



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST
CITY COUNCIL

BRISBANE

..DATE 13/12/2005

CONTINUED FROM 29/11/2005

..DAY 26

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

THE HEARING RESUMED AT 10.07 A.M.

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MR MULHOLLAND: Good morning, Mr Chairman. Before we commence today, can I say something about the timing of submissions at the conclusion of evidence. The last time we sat it was indicated that evidence was expected to conclude on or about the 16th of December, that Counsel Assisting would make oral submissions about a week later and that other parties would have until the end of January next year to respond taking into account likely absences for the Christmas/New Year vacation.

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This timetable has now been revised for the following reasons. First, there has been a substantial amount of evidence given during these hearings over 25 days and it would be appropriate for Counsel Assisting to provide detailed written submissions rather than oral submissions. In view of the fact that Counsel Assisting will still be actively involved up until the 16th of December, it would not be possible to prepare detailed written submissions in the time presently allowed. Secondly, it is also undesirable that there be such a wide gap between the submissions by Counsel Assisting and those made in response by interested parties. Any suggestion made in submissions by Counsel Assisting about misconduct or inappropriate conduct on the part of any person would be published weeks before a response could be placed on the public record by those adversely affected.

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In these circumstances, it is proposed to proceed as follows:

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1. Counsel Assisting will provide written submissions to interested parties by the 25th of January 2006 on a confidential basis.
2. Those parties will provide written submissions in response to Counsel Assisting by the 3rd of February 2006, again on a confidential basis.
3. All parties will be invited to appear and speak to their written submissions in summary form at a public sitting on 7 February 2006 at which time all written submissions will be made public.

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Now, some may, of course, choose not to make oral submissions or supplementary oral submissions and that is their choice. In relation to this new timetable, if anyone has any difficulties with it then please indicate to Ms Hamilton outside the public hearings some time no later than tomorrow so the matter can be then revisited if necessary. But at the moment that is the timetable that is proposed to follow.

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CHAIRMAN: Yes, thank you, Mr Mulholland. I had discussed that timetable with Ms Hamilton and I agree with it. I see the advantage that it has is the avoidance of that period of time between your submissions and when any submissions in reply are made. I see that there could be some prejudice in such a course. All right. We'll proceed today.

MR MULHOLLAND: Now, there are a number of - I first then call Mr Clarke, Ronald Clarke.

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RONALD WILLIAM CLARKE, SWORN AND EXAMINED:

MR MULHOLLAND: Is your full name Ronald William Clarke?-- That's correct.

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Mr Clarke, you attend here today under an attendance notice?-- Yes.

Would you have a look at this document please; is that the attendance notice?-- Yes, Mr Mulholland.

I tender that, Mr Chairman.

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CHAIRMAN: Exhibit 314.

ADMITTED AND MARKED "EXHIBIT 314"

MR MULHOLLAND: Would you also look at this document. Did you receive a notice to discover?-- Yes, I did.

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And is that the notice to discover?-- Yes, it is.

And in response to that did you provide material including a statement?-- I did.

Just have a look at this please, Mr Clarke. I don't expect you to go right through it but if you'd just quickly look at it to see if that seems to be what you provided to the Commission?-- Yes, it does.

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I tender the notice, Mr Chairman, along with the accompanying material.

CHAIRMAN: Yes. Exhibit 315.

ADMITTED AND MARKED "EXHIBIT 315"

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CHAIRMAN: Mr Mulholland, is that the totality of the material that was provided on the - I'm just wanting to know, it's - it'd be this full volume I have.

MR MULHOLLAND: Yes. Yes, it is, Mr Chairman.

CHAIRMAN: Yes, thank you.

MR MULHOLLAND: Mr Clarke, in relation to the statement that you provided through a letter from your lawyers is there anything that you wish to add to what you have said there?-- Mr Mulholland, I just noticed that there's one date that I think is suspect.

Yes?-- It's on the top of page 2, circumstances in which Mr Clarke wrote his letter, I think that should be 11th of April.

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11th of April?-- I think so.

All right. That's the first line on page 2?-- That's it.

Nothing else?-- No, sir.

It's otherwise true and correct. Now, Mr Clarke, can I first take you to the subject of this mobile sign. This is relating to the Darlington Park Raceway, do you know the issue that I'm talking about?-- Yes, I do. I have a - some documents here. Can I refer to those?

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Yes, of course. If during the questioning you wish to refer to any document just do so although tell us that you - if you are referring to a document please. Now, first of all, can I just remind you of this, is it the case that there was an email sent on behalf of the chief executive officer to Councillors - this was on the 1st of April - so just following the election on the 27th of March 2004 there was an email which was sent in regard to returns; do you remember receiving that?-- I do but - I do vaguely, I couldn't quote it but, yes.

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All right. Well, I don't think we need to go to it but it's part of Exhibit 306. And you certainly were aware of the obligation to make a return; is that so?-- Absolutely.

Now, did you then firstly lodge a final return dated the 31st of March 2004 disclosing nil gifts?-- I did, yes.

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Do you have a copy of the return there?-- No, I don't think so - I haven't got it here, no.

It's perhaps not necessary for you to go to it, it's part of Exhibit 4. Perhaps I should ask you just to look briefly at a copy, there's no need to go to Exhibit 4, Mr Orderly. Sorry, I will need to go to Exhibit 4. Would you show Mr Clarke his return from Exhibit 4, please? The quickest way for me to do this is to show you a copy of my - now, I'm just showing you the return of gifts, does that appear to be the one, it's dated you can see the 31st of March 2004?-- Yes.

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And it refers to the commencement date of the disclosure period, 19th of April 2003, conclusion date 5 May 2004. That signature there-----?-- That's mine.

Is that your signature?-- It is.

Now, subsequently, do you recall receiving any further memorandum from or on behalf of the chief executive officer, Mr Dickson, in relation to lodgement of a gifts return?-- No, I don't.

Or did you only receive one?-- I don't recall any.

Now, do you recall seeking to make an amendment in relation to the return which you had lodged, and did you do that by a memorandum of the 7th of July 2004?-- I did.

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Do you have a copy of that there?-- No, I'm sorry, I don't.

Let me just show you a copy. Now, in that you wrote to Mr Dickson, "It has been brought to my attention that I may have inadvertently not included some non-financial electoral support in my return of local government electoral gifts register which I furnished to you in June 2004. Accordingly, I wish to amend my form 1 declaration to include an in-kind gift represented by a large mobile sign and some time spent towing the sign around districts"?-- Sorry that's not-----

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"The Gold Coast-----"?-- Excuse me, that's not on this one.

Sorry?-- That's not on this one.

I beg your pardon, have I - sorry, I think I've gone to the wrong memorandum or the wrong letter. That was the one in 2005, wasn't it?-- That's right.

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The one in July of 2004 said this: "I have been reminded of two areas of in-kind assistance at the end of my recent campaign for election as mayor that I believe should be registered. This means, if possible, amending my previous nothing to declare statement." First of all, when you say you'd been reminded of two areas, what did that reminder consist of?-- A newspaper article.

Yes. And you go on to say, "These are (1) the proprietors of Darlington Park Raceway offered to provide free days to any of the persons who assisted my campaign on electoral day by volunteering to man polling booths. As Darlington Park has been closed ever since for random usage, these offers may not eventuate. But, nevertheless, they were made in good faith, and this perhaps should have been recorded in my disclosure." That's what you've said?-- That's what I said, yes.

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And then you said, secondly, "A Mr Bernie Hatton of Top Rider Motorcycles drove me around the polling booths and loaned me a helmet on election day. This gesture may qualify as an in-kind donation and, as such, should be added to my statement of assistance"?-- Yes. I put it in to be conservative, I suppose. I'm not too sure if it does represent an in-kind donation, but I put it in anyway.

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All right. But you did this out of, what, an abundance of caution?-- Just to be cautious, yes.

And you didn't assign any amount to it?-- No. No.

Well, did you think that it could be assigned a value, or did you think was-----?-- No, I don't think so. I think a lot of candidates were probably driven around to the booths by somebody. He drove me around.

Now, the proprietors that you were referring to, is that the Stevens?-- Yes, they propriedated Darlington Park.

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And that was, what, Tony Stevens and Joe Stevens?-- No, there's no Joe Stevens. No, there's Tony Stevens and Tony Stevens Junior.

Right. Okay. And Tony-----?-- May I just mention the Joe Stevens you're talking to probably came from that statement from Councillor Crichlow. That was Joe Wherby. His name is Wherby. He's a brother-in-law of Tony Stephens.

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So Tony Stevens is now deceased?-- That's right.

And the information, then, that you were providing in relation to paragraph 1 of this memorandum, that was your own memory and assessment of what had been provided to you, was it?-- That's right.

And at this point, on the 7th of July 2004, you weren't able to assess a value to that?-- No. No, as I say, I don't believe that many actually used the opportunity. It was virtually a promotion for Darlington Park anyway.

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Yes. Did you consider speaking to Mr Stevens in relation to the matter?-- I think I spoke to him in relation to the matter.

Right?-- But he didn't know.

Sorry?-- He didn't know how many people had used it, if any.

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So, what, did you speak to him on the 11th of April?-- Sorry, 11th of April? This is in - this is the previous year-----

Oh, sorry, July?-- In July?

Yes, did you speak to him in July?-- It would have been around about that time before I put it in to see if he had any - he'd had any people that made claim to have a drive, and he couldn't give me any details.

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Yes. So how many conversations did you have with Mr Stevens about it?-- About this particular subject, oh, just the one I would believe. I had a lot of conversations with Mr Stevens over the next few months about all - you know, about Darlington Park and about what he was trying to do there.

Right. What, this related to the Grand Prix, did it?-- Well - no, nothing to do with the Grand Prix, no. He had a problem

with council in that he'd gone to the Environmental Court and agreed with the Environmental Court to limit the acoustics of the events that were conducted there to a certain level-----

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Mmm?-- -----and he kept on breaking that level and he kept on asking council to come back and try and change the acoustic level which we couldn't do because he couldn't understand. So it took a lot of time to talk to him about that.

So this is people complaining about the racket?-- Yes, the acoustics there were specific - people that were there before him that had gone to the Environmental Court with it and he'd agreed in the Environmental Court anyway to do certain things which he hadn't completed properly and he didn't understand that he had to comply with the Environmental Court's decision that he had agreed to.

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All right. Well, let's go forward to the following year because what happened was that in April of 2005 you then provided two letters to the Chief Executive Officer, is that so?-- That's right.

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Mr Dickson. And again was that prompted by some newspaper article?-- Yes, it was prompted by an article in The Australian by Mr Greg Roberts.

Right. Now, is this the article headed "Clark faces questions on poll funding"?-- That's right.

Do you have a copy?-- I do have it, yes.

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All right. You might just look at it as I ask you some questions about it. The article referred to an investigation said to have been conducted by the Crime and Misconduct Commission into claims that you received \$50,000 worth of election donations from a Gold Coast motor racing identity. Now, this is a reference to Mr Stevens?-- I-----

Well, you took it to be a reference to-----?-- I believe so, yes.

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And it goes on to refer to Darlington Park Raceway and mentions the possibility of the Indy transfer from Surfers Paradise to that raceway, and then it refers to a transcript which the article says has been given to the CMC which records a discussion of \$50,000 worth of in-kind donations from Mr Stevens to your successful campaign for mayoral election and this is a conversation that is stated to have occurred four months after the election; that's right?-- This is the conversation that was taped by Councillors Crichlow and Sarroff.

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Right?-- Yes.

Okay. Well, this is what the article refers to?-- That's right.

To a taping of a conversation and referring to the presence of Crichlow and Sarroff at the time; correct?-- Yes.

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With Mr Stevens as well. And it records, so the article says, Mr Sarroff saying to Mr Stevens, "You should be giving him, Mr Clarke, the bill for the 50,000 for the trailers"?-- For the two trailers, yes.

Did you know that there were two trailers?-- No. Well, I suppose I did in one way, that there was one we used and one John Wayne was using so - he was a candidate in division 2. So if I had've thought about it, yes, I would have understood there were two trailers.

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Right. And he says, "I helped him tremendously" - this is Mr Stevens being recorded as saying - "I helped him tremendously. I made the sign. It cost me a fist, that one, \$23,000 to build overnight. He paid for the banners." That's what the article said, referring to this tape-recorded conversation?-- Yes.

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Now, how did that tally with your recollection of what occurred?-- Firstly there were no banners. Mr Stevens would never have said that. He knows that I paid for a sign, an old trailer, when I first saw it. In fact it still had the previous mayor's advertising slogan on it and it was just sitting in his yard.

Now, you paid - just so that we make this clear for the public record, Mr Clarke, you paid out of your own money for a new sign; is that what you're saying?-- Yes, this is the invoice we've got in my evidence; it was paid to Sign Force and it's a double-sided 6-metre by 3-metre billboard. The sign was shaped in a triangle-type way. It was \$2,600.

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So it's a very large sign by the sound of it?-- It's a very large sign, yes; it's a very large sign on a mobile platform.

Right. Now was there just the one sign?-- Just the one sign that I used, yes.

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All right. So you paid for that out of-----?-- No, I paid for the signwriting to go and later I paid for the rental of it, I paid three and a half thousand dollars to rent it. I paid for a driver to drive it.

You rented it from whom?-- From Queensland Mines.

Right?-- And Primary Industries.

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And again you privately funded that?-- Yes, three and a half thousand dollars.

Right. Yes?-- And I also paid for a car to - to tow it.

Right, and how long did that go on for?-- For three weeks. I rented the truck for three weeks. And that's again a part of my evidence, you've got the invoice for that.

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So this reference to \$23,000 in the article, do you know what could be referred to - that could be referring to?-- Well, if he said it, it would have to be about the other one, the other sign.

Right?-- That John Wayne used.

Right. And this article goes on to refer to Mr Wayne and in connection with Mr Wayne says that "I declared \$45,000 in in-kind donations from Tony Stephens to my campaign." Do you see that? That's in the third column?-- I see that, yes, yes.

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"Tony provided the figures. Ron Clarke got the same support, a large amount of money as a kind - as a gift in-kind. I was amazed to see that Ron Clarke put in a nil return. I couldn't believe it." Now, you responded to that, according to the article, and I'll just read this. You can comment on it after I've done so. "Mr Clarke told The Australian he would have declared any donations of which he was aware," and it quotes you as saying, "'It seems \$50,000 is a bit high for any help they might have given pulling my signs around for a couple of weeks,' Mr Clarke said. 'We used their signboards but it was my understanding they were paid for. If there was anything else that was provided then I didn't know about it or I would have declared it.'" Now you've told us in relation to your paying for the sign and the rental in relation to the carrying of the sign. There you seem to be referring to signboards?-- Yeah, sign-----

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Did you say that to the-----?-- It's a mobile sign on a - on - it's a board, not a banner.

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Right, okay. Yes, and you said, "It seems \$50,000 is a bit high for any help they might have given pulling my signs around for a couple of weeks." Is there anything else that you want to say in relation to that? Did that accurately quote you?-- Yes.

All right. Now, when you came to - so that was the article that you're referring to that prompted letters to the Chief Executive Officer, is that right?-- That's right.

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And do you have those letters there?-- I have those, I do.

Now, there were two letters, both written by you on the 11th of April?-- Yes.

And the first one commences, "It has been brought to my attention," is that so?-- That's right.

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Dated the 11th of April, "It has been" - this is to D Dale - "It has been brought to my attention that I may have inadvertently not included some non-financial electoral support in my return of Local Government Electoral Gifts Register which I furnished to you in June 2004. Accordingly, I wish to amend my form 1 declaration to include an in-kind gift represented by a large mobile sign and some time spent

towing the sign" - sorry - "towing the sign around districts of the Gold Coast to the value of between 20,000 and \$40,000. I paid for the signwriting and for another full time driver for over three weeks." Now, where did you get this estimate of a value between 20,000 and \$40,000 from?-- Good question. I don't know. I certainly wasn't - I certainly said it was not going to be \$50,000 and I think I just said the figures for the volunteer labour depending on how - how much he did or claimed that he did would be around 20 and 40 but they're just figures out of the air, there's no - no logic behind them at all.

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You seem to be accepting there that the sign was towed around the districts for some time?-- No, no. I didn't know when - I knew that - start again. I knew that my driver drove - drove it around the district for three weeks.

Yes, well, you said that there?-- I didn't know - yeah, I didn't know what Tony - I didn't know what Tony did.

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What, you didn't feel inclined to speak to him?-- I tried to speak to him.

Did you?-- Yeah.

What, when the - when you saw this article?-- Yeah, this is the first time I knew that this was even being challenged. I tried to speak to him. I couldn't make contact with him. I knew he was very ill.

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Right?-- And that's why I put it in, frankly. I was well aware by that time that I had no - no real obligation to put in - well, I didn't think I did. I was advised I wasn't by - by Tony Davis who's the chief of staff at the CEO's office. He referred me to - I think it's section 414 which says that gifts means the disposition of property or the provision of a service but does not include - be the provision of a service by volunteer labour. So my concern really was that Tony - Tony was ill, I didn't want to start a fight in the media with him, so I thought the best way out of this is put something in, not up to the 50,000 that was claimed in the article but something that showed his support to me was - was appreciated.

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Did you regard, so far as what you knew of the circumstances without speaking to him, did you regard this as something that had been volunteered by him rather than a service that had been asked for by someone on behalf of yourself?-- Yes. We certainly didn't want him to do it. One thing about towing a sign around is that you can offend people if you drive with a sign during busy period, so my - my driver was instructed not to start driving the - not to pick it up until 9 o'clock and not to be - with a sign any later than 4.30, get the sign back to the depot by 4.30.

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This is daylight hours we're talking about?-- Daylight hours, yes. So, I really didn't want anybody to start driving with a sign during peak hours because all you do is aggravate people and you've got your sign on it, so I was surprised that Tony

did it. I did know though that Tony did drive a sign on the election day because I saw him at one of the polling booths, ran into him with my sign - towing away my sign and that was a surprise to him.

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Well, perhaps we could come back to - to that in a moment. You go on to say in this letter, "I also produced a 100 rubber decal signs that I supplied to supporters and friends to the value of \$1,500 for them to display on their private vehicles As a matter of prudence could you please make these changes to my declaration for the 2004 election as a matter of urgency?" So, you're referring to that change, that is your reference to the \$1,500 plus the 20 to \$40,000?-- Yes, again. That's - I paid for those signs. It was a volunteer. I don't believe that they fall under the provisions that I should have declared them, but again, as I say, as a matter of prudence, while I'm making a declaration I might as well put that one in as well.

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The - the reference to 40, - 20, to \$40,000 does seem to be a rather generous on your part reference to how much this - this cost. From all that you knew, from what you've told us so far, it had been carried on the day, that is to say apart from what was suggested in the newspaper article?-- Yeah. My - my value would be \$200 most.

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So, when you said 20 to \$40,000 had you taken into account the reference to \$50,000 mentioned by Mr Wayne in that newspaper article? Did that influence you?-- The \$50,000 - it was mentioned at the top influenced me. The newspaper article quoted in the - it was quoted as Tony Stephens saying that I received \$50,000 worth of in kind donations from Mr Stephens. Transcript records, records them discussing \$50,000 worth of in kind donations from Mr Stephens. I have to say that I read the transcript since and it doesn't say that, but that's what was alleged at the time and I didn't have the transcript so I thought 20 to 40 is the most - the most that you could put on anything that was involved. I put it on, as I say, I didn't want to pick a fight in the media with Tony.

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Did you - did you check with your - any members of your campaign team to see whether they knew anything about a request being made to Mr Stephens to carry this sign around?-- No, I didn't because Gardner Brook, my campaign manager, she's the only one that had the authority and was with me when we - when we discussed getting the sign from Tony. We made it clear that our driver would be driving it.

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All right?-- He - he never at that stage intimated in any way shape or form.

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So, really your acceptance of this 20 to \$40,000 in relation to carrying the sign around, having regard for what you knew about conversations with Mr Stephens, well, it was really quite inconsistent with those conversations. You were agreed to a value of what had been done which to your knowledge had not been done at your request?-- That's right.

And - and that was because you didn't want to pick a fight with Tony over it?-- Exactly right. He is very excitable.

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All right. Well, now this other letter of the same day - how far apart were these letters?-- This one was five or six hours.

And in this letter of the 11th of April 2005 also, you write, "Dear Dale, I wish to clarify my earlier memo which I sent to you as a result of the Australian newspaper story today. During the election campaign it came to my attention that Mr Tony Stephens had an existing mobile sign that could be utilised for my electoral campaign. The matter was discussed and a commercial contract was entered into whereby I paid for the artwork necessary to have the existing sign converted to a sign advertising my mayoral campaign. I also entered into a separate commercial contract to have an independent driver drive the sign around the Gold Coast. As the above were normal commercial arrangements, bought and paid for, there was no implication for my electoral gifts register." That is, bought and paid for by yourself. That's what you're saying there-----?-- That's right. Mmm-hmm.

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And then you go on, "Mr Tony Stephens took it upon himself to drive the sign around the Gold Coast over and above the commercial arrangements outlined above. I was, and still am, unaware of the extent of this support provided by Mr Stephens. I have amended my electoral gifts register to record an estimated value of this support. I would like the record to show I was not aware of the extent of the support provided by Mr Stephens. As far as I was concerned I bought and paid for the electoral assistance, advertising provided by Mr Stephens." All right. Well, that's what you said there and you've told us the basis for it. Was there anything that had occurred between the sending of the first letter and the sending of the second letter?-- I just tried to make contact with Tony Stephens a couple more times.

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All right. Without success?-- Without success.

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Now, the - also on the 11th of April 2005 was an interview that you did with 612, the ABC, that morning with Steve Austin. Do you remember that?-- No, I don't.

Do you - do you have a copy of that transcript?-- No. I haven't seen a transcript.

Let - let me just see if I can refresh your memory. Perhaps I can show you this. The - what Steve Austin says, he opens by saying, "The suggestions are, in The Australian, et cetera", so he refers to The Australian article - this is a Brett Roberts article and the tape recorded conversation. I don't want to hurry you too much if you haven't seen this before, but if you'd just go through to the second page?-- Second page? Yes.

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And then you'll see that Mr Austin is saying, "Well, the "Australian" newspaper is reporting this morning that Mr

Stephens apparently donated gifts in kind to Ron Clarke, the Mayor of the Gold Coast. I spoke with him just a short while ago and asked him if he'd received any money first of all from the racetrack owner. And then he said, "No, no, I haven't received any money from anyone." Steve has always made sure that no-one made a donation to me although some people offered. Have you received any gifts of any kind? Yes you would say in kind because of the bill board. He offered, he had a bill board sitting there, he offered, to which he'd used, actually and you say, you go on to say Tony Stephens from Darlington Park had a bill board he used for Gary Baildon in the previous election when he was hot for Gary." And then you said, "And he offered that bill board to me provided I'd pay for the signwriting on it which I did, and also I paid for somebody to drag it around for two weeks. But then everybody - I saw Tony dragging it around although I didn't ask him to. In his enthusiasm he was taking it around on the Saturday of the election so whatever he did on the Saturday of the election, which was very nice, I knew he did it for Gary the previous one so when I wrote in my return I checked whether I should put this in on in kind or how you put it, so I noticed Gary hadn't so I didn't think it was worth putting. I put it down as in kind but didn't put a value on it." Do you remember that? So far, does this transcript accurately record this conversation?-- Yes. Yes.

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As best as you can recall?-- Yes, the best I can recall, I would have hoped I spoke better, but I didn't, obviously.

Sorry?-- I would have hoped I'd used better English but I hadn't.

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Now you see that this is an interview which is supposed to have happened at 8.34 a.m. So this is, if you-----?-- I think he recorded it before that.

Sorry?-- I think he recorded it before that.

Right?-- I think he did it pre-recorded, it was early morning.

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Do you remember whether this interview, now that I've drawn it to your attention, was before you wrote any letter to the CEO?-- Mmm, probably was.

Right?-- If it's on the same day. It's on the 11th?

Yes?-- Yeah. Well it must have been.

Okay. So you would have written the letter, the first letter, after you had this interview with Mr Austin?-- That's right. I don't think I'd even seen the story in the "Australian" by then, by the time I spoke to-----

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And you go on to say in relation to this \$50,000 worth of value, Mr Austin says to you, "So is the figure of \$50,000 worth of value sound accurate" and you say, "No, no, no, I don't think anybody would think it was worth \$50,000." I

won't read on but you go on to speak about the other rubber signs?-- Mmm.

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And if you can just quickly go through that if you-----?-- I'm sorry, I just want to make a comment about the Darlington Park. That was a - from a previous interview that I had some problems with Indy and I'm suggesting that they should pick somewhere out of town. Darlington Park by that time had stopped operating and we had actually had meetings with Mr Stephens before that, talking about we wanted to subdivide it up into a industrial park and I referred him to some of our officers, so in fact Darlington Park (a) wasn't operating and (b) would never have been a good site for Indy anyway. It was just a throwaway line that suddenly everybody built into a big story.

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Okay. Well I don't think we need trouble too much with that. Can I take you back to this transcript and to page 7?-- Oh, I'm sorry. Yes.

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At the foot of page 7 you'll see Mr Austin is asking you this question, "So you know nothing about any CMC investigation, you've done nothing wrong in relation to the gifts in kind from the owner of the Darlington Park Raceway." You said, "No, no, I've checked with the CEO, he's advised me there's nothing wrong about it. They always say gifts in kind and there's no need to put a value on that"?-- Yes. Well that was - the references must have been - they must have arranged the interview. They often ring you beforehand and arrange the interview. Sometimes they record it if you're not available. I must have said yes, he can ring back after 8.30 and I'll talk to you. In the meantime I'd obviously - would have been in the office, I usually get to the office between six and seven, seven - very early in the morning anyway, and so does the CEO so I phoned him.

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Right. So - you mean you phoned him after they indicated that they wanted to do an interview?-- That's right.

And the interview though, you've said, so far as you can remember and looking at the transcript, appears to have occurred before 8.30?-- No, the interview, I think, would have been after 8.30. It would have been live, probably.

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Would have been live?-- Yeah, I think it would have been live. I think they phoned me - as I said, I've mentioned, they often phone, you either do an interview or a record if you're not available or they arrange the time to make certain they're not - you know, they're talking a schedule.

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If you just go to page 2 and about half a dozen lines down, Mr Austin is saying on the transcript, "I spoke with him" - that is, you, "just a short while ago." Now this is 8.34, so your recollection is it would have been around about 8.30?-- Yeah, I would think so.

All right?-- Certainly I'd spoken - obviously I'd spoken to the CEO before-----

So you'd spoken to the CEO?-- Before I spoke to him.

And the CEO indicated to you that there was what, no need to disclose it?-- No, I think he read that Section 414 that I've just read out to you.

Right. But you went ahead and made this disclosure in those two letters?-- That's right.

All right. Well now, do you remember any further discussion in relation to this matter?-- Discussions - I had lots of interviews and lots of discussions.

Right. Well did anything further occur so far as any information coming to your attention about this assistance said to have been given to your campaign by Mr Stephens?-- No, no and unfortunately he'd - he died within two weeks - three weeks later, I think, so I never got the chance to actually talk to him about it at all.

I suppose you will recall the evidence given in relation to Mr Young's non-disclosure of some \$2,000?-- Mmm, hmm.

Do you remember that evidence?-- Yes.

And this was or is referred to in an email by Mr Martens of the council to the CMC of the 18th of July 2005. It's Exhibit 235. That - I take it that you became aware of that?-- No, I wasn't aware of it.

You weren't aware of it?-- No.

All right. Did you ever have any discussion with Mr Martens or the City Solicitor in regard to any reference to any of your alleged non-disclosures?-- No, I don't - I don't believe so. I can't recall any.

So you didn't know about the reference of Mr Young's non-disclosure and no one ever spoke to you about whether or not any alleged non-disclosure on your part should be referred to the CMC?-- No.

Is there anything else that you want to say in relation to that topic, Mr Clarke?-- Oh, just that I've taken the trouble to compare the transcripts that were given by Councillor Crichlow and Councillor Sarroff with the actual recording that we were able to obtain and-----

This is the taped conversation some -----?-- The taped conversations.

-----four months after the election?-- That's right. And I found that the taped conversations were the - were far more comprehensive and the transcripts that were given to the CMC evidently, if they were the correct ones, were just picks here and there from them and-----

You mean the bits that were given by Mr Sarroff?-- By Councillor Crichlow.

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Councillor Crichlow, yes?-- Councillor Sarroff I don't think has ever produced a tape and some of the quotes by Councillor Sarroff of Tony Stephens seem to be incorrect language but he didn't produce a tape so I can't check that but I have to say that they were selected quotes. That's the best I can describe them.

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So it wasn't a full transcript that was provided?-- No, it was two pages of transcript out of 17 pages of the tape - and scattered right through the tape.

Is that all that-----?-- That's all, yes, thank you.

All right. Well now, can I come to the question of the Licensed Venues Association? You remember this issue in relation to the closing hours?-- Vividly.

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Sorry?-- Sorry, vividly.

Vividly you remember it, okay. Well perhaps I can first ask you to - or remind you - of an email, Exhibit 217. This is an email of the 16th of March-----?-- Yes.

-----2004. Do you have a copy of that?-- I have a copy, yes.

And it's from you to Paul Allen. Who's Paul Allen?-- He was the secretary, I believe, and he was the proprietor of Melba's - that's where we have it - but I think he was the secretary of the Licensed Venues Association.

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Right. Well now, in this email you say, "Thanks for arranging the meeting on Monday and for your hospitality." So apparently you've had some meeting with Mr Allen, did you?-- Yes, I had a meeting at Melba's with Mr Allen and the Jim that's referred to there is Jim Bell, who is the president.

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Right?-- And they were the two office bearers and there were about 10 or so of the Licensed Venue operators - managers, proprietors and so on - at this meeting.

Yes?-- And we discussed the various options and what was expected to happen and the advantages and disadvantages of a 3 a.m. closing and a 5 a.m. closing or even later, as I'd suggested.

Well now here, what you say is, "As discussed I can confirm that I strongly believe in" - what is that - "5 a.m. closing" ?-- Or it could be "6".

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"6 a.m. closing. If not, later, provided clubs look to dispersing their patrons as quietly as possible when leaving, ensuring any heavily intoxicated are put into taxis or on to buses." So you're here indicating to the secretary of the Licensed Venues Association that you strongly believe in, you

think, 6 a.m. closing, is what you're saying?-- Yeah. Well the proviso I had on that - I don't know if it's in here or not and I don't know if it's here or not - was that liquor be stopped selling at 5 a.m. and they be allowed to calm down, as it were.

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Well, you have a look at it but that doesn't appear in this email as far as I can see?-- No, I can't - no, I didn't see it there, no.

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Okay. And you go on to say, "If elected, I would be looking at a continuing consultation with your group to review items such as disposal of bottles and other rubbish, access to and from the clubs by taxis and limousines, the installation of a special bus complimentary to users to circuit the region on a 30 minute, 24 hour day time-table. And we agree Council should treat the entire area of Surfers Paradise as a giant resort made up of numerous entities but with a responsibility of Council to keep the entire SP" - that's Surfers Paradise area, I take it?-- That's it.

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"...and Burleigh clean throughout the day and night, safe and secure with police booths, video camera surveillance at Council offices." I won't read on in the next paragraph. But this follows a meeting that you had and it's the subject "Pledge", so is this your pledge to the Association?-- Yes, and I think I put down below the qualification that my personal beliefs and that - that I'm - I'm-----

Well, let's read that, "Just" - this is in a PS I think that you're referring to?-- That's right, yes.

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"Just to clarify the above, these are my personal beliefs and are not being aired here to gain votes by making empty promises. Rather, I wanted to provide your group with what I'd like to do given the opportunity to return SP back to the status it once enjoyed and still does in some parts of the world." Now, I accept what you have just said, Mr Clarke, but doesn't it come down to the fact that you are pledging that so far as you are concerned, you're going to do your best to support later closing hours?-- Absolutely, yes, which I did.

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And there is no other qualification expressed in relation to that, is there?-- No, no.

You go on - I had left out a paragraph - I don't propose to read it unless you want me to, but you had said in the email, "I also agree on the moratorium on the issue of new licences until the infrastructure and population growth is such so as to justify more licences being granted." So that's, again, in response to the discussion, I take it, that occurred with Mr Allen?-- Yes.

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How many people were present at that discussion?-- Ten - I say between 10 and 15. It was - was a reasonable number.

Right. So from the Association?-- Yes, or - each of them or two of them were belonging to various clubs.

Now, this was - I suppose it's correct to say a rather critical time in the campaign, wasn't it?-- Yes. Almost a week before.

I don't know whether you accept this but what seems to have been portrayed, at least in the media, during this period is that Mr Baildon started out a long way ahead but as the election came closer he was getting closer - you were getting closer and closer to him so far as polling was concerned?-- Yes, but I have to say - I've got a chronology here but I have to say that this - this subject has been the subject from way before 2003 before the election was even started mooted.

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Yes?-- And it was the subject of many - many newspaper reports and discussions and the City Council had a - had a commitment to fight for a 3.00 a.m. closing and that's what I was arguing about. I thought a 3.00 a.m. closing was not correct. It would put too many people on the street in an inebriated manner when it was still dark and they still wanted to do something, so that's why I preferred a 5.00 a.m. closing.

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But certainly not up until the 16th of March had you given a pledge to the Association?-- No.

And you would be aware that the Association was issuing leaflets, pamphlets, whatever you call them, flyers, not only in relation to yourself but also - well, sorry, not only in relation to Mr Baildon, but in relation to Mr Christmas?-- Well, that - they hadn't - they hadn't issued them by then.

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No. Well-----?-- They issued them later.

They did issue?-- They did.

And do you have a copy of these?-- No.

You remember the evidence that was-----?-- I - I have a copy of the major ad that went in the newspaper. I've got a-----

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I will just show you to bring it back to your attention that way?-- That's right, yeah, I've seen that advertisement.

And that's part of Exhibit 217 and it's the one which - in which it's headed, "Mayor Gary Baildon, thank you for all you've done over the past eight years (nothing). Don't vote for Gary Baildon." And it says, "This is the way to vote for a change" and it's got "1, Ron Clarke; 2, Baildon; 3, Dean Vegas" - sorry - "3" - I'll read that again - "1, Ron Clarke; 2, Dean Vegas; 3, Ian Latto" and "4, Gary Baildon"?-- Yes.

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So this is the way to vote for a change and it's under the name of the Gold Coast Licensed Venues Association, spokesperson Jim Bell. Did you know Jim Bell?-- Well, I - I met him at that meeting.

"Don't for Gary Baildon." So it would appear that your pledge to the Association brought a response which was favourable to you?-- Well, there were other circumstances that occurred between my discussions and that advertisement being taken out.

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Right. Yes, do you want to tell us about that?-- Yes. On the 22nd of March, the Licensing Court announced that the four licences - that was for eight - for the major night clubs - were restricted to a 3.00 a.m. closing and that the other night clubs, the balance of the 24 in Surfers Paradise, would be allowed to trade till 5.00 a.m. provided they have a 3.00 a.m. lock-out.

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When had they been allowed to close up until that time?-- They were opened till 5.00 a.m.

5.00 a.m.?-- Yes, it was just the retention but the extra piece on it was the-----

Lock-out?-- -----3.00 a.m. lock-out which was going to commence from the 1st of April.

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Right?-- So they knew about - about those and I think their biggest concern - in fact, it was their greatest concern - was the four licences of the eight of the biggest clubs in Surfers Paradise were being restricted to a 3.00 a.m. closing.

But what I'm really putting to you is - and that only emphasises the point - the Licensed Venues Association were enthusiastically supporting you, and that enthusiastic support came about after you had made the pledge that I've referred you to, didn't it?-- Yes. Yes.

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And I would assume that that is what you intended should happen?-- I intended everybody should know that I was in favour of a 5.00 a.m. closing for everybody.

Having regard though - I'm interested as you would understand, Mr Clarke, with your position in relation to the Licensed Venues Association and you would have understood that at this point in your campaign it was really a critical stage, things were getting closer between Mr Baildon and yourself, you were in the last couple of weeks of campaigning, you make a pledge to this association as to what you were going to do and it simply - and it brings the response that they enthusiastically support you?-- Yes. But that - I didn't know whether that support was going to be helpful or not helpful. You have to remember that the other Mayor is a - is a very experience political operator. He's been in the business for a long time and in fact on the - on the 8th of July 2003 Peter Gleeson, who's one of the senior reporters down on the Gold Coast Bulletin, mentioned that even - sorry, even Councillor Baildon has done a convenient political inspired back flip meaning that he was once in support of the 5 a.m. but he changed to a 3 a.m. lockout and he goes - they go on to say, "He knows there's no votes in supporting 5 a.m. closing at city nightspots." I knew about that. I knew that supporting 5 a.m. would perhaps not bring me any votes at all amongst the

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majority of voters because the majority of voters don't go to nightclubs so it was a - it's a risk I took to express my views that everybody - all nightclubs should close at 5 a.m.

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Are you saying that this pledge that you made to the Licensed Venues Association wasn't made in order to gain their support - attract their support - which would in turn as you hoped - and this is what I'm putting to you - as you hoped would bring more electoral support?-- No. In fact, at that meeting they mentioned nothing about SMS messages or - or advertisements or leaflets or anything else.

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I understand that but what I'm saying - that so far as you making the pledge in this email was concerned did you not intend that that would - or may well lead to the Licensed Venues Association supporting you which in turn would lead to more electoral support for you?-- No. It could have - could have led to less electoral support depending which way you go.

Well, would you have done it-----?-- I certainly - we certainly - sorry.

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Sorry, I didn't mean to interrupt you but would you have done it if it meant, in your eyes, less support?-- Yes.

You would have. Sorry, I did interrupt you, did you wish to say anything further?-- Yes. I didn't authorise them to do anything. They're their own political masters, they do what they want and I was quite concerned actually that I was upsetting quite a few people because I got a few phone calls the other way. In fact, I had a letter from a number of churches as well.

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You accept though that when the - you've already referred to this - but when the - what appears to have been a barrage of SMS messages went out to young people from the Licensed Venues Association they did make a substantial difference to the result, did it not?-- Although the interesting - interesting-----

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Well, do you accept that or not?-- Well, I hope so except that the interesting statistic that a poll did by - that was done by the Gold Coast Bulletin on the - on the day of the - of the election showed that the young support was for Councillor Baildon, majority of young support.

Well, what's your assessment of what happened after this - these SMS messages that went to what, apparently 60, 70,000 people?-- Well, that's according to them. I - I don't know who they went to and I would - would have hoped it would have been positive. So we don't know - I won the election.

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Do you accept that this got you over the line?

MR GLYNN: How can - that's a ridiculous question, with respect, and I object to it.

MR MULHOLLAND: Well, I'm entitled to ask the witness-----

MR GLYNN: He's not entitled to ask ridiculous questions.

MR MULHOLLAND: You don't accept that, Mr Clarke, that this got you over the line?-- I don't know one way or the other. I don't think anybody can - can say that.

Now, do you remember the evidence given by Mr Staerk in relation to this, the 2,022 and 2,023, do you remember his statement in relation to this and then his evidence in relation to you changing your position so far as supporting earlier arrangements after the election?-- Yes, he was wrong.

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He was wrong?-- Mmm.

You mean to say that you - in what way was he wrong?-- First of all Mr Staerk had no association with me after the election was finished, he didn't know what I did and what I didn't, he relied on the newspapers so he didn't know what I actually did and I can tell you what I did if I may.

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Yes?-- I supported the 5 a.m. closing on the - in April. We had a meeting of Council where we passed a motion to establish a task force to withdraw our opposition to 5 a.m. closing and to support the - at the next application - to support the common closing of every - of every nightclub. In other words, that the 3 a.m. closing in position would be changed with our support, that we would recommend a change to the Licensing Court that everyone would come out at 5 a.m. and that - that was it, so I personally instantly moved on exactly what I was promising.

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Well, I just want to refer you to one of these articles. Now, this is - this is an article which is part of Exhibit 278, I don't know whether you've got it there, it's headed "Clarke Will Try to Reverse Club Plan"?-- No, I haven't seen that one. I've probably seen it but I haven't got it here.

Well, it's on the 27th of March, it's before the - I can't tell you whether it's the Gold Coast Bulletin because I don't know this but it was in the material provided by Mr Staerk. Could we have Exhibit 278 please. I'll just read it to you, Mr Clarke. It's, "Mayoral contender Ron Clarke will attempt to reverse a Council recommendation to close nightclubs at 3 a.m. if elected today." Now, I'll just go down to the penultimate paragraph of this article referring to what you've previously told us about as to what the liquor licensing had done in that week. Now, this is an article which was obviously written on the - or published - on the day of the election, the 27th of March. Do you have - the article says as I say in the penultimate paragraph, "Earlier this week the liquor licensing division revoked the 5 a.m. licences of four nightclubs. They also told operators of the 24 other licensed venues they would retain their 5 a.m. licences but would not be allowed to let revellers in after 3 a.m." Now, this is what we've already discussed, this is the so-called lockout; is that right?-- Yes.

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So they had revoked the 5 a.m. licences of the four nightclubs and, in relation to the others, they would be - the patrons would be not let in after 3 a.m. or locked out. The article goes on - it's being put before you now, Mr Clarke?-- Yes.

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Are you following?-- Yes.

"Mr Clarke said yesterday he favoured a 7 a.m. closing of nightclubs"?-- Yes.

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This is what you'd apparently told the reporter on the day prior to the election. "No alcohol would be served after 5 a.m. and, in that two-hour period, the patrons would be given breakfast"; that is, two hours between 5 a.m. and 7 a.m. Is that right? That's what you're referring to?-- That's what I'm saying. I've said that before, yes.

"You certainly can't close four nightclubs at 3 a.m. and lock the rest out. All you do is cluster everybody together and you're trying to tell charged-up people they can't come into clubs. That's a recipe for real violence." And you say, "'The idea is to bus people in and out of service all night to get them moving,' he said" - that's you - "'Let them linger on as long as they like, as long as they don't affect the residents. I have no problem recommending the liquor licensing that the 3 a.m. closing order be reversed.'" So it's pretty clear what you are advocating. You agree that this is what you said to the reporter?-- Absolutely. That 3 a.m. closing is actually eight nightclubs, four licensees. Closing them at 3 a.m., and allowing the people to come out onto the street and not being able to get in another nightclub, is a recipe for disaster. They should all close at 5 a.m.

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I suppose it depends on your point of view, doesn't it? You're just going to push the revellers out, on what you're saying, at 7 a.m. into the streets by which time-----?-- No, no. Well, by that time - I don't know if you've noticed the operation, and what I'd like - I think this is probably-----

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Well, can we just come back to what you want to say in a moment?-- Okay, sure.

Let me just ask the question that I want to ask you about this?-- Sure.

What I'm suggesting to you is that this is really perfectly consistent with the approach you took in that pledge to the association in the email a week or so previously, in which you pledged that you would support later closing hours. And here you are, on the day prior to the election, published on the day of the election, you're advocating a 7 a.m. closure with a lock-out at 5 a.m., to use your terminology?-- No, no. No, no, I wasn't doing that at all. Sorry, that's not that. That's not-----

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Well, aren't you saying-----

MR GLYNN: Let him tell him what he's saying.

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MR MULHOLLAND: Well, let me just refer you to the article. "Mr Clarke said yesterday he favoured a 7 a.m. closing of nightclubs"?-- Yes.

That's right, and then you go on to say-----?-- No alcohol would be served after 5 a.m.

Right. Okay?-- It doesn't - that's got nothing to do with anything except you can leave after 5.00, you can leave after 4.00. What I'm saying, if they're allowed to stay open to 7.00, they're not allowed to serve any more alcohol after 5.00. So you allow them to calm down a little and you'd also allow them to serve breakfast.

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Yes?-- But it has nothing to do with 3 a.m. lockouts.

Well, you're, however, attempting to reverse a council recommendation to close nightclubs at 3 a.m. if elected today?-- Yes, and that's what I did straight after it. 3 a.m. lockout, as I explained before, is a recipe for disaster. If you're closing your big clubs at 3 a.m. - with the licence, as it was there at that stage, being announced from the 1st of April that there was to be a lock-out of other clubs at 3.00 - you'd be putting people onto the street at 3.00, and that's a disaster. They couldn't get into any other club.

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So here you are advocating a 7 a.m. closure?-- Yes, I'm advocating a 5 a.m. closure or a 7 a.m. closure, whichever you like. I'm saying if they keep on-----

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You favoured a 7 a.m. closing?-- Yes. What I probably told the reporter - because this is my philosophy and always has been - I'd favour a 5 a.m. closing. But if they wanted to, say, open until 7 a.m., I see no objection to it, provided they stop serving alcohol.

Well, do you accept that you've told the reporter that you favoured a 7 a.m. closing?-- Yes.

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Right?-- Closing if they wanted to, yes.

And that you told the reporter that you would attempt to reverse a council recommendation to close nightclubs at 3 a.m.?-- Yes, which we managed to do. So, for the next round of licences, they will all - the objections were withdrawn and all those eight nightclubs finished at 5 a.m. with a 3 a.m. lockout.

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Now, in relation to this, you said that you did not accept what Mr Staerk had said in relation to the subject. Mr Staerk said this at 2023: he said, "I worked with Ron on a weekly basis with other phone calls. You'd have to ask Councillor Clarke and perhaps Gardiner Brook about that. I wasn't aware of any other contacts that Mr Clarke had with the group." This is a reference to the Licensed Clubs Association. Did

Mr Staerk have that sort of contact with you?-- No, not on a weekly basis. We had a-----

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Well, what-----?-- Sorry, I'll correct that. We had a weekly conference which sometimes Mr Staerk was at and sometimes he wasn't.

Yes?-- Towards the end of the election, I would imagine he would have entered on a weekly basis.

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Mr Staerk went on to say that he had contact with Mr Bell, and in his statement he said, "I became aware of the association through its anti-Baildon and anti-Max Christmas advertising campaigns in the Gold Coast Bulletin. Candidate David Dunk, whom I was also working with, further told me of their activities. I was annoyed that the campaign run by the association would not benefit anyone by just saying vote against someone. They had to say who to vote for. Dunk knew Jim Bell, the head of the association, and gave me his phone number. I then rang Bell with the intent to suggest that, in the case of the mayoral race, a vote against Baildon might elect either a Greenie or an Elvis impersonator, which would be a worse outcome. I was going to suggest they change their SMSes and advertising campaigns to say 'vote for Ron'. When I did so, Jim agreed"?-- Yeah, I saw that notification. He had no authority to do that. He didn't tell me about it until later. But the SMS messages I don't think mentioned anything about voting for me. As I understand it, they just-----

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Well, did you see some of these-----?-- No, I only saw them recently. But, as I understand it, as I was told, they didn't say anything. Have you seen them?

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Did they say not to vote for anyone?-- I think they said not to vote for Gary Baildon; they were very anti Gary Baildon and don't believe in that. I mean if I was asked about that I'd strongly oppose it. I don't believe in negative campaigns.

Well, they were running a negative campaign?-- Well, I - yes, but I didn't know they were running a negative campaign.

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Well, you knew they were running a negative campaign in regard to this other literature that they were putting out-----?-- Well, the only-----

-----shown to you?-- I didn't see any literature until after I spoke to them. There was-----

Well, exactly?-- There was always-----

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That's the whole point. You saw the literature after you spoke to them?-- No - well, I didn't see any literature at all and I'm saying that I didn't see the advertisements in the newspaper until after I spoke to them. They were on the 25th; I spoke to them on the 15th. But I did see a lot of newspaper articles in which they were strongly opposing the 3 a.m. closing that was being promulgated.

At any rate, there was this - he says that he spoke to Bell and the SMS messages went out, whether or not it was because of it or not I suppose no-one can say but that's what he says he said. Can I ask you to also look at an article which you may have there in The Australian of the 16th of May 2005-----

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MR GLYNN: May I see a copy of that, please?

MR MULHOLLAND: Do you have a copy of that there - this is part of Exhibit 306?-- What date was it, sorry, again?

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16th of May 2005?-- 16th of May, I have it, yes.

And this is under the headline, "Mayor failed to disclose nightclub grants". "Olympian Ron Clarke allegedly failed to disclose up to \$20,000 in donations he received from Gold Coast nightclubs for his successful mayoral campaign." And this was an allegation according to the newspaper which was made by the Gold Coast Licensed Venues Association. It further alleges that, "After he was elected last year Mr Clarke changed his position on earlier closing hours for the tourist strip. The association says it paid for advertising for the former Olympic long distance runner," et cetera. "Such in-kind donations are required to be declared under the Local Government Act." Then it refers to what you declared. And it refers to the Darlington Park Raceway matter. Then it goes on, "Licensed Venues Association Chairman Jim Bell said the donations to Mr Clarke's campaign were in the form of newspaper advertisements published over three days, 30 radio advertisements and between 50,000 and 60,000 SMS text messages sent to nightclub members." I think I said 70,000 before - 50 and 60 according to what Mr Bell's telling the newspaper. "All the material urged a vote for Mr Clarke. Mr Bell alleged the assistance was given after Mr Clarke said he opposed Mr Baildon's support for earlier nightclub closing hours." It then refers to the email and Mr Bell said - it quotes from the email and then it says - then the newspaper goes on - that, "Mr Bell said that after he was elected Mr Clarke supported the lockout for nightclubs so patrons could not be admitted after 3 a.m." "It was a complete turnaround," Mr Bell said. "He accepted \$20,000 worth of support, then he turned on us. If we'd known we would have stuck with Gary Baildon." You said - "Mr Clarke denied yesterday he had anything further to declare. What the venues spent on their campaigns to oust Gary Baildon was their business and not mine. I was never aware of the amount of their advertising account and I was not involved in any way with their campaign." So this - I don't think the rest of the article I need to refer to. Now, Mr Clarke, what is your position in relation to this allegation being made here? Are you - well, you tell us what it is so far as it was, as Bell put it, donations to your campaign in the form of newspaper advertisements published over three days, 30 radio advertisements, between 50,000 and 60,000 SMS text messages sent to nightclub members"-- I don't know, Mr Mulholland - I don't know how accurate that is, but they did put a return in-----

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You mean you don't know - when you say "accurate" you mean you don't know whether he said that to the reporter?-- I don't know whether he's accurate in his estimates or it's slightly exaggerated but I do make this point - is that his return shows \$21,000 in advertising and as I remember it was 8,000 was SMS messages and 16,000 from - for advertising. Those SMS messages and advertising were against Max Christmas, the local candidate, as well as Gary Baildon, so, whatever, they couldn't all be against me anyway. I asked for guidance from, again, the same source, Tony Davis, the chief of staff. I think you have letters there or - as well, in regard to political organisations, or organisations of any kind, can conduct their own campaign for or against any candidate of any sort. I had no knowledge of it. I didn't authorise it and I wouldn't have authorised it if I had have known about it. And as far as the changing over, they well knew that their hours were going to be 5 a.m. from the time of 1st of April, with a 3 a.m. lockout. I've got some - a police report here that was circulated to council and to everybody pointing out just how successful the 3 a.m. lockout had been in cutting down the amount of crime. May I quote: "The period chosen is a time" - this is between 3 a.m. and 5 a.m. - "The period chosen is a time when many patrons are highly intoxicated after many hours consuming alcohol and the interaction of these persons in public space as they go from nightclub to nightclub can impinge on personal safety and property security." It goes on to say, "From a police perspective the imposition of the lockout condition has significantly reduced alcohol-related crime, violence and anti-social behaviour across the Gold Coast district." And the figures that they back up that report with were quite outstanding. I have copies and I can give it to you.

Well, what time are we talking about? What period of time?-- This is from the 1st of April onwards.

1st of April?-- Yes, with the lockout.

Which year?-- Sorry, I'm - 2004. This report goes through to 2005. This was dated 25th of February 2005. The first report I got was in September when some clubs were still closing at 3. They agreed with us that the lockout was so successful that they would extend their licences to 5 with a 3 a.m. lockout and so successful were the figures after that that - and that happened from the 1st of September from memory - after that that we in fact had a meeting in Brisbane to discuss Brisbane's problems with the Premier chairing it, and a legislation came in legislating that all nightclubs would have a 3 a.m. lockout throughout Queensland.

Yes. What I'm putting to you, Mr Clarke, I suppose in relation to this is whichever way you look at this you indicate a pledge to the Licensed Venues Association. You did not want clubs, it would appear, from what you then said publicly just prior to the election, published on the election day, 3 a.m. or 5 a.m. closing, you're actually advocating later closing, and that came about after that pledge was made,

and then it would appear from what Mr Bell later said that he was very-----

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MR GLYNN: This is - this was the objection in part. We're getting quotes on quotes on quotes. Mr Bell, I don't understand, has ever been called to give evidence about this. It's really quite unfair to ask Mr Clarke to comment on matters that Mr Bell is alleged to have said to a reporter who has an axe to grind.

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MR MULHOLLAND: Well, I'll leave that out.

CHAIRMAN: Mr Mulholland, you've lost me in that last question, I must say, plus I'm - I don't quite know where you're going with this. I don't really see it as very relevant to this inquiry if Mr Clarke changed his mind after the election. It's - I don't really see the relevance of that to this inquiry whether or not he changed his mind.

MR MULHOLLAND: Well, let me leave it on this basis. That was not the principal part of the question. The principal part of the question related to the pledge followed by Mr Clarke's public statement that he supported 7 a.m. closing. That's the question, and what I'm suggesting to you is that what has happened here you've made a pledge to the Association in the e-mail, that is, of course, a private e-mail, that on the day of the election your support for later closing is published, and in the same week, and again prior to the election and after the e-mail that I've referred to there's the support by the Licensed Venues Association by way of SMS messages which necessarily had a - were supportive of you?-- Yes, exactly. Could I-----

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Right, now all-----

MR GLYNN: Let him answer the question.

MR MULHOLLAND: What the question is, do you - do you accept that there is any relationship and connection between your pledge and the support that was given to you after the pledge that you made by the Licensed Venues Association for your campaign?-- Yes.

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MR GLYNN: I object to that question. Why should he accept - be asked whether he accepts whether there's a question. The question should be, was there any arrangement between him and the Licensed Clubs Association.

MR MULHOLLAND: Well, I'm not going to accept your putting of the question.

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MR GLYNN: Well, it was just that because you don't seem to be able to ask the proper question I thought I might help out.

CHAIRMAN: Well, please - please don't let's have an argument at the table. I don't know that I can agree with you, Mr Glynn. This witness's state of mind might have some relevance, the state of mind he had at that time, because I

can only assume this is all going to the issue of whether or not there should have been some declaration in an election gift, and therefore his state of mind would, I assume, be relevant to that.

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MR GLYNN: Well, his knowledge would also be relevant. And he's not being asked about his knowledge.

CHAIRMAN: Indeed he had further knowledge, but he's not being asked about knowledge in that question. You objected to a question that asked about his state of mind. I'm indicating that I consider his state of mind is relevant so I allow the question.

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MR GLYNN: Then surely he should be given piece by piece, not 50 pieces of information, Mr Chairman.

CHAIRMAN: Mr Glynn, we've had a piece by piece many times. I assume this is now the crux of the whole series of questioning that's gone on for a considerable length of time. I'll allow the witness to answer the question.

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WITNESS: I'm happy to answer it and I need to explain this. I was in favour of 5 a.m. closing, 7 a.m. closing, 5 a.m. closing, I was in favour of the late night closing. The 3 a.m. closing was my objection and as soon as I got into council we overcame that to get a 5 a.m. closing. At no time was the 3 a.m. brought - lock out brought up by the Licensed Venue people, by my people or any sort. They knew what the licence conditions were. They never brought it up with me about the 3 a.m. lockout at that stage. They were very happy to collect my support for a 5 a.m. closing because they're big night clubs, wanted to trade until 5 a.m. That was the big crux of the matter and that was the matter I approached. The 3 a.m. lockout objection came well after the piece, after we fought, and they didn't mention that again, right through in September. We went to bat for them to get a 5 a.m. closing and the 5 a.m. closing had obviously a 3 a.m. lockout condition, the same as the other clubs. So we went to bat for them for the 5 a.m. closing, again very consistently, and the 3 a.m. objection has only come up this year because evidently from anecdotal evidence I'm told that because of the - of the 3 a.m. closing time there is less liquor sold as it approaches 3 a.m. because nobody wants to be thrown out and not be able to get back into clubs. Anecdotally they're not selling as much liquor and therefore they are against the 3 a.m. lockout. I argue with that because I think a safe - a safe precinct in Surfers Paradise is much more important for them than anything else I think they're wrong in arguing for - against the 3 a.m. lockout anyway. The police reports are such that they will never ever, I would suggest, go back to an open slather. They will always maintain a 3 a.m. lockout.

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MR MULHOLLAND: Mr Clarke, do you accept that your e-mail to the Licensed Venues Association and your pledge of support brought about their support by way of the pamphlets that I've referred you to and the SMS messages?-- Yes, for a 5 a.m. close - closing, that's right, exactly.

So you accept the fact that that message and support, that pledge of support from the Association resulted in the Association in turn supporting you by the pamphlets and the SMS messages?-- Well - no, hang on.

MR GLYNN: Now that's just a double question. That's a double question.

WITNESS: Well-----

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MR GLYNN: And it really is an unfair one.

WITNESS: And I-----

MR MULHOLLAND: Why?

MR GLYNN: Because you say support and then you say add by certain methods. Now that's two questions.

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CHAIRMAN: I don't understand that.

MR GLYNN: Well, the-----

WITNESS: I would suggest-----

MR GLYNN: The question is firstly, does he say he got some support? Secondly, it is by what method? You can't roll the two together.

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CHAIRMAN: But what is the support? If it isn't the-----

MR GLYNN: Well, support may simply be that its members will support him.

CHAIRMAN: Oh, Mr Glynn.

MR GLYNN: But it doesn't mean - it doesn't mean-----

CHAIRMAN: No, Mr Glynn. Mr Mulholland wasn't addressing a nebulous issue of support. His question, in my opinion, was addressed quite properly to the support by way of the pamphlets and by the flyers and by way of the SMSs. I think it's quite appropriate for Mr Mulholland to confine the support that he is asking the witness to address to those specific issues.

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MR GLYNN: What I'm saying is he should confine it but he should firstly ask was the - was there support, then was the support confined to those issues.

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CHAIRMAN: I see. Are you saying the pamphlets aren't support?

MR GLYNN: Did I say that for one moment, Mr Chairman?

CHAIRMAN: : I don't know. I don't know what you're saying, Mr Glynn.

MR GLYNN: I'm saying that there are two parts to the question.

CHAIRMAN: I think - I think the - I think the upshot of it is that I'm overruling your objection.

MR MULHOLLAND: Do you wish me to put the question again or did you understand the question?-- I think I understood it. My answer would be that I don't think that my commitment was the trigger, if that's what you mean, for the anti-Baildon - anti-Baildon hubris, I think that was going to happen anyway, but I certainly pledged a support for 5 a.m. closing, whatever they do. Now that - whether that was going to help me or hinder me I didn't - I didn't consider. I've always been committed to a 5 a.m. closing and that's it, so I just reiterated that to them.

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Did you ever take advice on whether or not you ought to disclose any support given to you by the Licensed Venues Association by way of any pamphlets or SMS messages?-- Yes. As I mentioned, I referred that straight to the CEO, the Chief of Staff, and I was advised it's nothing to do with me.

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And when did you do that?-- When it was first mooted, I think, in the papers. I didn't think of it before then.

And that advice that you received was from the CEO?-- From the Chief of Staff, the CEO.

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Right. Is that Mr Scott?-- Tony Davis.

Mr Davis. And was that an oral communication; was it?-- Yes, yes. I think he wrote to the Licensed Venues Association.

Now, let me - anyway, from the view that you took, having received that advice from Mr Davis, was that there was no obligation on you to make any disclosure?-- That's right.

Now I want to take you to the issue of the Sunland discount. You were present at a finance committee meeting on the 9th of December 2004; is that right?-- Yes, I was.

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And we know that there was a full council meeting on the 22nd of November 2004. At the finance committee meeting of the 9th of November you moved that the discount be allowed; is that right?-- I did.

Now did you know that according to a letter of Sunland on the 18th of June 2004 it had relocated from Level 18 to Level 14, 50 Cavill Avenue in February of 2003?-- Yes.

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Did you know in respect of Carn River that the address given for service of notices, including rates notices, was Level 18, 50 Cavill Avenue - that is by way of a Form 24 that went into the council in around September/October of 2003; did you know that?-- Yes, yes, from the DNR.

And did you know that the rates notice went to that address?-- To 18 - to Floor 18-----

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Level 18, 50 Cavill Avenue, that is, the address given on the form?-- Yes, it's an office floor - that's right - and it went to the 18th floor at 50 Cavill Avenue.

Yes. Now were you also aware at the time that you moved that the discount that council officers were against the discount being granted?-- Yes.

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And that the evidence - were you aware of that recommendation?-- Yes.

And you are - you were also aware, I take it, of other material tendered in these proceedings - I'm referring to Exhibit 234, Mr Finlayson's memo to Councillor Crichlow of the 1st of December 2004, Ms Kenyon's memorandum of the 9th of November 2004, Exhibit 203 and Ms Deverson's statement of the 24th of November 2004, Exhibit 312?-- Yes.

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You're aware of those exhibits. Now, at this meeting - council committee meeting or the finance committee meeting - Mr David Brown and Anne Jamieson, being architect and general manager respectfully of Sunland, were present, is that so, and they made some representations?-- Yes.

And I take it that you were aware at the time of that finance committee meeting of the provisions of section 1021 of the Local Government Act requiring the council to be satisfied that a person liable to pay a rate, or rates, had been prevented by circumstances beyond the person's control from paying on time in order to grant a discount?-- Yes.

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You're aware of that?-- Yes.

You're an ex officio member of this committee?-- I am.

Had you been the subject of some lobbying before this finance committee meeting?-- No, not lobbying as in as much as I did receive an application from Sunland and which I asked Ray Stevens to, as my executive assistant, to investigate the details and he went out and investigated and brought to me all the details which I thought justified the motion that I moved.

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What satisfied you that these were circumstances beyond the person's control from paying in time?-- There were quite a number - first of all was the Form 24 which, although - which is - although it comes from the DNR is virtually filled in by the vendor and contains the address of the - sorry - of the purchaser and the purchaser's - although as you say the purchaser's address on it was the Level 18. Inquiries - I found out that that was because those documents had been filled in some time before the transaction and had taken some two years to complete and although technically the responsibility was - lied still with the purchaser's solicitors to check those - that had slipped through so the wrong postal address was on that Form 24 and I understand the

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rates department took that address. But there were other circumstances which-----

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Well, could you - just before you go onto the other circumstances-----?-- Yes.

-----let's just deal with this one. What satisfied you that in relation to this Form 24 that the Carn River had taken steps to ensure that the rates notice went elsewhere?-- They hadn't.

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They hadn't?-- They hadn't - on as far as the transfer document's concerned.

Right. So the-----?-- Now the transfer document went in to the DNR and the repercussion was that their rates notice went to the wrong address.

Well as the notice itself says it has implications so far as the council is concerned for rates and so on?-- It says "Future rates and correspondence."

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Yes. So if a party wants to provide a new address then that can be done through a change to that form; can 't it?-- Yes, yes, I agree with that.

Right. And that hadn't happened on this occasion?-- It didn't happen, no. I agree with that.

Yes, okay. So what did you want to go on to say?-- Yeah, secondly was that the - that the letter - secondly was the fact that we checked out, we found that the Council itself had been corresponding with Carn River at the correct post office box - Post Office Box 1301 - for some time, since 19 - since 2002, since the transaction first started and they made the applications. So as far as the rate payer was concerned the Councillors did know of - of the correct address albeit a different department.

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And not in relation to the rates notices?-- Not in relation to rates notices, in a different department. But you add that to the fact that the rates notice itself had a payment on it for over \$100,000. For \$108,393 - sorry, 108,393.10 dollars that was a carry forward on the rates notice which was - and the rates notice even though it says it's for the period 1st of July - 1st of January 2004 to 30th of June 2004 it was actually the notice from the 3rd of October 2003 to the 30th of June 2004 and the fact that the Council discount that was offered on that rates notice at that time was 21,169.45 I thought that - that that - that that point and the point that the 18 floor was an address for Carn River and nobody knew who Carn River was and there was a letter given to the officers concerned in September testifying the fact - testifying the non-identification-----

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This is from Falcon?-- By Falcon, yes. Testifying as to-----

Well, who's Falcon?-- I'll go on if I may. Testifying as to the - to the fact that they received the - the letter with a rates notice in it and neither returned it to the - to the sender as they should have if they couldn't identify it or returned it down below to Sunland who used to be on the same floor but both ways I believe that there was a - a responsibility by Falcon to do one thing or the other with that rates notice and not hang on to it for the time they evidently did. And that - those - all those factors combined with the fact that I knew Sunland and I knew Sohiel Abedian and the fact that he had a fetish for paying all his rate notices on time and the fact that in the last five years he'd paid 1,779 rates notices Ray Stevens checked out on time to receive his - his discount. I've heard him lecture - unbeknown to him I've heard him lecture about the importance he placed on - on obtaining discounts - I'm not diverting, I - I think it's important to explain this.

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Well, is this directed to the question-----?-- Yes.

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-----that you are intending to answer relating to this company having been prevented by circumstances beyond its control-----?-- Yes.

-----from paying in time?-- Yes.

That's what the statute says?-- Yes.

And you believe that this all goes to that-----?-- I believe so. I believe - I believe it's not just black and white. I believe that if you're operating a business such as the Council you look at other circumstances to see if they are saying yes we - we didn't receive the notice and the circumstances were from beyond our control, we weren't - we - as far as we were concerned we were in touch with Council, Council to them is Council whether it's the planning department or the rates notice department, there's nothing I know of that says specifically you have to notify the rates department of your post office address, you advise Council of your post office address.

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What advice had ever been given to Council-----?-- Well, they had-----

Hold on. What advice had ever been given to Council in relation to the rates notice address apart from the form 24?-- Well, if I was - if I was in the rate payer's position and I was corresponding on 22 different occasions with Council with the right post office address I would have thought that that would have been sufficient.

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Any rate, you believe that this relates to the question that you had to be satisfied of that Carn River had been prevented by circumstances beyond its control from paying in time?-- That's right.

Yes. So I didn't want to cut you off there but were you saying essentially that you regarded Sunland as what, a good

corporate citizen?-- Well, they're one of our biggest rate payers. As I say they've-----

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Why should that make a scrap of difference?-- Well - well, it makes a difference because of the consistency of - if you've got 1,779 occasions on which you pay - pay your rates on time and gain the discount over a number of years I believe - and the fact that you did not receive the notice on time - and I believe they were circumstances beyond their control - in that normally anybody who receives a letter which is not part of their organisation would immediately if they didn't return it to - if they didn't know it was going to be one of - make a guess it was one of Sunland who used to be on the same floor as them would at least return it to sender to get it back to the Council. Council provides sufficient time for that to get back and for that to happen.

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But-----?-- And as well as - may I just emphasise again - is that the rate notice said \$108,000 already paid on it and that made it - it wasn't just a normal rate notice, it was a rate notice that had already a considerable sum of the general rate already paid.

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Mr Clarke, surely the fact that we have got here an obviously very successful and large property developer involved shouldn't make a scrap of difference. What about the little old lady in the suburbs who has a 60 or a 120 dollar rates discount, do they get the same entitlement-----?-- Yes.

-----that you gave - that you gave Sunland?-- Yes-----

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Not on - not on that criterion they don't?-- Well-----

Not on the basis that it was - one involved \$100,000 which had been paid?-- If - if a - if a rates notice has gone astray there's been-----

Beyond their control?-- Yeah, beyond their control. So if the postman doesn't deliver it to right - correctly - doesn't give it to their flat, gives it to the flat next door, that's beyond their control.

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Mr Clarke, that didn't happen here. It went to the address that it was supposed to go to?-- No, it didn't go to the address it was supposed to go to because there was no office for Carn River on that floor. It went to another office with the postman guessing that that's Carn River's office. It didn't got to Carn River's office.

It went to Level 18, 50 Cavill Avenue?-- But level 18 was a number of offices.

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Any rate, go on. Is there anything else that you want to say?-- No. I just say that when these - when these postmen - post notices do go astray we checked also and we found on a number of occasions and the period of the 1st of July 2005 for example, it's 425 - before that the six months previous was 465 and the six month period before that was 543 so on a

number of occasions Council do understand that if they do go astray through no fault of the payer that - that we can do something about it and I believe that this is an instant that fell under those circumstances.

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Did you take into account in this criteria that you applied the fact that Sunland was used by the Gold Coast City Council for its building certifications?-- No. It's got nothing to do with that.

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Did you take into account - sorry, it's irrelevant because-----?-- It's irrelevant I believe.

Did you take into account that they were saying that if they had to pay this \$13,000-odd discount, they may not be able to donate it to community groups like the mayoral fund?-- I don't - I didn't hear them say that.

Well-----?-- But certainly I heard them say that they were - they were very good big - they made dig donations to - excuse me - to the community but I never heard anything about - about the Mayoral Ball, and in fact this year they didn't go to the Mayoral Ball. They didn't make a donation.

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Did you take into account the fact - well, it appears that you did - that they had always paid in the past?-- Yes.

You thought that came within the criteria?-- Well, I didn't say that it come within the criteria. It came within if you make a judgment with all the other circumstances as well. I think that was the important factor you should look into it, yes.

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And did you take into account the fact that Sunland were saying that they would make a donation of the amount that they were allowed by way of discount?-- I would have still recommended a discount whether they were making the donation or not. I just think that would help their case to show - really help their case to show the genuineness of the fact that it went astray in circumstances beyond their control and that it wasn't a matter of money in any way, shape or form; it was a matter of the principal of the - of the fact, and as I was about to say before, I heard a lecture from Sohiel saying how he started his business in Sanctuary Cove some 20-odd years ago, all based on cash business. He didn't worry about his bookkeeper so much except end of the year he paid everything in cash in order to get discounts, and he ran - he estimated a 20 per cent margin beyond other rival builders by paying each supplier as they came in so he didn't have to worry about - about accruals and invoices not paid, et cetera. He paid his staff, he paid his contractors, and he used his bank accounts as a - as a profit barometer, as it were, to see how he was covering his costs properly.

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Right. Well, do you accept that the evidence that I've referred you to here, which I suggest is unanimously to the effect from Council officers that a discount such as this one had not been granted in comparable circumstances

previously?-- No, I'm saying that I don't believe - I mean, I believe they were defending themselves somewhat in that because they made an awful mistake when they presented those papers, which was pointed out to them, and they still ignored it, that Falcon was a subsidiary of - of the - of Sunland and, in fact, on the first two - two - except for the last memo that you - you quoted, they were still of that understanding. They still thought Sunland, that Falcon was a subsidiary of - of Sunland.

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Well, they did but I'm suggesting-----?-- But in the end-----

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-----to you that it doesn't make a scrap of difference to the question that the Council had to decide under section 1021 of the Act?-- Well, I think it does because if it had have been - if it had have been their office that accepted - accepted the invoice, and they couldn't trace it, I think it's very clearly their mistake, but when their office didn't get it and through no fault of theirs the people who received it didn't send it back either to the Post Office or to the - or to the Council, I think it's - I think it does make a big difference because it was a huge difference being a part of your organisation receiving it and not your organisation receiving it.

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Well, you're aware of this, I take it now, having regard to some cross-examination by myself in relation to the matter, that this person purporting to be the Managing Director of the Falcon Group wasn't even the Managing Director at the relevant time, that the letter was written-----?-- Well, I-----

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-----on the 20th of September 2004?-- Yes, I don't - I think that doesn't alter the fact, the fact that Falcon had said that they received the letter and-----

Well, they didn't say that, with respect?-- Well-----

What they said was and what you would have read in that letter if you read it, Mr Clarke, is this: we believe the rates notice was delivered to our office but we didn't recognise the name Carn River?-- But didn't they go on to say, don't they, that they - that they sent it down in the internal mail.

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Yes, but-----?-- They must have received it to send it down, surely.

Surely before if you were going to go against the advice that you were getting which was one-way so far as Council officers were concerned, you would at least want to investigate this letter and the contents of it. You say that you relied, from what you've said, quite strongly on it?-- Well, that's what the Council officers, they brought - they produced the letter.

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They produced a letter dated the 20th of September 2004 in the terms that I've referred to?-- Yes.

And I suggest to you that, in fact, the person who purported to be the Managing Director wasn't a director at the time?-- Well, I - I don't know but-----

According to the official records?-- But - sorry, Mr Mulholland, but if Council officers have produced a letter, I would have thought that they would have made sure the letter was legitimate. I believe it is. And it does say that "we believe the rates notice was delivered. We do not recognise" - "unfortunately, the time the letter was redirected to Sunland" - so they had the rates notice.

Now, in relation to those recommendations, you've said that there were mistakes made. You also are aware that Ms Deveson who provided the recommendation originally has provided that statement of the 24th of November 2005, Exhibit 312, and she makes it absolutely plain that it wouldn't alter her opinion in the slightest?-- Yes, I understood that.

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Because of the question that one had to apply oneself to?-- I understand that, and the CEO I think in his evidence said yes, he would support the officers, but I believe that there is a case for the discount which I've reiterated to you.

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Did you know that on or about the 16th of November 2004, that is slightly prior to - shortly prior to the full Council meeting of the 22nd of November 2004 when you also voted in favour of the discount, that Sunland had made a donation of \$7700 to the fund that was used to support selected candidates at the 27th of March 2004 elections; did you know that?-- No.

I see. If you had known it, would it have affected your decision?-- No, I don't think so. It was something - two separate - completely separate happenings.

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You wouldn't be concerned in relation to public perception?-- While I think that public perception is - is important, of course, but the most important thing you have to do is to do things that we see as right or wrong.

Well, what you don't seem to be bothered about, Mr Clarke, but I put it to you again. I'm asking you to put yourself in the position of your knowing that in between the consideration of the matter-----

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MR GLYNN: I object to this. This is asking him to guess, to make a hypothetical decision. It's really unfair.

MR MULHOLLAND: With respect-----

CHAIRMAN: It might be better to leave it and ask that in a more general way. I would be interested in Mr Clarke's opinion on that issue as a general topic.

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MR MULHOLLAND: All right. Now you have said, I think - well you've told us that you were self-funded in relation to your own campaign, Mr Clarke?-- Yes.

And you spent some \$250,000 of your private funds?-- Yeah. It's around about that. It was around 230,000-odd at one stage, so it must be around about that.

Right. And we take it then that that \$250,000 was all that was spent - that was the only money that was spent in relation to your campaign to be mayor for those elections?-- To - what I know about anyway - that's all I spent.

So there wasn't any other sum of money, for example, that you received outside the election period?-- Any sum of money - any other-----

From the - yes. From the time that you - you know what I mean by the election period?-- Yes, from -----

From the time of the public announcement?-- -----public announcement, yes.

Through to the 5th of May 2004. That's a month after the declaration of the poll?-- No, there's no other moneys come in-----

There's no other moneys?-- -----for the election.

All right. So you then spent that money out of your own funds to be elected to a position - what's the salary of the mayor - about \$90,000?-- No, I think it's about - well, the remuneration pack is about 130-140 of which I give 20 per cent to charity.

You would be aware that in relation to other candidates at the election they were funded in various ways - some self-funded totally, some-----?-- Only what I read in the newspaper. I didn't have, you know, contact with any other candidate regarding their funding at all.

No, I meant that you're aware now-----?-- Oh yes, yes.

-----in regard to the returns that have been put in-----?-- That's right.

-----as to how people were funded. What do you - what view do you have, if any - you may not have any view - in relation to the source of funding for candidates? Do you, for example, have any view on the appropriateness of developer funding?-- I don't think we should pick out developers.

Well, I'm asking you to?-- It's very tough - yes, I understand what you're saying. Certainly I didn't, in my campaign, want any obligation or what I thought would be an obligation to anybody, moral or otherwise, and that's why I was very particular about not getting any obligation as far as cash or kind was concerned. And - but I understand now that a lot of people can't do that and they need funding. I have to say that if I was arranging funding I would follow the example of the previous mayor and what he did was have his funding put into a special lawyer's trust account and he didn't know who made the funding to him until after the poll was over and was announced and then his lawyers would then list those who donated to him. It seems to me that the more arm's length you

can keep away from funding, you know, the better it is again, as you say, for public perception.

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Would it be better, do you think, if the system provided public funding of candidates to a certain figure and denied funding entirely from any other source?-- Well practically, how do you govern that? I mean, what you'd have to do is to balance - everyone expects - differentiates between the income and expenditure. You'd have to also have a declaration of what was also spent by you in your campaign to make certain that no other contributions had been made and how do you distinguish between contributions that you may be putting in yourself beyond what you may get back from the State Government because-----

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You mean if you were independently wealthy you might be able to top up what you've been provided?-- Exactly - actually, yes.

I suppose that's always a problem - whatever system you adopt, isn't it - that some are going to have greater resources than others - greater financial resources, I'm talking about?-- Exactly, and that tends to mean then that the government funding just tops up what other funding is there. So you'd have to really - you have to make sure that expenditure was also made a declaration of.

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Yes. So so far as the disclosure obligations are concerned would you advocate any change in the present -----?-- Yes, I believe that there should be an accounting right throughout the campaign somewhere.

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You mean, what, disclosure throughout the-----?-- Disclosure, yes.

So as donations are received by any candidate for an election there be some obligation on the candidate to put that in a register which is publicly available?-- Publicly available, yes.

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So that that could be viewed and published?-- Yes.

Is that what you mean?-- Yes.

And that would be compared with the present system where the disclosure need not be given until after the election; is that what you're really drawing attention to?-- Exactly what I'm saying, yes, and it's a lot of - and what I'd also like to see in that is also every month the expenditure also registered to show that - I mean, what happened last time - and I think should be avoided - is that some candidates overspent and had to get donations after the event and therefore donations were given after the - if they were disclosed - donations were given after the disclosure before the election.

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Are you referring to the particular fund that we're-----?-- Well the fund and - I know that Sohiel gave a donation to Gary Bailden of 18,000 and to Max Christmas of

3,000 or so after the election and the Lionel Barden Trust Fund overspent and had to get money after the election.

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After the election period?-- After the - well after the election was held - and therefore those declarations, in the best of goodwill, had they been made before they would not have advised all of their donations and -----

So what - would your - the model that you'd adopt - what - the right to funding after the election; is that what you mean?-- Yes. That's what I'm saying: the expenditure before the election has to be less than what the donations that they've received in.

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Before the election?-- Before the election and there should be nothing after.

Yes. I think that during the history of the election and afterwards, particularly afterwards I think this is a reference to, you criticised - correct me if I'm wrong - the use of the word "corruption" in regard - in relation to what occurred by the use of the fund, and you know the fund that I'm talking about?-- Mmm-hmm.

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The fund that existed in Hickey Lawyers?-- Mmm-hmm.

Which was used to assist selected candidates at the March elections. Now you criticise that use of "corruption". Is it not, however, in your view a corruption of the electoral process if voters are denied relevant information about candidates that they're voting for?-- My objection to it was mainly because it was used in a sense that donations were made in order to get favours after, and not in the manner in which you're talking about. I believe that everything should have been exposed but I don't believe that was corruption, I think that that was just something that wasn't in the Electoral Act at that time and people just didn't go about doing it. But I am saying the corruption inference that I was objecting to was the inference that just because a developer or some other organisation made a donation they were doing it in expectation of favours should that candidate be elected.

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Well, let's just leave aside the position of the developer and I understand the point that you're making, that so far as the developer is concerned, the developer's entitled to make a donation?-- Mmm.

Within the law as it stands, but I'm really directing your attention to the existence of a fund used to support selected candidates which is kept secret, right? It's not open to public view. Keeping information like that away from public view before the election, that is denying voters that information, that there is a fund available which is going to be used in order to support a group of selected candidates, and what's more, this is according to the evidence we have, the fund is going to be used to support selected candidates at the direction of two sitting councillors, and that is being kept from the voters' view. Now, do you have any - any view

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on whether that situation ought to be allowed to occur?-- My view is that it was clumsily handled. The two sitting candidates, the two candidates-----

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Just to keep the - sorry, Mr-----?-- The two candidates are already there.

Yes, sorry, Mr Clarke, would you just accept the premise of the question, accepting the facts as I've stated to you?-- Yes. I'm not arguing with those. Two points I have to make is: (a) the two candidates that arranged the funds didn't receive any money from those funds; and that the candidates that they were - they were arranging them for were - were not - were not operating as a - as a group. I saw them as - as a fund that was - was provided in order to make certain that we could get other good candidates in there and make the election as - as best we could for - for the quality of candidates that were - that were being up for the election.

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What about - sorry?-- I just saw it as an investment in the quality of candidates.

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So you don't have any problem with that being the situation if it be the case of a fund, that is a fund which was a developer-backed fund, being used to support selected candidates at the direction of sitting councillors and that being kept from public view until after the election, that being the intention?-- Well, the problem I have with it was being - keeping it from public view. I mean, I think it should have been open and above - well, that's - that's the - I see nothing else with the rest. I think it was meant to be a business fund in the first place. There was a lot of businesses that were saying, yes, we have to get good candidates into - into council. This was an attempt to get some good candidates into - into council independently. The emphasis and - I have to say the emphasis is on the facts that they were independent.

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Yes?-- And I thought it was a good way of going about it but I would have had it publicised from the very start.

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So your - you would have some criticism of information like that not being available to the public?-- Yes.

And you know, of course, that the person heavily involved in organising the funding that I've referred to was Mr Brian Ray?-- Yes.

And you know that Mr Ray described in e-mails that he sent as to what his intention was in these terms, that the intention, there were major developers going to be involved - this is one of the architects of the fund - major developers were behind it, it was intended to put together a fund to mount a campaign to win a caucus of like-minded individuals for various wards in order to achieve a predictable outcome from the elected body in a similar way as achieved in the Tweed elections, that being the intention of Mr Ray. Now, would you have any

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comment on that, a fund being used in that way, funded in that way?-- Well-----

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And kept secret from the - from the - from the voters?-- Yes, the secrecy part of it, as I said, I object to. I don't see - I think - start again. I've got no problem with independent candidates. What I do have a problem with, to mention the new word, the word you mentioned there was a caucus. What I do have a problem with is any party or group or combination where people would be meeting away from open council and will be making decisions away from council that would - that would hold the whole council. We have 15 councillors and if that happened and you had a group of eight or more but let's say eight, you could have five councillors voting in caucus, they could make a decision for the whole of the council, the whole of the 15 councillors and I object to that. I think local

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government is away from that. Local government should have independent councillors. It should have - there should be no meetings away from council. They should be all open to council to make decisions.

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So, there shouldn't be groups of candidates at least combining to the extent of receiving monies out of a common fund?-- Well, I - I don't know that's combining. I think, nobody can object to monies coming from two people, one people, or a litany of people. I've got no objection to that as long as the emphasis was, and I think it has been in this case, all the way through is that independence has to be kept and I have to say Councillor Sue Robbins, who was one of the so called instigators, is the most independent person I've ever met.

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I suppose then that if the - you were accepting the fact under the present system without looking at what you ascertained, that under the present system that there would be disclosure after the election so that people would not only understand who received money and how much, but they would understand where the money came from?-- Yes.

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And you are aware, I take it, of the circumstances in which the returns were put in here and who was disclosed as to where the money came from?-- Well, I think it-----

-----What was disclosed as to where the money came from?-- Yeah. Yes, Mr Mulholland. I think it shows a lack of organisation. I mean, nobody virtually knew who - who they should attribute the money from because of the - there's a vagueness within the provisions. There was a - a - a pamphlet distributed, I think it's in one of your exhibits - one of your exhibits that came out of the local government that shows one way about disclosing, made trustee and the name of the fund, or the actually - contributors to the fund and yet the - the Act itself shows another way and there's a confusion there anyway which has to be really sorted out.

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So, you - you think there is some confusion in the - in the existing legislation which needs to be clarified?-- Absolutely, yeah.

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And you've put forward what you think ought to happen so far as public disclosures and how the donations ought to be publicly disclosed?-- Yes.

Is there a problem, do you think, of public perception where property developers who may have donated large sums of money to a particular candidate, or candidates, who if elected might be involved in planning and development decisions involving those same developers?-- Yes, there's a problem in public perception. There's no doubt about that.

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Well, how does one cope with that?-- That's - that's very difficult. I thought about that a fair bit. My belief is that everybody should be able to participate in a debate because it's not a material conflict of interest in one way. There's no material person - personal interest in it, but there is a conflict of interest and it has been a contribution to - to the campaign fund and I think as either you, or the Chairman, made a point about if you actually had to excuse yourself each time that happened there may a lack of quorum, depending on how many - how many councillors they made donations to.

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That's only if the developers make donations?-- Yes. I believe there should be a limit on - on the number of candidates that any - that any developer or any business of any sort can make contributions to. In other words, there should be a limit of three or four, something that's well below the quorum and the number of candidates they can make donations to and I also believe that there should be a declaration of the personal interest and - but they can take part in the debate, but perhaps not take part in any voting.

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Does - does it, dealing with perception again-----?-- Yes.

-----does it not, in the circumstances that I've mentioned to you, give developers a better chance of access and even leverage?-- Not if you know the system. The system is - is so complex you have to - the officers make most of the recommendations and you have to know which officer-----

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They're not always followed-----?-- Well, no, that's right and that's quite right. There are occasions where officers make the wrong recommends - make recommendations which can be faulted, but - but there is - there is no doubt out there, and it's - I think it's - it's persisted, if you were, by the media that because a developer has made a contribution he or she is doing it for a particular reason.

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And you don't accept that? Let - let me put this question to you. Let's just - and this is not a far fetched situation. If a council decision in relation to a particular issue is finely balanced, is it not asking too much, at least in all cases in which that occurs, that is the situation being finely

balanced, not to expect that developers might use leverage in relation to any donations that they've made?-- Well donations have been made in the past and it's pretty hard to use leverage for the future.

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Well, but, isn't that the whole point of - of - a political life, you want to get re-elected, don't you?-- Not me.

So, aren't - well, I'll hesitate to - to ask you, Mr Clarke, if you're standing in the next election?-- No, thank you.

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But isn't it in that situation, where it is a finely balanced situation, asking too much of the individuals involved that there will not be - even if it's not said, some - some use of - of access in those circumstances?-- Well, there can be and what I - that's what I was suggesting. I believe that people should be able to participate in the discussion but not the voting if they've had a contribution made to their election fund of more than say, \$5,000.

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Right. So - so you think that it should be - you think first of all that there should be a limit on the amount that can be donated - what, by any - by any individual?-- By any, yeah, by any group.

By any group and in relation to the amount that is donated, if it's above a certain amount then in the case of a developer with a particular interest before the council, so far as the candidate was concerned who had received that donation, would not be able to vote-----?-- Yes.

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-----on the issue?-- And it's not just developers. For example Councillor Douglas quite rightly voted in the licensed venues issue. She was given cash of, I don't know how much, I think it was about 5,000, and she's been - she's participated in the debates which is quite right and under our present rules participated in the - in the voting, but in those sorts of incidents I - I believe that whoever makes a donation, if something comes up - be it a group, an individual or a company, and they're involved in something that's been discussed in council, that the - the donee, the person who has received the donation should be allowed to participate in the discussions but not in the voting.

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You did say in the reference to the provision in relation to material personal interests, is that what you were speaking about?-- Yes.

So, you - you think that needs attention as well?-- It needs attention as well, yeah. I mean it's good as it is, it maybe needing a little bit of an addition to it.

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All right. Well, is there any - is there any other matter in relation to the present system governing disclosure that you would like to say something on at this point?-- I think it's important that - that the point you touched upon is open disclosure is the most important thing that we can do. If everybody does it then I believe that it will take, you know,

the perception, the - the undue concentration that - that builds up around - around election time and I think it's especially bought up because everything had been kept so secret. I think that's wrong.

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All right?-- I think that's - that's the main thing, but it has to be put in in such a way that-----

You?-- -----that everybody knows about the expenditure as well because otherwise there could be hidden donations.

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Now, what about - you'll remember some publicity given to these candidates who did not disclose the funding in advance of the election; you'll remember the letter that went out to candidates from the Gold Coast Bulletin and the responses that went in in various forms by the candidates concerned - do you know the evidence that I'm talking about?-- Yes, I saw a little but I didn't, you know, in detail.

Well, you may remember this, that one candidate was particularly singled out for criticism in the media, Mr Pforr, as misleading voters. In that sort of situation of course I suppose it would be overcome by the - what you have in mind having a public declaration by candidates. What about in regard to any provision concerning misleading voters on issues of funding; do you think that the present legislation is wide enough-----?-- No-----

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-----to cover any vice in that regard?-- No, we should be - I mean we should be very certain about what it is and what it isn't. I'm not referring back to those circumstances because I didn't know enough about-----

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I'm just picking that as an example?-- Yes - please, yes - not referring back to that but, yes, as I understand the present legislation I think the parity should be more immediate and greater.

Well, would you sum up your view in that regard by saying that donors and candidates must be absolutely certain of what their obligations are in relation to the obligation of disclosure?-- Yes.

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And that does not presently exist in regard to the legislation?-- I don't think it does because the legislation is too woolly and it's not - I don't think it's direct enough; too much legalese.

And certainly you say that in regard to all donations in regard to candidates at a local Government election, those donations ought to be made public in advance of the election?-- As they happen.

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And that no donations ought to be able to be received after the election; does that sum up your view?-- Yes, it does.

You may or may not be aware that in Mr Power's diary for the 16th of October 2003 there is a reference to a 7 a.m. or a

7.30 a.m. breakfast of the Chamber of Commerce at Coomera. This was at the Boathouse Tavern and you were one of the guest speakers. Following that, according to his diary entry, between 9.30 a.m. and 10.30 a.m. you and he apparently met at the Nerang office?-- The Nerang office, yes.

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Do you remember that?-- I don't remember meeting him at the breakfast but I remember meeting him at the Nerang office. I-----

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Could you tell us what that was about?-- Yes, well, I made a point of actually - of contacting every candidate that was - not candidate - start again - every sitting councillor during that period just to get an idea of what they thought - how council was running and what they thought the big issues were, and I spoke to - well, Councillor Crichlow I spoke to for example. I think I spoke to Councillor Young, Councillor Shepherd, Councillor Power. Councillor Robbins I know I didn't speak to. I spoke to Councillor Grew. Councillor Robbins refused to speak to me so that's why I remember that. But I think I spoke to most of the - Councillor La Castra - to most of the councillors just to get their concepts about the major issues and where council - what council was doing.

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And I suppose you also saw them from time to time during the course of the election campaign?-- No, I don't think I even saw them again. I used to see - the only time we struck - we met again, was the other candidates for the mayoral - for the mayoral, because we often had debates around the place, and I'd meet an occasional candidate and that sometimes - they were held in - the same time as candidates were discussing for a particular division. In other words we'd have a mayoral debate and a candidates debate and passing to and from we'd just say hello to each other but I didn't have a conversation with any other sitting councillor.

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Did any candidate at the election, up until the election on the 27th of March, discuss with you the fund that we have spoken about within Hickey Lawyers?-- No. No, all I-----

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You didn't have any discussion with any candidate in relation to that fund and its operation or those who benefited by it, nothing at all?-- No, nothing at all.

Could I ask you to have a look at - you have an article there in your material for the - this is the Gold Coast Bulletin of the 3rd of April 2004?-- About what, Mr Mulholland?

This is "Mayor's elect bid may see bloc leader as deputy"?-- Oh, about the power pact or something?

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Yes, "power pact for Clarke agenda"?-- I can't put my hand on it straight away.

Well, I'll get it for you. It's 43 of Exhibit 3-----

MR GLYNN: Can I see it before it's shown to the witness, please?

CHAIRMAN: If you can show it to Mr Glynn, thanks.

MR MULHOLLAND: You don't have it there?-- No, I'm sorry, I don't have it.

That's all right?-- I know about it fairly - a bit.

This is just the transcript of it?-- Yes.

Now, you'll see that the article in these terms: "Ron Clarke is working on a deal with David Power which aims at delivering his election commitment for big ticket items. Mr Clarke who takes over as Mayor this week had a 90-minute meeting yesterday with Councillor Power, his possible deputy." First of all, do you remember the article, Mr Clarke?-- Yes, I remember seeing the article.

Right. And do you remember having this meeting with Mr Power?-- No, no, I've never had the meeting with Mr Power.

You didn't?-- No.

So this is completely untrue?-- Completely untrue.

You had no such meeting?-- No.

All right. "It is understood that Councillor Power told Mr Clarke he would have the support of the majority of councillors." No such conversation?-- No. Can I just explain something about my philosophy - and I touched on it before - is that I believe in independent councillors, and I'm not interested in working with blocks of any sort. I'm interested in working with independent councillors, and I have no ambition to have my agenda put in - I'm happy with my agenda and the items that I wanted to bring up run the ring of the council. If they supported it, so be it. I mean-----

Well, let's just read on. Go down to - "Earlier this week, Councillor Power pledged his full support to Mr Clarke, and last night said his meeting with Mr Clarke had been productive and fruitful. 'I think there would be a lot of harmony in this council amongst most of the councillors. As a general consensus, Mr Clarke was elected with a strong, city-wide mandate and we have to respect that.'" That's quoting Mr Power according to the article?-- Mmm.

And then, down further, "The Bulletin was also told Mr Ray has spoken to Mr Clarke, indicating that a group of like-minded councillors would support his election blueprint." Now, did you have a conversation with Mr Ray along those lines?-- No, I never spoke in my life to Mr Ray, unfortunately.

Never spoke to him?-- Unfortunately, he died.

All right. "The Clarke team told Councillor Power that, if he delivered the eight votes required to implement a reformed agenda, Mr Clarke would support Councillor Power in any future

mayoral campaign, probably in 2008." Did you know of any such meeting, if it did occur?-- No.

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Then it goes on to refer to Mr Staerk saying that they were expecting a broad consensus to emerge and so on. Anything said by Mr Staerk along those lines, did that have your imprimatur or approval?-- No, as I've mentioned. I've read this and I've read some other things that Mr Staerk said as supposedly my campaign manager. In both ways (a) he wasn't my campaign manager, he was never my spokesman, and he was very strictly my media - he did a very good job with media, but he was nothing else.

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So you were not at any stage a party to any discussion, meeting or agreement that there would be some uniting of yourself and a group of councillors?-- That's right, and I didn't want it to. I didn't want to operate that way.

And you have indicated on a number of occasions that you were strongly opposed to acting in that way?-- Absolutely.

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Yes. Yes, thank you, Mr Clarke. Return that. Just leave it there?-- Put it there?

And I'll have the orderly pick it up.

CHAIRMAN: Yes, Mr Glynn. We're coming up to 1.00. If you just break at a point that's suitable.

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MR GLYNN: Yes, thank you. Can I take you back, Mr Clarke, to a point earlier. When you ran as the mayor, what was your position - firstly, did you have a position as regard to whether you would run for a second term?-- I always intended to - can only run for the one term, hopefully get enough through in that time.

All right. Did you explain that publicly at the time of the election?-- I think so. I think it's pretty well known.

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Is that still your intention?-- Absolutely.

Okay. Now, my learned friend got onto a topic with you which he then left, and that is about the conversation which was said to have been taped by Councillor Crichlow. Since Councillor Crichlow gave evidence, have you been provided with a copy of the tape-----?-- Yes. Yes, and which I've transcribed.

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-----that Councillor Crichlow provided to the CMC?-- Yes, I've been provided with her tape, but nothing from Councillor Sarroff.

Mr Chairman, I don't understand that tape to have been tendered. May I call for it for the purpose of tendering it?

CHAIRMAN: I didn't even know whether we have it, do we?

MR GLYNN: Well, I'm happy to tender it later, if I can call for it. I understand, because we were given a copy-----

CHAIRMAN: If there is a tape and you want it tendered, then I'm happy to receive it. It can be checked over the luncheon break, Mr Glynn.

MR GLYNN: All right, I'll wait. In the meantime, I'll deal with this transcript question. As a result of receiving that tape, has a transcript been prepared?-- As best we were able to. It was a very indistinct tape.

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Now, the tape was indistinct?-- Yes.

Tell us the process by which the transcript was prepared?-- Well, firstly the transcript was prepared by our solicitors outside, and they prepared a transcript and there were a lot of gaps in that one. So I also had my secretary, who was also secretary to the previous mayor and who recognised the voices much better - and she was able to identify the voices. Before she did it, I went through as well and checked the voices, and helped out with what I could understand. And then she went through again and did another job, and then last night I went through again and checked her transcription.

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And have you satisfied yourself that, as far as is possible given the quality of the tape that you've got, that what you have produced is an accurate transcript of that tape?-- Yes, yes. If someone, as I say - when I say it's inaudible, it's quite audible in patches. But it was firstly recorded with trucks going past at the monitoring base at Darlington Park, so it had these big trucks coming from a quarry which runs past the park frequently. Then it was in a car coming back between - driven by Joe Wherby, who's Tony Stephens's brother-in-law, with Councillor Crichlow. And then they got to the office and the forecourt of the office, and went into a group of people who seemed to be all talking at once, and that became indistinct again. But between those areas we had some quite distinct recording.

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All right.

CHAIRMAN: Mr Clarke, you've said "Joe Wherby" a couple of times. Can you spell that name, just for the transcript?-- Yes. W-H-E-R-B-Y.

Thanks.

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MR GLYNN: So the transcript is wrong where it says "W-E-R-B-Y". Is that right?-- Yes, W-H.

It should be W-H-E-R-B-Y?-- E-R-B-Y. That's my fault.

Now, the transcript has a note on it to this effect: "There appears to be more than two people in this conversation, and their names are not mentioned". And then it's got,

"Suggested: Dawn Crichlow, Eddie Sarroff, Joe Wherby and Tony Stephens". Now, you said you listened to the tape last night?-- Yes.

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Are you satisfied that the speakers are correctly identified in the transcript?-- In the latest transcript, yes.

In the transcript that I'm about to produce?-- That's right.

All right. Now, in fact, is it the case that Mr Stephens, his voice doesn't appear until they return to the house?-- To his office, yes.

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His office, is it?-- Yes.

Okay?-- Well, his office is in his house, so-----

His office is in his house. There's a passage marked "Introductions at house"?-- Yes. When I say it's his house, it's a house on Darlington Park. He has a private residence away from there, but it's sort of a house. He sometimes sleeps there and the family is there all the time while he's working. So it's an office cum house.

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Okay. And that's - now the transcript ran to some - that you finally produced ran to some 17 pages?-- 17 pages.

And that starts at page 13 of that transcript? I'll ask you to have a look at this?-- I haven't got a copy-----

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That is the arrival at what's described as the house?-- Yes, I thought we marked on it where the transcript-----

I've got some copies here where there are markings, but I just want you to look at that one, that's all-----?-- No, a lot of the recording was done on the road.

Yes?-- So the transcript from Councillor Crichlow that she submitted, her transcript started on the road but some time in, but the transcript that Councillor Crichlow submitted was well before they got to the house, a lot of it was well before the house.

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Now, but Mr Stephens first appears on the transcript - on the tape recording at-----?-- Oh, okay. I'm sorry. Mr Stephens, yes.

Mr Stephens first appears at the house, is that right?-- Yes. I'm not listening correctly. Yes, Mr Stephens first appears at the house.

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At the house. All right. And have you also gone through and marked with a yellow highlighter on another copy, or another series of copies, the passages of the tape which at least roughly equate with the transcript produced by Councillor Crichlow?-- Yes.

All right. These are not exactly as Councillor Crichlow has transcribed them, but they roughly accord with the passages that appear on her two page transcript?-- That's right. We tried to associate one with the other.

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Mr Chairman, I tender firstly the unmarked copy.

MR MULHOLLAND: We haven't seen this, Mr Chairman. We don't object to its tender. It's perhaps a pity that we didn't receive a copy of it beforehand. We'll put in our transcript as well, which has only recently become available and perhaps we can then seek to get a copy which everyone can live with.

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MR GLYNN : Well, that's - I'm surprised that if there was one available we weren't told it was being prepared. That's why we prepared this one.

CHAIRMAN: Oh, you're not always told of everything that happens here, Mr Glynn.

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MR GLYNN: Well, obviously.

CHAIRMAN: What would you describe this transcript of-----

MR GLYNN: Transcript of tape produced to CMC - I don't know whether it's to investigators or what by Councillor Crichlow.

CHAIRMAN: By Councillor Crichlow. Thank you.

MR GLYNN: Of which a transcript has been prepared by Councillor Crichlow has already been tendered.

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CHAIRMAN: All right. That's Exhibit 316.

ADMITTED AND MARKED "EXHIBIT 316"

WITNESS: Can I make a note about the date? Mr Glynn, can I make a note about the date?

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MR GLYNN: Yes, of course?-- The date - the dates on this is the 25th February 1999. That's because that was the date on the actual tape itself. It's not to do with the-----

CHAIRMAN: It's not the date of the conversation?-- No, obviously. Yes.

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MR GLYNN: So you've simply dated it as per the tape that's been produced?-- Because it was on the tape, yes. That's right.

CHAIRMAN: All right. Now that's an unmarked one, you say?

MR GLYNN: That's an unmarked - this is now one which is marked in highlighter and I've got a number of copies

available, which the witness has told us roughly equate with the transcript that was produced by Councillor Crichlow.

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CHAIRMAN: All right. That one will be Exhibit 317.

ADMITTED AND MARKED "EXHIBIT 317"

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WITNESS: I've initialled each page.

CHAIRMAN: And does your largesse extend to me, Mr Glynn?

MR GLYNN: Of course, Mr Chairman. Why would I leave you out? And I have one spare copy here should anybody have a need for it.

CHAIRMAN: Thank you.

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MR GLYNN: Given what was just said by my learned friend, perhaps I should - this would be a convenient time to break, Mr Chairman, and allow everybody an opportunity to read it.

CHAIRMAN: Just - when you're saying this is highlighted, is the transcript produced by Councillor Crichlow just includes those specific bits that are highlighted?

MR GLYNN: Yes, it's not suggested that what's there is exactly what Councillor Crichlow has transcribed, but it roughly coincides with parts of her transcription.

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CHAIRMAN: Yes, all right. 317, and we'll break now and resume at 2.15.

THE HEARING ADJOURNED AT 12.57 P.M. TILL 2.15 P.M.

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THE HEARING RESUMED AT 2.30 P.M.

RONALD WILLIAM CLARKE, CONTINUING:

MR MULHOLLAND: There seems to have been, Mr Chairman, some misunderstanding in relation to this tape-recorded conversation and the transcript. I wish to make it plain that we are not seeking to make an issue in relation to the contents of this tape. Apparently it was thought that the transcript had been tendered but it has not been tendered and so in those circumstances I think we're all agreed that neither the tape or tapes or transcripts will be tendered.

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MR GLYNN: And I'm content with that provided no reliance whatsoever is being placed on the evidence of Miss - Councillor Crichlow - about the alleged conversation with Mr Stephens.

CHAIRMAN: I must say I have no memory of any transcript but I assumed it was my faulty memory.

MR GLYNN: Well, it came to me as part of the material. There was certainly reference to her having a tape and to her having a transcript in - and I assumed as part of it. I then sought to have the tape which I'd understood was available transcribed so that I could respond particularly to respond to her evidence about what the conversation was but if that evidence isn't being relied upon then the tape becomes superfluous.

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CHAIRMAN: Yes, thank you, Mr Glynn.

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MR GLYNN: I'll only be fairly brief, Mr Chairman, as I've promised a number of my colleagues. When you met with the representatives of the licensed clubs did you have any discussion with them about whether or not they would publicly support you in the campaign?-- Publicly - I didn't have any conversation about any specific support as far as leaflets or going to their members or anything like that if that's what you mean.

Did you have any discussion with them about whether they would support you?-- No, no. No. All we discussed about was what I was going to do if - if I got in about licensed hours.

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Did you have any expectation that you would receive any support from them?-- No, none whatsoever.

Did you see the public support of the licensed club as a help, a hindrance or neither?-- As I explained to Mr Mulholland I wasn't certain. I had - can I just divert just slightly. I had I suppose a disagreement, a constant disagreement with Graham Staerk as my media advisor who kept on saying, "I should be polling the public as to the issues to see which were the best issues and as to what I should say and my philosophy is - again I tried to explain - is I really don't care. I mean, I just wanted to put my opinion about what I - what I felt was the best and to have that voted upon one way or the other as people feel so I never relied on polls, I never - I never went one way or the other and I did note that - that article I quoted before by - by Peter Gleeson that the - the previous Mayor thought that - that this was a - a vote getter for him.

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So is that the reason why you gave the commitments that you did - that is, to publicly put your position?-- To publicly put my position one way or the other. Everyone knew that if I did get in there I would be going for 5 a.m. closing not 3 a.m. closing which I thought the public were either half and half or maybe favouring the 3 a.m. closing.

Who arranged for the meeting with the Licensed Venues Association?-- They phoned me.

Sorry?-- They phoned me.

All right. You refer to Mr Graham Staerk wanting to do polling and the like, did you ever go against his advice as to public positions that you should take?-- Yes, he was there to be my media advisor and as I say he's a very good media advisor but I don't agree with a lot of his political opinions.

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I just wanted to clarify your position about 7 a.m. closing. In terms of 7 a.m. closing did you favour the serving of alcohol till 7 a.m.?-- Can I just make the point, I was for 5 a.m. closing. I was asked about do you mean only 5 a.m. closing, would you have 24 hour operation as the licensed clubs - some of the licensed clubs wanted - I said, "No, the only way I'd see going past 5 a.m. is to close at 7 and have no alcohol served after 5 through to 7 a.m." but my main - my main thrust was always a 5 a.m. closing. If you want to open further stop it at 7 and have some - and have some breakfast or serve something so that people can get on the street much more sober.

20

Now, you were asked a number of questions by Mr Mulholland about an article that appeared on the Saturday of the election in which you expressed the view about 7 a.m. closing with 5 a.m. cessation of service of alcohol?-- As I say again they took it out of the context. I mean, my point was 5 a.m. They asked me about other things and I said, "Yeah, 7 a.m. if - provided if - but that was a part - I have to emphasise - that was a part of a whole series of questions so everything - the only thing that came out was about the licensing but they asked me about my policies about all sorts of other - other things at the time. It wasn't just a question about - a questioning about the nightclubs, that's the only thing that was published, that's all.

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The article in the Saturday morning paper, was that one that you organised or were you-----?-- No, no. No, no. I'm sorry to cut you off.

How did that come about?-- As normal, they just phoned me.

Who phoned who?-- I don't know even who wrote the-----

Did you phone the-----?-- No, no, no. No.

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-----journalist or did the journalist phone you?-- Whoever the journalist was phoned me.

Right. Did you ever discuss being involved in voting blocs with any person? That is, you yourself being involved in voting blocs?-- No, no. To the contrary. If any - if there was any discussions about voting blocs being around I was

firmly opposed to it. As I've explained a few times before I just don't believe in them.

1

Despite the way - despite the allegations that voting blocs exist in the current Council - regardless of the allegations about the fact that the Council operates as a voting bloc or voting blocs how do you say this Council is performing as compared to prior Councils?-- Well, I've - I've graphed it and it was my graph that was published and a lot's been made with previous evidence about this but what I - what I've done again is brought that graph up to date so I do have a graph showing all Councillors and the number of divisions there were between 2002 and 2003 and the divisions between - that's March 2002 and 2003 - and I've done that as an equivalent - as an equivalent voting pattern compared with March 2004 to December 2005 so it's about the same period. In the 2002 and 2003 of the 76 Council meetings there were 55 divisions. In the 68 Council meetings that have occurred in the same period of this Council there were 261 divisions. I don't know what that signifies. But-----

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Look, I think you've misunderstood the question-----?-- Okay.

-----I was seeking to ask, Mr Clarke?-- I'm sorry.

I'm talking about the performance of the Council generally?-- Okay.

Not about how people voted?-- I was keen - I was keen to get these into evidence. It's - it's voting - certainly - there are certainly a very mixture of - you can't predict which way people are going to - these people are going to jump one way or the other. But there's a general pattern of voting-----

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Do you feel that improves or acts negatively upon the performance of the Council?-- No, well, the Council has performed very well indeed. I mean, we're - we're operating particularly well. We've - we at the present time have 5.1 billion dollars worth of - of assets and so on. We're operating - we've got 365 billion dollars in the bank - million dollars in the bank, and so on, but the Council operates, I think, very - very efficiently. Yes, we have some controversies at times. Yes, we have some disagreements at times but disagreements can range. I mean, I - I remember-----

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I won't take you through examples. If someone else wants to ask you about them, they can?-- Okay.

And if someone else wants to ask you about-----?-- Yeah, sure.

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-----you your graphs, they're welcome to?-- Okay. I can only hope.

Finally, there was a question raised about Mr Staerk. Mr Staerk, I think you told us, was your media adviser during the election campaign?-- That's it.

Has he acted or has he worked for you in any way since the day of the election?-- No, no. He's partner - he's an organiser of - of functions and she has organised the Mayoral Ball on two occasions now.

1

All right?-- But other than that, no, we've-----

But he himself, does he play any role in that?-- He himself, we've had no - no contact whatsoever.

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Okay. And before the election, did you have any contact with him other than of a professional kind, that is-----?-- No, no, no.

Thank you, Mr Chairman.

CHAIRMAN: Yes, thank you, Mr Glynn. Yes, Mr Radcliff.

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MR RADCLIFF: Councillor Clarke, as you know, I appear for Councillor Shepherd. I'm only asking questions about his involvement in these affairs. Your counsel has just asked you questions concerning this bloc. You say that you disagree with that type of activity but do you - in your role as Mayor, do you observe that there is any bloc of candidates who constantly vote together?-- No, there are some councillors that - that vote one way or another. I think it's the same as any committee I've ever been on or any directorship I've ever been on, you know, you have a lot of - of people going that way and a lot of people going this way and in between there's - there's swingers.

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And your material at page 291 onwards in your exhibit that has been tendered shows that you can find no real pattern where constantly there is a group voting together as against a broad spectrum of voting activities?-- No, no. No, whatever - whoever votes together votes, I believe, of their own volition and representing their division. I - I can see no pattern. And the point that I make about my - my [indistinct] is that the same thing happened in the previous Council. The same pattern occurred.

40

Right. You spoke, when asked by counsel assisting, of the transparency of the decision-making process. That transparency descends down to the committee level of things as well, doesn't it?-- Yes, absolutely.

And any member of Council - sorry, any councillor can go to any committee, can't he and submit-----?-- Yes. They can't vote but they can go. Only the people that are elected to that standing committee can vote.

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But make submissions and observe the process?-- But anyone can make submissions and they can discuss. They can - they can bring attention to the views of their division but they can't vote.

And they can observe the process that's being undertaken there as well?-- They can observe and they can participate. They just can't vote.

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Yes. All right. You were asked questions about consultation with developers. Do you see anything wrong with that if a developer was to approach any councillor for an opinion concerning a proposed development before it's even been put to Council?-- It often occurs. I think in a - in an election such as - in a city such ours with 14 divisions and big divisions at that, you're constantly getting people asking a question, "What - what chance do you think for me to do this? What are the restrictions? What can be done" and they can give an opinion as best they can and if the people are serious then they will - they will direct them to the Council officers.

10

And Councillor Shepherd in his position as Head of Planning would have people of that type coming to approach him for these informal advices prior to making applications?-- Prior to the application.

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Yes?-- He's very particular about what he discusses after the application, Councillor Shepherd. I know he's - he's said, "No, I can't do it because I'm - I can't talk any more to you. I'm Chair of Planning."

Have you observed that he has been impartial in relation to these applications?-- Absolutely.

30

And have you observed that he doesn't - does he attempt to favour any developer?-- No, he's an - he's an excellent councillor.

And does he - it's been suggested that he might be colluding with members of staff or influencing staff members about how they should deal with these matters. Have you observed that at all?-- No.

And has Councillor Shepherd ever attempted, in your presence, to influence other members of Council or yourself to vote in a certain manner?-- Only by discussion within the standing committee or the Council.

40

Yes. Similarly, has he been influenced by other members of the Council to vote in a certain manner or for a certain project?-- No. Just by the same process.

Lastly, I think it's fairly plain now what happened in relation to the Sunland rates circumstance, but you've been to level 18 at 50 Cavill Avenue, haven't you?-- Yes.

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I just want to make sure that everyone understands that. There's not one business set of premises at the address, level 18, 50 Cavill Avenue; there are a number, are there not?-- That's right.

So similar to a floor of barristers-----?-- Yes.

-----that you will have 10 barristers on a floor, there could be as many as 10 businesses on that one floor?-- Yes, yes. On the 14th floor they've got - Sunland have the whole of the premises but on the 18th floor they shared it with other people.

Yes. So that the address, level 18, 50 Cavill Avenue, was the address of at least two possibly five businesses?-- At the present time I think there is about five there, yes.

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Yes, thank you. Thank you, I have nothing further.

MR DEBATTISTA: Councillor Clarke, I represent Councillor La Castra in these proceedings. I just have a number of questions to ask you. You were brought by counsel assisting earlier and asked to give your opinion on disclosure rules and the way in which candidates should disclose various interests?-- Mmm, hmm.

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You would agree with me, wouldn't you, that a person who is a sitting councillor will have already, in the ordinary course of events, fully disclose any donations they received in respect of the previous election?-- Yes, that's right.

And that any person who wished to know whether, for example, Councillor La Castra had received any funding at the prior election would be well able to do that before the 2004 election would occur?-- Yes, that's right.

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And that indeed any donations made to him by developers would have been apparent?-- Yes.

Now, you've indicated that you met-----

CHAIRMAN: Are you meaning that generally or in this particular case?

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MR DEBATTISTA: Well, in both cases - in both cases. In this particular case it would have been apparent as a general rule where a person is an incumbent councillor or indeed a former candidate.

CHAIRMAN: Well, in this it would have been apparent in some instances and not in others.

MR DEBATTISTA: In this specific instance it would have been apparent?-- Sorry, I thought you were talking about the fact that the register had already been made.

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Yes?-- So therefore at past elections the contributors would have been known to everybody.

That's precisely my point and in the case of Councillor La Castra there's been no allegation made-----?-- And every other

sitting councillor that's up for re-election their past election history was there, yes.

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That's right - and any former candidate who was not necessarily elected also?-- Yes. Yes.

Now you met with Councillor La Castra prior to your election as Mayor of the Gold Coast City Council as you met with a number of other councillors?-- Mmm, hmm.

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At that particular meeting did Councillor La Castra ever suggest to you that Roxanne Scott, if elected to council, would be a reliable vote for you on any matter?-- No, I don't think we -----

Did he mention Roxanne Scott's name?-- He didn't mention Roxanne Scott - not to my memory at all. I think we mainly talked cricket actually.

Did he mention any other councillor?-- No.

20

Or any other candidate for election at those elections?-- No, he didn't mention any other councillor or candidate.

Now subsequent to that has he ever suggested to you that he has any ability to convince another councillor to vote for you in matters before council?-- No.

Has it ever been suggested to you by him that he cannot commit to voting for or against you on a particular issue because he needs to discuss the issue with another councillor first?-- No.

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All right. Specifically, has he ever indicated to you that he cannot offer you support on an issue because he needs to discuss that with Councillor Power first?-- No.

Thank you.

MR WEBB: No questions.

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CHAIRMAN: Thank you, Mr Webb.

MR NYST: Mr Clarke, just if I could take you to the Sunland matter - well back to the Sunland matter, I should say - Ms Jamieson and Mr Brown both spoke at that meeting, didn't they, on behalf of Sunland? This is at the-----?-- I don't remember - I don't remember Mr Brown speaking. I remember Ms Jamieson speaking.

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Ms Jamieson. Well did - in speaking or addressing at that meeting did she put forward all of those various issues that you yourself raised as arguments in support of the discount?-- Not all of them, no.

Not all of them. But some of them?-- Some of them, perhaps, yeah.

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Did she speak quite articulately and passionately about those?-- Yes.

And those that she didn't put forward, did you have some knowledge from some other source?-- I already said, I had my exec look at them all and prepare a whole case about it.

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But certainly at that meeting Ms Jamieson put some quite articulate arguments in support of a discount; didn't she?-- Mmm.

And whether or not you've got it right or wrong - the decision was rather wrong - is it the case that you voted according to your honest - your view honestly held as to what was the right decision?-- I hope I put forward some articulate persuasive discussion about it too.

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On that day?-- On that day.

So you also, using the knowledge that you had, spoke in favour of it?-- That's right.

And it would be fair to say that both what - the combination of what you said and what Ms Jamieson said you believe costs you a pretty convincing sort of argument?-- I thought so.

Well you voted as to your honest view of what was right on the basis of that information?-- Yes.

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And so far as you know those of the councillors present at the meeting did likewise - they voted according to their honest view of what was right?-- Yes.

Certainly you had had no discussion with David Power prior to that meeting about this issue?-- No.

You hadn't suggested how he should vote or asked him to vote in any particular way-----?-- No.

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-----or had any discussion with him whatsoever?-- No. I don't believe in that.

So far as you know David Power's involved in that meeting. He listened to some articulate arguments put forward by Ms Jamieson and also by yourself and he voted accordingly?-- That's right.

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Then if I could ask you about the newspaper report - you may or may not need to see it again - this is the one dated 3rd of April in The Gold Coast Bulletin, the "Power Packed" article. Do you remember the one I'm talking about?-- Yes, I can remember it well.

Well the only part of that that I wanted to ask you about was you might remember an extract of it that says, "The Clarke

team told Councillor Power that if he delivered the eight votes required to implement a reform agenda Mr Clarke would support Councillor Power in any future Mayoral campaign probably in 2008." Do you remember that actual-----?-- I remember the words, yeah.

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Pardon?-- I remember the words distinctly.

Well now you said you - I think you said to my learned friend Mr Glynn, "I was firmly opposed to voting blocks" and that is the reality of it, is it-----?-- Absolutely.

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-----now and then?-- Now and then and forever.

It's the case, isn't it, that you yourself never told Councillor Power anything about any delivery of votes?-- Mr Nyst, it's against my philosophy - that I don't believe in lobbying for anything.

All right?-- So I'm not - I wouldn't be interested in doing any of my - of the ideas that I had in that sort of a way.

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You've never discussed with him delivery of votes of any kind; have you?-- Never, no.

Nor had you discussed with him any proposal that you'd in any way support him as a Mayoral candidate?-- No, no.

And you've never asked Mr Staerk or any of your team to discuss such a thing with him?-- No, absolutely.

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And Mr Power has never offered to deliver any votes to you or-----?-- No, I don't know has any to deliver, actually.

He's never asked you for any support in terms of his mayoral candidacy?-- No. No. Is he standing?

He's never discussed that with you-----?-- No, no.

-----at all, has he?-- I still don't know whether he's standing or not.

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Thank you, sir.

MR S FYNES-CLINTON: Just one matter. Councillor Clarke, you'd be aware generally of the identities of the group of councillors alleged by the Gold Coast Bulletin that constitute this bloc?-- Yes.

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Do you have any direct evidence of that group or a substantial part of that group ever meeting together at the Council chamber but outside the Council meeting structure?-- The only time they do is to - chairs meeting which I - which I instigated and which I hold before - half an hour before Council meetings. It usually takes 10 minutes or 15 minutes because then I have to talk to the CEO before I go down to the

Council meeting. So - and all it does is just cover what's going to be the hot topic today and making me aware of any controversial matters.

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So that's a meeting which is effectively convened by you for your information to help run the Council meeting?-- Yes. A number of chairs often don't get their in time either.

Similar question: are you aware of directly or have you heard any rumours of that group or a substantial part of that group meeting outside the Council chamber?-- No.

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Thank you, Mr Chairman.

CHAIRMAN: Yes, Mr Betts.

MR BETTS: Thank you, Mr Chairman. Mr Mayor, if I may ask you, prior to the 2004 Gold Coast City Council election did you ever inspect the electoral gift returns register of any candidate, either successful or not, that you had voted for or not voted for, for that matter?-- Sorry, prior to the-----

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Prior to the-----?-- -----2004 election?

Prior to that campaign?-- No, I never looked at any candidates.

Would you say then that you would be more interested in knowing about a candidate's policies rather than their gifts register?-- Yes.

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In evidence you gave to Mr Mulholland you talked about your views on trust fund moneys and that, in your opinion, information about Council involvement in the provision of funds to candidates, although not inappropriate, should be made public. Would you consider that any involvement by a councillor in a candidate's campaign should also be made public? For example, advice on campaigning tactics and promotion?-- No, no. I was just talking about the contributions made in cash by whoever.

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So-----?-- Because there's too many - I mean, I asked around about eight or so councillors I suppose I spoke to, not advice about campaigning really, just about the issues but I know that lots of councillors talk to - talk to candidates, prospective candidates. They're - they're very civil to them and they give them advice.

So you believe there's a difference between a councillor involved in raising funds for a candidate and also a councillor who is involved in-----?-- Well, I think he-----

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-----tactics and policy direction or something like that?-- Well, I think you go too far if you're trying to expect whoever - whoever raised the funds to be registered as well. I think it's enough disclosure to show those who made

the contribution, not those who tried to - to lobby for the contribution, as it were.

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Mr Mayor, it has been suggested that because I received election funding through the Lionel Barden trust fund that I was there for part of a so-called voting bloc. From your observations, is it your impression that I am part of a voting bloc?-- No, certainly not.

What is it that you have observed in my behaviour that would lead you to say that?-- Because you ask all these awkward questions.

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Are you talking about now or in Council meetings?-- In the Council.

Prior to the election we both had lunch together to introduce ourselves to each other. Did I leave with you the impression that I was anything other than independent?-- No.

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Thank you, Mr Chairman.

CHAIRMAN: Yes, anyone else? No. Anything arising out of that, Mr Glynn?

MR GLYNN: No, thank you, Mr Chairman.

CHAIRMAN: Mr Mulholland?

MS HAMILTON: Thank you, Mr Chairman. We have no re-examination. May Mr Clarke be excused?

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CHAIRMAN: Yes, certainly. Thank you, Mr Clarke?-- Thank you, Mr Chairman.

Thank you for your evidence.

WITNESS EXCUSED

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MS HAMILTON: Mr Chairman, could we just-----

MR GLYNN: I was going to ask to be excused but you're obviously going to ask for an adjournment.

MS HAMILTON: It's just proposed at this stage to tender the statements of some witnesses whom it is not proposed to call, subject to applications by others.

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CHAIRMAN: Thank you, Mr Clarke, if you want to pack up you can take your time and move out of there and anyone who wants to may depart hence.

MS HAMILTON: The first is an interview with Thomas Richard Tate on the 2nd of November 2005. I will tender that-----

CHAIRMAN: That's T-A-T-E, is it?

MS HAMILTON: It is, yes, Mr Chairman.

CHAIRMAN: That interview with Mr Tate will be Exhibit 318.

ADMITTED AND MARKED "EXHIBIT 318"

MS HAMILTON: I would also tender a record of interview with Stewart John Hill. At one stage it was proposed to call Mr Hill to give oral evidence. He is ill and has a medical certificate and it appears he will be ill for some time. So at this stage it's proposed to tender his record of interview, Stewart John Hill, on the 13th of October 2005.

CHAIRMAN: Mr Hill's record of interview will be 319.

ADMITTED AND MARKED "EXHIBIT 319"

MS HAMILTON: I would also tender a record of interview with Ian Solomon on the 4th of October 2005.

CHAIRMAN: Mr Solomon's record of interview will be 320.

ADMITTED AND MARKED "EXHIBIT 320"

MS HAMILTON: And, Mr Chairman, Biggs and Biggs have provided a number of statements to the Commission from journalists in respect of articles relevant to the Inquiry. I propose to tender the folder of statements as one exhibit and I will read the names of the witness statements into the record: Alice Gorman (nee Jones); Peter Gleeson; Fiona Hamilton; Joanne Gibbins; Ryan Ellem, E-L-L-E-M; Kylie Hennessey; Brian Mossop, M-O-S-S-O-P; Murray Hubbard and Merilyn, M-E-R-I-L-Y-N, McKenzie. I would tender that folder of nine statements.

MR RADCLIFF: May I speak about that tender. It really causes me some concern that these statements are being received in this manner. I have prepared some submissions which I can hand to you, Mr Commissioner, and I have a copy for my learned friends. I'll allow you first to read that and then I'd like to make some comments.

CHAIRMAN: I'm sorry, I can't hear you.

MR RADCLIFF: I'll allow you first of all to read that and then I'll make some submissions in relation to it.

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CHAIRMAN: Yes, thank you. Yes. I must say, is it being suggested that we, by counsel assisting, that we rely upon these statements to prove that a witness said something when the witness denies that they've said it?

MS HAMILTON: Well-----

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CHAIRMAN: Well, an example here is Lionel Bardon. I don't know. I'd need to go to the article as to whether Lionel Bardon said that he was the chairman. I know he was portrayed as the chairman, but-----

MS HAMILTON: Well, Mr Chairman, the article doesn't say that Lionel Bardon is saying it-----

CHAIRMAN: No.

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MS HAMILTON: -----the article just says, "Businessman Lionel Bardon has been identified as the unofficial "Chairman" of the team."

CHAIRMAN: Yes.

MS HAMILTON: The basis upon which it's sought to cross-examine Ms Gorman is certainly not made clear in this submission.

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CHAIRMAN: No.

MS HAMILTON: In particular, nothing is identified with which Mr Radcliff, on behalf of Councillor Shepherd, would like to factually take issue. The only item identified is that Bardon strongly refuted an involvement as chairman. I don't know what that's based on. I don't know that it was actually put to him during the hearing.

MR RADCLIFF: It was.

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MS HAMILTON: Well, in any case, the article is not saying that Mr Bardon ever admitted that he was chairman.

CHAIRMAN: That's right. I'd need to go to the article but that's my memory of it, that it's a journalist interpolation that he was chairman which, I suppose, in an election gifts return that goes in in his name might reasonably lead to an inference that he had a fairly significant role in it even though we know that was not true but-----

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MS HAMILTON: Well, I could certainly say the Commission is not intending to rely on this article to say that Mr Bardon was the chairman of anything.

CHAIRMAN: No, that's - but I must say I do have some sympathy for the position that in those circumstances - and I think they're fairly rare here which a witness says, "No, I did not

say that." And one example was Mr Clarke said it today. "I did not say that" - then I would think it'd be fairly awkward to be accepting merely a statement from the journalist that the journalist says, "Yes, he did say that in a statement," against the sworn evidence of Mr Clarke that he didn't say it.

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MS HAMILTON: Well, Mr Chairman, as you will have observed, Counsel Assisting has been careful to ask any witness who is directly quoted in an article, whether the witness agrees with it or not - I mean, I could say in general terms that I do not - we will not be seeking to rely on a journalist's version as opposed to the sworn testimony of a witness unless that journalist is called.

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CHAIRMAN: Yes, all right.

MR RADCLIFF: Well, that alleviates the position somewhat but not entirely. With the greatest respect, this is in an investigation. We've gone at great lengths to deal with it on that basis. Underpinning - or what I've observed from being here, underpinning this has been a document which you've refused to accept in evidence and a number of newspaper articles.

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They were Exhibit 3 and they've been pulled out 150 times during this-----

CHAIRMAN: I don't mind going on the basis of what you say, I just don't like the term that this investigation is underpinned by those things that you assume.

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MR RADCLIFF: Well, no, we don't know - we don't know but it appears to me-----

CHAIRMAN: You're right, you don't know.

MR RADCLIFF: It appears to me that they are - these newspaper articles were a progenitor of this inquiry to a degree.

CHAIRMAN: What's the problem now when Counsel Assisting - and I can assure you I'll be taking that attitude that no finding would be made against anyone that they said something to a journalist based purely upon an untested statement by the journalist and contrary to the sworn evidence of the witness. So what basis then, apart from that, do you have to object in any way to the receipt of these statements?

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MR RADCLIFF: If you look at - if you look at the journalist to which I've referred in my outline of argument and look at her statement alone.

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CHAIRMAN: I don't have the statements with me.

MR RADCLIFF: I'm sorry, I thought they were just tendered to you, sorry. We have spare copies.

CHAIRMAN: That folder of journalist statements.

MR RADCLIFF: If you look at the fifth page in.

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CHAIRMAN: This is the statement, is it?

MR RADCLIFF: Yes, statement of Gorman nee Jones.

CHAIRMAN: Yes.

MR RADCLIFF: The instance that I'm referring you to, in particular, is about three-quarters the way down that page under the heading, "How a Plot Took Shape". The comment is, "Interviews were conducted by telephone. The shorthand notes that were taken are still in my possession. The story is a true and accurate account of what was said to me." We've not been given the shorthand notes. We've not been given the opportunity to test this witness as-----

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CHAIRMAN: Look, I understand all that but what's the point? If there's - if what the witness attributes to someone as a quote, if it's not accepted by that person, we're not going to be relying upon it.

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MR RADCLIFF: No, but what-----

CHAIRMAN: So what's the point?

MR RADCLIFF: Because the newspaper article contains the photograph that you would have seen in the montage of people, including my client, as being members of an organisation that breaks the law.

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CHAIRMAN: So?

MR RADCLIFF: So you're accepting that without challenge as to how that-----

CHAIRMAN: Mr Radcliff, that's a silly statement, with respect. You're saying "we're accepting that", what do you mean? We're accepting that article or we're accepting the truth of the article?

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MR RADCLIFF: Well, the article has been accepted in evidence first of all.

CHAIRMAN: Well, so?

MR RADCLIFF: And secondly, the principal - one of the principal allegations that has been made out in documents that I've seen is that there is a "bloc" or a group of councillors who vote together in party fashion.

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CHAIRMAN: What's been produced in evidence has no photographs at all-----

MR RADCLIFF: That has also been tendered, I apologise, it has.

CHAIRMAN: Well-----

MR RADCLIFF: That has been tendered and was accepted by you as part of Exhibit 3.

CHAIRMAN: Well, presumably, it was tendered by you then.

MR RADCLIFF: It was and it is part - you took it as part-----

CHAIRMAN: How can you complain about it if you tender it?

MR RADCLIFF: Because we wanted to get to the background before - Mr Barden - as to what that photograph depicted. It's not just the content of the typed transcript that you have, it is what was actually put in the public arena. Now, I don't wish to be difficult about this but you go one - and this is not on point with my submissions. But what happened this morning with Councillor Clarke is worse when you look at the statement of Mr Solomon which you haven't read yet.

CHAIRMAN: Hang on. Sorry, if we can just stick with the one.

MR RADCLIFF: All right. Well - yes.

CHAIRMAN: This article,

MR RADCLIFF: Yes.

CHAIRMAN: How the Plot Took Shape.

MR RADCLIFF: Yes.

CHAIRMAN: Is your objection to receipt of this statement by Ms Gorman?

MR RADCLIFF: Yes. It's not sworn.

CHAIRMAN: That it has - sorry, is what?

MR RADCLIFF: It's not sworn, it is a signed document, no more.

CHAIRMAN: Yes, but - yes.

MR RADCLIFF: And it goes to - it has no probative weight. It should either be rejected by you or if it's to be accepted by you it is dangerous for you to receive it in that fashion without having her here to test it.

CHAIRMAN: What is the danger when we said that we would not use any part of it that is contrary to the sworn evidence of a witness before this hearing?

MR RADCLIFF: So therefore we can accept, can we, that the sworn evidence of my client is that there is no bloc then you will accept that evidence?

CHAIRMAN: No, no. Any statement attributed to a witness in any of these articles, all these evidence of what was in the

newspaper is exactly as you said before, is part of the background.

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MR RADCLIFF: Yes.

CHAIRMAN: That's all, and they're tendered as part of the background.

MR RADCLIFF: Yes.

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CHAIRMAN: Of an article that was printed in the newspaper on that particular day. But if a statement is attributed in here to Mr Molhoek, "They were wanting to check me out," I will not accept that that was said by Mr Molhoek to the journalist unless Mr Molhoek has agreed that he said it. All right?

MR RADCLIFF: All right. Therefore-----

CHAIRMAN: Now in so far as she says there is a voting bloc, of course I'm not going to act just upon the evidence of that witness.

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MR RADCLIFF: That it exists.

CHAIRMAN: I'm surprised you would even think that.

MR RADCLIFF: No, no. No, the evidence is - we received a note from - and I don't say this in any way disrespectful-----

CHAIRMAN: Oh, Mr Radcliff, I think we're wasting time. Unless you've got some more coherent sort of objection to this evidence I propose to accept in evidence Exhibit 321, the folder of journalists' statements. That will be utilised in the way we have indicated.

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MR RADCLIFF: Well, the record should note that I would ask that that witness be called.

CHAIRMAN: I do not propose to call that witness. Your objection is noted.

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MR RADCLIFF: As you will.

CHAIRMAN: Does anyone else have any objection?

MR DEBATTISTA: Chairman, I note my objection for the record. I note that my client indicated that one of the statements made by a journalist as it related to him was false. I object to the truth and accuracy-----

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CHAIRMAN: That's in the transcript.

MR DEBATTISTA: -----of that. I appreciate it's in the transcript. I also note, Mr Chairman, I don't object to the exhibit being received and I fail to see, since no one objects to the authorship of those articles, no one has suggested they're not written by the people who appear on the bylines

and why there is a need to tender this particular exhibit.
That's my objection.

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CHAIRMAN: Look, I note your point and I note Mr Radcliff's point, that they're going to have virtually no probative weight at all.

MR DEBATTISTA: And there seems no point, Mr Chairman, to tender it.

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CHAIRMAN: There's virtually no probative weight. If a witness has not accepted that they said something I certainly would not be prepared to go against that witness's evidence purely on the basis of a statement of a journalist that "it was recorded in my shorthand notes and it was an accurate account of what the witness - sorry, of what the person quoted said to me at the time."

MR DEBATTISTA: Thank you.

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CHAIRMAN: Because there's no way you could.

MS HAMILTON: Well, could I just indicate, Mr Chairman. I understand some of the articles didn't have a byline so there's some value in at least knowing who wrote them.

In relation to the notes issue, any person who's requested copies of the notes have been provided, for example, Mr Nyst requested copies of the shorthand notes. They can be provided to anybody who wants them. They are in shorthand. It may not assist. I tender that folder of statements previously identified. Yes, that will be Exhibit 321.

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ADMITTED AND MARKED "EXHIBIT 321"

MR WEBB: Mr Chairman, I don't wish to prolong the debate. I want to reserve my position. I'm much reassured by the statements you've made to previous people and it may be that in submissions there may be something, because my instructor points out, and with respect, I agree with him on this occasion, there may be an hiatus where there are statements which haven't been tested and commented upon and yet appear there and it would not be fair, taking up the point that's already been made really to rely on those if they haven't been put to witnesses or they're just general statements.

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CHAIRMAN: Look, I'm sure any of you are perfectly capable of making the necessary submissions at the appropriate time, but what you say is a valid point, Mr Webb. There might be some quotes attributed that have not been specifically put to a witness, that's a valid point, and I think you know me well enough that I wouldn't be wanting to rely upon-----

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MR WEBB: No doubt about that. As I said, I'm reassured.

CHAIRMAN: -----an unsworn statement of a witness.

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MR WEBB: Thank you.

CHAIRMAN: Okay, anything further?

MS HAMILTON: No. Could we adjourn?

CHAIRMAN: Tomorrow. The time?

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MS HAMILTON: 10 o'clock please.

MR WEBB: May I ask a question. You would have doubtless with the eagle eye you have cast over us, observed of late that I've heard about the program that you propose to have. I just had this question because in a casual conversation it was suggested me that half of Friday might be available. I've already had to put off something in Townsville on Monday because of - we were sitting on Monday. Is it proposed we may spill over to Friday?

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CHAIRMAN: I would hope not. We've got one witness left and I'm looking at Mr Nyst who's acting for that witness.

MR WEBB: I don't think he's the one who's going to take the time.

MR NYST: Can I say that it's not anticipated that we will be leading Mr Power through any evidence, so we'll go straight to Mr Mulholland, so as well as one can ever predict these things hopefully it would be finished in the two days.

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MR WEBB: Well, that really wasn't duckshoving but I suppose we really should be looking down the other end at Mr Mulholland.

CHAIRMAN: Yes.

MR MULHOLLAND: All we can say, Mr Chairman, is we're going to do everything we can to finish in the two days. We understand the legal representatives for Mr Power's position in relation to the matter. That's all we can say. We will do everything we can to finish in the two days.

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CHAIRMAN: I'm prepared to sit a bit late each day if it's thought necessary. I certainly would like to finish in two days. I have other commitments on Friday.

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THE HEARING ADJOURNED AT 3.18 P.M. TILL 10 A.M.
THE FOLLOWING DAY

WITNESS LIST

RONALD WILLIAM CLARKE, SWORN AND EXAMINED.....	2311	10
WITNESS EXCUSED.....	2371	

EXHIBITS

ADMITTED AND MARKED "EXHIBIT 314".....	2311	
ADMITTED AND MARKED "EXHIBIT 315".....	2311	30
ADMITTED AND MARKED "EXHIBIT 316".....	2359	
ADMITTED AND MARKED "EXHIBIT 317".....	2360	
ADMITTED AND MARKED "EXHIBIT 318".....	2372	
ADMITTED AND MARKED "EXHIBIT 319".....	2372	
ADMITTED AND MARKED "EXHIBIT 320".....	2372	40
ADMITTED AND MARKED "EXHIBIT 321".....	2378	