



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST CITY COUNCIL

BRISBANE

..DATE 08/11/2005

..DAY 13

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THE HEARING RESUMED AT 9.50 A.M.

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LIONEL JAMES BARDEN, CONTINUING EXAMINATION:

MR TIPLADY: Excuse me, Mr Chairman. Mr Nyst is in a part-heard matter today. My name is Tiplady, H.A. for the deputy mayor today.

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CHAIRMAN: Sorry, your name is?

MR TIPLADY: Tiplady, T-I-P-L-A-D-Y, initial-----

CHAIRMAN: Thank you, Mr Tiplady. Yes, Mr Mulholland.

MR MULHOLLAND: Thank you, Mr Chairman.

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Mr Barden, yesterday you told us that you had had, at the time that you were asked to lend your name to this account, a conversation with Mr Hickey. Do you remember that?-- I remember you - yes.

Yes. Now, what I want you to consider in regard to that conversation that you spoke about yesterday this. You see, there has been some evidence given by Mr Hickey in relation to this matter and what Mr Hickey says is this in so far as knowing or meeting you. 649, Mr Chairman. "Had you had contact with Mr Barden up until this changeover occurred?" And he said, "No, I met him about 10 years ago very briefly at someone's boardroom lunch, shook his hand, and I'd not spoken to him or met him again until about a month ago." And then he said, "Sorry, that's not correct. I did have a telephone conversation with him, I think it was around April" - that's April of this year - "when officers of the CMC requested that I provide information. They had to speak to him and get authority to do it." "Right. So the knowledge you had apart from that one meeting of him prior to the changeover - you had no other knowledge of him?-- No, I just knew that he was a businessman who, a long time ago, I understood he had something to do with fibre optics or something like that." "So he was going to control these funds but you didn't, at any stage, speak to him?-- No." "He didn't speak to you?-- No." Now, are you still confident that you did have a conversation with Mr Hickey in relation to this change over?-- As I said to you, I think so because I couldn't say when and I think that I had a conversation but it was - if it was, it was brief and-----

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And is this to the effect that you were seeking his assurance that everything was "above board" as you put it yesterday?-- Well, I knew it was. I mean, his reputation was such that I respected - from knowledge and I think was if - as I said to you, I'm vague on it simply because I can't remember the conversation but it went something along the lines of - that we - that I was going to do it and that he'd - he would

handle the funds but I can't - I couldn't give you details, I'm sorry.

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You were going to do it or you were thinking of doing it at the time you spoke to him?-- No, I think - I think, when I spoke to him, I'd - I'd committed.

Right. And you were just seeking, although you can't recall the details of the conversation - you said that yesterday - you were seeking his confirmation that everything was above board?-- No, I mean I think - I knew it was above board. I was basically just letting him know - I mean, whatever I say is going to sound like I remember what I said but it was - the vein of it was that I was making contact with him and that's as much as I recall.

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Now, I also asked you about some money which came to you in relation to Innovations Showcase-----?-- Yes.

-----in 2003?-- Mmm.

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I just want to put some documents to you in regard to that. Now, are those three letters of commendation to you-----?-- Yes.

-----in regard to it. Will you just tell - tell us, for the purposes of the record, the dates of those and under whose hand they are?-- 9th of July 2003, David Power; 18th of June 2003, Councillor La Castra; and 25th of June 2003, Jan Grew.

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Thank you. I tender those documents?-- Could I say that they're only three of probably 25 that came from various people in Government, major Public Service, senior members of industry as well as those three councillors and they weren't the only three councillors if I remember rightly.

Sorry. Were they the only three-----?-- I don't think they were.

Right. Well, can you tell us any other councillors that you received a letter of commendation from?-- If you'd have told me, I've got a full list of those people. I'm happy to supply it at another time. I do have that list.

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You do have the list?-- Yes.

All right. Well, would you do that, please, Mr Barden?-- Yes, I will.

CHAIRMAN: Those will be Exhibit 162.

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ADMITTED AND MARKED "EXHIBIT 162"

CHAIRMAN: There is one that was in a bundle of material given to me, Mr Mulholland, by Councillor Shepherd which the CMC obviously has.

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MR MULHOLLAND: Thank you, Mr Chairman.

CHAIRMAN: It's the 19 June 2003.

MR MULHOLLAND: We do have that. Would you just have a look at this, please?-- Yes, that's fine. I remember those.

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All right. Well, just-----

CHAIRMAN: Make that part of the same exhibit.

MR MULHOLLAND: Thank you.

And you say that apart from that there were others?-- Yes, a lot of others.

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All right, thank you?-- Could I just make a statement of - yesterday you asked me, sir, about a trust. I think your question was something along the lines - have I put a trust together before? And I'd forgotten that I have a family trust. I don't know whether that - I mean, I didn't do it intentionally. It just didn't dawn on me that I did have other trusts.

I'm not interested in the details of the family trust but I take it that the family trust was a deed of trust, was it?-- Yes, it was and it was put together by-----

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By someone else?-- Yes, by my accountant and lawyer.

All right. And there was a settlor, I suppose, and there were beneficiaries and-----?-- Yes.

All right. So that's the only contact that you've had with-----?-- Well, there's probably a couple of those. I mean, they're only to do with my business and my family business.

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Yes. Each of them, however, involve a written instrument?-- Yes, the ones that I'm talking about, yes.

All right. Now, do you have - you've got the material or a copy of the material you supplied to the Commission there?-- Sure, yes.

I want to deal with the return that you signed. Now, the return is dated the 16th of June 2004?-- Correct.

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And what I'm suggesting to you happened, but I'd like you to think about this and perhaps I'll need to refer you to some documents, there was a letter from Mr Hickey to you of the 10th of June 2004 enclosing the return of gifts. Now, do you remember that?-- I have it here.

And in it Mr Hickey indicates that he has incorporated "details of funds received into our trust account", that is Hickeys' Trust Account; is that right?-- Mmm-hmm.

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And he goes on to say, "Could you please check the document to ensure it is correct"?-- Mmm-hmm.

Now, did you receive that letter on or about that date?-- Yes, I did.

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Did it come by fax?-- I can't remember.

The letter goes on, finally, to note that "the return has to be lodged no later than the 26th of June 2004"; is that correct?-- Yeah, that's right.

Well, now, can I ask you to go to a letter, a copy of which is in your file, from you to Hickey?-- Yep.

Of the 28th of June 2004, and it's in these terms, "Following information received from David Power. Please could you issue the return as to trustees for the account. Please provide who the disbursements went to but please do not disclose the donors or the clients. Signed on behalf of the Lionel Barden Common Sense Trust Fund"?-- Yeah.

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Now, did you send that letter to Mr Hickey?-- I don't know.

Well, you've got a copy of it in your records?-- Yes, it was in - you - I was asked to provide records for the - you know, all the disclosure. I went through my - all my records and my files and this was on my computer.

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Right?-- Now, there was a real - what I tried to do was I was going to submit - I asked to David what was the - the actual situation with the submission because I - I didn't know at that time what the submission was.

Sorry, the submission, what-----?-- Submission, the submission of - of the trust fund details to the Council.

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Yes?-- And-----

Why did you ask him?-- Because I thought that he would have a better understanding of asking people within Council within a legal position of what we had to submit. I had had heard from different people we had to submit different things.

Sorry?-- I heard from different people that we had to submit - some said that we had to submit it as a trust and the - I had seen documents that had been submitted as a trust before to these things and some said that we had to be - fully disclose all of the people. At this stage when I was going to send, as I recall in conversations, when I was to disclose this that was my understanding at the time.

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All right?-- In - in following conversations within a day or two of that, and it was in - within 24 hours, I then

understood that - that the instruction was that we had to supply all the names of all the donors.

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Right. Now-----?-- So I don't know whether this letter went or didn't go. It's not signed. It came out of my - it came out of the memory out of my computer.

Well, would you, however, expect to have a signed copy if you had sent it or not?-- Probably.

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Probably?-- Yeah, I would have, yeah.

You don't know at this point whether or not you sent it or not?-- No, I don't.

So-----?-- And it's not what we acted on. The final information we got was the donors-----

Well, we know that?-- Okay.

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We know that you didn't act upon it in the sense that what the return was when it went in?-- Sure.

But I'm interested in knowing the circumstances in which this letter came to be prepared and any conversation that you had with Mr Power about it. You indicate that this is information that you have received from Mr Power?-- Right.

So insofar as what you request in the letter that you prepared of Mr Hickey, that was as a result of information you received from David Power?-- Well, basically-----

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Now, do you understand the question that I'm asking?-- I do and I'll answer the question. The fact is I believed that the - the best people to answer this would have been Council legal team and rather than - I didn't know them well enough. I asked David would he find out the exact position of what we needed.

Well, he must have gone away and come back and told you the information that you included in this letter of request to Mr Hickey before you prepared the letter, otherwise you wouldn't have put it in the letter?-- Oh and I - and I don't - I don't deny that.

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Right. So this is what I'm asking you. When you said, "Please could you issue the return as to trustees for the account, please provide who the disbursements went to but please do not include the donors or the clients", you were expressing information which had come to you from Mr Power; is that correct?-- Well, I was also expressing information that had come to me from other people.

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Yes. Sorry?-- From other people. I mean, there was documentation that I had received regarding other trusts that had been for raising capital for - for - raising money for - for elections.

Mr Barden, please concentrate on the question that I'm asking you?-- Well, the answer to your-----

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Hold on, hold on. I'm asking you as to the information that came from Mr Power and I'll ask you now to concentrate specifically, look at the letter please, where the letter says, "Please provide who the disbursements went to but please do not disclose the donors or the clients". Now, look at that part of the draft please or look at that part of the copy letter?-- Yep.

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"Please do not disclose the donors or the clients"?-- Mmm-hmm.

Is that what Mr Power told you to ask of Mr Hickey?-- At - at the time that this was made out, I believe that to be the case.

Right. Is that - when you say "I believe that to be the case", you believe that to be the case as a result of what Mr Power said to you; is that correct?-- That's correct.

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So he had asked you to ask Mr Hickey to not disclose the donors or the clients?-- No, that was - he asked - he told me the political - what he thought at the time was the political position and I was the one that - that - that said that at the time because I asked him specifically about it.

He said to you that that was what he believed to be the political position?-- No, that's - that's what he believed to be the legal position of that - of that situation.

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That's not the way it's expressed?-- No, but in the letter-----

Hold on, hold on. Mr Barden, look at the letter please. "Please do not disclose the donors or the clients"?-- Mmm.

It's a specific request to Mr Hickey and you say you don't know whether it was sent?-- Correct.

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Probably it wasn't sent you think?-- Mmm.

But it's a specific request to Mr Hickey that he not disclose the donors or the clients, isn't it?-- From me.

From you as a result of what Mr Power said to you; is that correct?-- It - when this was done, yes.

Now, the clients in this situation would have been who?-- Would have been the clients that were working with Quadrant.

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No, you're addressing it to Mr Hickey?-- Yes, but the clients that I referred to were the clients that - that - that I signed off on invoices for, for the clients that were the ones for the - Quadrant were handling.

You mean the candidates?-- Candidates, yes. And the reason I probably-----

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Is that what you really believe that that was a reference to?-- Well, that's why I think I called them clients. I mean, you're asking me now. At the time I wrote the letter - and the letter didn't go - I think, I believe, that I was talking about clients which was the candidates at the time.

Yes?-- Can I say that within 24 hours David Power was the one that rang me and told me that that wasn't correct.

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Well, do you know of any communication that had occurred between Mr Hickey and Mr Power in relation to that?-- No, I don't.

Now-----

CHAIRMAN: Can I just ask on that one - that one sentence, "Please provide who the disbursements went to." Who would that have been that the disbursements went to?-- The invoices, who the invoices from-----

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You mean to Quadrant?-- Quadrant and who Quadrant passed them on to.

I see, okay. Yes, thank you, Mr Mulholland.

MR MULHOLLAND: Could I see - this is part of Exhibit 4, Mr Chairman, and it's the return - Exhibit 4.

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Now, the document that you are being shown is a facsimile communication from Mr Tony Davis, Manager, Office of the CEO - this is at the Gold Coast City Council?-- Correct.

And it's addressed to Innovations Showcase attention Mr Lionel Barden. It's dated the 7th of July, subject Return of Gifts, "I confirm receipt of your facsimile sent 6 July 2004 received at 1902 hours. I also confirm that Council has no record of receiving details last week. It would be appreciated if you would provide me with information on how and when the details were forwarded to Council. I look forward to receiving the original documents for our records." Now, do you also see that the fax which came from you to Tony Davis, handwritten? Have you got that one?-- Yes, I have.

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Now, you'll see that, first of all, it's dated 7/6/2004?-- Correct.

And I suggest to you that that's obviously an error, it would be the 7th of July not the 7th of June?-- That's probably my computer.

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Having regard to the fact, if you just think about it for the moment, that the return which you signed is the 16th of June 2004?-- Yes.

So do you agree that that's just a typographical error there?-- Yes, yes.

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So we may take it that that was the 7th of July and you're writing to Tony-----

CHAIRMAN: It might be the American system and be the 6th of July.

MR MULHOLLAND: I see. Well, it could be.

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And you write, in this fax, "Tony, I understand from the other guys that you did not receive these details last week so I'm sending them again. Please advise receipt by fax or e-mail." And you sign it?-- Mmm.

Now, the return would therefore appear to have been lodged on or about the 6th of July. Can you explain to us what had occurred so far as the preparation of this return was concerned and also to explain the delay between the preparation of the return and your signing it and it being lodged in July? It's about a three-week delay there. You just explain what happened. First of all, how did - what were the circumstances, to your recollection, of the return being prepared?-- Well, I did the return and signed it on the 16th of the 6th.

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Now, did you do the return or were they - those-----?-- No, it was sent to me and I signed it, as you can see, on the 16th of the 6th.

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Right. So did it come to you from Mr Hickey?-- Yes.

So he had completed the details?-- He completed the details.

And he asked you to read-----?-- Send in the return, yes.

He asked you to read the details, read the return, check the details; is that correct?-- Correct.

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Right?-- That's right.

So what happened?-- And submit them to the Council which I did.

Right, well you did but as I say-----?-- Within two or three days.

I see. So you're saying that despite what the Council has said, they just haven't recorded the fact that this was sent to them. Is that-----?-- I don't know what the Council - I mean, I sent it into the Council and then I heard from Council that they didn't have a copy so I - I had a fax copy so I sent the copy.

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We have, however, that letter which I've asked you about-----?-- Mmm.

-----which you don't think was sent which is dated the 28th of June 2004 from you to Mr Hickey. That would not suggest that the return had been lodged at that time, would you agree with me?-- Probably.

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So that would suggest that you didn't lodge it within a few days of the date of signing it?-- It would appear that way.

You see, this is what I'm asking you to help the Commission with. We got the return, having been signed by you on the 10th of June - sorry, the 6th of June - 16th of June, sorry?-- Mmm.

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The return being signed by you on the 16th of June and then we have this no lodgement and certainly no lodgement by the 26th of June because you prepared this letter of the 28th of June which, as you have agreed with me, would suggest that the return had not been lodged by that time. In other words-----?-- Well, I don't know - I don't know.

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-----it was late?-- I don't know.

Now, I'm not criticising the lateness of it but what I'm asking you is what is your recollection of what was happening at this time. You obviously did not lodge the return. There was a delay. There was conversation with Mr Power obviously. It's as though people were unsure what they should put in this - to this return, for whatever reason?-- I was unsure.

You were unsure?-- Mmm.

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Well, you don't seem to have been the only person unsure?-- Mmm.

Because Mr Power was unsure; is that right?-- Well, I mean, I don't - I can only answer on the fact that there were two expressions at the time. One was, as I put it in this letter - I don't know about the date. I can't answer you on the dates. I know I submitted the - the - the document a few days after receiving it but my belief was right up until now and I - I - you know, you - you pick me up on this - that this part of the conversation was held first and within probably 24 hours it was reversed to say no, we have to submit and put these other things in. Now, that's my recollection and I - and-----

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That's after the closing date for the return?-- I don't know.

I know, but it is. You've been told what the date is, the 26th of June?-- Yeah.

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The letter is dated the 28th of June?-- I understand that. I - I appreciate what you're saying but I can - I don't know about the dates. I can't - I can't hold to those dates.

And what it may suggest to someone looking at this copy letter on your file is that Mr Power, having regard to what you've said, that Mr Power was of the belief at this time that maybe

the donors would not have to be mentioned in the return?-- no, that-----

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Now, what do you say to that proposition?-- Well, I - I don't know. I mean, you'd have to ask Mr Power.

MR TIPLADY: Excuse me, Mr Chairman. I'm not sure that the question could be put as to what Mr Barden would say Mr Power was thinking at the time. I think that's going a little bit too far.

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CHAIRMAN: I presumed it was referring back to this witness's statement at an earlier time that Mr Power had, in fact, said that to him. That's in the lead-up to your draft letter of the 28th of June; is that what you're referring to?

MR MULHOLLAND: That's exactly it, Mr Chair.

CHAIRMAN: Which he then changed - Mr Barden says that Mr Power changed his mind or his opinion on that within 24 hours I think you said was the situation?-- Well, I didn't say - I said - yes, there was a conversation which we had and I - I'm - I can't go into depth but - the conversation we had - the dates throw me because we did this - this happened at the time that - that - before I got the things from Tony Hickey. I - I can't understand why this has got the 28th of June because I would have thought it's long before.

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I think we could make it clear that we're really not terribly concerned if this return went in a few days late?-- But I-----

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That's not something that's of concern. So the dates don't really matter. It's more just what happened and in chronological sequence rather than the dates.?-- Okay. Well, if we take the date away, sir-----

Take the dates away?-- What happened was - what this expresses is that originally I asked in the submission - I'm hearing different things from different people as to how we've got to submit. I rang-----

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MR MULHOLLAND: And one of those people was Mr Power. He-----?-- No, before I spoke to David Power. Then I - I spoke to David Power and said, you know, "We've tried to keep this - keep the two apart and not show who the people were that" - that - so that it was just purely a trust and had no significant people behind it, for the right reasons as I mentioned, and then I said, "Is that how we are to submit?" He said, "Yes, I believe that's the case." So I prepared this letter. Now, it's got a date on it that I don't understand. Then within 24 hours he came back and said, "Look, the legal people say we've got to submit it and we've got to submit all the names." So then that's why we did it that way-----

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He said that to you?-- Yep, he - because I asked him could I get a legal opinion on it.

And so you understood that the legal people he was talking about were Hickey Lawyers?-- No, I - I asked - I said - I think I said to him at the time that his Council - the Council legal team would probably know better than anybody what the legislation was and that it's probably - because we were getting - I was getting different opinions from different people.

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Yes, well, who were these people?-- I don't - I mean, to be honest with you, I can't give you - well, I don't know. I mean, I know a lot of people. I - we were talking about it leading up to it-----

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Right, so-----?-----because it was - it was big time in the paper at the time.

Right. So, well, what, it was an issue of controversy; is that what you mean?-- Yes, it was, yeah, and I - and I wanted to know exactly how we had to play it.

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Well, can you give us the names of anyone that you spoke to in regard to the matter before you spoke to Mr Power?-- I mean, it sounds silly but I spoke to lots and lots of people but-----

Well-----?-- -----if I said it was - if I said it was the President of - of the North Chamber or it was the lawyers from - from - local Mudgeeraba, I'm not - I spoke to people but I don't know that they gave me the advice.

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All right. Well, you don't-----?-- I can't remember exactly the people that gave me the advice.

You can't name one person that you spoke to in regard to the matter apart from Mr Hickey?-- Well, I can - I could probably name 100 people I spoke to but I don't-----

No, Mr Barden-----?-- Yes.

-----please, in regard to this issue?-- To regards to this issue-----

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You can't name one person apart from Mr Power; is that correct?-- No, I can't.

Now, did you check the details in this return before you put it in?-- I checked the details as - as regards to moneys that had come in and I relied on - on the details as provided.

Well, you've told us yesterday that at the time that you were asked to lend your name to this account that you did not know of donations having been made because you thought it was the first account. If you look at the return you will see that there are five transactions prior to the date when you - your name became the name on the Quadrant account, and those relate to gifts of a total sum of \$50,000. Did you note that when you read the return?-- Yes, but I had signed a letter that said to Quadrant that - date it back to the 10th of December.

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I knew Quadrant had been operating before I actually took over the account.

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Yes. But Mr Barden, the account - the money was being paid into Hickeys' Trust Account. You knew that, you told us that yesterday?-- Correct.

Right. So the sum of \$50,000 has been donated to an account. That's what this would tell you, in regard to an account that was obviously held in someone else's name. Now, why would you therefore be putting your name to a return when you did not have charge of those moneys until February?-- But I didn't know that.

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But you did know-----?-- No, I didn't.

Well, hold on. You did know it when you looked at the return. You could see that there were five transactions there all prior to the period when you were asked to lend your name and your name was being lent to an account at Quadrant. What you knew, however, was that the moneys were being donated into a trust account at Hickeys?-- Correct.

20

So, why wouldn't you as an intelligent person looking at that return, why wouldn't you say, well hang on, what am I doing putting in a return in regard to sums of money that's been donated into an account held in someone else's name; it's obviously not my name?-- But that's not the case. I mean, there was no date at that time. I believed that I had my name on the trust account. When those people raised the funds and when the funds went into trust, I had no reason to question it.

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You see what I'm putting to you: why put your - I've put in a return showing donations made into Hickeys trust account at the time when you weren't the principal?-- No, I don't understand because I put my name to the trust account when the money was raised; it was either - could have been raised 12 months before. That's all come to my - it didn't dawn on me at the time.

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Didn't dawn on you?-- Well, there's no reason for it to.

Well, Mr Barden, some would say that there's every reason in the world having regard to what you knew had occurred, that when you received this return you'd say, well hang on, there's \$50,000 that has gone into Hickeys, been donated to Hickeys trust account at a time when obviously it is in someone else's name; what's all that about; what am I doing putting my signature to a return. You had no control over the matter at all. The fund was obviously under the control of someone else at that time. So, what I'm suggesting to you is looking at the return, realising the part that you had been asked to play in the matter, you would have immediately asked questions - that is, if you read the return. Did you read the return?-- Yes, of course I read the return.

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Did you note the point that I've just made: there's \$50,000

that's been received before you were asked to provide your name to the account?-- And there was commitment by Quadrant as to work that they'd done.

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Yes, but Quadrant is the - Quadrant is an advertiser, marketer. We're talking about funds which you knew to have been paid into a trust account at Hickeys?-- But I'm also saying that there had been action from Quadrant already before I actually went down there. So, I knew that something had gone on before. So, I just took it for granted that this had been operating before I put my name to the trust. I did not take any notice when those returns came in.

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You see, the evidence would suggest, that's before the Commission, that in regard to the account name at Hickeys which, as I indicated to you yesterday, there was a change on 4th March 2004, and that the change which occurred within the ledger of Hickeys had occurred without any part being played by you in it?-- Mmm.

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Now, you'd agree with that. Obviously, you know nothing about the change that occurred?-- I know nothing about it, no.

And what occurred in relation to that was that Power and Robbins had provided an authority in regard to the change of name; did you know that?-- No.

And although you noticed the entries when you received this return from Mr Hickey, it didn't enter your head, well, hang on, I'd better get on the phone to Mr Hickey and just find out what this is all about before I put my signature to a return in relation to these five donations?-- No, because I trusted the people who were involved, and I trusted Mr Hickey and his reputation. So I automatically accepted that situation. As I said, the money could have been raised before.

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Yes. Yes, could that exhibit be returned. Now, I'd just like you to have a look at this document. It's an authority of 19th February 2004. It's part of Exhibit 135, Mr Chairman, addressed to Mr Hickey, "Dear Tony," signed by Mr Power and Ms Robbins, "We authorised the following immediate draws: Rowe \$20,000, Scott \$3000, Pforr \$5000, Betts \$5000. Further, we authorised the following funds to be held and paid as invoiced by Quadrant." This is Power and Robbins and it's in February, middle of February after you had taken over, as it were, the account with Quadrant and then following that there is Scott \$10,000, Pforr \$5000, Betts \$5000. Have you found it there?-- No, I haven't.

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Just have a look at this. You see, of course, you weren't to know that this was happening. I take it Mr Power - you see what's occurring: direct payments to candidates is being authorised?-- If that's what it says, yes. That's what it appears to.

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And Mr Power never discussed that matter with you?-- No.

Well now, could we have Exhibit 89, please, Mr Chairman. And can I ask you to go to the email of 8th March. At the top of the page you'll see Sue Davies 8 March. There's more than one email but I only want to take you to-----?-- Page 1 of 3, is it?

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Sorry?-- What's the date on the bottom? 1508?

1508, that's the one?-- Is that the one, yeah, okay.

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Now, remember saying yesterday that you didn't have any contact with Mr Ray?-- Correct.

So do you know who Sue Davies is?-- I do now. I met with her after - about three weeks after the election, probably four weeks after the election when I met Brian Ray.

Right. Well, who's Sue Davies?-- Well, I think she's - is - was his secretary, I think.

20

Right. His PA?-- PA.

Well, you were communicating with her, weren't you?-- Well, it appears so.

Didn't you know that she was his PA when you were communicating with her?-- Probably, yeah.

Right. Are you sure that you didn't have any contact with Mr Ray?-- No. In fact, I can honestly say that when we met a month after the election, he was laughing because he said, "Boy, I caused you some problems" and - and - as a joke and he said, "We've never met, have we?"

30

Right. And what did you say? "No"?-- Well, we - I said, "I think I've seen you at a cocktail party or two but we've never personally met, no."

Now, would you go to the email at the foot of that page from Sue Davies to Lionel, that's to you, "Dear Lionel, 5th of March 12.29 p.m., subject 'Guest list for Wednesday 10th March'"?-- Mmm-hmm.

40

"Chris Morgan and Brian Ray have requested I forward the contact details noted below to you so that you may send invitations to them for the function at Lakelands Golf Club on Wednesday, 10th March, from 3.00 p.m. to 4.00 p.m. Bernard Salt will make a presentation of approximately 20 minutes at 3.15 p.m. and then Councillors Robbins and Power will speak to the contributors and pass to them candidates kits prepared by Quadrant. Chris Morgan will, of course, be attending also. Brian and Chris have suggested the following wording for the invitation" and then the following, "Here follows the guest list, Lionel" and it's signed by Sue Davies?-- Mmm-hmm.

50

And there is an email on the 8th of March from you to Sue Davies, "Hi Sue, all emails sent. Only one wouldn't go -

Graham Ingles. Could you please recheck email address."?-- Correct.

1

Now, does that mean to say that you forwarded on those invitations?-- I must have, yep.

And this was in relation to a meeting of these people, that is donors, contributors, with candidates; is that right? Is that what you understood to be happening?-- To the contributors I think.

10

Right. Well, did you understand that there were going to be candidates there as well?-- I didn't at that stage, no.

Well, now, what happened in relation to this is that originally it was scheduled, it would appear, to be at Lakelands and then later in the month of March it was rescheduled, if you like, to be held at your-----?-- That's right.

20

-----Showcase establishment-----?-- That's right.

-----at Coolangatta?-- Yep.

And then it was cancelled?-- Yeah, well, it was a stupid thing. I mean, we-----

Why was it stupid?-- Because we - we were trying to keep the two apart and the one at the Showcase was going to have the candidates who were - and - and with - it wasn't the right thing to do so we cancelled.

30

But there were two attempts to - the first attempt, apparently, wasn't cancelled because it was a bad idea; it was just rescheduled for later in the month?-- No, I think it was different. I think the one here was to talk to the - the contributors because - looking for money. And the one at the Showcase was both candidates and contributors and that - that one within 12 hours or 24 hours was cancelled because we were actually rushing ahead to do something and realised we - we were doing exactly what we - we said we weren't going to do so that was cancelled.

40

Well, it was cancelled in the week of the election. It was going to be on the Thursday the 25th of March, it would appear. The election was on the 27th?-- Yeah.

And we know that there was adverse publicity that was occurring-----?-- That's not what-----

50

-----in relation to the matter-----?-- Yeah.

-----in that week?-- Yeah.

Now, is that the thing that killed it?-- No, no, in fact-----

Did that have anything to do with it?-- No. No, in fact, Chris Morgan and myself discussed it and he said, "How silly are we?"

1

"How silly are we"?-- Mmm.

Well, how silly were you to-----?-- Well, pretty silly, though - the thoughts that were at the time that were driving it were that that Quadrant didn't have enough money under the - the budget wasn't fulfilled. So the idea was well, how do we bring this together.

10

And?-- And I'm not sure who suggested it, that - that we'd have the candidates and the - and the group and then of course-----

With a view to what? The candidates and the-----?-- Oh just the fact that - that they would-----

Hold on, the candidates and the contributors?-- Yeah.

20

Yes. Or donors, yes?-- Yeah. Well-----

With a view to what?-- Raising funds.

Right. Well, what was the idea of having them meet?-- Well, at that time it was the fact that they would see the sort of candidates that - that would be standing and we-----

And, what, that would encourage them if they liked the?-- Yeah. Yes, that was the idea for about 8 hours.

30

Right. They would be encouraged by if they liked the look of candidates to contribute?-- Correct.

If they were reluctant previously?-- Correct.

And you don't know whose idea that was but you went along with it for a period?-- Oh I mean, we all - yeah, it was - it was a rushed idea and it was a rushed thing and I sent out the invitations.

40

Surely, the publicity had something to do with killing it?-- No, it didn't because the publicity didn't come about until after that event, after we canned it.

Now, can I - you can return that?-- Mmm-hmm.

Can I ask you to have a look at this document, please. Now, this is a copy of the letter to the Editor?-- Correct.

50

This is attention Bob Gordon. That's the Gold Coast Bulletin, is it?-- That's right.

26 March 2004?-- Correct.

This was published in The Bulletin or not?-- On the - on the day of the election.

And you were writing to complain essentially about the reporting of what you had said to The Bulletin, is that correct?-- Correct, yes.

And you went on to say - I won't go through all of that - but you went on to say this - can you go to the last paragraph on page 1. You were referring to how you became involved in the matter and I'll read the three paragraphs just to provide the context. "In December" - that's December 2003 of course - "In December I retired from the Robina Chamber Presidency as my business interests were all now at Coolangatta. I had no further involvement in the combined Chamber decisions. Once the campaign commenced I was invited to a number of Meet the Candidates meetings. I was personally still worried regarding a radical group of candidates and their association with certain incumbents." And you've already explained that in your evidence and had explained it in the letter?-- Mmm.

10

I won't go back over that. You then go on, "I was approached by a number of my former colleagues and friends to put my name to a trust to which people from a broad business spectrum could donate to support a counter group of likeminded candidates who united would make positive and cohesive decisions for the good of the city." Now, was that correct?-- As I understand it that was my feelings on the subject, yes.

20

"To which people from a broad business spectrum"?-- Yes.

Well, what the evidence suggests is that it was almost if not totally from developers it was developer-related funding?-- Well, to me-----

30

Did you know that?-- I didn't at the time know that it was - they were only in development but they are all business people in business with a broad-business spectrum. In fact, a number of those developers are not only in development they're in other businesses as well.

So you weren't trying to hide the fact that there were developers behind this?-- No. Because I - I don't have any opinion that a developer is any different in business to any other businessman.

40

Isn't that, however, what a lot of the publicity was about at that time in the media, about developers being behind this fund? See, there had been a letter - there had been by this time published in The Bulletin the concession by Mr Ray as to his involvement. You've written this letter after all that has been published in The Bulletin?-- Yes, and I did because a number of things - I mean, if you believe The Bulletin you believe that Mr Ray and I had - had a meeting.

50

Right?-- And we've never had a meeting.

Right. Well, leave that aside-----?-- Well-----

-----I'm asking you about this particular paragraph and your statement there, do you think that that accurately portrays what you knew to be the position as at the 26th of March?-- Yes, I did.

1

And the way you saw it at that time was that these donations were to support a counter group of likeminded candidates who united would make positive and cohesive decisions for the good of the city?-- Well, if you're voting on something in Council you have to get a whole bunch of people together to get a vote. So whether they - they have to vote together to be able to make it work.

10

So you knew quite clearly that the people who would be the candidates who were being supported by this fund were going to be - or it was expected to be - would be part of a united group-----?-- Oh no.

-----who would act in the best interests of the city?-- When I say united you've got to get the number of votes together so my opinion is that - and it still is - that they would be people who saw the big picture for the city.

20

Yes. Now, would you go over please and if you go down to just above halfway this paragraph, "All of the moneys are handled by a legal firm and distributed against invoices submitted by professional and commercial companies involved in the production of printing and media et cetera." Now, in fact of course there were moneys that were being paid directly to candidates?-- That wasn't known to me at the time.

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I tender that, Mr Chairman.

CHAIRMAN: That will be Exhibit 163.

ADMITTED AND MARKED "EXHIBIT 163"

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MR MULHOLLAND: In relation to the invoices which you approved - this is the Quadrant invoices - there's no need I think to go to them but you can go to them if you wish to check this but the various of the invoices refer to candidates. You'll see names of candidates, Betts and Pforr and so on. Now, in regard to the exercise that you performed before signing off on the invoices did you ever speak to any of the candidates?-- No. I spoke to the candidates - the only contact I had with the candidates themselves was once at a meeting about a week before and there were only I think three people at that meeting.

50

And so essentially what your task was in relation to any invoice was to speak about the invoice on these occasions you went down - you said you went a couple of times a week - you'd speak to Mr Morgan and receive his assurances to what it related to and check yourself with your background that it

seemed a reasonable expense and then just sign off on it?-- Correct.

1

So you did all that there-----?-- Yes.

-----you didn't take them away?-- No, I didn't.

You remained at Quadrant?-- Mmm.

Your answer to that was yes I think?-- Yes, it was.

10

Now, did you know that four invoices - did you at any stage know that four invoices that you eventually approved for payment were - had been - were reissued, that they had been previously issued in the name of Power and Robbins?-- No, I didn't.

Now, if you look at your invoices - do you have them all there?-- Yes. I've only got the ones that I submitted.

20

Right. Well, I'll just get you to look at these invoice numbers. 817045, if you can find that. These are - you'll see them - these are two invoices for Mr Pforr?-- Oh okay, that's right.

817045 and 817046 and there are two more I want to ask you about, 048 and 049, each for \$11,000?-- Sorry, 246?

817045 and 817046?-- 046 - 045 and 046.

30

Right. Well, just look at those and then also look at the two invoices that you've approved for payment of 048 and 049 being in each case \$11,000 in respect of Quadrant consultancy fees?-- Yes.

Now, I should say for the record that those four previously issued invoices are part of Exhibit 144. Perhaps I could ask Mr Barden to have a look at those - Exhibit 144, please. Just have a look at the four and you'll see that the invoices are - have identical numbers but issued to Power and Robbins?-- Yep, I see that.

40

See that?-- Mmm.

Now, though those invoices which appear in that exhibit have not been initialled, the evidence will show that those invoices were initialled, approved for payment by Mr Power?-- Mmm.

And then what appears to have happened is that they were reissued. Now - as shown on your records. Now, did you know anything about that?-- No.

50

Mr Power never discussed that matter with you?-- No.

When did you first know of it? Did you have-----?-- Then, just then.

Just now?-- Mmm.

1

Yes. Could that be returned, please. That's all I have, thank you, Mr Chairman.

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

MR RADCLIFF: Yes, thank you, Mr Chairman.

10

Mr Barden, I appear for Mr Shepherd; so I only wish to ask questions about his involvement in these matters. First of all, your evidence has been that from January 2004 until June 2004, you had various activities concerned with what's come to be known as the Lionel Barden Trust. Insofar as that, was Mr Shepherd involved in that trust in any way?-- No.

Was Mr Shepherd or Councillor Shepherd ever mentioned in respect of these trust affairs in any way by any person?-- No.

20

Prior to your involvement in the trust - that is, prior to late January 2004 - did you have any involvement with Mr Shepherd concerning his campaign or any aspect of his re-election?-- No.

Was there any discussion with Councillor Shepherd about his becoming part of some de facto political group?-- No.

Now, in respect of this, Mr Chairman, there will be a minor amendment to my client's documents by way of disclosure. This is evidence that has come to my client's attention. It's a minor peripheral matter, but I do flag that it's slightly out of kilter with what he said.

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Mr Barden, you immediately prior to the election came to have communication with someone from Mr Shepherd's campaign committee, didn't you?-- I think they sent me a letter. I live in Mudgeeraba, and I answered the letter that-----

40

Yes. A few days prior to the election, you were asked to provide assistance or you volunteered to provide assistance by way of being a booth worker handing out how to vote cards?-- Correct.

And on the Saturday of the election between 3.30 and 6 o'clock you in fact handed out how to vote cards for Mr Shepherd?-- My wife and I both did.

Yes. And that communication in respect of that was - did you speak to Mr Shepherd about that or someone else about your-----?-- I think it was just his campaign manager.

50

Would that have been a Mr Kunst or something like that?-- Don't know.

You had no-----?-- Whoever it was gave me a direction as to where they wanted me to be and what time they wanted me to be there.

1

So in order that there be a complete disclosure of your involvement, it was on the Saturday of the election, you handed out how to vote cards for two or three hours?-- Correct.

Yes, all right, thank you. Now, I'm going to draw your attention to a couple of document that have come to the Commission before and I ask you to comment on some matters that have been raised. My client in his disclosure document says at .2, "I have had no dealings nor campaign meetings with Lionel Barden whatsoever and therefore no documentation is available." You would agree with that?-- Yes, I would.

10

He also goes on to say, "Regarding Mr Lionel Barden, my wife and I met Mr Barden and his wife on several occasions at Council related functions and socially at private functions perhaps twice." Would that be correct?-- Probably up to that time, yes.

20

Yes, "We have never met to discuss campaign issues relating to myself nor any other candidate."?-- No.

"We have never discussed the establishment of any financial trust to assist candidates, nor did I participate in the creation of a trust or receive any funding from a trust."?-- No.

30

And that's the case, isn't it, that he didn't receive anything from the trust whatsoever?-- Well, I mean, I never was in touch with Ted Shepherd the whole time of the - that I know of.

Yes. Now, similarly, we've been given documents by Mr Young, and Mr Young says, and I quote from the first page of the unexpurgated - sorry, the expurgated document that we've been shown. I'll just read this to you. It's a little bit long but I ask you to comment on it, "As has been widely reported and is detailed below, the modus operandi adopted by these councillors," of which my client was one, "was to conceive and actively implement an organised structure that provided political, logistical, financial, marketing and other support to selected candidates and to deny the existence of the structure to the public during the election campaign only to be outed later." What do you say about that?-- Nothing to do with it, got nothing to do with it.

40

No. "Were you ever aware of anything such as a group of like-minded candidates, sharing a common ticket"?-- Well, there was no common ticket. In fact the candidates were totally independent of one another.

50

Right, we'll leave that. In so far as you're concerned, and I'm coming really to the article which has been referred to by Mr Mulholland. For those who have Exhibit 3, it's number 31

and I apologise for this, Mr Chairman, I don't have copies of this, but perhaps they can be made available to others at a break. Here is the actual article that was published. Could the witness please see this document? I don't believe it's been placed into evidence at this point in time.

1

CHAIRMAN: Not in that full form.

MR RADCLIFF: No. No.

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CHAIRMAN: No. No.

MR RADCLIFF: The text of the article is at Exhibit 3, document number 31?-- I have a copy of it.

CHAIRMAN: Do you want to tender that, Mr Radcliff?

MR RADCLIFF: I will tender that, but I want the witness to-----?-- I have a copy.

20

CHAIRMAN: He said he has a copy, so-----

MR RADCLIFF: Oh, you have a copy. Oh, that's fine.

CHAIRMAN: -----perhaps I might have a look at it.

MR RADCLIFF: Yes. Yes.

CHAIRMAN: Thanks. When you're ready.

30

MR RADCLIFF: Yes, thank you. Mr Barden, dealing with that document now, and I'll ask you to look particularly at the photograph. The photograph depicts you as the chairman?-- Correct.

Was that ever your role?-- No. No.

The chairman of some power bloc?-- Yeah - no, that's why I wrote the letter.

40

Yes.

CHAIRMAN: It says not power bloc, that the heading is power base.

MR RADCLIFF: Yes. Power base. I apologise. Yes. I've lost my only copy now.

CHAIRMAN: Oh, I'm sorry.

50

MR RADCLIFF: No, that's - I'll deal with-----

CHAIRMAN: Mr - I didn't mean to take it off you. I thought you had another one.

MR RADCLIFF: No. No, I don't. I came totally unprepared. You may keep that. I have the transcript, your Honour.

CHAIRMAN: No, no, it's all right. Hand that back. I have the-----

1

MR RADCLIFF: Yes. Now, in the first paragraph, it's said by the reporter, Alice Jones, Sue Robbins yesterday named herself, David Power, Ted Shepherd and Bob La Casta as the main players in the election plot to take over the Gold Coast City Council; did - was that put to you by the author of the article?-- No, in fact we had a - yes, because I remember what date this is; it's the 26th-----

10

26th of March?-- Yes. We'd had a massive argument the day before. She-----

That is with Alice Jones?-- Yes. She accused me of this meeting with Brian Ray-----

Mmm-----?-- -----I told her about five times that I had never met the man. She went on and on and I was in the car and I lost my temper and then the next morning, on this morning, I actually rang her when I calmed down and told her the whole story about where I was at and my position and she still wrote this article.

20

Yes. In fact if you look at the last three paragraphs of the article, they are the paragraphs which relate to yourself?-- Correct.

Now, what do you say about those paragraphs of the article?-- Well, by this time I'd told her. I mean it was just a complete farce that - it says here that I was identified as an unofficial chairman and she made that accusation, I denied the accusation. She didn't talk about the trust on the day. I did - I said "I promise and I cross my heart, I have not - that's nothing to do with this; this is to do with Brian Ray"-----

30

Yes?-- -----and she just used different expressions of mine to conjure up the story: "Yesterday he told the truth, but no-one asked him the question what was your involvement?" and I actually rang her and told her the whole story. The day before we had talked about Brian Ray and what I was doing on the election day. Both of those things came up in our conversation and I lost my temper and there was a bit of a yelling match actually.

40

Mmm. But as you state in - do you still have Exhibit 163 before you, which was your letter to the editor?-- Yes, I - oh no, I don't. Oh, I've got it here, I think.

50

We have a copy somewhere?-- Yes, I do. I've got a copy of it.

Yes. Good. In that letter - and I'll deal with a couple of passages from this - in that letter you expressly state in the second paragraph that you were not the official or unofficial chairman of a group of people and that you told her that?-- Yes, I did.

So that - and you also said that what was said concerning "Cross my heart" was just patently wrong?-- Yes. I mean she used it to say that I told her that I - I - you know, I'd crossed my heart that I wasn't involved in anything. It was purely about Brian Ray.

1

Yes. So that which is attributable to you in respect of this article, you say is false or mis - or misreported?-- We can go a step further. At the opening of the Convention Centre, she wrote that same article almost again for about a third of the page of the bulletin about me being there with David Power and a number of other members of the Council and at the time, having written that article, went on about the Lionel Barden Trust Fund/Slush Fund, all the things about that - about a third of a page and I was seen there with, you know, in cahoots with them, in a corner doing something. I wasn't even there.

10

Yes. Yes. All right. If you turn the page of your document which is Exhibit 163, my learned friend, Mr Mulholland, took you to a number of passages about it, but about halfway through the second page, you say your editorial asks why the secrecy. Can you read that paragraph to yourself? Was that the case, that you didn't even know all of the donors at that point in time?-- That's correct.

20

And that you wished to keep that information strictly confidential?-- Well, that was what we were aiming to do and - you have to understand I had a job to do and I was purely doing a job. I wasn't running around saying, "Oh look, I've been given a job - I've been given a job"; I basically got my head down. In fact there's people who are close friends who didn't even know what I was doing, that I didn't think to tell them.

30

And you also go on to say in the next paragraph, "When we provided this information in detail yesterday your paper decided not to print any of the explanation but only to imply through provocative language and untruths some sinister backroom plotting by so-called developers, some Councillors and myself"?-- Correct.

40

Yes. Mr Chairman, I'll tender that document. It can be returned to you now.

CHAIRMAN: That will be Exhibit 164.

ADMITTED AND MARKED "EXHIBIT 164"

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MR RADCLIFF: I know it's repetitive, it's only for the photographs.

CHAIRMAN: That's fine, Mr Radcliff.

MR RADCLIFF: I was dealing with Mr Young's document once again. I just ask you to comment in respect of these matters which he says and see whether this is your understanding of anything that you came to hear of between that period of January and the election. He says that, "Pro-development Councillors" - and he doesn't name them, he merely uses cross-outs - "were entrusted by those responsible for all - for other aspects of the campaign to secretly recruit new candidates and organise a larger team of candidates." Did you know anything about that?-- No. My understanding is that there were candidates that were standing, nobody was recruiting.

1

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And he goes on to say that, "Support, advice and strategic direction was provided in a secretive and highly organised fashion"?-- There were no secrets.

You being the so-called chairman, the appointed chairman, is that - is there any truth in that?-- There were no secrets - nobody thought like that.

20

The selected candidates met with existing Councillors, with each other and with professional persons who had been secured to provide support. All aspects of their campaigns were managed including photography, proofing, advertising, mail outs, printing and actual campaign elements"?-- Well, that's basically what Quadrant was doing.

Quadrant was doing that?-- Mmm.

30

And then at the last page on - sorry, last aspect I would deal with on that page, those who were encouraged to provide or seek financial support. We're told by Councillors that there was a desperate need to counter a group of green candidates and to achieve a sympathetic predevelopment majority. Was that part of your brief in any way?-- That - there's nothing about predevelopment.

Lastly, in respect of Mr Young's document he says - he also says, "The commonsense candidates who lied to the community were successfully elected - and who were successfully elected won in places by deception." Were you part of any deception?-- No.

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I have nothing further, thank you.

CHAIRMAN: Thank you, Mr Radcliff.

MR WEBB: No questions at this time.

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CHAIRMAN: Yes, Mr Tiplady.

MR TIPLADY: Mr Barden, I appear for Councillor Howard today. Would I be correct in saying that you've known Councillor for Power for a period of time?-- Oh yes, probably - yeah, a long period of time.

And would I also be correct in saying that during 2003 it was a matter of general discussion in the business community on the Gold Coast about the poor behaviour of certain Councillors acting irresponsibly being impolite?-- Well, not just 2003 but, yes, in 2003 it was well discussed.

And you'd expressed your views about that in 2003 and prior to then as well?-- Yes, I did.

We heard yesterday that a meeting occurred with Councillor Power in early February 2004 at which time there was some discussion about this trust fund. It would not be unusual for you to meet with Councillor Power?-- No, we met quite often because we had - from a private enterprise point of view I was involved in the economic development and I was on Redak and David Power - that was his portfolio.

And you were also both involved in the innovation festival?-- No - in the innovation festival, yes, he was the - again, that was his portfolio and I was one of the first people to be involved in that.

So I put it to you that in early February 2004 Councillor Power rang you and invited you for a cup of coffee with him at Tigerlily's on Chevron Island?-- That's right, that's the name. I couldn't remember the name yesterday.

And as I said it's not unusual for you to meet socially with Councillor Power.

And how long would you say that meeting lasted if you can remember that meeting?-- About 20 minutes.

I suggest to you it lasted no more than about half an hour or 45 minutes?-- Yes, that would be probably it, yeah.

And during that meeting you would have discussed a variety of issues including the innovation festival?-- Yes. I mean, when David and I met we would have a list of items that we would go through.

And I put it to you that at some stage Councillor Power said words to the effect to you that, "Sue and I Have been talking to people, spreading the word basically, getting together funds to support them. Would you be willing to deal with distribution of funds? I'm not completely comfortable with anyone who's involved to be distributing funds. I'd like to see someone independent do that"?-- Yes, he asked me about - we were discussing my independence and in fact I was laughing and I said, "Being on the airport premises I don't - I don't even need to have to come to Council for signage."

And having been asked to take on that role can you remember your response?-- I don't know that I responded at the time. In fact, I said that I probably - I can't remember but I think I said I'd come back to him.

I put it to you that you told Councillor Power that in principle you'd be happy to take on the role of distributing the funds and you said words to - and David replied in words to the effect of, "The fund's being handled through Hickey Lawyers. If you're happy to do that I'll let Tony Hickey know and you can put your name to it"-- Yeah, that's probably the conversation - I mean, there's nothing that you've said that I would have to deny but I can't remember the exact words, no.

1

Do you recall making an offer to ring Mr Hickey yourself?-- I don't remember.

10

Nothing further.

CHAIRMAN: Yes, thank you, Mr Tiplady. Mr Martin.

MR MARTIN: Mr Barden, it seems that - from what you've said - that the first conversation with Mr Power about lending your name to the trust account occurred in late January or so of 2004; is that correct?-- As far as I recall.

20

And do I understand from your evidence that it was over some period of time before you got back to Mr Power or whomever to say that yes, you would do it?-- I don't recall the time period but it wasn't on that day but it was - you know, within-----

All right. Now, in any event you have a recollection of telephoning Mr Hickey after you had decided to lend your name to the trust account?-- I think so.

30

As you heard from Mr Mulholland, Mr Hickey in his evidence stated that he doesn't recall any such conversation but be that as it may, for you to contact Mr Hickey would only be in relation to, "What do I have to do in relation to this trust account," I take it?-- Correct, correct.

I think you told Mr Mulholland that to the best of your recollection it was a very brief conversation?-- Correct.

40

And I take it that if the conversation took place, Mr Hickey told you something like you'd have to authorise all of the payments?-- That's right.

Do you recall anything else in the conversation apart from those basic features that you've referred to?-- No, because it was purely house work. I'd never met Tony Hickey so it was really just discussing with him the - my job.

50

Okay. In relation to that, I note in your statement that you spoke about a general authorisation. That's not quite correct, is it? What you had to do was authorise specific invoices?-- That's correct.

Do you agree with that?-- Mmm.

I'm just referring to the second page of your statement. "I gave a general authorisation to Hickey Lawyers regarding the way in which the fund was to be disbursed." Could I suggest that you didn't do that, what you did was approve specific invoices to be paid?-- Well, that's what I meant by the authorisation. I've got copies of my letters to Hickey Lawyers that said that this is to be authorised so-----

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I see?-- -----you know, it's language, I guess.

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All right, thank you. You were asked today a number of questions by Mr Mulholland about the returns and, in particular, the copy letter that's dated 28 June?-- I don't understand it.

All right. Could I job your memory or attempt to jog your memory that there seems to have been, at least from the material that's been available to the Commission - there seems to have been some contact between you and Hickey Lawyers before the 10th of June and, therefore, before the returns are sent out to you. And I say that because the letter dated the 10th of June starts off with, "As requested, we enclose appropriate form 3 return of gifts." Do you see that?-- Mmm.

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Now, could you have contacted Hickey Lawyers and perhaps Tony Hickey himself to ask whether a return has to be put in by you?-- First and foremost, that's probably it. The only thing I can think of with that other letter is that it was the 28th of May because it would make more sense simply because of the timing issue was there.

30

Yes. I don't know - I think I missed it but I think Mr Mulholland showed you a document which he suggested must have been an incorrect date on one of your documents anyway?-- That's the only thing I can think of because that discussion took place before this document actually actioned. This was the last action of that whole conversation.

Okay. Well, could it be that you contacted Hickey Lawyers round about the 8th or 9th of June asking about whether or not you had to put in a return and then got communication back that you did have to put in a return and then authorised Mr Hickey to do it as requested?-- It would be before that.

40

You think it'd be before that?-- Yes. But that's the sort of conversation but the return - I discussed the return not only with Tony but also with David Power.

Yes. And what I'm suggesting is that, as a result of the communication to Hickey Lawyers about whether or not it was necessary to put in a return, you got advice from Hickey Lawyers-----?-- Yes, I did.

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-----that you did have to and then requested that they do it up-----?-- Yes.

-----and hence the letter of the 10th of June with the enclosure?-- Correct.

Thanks, Mr Barden.

CHAIRMAN: Yes.

MR MULHOLLAND: Mr Barden, do you have there the back-dated letter of the 10th of December 2003?-- Yes.

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Now, I mentioned it briefly in your evidence yesterday-----?-- Sure.

-----but there's just something - a couple of things I want to put to you in regard to this. You said that you understood - or your recollection was that you had drafted this letter. Now, can I just ask you to consider this in relation to the matter - what the evidence - and I can take you to these documents if you need it?-- Mmm.

20

But just listen to this, please. There was contact - or the first time that Mr Morgan heard your name was on the 30th of January 2004. That's the evidence that he's given here?-- Mmm.

And he was then receiving e-mails from Mr Power. He received an e-mail of the 4th of February from Mr Power stating, "Lionel Barden has agreed to act as primary client. If you change the name I will get it to him ASAP for completion." And there was then an e-mail of the 5th of February from Mr Morgan to Mr Power attaching a draft letter, "We discussed...", right?-- Mmm.

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"Once primary client has been confirmed, I would appreciate its return." So these are communications passing between Mr Morgan and Mr Power you see?-- Mmm.

And there was also an e-mail of the 5th of February from Mr Morgan to Mr Power, "Many thanks, David. Revised draft letter attached. If Lionel could mail it to me, it would be greatly appreciated." And then finally, there was the change of name within Quadrant on the 6th of February. Now, that's - that's what the evidence shows in regard to that. Do you think that this draft is a draft which was prepared by Mr Morgan not yourself?-- I can't remember. I said to you yesterday, sir, that we did - we did this draft together because he had no authorisation. He raised it with me that he didn't have authorisation. He could have given me the draft and I put it into my own language, I don't know.

40

Right. All right. What it suggests is that there are these communications passing between Power and Morgan concerning the draft and deciding upon it and then working that out between them and you eventually getting it. That's what these emails would suggest, but you tell us, is that your recollection now that I've put that to you, or was it your draft?-- I don't know, sir. I answered exactly as I did. I remember discussing this with Chris Morgan. I remember he didn't have

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any letter of appointment, so I discussed it with him, and this is the outcome. How we got to that, I'm not sure.

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Well, just one thing in regard to the letter, would you go down to the paragraph commencing all costs incurred, "All costs incurred are to be invoiced directly to the respective individual candidate's account once approved by myself. All invoices once authorised are to be forwarded to the candidate resource trust account care of Hickey Lawyers for payment." Where did that name come from?-- I'm not sure, but that - I mean, that was a name that - I saw that myself when I pulled out the copies of this and thought it was unusual. I mean, at the time that I did it, I didn't think about it.

10

Didn't notice it?-- Well, I'm not sure. To be honest, I can't answer that. It didn't make any sense because - so I didn't sort of follow it through.

Yes. One thing in relation to the article which Mr Radcliff showed you?-- Mmm.

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Do you still have that there?-- Yes, I do.

This is Exhibit 331. The last paragraph, he said - this is referring to yourself, "He said" - sorry, I've got to go back a question, "On Wednesday" - a couple of lines, sorry, "On Wednesday, he denied involvement in the fund saying, 'I promise on my heart, cross my heart, I have not,' but yesterday he said he had told the truth but no one had asked him the question: what was your involvement. He said that had he been asked that question, he would have admitted setting up the Lionel Barden Trust so businessmen could deposit campaign donations to the chosen candidates." See that?-- Yes, I do, sir.

30

Did you ever think of telling the media and therefore the public that what had happened was that you had been asked to provide a back-dated letter of authority?-- Nothing that's in here is what I told the press, nothing. What you read out to me then was not a conversation I had with any reporter from The Bulletin.

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All I'm asking you is did you think of telling The Bulletin of the circumstances in which you had been asked to lend your name to this account?-- No, it didn't dawn on me to.

You just didn't think of it?-- Well, no, I always believed that I was - had signed off on a trust account as the Lionel Barden Trust and that that was it. I had no other thoughts to it.

50

The only account that you'd ever signed off on, as you put it, was in relation to Quadrant?-- Working with the Quadrant people, yes.

Yes, thank you. May Mr Barden be excused, Mr Chairman.

CHAIRMAN: Yes. Thank you, Mr Barden, you're excused; thank you for your evidence.

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WITNESS EXCUSED

CHAIRMAN: We might take a break at this change and allow the change around at the Bar table. Adjourn for 10 minutes.

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THE HEARING ADJOURNED AT 11.24 A.M.

THE HEARING RESUMED AT 11.38 A.M.

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MR BOYLE: Mr Chairman, I call Col Dutton. He is represented by Mr Newton.

CHAIRMAN:

MR NEWTON: May I announced my appearance, Mr Chairman?

CHAIRMAN: Thank you, Mr Newton.

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MR NEWTON: My name is Newton, initials G.C. instructed by Deacons and I appear for Mr Dutton.

CHAIRMAN: Thank you.

COLIN DUTTON, SWORN AND EXAMINED:

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MR BOYLE: Witness, your name is Colin Dutton?-- That's correct.

You're the State Development Manager for Stockland Development Proprietary Limited?-- My present role is Regional Manager, Gold Coast, Northern New South Wales.

For Stockland Development?-- That's right, that's correct.

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Okay. You were served with an attendance notice to appear here. If I could show this to you. Is that a copy of the attendance notice that was served on you?-- That's correct.

I tender that document. It has the oath of service attached, Mr Chairman.

CHAIRMAN: Exhibit 165.

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ADMITTED AND MARKED "EXHIBIT 165"

MR BOYLE: Stockland Development Proprietary Limited was served with a notice to discover issued by the Crime and Misconduct Commission; is that right?-- That's correct.

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And that was issued on the 12th of August 2005. I'll show you that document. Is that a copy of the notice to discover that was served on Stockland?-- That's correct.

I'll tender that notice to discover, Mr Chairman.

CHAIRMAN: Exhibit 166.

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ADMITTED AND MARKED "EXHIBIT 166"

MR BOYLE: In response to that notice to discover, your solicitors or Stockland's solicitors, Deacons, sent in two letters of response providing information and also provided some documents; is that correct?-- That's correct.

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If you could just have a look at this. Now, is that a copy of the letters that were written on behalf of Stockland Development in response to the notice and also documents provided to the Commission?-- That's correct.

All right. I will tender that copy and I'll give another copy to the witness so he can work from it.

CHAIRMAN: Exhibit 167.

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ADMITTED AND MARKED "EXHIBIT 167"

MR BOYLE: Now, just a few general questions. Stockland Development Proprietary Limited, what sort of work is that company engaged in?-- Stockland itself basically has a - is a property - is a listed property trust, public company. Stockland has interests in industrial, commercial, retail, hotels and development. Stockland Development is the actual development component for the business and it's about 30 per cent of the total business.

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Okay. And the developments, where are they?-- In relation to Australia we've got approximately 90 communities throughout

Australia, in Queensland about 40, and on the Gold Coast we've got 6. We also own two shopping centres on the Gold Coast as well.

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Okay. And are you the person that oversees the Gold Coast aspects of development?-- Yeah, I look after basically the land development, the subdivisions, for the Stockland interests and there's 5 of those in total in the Gold Coast city.

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All right. Now, Stockland made a donation of \$10,000 towards the Gold Coast City Council elections in March 2004. Could you tell us your involvement in that particular donation?-- Yeah, as per my statement I - I had initial conversations with David Power. To the best of my knowledge, it would have been December/January 2003/2004, just prior to the elections, a couple of months prior to the elections. He made mention to me that there were funds being raised for some good candidates on the Coast and I put that on to a list of possible donations for our business. At the time there was a State election and local government elections going on throughout the State and so I was aware early, probably January I would think - I'm not quite sure of the actual date or time but probably by the end of January I certainly was aware that there was a - some funds or a donation being asked for. In regard - from that date through to the election, do you want-----

20

Well, firstly, the discussions with Councillor Power, you said funds were being raised for "good candidates", was that-----?-- Oh sorry, the discussion I had with David, I honestly can't recall where I was at the time. It was - it was basically at an industry lunch or running into him at some forum and he made mention that there was funds being raised to get some good candidates into Council. I - I gave a reply of, you know, "Thanks for letting me know about that", you know, "If you can give us a letter, I'll see what I can do", basically words to that effect. That was a very brief contact. Nothing formally, you know, meeting or anything else; it was just a brief contact in regard to myself and David.

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He didn't expand on the word "good candidates"?-- Oh I don't know the actual words. It wasn't - it was certainly that - the quick discussion was that "There's some candidates, some good candidates coming up that are running for Council and we'll be looking for some funds in regard to the upcoming election." It was two or three sentences. I honestly don't know that - you know, the actual words that were used at the time but it was to that effect.

50

He didn't mention - sorry, did he mention candidates by name?-- No.

Did he say who was involved in raising the funds?-- No, he didn't, not other than himself. He was the only one who contacted me in regard to it. He didn't give any other names in regard to possible candidates being funded or indicate any

other person. He followed up with a letter in February which I tendered as part of my statement.

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Okay. Now, you spoke to him and you said you put his - something on a list; is that right?-- That's correct.

Is that that document that you've provided here which is a-----?-- That's correct.

Which looks to be a memorandum dated 6th February 2004?-- That's correct.

10

So you caused that to be added into the list?-- Yes. At the time and that memorandum you're referring to is from Wayne Rex who is the general manager of Queensland. Rather than a whole lot of different people asking us for a donation, we knew the State election was coming up and we knew the local government elections were coming up, and we made an effort to try and get a concise list together so we only had to deal with the issue once. The list that's attached basically reflects that.

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In your discussions with Councillor Power, did he mention an amount?-- I can't recall. I can't recall whether an amount was made and I was looking at this again this morning. I think I actually recommended 10,000 when looking in relevancy in regard to other donations, I thought 10 grand - \$10,000 would be appropriate to cover any donations for the Gold Coast area.

All right. Now, on that list, it's got Gold Coast Alliance (National Party Aligned)?-- Mmm.

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Where did that come from?-- I think it would probably have been part of Wayne Rex's grouping up the memorandum in regard to putting it into some sort of name.

Right?-- National - there is councillors and everyone else down the coast that has some National Party or Liberal Party and Labor Party alliance and I think Wayne may have assumed that from his knowledge of the Gold Coast. But in regard to any dealings with Stockland and Dave Power, I was the only one involved in direct dealings with Dave Power or anything to do with the Gold Coast election.

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Well, did David Power mention anything called the Gold Coast Alliance?-- No. No, I think that's - sorry - that's more just a grouping of giving you the heading.

Or National Party aligned?-- No, no, definitely not.

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And you never gave that direction to Mr Rex?-- No, I think it was just a-----

Or never mentioned that to Mr Rex?-- No, no.

It's just something he did?-- Yeah, I think he's done that from the knowledge of - his knowledge of the Gold Coast.

Okay. Now, you say you got a letter from him which I think is the next document - that is, a letter from David Power on 26th February - sorry, it's a letter dated 26th February 2004?-- That's correct.

1

You have that there?-- Yes.

All right. It says there a community fund, support a community fund. Did he ever talk to you about any more detail as to that fund or what that might mean?-- No. In regard to administering the fund or the donation, whatever else, there was no discussion that took place in regard to it. Community fund, I suppose, in hindsight is a bit of an odd term but, certainly, to me it was a donation towards the election campaign.

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All right. Now, on this letters, there's other writing apart from the signature which appears to be of David Power. Whose writing is that, do you know?-- Yeah, the Lionel Barden Commonsense Campaign Fund Trust Account is mine.

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Right?-- The post office box is mine, and I think the running writing above, the Lionel Barden part of it, is probably Wayne Rex's.

Okay.

CHAIRMAN: Now, can you just interpret that: as discussed - what's that next word, can you read that?-- Yeah, I had trouble with this this morning myself. I had a bit of a relook over the attachment. I think it's forward. As discussed, I think it's forward but I couldn't-----

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I see, forward LB - presumably Lionel Barden?-- That's right.

Thank you for co-operation?-- Yes.

Yes, thank you.

MR BOYLE: Or it could be toward. Anyway, we - so, do you know when it was that you made that note about the Lionel Barden Commonsense Campaign Fund Trust Account?-- From memory, I'm pretty certain it was prior to the election; probably in the week or two leading up to the election, so would have been probably mid-March. Knowing that the letter itself was dated 26th February, it was somewhere between 26th February and the election. Do you want to know how the note came about?

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Yes?-- Yeah. Basically, from my recollection I rang - it was a very quick phone call to Tony Hickey to acknowledge that I would be or Stockland would be contributing and I think I asked, "What do I make the cheque to and what address," and I haven't checked it but I think you'd find that the address is Hickey Lawyers.

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CHAIRMAN: Well, it's as shown in Mr Power's letter?-- Sorry. All right.

MR BOYLE: Okay. Well, just on that aspect, Mr Hickey gave evidence - this is at page 657 at about line 20. He was shown a copy of a letter which was sent by you, which is the other letter dated 5th April 2004. Have you got that there?-- Yes.

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And it refers to a cheque in favour of Lionel Barden Common Sense Campaign Fund. Now, he was asked this question, "According to Mr Dutton, this is in favour of Lionel Barden Common Sense Campaign Fund in the amount of \$10,000 in support of a community fund." Answer, "Yeah, wonder where he got that idea. Do you have any - from." And Mr Hickey said, "Not from me." Are you able to comment on that?-- Yes. I suppose - and again, thinking back, I don't recall talking to David - the only two people that could possibly - the only two people I'd discussed the donation with was Tony Hickey and it was a very brief phone call, and David Power earlier on in the piece so I don't recall talking to David in the - in March at all in the lead up to the election. And given that I had that letter and I was doing the cheque at the time, I assumed it was Tony - that's my best recollection on the matter.

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Did you attend a function for David Power at Windaroo Country Club?-- That's correct. In my statement, myself and a couple of others from Stockland attended a - it was a campaign-related lunch at the Windaroo Country Club.

Well - so that was \$125 a head function?-- Yes, I can't recall the amount but it wasn't - it was - you know, wasn't a large amount so.

30

Do you know how many tickets Stocklands purchased?-- I think there was possibly four in total.

Four. And three attended?-- I'm pretty certain four attended.

Four attended?-- I'd have to check with individuals but I would think there was four of us.

So Stocklands paid for those tickets?-- Yes, correct.

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And did you discuss this fund with Mr Power at that function?-- No, no. It was quite a large function with - I don't know how many people, would have been a couple of hundred people there. Certainly, I didn't discuss at that time - was more a presentation by David and his campaign director in regard to the upcoming election. It wasn't a forum for having chats about money or anything else.

Okay. Well, how many times did you speak to Mr Power then about providing funds?-- Oh, once, I would think. I can't - like I said before, it was either December or January that we bumped into each other and he made mention of funds and I said, "I'll see what I can do," basically. The next contact I had in regard to the matter was - from recollection is the letter and that was a sort of - I'd basically dealt with and put it on our register in regard to the ability to give a contribution and the letter followed some weeks later.

50

Was there any reason there was the delay between the decision, back on the 6th of February 2004 to donate and the donation actually going on the 5th of April which was after the election?-- Yes. The only thing I can think of is I was waiting to see where to send a cheque to. I was waiting for the letter that I asked for. In regard to being after the election, there's no reason for that at all. I had the Stockland decision, if you like, in early February and it was just a processing paper work and a cheque from there.

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Well, I suppose we don't know when you received it but at least, as at the 26th of February - or there was a letter to you dated the 26th of February-----?-- Yes.

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-----detailing where you should send the money?-- Yes, I - yes, it had a - had a contact name directed to Tony Hickey, Hickey Lawyers. As I said, I rang Tony prior to the election to quickly get where I send - the cheque is to be sent to. I acknowledged at that point that we were making a donation. I think that was the first acknowledgement that I gave, a verbal acknowledgement. And I followed up with the paper work after that.

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All right. In the letter to him you say, "Further to our recent discussions"?-- Yes, that's a phrase I suppose I use. There's certainly - from recollection, I can't recall - I can't recall any discussions with David Power immediately following - immediately preceding this letter so I think I was referring back to the January or - meeting.

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So you can't remember him in March following you up for the donation?-- No, no, I can't.

I'll just show you this for completeness. This doesn't appear to be part of your records but - this is part of Exhibit 99. Can you recall ever seeing that receipt?-- No, not personally - doesn't mean to say that Stockland didn't receive it but I - it may have gone straight to our accounts section. The first time I saw this was this morning at the barrister's office.

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Okay, thank you. Now, from what you've said, you had a fairly limited understanding as to the administration of the donation. Is that correct?-- That's correct.

So did you have - I'll ask you specific questions. Did you have any idea who was to control the money?-- No, I suppose I assumed David Power was coordinating it at the time of - at the time of making the decision to give a donation and obviously Hickey Lawyers was coordinating it from my perspective at the time of giving the cheque.

50

You didn't - well, so as far as you were concerned, whoever you gave the money to, it was at their absolute discretion to use that money?-- Yes, I suppose, the decision to make a contribution to David Power is that I trust David Power's judgment in regard to the money and the donation and I'd known David for nine or ten years and I - I trusted him to

distribute the - or to appropriate the contribution appropriately.

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So you trusted his judgment as to the candidates it would go to?-- Yes.

But you were never told which candidates-----?-- No.

-----it was to be used for?-- Not - not that I can recollect.

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And you weren't told as to what views these candidates may have on certain issues such as development?-- Development never came into the discussion at all. The brief discussion I had with David in regard to it was, "We need to get some good people in Council." There was a whole lot of discussion at the time in regard to the city and the aches, if you like, of the city, the issues that would need to be addressed. I attended a number of forums, property related, industry related forms in regard to infrastructure and a number of other things. I think that all was highlighted prior to the election so I assumed it was along the same lines to address those same issues.

20

All right. But in the context of the donation and who it was to go to, there wasn't any discussion as to those particular issues?-- Oh no, I - I - like I said, I know David Power fairly well. I know the way he thinks. I know he's - he knows what the issues for the city are. He's very strategically focused and he - I trusted his ability to distribute the funds.

30

All right. Well, I'll ask you this: what was the reason for making the donation?-- Basically to get a better quality of councillor into Council that could address the issues that faced the city.

Well, obviously the company Stockland Developments had an interest in ensuring money went to candidates with a view that councillors would favour development; is that fair?-- To me, Stockland stands on its own two feet in regard to development and good development. It - it wouldn't be that we wanted people elected that were pro-development; it was - be people - and as David, I think one of his mantles, is good development and I suppose that's our focus is good development and achieving that.

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Well, you want candidates that wouldn't hinder good development?-- I would - I would like to think that the candidates would be, I suppose, people that can distinguish what is good and bad development and what are the issues in regard to development and everything else for the city and can apply themselves appropriately. I'm - to me, obviously we have an interest in the city in regard to development. We have an interest in regard to retail as well. We just wanted to see a properly functioning council.

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Did he say to you - you've said in evidence you assumed he chose the candidates, is that right, that got the benefit of this?-- I didn't go into that detail at all.

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Right. So he didn't say to you how they were to be selected?-- No.

And apart from what you've told us about the money going to Hickey Lawyers, were you aware of what was to happen to the money after that?-- No, no.

10

You didn't place any conditions on the donation?-- None at all.

Do you have any knowledge as to who in fact got the benefit of that donation?-- No, not the direct 10,000 but obviously I've been reading since in regard to-----

Just from media?-- Yeah, that's correct. And from the transcripts from - from this.

20

Was there any discussions with Councillor Power as to whether candidates were to know the source of the funds?-- Didn't - it wasn't discussed at all.

Or whether you as a donor were to know who the funds were going to?-- It wasn't discussed at all.

Did you have any knowledge of Roxanne Scott or-----?-- No, only-----

30

-----Grant Pforr?-- Only through the media in regard to - I have no knowledge of Roxanne Scott. As I said, other than the last month or so.

Grant Pforr?-- Grant Pforr I was aware of through surf life saving associations but other than that, I didn't know the man personally.

Greg Betts?-- No.

40

Brian Rowe?-- No.

Just on Mr Rowe, do you know John Lang?-- No. I know of him.

He was head of - well, Brian Rowe was an unsuccessful candidate?-- Yeah.

And John Lang was head of his campaign committee?-- Yes.

50

Did Stocklands have billboards at Pacific Pines?-- Yeah, we have billboards on the motorway and leading into Pacific Pines and a number of other estates, and the occasional internal - internal as internal to the - to the estate as well.

Did John Lang ever contact you concerning use of those billboards?-- I can't recall. Now that you say it, he may

have but that was - I - that's the first time I've thought about it. I certainly dismissed it if he did.

1

Right. Well, you can't recall anyone else approaching you about this, or you didn't associate the two-----?-- Yeah.

-----the meetings with David Power and someone contacting you about-----?-- No.

-----the use of a billboard?-- Yeah, no, I - I was responsible for advertising, everything else for the - particularly Pacific Pines, I used to have community groups and all sorts of people asking to use the - the billboard for a period of time, the - our major billboard near the highway, for a period of time. It used to be something I dismissed fairly readily. I - I think I allowed it to happen once for the Gaven State School, my own recollection, in regard to it.

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Well, did you have dealings with any other candidates?-- No.

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Now, just so far as this fund, you obviously knew of David Power's involvement. What about Sue Robbins, was that ever-----?-- There was no discussion - the only discussion I had in regard to the fund was with David. I suppose I may have assumed Sue was involved but I - at the time I didn't know.

Lionel Barden?-- No, I never - I never met Lionel at all.

So the first you heard of his involvement was when you rang Mr Hickey?-- Yes, that's correct. Obviously, the papers at the time there was - I was watching the previous session so it would have been around the same time as that.

30

So about - sorry, it was sometime in March?-- Becoming aware of the name Lionel Barden, yes, it was around-----

That was sometime in March?-- That's right.

But you're not quite sure when?-- No, no. It would have been prior to the election.

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All right. But in the context of the donation and who it was to go to, there wasn't any discussion as to those particular issues?-- Oh no, I - I - like I said, I know David Power fairly well. I know the way he thinks. I know he's - he knows what the issues for the city are. He's very strategically focused and he - I trusted his ability to distribute the funds.

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-----the meetings with David Power and someone contacting you about-----?-- No.

-----the use of a billboard?-- Yeah, no, I - I was responsible for advertising, everything else for the - particularly Pacific Pines, I used to have community groups and all sorts of people asking to use the - the billboard for a period of time, the - our major billboard near the highway, for a period of time. It used to be something I dismissed fairly readily. I - I think I allowed it to happen once for the Gaven State School, my own recollection, in regard to it.

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Well, did you have dealings with any other candidates?-- No.

Now, just so far as this fund, you obviously knew of David Power's involvement. What about Sue Robbins, was that ever-----?-- There was no discussion - the only discussion I had in regard to the fund was with David. I suppose I may have assumed Sue was involved but I - at the time I didn't know.

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Lionel Barden?-- No, I never - I never met Lionel at all.

So the first you heard of his involvement was when you rang Mr Hickey?-- Yes, that's correct. Obviously, the papers at the time there was - I was watching the previous session so it would have been around the same time as that.

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So about - sorry, it was sometime in March?-- Becoming aware of the name Lionel Barden, yes, it was around-----

That was sometime in March?-- That's right.

But you're not quite sure when?-- No, no. It would have been prior to the election.

Did you have any dealings with David Power in his role as chair of the northern planning committee?-- Yeah, I worked for Council from 1995 through to 2001 so I - I was - position there was coordinator of subdivisions and environmental assessment so I - David was the chair - from memory David was the chair from that time through to the election in '04. I certainly had a lot of dealings with him internally in Council. Occasionally outside of Council. From - I left Council in March 2001 and occasionally I would talk to David outside of Council.

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How long have you been at Stockland?-- March 2001.

So since working at Stockland you had dealings with him in that - on that committee?-- Yes. Yes. We have - our applications have gone through the planning committee and in mentioning - I mentioned to him that our applications are going to Council. He's the local Councillor in at least one - two of those applications and we make a point of keeping them informed of what's coming or what our business is and what's going to Council. Similarly for other divisions.

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Prior to the matter going to the planning committee?-- Yes. We've got four divisions that have our applications with them including - other Councillors I've contacted would be Peter Young, Dave Power, Grant Pforr occasionally and just recently Greg Betts.

What about Sue Robbins as the south - chair of the south planning committee up till the last election?-- Yeah. Sue I know - I knew fairly well. I'm the president of a surf club down in her area. I've been president for seven years and we used to regularly catch up in regard to community issues down that end of the Coast.

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What about in her role as - on the planning committee?-- The only - the only site we have on - in the southern half of the city is the observatory. I can't - I can't recall visiting her for any particular issue or anything else.

40

Did you have any knowledge of Quadrant?-- No. Not until recent press or the recent hearing.

So you weren't aware that some - this money was going to Quadrant?-- No, not at all.

Are you aware of who else donated to the fund?-- I couldn't list them but I've seen lists-----

Apart from media?-- No. No.

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Did Councillor Power say who else was donating to the fund?-- Not - no.

Either specifically or general terms?-- No. No. I - no.

At the time of making the donation did you have any concerns as to the fact of Stockland making a donation being made public?-- No.

1

Did you have any knowledge of a proposed function to meet the candidates - for donors to meet candidates on the 10th of March at Lakelands Golf Club?-- No.

Did you have any knowledge of a proposed function to meet the candidates on the 25th of March 2005 at Innovation Showcase?-- No. Only through reading transcripts and whatever, not - not at the time.

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Can I ask you why you chose to donate in this way as opposed to direct to candidates that you want?-- I suppose in the scale of things we were prepared to give \$10,000 and whatever way that would be most usefully used we saw as a vehicle for doing that through the arrangements we talked about. I doubt whether I would go and just single out individual people. The reason we chose it all in February was to stop individuals and you know if anyone approached us I could say we're already taking account of possible donations, thanks very much. That didn't eventuate but it was - I suppose a more formalised way of doing it than individuals.

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I don't have any further questions, thank you, Mr Chairman.

CHAIRMAN: Yes, thank you. Mr Newton or anyone else?

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MR TIPLADY: Thank you, Mr Chairman. Mr Dutton, I appear for Councillor Power. I'll just be quite brief. Can you tell me how long you've known Councillor Power?-- Since I joined Council as a mentioned before in December '95.

And you told us earlier that there was some concerns about the Gold Coast City Council in the early part of - probably after the 2000/2001 election. Could you just expand on what those concerns were?-- I suppose in regard to the performance of some Councillors and obviously the agenda throwing incident was always making - being referred to. I think that was in 2000-odd - sorry, 2003-odd. I can't recall. But generally in regard to the real issues in regard to the city, in regard to dealing with the highest growth rate in Australia. Obviously we're a big part of that and to me I suppose the most disappointing part was the Council not keeping up with that growth and dealing with that growth appropriately whether it be by direct funding themselves or whether it be by rates or whether it be by influencing the State Government or whatever to help with infrastructure. To me the infrastructure issue was probably the biggest issue on the books at the time and I don't think all the Councillors were tuned in to the whole of the city issues.

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If I could now take you to the conversation you had with Councillor Power that led to the donation. Can I put it to you that David said words to the effect that he'd like to get

some support for some sensible well-balanced candidates and that he was looking to ensure that there were sensible people in the City Council?-- Oh yes. Yes. Yeah, probably put it better than I did before but, yeah, that's the general gist of the conversation.

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And there was no discussion about any favours being done in returns for the-----?-- No, not at all.

-----for a donation. You briefly canvassed that you had some contact with Councillor Power about developments, that was commonplace to discuss that with local Councillors where the developments were occurring?-- Yes. Yes. Very much so.

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Nothing further.

CHAIRMAN: Thank you. Anyone else? Mr Newton?

MR NEWTON: Mr Dutton, are you yourself a resident of the Gold Coast?-- Yes, I live at Currumbin.

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Currumbin?-- Yes.

Right. And how long have you been a Gold Coast resident?-- 1992.

I see. So a long standing resident?-- Yes.

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And interested voter?-- Sorry?

And interested voter?-- Yes. Yes.

All right. Now, I just want to ask you something about your association with Mr Power, when you were an employee of the Gold Coast City Council. I think you said that you were the coordinator for subdivisions and environmental assessment?-- That's correct.

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Right. Now, could you just remind me of what association you had with Mr Power in that capacity?-- My role was to coordinate those applications and present them to the two planning committees on a weekly basis, so I was dealing directly - there was seven Councillors plus a Mayor on each committee and-----

Sorry, go ahead?-- So that was a weekly basis. Also, in regard to discussions on individual applications and assessment of applications, it was fairly common place in "without prejudice" meetings and everything else.

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And what association did Mr Power have with the planning committee?-- He was the Chair - sorry.

Chairman of which planning committee?-- North - planning north.

Okay. And you had those meetings every week with him I think?-- Yeah. Yeah, that's right.

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How long would they last for?-- Hour, hour and a half, on average.

All right. And did those meetings take place over the whole of the period of time for which you were a Council employee?-- Yes.

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What was your view of Mr Power?-- I think - well, David was very planning focused, as in town planning focused. I think he's a strategic thinker. I think he's got the interest of the city first. I'd say between him and Sue Robbins, they were probably the leading Councillors in regard to understanding the issues of planning and growth and the way that the city goes - the way the city goes forward.

These are the infrastructure issues to which you referred a moment ago?-- Yes, the infrastructure issues follow up the town planning aspect and I think him and Sue Robbins probably had the best handle on those pressures.

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I have nothing further for Mr Dutton, Mr Chairman.

CHAIRMAN: Thank you, Mr Newton.

MR RADCLIFF: I do have one very brief question, if I may?

CHAIRMAN: Yes, Mr Radcliff.

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MR RADCLIFF: I appear for Councillor Shepherd. You spoke just a moment ago about the "without prejudice" meetings; could you explain to the Tribunal what you mean by that? What - how does this - this process of these "without prejudice" meetings take place in respect of Councillors and developers?-- Yeah. I can't speak for today, but-----

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No?-- -----certainly in my role, if there was appeal in regard to an application-----

Yes?-- -----the normal process would have been to - people requested a "without prejudice" discussion with their solicitors in tow. The normal attendance at those "without prejudice" discussions would be the appellant's solicitor and the appellant counsel and their representing solicitor, the planning Chair and normally the local Councillor.

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Yes and the planning Chair would in effect take control of this mediation, so to speak?-- Yeah. Yeah. They would try and keep the proper process. A lot of the time the representative Councillor's solicitor would help ensure that the meeting progressed properly.

Mmm. So this has occurred after someone's lodged a development approval and it's been rejected for - either wholly or in part?-- Yeah, that's correct.

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And this was an informal and "without prejudice" attempt to resolve it without the need to go on to an Appellate Court process?-- That's correct.

And out of that, once the - if consensus was reached as to what the proper course would happen, what would be the next step after that?-- A report would then go back through the officers, back to the planning committee-----

10

Yes?-- -----for consideration and it would be discussed there.

Generally approved at that point, or could it then be rejected once again?-- Oh, it could be rejected, it could be approved. It could be - conditions approved or it could be - remain to be rejected. It's a fairly open process.

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Yes. Yes. All right. Thank you. Thank you for that, Mr Chairman.

CHAIRMAN: Nothing arising?

MR NEWTON: No further questions. May Mr Dutton be excused?

CHAIRMAN: Yes, thank you, Mr Dutton. You're excused. Thank you for your evidence.

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WITNESS EXCUSED

MR NEWTON: Mr Chairman, I call Brent David Hailey. Mr Hailey's represented by Mr Cronin.

CHAIRMAN: Good afternoon, Mr Cronin.

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BRENT DAVID HAILEY, SWORN AND EXAMINED:

MR CRONIN: Sorry, I should record my attendance, Cronin initials B.G. instructed by the solicitors for Villa World.

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CHAIRMAN: Yes. We do have the situation that if counsel appearing for the witness desires, you can take the witness through his evidence first or you can perhaps leave Mr Boyle to do it and ask questions later, whichever you'd prefer.

MR CRONIN: I saw the process that happened with the last witness. I'm happy to follow that and let Mr Boyle start it, thank you.

MR BOYLE: Witness, your full name is Brent David Hailey; is that right?-- That's correct.

You're the Chief Executive Officer of Villa World Limited?-- That's correct.

You've held that position since the 8th of September 2003?-- That's correct.

And you're also a director of Villa World Limited?-- Correct.

You've been served with an attendance notice. Would you just have a look at this document, please. Is that the attendance notice that was served on you?-- Correct.

Okay. I'll tender that, Mr Chairman.

CHAIRMAN: Exhibit 168.

ADMITTED AND MARKED "EXHIBIT 168"

MR BOYLE: And I'll get you to look at this other document. That's a notice to discover which was issued by the Crime and Misconduct Commission on Villa World. Is that the document that was served on Villa World?-- Our legal counsel would probably have to answer that question.

Okay, all right. Well, in response to a notice, Villa World provided certain information including a statement by yourself; is that right?-- Yes, correct.

And certain documents?-- Correct.

All right. I tender the notice to discover.

CHAIRMAN: Exhibit 169.

ADMITTED AND MARKED "EXHIBIT 169"

MR BOYLE: Now, I'll get you to look at these documents now, please. These are two letters from Villa World and also a copy of a statement by you and two annexures. So that - there's a statement by you dated the 22nd of August 2005?-- Yes, correct.

And two annexures. And there's also two letters from Villa World that - would they have been prepared on your instruction?-- Not the first one and not the - not the second

one. I'd suggest they've probably been prepared at the instruction of our in-house legal counsel.

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Okay. All right. Well, I'm going to ask you some questions now relating to your statement. You said in that statement that you had a meeting with David Power?-- That's correct.

On the 23rd of February 2004; is that correct?-- That's correct.

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That was at Villa World's office?-- That's correct.

And you've produced your diary which shows that?-- Correct.

Now, you were contacted by David Power prior to the meeting obviously?-- I think he might have contacted my PA requesting a meeting and she would have asked me if that was okay and I would have in the normal course said "yes".

Okay. Well, what - Villa World, what sort of work is that company engaged in?-- Primarily residential property development.

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Whereabouts?-- Melbourne or greater Melbourne, greater Sydney and South-East Queensland.

Including the Gold Coast area?-- Yes, indeed.

You weren't told anything as to the purpose of the meeting?-- No, not at all.

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Okay. Now, he - so far as the meeting is concerned, he asked you for a donation; is that correct?-- That's correct.

Did you have any dealings with any other councillors relating to donations?-- No, none. Not - not Gold Coast councillors.

Right. Okay. Now, what - if you're able to just expand on what you say in paragraph 4, did he say anything else as to the councillors that would receive the benefit of such a donation?-- No, they weren't identified in detail to me. He just said that he would be supporting other candidates standing against those candidates who were not sensible, if you like, in - in decision-making within Council.

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Supporting other candidates that were sensible. Did he say anything more about those candidates?-- Not that I can recall, no.

He didn't name them?-- No.

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He didn't say what their views may be-----No.

-----on various issues?-- No.

Or development-----?-- No.

-----more particularly?-- No, we didn't discuss development.

Obviously Villa World made a donation?-- Yes.

Of \$10,000?-- That's correct.

What was the reason for the donation?-- In - in support of sensible candidates in Council.

What do you mean by "sensible"?-- People who will actually listen when - when you make an approach to them, consider your - your position objectively and then make a sensible decision.

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And obviously in the case of Villa World, you're involved in development and obviously Council exercises planning powers and makes decisions as to approval processes?-- All the time.

So would it be right to say that the company had an interest in ensuring the money went to candidates with views that as councillors would favour development?-- No, that's not the case at all.

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What about would not hinder development?-- The primary frustration in the development industry is people who stand up and say no development whatsoever and will not listen to a point of view and will not listen to rational argument being put on the table or rational debate. So to support what I call sensible candidates is the proper thing for a company to do and not only development companies but any company.

You used the words in your statement, "a person such as Councillor Power and other candidates with a similar, progressive approach towards the development of the Gold Coast."?-- Correct.

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Does that - you seem to be saying that you want someone that listens but here in the statement you're saying you want someone with a progressive approach towards the development of the Gold Coast?-- Of the Gold Coast as a city, yes, not saying no development on the Gold Coast.

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Right?-- We are a development company; we want to see progress. So to support that is sensible from a company point of view.

Did he say what - who the other potential donors might be to this?-- No, that wasn't discussed. He mentioned other developers, that he was canvassing other developers and other industries.

All right. In your paragraph 6 you say, "I was openly canvassing all development companies."?-- Yep.

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Okay. But he certainly didn't mention anyone other than developer companies?-- I think there was a reference to the boat industry during the conversation.

Okay. What was your understanding as to the administration of the donation; who was to control the money?-- I had no knowledge of that.

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And did you know which candidates it was to go to?-- No, I had no knowledge of that.

Did he tell you how the candidates were to be selected?-- No.

Did you know what was to happen to the money, at least initially?-- To be put into a trust fund.

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Right. And then after that?-- No. No, I - my assumption was that he would receive the majority of it and if he was wanting to support other candidates, he might use some of the funds for that.

You were aware that it would go to - it was your understanding from your meeting with Councillor Power that it was to go to a number of candidates?-- That he would be supporting a number of candidates, but he didn't actually talk about how it was to be rationed out.

20

And you mentioned the word trust fund, did he mention that?-- Look, I don't recall. I remember him saying that there was a fund. Yeah, I don't recall.

Did he give the fund a name?-- No.

Can I just take you to the minutes of 26th February. That's Exhibit BH2. It's an extract of the minutes from 26th February. When were those minutes prepared?-- We had a discussion about that this morning. We suspect that - in the ordinary course of our business, the minutes are generally prepared up to probably three weeks after the Board meeting taken out of the notebook of our company secretary, and I haven't checked with her, but I suspect that she prepared the minutes after 11th March, because it was - I think you'll find in Mr Lambert's evidence that it was on 11th March that we became aware of the name of the trust fund.

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Right?-- So, even though the meeting was held prior to that date, I suspect in preparing the minutes, our company secretary who was a signatory to the payment, had then become aware of the name and inserted it in there.

Right. Okay. So to the best of your knowledge as at 26th February, you didn't know that name, Lionel Barden Commonsense Campaign Fund?-- That's correct.

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Are you certain about that?-- Yeah, I'd be very certain about that, yeah.

And it's only because you've now looked at subsequent emails which appears to show that that's the name of the fund?-- Yes.

Which was some time later in March?-- Yes.

And you can't think of a name it was given at the actual meeting on 26th February?-- No, I don't think anything of that nature was discussed at that meeting.

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You would have just said David Power approached you?-- At the Board meeting, yes, I had an approach from Councillor Power.

All right. So it was - and you're aware that the donation was subsequently made on 12th March 2004?-- Yes.

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From other documents you've seen?-- Yes.

Of \$10,000?-- Correct.

Okay. So, did he give you any direction at the time of the meeting as to how it was to be paid - who to?-- Who to?

David Power, who the-----?-- No.

Was there mention of a money amount?-- Yes, yes.

20

Did he suggest \$10,000?-- Correct.

And there was no conditions placed on it by you?-- No, none.

Or the Board I should say?-- No. No, not to my recollection.

Do you have any knowledge as to who in fact benefited from the donation?-- Through the media is the only way I've sort of discovered subsequent to - to making the donation.

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Okay. Was there any discussions with Councillor Power as to whether candidates were to know the source of the funds donated?-- No. No, discussions.

Or vice versa, whether the company was to know which candidates got the benefit of the funds?-- No. No, no discussions.

So what was your understanding as to the fact that some candidates were to get the benefit of this and others were not, was that simply at Power's absolute discretion?-- I have no knowledge how it was going to be administered. As I say I assumed the majority of the money was going to go to Councillor Power, so. I wasn't sure how - to what extent he was supporting other candidates.

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But as to who and how much others might have benefited was up to him to your knowledge?-- Yes, correct.

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Why did you choose to donate in that way and not direct to other candidates?-- We only had one approach.

And that was by Power?-- Yes, correct. One approach for the Gold Coast elections.

Did you have any knowledge of Roxanne Scott?-- No.

Or Grant Pforr?-- No.

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Greg Betts?-- No.

Brian Rowe?-- No.

Did you have dealings with any other candidates?-- No.

So you knew David Power was involved in at least talking to you about getting a donation. Do you know whether Sue Robbins was involved?-- No.

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Anything said to you along those lines?-- No. That name never came up.

Was there any mention to you with - in that meeting about Lionel Barden?-- No, none.

Or Tony Hickey?-- No.

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Quadrant?-- Not in that meeting, no.

Was it mentioned subsequently?-- Not - not in conversations with David, no. Or with anybody in connection with the elections, no.

Did Quadrant come up subsequently?-- Oh the confusion with Quadrant is that they're our marketing agents.

Right?-- Yeah, but-----

30

But so far as their involvement in the Gold Coast election?-- No discussions.

Did you have any dealings with Councillor Power in his role as chair of the planning committee up till the last election for the north planning committee?-- Yes, on one occasion.

And that related to a Villa World development?-- Yes, indeed it did.

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And that - was that some form of meeting prior to the planning committee meeting?-- No. No. It was a - it was a direct approach. Do you want me to elaborate?

Yes?-- Yeah, it was a direct approach. We had an approval on a project and we were constructing that project and Council officers advised us that there was a water supply issue in the area and that part of our project or the plans for part of our project wouldn't be able to be registered and that was contrary to the approval that was in place. So we contacted Councillor Power - that was late in 2003 - and I went and met him and that was where I met him for the first time and said, you know, there's our approval, this is what the Council officers are saying, this can't happen and he said, "You're entirely right." So he said, "That's fine, leave the matter with us," and we continued with our construction, continued

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with the registration of the plans. It was a Council issue not a developer issue.

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Right. So that was a matter that didn't have to go ordinarily to the committee or to Council?-- No. No.

So-----?-- No, it was a bureaucrat flexing his-----

You were-----?-- -----flexing his muscles if you like and we were getting nowhere with the bureaucrat.

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Where was that development?-- At Coomera, Upper Coomera.

What road?-- It'd be the end of Days Road.

Okay. Did you have any concerns as to the fact of Villa World making a donation being made public?-- No. No, expected it to be.

Did you have any knowledge of a proposed function to meet candidates on the 10th of March 2004 at Lakelands Golf Club?-- No, none.

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Did you have knowledge of a proposed function to meet candidates at Innovation Showcase on the 25th of March 2005?-- No, none.

You're not aware specifically who may - who else may have made donations towards this fund?-- I've seen-----

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Apart from the media?-- Media - yeah.

When he said he was canvassing all development companies did he mention them by name to you?-- No. No, it was a general statement.

Mr Chairman, I tender the documents produced by this witness.

CHAIRMAN: Yes. Mr Hailey, Carolyn Barton is your company's company secretary and chief financial officer and that is her signature on those letters?-- That's correct.

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Yes, all right. Thank you. those two letters, Mr Hailey's statement and the attachment will be - attachments - will be Exhibit 170.

ADMITTED AND MARKED "EXHIBIT 170"

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MR BOYLE: I don't have any further questions, thank you, Mr Chairman.

CHAIRMAN: Thank you. Yes?

MR RADCLIFF: I have no questions.

MR TIPLADY: Thank you, Mr Chairman. I appear for Councillor David Power. Just a few quick questions. How long have you known Councillor Power?-- The meeting I referred to regarding the Summit and Ridge project, the one at Upper Coomera, was the first time I met Councillor Power, so-----

And I think we've-----?-- -----late - late 2003.

-----put it at late 2003?-- Yeah.

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Okay. If I can take you to your meeting with Councillor Power. Now, correct me if I'm wrong, we're going back about two years now; would that be correct - maybe even longer?-- The one-----

In February?-- Yes. Yeah.

So I don't expect you to remember word perfectly what was said to you by Councillor Power at that meeting. But I put it to you that David said words to the effect to you that he was canvassing the business community on the Gold Coast looking for donations to ensure that sensible candidates were put into Council and that he was looking to ensure that the Council would make sensible decisions?-- The - the words I can't say specifically but the context is right.

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But words to that effect, anyway?-- Yes.

MR BOYLE: Mr Chairman, it might be a better approach if individual propositions - there was a number of things that were put. If it was did he mention sensible, did he mention-----

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CHAIRMAN: There were a couple of propositions in that, Mr Tiplady.

MR BOYLE: And we don't know which-----

CHAIRMAN: Perhaps it's easier to put one at a time and then we know that each one is specifically agreed to or disagreed with.

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MR TIPLADY: I'll just go back through that. So Councillor Power said to you that he was looking to get sensible candidates into Council?-- Correct.

And that by sensible candidates he meant people that would be willing to listen.

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MR BOYLE: Mr Chairman, as to what Mr Power may have thought or what this witness understand-----

CHAIRMAN: But this is being put what Mr Power said.

MR BOYLE: Yes, but I understood him - what Mr Power meant is the way the question was worded by what he meant by sensible candidates, that that was - well, this witness can only

comment on what he thought he meant by sensible, not what Mr Power thought.

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CHAIRMAN: Well, this witness can tell us what he understood by what he thought by that comment. Yes, all right. I don't know that I want to take up a lot of time with it.

MR TIPLADY: And that Councillor Power said to you that he was looking to ensure that there were sensible people in the Council?-- Sensible candidates, yes - sensible people in Council, correct.

10

Councillor Power also said words to the effect to you that he had had a lot of feedback that the business community was not happy with the performance of Council?-- I don't recall having a discussion specifically about that.

There was no discussion about Council needing to lift its act?-- I don't - I don't recall it at that time.

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And you mentioned in your evidence earlier that Councillor Power said to you that he was also canvassing other industries and one of them was the boat industry. So would you agree with me that, in fact, he was canvassing more than the development industry-----

CHAIRMAN: Well, you can only ask what he was told and not what Mr Power was actually doing.

MR TIPLADY: So you were told that Mr Power was canvassing more than the development industry?-- Yes, indeed.

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Now, in return for the donation, there was no promise of favours made to you by-----?-- Absolutely not.

-----Councillor Power. Nothing else.

CHAIRMAN: Yes, thank you. Anyone else? No. Mr Cronin?

MR CRONIN: No questions, sir.

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CHAIRMAN: Thank you, Mr Cronin. Mr Boyle?

MR BOYLE: No questions. May Mr Hailey be excused.

CHAIRMAN: Yes. Thank you, Mr Haily, you're excused?-- Thank you very much.

Thank you for your evidence.

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WITNESS EXCUSED

MR BOYLE: I call Gerald Adrian Lambert.

GERALD ADRIAN LAMBERT, ON AFFIRMATION, EXAMINED:

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MR BOYLE: Witness, your full name is Gerald Adrian Lambert; is that right?-- That's correct.

You're the General Manager Corporate of Villa World-----?-- Correct.

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-----Limited?-- Correct.

You've held that position since the 15th of February 2005?-- Correct.

You've been served with an attendance notice?-- Correct.

I'll show you that?-- Correct.

I'll tender that attendance notice with the oath of service attached, Mr Chairman.

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CHAIRMAN: Exhibit 171.

ADMITTED AND MARKED "EXHIBIT 171"

MR BOYLE: You're aware the company Villa World Limited was served with a notice to discover by the-----?-- Yes.

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-----Crime and Misconduct Commission. As a result of that you've prepared a statement?-- Correct.

Is that right?-- Yep.

You've prepared a statement dated the 22nd of August 2005 and it has a number of attachments?-- Correct.

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And you've got a copy of that there, have you?-- I do, yep.

All right. I will tender - the notice to discover is previously Exhibit 169, and I will tender this statement of information provided by Mr Lambert and documents attached.

CHAIRMAN: Yes, that's Exhibit 172.

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ADMITTED AND MARKED "EXHIBIT 172"

MR BOYLE: Now, Mr Lambert, I'll ask you about some of the information contained in your statement. You were approached by Brent Hailey on the 23rd of February 2004?-- Correct.

And he told you about being approached for a donation?-- Yes.

Prior to that time, had you received any request for a donation from any councillor or anyone else?-- No.

For the Gold Coast election?-- No, no.

Now, what did Mr Hailey tell you about the fund that was being set up?

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CHAIRMAN: Well, are you wanting extra to what's in the statement.

MR BOYLE: Yes, in addition.

CHAIRMAN: I don't want the witness-----

MR BOYLE: Sorry, if you have any-----

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CHAIRMAN: -----to just repeat what's in the statement.

MR BOYLE: All right.

Well, I'll ask you this. You say, "Brent Hailey also advised me that an independent fund was being organised to fund candidates who had a similar approach to Councillor Power." Can you recall him telling you that?-- Well, I can - yes, I can recall him telling me words to that effect.

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Well, what did that mean to you when he says, "had a similar approach - candidates who had a similar approach to Councillor Power"?

CHAIRMAN: Is it really relevant what it means to this witness? This witness carried out the financial transaction. I don't know that I'm going to gain much by what this witness understood.

MR BOYLE: Sorry. I should clear this up.

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CHAIRMAN: Mr Hailey-----

MR BOYLE: You're a director, aren't you, of-----?-- I was until last Thursday. I retired at our annual general meeting.

Right. So you were present at this board meeting where this was discussed?-- Correct, correct.

So you were part of the decision-making process?-- Correct, yes.

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Okay. Well, Mr Chairman, I'd submit it probably is-----

CHAIRMAN: All right. But it's common sense, isn't it? I think we can all understand what it means.

MR BOYLE: Well, if it just says in the statement "similar approach to Councillor Power", what does that mean? 1

MR CRONIN: It is objectionable. It's second-hand hearsay.

CHAIRMAN: It means what it says I would have thought. But all right. Look, I thought we might finish this witness by lunch time.

MR BOYLE: I'll move on. 10

Can you recall whether there was any mention of Lionel Barden at - you see the minutes, the first exhibit there?-- Correct.

GL1 refers to Lionel Barden Common Sense Campaign Fund?-- Correct.

Can you recall that name being mentioned at the board meeting?-- No. I can recall that it was not mentioned. 20

It was not mentioned?-- No.

Okay. Can you recall whether the fund was given any particular name?-- No, it wasn't.

Okay. Now, there was an e-mail that was sent by Shannon Hill?-- Correct.

Is your personal assistant?-- She is. 30

And she sent an e-mail to Sandra Wild at Hickey Lawyers. Was that done at your direction?-- Yes, would have been, yes.

How did you first become aware of the involvement of Hickey Lawyers?-- Can't specifically recall but I believe Brent would have told me subsequent to the board meeting or subsequent to our decision to donate that we should call Hickey Lawyers to find out the details for the donation. And I would have instructed Shannon - it appears to me that she called Sandy and then they had an exchange of e-mails. 40

It seems that she sent an e-mail giving the account details to which the money was to go to?-- Correct.

And then your personal assistant sent an e-mail asking for the name of the fund?-- That's it, yes.

And she uses the words, "Is it the David Power campaign fund"?-- Yes, yes. 50

Now, is that something you told her or-----?-- Possibly. I mean, to that point, that's the only name we would have heard.

Right. So as at the 11th of March-----?-- Yes.

-----that was the only thing-----?-- Yes.

-----you knew it by?-- Correct, based on this exchange of information, yes.

1

All right. And subsequent to that there was a cheque-----?-- Yes.

-----sorry - there was a donation on the 12th of March 2004?-- Yes.

And a receipt was issued which is part of the attachments on the 15th of March?-- Correct, yes.

10

Did you have any discussions with Councillor Power at all about this particular-----?-- No.

What about Mr Hickey?-- No.

And you never had any dealings with any other candidate involved in the election?-- No.

20

Did you have any knowledge as to who the money was to benefit in the election?-- No.

And you - did you have any information as to how candidates were to be selected to get the benefit of this?-- No.

As a director of the company, did you have any concerns as to which candidates the particular money was to go to?-- No.

Why is that?-- Well, it was a recommendation from the CEO based on - you know, so I accepted that recommendation of the director so.

30

So all you knew was that David Power made some request?-- Correct.

And you had no other idea as to where the money was to go?-- No.

And you're not aware of - are you aware of any other people who may have donated to the fund?-- Only through subsequent media releases.

40

Do you have any knowledge of Quadrant?-- They're our advertising agency.

Apart from-----?-- No, no. In this context, no.

In the context of the campaign?-- No.

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No further questions, thank you.

CHAIRMAN: Any questions? No. Yes, thank you?-- Thank you.

You're excused, thank you for your evidence.

WITNESS EXCUSED

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CHAIRMAN: Adjourn till 2.15, thanks.

THE HEARING ADJOURNED AT 1.00 P.M. TILL 2.15 P.M.

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THE HEARING RESUMED AT 2.18 P.M.

MR BOYLE: Mr Chairman, I call Constantine William Nikiforides.

MR CRONIN: I appear on behalf of Mr Nikiforides.

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CHAIRMAN: Having a busy day, Mr-----

MR CRONIN: Today.

CONSTANTINE WILLIAM NIKIFORIDES, SWORN AND EXAMINED:

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MR BOYLE: Witness, your full name is Constantine William Nikiforides; is that right?-- Yes, that's right.

You're the Chief Executive Officer of the Niecon Group?-- Yes.

And Blue Sky Capital Proprietary Limited is one of its companies?-- That's right.

Okay. You've been served with an attendance notice; is that correct?-- Yep. Yes.

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And I'll show you that document. That's a copy of the attendance notice that was served on you?-- Yes.

I tender that document, Mr Chairman, and the oath of service is attached.

CHAIRMAN: Yes, Exhibit 173.

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ADMITTED AND MARKED "EXHIBIT 173"

MR BOYLE: A notice to discover was issued by the Crime and Misconduct Commission to Blue Sky Capital Proprietary Limited is that right?-- Yes.

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And that's a copy of a notice that was served on your - on that company through your solicitors?-- Yes.

All right. I'll tender the notice to discover.

CHAIRMAN: Exhibit 174.

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ADMITTED AND MARKED "EXHIBIT 174"

MR BOYLE: In response to the notice to discover, you prepared a statement; is that right?-- Yes.

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And a number of documents were attached to that statement?-- Yes.

I'll just show you that document. Now, Mr Chairman, I understand Mr Cronin wants to ask some questions in relation to that statement before it's tendered.

CHAIRMAN: Certainly.

MR CRONIN: Thank you. Do you have a copy of your statement, Mr Nikiforides?-- Yes, I do.

30

Can I take you to paragraph 4 of that statement. Well, first of all, is the statement true and correct to the best of your knowledge and belief, except with respect to a date appearing in paragraph 4?-- Yes.

The date in paragraph 4, the date of the 17th of March 2004, have you had cause to reconsider the accuracy of that date?-- Yes, I have.

40

Would you have a look at one of the annexures. Is there a diary annexed to it of February diary?-- Yes, there is.

And if you look at - there's an entry on the 17th of February?-- Yes.

Have you had regard to that diary entry?-- I have.

In addition, do you have an email dated the - well, it bears two dates. It was originally sent on the 24th of February 2004 and again on the 1st of March 2004?-- No, I don't.

50

You haven't. Well, perhaps another copy could be-----?-- Actually I do, sorry.

You have found it; good. Now, having regard to those emails and the entries in your diary what's now your belief about

that date that appears in paragraph 4 of your statement?-- Yes.

1

What is your belief about the date, is it correct or not?-- No, the date's incorrect.

And what do you believe the date should be?-- Instead of it being the 17th of March it should have been the - approximately the 17th of February.

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Okay. Now, you had a meeting on the 17th of March at Brian Ray's office?-- Yes.

And was that the meeting attended by Councillor David Power? You refer to that in paragraph 6 of your statement?-- Yes.

Can you tell the Commission what was said by David Power about the councillors who were positive and trying to work and get things to happen - I'm paraphrasing your statement. What was said by him?-- It was just a - it was a general statement that - just a general statement.

20

Well, did he name the councillors who were positive?-- No. It was just - it was understood that there are positive-type councillors and it would be - and those who were not as positive, that's all.

And then he proposed to arrange a meeting at which people would meet councillors and candidates. Did he name any candidates?-- No.

30

When you received the email from Brian Ray - it's referred to in paragraph 9 of your statement - asking for the \$10,000 donation, what did you think was to happen to that sum of money?-- It was to go into a trust and-----

Well, whose trust?-- Into either Hickeys - Tony Hickey's trust.

And-----?-- Solicitors' trust.

40

Okay. And who was to control that money?-- From what I understood, Brian.

Brian Ray?-- Yeah.

Do you have any belief that it was to be controlled by David Power or any candidates-----?-- No.

-----or councillors?-- No, definitely not.

50

Thank you. And now, in making that donation of \$10,000, did you have any belief that you would receive any benefit or advantage from doing so?-- No.

What was your motive in making that donation?-- Well, Brian asked me for a start and that - because he's a friend of mine, if he asked me for a favour I would do it as he would do for

me. And his argument was very simply that you'd need to facilitate a democratic debate by donating money to councillors. He said - at the time he said "standing councillors and - and candidates". In any case, I didn't think too hard about it; I just gave him the money.

1

Now, have you had any discussions with David Power at all about the elections - the 2004 election?-- We did on the day that I met him. It was very brief. It was a "how are you, nice to meet you" type discussion, that's all. It was very very general.

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Have you received any benefit from the Council or councillors in respect of that donation that could in any way be tied to that donation?-- Absolutely not.

No further questions, Commissioner.

I should have tendered that statement, I'm sorry. I don't know whether I did or not. Perhaps I should have.

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CHAIRMAN: Yes, that will become Exhibit 175, I think. Thanks.

ADMITTED AND MARKED "EXHIBIT 175"

MR BOYLE: Have you got an extra copy of the statement?-- I've got - I've got this copy and another copy.

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That's okay, all right. So long as you've got a copy. I'll ask you some questions about that. Now, paragraph 4, as I understand it, you say it was approximately the 17th of February; is that right?-- Approximately, yes.

And that diary entry on 17 February relates to a - at 5 p.m. you've got an entry in your diary there - does that relate to the telephone call with Brian Ray?-- I don't - I don't know. I don't remember. I know that around - around that time for me to have an entry in the diary that would say Brian Ray on it, which has been spelt incorrectly, I would have had contact with him. I'm not very clear on the exact dates but it's around that time.

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Is that your writing?-- No.

No. All right. So the first contact about making a donation was about the 17th of February and that was when Brian Ray contacted you?-- Around then, yes.

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So there was no previous asking for money?-- About this election, no.

No. Okay. Paragraph 5 - this is the telephone call and what Brian Ray is saying to you?-- Yes.

"Brian Ray said that he was organising a fund to assist councillors and candidates who were prepared to get things done on the Gold Coast." Did he say anything more about in what way these candidates were to get things done?-- Yes.

What did he say?-- He was very concerned about infrastructure more than anything else and the damn wall at that point in time was a very big issue in terms of fixing the road that goes through Surfers Paradise and also the dam. And amongst other things, he just felt that the Council was quite complacent and wasn't moving forward and getting things done. There was flooding in areas and he felt there should be - and he was quite animated about it. He really did believe that things should change and there should be more money put into infrastructure. By putting more money into infrastructure, it's better for the Gold Coast in general.

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Was there any talk in this conversation about developments or approvals for developments?-- No, not at all.

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Now, just going on to the next sentence. "He said he wanted to generate democratic debate about what should be occurring on the Coast and he thought that a fund" - did he give any details as to the fund at that point?-- The only detail he gave at that point was that there would be a fund and I can't remember any further detail about it. There wasn't - I thought it was quite embryonic actually at this stage. I think they were - at that point in time I think he was just thinking that he wanted to do something and he said, "I'm" - well, I haven't got in here but he did say that - I wouldn't be the only person that he's asking money for, he would ask other people as well.

30

Did he say what other people would be asked?-- No.

In general terms?-- I can only assume, I don't know.

You can't recall what he said about-----?-- Not exactly but he didn't mention any names. I could assume that it'd be all his mates but other than that, no.

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And in that initial conversation, he mentioned the \$10,000 figure?-- Yes, he did.

And I think in answer to a question by Mr Cronin, you were saying that there was - he was referring to candidates who were positive and those not positive-----?-- Yes.

-----is that right?-- He didn't refer to them specifically. He said that he thought there should be more positive councillors who believed in moving the Gold Coast forward, developing - developing the public infrastructure and having a more positive attitude because a lot of them didn't have a positive attitude. There was a lot of in-fighting at the time. People were throwing books at each other, carrying on and doing silly things so Brian was pretty dirty on that. He thought they were being silly and they should just move

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forward. He didn't mention at any stage that - who the money was going to be given to, whether he didn't like any particular councillor or not, it was very general. He just thought it just needs a bit of a shake.

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All right. Now, you then go into the meeting on the 17th of March at Brian Ray's office and there was a meeting with Brian Ray, David Power and yourself. Is that right?-- Yes, that's right.

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Again, you use the expression "councillors who were positive and who worked to try and get things to happen". Was anything said again in what way things were to get things to happen?-- Going back to that particular infrastructure point, at the time, trying to get through Surfers Paradise was an absolute nightmare and the focal point of what Brian was saying, and I would have to agree with him, and David Power at the time was that things were not getting done properly. It was taking too long to have approvals done for building of roads. They keep staying it. They wouldn't - the Council could never agree on how much money they would put into it. Then they'd take the money away and put it somewhere else. They didn't know whether they'd raise the dam walls or not. The didn't - in fact, they were having a hard time even with parks and gardens at that point in time where the Gold Coast being a very tourist orientated city, even the gardening was too much trouble. So right at that point in time, Brian and myself, to some degree, agreed with him that things did need to get a bit of a move on or everyone should - all the councillors should have shaken hands and just become more friendly with each other, more cooperative and take a cooperative bipartisan approach instead of the separate approach they were taking.

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All right. So you say there was difficulties with approvals for building roads; is that right?-- That's right.

And dams was mentioned?-- Yes.

Was the gardens mentioned?-- I remember Brian joking about fronds falling off the trees and not getting picked up.

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Right?-- Probably trying to make a point.

Just - the Niecon Group, what sort of work does that company engage in?-- We do a lot of different forms of property development. Our major developments would be in multi-residential, low-rise, medium-rise, and high-rise buildings, commercial, industrial and retail.

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Whereabouts?-- Mostly on the Gold Coast.

What about Blue Sky Capital; that's the company that made the donation, I understand?-- Each development we do is done by a different company within the group. So, for every single development, there's a company, and at that point in time, the development that we were doing, Blue Sky Capital was doing. So, we have - that company would be the developer of that site

and Niecon really is a branding group. It's not really - it doesn't actually do the developments itself.

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What development was Blue Sky involved in?-- It's a high-rise development in Labrador called Aqua.

All right. Now - and Brian Ray was a developer?-- Yes.

Well, can you tell me, was there any discussion then at that meeting with David Power about approvals for development applications?-- No.

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Or the problems that is experienced by developers with Council?-- No.

Not at all?-- No.

There's two developers present at the meeting and one councillor?-- Mmm.

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And you're saying there was no mention of developments at all?-- No.

And the conversation went for 20 minutes?-- Approximately. There was conversation between Brian and myself, though, about the Council. I think it would be a bit rude to speak in front of David Power, but certainly we would sit back and say, look, things could be done a bit differently.

You said that in the presence of David Power?-- Absolutely not.

30

No?-- It would be rude. Everyone can improve.

Yes. Well, at that stage you seemed to be indicating that Brian Ray was talking about a frustration, and you were talking about a frustration?-- At that meeting, yes.

More about infrastructure things?-- That's right.

40

A general infrastructure, not just development infrastructure, infrastructure for development applications?-- No.

No. So there was just no discussion at all?-- No.

Okay. He talked about a meeting with potential candidates; is that right - according to paragraph 7?-- Yes.

And I might just ask you: you say, I think from Mr Cronin's questioning, there wasn't any mention of who the candidates were?-- No.

50

So far as the control of money from the donations, do you know anything about who was to control the money from those discussion?-- I assumed that Brian was. He seemed quite passionate about it.

And you had formed the view from that meeting that money was to be used to promote the election of a number of candidates at that particular election?-- And councillors, if that falls into candidates.

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But was there any discussion as to the philosophical views of these candidates in terms of issues?-- Just people who believed in moving the Gold Coast forward. That's all. They didn't mention people. It was just a casual discussion where - meet David Power, hadn't met him before. He struck me as a pretty bright man and there was nothing - it wasn't discussed specifically other than they're both - sorry, generally, people who were - I think the term ratbags came up there somewhere from Brian. He just felt there was a few people in the Council that weren't pulling their weight or contributing to the city's progress.

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Did he mention them by name?-- No, he didn't.

Was there any talk as to who would make the decision as to which candidates would get the benefit of this funding?-- No, that remained a mystery to me, that's for sure.

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Well, you're donating a significant amount of money, \$10,000, you'd want to know that it's going to the right candidates, wouldn't you?-- The reality - when I was asked for the \$10,000, I gave it to Brian Ray, and Brian Ray is a friend and I trusted him, and I gave him the \$10,000, and I knew that - Brian was no fool, he'll just work it out for himself.

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So, does that mean at that stage you understood Brian Ray to be making those sorts of decisions?-- I thought he would be influential in it, yes.

Did you meet David Power again apart from that one meeting before the election?-- Before the election, no.

You said the money was to - I think in answer to questions from Mr Cronin, was to go into a trust, a solicitors trust account at Hickey; is that right?-- Yes.

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When were you told that, or was that the subject of an email?-- It was - yeah, the - when Brian asked for the money and after I'd agreed to give him the money, he said that, "You can send it to Tony Hickeys trust account," being above board.

Did he say that, being above board?-- No, I just added that.

Why did you add that?-- Well, I wouldn't really give - I wouldn't give \$10,000 to - if it was going to be shared amongst candidates and councillors, someone has to distribute it, no better than a lawyer to do that, I should imagine.

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So, it was to go into Hickey Lawyers trust account. Do you know what was to happen to it after that?-- No.

In making that statement before, was there any reason to your mind why you'd have to keep it above board because it was a

donation to a political purpose?-- No. As soon as \$10,000 leaves you and it goes somewhere and it needs to be distributed because you've been told it's going to be given to several people, there's no more logical space - place than a trust account. If you - at least they can account for it. If you give it to Brian, well, you don't know how good Brian's accounting is, do you? I'm saying that in jest.

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See, it seems from your material that a cheque was made out; is that right?-- Yes.

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To Hickey Lawyers Trust Account on 23rd March 2004. You've got a cheque butt there?-- Yes, 23rd March.

And so that would have been sent to Hickey Lawyers, the cheque?-- That's right.

You might not have seen this. It's not part of the material which you've provided. Just have a look at this document. This is part of Exhibit 99. This is an official receipt from Hickey Lawyers from the trust account?-- Right.

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From \$10,000 to the company, Blue Sky Capital?-- Yeah.

And you see it's got the client there, Mr L. Barden?-- Yes.

Or it's got Mr L. Barden there, Commonsense Campaign Fund. Have you ever seen that receipt?-- No.

Did the name Lionel Barden mean anything to you at that point?-- No.

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Okay. When you paid the money, did you place any conditions on it?-- No.

You had no knowledge as to who was in fact or who in fact actually benefited from the donation?-- No.

Was there - or it seemed to be Mr Power's, for you, that candidates would know donors and donors could know candidates from that meeting that you had on the 17th of March 2004?-- Could you-----

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He was speaking positively about candidates meeting donors; is that right?-- Yes.

So there was no - was there ever any discussion about keeping the two separate as in the donors don't know the candidates and the candidates don't know the donors?-- I - I remember that there was going to be a meeting to meet the candidates and then that was changed.

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That was cancelled?-- That's right. I believe so.

Yes. Was any reason given as to why it was cancelled?-- No.

Well, that was never suggested to you that that was a reason why the meeting was cancelled, because they wanted to keep the donors and candidates separate?-- No.

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Did you have any dealings with other candidates prior to the election?-- Candidates including councillors-----

Apart from what you've told us?-- -----that were seeking re-election.

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Yes. Did you have any dealings with any candidates-----?-- No.

-----prior to the election?-- Not - only - only with councillors who seeked re-election.

All right. Well, which - in the period leading up to the election, which candidates did you have contact with?-- I had - I had spoken to - I can't think of any actually other than in my normal business dealings I spoke to Jim McInally - no other candidates, no.

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And you've been asked about your motive for making the donation by Mr Cronin and you said that Brian had asked you and you did it, firstly, as a favour; is that right?-- Yeah, that - the primary reason for me giving the money was because I was asked by Brian to do so and I couldn't see anything wrong with that. You know, he asked and I said "Fine, Brian".

And you mentioned also at the same time about the argument that he put forward about facilitating democratic debate?-- Yeah.

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Did that argument have any bearing on your decision?-- I primarily made the decision to give the money to Brian because Brian asked for it.

Did you have any knowledge in the involvement of Quadrant?-- No.

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You said you hadn't had any previous dealings with Power; had you had any dealings with Robbins as Chair of the South Planning Committee?-- Yes.

Was that in respect of developments?-- Yes.

Would that have been at meetings prior to matters going to the planning committee?-- Yes.

How many development - approximately - would you have had discussions with her about?-- One at the time.

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Which one was that?-- In Coolangatta. That was her area as well and she, I must admit, was also extremely passionate about her area and how it - whatever development you did there must - had to be perfect and would have to have merit above and beyond any other development on the whole Gold Coast because it's in her - it was in her territory.

But it was in Coolangatta, which development's this?-- It was called "Reflection on the Sea".

All right. Did that development go ahead?-- Yes.

So you never had any dealings with Councillor Robbins about making donations?-- No.

Is there any reason you chose to donate this way as opposed to directly to candidates?-- I had no intention of giving any money to anybody actually unless Brian asked me. The only reason I gave it is because Brian asked.

And you're not aware of - or are you aware of who else donated to the fund?-- Now I am but back then, no.

Only because of media; is that right? Well, prior to the election were you aware of any other donors to the fund?-- No, I wasn't.

All right. Just on that point, I show you an email which is part of Exhibit 89. Have you seen that email of - it's an email of the 5th of March from Sue Davies to Niecon Developments?-- No.

Have you ever seen that?-- No, no.

Rosalee, who's she?-- Rosalee was my secretary. I never saw this before. I must add to that, I don't use a computer unfortunately and when e-mails come in, I would probably read about 10 per cent of them.

Okay. Well, in that document it details a proposed guest list. And you're aware that there was a function to be held on the 10th of March-----?-- Yes.

-----which Bernard Salt was invited to address. You have other e-mails about that?-- Yes, yes.

Just - we'll address that issue. 10th of March in your diary, there's a reference to Bernard Salt, Lakelands Golf Club?-- That's right, yes.

And then it's got "cancelled". Can you remember who told you about the cancellation?-- No, probably Rosalee.

Now, annexure B to your statement is an e-mail dated the 1st of March from Brian Ray to you. Can you see that?-- I'll just grab that. Which date?

Sorry, it's the 1st of March 2004.

CHAIRMAN: 1st of March, right.

MR BOYLE: Sorry, it's obviously - sorry - been re-sent on the 1st of March?-- Yes.

It's an e-mail of the 24th of February?-- The e-mails are out of order in this.

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Sorry?-- Yes, 1st of March and it was sent 24th of February, that one.

Right. Now, that relates to the function on the 10th of March?-- Yes.

Where you and other donors were to meet the people - the proposed candidates; is that right-----?-- Yes.

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-----to receive money from this money. Is that-----?-- Say that again, sorry?

That is who - candidates who were to receive money from this fund that you had discussions with Brian Ray about?-- Yes.

Okay?-- Not who had received, who-----

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Or who were going to receive?-- Yes.

Okay. It wasn't just a general meet the candidates, it was those to get the benefit of this election fund?-- I don't know that actually. The candidates that were coming were the candidates and some councillors and it was the ones who - people who we hadn't met before. Whether it was the ones who were going to get the money or not, I wouldn't know. I was actually more interested in the Bernard Salt part but setting that aside, the candidates that they had organised to come along, I was under the impression it was everybody.

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I see.

CHAIRMAN: Well, it does say the participants in the Council election fund. What does that refer to?-- That's what the e-mail says.

Yes?-- But my recollection is that the candidates and the councillors who were attending were people that I hadn't met before. That's the way it was put to me by Brian.

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Yes?-- "You haven't met these people before, would you like to meet them?"

All right, okay. Just the way I'd read that, it certainly speaks more as if it's going to be meeting those councillors and candidates who are participants in the Council election fund rather than-----?-- That's exactly-----

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-----other candidates who weren't going to be participating in the election fund?-- That's the way I would read this.

Right?-- But from what I remember Brian saying to me, it was more than that-----

I see. So he said something additional to what's in this?-- That's right.

Okay.

MR BOYLE: You saw this e-mail, I take it, back at that time?-- Yes, yes, I did.

And as a result, going back to that other e-mail that I showed you-----?-- Yes.

-----you asked your personal assistant to get more information as to the timing of those things. See, at the bottom of the page?-- Yes.

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Of Exhibit 89?-- I think the - not I think - the reason for that is there were two things happening at that time. One was the - was the Council election and the second thing that was occurring was that Bernard Salt was going to write a new book that - and he's quite influential in terms of his expertise in demographics and statistics. And at the time he wanted to write a book on the similarities between Fort Lauderdale in Florida, Phoenix Arizona and the Gold Coast in Queensland. He asked me to - to organise people from the Gold Coast City Council, from the UDIA and other organisations to sit down and have a chat about whether they wanted the book - and other developers - whether they thought the book was a good idea. And coincidentally, Brian was organising this meeting with councillors - that's where that came from - councillors and candidates and other people - and developers were going to attend. And I thought it'd be a good idea to get Bernard together with them all at the same time and kill two birds with one stone. So if you - so if you - from what I just - the only paragraph I read was this and I haven't seen this information that you gave me before. Rosalee could have verbally rung me and said, "Look, the meeting is on this date," and I said, "Check with Bernard to see when he's going to be there." And it says that he would only be available between 1.30 and 4.30 and Rosalee tried to organise with Brian Ray's secretary, Sue, to see if it would be possible to have Bernard there at the same time as this meeting with the developers, with councillors and with candidates to assist him with - to assist him with knowing whether he was going down the right track with his new book.

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Right. So, the meeting was to be attended by developers, candidates, councillors, Bernard Salt?-- And other organisations such as the UDIA, the Property Council of Australia, quantity surveyors, the - it was actually Alan Midwood who did the Rider Hunt report, amongst others, whoever could be mustered to go to this meeting.

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Right. You said you haven't seen this document before, but the people that are on that guest list there, are they essentially developers?-- Yeah, they're all familiar to me.

They're all developers?-- I don't think Lionel Barden is.

Right?-- Other than Lionel Barden and Tony Hickey to a degree, the rest are developers and financiers, yeah.

Great Southern Land, do you know of that?

CHAIRMAN: Mr Boyle, this meeting has been gone into now with about 15 witnesses. I don't think we need to go through all the details again. We've had it a number of times.

MR BOYLE: Can I ask you about that email of 1st March - sorry, the email of 24th February 2004?-- Yep.

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It's got: okay, please pay; is that your writing?-- Yes, it is.

Which company?-- Yeah, which company was a question to Ron - which would be the company that would be most appropriate to make a donation from.

I see?-- And the obvious one is the one that you're actually doing - is the development company at the time. I don't know how he does his accounting, put it that way.

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All right. So there was the meeting of 10th March which was cancelled and you've produced an email about that being cancelled?-- Yeah.

You've got that there; that's attached. It's an email of 10th March?-- Yes.

You see that it refers to undertaking - in the mean time they're awaiting the \$10,000?-- Yes.

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And it refers to an advertising agency that had allocated expenditure. You didn't have any knowledge as to who that was?-- No.

All right. Now, following the email you got a further phone call from Brian Ray; this is the email of 1st March, some time around a week or two before the election. Sorry, he rang you - this is paragraph 9. He rang you on 1st March; he then rang you about a week or two prior to the election?-- Yep.

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There was no more information given to you about the fund or anything at that point?-- No. I wasn't interested, anyway.

And you attended a function on 16th March, though?-- Yes.

At Innovation Showcase?-- Yes.

Now, there was to be a further meeting on 25th March; that's correct?-- Yes.

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And you didn't attend that?-- No.

And you don't know whether it went ahead?-- No.

Was it your understanding that that was to be a meeting with the participants in the Council election fund?

CHAIRMAN: The paragraph says it was?-- Yes.

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MR BOYLE: Well - sorry, when it says further meet the candidates function, I'm not sure whether that means generally the candidates or candidates who were to be the recipient of the fund. If you know the distinction-----?-- I was told clearly that it was a meet the candidates things. That's what I was told. What's on the email, as has been correctly pointed out, would allude to it only being those specific candidates who were getting money, but that's not the case.

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No, no, there's two different meetings, you see, one on 10th March-----

CHAIRMAN: Mr Boyle, I don't think it matters, does it? This witness didn't go to either of them.

MR BOYLE: What he was told as to the meeting on the 25th March-----

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CHAIRMAN: Well, quite frankly I don't care what he was told about it.

MR BOYLE: Did you have any concerns as to the fact of your donation being made public?-- No.

I don't have any further questions, Sir.

CHAIRMAN: Thank you. Mr Nikiforides, I note on paragraph 2, paragraph E, you say there was a payment of \$695 on 11th May 2005, that's this year, to Councillor Ted Shepherd. That presumably ties in with the invitation that you've got attached to your material?-- I'll just - I'll find that. Yes.

30

And I can see from that invitation that the 695 is for a table of 10?-- That's right.

Did you attend at the function?-- Yes, I did.

And were there 10 people from your organisation who went?-- There was, including myself, yes.

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All right. Okay, so there were 10 people who went to that?-- Yes.

Yes, okay?-- There - yes, altogether, yes.

Thank you.

MR RADCLIFF: Thank you, Mr Chairman.

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CHAIRMAN: Sorry, did I cut out your questions. All right, anyone else? Yes.

MR TIPLADY: Mr Nikiforides, I appear for Councillor Power. Just a few quick questions if I could?-- Yes.

If I could take you to the meeting in Mr Ray's office on 17 March 2004. I'd suggest to you that Mr Ray did the vast majority of the talking and Councillor Power said very little?-- That's right.

In answer to a question put by Mr Cronin earlier about this meeting, you answered that Councillor Power was the one that had proposed the meeting of the candidates. I suggest to you that it was in fact Mr Ray who had proposed that meeting?-- It was.

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And if I can just develop in paragraph 7 of your statement, I'd just like to put to you a conversation that may have occurred that Mr Ray had said to you words to the effect that "it would be nice to know what people stood for". Can you recall Mr Ray making a comment in that regard?-- At that meeting?

At that meeting?-- That is the spirit of the way Brian would speak, yes.

20

And I suggest to you that Councillor Power responded in words to the effect of, "I don't disagree with that, party politics will probably come to the Gold Coast in the next two elections but for the time being we've got a Council of independent councillors and people don't want party politics on the Gold Coast at the moment, but at least by contributing to a fund like this, you can hope we might end up with councillors who are sensible and responsible about how they approach the job"?-- He did mention the party politics, mentioned - in fact, the spirit - I can't remember the wording but it was very much like that but I do not remember him mentioning anything about the candidates in those-----

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All right, can I suggest to you that Councillor Power said to you that party politics would come-----?-- Yes.

-----in the future?-- That's right.

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And that at the moment the Gold Coast did not want party politics?-- That's correct.

Also, in that context, you say in paragraph 7 of your statement that Councillor Power supported a meeting where councillors and potential candidates would be able to discuss what they represented - it's the first three lines of paragraph 7. I suggest to you that in fact Councillor Power was in fact supporting there the fact that people should know what candidates stood for rather than a meeting; it was a change in emphasis, so to speak?-- You could say that, yes, I - to me it's very similar.

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But just to clarify, so we're saying that Power supported Mr Ray's proposition that it would be nice to know what people stood for?-- Yes.

Nothing further.

CHAIRMAN: No-one else?

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MR CRONIN: No, thank you.

CHAIRMAN: Nothing from you, Mr Cronin.

MR BOYLE: No further questions, thank you, Mr Chairman, may Mr Nikiforides be excused?

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CHAIRMAN: Certainly, thank you, Mr Nikiforides. Thank you for your evidence.

WITNESS EXCUSED

MR BOYLE: Mr Chairman, I call David Devine. He's represented by Mr Hastie of Counsel.

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MR HASTIE: Thank you, Mr Chairman.

CHAIRMAN: Mr Hastie.

DAVID HAROLD THOMAS DEVINE, SWORN AND EXAMINED:

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CHAIRMAN: Now, Mr Hastie, do you want to lead Mr Devine through his evidence or-----

MR HASTIE: No, I thought I would let counsel assisting do that, Mr Chairman.

CHAIRMAN: Whatever you're happy with.

MR HASTIE: Mr Chairman, just for the avoidance of doubt, I'm instructed by Deacons.

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CHAIRMAN: Right, thank you.

MR BOYLE: Witness, your full name is David Harold Thomas Devine; is that right?-- Correct, yep.

You're the Managing Director of Devine Limited?-- Yes, that's right.

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You've been served with an attendance notice to appear here; is that correct?-- Yes.

Could you just have a look at this document. Is that the attendance notice-----?-- Yes.

-----you were served. I'll tender that. There's the oath of service attached, Mr Chairman.

CHAIRMAN: Exhibit 176.

ADMITTED AND MARKED "EXHIBIT 176"

MR BOYLE: The company Devine Limited was served with a notice to discover by the Crime and Misconduct Commission and that's a copy of that particular notice to discover?-- Yes.

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I'll tender that document, Mr Chairman.

CHAIRMAN: Exhibit 177.

ADMITTED AND MARKED "EXHIBIT 177"

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MR BOYLE: In response to that notice to discover, a statement - a two page statement by you dated the 26th of August 2005 was prepared; is that correct?-- Yep.

I'll just show you the - and that statement's true and correct, is it?-- Yes.

30

And also attached to the statement is a number of documents, a number of annexures; is that right?-- Yes.

Okay. Now, Devine Limited, what sort of work is that company engaged in?-- Devine Limited are major developers and home builders and high-rise developers in Queensland, Victoria, and South Australia.

Does that include development work in the Gold Coast area?-- Yes.

40

Okay. Now, in your statement at paragraph 2 you refer to being approached - sorry - you received a telephone call from Brian Ray; is that right?-- Yep.

Had you been approached by anyone prior to that time as to making a donation to any fund?-- I was approached by Gordon Douglas for the Gary Baildon fund around about that time. I'm not sure if it was before this but around about that time.

50

Right. Okay. But apart from that?-- No.

All right. Now, in that paragraph 2(a) you detail in quotes the words that Brian Ray used as best as you can remember; is that right?-- Yeah, that's - he did say that "It's a joke down here" at some stage. I remember him saying that. And then he went on to say that he was arranging or representing a group of developers to contribute to a fund.

Did he mention whether anyone else would be approached to deliver - to contribute to the fund?-- He mentioned - he mentioned a number of developers. The ones that I can remember are Villa World, Raptis, Sunland, Ray Group.

You can't remember him specifically mentioning anyone else?-- No.

And there he refers to the fact that a number of councillors are anti-development. Did he name any of those?-- No, he didn't name any councillors at all. He mentioned that there was a pro development group that - that he was setting up a fund for.

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All right. Did he use those words "pro development group"?-- I think it was more like a group of councillors who are interested in advancing development on the Gold Coast.

And your understanding that the money was to be used to promote the election of a number of those candidates; is that right?-- Yes, that's right.

20

Now, what was your reason for making the donation?-- Well, we had acquired a large or contracted to buy a large parcel of land at Currumbin and as I would normally do or as our company would normally do we would approach the local Councillor for the local authority and talk to them about the particular development. So around about October 2003 I approached the local Councillor in that area which was Currumbin to speak to her about the development we were proposing and I've been to a number of Council meetings in my 20 years experience in the industry but this was the most memorable one because I sat down at a meeting and she didn't want to listen to anything I had to say. I was represented there with a town planner and an architect of some note and we were treated like school kids in a school yard. So it was certainly a memorable meeting but the Councillor had no interest whatsoever in talking about the development.

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That's what you're referring to in paragraph (c) I take it?-- Yes.

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Okay. So are you saying your reason for contributing was because you had concerns about how you had been dealt with in respect of a particular development application?-- Well, when Brian Ray suggested that there was some reasonable people that could approach developmentally - development reasonably I thought well I've been treated very unreasonably maybe I can be treated reasonably which is all I ask so when you rang up it made sense to me to - to support this proposal.

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I'm just going to ask you a couple of questions about how - what your understanding as to how the donation was to be administered. Did you - were you told anything about who was to control the money?-- I think that when I received - when Brian said it was going to a trust account, a lawyer's trust account, I - that probably convinced me that it was probably a

good thing to do, that way I'd have control of probably distribution, it was Hickey Lawyers trust account and it would be accountable.

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Did he mention Hickey Lawyers in the initial conversation?-- He said - he said, "I'll send details - I'll email you details of where to send the \$10,000," and I think he may have said Hickey Lawyers Trust Account as the people administering it.

He didn't give the fund any other particular name?-- No. No.

10

All right. Just whilst we're on that subject on the 5th of February there's an email attached to your statement that refers to the details of Hickey Lawyers?-- Yeah.

There's writing on that, is any of that writing yours?-- No.

Did you see that email to approve the payment?-- Probably - probably not because otherwise I would have signed it.

20

All right. And it seems that there was a transfer of the money on the 5th of February 2004, is that right?-- Yeah. A telegraphic transfer or bank transfer.

That's another document attached to your statement. Okay. He talked in general terms about the types of candidates that the money would go to but he - did he mention any specifics?-- The only name that was mentioned in the whole conversation was when I said, "Look" - I asked him who the developers were and then I said, "Look, I've had trouble with Sue Robbins down there over a development that I'm - that the company's looking at negotiating with Council," and he said, "Well, you know, she's a friend of mine, maybe we can arrange a meeting," and after the phone call I never spoke to Brian Ray again nor Sue Robbins again. I went down a different course.

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Was there any indication as to how the candidates would be selected or who would be involved in selecting the candidates - to benefit from it?-- My recollection was that it was a very very straight to the point, not specific conversation other than the \$10,000 to a - to support pro-development candidates on the Gold Coast without any mention of specifics. The only mention of Sue Robbins was after I brought her up - her name up. He didn't even say that she was one of the candidates.

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So, I take it you had no knowledge as to who in fact actually benefited?-- No knowledge whatsoever except it was going to Hickeys Trust Account.

And you didn't know where it was going from there?-- No.

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Was there any discussions about whether the candidates were to know the source of funds or whether the donors were to know who the candidates were?-- No, no-----

The fact of keeping that a secret?-- There was no discussion on that at all.

Was there ever any mention of Lionel - any mention of Lionel Barden?-- Not to me, no.

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Part of Exhibit 97, I'll just show you this. I don't think it was part of the material produced by this witness, but I'll just get you to have a look at that. That seems to be a trust account receipt for - issues by Hickey Lawyers to Devine Limited; have you ever seen that?-- No.

All right. And it refers to Councillor Sue Robbins and David Power on that?-- Yeah, I see that. No, I haven't seen it.

10

Right. Well, were either of those names mentioned in any discussions relating to the donation?-- No, no names were mentioned in relation to any councillors or people who were standing for election.

Had you had any dealings with David Power in his role as Chair of the North Planning Committee?-- Not before the election, no.

20

Okay. Did you have any knowledge of Quadrant being involved in the campaign of-----?-- Never heard of them until I read about them in the Gold Coast Bulletin.

You've mentioned some names there of developers that he specifically mentioned. Are you aware of who else donated to the fund?-- Only what I've read in the newspapers subsequently, but they were - I can remember they were looking for at least \$100,000 and if we were contributing 10, I take it it was 10 developers that they were looking for as a minimum.

30

Did you have any concerns as to the donation made by Devine Ltd being made public?-- Not at all. We donate to political parties and others. It's part of the business we're in.

Usually, it would be directly to individual candidates, would it?-- No, very unusually to be-----

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Or part political parties-----?-- Yeah, well, directed-----

-----I suppose would be more often-----?-- -----political parties, yeah.

But is there any reason in this instance why you did it this way as opposed direct to a candidate?-- Well, we wouldn't - we wouldn't - we wouldn't support direct to one candidate. The main reason for this donation was that I had a serious situation with an anti-development councillor and there was common sense in relation to a pro-development councillors that may look at my application reasonably, not unreasonably but reasonably which is all we ask.

50

You used the word then "commonsense". Was that a word ever mentioned by - two words mentioned by-----?-- No.

-----Mr Ray?-- No. No, that-----

That's - okay. Did you have any knowledge of a proposed function to meet candidates on the 10th of March at Lakelands?-- I was a bit annoyed about that, not being on the invite list, but no, I didn't know anything about it.

Or the one at Innovations Showcase on the 25th of March?-- No.

I'll tender the statement and attachments, Mr Chairman.

CHAIRMAN: Yes, Exhibit 178.

ADMITTED AND MARKED "EXHIBIT 178."

MR BOYLE: I have no further questions, thank you.

MR HASTIE: I have nothing.

CHAIRMAN: Yes, any questions? No? Mr Hastie?

MR HASTIE: No, your Honour.

MR RADCLIFF: No, thanks, Mr Chairman.

CHAIRMAN: All right. Thank you, Mr Devine. Thank you for your evidence?-- Thank you.

You're excused.

WITNESS EXCUSED

MR BOYLE: Mr Chairman, if I can indicate that the witnesses who had been scheduled for today have now been completed giving evidence.

CHAIRMAN: I'm sure no one will argue with an early afternoon.

MR BOYLE: Thank you.

CHAIRMAN: Quarter to 10.00 tomorrow.

THE HEARING ADJOURNED AT 3.34 P.M. TILL 9.45 A.M. THE FOLLOWING DAY

WITNESS LIST

1

LIONEL JAMES BARDEN, CONTINUING EXAMINATION:.....	1133	
WITNESS EXCUSED:.....	1163	
COLIN DUTTON, SWORN AND EXAMINED:.....	1163	10
WITNESS EXCUSED:.....	1179	
BRENT DAVID HAILEY.....	1179	
WITNESS EXCUSED:.....	1188	
GERALD ADRIAN LAMBERT, ON AFFIRMATION, EXAMINED:..	1189	20
WITNESS EXCUSED:.....	1193	
CONSTANTINE WILIAM NIKIFORIDES, SWORN & EXAMINED:..	1193	
WITNESS EXCUSED:.....	1209	
DAVID HAROLD THOMAS DEVINE, SWORN & EXAMINED:.....	1209	
WITNESS EXCUSED:.....	1214	30

EXHIBITS

ADMITTED AND MARKED "EXHIBIT 162".....	1134	40
ADMITTED AND MARKED "EXHIBIT 163".....	1150	
ADMITTED AND MARKED "EXHIBIT 164".....	1156	
ADMITTED AND MARKED "EXHIBIT 165".....	1164	
ADMITTED AND MARKED "EXHIBIT 166".....	1164	
ADMITTED AND MARKED "EXHIBIT 167".....	1164	50
ADMITTED AND MARKED "EXHIBIT 168".....	1180	
ADMITTED AND MARKED "EXHIBIT 169".....	1180	
ADMITTED AND MARKED "EXHIBIT 170".....	1186	

60

EXHIBITS (Continued)

ADMITTED AND MARKED "EXHIBIT 171"	1189
ADMITTED AND MARKED "EXHIBIT 172"	1189
ADMITTED AND MARKED "EXHIBIT 173"	1193
ADMITTED AND MARKED "EXHIBIT 174"	1194
ADMITTED AND MARKED "EXHIBIT 175"	1196
ADMITTED AND MARKED "EXHIBIT 176"	1210
ADMITTED AND MARKED "EXHIBIT 177"	1210
ADMITTED AND MARKED "EXHIBIT 178"	1214

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