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## Transcript of Proceedings

CRIME AND MISCONDUCT COMMISSION

MR R NEEDHAM, Chairman

No 5 of 2005

PUBLIC HEARINGS INTO GOLD COAST CITY COUNCIL

BRISBANE

..DATE 11/10/2005

..DAY 3

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THE HEARING RESUMED AT 9.52 A.M.

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ROBERT MOLHOEK, CONTINUING EXAMINATION-IN-CHIEF

CHAIRMAN: You're still on your former oath, Mr Molhoek?-- Yes.

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Thank you.

MR MULHOLLAND: Mr Molhoek, I'd now like to take you to an email. Yes, would you have a look at this, thanks. Now, is that an email from Chris Morgan to Brian Ray of 24th March 2004?-- Yes, it is.

Again, I just want you to comment on the contents of the further message or the original message sent from Chris Morgan, "Hi David" - this is addressed to David Power and referring to the trust account, "Assuming the trust account still has a balance of \$10,300 from earlier in the week, we will need a further \$43,000 in total to clear the balance of expenses. This does not include any contribution to rob Molhoek's campaign," and so on. Now, this would suggest at this time that there was still an expectation that there would be a contribution to your campaign. Does that tally with your recollection?-- Look, it's possible that that was the case but I had no input into the emails, so it's difficult for me to comment on Chris Morgan's thinking on that occasion.

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Yes. Well, it goes on, "Considering the number of pledges still outstanding from donors, I would expect that this should be straightforward. However, we do need to give it a major push in the next 48 hours. Could you assist with calls to the following, please: Australand, John Howe, Leda, Col Dutton of Stockland and the Marine Precincts people," and so on. Did you know anything of this?-- No, I didn't.

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Yes. Perhaps I should tender that email at this point, please, or emails.

CHAIRMAN: It's really the email from Morgan to Power of 24 March 2004. Yes. That will be Exhibit 24.

MR MULHOLLAND: Now-----

MR WEBB: I think it should be 25, Mr Chairman.

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CHAIRMAN: That could well be so, Mr Webb.

MR WEBB: 24 was an-----

CHAIRMAN: An email.

MR WEBB: Another email.

CHAIRMAN: Yes. Yes, okay, so it's 25, thank you.

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ADMITTED AND MARKED "EXHIBIT 25"

MR MULHOLLAND: Now, can I ask you whether you know anything of the intention of Lionel Barden to host a one hour session for potential donors to meet new candidates at the innovation showcase on Thursday, 25th March 2004 - that is, two days prior to the election?-- I have no recollection of that event.

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Were you ever invited to such a function or session?-- I don't believe so and I don't have any recollections of such.

So you didn't, to your knowledge and it's certainly not in your material, but you didn't get an email indicating that there was this one might imply some problem with donors and the donors were actually wanting to meet the candidates in advance of making that payment, and that this was set for Thursday - that is, two days before the election, but then it was called off. Now, do you know anything of that kind happening?-- I'm certainly aware that there was a function. I'm not sure whether I read about that somewhere in the media afterwards or whether there was in fact an invitation but I have no record of having received anything from Lionel, and it was around that time that I had myself or Kevin Nichol had contacted Chris Morgan and said, "Look, we're withdrawing our request for any support at this stage."

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Your clear recollection is that you had contacted, whether it was by yourself or by Kevin Nichol, Mr Morgan to say that you wanted to have nothing further to do with that group?-- That was subsequent to a further request that we put in, I think, about 10 days out from the election, and then when the story - when the media started to break about where the funds was coming from, that sealed it for us, and at that point it was either myself or Kevin Nichol that contacted Chris and said, "Look, we haven't received anything to this date. The invoice that you've received from us, disregard it. We no longer want any association with - we're no longer interested in receiving any funds from you."

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Well, your recollection is that that occurred before the election?-- That's correct.

My suggestion to you is that there was still a wish on your part after the election, but your clear recollection is that it was before the election, 27th March?-- That's correct.

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Just coming back to this invitation to attend the innovation showcase session, if you had been invited to such a session, would you have attended it?-- No, I wouldn't have at that stage.

Why not?-- Because at that stage I'd become aware of the source of funds through the media and Brian Ray's involvement. We were still - had that sense of not getting straight answers as to what was forthcoming and had determined that we should have trusted our earlier instincts and just kept ourselves separate from it.

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Yes, well you may - I don't want to mislead you here but I should remind you that it was on the 25th, that is Thursday, the 25th of March 2004, that the Gold Coast Bulletin published an article in which Brian Ray was quoted as admitting that he and other businessmen were behind the big budget campaigns of a group of council candidates?-- That's correct.

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Now, that didn't happen until the Thursday. As I say, I don't want you to give your evidence on some misunderstanding. That happened on the Thursday. Was it after that that you took this decision that you didn't want to go ahead?-- My recollection was it was on or just prior to that. I became aware - I thought it was the Tuesday of that week - that - of some of the contributors. In fact the first knowledge I really had of what was going on was when Dawn Crichlow bailed me up at pre-polling and I thought that was the Tuesday at Southport Library, and basically-----

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Tuesday, the 24th?-- If that's the Tuesday before the election.

CHAIRMAN: That'd be the 23rd I think.

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MR MULHOLLAND: Oh, sorry, the 23rd, yes?-- -----and basically gave me a serve about my involvement. Said something like, "Have you got any idea what you're getting yourself into? You've got no idea," and just sort of, you know, made a whole range of issues like that and I said, "Well, look, Dawn, at this stage I still haven't received any funds. I've certainly attended some meetings. I've had an interest in being part of it but I've still not had any clear or straight answers as to whether I'm being supported or not." And it was at that point that - I'm pretty confident - that either Kevin or myself made further phone calls to try and find out just what was going on.

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Well, you'd been trying to do that for months really, to find out what was going on?-- Yeah.

Well-----?-- Five or six weeks.

Five or six weeks. What was it that Councillor Crichlow said that indicated to you that you should put an end to it?-- Oh, gee, it's hard to recall the entire conversation - it wasn't that long - but she basically accused me of being fairly naive, that, you know, I really didn't have any understanding of what was going on in council. You know, I think she even said I was stupid. I mean she was pretty scathing of me. And I was a little defensive because at that point I still didn't really have any clear understanding as to the source of funds or even - I was still highly cynical as to whether I was ever

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to actually receive any funds because, you know, we'd sent - as I indicated yesterday we'd sent account details through, there'd been no deposit.

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Yes, we'll come to that?-- On and on.

Now, coming back to my question in relation to the invitation to meet donors, bearing in mind that you'd had that conversation with Councillor Crichlow, would that have affected your decision whether or not to attend such an invitation if it had been made to you?-- Oh, absolutely, it - it certainly would have brought it more into focus for me.

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So if you knew that the donors were developers who were - or potential donors were developers and that the candidates were going to meet those people on the Thursday - that was the plan - would there be anything improper in that happening in your view?-- Oh, potentially, and I guess that's why I had that - that growing discomfort with the whole process. I've never said that I would have difficulty receiving support from the developer.

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Yes, yes, but, Mr Molhoek, can we cut directly to the chase. An invitation I'm putting to you hypothetically wasn't made to you?-- Yep.

If that invitation was made of you meeting potential donors in the form of developers two days out from the election, what would be wrong in your view in you going ahead with that meeting?-- Oh, I wouldn't - I probably wouldn't want to - I'm just trying to think of the right word. I would probably prefer not to get that close to those people on such an occasion.

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But if you knew and trusted developers, you said, then that would be okay to receive moneys-----?-- Well, there are-----

-----is that correct?-- There are-----

Hold on. Please don't talk across one another because otherwise-----?-- Sure.

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-----the record becomes unintelligible. If you knew and trusted developers it would be okay to meet them; would that be so?-- Oh, absolutely.

In your view. So in attending such a function - assume you were invited to it - would you only go on the basis that you knew the developers or would you go on a different basis, and keep in mind the fact that you were part of a commonsense campaign group in which money was coming from somewhere-----?-- Mmm.

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-----weren't you? So assuming that an invitation was made to you, are you able to say at this point in time whether you would have attended it or not?-- Oh, look, I don't know. I - I don't really know how to answer that. It's a fairly subjective question. I may have gone and may not have gone.

I really don't - you know, I probably don't tend to analyse things that deeply.

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Could I ask you now to have a look at the Gold Coast Bulletin article for Thursday, the 25th of March 2004 and this is in Exhibit 3, number 29. Have a look at this. Now, this article you will recall of course it was - would have been a significant article at that time with the election campaign; would that be correct?-- Yes.

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And in this article as I've indicated, property developer Brian Rowe is stated as having admitted that he and other businessmen were behind this campaign, planning - that is a group of council candidates, planning to form a voting bloc on the Gold Coast City Council. Now, you will remember reading this article at the time?-- Yes, I do.

And it revealed that according to Mr Ray, "We are contributing to the fund but that's all we're doing," and he as stated having been understood to have donated more than \$40,000 to council candidates in the Tweed. "We're not responsible for any of the campaign. We simply believe that if a more coherent outcome can be achieved for the membership of that council it will be in the interests of the city." Do you remember this?-- Yes, I do.

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And it goes on to refer to the candidates believed to be aligned, including yourself, "Rob Molhoek, Division 4". Did that correctly state the situation, that you had alignment with that group?-- Yes, it did.

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And then it goes on, "It is understood candidates backed by Mr Ray have access to a trust fund." Now, did you know of the trust fund?-- No, I didn't.

So this was a revelation to you?-- Yes, it was.

"Mr Ray said former Robina Chamber of Commerce president, Lionel Barden, approached him about the campaign, a claim Mr Barden yesterday denied." Remember reading that?-- Yes, I do.

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You, of course, have told us about contacts that you had with Mr Barden?-- That's correct.

And it goes on to say that his only involvement in Saturday's election was to hand out how-to-vote cards for Councillors Jan Grew and Ted Shepherd. Did that accurately represent what you knew of Mr Barden's association with this aligned group?-- At that point in time, absolutely. That was - that was the first knowledge that Lionel was even involved in a trust fund - was when it was alleged in the newspaper.

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But did you not have some view or idea that he was connected to this campaign in some way?-- Until this, I actually - I had no knowledge that he was directly involved. I just saw him as another business person in the community that had some passionate views about the performance of the current Council.

All right. Well anyway, can I then take you to - you can hand that back now. Is there any other comment you wanted to make on that article?-- No.

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Return that, please. Now, can I ask you to have a look at this e-mail - two e-mails. The first e-mail being an e-mail of the 25th of March 2004 under the subject, The Common Sense Candidate Resource. And it's from Chris Morgan to you and, basically, wishing you the best of luck at the election and indicating his congratulations on having run a great campaign. Do you remember receiving that?-- Yes, I do.

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And the return e-mail of the 26th of May 2004-----

CHAIRMAN: May or March?

MR MULHOLLAND: Sorry, 26th of March 2004, the day prior to the election, thanking him for the e-mail which he had sent you?-- That's correct.

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I tender those e-mails.

CHAIRMAN: Yes, they will be Exhibit 26, thank you.

ADMITTED AND MARKED "EXHIBIT 26"

MR MULHOLLAND: In that e-mail of the 26th of March, you said, "Thanks so much for the encouragement. I appreciated being able to sit with" - I take it you - "back in January to run over my plans. It was reassuring to hear from someone with your experience that I was on the right track." Now, that did not really represent the totality of your connection with Mr Morgan, did it, by any stretch of the imagination?-- I think it absolutely did. I - I - I'm - in my statement, I declared that I'd met with Chris. I - in my diary notes, I indicated that I took the opportunity to sit with him over a cup of coffee and run through my campaign plans and I did appreciate the - you know, the value of his advice and the encouragement that he offered on that occasion.

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Mr Molhoek, what I'm suggesting to you is it didn't represent the totality of your association because you've told us that on the 30th of January you had contact with him and in which you indicated that you were looking for between 10 to \$20,000 shortfall in your campaign?-- Yes.

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That - in that sense, it didn't represent that sort of association, did it? It was just a thank you, congratulations-----?-- Sure.

-----wishing - he wishes you all the best and you thank him?-- Yes.

But in fact, the association was an association in which you were seeking money through him?-- At the point - at the time of that e-mail though, Chris would have been under no misapprehension that we no longer sought - were seeking that financial support and so I was just seeking to be cordial and courteous in responding.

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All right. I'll ask you to have a look at this printout of the Gold Coast Bulletin material published on the 26th of March 2004, 31 in Exhibit 3. Now, just go to the part in this article referring to you. You were spoken to by The Bulletin reporter; is that correct?-- Yes, it is.

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And you see it there. It starts, I think, with, "They were wanting to check me out," said Mr Molhoek"?-- Well, it actually starts prior to that.

Right?-- There's a paragraph earlier to that that refers to me.

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Yes, all right. Well, read all of it in relation to what it says in relation to you and I'm going to ask you to comment on it and its accuracy so far as what you - what is attributed to you?-- "Initially Councillor Robbins and Councillor Power stuck to previous claims that they knew nothing about the bloc but after one of the candidates, Rob Molhoek, told The Bulletin yesterday about involvement of the two councillors, they consulted their diaries and realised they had attended a meeting with the team of challengers."

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Yes, sorry. I'm not asking you to read the whole article out, I just want you to read to yourself-----?-- Oh, sorry.

-----the part in so far as it refers to you and check for its accuracy. Does it represent what you told the reporter? I think all of what concerns you is on that first page?-- The majority of it is - accurately reflects most of what I discussed with Alice Gorman on that occasion.

Yes. Any comment?-- I'm sure that Archie gave her a little more detail than what's been published.

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Well, can you fill us in on that?-- Well, I certainly would have spoken to her about the original meeting, the one that some of my colleagues denied any knowledge of. I'm sure I spoke in a little more detail about my involvement in terms of requests for funding and then I, you know, the last minute decision to withdraw the request.

Well, you tell us what you recall saying to the reporter in relation to that?-- Well, pretty much what I've just said.

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So you told the reporter that you had requested money. Is that right?-- Yes, I did.

The report says that you told the reporter that you hadn't taken any money from the trust fund, was approached at your campaign launch, and so on. "A couple of weeks later I was

invited to a meeting at Robina with a bunch of aspiring candidates and a couple of [indistinct] candidates." Which meeting was that one? Was that the November meeting?-- I'm pretty sure that was the November meeting.

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Yes. Or was it - "I got there about 20 minutes late and left for another meeting." Is that the November meeting?-- No, that was the second meeting and - I certainly spoke to her though about both meetings because she actually subsequently interviewed some of the other candidates or councillors about the earlier meeting, so she obviously had knowledge of that meeting.

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At any rate, your recollection is-----?-- -----obtained it from the-----

-----that you said to the reporter you had requested funding at one stage but didn't go ahead with it, something to that effect?-- Something to that effect, and I actually did say to her a number of times that because she was pushing me on the issue of, you know, whether I would accept funding from developers, and I said to her on a couple of times, I said, "Look, Alice, fundamentally I have no issue where people get their funding from, what I have an issue with is wanting to be crystal clear as to who the source of funds is and what if any expectations they may have." And because in the course of the interview, my sense was that she was trying to paint what I thought was a fairly unfair slant about the intention of Chris Morgan and others were involved with this commonsense campaign. I felt that - I had some real concerns about what I perceived to be a bit of a bias on her part because of her relationship with Councillor Critchlow and the very clear support that was there for I guess rival candidates that became known as sort of the white knights.

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Well, where are we leading? What's the point of this, Mr Molhoek?--Oh well, where I'm leading is, you know, I can't absolutely recall everything that I said to Alice.

Are you suggesting or implying that you held something back because you didn't like her motives?-- No, I'm actually-----

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Distrusted her motives?-- -----I'm actually suggesting that I spilled my guts about everything, but she only chose to write things that suited the story.

Did you tell her anything about a meeting in January when you'd sought - you indicates you were looking from between 10 and \$20,000 in shortfall?-- Probably not in those specific terms. But I didn't hold anything back.

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Well, you held that back?-- Sorry?

You held that back?-- Oh, I didn't talk about the amounts, but I certainly indicated that I was open to receiving support from this group. It's something I've never denied at any point of the campaign.

Is there anything else that you want to say in relation to this article or what is attributed to you, or any other comment you want to make?-- No.

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Yes. Would you return that now, please. I just ask you to have a look at this email?-- Yes.

First of all, the email that I've asked you to look at is one from you to Chris Morgan of the 29th March 2004, subject the commonsense candidate resource. By the way, that commonsense candidate resource, did that reflect this group of candidates that you've spoken about earlier in your evidence?-- Sorry, I don't quite understand what-----

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Subject, the common - you've got at the head of this, "The commonsense candidate resource." Why did you select that as a subject?-- Well, that was the subject line that was in the email from Chris Morgan that I simply turned around back.

All right. And in it, you referred to this - of course by this time the election's over, you know that you've won the - your division - "had a long chat with Lionel today and begun the process." Just check this, "He told me about the letter you'd sent to Roy M" - who's that a reference to?-- Roy Miller.

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Who is he?-- The managing director of the Gold Coast Bulletin.

"Well done, perhaps I should be writing to Roy also. I've made contact with David" - that's David Power, is it?-- That's correct.

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"Spoken to Bob" - who's that? Is that Mr La Castra?-- Yeah, I think it may have been.

"And plan to catch up with Sue" - is that Robbins?-- "Sue Robbins and Ted Shepherd tomorrow."

"Unfortunately the Bulletin can't even record things properly, let alone report issues without twisting things." Now these people that you were meeting tomorrow, having just been elected to your division, were people who were part of the group of candidates, weren't they?-- That's correct.

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So you were meeting them, presumably, to have a talk about how you were going to organise yourselves at the council?-- No, that's not - that wasn't the intent at all.

Okay. What was the intent?-- I guess what I wanted to do was try and explain to them why I had decided to withdraw my request for financial support.

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Yes?-- And to try and explain why I was wanting to untangle myself from that involvement and to mend some bridges. There was a sense at the time and it was fairly - it was - I had a sense at the time that I think they all thought that I was the whistleblower and that I was, you know, feeding all this

information to the Bulletin and I was concerned that they had an accurate understanding of where I stood in it all.

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What, that you had, in fact, become what, some kind of informant or something-----?-- Well-----

-----for what was going on; is that what you mean?-- Well, no, not that I become an informant but - but, perhaps, it was me that had gone to the Board and then - and made more of this whole campaign than - than was originally intended.

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Right. You got that idea presumably someone had mentioned something to you which gave you the idea?-- Yeah, I - that was probably something that may have come out of the conversation I had with Lionel or Chris Morgan at the time. I would-----

What, they - sorry?-- I was keen to mend some bridges.

So, what, they gave you to understand that there was some pretty unhappy people, that is unhappy with you?-- Oh absolutely.

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Right. So you decided, as you say, to mend some fences?-- Yep.

Now, did you regard the fact that despite all your attempts to get information in relation to the funding, how it was operating and where it was coming from and so on, that you had never got to the bottom of that. Did you regard yourself as having been misled in any way?-- Yeah, probably. That would be a fair assessment of how I was feeling at the time.

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Did it ever enter your head that having been part of a group, even though in the end you didn't proceed to receive funds from the group, that you might have been under some obligation to identify the members of that group and any donations which had been made because of the statutory obligations under the Act?-- No.

You didn't?-- No.

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Never gave it a thought?-- To be honest, no, it never occurred to me.

Were you aware that there was a provision relating to obligations where you are part of a group of candidates or weren't you aware of that statutory provision?-- Well, I'm certainly aware of that provision, or subsequent to the election and - and reviewing the material.

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Were you aware prior to the election?-- No, not in those terms, and I - and I never considered that this was any group that - that met - that fitted into that criteria. It was never represented as that.

Well, did you give it any thought as to whether it did or didn't fit into that statutory provision?-- I really don't recall but - but had I have done so, I would - I would have -

I would have considered that it wasn't - it didn't comply or fit into that requirement.

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So you went on to say in relation to Quadrant, "I never told the Bulletin I declined your help. I actually stated you and I had known each for some time and because you had previous campaign experience and all my team were pretty green, I intended to use you for strategic advice and in fact had met with you to review my plans early in the piece", and so on. "In relation to funding, I actually told Alice Jones" - that's a reporter - "that I would welcome any financial support including that of developers provided that it came with no strings and it came through my campaign team." So do you - you're there referring back to what you had said to the reporter and there's no suggestion here that you had said to the reporter anything about looking for between 10 and \$20,000, is there?-- No.

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And you don't speak about it at all in these emails with Mr Morgan. Why is that?-- Well, because there - there was still nothing to speak of. There was no firm commitment. We were still trying to get an answer as to whether there was to be financial support. We were becoming highly cynical as to whether we were ever going to receive anything.

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This is as at the 29th of March 2004?-- This is as at - well, no, as at the 29th of March I had already spoken with Chris Morgan or my - Kevin had and advised that we were going to decline any support that may be on offer.

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All right. And you go on, then, you were quite happy to receive money from developers provided it came with no strings and came through "my campaign team". You see, if you had that attitude and had it at all times during the campaign, the question is why would you want to engage with Quadrant in relation to funding from sources unknown? Why wouldn't you just deal direct with the people that you wanted to deal with?-- Well, the assumption would be that Kevin and my campaign team were astute enough to ask the right questions to make sure that it wasn't coming with strings, and I was - I was quite frankly wanting to rely on them to look after that because my whole focus was really out with the pre-polling, door knocking campaigning-----

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Yes, yes, yes, Mr Molhoek?-- -----all of that.

But the question I'm asking you is your attitude to this. You say that you'd leave it to them, as it were, to be assured that there were no strings attached, but my question is different from that; my question is, why wouldn't you just simply, through your campaign team, seek any money direct? Why were you going through an intermediary?-- Oh gee-----

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Why were you persisting in that well into 2004, having regard to your attitude in relation to developers and so on?-- Because fundamentally Chris Morgan was someone that I still had a high regard for. I had no reason to be suspicious of him at this stage. I wasn't aware of Lionel's involvement

and the fact that it would be channelled through that trust account, and I assumed that there'd be nothing to be concerned about in - in the early stages.

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But he had told you nothing. You hadn't got to the bottom of it at all. You had been trying-----?-- Yep.

-----without success for weeks, if not months?-- Yep.

And you got nowhere?-- Yep.

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So why would you continue to persist?-- Oh possibly I was a bit naive. I'm a fairly forgiving person. I was trying to give them the benefit of the doubt right up to the last. I tend to be a fairly loyal person and so I was hanging in there for as long as I could believing that what was intended was right and appropriate.

Yes. And - all right, move on to the other email that I've put before you.

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CHAIRMAN: Did you intend to - oh sorry.

MR MULHOLLAND: I was going to tender both of them, Mr Chairman.

CHAIRMAN: Okay, sorry.

MR MULHOLLAND: And the email of the 31st of March from Chris Morgan to you, is that right, responding to your email?-- Yep.

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In part it says, "No need to feel concerned over Quadrant's coverage. It goes with the territory, and so long as there is nothing blatantly inaccurate we will maintain a low profile as we should in this context", et cetera. Is that right?-- That's correct.

I tender those emails.

CHAIRMAN: That exchange of emails will be marked Exhibit 27.

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ADMITTED AND MARKED "EXHIBIT 27"

MR MULHOLLAND: Now, could I ask you to look at this article, please, number 39 of Exhibit 3. Now, this is the printout of this article in The Bulletin. The first - sorry, Monday, 29th March 2004. Would you just read that article to yourself and, again, check for the accuracy of what is attributed to you. Does that accurately depict what you told the reporter?-- Can I have a minute just to read through it again?

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Yes?-- Because it's a little bit hard to follow. I'm not sure quite about the flow of this but I do recall that some of the quotes were a bit back to front. I think - it seems to be

attributing the quote about running the Permacrete company to me which was actually - I believe that would have been a comment that Councillor Pforr made.

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Well, apart from that-----?-- And I-----

-----is there anything that you want to comment on as to what is attributed to you?-- I'm not sure about the quote, "I've no affiliation to any political party," and the rest of that sentence. I'm not sure who's been - who that comment is being attributed to. I don't recall making that statement.

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Well, is it correct-----?-- And the rest of it seems reasonably - fairly accurate.

Right. So, did you tell the reporter that you declined financial assistance?-- Yes, I did.

And you were never told that there was to be a power bloc?-- No, absolutely not. There was never any discussion-----

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But you understood there was a group of candidates, didn't you?-- Yes.

Right. So what's the difference between a bloc and a group?-- A group of candidates is just a group of people with, you know, common values. A bloc, if that's the name that's to be attributed to some sort of political alliance, is potentially more of a political party or something, and that's been one of the issues that I and many of my colleagues have taken issue with is that it was never intended that anyone be wedded to anyone or have any formal structure in the same way that a political party would but, rather, just a desire to see, you know, more business like people in Council.

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Common sense stuff?-- Yeah.

Well, you said then that you declined financial assistance. Is there any reason why you didn't indicate at that point that you were trying to get financial assistance but it hadn't been forthcoming?-- I may well have said that to the reporter and he may have elected not to print that part but-----

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Well, are you saying you did say?-- I don't recall. I certainly made every effort to be as open and transparent with journalists in those few days running up to the election when all these questions were being asked.

Yes?-- And to some degree the frustration with what was and wasn't printed was expressed in that email of mine to Chris Morgan on 29th March, the day after the election or the Monday after the election.

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All right. Can I have that back, please. Could I ask you to have a look at this article, please, number 43 of Exhibit 3. Just remind yourself of that article, 3rd April 2004. Do you see the heading of it: Mayor elects, deal may see bloc leader

as deputy; Power packed for Clarke agenda, and then the article indicating, "Ron Clarke is working on a deal with David Power which aims at delivering his election commitment to big ticket items," and then it sets out the recapitulation really of what had been said previously about who were on this alleged ticket. Do you see that?-- Yes.

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Do you notice there in the article, "The Clarke team told Councillor Power that if he delivered the eight votes required to implement a reform agenda, Mr Clarke would support Councillor Power in any future mayoral campaign, probably in 2008." Did you know of anything of that kind - that is, of there being some eight votes being able to be delivered by Councillor Power prior to this article?-- I think I might have the wrong article, sorry. I can't see that in the-----

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Can I see the article that you have got?-- Sure. Is this April 3rd?

3rd April, "Where indicated the Clark team told Councillor Power that if he delivered the eight votes required," et cetera; see that?-- Yep.

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Did you know of any such group - that is, referring to eight votes, being able to deliver eight votes? Did you know of anything like that prior to this time, 3rd April 2004?-- No, I didn't.

May I just ask you then to have a look again at the document I asked you about yesterday, Exhibit 18, keep that article there, please, that I've-----?-- Mmm-hmm.

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-----given to you, Exhibit 18. Remember this document that I put in front of you yesterday where your name was misspelt and with the correct spelling in brackets after it? Remember this, it's an email with attachments from Sue Davies to Tony Hickey? So Sue Davies - do you know Sue Davies?-- No.

You know of no connection between Sue Davies and Brian Ray?-- No, I don't.

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Well, you see, that written on this email, first of all, there's a date, 17th of December 2003, and what's written underneath it is, "Supporting eight councillors which will - which give majority vote" is handwritten there?-- Yep.

Do you recognise that handwriting?-- No, I don't.

Well, it seems to suggest that someone is supporting eight councillors with the intention that that will give a majority vote on the council. Now assuming that to be so, at this time, in November 2003, and if you'd known about it, would that have been of concern to you?-- Yes, it would.

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All right. Why would it have been of concern to you?-- Because my decision to run for council was to run as an independent-----

And what would this suggest to you?-- It would suggest that I was being dragged into a net or a group, an alliance, that I had no real knowledge of or understanding of.

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Yes, all right. Would you return those, please? Now I remind now - I don't whether you've still got it there, your statements; do you have them there?-- Yes, I do.

And do you remember in there referring to a contact with Mr Staerk, on page 11? Just go to page 11, under "P", see Ron Clarke, being the heading, and you gave your contact with Ron Clarke or your knowledge of and in that - have you found the passage?-- Yes, I have.

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"Ron Clarke's campaign director, Graham Staerk, contacted me several weeks before the election. He seemed concerned about my independence and was wanting to speak candidly about my very public support for Councillor/Mayor - Councillor/Mayor Gary Baildon" and so on. You said, "I indicated I was not wedded to anyone and that if Gary were to lose then I would seek to be cooperative with whoever was the Mayor of the day. As it was not convenient to meet we agreed to catch up for a coffee after the election depending on the outcome. We met within a week or two of the election at Broadbeach for a coffee and discussed how the election had turned out and, in broad terms, Mayor Ron Clarke's agenda and concerns with the voting bloc." So just give us some greater knowledge of this meeting that you had with Mr Staerk at the time, that is, after the election. You had a coffee with him?-- Yes.

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Right. Was there a - was there any discussion about - this would have been, what, after the article of the 3rd of April in the bulletin?-- Yes, I think so.

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So the-----?-- May even have been - it may even have been within a couple of days of the election. I'm just trying to recall but it was certainly around that timeframe.

Well, you said, "We met within a week or two"-----?-- Yes, but-----

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-----and the 3rd of April-----?-- Was about a week so-----

-----so this is happening at about-----?-- -----it's around that timeframe.

-----the same time and the article is speaking about the Clarke team telling Councillor Power that if he delivered the eight votes required, implying that he could deliver eight votes, then Mr Clarke would support Councillor Power in any future mayoral campaign. Now, you say, that you met Mr Staerk within a week or two, what was the discussion in relation to any voting bloc and Mr Clarke's concerns so far as this voting bloc was concerned? Do you see what I'm saying; the article doesn't suggest any concerns?-- Mmm-hmm.

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So tell us what the conversation was?-- Oh, I think Graham's concern was that I'd - because I was - had been so strongly

supportive of Gary Baidon that I wouldn't - I wouldn't have an open mind to be supportive of Ron Clarke and it was basically wanting to do a bit of sell on me, I suppose, as to what - you know, what a great person Ron Clarke. What he was wanting to achieve. You know, why I should retain an open mind and, you know, try and support him and get behind the agenda that he wanted to initiate.

1

Was there any talk about whether or not you were one of the eight?-- Oh, there was certainly some discussion. I think Graham said, "Look, you know, I think you made the right decision in declining the financial support of that group. You know, retaining your independence is important and"-----

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But this article is suggesting that the Clarke team told Councillor Power that if he delivered the eight votes required, Mr Clarke would support Councillor Power. In other words, Mr Clarke actually wanted, according to the article, the support of the eight votes. Now, you're saying, Mr Staerk's saying to you that you did the right thing in staying away from this agreement?-- I think he was concerned that - you know, that I would go out of my way to be difficult or antagonistic towards the Mayor. I mean, I already wrote a letter to the editor about nine months - 10 months prior to the election having a swipe at him and, you know, I've never made any secret of the fact that I would have preferred Councillor Baidon to have been the Mayor so, you know, my sense was that, you know, Graham was just wanting to sort of, you know, do me a - do a sell on me as to what a great guy the Mayor was and-----

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I don't know, Mr Molhoek, whether or not you are directing yourself to the point of my question which is related to the fact that, according to this article, there is a wish on Mr Clarke's part to have the support of these eight votes-----?-- Well-----

-----and having regard to your contact with this group. And when you see that in the paper, you have this conversation with Mr Staerk, surely to goodness, there was some conversation about, "Well, who the heck are these eight group - eight votes? Your boss, Mr Clarke, appears to want their support. How does this tally with what you're telling me that you did the right thing? Don't you want me to be part of that support"?-- I'm not-----

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Do you see what I mean? There are eight votes which are indicated there which Mr Clarke, according to the article, is wanting Councillor Power to deliver. Now, you know or you knew at the time that there had been this group of candidates of which Councillor Power was one and you understood you were to be one?-- Correct.

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And here you're having the conversation afterwards and Mr Staerk is saying that you did the right thing in not going ahead. Doesn't that seem inconsistent with what's been portrayed in this newspaper article as being-----?-- Oh, there's-----

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-----Mr Clarke's point of view?-- Oh, there's no doubt there was a lot of inconsistent information around both in the media and in the corridors of Council and it was - it was something of a challenge to untangle myself from the involvement that I'd had with it but, you know, as to-----

Were you ever-----?-- -----Mayor Clarke wanting to secure the support of eight - eight candidates, I was certainly never party to any discussions about that apart from maybe some asides that Graham had made in sort of counting up the numbers or something on that occasion but-----

10

Was he looking for eight?-- I don't know that we specifically referred to eight. The most references I've heard to eight is Councillor Chrichlow saying frequently and often in Council, "Eight cities - eight votes and you can burn the city." But, quite frankly, I was just grateful to have been elected and happy to sit back and learn.

20

All right. Could I have that article back now, please?-- Actually, I don't have an article, it's my statement.

You didn't?-- Yes.

All right. That's been passed back already. Well now, you declared as part of your gifts register an acknowledgement that there had been a contribution by Winning Directions, did you not? That was in the material you provided to the Commission?-- Sorry, Winning Directions or-----

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This is in the gifts register, the gifts register?-- Are you referring to-----

This is sponsored-----?-- Sponsored hospitality, yes.

All right. I'd just like to put in this part at this stage and I just ask you to have a look at this page. And you declared, in that part of the gifts register, under Sponsored Hospitality Benefits, "source of contribution, Winning Directions; purpose of the benefit, guest at Origin 2 Suncorp." So you're acknowledging this in your register?-- That's correct.

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And that Winning Directions, of course, was Mr Staerk's company?-- Company.

Yes, I tender that.

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CHAIRMAN: And what do you describe that as? An extract from?

MR MULHOLLAND: That's an extract from the gifts register and, in particular, the Sponsored Hospitality Benefits section is the part that we've referred to.

CHAIRMAN: Yes, all right. That will be marked Exhibit 28.

ADMITTED AND MARKED "EXHIBIT 28"

MR MULHOLLAND: Yes. I ask you to have a look at this copy article number 47 of Exhibit 3. This is an article in The Gold Coast Bulletin, "Council Power Bloc Moves Fast at First Meeting," 8th of April 2004. Do you remember this article?-- Not specifically but I certainly, you know, accept that it was published.

10

Just have a look at it - have a look at it, would you, please? Just read the article. Do you see reference to yourself in that article?-- Yes, I do.

Yes, perhaps you can hand me - any comments you want to make on that?-- Not really.

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No reference to the bloc and so on. You didn't know anything about a bloc until you read it in the paper?-- It was never my understanding it was meant to be any formal alliance, no.

Thank you. Now, could I ask you to have a look at this document, please? Now, this comes from Quadrant records. You'll see that it's headed Common Sense Candidate Resource which we've seen on the e-mails that we've spoken about a few minutes ago. Expenditure Summary as at the 16th of April 2004; various amounts shown there and you'll see, down at the foot of the page, "shortfall \$22,676.53"; do you see that?-- Yes, I do.

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And then this entry is crossed out, "plus proposed payment to R. Molhoek, \$8,000" and the shortfall added to the previous total, \$30,676.53 which is crossed out and the original shortfall total then written in. Do you see that?-- Yes, I do.

Now, this rather suggests - and I can tell you it comes from Quadrant records - this rather suggests that at this time it was expected - that is, at the time that this was prepared - that there was a proposed payment to you of \$8,000. Would that tally with your recollection?-- My recollection is that I contacted - or Kevin contacted Quadrant prior to the election and said we wouldn't - we would be withdrawing - withdrawing our request for payment of an invoice that we'd sent to them. When I subsequently met with Lionel Barden about - I think it was about two weeks after the election - he said to me, "Look, we still have some funds available for you if you wish. I'm assuming you won't want them. Do you want me to tear this invoice up?" and I said, "Yes."

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Right. Now, your recollection-----?-- So it reflects - it probably reflects the fact that they've still made some provision and they were wanting to I guess ascertain the reason for me wanting to meet with Lionel.

This recollection of yours is a clear recollection of a decision made before the election?-- That's correct.

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So all of this was sorted out before the 27th of March?-- To the best of my knowledge. It was certainly - it was certainly difficult to untangle from it and - but to the best of my knowledge there was a phone call to both Worsfold Media, who were the recipients of funds for an account, and also to Quadrant asking that - cancelling any request for funding and instructing Worsfold Media if there was any cheque received from Quadrant that it was to be returned and not banked.

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All right. Could I ask you to have a look at these documents please.

CHAIRMAN: Did you intend to tender that last document?

MR MULHOLLAND: Sorry, I tender that.

CHAIRMAN: Yes, that Quadrant expenditure - candidate expenditure statement, 16 April 2004, will be Exhibit 29.

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ADMITTED AND MARKED "EXHIBIT 29"

MR MULHOLLAND: Just look through those documents and let me just walk you through these documents, Mr Molhoek, because I'm interested in your comments on what they suggest. First of all if you'd go to the last document, the tax invoice from Worsfold Media. That invoice, page number 1, 31st of March 2004, client's address, Mr Rob Molhoek. Mr Rob Molhoek, Council campaign account et cetera. March, this is referring to, apparently, services in March. Advertising in Gold Coast press as per attached schedule dated 23rd of February, \$7,367.50 and various additions, amount payable \$8,104.25. Do you see that?-- Yes.

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Now, we see written diagonally - or crossed out diagonally - and then the word "cancelled" and some number above it, 000372, which is crossed out, and there is a date. Now, that seems to be the 17th of-----?-- 14th of the 4th.

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Sorry, 14th of the 4th, thank you. 14th of the 4th. Do you recognise the handwriting?-- Yes, I do.

Whose handwriting is it?-- It's my writing.

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Well, just tell us what this is all about?-- When we - in the wrap-up after the campaign around the 14th I - I was actually writing cheques for a number of accounts. I spoke with - I was about to pay that account and there were three or four other accounts that I had for some radio advertising and - and it was my understanding that there wasn't sufficient funds in my campaign account to cover it. I subsequently rang Kevin and he said, "No, there's been - we've chased up some other

money that was outstanding and there's sufficient funds in the account to pay this so we'll look after that account from the campaign - the campaign fund."

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Yes?-- So I cancelled my own cheque which I was about to send for that and it was subsequently paid out of-----

So is that a cheque number which is referred to there?-- That's my cheque number.

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So what, you had written out a cheque?-- And was about to send it off-----

Sorry, would you just-----?-- Yes.

You had written out a cheque in which you'd filled out payment to Worsfold Media?-- That's correct.

And what happened, why didn't you go ahead with that?-- Well, I had about six accounts and I rang Kevin just to see what was left in the funds and he indicated that there'd been some further funds came in and - and - and suggested there was enough to cover that account so I then left - I then cancelled the cheque and then asked him if he would pay it out of the campaign account.

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Right. All right. So you were going to pay it yourself and didn't go ahead?-- That's correct.

Well, what's the - you see then that there is an email from Kevin Nichol to Simon Mills. Now, do you see that, that's the first of the documents dated-----?-- That's right.

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-----22nd of April 2004. Now, Simon Mills is a person you spoke about yesterday in connection with your campaign, isn't he one of the people you mentioned?-- Yes, he is.

And, "Dear Simon and Rob" - this is from K4, is that Kevin or - or who's that, who's K4?-- That's - yeah, Kevin Nichol, it's just an abbreviation he uses.

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So this is - this goes to you and to Simon, an email, do you remember receiving this? We received 5,000 - or 5K from Josephine this morning from Bernays Pty Ltd and Bindalay, two and a half thousand dollars each receipted et cetera?-- That's correct.

So you received this email?-- Yes, I did.

Now, you declared two and a half thousand dollars from each of those companies, this being Mr Raptis's companies, is that right?-- That's correct.

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And you declared that sum in your returns after the election. It appears then that at this time - that is, on the 22nd of April - \$5,000 was received into your campaign funds which then allowed you to pay certain accounts from your campaign account, is that right?-- That's correct.

Up until that time - and that - that meant that the total funds in the account was swollen to \$9,632.61 and they go on to say, "Therefore, Rob, we now have enough to pay the \$8,104.25 to Worsfold Media. If you haven't paid it from your own funds please advise." Correct?-- Correct.

We also see of the 7th of April 2004 from Katrina Gunders, "Attention Jenny" in relation to this invoice indicating that this has not been paid from the campaign account; correct?-- Correct.

And on the 5th of April we have a communication from Worsfold Media, "On instruction from Joe Sands today I'm reforwarding your March account which is attached herewith"?-- Correct.

Now, do you have there - all right, have a look at this document please. Now, this is from your records. What is this document?-- This is the records that were provided to me by Kevin Nichol.

Right. Is this part of your internal financial records?-- That's correct.

And does it indicate that the Worsfold Media Proprietary Limited amount of \$8104.25 was paid with cheque 000022?-- Yes, it does.

On the 7th of May 2004?-- Yes, it does.

What would you say to the suggestion that this may suggest that right up until April of 2004 you were still looking for funds through Quadrant but that you desisted in seeking those funds of \$10,000 when it became apparent that you could pay this account from the \$5000 which had come in in that month?-- I'd say that that's not - not an accurate reflection because we had already made a decision to - to pay any outstanding accounts ourselves and - and any delay in paying it was just simply waiting - you know, waiting for things to untangle themselves.

It rather looks like that, though, doesn't it?-- Oh I don't believe so. I think - I think what it reflects is that it - it took sometime to disengage from it and there was some confusion as to whether the account had or hadn't already been paid, and - and that's why there were instructions given to Worsfold Media that if they had received payment they were to return the cheque and that's why there was a request for the invoice to be reissued.

Well, there may be a perfectly innocent explanation for it and you explained your recollection of it, but the records that I put to you in regard to Quadrant rather suggest that this was still an ongoing or a belief of a commitment that they had to you which was continuing through into April of 2004; that's what it suggests, doesn't it?-- Well, it - and if that's their belief, then it's inconsistent with what I communicated to them.

And then when taken with your own records that I've just shown you with this other material, it does suggest that what did make a difference was receiving \$5000 which meant that together with the other funds you were able to pay the amount owing to Worsfold. You wouldn't have been otherwise able to pay them, would you?-- I already - well, I had already drawn a cheque to pay it myself and I had already allocated about 25,000 of my own funds to - to - to pay any outstanding accounts from my business account and I - I'd had - had a reasonably good year that year. The money certainly wasn't an issue for me.

All right. I tender those documents, four of them as part of the one exhibit, please, Mr Chairman.

CHAIRMAN: Those documents will be marked Exhibit 30.

ADMITTED AND MARKED "EXHIBIT 30"

MR MULHOLLAND: Mr Chairman, would that be a convenient time to perhaps have a break?

CHAIRMAN: You're having a mid-morning break.

MR MULHOLLAND: Yes.

CHAIRMAN: All right.

THE HEARING ADJOURNED AT 11.15 A.M.

THE HEARING RESUMED AT 11.30 A.M.

ROBERT MOLHOEK, CONTINUING EXAMINATION:

MR MULHOLLAND: Would you have a look, please, Mr Molhoek, at these e-mails or this e-mail? This is relevant to the matter we spoke about before the adjournment. It's an e-mail from Sue Davies, that is Mr Brian Ray's assistant, to Chris Morgan, Wednesday, the 26th of May 2004, subject Tweed Council Elections. "Hi Chris. Brian has received your final accounting, Chris, thanks. I'm having a mental block, was it Australand or Auscorp that promised us \$10,000 but didn't want it to go via Hickeys TA" - trust account, obviously - "I don't remember hearing that we received it one way or another, did we?" And then, "Would you have a look at my attached schedule

and confirm the non-payees are as noted?" Do you see that, the attachment and down-----?-- Yes, I do.

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And the foot of the page, "Notes. Molhoek was promised \$10,000." Again, this is dated the 21st of April, this page, and the various headings are Donations Received by Hickeys, Still to Come, Not Donating, and Notes. And you're one of the Notes. It rather suggests that even at this time, someone at least thinks that you - there is some obligation that has been entered into to pay you. That's certainly not the understanding from your end?-- No, it's not.

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Because you'd made the decision considerable time before that not to go ahead. Is that correct?-- That's correct.

I tender that e-mail and attachment.

CHAIRMAN: Yes. That e-mail and attachment will be Exhibit 31.

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ADMITTED AND MARKED "EXHIBIT 31"

MR MULHOLLAND: I ask you now to have a look at this article. Pardon me. This is number 100 of Exhibit 3. This is a Gold Coast Bulletin article, "The Birth of the Bloc", 1st of October 2005. Do you remember this article?-- Oh, vaguely. I think this was in the Weekend Bulletin a few weeks ago.

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If you go - if you just go through to reference to yourself which is the only aspect of it that I'm interested in at this point. Do you see there, "Molhoek, who ultimately did not take money from the trust was approached by Lang, Rowe and Solomon to attend the first Quadrant meeting," and then the quote. Have you found that?-- Yes, I have.

And the quote, "The Chambers were really getting behind this thing. They told me they were working to put together a group of like-minded candidates. It was about getting good people into Council. On the first hearing, I felt reasonably comfortable with it." He believes the whole saga began with the best of intentions." Is that what you said at that time?-- Yes, I did.

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Is there anything you want to add to what you said at that point?-- Oh, no, not particularly.

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And does that express what you intended to convey?-- Yes, yes, it does.

I tender that.

CHAIRMAN: It's already in.

MR MULHOLLAND: I beg your pardon. Yes, if you just return that?-- Thank you.

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Yes. Would you have a look at this article, please? This is number 82 of Exhibit 3. Now, this is an article of Monday, the 15th of August 2005, "Rookie Rob Calls for Contentious Council to be Canned. "An administrator would do a better job than the bitter and squabbling councillors who were more focused on their rivalries than fixing the region's problems," rookie Councillor Rob Molhoek has claimed. In a spray of virtually every one of his Council colleagues yesterday, the Mayoral hopeful said, "Most had lost sight of why they were elected." Councillor Molhoek said, "The Council should be sacked and a fresh Council elected," and so on. Does this express what you said at this time to the reporter?-- It certainly expresses some of what I said. But it is slightly out of context as how those comments were made.

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Right. Well, just tell us the context then. What explanation or comment do you want to make?-- Well, the context was - I think I was actually - I was expressing my frustrations with the functionality of Council and some of the in-fighting. I think the - my recollection was that the journalist actually asked me, "Well, do you think an administrator would do a better job?" And then I responded something to the effect of, "Well, you know, if we can't sort of get over all this, you know, this bickering and fighting at Council than, yes, they probably would." So it - it has changed the context slightly of what I actually did say on that occasion. But in terms of is it a direct quote that a journalist could rely on, probably, yes.

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Nothing you want to add to what you've said?-- No, not at all.

All right. Perhaps I can have that back. I'd ask you to have a look at this now, please. Now, is this written by Lionel Barden, "To Whom it May Concern" - is this something that you were given, supporting letter by Mr Barden?-- Yes, it is.

And what was this - this was just expressing his support for you?-- No, I was - because of the casual vacancy that had been created in Council with Margaret Grummit's resignation, I was - I put in an application to be considered as a replacement.

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Yes?-- And I contacted probably a dozen people and asked if they would just write a letter of support or endorsement and Lionel was one of those people that I contacted on that occasion.

I tender that letter.

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CHAIRMAN: Yes. That letter will be Exhibit 32.

ADMITTED AND MARKED "EXHIBIT 32"

MR MULHOLLAND: Could I ask you to have a look at this set of emails. Just flick through them, if you wouldn't mind. Is this an exchange of emails between yourself and Mr Grant Pforr? I don't think you need to read everything line by line, but just check that that's what they are?-- That's correct.

I tender that exchange of emails.

CHAIRMAN: The date of those, Mr Mulholland?

MR MULHOLLAND: Well, they're various dates. It's a group of emails, really-----

WITNESS: From February 17 to March 4.

CHAIRMAN: Okay, thank you.

MR MULHOLLAND: Now, there is a matter that I want to ask you about and I'll give you these documents to look at.

CHAIRMAN: I'm not sure if I indicated that that last lot would be Exhibit 33.

ADMITTED AND MARKED "EXHIBIT 33"

MR MULHOLLAND: Thank you.

Now, this is material relating to a discount that was given by the Council to a company. Do you remember this?-- Yes, I do.

All right. I just want you to look at the documents that I've provided you with. Essentially, is this the situation: that this was a company that hadn't paid its rates on time and so it lost the discount, and the discount amounted to \$13,822.45?-- That's correct.

Now, that had occurred in relation to a rate notice issued on 28th January 2004, and in relation to which entity was that?-- As I understand it, it was a subsidiary company of Sunland.

Right?-- Or a company associated with Soheil Abedian.

Right. So it was a Mr Abedian company at any rate?-- Correct.

Now, how did the matter come before you; can you just give the inquiry a snapshot, as it were, as to your involvement in this?-- I was chairman of the finance committee at the time. The agenda was circulated a day or two prior to the meeting.

The meeting being on Tuesday, 9th November 2004?-- That's correct.

Yes?-- It was just an item that came up in the course of the meeting for consideration.

Right. Now, prior to it coming up for consideration, did you seek some information from Councillor Staerk?-- Yes, I did.

And did you receive a response? What were you seeking from Councillor Staerk?-- Just if there'd been any precedent for crediting or, you know, rebating a rates discount because I wasn't aware of Council policy.

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Right?-- And was that a regular occurrence; you know, did Council have a liberal attitude towards that; did they give people the benefit of the doubt. Really, just trying to ascertain whether it was a reasonable request or not.

Now, you received in relation to that a memorandum dated 8th November 2004; is that correct?-- That's correct.

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And, essentially, in relation - and you can take us to any part of it that you wish, but, essentially, there wasn't any precedent for a discount being given in these circumstances, was there?-- Well, that wasn't my understanding of the memorandum and I-----

What was your understanding of the memorandum?-- My understanding was that there were precedents where consideration was given.

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In relation to the particular circumstances here?-- Well, my interpretation of the memo was that it complied.

Why?-- I'd need to read back through it now, it's such a long time ago, but-----

Which of the circumstances, (a) to (e) applied, because the memorandum includes this paragraph, "Financial services procedures permit officers to extend and allow discount in the following circumstances: a ratepayer advises a relevant rate notice was not received; if the address quoted is different due to an incorrect address being advised by the ratepayer's solicitors, they are not entitled to discount. Ratepayers need to address this error with their solicitor." Now, in fact, the circumstances here showed that it went to the correct address, didn't it?-- Yes. It's my understanding, though, that they'd moved two floors up and it had been delivered to the wrong floor.

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Right. But it had been delivered to the address that was required?-- That's correct.

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Okay. So, that didn't apply; (a) didn't apply?-- Yeah, well, I think my view at the time that we were probably being a bit tough in that instance, but I would have - I was prepared to be a little more generous with the interpretation, I suppose.

"(b) a ratepayer advises that the required payment is late due to sickness." That didn't apply, did it?-- No, it didn't.

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"(c) a ratepayer advises the required payment was late due to a death in the family." That didn't apply?-- No, it didn't.

"(d) a ratepayer advises that a cheque for the required amount was posted to council but did not arrive." That didn't apply?-- No.

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"(e) a ratepayer advises that a cheque for the required amount was posted in sufficient time to reach council by the relevant date but did not do so." None of those are right?-- Well, it's my understanding and I'm just trying to recall the details, but I think the cheque in fact actually did arrive, I thought it was a day or two after the due date, and there was a genuine effort on the part of this organisation to, once they realised that the notice had been overlooked, to pay the account.

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Do you remember receiving advice also in relation - or a recommendation from the council staff in relation to the matter?-- Yes, clearly-----

The 15th November?-- It's actually in the agenda for that meeting.

Right?-- That's correct.

So that was enclosed and it set out the various matters relevant to the recommendation and the recommendation was-----?-- I need to find the item.

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Well it was a recommendation-----?-- Not to award the discount. That's right.

Now in the end what happened was that what - what conclusion did your committee come to?-- The conclusion that the committee came to was that the recommendation was a bit tough.

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Was tough?-- And was - and-----

Who was on the committee?-- In that meeting - actually I can go to the minutes, I'll tell you. I believe Councillor Crichlow was there, Councillor Power, Councillor Sarroff, and it's my recollection the Mayor was also in attendance at that meeting.

All right. And was there any motion moved in relation to the officer's recommendation?-- Yes, that the discount on the subject rate notice be granted due to the special circumstances.

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Right. But before that, there was a motion, wasn't there, moved by-----?-- Oh, Councillors Crichlow and Sarroff moved that that the original recommendation be adopted. That's correct.

Now there was consistent advice from within the council, that is, from council staff, that in these circumstances the discount should not be given?-- Well, that's not correct, because I sought further advice from council officers-----

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Right. What, apart from what we see here?-- And-----

Apart from what we see here?-- Apart from what we see here. Subsequent to this meeting. And I can't remember the figures, but they basically provided me with significant detail as to the number of occasions where council had provided a reimbursement or some leniency with the discount and on review of that material, I came to the view that if this had been anyone else, then it was probably highly likely that they would have received a discount and it was brought - unnecessarily brought to finance to be dealt with in the first place.

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Were you aware of the history of the attempts by this company up to November of 2004 to try to get the discount? Were you aware of reasons, for example, it was linked to the fact that the company or companies associated with the company in question did work for the council therefore they should get the discount. Were you aware of that?-- I'm not quite sure I understand what you're referring to. I was certainly aware that Sunland had written to council and requested the discount and had been refused.

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Yes?-- I'm not aware of the other circumstances that you refer to.

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You're not. All right. So you received information from the council after this meeting of the committee of which you were the Chair. Let's just deal with the committee meeting first then and we'll go on then to deal with what happened so far as the council was concerned. So Councillor Crichlow seconded by Councillor Sarroff, they supported the officer's recommendation, that is that it be adopted and that motion was lost?-- That's correct.

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Then what happened was that Councillor Clarke, the Mayor, moved, seconded by Councillor Power, that the discount on the subject rate notice be granted due to the special circumstances?-- That's correct.

Yes. So that occurred. What was the next step then?-- There would have been a vote taken and the motion was carried. And then the item would be referred to full council for ratification the following Monday or Friday.

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And is that what happened?-- Yes, it was.

Now you said that before, in between the meeting of the full council and ratification of what had been agreed upon at the committee meeting, you received some more information. Where did you receive that information from?-- Oh, via email from council officers and that would have been in the normal course

of business circulated to all councillors. That's the protocol.

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Persuade me, Mr Molhoek, why the circumstances here constituted special circumstances?-- Gee.

It is the case, before you answer the question, that it required special circumstances, did it not, in order for it to be granted?-- Well, frankly, I was always of the view that it should never have even been referred to council for a decision, so - and my understanding of both the policy and the way we've dealt with other ratepayers was that I actually felt that this was being highlighted somewhat unfairly and-----

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Were you or were you not addressing the question as to whether or not special circumstances were required and in particular, the section 1021 of the Local Government Act 1993 for discount, if special circumstances prevent prompt payment is this; discount is allowed if council 'is satisfied that a person liable to pay the rate has been prevented by circumstances beyond the person's control from paying the rate in time to benefit from the discount.' Now that was the requirement under the Act. Were you aware of that?-- Well, it's in the actual - are you reading from the agenda item?

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Yes?-- Yeah.

So you were aware of it?-- Yes, I was.

So there was a statutory provision which the committee and council had to consider. Did you consider that, whether or not to repeat, there were special circumstances that the council was satisfied, or the committee was satisfied, that a person liable to pay the rate has been prevented by circumstances beyond the person's control from paying the rate in time to benefit from the discount. Now how, if the council had simply - if the company had simply changed floors, or whatever, moved to another building and hadn't made arrangements, how could that possibly fit within that provision? Just persuade me why special circumstances here applied?-- Well, I'll just restate what I said. As I understand, a genuine effort was made on their behalf. The payment did arrive - in fact arrive at council within a day or two of the due date. And frankly, given that there were only five of us in the finance committee, I was more than happy for the item to go to full council and to be reviewed and considered in that environment. Frankly, in the context of the agendas and some liberality in terms of the application of that policy, I didn't believe that it was an unreasonable request. And at the end of the day as an elected councillor, we're there to best represent the people and use our judgment in making hopefully sound and fair decisions. On that occasion I supported the Mayor's resolution that the discount be reinstated.

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There was a specific statutory criteria which needed to be satisfied, wasn't there?-- Well, I - I guess we could - we could debate that.

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Mr Molhoek, there's no question of debate about it. There is a statutory provision that I've drawn your attention to?-- There's also a Council policy which - which provides some liberality in that regard.

What do you mean, a Council policy which could override a statutory provision? Just explain that concept to me, please?-- Well-----

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MR NYST: Mr Commissioner, I object to this. With respect, my friend is maintaining this line about there being no statutory basis for this decision to be made where clearly, on the face of it, there is. Now, it may be that my learned friend might have taken a different view but if we're going to in this Inquiry dredge across every decision made by Council where people didn't follow the recommendations of the Council officers, I understand it there are two sides to that coin and there's a grand debate about-----

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CHAIRMAN: Well, Mr Nyst, there seems to be a basic premise here, isn't there? You're saying there is no statutory basis; Mr Mulholland says there is.

MY NYST: No, he's saying that there is no statutory basis; I'm saying that there is a statutory basis upon which they might find the way they did.

CHAIRMAN: Can you give me your submissions as to why you say there is-----

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MR NYST: As I understand it, the provisions include special circumstances which show that the person liable to pay has been prevented from paying on time because of some circumstances. Now, this witness has told us that the information he had was that the document didn't go to the correct address or the address where they were.

Now, that is a basis upon which he might have found that they were thereby prevented from paying on time. He says they were a couple of days late or he says "it went upstairs two floors. It eventually found its way down there. Let's give them a bit of leniency. That could potentially fall within the special circumstances." Well, surely that's at least available to him, and as I said, if we're going to dredge through every decision made by Council on the basis that they didn't decide the way Mr Mulholland would have decided, then we're going to be here forever.

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CHAIRMAN: Well, I think Mr Mulholland is entitled to investigate this but I take your point in that I'm not familiar with any of the papers in this and I don't understand what the situation is. There's been mention of it going to the wrong floor but as to whether that was the correct building but the wrong floor-----

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MR NYST: Well, I understand-----

CHAIRMAN: Perhaps if Mr Mulholland illuminates this situation as to what it is about the two floors down as to whether that was the correct address or the incorrect address and the reason for that.

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MR MULHOLLAND: Can I perhaps just take some more time to go to the agenda item and what was communicated to the Committee, Mr Chairman. Would you go to the agenda page 7. This is as summarised.

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CHAIRMAN: Can I just ask: do you have an extra copy of the material the witness is looking at? You might need that, Mr Mulholland.

MR MULHOLLAND: Just pardon me.

CHAIRMAN: If you don't have it, it doesn't matter.

MR MULHOLLAND: No, we can-----

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CHAIRMAN: I'll survive.

MR MULHOLLAND: It's just that-----

CHAIRMAN: Thanks.

MR MULHOLLAND: Now, would you go to that page 7 under paragraph 5. This is item 2, "Request for discount allowance", and it appears to relate to the Finance and Internal Services Committee meeting of the 9th of November 2004. That's your committee meeting that you've referred to; is that not correct?-- That's correct.

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All right. And "discussion", and there set out is the discussion, "The Mayor's office has received a request from the applicant to consider allowing discount on the late payment of the rate notice that was issued on the 28th of January 2004 because of extenuating circumstances. The rate notice was due for payment on the 2nd of March 2004 to qualify for the discount. The discounted amount to pay on the rate notice was \$86,045.94. The amount was paid on the 25th of March 2004." You follow me so far?-- Yep.

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"The rate notice was due for payment on the 2nd of March 2004 to qualify for the discount. The amount was paid on the 25th of March 2004 following the issue of a notice of creditor's intention to instigate legal proceedings on the 19th of March 2004. Because payment was received after the due date, it left an amount outstanding of \$13,822.45 representing lost discount. Both the rate notice and the aforementioned recovery notice had been sent to the same postal address. Upon receiving the notice of creditor's intention to instigate legal proceedings and making payment, the applicant wrote to Council seeking consideration for allowance of discount on the basis the subject rate notice was received 15 days after the due date. Council undertook a check of the rating records which confirmed that the postal address for service of notices recorded in Council's rating system was the address provided

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for this purpose on the documentation received when the owner purchased the property back in October 2003. On the basis Council had issued the rate notice to the address nominated, the request for discount allowance was declined. A second request to consider the discount allowance was received on the 1st of June 2004. The applicant claimed claiming the address on the notice was its business address and not its postal address and the previous payment history for its other properties would indicate payment being made by the due date. The applicant was again advised that discount could not be allowed and they could request for further consideration of the decision to the Manager, Financial Services. On the 22nd of June 2004, the applicant requested for discount to be granted to the Manager, Financial Services, stating the reasons already mentioned and the applicant stating its involvement with large development projects within the city and engaging Council for its building certifications." Now, do you note that, Mr Molhoek?-- Sorry, can you just highlight the paragraph. I've sort of lost-----

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Maybe you're reading a different paragraph. This is at the foot of page 7?-- Sorry.

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"On 22nd June 2004, the applicant requested the discount to be granted to the manager, financial services, stating the reasons already mentioned and the applicant stating its involvement with large development projects within the city and engaging Council for its building certifications." Are you with me now?

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CHAIRMAN: That's not in the document that was handed up to me.

WITNESS: It's not in the document that I have either.

MR MULHOLLAND: I see. Can I have that document that you have then, please. It's just on a different page, that's all; it's the next page. I seem to have a larger copy. Now, can you read the particular sentence that I've read, "On 22nd June," et cetera; do you see that?-- On 22nd June 2004, the applicant's request for discount to be granted to the manager, financial services, stating the reasons already mentioned and the applicant stating its involvement with large development projects within the city and engaging Council for its building certifications.

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Just pause there. Remember I asked you about this as to whether on an earlier occasion in the year when a request had been made for the discount to be allowed that there had been some suggestion that it ought to be allowed because of what the company was doing, and this is what I was referring to. Now, you said you weren't aware of it. You were aware of it, weren't you?-- I would have been on reading the note, but I was also - I mean, this is a summary of the material that was presented. On that occasion, a representative from the Sunland Group actually spoke at the meeting and addressed a whole range of issues: to do with their credibility, their involvement in the community, their commitment to the city,

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the number of rate notices they pay every year. I have to say I earnestly believe this is a very trivial issue.

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Right. Well-----?-- I had a ratepayer only a few weeks prior to this that had issues with a discount on a notice because of an incorrect water reading, water meter reading, and I went in to bat for her, and I could see no need to discriminate between a pensioner who missed out on a \$45 discount or someone that missed out on a \$13,000 discount just because, you know, we want to tag them developer and therefore they're not entitled to a fair assessment by councillors within Council to be fair and reasonable.

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Come back to what I'm referring you, please. We'll read on, "The acting manager, financial services, considered the request and the decision was the grounds did not exist to allow the discount."?-- That's his opinion. I disagreed with him.

Right. Well, please, can we just finish it?-- Well-----

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"But in this instance approve the waiving of penalty interest up to 6th August 2004 to allow time for payment of the outstanding amount. A further request was made on 28th July 2004 and the decision was that Council had issued the rate notice to the correct addresses advised and therefore could not assist in this matter. On 22nd September 2004, the applicant wrote to the Mayor's office stating that it was now believed the rate notice was delivered to their office, but because of an administrative mix-up, the rate notice was not recognised as one of their own because they did not recognise the company name, Calm River, on the rate notice." Now, that was the last excuse, if you like, as to why it wasn't paid in circumstances where the requirement of the legislation was special circumstances beyond the control of the person concerned; you see. Now, all I'm asking is-----?-- What I see is a fairly subjective assessment by an officer which councillors in a full council of meeting disagreed with, and by the democratic process elected to make what they thought was the right and appropriate decision as a full council.

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Now, you've said that in between the committee decision and the Council endorsement of that decision, or confirmation of that decision, you had received further information?-- That's correct.

And which isn't reflected in the material here; is that right?-- That's correct.

Right. Now, was that brought to the attention of the full council?-- I'm not sure whether I specifically raised it in any great detail but the nature of the request was I was really trying to ascertain whether it was an unusual thing for council to reinstate a discount. The information I received and I think at the time it was actually a phone call from the director of financial services just indicating that I think we'd reinstated something like - and my memory - I'm struggling a bit but something in the order of 2000 discounts

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to ratepayers across the city in the previous year, and there was some breakdown as to, you know, how many of them were, you know, fitted different categories and if there were any that were extenuating circumstances and from recollection there may have been - I don't now, I think there were - you know, I think the director may have said there were, you know, there was a hand full that, you know, were highly interpretive but they chose to be lenient with them, and I felt that was sufficient precedent to proceed with this, and I felt that - quite strongly that Sahiel on this occasion was simply being singled out for special attention by the officers because he was a developer and because they were concerned that it may be seen as a controversial issue, and he was entitled to be treated like any other ratepayer.

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Now, let me read to you the statutory provision-----

MR NYST: Well, Mr Commission, again, I maintain my objection to this. We've now been through the factual basis because-----

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CHAIRMAN: Why can't Mr Mulholland put the statutory provision to this councillor and he can make his comment on it.

MR NYST: Well, it's not to this particular question; it's to this line of questioning because, as I understand it, we had a summary of what the provisions are and they include this provision that says if the notice is not received. Now, we've now gone to the factual matrix and we can see that there are various excuses going on that all amounted to, well, we, for whatever reason, didn't turn our minds to it and did not receive it. Now-----

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CHAIRMAN: Well, that's not correct, is it. That last part is saying they did receive it but didn't recognise it as relating to one of their companies.

MR NYST: Well, that's why I said did not turn our mind to it. At one point they say they didn't receive it at the address, and then they say they believe, and I'm sure that it might have come in, they might not have turned their mind to it.

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CHAIRMAN: All right. This is an objection to Mr Mulholland reading the statutory provision to this witness-----

MR NYST: No.

CHAIRMAN: -----and presumably asking him to comment on it. What's your objection?

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MR NYST: No, no, my objection is to this line of questioning whereby it looks as though we're going to - certainly, in this case, we're trawling over a decision that was open to a committee of councils. On even the - on the statutory basis, et cetera, one can say, well look, they might have got it wrong; they may have misinterpreted the matter, misapplied the law, but one can clearly see that there was a factual matrix that fitted in that-----

CHAIRMAN: Well, Mr Nyst, all those things seem to be a matter that you or anyone else can make submissions on later.

MR NYST: But what I'm-----

CHAIRMAN: At this stage, this witness is just being asked about his view, the reasons he did this at that particular time. Now, we're entitled to get - Mr Mulholland is entitled to get the witness to give that evidence. Submissions can be made on it at a later time.

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MR NYST: What I'm concerned about, sir, is that this inquiry has defined terms of reference and it seems to me, with respect, that we're going well beyond them if we're going to be going to an investigation of who voted what and when and whether they were right or wrong, and it has, in that sense if one is going to go through that exercise, a potential to blow out to be a very, very long and expensive inquiry and it concerns me that we're going in this direction.

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CHAIRMAN: Well, this is the first lot of questioning along these lines. I think it's a little bit difficult to say that Mr Mulholland's going too far when it's the very first one he's asking about.

MR NYST: Thank you, sir.

MR WEBB: Mr Chairman, could I just raise a matter. It really comes from something that you, sir, said, that - the decision he made. It's in fact - the proper question would be: what did the subcommittee find were the special circumstances. It doesn't matter what he might have thought.

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CHAIRMAN: Well, perhaps you might be right. Perhaps it should be established whether he voted in favour or against the final resolution.

MR WEBB: Yes.

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CHAIRMAN: If he voted in favour, then it is relevant to ask why he made that decision. That might be so, perhaps that hasn't been established as to the way Mr Molhoek voted on that.

MR WEBB: It has been established that he did vote, but it's not relevant what he thought; it's relevant what was said by those who voted-----

CHAIRMAN: Well, with respect, if he voted in favour of it, he can be asked why he voted in favour of it.

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MR WEBB: Well, as you rule.

MR MULHOLLAND: Now, Mr Molhoek, let me just read to you section 1021 of the Local Government Act. "If a local Government is satisfied that a person liable to pay a rate has been prevented by circumstances beyond the person's control

from paying the rate in time, to benefit from a discount under section 1019 or 1020, the local Government may allow the discount" - noting those words "circumstances beyond the person's control" and the heading of the section is "Discount if special circumstances prevent prompt payment". Now, did you consider that provision and whether or not there were circumstances beyond the person's control before voting as you did in that committee?-- Yes, I did.

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And I come back to the question then: what did you find in the material which satisfied you that there were circumstances beyond the person's control?-- The fact that - the fact that it had been delivered to the wrong location, the fact that the letter of demand for payment actually did get delivered to the correct location, the fact that there seemed to be some subjective comments from officers about the matter, and I suppose I may have applied a slightly more liberal interpretation to that section of the Act than you did, than you are on this occasion.

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You seem to-----?-- I would have concluded that, well, it was special circumstances-----

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Yes?-- -----that complied.

Beyond their control. In circumstances where the latest word you had from the material was-----?-- Well-----

-----that - hold on. The latest circumstances you had, their excuse if you like, was that it was believed that the rate notice was delivered to their office but because of an administrative mix-up the rate notice was not recognised as one of their own because they didn't recognise the name-----?-- Mmm.

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-----Calm River, on the rate notice. Now, that was the most recent circumstances of the various circumstances that had been put before the council, wasn't it?-- As I understand from the agenda item, yes.

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And you regarded that as satisfying the statutory criteria?-- Yes, I did.

And you earlier made reference, when I think an interruption occurred, to a policy. Just so that we can be sure that I have your understanding correctly in regard to this, did you regard the policy of the council as distinct from the statutory provision as being paramount?-- Oh, I don't know that - that I would have been qualified enough to have actually made that distinction. I would have assumed that if council presented a policy, that it would have been consistent with any statutory requirements, and to the best of my knowledge made a judgment in how I determined to vote on the matter. So it's - you know, I mean hindsight's a wonderful thing but, you know, I felt that I made the best decision on the day.

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Now, you received some information that you referred to. How did that come to you?-- I've just been trying to recall but I - I'm pretty sure it was a phone call that I received from the director.

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The director, who was that?-- The director of - Graham Finlayson. And it was just a response to a question I asked and it was simply, you know, "How often do we actually reinstate people's discounts?" You know, "How many occasions does this occur?" because I was trying to establish in my mind whether this really was a one-off special case or whether we in fact - you know, I guess trying to get some context and-----

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Was there anything that Mr Finlayson said which conveyed to you that there was a precedent for, in the circumstances specific to this case, a discount being granted and, if so, what was it?-- He certainly didn't provide any commentary to that effect and it was clear that he held a different view as to the interpretation of policy on the matter. My view was, "Well, let it go to council and let full council determine the outcome."

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You mean he had a different view from the one that you have expressed here today?-- Oh well, he would have been defending the recommendation of his officers as you would expect him to do.

So the advice that you were getting from council was unanimous to the effect that this is not a case where the circumstances warrant granting the discount?-- I couldn't say whether it's unanimous because I don't - I didn't go around and interview all of the officers involved in the process.

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It was unanimous so far as you were aware, Mr Molhoek?-- No, I don't believe that would be an accurate statement for me to make.

Well, can you refer us to any advice that you got, legal or otherwise, or just internal advice, to suggest that in the specific circumstances here it either fell within the criteria or there was precedent for granting it?-- Not without - I'd have to go back through my records and emails to try and find such advice but I still maintain that there's some subjectivity in the decision that was made and, based on the decision of full council I think my colleagues would have agreed with that.

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Well, you voted in favour of in Council as well?-- Yes, I did.

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Yes. I tender that material.

CHAIRMAN: Yes, that will be Exhibit 34. That's the full bundle of material.

ADMITTED AND MARKED "EXHIBIT 34"

WITNESS: I sincerely hope we're not going to go through every decision of Council for the last year.

MR MULHOLLAND: Just before leaving this was there someone present from Sunland?

CHAIRMAN: Where, at the finance committee or the full Council?

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MR MULHOLLAND: Either?-- I've in fact - there was certainly someone at the finance committee meeting.

Who was that?-- Oh, I don't recall the exact name of the person. I think it was someone from the finance section of - or the accounts section of Sunland.

Who was allowed to-----?-- We gave them an opportunity to make-----

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-----this is part of the - sorry. This is part of the standard procedure, is it, people in situations like this can come along and address the committee in the committee's discretion?-- Well, all of our committee meetings are open and we often allow people to come and address our committee for all sorts of reasons.

Right. So you remember someone being there. What about at the Council itself, Council meeting?-- I couldn't say 100 per cent for sure but I'm - I seem to recall that there may have been a representative from Sunland in the public gallery but I don't really recall.

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And what was Mr Abedian's business?-- Sorry?

What was Mr Abedian's business?-- Mr Abedian's a developer on the Gold Coast.

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Yes, thank you. That's all I have.

CHAIRMAN: Yes. Does anyone seek leave to ask questions of Mr Molhoek?

MR MULHOLLAND: Oh look, there is one further matter, Mr Chairman, that I should have given Mr Molhoek an opportunity to speak about. You drew my attention during the most recent adjournment, Mr Molhoek, to a diary entry that you wanted to refer to?-- That's correct.

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Just go ahead now and tell the Commission what you want to about that?-- Well, last night I went home and tried to find some of my old diaries because my sense was that you were trying to suggest yesterday that I was recruited in some way by Lionel Barden and I just wanted to verify the fact that I had previously met with Gary Baildon on a number of occasions - or on two occasions - where Gary was encouraging me to run

for Council and I found a diary note specifically that relates to Thursday, the 23rd of January 2003 which I - I'm happy to submit - and I - or and I previously met with Gary Baildon at a pizza and coffee shop at Benowa Gardens Shopping Centre in October or early November of 2002 when we discussed the prospect of running for Council.

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Right?-- So I just wanted to I guess clarify the fact that if anyone was recruiting or encouraging me to run for Council it was the Mayor not Lionel Barden.

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Thank you.

CHAIRMAN: Yes, thank you. Yes, Mr Nyst.

MR NYST: Mr Molhoek, you spoke to Mayor Baildon and you spoke to other people about this decision?-- That's correct.

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And I suppose that includes your family, your friends and so forth?-- That's correct.

And by the way, were you back in - were you supporting Mr Gary Baildon as Mayor in those 2004 elections against Mr Clarke?-- I was very supportive of the Mayor on that occasion.

And publicly supportive?-- I'm not sure what you mean by publicly but, yeah, certainly-----

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It was no secret-----?-- Oh no, absolutely not.

-----that Gary Baildon was your preferred Mayor over Ron Clarke?-- Absolutely not.

And so anyway you spoke to Baildon and you spoke to your friends and family et cetera before announcing your intention to run?-- That's correct.

And you did that in August, you announced in August 2003?-- Correct.

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But you hadn't spoken to David Power at any time about that, had you?-- Not about my intention to run, no.

You were never asked by him or indeed encouraged by him or spoken to by him at all about your running as a candidate?-- No, I didn't.

He certainly didn't recruit you or enlist you in any shape, manner or form?-- Absolutely not.

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And part of your decision to run was that you perceived, didn't you, that there was a sense in the Gold Coast community at that time that our Council had become something of a joke?-- Correct.

It was a bit of circus in there, wasn't it?-- That's correct.

There were all sorts of agendas being run and people behaving sometimes atrociously, weren't they, in Council?-- Correct.

People interjecting and name calling and personal attacks going on, isn't that so?-- That's correct.

Councillors regularly being threatened with expulsion, had there been?-- That's correct.

The place a basket case by 2003, wasn't it, in the minds of-----

CHAIRMAN: Mr Nyst, you are appearing for Mr Power who is a fellow member according to this gentlemen of a group that he later joined.

MR NYST: Yes.

CHAIRMAN: I just mention that you are experienced, you'd probably be well aware that the questions that you ask and the answers that you receive for those will receive a lot more weight if they were to be elicited more in the form of evidence-in-chief rather than you making a lot of statements that this witness just says yes to.

MR NYST: Well, sir-----

CHAIRMAN: I just mention that to you.

MR NYST: Sir-----

CHAIRMAN: You'd understand what I'm meaning.

MR NYST: He can accept or reject them but I want to move this along because-----

CHAIRMAN: That is so.

MR NYST: -----we have a potential here to-----

CHAIRMAN: Mr Nyst, I'm not wanting to argue. I'm just indicating that as far as I'm concerned in looking at answers given by this witness to your questions they will receive a lot more weight if they are his words than a mere adoption of statements by you.

MR NYST: Thank you, sir. The place was a basket case, wasn't it, by 2003 in the sense that there was a lot of misbehaviour going on in Council?-- Correct.

And for example we saw one very highly publicised example of misbehaviour in a councillor throwing - attacking the Mayor and throwing papers at him in the Council and so forth?-- Yes.

And these were things that were being - in the Gold Coast community - being very broadly publicised, weren't they?-- Absolutely. It was the topic of discussion at - in every

business forum, in - in any community meeting that you went to, it was being talked about everywhere.

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And one of the reasons for that was its - the Gold Coast Bulletin covered Council proceedings very extensively, didn't it?-- Correct.

And it's not like Brisbane where the Courier Mail's got State Parliament to entertain it, this is - this was the biggest show in town, wasn't it? I mean, the Council - it was the big show?-- Absolutely.

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And so it got a lot of reporting in the Gold Coast Bulletin?-- Correct.

And without being too disparaging to that newspaper it does approach some of its reporting in something of a tabloid style, doesn't it?-- On occasions.

Yes. And very often the reports were more about personality differences and some of this misbehaviour than substantive issues?-- Correct.

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And so by the time that you were thinking about running you were already running into the people in the community who were talking about this perception - whether it was right or wrong - this perception that the Council was off the rails?-- Correct.

And you yourself, you had some firsthand experience, you went and looked - you went and watched Council I gather?-- Yes, I did.

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And you were reported in the newspaper - one of the reports that my learned friend put to you - reported as saying you were appalled by the antics, some of them don't seem to have graduated from the playground, and - did you say those things?-- Yes, I did.

And they - was that your perception of what was happening there?-- Yes, it was.

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And was it a perception that you were having repeated to you as you moved through the community?-- Yes, it was.

By various people in business and in the broader community?-- Yes, it was.

People were concerned at that time on the Gold Coast, weren't they? It's all right for people in Brisbane to-----?-- Yeah.

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-----read their Courier Mail but on the Gold Coast at that time people were concerned, the Council's off the rails, weren't they?-- Yes, absolutely.

And it was a repeated theme, everywhere you went when there was a meeting with more than a couple of business people or even just a general member of the community people were saying

you know what's going on in Council, weren't they?-- Yeah. Absolutely.

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People were talking about I suggest that we need these councillors - or some of them - to act more responsibly, more professionally?-- Correct.

To be better behaved in Council. And the people that were speaking about that included Mr Lionel Barden, didn't they?-- Correct.

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Mr Barden expressed that view that - and he expressed it both on his own behalf and on behalf of the Chambers of Commerce to you, didn't he?-- Yes, he did.

He said, "The people I'm coming into contact with - I'm a head of a local Chamber of Commerce, I'm a member of the combined chambers and we're worried about what's going on - about the way these people are carrying on"?-- Look, I spoke to people that were councillors at the time and expressed the same view including the Mayor of the day. It was no great secret.

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Mr Barden was critical of the lack of professionalism and expressed the need to get more businesslike and sensible people into Council?-- Correct.

And by the way, Mr Barden is not affiliated with the development industry in any shape, manner or form, is he?-- I have no real knowledge but my - I don't - I don't believe that he is.

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And of course your own research - I think one of the documents that my learned friend referred to - showed statements by you that your door knocking indicated that there was broad community frustration with-----?-- That's correct.

-----with this behaviour. The undignified behaviour of some councillors, is that right?-- Absolutely.

And I think you included in one of your own documents, "It's time to bring some dignity and commonsense back into Council"?-- Yes, I did.

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Were these all issues that were weighing on your mind when you came to make that decision to nominate and to run?-- Yes, they were.

Right. So you then ended up - well, you told us about your discussion with Lionel Barden but you eventually had the coffee show meeting with Mr Power?-- That's right.

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And your recollection is that you rang him to arrange that?-- That's correct.

And you met over coffee at Seabank, you were there together for about 40 minutes, weren't you?-- Something - something in that order at the time.

And there was a deal of just general social discussion?--  
Correct.

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But also discussion about Council?-- That's correct.

And during that meeting Power expressed the opinion, didn't he, that business was pretty upset with Council at the moment?-- Yes, he did.

And that was consistent with your own opinion?-- Absolutely.

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You were likeminded on that issue?-- Absolutely.

You thought - moving through the community, talking to business people, talking to people at sporting functions and social functions you thought, yes, there is a level of concern by Gold Coast people about the way our councillors are carrying on?-- Absolutely.

And Power went on to say, didn't he, that the Gold Coast had some real problems, infrastructural problems, traffic, water, public transport and the like that weren't being adequately addressed and that there was a problem with the public image of Council, it was very - extremely poor?-- Correct.

20

He told you that he believed that the Council desperately needed to improve its image, take a more sensible professional approach?-- Correct.

And he discussed, didn't he, with you - he pointed out to you that the Council had been going - sorry, the Gold Coast City had been going through a population increase of about 14,000 people per year?-- I don't recall that specifically but that's pretty - common knowledge anyway.

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Well, I suggest that it was discussed on that day. He said words to that effect that we've got this increase of about 14,000 people per year which puts enormous pressure on - has put enormous pressure on all sectors of our infrastructure?-- Yeah.

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And we've got to spend, we've got to act on infrastructure?-- Absolutely.

And he told you that the city currently had one of the - the city council had one of the lowest staff to population ratios in Australia?-- I don't recall that but that may well have been discussed.

I suggest it was and that he - he said that had to be addressed but that there were councillors in Council who were just opposing staff increases, rates rises and so forth for no reason other than just cheap political point scoring?-- There were certainly comments to that effect, I don't remember that - whether they were that specific but certainly in that area.

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When decisions were coming up about these desperately important infrastructure issues people were delaying them,

putting them off simply because these were hard decisions that were not going to be popular with the gallery in Council?-- Correct.

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These were opinions that he was expressing - he, Powers, expressing?-- Correct.

And you agreed with them, didn't you or you expressed agreement with them?-- Oh, principally. I certainly agreed that there was concern about those issues. I really wasn't in a position to speak with any great authority on them but it was certainly - I certainly had broad agreement on those issues.

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Okay. Well, Power went on to say that the Council needed to run the organisation or, "We, the councillors, need to run the organisation to best cope with the requirements of the city taking into account population increases and the attendant need for infrastructure"?-- Yes.

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And went on to repeat that at the moment he had people who were just "grandstanding in Council, behaving very badly, criticising their colleagues just for base political purposes"?-- Correct.

And he said, for that reason, he was "anxious to see sensible people get on the Council who knew how to behave so that they could take - the Council could take a responsible approach to the city's business and move things forward"?-- Absolutely.

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And you expressed general agreement with that at that meeting?-- Yes, I did.

And the meeting - there was no discussion of funding at that meeting, was there?-- No, none what so ever.

But you parted company ultimately by him, Power, saying to you if you needed any help in relation to campaigning, just give him a call and he'd more than-----?-- Correct.

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-----happy to help you. That right?-- Words to that effect.

Well now, you were then contacted, weren't you, in about - perhaps we'll address the issue of the date. The initial meeting that you went to Quadrant, you've put it at being in November?-- Yes, my recollection was it was around the 28th.

Okay. Well, I suggest to you the first meeting at Quadrant, certainly the first one attended by Mr Power, was on the 16th of December 2003. Does that accord with your recollection?-- Look, that's possible but I seem to recall that he was at the earlier meeting but - but I've already indicated that I have had some difficulty recalling the exact people that were there.

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Yes. Well, perhaps to make it quite clear, I'm putting to you on my own instructions that, to the best of our understanding, there was no earlier meeting. The first meeting was the one

in December, that you've just got that wrong in terms of dates?-- Well, it's not my recollection but-----

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Okay. And I suggest also, while we're on that score, that I think you put Councillor Grew and Councillor La Castra as being present at that first meeting. I suggest they were not present at all?-- Again, I've already indicated I don't have, you know, absolutely clear recollections of that but-----

Okay. In any event-----

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MR MULHOLLAND: Well, was he going to finish the answer?

MR NYST: I'm sorry, I didn't mean to interrupt. Did I interrupt? Did you want to finish-----?-- No, that's enough. That's all I needed to say.

In any event, the lead up to that - to your being at that meeting was that somebody from Quadrant contacted you, didn't they?-- I'm not sure whether it was someone from Quadrant or whether it was perhaps John Lang at the time but-----

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CHAIRMAN: Mr Nyst, you said - is this after the coffee meeting now-----?--

MR NYST: Yes.

CHAIRMAN: -----or after the 28th November meeting, after the coffee meeting?

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MR NYST: After the coffee - to put it clearly, sir, as I'm understanding - sorry - on my instructions, the first meeting is in fact in December and it's between - it's after the coffee meeting but in the lead up to the December meeting.

CHAIRMAN: Yes, okay.

MR NYST: Sorry. You weren't sure who contacted you?-- No, I'm not.

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In any event, were you told that there was to be a meeting if you wanted help or advice regarding your campaign or campaign strategies-----?-- Correct.

-----to come along, you were welcome to come along?-- Yes.

Well now, you - I don't think you know - you recall specifically who was there but I suggest that at least at that meeting were Mr Morgan from Quadrant, David Power, Sue Robbins, Grant Pforr, Roxanne Scott and Greg - sorry - Greg Betts and Brian Rowe?-- Correct.

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And there was general discussion, wasn't there, by various people about the frustrations that people were having with current Council?-- Correct.

And at some stage, Mr Power spoke about that, didn't he?-- I can't remember specifically but he certainly spoke at the meeting.

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All right. Well, I suggest he said words to this effect that, "We have some serious behavioural problems with some of the Councillors and Council at the moment. We've been hitting the headlines for all the wrong reasons, people having stand-up arguments in Council and throwing papers and such like. The reason we're speaking to you guys is because you appear to be sensible, rational, well-behaved people and we're anxious to end up with a Council that knows how to behave properly and professionally. We want to be surrounded by Councillors who behave with some dignity"-- Yes, that's - that would be a fairly accurate summary.

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All right. I'd suggest he went on at some point to the issue of a ticket being raised. Do you remember any discussion about a ticket?-- Not specifically, no.

20

All right. Well, I'll suggest this is - you tell me whether you recall something to this effect, that Mr Power said something along the lines of, "We're not looking to form any sort of ticket or alliance. People on the Gold Coast expect their Councillors to be independent so it's very important that you remain independent at all times"-- That would be absolutely consistent with what was portrayed.

Now, one of the things you have recalled clearly from this meeting is it being put to you in most clear, uncertain terms that it was important for you to remain independent at all times in Council, wasn't it?-- Correct.

30

There was never any sense that you were going to form some sort of a voting block or that you were going to be committed to voting in any particular way?-- That was certainly my understanding that-----

And your understanding came from what people were saying to you that day of the meeting?-- Correct.

40

And the message that was coming through was, "You've got to remain independent but we just want you to be well behaved. You can disagree but be well behaved. Don't be"-----?-- Correct.

-----"don't be"-----?-- Absolutely.

-----"silly about it"?-- Yes.

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That right?-- That's correct.

I suggest Mr Power said words to that effect, "People on the Gold Coast expect their Councillors to be independent and so it's very important you remain independent at all times but at the same time you don't have to be discourteous or disruptive in the process. If you've got a different opinion to somebody else, that's fine, nobody cares. But if you've got a

different opinion, then you argue it logically and sensibly and politely. You don't just attack your fellow Councillors and grandstand in Council for purely political reasons." Words to that effect?-- Correct.

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That was the message that he was putting through to-----?-- Absolutely.

He was on about behaviour, not about policies or issues, was he?-- That's right.

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There was no discussion that day, regardless of what documents Quadrant might have produced or otherwise, there was no discussion that day at all about any issues that required some sort of joint vote?-- Only in - only in broad terms to say that, you know, "We can't progress these issues because of some of those behaviours."

All right. But there was no attempt to enlist you to give some commitment to that in any particular way?-- No, none whatsoever.

20

And in fact it was quite the opposite, you have been told, where you must remain independent?-- Correct.

The issue of funding did come up at that meeting, I suggest?-- Correct, yeah.

And it came up in these general terms, Mr Power said words to the effect that business was - he'd perceived the business was very keen, that we in the council get our act together, and so we're hoping that the business community will put its money where its mouth is and support sensible candidates?-- Yeah, that would certainly have been my recollection of what was being offered.

30

And he said to you - he said words to this effect at the meeting, didn't he, "I'll be doing what I can to let my contacts within the business community on the Gold Coast know who I think the sensible candidates are?-- Correct.

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And that meeting ultimately concluded, didn't it, on the basis of the councillors there telling you that they were available to give you any advice that they could and that in the meantime, at least Power would be canvassing the business community for the possibility of some financial support-----?-- Correct.

-----for campaign funding?-- That's correct.

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So you came away from that meeting thinking that this was an attempt by these people to encourage you and assist you because they considered you to be reasonable, level headed people who could behave appropriately in council?-- Correct.

Not on the basis that you were to form any bloc or voting alliance or ticket or enter into any kind of commitment or

agreement as to how to vote on any issue or policy?-- That's absolutely correct.

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Okay. It was addressing behaviour, not policy or issues?-- Correct.

So far as you were able to hear from everything that happened there?-- Yeah.

And indeed my learned friend referred you to a newspaper article which was number 20 in Exhibit 3. It's a newspaper article dated the 26th February 2004. You're quoted there as saying, "At no time did he suggest running a ticket. He spoke of the importance of each councillor maintaining their political independence." And you did say that?-- Yes, I did.

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And it was true, wasn't it?-- Absolutely.

At no time did anybody suggest running a ticket, in fact, quite the opposite?-- That's correct.

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It was drummed into you this wasn't to be a ticket and you were to remain totally independent?-- That's true.

You went on to say, "If we want people to take our city seriously then our public meetings need to be conducted professionally and with due regard to basic courtesy and profile"?-- Yes, I did.

And that's what that meeting of Quadrant was all about, wasn't it?-- Absolutely.

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It was all about saying, "We want people that will behave professionally and with due regard to basic courtesy and protocol in council"?-- Correct.

"We don't want a bunch of wild cards who are just going to grandstand for political purposes"?-- Correct.

And your understanding coming out of that meeting was that if there was any funding coming, it would be funding coming from the business community, or the business community would be canvassed?-- That's correct.

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And you understood it to be an approach to all - all of business, as it were, the whole of the business community?-- Absolutely.

And that wasn't surprising to you, because you already knew from your discussions in the community and particularly with those people associated with the Chambers of Commerce that business across the board, leave aside development, businesses across the board were very concerned and were making noises as though they wanted to support sensible people into council?-- That's right.

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But I think you made the point, because we all know it's one thing for people to make promises and it's another for them to put their money where their mouth is, isn't it?-- Exactly.

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And what perhaps some people in Brisbane don't understand, but the reality is on the Gold Coast, big business is development, isn't it? They're the ones with the big money, they're the ones that are making the money?-- Yeah, well absolutely.

And the - as things transpired, you learned, didn't you, that all the people in the Chambers of Commerce would say, "Yes, we'll support you, we'll put money up, we want to have sensible people on it" they all fell away when the question was asked, "Have you got any money to put in"?-- That's certainly my understanding of what happened.

10

But it looks as though the ones that did pay in were the developers, the bigger business - is that right?-- That's correct.

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Well, commitments from - well, perhaps you don't know. We'll come back to that later. But there's no doubt, is there, that the Chambers of Commerce were all being very vocal at that time about their intention to support?-- Oh absolutely.

To support sensible candidates?-- Absolutely.

You were not aware of who was contributing to the fund?-- No.

And isn't it the fact that you were comfortable with that idea in that you were comfortable with the idea of not knowing precisely where the money was coming from in the sense that it meant that you could not be beholden to somebody if you didn't know that they'd actually donated?-- That's certainly a fair assessment, but still assuming that there would be disclosure at some point and still assuming that this support was coming from the broad business community and through Chambers of Commerce.

30

Yes. But you didn't particularly want to know that Lionel Barden was putting \$3000 in or Sahiel Abedian was putting \$2000 in, because to know that level of detail might, I assume you would feel, might in some way influence you or throw up a perception of influence?-- I certainly would have preferred there to be - for the gifts to be anonymous. But I realised that at some point there would have to be open disclosure of that through the electoral returns.

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Okay. Well, certainly there was never any suggestion by Mr Power, was there, that you should in any way mislead anybody?-- No, absolutely not.

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Not regarding funding or regarding this meeting or anything else?-- No, none whatsoever.

And there was never a suggestion - any suggestion by Mr Power or anybody else, for that matter, at that meeting or otherwise that you should not - that you should in some way not adhere

to disclosure requirements, or the other requirements of the Act?-- Oh no. Not at all.

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And I think the point's hopefully been made well enough, but certainly there was never any agreement to vote in bloc or in concert on any particular issue?-- Absolutely not.

And, indeed, since being in Council, there's never been a meeting of all of these people to decide how to vote on any issue other than actually in the Council, has there; never been-----?-- Well, certainly none that I've ever been invited to or aware of.

10

Right. I assume, like any other organisation, you have corridor meetings: you run into somebody down the coffee shop, or whatever, and you might talk about a particular issue?-- Yeah.

But leaving aside those sort of corridor meetings, if I can call it that?-- Yeah.

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There's never been any attempt to gather you all together and say we should vote in a particular way on any issue at all, has there?-- No.

Sir, I wonder if the witness could see Exhibit 14.

Do you have that document in front of you?-- No.

Sorry?-- Sorry.

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That document, Exhibit 14, a copy of that - did you say a copy of that was at the meeting at Quadrant?-- Yes, it was.

Okay. Do you know who produced it?-- I assumed it was Chris Morgan-----

But you don't know?-- And from the way that he spoke to it, I had no reason to believe otherwise.

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Okay. I suggest to you that it was not Mr Power's document, nor did he address it in any way on any of the issues in it?-- I would agree with that assertion.

You were asked about a newspaper article in which a Mr Tony White asked you if you were part of the bloc. The bloc, the bloc, quote unquote, was a term apparently created by the Gold Coast Bulletin, wasn't it?-- I'm not sure whether it was created by The Bulletin or some of the other councillors, but it certainly emerged through The Bulletin.

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Okay. And it came to - in terms of what was being reported in the Gold Coast Bulletin, the words, the bloc, came to mean you people that had met at Quadrant and had expressed an agreement on the fact that people needed to behave more sensibly in Council?-- That's correct.

But the Gold Coast Bulletin was painting it in a very different light, wasn't it?-- Absolutely.

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It was painting it as being some kind of dark conspiracy that was designed to take over the city?-- There were certainly articles that supported that. I would have said, more accurately, that that was the way that Alice Gorman and Peter Gleeson chose to present it through the media but - and I guess because they work for The Bulletin, but I think the - it was driven fundamentally through the sort of comments that Councillor Crichlow and others were constantly making which gave a fair degree of momentum to that line of journalism.

10

It could be defined in terms of the way the Gold Coast Bulletin was using it as a voting bloc?-- That's correct, yes.

Right. And when you were asked about whether you were a member of the bloc, you interpreted it in those terms, didn't you; you were being asked: am I a member of a voting bloc?-- That's right.

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And you never had been, had you?-- Not in those terms, no.

Because there was never any suggestion that there would ever be a voting bloc?-- That's correct.

But the more this reporting by The Bulletin went on, the more people in the community started talking about the bloc, as though there was some kind of developer-backed voting bloc; isn't that so?-- That's right.

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And the reality of it is that you personally started to sniff the wind a bit politically, didn't you; you got - you started thinking, well, I don't really want to be associated with this claim about there being a voting bloc for the developers?-- That's correct.

Yes. You knew in your own mind there was no such bloc?-- That's right.

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But the perception that was being put out through the newspaper and the wash that was being put on it by the Gold Coast Bulletin, in particular, was such that you didn't want any part of it. You decided I, for political reasons, really should disassociate myself from this?-- Absolutely.

Because they were putting a totally inaccurate wash on it, weren't they?-- Yeah, that was my view, absolutely.

And that you were asked - if you said, "I'm a member of the bloc," then that meant to the Gold Coast Bulletin you were a member of a developer-backed voting bloc?-- Correct.

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And that just wasn't true, was it; had never been true?-- It was never my belief.

You said to my learned friend, "I would have acknowledged general support for the intentions of the group." Do you remember saying that?-- Yes, I do.

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The intentions of the group that you were talking about were simply intentions to act professionally, responsibly and politely in conducting the business of Council; isn't that right?-- Correct.

And I think you told my friend - my learned friend that you felt the Gold Coast Bulletin had made more of it than was intended. The Gold Coast Bulletin certainly misrepresented what those intentions were in their articles, didn't they?-- That's correct.

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Yes. They misrepresented as being some sort of voting bloc that was going to try and do the bidding of developers and take over the city, and it was just a total inaccuracy?-- Correct.

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Just while we've got you there. Exhibit 3, number 43 of Exhibit 3, could the witness see a copy of that, please.

CHAIRMAN: Exhibit 3?

MR NYST: It's number 43.

That's the Gold Coast Bulletin article of 3rd April 2004. You were asked about this article and about point 6 on the page there, this appears, "The Clarke team told Councillor Power that if it delivered the eight votes required to implement a reform agenda, Mr Clarke would support Councillor Power in any future mayoral campaign, probably in 2008." Now, that's not sourced to anybody, that particular quote, is it?-- No.

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But is it the case that you'd never ever heard any such proposition?-- No, not at all.

You'd never been canvassed by anyone from-----?-- No.

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-----Mayor Clarke's office or anybody at all to try and make sure you'd be part of a bloc, a voting bloc?-- Not at all.

Well, that's just a totally unsourced assertion by the journalist by the looks of things. You, yourself in fact, were a mayoral aspirant, weren't you? You had in mind - you had aspirations yourself for - to run for mayor?-- Certainly considering it.

The last thing you'd be doing would be, I suppose, entering into some agreement whereby the mantle would be handed on by Ron Clarke to David Power?-- That - that would be a fair assertion.

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Because of one of the things you wanted to do is you were considering the possibility of running for mayor in 2008?-- That's correct.

And the only - sorry - the sourced comment by Mr Staerk below there is, "We believe that the bloc is largely mythology." You see that there?-- Sorry, I wasn't-----

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Well, we've got the unsourced comment there about, "The Clarke team told" - and then two paragraphs down, "We believe the bloc is largely mythology and let's see if it operates that way." And that's sourced to Mr Staerk?-- Yes.

And indeed, the bloc in so far as "the bloc" meant a developer-backed voting bloc was mythology so far as you know?-- Correct.

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CHAIRMAN: Is that a suitable time, Mr Nyst?

MR NYST: Yes, thank you.

MR YARWOOD: Commissioner, can I just interrupt before the lunch break? This might be a convenient - I've been, up to this point, an observer, however, I'm asking to seek to be heard for Mr Rowe who could quite possibly be the next witness today.

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CHAIRMAN: Yes. You are?

MR YARWOOD: Michael Yarwood - Yarwood, initial M.

CHAIRMAN: Certainly, Mr Yarwood.

MR YARWOOD: I was served the notice - Mr Rowe is from Perth. He's the headmaster of a private college in the northern suburbs of Perth. I was served the notice last Tuesday, that was by agreement because otherwise an application would have to be made to the Court. I've taken instructions on this issue of service on the basis that Mr Rowe would be moved up with a view that he was probably going to be heard yesterday.

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Obviously, there's been some lengthy cross-examination and quite possibly might not even be on this afternoon. It's the case that term in Western Australia started yesterday. It is a very short term, it's an eight-week term. Mr Rowe had to postpone a number of key meetings relevant to year 12s graduating in the TE system over there.

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There's an Anglican Synod meeting at the end of this week of which he's required to attend preliminary meetings. There's other heads of area meetings and he's rescheduled all these. I'm actually instructed by Mr Rowe to seek that his attendance be excused to a further date so that - he was originally booked to go back this evening at 7 o'clock.

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I've had a number of discussions with Mr Cameron Stewart of the Commission where Mr Stewart and I had agreed that by making a flight tonight, it was quite probable that Mr Rowe would be over. Mr Rowe is more than happy to come back, it's just that there are a number of students - there's in fact also one staff member that's flying - a potential staff member

that's flying in in relation to a head of Indonesian appointment.

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There is also a member of staff who is waiting probationary counselling. It would be-----

CHAIRMAN: I understand the need for Mr Rowe to get back but what are you asking?

MR YARWOOD: That his attendance be excused after the Commission closes this evening to a further date to allow him to return to-----

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CHAIRMAN: Can I ask that you take this up with Counsel Assisting and they might be able to give you some idea when Mr Rowe would be expected to get on and how long he might take and perhaps might be able to reach some agreement as to his coming back at another time.

MR YARWOOD: We attempted this last night and again this morning and we've just simply been told absolutely not so I'm having to ask for-----

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CHAIRMAN: Well, Mr Nyst, can I ask how long you anticipate you will be?

MR NYST: Not long at all, sir. I would think another 10 minutes. I'm not good at these predictions as you know-----

CHAIRMAN: No, no, I know exactly what it's like, Mr Nyst, but I'll take that-----

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MR PFORR: Sorry, Mr Chairman, Grant Pforr. I wish to seek leave to ask Councillor Molhoek some questions.

CHAIRMAN: And how long do you think you might be, Mr Pforr?

MR PFORR: Not long.

CHAIRMAN: Right, thank you.

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MR LA CASTRA: Thank you, Mr Chairman. Councillor Bob Le Castra. I did write to you last week to seek leave to-----

CHAIRMAN: Yes.

MR LA CASTRA: I would imagine that mine would take no more than five minutes.

CHAIRMAN: Okay, thank you.

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MR McBRIDE: Mr Chairman, I think I'll be about 20 minutes.

CHAIRMAN: Thank you, Mr McBride.

MR FYNES-CLINTON: I seek to ask two questions, Chairman.

CHAIRMAN: Thank you. Mr Webb?

MR WEBB: I have no questions.

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CHAIRMAN: Thank you. Well, on that, that looks like half, three-quarters of an hour before Mr Rowe, I presume, was to be the next witness. There would be no-one else lined up for this afternoon?

MR MULHOLLAND: No.

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CHAIRMAN: I had heard there was some suggestion of Mr Rowe perhaps going back tomorrow night instead of tonight, that there was some indication given to-----

MR YARWOOD: That had been unilaterally booked by the Commission. It's just that tomorrow - there's been two days of key, pre-term meetings-----

CHAIRMAN: Yes.

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MR YARWOOD: -----specifically relevant to a block of year 12 students who are about to go into their end of year exams. There's a Synod meeting. The discussions I had with Mr Stewart were-----

CHAIRMAN: I don't doubt what you say about the necessity but can I leave it that you perhaps try and talk with Counsel Assisting at lunch time and see if we can come to some arrangement that is perhaps suitable to both and see where we go from there. If you can't, well, I'll hear you at quarter past 2.

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MR YARWOOD: Thank you, Commissioner.

CHAIRMAN: Thank you, Mr Yarwood.

THE HEARING ADJOURNED AT 1.06 P.M. TILL 2.15 P.M.

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THE HEARING RESUMED AT 2.18 P.M.

ROBERT MOLHOEK, CONTINUING EXAMINATION:

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MR MULHOLLAND: Mr Chairman, just before continuing; in relation to the matter raised by Mr Yarwood of Mr Rowe before lunch, we've had the opportunity of discussing the issue raised by Mr Yarwood and it's been agreed that he has obtained instructions to this effect that on Mr Rowe's undertaking to complete a comprehensive statement to be provided to the Commission on or before Tuesday, the 25th of October 2004, and to return and give evidence starting on Monday, the 7th of

November 2004 and complete his evidence at that time, he could be excused at this time until that date. Now we are - we understand that Mr Rowe is prepared to give that undertaking and perhaps that could be confirmed by Mr Rowe at this time.

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CHAIRMAN: Is Mr Rowe here?

MR YARWOOD: Mr Rowe is in the-----

CHAIRMAN: Are you prepared to give that undertaking, Mr Rowe?

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MR MULHOLLAND: Sorry, 2005, of course.

CHAIRMAN: 2005.

MR MULHOLLAND: I said 2004.

CHAIRMAN: Thank you, Mr Rowe.

MR YARWOOD: If, therefore, I could ask that Mr Rowe be excused?

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CHAIRMAN: Yes, on that basis of that undertaking, then Mr Rowe is excused from further attendance until Monday, the 7th of November. Thank you. You're appearing this afternoon, Mr Glynn, for-----

MR GLYNN: I was wondering, seeing that statements are being made-----

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CHAIRMAN: You're for Mr Clarke, isn't it?

MR GLYNN: Mr Clarke.

CHAIRMAN: Yes.

MR GLYNN: I don't want to cross-examine this witness because, I understand, the only possible cross-examination has already been done but I wanted to ask this or raise this; this morning Councillor Molhoek was cross-examined about an article in the Gold Coast Bulletin dated the 3rd of April 2004. I would ask that you warn the press that when witnesses do not adopt the content of an article or part of it, there is no evidence of the fact that 's been - that's contained in the evidence. Otherwise it simply becomes a self-fulfilling statement with the press feeding off the press. For example, in that statement it was said that the Clarke team told Councillor Power that if he delivered the eight votes requires to implement a reform agenda, Mr Clarke would support Councillor Power in any future mayoral campaign.

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Now that's a statement that wasn't adopted by the witnesses and neither Councillor Power nor my client have had any opportunity to respond to it and that the press should treat such statements with great caution, if at all and I'd ask that you warn the press in those terms.

CHAIRMAN: Yes, Mr Glynn, I'm happy to do that. What you say is, of course, correct. Mr Mulholland obviously felt the need to put that to the witness and, I think, rightly so to enable him to give any comment that he could about his knowledge of that, but you are correct in that the witness was not able to give any evidence supporting the truth of the comment made in that newspaper article and it should be treated that way by any journalist that it is that particular comment in the newspaper article has not yet been adopted by any witness as being correct.

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MR GLYNN: May I say that question contains no criticism of my learned friend.

CHAIRMAN: I didn't take it that way, Mr Glynn. Yes, thank you, Mr Nyst.

MR GLYNN: May I be excused, please, Mr Chairman?

CHAIRMAN: Certainly, Mr Glynn.

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MR GLYNN: Thank you.

MR NYST: Thank you. Mr Molhoek, you were - you said, before the break, that you were of the understanding that the approach in terms of funding was to be - to, at least, the whole of the business community on the Gold Coast-----?-- Correct.

-----and certainly not confined to developers; is that so?-- That's correct.

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And you were asked to look at, sometime ago, an email, that's Exhibit 25 of the - that's - Exhibit 31 might be useful to see at the same time. Just whilst those are coming, your understanding was, from what Councillor Power and others were telling you, was that they were going to go out to the business community in general and try to get some kind-----?-- That's correct.

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-----of financial support?-- That's correct.

And you could see from your discussions with business in general that people were, at least, saying that they'd give support from the broad business community?-- That's correct.

And looking, firstly, at Exhibit 25, you see there, there's a reference to could you assist with the - with calls to the following; you see, this is the second paragraph there, Austral Land, John Howe, Leda, Col Dutton of Stockland and marine precinct people, you see that?-- Yes.

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Now John Howe is - that's John Howe of Weathered Howe Engineers, isn't it?-- I don't know for sure whether that is or not.

But you know the name, John Howe?-- Well, assuming that's him-----

Yes?-- -----based on your comments now but I didn't know that,  
no.

Yes. I'm just saying you know the name, John Howe?-- Sure.

And he's a prominent Gold Coaster, isn't he?-- Yeah.

Gold Coast businessman?-- Yes, he is.

He's a - he heads up the engineering firm-----?-- Weathered  
Howe.

-----Weathered Howe in Southport?-- That's correct.

And that's not a development - a Gold Coast developer, is  
he?-- No, not to my knowledge.

And the marine precinct people, that's the marine industry on  
the Gold Coast, isn't it?-- That's correct.

They're not real estate developers or anything?-- Not to - not  
as far as I'm aware.

No. And if we look at Exhibit 31, it talks about people that  
have made pledges to give money, they didn't necessarily put  
their money where their mouth was perhaps, but there's a list  
of people who'd said that they'd put the money up and John  
Howe was amongst that, by the look of that document. Do you  
see that?-- Yes.

And Heritage, are they a Gold Coast developer that you know  
of?-- I've no idea who they are.

Now the Macquarie Bank, it's a bank, isn't it?-- I believe so.

Yes. The marine group, we've got. The Royal Pines, it's a  
hotel resort, isn't it?-- That's correct.

And I take it that - those sort of commitments if they, in  
fact, were made would be consistent with what your  
understanding was that this was to go out to the business  
community in general to seek support?-- That - those would  
certainly have been consistent. I would have expected a much  
broader range of support.

Well, you weren't expecting it because you'd been - you were  
being told day in day out by people from the Chambers of  
Commerce that they were going to support-----?-- Absolutely.

-----sensible people in council?-- That's correct.

So you'd hope that they'd be coming from all sorts of people  
within the business community?-- Correct.

But as, I think, you said or, at least, agreed, people don't  
always put their money where their mouth is?-- No, that's  
right.

Now have you still got Exhibit 3 there; that's the - could he have Exhibit 3, please?-- No.

I'd like you, in Exhibit 3, to look at number 29 which is the article dated the 25th of March 2004 that my learned friend referred you to and in the headline, the article's named, "Ray Powers, The Bloc" and in the headline it refers to a group of council candidates planning to form a voting bloc. You see that?-- In the first sentence or just-----

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Yes?-- Yes.

First sentence. And it's broadly attributed to Brian Ray but there are no quotes from Mr Ray but there are some direct quotes attributed to Mr Ray further down. If you go down to about point 6 of the page it says, "Mr Ray said the idea was to overcome the dysfunctional illogical decisions made by Council more concerned with personalities than issues" and then "My interest was to see if there could be a more compatible group that can work together." Now, that is a direct quote and that's consistent, isn't it, with what you understood was the thinking behind these meetings?-- That's correct.

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Yes, it was to do with overcoming dysfunctional illogical decisions made by people who were more concerned with personality scraps than-----?-- That's correct.

-----the good of the city. And he's further quoted, a little further down, "The concept is to try to get a more rational approach to the membership of Council so they can act in a more appropriate manner"?-- Correct.

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And, again, that's entirely consistent, isn't it, with your understanding of everything that was said at that meeting?-- Absolutely.

It's all about trying to get people to behave more responsibly, more sensibly?-- Absolutely.

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And in the good of the city. And you were totally in support of that, weren't you?-- Yes, I was.

You only started to back away from it when the Gold Coast Bulletin and other journalists, perhaps, started talking about a voting bloc?-- That's correct.

About trying to categorise this meeting as being some sort of attempt to seize voting power within the city and do the bidding of developers?-- That's correct.

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And that was just a completely inaccurate picture of what was really happening?-- Well, that's - that's my understanding of what was to be, for sure.

And so you thought, "Well, I don't want to be associated with this so-called bloc at all; I just want to disown this whole thing because it's political dynamite"-- Correct.

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All right. But neither Power nor anybody else at that meeting ever told you to mislead anybody or be coy or make denials or anything else-- No, not - not at all. In fact, I was - I was comfortable with promoting the concept in my material about, you know, the need for dignity and commonsense in Council.

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Yes. It was only when the newspapers started to put this very sinister wash on it that you felt, "I don't want any part of this; I'm going to back away"-- That's correct.

"I'm going to be coy about any involvement with it at all?-- Absolutely.

Thank you.

CHAIRMAN: Yes, Mr Pforr is it?

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MR PFORR: That's correct, Mr Chairman. I seek leave.

CHAIRMAN: Would you like to come up or you can do it from there, whatever you would prefer.

MR PFORR: I need to be near a microphone.

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CHAIRMAN: Oh you need to be - a microphone, okay.

MR PFORR: Yes. Can I have that lectern moved this way?

CHAIRMAN: Yes.

MR PFORR: Thank you, Mr Chairman. My name is Councillor Grant Pforr. Mr Nyst alluded to your recollection of the first meeting of Quadrant on Friday the 28th of November, I believe; is that correct?-- Yes.

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Mr Chairman, I would ask if it would be possible if a copy of what I believe is Exhibit 7 be given to Councillor Molhoek. It's his first statement if I am correct. I believe that's number 7.

CHAIRMAN: I think Mr Molhoek has his own statement with him.

MR PFORR: He has his own statement. Councillor Molhoek, can I refer you through the Chair to page 8, the third and second-last paragraphs. Would you just mind reading those out again, please?-- "I was reacquainted with Chris on or about the 28th of November at a meeting of aspirant candidates hosted by Councillors David Power, Sue Robbins, Ted Shepherd, Bob La Castra, and Jan Grew. The invitation came about as a consequence of meeting John Lang and Brian Rowe at the Gold Coast Bulletin Gold Coast Honours Gala Dinner and their subsequent attendance at my campaign launch at Harley Park.

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Also in attendance at the meeting were other aspirant candidates, Grant Pforr and wife Liz, Brian Rowe and wife Ann, Greg Betts and Roxanne Scott."

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Thank you, Councillor Molhoek. My first question: approximately what time was this first meeting?-- I'm stretching the memory banks but I - I seem to recall the meeting being late in the afternoon, four or five o'clock in the afternoon but I can't recall exactly.

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That's fine. Thank you, Councillor Molhoek. My second question: what would your comment be if I told you that according to my campaign managers and my diary notes that I was at a funeral at Tweed during the day and at a function at Sanctuary Cove in the evening?-- My comment would be I probably had the wrong date. But I certainly recall there being a meeting on or around that time.

Okay. In your statement you've stated Bob La Castra and Jan Grew were at that first meeting?-- It's become apparent to me through the course of today that I may have been confused about their attendance at that meeting and in fact they may have been at the subsequent meeting that was held on December the 16th.

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Could you also be confused that Brian Rowe's wife, Anne, was there?-- That's a possibility. But I couldn't say for sure. I in fact thought that perhaps Councillor Betts's wife was there but I couldn't recall either so-----

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So, Councillor Molhoek, I'm suggesting to you through the Chair if I may that the first meeting of Quadrant was actually December the 16th and that Councillor Jan Grew and Councillor Bob La Castra were not in attendance and also Brian Rowe's wife, Anne, was not in attendance, but the rest of your statement is correct. How would you comment to that?-- I would certainly concede that there was some confusion about the date on my part. But I certainly recall that there were specifically two meetings at Quadrant and I am relatively certain that there was one meeting in December and another one prior to that but I can't be absolutely certain as to the exact date.

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Can I suggest to you, Councillor Molhoek, that the second meeting was, I believe, January the 8th?-- Well, that - that - I'm open to that suggestion but it's certainly not my recollection.

Okay. I think I've stated that in my statement so I'll let that lay at the moment. Mr Chairman, I must apologise, I don't know the exhibit number for the next one. It's in relation to the agenda item on the rates notice of Sahiel Abedian and his associated companies. Would you help me through with that exhibit number?

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CHAIRMAN: It's 34.

MR PFORR: Exhibit 34? Okay, my question to you on that,  
Councillor Molhoek-----

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CHAIRMAN: Do you want the witness to have Exhibit 34 with  
him?

MR PFORR: Yes, please; sorry, Mr Chairman. I must -  
Mr Chairman, I do not have a copy of that myself so I do not  
know what it alludes to. I would ask Councillor Molhoek a  
couple of questions on that.

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CHAIRMAN: Would you like to see it-----

MR PFORR: Not at this point in time, thank you, Mr Chairman.  
Councillor Molhoek, in relation to the agenda item, could you  
please advise me what was the voting on that agenda item on  
the actual amendment and was there a division called.

CHAIRMAN: Is this at the council meeting or at the finance  
committee?

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MR PFORR: At the council meeting, Mr Chairman. I do not  
attend the finance meeting; I am not a part of that committee.

CHAIRMAN: Okay.

WITNESS: I'm just trying to find it at the moment. Sorry,  
this is at the council meeting, isn't it?

MR PFORR: The full council meeting?-- Yep.

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The amendment and what was the vote; was there a division  
called. Maybe the councillor may be able to assist. Perhaps  
I'll just read the actual resolution. "The original officers  
recommended as follows be adopted: moved Councillor Crichlow,  
seconded Councillor Young. That council advise the applicant  
that it cannot allow the discount on the subject rate notice  
which was paid late. Councillor Sarroff called for a  
division - for was Councillor Power, Councillor Pforr,  
Councillor Young, Councillor Crichlow, Councillor Douglas and  
Councillor Sarroff. Against the motion were Councillor  
Clarke, Councillor Hackwood, Councillor Molhoek, Councillor La  
Castra, Councillor Shepherd, Councillor Grew and Councillor  
Betts. The motion was lost. Councillor Betts-----

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Yes, sorry, Councillor, before you go any further can you just  
advise me what in your interpretation does that mean? The  
councillors who voted for the amendment, they were voting  
against Mr Abedian receiving the rate discount; is that  
correct?-- That's correct.

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And was my name on that?-- No, you voted against the - you  
voted in favour of the discount being disallowed.

CHAIRMAN: Is that right?

MR PFORR: Mmm, the discount disallowed.

CHAIRMAN: No, it's got "for", for the motion?-- Yes, because the original motion was put-----

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MR WEBB: That was "cannot allow".

WITNESS: So Councillor Pforr actually voted against-----

MR WEBB: It's a negative motion; it shouldn't have been put in that form.

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WITNESS: Yeah.

CHAIRMAN: Yes.

MR PFORR: The previous page maybe - I just want to be clear on that, Mr Chairman?-- Sorry, I don't have the previous page.

CHAIRMAN: No, the previous page is irrelevant in the bundle I have?-- What is clear is that Councillor Pforr was opposed to Sahiel Abedian receiving that discount.

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MR PFORR: Thank you, Mr Chairman. That's all my questions. I appreciate the time.

MR NYST: Sir, I'm having difficulty following this. Could I just ask who else was for and against?

WITNESS: Sorry-----

MR NYST: I just can't pick it up on the-----

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CHAIRMAN: Yes.

MR NYST: -----the document.

CHAIRMAN: Yes, if you could just read it out against, the for and against list. I'm still reading that, Mr Webb. You might be able to help me. The motion is that the officers' recommendation be adopted and the recommendation is that council advise the applicant that it cannot allow the discount.

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MR WEBB: Yes.

CHAIRMAN: And that those in favour of not allowing the discount were Power, Pforr, Young, Crichlow, Douglas and Sarroff.

MR WEBB: That's correct.

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CHAIRMAN: And those who wanted to allow the discount were the Mayor, Councillor Hackwood, Molhoek, La Castra, Shepherd, Grew and Betts.

MR WEBB: Yes, and then go over the page.

WITNESS: That's correct.

MR WEBB: You've got to go over the-----

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WITNESS: Then over the page the original motion was put which was to allow the discount.

CHAIRMAN: Right?-- And then a further vote was called. Councillor Sarroff called for a division, and then Councillor Hackwood, Power, Pforr, Molhoek, La Castra, Shepherd, Grew and Clarke voted in favour of the revised amendment so-----

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So, there was some change around in the voting between the two?-- So, there was a change around in the voting, that's correct.

I see.

MR PFORR: Sorry, Mr Chairman, if I just may allude to something. The amendment was lost.

CHAIRMAN: Yes.

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MR PFORR: So, in my opinion, the motion became - the amendment became the motion and I voted, apparently.

CHAIRMAN: The record is there now. All right. Yes, Mr La Castra.

MR PFORR: In any event, it - as I understand it, it completely splits the so-called voting bloc.

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CHAIRMAN: Yes, it does.

MR LA CASTRA: Thank you, Mr Chairman. Councillor Bob La Castra. Just a few questions to Councillor Molhoek, if I may, thank you.

Councillor Molhoek, in your original statement, you mentioned a meeting that allegedly took place on or around 28th November 2003. Given that you have named many people who are due to appear before this inquiry as being in attendance at that alleged meeting, none of whom have made any reference to this alleged meeting, can you categorically state that this meeting ever took place?-- It would appear that I was obviously confused about the timing of that meeting, and based on Councillor Pforr's comments, I would concede that the meeting more likely took place on 16th December and that there was a subsequent meeting in January.

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Thank you. In your statement, Councillor Molhoek, you also say that the same people who were in attendance at the second meeting, on 16th December, were in attendance at the alleged first meeting on or around 28th November. What was your statement in relation to attendees at that alleged first meeting on or around 28th November based on?-- Sorry, I'm just trying to find the section that you're referring to. Sorry, sir, what was the question again?

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Sorry, the question was: in your statement you mentioned that the same people who were in attendance at the second meeting, which is what you stated in your statement as the second meeting, which was 16th December, that the same people were in attendance at that meeting as the first meeting, the alleged first meeting on 28th November; what was that statement in relation to the attendees based on?-- Well, I actually used the word basically the same people, and I would have been referring back to that incorrectly stated meeting of November 28. So, I guess what I was saying is that the first meeting were those people that are named as reference to 28 November, and then obviously the second meeting that I'm referring to which I've incorrectly stated as December 16 was more likely the one on January 8th that Councillor Pforr mentioned earlier.

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Councillor Molhoek, you say that you actually used the word basically. I haven't got your statement in front of me, but I believe from reading it two or three nights ago you then go on - further on in the statement to mention again the people who were in attendance on those two dates?-- Well, I didn't specifically mention the names of anyone on the second date. I only specifically mentioned people on the first date - at the first meeting.

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That's not the way I recall, but either way, I guess-----

CHAIRMAN: Mr La Castra, would you like to see the statement?

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MR LA CASTRA: If that is possible.

CHAIRMAN: Yes.

MR LA CASTRA: Thank you very much; thank you.

CHAIRMAN: Have you got Exhibit 7 there.

MR LA CASTRA: Sorry, looks like I've got it here. Thank you for that.

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CHAIRMAN: You'll see at page 9 I think is the page you're referring to.

MR LA CASTRA: Thank you very much.

CHAIRMAN: About the middle of the page. It says, "A second meeting was convened on 16 December."

MR LA CASTRA: I don't want to take too much of your time but I know that there is another reference on another page, certainly to myself, but anyway it's probably not that important. I'll just pass that back. But I will just go on. So, as in your recollection as to where you came up with those names, where did that come from: did it come from a diary note; did it come from something that someone had said to you; or did it come from another source?-- Just came from my own

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recollections of the meeting in trying to piece together what occurred on that occasion.

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Yesterday, did you say that possibly you had actually read this account in the Gold Coast Bulletin, in your testimony yesterday?-- I don't recall having said that but I may. Certainly, the comments in my statement were tied to my own recollections of the meeting. Quite obviously, there's been some confusion in my mind as to the exact dates, but I certainly recall there being two meetings.

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In relation to the meeting of the 16th of December you originally stated that I was in attendance. How do you reconcile that statement given that from the 14th to the 19th of December I was accompanying my son at the Queensland Junior State Cricket Titles in Townsville?-- Sir, are you referring to the 28th of November now or the 16th of December?

I am - I would actually suggest that the meeting of the 28th-----?-- It was the 16th.

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-----never took place but the 16th of December, how would you reconcile the fact that you stated I was at that meeting when I was actually in - I say Townsville, it might have been Mackay, I recall two years, one was in Townsville, one was in Mackay - but I was certainly away from the city at the State Junior Cricket Titles with my son from the 14th of December to the 19th of December so what would you say to that?-- Well, obviously I was mistaken. But my recollections were that you were at one of the meetings but - but-----

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Clearly, I - clearly, I wasn't?-- -----I can concede that I was probably mistaken.

Thank you. Councillor Molhoek, did you ever meet with me to discuss your election campaign?-- Prior to the campaign, no.

Or during the campaign?-- I - no.

Did you ever call me or make any contact with me in relation to your election campaign?-- No, I did not.

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Given that I clearly had nothing to do with your election campaign and never met you at the offices of Quadrant and in relation to Councillor Grew, Mr Chris Morgan's own statement says he had absolutely no contact with Councillor Grew during the campaign, why did you state that Councillor Grew and Councillor La Castra were in attendance; what was your reasoning for making the statement rather than, "I'm not sure"?-- I'm just - I'm trying to review my recollections but perhaps there was some comment at the meeting about yourself and Councillor Grew being supportive of - of the efforts and intent of that meeting. I really can't recall.

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So Councillor Molhoek, are you saying perhaps but you can't really recall as to the why?-- Not categorically and that's why I was a little unspecific in my statement about that.

In today's Gold Coast Bulletin an article states that yesterday you said that Councillor Grew and Councillor La Castra were in attendance at the meeting of the 28th of November and the 16th of December. Did you not after further recollection during your evidence yesterday state that you couldn't be sure that either Councillor Grew or myself were in attendance?-- That's correct.

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So given that the account in today's Bulletin saying that you did state that we were there, would you say that today's Bulletin gave a true and accurate account of your clarifying statements?-- Sorry, my statements from yesterday?

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Given that later in the day you said you couldn't recall that I was there and the Bulletin wrote only that you said that I was there; would you say that that was a true and accurate account of your clarifying statements yesterday?-- I suppose not.

So do you feel that the Bulletin's comments today are a misrepresentation of what you actually said and clarified yesterday?-- I don't know that I could answer absolutely one way or the other. I simply can't recall that clearly - the specific details of that meeting and who was absolutely in attendance.

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No, I'm talking about - I'm talking about today's recollection or account in the Gold Coast Bulletin of what you said yesterday but I think you answered the question with the first question that it wasn't a true and accurate statement. I only have two more questions I believe which are along those lines. Now, that you are an elected Councillor do you think that the print media gives a true and accurate account of what you've actually said to them in the past?-- Um-----

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Because this was raised yesterday too?-- Yeah. There are certainly occasions where their statements are quite accurate. There are other occasions where I believe comments are either taken out of context or - you know, through copy editing or whatever the stories can be trimmed back or changed and therefore change the actual context of what was said so we're certainly at the mercy of some interesting reporting and journalism at times.

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Councillor Molhoek, you mentioned today that on the 29th of March you spoke to Mr Roy Miller of the Bulletin and Bob. You said - when questioned was this possibly Bob La Castra you said it's possible it was Bob La Castra. Is it possible or probable that given that you had spoken to Roy Miller that Bob could have been Bob Gordon, the editor of the Gold Coast Bulletin?-- Sorry, which - can you just refresh my memory as to the specific reference?

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Today you were asked a question-----

CHAIRMAN: It's in an email that, it relates to a comment in an email. Are you able to assist on the number of that?-- Oh sir, I've got the email, I think-----

Have you?-- -----I think I've got it here. No, sorry, it's not that email.

I think it's one that in fact might be talking about someone else having spoken to Roy M and that perhaps you should as well, from memory.

MR LA CASTRA: It was the 29th of March I believe.

CHAIRMAN: Was it?

MR WEBB: Exhibit 27, Chairman.

CHAIRMAN: Thank you.

MR WEBB: Two pages.

CHAIRMAN: Yes. Well, we'll get that for Mr Molhoek.

WITNESS: Do you want me to read the statement?

CHAIRMAN: Yes, all right?-- "I've made contact with David, spoken to Bob, and plan to catch up with Sue and Ted tomorrow."

And is that an email from you, or-----?-- This was an email from me to Chris Morgan at Quadrant.

MR LA CASTRA: So you do believe you were referring to the fact you had spoken to me?-- Yes, that's correct.

Right. Are you certain that you spoke to me?-- Yeah, I am, because I recall Chris Morgan saying something to me like, you know, "There's probably a few bridges you need to mend and there are some councillors out there that are, you know, relatively unhappy with you" and I seem to recall calling David and yourself and just saying, "Look, I'd really like to catch up and have a chat to you about what happened and why I withdrew."

I know, Mr Chairman, I said there was only one more question, but that leads to another question.

CHAIRMAN: That's all right.

MR LA CASTRA: Thank you. Given that you had never spoken to me during the election campaign, had never met me during the election campaign, what bridges would you have had to have mended with myself and why would you have called me in that context?-- Because it was always my understanding that yourself and David and Sue and Jan were, I guess, in cohorts to some degree as to wanting to see better quality people in council, so - so whether that was agreed to me through a meeting at Quadrant or dialogue, you know, in a previous meeting with David or someone, I can't recall, but I certainly was of the clear impression that you had an interest in seeing myself and other candidates elected.

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But if it was to mend bridges that had been burned, are you suggesting that I maybe thought that you were not a quality candidate?-- No, I think it was more that I was concerned that you may have thought that I was the person that had run off and you know, blown the whistle or whatever, so to speak, on the commonsense candidates and the intent of that.

Okay. Given that I had obviously no involvement in that, I just wonder why you would think that - finally, final question, please, Mr Chairman. Since your election, have you ever been asked to vote in a certain way on any matter?-- No, not at all.

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Thank you very much.

CHAIRMAN: Yes, thank you. Yes, Mr McBride?

MR McBRIDE: Thank you, Mr Chairman. I'd like to ask you some questions about your statements. Do you have a copy of your first statement in front of you?-- Yes, I do.

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Thank you. Would you please go to page 7. In the last paragraph on that page, about four lines down there's a reference to the commonsense campaign. Can I ask you what you mean by a campaign?-- Oh, it's just using the loose term that had been attributed to it in the media and through previous emails. It's just a way of simply, you know, giving it a name.

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Would you agree with me that a campaign would involve a strategy?-- Well, a good campaign would, yes.

A campaign would involve management?-- Absolutely.

Direction?-- Yes.

Funding?-- Yes.

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All the things that were discussed at - I'll call it the first meeting, I won't get bogged down with dates - were elements of a campaign?-- I don't know whether that's a fair statement. I think that's drawing a fairly long bow. The tenure of those meetings was fairly loose. The overtones were really more offers and gestures of support and advice. It was very clear to me that I was - it was necessary for me to get out there and run my own race, and as much as I was able to, that's fundamentally what I did.

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Well, if you like I can show you Exhibit 4, which was the memorandum handed out at the first meeting, which I think you said yesterday you received and it talks about - and I'll read from it - "To develop a resources management and marketing expertise plus funding that individual councillors can access as required to complement their own campaign committee structures. It is to be available only to individuals in a

nominated group for the purpose of projecting an agreed position on the key city issues." And while I've got this document in front of me, it's correct, isn't it, that at the first meeting funding was discussed?-- Yes.

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Okay. Now, I mean, as you're probably aware, a number of the councillors who ran this election who had been named as present at these meetings or part of the commonsense group, did receive funding; that's correct, isn't it?-- I have - I have no knowledge of the extent of the funding but I'm certainly aware that they received funding.

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They received funding. And you know that they received direction, strategy, management advice?-- To what extent I don't know but I - I would certainly concede that some of them would have.

Yes. And even to the extent that this was supplementing their existing campaigns, they did receive some campaign assistance?-- Well, that - that's my understanding but again I'm not in a position to comment as to the extent of what they received.

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No, I'm not asking you to comment on the extent; I'm saying even to the extent that it was supplemented, their own strategies and their own campaigns, that they did receive some form of campaign assistance?-- Oh I have no doubt that they didn't.

Okay. And therefore, we come back to the start of my question, in your document you refer to the commonsense campaign and I put it to you that this isn't just picking up the language but there was, in fact, a campaign of sorts run by the commonsense group?-- Oh look I - I think that - I have to say I still think that's drawing an incredibly long bow. I mean, in life you look for - you look for a name to give to anything. I mean, the Bulletin have labelled it as - all as "the bloc" but we never - you know, there was never officially any bloc, but for sake of convenience when you start to refer to that alleged organisation or - or that structure, well, then, you loosely use those terms. I mean, I don't know how else I could have described it but - but it's certainly - it certainly was never intended from any understanding that I had that we were running a common campaign or a - or running as a group of candidates. So it's - it's just a term that I've applied to try and describe that initiative, I suppose.

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And at the top of page 8 where you have your meeting with Lionel Barden a couple of weeks after the election, again you speak about the commonsense campaign?-- Yeah, well, I'm just using the term loosely.

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You put a lot of thought into this statement when you prepared it?-- Yes, I did.

Yes. And you knew you would be cross-examined about it?-- Yes, I did.

And I think you said your second statement you compiled with the assistance of your lawyer?-- That's correct.

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So we have the benefit of your own words and thoughts in this document?-- That's correct.

It hasn't been amended, drafted, or sanitised by a lawyer?-- Not at all.

Okay, thank you. Just whilst we're on page 8, and the top of page 8, you say, "I expressed my disappointment with the behaviour of those involved." Could you please tell us who "those" were?-- Oh I was disappointed with Chris Morgan in - in seeking information and - and - and seeking to secure a level of support and - and not getting any - well, basically, not delivering, and it just seemed like I was being strung on and strung on. I was disappointed that Sue Robbins denied the existing - existence of any meetings and then subsequently came out in the media the next day and acknowledged that, you know, "Look, I've had a chance to look at my diary and I did attend a meeting." I was disappointed with the fact that there was a lot of revelry in - in - around town from the business community about - or the Chambers, you know, to support candidates, but what became very apparent was that - to me, was that it was - it was more the developers that - that actually came through with any support as opposed to the broader business community. And so it was those sorts of things that I was disappointed with.

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You're not suggesting you're disappointed with the developers' behaviour?-- Oh no, not at all.

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No, no. So just breaking that down, I understand about Councillor Robbins and I understand that the business community, in a sense, in the sense you've discussed they didn't come forward, but you've lost me a bit on Chris Morgan. You say that he didn't deliver and yet, in fact, I think a request was made of your accountant to forward some invoices which they would pay. How is that not delivering?-- Well, it's the litany of what went on. There was - there was the meeting that I had with Chris where he said, "Yeah, look, we'll - we'd like to support you and we'll certainly be, you know, back to you about that." There was the subsequent phone calls from my accountant, Kevin Nichol, to - to find out, "Well, what's happening? You know, what - what level of support's being promised?" Then there was the subsequent email that - that came in a response to a phone call from a conversation I believe or email between my accountant and Chris Morgan. "We've got some money to deposit" and - and then three or four weeks later there was still no money deposited, and then just prior to the - in the week or two prior to the election there was a request that we sent through an invoice for payment which subsequently wasn't - wasn't paid, and then - and then everything emerged in the media that - that this was fundamentally a developer-backed campaign and at that point, you know, any apprehension that I felt at that time was pretty - pretty much crystallised in those last few days before the election.

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As you said this morning, hindsight's a wonderful thing. During the course of the election, at least in the couple of months or in the new year 2004, Mr Morgan gave you advice on, I think you said some of your pamphlets and the way you were going about your electioneering?-- I met - I had a cup of coffee with Chris Morgan. We met at his office for about an hour. I actually assigned a value to that time and declared that on my return.

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Yes, yes, so-----?-- And basically, I took with me what was my campaign strategy document. I think I may have taken one or two draft, you know, pieces of art work that I was working on and we just sat and talked in general terms as to, you know, "Do you think I'm on the right track? Is there anything, you know, you'd suggest I change?" And I think Chris said something like, "Quite frankly, you're the most organised candidate I've ever seen," and you know, I think Chris may have even said, look, this is one of the first campaigns he'd been involved in or one of the few campaigns he'd be involved in and, you know, I'm obviously getting good advice elsewhere and I should just keep following it and follow my instincts. And that was about the extent of the conversation.

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So if I could just summarise that. You took up his offer at the first meeting for management and strategy advice; that's correct?-- I think that's an over-statement. I took up his offer to provide me with the benefit of his experience and his counsel. But I was well and truly organised. The strategy document that I shared with him, and in early January I think it was the date, that document had been created back in August the previous year and worked on by my own campaign team so, you know, for all accounts I was pretty well ahead of the game anyway.

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But you valued his advice to such an extent that you attributed a monetary value to it; that's correct, isn't it?-- Well, I did that because I - I wanted to be absolutely transparent about the fact that I had received advice from him.

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Thank you, thank you?-- And he's someone that I've respected and known through the media industry for many years.

Just returning to the first meeting and, again, this is dealt with on page 8. You say that the meeting of candidates was hosted by councillors and you list five councillors. Now, leaving aside debates about who was there, can you tell us who of the councillors was driving the agenda?-- In terms of who did the most speaking, it would have been Sue Robbins and David Power.

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I think you've said this morning that it was David Power speaking about the behaviour and dignity. That's right, isn't it?-- That was Mr Nyst that made those comments.

And you agreed with that?-- Absolutely.

And also that it was Mr Power who was going to be out there convincing the business community?-- That was my understanding from that meeting. 1

And that was Mr Power again?-- That's correct.

So is it fair to say that Mr Power of anyone there was driving the agenda?-- Oh, it's a fairly subjective statement. I-----

Well, if not, who was?-- I would have - I would have said that Sue was equally as passionate about the agenda. 10

On page 9, you say that you were reluctant about supporting Roxanne Scott. Can you tell us why you were reluctant in being supporting if this is a group of independent people?-- Oh, I've known Dawn for a long time and-----

Sorry, you may have misunderstood the question. I'm asking about your support of Roxanne Scott. I didn't refer to the reference to Dawn. I'm asking about your support for Roxanne Scott. Let me break it down. How would that support manifest itself?-- Oh, just by association. 20

Can you be a little bit more specific than that, please?-- Oh, or just that. I felt - I felt uncomfortable - I felt uncomfortable with, I guess, being seen or perceived to be seen as supporting Roxanne over Dawn because of the long-standing relationship that I'd had with Dawn. And it's a fairly subjective comment but I can't attribute anything specific to it. 30

Right. With respect, Councillor, it's your comment. I'm just asking you what you meant by it. You say that you were told that Chris Morgan had been appointed to provide the strategic direction and creative services to those represented. Who told you that he'd been appointed?-- Oh, I think Chris may have mentioned that in the meeting and said, "Look, I'll be providing this sort of support if you want to access it."

Thank you. At the foot of that page 9, and it's following the second meeting - let's just put to one side when that might have occurred - you talk about distancing yourself and independence. And this is without any reference to stories breaking in the media. This is with reference to the dissatisfaction as to the money coming through?-- Sure. 40

Why did you want to distance yourself?-- Oh look, I think I went in there to a degree bright eyed and bushy tailed, it was all very new to me. I was eager to learn, eager to mix with people that were on a similar mission in terms of wanting to get elected, there was the opportunity to avail myself of advice from established councils that had run campaigns. There was empathy there with other people who were running that weren't running against me and you know, perhaps in hindsight I was a little naive, a little too enthusiastic about just taking everyone at face value and you know, if I had my time over again I'd probably - I would probably just 50

say, "Look, thanks very much for the opportunity but, you know, I'll trust my instincts."

1

But these are people singing from the same hymn sheet as you, commonsense, dignity, independent people-----?-- But they-----

Sorry, I haven't finished my question. Looking after the greater community business needs, reflecting the concerns in the various Chambers of Commerce. But in early January or early in the New Year, you wanted distance, you wanted to withdraw and you want to retain your independence. Aren't these kindred spirits?-- Oh, no more so than probably, you know, thousands of other business people in the community that were echoing similar thoughts and similar sentiments about frustration with council.

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But you don't say that you want to withdraw, distance yourself, or retain your independence from those sort of people?-- Sorry, from the broader community?

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No, no, from the commonsense group. What you say in your statement is that you made a decision in the early New Year that you wanted to distance yourself from the commonsense candidates?-- That's correct.

And you want to retain your independence-----?-- Correct.

And I'm asking you why did you want to retain your independence from these people?-- Oh, because - well, as I said yesterday, because I wasn't getting clear answers about the level of financial support. I guess I became aware that, you know, these are people that I don't really know all that well and I was, I guess, reasonably well set up in terms of my own campaign and logistics that I thought, look, there's really not a lot to be achieved by, you know, batting forward too substantially with this and I'll wait - as I said in one of my emails that came up early this morning - I'll wait and see how things fall out after the election. So just - and frankly there was - oh there was just a lot going on at the time, you know, and I just thought, look, there's really not a lot of upside with the - with - we're going to sort of align the association with this point of view - you know, and - and the advice I suppose I was getting in broad terms is that - and the advice I in fact received from this group is that it's important for us to retain independence and I thought, look, for the sake of ten grand that might get thrown at me, you know, in the course of the campaign, I'd rather not have it. There's too many unknowns.

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But there was an upside, wasn't there? There was the potential of at least ten grand?-- Oh, there was certainly that-----

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And you hung on to that lifeline to the end?-- Yeah, because I wasn't wanting to - I wasn't wanting to sort of turn around and discredit the group either. I always fundamentally supported the fact that there was a need for greater

commonsense in council and I considered the majority of those people and the candidates to be people of that calibre.

1

It might be a matter of semantics and I don't say you're not discredit them to them extent that refusing money is discrediting, but you used words like distance, withdrawal and remained independent from, and I put it to you that's of more concern what you might be getting involved with than just discrediting someone because you say no thank you for your donation?-- Sorry, I don't understand the question.

10

I'm sorry, I'll put that again. I put it to you that the concepts of withdrawing, distancing and independence are far stronger than worrying about discrediting?-- I still don't really understand the point you're trying to make. The issue for me very simply was that - was that there was no funding forthcoming, there was I suppose several attempts to try and secure some financial support and when it wasn't forthcoming and then it became apparent that it may have all been coming from, according to media reports, the Ray Group, which we just simply reacted and said, "Look, we don't want a part of this."

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But the media report, with respect, is fairly late in the piece, isn't it?-- Oh, it was.

That's right?-- Absolutely. I was trying to give the relationships and the intent every opportunity to support it because I've maintained and always have done that fundamentally I supported the view of the broader business community and the group of candidates that there was a greater need for commonsense in council.

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Just moving on to page 11 under the heading of Ron Clarke, you say there, "Ron Clarke's campaign director, Graham - I think it's Stark - sorry, can you just confirm with me, is Mr Stark the campaign director?-- Well, it's my understanding that Graham was a substantive part of the team. I - at that time and at the time of writing, I thought he was the campaign director, but I certainly recall the gentleman that was mentioned earlier as being the official campaign director, so I may have, you know, I may have been inappropriate in describing him as such, but he was certainly in my view actively involved in the campaign.

40

Thank you. You say he seemed concerned about my independence, how did he express that concern?-- Gosh, I think he was more concerned that - that - that I was going to be so singularly minded - or singularly disappointed about Gary Baildon's non election - that I would find it hard to be supportive of the Mayor - well, Ron Clarke - subsequently who has become the Mayor and as a consequence of that would you know work uncooperatively within Council.

50

There's a subsequent meeting with Mr Staerk and you discuss concerns with the voting bloc. Who's the voting bloc that you refer to there please?-- Oh well, all we were discussing simply was-----

Sorry, I - could I have the names of the people when you refer to a voting bloc there, the concerns about-----?-- Oh well, I couldn't absolutely give them to you because I - the bloc really was an entity that existed in the media coverage and was a term that I think Councillor Crichlow affectionately ascribed to Council.

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No, no. With respect, you're not listening to the question. You're having a conversation with Mr Staerk and you discuss - and you don't mention whether the topic's raised by him or you - concerns with the voting bloc. Now, can I put it to you that either you know what the voting bloc is and you're asking him about it or he's asking you about it. Now, if your evidence is you don't know what it is, did you ask him who do you mean by the voting bloc?-- Oh, I think - I don't think anyone would have had any misgivings about who the bloc was allegedly supposed to be but it would have been Councillor Power and some of those other councillors that have been referred to in the media.

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And what were the concerns?-- Oh, I think Graham's concern was at that point I think he said something about the fact that - that he - that they were surprised that Mr Clarke would win the election so convincingly, that there was a sense in which they needed to work through the practicalities of trying to advance any agenda or campaign commitments that Mr Clarke had made, it was in those sorts of general terms.

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With respect, Councillor, that's a discussion about a new Mayor, a number of councillors and future trends or voting or alliances. This is specific. This is concerns with the voting bloc. There's a group - on your testimony, they've been identified - and there's a discussion about some problems with that group and I'm asking you what were the problems that were discussed?-- Oh I think Graham quite frankly was just you know concerned as to whether the Mayor would have the level of support that he would need to function as the Mayor and achieve some of his campaign commitments.

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From this voting bloc?-- Oh well, from Council in general and this bloc.

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See, we're going backwards. I thought we'd moved on from that. I'm asking you about discussions concerning - or discussions about problems with Mr Power and a group of other councillors. We've established that-----?-- Yeah.

-----and I'm asking you what was the subject matter of the problems which were discussed concerning that voting bloc?-- Oh, I'm sorry, I don't really understand what you're driving at.

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I'm happy to start again. You understand I'm asking not about an elected group of councillors and new Mayor and how voting patterns or trends might emerge - you understand I'm not asking about that, I'm asking about your statement where you say you had a coffee with a member of Mr Clarke's staff and there is discussion about problems with the voting bloc. Now,

are the problems expressed by you?-- Sorry, the word was concerns.

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Concerns, okay. Well, I think it's fair to interpose concerns for problems-----

MR NYST: Well, no, sir because this has to be seen in the context that there were concerns being expressed publicly about a voting bloc in newspapers.

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CHAIRMAN: Look, I don't think you need to go too much into the facts. This witness is perfectly capable of answering questions.

MR NYST: Well, I'm just concerned that it might-----

CHAIRMAN: It would be better if you do use the word "concerns", Mr McBride so as not to confuse the issue.

MR McBRIDE: So the question is can you tell us about a discussion-----?-- Oh, look I - I don't really recall all those - that much specific detail but I think Graham was concerned as to whether the Mayor would have a majority of support to advance some of his campaign commitments. I think he was concerned about you know whether there really was or wasn't a bloc and you know what did I know about it. You know, I mean, it was a very general discussion. Frankly, we spent more time talking about our old glory days of playing football at the same high school and our old school principal than we did discussing any substantive material to deal with the election outcomes.

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He sought you out for a candid discussion, didn't he?-- Prior to the election and then - and we subsequently agreed we'd catch up after the election to have a chat which we did.

Thank you. There's - we've had questions put to you about developer funds and I think you gave evidence yesterday that you don't have a problem with developer funds from those that you know and trust?-- Correct.

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Okay. Of the developers who put money into the trust account operated by the commonsense people, which of those did you know?-- Can I have the list because I don't - I have to refer to the list, I don't know who the contributors were.

Okay?-- The only one that I can recall that I know all that well is Jim Raptis.

Okay. Perhaps I can put it this way - another way - I'll put it another way. You find out that the funds are coming primarily from developers; that's correct?-- Correct.

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That causes you concern?-- That's correct.

But if these are people you know and trust, you're not going to be concerned?-- Well, it wouldn't matter whether it was a developer or any other contributor of my campaign. I would

want to have some rapport or some knowledge of who that person is, what they stood for, what their motivation in supporting me was and what became apparent to me was that I would - I could potentially not have any real control over where the money came from and that was a subsequent reason for withdrawing in the final - final moments because, you know, in hindsight, I don't - I know very few of the people on that list so-----

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But up until just before the election, you were prepared to accept moneys from a trust fund when you didn't know-----?-- Yeah, but-----

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-----where the money was coming from?-- But on the basis that I would have expected Kevin and my campaign team to have done some vetting of that. On the basis that it's never too late to send money back and there were many accounts where people receive funds from people during a campaign and then actually returning the cheque or write a cheque and return the funds and I certainly - I certainly would have done exactly the same had that occurred if there was someone on my list of contributors that I wasn't absolutely comfortable with.

20

So once the question or the issue came up that it was mainly developer's funds, you personally didn't ask any questions as to which developers?-- No, I simply withdrew and said-----

How much?-- -----"Please, don't send me the money".

So it's - so you just drew a line, developers, no go, full stop?-- I don't know that that was quite the line I drew but certainly on this occasion when it came out in The Bulletin that it was substantially the Ray Group that were contributing and I had no knowledge of them, I made that decision.

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Councillor, I think, we've established that The Bulletin and Mr Ray is very close to the election perhaps I should address you to the - perhaps the January/February period of this - of 2004. So you didn't ask the names of any of these developers?-- Wasn't aware that - there wasn't any intent to seek, actively seek money from developers at that point. It was - it was always couched as being broad support from Chambers of Commerce and, as David Power's representative mentioned earlier, that it was going to be canvassed among the broader business community for support.

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Yes. I think you agreed this morning with this proposition; that on the Gold Coast big business is development?-- That's correct, but it's not the only business in town.

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No, that - if it is big business, then why do the running?-- Oh, I guess, there are perceptual issues associated with the development industry. There are some great developers and I would consider someone like Jim Raptis to be a highly credible person. There are other developers out there that are substantially fly by nighters and I don't want to be seen to be casting any aspersions about any individual developers but I certainly would want to know a

little bit more about the ones that I chose to accept support from.

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Thank you. You were asked some questions this morning about a throwing incident in council. Can you tell us when that occurred? Just the year would be fine?-- Oh, just trying to remember all the years now. I think - I think it was 2002 from memory.

Yes. Would you be surprised to find out it was 1997?-- It does surprise me actually.

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Okay. And you also said you were aware of - well, there was some discussion about councillors being ejected. I put to you there's only been one councillor ejected from a meeting from the period 2000 to the August 2003 election?

MR NYST: What was put was threatened ejection.

CHAIRMAN: August 2003 election?-- It was put as threatened ejection.

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MR McBRIDE: I'm putting that - I'm talking about one councillor who's been ejected in that period?-- Sorry, what was the period again?

From 2000 until August 2003?-- I'm not in that position to comment.

You don't know and I put it to you that that person who was ejected was then subsequently re-elected in 2004?-- It may well have been. I don't know who that is.

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You don't know. Just a couple of points on these meetings. Regardless of dates, you're quite certain there were two meetings you attended?-- Absolutely.

You're on time for one and you were late for the other?-- Late, yeah.

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Okay. This morning you answered some questions and said that the thrust of these meetings was - and let me get this right - "behaviour not issues"?-- That's correct.

Is that what you said this morning. Yesterday you gave evidence that - and this is at page 61 of the transcript - "We discussed a range of Council issues." And can I refer you to, and I've mentioned it before, Exhibit 14 which runs through a list of key city issues - environment, growth management, crime, water, water conservation, flood prevention, public transport. They're Council issues which go beyond behaviour, Councillor?-- Yeah. We certainly touched on those issues but they - they were not the major focus of discussion in those meetings and they were there - as I recall, they were actually offered as dot points as to issues that you - you would certainly want to make sure you had an understanding of as a - as a potential councillor and someone that was running for Council.

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One final point: you say that following the meeting at Quadrant you're promoting your own election material - one of the words used was "dignity"?-- Correct.

You didn't in that material also promote that there was a group of like-minded people with a fund, strategic guidance, consisting of invited candidates and a romp of elected councillors, did you?-- No, I did not.

Thank you.

CHAIRMAN: Yes, Mr Fynes-Clinton?

MR FYNES-CLINTON: Thank you, Mr Chairman. Just two matters. Councillor Molhoek, yesterday early in your evidence you told the Commission about the initial meeting of your campaign team in the Bell's board room-----?-- Correct.

-----around about the 20th of August or 12th of August, and you then testified that shortly after that Mr Nichol was sent off to track down some statutory material about the obligations of candidates?-- Mr Nichol and - and one of the other members of that group.

And Mr Smith?-- That's correct.

That's right. And you testified that Mr Nichol made some inquiries and purchased a document on-line?-- I'm not sure whether he actually purchased it or whether he gave the information to my secretary and then she went and purchased it but either he or Mr Smith tracked down the information.

All right. That's all right. I'm just trying to clarify because in your evidence you actually said that inquiries were made of the Local Government Association. Did you mean the Local Government Department of the State Government?-- Well, we actually - we actually explored both. As I understand it, we went to the Queensland State Government web site and - and ordered material and there's a - from my recollections, there's a - there an enormous amount of material available as to how to run a campaign and the sorts of things that you need to do as a candidate to get yourself elected and there's advice on door-knocking and all sort of things and the best way to run a Council campaign. I also - also seem to recall that there was some general information about - about Council elections that may have been available at the - I think the web site for the Department of Local Government or something like that. I don't specifically remember whether it was the LGAQ site or - or whether it was actually the site that runs off from the Department of Local Government and Planning.

All right. We don't want to get bogged down on a side issue, but I suggest to you that the LGAQ deals only with Councils, the corporations and elected members and does not provide advice to candidates?-- Yeah, I - I'm sure that it was just an

incorrect reference and that we were actually referring to the State Government site.

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That's fine, thank you. And the one other matter is this: do you recall during examination by counsel assisting you were asked questions and propositions were put to you about the fact that during the campaign you made no public disclosures about sources of funding or potential funding. Do you remember those suggestions being made to you by counsel assisting?-- I - yeah, I do remember, yeah, some of those - some comment like that being made.

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Okay. Now, I'm dealing here with the statutory obligations which are in the Act and which the Commission can read for itself?-- Sure.

Against that background, I'd just like you to cast your mind back. You told the Commission about an initial meeting with Paul Stevens to get advice?-- Correct.

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You consulted with various people including councillors about running for Council?-- Yep.

And of course you received material from Mr Nichol and you-----?-- That's correct.

-----at least to some degree read that?-- Yep.

My question to you is this: from any of those sources, was something imparted to you to the effect that quite apart from the statutory obligations there's an expectation or a convention that during the campaign you will disclose sources of funding as they come up? Did anyone suggest that to you?-- Well, my knowledge and understanding of the requirements is that full disclosure is required by way of a final return after the election. My understanding is there's actually no legal requirement for disclosure during the campaign or prior to the election but there was certainly, I guess, a push from the media to ask that candidates be open and - and transparent prior to the election and to the best of my ability at that stage I responded to a request from the Gold Coast Bulletin to provide that detail and I think that - some of that information may have been subsequently reproduced in the Gold Coast Sun either prior to or just straight after the election. I can't recall the exact timing.

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Well, your correspondence with the board is in evidence. So, nobody said to you something like: Robert, the legal requirement is to disclose after the election, but it's understood that if you're going to be a transparent candidate you'll disclose all the way through. No one said that to you in terms of advice?-- No.

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Right?-- No.

Thank you, Chairman. That's all.

CHAIRMAN: Thank you, Mr Fynes-Clinton.

Can I just ask you on that: having been through this election and having been through what's occurred since that time, what is your view as to whether in fact disclosure should be made by candidates prior to the election of their sources of donations?-- My view is that absolutely it should be disclosed prior to the election, and I would certainly welcome any reforms that suggest that candidates do provide some very clear disclosure as to who their supporters or backers are, whether they be a political party or whether they be independent, prior to an election. Alternately, I think it would be very sound for - particularly given some of the controversy around local government elections in the State - to come up with a new system. Perhaps candidates should receive some sort of a subsidy like Federal and State politicians do based on their performance running at the polls or something, but there certainly is a need for some transformation of the current guidelines. Having said that, I think it needs to be fair and equitable across all three levels of government, and there seemed to be some major inconsistencies there.

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Okay. And when you say disclosure of the actual funding, are you meaning right through to the actual donor, or should it be sufficient that it gets through to some trust account?-- No, I think it needs to be disclosed all the way through. I think there's got to be some privacy provided in that. I'm not sure how you do that, whether - you know, you provide the name of the person and the suburb but not the specific address and their contact details, but I certainly think it would be advantageous to provide that sort of disclosure. In fact, one of the considerations that I have added is if I were to run again, I would insist that all of my campaign contributions would be listed in perhaps general terms on my campaign site. So that - on a web site, so that anyone can go there at any time and say, well, who's supporting this guy.

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Okay. Just this thing of the meetings. You're adamant that there were two. It's been suggested to you that the first one might have been 16th December with the second one 8th January?-- 8th January.

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Yesterday, I thought you said you were away in early January, returning about - somewhere between the 10th and the 14th?-- Yeah. I'm starting to think that I may have been confused about that. Maybe I actually got back about the 7th or 8th just in time for that second meeting, but-----

Would you have a note in your diary, or anything of that nature, to assist you?-- Unfortunately, I moved to an electronic diary around that time, and there was a lightning strike and a significant storm that wiped out my hard-drive about mid-January that year, so-----

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I know the feeling?-- That's why I have difficulty nailing the dates.

I just noted in the material sent to us by Quadrant, Mr Morgan has in his, one could call it his work book, there was a meeting on Thursday, 8th January, where Mr Pforr, Ms Scott and Mr Betts seem to have been there, but it was very much down to the details of discussing things like signage, core - I can't read it all but - and even the design of how it should be: vote one, Grant Pforr, et cetera?-- Yes.

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With each of those persons right down to fine details, web site advice. Were you at a meeting where it got down into the finer details of advice to them of their running their campaign?-- There was certainly discussion about those sorts of issues. My recollection was that that actually occurred at that meeting of the 16th where that-----

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Right?-- Where that other document that's been circulated - you know, listing the, you know, the core issues, and the like, and it was at that meeting that that document emerged and some of those - there was material - I'm pretty sure there was some material there for Roxanne Scott; there was some samples of material that had been produced for Brian Ray.

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All right?-- And some general advice as to the sorts of things you need to be saying on your material.

Yes. There's no notes of your names on that particular note. So I can't take you to those. Yes, anything further.

MR MULHOLLAND: Yes, thank you, Mr Chairman.

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Just that document that you were speaking about, the advice, that's that one, is it?-- Yes, that's correct.

Exhibit 14. Now, in relation to these meetings, could I ask you to go to your statement again - that is, the first statement. I don't want you to leave before having the opportunity in relation to these meetings which you deal with at page 8 and page 9 of your first statement, to just tell us now that you have heard what has been put to you during the cross-examination that has taken place; could you tell us whether you would wish to alter any of your statement in relation to those two meetings, and if so in what way?-- I would probably at this point alter the dates of those two meetings.

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Right. Take the first one, on or about the 28th of November 2003?-- I would assume that was probably the meeting of December 16th and that the - and that the subsequent meeting I referred to as being December the 16th was possibly the meeting that Councillor Pforr mentioned of January 8.

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Right. And what-----?-- But I would have difficulty swearing that because I really - I really am struggling to remember the exact dates and times.

It's a recollection, your best recollection?-- That's correct.

And what about so far as the presence of anyone at those two meetings?-- I - I would have to say the same, that's my best recollection.

What, that what you have in your statement or something else?-- No, that what I have in my statement.

All right. Yes, and is - that's the only thing you'd like to add to that, no other particular change comes to mind?-- No.

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Yes. Now, you were asked just now by the Chairman in relation to what your view would be in relation to disclosure. Can I, on that point, slightly different point, as you this? Having been through the mill of this election, how would you approach now the suggestion that you join a group that was going to be funded through an intermediary in similar circumstances to what occurred here?-- I probably wouldn't revisit that as an option. In fact, not probably, I wouldn't revisit that as an option. I would - I would either joint a political party and throw my hat in with that or I would just remain completely independent and appoint my own fundraising people and have them conduct business in close consultation with myself all the way at every juncture.

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Would you agree with me that to join a group under a banner of a common sense campaign or, as Mr Nyst put it, people who were together agreed to act professionally, politely and responsibly or under any such even general banner, that grouping should be made public prior to an election such as this?-- Yes, probably. It certainly - it would certainly, with the benefit of hindsight, be a far less challenging way to deal with it.

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So that in relation to such grouping, you would agree that the voters would be entitled to know in advance of the election of that grouping?-- I don't know that I would go that far.

Why wouldn't they be entitled to know that?-- I'm just - I suppose I'm a little cynical as to whether the majority of voters would even have that level of interest as to who they were voting for in a Council election so I don't really know that it would achieve that much. And I guess, in this case, because what was so strongly communicated was that this was simply about business people and the Chambers of Commerce wanting to see change within Council and support people in broad terms, I still would contend that this group has done nothing wrong in what it set out to try and achieve.

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Well, I'm really asking you not about-----?-- Yes.

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-----the - whatever implication that may have, I'm just asking you for an honest view, Mr Molhoek, in regard to whether or not the public should know of any such grouping in advance of the election?-- Yes, I'd agree with that, I think. I think the public interest would be better served by that being very clear. And I make the same comment about the alleged white

knights group, the independent candidates that ran under various banners during the same election.

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You said something in relation to, I think, in response to a question that was asked of you by Mr McBride - you said something to this effect in relation to the revelation of the Ray group being associated with this funding or being responsible for the funding and reading about that in the paper and at that point in time you didn't want to be part of it?-- That's correct.

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What was it about, the revelation of the Ray group, that you didn't want to be part of this funding?-- Oh, the fact that the front page of the paper carried the title "King Maker" and certainly had a large degree of discomfort with that and the sentiment that that headline carried. The fact that I had little or no knowledge of members of the Ray group and-----

So you weren't casting any aspersion on the-----?-- Oh no. No, I just-----

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It was just the revelation in the newspaper?-- Just the way it was presented in the media and - and the fact that I really didn't have much knowledge of them.

All right. Now, I need to return just briefly to the rates matter that I questioned you about earlier today and I just want to ask you or remind you of a couple of articles. Let me - these are in 29 and 38 of Exhibit 3 being articles of the 25th and 29th of March 2004?-- Oh sorry - oh, they're in here. Sorry, 28, was it?

30

Yes, 28 and - sorry, 38 - 29 and 38?-- Twenty-nine.

Do you have that - do you have 29?-- Yes, I do.

Can you just go down to the third paragraph and just read that one sentence paragraph?-- Sahiel Abedian, the head of the listed company the Sunland Group said he had also given money to a trust fund which was being made available to certain candidates.

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Stop there. Now, you would have read that at the time?-- Yeah, I'm sure I did.

And would you go to 38 now and would you go down to the sentence developers and read that sentence please?-- Developers Brian Ray and Sahiel Abedian said that they and others had contributed funds to a trust to help bolster the campaigns of chosen candidates, deemed to be sensible.

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All right. Now, so you were aware of that as well at that time?-- I'm not sure that I - sorry, when was this article? Yeah, I probably would have been.

Now, can I ask you to have a look at - this is in Exhibit 4, Mr Chairman - it's the first folder, I'd like you to have a look - this is the third party disclosure by Lionel J Barden.

I take it that you became aware that there was a third party disclosure by Lionel Barden - this was made public, wasn't it - subsequently, it became public?-- I'm not aware - I'm not aware of it though.

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Well, let me - perhaps I can find it for you rather than you sorting through that-----?-- Am I allowed to-----

It might be quicker. Thanks.

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MR WEBB: Was that may I ask Exhibit 4?

CHAIRMAN: What was asked for - that's Exhibit 4 the witness has?

MR MULHOLLAND: It's the third party-----

CHAIRMAN: That's Exhibit 4 the witness has?

MR MULHOLLAND: Yes.

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CHAIRMAN: Yes.

MR WEBB: What page numbers?

MR MULHOLLAND: It is - what's the page you're looking at there?-- Seventeen of 18.

And do you see there at the foot of the page the entry in relation to the Sunland Group, Lionel J Barden, third party, and the date given is the date of the return, 16th of June 2004, do you see that, Sunland Group, \$10,000?-- Correct, yeah.

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Date of gift, 28th of January 2004. At the time when you considered that rate matter you were aware of the fact that the Sunland Group had been a donor?-- Yes, I was.

And when had you become aware of that?-- Oh, I don't think I ever had any specific knowledge of it but rather was probably aware from just references in the media to Sahiel's contribution or involvement.

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Yes. All right. Yes, that's all I have. Thank you, Mr Chairman.

CHAIRMAN: Yes. Now, Mr Mulholland, do you want this witness excused or-----

MR MULHOLLAND: Well, he can be excused I think, Mr Chairman.

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CHAIRMAN: Yes, thank you. Thank you, Mr Molhoek. Thank you for your attendance and your evidence?-- Thank you.

WITNESS EXCUSED

CHAIRMAN: Now, the next witness was to be Mr Rowe but he's now been allowed to return to Perth.

MR MULHOLLAND: Yes. Could-----

CHAIRMAN: I presume there is no other witness available this afternoon.

MR MULHOLLAND: No. Could I ask that we resume at 10.30 in the morning please, Mr Chairman.

CHAIRMAN: And the next witness will be?

MR MULHOLLAND: Will be Mr Pforr.

CHAIRMAN: Right. Yes, thank you. We'll adjourn till 10.30 tomorrow.

THE HEARING ADJOURNED AT 3.52 P.M. TILL 10.30 A.M. THE FOLLOWING DAY

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