

INQUIRY UNDER SECTION 438U OF THE LOCAL GOVERNMENT ACT

BLUE MOUNTAINS CITY COUNCIL

Public Hearing

Held at
Blue Mountains Cultural Centre
30-32 Parke Street, Katoomba, NSW

On Monday, 2 September 2019 at 10.00am

Before Mr Richard Beasley SC, Commissioner

1 THE COMMISSIONER: All right, ladies and gentlemen, we
2 might begin. I am just going to deliver a brief opening
3 statement on these terms of reference, 3, 6 and 8, which
4 will be available on the inquiry's website shortly.
5

6 On 27 June 2018, the New South Wales Minister for
7 Local Government established a public inquiry into the Blue
8 Mountains City Council under section 438U of the Local
9 Government Act.
10

11 The role of this inquiry is to investigate, and
12 subsequently report on, nine terms of reference that relate
13 to the governance of the council.
14

15 The terms relate broadly to two issues: matters
16 concerning the council's management of asbestos; and
17 certain employment, working environment and organisational
18 structural issues, which I will refer to as "the employment
19 issues".
20

21 Each term of reference requires an inquiry into the
22 conduct of the council - that is, its senior staff and its
23 elected councillors. The asbestos management and
24 employment issues are to be inquired into by reference to
25 the guiding principles, roles and obligations on the
26 council and the governing body provided for in various
27 provisions of the Local Government Act, which set out the
28 general principles by which councils should exercise their
29 functions and that set out the role of the governing body.
30

31 Term of reference 4 for this public inquiry has
32 already been the subject of public hearings. An interim
33 report and a supplementary report concerning this term of
34 reference have been provided to the minister. Those
35 reports have been tabled in parliament. They have been
36 uploaded to the inquiry's website and can be read by anyone
37 with the interest and inclination to do so.
38

39 The public hearings commencing today have been set
40 down for this week and next. They concern terms of
41 reference 3, 6 and 8. These terms relate to the employment
42 issues.
43

44 As the inquiry's terms of reference have been posted
45 on the website for some time, it is unnecessary to read
46 those terms out in full. In summary, however, term of
47 reference 3 requires an investigation into the engagement

1 and employment by the council of Mr Mark Mulligan,
2 Mr John Hargreaves and any other relevant staff, with
3 a focus on the merits surrounding these appointments and
4 issues of transparency and proper process.
5

6 Term of reference 6 relates to whether the council has
7 and is facilitating a "consultative and supportive working
8 environment". Term of reference 8 requires an examination
9 as to whether the council's organisational structure and
10 resource allocation is consistent with the council's
11 obligations under the Local Government Act.
12

13 When public hearings for term of reference 4 commenced
14 I explained why it was being dealt with separately and why
15 an inquiry had not yet been made into terms of reference
16 that deal with asbestos issues. In short, certain
17 government agencies have been conducting their own
18 investigations into asbestos-related matters concerning the
19 council, and it has been thought, at least until now, that
20 the better course would be for this inquiry to await their
21 outcome.
22

23 In saying that, this inquiry cannot be indefinitely
24 delayed, and absent some reason that would prohibit this
25 inquiry from dealing with asbestos management issues, it is
26 likely that dates for those hearings into those terms of
27 reference will be set shortly after the conclusion of the
28 employment issues terms of reference.
29

30 Some further observations should also be made. Most,
31 if not all, of this inquiry's terms of reference would
32 appear to have had their genesis on the back of certain
33 allegations made by Mr Ray Hadley in December 2017
34 and February 2018 on his morning radio show on station 2GB.
35 During this period, the then Minister for Local Government
36 issued the council with a performance improvement order
37 dated 22 January 2018 under section 438A of the Local
38 Government Act. She had previously issued the council with
39 a notice of intention to suspend it.
40

41 Five reasons were given for that order, which all
42 related to the management of asbestos. The actions
43 required under the order included the council implementing
44 all recommendations arising from what were described as,
45 "two independent investigations initiated by council by
46 resolution on 14 November 2017 regarding asbestos
47 management and organisational matters", and,

1 "investigations being undertaken by SafeWork and the EPA".

2
3 The council had in fact made two unanimous resolutions
4 on 14 November 2017. One related to serious allegations
5 made over the previous few days - by the Blue Mountains
6 Gazette and Mr Hadley - in relation to the council's
7 management of asbestos. The council resolved to instruct
8 its solicitors to engage an independent investigator to
9 investigate and report on these allegations.

10
11 The second unanimous resolution made on 14 November
12 2017 related to the serious allegations raised by Mr Hadley
13 against the council and individual council officers in
14 relation to the recruitment of staff and consultants. The
15 council's solicitors were again instructed to engage an
16 independent investigator to investigate and report on these
17 allegations.

18
19 On about 16 November 2017 the council's solicitor,
20 Mr Trevor Cork of McPhee Kelshaw Solicitors, engaged
21 Mr Michael Tooma, a partner in the law firm Clyde & Co, to
22 conduct an investigation into asbestos management by the
23 council. This was the matter that was the subject of term
24 of reference 4, and nothing further need be said about it,
25 save that Mr Tooma, by March 2018, had provided to the
26 council three interim reports and a final report.
27 Mr Tooma's recommendations have been made public by the
28 council but his reports have not and are the subject of
29 a claim to legal professional privilege.

30
31 On the same date that Mr Tooma was engaged, the
32 council's solicitors also engaged Ms Scarlet Reid,
33 a partner in the law firm McCullough Robertson, to conduct
34 an investigation into the allegations concerning the
35 engagement or employment of Mr Mulligan and Mr Hargreaves
36 and related matters. Ms Reid also supplied to the council
37 a report in March 2018. That report would appear to relate
38 squarely to the issues raised in term of reference 3, but
39 not necessarily to terms of reference 6 and 8. Again, this
40 report is also the subject of an unresolved claim for legal
41 professional privilege, although Ms Reid's recommendations
42 have been published by the council.

43
44 The then minister issued another notice of intention
45 to suspend the council on 14 February 2018. On 22 February
46 2018, the council issued proceedings in the Supreme Court
47 seeking an injunction to prevent the minister from

1 suspending it. An interim injunction was granted by
2 a single judge of the court. The government appealed to
3 the Court of Appeal. That appeal was successful and on
4 20 June 2018 the injunction was set aside: see Minister
5 for Local Government v Blue Mountains City Council (2018)
6 NSWCA 133. No further action has been taken to suspend the
7 council.
8

9 It is important to restate some matters concerning all
10 of the terms of reference and about the nature of this kind
11 of public inquiry generally. Terms of reference are not
12 a pleading. An inquiry such as this is not established in
13 order to prove a case, in the way that phrase might be
14 understood in a proceeding before a court.
15

16 Like a commission of inquiry or a royal commission,
17 this is an administrative inquiry. It is an investigation
18 established to make findings of fact and, if necessary,
19 recommendations, but not to finally determine legal rights.
20 Inquiries such as this one can make recommendations to the
21 minister, but those recommendations are not binding and the
22 inquiry itself cannot implement any recommendation it might
23 make.
24

25 Given that this is an administrative inquiry, the
26 rules of evidence do not apply. The rules of procedural
27 fairness, however, do. Findings of fact, of course, should
28 be made rationally in accordance with proper standards of
29 satisfaction that may vary depending on whether the
30 asserted factual matter is adverse to the interests of any
31 person.
32

33 With the exception of section 13 and division 2 of
34 part 2, the provisions of the Royal Commissions Act of New
35 South Wales apply to this inquiry. Amongst other things,
36 that means persons may be summonsed to give evidence at the
37 public hearings and to produce documents. Partly because
38 of this, shortly after the Minister appointed me as
39 Commissioner for the inquiry, I appointed Mr Angus Broad of
40 the Office of Local Government as Officer Assisting.
41 Following this, the Minister for Local Government appointed
42 Mr Ross Glover of the New South Wales Bar as
43 Counsel Assisting the inquiry. I am grateful for the
44 assistance they have provided to date.
45

46 Several persons have been summonsed to appear at the
47 public hearings over the course of this week and next.

1 Various document have also been sought by summons or
2 voluntarily provided by the council. The inquiry has
3 developed the General Practice Direction which was based on
4 similar such general directions made for other inquiries.
5

6 That practice direction provides that Mr Glover as
7 Counsel Assisting is responsible for choosing the witnesses
8 that will be called to give evidence to the inquiry and the
9 order in which those witnesses will be called.
10

11 The practice direction also contemplates the granting
12 of authorisation of legal practitioners to appear for
13 persons with sufficient interest in the inquiry in order to
14 represent the interests of those persons at the public
15 hearings. There is no need for anyone previously granted
16 leave to reapply for such leave today.
17

18 Shortly after the Minister determined that this
19 inquiry take place, submissions were sought from the public
20 in relation to the terms of reference. Several persons or
21 entities were specifically invited to make submissions.
22 This approach is consistent with the nature of this kind of
23 inquiry. Hearings are generally public and active
24 community and interested group participation is to be
25 encouraged.
26

27 A number of submissions have been received. Some of
28 those submissions have already been tendered by Mr Glover
29 during the public hearings into term of reference 4. Those
30 and all other documents tendered during the hearings into
31 term of reference number 4 remain as exhibits, although
32 some may be of no or limited relevance to term of reference
33 3, 6 and 8.
34

35 At the conclusion of the evidence in relation to the
36 employment issues I may provide a short period of time for
37 any interested parties to lodge written submissions of a
38 limited length. I will only hear oral submissions if I am
39 convinced that it is necessary. It is my intention after
40 that to provide the Minister with an interim report in
41 relation to terms of reference 3, 6 and 8. Mr Glover?
42

43 MR GLOVER: Thank you, Commissioner. As you have noted,
44 the public hearings for this week and next concern terms of
45 reference 3, 6 and 8 only. To the extent that term of
46 reference 8 deals with the issue of resource allocation and
47 to the extent that those issues may intersect with what

1 might be described as the asbestos management issues, it is
2 not proposed to explore during these hearings any issue of
3 resource allocation in relation to asbestos management
4 specifically. Those issues will arise for consideration
5 when the asbestos management issues are considered.
6

7 Turning to term of reference 3, it requires that you
8 are to inquire into and report as to whether, in exercising
9 its functions pursuant to parts 1 and 2 of chapter 11 of
10 the Local Government Act, the council and its governing
11 body has since 2012 determined to employ or engage Mr Mark
12 Mulligan, Mr John Hargreaves and any other staff or
13 contractors in accordance with the guiding principles in
14 sections 8A(1)(a) and (2)(e) of that Act and the role of
15 the governing body in subsections 223(1)(j) and (l), as
16 well as section 349 of that Act.
17

18 Chapter 11 of the Local Government Act is headed "How
19 are councils staffed?" Part 1 deals with the determination
20 and re-determination and review of the organisational
21 structure of the council. Part 2 deals with the
22 appointment and functions of the general manager and the
23 appointment of senior staff.
24

25 Section 8A of that Act sets out the general principles
26 that apply to the exercise of functions and decision making
27 by councils. Relevantly, for the purposes of the inquiry
28 into term of reference 3, section 81A(1)(a) provides that
29 councils should provide strong and effective
30 representation, leadership, planning and decision making.
31 Subsection 8A(2)(e) provides that council decision making
32 should be transparent and decision makers are to be
33 accountable for decisions and omissions.
34

35 As noted, section 223 of the Act deals with the role
36 of the governing body. For the purposes of term of
37 reference 3, subsection 223(1)(j) provides that it is the
38 role of the governing body to determine the senior staff
39 positions within the organisational structure of the
40 council, and subsection 223(1)(l) provides that it is the
41 role of the governing body to be responsible for ensuring
42 that the council acts honestly, efficiently and
43 appropriately.
44

45 Section 349 of the Act deals with the appointment of
46 persons to positions within the council. In summary, it
47 provides that when a decision is being made to appoint a

1 person to a position, only a person who has then applied
2 may be selected and from those applications the applicant
3 with the greatest merit must be selected. The merit of the
4 persons eligible for appointment must be determined
5 according to the nature and duties of the positions and the
6 attributes of those persons relevant to those duties.
7

8 Finally, in determining the merit of a person eligible
9 for appointment to a position, regard must be had to the
10 objects of part 4 of chapter 11 of the Act which deals with
11 issues relating to equal employment opportunity.
12

13 By its terms, term of reference 3 directs attention to
14 the exercise of the functions since 2012 in engaging or
15 employing Mr Mulligan, Mr Hargreaves and any other staff or
16 contractors. Plainly, as drafted, its terms are
17 exceptionally broad. However, it is my submission that it
18 is beyond the reasonable scope of this inquiry to examine
19 each and every engagement or employment decision made by
20 the council since 2012. That can't have been the intention
21 of that term of reference. To do so would take an
22 immeasurable amount of time and consume a disproportionate
23 amount of resources.
24

25 Properly understood, the scope of term of reference 3
26 permits you to examine those engagements but does not
27 require you to investigate each and every one of them.
28

29 Accordingly, in addition to the engagement or
30 employment of Mr Mulligan and Mr Hargreaves, some examples
31 of other engagements or employments have been identified
32 for examination in respect of term of reference 3. In
33 identifying those examples regard has been had to some
34 submissions that were received in relation to term of
35 reference 3, the evidence given by witnesses to date and
36 the content of some of the allegations made by Mr Hadley.
37

38 I note at this point that very few of the submissions
39 received by the inquiry dealt with the specifics of term of
40 reference 3. Most were directed to asbestos issues.
41

42 THE COMMISSIONER: Just interrupting you there, I haven't
43 listened to what Mr Hadley said. Did he mention anyone
44 other than Mr Mulligan and Mr Hargreaves?
45

46 MR GLOVER: There were a couple of other appointments
47 mentioned. We will tender some transcripts of his

1 comments. I don't propose, consistent with the approach
2 I took in relation to term of reference 4, to play the
3 audio, but some transcripts have been prepared and I will
4 mention those in due course.

5
6 THE COMMISSIONER: Thank you.

7
8 MR GLOVER: It is presently intended, in addition to
9 Mr Mulligan and Mr Hargreaves, to adduce some evidence in
10 relation to the following: the appointment of the director
11 of service delivery in 2016, the appointment of the
12 position of the manager city presentation in 2017/18, the
13 process of the appointment of the general manager following
14 the retirement of Mr Greenwood in 2017, the engagement of
15 HRM Partners Pty Limited, and the engagement of Centium as
16 a consultant in 2016. Picking up your question,
17 Commissioner, Centium was one additionally mentioned by
18 Mr Hadley during his broadcasts.

19
20 THE COMMISSIONER: What are Centium?

21
22 MR GLOVER: They are a consulting firm used, without
23 predicting the evidence, in auditing council functions.

24
25 THE COMMISSIONER: I am just scrolling through the Local
26 Government Act. Does section 349 apply to everyone, every
27 single position? It says, literally, a person to a
28 position.

29
30 MR GLOVER: Yes, it is exceptionally broad on its terms.

31
32 THE COMMISSIONER: I was just wondering whether "position"
33 was defined as being a senior position. In any event,
34 there may be good reasons for that if it's that broad. I
35 am distracting you, I am sorry.

36
37 MR GLOVER: Given that Mr Mulligan and Mr Hargreaves are
38 specifically identified in term of reference 3, I will just
39 briefly mention some of the factual background that gives
40 context to the circumstances of their engagements. Some of
41 this material has already been led in relation to term of
42 reference 4. Mr Mulligan was first engaged in 2016 as a
43 contractor or a consultant in relation to the council's
44 safety improvement project.

45
46 THE COMMISSIONER: Via his company.

47

1 MR GLOVER: Via his company. In 2017 he was then engaged
2 as the acting director service delivery for a period of
3 12 months. Various allegations were made by Mr Hadley
4 about his engagement. They included that he had no
5 relevant experience to undertake the role, applicable
6 processes were not followed in relation to the engagement,
7 that Mr Mulligan was friends with Mr Liddell, which gave
8 rise to some sort of conflict, and Mr Mulligan's
9 appointment was made as the basis of a "boys club" or a
10 "jobs for the boys" culture at the council.
11

12 In relation to the first engagement, that is, the
13 safety improvement project lead, that position was first
14 created in 2016. Commissioner, I am just going to take you
15 to identify some of the documents in the bundle which
16 I believe you have. Can I say two things about the bundle
17 at the moment?
18

19 THE COMMISSIONER: Yes.
20

21 MR GLOVER: Firstly, my learned friend Mr Singleton, for
22 the council, has raised with me two issues: one, in its
23 form as it is before you at the moment, it contains some
24 information which identifies certain people who are of no
25 interest to the inquiry, that is, people who might have
26 applied for positions from time to time, so what has
27 happened is a redacted version has been prepared which
28 I propose to tender as the public exhibit.
29

30 THE COMMISSIONER: Is this redacted or not redacted?
31

32 MR GLOVER: The one that is here before you is not
33 redacted. The one that I propose to tender, and which will
34 become a public exhibit, has been redacted to mask the
35 names and identifying features of those persons.
36

37 THE COMMISSIONER: Yes, all right, that sounds reasonable.
38

39 MR GLOVER: The purpose of tendering the recruitment
40 information is to demonstrate the processes that were
41 followed, but the identity of those applicants is of no
42 moment.
43

44 Secondly, this morning Mr Singleton has raised with me
45 that there are some confidentiality issues with some of the
46 other documents, so what I propose to do at the moment
47 is --

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THE COMMISSIONER: You're not going to tender it now?

MR GLOVER: I am not going to tender it at the moment. To the extent that I will take any of today's witnesses or tomorrow's witnesses to it, I propose to mark the bundle as an MFI and then we will deal with those issues by way of redaction. What will happen is the bundle will go up, as I foresee it, and those sections which are either confidential or private will be redacted so the page numbering will remain consistent.

THE COMMISSIONER: All right.

MR GLOVER: If you take up that bundle you will see --

THE COMMISSIONER: Do we know what MFI we're up to? Is it MFI 8? I've got an MFI 7 in front of me.

MR GLOVER: It would be MFI 8.

THE COMMISSIONER: We will mark the folder headed "Witness Bundle" being used by Mr Glover for the purposes of his opening statement on 2 September 2019 is presently marked as MFI 8.

MFI #8 FOLDER HEADED "WITNESS BUNDLE" USED BY MR GLOVER FOR THE PURPOSES OF HIS OPENING STATEMENT ON 2 SEPTEMBER 2019

MR GLOVER: Thank you, Commissioner.

THE COMMISSIONER: This is material that you have provided to me previously, that we have by email.

MR GLOVER: Yes, that's right.

THE COMMISSIONER: I have got an electronic copy which is an unredacted version.

MR GLOVER: Yes, which is an unredacted version. At page 1 of that bundle the position of safety improvement project manager was created. That occurs on 5 February 2016.

THE COMMISSIONER: Yes.

MR GLOVER: At page 5 one finds the position description

1 and importantly for present purposes, just to identify what
2 that role did, at page 6 one sees the key responsibilities.
3 Some of this evidence has already been adduced, but for the
4 benefit of those who haven't taken part or been concerned
5 with term of reference 4, the first key responsibility was
6 to refine council's project plan for the maturing of its
7 safety management system. It has been submitted, it is
8 adduced, about what that involved. I won't read those out
9 on to the record, but one can see the type of project
10 management that was required.

11

12 THE COMMISSIONER: Yes.

13

14 MR GLOVER: The selection criteria for that position,
15 which may become relevant during these hearings, is set out
16 on page 8.

17

18 THE COMMISSIONER: Yes.

19

20 MR GLOVER: It required, amongst other things, extensive
21 experience and knowledge of safety management systems,
22 demonstrated recent experience in reviewing, designing and
23 managing change and assessing safety management systems,
24 et cetera, et cetera.

25

26 THE COMMISSIONER: Yes.

27

28 MR GLOVER: The position was advertised and a recruitment
29 campaign was conducted. There were a number of applicants,
30 and I'd just note at page 12 this is one of the documents
31 that has since been redacted, but one can see that the
32 applicants were then considered and assessed for their
33 appropriateness for interview.

34

35 THE COMMISSIONER: Which page, I'm sorry?

36

37 MR GLOVER: Page 12.

38

39 THE COMMISSIONER: Yes, I see.

40

41 MR GLOVER: You will see the number of applicants there
42 and they are then assessed for their appropriateness for
43 interview.

44

45 THE COMMISSIONER: I see, 1, 2 and 3, right.

46

47 MR GLOVER: You will see on page 14 the second to last row

1 of that table "recommended for interview" and there are a
2 number of persons recommended for interview.

3
4 THE COMMISSIONER: Yes.

5
6 MR GLOVER: The interview process then proceeds. What
7 happens is ultimately --

8
9 THE COMMISSIONER: Just pausing in relation to redaction,
10 all of these people's names are going to be redacted, are
11 they?

12
13 MR GLOVER: Correct, yes, except for the successful
14 candidate, yes, my learned friend is quite right, we have
15 done that. Ultimately, one candidate was identified as
16 being appropriate in the circumstances and that was
17 Mr Michael Shellshear and he took up the position shortly
18 thereafter. However, in about July he resigned. There was
19 a need to --

20
21 THE COMMISSIONER: July '17?

22
23 MR GLOVER: '16. Therefore, there was a need to replace
24 him.

25
26 THE COMMISSIONER: When did he start? April '16?

27
28 MR GLOVER: About April.

29
30 THE COMMISSIONER: Yes, 18 April is the agreed
31 commencement date.

32
33 MR GLOVER: Yes, on page 17. He resigned in about July.

34
35 THE COMMISSIONER: Yes.

36
37 MR GLOVER: And in early August there was obviously a need
38 to replace him and without anticipating the evidence, but I
39 don't think there's going to be much issue about it, what
40 occurred was that given that the recruitment campaign had
41 only identified one appropriate applicant, that being
42 Mr Shellshear, in an effort to keep the project moving
43 along, either one, two or a combination of Mr Grant McKay,
44 Mr Hargreaves and Mr Liddell sought to identify appropriate
45 persons who could fulfil the role on short notice.
46 Mr Mulligan was one and then there was another, [REDACTED].
47

1 Mr Hargreaves and Mr McKay met with both and --
2
3 THE COMMISSIONER: You just mentioned someone's name. Is
4 that going to be redacted?
5
6 MR GLOVER: I did, and I paused for a moment, but the name
7 is already out there.
8
9 MR SINGLETON: That's all right.
10
11 THE COMMISSIONER: We don't have a beeping thing like the
12 Victorian Court of Appeal. Anyway go on, it doesn't
13 matter.
14
15 MR GLOVER: I haven't redacted his name in the bundle
16 either. Mr McKay and Mr Hargreaves met with both and
17 Mr Mulligan was identified as being the preferred option.
18
19 THE COMMISSIONER: Yes.
20
21 MR GLOVER: There were some communications then between
22 Mr McKay and Mr Hargreaves and Mr Mulligan and in one of
23 them - and this is on page 36, it starts on page 36, on
24 18 August, following the --
25
26 THE COMMISSIONER: Mr McKay's role was?
27
28 MR GLOVER: Mr McKay was at that point - I'll just turn up
29 the precise role - manager governance and risk.
30
31 THE COMMISSIONER: He is the manager governance and risk.
32 That's who this role reported to?
33
34 MR GLOVER: Correct. Mr Liddell was the --
35
36 THE COMMISSIONER: Mr Hargreaves was what?
37
38 MR GLOVER: He was the program leader business
39 improvement. Mr Liddell was a group manager people and
40 systems.
41
42 THE COMMISSIONER: All right.
43
44 MR GLOVER: The head of that group.
45
46 THE COMMISSIONER: Yes. All right.
47

1 MR GLOVER: Mr McKay and Mr Hargreaves met with
2 Mr Mulligan on 17 August and on the 18th, and this is at
3 page 36 of the bundle, this is a document you've seen
4 before, Commissioner, it's the email that starts on the
5 bottom, it is slightly cut off in the printing, Thursday,
6 18 August at 3.11pm, do you see that?

7
8 THE COMMISSIONER: Yes. Is Mr Liddell playing a role
9 in --

10
11 MR GLOVER: No, not at this stage.

12
13 THE COMMISSIONER: So this is Mr McKay.

14
15 MR GLOVER: Mr Liddell identified Mr Mulligan as being a
16 potential suitable candidate.

17
18 THE COMMISSIONER: Because he knew of him from some work.

19
20 MR GLOVER: Because he knew of him and had worked in the
21 same organisation as him, but beyond that this was a
22 process driven by Mr McKay and Mr Hargreaves.

23
24 THE COMMISSIONER: All right.

25
26 MR GLOVER: This email of 18 August, you'll see about
27 halfway down page 37 there's a discussion about dates.

28
29 THE COMMISSIONER: Yes.

30
31 MR GLOVER: And then Mr Mulligan quotes his daily rate for
32 contracted engagements. He gives two rates there, one for
33 a short-term engagement, one for an engagement beyond
34 30 days. Ultimately, Mr Mulligan was engaged. The formal
35 arrangements commenced on 5 October and you'll see that at
36 page 41.

37
38 THE COMMISSIONER: Yes.

39
40 MR GLOVER: But as the inquiry has heard, Mr Mulligan did
41 about four days trial or preparatory work in about August
42 or September, but the engagement formally commenced on
43 5 October, and was scheduled to finish on 23 December. You
44 will see that from the letter from Mr Liddell of
45 9 September at page 41, and indeed, the engagement
46 concluded on 23 September.

47

1 On about 4 November a concern with respect to the
2 requisition had been raised in the council's ordering
3 system for Mr Mulligan's services and in particular whether
4 or not there existed a quote for those services given that
5 the entry that was recorded in the system was "N/A". There
6 were concerns raised as to whether there had been
7 compliance with relevant council policy. I don't propose
8 to go into further detail of those issues during opening,
9 but there will be some evidence about it and there are a
10 number of documents already in evidence.

11

12 THE COMMISSIONER: Yes.

13

14 MR GLOVER: As noted earlier, Mr Hadley's allegations
15 included not only that the relevant policies had not been
16 followed, but suggestions of a conflict of interest given
17 that Mr Liddell had known and worked with Mr Mulligan and
18 he suggested that Mr Mulligan did not have appropriate
19 qualifications to fulfil the role. We will explore both of
20 those allegations during the course of these public
21 hearings.

22

23 THE COMMISSIONER: Mr Mulligan's CV was tendered in term
24 of reference 4, wasn't it?

25

26 MR GLOVER: It was, yes. There will be some additional
27 documents in relation to what he proposed when he was first
28 approached. He gave I think it was called a capability
29 statement.

30

31 THE COMMISSIONER: Mr Mulligan is giving evidence again,
32 correct".

33

34 MR GLOVER: He is on Friday.

35

36 THE COMMISSIONER: Friday, all right, thanks.

37

38 MR GLOVER: He is travelling from Canberra to be here. In
39 about July/August the council undertook a recruitment
40 process for the position of the director of service
41 delivery. That is a senior staff position within the
42 council and he is a member of the executive leadership
43 team. Ultimately, Mr Bruhn was appointed. However, he
44 resigned in about mid 2017. I turn to page 148 of the
45 bundle.

46

47 THE COMMISSIONER: Does that mean he left the council

1 altogether then?

2

3 MR GLOVER: Yes.

4

5 THE COMMISSIONER: Yes. All right.

6

7 MR GLOVER: Could I turn to page 148 of MFI 8. This is in
8 August 2017.

9

10 THE COMMISSIONER: Is this a business paper?

11

12 MR GLOVER: It is a business paper. At page 155, as part
13 of that business paper, it was suggested to the governing
14 body that it was proposed to appoint someone to that
15 recently vacated position on a fixed 12-month term, this is
16 at the top of page 155, and then the rationale is set out
17 there. It is two fold. It provided the incoming general
18 manager the ability to determine the incumbent. Of course,
19 Mr Greenwood was due to retire at the end of that year,
20 that is, 2017. Secondly, it provided the interim director
21 with the ability to have a stronger focus. That was the
22 reason given to the governing body as to why a 12-month
23 appointment was to be made.

24

25 Mr Hadley, however, alleged that the decision to make
26 the appointment for 12 months was to enable Mr Liddell, who
27 at a later time was identified to take on the role of
28 acting general manager, to quietly appoint his mate once he
29 had assume that role.

30

31 THE COMMISSIONER: His mate being Mr Mulligan.

32

33 MR GLOVER: Mr Mulligan. However, what transpired was
34 that there was a recruitment process undertaken by the
35 council to fulfil the role of acting director service
36 delivery through the engagement of Hays Executive
37 Recruitment. A number of potential candidates were
38 identified. Mr Mulligan was one of them. Hays recommended
39 a number of candidates for interview, including
40 Mr Mulligan, and a process was undertaken which included
41 Mr Mulligan being interviewed by the entire executive
42 leadership team of the council. Ultimately, he was
43 identified as the appropriate candidate and he was
44 appointed for 12 months.

45

46 THE COMMISSIONER: Yes.

47

1 MR GLOVER: The announcement of that appointment can be
2 found at page 220 of MFI 8. That was announced on
3 27 October.
4
5 THE COMMISSIONER: Hays is what, a head-hunting type firm,
6 a recruitment specialist.
7
8 MR GLOVER: Yes, a recruitment specialist. Shortly after
9 Mr Mulligan's appointment, as you've noted in the evidence
10 in term of reference 4, has revealed various allegations
11 began being made in relation to this appointment in the
12 media, including by Mr Hadley.
13
14 THE COMMISSIONER: Yes.
15
16 MR GLOVER: Ultimately, Mr Mulligan left the role of
17 acting director service delivery on 12 February 2018.
18
19 THE COMMISSIONER: Yes.
20
21 MR GLOVER: Turning now briefly to the recruitment of
22 Mr Hargreaves, in February 2016 the council created the new
23 position of program leader business improvement. If you
24 turn to page 226 of MFI 8, you will find the position
25 description.
26
27 THE COMMISSIONER: Yes.
28
29 MR GLOVER: The inquiry hasn't heard much by way of
30 evidence about this position, so I'll just pause for a
31 moment to highlight some of the aspects of it. At the
32 bottom of page 226, under the heading "Position Summary" -
33 do you have that?
34
35 THE COMMISSIONER: Yes, I do.
36
37 MR GLOVER: A key member of a team responsible, broadly,
38 for enterprise risk management, internal audit and safety,
39 and this sat within the governance and risk branch of the
40 council --
41
42 THE COMMISSIONER: Yes.
43
44 MR GLOVER: -- reporting to the manager governance and
45 risk who at this time was Mr McKay.
46
47 THE COMMISSIONER: Yes.

1
2 MR GLOVER: The position holder was responsible for
3 building business improvement capability and business
4 improvement projects would be conducted in accordance with
5 the program office approach, et cetera. Finally, at the
6 last sentence under "Summary" on page 226:

7
8 The position holder was responsible for
9 project definition, overseeing project
10 leads, project reporting and working with
11 the business to formulate and track
12 previous strategies for the projects.

13
14 We will explore the detail of that with Mr Hargreaves when
15 he gives evidence tomorrow.

16
17 THE COMMISSIONER: He is tomorrow, is he?

18
19 MR GLOVER: He is tomorrow. He is also travelling to be
20 here.

21
22 THE COMMISSIONER: Yes.

23
24 MR GLOVER: The key responsibilities one sees on page 227.

25
26 THE COMMISSIONER: Yes.

27
28 MR GLOVER: And the various selection criteria on 228 and
29 229. A recruitment campaign was conducted to appoint
30 someone to this position. A number of applications were
31 received. On page 241 of MFI 8 you'll see a similar
32 schedule that we saw in relation to the project lead role.

33
34 THE COMMISSIONER: And again, you're going to have
35 redacted these people's names?

36
37 MR GLOVER: That's correct, except for Mr Hargreaves, and
38 a number of persons are there. They were the applicants.

39
40 THE COMMISSIONER: Yes.

41
42 MR GLOVER: Ultimately, a number were identified for
43 interview, and they are to be found at page 246. Of the
44 applicants, five were identified for interview, including
45 Mr Hargreaves.

46
47 Some ultimately, although being offered interviews,

1 did not proceed to be interviewed or withdrew their
2 application, but ultimately Mr Hargreaves and one other
3 were being considered and a second round of interviews was
4 conducted. They were conducted by Mr McKay and
5 Mr Greenwood.

6
7 THE COMMISSIONER: Were the initial interviews by
8 Mr McKay, Dr Dillon and Mr Bruhn? I'm just looking at
9 246?

10
11 MR GLOVER: Yes, 246 and 247. Mr McKay, Dr Dillon and
12 Mr Bruhn, which appears on the bottom of page 247. That
13 interview panel identified Mr Hargreaves and one other as
14 being suitable, and a second round was arranged with
15 Mr McKay and Mr Greenwood.

16
17 The significance of Mr Greenwood partaking in that
18 second round is that Mr Liddell would have ordinarily done
19 so, however, he did have a relationship with Mr Hargreaves:
20 they were members of a golf club and they played golf
21 together.

22
23 THE COMMISSIONER: So he said, "I can't be on the
24 interview panel", did he?

25
26 MR GLOVER: To that effect, and it was left with
27 Mr Greenwood and Mr McKay.

28
29 There will be some evidence about what happened in
30 that second-round interview and whether reservations were
31 expressed and in what terms and how they were communicated.
32 I don't need to touch on those in opening, other than to
33 note they were there. Ultimately, Mr Hargreaves was
34 appointed and engaged for a term of 12 months. The
35 selection report can be found at page 253, approved by
36 Mr McKay and Mr Greenwood.

37
38 As I've noted, the concerns about Mr Hargreaves'
39 engagement focused primarily on his relationship with
40 Mr Liddell. Mr Hadley suggested - whether or not in terms,
41 but certainly suggested - that a job had been given to
42 Mr Liddell's golfing mate. They are my words, not a direct
43 quote from Mr Hadley. We will explore whether or not that
44 had, in fact, happened.

45
46 I don't propose to go through the other factual
47 details about some of the other engagements or appointments

1 in opening, but given that those two were expressly
2 mentioned in term of reference 3, I thought it useful to
3 set the scene, as it were.

4
5 Turning briefly to term of reference 6, it requires
6 you to inquire into and report on --

7
8 THE COMMISSIONER: Sorry, just before you move on,
9 something occurred to me. For term of reference 4, 2GB
10 supplied documents on a summons for production. Do they
11 contain material that is relevant to term of reference 3 as
12 well?

13
14 MR GLOVER: Some, but it is also available from other
15 sources.

16
17 THE COMMISSIONER: Right. Does that identify what caused
18 Mr Hadley to - was someone providing Mr Hadley with
19 information?

20
21 MR GLOVER: As term of reference 4 revealed, Mr Hadley had
22 been provided with copies of documents, emails, and some of
23 those --

24
25 THE COMMISSIONER: I've forgotten: did the summons to 2GB
26 that was issued for the reopening of term of reference 4
27 relate to all documents 2GB held in relation to
28 Mr Hargreaves as well as Mr Mulligan?

29
30 MR GLOVER: I will have to check in relation to the
31 summons. I don't believe it would have touched on
32 Mr Hargreaves; it certainly went to Mr Mulligan. I will
33 take that on notice and we will address that during the
34 morning.

35
36 THE COMMISSIONER: Yes. I'm just wondering, out of
37 completeness, do you think you have everything that was
38 sent to 2GB?

39
40 MR GLOVER: I don't know.

41
42 THE COMMISSIONER: I can have this conversation with you
43 later.

44
45 MR GLOVER: Yes. If there is any doubt about it, we will
46 summons them.

1 THE COMMISSIONER: Yes. Presumably, these things can't
2 just be said on radio without some information.
3
4 MR GLOVER: Well, it appears in relation to the issues
5 that are raised in term of reference 4, Mr Hadley would
6 read or base his comments on the content of emails that had
7 been produced to him. So I suspect, without knowing at the
8 moment --
9
10 THE COMMISSIONER: You can't recall whether there was
11 anything in the material that was already part of term of
12 reference 4 that talks about Hargreaves and golf and --
13
14 MR GLOVER: I would have to double-check.
15
16 THE COMMISSIONER: I wouldn't have been looking for that,
17 either.
18
19 MR GLOVER: No, nor was I. I will have to double-check.
20 If there is any doubt about it, we will issue a summons.
21
22 THE COMMISSIONER: Yes.
23
24 MR GLOVER: Turning to term of reference 6, it requires an
25 inquiry into and report upon whether, in exercising its
26 functions pursuant to parts 1 and 2 of chapter 11 of the
27 Local Government Act, the council and its governing body
28 has, since 2012, facilitated and is facilitating
29 a consultative and supportive working environment in
30 accordance with the guiding principles under
31 section 8A(1)(i) and the role of the governing body under
32 section 223(1)(i), (j) and (l) of that Act.
33
34 Section 8A(1)(i) in terms provides that the council
35 should be responsible employers and provide a consultative
36 and supporting working environment for staff.
37
38 THE COMMISSIONER: I take it "consultative and supportive
39 working environment" is not defined in the Act?
40
41 MR GLOVER: You would be correct.
42
43 THE COMMISSIONER: Maybe it is obvious what one is.
44
45 MR GLOVER: Perhaps. As noted earlier, section 223 deals
46 with the role of the governing body and 223(1)(i) provides
47 that the governing body determines the process of

1 appointment for the general manager, et cetera. 223(1)(j)
2 provides that the governing body is to determine the senior
3 staff positions and the organisational structure.

4
5 THE COMMISSIONER: "Senior staff" is defined, isn't it?

6
7 MR GLOVER: It is. We will spend some time on that.
8 223(1)(l) provides that the governing body is to be
9 responsible for ensuring, again, that the council acts
10 honestly, efficiently and appropriately. So there is some
11 overlap between the provisions that the terms of reference
12 are directed to. Again, very few of the submissions
13 received by the inquiry touch directly on the content of
14 term of reference 6.

15
16 THE COMMISSIONER: Is there a stronger link than I think
17 between term of reference 3 and terms of reference 6 and 8?
18 Do they all fall out of term of reference 3?

19
20 MR GLOVER: Certainly term of reference 3 gives content to
21 term of reference 6 in particular; perhaps less so 8, but
22 certainly there will be some overlap between some of the
23 issues that have been raised in relation to term of
24 reference 3 and then the concepts picked up by term of
25 reference 6.

26
27 THE COMMISSIONER: I guess what I meant was, is there any
28 theme in the submissions provided - is there any allegation
29 that the council wasn't or isn't facilitating
30 a consultative and supporting working environment because
31 of some issue concerning employment and engagement of
32 Mr Mulligan and Mr Hargreaves, or is it broader than that?

33
34 MR GLOVER: Those who have addressed it have addressed it
35 in that context.

36
37 THE COMMISSIONER: Only in the context of employing
38 Mr Mulligan and Mr Hargreaves?

39
40 MR GLOVER: Yes.

41
42 THE COMMISSIONER: The more I think about it, it's
43 probably linked to that, in the sense of not requiring,
44 unless there is an obvious reason for doing it, looking
45 into every meeting in a staffroom, as to whether - we would
46 be here for 100 years doing that.

1 MR GLOVER: Yes, to the extent that it has been raised,
2 the issues in term of reference 3 are the gateway, as it
3 were, and then issues similar to, but not necessarily
4 limited to, the circumstances of those appointments - for
5 example, how the council deals with people raising issues
6 generally, not just these issues, but certainly the term of
7 reference 3 issues are the gateway.

8
9 What is proposed during these hearings is to explore
10 term of reference 3 in addition to those individual
11 circumstances when they arise, if they arise, during the
12 evidence, but to examine council's processes and measures
13 that are in place to ensure best compliance with the
14 statutory obligations.

15
16 THE COMMISSIONER: The reason I'm raising that is because
17 I've certainly been involved in one inquiry where, as
18 counsel, I had a role in actually drafting the terms of
19 reference. This is one where neither you nor I have had
20 any role in drafting this, so we have to make the best we
21 can. Making the most logical best we can of it, everything
22 seems to have been drafted around allegations made
23 concerning asbestos management, alleged conflicts of
24 interest in relation to term of reference 4 that turned out
25 not to be conflicts of interest, and the allegations made
26 at term of reference 3; and the others, 6 and 8, seem
27 potentially just adjuncts to the allegations that drove
28 term of reference 3. It doesn't seem as though there is
29 a lot of sense for you or me to interpret it in another way
30 or more broadly, unless there is a requirement.

31
32 MR GLOVER: When one delves into the particular instances
33 where it might be suggested that the council fell short,
34 I embrace everything that you have just said. It can't be
35 that, sensibly understood, term of reference 6 requires
36 this inquiry to go searching for instances where there have
37 been, it might be thought, occasions where the council,
38 being in interaction with a particular manager or
39 management, has fallen short.

40
41 THE COMMISSIONER: I'm saying this out loud because,
42 understandably, a member of the public reading 6 might
43 think, "God, there's going to be a sweeping inquiry into
44 the council's consultative and supportive working
45 environment", but none of these terms of reference - it's
46 not proper to read any of them not in the context of all
47 the others.

1
2 MR GLOVER: Absolutely.

3
4 THE COMMISSIONER: Do you have a view on this,
5 Mr Singleton?

6
7 MR SINGLETON: I would broadly endorse both of you and put
8 them together in this way: term of reference 3 is, as my
9 friend said, a gateway to the other two, so to the extent
10 that the specific case studies, Mulligan, Hargreaves and
11 the five other matters that were identified this morning in
12 council assisting's opening address, throw up systemic
13 issues, you would look at them.

14
15 THE COMMISSIONER: Yes, because 3 names two people, then
16 it says "and other staff or contractors", so that gives
17 scope for people to come forward and say, "What about this?
18 What about that?" and it can be looked at as to whether it
19 is relevant or not.

20
21 MR SINGLETON: So in that sense, this is an inquiry into
22 particular problems rather than a sweeping inquiry into
23 everything.

24
25 That said, we respectfully urge that Mr Glover is
26 correct to say the focus should be on systems and
27 processes, not on a close scrutiny of particular
28 individuals, at least not gratuitously. Council is
29 particularly concerned not to get into why someone didn't
30 get a job. It does not wish to throw allegations against
31 individuals.

32
33 THE COMMISSIONER: Yes. So I would anticipate you would
34 be making submissions about Mr Mulligan and Mr Hargreaves,
35 in relation to what is raised in term of reference 3. In
36 relation to 6, outside of any other specific matter brought
37 up, I imagine you would just be pointing to policies that
38 council has in place.

39
40 MR SINGLETON: That's essentially right. I would just add
41 one little detail: underneath a policy is the
42 implementation, and we have, and will provide, large
43 bundles of documents just to show it.

44
45 I will just give one brief example. A system I will
46 call the "team brief" system was introduced as a mode of
47 communicating with staff a direction of the council on

1 current issues and hearing back from them. There are
2 a couple of folders' worth of team briefs which have been
3 assembled. We wouldn't expect that every line would be
4 examined, but the fact that they exist is a part of the
5 evidence about the nature of the consultative culture.
6
7 THE COMMISSIONER: All right. Thanks. Sorry, go ahead,
8 Mr Glover.
9
10 MR RYAN: Commissioner, if I may?
11
12 THE COMMISSIONER: Yes, sure.
13
14 MR RYAN: We do have a view on this. It is somewhat
15 different.
16
17 THE COMMISSIONER: We may as well hear it now so that we
18 know. Go ahead.
19
20 MR RYAN: Yes. Last week we sought further information,
21 which wasn't forthcoming, but we intend to --
22
23 THE COMMISSIONER: What information was that?
24
25 MR RYAN: It was access to one of the reports that legal
26 privilege had been claimed over.
27
28 THE COMMISSIONER: Ms Reid's report?
29
30 MR RYAN: Yes.
31
32 THE COMMISSIONER: Right.
33
34 MR RYAN: We intend to make a submission today primarily
35 on term of reference 6. I'm just seeking final
36 instructions before sending that off. Rather than term of
37 reference 3 being a gateway, we would actually see them as
38 being co-joined, in the sense that the supportive
39 environment, or lack of, actually leads to the type of
40 disquiet that we have seen that has given rise to term of
41 reference 3.
42
43 THE COMMISSIONER: I see.
44
45 MR RYAN: Of course, recognising that this inquiry can't
46 investigate every single thing since 2012.
47

1 THE COMMISSIONER: To give a silly example, if someone
2 said, "Bill got a cake when he retired and Jane didn't",
3 I don't view that as falling within 6.
4
5 MR RYAN: Of course, that would be taking it to a degree
6 which is not warranted. But we are talking about --
7
8 THE COMMISSIONER: You say there is something beyond
9 Mr Mulligan and Mr Hargreaves and potentially a few other
10 people in relation to 6 - there is a broader issue?
11
12 MR RYAN: That go to systemic issues in the council, that
13 we will make a submission about.
14
15 THE COMMISSIONER: All right, sure. Thank you for that.
16 You continue, Mr Glover.
17
18 MR GLOVER: Thank you, Commissioner.
19
20 THE COMMISSIONER: It may end up that everyone's actually
21 on the same page, but we will see.
22
23 MR GLOVER: As I think I was saying - it has probably been
24 overtaken by the exchanges --
25
26 THE COMMISSIONER: You had mentioned something about term
27 of reference 6 and gateway. Whether it is gateway or
28 co-joined, who knows. Term of reference 8 looks a little
29 on its own, but again --
30
31 MR GLOVER: It does, but it may be, to the extent it
32 interacts, it probably, in my submission, interacts more
33 with the asbestos terms of reference, although, when I come
34 to deal with it shortly, I will be suggesting there are
35 some general matters that can be explored at the moment.
36
37 THE COMMISSIONER: Tell me if this should have been
38 a private discussion, but I will ask the question anyway:
39 in relation to term of reference 8, there has been some
40 expert assistance provided?
41
42 MR GLOVER: I haven't received it yet. At the moment
43 I don't have it, but it is foreshadowed that there will be
44 some expert evidence provided to the inquiry.
45
46 THE COMMISSIONER: A company was engaged to provide
47 a report to the inquiry?

1
2 MR GLOVER: Yes. It hasn't been received yet.
3
4 THE COMMISSIONER: If it appears satisfactory, you intend
5 to tender it, and the author of the report will give
6 evidence?
7
8 MR GLOVER: That is my present intention, yes.
9
10 THE COMMISSIONER: I take it from the way you are
11 answering my questions that you anticipated already having
12 that report?
13
14 MR GLOVER: I did.
15
16 THE COMMISSIONER: These things happen.
17
18 MR GLOVER: This is no criticism of the author, but it
19 wouldn't be a good case without a last-minute report.
20
21 THE COMMISSIONER: What's the estimated time you are going
22 to receive this?
23
24 MR GLOVER: I'm told the author has been in hospital and
25 it is anticipated today.
26
27 THE COMMISSIONER: All right. Any implied criticism
28 I withdraw, if the witness has been in hospital. I didn't
29 know that. Is he out now and fine, or recovering? I don't
30 want to know the details and I don't think we should raise
31 them publicly.
32
33 MR BROAD: He is out. He intended to finish the report
34 over the weekend.
35
36 MR GLOVER: It deals with general concepts that are
37 directed to term of reference 8 rather than specifics.
38
39 THE COMMISSIONER: Good. So there will be some expert
40 assistance there - other witnesses may be experts too, but
41 independent expertise.
42
43 MR GLOVER: Yes. Subject to seeing the report, I propose
44 to call its author and go through it, effectively.
45
46 THE COMMISSIONER: All right. Thanks. I imagine that
47 will be in the second week?

1
2 MR GLOVER: I think I had it planned for next Monday. It
3 can be accommodated - if others need more time to deal with
4 it, we can deal with that.

5
6 THE COMMISSIONER: Okay.

7
8 MR GLOVER: What I was touching on was the issue that has
9 been just recently explored, that is that term of
10 reference 6 doesn't require, and I think everybody agrees,
11 an investigation of individual circumstances, beyond
12 perhaps those which give rise to a suggestion that there is
13 a systemic problem, and the Hargreaves and Mulligan
14 circumstances are, in my submission, of that nature.

15
16 I don't propose to say too much more about what the
17 council does in relation to a consultative workplace, other
18 than just to identify at the moment one thing it does is
19 engage in staff surveys.

20
21 If you don't already have the bundle I will ask
22 Mr Broad to provide it to you. A bundle of staff surveys
23 has been prepared. At the moment, it is in black and
24 white, largely because I only had black and white copies
25 available to me, but I understand that some colour copies
26 can be provided, which one will need to interpret it.

27
28 THE COMMISSIONER: Are these surveys conducted under any
29 requirement in the code of conduct or are they just thought
30 to be a good work practice?

31
32 MR GLOVER: I will have to double-check that.

33
34 MR SINGLETON: My instructions are the latter,
35 Commissioner, just thought to be a good idea.

36
37 THE COMMISSIONER: Yes. I've flagged this already and
38 I think the answer has already been given to me. When
39 I saw these documents I inquired - reading these results on
40 their own tells me something, but it doesn't say how it
41 compares to Randwick council or another council, and I'm
42 told there aren't any.

43
44 MR GLOVER: There aren't any.

45
46 THE COMMISSIONER: I don't propose that we summons every
47 other council in New South Wales to find these things out.

1 I was wondering whether OLG kept a database, but they
2 don't.

3
4 MR GLOVER: The purpose of this material, as I foresee it
5 at the moment --

6
7 THE COMMISSIONER: You see it as useful, even on its own.

8
9 MR GLOVER: I do, to identify that there is a process
10 undertaken and to give an idea of a process - I don't say
11 this is the process, this is a part of the process - that
12 goes to one of the concerns raised by term of reference 6,
13 and it shows the sorts of things that council were
14 consulting staff about.

15
16 Now, of course, in a workplace of between 500 and 600
17 people, I think, one is never going to get 100 per cent
18 subscription rates to the idea that the council is
19 a consultative, supportive workplace. Just human nature
20 would tell one that.

21
22 THE COMMISSIONER: No, but, for example, when I first
23 looked at this, for 2012, overall satisfaction of staff is
24 76 per cent.

25
26 MR GLOVER: Yes.

27
28 THE COMMISSIONER: That's three out of four people. My
29 query was, "Well, how does that compare to other councils?"

30
31 MR GLOVER: Quite so.

32
33 THE COMMISSIONER: "Are they at 50 per cent and this
34 council's doing famously compared to other councils?"
35 I wouldn't have thought they are all at 90 per cent. That
36 would surprise me.

37
38 MR GLOVER: It would. What it does show is, for example,
39 if you turn to page 2, this is just an example of 2012,
40 there are topic areas that are explored: "Leadership",
41 "Information communication", "Working together", "Respect
42 and integrity" - these are the sorts of issues that are
43 being examined.

44
45 THE COMMISSIONER: They are the sorts of issues that you
46 would go and explore if you were looking at whether there
47 is a consultative and supportive working environment?

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MR GLOVER: That would be my submission, yes. Turning ahead to page 15, one gets a little bit more of an idea of what is involved in some of those categories. This is under the "Working together" heading. These are the questions: "I feel part of my work group"; "People work well together"; "The immediate supervisor of my work group acknowledges effective teamwork"; et cetera.

THE COMMISSIONER: Yes, these are all about 80 or just above 80, or a small bit one side or the other of 80 per cent.

MR GLOVER: Quite.

THE COMMISSIONER: What's the name of the expert you are calling?

MR GLOVER: Mr Blackadder.

THE COMMISSIONER: Is this his area of expertise?

MR GLOVER: I will explore that with him once I have a chance to speak with him. He may be able to, from his experience, give some view about how these sorts of measures fit with other councils that he has been involved with.

THE COMMISSIONER: This is a positive response by four out of five people. I suppose you just use your commonsense that that seems, in any large organisation without knowing anything more, fairly reasonable. It is certainly not alarming.

MR GLOVER: If one very reverses it, the opposite conclusion shouldn't be reached in the absence of --

THE COMMISSIONER: If I saw figures that said one out of five are feeling that working together - all these questions are satisfactory, I would think that this place has a problem.

MR GLOVER: Quite so.

MR RYAN: Commissioner, if we are going to explore this - I understand this is opening address - can we have more recent results than 2015? I would have thought that's

1 relevant.

2

3 MR GLOVER: This is by way of opening. It is an example
4 only. Don't draw any conclusions as at 2015. There are
5 results in the bundle from 2015. We will come to it. I'm
6 just identifying these sorts of issues at the moment.

7

8 THE COMMISSIONER: Yes.

9

10 MR GLOVER: Finally --

11

12 THE COMMISSIONER: Just to assist Mr Ryan, are there more
13 recent results?

14

15 MR GLOVER: Yes, there are. They are all there.

16

17 THE COMMISSIONER: Right. Okay.

18

19 MR GLOVER: Everything will be there. In fact, I will go
20 to 2015 in a moment. Page 18, just to complete this
21 example, here are some responses which are perhaps directly
22 relevant to the issue of, for example, consultation.

23

24 THE COMMISSIONER: Yes. All right.

25

26 MR GLOVER: Let's go 65.

27

28 THE COMMISSIONER: Yes. So that's 2015?

29

30 MR GLOVER: Yes. If we jump ahead to 89, for
31 demonstration purposes, these are some trends. Again,
32 these are the sorts of things that are being dealt with -
33 "Communication with supervisor"; "I can approach my
34 immediate supervisor", et cetera. So similar themes still
35 being explored in 2015.

36

37 THE COMMISSIONER: I take it this survey is voluntary?

38

39 MR GLOVER: Yes. There are some statistics in here about
40 participation rates, yes. I'm just trying to find an
41 example for you. Back at page 6, this is the one that just
42 comes to hand, this is in 2012.

43

44 THE COMMISSIONER: That was two-thirds, wasn't it,
45 60 per cent?

46

47 MR GLOVER: 62 per cent. We will come to some more detail

1 about those things, but that is just one of the tools --
2
3 THE COMMISSIONER: How many people are employed by the
4 council, in broad terms?
5
6 MR SINGLETON: Broad terms, 550.
7
8 THE COMMISSIONER: Thank you.
9
10 MR GLOVER: Again, being able to deal with this sort of
11 material in this way shows why, save for particular
12 examples which perhaps highlight systemic problems --
13
14 THE COMMISSIONER: Is there a survey every year?
15
16 MR GLOVER: It is either annual or biennial.
17
18 THE COMMISSIONER: Is 2015 the most recent?
19
20 MR GLOVER: There is a report in 2018 which takes
21 a slightly different form. I hadn't proposed to deal with
22 2018 in opening, but I can tell you where it is.
23
24 THE COMMISSIONER: You don't have to. It is just in here
25 somewhere, is it?
26
27 MR GLOVER: It starts at page 105 of the bundle.
28
29 THE COMMISSIONER: "Organisational review staff survey
30 historical data".
31
32 MR GLOVER: That deals with results up to 2016. This is
33 the report, if you turn to page 106, which is compiled
34 in May 2018. At page 106 one has a useful summary of the
35 history of these surveys, and then what this report does is
36 draw some statistics across the survey results in an effort
37 to identify trends and responses.
38
39 THE COMMISSIONER: So at 107, with the exception of 2006,
40 which seems to be an outlier, there has been a general
41 response between 57 and 65 per cent.
42
43 MR GLOVER: Yes.
44
45 THE COMMISSIONER: And, generally, satisfaction seems to
46 have been rising from 2003 to 2015.
47

1 MR GLOVER: Yes, overall, over that period of trend, yes,
2 that's certainly right.
3
4 THE COMMISSIONER: It has gone from 63 per cent in 2003 to
5 75 in 2015.
6
7 MR GLOVER: Correct.
8
9 THE COMMISSIONER: With a high point of 77, which is
10 probably one person changing their view, or two people
11 changing their view.
12
13 MR GLOVER: Yes.
14
15 THE COMMISSIONER: Movement up by about 10 to
16 12 per cent.
17
18 MR GLOVER: On trend, that's right.
19
20 As I was saying, aside from individual issues which
21 suggest systemic problems, that's the sort of material that
22 provides insight into how the council has gone about -
23 I don't say it is all of it. There will be more.
24
25 THE COMMISSIONER: Do you want to tender that now?
26
27 MR GLOVER: I can tender that now, if convenient.
28
29 THE COMMISSIONER: No objection?
30
31 MR SINGLETON: No objection.
32
33 EXHIBIT #37 FOLDER OF DOCUMENTS ENTITLED "STAFF SURVEYS"
34
35 MR GLOVER: Can I say this, Commissioner, I mentioned
36 briefly that it's in black and white.
37
38 THE COMMISSIONER: It can be replaced by a colour copy,
39 and the colour copy will become exhibit 37.
40
41 MR GLOVER: One will need the colour to make sense of some
42 of the paragraphs, for example.
43
44 THE COMMISSIONER: Yes.
45
46 MR GLOVER: Now I propose to term to reference --
47

1 THE COMMISSIONER: The electronic copy I got was black and
2 white too, wasn't it?

3
4 MR GLOVER: That is because the version that I have is
5 black and white, but I am told there are colour copies in
6 existence.

7
8 THE COMMISSIONER: All right.

9
10 MR GLOVER: I don't propose to say any more about term of
11 reference 6 at the moment, but I will turn to term of
12 reference 8. It directs that there be an inquiry into and
13 report as to whether in exercising functions pursuant to
14 parts 1 and 2 of chapter 11 and part 2 of chapter 13 of the
15 Local Government Act, the governing body and senior staff
16 of the council has determined, reviewed and re-determined
17 an appropriate organisational structure and resource
18 allocation in accordance with the guiding principles in
19 section 8A(1)(c) and (2)(c) and the role of the governing
20 body in section 223(1)(g), (h) and (l) of that Act.

21
22 THE COMMISSIONER: I suppose, just thinking out loud, 8 is
23 partly related to term of reference 4. In term of
24 reference 4 we learnt about a restructure of who became
25 responsible for asbestos management and there was a
26 framework change there.

27
28 MR GLOVER: Yes, and that's why earlier I noted that there
29 will be elements of term of reference 8 which relate
30 significantly to asbestos issues.

31
32 THE COMMISSIONER: To everything, yes.

33
34 MR GLOVER: It is not proposed to deal with any of term of
35 reference 8 that relates to those particular issues. One
36 can see all sorts of resourcing and strategic planning
37 going to that particular issue and that's why the
38 observations you made earlier about how is term of
39 reference 8 informed is informed, in my submission, in
40 large measure by those asbestos issues.

41
42 What I propose to do during these round of hearings is
43 to consider term of reference 8 at a framework level, save
44 for any particular examples, again, which require more
45 detailed consideration because they show a systemic or
46 significant problem.

1 THE COMMISSIONER: All right.

2

3 MR GLOVER: But term of reference 8, and this is where the
4 expert assistance will come in, at least at this time,
5 I propose to deal with it at that higher level. Certainly,
6 once we get to resourcing and strategic planning around
7 asbestos, informed by the four other asbestos terms of
8 reference, in term of reference 8 can have some real
9 content.

10

11 THE COMMISSIONER: Yes. From memory, what I said about
12 the new framework that came in in late December 2017 for
13 asbestos was partly on the advice of I think SafeWork, it
14 might have been SafeWork, was Dr Dillon's evidence

15

16 MR GLOVER: I think Dr Dillon gave evidence about
17 SafeWork, yes. When those issues arose there were a number
18 of things that changed and steps council took and they
19 would fall to be considered in term reference 8, as well
20 as, prior to those things having taken place, what was the
21 plan and resource allocation directed to those issues, and
22 they did pause to consider the comparison, but I don't want
23 to get ahead of the game, as it were.

24

25 When one looks at part 2 of chapter 13 of the Act -
26 and I don't propose to go through all the sections - it
27 deals with the requirements of councils to undergo
28 strategic planning and that's picked up again in
29 section 8A(1)(c), which provides that council should plan
30 strategically using integrated planning and reporting
31 framework for the provision of effective and efficient
32 services and regulation. I will come back to that
33 framework in just a moment.

34

35 Section 8A(2)(c) provides that council should consider
36 the long-term and cumulative effects of actions on future
37 generations. As to the governing body, section 223(1)(g)
38 provides that it's to keep under review the performance of
39 the council, including service delivery. 223(1)(h)
40 provides that the governing body is to make decisions
41 necessary for the proper exercise of the council's
42 regulatory functions and 223(1)(l) provides that the
43 governing body is responsible for ensuring that the council
44 acts honestly, efficiently and appropriately.

45

46 What I do want to touch on in opening is the
47 framework, just to give some context about where some of

1 this planning and resource allocation takes place.
2 Commissioner, I would ask Mr Broad to provide with you
3 three documents.
4
5 THE COMMISSIONER: Yes.
6
7 MR GLOVER: You may have them electronically but it's
8 easier. They are the Department of Premier and Cabinet's
9 Integrated Planning and Reporting Guidelines For Local
10 Government. These are all publicly available documents.
11 March 2013 is the date and that is the current one. The
12 second document is the Blue Mountains Community and
13 Strategic Plan 2035.
14
15 THE COMMISSIONER: Wait a moment. I have one document
16 that has come apart.
17
18 MR GLOVER: I am sorry. You have only got one. You have
19 only got the --
20
21 THE COMMISSIONER: The Integrated Planning and Reporting
22 Guidelines.
23
24 MR GLOVER: You have that in hard copy?
25
26 THE COMMISSIONER: Yes.
27
28 MR GLOVER: You should have electronically the strategic
29 plan and the resourcing strategy.
30
31 THE COMMISSIONER: I do, yes.
32
33 MR GLOVER: I am going to just highlight a few things out
34 of each of those documents for the purpose of opening.
35
36 THE COMMISSIONER: Just give me a moment. Council's
37 resourcing strategy is another document, is it?
38
39 MR GLOVER: Yes.
40
41 THE COMMISSIONER: I have that.
42
43 MR GLOVER: And the community strategic plan 2035.
44
45 THE COMMISSIONER: I have that as well. I have them
46 electronically.
47

1 MR GLOVER: Yes, thank you, Commissioner. I am going to
2 start with the guidelines which you have in hard copy.
3 These are issued by the Department of Premier and Cabinet
4 in accordance with the Act. It is a useful document for
5 immediate purposes because it sets out the framework that
6 is required by the Act to which term of reference 8
7 relates. If one turns to page 5 of those guidelines, there
8 is a summary of the statutory obligation and the
9 legislative requirements, there is a blue-box, guidelines
10 legislative requirements, halfway down the page, and they
11 list all the mandatory requirements of the Act, et cetera,
12 and councils must comply in planning and reporting with the
13 Local Government Act and they are the provisions, some of
14 which are picked up by term of reference 8.

15
16 THE COMMISSIONER: Yes.

17
18 MR GLOVER: If one turns to page 6, there is a useful
19 description of the integrated planning and reporting
20 framework. There is a series of plans which go into it.
21 Do you have the diagram on the second half of page 6?

22
23 THE COMMISSIONER: I am sorry, when you said this must be
24 complied with, I was just looking for the legislative
25 requirement: actually, in section 406.

26
27 MR GLOVER: Yes, it is in that part of the Act.

28
29 THE COMMISSIONER: Yes. What page do you want me to go to
30 now?

31
32 MR GLOVER: Page 6. There is a diagram there which
33 represents the framework. The highest level 1 has the
34 strategic plan and that sits with the resourcing strategy
35 and then some shorter-term plans, a delivery program and an
36 operational plan, et cetera.

37
38 THE COMMISSIONER: Yes.

39
40 MR GLOVER: Those are the sorts of things that we will be
41 exploring. At page 7 there is a helpful statement of what
42 the community strategic plan involves.

43
44 THE COMMISSIONER: Yes.

45
46 MR GLOVER: You will see there that it's the highest level
47 plan that a council would prepare. Its purpose is to

1 identify the community's main priorities and aspirations.

2

3 THE COMMISSIONER: Yes.

4

5 MR GLOVER: There is some detail on the following pages
6 about what that must include. And then the resourcing
7 strategy --

8

9 THE COMMISSIONER: This document is relevant to term of
10 reference 8, correct?

11

12 MR GLOVER: It is, yes. And then on page 11 one finds the
13 guidelines statement of the resourcing strategy. It goes
14 down from there, but for the moment I just wanted to
15 highlight the framework. Relevantly, for opening purposes,
16 if one takes up the community strategic plan --

17

18 THE COMMISSIONER: Do you want to tender the integrated
19 and reporting guidelines?

20

21 MR GLOVER: Yes, I am happy to tender that now.

22

23 New South Wales Government Integrated Planning and
24 Reporting Guidelines For Local Government in New South
25 Wales, dated March 2013.

26

27 EXHIBIT #38 NEW SOUTH WALES GOVERNMENT INTEGRATED PLANNING
28 AND REPORTING GUIDELINES FOR LOCAL GOVERNMENT IN NEW SOUTH
29 WALES DATED MARCH 2013

30

31 MR GLOVER: Just to provide an example of what the council
32 produced within that framework, would you take up the
33 community strategic plan.

34

35 THE COMMISSIONER: I have the community strategic plan
36 2035.

37

38 MR GLOVER: Yes, that's the one. I will just identify but
39 pass over the introduction. On pages 6 and 7 there one
40 sees again where this sits within the framework.

41

42 THE COMMISSIONER: This document was created in 2017.

43

44 MR GLOVER: Correct.

45

46 THE COMMISSIONER: Yes. What page do you want me on?

47

1 MR GLOVER: Page 7 identifies that.
2
3 THE COMMISSIONER: Yes, I have that.
4
5 MR GLOVER: Passing over to page 18, these are the
6 sections which the plan is divided into dealing with
7 different aspects of the council's obligations within the
8 community. Then from there I don't need to go into the
9 detail for the moment, but just by way of example, that's
10 then broken up. If one turns to page 24, each of these
11 sections are then broken down into objectives and then
12 statements of action and strategies. That's adopted
13 throughout.
14
15 THE COMMISSIONER: I see, yes.
16
17 MR GLOVER: I don't need to go through the detail of it
18 now, but that's how the community strategic plan sits
19 together. The next document that comes in that framework,
20 as we've seen, is the resourcing strategy. I can tender
21 that now too, Commissioner.
22
23 THE COMMISSIONER: When you took me to page 24, for
24 example, strategy 1.1a, "Strengthen the financial
25 sustainability of the council", that does relate to the
26 obligations of the governing body in 223(1)(c), as an
27 example.
28
29 MR GLOVER: Correct.
30
31 THE COMMISSIONER: Yes.
32
33 MR GLOVER: I'm going to leave that document now.
34 I tender that.
35
36 THE COMMISSIONER: All right. This will be exhibit 39.
37
38 EXHIBIT #39 BLUE MOUNTAINS CITY COUNCIL DOCUMENT HEADED
39 "BLUE MOUNTAINS COMMUNITY STRATEGIC PLAN 2035, 2017
40 EDITION"
41
42 THE COMMISSIONER: How much longer will you be in opening?
43
44 MR GLOVER: Five minutes.
45
46 THE COMMISSIONER: Shall we finish you?
47

1 MR GLOVER: If it is convenient.
2
3 THE COMMISSIONER: That's fine. Do you want to say
4 anything in opening?
5
6 MR SINGLETON: Three minutes.
7
8 THE COMMISSIONER: We might finish you, too. Do you want
9 to say anything.
10
11 MR RYAN: Yes.
12
13 THE COMMISSIONER: All right. We might finish with all
14 the openings and then have a break.
15
16 MR GLOVER: The final document I wanted to touch upon
17 opening is the resourcing strategy.
18
19 THE COMMISSIONER: Yes, I have that.
20
21 THE COMMISSIONER: We have noted in passing where that
22 fits. If one turns to page 6, it is just a useful
23 statement of what it is directed to.
24
25 THE COMMISSIONER: Page 6?
26
27 MR GLOVER: Page 6.
28
29 THE COMMISSIONER: Where do you find the page numbers on
30 this.
31
32 MR GLOVER: The bottom right, Commissioner.
33
34 THE COMMISSIONER: Yes, I have that.
35
36 MR GLOVER: Could I just highlight this for the moment:
37 the resourcing strategy outlines the council's resourcing
38 commitment over the next 10 years in implementing the
39 community strategic plan, so it fits with that plan.
40
41 THE COMMISSIONER: Yes.
42
43 MR GLOVER: About halfway down the page one sees what it's
44 made up of - that is, a long-term financial plan, an asset
45 management strategy and a workforce asset strategy. It
46 broadly describes - there is a lot more detail that goes
47 behind it, of course, but it broadly describes - that this

1 is the financial plan that sets out how the council is
2 going to go about achieving the objectives and aspirations
3 in their community strategic plan. So they are two
4 examples of some of the planning that goes into the concept
5 of resource allocation and strategic planning.

6
7 THE COMMISSIONER: Are you tendering that document.

8
9 MR GLOVER: Yes, relevant to term of reference 8.
10 I tender the resourcing strategy for 2017 to 2027.

11
12 THE COMMISSIONER: Blue Mountains City Council document
13 entitled "Resourcing strategy 2017 to 2027" - is there a
14 date when this was created on it somewhere?

15
16 MR GLOVER: July 2017.

17
18 THE COMMISSIONER: Dated July 2017 is exhibit 40.

19
20 EXHIBIT #40 BLUE MOUNTAINS CITY COUNCIL DOCUMENT ENTITLED
21 "RESOURCING STRATEGY 2017 TO 2027" DATED JULY 2017

22
23 MR GLOVER: That's all I wanted to say about the
24 particular terms of reference. It is proposed to hear from
25 a number of witnesses during this round of hearings and a
26 proposed schedule of those witnesses has been placed on the
27 inquiry's website.

28
29 THE COMMISSIONER: Is that the same schedule I've been
30 given?

31
32 MR GLOVER: It doesn't look like that.

33
34 THE COMMISSIONER: No? Perhaps I'd better check the
35 website.

36
37 MR GLOVER: At the moment it is intended to call witnesses
38 in that order on those days.

39
40 THE COMMISSIONER: So on the website you've put a list of
41 witnesses and their order?

42
43 MR GLOVER: Yes, I have, and the days on which it is
44 proposed they're to be called.

45
46 THE COMMISSIONER: I know Mr Irwin and Mr Anderson are
47 today. Tomorrow is?

1
2 MR GLOVER: Mr Hargreaves and Mr Keys.

3
4 THE COMMISSIONER: And Mr Mulligan you said Friday?

5
6 MR GLOVER: Mr Mulligan is on Friday. For those who are
7 here and who may be interested, of course, the list is
8 subject to change as we go, but any changes will be put up
9 on the website as soon as they are known.

10
11 THE COMMISSIONER: All right: I have found that now,
12 Mr Irwin and Mr Anderson; Mr Hargreaves and Mr Keys
13 tomorrow. Wednesday is reserved for a private hearing
14 which you obviously don't want to raise publicly, but you
15 will tell me about it.

16
17 MR GLOVER: Yes.

18
19 THE COMMISSIONER: Mr McKay, Mr Buchanan and Ms Twomey on
20 Thursday, and Mr Mulligan Friday. And the following Monday
21 is Mr Blackadder and Mr Greenwood.

22
23 MR GLOVER: Yes.

24
25 THE COMMISSIONER: Tuesday is Mr Greenhill; Wednesday,
26 Dr Dillon. Does that mean you anticipate finishing by
27 Wednesday afternoon?

28
29 MR GLOVER: Yes. It maybe that things move slightly
30 quicker or slightly slower and there may be days when we
31 finish slightly earlier. Unless there's anything further
32 I can assist you with, Mr Commissioner, that's all I wish
33 to say by way of opening.

34
35 THE COMMISSIONER: Do you want to say anything, Mr
36 Singleton?

37
38 MR SINGLETON: Briefly, Commissioner. As you've already
39 pointed out, terms of reference 3, 6 and 8 all relate to
40 employment issues. It is inherent in employment issues,
41 management of personnel, that sensitivities will arise, or
42 could arise. We make no suggestion that the inquiry should
43 curtail its proper pursuit of the terms of reference,
44 particularly number 3, nor do we suggest that there should
45 be any avoidance of scrutiny of allegations of misconduct
46 if any come to be made, although the evidence presently
47 does not seem to suggest that any misconduct has occurred.

1
2 Otherwise, as I said in the exchange before, we
3 respectfully urge that as the examples are explored, rather
4 than pursue more and more examples, we are looking at the
5 systems. Council does not wish to get involved in
6 criticising anybody unnecessarily. Nobody is perfect, and
7 there are good reasons, therefore, to confine these things
8 to the systems rather than individuals.
9

10 We make two further points. The first is that all of
11 this, as I said in the first opening address a few months
12 ago, needs to be viewed in context. The terms of reference
13 cover a period of great challenge and great achievement for
14 the council. I won't go into detail, but to list half a
15 dozen or so examples, the Blue Mountains City Council
16 manages a particularly geographically challenging and
17 expensive area. From just before the terms of reference -
18 this is, about 2011 - the council began an across-the-board
19 business improvement program, including a safety
20 improvement program - major undertakings. It is important
21 to note, they were commenced well before the public
22 controversies, or alleged controversies, were aired in
23 2017.
24

25 Meanwhile, the council has been pursuing other
26 matters. It achieved the status of being designated by the
27 state government as fit for future, one of only a quite
28 small minority of councils in this state that secured that
29 designation.
30

31 It also managed, in the term of reference period, two
32 above ordinary rate rises, and just before the term of
33 reference period another one, not through arbitrarily
34 imposing them, not kowtowing to short-term popular
35 objectives, but through the leadership of consulting the
36 community, persuading the community and getting the consent
37 of the community to these important rate rises. That, of
38 course, relates to one of the great achievements, long-term
39 financial stability. In roughly the period of the terms of
40 reference, the council has managed to halve its \$60 million
41 debt.
42

43 And there are more specific and tangible achievements.
44 I'll mention three. The Springwood Hub, a large community
45 centre of importance; the redoing of the Lawson township in
46 light of the state government's highway going through the
47 old town centre; and the building in which we meet today

1 and this week and next, the Blue Mountains Cultural Centre
2 and Katoomba Library. These are major achievements in the
3 relevant period. It is all very well, as you are required
4 to do and properly will, to scrutinise particular details
5 of the council's administration, but the sight should not
6 be lost of the context.

7
8 Then there were the challenges. In this period the
9 state government has imposed significant financial and
10 other imposts on all local governments and we were no
11 exception. As I mentioned before, we have suffered natural
12 disasters, several in the period, but most significantly
13 the 2013 bushfires, the size of which I described last time
14 and were described in the written submission which is
15 already in evidence.

16
17 These are significant because those who are attempting
18 to manage an organisation and lead it through a period of
19 great reform and achievement are entitled to be judged on
20 the full context of the challenges that faced them at the
21 time. I'm grateful for the opportunity to help the inquiry
22 in the coming fortnight.

23
24 THE COMMISSIONER: Thank you.

25
26 MR SINGLETON: I said there were two points. The third
27 one is on another piece of paper. It is a brief one.

28
29 THE COMMISSIONER: Yes.

30
31 MR SINGLETON: In our submission, the council is entitled
32 to be proud of the staff of the council and its
33 achievements, and it is. We don't expect that the close
34 scrutiny of a Royal Commission-style inquiry will find
35 perfection, but this should not detract or distract from
36 the successes and the good qualities of the council staff.
37 May it please the inquiry.

38
39 THE COMMISSIONER: Thank you. Mr Ryan?

40
41 MR RYAN: Commissioner, I know I said I wouldn't, but in
42 just hearing those opening addresses I did want to say
43 something on behalf of my client.

44
45 THE COMMISSIONER: You are appearing for Councillor Brown?

46
47 MR RYAN: I am appearing for Councillor Brown. I know you

1 have already issued a clarifying statement about term of
2 reference number 8 and the need for it to be focused on
3 asbestos issues and that it wasn't broad. I know that this
4 inquiry will spend a lot of time examining the detail of
5 the engagements, the various engagements, of people named,
6 such as Mr Mulligan and Mr Hargreaves, and it will focus,
7 in my view, in a very legalistic way on policies and
8 procedures, et cetera, but I am concerned, we are concerned
9 about the comments about term of reference 6.

10
11 The purpose of the inquiry, in our opinion, is broad,
12 to inquire in a broad manner into the functioning of the
13 council. Sometimes it is not whether a legal standard has
14 been breached but the manner in which the council has
15 conducted itself that is highly important. It has a huge
16 impact on the morale of the staff and, therefore, leads to
17 the functioning of the council and the governance of the
18 council, which is a very relevant point in relation to
19 asbestos.

20
21 I'm just simply making the point now that we would be
22 concerned if any further reading down of term of reference
23 6 occurs. We believe that these things are linked, and the
24 manner in which some things - they may not amount to a
25 misdemeanour but, nevertheless, the manner which they're
26 conducted may impact significantly on the morale of staff
27 at council.

28
29 THE COMMISSIONER: All right. Term of reference 6 is
30 directed to whether the council is facilitating a
31 consultative and supportive working environment. That in
32 part may be related to the manner in which Mr Mulligan,
33 Mr Hargreaves and any others were engaged. It is, to an
34 extent, on its face broader than that, but the inquiry can
35 only investigate the issue raised in relation to a
36 consultative and supportive working environment in
37 circumstances where there is evidence, for example,
38 initially, by means of submission from people, that the
39 council either does or does not facilitate a consultative
40 and supportive working environment. It certainly doesn't
41 seem to me to be a sensible use of either taxpayers' or
42 ratepayers' funds for the inquiry to go out looking for a
43 problem that hasn't been made apparent to us by submissions
44 or other means.

45
46 Having said that, people with a proper interest are
47 free to come forward and say, "I'd like to give evidence on

1 this topic and here is what I'd like to say", and a
2 judgment will be made by Mr Glover as to whether that's
3 relevant to one of the terms of reference. I think this
4 has been advertised for months and months and months, these
5 terms of reference; correct?

6
7 MR BROAD: It was initially advertised last year and
8 submissions were called at that stage.

9
10 THE COMMISSIONER: I don't intend to, in any silly
11 fashion, read down term of reference 6 and suggest that it
12 is entirely only confined to issues in relation to
13 Mr Mulligan and Mr Hargreaves, but, equally, the evidence
14 that's called in relation to term of reference 6 will end
15 up being the evidence that people concerned have been
16 interested enough to suggest should be brought forward in
17 relation to a term of reference that is so broad as to
18 whether the council has a consultative or supportive
19 working environment.

20
21 To use a silly example, if term of reference 6 said,
22 "Does the council have a fridge", then you would issue
23 a summons for documents proving the council has a fridge.
24 This is so broad that, if the inquiry took a ridiculously
25 broad view of 6, we could have hearings for six months and
26 spend an inappropriate amount of money investigating things
27 that might not need to be investigated. There has to be
28 a balance here and, as I said, the terms of reference do
29 seem to have all fallen out of certain allegations. But
30 I don't intend to read it narrowly in a silly sense.

31
32 All right. We are going to have a break now. Are the
33 witnesses here, or is one of the witnesses here?

34
35 MR GLOVER: I believe so. I don't personally know.
36 I believe so. They should be here in answer to their
37 summons.

38
39 MR SINGLETON: May I just say one thing. You asked me how
40 many staff there are at the moment. I estimated 550, from
41 my own understanding. There are currently 545 full-time
42 equivalent staff positions, but they are made up of
43 permanent and temporary, casual and full-time. There are
44 872 individuals on the payroll.

45
46 THE COMMISSIONER: Thank you for that. All right. We
47 will take a break until 5 past 12.

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SHORT ADJOURNMENT

THE COMMISSIONER: We might recommence.

MR GLOVER: I call Mr Irwin.

<STEVE IRWIN, affirmed: [12.10pm]

<EXAMINATION BY MR GLOVER:

MR GLOVER: Q. Mr Irwin, could you state your full name for the record, please?

A. Steve Irwin. Would you shut that door, someone, please?

Q. What's your current role at council?

A. Just warehouse supervisor.

Q. How long have you been employed by the council?

A. About 40 years.

Q. And what positions have you held in that time?

A. Mostly in the warehouse.

Q. How long have you been a warehouse supervisor?

A. Oh, 28, 29 years.

Q. Can you just generally describe your day-to-day responsibilities as warehouse supervisor?

A. Just supervising a warehouse. Stock in, stock out, pick-ups, deliveries, inquiries. Just day-to-day --

Q. Were those general day-to-day duties the same in about 2016?

A. No.

Q. What changes have happened since then?

A. They have been reduced somewhat.

Q. What duties did you have in 2016 that you no longer have today?

A. Not so much roles and duties as what we can and can't do.

Q. What could you do in 2016 that you can't do now?

A. Authorise our own sort of work, book out stuff without

1 authorisation, requisition certain things.
2
3 Q. What do you mean by "book out stuff"?
4 A. Oh, well, stock. If we have to book out something for
5 ourselves or buy a new pair of boots, we have to now go
6 through certain protocols because of changes.
7
8 Q. And you mentioned requisitioning?
9 A. Yes.
10
11 Q. What change to your day-to-day work has happened in
12 relation to that area?
13 A. Once again, I can't just requisition stuff now, I have
14 to go through three or four people to get my orders
15 authorised.
16
17 Q. So there have been some new processes put in place in
18 those two areas which have impacted what you do day to day?
19 A. A little bit, yeah.
20
21 Q. But your duties are still the same?
22 A. Similar, yeah.
23
24 Q. The processes that you --
25 A. Just due to lack of staff now we sort of spread
26 ourselves a bit thin and we do more than what we used to
27 do, but that's no-one's fault; that's just the way things
28 are.
29
30 Q. As a warehouse supervisor in 2016, what role did you
31 have in relation to the procurement by the council of
32 services, if any?
33 A. Which services, sir?
34
35 Q. Well, when the council acquired services, it would go
36 through a purchasing process; correct?
37 A. Most times, yes.
38
39 Q. And what role, if any, did you have in that process?
40 A. If I was to request the service, I would be involved,
41 but apart from that, next to none.
42
43 Q. Where does your role sit within the organisation of
44 the council? What directorate or group are you in?
45 A. It just changed recently. I don't know what I'm in
46 now. I'm in a colour purple, but I really don't know.
47

1 Q. In 2016, where did you sit, do you remember?
2 A. I'd call them engineers, but I can't think. We have
3 changed that often, I really can't remember what we were
4 called. People here in front of me might be able to help
5 me. I just can't think what it was called.
6
7 Q. That's okay. You don't remember whether you were
8 service delivery or --
9 A. That's it, yeah, S&D, yes.
10
11 Q. You were in service delivery?
12 A. Yes, yes.
13
14 Q. Who did you report to?
15 A. Do you mean how many bosses did I have or --
16
17 Q. Who was your immediate supervisor in 2016?
18 A. 2016? A gentleman, Mr Geoff Whatmore.
19
20 Q. And who was the ultimate head of your area? Who was
21 above him, do you remember?
22 A. Is this directorate area or is this my local area?
23
24 Q. In your local area, who sat above Mr Whatmore?
25 A. Nobody sat above him. You mean who was above him?
26
27 Q. Well, obviously no-one sat above him. Who did
28 Mr Whatmore report to?
29 A. Well, hang on, now they do sit above him, so I'm not
30 sure what you're talking about.
31
32 THE COMMISSIONER: Q. Do you know who Mr Whatmore
33 reported to?
34 A. Back then?
35
36 Q. Yes. You said you reported to Mr Whatmore. Do you
37 know who he reported to? If you don't, that's all right.
38 A. I don't know. Maybe - I don't know. No, sir. Sorry,
39 sir.
40
41 MR GLOVER: Q. Now, a little earlier I asked you what
42 role you had in the purchasing - we will use that term -
43 purchasing process by the council of services, and you said
44 apart from your own, doing things as part of your own job,
45 virtually none.
46 A. That's about right, yeah, yeah. On occasion, though,
47 I'd help out if people were off sick, or short-staffed or

1 couldn't make it or out on other functions.
2
3 Q. On those occasions, what was your involvement?
4 A. I would help raise orders from requisitions. That's
5 about the limit of that.
6
7 Q. What does raising an order from a requisition involve?
8 A. Well, if somebody wants 15 cups, someone puts in a
9 requisition, it gets authorised by somebody, and then we -
10 not "we", but purchasing, then, would raise an order on
11 those cups to get them into stock or to get them to the
12 person who ordered them.
13
14 Q. So someone places an order, that's then --
15 A. Places a requisition.
16
17 Q. Places a requisition.
18 A. Yes.
19
20 Q. That's then approved by somebody?
21 A. Yes, yes.
22
23 Q. With appropriate authority levels?
24 A. Yes, yes.
25
26 Q. And I assume that they differ, depending on the value
27 of the order, do they?
28 A. Yes, yes.
29
30 Q. And then it comes to - did you say purchasing?
31 A. Yeah.
32
33 Q. The purchasing area. And that was Mr Whatmore's job,
34 was it?
35 A. Mostly, yeah, yeah.
36
37 Q. By the time the requisition had been raised and then
38 approved and then it comes to the purchasing area, what was
39 the process to raise those orders?
40 A. Normally just pressing a few keys on the keyboard,
41 yeah.
42
43 Q. Did it involve any checking of what had happened in
44 the raising of the requisition and its approval, or was it
45 purely a manual task to click the button to make the order
46 happen?
47 A. Sometimes we ask, sometimes we don't ask, questions.

1 We were told a long time ago not to ask questions.
2
3 Q. When were you told that?
4 A. This is going back a long, long time.
5
6 Q. Five years, 10 years?
7 A. Maybe 10.
8
9 THE COMMISSIONER: Q. Could it have been Mr Mark Bruhn
10 that Mr Whatmore reported to? Does that ring a bell?
11 A. It does, yes. Yes.
12
13 MR GLOVER: Q. Did you ever ask any questions yourself
14 about orders?
15 A. Me? I've got no qualifications at all in purchasing;
16 I wouldn't --
17
18 Q. Are you aware of the appropriate purchasing policies?
19 A. No, I've got - no, none at all.
20
21 Q. Ever read them?
22 A. No, no.
23
24 Q. So when you have, on occasion, been involved in the
25 purchasing process --
26 A. Yes.
27
28 Q. -- have you ever asked a question about what had
29 happened before raising the order?
30 A. I would think not.
31
32 Q. So on the occasions that you have been involved in the
33 process, you've, as you put it, clicked the button and the
34 order has been raised, without investigating; is that
35 right?
36 A. Most of my requests have come through phone calls.
37 When people are off or people aren't there, they're sick or
38 away, people ring me up and say, "Can you please raise this
39 requisition into an order?", and I say, "Yeah."
40
41 Q. Do you recall in 2016 there were some concerns raised
42 about the approval of or the raising of two orders in
43 particular, one for MA & SE Mulligan and one for Centium?
44 Do you remember that concern being raised?
45 A. Yes, I do.
46
47 Q. Was that a concern that you had or was it a concern

1 that someone else had and told you about?
2 A. No - no concern of mine.
3
4 Q. No concern of yours?
5 A. No, not at first, no.
6
7 Q. Whose concern was it?
8 A. It was my supervisor's.
9
10 Q. Mr Whatmore's?
11 A. Mr Whatmore's.
12
13 Q. And what did you understand his concern to be?
14 A. That the process may not have been followed exactly
15 how it should have been.
16
17 Q. When you say, "The process may not have been followed
18 as it should have been", what process are you referring to?
19 A. Oh, listen, I don't know the details. All I know is
20 over a certain amount of money you have to get tenders or
21 certain things put in process, and then file note numbers
22 put on the system so people can check up to see what's
23 there, to make sure things are done right. Because if we
24 get audited by an outside auditor and they say, "Can we
25 look at this file note or those details accompanying
26 certain things", if they are not there, council gets in
27 trouble - if they are supposed to be there. That's all
28 I know. I really don't know much about the purchasing
29 policies.
30
31 Q. Did he discuss his concern with you?
32 A. He certainly did.
33
34 Q. What did he say to you?
35 A. He said, "This is not right."
36
37 Q. Beyond that, do you recall any of that conversation?
38 A. I - of course I do.
39
40 Q. Well, what did he say?
41 A. We have lived this for three years.
42
43 Q. What did he say?
44 A. He said, "I think this is wrong, but on the face of
45 it, it may be a trap or it may be a test."
46
47 Q. "May be a trap". Did he explain to you what he

1 meant by --

2 A. In fact, I was the one who said, "It may be a trap";
3 he said, "It may be a test".

4

5 Q. What did you mean by, "It may be a trap"?

6 A. Well, the people who raise the requisitions, who
7 authorise the requisitions - can I just stop this for
8 a second?

9

10 Why is my testimony public and not private? I - this
11 is - this is going to cause a lot of trouble, this, and
12 I just don't want to be in trouble myself, any more than
13 I already have been. No-one gave me the choice to make it
14 public or private. I didn't put a submission in. Here
15 I am now with people I don't know from a bar of soap, I'm
16 pouring my heart out. I am going to get in trouble over
17 this and I would like to know why I didn't get an option to
18 have a private hearing?

19

20 THE COMMISSIONER: I'm not sure that I understand your
21 evidence so far, with respect, to be pouring your heart
22 out.

23

24 THE WITNESS: I haven't finished yet. You haven't asked
25 me any questions.

26

27 THE COMMISSIONER: Just hang on a second. You have been
28 summonsed to give evidence at a public hearing. No-one has
29 made any application to me, including by you, to give
30 evidence at a private hearing.

31

32 THE WITNESS: I didn't know I had to. I didn't put
33 a submission in.

34

35 THE COMMISSIONER: Whether or not you put a submission in
36 is not relevant. You have been summonsed to give evidence
37 here. Mr Glover is entitled to not only ask questions,
38 but, under the legislation in relation to which this
39 inquiry is being conducted, you are required to answer
40 those questions.

41

42 THE WITNESS: I don't mind answering the questions, but if
43 I say names, what do I do then?

44

45 THE COMMISSIONER: You are compelled to give answers.
46 Whilst it is not my role to give you any advice, I'm not
47 sure that I would understand how you could possibly have

1 your position compromised in any way, because you are being
2 compelled to give evidence.

3
4 THE WITNESS: Please continue.

5
6 MR SINGLETON: May I raise a different point? The last
7 few questions have essentially elicited hearsay of a rather
8 general nature, and we submit that, as this witness has
9 made quite clear, he wasn't really part of the process.

10
11 THE COMMISSIONER: I understand why Mr Irwin would have
12 been summonsed but, equally, in terms of Mr Irwin's direct
13 responsibilities himself, he's said he is the warehouse
14 supervisor.

15
16 Q. Can I just direct some questions to you before I come
17 back to Mr Singleton?

18 A. Please do.

19
20 Q. As you said, if I was to narrow down the scope of what
21 your main responsibilities are, one of the things you said
22 was "stock in, stock out"?

23 A. Yes.

24
25 Q. So being a warehouse supervisor, essentially your key
26 responsibility - and tell me if I'm wrong, because I don't
27 want to put words into your mouth --

28 A. No, go for your life.

29
30 Q. Your key responsibility as the warehouse supervisor is
31 in relation to actual goods?

32 A. Physical items.

33
34 Q. Physical items coming in and going out of the
35 warehouse, and making sure that that's done in accordance
36 with all the --

37 A. Protocols and policies.

38
39 Q. -- rules and protocols and policies of the council?

40 A. Yes.

41
42 Q. Your direct responsibility isn't in relation to
43 engaging people to provide a work service to the council;
44 correct?

45 A. I don't deal with that.

46
47 Q. Nothing to do with you?

1 A. No, except for I raised those two orders --

2

3 Q. Yes, I understand that, and that's probably why you
4 are here.

5 A. That's for sure.

6

7 Q. But you didn't have a direct role, for example, in
8 saying, "It would be a good idea for this council to get in
9 Mr Mulligan to provide safety services"?

10 A. Method and device, yeah.

11

12 Q. Nothing to do with you; correct?

13 A. No.

14

15 THE COMMISSIONER: That's the context. Did you want to
16 still say something?

17

18 MR SINGLETON: Yes, I do. The difficulty is this:
19 Mr Whatmore had some concerns about two particular
20 requisitions, as this witness has just testified. This
21 witness has quoted Mr Whatmore as saying, "This is not
22 right", "I think this is wrong". However, although this
23 witness probably doesn't know it, the evidence before the
24 inquiry clearly establishes that Mr Whatmore is no longer
25 pressing the proposition that it is not right, or wrong.
26 He had a concern, which is understandable, and you have the
27 evidence as to why it was understandable, but it turns out
28 that it's not a sustainable proposition that there was any
29 impropriety, on the evidence that we have received so far
30 on this particular matter.

31

32 Now, we can't cross-examine this witness about what
33 Mr Whatmore's current position is, but what will occur is
34 that the only material in the public domain is this
35 witness's hearsay of an adverse kind, which is wrong - not
36 through any fault of his. That gives rise to an incurable
37 unfairness to my client, but, particularly, it is of no
38 evidentiary value to have Mr Whatmore's hearsay evidence
39 from the past, when it doesn't reflect the full position.

40

41 THE COMMISSIONER: I understand your submission. I don't
42 think it raises, with respect, an incurable problem for
43 you. I do think we need to be careful, though, about
44 referring to evidence from private hearings as distinct
45 from public hearings, so bear that in mind.

46

47 MR SINGLETON: I certainly do.

1
2 THE COMMISSIONER: I don't think there is a dramatic
3 problem at the moment that would cause me to take
4 a different role than allowing Mr Glover to proceed for the
5 time being, but if you feel as though the position has been
6 reached again where it is causing your client a difficulty,
7 please don't hesitate to say so and I will listen.
8

9 MR GLOVER: I can't remember what the last question was,
10 but I will state this one.
11

12 Q. You said in answer --
13

14 THE COMMISSIONER: You were talking about whether there
15 had been a discussion between Mr Irwin's supervisor and
16 himself about these particular requisitions, I think, in
17 relation to Mr Mulligan.
18

19 MR GLOVER: Yes, that's right.
20

21 THE COMMISSIONER: The witness has clarified that he had
22 no direct responsibility in relation to doing anything in
23 relation to Mr Mulligan.
24

25 MR GLOVER: I understand that. The purpose of the
26 examination is somewhat different.
27

28 Q. In answer to a question earlier you said that you made
29 a comment to Mr Whatmore that you thought this might be
30 a trap?
31

32 A. Yep.
33

34 Q. Do you remember that? Why did you say that to him?
35

36 A. This is where it gets untidy. There was an audit done
37 several months previous. It was done by an internal audit
38 committee from council and it was done on procurement and
39 purchasing. It was a rather nasty bit of literature which
40 accused a fellow officer and myself of doing some
41 inappropriate activities, and we were accused of stealing
42 and all sorts of nasty stuff. And on the back of that, it
43 was the same people who raised - who authorised the
44 requisition. So we just thought it was a trap for me - not
45 a trap for me, but a trap, I just said to my supervisor,
46 "This may be a trap", he thought it was a test.
47

48 THE COMMISSIONER: Q. By "trap" and "test", do you mean
49 a test or a trap in relation to whether proper protocols

1 were followed?
2 A. We were doing our job, yeah. We soon found out that
3 it was no trap, it was no test, because almost immediately
4 we were getting phone calls from headquarters asking what
5 we were doing, because certain people at headquarters were
6 running around like headless chickens. The general manager
7 was thumping desks and pointing fingers; and certain other
8 people who have now been asked to leave, or left, or
9 whatever they have done to themselves, were most upset.
10
11 Q. Was this a phone call that you had?
12 A. Phone calls, yes.
13
14 Q. You were a party to this phone call?
15 A. Yeah, well, they asked me what we did.
16
17 Q. Was this after the orders had been raised?
18 A. Yeah - no, when we questioned them. When my colleague
19 questioned them, sorry.
20
21 Q. We will come to that.
22 A. Sorry.
23
24 Q. I will ask you to be shown MFI 8, please. I will show
25 you a few documents, Mr Irwin. I appreciate they may not
26 be all that you have seen about these topics. Sorry, keep
27 that one with you. I need you to have a look at another
28 one as well, Mr Irwin. Put that one to one side.
29 A. Do I open it yet or not?
30
31 Q. Don't open it yet. You will need that in a moment,
32 but I also need you to have a look at - there are a couple
33 of documents in some difference places. I just want to
34 make sure you have the right one. I will show you another
35 bundle of documents. I will identify the exhibit number in
36 a moment.
37 A. Thank you.
38
39 Q. Just open that. The first page you have should be
40 page 7.
41 A. Yes.
42
43 MR GLOVER: This is exhibit 34.
44
45 THE COMMISSIONER: Can someone tell me what exhibit 34 is?
46
47 MR GLOVER: It is a bundle of documents, the first six

1 pages of which are confidential.

2

3 THE COMMISSIONER: What volume?

4

5 MR GLOVER: Witness 5, I think.

6

7 THE COMMISSIONER: Witness 3 or witness 5?

8

9 MR GLOVER: Witness 5.

10

11 THE COMMISSIONER: I have that here. Just give me a
12 moment. Witness 5 I have. Yes, what page?

13

14 MR GLOVER: Page 7.

15

16 Q. The first page in your bundle, Mr Irwin, is page 7,
17 isn't it?

18

19 A. Yes.

20

21 THE COMMISSIONER: Is that an email that's dated

22

23 4 November 2016?

24

25 MR GLOVER: It is, yes.

26

27 THE COMMISSIONER: Yes, I have that.

28

29 MR GLOVER: Q. Mr Irwin, this is an email from
30 Mr Whatmore to Mr Bruhn of 4 November 2016 at 1.55pm and
31 you're copied to it. Do you remember this email?

32

33 A. Yes, I certainly do.

34

35 Q. Did you have any part in that email being prepared?

36

37 A. No, apart from sitting next to Geoffrey when he wrote

38

39 it.

40

41 Q. Did you draft it together?

42

43 A. Sorry, I shouldn't - sorry, my supervisor when he

44

45 wrote it.

46

47 Q. Did you draft it together?

48

49 A. No.

50

51 Q. In this email Mr Whatmore sets out his request for
52 approval to raise these two orders?

53

54 A. He certainly did.

55

56 Q. He then sets out some issues, as he saw it, with those

1 two orders; correct?
2 A. Yes.
3
4 Q. Are they the issues that you understood, or you
5 discussed with Mr Whatmore at the time?
6 A. He discussed with me, yes.
7
8 Q. That was sent to Mr Bruhn as the director of service
9 delivery; correct? He was the director at the time?
10 A. Yes, he is: yes, Mark, yes.
11
12 Q. Did you share Mr Whatmore's desire for advice and
13 approval before these orders were raised or it had nothing
14 to do with you, you say?
15 A. I sat next to him and he said what he said. He just
16 sent the email. That was my - that was my input. I
17 watched him press the button.
18
19 Q. I think you answered a question earlier by saying that
20 you personally didn't really have any of these concerns
21 that Mr Whatmore is detailing here; is that right?
22 A. Not knowing them, no.
23
24 Q. Not Mulligan?
25 A. Not knowing them.
26
27 Q. Not knowing them?
28 A. No, I don't. I've got no - I've got no
29 qualifications, no knowledge of the council's procurement
30 and tendering system.
31
32 Q. All right. So at this time you didn't have any
33 concerns at all about these two points?
34 A. Except for when my colleague said, "I believe there's
35 something wrong with these two, these two reqs."
36
37 Q. At some later time, though, did you start to have some
38 concerns about it?
39 A. Straight away, yeah.
40
41 Q. Straight away?
42 A. Yeah.
43
44 Q. When did those concerns arise?
45 A. It's three years ago now, I don't know exactly what
46 time it was.
47

1 Q. What involvement did you have going forward in these
2 issues?
3 A. An involvement?
4
5 Q. Yes.
6 A. The next physical involvement I had was when I pressed
7 the buttons to make the two requisitions into council
8 orders.
9
10 Q. So you raised the orders, did you?
11 A. Yes. I've just said that there.
12
13 Q. Turn to page 15.
14
15 THE COMMISSIONER: Can I just get some clarity because
16 I can't remember. Exhibit 34, is it only the first seven
17 pages that are a confidential exhibit?
18
19 MR GLOVER: The first six.
20
21 THE COMMISSIONER: The first six. The rest is a public
22 exhibit, is it?
23
24 MR GLOVER: Yes.
25
26 THE WITNESS: 15 you said, sir?
27
28 MR GLOVER: Q. Yes.
29 A. Yes.
30
31 Q. This is an email on 24 November. I am just trying to
32 get clarity as to who raised the orders.
33 A. I raised the orders.
34
35 Q. So when Mr Whatmore said in this email that he had
36 returned to work in his lunch break to raise the orders,
37 you in fact raised the orders, not him?
38 A. I physically raised the orders.
39
40 Q. And that involves pressing buttons --
41 A. Just like a monkey, just pressing the buttons.
42
43 Q. How did you come to be the person who raised the
44 orders?
45 A. Because he was doing a leadership forum day that we
46 all had to go through and he couldn't get back or there was
47 some mix-up, he might have been late, I don't know, we were

1 told to do it by a certain time, and I said, "Listen, if
2 you can't come back, I can help the council by doing it."
3 I'll help - you know, it's what we do, and I just pressed
4 the button and away she went.
5
6 Q. At the time you raised the orders had you formed a
7 concern about it, that is, the concern that you ultimately
8 had, did you have it at that time --
9 A. Yes.
10
11 Q. -- or did it only arise later?
12 A. No, when it first happened.
13
14 Q. When it first happened. Do you have a --
15 A. When my colleague first raised his concerns, not long
16 after that I thought there was something wrong, yes.
17
18 Q. And what did you think was wrong?
19 A. That they had hadn't followed the policy that my
20 colleague said they hadn't followed the policy.
21
22 Q. And that was based on what he told you --
23 A. Yes.
24
25 Q. -- not your --
26 A. Only because he's been there 30 years and done his job
27 for 30 years. I mean, you have to have some faith - you have to
28 have some faith in people who have been doing their job for
29 a certain time.
30
31 Q. Yes. The concern that you had was really one that
32 Mr Whatmore had explained to you?
33 A. Yes.
34
35 Q. Not because you, as you've said earlier --
36 A. Immediately after, yes, and then after a short time
37 I realised there was trouble because of the commotion over
38 two boring requisitions that were made into orders and just
39 the fuss people made over them.
40
41 Q. Let me finish my question, please.
42 A. Sorry, sir.
43
44 Q. At the start you only thought there was a concern
45 because of what Mr Whatmore told you; correct?
46 A. Yes, sir.
47

1 Q. You didn't form your own view about that because, as
2 you've said in your evidence today, you had no involvement
3 in the process and weren't familiar with the appropriate
4 policy; is that correct?
5 A. That's exactly right, sir, exactly right, sir.
6
7 Q. At some later stage you started to form a concern?
8 A. Yes.
9
10 Q. What I'm exploring with you is whether the concern
11 that you independently formed you had at the time you
12 raised the orders or only some time later?
13 A. Some time later, yes.
14
15 Q. And --
16 A. And I cannot tell you how much "some time" is. It's
17 three --
18
19 THE COMMISSIONER: Q. No, I understand that.
20 A. It's three years.
21
22 Q. It is not a memory test, don't be concerned by that.
23 A. Thank you.
24
25 MR GLOVER: Q. What was the concern that you formed
26 independently of what Mr Whatmore had told you in the
27 beginning?
28 A. That something wasn't quite right with these two
29 requisitions.
30
31 Q. When you say "something", are you able to explain what
32 you mean by something wasn't quite right?
33 A. The process wasn't followed exactly to the letter of
34 the law, I don't think - not the law, I shouldn't say that,
35 to the council's policy, only because of the fuss people
36 made. I don't know what the policy is, but when people
37 make such a fuss over day-to-day things you know something
38 is not right. I've been there a few years and you get to
39 know when things aren't quite right and this didn't seem
40 quite right.
41
42 Q. What was the fuss that caused you to have that
43 concern?
44 A. The phone calls we were getting.
45
46 Q. What phone call did you personally get?
47 A. No, no, no, I didn't say "phone call", I said "calls".

1 We were getting daily phone calls to say, "What are you two
2 up to over there? These people are carrying on like caged
3 animals, pacing back and forth. Stuart looks sick and
4 Robert is just cracking heads big time."
5
6 Q. Well, let's backtrack.
7 A. You wanted me to talk. That's what I - I don't want
8 to mention names.
9
10 Q. Mr Irwin, let me just ask the questions and then you
11 can you answer them in your own way. You mentioned
12 receiving calls. Did you personally receive those calls?
13 A. Yes, I did.
14
15 Q. Who were they from?
16 A. I can't remember, sir.
17
18 Q. And just taking it slowly, what did the person on the
19 other end of the phone, whoever that was, say to you about
20 this issue?
21 A. I can't remember what --
22
23 THE COMMISSIONER: Q. Just words to the effect.
24 A. Words to the effect that what was going on, what have
25 we done. With the panic we've set off over there at
26 headquarters, what have we done.
27
28 MR GLOVER: Q. What had you personally done, is that
29 what you mean?
30 A. What had we done; it doesn't matter whether it was me
31 or someone else, what had we done.
32
33 Q. When there was a reference to "what had we done", what
34 did you understand them to be referring to?
35 A. The two requisitions that my colleague had questioned.
36
37 Q. So the asking of questions in relation to them is what
38 you understood those phone calls to be about; is that
39 right?
40 A. Yes.
41
42 Q. What did whoever was the other person on the end of
43 the line say to you about having asked those questions?
44 A. I can't remember, sir.
45
46 Q. Did you ever have a conversation with Mr Bruhn about
47 this issue, that is, the raising of these two requisitions?

1 A. Me personally?
2
3 Q. Yes.
4 A. Never.
5
6 Q. Did you ever have --
7 A. To the best of my - I don't think so, no.
8
9 Q. That's okay. You certainly can't recall having done
10 so today; is that right?
11 A. No.
12
13 Q. Aside from your immediate supervisor, did you ever
14 have a conversation with any other manager at the council
15 about these issues?
16 A. Between - the first email to Mark Bruhn, my
17 supervisor, and to me raising the reqs, I don't think so,
18 no.
19
20 Q. Okay. What about after then?
21 A. Yeah, plenty of them, yeah.
22
23 Q. At some later time you sent some emails about it; is
24 that right?
25 A. Yes.
26
27 Q. Would you take up that other folder. You can put that
28 one aside. Thank you. Could you take up MFI 8 and just
29 turn to page 80 for me, please?
30 A. 80 or 8, sir?
31
32 Q. 80.
33 A. 80. Yes.
34
35 Q. I am sorry, Mr Irwin, start at page 70, if you would.
36 A. 70?
37
38 Q. 70, I'm sorry.
39 A. Yes.
40
41 Q. I'm just going to take you to a couple of these.
42 I don't suggest they're all of the emails you sent, but
43 these are just some in the bundle, okay? I appreciate
44 there are others. This is an email from you to
45 Mr Greenwood --
46 A. Yes.
47

1 Q. -- of 25 November 2016. Here you say:
2
3 The reason I am emailing is because I was
4 the one who raised the orders for the two
5 held requisitions and I am feeling
6 compromised and uneasy.
7
8 Why were you feeling compromised and uneasy?
9 A. Because I knew the fuss from my supervisor questioning
10 what had been done, what fuss the people were making over
11 it.
12
13 Q. And the fuss you refer to is these phone calls?
14 A. The phone calls, yes.
15
16 Q. And beyond the phone --
17 A. And just the way people carried on, that we didn't,
18 that we didn't raise them straight away.
19
20 Q. I am sorry, Mr Irwin, you'll have to help me. What do
21 you mean by, "The way people carried on that we didn't
22 raise them straight away"?
23 A. Because they weren't raised for a couple of weeks -
24 you know, for a week or two. I can't remember the exact
25 time.
26
27 Q. That is, the orders weren't raised?
28 A. Yes, the orders weren't raised, yeah.
29
30 Q. I see. And there was a suggestion made that that
31 delayed the payment of those people; is that right?
32 A. Yes, something along those lines.
33
34 Q. All right. There was the fuss, in your evidence,
35 about phone calls being received and the suggestion that
36 questions were being asked of delayed payment. Were they
37 the only two things that left you feeling compromised and
38 uneasy?
39 A. At the time, yes.
40
41 Q. Did it change?
42 A. Yes.
43
44 Q. How did it change?
45 A. When I went to the end meeting for the leadership
46 forum, I bumped into the acting EO who had done the first
47 investigation on the requisitions and I maybe shouldn't

1 have done it, but I just politely said who I was and
2 I asked this officer is there some - you know, maybe some
3 sort of ending to it and the officer just ran away from me
4 and just said, "Speak to someone else." So then I thought
5 there was something really wrong.

6
7 Q. But that was you interpreting from their interaction
8 with you, was it?

9 A. No, my interpretation. It could have been something -
10 they might have had a place to go to, they might have - you
11 know, many reasons why they did that.

12
13 Q. When you say she ran away from you, she directed you
14 elsewhere and walked away?

15 A. Literally, literally. Yeah - no, ran. I don't know
16 why and I just took it maybe the wrong way, but when you
17 ask a serious question to the acting executive officer, you
18 expect some sort of --

19
20 Q. Just putting to one side your interpretation of that
21 interaction which, as you say, may or may not be right --

22 A. Yes.

23
24 Q. -- what I am exploring with you is whether what caused
25 you to feel compromised and uneasy, if there's anything
26 beyond those phone calls and someone suggesting to you that
27 by raising questions, payment had been delayed to those
28 suppliers; is that it?

29 A. Well, going back to this audit that the audit people
30 did, the internal audit people did, they were the ones who
31 raised, who authorised and raised the requisitions. One of
32 them raised it and then one of them didn't raise it. One
33 was raised by John Hargreaves and one was raised by Yasoda.
34 They were authorised by Grant McKay and then later
35 authorised by Stuart because they were so much money. I've
36 forgotten my train of thought now. What did you ask me
37 again?

38
39 Q. I'm just trying to get to the bottom of when you're
40 saying this email you're feeling compromise about is --

41 A. Yes, righto, righto, going back. When they did the
42 audit, the audit is being investigated and it was by an
43 external company and it was proved to be exceptionally
44 wrong.

45
46 Q. What you're referring to here is the procurement --

47 A. The procurement of the two '14 and '15 procurement

1 orders. So they were the authors of this piece of
2 literature and it was proven to be exceptionally a very
3 wrong piece of information, so also we thought maybe they
4 had made a mistake. After we knew it wasn't a test, it
5 wasn't a trap, we thought it may have been just an
6 out-and-out mistake. So that's also one of the reasons why
7 Mr Whatmore may have questioned it to, I can't speak for
8 him, but when you have people write such things and are
9 proven wrong and all of a sudden they do this, you think
10 hang on, maybe they have made a mistake.

11

12 Q. Is that, as best you can explain, why you wrote you
13 were feeling compromised and uneasy?

14 A. Yes. Yeah. It could have been a million things.
15 It's three years ago now. I've got emails here going back
16 that long too but I don't read them every day. I can't
17 remember.

18

19 Q. If you can't remember, that's fine.

20 A. Yes.

21

22 Q. Okay. Further down in this email here you say --

23 A. Is this the --

24

25 Q. This is the same email, page 70. Do you have that?

26 A. Yes.

27

28 Q. "At no time in this entire process were we given
29 anything that even resembled an answer." Do you see that?

30 A. Yes, I certainly do.

31

32 Q. "And when a response did come, it was untimely and
33 confusing. In fact, through the whole ordeal we felt
34 ignored." What were you referring to in that paragraph?

35 A. Just the answers we got back from them.

36

37 Q. What answers do you have in mind?

38 A. Oh, I can't remember now. It's probably in an email
39 somewhere. You probably have it here too. I --

40

41 Q. If you can't say, that's fine.

42 A. I can't remember.

43

44 Q. All right. What made you feel ignored?

45 A. Because we were.

46

47 Q. You might have to help me a bit more with that. What

1 were you expecting and why do you say you were ignored?
2 A. Just an answer, just to say --
3
4 Q. Mr Bruhn had given an answer, hadn't he, that he had
5 investigated it and it was appropriate to process the
6 invoicing, the orders? Was that not an answer?
7 A. It possibly was, yes.
8
9 Q. But it wasn't one that satisfied your concern?
10 A. No.
11
12 Q. Why didn't it satisfy your concern?
13 A. Here we go. Mr Bruhn had followed that audit
14 religiously and he believed that we were both criminals in
15 no uncertain terms.
16
17 Q. I am going to stop you there.
18 A. So --
19
20 Q. Just stop.
21 A. You asked me --
22
23 Q. Just stop. You're expressing a view about a thought
24 that Mr Bruhn had, are you?
25 A. You asked me a question. I can't answer in, you know,
26 what I think.
27
28 Q. In that last answer you were expressing a view about a
29 thought that Mr Bruhn had; that's right, isn't it?
30 A. Yes, it is, sir.
31
32 Q. Did he ever say that to you?
33 A. Via email, yes, he did.
34
35 Q. All right. Go on.
36 A. You'll have to ask the question again.
37
38 Q. You said you didn't get an answer. What I was
39 exploring with you was that you are aware, aren't you, that
40 Mr Bruhn --
41 A. Mr Bruhn, that's right.
42
43 Q. -- had sent an email saying he was satisfied that the
44 orders could be raised; do you remember that?
45 A. Yes, yes, that's right.
46
47 Q. And what I was suggesting to you is that that was an

1 answer, and you agreed, and then you said it wasn't one
2 that satisfied you?
3 A. No, it wasn't.
4
5 Q. And I'm exploring with you why, having been given that
6 answer by the director of service delivery, it didn't
7 satisfy your concern, not someone else's concern, I'm only
8 interested in your concern?
9 A. My concern, yes, because I had no faith with
10 Mark Bruhn.
11
12 THE COMMISSIONER: Q. Mr Bruhn told you in a group email
13 that written quotations had been received for both Centium
14 and MA & SE Mulligan. You didn't accept that? You didn't?
15 A. I didn't accept his word, no.
16
17 THE COMMISSIONER: All right.
18
19 MR GLOVER: Q. All right. Thank you. Would you turn
20 ahead to page 80 now, please. This is some time later?
21 A. Yes.
22
23 Q. This is now in May 2017. Again, as I said, I'm not
24 taking you to all of the emails, just some samples. If
25 there are any others that you need to go, please say so.
26 You take up the issue with Ms Cooper and Mr Greenwood
27 again. Do you see that?
28 A. I certainly do, sir.
29
30 Q. Why were you emailing Ms Cooper at this point in time
31 about this issue, do you remember?
32 A. Oh, because there was no answer, yeah.
33
34 Q. Well --
35 A. I was - I was - through an email I was told I would
36 get some response by either the acting EO or the EO. It
37 was - it was five months later and I hadn't heard nothing,
38 so I just thought I'd ask.
39
40 Q. I see. All right.
41 A. There were lots of emails between this one and the one
42 I went to earlier.
43
44 Q. Yes, you're quite right.
45 A. As you well would have known.
46
47 Q. Yes. Halfway down that email one issue --

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THE COMMISSIONER: What page are we on now?

MR GLOVER: 80, MFI 8.

Q. Halfway down that email, I can take you to the email to which this replies if you need it, a suggestion was made that you could contribute to the business improvement project, and in this email you reject that proposition. Do you see that?

A. I certainly do.

Q. And then you go on to say:

If processes were shown to be open and transparent, none of these issues would have surfaced.

Firstly, why did you so quickly reject the idea that you could contribute to the business improvement project?

A. Because the same people who were the business improvement project raised the requisitions.

Q. And you saw the issues as being linked, did you?

A. Well, yeah.

Q. All right. And when you say, "If processes were shown to be open and transparent, none of these issues would have surfaced", can you just expand upon what you were intending to convey by that statement? Firstly, what are the processes that you say --

A. They should be put on a TRIM file which you'd go in there and see before the paperwork is in there to accompany what the proper process --

Q. Is that right? That's based on something someone told you about the process, is it?

A. Well, over the years you learn some little things, yeah.

Q. When you say it wasn't open and transparent, that's because there wasn't a TRIM reference; is that right?

A. It was blocked. It may have been in there but it was blocked.

Q. So what you wanted to see was --

A. What my colleague wanted to see, yeah, was just to see

1 and make sure there was something in there.

2

3 Q. You wanted to see it, too, by this stage, didn't you?

4 A. Well, okay, I did too, yes. Well, seeing I raised the
5 reqs, yeah, I just thought it would nice to see what I'd
6 done was correct.

7

8 Q. What you wanted to be shown was the quote that

9 Mr Bruhn said existed, is that it?

10 A. To both Centium and to --

11

12 Q. And is that the extent of it?

13 A. That's about it, yes. As far as I know, I may have -
14 not reading this for a long time, I can't remember exactly
15 what I wrote.

16

17 Q. Do we understand then that when you say if processes
18 were open, shown to be open and transparent, none of the
19 issues would have surfaced, that had you seen a quote at
20 the time --

21 A. Not so much me seeing a quote at the time, but my
22 colleague, yes.

23

24 MR GLOVER: I see. All right.

25

26 THE COMMISSIONER: There is an interim step I think that
27 you might want to point out to the witness. There was this
28 email saying processes not followed, et cetera, and then
29 the email from Mr Bruhn saying, "No, there are two quotes".

30

31 THE WITNESS: Yes.

32

33 THE COMMISSIONER: Then a more detailed email saying, "Oh
34 well, it hasn't been done properly for that."

35

36 MR GLOVER: Yes, I am happy to do that.

37

38 THE COMMISSIONER: But then the next response is Mr Bruhn
39 telling everyone relevant on 23 November by email - this is
40 page 15 of exhibit 34 - that he would take full
41 responsibility --

42

43 MR GLOVER: Yes, I am happy to do that.

44

45 THE COMMISSIONER: -- for approving these. And then
46 there's a response back to Mr Bruhn, to which Mr Irwin is
47 copied in saying, "Okay. Well, we're doing it under

1 protest."

2

3 MR GLOVER: Yes, I am happy to do that.

4

5 THE COMMISSIONER: Yes. The only thing I wanted to point
6 out was that ultimately Mr Bruhn just indicated, "I've
7 received advice from the acting executive officer that this
8 is all fine and I'll take full responsibility."

9

10 MR GLOVER: Yes.

11

12 Q. Would you put that larger folder to one side for me,
13 Mr Irwin, and take up that one again, thank you. I will
14 orient you to it in this way. Would you turn to page 15,
15 please, Mr Irwin. This is an email chain which starts back
16 on page 18.

17 A. Anyway, 15, yes.

18

19 Q. Keep 15 there.

20

21 A. Yes.

22

23 Q. If you turn ahead to 18 you'll start to see the
24 beginning of the chain, so it's coming from the bottom. We
25 don't need to touch on the detail, but just to give you the
26 sequence, there's an email from Mr Whatmore to Mr Bruhn,
27 probably to you, about standards. Do you see that on
28 page 18?

29

30 A. Yes.

31

32 Q. And then over on to 17 there are some more exchanges
33 and then at the bottom of page 16 there's an email from
34 Mr Bruhn copied to you of 16 November at 5.49pm. Do you
35 have that?

36

37 A. Mmm.

38

39 Q. At the bottom of page 16? Do you have that?

40

41 A. Yes.

42

43 Q. Here Mr Bruhn says, "Apologies for taking so long to
44 get back. Back-to-back meetings", et cetera. On the top
45 of page 17:

46

47 I am satisfied that written quotations for
both contracts have been received, so
please process requisitions.

48

49 Do you see that?

1 A. I certainly do.

2

3 Q. And then he gives some TRIM references in the last
4 paragraph?

5 A. Yes.

6

7 Q. Do you remember that email, getting that email?

8 A. Yes, sir, yes.

9

10 THE COMMISSIONER: That is the one I asked Mr Irwin
11 whether he was satisfied about and he said no, he didn't
12 trust Mr Bruhn.

13

14 MR GLOVER: Correct.

15

16 THE WITNESS: I had doubts, yes.

17

18 MR GLOVER: And then I think the step, Commissioner, that
19 you were alluding to comes on page 15.

20

21 THE COMMISSIONER: Yes.

22

23 MR GLOVER: Q. There is an email from Mr Whatmore,
24 copied to you, and then further up, responding to that, on
25 23 November at 5.54pm, Mr Bruhn says:

26

27 On the basis of preliminary advice received
28 from the Acting Executive Officer, please
29 proceed with processing the orders. I will
30 take full responsibility for you approving
31 of these.

32

33 You weren't copied to that email but you received it the
34 following day when you were linked back into this chain by
35 the email that appears at the top of page 15, where it is
36 said that the orders are being raised under protest and, as
37 you've told us earlier, you were the one who actually did
38 the raising; correct?

39 A. Yes.

40

41 Q. And you were aware, were you, at the time you raised
42 them that Mr Bruhn had said not only that was he satisfied
43 these documents existed, but that he took full
44 responsibility for approving them?

45

46 THE COMMISSIONER: Q. Did you read that at the time?
47 You may not have, I don't know. Do you have any

1 recollection?
2 A. It's three years ago. I may have. I --
3
4 Q. You don't know. Sitting here now, you're not sure.
5 A. No.
6
7 THE COMMISSIONER: Fair enough.
8
9 MR GLOVER: Q. But as you have said earlier, Mr Bruhn's
10 responses didn't satisfy you in any event; is that right?
11 A. No.
12
13 THE COMMISSIONER: Q. You don't have any recollection of
14 reading the email at the time from Mr Bruhn taking full
15 responsibility, or do you? You don't?
16 A. I don't. It's a long time ago now.
17
18 Q. All right.
19 A. I'll say "no" right this second.
20
21 THE COMMISSIONER: That's all right.
22
23 MR GLOVER: Q. Would you turn to page 106 of the larger
24 bundle please, Mr Irwin? Back to that one, MFI 8.
25 A. 101?
26
27 Q. 106. Do you have that?
28 A. Yes, sir.
29
30 Q. This is an email from you to Ms Twomey, do you see
31 that, at the bottom of page 106?
32 A. It's a little bit fuzzed out, but --
33
34 Q. Yes, it's a bit chopped off, but it picks up again
35 over at 107?
36 A. Yes. Oh, I see.
37
38 Q. Do you see an email from you to Ms Twomey of 31 August
39 2017 at 2.31pm?
40 A. I certainly do.
41
42 Q. And you are emailing Ms Twomey about this issue at
43 this stage. Was that because she was the acting director
44 of service delivery at the time?
45 A. Acting director, yes, that's right, yeah. We had been
46 through a few.
47

1 Q. Yes. And why were you taking it up with her at that
2 time?
3 A. Well, the email says earlier that I did. The
4 gentleman just asked the question of it and I - he was a
5 bit nervous, so he asked me knowing that we were involved
6 somehow, so I just thought I'd ask the question for him.
7
8 Q. All right. On page 107 - this is the bit that
9 I wanted to ask you about - you say at the third paragraph
10 from the top:
11
12 I would like to witness for myself the
13 information purely on an ethical basis and
14 for my own well being.
15
16 Do you see that?
17 A. Yes.
18
19 Q. The information that you wanted to see was what?
20 A. Pardon?
21
22 Q. What information did you want to see?
23 A. Both the TRIM files.
24
25 Q. Both the TRIM files?
26 A. Yes.
27
28 Q. When you say on an ethical basis and for your own
29 well being --
30 A. Well, I raised the order and I thought something was
31 wrong, so just out of pure ethics on my behalf or on
32 council's behalf, and morals, duty, just to say that, "Here
33 you are. Here's the two TRIM files. There's the
34 information. Go away and shut up."
35
36 THE COMMISSIONER: Q. The paragraph at the top of 107
37 indicates that you were concerned about whether or not the
38 council had quotes for Mulligan and Centium?
39 A. Yes.
40
41 Q. That would be part of the TRIM file, would it?
42 A. Yes.
43
44 Q. Yes. Right.
45 A. And I was told it may not be here. Don't quote me
46 where it is, but I was told that anybody has a right to see
47 the papers, paperwork and orders if they're involved in

1 them, so I just thought after all this time - it has been a
2 fair while then, August. I mean the fuss started back in,
3 back in whenever it was.
4
5 MR GLOVER: Q. All right. Just to round out this
6 topic --
7 A. Yeah.
8
9 Q. -- as it developed, the limit of your concern was to
10 see the quotes that Mr Bruhn said existed; is that a fair
11 summary of your concern? Yes?
12 A. Yes, sorry, sir. Yes, sir.
13
14 Q. Had you been shown them, that would have satisfied
15 your inquiry, would it?
16 A. I think so, yes, sir.
17
18 Q. Now, I don't expect you did, but you didn't have any
19 involvement in Mr Mulligan's appointment to the position of
20 acting director, service delivery, did you?
21 A. Definitely not. They went through a recruitment
22 agency - Henderson - Hays.
23
24 Q. And similarly with Mr Hargreaves, you didn't have any
25 involvement in his appointment?
26 A. Never met the man, never saw the man, and no,
27 I didn't.
28
29 Q. Thank you. One thing I just wanted to clarify with
30 you, Mr Irwin, I want to show you exhibit 36. Mr Broad
31 will bring it to you. In relation to Mr Mulligan, the
32 MA & SE Mulligan order was identified as being "not
33 applicable" in the quote reference?
34 A. Mmm.
35
36 Q. I want you to confirm that that's a screen image, and
37 the "NA" appears in the reference box on the first page?
38 A. Certainly, sir, it is.
39
40 Q. So when you're picking up the correspondence about
41 that issue, that's the "NA" reference that one has regard
42 to, is it?
43 A. The box where it comes up, yeah. Which is the one
44 that my colleague had noticed, yeah.
45
46 MR GLOVER: Thank you. That's all I have for Mr Irwin.
47

1 THE COMMISSIONER: Do you have any questions?
2
3 MR SINGLETON: I will have some questions. I would
4 normally yield to Mr Ryan.
5
6 THE COMMISSIONER: Do you know how long you will take?
7
8 MR SINGLETON: I think in the order of 30 or 40 minutes.
9
10 THE COMMISSIONER: Okay, all right. We will have lunch.
11 I'm sorry, we will have to adjourn until 2. Go and have
12 something to eat and come back at 2. All right. We will
13 adjourn until 2 o'clock.
14
15 LUNCHEON ADJOURNMENT
16
17 MR GLOVER: I have finished my examination. I think it is
18 over to Mr Ryan.
19
20 THE COMMISSIONER: Mr Ryan, do you have any questions?
21
22 MR RYAN: Yes, I do. I doubt it will take 30 or 40
23 minutes. It will be short.
24
25 THE COMMISSIONER: Yes.
26
27 <EXAMINATION BY MR RYAN:
28
29 MR RYAN: Q. Mr Irwin, my name is James Ryan, I'm
30 representing Councillor Brown. Thank you for your
31 evidence. I just wanted to go through a couple of things
32 with you. To begin with, if you could confirm that I am
33 correct: I think you gave an overall impression, you began
34 by saying you hadn't read the policies and procedures --
35 A. No.
36
37 Q. -- by which I think you meant for procurement?
38 A. No, I haven't, no.
39
40 Q. It seems to me that you probably could be described as
41 taking a practical and hands-on approach?
42 A. Yes, sir.
43
44 Q. So the questions I'm asking you really relate to your
45 opinion and your state of mind, not to anyone else's. You
46 did also say that you trusted Mr Whatmore. You said,
47 I think, that he had had 30 years of experience?

1 A. Thirty-three, I think it was.

2

3 Q. You also mentioned that you pressed the buttons on the
4 requisitions and you knew what a TRIM was, and over the
5 years you'd learnt a few things?

6 A. Oh, yeah, basically, yeah.

7

8 Q. So if I understand the context of the requisitions
9 correctly, they were preceded in 2014 and 2015, I think you
10 said, by an internal audit of the procurement section,
11 which included your warehouse?

12 A. Over all council and a lot to do with warehouse and
13 purchasing, yeah.

14

15 Q. I think you also said that you believed it had been
16 proved unfounded or untrue?

17 A. Not my belief, it was proved unfounded. I've got
18 paperwork here, if you want to look at it.

19

20 Q. Can you tell me, were you consulted about that audit?

21 A. No, sir, never.

22

23 Q. Was that a reason for you to feel possibly angry about
24 it?

25 A. Possibly - I don't think so, no.

26

27 Q. At this time, so immediately before the requisitions,
28 would you describe the atmosphere at council, and in your
29 particular area of council, as being a supportive
30 workplace?

31

32 THE COMMISSIONER: That would have to be restricted to the
33 warehouse, wouldn't it?

34

35 MR RYAN: I did ask in his particular --

36

37 THE WITNESS: For reasons unknown, where I work is like
38 a bar: people come up and they chat about their daily
39 routine, what they think, what they feel, and over the
40 years it has become quite the place to have a conversation.
41 Unfortunately or fortunately, we are privy to not the
42 truth, possibly, but their interpretation of the truth, and
43 we get a lot of information that other sections may not
44 wish to divulge publicly, but we get it privately. Over
45 the years we have heard lots of things.

46

47 I think the trouble is, now, that the current

1 management is doing a good job, from the - from when the
2 last general - well, the last general-manager-to-be,
3 Stuart, stood down, or was stood down - I think they've
4 tried to do a good job. I think what's happening is they
5 are still hiding sins from the past, and until the sins of
6 the past are rectified and somehow aired, it's never going
7 to be any good. There's going to be problems there,
8 factions. People don't trust each other, sections don't
9 trust sections, groups don't trust groups because of what
10 has gone on in the past. I really think they are trying to
11 do the right thing, but until - we've had five
12 investigations on this subject we're doing right now, and
13 if it's any - if it's always been good and people have
14 followed processes, what am I doing sitting here now?

15
16 We had the first one from the acting XO. Then she was
17 taken off it and the XO herself came back from holidays and
18 did it. ICAC got involved. McCullough Robertson got
19 involved. And the last one was the Nemesis investigation.
20 They all found the same thing: council did nothing wrong.
21 It was an absolute perfect process. But I'm still here,
22 the sixth investigation. There must be something wrong to
23 have six investigations all based around the same thing.

24
25 THE COMMISSIONER: Did ICAC do an investigation?

26
27 MR GLOVER: No.

28
29 THE WITNESS: I'm worn out. I'm over it. I just don't
30 know what to - why we're all sitting here.

31
32 THE COMMISSIONER: Q. I think the council may have
33 reported certain matters to ICAC. I think ICAC chose not
34 to investigate; correct?

35 A. Something like that, correct, but they were still
36 involved.

37
38 MR RYAN: Q. Can I ask, Mr Irwin, the Nemesis
39 investigation - I hope I'm never investigated by a firm
40 called Nemesis, but, anyway, the Nemesis investigation -
41 did that come after the McCullough Robertson investigation?

42 A. Yes, 12 months, give or take.

43
44 Q. So it was a 2018 investigation?

45 A. We had the final meeting only this year, in
46 I think February, January/February this year, and that was
47 the end, the end of that.

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Q. And what was it an investigation into?

A. It was on investigations, plural, by - the P&S manager, who later became the acting general manager, by his staff. His staff investigated him on the same things they're talking about now, on the Mulligan and Centium.

THE COMMISSIONER: Q. Don't assume I know what "P&S" means?

A. Sorry, P&S manager. People and systems manager, the general manager's - sort of self-explanatory. But there were two investigations taken internally, back in - starting in 2016, if memory serves me correctly. It went on for a couple of months. Then ICAC got involved; and then, 12 months later, McCullough Robertson; and then only 12 months ago or so it finished with the Nemesis one, all basically on the same --

MR RYAN: Q. So I think what you have summarised --

A. Sorry, the Nemesis one was based on the investigations that were carried out on the P&S manager back in 2016.

Q. I think what you have just summarised is a situation where you observed that if the investigation came to a credible finish, there wouldn't be a need for subsequent investigations?

A. You wouldn't be sitting here now. Yeah, no-one would be sitting here now.

Q. Could I take you back, then, to that period when the requisitions were actually made, in late 2016?

A. Yes.

Q. You have said today that you thought the requisitions, without you or Mr Whatmore being able to view what they were based on, was a trap?

A. Yes.

Q. Or because you had had this --

A. Test, yeah.

Q. -- audit, which you hadn't been consulted on, you thought it might be a test?

A. Yeah.

Q. And I'm correct in thinking you said something like Mr Bruhn had accused you of thieving or stealing?

1 A. He accused my colleague of doctoring reports after he
2 read the report, because we - my colleague used to give
3 him, as all officers, you know, give their bosses, reports
4 and data and what-not, and towards the end of his tenure
5 there he was stopping doing that, and he told my
6 colleague's boss and my colleague's lower - one level down,
7 not to accept any information from my colleague, because he
8 could doctor the reports. The trouble is, though, the
9 people he was asking to get the reports then was our IT
10 department, and they were struggling to get the reports, so
11 they would ask my colleague to get the reports, and it
12 would just go back the same way but through a different
13 channel. So the reports were the same, it is just that he
14 didn't trust what we were doing. And he was quoting out of
15 the - quoting directly out of the audit report, or what it
16 said he was thinking we were doing.

17

18 Q. So, just to go back to your state of mind to think
19 that this was a trap --

20 A. Yes.

21

22 Q. -- or a test --

23 A. Yes.

24

25 Q. -- it doesn't sound to me that you felt you were in a
26 very supportive environment?

27 A. At the time, no. It was the worst three years of my
28 life. It was shocking.

29

30 Q. The worst three years of your life?

31 A. Awful. Awful. I've been there for 40 years, and
32 I love council or I wouldn't have been there for 40 years.

33

34 Q. I am sorry, which three years are you talking about,
35 from that period --

36 A. From about - it started this year, go back three
37 years.

38

39 Q. That's the worst period?

40 A. Probably, yeah, without a doubt.

41

42 Q. And I'm taking it from that comment that it's
43 beginning to get better?

44 A. Yes, but the trouble is, people are still reading that
45 report. Only two weeks ago I was taken aside by a friend
46 and he said, "Listen, what have you done?" I said, "What
47 are you talking about?" He said, "I was told not to trust

1 you and that the warehouse was trouble." That's the second
2 time this year, three years after that report was written,
3 and we're still getting flak from the fallout of that
4 report. It will never go away, unfortunately.

5
6 Q. So you feel your name has been --

7 A. Oh, without a doubt, yeah. We were on the verge of
8 suing council for slander, but I - it would be just the
9 most scary thing in the world to do that.

10
11 THE COMMISSIONER: Q. I may have misheard, but I thought
12 there was a question, "So you feel as though you have", and
13 then the answer was, "Without a doubt", but there was no --

14
15 MR RYAN: Q. The question was: you feel that your name
16 has been besmirched?

17 A. Without a doubt. We had a thousand emails --

18
19 Q. Your reputation has been damaged?

20 A. Without a doubt, yes.

21
22 Q. Can I ask you this, a very specific question: at that
23 time, were you concerned that the council, or those
24 supervisors responsible for the requisitions, were placing
25 a trap or a test, were seeking to get evidence to take
26 disciplinary action?

27 A. Without a doubt. Without a doubt.

28
29 Q. That was on your mind?

30 A. When you read the terms of reference for that audit
31 that was carried out back in 2016, the terms of reference
32 were a particular line of questioning, but when the audit
33 came out, the audit never followed anywhere near the terms
34 of reference. It was questioned in the final report from
35 the investigator and asked of the auditor, "Why didn't you
36 follow the terms of reference", and of course there was no
37 answer, because they both disappeared. So we just couldn't
38 find out why they didn't do it.

39
40 But the thing is, if the terms of reference weren't
41 followed by the auditors, why didn't management pick it up,
42 when they read the report and the draft copy - why didn't
43 they say, "Excuse me, auditors, you have made a bit of
44 a slight error here, you are not following what the terms
45 of reference are." Now, I thought terms of reference were
46 the be all and end all of what you have to follow, and you
47 can't just veer off and do something else. But obviously

1 they were allowed to do it for some unknown reason.

2

3 Q. If I could just come back, you said that the audit
4 didn't follow its terms of reference?

5 A. Definitely not. That was questioned by the
6 investigator at the time.

7

8 Q. Which investigator?

9 A. From Weir Consulting. I've got it all here.

10

11 Q. And Weir Consulting conducted which investigation?

12 A. The audit - the investigation - the USU investigation
13 externally on the audit. It took us 12 months of - I don't
14 know what to say, not crying about it, but we emailed every
15 person we could: the union; we emailed every boss, all
16 through management; Robert Greenwood got involved.
17 Everybody got involved and eventually my manager did say,
18 "If you're not satisfied" - after being told not to talk
19 about it ever again - "If you are not satisfied, put a USU
20 grievance in", and we did.

21

22 THE COMMISSIONER: Q. The audit was on what?

23 A. Tendering - purchasing and tendering.

24

25 Q. Purchases into the warehouse?

26 A. Procurement and tendering.

27

28 Q. Procurement and tendering, right.

29 A. Yes. When you look at the terms of reference, the
30 warehouse wasn't involved in it at all, and yet it aimed
31 right at us.

32

33 MR RYAN: Commissioner, I'm not sure that that document is
34 in evidence and I am wondering if it's possible to ask for
35 it.

36

37 THE COMMISSIONER: You can discuss that with Mr Glover.

38

39 MR GLOVER: I don't have it available to tender it. It
40 will be tendered, but I don't have it here available to me
41 at the moment.

42

43 THE COMMISSIONER: You can talk with Mr Ryan about that.

44

45 MR GLOVER: Yes.

46

47 MR RYAN: Q. Thank you, Mr Irwin. Just to come back,

1 we've talked about that you are a hands-on person and you
2 haven't read the policies, so you probably - when you say
3 something is wrong, which I think you described that you
4 had come to believe something was wrong, you do that,
5 I think, on the basis of observation?
6 A. Observation.
7
8 Q. One of the things that you described, I will say
9 colourfully, was a situation where when the requisitions
10 weren't processed - I think you said they took a week or
11 two?
12 A. Something like that, yeah.
13
14 Q. You described a situation that the phone - there were
15 multiple phone calls?
16 A. Yeah.
17
18 Q. And people were saying things like, I think you said,
19 "Stuart was looking sick".
20 A. He was. That was the exact wording. Robert was
21 banging heads and --
22
23 Q. Sorry to backtrack, so you mean Stuart Liddell?
24 A. P&S manager, future general manager, yeah.
25
26 Q. So when you say "Stuart's looking sick" --
27
28 MR SINGLETON: I object. The witness didn't say he said
29 it; he said someone unknown rang him.
30
31 THE WITNESS: Yes.
32
33 MR SINGLETON: It is not proper to say, "you said", it's
34 not proper to put that proposition in any form.
35
36 MR RYAN: Commissioner. I take that back. What I meant
37 was that Mr Irwin had been told by an unknown caller that
38 Mr Liddell was looking sick.
39
40 THE WITNESS: Many times. Many times.
41
42 MR SINGLETON: That's not the evidence. The evidence was
43 "Stuart", not "Mr Liddell".
44
45 THE WITNESS: It's one and the same.
46
47 MR RYAN: Fair enough.

1
2 Q. "Stuart was looking sick"; they were the words you
3 heard. Can I ask what you understood by that, because I'm
4 assuming that that was an expression: it didn't literally
5 mean --

6 A. Not sick like this gentleman --
7

8 MR SINGLETON: I object. There is no further relevance in
9 this line of questioning.
10

11 THE COMMISSIONER: Is it helpful for me to know what
12 Mr Irwin thinks?
13

14 MR RYAN: I think Mr Irwin has given very powerful
15 first-hand evidence of the atmosphere and the activity of
16 Blue Mountains City Council staff immediately following the
17 concerns that were raised when these two requisitions were
18 filed. I think --
19

20 THE COMMISSIONER: That might be a bit broad, that
21 statement.
22

23 MR SINGLETON: It's not true. He hasn't given first-hand
24 evidence at all.
25

26 THE COMMISSIONER: I would say he has given evidence of
27 what his perception was.
28

29 MR RYAN: Of course. Of course, what he has described --
30

31 THE COMMISSIONER: I don't know that that would allow me
32 to draw any conclusive findings of fact at the moment.
33

34 Q. But, in any event, someone told you that Stuart wasn't
35 looking well?

36 A. Yeah. Looking unwell, yeah. Stressed.
37

38 MR RYAN: I'm not after a conclusive finding of fact, I'm
39 trying to understand what "not looking well" means.
40

41 THE COMMISSIONER: Yes. I know the rules of evidence
42 don't apply here, but just even applying common sense, what
43 does it matter what Mr Irwin thinks about that? He didn't
44 see him.
45

46 MR RYAN: Because Mr Irwin - if I can use an analogy,
47 Commissioner, Mr Irwin --

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THE COMMISSIONER: Q. Did the person that rang you say, "Stuart is looking sick, and by that I mean", or did he just say, "Stuart is looking sick"?

A. He was not sick like this gentleman in front of us; he meant he was stressed. He was under duress.

Q. Did he say that, though?

A. Yes.

Q. What did he say?

A. Oh, listen, three years ago - I'm going to say I don't know what he said right this second, but words to that effect.

Q. That he said what?

A. That, "He looked sick. What have you done to him?" That's all I'm going to say because it's three years ago and I really - I --

MR RYAN: Thank you. We will move on.

Q. The next thing you said was that Robert was cracking heads?

A. We heard that a lot, yeah.

Q. Can I clarify that you mean Robert Greenwood?

A. Former general manager Robert Greenwood, yeah.

Q. And "cracking heads" means --

A. Getting upset with people and --

Q. Thank you for that. Just a little bit further on in your evidence I think you were taken to an email, it could have been from the acting executive officer, and it was "Thank you for raising this again", if I recall this correctly, "but why don't you participate in the business improvement program"?

A. And I said, "Because the business improvement program was run by the same people who raised and authorised the said requisitions." So it's a bit of a dog biting its own tail, which is why, in the first place, my coordinator, my colleague, couldn't go to the audit team, which you would raise - not the audit team, sorry, the procurement team, to raise the problem, because they were the ones who raised the requisitions.

1 Q. So this really comes to something important: you are
2 saying, I think, in summary, that you didn't feel that
3 those people running the business improvement, who had been
4 the ones responsible for the two requisitions,
5 controversial requisitions --
6 A. Yes.
7
8 Q. You didn't feel they had credibility in the business
9 improvement program, because, if I understand correctly -
10 and this is what I want you to confirm - despite all of
11 these, the number of times you raised this issue --
12 A. About the audit?
13
14 Q. About the requisitions.
15 A. About, sorry, the requisitions.
16
17 Q. As I understand it, no-one had actually come and
18 clarified what the proper procedure was to deal with
19 requisitions where the TRIM file was locked?
20 A. I don't think my colleague's ever seen it before, or
21 before that, even, so, no.
22
23 Q. So your words --
24 A. TRIM files, unless it's some magical secret of how the
25 earth was built, should be open for people with the right
26 authority to see what is in there, and being a purchasing
27 officer, you'd think he would have authority, after 33
28 years, to see what's in there.
29
30 Q. Your words earlier today were that first you thought
31 it was a trap?
32 A. Test or a trap.
33
34 Q. It may be a test?
35 A. Yeah.
36
37 Q. And when you saw that it couldn't possibly be, because
38 everyone was in uproar, you thought it was just a simple
39 mistake?
40 A. Just a mistake, yeah.
41
42 Q. So the solution to the simple mistake would have been
43 to open the TRIM files?
44 A. Yes.
45
46 Q. And that has never occurred?
47 A. Not to this day, no.

1
2 Q. Thank you. Earlier today the Commission tendered
3 staff surveys, and the staff surveys were generally of
4 a nature which said approximately 75 per cent of staff at
5 Blue Mountains thought it was a pretty good place to work.
6 What would your response to that be?

7 A. Oh, you know what, I've never filled out a survey yet,
8 so I would be striking that question from the record.
9 I think Blue Mountains City Council is a fantastic place to
10 work, it really is, and everybody who is there at the
11 moment wants to be there.

12
13 What has been strange, though, is that everyone who
14 has touched this poisoned chalice has gone. I could go
15 through a dozen names.

16
17 Q. I beg your pardon, which poisoned chalice?

18 A. The requisitions. I could go through a dozen names
19 who have even looked at those questions and they've all
20 disappeared. It just seems like, like I said, a poisoned
21 chalice. In fact, I'm the only one standing still, really,
22 involved, who is still here.

23
24 Q. So earlier, just to sum up, because they are all the
25 questions I have bar this one, you said that it had been
26 the worst three years of your life, and by that I think you
27 meant from roughly that late October/4 November period,
28 2016?

29
30 A. When we first raised the problems with the audit here,
31 which is back in 2016, up until - I thought it was all gone
32 up until two weeks ago, and this gentleman pulled me aside
33 in the corridor and said what I said before, about, "What
34 have you done? I've been told not to trust your people and
35 you are troublemakers". Now, in that report, in that audit
36 report of 2016, we were mentioned as agitators, and all we
37 did was just say, "Excuse me, we think that audit's wrong."
38 And council just turned their backs away from us and walked
39 away, and it took a long time. And it was funny, because
40 every single person we spoke to officially had the same
41 blurb. Unofficially, we were told it was absolutely a load
42 of rubbish, but because the people who instigated it had
43 a lot of power, they were very fearful to speak out loud.

44
45 Of course, when the investigator from Weir started
46 asking questions, people must have realised that what was
47 going to happen is the investigation would find that the

1 audit was very, very bad, and I did see a change of heart.
2 People started talking about it out loud, that it was
3 a rubbish audit and the facts weren't right and the process
4 was shocking. So there was a change. But the first couple
5 of years was just - the first 12 months was just an
6 absolute - awful. Everybody said the same thing, that it
7 was official, it was the best thing, we had to go along
8 with it because the means justifies the ends [sic]. I can
9 go on with a thousand things I've written down here, but
10 I just can't think off the top of my head. Please, take
11 this away. Please. That's if council allow you to have
12 the first copy of the internal paper, because we were
13 denied it, and we got it given to us underneath our door.
14 It was slipped underneath the door to us and that's how we
15 found out about this thing. We were never meant to see it.
16 It was written about us, we weren't involved in it, except
17 for what was in it written about us, and it was put
18 underneath our front door.

19
20 Q. I'm sure the inquiry is going to have a look at that.
21 They may already have those documents. I'm not sure.

22 A. Thank you.

23
24 Q. However, I just did want to clarify, I thought you had
25 said that things were getting better?

26 A. In the last 12 months, on the back of the procurement
27 improvement people, we hired a staff member, a new
28 employee. I'm fearful to say what --

29
30 Q. You don't have to say anything about anyone. I'm
31 asking about what you think.

32 A. I was targeted, unfortunately. The last six months
33 haven't been too bad, but before that I was targeted, and
34 I was targeted pretty hard. I was micro-managed. I had to
35 write down things, what I did every day, where I was, where
36 I wasn't, and just me and nobody else. It was awful. On
37 the back of comments made by managers, and that dribbles
38 down to certain staff and then they think it's a factual
39 statement. Unfortunately, I had to live with it. I've got
40 a lot more to say but I'm very fearful of saying it in
41 front of people here and I'm not going to say it.

42
43 MR RYAN: Thank you. Thank you, Commissioner.

44
45 THE COMMISSIONER: Thank you.

46
47 MR SINGLETON: Mr Irwin has been offering for all of us to

1 have a look at that pile of documents, so I will make
2 a formal call for it.
3
4 Can you show us the documents that you have brought
5 along, Mr Irwin? Mr Broad will come and take it.
6
7 THE WITNESS: Can I just say - am I allowed to do this?
8 There is management sitting here now.
9
10 THE COMMISSIONER: You don't need permission from anyone
11 at the moment.
12
13 THE WITNESS: I just wanted to make sure, sir.
14
15 MR GLOVER: And I call for the other pile of documents on
16 the table as well.
17
18 THE WITNESS: That's the Nemesis. That's just my personal
19 notes. If you want to take them, by all means, take them.
20 There is nothing personal in there.
21
22 MR SINGLETON: The material has been provided to Mr Glover
23 for the first look.
24
25 THE COMMISSIONER: Take your time. We will just pause
26 while they look at the documents, Mr Irwin.
27
28 THE WITNESS: Can I address the court, the hearing, after
29 this?
30
31 THE COMMISSIONER: Remind me after, if there is something
32 you want to make a submission on.
33
34 THE WITNESS: Yes, thank you.
35
36 THE COMMISSIONER: We will just wait.
37
38 MR GLOVER: Commissioner, some of these I have seen
39 before, some of them I haven't. What we will do is, once
40 Mr Irwin completes his evidence today, we will make
41 arrangements for Mr Broad to take copies, to ensure the
42 inquiry has everything. As I say, I have seen a number of
43 those pages before, but there are some which - I'm not
44 saying we don't have them, but I personally haven't seen
45 them.
46
47 THE WITNESS: You are welcome to them.

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MR SINGLETON: I have had a look through them as well, briefly, of course. I will give the entire set back to Mr Glover for his management in consultation with Mr Irwin.

THE COMMISSIONER: Yes.

MR GLOVER: Mr Irwin, at the moment I will pass them to Mr Broad and you can liaise with him before you leave today about copies and return of documents to you.

THE WITNESS: Thank you.

<EXAMINATION BY MR SINGLETON:

MR SINGLETON: Q. Mr Irwin, I will just deal with these documents first. The document that you found had been slipped under a door was a version of the procurement and tendering oversight review?

A. The final report.

Q. The final, not the draft?

A. No, the final.

Q. You have expressed some concerns about the accuracy of it?

A. You could say that, yeah.

Q. Is it convenient to work off that final report for a broad look at your concerns?

A. If you wish to.

Q. You have said that it is inaccurate in --

A. Process and data, yes.

Q. Some of the facts written down are wrong, in your opinion?

A. Yes, sir.

Q. One of the errors that you noticed was that the authors refer to "Stores", as a lump, without distinguishing or recognising that there was a distinction between the procurement team and the stores management team. I may not have the names right, but that's the concern, isn't it? That was one error?

A. Oh, one minor - that was just a minor mistake.

1 Q. That was one error?
2 A. A minor mistake, yeah.
3
4 Q. Because you constitute the stores management team?
5 A. Once, yeah.
6
7 Q. Back at this time?
8 A. Yes.
9
10 Q. And Mr Whatmore was the procurement team?
11 A. Purchasing.
12
13 Q. Purchasing, thank you, but he also was your
14 supervisor?
15 A. Supervisor, yeah.
16
17 Q. And the two of you worked --
18 A. Together.
19
20 Q. -- physically collocated?
21 A. Yes.
22
23 Q. And very cooperatively together?
24 A. Yes.
25
26 Q. Backing one another up as required?
27 A. In our tasks, yes.
28
29 Q. And no doubt many people in the organisation, perhaps
30 wrongly, just thought you were a team and you were down in
31 the stores?
32 A. I don't know how they think.
33
34 Q. Right. Notwithstanding the bar - that you operate
35 like a bar, picking up all information - you never picked
36 that one up?
37 A. No, no.
38
39 Q. The most significant factual error that you perceived
40 in this document was a suggestion that you - I will put it
41 bluntly - might be stealing things?
42 A. It was implied, yeah.
43
44 Q. And that comes in a particular finding with commentary
45 under the finding?
46 A. Yes. It did, sir, yeah.
47

1 MR SINGLETON: I will ask Mr Broad to show you this
2 document. I have opened it at the right page.
3
4 Q. Have a quick glance, but that looks like the report
5 that we are talking about?
6 A. I think so, sir, yes.
7
8 Q. It's not stapled, but I've sort of broken it into two
9 piles. Do you see a finding - by dividing it into two,
10 like cutting a pack of cards, I've exposed a page with
11 a finding on it?
12 A. They've all got findings, yeah.
13
14 Q. But I've in effect opened it up at one. Do you see
15 finding number 22 there, I think it is?
16 A. "Upscaling", yeah.
17
18 Q. Do you see a page that looks like this?
19 A. They all look like that.
20
21 MR SINGLETON: May I approach, please, Commissioner.
22
23 THE COMMISSIONER: Yes, you may.
24
25 MR SINGLETON: Q. The one that is open in front of you?
26 A. "Upscaling", yeah.
27
28 Q. Do you see it has, in the top left-hand corner, the
29 number 22?
30 A. Yep.
31
32 Q. And do you see, an inch across the page, a heading
33 "Finding", in a black box?
34 A. Yes, sir.
35
36 Q. And underneath that heading it says:
37
38 Stores - Stores staff are able to add new
39 items to the Stores inventory without
40 managerial approval.
41
42 A. I do see that, sir.
43
44 Q. So we're on the same page. Just have a look at the
45 heading "Implications", which is about halfway down on the
46 right-hand side.
47 A. "Upscaling", yeah.

1
2 Q. I'm sorry, I don't see the word "upscaling"?
3 A. Three lines down on that "Implications", council -
4 actually, in the third line, the first word, "upscaling".
5
6 Q. All right. So just read that paragraph to yourself.
7 A. Mmm-hmm.
8
9 Q. Have you done that?
10 A. I've read it, years ago, too, yeah.
11
12 Q. So you recognise it. That is where you saw the
13 implication that you might be a thief?
14 A. Definitely not.
15
16 Q. Right. Where is the statement that you are a thief?
17 A. Implied, I said.
18
19 Q. Implied by what - this page or another page?
20 A. Number 24.
21
22 Q. Number 24.
23 A. That's two pages past 22.
24
25 THE COMMISSIONER: Isn't there something - back on 22 it
26 says:
27
28 Once a staff member has added a commodity
29 to the inventory, they can take advantage
30 of other control weaknesses and requisition
31 these items on a "self-approval" basis.
32
33 MR SINGLETON: We are trying to identify which one the
34 witness was concerned about. He said --
35
36 THE COMMISSIONER: Q. Were you concerned about that,
37 though?
38 A. Yes, it was wrong. All that means is we could change
39 this pen to a fancy pen and book it out for ourselves and
40 take the pen home, but that's only a minor problem, that
41 one.
42
43 Q. Right. So 24 is the one that --
44
45 MR SINGLETON: Q. And in particular, so if you've got
46 page 24 - I am sorry, funding number 24?
47 A. Yes, sir.

1
2 Q. There is a heading or the summary of the finding is,
3 "Stores - there is no documented process to write off stock
4 in stores"?
5 A. That's what it says.
6
7 Q. But the particular bit that caused you perhaps the
8 greatest offence of all was under the heading
9 "Implications", that paragraph there; is that right?
10 A. One of them, yes.
11
12 Q. Well, is there a more offensive one than that?
13
14 THE COMMISSIONER: Q. Take your time.
15 A. That's - sorry, that was one of the most offensive
16 ones, yeah, or the more offensive ones, yeah, about the
17 \$8,000 worth of stock that was unaccountable.
18
19 MR SINGLETON: Q. Well, it doesn't say anything about
20 \$8,000 --
21 A. Look above it.
22
23 Q. Oh, I see. That is at the top there, yes.
24 A. It's on the same finding, though.
25
26 Q. What the statement actually says is not that anyone
27 had stolen any stock, but the systems that had been
28 provided to you did not safeguard against the hypothetical
29 possibility that stock could be written off after it being
30 converted to someone's own use?
31 A. May I speak?
32
33 Q. That's what it says, doesn't it?
34
35 THE COMMISSIONER: Q. When he has finished the question,
36 yes.
37 A. Oh, sorry, sir.
38
39 MR SINGLETON: Q. The question is that's what it says,
40 isn't it, those are the words?
41 A. If you read what was there, if that's what you've read
42 out, yes, it does.
43
44 Q. And that's what you believe implies that you were a
45 thief?
46 A. Implied to be, yes, stealing stock, yes.
47

1 MR SINGLETON: I would ask that it be marked for
2 identification and Mr Glover can decide --
3
4 THE COMMISSIONER: That is, the whole report?
5
6 MR SINGLETON: The whole document.
7
8 THE COMMISSIONER: Procurement and tendering process -
9 oversight review summary report, dated February 2016, is
10 MFI 9.
11
12 MFI #9 PROCUREMENT AND TENDERING PROCESS - OVERSIGHT REVIEW
13 SUMMARY REPORT, DATED FEBRUARY 2016
14
15 THE WITNESS: May I speak for a second, or no?
16
17 THE COMMISSIONER: Q. Just wait for the questions.
18 A. Sorry.
19
20 Q. You will just have to remind me if there's something
21 you want to raise?
22 A. No, just about this report.
23
24 THE COMMISSIONER: Q. Just deal with Mr Singleton's
25 questions first and then I will remember to ask you.
26 A. Sure.
27
28 MR SINGLETON: Q. Somebody, who you cannot identify,
29 made some telephone calls to you and amongst other things
30 said, "What's going on? What have you done to cause panic
31 in senior management?", or words to that effect?
32 A. Along - very well said.
33
34 Q. I am just trying to quote what you said?
35 A. Yeah, that's good.
36
37 Q. It's clear, isn't it, that the person calling, by
38 those words, it is clear, wasn't the general manager or one
39 of the senior managers?
40 A. No, sir.
41
42 Q. Do you agree with that?
43 A. Yes, sir.
44
45 Q. Are you now aware that the two procurements that gave
46 rise to concern, that is, Mr Mulligan's firm and Centium,
47 were being raised urgently to deal with safety issues?

1 A. Sir, like the crisis?
2
3 Q. I didn't say that.
4 A. I'm just saying like the crisis?
5
6 Q. I am asking whether you are now aware that in fact the
7 two requisitions for those procurements were raised to deal
8 with an urgent need in respect of safety. Are you aware of
9 that or not?
10 A. I was told a story, yeah.
11
12 Q. You said that Mr Bruhn had sent you an email that said
13 you were a criminal. You gave that evidence?
14 A. Yeah.
15
16 Q. And it's not true, is it, no such email exists or ever
17 has?
18 A. No, I said - excuse me. I said he accused my
19 colleague of tampering with data and he believed everything
20 in that report because he was quoting from that report.
21
22 Q. But you say you don't adhere to the proposition that
23 Mr Bruhn sent you an email saying that you were a criminal?
24 A. I'll withdraw that. That was wrong of me to say that,
25 sorry, sir.
26
27 Q. Right. Mr Bruhn at the time told you, "Look, this is
28 a matter in which there is a quotation in both cases" --
29 A. Told my colleague, yes.
30
31 Q. And Centium told your colleague, Mr Whatmore, that
32 there was, indeed, a quotation from each. If you had
33 believed him your concerns would be allayed. Your concern,
34 however, was, wasn't it, that he wasn't to be believed?
35 A. Whereabouts, yes.
36
37 Q. Do you now know that, in fact, the quotations did
38 exist and were in TRIM and have now been produced to this
39 inquiry to be used in evidence? Are you aware of that?
40 A. No, sir.
41
42 THE COMMISSIONER: There is an issue about whether the
43 written quotations policy even needs to apply here, though,
44 in relation to Mr Mulligan, because of it being an urgent,
45 unplanned event, or whatever the exclusion is, to the - is
46 it an emergency or an unplanned event or something that --
47

1 MR SINGLETON: No, urgent emergency, or similar word, and
2 unplanned event were two out of the few available
3 exceptions. It is well established in the documentary and
4 other available evidence that, in fact, there was no breach
5 of the policy.

6
7 THE COMMISSIONER: Although, in fairness to Mr Irwin, that
8 wasn't communicated to him or Mr Whatmore.

9
10 THE WITNESS: We were told about the crisis many, many,
11 many months after.

12
13 MR SINGLETON: Q. At the time you thought it might be a
14 trap or a test, but now, having more information available
15 to you, you realise it wasn't a trap or a test; correct?
16 A. Not a trap or a test, no. They made a mistake, yes.

17
18 Q. And also not a set-up for a disciplinary action?
19 A. Correct. At the time we didn't think that, though.

20
21 THE COMMISSIONER: The witness just said they made a
22 mistake. You don't agree with that, do you, or do you?

23
24 MR SINGLETON: No, I missed it altogether.

25
26 THE COMMISSIONER: Q. Did you say they made a mistake?
27 A. We thought they made a mistake.

28
29 Q. "We thought they made a mistake".
30 A. I didn't say a trap. They made a mistake.

31
32 MR SINGLETON: Q. You went through a series of
33 possibilities, as you've outlined in some detail, the last
34 of which was it was at least a mistake?
35 A. Yes.

36
37 Q. But if it is the case, although you haven't heard of
38 it, apparently, before now, or you're not persuaded, that
39 indeed the quotations did exist, were in --
40 A. This is the first time I've been told that. I have
41 been told it was a crisis. We were told it was a crisis,
42 therefore, there was no paperwork required because they
43 raced in and they took the first person they could.

44
45 Q. If it turns out that there was both urgent
46 circumstances and quotations that were on TRIM and that the
47 TRIM numbers correlate with the ones that Mr Bruhn put in

1 his emails, then belatedly much of your concern would be
2 allayed, it might not even be a mistake?

3
4 MR RYAN: Objection, Commissioner. The issue of
5 reconstructing history is something that might be available
6 to Mr Singleton, but the real question is was it a mistake
7 at the time and if it wasn't a mistake, why wasn't it
8 explained properly? In those were the proper reasons, why
9 weren't those reasons given at the time?

10
11 THE COMMISSIONER: Q. Put aside for the moment whether
12 it was explained. I think the witness has said he hasn't
13 seen the quotations and didn't know they existed until
14 literally sitting there in the witness box now.

15 A. Right this second now.

16
17 THE COMMISSIONER: So I think it is a still a fair
18 question isn't it for Mr Singleton to say, "Well look, if
19 you make this assumption" - and that's all it needs to be.
20 Let me ask the question.

21
22 Q. If you make the assumption, forget whether it is true
23 or not, just assume for the sake of a hypothetical that all
24 the quotations - there were quotations, first of all, that
25 they were on TRIM, and that there was an urgency required
26 in relation to getting Mr Mulligan to complete some
27 updating of some procedures that needed to be updated
28 pursuant to the Work Health and Safety Act. If you assume
29 all those things, I think the question Mr Singleton was
30 putting to you was that allays many of the concerns you've
31 had for a number of years about the whole process?

32 A. If that's all true, for sure, yeah, if it's all done
33 perfectly and the timing is right and nothing has been
34 backdated and it's all proper, then yeah, yeah. And that
35 would mean --

36
37 Q. I am only asking you to make an assumption.

38 A. Yeah.

39
40 Q. It is up to someone else to prove all these things.

41 A. But that would mean also then their investigations
42 would also have found the same findings, yeah. If you were
43 to check those --

44
45 Q. If they had that evidence, yes.

46 A. If you were to check those investigations they would
47 have the same findings as what the last one.

1
2 MR RYAN: Commissioner, I maintain my objection. We are
3 putting a situation retrospectively to the witness. The
4 witness has no personal knowledge of these so-called
5 circumstances which I don't accept are all factual.
6

7 THE COMMISSIONER: Witnesses are asked all the time to
8 make assumptions and give an answer based on assumptions.
9 That happens in courts of law where the rules of evidence
10 apply, let alone in an inquiry like this. I didn't put to
11 the witness that he had to prove these facts or that he had
12 to accept them as a matter of fact. I've just asked him to
13 make some assumptions, which if it turns out are proved
14 that's someone else's job, but I just asked the witness to
15 make some assumptions and to give his opinion based on that
16 assumption.
17

18 If those things don't end up to be proven right then
19 his answer falls away too because he presumably would say,
20 "No, I'll still concerned", but asking a witness to make an
21 assumption about facts is very standard and that's what
22 I've asked him to do and he has given his response.
23

24 MR SINGLETON: I have nothing more. Thank you,
25 Commissioner.
26

27 THE COMMISSIONER: Q. You raised with me that you wanted
28 to say something about the procurement and tendering
29 process report. What was that? What do you want to tell
30 us?

31 A. Just if - we're talking about 6, 3 and 8, are we?
32

33 Q. Yes.

34 A. In this we're talking about 3 shouldn't be linked with
35 8 and 6?
36

37 Q. Don't concern yourself about that.

38 A. I have no idea.
39

40 Q. But we are dealing with term of reference 3, 6 and 8,
41 yes.

42 A. Many people, many staff believe, including me, that
43 the audit was carried out on purchasing staff and store
44 staff because of a police matter several years ago where a
45 colleague was accused and charged with some fairly major
46 stuff and it never got proven and --
47

1 Q. Was that a theft matter or --
2 A. Listen, we were never told.
3
4 Q. I see. You don't know.
5 A. Not the detail, no, but he was charged with about
6 30 or 40 offences.
7
8 Q. Yes.
9 A. The officer who interviewed me --
10
11 Q. Police officer?
12 A. Sorry, yes, a detective, he's a 30-year veteran up
13 here and he said he's never seen such a case like it, it
14 was a massive case. It would have involved more than one
15 person. It would have involved external people and
16 employees, internal employees as well.
17
18 Q. Right.
19 A. When it was all said and done, this gentleman --
20
21 Q. How long ago was this?
22 A. Seven years and three weeks, because the gentleman
23 rang me last week.
24
25 Q. So it predates this report by some years.
26 A. Yes, it all links together. This gentleman was - the
27 case was chucked out of court, for what reasons I have no
28 idea, but nothing was ever proven, but because this
29 policeman and council thought that there were a lot more
30 people involved, it was very embarrassing for council to
31 have one of their own children go through the courts and it
32 was on TV and the local paper and everything else, we were
33 subpoenaed.
34
35 Q. Subpoenaed to give evidence?
36 A. To give evidence down in Sydney. We never got to do
37 it because the court case was thrown out.
38
39 Q. For this particular trial?
40 A. About 25 people got subpoenaed.
41
42 Q. But it didn't ultimately go in?
43 A. There's about six - yes, the trial did.
44
45 Q. The trial did?
46 A. But our subpoenas didn't - our subpoenas didn't even
47 come - we weren't involved.

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Q. Was there a finding of not guilty, was there?

A. I don't know what it was. It was just - it just disappeared, the court case. You'd have to ask management or people like that --

Q. All right. So either the charges were dropped or --

A. Exactly right. In the end result he wasn't charged. I don't know what that - sorry, he wasn't found guilty.

Q. He was charged but he wasn't found guilty?

A. Yes, that's it, he wasn't found guilty, but because they said there was multiple people should have been involved because the scam was so big, we got subpoenaed, and I believe that on the back of that, because council was embarrassed, my colleague and I worked closely with this gentleman and we were tarnished with the court case.

Q. I see, yes.

A. And that's where it stems from. It's not just me believing that. I've been asked that quite a few times at different meetings by management if that's the case of why you think this is - sorry, why we were targeted with this audit report and I think that's the reasons why.

Q. All right. Was there anything else you wanted to --

A. Yes. This gentleman - I don't know --

Q. Mr Singleton?

A. Mr Singleton was talking about the audit report and this finding. All you've got to do is go to the actual end report from the investigator to find out what she said. It's no good saying what I think about finding such and such. Go to her final report to see exactly what she says about council.

Q. When you say "her" --

A. Weir Consulting, Amanda Harvey.

Q. All right.

A. So what I think means nothing. We got them involved to say, "Can you please have this investigation?", what she thinks, and now management kindly have apologised, after a bit of toing-and-froing, but I thought it was all over but obviously not because of that conversation I had just a couple of weeks ago the bloke, this staff member said about what have we done, we're not to be trusted. Unfortunately,

1 this report will follow me for the rest of my council days.
2
3 Q. All right.
4 A. Even though it has been proven absolute rubbish.
5
6 THE COMMISSIONER: I actually have a question for you. Am
7 I right, the recommendations that were made by Ms Reid have
8 been publicly released; correct?
9
10 MR SINGLETON: Yes.
11
12 THE COMMISSIONER: So Mr Tooma's recommendations released,
13 Ms Reid's released.
14
15 MR SINGLETON: Yes.
16
17 THE COMMISSIONER: My memory, without going to the
18 document, is Ms Reid made a recommendation that various
19 people be informed as to why the engagement of Mr Mulligan
20 was not a breach of the council's written policy; is that
21 right?
22
23 MR GLOVER: Bear with me, Commissioner. I will check the
24 exhibit.
25
26 THE COMMISSIONER: I don't think you tendered it.
27
28 MR GLOVER: We tendered it in term of reference 4.
29
30 THE COMMISSIONER: Yes.
31
32 THE WITNESS: Can I speak?
33
34 THE COMMISSIONER: Q. Just hang on because I want to ask
35 you a question.
36 A. The answer is yes. The answer is yes.
37
38 Q. Just hang on, I have a more specific question I want
39 to ask you.
40 A. Oh, right.
41
42 THE COMMISSIONER: Just let me find it. There is a list
43 of exhibits here. We are only up to 22 online.
44
45 MR GLOVER: It was tendered in --
46
47 THE COMMISSIONER: Has anyone thought to keep an

1 exhibit list?

2

3 MR BROAD: I have the exhibit list.

4

5 THE COMMISSIONER: Have Ms Reid's and Mr Tooma's
6 recommendations been tendered? I thought they had been.

7

8 MR GLOVER: They have, they definitely have.

9

10 THE COMMISSIONER: They just may not have been uploaded.
11 Yes.

12

13 Q. Recommendation 5, that is public, whether or not it is
14 an exhibit, is council consider informing Mr Irwin and
15 Mr Whatmore of the outcome of this investigation, including
16 the reasons why the engagement of Mr Mulligan was not a
17 contravention of the council's code of conduct and written
18 quotations procurement standards?

19 A. Yes. As I've said --

20

21 A. Has council told you?

22 A. Yes, they certainly have, yes.

23

24 Q. That's what I wanted to know. Thank you.

25 A. We were told there was a crisis and there was no
26 information needed to be sought because it was a crisis.

27

28 Q. All right. Thank you.

29 A. Yet, I'm hearing now we've got information in the TRIM
30 files which seems to be --

31

32 Q. But they didn't tell you that either?

33 A. No. They just said it was a crisis and nothing was
34 needed. So from the start --

35

36 Q. But that doesn't make it a bad thing, that it was
37 entered into the TRIM file, even if it was a --

38 A. No, but what they told us that it was a crisis and
39 therefore, no documentation was necessary, but now I'm
40 hearing the documentation has been here since day one. So
41 it's --

42

43 Q. All right.

44 A. Yeah.

45

46 Q. I mean, it's probably hard to engage someone like
47 Mr Mulligan without some form of written correspondence

1 and --

2 A. I don't know.

3

4 Q. Fair enough.

5 A. I heard some - I heard some stuff but I'm not going to
6 repeat it because it's only what I've --

7

8 THE COMMISSIONER: All right. That is what I wanted to
9 ask. Did anything arise from anything that anyone asked?

10

11 MR SINGLETON: We would wish to make the point that, with
12 no disrespect to the witness, it would be unsafe for anyone
13 to rely on the account given about the content of a police
14 investigation, the content of statements made by the
15 police, or to speculate about court proceedings. Really,
16 the information is very vague.

17

18 THE COMMISSIONER: No, but the witness is just giving his
19 view about how that previous thing was related to this --

20

21 THE WITNESS: I've been asked that a million times.

22

23 MR SINGLETON: I am not criticising the witness. I am not
24 really addressing you, sir, but it is necessary to be
25 careful about such material.

26

27 THE COMMISSIONER: Of course, yes.

28

29 MR SINGLETON: This is a public inquiry.

30

31 THE COMMISSIONER: Yes.

32

33 MR RYAN: Commissioner, given the evidence that Mr Irwin
34 has given us today I think it was along the lines of things
35 are getting better, but while management keeps trying to
36 cover up things that went on in the past, there will always
37 be factions and disquiet.

38

39 THE COMMISSIONER: Yes.

40

41 MR RYAN: What Mr Irwin is describing is a situation where
42 a colleague was apparently prosecuted and the fallout from
43 that has lingered in the council. Apparently it has led to
44 an audit of procurement which has created its own
45 ill-feeling and been investigated itself, I now understand
46 from today, which I didn't know.

47

1 Given that this event seven years ago apparently seems
2 to be part of what many people have described as
3 contributing to the toxic culture, I am requesting that the
4 inquiry is informed about what the outcome of that
5 prosecution was so that we can all be on a level playing
6 field.

7
8 THE COMMISSIONER: All right. Feel free to follow that up
9 with Mr Glover when we finish.

10
11 MR GLOVER: I can say that I don't have any direct
12 information about it. If someone wants to draw it to my
13 attention, so be it. I don't have an answer.

14
15 MR SINGLETON: As I represent the council, I would wish to
16 say that --

17
18 THE COMMISSIONER: I can't see any relevance to the terms
19 of reference. I see the relevance to the answer the
20 witness gave, but I don't see it arising from the terms of
21 reference.

22
23 MR SINGLETON: I don't criticise the witness at all. It
24 is speculative as to whether the criminal matter referred
25 led to the audit. It is an understandable speculation.

26
27 THE WITNESS: Assumption.

28
29 MR SINGLETON: But that's all it is at the moment. With
30 no criticism of Mr Irwin, the evidence doesn't support what
31 Mr Irwin has said. I am not aware, but may have forgotten,
32 that any witness in this inquiry has referred to a toxic
33 culture. He may have some material on which he bases
34 that but --

35
36 MR RYAN: Commissioner, I think that's a term that has
37 been used in at least some of the investigations that
38 council has commissioned. I would suggest, to the
39 contrary, that a direct --

40
41 MR SINGLETON: We will wait for the evidence. It is not
42 necessary, in my submission, for Mr Ryan to interrupt me,
43 nor should this, in my submission, become a debate. Thank
44 you.

45
46 THE COMMISSIONER: Yes. Look, I am happy for an exchange
47 of views as long as it is respectful. I think it is early

1 in the day to be making submissions but you will get a
2 chance to do that eventually. Does anyone have any more
3 questions of Mr Irwin, because otherwise he really should
4 be free to go?
5
6 MR SINGLETON: I do.
7
8 THE COMMISSIONER: You do?
9
10 MR SINGLETON: Q. Mr Irwin, you've got the day off
11 because of coming here?
12 A. I don't care about that.
13
14 Q. But you do?
15 A. Whatever, yes.
16
17 Q. And you've got the day off tomorrow?
18 A. No, I'm going to work tomorrow. There are things to
19 be done. Anyway, that's not your business, that's council
20 business.
21
22 Q. Well, I am the council in this hearing and --
23 A. Well, I'll be at work tomorrow, so leave it at that.
24
25 Q. It's a matter for you, yes.
26 A. Exactly right. Thank you.
27
28 Q. You're telling me you've got the day off?
29 A. I know that, but thank you.
30
31 THE COMMISSIONER: Is there a reason I need to know
32 anything about this?
33
34 MR SINGLETON: It is a supportive workplace, Commissioner.
35
36 THE COMMISSIONER: Is there anything further for the
37 witness?
38
39 THE WITNESS: Can I just say something?
40
41 THE COMMISSIONER: Q. Yes.
42 A. I believe current management is trying to do their
43 very best --
44
45 Q. Yes, I heard you before.
46 A. -- in very, very hard circumstances, so I feel a bit
47 of fear that reprisal - I'm trying to cover my tracks a

1 little bit by saying that they're doing a good job, but
2 they've had a hard changeover from the previous management.

3
4 Q. I think you should feel comfortable that there won't
5 be any reprisal for any witness that is compelled to come
6 along and give evidence, as you have, because it wasn't
7 your choice, someone made that choice for you. Thank you
8 for coming. I don't think anyone has any further
9 questions, so you're free to go, or you're free to stay.

10 A. No, I think I'll go. I've said far too much.

11
12 THE COMMISSIONER: All right. Thank you.

13
14 <THE WITNESS WITHDREW

15
16 THE COMMISSIONER: As it turns out, that is the only
17 witness we have today.

18
19 MR GLOVER: Yes. We had Mr Anderson scheduled. Shortly
20 after lunch I was informed that there were difficulties
21 relating to his attendance, so I apologise. I was only
22 made of it myself shortly after the --

23
24 THE COMMISSIONER: He is a very short witness.

25
26 MR GLOVER: He is a very short witness, in any event.

27
28 THE COMMISSIONER: And he is based interstate?

29
30 MR GLOVER: As I understand it. What I am proposing is
31 once we can again secure contact with him, we will make
32 arrangements to, subject to your approval, Commissioner,
33 deal with him shortly by telephone.

34
35 THE COMMISSIONER: Yes. Have you raised that with
36 Mr Ryan?

37
38 MR GLOVER: I haven't raised it with anyone yet.

39
40 THE COMMISSIONER: There are a couple of short witnesses.
41 If it's not going to an issue that is explosively contested
42 in terms of credit, if they're a short witness, given that
43 it's an administrative inquiry, to save costs I am content
44 to have witnesses that don't need to be shown a whole lot
45 of documents give evidence by telephone link. Is that --

46
47 MR SINGLETON: In principle, we would agree.

1
2 THE COMMISSIONER: I'm not asking you to say "yes" or "no"
3 right now, because it's something Mr Glover will have to
4 discuss with you.

5
6 MR SINGLETON: Yes. Seeing we are discussing this --

7
8 THE COMMISSIONER: I would prefer, with a witness that is
9 of short scope and not document heavy, rather than flying
10 them down for a day, if it's going to be 10 minutes of
11 questioning, I would rather do it by phone. I've quite
12 often done phone evidence at the Racing Appeal Panel - not
13 for drug cases, but sometimes for serious misconduct - by
14 telephone, and if everyone is happy, it can save a lot of
15 time and costs for country people.

16
17 MR SINGLETON: We agree in principle. We don't know what
18 will be led from Mr Anderson, but we will discuss it with
19 Mr Glover.

20
21 THE COMMISSIONER: Mr Glover will discuss it with you,
22 too.

23
24 MR RYAN: Yes. I think it would be advantageous to know
25 what documents are going to be shown, if any, or if there
26 is a statement so that we can evaluate how that telephone
27 interview would --

28
29 THE COMMISSIONER: I'm sure with Mr Anderson it goes to
30 a very narrow issue, so that might make it easier to deal
31 with.

32
33 So is that the end of the witnesses for today?

34
35 MR GLOVER: Yes.

36
37 THE COMMISSIONER: Remind me who is tomorrow, again?

38
39 MR GLOVER: Mr Hargreaves and Mr Keys, and Mr Broad tells
40 me both have been reconfirmed; they will be coming.

41
42 THE COMMISSIONER: Is there anything else that can be done
43 today?

44
45 MR GLOVER: No. The only other thing is in opening you
46 asked me about the scope of the summons to Macquarie Media.

1 THE COMMISSIONER: Yes.
2
3 MR GLOVER: I revisited that over the luncheon
4 adjournment. Necessarily, given what term of reference 4
5 is about, it was heavily directed towards Mr Mulligan's
6 circumstances, so what we propose to do is to issue
7 a follow-up to capture some of the other persons he
8 mentioned to ensure we have everything. I'm confident we
9 do, but we propose to do that, just to close that out.
10
11 THE COMMISSIONER: So the question for term of reference 3
12 is, "Was the engagement and employment of Mulligan,
13 Hargreaves and others in accordance with" the various
14 provisions of the Local Government Act.
15
16 MR GLOVER: Yes.
17
18 THE COMMISSIONER: There is no way of avoiding what
19 Mr Hadley said - whatever way I answer that will be an
20 answer to what he said on his broadcast, will it?
21
22 MR GLOVER: Well, of course the terms of reference aren't
23 informed by the scope of his allegations, but some of what
24 he said cuts across some of the concepts dealt with in
25 those very broad legislative statements of aspiration, one
26 might call them, "open and transparent" --
27
28 THE COMMISSIONER: You told me in opening that he said
29 Mr Mulligan wasn't qualified, and also that there was
30 a conflict of interest between Mr Liddell and Mr Mulligan?
31
32 MR GLOVER: Yes.
33
34 THE COMMISSIONER: And between Mr Hargreaves and
35 Mr Liddell?
36
37 MR GLOVER: Yes, there is a suggestion of that, although
38 less direct, and that ties in to the allegations of a boys'
39 club. So the allegations made in relation to Mr Hargreaves
40 are certainly not as direct as those in relation to
41 Mr Mulligan, there is no doubt about that, but they are
42 present in the context of what was described as a "boys'
43 club" or a "jobs for the boys" culture. So out of an
44 abundance of caution --
45
46 THE COMMISSIONER: In the opening, MFI 8 - is the
47 transcript of what has been said on air included?

1
2 MR GLOVER: It is not in there, but we have it and we will
3 make some copies.
4
5 THE COMMISSIONER: You intend to tender that, do you?
6
7 MR GLOVER: I do.
8
9 THE COMMISSIONER: In that case, I imagine someone will be
10 asking me to make a finding in relation to something to do
11 with that, so that might mean just double checking we've
12 got everything.
13
14 MR GLOVER: I'm confident we do, but given recent history,
15 I think it may be safer just to square it away.
16
17 THE COMMISSIONER: Is there anything else anyone else
18 proposes we can do today?
19
20 MR SINGLETON: I just note that MFI 9 is lying there not
21 marked.
22
23 THE COMMISSIONER: Is there any reason why this doesn't
24 become an exhibit now?
25
26 MR GLOVER: I propose to tender it, so if it is convenient
27 to do so now --
28
29 MR SINGLETON: It should be a confidential exhibit, in our
30 submission, particularly given that Mr Irwin has testified
31 that it's, in his view --
32
33 THE COMMISSIONER: Someone's been examined on this
34 document in a public hearing. How does the document become
35 a confidential exhibit?
36
37 MR SINGLETON: I think the whole of the document can be.
38 The importance of the examination was to identify that
39 which he claimed carried the implication, so that you can
40 compare the actual words with what he felt.
41
42 THE COMMISSIONER: I know, but what's the sensitivity
43 about this? Perhaps it might be better - let's leave it as
44 an MFI for the moment. You can discuss with Mr Glover if
45 there are any sensitivities that I can't presently see in
46 that document.
47

1 MR SINGLETON: May it please the inquiry.

2

3 THE COMMISSIONER: All right. We will adjourn until 10am
4 tomorrow. Thank you.

5

6 AT 3.08PM THE INQUIRY WAS ADJOURNED TO
7 TUESDAY, 3 SEPTEMBER 2019 AT 10AM

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