



Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARING INTO GOLD COAST
CITY COUNCIL

BRISBANE

..DATE 15/12/2005

..DAY 28

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THE HEARING RESUMED AT 10.03 A.M.

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CHAIRMAN: Yes, Mr Mulholland?

MR MULHOLLAND: Good morning, Mr Chairman.

DAVID LESLIE POWER, CONTINUING EXAMINATION:

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MR MULHOLLAND: Mr Power, I'd like you to have a look at an original file, Exhibit 287, please. Now, you'll see that these are statements on the account in the name of yourself and Councillor Robbins with Hickeys and there are statements behind which are invoices; do you see that, Mr Power?-- Yes, I do.

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And is that your signature on the three statements that appear in those documents?-- Yes, it is.

And does that signify that in or around the end of January 2004 you approved those amounts, being Quadrant amounts?-- Yes.

And is there any other signature apart from yours?-- There doesn't appear to be.

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And each of the statements is in the name Power and Robbins Trust Account?-- Correct.

Yes. You can return that now. Thank you. Now, I want to come to the subject-----

MR TEMBY: Can I see that file?

MR MULHOLLAND: Yes, of course.

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I want to come now to the subject of the luncheon tickets. You know what I'm speaking about?-- My luncheon or my fundraiser?

The one that occurred on 3rd March 2004?-- Yes.

Now, have you been given in the break a memorandum from Mr Karel Weimar?-- No, I have not.

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You haven't received that. What I want to first of all is to refer you to an entry in your diary, and I'll bring it to you - I'll give you the opportunity of looking at the diary entry if you wish, but there was on 3rd March 2004 in your diary this entry, "11.30 a.m. 4.00 p.m. lunch Windaroo." Do you accept that?-- I accept that, yes.

Right. Your campaign program lists business lunch on 27th February 2004. It would appear that what occurred here is that it was originally intended for 27th February but in the end it happened on 3rd March. Does that tally with your recollection?-- As I recall, yes.

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And the invitation stated - let me just have a look - let me give you a look at this. You'll see that that was apparently a draft done at a time when it was going to be 27th February?-- Yes.

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And it has obviously been changed to the later date. The invitation says, "Luncheon supplied, drinks available," and calls for a donation of \$125, "The venue being the Windaroo Country Club."?-- Correct.

And an option is provided to specify that the recipient will not be attending the function but encloses a donation anyway; is that correct?-- Yes, it does.

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All right. Now, I wish to tender at this stage, Mr Chairman, first of all a statement of Mr Karel Alexander Weimar of 12th December 2005 together with an attachment and also a facsimile transmission from Windaroo Lakes Golf Club which is dated 9 November 2005.

MR TEMBY: Commissioner, may I inquire before the exhibit is marked whether it's proposed that the gentleman making the statement should be called.

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MR MULHOLLAND: Not unless Mr Temby wants it to occur.

MR TEMBY: And if we do?

MR MULHOLLAND: If you do, he'll be called.

CHAIRMAN: Is there another copy of this for me?

MR MULHOLLAND: For you, Mr Chairman?

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CHAIRMAN: Yes, I haven't seen this statement, Mr Mulholland.

MR TEMBY: I'm obliged to my friend. I don't object to the tender on the basis that the proposed witness will be called if necessary and we'll note the position in that respect and advise subsequently.

CHAIRMAN: Mr Weimar is an officer of the CMC. Subject to any leave or anything he has, he will be available. I'd prefer to know today whether you require him to be called.

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MR TEMBY: Commissioner, we'll do our best to accommodate that request.

CHAIRMAN: Certainly. The statement of Mr Weimar will be marked Exhibit 324.

ADMITTED AND MARKED "EXHIBIT 324"

CHAIRMAN: The facsimile transmission from Andrea Johansson of the Windaroo Lakes Golf Course dated 9th November 2005 will be 325.

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ADMITTED AND MARKED "EXHIBIT 325"

MR MULHOLLAND: Now, Mr Power, in relation to this lunch, you have advised the Commission that you have no other records in relation to this lunch; is that correct?-- That's correct.

You've made a thorough search and all that you have has been provided?-- Correct.

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And really consists of that draft invitation?-- That's correct.

You may also care to know that the club has no records at all in regard to that lunch?-- I have no comment on that.

Did you know that?-- No.

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You haven't spoken to anyone there?-- Not at all.

All right. Now, just in relation to this lunch. In your return, the return you put in after the election, the electoral gifts return, you declared that in the period ending March the 3rd, 2004, you or your campaign committee collected \$58,000 described as various luncheon tickets, and noted in the margin of the return is that the luncheon involved 464 persons. You know that?-- Yes, I accept that.

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And you made that note, did you?-- No, I did not. That return-----

Well, you say-----?-- The return was actually filled out by my campaign manager and the trustee for the account which was Mr Darryl Woods. I asked Mr Woods at the time was he certain that everything was correct. He assured me it was. I signed it.

Right. The 464 persons, do you know how they were arrived at as having attended the luncheon?-- No, I don't. I can only assume that that is the equivalent of the tickets that were purchased or donations made on the day.

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Well, you may do the arithmetic or accept the arithmetic that \$125 multiplied by 464 equals 58,000?-- I accept that if that's the equation.

So it would appear, if that be correct, that someone has just divided 58,000 by 125 and arrived at 464?-- Well, I can't answer that because I didn't do the arithmetic.

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Do you recall the function?-- Oh, absolutely.

All right. Have you got any idea of the numbers who went?-- I couldn't tell you exactly. I know that the facility was absolutely packed. I recall the number of people attending for drinks prior to luncheon then leaving, and also a number of people attending after lunch and having some drinks and then leaving.

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They did sit down, did they, all of the people who attended?-- All of the people who attended for a meal, yes.

Right. I suggest to you that that function room where this was held can comfortably hold about 250 people for a stand up lunch and down to about 150 for a sit down lunch. What do you say to that?-- I have no idea about that. That's a matter for the club.

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In other words, nothing like 464?-- Well, all I can tell you is that from my own observation, and I must admit I was quite surprised when I arrived there at the actual numbers. I expected to have a luncheon of probably about 80 or 90. It was quite clearly it was hundreds there.

The fact that you put reference to this and the numbers in your return suggests that you thought that it's something that ought to be declared?-- Well, no. In actual fact I raised this with my campaign manager and said, "Why - why are we declaring this given that it's a luncheon, given that they are receiving a benefit in return for their funds, we don't need to declare it," and his opinion, which I then concurred with, was that we need to be open and accountable on everything.

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The inquiries from Windaroo Lakes Golf Club has shown that although the club's records have disappeared all the club can confirm is that a function was held and the club sold \$2,475 worth of food and \$668 worth of beverages for a total cost of \$3,143. That's according to what the club does know. What do you say to that?-- I have no comment, I - I have no idea what the club expended on food or - or how many drinks that they - they served, I have no idea.

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If that is the case and accepting that the figure for food was, as I say, 2,475, and that there were in attendance on that day the number of people that your return suggests were present?-- That's not what the return says.

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What-----?-- The return, as I understand it, says an equivalent of 470 - or 464 tickets were purchased. Whether or not all of those people turned up, I've never stated that one way or the other.

Well, it suggests that the cost per person is so low that it would have been ridiculous. So what are you saying?-- Once again-----

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Nothing like that occurred?-- Once again I have no - no knowledge of the exact numbers. All I can tell you is that I turned up to deliver a speech. I left whilst there were people still there. I can advise you very clearly in my mind there were people that turned up prior to the luncheon who stayed for a few minutes and left, and the same after the luncheon, and that's all I can tell you. I did not issue the invitations. I approved the draft. I did not collect the RSVPs, I did not collect the money, I did not bank it, I did not do any of the auditing.

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According to the allocation made by Mr Weimar, and I appreciate that you haven't had the opportunity of seeing this, but I'll mention it to you and ask you for any comment you want to make, if his allocation of luncheon ticket money is correct then you collected \$7,375 in luncheon tickets between the 10th of March 2004 and the 5th of April 2004, that is to say after the lunch?-- I have no idea of that.

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So what other memory do you have of the luncheon? Who attended it and so on?-- Oh, it was a broad range of people in attendance. I recall there were dairy farmers, cane farmers, there were ex Main Roads gangers, certainly developers, other business people, former councillors; it was a very broad range of people.

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All right. Well, anything else you want to say on the subject?-- No, it's - it is the first time that - in my time as councillor we've held a fundraising function such as that. It was handled at arm's length. The - the campaign manager assured me - and he is a lawyer and has very good standing within the Coomera community - has assured me that it complied with the legislation. That's all I'm aware of and that's what I was prepared to accept.

Well, do you have any idea whatsoever as to how much this luncheon, including meal - including food and beverages, cost?-- No.

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No idea whatever?-- No.

Because on the figures that I've suggest to you you've made a huge profit?-- Well, I would have thought the objective is to make a profit so that you can expend it on a campaign, but having said that I can't comment. As you can see by the copy of the bank statements that I gave you I wasn't even trustee of the account until about August of 2004.

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All right. Can I ask that Mr Power be shown Exhibit 3 - 76, please? You've got that page? This is The Courier-Mail article of Friday, 12 August 2005 headed, "Dinner Scam Funded Polls". And if you just go halfway down, in relation to yourself, "Two councillors yesterday denied any wrongdoing in their administration of the fundraising. Deputy Mayor, David

Power, the alleged leader of the pro development bloc on the Gold Coast Council said he raised \$58,000 at a single fundraising luncheon during last year's election campaign. Councillor Power, who's announced plans to run for the mayoralty in 2008 said, 'Hundreds of people attended the luncheon at the Windaroo Gold Club. They weren't just developers there, we had cane farmers and Main Road gangers and people from all walks of life. It was bloody huge. I was quite surprised at the numbers that were there.'" Did you say that?-- Yes.

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"Councillor Power said, 'The luncheon takings were topped up by raffle ticket sales.'" Did you say that?-- Yes. We had a number of bottles of wine, I think, probably only a dozen or half a dozen, that were - were provided from De Bortoli's, as I recall. They were all less than \$20 a bottle and were given away right at the end. In fact, I distinctly remember that because one of my cousins actually won it, which went down well with the audience.

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This is one raffle that we're talking about?-- No, there was a series of giveaways and I'm sorry, Mr Mulholland, I don't recall it specifically because it lasted all of about five minutes.

Can you tell me how much you made out of the raffle?-- No. And look, I'd be surprised if it was very much at all, quite frankly.

What, are we talking about hundreds of dollars?-- I wouldn't think so.

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So less than that?-- Yes. It was very quick. There were some bottles there that were given to us by De Bortoli's and it was decided that they would be - they'd be utilised.

"In his interim election gift return Councillor Power stated he received \$47,825 from the sale of various luncheon tickets and 79 people contributed to his campaign. In his final return the luncheon ticket sales figures rose to 58,000 with the number of donors up to 486. 'Interim returns are so you can get your accounts all up to scratch' Councillor Power said. Remember under the Local Government Act I didn't even have to declare the luncheon tickets, I just did it to be open. My campaign manager told me it was all done in accordance with the Act.'" Are the remarks in that article attributed to you yours?-- Yes.

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Is there anything else you want to say on what you've said there?-- No.

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Yes, well, you can put that aside, please. Now, have you overnight received a list of meetings that you attended with the various developer donors in the relevant period?-- I received it this morning just before the start of proceedings.

Have you had the opportunity of looking at it?-- Only briefly.

All right. Well, just let's go as quickly through it as we can. I'll tender a copy of this document, Mr Chairman, at this stage.

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CHAIRMAN: That'll be 326.

ADMITTED AND MARKED "EXHIBIT 326"

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MR MULHOLLAND: Thank you. Now, just let's - I don't want to dwell on them unless you want to make some comment, but Villa World; you see there diary entries for 5th of November, 10th of February, 12th of February, 23rd of February?-- Yes.

All right. Now, that one for the 10th of February there includes a reference to UDIA reps and names them?-- Yes.

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Right. And all those names there, down to where are UDIA reps?-- I believe that all of them are UDIA reps - oh, sorry, my apologies. Graham Ingalls, Geoff McDermott, Greg Nate, Andrew Carstairs, Phil Yaxley, Col Dutton, Gerry Lambert and Rod Holmes, I believe they're all UDIA members.

Right?-- And I believe also that a number of those were part of the executive as well.

Right, fine. At any rate, nothing that you want to say at this point in relation to that?-- No, they're normal meetings in accordance with our duties. It's - it's a regular occurrence to meet with industry groups on roughly a quarterly basis.

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This is on council business?-- Yes.

All right. Ingles, again just go through what is there and make any comment that you wish?-- The 18th of March meeting I don't believe I ended up attending, I believe I was caught up in a previous meeting, and that was dealt with by officers.

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By?-- Officers.

By officers?-- There were issues there about-----

Officers of the council?-- Officers of the council, yeah. I believe there was some assessment issues there.

All right?-- And also on the 24th of May 2004, I don't believe that Graham Ingles attended that meeting, although Ted's diary may clarify that more but I believe that was representatives of his company.

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Right. Which entry is that?-- That's the 24th of May 2004, 2 p.m. to 3 p.m. "Graham Ingles, Ted Shepherd, David Power, Nerang basement application, difficulties Cunningham Drive, 700 lot project."

All right. Yes, so nothing else under that?-- No.

All right. Well, the next - the next heading, B C Currey?-- Yes.

Anything that you want to say in relation to those?-- No. Once again they're general - general discussions about matters affecting council, the normal duties. Brett Currey, by the way, is also heavily involved in - in a community centre and also a local cricket club so I have a fair amount - and also the local chamber so I have a fair amount to do with him.

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Was this council business?-- Well, yes, all of those were council business that I can recall.

Right. Sunland?-- You've got David Monaghan listed under Sunland. David, as far as I can recall, is with Hickey Group, Hickey Lawyers, and David - that was a matter of a-----

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I think that's just-----?-- A legal matter that David was taking care of for me.

Right. I think that's just there because it was part of the same diary?-- Okay.

But I take your point. Yes. Just in relation to the diary of the 17th of December 2003, one of the matters apparently discussed was the future of the Gold Coast?-- Yes. That - that was basically the time when it was being discussed as to how much raw land was available, greenfield land was available. Our planning scheme had originally predicted, when we developed it, around about 25 years worth' of raw land stock. Because of the growth that we'd experienced in that two and a half to three year period we'd revised that down to 15 years. So it was really about the future direction of the planning scheme.

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All right. Anything else in relation to the entries under Sunland?-- No.

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Roche?-- No. The only thing I would comment on is the reference there to Calypso Bay. For those who aren't aware Mr Roche, at that time, or just before that time, development was actually a hobby for him. He was actually the owner of Nutrimetics Worldwide, so he was a developer, I guess, as a hobby only, and Calypso Bay as a development has had its approvals since the mid-eighties.

Yes. And the next one, Stocklands?-- No. Once again, as far as I can see, is normal duties. The only thing that number 26 that is the 22nd of November 2004, there's listed a function there at Michael's Riverside restaurant. I didn't attend that.

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All right. Yes. Nikiforides?-- No, I have no comment on those.

Austcorp?-- And no comment on that. I think in fact that 14th of November meeting that Mr Rowe, Mr Warren Rowe may have been with me.

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Now the developers and the representatives referred to there are included because, as indicated by the heading, these are donors to the fund, whether it be the fund under your name, this is the fund within Hickey Lawyers, the fund under your name and the name of Robbins, Councillor Robbins, or Lionel Barden, or in some cases donations or donors to your own campaign?-- Yes.

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All right. Well, there's nothing else that you want to say in relation to that?-- No. Look, most of these people I've been dealing with for 15 years or more. In fact the vast majority of them, as I'm aware, donate to various people including the various political parties at both State and Federal level, so nothing unusual.

Mr Power, would you accept that you don't need, for a corruption of the electoral process to occur, that developers make donations expressly in exchange for favours?-- I'm sorry, could you repeat that?

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Yes. I'm asking you whether you accept that you don't need, for a corruption of the electoral process to occur, that developers make donations expressly in exchange for favours and it can occur even if there are not express favours given for donations?-- No-----

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Do you accept that as a general proposition or not?-- No, I don't. In fact, the rigour and the process which we use within Gold Coast City in particular is almost impossible to corrupt the development process. It requires almost a conspiracy of 15 people, 7 officers and 8 councillors, and for anyone to suggest that that is going to happen and happen on a regular basis, even happen irregularly, really is - is, I guess, stretching the bounds of credibility. In addition to that, these people, as I said earlier, make donations to the political parties. One would not assume that they make those donations on the basis that a State Minister will amend legislation to benefit them.

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All right. Well, you wouldn't therefore accept the proposition that one is concerned in this area with a potential - that is for a potential that the donation which is given is later than the possibility of some favour or benefit sought?-- No, I don't accept that at all. And, in fact, in my 15 years I've never seen it happen. In fact, I've never even heard of it happen. The fact of the matter is that the majority of these companies are of national standing; companies such as Villa World, Sunland, Stocklands, they are publicly listed companies. It is not worth the - the effect it would have on their reputation both at a development level and also within the stock market itself, to be caught up in those sort of exercises. It's patently ridiculous, and, in fact, if you look at the record of Gold Coast City since amalgamation, our - our trend has been to increase the

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planning controls, particularly the environmental controls, and if you also look at the record, in particular in my case and Sue Robbins, we're the ones that instigated most of those - those changes.

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Do you accept or not - maybe the answer to this question is obvious from what you said - that there's always a potential that developers will be seeking in the conditions applying to planning and development applications, or other favourable outcomes. For example, in relation to infrastructure charges, that they might have an interest in?-- The applicants, regardless of-----

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Do you understand the question I'm asking you?-- I understand that question. The applicants - and let's - we need to clarify this; it doesn't matter whether it's Villa World, Stocklands or Mrs Smith down the street, under the Integrated Planning Act anyone making an application is by definition a developer. The - the development industry as a body look for reasonable and relevant conditions as - as defined. That is all they look for. Now, what their definition of reasonable and relevant is will depend on their own perception. It may well be different to ours, it may well coincide.

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Do you accept or not that there is always the potential that councillors who receive donations in the circumstances I've mentioned, even if perhaps unconsciously, will be influenced in their decisions?-- I don't believe so if they're strong enough mind. The facts bear out that the majority of applications that go through that have changes, invariably those changes to conditions are actually an increase in the severity of conditions placed on by councillors at committee. There are certainly times during the without prejudice process we will negotiate a - a mid point outcome, but that is handled through the normal processes in accordance with council policy and also the Act. I - I believe that the regulations as they exist and the processes that we have in place in this day and age compared to the late 80s in particular make it almost impossible for that to occur.

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Now, can I ask you - can I go from that - those general propositions to a particular matter, the infrastructure charges question? Now, again, do you remember that the infrastructure charges came up as a subject in advance of the election of the 27th of March?-- I do.

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And were you, prior to the election, subject to any written or oral submissions from developers in relation to the question of - or indeed from other people apart from developers - in relation to the question of infrastructure charges and their appropriateness?-- Yes, we were. I wasn't the only one. We received from both-----

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Just deal with-----?-- Both ends of the spectrum.

Yes, just deal with what you were subject to?-- I received letters, I also received phone calls, as I said, from both ends of the spectrum. We had one particular group known as

Gecko basically asking us to take everything we could at any opportunity regardless of the law and, of course, there were those that believed we should stick with the existing system, which clearly was illegal because the Act required us to begin to introduce infrastructure charges.

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Your diary entry of 28 January 2004 is in these terms: "Warren Rowe/Sue Robbins DP office, Nerang, UDIA letter draft policies on infrastructure developer contributions." What does that convey to you?-- There were concerns being expressed at the time and I have to say not only by the industry but internally to me by officers of the enforceability of the - of some of the sections of the policy, in particular the community services component of the policy. There was some question as to the-----

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Mr - look, Mr Power, I don't want to interrupt you but would you address yourself to the specific entry?-- Well, I am, Mr Mulholland. The specific entry - unfortunately the one problem we've had with infrastructure charges, not only through evidence I've heard here, but also the debate held in council with the over-simplification of it, it's possibly one of the most complicated pieces of development legislation ever promulgated in this State, and we were coming to grips with it. We were not given any notes by the Department of Local Government as to how to produce; Councillor Robbins and I were the responsible chairs to ensure its appropriate implementation and its enforceability through the committee process in conditions, remembering that until a priority infrastructure plan is actually adopted by council, these infrastructure charges are still open to appeal.

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Right. But there had been infrastructure charges which were imposed which - which people were unhappy with; is that correct?-- Oh, absolutely, but that's from time immemorial.

And in relation to this entry does it suggest that on this day there was some draft being discussed or prepared by UDIA in relation to the question?-- No, I think that refers to a letter that we had received and they were referring to the draft infrastructure charges.

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Right, well-----?-- So it was probably not written very well in the diary entry but I think it was a letter that we were dealing with that had come in from them.

So UDIA were opposed to it?-- No, they were not opposed to it and that's - that's-----

Well, did they object to some aspects of it?-- They certainly objected to the immediate introduction in a complete manner. They believe that we should follow the Brisbane lead which was a phased introduction and that's fair enough. But they also questioned components of it. We had sign off on two components being the transport and the water and sewerage, but there were grave concerns, as I said, expressed by both the industry and also by council officers to myself and Councillor Robbins as to the third component.

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All right. Well, they didn't want an immediate implementation of the infrastructure charges?-- They asked for a phased implementation.

Right. And your diary entry of the 5th of March 2004 is in these terms, "9.30 a.m. to 10 a.m., infrastructure charges, CEO office, Surfers, attending CEO, Councillor Power, W Rowe, S Cox, C McCaul. Meeting requested by Councillor Power re infrastructure charges." What's that relate to?-- That was basically discussing the concerns about enforceability, particularly an issue that had started to come to light at that stage about retrospectivity on applications that were already under way, at least from their operational works component, and whether or not that had any legal implications, and also once again raising the community services component.

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Now, on the 19th of March 2004, a week out from the election, did you seek to have the question of infrastructure, the infrastructure charges raised?-- Yes, I did. I asked the mayor for permission to suspend orders to permit a general discussion. Under local law number 1, which is our meeting law, you are required one minute of speaking before you are required to move a motion. When I stood up I made it very clear I had no intention of moving a motion, that I asked leave for orders to be suspended so that matters could be brought to council's attention and council could determine how it wished to proceed with it.

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Well, now, we've been told by Mr Dickson that you asked him to draft a resolution. Do you agree with that?-- I did.

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And do you know the terms of it?-- It was basically looking at the issue of holding the infrastructure charges should council be concerned about the legal implications of the retrospectivity until that matter could be clarified legally.

Right. And so there was a resolution prepared?-- That's not unusual. If you are bringing something to council's attention that may require an alteration of the current position, the preparation of a condition - sorry, an alternative resolution is the appropriate way to go. It's - particularly when you're dealing with something as complicated as that it is prudent to make sure that you've got a resolution that is - is not only valid but is also understandable.

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Can you tell us anything else about the terms, so far as your recollection goes, because we don't have a copy of it now, what the terms of the resolution actually stated?-- I don't recall specifically but its intent was to get further legal advice. We were delving into ground that we'd never been in before with this - this area, and the issue of retrospectivity really did raise serious concerns, and I remember the mayor in particular speaking about it.

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So, what, it said before something happened or what did it say?-- Oh, I think it was probably along the lines of - that policy such and such be not applied until - until such time as

clarification could be made of certain aspects. I can't tell you the exact wording.

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And legal advice is obtained, is that-----?-- Yes. Well, that was the intent.

Was there legal advice actually referred to in the resolution?-- No, there wasn't. There was only the referral and I certainly spoke about it when I - when I stood to ask leave that concerns had been raised with me and that was raised at a very senior level in the offices.

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And did that - and you wanted - and you're making this point, you wanted this to be discussed by council to see what the view of council was?-- It was entirely appropriate. As I said it was - it was new ground that we were heading into. I think we were only the second council in Queensland at that stage to be looking to introduce comprehensive infrastructure charges and-----

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Was that your view?-- In what respect?

Was that your view that the resolution that you drafted should be accepted by the council?-- Oh, only if council believed that there was an issue there that they were not comfortable with. If council were-----

No, no, what about your position?-- Well, my view was that we had a risk and that risk needed to be dealt with. Now, I accepted that council were not prepared to pursue the matter further. I didn't move any motions, didn't even attempt to move any motions. We resumed general orders and resumed the meeting.

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But did the resolution that was drafted reflect your view?-- The resolution reflected the concerns that were expressed not only by me but also by senior officers.

And also by developers?-- Well, the developers were mainly concerned with the staged implementation at that point in time. They had certainly raised concerns but had no specifics with regards to the methodology used for the community services component.

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Well, they weren't happy with the infrastructure charges and they sought some kind of relaxation in relation to the infrastructure charges in their existing form?-- Well, it's interesting because one of the issues I-----

Is that correct or not?-- Well, it is, but it goes beyond that and it's an interesting issue that when I first raised my concerns about market yield versus planning scheme yield, which is what council adopted, I highlighted that the effect on individuals could be quite dramatic. By three councillors I was absolutely lambasted for that, for trying to protect developers. It's interesting to note that some six months after the election Councillor Crichlow raised exactly the same issue for a lady who wanted to subdivide her block into two

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and was treated like a hero for the fact that she had to pay for the full infrastructure charge as resolved by council, yet pointed out as being a default or a fault in the policy from day one.

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I can tell you, Mr Power, that in the period that we're speaking about these payments were made into the fund at Hickey Lawyers on the 15th of March 2004, Villa World paid 10,000 or donated \$10,000, and on the 17th of March 2004 Mr Ingles donated \$10,000. Now, what do you think, so far as public perception? I understand all that you have said but what do you think a public perception would be if they knew of the meetings referred to in your diary around this period and also knew of those entities donating those sums of money to a fund that you controlled that was used in relation to selective candidates for an election about a week away?-- I would suggest that public perception could be easily swayed by anyone who wants to create a false impression. The fact of the matter is that we have an obligation under the Act and by our oath to continue on with the business of council, which we did in a very professional manner.

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Well now, can I come to the subject of after the election. Did you - were you involved at different times after the election in chasing up the shortfall in the amount needed to pay Quadrant?-- Yes, I did on a number of occasions.

All right. Well, can I take you to a couple of these. Just refer to what is in there. You might go to 10.6.1 - sorry, 10.3.1 to start with. There's an email there from Sue Davies to Tony Scott on 13th July 2004, "Just spoke to David Power, Tony. He's going to give Terry Morris a call now to hurry him up. There will be another" - sorry, "Also there will be another \$10,000 coming via Hickeys in the next week with more to follow because there's been a shortfall with some of the candidates. I'll keep on it." This is part of Exhibit 89?-- Yes.

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Now, at this time, were you involved in chasing up this \$10,000?-- Not sure what reference that is to the \$10,000, but I certainly left a message for Terry Morris. I'm not sure that Terry returned that call at that time.

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All right. So you were involved in the Terry Morris. What about, "And there will be another \$10,000 coming in the next week."?-- No, I'm not sure what that refers to.

All right?-- Unless there's something specific.

10.3.2. There was on 4th August 2004 - do you know anything of an invoice - you've got an invoice there, have you, for Ninaford?-- Yes.

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Do you know anything of the raising of that invoice for \$10,000?--No.

Nothing whatsoever?-- No. It's a matter between Quadrant and the listed client there, Ninaford, sorry.

Do you know anything of the circumstances in which \$10,000 came to be paid to Quadrant in relation to purportedly this invoice?-- Only from what I've heard in evidence at this hearing.

Sorry, I said 10,000 - 11,000?-- 11,000, only from what I've heard in evidence at this hearing.

Right. Now, can you go to 10.6.1, please.

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MR TEMBY: Commissioner, may I see the documents that are being referred to? I don't know if they're marked as an exhibit. Part of 95, thank you.

MR MULHOLLAND: On 24th August 2004, Sue Davies emails Brian Ray, "No money into Hickeys account from Sohiel. I spoke to David Power's secretary in his absence. She will get on to David. Tony Scott received 5000 refund from Terry Morris," part of Exhibit 89. Now, just breaking that up: did you know or were you contacted in relation to some amount that was coming from Mr Abedian's company?-- No, what that refers to, I believe, was the fact that I had undertaken to raise the matter with Mr Abedian. I believe that was in July. I think my diary shows that I met with him and I think Mr Abedian actually indicated to this inquiry that I mentioned it on the way to the lifts, mentioned it in passing and left it up to him as to whether or not he would take action on that.

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So what, you - what's your version of what you said to Mr Abedian?-- We were heading towards - we were leaving his office, heading towards the lifts. I mentioned to him that there was a shortfall and in what was available to pay for the campaigns; suggested that if he was of a mind, it would be lovely for him to donate some. He said that he would take that under consideration and that was it. That's as far as it went.

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So you put to him on the basis of he make care to make a donation, did you?-- I did.

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And is that all you know about it?-- That's it. I remember my secretary telling me that Sue Davies was chasing me urgently regards to matters and that was it.

Did you know that Mr Morris made some payment to Quadrant?-- No, I wasn't aware of that.

So there was no follow up in relation to the Morris-----?-- No, as I said, I remember leaving a message for Terry. He didn't get back to me. I assumed that the matter had been dealt with with Brian.

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On the 7th of September - this is 10.6.2 - Davies emailed Ray again: "Should you follow-up David Power re election funds no \$10,000 received yet, no response from David." Part of Exhibit 89. Does that assist you in relation to anything further that happened concerning that donation?-- No, no.

Unless, once again, it was in reference to Sunland, that's the only - only thing I can put it down to.

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Did you mention any amount to Mr Abedian?-- No, I don't believe I did.

10.6.3; do you have those there?-- Yes, I do.

This really indicates that you were being said to be responsible for chasing up Sohiel Abedian in relation to another donation from Sunland?-- These are the invoices you're talking about? 10.6.3 is an invoice from Quadrant.

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All right, well, leave aside what I just said. Just have a look at the invoice?-- Yes.

The invoice, you'll see, is in the amount of \$7,700 total; do you know of any circumstances surrounding that amount being paid in relation to that invoice on - in November of 2004?-- No.

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Nothing at all?-- No.

You didn't hear, even afterwards?-- I don't recall hearing anything afterwards but certainly I wasn't - wasn't aware at the time. Most of my information has come from what's been delivered in evidence here.

All right. If you could just put that aside for the moment. Now, you know the Yarrayne matter-----?-- Very well.

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-----that was mentioned. I just want to give you the opportunity to make any comment you wish on it. Have you moved a motion that reinstated some of the blocks being lost for storm water treatment at the meeting of the Planning Committee on the 3rd of August 2004; is that correct?-- Not entirely; that's an over-simplification of what the intention was.

Right. Well, you know the suggestion that the minutes that appeared at the meeting for adoption on the 6th of August 2004 didn't reflect what was decided at the committee?-- The minutes reflected the discussion quite clearly. At the committee meeting I made it very clear that what I was looking for was a whole of catchment response. This is a clear example of the sort of distasteful type of activities that we'd had occurring in the previous council where simply because of personalities holistic outcomes were not - were not accepted. This condition-----

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This was at the previous council?-- Yes, and this is an example.

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This is, you mean, before the 27th of March 2004?-- And this is another example of the type of behaviour and the resulting publicity that we were experiencing in the previous council.

Yes?-- This condition required in line treatment within the site itself. It only treated some 40 per cent of the actual catchment within the development. The suggestion that I made at the committee was that because downstream there was an existing development of some 20 years of age that had a wetland within the park that was already acting as a treatment for a park residential estate with high nutrient runoff, that we could take a contribution from this developer and treat the whole of the catchment. Very clearly that was supported by the officer, Mr Chris Netherway, at the committee meeting, stated unequivocally - he is the co-ordinator of subdivision services - that holistic treatment and whole of catchment treatment was ideal. Two of the conditions that were - were left - sorry, one condition was changed, unfortunately another condition that was left in place conflicted with that condition and required some clarification between myself, the chair of planning and the officers prior to council. But the minutes clearly reflected the intent of the committee, which was overwhelmingly voted for.

But the minutes of the meeting on the 3rd of August 2004 reflected what was decided by the committee, didn't it?-- It reflected the - the discussions that were held to achieve the intent of a whole of catchment approach, which was water sensitive urban design. The interesting thing is about this proposal, that blocks were actually resolved to be put back in, is incorrect, because when you actually apply water sensitive urban design in its appropriate form it usually means that you cut blocks. So it's highly likely that the applicant might have ended up with far less blocks than what was proposed anyway.

Well, you know the - you know the evidence given by the inquiry - given at the inquiry in relation to this? You would have read it, referred to it; is there anything else you want to say on the subject, Mr Power?-- Mr Mulholland, yes, I do. When it comes to planning matters I'm unaware of any other elected rep in this State who has been invited by the Royal Australian Planning Institute to be a full member without any planning qualifications. I take my position as a planning chair very, very seriously and have probably amongst the best knowledge of any elected rep in this State of not only the Act but also planning principles. The Yarrayne development was an improvement and the attempts to bring that into this inquiry and to smear my name with it, was simply no more than base political exercise.

Right. Now, on the - along the same lines in the sense that I'm just asking for any comment you want to make, we've - we've covered the evidence in considerable detail here in relation to the Sunland discount; you know what I'm speaking about?-- I am, yes.

I'm not going to go through all the factual matters but I can, if necessary, put them to you. What do you want to say in relation to the Sunland discount being allowed?-- Once again I think it's - it's a matter that has been promoted for base political purposes. It was an issue that was clearly decided

on individual opinions. I was convinced in the committee that the Mayor's argument was sufficient to vote for it. Councillor Crichlow's argument within the committee was not coherent. When we got to council she was far better prepared, the argument she put forward on her amendment I felt had greater weight and therefore voted for it. She lost that amendment, we moved on.

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Right. So you believe that in the circumstances as you understood them, within the terms of the particular statutory provision, that the terms of that statutory provision were satisfied in these circumstances and the discount could be granted?-- I believe that councillors had satisfied themselves, and certainly at the committee meeting I was satisfied that sufficient argument had been put forward that it was beyond the ratepayer's control.

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Now, I just want to ask you briefly about one other matter. Do you remember any discussion with Mr Ray Stevens in regard to funding that might be made available for a candidate or candidates at the by-election that occurred subsequent to Councillor Robbins' death?-- No.

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So there was no such discussion?-- No, and quite frankly, I find it amusing that someone would suggest someone of Ray Stevens' experience would be wanting to put - I'm aware of the evidence - would be wanting to put \$40,000 into a campaign where there was such a large number of candidates. It was a lottery at best. It just - it's just bizarre that anyone would even suggest that he would make that approach.

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Yes. Now, can I ask you this. Do you accept that in the period the 23rd of December 2003 to the 3rd of March 2004 with your knowledge and authorisation payments were made into and out of an account in the name of yourself and Sue Robbins within the trust account of Hickey Lawyers?-- Yes.

Do you also accept that such payments were made to Brian Rowe, Greg Betts, Grant Pforr and Roxanne Scott who were candidates in the elections of the 27th of March 2004?-- Yes.

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Do you also accept that in total such payments in amounted to \$90,000 and such payments out amounted to \$69,500?-- If that's what the evidence shows then I accept that.

Then why didn't you lodge a third party return under section 430 of the Local Government Act in relation to such payments?-- Until recently I was not aware that - that a return should be lodged specifically within our names. I'm still not entirely certain as I believe there's some dispute between opinions anyway. My understanding of the situation was a third party return needed to be submitted. That third party return was Mr Barden's and as I understand it Mr Barden's return indicated all funds in and out, which is clearly the objective of the Act anyway, to indicate where the funds had come from. As to whether or not it should have been in Sue's and my name, the best that I can tell this Commission is that I spoke to Councillor Robbins about two or three days

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before close of - of the declaration period asking her if things were being dealt with in accordance with the Act and she assured me it was. I didn't take the matter any further.

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Mr Barden has told us that he knew nothing about direct payments to candidates?-- I can't answer what Mr Barden said or did not say.

And Mr Barden was not at all involved, even in relation to Quadrant, until the end of January 2004, was he?-- That's correct.

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Yesterday, and you've said it again, that you believed that Mr Barden may have to put in a third party return. Well, if you had that opinion in relation to Mr Barden, surely that applied to you?-- Well, it - it was something that occurred after the election, as I said, and I - as far as I was aware, Mr Barden's third party return could take care of all the funds in and funds out. Now, I may have been mistaken on that. If I was-----

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Did you take any advice?-- No, I did not. As I said, I spoke to Councillor Robbins as to whether she was satisfied. She told me that she was. I did not take advice on the matter. If I am incorrect in that I will stand corrected.

Mr Power, you did not put in a third party return because you did not want it to be publicly known?-- Not correct.

Of course, if no candidate had disclosed Lionel Barden and only one did, or yourself or Sue Robbins in their return, and neither Lionel Barden nor yourselves, that is yourself and Sue Robbins, I'm talking about, had put in returns which you didn't, and Mr Ray didn't blow the whistle in the Gold Coast Bulletin, then the public would never have known as to what happened in relation to this fund, would they?-- Well, I can't answer that, that's wisdom in hindsight, but I can assure you that it's never been of concern to me to declare funds related to an election. If that is my responsibility I'm quite prepared to do it. As of today I still have not been given formal advice in any shape or form that - that we did not comply. And as I said, my other understanding is that the Act requires those donating to the fund to be made public so that the community is aware and that has certainly been achieved.

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Have you sought formal advice in relation to your obligations?-- That's not what I said. I said to date I have not been given formal advice. It has been knowledge-----

Well, my question is, have you ever sought formal advice in relation to your obligations?-- No, I haven't.

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Despite everything that has occurred you still haven't sought formal advice?-- Well, in reality the issue has only been raised since this inquiry has been made public as to whether or not there may be a discrepancy there, and it is my feeling, and was my feeling at the time this inquiry was called, that the inquiry would tell me one way or the other. Now to put

one in after an inquiry is called just on the basis that it may be correct, I would have thought was a very cynical exercise and you would probably be standing there accusing me of doing it for the sake of trying to avoid a problem.

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All right. Yes, anything else you want to say on that topic?-- No, as I said, Mr Mulholland, I am quite prepared to accept that if it was supposed to be in our name that - that I - I was incorrect in my assumption but, clearly, all funds in and all funds out were made aware to the public.

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Now, I just have a couple of other matters. Do you have there - they should be at the end - some transcripts of - have you got the media folder there?-- Yes, I have.

Could you go to page 18, please? I'd like to deal with this as quickly as I can but give you the opportunity to make any comment you wish. If you look at this article headed, "It's a Power Backout" of 23rd February 2004, about a third of the way down. You mention there at the beginning but then about a third of the way down, you said, "Many people were making many assumptions. I wonder how it's been assumed I have encouraged them in any kind of organised support." "Many people were making many assumptions" about the campaign. Did you say that?-- Once again, this is a correct statement but completely out of context. In fact, if you look up to the opening paragraph, it talks about a plan "to wrest control of the Council and render the Mayor a lame duck". And in fact, the correct context of this - that actual quote was used in an article by Ms Alice Gorman just recently where she indicated that she had to refer to The Bulletin records to refresh her memory and she said - she actually put that quote about "organised support to render the Mayor a lame duck" into context so that is what that was referring to. It was not referring to in any way, shape or form support for candidates as individuals.

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All right. Now, the next one, "All the people mentioned, to the best of my knowledge, announced they were running for the Council long before I even knew about it" - the ticket. Did you say that?-- Sorry, where is that one? Sorry, it's right underneath.

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It's immediately after?-- "All the people mentioned" - no, once again, this is a classic interpretation by a - by a journalist. The "it" I was referring to was the individuals actually running.

Right?-- Their interpretation was the ticket.

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"He said, "The community would not accept a ticket preferring to look after themselves and their divisions when casting a vote"?-- Absolutely correct and I stand by that today and I stood by it right through.

And so on. I won't read all this. Read down, would you please, from there to the end. Is there anything attributed to you there which is taken out of context or not what you

said?-- No, that's generally - generally correct to the best of my recollection.

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All right. Go to page 29, please, article of the 25th of March 2004 titled "Ray Power's Bloc", second page, starting about 10 lines down, "Veteran Councillor David Power" - and if you read from there down to the end of what seems to be attributed to you, the next bit is, "Former St Stephen's College principals" and then it goes on to speak about Brian Ray. Do you see that?-- Yes, I do.

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So if you just read that section that I've referred you to and I'll ask you the same question?-- Sure. That's the only one that - the first one that comes to my attention there is, "I can't remember the last time I spoke to Brian, I'm serious. I think it was before Christmas." In actual fact, it was, "I can't remember the last time I spoke to Brian, I'm quite serious." And then, "I think it was before Christmas" - he asked me about my opinion about how Council was functioning so once again two separate quotes re-arranged to give a different meaning.

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All right?-- The reference further down, "All I know is the business community. I'm not talking about developers. The combined Chamber of Commerce has a resolution on the books that they're going to get political and assist people. That's all I know." That was a reference to the combined Chamber of Commerce because I was not aware of what they were up to. That is not a reference to arranging funding or distributing funding.

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All right. Would you now go, please, to the - page 31, Gold Coast Bulletin, 26th of March 2004 titled, "How a Plot Took Shape"?-- Mmm.

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

Go to the second page, please, and about two-thirds of the way down, there's a paragraph commencing, "When he was contacted by The Bulletin yesterday morning, Councillor Power" - and would you read from there through on the next page down to the - "I have looked in my diary" - et cetera - "said Councillor Power". Do you see that?-- Yes, I see that.

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Again, I'll ask you the same question in relation to that passage after you've read it?-- Yes, once again, an interesting tactic by this journalist. I made it very clear. She rang me as I was supposed to be going into a meeting. I told her that I was quite busy. She continued to persist the questions. I told her at the time that there was a meeting but that I could not recall whether it was in November. That was the total extent of my so-called vagueness. The reference there to - you seem to want to make out we're running it, once again, that is a reference to the individual's own campaigns. It was not a reference to anything else because she asked me whether or not we were running their campaigns and campaigning for them. I did call her back that afternoon after I was out of the meeting and confirmed that I had had the meeting in

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November but at no time was I vague with her about meeting at Quadrant or avoided it. That is simply - I would hesitate to call a fabrication but it's certainly an exaggeration of the conversation.

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All right. Anything else on that?-- No, I think that probably sums up that total extract.

Would you go to page 46, please, Gold Coast Sun edition of 7th April 2004 titled More Councillors Needed on Coast, Power?-- Mmm.

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And if you go down half a dozen lines from the foot of the page, "On other issues Councillor Power said" and did you say that?-- Well, you'll see the reference there to slush fund, and, yes, I did say that I didn't know anyone-----

Well, you don't have to repeat what you said yesterday but is there anything else you want to say?-- No, but you understand the point there. There was no question or no request to answer information about a centralised fund other than a slush fund.

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So I take it, Mr Power, that in short what you say is that if the reporter had accurate information in relation to what in fact you did do concerning this fund, then you would have agreed or commented on the question?-- If the reporter had not placed a question before me that intimated wrong-doing, then I certainly would have given them a direct answer to that question-----

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What, if the reporter hadn't put to you something in a pejorative way or critical way?-- Well, it's not just a critical way. This clearly - when the continually use the term slush fund, they are clearly indicating electoral bribery. That's the intention of it and that's the intent of the articles. I think we've clearly demonstrated from my answers previously to these previous articles that-----

So, my point is-----?-- -----the structure of the articles are designed to get a certain impact on the community, not the reality.

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So, my point is correct: that what you really needed from the reporter was not to accuse you in such a way but put to you something accurately that existed in relation to the fund, then you would have agreed with it?-- If he had asked - if any of the reporters had asked me, "Are you responsible or involved in a centralised fund," words to that effect, I would have said yes.

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Right. You would have-----?-- If they had reported it any differently, then I would have had an objection to it and-----

And if they had said to you then and this fund was backed by developers, you would have agreed to it?-- No, I would not have agreed with that because, clearly, the evidence shows that the people that have donated are not solely developers.

Are not solely developers?-- No.

Okay. So you wouldn't have agreed with that, but you would have told them what the position was?-- I have told them, and I said this yesterday in evidence, I told them quite clearly that the business - there were businesses assisting candidates, and can I point out in the dot point underneath, "He believed the CMC would investigate the so-called Lionel Barden Trust Fund accessed by a number of candidates not including himself." I did make that comment and it would have been absolutely ludicrous of me not to try and comply with the law in the belief that that would be occurring.

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I'm probably wasting time. Can we go on, please, to 53, Gold Coast Bulletin 15 April 2004?-- Mmm.

You see that one, "I confess, the bloc really does exist. We had to stop those greenies."?-- Yes.

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And half a dozen lines down, I mean, you're really mentioned here quite a bit, but you see, "Councillor Power said he did not actively recruit" et cetera, just read through there down the rest of the page and on to the next page to the paragraph ending "in the best interests of the city" about half a dozen lines down the second page. Would you do that, please?-- Yes.

All right. Anything in relation to that?-- Yes, this article is a fascinating one. I understand in Ms Jones' statement, she stated that she can no longer find the tape but she has her notes. It's interesting I recall that she taped that interview but she didn't take any notes at the time. So I find that quite fascinating. It was the first time Ms Jones had actually sat down with me at any time during her term as Council reporter to actually do an in-depth interview. I rang the Managing Director of the Gold Coast Bulletin the day that this article came out and protested vehemently at not only the context in which it was used but also that wonderful headline which was completely concocted to support the conspiracy theories of the Gold Coast Bulletin.

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The conversation with Mr Miller lasted about 30 minutes. It was quite acrimonious. It was clearly not going anywhere. He was not going to correct it, and as far as he was concerned, the truth be damned. He was satisfied with the context. I can say to you that this article is completely, utterly out of context with the interview that was undertaken by Ms Jones.

All right. That's all you want to say?-- Yes.

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Now, you can put that down, please, Mr Power. I ask you to have a look at this. Mr Chairman, at this stage there are a few documents I'd like to tender. This was the subject of something said a few weeks ago. I'll just tender the material that I'm going to ask - I tender The Australian article of 22nd November 2005 headed Whistleblowers Threatened, and also an email from Mr Roberts, the reporter, from Mr Roberts to an

email address at the Commission, and that's dated 11th -
sorry, 17th November 2005.

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CHAIRMAN: Those documents will be Exhibit 327.

ADMITTED AND MARKED "EXHIBIT 327"

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MR MULHOLLAND: All right. Now just have a look at the
article. You've probably had the opportunity by now. You're
aware of this?-- I am.

And what is said in the article fairly reflects the tenor of
what you had said to the reporter?-- It does.

And you say council will be forced to consider prosecution of
these three for official misconduct. Mr Power, what do you
say in regard to the appropriateness of you making such a
comment in your position, having regard to the inquiry being
ongoing at the time you made these statements to the
reporter?-- Mr Mulholland, my comments were completely
inappropriate. The fact of the matter is that - and you'll
note in my e-mail to Mr Roberts - I refer to the distress that
this whole process has caused to councillors. This is a
statement that I had repeated on a couple of occasions prior
to this inquiry being announced, it was nothing new. Having
said that, I had learned only a week or so prior to this that
a strong supporter of Councillor Young's, Mrs Sally Spain,
acting in her role as a relief teacher at my son's school, had
approached my son and made derogatory comments about me, my
politics and whether or not I was a nice person. This is a
13-year old child. I acted in an emotional way. It is
completely out of character and I apologise to you, Mr
Chairman, and this Commission for doing it, but unfortunately,
after 10 years of putting up with abuse from these people and
implications of impropriety, misconduct and I have to say,
corruption, my patience with these people is at an end.

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Well, you will agree with me then when I say to you that the
remarks that you made could only be construed as a threat of
retribution against Mrs Crichlow and Mr Young?-- No, Mr
Mulholland. In fact if you look back to previous articles
prior to the inquiry being called, where I made statements at
a public meeting.

And Mr Sarroff, I should say?-- Correct. They were references
to continual criticism in public over a period of time. They
were not actually references to any evidence given here. The
timing was certainly inappropriate, I acknowledge that, but,
for instance, you have heard in evidence Councillor Sarroff
claiming that councillors took dirty money. We've had claims
from Councillor Crichlow of corruption. We've had personal
comments made by these three people to individuals of which I
have a separate action which the Chairman is aware of, which
we have gathered evidence from individuals where they have

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personally attacked my integrity, personally attacked my honesty.

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So you falsely stated, because it was implied in what you said, that you had some power to consider the prosecution of these three people for official misconduct, Mr Power?-- No. I did not state that I had any power in that, Mr Mulholland, at all.

That was the implication of what you said, Mr Power?-- No, I'm sorry, Mr Mulholland, that's not - the implication is that council may had to consider at some point as to whether or not they had been brought into disrepute and been financially affected by the activities of councillors. Whether that has anything to do with this, this inquiry and evidence given is absolutely irrelevant because the statements were actually made originally long before this inquiry was called.

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Yes, thank you.

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CHAIRMAN: Mr Power, in your e-mail?-- Yes.

At the bottom of the first page going up to the top of the second one, you state that "Please remember that a conflict of interest is determined by the individual within their own mind"?-- That's correct.

"And if the individual can place the public interest above the private then no conflict exists"?-- That's correct.

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Is that what you believe?-- That is not only my belief, Mr Chairman, I have taken legal advice on a number of occasions over the years for matters - matters pertaining to myself, that the conflict of interest only - can only exist within the individual's mind and therefore if the conflict - the conflict is resolved therefore there is no conflict.

Oh, well?-- Now the interpretation, I guess, is up to the individual.

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We might hear submissions on legal matters on that sort of point then?-- Mr Chairman, I'm quite prepared to provide my previous legal advice from individual companies to the - to the Commission if you would so desire.

I'd be happy to see them. I would have thought that the conflict remains. A person might be able to rise above the conflict and act in the public interest despite the conflict, but I would have thought the conflict remains as an issue of fact in the background?-- I suppose - yeah, I suppose, Mr Chairman, that's going to be one for the-----

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That's the way I would-----?-- For the lawyers to sort out.'

That's the way I would have approached it?-- But I certainly think that from a simplistic point of view, for the individual, a layman sitting in council, that if you can put your public interest above the conflict is therefore resolved.

Yes, all right?-- As a layman's - as a layman's interpretation.

All right. It's a matter we'll address in a discussion paper that I hope to have released next week and I'd be interested to hear submissions on it. Mr Temby?

MR TEMBY: Thank you, Commissioner. We, as I understand it, may question the witness now.

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CHAIRMAN: Yes, and again later.

MR TEMBY: Or defer until others have done so. Do you prefer to defer?

CHAIRMAN: I'm happy for you to do it now and again after others.

MR TEMBY: I understand. I'm obliged to you. We don't need to ask any questions at this time.

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CHAIRMAN: Whatever you please. There is one matter. I heard it many times and I'm not criticising for that, I would have expected to hear it from various witnesses as relevant. Mr Nyst put what I took to be your client's instructions to various witnesses of what was said at various meetings. I'd be happy to have it just on the basis of you heard those things put, were they your instructions, are they what you say, rather than going through it all, but I would think it appropriate that at some stage it be confirmed that what was put by Mr Nyst was in fact on instructions.

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MR TEMBY: I note that request and no doubt we'll do that at a later stage.

CHAIRMAN: Thank you.

MR TEMBY: The witness mightn't be able to say that he heard all of those things said, mind you.

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CHAIRMAN: No, but-----

MR TEMBY: But I'll take it up with him.

CHAIRMAN: But I'm sure we can do it in some way that does it expeditiously. I'd have no doubt that it was done on instructions.

MR TEMBY: I think, with respect, even if the question wasn't asked you'd be entitled to so assume.

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CHAIRMAN: I would have assumed. It would be nice to have it confirmed.

MR TEMBY: I'll take that up with him.

CHAIRMAN: Yes. Mr Radcliff.

MR RADCLIFF: Yes, I'll be fairly brief, Mr Chairman.

CHAIRMAN: I note the time; would you like a mid-morning break before you start?

MR RADCLIFF: It might all assist us, yes, to work out our batting order.

CHAIRMAN: Okay, thank you. Ten minutes, thanks.

THE HEARING ADJOURNED AT 11.32 A.M.

THE HEARING RESUMED AT 11.43 A.M.

DAVID LESLIE POWER, CONTINUING EXAMINATION:

CHAIRMAN: There's been a change in the batting order. Yes, Mr Betts.

MR BETTS: Thanks, Mr Chairman. Councillor Power, it was - I believe you said yesterday it was Mr Ray's idea to have a trust fund to - to look after the donations that came in; was that correct?-- Yes, that was the first time it was mentioned to me.

Okay. And in your opinion would it have been any - would the outcome have been any different if the funds were disbursed somehow directly into individuals' accounts or would the - I guess the outcome be better if it was through a trust fund?-- I don't think the outcome would have been any different, even in spite of that last minute attempt by certain parts of the media to obliterate some campaigns, and that was clearly the intent, by the way, that they wrote the stories; that - that didn't happen.

Just going on to the meeting at Quadrant - or the meetings at Quadrant. The initial meeting, Councillor Molhoek, myself, Councillor Pforr, of the five people that were at that meeting, those three were elected. Sue Robbins helped me in my campaign, giving me advice and so on and she introduced me to the opportunity of getting that funding at that meeting - or through that meeting. Councillor Molhoek did not receive any funding from that source. Councillor Pforr was the only person other than myself that received funding from the source and was elected. Is it correct to say that you're of the belief that the current council is effectively making decisions on behalf of the City in accordance with the Local Government Act?-- Absolutely.

Well, Councillor Power, based on that would you say that you feel responsible for that outcome in any way other than your own individual vote on council matters?-- No, not at all. I think it's been up to the individuals, they make up their own minds; in 15 years I don't think I've ever approached another councillor and asked them to vote with me for any - any reasons. I rely on the arguments and I think all of the councillors who I believe are reasonable and intelligent people to work with, do the same thing.

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Don't jump ahead of my questions, I'm going to come to that. Besides your assistance in raising campaign funds that I accessed, would you claim any responsibility in my successful election as a councillor?-- Not at all.

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Councillor Power, when a person accesses the electoral gift return of a councillor, due to council policy it is a matter of course that the councillor is - the councillor involved is advised that this has taken place; is that correct?-- That's correct.

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Can you tell me then, in your time as a councillor, if you have an estimate of the number of people from the general public - that is not councillors, candidates or their supporters or the media - who have been interested enough to take a look at your electoral returns?-- Oh, I can't recall a single occasion.

Therefore, would you believe it to be the case that the majority of voters are far more interested in a candidate's policy position than their funding sources?-- That's not an easy question to answer because surveys show that the vast majority of people don't even know who their councillor is. I remember a survey done in the 1991 election; the then Chairman of the Albert Shire was 23 years as a councillor, 12 years as chairman, only 40 per cent of the shire knew who he was. So, look, there's an old rule of thumb in councils; 30 per cent love you, 30 per cent hate you, 30 per cent don't care and 10 per cent don't vote. And I think it's only the people who are thinking voters that - that take any interest in policies or - or - or that sort of issue. Very, very few take any interest at all in funding.

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Okay. Going on to the infrastructure charges, there's been a number of witnesses at this inquiry who have given evidence on this topic. I would like to ask you if you can recall the council meeting in approximately July or August 2004 where the staging of the infrastructure charges was put to the vote following an officer's report?-- Yes, I remember that.

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Can you recall how you voted on that occasion?-- I think it was a unanimous vote actually that the staging be not implemented.

Okay. You would probably not recall how I voted so I can tell you that-----?-- Okay.

-----I voted against any change to the charges. Would you accept that suggestion? I believe you just have?-- I do accept it.

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I ask you then, did you tell me how to vote on that issue?-- I don't think you and I discussed it at all.

Did I ask you how I should vote on that issue? I take that-----?-- No, you didn't.

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No. Have I - have you ever told me how to vote or have I ever asked you how I should vote on any issue?-- No, and I wouldn't be so presumptuous to advise you.

Well, Councillor Power, to use Mr Nyst's terminology, as the so-called leader of a power bloc you're a bit of a fizzer, aren't you?-- Obviously.

On the issue of myself being accused as part of an organised group of candidates, can you tell me, apart from the two times we briefly met at Quadrant, did we discuss any issues? In fact, did we speak at all until after the election?-- No, we didn't.

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No more questions, Mr Chairman.

CHAIRMAN: Thank you, Mr Betts. Mr Radcliff?

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MR RADCLIFF: I have only got a few questions. As you know, Councillor Power, I appear for Councillor Shepherd. Can I deal first of all with the - what we've come to know as the Lionel Barden Trust. The evidence so far seems to be that Councillor Shepherd's only involvement was with an attendance at one meeting on the 16th of December. You've given evidence yesterday that you were involved in selection of certain candidates. Can you recall that?-- I do.

Let's deal with the selection of the candidates. Did you in any way discuss that with Councillor Shepherd, that you were selecting candidates-----?-- No.

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-----prior to this occurring?-- Not at all.

Did you ever discuss the selection of those candidates with him?-- Not at all.

Now, you indicate in paragraph 24 of your response to the Commission of Councillor Shepherd attending this meeting. Why was he there? What was his role?-- We were there, all three of us in that instance, to simply give advice as to what we knew about campaigning, about electioneering, et cetera. Councillor Shepherd is one of the most effective campaigners I think I've ever met, and he was simply there to give them the benefit of his experience as Sue and I were at the time.

50

And apart from his attendance at that meeting, did he have anything whatsoever to do with the events which you've been cross-examined - examined on concerning the collection of moneys from developers or the dissipation of those funds?-- Nothing at all. Councillor Shepherd and I at no time discussed it, and in fact I don't believe we even discussed the matter until some time after the election when there was the very obvious campaign by a very vocal minority to have something done about it.

1

Did you in any way discuss with Councillor Shepherd the steps which you were taking to collect moneys that were necessary after the election to satisfy the Quadrant bills?-- No.

10

You gave evidence about your role as head of the planning committee. Since the election and since about April you no longer fulfil that position and now the two committees have been combined and Councillor Shepherd is the head of that committee. You've had an opportunity to observe his method of conducting that position. What do you have to say about that? How does he conduct himself?-- He conducts himself very professionally. He does conduct himself in a different manner to me within the committee but that's to be expected, we have our own style, but Councillor Shepherd has, from my observations, always been very professional, very thoughtful in the objectives he tries to achieve and also the balance that he tries to have undertaken by the committee.

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Do you observe impartiality on his part?-- Absolutely.

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Do you observe that he attempts in any way to influence any person?-- No. In fact there is a different - that's one of the style differences, I guess, from myself to Councillor Shepherd. Councillor Shepherd rarely engages in the debate within the committee, whereas during my time I did engage in the debate and participate as a member. It is very rare that Councillor Shepherd will do that. He will simply use his position as chair to guide the meeting and conduct it in accordance with the rules, and only engages when he believes it is absolutely necessary.

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It is suggested in some quarters that he has colluded with staff members or others so as to influence their position in so far as his leadership of that committee. What do you say about that?-- It's an absolute fantasy, not only an insult to Councillor Shepherd but also an insult to some very professional staff, some of whom I've known for 15 years, and are extremely professional in the way that they conduct their duties.

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All right. Has he ever attempted to influence you or others in your presence?-- Never.

Has he ever - have you ever attempted to influence him to vote in any fashion or to have conducted himself in any manner before the - in council?-- Never.

If it's to be suggested that he has acted so as to benefit developers what would you say about that?-- That was a lie.

1

You've been examined at length by Mr Mulholland concerning the articles, and I don't intend to go - the newspaper articles, I don't intend to go through them chapter and verse, but in, for example, the first of those articles is by Alice Jones. I won't show it to you, it's 30 August 2003. She says: "City council power brokers, Robbins, La Castra, Shepherd and Power, were huddled together in a group." She, throughout all of her articles, suggests that there is this group of four who then went on to develop into the bloc of eight. Is there any truth in that?-- No, none at all, and in fact if you look to previous public statements in the last term, going back to the beginning of last term, there were accusations by a couple of councillors that supposedly there was some bloc that was controlling things even then. It's a fantasy, it's a creation of some paranoid minds.

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As well, in 31 of 3 the article is "How the Plot Took Shape". I won't show it to you to save some time. The opening sentence is "Sue Robbins yesterday named herself, David Power, Ted Shepherd and Bob La Castra as the main players in the election plot to take over the Gold Coast City Council." Now, first of all, you can't speak for Sue Robbins as to what she said but firstly, in relation to that sentence, is it correct?-- No, it's not.

20

Did Alice Jones in any way communicate with you about that very sentence?-- No, she didn't.

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But she had the opportunity to, didn't she?-- Yes, she did and I actually am trying to recall whether she spoke to me for that article at all.

There is a passage that was referred to you about that article by Mr Mulholland where you were quoted?-- Yes.

And that was later in the article?-- It may well have been, because - I'm sorry, Mr Radcliff, I'll put that into context. Whether she spoke to me about that article after she had spoken to Sue at all. We were on the phone almost constantly to - to Ms Jones as she was the council reporter, but specifically she never mentioned that to me and she certainly never raised that comment of Sue's with me.

40

Yes, all right. Just briefly, we've heard of this document called the "Peter Young Dossier". I'll touch on a very few passages of that. I don't need to show you the document. I'm fairly certain you'd know most of its content?-- I know it reasonably well.

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On the third page there is a sentence starting - that says, "Pro development councillors Power, Robbins, La Castra and Shepherd were entrusted by those responsible for other aspects of the campaign to secretly recruit new candidates and organise a larger team of candidates." What do you say about that?-- Total fabrication.

I deal now with the lunch room incident. He says, "According to the election gift returns the sum distributed to those candidates totals \$127,567.38. It is not apparent where the remainder of the trust funds were distributed or how they were used but in January 2004" - I don't need to read on, you're aware of that passage. What do you say about what took place in that incident?-- The lunch room reference?

Yes?-- I had actually forgotten all about that until Councillor Shepherd reminded me. It was simply a throwaway comment about the lunch room itself, the food available, et cetera. I mean, we were fully aware that Councillor Young was coming into the room and childish, I might say, but it was an attempt at some black humour.

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On the fifth page he says, "Analysis of" - oh, this is the 99 per cent of the time voting trend that he demonstrates with reference to once again a council - a Bulletin article. What do you say about these voting trends?-- Well, they're totally misleading, because when you look at it all that's being assessed there is when a division is called. A division would be called on less than probably 1 per cent of the votes - the total votes in council. It would be - have been interesting to have divisions called within every committee over the last five years, six years, for instance, because I think it would show a completely different pattern in terms of voting trends. It's very easy to stand up and make statements when you know that the general vote - the vast majority of votes are not recorded and therefore the - the conduct of certain individuals is not there and apparent for everyone. But as far as that voting trend is concerned it is simply a matter of course that people will vote with their consciences, if they happen to agree they'll vote together.

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And do you find that is the case, that people vote according to their own consciences and independently in the council that you-----?-- Yes, absolutely. And I think anyone who is a reasonable observer of council and not driven by, I guess, political motivation, has - has observed that. The argument lives or dies on the floor - sorry, the vote lives or dies on the floor by the argument and it's - it's extremely unusual for councillors to even have a general discussion about - about matters before the council meeting.

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Yes, yes, all right. Lastly there's one last sentence I'd refer you to. It is said at the foot of one of the pages, "In the immediate build-up to the 2004 election developers were approached by standing councillors and advised that their concerns would be looked after if the right people were elected." Now, in so far as Councillor Shepherd is concerned - you're represented by others and they'll ask you questions about this - but what do you say about that if that comment was directed to Councillor Shepherd?-- A load of rubbish.

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That's all I have of this witness. There is a transcript error to which I'll refer you after this in relation to that passage which was dealt with earlier before-----

CHAIRMAN: If you'd take it up with Counsel Assisting.

MR RADCLIFF: Oh, all right.

CHAIRMAN: If it can be agreed it's an error then it can be corrected.

MR RADCLIFF: Yes, all right. Yes, I'm sorry, one last question. In the current planning process as compared to when you were the chair, there's now the process of without prejudice negotiations?-- Yes.

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Are you able to tell us how Councillor Shepherd deals with these in his role as Planning Chairman?-- Yes, the without prejudice meetings have traditionally been held in the presence of not only officers but also the Chair of Planning and the divisional councillor, sometimes one and the same. But in the past I would take a more active role, and I know Councillor Robbins did, in chairing the meeting and actually guiding it on the basis of defending council's policy decision in terms of the application. Councillor Shepherd tends to not be engaged in the debate and leave the debate at the hands of the officers and the applicant, and, once again, injects himself when he believes that it's getting off track or that it needs reaffirmation of council's policy, or council's decision with regards to a matter. So his - his handling of it is very, very balanced and his handling of it is - is, I would say, very professional.

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Thank you.

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CHAIRMAN: Yes, Mr Debattista.

MR DEBATTISTA: Thank you, Mr Chairman. Councillor Power, I represent Councillor La Castra in these proceedings so I have a few questions on his behalf to ask you. Can I start by asking - or by asking you really it's true, isn't it, that each councillor tends to have a good awareness of the type of businesses and operations that exist in their own division?-- Oh, absolutely, absolutely.

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And you, for example, as councillor for Division 2 would have contacts with and know people involved in many of the major businesses located in Division 2?-- Correct.

And it is the case, isn't it, that if other councillors, or a group of people were talking about a business which was primarily located in Division 2, that they might suggest that they talk to you about that?-- That's normal protocol. If there is an issue that is raised by someone with another councillor, the first question that is normally asked, "Have you spoken to the divisional councillor on this?" Clearly there'll be times when they have problems dealing with the divisional councillor for one reason or another but that is the normal protocol.

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Even outside of the actual Council process where, for example, a number of people with an interest in local politics and a councillor were talking about issues, it's possible, in fact likely, isn't it, that if a particular development or a particular business located in your division was raised that people would turn to you for information on it?-- I think the majority of councillors would do that. I can't speak obviously for all of them but the vast majority of councillors would definitely do that.

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All right. You're aware that Royal Pines is located in my client's division?-- Yes.

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Did you ever ask my client to approach Royal Pines to donate to what has been referred to as the trust fund?-- No.

Did you ever - sorry, a bit back from that. Did my client ever participate with you in the selection of candidates to run in the Gold Coast City Council elections?-- No.

20

Now, you've met Ms Scott, I understand?-- Yes, I have.

Yes. At the December 16 meeting at Quadrant?-- That's correct.

Yes. Which my client was not in attendance?-- No.

You recollect that properly, do you?-- That's right.

Now, did you ever meet with my client and Ms Scott together otherwise?-- No.

30

Did my client ever give you reports on Ms Scott?-- No.

Did my client ever suggest to you that Ms Scott would be, if elected, a reliable vote for you?-- Absolutely not.

Did my client ever tell you that you could say to Ron Clarke or Gary Baildon or any other mayoral candidate that if elected Ms Scott would form part of a reliable vote for his reform agenda?-- No.

40

Did my client ever authorise you to tell Ron Clarke that my client would vote for Mr Clarke's agenda?-- No, and the question was never put to me from Mr Clarke or his people either to pursue that.

So, you in fact never made that representation?-- Not at all.

And my client never asked you to?-- No.

50

Now, you were brought by counsel assisting yesterday briefly to a meeting recorded in your diary on 26th February 2005 which is a meeting with Janssen and La Castra; do you recall that generally?-- I do.

All right. And I understand your answer to be that you believed it was about an interpretive rainforest?-- That's correct.

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Just so we're clear on that, that's an issue about which Mr Janssen felt very strongly, isn't he?-- He was very passionate about it, definitely.

And it's an issue which he has raised with you before?-- Yes, he had. It was an issue that he'd been pursuing for some time believing that Nerang was the gateway to the hinterland and, obviously, our remnant rainforest areas towards Tamborine and the national parks of Springbrook.

10

In fact, it's an issue that he had raised with my client in your presence before?-- He did.

And just so we're all clear, all three of you are members - yourself, my client and Mr Janssen - were all members of the Nerang Chamber of Commerce at the time?-- I was an honorary member.

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Yes?-- But in addition to that, Mr Janssen was aware that in '94 to '95 I actually represented part of Nerang and in fact had up until the 2004 election the areas down to Mt Nathan which is the back area of Nerang. So I did have a fairly intense interest in what happened in that area.

So it wasn't unusual, in other words, for Mr Janssen to seek to meet with you about this particular issue?-- No, and in fact it goes beyond that. Not only being Chair of Planning North which that area fell into, I was a member of the Regional Economic Development Advisory Board which, obviously, also had a keen interest in that sort of activity being undertaken. So there was general interest as well as the specific divisional interest.

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All right. And you're aware now, aren't you, that Mr Janssen was involved in running a campaign of sorts against Mr - against Councillor Young?-- I am aware.

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Right. Were you aware of that at the time that meeting was held?-- No, I was not.

Was that campaign discussed in any way?-- No, it was not.

I just want to take you back to the Eco Trans development. Would it be fair to characterise that as a cable-way to the Gold Coast Hinterland?-- Yes.

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All right. And it was a significant development proposal at the time?-- Very significant. It was intended originally to go to Mt Tamborine, but there were alterations over time.

And it would have fairly significantly affected your division?-- It was wholly contained with the exception of the Tamborine component within my division.

And you adopted a stance opposed to the Eco Trans development?-- Well, I took a stance that there was a particular process that I wanted them to follow to be able to assess the application. I did express severe concerns over crossing of land that we had purchased under our open space preservation levy and the fact that they did not want to undertake a flora and fauna survey prior to lodging an application so that we could set the terms of reference. There were differences of opinion in Council as to how that should be handled, but mine was more of a process issue rather than the actual application itself.

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It's fair to say when you say there were divisions in Council, though, that you were on one side of the Council generally opposed in a sense to the proposal proceeding in the way it was, and my client was on the other side?-- Absolutely, yes.

And in fact my client was possibly the most outspoken supporter of this particular development?-- Yes and spoke very passionately and I would suggest coherently for his position and it really did come down to, as I recall, a fairly close vote as to how that was dealt with.

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And insofar as there were Council votes, the two of you were on opposite sides?-- We were.

Now, I want to ask you about the campaign involving Councillor Betts. Councillor Betts, as we all know - now are aware, was a recipient of funds from the trust fund. Were you aware of a candidate by the name of David Dunk?-- I was aware only from media reports, yes.

30

All right. And Mr Dunk was running in the same division that Mr Betts was running in?-- Yes.

All right. Did my client ever tell you that he was offering assistance to Mr Dunk?-- No, not that I recall.

Did my client ever recommend to you that Mr Dunk receive funds from the trust fund?-- No.

40

Did he ever mention the name of David Dunk and Quadrant to you?-- No.

Now I understand your evidence to be that in relation to the existence of the trust fund you weren't actively attempting to conceal it from the public at large; is that a fair summary?-- That's correct.

All right. But, by the same token you weren't - please correct me if I phrase this wrongly?-- Mmm-hmm.

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You wouldn't have wanted to, for example, tell Councillor Young what the tactics that were being employed for Mr Rowe, for instance, were?-- Oh, certainly not. I mean, I think every candidate has the right for their campaign tactics and campaign strategies to be kept confidential.

And even beyond that you wouldn't have, for example, wanted to disclose to Mr Young the amounts of money that Mr Rowe was receiving from the fund?-- Well, once again, no, I think that would be a matter or a decision for Mr Rowe to determine as a recipient in the candidate in that decision as to how he dealt with it.

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Now it was your view, isn't it, that Councillors Young, Crichlow and Sarroff formed a disturbing influence, I think, were your words yesterday-----?-- Mmm-hmm.

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-----on the prior council; is that correct?-- Yes.

All right. And your view was also that the former Mayor, Mr Baildon, politically backed those three?-- On a fairly regular basis and, in fact, on one occasion I recall where we were debating the issue of disciplinary action under the code of conduct for one of those councillors and Councillor Young - sorry, Councillor Baildon, my apologies, really tried to avoid that at any cost even though there was a clear and significant breach of the code.

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All right. And Councillor Hackwood was a strong supporter of the former Mayor, wasn't he?-- Yes.

And it would be fair to say that, in your mind, if you had told Councillor Hackwood something involving those people and be politically supported that he may well have reported it back to them?-- Well, that's potential. Ray and I have known each other since '91. We were elected to the Albert Shire together and Ray does tend to have the attitude of hail fellow well met and, yes, and sometimes not entirely discreet.

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So what I specifically want to put to you is this; there's a meeting placed on hold in your diary on the 20th of January-----?-- Mmm-hmm.

-----which, as I recall, suggests that yourself, Councillor La Castra and Councillor Shepherd, Councillors Grew and Councillors Hackwood are meeting-----?-- No.

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-----or were intended to meet on that date. Counsel assisting put certain allegations to you in respect of what that meeting was intended to do. What I want to put to you is that if that meeting was intended for the purpose that counsel assisting has described, the last person you would have invited was Councillor Hackwood?-- Well, that's correct, under those assumptions, but it's clearly shown that Councillor Robbins and I didn't discuss the matter with any other councillor. So there is no way that we would have held a meeting like that for that sort of purpose.

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Thank you. Thank you, Mr Chairman.

CHAIRMAN: Yes, Mr Freeburn?

MR FREEBURN: Thank you, Mr Chairman. Councillor Power, can you just explain to me because I'm not computer literate, your electronic diary is on a laptop that you carry with you?-- No, I don't carry the laptop. I leave the laptop sitting on my desk attached to the docking station. Quite frankly, I found it, with the systems that we use, just far too cumbersome to drag around. What I use is an iPac - Hewlett Packard iPac which docks into that.

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Okay. So we get two documents. You've got an iPac which is-----?-- I think-----

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-----what, like a notepad?-- Let me explain it; you might as well assume that the laptop is used as a desktop. It is not removed so, therefore, is a desktop computer.

Right?-- And then the iPac Hewlett Packard is a handheld - a palm pilot, from want of a better term.

Okay. So when you write a diary entry on your palm pilot and dock these things together-----?-- Mmm-hmm.

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-----why not updose the other?-- Depending on the synchronisation settings it will occur but it does depend on the synchronisation settings for both - for all the files not just the generalisation - the general files, sorry. You will have to synchronisation settings for calendar, for notes, et cetera and emails, et cetera.

All right. Well, depending on the synchronisation settings, one electronic memory will update the other one?-- Depending on those synchronisations.

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All right. So the record of what's in your diary will be in your palm pilot?-- Mmm-hmm.

And also on the council server; is that right?-- Well, no, no, that's - once again, it comes back to the synchronisation settings. If the synchronisation settings says that something should be deleted after a specific period of time the information will not be back loaded onto the palm pilot once the palm pilot deletes it. It will be still kept within the desktop though.

40

Well, there's an electronic record of last year's diary on the council server; is that right?-- I have no idea.

You didn't know that?-- On the server, I have no idea if it's on the server.

50

Is it on your-----?-- The diary is kept on my - the CD drive so-----

On your computer?-- Yes.

Right. So I'm just trying to understand, when you assume that your diary had been wiped, what electronic part of the computer did you assume had been wiped?-- Well, I think I

explained that to counsel assisting. I checked my hand held assuming that it was completely synchronised at the time that the request came through from the Commission. It showed that time as blank which clearly indicates that it's been wiped. The synchronisation settings were reset. I - boys with toys, playing with the synchronisation settings a few weeks ago, reset, back loaded, I looked at it, saw it, immediately contacted my lawyers and said, "We've got the information back loaded. We need to advise the Commission."

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So you didn't think to look on your own desktop to see whether-----?-- Well, as I said-----

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-----there was a-----?-- -----once you dock, it tells you if it's - if the synchronisation has occurred. It doesn't tell you automatically what the synchronisation settings are.

All right. Now the - can I just put some propositions to you about conflict of interest and see if you agree with them; councillors are obliged to serve the overall public interest in the public interest of their division?-- Correct.

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Councillors must ensure that there is no conflict or possible conflict?-- Within the context - within their - the satisfaction of their own determination that they can put the public interest above the private interest so that needs to be taken into context.

Well, taken in context that you apply your own mind to it. Is that-----?-- Well, potential conflict of interest - and this is a fascinating component of the code of conduct and I believe it is referred to in the Act or I'll stand corrected on that. The potential of conflict of interest could be that you met someone at a - at a milk bar and shouted them a milkshake at some point in time. It is a very broad ranging and a very ambiguous statement contained within the definition so - or contained within the Act. As far as I'm concerned, the application of it, with 15 years of experience, is the determination within your own mind if you can put the public interest above the private.

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If you can put the public interest above-----?-- And that's up to the individual, it is not up to any other councillor or any other person to determine.

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Is the test whether your private interest could influence you?-- The test is whether you can put the public interest above the private. Now, that is up to the individual, it is not up to me to tell another councillor, it is not up to the Department of Local Government to tell the councillor how they should determine that.

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I see. Is the test whether people are likely to have believed that you could be influenced?-- No.

You don't accept that the public perception is important?-- Public perception is important to everything we

do. The public perception can be manipulated by rather malicious intent and-----

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Let's confine us - let's confine your answer to the question about conflict of interest, public perception about conflict of interest?-- Well, the public perception of conflict of interest is almost impossible to determine. The public interest can wax and wane on any different issue on any given day. The fact that a conflict of interest may be declared by a councillor does not in any way show that that councillor may have something that they need to be concerned about, only that they are not convinced that they can put the public interest about the private. I don't - I don't intend to make definitions sitting in an inquiry that are the responsibility of an individual councillor.

10

Do you think you should be open about conflicts and potential conflicts?-- I am.

Councillors are obliged to disclose election gifts?-- Well, by definition the fact that election gifts are on a register that is open for public viewing and invariably published in the media, the so-called perceived conflict through that is declared by definition.

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Now, you decided in October of 2003 to help a business-sector backed push to take control of the Council?-- No, I did not.

You reject that proposition?-- Yes.

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You are quoted in the Gold Coast Bulletin as something to that effect?-- I wouldn't put too much stock in The Gold Coast Bulletin using quotes correctly or within the right context.

Well, do you reject that?-- I reject that statement.

You and Councillor Robbins were signatories to the trust account?-- Yes, we were.

And you and she decided and signed off on where the money went?-- Yes, we did.

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At least until the 3rd or 4th of March?-- Correct.

And later you approached Lionel Barden?-- I did.

And-----

MR TEMBY: With respect, "later" misrepresents the evidence.

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MR FREEBURN: Sorry, I'll-----

MR TEMBY: It's not later than 3rd or 4th March. Was a month before-----

CHAIRMAN: It wasn't later than the 3rd or 4th of March. It was prior to that time.

MR FREEBURN: You approached Lionel Barden in January or February?-- Around about that time but I think it's in evidence what - when that was.

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And you asked him to be the trustee of the fund?-- I asked him to - I'm not sure I used the word "trustee" but I certainly asked him to be responsible for distributing those funds, yes.

And you talked to Lionel Barden about funding a group of like-minded councillors?-- I don't believe I used that term at all.

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Again, you're quote in The Gold Coast Bulletin of saying - of talking about like-minded councillors?-- Well, once again, I wouldn't put too much stock in quotes from The Gold Coast Bulletin.

Do you reject using those words-----?-- Well, I'd like - I'd like to see that article again, please, before I comment on it.

20

All right, we'll turn it up. You have - can the witness please see Exhibit 3? It's mentioned a couple of times. If you turn to item 53, second page of that article.

MR MULHOLLAND: Sorry, page number?

MR FREEBURN: 53?-- Yes.

See about the middle of the page - and this looks to be a summary of what's happened so far. "Councillor Power claims there was not a development bloc, just a group of like-minded people"?-- Well, once again, I was examined by Counsel Assisting on this whole article and rejected it as being totally out of context and a complete misrepresentation of statements and used completely out of the context of the interview that was conducted to produce it.

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Councillor Power, I just want to get your evidence clear. Do you say that that expression is taken out of context or that's an expression you did not use?-- I did not use the term at all at any stage of funding a bloc of like-minded councillors.

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What about the expression "like-minded councillors"?-- I think I may have referred to that after the election. I certainly did not do that before the election. And the term "like minded", as I have explained in this inquiry, was, in my definition, people who simply respected each other and conducted themselves in a professional manner. Beyond that, it's their own choice.

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I see. So you may well have used the expression "like minded"?-- Subsequent to the election. Prior to that-----

Subsequent to the election?-- Prior to that, I would want to go through all of the articles and refresh my memory.

All right. Now, at any time before the election did you tell the electorate of this trust fund?-- I was never asked any

questions about a trust fund and therefore did not make any comment about it.

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So you weren't asked so you didn't say?-- Correct.

Did you ask the candidates who received money from this fund to disclose the payments from the fund?-- No. Sorry, disclose the payments from the fund in accordance with the Act?

Did you ask them to disclose the payments from this fund?-- Well, I'm sorry, I need clarification. Are you talking about to the media or are you talking about in accordance with the Act?

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I'll ask it again. Did you ask the candidates to disclose to anyone payments from the trust fund?-- I did not speak to the candidates about disclosing to the media or anyone else about their funding. That was a matter entirely for them, they were running their own campaigns.

20

Did you think that the voters had an interest in - a legitimate interest in knowing that the trust fund was paying sums of money to assist the campaign of some candidates?-- And they would have been advised subsequent to the election through the legal process of the declaration.

I see. So the answer is yes, they did have an interest but subsequent to the election?-- Well, it's an interesting question and I find it fascinating when the media puts that question that they usually only put it to a select number of candidates. For instance, no question was put to the candidate who ran against me, for instance, who took significant funding from developers who were being prosecuted by council for breaches of conditions. Maybe that would have been of interest to the community.

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So do you think the voters of - the voters of these divisions had an interest in knowing of the payments?-- You would have to ask the voters that.

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Do you think they had a legitimate interest in knowing of these payments?-- Once again you'd have to ask the voters that.

CHAIRMAN: No, you're being asked whether you thought it?-- Well-----

If you can't answer say so?-- Mr Chairman, I did answer. I said that they would be obviously notified through the declaration process subsequent to the election. That is the process by which the voters are - are informed legally within this State. Compliance with the Act is the - is the appropriate form.

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All right, so are you saying that apart from that you thought the voters would have no interest in knowing?-- No, I didn't say that, Mr Chairman, I don't - I-----

Well, that's what you're being asked?-- I can tell you that on two occasions our council has voted unanimously to have the Act changed for pre-poll declarations. I voted for that. I have no problem with that so long as it is uniform across the board. And should a voter take an interest in it then they will avail themselves of that information.

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MR FREEBURN: So the answer is that you think, by reason of your voting in that way, you think that the electorate should know where the funding is coming from?-- I think it's far simpler doing that than after every election in almost every council having the problem of people grandstanding and making hay of the fact that some people get donations from particular sources that they don't particularly appreciate. It's far easier to solve the political problem that occurs in every - almost every major local authority in this State at every election by changing the Act and making a pre-poll declaration.

10

You didn't think of - well, you didn't think of making sure that was done in this case?-- Well, it's an interesting question. I think that the matter as to whether a candidate chooses to advise the electorate is up to the candidate. I was not the candidate. In addition to that I wonder whether or not it would have exposed a candidate and exposed - in informing the community under privacy - privacy laws prior to the requirement under the Act.

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So what was the problem with the privacy?-- Well, if - if a candidate discloses something without the permission of a donor prior to the declaration period in the Act I wonder whether that exposes them to any - any privacy issues.

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How can disclosing a payment made to a councillor-----?-- The Act requires the declaration to be made after the election.

And you think that by doing that-----?-- I'm just asking the question. I'm not getting into a debate. I'm merely pointing out an issue that's been raised with me privately.

40

Now, you told us that you looked up the definition of slush fund at some point?-- No, I said I knew the definition of slush fund.

When did you - you didn't look it up in the Oxford dictionary?-- The Oxford-----

Didn't you tell us? Didn't you tell us that you-----?-- The Oxford Australian Concise Dictionary, is that what you're talking about?

50

Well, you gave evidence yesterday-----?-- Yes.

-----that you looked up the definition, as I understood it-----?-- No, I said if you - I didn't say I've looked it up, I said if you'd like to check it, and I said that I was aware of the definition. If you'd like to check the transcript I think that's what you'll find I said.

All right. So you're aware of the definition in the Oxford-----?-- Australian Dictionary.

-----Australian Dictionary?-- Yes.

And - but you didn't look it up?-- I've been aware of the definition of a slush fund for quite some time. I've been a councillor for 15 years. It's not, as has been pointed out actually by comments by the Chairman, it is not a complimentary term, and you will find previous references to it in this inquiry that even equates it to brown paper bags or electoral bribery.

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CHAIRMAN: You might be misquoting me. When I said a brown paper bag I was not meaning-----?-- I understand that. I understand that.

When I said a brown paper bag I was meaning nothing to do with corruption. To me a slush fund, the way it's used, in my knowledge in this State, and specifically with brown paper bags, is a fund for political purposes where one politician has control of the fund and is able to dispense at that person's discretion the funds to other politicians so that those other politicians can be under some obligation to him?-- Yes.

20

That's as I understood the term slush fund as used in this State and with reference to brown paper bags?-- Mr Chairman, I was reading the transcripts the other day and I think you actually also made comment about if they don't behave in a certain way then the funds can be cut off or withdrawn or something to that effect.

30

That would be a possibility?-- My interpretation of a political bribe is electoral bribery.

No, no, with respect, it just means that in this case you had a control of fund at one election; you would have control of the fund perhaps at the next election, people might think, and that next time they might or might not be the recipients of your largesse from that fund?-- That's-----

40

They might consciously or subconsciously feel that they need to keep on your side if they want to be recipients of your largesse at the next election?-- I would hope no one would feel like that, Mr Chairman.

Well, they mightn't, but members of the public might think that some people might?-- Yes.

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MR FREEBURN: Councillor Power, what I'm going to read from is the Macquarie Dictionary. And I just want to see whether this accords with your understanding of the slush fund. "Slush fund; money collected unofficially, sometimes by secret or deceitful means, by an individual or an organisation for a special purpose."?-- And you would like me to comment which way on that?

Well, does that accord with your understanding of the expression?-- My understanding is on the record, that it is as the Australian Oxford Dictionary - Concise Dictionary says, "Money for political bribery - electoral bribery", I think is the term.

Okay. Do you still have Exhibit 3?-- Yes, I do.

Just turn to page 38. Have you got page 38?-- I have.

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See about two-thirds of the way down, "Councillor David Power claimed there was 'no development bloc' just a group of 'like minded people.'"?-- Yes.

Did you say that?-- I believe that - that that one is correct.

Thank you?-- Can I just also point out, as I have frequently, that the issue of like minded, from my point of view, was the issue of mutual respect. And I also would like to point out that I've been referred to in a number of articles, as well as accusations to this Commission as being pro development. I've never described myself as that, ever.

20

Now, you know a journalist, Murray Hubbard?-- Yes, I do.

In March 2004, before the election, did you tell him that, "I can say that I am paying my own campaign funding and there are no slush funds that I know about."?-- No, I did not say that.

30

Just turn to page 26 of Exhibit 3. Have you got that page?-- Yes, I have.

Two-thirds of the way down, "Councillor Power said the rumours are just that."?-- Yes.

Then he's got you quoted as saying, "I can say that I am paying my own campaign funding and there are no slush funds that I know about."?-- That is only half a quote.

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It's only half a quote?-- Correct.

What else did you continue to say?-- The statement was that, "I can say that I am paying my own campaign funding raised by my committee."

Okay. So the quote is accurate except for-----?-- Well, no, the quote is not accurate.

Well, listen to the question first. The quote is accurate if one inserts the words - some words after "Own campaign funding" the words, "Raised by my own committee."?-- Well, I'm not sure how you can say the quote is accurate if you insert that. This is a matter of record, therefore it's wrong.

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Well, is that the only error in that quotation?-- That's correct. And there are no slush funds that I was aware of.

Okay?-- Within the definition that I'm aware of.

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All right. Then you continue. You see, at that - that was an opportunity for you to say, "Look, there are no slush funds but there is this trust fund."?-- I would ask you if you were advising a client in a witness stand-----

No?-- -----to answer questions that they had not been asked. The fact of the matter is that when you're dealing with the media as a politician you are on trial and you answer questions that are put to you, you answer them as fully and as frankly as you can and if they don't ask the right question that is the responsibility of the media, not of the councillor.

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I see. This is a week before the elections, a journalist is asking you questions and they ask you about slush funds, about campaign funding and you don't mention the fact that whilst there may not in your mind be a slush fund there is this trust fund?-- Like I said, as a lawyer I'm sure you don't advise clients when they're on the stand to answer questions that are not asked. The fact of the matter is that I was being asked about a slush fund which had corrupt connotations in my interpretation. I was certainly not going to admit to anything that has corrupt connotations because I take my obligations very, very seriously.

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Well, what about your obligations to the voters?-- Well, you seem to be mistaking the fact that the media is - or you think that the media is there to report the news; they're not. They're there to sell newspapers on the basis of their advertisers, the news is coincidental. The facts are - and clearly demonstrated through all of these articles - there is misrepresentation, there is use of language that is inappropriate and inaccurate and there is a use of quotations out of context on an almost continual basis.

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Well, this was just - that statement was just a half truth, wasn't it?-- No, it was a complete truth because there's no slush funds as I understand that definition, ever.

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All right. Now, why not give a full and honest answer; why not say, well look, there are no slush funds-----?-- I'm sorry, but I think I've answered this. I gave a full and complete answer to every question that was asked, specifically to those questions. If they wanted a complete history or complete story outside of those questions, they should have asked further questions. That's their job.

Do you seriously say that you gave a full and complete answer?-- A full and complete answer in the context of the questions asked.

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Did you also tell Mr Hubbard, you'll see a bit further down, "I will say the business community have asked my opinion on candidates and I have told them who are okay and who are not." Did you say that?-- Yes, I did.

Well, you were doing more than just saying who was okay and who was not?-- No, not at all. Once again, I was giving my opinion to these people. Should they choose to support them, that's their own free will. I certainly didn't hold a gun to their head.

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Well, you were doing more than just suggesting which candidates were okay and which were not. You were authorising money to be paid to certain candidates?-- I was not asked that question.

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Right. You had a trust account with your name on it at this stage, didn't you? Sorry, you had a trust account with your name on it in the previous couple of months-----?-- Well, that's a matter of record-----

Why not be honest and - is that right?-- That's a matter of record.

Well, why not be honest and candid about that?-- I was honest. I answered the questions.

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Weren't you-----?-- With all due respect and I stated this to counsel assisting, all questions that were asked of me by reporters were answered within the context of the question truthfully and openly. If you wish to take up the matter of the reporting, then you need to talk to the reporters.

You see, you were just underplaying your involvement in the candidates, weren't you?-- No, because the candidates were running their own campaigns upon the issues that they saw fit.

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But you had some role in selecting the candidates?-- No, the candidates are already nominated. Whether they chose to take the money was also up to them. The only selection that I was involved in was the selection of making an offer to those candidates.

You see further down, the next sentence, "Some candidates I know are getting significant support but that is nothing to do with me."?-- Correct.

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"That is their choice."?-- That's correct.

You told Mr Hubbard that?-- That is correct. I would have thought it is the choice of every donor and every candidate as to whether they give and/or accept that donation.

But you say there that it had nothing to do with you?-- But that's within the context of the question.

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Which was?-- The question was: some people are getting significant support; are you aware of that? Yes, I am. Evidence was given yesterday of Mr Fish giving direct support outside of the trust two candidates. That was his choice. That was the choice of those candidates to accept it. That had nothing to do with me.

Well, some candidates you knew were getting significant support and it had everything to do with you; you were signing the cheques?-- With all due respect, that was the answer to the question that was posed to me.

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Well, the question-----?-- I'm not going to answer as an elected representative questions that are not posed to me.

The question you've just told us was: did you know that the candidates were getting significant support?-- There's the answer.

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And you said, "Well, it's got nothing to do with me."?-- That is correct. There is nothing to do with me whether those candidates receive that support or accept that support. It is an offer and a request. It's called free will, and I didn't think there was anything illegal about that.

But you just - do you seriously say that that's an honest answer-----?-- Yes.

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-----to Mr Hubbard?-- Yes. Within the context of the question, absolutely.

The fact that these candidates were getting significant support had nothing to do with you?-- That's correct. Within the context of the question, that is correct. How it's used in this article is another matter altogether.

You see, one of the reasons you didn't disclose this fund because you really wanted to keep it a secret, didn't you?-- Is that a statement or a question?

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Well, you can respond to it?-- Well, I've responded to that a number of times and, in fact, if you were listening yesterday, I make it a habit as a councillor - I don't play the political or the populist game as a councillor. I never have. You don't win six elections with taking the attitude I do without being upfront and direct. I believe that you tell people as it is if they ask you, and, quite frankly, I had no problem and have never had a problem disclosing my involvement with donations or with assisting other people.

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You wanted to keep this trust fund secret?-- Incorrect, and offensive, I have to say.

Well, you certainly did not happen to disclose it, did you?-- Wasn't asked the question in the appropriate form. If they ask the question, they'll get a straight answer.

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All right. A number of people or companies put money into this trust fund?-- Yes.

And let's see whether you agree with this: they were all people or companies which had Gold Coast property development interests?-- Incorrect.

Which ones did not?-- City Pacific is a finance company.

Sorry?-- City Pacific is a finance company.

City Pacific is a finance company?-- Correct.

Right. Any others?-- I'm not sure off the top of my head. I'd need to see the list again.

Well, sitting there now, this inquiry has been going some days, are you conscious of any other people who donated money, put money into this trust fund who were not Gold Coast property developers?-- Well, as I said, I'd like to see the list again because I'd like to turn my name to the - turn my mind to the names. There were names used in the declaration that were names that I'd never heard of before.

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All right. I think you told Mr Mulholland yesterday that you were involved in the selection of five candidates?-- To make offers to, yes.

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And you were involved in the funding of at least four out of those five candidates?-- Yes, or making the offer of funding, yes.

And I think you told Mr Mulholland yesterday you weren't concerned about the policies of those five?-- No.

Except you were concerned about improving the standard of debating in the council?-- And the behaviour, I must say. One of the things that particularly concerned me was the diminution of respect not only for the individual councillors but also for the office that we hold.

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All right. Standard of debate and behaviour?-- Mmm.

All right. And how did you know that those five candidates would conduct themselves in a civilised way?-- Well, I guess you always hope that people conduct themselves in a civilised way. I recall in - actually in about 1995 mentioning to - to Mr Young that - at that stage after I'd first met him that I thought he consider running for council one day, he might make a good councillor. You sometimes get it wrong.

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Do you want to answer the question?-- I think I did, "You hope - you hope that those people will be good people to work with."

Right. You only knew one of them, didn't you, Mr Rowe?-- No, that's not correct, I knew Mr Pforr as well.

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Right. You knew Mr Rowe fairly well; he was a friend of yours?-- I considered Mr Rowe, and still consider Mr Rowe a friend.

You didn't know at least three of them very well at all, did you?-- I knew Mr Pforr very well through - well, reasonably well through our involvement with the Water Sports Club; the others, no, I did not. As I stated yesterday, Mr Molhoek I

think I'd spoken to for about two minutes in a line at Dreamworld once, and beyond that, no. But you trust. And it's interesting - and I'm sure that most people would know - that 80 per cent of your opinion of someone is made up in the first five minutes of meeting them. You tend to trust your instincts and being in politics as long as I have, you tend to develop reasonably good instincts with people.

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How many of these people had you met before you selected them?-- In actual fact only - only three, I believe.

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So you hoped that the five of them would conduct themselves in a civilised way?-- Absolutely.

And-----?-- As you hope every - every councillor will do.

And on that hope you funded these five - five campaigners?-- Well, I have to say that as a voter I hope, in giving away the most valuable thing that I have in a democracy which is my vote, that the person I'm voting for will behave in an appropriate way. So we hope on a regular basis when it comes to democracy.

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Well, did you establish with the five certain principles of conduct?-- No, not at all.

Did you lecture or tell them that they've got to abide by certain principles of conduct?-- One thing I don't do is lecture. We have a code of conduct for meeting behaviour, we have Local Law Number 1, which governs our meeting - meeting rules and meeting procedure. If a councillor complies with those regulations, those rules, then the behaviour automatically takes care of itself.

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You had meetings with them. Did you stand up and say, "Well, this is what I expect from you."?-- No.

"This is the code of conduct."?-- Not at all.

Send them notes?-- No.

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So you funded this campaign for these five candidates, three of whom you barely knew, in the hope that they would conduct themselves in a civilised way. Is that what you're telling us?-- As I said, as voters we give away the most valuable thing that we have in a democracy on hope. So yes, compared to that money is secondary.

So you were anxious to obtain a majority on the council?-- I was anxious to obtain 15 councillors who would actually conduct themselves in an appropriate and dignified manner.

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You expected, didn't you, that on controversial issues these five candidates would vote with you?-- Well, that hasn't proven to be the case, so that would be a fairly forlorn hope.

Well, let's not - let's just deal with the question. You expected that on controversial issues that these five people

would vote with you?-- No, I did not expect anything of the sort. And, in fact, as my evidence has shown, at the 16th of December meeting I specifically said, "No one cares how you vote. Debate the subject, don't personally attack your colleagues and don't use the media for political gain at their expense. And no one cares how you vote."

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Well, did you - you see, as I understand your evidence, you're saying that you established this fund to promote civilised debate?-- Correct.

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And you spoke to journalists in March; why didn't you say to them, "Well, look, there's this fund to promote civilised and respectful debate."?-- Well, I think I've answered your question about the journalists on a number of occasions. I answered the questions they put to me. My standing on the issue of civilised behaviour in council was well known. I had been very vocal about it for almost three years, so it was nothing new that I would be hoping that councillors would be elected who would conduct themselves in accordance with the rules and regulations and the appropriate behaviour of councillors.

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So is the only way that you might have disclosed this to the press, or to the public, if a journalist had happened to ask you, "Well, is there a fund that you've set up?" Your answer would be, "Yes."?-- If that question had been asked I would have answered it.

And - or if they'd said to you, "Is there a fund or some sort of movement afoot to promote respectful debate?", you would have answered that, "Yes."?-- Absolutely, no problem at all. And, in fact, like I said, I'm on the record as encouraging that-----

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Yes, you've told us?-- -----and hoping that candidates would come forward on that basis.

Now, you received various donations to your own 2004 campaign?-- Yes.

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And they were banked as they came in?-- I have no idea.

Didn't check or make sure that that happened?-- I have no idea. I was not trustee for the account. I didn't take control of my - my campaign account until, I think, about August of 2004. I can tell you right now any questions to me about receipt of funds or distribution of funds during that period, I have absolutely no idea. I didn't handle it.

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All right. So am I right in thinking that there are two types of funding that you received in that campaign: donations and money from this dinner?-- As I recall the declaration, yes.

Now, your interim return of gifts, do you remember that; do you want to have a look at that?-- Yes, I do.

That talks about donations - or that was signed on 6th April 2004?-- I'll take your word for it.

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Just have a look at it.

CHAIRMAN: We might move on to that, perhaps, Mr Freeburn, after lunch.

MR FREEBURN: I'm sorry.

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MR TEMBY: Before you rise, Commissioner, can I say this: my instructing solicitor and I have since the witness started to be examined talked to him briefly on perhaps three occasions limiting ourselves to generalities and logistical questions. There's two or three respects in which I need to take instructions from him before I question him and I ask whether anybody objects if I do that over the luncheon adjournment which will save a bit of time because otherwise I'll have to seek a short break after the cross-examination has finished.

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MR FREEBURN: It's fairly unusual for a witness in the middle of cross-----

MR TEMBY: If there's any difficulty, I'll make an application for a short break after he's finished. That's fine.

CHAIRMAN: Well, we could deal with it now because it will save time then later this afternoon, that's all.

MR TEMBY: Yes. I'm not going to ask him anything about what he's being questioned about or what I anticipate he's going to be questioned about. There's some respects in which I need to obtain some factual information to decide whether or not to ask questions in what could otherwise be called re-examination. That's what I want to do.

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MR MULHOLLAND: Mr Chairman, can I just say in relation to this, this is not the usual adversarial proceeding.

CHAIRMAN: No, I'm conscious of that.

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MR MULHOLLAND: And in circumstances where - I don't have any objection to Mr Temby following that course, and if in due course there is any problem that relates to it, well, it can be the subject of further examination, I would have thought.

CHAIRMAN: Yes. Well, you'll be going last.

MR MULHOLLAND: Yes.

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CHAIRMAN: In questioning. My immediate reaction was to rely upon your ethical conduct to allow you to ask the questions for instructions that you need to, Mr Temby. As Mr Mulholland says, this is not a normal court; it's an investigative hearing. If Mr Freeburn - all right.

MR FREEBURN: I don't have a problem.

CHAIRMAN: You don't take it any further.

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MR FREEBURN: No.

CHAIRMAN: All right. We'll leave it with you, Mr Temby.

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

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THE HEARING RESUMED AT 2.17 P.M.

DAVID LESLIE POWER, CONTINUING EXAMINATION:

MR FREEBURN: Councillor Power, can I just try and abbreviate in the area - do a short cut. With the luncheon, there is a declared amount of \$58,000 as receipts for that luncheon. You remember Mr Mulholland took you to that?-- Yes.

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And I gather that the bank account into which that money went includes two types of receipts, luncheon money and donation money; is that right?-- Well, I can only assume that. I wasn't in control of the bank account.

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Right. Well, we've done a bit of an analysis of the bank account and what amounts have been declared by you in the gift return. You understand what I'm saying?-- I'm following you, yes.

Right. Now, there are some amounts of \$5,000 that is amounts of \$5,000 that have been - seven amounts of \$5,000 that have gone into that account that aren't in your gift return specifically but are, one would assume, included in the \$58,000 amount. Is that right?-- I can't answer that. I didn't do the receipting. I didn't complete the return. All I did was sign it on the basis that my campaign manager assured me that it complied with the legislative requirements.

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All right. So you didn't check it at all or-----?-- My campaign manager, who is a lawyer I might add, assured me that it complied with the provisions of the Act.

So you had no involvement at all in the receipt books and the amounts that went in?-- Not one iota.

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What do you say to the proposition that seven amounts of \$5,000 were paid for luncheon tickets?-- It's not unusual for people to buy bulk amounts of tickets by tables. What happened in this case, I can't answer that.

You don't know, all right. Seven amounts of \$5,000 - \$5,000, of course, pays for 40 tickets. Were there tables of 40 at

the lunch?-- There were a number of tables, as you heard me explain to Mr Mulholland. I couldn't answer how many people were there. All I know is that there was a significant number and a number of people turned up prior for a drink and left before the lunch and also a number of people turned up afterwards for a drink and left without eating as well.

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All right. Now, you've - in February 2004, Yarrayne donated \$2,000 to your campaign?-- Correct.

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In August 2004, the Council dealt with a development application by that company?-- Correct.

And you were involved in debate about that application?-- Correct.

And the Council officers recommended one thing and you argued for another?-- Yes, and as I said, the Council officers, particularly the officer who was coordinating the application, agreed with my position at the committee.

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But not previously?-- It hadn't been discussed previously. I very, very rarely discuss conditions - potential conditions with officers until it gets to the agenda status.

In the debate, did you declare that these people or this company had donated money to your campaign funds?-- Well, there's absolutely no need to. By definition, it is already declared and is public knowledge.

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So you saw no need to so you didn't?-- And there was no conflict as far as I was concerned.

CHAIRMAN: Would you have - just if I may - would you have any intention of approaching that same developer at the next election?-- Chairman, I've actually never approached anyone for a donation. My campaign team has always done that. It's always been at arms length. If they chose to-----

Would you have any-----?-- -----I wouldn't have a problem with it so long as that - that individual company was not being prosecuted by Council for breaches of its approvals. I would have a problem with that certainly.

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Yes, all right. I'm not suggesting that it would make it come within the definition of the material personal interest but there is the fact that they donated to your campaign fund in the past and-----?-- Yes.

-----that doesn't make it clearly a material personal interest but if you were looking at the expectation of whether they would donate at the next election, then it might perhaps come within the material personal interest. Have you ever looked at it that way?-- No, I haven't really, Chairman, because I - you don't always expect that the same people will be around from one election to another particularly now we've got four year terms. But the one thing that people who have dealt with me over the years know, and I'm speaking only for myself, is

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that they will always get treated straight down the middle.
If-----

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You've told us that, that wasn't the point I was asking?-- Yes, so I don't think - I don't think I'd even consider it as an issue.

You don't consider it, all right.

MR FREEBURN: XYZ Investments made a \$2,200 donation to your 2004 election campaign?-- That's correct.

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In about March 2004?-- Well, whenever it's listed on the - yes, it says the 3rd of the 3rd so I can only assume that's correct.

Now some related companies, Harrowcliff and Kenbrook, were developers of a site called Riverlinks at Coomera?-- I have no idea if that's their development names.

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But were you aware that XYZ Investments was related-----?-- I was aware of XYZ as being associated with Riverlinks; the others, no idea.

All right. The council's approval, in that case, required some riverfront land, Republic Park?-- That was the conditions proposed by the officers.

And the developers appealed?-- The developers did appeal on that.

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And an issue debated in council was whether to settle the appeal or not?-- After some lengthy period and particularly heavy debate when it was initially decided. Can I also point out that that site has had approvals, urban residential approvals on it going back to the mid-80s.

Thank you. And you moved the motion to settle that appeal-----?-- Yes, I did on the recommendation of council officers.

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And at the full council meeting you voted in favour of settling the appeal?-- That's right, in accordance with the recommendation from the council officers.

Neither in committee or in full council did you declare that this company or a related company had donated to your campaign?-- Well, once again, it is a matter of public record and, therefore, deemed to be declared.

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Well, see, it's not a matter of public record, is it, unless you make the connection between XYZ Investments and the particular companies involved?-- Well, it would also depend on whether or not XYZ were listed on the agenda time but as far as everyone knew within the committee it was common knowledge that XYZ were developers of Riverlinks because it was made some play off by a couple of councillors.

Well, I take it, you didn't declare it because you thought it was common knowledge?-- Well, no, I didn't declare it because there was no conflict of interest as far as I was concerned-----

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Right?-- -----and as far as the donation is concerned, it is declared in accordance with the Act and, sorry, can I also repeat? It is public knowledge because that is a publicly available document.

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All right. Villaworld put \$10,000 into the trust account on the 15th of March 2004?-- That's a matter of record.

And in 2004 the council dealt with a material change of use and reconfiguring of a lot for Villaworld; do you know that?-- I had no - nothing in front of me regarding that so unless you've got something to put before me.

You do not know about-----?-- I don't know of specific dates. I know that we dealt with many things during that period. We have a statutory obligation to deal with applications within a timeframe.

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All right. Did you - well, if you don't recall it. Sunland originally put \$10,000 into the trust account?-- I believe so.

In November 2004 a related company got it - we've heard evidence about this; got a discount on its rates?-- That's correct.

30

Did anybody declare that donation? Did any of the candidates declare that donation?-- I don't recall. I think - I've some recollection of Councillor Betts leaving on the substantive voting council but beyond that I don't have any recollection.

Now the Ingles Group donated \$9,000 to your 2004 campaign fund and \$10,000 to the trust fund and \$1,000 in luncheon tickets. Can you confirm that?-- That's a matter of public record.

All right. And a related company, Downlane Pty Ltd, lodged an application for subdivision in April 2004?-- I have no idea when they lodged an application.

40

Well, do you know that they did lodge-----?-- There was an application lodged and dealt it with by council for Downlane and I must point out that it is quite common practice for developers to use shelf companies as applicants. We have no idea who those shelf companies may be attached to in most instances.

50

Right. Well, did Downlane lodge an application or subdivision in April - sorry, shortly after the elections?-- I have no idea when they lodged it but there was certainly an application that was lodged and an application dealt with by council.

But, see, you must have been acutely aware of a potential conflict here because Ingles or the Ingles Group was your

biggest single donor?-- In what - I'm sorry, but I don't see what that has to do with having a conflict. If you deal with an application in accordance with the Act and in accordance with the process of recommendation which did happen with that, I might add. In fact, I believe, the council has put extra conditions on it and I actually put extra conditions on it. I don't see what that has to do with donations.

1

Well, see, this Ingles Group had effectively taken \$20,000 out of its pocket shortly before the election. Shortly after the election it's got an application for a subdivision?-- The Ingles Group has applications and has had applications prior to and after elections for probably the last 15 to 20 years. That's nothing unusual for them or any other developer. Were' bound statutorily to deal with applications within a timeframe.

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Well, did you think that the other councillors or the public had an interest in the name of the relatively recent donations if they had known?-- The donations, as I said, are a matter of public record. I wouldn't have known who Downlane was.

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You see, you say it's a matter of public record but unless you're actually - and you said a moment ago, that some of these companies operate through shelf companies, don't they?-- Yes, I've already said that.

Well, doesn't that obscure the fact of the donation?-- Well-----

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Not deliberate, but it-----?-- I'm sorry, but if you want to go into the issue of how a development company conducts its business you need to talk to them. Why they - they conduct their applications under a shelf company name is a matter for them and the Australian Tax Office, not for me. The fact of the matter is that councillors, nine times out of ten, if a shelf company's name is used, have no idea who the applicant is as the primary - as the primary owner; no idea at all.

But, councillor, one of your answers here is to say, "Well, this is all a matter of public record."?-- I said the donations are a matter of public record.

40

Donation by X - by company A might be a matter of public record, an application by company B for a development approval might be a matter of company records; it's a question of connecting the two, isn't it?-- Well, with all due respect, at law they are two different entities. Now, whilst the principal - let me finish; the principal may be the same person or the same individual, they are still two different entities and by law under the Act you have to treat an application on its merits and that's what I do. Now, any inference beyond that is, quite frankly, ridiculous. The applications are dealt with as they are lodged with council. And no other way can be - or no other issue can be attached to that in regards to donations and the donations under the principals' names.

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So you saw no need to make a declaration?-- I wouldn't have known who Downlane was.

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You wouldn't have known who Downland was but you knew - must have known about the particular application, looked at it; you would know the site?-- Why is that - why is that going to automatically connect it to the Ingles group?

So is your evidence that you did not know who Downlane was and who this application-----?-- Not until after it was dealt with by council.

10

Not until afterwards?-- That's correct.

All right. Devine; 17th of February they'd paid \$10,000 into the Common Sense Trust Fund?-- I'm not sure how it could possibly be connected that I-----

Can you answer the question?-- Yes, I'm just asking - asking if you can clarify for me how I could have a possible conflict of interest of paying into a trust fund that I didn't receive any benefit from?

20

Did - do you know whether Devine paid \$10,000 into the Common Sense Trust Fund-----?-- According to public record they did.

-----on the 17th of February 2004?-- According to public record they did.

On the 24th of February 2004 they purchased a site at Finnegan Way, Coomera?-- I have no idea.

30

You don't know of that?-- I have no idea what date they purchased the site at Finnegan Way at Coomera.

Well, do you know of the purchase but not the date?-- I'm aware that they have interests right across Coomera but I have no idea of what date they purchased anything at Finnegan Way.

In September 2001 they lodged an application for a subdivision to increase the number of lots from 88 to 132; do you know about that?-- I have no recollection of that.

40

Right. You've no recollection of the debate?-- We deal with hundreds of applications on a fairly regular basis.

The answer is no, is it?-- The answer - well, as I've already said, I have no recollection.

In those things I've just put to you, you see the pattern, don't you? There's a donation and an application and then consideration by the council?-- And the pattern is what?

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Well, I've just told you; there's a donation, an application and consideration by the council?-- And the pattern is what? I'm still waiting to see a pattern. A pattern usually indicates that there is some sort of outcome or some sort of

design. If you can show me what the design is, I'd like to know.

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Do you accept that in those cases I've just put to you there is a donation, an application and consideration by the council?-- Well, I have no idea because I don't know, other than what you've told me, when the applications were made or considered.

Do you accept that the public has a legitimate interest in knowing whether their elected representatives have received some financial support from the company affected by the council's decision?-- Well, that's clearly indicated by the fact that the legislation requires us to declare these things, and it's all been declared.

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What's been declared?-- Well, the donations have been-----

The gift register?-- All the donations have been declared.

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CHAIRMAN: It didn't quite work out in this case though, did it?-- No, Chairman, but, I mean-----

I think we've got, I think, about 25,000 of donations that were never declared?-- Chairman, as I understand it - and I only have this from evidence given here - is that those donations were actually received after the end of the declaration period. Now, as I understand it they automatically fall into the next declaration period, so therefore something must be lodged at the next election. So I don't think there's anything necessarily untoward there but that's probably something in the legislation that should be tidied up.

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Yes, something we have to look at?-- Yes.

MR FREEBURN: The fact is that you don't really - you didn't involve yourself in the declarations - the returns, apart from checking - your staff put these things in front of you and you asked them whether they got them right and you signed them; is that right?-- That's basically it.

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So you don't know whether your returns are complete or not?-- They are complete to the best of my knowledge and my knowledge is what I asked of my campaign manager - very direct question - and as I gave in evidence, I think it was yesterday, that I even queried him as to why we were nominating the lunch given that we didn't have to declare it under the current rules, simply to be open and declare it.

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Thank you. Thank you, Mr Chairman.

CHAIRMAN: Mr Webb.

MR WEBB: Thank you, sir. I just wanted to ask you a couple of questions, Mr Power, about Yarrayne. If I understand

matters the development was near an area which was already being used as a retention area for overground runoff?-- Yes, that's correct. It was - this - the Yarrayne site was on the northern side of the road; the existing site, which was about 30 years old as a park residential estate, was on the southern side; Baker Creek is the actual watercourse in question and it ran directly into the Coomera River. Part of the - that overflow - overland flow actually has some retention area that was used, I guess, in an unplanned way from 30 years ago, so-----

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As a water sedimentation retention area?-- Essentially, yes. I don't think it was necessarily planned from 30 years ago but it eventuated that way because that area was very low-lying.

And council then, as in more recent times, retained it as a retention area?-- That's correct. It is - it's part of a larger parkland, significant size parkland, actually.

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So would I take it that in the times that it may have a use as a retention area, it wouldn't have a use as a parkland in a general sense? I don't mean an adventure parkland but-----?-- Oh, no, as useable open space. No, and that's one of the reasons why I believed it was appropriate to formalise it and actually get a contribution from the upstream development that would affect it.

Well, the council, by acting in the way that you've mentioned, through the subcommittee and then in an open council meeting, didn't actually give anything away to Yarrayne. They didn't give parkland away which had some higher and better use than a retention area?-- No, that was a lovely little emotive argument that was put to the press but in actual fact the area that was in question to be used was already, unofficially, I guess, or at least informally being used anyway by the 30-year old development.

30

So rather than create another, and I take it unnecessary sedimentation retention area you were just using the whole catchment principle of planning to put the sedimentation area into - utilise what is there for the highest and best use of the land?-- That's correct, and it also would have saved the ratepayers significant sums of money because sooner or later we are going to have to get into that - that retention area downstream to actually formalise it, and that will cost significant sums of money which will be borne out of rates rather than developer contributions.

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Well, is it correct then that in your view council was acting properly and was not giving anything to Yarrayne?-- Oh, absolutely. Council was acting on very sound town planning principles and hydraulic principles. No question about it.

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Thank you.

CHAIRMAN: Mr Fynes-Clinton.

MR S FYNES-CLINTON: Thank you, Chairman. Councillor Power, you were questioned at some length by both Counsel Assisting and my learned friend, Mr Freeburn, concerning your discussions with the press and it was put to you on several occasions that there were certain things you didn't tell them. Now, my question is this, is - and you explained your reasons for doing that - the question is this. Is that an approach which you adopted only in relation to this matter, the matter of the bloc and the so-called fund, or is that an approach that you adopt generally when dealing with the media?-- Oh, no, that approach I adopt generally with the media. It's - it is something that I've learnt through bitter experience in 15 years, that to give the media in some cases to - information beyond their question generally confuses them because they have trouble understanding in some cases, not all of them, in some cases exactly what we do as local government.

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To your knowledge, and if you don't know say so, is that an approach which is unique to you or is it something which many elected politicians adopt?-- I would suggest that probably the vast majority of elected representatives do that.

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It's just that your answers to those questions were met with what might be described as the raised eyebrow and the disbelieving sigh. It's your evidence that for those involved in politics there's nothing unusual in the approach you took?-- Not at all. Not at all.

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Thank you. The matter of infrastructure charges, just briefly. You were questioned on that and we've had the evidence about what happened, et cetera. Just to expand on a few relevant points there from my client's perspective in making submissions. Roughly how long had the council been working on these infrastructure charges plans that were about to be adopted at the time of the election?-- Formally and informally probably close to three years. We were aware at the introduction of the Act that we had a period in which to develop infrastructure charges plans and I think we introduced the working group, the committee that has been referred to in evidence, probably about 18 months prior to adoption, 12 to 18 months anyway.

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All right. Can you give us a ball park figure in terms of the number of bodies that were involved, officers, consultants and other people over that period, just roughly?-- Oh, across the whole organisation plus external, probably close to 120 people.

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And on a similar basis are you able to estimate, just broadly for the Commission, what the council expended to put those policies together over that period?-- Oh, dear. I don't think we've done a final accounting of it but I'd be very surprised in terms of manpower expended if it didn't - didn't reach the 3 or \$4 million mark.

Since the policies were adopted the council's been involved in some developer appeals against the imposition of those charges, correct?-- Correct.

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Yes. What's the council's attitude been to defending those appeals? Has it defended them wholeheartedly? Half-heartedly? Has it settled?-- We have defended them wholeheartedly. The attitude of council has been to defend rigorously at least the first - the original decision that we had in the Ninaford case because that was a bit of a landmark decision.

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And that particular matter where the council was successful, the applicant then took that to the Court of Appeal. Are you aware of that?-- Yes, I am aware of that.

Yes, and without going into any details that matter did not go to a hearing, did it?-- No, it didn't. There were recommendations from legal advisers to council.

20

All right. So, as I say, without going into the detail, to the best of your knowledge, was the Council's decision on that matter consistent with its legal advice?-- Yes, it was.

The only other matter is this. You'd obviously be more than aware of the identity of those persons identified by the media as constituting the so-called bloc. Has that group of people ever held a meeting between themselves outside the Council chamber?-- No.

30

Has it ever been suggested to you by the Gold Coast Bulletin or any other media outlet that such meetings have been held?-- Yes, it has. In fact I remember some conspiracy theory about us meeting at a coffee shop on Chevron Island. We were obviously plotting something. I think two or us or three of us were having a cup of coffee one day. But the Gold Coast Bulletin has certainly expressed that.

Are you aware as to whether - and I'm being a bit lazy here - as to whether any of the articles in the Gold Coast Bulletin actually asserted that the bloc has had meetings outside the Council chamber?-- Yes.

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Thank you, Chairman.

CHAIRMAN: I think it's back to you, Mr Temby.

MR TEMBY: During the course of this hearing, did Mr Nyst from time to time seek your instructions as to dealings you had had with and conversations with various individuals?-- Yes, he did.

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And did you provide him with instructions when so sought?-- Yes, I did.

After such occasions, were you sometimes in the hearing room when you heard him question such individuals?-- Yes, I was.

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And at least on the occasions you were here, did he do so in a manner consistent with your instructions?-- Yes, he did.

Thank you. Now, I move to a different topic. You were yesterday taken to and I think shown an email from the late Mr Ray to a Mr Banks at Macquarie Bank dated the 3rd of March 2004, in which Mr Ray suggested that a contribution be forthcoming and referred to a fund to mount a campaign to win various wards for a caucus of like-minded members; you remember that?-- I do.

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And I think you have given evidence already that you were not aware of that email until this hearing?-- That's correct.

And the general effect of your evidence is that the words I've just read out were far from anything that you were seeking to achieve?-- That's correct.

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Now, for the purpose of the two or three questions that followed, I invite you to accept that caucus can be taken to mean a group of like-minded elected representatives who meet before there is debate on an issue or issues to decide how they will collectively vote; you understand that?-- I understand that.

Have you on any occasion since the 27th of March 2004 participated in such a caucus?-- Never.

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Are you aware since the 27th of March 2004 of any members of the Gold Coast City Council who have participated in such a caucus?-- No, I'm not.

Do you understand that in asking you these questions I am not asking you about a caucus numbering eight or any other particular number of members; you understand that?-- I do understand that.

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And consistent with the definition I've suggested to you, two would suffice; you understand that?-- I do understand that.

Do your answers stand as to both your participation and your knowledge?-- Yes, my answers stand.

Has your practice in the respect I am now questioning you about changed in any way since the 27th of March 2004 as against your practice prior to that date?-- The practice I currently undertake is the same I've always practised after every election.

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And is there any difference in your state of knowledge as to existence of a caucus no matter how small since as opposed to before the last Council election?-- No, no change.

Now, finally, I want you to listen to what I'm about to say to the Chairman, and I'll ask you when I've said it whether you

agree with it. And this relates, Chairman, to the issue that was raised by counsel assisting concerning the witness's statement as to those who might be looked upon as his political opponents in the Council who have been characterised by some as being whistle-blowers, and if it suits you I'd like to say something on his behalf and ask if he agrees with what I say. What is said on instructions is this. The witness did make statements concerning such individuals on, we think, three occasions - certainly two but we think three. On the last of those occasions, Mr Nyst and I became aware for the first time that such statements - such a statement had been made.

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We then spoke to the witness, our client, in the plainest of language and told him that his conduct was inappropriate and there must be no repetition of it, and since that time there has been no further instance of that sort. Mr Power hopes it is apparent from the answers he gave earlier that he regrets having made statements of this sort. He wishes to point out that on each occasion what he said was not said in an unprompted way or out of the blue but, rather, was responsive to things which had been said by others and publicised.

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And, indeed, although he said nothing either in the witness box or outside the hearing room about this, I inform you, Commissioner, that the making of statements of that general sort has continued until as recently as this morning, and I wish to tender a transcript of a radio interview which was provided to us; not sought by us but provided to us. And might I just point out some of the things that were said in the course of the radio interview by a councillor who I choose not to name.

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That councillor was on the first page introduced by the radio person as brown paper bag reporter and was then named. On the second page, that councillor was identified at about point 6 as one of the whistle-blowers about this. You'll be pleased to hear at the foot of the second page, this was said by that councillor on radio, "I think they've gone from the health inquiry. I think the idol down here at the moment is Mr Needham and Mr Mulholland. You know, they're really going from strength to strength."

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On the third page at about point 3, a radio individual referred to my client, the present witness, and represented the position as being that Mr Mulholland QC had said that Mr Power, the Deputy Mayor deliberately chose to lie to the Gold Coast Bulletin. The councillor immediately said, "And that journalist, she won a Walkerley," and a little further down, "You don't win a Walkerley if you don't report the truth." And there's not a lot more, but if I ask you to go to the penultimate page which is numbered 7 at top right, the radio person said, "And Robert Mulholland will write the recommendation; is that what you're saying," and followed up with, "He's the man who's going to write the recommendation about what should happen." Councillor, "Absolutely. And he's the one who said yesterday the Deputy Mayor lied, so it's not looking good."

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Now, it's a matter of regret that there should be this sort of running commentary alongside an inquiry of this sort. There's been a deal of it. On two or probably three occasions, Mr Power responded to comments of this broadly general type. He acknowledges that he shouldn't have done so and asks the Commission to accept that he regrets having done so.

Have I stated your position fairly?-- Yes, you have.

There's nothing more, Mr Chairman.

CHAIRMAN: Thank you, Mr Temby. The transcript will be Exhibit 328.

ADMITTED AND MARKED "EXHIBIT 328"

CHAIRMAN: Yes, Mr Mulholland?

MR MULHOLLAND: Mr Chairman, just in relation to that latest transcript, I think it should be made plain by me that needless to say I did not know of this interview, either before it or since, until it's just been tendered, and I ought to say that in relation to the person who is interviewed I have had no contact whatsoever with her in relation to this matter outside the hearing, nor has counsel who is assisting me.

It is as much a matter of regret that the commentary that we've been made aware of by Mr Temby was made today, as it is in relation to any commentary that has been made in the course of these hearings. And that's all I wish to say about it.

CHAIRMAN: Well, that commentary is also inaccurate, of course, in that, as you well know, Mr Mulholland, you won't be making recommendations, you'll be making submissions, and the recommendations at the end of the day will be made by the Commission.

MR MULHOLLAND: Precisely.

CHAIRMAN: So she seems to state - assume your position is different from the actual factual situation.

MR FREEBURN: Mr Chairman, can I-----

CHAIRMAN: Yes, Mr Freeburn?

MR FREEBURN: Can I make clear that from my client's point of view my client did not know of the interview either until it was mentioned now.

CHAIRMAN: All right, that's noted. Thank you. Yes, Mr Mulholland?

MR MULHOLLAND: Thank you, Mr Chairman. Mr Power, there is just one matter that I need to take up with you and that concerns the list of donors shown on the Barden return which Mr Freeburn has taken you to. Do you still have that before you?-- No, I don't, Mr Mulholland. I actually didn't have that at all. I was accepting that Mr Freeburn was-----

I'll just get the copy?-- -----reading it correctly.

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I'll just get the copy so that I can ask you a question-----?-- Sure.

-----about it. You take this. Do I - just in relation to that list you have said something which might indicate a view on your part that Mr Sullivan, that is Mr Phil Sullivan, is not a developer. Leaving him aside for the moment, is there any other donor named on that list who you would seek to describe as not a developer?-- Mr Mulholland, I would suggest that the Ray Group are not solely developers, they're involved in tourism and also liquor.

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Right?-- The - Fish Developments, even though it says developments, I believe are also into motor racing, wineries and liquor outlets; Roche Group up until very recently, as I said, Mr and Mr Roche used to own Nutrimetics Worldwide, sold that back to the Americans; and Stockland Developments is also into shopping centre ownership which they own at least one shopping centre on the Gold Coast.

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CHAIRMAN: To be fair to Mr Freeburn I think his question was whether they were companies or individuals that had development activities on the Gold Coast. He wasn't necessarily saying they weren't doing other things on the Gold Coast and elsewhere?-- Yes. Mr Chairman, the Ray Group, as I understand it, don't have any developments on the Gold Coast and haven't had for some years, but I accept, with the exception of them and also Mr Phillips through his company - sorry, Mr Sullivan through his company, don't specifically have developments on the Gold Coast.

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MR MULHOLLAND: Well, we've already heard from Mr Ray's son himself in relation to what he sees his companies as and you would agree as well that they've been involved in property developments?-- Oh, certainly, I'd never disagree to that.

So far as Mr Sullivan is concerned he gave evidence here at page 1264 and you may be interested to know that the cheque of \$10,000 which is referred to there was paid through his company Ronglen Pty Ltd trading as Sullivan Constructions. Do you know the company?-- No, I've never heard of that company.

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And asked in relation to that, at the page that I've given, it was - the question was put, "Now the companies that you were involved with, the donation which went to Hickey Lawyers trust account went from Ronglen Pty Ltd, is that right, trading as Sullivan Constructions?" "That's correct." "What sort of company is that?" "It's a small construction company,

development company." "Okay?" "Private." "Does that operate on the Gold Coast?" Answer, "It operates on the Gold Coast." Question: "It's involved in developments on the Gold Coast?" Answer: "It has been."-- Mr Mulholland, I wasn't aware of that. My only knowledge of Mr Sullivan is through the - through his public companies and the financial institutions. I've never come across the name Ronglen or Mr Sullivan through the development process.

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Yes, all right. I having nothing further, thank you, Mr Chairman.

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CHAIRMAN: Yes, thank you, Mr Mulholland.

MR MULHOLLAND: May Mr Power be excused.

CHAIRMAN: Certainly, thank you, Mr Power?-- Thank you, Mr Chairman.

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WITNESS EXCUSED

MR MULHOLLAND: Mr Chairman, yesterday-----

CHAIRMAN: There is the aspect of Mr Weimar-----

MR MULHOLLAND: Yes.

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CHAIRMAN: -----whether we'd need to call him this afternoon.

MR TEMBY: We've considered the position. There is no need for him to be called and we'll handle what we want to say in submissions.

CHAIRMAN: Thank you.

MR MULHOLLAND: Mr Chairman, can I ask, as that completes the evidence to be called, that the hearings be adjourned in accordance with the timetable stated yesterday and be adjourned to the 7th of February for oral submissions.

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CHAIRMAN: Yes, all right. And before then we'll adhere to that timetable with respect to written submissions from you and then from any party who wants to put in written submissions.

MR MULHOLLAND: Thank you.

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CHAIRMAN: All right.

MR TEMBY: May I say that I'm out of the jurisdiction until nearly the end of January and then I've got something substantial in the High Court. To the extent that I'm to be involved in helping prepare submissions, there'll be limitations upon my availability which might nudge things out

a little and I hope - we'll try and minimize inconvenience but I hope if there's a need for accommodation, it can be provided.

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CHAIRMAN: Yes, well, we are proposing to sit on the 7th-----

MR TEMBY: Yes.

CHAIRMAN: -----which I believe is a Tuesday.

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MR TEMBY: I don't think I'll have any difficulty in being here on the 7th if that's the appropriate date. It's just that in adhering to the timetable for written submissions we might need a little accommodation is all I'm saying.

CHAIRMAN: Yes. The idea was that if submissions could be in by the Friday then I can have read them before the Tuesday so that people can speak to them on the basis that I am familiar with the contents.

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MR TEMBY: Yes.

CHAIRMAN: As long as I have time to read them before the Tuesday morning and that everyone else doesn't seek the same accommodation so I get them at 5 o'clock on the Monday, I'm sure we'll manage.

MR TEMBY: Thank you, Chairman.

MR MULHOLLAND: And the other advantage of course is if the timetable is adhered to, it may affect somewhat what I have to say on the 7th.

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MR TEMBY: Yes.

CHAIRMAN: And if I could ask that perhaps - I understand some people might want to just put in written submissions and not appear and that's fine. I would accept that. If there was anything in particular in them that I felt the need to clarify then I might ask, through Counsel Assisting, if we could do that. But if people could let Counsel Assisting know if they do intend to appear on that Tuesday, the 7th in case there's too many, we might have to look at making time available on the 8th. All right, we'll adjourn until the 7th of February and may I wish you all a Merry Christmas.

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THE HEARING ADJOURNED AT 3.08 P.M. TILL TUESDAY, 7TH OF FEBRUARY 2006

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WITNESS LIST

DAVID LESLIE POWER, CONTINUING EXAMINATION.....	2477
WITNESS EXCUSED.....	2543

EXHIBITS

ADMITTED AND MARKED "EXHIBIT 324".....	2479
ADMITTED AND MARKED "EXHIBIT 325".....	2479
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