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## Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST CITY COUNCIL

BRISBANE

..DATE 17/11/2005

..DAY 19

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THE HEARING RESUMED AT 9.57 A.M.

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PETER JOHN YOUNG, CONTINUING EXAMINATION:

CHAIRMAN: Yes, you're still on your former oath, Mr Young?-- Yes, sir, thank you.

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Mr Nyst?

MR NYST: Mr Young, did you have the opportunity then overnight to have a look at Exhibit 206?-- That's the memo from the Chief Executive Officer, I did, yes.

All right?-- I don't have a copy right in front of me now, Mr Nyst.

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Could he have that, 206. Just to short-circuit things, you may not need it, but you've read it?-- I have.

Do you disagree with any of the factual material contained in it?-- I'm not fully cognisant of all of the issues relevant to this matter, Mr Nyst.

Yes?-- I don't-----

Well, you said yesterday-----?-- I don't disagree necessarily with any of the matters here.

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You don't disagree with anything that's in the report?-- I'd say it's not complete.

Yes. Well, you don't disagree with it in the sense that insofar as you don't - insofar as you know about the facts, you agree, but insofar as you don't know about the facts, you're not in a position to disagree; is that-----?-- That's correct, thank you.

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Right. Well, in particular, the - you were at the Council meeting, the full Council meeting that dealt with this?-- Yes, I was.

And there on page 2 of the report, the last dot point says, "The minutes presented to Council are an accurate reflection of the committee discussion and proposed amended conditions resulting from that discussion. They included an explanatory note on the contradiction that arose."?-- Sorry, are you reading verbatim?

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Sorry?-- Are you reading from the document?

I'm reading from the document I've got. I don't know whether you've got the same document?-- "The minutes presented to Council are an accurate reflection of the recommendation passed."

Could I see yours; perhaps it's a different draft. All right. Well, perhaps - my copy is slightly different but I'll read to you from your copy?-- Are there different versions of this memo, Mr-----

Pardon?-- Are there different versions of this memo or-----

Well, there must be. There must be at least two because mine is slightly different?-- How could that be? I'm sorry.

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Well, have a look at my copy. Have a look at my copy, if you will and tell me what if any differences you-----?-- Well, just looking at that, the very last dot point on page 2, they're certainly different in that the exhibit says, "The minutes presented to Council are an accurate reflection of the recommendation passed," and so forth.

Yes?-- Whereas this one says, "The minutes presented to Council are an accurate reflection of the committee discussion and proposed amended conditions resulting from the discussion."

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Okay?-- And I just need to work out how these can be so different.

Take whatever time you want, but when you've finished, can I have them both back?-- Yes, of course. These on the cover appear to be the same, but there's obviously a discrepancy. They appear to be the same memorandum from the same author to the same person of the same date and they contain different information.

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Well, different information in that paragraph?-- Well, I haven't studied every paragraph.

Okay. Well, give me them both back - sorry, just give me my one back and we'll just deal with the exhibit that we've got in.

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CHAIRMAN: It's a bit concerning, though, Mr Nyst, isn't it, that-----

MR NYST: Well, there's nothing particularly concerning about it. You're welcome to have a look at it. I assume I've got some sort of a draft.

CHAIRMAN: I'm not saying it's concerning from your point of view. It's more concerning from the Gold Coast City Council that they seem to have two different documents saying different things that purport on the face of them both to be quoting from the same document.

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MR NYST: No, they don't say different things, as I've said. I'll give you that. I suspect you'll find that it's a different wording: that somebody has done a draft and then revised the draft, but if you have a look at the-----

CHAIRMAN: Which is the draft and which is the final?

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MR NYST: Well, all I want to do is ask him about what's in the dot point, does it agree with it or not; is that what was said at the Council.

MR BODDICE: Commissioner, could I just add: from what it says, it says a completely different thing in that dot point.

CHAIRMAN: Yes, it does in that dot point. And to me it's astounding that one can change the minutes of a committee meeting without consulting or at least advising all the members of that committee, but that seems to be de rigueur at the Gold Coast City Council.

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MR NYST: Yes. Going to-----

MR WEBB: I really object to that statement, Mr Chairman.

CHAIRMAN: Well, we've heard evidence of it.

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MR WEBB: No. Mr Chairman, you said it's de rigueur. That really is going a little over the top as, on reflection, I think, with respect, you'll agree with me.

CHAIRMAN: Well, no, I'm reflecting and I'm not changing what I said. We had evidence from - put to the witness, it was Councillor Sarroff, it was put to the witness that that is the normal way that things happen: that there can be the committee meeting, there can be discussions afterwards at which it can be realised, and I understand this, that a recommendation that was - a condition that was adopted at the committee meeting might have unintended consequences. That, naturally, is sorted out which, again, is understandable, and the decision is altered, which, again, is understandable, but the fact of the change is not reflected in the memo perhaps at the time to every committee member so every committee member knows what's going on, and that was the evidence that was given and there was no challenge to what was put by, I believe, Mr Nyst, and he'd have been putting it on instructions by you that that in fact was the normal course that was adopted. So, I can only act on the evidence.

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MR WEBB: Chairman, I'm going to lead a document into evidence about the very topic that Mr Sarroff was talking about which in fact shows that an explanation is given when there is a change, but I'll deal with that-----

CHAIRMAN: Why didn't you produce it to Mr Sarroff at the time?

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MR WEBB: Well, for one reason: I wasn't on my feet dealing with it; and for the second reason, I didn't have the document here.

CHAIRMAN: I see. All right. All right. Well-----

MR WEBB: Matters just come up in this inquiry and it takes time for us to go back and get the explanation for it.

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CHAIRMAN: Well, Mr Webb, I can only act on the evidence as it's presented to me and in the state of the evidence I don't resile from my statement. If you produce something to me that shows the evidence that's been adduced so far as incorrect, then of course I will act on the evidence as it is finally presented.

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MR WEBB: I'll be doing it through this witness.

CHAIRMAN: Thank you.

MR NYST: Now, Mr Young, you've got the Exhibit 206 there, have you?-- Yes, Mr Nyst, and just if you'll give me a moment-----

No, no, no. I'm interested in Exhibit 206. You've got counsel that can take you through whatever else you want to say?-- Yes, and you're asking me questions about a document I reviewed last night-----

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Listen to the question; listen to the question?-- -----and I'm confirming that-----

Listen to the question and answer the question?-- -----the document I reviewed last night is the same as Exhibit 206.

Well, sir, really, you'll have to take control of these proceedings at some stage.

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CHAIRMAN: No, if you'll listen to him, he's saying he read a document last night and he's now not sure that the document that he read last night was Exhibit 206 or an earlier or a later draft. So, he's just checked on that.

MR NYST: All right.

WITNESS: Thank you, Mr Chairman.

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CHAIRMAN: It was at your request that he read Exhibit 206. He's wanting to establish whether in fact he did read 206 or something else.

MR NYST: He was given 206 by the Commission, not by me.

CHAIRMAN: I don't know. Just check it, Mr Nyst.

WITNESS: Without making a detailed examination, Mr Chairman, they appear to be the same, the document I read last night and that which is 206.

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CHAIRMAN: Thank you, Mr Nyst.

WITNESS: And if I might make a comment, sir: it concerns me very significantly that we have two quite different documents before us under the signature of the Chief Executive Officer,

neither of them carries any nomenclature that it is a draft or a final; they appear on their face to be exactly the same and they are entirely - not entirely, they certainly contain significant differences.

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MR NYST: Did you look at Exhibit 206?-- Yes.

You read that, did you, last night?-- Yes, I did.

And you're familiar with it?-- Yes, I am.

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And you don't disagree with any of the material in that?-- In so far as I know I can - I will agree with the things that I was aware of at the time. There are - for example, matters related to you about what occurred-----

Sorry, but we don't need to go into this-----?-- -----at the committee meeting.

You don't disagree with anything that's in it?

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CHAIRMAN: Well, he's already answered the question, that he agrees with those matters that he knows about, he can't agree with the matters, agree or disagree with the matters he doesn't know anything about. He told you that earlier.

MR NYST: And then looking at that last dot point, "The minutes presented to council are an accurate reflection of the recommendation passed." Is that correct?-- Well, I don't believe that it is correct.

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And how is it incorrect?-- I wasn't at the committee meeting but my understanding is that-----

I'm sorry, could I just interrupt you. You don't know, is that what you're saying?-- I don't exactly know, that's correct, Mr Nyst. I wasn't at the committee.

Well, just go to the next one. They included a - this is the minutes presented to counsel - included "an explanatory note on the contradiction that arose due to the recommended conditions." Is that correct?-- I do recall there was an explanatory note, yes.

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And it goes on, "And an explanation of the proposed changes to council so that council was aware that the proposed conditions arose from the intent of the committee's recommendations with changes to make them logical and workable." Is that correct?-- I recall there was an explanation of the proposed changes.

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Okay. And the director, Mr Rowe, also reports this in the next dot point: "Council officers were not directed by any councillors to change, amend or bring forward conditions in any format." You're not in a position to disagree with that, I take it?-- I'm not in a position to agree or disagree, Mr Nyst.

Yes. "The minutes presented to council reflect the consequences of the planning committee recommendations." Don't disagree with that?-- I wouldn't rely upon this necessarily, Mr Nyst. 1

You don't disagree with it and you're not in a position to disagree with what's said there by Mr Rowe?-- I don't rely upon it. I have cause-----

No, I'm not asking you about whether you rely on it, I'm asking you-----?-- I have cause to disagree with it. 10

Just listen for a moment. I'm asking you, are you in a position to disagree with it? Do you positively disagree with what Mr Rowe is saying there?-- I have cause to have a disagreement with it, yes.

Okay, and what's the basis of your disagreement?-- The debate that was ensuing about the accuracy of the minutes. 20

Yes. What about?-- And arguments presented at the time.

Are you saying things that were said at that meeting?-- At the council meeting.

Right?-- Yes.

What about the rest of that paragraph? Do you disagree with it?-- About council officers were not directed by any councillor, you've asked me about that. 30

No, no, going on from there, the recommendation - "The recommended conditions were not complete or workable and a revised set of conditions were drafted to capture the intent and presented to council with a supporting explanation. This is not an unusual occurrence where conditions are changed in committee without fully exploring the flow on effects and consequences."?-- It's - it's a point of view that I don't agree with in one sense. I don't believe it is a - not an unusual occurrence. 40

Is it an occurrence that you're aware of happening before or is this the first time?-- I would think that the degree of word-smithing that may have been employed, and that's a term that's used in this document, not mine, would be very, very minor normally.

Right?-- What we're talking about here is the difference between one part of the committee recommendation which was to remove a number of allotments. 50

Yes?-- And that just disappeared. It's not even referred to in this document at all, the fact that an outcome of Councillor Power's motion would have been to effectively remove seven - sorry, reinstate seven allotments that the officers had sought to have removed.

But it is dealt with, isn't it?-- It's not a dot point in this document, it's not addressed in this document.

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Yes, it is, isn't it?-- Where?

I thought it was about the original application being in respect of Lots 24 to 30, doesn't it? 24, 30, 86, 87 and 206, is that-----?-- On the first page under the relevant points the council officers' report did recommend the removal of Lots 24 to 30, but what I'm saying is that this document doesn't reflect the fact that Councillor Power's motion was to reinstate Lots 24 to 30, therefore effectively overturning the officers' recommendation.

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Sorry, isn't that dealt with in the second dot point on page 2? That deals with the recommendations, doesn't it, that came out of the committee?-- It doesn't make it expressly clear that an outcome was - an outcome would have been the reinstatement of the seven allotments. I don't read that into this at all. Any - any person without a good knowledge of it wouldn't read that.

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But look, those were the recommendations that came out of that committee, weren't they? You're talking about the seven lots, but those were in fact the recommendations that came out of the committee?-- Those that appear under the first dot point on page 2?

On the second dot point on page 2?-- Sorry, yes.

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Here it says, "The committee resolved to adopt the recommendations of the officers subject to following amendments"?-- As I said, I wasn't at the committee and I think that those things were reflected in the explanatory notes.

Yes?-- But I don't think that they were in the minutes.

Yes, but you're not cavilling that those were the - that's what the committee resolved?-- I believe that to be - that's what the committee resolved.

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And you're not cavilling with the next point that's made, "It became clear that those conditions contradicted each other"?-- I don't know when that became clear but it's certainly clear to me that the conditions contract each other.

Yes, all right. Okay. And - but you say that whilst you know of this practice of amending between the council and committee it's usually not to this extent. Is that what you're saying?-- I would be very surprised if it is. I would be very concerned if it is, because - yes, that's all I'll say.

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You're not - you don't know but you'd be concerned if it was. Is that what you're saying?-- Yes.

All right. Thank you, sir.



CHAIRMAN: Mr Webb? Mr Webb?

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MR WEBB: There's someone else before me, I think, Mr Chair.

MR BARTLEY: Mr Chairman, my name is Brian Bartley, I represent Graham Ingles.

CHAIRMAN: Yes, Mr Bartley.

MR BARTLEY: Of the Ingles Group of Companies. I propose to raise with Councillor Young some matters which arise from his dossier and his interviews with the CMC. I do that recognising the rulings that were made yesterday.

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Can I say from the outset that I'll be concise and I'd ask your indulgence in permitting some questioning about the dossier. My client has been the subject of considerable publicity as a result of the allegations made by Councillor Young and, in my submission, ought have the opportunity to respond to those and to test the allegations.

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CHAIRMAN: Well, can you take me to the part of the allegation - in the dossier first?

MR BARTLEY: Yes, it's-----

CHAIRMAN: Is it page 15, item 7?

MR BARTLEY: Yes, it is. It's item 7. I'm proposing to raise that initially with-----

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CHAIRMAN: I wouldn't have - I wouldn't have read that as an allegation against your client's company or your client company at all. It's more an allegation. As it says, all it's saying, no declarations with regards to possible or actual conflicts of interest were made. If it is an allegation against anyone and it might not even be but if it is an allegation against anyone it's certainly not against your client's company.

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MR BARTLEY: I think - I think there are effectively, two allegations in there. One relating to the declaration of interest and the other relating to the increase in lot density and there are - there are some other documents which indicate a development of that allegation which I would like to put to council then.

CHAIRMAN: All right. If you want to produce the actual documents-----

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MR BARTLEY: Yes, I will.

CHAIRMAN: -----and go through. All right, I'll accept that.

MR BARTLEY: Thank you.

MS HAMILTON: Mr Chairman; could I just note that this is not a matter on which evidence has been led-----

CHAIRMAN: Yes, yes-----

MS HAMILTON: -----from this person and-----

CHAIRMAN: -----I think Mr Bartley-----

MS HAMILTON: -----the only purpose in raising it-----

CHAIRMAN: -----acknowledges that-----

MS HAMILTON: -----could be to impugn his credit which I don't really know what Mr Bartley's proposing to do would-----

MR BARTLEY: The matters I put to the council go directly to credit.

CHAIRMAN: Are you suggesting that the statements in those couple of paragraphs are factually inaccurate?

MR BARTLEY: No. But I'm - but I will put to Councillor Young about some other matters relating to that allegation involve factual inaccuracy.

CHAIRMAN: But if he hasn't stated them, how can it be a factual inaccuracy on his part?

MR BARTLEY: The inaccuracy doesn't arise from that document, it relies - arises from some earlier and later documents.

MR BODDICE: Well, in those circumstances, I object because it's not part of the evidence and it's not alleged that the-----

CHAIRMAN: No.

MR BODDICE: -----the allegation was factually inaccurate and it is to seek to introduce something the Commission's not proposing to rely upon at all.

CHAIRMAN: No. I'm somewhat with you, Mr Boddice. The other documents; is this more of these newsletters or something or something that's been said by this witness somewhere else, are you suggesting?

MR BODDICE: It's - it's correspondence following a newspaper article based on that allegation.

CHAIRMAN: So it's in correspondence?

MR BODDICE: Yes.

CHAIRMAN: Addressed to?

MR BODDICE: Councillor Young. And from Councillor Young.

CHAIRMAN: To your?

MR BODDICE: To my firm.

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CHAIRMAN: So it's not - it hasn't even gone into the public arena-----

MR BODDICE: The - it deals with a newspaper article which is in the public arena.

CHAIRMAN: Mr Bartley; I'm sorry but I - I don't know that it can have sufficient sort of probity as to the credit of this interest that I should allow it.

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MR BARTLEY: Well, with respect, I haven't had an opportunity to show you or Councillor Young the documents. In my submission, they will go directly and without delay to matters in-----

CHAIRMAN: Would you be prepared to allow me to see the letters first and then-----

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MR BARTLEY: Yes.

CHAIRMAN: -----I could perhaps, look at them and make a quick assessment and if I then don't allow them, I'll forget them fairly quickly. I see so much material, I have no trouble forgetting material. And is the matter in the record of interview relating to the scene?

MR BARTLEY: Yes, it is.

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CHAIRMAN: You could sit down if you like while I just read these and if people would excuse me. Mr Bartley; was it the fact that - if you go to the second paragraph under that-----

MR BARTLEY: Mr Chairman, could we deal with-----

CHAIRMAN: -----item seven-----

MR BARTLEY: -----could we deal this matter in the absence of the witness?

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CHAIRMAN: Yes, yes, could you wait outside and not near one of the monitors?-- Yes, sir.

WITNESS STOOD DOWN

CHAIRMAN: I'm happy to go along with that. And there should be no publication of this interchange between Mr Bartley and myself by the media. I state that: The media will be listening in the media room.

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MR WEBB: Well, perhaps the camera should be turned off, Mr Chairman?

CHAIRMAN: Well, there'd be no publication of the sound. It says that-----

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MR BARTLEY: Mr Chairman; the-----

CHAIRMAN: -----it was initially a 61 lot subdivision before your client owned it-----

MR BARTLEY: Yes.

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CHAIRMAN: -----and later it went to 73-----

MR BARTLEY: Seventy-two, in fact. I think - I think the figure 73 appears in some places but-----

CHAIRMAN: Seventy-two?

MR BARTLEY: Yes.

CHAIRMAN: All right. Was it - was there an earlier approval for 61?

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MR BARTLEY: That appears from the council documents. My client-----

CHAIRMAN: It was before your client owned it?

MR BARTLEY: Yes. My client-----

CHAIRMAN: Yes.

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MR BARTLEY: -----wasn't aware of it-----

CHAIRMAN: But that's the only point that's being made.

MR BARTLEY: No.

CHAIRMAN: No.

MR BARTLEY: If I could explain it this way: The complaint initially deals only with that increase from 61 to 72. It was reported then in the Courier-Mail in terms which suggested that there had been special treatment given to my client as a result of donations being made and, of course, the Courier-Mail and the general reader did not have access to the complaints to the CMC nor the record of interview so the Courier-Mail reported that two companies that also donated-----

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CHAIRMAN: But, Mr Bartley; I'm sorry-----

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MR BARTLEY: Yes.

CHAIRMAN: -----I understand your point. I've read what was in the-----

MR BARTLEY: Yes.

CHAIRMAN: -----Courier-Mail. I understand that but that  
might be so but I've said before, we are not here to correct  
any inaccuracy that might have been given to anyone by a  
Courier-Mail article. I'm-----

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MR BARTLEY: No.

CHAIRMAN: -----only interested in any issue of credit that  
arises out of this-----

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MR BARTLEY: Yes.

CHAIRMAN: -----and on what you've shown me, there is no  
factual inaccuracy in what this witness has said. There-----

MR BARTLEY: What the-----

CHAIRMAN: -----was a 61 lot subdivision approval before your  
client purchased the land.

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MR BARTLEY: Yes.

CHAIRMAN: After your client purchased the land, he has  
pointed out, the factual situation that they gained an  
approval which had a larger number of lots.

MR BARTLEY: Yes.

CHAIRMAN: Now, that's a factual matter.

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MR BARTLEY: Yes.

CHAIRMAN: He has made no suggestion here that there was  
anything wrong on the part of Ingles-----

MR BARTLEY: In the-----

CHAIRMAN: -----in getting that. He then goes on to make the  
comment that at the time of the consideration of the second  
development application, there was no declaration with regard  
to possible/actual conflict of interest. Now, that's all-----

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MR BARTLEY: He goes-----

CHAIRMAN: -----just factual.

MR BARTLEY: No. He goes beyond that. When it's put to him  
that my client's consultants say in their report-----

CHAIRMAN: Put to him, where?

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MR BARTLEY: In - with the - in the letter. He's put to  
him-----

CHAIRMAN: Yes, but - all right, so he can-----

MR BARTLEY: It's-----

CHAIRMAN: -----he says, "Well, I disagree with some of the points you're consultants say. They haven't taken into account some of the constraints on the land." Look-----

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MR BARTLEY: And he-----

CHAIRMAN: -----I - I've worked in planning and environment work for years. I've worked in the Land Court for years. I've heard opposing sides put about the effect of development constraints. Different people can put different arguments. You might be right. He might be right. I'm not going to determine that-----

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MR BARTLEY: Well-----

CHAIRMAN: -----and, in my view, it's not of a significant factor that would reflect upon the credit of this person.

MR BARTLEY: Well, what he says is, "Here's a copy of the report that went to council," and that's the large enclosure with that letter of Councillor Young's of the 19th of August. He says in that letter that the conclusion that the 87 dwellings referred to by the consultants is unlikely, unrealistic even misleading-----

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CHAIRMAN: That's his opinion.

MR BARTLEY: And I want to put to him that the report that he has provided to my firm in response to the letter shows quite clearly that the number of lots were well within the allowable number of lots. Now, it goes to the credit of this witness-----

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CHAIRMAN: You - you-----

MR BARTLEY: -----that he's-----

CHAIRMAN: You disagree with his opinion.

MR BARTLEY: No.

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CHAIRMAN: No, I'm sorry, Mr Bartley, I won't allow that cross-examination.

MR BARTLEY: Well, with respect, my client has been subjected to publicity which paints him as somebody who's prepared to pay to get more lots than he's entitled to and that's-----

CHAIRMAN: Mr Bartley, your client has its rights in another jurisdiction. It can exercise or not exercise those rights as it likes. This is not the jurisdiction for it to obtain any satisfaction with respect to that.

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MR BARTLEY: But it is the jurisdiction in which the credibility of this witness - this witness who's come here, professing a high regard for the public interest and maintaining standards, who is prepared to describe the consultant's report is misleading in respect of the lot

densities, when it's perfectly plain from the Council's own report that it's well within the densities, then that's a matter that goes to his-----

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CHAIRMAN: Mr Bartley, I'm against you, Mr Bartley.

MR BARTLEY; All right. Thank you, Mr Chairman.

MR RADCLIFF: Mr Chairman, whilst the witness is out-----

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CHAIRMAN: Yes.

MR RADCLIFF: -----there is another matter I intended to raise with you in the absence of the witness. May I do so now?

CHAIRMAN: This is a convenient time then.

MR RADCLIFF: Yes, rather than - if you look at page 9, this arises out of the document which we've been referring to - dossier.

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CHAIRMAN: The dossier.

MR RADCLIFF: And this arises out of what Mr Nyst did yesterday, in - with respect to going over and over matters and raising an issue which is squarely in the transcript of corruption, pages 1701, 1702 and 1703 of the transcript.

CHAIRMAN: I'm sorry, I don't have the transcript.

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MR RADCLIFF: It is said - oh, well, Mr Nyst - you might recall; I don't need to go to chapter and verse of the transcript - Mr Nyst suggested that this conduct of dealing with the Councillors promising favours to developers by way of reducing the infrastructure charges was tantamount to corruption, and the witness responded in kind by saying, "Well, that's your words; that's not what I would call it; you might interpret it to be that." Mr Nyst, with the greatest respect to him, went on and on and on over this for an hour. Now, the point that I raise is this. I'm cognisant of your ruling that was made yesterday and it is squarely raised in pages 1531 yesterday - sorry, the day before - and in respect to my questioning, if I could just read this one section, I've said to you, after you had ruled that you would not be receiving - or, sorry, Mr Mulholland said he will not be using the document we call the dossier, and you - well, you applauded him for that saying it was full of irrelevancies.

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I then said, "Therefore it may be appropriate that we invite you to make a ruling in respect of its content as to whether it is relevant at all to these proceedings," and your response was:

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"Well, we'll not be putting it in evidence so it will not be relevant. It will not be part of the evidence and as not being part of the evidence it will not be able to be relied upon in any way in any report that comes out of this hearing."

I'm aware of that ruling but now as a consequence of what Mr Nyst has done, I'd ask you to look at page 9 of the dossier and the sentence is right at the foot of the page-----

CHAIRMAN: I'm aware of that sentence, yes.

MR RADCLIFF: -----and if you are able to say now once again that you rule that that sentence is irrelevant and will not be considered then I won't ask any further questions of Mr Young.

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CHAIRMAN: Yes, look, I don't - I don't like the term irrelevant. The mere fact is that sentence is not in evidence before this Commission.

MR RADCLIFF: Yes.

CHAIRMAN: And if it is not in evidence it will not be relied upon. The part-time Commissioners who will sit with me to determine the content of the final report will not see it, and I can assure you that I will not be placing evidence on it. It is a sentence that is baldly stated with absolutely no evidence to back it up. It's a hearsay statement that has absolutely no weight and it will not be relied upon because it will not be in evidence.

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MR RADCLIFF: I then repeat, Mr Nyst didn't tiptoe through the daisies, he stomped all over them.

CHAIRMAN: Well, with respect, he didn't ever refer - I'm not cavilling with a lot of what you said - but Mr Nyst never referred to that particular sentence. He was cross-examining about the infrastructure charges matter upon which evidence was led by Mr Mulholland from the witness. So Mr Nyst was entitled to cross-examine on the infrastructure charges matter.

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MR RADCLIFF: I say one-----

CHAIRMAN: Insofar as his use of the word "corrupt", one wonders why - you know the old adage, don't ask a question too many - one wonders why sometimes questions get asked but I can't tell Mr Nyst how to conduct his cross-examination.

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MR RADCLIFF: I conclude by one point, Mr Nyst concentrated on the heading immediately above this paragraph, and it is the section within which the infrastructure charges flow.

CHAIRMAN: Yes.

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MR RADCLIFF: I think I'm satisfied now that you've - but perhaps it might be appropriate, with the greatest respect - this has been prevented from being published by your recent order. It may be appropriate that I renew my application or that you authorise that what we have said now can be published because it - the perception from yesterday's cross-examination in the eyes of those who sit in the other room is that this is



- and it's being publicised as that in a local paper called-----

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CHAIRMAN: Is it? I haven't seen it.

MR RADCLIFF: Well, I can give you that as well but it's suggested that this is - and now, as a consequence of directly what Mr Nyst has said, this is a corruption inquiry.

CHAIRMAN: Mr - if you desire-----

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MR RADCLIFF: Yes.

CHAIRMAN: -----our exchange that you and I have just had to be available for publication then I will-----

MR RADCLIFF: I do.

CHAIRMAN: -----I will withdraw any suppression order with respect to that. That only applies to Mr Bartley and my exchange.

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MR RADCLIFF: Yes, thank you. If you let that be known to the press, then at least hopefully we'll have a proper publication of what the intent of this inquiry is. Thank you. I won't be asking any further questions of Mr Young.

CHAIRMAN: Thank you. May-----

MR BARTLEY: Mr Chairman, could I ask that you withdraw the suppression order in respect of our exchange as well. In asking for the witness to go outside, I was really only trying to avoid giving him a preview of the questions that I intended to ask him. I didn't - I didn't need our exchange to be suppressed.

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CHAIRMAN: I can see - can you see any difficulty in-----

MS LODER: No, no, I see nothing-----

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CHAIRMAN: No?

MS LODER: -----in the exchange that needs to be suppressed.

CHAIRMAN: All right. I accede to your request, Mr Bartley.

MR BARTLEY: Thank you.

CHAIRMAN: I thought I was being of assistance to your client, Mr Bartley, but if they don't want it, I'm quite happy to remove it.

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MR BARTLEY: No, the fact that there's another side to the story is well and truly in my client's interests to be published. Thank you, Mr Chairman.

CHAIRMAN: Thank you, Mr Bartley.

PETER JOHN YOUNG, RECALLED:

CHAIRMAN: Thank you, Mr Young. Mr Debattista?

MR DEBATTISTA: Thank you, Mr Chairman. I've been asked to move this microphone so that there might be clearer transmission. Mr Young, I'm here representing Councillor La Castra today and on that basis there are some questions I need to ask you?-- Thank you.

10

You allege that Councillor La Castra, as I understand it, is a member of what you term a pro-development bloc; is that the case?-- Yes.

And you go further than that and allege that he is in fact an organiser of that?-- I don't believe I'd do that.

20

Well, can I ask you to turn to page 3 of your dossier in that case, please. If you can turn to, please, the heading which begins "a highly organised" and if you can move to the paragraph which commences immediately underneath the three dot points; if you can just read that to yourself, please?-- Yes. Thank you.

Did you read that to yourself?-- Thank you.

30

All right. I'll ask you the question again if I can. You do in fact allege that Councillor La Castra is an organiser of that bloc?-- No, that's not what this statement is about at all.

That's fine. If that's your answer, that's fine. As I understand it, you in fact complain that all the existing Chairs of Council committees as of today are members of a pro development bloc.

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MR BODDICE: Well, there was - subject to one-----

CHAIRMAN: Yes, there was Councillor Sarroff.

MR DEBATTISTA: I'm sorry, Mr Chairman. My question is as of today on my understanding Councillor Sarroff is no longer Chair of the Finance Committee.

CHAIRMAN: Well, Councillor Molhoek is-----

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MR DEBATTISTA: Yes.

CHAIRMAN: -----is Chair.

MR DEBATTISTA: I don't believe that the witness has made any concession in respect to Councillor Molhoek.

CHAIRMAN: Okay. Just - can someone tell me was Councillor Molhoek appointed the Chair immediately after the election or did he assume that later?

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MR DEBATTISTA: My understanding, Chair, and I can perhaps assist is that as I-----

CHAIRMAN: Perhaps the witness might be the best to tell us that.

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WITNESS: Immediately after the election Councillor Sarroff was reappointed to the position of Chair of Finance and at a later point in time, Councillor Molhoek, when Councillor Sarroff resigned from that.

CHAIRMAN: I see. It was-----

MR WEBB: It was immediately - I can put it in point of time - immediately after the first budget was handed down that Shane - Councillor Sarroff ceased to be and he actually resigned after his budget was published.

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CHAIRMAN: Thank you, Mr Webb.

MR DEBATTISTA: Thank you, Chair. I might ask them each individually, in fact, if that's all right. You allege that Councillors Molhoek, McDonald, Shepherd, Grew, Hackwood and my client Councillor La Castra are all members of this bloc. That's the case, isn't it?-- I'll just take myself to wherever that may be referred to. Can you draw me to the reference to Councillor Molhoek, please.

30

I certainly can. What I can do is I have a copy of your transcript from yesterday, so I can hand a copy up to yourself and also to the Chairman. It's page 1553, Chairman. I'm not sure if you have a copy. I take you, Councillor Young down to the paragraph which commences at line 40. Roughly midway through that paragraph there is part of a sentence which commences, "And it became apparent that each person associated with the Lionel Barden Trust Fund or that pro development bloc was to be given a chairmanship"?-- Yes, and I think I have qualified that at a later point in time, sir.

40

You certainly qualified that to exclude Councillor Sarroff. Do I now understand that you are qualifying it to exclude Councillor Molhoek?-- I think it was confirmed that I also excluded Councillor Betts - that Councillor Betts-----

Well, Councillor Betts isn't a Chairman of the committee, is he?-- That's correct.

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MR BODDICE: Commissioner, could I just add, the start of that sentence is, "Well, immediately after the election at this post election meeting" and that's the context in which these discussions occur. Well, on the evidence, Councillor Molhoek was not a chair at that time.

CHAIRMAN: Yes.

MR DEBATTISTA: Well, the witness can resolve the difficulty very simply. Does he allege that Councillor Molhoek is a member of that bloc?-- I would personally classify Councillor Molhoek as someone who's more inclined to waver, but on a number of key planning matters I would consider his position to be pretty much aligned with the core, if you like, of the bloc.

Thank you, Councillor Young. Now, as I understand it, you have no evidence to suggest that my client received any funding from the Lionel Barden Trust?-- None whatsoever.

10

You also have no evidence to suggest that he ever donated to the Trust?-- No evidence.

You have no evidence to suggest that he was involved in the distribution of any monies from the Trust?-- No evidence.

And you have no evidence that he ever told any person that if they received monies from the Trust, that they would be required to vote in a certain way?-- I have no evidence of that.

20

Thank you. Now, a particular document has been put to you a number of times and - it is the document with the voting analysis table on it. I don't want to labour the point a great deal, but I note that you were asked a series of questions about it yesterday, by Mr Nyst, I believe, where he questioned you about your analysis of that particular document. Do you recall that yesterday?-- Well, I recall that questioning in a broad sense, yes.

30

Certainly. Well, I only have the one copy of the transcript from yesterday, so I apologise for that. But I'd just like to read out a portion of that exchange and you can tell me if that sounds right or wrong and if you've got a problem with it I can hand you the transcript and you can see if you agree with my reading?-- Thank you.

40

Mr Nyst says - and this is referring to Councillor McDonald, "Well, was that right, that she votes up to 99 per cent of the time with the others?"

MR BODDICE: Page?

MR DEBATTISTA: I'm sorry, at 1685. It's just below line 40 - around line 50, I'm sorry. Mr Nyst's question was, "Well, was that right, that she votes up to 99 per cent of the time with the others?" And your response was, "Well, even if she votes one per cent of the time, that's up to 99 per cent of the time, but" and then Mr Nyst interposes by saying, "Yeah, but it's a bit misleading isn't it" - there's some dashes and somebody was speaking, where someone says, "reality" and then your response is, "No it's not misleading at all." Do you recollect that?-- Yes, I do.

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All right. You don't require to look at the transcript of that?-- I don't think so, thank you.

1

You're content with my reading?-- Yes.

Do you maintain that stance, that it's not misleading to characterise Councillor McDonald's voting patterns in that way?-- Characterise her voting patterns in that way?

By saying that she votes up to 99 per cent with members of the bloc?-- I don't believe I was trying to mislead the Minister for Local Government whatsoever.

10

CHAIRMAN: Mr Debattista, the statement was not just confined to Councillor McDonald, it was these six, seven, or however many it is, vote together up to 99 per cent and that is true with respect to some of them, it's not - Councillor McDonald's never went up to 99 per cent, some of the others did.

MR DEBATTISTA: That's so, Chair. It's really the point that I wish to put to this witness. I can make the point this way. If I were to say to you that Councillors La Castra, Crichlow, Sarroff and Young voted together up to 87 per cent of the time, that would also be factually correct based on that, wouldn't it?-- I don't have the document in front of me, sir. But if they're the correct figures, then I'm not denying that that - you could make that assertion.

20

All right. And just take a moment to look at the document again and see if you do agree with my calculation?-- Sorry, who were those councillors, please?

30

Certainly. Councillors La Castra, Crichlow, Young and Sarroff.

CHAIRMAN: Well, we can speed it up by saying that if the figure shows that, he agrees with it, whatever the figures are he will agree to.

MR DEBATTISTA: And you would accept then that that is not misleading as a characterisation either?-- It depends what context you want to put it into.

40

All right. So it's misleading - it could be misleading in that context but not in the context you put earlier. Is that right?-- I believe that if I was to present the information that you just did to me to the Minister, that would have no relevance whatsoever.

Councillor, can I ask you to take a look at this. This is an extract of your evidence, not from yesterday but from the day before, I have a copy for the Chairman also. It's at page 1567. I've handed to Councillor Young, I should note, pages 1566, 67 and 68, the second of those pages I commenced with. You've noted that I've highlighted that, Councillor Young, in two colours?-- Yes.

50

All right. Can you just read to yourself - I'm sorry. I'm just going to read to you the section in blue, which is, "It was not in the context of the Planning and Environment Appeal that I was pursuing, it was never offered as a bribe, it was never, you know, the suggestion of there being a bribe is quite ridiculous"-- Mmm.

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You're referring - page 1567 - you're referring there to the suggestion that either Mr Fish would buy your house for a million dollars as a bribe in connection with your appeal was ridiculous. That's right, isn't it?-- Would you ask me that question again. I just want to get it right. Sorry.

10

Sorry, well, perhaps we could clarify it by going over the page first, you'll see there's another section which is highlighted which says, "I can see why he would - I can't see why he would have been tempted to offer a million dollars for my property if I should settle the appeal. It's just - it's preposterous and it never happened." Would you agree there that you're talking about the suggestion that a bribe of him purchasing your property for a million dollars to settle the appeal is preposterous?-- It is a preposterous suggestion to make in a - in a - as a sensible thing at all. If - if there ever was a suggestion around the million dollars I'm - my position has always been that that's completely ridiculous.

20

Can I just ask you to read to yourself the section I have highlighted in pink on the second page?-- Yes.

Now, you would agree, wouldn't you, that during the course of this Inquiry both the Chairman and Mr Mulholland have given you where necessary every opportunity to explain yourself?-- Yes.

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And to make yourself plain?-- Yes.

And you'd agree in fact also that where you felt it necessary as indeed you did this morning during Mr Nyst's evidence you have not been reticent about speaking up to make sure that you are clear and understood?-- Well, I'd have to say that in regard to this particular conversation or conversations that occurred seven years ago my memory's pretty stretched and I've done the best that I can and as I have with every other thing that's been put to me.

40

Certainly. But wherever you felt that there's ambiguity or concern you've attempted to clarify that, haven't you?-- I have.

MR BODDICE: Can I ask what is this second paragraph that he's been asked to read? We don't have the luxury of it being colour coded.

50

CHAIRMAN: Oh don't you? It's the part-----

MR BODDICE: It's just the line, I just need to know the line.

MR DEBATTISTA: I apologise to Mr Boddice.

CHAIRMAN: Just have a look at that and then it can come back.  
And for the record-----

MR BODDICE: Is it blue or pink we're looking at?

CHAIRMAN: Pink.

MR DEBATTISTA: Pink at this stage.

CHAIRMAN: Mr Debattista, it might be best if you read into the record the lines so it can be understood for the record which part.

MR DEBATTISTA: Certainly. For the record the lines I've highlighted are, "I said to him, 'Look, you and I, John, we just don't get along. This - we're always going to fight about stuff. The best way we can deal with this is just to get away from each other.' As I said, he was - he had an interest in the property adjacent to mine. I said to him, 'John, I'll buy your properties. All I've got is \$600,000, I'll give you that or you buy mine for a million.'" "

MR BODDICE: And add the next sentence please if it's going into the record.

MR DEBATTISTA: Well-----

MR BODDICE: It was not in the context of the planning and environment appeal that I was pursuing.

CHAIRMAN: Well, that's-----

MR DEBATTISTA: Well, with respect I've highlighted that area.

CHAIRMAN: He was just reading into the record the part in pink which is what he was referring to so Mr Debattista was doing what I'd asked him to do.

MR DEBATTISTA: Yes. I might note that I've already referred the witness to that section earlier on. Now, Councillor Young, when you were under cross-examination by Mr Nyst yesterday during his questioning about this matter you proffered the explanation that the offer made by you for him to purchase your property for a million dollars wasn't a credible proposition?-- Well, I can't see that I ever would have made it to him as a credible proposition. It would have been a challenge if anything just to say you know you and I have got issues, they're not going to go away.

Mr Young, you've had ample opportunity to explain yourself in relation to this matter and yesterday when Mr Nyst put the question to you was the first occasion that you had ever offered the explanation that it wasn't intended to be a credible proposition and I put it to you that that is because that is an explanation that you invented on the witness box?-- I'm not inventing anything at any time, sir. What I'm trying to do is recall to the best of my ability conversation or

conversations that occurred seven years ago. I'm trying to recreate and that's - that's a very difficult and it's a treacherous thing to do but-----

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I'm not asking you to recall the details of the conversation, I'm not talking about the details of the conversation. You were asked earlier about this conversation and you made a statement about it. You'd never stated at that time that you didn't regard it to be a credible proposition. The first time that that occurred was subsequently when Mr Nyst asked you a question about it. I'm putting it to you, I'm not asking for any - anything further from you. I put it to you that the reason for that is because you invented that explanation for this whilst you've been sitting there on the witness stand?-- I'm not inventing anything.

10

All right. Thank you, Councillor Young. Councillor Young, do you recall ever having been censured by the current Gold Coast City Council?-- Yes - current Council?

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I'm sorry, by the prior Gold Coast City Council?-- Yes, I was.

Do you recall that that was because you made certain allegations against a former Councillor whom you refused to name?-- I don't believe that that information was ever made public that in fact it was a former Councillor and in fact the allegations weren't about the former Councillor per se, they were about the rezoning of his property.

I think I'll accept my characterisation if that's all right, Councillor Young?-- Sorry, what is your characterisation?

30

My characterisation was that you made certain allegations about a person who was a former Councillor?-- Well, where are those allegations?

Well, Councillor Young, I've asked you if you recall that that is what you were censured for. Your answer is either yes or not?-- No. No. My - no, that's incorrect.

40

But you do recall being censored by Council?-- Yes.

All right. Censured, I'm sorry. And do you recall that the motion to do that was moved and seconded by Councillors Power and La Castra?-- I recall it was moved by Councillor Power, I don't recall who the seconder was.

Do you recall that Councillor La Castra voted for or against that motion?-- I don't recall.

50

You don't recall?-- I would suspect that he did but I don't recall.

Well, I want to suggest to you that the reason you include Councillor La Castra in this alleged bloc of persons against you is because you're annoyed that he voted to censure you from - in Council?-- Oh well, that's just a ridiculous allegation I'm sorry.



I also want to suggest-----?-- Fanciful.

I also want to suggest to you that it suits your political purposes for there to be an alleged bloc in this Council?-- I reject that.

I suggest to you that you believe it wins you votes to rail against an alleged bloc in this Council?-- I reject that.

10

I suggest that it suits your political purposes to claim that the environment in which you work is hostile at Council?-- I reject that.

All right. Well, Councillor Young, I'd like you to take a look at this material in that case. I do have copies for those at the Bar table. Councillor Young, both of these documents are election material put out by you, aren't they?-- They are.

20

And you'd agree with me that the purpose of putting out election material is as a general rule to win yourself votes, wouldn't you?-- I would put it more than that, sir.

Well, you don't put it out to lose votes for yourself, do you?-- I'd say that it's to inform the community so they can make an informed decision.

Would you turn you the document which says, "I'm proud to say we have achieved great things for Division 4," it's the document with the two large photographs on the top of it. If you'd turn to the second page of that there are a series of propositions listed there interspersed with copies of newspaper extracts?-- Yes.

30

And after each of those propositions you use the words, "Them for, me against," or occasionally, "Me for, them against," or some variation thereof, don't you?-- That's correct.

And, in fact, at the top of that document, you say, "Here are some issues where my position has been different to that of some neighbouring councillors."?-- Mmm.

40

Now, when you say that, you're referring really to Councillors Power, La Castra and Shepherd, aren't you?-- I'd say pretty much so, yes.

All right. So, in actual fact, your purpose in this document is to establish that Councillors Shepherd, Power and La Castra are members of a bloc, a them whom you are against; isn't that so?-- No, it's not.

50

All right. You reject that interpretation entirely?-- You can make that interpretation; it's not the intent of the document.

All right. And I just note also in respect of the other document-----

CHAIRMAN: Is the against and for there those who voted for a motion and those who voted against a motion?-- That's correct, or against that outcome.

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Or resolution, or whatever it was?-- Yes, sir. I mean, I just need to make it clear: this is a publication that was distributed within Division 5, to the electorate of Division 5, if you like.

MR DEBATTISTA: To people who can vote for you, that's right, I understand that perfectly well, Councillor Young?-- Yes.

10

Perfectly well. And just - sorry, just on that document also, when you say them, I take it you include Councillors Shepherd, La Castra, Power - are there any other councillors you include?-- It wouldn't necessarily be accurate to say that in every sense where the term them is used it may be referring to those three councillors.

In respect of the other document-----?-- It may be two of them or one of them or-----

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In respect to the other document on the second page, you have a heading which states the reality?-- Yes.

And the second line of that, you indicate in a hostile political environment?-- Yes, it certainly was.

Well, once again, Councillor Young, I suggested to you earlier that it suits your political purposes to say there is a hostile political environment?-- There was a hostile political environment and I'm just relaying the truth to the community.

30

But it suits your political purposes to say so, doesn't it?-- In what way?

Well, Councillor Young, you're the one who has been elected. It's your election material. You're the one canvassing for votes and you're the one who includes the statement. It suits your political purposes, doesn't it?-- I think it's - what I was trying to relate to the community is that we need to put a lot of effort into achieving those outcomes and that effort would have to continue. If people chose to - if you want to interpret that as being for my political purposes, it's not the intent of writing it.

40

All right. Well, Councillor Young, finally, I just want to suggest this to you: you've made a lot of the patterns in which other people vote, haven't you?-- Some of the issues that are related - relayed to the community in this document regarded social and infrastructure, for example-----

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I've moved on from that document, Councillor Young. I'm sorry-----?-- Which is important to the community.

-----Mr Chairman, I should also formally tender those documents.

CHAIRMAN: Yes. They'll be Exhibit 247.

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ADMITTED AND MARKED "EXHIBIT 247"

MR DEBATTISTA: What I want to suggest to you, Councillor Young, is very simply this: at the end of the day, you don't know why Councillor La Castra votes against you on any range of issues, do you?-- I don't know what's in his mind at all times, no.

10

That's right. Councillor La Castra might be sitting there and when an issue comes up, he might think - I don't say this is his position, but he might think this is that bloke who we had to censure in Council the other day, this is the day who's always calling press conferences with Eddie Sarroff and Dawn Crichlow to denounce the Council; I don't think this guy-----?-- Is this a speech or a question?

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-----has got very good judgment, I won't vote for it. He could be thinking that, couldn't he?-- He-----

CHAIRMAN: I won't vote for him?

MR DEBATTISTA: I'm sorry?

CHAIRMAN: Won't vote for him or with him.

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MR DEBATTISTA: Won't vote with him, with him.

WITNESS: He could be thinking any number of things. Sometimes he actually expresses what he's thinking.

MR DEBATTISTA: Indeed. Thank you, Chair; I have nothing further.

MR NYST: Sir, I might just, if I may, tender that document; this is the Warren Rowe report on the - the other version of it. I've been taking my markings off as best I can, but there are still some markings. All the markings are mine except for the signature at the end.

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CHAIRMAN: Right. Now, that was Exhibit 206, the other one. We'll make this 206A.

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ADMITTED AND MARKED "EXHIBIT 206A"

MR WEBB: It might be appropriate, I've obtained instructions on that and it might be appropriate if at this juncture I just mention what those instructions are: that 206A was a draft which was sent to those persons to whom it's addressed and was

apparently inadvertently signed and the 206 was intended as the original. You would understand that the number of documents that are coming through an organisation like this, errors can occur, as indeed can occur with this Commission. For instance, we saw there was questioning about a matter which was not public made of one of the witnesses that I adverted to the other day. These things occur. We all know that.

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CHAIRMAN: Mr Webb, things can happen. I don't doubt that.

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MR WEBB: The signature should not have been put on that. That was inadvertent and it was only a draft and if you read it carefully you'll see that there's really nothing in it between that and the original, a change of about two words.

CHAIRMAN: Well, the documents will speak for themselves. Mr Webb, do you desire to ask any questions of this witness?

MR WEBB: I do, but my learned friend, Mr Nyst-----

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CHAIRMAN: You seem to have a marked reluctance, Mr Webb, to get to your feet.

MR WEBB: No, I'm always-----

CHAIRMAN: I'm pleased to hear it.

MR WEBB: I'm always happy to ask questions if there's any point to it, and I do have some which are pointed, I hope.

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CHAIRMAN: Thank you, Mr Fynes-Clinton?

MR S FYNES-CLINTON: Councillor Young, I'm representing the Local Government Association of Queensland and I just wish to explore a couple of matters that concern general issues of concern to councils throughout the State?-- Yes.

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The first one is this: on the first day of your evidence, there was some discussion between yourself and counsel assisting about the terms pro development, anti development, and you made a response to the effect that you consider yourself a pragmatic or middle of the road representative, and then you went on to say, "But I certainly have some problems" - and this is by the way on transcript page 1555 at the top, "But I certainly have some problems with the number of developments that we are approving. So, it's been painted, I've been painted as a greenie and anti development and they're claims that I reject." Do you recall that?

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CHAIRMAN: I don't know that the witness said with the number or whether he said a number.

MR S FYNES-CLINTON: Mr Chairman, in the transcript, line 1 page 1555, "But I certainly have some problems with the number of developments that we are approving."?-- That wouldn't be my

recollection, Mr Chairman. It's not the number it's some of them and-----

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CHAIRMAN: Yes. That's certainly my recollection, that the witness spoke more about a number rather than the number as being a lot.

MR S FYNES-CLINTON: Well, Chairman, I was absent that morning. I went solely from the transcript.

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CHAIRMAN: Of course.

MR S FYNES-CLINTON: If that's the witness's evidence, then I'll move on.

CHAIRMAN: Yes. I don't know whether anyone else has any particular recollection on that but that was my general understanding of the witness's evidence.

MR WEBB: Well, I may have misheard; I thought he did say the number. I'm just looking to see if I've got a note of it.

20

WITNESS: Mr Chairman, can I offer-----

MR WEBB: He may have meant to say a but he can correct that.

WITNESS: Yes, it would have made no sense for me to say the number. That's completely outside of Council's control and not an issue but I would think it would have been about a number of them and that's certainly what was in my mind.

30

MR S FYNES-CLINTON: That was the issue to be questioned on, so we'll move on. That's fine. That you for clarifying that?-- Thank you, sir.

The second issue relates to the complaint by Councillor Shepherd asserting that you failed to declare a material personal interest; you recall that?-- Yes.

The facts were - as I understand it there was a developer appeal against the Council's decision on that matter; correct? Or was it your appeal against the approval, that wasn't clear in the transcript?-- It was a developer appeal against Council's refusal and I was a respondent.

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And you joined as a respondent?-- That's correct.

And you indicted that. And you remained a party to the appeal on the Court record when the matter came up then in 2004?-- Yes.

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Your purpose for being in the proceedings just in short terms was what, your reasons for being a party?-- I don't recall all of the issues-----

Just generally?-- -----but I think the final - it would have been principally two I think, one was the original layout and the intensity of the development and I think there was a

proposal for a number of units or town houses or things of that nature so it was - and that - how that didn't relate to the planning instruments or documents and the second - and the thing that finally - it finally boiled down to - because - if I might explain - the applicant modified their proposal somewhat during the process of those intervening years so ultimately the consent order dealt with a very different plan of development and the one issue that prevailed for me to pursue I believed was this issue of a wildlife corridor connecting the Coomera River to the Nerang State Forest and a road that was to cross over that.

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I take it from your evidence that at least in general terms you were happy enough with the final resolution?-- Well, I remember feeling that Council could have been more stringent.

I suggest to you this, that if the final resolution had been much more favourable to the developer that you would have then had a difficult decision to make, whether to continue your appeal or withdraw it, that that would have been a difficult decision for you to make?-- If the Council's decision was to be more?

20

Favourable to the developer and directly contrary to all of the matters that you were trying to pursue?-- And sorry the rest of the question - sorry, again please, Mr Fynes-Clinton.

All right. I'll rephrase it. You indicated that although it wasn't perhaps perfect that you could live with the decision actually made?-- Yes.

30

My suggestion was if the decision which the Council had actually made to settle that appeal was far more favourable to the developer then you would have faced a difficult choice as to whether to proceed with the appeal or simply walk away from it?-- You could say that but - all right, you're putting a speculative proposition to me and I would have to say, yes, that may be the case.

And certainly - I should make clear for the record that it's in the evidence, you did declare an interest at the committee meeting so I'm looking at the issue of principle. My final question on that point is this, given your previous answer you'd agree with me that if it was your choice to go ahead with the appeal some significant expenditure of your personal time and resources would have been required to fight that appeal, wouldn't it?-- As I indicated that - to counsel assisting - that may have been - you might have classified that as a potential risk to me in terms of a benefit or dis-benefit as defined in the Act, yes.

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That's as far as I need to take it, I was just trying to clarify the facts of the matter from your perspective. Two other matters. When Mr Radcliff was questioning you he put the proposition to you that yourself, Councillor Sarroff and Councillor Crichlow were like-minded and you rejected that proposition as you've consistently done but you did make the statement transcript page 1602 that we have a similar

philosophy about some major issues?-- Yes. That sounds right sir.

1

But it's your position, isn't it, that yourself, Councillor Crichlow and Councillor Sarroff are independent Councillors, you make independent decisions, you think independently?-- Yes, most certainly.

It'd be true to say, wouldn't it, that at least in terms of what one can see from the outside the members of the so-called bloc appear to have a similar philosophy about some major issues?-- I don't argue with that.

10

Do you accept or reject the proposition that some or all members of the so-called bloc are nevertheless independent thinking and voting Councillors?-- I think that they were probably - some of them were probably chosen because they had a similar philosophy. As to whether or not they exercised their independent train of thought on every matter I couldn't answer, sir.

20

You just don't know really, do you, because it's in their own mind, isn't it?-- I hope so.

And you've got no direct evidence that any of them act as puppets that don't vote their own mind on issues?-- I have no direct evidence of that, no.

Just one more aspect of that very quickly, this is page 1603 of the transcript. There was some discussion between yourself and counsel assisting about party politics and voting party lines and you made this observation, this is about line 40 page 1603, "People have and do exercise their right to cross the floor and I think, you know, the recent - what we do see on occasion in my opinion at being judged or this opinion being formed from being present at many of these meetings is that there is the ability through numbers to allow someone to vote against a matter, allow someone to be seen to vote contrary to the rest"?-- Yes.

30

Councillor Young, is it your evidence that you believe that on some one or more occasions an elected Councillor of the Gold Coast City Council has voted contrary to their honest view of what the correct decision is for some personal or political purpose?- That is my opinion, yes.

40

Opinion and that's fine. Do you have any instance of that where you can name a Councillor or a particular matter - just one if you have one?-- I would suggest to you that the Sunland matter that has been the subject of a lot of attention here may be one of those.

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I'll move on from that, thank you. Just two more things. You had an exchange with Councillor Betts about the concept of ecologically sustainable development. When you were having that exchange, when you used that term, were you referring to the principles of ecological sustainability in the Integrated Planning Act or something else?-- I wasn't being specific, Mr

Fynes-Clinton, as to what the sort of information might have been or the principles, I would have been thinking in a much broader sense but certainly-----

1

Just very quickly, the Act - the Integrated Planning Act as you're aware defines ecological sustainability for the purpose of town planning assessment, doesn't it?-- Yes, and there are other Acts - Commonwealth Acts for example - that have other definitions.

10

Well, that's true but unless something triggers the Commonwealth's environmental legislation - which is only the biggest projects around - in Queensland development applications are assessed against the Integrated Planning Act and sometimes the Environmental Protection Act, the Commonwealth legislation doesn't apply normally, does it?-- Not normally.

Section 1.3.3, Ecological Sustainability in the Integrated Planning Act is a balance that integrates (a) protection of ecological processes and natural systems at the local, regional, State and wider levels; (b) economic development; and (c) maintenance of the cultural, economic, physical and social wellbeing of people in communities. Does that ring a bell with you?-- It does. It's certainly not the reference I was making - you know, I wasn't making specific reference to that document because I'm aware that the term "balance" as it's used in this Act is probably completely out of kilter with most other legislation which seeks to seek a - the integration of rather than the balance and it's a topic of some considerable discussion.

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30

Thank you. Effectively you've answered my question before I asked it so I'll move on from that. There's really only more question and that's this - I'm going to put something to you but please, if it's untrue or you don't agree, say so clearly: I suggest to you that one could take from the whole tenor of your evidence that you have a personal view that the public or community interests and the interest of major developers are things which are always opposed by definition. They can never coincide?-- No, it's - I would reject that. In effect if I might expand on that - just shortly after the election I recall writing in my newsletter that an objective of mine would be to try to bring the two, what appear to be disparate, camps together where we have the community voting booth strongly for some candidates who had received no funding from development interest and those candidates that had attracted very significant development funding had only skimmed through by the skin of their teeth, if you like, in many instances. And I saw that as a real objective of mine in a personal sense and I made that public - that somehow we've got to bring these two important groups of our city together so that we're all singing off the same sheet - and I'm just paraphrasing, I'm sorry, but that's my philosophy.

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So just to complete that, at the moment in the context of Gold Coast City Council do you consider that the interests of major developers and the public of community interest coincide or do



you consider that at the moment they're going different ways?-- It differs from case to case. I see some excellent examples where the two do coincide and I see some tragic examples where they are so desperate it is almost criminal.

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Yes, thank you, Mr Young.

CHAIRMAN: Thank you, Mr Fynes-Clinton. No one else is standing, Mr Webb.

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MR WEBB: The last man standing, apparently, seem to be cut down, no doubt. Mr Chair, you made some rulings concerning the document that was published of the Minister and the document that was published on the web site. They're one and the same documents but parts are cut our of the web site and that means that we're not to go through those in detail and I respect of course your ruling because this is your inquiry but I just wish to make this statement: that so far as those documents are concerned where they contained criticisms of the CEO or his staff in so far as those assertions are made, my instructions are they're false, the allegations and the assertions are made on the web site similarly to that effect are false and I won't be going into any of those except in so far as they've been touched on already.

20

I just want to clarify, before I get into my questioning proper, an answer that you made to Mr Battista - and that's - he was putting to you - and if you don't mind I'll just paraphrase what I understand he was putting - that you were censured on one occasion because of statements you made about a former councillor?-- That was the proposition he put to me and I don't agree with it.

30

Well you - and I want to be - see if you're being a little bit - if you find this offensive I apologise but it's the only way I can put it - a little cute because are you drawing a distinction between the fact that you didn't identify the person who was a former councillor when you were making the allegations? Is that the point you're making?-- No, it's more than that, Mr Webb. I think the document in which I made reference to a planning decision has already been tendered and in it I don't mention any property, I don't mention any person, I don't mention any standing of the property owner - there's no mention whatsoever that might lead to the identity of the people involved being declared-----

40

This is exactly -----?-- -----so how are you saying - no, I'm not being cute.

This is the point I'm getting to exactly: you were in fact identified - in your mind you knew who you were speaking about and it was a former councillor?-- I knew exactly what property and which matter I was referring to.

50

And it was a former councillor that you were referring to?-- I've never admitted to that but I will-----

But you were under - look-----?-- I have never said that.

-----you are being cute. You're being cute with me?-- I've just said, "I will." You didn't hear, Mr Webb.

And you were being cute with Mr Battista?-- I don't see that.

You were answering his question carefully to deny that you were referring to a particular councillor which you've now admitted because you didn't identify the councillor in your document?-- I have never identified that councillor and I-----

I see. Well let's move on?-- -----and I think that's the assertion that was being made and that's when I had to reject.

Well now, I'll try and ask-----?-- I'm quite happy to - sorry.

-----my questions in a -----

CHAIRMAN: Mr Webb, the witness hadn't finished answering your last question.

MR WEBB: Oh, I see, yes. I'll have to be ready for that?-- I think -'d like to say two things about that censure motion: one is it was - the second part of it is ultra vires. It makes reference to the fact that I hadn't referred the matter to the appropriate authority and I certainly had - that being the CJC, as it was then. And the second matter is I'm quite prepared to provide to you, this hearing, right now, all of the information pertinent to those claims. I can back them up, thank you.

Anything else?-- No, thank you.

Thank you. Now, you said to one of the former questions of you this morning, when being asked about the formation of the committees whether you were asked or whether you volunteered it, "I do not now remember" but you suggested that the selection of the committee Chairs and the committees was rehearsed. That was your wording?-- Yes.

Okay. You do accept that you said that?-- Yes.

Right, let's move on. Are you suggesting it was rehearsed by my client, the CEO?-- No, Sir.

So you make no - or by any council officer for whom I'm also appearing?-- No, Sir.

So someone else had had a dress rehearsal somewhere?-- Yes, the councillors.

Right. Let's go on.

CHAIRMAN: Mr Webb, I never gave you leave to appear on behalf of every council officer. I gave you leave to appear on behalf of the CEO.

MR WEBB: And he has the responsibility, as I pointed out to you in my lengthy submission, for all of the council officers and so for appearing for him I also have to protect those for whom he has responsibility.

1

CHAIRMAN: Mr Webb, I gave you leave to appear of the CEO.

MR WEBB: Would you now extend that leave, Mr Chairman?

CHAIRMAN: Well if you want to seek leave to appear for others you can put in a written submission setting out the reasons why those other people need leave.

10

MR WEBB: I'm-----

CHAIRMAN: I do not necessarily see your client, the CEO's, interests being totally at idem with every council officer. It might be, it might not. I will consider separately an application for you to appear for any individual council officer. I am not - have not given you leave to appear for every council officer.

20

MR WEBB: Mr Chairman, you are well aware, I would suggest with respect, that Mr Dale Dickson, as CEO, is responsible. The legislation says so.

CHAIRMAN: Of course.

MR WEBB: I've referred you in detail to that and I extended submission-----

30

CHAIRMAN: But that doesn't mean to say that I gave you leave to appear for every one. I gave you leave to appear for the CEO who does bear responsibility for the administration of the council and its officers.

MR WEBB: Mr Chairman, I'm not engaging in this debate with you, purely for the sense of having a debate about the matter. If there is a company and a director is called-----

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CHAIRMAN: Mr Webb, we will not debate the matter now. If you want to seek leave to appear on behalf of any other individual council officer you may apply in writing.

MR WEBB: I've just obtained some instructions because it may mean I will have to reserve my cross-examination of this witness. Would it be appropriate to take the morning adjournment at this stage so I can-----

CHAIRMAN: Yes. Certainly.

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MR WEBB: -----not hold you up.

CHAIRMAN: We will adjourn for 10 minutes.

THE HEARING ADJOURNED AT 11 23 A.M.

THE HEARING RESUMED AT 11.35 A.M.

PETER JOHN YOUNG, CONTINUING EXAMINATION:

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MR WEBB: My apologies, Mr Chairman.

CHAIRMAN: That's all right.

MR WEBB: There was no disrespect intended.

CHAIRMAN: None was taken.

MR WEBB: Although I'm often late I never intend to be. I know that's Irish.

20

CHAIRMAN: Catch your breath, Mr Webb. Catch your breath.

MR WEBB: I don't seek that leave at the moment, sir, and in fact I've reflected on the comments and I can probably, at least at this stage, proceed to deal with the matters that have been raised without seeking any further leave than I've got. It's perhaps over-stating the position.

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CHAIRMAN: All right. Thank you, Mr Webb.

MR WEBB: You mention that you - I think you said, you had an Arts degree. Is that so?-- Yes.

What institution was that?-- It was granted by the Flinders University of South Australia from studies conducted at that University and at Sydney University.

So, it's a University of South Australia, is it? Flinders University?-- Flinders University, yes, and the studies I undertook at Sydney were recognised as part of the degree.

40

Certainly. I take it that was for your majors?-- The studies that I did-----

With the Sydney University?-- At majors at both - studies for majors were conducted at both Universities.

Oh, I see. All right. I don't really need to go into that detail, but part of your course, I take it, it may be different in other states, included English, I suppose?-- English, the language?

50

Yes. There's a particular subject in an Arts degree, usually in Australia, that is English?-- Certainly not at the Universities I studied at and it would be something you might

specialise in and select. I didn't ever take it at University, no.

1

Well, did you study logic? Uhler's Circles, for instance, that sort of-----

MR BODDICE: Commissioner, it's absolutely fascinating to find out what degree courses hold, but it has no relevance whatsoever, with respect.

10

CHAIRMAN: Mr Webb, I think it might have changed a little bit since you and I were at University.

MR WEBB: It may have, but I was getting to - you would be well aware, sir, Uhler's Circles are used as part of the process of deduction.

CHAIRMAN: Yes. I did logic.

MR WEBB: I assumed you had, probably did it at Gregory Terrace in Year 12. Yeah?-- I didn't study logic, Mr Webb. I studied things like ethics and politics.

20

Ethics in politics?-- Yes.

CHAIRMAN: Ethics and politics.

MR WEBB: Oh, I'm sorry. I thought he - didn't you say ethics in politics?-- I meant to say ethics and politics, yes. It's a-----

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CHAIRMAN: I don't think there's any such subject.

MR WEBB: Well, I don't want to become personal here, but there was a man Richardson who lectured me in that topic, political science, who insisted there was. Well, there were ethics in politics. We all thought it was a strange mixture of terms, but anyway. What I was getting to is this. Throughout your evidence we hear you using the word perception, or belief, or conclusion which it's quite clear come from a number of different facts and you've drawn a conclusion, made an assertion. That's so, isn't it? That's how your mind works? Nothing critical of you at this stage?-- You're putting two things together there, Mr Webb. I need you to make some definition, or distinction, that you were talking about-----

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Don't you understand my question?-- -----perception. Not really.

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I'll start again?-- Thank you.

I withdraw that question. This is a new question. You used terms throughout giving your evidence like perception. I'll go stage by stage because that's how I - I perceive you like it. Perception?-- I've used the term, the public perception, yes.

Oh, and your own perception?-- Yes, that's true.

1

Please, we'll be a lot quicker if we - if we don't qualify everything. Now, belief?-- Yes.

And you see various disassociated facts and you draw deductions from those?-- There are certainly facts. Some of them are associated, some of them you might assert are disassociated, yes.

10

Yes. Well some are and some are hearsay-----?-- If they're hearsay they're not facts.

-----And you put the whole lot together and then make an assertion, is that so?-- No. That's not the way I would put it the position, Mr Webb.

Now, if you don't understand any of my questions, please ask me to qualify and it's no stranger to me people sometimes don't understand my questions, sir, because I don't put them properly. It does happen. You, in Exhibit 233, pages 3 of 18 ad 4 of 18, you speak there of collusion with Council officers. You don't need to look at these pages, just - unless you really have to?-- I would prefer to, Mr Webb. This is which date of which interview date? I've got the transcripts here.

20

3 of 18, 4 of 18. There's only one series of 18. I'll turn it up and give you that information. I had it open. I'm sorry. It's the 4th of August. Where's my glasses?-- I've got that page, Mr Webb. Thank you.

30

CHAIRMAN: But that doesn't seem to be - is that part of Exhibit 233?

MR WEBB: Page 4 of 18? It's too - I'd actually mark them as they went in with roman i, ii, iii, iv, v, but no-one else has so I'll-----

CHAIRMAN: Well, which one is it because I've marked it too.

40

MR WEBB: The 4th of August which I've got marked as 233 (vi).

CHAIRMAN: Six? Yeah. My number 6 is 23 pages. It doesn't matter. 4 of 18? All right.

MR WEBB: I was going to rise and ask that they be marked as they go in to obviate this sort of-----

CHAIRMAN: Sure. Perhaps I should have.

50

MR WEBB: No, it's my fault. I wasn't intending any criticism. You don't have it?

CHAIRMAN: I - I have pages 17 and 18 of 18. I don't have 3 and 4 of 18.

MR WEBB: Well, they were passed along to me. I don't know how my copy has got in there because they were passed along, but-----

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MS HAMILTON: Mr Chairman, they were tendered carrying on from the earlier tapes starting with 21 of 23 of the second tape and at the back of that it carries on to the beginning of the next tape.

CHAIRMAN: Say, 21 of 23? Oh, I see.

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MS HAMILTON: And then at the back of that it carries on up to.

CHAIRMAN: Yes. I've got it.

MR WEBB: Well, that's a relief to me. Mr Chair, it must be my lucky day following on from Australia's win last night. Mr Chair, the - you may have picked this up or not. I don't know. At the very bottom the date is shown in very fine print.

20

CHAIRMAN: Yes. Yes.

MR WEBB: I was sure you would have seen that, but I gathered from your question you may not have. Now, have you had a look at - look, I'll let you read it before I say anything more - P line 65 at page 3, and I'll let you read the whole passage so you've got it in context?-- I've read that, thank you.

30

And you've read over the page?-- Yes, I have.

And you can see what I'm going to ask you about?-- I think I have an idea, yes.

It's pretty obvious, isn't it?-- No.

The conclusion evident in this council between officers and some councillors?-- I think you're taking it out of context, Mr Webb. The sentence is, "I think Councillor Sarroff is of the" - "of" - "has a concern that not only is there a certain amount of collusion evident in this council between officers and some councillors, but also that there's a certain amount of influence"

40

Oh, certainly, you're attributing that suspicion to Councillor Sarroff-----?-- It's indirect-----

-----for concern?-- It's in direct context to the Yarrayne matter, and the subject there, of course, is-----

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Yes, I'll come to that in a moment?-- -----Councillor Sarroff's submission to the CMC.

I'll come to that in a moment, but are you making a suggestion that there's a certain amount of collusion evident in this council between officers and some councillors?-- It's not the allegation being made at that point there. No, Mr Webb.

No, no, you're just repeating what you think Councillor Sarroff is saying there, but I'm asking you-----?-- Oh, if you're asking me-----

-----is that your view?-- I believe that there is a certain amount of collusion, yes.

Are you using that collusion in a critical sense? In a sense that, well, this is really something wrong with the-----?-- Yes.

10

You are?-- I think it's unhealthy. Yes, Mr Webb.

You say it's unhealthy?-- Yes, I do.

Well, you speak to council officers, do you not?-- I do.

And if you've got a particular view, you'll raise it with them?-- I'll do my best to do that, yes, but all within the confines of policies and proper procedures and structures.

20

Proper procedures and structures?-- Yes.

What if you had an interest in a matter?-- I would declare - make that interest absolutely apparent to the officers.

And you wouldn't speak to the officers because it's your view that councillors can influence officers, isn't it?-- Yes, it is.

30

So you'd be scrupulously careful not to try and influence their decisions?-- I'd make every attempt to do that, Mr Webb, and you'll probably have some evidence to that effect, I would hope.

Oh, look, please don't try and work out where I'm going?-- Sorry, I'm just-----

It's much better if you just answer the questions. Then we can be sure you're thinking about the question and you're giving a proper answer to that question?-- Mr Webb, I am - I do try to be very scrupulous and I could certainly provide you evidence of that.

40

Well, you wouldn't declare a material personal interest and then go on to try and influence the council officers who are considering the matter, would you?-- I would - if - I would declare a material personal interest and make it entirely apparent what my interest is. I might still encourage officers to consider certain issues that I think are in the public interest. I'll make that declaration. I'm - and I'll-----

50

And then proceed to try and influence them. Is that proper-----?-- That's-----



-----in your view?-- I won't try to influence them, Mr Webb. I'll try to encourage them to look at particular issues.

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Advance arguments to them that you want them to consider?-- I very deliberately step outside of the relationship that might normally exist between me and a junior officer and I'll elevate it to the CEO himself, or to a director, or a number of directors, so that it is entirely their decision as to who and how the matter is dealt with.

10

Look, one of the most frequent and favourite ploys of people - I suppose people like myself may give some advice to someone and then say at the end, having given them strong advice, "But it's up to you. It's your decision." Do you recognise that as a persuasive ploy?-- Do I recognise that?

As a ploy?-- As a ploy. You'll have to be more specific, I'm sorry, Mr Webb.

You say to someone - you give them very strong advice, and at the end you can see that it's advice that they really don't want to follow, or it may be advice they want to follow, and you wipe your hands by saying, "But the decision is yours. It's up to you"?-- I don't know if I would use the term "ploy". I suspect that people would-----

20

Technique. You would prefer technique?-- I think probably more it may be a manner of speech or whatever. I'm not sure if I use that.

30

It's a technique, surely. Look, can we agree on a couple of things? It's a technique, isn't it?-- That may be a technique other people use, yes. I can't vouch for other people.

I wasn't really asking that?-- Are you asking me if I use that?

Just have a look at this. This is an example of what I was just putting to you, isn't it? Oh, sorry, read it first?-- I'm familiar with the document, sir.

40

Oh, yes, but I've noticed you've got to read it right through before I ask you any questions about it?-- That's fine.

Right. That's an example of what I've termed a technique that you say others use. Going to the council, you declare a material personal interest. That's up at the top in bold. And then you argue your case, or the view you want to have expressed. Is that so? Have I given you the right document?-- You've provided me a memorandum written 6th of April 2005 to Matthew Halse, manager Implementation and Assessment with copies to the director - his director, and to other - to Mr Netherway. That's correct.

50

Incidentally, did you - is that the circulation list? Did you give a copy of this to other councillors?-- I don't believe I would have, no.

No, that's not your normal practice, is it?-- No. I would have typed this and asked my PA to forward it to whoever I've identified.

1

Had you spoken to Mr Lee about the topics?-- Not about the topics, no. We made a very deliberate - it was a very deliberate decision not to talk about the topics. I think on one occasion he brought to my office a map, or something. We didn't talk. That was a - you know, I wanted to protect him and myself, and I think on one occasion, whether it was about this matter or some other matter, I even asked my PA to be present when an officer was with me.

10

And did you speak to Warren Rowe about it at all?-- I don't recall having done so, no.

Would you normally? He's the director?-- Normally what? In what-----

When you raise a matter such as this, would you normally speak to the director?-- Where I've declared a conflict of interest?

20

Or where you don't declare a conflict of interest?-- Where I don't declare, I might talk to any number of people. It depends on who I think it's appropriate to speak with.

I'm sorry-----?-- In the circumstance where I've declared a conflict of interest, I don't think I would talk about it at all. You know, I make this submission to them and it's hands off.

30

Now, we can read this for ourselves?-- Yes.

And some of us may and some of us may not, but you might have a different - I don't like to use the word "spin", though I think you used it yourself earlier, or someone did in this inquiry - is it your intent to persuade the officer that these are the matters which he should be addressing and that your view should prevail?-- I think it's correct to say that I've identified what I perceived to be public interest matters that ordinarily should be considered, and this comes to the point that I was making with Mr Mulholland a few days ago when we were talking about this conflict of interest and the need for the community's interest to be forwarded at all times. In some cases I have deliberately excluded myself from voting on matters and I'm conscious of the fact that that effectively prejudices my community, or could, in that their voice is not being heard, and this is a matter in which I think I've taken a very ethical, logical and diligent approach to a matter in which it could be accused that I would have a conflict of interest. I've made it extremely apparent, and, I'm sorry, it's a very long answer to your question, Mr Webb; I'll stop.

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Well, you haven't got to the answer yet, you see? You haven't actually - do you remember what the question was even?-- I'd be happy if you'd repeat it, please.

Well, no. Would you answer my question now. Do you remember what my question was or were you just making a speech?-- I wasn't making a speech but I don't recall your question.

1

I think that, with respect, if you listen to the question and answer the question and then add whatever rider, as long as it's relevant?-- I thought I had answered the question.

CHAIRMAN: Mr Webb, you asked him if he wanted to make any general comment on this and you referred in your question to the perhaps use of the term "spin". Now he's made his general comment. I would have thought he was answering your question.

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MR WEBB: No, the question-----

CHAIRMAN: Do you need to ask him to answer something else?

MR WEBB: That was a preamble. My question was, did you not intend to influence the officers to your point of view with this document?-- I think answered that first in my response, Mr Webb. I didn't-----

20

No, you haven't. I haven't had an answer?-- I didn't seek to influence the officers. I said I sought to make them aware of issues that they should be pursuing in the public interest.

All right. So this wasn't written to them to endeavour to get them to go along with your view when approaching the matter? Is that what you're saying?-- Not to go along with my view? It was - I was espousing a position which I thought was in the public interest. It's there-----

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That's your view. Were you endeavouring to get them to go with your view as set out in this document?-- No, not at all. And it doesn't articulate that whatsoever, Mr Webb. It says, "I offer" these things, for example.

"This is inconsistent on just the second page," Mr Chair?-- Third paragraph, Mr Webb, "I offer the following".

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The second page, Mr Chair, the second paragraph. "This is inconsistent with earlier approvals in which the vegetation along Cox Road was to be retained and is inconsistent with the draft Cox Road structure plan which includes a significant vegetation buffer to that road. Furthermore it is anticipated that Cox Road will be ultimately a four lane carriageway. Insufficient space will exist within the road corridor to provide adequate buffering." You say that's not expressing a view, whether it's in the public view or in your view, you say it's not expressing a view in relation to the matter that it's addressing?

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CHAIRMAN: Mr Webb, I'm not following your questioning. Is your client suggesting that there was something improper in this document?

MR WEBB: Mr Chairman, I'm questioning this witness directly in relation to how he goes about things where he's already said that he doesn't attempt to influence.

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CHAIRMAN: But he's declared his material personal interest and then he offers his comments upon various aspects of the application.

MR WEBB: Yes, Mr Chairman.

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CHAIRMAN: The - I presume, naturally, he would hope that they would listen to his comments and take them into account in reaching their decision. Is your client suggesting there's something wrong in-----

MR WEBB: No, I-----

CHAIRMAN: -----a councillor doing that once he's declared his material personal interest?

20

MR WEBB: Ultimately if you declare a material personal interest one would have thought one doesn't then go ahead and try and influence officers of the council in a way he has criticised-----

CHAIRMAN: But he lives next door to this application. Does that mean that he, because he is a councillor, loses the rights that he has as a private citizen to make a submission to the council about it?

30

MR WEBB: No, I didn't suggest-----

CHAIRMAN: The way any person has.

MR WEBB: I didn't suggest that, Mr Chairman. It's the way it's done that I'm talking about. I thought that was obvious.

CHAIRMAN: Well, you're losing me. Can you please put what you say-----

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MR WEBB: Well, it's on a-----

CHAIRMAN: -----is obvious this is the wrong way it's done.

MR WEBB: Well, it's on council letterhead immediately.

CHAIRMAN: Right.

MR WEBB: And it's done in a way in which allow "I've got a material personal interest in this matter." Well and good. I'm not suggesting that he's saying that by way of threat, I didn't - I'm not going down that path, that would be drawing a long bow, but I am saying that it's an attempt, it's a method of dealing with the matter which isn't appropriate.

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CHAIRMAN: Right.

MR WEBB: I mean, if you declare a material personal interest----- 1

CHAIRMAN: Okay.

MR WEBB: -----interest and you walk out-----

CHAIRMAN: Look, I'm-----

MR WEBB: May I finish? 10

CHAIRMAN: It's all right, I've heard - I understand where you're coming from now as long as we apply the same standards to everyone. I now understand your client's position.

MR WEBB: May I say - continue with what I was saying? If you declare a material personal interest in the council you don't proceed to declare that and then speak to a motion on debate. The witness says you don't do that. 20

CHAIRMAN: But this isn't in council.

MR WEBB: There's little difference, with respect.

CHAIRMAN: All right.

MR WEBB: As I see it but others may see it otherwise. You clearly do. Anyway, that's - I tender that document.

CHAIRMAN: That will be Exhibit----- 30

MR WEBB: 6th of April 2005.

CHAIRMAN: -----248.

ADMITTED AND MARKED "EXHIBIT 248"

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MR WEBB: I'm just reminded I should go back to a matter. Do you suggest every time a councillor goes and speaks to an officer who he can ascertain pretty quickly is dealing with a matter, that in arguing his agenda the councillor would be colluding with the officer?-- Not in every case, no.

Well, what do you mean when you speak of collusion? You've expressed the view that there is collusion?-- Yes, I have. 50

Between other councillors with some officers. You adhere to that, do you, that assertion?-- Yes, I do.

What do you mean by collusion? We might have different meanings?-- We might. My meaning would be where an officer and a councillor will, by themselves, determine or seek to establish what an outcome might be where the input of the entire council is not being heard.

I'm sorry, where the input?-- Of the entire council is not being heard.

But business would grind to a standstill if every particular matter-----?-- It's not every particular matter, Mr Webb.

How can a councillor collude with a council officer to bring about an outcome?-- I would suggest that an officer might be encouraged to pursue a particular outcome, for example.

So a councillor who believes he's representing the public and it's in the public interest suggests to a council officer that, "Look, this is the way I think this should be going. If you take the same view, I'm urging this view upon you, it's a discretionary matter but I'd like to see you go this way," is that collusion?-- Your assertion initially is that the councillor has the public interest as the predominant interest and I wouldn't accept that that's always the case where there's a matter of collusion.

CHAIRMAN: But I don't think that was getting?-- -----Sorry.

-----to the point of the question?-- I beg your pardon.

It's - because the council officer is not going to know that. It's not his place to judge that. Just if the - if a councillor does go along and urge a particular point of view upon a council officer what stage does it have to reach before you start to think of it as collusion?-- Thank you, Mr Chairman. It's very difficult to deal with this in a very general sense but I would think that it's where the public interest is perhaps not prevailing. That's where the - there may be collusion, where it's-----

I can understand Mr Webb's concern in that collusion has a ring about it that the council officer is acting improperly?-- Yes.

And that's a fairly serious accusation to make. Naturally one would - I would expect that council officers would listen to the expression of opinion by a councillor and would be expected to consider that expression of opinion?-- Yes, sir.

But still then at the end of the day reach - if it's a town planner, say - at the end of the day express their own professional opinion as they hold it having taken into account and perhaps accepting or rejecting the opinion of the councillor?-- Yes.

And if the council town planner does that the council town planner can't be said to have been colluding. It needs something more before you can accuse the person of colluding. Well, what do you mean when you use this term of colluding?-- Well, I think what I mean is where the public interest is being subverted to - in the interests of a private individual or entity. So, for example, a development proposal, the public interest might be best represented in

terms of the yield or the density on that site. There may be some encouragement to achieve a higher yield that would obviously benefit the applicant, and it's upon the officer accepting that, that I'll consider that to be collusion. Yes. So if the Council town planning officer expresses an opinion that is contrary to his professional opinion of what is in the public interest, then of course that would be collusion. But it's fairly difficult to draw the long bow, isn't it, of saying just because your view is that it's not in the public interest what the planner has expressed that therefore that planner must have colluded, and some planner might bona fide hold that professional opinion?-- Yes. The officer may have that professional opinion.

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(Suppression Order)

I just want to take you back now to 248. The fact that you do this by letter rather than by face to face - the last exhibit. You don't have a copy? I'll give you one. Just make sure that - that's a copy, is it?-- Yes, Mr Webb. Thank you.

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The one that was tendered?-- Thank you, Mr Webb.

Now just look midway down the first page. You say - you see the paragraph commencing, "Notably the current currency period" and then you go on and you criticise the council. You say, "Despite that officers have continued to deal with the application"?-- I don't agree that that's a criticism, I'm just making a perfectly valid point that an officer had prepared an agenda item to actually refuse the extension of the currency period and for some reason, and I'm not making any further assertion there, I'm just saying that it's never seen the light of day, that draft report, and officers are continuing to deal with the matter.

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So it's not a criticism, it's just a historical fact, is that what you're saying?-- Well I think it's a historical fact that was factual-----

My question was - did you understand my question?-- I think I did.

40

Did you understand my question?-- I think I did.

It's just a statement of a historical fact, it's not a criticism. Is that what you're saying?-- That's correct, Mr Webb.

And then you go on and advance the various reasons which is - and I understand, you don't have to keep repeating it, you say is in the public interest, not your own personal interest?-- I would often write memos to officers about development proposals - very often.

50

All right?-- And I generally put them in writing so that they're on the record, Mr Webb.

And you do that - that's a particular interest of yours which is a perception of what the public really wants you to do as a councillor?-- To put things in writing to the officers? 1

No, put the memos forwarded, about development proposals----?-- I doubt if-----

To guide the officers or to make them aware, use your own phrase, I'm sure you will, what is it you put these before the council officers for?-- That's not for the public perception. The public wouldn't even know, I think, about the memorandums I write. I write----- 10

But it's for the public interest?-- Certainly the public interest, yes.

As their represented elective duly and with a responsibility under the Local Government Act to represent them.

And so in Exhibit 248 you were really pursuing both interests, your interest and the public perception interest?-- no I reject that, Mr Webb. If I was wanting to pursue my own interests the matter before the officers would have been much broader. 20

Oh, I'm sorry, I was referring to the fact that you declared that you have a material personal interest?-- Yes, but I'm not presenting any issues of relevance to me in the capacity as an adjacent landholder here. 30

All right. You said - and I want to ask you about this protocol that you've been referring to that you say is being breached; do you remember giving that evidence? I've just given you a shortcut version of it without all the questions that you spoke to, but do you understand my question, firstly?-- No, I don't. 30

The protocol that you say has been breached in dealing with applications, you said, your words were, there's a longstanding protocol?-- Oh, I think you're referring to the protocol whereby Councillors would be advised where matters are being discussed with other Councillors, yes. Sorry, I'll make myself clear, where----- 40

No. No, no, I'm referring to - you only referred to one protocol, I believe, in your evidence and that was the protocol where there are applications-----?-- Yes, where there are development applications.

-----the planning, that's the only protocol I've heard you refer to?-- That's correct, where a development application may be----- 50

Okay, we're talking about the same thing then?-- Yes.

Good. The - I suggest your statement of the protocol or your understanding of it is in error. For instance, in one part of your evidence you said that, "Officers have told me" - and



I'll get the - "that they don't even know which in which Councillor's area an application may be." That's officers dealing with a particular application?-- I don't think that's exactly what I said, Mr Webb.

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Yes, that's - I'll be corrected by the transcript but you didn't mean to say that you did so; is that what you're saying?-- That's not what I'm saying either, Mr Webb.

MR BODDICE: Well, with respect, Commissioner, that's just completely unfair - trying to put something, doesn't even know whether it right.

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MR WEBB: I know it's - I've got a note of it, Mr-----

MR BODDICE: Surely my learned friend knows the level that you put previous evidence, and that is that you refer to it in the transcript.

CHAIRMAN: Are you able to give the transcript reference, Mr Webb?

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MR WEBB: I don't have the transcript.

CHAIRMAN: It's available every day.

MR WEBB: I'm aware of that.

CHAIRMAN: I see.

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MR WEBB: And we - I know the Council has the transcript; I do not have the transcript here.

WITNESS: I recall answering a question of the Chairman.

MR WEBB: I'll just turn my note up.

CHAIRMAN: Mr Webb, can you recall whether it was in evidence led by Mr Mulholland or in someone else's evidence - someone else's question?

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MR WEBB: It was in evidence from Mr Mulholland, I believe.

CHAIRMAN: Right.

WITNESS: I think it's more likely to have been from Mr Radcliff, Mr Chairman, and it was a specific mention about a geographical area and the officer not knowing was in response to a question by yourself.

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MR WEBB: Yes, I don't have who's doing the cross-examination in my notes, but there - that was said, I'm in no doubt about that, and it's just confirmed by my instructor, that Council officers would not - he's been informed - this is how it came out - he was informed by Council officers that they don't know which Councillor's area an application is in.

CHAIRMAN: Yes, I think I might have asked a question of you, Mr Young, about why wouldn't Council officers know, and you said that sometimes on the boundary they don't-----

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MR BODDICE: Commissioner, it's 1605.

CHAIRMAN: Thank you.

MR WEBB: Well, perhaps if I could have a look at that.

10

WITNESS: That was one instance, yes, Mr Chairman.

MR WEBB: I have to turn my back to the witness, I apologise.

CHAIRMAN: That's - I don't mind your back at all, Mr Webb.

MR WEBB: It's only because it's a broad back.

CHAIRMAN: Someone suggested walking out the door is the best view of it, but I'd never say that.

20

MR WEBB: No, and I'm sure it's never been said of you either, Mr Chairman, but that might be the difference in body bulk. I'll deal with - and this is what you said at line 40, "And in fact officers who've attended such meetings have told me they had no idea on one occasion, for example, that the matter was even within my division." Well, that could have only come up because you've complained about it to the officer that, "Why wasn't I told?"-- That's correct.

30

Has it only happened once that you've complained about it?-- There's probably only one circumstance like that, yes, Mr Webb.

And that was the explanation you were given?-- By that officer.

Yes?-- That he no idea that the matter was in my area?

That he had no idea it was in your area?-- That's the explanation he gave to me, Mr Webb, yeah.

40

I see. Well, now, I'll have to take you to the protocol?-- Is it written down?

I'm going to take you to the protocol. Firstly, and some of this - this should be within your knowledge, I'd suggest. "An application is received over the counter by a customer service department", is that so?-- Certainly not always, no.

50

"The application is created in AME; that is" - AMS, I'm sorry, "application management system by the customer services"?-- I don't have a distinct knowledge of all of the procedures of the technical officers, Mr Webb, but it sounds accurate.

And that-----

CHAIRMAN: Is this protocol or is this just the practice that happens?

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MR WEBB: I'm going to the practice and then I'm going to go to the protocol. You can't understand the protocol without knowing the practice.

CHAIRMAN: Sure. And the witness did ask you - and I'm interested to know - is there a written protocol?

10

MR WEBB: No, there's not. No, he was asking me what a document I was using was written or something. He's not entitled to do that.

WITNESS: No, no, what I was asking is there - is the protocol written, Mr Webb, sorry.

MR WEBB: Mmm. All right. Well, now, AMS then automatically populates the property details, which includes the details of which division the property is in. This is a very early stage in the application you'll see that the first action by Council it goes into AMS; do you know that?-- I didn't know that but I'm certainly aware of many times there being errors in the data entry, to the point where by the time an item is listed before the committee it will identify the incorrect division.

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All right. Well, the automatic system which we see so often in this day and age may have faults in it, that's what you're saying, or it might even be the data entry, one or other?-- Yes, or some other reason.

30

All right. But this is - this is the perfect world, so at that stage it's attributed to a division. You would see that from the documents that open up the particular file, and you've seen many files?-- Yes, I have, Mr Webb.

And you do acknowledge that such a document is created on each file?-- I don't inherently know that, no.

Well, of all the files you've seen such document is created-----?-- I don't - I don't see files from the AMS system, Mr Webb.

40

No, no, this is the file, the particular property file, you see?-- Oh, sorry, I beg your pardon, the - the folder in which-----

The file has attached to it the document that the AMS system creates. If it didn't it'd go back to square one again and you'll have to start again?-- The folder - the file, the manila folder, shall we say, would have within it the application and a copy of the receipt and some sort of electronic record of the receipt of the application.

50

And just - if you'd just listen to me if you don't mind. "Application proceeds to the records services division to be profiled and a property number" - PN is the acronym used - "property number file is created"?-- Good.

You agree that's the-----?-- I don't know the inherent - I don't know all of the details of how these systematic things are done, Mr Webb.

We'll overcome it this way. I'd ask you to assume that this is the way in which the files, of which you've seen a number, are built up and the steps that are taken. It then proceeds to the pre-assessment area within the - within the INA branch of the Planning Environment and Transport Directorate. Sorry to be giving you so many acronyms but that's apparently the way it's done?-- I'll accept that.

10

And its application details are completed, the application is loaded on to MAP info and moves to - and here's another one - a DART officer, to be placed on the DART agenda?-- I'll accept that.

And within five days of receipt of the application it's scheduled on the DART agenda, Development Assessment Review Team. That's what DART stands for.?-- Yes, I know that. Thank you.

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Council officers-----

MS HAMILTON: Mr Chairman. I'm reluctant to interrupt Mr Webb, but this line of questioning seems to be directed towards disputing a statement made by Mr Young that one officer told him he didn't know the division in which an application was lodged.

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CHAIRMAN: No. I think it's directed towards telling us what the protocol is, but-----

MS HAMILTON: Well I - if-----

CHAIRMAN: -----it's taking a long time.

MS HAMILTON: -----if that is so, I question the relevance of it to the inquiry. It could only be relevant to dispute something that Mr Young has said. I take it to impute his credit in some way.

40

CHAIRMAN: I understand your point, but it's probably faster if we just let, and hope that Mr Webb does it quickly.

MR WEBB: I'll endeavour to, Sarah. I don't pretend for a moment that this is fascinating detail. Well, I could perhaps deal with it by - the witness has shown an insistence on having particularity and that's why, basically, I'm laying all of the foundations. I'll see if I can get an answer from him without going through all of this.

50

CHAIRMAN: Thank you.

MR WEBB: You see, developers, or people who are making applications, may go directly to a Councillor or to a Council officer. That's what occurs, isn't it?-- It could occur, yes.

Even before they lodge an application?-- Yes, most certainly, it could occur.

And there's no protocol that at that stage the Council officer has to speak to the Councillor in whose division the person is making an inquiry about, or wishes to make a submission about?-- I don't see how that - you haven't made it - the leap as to how the officer would even know because you mention a meeting between the developer and the Councillor?

10

The developer or the applicant? I'd prefer to call them applicants because-----?-- Fine.

-----there are all sorts of applicants?-- So, the applicant and the Councillor meet?

Yes?-- So, how is the officer to know?

No. I'm saying - there's no protocol that the Councillor, that Councillor will ring you and say, hey, drop by. There's no such protocol, just because it concerns your division, is there?-- My understanding of the - of the protocol is that that would probably enliven, at least, an approach to the Divisional Councillor.

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By whom?-- By the Councillor who was approached. By the applicant.

Well this protocol that you speak of is not written. It's not recorded anywhere, is it?-- That's correct.

30

Well, if per chance prior to lodgement there's a conference called a pre-lodgement conference, isn't there?-- There can be. There's not always, to my understanding.

Mmm. And a Council officer will be at that conference if it's held?-- Yes. I would expect so, yes.

And there's no protocol that requires the other - the Council officer or anyone else to notify the Councillor in whose division the application is made, or to be made?-- I don't believe there is, for the Council officer to advise a Councillor, no.

40

No? All right. So, you're speaking of a - a failure to - of a fellow Councillor to notify, aren't you?-- Yes, I am.

That's your complaint, when you say the protocol that you've identified-----?-- Not necessarily. I'd have to make it clear that sometimes the officers will assume that responsibility.

50

So, it's not a hard and fast rule?-- No, not at all.

All right. Well nothing has changed. That's the way in which things are still done. Sometimes there are approaches to the Divisional Councillor by either the Councillor who is approached by an applicant, or by a Council officer and

sometimes it's not. It's business as it was, I'm suggesting?-- Business meaning that the protocol isn't always followed?

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Yes?-- I'll accept that.

Really, the protocol is there is no protocol?-- There is a protocol. It's not always followed. That's the assertion I'm making and I maintain that.

10

But there's been no change with the new Council. It's - sometimes it occurs and sometimes it doesn't. Sometimes what you call a protocol is followed, sometimes it's not?-- I've never made an assessment of the rate at which the protocol is adhered to before and after, Mr Webb.

I remind you, I'm just reminded, I can't give you - you did give evidence that the protocol had been changed with the new Council?-- If I said changed, I mean it's not written, so it could only be changed in the way it's practiced, Mr Webb, and my belief is that the protocol is being - not being followed as much as it used to be.

20

Oh, I see. But it was - if I might use the term, hit and miss before and it's hit and miss, but you say it misses more often now? Do you understand my question or I have I made it too obscure?-- I would prefer to say that sometimes the protocol is applied and sometimes it's not and it's more often not applied now.

30

I see. Now, I want to ask you - there's been a couple of references in your evidence about tapes. I'm just concerned really about two aspects of this. You said when you were speaking to Mr Fish-----?-- Yes.

-----That he had a tape?-- There was a tape in a cassette case, I think on the desk-----

-----Yeah?-- -----which I noticed and it said, Council meeting and it had a date. I don't know where he got it from.

40

Was it official Council typing on there, with Council GCCC on it?-- No. I have no idea where it came from. It could have been a tape he made himself.

Thank you. The - well, I just wonder why you mentioned it?-- I just recall-----

Weren't you mentioning it to infer that some Councillor or Council officer had given it to him?-- No.

50

Isn't that your reason for mentioning it?-- Not at all. I just had a vivid recollection of seeing that there and thinking, how -----

I see. That's your explanation?-- -----how did he get these tapes?

Well, you've got tapes from Council before, haven't you?-- As a Councillor I have sought to receive tapes of some meetings, yes.

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Very rarely, but you have done it?-- As a Councillor, yes, I have done it.

Yes. And according to the search that's been made, there have only been very few occasions in which a Councillor has asked for, and been given a tape?-- I couldn't say how many occasions. What - in the last five years? I have no idea. Last year? No idea. I've probably asked for a tape of a full or part of a Council meeting on a dozen occasions, so, in the last five years. That's a guess, Mr Webb.

10

All right. Now, you made another mention of tape in your evidence?-- Sometimes they're not provided, I have to say, because they've been inadvertently wiped over already.

Or it's outside the period for which they're to be held?-- That may have occurred once, yes.

20

Were you - have you always been aware of the period which the tapes are kept?-- I think it's provided for in the local law, but I don't recall the exact period.

All right?-- I think it's a few-----

Well, I won't ask you about it?-- I think it's a few weeks.

30

Now, you also mentioned that a tape in this context, I believe you said that Mr Sarroff taped a site inspection, or conversation at an inspection?-- That's my understanding, yes, Mr Webb.

That's what Mr-----?-- And I did say that.

-----Sarroff told you?-- He told this Commission that and I relayed it to the Commission that Councillor Sarroff had found - located that tape.

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Well, you had a conversation with Constable Sarroff about that tape?-- Councillor Sarroff? No. Not necessarily. He called me the other evening - that must have been-----

I'm sorry. I'd like to move on, despite what it may seem, but you see, how could you know that he'd located the tape unless he had a conversation with you saying, I've located the tape?-- I was just about to explain. He called me on the-----

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Well, I don't want to go into detail. Conversation is sufficient. You had a conversation with him?-- -----He told me that he had found the tape, yes.

Right-----?-- And I encouraged him to submit it to the CMC as-----

Thank you-----?-- -----quickly as he could. That was about the end of the conversation. Although, he said - I think he said it's substantiated his position. I don't-----

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Where does this come from-----?-- -----offer any comment on that.

MR RADCLIFF: While my friend's taking instructions, we at the back here are at a loss as to what this tape relates to. Should-----

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CHAIRMAN: If you checked the transcript-----

MR RADCLIFF: -----we remain-----

CHAIRMAN: -----you'll see that this witness did refer-----

MR WEBB: It's your own.

MR RADCLIFF: It's your own. Thank you.

20

MR WEBB: Sorry, I don't have copies of all of this. It might not - perhaps, if the witness could look at this. I think I have a copy for you - I can't assist my friends. It may not be necessary. There's a printed version of this on the website. This - are you familiar with the content of this document?-- I believe this is taken from council's Code of Conduct, Mr Webb. Is that correct?

Yes, that's so. You - you recognise it?-- It certainly looks familiar to-----

30

Thank you-----?-- -----the existing Code of Conduct. It may be - I may need to clarify that because-----

Yes?-- -----many Codes of Conduct look very similar.

It's a Code of Conduct that applied up until a week ago. You'd be aware that the Code of Conduct changed about a week ago?-- No, I'm not aware of that, Mr Webb.

40

Oh, well-----?-- The Code of Conduct's still exists and all that's been-----

Well, it might have been while you were - there's been a - this was a - in any event, I'm instructed that this is the Code of Conduct at the relevant time that we're speaking about, Yarrayme and those sort of - this deals with councillor's behaviour. You certainly would not - may I assume, you would not tape conversations between council officers and the councillors; would you?-- I've never done that, Mr Webb.

50

But you wouldn't have. It certainly - I'd suggest against - if you look at the third page of that document, 'Behaviour' and look at (c) 'Integrity'. You've probably read this before. "The obligation to maintain open and honest communication with other councillors and



officers."-----?-- I'd certainly never consider taping a  
conversation----- 1

Mmm?-- -----with any person without their prior knowledge.

Well, I know you're not the person passing judgment but you  
can express your opinion. It would certainly be against  
the-----

CHAIRMAN: Well, with respect his opinion; does it matter? 10

MR WEBB: I want-----

CHAIRMAN: Do you want to tender that-----

MR WEBB: I tender that-----

CHAIRMAN: -----document-----

WITNESS: This is only an extract of the Code of Conduct, Mr  
Chairman; a very small extract. 20

CHAIRMAN: That extract of the Code of Conduct of the Gold  
Coast City Council will be Exhibit 248.

ADMITTED AND MARKED "EXHIBIT 249" 30

MR WEBB: Two forty-nine.

MR BARTLEY: Two forty-nine, I think-----

CHAIRMAN: What was 248? I didn't note it?

MS HAMILTON: The memorandum from Councillor Young. Where he  
declares his material personal interest and makes----- 40

CHAIRMAN: Oh, yes, yes, thank you.

MR WEBB: To Jonathon Lee.

CHAIRMAN: Yes, thank you.

WITNESS: And, no, it's not to Jonathon Lee, Mr Chairman.  
He's the action officer. It's to Matthew Halse. 50

MR WEBB: Oh, that's the action officer, thank you.

CHAIRMAN: Yes.

MR WEBB: You made some statements about the Hope Island local  
area plan-----?-- Yes, Mr Webb.

Now, things have moved significantly since that plan came into effect; has it not? Or since the first plan - whether it's actually a completed plan or one that's still being modified may be open for dispute on the minutes I've seen but, in any event, I think it was August 2003. I'll just have to get the right document, I'm sorry. "Explanation of the LAP." Yes, in August 2003, Gold Coast City Council's Planning Scheme was prepared and as part of that, there was a local area plan for the Hope Island area which included the Hope Island place code; do you recall that? You were a councillor at the time, August 2003?-- August 2003 was the inception date of the Living City Planning Scheme which incorporates a number of planning - local area plans.

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Local area plans?-- Yes, Mr Webb.

Well, now, that stage, as I think someone else may have been questioning you about, the Hope Island canal had not yet been built?-- That's correct.

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To something that has been a long time in the digging if I can use that term?-- Very much a long time on the books, yes.

And when it - it is now in existence, is it not?-- It is.

And it became apparent in a planning sense that the - very soon after the adoption of that plan with the canal coming in, there were many other considerations that hadn't been taken into account when that plan came in or when that plan - when I say came in, it was part of the adoption of the scheme under the Integrated Planning Act?-- I didn't quite get your question. I'm sorry, Mr Webb, I followed that but-----

30

Your planning scheme came in as a result of the Integrated Planning Act?-- That is correct.

All right. And a number of plans for different areas were put in place?-- I shouldn't say as a result of but it's subject to the provisions of the Integrated Planning Act and, yes, has a number of controls.

40

All right. And this area plan came in and it was quickly realised by planning officers that it was inappropriate?-- Was it? I don't have any knowledge of that, Mr Webb.

I see?-- But it was quickly realised and that's the point I've made. The schedule also had relevance to all of the issues confronting the city and these emerging issues and long standing issues has no relevance - no reference whatsoever to the Hope Island LAP review.

50

Would you say that Council - and here I refer not only to the councillors but the Council planning officers, their knowledge and expertise in areas covered by the Integrated Planning Act developed significantly, as one might expect they - their knowledge, they had little knowledge, the plan came in or the scheme came in and they had to in attempting to apply things like infrastructure, levies and so forth, they had to move

very quickly to try and get a proper handle on how it should be applied?-- I think I understand your assertion, Mr Webb, and it's not something that I would accept necessarily. You see, the planning scheme was prepared over a very long period of time, and it incorporated a number of local area plans in a complete form - in a completely reviewed form and some that had been carried over from previous planning schemes whether they be the prior Gold Coast City planning scheme or the Albert Shire planning scheme which until that time had relevance under law. There was - in terms of, for example, Hope Island, I don't anything all of a sudden emerged. There had been long standing issues that required attention. There's no doubt about it. Just as I said yesterday, there were long standing issues requiring attention in Surfers Paradise, Coolangatta and just about anywhere else.

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Would you agree with this statement: the provisions - that is, the Hope Island post code and the local area plan - have been described by planners as rudimentary although they do issue - I'm sorry, they do address some of the main issues associated with fragmented land ownership, proposed unconnected road systems and lack of public access to the waterfront, and also provide some guidance for statutory planners to pursue those matters through the development applications; do you agree with that statement that that's the state of things after the plan came into existence?-- About Surfers Paradise, yes.

20

No, no, about Hope Island; I'm only addressing Hope Island?-- I'm sorry. About a number of places, Mr Webb, and-----

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But I'm only addressing Hope Island?-- Well-----

Could you restrict your answers to Hope Island?-- Mr Webb, if that was the case, I don't believe that particular information was ever brought to the attention of Council or in that form - at the time of the adoption of the Living City Planning Scheme in 2003 - I'm not sure what the reference is but-----

It became apparent to the planners and the Council that provisions then existed needed strengthening to achieve desirable planning outcomes?-- Well, I don't know when that became apparent, Mr Webb.

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With the submission of developer applications it also became apparent that co-ordination of infrastructure provision was proving difficult. In the second half of 2003 Council commissioned consultants, Parsons Brinckerhoff, to complete a review of infrastructure needs in the area which was primarily aimed at co-ordinating infrastructure provision with regard to the problem of fragmented land ownership - by necessity - the study also investigated planning and development issues. Were you aware of that?-- In-----

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The latter half of 2003?-- I don't recall specifically being aware of that, Mr Webb.

But you do know that Parsons Brinckerhoff were commissioned as consultants to review - and I'm speaking of the area of the Hope Island area?-- I'm familiar with the name Parsons Brinckerhoff in the context of the local area plan for Hope Island. I'm not aware when they were commissioner. I learned from documents tendered yesterday by Mr Fish that there was some input from them in that period, late 2003.

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That study highlighted - did you see the results of the study?-- Parsons Brinckerhoff study?

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Yes?-- I don't recall.

I know this is not your division but, nevertheless, if you hear of something in another division, a plan such as this, you may or may not go and look at it. I can understand that?-- Well, one would expect normally a plan of that nature would come before the strategic growth management committee. I keep an eye on those - I used to keep an eye on those agendas and now I'm a member and obviously keep an eye on those agendas and I just don't recall if the matter ever came before the committee or any - and I don't recall I have any other knowledge necessarily of seeing the plan.

20

All right. I'm suggesting the study highlighted the need for a co-ordinated development pattern and there were some recommendations made in the report which didn't find favour with the Council planning officers. So the particular report was not forwarded to Council for adoption. Are you aware of that?-- Only just now, Mr Webb.

30

I see, all right. Do you recall a report being made to Council in November of 2004 where the reporting officer expressed a need to review the existing Hope Island LAP in accordance with Council's strategic planning branch's five year work program?-- I recall an agenda item regarding the Hope Island local area plan; I don't recall the specific context of that.

And it was suggested at that time that the draft LAP - there already was an LAP, this is the draft amended LAP - would be expected to be completed by March of this year, that's March 2005?-- I don't recall that but I don't quibble with it.

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Well, that was on an agenda item, I suggest. You don't recall it?-- I don't quibble with it but I don't recall it.

And at that same meeting, Council resolved to endorse a project management plan for the review of the Hope Island local area plan area?-- Yes.

50

And the project management plan included the appointment of consultants to undertake a public consultation process via a design for - that had been held in 2004, in December 2004; do you recall that?-- That sounds correct, Mr Webb, yes.

It was not until September of this year, however, before Council officers submitted a report to Council with the

intention of informing the Council of the outcomes of the design forum and to inform Council of the subsequent planning work undertaken and the content of the planning documentation prepared by the consultants, and that was called the Hope Island concept master plan and design code; do you remember that coming before Council?-- Yes, I do.

1

Now, do you say that this was somehow or another a speeding up of the process?-- Which in particular is a speeding up?

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This process. I've just gone through the various stages which have occurred since the original LAP came into existence?-- What I've indicated in the past and I'll reiterate now is that the process itself as it's appeared to Council looks perfectly legitimate to me. It's just that it seemed to appear before Council with great haste and completely out of context with the adopted schedule just after the 2004 election.

Did any Council planning officers ever report to Council or to councillors that it was galloping along too fast or that it was anything other than their planning, that this is the way the review should proceed?-- Not to my knowledge, Mr Webb.

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Now look-----?-- Does your client accept that the schedule has ever been changed, Mr Webb?

As I think you're aware, I'm here to ask the questions?-- I beg your pardon.

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Have to go for a little walk down the river. I turn to the Calm River, the rates matter?-- Yes.

I'm sorry, we're just having a bit of a domestic here. It now appears that a council officer, who I won't name or it will be in the paper, received - who handled Exhibit 204, that's the Falcon Group letter, Mr Chair - in a report which she prepared firstly wrongly identified the date, said it was the 22nd-----

CHAIRMAN: Are you asking a question or giving evidence?

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MR WEBB: No, I'm just going - I will make the statement in a moment but I do want to ask the witness a question. Incorrectly assumed that the Falcon Group-----

CHAIRMAN: Are you asking the witness to assume this is correct?

MR WEBB: I will, that's a better way of proceeding, thank you, Mr Chairman.

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CHAIRMAN: Okay.

MR WEBB: I'll just ask you to assume these facts, that a - the particular person who was reporting to Mr Finlayson, and he's the appropriate director, prepared a report wrongly identified the Falcon Group letter on the 21st September in her report as the 22nd of September, wrongly assumed without

making any inquiry that it was part of the Sunland Group and prepared her memorandum accordingly. Now, I believe you've been critical of the handling of the discount matter, is that so?-- I think - yes, that's correct, Mr Webb.

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Thank you. Well now, if you had known that in fact the letter had been delivered to a party who wasn't the addressee, wasn't Calm River, and that party held onto the document for a while, didn't know what to do with it, ultimately handed it in to the building supervisor rather than sending it back?-- Mmm.

10

You'd be well aware, you're a ratepayer, you get - on your rates notice you get a return address on it?-- Mmm.

On the outside of the document - the envelope?-- Mmm.

If you had've known that were in fact the case?-- Yes.

That may have put or may not - may have put a different complexion on matters?-- None whatsoever.

20

I see. So someone steals your mail. I'm using a-----?-- That's a different situation now.

Beg your pardon?-- You're talking about a completely different situation now.

Well, someone-----?-- Theft of mail is outside of the responsibility of-----

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Well, someone intercepts mail?-- Of the recipient.

Anyway, you've made your point. You say that just wouldn't matter?-- It surprises me that you're introducing it like this, Mr Webb. You're introducing material that was not available to the council at the time of making its decision.

I know that?-- What we had available to us indicated quite clearly that the address of the - or the address of the recipient was correct. It was as advised to the council. If there was some problem with that it was outside of the responsibility of council and council is obliged to implement the provisions of the Local Government Act and that should be your client's chief obligation. So where we have a situation where the - Mrs Smith down the road has no responsibility for this client having advised council of his wrong address, I don't see why Mrs Smith should have to cough up, so to speak.

40

Mrs Smith doesn't have to, I wasn't putting that?-- She's a ratepayer as are thousands of others.

50

Oh, I see what you-----?-- And our rate-----

Mrs Smith, the ratepayer, thank you?-- All of the Mrs Smiths, yes.

Well, now, would it be fair to say you don't have a recall of what oral statements were made to or by the representatives of

Sunland who attended either the finance committee meeting - you weren't there, were you?-- I was not at the finance committee, that's correct.

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Or at the council meeting. Have you got a recall of what statements they made?-- I don't recall them being present or making statements at the full council meeting, Mr Webb.

All right. Nothing further on that. You referred to persons lobbying the CEO?-- In the context of what?

10

Well, in the context of the rates issue? Well, I'll get to this point. You used the word "lobby", lobbying the CEO, councillors lobbying the CEO?-- In the context of the rates repayment? I don't recall that, Mr Webb.

Look, just-----?-- Please-----

-----using the term, it's the term I'm trying to get to, you see?-- Well, it's a term that's very important and I would need to be satisfied that that's what I said, and I'm not at this point in time. Can you provide me that?

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Well, perhaps we might have to deal with that after lunch, Mr Chair. I'm very near the end. I just wanted to know whether you were using the word "lobby" as a term of art? That is, when you use the word lobby you meant that someone was doing something, what, that they're entitled to do, not entitled to do or - or are we just simply meaning people went to the CEO and asked him to prepare an agenda item?-- I think this is - we're dealing with a completely different matter now? I believe it's nothing to do with the rates.

30

You used the word "lobby", what do you mean by the word lobby?

MR BODDICE: Well, Commissioner, I object. Unless he's prepared to put, having read the transcript and doing it the proper way, I object to the question.

CHAIRMAN: We might be able to fortunately through the computer be able to find it quickly.

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MR WEBB: We've got it.

CHAIRMAN: Mr Webb, it would be appreciated if you would prepare your cross-examination.

MR WEBB: Thank you, Mr Chairman, for that advice. Now I'm looking at page 1548, line 50: "Right?-- It was immediately prior to the election. It came as a - it came out of the blue, really, this attempt in a political sense. We were at the council meeting and a motion was introduced. There was conjecture about where this had come from. The CEO wouldn't reveal. He said he'd been lobbied by certain councillors and wouldn't tell the rest of the council, the elected representatives, who had lobbied him and-----", "The CEO being?-- Mr Dickson, and he - a draft motion was presented, I think by him, and-----", "Presented, was it presented?-- I

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don't - presented in the sense it was introduced to the meeting. I don't think it was tabled. It was moved as a motion by the CEO, of course, but I recall he had the document"-----

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CHAIRMAN: Well, perhaps you could seek instructions from your client as to what he meant by the term "lobbied".

MR WEBB: Well, I'm just going to put to the witness that he didn't use the term. I put that now without reading through the rest of that particular sentence. I'm suggesting to you the CEO did not say he had been lobbied by councillors?-- My best recollection is he most certainly did say that he had been lobbied.

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The procedure is that for-----?-- And we're dealing with the infrastructure charges issue here just to make it clear.

For councillors to - well, you were incorrect in your evidence there. You later corrected it, I think. There was no motion actually put by the CEO, was there?-- There was a - there was no - the CEO can't put a motion.

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CHAIRMAN: Mr Webb, this has been addressed and made plain. Do we need to go over and get him to repeat the evidence-----

MR WEBB: No, no.

CHAIRMAN: -----he gave yesterday and indeed the day before.

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MR WEBB: No, but I'll go to what I have to put to him.

CHAIRMAN: Thank you.

MR WEBB: That the CEO did not introduce a motion. I put to you he did not introduce a motion?-- He certainly didn't.

CHAIRMAN: The witness has not said that the CEO did introduce a motion.

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WITNESS: No, he didn't.

CHAIRMAN: So there's no need to put that to him.

MR WEBB: He just did, yes, he did, I just read that part out. He did say that.

CHAIRMAN: Well, he corrected it later. I think it was during Mr Nyst's cross-examination it was made plain that there was no motion in fact introduced. There was a motion, a draft motion available.

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MR BODDICE: And indeed at 1549, line 5, the question was, "Presented, was it presented?-- I don't - presented in the sense that it was introduced to the meeting. I don't think it was tabled. It wasn't moved as a motion by the CEO of course, but I recall he had the document and it was then picked up, copied and provided to a few councillors."



CHAIRMAN: If a point has been clarified and it coincides with your instructions there's no need to clarify the point again.

MR WEBB: Thank you.

CHAIRMAN: If it's different from your instructions, of course, you will have to put your instructions.

MR WEBB: Well, I have put it that the CEO did not use the term "lobbied".

CHAIRMAN: And he never - he now agrees that the CEO did not introduce a motion. He's already answered your question about the term "lobby".

MR WEBB: Now, I want to put to you the minutes - I do have copies of these, Mr Chairman - just look at this document please.

CHAIRMAN: Well, I do note the time so before you move onto that perhaps if you give a copy to the witness he can read it during the lunch time.

MR WEBB: I'm just simply going to introduce it to him, I wasn't going to-----

CHAIRMAN: Okay. Well, I'll take it.

MR BODDICE: Commissioner, I would ask, if at all possible - Commissioner, I would ask if at all possible, my learned friend indicated just a short while ago he didn't have long to go. If it's possible to finish Councillor Young before lunch in view of how long he has been here I would ask that consideration be given to that.

CHAIRMAN: Well, it will save him and presumably you and your instructing solicitor coming back after lunch.

MR BODDICE: I'd have to confess-----

MR WEBB: That's where I was trying to get to.

CHAIRMAN: Okay. Well, I'm happy to sit on. So what is this, Mr Webb?

MR WEBB: These are the minutes of the council meeting of the 6th of August and they include the city planning committee's minutes of the 3rd of August. Yes, and that I've put it the wrong way around. They are the minutes of the city planning committee of the 3rd of August 2004 going to the council on the 6th of August 2004.

CHAIRMAN: All right. But it is just the minutes of the planning committee.

MR WEBB: That's what it is.

CHAIRMAN: Yes, okay. They'll be Exhibit 250.

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ADMITTED AND MARKED "EXHIBIT 250"

MR WEBB: You received this agenda item, did you not?-- I received the agenda item and these minutes, yes, Mr Webb.

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And I'd ask you to look-----

CHAIRMAN: This is the Yarrayne matter, is it?

MR WEBB: It's Yarrayne, yes, Mr Chairman. Just look at the bottom of the - it's probably numbered but my copy doesn't show it - it's the third page in of the document that I gave you?-- Yes.

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I want you to look at the bottom of the page, the recommendation?-- Yes.

The minutes that you received - you and the other Councillors - contained that recommendation did they not?-- The minutes that I received contained this statement, yes.

Yes. The statement how there was an alteration made?-- Yes.

Thank you. Nothing further, Mr Chairman.

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CHAIRMAN: Thank you, Mr Webb.

MR WEBB: Oh I tender that, I'm sorry.

CHAIRMAN: It is Exhibit 250.

WITNESS: And further I received a - I've seen a memo from the CO which explains that he doesn't believe that that's the best practice.

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CHAIRMAN: Mr Boddice.

MR BODDICE: I don't have any questions, thank you.

CHAIRMAN: Ms Hamilton.

MS HAMILTON: Just one matter. Mr Young, could I just clarify, you've spoken about the advisory group in respect of infrastructure charges-----?-- Yes, and I've-----

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-----which developer related interest?-- Yes.

On page 5 of Exhibit 243 a reference is made to a developer reference group which was formed to examine industries concern. The group compromised consultancy represent key

development industry players, gasmen and associates et cetera. Is that the group you're referring to?-- That is correct. Yes. I read that document last night and confirmed that that is - that's the advisory group which I'd referred to previously.

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Thank you, yes, that's all I have. May the witness be excused?

CHAIRMAN: Yes. Mr Young, you're excused. Thank you for your evidence.

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WITNESS EXCUSED

CHAIRMAN: We'll adjourn till 2.20.

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THE HEARING ADJOURNED AT 1.06 P.M. TILL 2.20 P.M.

THE HEARING RESUMED AT 2.18 P.M.

CHAIRMAN: Yes, Mr Boyle.

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MR BOYLE: Mr Chairman, the next two witnesses have indicated they don't want to be filmed whilst giving evidence. That's Ms Chan and Mr Cheong. Mr Chairman, I call Ms Chan.

CHAIRMAN: Cameramen, you understand that. So the usual. And the still photographer doesn't seem to be here. If anyone notices him come in if you can let me know and I'll make sure he's aware of not to take any photographs.

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SUK-FUN JOYCE CHAN, ON AFFIRMATION, EXAMINED:

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MR BYRNE: If the Commission please I seek leave to appear on behalf of Ms Chan and also Mr Cheong, instructed by Jacobsen Mahoney Lawyers.

CHAIRMAN: By Jacobs and?

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MR BYRNE: Jacobsen Mahoney.

CHAIRMAN: Jacobsen Mahoney. Mr Byrne, you have an automatic right under the Act to appear for a witness.

MR BYRNE: Thank you.

CHAIRMAN: I should say the witness has the automatic right to be legally represented.

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MR BYRNE: Yes.

CHAIRMAN: I don't appear to have any material from Ms Chan. If I can perhaps - anything that's being produced, if I can be just given copies of it.

MR BOYLE: Yes, Mr Chairman. Witness, your full name is Suk-Fun Joyce Chan, is that right?-- Yes.

You were served with a notice to appear here. Would you just have a look at that. Is that the notice you were served with?-- Yes.

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All right. I'll tender that notice.

CHAIRMAN: That's Exhibit 251.

ADMITTED AND MARKED "EXHIBIT 251"

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MR BOYLE: Now, that - there's a company Ninaford Pty Ltd, you're a director and secretary of that company; is that right?-- Correct.

You were interviewed by a CMC officer in Sydney on the 5th of November 2005?-- Yes.

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Would you have a look at this document please. You've seen a transcript of that interview?-- Yes.

And is what you've said in the interview true and correct?-- Yes.

I tender that transcript, Mr Chairman.

CHAIRMAN: And is that transcript an accurate record of the interview?-- Yes.

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Yes, that will be Exhibit 252.

ADMITTED AND MARKED "EXHIBIT 252"

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MR BOYLE: Mr Byrne will take the questioning from this point.

MR BYRNE: Ms Chan, as Mr Boyle has said you've been through that interview, it's correct?-- Yes.

If I can just direct your attention to certain things. Ninaford Pty Ltd is a company of which you've said you're a director?-- Yes.

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And that company together with another company called Framelgate, is that the correct-----?-- Yes. Framelgate.

They're involved in a project called The Wave at Broadbeach?-- Yes.

And does - do those companies and yourself as director have a solicitor who acts in respect to the companies?-- You mean a legal representative?

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Yes?-- Yes.

Who is that please?-- Mr Tony Hickey.

You'd meet regularly and discuss things with Mr Hickey I take it?-- Yes, we meet every month.

In respect to the matter that brings us here today do you recall a meeting you had with Mr Hickey and your husband in about the middle of last year, about July last year, when there was discussion about a donation?-- Yes.

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Can you tell us what you recall of that please?-- I can only remember that this is a donation of 10,000 because it is only a few words so I can't remember very well exactly the date and where do we meet, yeah, is mention about a donation.

Donation to what, what can you recall?-- To the Council.

The Council?-- Yes.

50

Where did the figure of \$10,000 come from?-- Because Warren and I think that the maximum we donate is 10,000 so that is the figure mentioned.

Who mentioned that figure?-- I think both Warren and I.

Was that in response to a question by Mr Hickey or a statement?-- Yes, Mr Hickey asked if we can generously donate it from our project to the Council and we think that since the Council are doing the work for the community so it is very reasonable for us to donate a sum of 10,000.

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What happened after that meeting and conversation?-- After that I think Warren - I remember Warren said we did not need a record for our bookkeeping and for our accountant so we - Warren asked if they can produce an invoice or receipt so that we can write a cheque to them.

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Okay. And did such an invoice or receipt arrive?-- Yes. Tony did fax us an invoice and then after we received that invoice I write a cheque to him.

Now, you've brought documentation up - with you up from Sydney. That includes the original of the invoice. Mr Chairman, with your leave, I've shown the originals to my friend, Mr Boyle. If I can produce copies?-- Yes.

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CHAIRMAN: Yes.

MR BYRNE: Just hold that for a moment, Mrs Chan. Does that appear to be the invoice you spoke about or a copy of it?-- Yes, this is the invoice.

All right. Now, that's addressed to Ninaford Pty Ltd and Framelgate Pty Ltd care of Hickeys Lawyers?-- Yes.

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Now, the invoice perhaps speaks for itself but you'll see there's what appears to be a stamped impression about halfway down on the right-hand side; what's that, do you know?-- The stamp?

Yes?-- That is by me and that is cheque number 88 and I write the cheque on 5th August.

Okay. Now, the other thing that's not standard on that appears to be Chinese characters or writing at the top right?-- Yes.

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Can you tell us about that?-- That is Warren's handwritten - making notes saying that this is donation to the government or Council.

I tender that, if the Commission please.

CHAIRMAN: Yes, that will be Exhibit 253.

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ADMITTED AND MARKED "EXHIBIT 253"

CHAIRMAN: Would you have another copy of that, Mr Byrne?

MR BYRNE: No.

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CHAIRMAN: All right.

MR BYRNE: We gave copies to my friend.

CHAIRMAN: That's okay, I can get one later.

MR BYRNE: Thank you.

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You mentioned, Mrs Chan, that you wrote a cheque. Would you look at this. This purports to be a copy of a cheque butt?-- Yes, correct.

Is that the cheque butt relating to the payment of \$11,000?-- Yes.

All right. Again, the original has been shown to my friend, Mr Boyle. I tender that, if the Commission please.

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CHAIRMAN: Exhibit 254.

ADMITTED AND MARKED "EXHIBIT 254"

CHAIRMAN: Could I just check, that invoice is a Quadrant invoice.

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MR BYRNE: It's a Quadrant invoice, yes.

CHAIRMAN: Yes. Yes, thank you. And the cheque is on the account of what, Ninaford, is it?

MR BYRNE: Ninaford Pty Ltd.

CHAIRMAN: And made out to?

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MR BYRNE: Made out to - I don't have the cheque but I can ask the witness.

Who was it made out to?-- Quadrant.

Quadrant.

CHAIRMAN: Thank you.

MR BYRNE: Could I just check with you; I may have misled you. You also provided to me and I've given to my learned friend a copy of a bank statement which seems to have the cheque number 88 coming out of it and that appears to be on an account called Framelgate Investment Ltd?-- Yes.

50

So it would be Framelgate rather than Ninaford Pty Ltd?-- This is a project of both companies. So the account is in both names.

Both names, all right. Now, the Chairman raised the invoice is in the name of Quadrant. Did you know who or what Quadrant was when you received the invoice?-- No, I have no idea what this is.

Did you or your husband in your presence ask for anything in the form of what you received?-- No.

And where was the cheque sent to?-- The cheque sent to Mr Tony Hickey.

Now, you live in Sydney?-- Yes.

Do you know any of the Gold Coast city councillors?-- No.

Were you in any way involved in the election that was held in 2004 on the Gold Coast?-- No.

Perhaps I can ask you this again: why was your reason or motivation in making that payment?-- I just want to make a donation, yeah. I have no indication or anything.

Did you know precisely where the money was going to?-- No, I haven't asked.

No, thank you, Mr Chairman.

MR BOYLE: Can I just go back to the last few questions Mr Byrne asked you as to why you made the donation. You said you just want to make the donation - a donation?-- Yes.

But why did you want to make the donation?-- Because Tony ask if we can make a donation to the Gold Coast Council. Then Warren and I decided to donate the money, because I thought the Council is doing the work for the community. I think it is - part of the citizens should make some generous donation if it is necessary, yes, that's what we thought.

It's because of the Council work in the community?-- Yeah.

Okay. Now, can I just clear up: the writing on the invoice was your husband's; is that right?-- Yes.

And the writing on it says donation to-----?-- Government or Council.

It says government or council?-- Yes, because we don't know what the donation goes for, just to make notes that's easy to remember.

Right. So does that mean you didn't know whether it was going to a Council or the government?-- No.

You didn't know which?-- We know that it is a donation to the Council. That's why we make the notes there.



Right. Okay. This invoice from Quadrant was received by fax; is that correct?-- Yes.

You wrote out a cheque and then sent it to Tony Hickey?-- Yes.

The cheque was payable to Quadrant?-- Yes.

Did you send a copy of the account back with the cheque? What did you send with the cheque?-- I just sent the cheque.

10

Just the cheque?-- Yes.

And that was for \$11,000?-- Yes, correct.

Can I just - for completeness, I might show you an exhibit, part of 104. It's part of Exhibit 101. There's - you see, that's a copy of the same account?-- Yes.

But it doesn't have any faxed markings on it, and it also has a date stamp on it. That's not your date stamp?-- No.

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No. All right. Thank you. Now, Framelgate Investment Limited is a foreign company. Is that right?-- Yes.

And the director of that is Hung Sun Ho?-- Yes.

Is that correct?-- Yes.

Is that person also known as Stanley Ho?-- Yes, he is called Stanley Ho.

30

And the company, Ninaford, he is also a director of that company? Oh, sorry, he's a director and has shares in a company which your husband has - is director of and you're a director of. It's Hungtat Worldwide Pty Ltd?-- Yes.

That's H-U-N-G-T-A-T?-- Yes.

And Angela Leung is also a shareholder of that company?-- Yes.

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And she's also a shareholder of Ninaford?-- Yes.

All right. And a director of Ninaford?-- Yes, correct.

Now, Angela and Hung Sun, are they husband and wife or-----?-- Yes, they are husband and wife.

Right. Did you have any discussion with either of those two people about making this donation?-- No, because I'm the representative.

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So you didn't check with anyone else or have any discussions with anyone else relating to these donations apart from your husband?-- Yes.

Has anyone else asked you to make a contribution to council - donation to council?-- You mean Mr Tony Hickey?

Apart from Mr Tony Hickey apart from this occasion?-- No.

And you said you don't know Quadrant. Am I right in saying that Quadrant didn't do any work on behalf of Ninaford or Framelgate, as far as you're aware? Any sort of work?-- I don't think so.

Or you don't know of any?-- I don't know of any, yeah.

Did you read the invoice?-- Yes.

Were you happy to pay money on the basis of the information in the invoice?-- Yes.

You said that there was an agreement to pay \$10,000?-- Yes.

And you paid \$11,000. Is that right?-- Yes.

Looking at the invoice, it doesn't mention a donation, does it?-- No.

And on reading the invoice, it just seems to represent that work was done for Quadrant - done by Quadrant for Ninaford. Is that correct, on the face of the invoice?-- Yes.

And there's a component in there of GST?-- Yes.

Now, that would appear to indicate that there was - the charging of GST is on the basis of it performing some form of service for Ninaford. Is that right?-- I don't know.

Well, if you make a donation, ordinarily you don't pay GST as well; a \$10,000 donation to someone?-- Yes.

You don't ordinarily pay GST, do you?-- No.

So by having the thousand dollars extra, that gives it the appearance that they'd performed some form of service which attracts a GST for Ninaford. Is that correct?-- Yes.

Did you have any discussion with Mr Hickey as to what information should be in the invoice-----?-- No.

-----that you received?-- No.

And I think when you gave evidence you said it was an invoice or receipt that you asked for when you had this conversation?-- Yes.

How long was it that - after this conversation with Mr Hickey was it that you received this invoice, do you think?-- Because we have meeting every month, so probably it will be discussion in July. That's why we receive it in office so that will be - take about three weeks at least.

So it was-----?-- Three weeks.

You think it was about three weeks after your meeting?-- Yes. 1

And you can't recall any other note coming with this invoice that was faxed through?-- No.

For the purpose of your own accounts, did you treat it as a donation?-- Yes.

So that's how it would appear on your books?-- Yes. 10

MR BOYLE: Do you know, this money, who it went to benefit at all, apart from paying this account? Who - who got the benefit of this money?-- I think Gold Coast Council.

All right. The whole - the whole Council?-- Yeah.

Can I - I know you say you don't know any candidates, but - but Quadrant did work for a number of people and I'll just ask you whether you know these - any of these names. 20

MR RADCLIFF: Really, the witness has said in her statement and in cross-examination by counsel assisting that she doesn't know any of the candidates. It's really going-----

CHAIRMAN: No. She was asked do you know any Councillors.

MR RADCLIFF: Oh, sorry. I beg your pardon. Yes. Councillors. I thought my friend was going back onto Councillors again. I withdraw that. 30

CHAIRMAN: No. He said he was going to the people that Quadrant did work for.

MR RADCLIFF: Yes.

CHAIRMAN: Some of whom are Councillors.

MR RADCLIFF: Yes. That's right. Well, I maintain my objection in relation to that. 40

CHAIRMAN: Why? You know, why can't there be a more specific question following on from a general question? Unless you can give me a good reason I over-rule your objection.

MR RADCLIFF: When they've been asked three times and the answer is no.

CHAIRMAN: Well, I don't know that the question was asked three times, but that's irrelevant. If a general question is asked, do you know any Councillors of the Gold Coast? No. In particular, do you know Mr X, Mrs Y, et cetera? The person might know them, but not know they're a Councillor. 50

MR BOYLE: Do you know a person, Roxanne Scott?-- No.

Brian Rowe?-- No.

Greg Betts?-- No.

Grant Pforr?-- No.

Now, you say you can't recall any dealings with Quadrant. Have you ever - do you know a person called Tony Scott?-- No.

Chris Morgan?-- No.

Did you have any concerns about the fact of you making a donation to the Council becoming known publicly?-- What do you mean by that? I don't understand.

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Well, that - that it become out - come out in the media, or anything else, which says that you made a donation to Council? Did - did you have any concerns about that?-- No. No.

The companies, Ninaford and Framelgate, were involved in a development called the Wave on Broadbeach, is that right?-- Yes.

20

And that company had applied for an approval to change the use to a 30 storey mixed use development at Broadbeach, so that it was going to be a shop and apartment development. Is that correct?-- Yes.

Now, I'm just trying to get the context of this donation. You are - there was a request - you were having quite regular meetings with Tony Hickey about that particular development, I take it?-- Yes.

30

You were having monthly meetings?-- Yes.

And in the lead up to making this donation, how often had you been meeting him about this particular project?-- We'd meet every month.

Yeah, for how long? For the year leading up to that, or-----?-- Since the project started.

Which was when?-- 2003 - end of 2003.

40

Okay. So, you had something that had been submitted for approval to Council for this project, is that correct?-- Yes.

Now, what - what I suggest is that on the 28th of July - excuse me, bear with me a moment - the 28th of July 2004 your - the Council wrote to Hickey Lawyers, care of Planet Consulting Proprietary Limited advising them of an approval of the development subject to certain conditions. Is that - would that be about right?-- I have no idea because he didn't give me a copy.

50

He didn't give you a copy?-- No.

Okay. Who? Planet Consulting Proprietary Limited, who are they?-- He is one of our consultants.

For the project?-- Yes.

Okay. When you met with Mr Hickey some time in July, you discussed the project, obviously?-- Yes.

As well as this donation to Council?-- Mmm. I can't remember the donation is discussed in the meeting or after the meeting, or in the dinner time. Yeah. Sometimes we will have after meeting, we will have a chat so I - I can't remember when we discussed this.

All right. Well, can I ask you, were you aware that obviously the Council approved the development, but subject to certain infrastructure charges?-- Yes.

Infrastructure charges which you thought were quite excessive?-- Yes.

It was about one and a-half million dollars, is that correct?-- Correct. Yes.

Now, what I'm saying to you is that on the 28th of July a letter went from the Council to Planet Consulting Proprietary Limited, advising them of that decision. Okay?-- Mmm-hmm.

Now, what I'm asking you is at the time you made - or made the donation to Council, were you aware of the decision by Council to approve your project, development, subject to those infrastructure charges?-- No.

You weren't?-- No.

So, at that stage you weren't aware that the approval had been granted?-- No.

Did you know then, at the time you made the donation, that the - or did you believe that the - that your development application was still before Council?-- I don't understand what you mean.

Well, you know that you - you put in a - an application for a development to the Council and it - and then it has to go through a committee and then it goes to the full Council for a decision?-- Mmm-hmm.

Given the size of this project. Now, I'm just wanting to know at what stage did you - at the time you made the donation, did you think your project - your development was at, at the time of the donation?-- I - I don't think my donation related to this approval. I don't think of it.

Yeah?-- Yeah.

But I'm just asking you what did you believe to be the status of your development application at the time you made the donation?-- I really don't understand. I didn't think of the approval.

Well, you see, you're giving evidence that you made the donation because you thought the council was doing good for the community?-- Yes.

1

Now, there's two possible ways, so far as the development application is concerned, it was either to your mind still before council for approval awaiting approval at the time you made the donation, or the council had already made the decision with the infrastructure charges and then you paid the donation to them. Do you see that?-- No, no, no. I didn't think of this approval at all, yes. I made the donation only because from our heart, we don't think of any application or so.

10

So you didn't consider your - the fact that the one and only project that your company was involved in on the Gold Coast with the full council at the time you made the donation of \$11,000?-- I don't think of it.

Sorry?-- I haven't any idea, I don't think of any approval at all.

20

And it was done at the request of the solicitor who's acting for you in the approval application?-- Yes, it was done by Mr Tony Hickey.

Yes, who was acting for you in this project?-- Yes.

Your one development project?-- Yes.

30

And you say there's no connection at all?-- No. He just told me that and hasn't mentioned anything about it.

And it never entered your head when you were making this donation-----?-- No.

-----about the fact of your project?-- No.

Can I ask, was the invoice obtained in that form to conceal the fact that money was going to a fund to the benefit of councillors?-- Can you explain that?

40

Well what I'm suggesting is that the form of the invoice gives on its face the look as if it was work done for your company. Correct?-- Yes.

And what I'm suggesting is, was that invoice obtained to conceal the fact that you were making a donation to a fund for the benefit of certain councillors?-- No.

50

Did you know that - I'm sorry, I withdraw that.

In your interview - have you got a copy of your interview there?-- Yes.

If you just turn to page 7?-- Yes.

Line 225, do you see the numbers on the left hand side?-- Yes.

I'll just read this to you, "I remember Tony" - this is about your meeting with Mr Hickey - "I remember Tony said, 'Council is good people and if the budget is not tight or - we'd like to make a contribution to the council and then I remember Warren, both Warren and I said, oh, doesn't have problem, because (sic) this is a very profitable project, it not much, we'd be happy to donate.'" Is that correct?-- Yes.

So Mr Hickey was saying to you at that point at the time of the meeting the council is good people. Is that right?-- Not Tony but both Warren and I thought that council is very good people.

Right, so it wasn't Tony saying council is good people?-- No, both Warren and I.

And when you say good people, you mean it in the context of community sort of activities?-- Yes, in a general-----

Not development sort of way?-- No, I didn't think of any approval.

No. And yet you made the donation from the same company that was seeking from the same account - of the company that was seeking the approval. Correct?-- Yes.

Out of that fund?-- Which fund?

Out of the accounts?-- Yes, the accounts.

And you didn't know it to relate to any election campaign?-- No.

The - and did you believe it to be a payment for work that was done, previously done. Is that right?-- No.

It was work that was done by Quadrant on behalf of the council. Is that what you believed when you saw the invoice?-- No, when I saw the invoice I thought this is only a sort of invoice or receipt so that we can keep a record, so I didn't care who is Quadrant, so I just write a cheque and then sent it to Tony.

Right. And in your books you'd write down council donation. Is that correct?-- Yes, correct.

Now Mr Hickey has given evidence - and this is at page 666 at line 10 - he said "This company agreed to assume a responsibility for outstanding consultancy fees that were owed to Quadrant as a result of the election campaign." Now you say you weren't told by Mr Hickey that it related to an election campaign?-- Maybe he had to Warren, but I can't recall he told me.

So the best you can remember is it was just the Council?-- Yes.

I don't have any further questions, thank you.

1

CHAIRMAN: Ms Chan, in your record of interview, in your interview with the Commission officers, you said there that all your invoices were approved by Tony Hickey before they were passed on to you for you to write out a cheque?-- Yes.

Can you tell me about that? What do you mean that all your invoices were approved by Tony Hickey?-- What I mean is all the invoices were passed to me by Tony Hickey, because Tony got it from our project manager who verified it before I write the cheque, so the project manager pass it to Tony and then Tony sent it to me.

10

And was there any reason why you passed it through Tony Hickey, why your project manager didn't send it straight on to you?-- Because I want people to double-check and that was just passed to me.

Right. So you wanted Tony Hickey to double-check the invoices?-- Yes. Yes.

20

And was he to look at it and tell you if it was okay to pay on that invoice?-- He sent it to me but it should be approved by the project manager as well, both of them.

Okay. And you said that you asked Tony Hickey to give you an invoice or a receipt upon which you could write out the cheque. When you then got the Quadrant invoice, it says on it, "Consultancy fees." Had you asked that the invoice have something like that written on it, this form "Consultancy fees"?-- I saw the word "consultancy fee" but I haven't asked.

30

You didn't ask for that?-- I didn't ask.

And did you ask for it to come from Quadrant or from some firm rather than from the Council?-- No, I haven't asked.

I see, and did-----?-- Because I know that this is a donation.

40

Yes. But did you ask Mr Hickey why you were being asked to pay a donation to the Council upon a form from an invoice - and you know what an invoice is, I assume?-- Mmm.

On an invoice from Quadrant. Did you ever ask Mr Hickey that?-- No.

And was there any reason why you didn't query him as to why it was an invoice from Quadrant for what you understood was a donation to the Council?-- No, I didn't ask.

50

I see. Yes, any questions?

MR MARTIN: I have a couple, thank you. Ms Chan, could I take you back to the conversation at that meal with Mr Hickey - and



I know that you've told us at the outset that you haven't got a great recall of what words were exactly spoken. Could I suggest to you that whatever the exact words were, Mr Hickey told you and Warren that other developers had donated money to the election campaign for the Council and as a result hopefully there was a pretty good Gold Coast Council in place. Did he say something like that to you?-- No.

1

You don't recall anything like that?-- No.

10

Well, could I break it down a bit. Firstly, did he speak about the election campaign?-- No. He didn't speak to me about the election campaign.

He didn't speak to you about it and that's why you answered my friend over there in that fashion that you don't recall him mentioning the election campaign; is that right?-- Yes.

You do at least recall him talking about a donation-----?-- Yes.

20

-----and you do recall him talking about a good or solid Gold Coast Council?-- Yes.

You recall that much in the conversation?-- Yes. I - yes, I can only recall the Gold Coast Council, yes.

Okay. Could I suggest to you that he also said that other developers had paid \$10,000 - he actually mentioned the figure \$10,000. Do you recall that he mentioned that figure?-- No.

30

Do you think that you and Warren came to that figure, do you?-- Yes.

I see. And I suggest to you that he said one of the consultants hasn't been paid all his fees; would you pay for these outstanding fees or contribute to these outstanding fees. Did he say something like that?-- No. I can't recall.

You can't recall. You see, the Chairman over there just asked you some questions before about when you received the invoice and it referred to consultancy fees. You didn't query the invoice, that is, you didn't question the invoice with Tony or with Quadrant or anyone else. Could it be that that was because Mr Hickey said to you, "We'd like you to contribute or donate," whatever word was used, in respect of a consultant, that his fees were outstanding. Could that be the reason why you didn't question the invoice?-- No, because Tony is a very trustworthy person and we trust him very much, so I didn't ask any question on the invoice.

40

50

Okay. All right. Well, at this dinner were there times at which Tony Hickey was speaking with Warren and not necessarily with you, were there?-- We both are present at the time but I can't recall it. Maybe I just can't remember it.

Okay. All right. And, Ms Chan, clearly, English is not your first language?-- Yes.

Is that fair enough?-- Yes. Maybe I don't understand at the time.

1

All right. Okay. Thanks, Ms Chan.

CHAIRMAN: No-one else? Anything, Mr Byrne?

MR BYRNE: No, thank you, Mr Chairman.

10

MR BOYLE: May the witness be excused?

CHAIRMAN: Yes. Thank you, Ms Chan. Thank you for your evidence.

WITNESS EXCUSED

20

MR BOYLE: I call Mr Cheung; Warren Cheung.

WARREN CHEUNG, ON AFFIRMATION, EXAMINED:

MR BOYLE: Witness, your name is Warren Cheung. Is that right?-- Yes.

30

You can stay seated. You're a director of Hungtat Worldwide Pty Ltd. Is that correct?-- Yes.

Which operates Palm Meadows Golf-----?-- Right.

All right. Now, you were served with a notice to appear. Could you just have a look at this, please? Is that the notice that was served on you, Mr Cheung?-- Yes.

40

I tender that notice. It has an oath of service attached.

CHAIRMAN: Yes, that's Exhibit 255.

ADMITTED AND MARKED "EXHIBIT 255"

50

MR BOYLE: And on the 5th of November 2005 you were interviewed by a CMC officer in Sydney. Is that correct?-- Correct, yes.

And that interview was tape-recorded and a transcript has been prepared of that. Have you looked at that transcript?-- I did.

Is that an accurate record of your conversation?-- Yes.

And is what you said in the conversation with the CMC officer true and correct?-- Yes.

All right. I tender that transcript.

CHAIRMAN: It's Exhibit 256.

ADMITTED AND MARKED "EXHIBIT 256"

MR BOYLE: Mr Byrne will conduct the examination from here, Mr Chairman.

MR BYRNE: Mr Cheung, the meeting - let me start at the beginning. What involvement do you have with the companies, Ninaford and Framelgate?-- I do not engage any role in Ninaford and Framelgate.

Your wife is director?-- Yes, she's the director.

And there needs to be a local, as in Australian director, of a company such as that. Is that your understanding?-- Yes.

Now, as we've heard, those companies were involved in a development called The Wave at Broadbeach?-- Yes.

You were fully aware of that development; what was going on?-- Yes.

And what was the role of Tony Hickey?-- Tony Hickey is legal representative for The Wave project, and as well he's the legal adviser for our golf course, Palm Meadow.

Now, you also reside in Sydney?-- Yes.

How often would you travel to the Gold Coast during the development project? Well, it's ongoing, but how often do you travel?-- We travel to the Gold Coast once a month, and every time we will take three or four days. It depends.

And on each of those visits would you meet with Tony Hickey?-- Yes. Most of the time, yes, to discuss project.

And what's - what form would those meetings take? Were they similar or did they differ?-- I don't understand what-----

Where would you meet him?-- In - most probably in Tony's office.

All right. Would you speak to him in other places?--  
Sometimes in leisure time we might have some casual talk  
during dinnertime in the restaurant.

1

Various restaurants around the-----?-- Yeah.

-----Gold Coast? Do you remember a particular occasion about  
July of last year when there was mention of, if I can use the  
term "donation"?-- Yes.

10

Can you tell us firstly whether you can recall where that took  
place?-- I can't say because it's 14 or 16 months ago, but I  
can assume that this probably - most probably would be  
discussed in the time in a more friendly environment.

And who was present?-- Usually my wife and Tony.

Now, the particular conversation, you've given an account in  
the interview. Can you give us your best recollection now of  
what was said?-- Well, I think in one of the evening during  
dinnertime Tony had proposed whether we can be generous to  
contribute in an amount of something like \$10,000 as a  
contribution donation to this campaign.

20

Campaign?-- Yeah.

What campaign?-- The election campaign; something like that.

What did you say, or what did your wife say?-- Well, since we  
are doing a very profitable project and he's asking for that  
sort of sum, and then we think we can - able to afford it, and  
then, okay, this is a donation. As long as it's legal and we  
can - okay, we approved it.

30

As long as it's legal, did you say?-- Yeah. And I  
specifically mentioned that I need an invoice because I have  
to keep my book.

What happened after that?-- Nothing happened I think until we  
received the invoice from Tony, and then we make our cheque.

40

Could the witness see, I believe it's Exhibit 253? That's a  
copy, but do you recognise it?-- Yeah.

What is it, please?-- It's the invoice from Quadrant.

That's the invoice you've been speaking of?-- Yes.

Now, as you say, it comes from Quadrant. Had you ever heard  
of Quadrant?-- No.

50

Do you know who they are or what they did?-- No.

And did you ever ask Tony Hickey about who they were?-- No.

Now, we see Chinese writing on the top right?-- That's my  
writing, yeah.

When did you write that?-- I wrote it on the day - I believe it will be on the 5th of August when Joyce written the cheque. Because this is not part of the service, I know that it is a donation. That's why I've particularly written in Chinese saying that is a donation. 1

What does that - if you can translate your writing for us please?-- Okay. Is "Donation to Government Council.

"Donation to Government Council"?-- Mmm. 10

Now you say you knew it wasn't in relation to consultancy fees?-- Mmm-hmm.

Why is that?-- Well, because they are doing nothing for us. All other consultants, they are doing the job for us has been certified by the project manager and then we know that the detail what they are - been doing. But this invoice, I only ask for Tony to give me invoice if he want to get a donation from us, we just want an invoice, that's all, to keep our book. 20

Keep your books?-- Yeah.

Now what was your understanding at the time the payment was made as to what was going to happen to the moneys?-- We just trust Tony and then we pass the cheque to Tony and we don't want to know anything about it. We believe he's our lawyer and then he's a trustworthy person, and then since we can spare the \$10,000 out of our account as a donation we don't really want to know about it. 30

Okay. Were you involved in the Gold Coast elections in the sense that you obviously didn't vote?-- I know nothing about it.

Did you know any of the candidates?-- No.

Do you know any of the persons who were elected to be councillors?-- No. 40

Now, the companies, Ninaford and Framelgate, they were involved in The Wave development?-- Yes.

Now, that involved an application for approval from council?-- Yeah.

What connection if any did the donation have with that application?-- I don't think that's any relation to it, you know. We are just start initiating this project some time in middle of 2002, 2003, and we have nothing to do with this donation. The donation is only coming out from our generosity, you know, which are asked by Tony. 50

In respect to the application, is it fair to say that it went through Courts at various levels?-- I don't understand that.

Were there Court proceedings in respect to the application?-- Mmm-hmm.

1

Do you understand what I'm saying or am I not making myself clear?-- No, no, not really.

You're aware that the application originally came with a - about \$1.5 million infrastructure?-- Yes.

Was there a challenge made by the developers in respect to that?-- Yes.

10

How did that - what form did that take?-- I think we have employ Tony to - on the Court. We are not agreeing with that large sum of money of \$1.5 million for the infrastructure.

And can you assist on whether an appeal was lodged on behalf of the developers in August 2004?-- Yes.

And that continued through the District - sorry, Planning and Environment Court, the Court of Appeal, until there was resolution in about October of this year?-- Yes.

20

Was the company paying legal fees in respect to that challenge?-- Yeah, I think we have spent approximately over \$250,000 on the legal - legal fee to get these things right.

And that now, through that procedure, has been resolved?-- I think has been resolved.

30

You're not the one who wrote the cheque, it was your wife?-- No, is my wife.

Do you remember the account on which it was drawn, which account?-- I think Ninaford or Framelgate because it's a joint - joint - this piece of land is under two company name, Ninaford and Framelgate.

Thank you.

40

CHAIRMAN: Yes, thank you. Yes, Mr Boyce?

MR BOYLE: Now as - you're a director of that Hungtat Worldwide Pty Ltd. Its principal place of business is Palm Meadows, that's correct?-- Yes.

And that's the registered office also of Ninaford, is that right?-- I'm not too sure about that.

50

Okay?-- As I mentioned I have no roles in Ninaford and Framelgate.

Okay. You have no - you're not listed as a director or a shareholder or anything of those two companies?-- No.

But in day to day things did you play a role in those companies?-- No, because these two company, as well as Hungtat, is under the one ownership and the Framelgate and Ninaford have decide to initiate this development and then I will come into a position managing, as a managing consultant to do this part here.

1

Right. Well, does that mean you had an interest in the project?-- I do. I have to look after my interest of my own.

10

I see. So you really did have an interest in what Ninaford and Framelgate were doing? You did have some role in that?-- Yes. In The Wave.

In The Wave?-- The Wave, yes.

Okay. And is that why you travelled to have these monthly meetings with Mr Hickey?-- Yes.

And you'd been having monthly meetings since 2003?-- Yes.

20

Now you, from the discussion in July 2004, thought that the contribution was to campaign for an election. Is that correct?-- Yes, something like that.

And was your understanding from the discussion that it was for an election that had passed?-- I don't - I don't know. I don't know when the election take place. It was before or after.

30

Right. So it could have been for an up and coming election?-- It could be.

And did you know for whose campaign in particular?-- No.

That money was to be used for?-- No.

Did you know who was to get the benefit of that money that you - sorry, that Ninaford or Framelgate donated, do you know who got the benefit of that or who was to get the benefit of it?-- No.

40

No names were mentioned at all?-- No, no. Is only Tony mentioned it is donation since we agree and then we make the payment. I just keep it very simple and short.

All right. Well, did he mention it was for a Council campaign election?-- I can't recall that.

Why - why did you put on the receipt donation to Government Council?-- Well, because the money that we spent as an outgoing expenses and I have to keep a book and this is not the service they provide it - that's why I specially marked in my language this is for donation.

50

Yes, but it - it wasn't a donation to the Council as far as you were aware? It was a donation to a campaign?-- Well, to me, I couldn't make any difference between this election or

the Council. For me, I wanted to get as a very simple word this - a donation, whether we can afford it, if we can, we just donate it and then we trust - only as our legal - legal lawyer he were doing the right thing.

1

Well, did you think it was the Gold Coast Council?-- I - I assume so. I assume it's Gold Coast Council.

You said it was a very profitable project so you - you decided to donate?-- Yes. We can afford to donate.

10

And this very profitable project was happening in the Gold Coast Council area, wasn't it?-- At the Wave.

Yeah. Did you have any other conversation with Mr Hickey about the donation since you had that meeting with him to when the cheque was sent?-- No.

You - what do you say was the purpose of the invoice, or the need for an invoice?-- To keep my book and for probably for tax purpose.

20

Tax purposes?-- Yes. I don't know. It's up to my accountant how to do it.

All right. Well, did anyone suggest to you that making a donation to a campaign would be a company tax deduction?-- I don't know. It's up to my accountant whether to - how to do it. Whether it's a tax deduction or not, is up to the professional people doing it, but I need the receipt.

30

And that was a condition before you paid it, wasn't it?-- Yes.

That you got it?-- Mmm.

And when you got it, did you read it, the invoice?-- Look, it's very simple invoice - it's a consultant fee.

But you had no idea what the consultancy was - what sort of consultancy it was?-- I know they are not doing anything for us. This only an invoice for my book.

40

All right. And on the face of the invoice there's nothing to mention it being a - for a donation of any description, is there? Is that correct?-- Correct.

And you agreed to a \$10,000 donation, is that right?-- Yes.

And that was made in to \$11,000 because of GST, is that correct?-- Right. Correct.

50

Can I suggest to you that on the face of the invoice it appears that it just shows that it was work done by Quadrant for Ninaford and Framelgate?-- I beg your pardon.

On the face of the invoice, it looks as if it's for work done for Ninaford and Framelgate?-- It appears to.



Yes. Do you understand that there may be a difference so far as if - if they did work for you it may be tax deductible?-- I don't know. I don't know.

1

You don't-----?-- It's up to my accountant to sort it out.

And in fact it - it includes a GST which seems to suggest that Quadrant was doing some sort of service for you and that's why it was charged?-- It appears on the invoice, yes.

10

Ordinarily you don't pay GST on a donation, do you?-- I don't know. I never make any donation before.

Why did - why did you support the making of a donation here?-- It was requested by Tony - to us and then we think, it was such a huge size of project and we can - able to do this amount of money for - as a donation.

So, it was just because he asked you?-- Yeah. He proposed it.

20

It wasn't because you thought it was going to a good cause, or anything like that?-- No.

Can I ask you about your project? It went at - sorry, I'll ask you - what was the stage of your project at the time that you made the donation?-- I'm not too sure. I think we have already got the approval.

Sorry?-- I - I don't - I'm not too sure about it - the timing.

30

Yes. Well, you see, did it occur to you that you could be donating to a Council which was considering a matter of which you had an interest, or the company had an interest?-- I think it's a totally two different issue to me.

Two different issues?-- Yes.

It - it never crossed your mind?-- Never.

See, what I suggest is that on the 28th of July the Council sent a letter to Planet, you know that company that was doing work on your behalf for the project, advising them that approval was given but subject to certain conditions and infrastructure charges?-- Mmm-hmm.

40

Infrastructure charges which you subsequently appealed against?-- Yes.

And I suggest the appeal was lodged on the 26th of August 2004?-- I can't be quite-----

50

Which was a few weeks after making the donation I suggest?-- Mmm.

Now, are you saying that at the time that the cheque was written on the 5th of August you didn't know what the stage of approval was with Council?-- I think we - probably we know

that we already got approval but we didn't know the detail of the conditions.

1

So you hadn't been advised of these infrastructure charges?-- We have budgeted for the infrastructure charges but we didn't expect - we didn't know that the infrastructure - infrastructure amount would be - would be such a big amount.

So at that stage were you happy that you got the approval?-- Of course we happy to get approval.

10

Yes. So - and you weren't in any way - at the time you made the donation - aware that you had these huge infrastructure charges? No? So you were quite happy with the Council at that point?-- No, we - we just got the approval, we are happy to have the approval and I don't see that anything related to this donation.

But the reality was you have the solicitor who acts for you on the project and had been acting for some time on the project-----?-- Yes.

20

-----asking you to make the donation?-- Mmm.

And it was to Council; correct?-- Well, Council or election campaign or whatever-----

Yes. Well, you've written Council, Government Council on the - on your form. It's to the same Council as far as you are aware that was dealing with your project?-- Mmm.

30

And it was from the same company that was dealing - was conducting the project?-- Mmm.

And you say it never crossed your mind?-- No.

Was the invoice obtained to conceal the fact that money was going from the company to the benefit of certain Councillors?-- No. We just send the cheque to Tony Hickey, that's it.

40

Can I ask you - you said you don't know - didn't know any Councillors or candidates for an election; is that correct?-- That's correct.

I'll ask you a few names, see if you know any of these people. Roxanne Scott?-- No.

Brian Rowe?-- No.

50

Greg Betts?-- No.

Grant Pforr?-- No.

You say you had no dealings with this company Quadrant?-- No.

And they didn't do any work for you?-- No.

Do you know Chris Morgan or Tony Scott? Did anyone else approach you to make a donation to the campaign fund?-- No.

1

Mr Hickey gave - has given evidence and he said this, "This company agreed to assume a responsibility for outstanding consultancy fees that were owed to Quadrant as a result of the election campaign." Can you recall him saying anything along those lines?-- Can't really remember.

And on another point at page 665 line 50, "And they were asked were they prepared to contribute to assume responsibility for part of those consultancy fees by way of contribution, you know, belatedly to that campaign." You can't recall that?-- No.

10

You see, what I'm saying is it seems to suggest that it's for a campaign that's already happened?-- As probably English is not our main language maybe - maybe we could not catch what exactly he said but as far as Joyce and myself concerned he supposed to give a donation and then we think we can afford to do it and then we just donated.

20

You certainly didn't know that it was a donation for a campaign which occurred five months earlier?-- No.

Did anyone else - did you consult with anyone else prior to making the decision to make the donation?-- No, except my wife.

You didn't discuss with - the matter with Stanley Ho?-- No, I don't think-----

30

Or Angela?-- No.

Yes, I don't have any further questions. Thank you.

CHAIRMAN: Yes, thank you. Mr Cheung; you said that you said to Mr Hickey that you needed an invoice-----?-- Yes.

-----for your books?-- Yes.

40

Did you tell him any of the details that you would need in the invoice?-- No, I didn't. I just asked him, "I want invoice." That's all, to keep my book-----

All right?-- -----because it's outgoing expenses so in any case, if anybody wanted to know who took that \$10,000 in the book - a track record.

Certainly. Okay. Yes, Mr Martin?

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MR MARTIN: Thank you. Mr Cheung; did I understand you to say that you used to travel up to the Gold Coast about once a month-----?-- Yes.

-----and stay there for three or four days at a time-----?-- Yes.

1

-----so is that correct?-- It's correct.

And was that going on throughout 2003 and 2004?-- Yes.

Okay. On the occasion that Mr Hickey spoke to you about a donation or contribution, I see you use both words-----?-- Yes.

10

-----when you spoke to the police officer. He certainly did speak about a donation or contribution and spoke about an election campaign; is that correct?-- Yes, he might, yes.

Yes. And is it also correct that it was he, Mr Hickey who mentioned the figure of \$10,000-----?-- Uh-hmm.

-----by way of the donation or contribution-----?-- Right.

20

-----is that correct?-- Correct.

Mr Cheung; and I'm not purporting to give the exact words that were spoken at the meal but do you accept that Mr Hickey said to you words to the effect, "Others or other developers had contributed to the election campaign." That they had contributed \$10,000 and that hopefully, there was a good council or a solid council or a pretty good council resulting from the campaign but there was a consultant who had fees yet to be paid and he was asking you really, as a favour or an act of generosity to contribute \$10,000 towards that?-- Oh, yes. I think he might have say that. I can not recall 100 per cent but I - once we - agreed to pay - donate - contribute or whatever donation or contributions for the \$10,000, that's - we just asked as long as we got an invoice and is legal.

30

Yes?-- Okay.

And you-----?-- Yeah, we do that.

40

-----specifically said, "I want an invoice for it. We need it for the company books," or whatever-----?-- Yeah.

All right. And Mr Cheung, it was simply an act of generosity on your part or on the company's part to donate that money; is that so?-- Yep.

Whatever was said by Mr Hickey that night it clearly referred to an election campaign and the Gold Coast Council because you knew to write that on your invoice about the council, didn't you?-- Yeah.

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Thanks, Mr Cheung.

CHAIRMAN: Mr Byrne?

MR BYRNE: No, thank you, Mr Chairman.

MR BOYLE: No further questions. May this witness be excused?

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CHAIRMAN: Yes, thank you, Mr Cheung, thank you for your evidence.

WITNESS EXCUSED

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MR BOYLE: Mr Mulholland is conducting the examination with respect to the next witness.

CHAIRMAN: Do we need a short adjournment?

MR BOYLE: A short adjournment, thank you.

CHAIRMAN: Yes.

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THE HEARING ADJOURNED AT 3.43 P.M.

THE HEARING RESUMED AT 3.50 P.M.

MR MULHOLLAND: Mr Chairman, I call Anthony David Scott

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ANTHONY DAVID SCOTT, SWORN AND EXAMINED:

MR MULHOLLAND: Is your full name - just sit down, Mr Scott. Is your full name Anthony David Scott?-- It is.

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And you a director of Quadrant?-- I am indeed.

You are the chief executive officer of Quadrant?-- Yes.

How long have you been a director of Quadrant?-- The company was established in 1990.

Yes, and how long have you been-----?-- Since its inception.

Are you - you are the majority shareholder?-- I am indeed.

50

Mr Scott, on the 15th of April this year did the Commission request information from you?-- Yes, it did.

And did you respond to that request, that written request from the Commission by a communication by letter of the 19th of April 2005?-- I did. I did.

And did you provide information to the Commission at that stage?-- Yes.

1

Would you have a look please at Exhibit 144. Does that material contain the information you supplied to the Commission in April?-- Without going through every page it would appear to, yes.

Yes, thank you. Now, did you receive on the 27th of October 2005 an attendance notice from the Commission?-- I did.

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Would you have a look at this document please? Is that the attendance notice?-- Yes, it is.

I tender that, Mr Chairman.

CHAIRMAN: Exhibit 257.

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ADMITTED AND MARKED "EXHIBIT 257"

MR MULHOLLAND: Now, did the Commission request an interview of you?-- Yes, it did.

And did you decline that request?-- I did.

Did your solicitor, Mr Boe, however, supply a statement from you?-- He did.

30

Yes. Would you have a look at this document please? Now, is that the statement that you provided?-- It is. And you supplied it on oath?-- I did; however, I have one correction to it, there's a date slightly out.

All right?-- If I may make that correction.

Well, yes - well, you can. I'll let Mr Boe take you to that, because he's indicated that he'll take up the opportunity of questioning you very soon?-- Thank you.

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That is dated the 10th of November 2005, Mr Chairman, and I tender it.

CHAIRMAN: Yes, that statement of Mr Scott is Exhibit 258.

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ADMITTED AND MARKED "EXHIBIT 258"

MR MULHOLLAND: Yes, Mr Boe is going to question Mr Scott now.

CHAIRMAN: Yes, Mr Boe.

MR BOE: Thank you, Mr Chairman. Mr Scott, in providing the information on or about the 19th of April 2005, what did you do in mechanical terms? What did you physically do in causing that response to go to the CMC?-- Having received the letter I instigated one of my staff to basically go to our Arch Lever folders, photocopy everything we had on those files, package it up and under my hand of a letter, send it back.

10

And you had nothing to do with this particular account, did you?-- Correct.

Why did you do this?-- Christ Morgan, who it was directed to, was on leave overseas.

And the staff member you directed to compile the information, was that his secretary?-- Correct.

Did you know - did you ask her to exclude anything?-- Not at all.

20

So it was a open request to forward everything-----?-- Absolutely everything we had.

Okay. Now, subsequently - that is more recently, following conferences with people in my office, did you ascertain that there was a document that you didn't then forward?-- There was one particular invoice that was on my secretary's personal computer which was not back up on our system and that's - we discovered that a few days ago.

30

Okay. And I'll get to that in a minute. That's the Sunland invoice?-- Sunland, yes.

Now, the - I don't propose to cover any matters in detail in your statement that you provided, but just leading to the issue of your involvement in chasing payment on Quadrant's behalf, can you just first outline why it is that you took it over?-- Certainly. My involvement from month to month, month, was seeing that we had an outstanding debt of approximately \$22,000. My relationship with Mr Ray was probably stronger than Chris's, so I took it on myself to chase the debts that were outstanding.

40

You are a majority shareholder?-- I am a 60 per cent shareholder of the company.

And you had an interest financially-----?-- Absolutely.

50

Okay. Now, in taking those steps were you aware of who, in fact, Quadrant had performed services for?-- Vaguely. Not in great detail.

Can you just be more specific. What were you aware of in terms of what Quadrant had done?-- I was aware that we'd created some marketing material for various candidates.

Did you know who they were?-- No.

1

Had you ever met any of them?-- No.

Now, had you ever met any of the councillors?-- No.

Now, the - the - how did you go about chasing the-----?-- Regular phone calls to-----

To whom?-- To Mr Ray.

10

Did you speak to him specifically?-- Mainly to his secretary, Sue Davies, and if I bumped into Brian in the car park we'd certainly have a chat about it saying what's happening.

So other than a general comment like, "What's happening, I want to be paid", did you, you know, go into any more specifics?-- No. He was very aware of it.

In his response to you?-- Yes.

20

Okay. Now, you'd known Mr Ray for, what, -----?-- Approximately 20-odd years.

And you, what, regarded him as almost a close-----?-- Oh, we were friends, we were business associates.

Okay?-- We'd done his work for many years.

Okay. Did he tell you what he was doing in order to chase payment?-- He did say that he and Mr Hickey were taking that on board and would help to chase funds.

30

Okay. Now, other than Mr Ray, did you speak to anybody else about getting paid?-- No.

Are you sure about that? I mean, did you speak to Mr Hickey, for example?-- Mr Hickey called me at one particular point and asked.

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Okay. So the person you were initiating contact to was Mr Ray?-- Yes.

And was that because your understanding was he was the person that started this whole-----?-- He introduced us to the opportunity in terms of a business venture, yes.

Okay. So Mr Hickey contacted you, in your statement, at paragraph 18, it suggests that the date was around October 2004?-- Yes.

50

Is that correct?-- I believe it was August 2004.

Okay. And can you just, firstly, tell me the circumstances of him calling you?-- Yes. At that point in time we were owed about \$22,000. He rang and said, "Look, if you can raise - the only way to get your pay"-----



CHAIRMAN: Sorry, he - who-----

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MR BOE: Just slow down?-- Sorry.

Just slow down.

CHAIRMAN: The he is-----

MR BOE: Mr Hickey?-- Mr Hickey.

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CHAIRMAN: Mr Hickey, thank you.

MR BOE: So Mr Hickey calls you; correct?-- Correct.

Prior to that, had you had dealings with Mr Hickey?-- Yes, over the years, yes.

Yes. And is that through Mr Ray?-- And socially, yes.

Okay. The - you wouldn't call yourself close?-- No.

20

No, but you knew who he was?-- Most certainly.

And you knew him to be a solicitor?-- Yes.

And you knew him to be a solicitor that did legal work sometimes for Mr Ray?-- Absolutely.

And could you just slow it down and just detail your best recollection of what he said relevantly about your request to getting paid?-- The phone conversation was from him saying, "To get you paid I need you to send me an invoice for consultancy fees for \$10,000 plus GST made out to a company called" and he spelt it to me. I hadn't heard of this company, Framelgate. "Send the invoice to me directly and I'll have it paid for you."

30

And what was your response to that?-- Fantastic. We had a debt of \$22,000 outstanding at that time.

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Did you query him, in any respect, as to the reason for this request?-- Not at all.

Did you apply your mind to the appropriateness of issuing an invoice to this company at all?-- No.

The - you did issue an invoice-----?-- I did.

-----in accordance with Mr Hickey's request?-- Correct.

50

And did you, in fact, receive a cheque in payment of it?-- We did.

And what did you do with that in respect of the ledgers in your-----?-- We offset that \$11,000 off the 22 that was currently owed for the work previously done.

Excuse me, Chairman. A document was provided to the Commission which is a reconciliation of payments, I'm told, that have been circulated-----

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MR MULHOLLAND: It's Exhibit 141.

MR BOE: 141. Mr Scott, have you got a copy of the - some of your invoices ledger of your - a copy of that-----?-- Here, physically, with me now?

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Yes. The exhibit's coming to you?-- Thank you.

I think the last page - pages of that exhibit. Now you'll see on page 2 of the document a receipt, by reference with the date, 10th of August 2004-----?-- Correct.

-----a figure of \$11,000?-- Yes.

Now it seems to be that you put that payment against a particular account of Mr Betts?-- We did.

20

Now can you just explain how that occurred?-- No, I have no knowledge of why it was against Mr Betts.

Okay. So it simply - is it your understanding that there was a figure that was outstanding you were chasing and whatever you received from Mr Hickey or Mr Ray, for that matter, you just gave to your Accounts Department for them to allocate against the general deficiency-----?-- Correct.

30

-----on these matters?-- Correct.

Were you asked by Mr Hickey, in any way, to conceal the nature of these payments?-- Not at all.

Or did he ask you to, in fact, you know, hide previous invoices or anything like that?-- Not at all.

Was any discussion about any accounting or invoicing that had already been produced by Quadrant at all with Mr Hickey?-- Not at all.

40

You've used phrases like replacement in paragraph 18-----?-- Yes.

-----is it more accurate to rely on what you said about your conversations with Mr Hickey rather than what's in paragraph 18; is your evidence from today the more precise recollection-----?-- Yes, it is.

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-----of these events? Now can you just tell me the circumstances on your locating the Sunland - a copy of the Sunland invoice in your office in the last few weeks?-- From a conversation of two days ago?

With Ms Pink from my office?-- Yes.

And what did you do?-- We've telephoned my personal secretary and asked her to double check back through her records to see if there was any reference of an invoice from Sunland. She called back a few minutes later and said, "Yes, I found it on my computer" not in our - on our server which is where we'd originally looked.

1

Okay. Now, your understanding is when you were first asked to produce documents to the Commission, did you understand that there was a reference to the server in your business?-- I did not.

10

Okay. Why wasn't this document previously disclosed?-- I didn't know it existed.

Okay. And the - did you - have you then subsequently asked her to print out a copy of that invoice?-- I have indeed.

Now, is this a copy of it? Is that a copy of it?-- Yes, it is.

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And up the top there it's got some-----

CHAIRMAN: Is there a copy for me?

MR BOE: Yes. The facsimile detailing on the top of the page, is that the record of you sending it to my office? Is that your fax number?-- That's our fax number.

Right. Now, why is your fax number on it?-- Because I'd say this has been photocopied when it's been sent to your office on the 10th of November.

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I see. Can I put it other way. Insofar as the image on the computer - on your secretary's computer, it doesn't have the facsimile notations on the top and the bottom?-- No, not at all.

Is that right?-- Correct.

40

Now, have you asked her to look to see if she can locate any other documents of this kind?-- I have indeed and we have not found any others.

And has she consulted other staff-----?-- Yes, we asked them.

-----that have separate computers?-- Correct.

And is the answer that there is no other copy of any other invoices?-- Correct.

50

Now, the - these are not - this particular invoice and the Framelgate invoice are not invoices produced mechanically by your accounting program?-- Correct. They are-----

These are separate invoices that can be manually created?-- Correct.

Did you ask for these things to occur?-- Yes.

1

That is, the Sunland Group one?-- Yes.

As well as the-----?-- Framelgate.

-----as the Framelgate one?-- Yes.

Now, did you have any communication with Mr Hickey in relation to the Sunland invoice?-- No.

10

The details of it, who gave it to you?-- They came via email from Brian Ray's secretary, Sue Davies.

And the - and that's already part of the material that's been provided to the Commission?-- I believe it has.

Have you properly accounted for the receipt of these payments in terms of taxation?-- Yes, we have paid GST and in our tax returns.

20

Now, your understanding of Quadrant services as provided to the various Councillors, was any of it done other than in the discharge of the professional undertakings of Quadrant?-- Not at all.

Was any favours given to anybody at all in relation to provision of services?-- No, it was a commercial business.

Now, can you just tell me the circumstances in relation to the Pronto payment?-- Yes. As I said, we were - were approximately \$20,000 out of pocket.

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Just before you do that, could I just tender that copy of the Sunland invoice?

CHAIRMAN: Yes, the Sunland invoice of 1 November '04 to - sorry, the Quadrant invoice to the Sunland Group will be Exhibit 259.

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ADMITTED AND MARKED "EXHIBIT 259"

MR RADCLIFF: If I can assist, I think that's already Exhibit 146. Oh, different version. Thank you.

MR BOE: Who is Pronto?-- They are a mailing company, a Gold Coast mailing company.

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Did you understand Pronto to have discharged some services at Quadrant's request in relation to this campaign?-- Yes.

And did you understand that they had rendered an invoice to Quadrant for that work?-- Correct.

And what did you understand that amount to be?-- I'm not familiar with that.

1

Okay. Now, did a request come from somewhere in relation to Pronto?-- A request did come from Mr Ray's office, offering a \$5,000 rebate on that work, which we declined.

What does that mean? What does that mean? You say Mr Ray's office asked you what in relation to the Pronto-----?-- It was an email. I'd have to read the email again to get my memory-----

10

Sure. Well, can I just cut - can I just cut to the chase then. Pronto had been paid their account?-- Yes, they had.

By Quadrant?-- Yes.

And did you ultimately receive a cheque from the trust in relation to Pronto?-- No.

20

Did you receive it from Pronto directly?-- Correct.

And you understood that to be what?-- Payment offsetting out existing debt of \$22,000, or contributing to that debt.

So the payment by Pronto had nothing to do with your commercial arrangement with Pronto?-- Correct.

You understood Pronto was adding to the pool of money from which you would be paid for your services?-- Yes.

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And so in that sense in - from where you sat no different from the role Sunland took for example?-- Correct.

Thank you, I've no further questions.

CHAIRMAN: Yes, Mr Mulholland.

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MR MULHOLLAND: Mr Scott, I want to take you back to your first involvement in this fund that was to be used for candidates at the 2004 election and in particular the first contact that you had with Mr Ray about the matter. Now, what you say in your statement - do you have a copy of it there?-- I do, may I refer to it?

Yes, of course. Just look at your statement and you say in paragraph 5, "At the conclusion of one unrelated meeting" - having explained that Mr Ray and you had a business relationship - "At the conclusion of one unrelated meeting in early November 2003 Brian approached me about the potential involvement of Quadrant in a new project. I recall that he said he was putting together an advertising budget to assist candidates to run in the then upcoming March 2004 Gold Coast City Council elections. The discussion did not descend into any great detail. I indicated that Quadrant would be interested in being involved but that I would not work on such

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an account as I have no knowledge base in that area but that another of our directors Chris Morgan had a keen interest in local politics and would be able to assist." Now, in preparing this statement did you have reference to any of the evidence given at these proceedings? In particular, did you refer to the evidence given by your partner Mr Morgan?-- I'd read parts of his evidence but not all of it.

1

When you say you read parts, did you read the relevant parts in so far as you were mentioned by name?-- Yes.

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Right. And you were familiar with what he said before you prepared your statement?-- Yes.

And did you also read what Mr Hickey said?-- Only when my name was mentioned, yes.

Because you wanted to be able to consider what they had said in deciding whether or not you agreed with it or not I suppose?-- Of course.

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Now, I want to ask you about that first meeting, 862. Mr Morgan told the Commission that on the 2nd of December 2003 you brought to his attention this matter. You had had a meeting with Brian Ray and he told the Commission that you wandered into his office and sort of said - and I quote, 863 - "There's a prospect of some new business coming through for January. Brian suggested that there could be some funds raised to support candidates for the forthcoming election." Do you remember saying that to your partner?-- Words to that effect, yes.

30

So in that first meeting in relation to this matter when it was first raised with you by Mr Ray he indicated to you that there could be some funds raised to support candidates for the March 2004 election?-- Yes.

And you communicated that to Mr Morgan; is that correct?-- Correct.

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Did you go on to discuss with him what involvement Quadrant might have?-- No.

Mr Morgan told the Commission that he gained the impression from what you told him that it was - what was being explored was that Quadrant might be involved either by way of making a direct contribution in cash, or providing some in-kind support in relation to these candidates?-- Not at all.

Not at all?-- No.

50

In fact, Mr Morgan told us that close to when he had this conversation to you he made a note in relation to the matter?-- No.

And that note, as we have seen in his workbook, refers to whether it be some direct or in-kind support to that effect.

You say that he didn't - you did not say anything - you did not discuss any such alternative?-- No.

1

Whether it would be in-kind support or a direct contribution?-- I would never agree to a in-kind support or a direct contribution. It was a business opportunity for-----

Well - yes, well, so that there is no misunderstanding, what Mr Morgan explained was when he spoke of in-kind support, it might be somebody would provide professional services; printing, signage, things of that kind, so that Quadrant would contribute to the support of such candidates, obviously, through - in that way; professional services, printing, signage, things of that kind?-- Who would supply the art work? The printing would be done externally. We don't - we are not printers.

10

So there was no - you had no recollection of any conversation with Mr Morgan where you explored together the question as to whether there might be a direct donation or in-kind support?-- No.

20

Did you - well, I suppose it's obvious, but you would have known at a very early stage from what Mr Ray said to you, that he was contemplating developers contributing to this fund?-- I would assume business people, developers, the like.

Well, Mr Ray, as you knew from your contact with him both as a friend and a - in this business relationship you had, you knew that Mr Ray was a well known developer?-- Certainly.

30

And had many contacts in the development industry?-- Indeed.

So what you would have been well aware of is that developers would be contributing to this fund?-- Possibly.

Possibly?-- I'm not aware of - I'm not aware of that, no. One would assume that, but I have no knowledge of that.

Well, having been reminded of what Mr Morgan says in relation to the matter, and having agreed with me that you did have a conversation with him in relation to what Mr Ray had said, is there anything further that you can recall about the conversation you had with Mr Ray when he first raised the matter with you?-- No. It was a very brief conversation.

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Well, what was he wanting from Quadrant?-- Our normal services; our advertising and our consultancy services as a paying job.

50

As a paying job?-- Absolutely.

So did he say that to you? That Quadrant would be paid a professional fee?-- No, he didn't say that to us. We established a fee some time in January, I believe.

Well, that's what I was next going to ask you. When was the fee structure-----?-- Can I refer-----

-----decided upon?-- Can I refer to my notes?

Well, just tell us first of all your recollection, Mr - you say "in January" is your recollection?-- It would have been either late December or early January. In fact, it would have been mid-January 'cause I was away for a number of weeks in January, so I'd suggest then it was early December, and I-----

Well, why - sorry, before you go on, I'm just interested in when this fee structure was agreed upon. There is material before the Commission from which it might be inferred that this fee structure was agreed to, or was decided upon by Quadrant, in January, and that was what you suggested in your answer to me that your recollection was that it was in January. You say that you were away on leave. When did you come back from leave?-- About the 8th of January.

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All right. Well, is it possible, according to your recollection, that the fee structure, if I can put it that way, was decided upon after you came back from leave?-- No, I think it would have been more like late December.

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Why do you think that? What is it that makes you think that?-- From recollection the fee was \$10,000 per month for three months and I would have thought it would have invoiced January, February and March, so we would have agreed on a fee, Chris and I, long before the end of the financial period.

Well, why would that be so, having regard to the relationship that you had with Mr Ray? Mr Ray, I take it, you knew that you could utterly depend on so far as meeting any costs that might be involved in what Quadrant did. So it wouldn't be absolutely essential to agree to it before the first month in which you were going to charge for your involvement, would it? Not in relation to a client like Mr Ray?-- It was completely separate to Mr Ray, although - it was a separate commercial advertising job.

30

You say that it was separate, but it was very much bound up with Mr Ray. You became involved - that is, Quadrant became involved because of the request by Mr Ray and Mr Ray was a very good business - had a very good business relationship with Quadrant, didn't he?-- He did.

40

And you were a friend of his?-- Yes.

Yes. So my question is, or my suggestion to you is that it would not have been necessary for you to finalise your fee structure in December?-- Quite possibly. I really don't recall.

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And my next question is, are you able to say if there is any document, apart from the invoices prepared at the time in relation to what Quadrant was going to charge for its involvement?-- There would have been a letter of appointment that Mr Morgan would have, I'm sure, instigated.



Right?-- Outlining that fee

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All right. And do you have any particular letter in mind?-- No.

Have you looked for any such letter?-- No.

Have you in preparing your statement looked at the notes made in Mr Morgan's notebook?-- No, I have not.

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Were you aware that he did make a note? It's referred to - he actually referred to it in giving his evidence. But I thought you read-----?-- I read bits of it where my name was mentioned.

Well, in speaking of the 2nd and 3rd of December, he referred to records. He referred to his diary note and also referred to his work book. You didn't look at his work book?-- In his physical level, no.

20

May the witness see that work book, Exhibit 131. Have you seen that book before?-- No. We all have these books in our individual areas. This is Chris', and I don't look at his personal records, no.

I thought that before you provided a statement in relation to this matter you may have-----?-- No.

-----looked at what your partner had written, but you haven't?-- No.

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Yes, all right. Can I see now Exhibit 129, please? Now, in relation to Exhibit 129, Mr Chairman, that contains diary entries from the 8th of December 2003 onwards and you may recall that there was some discussion about the entries prior to that date not being included in the exhibit. I'd like to remedy that deficiency and supply copies of diary entries, which may have some significance, to be added to that exhibit. Perhaps I should do that before I go to the diary itself.

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CHAIRMAN: And the entries cover what period?

MR MULHOLLAND: The entries cover the period up to that date - the relevant entries only.

CHAIRMAN: I presume they do start at some date, don't they?

MR MULHOLLAND: The first one is October the 27th.

CHAIRMAN: Right, thank you.

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MR MULHOLLAND: So I tender those entries and would ask that they be added to Exhibit 129 in due course.

CHAIRMAN: Yes, they can be added to that exhibit.

MR MULHOLLAND: Now, you do not recall meeting with Mr Morgan and with Mr Ray on the 3rd of December, is that correct?-- I

was not at that meeting and I believe Mr Morgan had changed his statement in that regard.

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Have you - have you referred to - just have a look at the entry for the 3rd of December, that's Mr Morgan's entry?-- I don't have the 3rd of - mine just starts the 8th.

Yes. Mr Scott, you - you didn't refer to this diary before you made your statement-----?-- No.

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-----because it wasn't made by you?-- Correct.

Well, did you make any record at all in relation to this matter?-- Which matter?

This matter; the request from Mr Ray that Quadrant be involved in relation to this funding?-- No.

Well, you see, if you look at the entry for the 3rd of December 2003 you will see that Mr Morgan has noted, "11.30 TS", which he says is a reference to you, "/Brian Ray", and he says that the three of you met that day?-- He's incorrect.

20

If you made no note of it, why are you so certain that you didn't meet with Mr Ray and Mr Morgan?-- Because from my initial handing over the business opportunity to Mr Morgan I had nothing further to do with it.

Well, you did have something further to do with it?-- Well-----

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You had something further to do with it the following year?-- Correct.

And I gather from some of your answers to Mr Boe that your recollection has been - is somewhat different than it was at the time that you provided your statement?-- By - yes, a month or two were out.

A month or two out. But you have a definite recollection that you weren't at this meeting?-- Yes.

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Well, let me see if I can jog your memory. Mr Morgan recalls - this is at 869 - that, "Brian Ray suggested that Mr Morgan become executive director to co-ordinate the whole exercise." He'd become executive director of some sort of - he would become executive director of some sort of campaign; do you remember ever hearing Mr Ray say something like that?-- Yes.

Well, when did he say that?-- I don't recall exactly which day.

50

See, Mr Morgan says that the three of you met after you had met Mr Ray on the previous day, 2nd December?-- No.

No?-- He's incorrect.

Well, he's incorrect, I understand you to say, in relation to you attending the meeting on the 3rd, but is he incorrect in his suggestion that you had had a meeting the previous day with Mr Ray?-- I'm lost here - the previous day being a month - sorry, a Monday. 1

The previous day being 2nd December?-- I don't recall, sorry.

Well, when - are you able to say with any specificity at all as to when you had the discussion with Mr Ray?-- The exact date, no. 10

Well, could it have been 2nd December?-- It could have been.

Were you absent on 3rd December?-- No.

Have you checked your diaries?-- Yes.

What were you doing on 3rd December?-- I don't recall exactly. 20

Well, when did you check your diary?-- Some months ago.

Well, you see, if you read the record insofar as your name was mentioned, you would have understood that Mr Morgan was saying that you were at the meeting on the 3rd?-- And I corrected Mr Morgan.

Yes, but you don't - whilst you're definite that you weren't there and whilst you referred to your own diary, you can't tell us what you were doing on the 3rd?-- Not offhand, no. 30

Well, were you at the office?-- Yes.

Were you attending to something else?-- Yes.

Is that why you say you weren't at this meeting?-- Correct.

So you weren't there because at 11.30 you were doing something else; is that why-----?-- Yes. 40

You think - but you can't tell us what you were doing?-- I could - if I could refer to my diary, I could tell you exactly what I was doing.

Well, is your diary here?-- No, it's not.

Look, this - your evidence isn't going to be completed today. Would you bring your diary back, please, when we resume next week?-- I'm away next week. 50

You're away next week?-- I'm away overseas next week.

When are you going overseas?-- Saturday morning.

MR BOE: That has been communicated to the Commission. We did ask-----

CHAIRMAN: Well, the page of the diary can be forwarded through. 1

MR BOE: I'm happy to provide a copy of the diary. I, as I understand it, has no reference to any of the matters before the inquiry but subject to some confidentiality regard, it will be provided.

CHAIRMAN: If the diary page can be referred to and we'll have to try and finish the evidence of this witness this afternoon. 10

MR MULHOLLAND: Well, we won't finish this afternoon, Mr Chairman. That's just not going to be possible. I did not know - it's the first I have been informed that the witness was simply unable to be here next week. In fact, one wonders in that situation why we've started him.

MR BOE: Well, can I just-----

MR MULHOLLAND: If we'd known that----- 20

MR BOE: Well, as I told-----

MR MULHOLLAND: Hold on. If I had known that, we could have had another witness in.

CHAIRMAN: Well-----

MR BOE: Mr Chair, can I just say on 11th November, Mr Lambrides was written to by my office detailing exactly the dates that he would be going overseas. I'm happy to tender it and----- 30

CHAIRMAN: Look, I have no difficulty in accepting your saying that, Mr Boe.

MR BOE: And for days we've been asking to be brought on so that we wouldn't have this difficulty.

CHAIRMAN: There have been some difficulties in that - it was I think anticipated that Mr Scott would be giving evidence yesterday, but another witness went a lot longer than it was understood his evidence was going to last. 40

MR BOE: I'm not criticising; I'm responding to the criticism that it's been suggested that Mr Mulholland didn't get told by us.

CHAIRMAN: I'm not wanting to apportion blame. 50

MR MULHOLLAND: Mr Chairman, it is just not possible for us to finish Mr Scott this afternoon and-----

CHAIRMAN: Mr Mulholland, I respect your position as counsel assisting. You very obviously at times know things that I don't know, I don't know what's coming, but I wouldn't have seen that particular meeting and as to whether Mr Scott was there is an extremely significant event.

MR MULHOLLAND: That isn't the reason why we can't finish this afternoon. 1

CHAIRMAN: When do you return from overseas, Mr-----?-- Only away one week. I'll be back on the following Saturday.

Well, the way we're going, we'll be sitting the week following next. We might have to finish Mr Scott's evidence then.

MR MULHOLLAND: Well, perhaps Mr Scott could give evidence on that day, Monday week. 10

CHAIRMAN: Well, subject to the carrying over of any other witness who might be part way through evidence on the Thursday when we have to adjourn-----?-- I'd be available any time that week.

MR BOE: Could I just ask that - if possible, that it be listed to not start till some time late morning or the afternoon? I do have a commitment down the Gold Coast on the Monday. 20

MR NYST: I'm in the same matter that day.

CHAIRMAN: We should be able to accommodate you, Mr Boe.

MR NYST: And me too?

MR RADCLIFF: While we're discussing this, it has been flagged that we may sit on the 28th and 29th. I have a----- 30

CHAIRMAN: I think that's been flagged for a fair while that we could be sitting.

MR RADCLIFF: A have a predicament on the 30th. I'm just hoping that that's not going to be taken up as well, sir.

CHAIRMAN: I'm in your hands as to how long witnesses take.

MR RADCLIFF: Not mine. 40

MR BOE: Can I just say, Mr Scott can be here tomorrow morning too. I know you don't sit generally on Friday.

CHAIRMAN: Yes. Look, I appreciate the offer. Unfortunately, as well as presiding here, I have to continue to be the CEO at the CMC, and I have commitments there. All right. Are you wanting to adjourn now?

MR MULHOLLAND: I think so. 50

CHAIRMAN: All right. We'll adjourn till 9.45 next Monday.

THE HEARING ADJOURNED AT 4.40 P.M. TILL 9.45 A.M. MONDAY, 21 NOVEMBER 2005

# WITNESS LIST

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ADMITTED AND MARKED "EXHIBIT 255" .....	1825	1
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ADMITTED AND MARKED "EXHIBIT 258" .....	1837	
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