



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST
CITY COUNCIL

BRISBANE

..DATE 14/12/2005

..DAY 27

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THE HEARING RESUMED AT 10.06 A.M.

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MR FREEBURN: Mr Chairman, may I announce my appearance please?

CHAIRMAN: Certainly.

MR FREEBURN: Freeburn, I appear for Councillor Young in place of Mr Boddice.

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CHAIRMAN: Right, thank you, Mr Freeburn. Yes, Mr Mulholland.

MR MULHOLLAND: Good morning, Mr Chairman. I call David Leslie Power.

DAVID LESLIE POWER, SWORN AND EXAMINED:

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MR MULHOLLAND: Is your full name David Leslie Power?-- It is.

Mr Power, do you appear here today under an attendance notice?-- Yes, I do.

Would you have a look at this document please. Is that the notice?-- It appears to be, yes.

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I tender that, Mr Chairman.

CHAIRMAN: It will be Exhibit 322.

ADMITTED AND MARKED "EXHIBIT 322"

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MR MULHOLLAND: Now were you also served with a notice to discover?-- Yes, I was.

And that's dated the 11th of August at 2005? Will you have a look at this document please. Is that the notice to discover?-- I believe it is, yes.

And did you, in response to that notice supply material to the Commission?-- Yes, I did.

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MR TEMBY: Commissioner, at this stage I have an application to make. I seek an order pursuant to section 197(5) of the Crime and Misconduct Act namely that all answers given in all documents produced by the witness from this point in his evidence will be taken to have been so given and so produced on objection. So it's 197(5) which - which you're aware of, Commissioner.

CHAIRMAN: Yes. Are you asking for all answers or just a class of answers, Mr Temby?

MR TEMBY: I'm asking for all answers and I don't mean to develop that and say why, in the particular circumstances, we submit that it's justified.

Firstly the Act contemplates there will be circumstances in which such an order with respect to all answers and all documents will be made. There would otherwise be no utility in conferring such a power which it is submitted is conferred in plain terms. So it can be done across the board or in stages or by subject matter, but it can be done across the board and there are circumstances in which that will be appropriate, otherwise the Act would not so provide, and we submit that there are here such circumstances for these reasons.

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Firstly, Councillor Power is clearly an important witness, testified to by the fact that he's been chosen by Counsel Assisting to be the last witness in this hearing, and he's a witness who has often been mentioned previously, as you know, Commissioner, both in the Young dossier and in evidence.

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Secondly, I inform the Commission that he has taken legal advice which is to protect his position by taking self-incrimination objections whenever - objections whenever he's properly able so to do and that is advice which he intends to follow.

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Thirdly, it will disturb the flow of the evidence and be productive of fruitless delay if such objections have to be taken and dealt with seriatim.

Fourthly, to follow that course would also be unfair to the witness. If he has to raise objection seriatim then he'll be required to concentrate upon two matters, namely whether this is a question to which he should object, and what answer he should give to the question, whereas surely what matters from all viewpoints is the latter alone, that is to say the giving of truthful evidence.

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And fifthly, the Commission would not wish to see this or indeed any witness who's received advice of the sort he has that I've outlined earlier, give a potentially incriminating answer without objection and by oversight. It would be a worrying occurrence if that occurred and it's likely to occur in the case of a witness who will have to give evidence over an extended period, does not enjoy legal training, and as we understand it, must raise the objections himself.

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For those reasons, which combine principle and practicality, it is submitted that the appropriate course for the Commission to take is to exercise the power undoubtedly conferred by section 197(5) and give the direction which as sought is a direction that all answers given and all documents produced by

the witness from this point will be taken to have been so given and so produced on objection. They're the submissions. 1

CHAIRMAN: Yes, thank you, Mr Temby. Mr Mulholland?

MR MULHOLLAND: We do not - we do not object in the circumstances to the order sought.

CHAIRMAN: Yes, thank you, Mr Mulholland. I'm inclined to grant your request, Mr Temby, in particular the disruption, as you say, that will flow to the evidence and the time that will be taken up if, as you say, we have to deal with the seriatim as each of the issues come up. 10

I will make the order sought under section 197(5), that privilege apply to all answers, privilege against self-incrimination apply to all answers that you give.

WITNESS: Thank you, Chairman. 20

MR TEMBY: And all documents produced, may it please the Commission.

CHAIRMAN: And all documents produced. I note that the documents that have already been produced to the Commission were made - produced with a claim of privilege.

MR TEMBY: They were.

CHAIRMAN: So that will apply still. 30

MR TEMBY: You're correct, Commissioner. Thank you. Now I have a consequential application to make.

The Commission has power under section 180(3)(a) to prohibit the publication of answers given, which is to say evidence which we don't see, or anything about an answer which is given. We seek an order prohibiting publication of the argument leading to the ruling as to whether or not answers by this witness are to be regarded as having been given on objection and the fact of that ruling, and that, we submit, is a prohibition order concerning answers given which can be made under 183A. 40

The justification, Commissioner, is as follows. The order sought will not prevent publication of evidence and in that respect we, of course, note that the Commission decided before hearings commenced that the hearings would be in public and it so desired it on public interest grounds, and I stress that the order that we are seeking would not prevent the publication of any evidence that would be given by Councillor Power. 50

Nor are we seeking to close the hearing and nor did we seek to close the hearing so far as the making of the earlier application was concerned. But, in fairness to the witness, the order now sought would prevent publication of that which experience shows is apt to mislead. If there is publication

of the fact of the argument leading to, and the ruling with respect to, privilege, that is likely to give rise to a belief - indeed, experience shows probably an automatic conclusion - that a person who has sought such an order has done so because he concedes some form of wrongdoing.

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That is typically how these matters develop, and typicality may be assumed in the case of a hearing which is chiefly being followed by a particular newspaper, which particular newspaper clearly sees itself as having been the organ of publication which deserves the credit for the setting-up of the enquiry. And that belief or automatic conclusion is of course quite false. In strongly analogous circumstances, you will be aware, Commissioner, that to do as Councillor Power has done is simply to exercise a civil - in this context, the statutory - right.

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It's strongly analogous to the exercise of the right not to answer questions, which is often exercised by people who are being questioned by the authorities. On a daily basis in the Courts of this land, juries are directed that the exercise of that right, sometimes called the right to silence, when under questioning by the authorities is irrelevant to the question of guilt or otherwise. Now, we urge that the fact that Councillor Power has sought and obtained a ruling that all of his evidence will be taken to have been given on objection reflects no more than an application by him, which has been acceded to, whereby he seeks to assert the statutory right which is available to anybody.

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And it would be very unfair to him if that led to a blaze of publicity apt to instil incredulous readers the belief that he's done this simply because he has something to hide. It's for those reasons that we seek the order under 180(3)(a). To repeat, it is an order prohibiting publication of the argument leading to the ruling that answers by this witness are to be regarded as having been given on objection, together with the fact of that rule.

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CHAIRMAN: Yes, Mr Mulholland?

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MR MULHOLLAND: Mr Chairman, we oppose the order sought under section 180 subsection (3) of the Crime and Misconduct Act. It would not be a fair or reasonable inference for any person to draw some adverse conclusion against Mr Power by reason of the argument used to support the application recently made on his behalf. As we understand it, this application that was made on his behalf following legal advice, people in the community are well used to understanding that people are entitled to make this kind of objection and, as I say, no fair or reasonable person would draw any adverse conclusion.

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I make it plain that we do not, and could not, suggest that such an inference could be drawn. It's simply part of the argument. This is an open, public enquiry and we would resist at this stage that this type of argument, even though it be, as it were, legal argument, in support of an application be prohibited from publication. So we oppose the application.

CHAIRMAN: Yes, thank you, Mr Mulholland. Mr Temby, I'm inclined not to make such an order. It is apparent that your client, in claiming privilege with respect to the documents that he produced to the Commission in answer to the notice to produce served upon him, acted on legal advice. It is very apparent that he is acting here today, in claiming privilege, on legal advice that you have given him.

No adverse inference will be drawn by this Commission against your client for having exercised what is a right that is given to him under the statute that sets up this Commission, and no adverse inference should be drawn against him by any other person for exercising such a right. I agree with what Mr Mulholland said that no fair or reasonable conclusion could be drawn of any inference adverse to your client by his actions.

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And I would indicate to the media, who presumably are listening to this, that they should exercise care in reporting today's events to ensure that they do not suggest any adverse inference in the way in which they do any report or express any report of the claim of privilege by your client.

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MR TEMBY: Commissioner, with respect-----

CHAIRMAN: I decline to make the order that you seek.

MR TEMBY: Yes. With respect, I say no more than - of course, I respectfully note the ruling and I thank you for what you have said in the course of giving the ruling.

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CHAIRMAN: Thank you.

MR TEMBY: Thank you.

CHAIRMAN: Yes, Mr Mulholland.

MR MULHOLLAND: Now, I asked you about the notice to discover and I was about to, and I now do, come to the material that you supplied through your lawyers. That includes a letter from your lawyers of the 6th of September together with a statement of yourself, witnessed by a Justice of the Peace, along with other material in the folder that I now hand you?-- Not having looked through fully, Mr Mulholland, that does appear to be-----

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No, no. Well, it does appear to be-----?-- It does appear to be the information we sent, yes.

Fine. Could I just see the notice to discover that I handed you a minute ago, please?

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That notice, which was dated, I think, the 8th of - the 11th of September - sorry, the 11th of August, required a reply by the 22nd of August, that was extended to the 6th of September, was it not?-- It was.

And, the material was then supplied in the fashion that I've mentioned, yes. I tender the notice together with that material.

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CHAIRMAN: Yes, that will be exhibit 323.

ADMITTED AND MARKED "EXHIBIT 323"

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MR MULHOLLAND: Did you subsequently, on the - by letter of the 15th of November of your lawyers, supply certain material in relation to a luncheon function?-- I'd need to have a look at that, if I could.

I'll ask you to have a look at this document?-- No, Mr Mulholland, this is not in reference to the luncheon function. These are the copies of the bank statements which I was able to obtain because I became trustee to the account at some time after the election and I requested copies from the bank, as - as I believe is appropriate.

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All right. Well, I'll ask that that be placed as part of the same exhibit. Sorry, I didn't note the number, 332 was it, Commissioner?

CHAIRMAN: 323.

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MR MULHOLLAND: Thank you. Well, now did you subsequently supply, through your lawyers, a letter of the 29th of November, entries from your diary covering the period from the 2nd of October 2003 to the 31st of March 2004?-- Yes, this appears to be what we provided. It was originally believed to have been deleted irrecoverably. I was able to recover that and, upon recovering it, forwarded it immediately.

Yes. I ask that that be made part of the same exhibit.

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CHAIRMAN: Yes. Could I just see that, thanks?

MR MULHOLLAND: Now, if you wish to refer to any document in any question that I ask you, please say so. You don't have any documents brought with you into the witness box. Mr Power, in relation to that letter of your solicitors, written on your behalf, and which you've told us about, you say that you recently discovered 2003/2004 entries to your electronic diary which you'd previously believed had been wiped. How did that come about, that you previously believed that they had been wiped?-- I operate a diary, a hand held electronic diary, that is docked with my desktop PC. At the time I checked my hand held diary and went back, unfortunately, the synchronisation settings on the hand held deleted anything after six months. I assumed that - that that was the case on the desktop PC. Those synchronisation settings were re-set within the last month and, obviously, it was back loaded.

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Right. What caused you to re-set them?-- Oh, it was simply just fiddling with the - the - the laptop - sorry, the hand held, that's all.

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So, you believed that they had been wiped and you later discovered, in the exercise that you've told us about, that they hadn't been and so you produced them?-- Correct.

All right. Now, you represent division 2. Is that correct?-- That's correct.

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And, you were elected at the March 27 2004 election?-- That's correct.

When were you first elected to the Gold Coast City Council?-- To the amalgamated Gold Coast City Council at amalgamation in 1995. Prior to that, I was an Albert Shire Councillor since 1991.

Obviously, you have a lot of experience in work as a councillor?-- I believe I would, yes.

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Before the 27th of March 2004 election, what committees were you a member of?-- I was a member of the co-ordination committee, the finance committee, planning north committee - I was chair of that, and the strategic planning committee, which I was also chair of.

And, subsequent to the 27 March election?-- Subsequent, I am a member of co-ordination committee, finance and the combined city planning committee.

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Are you a chair of any committee?-- Sorry, my apologies. I'm also a chair of strategic growth management committee.

Right. And, what functions does that committee that you're chair of have?-- Strategic growth management is somewhat different to its traditional role. Previously, we simply looked after the strategic plan and the town planning process for the city, the development of the plan itself. The strategic growth management committee now looks after strategic growth issues beyond the planning scheme such as transport and major infrastructure issues that are dealt with outside of the individual committees that deal on a - on a directorate basis. So, for instance, extension of our public transport system through our transport levy is being dealt with through that committee.

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Now, I want to deal with the period late 2003. You have followed the evidence at this enquiry, I gather fairly closely?-- Reasonably.

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Have you been present during much of the evidence?-- I wouldn't say much of it. I think probably less than half of it, to be honest. But, I have tried to keep abreast of it.

And, if not in this room, actually the hearing room, you've been in some other room watching the televised-----?-- Well, as I said-----

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-----proceedings?-- -----as I said, Mr Mulholland, I probably have been here less than half the time of the sittings within the building itself but I have tried to keep abreast, yes.

What? By reading the transcripts?-- Reading the transcripts. I wouldn't suggest that I've tried to keep abreast by reading the paper, that's not always entirely accurate.

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All right. Well, you heard then more than once mention of a group of candidates during the course of the evidence. Now, I'll give you the opportunity in due course to say what you wish in relation to that. But, at this stage, I want to deal with some early meetings. Your diary, and as I say, I don't want to delay by going to exhibits unnecessarily. But, if you do wish to refer to any document to which I refer, well, just ask?-- Certainly.

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Your diary for the 3rd of October 2003 has an entry "12.30 to 2.00 p.m. lunch Barden/Solomon/Young". Do you agree with that?-- I believe there is an entry to that effect.

Now, the "Young" referred to there, is that a Greg Young?-- Yes, it is.

Is that - is Mr Young a council officer?-- Greg is no longer a council officer, he was a director.

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He was?-- A director.

Of what?-- Of the economic development and major projects directory.

What did that meeting relate to?-- That was simply a social meeting. Mr Solomon, Mr Barden and Mr Young and I were - were friends. Mr Young still does live within my division.

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That had nothing to do, and there was no discussion, in relation to any raising of funds?-- No, absolutely not. I certainly wouldn't discuss that sort of matter in front of a council officer.

Now, your diary for the 16th of October 2003 is in these terms, "7.00 a.m. to 7.30 a.m. Coomera Chamber of Commerce breakfast Boathouse Tavern, guest speakers Ron Clarke, Meryl Asperant, Sun Southby, et cetera. What does that entry relate to?-- I believe there was a Chamber breakfast. They have Chamber breakfasts once a month, usually held at either the Boathouse Tavern or on Hope Island. I can't specifically recall that the Mayor, sorry, Mr Clarke as he was then, speaking at that breakfast but, I'm a fairly regular attendee of those.

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All right. Well, was there any meeting of any other person that you can recall by you, during the course of that

breakfast associated with the election in 2004?-- I couldn't specifically recall that. There are a lot of - a lot of people attend those breakfasts and some of them are regular, some of them attend on a one off basis.

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You have no memory?-- No.

All right. "9.30 a.m. to 10.30 a.m." Again, same day in your diary, "16 October. It is Ron Clarke, DP office Nerang." Now, DP office Nerang, that's your office, is it?-- That's correct

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And that's the council office, is it?-- That's correct.

Did you meet Mr Clarke that day?-- I believe so.

In relation to what?-- I believe Mr Clarke was doing the rounds, meeting all sitting councillors, finding out what their objectives were in their divisions, basically getting to know them.

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Now, there is an entry in your diary for the 13th of November, 2003. "7.30 to 9 a.m. Ian Solomon, Water Lily Café, Marine Parade on Short Street." Where is that cafe?-- That is in Southport. It's at the eastern end of Short Street.

Do you remember that meeting?-- Yes, I do.

Now, the previous evening had been the occasion of the gala dinners - or gala dinner - gala awards dinner-----?-- Oh, for the Gold Coast Bulletin, yes.

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-----For the Gold Coast Bulletin-----?-- Yes.

-----If you recall? Do you remember that? Did you attend that?-- No, I didn't attend that.

All right. So, again I ask you, did you - that meeting with Mr Solomon, what was that about?-- That was just a social meeting. We had breakfast. We certainly did discuss the election, how he thought Councillor Baildon was going in particular, but beyond that it was more of a social discussion.

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No reference to any need to get together some campaign in relation to the next election, that is the 27 March election?-- Not that I recall. We certainly had a number of discussions over years about the performance of council in general, but certainly not that I can recall at that breakfast.

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"9 a.m. to 10 a.m." Your diary again, for the same day. "Robert Mulhoek, Water Lily." Do you remember meeting Mr Mulhoek?-- Yes.

And what was that about?-- That was for Rob to - once again, get to know me. I can't actually recall who arranged that. I think it might have been Rob, and basically to advise me that

he was running, although it was pretty much common knowledge at that stage, and just have a general discussion about council and what was happening.

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So, what you just met him as a - as a candidate?-- Yes. He - the only other time I think I'd even - even bumped into Rob Mulhoek was actually at Dreamworld during the opening of a ride. He was in the line to get in and we had a brief chat but prior to that we'd never had any discussions.

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So, you knew that he would be a candidate at the time of that meeting?-- It was pretty much common knowledge at that stage. We were very much aware that Councillor Baildon had approached Rob at an earlier date encouraging him to run and in addition to that, he was sitting - or going to run in a seat that was being vacated by Councillor Margaret Grummit so she could run for State.

Now, you know Mr Tate? T-A-T-E?-- Yes, I do.

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Mr Tate has told the Commission that there was a meeting at the Gold Coast Brew Pub in early November 2004, you being present-----?-- 2004?

-----Sorry, 2003. You being present along with others including Mr Janssen, Solomon, Lang and Rowe. Do you remember this occasion?-- I do. I've actually got it listed in my diary as the Islander Resort.

Right?-- But I certainly do remember that. I attended that meeting late and I left before they had finished.

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Now, that - you recall a meeting at the - at that pub?-- Yes, I do.

Right. So, was there a meeting at the Islander Resort?-- No. They're one in the same. They're a facility that's totally owned by Mr Tate.

So they're in close proximity?-- They're right next to each other, adjoined.

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All right. So there was only one meeting and it was-----?-- That's correct.

-----at the Gold Coast Brew Pub, according to your recollection?-- Well, I - once again, as I said, in my diary I think it's listed as the Islander Resort but it's virtually-----

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That's what you mean?-- -----one - it is one in the same thing.

Right. And Mr Tate-----

MR TENBY: Sorry to be troublesome, but I failed to note the date that was put to the witness.

MR MULHOLLAND: November 2003. Early November.

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MR TENBY: Just early November. Thank you, very much.

MR MULHOLLAND: Yeah, I know. I'm just putting to you at the moment a recollection of Mr Tate. You remember this meeting as being a meeting on the 13th of November?-- I believe so.

Right. All right. Well, let's accept that it was that meeting on the 13th of November. Those people attended, is that correct?-- I can certainly remember Mr Janssen, Mr Tate, Mr Lang and Mr Solomon. Beyond that I can't be certain. There may have been one or two others there.

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You can't remember Mr Rowe?-- No. I don't recall Mr Rowe being there.

Mr Tate has said that you were going to head a group of like minded candidates. Would he have got that idea from that meeting that day?-- Well, I wouldn't suggest so. The - the fact that we had discussed the need for business to get involved because they were continually complaining about council not addressing the issues. The only comment that I had made that could even give him cause to - to consider that was that I believed that there would be candidates running who would be suitable to be supported and candidates that could be worked with.

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All right. So, you remember something along the lines that I've mentioned?-- Well, once again, I don't agree with Mr Tate's interpretation and I certainly wouldn't have said anything to the effect of heading up a group.

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Mr Tate seems to recollect that this idea of the group was borne outside the combined Chamber of Commerce meetings, but was brought to a meeting, convened for that purpose, to be discussed and that you came and gave a presentation to it. Do you remember anything like that occurring?-- Well, I certainly gave my feelings and my thoughts on the upcoming election and certainly candidates to the group. At no time did I suggest to that group, those individuals from the Chambers, that there was any attempt to form a group, that there was any attempt for me to lead a group. The suggestion to them was that if they wanted good candidates, if they wanted to solve the problems confronting the city, particularly with infrastructure, then they needed to - to put their money where their mouth was. But under no circumstances did I suggest that to them and in addition to that, I believe that the invitation to attend that meeting came from one of the Chamber heads.

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What would you put it as, Mr Power, you were interested in a number of candidates perhaps being funded and assisted at the - during the campaigns for the coming election?-- I actually don't recall at that meeting mentioning funding specifically at all. I certainly mentioned to them that it was time for business to get out there and support candidates if they believed they were appropriate but-----

Do you - do you just - yes, go on?-- -----but I certainly would not have - would not have suggested to them funding for a group under any circumstances.

Well, would you have suggested funding for like minded candidates?-- I would not have used that word; I would have suggested people who were sensible, intelligent and people that you could work with to find solutions.

Right. People being funded?-- I certainly suggested to them that if they were going to get a change in the direction that we were heading - which I have to say was - was of grave concern to everyone, then they would have to put their money where their mouth was.

All right. Well, these sensible, intelligent people as candidates, were going to need funding; is that the view you had at the time?-- Well, I certainly believe that they would need support and broad ranging support.

Now the - yes?-- But how that may occur would be in the hands of the business community themselves.

Right. Now this was because of dissatisfaction with the incumbent council and the work of the incumbent council, is that correct?-- To some degree, yes. And it went beyond that, it was - there were issues of behaviour clearly. We were hitting the headlines for all the wrong reasons nationally.

You mean bad behaviour in the council chambers?-- Correct. And, unfortunately, the perception of a minority of people that, if you disagreed with them, then there obviously had to be something that was corrupt or - or untoward happening instead of just accept that there may be differences of opinion.

Right. Did this relate to planning and development matters?-- It related to matters across the board.

Did it include planning and development matters?-- Oh yes, absolutely.

And is it the situation - that is, you viewed it at this time - that is, November of 2003, there was a problem in regard to obtaining of predictable outcomes with the incumbent council?-- I believe that was the perception amongst some of the business community.

Was it your perception?-- No, I think my perception of the way that we were dealing - at least at a committee level, was that there was - there was certainly some conditions and some refusals that were being promulgated by individuals that I believed were unlawful.

Did you ever disagree with anyone who suggested or did - you've obviously heard of the suggestion made at this time that there was a problem in relation to predictable outcomes?

Did you disagree with any such suggestion at the time?-- Well, I guess it's a matter of interpretation what the outcomes are. For instance, the outcomes that could have been referred to may not have been planning and development. The outcomes referred to could have been the raising of the Hinze Dam for water supply. That was on again, off again, on again, off again at some stages during the last term.

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Was there any problem as you saw it in regard to obtaining of predictable outcomes relating to planning and development matters?-- Not with regards to compliance with the scheme or compliance with the Act. I certainly think that there was a degree of unpredictability of conditions being placed upon some - some applications which, in my opinion, were unlawful.

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Right. And the time that it was taking for these applications to be finalised?-- Well, no, in that instance I think that that's merely a situation of the circumstances that we were in. We have just experienced the largest boom in the history of south-east Queensland and we received last year - in that last year of the last term, 30,000 applications. Now that's-----

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Well, we've heard something about that?-- -----way beyond the norm.

All right. So you say that that concern related to the fact that you had so many applications?-- Well, that and the fact that we had limited resources. There was a - a cap that was promoted by the former Mayor on staff. That was proving very difficult to change through the budget to increase staff to deal with what we were - what we were experiencing.

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Let me go on. Mr Tate has said that the purpose of the meeting was to get an update on the idea of like minded candidates to see if it had momentum. Do you remember this meeting on the 13th of November being concerned at that? That is, gaining an update on the idea of like minded candidates to see if it had momentum?-- I certainly don't recall that term ever being used during that meeting. I advised them that I was aware of some candidates who appeared to be good people; people that you could work with but certainly never used the term "like minded candidates."

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Mr Tate says that you spoke in general terms about momentum building that there were like minded candidates running and that there'd be a pool of funds that would help these candidates. Did you do that?-- I don't recall discussing funding at all and I - I note with interest that the issue of like minded keeps coming up. As far as I'm aware that - that term was coined much later within the media.

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All right. Well, you reject that term "like minded". Apart from that, do you agree that it was discussed that there would be a pool of funds to help candidates - selected candidates?-- No, once again, I don't recall discussing a pool of funds. I certainly did point out to business that they

would need, if they wanted change, to put their money where their mouth was and that, of course, meant financial support.

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Mr Tate said that you gave a verbal presentation about a city vision of other candidates. Do you remember doing anything like that?-- I remember advising them that I was about of Rob Molhoek. I don't recall specifically mentioning other candidates at that stage but I certainly - certainly recall saying to them that we would have to see who else put their hand up at a later date and as to what their - what they were like to work with.

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Well, is it your situation that if Mr Tate did gain the impression from this meeting that you were in agreement with the idea of supporting like minded candidates, that was a misunderstanding of your position?-- Insofar - like minded insofar as having mutual respect for each other. No problem with that at all. In fact, I would love to have 15 councillors who are like minded in that respect. In terms of like minded as to united policy positions, that's not - that's not an issue that I've ever supported. I believe we should be independent.

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People with commonsense?-- Well, everyone who stands for election uses that. The gentleman who ran against me used it as his slogan.

No, I'm interested in this meeting; was that term mentioned?-- I think I might have - might have said we needed some people in there with commonsense who would approach things on a professional basis and not personal.

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Do you remember this meeting at the Islander Resort being a morning or afternoon meeting?-- Look, Mr Mulholland, I'm sorry. I can't recall that.

Do you remember, at the meeting, discussing division by division which councillors were pro to business and sensible, and which were dickheads?-- Well, I certainly wouldn't have used that term, Mr Mulholland, I can assure you.

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What about Mr Solomon?-- Yes, I can imagine Ian saying that.

Well, did he say it on this occasion?-- He may well have.

In other words, divide them up into pro business and sensible, and dickheads?-- He may well have. I can't recall him - there was certainly a discussion on a division by division basis as to who was known to be running, and that's for those candidates that were believed to be okay, but also candidates that there was a degree of concern about their behavioural aspects.

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Do you agree that these people who were present - Mr Tate, Mr Janssen, Mr Lang - talking to you about their frustrations with the council?-- Absolutely. We'd had comments coming back not only from the business community-----

No, no, at the meeting?-- At the meeting? It certainly would have been mentioned. Specific comments? No, I can't recall, but it certainly would have been mentioned. It was the general topic of discussion every time we met.

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Did you talk about establishing a trust and getting a solicitor to administer it?-- I understand Mr Solomon has placed that in his statement. Now, I don't specifically recall that. I did have a conversation with Mr Solomon over the telephone in, I think, January where it was certainly mentioned to me. But, as I said to you earlier, I was late for that meeting - they were well underway - and I also left and they were still going.

10

Yes. Well, Mr Solomon in fact has the same recollection that you arrived a little later. But, nevertheless, he has this recollection in relation to the discussion?-- Sure.

Now, when you say you don't recall it, I take it that what you're saying is you don't recall it as distinct from you denying that this is what the discussion was?-- I think I would probably recall any specific mention of a trust fund. As for - as I said before, as for funding, I certainly did tell them as a business community I believe that they need to put their money where their mouth was. But specific mention of a trust fund, I don't specifically recall that.

20

Right. What his recollection is - that is, Mr Solomon - is that he suggested Lionel Barden. Do you remember any mention of Lionel Barden in relation to a fund being discussed at the meeting?-- No, certainly not.

30

So when you-----?-- And that's one where I believe that Ian may be confusing the discussions we had on the telephone, I think, in January.

All right. So this is-----?-- He certainly mentioned Lionel to me in that telephone discussion.

Sorry, later on?-- Later on. As I said, I think it was in January.

40

But nothing at this meeting?-- I don't recall it at all. He may have mentioned it when I wasn't there.

Now, your recollection in your statement is to this effect: you say at page 4 that, in or about November 2003, you had a number of discussions with Robbins about the looming problem of wildcard new councillors being elected and that you decided to approach various industry and community leaders to discuss their concerns. That's what you say in your statement?-- Yes.

50

Now, that discussion that you had with Ms Robbins that you're referring to there, was that - or the discussions - did they include discussions before the meeting on the 13th of November?-- I think we probably would have been talking about it for months beforehand on and off. Sue and I used to converse fairly regularly. She was chair of Planning South,

so my counterpart in that respect, so we conversed on a fairly regular basis. But it was pretty much common knowledge that there were going to be a number of candidates who had stated objectives that were of real concern for a city-wide basis.

1

Well, "what I'm concerned about is the looming problem of wildcard new councillors being elected". When you say "wildcard", is this the way you and her discussed it?-- Certainly, in the respect of candidates that you weren't sure of how they were going to react.

10

Is this new candidates or is this candidates who might include councillors from the incumbent council?-- Well, it certainly included councillors who were incumbent. There's no question about that.

And who were they?-- Councillors Young, Crichlow and Sarroff.

And that was discussed with her. Now I'll come to the second part of the question that I asked you. You said that you decided to approach various industry and community leaders, and this would have included a discussion about that prior to the 13th of November meeting?-- I'm sorry, are you suggesting that we'd discussed getting together with them as a group?

20

No, no, I'm just suggesting whether or not - I'm referring you to what you said in your statement that you decided to approach various industry and community leaders to discuss their concerns. Had that been determined prior to the 13th of November 2003 meeting?-- I can't specifically recall that, but certainly we had been talking to chamber heads, we'd been talking to business people, we'd been talking to general community-----

30

Had you been talking to other councillors as well, apart from Sue Robbins?-- Not really. It was generally acknowledged that we had some issues that needed to be dealt with. But, in specifics, no. Sue and I really kept those discussions largely to ourselves.

40

You go on to say that you and Sue Robbins contacted Brian Ray to discuss issues, and he suggested bringing Tony Hickey into the picture?-- Yes.

And that you all met in late November 2003 at a coffee shop at Varsity Lakes. Now, when you say that you all met, that's yourself, Sue Robbins, Brian Ray and Tony Hickey. Is that what you mean?-- That's correct.

Do you agree that this meeting at the coffee shop mentioned was a meeting involving a discussion of putting together funding for candidates?-- Certainly that was part of the discussion, yes.

50

You're aware of the evidence Mr Hickey has given in that respect?-- Vaguely aware, but I don't have the specifics.

There is an email from Sue Davies - you know Sue Davies,

Mr Ray's PA?-- Yes.

1

To Tony Hickey, CC to you and to Ms Robbins, on the 24th of November 2003 - this is Exhibit 18 - rating candidates. Are you aware of that?-- I'm aware of it only because of evidence given to this - I don't recall it specifically coming to me.

Well, it was CCed to you?-- Yeah, I should put it into context, Mr Mulholland. At that time - and you've now seen my diary and the way that it's structured - that period of time it was extremely busy, beyond the issue of my own election as chair of planning and chair of strategic planning. I will make it very clear right now it was an absolutely chaotic time with some 14,000 lots under construction within my own division alone.

10

Mr Power, I understand the point that you were a very busy person at this time, probably at all times in late 2003 and early 2004 but I suggest it is surprising that you don't remember such an email having regard to the nature of what was in it?-- I'm not suggesting that I didn't receive it. I don't recall it. Excuse me.

20

Well, that's what I-----?-- The first that I - the first that I remembered it, was when you tabled it here.

Well, you have had plenty of opportunity since it was tabled here, as you put it, to consider it, and I'm not going to go in detail to it, but it has a rating there alongside candidates. Now, surely you can remember now having received such a document?-- I don't specifically recall it but I do believe-----

30

You have no recollection whatsoever, of receiving such an email?-- Mr Mulholland, I can receive up to 130 emails a day, I'm sorry.

Mr Power, I understand that point. But, this particular matter of your involvement in this way with other candidates would have been something quite unique, would it not. You wouldn't have done this previously-----?-- No.

40

-----rating candidates-----?-- Absolutely.

-----or, being involved in rating of candidates. You wouldn't have previously been involved in any discussion concerning a number of candidates who would be receiving from a common fund, would you?-- No, absolutely not.

Right. Well, having regard to that, and having regard to its importance in relation to the Council, and the operation of the new Council, and the problems that you had with the old Council, which we've mentioned briefly, all of that, are you saying that you have no recollection at all of receiving such an email?-- No.

50

Do you remember, if you don't remember the email, do you remember ever receiving information to the effect that there

was some rating made of - in relation to candidates. Perhaps their prospects of success at the coming election?-- Yeah, I vaguely remember Brian making some aside comment to me after the second meeting at Varsity, at the coffee shop, where Tony was there, that-----

1

This is a later meeting, not the one that we're talking about?-- This is the one that you - you were referring to before. As we were leaving, making some comment about working out the chances, or what are the chances of each of the - the candidates winning. Now, that is my interpretation of what he'd produced there. It is his interpretation alone. It certainly wasn't mine or Sue's.

10

And, you never had any input into whether you thought that was a reasonable estimate of their chances?-- No. And, in fact, I think he's got me at a hundred per cent there, or a hundred, or whatever it may be, and, as history will show, that's clearly not the case.

20

Well, no candidate had ever regarded themselves as that sort of a sure bet, would they?-- Only if they're stupid.

You mentioned a second meeting, this is the first meeting that you attended with Mr Ray, is it not?-- Sorry, the one-----

This meeting in late November at the coffee shop at Varsity Lakes?-- No, I had two meetings with Mr Ray at that coffee shop and that was - that's shown, I believe, in evidence. But, the first one was for Sue, myself and Brian only.

30

Yes, all right?-- And, then there was a second one with Mr Hickey after Mr Ray's suggestion that he be contacted.

Now, that first meeting, what was discussed at that first meeting with Brian Ray?-- That was more of-----

And, Sue?-- -----it was more to get some advice from Brian. He - we knew him to be involved previously in State and Federal and Local Government elections. We weren't aware actually at that time that he was in some way, at least on the periphery, involved in the Tweed Shire. But-----

40

When you met him for the first time?-- That's right. It was merely to get his advice, or his feelings as to how he felt would be the best way to support individuals who may be - may be good candidates.

Right. So, that meeting occurred and then the next meeting took it a step further-----?-- That's correct.

50

-----in the sense that Mr Hickey was being asked to attend?-- That's correct.

How long apart were those meetings?-- Oh, I'm sorry, without consulting the diary, I - I can't recall. I would imagine within a couple of weeks of each other.

All right. Well, is there anything else that you remember about that first meeting?-- The first meeting with Councillor Robbins, myself and Mr Ray?

1

Yes?-- No, only that it was general in its - in its discussion. Mr Ray was certainly aware of - of the concerns that were being expressed in the general business community but he didn't express to us at that time any - any issues particularly relating to any particular area, such as planning and development.

10

All right. Well, I may come back to that. Your diary for the 4th of December 2003, one says this, "1.00 p.m. to 3.00 p.m. lunch, Lionel Barden and Greg Young-----?-- Mmm-hmm.

-----at Showcase Coolangatta". Did that meeting involve at all the matter that we have just been discussing, that is, the number of candidates being funded-----?-- No, no, no-----

-----in some way?-- -----absolutely not. That was the first time that I'd had - had a chance to get to see Innovations Showcase in its essentially completed form. It was purely - purely business.

20

All right, purely business and unrelated to any of the matters which have been the subject of this enquiry?-- Correct.

Now, on the 18th of December, your diary shows 12.00 to 2.30 p.m. lunch with Lionel Barden, Ian Solomon, yourself and Dale Dickson and then it's got, "PBA"?-- Mmm.

30

Did you attend such a lunch?-- PBA means to be advised. It's highly likely, Mr Mulholland, that if that hasn't been removed then that didn't occur. I don't recall that actually happening.

You don't recall such a lunch?-- No.

Now, you say that you personally spoke to Sohail Abedian, Bill Roche, Graham Ingles and Colin - Col Dutton about the plan to support good candidates and that you had - well, first of all, that is so, is it? That you had such a discussion with those people?-- Well, it is within the respect that Mr Abedian, for instance, I may have superimposed a conversation that I had with him subsequent to the election. Unfortunately, with all the publicity that we've had since the election, it's quite easy to superimpose information that you've gained since or actions you took since on what may have happened prior. But-----

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Well, we'll just-----?-- -----that's the only one.

50

-----I might come to particular meetings later but do you agree that you did speak to the people I've just mentioned about the plan to support good candidates prior to the 27th of March election?-- Yes.

It has also been suggested by others that you spoke to Mr Nikiforides - Mr Nikiforides is associated with Blue Sky Capital. Is that correct?-- Well, I wasn't aware of the name Blue Sky Capital until this hearing started.

1

Right?-- I certainly did speak to Mr Nikiforides-----

Well, hang on, let me just put a date to you?-- Yeah.

On the 17th of March 2004?-- I may have, Mr Mulholland, I don't recall that. I spoke to him prior to the election about an issue that he was going to lodge an application over a site in Broadbeach but I may have discussed with him other matters-----

10

Well-----?-- -----I don't recall.

-----can I - do you - would you agree that you, at a meeting on the 17th of March 2004, discussed with him the question of funding for these - for some candidates at the March election?-- Could you refresh - if you have any awareness of where that meeting was, that might help my memory. But, I don't specifically recall meeting for that purpose-----

20

Okay. Well, I might come back-----?-- -----unless it was mentioned within the context of his application, that he was penning an application.

Maybe I'll come back to it. You don't remember it either?-- I'm not denying it.

30

What about - you're not denying it?-- No.

So you might have discussed with him the funding of some candidates?-- Possibly.

Standing at the election?-- Possibly.

With a view perhaps to him contributing?-- Oh, certainly if he felt that it was appropriate for him.

40

All right. What about anyone from Villa World?-- Yes, I spoke with Brent Haley. I have a recollection of that. And I believe that was in the boardroom of their office.

Did you speak with Mr Haley at a meeting on the 23rd of February 2004?-- It may have been that date. I had a number of meetings, I believe, with Villa World representatives over that period of time because of the amount of applications that were occurring, not only within my division but in the planning north area.

50

And was there any discussion in relation to funding at that meeting?-- Well, certainly at one of those meetings I raised with Mr Haley the issue of assisting candidates, and simply put it to him that if they believed it was appropriate then it would be grateful.

All right. Do you agree that in the period November 2003 through to March 2004, that those people that I've mentioned to you earlier, Mr Abedian, Mr Roche and Mr Ingles and Mr Dutton, you would have discussed or you did discuss council business with them in the period I've referred to, that is November 2003 through to March 2004?-- Oh, absolutely.

1

So would you accept the proposition that in the period that I've referred to, November through to March, you had discussion with those people, both in relation to matters of council business and also matters of funding?-- Absolutely.

10

And you had no problem doing so?-- No. No, I find it rather interesting that people always seemed to believe that that's a conflict of interest. It's part of the normal political process. I think anyone of strong mind can separate the two quite easily.

You wouldn't see it there as being any problem of a potential conflict of interest?-- No, and I think this focus on donations continually amuses me because a donation is no less important to a candidate than it is - than a booth worker and you could be easily discussing with Mrs Smith down the street a new garage for her property and she could be manning your booth for you next week. There seems to be this - this - I don't know - fixation that donations make the election.

20

The hypothetical lady that you're speaking about is probably unlikely to be voting or donating thousands of dollars to you whereas a person in the category of the people that I've referred to would be such people, wouldn't they?-- Well, it's relative really. I mean, \$5 to Mrs Smith may be the equivalent to these people of 10,000 and I have to say that - that I have made, in six terms, no secret of taking donations at all. I don't see that it's an issue. Certainly at a political level at State and Federal it is not an issue and I am still beggared by belief that it can be an issue at local government level.

30

Right. Would you accept there might be a problem of public perception?-- Unfortunately public perception can be manipulated by inferences of any wrongdoing in local government.

40

Does that mean that there may be a problem of public perception?-- I think there's a problem with public perception about local government across the board. People automatically assume, whether it's the garbage collection contract or planning and development, that there's something untoward going on.

50

Do you agree, Mr Power, that in late 2003 you were involved in getting together funding for a group of selected candidates who were sensible, intelligent, common-sense and who stood for the 27th of March 2004 election?-- No, I've never denied approaching business across the board to give support to those candidates.

Well, do you - is the answer to my question yes, that you agree that in late 2003 you were involved in getting together funding for a group of selected candidates of the description that I gave you who stood for the March elections?-- Well, getting together funding for those candidates that chose to avail themselves of it, and yes, if you wish to choose the word "selected", then that's fine, but they were certainly not forced upon them.

1

Well, I'm not suggesting that anyone coerced them to do anything but I am suggesting, or I am asking you whether you were involved in getting funding for a group of selected candidates?-- For-----

10

Is the answer to my question yes?-- For individual candidates, yes, I did.

For individual candidates?-- Correct.

Right. Do you agree that you were involved in the selection of candidates who would benefit from the funding that I've referred to?-- Oh, selection is a fairly subjective word in that respect but certainly we - we identified, Sue and I identified people that we thought we could work with, and work with in a harmonious manner.

20

You seem not, however, to wish to deal precisely with the question that I'm asking you. I'm asking you whether or not you were involved in the selection of candidates-----?-- Certainly-----

30

Hold on - whether you were involved in the selection of candidates who would benefit from a common fund?-- We certainly identified candidates, yes, and we - I mean, there's no - no question we didn't select them out of all the candidates we knew that were running. Those candidates, whether they availed themselves of that, was their own choice.

So is the answer to my question yes?-- Yes. Yes.

40

Now, if there is always a problem of public perception, using what you had recently said to me, in receiving or in meetings with people who you might be getting funds from, developer people who you-----?-- That's not actually what I said. I said I think there's a public perception with local government across the board, whether it's a garbage contract or planning and development.

But that also applies to a public perception. We were specifically talking about meetings with these people that I-----?-- Yep.

50

-----referred you to on council business?-- Yes.

And at the same time meeting them in relation to obtaining funding from them?-- Yes.

To - funding from them for these selected candidates?-- Mmm.

Now, you've said that there's always a problem of public perception and I took your Honour to be also applicable to that situation. Was it intended to be applicable to the situation I've just mentioned or not?-- I think certain members of the community have - have that perception. I don't believe it's the majority. In fact the vast majority have no idea who their councillor even is.

That would be a reason for someone in the position such as yourself to wish to keep secret from the public that you were involved in such meetings, would it not?-- No, not at all. In fact that proposition is actually logical because if you look back over six terms I've made it very clear that I have taken donations in the past through my campaign committee from developers. So I have no problem in people being aware of that so long as they are duly declared, so long as people are aware that donations are being made.

10

Right. So you would have had, in relation to the obtaining of funding so far as the selective candidates for the March 2004 election was concerned, no problem in revealing your involvement with such a fund to the public in advance at the election?-- So long as that revelation was within the context of the reality and not-----

20

What does that mean?-- Well, not the terminology that was used constantly by one particular reporter, being "a slush fund". Now, that - under the Oxford Australian Dictionary - refers, as I believe, to money used for political bribery. Now, I'm sure as hell not going to sit there and accept a proposition from a reporter that I'm involved in a slush fund for illegal purposes.

30

Well, I haven't used the term "slush fund"?-- No, I understand that.

But so far as - well, what's your position in relation to that? You would have no problem in making public your involvement in gathering funds for such a purpose?-- I actually made it very clear to the reporters that I was giving advice to businesses on candidates to support - and I said that a number of times; whether they printed it or not was up to them - and in giving support from businesses to candidates. Any reasonable and rational person would assume that that's financial support.

40

So in relation to what you did so far as gathering the funds in this instance, selecting candidates who would benefit from that fund, you would reject any conclusion that might be made from the evidence that you were involved in an attempt to keep this secret from the public?-- No, absolutely not. In fact-----

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You made no such attempt?-- No, not at all.

All right. Well, we might come to some of the evidence and come back to the question that I asked you. On the 26th of

February 2004, your diary has an entry, "7 a.m. to 9 a.m. Coomera Chamber of Commerce, Boathouse, John Lang." Can you tell us whether that had anything to do with the funding or candidates [indistinct] discussing?-- I'm sorry, what date was that again? 1

This is the 26th of February. I'll read it again: "26th of February 2004, 7 a.m. - 9 a.m., Coomera Chamber of Commerce, Boathouse, John Lang"-- Excuse me, I believe that I was invited there to deliver a speech, that's all. 10

Right. 5.30 to 6.30 p.m., same day, diary entry: "Bob La Castra/Bob Janssen, Town and Country". Any idea what the was about?-- Not specifically. I know that Bob Janssen was particularly worked up about an issue concerning a rainforest interpretive centre going into Nerang and was having a number of discussions with us over that period of time. Whether that was specifically mentioned there, I can't recall. But, on the two occasions previously where we'd met to discuss that, it was certainly held at the Town and Country. 20

Do you agree that the selected candidates, using that term to cover the people that I've been referring to as selected candidates - that the selected candidates were Molhoek, Betts, Pforr, Scott and Rowe?-- Yes.

And you accept that you were involved in their selection to benefit from the common fund?-- Well, I accept that they were to be approached to make the offer to them, and after that it was up to them. 30

Now, in the result, Mr Molhoek did not receive any funds, but it was clearly the intention for a long period that he would receive funds. Do you agree with that?-- Absolutely.

But why didn't he?-- Essentially, it's the nature of Gold Coast business. When the rather scurrilous stories started about a slush fund and all sorts of nefarious activities occurring, Gold Coast business, when that sort of thing happens, tend to run for the hills. A lot of people who has originally indicated in the general business community that they would be providing support, disappeared into the mist. 40

Right. So it was simply the case, so far as he was concerned, that there weren't the funds available to support him as well as the others?-- I believe so, yes.

Now, before I come to particular meetings and so on, apart from your own involvement in the gathering of funds and the selecting of candidates, Mr Ray was obviously involved?-- Well, yes, he was. 50

And you've referred to those early meetings with him and his - and you have explained this morning that, so far as he was concerned as you saw it, it would better achieve support from the business community - have I correctly understood what you've said this morning - by involving Mr Ray?-- No, not in that respect. It was more that Brian had had experience in

previous campaigns at various levels, and we just felt that it was worthwhile getting his advice. Brian's decision to actually become involved was his own, and basically volunteered to assist wherever he could.

1

Right. Was he enthusiastic about it?-- He was. Brian, I think, always got enthusiastic about political machinations, but he certainly was going, at some stages, beyond what Sue and I believed was the direction.

10

Surely, when you first involved him, you hoped that his contacts in the business community would assist you to gather funds?-- Certainly.

So it was really the two aspects of it; his experience in similar matters plus his contacts in the business community, perhaps assisting you to gather funds?-- Yes, that was what ended up as the ultimate outcome, yes.

Right. Well, as soon as you put the proposition to him, he was very enthusiastic about it, wasn't he?-- Well, certainly. We put it in a very general form that we believed that candidates needed support and that the business community needed to band together. Brian's suggestion to us was the idea of a central fund at the time, and we saw no reason to object to that.

20

Now, I think Mr Hickey described it, so far as Mr Ray was concerned, in terms something like this: that when it was explained to him what he as being asked to do, he sort of said is that all you want me to do or words to that effect?-- In Mr Hickey's case.

30

No, no, this is Mr Ray. When it was put to him as to what was involved, his response was enthusiastic to the point of, well, is that all you want me to do?-- Yes, and it was - I think you can see by one of Brian's emails - which I think you've tabled previously - to Macquarie Bank he tended to, I think, take a proposition beyond what was suggested and run with his own ideas at some stage. But certainly it wasn't anything beyond assistance with fund-raising.

40

You might be anticipating some of the questions that you think I might be going to ask you, Mr Power?-- I am, somewhat.

And perhaps we'll come to them afterwards. Do you agree with this, however: that, with Mr Ray, you were the dominating influence in regard to obtaining and distribution of funds to these selected candidates?-- Certainly in spreading the word amongst the business community. Beyond-----

50

No, no please - please, I'm not objecting to you answering the question as you wish?-- Mmm.

But please make it responsive to the question?-- I intend to.

Just - I'll just put the question again. With Mr Ray, do you agree that you were the dominating influence in regard to the obtaining and distribution of funds to elected candidates?-- I

certainly would have been the dominating, along with Mr Ray - dominating influence in terms of spreading the word and asking the business community for support and trying to collect funds. As far as the dominant force in distributing those funds, I am aware that Sue and I authorised three payments. As to the total amount and the context within the - the total amount collected, I can't answer that because I'm not fully aware of actually how much we authorised in total.

1

Do you really mean that? At this point in time you don't know how much you authorised in total?-- No. I'm aware of the - the requests that came through for individuals and I think there are amounts ranging from 3,000 through to 20,000 or whatever. But the total amount, no. I'm not fully aware of what it totalled up to and, in fact, I have not even looked at the return - the third party return that was put in.

10

Mr Power, we'll come to the particular evidence to support these. The evidence clearly shows that you were the person who, along with Sue Robbins, approved the payments from the account within the Trust Account of Hickey Lawyers?-- That's correct, up to a point.

20

What do you mean up to a point?-- Well, it was transferred as you know into - into a - the name of Mr Barden at a later date but we - we certainly didn't act as an auditory process for it.

All right. I'll take you to some of the evidence. Let me deal with some of your contacts with selected - the selected candidates. Do you agree that you met individually with all of the selected candidates I've mentioned prior to the first meeting of Quadrant on the 16th of December 2003, with the exception of Mr Betts?-- I had never met Roxanne Scott prior to that and I see you looking incredulous but I don't recall ever meeting Roxanne Scott. I was aware of her. Mr Betts, I had never met before; Mr Pforr I knew through his involvement with the Coomera Watersports Club on purely a community basis and, of course, Mr Rowe I considered to be a personal friend and knew through his position as Principal of St Stephens. As I previously stated, Mr Molhoek, the only time I had met with him prior to the coffee shop meeting was in a line at Dreamworld for about three minutes.

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Would you agree that you met in the case - well, in the cases of Mr Pforr, Mr Molhoek and Mr Rowe, you met those people before they had publicly announced their candidacy?-- Ah, Mr Molhoek may have announced afterwards. First I was aware that Mr Pforr was running, I believe, was when it was in the paper. I don't believe he told me personally. Mr Rowe, certainly I met with him, I think, before it was announced in the paper although there was a couple of days prior to his official announcement I believe that there was some rumour in the paper printed. Certainly Mr Land had indicated to me that he had been in discussions with Mr Rowe and that was sometime before.

50

Maybe the question I asked you is a little bit hard to put to you in a global way like that. Let me just put some of the

individual contacts to you. So far as Mr Pforr is concerned, he says he first met you through Brian Ray - Brian Rowe concerning a community rowing facility at Coomera in about 1998 and that you suggested to him that he should run for Council one day. Do you agree with that?-- I could have said that; I certainly did meet him at Brian's office, yes.

1

Now your diary for the 9th of November - 9th of October 2003, 12 o'clock to 1.00 p.m., "Grant Pforr, councillors meeting room, Surfers Paradise." This is the 9th of October. Now do you recall that meeting?-- Yes, that was about the Coomera Watersports Club.

10

Right. The councillors meeting room; so it had nothing to do with any involvement in any funding for him at the forthcoming election?-- Oh no, we were trying to - to get State and Federal funding to assist the construction of the club at that stage so-----

I might say that Mr Pforr agrees with your recollection that you would not have known of his intention to run until he publicly announced it in The Bulletin on the 30th of October?-- Yes. I don't - I recall actually being surprised when I read it.

20

Now, in relation to your diary again, 28th October 2003, it shows 3.30 - 4.00 p.m. "Drop lifejackets to Grant Pforr on site Coomera Watersports". Does that simply relate to that matter?-- Yes, that's all. I had some lifejackets. I'm member of the club, my son rows there - my eldest son and I had to drop some lifejackets back.

30

Now let me pass as quickly as I can through these contacts. You make any comment you wish. Diary on the 1st of November 2003, 9.00 a.m. - 1.00 p.m. Coomera Watersports Club Regatta. Then you have 9.00 a.m. - 11.30; then, "Barbecue Grant Pforr". With a telephone - with two telephone numbers; one being a mobile. Again, what's that about?-- Ah, that's probably the interschool regatta. We have a-----

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All right?-- -----one for the local schools, that's all.

All right. His diary for the - Pforr's diary for the 5th of November has a note, "Ring Councillor Power." Do you remember any discussion you might have had at that time-----?-- Ah-----

-----with him?-- At that time, in spite of the fact Mr Pforr is a friend, he was being an absolute pest in terms of getting - trying to get the - the club up and running and I think he's probably said the same thing.

50

Righto. So you say that that's what that was about?-- Yes.

On the 7th of November 2003, Mr Pforr faced you his CV, Exhibit 38. Do you remember that happening?-- I seem to recall getting a copy of the CV. As to what context it was in, no, I don't - I couldn't recall that.

I said on the 7th of November; on the 10th of November, do you remember a first draft of his CV being prepared and suggesting to you that you should get together for lunch or dinner on the 15th or 16th of November?-- I don't recall that.

1

Exhibit 39?-- No, I don't - I don't recall that.

Don't remember that?-- No.

You remember something about the CV though?-- I remember something about the CV because at the time when I opened the email and saw how big the email was I thought, "I'm too busy for this at the moment; I'll go back to it later." But beyond that - I can't even remember if I replied to be honest.

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The CV obviously was connected in some way to the forthcoming election, wasn't it?-- Well, it may well have been. One of the things that-----

You don't remember it?-- No. Grant was very particular about putting his qualifications in for any - any grant applications we made to State and Federal governments so it could have been for that. I have no idea.

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Your diary for the 24th of November 2003 is in these terms, 9 a.m. to 9.30 a.m. Grant Pforr and your office, DP office, so that's your Nerang office, I take it? If we see DP office can we take it that's your Nerang office?-- That is. Yes.

That's the council office?-- That's correct.

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On the 9th of December 2003 there is an email from Grant - from Liz Pforr, Grant's wife, to you in closing Mr Pforr's anticipated budget for the election. Exhibit 40. Do you remember that?-- I remember seeing that email. I don't remember paying too much attention to the anticipated budget because it was not an issue for me, to be honest.

He says that you indicated to him that you were happy to offer him advice in relation to what an actual campaign would cost and this was the reason he sent over a draft budget. That's at 241 of the transcript?-- Yes, I certainly would have - would have made comment on that, but I would have assumed that that would have occurred as just a general discussion rather than-----

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All right?-- -----reading anything.

Let me go on to Mr Molhoek who we've also mentioned. Your diary for the 13th of November-----

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CHAIRMAN: Well, just before you go onto that we might take a mid-morning break and Mr Freeburn, I'm sure we could make room for you at the bar table. It might be more convenient if you're making notes.

THE HEARING ADJOURNED AT 11.35 A.M.

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THE HEARING RESUMED AT 11.45 A.M.

BRIAN LESLIE ROWE, CONTINUING EXAMINATION:

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MR MULHOLLAND: Mr Power, can we go straight to these contacts of Mr Molhoek?-- Yes.

Your diary for the 13th of November is in these terms. "9 a.m. 10 a.m. Rob Molhoek, Water Lily." Do you remember meeting with him at that stage?-- Yes.

What - you had coffee there, or something?-- That was just coffee, a general get-to-know-you, more than anything else, find out-----

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Let me tell you what he says and you tell me what you recall about this meeting?-- -----Sure.

He says, "You met for coffee for about 30 to 45 minutes. You discussed the possibility of Chamber of Commerce support for candidates with more business like focus." And I refer to page 61 of the transcript, page 1 also, Exhibit 8. Do you remember that?-- No, I don't dispute that. I think - I think actually the term I might have used was more professional candidate, but business like candidates, I would accept that that's a similar interpretation.

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All right. And do you remember how that meeting was arranged?-- I have a vague recollection that Rob rang me and asked to speak with me at the office and given that I was already meeting Ian Solomon in Southport on that day I arranged it straight after.

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His belief is that his attendance at the first Quadrant meeting on the 16th of December, was suggested to you possibly at this coffee meeting. Do you remember that?-- I don't specifically recall that. In fact, I don't believe that I invited, personally invited any - any candidate to that meeting.

Well, he thought that that was a possibility. He also said that it may have been a possibility it came through a call from someone at Quadrant - this is at page 62 of the transcript. Your recollection is?-- -----I don't believe I - I mentioned it at - at that time. I may have mentioned Quadrant as a support mechanism but I'd be surprised if I did quite frankly.

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His official campaign launch, that is Mr Molhoek's, was on the 19th of November 2003?-- Mmm.

Do you remember that?-- No. I didn't attend.

All right. And he said he announced his candidacy in August, but the official campaign launch was on the 19th of November?-- I believe that I may have received an invitation to that, but I was - I don't believe I attended.

All right. Roxanne Scott, she says that she believed you had coffee together sometime before the 16th of December 2003 meeting at Quadrant. She, and we've said earlier, that you didn't have any-----?-- Mmm.

-----contact, according to your recollection. She said she believed that you had coffee together before that meeting. She - she had heard funding might be available and had contacted Mr Morgan, that's Chris Morgan-----?-- Mmm.

-----but wanted to find out a little bit more about it. She was given your name and you had coffee. Now, do you remember anything like that coming to your attention?-- I don't and I don't believe there's anything specific in my - in my diary, but I'm prepared to accept Mrs Scott's, or Miss Scott's recollection on that.

She's somewhat vague on details, but does believe you discussed funding, 384 of the transcript?-- I don't recall, Mr Mulholland. I - I genuinely don't recall having the coffee with her, but as I said, I'm prepared to accept her - her view of the events.

Mr Rowe? You'd know of Mr Rowe?-- Oh, look, Mr Rowe and I met regularly on issues to do with the school, with St Stephens College. I would have met him on a number of occasions.

All right. Now there is some evidence given by Mr Lang that you met with Mr Rowe sometime before the gala dinner that I referred to earlier on the 12th of November, that's when the dinner occurred?-- The Bulletin dinner, yes.

Yes. He announced his candidacy on the 28th of November. Do you remember meeting Mr Rowe sometime before the gala dinner?-- I believe that-----

-----Sorry. I should go on to say, this was in relation to giving him advice about running for council?-- Yeah. I believe John had mentioned to me, at a Chamber breakfast, that he had been talking to Brian about running and that he believed he was going to run.

Brian?-- Brian Rowe, sorry. There was a meeting at Love A Coffee, at Oxenford. We had breakfast, or coffee, very early in the morning.

I'll come to that in a minute?-- That - look, I can't recall whether that was it, but I certainly did speak to Brian about the issues in council if he were to be a councillor and what to expect.

Yeah, no, this evidence given by Mr Lang related to sometime before the gala dinner?-- Oh, Mr Mulholland, I couldn't place timing on that. I'm sorry.

1520. Would you have - you can't remember whether or not you met him prior to the 12th of November 2003, in relation to any advice about running for council?-- No. I certainly did speak to him about what it's like to be a councillor before he publicly announced that he was still considering, but when it was, I couldn't answer that.

10

Now, the 11th of December 2003 meeting that you've mentioned. Your diary entry is, "7.30 8 a.m. breakfast with Brian Rowe, Love A Coffee, Oxenford." That's the meeting you've just referred to, is that right?-- Yes. What date was that again, I'm sorry?

11 December?-- Yes. That's probably the one I'm recollecting.

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All right. Again, before this meeting at Quadrant on the 16th, now Rowe says that you told him a group of business people were getting together a fund to support people to bring about a change in council and that you'd been speaking to those concerned. This is at 1058 of the transcript. Do you remember that?-- Words to that effect.

He says, "You did not want to reveal who was involved, but you believe that some reasonable funding could come through."?-- Well, that's - yeah. But that was the indication that we were hopeful that there'd be sufficient funding to support candidates, yes.

30

In fact he remembers two meetings with you which he thought both of which occurred at Mr Lang's office. Do you remember two meetings with Mr Rowe at Mr Lang's office?-- I remember one meeting distinctly where he showed me some artwork and asked my opinion of it. Whether or not there was a second meeting, I, once again, can't specifically recall it.

40

But this is in relation to any funding for candidates including him, do you remember any-----?-- We certainly discussed funding and the opportunity of sourcing funding, no question about that. I was not specific as he stated, I didn't advise him from whom or from what direction but certainly advised him that I would try and use my contacts to garner support for him.

Do you remember two meetings with Mr Rowe prior to the 16th of December meeting at Quadrant?-- Not specifically, no. No, I - I certainly remember the-----

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Well, you can't remember-----?-- -----Luv a Coffee and I remember seeing him at Lang's. Now, whether that was before the 16th or not I can't be certain. There was certainly one meeting at Lang's where as I said he showed me some artwork but I think that might have been after the 16th.

And Mr Lang was present?-- I believe so.

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All right. Now, did you know from your contacts with Councillor Robbins that she was having a deal of contact with Mr Betts?-- I think the first time that Sue mentioned Mr Betts to me was around about the time of the second meeting at Varsity with Mr Ray and probably within a couple of days of that and she mentioned that Paul Gammon had mentioned Mr Betts to her as a possible candidate.

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Now, the second meeting that you remember at Varsity, is that the one of late November?-- Yes, that's the one that I believe Mr Hickey attended.

Right. And that meeting would appear to have occurred prior to the 24th of November, would you agree with that?-- Oh, I - I'd be guessing. I don't believe it's in my diary.

You've seen an email - I don't think you remember - of the 24th of November?-- Yeah, I'd want to have a look at that again but I'm prepared to accept that that's - if that's the evidence that it occurred then that's fine.

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Well, it was around about that time anyway?-- Around about that time.

Now, the - can I come to some meetings at Quadrant in the lead-up to this, this is involving the selected candidates that we've discussed. Now, Mr Morgan has notes of a meeting with Mr Scott - you know Mr Scott from Quadrant?-- I actually don't think I've ever met Mr Scott.

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Well, he has notes of a meeting with Tony Scott or his - a partner of his - and Mr Ray on the 3rd of December 2003, Exhibit 131. And those notes show that you were already being named as the clients - that is, Quadrant's clients - and he believes that he was told that by Mr Ray, that's at 869. Now, do you - do you accept that by the 3rd of December 2003 that there was some agreement that you and Robbins would be the clients of Quadrant for the purpose that we've been discussing?-- I believe that was actually Brian's suggestion. I seem to recall that the first it came to my attention that a client need to be - needed to be identified by Quadrant was an email that I received in the new year - I think you may have a copy of that - where he was asking for a letter of appointment and that letter of appointment he originally asked for Sue and I to sign and I don't believe until that stage that I was aware or Sue was aware that we were actually the listed clients for Quadrant.

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Well now, that's much later so if you were being named as it were as the clients of Quadrant at this stage then that would be something that you were unaware of at the time; is that what you're saying?-- Yeah, I would - I would - I wouldn't have even turned my mind to it, to be honest.

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What, you wouldn't have thought that there'd be any consequence, is that what you mean?-- No, I would have

probably - I mean, this is wisdom in hindsight - but I probably would have assumed that the clients would have been the candidates themselves rather than Sue or myself.

1

What, all five candidates?-- Yes. But having said that it wasn't - it wasn't something that I really turned my mind to and that's why when the email came through in the new year asking for that letter of appointment that it was really brought to my attention for the first time.

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So I gather from your response though it really what, would have been of no consequence to you whether you and Robbins were the clients of Quadrant for this purpose - that is, in relation to this fund and being used to support the candidates by the assistance provided by Quadrant - whether you were the clients or whether the candidates themselves wouldn't have been of any consequence to you?-- Oh no, I believe it would - it was of consequence because I did believe that the clients themselves - sorry, the candidates themselves - needed to be the ones in control of their own destiny in that respect so certainly if it had been brought to my attention I would have taken the same action that I did when it was brought to my attention in January or February, whenever it was.

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See, you had had this meeting in late November and the evidence here shows that on the 2nd of December there was a discussion between Tony Scott and Mr Ray and the following day there was a discussion between Tony Scott, Mr Ray and Mr Morgan. Now, all of that came from that first meeting in late November but you were unaware at that time - this is your certain recollection is it - you were unaware at that time that you were being talked about as the clients of Quadrant?-- Absolutely. There was no - no discussion in the 16th of December meeting I think it was where - that you referred to, 16th or 18th whatever it was - there was certainly no discussion there-----

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I'm back earlier than that?-- Yeah - no, there was never any discussion as to who would be the client of Quadrant, it was probably an assumption on my part and it's probably something I should have clarified.

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Well, it's a wonder, may I suggest, Mr Power, that you didn't clarify it because if you were - if you regarded it as a matter of significance as to who the client was or clients were you could have easily achieved the result of the clients being the candidates themselves, couldn't you, by insisting upon it?-- Certainly could have at the time and as I said it - it was something that I hadn't even turned my mind to. As I stated earlier that period for me up until March, apart from my own election, my duties in Council, it was extremely busy. There were things that I probably should have paid attention to that I didn't.

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Now, the - your diary for the 10th of December, 9.30 to 10.30 a.m., Quadrant meeting at Quadrant. Now, in fact this meeting - do you remember such a meeting?-- I believe that's a meeting

that was held or at least asked for by Mr Ray to introduce us to-----

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Mr Morgan?-- -----to Mr Morgan.

Right?-- I actually think that Mr Morgan and I had only in passing been at the same function together on a couple of occasions so I didn't really know the man.

It's got - to go on - 34 Glenferrie Drive, Robina, Sue Davies and a telephone number?-- Yes. Well, Brian would have organised that.

10

Righto. And, on that day, you attended along with Sue Robbins, Brian Ray and Mr Morgan?-- That's correct.

And, this was in fact at Mr Ray's office, wasn't it?-- Whether it was in Mr Ray's office or Mr Morgan's, I can't specifically recall because one's - one was above the other at the time in the same building.

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All right. Now, Mr Morgan has a day or work book in which reference is made to this meeting and I'd just like to refer you to this, page 79. Now, this was Wednesday the 10th of December, the four of you were there and he made a note of the title, "Commonsense Candidate" with a source. Do you remember that name ever being used?-- Yeah, I believe - I believe that was a comment or a name used by - by Chris. Now, whether he'd coined it or not, I don't know. To some degree, I think it led to some confusion as to what - what names were being used for what but I think it was - it just came from the general discussion that we wanted some commonsense people in there.

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Right. Well, do you agree that that was mentioned-----?-- That name was-----

-----at the meeting on the 10th of December?-- -----certainly mentioned, yes.

MR TEMBY: Commissioner, I rise only for you, if I might, to ask the witness to listen, let the question be finished before you answer it. You're not here to have a chat, you need to listen to the question?-- Thank you, Mr Temby.

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I hope you won't mind me doing that, Mr Mulholland?

MR MULHOLLAND: No, get up at every opportunity. I'm not used to such assistance but it is almost Christmas. Now, was it suggested that these people, who were going to be selected or identified by you, were people who were commonsense people. Was there a discussion along those lines at this meeting?-- I don't know whether they were described as "commonsense people".

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Let me go on. Sensible people, similar in terms of attitude, a professional manner and the ability also to work with one another?-- I certainly would have - would have said that that's my belief from what we knew of them, yes.

And, so this, you would agree, that this was such a discussion at that meeting?-- Yes.

Now, 891 - his notes in relation to this, made in connection with the meeting, part of exhibit 139, he has a note of you and Sue Robbins recognising the frustration of rate payers in the business community. Do you agree that there was a discussion along those lines?-- There was a discussion on the lines except it was also pointed out that there was general frustration in the - the community at large.

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He drew from it your recognition of the frustration of rate payers in the business community and the other aspect, which he also noted, was "Pride and respect in agreement on key city issues, sensible majority, professional"?-- I think that's Mr Morgan's interpretation. Certainly, from my point of view, and I obviously can't speak for Sue, but, from my point of view, the issue was the ability to debate something and debate it on the issues and the - the topic.

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Mr - let me just put to you a question that I put to Mr Morgan and his answer, 893, "So, it's now beyond any doubt...", this is me to Mr Morgan, and this is in relation to this meeting and what was discussed, "So, it's now beyond any doubt that what you were looking for was a group of candidates who would constitute a sensible majority on the Council to be elected in March of 2004. Is that right, Mr Morgan?". Answer, "Correct. With a view to achieving a Council that functioned as opposed to one that wasn't". Do you agree that that is what came out of this discussion?-- No, not specifically because the intent from Sue and I was always about having a majority in Council and that could be 15 or 8, and I prefer 15, who simply respected each other. Whether that was - that translated through to the decision making process being more uniform, that would - would lay in the debate and lay in the voting. But, in terms of - in terms of - of a majority and sensible people, Sue and I always only wanted to achieve people who could actually debate something with respect.

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Well, you had five and there were the two of you and there were a few others on the Council who you weren't opposed to anyway?-- Mmm.

What seems to have clearly impressed - been impressed upon the mind of Mr Morgan was that there was to be a majority which could be gained by these people presumably. You don't recall it in those terms?-- No. Because - I mean, the term majority is somewhat subjective. What's the majority for? If someone-----

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Well, the majority, to answer the question and put another question to you, the majority is a majority with a view to achieving predictable outcomes, having regard to the problems in relation to the incumbent Council?-- No. Unfortunately, that's Mr Ray's interpretation of predictable outcomes. Anyone who wants to sit in a Council meeting of 15 independents and would suggest that you can get any degree of

- of predictability on the arguments put forward is kidding themselves. The-----

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But, what's the point?-- The point of - the point is a majority - I - I need to take a backward step and Mr Chairman if you could allow me some latitude. I originally was elected to the Albert Shire Council at the ripe old age of 28. The average age of the councillors that were in there were 50 and their mid-50's. I learnt the art of local government through respect and the adherence to meeting rules. That was the objective. No other. And, if I could get a majority in any council in this State of 15 people who actually operated with respect, I'd do it again, not a problem.

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Well, you'd have the comfortable majority if you got up the candidates that were selected along with the people who you were happy to work with on the incumbent council, wouldn't you?-- But, in your own words, Mr Mulholland, anyone who suggests they're a hundred per cent is kidding themselves.

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Well, no-one's suggesting it, that you could be at a hundred per cent on all issues but, to use your terms, you were selecting candidates, or being involved in the selection process and involved in funding, with a view to having people who were sensible, intelligent, commonsense, et cetera, et cetera. With a view, surely, to try to achieve a sensible majority of people on the new council. Now, surely you'd agree with that?-- A sensible majority or a majority of sensible people?

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Well-----?-- I mean, they are two different things.

Okay?-- And, I do - I do believe-----

What's the difference?-- Well, the majority of sensible people is - I believe anyway, at least in the terms of operating in council, are people that operate in a professional manner. They may not have the same opinions but they'll certainly adhere to the - to the rule of the meetings. A sensible majority is, I believe, at least a connotation that that is a group of people who have similar philosophies and similar policies and that clearly wasn't the case in this instance.

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This is really a concern that you have, Mr Power, may I respectfully suggest, in hindsight of agreeing to a proposition that there was a group of candidates, having regard to the statutory obligations in the Local Government Act?-- No, not at all. In fact, if you look back over public statements that I made over the previous term and the term before, I'd expressed very, very clearly my concern with behavioural aspects in council and how we needed to get candidates who were strong yet compliant with the meeting local laws and respectful of their colleagues. And that's been a publicly stated position of mine for more than eight years.

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But you're a pragmatic politician, if I can put it that way. Would you agree with that?-- I like to think I am.

And a pragmatic person in your position, with your experience and being involved in this kind of exercise for the first time, would surely have been intending to have, if possible, a majority support on the council; a majority of sensible, intelligent, commonsense people?-- I would hope every electorate does that.

Well, you had-----?-- And certainly I have no problem-----

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Hold on. You had, in regard to-----

MR TEMBY: Commissioner, my learned friend should let the witness finish, and on several occasions now he's not shown him that courtesy.

MR MULHOLLAND: All right, go on?-- I have absolutely no problem on any council having a sensible, intelligent majority, and I would hope that everyone would support that. But there is a fundamental difference between that and having a group of - using your term - a group of people who act as a majority for the purposes of decision-making.

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I don't know whether I did use the word "group"?-- You did refer to it-----

At any rate, you don't want me to use the word "group"?-- Well, we are not in any shape or form discussing a group; we never did. We discussed supporting individuals who would show the appropriate respect and show the appropriate discipline for the office that they held.

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There is an email from Mr Morgan of the 11th of December 2003 - that is, the day following this meeting - thanking you and Sue Robbins for their time the previous day, and indicating that he, Mr Morgan, will prepare a draft of objectives and proposed strategy, and "the nature and application of the resource that we discussed". Now, was that something which - you remember the email that I'm talking about?-- I vaguely remember it, but he certainly followed up that meeting with an email. If that's the content of it, I accept that.

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He speaks about "reaching consensus between all parties, including Ted and Bob, prior to the meeting planned for the next Wednesday evening; at this stage, the next Wednesday evening". This is a quote. Now, this is from him to you, and do you remember this?-- I vaguely remember something to that effect. I don't believe I replied to it.

So this consensus between all parties - that parties encompassed there must be yourself, Ms Robbins, Mr Ray, Ted Shepherd, Bob La Castra and presumably Mr Morgan as well. Would you agree with that?-- I believe that there was an email that indicated that that list - whether or not they all were able to attend I don't think was confirmed. In addition to that, I think a lot of that list as to who would be involved was from Mr Ray and Mr Morgan.

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Well, Mr Power, what I'm suggesting is that clearly this email emerges from the meeting the previous day?-- Yes.

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And what he takes out of it, thanks you for the time - that is, you and Sue Robbins - for your time on the 10th, and he's preparing a draft of objectives and proposed strategy, the nature and the application of the resource that we discussed, and reaching a consensus. Now, the consensus is to be reached in advance of the meeting that was going to occur at Quadrant, and the people that is encompassed in this email by Mr Morgan includes Ted - it could only be Ted Shepherd, couldn't it?-- I assume so.

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And Bob La Castra?-- I assume so.

Right. So he has come to the conclusion, it would appear or can be inferred, from the meeting on the 10th that they were part of the consensus that ought to be reached in relation to the matters that have been discussed by you - the draft of objectives, the strategy and so on - before the meeting that is going to take place at Quadrant. Would you agree with that?-- Well, that's Mr Morgan's opinion and, as I said, I don't even recall replying to that. If I did, I stand corrected. But that's Mr Morgan's opinion and like Mr Ray, who formed his own opinions but didn't necessarily reflect my opinion or Sue's.

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Well, you say "didn't necessarily". That doesn't really completely address it. Are you saying that, at that stage following the meeting on the 10th, you would not have gained the need to reach a consensus between the parties identified - and who I've referred to - before the meeting at Quadrant which would involve, of course, the selected candidates?-- I don't believe I spoke to any of those people between that date. The-----

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No, no, I'm not suggesting you spoke-----?-- Between the two dates. Well, to reach consensus, I would have had to have spoken-----

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No, I'm talking about the 10th. I'm talking about the 10th, the meeting of the 10th from which this is what Mr Morgan apparently gains from it?-- I thought the terminology used there referred to a consensus being reached before the next meeting.

Yes, of course, but what I'm suggesting to you is he has the meeting with you on the 10th?-- Yes.

And he then has the view formed from the information, presumably - he's just acting on instructions - that he should involve all parties in relation to this question of "the nature and application of the resource that we discussed and the draft of objectives in the proposed strategy". Now, did you not take that also from the meeting of the 10th of December?-- No, certainly not. My interpretation was, from that meeting, that we certainly needed to invite the proposed candidates to a meeting, give them the offer of assistance

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should they require it. But as, I guess, other evidence has shown, Mr Morgan had assumptions on other matters which I disabused him of fairly quickly as well at that subsequent meeting.

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Yes. There was a response by you on the 15th of December - by the way, I should ask you this: the email address davles@optusnet.com.au, is that yours?-- That's my home email.

That's your home?-- Yes.

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We see two email addresses that you used during this period; that one and also the council email address?-- That's correct. I believe some of them went there.

Now, just dealing with one of these emails, on the 15th of December you send an email to Chris Morgan, the subject, Gold Coast Hot Topic Survey. "Chris, sorry to do this to you, can we make the meeting for Tuesday evening at 5 instead, there are a couple of people with problems that afternoon." Do you remember that? It was originally if you remember going to be - I don't want to go to the other email-----?-- I - yeah.

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-----but it was going to be the 17th and then it was made the 16th?-- I wouldn't mind seeing that to refresh my memory but I vaguely remember it now that you mention it.

All right. Let me show it to you?-- Yes.

So that really shows - do you want to keep it in front of you?-- Oh no, that's fine. Thank you.

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That shows you organising or re-organising the time for the meeting to the evening on the 16th of December as a couple of people had problems. So you're actually involved in the arrangements for the meeting?-- I certainly didn't invite any of the other candidates, I believe that's - that's already been - been expressed. The people I was probably referring to is either Sue or myself I would imagine.

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Well, Mr La Castra had a problem anyway, he wasn't able to be there, do you remember that?-- Well, I don't believe - I don't believe I spoke to Bob about it.

So you think that it's - any rate, there were a couple of people - but what I'm suggesting to you is that you were actually involved in the arrangements and the rescheduling?-- Well, only - only from the point of view of being able to attend myself certainly not from the point of view of arranging the other attendees.

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That email from Mr Morgan that spoke about the application of the resource having been discussed on the 10th; what was that, the resource?-- That would be the funding and how that would be I guess managed or at least utilised.

Were you actively involved in chasing up the people who would attend on the 16th of December?-- I don't believe I was. I

certainly - I certainly don't recall calling anyone directly. I spoke to Sue Robbins - Sue was fully aware of it anyway - and whether or not Sue or I spoke to Ted I don't know. Now, Sue may well have chased up people. I can't answer that.

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On that same day from Chris Morgan - that is, the 5th of December - I've referred you to an email from you to Chris Morgan on the same day - above it there is an email from Chris Morgan to you, Tuesday at 5 p.m. - this is in response it would appear - "Tuesday at 5 p.m. here at Quadrant will be fine. My meeting with Tony and Brian has now been confirmed for 8.30 a.m. Wednesday morning." So you're going to have a meeting, another meeting, with Brian Ray and Tony - that's Tony Hickey apparently?-- Could well be. Once again I'd need to check my diary.

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Okay. At that stage any rate it would appear - "My meeting has now been confirmed for 8.30 a.m. Wednesday morning" - that's with Tony and Brian - "Two things if you could, one, could you please provide me with a list of people attending and, two, is it possible to get the divisional boundary map today, tomorrow, I need to urgently" - et cetera. Do you want to see that?-- Yes, please. Yes.

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All right. So you asked for a list. Did you know in advance who would attend?-- Once again, I - I don't recall specifically speaking to anyone myself. It may well have been that it was organised through Sue or Quadrant, I don't - I don't recall that. I may well have replied to Chris on that but it could have been in consultation with Sue.

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Would you have a look at this email. This is from you to Chris Morgan of the 15th of December, 5.25 p.m., "Chris, attendees are Rob Molhoek, Grant Pforr, Brian Rowe, Roxanne Scott, Greg Betts, David Power, Sue Robbins, Ted Shepherd, La Castra is away" - et cetera?-- Yes, that's from my email address.

Well, it's an email you sent, isn't it?-- Absolutely. And as I said I don't specifically recall speaking to any of those candidates inviting them. It could well be that Sue Robbins organised that, gave me the information which I passed back.

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What it suggests however is that you were as I've suggested involved actively in the organisation of people attending this meeting on the 16th of December at Quadrant, do you agree with that?-- Well, I don't think that email confirms that, Mr Mulholland. I'd certainly accept that I asked for the meeting to be rearranged, that could have been for my diary, Sue's diary, it could have been for any number of reasons but once again I don't specifically recall speaking to any of those candidates to ask them to be there.

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Well, you accept that was an email you sent?-- I accept that was an email I sent but that could well have been in consultation with Councillor Robbins.

All right. And one of the people who had been referred to in that earlier email, Mr La Castra, is noted by you as being away so it was originally intended that he'd be there but he was away apparently?-- Well-----

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Is that your recollection?-- I don't recall ever speaking to Bob about it. Once again, Sue - Sue Robbins may have had the assumption that Bob would be there. The intention for Councillors to be there was one reason and one reason only and that was to give campaigning advice to candidates.

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Yes. Now, this meeting on the 16th of December, in your diary you have noted for the 16th of December 2003, 5 to 6 p.m., Sue Robbins/Ted Shepherd, Robina. Now, what does that signify?-- That would, I believe, be the meeting at Glenferrie Drive which is - where the meeting was held is at Robina.

All right. So you went to that meeting?-- Yes.

And how long did it last?-- Oh, look, I honestly couldn't say. I don't think it was very long. The - the three Councillors in attendance had - myself and Sue and Ted - had far too much work to do to be sitting around in meetings babysitting too many people.

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Could I ask you to have a look at Exhibit 14. I'll just pause a moment - just tell me while we're waiting for that, what's your recollection of the meeting?-- It was pretty informal, there was no real chair as such. The - there was general discussion about dos and don'ts in campaigning, things you do when you're doorknocking et cetera. There was some discussion about issues that candidates had gleaned whilst they were campaigning so far because most of them had already announced and were well and truly underway before we met them and-----

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Yes?-- More so it was giving them some of the expertise from the three councillors. Sue was particularly vocal. I particularly recall Ted and Sue disagreeing over one issue which - that's - that's not uncommon for all of us as to how something should be dealt with, a particular campaigning point. But by and large it was reasonably generic in its nature.

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Reasonably generic. Do you remember - you've got the-----?-- I have.

-----exhibit there now?-- Yes.

Do you remember it being - there being any discussion about objectives in the terms of this document?. This is a document of Mr Morgan's. "To achieve consensus among a select group of councillors and candidates that acknowledge public concern on five key issues that are top of the line across all divisions." Do you remember any discussion in relation to that objective?-- There was no discussion on - on this or its contents at all. Mr Morgan arranged for this to be put in front of us at the last moment. It was his perception of what should occur.

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Did you agree? Did you - sorry, did you read it?-- I did at the time and I-----

Did you take a copy away?-- No, I didn't. As far as I was concerned it was absolutely irrelevant.

Well, did you say that, "This is irrelevant"?-- I - what I did say to Chris was that there is no way on Earth that we're doing this because these - these candidates need to run their own race.

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Right. So look at the third dot point under Objections - under Objectives. "To focus public opinion on these individual councillors/candidates in that they recognise/understand the frustrations of ratepayers and business houses alike and are willing to adopt a joint common sense approach to solutions."?-- Mmm.

Anything like that did you address that, or did anyone address that point at the meeting?-- No, not at all. I mean, the term "common sense" was obviously used but that's - that's fairly much a throwaway line in political - political campaigns but there was certainly no discussion on that dot point 3 or any of the dot points.

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Well, are you saying that you, in relation to that first dot point, indicated that there's no way in the world that you were going to be involved in that?-- Correct.

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And what was the reaction? Anyone else make any comment?-- No. That was - I made that to Chris as an aside. There were general conversations going on around the table. As I said, the - there was no real chairman on the day and I made this to Chris who was actually sitting - Sue Robbins was sitting on my left, Chris was sitting to her left and I made that across Sue to him that I felt that this was - this was not - was attempting to be achieved.

I've taken you to the communication following the early meeting that you had with Mr Morgan and others?-- Mmm.

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In which there was a reference to consensus prior to the meeting. Now we have a document having been prepared by him. Did you have any discussion with Mr Morgan in advance of the meeting in relation to the question of consensus?-- No, and once again I think that was Chris's interpretation of what - what was trying to be achieved.

So you - you're quite plain about this, that your recollection is that you challenged this particular dot point at the meeting?-- I challenged the whole document with Chris.

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You challenged the whole - the whole document?-- Yes.

Right. What did you say?-- Well, basically that I didn't - didn't think it was what was trying to be achieved. We needed to recognise that these candidates were individuals, that they

had their own - their own issues they needed to deal with and the support that was being given for them was simply that, that they utilise as to their own best endeavours. Not to be - not to be directed in any way.

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Not to be directed. But apart from - you see, all it says is a consensus, "to achieve consensus among a select group of candidates that acknowledge public concern on key issues"-- Mmm.

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But you didn't want to achieve that?-- Well, the key issues were, I guess, is obvious as Q1 is on our skyline now. The key issues facing us were transport, water, sewerage, et cetera. It didn't take a rocket scientist to work that out.

Well, what-----?-- If those candidates weren't going to their electorate dealing with those issues then they weren't going to get elected anyway.

Well, what's the problem then about agreeing to - be agreed to - to agreeing to agree upon at least this much, those five key issues?-- Very simply the issues themselves may be fairly obvious but the solutions to those issues are not and there could be violent disagreement between the individuals as to what the solutions may be on those issues, and therefore you're not going to have consensus.

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So your query or quibble with this was really in relation to the reference to cost effective solutions?-- No, my disagreement with this was that it didn't fit with what we were always assuming to be the objective of rating this assistance for the candidates and that was for those candidates to use it as they see fit to get the best opportunity to win.

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So you didn't want, in the terms of the second sentence to that dot point, you didn't want to promote a desire on the part of this - these selected candidates to jointly work together to achieve prompt cost-effective solutions?-- That would come about through the debate process, not through the campaigning process. I mean, any - any councillor who's elected I would hope would do that, but as far as putting forward their position, their philosophies, that was their - their own personal choice. It wasn't up to others to tell them, including me and including Mr Morgan, how to do that.

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Well, you're making, it might appear, a distinction. You see, these are candidates selected by you, if not entirely. You were heavily involved in the process of selecting these candidates. They were going to benefit from a common fund. Now you've agreed with that. And yet in regard to this particular point that is promoting on the part of these selected people who were to benefit from this common fund that you were going to be heavily involved in raising, you apparently had some objection to promoting on a desire on the part of these people to jointly work together to achieve prompt cost-effective solutions. Why would you, in relation to that, have that problem? In other words, let me put the

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question to you this way. You were prepared to be heavily involved in the selection of these people in their benefiting by a common fund. But, you're saying that when it comes to trying to have some consensus or agreement reached with them, you baulked at that. Now, have I taken that unfairly from what you've said?-- I - I think you're over simplifying it somewhat. The issue for me was getting people as candidates and giving them the best opportunity who would behave with dignity and with respect. As far as reaching consensus, that's the process of government. That's not the process of - of campaigning and I don't believe, as independents, and I never have believed as independents, that that is appropriate.

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Right. Now, these issues are referred to on the second page if you go to the document. Do you remember seeing those issues, the second page?-- The second page. The consensus on issues?

Yes?-- Yes.

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All right. Did you have any objection to any part of that?-- As to whether or not they are issues? Or-----

Yes?-- -----whether or not there should be consensus?

Well, no. Well, did you have any objection at the meeting or subsequently? Did you raise any objection-----?-- Well, only what I-----

-----to what was said in this document?-- Only that I - I did tell Chris, very clearly, at the meeting, that I didn't believe that this document and its - its contents were appropriate. Now, having said that, those key issues, I agree with because, as I said, anyone - anyone with half a brain would have known that they were the issues facing us as a growing city.

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Is the issue that you had with this document essentially that you wanted to make it plain that these selected candidates were to be completely independent?-- Absolutely. And, in fact, one of the things I said to them at the meeting at that time was that no-one cares which way they vote on any particular issue. No-one will care about that at all just as long as you debate the topic and don't attack your colleagues or use the press to - for political gain at their expense.

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Right, okay. So, you'd reject the proposition, I suppose, that what you were more concerned about, Mr Power, was that they should ensure that they perceived to be independent?-- No, absolutely. I - I have always firmly believed, and in fact in the 1994 election we had the Labour Party running. We ran a - a number of us ran on the issue of keeping party politics out of council and remaining independent. So, it's not just being seen to be but it is to be.

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Though, that previous experience didn't, and couldn't be compared with the situation where you had selected candidates

benefiting from a common fund, could it?-- I don't understand the question, I'm sorry.

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You're referring to this previous experience of yours. I'm suggesting to you that that previous experience is in no way comparable because that was not a situation where you had participated in the selection of candidates and the organisation of funding for those selected candidates?-- Oh, no. You were - I was merely responding to the fact that you were questioning whether or not I was concerned about the perception of independence or the actuality of independence. I'm on record for 15 years of saying that I believe that councils and local government should be independent.

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All right. Well, I don't know that you've dealt with the question I've asked but let's move on. Do you see there under the heading, "Strategy", paragraph 3, "An agreed media position wants awareness of this resource for campaign for commonsense in councils, working title becomes public". Anything said about that?-- No.

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All right. Did you have any issue with that?-- I had an issue with the whole document but I didn't specifically address individual items with - within it, with Chris. I just simply said I didn't think it was appropriate.

Did you - well, did you suggest that really that these - that the people should tear up this document and pay no attention to it?-- No.

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At least one candidate, I don't know whether you know this, but took away the document?-- Mmm-hmm.

But, you strongly told the whole meeting that-----?-- No, that's not what I said. I said I spoke to Mr Morgan, who was sitting to the left of Councillor Robbins, and told him personally. There were other conversations going on at the table at the time. But, this document in itself was never discussed nor were the individual components of it discussed.

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Why didn't you indicate your view so that all people present would understand your view?-- Well, I think I did and I - I stated a few moments ago that I articulated to the meeting, very clearly, that I believed that they needed to be independent at all times and that nobody cared how they voted so long as they voted and debated the issues.

Now, under "Resource" is this statement, "The extent of the resource will naturally depend on the size of the funding achieved. The extent of the resource...", again the resource, is that the - what's that a reference to, as you understood it?-- As I understand it, that would have been referring to the funding.

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And, by this time I suppose you were concerning yourself with the question as to how the funding would be achieved?-- Yes.

Now, were you to attend a meeting on the 17th of December 2003, that is the day following this meeting on the 16th?-- I don't recall attending any meeting on the 17th.

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Do you remember-----?-- No.

-----do you remember whether - I'm not suggesting you did attend but do you remember at one point you were going to attend the meeting on the 17th. Or, do you say you had no recollection of it?-- I don't recall.

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What we know is that on the 17th there was a meeting in Mr Ray's office attended by Mr Morgan, Mr Hickey and Mr Ray. Did you know of such a meeting at the time?-- No.

The notes - the handwritten notes of Mr Hickey on a - the document "Rating Candidates", that I referred to earlier, this is the late November email-----?-- Mmm.

-----he made a note in relation to this meeting on the 17th on that document. And, the note he made was, "Supporting eight councillors which will give a majority vote". And, also, "Trust account authority by Sue and David make them the client". Now, did you know at this time, that is on or about the 17th of December 2003, that there was any intention to achieve a majority by the process that you were involved in of selecting candidates and organising funding?-- No, and I think that that's - you're - I mean, you're asking me to interpret another individual's perception and - no, I wasn't.

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Well, we're talking about here a very experienced solicitor who makes a note to that effect. You say that you didn't - that you think that this is just a - this is what, some misconception?-- I - I don't know. You would have to ask Tony about - about that, and I assume you have. But, as far as why he wrote that, he may have written it as an extract from a comment that Brian Ray made. He may have had it as his own perception. I don't know. I wasn't at the meeting and obviously the first time I saw that document was as part of evidence in - in the hearing.

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Were you aware at this time that you were going to be the names on the account at Hickey Lawyers in relation to this funding, that is, you and Sue Robbins?-- I'm not sure that we were aware at that time. I would suggest that we certainly knew within a reasonable timeframe subsequent to that. What that meant at the - at the time, I don't believe that Sue and I actually applied our minds to it.

Yes. Now, there is an email from Mr Morgan to Mr Ray on the 19th of December 2003, "Met with David and Sue again to recap and agree on activity for the New Year. We have set a next meeting date with all candidates for Thursday 8 January at Quadrant", this is part of exhibit 89. Do you remember at meeting with Mr Morgan and Mr Ray on the 19th of December?-- No, I don't. Now, that's once again not suggesting it didn't happen. I wouldn't mind having a look at my diary to refresh my memory.

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All right, well, perhaps we can show you your diary?-- And, I'm not sure whether Councillor Robbins diary showed that.

Perhaps your lawyers might have a copy of the diary?-- I'm sorry, what date was that again?

The 19th of December?-- Well, according to this, I was playing golf.

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Right. So, you, I gather, have no recollection-----?-- No, I don't.

-----of attending any meeting?-- I certainly recall speaking to Mr Morgan on the phone about a meeting date in January. Now, whether that was the actual result I can't - I can't guarantee but I can only go by my diary which indicates I was at Sanctuary Cove.

Well, it's suggested there was a meeting on that day and Mr Morgan also made notes of a meeting on that occasion. But, you have no recollection of being present at such a meeting?-- No, it could well have been called at the last minute. Now, whether or not Sue attended that without me I - I am not prepared to speculate on it.

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There was an email from Mr Morgan of the 22nd of December 2003 to you, Ms Robbins and the new candidate, scheduling the meeting for the 8th of January. You were - you agree that you were involved in the - that process of the meeting of the 8th of January and the people who would attend?-- There was certainly an attempt to set up a meeting then and I was involved in some discussions. Now, whether they were in person or on the phone I can't specify.

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There's an email from Roxanne Scott to Mr Morgan on the 9th of January 2004, part of exhibit 134, about election issues which contained this phrase, and I quote, "As David suggested yesterday...", that is apparently a reference to this meeting on the 8th of January, "and took an...", sorry, "suggested yesterday, her leaflet...", I'm adding words to make this intelligible, "her leaflet needs to include certain information". That is, that Roxanne Scott was sending this email and referring to a suggestion that you'd made the previous day about how - one aspect of her campaign?-- Mmm-hmm.

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Do you remember something like that occurring?-- Not specifically. I know that I spoke to Roxanne on probably one occasion outside of those meetings. She asked me for advice. What that was specifically relating to I can't recall.

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Exhaust your memory in relation to the meeting of the 8th of January. What do you recall about that meeting?-- Look, I've got to honestly say I don't recall anything about that meeting.

Really?-- I do recall a discussion with Mr Morgan about candidates campaigning at the same time as the State or Federal - I think there was a Federal election at the same time - and the confusion that that would result in. Now, whether that was at the same time, I can't answer.

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Right. That's all?-- That's all I can recall.

Can you tell us how long that meeting went for?-- Well, if I can't recall the meeting it's going to be a bit hard. But, most - most of the meetings we had were very, very quick.

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So, it's pointless for me to ask you anything further about it. You just have no memory. It's a complete blank?-- I generally cannot recall that meeting.

All right. The - this particular meeting, it would appear from the evidence, that you were present for the whole of it but you don't recall even if that be true?-- No.

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You weren't present for the whole of the meeting on the 16th of December?-- No, the 16th of December I believe that I had my children with me, sorry, no, that might have been the January meeting. I think I've got the January meeting confused. But, the 16th of December, I would have to rely on others - other recollections. I certainly arrived at the same time as Sue before it started. Whether or not I left at - at the conclusion I can't answer.

You have a better recollection of the - well, you've got a recollection at least of the 16th the meeting that-----?-- Oh, yes.

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-----the 16th of December but really no recollection of what went on at the 8th of January meeting?-- Not really, no.

Not really?-- Is that - sorry, Mr Mulholland, can I clarify something? Is the 8th of January meeting the meeting with all of the candidates again?

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Yes?-- If that's - if that's the one, I'm sorry, I misunderstood you, I thought you were talking about a meeting with just Councillor Robbins, myself and Mr Morgan. The meeting in January, if it was the 8th of January, the best that I can recall about that is that I did have my children with me and that I was in and out checking on them while they were down at the lake. The conversation that occurred, no, I'm sorry, the answer's still the same, I can't - can't recall.

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I want to draw your attention to an email that was sent from Mr Morgan to you which was cc to Sue Robbins on the 19th of January 2004 and this reported on various issues of common interest to the candidates campaign including legal, divisional boundaries and timing of campaigning. Now, first of all, do you remember that email?-- Not directly. If I could see a copy that might refresh my memory. Yes, I recall-----

It's the one at the bottom as you can see?-- I do recall that.

Just have a look at it and refresh your memory?-- Yep.

Are you happy with that now?-- Yes.

Do you need to keep it in front of you?-- No, I think I'm satisfied with that.

So you were being reported to by Mr Morgan. You knew at this stage that you were perceived as a client of Quadrant?-- I'm not sure that I knew that by that stage. As I said there was a separate email containing a letter of appointment. Now, whether that was before or after that - I'm sure you've got it there.

Did you at any stage undertake to look after the legal aspects associated with the campaigns of the selected candidates?-- Chris asked me if I could refer-----

Chris Morgan?-- Chris Morgan asked me if I could get a lawyer to give them advice. I recall the request. I certainly recall that email. I believe I left some messages with some people in Brisbane. I don't believe that I ever got a return call and that's as far as the matter went.

Well, let me just read from the email to you from Mr Morgan. "We need an experienced point of reference to obtain unambiguous (and no charge?) advice on matters relating to local government campaigning. I'm receiving constant queries from these candidates which are outside our area of expertise and impact on forward planning and budgeting. David, I seem to recall you had someone in mind when I raised this point some weeks ago, can you advise please." Who did you have in mind?-- I didn't mention a specific name, I merely mentioned to Chris that I would attempt to contact some people and see if they could give us some advice. As I said I can't even recall whether I telephoned actually or emailed but-----

Who did you have in mind to try to get in touch with?-- Oh, I was thinking of a couple of firms in Brisbane that were separated from the Gold Coast but at the - at the time as it shows in - in that email - I don't believe I - I got any replies at all.

So you obviously, from what you've said, tried to get some legal advice. Who did you contact?-- I believe - Mr Mulholland, you're dredging my memory here.

Can't remember?-- Yeah, I - if you can leave it with me it will come to me again but it was - the individual I was trying to track down was on holidays.

If it doesn't spoil your lunch perhaps you could think about it over lunch?-- I will try to.

Do you remember this, however, that Mr Morgan spoke to you on more than one occasion about chasing down some legal advice in relation to these selected candidates?-- I only recall that occasion and from my recollection the matter wasn't specifically raised again.

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In this context particularly with your experience and having regard to your involvement in what was happening you would have been concerned I take it, Mr Power, to ensure that the selected candidates had the best advice in regard to their statutory obligations concerning their campaign, would that be correct?-- Well, I would certainly hope so but as you would be well aware the individual's responsibility is their own to make sure that - that they comply.

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Yes. But I keep putting to you and I suggest it's what makes it different here, your involvement in their funding and their selection as people who would benefit from the funding. Now, I just say that preparatory to the question. Were you not concerned to ensure that the selected candidates that you were working with in this way had a proper knowledge of their statutory obligations?-- Well, I certainly expressed to a number of the candidates that they had obligations and that they should comply with them. As far as being responsible for them, no, I'm not responsible for them - they're grown adults - and regardless of whether I was assisting to raise money for them the responsibility still rests with them.

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Yes, but having regard to you being involved in raising the funds and their selection and them benefiting from the funds surely you were concerned to - for them to understand their obligations so far as any disclosure and what they must do in regard to the funding that they were to receive?-- Well, one would automatically assume that they would if they had any questions that couldn't be answered would go to the returning officer, go to the chief executive officer, go to the Local Government Association or the Department of Local Government. There's plenty of options out there for a candidate of which everyone was well aware but I repeat, it is not my responsibility nor any other person's responsibility other than the individual candidate.

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So what, may we take that answer that you really did not concern yourself with ensuring that they understood the benefit of your experience and the obligations which you knew of in regard to funding and disclosure issues, you were not concerned that they heard something from you about it?-- I'm not a legal advisor so there's no way that I was going to give them equivocal advice - unequivocal advice, rather - on what their obligations are-----

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Did you tell them to get their own legal advice?-- No, I did not.

May I see Exhibits 9 and 10 please. This being the - what we refer to as a handbook and information for prospective candidates?-- Yes.

Did you know of those documents in the period that we're speaking about, late 2003/2004? Were you aware that these documents were in existence?-- Documents such as this are handed out at every election, whether they're identical - but of similar format are given out at every election to every candidate.

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In all the discussions that you had in the period 2003 and 2004, with and about the selected candidates and their funding, did you ever raise with them whether they were familiar with the obligations that they had and refer to documents such as I put in front of you, Exhibits 9 and 10?-- I don't believe that I ever referred to these documents at all.

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Would that be a convenient time, Mr Chairman?

CHAIRMAN: Yes. We'll adjourn till 2.15.

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THE COURT ADJOURNED AT 1.02 P.M. TILL 2.15 P.M.

THE COURT RESUMED AT 2.20 P.M.

DAVID LESLIE POWER, CONTINUING CROSS-EXAMINATION:

MR MULHOLLAND: Thank you, Mr Chairman. Mr Power, did you recall over the luncheon adjournment the name of any legal person that you approached?-- Unfortunately I didn't actually recall it. It was given to me because it was Mr Stephen Fynes-Clinton.

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Right?-- And I do recall that it was Stephen, now that I've been reminded of that.

Sorry, I-----?-- I do recall that it was Stephen that I left the message for, now that I've been reminded of that.

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And so you sought to contact him, what, in late 2003?-- Whether it was 2003 or early January I can't be certain. I'm assuming it will be within a few days, within a week, I would suggest, of that email. But I didn't pursue it any further.

All right. Now, can I ask you to have a look, please, at two emails. Would you have a look at these emails. These are part of Exhibit 138. Now, first of all, there is the email of the 8th of January. This isn't one of your emails, but I want to ask you about something appearing in it. It's from Ted and Sue. This is Mr Shepherd to Chris Morgan, Thursday the 8th of January 2004, 8.39 p.m.: "Hi Chris, I've finalised what I think is our winning election program based on my ultra-conservative approach." Now, you'd know that Mr Morgan did some work for Mr Shepherd in his campaign?-- I believe so. I don't have detailed knowledge of it, though.

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All right. Go down to the paragraph beginning "additionally". It says, "Additionally, by spreading the work around I can dissociate myself from the other campaigns. I'm nervous that too many people know who is involved. Probably I'm just paranoid." Did you know from any conversation you had with Mr Shepherd at the time, or from any information coming to you, that there was suggestion of any person being nervous about the selected candidates who were receiving money from a fund that you were involved with?-- I don't recall having any discussion with Ted about this or any other person.

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So when he says, "Probably I'm just paranoid" - so you don't remember any conversation?-- No.

Just go to the next one of the same parties, Ted and Sue to Chris Morgan, 11th of January 2004, 10.02 a.m. This is a subject re division 9 campaign. Second paragraph, second sentence: "I had an interesting conversation with Max Christmas yesterday where he was aware that I was involved with the 'David Power group of eight'. I denied it, but you need to be aware that somebody is talking already. I hate to think what will happen closer to the election. I'm available for advice to the candidates but do not want to be linked financially or politically with the other campaigns." Again, did you have any conversation with Mr Shepherd in relation to that topic?-- Nothing that I recall.

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Did you, at this period - that is, in or around January of 2004 - have any contact with other people who were involved with this fund, either the selected candidates or those involved with organising the funding, in relation to a concern that it might get out publicly that there was such a fund that was supporting selected candidates?-- No, and in fact I don't think that was ever discussed. The concern that was always discussed was the fixation with certain sections of the media on this issue of a ticket, and clearly that was a misrepresentation of what was intended.

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Would you accept as a proposition that the public, comprising or including elector wards for the Gold Coast City Council of March 2004, were entitled to know of the existence of a fund that was being used to support selected candidates?-- I'm sorry that's-----

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MR TEMBY: I object to the question on the basis that "entitled to know" is highly ambiguous. Is the witness being asked legally entitled to know, morally entitled to know, ought have been told? It needs to be clarified in what respect the "ought" is being asked.

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MR MULHOLLAND: I'm not speaking about a legal entitlement. I'm just asking the witness as to whether or not he accepts as a proposition that electors should know of the existence of such a fund that supports elected candidates?-- Are you talking about pre-poll or post-poll.

Pre-poll?-- Pre-poll, I guess that's up to the individuals involved given that it is purely a matter of choice. Certainly post-poll I believe that the declaration should be made in accordance with the Act. But as far as - as far as advising the community it would be helpful if you were able to advise the community through a source that actually reported correctly.

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But I'm speaking to you as someone who was involved in the selection and the organisation of the funding as to whether or not you accept that electors at that election were entitled or should have been - should have been able to assess that piece of information, that is there was a fund used to benefit selected candidates?-- The electors were advised, incorrectly I might add, by the media that there was a fund, so to suggest that they weren't aware that there was a fund is incorrect. The terminology in applying that fund is incorrect. So I can't suggest that they have been misled or deceived or even refused information. Certainly what was foisted upon them was the interpretation that was an interpretation completely false.

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All right. Mr Power, would you go to that other document. The e-mail from Sue Davies, that is Mr Ray's PA, to you of the 10th of March 2004. "Subject Guest List for Wednesday 10th of March." Do you see that?-- I haven't got it in front of me, Mr Mulholland.

Have a look at this one. In fact I've given you the wrong details. This is Friday the 5th of March from Donna Gates. Now that's your PA, is that correct?-- Correct. That's correct.

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Sent Friday the 5th of March to Sue Davies, Mr Ray's PA?-- Yes.

"Subject Names", and this is a list from you. Do you remember something about this?-- I vaguely remember this list, yes.

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Well, just go over and have a look at the remaining e-mails. There's another one on the 5th of March. Flick your eyes over - through those, and do you see that there was intended to be a function at one stage in early March of 2004 and it was going to be attended by various developer representatives. Do you remember this?-- There was a proposal for - by, I think, Brian Ray for a get together that would include candidates and donors. That, at this stage, clearly hadn't been fully discussed between Sue and myself. I would, however, question that they are solely developer representatives. Mr Trenton Gay, for instance, is involved in the marine industry and obviously Stocklands is involved in - and the Roche Group are involved in other things besides developments.

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Well, they're also involved in developments, aren't they?-- They - they are involved in a number of activities. Roche Group is involved in tourism in New South Wales, and Stocklands is involved in shopping centres.

All right. Well, if you go down to the particular e-mail I want to draw your attention to, it's on the second page. The top of the page has Sue Davies' name there and it's Friday 5 March, 10.05 a.m. Have you got that page?-- Yes, I have.

And then go down - this is from Sue and it says this: "Chris Morgan of Quadrant will also attend, and of course the two councillors Sue Robbins and David Power. We will invite the guests by e-mail because time is now so short. I would like Bernard Salt to speak from 3.15 p.m. for approximately 20 minutes so Brian Ray is suggesting he attend the function from 3 to 4 p.m. The function itself will be from 3 to 5 p.m. so that Sue Robbins and David Power will have an opportunity to pass some candidates' kits to the contributions following Bernard's presentation." Now do you remember that there was an intention to have a function which would be attended by these people, and there's a list of them above those words, the people who would go, "our proposed guest list." Do you see all that? Tony Hickey on behalf of Great Southern Land, Brian Ray, Greg Phillips, Soheil Abedian, Phil Sullivan, et cetera, et cetera. Do you see all of that?-- Yes, I see.

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Now do you remember that it was intended at this time to have such a function to be attended by contributors to the fund that we're speaking of and that you and Sue Robbins would be along there talking and apparently presenting candidates' kits?-- Well, apparently that's what they had in mind but clearly Sue and I didn't know anything about that part.

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You knew nothing about it?-- About the presentation of kits or speaking, no. And certainly within a couple of days of these e-mails, as I'm sure you're aware, Sue contacted them and told them that she didn't agree with it and believed it should not go ahead.

Right. Well, that's early in March. Can I ask you to have a look at - any rate, you say that if this was done, it was done, what, behind your back?-- Well, in terms of - certainly in terms of proposing that Sue and I would hand out some sort of kits or speak, we were never notified of that. It was certainly mentioned to us that it was proposed to have a function. Sue and I, when we finally got the chance to speak about it, which was a few days after this, came to the conclusion that it was not appropriate, it was against everything that we were trying to achieve which was separation, and that we wouldn't agree with it and Sue followed that through.

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Why was it - why was it inappropriate?-- Well, the objective was to have candidates separated from donors.

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Well-----?-- Very clearly, and of course, that would not be achieved if this was to go ahead.

Why would that be inappropriate?-- Well, it would go against everything that we - we'd previously promoted, that the candidates would be better off being separated from donors,

better off being isolated, not knowing who the donors would be, and also the issue of perception.

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Right. You mean public perception?-- Well, public perception as well as the internal perception that - that there was some sort of connection there that there may be some sort of beholden nature to the donors and clearly that wasn't appropriate and was never the intention.

So, the first objection was separation? You being against there being any contact between the contributors and the donees?-- Yes.

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Could you have a look at this then? Now, this is an email from Chris Morgan to you, if you have a look. This occurred on the 18th of March 2004 and what I suggest to you is this meeting that had been originally scheduled for early March was then going to be rescheduled for later in the month. Mr Morgan writes to you saying this: "Have been speaking with Lionel" - Lionel Barden obviously, "and we have had a direct request by some donors to meet with our candidates, particularly contributors who have yet to do so. Our intent is to invite all our candidates and (key councillors) to meet with the donors next Thursday at Innovation Showcase for an hour between say 4 and 5 p.m. A full display of literature et cetera would be set up. This will also minimise the possibility of media exposure, although in some respects it could work to our advantage. Could you advise me/us a.s.a.p. if you're all comfortable with the concept as Lionel wants to get invitations out urgently. We are still way short of the total dollars required and we need to confirm at least another ten donors." And then there's an email by - from you to Chris Morgan in return: "Chris, go ahead. This is too important to let run off the rails now." Do you agree that those emails were exchanged later in March?-- Yes, and as I said to, on my previous answer, it was sometime later that Sue and I had discussed that matter and come to the conclusion at a later time that we didn't agree with it.

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Well you said a few days later, I think-----?-- My apologies-----

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-----in answer to my-----?-- for the terminology.

-----question previously, but here you, despite it having been scheduled earlier and having had that - taken that on board, it's rescheduled and on the 18th of March, you seem to be enthusiastic about it. Isn't that the only way to read this email?-- I certainly replied in that context, but as I said, and I'll repeat, that Sue and I had not had a chance to discuss it between each other and we certainly had not applied our minds to the principles that we had espoused from day one. The moment we did that, Sue contacted them almost forthwith and the meeting was stopped.

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Well I'm suggesting to you, Mr Power, that that email just shows out - shows up the answer that you previously gave me to be an untruthful answer. I'm suggesting to you that you were

enthusiastic about the - about the prospect and I suggest to you further that the decision that was ultimately made was not made by you, but apparently was made by Sue Robbins?-- The answer was not untruthful, Mr Mulholland, and I - I really have a problem with that. I did say to you that within a few days I acknowledged that. The timing may not be entirely accurate, but the point remains that it was after that date that Sue and I had the first opportunity to talk about it. Sue did not make the decision. We had a discussion and Sue was the one that took it on herself to contact them and advise them that we did not feel it was appropriate. I have no problem with that. She was a very forceful lady who - who could handle the situation quite clearly on her own.

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All right. Would you have a look at - keep these documents, hasten the process-----?-- Yes.

-----if you had those back from you and this concerns the next area - it will hasten it, as I say, if I put those documents in front of you. Now what I want to ask you about is a meeting, or meetings that you had with Mr Fish. You know Mr Fish, of course?-- Yes, I do.

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Is he a developer?-- Amongst other things. I would call him a general business person.

All right. Well, now on the 17th of February it would appear your secretary emailed Mr Pforr about a meeting that you had arranged for Mr Pforr with Mr John Fish. Exhibit 51?-- Yeah.

30

Is that right?-- Correct.

And when had you arranged that meeting? When - when did you make the arrangements, is what I'm asking?-- I'm - I'm assuming it was probably the same day, the 17th of February.

Now, according to Mr Pforr you suggested that he should meet Mr Fish, that's at 291 to 292 of the transcript?-- Correct.

You agree with that?-- Correct.

40

And Mr Fish offered him funding and in kind support?-- I'm not sure that that occurred in front of me. I don't recall that being mentioned.

Well you certainly know that he did eventually get funding?-- I'm certain - I was certainly aware of that after the election, yes.

Not until after the election?-- Well I said, I'm certainly aware of it after the election. If you're asking me when, prior to the election, I'm afraid I wouldn't be able to give you an answer to that.

50

Were you aware prior to the election, Mr-----?-- I was aware that Mr Fish had given support to Mr Rowe as a personal friend and I was aware, at a later date in March, that some promises

had been made but whether or not that had been given, I was not aware.

1

So, that's your extent of knowledge of funding of Mr Pforr, is it?-- Yes.

Okay. Well, the - Mr Hickey has given evidence at 651 that he had some part in this meeting as well. Did you know of any part Mr Hickey had in this meeting with Mr Fish?-- I believe that Mr Hickey gave evidence that he contacted me suggesting that - that it would be worthwhile meeting with Mr Fish, or that we should meet with him.

10

All right?-- I don't specifically recall that, but given the nature of changes that were about to occur on Hope Island, in terms of urban development and the impact that would have on the surrounding divisions, it probably would have been something that I would have suggested anyway at some point in time.

20

What - this was unrelated, was it, to any attempt to get Mr Fish to contribute to this fund?-- Totally unrelated. The situation, as you would probably be aware, is that division 3 is bordered by divisions 2 and 5, being my division and the division that - that Mr Rowe was going to be contesting. Hope Island, in its development, will have some 25,000 people on it at full capacity. Now, the impact of that on the surrounding divisions is quite significant. I believed that it was appropriate for both of those gentlemen to have some idea of what was going to happen and the impacts it would have on them and their responsibilities as councillors if they were elected.

30

This is Mr Pforr and Mr Rowe?-- Correct.

Now, let's just come forward to bringing everyone into the picture as to this - when this meeting occurred. There's a diary entry of yours for the 23rd of February 2004, "2.30 to 3 o'clock. On site Fish meeting, Sickle Avenue, Hope Harbour."?-- Correct.

40

Now, is that when this meeting, which the e-mail of the 17th of February referred to, occurred?-- Yes, I believe so.

Mr Fish said in relation to this that Mr Hickey telephoned him and said that you would like to come and introduce Mr Pforr to him, that is to Mr Fish, and to meet Brian Rowe again as he already knew him?-- Mmm.

That sits in with your recollection of what occurred?-- It's fairly close to what occurred, whether it's exactly the wording used, I can't answer that.

50

Do you accept that you organised this meeting?-- I certainly did.

And the - do you remember any discussion of a trust fund that day?-- Certainly not in front of me. Now, whether it was

discussed with either Mr Pforr or Mr Rowe outside of my earshot, I can't answer that.

1

You would be aware that in his evidence Mr Fish agreed with Mr Nyst at 2002 that you may not have mentioned the trust fund in earshot of yourself?-- No, well, I don't - certainly don't recall mentioning it at all.

Sorry. The trust fund may not have been mentioned in front of Rowe and Pforr?-- No, and I think the general discussion revolved around two principal issues, one that the problems that Mr Fish had experienced in the past with Councillor Young or Mr Young as he was then, and the changes that were likely to occur on Hope Island itself.

10

Mr Fish did say that he definitely mentioned there could be further funding from himself. Do you remember him mentioning that?-- I don't recall him mentioning it at that time. I certainly know that at a later date he informed me that he had pledged funds and that's obviously borne out by the e-mail on the back of what you've just given me. But at that time, no, I don't specifically recall him mentioning it.

20

Mr Fish said he made no commitment at the meeting to provide further funds to Rowe or Pforr but left it on the basis that he could be contacted by them if they required further funding?-- He may well have done that.

And he said he assumed that they already had received money indirectly from him through disbursements from the fund?-- I can't-----

30

Anything said on that occasion about that?-- I can't recall anything being said on that occasion. As I said, whilst we were leaving, I walked ahead of the other three towards the car. It may have been discussed at that time.

All right. There were - there was mention at this meeting by Mr Fish of Mr Young. There was some whinge he had about Mr Young. Do you remember that?-- Mr Fish has made repeated comments to me and anyone who will listen over the last 10 years-----

40

No, at the meeting?-- He certainly did.

Well now, your diary also records for 1 March 2004, 3.30 to 3.30 p.m. "John Fish site-offs". What's this about?-- It was asking at that time how the local area plan was going. Being chair of strategic growth or strategic planning, as it was then, that fell under the responsibility of that committee and I believe it may even have been at that stage, as I was leaving, that he mentioned he would be prepared to support those candidates directly.

50

Right. This is at the second meeting?-- Yes.

So the candidates that you're referring to are a Mr Rowe and Mr Pforr?-- Correct.

And so you knew, at least by the second meeting, that he was likely to support those candidates?-- Well, he'd certainly promised but whether or not that would eventuate is another matter. We'd seen lots of promises from people.

Well, you - whatever other object you had, part of what you were seeking to achieve by the meetings that you had with Mr Fish was to facilitate funding?-- Well, certainly not at that meeting, no. That meeting was principally about the local area plan, where it was at, what sort of time frame would be looked at-----

10

Either meeting?-- The first meeting, no, was certainly not. In fact, I would suggest that neither meeting was to secure funding out of Mr Fish. The first meeting was simply to give an understanding to the candidates of the differences in expectations between what council may want to achieve from an area, what a developer may want to achieve from an area and what the community may expect and that's a very critical issue for greenfield areas.

20

Would you go to an e-mail that you should have there-----?-- Yes.

-----of the 9th of March. Do you have that?-- I do.

This is not long afterwards. It's an e-mail from you to Mr Morgan to say that you would "follow some people up" and to give him, that is Mr Morgan, the good news that "another donor has pledged to assist Pforr and Rowe direct so that may take them out of the equation altogether"?-- Mmm.

30

Is that a reference to Mr Fish?-- Yes.

And what is the reference to "so that may take them out of the equation altogether"?-- Simply that they may not need to call upon any more funds from - from the central fund.

Right. Because of the direct funding; is that what you're saying?-- Possibly, yes.

40

When you say "direct funding" what do you mean? You understood that there would be some money going directly from Mr Fish to the candidates?-- Yes, my impression was that he was intending to donate directly to them. Of course, that was their own choice if they decided to accept that.

The evidence would suggest that Mr Pforr got money on the 9th of March and also on the - that's \$10,000 he got on the 9th of March, the same day as that e-mail, and that Mr Rowe got \$24,000 on the 10th of March?-- From Mr Fish?

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Yes?-- I'm sorry, I have no knowledge of that.

You've got no knowledge of that?-- No.

It's difficult to escape a conclusion, I suggest, that your presence at the meetings with Mr Fish, to which I have referred, did not persist in Mr Fish later making donations to assist these candidates. Would you agree with that?-- No, I don't agree with that. I think-----

1

Was that a coincidence?-- I think Mr Fish would have - would have donated to Rudolph the Red Nosed Reindeer if he ran against Councillor Young, he would have supported anyone that would run. As far as Councillor Pforr is concerned I can only assume that Mr Fish was satisfied that he was a candidate he was prepared to support.

10

Nothing else you want to say in relation to that and the timing of it?-- No. I think it's - it's entirely in the hands of Mr Fish and the two candidates as to the arrangements between them.

Do you see it as entirely a coincidence that you had those meetings and they received the funds?-- Well, meetings occurred right up until the election with all sorts of people. I was still meeting with - and doing my job in accordance with my oath - right up until the week or even a few days before the election. If - if someone calls me as chair of strategic planning to discuss an issue I will respond to that call be it a meeting or in my office or on the phone.

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Anything else you want to say?-- No.

Can I just ask you now to deal with some contacts with Mr Ray. First of all you have an entry in your diary of the 17th of February 2004. I've just put different documents in front of you, take back those so it doesn't become too cluttered. Your diary entry for the 17th of February, 4 p.m. to 4.30 p.m. appointment Glenferrie Drive, Ray group. So that's a contact that you had with Mr Ray at that time, is that right?-- I can only assume that happened, I don't specifically recall that date but I can only assume my diary's correct.

30

Now, have a look at this email if you need to, there's an email from Mr Ray of the 3rd of March 2004 to Matthew Banks at Macquarie Bank, Exhibit 89, showing his understanding of what you wanted to achieve -that is, Mr Ray saying to Mr Banks what his understanding of what you wanted to achieve. The way in which this is described by him as you'll see is to get a coherent Council, a predictable outcome and "to mount a campaign to win various wards for a caucus of like-minded members with whom we can negotiate in a similar way to the outcome achieved in the last Tweed Shire election". Now, that's what he's saying about his understanding of what you wanted to achieve. What do you say as to his understanding of what you wanted to achieve? How close to the mark was it?-- I think he's grossly mistaken and quite frankly if I'd have been aware of this - this at the time I would have discussed it with him and disabused him of his theory.

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Well, you had several meetings with him and did you - did you ever give him cause to think that that's what you wanted to achieve?-- Never.

1

So let's just deal with it item by item. Did you want to achieve by your involvement in this fund to get a coherent Council?-- Well, my understanding of the word "coherent"-----

Will you direct yourself to the question that I'm asking?-- I am - I am doing that, Mr Mulholland. At my understanding the word "coherent" means easily understood. If it's an easily understood Council I don't have a problem with that.

10

So what, you don't have a problem with his understanding of that - you wanting to achieve that?-- A coherent Council should be everyone's objective.

Okay. A predictable outcome?-- Well, I would want to know what it was in his mind before I'd answer that as to what he meant by that.

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Well-----?-- I have no idea what he - what his interpretation of a predictable outcome is.

Well, if it meant that he wanted a predictable outcome by decision making in relation to development and planning matters as distinct from a perception by you up to that time that it was unpredictable for such people before the 24th of March election, would that have agreed with what you thought at that time?-- Predictable outcome as I said before would have been in accordance with the scheme sound town planning merit so the only issue that I mentioned earlier today that was an issue of unpredictability in terms of town planning was the application of conditions or even refusals that I considered to be unlawful. Now, that's a matter that the Court would have decided through the appeal process. But a predictable outcome, it could mean anything. As I said earlier it could be the dam being raised for flood mitigation or the dam being raised for water storage.

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Do you think that what might have happened is that you used words like that to Mr Ray and he might have misunderstood what you were referring to?-- I've - I've never used that word to Mr Ray or to anyone else.

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What, predictable?-- Correct.

You never used the word "predictable" to him?-- Never used that word for Mr Ray or to any other person.

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And certainly never used the word "predictable outcome" to him?-- Once again anyone who would suggest that a group of independents - 15 independents would be predictable is - is acting very bravely.

The next bit, does what he says there about his understanding of what you were about, "To mount a campaign to win various

wards for a caucus of like-minded members," would that express your view at the time?-- Not at all.

1

So that wasn't the object?-- No, not at all.

Or part of the object?-- Not at all and I would never have used the word "caucus" either.

"With whom we can negotiate in a similar way to the outcome achieved in the last Tweed Shire election"?-- Well, once again I wasn't even aware until a later date - it may have been only just before the Tweed elections - that Mr Ray was in any involved. With regard to the references to the Tweed Shire, completely irrelevant, different State, different legislation.

10

Well, Mr Ray was a fairly intelligent businessman, was he not?-- I believe he was, yes.

Right. And you see, what we know and from what you've agreed with, that Mr Ray didn't of his own mind think of the campaign that he became involved in, he was approached by you, wasn't he?-- He was approached by me for advice and he was approached by me for support for individuals. At no time was he approached by me to set up a caucus.

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So you reject the view that - you reject the idea that Mr Ray's view reflects what he was told by you?-- I absolutely reject it. They are Brian's perceptions and I - I can only put it down to his enthusiasm for being involved in the political process.

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Well, he's embellished things quite a deal according to what you have just told us?-- Well, lots of people embellish things when they're involved in activities. We see that quite often in certain headlines in the media.

This seems to be in quite fundamental respects he's just gone completely overboard because it bears no resemblance to what you had in mind?-- Well, I'm afraid I can't answer that, Mr Mulholland. You would have to ask Mr Ray.

40

Well, no, what I'm asking you is that what he believed that you were on about bears no resemblance to what in fact you were on about?-- The only things that we discussed on a consistent basis was garnering support and, in the initial stages, how that support may be provided.

And you and Mr Ray never discussed what was happening in the Tweed Shire election?-- Tweed Shire? No, never. Tweed Shire was of no relevance to me at all other than it be a neighbouring council.

50

In an e-mail soliciting \$10,000 from Austcorp on the 11th of March 2004, you'll see there - this is part of Exhibit 89 - Brian Ray notes, "We are flat out attempting to get a coherent group of councillors so that we may be able to get a better outcome for the City as a whole and I know David Power particularly will appreciate your assistance." So "we" - he's

obviously including you in that - this time he describes it as "so we may be able to get a better outcome for the City as a whole". What about that "coherent" group of councillors being brought together to get a better outcome for the City as a whole. How would that express your view at that time?-- Well "coherent", once again, is easily understood so I would imagine that if they were easily understood as a group then we're going to hopefully get better outcomes but, once again, this is Brian's interpretation.

1

Well, you don't seem to have too much to complain about, however, if he had that understanding as to what you were on about?-- Well, I would suggest that the better outcome would have been achieved anyway with regards to the position I put to you earlier, that we were looking for people who respected each other.

10

Do you think that that is the way in which you and Mr Ray may have discussed the matter, trying to get a coherent group of councillors together, to fund them so that you might get a better outcome? What about that?-- I don't recall - I don't recall ever using that word "coherent" with Mr Ray and, certainly, from the point of view of getting a better outcome, yes, that was certainly the objective, a better outcome in terms of the performance and the behaviour of councillors.

20

Now, an e-mail from Mr Ray to you on the 21st of May 2004 - this is after the election - I just want to complete this concerning contacts with Mr Ray - refers to "some really disturbing scuttlebutt" and the need for you to meet and discuss - again part of Exhibit 89 - and it refers to the fact that you have an appointment set for the 25th of May. What's that about, do you know?-- I do recall this e-mail but I actually don't recall what the scuttlebutt was he was referring to. It could have been any one of a number of rumours that the media tend to circulate as fact.

30

Right. So you don't remember-----?-- No. I do specifically remember that - that e-mail because I remember the use of the words "scuttlebutt" but you need to take into account that Gold Coast City, even though we've got 500,000 people does, at times, tend to thrive on rumour and innuendo.

40

All right. Now, I want to ask you some questions - I'll move from that topic to the operation of the so-called Power/Robbins trust or account and the change of name to Lionel Barden. Again, I'll give you some documents so that will hopefully hasten this questioning, Mr Power. First of all, according to Mr Hickey - and this goes back to the meeting in late November and I think you've agreed that it was in that period, around about the 24th of November 2003 - you know this meeting at the Varsity Lakes coffee shop?-- Mmm.

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According to Mr Hickey - 603 - he, you and Robbins met to discuss putting together funding for candidates. "Mr Ray suggested" - this is according to Mr Hickey - "Mr Ray suggested that funds raised should be put in Hickey's trust

account and he agreed." Do you remember that being discussed?-- Yes, I do.

1

Bt he said, that is Mr Hickey said there would have to be clients nominated. Do you remember that?-- I vaguely recall that statement - was words to that effect anyway.

And do you remember you being mentioned, that is you and Robbins being mentioned as being the clients?-- Yes.

10

Now, you agreed to that?-- At the time we did, yes.

And Mr Hickey goes on to say he understood that you or Robbins had contacted Ray to arrange the meeting - well, we dealt with that this morning?-- Mmm.

And it was his idea for Mr Hickey to come along?-- Correct.

You knew that Mr Hickey was going to come along to the meeting though?-- Yes.

20

605. "There were several councillors who were considered not reasonable and rational" - this is Mr Hickey again - "namely Sarroff, Young and Crichlow" - again, you agree with that account of the meeting?-- I agree.

"And the names, several candidates who would be supported were also mentioned including Molhoek, Rowe, Pforr and Scott." Do you agree with that?-- Yes.

30

Now, you say - and I'm referring here to your statement - but this is in your statement at page 11. You there say that you were never involved in the actual receipt of funds. You do not recall ever being notified by Hickey Lawyers the actual receipt of funds or the quantum of specific contributions made to the trust or what amounts were paid to support various individuals. That's what you say in your statement?-- Yes.

Is that true?-- That's true within the context that the amount - the last statement was referring to the total amount paid out rather than individual amounts to individual candidates.

40

Well, you don't say that you were aware of the individual amounts being paid to candidates. Why didn't you say that in the statement?-- Well, I would have expected that that would have been part of the discovery and I would have thought that that would have come to light through this process, through the investigation. But having said that, the issue, as I saw it, was that the total amount paid out was the more relevant issue.

50

Well, you say it was a more relevant issue, why in providing a statement in relation to this matter, Mr Power, would you not have frankly and fully referred to your knowledge of individual amounts being paid to candidates?-- Very simply. I produced that statement with the advice of my lawyers on the basis of providing a narrative to give I guess a better explanation as I saw it. I certainly didn't have any

documentation to be able to refer to, to advise accurately as to what the individual amounts were. I can recall some since this hearing started because I've seen evidence. But, at that time, I had nothing in front of me that I could have pointed to, to say that I am absolutely aware that these individuals received 'X' amount.

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Well, you could have made a request to be supplied with information which would allow you to address, in a comprehensive way, what your knowledge was of individual amounts, couldn't you?-- Well, as I stated in that - that original statement and offered to the Commission, that if there was any extra information that the Commission wanted, to please contact me and I'd be very happy to get it. I did not receive any contact.

10

Mr Power, you were suggesting in the recent answer that you gave me, that the absence of any reference to individual amounts to candidates was there because of some advice you received from lawyers?-- No. What I said was, I received advice and the form of the statement that I gave as a narrative rather than addressing a dot point form to help better explain to the Commission the situation as I saw it. In terms of the absence of a reference to specific amounts to candidates, I've explained that quite clearly, I had no documentation, I'd be acting from memory and that's - that was not going to be accurate.

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Now, it would appear, and this is part of exhibit 97, what is described as a trust statement for Power Robbins Fund. It would appear that on the 23rd of December 2003 the Power Robbins account, within the trust account of Hickey Lawyers, was created. You accept that?-- According to this, yes.

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Well, you would have known at the time that that happened?-- Well, I wasn't aware of the date that it happened and I also wasn't aware at that time of the name that was being used.

Well, on the very next day, the 24th of December 2003, you and Sue Robbins signed an authority to pay Brian Ray seven and a half thousand dollars from the Commonsense Trust. Do you have that document?-- I do.

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"We authorise a draw of up to seven and a half thousand dollars for campaign assistance for division 5, candidate Brian Rowe, from the Commonsense Trust. Yours faithfully", and both of you have signed it and it's under the letterhead of the Gold Coast City Council?-- Yes, and if you look at the term - the use of the term "Commonsense", I think that indicates that we were not aware that it was actually in our names.

50

It wasn't in your name. Well, what-----?-- Well, the term-----

-----are you trying to make?-- -----the term that is used, "Commonsense Trust"-----

Yes?-- -----I think that indicates that we weren't aware that the trust was actually in our names specifically.

Well, you were the people who were controlling the fund?-- That didn't mean that we knew that our names were being used as a trust name.

Right. So, you were - what? But, you seemed to be making a point. I'm just wondering what-----?-- Well, only that - that we weren't aware until a later date, and I can't tell you when, I can't recall, that our names were specifically used.

10

But, you knew from the meeting - we've just been through this, you knew from the meeting with Mr Hickey that he suggested what the name should be?-- No, he suggested we be clients.

What? You thought that it would be a different name?-- Well, it was - the term "commonsense" has been frequently banded around, as you've - you pointed out earlier, and it was our assumption that that would probably be it because it was referred to in a number of meetings as a "commonsense resource".

20

Well, you're banding it about at this point?-- Well, it was banded about, as I said, frequently at meetings and you referred to it earlier, that was my exact statement.

Well, you were happy to use it?-- Commonsense Trust-----

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Yes?-- -----or - oh, yes, no problem with that.

But, would you have objected if you knew that it was in your name and Sue Robbins name?-- I think we hadn't really applied our mind to the implications of even being the clients when it was first suggested and that's probably an indication of how busy both of us were at that time. We certainly discussed it later in January, about our being responsible for distributing funds and we certainly discussed the - the issue of the perception of people being - being beholden to us and we felt that it - it was probably a mistake on our part, given the lengths we'd gone to, to ensure independence.

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Right. Well, we'll come to that opinion that apparently you came to at a later point. But, you - what was the - what, at this point, was your position? You were happy to be controlling the funds, you couldn't see any problem with that?-- I don't think we'd really applied our minds to it, to be honest and that's - that's something that, in retrospect, we should have thought about it a lot more fully at the time. Purely from the point of view there should have been separation between ourselves and the candidates because it could give the perception that we were looking after their campaigns and clearly we were not, they were looking after their own.

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It is - so, the implications that you're referring to that it-----?-- Rather than the actual - the actual management of

accounts - sorry, management of the campaigns, that's correct. It's more of a perception than the actuality of it.

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What about the implications of the fact that you and Sue Robbins, being city councillors, incumbent councillors, were controlling the disbursement of funds for a group of selected candidates?-- I don't understand where you're getting at with that question because I thought I answered that in the respect that we didn't believe that anyone should be beholding to any councillor. And, certainly, I have enough faith in the councillors who were elected to be strong willed enough not to do that. But, I certainly don't believe it was an appropriate perception to - to be promoting.

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So, what? It was a perception, really?-- It was a perception issue because I don't - you're talking about personalities, extremely strong personalities with all of these candidates. I don't think anyone would have been game to go to them and tell them that we arranged funding for you, therefore you must do this. That would have been just plain stupidity.

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Maybe you wouldn't need to, it'd just be expected?-- No, absolutely not. In fact, it would be totally against what I'd told them to their faces at the - the December meeting, that they need to be independent at all times and make up their own mind.

So at this time, late December, and even at the time that you came to sign this authority, it didn't occur to you that there might be a problem of, to use your word, implications arising from your being involved in this way?-- No, I don't think I really turned my mind to it till after the - after the Christmas break, well into January. By that stage things in the office had started to calm down a bit. We'd had a little bit more time to - to, I guess, take a deep breath and wonder where we were going with our own campaigns because we weren't concentrating on our own campaigns due to the workload in the office.

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With all your experience, you're writing an authority, you're signing an authority with Sue Robbins on the city council letterhead, and you're authorising funds to selected candidates and you say that it did not occur to you that there might be some problems of implications arising from that?-- That can happen to anyone, Mr Mulholland.

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In all your experience have you ever heard of something comparable happening of a common fund being used at the discretion of existing councillors in order to assist candidates standing at - for the first time at an election?-- I don't pay attention to what goes on in other local authorities. I can't answer that.

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Well, you don't know of it ever happening?-- I'm aware of trust funds that have operated in other councils. I'm also aware of a trust fund that operated for former Mayor Gary Baildon. As to how they're managed that's up to the individuals. It's not to me.

This wasn't any ordinary trust fund in the sense of a trust fund set up under a trust instrument, was it?-- I can't answer that, I'm not - I'm not trained in these matters. I can only tell you that it is a trust account, and a lawyer's trust account and that's all I know.

Even more remarkable, why you would not have sought legal advice before you were to embark upon such a process. Did you seek legal advice before you embarked upon this process?-- I don't see the need, given that we had the offer coming from someone who was of the legal fraternity to make available that account. I'm not aware of any illegalities in doing it through a - through a lawyer's trust account. I'm not aware of any illegalities for a councillor to distribute those funds.

What about the fact that this is under the letterhead of the city council?-- Yes, and that is solely my responsibility and it is something that it's quite out of character with me. In fact I should point out, Mr Mulholland, that even with my diary at this time I normally don't put election material in my diary, but given how busy we were at that period, the extreme stress that we were operating under on a professional basis, I certainly did something there that is completely out of character.

All right. Well, we know, as you'll see, from one of the documents or e-mails that you've got there, on the 24th of December 2003 Mr Hickey sent an e-mail to Mr Ray reporting on the creation of the trust account in the name of your name and Robbins, but you didn't know that?-- I'm sorry, you're on the Brian Ray-----

It's part of - yes, this is from Mr Hickey to Mr Ray of the 24th of December. Do you have that one there Part of Exhibit 89?-- Got one from Brian Ray. I've got one from Brian Ray to Mr Hickey on the 24th of December, not from Mr - that's it.

Oh, that's the other way round?-- Sorry, not from Mr Hickey to Mr Ray.

Sorry?-- Yep.

Right. From Mr Ray to Mr Hickey?-- I don't recall ever seeing that.

And-----

CHAIRMAN: The one below it is from Hickey to Ray?-- Oh, I'm sorry, Mr Chairman, yes.

MR MULHOLLAND: Do you see it?-- Yes, I do.

"Councillor David Power and Councillor Sue Robbins, Gold Coast City election campaign. We have opened a trust account." So here's Mr Hickey saying on this same day, the day that the first disbursement of funds occurred, the name of the fund but

you didn't apparently know that?-- Not specifically that it was going to be in our names, no, and as you can see, we're not cc'd on that anywhere.

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Would it have made any difference? Would you have objected if it was in that name?-- I think - I mean, this is wisdom in hindsight and it's a fairly cheap commodity, but I think that if I had sat and thought about our name being used on - specifically on the trust account it probably would have triggered further thoughts about the issue of separating sitting councillors from the candidates.

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I mean, the fact that you put a name, a different name, if you're controlling the fund, doesn't in reality make a scrap of difference, does it?-- Well, I think it does and it shows quite clearly that we were not aware of the name that the account was held in. We certainly were aware that we were the clients, there's no denying that, but we certainly weren't aware and I think - I think, as I said, with the wisdom of hindsight that if we had been aware it probably would have made us sit down and further discuss the matter in detail.

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CHAIRMAN: You didn't really answer the question then. It was put to you that it makes not a scrap of difference not matter what the name was, as long as you controlled the disbursement of funds from it. The implication that you refer to is still there?-- Well, the implication is still there, Mr Chairman, but as I said, it probably would have, if we were notified, if we had known it was in our name, made us think more carefully about those implications. I think the fact that it was in the common sense trust we were just merely focusing on the fact that there was a fund there and these people needed help and we were providing help. End of story. And I don't think we thought any further than that.

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MR MULHOLLAND: Well, just in relation to that answer you've made to the chairman, would you care to go to the e-mail which is there from Mr Morgan to you and Sue Robbins of the 5th of May - sorry, 5th of January 2004, 8.54 p.m., to "Councillor David Power and Councillor Sue Robbins. Subject Power and Robbins 2004. GCCC," we know what that is, "Election Trust Fund?" Do you see that?-- Yes.

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"Hi, David and Sue," and so on, "Contact with the five new candidates has been constant over the Christmas-New Year break with meetings here at Quadrant and numerous phone calls for advice on various matters. We just sorted out today some urgent art work amendments for Brian Rowe." So there it is. There at that time you are being informed, aren't you, of the name, Power and Robbins 2004 GCC Election Trust Fund. Now if you had such an objection-----

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CHAIRMAN: Well, that's perhaps a little bit unfair because down the second paragraph of the e-mail it says, "We don't have a real client. As a matter of fact I'm still unaware of the name of the trust fund."

MR MULHOLLAND: Yes.

WITNESS: And in fact, Mr Chairman, if you look the subject it's got a question mark after - after it. So we wouldn't have paid any attention to that at all.

CHAIRMAN: But it should have drawn your attention to the fact that there was at least the thought that your name might be on it?-- The matter, I have to say, Mr Chairman, until probably mid to late January, had not even occurred to us. I'm sorry, I should refer to myself. It certainly wasn't something that Sue and I discussed and I can only assume it had not occurred to her either.

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MR MULHOLLAND: Well, this is a Quadrant account, of course. This isn't the Hickey account. It didn't occur to you. What did you understand at this time that the name of the Quadrant account was?-- Well, I'm assuming that that was about the period that we were notified that they wanted a client and, of course, as I stated earlier, it was always my assumption that the individual candidates would be the client from our initial discussion. I left this matter in Sue's hand. I can't really give you any other answer other than remembering that I did see it.

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So you didn't go back to Mr Morgan and say, "Hang on, I object to that, that's not the name that I want to be associated with, you'd better make it in some other name"?-- On the subject title you're talking about?

Yes?-- No. Not at all.

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Well now, there's an email - first of all, you'll see there's a diary entry of yours, 20 January 2004, 3.30 to 4.30 p.m. hold for meeting, Robina?-- Yes.

Bob, Ted, Sue, Jan, David, Ray. So, would you agree with me that this is a reference to La Castra, Shepherd, Robbins, yourself, Grew and Hackwood?-- I can assume that but I don't actually recall that meeting ever happening and I couldn't even tell you why it was in there.

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Well, there's an email from you to Hickey Lawyers of the 21st of January 2004, have you got that one, about a request for draws and specific sums by candidates, part of Exhibit 100, have you got that email, 21 January 2004?-- Yes, I have that.

And there's a follow-up email on the 22nd of January 2004 in which it's stated that your figures were wrong and Sue had given you the correct ones and if you notice that there's an email of-----?-- I'm sorry, I don't see one that says that my figures are wrong.

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You don't have that there?-- What date was that again?

22nd of - sorry, 21, 22 January. You don't have that?-- I don't appear to have one that indicates that my figures were incorrect.

All right. Well, just hold on for a second. Let me put this document in front of you?-- I don't think it's there, Mr Mulholland.

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No, it may not be. If I might just stay here for a moment, Mr Chairman, to make it easier. This is part of Exhibit 100 as well. You see the 22nd of January 2004, from you to Mr Hickey, "Sorry, Tony, my original email had the figures wrong, Sue has given you the correct ones." And if I can just show you an email from Sue Robbins to Mr Hickey of the 22nd of January advising certain amounts?-- Yes.

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Then compare that with the amounts that you indicated a draw of, this is the - from you to Mr Hickey of the 21st of January 2004?-- Yes.

You authorised different - you authorised amounts which were different than the amounts authorised by Sue Robbins?-- Yes.

See that?-- Yes.

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And then your write - send the email afterwards on the 22nd of January saying that Sue's were the correct figures?-- Yes.

All right?-- Yep.

So there you can see that you are authorising those payments; correct?-- Yes.

For all of those candidates?-- That's correct.

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Directly involved in - and authorising those draws?-- Yes.

Now, subsequently there was an authority of the 23rd of January - do you have that authority there?-- Yes, that's in a more structured form - letter form.

Right. It follows really the same structure as the one in late December that we've looked at except that it's not under the Council letterhead, is it?-- No, it's not.

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Right. Had you had a change of mind in the meantime or was that just an accident?-- I think I was paying more attention to the fact that I had - had stepped out of my normal practice.

All right. So you and Sue Robbins are authorising those amounts to be paid?-- Yes.

As appears. Yes. So that in total then is an authority from you and Sue Robbins authorising \$29,000 to be paid directly to the four candidates?-- Correct.

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Now, coming back to the meeting referred to in your diary or suggested by your diary for the 20th of January, do you think that putting that together and having regard to the timing that that meeting with those other people could have been about the funding for these candidates?-- Not a chance.

Why's that?-- For the simple reason that these other people were not aware of what Sue and I were doing.

Well, would you have any reason not to have mentioned at a meeting assuming you had the meeting on that date to those people what was happening, what you were up to?-- I think all of them - all of those that have testified have indicated that they were not aware and that's very clear. We did not tell them-----

Leave aside what they have said for the moment, what do you say?-- We at no time discussed with any of the others what we were doing.

We being who?-- Sue and I.

You and Sue. Why didn't you discuss it with the others?-- Because we didn't, Mr Mulholland. I mean, I don't - there's a lot of things I don't discuss with my colleagues, some of them I classify as very good friends but I don't discuss everything with them.

If there was no problem about it having regard to your association with them why wouldn't you discuss it with them what you were doing?-- Because I chose not to.

Why did you choose not to?-- Because I chose not to. I mean, I-----

That's no answer-----?-- Well, I'm sorry, but it is. I have the right to be able to choose who I discuss things with and I don't believe there's any laws against that. The fact that Sue and I chose not to discuss it with anyone was individual, we certainly didn't decide to do that. It was up to our individual choice but I can guarantee we did not discuss what we were doing with the other Councillors.

All I'm suggesting to you it's a significant event in your life in relation to the election campaign, something that never happened before you being involved in this way and yet you choosing not to discuss with anyone apart from Sue Robbins what you're doing?-- That's correct.

That rather suggests that you saw something wrong about what you were doing?-- There's absolutely nothing wrong with what we were doing. It's part of the constitutional right to be involved in the election process.

I'll pass on. Would you go to the email from Roxanne Scott to Chris Morgan, part of Exhibit 134 of the 27th of January 2004. "David has given me a tentative figure for a campaign budget, have you heard anything definite yet?" Do you see that?-- Yes, I do.

Now, this suggest that at this time you were having control over the overall budget allocation for candidates. Would you agree with that?-- At that time, yes, I agree with that.

There are then two email transmission from Tony Hickey on the 28th of January 2004, both part of Exhibit 100; one to yourself, Robbins and Ray, indicating that Hickeys hold \$29,000 to make the payments that were authorised by yourself and Robbins on the 23rd of January, and one to Ray about how you and Robbins "are getting a little bit frustrated in waiting for their money". Do you see that? I put two emails to you at the one time?-- I'm sorry, I'm still looking at the first one. My apologies.

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This is from Tony Hickey on the 28th of January?-- Yes, now I see it.

Have you got that?-- Yes, I have that.

Just read that. You'll see it referring to \$29,000, to make the payments - this refers back to that previous authority that I took you to. Do you see that?-- Yes.

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And then the other one is to Brian Ray about how you and Robbins "are getting a little bit frustrated in waiting for their money". Do you see that?-- Yes.

Does that reflect the position, that you were getting frustrated in waiting for the money?-- We were certainly getting concerned that people had made promises and, of course, individuals who had chosen to accept funds were designing their campaigns around the potential of receiving assistance. So, yeah, we were getting concerned.

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At any rate, you're accepting, aren't you, that you understood full well that this fund was under your control and that of Robbins?-- At that point in time, yes.

Now, Mr Morgan, I can tell you, says he was told by you that the name of the account held in Quadrant's office would change. Now, on the 30th of January, he was advised that Lionel Barden had allowed his name to be used, but Mr Morgan said he wasn't too sure why the name was changed. This is at 852 and 922 respectively. But he told the commission the name has changed because it was bound to become public at some stage. Now, that's at 966. What can you say about this change of name, Mr Power? What's your evidence in relation to that?-- Well, my recollection is, as I stated before, it was around about the middle to end of January that Sue and I finally had a chance to sit and discuss the matter, the implications of candidates receiving money ostensibly from a sitting councillor. We had decided that we needed to separate ourselves for no other reason than to ensure that that independence was not only done but seen to be done. At that point in time, we had no idea of who or how that should be done. I spoke to, as I stated earlier, Mr Solomon on at least one occasion on the phone, and I believe he suggested Lionel to me.

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Mr Solomon, right. When did you first think of whether it was at the suggestion of anyone else or not? When did you first

think of Lionel Barden as perhaps having his name used?-- Look, I'm sorry, I can't tell you that. It was probably mid-January that we were starting to look at the issue of our involvement. When I actually had Lionel's name suggested to me, there is no way I would be able to recall that.

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Can I just - I don't want to raise objection-----

CHAIRMAN: Sure.

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MR TEMBY: No, no, I understand that point.

MR MULHOLLAND: This is in relation to Quadrant?-- I'm sorry, you're talking about the Quadrant name?

Yes, the Quadrant name?-- Yes. That was on the 5th of February, as I see, from Chris Morgan. He sent the draft letter.

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Yes?-- It was around about that time that he asked me for his client - I apologise, I thought you were talking about the trust fund. My apologies. So as far as-----

So it wasn't until February. Is that what you're saying?-- Look, around about that time. It was all done roughly at the same time, that I can recall, that we started to ensure that the independence was not only done but seen to be done. But I know that it was about mid to late January that I spoke to Ian, who suggested that Lionel-----

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You spoke to Ian?-- Yes, that Lionel-----

Ian Solomon?-- -----would be an appropriate person to be in control.

Well, that fits in. That would fit in with what Mr Morgan says. Let me just take you back, because you say you misunderstood what I said. Morgan says he was told by you that the name of the account held at Quadrant's office would change and, on the 30th of January, he was advised that Lionel Barden had agreed to allow his name to be used. That's at 852. So you say that it was before that; that is, before the end of January?-- It was some time around then. I can't be specific. There was no meetings that I can recall other than a meeting with Lionel over coffee at Tiger Lily's, which I think is in my diary, where we discussed the fund. But as far as the Quadrant account, I'm sorry, I don't recall too much about that.

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And you, up until that time, understood that the name that Quadrant were using was your name and Sue Robbins'?-- No, I did not understand that.

Righto. So you did not know that?-- No, not at all. In fact, as I stated earlier, it was my belief that the individual candidates would be the clients for Quadrant, given that they were controlling their own destiny.

All right. Well, there is a diary entry for the 30th of January of yours, 4 to 5 p.m., Chris Morgan. Do you see that?-- Yes, I do.

Do you know what that's about?-- No, I don't recall.

It could be about this name, Lionel Barden?-- It - it may have been about that issue. It also may have been the issue that Chris I believe was also getting concerned about, people meeting their - their promised donations.

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You were intimately involved, in fact, may I suggest controlling, the name of Lionel Barden being used in relation to Quadrant. Would you agree with that?-- No, not at all-----

You wouldn't?-- -----it was entirely up to Lionel Barden to - to say yes or no with that. So, I mean that's - that's a preposterous suggestion that I would tell Lionel what to do or use his name without his permission.

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No, no, I'm not suggesting that you were using his name without permission but I'm suggesting that you were - you spoke to Mr Solomon on your own account. You received the name Lionel Barden and he came to be the name that was used on the Quadrant account. Correct?-- Somewhat of a simplification but certainly it was the name that was used on the account, yes.

And, the reason for the use of Lionel Barden was for convenience?-- In what respect?

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Well, it was convenient - did you tell - did you speak to Mr Barden?-- I would have had to have spoken to Lionel for his name to be used.

Right. Well, did you tell him that you were controlling a fund in an account at Hickey's and - which was being used to disperse monies to selected candidates. Did you tell him that?-- I certainly told him we were looking - that we were collecting funds. I certainly told him that we were looking to - to help candidates, individual candidates as best we could. Whether or not I specifically mentioned a single account, or single trust account, no, I don't - don't believe I did. It was not an attempt to mislead Lionel, it was simply, you know, stating that it was an ongoing process of collecting and distributing funds.

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Well, what seems to be surprising in this, Mr Power, is that Mr Barden says right through this process he did not know that you were in control of an account at Hickey Lawyers?-- And, that's probably right.

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He thought that when he was asked that he was being asked to be the name that would be used in relation to the fund. That's what he says?-- That's probably right because the statement I used with him was that - was to the effect that we were collecting funds to be used for these candidates. Now,

that was an ongoing process. I certainly did not hide it from him. Lionel is - is a good friend. I sure as - sure as heck wouldn't try to deceive him in any way.

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But, look, here he is, if he's a good friend perhaps it's even more surprising. But, here you are, there have been already these funds and large amounts dispersed from the account. Mr Barden is being used in relation to the fund for the first time after the 30th of January and he's not told what's happened in relation to the fund, the details of what's happened in relation to the fund up till that time?-- Well, I-----

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And, yet, he's supposed to be what, the trustee, is he, of this fund?-- I disagree with the term "used". No-one used Lionel at all. Lionel agreed to - to be in the position that he was. He agreed with the knowledge that we were collecting funds. He agreed with the knowledge that we had been collecting funds for some time.

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But, agreed to what? He agreed?-- To distribute further funds.

Well-----?-- And, also to be the client.

-----with respect, what he agreed to was that he'd go down to Quadrant, look at the invoices which were prepared once a week, check the invoices to see that they seemed to equate with what the amount of work shown on the service performed should be worth and without further investigation give them a tick. That's what he did. That's what Mr Barden did. And, in relation to the funds at Hickey's, so far as those funds are concerned, they continued to be controlled by you?-- Well, that's not correct. After - after a certain date, and you have the date there, I don't, Mr Barden was responsible for authorising. Now-----

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The 4th of March 2004-----?-- Whatever that date-----

-----this is a month before the election, three weeks before the election, up until that time, you controlled the fund and you controlled that account, didn't you?-- No-one's denied that.

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And, in fact, I suggest to you right up until the election, you were in effect of control of the monies that were dispersed from the fund?-- Incorrect.

Okay. Well, we'll go to the evidence in relation to that. So, so far as Mr Barden was concerned, you - this was just no deliberate attempt on your part to mislead Mr Barden, you just didn't think of telling Mr Barden what had occurred in relation to the details of this fund and who was operating it and about the amounts that had been distributed, and so on, when you asked him to come on board?-- The principle issue, which was discussed and made very clear, is that funds had been collected, were continuing to be collected, and some had

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been distributed and would he take over from there. That was it. 1

Now, there are emails, which you should have there, from Mr Morgan to you of the 4th of 5th of February 2004, redrafting the letter of appointment for Mr Barden with attached draft letter. Do you have that there?-- I do.

And, you advised that Mr Barden has agreed to act as "primary client"?-- Yes. 10

What's that mean, the "primary client"?-- Well, as I understood it at that stage, that the clients were not going to be listed on Quadrant's books as individual candidates, that they required, or wanted, a primary client and I assume then that the - the other - the candidates would be sub-listed under that. That - that's basically why they requested that letter of appointment from myself and Sue in the first instance and of course why it ended up from Lionel in the - in the wash-up. 20

And, all right, well, Mr Barden says, and I take it you don't quibble with this, that he didn't know the trust had been previously held in your name and that of Robbins and you never told him that, you'd agree with that?-- No, that's correct. I mean, as has been shown, we didn't even know for quite some time that it was in our name.

All right. Now, your diary shows that you met with Mr Barden on the 4th of February 2004, 2.30 to 3.30. Lionel Barden, Tiger Lily Café, Chevron Island?-- Correct. 30

Now you met there, what - did you have some discussion about the fund?-- That's when I put it to Lionel, with regards to the fund and as you can see, there was some time lagged between that discussion and it actually occurring and it was simply because of how busy I was.

So busy that you couldn't give him the details of the fund to that time?-- Well that's - that's unfair, Mr Mulholland. Don't----- 40

Why is it unfair, Mr Power?-- Well, it is unfair because I told him that we had been collecting funds, we were continuing to collect funds for the purpose of supporting individual candidates. The name of the - the account did not seem relevant.

This back-dating of the authority, that was just a sham, wasn't it?-- Well you'd have to take that up with Quadrant. They required----- 50

Well, you went along with it?-- -----Well, sorry, no, I didn't go along with it. What I did was organise someone who would be their primary client. As to when it was dated, or back-dated, that's an issue for Quadrant and - and them alone. It's not an issue for me.

The way in your statement that you described this is, you say, that you believed - this is page 8 of your statement. You believe Lionel Barden established a trust fund known by various names after you and Robbins had originally operated as the Power and Robbins Trust, but you have limited knowledge of these entities?-- Correct.

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Does that, to your mind, truthfully and fully state your involvement in relation to this fund?-- Yes.

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All right. Well, would you have a look now please at the internal email from Mr Morgan of the 6th of February 2004, part of Exhibit 135? "To change the name to Lionel Barden Trust Account instead of Power and Robbins."?-- I'm having trouble finding it, Mr Mulholland.

It's from Morgan-----?-- Oh, yes. Yes.

-----6 February-----?-- I have that.

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-----Right. It's an internal one?-- Yes.

And it?-- -----It's got page 2 of 2 at the top right hand corner.

Okay. And you see "Lionel Barden Trust Account instead of Power and Robbins", or you didn't know about the Power and Robbins - you've told us that, being used up to that time?-- Yeah. I don't even recall seeing this email.

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No, no, well I'm not suggesting it went to you, but I just want to ask you about what your knowledge was at the time. Let me just go on. The email was forwarded also to Sue Robbins and you'll see that she responds on the 8th of February 2004 noting that she is pleased with the email and that the change of name is essential?-- Just a minute. I'm having trouble finding that one as well.

This is the 8th of February, 1 of 2?-- I have one from Chris Morgan on the 9th.

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It's down the bottom.

CHAIRMAN: It should be the bottom of that page?-- Yeah.

MR MULHOLLAND: It's the bottom of what you're looking at there?-- No, Mr Chairman. I've got-----

There's one at the top-----?-- I'm sorry. I have got it now. My apologies, yes, I have. Yeah, the name of - the change of name is essential, yes?

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All right. Now, you'll see - go straight then to the top of the page and you'll see from Chris Morgan - that was sent to Chris Morgan and then from Chris Morgan, he sent an email back to Sue Robbins and he cc'd it to you, re: change of client account name. Do you see that?-- Yes.

Now, you have said that you had a conversation with Sue Robbins. Did you see, as she appears to, that there was - the change of name was essential?-- Yes, I did and it was something that we'd reached a conclusion together that - that to ensure that independence is not only seen to be done, but is done, that that was appropriate.

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Tell me this, why was there - there no attempt at this stage to do anything about the - the account and the control of the account at Hickeys?-- From our name to Lionel Bardens?

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Yes?-- Very simply. I was very busy. I had my own campaign to run. I got distracted for a couple of weeks and didn't get back to it for a couple of weeks.

Or did you think that you didn't - you wouldn't have to do anything about the solicitor's trust account because there would be more of a difficulty in anyone finding out that you were in control of that account?-- No, I didn't have a problem with that. The - the issue to us was always to ensure that the candidates felt that they had their own independence, they were running their own race and clearly that - that was part of our philosophy and it was absolutely no problem at all.

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Mr Power, I suggest to you that that doesn't provide any reasonable response to the question that I asked you. What I'm asking you is this. You came to the conclusion that it was inappropriate for you to have been associated, as you were, in relation to the Quadrant account so there was the use of Mr Barden in relation to that account. You were heavily involved in relation to the solicitor's trust account to the extent of actually controlling the distribution of funds. It is inconceivable, I suggest, that you wouldn't have thought if you regarded it as inappropriate in relation to the other account, why you wouldn't have done something about the Hickey account at that time?-- Well-----

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This idea that you'd just forgotten, or something, or you didn't think of-----?-- No. I didn't say I'd forgotten.

40

Well, you didn't think of it because you were too busy?-- I didn't say I'd forgotten, Mr Mulholland, and I clearly pointed out that on the 4th of February I met with Lionel to discuss that very matter, to change it over. Now, if you've ever been involved in an election campaign, as well as trying to be a councillor, you'll understand that they are the two primary focuses. This was not my primary focus.

You're controlling the funds to the candidates-----?-- That's-----

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-----through the - hold on, you're controlling the funds to the candidates through the lawyer's trust account. Now you're having a meeting with a person who you're going to use in a trustee capacity and you did not think of the account and the appropriateness of your name and being used in connection with the solicitor's trust account?-- I'm sorry, I didn't say that.

I just said that I had that meeting specifically on the 4th to discuss the trust account.

1

With Mr Barden?-- Barden, correct.

In relation to Hickey's trust account?-- Correct.

Well, why did you not seek to make a change in relation to Hickey's trust account?-- And as I've just explained I was in the middle of a campaign of my own which was a very difficult one and I had to fulfil my duties as a counsellor and as you can see from my diary that is an extremely busy process. I got to it when I had the first opportunity.

10

Mr Barden says, he did not know of your association with the Hickey trust account?-- I have no quibble with that.

Well, you didn't discuss it with him then at the meeting at all, did you?-- I told him that there was an account at Hickey's. He needed to speak to them. He's already testified to that. I told him-----

20

But you didn't tell him who controlled it?-- I told him we were - that there was an ongoing collection of funds for the distribution to candidates. Now as far as whether I controlled it, Sue controlled it or whatever, that really wasn't an issue. The issue was whether he was prepared to control the funds from there on.

Well, let's look at what happened thereafter; despite the appointment of Mr Barden on or about the 6th of February in relation to Quadrant, on the 19th of February 2004, you and Sue Robbins signed an authority to Hickey Lawyers to pay \$33,000 directly to four candidates and you also authorised \$20,000 to be "held and paid as invoiced by Quadrant" part of Exhibit 97?-- Correct.

30

So there you are, the 6th and the 19th, you didn't think at this time that maybe you ought to have a chat with Mr Barden and fill him in on what's happening - what you're doing?-- Well, the issue for Mr Barden is that he would be responsible for anything that came after that date that he took over. The issue up until then was not a matter of discussion. So, no, I did not think about it. I did not believe it was an issue that concerned him too greatly.

40

There was an email to Mr Morgan on the 12th of February 2004, do you see that?-- Yes.

Mr Ray notes that David Power is "chasing \$60,000 in contributions" and on the same day Mr Morgan emails Mr Ray to advise that you are following Villa World as you had been talking to Brent Haley from Villa World earlier that day, do you see that?-- Yes.

50

And that reflects the truth?-- I believe so, yes.

That's part - they are part of Exhibit 89-----?-- That's right.

1

Now your diary for the 12th of February contains an entry, 10.30 to 11.30 a.m. Brett Haley and Stewart Whitewood of Villa World, DP Office, Nerang, with a number shown and Mr Haley's statement indicates he discussed donating to the fund at a meeting with you on the 23rd of February and, indeed, your diary for the same date refers to such a meeting; do you agree with that?-- Yes.

10

Mr Haley says that you told him that you were "openly canvassing all development companies who had interests on the Gold Coast and that you were campaigning on the basis of your reputation as a commonsense and approachable councillor", Exhibit 170. Did you - do you agree that you told Mr Haley that?-- Well, they're somewhat two separate steps. The issue of what I was campaigning was my own-----

Well, let's take them one by one?-- -----with my own campaign. So with relevance to this I think it's somewhat limited. As far as openly canvassing all development companies, I was openly canvassing anyone who would listen.

20

No, what he's suggesting - what Mr Haley is speaking about is discussing donating to the fund?-- Yes, I understand that.

This is in relation to the fund-----?-- I understand that.

-----this is the fund that you were controlling?-- I understand that.

30

Right. So did you tell him, in connection with that, that you were openly canvassing all development companies who had interests on the Gold Coast and that he was campaigning, that is, you were campaigning on the basis of your reputation as a commonsense approachable councillor; did you tell him that?-- I think, once again, they are two separate issues. The discussion was about my own campaign at one stage which I clearly was campaigning on that basis. The reference to campaigning in this aspect was not the issue of canvassing donations in any way shape or form. The first component is with regards to, yes, canvassing all developmental companies. As I have stated, I canvassed businesses in general.

40

This is the 12th of February; is that right, 12th of February. So you're talking about - you're not talking to him at that stage - I'm sorry-----

MR WEBB: With respect, doesn't the Haley's statement give the date as being the 23rd of February-----

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CHAIRMAN: Yes, 23rd of February.

MR MULHOLLAND: Yes, sorry. There are these two meetings, but do you - at that meeting on the 23rd of February 2004, do you say that you had no discussion with Mr Haley at all in relation to donating or anything about the fund that we are

speaking about at Hickey Lawyers?-- No, I'm sorry. You're misunderstanding what I'm saying. I'll repeat it again. The issue of canvassing all development companies and soliciting support, yes, clearly I did canvass that with him at that meeting and I can-----

1

Were you asking him for a donation?-- I asked him if he was prepared to contribute-----

Right?-- -----left it up to him. I don't quibble with that. As far as all developmental companies, I also advised him that I was approaching general - the general business community as well but the issue of campaigning on the basis of his reputation as a commonsense and approachable councillor, that was a reference to my own campaign and what direction I was taking. It had nothing to do with the fund.

10

I see. All right. Did you also indicate to him that you were canvassing other development companies in relation to the fund?-- I advised him that I was discussing it with all sorts of companies. Not just development companies-----

20

Did you-----?-- -----marine industry, for instance.

Yes. Did you - do you agree that you also met with him on that earlier date on the 12th of February-----?-- On the 12th of February, yes, and, as I understand, the discussion, as I recall, was with regard to a couple of sites that they had within my division and some issues of infrastructure provisions to those sites.

30

So discussion about donating to the fund on that earlier occasion?-- Not that I recall, no.

Now on the 13th of February, this is part of Exhibit 89, Mr Ray replies to a Morgan email of the 12th of February and what he says is that he has spoken to you and that you promised to ring Ray that day to confirm where you are in relation to \$80,000 worth of commitments. Now do you remember that?-- Yes, I do.

40

All right. So that accurately states what was happening?-- Yes.

Mr Ray notes that he and Morgan were going to have a meeting on the 17th of February with you and notes "we should attempt to resolve everything by that date." See that?-- Yes, I do.

And your diary for the same date, the 17th of February, has a reference to "appointment Glenferrie Drive, Ray Group, Sue Davies" et cetera?-- Yes.

50

And Sandi there is Sandy Wild. Did you know her at Hickeys?-- I may have.

PA there?-- I may have.

All right. Well, do you - do you agree then with what that reflects, that is to say that you are trying to resolve by that date the question of the funding of the commitments?-- That's correct.

1

The \$80,000 worth of commitments, trying to what, crystallise that?-- Yeah, well, basically get people who had-----

Firm it up?-- Yeah, basically people who had previously indicated support, chase them up if they hadn't - hadn't done anything, and possibly come up with new ideas?-- On the 17th of February, 2004, Mr Pforr e-mails you requesting a \$5,000 draw down, saying you would - that he would have to discuss the issue of preferences with you. Do you see that? Have you got that one? Mr Pforr e-mailing you on the 17th of February?-- I'm looking. Yes, I have that.

10

Pardon me for a moment. Do you have a number there, 6.17 on the-----?-- Yes.

20

-----top right hand?-- In fact they're all numbered top right hand corners.

Now, so you agree with that, that's what that is about?-- Yes.

So you are having at this time continued involvement in directing funds despite the appointment of Mr Barden?-- Well, that's not what that says. It's asking for a draw. The only thing I could do once Mr Barden is appointed is to place that request if it was placed with me. I certainly wouldn't have had the ability, if at that time he had been appointed, to authorise a draw.

30

Why wouldn't you have the authority?-- I said if he had been appointed.

If he had been appointed to what?-- To control that fund.

But he hadn't been appointed to control Hickey Lawyers' account-----?-- Well-----

40

-----in your name at that stage, had he?-- At that stage. In fact this doesn't have a date on it.

No, this is-----?-- This doesn't have a date on it so I don't know when this was-----

Have a look at the foot of it, right hand side?-- 17th of the 2nd. My apologies, it does have a date at the bottom there.

50

So what I'm-----?-- So at that stage, yes, Mr Barden had probably not formally taken over, no.

Right. Not formally taken over? He didn't even know anything about your involvement, you've told us?-- He knew that we were collecting funds, he knew that we were distributing funds.

Well now, according to Mr Ray's diary, Exhibit 91, together with Mr Hickey's evidence at 642 and 651, on the 17th of February you, Mr Hickey and Ray met?-- I'm sorry, 642 and 651 did you say?

1

No, no. No, that's just a transcript reference?-- I'm sorry.

I'm not giving you that for any reason, I'm just-----?-- Mmm-hmm.

10

-----giving that for the purposes of other people. But any rate, there's a meeting on that day. Do you agree that there was a meeting at Tiger Lily's at about that time?-- I don't have anything in here. I'm not sure where you're referring to at the moment, Mr Mulholland.

Well, I'm referring to Mr Ray's diary, that's all. Let me-----?-- I've never seen - I've never seen Mr Ray's diary.

6.18?-- It's certainly in Mr Ray's diary. I'm not sure whether it was in mine.

20

Well, I don't think there is any reference in your diary to it. Do you remember such a meeting?-- Not off hand.

All right. On the 18th of February 2004 Barbara Christoffel, who was a campaign worker for Mr Rowe, e-mails Sandra Wild at Hickeys saying, "Councillor David Power has confirmed with us \$27,000 will be made available today for the Rowe campaign fund." This is part of Exhibit 100. This is 6.19. Do you have that?-- I do.

30

And here you are, continued involvement in directing the funds despite the appointment of Mr Barden?-- I'm sorry, but you just said Mr Barden hadn't been appointed.

Well, despite the appointment of Mr Barden in relation to Quadrant, he still doesn't have any control whatever of the-----?-- No-one's denied that.

40

-----fund, does he?-- No-one's denied that.

And it still hasn't occurred to you that there should be any change in relation to Hickeys?-- Well, with all due respect, it had occurred to me but I've explained on twice - on two occasions now that I had not got around to doing it.

You have had sufficient time, apparently, to be heavily involved in organising funding but not sufficient time to do anything about the name of the account or who was controlling the account at Hickeys. Is that what you're telling us?-- It's a fairly strong leap, I would have thought, Mr Mulholland, given that I was concentrating on my own campaign at the time and a very difficult campaign it was. The fact of the matter is that I had not got around to it. It is a simple case of prioritisation of the things that I was doing. Whether that is believable to you or not is your choice.

50

\$20,000, I can tell you, was in fact paid to Mr Rowe on the 20th of February so there's this e-mail that I've referred you to on the 18th of February. On the 20th of February, \$20,000 is in fact paid to Mr Rowe?-- Mmm.

1

There's a reference to 27,000 but in fact the amount that went to him is 20,000. So you authorised that; is that right?-- I - if there is documentation to show that I authorised that then I would have to agree with it.

10

Well, you authorised all funds, did you not, up until early March at any rate?-- Well, it would have to be authorised in writing and, as I said, if there is authorisation in writing to show that that 20,000 was authorised then, yes, I did.

Would you just go to 620, please?-- Yes.

Do you see that on the 18th of February 2004 you are e-mailed by Mr - I'll go past that and I'll come back to it. On the 26th of February - this is 6.21 - you wrote to Mr Bill Roach - that's from the Roach Group; is that correct?-- That's correct.

20

About contributing to a "community-based fund" that had been established to bring back dignity to the Gold Coast and "certainty in the decision-making process"?-- Correct.

Part of Exhibit 81. "Certainty in the decision-making process". Remember I asked you about the question of the result that was to be achieved-----?-- Predictable, I think.

30

-----by what you were doing. Remember me asking you that?-- I think predictable was the word used.

Well, here's "certainty". "Certainty in the decision-making process". This is a way you were describing this fund that you were controlling. It's established to bring back dignity to the Gold Coast and "certainty in the decision-making process". Now, those were your words. What did you mean by them?-- Very simply, we'd had a track record of decisions being made and then reversed either through rescission motions or alternative motions at a later date based on new agenda items. It was confusing to the organisation and it was particularly confusing to the community when you were having decisions reversed continually on major issues. So the issue of certainty was simply from the process of, if you make a decision, carry it through, finalise it and deliver it.

40

You'd only get certainty in the decision-making process if you were able to achieve a majority of like-minded candidates, wouldn't you?-- You would certainly get decision making - or, sorry, certainty in the decision-making process if the decision you reached was one that everyone respected. Now, whether that's a majority, that would be borne out through the governmental process, as I said earlier, not the candidature process.

50

On the 26th of February you wrote to Col Dutton of Stocklands, Exhibit 167, in similar terms requesting a donation for a community fund?-- Correct.

1

Do you see that there?-- Correct.

Now, you continue to - or Mr Morgan continues to liaise with you then about payment and so on, emails - this is 6.22 - have you got 6.22?-- Yes, I have.

10

Emails from Mr Morgan to you of the 1st of March 2004, "Just a quick note and a concerned one to boot." Do you see that?-- Yes.

And further, March 2004, "Really appreciate your efforts to move some funds our way today." See that?-- Yes.

The last email also says that they're going to provide you with a spreadsheet showing an overall summary analysis of actual campaign commitments and proposed expenditure to date per candidate. Do you see that?-- Sorry, is that 6.22?

20

6.22. That email - the email of the 3rd of March, do you have that one there?-- Sorry, I do. I've actually got two listed, it's 6.22.

All right. Well let me-----?-- There's one on the 1st of March and one on the 3rd of March.

Well, just let me suggest to you that there is such an email-----?-- No, I have it - I have it.

30

You haven't got it there?-- Yes, I've got it here.

Sorry, you have got it there?-- I think so. It's - "Really appreciate your efforts to move some funds our way today, thank you both."

That's the one?-- Yeah, there's two listed at 6.22.

40

And it says - refers to the spreadsheet, do you see that?-- Yes.

And that would suggest - and I just want you to make any comment you wish about it - but that would suggest that you again are really controlling the whole process in relation to the fund, would you agree with that?-- Once again as I said until Mr Barden officially took over distribution of funds-----

50

Yes, this is-----?-- -----then clearly that - that was the case - but I believe that the spreadsheets were given to us on the basis of giving some understanding of what may be needed for these candidates to complete their campaign so it was more for a collection purpose rather than distribution.

Right. But you are being fully informed in relation to what's happening at Quadrant, aren't you?-- I wouldn't suggest I'm

being fully informed. I have no idea what the individual candidates were up to in terms of their campaigns.

1

Righto. There's an email there on the 2nd of March, part of Exhibit 100, this is an email from you to Mr Hickey. Do you see that?-- Yes.

That Mr Morgan is getting edgy and that you yourself are getting nervous about the failure of pledges to come through?-- Correct.

10

6.23, on the 3rd of March 2004 you fax a written authority to Hickeys to transfer all funds to the credit of matter number 245821/1 to "Lionel Barden Commonsense Campaign Fund"?-- Mmm.

Remember that happening?-- Yes.

Part of Exhibit 97. So here we are three weeks or thereabouts from the election. That's part of Exhibit 97. According to Mr Hickey - I just want to put this evidence before you, Mr Power - according to Mr Hickey, 645, he received advice from you by telephone that you and Robbins wanted to appoint someone other than yourselves to manage the trust account, remember that?-- I do.

20

Right. Well, did you - is that what you said to Mr Hickey?-- Yes, I don't recall whether I said someone other than us but I certainly said that - informed him that someone else would be taking over and I believe I might have mentioned Lionel's name.

30

Did you tell him why?-- I don't recall going into that.

So you didn't tell him - or you don't recall telling him?-- I don't recall going into that.

Why?-- No-----

Why was it?-- I don't-----

40

What was the reason?-- I don't recall going into that with him.

Well, you didn't go into it with him, but I'm asking why? Why did you do it?-- Well, I think I've answered that probably a half a dozen times. With our consideration-----

No, I'm asking you now in relation to this account at Hickey's?-- Well, as I stated earlier, Sue and I, around about middle to late January, started to discuss the matter more fully or at some time discuss the matter more fully, recognised that in some respects it did not comply with the objectives that we were trying to achieve, which was the complete independence of councillors from a perception point of view, and we believed that it was inappropriate for us to continue.

50

All right. Do you accept that, even after the change, you controlled the fund?-- No, I don't accept that.

1

Well, the final trust statement from Mr Hickey for the client headed Commonsense Campaign Fund - this is 6.24. Do you see that?-- Yes, I do.

Starts with a trust journal transfer of \$20,500 from Sue Robbins and David Power, GCCC election campaign fund?-- Yes.

10

I take it that you received a statement?-- I don't remember seeing this. It could have gone to Sue.

So, what, you never even bothered to check any statement?-- As I said, I don't recall seeing this. It could have gone to Sue.

Well, that's what I'm putting to you. Did you not interest yourself, seeing that you were making the change, to find out what had occurred in relation to the funds?-- Well, instructions had been given; one would assume that they were carried out.

20

So you can't remember ever getting a copy of a trust statement?-- I don't recall seeing it, no.

Ever?-- I don't recall seeing it.

Now, on the 9th of March 2004 - this is 6.25 - Mr Morgan emailed you on the "state of the nation" as far as funding went. Sorry, he emailed Mr Ray, but he also emailed the same information to you and to Sue Robbins, and he notes that on that email. Do you see that?-- I've got one to Brian Ray.

30

6.25. He notes that he had emailed the same information to you and Sue Robbins with a copy to Lionel. Do you have that there?-- Yes, I'm just looking at it at the moment. This is the 10th of March at 4.21 p.m., is it?

No, no, this is the 9th of March, below that one for the 10th?-- Okay, yes.

40

You go down-----?-- Now I have it. It's 6.26 on mine. There's one from the 9th of March.

Well, I can't help you there, but this is the one from the 9th of March 2004, Mr Morgan-----

CHAIRMAN: 6.25 is the 10th of March at the top, but if you look down you'll see within that page the one of the 9th of March from Chris Morgan to Brian Ray?-- Chairman, I saw that, but I didn't see any reference in there that it had been sent to Sue or myself.

50

Well, it says, "I've copied you independently on the attached, which is the Email Copy Follows, which has been emailed this evening to Dave and Sue, copied to Lionel"?-- Right.

So it would suggest that what's at the bottom of the page under Email Copy Follows was sent to you and to Sue Robbins?-- Sorry, I have that now, yes.

1

And a copy to Lionel?-- Yes.

MR MULHOLLAND: Do you accept that that went to you?-- I'm accepting it was emailed. Whether or not I read it, I don't recall.

10

6.27: on the 10th of March, Mr Hickey reports to you - have you got 6.27?-- Yes.

10th of March, Mr Hickey reports to you, referring to a telephone discussion that you had that morning providing details about which funds that you were supposed to be following up personally. See that?-- Yes.

Now, Mr Hickey has said in evidence, 652, that he continued to report to you as opposed to Mr Bardon because you would ring up and make enquiries, and he assumed that you still had involvement in the process because of your involvement from day 1. Would that assumption that he made be fair?-- Well, there's certainly a big difference between being involved in collecting funds and being responsible for distributing them, but certainly I don't have a problem with the proposition that I was out there actively collecting funds.

20

Yes. Mr Mickey added that the only control that he was interested in was who was to direct him to distribute the funds. Anyway, that's at 652. Now 6.28, do you have that?-- Yes, I do.

30

The emails in your material include an email from Mr Morgan as late as the 15th of March 2004, addressed to Mr Barden. Now, do you have that email of the 15th of March?-- Yes.

Yes?-- Yes.

40

And you see that that also went to you?-- Yes.

And this is in relation to approving funding and the booth captains session also being cc'd to you. Do you see that?-- Yes.

Similarly the next email of the 17th of March 2004 in regard to booth captain's session is cc'd to you. Do you see that?-- Yep.

50

The next two emails about chasing up payment of the 18th of March 2004 and the proposed "meet the candidates" session, also 18 March 2004 are either addressed or - addressed to you or cc'd to you. Is that correct?-- It appears to be.

6.29. Mr Hickey reports to you and Mr Ray on the 17th of March 2004 about the balance of the funds available. Do you see that?-- Yes.

And the condition imposed on the donation by Mr Ingles, namely that it not be used against Mrs Crichlow. Do you see that?-- Yes.

Now, 6.30, on the 18th of March - I'll leave that because I've already taken you to that today. 6.31, yep, 6.30?-- I do.

An email from Mr Morgan to yourself written on the 25th of March 2004 as a result of a newspaper article suggesting there was a meeting in November 2003 to confirm that the first and only real group meeting was held on the 16th of December 2003. Do you see that?-- Yes, I do.

10

Now, he describes it as a group meeting. You didn't see it as a group meeting?-- Well, what would you describe as a number of people gathered in a room?

Exactly?-- Well it doesn't connote anything other than that they're gathered in a room.

20

6.32. An email from Mr Morgan to you on the 25th of March 2004 ending with, "Best wishes from all the team at the common sense candidate resource." Do you remember receiving that?-- Vaguely.

"From the team at the common sense candidate resource." What did you take that to be a reference to?-- I think it was a bit of tongue in cheek to poke a bit of fun at what the Bulletin had been doing up until then.

30

Oh. This was having a joke, was it, at the Bulletin's expense?-- Well, it's pretty easy to do.

Not reflecting the reality, eh?-- I think if you look at it the resource that he was probably referring to there, apart from being tongue in cheek, is the resource that he was offering the candidates in his professional capacity.

6.33; a letter to Hickeys of the 28th of June 2004, you have that one?-- Yes, I do.

40

In Mr Barden's material it says this, "Following information received from David Power, please could you issue the return as trustees." Do you see that?-- Yes.

Do you remember - have a good look at that document?-- Yes.

It's in these terms, "Following information received from David Power, please could you issue the return as trustees for the account. Please provide who the disbursements went to but please do not disclose the donor or the clients. Signed on behalf of the Lionel Barden Commonsense Trust Fund." Now do you remember having any conversation with anyone in relation to this request that went from Mr Barden to Mr Hickey?-- No, the only discussion that I can recall having with Lionel with regards to that was simply to advise him that I believed he would have to put in a third party return.

50

Well, what it really suggests, does it not, is that there was information from you and that as a result of that information this request was made. Did you request Mr Barden to request Mr Hickey to issue a return but to make sure that he not disclose the donors or the clients on the return?-- No, I did not.

Quite sure about that, Mr Power?-- Positive.

10

When did you first become aware of this letter?-- As you put it before me today.

So that insofar as it suggests that he's received some information from you, you don't know what he's talking about?-- The generic information was very simple that I believed he may have to put in a third party return and he needed to check that out.

All right. What I'm suggesting to you is the upshot of this; I want to put it to you as a proposition, is that no one had greater control over the funds held within Hickey's trust account to support the selected candidates except you or than you? No one had a greater control over those funds other than you?-- And Councillor Robbins.

20

Well, Councillor Robbins, did she exercise the same control, do you think?-- Absolutely.

Were you speaking to her quite regularly during the period?-- Councillor Robbins and I spoke to each other almost on a daily basis about various issues. Whether it was on a daily basis about this, I can't specifically comment but the issue of authorising payments, clearly had to be in both names so the responsibility was there equally. I don't know that.

30

CHAIRMAN: Was Councillor Robbins involved in canvassing for donations to the fund?-- I believe she was, Mr Chairman. I don't have any details of anyone she spoke to specifically but Sue's contacts within the business community was as good as mine if not better.

40

She doesn't come up anywhere in any of the documentation the way you do?-- No. She may well have contacted people by phone. She may well have just spread it through Chamber of Commerce meetings. Sue worked in a different manner to what I did. I can't really comment on how she dealt with it but I do know that she was definitely spreading the word that we were looking for support for candidates.

50

MR MULHOLLAND: Now I want to ask you, seeing that we were recently talking about The Gold Coast Bulletin or, at least, you were. I will refer you to an article in the Gold Coast Bulletin, this is in Exhibit 3.16. Could I have Exhibit 3, please, number 16? This might save some time. Now, this is an article in the Gold Coast Bulletin, as you will see. For Friday the 20th of February is headed "Planning boss forms faction with plan to rule civic roost. Power play to control

Council". I suppose that's an emphasis on your name as well, Mr Power?-- Very clever of them.

1

Any rate, do you remember this article?-- I do.

And, it starts by saying, "Gold Coast planning boss, David Power, is believed to have spent nine months engineering a political team that will see him become Deputy Mayor and have the numbers to control the Council if he succeeds in the March 27 poll". Now, just read down to about half-way down the page and it says, "The Bulletin has been told, Councillor Power has attracted as much as \$500,000 in funding from developers to spend on candidates sympathetic to the incumbent councillor's policy views". Right?-- Yes.

10

Well, you remember this article well?-- Well, I remember the ridiculous amount of 500,000 because it was being banded about by reporters on a fairly regular basis.

All right, well, we'll come back to that. "But, Councillor Power yesterday dismissed the claims as 'conspiracy theories'", in quotes, "and said he would welcome any funding to help his own campaign". Did you say that to the Bulletin reporter?-- Yes, within the context of their position on the matter. What-----

20

What's that mean?-- Well, if you look at it. It's - the Bulletin has been told Councillor Power has attracted as much as \$500,000, clearly that's wrong. And, that was the proposition that was put to me. I actually laughed at the reporter and said, if there's \$500,000 out there, can you send some my way. So-----

30

Okay, well-----?-- -----it was just patently ridiculous.

Well, lets-----?-- I also dismissed the issue of conspiracy theories about me heading up some sort of faction to take control of Council because clearly that was not the case.

Right. It goes on to quote, and apparently this is being attributed to you, "If there's half a million in funds lying around the place, could someone let me know. I'd like some too, he said. To the best of my knowledge most people are having problems raising funds because of the State election and the Federal election. I have got enough trouble paying for my own campaign without worrying about other people's. All of the people that are running, to the best of my knowledge, are completely independent whether they are members of a political party. Trying to help candidates in other areas never goes down well with the community. That's why I don't get involved in campaigning for other candidates. I've got enough of my own damn problems". Now, did you say all of that to the Bulletin?-- Once again, Mr Mulholland, this is a classic example of the Bulletin, or at least the media, taking an accurate quote and placing it out of context. The statement of, "Trying to help candidates in other areas never goes down well with the community...", et cetera, et cetera, was a reference to previous elections. I had made it very, very

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clear to the - to the reporter that on previous elections I had not taken part, in any shape or form in the campaigns of other candidates simply for that reason. However, it's put into the context of the current election. I had made it clear to the reporter, on previous occasions, that I had very clearly been given - been giving advice to both the business community and candidates as to appropriate campaigning measures and also as to whether or not candidates were worthwhile supporting. As far as, "I have got enough trouble paying for my own campaign without worrying about other peoples", that is also taken out of context because it was meant - it was placed in the context of the half a million dollars. And, as you can see from the stuff you've just put in front of me, the difficulty we were having in raising that small amount that was listed there. So, the context of that, the quotes themselves, accurate. The context in which they are reported, completely and utterly inaccurate.

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Mr Power, why didn't you tell the Bulletin reporter the truth as to what involvement you did have in the funding of selected candidates?-- I did.

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You did tell them?-- Absolutely.

Oh, so you did tell them that you did know about a fund that was used to support candidates who were selected, did you? You told them that?-- Mr Mulholland, the question that was constantly put to me by the reporters was a slush fund. Now, we've gone over the definition of that. I-----

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Forget about that?-- Well no, I can't forget about that, because that's the question that was posed to me.

No, but what I'm - you're having - you're quibbling with the - and you're pointing out that this figure of \$500,000 was not correct. Why did you not tell them, Mr Power, look, I am involved in a fund, there is - this is how the fund operates, it's used in relation to selected candidates, these are the selected candidates. I'm a signatory to the account. Why wouldn't you tell them that?-- Mr Mulholland, the question that was continually put to me by the reporters was a slush fund. Now I've repeated regularly that a slush fund under the Oxford Australian Dictionary, which I was fully aware of, is money used for the purposes of political bribery. That is an offence. I am not going to admit to something that I am not engaged in. As far as-----

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Well, that's what you were engaged in?-- Well, I haven't finished. I haven't finished. The fact of the matter is that I advised the reporters regularly that I was giving advice to the business community to support candidates. If any reasonable and rational person would assume that the support going to those candidates must be monetary and therefore it is up to the reporter to pursue that in a rational and also balanced fashion, which they did not.

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Well why didn't you tell them the truth, so-----?-- I did.

-----that would - you didn't tell them the truth at all, I suggest, Mr Power?-- I answered their questions direction as they posed them.

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If you were - if you had a problem with the amounts being bandied about with the use of the slush fund and so on, why not just tell them the facts? Why not tell them that you had authorised thousands, tens of thousands of dollars to go to selected funds? Why not tell them that?-- They didn't ask me.

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They didn't ask you? Well, you're complaining about the misreporting of The Bulletin. Why didn't you tell them what the actual facts were so that they could publish them to the electors of the area?-- With all due respect, Mr Mulholland, that shows a complete lack of understanding of the way the political process works. The fact of the matter is that these people had already made up their mind that there was a slush fund. That was the term being used. The use of the term "dirty money" was used by other councillors, which is absolutely abhorrent to me. The fact is, I answered questions that were posed to me directly, I answered them truthfully, I answered them openly and honestly. What I did not provide them with was answers to questions that they did not pose. I would have answered a question if they had said, "Are you providing funds from a trust fund?" Then I would have answered it directly, then they would have got the answer they were after. But what they were looking for was to implicate councillors and candidates in something that was untoward, something that was illegal, which I am not prepared to accept under any circumstances.

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Well, if you'd told them the truth and they hadn't published it, maybe you'd have a complaint?-- Sorry, Mr Mulholland, but 15 years of dealing with certain publications in my city has taught me very well how to deal with the media and be very accurate and very specific in answering questions.

Mr Power, what I'm suggesting to you is all of this is so much hogwash on your part. That what you knew to be the case, your involvement in the distribution of very large sums of money to candidates selected by you for this election - you knew that that revelation publicly would severely embarrass you and that's why you deliberately chose not to tell the truth. Isn't that correct?-- That's a very offensive statement, Mr Mulholland. I told the truth and I would defy anyone to show the evidence that the answers that I gave to questions were not truthful answers. The questions posed were answered truthfully. The use of those answers were what was untruthful and if you have a problem with the untruthfulness of these articles or the fact that they don't inform people properly, then I suggest you take it up with the reporters.

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Well, why didn't you tell them it wasn't 500,000, it was 150,000?-- I did. I told them that it would be ridiculous that anyone would give a half a million dollars to the candidacy of local councillors.

Well, why not tell them the amount?-- They didn't ask.

And you weren't, and wouldn't have been at all embarrassed at the public revelation at this time of what actually was the situation, that you had been controlling these funds going to candidates that you selected. Is that what you're seriously telling us?-- Not at all. In fact, if I may have a little bit of latitude in answering this. I don't toe the normal political line of always taking the line of least resistance. For instance, when it comes to issues such as rate rises, I am regularly out there talking to community groups when they have had a two and a half per cent rate rise, telling them that they probably should have had six or eight per cent to cover the cost. Now any normal political person would be avoiding that at all costs because of the unpopularity. I don't believe in doing that. But if they want to present a story that is true and accurate, if they want to do that and ask me the accurate question, I'll give them an accurate answer.

Thank you, Mr Chairman.

CHAIRMAN: We'll adjourn till 10 o'clock tomorrow. Oh, before you do, is 10 o'clock tomorrow-----

MR MULHOLLAND: A quarter to 10.

CHAIRMAN: Quarter to 10. Is that okay by everyone?

MR MULHOLLAND: Thank you.

CHAIRMAN: Quarter to 10.

THE HEARING ADJOURNED AT 4.45 P.M. UNTIL 9.45 A.M. THE FOLLOWING DAY

WITNESS LIST

DAVID LESLIE POWER, SWORN AND EXAMINED..... 2381

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EXHIBITS

ADMITTED AND MARKED "EXHIBIT 322"..... 2381

ADMITTED AND MARKED "EXHIBIT 323"..... 2386

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