



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST CITY COUNCIL

BRISBANE

..DATE 19/10/2005

..DAY 9

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ANTHONY WILLIAM HICKEY, CONTINUING:

WITNESS: Sorry, Mr Commissioner, the barrister was interviewing me.

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CHAIRMAN: That's quite all right, Mr Hickey.

WITNESS: Sorry, Mr Nyst. You asked me yesterday was I overseas in December.

CHAIRMAN: Oh, yes?-- I was overseas from the 7th until the 15th of December.

Right. That's of 2003?-- 2003, correct.

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7 to 15?-- Yeah. I also went away from the 26th of December on a family holiday for a couple of weeks.

Yes. Thank you for that?-- So I haven't had a chance to - there is another matter. Can I mention another matter that-----

Yes?-- For Mr Mulholland. Yesterday I was asked about Mr Janssen and whether we did legal work and I said that I didn't have any knowledge of that. I asked my secretary to again check this morning whether we had a file and we do have a file. Previously she'd checked in the name of Jensen, not Janssen. I haven't seen that file and I spoke to Mr Janssen outside this morning and I asked him who was the lawyer. He couldn't recall the name of the lawyer but I assume it's a lawyer that left our firm about a year ago, but I can provide you with that file today if you like.

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Yes, thank you for that. Yes, Mr Nyst?

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MR NYST: Mr Hickey, yesterday we'd dealt with the meeting that you had. I think your best guess was late in November-----?-- Yes.

-----2003 at Varsity Lakes and at that meeting you've told us that Power and Robbins claimed to be simply wanting some support to get some sensible people into council?-- Correct.

Mr Ray seemed to be keen to do more, to offer more but they didn't seem to be interested in anything further?-- Correct.

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And you subsequently came to know that he, Mr Ray, had done more in relation to the Tweed campaign, is that right?-- No, no, I didn't really have a great knowledge of Brian's involvement in Tweed.

Okay. You said you were aware of the Tweed campaign. You don't mean - you didn't mean of Brian Ray's involvement, you just meant-----?-- Yes, I was just aware of the campaign.

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Of the Tweed campaign. Well, look, in any event you said Mr Brinsmead was working out of your office at the time?-- Yes.

But he, you said, had - your words were zero connection with-----?-- Absolutely, yeah.

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With this Gold Coast campaign. And so far as you know, so far as you've heard and all of your observations, et cetera, there was never any mention by Robbins or Power of any connection with the Tweed campaign model at all?-- No, none - none at all.

Or in any way with any-----?-- It was never - never even discussed.

Right. None of the individuals?-- No.

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Nor the-----?-- No.

The modus operandi in the Tweed?-- No.

Or anything to do with the Tweed campaign?-- No.

So far as you understand, any suggestion or mention of the Tweed campaign in the context of this is just a complete furphy, it's just a complete irrelevance?-- It's completely irrelevant, yes.

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Right. All right. Well then, the next meeting that you have in connection with this - sorry, the next - is it the next contact with anybody in connection with this?-- Mmm.

The next direct physical contact with anybody is on the 17th of December?-- Yes, yes, I believe so.

Do you remember whether, in the interim, you had any telephone contact with Mr Power?-- I don't - I don't-----

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You don't remember?-- I don't recall.

Okay. But in the meantime - I'm sorry, I withdraw that. The next physical contact is on the 17th of December and that's when you - when Brian contacted you and asked you to come to a meeting and you - you remember being at that meeting with Brian Ray and Chris Morgan?-- Yes.

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And you don't remember Power or Robbins being there?-- I can't remember whether they were there or not. My best recollection is that they weren't there.

All right. Well, I suggest that they were not?-- I'm not a hundred per cent confident but that's probably right.

I suggest that Power was not and you wouldn't cavil with that?-- No, I wouldn't.

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All right. Well now, at that meeting then the document dated the 16th of December, that's the document Exhibit 14 in these proceedings, do you want a copy of it?-- No, I recall that document.

Okay. But it was tabled. Do you remember who tabled it?-- No, I don't. I don't really, no.

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Okay. But you said to my learned friend, Mr Mulholland, that it was tabled and there was discussion between Brian Ray and Chris Morgan about what were the key issues?-- Yes.

And there was a list of issues, wasn't there, on the second page?-- Yes, yes.

Did they - were they addressing that list when they talk about what the key issues might be? Do you remember?-- Look, I can't really recall. I had the view that it was - the recollection was more of a general philosophical discussion about how to run a campaign.

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Okay. Well - but at any event it was apparent to you, was it, that the idea of what might be the key issues had not as yet been decided because they were still in the-----?-- Yes, yes.

In the course of-----?-- Yeah. I'm sure that we didn't at that meeting go through that point by point.

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Right, but more than that it appeared to you that at no previous meeting or discussion had any person or group of persons decided on a list of key issues because here was Morgan and Ray themselves considering in trying to come to some list of key issues?-- Yeah, that would be correct. It seemed that, you know, we were in the early stages.

Yes, okay. And you don't think they came to a list either at that point, is that-----?-- What, at that meeting?

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Yes, you don't think they refined it down to a number of-----?-- No, I don't think they definitely agreed on a strategy or whatever.

Right. Well, you spoke then about - in this context you've told us that there was some discussion about candidates that had been identified by Power and Robbins as being potentially worthy and as I understand it from the - what was being said to you your understanding was that the only thing that in any way linked these people was the view that they were rational and sensible people?-- Yes.

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And you said the word common sense was used a lot, the common denominator, if you like, with these people that were being discussed was that they all seemed to have some common sense?-- Yes.

And you went on to make the further comment in evidence, existing councillors were taking a lot of time with their decision and three of them in particular were not exhibiting any common sense at all, or words to that effect?-- That's - that's what Sue Robbins said quite clearly at that first meeting, yes.

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Okay. Was that something also that you were aware of from your own observations or living in the community?-- Yeah, generally, that was the view in the community and the business community, yes.

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That some of the councillors in there were not being very sensible?-- Yes, not - maybe not very professional.

Not very professional in their behaviour?-- Yes.

Right. Well, you did say to my friend that Greg Phillips - you'd asked Greg Phillips for some money and you said, he said he'd put in more because he was so unhappy with his representation in his division?-- Yes.

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Was that one of these three people?-- I think it may have been but I can't recall.

Okay. Do you-----?-- I'm not sure which division he was in.

Okay. Do you remember any of the specifics of his-----?-- No.

-----complaint?-- No.

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Okay. Well, now, I don't know whether you've still got Exhibit 100 there but that's the bundle of e-mails and you may not need it if you do use it if you need to - what I wanted to ask you about here was you were questioned about the e-mail of the 24th of November where you'd made some-----?-- Yes.

-----notations on there?-- Yeah, I recall that documents, yes.

And in particular was the notation by you supporting eight councillors which will give majority vote. Now, your best recollection that that was a note that you took of something that was said by Mr Ray, is that - or Ray and Morgan?-- Yeah, I'm not absolutely sure who said it-----

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Okay?-- -----but it was discussed by them at that meeting.

But one thing is certain, David Power didn't say it, did he?-- No, I don't recollect David saying that.

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No, I'd suggest that it wasn't said in his presence?-- I don't believe so.

If your best recollection is that it was said at the meeting of the 17th of December, that is your best recollection, isn't it?-- Yes, yes.

And therefore is it correct to say that your best recollection is that it was then said only in the presence of you and Chris Morgan?-- And Brian Ray.

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Yeah, well, Brian Ray says?-- Yeah.

Yeah?-- Yeah.

Okay. Now, subsequent then to that meeting you went out to contact people in the business community didn't you?-- Yes, I did.

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And-----?-- Well, I telephoned them. I didn't go out in my car.

Yes. I'm sorry that's what I meant but-----?-- Yeah.

If I could flash back to the Varsity Lakes meeting?-- Yes.

When Robbins and Power were talking about getting some support, it was talk about getting support from the business community throughout the Gold Coast wasn't it?-- Yes, yes.

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There was no suggestion it should be confined to developers?-- No, no, not really.

It was the - what was being put out was, we'd like to get some support from the community in particular the business community?-- Yes.

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And you all agreed that you'd try and canvass your contacts in the business community?-- Yeah.

Did Power, at that stage, do you remember whether he talked about people such as the people in the marine industry?-- He may have, he may have. He mentioned the marine industry on more than one occasion to me - in my presence - I can't remember exactly when.

The Chambers of Commerce?-- No, I don't think - I don't think he mentioned Chambers of Commerce. The focus was really on who Brian and I could contact.

40

Okay. And you weren't told were you, in any way, confine the ambit of people that you'd canvass?-- No, not at all.

No, you were just - the idea was you'd just go out to anybody that you could in business to try and-----?-- Yeah.

-----drum up some financial support?-- Yeah. Well, it just so happens that on the Gold Coast the substantial business people are development groups.

50

Are development groups?-- That's the biggest industry there.

But there was never any suggestion that this would be an approach solely to the development industry?-- No, no, no.

And ultimately, you - you're not sure whether it occurred at that meeting but you do recall discussion with David Power about his contacting people - other people other than developers?-- Correct.

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Yes. And just to - to clear, on that exhibit I was just referring you to there's a list of donors and that's a list that was done by Brian Ray, isn't it, I think you said?-- Yeah, I believe it was done by Brian.

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And it included people like Village Roadshow?-- Yes.

Macquarie Bank?-- Yes.

The Riviera, Quintrex and Mustang?-- Yes.

They're all boat builders, aren't they?-- Yes. Actually, I think - I think David may have mentioned it sometime that he would contact those people.

20

Right?-- I think they are marine industry people.

Right. Well, we were dealing with Exhibit 14 if I could go back to that. You were asked about those objectives that are noted on the first page and I think you said, well, that was not the first dot point in relation to the first dot point - you might - perhaps if you could have this document, Exhibit 14?-- Thank you.

With respect to the first dot point, I think you said that wasn't your understanding. Your understanding was - I think you said, I understood the funds was to support candidates who had common sense and intelligence and would be responsible candidates. Remember saying that?-- Yes, yes. As I said, this wasn't to my recollection, gone through line by line and-----

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Yeah?-- -----ticked off and agreed to or anything and I-----

I understand that?-- -----frankly didn't pay much attention to it at all.

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I think you said that you didn't in any way subscribe to the document?-- No, I didn't want to be involved in it.

But just in particular that first dot point - that wasn't anything that you understood to be an arrangement or agreement that was reached at any point during any meeting that you were at?-- That's correct.

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The third dot point you were also asked about and you said, "I generally understood this to be what the fund was to support." But there had been no discussion, had there, about - or any suggestion - of joint voting or a joint stance on any vote in Council, had there?-- No, not at all.

You see-----?-- No, not at all. I mean, at some stage it was - it was acknowledged that the best result would be that you'd

have people there that you know would look at the issues seriously and with some commonsense and intelligence and - but that would not guarantee any outcome.

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And that dot point uses the phrase "a joint commonsense approach to solutions"?-- Yes.

But there was no suggestion at any of the meetings that you were present for that there'd be any attempt to form a joint voting bloc or-----?-- No. No, quite the contrary.

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Quite to the contrary?-- Yes.

Quite to the contrary in the sense that it was always contemplated from what you could see at the meetings you were at that all of the candidates if they became Councillors would remain totally independent?-- Yes, yes. I mean, nobody would?--

And would bring their own rational, reasonable and sensible thought for every application?-- Yes, yes.

20

And again, just that final dot point, you - I think you commented about that, "I just saw that as a bit of marketing by Quadrant," that's-----?-- Yeah, yeah. Yeah.

-----dot point down - on the first page. But beyond that - to be specific - nothing like that was ever spoken about or the subject of any agreement or arrangement at any of the meetings that you were present at?-- No.

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On page 2 under the heading Strategy, you were taken by Mr Mulholland to point 3 about - where it mentions an agreed media position. I think you said, "I never understood there was to be an agreed media position." Beyond that there was never any discussion particularly at the Varsity Lakes meeting, was there, not any agreement at any point about an agreed media position?-- No, not at all.

And Power's never suggested anything like that to you?-- No.

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On the phone or elsewhere?-- No, not at all.

Well, just in summary then, you told my learned friend words to this effect, "This document was tabled but not discussed in any great detail. It suggests some high level of organisation which to my knowledge didn't exist." Is it a fair summation then to say that this document is not in any way reflective - when I say not in any way, is not reflective in terms of talking about consensus amongst a select group of Councillors - is not reflective of what David Power and Sue Robbins were proposing at that meeting that you were at?-- Yeah, that's correct. Yeah, I don't believe it is.

50

And it's not reflective of any arrangement or suggested arrangement or proposal that David Power's put to you at any other time?-- No, I've never discussed it with David.

The arrangement so far as you understood them to be proposing and so far as you understood were to be put in place was simply one to give some support both in terms of advice and financial funding to people that they considered to be sensible, reasonable, rational people that would therefore make worthy Councillors?-- Yes, basically. David and Sue never really discussed in my presence what sort of advice they were going to give to these people or how they were going to give them advice.

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Yes?-- I assumed probably that they would be but I was never - there was never any plan or discussion given to me about that.

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Okay. But what they did say in your presence was, "All we want to do is support people who will behave-----?-- Yes.

-----responsibly"?-- Yes.

Your trust account, you were asked whether there was a trust document in relation to the trust that was set up there?-- Yes.

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And you said there was no trust document?-- That's correct.

Did you at any stage have an opinion as to whether you needed a trust document to have a trust fund?-- Well, no, I don't need a trust document to receive funds into a trust account.

Okay. Well, that is your opinion now?-- Yes.

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And was that your opinion then?-- Yes, yes.

Do you remember whether you ever expressed that opinion to any of the people involved in this Inquiry?-- No, I can't recall.

Did you have any - did you ever have any opinion as to whether a solicitor's trust account is a trust fund for the purposes of the definition of "relevant details" under the Local Government Act?-- I think the view that we took when my office researched it was that it wasn't.

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It was not?-- Yeah.

Do you remember whether you - I think you said yesterday you discussed that with David Montgomery?-- No, I - I didn't personally discuss it-----

I mean somebody from your office?-- Yeah, I think Brad Scale did.

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Do you remember whether you ever passed on that view that you concluded to David Power or Sue Robbins or anybody else?-- No, I had no discussions with them about - about that.

There's just one last document I wanted to ask you about which is the - I don't need to show you the document. On the 5th of March you got the authority to transfer the money into the Lionel Barden Trust-----?-- Yes, yes.

-----which you did?-- Yes.

After that, is it correct that you didn't receive any further directions in respect of that fund from David Power?-- Directions as in authorities to disperse funds?

Yes, or any more directions-----?-- I - I-----

-----more generally?-- -----I generally had discussions with David where he - and it really was basically, "Well, what money have you got", you know, maybe it would have been someone who was supposed to send some money and it hasn't arrived.

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Yes, but no directions, not him telling you to do anything-----?-- No, no.

-----or expressing any view as to what should happen or anything else. Just-----?-- No, no.

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-----enquiries by him?-- No, that's right.

Enquiries by him and advices by him as to monies that he'd been able to perhaps arrange to come in?-- Yes, yes.

All right. Well, look, just in summary then, you never heard from David Power, or in David Power's presence, any suggestion ever of any kind of developer backed voting block in Council?-- No.

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Right, thank you, sir.

CHAIRMAN: Yes, Mr Webb?

MR WEBB: I have some questions, with your leave, sir. You were asked a number of questions and answered a number of questions yesterday about the mechanics of operation of a trust account. That's correct, isn't it?-- Yes, yes.

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And, you were asked this morning by Mr Nyst just - did you need a trust deed and you answered again, "To open up an account in your trust account"?-- Mmm-hmm.

Can I just - to establish a trust, leave aside your trust account for the moment, it is your understanding you do not need a trust deed?-- Correct. It can be constructive trust, implied trust-----

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All sorts of trusts?-- Yes.

But, you don't need a deed to-----?-- No.

-----create a trust?-- That's correct, that's correct.

Now, you may not have considered this question until this morning but have you really what happens when you open up a trust account, apart from the mechanics of how you do it, which we heard a lot of questions yesterday?

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CHAIRMAN: Mr Webb, can I ask whether you want to preface these questions by referring to opening up a trust account in the normal course of the operation of the solicitor's practice because that's part of the definition of trust in the Trust Accounts Act.

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MR WEBB: Yes, that's so. But, there's a further - there's a wider-----

CHAIRMAN: And this witness has told us that he was providing no legal services to these people. He was doing this, in effect, as a favour-----

MR WEBB: Yes.

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CHAIRMAN: -----nothing wrong with that of course but-----

MR WEBB: No.

CHAIRMAN: -----not as part of the normal part of his practice.

MR NYST: He did say he was providing a service though. He said-----

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CHAIRMAN: Not a legal service.

MR NYST: I thought he did, I thought he said to-----

CHAIRMAN: Well, he said yesterday that he was providing no legal service-----

MR NYST: He did say that at one point but he - later Mr Mulholland was asking specifically about it and he said, "We did provide a service, we managed the funds", and so forth.

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CHAIRMAN: But they - it was a money handling service, of course. But, there was no legal advice, there was no legal service being provided to these people. No advice was given to them with respect to any aspect of this, that's the clear evidence of this witness. So, do you - I'm just suggesting-----

MR WEBB: I'm not - I'm going on-----

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CHAIRMAN: -----that perhaps preface your question in the normal course or whether you want to ask for it in both ways.

MR WEBB: Well, I do. I was going to of what in fact, doing it in the normal course what-----

CHAIRMAN: Okay.

MR WEBB: -----what results from that.

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CHAIRMAN: All right.

MR WEBB: But, I don't - I'll adopt that.

CHAIRMAN: Okay. In the normal course of the practice.

MR WEBB: In the normal course of opening a trust account, you may not have considered this before, an opening up an account within your trust fund, do you understand that you then were the trustee of that particular account. You may not have ever considered this because solicitors are more concerned with complying with the Act you see?-- Yes, correct. I probably haven't considered it but, probably, yes, we are the trustee.

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Yes?-- We are responsible for those funds which are then under a direction that they're to - we hold them on trust, I suppose, under direction that they are to go out as directed by law and by the time.

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Exactly. And, is it likely again you may not have considered this, that means then that particular account, and there are a number of them within your trust account-----?-- Yes.

-----are each separate trust funds?-- Possibly, yes.

Well, what else could they be?-- Mmm.

It's a fund of money?-- Mmm.

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I don't know that that will - that was just a "Mmm", I think Mr Hickey meant to say, yes?-- Possibly, yes, sorry.

He's not an expert witness.

MR T FYNES-CLINTON: I have no questions, Mr Chairman.

CHAIRMAN: Thank you, Mr Fynes-Clinton. Yes, Mr Mulholland?

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MR MULHOLLAND: Thank you. I'd like to take you back to exhibit 103. Do you still have that there-----?-- No, I don't.

-----or a copy of it?-- No, I don't.

Could Mr Hickey have exhibit 103, please?-- Yes?

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Now, if you look at that first letter again, Mr Hickey, of the 11th of June 2004 addressed to Mrs Roxanne Scott-----?-- Mmm-hmm.

-----from you?-- Yes.

In it, you say, "I also trust that your return did not show a donation from Tony Hickey-----?-- Yes.

-----you did, of course, receive funds which passed through Hickey Lawyers trust account. Monies held in our trust account were donated by certain other parties. If you have made a mistake in your communication to Ms Jones, or in your return, would you please amend it". Now, were you there seeking to convey to Mrs Scott that, in your view, the person who should be disclosed on the return was not Hickey Lawyers but the donors?-- No, no. I - look, my - my recollection is that the article that I read in the newspaper, what concerned me was it referred to me, Tony Hickey, making a personal donation, which I didn't make. And, I wanted to explain to Mrs Scott that I didn't make it, that monies came from my trust account and then I explained that those monies were donated by certain other parties. I wasn't seeking to give her any advice as to how she should do her return except that she should not be mentioning in the return that I made a personal donation.

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But, why, in view of the knowledge that you had, why wouldn't you inform her as to who you believed it should be? She had received money from Hickey's Lawyers-----?-- Mmm-hmm. Mmm-hmm.

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-----from the trust account-----?-- Correct.

-----of your firm?-- Correct.

So, if you were seeking to correct some misapprehension she had as to what she should do, why not tell her what you believe that she should do or at least have her advise that she should seek independent legal advice, or something to that effect?-- Well, I didn't have the responsibility to give her legal advice and I didn't intend to try and give her legal advice and I didn't consider that. I was - simply was wanting to correct what I'd read in the newspaper, I was concerned about that.

30

Well, within a - five days of writing that letter, you had drafted the relevant details in relation to the Barden return, that is, of the 16th of June 2004. That's part of exhibit 4, do you want to see that again?-- No, no, I recall that.

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Well, there you have actually indicated that Barden should - the way in which that third party return should be filled out?-- Mmm.

Why wouldn't you, five days earlier having regard to you having received this letter by Mrs Scott, seek to at least give her some information as to what she should do?-- I didn't consider that I should give her any information or give her any advice except to correct what was a glaring error in the newspaper report.

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It looked as though she was in the dark about what she should do?-- It certainly seemed she was confused and I hope - I hoped that that letter would have helped her correct that.

I mean, well-----?-- But I wasn't going to - you know, I didn't consider that I should then give her advice and give her my opinions on matters.

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Mr Hickey, you're a lawyer, heavily involved by virtue of your trust account being used in relation to these funds and here's one of the donees writing to you by letter of the 15th of June 2004 -if you just turn over - and this is what she says, among other things, "I understood by 'name of donor' they were requiring a contact name of a person who could verify the information I provided." Now, you would-----?-- Yes.

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-----have known when you received that, well, that was obviously a completely mistaken belief on her part and yet you didn't take it any further in this reply?-- No, I definitely didn't. Well, no, her letter of the 15th is a reply to my letter of the 11th.

Yes. But you didn't-----?-- I didn't communicate with her again, no. I was only concerned to make sure that she corrected the fact that she showed me as a - as a donor - which I wasn't.

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And the next day you draft the Barden return?-- Correct. Who was the person in control of the trust account.

In circumstances where you would have known by just a glance at the ledger that Roxanne Scott had received \$10,000 from the fund before the change of name?-- She may have, yes.

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And in a situation therefore where this name that was used had changed from Power and Robbins to Lionel Barden and yet in those circumstances these events all occurring at the same time you didn't think it might even be worthwhile to say to a candidate who was obviously - seemed to be searching for what she should do, well, you'd better get some legal advice?-- I didn't - no, I didn't. I didn't consider I had any responsibility in that regard.

Now, yesterday I asked you about the document which you had provided to the Commission when it wrote to you at a preliminary stage of its investigation; you remember this evidence?-- Yes.

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Now, this is all part of Exhibit 102 and I'd like you just to have a look at that again. Do you have a copy there?-- No.

Maybe we should get it for you, Exhibit 102, please. You don't have-----?-- I may have it in my file.

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And would you just have a look - I'll hand you back the copies you had yesterday of Exhibits 97 and 99?-- Yes.

Now, just comparing the documents you'll see at once that in relation to Exhibit 102, the information that you supplied in April of 2005, that that document described as a trust statement has no reference on it. If you go to the final

statements in June in relation to both the Power/Robbins account and also the Lionel Barden account-----?-- Yes. 1

-----you'll see that there are references?-- Yes.

Now, what is the reference, what's the significance of that, could you just tell us please?-- It's just a file reference.

Right. Well, just - it has two sequences of numbers, what do they relate to?-- I can't honestly tell you but that's just the coding that's used when files are opened. I don't open files. 10

Well, this one that you provided to the Commission back in April has no reference at all?-- But the covering letter does.

The covering letter?-- Yes.

But the statement itself - when you say the covering letter has, you mean it has your name-----?-- That's got our reference, my name, and then it has that file reference. 20

Yes. But the document itself doesn't have any?-- No.

Which in the ordinary course of events is apparently put on such a statement?-- I don't - I don't think all the time that happens, no. I mean, as I said to you this document here was a consolidation of accounts so it was prepared, perhaps these documents have just come straight off the computer. I don't know. 30

No page numbers?-- Sorry?

No page numbers-----?-- No. No.

-----on Exhibit 102, is there?-- There is - yes, there's a page 2 on the second page.

Right. All right. That reference number that you have put at the top of the letter of the 13th of April, what reference number is that?-- I believe it's the file reference. 40

The file reference?-- Yes.

Not the reference which would be placed at the top of a trust statement?-- Well, they should be the same.

Well-----?-- As I mentioned yesterday-----

Which one is it?-- -----when you open up a file - when you open up a file and then you open up a trust account ledger relevant to a file that's the code that goes in as the file reference. 50

Well, look at the reference at the top of the letter and compare that with the references at the top of the two statements in 97 - Exhibits 97 and 99?-- Yes. Well, it's the same references in 99.

Right?-- Which would have been the current file that we were using.

So - I need to ask you this, Mr Hickey - this went under your letter-----?-- Yes.

-----and you were well aware of the contents of the invoice - of the statement, the trust statement so-called that went to the Commission?-- Yes. Yes.

Yes. When was that trust statement of the 8th of June 2004 that you supplied to the Commission in April of this year - when was that prepared?-- Would have been the 8th of June, I presume.

On the 8th of June?-- Yeah, I'm not certain but I presume - that's the date it bears because as at the 8th of June it shows transactions.

Apart from you, who else was involved in the preparation of that statement?-- Well, I wasn't involved in the preparation of it at all. That would have come out of our accounts department.

Well, you received the letter?-- Yes, yes.

And presumably-----?-- Yes, but the preparation of this trust statement you're talking about.

Yes?-- That would have been prepared or produced by our accounts department.

On your request?-- Yes, yes.

Right. So you told them what you wanted?-- Yes, yes.

Who did you speak to?-- Oh, I can't remember it, probably my secretary.

Give us the names?-- Probably my secretary Sandy would have instructed our office manager, Steve, or his assistant Michelle.

All right. Well, just give us the names, the full names of the people who you think could have been involved in it?-- My assistant Sandy Wild, my manager Steve Hodgson, and perhaps his assistant Michelle Lowe.

And in sending that trust statement to the Commission in April of this year you knew that it misrepresented the facts in that it ignored that - it ignored the fact that up until early March the account was in the name of Power and Robbins?-- No, I didn't misrepresent, you know, talking about it now if you look at it, yes, it doesn't disclose that but it was not sent out as a misrepresentation. As I explained to you yesterday I thought I was providing more than I was being asked for and I

thought I was directing my attention specifically to what this gentleman spoke to me on the telephone about.

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Mr Hickey, just address yourself to the document?-- Yes.

In so far as it suggested that these donations - just look at the document as I ask you this question?-- Yes, I know the document, yeah.

As you look at that document?-- Mmm-hmm.

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It misrepresented the fact that the donations made up until the 4th of March were to the Lionel Barden Common Sense Campaign Fund, didn't it?-- It was not meant to represent those facts at all. It was meant to be a record of funds received and funds distributed.

Whatever you say your intention was, I suggest to you that the document on its face misrepresents the fact in that it suggests that the donations, for example, up until the 4th of March came to the Lionel Barden Common Sense Campaign Fund and that was incorrect. Now address the question?-- Looking at the document now, it doesn't identify the involvement of Power and Robbins, correct. There was never any intention to misrepresent. In fact there's an intention to represent a position in direct response to what the Commission - what I understood they wanted.

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In circumstances where, and this is the additional question, in circumstances where you knew that the donations that were made up to the 4th of March 2004 were made to the Power-Robbins account?-- Yes, I certainly knew that but at no time did I consider that at the time of producing this document as being at all relevant.

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Now, you - I need to draw this to your attention, Mr Hickey. You would be aware that it is an offence under the Crime and Misconduct Act of 2001 to give the Commission a document containing information the person knows is false or misleading in a material particular. Are you aware of that?-- No. Yes.

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Well, I'm telling you that it's a criminal offence for a person to give the Commission a document containing information the person knows is false or misleading in a material particular?-- I had no intention to do that.

Right, well, I'm giving you the opportunity now, having had the opportunity to consider the matter overnight, I'm giving you the opportunity to tell the chairman and this Commission anything further you want to say in relation to the circumstances under which this document was provided to the Commission in April of this year?-- I can't add anything to what I've said.

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You don't want more time to consider it?-- No.

Yes. Now, just finally in relation to the same topic, can I suggest to you that on the 12th of April of this year you had

a conversation with Mark Docwra, D-O-C-W-R-A, of the CMC?-- I recall speaking to him, I'm not sure of the date.

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Yes. Well, I suggest to you that Mr Docwra - and I want to put this before you, listen carefully and you tell me whether you agree that this is a correct statement of what happened - at about 10.45 a.m. on the 12th of April Mr Docwra phoned your office and left a message for your - for a return and at about 11 a.m. you phoned Mr Docwra. Now do you remember that is the way it happened?-- I might just see if I have a diary note on that.

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Yes, certainly?-- I have a diary note of a telephone conversation on the 11th of April with Mr Docwra, telephoned from him.

Yes. Do you have any details of that noted?-- It simply says "Declaration" then underneath "disbursements" then underneath it, "terms of trust".

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All right. Well, I'll ask you to - before you leave today to allow the Commission to copy that document. Let me suggest this to you, that at about 11 a.m. on the 12th of April there was this conversation. You confirmed that you had received the Commission's fax the previous day and that you were sending an authority to provide access to a trustee, to a trustee. Now do you remember-----?-- I recall a conversation to the words to that effect.

Right?-- There might have been a second.

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Do you remember you stated that you were not acting in a legal professional relationship with Lionel Barden?-- No.

Well, do you deny that you said something like that?-- Well, I can't remember saying it, no.

But you're not denying it. Is that what you mean?-- Well, I can't imagine why I would say that but I can't recall.

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Why wouldn't you say it? It was correct, wasn't it?-- Correct, yes, but I - just in the - in my recollection of the discussions I had with Mark I don't know whether that would have been relevant.

Well then, do you recall this, that you went on to say you did not expect any difficulty in obtaining authority and expected the CMC merely wanted to access the records in order to compare with candidate returns. Do you remember saying that?-- Yeah, I remember words to that effect.

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Mr Docwra agreed with that?-- Yeah, generally. I recall that.

So you understood from what he said that the Commission wanted to make a comparison with the returns made by the candidates?-- What I understood from our discussion - what my clear memory of the discussion was - that they were concerned to determine who received funds. That was their concern.

Well, I thought you agreed with my question but I'll put it again to you, I'm suggesting you said that you did not expect any difficulty in obtaining authority-----?-- Correct.

-----and you expected the C M C merely wanted to access the records in order to compare it with candidate returns?-- I honestly - I don't recall that. I don't recall those words.

That is, compare the records?-- Yeah, I don't recall those words.

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I thought you agreed a moment ago; you don't recall?-- Well, I'm sorry, I don't recall those words.

Do you recall that you went on to say that you would be requesting further details about the complaint the CMC was investigating?-- Yes, yes, I said something like that.

And Mr Docwra said that the CMC was not required to give those details?-- Yes.

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That you said you would be sending the letter anyway?-- Yes.

Mr Docwra said, "Senior officers indicated that time was important and asked about timeframe for access because if there was going to be delay a notice to discover might be used." Do you remember him saying that?-- I remember him wanting to hurry up but I can't remember talking about access or anything like that.

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Well, you don't-----?-- He could have said it, I don't recall it but he certainly was in a hurry to get information.

Do you recall you saying that you had only discussed the matter yesterday - that is, you said, "We had only discussed the matter yesterday and received the fax last night and the election was held in March of 2004." And Mr Docwra - well, first of all, do you agree that you said something like that?-- When you say "we" that's what, Mr Docwra and myself?

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No, no. That you said?-- Yes.

That you said-----?-- Yeah.

-----that there - yes, that there had been a discussion-----?-- With him?

Yes?-- Yeah, I think I said words to that effect because he was pushing me and I said well - words to the effect well I only heard from you yesterday.

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All right. And received the fax last night and the election was held in March 2004. So you agree with that part of it?-- No, I can't recall all of that but I do recall we had a discussion where I said he was pushing me.

Do you recall that Mr Docwra said that the CMC powers of access did not require that you - that is, you, Mr Hickey - to obtain instructions and that point you interrupted and said that if Mr Docwra had any knowledge of trust law you had to obtain instructions?-- Yes, I recall telling him I had to get instructions, yes.

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And that was a reference to getting instructions from who?-- Lionel Barden, yeah.

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Right. Well, was he the trustee?-- He was the client in charge of that account and I had to get directions from him, he was our file client, to give information.

I'm suggesting to you that Mr Docwra said he appreciated that-----?-- Yes.

-----and didn't mean to get into a heated discussion. You interceded and said it was not a heated discussion?-- Yes, yes. I recall that.

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And Mr Docwra said that you had the records in your possession?-- Yes.

And if there was going to be any delay in obtaining instructions the C M C might prefer to use powers of access-----?-- ?-- Yes.

-----that did not require you to have instructions from Lionel Barden?-- Yes, I recall that.

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And you said that you should have instructions in a couple of days?-- Yes, yes.

So you would agree that - you would agree, would you, that you understood that from the Commission's point of view this was an important and urgent matter-----?-- Yes.

-----to be addressed by you?-- Yes, yes, yes.

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Yes, I've nothing further, thank you.

CHAIRMAN: Can you help me, do you have a copy of Mr Barden's election gifts return rather than getting it out of the folders?

MR MULHOLLAND: Yes.

CHAIRMAN: Mr Hickey, did I understand you correctly when my belief was that it's this page that sets out the schedules of gifts, the name of the donor, the address of the donor, the date of the gift and the amount of the gift, that that was the schedule that you provided to Mr Barden?-- Yes, that's our typing, yes.

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Right. To assist him then in putting the return in?-- Yes. Yes.

And after the research was done within your office the conclusion was reached that it shouldn't be your firm that put the return in-----?-- Yes.

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-----but that it should be Mr Barden?-- Yeah, we reached the conclusion that it certainly wasn't our responsibility or Hickey Lawyers Trust Account to put a return in. I'm not sure if we specifically concluded that he must put a return in either but it seemed that he should and I was concerned to make sure that a return was put in with that disclosure.

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And that being on the basis that he was the person who had control of the fund-----?-- Yes.

-----who indicated where money should go?-- Yes, yes.

Well, on that basis why did you send him a schedule that showed moneys that were received at a time when he wasn't the person who had any control over it? Why didn't you send two schedules namely one that would take it up to the 19th of February which would be during the time when David Power and Susan Robbins had control and a second one from the - you might have had to work out the 3rd of March as to whether that was Power and Robbins or Barden but you understand what I mean?-- Yes, I do. Look, I just didn't consider it. I just didn't consider it, I was concerned to just make sure there was a disclosure. I didn't go back and think about when the - there being a change of trustee or client in charge of accounts. I just didn't turn my mind to it.

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All right. But then that means that any interested member of the public who looked at these returns would conclude that throughout the entire period of the receipt of these donations Mr Barden was the person who had control of the disposition of these moneys?-- Yes, yes. Possibly, yes. I didn't consider that. I thought the relevance of the return was where the money came from or where it went to.

And, of course, that again would be misleading to that interested member of the public?-- Possibly, yes.

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And, is it a coincidence that it's misleading in precisely the same way that the information that you provided to the Commission in April of this year was misleading. That it gave the impression to the reader of the document that the person throughout who had control of the disposition of these donations was Mr Barden instead of that for the largest part of the time-----?-- Mmm.

-----the persons who had the disposition of their control was Councillors Power and Robbins. Was that just coincidental or-----?-- Yes.

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-----were you-----?-- Well, it's consistent that a-----

-----desirous of hiding the fact-----?-- No, no-----

-----of their involvement?-- -----not at all. I - I didn't

attach, or see any relevance of that matter. I really focused only on where the money came from and where it was to go and I - I - I didn't consider it at any of those occasions.

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So, it's pure coincidence that both of those documents were misleading in the same way?-- Yes.

Yes, thank you. You're not excused. You might be required back. You will be advised. Thank you.

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WITNESS STOOD DOWN

MR MULHOLLAND: I call Paul Brinsmead.

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PAUL WESLEY BRINSMEAD, SWORN AND EXAMINED:

MR MULHOLLAND: Mr Mulholland, do you attend here under an attendance notice issued under the Crime and Misconduct Act 2001?-- I believe so.

Would you have a look at this document, please. No, stay there. Is that the notice?-- Yes, it is.

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I tender that, Mr Chairman.

CHAIRMAN: I think that might be exhibit 102, is that correct? 104.

ADMITTED AND MARKED "EXHIBIT 104"

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MR MULHOLLAND: Would you have a look - did you also receive from the Commission a notice to discover?-- I believe I did.

All right. Would you have a look at this document, please. I'll show you a document in a moment and ask you if this is the notice to discover and did you supply information in response to that notice. Perhaps you could answer both those questions?-- Yes, I did receive this notice.

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All right. And, did you supply that - in answer to the notice - that letter of the 18th of August addressed to the Commission?-- Yes, I did.

That one page letter?-- Yes, I did.

I tender both of those as just the one exhibit, Mr Chairman.

CHAIRMAN: That will be exhibit 105.

ADMITTED AND MARKED "EXHIBIT 105"

MR NYST: Could I see that, please?

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MR MULHOLLAND: Do you have a copy of that letter, 105?-- Not with me.

Now, Mr Brinsmead, you didn't have much information in relation to the matter that the Commission was interested in. Is that the position?-- I didn't have any information.

A paucity of information, it would appear?-- No information.

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No information?-- No.

What you say in this letter is, "I ceased to be an owner of Hickey Lawyers in early 2003". Now, could you tell the Commission, what is your present occupation, please?-- I'm a property developer.

Right, and whereabouts do you - whereabouts is your business address?-- Chevron Island - 17 Burra Street Chevron Island.

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Right, and how long have you been operating your business from that?-- The business has been operating there for about three years but I personally - I personally have commenced working in the office at about June this year.

The office of?-- Resortcorp.

Resortcorp?-- Yes.

Is that the principal company-----?-- Yes.

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-----that you operate?-- Yes.

Now, you are a company director-----?-- Yes.

-----of a number of companies?-- Yes.

Are they inter-related companies?-- Yes, they are.

All right, and that company that you've just mentioned is the principal among those companies?-- There are a number of Resortcorp companies, they're associated companies.

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Now, if you go back to the letter. You say that you ceased to be an owner. You continued as a consultant to Hickey Lawyers and carried a card as a partner?-- Mmm-hmm.

"I remained in this position until 30 June 2005. From about June 2003 I ceased to undertake any legal work as I was

involved substantially in managing and running my own business, Resortcorp Proprietary Limited. I had no participation or control over the management or the affairs of Hickey Lawyers. Consequently, I have no ability to provide you with any documents or information that may or may not be in the possession or control of Hickey Lawyers. Also, as I was not involved in, or managing, controlling, or in any way involved with the management affairs of Hickey Lawyers from June 2003, I do not have any direct knowledge of issues associated with the Gold Coast City Council elections". I'll come to the last part shortly. Now, can I just ask you whether you agree with this, that after you ceased to be a partner, you continued to retain a nominal role as a consultant of the firm?-- That's correct.

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And, that would have continued up until around about the Gold Coast elections in April - sorry, in March of 2004. Would that be correct?-- I continued as a consultant until June 2005.

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All right. Well, certainly past the time of the alleged-----?-- Correct.

And did you, during that period, occupy an office within the office of Hickey Lawyers?-- Yes, I did.

And how long did you keep that office for?-- I kept that office from the time I ceased being an owner until I moved at about 30th of June this year.

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Right. And just tell us, is there a suite of offices that Hickeys have?-- Hickeys have about one-and-a-half floors of space.

Right. And where was your office in relation to Anthony Hickey's office?-- My office was - it was about three offices away from where Tony Hickey's was.

Did you do legal work during that period?-- I did in the - in the early time when I ceased to be a partner. I had a number of clients that I continued to do a very limited amount of legal work for but by about - by about June 2003, I would have ceased doing - probably did very little legal work from that point.

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Right. So up to and past the time of the Gold Coast elections, City Council elections, you were still doing legal work?-- I was doing some.

Now, your letter to the Commission goes on to say this, "I did not participate in or have any role in anything to do with the Gold Coast City Council elections, any of the candidates in the Gold Coast City Council elections or any issues that Hickey Lawyers got involved with associated with the Gold Coast City Council elections." And finally, you added, "Accordingly, I do not have any documentation or information what so ever relevant to the Gold Coast City Council

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elections." And the question is this, Mr Brinsmead. Is that an accurate statement?-- Yes, it is.

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Right. So you had no dealings at all in the lead up to the Gold Coast City Council elections with, for example, any of the candidates at those elections?-- No.

Do you know Mr Brian - or did you know Mr Brian Ray?-- Yes, I did.

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Did you know him well?-- Very well.

And how long had you known Mr Ray?-- I had been Brian Ray's solicitor for probably 15 years.

Prior to?-- Prior to the election.

Right. And did you continue to do work for him up until the time of the Gold Coast City Council elections?-- No, I ceased working for Brian - look, I can't remember the exact dates but I would estimate probably early in 2002. I was gradually - I was gradually moving out of the law and letting more and more clients go, so to speak, and other partners were taking up my responsibilities and Brian was one of those that I ceased acting for fairly early.

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In this letter that you sent to the Commission - in that letter, you said that you did not have any direct knowledge of issues associated with the Gold Coast City Council elections. Does that imply that you had some indirect knowledge?-- Well, I think all of us have some indirect knowledge in terms of what we read in the media.

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Right. So is that what you meant?-- Yes.

It was just by what you read in the newspaper and watched on TV?-- Look, I may have heard some comments. I mean, we all mix in the same circles and I may have, from time to time, heard some comments in a social context from a number of people but those are the only - the only context - the only information I received on the election.

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Do you keep a diary, Mr Brinsmead?-- No.

No diary?-- Well, I take diary notes in terms of telephone conversations as a lawyer but I don't have a diary-----

Well, how do you know what commitments you-----?-- Well, I have a - I have a computer that has a diary on it, yes.

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Right, well-----?-- Sorry, I thought you meant a-----

No, I meant a diary?-- That records appointments, yes.

Electronic diary, any kind of diary?-- Yes, I do, sorry, I do.

I hope that the situation is that when the Commission asked you about any information you had, you did search your

electronic diary to see whether you - there was anything there that might assist your recollection. Did you do that?-- I didn't do that because I know I have nothing.

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You know that you had nothing?-- Yes.

Well, your diary would record any contacts that you might have had in that period with people that are of interest to the Commission in relation to the matters before the Commission?-- I had no role what so ever in the Gold Coast Council election and I had no contact with councillors and I have no knowledge of any affairs associated with that election.

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Right. Now, what about contact with Mr Ray in the lead-up to the elections? Did you have such contact?-- I had many meetings with Brian Ray.

So if you were to go to your electronic diary and any diary notes that you kept, you would be able to say whether you did have contacts with Mr Ray in that period?-- Probably, yes.

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But you haven't done it?-- No.

I see?-- I haven't done it because I had no meetings with Brian Ray concerning the Gold Coast Council elections.

Did you have any conversations with Mr Ray in relation to the Gold Coast elections and the funding of candidates?-- I had one meeting and it was a meeting to discuss issues associated with the Tweed Shire Council elections and-----

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Yes. Which were at the same time?-- Which were held at the same time. And at the end of that meeting, I recall Brian making a few brief comments about the election campaign. I can't remember - in fact, someone reminded me the other day that a couple of comments were made. And I can't remember what those comments were.

Sorry, I'm not with you. Who reminded you and of what?-- I was talking to Graham Staerk the other day and asked him to recollect whether I'd met with anyone because I could never remember meeting anyone and he said the only person I can ever remember you meeting with that made some comments was Brian Ray.

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Right. Did you go to your diary to try to find that date?-- No.

So you don't know when the date was?-- Offhand, no.

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Well, why didn't you go to your diary in responding to the Commission request?-- Because I did not meet with anyone associated with the Gold Coast City Council elections.

Did you not know that this was in relation to issues concerning the funding of candidates?-- I knew what the inquiry was about, yes.

Right. Well, if you had a conversation with Mr Brian Ray, who you well know - well, let me put it one by one. You knew that Brian Ray was involved in organising funding, didn't you?-- Yes.

Right. How did you know that?-- Because I read it in the newspaper.

And did you discuss it with him?-- Brian made some comments about - at that meeting-----

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And we don't know when the meeting was. Yes, he made some comments?-- Yes.

What comments?-- I can't remember what those comments were.

Right, well, there is a meeting that we are yet to determine when that meeting was, at which there was some discussion which you can't remember. Any other similar contact with say Mr Staerk? Mr Staerk was present, was he?-- Yes, he was.

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Who else was present?-- That was it.

And why were you meeting?-- We were meeting with issues associated with the Tweed election.

Well, just in relation to the Tweed elections, can I quickly remind you of this. You would, of course, have taken a keen interest in Professor Daly's first and final reports concerning the Tweed elections?-- Is that a question?

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Yes?-- Yes.

Right. And is this the situation? This is the way it was described by Professor Daly. This is at page 297 of his first report. "In the 2004 Tweed Shire Council election, a group called Tweed Directions constructed a campaign funded by money primarily sourced from developers and intended to secure a pro-development majority in the Council. The campaign was masterminded by Graham Staerk, Allan Blundell and Paul Brinsmead." Now, the Paul Brinsmead referred to there is yourself. Is that correct?-- The - the report on the Tweed is on the public record. As I understand it, this inquiry is an inquiry into the Gold Coast Council election.

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Yes?-- The terms of reference are limited to an inquiry into the Gold Coast Council election.

Yes?-- I don't intend to address myself to issues associated with the Tweed Council election. They're outside the terms of reference of this inquiry.

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Yes?-- And the Tweed Shire Council inquiry will, and is very likely to be, the subject of further litigation.

Yes, well, you will address, subject to any direction of the Chairman, my questions. My questions are introductory to what

I want to deal with, namely, your dealings with anyone in relation to the Gold Coast elections at the same time. But I'm asking you at the moment to acknowledge the fact that Mr Daly said that in his report. Do you know that he said that in his first report?-- I'm not going to answer any issues associated with the Tweed Shire Council elections because it is not relevant to the terms of reference of this inquiry.

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Well, in my submission, Mr Chairman, it is plainly relevant to explore the witness's connection with the events of the Tweed election as dealt with by Professor Daly preparatory to asking him as to whether or not the same process occurred in relation to the Gold Coast elections and he was part of it and that's what I want to do.

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CHAIRMAN: On the basis of that questioning, I have no difficulty in seeing the relevance to this inquiry and, at this stage, I direct you to answer the question that you've just been asked.

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MR MULHOLLAND: The question is, again, you know that Professor Daly said, in his first report, that, "In the 2004 Tweed Shire Council election, a group called Tweed Directions constructed a campaign funded by money primarily sourced from developers and intended to secure a pro-development majority in the Council. The campaign was masterminded by Graham Staerk, Allan Blundell and Paul Brinsmead." Now, you would have read that in the first report?-- Sorry, what's the question.

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Do you agree?

CHAIRMAN: You've been asked whether that was said in the report. You're not being asked whether you agree with the correctness or otherwise of it, that might come later. You can answer that question or whatever when that - if that question is asked. At this stage, you're being asked a simple question. Do you recall that that was written in the report by Professor Daly?-- Yes, I do recall that.

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MR MULHOLLAND: And that Professor Daly described your involvement - this is at page 269 - in these terms, "Tweed Directions hired professional campaign experts from outside of Tweed Shire to manage the campaigns. Within the organisation itself, Paul Brinsmead appears to have been the chief strategist of the overall campaigns." Do you agree that that's the way in which Professor Daly described your role?-- I understand so.

Do you agree with that description?-- No, I don't.

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How would you describe it?-- Can I get back to the question of relevance? What is the relevance of my role in the Tweed Council elections?

CHAIRMAN: I wonder whether it needs to go quite as far as that, Mr Mulholland.

MR MULHOLLAND: All right. I'll go straight on. Mr Brinsmead, what I suggest to you is that you had a strategic role in relation to the Tweed Directions campaign and what I wish to ask you is whether or not you had any role whatever in relation to a campaign which could be described as a similar campaign so far as the Gold Coast City Council elections are concerned?-- I had no role in the Gold Coast City Council elections.

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You had dealings with Brian Ray in relation to the Tweed elections?-- Yes.

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And apart from this one discussion that you had with Mr Ray which you've only been reminded of recently you had no other conversations with Mr Ray in relation to what was happening in the Gold Coast elections?-- Not that I can recall.

Not that you can recall?-- I don't believe I ever did.

Did Brian Ray ever discuss with you the fact that he was organising funding from business people, but primarily developers, to fund candidates in the Gold Coast elections?-- There was never any conversation in those terms.

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Any conversation to that effect?-- We had a meeting and some comments were made by Brian at the end of that meeting. It was two or three throwaway lines that had - from what I recall had nothing to do with his role or how he was organising things, they were simply some observations.

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Didn't you check with Mr Ray to see how things were going, how the fundraising in relation to the city council - the council elections was going?-- I wasn't really interested in it.

Did you have any contact in which any discussion took place concerning the funding of a campaign to assist candidates at the Gold Coast City Council elections of March 2004 with Mr Hickey?-- Tony and myself often would have conversations about a lot of things. I would more often talk to him about the things I was involved with on Tweed issues. Tony may have on a very limited - on a number of very limited occasions made an observation but there was never anything detailed, never anything specific that I could say what was said or when.

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So you can't remember any detail in relation to such a conversation at all?-- No.

Nothing?-- The conversation - the conversations, if we ever had them, would have been so brief and so insignificant. It was a subject that we just didn't discuss.

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Do you know Mr Power?-- I've never met Mr Power.

Did you know any of the candidates at the council elections on the Gold Coast for the 2004 elections?-- Leading up to the elections I - the only councillor I can ever recall having met was Councillor Eddie Sarroff.

Right. Yes. What about Mr Staerk? Did you have any conversations with Mr Staerk in relation to any funding of candidates at those elections in March 2004 on the Gold Coast?-- I can't recall talking to Graham about that.

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No recollections whatever of any conversation?-- About?

About the Gold Coast City Council elections of 2004?-- We - we would have had conversations about the elections. Your question before was about funding.

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Yes, that was the next part of it. Any conversation at all with him concerning the funding of candidates at the 2004 Gold Coast elections? Do you understand my question, Mr Brinsmead?-- Yes, I do. I can't recall any conversations.

Yes, I have nothing further, thank you, Mr Chairman.

CHAIRMAN: Mr Brinsmead, in the second half of 2003 and the first half of 2004 you were mainly involved, you had this slight consultancy role, but otherwise you were mainly involved in property development. Is that correct?-- That's correct.

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Where were your property developments at that time?-- Predominantly - predominantly in northern New South Wales.

Were there any within the Gold Coast City Council area?-- We had one project at Currumbin.

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Right. Yes, thank you. Mr Nyst?

MR NYST: I have no questions.

MR WEBB: No questions.

CHAIRMAN: Mr Fynes?

MR T FYNES-CLINTON: No questions.

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CHAIRMAN: Nothing in reply?

MR MULHOLLAND: Yes, may the witness be excused?

CHAIRMAN: Yes, thank you, Mr Brinsmead.

WITNESS EXCUSED

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CHAIRMAN: We might-----

MR MULHOLLAND: Yes, thank you.

CHAIRMAN: -----take the mid-morning break now. Adjourn for 10 minutes please.

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THE HEARING ADJOURNED AT 11.17 A.M.

THE HEARING RESUMED AT 11.28 A.M.

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MR BOYLE: Mr Chairman, I call Malcolm Ion Chalmers. Ian is spelt I-O-N.

MR HOWE: Mr Chairman, I appear for Mr Chalmers with Mr Wesley Smith.

CHAIRMAN: Thank you, Mr Howe.

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MALCOLM ION CHALMERS, SWORN AND EXAMINED:

MR BOYLE: Witness, your full name is Malcolm Ion Chalmers, is that right?-- That's correct, with an O.

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You're of 1156 Gold Coast Highway, Palm Beach?-- That's my business address. My residential address is 2/25 Chairlift Avenue, Mermaid Beach.

You're a solicitor?-- That's correct.

You're admitted to practise in the State of Queensland and you were admitted on - in March of 1981?-- That's correct.

You conduct a business under the name Mal Chalmers and Company at Palm Beach?-- That's right.

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In respect of these proceedings you were served with an attendance notice to appear here. If I could just get you to look at this document?-- Yes. Yeah, that's a copy of that document.

That's a copy of that attendance notice. It has an oath of service attached to it?-- Yes.

50

I tender that, Mr Chairman.

CHAIRMAN: That will be Exhibit 106.

ADMITTED AND MARKED "EXHIBIT 106"

MR BOYLE: Witness, you were also given a notice to discover to provide a written statement and produce documents and that was by way of notice dated 8 September 2005, is that right?-- That's right.

And as a result of that you produce documents and also prepared a statement which you signed?-- I did.

10

All right. Could you have a look at these two documents?-- Yes, I recognise those.

All right. I'll tender the notice to discover and also the statement by this witness?-- I haven't got a copy of this. Could I keep a copy of that to read or - if your asking other questions.

All right. We'll have an extra copy?-- Yep.

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CHAIRMAN: They will be Exhibit 107.

ADMITTED AND MARKED "EXHIBIT 107"

MR BOYLE: Now in your statement, if I could just take you to the second paragraph?-- Yes.

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You say in early 2004 you were approached by Mr Norm Rix of Family Assets Pty Ltd?-- That's correct.

And you'd previously acted for him?-- Yes, I had.

Now, you say there, "He told me that he was depositing the sum of \$5,000 into my trust account," and you gave him basically the details so he could do that?-- Well, I didn't give him the details on the day in question. I believe the conversation I had with him was on the golf course. It was in the Christmas-New Year break. I can't remember exactly what date but we didn't really discuss what was going to transpire but basically that he was going to be putting these funds in and when he got back to work it would be fully discussed.

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Well, at that point on the golf course did he say what he was putting, \$5,000 into your trust account?-- No, I didn't discuss that with him at that point in time.

50

You didn't ask for any reason why he'd be wanting to put money into your trust account?-- Well, I've acted for him before, it was - he's put money into my trust account before and - and I've got a rule that I don't discuss business at golf. It was a social activity.

All right. Then you say in the statement, "Those funds were subsequently received on 7 January 2005"?-- Yes, that's correct.

1

Well, was there any discussion at that point as to what the purpose of the funds were?-- I didn't have a discussion with Mr Rix. My understanding was, was that he would have spoken to my bookkeeper. Normally I'm in the habit if people put funds in my trust account I ask them to contact her so that they can get details of my bank account and the funds put in. As I say in my statement, my first contact with Mr Rix after that, my first direct contact with him was on or about the 14th of January.

10

All right. Well, you produced some trust account records?-- Yes.

If I can just get you to look at these. Now, first of all there's a trust account statement?-- Yes.

20

Which shows the payments in and out of your trust account, is that correct?-- That's correct, that's correct.

Now the trust account receipt on the 7th of January?-- That's correct.

That's for the \$5,000 deposit?-- \$5,000, yes.

And you see there - well, who wrote that out, do you know?-- Well, my bookkeeper wrote that out and as I say she spoke to Mr Rix. She did tell me subsequent to that so I knew what it was on that day but I didn't have a direct conversation with Mr Rix, so my statement is my direct evidence in what contact I had with Mr Rix.

30

All right?-- So I was aware on that day what the funds were for but I hadn't spoken to Mr Rix about it.

So - right. Well, it's obvious from the receipt what it's about?-- He would have - yes, that's correct.

40

Okay. The next is a Suncorp Metway deposit slip for \$5000. That's depositing it into your trust account?-- That's correct.

And - okay. Now, may the witness see Exhibit 63, please. I'll just have these shown to you?-- Yes.

Now these are some statements which have previously been tendered, so I'll just show you those copies?-- I'm aware of those. Yes.

50

One is to Aus Supply House in the sum of \$247. And the other one's for Signarama, \$385?-- Yes.

And were those paid by you?-- They were paid from my trust account, from funds held in my trust account. That's correct.

Okay?-- On behalf of Mr Rix.

1

And there's a copy of a letter there too?-- That's correct.

From Roxanne Scott?-- Yes.

And that's something that was received by your firm?-- That's right.

It's dated the 16th January 2004?-- 16th January. That's correct.

10

Okay. Now going back to the - if you'd just hand that back. Just to get the sequence right, then we have a cheque on the 4th February 2004 - sorry, if we can return the exhibit - the trust account, there was a cheque there for \$4368, 4th February?-- Yes. That's correct.

And that was - it appears deposited by your bookkeeper into the Roxanne Scott Campaign account?-- That's correct, yes.

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Okay. Mr Chairman, I'll tender those trust account documents as one bundle.

CHAIRMAN: That will be Exhibit 108.

ADMITTED AND MARKED "EXHIBIT 108"

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MR BOYLE: Now if we could return to your statement?-- Yes.

Mr Chalmers. You say you got the funds on the 7th January, you spoke to your bookkeeper?-- Yes.

And she told you that it related to the Roxanne Scott account?-- Yes.

40

And then on the 14th January 2005, you had a telephone conversation with Mr Rix. Would you tell us about that conversation?-- Well, I had a conversation with Mr Norm Rix because nothing had happened with the funds. I was just inquiring what the position was with this money and he indicated to me that he - you probably need to know a little bit of background, my background with Mr Rix. I know him as a businessman, a former landlord of ours - we had a family business which - we were tenants of his at the Ashmore City Shopping Centre where his family owned that building, and so when I spoke to him I asked him what he wanted me to do with the money because nothing was happening with it, and basically he suggested to me - well, we decided that the funds would be distributed in accordance with accounts which were presented by Roxanne Scott and he would ask her to contact me which she subsequently did.

50

All right. Well this is important, Mr Chalmers?-- That's fine, yep.

1

So he was the person to contact Roxanne Scott?-- Yes.

To tell her that the money was in your trust account?-- That's exactly correct.

Well, did-----?-- I had no way of contacting Roxanne Scott at that point in time.

10

Well, did-----?-- I received a letter from her dated the 16th January where she's enclosed her business card.

Yes?-- And I had a conversation with her between that time and receiving the letter.

Yes. Right. So you-----?-- I have read her evidence, so I'm aware where you're coming from.

20

All right. Well, I'll - just so we clear it up, this is at page 372 of line 20 of the transcript. When Ms Scott was giving evidence she was asked, "How did this come about that you were getting money from Mal Chalmers." She said, "I had been doorknocking around the area fairly extensively, and yeah, Mal Chalmers contacted me and said there was funding available"?-- Well all I can say to that is I live at Nobby's Beach and her area's far north of there and I would have had no contact with her. No-one's ever - in fact, no-one's ever doorknocked on my door in all my life.

30

No, it's saying-----?-- Well I don't know how she would have come about getting, you know, why all of a sudden out of the - she's suggesting that out of the blue I've contacted her and said, "I've got some funding for you" and that's just not correct.

Well, I presume that means from Mr Rix, that she doorknocked and spoke to Mr Rix and Mr Rix then put it in-----?-- Well, that's my understanding of it. I can't give you any direct evidence that Roxanne Scott knew that the funds were coming from Norm Rix. I mean, I had one conversation with her after I'd had that conversation with Mr Rix where he indicated to me that he'd have her contact me, she subsequently contacted me by telephone and it wasn't a very long conversation, but it was along the lines of present accounts and they'll be paid.

40

All right. So no-one in your - well, to your knowledge, in your firm contacted-----?-- No.

50

-----Ms Scott?-- That's correct.

And it would have only been through Mr Rix?-- That's exactly right.

And what sort of work does Mr Rix do, Norm Rix?-- Well, he does lots of things. I mean, I do a lot of stuff - I don't do his company stuff. I do a lot of personal things for he and

other members of his family including his daughter, his son-in-law, employees and other people.

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CHAIRMAN: But you were asked not what you do, but what he does?-- Oh, what he does. Well, he's a businessman.

MR BOYLE: Well, what about Family Assets Pty Ltd?-- Well, Family Assets, as far as I'm aware, used to own the Ashmore City Shopping Centre and I am aware that they do do development work now, they have subdivisions, but they're also landlords, I think they've still got properties where they're still landlords, so I don't know what all his business dealings are.

10

What about Rix Developments? What's his association with that?-- I can't help you with Rix Developments.

So did you ever tell Roxanne you had funds in your account for her benefit?-- When she rang me I told her, yes.

20

But she initiated that contact?-- She did.

So the only way she would have known to contact you would be through Mr Rix?-- Through Norm, yeah. That's my understanding.

There's another - she sent something through to you on the 7th of January providing her account details. I'll just show you that?-- Yeah, I haven't seen that but I saw that - I hadn't seen that before the other day actually.

30

So this was a document which you produced as I understand it?-- Yes, that's correct. It was on the file.

So that's a document she sent to your firm on the 7th of January?-- Yep, that's correct.

All right. I'll tender that document, Mr Chairman.

CHAIRMAN: That will be Exhibit 109.

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ADMITTED AND MARKED "EXHIBIT 109"

CHAIRMAN: Could I just see that thanks?

MR BOYLE: Did Mr Rix tell you anything as to what he said to her about the donation?-- Well, my understanding of the matter was Norm told me that he'd had this meeting with this Roxanne Scott and it was quite a lengthy meeting and that in it she'd sought his counsel on what she should and shouldn't do as far as standing as a candidate for the Gold Coast City Council. Norm in his usual manner found that he - he liked her and decided - told me that he wanted to give her some money to help her fund.

50

Can I just ask you about the use of your trust account on this particular occasion?-- Yes.

Okay. Now, you were completely comfortable having your trust account used in this way?-- Perfectly legal way of dispersing funds. In fact, I'd suggest that anyone that wanted to donate to a candidate would do that the reason being it creates an audit trail and it also eliminates the situation of someone giving a sum of money to someone and that person going down the road and spending it in a pub and you not know - it's not properly accountable so I see it as a perfectly logical way of doing it. I'm governed by the Trust Accounts Act and strict regulations. I'd probably point out to you that - and there seems to be some misapprehension in the evidence that I've heard or read in what a solicitor's trust account function is. As trustee I'm trustee for not only Norm Rix for his \$5,000 I'm trustee - I've got a printout of my trust account for January where there are 100 ledgers so in effect I've got 100 trust accounts within that trust account. Now, they're governed by strict rules. One of those rules is that no fees can be charged to that account. You cannot make cheques out to or bearer, they've got to be made to or order so that there's a proper trail so that if I make a cheque out to Roxanne Scott she can't go and assign it over to you, it's got to be balanced every month, it's got to be audited every year and in addition to that I have - I have a retired senior law society auditor who comes to my office once every three months to do just a spot audit to make sure everything's in order. It's the hearth of my business and I've got to make sure everything's right.

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All right. Well, in respect of what happened with Mr Rix-----?-- Yes.

-----you weren't providing any legal service?-- No. Well, I was providing an administrative service for doing his putting it through my trust account as I just said, it was basically just an administrate role.

40

Okay. Well, have you allowed your trust account to be used in that fashion, for donations, before?-- I have. Well, I - I can't recall exactly but I'm sure I've had donations where people have made to charities or other things, not for political purposes, no.

So this is the first-----?-- Well, that I can recall.

-----that you can recall for a political-----?-- Yeah, I've been in business for 25 years so I don't take a real lot of notice of that sort of thing.

50

So when you received the money in at whose direction was the disbursements to be made?-- Well, basically at the - well, Norm told me it was at - to disburse in accordance with her instructions provide there were accounts provided et cetera which they were.

But then that changed?-- That changed. She indicated some time down the track - I think it was early February from memory - that she wanted a lot of the money put into her campaign account and I checked with Norm to see if that was okay and he was comfortable with that. She'd established her bona fides and it you know was going into a proper campaign account which we established was set up for the purpose.

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Can I just show you a document which looks like a photocopy of a telephone message?-- Got that, yep.

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that's from your file?-- That's from my file, that's right.

Right-----?-- I'm not sure whose writing that is to be quite honest with you but it's-----

Who's Sybil?-- Sybil's my bookkeeper.

Sorry, what's her last name?-- Goldsworthy.

20

Goldsworthy. She's the person that witnessed your statement?-- That's correct, yes.

All right. So there was a phone call from Roxanne Scott, you then spoke to him again and got authority-----?-- Well, I didn't speak to Roxanne Scott, she would have spoken to one of the girls and I only had the one conversation with her and Sybil would have said to me, "Well, what have we got to do here?" I said, "Well, I'd better check with Norm to make sure everything's okay," and checked with Norm and he was comfortable with that.

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Sorry, who checked with Norm?-- I did.

You did. I'll tender that telephone note.

CHAIRMAN: It's Exhibit 110.

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ADMITTED AND MARKED "EXHIBIT 110"

MR BOYLE: Can I show you another letter, a letter you did - a copy of a letter that's from your file?-- Yes, that's correct.

Now, that's a letter dated the 25th of August 2005 to Roxanne Scott?-- That's correct.

50

What's the background to that letter being written?-- Well, the background to that letter is that I was contacted by a young lady from the Gold Coast Bulletin on - in late August, I think it might have been the 22nd or something - and she asked me - she'd seen my name on one of the electoral returns and she'd asked me who the funds came from and I told her that I couldn't tell her, it was just solicitor/client privilege. In fact, I think I said to her, "You know I can't tell you." And

it sort of grew its own life from there. She thought that she was on to a bit of a winner, that she'd uncovered this secret trust fund - in their words - in the Bulletin's words - which is totally incorrect because the matter was in the Gold Coast Sun and I've got copies of articles on that which I can tender for you to read which would probably be of importance to the Commission because they seem to have every other article on it and this is the Gold Coast Sun dated the - Wednesday, the 9th of June 2004 by Murray Hubbard. He refers to, "Roxanne Scott admitted receiving \$5,000 from a fund controlled by Mal Chalmers, Solicitor," and then there's another article as well which is even prior to that referring to it, Wednesday, the 14th of April. I don't know whether you want to have a look at those or-----

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All right. Well, we tendered a number of articles in-----?-- Yeah, I don't know whether those ones have come up though.

CHAIRMAN: That's June of this year, is it?-- No, last year.

20

'04?-- '04. That was when the returns first went in.

I see?-- Yeah, and I think it came out of that because my name was in the return and I think it transpired from there. The Gold Coast Sun is a free publication which comes out every Wednesday as far as I'm aware.

Yes, could I just see that?-- Yes.

30

And then - what, this second one is also relevant is it? The one of 14th of April of this - last year?-- Well, I could have thought so because it quotes Miss Scott as well.

Yes. I think we might already have that one?-- Yeah, you may have that one.

Just let me check. Yes, yes, that's number 52 in our list?-- Oh okay, really.

40

But the first one we don't so I'll mark that as Exhibit 111.

ADMITTED AND MARKED "EXHIBIT 111"

CHAIRMAN: Thanks?-- Thank you. Now, yeah, so you wanted - so, what happened from there was, the article of the 23rd of August, I think it was, appeared in which it was suggested that I had to lodge a third party return and there were a couple of other articles subsequent to that. But in respect of the letter I was contacted by Tony Davis from the Gold Coast City Council in respect of the matter. His initial advices were that he felt I had to lodge a third party return.

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Just - can we place this in context? It's - it seems to be article number 85 in Exhibit 3. Can the witness be shown that? Just see if this is the article you're referring to Mr Chalmers.

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MR BOYLE: It's an article of the 23rd of August.

CHAIRMAN: Did you have a copy of that there? It just might speed things up. Yes, Mr - oh, all right. Can you just read through this, number 85, thanks. Just read through this Mr Chalmers, there's a-----?-- Out aloud or?

10

Oh no, just to yourself?-- Yeah. That's an article by Greg Stoltz.

No, it's by - 85, by Fiona Hamilton?-- Oh, here it is, yeah. Yes. Gold Coast Bulletin.

Yes?-- Yeah, that's the one. Yes, that's correct, that's the one I'm referring to.

20

All right, well, it's got a couple of parts there. It talks about Miss Scott receiving these donations which total 5,000?-- Yes.

It says, however, Mr Chalmers failed to lodge a third party return-----?-- That's correct.

-----listing the original donor of the money. Comments from councillor Young saying the lack of the disclosure of the Chalmers Trust Account was a clear breach of the Local Government Act?-- Yes.

30

"You were saying you did not realise the third party return was necessary"?-- Yes.

"It was a client of mine. I can't tell you who." You see it now. Did you say that?-- Now, you've got to put this in context. My understanding of the matter is, I was asked that question before those other people were approached.

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I see, yes?-- I wasn't asked, did you breach the-----

Sure?-- -----Local Government Act. It was just a question off the cuff and I - and my answer was a simple, I wasn't aware I had to, meaning-----

Okay?-- -----as far as I was concerned I didn't have to and then it grew its life of its own after that and these other people were contacted.

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Sure, okay?-- And I wasn't contacted subsequent to that to make a comment.

All right. Well, you'll have the opportunity now. It quotes then, Local Government Association Executive Director, Greg Hallam, saying anyone who's set up a trust account was obliged to lodge a return listing all its donors. It said when the

Bulletin alerted Chief Executive Officer, Dale Dickson's office, about the omission yesterday Mr Chalmers was contacted and told to lodge a return?-- That's correct, I was.

1

We have taken the matter up with the solicitor concerned said a council spokesman. The Local Government Act does have disclosure periods. There is a penalty. Were you contacted by the Gold Coast City Council and told to lodge a return?-- I was told that he felt I had to lodge a return and I said, well, look, I'll look into it.

10

Yes?-- I wasn't going to take his word for it.

Sure?-- And I wanted to look at - have a look at the Act to see what the Act said and I subsequently looked at the Act and I couldn't see where I was required to lodge a return.

And what did you do then?-- I didn't do anything.

Well, you were - I think you say in your statement you were told-----?-- Oh subsequent to that - sorry. I'm talking about - I'm just trying to keep it in context of this article.

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Yes, okay?-- Because there is another article later in the week.

Oh, is there?-- Yeah.

Where?-- On Friday where they're basically retracted.

30

Well, if you look at the next one. That might be the one you're referring to?-- Yeah.

At about the middle of the page it says on Monday, Mr Chalmers, said he was not aware of third party returns?-- That's -that's just a, sort of, double up of that other article I see that as.

And then it - "Tony Davis, the Manager of the Council's Chief Executive Office said there appeared to be a loophole in the Act which you'd referred to the Department of Local Government. Mr Davis said that if the funds were in a solicitor's trust account for another purpose originally but later used politically they were not classified as a gift and therefore did not require a return"?-- Well, I'm - I'm still coming - trying to grasp what he's but either way I don't see that I was obliged to lodge a return. I mean, I did my own research on it. Section 430 of the Act with third party returns refers to people who expend money on other people's behalf. Well, I've just given evidence that no money can be taken out of a trust account so I haven't expended any money on anyone's behalf and my understanding of the Act is that a trust fund, all you've got to do is put the name and address of the trustee. I'm not sure what section that is. I think it's 4.16 or 4.25 or something like that.

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All right, anyway, Tony Davis of the Gold Coast City Council, you tell us in your statement told you that you weren't

required to lodge a third party declaration?-- That's correct. That was subsequent to that - that was prior to Friday.

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Yes?-- He contacted me and said, look, we've looked at it. You don't have to lodge a statement but he did say, to complete your requirements you should notify Miss Scott of who the principal donor was. Now-----

And, that's the reason for your letter to Ms Scott?-- That's the reason. I didn't entirely agree with that course of action but just to satisfy Mr Davis at the time, I did so.

10

Yes, all right, thank you.

MR BOYLE: Thank you, Mr Chairman. I'll tender that letter.

CHAIRMAN: Yes.

WITNESS: Yes, so that letter was in response to that - that - those two articles in the paper.

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MR BOYLE: All right. That's a letter from you to Roxanne Scott dated the 25th of August-----

CHAIRMAN: I think actually it's already in as exhibit 65.

MR BOYLE: Oh.

WITNESS: And, you might note it says confirming who the principal donor was, so, as far as I was aware, she did know who the donor was.

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MR BOYLE: Sorry, I-----?-- The letter reads, "I confirm".

CHAIRMAN: Yes, well, that's exhibit 65, yes.

MR BOYLE: I think the other letter had some other notations on it because it was forwarded by Roxanne Scott to the Council but I don't think it matters. Can I just clear up. Did you understand Tony Davis to be the manager, is it, the chief executive officer?-- No, my understanding was that he was 2IC, or to Dale Dickson, or something. I think he said he was - his - well, was - yeah, he was sort of under him sort of thing, basically, yeah.

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And, he spoke to you on two occasions?-- Yes.

One time to tell you that you needed to lodge your return?-- That's correct.

50

And then you looked it up-----?-- Yeah.

-----and you didn't respond in any way-----?-- No.

-----and then he contacted you again. Is that right?-- He subsequently contacted me later in the week and said, "You don't need to lodge a return".

And, that was when-----?-- Yeah.

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-----the suggestion of a letter-----?-- I mean, I had a lot of things to do, you know what I mean. I wasn't just sitting there trying to work out how to lodge a return. I had business to attend to. So, I was going to look at it and I had looked at the Act and he had e-mailed me actually a copy of that candidate's booklet but it got deleted. I don't have a computer on my desk and the girls deleted it.

10

For completeness, did you provide any advice to Roxanne Scott in respect to any electoral return she might have to give?-- No, I didn't - I did not.

Did she, at any stage, ask you personally, or to your knowledge, any of your staff members, as to the source of the donation?-- I don't know that, I - I couldn't tell you that.

But, did she ever ask you?-- Well, as I say, the conversation I had with her was - was along the lines, "Norm told me you'd be ringing", and it was taken it was given that she knew where the funds were coming from. I mean, I've read her stuff and probably in fairness to her, my only involvement in this matter was this one small thing. She had a lot of things going through her mind and I think perhaps she might have read that article of the 23rd of August which indicated that I wasn't prepared to - to divulge who the client was to the paper and, she's probably got that in her mind that - the same thing.

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Is your evidence that because she contacted you and your firm that you assume she already knew-----?-- Yes.

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-----who the donor was?-- Correct.

And, when you mention Norm by name you-----?-- Oh, Mr Rix, yeah, Norman Rix, yeah.

You said, Mr Rix to her?-- Yes. Well, I think I would have said, yeah, Norm Rix, yeah, I would have said that. I wouldn't have said Mr Rix, I would have said Norm Rix.

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No further questions.

CHAIRMAN: Yes? Any questions?

MR NYST: I have no questions.

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MR WEBB: Yes, I have a question. Mr Chalmers, you've told us of your operation of the trust account and you made a couple of points about the trust account. Is it your - you may have only addressed this question recently - but, is it your understanding that in relation to each of those accounts, which are of course separate funds, you're the trustee of those accounts?-- I was the trustee on behalf of Mr Norm Rix

to disperse monies as he directed me within that trust account. That's my understanding of it.

1

I see. But, you see there's a fund there that's comprised of this particular account?-- Yes.

You mentioned the vast number that you've got?-- Yes.

Or, it seems vast to a humble barrister, it may not be?-- Yeah, well that's what - that's what I mean. I mean, it's probably, you know, there was over a hundred ledgers for that particular month so it's - it's not a small thing. It's something that we've really got to make sure is done properly because we've all seen the results of what happens to people that don't.

10

Too true. But, of that fund, you see, you're the only person who can deal with it upon direction by the person?-- That's correct. I've got a-----

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So, you're the trustee of the fund?-- That's right.

Yes.

MR T FYNES-CLINTON: Just one matter, Mr Chairman.

CHAIRMAN: Yes.

MR T FYNES-CLINTON: Mr Chalmers, you mentioned that you had a look yourself at section 430-----?-- Yes.

30

-----of the Local Government Act?-- That's correct.

And, that the introductory part of that section referred to a person who incurs expenditure?-- Yes.

And, that you consider that didn't apply to you-----?-- That's correct.

-----as I understood your evidence, because you'd passed on money to a candidate?-- That's right.

40

Would you just have a look at this, please. It's just an extract from the Act?-- Yes.

It's from a document that I'm going to tender but just for convenience. Now, that's a copy of section 430 and I'm just wondering if you'd turn over to the definitions section, which is subsection 5, I think-----

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CHAIRMAN: Six.

MR MULHOLLAND: Six.

MR T FYNES-CLINTON: Six, about expenditure. And, I'm just wondering if you gave considera

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it's just your evidence
before you didn't think you'd incurred expenditure?-- No, I
hadn't. The \$5,000 went in and went out.

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All right. So, you didn't consider that you'd made or been
involved in making a gift to the candidate yourself?-- No.

Even though the money was vested in you as trustee?-- That's
correct.

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Okay, thank you. Could you send that back, please, Chairman.

CHAIRMAN: Is that because as the solicitor who was running
this trust account, you had absolutely no discretion as to how
that-----?-- That's right. I've got-----

-----money was expended?-- -----absolutely no discretion at
all.

Yes. And, where it says, "Expenditure includes a gift to a
candidate", you didn't, "As trustee"-----?-- No.

20

-----make a gift to the candidate. You didn't determine that
that money should go to her?-- No, that's correct.

It was Mr Rix who did that?-- But, there seems to be a
misconception that I've been approached by some people saying
well, what have we got to do to get money from your, you know,
to get - get a - there seems to be this thing that there's a -
because in your trust account there's a broader amount of
money, I think it's important to point out that that \$5,000
has got to be - I can't draw \$5,001 for example or alarm bells
go off if that happens. Or, if Norm rang up and said, look, I
want to give that - that lady another \$1,000 I'll give you the
money later, well, I can't do that-----

30

Yes?-- -----that's - it's - it's all got to be properly-----

But, you also couldn't have decided to give a-----?-- No,
that's right.

40

-----\$1,000 to a different candidate-----?-- That's exactly
correct, yeah.

-----apart from Ms Scott?-- There seems to be this
misconception that I could but-----

Yes. And, whereas, of course, if a trust fund was set up with
a-----?-- Oh, yes.

50

-----trust deed-----?-- Yes.

-----giving the trustee, as one might expect-----?-- Yeah.

-----the discretion to determine-----?-- That's right.

-----which candidate how much money should go to-----?-- Yes.

-----then that trustee would be making a gift-----?-- Yes.

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-----within the meaning of this section?-- Yes, I understand. That's - that's correct. That's the way I see it.

Yes. Yes, thank you, Mr Chalmers.

MR WEBB: I have a question arising out of your questions, sir.

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CHAIRMAN: Certainly, Mr Webb.

MR WEBB: And of course, with a trust deed you can also via the deed set up who are to be the persons determining the appointors or directors, who is to receive the proceeds of the-----?-- Well, that's correct, but mine was-----

Not just the trustee?-- Yeah.

Who might be nominated?-- That's correct.

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And of course-----?-- -----but that wasn't my situation at all.

Yes, thank you.

CHAIRMAN: Any re-examination?

MR BOYLE: No, Mr Chairman.

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CHAIRMAN: Yes, thank you, Mr Chalmers, you're excused. Thank you for your attendance.

WITNESS EXCUSED

CHAIRMAN: Thank you, Mr Howe.

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MR HOWE: Thank you, Mr Chairman.

MR BOYLE: I call Mr Janssen.

CHAIRMAN: Call Mr - it's Robert David Janssen.

MR BOYLE: Mr Chairman, on the point of the gifts, third party gifts, it's only for gifts above \$1,000 as I understand the prescribed amount. So the previous two transactions, the paying of expenditure would not have fallen within that.

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CHAIRMAN: But it's the three, you collate the three together to see if they go above the-----

MR BOYLE: Yes, except if it goes to - that's different to the candidate going directly.

CHAIRMAN: All right, okay.

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MR BOYLE: But that was just-----

ROBERT DAVID JANSSEN, SWORN AND EXAMINED:

MR BOYLE: Witness, your name is Robert Janssen?-- Yes, it is.

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You live at 20 John Munro Court, Carrara?-- Yes, I do.

You appear here after having been served with an attendance notice, is that correct?-- That's correct.

Could you have a look at this document. That's a copy of the attendance notice served upon you?-- That is correct.

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I'll tender that attendance notice, Mr Chairman.

CHAIRMAN: Exhibit 113.

ADMITTED AND MARKED "EXHIBIT 113"

MR BOYLE: You were served with a notice to discover requiring you to produce a written statement and also certain documents in your possession. Is that right?-- Yes, I was.

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And that was back in September and you, as a result of that, provided some documents and also a typed statement. Is that correct?-- That's correct.

All right. I'll show you the notice to discover and also a copy of your typed statement. Is that the notice and the statement that you provided?-- That is the notice.

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All right. And the-----?-- And that is the statement, yes.

And the statement?-- Yes..

The typewritten statement-----?-- Yes.

-----you have provided. I'll tender those two documents, Mr Chairman.

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CHAIRMAN: That will be Exhibit - those documents will be Exhibit 114.

ADMITTED AND MARKED "EXHIBIT 114"

MR BOYLE: I'll give you another copy actually of your-----?-- I have one with me.

Oh, you have a copy of your statement?-- Yes, I do.

ORDERLY: Would that be, Mr Chairman, Number 112, should that be 112 and 113, not 113 and 114?

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MR BOYLE: I'm instructed that that is correct.

CHAIRMAN: That's correct, is it?

MR WEBB: Yes.

CHAIRMAN: Yes. I had noted Mr Chalmers' letter and then subsequently realised it was already in, so thank you for that. So the notice to attend will be 112.

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ADMITTED AND MARKED "EXHIBIT 112"

CHAIRMAN: The notice to discover and the accompanying documents will be 113.

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ADMITTED AND MARKED "EXHIBIT 113"

ORDERLY: Thank you, Mr Chairman.

MR BOYLE: Now, Mr Janssen, what's your current occupation?-- I'm a builder.

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And you're involved with the Chamber of Commerce. Is that right?-- Yes, I am.

At the time of providing your statement you say that you were President of the Nerang Chamber of Commerce and Chairman of the Western Chambers and secretary of the combined Chamber of Commerce. Is that correct?-- That's correct.

And you still hold those positions?-- Yes, I'm still President for my fifth term of the Nerang Chamber of Commerce, I am the secretary for the combined Chamber and the Western Chambers of Commerce hasn't had a meeting for probably about 15 months.

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Now, I'll just take you through your statement?-- Mmm-hmm.

You say that there came a time that there was basically an appraisal done?-- That's correct, yes.

You said - refer there to a number of serious issues that, in your view, needed to be addressed?-- Correct. 1

Then over onto the second page, the second paragraph you say, "The first move to change the balance within the city came in the form of dealing with the 'green' issue when I was approached by Councillors Sue Robbins and David Power to write a piece on the effect that radical fundamentalist philosophy was having on infrastructure." Could you just explain that, how that came about?-- Yes. Well, at that particular time we'd already lost some important, shall we call it, tourism infrastructure within the city in relation to two cableways which is - which is an ongoing thing. There was an objection to the Tugun Bypass which was having - which would have and was having a serious effect on the city's infrastructure. I believe there had really been something done in relation to the harbour study which again had a lot to do with the tourism benefits to our city, and as a consequence it was felt in business circles that the green movement was having an inordinate effect on the infrastructure of our city and its future - future economic viability, so consequently these were very, very important issues to the business community. 10 20

When you say the harbour issues are you talking about the cruise ship terminal?-- The cruise ship terminal was only one small part of the harbour study. The harbour study dealt with a wide range of issues in relation to road infrastructure, the expansion of The Spit so that it could gain probably an extra 20 per cent of its area for public use, it dealt with the cleaning up of the Seaway and the cleaning up of the Broadwater. There - as I said, there was a whole range of issues which would have been beneficial for the city. 30

Well, when were you approached by Councillors Robbins and Power?-- I wouldn't exactly call it an approach. I mean, my position as the president of the Nerang Chamber of Commerce and a strong lobbyist within the City, I'm constantly speaking to a whole range of councillors and I believe that this may have evolved from a conversation I had with Councillor Robbins in the fact that we were all - Councillor Robbins, I might add, was very environmentally conscious and I had a great deal of respect for her so she also understood our position because the Chambers are also environmentally conscious. What we were looking for was a balance and I think it was just out of a conversation because I do do a lot of writing. I do the press releases. I do the minutes. I do various things for the Chambers - that this position evolved. When Councillor Robbins mentioned to me that perhaps it was a good idea to do this, I said, "Well, it's going to take a little bit of research. I'm going to have to talk to a lot of people." She said, "Well, look, I'm sure there'd be people in this City prepared to pay to have this done," I said, "Because it will not" - we thought, at the time, that The Bulletin would never print it. So she suggested there would probably be people that would be prepared to pay to make sure this appeared in the paper via full advertisement - full page advertisement. 40 50

When was the approach?-- Look, I couldn't give you an exact date.

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Some time in late 2003?-- Yes, could have probably been - well, would have been late 2003. I think I said early 2004. I'd like to point out, if I may, that I received my notification on - when was it - what date was it - 7.40 a.m. on Friday, the 16th and I was supposed to have it in by the Monday and, being a businessman, I had a lot of commitments that weekend. So I put this together very - fairly quickly so there may be some things in there that I might have to look at, yes.

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All right. Well, I suppose this is your opportunity-----?-- Yes, that's right.

-----we've tendered your statement. You know, we want to give you a full opportunity-----?-- No, that's fine.

If there's something-----?-- I think it was late 2003.

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Right, okay. Look, if there's anything incorrect in your statement-----?-- No, that's fine.

-----I want you to tell us-----?-- Yes, that's fine.

Have you read it recently?-- I read it as I was sitting outside actually.

Okay. So you've read it today?-- Yes, I have.

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All right. Now, well, what did David Power have to do with the approach about this article?-- I - as I said, in the course of what I particularly do in relation to lobbying, et cetera, and having grave concern about the infrastructure within our City in relation to tourism and specifically tourism, I'd also spoken to David about this issue because he had similar views to that of Councillor Robbins.

So - well, what was his view about you doing this article?-- David, like a whole lot of the councillors, were particularly upset about the Greens' stance on the Tugun bypass. They thought it was terrible for our City. The Tugun bypass is the main tourist gateway to our City when you consider that a lot of our tourists arrive by air.

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All right. Look, what I might do at this stage is just show you these - the material that you've provided to us-----?-- Mmm.

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-----which is a copy of various things that you've written by the looks of it?-- Yes.

Is that correct?-- That's correct.

Now, there's an article there that's called "Backlash Builds Against Greens Over Tugun Bypass"-----?-- That's correct.

-----by Bob Janssen?-- That's right.

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Now, is that the article that you're referring to here?-- Absolutely.

All right. Well, we might separate that because I need to distinguish between that and election material that you might have circulated?-- Yes, yes.

Now, this is what you're referring to in the second paragraph. The article was written - attached but was never published?-- That's the one.

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Well, I'll tender that document, Mr Chairman.

CHAIRMAN: That will be Exhibit 114.

ADMITTED AND MARKED "EXHIBIT 114"

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MR BOYLE: Just that one documents. It's titled "Backlash Builds Against Greens Over Tugun Bypass". Just that one section, thank you.

Halfway down page 2, you say that you were actually a candidate for division 8 back in the 2000 election?-- That's correct.

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And you ran against Councillor Bob La Castra?-- Yes, I did.

Obviously, Councillor La Castra was successful on that occasion?-- Absolutely.

And have you developed a relationship with him since that time?-- Councillor La Castra is my councillor. He's one of the councillors in Nerang and, of course, it's in the interests of the - a number of people I represent in business to have a working relationship with the councillor as well as all the others, yes.

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All right. Well, we'll probably come back to that later on?-- Okay.

Now, moving over to the next page, the third paragraph, it says, "Between November 2003 and January 2004"-----?-- Mmm.

-----and it says, "It was recognised that these candidates" - and it's referring to "Green Team" - "It was recognised that these candidates were being mentored by those associated with radical fundamentalist philosophies"?-- That's correct.

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So then you have a conversation with Councillor Sue Robbins - you see that at the start of the next paragraph?-- That's right, yes.

Now, this is important-----?-- Yes.

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-----this sentence, okay. "In a conversation with Councillor Sue Robbins, I was made aware that there was a substantial funding in a blind trust to support candidates that exhibited "common sense" with a balanced approach to development and environmental issues"-- That's right.

Okay. Could you just tell us about that conversation with Councillor Sue Robbins?-- To the best of my recollection, and I can't recall every, single, solitary word of it, Sue and I were discussing a range of issues at that particular point of time and one of them was the - one of them was the previous article I'd written in relation to the affect the Greens were having within - within the public perception of the constituents of the City. In that conversation, we more or less agreed that Councillor Young was a - well, we thought, was a destabiling force within Council in relation to the way the Council was run. The business community certainly didn't feel he supported their point of view. And when I say "business", I'm talking about the fact that Chambers of Commerce essentially support Mum and Dad or small businesses. As a consequence of that, I remember mentioning to Sue, "Well, if you want to know how good this guy is, just ask him and that's the way he gets away with these things. Something needs to be done to try and bring forward to the public all those things that aren't in their interest." And that's when I talked about perhaps I could write something in relation to the - in relation to a negative campaign on him. Sue then basically said, "Well, you know, that's not a bad idea. Make sure you check it all out. How long is this going to take?" And I said, "Well, I'll have to take a few - couple of weeks, two or three weeks off work" - "Well, look, you know, who's going to distribute it?" And I said, "Well, I hadn't thought about that." "Who's going to pay for the printing?" "Well, I haven't thought about that." And then she said, "Well, look, there's this - there's this trust fund, perhaps we could access that to pay for these expenses." And I think that's basically the general gist of the conversation.

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So the idea of a negative campaign came from you?-- Yes, it did.

And she talked about the trust fund. What did she tell you about the trust fund?-- Well, she didn't - I've used the term "trust fund" because it's been so common ever since but there was funding available. I didn't find out about the trust fund until - the word "trust fund" until a little bit later.

CHAIRMAN: Why do you use the word there "in a blind trust"?-- Well, we're looking in hindsight here. A blind trust - what I see as a blind trust is - when the trust fund issue first was presented to me, the point that business was always concerned about and, in this particular sense, I'm representing business, was the fact that there must be no perception of inappropriate behaviour. So what we saw as a blind trust was one where people from all walks of life, all forms of business, in other words the constituents, could

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channel funding to whatever candidates they wished so that there would be no onus on the candidate to be requested to give favourable decisions.

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All right. But the way you've got this in your statement-----?-- Yes.

-----is that you say, "The conversation with Councillor Sue Robbins, I was made aware" - presumably by her-----?-- Yes.

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-----"that there was a substantial funding in a blind trust"?-- Yes.

Now, did she use the term "blind trust"-----?-- No.

-----or what did she say that indicated to you that it was a blind trust, as you've just explained that term?-- Well, I must point out that I had a number of conversations with Sue. I'd also like to point out that this particular section of it may not be all within the one conversation.

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All right?-- The word "blind trust" is a term I've used.

Okay?-- I don't even - I'm not even sure if Sue suggested the word "trust" at that particular point of time but she said there was substantial funding. The trust issue has come up since then. I mean, it's been-----

But you can see the point. The way you've-----?-- I see your point, sir, yes.

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The way you've worded it, makes it look as if she used the term or she at least used terms that were the equivalent of what you've described as a blind trust?-- To clarify that point, no, it's my term.

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Okay. Can you recall when this
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ubstantial funding"-- Yes, yes.

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But you didn't get any more detail as to the amount?-- No.

Or how much you would get paid?-- Well, I wouldn't know at the time. I mean, I had to find that out.

In that sentence, you also have in quotes there "common sense" - candidates that exhibited "common sense"?-- Well, I think it's a term we've all picked up since the publicity on this first began. It's not a bad term in the sense that, quite frankly-----

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CHAIRMAN: Yes, but did she use it? I think this is the point we're getting at. Did she use it at that time in that conversation?-- I - yes, I think - I think Sue probably would have used that and it's a term I would probably use too.

MR BOYLE: Was there any talk of you being involved in any other negative campaigns against anyone other than Councillor Young?-- No.

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All right. Well, how did it come about that you got paid for - paid some money from - you received some money, is that correct?-- Yes, I did, yes.

\$5,200?-- Yes, I did.

How did that come about?-- I - I had written the material, spoken to Sue. She - I'd sent her the - what I sent you actually which is the copy of what you've got. I'd also run that material past someone at Hickey Lawyers to make sure that there was no defamatory material within it. Then I said, "Well, I'm going to get this printed." And gave an estimate and the estimate was \$5,200. And the next thing I get was a cheque from Hickey Lawyers - well, with the Lionel Barden Trust Fund - something on it. I don't remember the cheque exactly.

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All right. So it says there, the last sentence of that paragraph, "I was paid by the trust the sum of \$5,200 for the first article"-----?-- Yes.

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-----"the drop mailers"-----?-- Yes.

-----"research, layout, printing and distribution"?-- That's right.

Well, who did all the printing and distribution?-- I'm just trying to think of their name now. The printing was done by - the layout and the printing was done by - it should be on the - can I have a look at this?

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Yes?-- It doesn't appear on here. The original should be on there who was authorised by, et cetera. Oh, here it is. Base Art in Nerang, I'm sorry. The printing was done by Base Art in Nerang. It was folded for us at some place opposite the Council Chambers, Evandale and the distribution was done by

one of the people that handles drop mailers. I can't remember her name but she ran her business from a place in Bosun's Landing on the Gold Coast which is in the Nerang vicinity.

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So was this \$5,200 just to cover your expenses or was it for your own personal work as well?-- It was also for my own personal work, yes.

And so this was purely from a conversation with Councillor Robbins?-- In what way do you mean?

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In terms of the amount of money that was - that you asked for or-----?-- Yes.

-----and the offering of it to you and-----?-- Yes.

Okay. And so that's the amount you asked for from her?-- That's right.

And then you got the cheque from-----?-- Hickey Lawyers.

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-----Hickey Lawyers. You said that you ran something past - some of the fliers past someone at Hickey Lawyers. Do you know who that was?-- No, I don't. No, I don't remember. I met this person once. I'd sent them the proof, spoke to someone on the phone, left them with them for a day or two, as I recall to the best of my knowledge, then I went into see them, we went through it. They pointed out a couple of things to me that may leave me open to common law litigation for defamation by a third party. I deleted that material and then sent it out for printing. It was the only time I'd actually met with someone from Hickey Lawyers.

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Well, how is it that you came to go to Hickey Lawyers as opposed to anyone else?-- Well by that particular time - between the time I decided to do this and that particular time I found out that Hickey Lawyers were doing this trust. I can't remember, and I can't recall how I found that out, but I knew that by that time.

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Are you able to say how you sent it to them?-- I can't recall. I really can't.

And you don't know the name of the solicitor or-----?-- I don't know - I do know he was employed by Hickey Lawyers, yes.

Did he say he was a solicitor?-- Oh yes. I specifically - in the phone conversation I had with Hickey Lawyers, I specifically asked for someone that was familiar with laws concerning defamation. So whoever their person was that handled that, that's who it would have been.

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How old is this person - approximately?-- I suppose in their 40s.

I'll just put something to you?-- Mmm.

Were you aware of Mr Hickey giving evidence yesterday?-- I read the papers, yes.

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And today?-- Yes, I bumped into him out-----

CHAIRMAN: Mr Hickey gave further evidence on this this morning, which you might not have been here for.

MR BOYLE: Oh.

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CHAIRMAN: He gave evidence this morning that he'd had a further check made. The original check had been under Jensen, not Janssen. And a file has been found.

MR BOYLE: Oh, I see. Thank you.

CHAIRMAN: Can you recall - was it your own idea after you heard that Hickey Lawyers were involved - was it your own idea, well I'll ring them to get advice on this, or did someone else suggest that to you, to use them?-- Oh no, I'd had conversations with Sue about the material I was writing.

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Right?-- And we'll probably come up with this very shortly, obviously I'm going to check the accuracy of this information. Most of it I knew. I wanted to make sure that it was absolutely correct. And I think it was probably through a conversation with Sue that I - that she suggested Hickey and I - by that time I'd found out that they were handling the trust. I'm pretty sure that's the way it went, to the best of my knowledge.

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So you then rang Hickeys?-- Yes.

Presumably said who you were?-- Yes.

What, said that you were working for this - I don't know, group, or whatever that-----?-- No, I never - I was - I never considered myself working for the group.

Well, I'm just intrigued. You speak, presumably to the receptionist at Hickey Lawyers-----?-- Yes.

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-----you're coming out of the blue to them to seek their advice. How do you explain yourself to them?-- Well, the only way I could possibly explain that, and I presume this is the case, I mean, it's a presumption on my part, the fact that Sue Robbins would have told them that, hey, look Bob, Janssen's going to ring you, he's done this stuff on Peter Young, he wants to make sure it's correct, and he wants to make sure he's-----

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So you'd have rung and said, "Look, I've been told by Sue Robbins to ring your firm to get advice on these matters about possible defamation-----?-- I can't recall the exact conversation but I suppose that's a logical explanation, yes.

And did you ever ask whether they were going to send an account to you for the legal fees, for the work they did for you?-- As a matter of fact, during my conversation with the

particular solicitor, he said that he wouldn't be sending me a bill.

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So you - I presume you thought it would be paid out of the same fund that was paying you?-- Absolutely.

Or an in kind contribution by Hickey Lawyers?-- I never really gave it any great deal of thought. I mean, I didn't think the statement made by the solicitor would be unusual under the circumstances.

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No, I can understand that.

MR BOYLE: All right. Now you say about the material that you produced and you said drop mail was attached in this statement, could you just isolate those for us, the drop mailers that you produced. Is that - there's four documents?-- Sorry.

Are these the drop mailers?-- Yes, there's four pages, back to back, yes. A4s.

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Oh, I see?-- Yes.

And they're titled, "Know your councillor"?-- Yes.

Effectively?-- Yes.

One's got "Who done it" on it?-- Yes, that's it.

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And this is the material you produced as part of this negative campaign against Councillor Young?-- That's correct. It's all of it, actually.

And that was the material as it would have pretty much gone out to the - in the letter box drops?-- Yes. From my recollection, about 600 went out in - of the first one, of one of them, went out into Nerang - before it was pulled.

Sorry, which one was pulled?-- I don't know which one. The idea was to, as I can recall to the best of my knowledge, was to drop the entire division with one of these on the Tuesday and to drop the rest on the Thursday, the second one on the Thursday.

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And you don't know which is-----?-- No, I'm not sure which one.

CHAIRMAN: When you say "which one" there appears to me to be eight here?-- No, I'm sorry, sir. If you sort of do that, it's an A4.

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I see. So where there's eight, they were going out in two lots of four?-- Well, this is - imagine an A4 printed on both sides.

Mmm?-- And you just fold it over, so that's one. And the other one's the other one.

Yes, I see?-- Okay.

So each one would contain a number of different ones of these?-- That's right.

Yes?-- This is actually the way that they did go out, I can't remember which is the front and which is the back - actually could find the original - but-----

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But each one would contain four of these separate sort of articles?-- Yeah, there's one, two, three, four, five, six on one of them. And one, two, three, four on the other.

I've only got eight here.

MR BOYLE: Yes, it's four pages on each - each one that goes out?-- That's correct, yes.

But I think he's referring to six issues. Is that right? Is that what you're talking-----?-- There's six issues on one and four issues on the other. Yes.

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Right, not the page numbers?

CHAIRMAN: I'm sorry, I might be a bit thick, but on mine here there's - what I've got here there's - like eight separate sort of half page articles?-- Yes. There are eight separate half page articles. When they were presented, they were presented in this form. Imagine an A4 printed on both sides.

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Yes, so it would be like that?-- That's right. It was folded in half.

Yes?-- And that was the whole thing.

So that's four articles then on that particular-----?-- Or the four of the six articles, yes, going out as one pamphlet.

Well, one, two, three, four. All right?-- Okay. Well, the other one's got six on it, that's what I'm saying, there were two separate pamphlets.

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Doesn't matter. I just don't understand how one can have six-----

MR WEBB: I've got four pages and certainly you can divide them up like that. I don't know if I've got them in the right order but there are - there's one page with two articles, another page with-----

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CHAIRMAN: I see, yes. You're saying some of them are two articles?-- That's right.

I'm with you now. Thank you, Mr Webb and Mr Nyst. I presume each one of them had one of the ones that's got an authorisation at the bottom?-- Yes, sir, they did.

Yes.

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MR BOYLE: Whilst we're on that subject, on the bottom of the "Who Dunnit" one I can see - or-----?-- Yeah.

Sorry, you would have had it on both of them that went out. "Community electoral alliance." What's that organisation?-- It wasn't an organisation. The community electoral alliance - if you refer back to my statement - was something that was formed in the 2000 election with Councillor Young as its - as its Chair. It's the group I was involved with in the 2000 election which included people like Sally Spain, Sheila Davis, Peter Young, members of the Nerang Community Association and various other organisations. While I was very comfortable in putting this material out. What I didn't want to happen was that it would be reflected upon badly in relation to the Nerang Chamber of Commerce. Now, obviously it's very difficult for me to dissociate my position from that considering the position I hold. However, I wanted to make it very clear that this actually came from me and the person that would understand that the most of course would be Councillor Young.

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Well, who was involved in that group?-- The community electoral alliance was just a name that we came up with because of that past association and I discussed that with - I believe John Lang said let's call it - let's just call ourselves the community electoral alliance, there's a significant point to that.

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John Lang, he was the campaign manager?-- I don't think he was a campaign manager, I think Michael Yarwood was a campaign manager for - well, whatever - I don't know who was but-----

Well, we're talking about Brian Rowe?-- -----he was certainly involved with Brian - yeah, he was certainly involved with Brian Rowe's campaign, yes. And also at the time President of the Coomera Chamber of Commerce I might add.

He was?-- John Lang, yes.

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Yes, okay?-- For many years.

All right. Well, who - anyone else involved - this is in 2004 in this alliance?-- It was in 2004, yes.

Yes. Who else was involved apart from you and Lang?-- In relation to?

This alliance?-- It was just a name used and I said, "Well, if it's you and I it's an alliance so we'll just use it."

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So no-one else?-- No.

And so it was basically dropped after the 2000 election?-- Yes.

And just picked up again by you in 2004?-- Yes.

CHAIRMAN: Was it ever registered as an unincorporated association?-- No. No, never.

And who's the A Wise that these documents are authorised by?-- Never met him quite frankly.

Does he exist?-- Oh actually that's not true. I did meet him on the poll day. I can't recall who I had the conversation with but I think it was - might have been Michael - might have - I think it possibly was Michael Yarwood and Michael was well aware of what was coming out. And I said, "Look, it would not be wise" - I know there's a pun there but - "it would not be wise for my name to appear on it," obviously because of the reflection it may have on the Chamber. That's why I put in the community electoral alliance so that Councillor Young would understand where it actually came from but the A Wise was just someone that read it and authorised it for the campaign.

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You said you only spoke to him on the polling day?-- Yes.

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Who organised for him to read it and authorise it?-- Possibly Michael Yarwood.

Possibly?-- Yeah. I think it was - look, I don't know. I - Michael Yarwood had a copy of this. The other person involved on Brian Rowe's campaign - I just can't recall the name at the moment - Ian Fryar, the past president of the Nerang Chamber of Commerce, he'd read this so it could have been any one on that campaign.

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Well look, I'm - I must say I haven't read the divisions of the Local Government Act with respect to the requirements for authorisation so I don't know whether I should warn you but did you ensure that all the requirements with respect to authorisation were complied with before you arranged the distribution of this document?-- Can I take privilege?

As I say I don't even know what the requirements are?-- Well, neither do I.

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I would imagine it's not something that should be done lightly but you don't put someone's name on it without actually that person agreeing and authorising the document?-- Well, I'm quite sure that they would have - they would have read it because I did have a conversation with this gentleman on poll day and he said, "I don't know what the fuss is about," because apparently Councillor Young knocked on his door two times during the day and it was all true. I read it so I would only assume that he had read it.

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But you put this out without checking with anyone and getting the confirmation of some person that in fact Mr Wise had authorised the distribution of this material; is that what you're saying?-- Would you just, sorry, clarify the question; sorry?

You're the one who organised for the distribution of this material as I understand it?-- Yes, I am.

1

And before doing so did you specifically get instructions from some person you thought could give those instructions that Mr Wise had in fact authorised the distribution of this material?-- Yes.

From who?-- Yes. And I think Mr Yarwood told me that Mr Wise had authorised it.

10

Mr Yarwood told you that?-- Yes.

All right. Thank you.

MR BOYLE: Mr Yarwood's a solicitor?-- Yes.

MR WEBB: I though it was 392?

MR BOYLE: All right. Moving - I'm sorry. I'll tender those - a copy of those leaflets that were produced and distributed.

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CHAIRMAN: Yes, they will be Exhibit 115.

ADMITTED AND MARKED "EXHIBIT 115"

CHAIRMAN: Sorry, what was that section again, Mr Webb?

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MR WEBB: Three-nine-two.

CHAIRMAN: Three-nine-two, thank you.

MR BOYLE: The next paragraph of your statement says that I joined the campaign team (unofficially) of candidate Brian Rowe who was standing against Councillor Young. What does that mean?-- Sorry?

40

What does that mean?-- Unofficially?

Yes?-- Well, obviously, knowing that I was going to be riding negative material against Councillor Young and wishing Mr Rowe to be a successful councillor and to win the election, I felt that by becoming an official part of his campaign team may reflect badly on him then and possibly further down the track considering the strong support of Councillor Young so, yes, I was involved with his campaign but I was not - was not involved officially with it. In other words, I wasn't part of his official campaign team and never referred to.

50

CHAIRMAN: You say that Mr Rowe was - exhibited curiosity about what you were doing and questioned you on it but you told him, in effect, back off you don't need to know-----?-- That's right.

-----as that way he had credible deniability?-- Yes.

1

What do you mean by credible deniability?-- WE have a situation here where I'm running a negative campaign against - against a councillor, a sitting councillor, who's seeking re-election. Somebody that I personally didn't support and many members in my Chamber and business didn't support. Brian Rowe, we thought, was a-----

Yes, but just address the question?-- All right, was a good candidate and we did - the way Brian ran his campaign which was, Mr Nice Guy, and he is a nice guy. I don't think he would have approved of this material at all and in reflection, at the time when it was distributed, we certainly didn't. Realising that in advance, I said to him, Brian, you really don't need to know. That way you've got credible deniability

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So, it means that he could go out there and say look, I know nothing about this?-- Yes, and that's true.

20

Except that I know who's doing it but I didn't see the material, I haven't approved it but-----?-- Yes.

-----presumably he wouldn't even admit that he knew that you were doing it?-- No, I'd like to make one thing clear here. That at no stage did I ever choose to deny the fact that I'd written this material.

No, no, no, no. When he's having credible deniability I assume that means the idea is that he - for him to say look, I know nothing about this?-- I know nothing about what was written, yes.

30

I know nothing about what was written?-- Or the content, yes.

And leave the impression that he had nothing to do with it. It was nothing to do with his campaign?-- Which would have been a fair assessment, yes.

Yes, all right.

40

MR BOYLE: The - your involvement in his campaign - well, you said that you were off doing the - these - organising this negative campaign. Did you do any other activities in the course of his campaign? Positive or negative?-- I did some positive things to his campaign. Brian had a very positive campaign. Had some excellent ideas in the way in which he was going to conduct it. I tried to get Brian to engage Councillor Young. Politics is a contact sport. If you don't make contact and you don't engage, you don't win elections. Brian, being the nice guy that he was, thought he could win this through - through-----

50

Well, I'm asking you really about your activities in this campaign?-- Well, I'm telling you.

Yeah, well-----?-- Well, that's what I did. I tried to give him information in relation to making - taking - taking the

argument up to Councillor Young. I also suggested a few ways in which, like a video and a few other things which was done with Chris Conroy, that might help him in his campaign, yes, I did.

1

Anything else, like handing out "How to Votes" or anything like that?-- I never handed out "How to Vote" cards for Brian Rowe.

Okay, well, what about during the course of the publishing of these documents-----?-- Yes.

10

-----that were circulated?-- Yes.

Did you ever show those to him?-- No.

But he spoke to you about the fact that they were - that you were doing this?-- Brian wasn't even totally sure of what I was doing and that was - that was - it was constructed that way. He knew I was doing something. He didn't know what I was doing and he kept asking me what I was doing and I said - I kept saying to him, Brian, you don't want to know. That way you've got credible deniability.

20

I'll just take you to a couple of documents?-- Hmm-mmm.

I just want to show you a newsletter. A Nerang - not for the newsletter for December 2003, Nerang Chamber of Commerce?-- Yes.

30

Just have a - have a look at that.

CHAIRMAN: It's December 2003, is it?

MR BOYLE: Yes, it is.

CHAIRMAN: Thanks.

MR BOYLE: Now, this is the organisation that you were president of, is that right?-- Yes.

40

Were you involved in the production of that newsletter?-- I wrote it, yes.

You'll see on page 2 where there's a statement there about the role of the Chambers. I'll just quickly read it. "There is general agreement among all our city's Chambers that we must become more influential in its governance. The best way to achieve this is to take more active role in the upcoming elections"?-- That's right.

50

Sorry?-- That's right. I wrote that.

"How this will manifest itself is yet to be determined, however, there is a sub-committee looking into those policies that Chambers are prerequisite in influencing what constitutes a suitable candidate be they encumbered or otherwise." We shall - "we will keep you informed"?-- Yes.

So, you wrote that?-- I did.

Why did you put that in the newsletter?-- You'd have to go back four years in history.

All right. Well, we won't - were you getting at, there was a sub-committee set up to look at the up-coming elections even the council elections?-- Absolutely. Every election.

Right. Who was on that subcommittee?-- The subcommittee was never actually formed for the simple reason that it involved - it was - it was essentially a discussion between a number of Chamber presidents in relation to the role of Chambers of Commerce within the political sphere, and what they - how far they should become involved, and while I don't have it with me there is a document that has since been written that fully explains that position. It was discussed within our own committee, not as a subcommittee, so that's why I'm clarifying that. Our committee discussed it. It was also discussed at the combined Chamber level.

Now you had some discussions, I take it, with Mr White about that. Is that what you're talking about?-- Mr White, Tony White?

Yes?-- Oh, absolutely. Tony and I often disagreed on that point.

All right. Okay. Well, I'll tender that newsletter for the Nerang Chamber of Commerce, December 2003. I just want to show you another document.

CHAIRMAN: Just - at the rear of it is a document-----

MR BOYLE: Oh, sorry, that's-----

CHAIRMAN: -----which might or might not be part of the exhibit.

MR BOYLE: No, it's not. That's-----

CHAIRMAN: So you're tendering just the newsletter.

MR BOYLE: Yes, thank you.

CHAIRMAN: All right. That will be Exhibit 116.

ADMITTED AND MARKED "EXHIBIT 116"

MR WEBB: 115?

CHAIRMAN: 116.

MR WEBB: We didn't notice the tender of the flyers.

1

MR BOYLE: The next letter I want to show you is a letter which is to the residents of Division 5. That's right?-- Yes.

And it's signed by various members of the - and past members of the Chamber of Commerce. Is that right?-- That's right.

And effectively it's a letter which is signed by you?-- Yes.

10

Supporting Rowe?-- That's my signature, yes.

And that your understanding that that was circulated by way of letterbox drop to the - Division 5?-- I understand that, yes.

All right. I'll tender that document.

CHAIRMAN: Yes. Thank you. Yes, all right, Exhibit 117.

MR BOYLE: Just on the issue of the campaign team?-- Mmm-hmm.

20

I want you to look at this document please. It's a document entitled Campaign Committee Contact Numbers?-- That's right.

Have you seen that document before?-- No, I don't recall it. No, I don't recall it. No.

Well, this obviously relates to the contact numbers for Brian Rowe's campaign committee?-- Yes, that's - yes, I can see that, yes.

30

Well, you see there your name's on that list?-- I do see that.

That's got your contact details on it?-- Yes.

They're correct?-- That's correct, yes.

You see, I suggest that this document was obtained from a file from Mr Lang?-- Yes, okay, yeah.

40

Okay, which places you as being part of the campaign committee is what I'm suggesting?-- Yes, well - yes, I'm surprised but yes. Look, I said very - very much earlier in the piece I was part of the campaign thing but I was supposed to be unofficially part of the campaign thing, and again that was brought about because of the material I was writing and I didn't want it to reflect on Mr Rowe's campaign. So looking at this document they've included me as part of the official campaigns here which was contrary to what I believed the case to be, it's that simple.

50

CHAIRMAN: It might have been an early document and perhaps you were then deleted at a later stage in the campaign when you started on your other activities?-- Yes, sir. That's possibly the case.

MR BOYLE: I'll tender that document.

CHAIRMAN: Yes, Exhibit 118.

ADMITTED AND MARKED "EXHIBIT 118"

MR BOYLE: Is that a convenient time, Mr Chairman?

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CHAIRMAN: Yes, thank you. 2.15.

THE HEARING ADJOURNED AT 1.04 P.M. TILL 2.15 P.M.

THE HEARING RESUMED AT 2.18 P.M.

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ROBERT DAVID JANSSEN, CONTINUING:

MR BOYLE: Mr Janssen, I'd like to take you to a meeting which you had, it would seem, with Mr Rowe, is that right, in - on the 25th of November, you had a lunchtime meeting with him?

30

CHAIRMAN: In '03?

MR BOYLE: '03, 25th of November 2003 - I'll show you an email?-- Yeah, thank you.

Just so that we save time. Now, this is an email dated the 25th of November 2003 from you to Lang Realty - to John Lang?-- Yes.

40

And then you say in the email, "I met with Brian today for lunch and gave him my assurance of support." You're meaning Brian Rowe?-- Yes, that'd be right. Yes. If it went to John Lang it would have been in relation to Brian Rowe.

What sort of support did you assure him of?-- That he - that we - that he would get support during the election from the business community.

What sort of support?-- Basically in relation to handing out how to vote things et cetera et cetera.

50

What about negative campaigning, did you discuss that with him?-- No.

Did you discuss funding with him?-- No.

Had he nominated at that point or indicated that he'd be running at that time?-- I couldn't tell but I knew that - that he was a person that we believed would have a good chance in that campaign, yes.

1

The subject you've got there, what is the 'green machine' costing - 'green machine' costing this city and can we as a community afford it, was that your philosophy?-- No, it's the business community's philosophy. I've already referred to that in relation to future tourism infrastructure within the city and their objection to it.

10

So you were looking at getting candidates who would be against 'the green machine'?-- No, we were looking at - well, we were looking at candidates that would be against radical fundamental philosophies not necessarily anti-green, no.

We'll take you to some articles a bit later about that. Look, I'll tender that email.

20

CHAIRMAN: Exhibit 119.

ADMITTED AND MARKED "EXHIBIT 119"

MR BOYLE: Did you at any stage become aware as to where the money was coming from for this fund?-- No.

30

Were you aware as to who else was being - or obtaining money from this fund?-- I understood that Brian Rowe would be obtaining money from this fund and I understood that there were other candidates that would probably be obtaining money from this fund, yes.

Do you know who those candidates were?-- I knew - well, it all happened over a period of time, towards the end I - I heard names mentioned.. I'd heard that Grant Pforr was one of the candidates, I'd heard that Greg Betts was one of the candidates. I'd heard that Roxanne Scott was one of the candidates. I obviously knew about Brian Rowe.

40

Did you discuss funding with any of those people?-- No.

Or that fund-----?-- No.

-----that we're talking about?-- No.

50

Is it correct to say - this is important - Brian Rowe to your knowledge was getting money from the same fund you were getting paid from?-- Yes. Yes, I'd say so, yes.

So he was getting money to fund his campaign and you were getting money to fund a negative campaign against his opposition?-- That's right.

Now, you see at the bottom of page 3-----

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CHAIRMAN: Just on that point, did you ever advise him of the amount of funding that you received so that he could declare it in his return of election gifts as in kind?-- No. I saw the - I saw the two things as separate. I never saw what I was doing necessarily as part of his campaign. It went in conjunction with his campaign but not part of his campaign. I saw a definite difference in the two. This was-----

10

Both designed though towards defeating-----?-- Councillor Young.

-----Councillor Young?-- Absolutely.

All right.

MR BOYLE: And really both designed to get Mr Rowe in because that was your - that's what you wanted, you said, you wanted Mr Rowe as the candidate to get in?-- Let me clarify that. Mr Rowe was a good candidate we believed to stand against Councillor Young so to get Mr Rowe in I think - I think it was more a case of getting Mr Young out.

20

But there were only two candidates?-- That's right.

So it was either going to be one or the other?-- Exactly.

The bottom of the third page, the last paragraph, of your statement you say, "The selection of candidates was almost wholly from those who had already declared their intention to run." Who was involved in the selection of candidates?-- To my knowledge Sue Robbins was obviously looking at it, which I was well aware of, I assumed from that that possibly David was. I know that John Lang was. I know that I was. But my main focus was of course within the Nerang area. And I obviously assumed that other Chamber presidents were doing the same thing.

30

All right. Now, you say there the only possible exception was Brian Rowe?-- Yes.

40

What do you mean by that?-- Well, I - when I wrote this I couldn't recollect the exact timing that Brian decided to become part of the campaign so it could have been before or after whatever time - we're looking at this in hindsight of course. Brian as far as I was aware because we were within the western chambers were looking for a viable candidate to run against Councillor Young was selected I believe by Mr John Lang. So whether or not he'd put his hand up and said I want to run, that's what I'm referring to. I want to run, okay, let's look at who's running there, let's pick Brian. Considering the fact that he was the only candidate I think there wasn't much choice.

50

Well, he was offered funding before he made a decision to run; is that your point?-- No, not at all. I - I wouldn't know what he was offered. The only reason Brian Rowe was selected

was because he was a viable candidate against Councillor Young. Our goal was to remove Councillor Young from office. That's the businesses' point of view.

1

CHAIRMAN: When you talk about the selection of candidates there, are you meaning the selection of candidates that the Chambers would support-----?-- Yes.

-----or are you meaning the selection of candidates that the people controlling this trust fund would allocate moneys towards?-- No, it was - it was always, from our perspective, the selection of people that Chambers would support.

10

Chambers would support?-- Yes.

Okay.

MR BOYLE: I'm just looking at the timing of when Mr Rowe might have been aware of this funding and-----

20

CHAIRMAN: Did you have anything to do with allocating this funding or-----?-- Nothing.

I wouldn't expect this witness would know anything about that, Mr Boyle.

WITNESS: No, I don't know anything about the allocation-----

CHAIRMAN: I don't want this witness speculating on things that might mislead us.

30

MR BOYLE: All right. Did you - well, at any stage in the election, did you discuss with Rowe this fund?-- Nothing, never at any time.

Thank you, Mr Chairman.

CHAIRMAN: Yes, Mr Nyst.

MR BOYLE: No, sorry. No, I haven't - sorry, I haven't finished-----

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CHAIRMAN: Oh, I'm sorry.

MR BOYLE: -----just about that point.

CHAIRMAN: My apologies.

MR WEBB: Could I just make a - while there's a break - I understand this morning Mr Chalmers was talking about a Mr Tony Davis, a contact with him. He referred to him as being the CEO's 2IC. Just want to place on record he's not the CEO's 2IC. He's the manager of a small unit which is the CEO's unit. In fact, the Director, City Governance is the person appointed by the Council to act when, for one reason or another, the CEO is not there.

50

CHAIRMAN: Well, Mr Davis's title as at this time at 2004?

MR WEBB: Was Manager, CEO's office.

CHAIRMAN: Manager, CEO's office. I think that's the way it was actually reported in the press at the time is Manager, CEO's office.

MR WEBB: That might be so but I was referring to Mr Chalmers' evidence. That's my recollection that's what he said and I just wanted to correct that.

10

CHAIRMAN: Yes, thank you for putting that on the record.

MR BOYLE: Going over to the top of the next page, "Lang, President of Coomera Chamber recruited Brian." Did you play any role in recruiting him?-- No.

"My first knowledge of the involvement of Lionel Barden" - was when you got the cheque; is that right?-- Yes, that's right.

20

The cheque you got from Hickey Lawyers was accompanied with a letter dated the 9th of March 2004. Can I just show you this letter? Mr Chairman, this is part of Exhibit 99.

CHAIRMAN: Yes.

MR BOYLE: It's a letter to you and it says, "As directed by Mr Lionel Barden"?-- Yes, yes.

And then it encloses the \$5,200?-- Yes, yes.

30

That's the letter you read and-----?-- Yes, yes.

Okay. And so that's the first time you became aware of his involvement?-- That's right.

As a result, you contacted him?-- That's right.

And you talked to him-----?-- Yes.

40

-----about this fund?-- Not in great detail but I was surprised, that's all.

Well, just tell us where you met him?-- Where I met Lionel Barden?

No, where you - no, on this occasion that you spoke to him-----?-- I didn't meet him at all, I rang him.

You rang him, okay?-- I rang him.

50

Yes?-- "Lionel" - you know, I basically said, "Lionel, I didn't know you were involved in this trust fund." That was basically what I said to him.

What did he say?-- He said, "Yes, I am. I was asked to do it." He didn't mention by whom. And I thought, well, that's not unusual because Lionel Barden was a businessman of some

reputation - had some extraordinary contacts within the City and was considered to have a great deal of knowledge on the City and he'd been involved with the Robina Chamber and the combined Chamber for a number of years.

1

Okay. So he - is that all he said? He was asked to do it. Yes, what else?-- Yes, that was basically it.

Did he say how it all worked?-- No.

10

About this idea of "blind trust"?-- No.

Well, that's how you describe it, I should say-----?-- We have discussed - we have discussed that since but I already had an understanding from the conversations I had during the time with Councillor Robbins and agreed to the concept which I had mentioned in evidence before, that the idea was that the donators and those receiving it were never to meet so that there could be no perception of any impropriety.

20

Did anyone discuss with you the fact of keeping the existence of the fund a secret?-- I'd phrase it a different way. It was certainly something that we felt should not be discussed simply because of the fact that The Bulletin was certainly backing the other side so to speak, yes. There was no word "keep it a secret", there was just no point in discussing it. We did not feel - and as I've said in my statement, Sue Robbins got it correct when she said, "I don't think The Bulletin would give us a fair go." And there is nothing before that or since that would make me think any differently.

30

So that it was something that, from what Robbins said about The Bulletin not giving you a fair go, that it should not be revealed, the existence of the fund?-- Well, put it this way. As you do, if you ask the right question, you get the right answer. I certainly wasn't going to volunteer the information. If somebody had asked me, well, I'd own up to it, what I knew.

Well, was - so from your point of view, there was no attempt to conceal from the community information as to the existence of the fund?-- Not in that context, no. There definitely wasn't in that context, no.

40

What about the membership of these candidates that were being - receiving money from this fund?-- I never met the candidates other than one of them and that was Brian Rowe.

Yes, but you knew there were others getting money?-- Of course I did.

50

Was it ever discussed that that should be concealed from the community as to who was getting money from this fund?-- That scenario never raised itself at any stage.

So it was never discussed?-- Not as I'm aware - that I'm aware of, no.

All right. So he didn't say who asked him - this is the discussion with Lionel - who asked him, what was involved, how it worked or anything about it at that point?-- Well, look, I deal with facts all the time and if somebody makes a statement I accept that as a fact. I don't need to go into the nitty gritty of what happened and I didn't on that occasion.

1

You must have been very interested though getting this letter which had his name which is the first you knew of his involvement and you must have wanted to know a little bit more about it?-- I simply asked - I'd simply told him I was surprised, "I didn't know you were involved." He told me he was involved and that's obvious with the - with the letter I received with the cheque, and I really didn't feel there was - there was any reason to go into it because I knew his standing within the community.

10

All right. Next you see the paragraph we've already dealt with Hickey Lawyer questions?-- Mmm-hmm.

20

But at the bottom of it you said, "All the information in the drop mails is accurate, some of the matter as a public record, some personal knowledge and the rest checked against council records"-----?-- Mmm-hmm.

-----"and corroborated by councillors or council officers." Now who-----?-- What page is this on, sorry?

Sorry, the same page. This is the third - the third - fourth - fourth page, middle paragraph, "the material I produced on Councillor Young brought me into contact with Hickey Lawyers." See that paragraph?-- I'm on the wrong page. Oh, yes, I see it, yes, sorry, thank you.

30

All right?-- Yeah.

I'm interested in the last sentence?-- Yes.

"The rest checked against council records and corroborated by councillors or council officers."?-- That's right.

40

So who were the councillors you'd discussed these drop mailers with?-- Okay. In one particular instance there's a story there relating to the Railway Street - the Railway Street thing. I discussed that with Councillor Ted Shepherd because it was in his Division and the circumstances under which that particular article was written involved Councillor Shepherd. So because I had been called by the Bulletin, one Alice Gorman nee Jones, who had asked me specific questions in relation to that development. What I needed to know was some of the circumstances involved in that development.

50

Did you show him the drop mailing?-- No, it was - no, it was a telephone conversation.

Did you tell him that you were doing this drop mailing?-- I can't recall if I did at the time. Perhaps I did, perhaps I didn't. All I was chasing was information.

That's not your electorate, is it? Your division?-- Actually it is.

It is?-- Yes. I'm in the 4211 postcode which, technically speaking, takes me through into the border of Mudgeeraba and we work very closely with Mudgeeraba Chamber. I go through Carrara, all the way up to - if one would consider it, up to Helensvale if necessary. So yes, it covers quite a - to go to Gilston, it covers quite a part of my sphere of influence, if you want to put it that way.

Did you discuss anything with him about the fund?-- No.

Okay. What other councillors?-- I did ask Councillor La Castra certain information on various things. I'd received some information from Councillor Robbins as well which was the article pertaining to Spending Spree, as I recall, and she supplied me some documentation that was just a series of figures of what Councillor Young had spent in comparison to the Mayor, Gary Baildon. Could I just have a look at this just to refresh my memory of where - where I got information from?

Certainly?-- I had had intimate knowledge to a point of the Station Street development situation because-----

CHAIRMAN: You're being asked about the drop mails, not about the other articles?-- But this is - this is the drop mails. I'm sorry.

I thought these were thought?-- Yeah, well, this is my original copy.

I see?-- Sorry, Mr Needham.

That's all right?-- The electoral boundary redistribution, I asked Councillor La Castra some information on that in what the normal procedure would be in relation to the electoral office and how Councillor Young had handled that particular situation. As a matter of fact if you go back over records you'll find that I made comment on television in relation to that. What else? Half-Hearted. I asked Councillor La Castra about - because I'd already had this information and I wanted to check it, that Councillor Young had voted in favour of the funding and I think I rang Bob and said, "To my recollection Councillor Young voted in favour of the funding and yet he claims that he was against the project. Am I correct?" and he said, "Yes, you are." Words to that effect. Who Dunnit? I was intimately involved with. Censured, again I checked that with Councillor La Castra to make sure that information was correct. A lot of this information, I might add, is on public record. And that's probably - probably it.

MR BOYLE: Well, you're referring to a document there that's entitled Our Sitting Division 5 Councillor Was Elected on a Platform?-- That's right.

Now that basically repeats or is a copy of what is produced in the mail outs?-- Exactly.

1

Isn't it? Yes, okay. Well, we won't need to tender that. You say you spoke to La Castra?-- Yeah.

Did you discuss with him what you were doing?-- I really can't recall. I would imagine that I - look, I can't recall, I may or I may not have. One would expect that I possibly did but I can't say for sure that I did. It would certainly be - he was certainly aware that I was seeking information in relation to Councillor Young, yes.

10

But, you can't - you're not sure whether you told him that you were going to do this mail out - drop mailers?-- For sure, no. I possibly did though, I'll admit that.

Did you tell him anything about the fact that you were getting money from a fund?-- No.

20

Did you discuss any fund with him at all?-- No.

Now, you say - towards the bottom of the page - "My wife and I supported Ron Clarke-----?-- That's right.

-----in his bid to become Mayor"?-- Mmm-hmm.

Can you just tell me about whether you were involved in his campaign at all?-- No, I wasn't involved in his campaign in any way, shape or form other than my wife liked the way Ron put his case forward as - as a possible Mayor and she did stand at - I think it was the Nerang Council Chambers for handing out pre-selection - how to vote for pre-selection cards.

30

In fairness to you, I'll just point to the sentence halfway-----?-- Yeah.

-----through that paragraph?-- Yeah.

40

"Our support was achieved through speeches and publicised comment and distribution of how to vote cards-----?-- Yes.

-----during the pre-polling and election day"?-- That's right.

So, were you involved in all those things?-- I was involved in - on the election day, yes. Are you referring - which - which part do you want me to refer to? I mean, there's a couple of things there.

50

Sorry, it's halfway down-----?-- Yes.

-----that paragraph.

CHAIRMAN: Well, does it really matter, the details of it?

MR BOYLE: I'd like to know whether this - well, this witness being involved in other campaigns is relevant considering his funding source.

1

CHAIRMAN: But, he's told us he was.

MR BOYLE: Well, did you discuss with Mr Clarke about the funding?-- Mr Clarke - the way I understood the whole thing was - was moving, and the direction it was moving, Mr Clarke had nothing to do with it.

10

CHAIRMAN: Can you just answer the question as to whether you discussed it with Mr Clarke?-- No, no, no, no.

Okay.

MR BOYLE: Was any of the funding used towards Mr Clarke's campaign, this \$5,200?-- Not a cent of it.

Now, you - just so that I'm clear-----?-- Mmm-hmm.

20

-----apart from Rowe and Ron Clarke, you weren't involved in any other campaigns?-- Actually I was, yes. I also handed out how to vote cards for Councillor La Castra on the same day.

Okay.

CHAIRMAN: You must have had a real pocket full?-- It was a very busy day, sir.

MR BOYLE: And you were aware - so, you were aware Rowe was getting funding?-- Yes.

30

And, you were aware, according to your statement, that Roxanne Scott was receiving funding?-- Yes, I'd heard that, yes.

Now, you also say, over the page, this is the second paragraph, that starts off, "Councillors Hackwood...", et cetera?-- Yes.

Halfway down that paragraph, "I was aware that they were running...", sorry, this is Pforr and Betts I'm talking about?-- Yes.

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"Pforr and Betts, I was aware that they were running and supported by the trust"?-- Yes.

When did you become aware of that?-- There were many discussions about the Council elections amongst the combined Chambers of Commerce. Different chambers looked after different areas. Obviously, the Surfers Paradise chamber, which at the time was Tom Tait, was looking at Roxanne Scott - Roxanne Scott - no, he wasn't. Ian Solomon was looking after Roxanne Scott, or himself as a possible candidate. Tom Tait was involved with Susie Douglas and whoever else was running there. I was looking after Nerang. Tony White was backing his own man actually up in the Northern parts so, all these things were discussed amongst us. And, it had been discussed who's the candidate and such and such. Are they being funded?

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I think so. And, in that particular way, that's how you gain the knowledge. I wasn't absolutely sure at the time but that's what I had heard.

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Right?-- I found out at a later date, that was the case.

Well, now you obviously discussed this fund issue with Councillor Robbins throughout the election?-- Yes.

La Castra - Councillor La Castra?-- No, no.

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Councillor David Power?-- Yes.

What was your discussion with him about the funding?-- It's not part of my statement, by the way, so can I clarify something here? There was an initial meeting at The Islander, and I can't recall the date, when Tom Tait, Ian Solomon, David Power and some of us were present discussing possible candidates with commonsense and it was suggested at that particular point of time that perhaps something should be set up to support these candidates. So, in that particular sense, I suppose it was discussed, yes.

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Is that the only occasion?-- The only occasion I can recall.

This is with David Power?-- Yes, it's the only occasion I can recall.

And, was the concept discussed in terms of keeping the distance between donors and candidates?-- Absolutely.

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At that point?-- At that point.

All right.

CHAIRMAN: Would that have been in November before it-----?-- Yes, I - I - I'm sorry, Mr Needham, I - I was asked that question by a reporter for the Gold Coast Bulletin and commented to her at the time. My - I didn't include that in my statement because I was at that meeting and, yes, it would have around about November.

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MR BOYLE: Mr Chairman, may the witness see the media articles, or turn it to page number 100. Whilst that's being obtained, can I just ask you about this. In your statement, "My only contacts in trust issues prior to the election were Councillors Robbins, La Castra and Power." What I'm interested in is your discussions about trust issues with Councillor La Castra?-- There was no such thing - when we're discussing trust issues, I'm speaking in general - I mean, I was asked the question of what I did in relation to being paid by the trust to doing these articles, and obviously that becomes a trust issue because I got paid by the trust in the particular sense that I had asked Councillor La Castra questions in relation to the negative campaign that I'd run. I'm referring to it in that context.

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All right. So you didn't discuss anything about a fund. As far as you can remember-----?-- No. Not in relation to the fund itself, no.

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Now I'll just take you quickly through this?-- Yes.

This is an article by Fiona Hamilton, Gold Coast Bulletin, 1st October 2005?-- Yes.

"13th November 2003, there was a gathering at The Islander Resort, Surfers Paradise." That's correct?-- Yes.

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Tom Tait, who was the President of Surfers Paradise Chamber of Commerce was there?-- Yes.

He convened it. David Power?-- Yes.

Was there?-- Yes.

Ian Solomon, the past president of the Southport Chamber of Commerce?-- Yes.

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Was there. John Lang was there?-- President Coomera at the time.

And you were there?-- Yes.

And you were having all this discussion about setting up a fund?-- It wasn't a discussion about setting up a fund, it was more a discussion of what the problems were within council and what we needed to do to rectify that particular problem. Funding was certainly discussed but it wasn't there to specifically discuss that topic.

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Okay. Down towards the bottom of the page, about three-----?-- Are we talking about the article?

The article?-- Yes.

See above where it says from page 31. "According to Solomon it was his suggestion that a pool of monies be used to deliver a group of 'like minded candidates'. Now was that expression used?-- I don't know if that's the exact expression, but words to that effect did come up in the conversation, yes.

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Well, what sort of candidates?-- I'm just trying to find a way of phrasing this. The type of candidates we were looking for were those candidates that had a balanced point of view in relation to the infrastructure of our city that weren't pro-development and that weren't anti-development, that treated each case in relation to development and the environment on a case by case basis. I think that pretty well reflects what we were looking for.

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The material you circulated, would you say it's pro-development?-- Which material are you talking about?

This material that you've written and supplied to the Commission. Would you say it's pro-development?-- I'd say that it was balanced.

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Balanced?-- Mmm.

Do you in that material refer at any stage to some development that went ahead and was inappropriate?-- No. That wasn't what I was writing about.

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It complained about a number of development issues that were knocked on the head, doesn't it?-- Yes, it does.

And it seemed to generally attack - well, what you describe as the green method, or the green takeover?-- Absolutely. There were nine green candidates in that last campaign. We were much - we were very much aware of that and we found that extremely frightening.

So you were looking for someone who isn't green?-- No. That's wrong. I was up until recently on a committee that is very green and that's Communities for Sustainable Futures.

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CHAIRMAN: Mr Janssen, this article - you've read through this?-- Yes, I have.

This one at number 100 in that book in front of you?-- Yes.

The things that are attributed to you in this as being quotes. Did you say those things?-- Well I don't think I ever used the word "supported" by like Councillor - was it Councillor Power and Councillor Robbins. Certainly I mentioned that I'd discussed the issue with them. Most of the quotes in context are basically accurate, yes, Mr Needham.

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Thank you.

MR BOYLE: Well, that's perhaps an example where you in your quotes say, "We've discovered all these green candidates"?-- Mmm.

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And that there was the loss of the Sky Rail, the Tugun By-Pass-----?-- Mmm.

-----raising Hinze Dam Harbour Study?-- Mmm.

So you were looking at people that would run against these green candidates?-- Essentially, yes. Yes.

So someone who was - had a philosophy against those - what was being espoused by those green candidates?-- Look, that's a - that's a point - the particular sections you've chosen there all have to do with the current and future infrastructure in relation to tourism of this city and this is politics. We have two opposing point of view. The politics is not a church social meeting, it's a very tough game, and do we want green balance, yes, we do. Do we want fundamentalistic concepts,

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no, we don't. So we were looking for people who were balanced.

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All right. Just going back a page, you see there from page 31 on the front page of that item 100, below from page 31, this is quoted, I presume, to Mr Solomon. "We talked about who should be the trustee and I suggested Lionel Barden"-- I don't recall that. Is that what you want to ask me?

Yes, because you-----?-- I don't recall that part of the conversation.

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You don't recall him being mentioned at all at that meeting at any time?-- I don't - look, Lionel would have been mentioned. I mean, Lionel played a very significant part in the combined chambers. His name would have come up in conversation a number of times. He wasn't at the meeting. But as I said, he was a very significant part of the combined chambers.

If I may just have that. I just want to refer to a couple of other articles in a minute. I'll just take you to - back to your statement. We talked about trust issues. Brian Ray, did you ever talk to him?-- Never met the man.

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Quadrant?-- Who?

Anyone at Quadrant?-- Oh yeah, I met - I met Chris Morgan two weeks ago at the Hinterland Ball for the first time ever.

But up until that time?-- Never met him. I knew of him, but I'd never met him.

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Okay. Sorry, did you say you got information from David Power? About these drop mailers. It just says there in your - Councillor La Castra clarified some information for me in regards to drop mailers as did Councillor Power and Robbins?-- As far - look, I can't recall, but Dave and I did discuss the first article, which was in relation to the Tugun By-pass thing.

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What was said about that?-- Well, once again we come back to the issue of fundamentalist thinking and these things are part of the infrastructure of the city and-----

CHAIRMAN: Mr Boyle, I don't know that we need the details of it, what's in it, do we? They discussed it-----

MR BOYLE: All right. So this was for the flyer relating to the Tugun By-pass?-- There was no flyer on the Tugun By-pass, was there? I thought you said.

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Well - oh, okay. Well there might have been an article or something-----?-- Yes, there was an article, which I can't recall - backlash bills against the greens on the Tugun By-pass. I think that's what I was talking about.

Okay. There was some other material that you've supplied us. One article is as you say backlash bills against greens over Tugun By-pass - that's an article that was written by you?-- Yes, and wasn't published.

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Did you provide that to someone?-- Yes. As I mentioned earlier, Sue Robbins mentioned to me that there would be people prepared to make sure this appeared in The Bulletin by buying a full page ad. I sent it off to Sue and David obviously knew about it because I'd spoken to both of them about it.

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There's another article, Green Connections in 2004 Gold Coast City Council elections. Have you got that there?-- That's not an article as such. I was asked to supply some information to a journalist in relation to what was going on, plus there were people in the combined chambers who wished to know who was involved in the campaign and that's what I put down in the list, all that I could recall. Since then of course I've come across a couple more.

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What's the - who was the journalist that you provided this document to?

CHAIRMAN: Mr Boyle, does any of this have any relevance to our terms of reference. I can't see it.

MR BOYLE: Well, can I take him to one specific aspect of this article.

CHAIRMAN: All right.

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MR BOYLE: It really is getting back to the issue of philosophy, okay-----

CHAIRMAN: But philosophy really has little to do with it here. There's absolutely nothing wrong in the Chambers of Commerce coming up and supporting candidates if they want to as long as it's all done legally and above board and it is not misleading the public in any way. I have no difficulty at all with the Chambers of Commerce exercising their democratic right in supporting candidates if they want to.

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MR BOYLE: Yes, but-----

CHAIRMAN: And they're pro-business. One would expect them to be. That's what a Chamber's all about.

MR BOYLE: Yes.

CHAIRMAN: So-----

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MR BOYLE: But if we're looking at candidates who have a similar mind both in philosophy and funding and we're looking at-----

CHAIRMAN: But this gentleman had nothing to do with the trust.

MR BOYLE: But if the selection of candidates was a common thread of-----

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CHAIRMAN: No, no, I think you're misunderstanding it. He's talking about a selection of candidates that the Chambers would support, which they're perfectly entitled to do. That as I understand it is a totally different situation from another lot of selection of candidates, again, I'm not suggesting there was anything wrong with it, that other people would support, namely were supported through this trust. I don't think we need - we've got to be careful not to confuse the selection of candidates that Mr Janssen's talking about with the selection of candidates that were going to be supported by the trust fund.

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MR BOYLE: Well I'll ask one more question on that aspect. That's at page 3 of that one I'm just talking about, Green Connections-----?-- Which is-----

Green Connections in the 2004 Gold Coast City Council Elections?-- Okay. Page 3.

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Yes. "Those of us who were aware of the danger of a green takeover that would cripple this city sought our moderate candidates"?-- Yes.

What's that referring to there?-- Chambers of Commerce. I mean, we were very concerned about - about the green candidates that were coming up. We were aware of the support they were receiving from a core group and that core group as we saw was behind most of the things in the city's infrastructure that was blocked, as Mr Newman kindly put it. We are concerned about the business of the city and we felt we had a duty of care to make sure that we had candidates that will represent our point of view and I'd like to add to the fact that that was our democratic right.

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All right. Look, I'll tender those two articles that were written that-----

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CHAIRMAN: Yes. The one headed Green Connections-----

MR BOYLE: One headed Green Connections, there's another one relating to backlash bills against Greens.

CHAIRMAN: No, I won't accept them as exhibits. This gentleman, as I said, and the Council's - the Chambers are perfectly entitled to have their support of candidate as they see support their causes. I don't see them as in any way relevant to our terms of reference.

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MR WEBB: Mr Chair, I thought one of the unpublished articles was already in.

MR BOYLE: It's an exhibit, 114 I think - I've been told.

MR WEBB: I don't know why - I thought it might have been some how or other relevant but I - I can't see it.

CHAIRMAN: I do recall now, I just accepted it at the time but I'm somewhat with you in that I really don't see the relevance of it.

MR WEBB: Maybe it could be removed and that number allocated to something else. No, I'm just instructed that's going to confuse my instructing solicitor. I don't want that to happen.

CHAIRMAN: Yes. Is that it, Mr Boyle?

MR BOYLE: No. But what - what you were doing yourself was quite apart from the Chamber of Commerce in doing this negative campaign?-- I took the responsibility upon myself, yes. Was it apart from the Chamber? I suppose if I took the responsibility upon myself as apart from the Chamber. Were members of my committee aware of the material? The answer would be yes.

Well, you certainly - the material you had in terms of the letterbox drop didn't reflect Chamber of Commerce on it, did it?-- No, and that was - that was by design.

The concept of the fund had nothing to do with the Chamber of Commerce?-- Well, I again take you back to the meeting we referred to in November.

Yes, November?-- Yes. Where it was a part of the conversation that we had. Obviously if you're going to run candidates in this day and age - I mean, politics as I said again is a contacts - this takes a considerable amount of money in relation to advertising, getting the message of the candidate across.

In your article - sorry, your statement - you say, "In respect of the drop mailers I did not authorise the material for the sake of the Chamber regardless of its resolution as I acted as an individual." What resolution are you talking about there?-- The resolution was actually published in our newsletter. The resolution simply read that the Chamber had passed a resolution that it would support candidates who supported our particular point of view and work against those that did not which is our democratic right.

All right. Now, we talked about Mr White?-- Yes.

Who was the president of the Paradise Point Chamber, is that right?-- Yeah, Chambers North, same thing, yes.

And did you approach him to get involved in the campaign to unseat Mayor Gary Baidon and Councillor Peter Young?-- I don't think Gary Baidon even came into the issue. I didn't speak to Tony about - I don't recall ever speaking to Tony about Gary. Although, was there a discussion about Gary, yes, there was. Can I relate to that, Mr Needham?

CHAIRMAN: Again, I've no idea what this is all about.

MR BOYLE: Okay. Could I just take you to article 64 please?-- Which is?

Mr Orderly, could you just open that up on page 64 for me. This is of the media exhibits. I just want to ask you about this, if you look at the first paragraph, it talks about Nerang Chamber President Bob Janssen to get involved in - to unseat Mayor Gary Baildon and Councillor Peter Young?-- Mmm.

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Can you just say what the conversation you had with Mr White - well, did you want them to get involved in a campaign to unseat Gary Baildon?-- Can I read the rest of this please so I can get the context of it?

Yes?-- Okay. There was a conversation and numerous conversations amongst the - those members of the combined Chamber of which Tony White is a member. Tony white with his own capital supported his own particular candidate which - which he had every right to do. The conversation in relation to Councillor Young was no different than any other conversation - that is, we felt he was a conduit for radical fundamentalist green thinking and he had to go. Gary Baildon, I believe you entered something into evidence before in relation to a ecotourism forum, am I correct?

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I'm not sure on that?-- Okay. When seeking funding from Council to have that particular forum which was held at the Bicentennial Centre at Nerang it was opposed by Councillor Young and it was an open forum so we could get some movement forward in nature based tourism as we call it now and I was present when that funding was asked for in Council Chambers when unfortunately Gary Baildon made the comment in relation to the combined Chambers of Commerce, the comment was, "I don't think we should be supporting fringe element groups of this type," which was a most unfortunate statement because it was remembered by every businessman in the Western Chambers and in that particular sense I had discussed this issue with Tony White.

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Excuse me, Mr Chairman. Were you talking about the monthly newsletter?-- That we put out?

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Yes. That's - sorry, that's 116. Did you ever meet Tony Hickey?-- Sorry?

Did you meet Tony Hickey?-- Yes, I met him at the Mayor's Ball a month or two ago and I met him outside when he came in to give evidence.

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All right. So not during the campaign?-- Never.

Okay. Sir, I don't have any further questions, thank you, Mr Chairman.

CHAIRMAN: Mr Nyst.

MR NYST: Mr Janssen, during that - during 2003 and some years prior to that, you had been very active politically, hadn't you, now that you're involved in Nerang Chambers of Commerce and so forth?-- Yes, we were trying to take the Chambers back into a situation where it - it was no longer a boy's club and actually played a role in the future of the city and which involved politics.

All right. And you personally had been - you have strong views on various community and business issues, don't you?-- Yes, I do.

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All right. And, in fact, you've run - I think you might have mentioned in your statement, you ran for election in 2000 - in the year 2000?-- Yes, I do.

And you were asked about being anti-Green, I think, you said you weren't, you were - you'd recently been on the committee of the campaign for sustainable futures, is it?-- I was a member of the - up until recently, a member of the communities for sustainable futures and, I might add, in relation to the Green context, I was also on the flood plain committee trying to prevent development by Nifsan on the flood plain.

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All right. And did issues such as that come into your - the year 2000 election-----?-- Yes, they did. One of the things I oppose Councillor La Castra was development on the flood plain.

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Okay. You were, in fact, supported by the community electoral alliance at that time, were you?-- Yes, I was.

And it's a body that Mr Young was - now Councillor Young, but Mr Young then, was a member of-----?-- He was the chair.

Chair of it, was he?-- Mmm.

And you were supported directly by Councillor Crichlow?-- Yes, I was.

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And you shared many views with her; is that so?-- I'm sorry?

You shared - you were like minded with her on various issues at that time?-- Oh, I wouldn't go so far as to say that but considering the fact that she was an unchallenged councillor there was some benefit.

That's right. Okay. But, in any event, she was supported by-----?-- Yeah.

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Well, when you - you weren't elected?-- No, I was unsuccessful.

But you continued to be quite outspoken in your views about various political issues?-- I have that reputation.

Right. And you were approaching lobbying on a regular basis, Gold Coast City councillors, amongst other people, about issues that you thought were important to the community?-- The council, Federal Government, the State Government.

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Right. And, in particular, you became increasingly concerned about the level of debate on environmental issues?-- In the direction it was going, yes.

Yes. You believe that - you believed then, didn't you, that there were issues that were coming up which were important issues to the city but are being swamped by emotive - environmental arguments?-- Absolutely.

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And you were making approaches to Gold Coast City councillors, Mr Power amongst them, expressing your strong views that all of this environmental debate was getting out of hand?-- Expressing the point of view that had gone far too far, the pendulum had swung too far the other way, yes.

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So, for example, at one point there'd been statements by the Gold Coast and hinterland environment council that people shouldn't be allowed to go to Springbrook - to the Springbrook National Park because it was too environmentally sensitive. They could see it by video?-- I-----

Do you remember that issue?-- I felt that extremely offensive.

Okay. And you were very vocal in your concern about that?-- Yes, I was.

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And you complained about it to various councillors including Mr Power, didn't you?-- Not only Mr Power but, again, the State Government.

All right, and the issues continued and right up to that Tugan by-pass was a topical one during 2003, wasn't it?-- Yes, it was.

There was - you consider that to be very critical to infrastructure on the Gold Coast?-- Yes, I do.

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And, there was a - that same group was saying that the by-pass would endanger a certain type of frog or something that was living in that area, or thought to be?-- So - even to the point where I think the problem was that when one considers what is done in other parts of the world to alleviate these particular problems, we were getting one particular point of view from the media and there was no expression of alternatives - viable alternatives, that's right.

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All right. Well, you were concerned that the debate was being stymied to some extent-----?-- Absolutely.

-----that there wasn't sufficient debate about these issues?-- Absolutely.

And, you were constantly on the back, if I can use that term, on the back of councillors to say, you should be doing something about it just to make sure there's a more informed and reasonable and rational debate in Council about these issues?-- That's correct.

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And, one of the councillors that you lobbied in that sense from time to time was Mr Power?-- Absolutely.

But, of course, you got around to most of the councillors, didn't you? All right, well - you're nodding, it's being recorded, you mean yes, I take it?-- Yes, I mean yes, affirmative.

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Okay. Well, now, you said then that at some stage Sue Robbins and you were discussing a range of issues-----?-- Mmm.

-----including an article you'd written and you'd agree that Mr Young was some problem, or a destabilising influence I think you said. When was - when were those discussions, or that discussion, do you know?-- In relation to what, Mr Nyst?

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Well, you - perhaps I'll read the full notes-----?-- Okay.

-----so that you can put it in proper context. This is just my note you'll understand so it's a summary. But, you and Ms Robbins were discussing a range of issues, including an article you'd written and you agreed that, "Young was a destabilising influence. Small business did not support his view". You said, something needed to be done perhaps I, meaning you, could write something in terms of a negative campaign on him and you asked the question, "Who's going to pay for that?" And, Ms Robbins, you say Councillor Robbins, said, "There's funding available"?-- Yes, that - that's a generalisation of it.

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Well, do you-----?-- I actually made the comment during-----

I don't want to go into the details-----?-- Okay.

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-----of the conversation now-----?-- Yeah, fine.

-----unless you need to, but I just want to know when was it do you think that she said to you funding is available?-- It was some time early in the year, 2004, I think.

Early in 2004?-- Yeah, I think so, yeah.

And Mr Power was not present during that discussion?-- No.

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Now, you say in your statement, this is at the third page of your statement, the fourth - sorry, second, the third paragraph?-- Third page, third paragraph?

Third page, third paragraph?-- Yes.

And the last sentence of that paragraph, "The Nerang Chamber passed a resolution that it would support those candidates

that espoused the principles of the Chamber and work against those that did not. Councillor Young fell into the latter category"-- Yes.

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And, then you go on to say, "In a conversation with Councillor Robbins, I was made aware there was substantial funding in a blind trust...", et cetera?-- Mmm-hmm.

Now, I take it that before you discussed with Ms Robbins the idea that there was some funding, you, the Nerang Chamber, had already passed this resolution?-- Oh, yes, yes.

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Right. So, this was one of those - sorry, this was as a culmination of those various issues that you'd be concerned about?-- Yes.

I take it you'd been airing them in the context, in the forum of the combined Chamber of Commerce?-- Yes, we had.

And had there been some agreement amongst other people at those chambers with your views in that regard?-- Absolutely. A number of chambers had agreed to that particular position.

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All right. Well, you came to that view and you thought well, we will - we should support the candidates in that-----?-- Yes.

-----sense. And, then you went off at some later time and you had this conversation with Sue Robbins?-- Mmm-hmm, yes.

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And, she then gave you to understand that there was already funding in place?-- That's correct.

Right. And, you say, well, I think you said, you're not sure whether she mentioned the word trust or blind trust, you think that was your term. Do you - is that-----?-- It - yeah, well, it - it was a term I - I used - obviously, because it's been used so often in the media.

You just sort of picked up that up have you since from the-----?-- Well, it's like any other idiosyncrasy, if it's said often enough, you start to pick it up.

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A lie told often enough?-- Yes.

In any event, you never heard Mr David Power use that-----?-- Not to my recollection, no.

-----expression. Right. All right. But, now could I just ask you to look at - and you've got exhibit 116, that's that newsletter there for December 2003. Do you have that there?-- No, I don't.

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Well, you might not need it but I remind you if you need to see it let us know?-- Okay.

It talks about, on the second page, the role of the Chambers, "We must become more influential in its governance," meaning

the city's Chambers, I think, governance. "The best way to achieve this is to take a more active role in upcoming elections."?-- Yes.

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Do you remember that sort of talk?-- Yes.

And then I think it was picked up again in Exhibit 117, the document says, "For so long regarded as the silent majority many, many" - sorry - "many small business owners are tired of the squabbling and at times ineffectual representation from their current councillors and intend to voice their dissatisfaction on the principle known"?-- Mmm.

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Now, are these statements consistent with what was being bandied around in the Nerang Chamber of Commerce at the time?-- It wasn't only the Nerang Chamber of Commerce, it was the-----

I'm coming to that?-- Yes, it was.

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In the Nerang Chamber of Commerce?-- Yes, yes.

And in other-----?-- Yes.

-----Chambers of Commerce that you had contact with?-- Absolutely.

And you were on - I think you said you were the secretary of the Combined Chambers?-- I'm currently the secretary of the Combined Chamber, yes.

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And were you then?-- No, I was a member of the Combined Chamber as all the presidents were.

Oh, I see. Well, as a member of those Combined Chambers did you hear these sort of things being spoken about on a regular basis?-- Very regular.

Great dissatisfaction by members of these business entities, these Chambers, great dissatisfaction about the level of representation in council?-- Yes.

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About poor behaviour in council?-- Yes.

A lack of common sense in terms of debate in council?-- Yes.

And these were things, were they, that you'd passed on to Councillor Robbins?-- Yes, Councillor Robbins and-----

And also to Councillor Power?-- Yes.

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And there was talk at that time, was there, about the - about the situation getting such that the Chambers of Commerce should do something about this, that it should give support to sensible rational quality candidates?-- It was a direction that the Chambers had been heading in for some years, yes.

All right. Now, is it in the context of that sentiment arising that you had that meeting with David Power and other Chamber of Commerce people, Tom Tait and Mr Solomon, et cetera?-- Yes. 1

And at that meeting it's the case, isn't it, that you were expressing those views very strongly? I mean, you and the other members of the Chamber of Commerce?-- Yes, we were.

The business community was sick of the poor level of representation in council?-- Yes, we were. 10

Sick of what you considered to be at times irrational and irresponsible behaviour by councillors?-- Yes, we were.

And that you were - that you were in effect demanding that something be done about it?-- Yes.

And Power said to you, didn't he, words to the effect that if you want to do that then you should make sure you support good candidates?-- I - well, along those lines. I think it was an exchange in both directions, but you know, with that - yes. 20

Put your money where your mouth is, for example?-- Well, that's an often-used term.

Yes?-- Yeah.

If the business community is so concerned about these things, well, do something about it?-- I think words to those effect have been used on a number of occasions, various conversations, yes. 30

Okay?-- It's possible it was done there.

And it wasn't Mr Power that suggested the - at first suggested the setting up of the fund, was it?-- Look, I don't - I don't recall whether it was. I mean, it was----- 40

Do you remember Mr Solomon talking about setting up a fund to-----?-- Mr Solomon spoke about a whole range of issues. Setting up funding was discussed between all of us, then prior to that and after that meeting.

All right. But were you Chamber of Commerce people there saying, or discussing the possibility of a funding set up whereby people can, within the Chambers of Commerce and the business community, generally could contribute to give some support to quality candidates?-- Obviously we felt that business needed to do that. 50

All right. Now, at some point you say Ms - sorry, Councillor Robbins suggested you become involved in the negative campaign, if I can call it that, against Councillor-----?-- Sorry, would you repeat that?

At some point?-- Mmm.

I think you said that at some point Councillor Robbins suggested that you become involved in a campaign against Councillor Young?-- I don't know whether it was - I don't recall saying she suggested it. What I recall saying and the way I did it was that it was very clear that one of the major obstacles in council was Councillor Young and I think I possibly came up with the suggestion that we - yeah.

Okay, well, I was actually there referring to your statement but what you're saying is and I've probably heard that you put your statement together under some time pressure but what you're saying is your better recollection is that you may have-----?-- Yes.

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-----suggested that initially?-- Yes.

In any event, she adopted that suggestion?-- Yes.

But Power - Councillor Power was not part of that discussion, was he?-- No. I was with Councillor Robbins.

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And he took no role of ultimately in organising or proposing or in any way driving that negative campaign?-- No, other than me having asked him questions on some details which I did of a number of councillors-----

Yes?-- -----and council officers.

Well, what you mean by that is you'd ring them up or stop them in the street or whatever and say, is this true, I've heard such and such, is this true?-- Maybe by phone, yes.

30

Right. But no - but you didn't in that context, say look, this is because I want to do a negative-----?-- No.

-----campaign?-- No.

And so far as Councillor Power's concerned you may have got some information from him in that sense?-- Yes.

40

But he wasn't in any way, shape, manner or form involved I driving this negative campaign?-- No.

That was really your baby along, to some extent, with Councillor Robbins, is that fair?-- Yeah, and - and some complicity within the Chambers, yes.

Within the Chambers, yes. Just finally, sir, Councillor Power has never suggested to you, has he, that you should lie or mislead anybody-----?-- No.

50

-----in relation to-----?-- No.

-----any of what we've talked about here?-- No.

Not - he hasn't even made any suggestion that you should be coy-----?-- No.

-----or in any way misleading?-- No.

Right. Thank you, sir.

MR S FYNES-CLINTON: No questions, Chairman.

CHAIRMAN: Yes, Mr Boyle?

MR BOYLE: No re-examination. May this witness be excused?

CHAIRMAN: Yes. Yes. You may be excused Mr Janssen. Thank you for your evidence, your attendance.

WITNESS EXCUSED

MR BOYLE: Chairman, I call James Richard Kelly.

JAMES RICHARD KELLY, SWORN AND EXAMINED:

MR BOYLE: Witness, your name is James Kelly - James Richard Kelly, is that right?-- Yes.

You're a media officer employed at the Gold Coast City Council?-- Yes.

You've been served with an attendance notice to appear at this hearing and I'll show you a copy of that please. That's a copy of the attendance notice that was served on you. I'll tender that notice, Mr Chairman.

CHAIRMAN: Yes. That's Exhibit 120

MR NYST: One hundred and twenty I think you'll find.

CHAIRMAN: Exhibit 120, thank you. I always look up when I say it.

ADMITTED AND MARKED "EXHIBIT 120"

MR BOYLE: Can I just show you this document? Now that's a transcript of an interview which was conducted with an officer from the Crime and Misconduct Commission on the 19th of September 2005 is that right?-- Yes.

There was some changes - typographical errors that you found in that document. Just - I think you found one at page 4?-- The word should be Mr - Mr Stevens not Mr Sevens.

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Okay, that's at line 109, page 4. Okay?-- Page 6, line 166, should be the City Planning Committee not the City Cleaning Committee.

And page 11?-- And page 11, line number 409 should Eddy Sarroff not Betty Sarroff.

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CHAIRMAN: Just with these - is that the original that's been typed?

MR BOYLE: The one - the one that's been tendered, this witness has already marked those changes on it.

CHAIRMAN: You've made those corrections on it?-- Yes.

Thank you. Yes, so, page 11.

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MR BOYLE: Page four, six and 11.

CHAIRMAN: Yes, page 11, the-----?-- Was line 409.

Yes?-- It should be Eddy Sarroff not Betty.

Yes?-- Yes.

MR BOYLE: All right, I'll - so you've had the opportunity of reading that interview today?-- Yes.

30

And you're happy with that interview?-- Yes.

What's the contents of what you've read in the transcript?-- Yes.

Okay, I'll tender that - that transcript.

CHAIRMAN: Well is what you said in that interview, your answers in there, true and correct?-- Yes.

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Yes, thank you. That's Exhibit 121.

ADMITTED AND MARKED "EXHIBIT 121"

CHAIRMAN: 121, yes, thank you.

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MR BOYLE: Now, essentially - do you have another copy of the transcript there?-- Yes.

Okay. You held the position as media officer with the Council since August 2004?-- Yes, on a temporary basis.

Now, following the death of Councillor Sue Robbins, you ran as a candidate in that by-election for division 14, is that right?-- Yes.

1

And you were one of 14 candidates?-- Yes.

All right. Now, in your interview, you refer to the fact that there was - it was revealed in the newspaper some time in December that you were going to nominate as a candidate; is that right?-- Yes.

10

Now, I'm going to ask you - you, in the interview, refer to an approach by Mr Stevens, Mr Ray Stevens?-- Yes.

What's his position at the Council?-- I believe he's the advisor to Mayor Ron Clarke.

Right.

MR NYST: Excuse me, sir. I wonder if it is helpful - I think it appears that this witness has that record of interview in front of him or some document he's leafing through as being asked questions. I wonder if that's helpful or it's better that he not have that as he gives this evidence.

20

CHAIRMAN: Why?

MR NYST: Well, we can all read the document. If he's simply going to regurgitate that by reading it then it doesn't add much to the written document for him to swear it on oath. I'm assuming that my friend is about to take him through and try to get his recollection of the events and not have him read the document.

30

CHAIRMAN: Well, I assume that Mr Boyle is just going to go to a few parts of it not to go through the entire thing otherwise there's not much point in tendering it.

MR NYST: Well, what I'm saying is, if he's going to go to a few parts of it, there's not much point in the witness finding that part and regurgitating what he's already said.

40

CHAIRMAN: I'd agree, I wouldn't want the witness to just go and read it out but this isn't a memory contest. He-----

MR NYST: No, but wouldn't - sorry. Wouldn't it be better if he not have that unless he needs to refer to it?

CHAIRMAN: I don't see any difficulty when he's having it in front of him but, as I say, this isn't a memory contest but I certainly agree that I wouldn't want Mr Kelly to be just re-reading out aloud answers that he's given previously.

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MR NYST: Well, perhaps he could put it aside for the time being and then if he finds it difficult and says, "Look, I have to refer to the document to refresh my memory on the issue"-----

CHAIRMAN: What do you say, Mr Boyle? See, I don't know what your intention is here. Just you might be able to assist.

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MR BOYLE: Well, I was going to take him to a very limited number of passages to see if he has any other recollection about the particular meeting-----

CHAIRMAN: I see. So you want to take him to particular parts and ask Mr Kelly if he can perhaps elaborate, enlarge on what's in there or whatever. I see no difficulty with that.

10

MR NYST: Could I just say - I'd like to know whether or not he needs to refer to the document? See, it might be that my friend says, "Look"-----

CHAIRMAN: Well, Mr Nyst, look, we're wanting to save time here.

MR NYST: Yes.

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CHAIRMAN: What's been done is, as I see it, that this witness's evidence-in-chief has basically been taken as this - this document which is now Exhibit 121. However, there are some parts that Mr Boyle wants the witness to clarify, enlarge upon, and in those circumstances, to take him to halfway down page X and ask him to enlarge, clarify upon, what is there, I see as a perfectly acceptable way of taking his evidence-in-chief.

MR NYST: Thanks, sir.

30

CHAIRMAN: Thank you, Mr Boyle.

MR BOYLE: Just on that point, my submission is that it's not inconsistent with a procedure as a witness has provided statements previously in these proceedings.

CHAIRMAN: Yes.

MR BOYLE: It's just another way of-----

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CHAIRMAN: Doing exactly the same, yes. Yes, thank you, Mr Boyle.

MR WEBB: Mr Chairman, I don't want to unnecessarily rise but I've been a little bemused by the way in which evidence has really meandered along a bit, getting a witness to repeat what he's said and some times many times and that's why I rise to my feet now. I thought there might be accepted-----

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CHAIRMAN: I certainly would encourage alacrity in dealing with witnesses' evidence.

MR WEBB: The late St George Kniepp, as I think you, Mr Chairman, are well aware said, "When you tender a document under section 92 of the Evidence Act, you don't go to it," because that's the evidence-in-chief.

CHAIRMAN: Yes. I would expect that we won't go back through all of this to regurgitate everything that's in it but I can understand, when this was an interview done perhaps a number of weeks ago, that there might be a need to elaborate further and enlarge on some parts of what's in this document and-----

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MR WEBB: Yes, elaboration certainly.

CHAIRMAN: -----if Mr Boyle does that, he will be doing his job well.

10

MR WEBB: I remain to be surprised.

CHAIRMAN: Thank you, Mr Boyle.

MR BOYLE: Okay. So you talk in the content of this document, the first meeting is on page 4 about line 98 to 112, the meeting with Mr Stevens, right?-- Yes.

Now, is there anything so far as - that you can recall, about the funding or the source of funding apart from what's in that particular document?-- No.

20

Now, you say that there was about a four to five day gap?-- At least.

And then you were called into his office again?-- Yes.

And there was a further meeting and you declined the offer?-- Yes.

30

Was there anything else said at that point about the source of funding?-- No.

Now, I'll just take you to the page - page of 7 - the bottom of page 7 over to the top of page 8. I'd just like you to explain what he said there, "No, they're a group of like-minded people in the community." Can you recall him using those words?-- I said that I remember him saying to me that, "We like - we like you - we like you as a candidate. We like you. You know, we like what you stand for. You know, if you - there would be certainly some money available if - if you see things our way."

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Did he say who we were?-- No.

Or our, who that would be?-- No.

Yes, I don't have any further questions, thank you.

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CHAIRMAN: Yes, just before any questioning on this - I note - and perhaps I'll address this to you, Mr Webb, for want of anyone in a better position to address it to - I note at the bottom of page 5 Mr Kelly says that he's worried about what will happen to this relationship - presumably the relationship between himself and Mr Stephens when he has to work a few metres apart - and my position in Council. It's that latter part in particular. If this information is presented at the

CMC et cetera. I would just draw to your attention, perhaps the drawing to the attention of your client, so that the Council generally can be aware of it of section 212 of the Crime and Misconduct Commission Act which makes it an offence of victimisation of anyone to prejudice or threaten to prejudice or intimidate et cetera any person for any evidence that that person has given to the Commission or any information that person has given to the Commission. It's in effect like a whistleblower protection and the CMC would take it most seriously if anything was to happen that might be thought to be any form of reprisal to this person for giving evidence here.

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MR WEBB: Thank you, Mr Chairman, I take that on board but may I inform you that my client is extremely well aware of those provisions.

CHAIRMAN: Good.

MR WEBB: And certainly in that as in all other matters intends to comply with the law. I was puzzled why this was in the record of interview in fact.

20

CHAIRMAN: You might understand why an individual might feel that way but I'm comforted by what you say about your client, that's presumably Mr Dickson you're referring to.

MR WEBB: That is Mr Dickson that I'm referring to.

CHAIRMAN: His reaction and I trust it will be the reaction of everyone within the Council not just the Council officers. Thanks, Mr Webb.

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MR WEBB: Well, I - yes, thank you, sir.

CHAIRMAN: Any questions?

WITNESS: Commissioner, could I add something?

CHAIRMAN: Yes, certainly?-- The reason I said that in that statement there was because I'm on a temporary basis at Council and to gain full-time employment with the Council I thought that this might have an adverse effect or if it was saying something against other people in the Council.

40

Yes?-- I might also add that-----

Well, I could say that Mr Webb might be puzzled as to why you'd say that but I would say I'm not at all puzzled as to why you would say it?-- Right.

50

MR WEBB: No, I've said I was puzzled why it appeared in here. I thought that's what I said.

CHAIRMAN: Well, all right. It appears in there because Mr Kelly said it?-- I might also add that since I've been employed at Council the job that I'm doing on a temporary basis has come up full time and I have applied for that job.

I was the only candidate I believe that applied for that job and I was to have an interview on Wednesday, two days ago - sorry, last week, last Wednesday - last Wednesday - and my position has - I was told that I wouldn't be employed full time in that position until after the Commission was heard - till after the Inquiry was finished - if at all, I guess.

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MR WEBB: I'm in a position to have something to say on that.

CHAIRMAN: Well, that's something that perhaps we might not deal with in public here but you might like to write to the Commission and perhaps put it in writing as to what's happening.

10

MR WEBB: Well, I'm quite certain that it won't affect matters and it is appropriate I should say at this stage, I rely on my experience in that regard. The - because - for the very reason that this particular witness was going to be a witness and because the unknown outcome of the Inquiry the time for the decision on that position was extended until January so that matters would be well cleared by then and it was done on the advice of the acting - Acting Director of City Governance who is my instructing solicitor as a question of fairness.

20

CHAIRMAN: So what, has the business of Council come to an end and a halt until the outcome of this Inquiry?

MR WEBB: No, no, Mr Chairman. You've taken it the wrong way, I suspect. It's just that it was considered and it was considered that it would be more appropriate and fair simply to extend the period until those matters are over. Not for any other purpose whatsoever.

30

CHAIRMAN: Well, you might like to write to us and set out the reasoning behind why it was thought to be appropriate to extend it because the outcome of this inquiry was unknown as to what relevance that could have to this appointment but if you could write to us on that, that would be very good. Yes, any questions, Mr Nyst?

40

MR NYST: Yes, thank you, sir. Mr Kelly, just by way of elucidation and explanation and, I suppose, expansion of your record of interview, you told my friend - my learned friend, Mr Boyle, that there was nothing more about the source of funding in that discussion other than what appeared on page 4; is that right?-- Yes.

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And that is the fact, isn't it?-- Yes.

All right. And then you had a subsequent discussion, you say, with Mr Stevens and you, in answering my learned friend's question, said there was nothing - nothing else was said about the source of funding in the second meeting either?-- No.

And so-----?-- Correct.

Pardon?-- Correct.

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Right. And that's what you told Mr Boyle and that's the truth?-- Yes.

All right. And so the fact of it is not at any stage was there ever any discussion about the source of the funding?-- That's correct.

10

You had no idea where it was said to have come from?-- No.

No. You had no such idea; is that so?-- I had my own ideas but I was never informed by anybody where the money was coming from.

Yes. He, Stevens, on your account, did not purport to say it was coming from any source-----?-- That's correct.

-----any particular source? Right. There was no suggestion from him that it came from Lionel Barden Trust Funds?-- No suggestion.

20

No suggestion that it came from developers?-- No suggestion.

No suggestion that it came from the business community?-- No.

No suggestion of where it came from?-- No.

And you're absolutely certain and clear minded about that?-- Yes.

30

There can be no doubt in your mind about that?-- No doubt.

Not even the slightest suggestion from Stevens that the money came from developers?-- That's correct.

That's correct. And, by the way, you're not suggesting Mr Power was present for any of these meetings?-- That's correct.

40

Nor have you ever referred any of this to Mr Power for comment? You can leave that document to a side for the moment while I'm asking this question, but no suggestion that you ever referred it to Mr Power for his comment or discussion at all?-- That's correct.

Okay. And now in these discussions with Mr - sorry, could I - I withdraw that for the moment. Mr Stevens, he was a workmate of yours, was he?-- A colleague.

50

A colleague but you weren't friendly - you weren't on friendly terms in the sense of spending social time together?-- Not at all.

So was this the first conversation you'd ever had with him?-- Ever?

Yes, I'm talking about the one where you say he brings you in, you describe it on page 4 of your statement; is that the first ever conversation you'd had with him?-- No.

1

Had you had many conversations with him before that?-- Yes, but not in this capacity at all.

Had you discussed your political views with him at any stage?-- No, I don't think so.

10

You ended up running, didn't you, in the bi-election?-- Yes.

Are you a particularly pro-development person?-- I campaigned on sensible development.

On sensible development. Well, you were supported in your campaign by Councillor Young, weren't you?-- A verbal support on TV, yes.

Yes, active support, is what I'm saying. He actively supported you as a candidate?-- He came out on TV and said that he supported me, yes.

20

And Councillor Sarroff?-- Yes.

And Councillor Crichlow?-- Yes.

And, I think, Councillor Douglas; is that right?-- Yes.

Okay. And were they the only councillors that supported you?-- Supported me, yes, on TV, yes.

30

All right. Well, you were like minded to them, were you? You had similar views to each of them?-- I wouldn't necessarily say that.

Well, in their discussions or their support, did they seem to suggest that?-- I think that they felt that I'd be a good candidate and that I'd do things good for the city.

40

All right. Well, now the first conversation that, you say, you with Mr Stevens, when was that?-- About four years ago when he was running as-----

No, no, I'm sorry, I'm-----?-- Okay.

-----I framed the question badly. The first conversation that you talked about in your record of interview; don't worry about the record of interview for the time being, but the first conversations you had with Mr Stevens, you described in the - that you related in-----?-- On this issue?

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-----you record of interview on this issue?-- Yes.

When did that happen?-- Late November, early December - more like early December.

Early December 2004?-- Yes - 2004.

Yes. By then had you published your policies and so forth?-- No.

This was a very early date, was it, in terms of the-----?-- Early days.

By-election. Had you simply said to somebody, well, I think I'll run?-- Yes.

10

Had you formally nominated, or anything like that?-- Nominated - no.

Had you formally announced your candidacy?-- Not till the 10th December.

To the 10th. So this is before you-----?-- I believe so, yes.

-----you've announced your candidacy?-- Mmm.

20

You'd never published your policies?-- No.

You'd never discussed them, I take it, with Mr Stevens?-- No.

In this conversation, he didn't ask you what your policies were?-- No.

And so far as you know, he had no idea what your policies were?-- That's correct.

30

He had no idea what you stood for?-- That's correct.

Are you saying that during this conversation he said, "We like what you stand for"?-- Yes.

Well, did you say, well what are you talking about, you wouldn't know what I stand for?-- Well, I imagine that he was talking about, we like how you present yourself.

No, that's not what you say he said, though. You say he said, "We like what you stand for"?-- What page are we on?

40

Never mind the document. I'm talking about evidence you've given under oath here. You've sworn that he, Stevens, during this conversation said, "We like what you stand for, Mr Kelly"?-- Yes.

Now how would he know what you stand for?

CHAIRMAN: Are you saying the witness said that in his evidence-in-chief, are you?

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MR NYST: He did. He did, yes.

CHAIRMAN: All right.

MR NYST: How would he know what you stand for?-- Well, I would tell you that when someone says, "I like what you stand

for" it wouldn't necessarily have to be politics-wise, what your policies are. "I like what you stand for" "I like that you're an honest person, that you're" - you know, that you're a nice young bloke, perhaps. "I like what you stand for."

1

But aren't you saying this conversation occurred in the context of somebody offering you money to take a political stance, a particular political stance. Isn't that what you're on about?-- Could you repeat the question again, please.

10

Aren't you saying that this conversation, this comment of "We like what you stand for" occurred in the context of Stevens trying to recruit you as a political candidate?-- Yes.

And talking about, you say, there'd be some money available if you were to see things our way?-- Yes.

Talking about your policies, et cetera, wasn't it?-- I wouldn't say it would be the policies, no, not necessarily.

20

Well, your - you would swear on oath that he said to you - or you have sworn on oath, you may want to reconsider it or whatever, but do you say I'm quite clear that he said to me, we like what you stand for?-- Yes.

Right?-- Words to that effect.

And you - it is the case, is it, that you know of no way that he would know what you stood for politically?-- That's correct.

30

But what you do know is that ultimately as the campaign progressed, Councillors Young, Crichlow, Sarroff, all saw you as someone worthy of support?-- Yes.

Right. And perhaps like minded to them?-- They're your words.

Okay. Well in any event, you had the conversation, you say, in early December. You didn't make any notes of it, did you?-- No.

40

You made no other recording of it of any kind?-- No.

Did you write it down afterwards or make a statement or anything?-- No.

Not until September this year?-- Yes, that's correct.

A couple of days before the record of interview?-- Correct.

50

And what did you do then?-- Well I wrote them down in a book, so as I was-----

Where's - pardon?-- I wrote them down in a book so I'd know - I'd know exactly what transpired so it would help me remember on the day when I was giving the record of interview.

You wrote down a statement, did you?-- I wrote down, "This is what happened on this day I was called in, this is what happened, this is what happened.

1

All right. Now just to kind of step that back a little bit. You made a statement to a journalist during the election campaign, didn't you?-- Yes.

That you claimed that you'd been approached and offered funding?-- Yes.

10

And that journalist asked you for names, you say?-- Yes.

And you declined to give them?-- Yes.

Is it the case then a good deal later as in nearly a year later, the CMC contact you and say, "We've been told that you were offered money"?-- That's not how it happened.

Okay, well, you tell me how it happened?-- A colleague at work was interviewed by the CMC and I-----

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Who was that?-- Robyn-----

CHAIRMAN: Well, is that necessary?

MR NYST: It may be because we've got to talk about other people that are said to have been involved in this process.

CHAIRMAN: Well, I'm not - unless you can convince me that it's necessary I don't feel that the name of any person at the council who chose to speak to us needs to be disclosed, so you'll have to convince me why it's necessary for this witness to tell you that name.

30

MR NYST: Well, it may be that that person has some information about this alleged conversation. It seems to me that would be something of interest to this inquiry.

CHAIRMAN: Well, let the witness answer the question that you had asked him before you find out whether it is necessary to do that or not.

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MR NYST: Thank you, sir.

WITNESS: A colleague of mine I believe had has a record of interview with Ken Bemis from the Crime and Misconduct Commission and it was suggested to him that that person knew that I had been offered some money in the Division 14 by-election, and that that information - and basically that person sounded out whether that information would be useful to the CMC, and I believe the gentleman from the CMC told the person that that information would be useful and I was provided with a detective's number and I rang the CMC.

50

MR NYST: Okay. Well, the only person you'd ever imparted this to was the journalist Fiona Hamilton, wasn't it?-- About what?

About this offer being made to you?-- No.

Who else did you-----?-- Haven't you - sorry.

Have you spoken to your wife and to Greg Pearce?-- I've spoken to my wife and I've spoken to some peers at work.

Some peers?-- Well, the record of interview says that Colin-----

Pearce, is it?-- Colin Pearce was told as soon as I came out of the office I said I'd been offered \$40,000.

But Colin Pearce was your campaign adviser, wasn't he?-- No, a colleague at work.

But did he assist you in your campaign?-- I had some discussions about the campaign with Colin but-----

Colin Pearce was the person that suggested to you that you should go to the press and make a statement that you'd been offered funding by developers, isn't that so?-- Yes, it was suggested to-----

And you did go to the press and tell them that you'd been offered funding by developers but you declined?-- Yes.

And that was a lie, wasn't it?-- What's a lie?

That you'd been offered funding by developers and that you declined it?-- I said I'd been offered money, not - I said I'd been offered some money, \$40,000.

No, sir, you went to the press, didn't you, and told them that you'd been offered funding by developers. Isn't that so?-- I believe not.

Didn't you - didn't your whole discussion with Greg Pearce or whatever his name is, Colin Pearce, start on the basis of Pearce saying to you, "Other people are being funded by developers and you're not?" Pardon me, let me just get that right. Sorry, you went to Pearce, didn't you? Just leave the document aside. You went to Pearce, didn't you, and said, "Other people are being funded by developers and I'm not"?-- Yes.

"And it's not fair"?-- Never have I said it's not fair.

Well, was that the thrust of what you were saying to him?-- No.

There was some unfairness involved in that?-- No.

Well, you asked him, "What should I do about this?", that's right?-- In the - this is what happened.

No, did you ask Pearce, "What should I do about this"?-- Yes.

Right?-- What should I do about-----

And you and he got-----

CHAIRMAN: Just - hang on, the witness hadn't finished answering.

WITNESS: Sorry, what should I do about what?

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MR NYST: What should you do about the fact that other developers - sorry, that other candidates were being backed by developers and you weren't?-- I didn't care about that, at all. I was very happy that I wasn't being backed by developers or anybody that was offering me money at all. Let's not say developers, from anybody, from anybody other than my wife.

Okay, did you and Pearce get your heads together and decide that it would help your campaign if you told the press that you weren't backed by developers, that you'd been approached but that you'd said no?-- Yes.

20

Yes, and that's what you did, didn't you, to help your campaign you went along and said, "I'm not backed by developers, I've been approached by developers but I've said no"?-- I said I'd been approached.

Approached, in the context of "I'm not backed by developers, I've been approached to take money from developers and I've said no"?-- I said I'm not backed by developers but I've been approached, with the source of funding.

30

Well, what does that mean? What does that mean?-- Well, could I - could I point you to the newspaper article-----

No, just listen to what I'm asking you-----

CHAIRMAN: Just let the witness answer the question.

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MR NYST: No, with respect, sir-----

CHAIRMAN: Mr Nyst-----

MR NYST: -----I asked him a question. He has not answered it.

CHAIRMAN: Mr Nyst, I think that the answer that this witness is attempting to give you is responsive to the question that you asked so you will allow him to answer it.

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MR NYST: Well, the question was, what does that mean, "I've been approached by developers but I've said no."

CHAIRMAN: That wasn't the question that he was answering.

MR NYST: That was the question that was asked. The question that was asked is what does that mean. 1

CHAIRMAN: That wasn't the question that you asked at that time. Now, allow the witness to answer, please.

WITNESS: I'd like to refer you to The Gold Coast Bulletin article and it says, "On January 21, 2005"-----

MR NYST: Well, what - where is it? Where can we find it? 10

CHAIRMAN: January 21, is it? We'll see if we have that.

WITNESS: 2005. Title is, "A Nasty Campaign" by Fiona Hamilton.

CHAIRMAN: No, that's not in Exhibit 3. Do you have a copy of it there?-- I do but it's stuck in the book.

MR NYST: Could I see that? 20

CHAIRMAN: Well, just read it out to us if you would so we can all hear it?-- I'd like to read it first. It says, "Other candidates have been - have brought fairly reasonable claims to the newspaper's attention" - me, I guess - "but unfortunately, without a shred of proof. Two" - one of those is me - "claimed they had been offered thousands in election funding before Christmas potentially from developers" - potentially - not from developers, potentially from developers. "The accusations drew interest until the pair refused point blank to say who they had been approached by. Candidates, put up or shut up." At no stage, do I recollect saying that I had been approached by developers. I have been approached with a sum of money that I would assume that would come developers. 30

MR NYST: But you do recollect, because you've given it to us here in sworn evidence - is this, that you said, "I've been approached by developers" - sorry - "I'm not backed by developers. I've been approached but I've declined"?-- Correct. 40

Right. "I'm not backed by developers. I've been approached but I've declined"?-- Correct.

Not what was that intended to mean?-- Well, at the time of the election, other candidates were going around and claiming that everyone under the sun was being backed by developers and that James Kelly was obviously being backed by developers and James Kelly is one of the bloc. James Kelly is not one of the bloc and James Kelly is not backed by developers and that's the reason I went to the newspaper to explain to them, you know, that I - that I was running my own campaign, funding my own campaign. 50

You were trying to assert, weren't you, that developers were backing you and that you were - that they'd approached you to back you but that you, being the good anti-development person

you were, were not wanting to entertain that?-- I can't answer that question because it's framed incorrectly. 1

Pardon?-- You said I'm anti-development. I've never said I'm anti-development.

You were trying to make the point that you weren't going to be corrupted by developers. "I'm not developer backed. I've been approached but I've declined"?-- That's correct. 10

That's right?-- And I-----

And there'd been absolutely no suggestion, even on your account, of what Stevens said of any approach by developers?-- Correct.

But that's what you were trying to infer in speaking to the press, weren't you?-- I guess so.

Your statement that you wrote down in your book; do you have that here?-- It's in the car park. 20

I wonder if it could be stood down briefly, sir?

CHAIRMAN: Where's the car park?-- Just the Anzac car park.

It's not far. All right. Take you 10 minutes to get down there and back?-- Mmm.

We'll have an adjournment. 30

MR BOYLE: Could I interpose another witness and just - or-----

CHAIRMAN: Yes. And perhaps - could we borrow that press article that you have there and we can photograph it-----?-- Yes.

-----and then I'll take it as an exhibit. We won't take it from you but if we could just photocopy it?-- Okay. 40

So if you just stand down and go and get that.

WITNESS STOOD DOWN

CHAIRMAN: You're interposing another witness, Mr Boyle? Which witness is that? 50

MR BOYLE: Mr Campbell.

CHAIRMAN: How long will he be?

MR BOYLE: I don't expect him to be - I'd envisage-----

CHAIRMAN: It's just I don't want to have sort of two witnesses unfinished this evening. I'd prefer to finish one if we can.

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MR BOYLE: If we sat a little bit later, I was hopeful to finish both witnesses tonight.

MR NYST: Can I ask that we not start Mr Campbell. I was provided material by Mr Campbell and this witness, I think it was this morning, but recently and I haven't really digested the material on Mr Campbell as yet and-----

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CHAIRMAN: It won't take you long and I don't think it mentions your client at all.

MR NYST: Well, it may not but I need to read it.

CHAIRMAN: I only saw it this morning. The statement is eight paragraphs.

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MR NYST: I've read that statement but I haven't read the record of interview.

CHAIRMAN: The interview.

MR NYST: And for the sake of 10 minutes, it seems to me we could-----

CHAIRMAN: Can Mr Campbell come back tomorrow?

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MR BOYLE: Well, he's apparently been waiting for some time. He's broken his arm, I understand, fairly recently and he's in a bit of pain and, as I understood it, because tomorrow will be fairly full with witnesses, it may be desirable to, if possible, sit on a little bit later.

CHAIRMAN: Can you tell me how late you can sit?

REPORTER: I could stay till 5.30.

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CHAIRMAN: All right. Well, we might have a short adjournment now to allow Mr Nyst to have time. Before we do, can I just ask one thing? I assume Mr Stevens was provided with a copy of Mr Kelly's material.

MR BOYLE: I understood him to have been contacted. I don't know whether he's here. He is here.

CHAIRMAN: All right.

50

MR BOYLE: He collected the-----

CHAIRMAN: No, that's all right. I was just wanting to make sure that you'd had procedural fairness.

MR STEVENS: I have been provided-----

CHAIRMAN: Yes, thank you. We'll just take an adjournment and can you let me know when Mr Kelly returns? We'll resume when he returns.

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THE HEARING ADJOURNED AT 4.11 P.M.

THE HEARING RESUMED AT 4.22 P.M.

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CHAIRMAN: Yes, Mr Nyst.

MR NYST: I can formally tender that article, the copy of the Gold Coast Bulletin of the 21st January 2005.

CHAIRMAN: Yes. Exhibit 122.

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ADMITTED AND MARKED "EXHIBIT 122"

MR NYST: I might have given those back to the witness, but other copies of the article.

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CHAIRMAN: When you're ready, Mr Nyst.

JAMES RICHARD KELLY, CONTINUING:

MR NYST: Mr Kelly, did you get that document?-- Unfortunately, it's at the Gold Coast, at our house. I thought it was in the car. Sorry.

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Are you able to get it by fax or anything this afternoon?-- No.

I'd like to see that document, sir, before I proceed much further.

CHAIRMAN: Why?

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MR NYST: Because I want to see what was written in this-----

CHAIRMAN: Did you use that document when - you said before that you did it, you made that document so when you were interviewed you'd have the record of what you said?-- Yes.

Did you use that when you were interviewed?-- Yes.

In what way, just-----?-- Just to refer to and make sure that, you know, the events, chronological order, were adhered to.

1

All right. Are you prepared to supply that to the Commission?-- Yes.

All right. If you could do that, whether it can be faxed to the Commission or something of that nature. If you take up with Ms McDonald and work out the best way of doing that, and Mr Nyst, I will - it can be made available to you when it's obtained and we'll see where we go from there.

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MR NYST: So will this witness be now stood down till we've had a chance to have a look at that.

CHAIRMAN: No. This witness will be excused but on the understanding that if it becomes necessary arising out of that document when it arises he might have to be recalled.

MR NYST: Well, the witness-----

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CHAIRMAN: And we'll determine that when we see the document.

MR NYST: We've heard an account from him. It seems to me, with respect, that it's appropriate that he be cross-examined.

CHAIRMAN: Of course. And it will only be relevant if there's something in that that is different from what his evidence has said here that would require you to be able to question him about it is going towards his credit or whatever. We will get the document, we will have a look at it and we will then address the issue, Mr Nyst.

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MR NYST: I have-----

CHAIRMAN: I'm not - I don't need to make a ruling on it now, we can do that when we get the document and you have an opportunity to see it and make submissions to me on the contents of the document.

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MR NYST: But I have further questioning of this witness.

CHAIRMAN: Yes.

MR NYST: But I'd like to see that document, being the first statement that he has ever recorded about this incident before I proceed with that questioning on the actual conversation as he said-----

CHAIRMAN: I cannot see how you are not able to continue with your cross-examination now on the basis that this witness says that he's used that and he's in effect put into his interview what is in that document. You can then continue on that basis and you can cross-examine him as much as you need to. You can then at a later time when it becomes available you can see the document and if something comes out of that where it becomes necessary we'll consider the question of whether we have to ask Mr Kelly to resume his place in the witness box.

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MR NYST: Sir, with respect. It's hardly fair that I be placed at that disadvantage and I say this in this sense. This is clearly this man's first record of the incident. The Commission knew about this document before we were ever given-----

CHAIRMAN: Well that's an assumption on your part.

MR NYST: I don't need to assume it, sir. It's in the record of interview, their being told about it. So they knew about the document. Commission officers knew about the document. They give us a record of interview, they don't give us the original statement and to now say, well, look, we're going to divide this up and we'll decide later on whether you should be able to question further and you've got to proceed now without all of the documents before you, in my submission it's hardly fair. In my submission the fairer thing would be to give us-----

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CHAIRMAN: Before you go on, Mr Nyst, when did you get a copy of Mr Kelly's record of interview?

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MR NYST: I think it was this morning.

CHAIRMAN: Is that correct, that it was this morning?

MR BOYLE: Yes, it would have been this morning.

MR NYST: And I've read it during the luncheon adjournment-----

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CHAIRMAN: Is it referred to in here?

MR NYST: Yes.

CHAIRMAN: I certainly didn't pick it up, but I take your word for it, if it's-----

MR NYST: I think it's at page 8. You should find it at page 8, I think.

40

MR WEBB: It's certainly in there, I'm reminded, because I said to my instructor, where's the document.

CHAIRMAN: If Mr Nyst tells me it's in there, I have no reason to doubt it. "Other than what I just wrote two days ago."

MR NYST: So it really should have been given, because I'm not here, I'm not trying to apportion blame to anybody, but I'm just saying that-----

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CHAIRMAN: Well, Mr Nyst, you say that, I don't know that you're correct. Obviously, the interviewer didn't even think it was relevant to obtain it.

MR NYST: Well, I doubt that, with respect.

CHAIRMAN: Mr Kelly still has it.

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MR NYST: But in any event if they didn't and they're wrong and in my submission as a matter of fairness it ought to have been given to us.

CHAIRMAN: Well, I'm sorry, but I am not going to stand this witness down purely on that basis. You may continue to cross-examine him now. If you choose not to cross-examine him now that is your choice, Mr Nyst, and you will live with it and your client will live with it.

10

MR NYST: Well, I take-----

CHAIRMAN: You will complete your cross-examination now, we will get that - as I said before we will get it from Mr Kelly who's agreed to provide it, it'll be provided - a copy will be provided to you, we will then look to see whether it is necessary to ask Mr Kelly to return.

20

MR NYST: Well, I don't think I'll take that risk, sir, I'll continue on.

CHAIRMAN: Thank you.

MR NYST: Look, in any event, Mr Kelly, having had this conversation that you say you had with Mr Stevens in early December 2004 you made no complaint to anybody about what he said to you, did you?-- No.

30

And I take it that was because on its face it was no more than an innocent offer of support?-- Yes.

All that had been said to you, you say, is this, "He said there was money available, anything up to \$40,000 to me if I was interested to help my campaign"?-- Yes.

Now, is that a full and correct statement of what you say he said to you?-- Yes.

40

So it was words to the effect of, "There's money available to you, could be anything up to 40,000 if you're interested to help your campaign"?-- Yes.

Nothing more or less than that?-- No.

You're quite clear on that now?-- Yes.

And when that was said you said, "Well, I'll have a think about that and I'll come back to you"?-- Yes.

50

Now, you assumed from that you say in your record of interview - sorry, did you in fact draw any assumption from what was said?-- Yes.

What did you assume?-- That the money would most likely be coming from developers or someone - let's say developers, yes.

Why did you assume that?-- Because nine months prior to that after the March elections in 2004 the information came out in the newspaper that there was the Lionel Barden Trust Fund and money about from developers backing certain candidates so I just assumed that that would be from a similar type venture.

1

But there was no money in the Lionel Barden Trust account in early - December 2004, was there?-- Well, I don't know.

You don't know but did you - you say you assumed it was from the Lionel Barden Trust Account?-- I said that it may have been a possibility, I didn't say I assumed it was definitely from that.

10

I think you did say that to Commission officers, didn't you? You said, "I assumed the money was available from something like the Lionel Barden Trust Fund"?-- From something like the Lionel Barden Trust Fund.

I see. Okay. And from developers?-- I guess so, yes.

20

And this is an assumption you made simply on the basis you're saying that you were told there's money available?-- Yes.

Okay. But beyond that you told Commission officers, didn't you, that if you're interested in taking up the offer you should have a chat to Councillor David Power?-- Yes.

Was that said to you?-- Yes.

30

So something like there's money available, could be anything up to 40,000 if you're interested - sorry, if you're interested to help your campaign, if you're interested in that have a chat to Councillor Power?-- Yes.

And did you say you would?-- I didn't reply, I don't think.

Did you?-- Pardon?

Did you speak to Councillor Power?-- No.

40

Why not?-- Because I never intended to take money off anyone, so what a waste of time that would be.

But you didn't know where the money was coming from, did you?-- No, and I didn't mind. I didn't care.

Did you ask Stevens, "Well, where's the money coming from"?-- No, I didn't.

50

"What's the deal? Why am I being offered this?"-- Well, if it's in your head that you're not going to take money off anyone and someone offers you money, well, my - I just didn't think about it anymore because I knew in my heart that I would not take any money from anybody during the election campaign.

Did you ask him, "Is this council money"?-- No, I didn't.

"Is it public money?"-- No.

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"Is it private money?"-- No.

You didn't ask him anything?-- No.

Are you serious about that?-- Yes.

He says to you, "Look, there could be \$40,000 to help you in your campaign-----?"-- Yes.

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-----if you're interested", and you don't even ask him "Well, what - where's it coming from? What's the deal? What do I have to give for it?"-- That's correct.

Didn't even ask at all?-- That's correct.

Are you sure that it happened that way?-- Yes.

Are you sure Mr Stevens actually offered you money?-- Yes.

20

Or did you in fact raise this to try and help your campaign or raise this in the context of, "I've been made offers", hoping it would make you look like you were some sort of incorruptible anti-development person?-- Absolutely not.

You see, isn't it the fact that you did have a discussion with Stevens, but he was simply asking you about your - about the news that you were thinking about running as a candidate?-- Yes, that was discussed..

30

And he told you, didn't he-----

CHAIRMAN: Mr Nyst, can I ask - are you appearing for Mr Stevens?

MR NYST: No. But not surprisingly perhaps, given what I've read, I've spoken to Mr Stevens.

CHAIRMAN: I just wonder whether it mightn't come better from Mr Stevens to be putting his case-----

40

MR NYST: Well, it would, but-----

CHAIRMAN: -----rather than for you, who doesn't act for him, to be putting his case. That's all.

MR NYST: Yes. Well, I-----

CHAIRMAN: I'm not used to one - a barrister putting a case for someone other than his client, that's all.

50

MR NYST: Well, with respect, it would be something that you wouldn't have seen very, very often, sir, in a situation where one has instructions as to a conversation that one's client was not privy to. One suggests that that was the way the conversation went on the basis of a statement or whatever you've received.

CHAIRMAN: I can appreciate that and quite frankly I think it's going to be better for it to come from someone-----

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MR NYST: Yes.

CHAIRMAN: -----but what I'll do, I think, is just ask you to wait a moment. Mr Stevens, do you propose to ask any questions of this witness? Can you come forward so that you can be heard at a-----

10

MR STEVENS: Right.

CHAIRMAN: No, to the microphone.

MR STEVENS: Yes. Thank you, sir. Well, I hadn't really come prepared to ask questions, but I'm very impressed the way Mr Nyst is asking the questions and I'm quite happy for him to continue.

CHAIRMAN: Well, look, can I put it this way, if you've given over to Mr Nyst your version of the events it is best that your version gets put to this witness so that he comment upon it. Are you happy for Mr Nyst to do that, in effect, on your behalf?

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MR STEVENS: Absolutely.

CHAIRMAN: All right. Thank you.

MR STEVENS: Thank you. sir.

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CHAIRMAN: We'll continue with that then. Thank you, Mr Nyst.

MR NYST: I should say, sir, that it's my intention not to put it in chapter and verse but just in effect, because I haven't had the time to take the details-----

CHAIRMAN: I'll leave it to your judgment.

MR NYST: I believe Mr Stevens in a friendly discussion was asking you about your unofficial announcement that you were going to run?-- Yes.

40

And he asked you about things such as what your - you know, whether you owned a - whether you were living in the division and that sort of thing?-- Yes, I believe so.

And he told you, didn't he - he asked you about funding, about how you were going to fund it - fund the campaign?-- I guess he would have, yes.

50

And he said words to the effect of "It's going to take a bit of money"?-- Yes.

"It could take up to \$25,000-----?-- Yes.

-----to fund". And he also said that he thought Karen Coates was the favourite?-- Yes.

And that's all he said, isn't it?-- No.

When I say, "That's all", there was no talk about any offer of money to you?-- That's not correct.

Well, I suggest that you then got together with Mr Pearce later and the two of you decided that it would help your campaign to inform the Gold Coast Bulletin that you weren't backed by developers but that you'd been approached and said no?-- Yes.

10

And you did infer to Ms Hamilton that you'd been approached by developers, didn't you?-- I guess so.

And you did say-----?-- Not directly.

No, but you inferred? Inferred?-- Yes, yes.

Sorry, you implied it, I should say. You implied that in your - in your discussions with her. Is that so?-- Yes.

20

And did you say that - did you add that somebody in the council had said this to you?-- Yes.

Well, a short while later then, a short while after your conversation with Ms Hamilton, Mr Stevens called you back into his office, didn't he?-- No.

Did you have another discussion with him?-- By telephone.

30

By telephone. Sorry, I might have got that wrong, but in any event, he said this to you, didn't he? He said words to this effect, "I've had The Gold Coast Bulletin chasing me about some suggestion I offered some candidate money"?-- Yes.

"You haven't been saying anything like that to The Gold Coast Bulletin, have you?" That's what he said, words to that effect, didn't he?-- Yes.

40

And you said, "No, definitely not, but it might have been Kellie Trigger"?-- No.

Did you say no, definitely not? You denied it, didn't you?-- Could I ask the question again?

Sorry?-- Sorry, could you ask the question again?

Did you say, "No, definitely not"?-- I said I definitely never mentioned Mr Stevens' name to the Bulletin.

50

Did you deny ever telling the Bulletin that you'd been approached for funds? With an offer of funds?-- Did I - sorry? Could you ask the question-----

Did you deny to Stevens that you'd been - that you'd made a statement to the Bulletin about being approached regarding funding?-- I told - I believe to the best of my recollection

that I told Mr Stevens that I had told Fiona Hamilton that I had - that I had been approached but I'd never mentioned Mr Stevens' name.

1

Didn't you tell him that you definitely hadn't said any such thing?-- No.

And didn't he respond to that words to the effect of, "Well, James, if anyone says - tells lies about me I'll sue the arse off them"?-- That's what he replied. I don't know about sue the arse off but certainly that "I would - if anyone tried to pin that on me, you know, that I will sue them," yes.

10

No, I'm saying he said words, "If anyone tells lies about me I'll sue the arse off them"?-- That's a possibility.

Right. And what did you say to that?-- I said "I get the message loud and clear," and that it wouldn't be me telling The Gold Coast Bulletin where - who approached me for the money.

20

Well, he's saying to you "If anyone tells lies about me I'll sue the arse off them." You must have been - you must have understood him to be saying to you, "That's a lie, and if you say that sort of thing I'll sue you." Is that right?-- Could you ask the question again?

Did you understand by what he said that he was meaning, "That's a lie and if you spread that lie I'll sue you"? Don't worry about reading documents, just - just answer the question?-- I understand that Mr - Mr Stevens said to me that if anyone - if anyone spread the idea that - you know, that I - that he was behind developers or he was offering money to any candidates that he would, in your words, sue the arse off them.

30

But did you-----?-- So I said I get the - I get the message loud and clear. In other words-----

Did you say, "Look, it's not a lie, it's true, you did offer me money"?-- No, I didn't say anything to that-----

40

Didn't-----?-- I didn't say anything to that effect.

Why not?-- Because I never mentioned to The Gold Coast Bulletin who Mr Stevens was or what connection he had so I didn't-----

No, but - sorry?-- I didn't think I needed to say any more.

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But on your account that wouldn't be a lie or unfair or - on your account he had offered you this money?-- Well, if he denied it, it would be a lie, yes.

Are you saying he puts it to you in those terms, "If anyone tells lie about me or if anybody tells that story then I'll sue them"?-- Yes.

And you didn't even challenge that and say, "Well, that's not a lie," or "It's the truth"?-- No, no, I didn't challenge that.

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You see, isn't the fact of it that you had the discussion with Mr Stevens in which you mentioned funding and in the cut and thrust of an election campaign you attempted and succumbed to the temptation to make more of that than what you were entitled to make?-- No.

10

Well, you say - your claim is he offers you \$40,000 in funding you don't even ask where it's come from, why, you're invited to speak to Power about it, you don't talk to Power about it at all, you don't follow it up at all?-- That's correct.

It would be an extraordinary offer if it had been made, wouldn't it?-- Absolutely. That's why I went and told Col Pearce about it immediately.

Well, you made no complaint to anybody?-- No.

20

At all, did you, for a year?-- No.

And then only when the CMC came knocking on your door and saying that somebody else has said that you've said this to somebody?-- Yes.

Yeah. You leave it to that point?-- Yes.

In terms where you thought it was some sort of a corrupt offer?-- Yes.

30

Or in any event-----?-- I wouldn't - I wouldn't use the word. That's your word, corrupt.

Well, that's what you've been trying to make of it, isn't it, both when you spoke to Fiona Hamilton and when you gave evidence here you've been trying to make - make out it's some sort of corrupt offer, isn't that so?-- Okay.

40

CHAIRMAN: Why - why is it corrupt offer?

MR NYST: I'm asking him if that's what he's trying to make of it?

CHAIRMAN: But you use the term as if it is. You're putting it to the witness that it's a corrupt offer.

MR NYST: Oh, well, sir-----

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CHAIRMAN: Why would it be a corrupt offer?

MR NYST: With respect, in the context of this investigation, it's clearly, in my respectful submission, meant to be an offer of some kind of hidden support and I put it in those terms.

CHAIRMAN: Well, if it's hidden, all right.

MR NYST: Well, that seems to me, with respect, to be.

CHAIRMAN: Not disclosed. Okay?-- It was - to me it was extraordinary that a person in council of Mr Stevens stature would - would A have money to throw around or-----

MR NYST: Yeah?-- -----would - that would approach me for the - it was as Ken Bemis said, you know, anyone can offer anyone any money when it comes to an election but to be offered by the mayor's right-hand man was very strange to me.

10

Strange and extraordinary?-- Extraordinary.

And you didn't even so much as ask the question of what do you mean, what are you talking about, Mr Power - Mr Stevens?-- No.

You didn't-----?-- Not as far as developers go, no.

You didn't even do so much as to go to your superior at work and say, Mr Stevens has said this to me and I'm concerned about it. It seemed an extraordinary strange thing to say?-- No, I didn't.

20

Didn't mention that? You didn't take up the offer to go and talk to Mr Power about it?-- No.

Didn't even go to Councillor Power and say, look, Stevens just said something to me that seems strange and extraordinary, what's that all about?-- No. As I've explained before, I've never had any intention of taking any money off anyone so-----

30

All right, well-----?-- -----I didn't think there was any need to even investigate it further.

Or in any event David Power was not present at any of these discussions?-- That's correct.

You've never raised any of this with him?-- No. That's correct.

40

In any shape, manner or form. I would like to see that document, sir, and perhaps make submissions to you once I've seen that.

CHAIRMAN: Mr Stevens, is there any questions that you want to ask now? If there are, come forward.

MR STEVENS: No, sir, no. No, I'm being requested to appear in November and I'll save my testimony till then rather than repeating.

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CHAIRMAN: Well, if - if you are going to say anything in November over and above what has already been put to this witness as to what went on on those days then I would ask that you put it to the witness now to give him the opportunity to comment upon it. That's just the way it works in - in this system, is that it's desirable that you can give this witness

the opportunity to comment upon what you're going to say later then it saves having to bring him back after you've given evidence to be able to reply to something.

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MR STEVENS: Well, at this stage, sir, I am unprepared to - I wasn't coming here prepared to ask questions on the matter. I'd like to consider the matter further in terms of I do have my own version of the matters there and they weren't quite on-going but I wasn't prepared here today to question the witness and-----

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CHAIRMAN: Well, it has been put by Mr Nyst and - and that was, I think, was of some assistance to you but if you have the opportunity to ask him any further questions, put any further matters to him if you suggest other things happened or if it was different in some way. It's up to you. I'm not forcing you to. I'm just giving you the opportunity because-----

MR STEVENS: Really, sir, at this stage I'd prefer to wait until I talk in November. Thank you very much.

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CHAIRMAN: Yes, Mr Boyle?

MR BOYLE: Just a couple of issues. You said you never intended to take money off people?-- Yes.

Did you - how did you fund your campaign?-- By myself and my funds from my wife.

30

Now, another issue about public support and you were asked questions about support from Councillors Crichlow, Young, Sarroff and Douglas?-- Yes.

When was it that they made publicly - went public in their support for you?-- The day before the election on TV.

Right. Now, this - just so that I get this right. You say you announced your intention to run on the 10th of December?-- Yes.

40

Is that right? And so this first conversation was all that-----?-- I believe so, yes. Although earlier, about 10 days earlier, in The Sun newspaper, that's when my photo was on the front page of the paper saying that James Kelly looks like he's intending to run along with Peter Drake and another candidate.

50

Right. Well do you know then whether the second conversation was before you were formally announced?-- I don't recall. I don't think it was, though.

All right. There was only about - how many, five days-----?-- Yes.

Gap?-- Yes.

I don't have any further questions.

CHAIRMAN: Yes, thank you. Just - what was the date of the by-election?-- The 22nd January.

22nd?-- 2005, this year.

Yes. Yes, thank you, Mr Kelly. Look, you're excused for the moment but on that understanding that it might be necessary to ask you to come back. You're prepared to come back?-- Yes.

10

If need be?-- Yes.

Yes. Thank you, Mr Kelly?-- Could I just say one thing. What - obviously things are said in newspapers. What happens in the case where someone knows that they're - Mr Stevens was apparently rung up by The Bulletin and - to ask why he's appearing at the CMC and the next day he came out in the newspaper and it quotes that he's come into the CMC was - it came after a candidate, "a whingeing, carping, losing candidate" made a statement. I guess that was in reference to me. What-----

20

Look, I'm not - I'm not-----?-- Yeah. From my point of view, working-----

I'm sorry, Mr Kelly, it's not appropriate, especially in an open forum like this for me to give you legal advice. If you had some concerns about that, may I suggest you seek your own legal advice on the matter?-- Right. Okay. I guess my question was that I work five metres away from Mr Stevens and if we need to separate or whatever at work, that's a question for the Gold Coast City Council, is it?

30

That's a question for the Gold Coast City Council. But as I indicated before, the CMC would be most interested in any suggestion of any reprisal being taken against you because of any information that you've given to the CMC or because of the evidence that you've given here?-- Thank you.

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Yes. Thank you.

WITNESS EXCUSED

MR BOYLE: I call Desmond James Campbell.

CHAIRMAN: Yes. Thank you, Mr Campbell. Mr Boyle, I have seen just this morning a copy of the statement of Mr Campbell. I have been advised, I did ask and I have been advised that the gentleman who was mentioned in it has been advised of Mr Campbell's attendance here today and has been advised of what's in this statement. Do you understand that to be correct?

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MR BOYLE: I can say that the company is legally represented and they have collected a copy of the statutory declaration and the interview this morning.

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CHAIRMAN: Thank you. Yes?

DESMOND JAMES CAMPBELL, SWORN AND EXAMINED:

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CHAIRMAN: Yes. Thank you, Mr Campbell. Yes, Mr Boyle?

MR BOYLE: Witness, your name is Desmond Campbell. Is that right?-- That's correct.

You live at 8 Wells Road, Southport?-- Street.

Street. You've been served with a notice to appear; is that correct?-- That's correct.

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Can I show you a copy of that?-- That's correct.

That's a copy of the notice that was served on you?-- Yes.

I tender that.

CHAIRMAN: Exhibit 123.

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ADMITTED AND MARKED "EXHIBIT 123"

MR BOYLE: Now you have provided a statutory declaration and you were also interviewed on the 2nd September 2005 by a CMC officer. Is that right?-- That's right.

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If you would just have a look at these two documents?-- Yes.

First of all, there's a statutory declaration. It's dated the 8th August 2005. You've signed that?-- Yes.

And that statutory declaration is true and correct?-- That's correct.

Yes. Now also the interview - you've had the opportunity today to read the transcript of the interview, and is that true and correct?-- Yes.

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Okay. Now, the interview sets out the background as to how the statutory declaration came to be prepared; is that right?-- That's right.

Okay. All right, look, I tender them as one document, the statutory declaration and also the transcript of the interview with this witness dated the 2nd of September 2005.

CHAIRMAN: Yes. The transcript is a true transcript of the interview; is that correct?-- That's correct.

But is what you said in that interview also correct?-- Yes. There are a few spelling mistakes but it's-----

We can live with those but what you said there is true and correct?-- Yes, the text, yes.

Yes, thank you. That's Exhibit 124.

ADMITTED AND MARKED "EXHIBIT 124"

CHAIRMAN: This is not really magnifying your voice, it is recording it?-- Okay.

So for it to be heard, you might have to speak up a little bit or speak closer to it?-- That's fine.

MR BOYLE: I'll just give you another one. Is Exhibit 124 the transcript and the declaration.

CHAIRMAN: Yes.

MR BOYLE: They're both 124.

CHAIRMAN: Yes.

MR BOYLE: Just - if you've got the statutory declaration there, if you look at - have you got an extra copy of that? Just if I can ask you. Paragraph 4, you sent information packages which had been prepared by Warren Morton. When was that?-- In July of 2004.

Now-----

CHAIRMAN: Would it be July because you say, in paragraph 2, that you were only approached in August?-- Yes, the - Mortons did the actual proposal in July 2004. I didn't become aware of it till later.

I see. But when you sent out the information package-----?-- That was after I had been - yes, after-----

So it'd be after August?-- After August, yes.

Do you remember how long after August?-- Probably two weeks.

Right.

MR BOYLE: You say you got called by Craig Treasure of the Sunland Group?-- Yes.

Had you previously ever spoken to him?-- No.

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Or since?-- No.

CHAIRMAN: He identified himself on the phone, did he?-- That's right.

Yes.

MR BOYLE: And Sunland was a group that you'd sent it to-----?-- They were one of the groups, yes. I'd sent it to all major developers.

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Yes. Now, paragraph 5, the last sentence, "He then said to me that I should let the vendor know that Sunland could get the development through Council because they had contributed to the councillors' election fund." Did he give any more detail as to how they would get it through Council?-- No. It was a comment - it was part of a comment. The conversation wasn't that long. It basically came across as who else had received the package and was anyone else interested. They'd had an eye on the project for a number of years and had strong interest in it and they just said that, could I let the vendor know that because they had contributed to councillors at the election, that they'd be able to get the project through Council.

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Well, look, you're a real estate agent salesperson employed at Ashmore First National; is that right?-- That's correct.

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And you are involved in special projects-----?-- That's right.

-----which relates to development?-- Mainly development projects, yes.

So for the sort of proposal to go through Council, would you have envisaged any problems with it?-- Yes.

Why was that?-- The land was some 343 hectares and it was in pristine condition. It was probably one of the only sites on the Gold Coast that has that - never been anything on it even farmed in a hundred years. So it was absolutely pristine and the owner of it - and this is where I have to explain - when I talk about the owner, there's two - there's two people. There's the actual owner who was Robert John Anthers. He was known as Spiney. The actual person I was dealing with was Fred Loskow who was the nephew who had power of attorney from Robert John Anthers. So all my dealings were with Fred Loskow who had power of attorney. There were around half a million dollars in rates owing and there was Council orders, I understand, to clear the boundaries where it bounded the residential developments either side. Now, Robert John Anthers was a invalid pensioner and I don't know the stance of the power of attorney as to whether they wanted to put any money in and, of course, there was that urgency that something be done as well as the land had been down-zoned in the new town plan. And it meant that if a development was to happen, it had to be submitted to Council - full development plan had

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to be submitted to Council by June the 6th 2005. And to do that most of the town planners felt that something had to be done by around September 2004.

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Was there any issue about the number of blocks?-- Yes. Residential - because there was - it was such pristine land, a lot of it council would want and probably in the Morton report over half of it council would want to keep in that condition. So the amount of blocks, yeah, you - in discussions, Morton's got a figure around the 1200 or something, but other town planners had put that a lot higher in the amount of use you'd get out of it.

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Which would have to be approved by council?-- Oh, everything would have to be approved by council.

I just want to focus on that last sentence and I'll just ask you a couple more questions, just on that last sentence in paragraph 5 that I've already read out, where it says - what he said about getting the matter through council because they had contributed to the councillor's election fund. Do you remember any more detail as to the words he used?-- No. I didn't - it was only for me to let the vendor know that statement, which I did, and it was only that - to come across to the vendor that because they had paid money into, you know, council's elections, to let the vendor know they'd have a more favourable - or they would be able to get it through council.

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Now see where it says, "Contributor to the councillor's election fund" did it say - did it give any more detail as to which fund?-- No.

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Did he say how much was contributed?-- No.

Did he say which councillor's election fund?-- No.

I don't have any further questions. Thank you.

CHAIRMAN: Yes. Thank you. Any-----

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MR WEBB: Might I just mention a matter, Mr Chairman, hopefully usefully. I'm aware that Mr Peter Nolan of counsel is generally retained by Sunland to appear at this hearing. You may have noticed I just left to - because I expected he would be here. It occurs to me that he may not and expected us to be here beyond 4.30. I wasn't able to contact him, he'd left his Chambers. I'd just mention that as a possible-----

CHAIRMAN: Yes. Well-----

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MR WEBB: I don't know if anyone has contacted him and said that there will definitely be evidence led today, but outside of normal hours. I just - I'm not - hopefully I'm not creating a problem.

CHAIRMAN: No, no, no. I thank you for bringing it to my attention, but it's always a little bit awkward in that

counsel shouldn't make assumptions as to when things will finish. Yes, thank you, Mr Webb. Yes, Mr Nyst?

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MR NYST: Mr Campbell, do you know who the councillor was for that division?-- Ted Armstrong - Ted Shepherd, sorry.

Shepherd. Right. Do you know the history of that land?-- Yes.

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Mr Power - sorry, Councillor Power has been actively campaigning for about 15 years to protect that land, hasn't he, to stop development there?-- He did inform me at - during the break that he was actively - he would look at stopping any - he was going to look at stop-----

Well, apart from anything he may have informed you, do you know anything about that?-- Nothing about Councillor Power's involvement to what I said then, but I do know that about 20 years ago, I think it was, that John Franklin, Terry Moore who was the CEO and a couple of others from council went on to the site but Spiny wouldn't come out of the area where he was to meet them. They were going round to try and come to a deal to resume it then.

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Okay. Has it been developed?-- No.

Could I ask you, how did you come to make the statement to the Commission?-- It was at a - firstly, when I approached the vendor to give the information to the vendor, he got very upset. Got to understand that the vendor is a - when I'm talking about the vendor, it's the nephew of the property.

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Is that Mr-----?-- Loskow, yes. They felt that Council had - were a problem anyway and then to - for someone - for me to tell them that someone had said that because they've paid Council, they've got - that just blew up. He just blew up and he complained bitterly and that's - that's where the pressure came back on me and then when-----

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Was he annoyed with David Power when you say "blew up", did he blow up about David Power?-- No, no councillors name was mentioned.

David Power had put forward a proposal to back-zone that block to rural conservation, hadn't he?-- I don't know, sir.

Well, was this vendor upset that the Council was trying to stop development on this land?-- Yes, yes.

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Had there been a history of councillors trying to stop any development there?-- Well, I was first informed of it by a town planner, Michael Papageorgiou about two years ago when I met him on another project. He said that Council were looking to resume it. That was my first knowledge of it in that-----

The Albert Shire back when Mr Power was at the Albert Shire, they wanted to - was a move by them to buy it, wasn't there, under some sort of green-----?-- Well, that's when Terry Moore and John Franklin and, I understand, some others went round there to try and come to a deal with him.

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Okay. But the vendor, perhaps understandably, wanted it to be opened up for development because it would make it more valuable, I suppose?-- I understand the vendor offered it to National Parks some time ago in the last five years or something.

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Okay?-- But the nephews that - the actual - the people inheriting the property, they were pro-development so they were looking for the big money.

And in any event, when you went back to Mr Loskow about this, did you say that he became very upset about it?-- He became very upset, yes.

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And did he - I had asked you - we'd got to this point where I asked you how you came to be at the Commission?-- Yes, he'd made - I'm not sure how he'd - who he'd complained to but it came up at a meeting. We had Councillor Young at a Rotary meeting and I think - I asked him about the Council's intentions on the - on Spiney's property. And he said that Council were looking to resume it. I said at that stage, because no town plan had been made - no application had been made under this, you know, superseded plan and none could because the time had run out - that would be the best interests and then came up about - I told him about the Sunland incident and he asked me would I make a statement on it and I said yes.

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And when was that?-- About - I'd have to find out from the records but probably about four months ago.

Four months?-- Mmm.

Okay. And do I correctly understand you to say the comment about contributing was sort of a throw-away, brief comment; is that fair?-- It was just a statement to tell the vendor.

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Yes?-- In other words, to tell the vendor that because they had done this, they'd be the best people to buy the property.

Yes?-- In other words, they would be able to - they should be looked at in the leading light to get the property.

And I think you put it in evidence here, because they'd contributed to councillors at the election?-- Mmm.

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Yes?-- That's right.

So what, this Mr Treasure was saying was, "Look, you should tell your vendor that we're the best people to talk to because we reckon we can get it through because we've contributed to councillors at the election"?-- That's correct.



Transcript of Proceedings

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Issued subject to correction upon revision.

No mention of the Lionel Barden Trust Fund or-----?-- No.

-----any trust fund or-----?-- No.

-----trust account?-- No.

We've contributed to Council funds at the election?-- Mmm.

Mmm means yes, you're being recorded?-- Yes, sorry.

Okay, and David Power obviously wasn't present at this conversation?-- No.

Wasn't privy to it in any way?-- No.

And you've never referred it to him or mentioned it to him?-- First time I've ever spoken to David Power is in the foyer.

Right, thank you, Sir.

CHAIRMAN: Yes, Mr Webb.

MR WEBB: I understand because I was temporarily out of the room that you - did you suggest that there were back rates owing of about half a million?-- Yes.

Where did you get that figure from?-- From the vendor.

If I suggest it was substantially more than that, you didn't make any independent inquiry to see exactly what the back rates were?-- This is last September - September 2004.

Mmm?-- That I was told it was around 500,000.

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

Around 500,000?-- Mmm.

And I think from the - your answers to those questions I did hear, you have absolutely no idea that - as to what reports have been made to Council, what consideration this Council or the Albert Shire have given to the land, you've no idea of the large number of reports that have been generated about the land?-- No, that's correct. I do know that they have looked at, you know, taking - buying the land in the Green levy-----

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Yes?-- -----and as I said, that's probably its only avenue left now because as a rural development, it just doesn't work.

But you - I suppose you only know anecdotally that the Council has been trying to hold the land in its pristine condition, and that's been the thrust of reports to it that it should be because it has some perceived value in that state. You wouldn't know anything about that?-- Well, I know its got value in that state because there's some very sensitive-----

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Well, that's your opinion?-- Well, I've walked all over the property.

Yes, that's why I'm saying that's your opinion?-- No, that's my opinion.

You don't have any detailed knowledge-----?-- No, I don't have any detail.

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-----how the Council has been tracking the land carefully?-- No, but Warren Morton was a former town planner with the Council and he's the one that did this report and he also mentioned in the report that Humphreys-----

Yes?-- -----Perkins and someone else had done another detailed report on it.

Right. I've nothing further, thank you, Sir.

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CHAIRMAN: Yes, anything?

MR BOYLE: I just have one point. The words that were used by Mr Nyst when he was asking you questions about - I think the words he used was "contributed to Councillors at the election". Now in your statutory declaration you refer to fund, election fund?-- The Council fund, that's it.

Right, okay, so did he use the word fund?-- Yes.

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Okay. I have no further questions, may this witness be excused.

CHAIRMAN: Certainly. Yes, thank you, Mr Campbell, I'm sorry we kept you waiting with your arm this afternoon, but thank you very much.

WITNESS EXCUSED

CHAIRMAN: We'll adjourn till 9.45 tomorrow.

MR NYST: Could I just raise one matter?

CHAIRMAN: Yes.

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MR NYST: I think tomorrow we have Mr Morgan.

CHAIRMAN: I believe that's correct.

MR NYST: And I was speaking to Ms Hamilton just previously and I'm concerned she may now be gone for the afternoon but I think there's some suggestion-----

CHAIRMAN: I doubt it.

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MR NYST: I think there's some suggestion that Mr Morgan has given a further statement. Now, I don't have that but if we're to deal with him first up tomorrow, I wonder if we could get a copy of that-----

CHAIRMAN: Well, perhaps before you leave this - speak of the devil.

MR WEBB: That's an unfortunate choice of words, Sir.

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CHAIRMAN: Yes, all right, we'll adjourn till 9.45.

THE HEARING ADJOURNED AT 5.15 P.M. TILL 9.45 A.M. THE FOLLOWING DAY

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WITNESS LIST

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ANTHONY WILLIAM HICKEY, CONTINUING.....	680
WITNESS STOOD DOWN.....	700
PAUL WESLEY BRINSMEAD, SWORN AND EXAMINED:.....	700
WITNESS EXCUSED.....	708
MALCOLM ION CHALMERS, SWORN AND EXAMINED:.....	709
WITNESS EXCUSED.....	724
ROBERT DAVID JANSSEN, SWORN AND EXAMINED:.....	725
WITNESS EXCUSED.....	769
JAMES RICHARD KELLY, SWORN AND EXAMINED:.....	769
WITNESS STOOD DOWN.....	784
JAMES RICHARD KELLY, CONTINUING:.....	786
WITNESS EXCUSED.....	798
DESMOND JAMES CAMPBELL, SWORN AND EXAMINED:.....	799
WITNESS EXCUSED.....	806

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ADMITTED AND MARKED "EXHIBIT 112" 726
ADMITTED AND MARKED "EXHIBIT 113" 726
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