councillors shouting at each other,
31      councillors making claims against each other, councillors
32      lodging Codes of Conduct, councillors trying to - during
33      the debate, I suppose, belittle other councillors: it
34      wasn't pleasant.
35
36      Q.   Were some of the councillors who you saw engaging in
37      that conduct re-elected in 2016?
38      A.   Yes.
39
40      Q.   Can I ask you if you had any impression upon the
41      re-election of some of those councillors in 2016, whether
42      you formed the view that perhaps that sort of conduct was
43      going to continue?
44      A.    I wasn't looking forward to engaging with that new
45      council, no, because there were councillors that I knew
46      were going to be difficult for the staff.  And not only for
47      the council of 2012, there were people who were elected
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1   from the council of 2008 as well.
        2
        3   Q.   Give me your impressions of that 2008 council. Shall
        4   we rank the councils? We're talking looking at governing
        5   body, we're talking about the governing body?
        6   A.   Yep.
        7
        8   Q.   In your impression, was the 2012 governing body the
        9   most dysfunctional - in your impression?
       10   A.   Yes.
       11
       12   Q.   And was the 2008 term of council more or less
       13   dysfunctional than the 2016-2020 term?
       14
       15   THE COMMISSIONER: I don't know, there might be a
       16   proposition there that I'm not sure is yet agreed with,
       17   although it might be inferred, perhaps in fairness to the
       18   witness, give him the opportunity --
       19   A.   I'm happy to --
       20
       21   THE COMMISSIONER: Just wait. Mr Parish will rephrase his
       22   question.
       23
       24   MR PARISH: I'll rephrase it.
       25
       26   Q.   Was there a level of dysfunction in the 2008 term that
       27   you saw as well?
       28   A.   There was, but in my opinion the dysfunctionality
       29   amongst the councillors wasn't as bad as the 2012 council.
       30   But having said that, for the senior staff the 2008 council
       31   was probably the most challenging period in my time in this
       32   organisation, and I can relay what the general manager of
       33   the day said when he left this building, a man by the name
       34   of Mike Hyde who was the general manager from 2005-2009.
       35
       36   He spent 20 years in the army, he was a major in the
       37   army, he'd done a couple of tours of duty in the Middle
       38   East, he was part of Desert Storm, and his parting words to
       39   me were, the most difficult thing that he'd done in his
       40   lifetime was to go to Iraq and be part of Desert Storm.
       41   The second most difficult thing that he'd done in his
       42   lifetime was to be the general manager of Wingecarribee
       43   Shire Council. That said something to me.
       44
       45   Q.   And why was that 2008 governing body council hard for
       46   staff?
       47   A.   Look, there were a number of issues that were very

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 1    topical at the time.  The Lehmans CEO issue, for example,
 2    but in terms of the senior staff it was the constant
 3    attack, the constant attack on the senior staff.
 4
 5    Q.   Those constant attacks, were they coming in council
 6    meetings or were they coming in committee meetings, or were
 7    they --
 8    A.   All of the above.
 9
10    Q.   All of the above.  Briefings?
11    A.   All of the above.
12
13    Q.   And what about either by correspondence or
14    face-to-face outside of those forums in the actual building
15    itself?
16    A.   Yep.
17
18    Q.   Can you give some examples of - I withdraw that.  Were
19    any of the 2008 governing body that you're referring to
20    elected in both 2012 and in 2016 that you can recall?
21    A.   Not in the 2012 council, but in the 2008 and the 2016
22    council, yes.
23
24    Q.   Were some of the councillors whose conduct you're
25    thinking of in respect of the 2008 term councillors who
26    were also councillors during the 2016 term?
27    A.   Yes.
28
29    Q.   Can you give me some examples in the 2008 term?
30    A.   Look, one thing that stands out.  We used to have
31    each year a strategic planning day where we would, as the
32    management team, take a range of matters to council to try
33    and plan in a strategic way.  I believe it was probably in
34    2009 at The Briars, we had our strategic planning day
35    there.  It was late in the afternoon, the general manager
36    had been called away because there'd been a major storm
37    down in the Illawarra where he lived and he'd lost part of
38    the roof of his house.
39
40        I was attacked verbally across the table by a
41    councillor, and to this day I still don't know why.  I
42    wasn't actually part of the conversation that was going on
43    at that point in time, I'd done my bit before lunch and was
44    probably, to be frank, probably daydreaming a little bit
45    and just waiting for that particular part of the meeting to
46    conclude, and I just got - I got attacked.
47
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 1     Q.   Was that councillor who verbally attacked you
 2     re-elected in 2016; is that right?
 3     A.   Yes.
 4
 5     Q.   Did you see some of the behaviours, therefore, from
 6     the 2008 term and the 2012 term carried through into the
 7     2016 term?
 8     A.   Absolutely.
 9
10     Q.   Just focusing on the 2016 term for now, did you
11     witness or experience inappropriate communications between
12     councillors and staff?
13     A.   Absolutely.
14
15     Q.   Can you give some examples of that?
16     A.   Well, it came in various forms.  There was a lot of
17     very aggressive behaviour to staff in information sessions,
18     it also spilled over into some of the council meetings and
19     committee meetings in those planning days I've talked
20     about; it was very torrid at times.  There were times when
21     the general manager had to basically tell the councillors,
22     enough was enough or she was going to remove the staff.
23
24          In terms of the 2016 term of council, I remember day
25     one.  Day one, we were requested to come and meet with the
26     mayor, so myself and the other deputy general manager, Mark
27     Pepping and Ann Prendergast went into the mayor's office.
28     I believe that Councillor Grahame Andrews was in the office
29     as well.
30
31     Q.   Is this after the mayor has been elected, so
32     perhaps --
33     A.   It was the morning after.
34
35     Q.   -- probably around 26 September 2016?
36     A.   It was after the mayoral election, yes.
37
38     Q.   27 September 2016?
39     A.   Yep.
40
41     Q.   And the mayor was Mayor Halstead?
42     A.   Yep.
43
44     Q.   Sorry, carry on.
45     A.   I have to say, I found that meeting quite confronting.
46     The mayor basically said that he didn't trust any of the
47     staff, he didn't trust the three people that were standing
```

in front of him, he questioned our competence and indicated
that I might know something about finance, he wasn't sure.
Mr Pepping might know a little bit planning, he wasn't
sure, and he wasn't sure what the general manager's
qualifications were. That was confronting. He also made
the comment to the general manager that he wouldn't take
senior staff lying to him. This was day one: it was
confronting.

Q.   Did Mr Halstead, who had also been a councillor in the
previous term as well --
A.   Yes.

Q.   -- was there any indication to you where that line of
inquiry, attack or however you felt it was, was coming
from?
A.   Oh, I knew it was coming.

Q.   What gave - what --
A.   Because I'd been a member of the senior staff in the
term of the 2008 council, so I had a pretty fair idea that
it was gonna be a tough four years.

Q.   Can you give some other examples of interaction either
with senior staff or staff below senior staff that you
experienced or witnessed in the 2016 term that you thought
was inappropriate?
A.   Well, I'm going to stick to examples where there were
witnesses and where there's documentation. I mean, I could
probably give you dozens, but I'll stick to ones where I
know there is documentation and there were witnesses.

        Another example I'll give you is that, in 2018 - and I
can't tell you the date because all of these things, I
don't have access to diaries and corporate records any more
but --

THE COMMISSIONER: Don't trouble yourself about that,
Mr Paull, it's not a precise memory test, just give your
best evidence.

THE WITNESS: In 2018, it was a Friday afternoon, I
normally had a meeting with the general manager basically
to catch up on where I was at and any issues that I might
have that I might need to make the general manager aware
of. Mr Pepping, the other deputy general manager, also had
a meeting on that same Friday afternoon, so he was before

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 1        me.
 2
 3             So, I came up the stairs in the general manager's
 4        office and the mayor's office are down the hall here,
 5        that's not the case now, I don't believe.  I came through
 6        the door over here, Mr Pepping was coming out of
 7        Ms Prendergast's office, Ms Prendergast came out the door.
 8        The mayor came out of his office and started shouting at me
 9        about, he couldn't believe what I'd done, "What have you
10        done?"  I had no idea exactly what it is that I'd done, but
11        he continued to berate me and I stood there and thought,
12        well, eventually he's going to tell me what I've done.  His
13        exact words were, "I'm not going to tell you what you've
14        done.  I hope you go home over the weekend and I hope
15        you're sick in the guts trying to actually ascertain what
16        it is I'm on about.  I'm not going to tell you", and he
17        went back into his office, and I just looked at the general
18        manager and looked at the other deputy general manager and
19        said, "Well, not sure what that's about", got on with
20        business.  To this day I have no idea what it is that I was
21        actually supposed to have done.
22
23        Q.   Was that Mayor Halstead or Mayor Gair?
24        A.   No, Mayor Halstead.  Now, I lodged an incident report
25        in relation to that matter because it was one of those
26        instances where I believe that I needed to make a formal
27        record.  I could have made records of many incidences, but
28        I didn't, because I suppose, you know, being here as long
29        as I've been and being through what I've been through, you
30        just accept that, you know, getting belted up by
31        councillors is part of the job.
32
33        Q.   Do you think you ought to just accept that it's part
34        of the job?
35        A.   Well, frankly, what's the options?  The Code of
36        Conduct, in my opinion, is ineffective.
37
38        THE COMMISSIONER:   Sorry, just to bring you back to
39        Counsel Assisting's question, whether or not there are
40        other options, do you think it's acceptable for someone to
41        come to their workplace --
42        A.   No, absolutely not.
43
44        Q.   -- having to accept the fact they're going to be, I
45        think you said, "belted up by councillors"?
46        A.   Absolutely not.
47
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1 THE COMMISSIONER: Thank you, and if Mr Parish wants to
2 take up other issues, he will.
3
4 MR PARISH: Q. Did you feel like that was a form of
5 bullying?
6 A. Absolutely.
7
8 Q. Did you form the impression - I think we'll just stick
9 for now at least perhaps to the 2016-2018 period where
10 Mayor Halstead was the mayor - did you think that there was
11 bullying during that period of staff by councillors that
12 went beyond just you?
13 A. Absolutely.
14
15 Q. Do you have any examples of bullying of other staff
16 members?
17 A. Well, there were multiple meetings where accusations
18 were made against staff about whether information was
19 accurate, whether staff were hiding things, whether the
20 staff were actually competent; it was relentless.
21
22 Q. How did that, firstly, affect you in your health and
23 well-being in your impressions of the safety of this
24 workplace?
25 A. For the senior management team, it wasn't a safe
26 workplace. For me personally, it took a toll, but at the
27 end of the day I was here to do a job and I tried to do
28 that job to the best of my ability and I always focused on
29 that. I was here to protect the staff as best I could from
30 those sorts of attacks; it was not always easy to do that.
31 I got good support from the team around me and, to be
32 blunt, very good support from my family, my wife and my two
33 sons: that's how I coped.
34
35 Q. What about the staff below you, you've got 300-odd
36 staff below you, were you getting feedback about how
37 councillor interactions or councillor behaviour was
38 affecting them?
39 A. A lot of those interactions were, "How can they get
40 away with it? Why isn't the general manager doing
41 something?" Well, the simple answer was that it was
42 difficult for each of those four general managers, to be
43 fair, because they all had their challenges in terms of
44 managing the councils that they worked for. The Code of
45 Conduct was there. I've expressed my views about the Code
46 of Conduct, it's ineffective.
47

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 1              There's also a lot of pressure on senior staff from
 2        the point of view that the people that you're trying to
 3        engage with, they have the ability to terminate your
 4        contract; that's a pressure.  Senior staff have a five-year
 5        contract: no, we don't, you have a 34-week contract,
 6        effectively council can determine at any time to walk in
 7        and say, "There's your 34 weeks, see you later".  They
 8        don't have to give a reason, you don't have to be someone
 9        not performing, it can be they don't like the colour of
10        your tie today, see you later.  That's a pressure when
11        you've got a mortgage and children in school and things
12        like that: they held that over you.
13
14              Now, they've marched four general managers out of this
15        organisation and nine senior staff at the next tier in the
16        time I've been here: none of them left voluntarily, we've
17        all been pushed.
18
19        Q.   Is it fair to say then that amongst senior staff in
20        the 2016 term there was a climate of fear both in regard to
21        bullying and the ability of them to do their job?
22        A.   It was very challenging.  The general manager was
23        probably most affected in terms of her mental health.  At
24        the point she left this organisation her mental health had
25        been destroyed.  And in terms of my mental health, yes, it
26        was very challenging.  To be frank, did I ever worry about
27        my contract?  I did in the back of my mind, but I did my
28        job as best I could and let the chips fly.
29
30        Q.   I take it, you had to attend briefing sessions from
31        time to time; is that right?
32        A.   Most of them, yes.
33
34        Q.   Did you witness or hear about similar conduct by
35        councillors in those briefing sessions in the 2016-2020
36        term?
37        A.   Absolutely, I mean, it was embarrassing sometimes with
38        consultants and professional people that we brought to
39        council to participate in those information sessions at
40        various times.  For various matters we had to bring expert
41        professional people in from outside the organisation, and
42        it got to the point where we had to warn them before they
43        came into the meeting that they were probably going to get
44        a torrid time, and on occasions they did; they remained
45        professional and, when they left, we'd often have to
46        apologise for the conduct that went on in the meeting that
47        they were participating in, but it was what - it is what it
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1    was.
2
3    Q.    Can I ask why those times were torrid?  Was it
4    aggressive questioning but questioning that was
5    nevertheless on point, or was it questioning that was
6    perhaps tangential, irrelevant, or uninformed?
7    A.    I respect the fact that councillors are entitled to
8    ask questions, searching questions, and get profession,
9    well-informed answers: have no problem with that at all.
10   And, a large majority of the councillors did, but there
11   were a small number of councillors that for various
12   reasons, in my opinion, were always after the "gotcha
13   moment" in terms of trying to - I've got the staff now,
14   I've got something to hold over them, I've got something to
15   belt them with.
16
17   Q.    In your experience, is that the purpose of these
18   briefing sessions, to --
19   A.    Absolutely not, the briefing sessions are there to
20   provide councillors with information, to allow them to ask
21   questions in a more informal manner so that they're
22   informed, and that when they are making decisions - because
23   often in the chamber you don't have the ability to go into
24   great detail in terms of matters.  There's always a report
25   that sets out the issues and makes recommendations and
26   councillors obviously have that before them before they
27   come to the meeting and have the ability to read that and
28   understand that.
29
30        The briefing sessions we had prior to the council
31   meeting was another opportunity for the councillors to ask
32   questions about what was on the agenda and in the business
33   paper so that we could, you know, get those things
34   clarified so that it didn't hold up the business of
35   council.
36
37   Q.    In giving the answer that you gave prior to that one,
38   did you form a view whether the councillors who were asking
39   those sorts of "gotcha questions" really understood their
40   roles and responsibilities at least in that briefing
41   session context?
42   A.    My personal opinion is that they were making it
43   personal about the attacks on staff rather than staying
44   professional, and that's inappropriate.  There were
45   personal attacks on other councillors as well: that's
46   inappropriate.  The briefing sessions were there to conduct
47   the business of council, not to try and score points
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 1      against, you know, the other councillors, or not to try and
 2      catch the staff out, or not to try and beat the staff up,
 3      that was not the purpose, so in my mind, they weren't
 4      conducting themselves in a way that was appropriate for a
 5      councillor.
 6
 7      Q.   What was the effect of this points scoring on the
 8      ability to efficiently conduct both the briefings and, if
 9      you have a view on it, the council meeting that followed
10      it?
11      A.   Look, it made it very challenging because,
12      particularly for staff that would only come to the council
13      meetings very occasionally perhaps to present something if
14      it was a report that they had particular expertise in.
15      They were, you know, I suppose apprehensive about what they
16      might face.  As I said, the general manager and myself and
17      the other deputy general manager tried as best we could to
18      make sure that, if things got out of hand, that we would
19      step in, but there were staff who didn't want to come and
20      present things because they knew they were probably going
21      to get whacked.
22
23      Q.   Do I take it from that answer then, that there was a
24      direct correlation at least in your view between the
25      behaviour of councillors and the willingness of staff to
26      actually just do their job?
27      A.   In my opinion, the staff in the period of the
28      2016-2020 - 2021 or early 2021 that I was with council
29      stood tall.  I am so proud to say I was part of that team.
30      Across this organisation there were people that were
31      standing up and doing their job during very difficult
32      times: during bushfires, during floods, during COVID.  Yes,
33      they were bewildered by what was going on in the council
34      chambers, but they stood tall.
35
36           In my opinion, and it's only my opinion, but I'm
37      entitled to have an opinion, we had the best management
38      team that I've worked with in the 20 or nearly 20 years
39      that I've worked here in this council, and that's no
40      disrespect to some very, very effective and efficient
41      people that I've worked with in the past in this
42      organisation, but as a group in my opinion it was the best
43      senior management team that I've worked for.  Now, that's
44      only my opinion, but having worked for five councils and
45      four general managers I think I've got a right to have an
46      opinion.
47
```

1   THE COMMISSIONER: Thank you, but I'm not sure that that
2   was quite the question. Perhaps Mr Parish might re-put the
3   question.

4
5   MR PARISH: Yes.

6
7   Q.   I was seeking to explore whether the conduct of
8   councillors, tying back to the example you gave in the
9   briefing sessions where staff were reluctant to even
10   attend, whether I could take it that in your view at least
11   there was a correlation between councillor behaviour and
12   the willingness of staff to actually acquit or do their
13   jobs?
14   A.   Quite the contrary. What I think I said was, they
15   stood tall, despite it.

16
17   Q.   Were there times where staff members did not attend
18   briefing sessions because of their fears?
19   A.   There were times when we chose not to bring certain
20   stuff and more senior management or middle tier or group
21   managers, I suppose, tier 3 managers, took on the role of
22   presenting those particular reports or matters to the
23   various information sessions.

24
25   Q.   Does that mean that you were from time to time having
26   to shield staff members from councillors?
27   A.   Yep.

28
29   Q.   Was that something particular in the 2016 term or is
30   that something that happened from time to time in the other
31   terms that you referred to?
32   A.   I would say that at various times through the last
33   12 years of the last three councils that's probably been
34   the case, but it ebbs and flows.

35
36   Q.   Was it worse in the 2016 term?
37   A.   Towards the end it absolutely was, yes.

38
39   Q.   Can I ask about the ability of councillors to interact
40   with staff outside briefings and council meetings.   There
41   were policies in place, am I correct, to regulate that?
42   A.   Yes.

43
44   Q.   Do you think they were sufficient and well adhered to
45   in the 2016-2020 term?
46   A.   Well, the policy was very clear; councillors were only
47   able to interact with tier 3 managers: so, group managers,

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deputy general mangers and obviously the general manager.
The direction was that they could only interact with those
tier 3 managers in areas that were in their portfolio and
the same for the deputy general manager so you didn't
wander outside what was your area of management.

       Did councillors overstep that? On occasions, and on
occasions they were told that that was not on, and the
staff were reminded that, if a councillor rang them direct
and said they wanted to talk to them about something, their
replay was to be, "I'm sorry, councillor, I'd like to help
you with that, but you'll need to speak to my group
manager".

Q.   Did you hear of that happening during the 2016-2020
term?
A.   On occasions.

Q.   Does that suggest to you that, at least some of the
councillors in the 2016 term didn't understand their roles
and responsibilities?
A.   I think they understood their roles and
responsibilities but I think they chose to ignore them.

Q.   I take it you're familiar with the distinction between
operational and strategic and the way that that interacts
or demarcates the behaviour of the governing body with the
staff?
A.   Absolutely.

Q.   Did you witness or hear of circumstances in the 2016
term in which councillors crossed that line into
operational?
A.   I can give some examples. It wasn't really the big
issue in terms of managing this organisation, but I can
give examples. I mean, the big issue was the way that
staff were treated, but I can give you examples where they
have stepped over the line?

Q.   Yes.
A.   Again, I'd have to be a bit vague with dates because I
don't have that information. In 2018 a councillor attended
the infrastructure services depot at Moss Vale and
instructed the group manager out there to bring all of the
maintenance staff in and that he was going to conduct a
training session with them as to how they were to patch a
pothole and that they were all to attend. That particular

```
1      instruction I wasn't aware of until after the event had
2      happened.
3
4          The group manager came to me and was most upset that
5      that had occurred, a lot of staff out there were very upset
6      that they'd basically been treated like school children and
7      been through a session where they'd been told that they
8      weren't patching potholes appropriately and this is how
9      they were to patch potholes, so that was inappropriate.
10
11     Q.   That was Councillor Halstead, I think we've already
12     had some evidence on that.
13     A.   Yes.
14
15     Q.   What ought the group manager have done in that
16     situation?  What's good practice?
17     A.   Well, he should have told the councillor that that was
18     inappropriate and that he needed to go and speak with the
19     general manager and, if the general manager wanted to give
20     permission for that to happen, well, I would be very
21     surprised if the general manager would have and in actual
22     fact the general manager didn't.
23
24     Q.   Can you give some other examples?
25     A.   Yes.  Again, I think it was probably in about the
26     middle of 2019.  There was a stop work meeting at council's
27     Resource Recovery Centre where the USU had called a stop
28     work meeting out the front of the Resource Recovery Centre,
29     just outside the gates.  Councillor Scandrett attended that
30     meeting dressed in his fluoro with his beanie pulled down
31     over his ears to be one of the workers.  He addressed the
32     staff at that particular stop work meeting and, my
33     understanding is, had made some comments about senior
34     management.  I think that was inappropriate because that's
35     getting into the operational side of council.
36
37     Q.   Just from your experience in local government, what
38     would you say to the proposition, if put by someone like
39     Councillor Scandrett in that situation, that they weren't
40     addressing the meeting in their capacity as councillor but
41     that they were doing it in a personal capacity: do you, in
42     your experience --
43     A.   Chinese walls.  I mean, he's an elected councillor,
44     the issue was in regard to hours at the Resource Recovery
45     Centre, which is an operational matter.  Although that
46     said, it related to council's budget and a decision the
47     council had made in terms of the opening hours of the
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1      Resource Recovery Centre, so you can't make that
2      distinction: he's a councillor, it was a council issue, it
3      was a staff matter, he got involved.
4
5      Q.    Thank you.  Can I turn to your experience during the
6      2016-2020 term in actual council meetings themselves.  Can
7      you give any impressions about the conduct of councillors
8      in those council meetings?  Was it a continuation of what
9      was happening in the briefings?
10     A.    Look, in terms of the council meetings, probably
11     before the first two years the council meetings functioned.
12     It went downhill probably in early 2019 and got worse from
13     there.
14
15     Q.    Can you ascribe any reason for the downhill turn?
16     A.    Look, again, these are opinions from myself --
17
18     Q.    Of course.
19     A.    -- there were a number of, I'll call them events
20     across that two-year period that, in my opinion, escalated
21     the decline.  The mayoral election in 2018, there was a
22     change of mayor and deputy mayor, there was a shift of
23     numbers in the council.
24
25     Q.    Pausing there: by that do you mean that the election
26     of Mayor Gair to the chair --
27     A.    Yes.
28
29     Q.    -- meant that there was a denigration of the conduct
30     and behaviour of the council meetings?
31     A.    Well, it was a turning point, and if I can relay a few
32     more events I guess you'll see the relevance of what I'm
33     talking about.
34
35            There was also a Land and Environment Court case
36     involving Councillor Turland which, the outcome, I don't
37     think Councillor Turland was very happy with.  In early
38     2019 the general manager's contract came up for renewal,
39     I believe it was early 2018, might have been late 2018,
40     again, I'm struggling a little bit with the dates, but six
41     councillors voted for the general manager's contract to be
42     renewed, three didn't; that's another point in time where
43     things changed.
44
45            When Councillor Markwart resigned due to ill-health,
46     we had eight councillors.  The mayor had to use the casting
47     vote on a lot of occasions; that created a lot of angst.
```

1   The reality is, that's democracy in action, how else can a
         2   council function? If there's a tied vote the mayor has to
         3   use his casting vote otherwise council can't make a
         4   decision.
         5
         6   In my opinion, again, another turning point was
         7   probably early in 2020, after the bushfires, there was an
         8   issue - I mean, COVID had only just come to the Highlands,
         9   there was a matter which I guess got into the media which
        10   I'm not comfortable talking about, but the mayor had asked
        11   councillors whether any councillor who had been a close
        12   contact of anybody who perhaps had had COVID or been
        13   contacted with COVID: that raised the temperature
        14   significantly again.
        15
        16   I'm just trying to think of the other things that I
        17   was thinking of as well. I mean, you could see an
        18   escalation in the personalisation of the animosity between
        19   three councillors and the mayor.
        20
        21   Q.   What was your impression in those 2016 term meetings
        22   of how the councillors interacted with the community who
        23   attended meetings? Positive, negative, no real impression?
        24   A.   Some good, some bad. We had a public meeting in, I
        25   think it was early 2018 about Station Street in the Bowral
        26   Memorial Hall.
        27
        28   Q.   That may well be 14 February 2018 --
        29   A.   That's probably the date.
        30
        31   Q.   -- meeting which has come up a few times in evidence.
        32   A.   It wasn't handled well.
        33
        34   Q.   What was not handled well about it?
        35   A.   There were some things said that I think probably
        36   shouldn't have been said, and I believe there were some
        37   apologies issued after that meeting.
        38
        39   Q.   By who? Which councillor said stuff?
        40   A.   I believe that the mayor of the day issued an apology
        41   to someone after that meeting.
        42
        43   Q.   In your impression, at least in that 14 February 2018
        44   meeting, did you see good civic leadership on display from
        45   the mayor?
        46   A.   Well, again, it's only my opinion.
        47

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```
1      Q.   Of course, that's all we're asking.
2      A.   In my opinion, no.
3
4      Q.   Is it fair to say that that impression is caused by a
5      mayor saying things which they subsequently have to retract
6      and apologise for?
7      A.   Yes.
8
9      Q.   Any other examples of interactions you saw between
10     2016 councillors and the community that left an impression
11     on you?
12     A.   Look, more I guess, again back to the staff, and
13     meetings where staff had participated in a meeting with
14     members of the community, and again, I believe the staff
15     were treated poorly and I think some of the people in that
16     meeting from the community were a little embarrassed as
17     well.
18
19          In terms of broader community meetings: well, we
20     didn't have what you would call public meetings again until
21     after the bushfires, so that was some time later.  There
22     were quite a number of matters that were put out to the
23     community where there were opportunities for the community
24     to interact with staff and councillors: community strategic
25     plan, a whole range of things across various activities of
26     council, environment things, a whole range of things,
27     generally I think the communication was reasonable.
28
29     Q.   There's been evidence to this inquiry that, at least
30     in the perception of some, the attitude from councillors
31     towards the public was adversarial; is that something you
32     agree with or an impression you are left with?
33     A.   Look, there were certainly issues where councillors
34     had strong views and they didn't always align with lobby
35     groups or individuals from the community.  We live in a
36     community where, and I'm generalising a little bit, but
37     again it's my view, that we have quite a few people who are
38     well educated, very articulate, a high number of people
39     retired, often they're people that have worked in either
40     the private sector or the public sector at a very high
41     level, they're people who are used to making decisions and
42     being decision-makers, so when they have an opinion about
43     something, and that's a strong opinion, they voice that
44     opinion and that's perfectly fine.  I think that on
45     occasions when councillors didn't agree with that opinion
46     they took that as council not communicating or council not
47     engaging.
```

1
2   My view is that the elected council is there to listen
3   to the community and make decisions and that's what they
4   do, and they make those decisions based on the information
5   that they've received and on what they believe, and if they
6   have strong opinions they should be allowed to voice them.
7   As I said, some people in the community didn't accept that.
8
9   Q.   On reflection, do you think the communication in
10   respect of the Station Street bypass could have been better
11   handled by either the governing body or at senior staff
12   level?
13   A.   The engagement with the community on Station Street
14   started in 2013 and it was still going in 2020. There is a
15   multitude of information that was put out there. There
16   was, back in 2017, a month of engagement with the community
17   where they were able to put in submissions, come and speak
18   with staff. Through 2018 we had a community engagement
19   hub, I'll call it, in Station Street that operated for a
20   month and I think we extended it for a month, where quite a
21   number of the community came and spoke with our community
22   engagement team, with the project manager, they were walked
23   through the project, they were, I guess, informed about
24   what the benefits of the project were, why we were going
25   down the path we were going down. So, from my point of
26   view from an operational side of things, we were doing our
27   very best to keep the community informed.
28
29   The reality is, there were a lot of pressures in terms
30   of that project. It was a use it or lose it type of grant.
31   It was three or four years past its delivery date already
32   because of the difficulties in engaging with third party
33   government departments to try and even get the property
34   that we needed to actually deliver the project. I was
35   getting pressure from council, mayors, local members,
36   everybody about getting the project delivered. So, we
37   tried to keep it moving while still engaging with the
38   community, and the council actually did make some
39   significant changes to the project in response to that
40   community engagement.
41
42   Undergrounding the power down Station Street, spending
43   a million dollars on landscaping with 120 mature trees,
44   realigning the roundabout at the northern end of Station
45   Street to lessen the impact on the Pin Oaks, which was the
46   big issue for the community and which, quite frankly, I can
47   understand why the community were concerned about that:

they are an iconic piece of, you know, the streetscape in
Bowral. But the reality is, the project is a brownfields
site with very constricted access in terms of where the
road could go, the services under the ground, the business
houses, all of that; it was a very difficult project to
really make any significant changes to.

Q.   You've talked quite a bit there about what I guess I
could term the quantity of the consultation; what about the
quality of the consultation? On reflection do you think,
despite the amount of consultation, do you think you gave
the community what they need?
A.   It's a subjective question, I guess: how much
consultation is enough? That's a very difficult thing to
answer. We met with various community groups, lobby
groups, and tried to put the case as to what was the
project about, what were the constrictions in terms of what
council could and couldn't do, what it was going to
achieve, why we were doing it: it's based on traffic
analysis, traffic studies, traffic modelling to solve a
problem in Bowral.

      And I need to correct, it's not a - I'm sorry, I'm
being pedantic, it's not a bypass. It's not a bypass, it's
a distributor road. What it's about is the interaction of
traffic within the CBD of Bowral, to get in and around the
business houses of Bowral and then back out. Now, that
might seem a bit pedantic. It's not about bypassing
Bowral, that's what the Hume Highway's for.

      So, it was based on economic analysis, traffic
studies, traffic analysis and trying to get the best
outcome for the CBD and the business houses of Bowral.

THE COMMISSIONER: Q.   Mr Paull, I think my terms of
reference - it's all very useful background, my terms of
reference don't require me to form a view on the merits.
A.   Okay.

Q.   I think Counsel Assisting's question is directed to,
accepting your earlier evidence about the amount of
consultation.
A.   Yep.

Q.   Given that there were still a number of people
expressing objections to it.
A.   Yep.

```
1
2      Q.   Sitting back, thinking back now, do you think that
3      something could have been done better?
4      A.   Look, possibly.  The only answer I can probably give
5      is, what's the alternative?  In terms of delivering the
6      project, the engineering constraints meant that there was -
7      there was really only one outcome.
8
9      Q.   Well, there might be two?
10     A.   Or two, I guess: the other outcome is, do nothing.
11
12     THE COMMISSIONER:   Yes, thank you.
13
14     MR PARISH:   Q.   You were the acting GM twice, I think I
15     wrote down?
16     A.   Yep.
17
18     Q.   And, did you also from time to time as a group manager
19     have to assist in chairing council meetings?
20     A.   Yes.
21
22     Q.   Can you give me your impression, when you had to
23     assist in chairing the meetings, how that process went?
24     Did you think it was an effective procedure?
25     A.   Are you talking about when the council was operating
26     in this building, or are you talking about when council was
27     operating via Teams or?
28
29     Q.   I'll deal with it, the in-person ones first when it's
30     in this building.
31     A.   Look, again, there were times when council meetings
32     got out of order and councillors misbehaved, and depending
33     on who was chairing the meeting they would try and bring
34     the councillors back into order.  There were occasions
35     where the mayor had to adjourn the meeting for 15 minutes;
36     that happened on a few occasions.  There was at least one
37     occasion where the general manager had threatened to take
38     the staff out of the meeting.  It ebbed and flowed.
39
40     Q.   We had some evidence from, I think it was Mr Reynolds,
41     that when he observed meetings chaired by Mayor Gair, that
42     he thought Mayor Gair perhaps could have used the general
43     manager or the deputy general manager sitting beside him
44     better in meetings to defer to him on points of procedure,
45     et cetera.  Do you have a view on that?
46     A.   I would agree.  The mayor often dismissed you when you
47     tried to provide some assistance.  He wanted to be
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1        independent.  Having said that --
2
3        Q.    Pause there, we're talking about Mayor Gair at this
4        point?
5        A.    Mayor Gair, yes.
6
7        Q.    Carry on, sorry.
8        A.    Chairing a meeting on Zoom or Teams or whatever it was
9        we were using, we were using different things at various
10       times, I've got to tell you is very difficult.  It's very
11       much more harder than doing it in person when you've got a
12       TV screen sitting on a wall with 12 boxes with 12 faces,
13       and those faces are moving depending on who's talking, and
14       some of those individuals are misbehaving and would not
15       adhere to a mayor's call to order, it's very difficult to
16       manage that situation when people are not in the room.
17       Because, when one someone's in the room, the mayor can
18       stand up, everybody has to be quiet and the mayor has the
19       floor.  The mayor can't do that when we're in a Zoom
20       meeting.  If you stood up, what do you think the people
21       would have seen?
22
23       Q.    At least in some of the meetings that will be put into
24       evidence, and perhaps even played next week to other
25       witnesses, even when the mayor did seek to exercise their
26       authority by speaking or standing up it was ignored by
27       councillors; is that something you saw and experienced from
28       time to time?
29       A.    Well, the way that the mayor was trying to manage that
30       was to mute people.  Now, that was effectively saying that
31       the chair now has the floor and you need to cease talking,
32       because that was the only really way from a technology
33       point of view that you could bring the meeting to order.
34       Now, councillors constantly challenged that and refused to
35       acknowledge the fact that the mayor had precedence and that
36       the mayor was trying to bring the meeting to order: they
37       ignored that, they just kept talking over the top of him.
38
39       Q.    Do you have a view as to whether Mayor Gair, at least,
40       could have used you or whomever else was assisting in the
41       meetings better in the 2016-2020 term?
42       A.    Look, in hindsight I guess I would imagine Mayor Gair
43       would probably say that he probably could have, but in the
44       moment it was very difficult because it was very heated.
45       And for the council staff to get involved when councillors
46       are shouting at each other, it's not easy because we pretty
47       much speak when we're given the opportunity to speak.  Even
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1   the general manager really - can really only intervene when
2   the staff are being, you know, treated inappropriately. In
3   terms of the debate, it's for the mayor to chair the
4   meeting. Yes, senior staff from time to time can offer
5   advice about meeting procedure, et cetera, but ultimately
6   the mayor has to chair the meeting.
7
8   Q.   One thing Mr Reynolds mentioned in evidence, I think
9   yesterday or the day before, was the importance of having a
10 good relationship between the person assisting the mayor
11 and the mayor --
12 A.   Absolutely.
13
14 Q.   He wasn't suggesting anything improper, but the idea
15 of having a little code, or a wink or a nod or something
16 like that. Did anything like that exist to allow you or
17 Ms Prendergast to assist Mayor Gair?
18 A.   Well, look, you were always sitting adjacent to the
19 mayor so you had the opportunity to - a word in the ear,
20 and that did happen on quite a few occasions: I'm not
21 saying it didn't happen, it did, and that's a normal thing
22 between a general manager and a mayor; there needs to be
23 a degree of trust there and you need to work together as a
24 team.
25
26 Q.   Do you think there was a degree of trust between you
27 and Mayor Gair at least?
28 A.   Yes.
29
30 Q.   Did you have a moderately close relationship with
31 Mayor Gair, do you think, in your impression?
32 A.   Well, Mayor Gair has been on the council for the five
33 councils that I've mentioned that I worked for, so I've
34 known Mayor Gair for quite some time, he's been the mayor
35 on a number of occasions, so I have a good working
36 relationship with him as I do with quite a number of the
37 councillors.
38
39 Q.   Do you recall if Mayor Gair ever put any pressure on
40 you to take steps to assist in the removal of the eight Pin
41 Oaks on Station Street before the REF had been issued?
42 A.   Yes.
43
44 Q.   He did put pressure on you?
45 A.   Yes.
46
47 Q.   Was that in the form of a letter that he gave you

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  1        instructing you to remove the eight Pin Oaks on Station
  2        Street?
  3        A.   Yes.
  4
  5        Q.   Do you still have that letter?
  6        A.   No.
  7
  8        Q.   Do you know what happened to that letter?
  9        A.   I imagine it would be in the records of this council
 10        somewhere because it was in my office.
 11
 12        Q.   What did that letter say to the best of your
 13        recollection?
 14        A.   It instructed me to remove the Pin Oaks.
 15
 16        Q.   And this was before the REF had been issued?
 17        A.   Yes.
 18
 19        Q.   Do you know why he was seeking you to do that?
 20        A.   I can't comment, you'd have to ask Mayor Gair.
 21
 22        Q.   Do you recall what the contents of that letter was?
 23        A.   Well, broadly what you said, instructing me to remove
 24        those Pin Oaks ASAP.
 25
 26        Q.   You obviously resisted that because the Pin Oaks are
 27        still there?
 28        A.   Yes.
 29
 30        Q.   Did you feel under a level of pressure to do something
 31        that perhaps was inappropriate or perhaps even illegal?
 32        A.   Was it unlawful?  I won't comment on that.  Was I
 33        under pressure?  Yes, I was, but it wasn't only come from
 34        Mayor Gair.
 35
 36        Q.   How did you deal with that pressure, what steps did
 37        you take?
 38        A.   Well, there was no way that I was going to take that
 39        action because I believed it was inappropriate at the time.
 40
 41        Q.   If I put it to you that the reason Mayor Gair wanted
 42        you to take steps to assist in the removal of the eight Pin
 43        Oaks on Station Street prior to the issuance of the REF,
 44        was to make Station Street a fait accompli: would you agree
 45        with that?
 46        A.   Again, I can't presume what was in the mayor's mind.
 47
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1    Q.    Had you ever in your experience been put in that
2    position before?
3    A.    I've been pressured about many things over many years
4    from many different people.
5
6    Q.    But this was in respect of a contentious planning
7    matter.
8    A.    Yes.
9
10   Q.    He put it in writing and signed it?
11   A.    Yes, he did.
12
13   Q.    And, whilst you may not want to comment on whether it
14   was illegal or improper or not, assuming for a moment it
15   was, had you ever been put in that sort of situation
16   before?
17   A.    Where something was potentially unlawful or improper?
18   Nothing comes to mind, but I've certainly been put under a
19   lot of pressure on a lot of high profile issues.  By the
20   way, it wasn't only the mayor that was pressuring me at
21   that time as well.
22
23   Q.    Was another councillor specifically pressuring you to
24   take steps to remove the eight Pin Oak trees prior to the
25   approval of the REF?
26   A.    No, it was from another sphere of government.
27
28   Q.    What sphere of government was that?
29   A.    State Government.
30
31   Q.    Did you receive specific representations from someone
32   within the State Government to remove the eight Pin Oaks on
33   Station Street prior to the issuance of the REF?
34   A.    I was pressured, yes.
35
36   Q.    And in what form did that pressure come?  Was it a
37   letter, was it a phone call?
38   A.    It was a verbal conversation.
39
40   Q.    Face-to-face?
41   A.    Yes.
42
43   Q.    Back to Mayor Gair: what did you tell him when you
44   received this signed letter asking you to remove, take
45   steps to remove the eight Pin Oaks on Station Street
46   immediately?
47   A.    I told him that I wasn't going to take that action.
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Transcript produced by Epiq

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 1
 2      Q.    Did he apologise or withdraw the instruction?
 3      A.    I think he accepted it was the right thing to do.
 4
 5      Q.    In your impression did Mayor Gair acknowledge or
 6      understand that it was not a request that ought to have
 7      been properly made in the first place?
 8      A.    Again, I can't surmise what was in the mayor's mind at
 9      the time.
10
11      Q.    Did you talk --
12
13      THE COMMISSIONER:   Q.   Did you talk to him about it?  Did
14      you have a conversation about this?
15      A.    I did, I told him I thought it was --
16
17      Q.    It would have come as a shock to you, wouldn't it?
18      A.    It was a surprise it was in writing, yes.
19
20      Q.    So, do you remember having a conversation about it?
21      A.    We did, yes.
22
23      Q.    What happened during that conversation?  What did he
24      say to you about it?
25      A.    As I said, there was pressure from many quarters about
26      Station Street in terms of moving the project forward.
27      We'd met with the local member --
28
29      Q.    What did he say to you about it?  That was my
30      question.  What did the mayor say to you in that
31      conversation about this issue?  I appreciate all the other
32      contexts which you've given me, but what I'm interested in
33      at the moment is that conversation?
34      A.    Look, I don't remember the conversation in detail, I
35      just remember saying to the mayor, "Mr Mayor, that's not
36      the right thing to do, I'm not going to take that action",
37      and I think he accepted that he probably shouldn't have
38      asked me to do that.
39
40      MR PARISH:   Q.   Some might say that's a pretty unfair
41      position to put you in.  Who did you feel you had the
42      ability to talk to about that or report it to, if you felt
43      that was something appropriate to do at all?
44      A.    Are you suggesting that it's corrupt conduct?
45
46      Q.    No, I'm not.
47      A.    Right, well, the reality is the --
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1
2      THE COMMISSIONER:   Mr Paull, just listen carefully to the
3      question you're asked, and answer the question you're
4      asked, and there will be no confusion.
5      A.   Okay.
6
7      Q.   Counsel Assisting has not put that proposition at all
8      from the question.  His question was plainly directed to,
9      you being put in that position, who did you feel like you
10     could speak to about it, if anyone?
11     A.   Well, as the acting general manager, nobody really.  I
12     mean it was a decision I had to make: I made the decision
13     not to proceed.
14
15     MR PARISH:   Q.   What effect did that have on you from a
16     health safety, mental point of view?
17     A.   That particular moment in time, I don't believe, had
18     any great effect on me.  The events of the previous
19     18 months or 12 months certainly did and the six months
20     following that certainly did; it was just another difficult
21     issue that I had to deal with.
22
23     Q.   Can I put it to you that it's a pretty remarkable
24     request from a mayor to the general manager to ask him to
25     take unilateral steps to remove trees in a contentious
26     project before it's approved.  Is that not something which
27     weighed heavily on your mind or was that just another day
28     at the Wingecarribee Shire Council as acting general
29     manager?
30     A.   Well, I don't believe that Councillor Gair was asking
31     me to do something that was unlawful.  I think he
32     understood that there was a process that was still in train
33     in terms of moving the Station Street project forward, the
34     REF was a part of that.  The other moving piece of the
35     puzzle was getting a sign-off from Sydney Trains for the
36     property that we needed, and my view was, until I had some
37     sort of binding agreement with Sydney Trains the project
38     was not going to proceed in terms of any significant action
39     on the ground, because until I had a project, and I didn't
40     have a project until December 2020 when finally, after six
41     years, we got an agreement signed with Sydney Trains, or
42     TAHE.
43
44     THE COMMISSIONER:   Q.   When you got the letter, did you
45     ask him why he'd sent it to you?
46     A.   I can't recall, to be honest.
47
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1      Q.   Did it just come out of the blue?
2      A.   It did, yes.
3
4      THE COMMISSIONER:   Yes.
5
6      MR PARISH:   Q.   Did you ask him why he put it in writing?
7      A.   Well, I would imagine he put it in writing because he
8      wanted it to happen.
9
10     Q.   Can I just go back to a previous answer.  Do I
11     understand it that you didn't think there was anything
12     necessarily illegal or unlawful about removing the Pin Oaks
13     at that stage?
14     A.   Well, no, that's not quite what I said.
15
16     Q.   Tell me what you did mean to say?
17     A.   We needed to complete an REF, we hadn't done that, so
18     until that REF had been completed and signed off, and until
19     I had a signed agreement with Sydney Trains or TAHE that we
20     were going to get the property we needed, there was no way
21     that those Pin Oaks were coming out because it would have
22     been inappropriate in my mind.
23
24     Q.   So you do accept that it would have been inappropriate
25     to take the Pin Oaks at that stage, but you don't accept
26     that it maybe have been unlawful; is that correct?
27     A.   I wouldn't have taken the Pin Oaks out until the REF
28     was completed.
29
30     Q.   I'm not suggesting you would have, but the request was
31     that you did; did you think that was unlawful?
32     A.   Well, I'm not sure that the mayor understood the
33     significance of the REF and where that was up to.
34
35     THE COMMISSIONER:   That's not the question.  Listen
36     carefully to the question, please.
37
38     THE WITNESS:   Yep.
39
40     MR PARISH:   Q.   Did you think that the mayor thought it
41     was unlawful?
42     A.   I don't believe he did, no.
43
44     Q.   Do you think that portrays a lack of understanding of
45     either the Local Government Act or the Environmental
46     Planning and Assessment Act by the mayor?
47     A.   No, I don't, because councillors are not experts in
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 1        all things local government, whether it be finance,
 2        governance, environmental matters, they rely upon expert
 3        advice.  The mayor would have been aware that an REF was
 4        being conducted because it had been raised in the council
 5        meeting.  Would he have intimate knowledge of what an REF
 6        was and why it was required?  He may or may not, I don't
 7        know.
 8
 9        Q.   Do you accept this was a highly contentious strategic
10        planning project?
11        A.   It garnered a lot of community interest, yes.
12
13        Q.   Do you accept that the fate of the eight Pin Oaks was
14        part of that contentious aspect?
15        A.   Yes.
16
17        Q.   Do you accept that, at least from your impression, the
18        purpose of Mayor Gair's request was to remove a bone of
19        contention in the project before the proper processes had
20        been completed?
21        A.   Well, as I said, I don't believe that the mayor was
22        directing me to do something without proper process, but he
23        certainly had directed me to get on with the project.
24
25        Q.   How can it not be without proper process to remove the
26        eight Pin Oak trees before the REF had been issued?
27        A.   Well, as I said, he may not have been aware where the
28        REF was up to.
29
30        THE COMMISSIONER:   Q.   I'm sorry, a moment ago you told
31        me you thought this was inappropriate, and now you've told
32        me that you didn't think the mayor was doing anything
33        without proper process.  To be frank, I have some
34        difficulty reconciling those answers.
35        A.   Well, what I'm trying to say is that it would be
36        improper for me as the acting general manager to move
37        forward with that project if we hadn't met our obligations
38        under the Environmental Planning and Assessment Act, so
39        that's the reason why I didn't.
40
41        Q.   Yes.
42        A.   The mayor's understanding of that is difficult for me
43        to comment.
44
45        Q.   I appreciate that.
46        A.   The other factor I'll make aware: again, I believe
47        there was a council resolution to remove the Pin Oaks that
```

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 1    was passed in March 2020, I believe, and I believe it went
 2    to an extraordinary meeting and there was a rescission
 3    motion and it wasn't overturned, so there is actually a
 4    council resolution to direct the staff to remove the Pin
 5    Oaks.
 6
 7    Q.   What is proper - well, is it proper for there to be a
 8    council resolution to direct staff to do anything?
 9    A.   Well, the council --
10
11    Q.   That's a yes or no question.  Is it proper for a
12    council resolution to direct staff to undertake any work?
13    A.   Well, it directs the general manager.
14
15    MR PARISH:   Q.   Is it the usual process that the mayor
16    would then put something in writing, signed, to the general
17    manager asking them to take those steps?
18    A.   Well, difficult for me to comment; I mean, I've acted
19    in the - I've acted in the general manager's role for two
20    short periods, acted obviously at other councils as the
21    acting general manager as well.  Have I had that type of
22    direction when I've been in that acting role previously?
23    No.
24
25    Q.   Do you know if Ms Prendergast had any request made of
26    her to remove the eight Pin Oaks prior to all the necessary
27    reviews and plans being completed?
28    A.   Well, again, there was constant pressure to keep
29    moving the project forward.  Was there a direction to
30    Ms Prendergast to take those Pin Oaks out?  I can't
31    comment, I don't know.
32
33    Q.   She never said anything to you or you never witnessed
34    anything?
35    A.   She was adamant that the Pin Oaks would not come out
36    until the REF had been completed, and again, that we had a
37    project going forward, in other words, that we had a
38    sign-off with Sydney Trains.
39
40    Q.   And I take it from your evidence and the fact that you
41    declined Mayor Gair's request, that you were of the same
42    opinion when you were acting general manager?
43    A.   Absolutely.
44
45    THE COMMISSIONER:   Q.   That being so, what was then the
46    significance of the council resolution that you referred to
47    earlier?
```

```
1      A.    Well, the council resolution was a confirmation that,
2      subject to proper process, that the staff were to continue
3      to move with the project.
4
5      Q.    Right, and at the time the letter had been received by
6      you, the process hadn't been complete; is that how I
7      understand your evidence?
8      A.    No.
9
10     Q.    You agree with me?
11     A.    Yes.
12
13     THE COMMISSIONER:    Thank you.
14
15     MR PARISH:    Q.    There's been some evidence that there was
16     a perception that some councillors were favoured over
17     others and given information that other councillors were
18     not given.  Did you ever see or experience that in the
19     2016-2020 term?
20     A.    Absolutely not.  My view was, and it was the view that
21     all my staff were instructed was, that we were here to
22     assist all the councillors equally, to treat them with
23     respect and provide them with equal access to information.
24
25     Q.    Do you have any insight into why that perception grew,
26     at least within some councillors, in the 2016-2020 term?
27     A.    Well, senior staff were in an unenviable position
28     because councils make decisions and more often than not
29     they're not by majority; sometimes they're by a casting
30     vote or whatever it may be.  So, three, four of the
31     councillors may not agree with the decision of council, but
32     the staff have to get on and enact that decision of
33     council, we don't have the choice.
34
35          So, some of those councillors who feel that, you know,
36     they didn't get justice in the council chambers then take
37     the view that, if the staff enact those things, that
38     they've taken a position.  They haven't taken a position,
39     you have to do your job; you have to do what the council
40     determines by majority.  I can't decide that, oh well,
41     those four councillors don't want it and those four
42     councillors do; what do I do?  I've got to get on and
43     deliver what the council decision is, you don't have any
44     choice.
45
46     Q.    In your view that sort of behaviour, does that
47     indicate to you that the councillors didn't understand
```

1   their roles and responsibilities?
         2   A.   Quite possibly. I think sometimes it was just that,
         3   how can I put it? They didn't accept the process.
         4
         5   Q.   I'm thinking of the obligation of councillors to, I
         6   think, uphold and not misrepresent decisions of council.
         7   A.   Absolutely, once the council's made a decision, the
         8   decision is made.
         9
        10   Q.   Did you ever strategise with Mayor Gair about how to
        11   get reports over the line in council?
        12   A.   No.
        13
        14   Q.   Did you ever strategise with Mayor Gair about
        15   providing selective information to certain councillors to
        16   attempt to get certain reports over the line?
        17   A.   Absolutely not.
        18
        19   Q.   Did you ever have meetings with both Mayor Gair and
        20   Councillor Nelson to do such things?
        21   A.   Absolutely not.
        22
        23   MR PARISH: Those are the specific topics I was going to
        24   touch on, Commissioner.
        25
        26   THE COMMISSIONER: Yes.
        27
        28   Q.   In the 2016-2020 period was there another occasion
        29   where a councillor or a mayor during that period directed
        30   you to undertake particular tasks?
        31   A.   I was pressured on many things: emails from
        32   councillors about many things: do this, fix that road, fix
        33   these potholes, trim Mrs Jones's trees, mow the footpath
        34   out the front of Mr Smith's house, hundreds of requests
        35   from councillors. Now, they were councillor requests, they
        36   should have went through councillors' formal action request
        37   system, but councillors chose to send those things directly
        38   to deputy general mangers. Now, was that then directing
        39   me? No, but it was then pressuring me, on many things.
        40
        41   THE COMMISSIONER: Yes, thank you. Mr Parish?
        42
        43   THE WITNESS: Fairly common in local government.
        44
        45   THE COMMISSIONER: Q.   Well, that may be. What I'm
        46   exploring with you is whether requests in form are, in
        47   substance, directions?

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 1    A.    Well, my view is that requests from the community
 2    should go through a process.  They should be recorded
 3    through councillors' Customer Information Centre, they
 4    should be triaged, they should be risk assessed and they
 5    should be prioritised, and they should be dealt with on a
 6    priority basis so that everybody gets a fair go.
 7
 8         Some councillors encouraged the community to go direct
 9    to them, and the inference was that you'd go around that
10    process and that they would get into the earhole of whoever
11    they needed to, to get things happening for that particular
12    resident.  That is pretty common in local government.
13
14    Q.    It might be common, but is it appropriate?
15    A.    No, it's not, and as an officer of council you have to
16    resist that, and we tried to.  We continued to remind the
17    councillors of the proper process for the community to
18    lodge customer requests, we made them aware of the system
19    that we had in place to triage and prioritise and to
20    deliver on those things, and we actually had regular
21    reports at senior management level as to how many action
22    requests we had, where they were up to, the risk profile,
23    so that we do try and manage those in a fair and proper
24    way.
25
26    Q.    And the orderly management of matters like that, I
27    assume, is something that's important to the efficient
28    conduct of council business, is it not?
29    A.    Absolutely, absolutely.
30
31    Q.    And by taking these matters direct to staff, let's
32    just assume for the moment in accordance with the
33    interaction policy, does that hinder the efficient
34    operation of council business?
35    A.    Absolutely.  I mean, I used to get text messages from
36    particular councillors 24/7.  The group manager below me
37    that manages the infrastructure says it's part of the
38    business, or used to, used to get peppered with them.
39
40    Q.    And you've described them as being on occasion
41    "pressuring"; have I understood you correctly?
42    A.    Pressuring, robust, on occasions abhorrent.
43
44    Q.    But you still fall short of describing them as a
45    direction, do you?
46    A.    You had to make --
47
```

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1    Q.   At least in your own mind?
2    A.   Yes - well, you had to make a decision about what was
3    the level of risk, what was the proper process I would -
4    well, what would be the decision I would make if it went
5    through the proper process.
6
7    Q.   Yes, I appreciate you would apply a proper process to
8    it, but things of this type were received by your
9    colleagues, I take it?
10   A.   Yes.
11
12   Q.   And, did any of them ever express to you a view that
13   they were not merely requests but directions?
14   A.   On occasions, yes.
15
16   THE COMMISSIONER:   Thank you.
17
18   MR PARISH:   Q.   Just on that topic but moving forward in
19   time slightly, have you had any communications with
20   councillors post you leaving the organisation and after
21   this inquiry was announced?
22   A.   Occasionally I say hello to some of the former
23   councillors; they're people I know, people I respect.  Have
24   I had any conversation with any councillors about my
25   evidence here?  No.  Have I had any conversation with any
26   councillor about what evidence they're going to give?  No.
27   Have I said hello?  Yes, "How are you going? ".
28
29   THE COMMISSIONER:   Again, thank you, but none of that was
30   in the question.  Just listen carefully to the questions
31   that Counsel Assisting is asking you.  None of those latter
32   propositions were put to you.  Listen carefully.
33
34   MR PARISH:   No, I'm just seeking some --
35
36   THE COMMISSIONER:  Listen carefully.
37
38   THE WITNESS:   I've had a cup of tea with the mayor.  I've
39   had a cup of coffee and a motorbike ride with Councillor
40   Markwart, because I enjoy motorbikes and he does.
41
42   MR PARISH:   Q.   Maybe I'll just shortcut your answer by
43   asking you whether you were discussing evidence in this
44   inquiry or indeed this inquiry at all?
45   A.   No.
46
47   Q.   Thank you.
```

1   A.   I've not followed this inquiry, I've not watched any
2   of it.
3
4   Q.   You're missing out. Can I just ask whether there are
5   any other topics that you wish to address the Commissioner
6   on?
7   A.   There is.
8
9   Q.   The way we've been dealing with it is perhaps if you
10   can give me the topics and I'll ask you about them if it
11   fits within the terms of reference.
12   A.   Okay. Well, the performance improvement order that
13   was issued by the Minister in September 2020 talked about
14   the occupational health and safety risk to staff.
15
16   Q.   Yes.
17   A.   The letter, I think, that was issued to myself and the
18   mayor when the Minister was indicating that she was
19   considering suspending the council also talks about
20   concerns about the occupational health and safety of the
21   staff. That doesn't seem to be a priority in this
22   Commission of Inquiry and I guess --
23
24   THE COMMISSIONER: Q.   I thought you weren't watching.
25   A.   Well, I've read the terms of reference.
26
27   THE COMMISSIONER: Please continue.
28
29   MR PARISH: Q.   We might just pick up on that topic.
30   What was your view about the, I think, reputational risk,
31   and health and safety might have been mentioned in some of
32   those documents; did you --
33   A.   Well, in terms of health and safety, that's what I'd
34   like to prioritise.
35
36   Q.   Yes.
37   A.   In terms of the health and safety of the senior
38   staff - I don't want to speak too much about Ann
39   Prendergast, but it seriously affected her health, to the
40   point where - and I don't think she'll mind me saying - she
41   was at the point of having a mental breakdown virtually.
42
43   Q.   Is your evidence that you're agreeing that there was
44   occupational health and safety risks --
45   A.   Absolutely.
46
47   Q.   -- caused by the conduct of councillors?

```
1      A.    Absolutely.
2
3      Q.    Thank you.  What other topics did you want to touch
4      on?  I might just expand on that.  There's reference in
5      multiple places to the "toxic culture"; do you have any
6      insight or thoughts on that?
7      A.    If you're - it's been suggested to me that there's
8      been evidence given that there was a toxic culture in the
9      workplace or the operational part of council.
10
11     Q.    Yes.
12     A.    My frank response to that is, I find that a little
13     insulting to the highly professional and dedicated staff
14     that worked in this organisation, through very difficult
15     times, through bushfires, floods, COVID, et cetera.  I
16     don't accept that, that that was the case.  In my opinion,
17     and that's only my opinion, the operational part of council
18     was actually delivering despite the councillors.
19
20     Q.    Yes, thank you.
21     A.    And the culture was good - or it was, given the
22     times - I mean, COVID is something we've never experienced;
23     the bushfires of 2019-2020 were something that this shire's
24     never experienced, so it was very challenging for the staff
25     in terms of coping with all of those things.
26
27     Q.    Thank you.  Any other topics you want to touch on and
28     I can explore them if they're within the terms of
29     reference?
30     A.    Not that I can think of, no.
31
32     MR PARISH:    Thank you, Mr Paull.
33
34     THE COMMISSIONER:    Q.    Can I just pick up the staff
35     issue.  Do you think the staff, at all levels - let's just
36     take it group manager and below for the moment and then
37     I'll come back to the senior staff.
38     A.    Yep.
39
40     Q.    Do you think that they were supported by the governing
41     body in 16-20?
42     A.    By the council?
43
44     Q.    M'mm?
45     A.    I think the staff were - I used the word previously -
46     "bewildered" by their behaviour; that certainly had an
47     effect because it damaged the reputation of the whole
```

1   organisation, including the people that worked in it, and
2   the fact that the staff were, again, in my opinion, were
3   stepping up and were delivering, the community saw the
4   whole organisation as a rabble, I guess, and that's not the
5   case.
6
7   Q.   And, what about the senior management? Do you think
8   they were supported by the governing body of 16-20?
9   A.   No.
10
11   Q.   Are there any other incites into that answer that you
12   would wish for me to take heed of?
13   A.   Well, again, only observations about, working in local
14   government at a senior level, and I'm not looking for any
15   empathy or anything like that, it's a very challenging
16   position to be in because you've got the community, you've
17   got the councillors, you've got the staff, sometimes all
18   wanting different things; you have a role to play in terms
19   of how local government functions, so that's very
20   challenging.
21
22   I mean, you can be in the pub on the weekend and
23   someone will challenge you about what council's doing.
24   Now, that's part of being a senior manager in local
25   government, but other staff at various levels in the
26   organisation, as I understand, were being challenged as
27   well about, "What the hell is council doing?" That's tough
28   because they can't influence that and, as I've said, senior
29   staff have a limited ability to influence the behaviour of
30   councillors as well.
31
32   In terms of the reputation of this council, we were
33   doing our best to put the positive messages out there. We
34   were also doing our very best at a senior management level
35   to let the staff know that they were doing things well and
36   giving them positive feedback where they were achieving
37   what they needed to achieve, and thanking them for their
38   efforts and being out amongst them to actually congratulate
39   them in what they were doing.
40
41   I understand again - and, as I said, I've only had
42   this passed on to me by third parties - that there's been
43   some criticism of that. We did the best we could in the
44   circumstances.
45
46   Q.   Does all of that highlight the importance of a
47   cohesive working relationship between the governing body

```
 1    and the senior management of the day?
 2    A.    Absolutely.  If there's not trust between the senior
 3    management team, the mayor and the council, then an
 4    organisation is going to be dysfunctional.  It's the most
 5    important thing in local government.  I've had the pleasure
 6    of working here under two councils where that trust was in
 7    place and there was a very good working relationship, and I
 8    actually enjoyed working with the 2000 council and the 2004
 9    council.  It got a lot tougher after that.
10
11    Q.    And I take it from that answer that the trust between
12    the executive team, if I can put it that way - I appreciate
13    that's lumping you all together, but you understand what
14    I'm driving at - and the governing body broke down over
15    time; is that how I understand it?
16    A.    With certain individuals in the governing body.
17
18    Q.    And when did that start to happen?
19    A.    2008.
20
21    Q.    And it persisted right through until --
22    A.    Look, it ebbed and flowed; various times it was worse
23    than others.  I mean, the disruption in this organisation
24    from changes in senior management have also been very
25    disruptive as well; just part of the challenges of working
26    in local government.
27
28    THE COMMISSIONER:    Indeed, yes.  Anything arising?
29
30    MR PARISH:    No, Commissioner.
31
32    THE COMMISSIONER:    Are there any applications?  No.
33
34          Mr Paull, thank you very much for your attendance
35    today, I do appreciate that answering a summons is probably
36    not the thing that most people want to be doing on a Friday
37    afternoon and it would have taken you away from your other
38    activities, so your time is much appreciated
39
40    THE WITNESS:    Thank you very much, Commissioner.
41
42    THE COMMISSIONER:    Mr Parish, can Mr Paull be excused?
43
44    MR PARISH:    Yes, Commissioner.
45
46    THE COMMISSIONER:    You are excused from further attendance
47    under your summons.  Just leave any of the papers that were
```

```
 1        there, and you're free to go.
 2
 3        <THE WITNESS WITHDREW
 4
 5        THE COMMISSIONER:   Does that complete our evidence for
 6        today?
 7
 8        MR PARISH:   Yes, Commissioner.
 9
10        THE COMMISSIONER:   Is there anything else I need to do
11        today?
12
13        MR PARISH:   I'll just foreshadow that we appear to have --
14
15        THE COMMISSIONER:   I'm sorry, just pause.  I'm sorry, sir,
16        gentlemen, we're still in session.  You're free to leave
17        but any discussions outside, please.  Yes?
18
19        MR PARISH:   We've appeared to have finalised our witness
20        list for next week and we'll be posting that on the website
21        shortly.
22
23        THE COMMISSIONER:   Excellent, all right.
24
25        MR PARISH:   We'll be examining Councillor Whipper first up
26        on Monday morning.
27
28        THE COMMISSIONER:   Yes, all right.  What about
29        Ms Miscamble?
30
31        MR PARISH:   Arrangements are still trying to be made in
32        that respect.
33
34        THE COMMISSIONER:   All right, yes.  All right, if there's
35        nothing else I need to do now, adjourn until 10am Monday.
36        Thank you.
37
38        MR PARISH:   Thank you, Commissioner.
39
40        AT 1.51PM THE INQUIRY WAS ADJOURNED TO
41        MONDAY, 11 APRIL 2022 AT 10.00AM
42
43
44
45
46
47
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