



PUBLIC INQUIRY INTO LIVERPOOL CITY COUNCIL

**COMMISSIONED UNDER S 438U OF THE LOCAL
GOVERNMENT ACT 1993 (NSW)**

**PUBLIC HEARING
SYDNEY**

**MONDAY, 18 AUGUST 2025
AT 10.09 AM**

DAY 15

APPEARANCES

**Ms T McDonald SC, Counsel Assisting
Ms B Anniwell, Counsel Assisting
Mr E McGinness, Counsel Assisting
Mr J Emmett SC with Mr D Parish and Mr N Andrews, Counsel for Liverpool
City Council
Ms K Richardson SC, Counsel for Mayor N Mannoun
Ms C Hamilton-Jewell, Counsel for Mr P Ristevski
Ms J Gallagher, Counsel for Mr S Mallard**

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to any direction against publication commits an offence against s 12B of the Royal
Commissions Act 1923 (NSW).*

<THE HEARING RESUMED AT 10.22 AM

COMMISSIONER: Yes, Ms McDonald.

5 **MS McDONALD:** Commissioner, just one matter of administration.

COMMISSIONER: Yes.

10 **MS McDONALD:** Last time we were here on the Friday we heard evidence from Emily Tinson and she was shown a number of documents. We've forwarded to Council's solicitors a list of documents that we wish to tender. There's just going to be some double-checking about whether there needs to be any additional non-publication orders or applications for non-publication orders. So we can't deal with that at the moment, but hopefully we will be able to deal with it some time
15 during today.

COMMISSIONER: Thank you. And ready for Mr Mallard?

20 **MS MCDONALD:** Yes.

COMMISSIONER: Mr Mallard, come forward. We will just have you re-affirmed since it has been a while since you were here last.

25 **<SHAYNE MALLARD, AFFIRMED**

COMMISSIONER: Thank you. Yes.

30 **MS McDONALD:** Mr Mallard, I'm going to turn to a new topic and that is the sale by Council of lots 101 and 102 of the Hammondville Park area to what's known as Sporties or the Moorebank Sports Club.

MR MALLARD: Yes.

35 **MS McDONALD:** Now you had some involvement with that sale.

MR MALLARD: In the - sort of the concluding end of it, yes.

40 **MS McDONALD:** And as part of your involvement, did you engage an external firm to provide a probity report about the procedure that had been followed in respect of the proposed sale?

45 **MR MALLARD:** The - as I said, I inherited a transaction that had been undertaken largely - it goes back a decade, but largely been driven by Mr Ajaka before I became a director, and we were at the pointy end of the sale contract and the report to Council. Mr Galpin, David Galpin, legal - senior legal counsel or legal counsel at the Council had drawn to my attention he felt that the draft - it was only a draft at that time - unsolicited proposal policy hadn't been strictly adhered to, which came as

a surprise to me, as it - you know, as I had inherited a process, but nonetheless - and felt there needed to be a probity report done, which the policy requires to have an independent probity officer appointed, having to use that - that policy.

5 I agreed with that and went to - at this point Jason Breton was acting CEO - went to Jason and said this report was already written, can't go to - I don't recommend it goes to Council, and I had to authorise it at the next Council meeting - to do the approval of the transaction. We needed to do the probity report. David's recommended it. It is the policy. We could get caught up on this. And Jason took it on notice and then
10 came back to me and agreed that we do that, and then I think either Galpin or Procurement - anyway, went through the process and appointed a probity adviser. I think a delayed - they wrote a report. From memory, it was a good two months' delay. Yeah.

15 **MS McDONALD:** As you said, this transaction had a history. What I propose to do is to take you first to the probity report, which contains within it a history of - excuse me for a minute - a history of the project, just to kind of give an indication of what had occurred and then to earmark when you became involved. Could document LCC.004.003.8394 be brought up, please. And if we can just pause before we live
20 stream it. We can now live stream it. And would you please go to page 75.

Just to orientate you, Mr Mallard, this document is part of a report that went to the Audit Risk and Improvement Committee meeting of 19 July 2024. That is the first page of this probity report. As you can see, review of the proposed sale of two lots at
25 Hammondville Park to Moorebank Sports Club with a date of June 2024. Would you go to page 76, please. And just pausing there. This is a letter from O'Connor Marsden dated 18 June 2024 addressed to David Day, Head of Governance. And you can see it has got:

30 "Probity review report, proposed sale of land at Hammondville Park."

MR MALLARD: Yes.

MS McDONALD: Now, if you would then go through to page 78, we've got the
35 table of contents. And the part I want to draw your attention to first is on page 79. Now, under Executive Summary, the first section there, you can see O'Connor Marsden refers to their engagement:

40 "Provided in accordance with terms and conditions of our fee proposal dated 28 May 2024."

So just pausing there. We've got a letter dated 18 June. We've got a reference to the fee proposal which appears to have been accepted dated 28 May. So it would appear that the report has been prepared from the end of May to about 18 June.

45

MR MALLARD: Okay.

MS McDONALD: Does that accord with your recollection?

MR MALLARD: The dates seem to be right to me, yes. Yep.

5 **MS McDONALD:** Now, just to give some background, I wanted to take you to section 1.1 Project Background. And obviously a lot of this predates your employment at the Council. But you can see as early as 2012, Sporties - that the club's referred to - has expressed a desire to purchase part of the adjoining Council-owned land.

10 **MR MALLARD:** Indeed. I was there in 2012, and it was being discussed back then.

MS McDONALD: Right. Okay.

15 **MR MALLARD:** Yes.

MS McDONALD: And then again, just jumping on through this, you can see that it's caught up also with the question of the Hammondville Park Masterplan, which, again just summarising, that appears to have been either amended or reviewed over
20 this period of involving the proposed sale as well?

MR MALLARD: Yes.

MS McDONALD: And then in that Project Background, if you can jump to 11
25 August and then 11 September 2019. Do you see that?

MR MALLARD: Yes.

MS McDONALD: You've got Sporties submitting an offer to Council, this time for
30 three lots: 101, 102 and 103. Then in the next paragraph, a report was developed, but ultimately the offer was rejected on the basis that it did not support the Council's approach for the area.

MR MALLARD: Yes. And again, that's not when I was at the Council and all, but,
35 yeah, I - that is the background.

MS McDONALD: No, no, no, no. I'm just giving you some background.

MR MALLARD: Yes. Yes. And that was three lots and there were - wound up been
40 two lots.

MS McDONALD: Yes, ultimately.

MR MALLARD: Yes.
45

MS McDONALD: Then there's a reference to a review in 2021 which highlighted the need for aquatic centres, leading to the inclusion of swimming pools in the

100-day plan adopted on 2 February 2022. Again, you weren't there at the time but is that your understanding that a mayoral minute was presented at that -

MR MALLARD: Yes.

5

MS McDONALD: - council meeting which proposed, I think, two swimming pools?

MR MALLARD: From memory, that's correct. Yes.

10 **MS McDONALD:** Now, if you then jump to the second entry dealing with June, you've got Sporties submitting an offer to Council for purchases again of the three lots. But Council informed Sporties that lot 103 was not for sale. And then we've got in August an offer on behalf of Sporties for only lots 101 and 102 for about 6.7 million, and then on 4 October the same offer being made, but this time an
15 independent valuation obtained by Sporties and a traffic engineering report and another cost estimate report were provided as well.

MR MALLARD: Mm-hmm.

20 **MS McDONALD:** And then if you go across the page, you've got the council meeting on 25 October 2023, where there is - it's under the heading dealing with the Hammondville Park Masterplan, but the CEO was authorised to explore the disposal of operational land at Hammondville Park, subject to an offer from the club. And then on 13 December there was a resolution to sell the proposed lots. Then at the 7
25 February 2024 council there was a resolution to rescind the December resolution. That was not passed, but there was a resolution to defer sale of the proposed lots until extensive community consultation had been completed.

MR MALLARD: That's correct, yes.

30

MS McDONALD: That was then undertaken. And then we've got a report on 26 June with the recommendation of approve the sale of the two lots again. And then ultimately, is it your understanding that - excuse me - at that July meeting there was - the Council resolved to defer the matter for further due diligence and other
35 matters set out in the Audit Risk and Improvement Committee minutes. Then in August there was a further rescission motion for the proposed sale, seeking that the Council considers the concerns raised by the ARIC. That motion failed and the motion passed to approve the sale. Then on 28 August there was a further rescission motion. That failed, and ultimately on 26 October contracts were executed with
40 a settlement date of 30 June.

MR MALLARD: Yes. Well, the report - the probity report went to ARIC, which is appropriate because it was an issue of risk. And ARIC took apart the probity report concerned, and that's where they're talking about the minutes of the ARIC meeting.
45 We took the probity report and addressed the concerns it raised.

MS McDONALD: Okay. I'm going to stop you there, because we will get to that in a little bit more detail.

MR MALLARD: Okay. All right. Yep.

5

MS McDONALD: But my first question is, taking you through that chronology, does that roughly account with your recollection of the events?

10 **MR MALLARD:** It does. I point out the - sort of, the late end - the tail of this is when I got quite directly involved.

MS McDONALD: Well, Sorry, that's - first question, does that account with your recollection?

15 **MR MALLARD:** Yes, it does. Sorry. Yes. Yes, it does.

MS McDONALD: And your involvement, you spoke about - you did describe it as the pointy end or the tail end.

20 **MR MALLARD:** The tail end, yes.

MS McDONALD: And a conversation with - was it David Galpin?

25 **MR MALLARD:** Yes. I see David Day's there as well, but David Galpin would be the one I mainly spoke with about - sorry, David Galpin very clearly was who spoke to me about his concerns about the issue of the probity.

30 **MS McDONALD:** Now, given that it seems that it was the end of May that O'Connor Marsden was engaged to prepare the probity report, roughly when did you have that conversation with David Galpin? Excuse me for a minute. Sorry, Commissioner.

MR MALLARD: He is present.

35 **MS McDONALD:** Yes.

MR MALLARD: So I'm being very careful.

40 **MS McDONALD:** Roughly when did you have the conversation with Mr Galpin?

45 **MR MALLARD:** Again, I would have to refer to my notes on that, but my recollection was it was a phone call conversation and - well, obviously it gave rise to the probity report, so you have to land the date in that period before that May commissioning of the - the letter from them on their fees and services, which didn't involve me - that would have been Mr Galpin's area. So one would assume that would be closer, actually, within - April, May, yeah. I'm just surmising from that.

MS McDONALD: Before that conversation with Mr Galpin, did the sale of this property come within your directorate?

5 **MR MALLARD:** Yes. So when my directorate was created, a new commercial property unit was created but it had no staff, and I had to go through a recruitment process to recruit staff. And much of the earlier part of that transaction was - and the reports to Council were in the hand of John Ajaka, as CEO. He was doing that negotiation - I guess in the absence, because property was handled in a sort of
10 broader sense in Farooq Portelli's area before that and there wasn't a real commercial focus in there, hence why they created a commercial team in my team.

And so it - towards that tail end - by then, I recruited two professionals from the sector and we started to do the work on finalising that negotiation. But Mr Ajaka had actually concluded the negotiation, which was quite a good outcome for Council in
15 the end. And then I got involved with the report. I was involved in the consultation, so we had - saw the - it's all a bit blurry for me, actually, but we saw the council - a resolution to rescind it failed, then the mayor put up an alternative resolution, which was to conduct an extensive community consultation about the sale, and then my team, community development team and property team undertook that
20 consultation - extensive consultation.

MS McDONALD: And that was the consultation that took place over February and March and April?

25 **MR MALLARD:** So that's the 7 February - the note there, at the council meeting on 7 February council rescinded the council decision from 13 December, and instead resolved to defer the sale of proposed lots until extensive community consultation had been completed, which then we undertook.

30 **COMMISSIONER:** There were three lots contemplated from time to time?

MR MALLARD: Yeah.

35 **COMMISSIONER:** So do you - just - lots 1 and 2, what were they being used for prior to the sale?

MR MALLARD: Free-of-charge community car parks.

40 **COMMISSIONER:** I see. And lot 3?

MR MALLARD: I think, from memory, that's a car park as well. And it was extracted - they were quite contiguous, but they were - you know, they were - in fact, we had to subdivide it in the process.

45 **COMMISSIONER:** And this is part of a larger public space sporting precinct, is it?

MR MALLARD: Yes, sporting precinct. That's right. The Masterplan which was referred to here is to develop a hub of sport, child care, library, that type of thing. It's a big, sort of, vision for the precinct.

5 **COMMISSIONER:** And the club had some land adjacent to this facility?

MR MALLARD: In the centre of it, in fact.

COMMISSIONER: I see.

10

MR MALLARD: And that's historical - way before our times, the club - a community club somehow got some land there right on the sporting field and - but it was totally landlocked. Surrounded by our Council land, and -

15 **COMMISSIONER:** Surrounded by sporting fields and the like?

MR MALLARD: Sporting fields and car parks.

COMMISSIONER: Yes.

20

MR MALLARD: Council-owned. And they were - they had a desire to expand their footprint to - because they didn't have function rooms or anything - at capacity, and had landholdings in other Local Government areas, so they were quite clear they might pull out of there and go somewhere else. So there was a, sort of, community benefit that we could see - and working through the complex issues of the land ownership and the use of the land to conclude this transaction.

25

COMMISSIONER: Thank you.

30 **MR MALLARD:** And the consultation came back very positive. So long as we hypothecated the sale revenue to this - to the Masterplan. That was the community consultation.

COMMISSIONER: Sorry, what was the last part?

35

MR MALLARD: The revenue for the sale of - to - there's a couple of things that came back from the community consultation. One is that the parking had to be retained -

40 **COMMISSIONER:** Yes.

MR MALLARD: - free of charge, in perpetuity. And that the sale revenue would be hypothecated or applied to the Masterplan for the precinct. The community didn't want the money disappearing into the -

45

COMMISSIONER: Put back into the very facility from -

MR MALLARD: Yeah. That's right. Yes.

5 **MS McDONALD:** Would you bring up document LCC.014.002.1518. This was a confidential report which was provided to the Council for the 13 December 2023 meeting. And that can be live streamed. Now, from the first part of the report - you approved the report?

MR MALLARD: Yes.

10 **MS McDONALD:** So it has been generated by Mr Simat within the directorate?

MR MALLARD: Yes.

15 **MS McDONALD:** And would you go to page 5, please.

COMMISSIONER: As usual, I was jumping ahead.

MR MALLARD: It's a good refresher for me too.

20 **MS McDONALD:** It's described, at the beginning of that:

25 "The Moorebank Sports Club has been seeking opportunities to maintain community relevance and has represented its vulnerability and its landlocked position in the precinct."

Now, it's not the best photo. So the green section is lot 101. The red section is lot 102 and then lot 103 that wasn't sold is blue.

30 **MR MALLARD:** That's correct.

MS McDONALD: And then next to the boundaries of 101 and 102, there appears to be a building. Is that the sports club?

35 **MR MALLARD:** That's correct.

MS McDONALD: Right. And you can't really see, but - well, you can see there's at least one oval.

40 **MR MALLARD:** Yes.

MS McDONALD: And there's other green space to the right of the photo and also above it.

45 **MR MALLARD:** Yes. And you can see the club is totally landlocked there in that diagram. The main road there is the only road frontage on the red block of land 102.

MS McDONALD: You may not know this, but did the club have some kind of easements or something like that over either 102 or -

5 **MR MALLARD:** I don't know the answer to that. We applied - we created easements in the sale process so that we had right of way over it to get to the sporting fields and so forth, but I'm not sure what rights the club had to access, no. It's -

10 **MS McDONALD:** Now, you spoke about, I think at this point of time, a draft unsolicited proposal -

MR MALLARD: Policy, yes.

MS McDONALD: Policy.

15 **MR MALLARD:** Yes.

MS McDONALD: And to your knowledge, was it built from an ICAC publication?

20 **MR MALLARD:** Guidelines, yes.

MS McDONALD: Guidelines. And when you had employed your commercial property people and they were then looking at this proposal or the offers that were being made, to your knowledge, had they turned their mind to the draft unsolicited proposal policy?

25 **MR MALLARD:** No, the answer is no. We hadn't. It had basically been sitting in - not put on exhibition - hadn't been processed through the system, so I wasn't highly aware of this policy, I acknowledge that, until Mr Galpin brought it to my attention. I know Julie -

30 **MS McDONALD:** Scott.

MR MALLARD: - Scott had raised it with me as well. And so it felt really like - and also I wasn't 100 per cent certain - until Mr Galpin spoke to me, I wasn't
35 100 per cent certain that it applied to this, because the Council - for 10 years the Council had been doing this negotiation on and off, and it was - and the Council seemed as eager to do something transactional with the club, as much as the club was with us, so I wasn't quite, in my head, clear that this was an unsolicited proposal. Today I acknowledge it was. But once it was brought to my attention, the
40 shortcomings, then we - then I straightaway said let's get the probity report done.

MS McDONALD: And you've already mentioned this in your evidence, but one of the problems with engaging the probity company in about May of last year was that by that time there had been a lot of negotiations and a lot of the matters that either
45 the ICAC document or your unsolicited proposal policy required just hadn't been undertaken.

MR MALLARD: Yes. So the highlight of the shortcomings in the report - and, you know, it was an education curve for myself. And subsequently, when I was still there, we were applying that policy to other unsolicited proposals much more vigorously, but nonetheless, it was an important document for us to - and the club
5 was very upset that we had to go through - we'd just done a community consultation and then we did this report and had to go back to square 1 on a number of matters. You know, I think it delayed the whole process for quite a few months.

MS McDONALD: Would you bring up LCC.004.003.8394 again. And if you would
10 go to page 81, please. This is the summary of the O'Connor Marsden probity report. It sets out, first dot point:

"Though there's been documentation of most recent discussions and negotiations".

15 They say further documentation could be included in the Council report for 26 June meeting, setting out a number of dot points:

"Confirmation that individuals involved in the process did not have interests
20 of associations which could rise to conflict. Justification for the decision to proceed with a non-competed direct negotiation sale, consistent with the ICAC guidance material. Detailed evaluation of the proposal against identified criteria, such as those in the Council's draft unsolicited process guide."

25 Then there's a lack of documentation in respect of the initial discussions and negotiations. Then there doesn't seem to be any formal approval of the decision to enter into discussions and negotiations on or around the time of the Council entering into the memorandum of understanding. First formal approval appears to be the council resolution from the meeting of 25 October 2023, which was after the most recent offer from Sporties. So the guidelines and the ICAC document, it usually - it
30 doesn't usually - it applies as soon as there's some kind of unsolicited proposal made and it involves matters such as determining whether there - should be pursued or whether - you know, direct negotiations with the entity or whether some other market-driven or market involvement -

35 **MR MALLARD:** Yes.

MS McDONALD: And none of that had been done?

MR MALLARD: No. That earlier work, in that - the first steps of the unsolicited
40 proposal policy hadn't been applied, no.

MS McDONALD: They raise lack of documentation, really, until the latter part of the negotiation.

45 **MR MALLARD:** Yes.

MS McDONALD: When you were reviewing documents, did that accord with your observation?

5 **MR MALLARD:** Well, there weren't many documents in terms of the ones lacking that they refer to. There weren't those documents to - to review. I mean, the CEO, Mr Ajaka, had been doing the negotiations directly, and I think from memory the way we were able to address that to the satisfaction of the probity auditors was that Mr Ajaka would nearly always dictate an email to Sporties, copying in perhaps our lawyers - I don't know - or property people or another director - not me, because
10 I wasn't a director at that time - stating what the situation was and negotiations were. So we were able to sort of piece together the discussions.

MS McDONALD: But they weren't a contemporaneous -

15 **MR MALLARD:** No, there was no contemporaneous diary notes kept of those meetings. That was the shortcoming.

MS McDONALD: They also identified lack of declarations of no conflict of interest -

20 **MR MALLARD:** That's correct.

MS McDONALD: - by various parties involved. That was one of the matters that was attempted to be rectified retrospectively?

25 **MR MALLARD:** That's correct. And, in fact, it included me because I was involved in that last part of it. And we apply it - we applied that and this - there was no conflicts of interest.

30 **MS McDONALD:** Did you include in declarations of no conflict of interest the councillors and the mayor?

MR MALLARD: I don't - I can't answer that question. I only dealt with the commercial - my directorate side of it. So I can't answer that question.

35 **MS McDONALD:** Once this report was received - as we'll see in a minute, it was provided to the Audit Risk and Improvement Committee and, of course, their minutes eventually go to a council meeting - but any of the concerns raised in the probity report about the proceedings up until, let's say, May 2024, who then took
40 over whether their concerns could be retrospectively dealt with?

MR MALLARD: Our concerns or the probity adviser's concerns.

MS McDONALD: We'll start with the probity concerns.

45 **MR MALLARD:** I think it - I think - again, I'm not certain how - what the process was that were used, but I think it would have involved Mr Galpin, myself putting

together the material that was - and Steve Simat, who - I think Steve was quite involved in that - to address those concerns.

5 **MS McDONALD:** And as part of that, did you raise with Council conflict of interests that may have arisen or declarations by councillors or the mayor that they had no conflict of interest?

10 **MR MALLARD:** I don't recall doing that. And as I said a minute ago, it was really focused on the professional staff involved in the negotiations - or frankly, anyone who touched the transaction.

15 **COMMISSIONER:** Mr Mallard, I've just been passed a note from those down the line taking the transcript. If you wouldn't mind just speaking a little slowly this morning.

MR MALLARD: Okay.

20 **COMMISSIONER:** It's not your volume today. It's just the pace. It's all right. I can't count how many times I've been asked to do the same, so it's no criticism.

MR MALLARD: All right. That's okay.

25 **COMMISSIONER:** Just go a little bit slowly. That would be wonderful. Thank you. We'll get you some more water.

MR MALLARD: We have a jug here today.

COMMISSIONER: Excellent. We're prepared.

30 **MS McDONALD:** Could we go back to page 70 of this document. So was the procedure, Mr Mallard, the probity - independent probity group were engaged, they provided the report. I've taken you to the executive summary of the report.

35 **MR MALLARD:** Yes.

MS McDONALD: You were then provided with a report. And then, using that as a basis, this report to the Audit Risk and Improvement Committee was then written.

40 **MR MALLARD:** Yes. So I'm not sure how that came about, but it's appropriate to send that sort of report - critical of the process that we had engaged - to Audit and Risk, to bring it to their attention. And George Hampouris - he didn't report to me, he was - reported to Michelle in - in Audit and Risk, and - yeah, so he would have prepared this report based on our report.

45 **MS McDONALD:** And you just have a look at the Summary Overview there. In the second paragraph, it said:

5 "In response to the probity matters identified through the report, Council has actioned all possible due diligence activities with regards to the potential sale. All other opportunities which could not be applied retrospectively will be treated as future focused, with a view to implement these as part of continuous improvement of Council's processes."

10 Now, can I just pause there. The actioning of "all possible due diligence activities", you're referring to due diligence matters that hadn't been undertaken but still could be undertaken?

MR MALLARD: Yes, conflict of interest forms. Yes.

15 **MS McDONALD:** Right. But then you identified that there had been some that could not be applied retrospectively. Do you recall what they were?

20 **MR MALLARD:** Well, clearly the minutes of direct negotiation meetings that - that - they weren't taken. That's particularly one of the areas that we had to deal with. Other areas like applying - the requirement to have a resolution to start negotiations was - that wasn't clear that needed to be done, but under the guidelines it does. So that can't be retrospectively done. And the issue of the - applying the decision - applying the proposal to the Council's strategy, community strategic plan, the Hammondville Masterplan, that hadn't been done. Retrospectively we could do that, and that ticked the boxes and we did that community consultation as well.

25 Yeah. And then the talk about continuous improvement, Council hadn't advanced the draft unsolicited proposal policy. It had been sitting in draft for some time. And as a result of this, we did - we put it through the Council, put it on exhibition and applied the learnings to other - future unsolicited proposals, and councils get a lot of those. And I think - I could be corrected, but I'm told we're one of the few councils that
30 actually has a formal policy, we - they, now - one of the few.

MS McDONALD: When was the draft unsolicited proposal policy devised or drafted?

35 **MR MALLARD:** Before my time.

MS McDONALD: So before when you started in 2023?

40 **MR MALLARD:** That's correct.

COMMISSIONER: In that answer, the earlier answer, you mentioned that one of the things that could be addressed retrospectively was applying the proposal to the strategic plan.

45 **MR MALLARD:** Yes.

COMMISSIONER: Could you just explain to me what you meant by that?

MR MALLARD: Well, the Hammondville Masterplan was adopted by Council which included, I could be corrected here, but I think it included the disposal of those two car parks. A subsequent amendment included that, it had already been identified.
5 And the Masterplan for the sporting precinct which included a role for Sporties, and other community facilities going into there. Then you look at a broader community strategic plan which the Council has to adopt at the beginning of each term, and that talked about hubs and sporting facilities and will increase sporting facilities for the community. So that - aligned with that strategy.

10 **COMMISSIONER:** So what work was needed? What work was needed to align this sale process to those plans?

MR MALLARD: It would have been in one of my teams, just retrospectively sit
15 down at the proposal and say, "Yep, it ticks these boxes."

COMMISSIONER: I see.

MR MALLARD: But it should have been done at the beginning of the process not
20 after it was nearly concluded.

COMMISSIONER: I understand.

MR MALLARD: If it had been not identified, then we would have had to have done
25 some remedial -

COMMISSIONER: So to make sure what was being done -

MR MALLARD: Yes.
30

COMMISSIONER: - matched the plans that had been adopted by Council or were at least consistent with them?

MR MALLARD: Aligned with the strategies, yes.
35

MS McDONALD: And when you spoke about the Hammondville Masterplan, was that the revised Masterplan that was approved by the Council towards the end of 2023?

40 **MR MALLARD:** That would be the one, yes.

MS McDONALD: And your recollection is it included in it the disposal of the two lots?

45 **MR MALLARD:** I believe so. But I'm not 100 per cent certain, yeah. And, again, I inherited, as a director, that Masterplan work. It's our local - Mark Taylor was

working on that, the community consultation process that you undertake to do those Masterplans.

MS McDONALD: Now, right down the bottom of this page, you've got:

5

"Below is a summary of key issues or things and commentary that have been prepared with respect to the risks that the Council should consider when forming a view on the potential sale."

10 We go to the next page. So this is a table that either you prepared or those who report to you prepared?

MR MALLARD: It may well have been George, but yes. I'd say it was George and Steve - Steve Simat and George Hampouris.

15

MS McDONALD: And you can see under issue 1 it has got:

"Seeking authority."

20 And in the left-hand column sets out some of the criticisms from the probity report about what has occurred. Is that fair to say?

MR MALLARD: Yes. Yes.

25 **MS McDONALD:** And, for example, there was no protocol established for negotiations which excluded the CEO from negotiations that the CEO had authorised and - prior to October 2023 and precluded lobbying of councillors, which occurred when Sporties wrote to councillors in 2019, 2023.

30 **MR MALLARD:** That's correct.

MS McDONALD: And then on the right-hand side is the impact. And then it sets out things that the Council then should turn their mind to as to whether they need further information to consider whether those particular risks or concerns have been resolved?

35

MR MALLARD: Mm-hmm.

MS McDONALD: And you can see there it starts off with:

40

"Council should consider whether it's satisfied there was and remains justification for direct negotiations, proposal represents best value for residents and ratepayers, best value assessment has not been distorted, has not distorted Council's assessment of whether Sporties' proposal represents best value for residents and ratepayers."

45

MR MALLARD: Yes.

MS McDONALD: And then a question about actionable apprehended bias because of the lobbying of councillors:

5 "At a minimum, mayor and councillors must consider the extent of any lobbying and the requirements of the code of conduct, recording conflicts of interest."

Now, this was the report that you submitted to the Audit Risk Improvement Committee meeting. I'll bring up the minutes of the committee meeting of 19 July. Would you bring up LCC.014.002.1443. So you can see this is the first page of the
10 minutes. If you look at attendees, you're about - I think it's eight down.

MR MALLARD: Yes.

MS McDONALD: And would you then go to page 6. Right down the bottom of the
15 page, 8.3, we've got:

"Probity over sale of land, Hammondville Park."

It refers to:
20

"Management presenting on the outcomes of the probity report."

The committee commended management for undertaking a probity report this late in the process. Then across the page, to page 7, you've got:
25

"The committee strongly cautioned Council on proceeding with the sale in light of the process failings identified in the probity report. Committee made it clear that its recommendation is not because it has concerns around the lawfulness of the sale but more because it's difficult to ascertain how Council has satisfied themselves of the
30 need to sell the land, how it aligns to an overarching asset utilisation, asset disposal strategy, including how Council responds to the challenge of proceeding with the decision based only on one valuation."

MR MALLARD: Mm-hmm.
35

MS McDONALD: Then in the next paragraph, they acknowledge the risk that Sporties may draw their interest in the sale. And they also identified reputation risk to proceed is also high. And then right down the bottom:

40 "The committee resolved to record its concerns with the process deficiencies identified with the probity report, implications of proceeding with a decision to sell the land without further confirmation that the sale of the land is in the Council's best long-term interest strategically. Further due diligence, including the obtaining of an additional valuation and the Council have regard to the concerns, perceptions that
45 may be generated by failings that have been identified in the probity report."

Those resolutions - those minutes eventually go to the Council at a Council meeting?

5 **MR MALLARD:** Yes, they do. And ARIC is advisory - we should note that it's not binding on the Council, it's an advisory body - and as you can see here it's quite conservative. And those issues they raised, I believe we addressed those in the report to Council. We did get a second - and maybe, I think, we got a third valuation for the property.

10 **MS McDONALD:** For the Council - extraordinary Council meeting of 13 August 2024, was another confidential report provided to Council on this sale?

MR MALLARD: I don't recall.

15 **MS McDONALD:** All right. Could you bring up document LCC - sorry, before I take you to that -

MR MALLARD: I mean, all reports on the sale are always confidential. So if there's a report it's confidential, yes.

20 **MS McDONALD:** Excuse me for just a minute. Sorry, if you can just excuse me. I think I've written down the wrong - I'll bring up the confidential report for the extraordinary meeting of 13 August. That was LCC.014.002.0490. Yes, that's fine. Excuse me. So this is the confidential report that went to the extraordinary meeting.

25 **MR MALLARD:** Mm-hmm.

MS McDONALD: And in it, if you jump to page 5, there's a reference to the council meeting of 25 July where it was resolved to:

30 "Defer the matter to allow for further financial due diligence."

MR MALLARD: Yes.

MS McDONALD:

35 "To demonstrate strategic alignment and closer alignment to direct negotiation guidelines and to receive a report back outlining policy procedure improvements for direct negotiations for future scenarios."

40 Then if we move down towards the bottom of this page, we've got:

"Further financial due diligence."

And there's a reference to:

45 "A second independent valuation was commissioned as per the ARIC's recommendations."

MR MALLARD: Mm-hmm.

MS McDONALD: So that was undertaken. Then over the next two pages, there appears to be, in a way, that retrospective analysis of -

5

MR MALLARD: Yes.

MS McDONALD: - a direct negotiation and other aspects of due diligence that should have been undertaken at the beginning of the whole process.

10

MR MALLARD: Yes, and it's retrospectively applied.

MS McDONALD: Yes.

15

MR MALLARD: Yes.

MS McDONALD: Then if we go to page 7, right down the bottom, (b):

"To demonstrate strategic alignment."

20

This links with the question that the Commissioner asked you about looking at the Masterplan and other - or at least the Masterplan about whether the sale is consistent or aligns with it.

25

MR MALLARD: Mm-hmm.

MS McDONALD: If you go across the page to page 8, you can see:

30

"At a high level, the Masterplan proposes construction of new aquatic and leisure centre, provision for additional Council services, installation of soccer fields, upgrades to sports club."

There doesn't seem to be any reference in the Masterplan to selling the lots?

35

MR MALLARD: I think - look, from memory - and I refresh myself with the document - I'm almost certain there is a reference in the Masterplan to selling the lots because - the reason I say that is the councillors, when I was in my last few months there, wanted to unlock that money from being dedicated to the Masterplan, right? The sale revenue. And to do that, we would have to go and put on exhibition an amendment to the Masterplan, and that's - that process was starting, because that's in my area - was in my area as well, when I departed.

40

45

So the Masterplan must have had a reference to the sale. Maybe not to Sporties, but the sale of the land, and the land being dedicated to - that the Masterplan - because it's what's called an internal restriction, so it was internally restricted. And to change that, I got advice from our - and I think I got legal advice, but also from our community planning team that we needed to amend the Masterplan yet again.

MS McDONALD: Just before you leave that topic, if we can go to page 3 of this document, under Recommendation, point 3:

- 5 "Create an internally restricted reserve titled the Hammondville Pool and Precinct Reserve for the proceeds of the sale."

MR MALLARD: That's correct.

- 10 **MS McDONALD:** So that's what you were referring to?

MR MALLARD: Internally restricted.

- 15 **MS McDONALD:** And before you left your employment with the Council, there were an interest or proposals that the funds should be released from being internally restricted?

- 20 **MR MALLARD:** I think that was a resolution of the Council to - to unrestrict the funds, and I think that's taken in the context of the budget situation we had, where the amount of unrestricted funds was quite dangerously low. But when I took that back to my team - we can't just unrestrict it. We have to amend the Masterplan to do that, because we told the community in the Masterplan that the revenue would go into the precinct.

- 25 **MS McDONALD:** Okay. Do you know how that resolved?

- 30 **MR MALLARD:** To - the answer is no. To avoid the confusion, because you can see I'm confused with all these different processes - to avoid the confusion for the community - of advertising an amendment again to the Masterplan, the sale hadn't yet gone through. I think it only was - only included at the end of the financial year. I had got the staff to prepare for it because I had to bring in a consultant to do it. And once the sale was completed, we were then going to do the amendment to the Masterplan process. We didn't want to have the sale causing confusion about the Masterplan amendment. So that - so the bottom line is I don't know the answer to
35 your question, but I expect that they're probably doing it now.

MS McDONALD: All right. Now -

- 40 **MR MALLARD:** There was a Council resolution to do that, so it has to be done.

MS McDONALD: And the Council resolution was when you were still there?

MR MALLARD: Yes.

- 45 **MS McDONALD:** Now, I think, as I outlined earlier, the result of the provision of this confidential report is that at the two meetings held in August by the Council, the resolution to proceed with the sale was passed.

MR MALLARD: Yes.

5 **MS McDONALD:** And any resolution to either defer it or not to approve the sale - waiting to deal with the concerns raised by the ARIC failed.

MR MALLARD: They were addressed.

10 **MS McDONALD:** Well, no, no, no.

MR MALLARD: You mean -

15 **MS McDONALD:** Just talking about the resolutions. Resolutions were put forward - and I'm just putting it generally - to either defer the sale or not to proceed with the sale until the Council considers the concerns raised by the ARIC and that those rescission motions failed. I'm not asking whether they were right or correct or what.

20 **MR MALLARD:** No, no.

MS McDONALD: It's just -

MR MALLARD: The timeline is confusing.

25 **MS McDONALD:** Okay.

MR MALLARD: I'm sorry that I'm sounding confused. Normally it's clear with me, these things, and I - I would have read all these through again with more time. Council deferred the sale to do the community consultation. That was -

30 **MS McDONALD:** Yes.

MR MALLARD: And that was a deferment. Deferred -

35 **MS McDONALD:** Deferred in July for further due diligence.

MR MALLARD: Yes. And that was to - that applied - the probity adviser's report and ARIC concerns, and they were addressed in the confidential report. So as far as I am aware, the - those - those issues were addressed in resolutions and reports, and

40 **MS McDONALD:** Right.

MR MALLARD: Approval of the sale.

45 **MS McDONALD:** So you don't have a recollection that on the 13 August meeting and 28 August there were further rescission motions about the sale?

MR MALLARD: There may well have been. One or two councillors were quite stridently opposed.

5 **MS McDONALD:** Okay. But you don't recall that?

MR MALLARD: I accept your - I accept that -

MS McDONALD: Okay.

10

MR MALLARD: - you've got the evidence there, that that may have been the case. I know that, you know, it is an incredibly complex process and - for us to get through that, and - like, talk about the outcomes for the community, which I stand - stand behind, in terms of the outcomes of that sale.

15

MS McDONALD: Now, could we go to page 5 of that report, please. Point 2 - and this was the resolution at 25 July:

20

"Receive a report back outlining a policy procedure improvement for direct negotiations for future scenarios."

25

MR MALLARD: Well, the response to that would have been the draft unsolicited proposal policy, which had been sitting - pending going to Council would have gone up to Council, and then it went on exhibition.

MS McDONALD: Well, no, it refers to receiving a report outlining a policy procedure improvement for direct negotiations. The draft policy was already in place, wasn't it?

30

MR MALLARD: It hadn't been put to Council. The draft - I could be corrected, but I don't believe that had been put to Council. It went to Council. It went on exhibition. So I would have thought that would have been - would have addressed in - point 2. Recognising the policy didn't come out of my area, that - that came out of Governance and Legal. But nonetheless, as a result of this, I - we - my memory is that we put the policy out and it - now it's formal Council policy.

35

MS McDONALD: If you go to the bottom of page 10 of this document, you can see section 2:

40

"Receive a report back outlining a policy procedure improvement."

MR MALLARD: Mm-hmm.

45

MS McDONALD: And if we go to the next page, at the top - and they refer to:

"The probity report considered Council's dealings by reference to the ICAC guidelines."

MR MALLARD: Yes.

5 **MS McDONALD:** And then they say, in response to probity matters identified in the report, they've actioned all possible due diligence activities with regards to the potential sale.

MR MALLARD: Mm-hmm.

10 **MS McDONALD:** This is a quote from something I took from the report I took you to.

MR MALLARD: Mm-hmm.

15 **MS McDONALD:** If we then go to:

"There are opportunities identified to better comply with the ICAC recommendations and a further report will be tabled to Council in the future outlining better practices and policy recommendations."

20 Do you know if that further report was ever tabled?

MR MALLARD: I don't recall, but I go back to my previous answer. The IC - the draft unsolicited proposal policy addresses those - those concerns, yeah. So if that
25 went through Council that would therefore -

MS McDONALD: But this is talking about a further report tabled to Council in the future outlining best practices and policy recommendations for Council's consideration. That would suggest something different from an already existing
30 unsolicited proposal policy which seems to have arisen from observations made in the probity report.

MR MALLARD: Again, the unsolicited proposal policy, as a result of this - the probity report here - and the lesson to be learnt in the process of this sale was
35 put - put out - put through Council, put on public exhibition and -

MS McDONALD: Sorry, what was?

MR MALLARD: The unsolicited proposal policy, which was a draft, was to - on
40 public exhibition.

MS McDONALD: Yes.

MR MALLARD: And came off public exhibition. And my understanding is it's now
45 a formal policy of Council. That addresses - I'm not sure what the report cover would have said in terms of - because I didn't write that report, but nonetheless,

the - the - the unsolicited proposal policy addresses the issues here about best practices and policy recommendations for Council's future dealings - direct dealings.

MS McDONALD: Was it your area?

5

MR MALLARD: No, no, no. Unsolicited proposal was - it was with - Mr Galpin's area. It might have been Mr Day who had it - who was Governance, but it was not - not in my area, no.

10 **MS McDONALD:** Right. So -

MR MALLARD: My area - I might say my area touched - had a role in it, in terms of when an unsolicited proposal came through. Strangely, the - it identified the manager of Economic Development - that was with Julie in that role, but that
15 position as the first person to do a preliminary assessment of an unsolicited proposal. Sort of a gateway process.

MS McDONALD: So your view is that the further report being tabled to the Council was all caught up with bringing to Council - being publicly exhibited and then
20 bringing to Council the draft unsolicited proposal policy?

MR MALLARD: Normally the other way around. Go to Council and then go on exhibition.

25 **MS McDONALD:** But that's your understanding?

MR MALLARD: That - that would be my take of what - what the process was.

MS McDONALD: All right.

30

MR MALLARD: But certainly I - I wasn't involved in drafting any report, as it - issues there.

MS McDONALD: Would you bring up document LCC.014.002.0023. Yes. Thank
35 you. Now, this is a memo from Jason Breton to Steve Simat, 20 June. And if we follow down, it refers to the 13 August meeting where certain resolutions were made approving the sale of 102 and - lots 101 and 102, authorising CEO to complete all documentation, creating the internally restricted reserve, et cetera. Then it has got, on
40 26 October, the contracts were executed in exchange for a sale of eight million, but settlement was on or before 30 June while the variations to the section 88B instrument are being registered. Is it your understanding that was caught up with the easements that had to be created?

MR MALLARD: Yes. Subdivision and easements on the site, and that - and it
45 would touch on the deed or the condition in the sale that approximately 280 parking spaces will be dedicated to whatever they did on that site development going forward, in perpetuity, to the community.

MS McDONALD: And just from this memo, it appears that there were further negotiations dealing with things like the easement variation, et cetera.

5 **MR MALLARD:** Yes.

MS McDONALD: But ultimately, it would appear that it has been resolved?

MR MALLARD: Yes.

10

MS McDONALD: And before you left your employment with the Council, was it your understanding that settlement had occurred?

15 **MR MALLARD:** No. No, but I understand it occurred before the end of the financial year. But, I mean, that's just hearsay. Yeah.

MS McDONALD: All right. And, of course -

20 **MR MALLARD:** Actually, no, that's not correct. Sporties actually announced it on social media and I - I then sent them a message of congratulations and - and I was no longer an employee of the Council - that they had concluded the sale on 30 June or something like that.

MS McDONALD: All right.

25

MR MALLARD: So it's in the public arena.

30 **MS McDONALD:** Excuse me for a minute. Could we jump back to your - the report that you authorised to the ARIC meeting of 19 July 2024, LCC.004.003.8394. And it's page 70. Can I take you back to the Summary Overview in the second paragraph. I took you to the beginning of that paragraph, which distinguished between due diligence activities that still could be implemented, in a sense, retrospectively.

MR MALLARD: Mm-hmm.

35

MS McDONALD: And then the next sentence, it says:

40 "All other opportunities which could not be applied retrospectively will be treated as future-focused, with a view to implement these as part of continuous improvement of the Council's processes."

It then says:

45 "These actions will be tracked through Council's audit system, to ensure they are monitored through to their completion."

The reference to the Council's audit system, what's that referring to?

5 **MR MALLARD:** Again, this is - and I authorised this, but George Hampouris is the - is as - suggest probably written this, and there's an audit and risk matrix - a risk matrix, sorry, that is a constant focus of the directors identifying risks and remedies or abilities to address them, to reduce those risks for the organisation. That would be the reference to that. So something - an unsolicited proposal - I've been involved in a couple since then or - particularly one since then - the risk matrix is applied to it straightaway, in terms of - that's part of the unsolicited proposal policy - you have to do that and report it to ARIC as well. And George - I would have George involved in that process. He's an expert in that space. And that goes up to ELT and to ARIC.

MS McDONALD: Commissioner, I was going to turn to another topic. Is that an appropriate time?

15 **COMMISSIONER:** Yes. Mr Mallard, we'll take a mid-morning break for 20 minutes. We'll start again at 10 to 12.

MR MALLARD: Okay.

20 **COMMISSIONER:** If you wouldn't mind being back here just a couple of minutes before that, I would be most grateful. I will adjourn till 10 to 12.

<THE HEARING ADJOURNED AT 11.33 AM

25 **<THE HEARING RESUMED AT 12.05 PM**

MS McDONALD: Mr Mallard, different topic.

30 **MR MALLARD:** Thank you.

MS McDONALD: Would you bring up, please, LCC.002.010.2298. And it can be live streamed. Now, this is the establishment structure of the Council as at January 2025. Your directorate is the far left, director of City Futures.

35 **MR MALLARD:** Correct.

MS McDONALD: And underneath you you've got your commercial development. Were they were commercial property people that you've been speaking about?

40 **MR MALLARD:** Yes, they are. Yes.

MS McDONALD: You've got City Economy, City Strategy and Performance. Can I just ask you, what did City Economy look after?

45 **MR MALLARD:** They looked after - ranging from relationship with small businesses - in a practical sense, we had a - we had a fellow that would go and meet new businesses, shop owners, that type of thing. Do workshops, provide information

to them about Council services, through to the major investors in the - in the city. Would - would that - be the - the contact point to talk to the Council about - you know, if they're maybe a big warehouse developer or something like that. Employers. And then it evolved that - the university sector sat with Julie Scott in that area. I
5 mean, that was - that's a major driver of our city, with the universities moving into Liverpool. Education sector. The Liverpool Innovation Precinct, we're a member of that, which is centred around the health, hospital - Ingham Institute, that all came through the City Economy. What else? We had the Grants team there, which is a big area of revenue for the Council. Grants from the State and sometimes Federal
10 Government.

MS McDONALD: So including the WestInvest grants?

MR MALLARD: No, that was done - well, that was before my time. That
15 was - well, back when I was still in government, those grants were applied for and achieved. I think I do recall that Julie and her team had a - a bit of a say in that process. But after that, they were hands-off. A new team was set up under Operations to do the - the WestInvest or whatever it's called now - WSIG processes. But, you know, Council relies on grants to do a lot of things. You know, extra employees,
20 apprentices - we're getting grants for that at the moment. Always applying - and are quite rigorous application processes to get the grants. You can't - it's not just a matter of ticking a few boxes.

MS McDONALD: Then West City Strategy and Performance. What did they do?

MR MALLARD: Well, they came across later in the piece, as I was - as I was recruited, from Farooq's area. So they do the compliance reporting, which is like your annual report, your biannual report. They'd just completed - and now it's adopted of Council these - community strategic plan, CSP, which every council has
30 to do within 12 months of its election. That's a massive project. Then the - I can just hear the manager in my head reminding me what the areas were, but all those important reporting documents that the State Government requires, the department requires, the public of course requires, they are all prepared by that team, and it involves a lot of consultation internally. And then - and then consultation with the
35 community.

The central community strategic plan, the operational plan, the delivery plan, all those things are compiled and drafted up through that team. Then I gave them projects to do as well, like the Liverpool 2050 Strategy, which was a Council
40 resolution - which I talked about, I think, the other day. That - they were left at - that was unfinished work, but that project they were doing as well.

MS McDONALD: Then the final group is titled Communications, Marketing and Brand.

45

MR MALLARD: Yes.

MS McDONALD: At this stage there were 13 positions. Communications, at one level or in one area, they deal with communications via social media, media, about developments within the Council?

5 **MR MALLARD:** Yeah. I mean, that's a - quite a broad team. And, yeah, the - sort of the - a popular perception would be, you know, media relations and social media, but the team there is also a very good team of graphic designers. So every document that I just talked about the previous team - published all the documents, all that
10 graphic design work is pulled together by the graphic designers in the communications team. Every brochure, every ad we put on our websites, everything we do, graphically - some of the reports you've seen - the logo, all that comes through from the communications team. Then there's a - they've got a videographer in there, and that - compiles all the videos of the events we do and edits them up and turns them into material for our website or for our social media.

15 **MS McDONALD:** Now, I want to ask you some questions about - around September 2024 - or it could have been October 2024, after the declaration of the polls resulting from the Council election.

20 **MR MALLARD:** Yes.

MS McDONALD: At that point, the structure that I've just taken you to was roughly in place. So Communications refer to you?

25 **MR MALLARD:** Yes. That's right. And I pointed out the other day in my evidence that I shared a department with Operations, which is over on the operations side, which was the Community and City Planning team. We were doing a pilot of a shared - shared - sharing those two teams. I did more the strategy and the Operations director did more of the implementation of those strategies.

30 **MS McDONALD:** Just concentrating on the communications, at that point, when there was an event that involved, I'll put it broadly, the Council, how was it determined whether anybody from your communications team would attend to record it in any way?

35 **MR MALLARD:** The communications team would have a weekly meeting, a work-in-progress meeting.

40 **MS McDONALD:** With you?

MR MALLARD: No, I would join in sometimes, but the team would get together and go through - I think at this stage they were mainly on Tuesdays - go through the week ahead, even the month ahead, what we need to be doing, what were the strategies or the communication things - what do we need to do - like, statutory
45 requirements - you know, like legally, and also what events are going on. What - you know, what festival, what religious events are going on. And in terms of that

declaration of the poll, that's a public event that you would cover - you would send someone along to.

5 **MS McDONALD:** Okay. Hold on. I think you jumped ahead. So around September, October, you'd had the elections and then you had the formal declaration of the poll?

MR MALLARD: Yes.

10 **MS McDONALD:** And that particular event, it was usual that you will send somebody from your communications team?

MR MALLARD: I would suggest every council does. I mean, it's a very important event. That's the - all the candidates for Council are invited, so - you know, not just the ones that are elected.

15 **MS McDONALD:** Well, can I just stop you. Where is it held usually?

MR MALLARD: Well, this is unusual. Liverpool Council use a private contractor to do their election, along with, I think, Fairfield Cabramatta Council. And it's
20 actually - it was actually in a - coincidentally, we had supplied them with a building next to Liverpool Civic Place, so a redundant building, to conduct their head office for the election campaign. I think that was a - sort of cost saving, in terms of the contract, and - but very arms-length from us. And that - I think that was where it was held.

25 **MS McDONALD:** Right. And I must admit my experience of these have usually been from English television shows.

MR MALLARD: They're great.

30 **MS McDONALD:** Is that what occurs?

MR MALLARD: Having been subject to them myself, they - they're - they are - it's not - not like the English one with the loony crazy party -

35 **COMMISSIONER:** I was going to say, is there a novelty candidate?

MR MALLARD: Possibly, but - and I wasn't in attendance at this one, but it would normally be they would declare - they would put up on a screen the count and the
40 breakdown of the preferences.

MS McDONALD: So for each ward?

MR MALLARD: There's only two wards in Liverpool.

45 **MS McDONALD:** Yes.

MR MALLARD: So that would be the case.

MS McDONALD: Yes.

5 **MR MALLARD:** And the popularly elected mayor - because the mayor is popularly elected -

MS McDONALD: Yes.

10 **MR MALLARD:** And it normally - they - I don't know if this happened on this day, but normally they put up a screen and you'd see the counts and the people eliminated, so that the people - not happening live - not normally happening live at that point, so that people can see when they got knocked out because they didn't have enough votes, and then you get to the final elected members with quotas, and then
15 the final couple only get in, say, a quarter of a quota but the - the others have less, so - and you see who's elected. So it's quite common to - to cover that. I've got to say, usually the major parties are well aware of the result because of their scrutineers in the polling booths before that time, so it's a - so this particular one -

20 **MS McDONALD:** Sorry. So when you have the declaration of the polls, members of the public are invited or able to come?

MR MALLARD: I think so.

25 **MS McDONALD:** And I think you've given evidence that anybody who stood for election is able to come.

MR MALLARD: Yes. They normally bring along some supporters.

30 **MS McDONALD:** And then because it's an important event in the life of the Council, somebody from your communications area is dispatched.

MR MALLARD: Yes.

35 **MS McDONALD:** And is the idea that they take photographs?

MR MALLARD: Yes. So from memory, this was on a Saturday, and they would take photographs for our social media. And I would expect that our communications - that - would have written a media release, non-partisan, just
40 saying, "These are the results," and congratulating all the candidates, which then would have fed into the social media post. There's a lot of interest in the community, particularly about the popularly elected mayor position. It gets a lot of focus.

MS McDONALD: Now, who from Communications was sent?
45

MR MALLARD: There may have been two, but certainly a new employee that just joined the Council was sent along. A videographer.

MS McDONALD: To take -

MR MALLARD: Photographer and videographer.

5 **MS McDONALD:** To take photos and to take -

MR MALLARD: And do a video. Well, he does video as well, yes.

10 **MS McDONALD:** All right.

MR MALLARD: He's very talented. But he'd been with us for, like, literally two weeks.

15 **MS McDONALD:** And your understanding is this person attended, took photos and videos - or a video that was then downloaded onto the Council website?

MR MALLARD: Yes. So he took - took photos. Step 1 - step back about who attended, in terms of the councillors -

20 **MS McDONALD:** Well, hold on.

MR MALLARD: Okay. I just -

25 **MS McDONALD:** Just let's take it by step.

MR MALLARD: Okay. Well, he - yeah, he took photos of the successful candidates that were - that attended - not all the candidates attended. And subsequently did a video. That fed into -

30 **MS McDONALD:** All right. And so he took those, and were they downloaded onto the Council website?

MR MALLARD: Not by him. They were fed to a coordinator and then approved to go up onto our social media.

35 **MS McDONALD:** Now, you didn't attend this declaration of the poll?

MR MALLARD: No, no, no.

40 **MS McDONALD:** But what is your understanding of - of the successful candidates who attended?

MR MALLARD: I think - I think all the Liberal candidates or maybe - nearly all the Liberal candidates attended, and certainly the mayor and Councillor Harle, the deputy mayor - well, no, he wasn't deputy mayor then, but Councillor Harle, independent.

45

MS McDONALD: And is it your understanding that none of the candidates associated with the Labor party attended?

5 **MR MALLARD:** That's my understanding.

MS McDONALD: And is it your understanding that other than Councillor Harle, none of the - any other candidates - sorry, successful candidates associated as an independent attended.

10 **MR MALLARD:** It's only Councillor Ristevski. My understanding - they weren't there, but there's certainly no evidence of it in the photographs, though.

MS McDONALD: All right. So photos and videos were taken. You said that they
15 were sent to a coordinator for approval. Who was the coordinator?

MR MALLARD: Lance Northley.

MS McDONALD: Lance -

20 **MR MALLARD:** Northley, N-o-r-t-h-l-e-y.

MS McDONALD: And it's within his responsibility to approve the download?

25 **MR MALLARD:** Yes. And - whether or not he does it physically, the upload of the video, or whether it's done by the other person, but yeah.

MS McDONALD: All right. So photos and video were uploaded. Did you receive
30 any communication within the Council about what was uploaded to the website?

MR MALLARD: I - I hadn't seen the upload - the content of it, but I think on the Monday morning I - I - I received a very angry message from the acting CEO, I think, at the time, about the - the video content and - I'm not sure if this was a phone call or if this was an email initially - that the - Councillor Betty Green, Dr Betty
35 Green, who had been the candidate - Labor candidate for popularly elected mayor against Ned Mannoun, being that Ned Mannoun was successful, had lodged a very strong complaint about the - not the photos but the video that had been uploaded.

MS McDONALD: And, of course, Councillor Betty Green also stood for - as
40 a councillor as well.

MR MALLARD: That's correct.

MS McDONALD: And she was successful with that.

45 **MR MALLARD:** That's right. She was - yes.

MS McDONALD: Were you forwarded the complaint by -

MR MALLARD: No, I don't -

5 **MS McDONALD:** - Councillor Green?

MR MALLARD: I don't think I was forwarded the complaint. It was just brought to my attention that it was her and she was upset. The video -

10 **MS McDONALD:** And, sorry, just pausing there -

MR MALLARD: Yeah.

15 **MS McDONALD:** So you get - you can't recall it, some communication from the acting CEO. So that was Mr Breton?

MR MALLARD: Yes.

20 **MS McDONALD:** Either it was a phone call or an email, raising that Councillor Green had lodged a complaint about the video. Did you look at the video then?

MR MALLARD: I think I looked at it briefly. I mean, I think - likely -

25 **MS McDONALD:** So can I just stop you there. What did the video depict?

30 **MR MALLARD:** Just - so likely Mr Breton's communication to me was via email, I'd suggest, not a phone call, but the video depicted the mayor with - an excited mayor with his Liberal councillors, thanking the community and spruiking his agenda for the next term. And, yes - and that was the complaint. It looked like it was a biased - the Comms team had put up something biased, you know, just - to just betraying the Liberal team.

35 **MS McDONALD:** Was Councillor - when you watched it, was Councillor Harle in the video?

MR MALLARD: No. No. And subsequently, when I did some investigation, he declined to participate.

40 **MS McDONALD:** In the video?

MR MALLARD: That's right.

45 **MS McDONALD:** Right. So you received - you described it as an angry message from the acting CEO.

MR MALLARD: Yes.

MS McDONALD: Why did you say it was - why do you describe it as angry?

MR MALLARD: It was just a - his usual brevity and, you know, "What's going on? Who's done this?" You know, "I've got a serious complaint from Councillor Green."

5 And, like, this is the first time I was aware of this, so I said, "Let me get into it straightaway." You know, "Gather the evidence of what's happened," and I started that process. I mean, this is sort of - this is people driving to work time. So I was trying to track down people - Lance, the manager at the time, Mimi, trying to find out what happened, you know?

10

MS McDONALD: Who was the second person you referred to?

MR MALLARD: Mimi. I can't think of her surname now. She was the manager of Communications at the time.

15

MS McDONALD: It's not Mimi Curran?

MR MALLARD: Yes, yes. Mimi Curran. Correct.

20 **MS McDONALD:** So you received the angry message. You start investigating -

MR MALLARD: I said to him, "I'll look into it and I'll get all the information together."

25 **MS McDONALD:** And do you start speaking to people and -

MR MALLARD: And putting the pieces together. Obviously it was taken down.

30 **MS McDONALD:** And what do you - then, is the next step - excuse me - in your communication with the acting CEO, do you contact him?

MR MALLARD: Yeah, by email. Yes.

MS McDONALD: And what did you say in the email?

35

MR MALLARD: I think - there were a couple of emails. I said, I think, "I'm trying to contact people," probably - may have said Mimi and Lance, or - at that stage it was nowhere Lance was involved, perhaps because - it's - it was very important to get as - the facts together quickly. Otherwise, you know, you've - you've got the
40 remedy. How did it happen, and did it comply with policy? That was - that will come later.

MS McDONALD: Yes.

45 **MR MALLARD:** So - and Mimi's phone was off. I couldn't contact her. She was driving in from the Southern Highlands, to find out - because I normally go through the manager to get to the thing. So then I started pulling pieces together to try and see

what had happened. And so I was feeding to Jason updates as - as - as much as I could without going -

MS McDONALD: Yes. So updates on -

5

MR MALLARD: I can't get a hold of Mimi and trying to find out who -

MS McDONALD: - your investigative tasks.

10 **MR MALLARD:** Who's - what happened there.

MS McDONALD: Yes.

15 **MR MALLARD:** I knew there would be a back story, and I found out there was a back story. But, yeah - so I was just trying to pull it all together, and that would be in a period of over 30, 60 minutes, a couple of emails. Because by then I'd found out that the new junior staff member had been there and done the - done that filming. At that point, I didn't know that Councillor Harle had declined to be in the video, but he was in the photographs, which were fine, and then, "Okay, who approved it to go up?" You know? It's not something I would normally be approving, but I changed
20 that after this happened and, you know, trying to get to the bottom of it.

MS McDONALD: All right. Does it get to the stage where you've conducted enough of an investigation so you can report back to the acting CEO?

25

MR MALLARD: I wasn't yet at that point. I don't think I was aware at that point that Harle had declined to be in the video and - and - subsequently later that day, when we had - when we - when people applied what had happened to the policy - the media policy at that time, it didn't break the policy.

30

MS McDONALD: Just focus on my questions.

MR MALLARD: Okay. Anyway - yep.

35 **MS McDONALD:** So you're still investigating. You've still got work to do with your investigation. Do you receive any further communication from the acting CEO?

MR MALLARD: Yeah. So I'm not sure what provoked it. Perhaps I say, "I need more time to" - you know, getting hold of Mimi, try to work out what happened. And
40 he emailed me back something along the lines of, "This doesn't cut" - "doesn't cut the mustard" or something like that. "I'm taking over communications, effectively immediately." And I think he copied a couple of people in that. And, of course, Lauren sees all my emails as well and was aware of that - my EA.

45 **MS McDONALD:** All right. Do you - hold on. So something along the lines of "not cut muster"?

MR MALLARD: "Doesn't cut the mustard." I think it - I think that's what he said. I - I could probably find the emails, because I - I got some legal advice about it.

MS McDONALD: "I'm taking over communications."

MR MALLARD: Yeah. "Effectively immediately."

MS McDONALD: Do you recall who the email was copied in to?

MR MALLARD: No, I don't. I'd have to see the email.

MS McDONALD: Other than Ms -

MR MALLARD: I have a feeling - I thought it was ELT members, but I'm not certain. And I was pretty upset.

MS McDONALD: All right. I want to ask you some questions about your reaction to this. Just before I raise another matter, I know it was an email and an email is in black and white and is in writing, but was it written or drafted in any way that you formed a particular view of the tone of the email?

MR MALLARD: Mr Breton regularly emailed very, very brief, you know, statements. So - so it would be like, "Noted," or "Approved," something like that, often in upper case. My recollection was it was in upper case, but I - you know, I - I'd need to look at the emails again.

MS McDONALD: Commissioner, I have an application for the next part of the evidence to move into a private session because I anticipate it will raise just some personal issues for Mr Mallard.

COMMISSIONER: Is there any difficulty with those who are in the room remaining in the room?

MS McDONALD: No, that's fine.

COMMISSIONER: All right. We might just shut the door. Is the - what I - we arrived at as the usual form of order late in the last sittings appropriate?

MS McDONALD: Yes.

COMMISSIONER: All right. Pursuant to section 12B(2) of the Royal Commissions Act, I direct that the next part of the evidence be taken in private and that those who are currently in the hearing room may remain in the hearing room. Pursuant to section 12B(1) of the Royal Commissions Act, I direct that the transcript of the private session of this inquiry not be published, save that the non-publication order takes the usual form, as was expressed during the last sittings. And I'll get the nod once we go into private session.

<THE HEARING ADJOURNED TO PRIVATE SESSION AT 12.29 PM

<THE HEARING RESUMED IN PUBLIC SESSION AT 12.43 PM

COMMISSIONER: Thank you.

5 **MS McDONALD:** Mr Mallard, I want to take you back to an answer you gave after
you received the email from the acting CEO and you described - I asked you about
the effect on you and you described it as a "punitive action", and you spoke about
being singled out and bullied previously by the acting CEO in workshops and other
particular meetings. Would you expand on that? When did that conduct start? Sorry,
10 was the conduct a one-off or were there a number of instances?

MR MALLARD: There was a pattern that was occurring. I mentioned in my
evidence at the previous hearing, the stick-it note incident in the workshop at
Lurnea - from memory, that was after this event - it might not be, and - where he
15 announced to everybody - when I was talking about the risks for the organisation was
turnover of CEOs and constant restructures, he announced to everyone, "Everyone
knows that the mayor's office wants to shut down City Futures by September," and
I diarised that and it upset me a lot. Went back and talked to my team about that after
hearing those rumours. There was -
20

MS McDONALD: That was after this email?

MR MALLARD: By September, the Council elections were - I think - I think that
was - I think that was after. I'd have to - makes sense it would be after.
25

MS McDONALD: Can you recall anything before the email?

MR MALLARD: There's just a pattern in ELTs - that I was talked over or my
contribution wasn't taken seriously, and I'm always pointing out I'm a bit - I'm
30 risk-adverse in context of the Act and always pointing out the procedures we need to
do or so forth, to the point where one of the other directors, the Director of
Planning - she told me this later on - went and saw him and said, "You've got to stop
singling Shayne out," and, "It's bullying in ELT, what you're doing to him."

35 **MS McDONALD:** Who was that Director of Planning?

MR MALLARD: Lina. Lina.

MS McDONALD: Kakish?
40

MR MALLARD: Yes. Yes. And she's a very strong and forthright woman and she
just - she felt it was wrong and she came to see me. And to the point where I was
avoiding engagement if I didn't have to.

45 **MS McDONALD:** You referred to ELT. They're meetings of the executive group?

MR MALLARD: Yes.

MS McDONALD: Directors?

MR MALLARD: Yes.

5

MS McDONALD: And managers or just directors?

MR MALLARD: No, no, no. Executive leadership team. But the directors, the CEO, and usually the CEO's EA.

10

MS McDONALD: And how often -

COMMISSIONER: Would councillors ever - I'm sorry. Would councillors ever attend?

15

MR MALLARD: No, it would be inappropriate for councillors to attend, although prior to my joining ELT the mayor was invited to attend occasionally, just to have a consultation, but not to make decisions, which I thought - which - I don't think that's unusual in Local Government, but that's just as a guest. We have guests come all the time, of course. We have externals come and present reports and things all the time, in person or on the screen.

20

COMMISSIONER: So a councillor or councillors, mayor or otherwise, attending such a meeting for the purpose of having a briefing or getting feedback is okay, but otherwise inappropriate, in your view? Is that - have I understood you correctly?

25

MR MALLARD: As an exception. You wouldn't normally have councillors or the mayor there. I mean, the whole time I was in the ELT, which was two years, I don't think any councillor - no, I don't recall any councillors or even the mayor attending the meeting. And if they attended, it would be a narrow agenda slot -

30

COMMISSIONER: Yes.

MR MALLARD: - to just discuss, you know, "You've been elected. What's your vision?"

35

COMMISSIONER: Yes.

MR MALLARD: You know, maybe the - but not "Let's talk about industrial relations problems we've got in the workforce."

40

COMMISSIONER: But that didn't happen in your time?

MR MALLARD: No, it didn't. No.

45

COMMISSIONER: Thank you.

MS McDONALD: Excuse me. Just moving to another topic, on the last occasion I asked you about one of the positions that was created that I think you occupied at one stage - the senior adviser position.

5 **MR MALLARD:** Yes.

MS McDONALD: And where it was moved to, I think, coming under your directorate -

10 **MR MALLARD:** Yes.

MS McDONALD: And obviously by that time, as the director, that's the position where I think Ms Boustani was appointed on a temporary contract?

15 **MR MALLARD:** That's correct.

MS McDONALD: And eventually was appointed in that role in a permanent capacity after it was advertised.

20 **MR MALLARD:** Yes.

MS McDONALD: And I asked you some questions about the kind of reporting structure. I hope this is on the system. Would you bring up document, please, LCC.001.003.0091. We may leave that for the minute. A different topic. The
25 proposal with the Amphitheatre Dome. Before you left Council, did you have an involvement in that proposal?

MR MALLARD: Yes. Under the - under the unsolicited proposal policy I did, yes.

30 **MS McDONALD:** When did you first learn of the proposal?

MR MALLARD: The - I always have trouble with dates, as you know. I - the - yes, early this year, February '25, I got a message - a diary invitation from the CEO's EA - or maybe an acting CEO still at that point, to - a surprise visit to - up the
35 Central Coast - I think it was Morisset - Morisset. And without - and then you look through who's been invited, and Julie Scott got one as well - to go the next day, I think it was, or the day after. And so we trekked up and we were meeting - all under - very cloak and dagger - we were meeting at the McDonald's.

40 **MS McDONALD:** Okay. Can I just stop you there. So the invitation was surprise visit to Morisset. And from the invitation, you could see who else was invited?

MR MALLARD: I think so. I was certainly aware that Julie had been invited.

45 **MS McDONALD:** Other members of staff?

MR MALLARD: Well, others turned up up there.

MS McDONALD: Okay.

5 **MR MALLARD:** But I'm not sure - I'm really not certain if I could see who was invited, but I - I became aware very quickly that Julie was going there too.

MS McDONALD: All right. So you rock up to - and at that point you have no idea what's -

10 **MR MALLARD:** No idea.

MS McDONALD: What it's about.

15 **MR MALLARD:** We had no idea.

MS McDONALD: So it kept to the description of a surprise visit?

MR MALLARD: Yes.

20 **MS McDONALD:** And so you rock up to McDonald's?

MR MALLARD: Yes.

25 **MS McDONALD:** Who's there?

MR MALLARD: It was - Julie and I got there an hour early to have a chat and - and - and then in - in rolled into the car park the acting CEO, the acting Director of Operations, Peter Scicluna, Councillor Dr Betty Green and the deputy mayor Councillor Harle. From memory, it's - there might - I don't think there was
30 anybody else, but I could be wrong. Well, that's certainly the - the highlight, in terms of who turned up. And then we all trekked straight across the road from the McDonald's to this ginormous structure, which I had seen only the week before when I was driving past because I just happened to be up the Central Coast and I was wondering what on Earth it was. So it was just a coincidence that I had already just
35 seen it a week earlier.

MS McDONALD: All right. So the group walk across?

40 **MR MALLARD:** Drove across.

MS McDONALD: Or drove across. And there's this structure in place at Morisset.

MR MALLARD: Yeah. Still there today. Yeah.

45 **MS McDONALD:** And it's described as the amphitheatre?

MR MALLARD: It looks like a quarter of a geodesic dome - you know, that sort of gridding. And it's got a cover over it. It's huge.

5 **MS McDONALD:** And when you had this - when was it revealed to you what was going on with the surprise visit?

10 **MR MALLARD:** Well, we were - there's people set up there with some catering and all that, and we jumped out of our cars and started to walk across, and the CEO was very animated about what this was about. And we met proponents of this proposal, called Winarch - I think it - Winarch, and a lobbying firm called Freshwater.

MR PARISH: Commissioner, can I rise to my feet for -

15 **COMMISSIONER:** Yes.

MR PARISH: There's multiple documents related to this unsolicited proposal, which we've made claims over.

20 **COMMISSIONER:** Yes.

MR PARISH: And there are contractual and public documents that we (indistinct) confidential. I don't know where this is going or whether it will trespass on anything (indistinct) but I'm conscious, if it does trespass into those (indistinct).

25 **COMMISSIONER:** All right. Well, we're early doors just yet. I'm alive to that.

MR PARISH: Yes.

30 **COMMISSIONER:** Perhaps we'll just tread carefully.

MS McDONALD: Yes.

COMMISSIONER: And if there is a problem, don't hesitate to let me know.

35 **MR PARISH:** (Indistinct).

COMMISSIONER: I think we're at a background stage at the moment.

40 **MS McDONALD:** Yes.

MR PARISH: We're at the McDonald's part of it.

COMMISSIONER: Yes. We've crossed the road.

45 **MR MALLARD:** We've crossed the road.

COMMISSIONER: And there's some catering.

MR PARISH: (Indistinct) at McDonald's, and moved to another catering -

MS McDONALD: I haven't established that.

5

MR PARISH: You haven't established it, but, yes, it may come up. I just -

COMMISSIONER: Don't hesitate to let me know, and I'm sure counsel assisting is live to it as well.

10

MR PARISH: Thank you, Commissioner.

MR MALLARD: I wouldn't have eaten at McDonald's if I'd known there was catering across the road.

15

MS McDONALD: So you did eat at McDonald's?

MR MALLARD: Yeah, Julie and I had a breakfast burger.

20 **COMMISSIONER:** You can't drive to the Central Coast without stopping at McDonald's.

MS McDONALD: All right. So you've given evidence that the CEO spoke, to begin with - or maybe not to begin with, but you -

25

MR MALLARD: No, he's just animated about this structure.

MS McDONALD: All right.

30 **COMMISSIONER:** Animated in the sense of excitement?

MR MALLARD: Yeah, I think he was - I - he actually did come up to me and say, "What do you think of this?" But he's moving around the group.

35 **MS McDONALD:** And by that time, had you been told what actually was being proposed?

40 **MR MALLARD:** No. Once we - there were introductions done. As I said, there were some lobbyists there and the proponents there. And then people from the proponents were - and there were - and the lobbyists talked about what the situation was, and the CEO makes a contribution at that point. We were all standing in, sort of, a semicircle underneath the structure.

45 **MS McDONALD:** What actually was - you were up at Morisset, this dome - amphitheatre is in place - it's in situ?

MR MALLARD: Yes.

MS McDONALD: How is Liverpool City Council linked with this?

5 **MR MALLARD:** Okay. So this was all briefed to us and subsequently I - obviously I know it because I worked on the project with Council. It's an odd situation. The - the dome was built as a developer contribution to a subdivision up there, but it was contingent upon that road that goes past the McDonald's being upgraded for the traffic study. Subsequent, that was a commitment made by the previous Liberal
10 Coalition government, apparently, that - and then the new Labor government came in and said, "We're not going to do that." And so the structure itself was therefore non-compliant, I suppose, for the purpose for which it was going to be used, which was an entertainment venue, and they were looking to offload it. And they claimed there was interest from other Councils.

15 **MS McDONALD:** From that initial - the surprise visit, at a general level, what happened with any interest in the amphitheatre with Liverpool City Council after that?

20 **MR MALLARD:** So then we applied the unsolicited proposal policy, which may by then have been formally the policy of Council - nonetheless, a draft is still a policy of the Council, which we talked about - earlier evidence - and that triggers - there's gateways in that. And that trigger - the first gateway is unsolicited proposal goes to the manager of Economic Development, and that's why Julie was there - who does, with very few resources, a bit of a desktop assessment and says, "Is this worthwhile
25 looking at or is this not?" And we get a lot of, you know, strange proposals that - you know? And so - and so subsequently, my understanding, Jason then connected Julie to the proponents - the lobbyists and the proponents, to start some paperwork and to start that process in the proposal.

30 **MS McDONALD:** Okay. You've distinguished between the proponents and the lobbyists.

MR MALLARD: Yes.

35 **MS McDONALD:** What was the role of the lobbyist?

MR MALLARD: I think just - and I confess I was - I've been a lobbyist myself in the past - just to connect the - the decision-makers with the proponents. The proponents don't have the skills to understand the networks, communicate with Local
40 Government or with State Government, because it was a State Government role and there was that road and Council has this - up there, that Council has effectively some sort of liability, sort of, for this structure too. So there was a lot of moving parts.

MS McDONALD: Okay. Has the proposal continued to be considered and
45 developed within Council - sorry, within Council?

MR MALLARD: Well, judging by legal counsel, I suggest it has continued. When I - so there's stages to go through.

5 **MS McDONALD:** Were you - did you - I'm sorry, I'll withdraw that. Did you become a member of - or was it proposed that you become members of certain committees that broadly were considering the proposal?

10 **MR MALLARD:** Under the policy, once the - it actually specifies the manager of Economic - manager of City Economy - gateways that - in an initial desktop assessment, which - it goes to the CEO. It says, "This is worth looking at." Right. And there are no resources applied to it at that point, other than that person's time.

MS McDONALD: Sorry, so -

15 **MR MALLARD:** So then the -

MS McDONALD: Julie has looked at it?

20 **MR MALLARD:** Yeah.

MS McDONALD: She then sends it to the CEO?

MR MALLARD: Yeah. She asks for more information from the proponents.

25 **MS McDONALD:** Yes.

30 **MR MALLARD:** You know, the finances weren't very thorough and that sort of stuff, so she tries to get that together. Then it goes to the - and the policy goes to the CEO, who gateways it then - so a check, and creates a project control group, PCG, specifically to do a deep dive into this proposal - this is before it goes to Council - and applies some budget to that, to do a deep dive into it, to subsequently deliver a report which may or may not recommend to proceed further. And at that point, the CEO would likely brief Council and do a report to Council. Yeah. The briefing of the Council isn't in the policy, but you would expect that to happen, but
35 they were all aware of it. And then it would go to Council, public exhibition. That - that - yeah, so it's got a - it has a process it has to go through.

COMMISSIONER: That's the pathway under the unsolicited policy proposal?

40 **MR MALLARD:** That's correct. That's a simplified explanation of it. Yes. That's right.

COMMISSIONER: And that was adopted in about March 2025; is that right?

45 **MR MALLARD:** After the - the policy was drafted, and apparently it was sitting around for a while.

COMMISSIONER: Yes.

MR EMMETT: And then after the Hammondville issue that we talked about earlier, it went through Council and went - and became the formal policy. I checked that in
5 the break, by the way, and -

COMMISSIONER: Was that - that was some time - adopted formally earlier this year, is that your recollection? I might be - I might have the date wrong, but -

10 **MR MALLARD:** Well, the - May?

COMMISSIONER: If you don't know, that's fine.

MS McDONALD: We -
15

MR MALLARD: It would be earlier this year, I think you'd be right. And it wasn't my directorship that did the report. That's what I was talking about before. It was Governance -

20 **COMMISSIONER:** I understand.

MR MALLARD: - and Legal. But I did check in the break, and it has - has now - it's now formal policy. I was right in my recollection.

25 **MS McDONALD:** Commissioner, just for your purposes -

COMMISSIONER: Yes.

MS McDONALD: - the unsolicited proposal policy was adopted on 24 March of
30 this year and it's document INQ.018.001.0009.

COMMISSIONER: Thank you.

MR MALLARD: And that's on the website. It's the first thing you point people to,
35 and it -

COMMISSIONER: And there's a procedures or - document that goes with it, is there?

40 **MR MALLARD:** Yes. That's correct. Yes. There's two documents.

MS McDONALD: And has that, to your knowledge, been passed as well?

MR MALLARD: Yes, they would have gone - my understanding is it went through
45 Council, exhibition, come off exhibition, no amendments, becomes policy.

MS McDONALD: So there's a policy - it's like the code of conduct. There's the code of conduct. Then there's the code of conduct procedure.

MR MALLARD: Of practice. Yes, yes.

5

MS McDONALD: Okay.

MR MALLARD: Yes.

10 **MS McDONALD:** So in a similar fashion, there's two associated documents with the unsolicited proposal?

MR MALLARD: Yes. And they've - and they have to be read together.

15 **MS McDONALD:** All right. I'm just -

MR MALLARD: So we learnt our lessons from Hammondville very quickly.

20 **MS McDONALD:** Is that an appropriate time?

COMMISSIONER: Yes. Sorry. Yes. Mr Mallard, we'll take the lunch break.

MR MALLARD: Okay.

25 **COMMISSIONER:** And we'll resume at 2 pm. So if you wouldn't mind being back here a moment before then, I'd be grateful.

MR MALLARD: Okay.

30 **COMMISSIONER:** Thank you. 2 pm.

<THE HEARING ADJOURNED AT 1.03 PM

<THE HEARING RESUMED AT 2.16 PM

35

COMMISSIONER: Yes.

40 **MS McDONALD:** Mr Mallard, before lunch you were taking us through the procedures that have been adopted for the consideration of the unsolicited proposal about the amphitheatre, and you spoke about a project control group -

MR MALLARD: Yes.

45 **MS McDONALD:** - that was going to do a deep dive into the proposal.

MR MALLARD: That's correct.

MS McDONALD: And then it ultimately would, my note was, report to the mayor or -

MR MALLARD: No, prepare a report to the CEO.

5

MS McDONALD: And then depending on what was the result of the deep dive, that may then have resulted in a report to Council about the proposal?

MR MALLARD: Yes. There's other checks and balances in there. I think, from memory, there has to be a risk assessment, of course. And I think, from memory, there's a report that goes, at some point in that process - or maybe as parallel to the Council, to ARIC.

MS McDONALD: Yes. Now, in addition, has another committee been established as part of the proposal but is looking more at the nuts and bolts of the proposal actually being put into operation?

MR MALLARD: The CEO established a - effectively, another PCG or a committee to look at the implementation and delivery of the project in Woodward Park.

20

MS McDONALD: Does that second PCJ - or, sorry, PCG have a particular name?

MR MALLARD: I'm not aware of a name for it, but I'm sure it has - but it would be diarised as some sort of name. But that - that second group or PCG is not in the unsolicited proposal policy. That's not in that scope of steps to go through. So it's a separate process.

MS McDONALD: And you said it's looking at the implementation and delivery of the project, even though the project actually hasn't been endorsed by Council yet.

30

MR MALLARD: Yes. The PCG that I was on - and I was invited to be on the second one and I declined. The PCG on the - the PCG, as established by the policy, is given resources and the CEO allocated some budget to it, to - to do the analysis of the proposal, right? That's when - move it to a much more serious assessment. When I left, I was tasked by that PCG - chaired by Peter Scicluna, it was then - the acting director of Operations to procure, through our procurement processes, requests for quote - one of the big - a major firm to come and do a really detailed analysis of the cost benefits, how it fits into our - I've been asked to slow down, but I - cost benefits, how it fits into our - into Council's strategic plans and the risks - risks are quite broad, from planning risks to financial risks. And so when I left, we were trying to procure, you know, like KPMG or someone to do that work. There was a probity advisory firm - the same one that did the report for -

MS McDONALD: Hammondville.

45

MR MALLARD: - Hammondville, and adviser assigned to work with the - that PCG.

MS McDONALD: The PCG.

5 **MR MALLARD:** Yeah. Because in the policy, it's very clear - and this is reiterated many times in meetings - all of the meetings were online, but they were nearly weekly - that Council has to be arms-length from the proponents at this point and needs to assess it vigorously and independently and not show bias towards it. So the PCG was - we were operating quite secretly, in a sense - you know, the ELT knew about it, but I don't recall it being briefed to anyone else. And that's when I left. The
10 other one you talked about -

MS McDONALD: Sorry, just before you turn to the other one -

15 **MR MALLARD:** Sure.

MS McDONALD: - when you said Council has to be at arms-length from the proposal, the use of the word "Council", are you referring to the governing body or the rest of the Council dealing with operations or both?

20 **MR MALLARD:** That's a good question. The probity adviser in one meeting was very firm that the CEO and other operational people needed to be arms-length from - not show bias towards it. And you might recall from the earlier report on Hammondville, we were conscious of the lobbying provisions in the policy as well.

25 **MS McDONALD:** Now, the second PCG that was established, which you described as implementing and delivery - looking at implementation and delivery of the project, were you invited or requested to be on that?

30 **MR MALLARD:** Yes.

MS McDONALD: The second PCG.

35 **MR MALLARD:** Yes. I got a diary invitation, and it was then repeated in my diary at that time for this meeting. And immediately a red flag came - went up for me, because I'm on the policy - the one implemented by - by the policy, and the probity adviser had given us quite strong instructions around independence and not showing bias, and I felt - and I wrote this to Peter Scicluna as my reason for not attending it. I didn't write to Jason, though. I wrote to Peter, because I felt that was conflicting with the policy and the procedures in the policy about being arms-length from the
40 assessment.

So if you - if you - particularly if you're overlapping on the two committees, if you're on that other committee, which is clearing a way for it to be implemented - now, I didn't go to the meetings, but I got briefed on them - Julie Scott was put on it. I
45 think Peter Scicluna was on it. Emily Tinson was on it.

MS McDONALD: This is the second -

5 **MR MALLARD:** And I got briefed that - on what - the work they were doing, which was, as you are aware of now, looking to amend the WSIG grant to Brickmakers Creek, to be able to finance this project. Planning issues were just being discussed. I know Lina was in and out of that - she would mention it to me.

MS McDONALD: Who did?

10 **MR MALLARD:** The director of Planning.

MS McDONALD: Lina Kakish?

15 **MR MALLARD:** Because there - there - didn't even - and we were looking at this and - on the main PCG that I was on. There were issues around traffic - traffic management. It was going to be a stadium or a music venue. Traffic and sound was a concern too, because there's quite a few residential towers around it. And then environmental. And there's impact on sporting groups - there's massive sporting facilities there. Netball and so forth.

20 **MS McDONALD:** I think we kind of leapt ahead.

MR MALLARD: Right.

25 **MS McDONALD:** Put broadly, the proposal is that the amphitheatre would be constructed or established where?

30 **MR MALLARD:** Woodward Park, which is down there in Brickmakers Creek, near the Whitlam Centre. Off Hoxton Park Road, which is - coincidentally, number 3 Hoxton Park Road we spoke about last time is right next door to it.

MS McDONALD: Yes. And so by the time you left your employment at the Council, you declined to become a member of this second group?

35 **MR MALLARD:** Right - I never participated in it at all, and I wrote to Peter Scicluna, because he was chair of the main PCG, and pointed out why I wouldn't be involved. I thought I was hinting at it - I thought it was a big hint to him that I felt it was inappropriate. I probably said that, and that was - it went no further. Then Lauren, my EA, got the CEO's EA to pull me out of the constant, you know, diary invitations.

40 **MS McDONALD:** The email that you sent to Peter -

MR MALLARD: Yes.

45 **MS McDONALD:** - roughly when was that?

MR MALLARD: I always wish I had my diaries here to do this. So if we went to see the facility in February this year -

MS McDONALD: That was the surprise visit?

5
MR MALLARD: Yes. Yeah. That's right. I'm remembering my notes. So the - I'll call it the main PCG, the formal one, right? That was meeting weekly pretty quickly. It was quite - we had competitive attention, allegedly, with other Councils and we were keen to move forward and do the assessment. So it would be around
10 about March, I suppose, that - that the other one was - started to get active. And I know the CEO briefed ARIC on the proposal, which is in the policy, so, you know, that's - I mean, that's - and obviously ELT were fully briefed on it. That all happened in February/March.

15 **MS McDONALD:** Just another topic, Mr Mallard. When you became the director of City Futures - immediately before that, you occupied the senior adviser role?

MR MALLARD: Yes.

20 **MS McDONALD:** And could you remind me, at that stage, who did the senior adviser report to?

MR MALLARD: Yes. When I was employed on that three-month contract, that position reported to John Ajaka - to the CEO.

25 **MS McDONALD:** And physically, where was that? Where was your desk?

MR MALLARD: I - I took over - there's a break - so mayor suite - reception, mayor suite to the right and lobby where you sit, and to the left there was a break-out
30 meeting room which was not being used, and so I said I'll move in there, cognisant of the fact that we were going to be moving - we would be moving to our new building within months, so I didn't want to have any restructuring occurring. It was an - and that sat me at a - door open, smoked glass, and I just used the conference desk, and I had eyeball with mayor's EA, who happened to be Lauren Myers, and the door to
35 the mayor's office, so I'd be aware of what was going on. And that was sealed off from the corridor.

MS McDONALD: When you were appointed the director of City Futures, that was a new directorate that was created as part of the restructure?

40 **MR MALLARD:** Mm-hmm.

MS McDONALD: Did the senior adviser role shift from where it was placed within the organisation?

45 **MR MALLARD:** Yes. So I'm not quite sure the mechanism of how that occurred, but Mr Ajaka didn't want to have - he didn't - he had a view that the directors

reported to him, and that's how he managed - that's how he wanted to manage the Council. So it was not surprising it was relocated, but I just don't remember exactly how - it would've had to gone through the consultation process with the unions and so forth, but it was appointed to report to me, which I thought - if John didn't want
5 that position - reporting, I - that was totally appropriate for me since I held it myself for two years - '12 to '14 and a couple of months now - to be able to help.

Initially, I think it might have even been Mimi who had a temporary role in that before applied in competitive process and got appointed to the manager of
10 Communications. But Betty didn't have a lot of political experience, so I thought it would be good to be able to liaise with her in terms of managing any situations. She didn't come from Local Government or government at all.

MS McDONALD: Right. She was - Ms Boustani -
15

MR MALLARD: Yes.

MS McDONALD: - was originally appointed under a temporary contract.

20 **MR MALLARD:** That's correct.

MS McDONALD: Who raised with you her appointment on a temporary contract?

MR MALLARD: Her recruitment? I was, by then, a director and I'd moved into an
25 office next to the Communications team on the same floor but sealed off from the mayor's office. The councillors can't go through to those areas, but there's a door that, you know, we can go through, and I got either a call or a text from John Ajaka, "Can you come to the mayor's office," which is not unusual, but - so I happened to be free so I walked into the mayor's office. John was sitting - there's the mayor, John and
30 what - who I became aware of was - was Betty, with her back to me, and they were having a discussion.

And that's when - so from my memory, what had happened was that the mayor and Betty had had lunch and the mayor explored this opportunity with her, and then he
35 brought her back to the office, called John in - John Ajaka, who was in another meeting, I believe - and then by then they had sort of said, "Let's make this happen" - contract, and brought me in to then do the - do the arrangement. That's when I became aware she had previously been his lawyer - I was told that.

40 **MS McDONALD:** Previously been whose lawyer?

MR MALLARD: The mayor's, but not - not currently, you know -

MS McDONALD: And when you said that you arrived - sorry, the mayor and
45 Ms Boustani had had lunch, and then you said something about they've explored - he'd explored an opportunity with her?

MR MALLARD: "What are you doing?" You know, that type of - look, that's anecdotal, that's what I was told. And, "What are you doing? What's the future hold for you?" She was disengaging from a law firm, I understand, and we were looking for someone with a - a smart person to replace me in the - in - but - but at that point
5 reporting to Ajaka, you know, as a senior adviser. Yeah.

MS McDONALD: Did the mayor at the meeting declare that he - that she had previously acted as his lawyer?

10 **MR MALLARD:** Yeah. So I - either the mayor - either John then pointed it out he'd become aware of it at that point or the mayor did, but I - I was aware at that point - and I didn't see a conflict with that because it was no longer the case - that there - that she had previously been engaged in the - in the past - like, quite distant
15 past as his lawyer. But I thought, frankly, to me, that actually was an advantage. One, law qualifications are helpful. Legal understanding is helpful in that job. And two, she, I'd assume, knew how to work with him, which was a challenge.

MS McDONALD: Why is it a challenge?

20 **MR MALLARD:** A challenge to work with a new CEO or anyone else if you don't know their - if you - you know -

MS McDONALD: (Indistinct) idiosyncrasies or -

25 **MR MALLARD:** Yeah. That's right. And a challenge to work with me. But someone's got to - got the - some experience, then you hit the ground running much better. And that's the beauty of the contract system, when - in those, sort of, sensitive roles, because if it doesn't work, it doesn't work. Yeah.

30 **MS McDONALD:** Why do you describe it as a sensitive role? Because it wasn't - sorry, why do you describe it as a sensitive role?

MR MALLARD: Well, any senior executive, not just the mayor - an EA needs to be aware of the amount of confidential information and discretion that's required.
35

MS McDONALD: Can I just stop you there. We're not talking about an executive assistant to the mayor. It was a senior adviser.

40 **MR MALLARD:** Yes. And a similar sort of consideration as an - as an EA too. So they need to be aware of the discretion of the information they're privileged to and how to handle that information. Yeah. And how - how to - yeah, and to be sensitive to.

45 **COMMISSIONER:** Was any consideration given at the time to whether there should be a competitive recruitment process?

MR MALLARD: As I sort of started to allude to there - and this goes back to when I was there in '12 to '14 - some roles are, as I just said, sensitive, require a character that will work with the mayor - or a CEO, but particularly the mayor, and so recruiting someone on a contract - it turned out to be 12 months, but mine, for
5 example, was three months, but I was a known entity by then so that wasn't really an issue, but it gives you the opportunity to say it's not working - for the mayor to say it's not working to the CEO, and then to say, "We're going to" - "It hasn't worked out. We'll move on." Because the - some roles require that sort of sensitivity and flexibility, and that's - and I was advised that that's - that was permitted within the
10 Act, in terms of contract appointment.

I - I note that it was - Farooq gave evidence saying - or it might have been Eddie Jackson - Dr Jackson, when he was here, gave evidence saying that it was to fill
15 a - quickly fill an important technical position. It might have been the case when he was the CEO, but my experience had been it had been to recruit someone to a sensitive position where we had difficulty retaining people because they were - they didn't work in that situation very well - like, didn't get on with the mayor. This is what happened to Mimi. Didn't - didn't have the right relationship. So we - that's why we would do that.

20 **COMMISSIONER:** Would not the usual probationary period in a normal permanent appointment arrangement give that flexibility, or is it something more that you're -

25 **MR MALLARD:** The answer to the question is yes, it would. A probationary period would. There's a timeline issue there of filling the position quickly. That's another factor, and -

COMMISSIONER: Did this position have to be filled quickly?

30

MR MALLARD: Yes.

COMMISSIONER: Why?

35 **MR MALLARD:** Because I'd been - I had been recruited as a director. Mimi Curran had been dropped in there by me on a - she was on contract at that point. But Mimi and the mayor, I should have seen it coming, were not - not compatible, working together. And then I moved her across temporarily to Communications because I had a big problems in Communications leadership at the time, to shake it up because
40 there was a bit of a problem. And so there was a vacancy in the mayor's office that needed to be filled.

COMMISSIONER: Was there any policy as to when positions should be recruited through a - I'll call it an ordinary competitive recruitment policy or when - describe it
45 as direct or contract appointments would be appropriate?

MR MALLARD: No. No. We just applied the Act, which said up to 12 months, contract appointment.

COMMISSIONER: I appreciate the Act and its (indistinct).

5

MR MALLARD: Yeah.

COMMISSIONER: But there was no internal guidance as to when utilising those provisions under the Act might be appropriate?

10

MR MALLARD: No.

COMMISSIONER: Therefore, the flexibility that you described or the need to fill -

15 **MR MALLARD:** No. We took advice from Craig Knappick, who reported to Farooq Portelli. It was the exception, not the practice. I mean, the - my area, a bit, in terms of the - you know, the - the adviser to the CEO - to the mayor, so CEO - having a skilled person like Mimi - we appointed her. She applied to be a director, was unsuccessful, but John Ajaka said - I remember him saying to me,
20 "She's very talented," and, "I think she can shake this place up a bit," and that's certainly true, and she was - and I - in fact, I negotiated it with her and we put her on a one-year contract. And as I said, dropped her into the mayor's office (indistinct) Communications, and then we advertised the Comms leadership role and we had 27 applicants. I went through a lot of job interviews. Farooq was on the panel with me.
25 But she was the standout for that.

Another example where we did it was we recruited the senior manager, commercial property, in - I had to build my team really quickly around that. You got yourself on - previous evidence given - there was no strategy and a lot of pressure on us to
30 lease out that Liverpool Civic Place - Council Civic Place, and we needed good people to do that. So Steve Simat and another guy called Jeffrey Appel applied through a competitive process - only two applicants we got, though, because councils don't pay enough money to get people from the property industry.

35 We appointed - and Farooq was on that panel with me, and so was Jason, in fact. We appointed Steve Simat. We had a deputy's position that was vacant. We hadn't recruited for that - haven't advertised, but we appointed Jeffrey to it on a contract, to try him out, see if that worked, and then we were going to go to market and do that. So they were examples that we needed - and time was imperative in that commercial
40 property space. I mean, Jeffrey was amazing and - doing the nuts and bolts on those big leases we did. So yes, that was - that's an example where it was practical. Yeah.

COMMISSIONER: But you've explained some of the advantages that can come to the organisation by that approach. Are there any downsides or risks, in your view?

45

MR MALLARD: I - I got caught out a little bit, running out of time. Like, it's a limited 12 months. That wasn't clear to us in the past. It was - Farooq Portelli and

the lawyers really brought that to our attention. So Betty got - towards the end of that.

5 **COMMISSIONER:** When you say caught out, getting to the end of the 12 months?

MR MALLARD: Well, there was a view - I inherited the view - the view was around when I was around in 2012 to '14, that you had to up two years, but that was corrected during my period there - early years - early days as a director - that that was not correct. So I guess once we were aware of that, clearly, then we - they were
10 put into place - the recruitment processes that prevent that occurring. The downside? Well, the downside is some people - the perception that your inquiry has got as one of its terms of reference is - or the previous inquiry was that there's favouritism and nepotism and all that because that could open up those allegations. Yeah.

15 **COMMISSIONER:** You're talking about the 430 investigation?

MR MALLARD: Yes.

COMMISSIONER: What do you - do you have an observation about that
20 perception or otherwise?

MR MALLARD: Well, first of all, the perception comes from political opponents of the mayor. So that - it is coloured in that context. As you - as I indicated previously in the inquiry, I - I resigned from my political party to try and head that off - you
25 know, to not compromise my ability to do my job. I think I was relatively successful at that. Some of the other - it's only natural for a political position to want to have some people around them that are people that identify with their political views, whether it's Labor, Green or Liberal mayors, you will find that in all councils.

30 So, I mean, when I got there, there's this whole - this exaggeration - it was 12 - nine or 10 or 12 political appointments around the place. It wasn't the case. And, yeah, so - and then the - and your opponents raise that - even raise in Parliament, the media get hold of it, so it gets a bit of traction. So there - that's probably the biggest downside. And I mean, I was relieved - I was happy to do a three-month
35 contract. I knew what I was there for. Then at - but I was definitely keen, when I decided to run for the position of director of City Futures, to go through as vigorous as possible recruitment process, which I did, which the previous inquiry acknowledged.

40 **COMMISSIONER:** Do you think that if there was a policy that set out when contract or direct appointment can be used, that might go some way to not eliminating the perception to which you refer but at least being able to manage it? Even if it is permitted in the Act?

45 **MR MALLARD:** Yes.

COMMISSIONER: And am I - is that a clear enough -

MR MALLARD: I think this goes to the tension in Local Government versus state Ministers, opposition officers, federal or state. I had some staff - professional staff, not politically aligned, come and go from Minister' offices that had a different view.
5 You know, that - surely the mayor will have some people around him or her that align with their agenda and they can trust.

So that's a tension that is in the Act because the more reforms that government has done over the last 20 years to Local Government, the more they wanted to be like
10 a board of directors, unified in the decision-making and not having politics, but there's always politics when you elect people. So the answer to your question is I would think maybe the department might look at it - some policy template on - on that type - on that - recruitment in that space. I think mayors - particularly popularly elected, but I think all mayors should be entitled to have one or two staff that they
15 can have a say in picking in their office.

MS McDONALD: Sorry, could you repeat that? That -

MR MALLARD: I think, in terms of the broader issue of mayors - and they all do it
20 differently - I mentioned in the previous inquiry the Parramatta mayor had a direct adviser, you know, contrary to the Act. I hope they're not listening. And in - the knowledge that Wendy Waller, when she was the Labor mayor, didn't have an adviser, but I think mayors should be - should have the power to have a say (indistinct) say in the recruitment of one or two - maybe the EA and then
25 an adviser - for them to do their job rather than being strictly the public servant model, where we do the panel and - because when we do the panel to appoint someone, say the EA to the mayor, the people who are on that panel have got political antenna on - to say this person will work well with that person.

30 **MS McDONALD:** But the political adviser position was not an adviser position at Liverpool to the mayor.

MR MALLARD: No.

35 **MS McDONALD:** It was - and if I can just bring up LCC.001.003.0091. This is a document dated around February 2024, and you can see you're one of the nominated people submitting it. And you can see it's redesign of personal assistant to director City Futures and change of reporting line for senior adviser.

40 **MR MALLARD:** Okay. Yes.

MS McDONALD: If we could go through to page 4.

ASSOCIATE: Do you want this document to be on the live stream?
45

MS McDONALD: Yes. Sorry. Now, that was the City Economy structure currently. And you can see you've got manager of City Economy. Was that Julie Scott?

5 **MR MALLARD:** Yes. It's always been Julie Scott.

MS McDONALD: And you can see there that the senior adviser reported to her and then she would report to you. And then if we jump across to page 5, this was the proposed change. And you can see from the change the senior adviser now - instead
10 of reporting to Julie as the manager, there's now a direct report to you.

MR MALLARD: Yes.

MS McDONALD: So if we just - and my understanding is that proposed change to
15 the structure was adopted towards the beginning of 2024.

MR MALLARD: Yes. I think the previous structure you showed was a temporary arrangement. Just raking up a dormant memory cell on this one. I think when - when - I'm thinking that before City Futures was created - or activated, that
20 that may have been the way Mr Ajaka moved her away from reporting to him, to report to Julie, but that wasn't very long at all.

MS McDONALD: Well, if we can go back to the first page under section 2, Supporting Information, we've got in early 2023 the new CEO, who would be
25 Mr Ajaka -

MR MALLARD: Yes.

MS McDONALD: - and executive recommended a 12-month temporary role, senior
30 adviser to assist the Council and executive deliver the 100-day plan. Do you see that?

MR MALLARD: Yes, yes.

MS McDONALD:
35

"In creating the City Futures directorate in September 2023, it's now proposed to recruit to permanently fill the position and become a direct report to the director, City Futures."

40 So from that, it appears that it was anticipated only to be a temporary position to assist the Council and the executive to deliver the Council-endorsed mayor's 100-day plan. Now, there's no reference there to advising or assisting the mayor, per se.

MR MALLARD: No.
45

MS McDONALD: It's described as assisting the Council, and I assume the use of the word "Council" there is to the governing body, or councillors and mayor and the executive to deliver - to assist in delivering the 100-day plan. Now -

5 **COMMISSIONER:** Do you agree with that?

MR MALLARD: I can see Julie has written this, I might say. The 100-day plan - many more days than 100 days and still hadn't been fully delivered - so it's like - whilst it might look like a short-term proposal - but that was the focus of the
10 Council at that time. I just - my feeling is that there was a holding, because the previous structure you showed there was a holding position where the senior adviser was reporting to Julie, and that when - it was Julie's area or City Economy - it was under Community and Lifestyle. And then once my directorate was created, I was recruited, they were all formally and - and she came across to mine. So I would say
15 the timing here is - that was the holding position, and then it - the restructure the final structure you show - where the senior policy adviser reported directly to me was adopted. This is just JCC, by the way. Yeah.

MS McDONALD: No description in this document as to that reporting structure to
20 be a holding -

MR MALLARD: No. And this is JCC. This is a consultative document to the unions.

25 **MS McDONALD:** Yes. That you were required to do. Or the Council is required to do.

MR MALLARD: Yes.

30 **MS McDONALD:** I think the issue that I'm trying to get at is that in some of your answers you've really emphasised that it's a senior adviser to the mayor. Can I just pause for a sec. For example, you spoke about the mayor and Mimi Curran were not compatible, weren't going to work together. And the description here doesn't focus on the mayor.

35

MR MALLARD: Yes.

MS McDONALD: And I'm just wondering where the role has - it would appear, to have metamorphosised from being an advisory position within the - I'll call it broadly
40 the operational structure of the Council, to suddenly - not suddenly, I withdraw that. It metamorphosises into a senior adviser position, which in substance appears quite personal to the mayor. And I suppose question number 1 is that impression that I've put to you gained from evidence we've heard and documents that I've read, is that something that you observed?

45

MR MALLARD: I mentioned this in evidence a couple of weeks ago, that - I described myself in my CV, as you'll recall, as senior adviser to the mayor

and the CEO. You know, legally, I was senior adviser to the CEO. Liverpool Council, particularly under Farooq Portelli when he was CEO, had a very black and white view that no one reports to the mayor, right? But the community has a view, and the mayor has a sense of expectation from the community that he has some advisers to help him do his serious work he does in the community.

So that - the position - when I was in the position, reported to the CEO - or initially, as I said previously, to a director when I first started in 2010, but then to - to the CEO - to Farooq Portelli and Carl Wulff. Then when I came back, I was reporting to - for that short period, reporting to Ajaka. And then it came across to report to me. But at all times the CEO or the director allows the mayor and any councillor, as I also said in the last evidence, access to that adviser. And I - I - not - I didn't have time in this two months I was there to really engage with councillors. They were all just newly elected, but the previous role, where I was there for two years, I did quite a bit of work with Labor councillors and others to assist them in projects they were doing in their community.

MS McDONALD: How are the other councillors informed that they can access this resource of the senior adviser? Sorry, I'll reframe that. When you're the head of the City Futures directorate, the senior adviser is reporting to you either - initially through the manager.

MR MALLARD: Yes.

MS McDONALD: Then subsequently directly to you. Did you - or how did you inform the other councillors that this was a resource that was available?

MR MALLARD: There's no - in the current period I was there as director - you know, the answer to your question is there's no formal way of telling them that. One, it's a sense of awareness because they're in meetings and often available - you know, attending meetings that they may be attending. The previous term when I was there for two years in a row, I contacted the councillors and - you know, when I got elected to Parliament, they - when I was - they came - many of them came up and congratulated me because I'd been working with them on various matters, but, yeah, that's - it's a good observation about how they knew they had access to that adviser.

MS McDONALD: And to your knowledge, when you were the director of City Futures with the senior adviser either directly or indirectly reporting to you, at any time did she do any work - for, for example, any of the Labor councillors?

MR MALLARD: In a broader sense, the answer would be there were some. I mean, we were working on - I had responsibility but not much resourcing to work on a Masterplan for Miller and 2168, the - one of the sort of socio-economically most challenged areas of Liverpool, and Betty was assisting me in some of that work we were doing around that. I was looking at a development - like a Waterloo-type response, you know, development-driven outcomes, but there wasn't resourcing for that. So that was certainly - that - I'm not - that was certainly - Councillor Betty

Green and Ammoun both came from that area - (indistinct), and that was certainly one of their agendas in many of our strategic meetings, to - to work on that. So in a sense, she was doing some assistance in that regard, and I'm not a hundred per cent certain - I do recall she may have attended some meetings around that, so -

5

MS McDONALD: All right. But that's just attending - sorry, I will withdraw that. That is attending meetings where a number of people have attended - not, to your knowledge, providing - for example, if a councillor approached her and said, "I'm really interested in establishing an animal welfare shelter but I need some research done on it, can you assist me?" So no, kind of, one-on-one?

10

MR MALLARD: The normal process there would be an - and I'm not sure there's a good example, that - they would come to a director - probably to me, and then I would allocate project work to - to - to the adviser in that space.

15

MS McDONALD: And is that also the case if there was a particular issue that the the mayor was interested in that he wanted Ms Boustani to do some work on, it should have come to you?

MR MALLARD: I would - no, he - he had - Mr Boustani had some autonomy. I was fine with that. I - but I was - I had weekly meetings with her to be updated on where she - and she came to do it - all of my manager meetings, or came in by Teams, to update us on what - the project she was working on, where it was - where it's at, because I was very big on clear - some of the projects, like Woodward Park, for example.

25

MS McDONALD: What was her autonomy?

MR MALLARD: She's a senior adviser. It's to - like, to me, that was - I had been in that role. It's a - the ability to be advised by the mayor about an issue and then contact - and she was able - she was allowed to - of course she was - she was a part of the operations, to contact the director or manager, try and see what was going on in this problem. So I used the story the other day about trees. You know, it's - believe it or not, it's one of the most common things we get complaints about - you know, trees hanging over someone's backyard. She would be able to try and resolve that issue without me being too involved in that.

35

MS McDONALD: Were there any guidelines that set out what her autonomy was? Or was it up to her discretion?

40

MR MALLARD: Well, we could pull up her PD, because I know we worked on that quite a bit - position description, but it was to have close liaison with me.

MS McDONALD: You spoke about the mayor and - is it Mimi Curran?

45

MR MALLARD: Yes.

MS McDONALD: Were not compatible to work together.

MR MALLARD: Freudian.

5 **MS McDONALD:** Why was that?

MR MALLARD: Personality - difference in personality.

10 **MS McDONALD:** And what were the two personalities?

MR MALLARD: Mimi - I have a lot of respect for Mimi, I thought she was very good, but she came from outside of government. She was a consultant from the private sector and was appropriately, in my view, quite combative in terms of, you know, following instruction and pushing back. The mayor didn't appreciate that, nor
15 did some managers around the organisation either, I might add. And that - that - that was certainly her character, and I thought her strength because I thought - shake up the - some of the cobwebs around the organisation. But in the end we parted company because of that conflict.

20 **MS McDONALD:** She left employment at the -

MR MALLARD: Yeah, we - we parted company because of that friction between her and some of the staff, but that's - you know, that was amicable parting of ways.

25 **MS McDONALD:** Sorry. You spoke about the change in the organisational structure when Mr Ajaka became the CEO, and there was a change from any direct reports to the CEO other than the directors. So it was a very clean CEO, and then underneath the various - the six directorates.

30 **MR MALLARD:** Yes.

MS McDONALD: All reporting to the CEO.

MR MALLARD: Yes.
35

MS McDONALD: And then underneath that, the various sections or divisions of the various directorates.

MR MALLARD: Yes.
40

MS McDONALD: Now, the structure has now changed, in that not only have two directorates been abolished but there are now a number of direct reports to the CEO other than the four directors. So it appears to be a reversion to the organisational structure that was in existence before Mr Ajaka was appointed.
45

MR MALLARD: Or similar. Yes.

MS McDONALD: I just want to ask your view, given your experience with local council, about the advantages or disadvantages of the two structures.

5 **MR MALLARD:** Well, no two Council structures are the same, and they very much reflect a CEO - particularly a CEO - maybe the council and the mayor, particularly when they had a role in the structure - the way they want to operate. Clearly, Mr Breton wants to be more hands on in some of the areas of the Council's operations - he has got now directly reporting to him Audit and - Audit and Risk, which is an ARIC - or ARIC doesn't report to him, but they involve ARIC. He's got
10 commercial property area, which is, you know, the area we really need to - they need to - you know, the Project 26 project, and - trying to think what the other one - the -

COMMISSIONER: Communications?

15 **MR MALLARD:** No. Communications at the moment is sitting over there in Tina Bono's area. I can't think what the other one was, but the - so - and obviously Mr Breton wants - I said strategy - he was - area - I might not have said strategy. He's got strategy reporting as well, which is all the reporting - annual reports and biannual reports and strategic work. So he's taken those on. He wants to be more
20 hands on. That's - that's his decision. He's a very hands-on CEO. John wasn't. John wasn't. He had a view of - he wanted to have the directors report to him through ELT and he wanted to be involved in the big-picture stuff and tried to keep problems away from him as much as possible, but that - so is it just two - two different types. But I looked at different structures, the - some councils have two executive directors
25 and they have directors below that. There are all kinds of different structures.

MS McDONALD: But my question was -

MR MALLARD: Sorry.
30

MS McDONALD: - can you comment on advantages or disadvantages. You've commented that it may be a creature of the nature of the CEO and the way that the CEO will manage the organisation, but have you got any broader comments on advantage or disadvantage?
35

MR MALLARD: My view is a CEO - a CEO's office, with some of the critical areas perhaps reporting direct - like Audit and Risk, which is - highlighted very - very involved by the government in terms of Councils - but the directors have their - have their areas of work. The abolished City Futures, a lot of the areas that
40 were put into my area don't fit neatly anywhere else. Like City Economy, my advice went - before I left was really has to go to the CEO, because it was sitting in Community and Lifestyle, but it's not a - and it is sort of community, but it's really a heavy hitter with businesses and universities - major stakeholders in our city. So that's why it fitted well with City Futures.
45

Commercial property fitted well City Futures, in my view. We - we got the runs on the board very quickly, but it was floundering and it wasn't labelled commercial

property. It was floundering over in Farooq's area, where they have also got responsibility for compulsory land acquisition for roads and water - drainage works and a huge amount of work, and getting a priority right - so separating them was a good move, but not putting them under one director was - my view, but - because
5 they are quite distinctly different areas of Council activities.

MS McDONALD: Can I just pause - can we bring up INQ.009.001.0033. And it's page 524 and it can be live streamed.

10 **MR MALLARD:** Yep.

MS McDONALD: You can see there this is, I think, at least the directors, and what is included in the office of the CEO. So as you said, you've got Audit and Risk, Commercial Development, and now you've got City Strategy and Performance.
15

MR MALLARD: Yes.

MS McDONALD: While City Economy has gone under Planning and Design.

20 **MR MALLARD:** That's correct. Sorry. Yes, that's what it is now. And -

MS McDONALD: Sorry.

MR MALLARD: And I gave evidence a few weeks ago that - I - I made
25 a submission on that because there's inherent risks in putting City Economy in Planning and Design because a lot of the engagement for City Economy is with the property industry. And so - and it - it's a growing important area for councils, city economy - from small businesses to big businesses, and the really important responsibility of the university sector and the health sector, and it was engaging with
30 the airport and also with Bradfield - the Bradfield authority. So in my - if I was the CEO, I would be putting that over into my area. If you're going to have the office of the CEO and someone running that, if you didn't have a director for City Futures, I - I would have that away from the other one.

35 **MS McDONALD:** When were you a councillor on City of - or South Sydney then, City of Sydney -

MR MALLARD: Gosh.

40 **MS McDONALD:** - was a - did the structure - organisational structure of Council adhere to one of the models?

MR MALLARD: Now you're testing me.

45 **MS McDONALD:** Okay. If you can't recall -

COMMISSIONER: It probably changed a bit it over those 20 years.

5 **MR MALLARD:** It certainly did, and it's a different Act for the City of Sydney. So it was a little bit more engaged under the Lord Mayor and the actual operations than there is in the general Local Government Act. So I think, first of all - and there was a debate at our council about it too - I think both councils had deputy CEOs, and then filtered the - the directorates up through the deputy CEO or the CEO. I don't recall - yeah, so I don't recall office of the CEO with this sort of responsibility at South Sydney. The City of Sydney, I - I'm not sure.

10 **MS McDONALD:** Will you excuse me for a minute. No further questions.

15 **COMMISSIONER:** Just on this topic of (indistinct), Mr Mallard, last time you were here, you gave some evidence that at a - I think a planning workshop you raised that you thought one of the biggest - or larger risks facing the organisation was instability.

MR MALLARD: Yes.

20 **COMMISSIONER:** Do you remember giving that evidence?

MR MALLARD: Yes, yes. That was a -

25 **COMMISSIONER:** Can you just explain to me why that was on your radar as a risk to the organisation at that time?

30 **MR MALLARD:** So as I said, that was at Lurnea, and Michelle was facilitating that workshop. It was just the directors, and the acting CEO, and there was a - a SWOT analysis - strength, weaknesses, opportunities - and everyone was putting up stick-it notes and I put up on the weakness the turnover of CEOs and the instability of the structure. At that point, the government hadn't amended the Act about the council having a role in the structure, and I gave evidence at the last hearing - the mayor was - was procrastinating on it. He had the numbers on the Council by putting the new structure through the Council - it was creating a lot of instability across the whole organisation.

35 **COMMISSIONER:** Why?

40 **MR MALLARD:** Well, it takes - it - it can take up to two years to bid down a restructure. And when - like, there's - stage 1 at the Liverpool Council has been gone through, which was just the amalgamation of six to four. Stage 2 is probably underway now, which is rearranging all the - breaking up some business units and that. The staff are not certain in terms of their - who - what their strategy is. My removal removes a whole lot of strategic work I was doing and direction I was giving to my directorate. They're doing what I'm - what we call BAU, business as usual, at the moment, but there's no lightning - direction that they're going in.

45

The recruitment process has pretty much stopped because you don't recruit vacancies until you know what you are going to be doing. So yeah, it just creates instability. And so I - and, of course, the CEO turnover for any organisation, not just councils, it will also create instability, as people get to understand the CEO, the CEO - again,
5 re-addresses the structure and priorities of the Council. So I put that as a weakness, because our Council has that reputation, and that's when Jason famously said that everyone knows the mayor's office wants to close down City Futures - September, but - and I think it was a legitimate observation.

10 As I said, again, in the previous inquiry, which you're looking the - in my transcript then - when the Council still had control over the structure, John Ajaka and I was - I can't remember if I was a director or still an adviser then, but nonetheless, I was - I may well have been a director, but John was pulling his hair out about getting - so he had the approval of the directorships but not the structure below from
15 the Council. And the mayor just kept putting it off, I think, as a leverage.

COMMISSIONER: What effect does that uncertainty or instability have to your observation on the operational side of the organisation about getting its work done and strategic planning and the like? Does it impact on those matters?
20

MR MALLARD: Yes, it does.

COMMISSIONER: How?

25 **MR MALLARD:** Well, change of priorities with - with a new CEO and the change of directors impacts the work plans that you agreed to with the team. And how they relate to a new strategic plan and the - the proposals of the organisation. It just - you know, it just creates uncertainty - uncertainty, and that creates reluctance to make difficult decisions, all right, until you know where things are going. And it also
30 creates reputational damage with the stakeholders, the community, and others that are dealing with the Council when things keep changing.

COMMISSIONER: Recruitment challenges?

35 **MR MALLARD:** Yes, so -

COMMISSIONER: Did you observe that yourself in filling roles within your team?

40 **MR MALLARD:** Yes. Yeah. And also - well, recruitment challenge, yes. So you'd advertise, and invariably it's people from other councils - we had a reputation for being unstable and they'd ask us about the stability and the CEOs and that -

COMMISSIONER: Candidates?

45 **MR MALLARD:** Yeah. Particularly senior ones. And then when we go to market for services, sometimes it came up - you know, in regards to the Council's instability.

COMMISSIONER: How would it come up in that context?

5 **MR MALLARD:** Well, we couldn't attract anybody to - in the first round to provide professional services to the Council for the assessment of the dome project - the first round. Anecdotal feedback we got was people didn't want to go near the Liverpool Council at the moment. So there was reputational issue there. I don't know whether that - we - they started a second round when I was there. We dropped down to, sort of, lower tier of consultants, and so that probably has been fixed now.

10 **COMMISSIONER:** Earlier today, speaking of the amphitheatre or dome, you described the site visit - Central Coast - and at least two councillors were there, from your recollection. When you were a councillor at City of Sydney or South Sydney, would you attend site visits like that?

15 **MR MALLARD:** No, never one like that. I would attend site visits, yes, but they would already be formally in the council system. I mean, unsolicited proposals in - I don't think the policy - the ICAC guidelines or anything were involved in it back in those days. I mean, the reason the ICAC is involved in it and why we have to have a policy is it's a big area of potential corruption. You've got one-on-one
20 negotiations, you know? Mr Ajaka and the sports club - you know, that type of thing. It's to protect the organisation - both organisations on that basis. So -

COMMISSIONER: Well, just on that point, then, do you have a view about whether it's appropriate for councillors to attend a visit like the one at the
25 amphitheatre in the Central Coast, given the stage that it was at at that time?

MR MALLARD: No, it wasn't appropriate.

COMMISSIONER: Why?
30

MR MALLARD: Because it was an unsolicited proposal. It hadn't even gone into - well, you could argue that it wasn't an unsolicited proposal legally, because it hadn't submitted to the Council, but, you know, that's - yeah, that's splitting hairs. It's an unsolicited proposal, it's gone through the CEO's office into the organisation.
35 Yeah, under the policy, from memory, at some point - I'm not sure when it is - councillors need to be made aware of it, you know, but after we'd done the assessment. We don't want to put the cart before the horse and say, "This is fantastic," and then KPMG come back and say, "This is a dog." We need to get all the - all our ducks lined up. Excuse all those analogies.

40 **COMMISSIONER:** What about -

MR MALLARD: Metaphors. Sorry, metaphors.

45 **COMMISSIONER:** Sorry, I didn't catch that.

MR MALLARD: Sorry. I said metaphors, not analogies.

COMMISSIONER: Last time you were here you gave some evidence about representations being made by constituents to councillors and you gave some evidence about your experience as a councillor receiving those and also as a council
5 staff member. Were you ever aware of councillors requesting meetings between council - with council staff and the constituent to explore issues raised by the constituent? Be it a tree or DA or a compliance action or anything?

MR MALLARD: Yeah. It's not inappropriate if it's approved by - under delegation
10 by the director.

COMMISSIONER: Just pausing there, are you aware of anything like that happening during your time at Liverpool City Council? That is, a councillor saying, "I want to have a meeting with you, Mr Mallard, and the constituent to raise" - to
15 discuss the constituent's issue, whatever it might be? Did that ever happen to you, for example?

MR MALLARD: Well, yes, but as a director that's not inappropriate, and I'd always bring along someone to take minutes of that meeting. And invariably, that would be
20 the mayor, usually, to talk about a problem or - but that's the main reason - an issue.

COMMISSIONER: So you don't see it being an issue with a director?

MR MALLARD: No, as long as the directors are fully aware of their legal
25 obligation and - around, you know, operational and conflicts of interest. We had implemented in the mayor's office - and I think Lina had implemented it also - like, a form, which I recommend all councils should have for those meetings - so it records conflicts of interest, anything - I - it happened to me once at Liverpool, where you rock up to a meeting and you weren't aware who was going to be there
30 and you find out they're in court with the Council, which is totally inappropriate - you know, just back right out of that situation. But, you know, a tree expert could go look at a tree and a councillor might be invited to go along to advocate on behalf of the resident about the tree.

COMMISSIONER: Why?

MR MALLARD: I think councillors - the successful ones, looking at the Lord Mayor of Sydney, engage at that level. They might - they might not - they won't direct the staff, "I want that tree cut down." They shouldn't do that. They might say,
40 "Here's the issue Mr and Mrs Jones have got. A branch fell on their car port or on their roof. What can we do about it? They want the tree cut down." And then the staff member - normally, you'd have someone very senior go along to that. Well - say, "Well, we can go back and look at the policy and see what we can do." That's - in my view, that's not totally inappropriate. Just don't direct them to do it.
45

COMMISSIONER: Is there a policy about those types of meeting or interactions, other than the councillor - staff interaction and access to information policy?

MR MALLARD: There's a delegations policy. So the CEO delegates the directors. The directors can delegate to managers - interaction with the councillors.

5 **COMMISSIONER:** Care would have to be taken, would it not, that the interaction would not be perceived by the staff member to be a direction from the councillor?

MR MALLARD: Absolutely.

10 **COMMISSIONER:** Even if the words aren't said?

MR MALLARD: Yeah, absolutely. And we saw that with the Councillor Ristevski correspondence around that retaining wall the other week. Very quickly you learn, even though you train councillors - they go through induction - very quickly you
15 learn those that are just not going to behave. Unfortunately, my experience has been when one causes a lot of trouble, the boundaries are pulled up higher for everybody, you know?

COMMISSIONER: But there's no, to your knowledge, policy that sets out clear
20 guidance to staff and councillors as to what is appropriate or otherwise in those type of circumstances?

MR MALLARD: Councillor action policy and the delegations would be all - or there'd be, you know, in the circumstance - but the - my experience is that it's the
25 exception that this sort of thing happens, it's not the common -

COMMISSIONER: Not common?

MR MALLARD: No.
30

COMMISSIONER: Thank you. Nothing arising from that?

MS McDONALD: No.

35 **COMMISSIONER:** Does anyone seek to ask Mr Mallard some questions?

MS HAMILTON-JEWELL: Yes, Commissioner.

COMMISSIONER: Yes.
40

MS HAMILTON-JEWELL: I do. I have spoken with my learned friend, Ms Richardson, and she is content for me to go first.

COMMISSIONER: Okay.
45

MR MALLARD: Sorry, who are you representing?

MS HAMILTON-JEWELL: Mr Mallard, my name is Ms Hamilton-Jewell, I'm counsel for Councillor Peter Ristevski.

MR MALLARD: Okay. Thank you.

5

MS McDONALD: Just check with the mic.

MS HAMILTON-JEWELL: Sorry, we are just shuffling so we can get microphones and the like.

10

MR MALLARD: That's all right.

MS HAMILTON-JEWELL: I just have a handful of questions. You gave evidence on the last occasion that during your time as a director you were inundated with requests for information from councillors. And just for you, Commissioner, the transcript reference for that is T961.

15

COMMISSIONER: Thank you.

MS HAMILTON-JEWELL: At 23 to 26. Am I correct in understanding the Council Support team, they did not report directly to you at the time you were with Council. Is that correct?

20

MR MALLARD: That's correct, they triaged the - if the Council use the correct system, not all of them did, email Council Support and Peter Ristevski was one that usually did that, then they would - not always correctly I might add - but they would triage it to - at one stage it was just to managers, I got it triaged to me as a director so I knew what was happening, to the different directors, of planning, whatever.

25

MS HAMILTON-JEWELL: And picking up on that, so you didn't know the volume of Council Support requests that were coming through. You could only know about the ones that were being directed to you and your team?

30

MR MALLARD: No, ELT was discussing the high level of the requests and the stress was creating for the team.

35

MS HAMILTON-JEWELL: And you gave evidence on the last occasion there was a requirement to provide a response in a short period of time?

MR MALLARD: Yes. We at the last hearing we examined the policy. I think I said it was three or four days. It was actually I think from memory, because I read the transcript last night, it was two.

40

MS HAMILTON-JEWELL: Two ordinary days and this timeframe created a lot of pressure?

45

MR MALLARD: Yes.

5 **MS HAMILTON-JEWELL:** That was your evidence, yes. Now, we don't need to go to the policy but for the purposes of the transcript, it's OLG.001.001.0276 and in annexure A to that policy it actually provides a time for a response of two ordinary days. Now, in your capacity as a director you attended certain Council meetings?

MR MALLARD: All Council meetings. You mean the formal public meetings? Yes.

10 **MS HAMILTON-JEWELL:** Yes, I mean the full Council meetings.

MR MALLARD: Yes.

15 **MS HAMILTON-JEWELL:** If I can just pull up the meetings for the meeting of 26 March 2025. The doc ID is INQ.009.001.0009. For my part, I'm content with that. I understand there's no objection. Now, if you just look at that first page there, if you can scroll down a little bit please, and just placing you, you can see your name is there as having attended?

20 **MR MALLARD:** Yep.

MS HAMILTON-JEWELL: Now, I will come back to that document I'd like to go to the agenda for that meeting which is RIS.001.001.0002.

25 **ASSOCIATE:** (Indistinct)

30 **MS HAMILTON-JEWELL:** Yes, thank you. If you can zoom out a bit please. Thank you. Again just to orient you, this is the Council Agenda for the ordinary Council meeting on 26 March 2025. If you can go over please, associate, to page 286 of that document, and you can see here this is a notice of motion. It's a notice of motion to establish a 30 day response time for councillor requests. And this was a motion put forward by Councillor Ristevski, and you can see what the motion is proposing to do is establish a standard response time of 30 days.

35 **MR MALLARD:** Yes.

40 **MS HAMILTON-JEWELL:** And if I can now go to a different document, please. If you can go to RIS.001.001.0002 - sorry, 0001. Now, this is a transcript taken from the YouTube video of the Council meeting which took place on 26 March 2025 and this is the debate in relation to that notice of motion that we saw on the screen. And if you can go down, please, the second-last box on that page.

ASSOCIATE: Sorry, do you want that (indistinct)?

45 **MS HAMILTON-JEWELL:** Yes, please. You can see there, CR, there is a comment from Councillor Ristevski:

"The current policy is two days which I think is very unreasonable."

See that. And you agree with that view, don't you, that two ordinary days is an unreasonable time for them to respond?

5

MR MALLARD: Well, it's up to the Council to determine, for their policy, how many days. I - I did didn't contribute to this but I did some research and two days is quite brief compared to like - the City of Sydney I think is five days. So I -I concur I think. I didn't recollect the CEOs response was 30 days was excessive, but
10 somewhere between the two. But, I mean, at the end of the day it's a Council decision.

MS HAMILTON-JEWELL: It is but you agree, don't you, that two ordinary days to respond adds to the pressure on your team to respond to those Council Support requests?
15

MR MALLARD: Well, in more recent times it has, yes.

MS HAMILTON-JEWELL: And if you can go over to page 3, please. In the
20 second-last box there again you can see there's a comment from Councillor Ristevski and it's:

"Staff are doing a fantastic job by all means. The reason I put up the motion is because I think they need more support."
25

MR MALLARD: Fair enough.

MS HAMILTON-JEWELL: And you agree with that statement, don't you, that the staff of Council need more support in dealing with Council Support requests?
30

MR MALLARD: Well, that's a decision for the director. I'm not the director of these staff. They were - we were getting reports that they were under significant pressure to process the requests in a timely manner, so that we directors could do it within two days because that includes the arrival of them. And there was some issue
35 around some burnout, some of the staff. And when you've got that sort of pressure, mistakes can be made, human error can occur.

MS HAMILTON-JEWELL: And if we can go back to the minutes, they're INQ.009.001.0009 and if you can go to page 69 of that document, please. You can
40 see here this is that notice of motion again, and you can see that it was proposed that there be a standard response time of 30 days.

MR MALLARD: Yep.

45 **MS HAMILTON-JEWELL:** And if you can go down to page 70, please. Item 1:

"All requests made by councillors be substantively responded to within 30 days of submission."

5 And you agree, don't you, that increasing the time to 30 days would help relieve some of the burden and time pressure on those responding to Council Support requests?

10 **MR MALLARD:** Well, 30 days I think personally is excessive and would - could well create sort of lag and lethargy in getting them processed. So somewhere between the two. I looked at - I said, "Look at the City of Sydney", I think from memory it was five days, I thought that five working days that's really a week. I thought that was pretty - pretty good. The second part there where an email sent to a similar stakeholder should be copied to the relevant council, but that's an administrative, you know, quite an administrative burden to start doing that but
15 nonetheless, as I said, the decision is Council's, the policy of the policy.

MS HAMILTON-JEWELL: But you agree, don't you -

20 **MR MALLARD:** But the -

MS HAMILTON-JEWELL: - increasing it beyond two ordinary days will alleviate some of the time -

25 **MR MALLARD:** It wasn't an issue in the Council in the period I was there from '10 to - '12 to '14, and it wasn't an issue until the Council elections in September when new councillors got elected and new councillors, not just Councillor Ristevski who's an old hand at this because he's been a councillor before, very enthusiastic when they first start. I'm not saying they peter out later on and they will send a lot of requests in to respond to their commitment to the community in their election. So, you know, whether it be - Peter is big on waste cleaning up in the city. Other councillors like
30 Councillor Harle are big on shopping trollies. Dogs often, leashes and parks, that, you know, you'll get quite a bit of that at the beginning and it will start to even out a bit as they get settled in.

35 **MS HAMILTON-JEWELL:** And, to your knowledge, has that policy been amended and put forward, a new policy put forward by Council?

MR MALLARD: Well, you can tell me - is that saying declared carried?

40 **MS HAMILTON-JEWELL:** The motion was declared carried and to your knowledge has a revised policy come back?

MR MALLARD: I can't answer that question because I left not long after that.

45 **MS HAMILTON-JEWELL:** Yes. Just going to a slightly different topic now. You gave some evidence in relation to a request by Councillor Ristevski to make a social media post.

MR MALLARD: Yes.

5 **MS HAMILTON-JEWELL:** If I can take you back to the email chain which is INQ.005.001.0012. If you can go to 0005 on that document, please. You can see here is the email from Councillor Ristevski, it starts on the page before, to Council Support.

10 **MR MALLARD:** Yep.

MS HAMILTON-JEWELL: And scrolling up please to the bottom of page 3, see the response comes back and it's made its way through you, and you are responsible for responding to Councillor Ristevski in relation to that request.

15 **MR MALLARD:** Yes.

MS HAMILTON-JEWELL: In your response, if you can go to page 0004, please, you refer to the media policy, the current version.

20 **MR MALLARD:** Yes, that's correct.

MS HAMILTON-JEWELL: And you refer there to certain sections of the media response policy.

25 **MR MALLARD:** Yes.

MS HAMILTON-JEWELL: Including the roles and responsibilities,.

30 **MR MALLARD:** Yes.

MS HAMILTON-JEWELL: And it says there the mayor is the official spokesperson. And in 4.1.7:

35 "The mayor may nominate another councillor to act as an official Council spokesperson for an issue."

Do you see that?

40 **MR MALLARD:** Yes. And that's in the Act as well.

MS HAMILTON-JEWELL: But you don't, in your email here, give an indication to Councillor Ristevski as to whether or not his request to do a social media post is approved or not approved, do you?

45 **MR MALLARD:** I'd - I'd probably need to see the whole email again. This was a complaint that we had declined the post, I think, and I was responding to that complaint. I don't -

MS HAMILTON-JEWELL: If you go down to the email, the very bottom one from Councillor Ristevski on page 5, you can see there:

5 "I have seen multiple posts."

In the next paragraphs:

10 "Please get back to me if that opportunity is available and, if not, why."

MR MALLARD: Yeah, okay and it's -

MS HAMILTON-JEWELL: And then in your email which starts at the bottom of page 0003:

15 "Dear Councillor."

And please take your time to read the whole email.

20 **MR MALLARD:** Yeah, and it's pointing out that the mayor's spokesperson can delegate and that's why those two councillors were on video. I wasn't aware what he wanted to post either, by the way as you know later on, that that email wasn't sent to me.

25 **MS HAMILTON-JEWELL:** But you don't answer the question whether or not he can do a post.

MR MALLARD: Well, that's an - that's an interpretation you could have. My interpretation of what we've, we have said there is our policy says the mayor delegates it, so he better go to the mayor.

MS HAMILTON-JEWELL: And you gave evidence on the last occasion that if someone was unhappy with the response from a director or wanted to provide additional information, that should be elevated to the CEO?

35 **MR MALLARD:** Yes, yes.

MS HAMILTON-JEWELL: And if we continue in the email chain.

40 **MR MALLARD:** He does elevate it to the CEO.

MS HAMILTON-JEWELL: He does elevate it to the CEO.

MR MALLARD: He gave some new information to it too.

45 **MS HAMILTON-JEWELL:** He does and if you can go to page 002.

MR MALLARD: But he also, you know -

COMMISSIONER: Just wait for the question.

5 **MR MALLARD:** All right. Okay.

COMMISSIONER: Wait for the question.

10 **MR MALLARD:** Thank you, Commissioner.

MS HAMILTON-JEWELL: So scroll down a little, please, to the email from Mr Breton and Mr Breton responds which says:

15 "I referred your application to the mayor."
And you can see that to then :

"I've been advised at this date the mayor does not agree to the proposition, noting the mayor is not obliged to provide me with his rationale and has reserved his reasons."
20 Do you see that?

MR MALLARD: Yes.

25 **MS HAMILTON-JEWELL:** You can see Mr Ristevski responds:

"Does the mayor determine what is on the Council Facebook page?"
Do you know the answer to that question? Does the mayor determine what is posted
30 on the Council Facebook page?

MR MALLARD: He doesn't determine what's on the Facebook page. He contributes to it in - as a spokesperson. The media manager and may be one other, a media staff person would have a biweekly meeting. If he couldn't make it, it would
35 be with his office, but he - and just go over the sort of opportunities coming up over the next few weeks in terms of media opportunities, social media opportunities. But 80 per cent, 90 per cent of what goes on Council's website, social media pages are operational. You know, we've got the markets on Sunday at Powerhouse, this - this photo exhibition, this library show that type of stuff has nothing with the mayor.
40

MS HAMILTON-JEWELL: That was my next question which you answered it and that's because what goes onto the Facebook, Council Facebook page is largely operational, isn't it?

45 **MR MALLARD:** Largely, yeah.

MS HAMILTON-JEWELL: So you would agree then, wouldn't you, that it's actually not appropriate for the mayor to be the sole person that can decide what gets posted on to Council's Facebook page. Do you agree with that?

5 **MR MALLARD:** He doesn't decide.

MS HAMILTON-JEWELL: But if he was the sole person, you agree that that would be entirely inappropriate?

10 **MR MALLARD:** Well, we'd consult with his office or him about opportunities in the coming weeks. But he doesn't decide it. I mean, we would sit down and look at resolutions of the Council and see what could - what we need to post about that, you know, policies, policies. So we'd post stuff from the State Government. We were the - Liverpool Liverpool social media pages have the highest penetration of the
15 community of any social media in Liverpool and the (indistinct) of the local paper meant the State Government was turning to us to put COVID messages out, vaccination messages out, warnings about floods and things on our social media. So it's an important tool of communication.

20 **MS HAMILTON-JEWELL:** So accepting that it's an important tool of communication and you've said it's operational and you've said that the mayor doesn't decide what does and doesn't go on to the Council's Facebook page. Yet when Councillor Ristevski sent his request to make a post on the Council's Facebook page, he was told that it was at the mayor's discretion and the mayor had refused to
25 allow him to post it.

MR MALLARD: That's the policy in terms of spokesperson for the Council.

30 **MS HAMILTON-JEWELL:** And so you consider there to be a difference between councillors posting on the Facebook page because they're - in your view, they're acting as a spokesperson for Council.

MR MALLARD: Well, they're the elected body. So you treat the - the elected body, the policy applies.
35

MS HAMILTON-JEWELL: All right. And you agree, don't you that posts on the Council social media page should not be politically aligned?

40 **MR MALLARD:** Well, yes, I do agree with that.

MS HAMILTON-JEWELL: And posts on a council social media page shouldn't be used to campaign or raise the profile of certain councillors?

45 **MR MALLARD:** I agree with that. And it's as much possible avoided. You know you're profiling the mayor opening a childcare centre, you know, he's been invited to do it and we sent someone along to that, that could be interpreted that way. But that's him as the mayor, properly elected mayor, the spokesperson for the Council.

5 **MS HAMILTON-JEWELL:** And you agree that there is a risk that if the mayor is the person who decides whether councillors can make a post on Council's Facebook page, that there is a risk that the man might refuse that request based on personality disputes?

MR MALLARD: Well it's not just the social media it's like a media release or media statement or going out and talking to the press. I mean Councillor -

10 **MS HAMILTON-JEWELL:** I understand that but this particular policy -

MS McDONALD: Well, I'm not sure that Mr Mallard had finished answering.

15 **COMMISSIONER:** He hadn't.

MS HAMILTON-JEWELL: Please continue.

20 **MR MALLARD:** Thank you. Now I've lost my thought. I mean, it's a broader policy than just social media because we combine the two under the - but the - you know, a councillor - I was a councillor - can go to the media direct and put a contrary position on any matter. You know, not personally attack someone, that's totally outside the policy, but you can challenge the position of the mayor. So it doesn't preclude that.

25 **MS HAMILTON-JEWELL:** Approaching the media generally?

MR MALLARD: Yeah, yeah.

30 **MS HAMILTON-JEWELL:** But in terms of -

MR MALLARD: But if the mayor wants to attack another councillor he can't use any of our social media or Council's resources. He can certainly ring up a journalist and he's done it, every mayor has done it, and even send an email himself saying, "This is wrong, this person is wrong" but we won't go near it with a barge pole and I've had occasion where I've had to cut that off.

40 **MS HAMILTON-JEWELL:** And now focusing for a minute just a Council's Facebook page, you agree, don't you, that if the mayor is the one to decide if a councillor can post on Council's Facebook page there is a risk that that request might be refused based on personality disputes. Do you agree that that risk is there?

45 **MR MALLARD:** I - I can't answer that on behalf of the mayor. But, I mean, the policy is that the mayor is a spokesperson and he can delegate, and that's in the Act. And so that's a situation and it's a policy that's adopted by Council that we apply.

MS HAMILTON-JEWELL: I understand all of that but focusing on my question. Do you agree that there is a risk that if the mayor doesn't like someone there is a risk

that the request to make a social media post on Council's Facebook page may be unfairly rejected?

5 **MS RICHARDSON:** It has been put a number of times, but also in fairness the reference to the policy is about the extent to which a councillor can act as an official Council spokesperson. So, really, it's a question about the exercise of the power of the mayor to delegate and, in my submission, the question is not being fairly put by reference to -

10 **COMMISSIONER:** Operator, could I just have that passage of the email that shows the policy? There it is. I think that's right, Ms Hamilton-Jewell. I think, if it's of assistance to me, you might just need to clarify whether what your proposition is, whether it's related to making a statement on behalf of Council or some other form of statement on the Council's web page.

15 **MS HAMILTON-JEWELL:** I'll go about it this way. So the mayor is the official spokesperson and that's in accordance with the policy, and the mayor can decide to delegate to another councillor to act as an official Council spokesperson for an issue, event, or topic.

20 **MR MALLARD:** Mm-hmm.

MS HAMILTON-JEWELL: And if a councillor wished to make a post that went on to Council's Facebook page, the policy response, because that councillor would be acting then as an official Council spokesperson in relation to that post, and in delegating the ability to a councillor to make that post, that ability might be impacted by a mayor's personal like or dislike of an individual.

25 **MR MALLARD:** Okay. I mean on that, I mean the mayor's motivations are the mayor's motivations. I can't answer that. He'll be in the witness box soon.

MS HAMILTON-JEWELL: That's all, thank you Commissioner.

30 **COMMISSIONER:** Thank you. Ms Richardson.

35 **MS RICHARDSON:** Mr Mallard, my name is Ms Richardson. I'm counsel representing Mayor Mannoun.

40 **MR MALLARD:** Okay.

MS RICHARDSON: You were asked some questions earlier this afternoon about the appointment of Betty Boustani to the role of senior adviser. Do you recall those questions?

45 **MR MALLARD:** Yes. Yes, indeed.

MS RICHARDSON: I'm just going to ask you a few questions about that. So we've seen documents - this is not a memory test - but the documents reveal these dates that I think you were appointed as the Director of City Futures effective on about 21 August 2023. Does that ring any -

5

MR MALLARD: Yes, it does, yes.

MS RICHARDSON: That's about the approximate timeframe. And so you gave evidence that your previous position as senior adviser was vacant. Was it vacant from that point forward or just - or a bit more than 21 August. When did you vacate the senior adviser role?

10

MR MALLARD: Literally I think on the Friday and started as a director on the Monday. But I - I - I did move Mimi Curran into the position temporarily to - to trial that out.

15

MS HAMILTON-JEWELL: And was -

MR MALLARD: So that was that period between that and then Betty.

20

MS RICHARDSON: And was the position for the senior adviser role advertised after you had vacated it?

MR MALLARD: As far as I'm aware, no, but I could be corrected. But as far as I'm aware it was not advertised.

25

MS RICHARDSON: But the position was vacant, was it?

MR MALLARD: When I left it?

30

MS RICHARDSON: Yes.

MR MALLARD: Yes. But, as I said, Ms Curran who was, sort of, freelancing a bit in the organisation, she applied to be a director, as I said earlier today, and John Ajaka felt she had a lot to contribute to the organisation. She didn't get the director job, but he wanted to try and utilise her skills. So she was sitting in my directorate and I moved her into advising - well, adviser to the CEO but in that mayor's break-out office that I talked about before, the break-out meeting room, to do that role that I was doing.

35
40

MS RICHARDSON: So the senior adviser role?

MR MALLARD: Yes.

MS RICHARDSON: So she was doing that on a temporary basis?

45

MR MALLARD: Yes.

MS HAMILTON-JEWELL: And how long was she doing that role on a temporary basis?

5 **MR MALLARD:** Well, I would say it would be up until the Betty Boustani opportunity came along.

MS RICHARDSON: So was it the case -

10 **MR MALLARD:** Or it could have been a bit soon - earlier. I moved her across then - I had a vacancy in the Manager of Communications and Marketing and then I had some difficulties in that area in terms of personnel and problems. And I felt that Mimi would be a good circuit breaker to get that back under control. I inherited it. And so I moved her across to there, so there was a vacancy then in that role.

15 **MS RICHARDSON:** And was it the case that Mr Ajaka, did he express a view to you that Ms Curran wasn't working out in that role, in the senior adviser role? What happened there?

20 **MR MALLARD:** To be frank, the mayor just isolated her and stopped communicating with her, and so there's a breakdown in the communication. So, you know, it was clear as anything that that wasn't working out. And, as I said, it's personality and perhaps a management style issue.

25 **MS RICHARDSON:** And in relation to - you gave some evidence about a day you were called into a meeting where - or a room where Ms Boustani was there with Mr Ajaka and Mayor Mannoun?

MR MALLARD: The mayor's office.

30 **MS RICHARDSON:** In the mayor's office?

MR MALLARD: Yeah, in Moore Street.

35 **MS RICHARDSON:** And so it's the case, isn't it, that when you were called into that room, Mr Ajaka introduced you to Betty Boustani; is that correct?

MR MALLARD: Yes. Yes. And he only just met her himself.

40 **MS RICHARDSON:** Right, but did he introduce her to someone who was potentially looking for a new role at the Council?

MR MALLARD: Yes. Yeah, the role being adviser, senior adviser. She - she, as far as I'm aware, was unaware of that position. It had been raised at lunch with the mayor. And my understanding is that was totally a left-of-field idea that came up
45 when they were just catching up.

5 **MS RICHARDSON:** Well, I want to suggest to you that when you went into the meeting or into the room where Mayor Mannoun was with Mr Ajaka that Mr Ajaka introduced Ms Boustani to you as someone who was generally available to opportunities within the Council but not specific to the senior adviser role. Do you recall that?

10 **MR MALLARD:** He could have couched it that way, but it was pretty - reading between the lines what that was about, yeah. But, I mean, I left that room with instruction to make it happen.

MS RICHARDSON: Well, I want to suggest to you that what - that Mr Ajaka introduced to you as someone who was potentially interested in a role in Council, not specific to the senior adviser role. Do you accept that that's -

15 **MR MALLARD:** That's not my recollection.

MS RICHARDSON: Yes, and that after that Ms Boustani then went and spoke with you and Mr Ajaka immediately after that first meeting in the absence of Mr Mannoun about various roles in Council?

20 **MR MALLARD:** I don't recall that. I recall meeting with her afterwards. I don't recall John being there.

25 **MS RICHARDSON:** Well, when you were meeting with her, did you discuss various roles in Council with her?

MR MALLARD: We went straight to the senior policy adviser and started talking dollars.

30 **MS RICHARDSON:** And started talking what?

MR MALLARD: Money.

35 **MS RICHARDSON:** Okay. And then we've seen that the inquiry has a document before it of you writing on 6 September 2023 where you recommend Ms Boustani as a senior adviser. And I'll just pull those up.

COMMISSIONER: OLG.001.001.1055.

40 **MS RICHARDSON:** Thank you. I'm grateful. So was that the letter that's ended in point 9340, Commissioner, is that the one you read out?

COMMISSIONER: I have a different - this is the memo from Mr Mallard to Mr Ajaka. Is that the -

45 **MS RICHARDSON:** No.

COMMISSIONER: I might have taken you to the wrong document.

5 **MS RICHARDSON:** No, it is correct actually. You took me to a different document but your document was the one I was supposed to do. If that could be brought up please.

ASSOCIATE: Is that on the live stream?

10 **MR MALLARD:** It does cover salary, I think.

COMMISSIONER: I think it has gone up before but we can

15 **MS RICHARDSON:** Sorry, I've got a version of that with different numbers on it but I think it's the same. I think that has also been ascribed the number LCC.010.009.9343.

COMMISSIONER: Thank you.

20 **MS RICHARDSON:** But it's the same one, by the looks of it. Do you see there, Mr Mallard, you authored that memo to Mr Ajaka?

MR MALLARD: Mm-hmm.

25 **MS RICHARDSON:** And the subject is:
"Engagement of Betty Boustani on a 12-month temporary contract."

MR MALLARD: As senior adviser, yes.

30 **MS RICHARDSON:** Yes. And then you set out the background that you had been appointed to Director of City Futures effective 21 August. That was the date I just gave you. And then you've set out that she has a background in business management, governance, corporate advisory work and her CV is attached.

35 **MR MALLARD:** Mm-hmm.

MS RICHARDSON: Do I take it as part of making that recommendation to Mr Ajaka you reviewed Ms Boustani's CV.

40 **MR MALLARD:** Yes.

MS RICHARDSON: And you formed the view that she was someone worthy of the recommendation of a 12-month temporary contract in the senior adviser position?

45 **MR MALLARD:** Yeah, I stand by that I thought she was a good fit and, as I've said earlier in evidence, the skill set she had, I thought would be very helpful in the organisation.

MS RICHARDSON: And could you assist the Commissioner with a description of what was it about her skill set that you felt met the requirements of that position?

5 **MR MALLARD:** Well, we went through this earlier today but, first of all, I was comfortable with the fact that she knew the mayor and that he had confidence in her, which - which the issue of being able to communicate with the mayor and having his trust. And that's not unique to a mayor. You know, any CEO has those sort of issues. So that was the first starting point, similar starting point to what I had.

10 The second starting point was that - don't mention it there - it's in her CV that she's a lawyer. And a legal mind, understanding legislation, understanding policies and legal instruments, in an advisory role was very helpful. And the third one was that she was a, you know, business consultant, had a corporate, commercial property
15 mind, and commercial - and a commercial background which I think that added into the role, that was helpful too. Because the mayor is very, you know - and - and the CEO too, John, very commercially minded about opportunities for the Council.

MS RICHARDSON: And it's the case, isn't it, that when you made the
20 recommendation that she be offered a 12-month temporary contract that you were well aware that she had previously known - she was previously known to the mayor as a lawyer who had acted for him?

MR MALLARD: No, I -

25 **MS RICHARDSON:** In a previous incarnation?

MR MALLARD: - didn't know that at that point. But I knew she was a lawyer, obviously, therefore, that she may have acted for him in the past. But I wasn't aware
30 that she was involved of getting to the point of this defamation. That was when I found out that she was involved in that legal process at that time.

MS RICHARDSON: But you were aware that she was a lawyer that had previously acted with Mr Mannoun?

35 **MR MALLARD:** Yeah, but was no longer involved, didn't represent him any more either. That was quite - like, we're talking 10 or 15 years, maybe 15 years earlier.

MS RICHARDSON: But you were aware that she'd had that connection to him
40 before?

MR MALLARD: Yes.

MS RICHARDSON: And did Mr Ajaka say words to you that made you understand
45 that he also knew that Ms Boustani had had that -

MR MALLARD: No, I think introduced her -

MS RICHARDSON: Just wait for my question.

MR MALLARD: - as Ned's former lawyer.

5

MS RICHARDSON: Sorry, did Mr Ajaka also say words to you that caused you to believe that he also knew that Ms Boustani had had a previous engagement with the mayor as a lawyer providing him legal services. Is that correct?

10 **MR MALLARD:** Yes. Well, we all knew that Ned, the mayor, had gone to lunch with his former lawyer. That's how -

MS RICHARDSON: He, sorry.

15 **MR MALLARD:** He'd been at lunch with his former lawyer. That's how he was introduced to me when I walked into the room. So yeah, John was aware, 15 years ago that she had been his lawyer. That was - I - I was - that was pretty clear to me.

20 **MS RICHARDSON:** To your understanding was it always clear to Mr Ajaka at the point at which consideration was being made to offer her this contract that she had previously been his lawyer?

MR MALLARD: From my memory, he acknowledged that, in that introductory gathering, that she had been his lawyer in the past.

25

MS RICHARDSON: So when you made the recommendation to Mr Ajaka that he offer her the temporary 12-month contract, did you turn your mind to the fact that she had previously provided legal services to him as a lawyer, and you formed the view that it was still appropriate for you to make that recommendation in respect of her?

30

MR MALLARD: I mean, we had a conversation, Ms Boustani and I, about that relationship, and like it was 15 years old and they were just acquaintances. And she's a member of the Liverpool community, and she was just looking for a sea change in terms of her career. So I didn't see a problem with that. She wasn't - as far as I was aware, because some things came out later on about some secondary work that she had sought out, but it didn't involve the mayor that she was no longer a practising solicitor. So that's why I thought it would be a good fit. I didn't see a conflict of interest for 15 years earlier.

40

MS RICHARDSON: And -

MR MALLARD: And so I'll just say it didn't become an issue until we had the defamation and the subpoenas come in that she was involved (indistinct) in what was alleged to be defamation.

45

MS RICHARDSON: But that happened later; is that correct?

MR MALLARD: Yeah, that's when it became a bit of an issue for us, how we manage that.

5 **MS RICHARDSON:** Did you also have an understanding at the time as to whether Ms Boustani had any affiliations to a particular political party?

MR MALLARD: No. No.

10 **MS RICHARDSON:** So she didn't have any or you didn't have any understanding about it?

MR MALLARD: I take a strong view that I don't ask that question. You know it's illegal under the Federal Workplace Act and I think it's prejudicial. So, you know, if
15 she's Green or whatever, it wasn't an issue for me. If the mayor - in that circumstance the mayor had confidence in her and I was prepared to accept that, move forward and Mr Ajaka clearly had confidence in her.

MS RICHARDSON: But it is the case, isn't it, that you didn't have any knowledge
20 that she was connected to the Liberal Party; is that correct?

MR MALLARD: Well, I don't know that she is to this day. And I was a very senior member of the party in my day but I never came by her at all in anything but - and never saw her being at any political functions or anything. So, you know, and I know
25 that was put round, that was a rumour put around about her, but certainly no evidence to me. You could prove me wrong but it wasn't - it wasn't - didn't blast that out in her CV.

MS RICHARDSON: And are you aware in relation to Ms Boustani that she was
30 then later assessed for her appropriateness for the role in terms of being appointed to it on a permanent basis?

MR MALLARD: No, she went through a recruitment process, a competitive recruitment process which is -
35

MS RICHARDSON: Sorry.

MR MALLARD: It was done externally.

40 **MS RICHARDSON:** It was an external process?

MR MALLARD: Yes.

MS RICHARDSON: Can you assist the Commissioner with your understanding as
45 to what the outcome of that process was?

5 **MR MALLARD:** It was kept at fairly arm's-length from me. I - I was the director originally because she reported to me - assigned the job of recruiting permanently someone in that position. And because of - I use the word "heat" for want of a better - a bit of heat being applied to that position and that person. The CEO and I guess through Mr Knappick, Craig Knappick in HR, made a decision to independently externally recruit. And I understand it was quite vigorous and the outcome of that was her being appointed.

10 **COMMISSIONER:** When you say "externally" what should I take from that?

MR MALLARD: They contracted a firm probably from their panel, so it's not my area, it's a HR area -

15 **COMMISSIONER:** Yes.

MR MALLARD: - to recruit that position.

COMMISSIONER: Like a recruitment firm?

20 **MR MALLARD:** A recruitment firm, yeah. I don't know who it was.

COMMISSIONER: That's all right.

25 **MR MALLARD:** But I know Mercer did an assessment of the salary, just - which - to arrive at a salary package.

COMMISSIONER: There was a benchmarking done of -

30 **MR MALLARD:** Yes. Correct. Yes. I was interviewed for that.

COMMISSIONER: For the permanent role?

MR MALLARD: No, I was interviewed for the -

35 **COMMISSIONER:** The benchmarking, but that was for the -

MR MALLARD: Job description of that role, since I had done it two times in the past.

40 **COMMISSIONER:** That was for the purpose of the competitive -

MR MALLARD: Salary.

45 **COMMISSIONER:** - recruitment process?

MR MALLARD: That's correct.

COMMISSIONER: And the salary was benchmarked at that time.

MR MALLARD: Yes, by Mercer, independent company.

5 **MS RICHARDSON:** And your understanding is the benchmarking by Mercer - the outcome of that was that the salary she had already been given was in line with benchmarks?

MR MALLARD: Correct.

10

MS RICHARDSON: And that as a result of that external competitive process, she was successful in that process?

15 **MR MALLARD:** Yes, but I didn't see any documentation around that. Even though it reports to me, that's all done by Craig Knappick, and Jason, I guess, had an role in overseeing that, but I was confident that that had occurred.

MS RICHARDSON: And Craig Knappick was the Chief People Officer at the time?

20

MR MALLARD: That's correct.

MS RICHARDSON: And are you aware that she was then, as a result of that process, offered that senior adviser position on a permanent basis at about the 25 12-month mark, when the temporary contract ceased?

MR MALLARD: Yes, and that reported to me right up until when I left.

30 **MS RICHARDSON:** So she reported to you after that?

MR MALLARD: Yes. That position reported to the director of City Futures, yes.

35 **MS RICHARDSON:** And are you aware that her remuneration package actually increased slightly from the amount she had been offered under the temporary contract? Are you aware of that?

40 **MR MALLARD:** Setting aside industry increases that, sort of, happens every year or two, I vaguely recollect there was some toing and froing around is this figure gross, does it - or does it include super, does it include a car allowance, yes or no, that may be where you're picking up a slight change in that situation, because we had to negotiate that fine detail.

MS RICHARDSON: So I just - the document, for the transcript, with the permanent offer is LCC.010.009.9345.

45

COMMISSIONER: Sorry, Ms Richardson, I wasn't quick enough. Could you just give that to me again?

MS RICHARDSON: Sorry. LCC.010.009.9345.

COMMISSIONER: Thank you.

5

MS RICHARDSON: That's dated 18 September 2024. It's a letter from Craig Knappick, Chief People Officer, to Ms Boustani, offering her the full-time permanent appointment to that position as a result of the external competitive process. Mr Mallard, when you gave evidence a week or so ago, you gave some
10 evidence about - I think it was a governance meeting when the budget was first presented and you gave evidence about the mayor's reaction to the budget being in deficit.

15

MR MALLARD: Mm-hmm

MS RICHARDSON: Do you recall that evidence?

MR MALLARD: Draft budget, yes.

20

MS RICHARDSON: The draft budget. You recall that?

MR MALLARD: Yes.

25

MS RICHARDSON: I want to suggest to you that at no point did Mr - that Mr Mannoun was, in his body language, visibly annoyed with what had been said in relation to the budget being deficit, but he did not storm out.

30

MR MALLARD: Well, that's not my recollection. I was sitting diagonally opposite the mayor. I could see - I had known him for a long time, 20 - more than 20 years, and I could see his body language was - like, he was clearly already angry. And my
35 recollection is he picked up and dropped the - dropped the bundle of documents, then left. Because I think we had to - I was a bit - I thought it was a bit immature, frankly, because we had the leadership of the Council there and councillors, all the directors and various support staff (indistinct) and just walk out like that was, I thought, not to the good standard I expected.

40

MS RICHARDSON: Well, I want to suggest to you that he did not leave the meeting or storm out of the meeting, that he was visibly annoyed but he stayed in the meeting. Do you accept that?

MR MALLARD: No, the meeting as aborted. That's my recollection - that we aborted the meeting.

45

MS RICHARDSON: Well, I want to suggest to you did you hear the CEO, Mr Breton, say to Mr Mannoun that - just to stay in the meeting and that the meeting would go on?

MR MALLARD: Well, he wasn't the CEO, he was a director. The CEO was John Ajaka. Mr Ajaka was the CEO.

MS RICHARDSON: Sorry.

5

MR MALLARD: That's all right. So Mr Breton -

MS RICHARDSON: Mr Breton was in the meeting?

10 **MR MALLARD:** Look, I can't - I think all the directors were there. Mr Breton often came in via, you know, on the screen because he was in the operations, like the depot. But I think - I think they were all there.

15 **MS RICHARDSON:** Now I want to suggest to you that he didn't hit the papers down hard on his desk but he did drop - he dropped the papers down as part of being annoyed. Would you accept that?

MR MALLARD: It's a semantic argument. They weren't banged down on the table. A big board table and I know Ned, that was a message that he was very angry.

20

MS RICHARDSON: Well, you were aware that the mayor had campaigned on a balanced budget?

25 **MR MALLARD:** I mentioned that in my evidence at the last hearing. It's in the DNA of Liberals to have budget balance, and Ned had a slogan which he stole from Canberra which was "Back in the black."

MS RICHARDSON: Right. And so having a balanced budget was something he had campaigned on, correct.

30

MR MALLARD: Yes.

MS RICHARDSON: And it was a matter of important political - not political, a important policy object that I was seeking to -

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MR MALLARD: I acknowledge that. That what was happening was not consistent with his policy. This was the first cut of a budget process. I gave evidence at the last hearing about John Ajaka's approach which was "Think big, come forward with ideas that your team want that align with the strategic plan to the Council and the 100-day plan" and all that sort of stuff and he wanted the councillors to own the budget. So they make decisions about, "We won't do this, we won't do that" and go through it that way rather than - and clearly what Ned wanted Jason delivered to him was all the hard work done by the organisation to give a - so the Council made decisions in this kind of budget about what was cut out. It was all done by directors in meetings.

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45 **MS RICHARDSON:** Just taking you forward to the Council meeting of 26 April last year which was the meeting at which the police were called and so on.

MR MALLARD: Yes.

MS RICHARDSON: Do you recall that?

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MR MALLARD: How could I forget it.

MS RICHARDSON: Memorable. Did you see the protest outside and the types of placards that they were holding at the time?

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MR MALLARD: Down on the - in the courtyard?

MS RICHARDSON: Yes.

15 **MR MALLARD:** I saw them but I couldn't read the placards.

MS RICHARDSON: Could you hear people chanting?

MR MALLARD: I could hear chanting but I couldn't hear what they were saying. I'm giving you answer - we were up, two floors up and glass that's not opened and the western sun was hitting the glass so - but I could see them out there. There were one or two placards, there wasn't a lot. But obviously relayed to me inside with staff coming up saying, "This is what they're saying, this is what is going on", yeah.

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25 **MS RICHARDSON:** And just in terms of a timeline, the Council meeting was on the Wednesday, the 26th - sorry, on the 24th, I apologise.

MR MALLARD: That's okay.

30 **MS RICHARDSON:** Were you aware that on the day before the Council meeting, so that would be 23 April, that Stephen Donley of the USU union had gone on Ray Hadley? Were you aware of that at the time?

MR MALLARD: No. No. I don't listen to Ray Hadley.

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MS RICHARDSON: Was it reported to you at the Council that that had happened, that he'd gone on the radio?

MR MALLARD: And is this - it would help my memory if you would tell me what he was talking about on the radio.

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MS RICHARDSON: Well, he went on the radio and said to Ray Hadley that they, in effect, had it on good authority that there were going to be -

45 **MR MALLARD:** Job losses.

MS RICHARDSON: - 150 job losses at Liverpool City Council and that there might be a vote about it the following day at the Council meeting.

5 **MR MALLARD:** Okay. So I vaguely recollect that - I mean, I've got the media team, media monitoring.

MS RICHARDSON: Sorry, slow down a bit.

10 **MR MALLARD:** Sorry. Media team and media monitoring, so I would have been made aware of the interview and those comments. And we - and my media people probably would have fed it through to the CEO and to the mayor, so they were aware of it. It's just normal process.

15 **MS RICHARDSON:** Could I just stop you there. With that type of thing, with media monitoring, would you be told about an interview like that relatively promptly on the same day?

MR MALLARD: Yes.

20 **MS RICHARDSON:** Is that even more likely, given - I want to suggest to you that it was a pretty controversial interview, in terms of a topic that would be of significant interest to Council workers.

25 **MR MALLARD:** Yes. And more likely - would be that I'd be a - like, the third or fourth person to know about this because the media guy - the communications officer that we had - have - had would probably flick it to the mayor straightaway and to the CEO straightaway, to alert them to it, so that they were aware, and to me - bring me into the loop.

30 **MS RICHARDSON:** And were you aware that the then CEO, Mr Ajaka, had actually met with the senior union person the day before, on the Monday?

35 **MR MALLARD:** I wasn't aware, but I certainly was aware that one of the KPIs that John set himself when he became CEO was to establish peace with the unions. They were incredibly hostile when John got there and there was a couple of hundred IR - industrial relations, you know, hearings going on about different matters, and that John, as has been mentioned in the inquiry already, joined the union to get - be in the tent. In fact, he asked me to join the union and I did, to get in the tent, to calm the whole situation down because he -

40 **MS RICHARDSON:** I'm just asking you a specific question. On the Monday -

MR MALLARD: So the answer to your question, I didn't know about that meeting, but it wouldn't surprise me that Mr Ajaka had meetings - he regularly met with
45 Sandie - can't think of her surname now.

MS RICHARDSON: Sandie Morthen?

MR MALLARD: Sandie Morgan.

MS RICHARDSON: I think it's Morthen, M-o-r-t-h-e-n. Is that correct?

5

MR MALLARD: Yes. Yes, yes. And, yeah - and so it wouldn't - it wouldn't be out of the ordinary to have a meeting with the unions.

MS RICHARDSON: But were you told anything about whether or not Mr Ajaka had met with Sandie Morthen on that Monday?

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MR MALLARD: No. No. No.

MS RICHARDSON: Those are my questions. Thank you.

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COMMISSIONER: Mr Parish?

MR PARISH: No, thank you, Commissioner.

COMMISSIONER: No? Thank you. Just in answer to one of Ms Richardson's questions about the awareness that Ms Boustani had been Councillor Mannoun's lawyer, was that formally recorded anywhere as part of the recruitment process? In a form or in a file? To your knowledge. You may not know, but -

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MR MALLARD: I can't even tell you if it was actually identified - that position in her CV. I don't think it was. So I don't think it was formally recorded. Being it was 15 years earlier and she hadn't represented him at all since that period, I just didn't feel it was a conflict -

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COMMISSIONER: That's not the import of my question.

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MR MALLARD: No.

COMMISSIONER: It was just whether it was or wasn't, to your understanding, and if -

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MR MALLARD: No.

COMMISSIONER: I understand your answer is you don't think so, but you're not sure.

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MR MALLARD: No, I don't think it was.

MS McDONALD: So your recollection of that meeting is that Ms Boustani was introduced as the mayor's former lawyer but acted as his lawyer about 15 years ago.

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MR MALLARD: It was clear it was back when he had - when he had his business. Like - like, the recruitment - training and - training business, where he was very successful. That was before he was elected to Council.

5 **MS McDONALD:** You said something - I'm just trying to find my notes, but if I can paraphrase my understanding - is given that information, you weren't troubled or concerned, but a concern did arise when the defamation proceedings were commenced. They were the defamation proceedings commenced by Mr Mannoun against Mr Ristevski?

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MR MALLARD: That's correct.

MS McDONALD: And why did you become concerned about Ms Boustani's role in that or her role as a lawyer or -

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MR MALLARD: Ms Boustani contacted - as a direct report, contacted me and said, "We need to have a discussion," and then outlined the defamation proceedings. I think I was aware, already aware the mayor was going to pursue defamation proceedings against Peter Ristevski. He was no longer a councillor at that time, that's when he was a civilian but she outlined that -

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MS McDONALD: Mr Ristevski wasn't on Council?

25 **MR MALLARD:** No. No, during the beginning of the defamation. And she indicated to me that she was a lawyer for him back at that sale of his business, I just mentioned before he was a councillor, and acted for him in that sale. And she had been, I think, subpoenaed or required to - to give - to give evidence in - in the defamation. That concerned me and I think, from memory, John Ajaka was in his office and I was able to go straight down there and I said, "I'll get back to you but this could be a problem." The problem I perceived was that if she is going to be dragged into a high profile defamation case and she is employed by the Council as an adviser, reporting to me, that that will create conflicts of interest for her in regards to she is giving evidence for or against the mayor, and reputational damage for the Council. She was still on contract at that time. So I went down and saw John, and 35 John Ajaka, of course, is a, you know, highly experienced lawyer as well as a parliamentarian and he immediately said, "This is a problem." I said, "If they go forward with the subpoena I think we should - we might have to part company with her" because we had a clause in that 12-month contract that you can terminate with four weeks or something. So you weren't locked into paying for 12 months because 40 of that, the two things there, the conflict of interest for her and the potential reputational harm to the Council, and because she was on contract that was an option that was viable for us. And then either that day or the next day, I got Betty in with a meeting with John, which was quite heated, about that situation. Things came to pass. I don't think she was actually dragged into the case at all other than just in the 45 documentation.

MS McDONALD: When you said the meeting with you, Mr Ajaka and Ms Boustani became heated, what do you mean?

5 **MR MALLARD:** Mr Ajaka started pacing up and down in the office. And he often thought with his hands, when he walked around, trying to work out the, you know, pros and cons what we were at. And he agreed with me reluctantly, my reluctant view, that there was potential, and we just put her on notice that "We may have to suspend you or you may have to leave us if this becomes a case that you are dragged into." John was quite critical of - they didn't get on very well, I've got to say, Betty
10 and John.

MS McDONALD: They didn't?

15 **MR MALLARD:** No, not very. But John was critical of Ms Boustani because he used to say to her, "Stop pretending - stop thinking like you're Ned's lawyer, all right. You are not defending or representing Ned, you are in the organisation." And so - and that was always a challenge. But, I mean, I had a lot of time for Betty, she was quite skilled in what she did. But that's the situation.

20 **MS McDONALD:** You described the meeting as "heated". Who became - when you say "heated" did people become angry or upset?

25 **MR MALLARD:** No, John, he did not be an exaggeration, but Mr Ajaka, John, was pacing up and down. And he talks like that, you know, "This is a problem, we've got to, we need to resolve it." You know, he talks with his hands. And when Ms Boustani would try to defend herself he would cut her off and said "No, look, you've got to understand, this is a problem for us." Yeah.

30 **MS McDONALD:** The conversation that Mr Ajaka would say to Ms Boustani, "You're not acting as Ned's lawyer" was that said on previous occasions?

MR MALLARD: Yes.

35 **MS McDONALD:** And in different contexts?

MR MALLARD: Yes.

MS McDONALD: What were some of those?

40 **MR MALLARD:** If - if the view was that the mayor had attended a meeting where he shouldn't have attended, you know, she would be defensive of that. And that's just a broad example, you know. Or in meetings when there was some challenging discussions going on and she would side with the mayor every time. But, you know, that's - yeah.

45 **MS McDONALD:** You also mentioned secondary employment.

MR MALLARD: Yes. All staff - or it might be all senior staff - I'm not sure it's all staff. But all staff are required to provide - get approval from their direct report for secondary employment, and so it might - it could be all staff, I'm not certain, but certainly managers - and there's a form you fill in, lands on my desk if it was
5 my - and you would check that to see, well, what are you doing and is there any conflict with the Council? And if there is, you - if you might approve it, you might indicate, "You can do no work in the Liverpool Local Government Area," or something like that.

10 And it included, for the sake of caution, family trusts and voluntary positions on boards, all that, and then the Auditor-General does an audit of - I think it's the Auditor-General - of secondary employment by senior staff. And I don't know if it does it for every council, but we got picked out. And across all of our desks, not just
15 Betty to me - others got it too. I got a couple of other managers that had the same issue - mainly family trusts or family superannuation funds - they hadn't declared them, so we had to do some mopping up.

Ms Boustani had, I think, from memory, a family super fund or something, and she was also an adviser to a law firm in some role, and - and - I - I approved those with
20 the usual conditions around prohibition on any engagement with Liverpool Local Council - Liverpool Council. And then they get recorded. But it wasn't unique to her. I got - I think I had - I think three in my directorate were picked up by that audit.

MS McDONALD: Can you excuse me. Yes, they're the questions.
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COMMISSIONER: All right. Mr Mallard, that completes your evidence for the moment. I'm being asked not to release any witnesses formally, but as soon as I'm told that you can be released from your summons that will be communicated to you.
30 And - hang on, I've been - no, I can continue.

MS McDONALD: Sorry. That's -

COMMISSIONER: That's all right.

35 **MS McDONALD:** As long as Mr Mallard isn't being excused.

COMMISSIONER: No one is being - I was just in the throes of explaining to him that although he can go home today, he's not formally excused from his summons. When that can happen, that will be communicated to you.
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MR MALLARD: All right.

COMMISSIONER: And if we need to trouble you again, that will be communicated to you and those representing you as well. But I'm very grateful for
45 your attendance and your assistance over these two days.

MR MALLARD: Thank you.

COMMISSIONER: And you're free to go for the moment.

MR MALLARD: Thank you, Commissioner.

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COMMISSIONER: Thank you. Thank you.

<THE WITNESS WITHDREW

10 **COMMISSIONER:** Is there anything else to do this afternoon? 10 clock tomorrow?

MS McDONALD: Yes.

COMMISSIONER: Adjourn till 10 am tomorrow. Thank you.

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<THE HEARING ADJOURNED AT 4.17 PM