

INQUIRY UNDER SECTION 438U OF THE LOCAL GOVERNMENT ACT

CENTRAL COAST CITY COUNCIL

Public Hearing

Conducted via Zoom videoconference

On Wednesday, 13 October 2021 at 10.00am
(Day 9)

Before Ms Roslyn McCulloch, Commissioner

1 THE COMMISSIONER: Good morning, the public hearings into
2 the Central Coast Council will now resume. The first
3 witness today is Mr Dick Persson. Mr Persson, would you be
4 able to come on camera and off mute, please.

5
6 <DICK PERSSON, affirmed: [10am]

7
8 THE COMMISSIONER: Q. Thank you, Mr Persson. You were
9 the administrator of Central Coast Council following the
10 suspension of the councillors on 30 October last year, and
11 you continued in that role until 16 April this year?

12 A. Correct.

13
14 Q. We have received via Mr Hart your interim report, your
15 30-day report and your final report, so you don't need to
16 repeat what you have said in those things, but I do have a
17 few questions for you. First of all --

18 A. Do you mind, Commissioner, if we start by just asking
19 the same question about my qualifications and experience?

20
21 Q. I was about to do that, yes.

22 A. Okay. I will take that as the question then.

23
24 Q. Yes.

25 A. I don't mean - I think it's relevant in the context of
26 the discussion today, particularly some of the comments
27 that I would like to refer to, from Professor Sansom, and
28 some of the other observations that are made.

29
30 I have a bachelor of arts degree majoring in
31 government and local government. I have been a senior
32 public servant for over 20 years. I was head, chief
33 executive of a large number of departments, including the
34 Department of Local Government, Housing and Planning in
35 Queensland, which was the same as the Local Government
36 Department here, plus the others, and I put through the '94
37 Act, which is similar to the '93 Act in New South Wales.

38
39 I was the head of the Department of Health in
40 Queensland, which is a very large - one of the fourth or
41 fifth largest organisations in the country. I returned to
42 New South Wales to be head of the Department of Public
43 Works and Services with thousands of employees.

44
45 I have been administrator of Warringah Council for six
46 years, interestingly. That is sort of relevant in relation
47 to some of the discussions about democracy.

1
2 I was appointed as administrator of Port
3 Macquarie-Hastings Council, I was appointed as
4 administrator to merge the Northern Beaches Council and I
5 was appointed here as an interim administrator to come in.
6

7 I have chaired many boards, I have been on many boards
8 and I believe I have a very wide-ranging experience in
9 organisational change and performance management and
10 getting results and dealing with financial crises.
11

12 Q. Thank you. Can you comment on the period of
13 administration that the council was given initially
14 following the merger. Do you think that was sufficient?

15 A. I made the observation in my final report, I think,
16 where I recommended an inquiry. And I made the observation
17 that not all councils are the same, and some were more fit
18 for the future than others. For example, in the Northern
19 Beaches Council, where I went, Warringah had just won the
20 Bluett award, which is - you may know it, others may not -
21 basically a contest for the best performing council in the
22 state. Pittwater, many of their residents were reluctant
23 to be merged, but they had won the Bluett award a number of
24 years before. Manly was also a reasonably well run
25 council, a little bit eccentric in some respects but,
26 nevertheless, it was a very different type of organisation,
27 financially strong. There was quite a lot of community
28 support for the merger, particularly when I, in the first
29 week, gave approval for beach parking stickers to be shared
30 across all councils. Everybody rang and said, "You don't
31 have to do anything else." Generally, the staff were
32 supportive.
33

34 So it was a very different environment. Two of the
35 three systems were totally the same. So, if you look at
36 that situation, 16 months was enough.
37

38 In relation to what I have discovered - and some of it
39 is since I have left, it's been an ongoing journey - the
40 Central Coast Council, and I mentioned in that report, it
41 turned out - I don't think it was enough. I can't comment
42 on the performance of those involved in getting to where
43 they got to.
44

45 I just make the observation, or pass on the
46 observation, that two ministers in the government mentioned
47 to me after my completion that the government considered

1 the Northern Beaches the most successful merger, and then
2 they added, "along with the Central Coast" - maybe not,
3 Central Coast, but it was interesting that that was their
4 perception.

5
6 So I don't think it was enough. My main urging of you
7 today, from my experience, would be to recommend that the
8 council not come back until at least September next year.
9 I personally think longer would be better, but I understand
10 there are lots of things in that equation, including
11 politics and democracy, and whatever.

12
13 The reason why, in places where they have successful
14 mergers, like Victoria - I also introduced mergers in
15 Queensland as head of that local government department all
16 those years ago; some were undone by the incoming change of
17 government, some of them have gone back subsequently. The
18 reason why governments put the councillors on the sideline,
19 or out of the picture altogether - in New South Wales' case
20 they were put on the sideline - was because the business of
21 merging organisations is hard management yakka. No
22 disrespect to councillors, they have their role, but very
23 few of them have that experience. Often the hard
24 management yakka involves hard decisions.

25
26 Q. Mr Persson, I am sorry, I just lost what you were
27 saying then. You froze for a moment for me. Could you
28 repeat what you were saying, please, Mr Persson. You might
29 have to - there is a little bit of a lag, so we will each
30 wait after each one stops talking, but because you froze,
31 you will need to repeat what you just said.

32 A. Okay. I'm not sure how far back, but my thesis is
33 that that the Northern Beaches Council was in a very good
34 state to be merged and 16 months was adequate. The
35 councillors who were on the sideline were actively engaged,
36 I gave them different roles and functions and they
37 participated mostly cooperatively and happily. Some
38 didn't, but - all but one did.

39
40 In the case of Central Coast, it's clear there wasn't
41 political support, a lot of opposition to the merger. The
42 councils weren't as fit for the future financially in terms
43 of their systems and their ability to integrate them, their
44 staffing situations. They were many years behind, in my
45 view, particularly Warringah Council, which I'm proud to
46 say I had something to do with getting restarted, and
47 Mr Hart, of course, I appointed him as the chief executive

1 there and he carried on to make it the best performing
2 council. The Central Coast Council was some years behind
3 that. So I don't make too much comment, but I do think
4 keeping the councillors out of the business, while that
5 hard management task is undertaken is very important, and
6 I'm hoping that you form the view that it would be
7 beneficial for a council not to return, an elected council,
8 until at least September next year, to allow the new CEO
9 and the management team to do the work that's still to be
10 done.

11
12 It's hard to quantify, but I have a sense that the
13 whole fiasco, the calamity and the political drama that
14 surrounded it has probably put them backwards in terms of
15 their ability to go forwards. I don't think it's like -
16 "We'll just get back to the little bit that needed to be
17 done after Mr Reynolds finished." I think they are in a
18 real state. It will be interesting to hear Mr Farmer's
19 view of that now that he's had a chance to assist, and of
20 course Mr Hart, who was there from day one with me and now
21 as the administrator, in terms of when they come back.

22
23 Q. Do you think it was also a disadvantage that there was
24 so much instability in the roles of CEO and CFO, for the
25 council?

26 A. Oh, unquestionably those things are a factor. But
27 when we get to the nitty-gritty of my time, my view is that
28 a CEO and the councillors have to deal with what's in front
29 of them. Where you're looking at, in terms of what
30 happened beforehand, is relevant and useful to understand
31 background, but at the end of the day, part of the task
32 confronting you - and I understand how difficult it is -
33 part of your task is to assess whether they did their job
34 well enough and whether they should come back as an elected
35 body. I'd say no, they didn't. Those other things are
36 relevant, whether it's the floods, the fires, the COVID,
37 yes, and I acknowledge them in my reports - I'm sure you've
38 read them recently. Sometimes when you write a document,
39 time passes, you look at it and you go "Ouch", or whatever.
40 Well, I'm very comfortable with every word in those
41 documents.

42
43 Q. Although you did change your opinion about whether an
44 inquiry was appropriate?

45 A. No, no, I recommended the inquiry.

46
47 Q. Ultimately, yes.

1 A. Well, that was my final report.

2

3 Q. Yes.

4 A. To be frank, I recommended the inquiry because that

5 was the only legal way that the minister could keep the

6 councillors from returning. That would have been a

7 disaster in so many ways. My recommendation of the

8 minister was for the inquiry to focus on what needed to be

9 done to make the merger successful. But it's up to you.

10 Your terms of reference don't quite go there, but they

11 allow you the further room if you want. That was why I did

12 so, and I'm quite open and frank about that. There was no

13 way that the councillors should have returned when I

14 finished my second three-month extension.

15

16 Q. Now, a number of councillors have said that the budget

17 was presented to them as a fait accompli and they really

18 didn't feel that they had any power to change the bottom

19 line, only to fiddle with what was in the middle of it.

20 What's your view about that?

21 A. They weren't up to the job. That's my view. It's

22 what the job is. That's what the job involves. The

23 section of the Act is very clear about their responsibility

24 in relation to budgets.

25

26 I know a number of other local government people of

27 long-standing, elected officials, who roll their eyes in

28 disbelief at though sorts of comments. It is obviously

29 relevant to explore their training, their ability, and

30 those things, and it would be very helpful if you had a

31 good CFO and a good CEO in place. That's why we don't have

32 more problems, because usually they are reasonably

33 competent or very competent. In this case, I believe we

34 fell short of those tests, and I'm sure we'll get to some

35 of that more specifically when we get to Mr Murphy.

36

37 I think in cases where that situation doesn't exist,

38 there's a huge vulnerability, and I think that's what

39 happened here.

40

41 But councillors - some of them were experienced. You

42 had Mr Best on, I know, for some time. He'd been around

43 for a long time. Asking questions on notice was his

44 modus operandi. I said to him - he probably told you, he

45 showed you the 56 motions he'd moved, or whatever. I sort

46 of said, "Well, after the first 20 didn't work, did you

47 think about some other way of dealing with it, because

1 clearly it wasn't working, yet you claim to be aware that
2 there was a financial calamity."

3
4 There was huge - I talked to all of the councillors,
5 all of the ones other than the ones that had resigned
6 before I got there, and some of them I have a great deal of
7 sympathy for. You mentioned - you saw one who talked about
8 being bullied.

9
10 Q. Several, actually.

11 A. Councillor Hogan was bullied not only in the council
12 chamber by the opposition, she was bullied in her party by
13 some of those people who were very determined that there
14 was nothing wrong with deficit budgeting and the expansion
15 that they were on.

16
17 You might have noticed in one of my reports, I think
18 the last one, I mentioned that there was no regret, I think
19 with Councillor Vincent, who I also was able to watch you
20 deal with, and he was telling me after a meeting, in a
21 fairly animated exchange we had after a council meeting,
22 that all that had to be done, even then, near the end my
23 time, was cut the capital works program. He had no
24 understanding, despite his masters degrees and whatever
25 and other experiences, that the recurrent budget was the
26 problem, not the capital budget. They were just spending
27 more than they had. Even if they thought restricted
28 reserves were okay to access, which is another point, even
29 if they did, they were going to run out at some point and
30 there was no sense of a strategy to get themselves out of
31 the hole they were digging.

32
33 Q. Do you think the councillors actually knew that they
34 were digging in to the restricted funds?

35 A. No. In fact, I think in my first report after 30 days
36 I mentioned that I thought that was a very technical matter
37 and I don't think, as an administrator, I would have
38 noticed that if the CEO and CFO had not brought it to my
39 attention. I gave them a pass for that. My only issue
40 with them, and still remains, is their inability/failure to
41 do enough to manage the budget which was blowing up before
42 their eyes.

43
44 Q. So one of the major things you mention is the IPART
45 decision in May 2019. The councillors knew that that was a
46 decision pending and that it could be unfavourable, because
47 they'd had a draft report, or some prior knowledge. Do you

1 think they acted sufficiently in adjusting the budget?
2 A. No, no. I made that very point clear in my reports
3 early on. It was clear. Forget the interim draft report,
4 which I take your point, and, yes, if I'd been in charge
5 I would have started to act then - but once the actual
6 decision was made, that's when a CEO, getting paid \$10,000
7 a week, is accountable. You don't have more reports from
8 the big end consulting firms, you sit around the table with
9 the executive and say, "How do we find the \$50 million or
10 \$40 million - \$50 million quickly?"

11
12 Q. It was \$39 million.

13 A. But there were other moneys as well in terms of other
14 parts of the deficit. We are in deep doo-doo here and you
15 have to make hard decisions. The job of a CEO at this
16 level in this sort of complex organisation, in my view, is
17 not just to commission reports that might - anyway, there
18 was a sense of urgency, and that was obvious to experienced
19 CEOs, whether it be Mr Hart or myself, and other people
20 around the local government world that we are in touch with
21 cannot believe that there wasn't that sense of urgency and
22 action.

23
24 Q. I understand that the Grant Thornton report, though,
25 was really focusing on COVID because it was an unknown
26 quantity. Was that your perception?

27 A. Look, all of - yes, there is an element of that, but I
28 go back to my point: you have a responsibility as a CEO
29 and as the councillors - and I'd like to talk about them as
30 a governing body --

31
32 Q. You have frozen again. I'm sorry, you froze again.
33 Just go back a moment.

34 A. I go back to my central point. The CEO and the
35 councillors have a responsibility to deal with what's in
36 front of them. Yes, there are unknowns, and COVID was an
37 unknown, and it is appropriate that they made attempts to
38 try and soften that impact. But at the end of the day,
39 what clearly had to be done was the sort of things that
40 Mr Hart and I did. We had turned that whole two years all
41 around in a year. Yes, I became much less popular once
42 I had to start raising rates and selling properties and
43 reducing staff numbers, all of those things, because that's
44 services as well, but that's what you have to do.

45
46 The \$39 million is relevant. The other big relevant
47 factor in that equation was the staff number. At the end

1 of the day, they were paying for 250 more staff after
2 amalgamation, and you just can't get away from that point.
3 You can talk about vacant positions and all of those
4 requirements that the State Government put on the merger
5 and some have relevance, but not here. You didn't have to
6 put on 250 extra staff. It was a very cavalier attitude of
7 the majority group, in my view.

8
9 Q. But who was making those decisions about staff? It
10 wasn't the councillors.

11 A. I don't agree. The councillors make the decisions.
12 Who was recommending - allowing the expansion may well be
13 staff. Look, I'd like to be quite frank and give you my
14 overall political assessment, because I think it's
15 important. If you want to stop me because I'm mentioning a
16 person, and you want to talk offline - are you familiar
17 with the Local Government Act prior to 1993 changes and the
18 role of the mayor?

19
20 Q. Unfortunately I'm old enough, yes.

21 A. It's not just age; not that many people focus on the
22 pre '93 Local Government Act. But some people will be
23 surprised to know that the mayor was the chief executive
24 under that Act. And the reason why general managers
25 today - in the Act they are referred to as general
26 managers - is because when the minister of the day wanted
27 to change the Act the old mayors, the old grey mayors, they
28 would not agree to the term "chief executive" being used.
29 So that's why the term "general manager" eventually
30 replaced "town clerk". The town clerks were there to do
31 what the mayor wanted. The mayor hired and fired, okay?

32
33 In my view - and I've talked to all of the ELT and
34 quite a number of other people - Mayor Jane Smith, who
35 I believe has a very fine record as an environmental
36 activist, and I consider myself a bit of one as well - she
37 came in determined to effect changes. She employed a
38 person, and one of the councillors on the inquiry mentioned
39 to me that she wanted to employ a woman but, "If can't get
40 a woman, I'm going to get a non-alpha-type male".

41
42 She acted to a large extent like a pre-'93 mayor. She
43 attended ELT meetings, took over the meetings to a large
44 extent, you know, was tough on staff directly. Mr Murphy
45 didn't intervene, in my view, from all accounts, to provide
46 the balance that the chief executive should do under the
47 Act between that, and I think that was sort of the

1 beginning of when it went off the rails.

2
3 A number of ELT members who raised this with Mr Murphy
4 were told they just had to get on with the mayor, as he was
5 obviously doing.

6
7 Now, that majority group was set about on expanding
8 services. And remember, politically, they had no interest
9 in whether the merger was a success or not; their party had
10 opposed the mergers. And I think that is relevant. You
11 can see a very similar pattern in Goulburn, if you look at
12 what happened there.

13
14 So I believe there was an attitude that, "We are going
15 to expand", and I think the CEO went along with it. I do
16 think they were involved in increasing the number of staff.

17
18 Q. You say in your reports that there were emails and
19 documents that suggested that the CFO and the CEO knew
20 about the use of restricted funds. You don't say when or
21 what the documents are.

22 A. The documents have been released publicly. I have
23 them tabbed in front of me. About two minutes before we
24 came on I got a copy of some of those documents from your
25 office saying that Mr Murphy's lawyer wanted to ask me
26 questions about that, and I look forward to that.

27
28 Probably the first one that caused alarm bells was on
29 19 November 2019. This is a - I know you don't like people
30 holding things up to the screen, but I'm going to do it
31 just very quickly.

32
33 Q. I hope it works.

34 A. To show you the handwriting on it.

35
36 Q. We can't see it. But I can see it because I have a
37 copy.

38 A. Mr Murphy had a habit of putting all his notes in the
39 system. This is an agenda presented by the CFO, and the
40 second item:

41
42 Financial strategy for financial
43 sustainability. Use of restricted funds
44 reserves, et cetera ...

45
46 Do you have it in front of you?

47

1 Q. Yes, I do.
2 A. You'll see in Mr Murphy's handwriting there is a note,
3 an arrow going up saying "next time".
4
5 Q. Yes.
6 A. There wasn't a next time. If you are an experienced
7 bureaucrat, you don't have things going on paper that you
8 don't want seen. It's just inconceivable to me - I mean,
9 this isn't proof that would send someone to jail on a legal
10 challenge, in a legal test, but it's a very strong
11 indicator that they were discussing this issue quite a long
12 time beforehand.
13
14 Now, in terms of other documents, there is an email -
15 let me just find this. This is from Craig Norman, who
16 I think you are dealing with after me, to Shane Sullivan.
17
18 Q. What page are you looking at?
19 A. It's an email, and it's --
20
21 Q. At the foot of the page there should be a page number.
22 A. I haven't got yours, I've only got my copy in front of
23 me. I would have to go back into my email to get the ones
24 that were sent to me two minutes ago.
25
26 Q. I see. An email from Craig Norman to Shane Sullivan,
27 Julie Vaughan, Boris Bolgoff, yes, 27 March?
28 A. Yes. The third paragraph:
29
30 For funds to become unrestricted there
31 would need to be legislative change which
32 itself would have to cover off on whether
33 it was able to be delegated to the CEO ...
34
35 By the way, even if - the legal debate about restricted and
36 unrestricted is challenging, and Mr Hart's better placed to
37 speak to you about that. But, notwithstanding that, they
38 still had to be approved by the council, and possibly the
39 minister - anyway. So there is another one that I have
40 referred to - actually, it's in the same connection. This
41 is an email from Craig Norman - no, this is from
42 Shane Sullivan on 27 March. That obviously preceded the
43 one we just talked about. It starts, "Good afternoon",
44 then it lists a lot of dot points. The last one says:
45
46 Craig, if funds were unrestricted, would
47 approval to use those fund have to go to

1 council or would it be something Gary would
2 do under delegation in consultation with
3 Councillor Smith?
4

5 That's quite a long time before the claims of Mr Murphy and
6 some that they just didn't know about it until this report,
7 produced, you know, almost at the 11th hour.
8

9 There is another one - no, that will do, I have made
10 my - so I believe that there's very clear indicators that
11 there was an awareness. I was never able to speak to
12 Mr Murphy or Mr Norman, they were on stress leave, medical
13 leave. I'm reluctant to mention that, but it has to be
14 said, I tried to talk to them and I find it very rich that
15 Mr Murphy makes a case that he didn't get fair process.
16 Twice I invited him to meetings, he said he wasn't
17 available due to his medical situation. I said, "Can you
18 make a time?" No, never responded. So I actually
19 attempted, but the CFOs weren't available to talk to.
20

21 I also just have to say, Mr Hart and I came in with
22 two days' notice. Fortunately, Ms Cowley had been there a
23 week, and she's the star of the show in terms of financial
24 acumen and knowledge. I'm sure you had a good - I saw some
25 of your interview with her. She had largely worked out
26 what had happened, and that was a great relief to us. On
27 the way up we'd been talking about other financial experts
28 we knew in the system we could invite in to help her
29 untangle what's gone on here, so that wasn't as necessary
30 as we had first hoped. I've lost my track, my train.
31

32 Anyway - that's right. I want to make the point that
33 while the government gave the council some money with a few
34 days' notice to pay their staff "next week", we had a
35 crisis ahead of us in a very short time for that to happen
36 again, and it was Ms Cowley's experience and networks in
37 the banking industry that got us a \$50 million loan fairly
38 quickly, which was necessary.
39

40 So we are now into December. If we couldn't get
41 another \$100 million loan before everyone went on Christmas
42 holidays, we weren't going to be paying staff in mid
43 January, again. This was actually a crisis that I think
44 people just refused to - for people like Professor Sansom
45 to go on about the State Government and what they should or
46 could have done, it is just absurd sort of stuff. Real
47 academic wankery, in my view.

1
2 We were dealing with what was in front of us and that
3 was the need to get that loan, and we secured it at the
4 very 11th hour, the risk manager had gone on leave and
5 there was only one bank willing to deal with us.
6

7 I should also mention that a couple of weeks
8 beforehand I spent, with Mr Hart and Ms Cowley, two and a
9 half hours with another bank that had a \$115 million loan
10 who was thinking of calling it in. It was only because we
11 were able to satisfy them that we had a strategy in place
12 to reduce debt - and some, like Mr Sansom, might argue that
13 it's manageable, and it may be in some times; I don't know
14 if it's manageable if interest rates go back to 3, 4 or
15 5 per cent, by the way - to reduce debt by selling
16 properties, to raise revenue by rates, to cut costs and do
17 you will of those things. It was only then that they
18 didn't call in that loan, and it was only on that basis
19 that anyone was willing to deal with us about a further
20 loan.
21

22 I just have to make the point - it's not an excuse or
23 a defence, but we were going pretty fast just getting the
24 foot back on the ground before we fell on our face time and
25 time again. We were doing our best to work out what had
26 happened, but also had to deal with what needed to happen
27 to keep the place going and stop it going belly-up.
28

29 Q. Can I just stop you there. When you took over, hadn't
30 the council already at that point developed the 100-day
31 plan to dig itself out of the hole?

32 A. They had developed a plan which would not have got
33 them out of the hole, and that's where I used the term "too
34 little too late". It had lots of items on the agenda, but,
35 no, in my view it would have been successful and I'm sure
36 Ms Cowley and Mr Hart would affirm they were of the same
37 view. This is ticking-the-box stuff, from my point of
38 view, when what was needed, as I said a while ago, was to
39 get down to the table, roll the sleeves up and work out
40 what really has to be done very quickly. Overtime bans -
41 this is just like a bandaid on a gaping wound. This is not
42 a serious management talk.
43

44 Q. So did you actually have to physically stop works that
45 were being undertaken?

46 A. Yes. Yes. The capital works program was reduced
47 immediately, and that had been approved even though they

1 knew they were in trouble. Apart from the actual money for
2 the project you need lots of staff and other expenditure
3 around capital works as well, as you probably know. So it
4 was yet another one of the things that just hadn't been
5 done.

6
7 No, it was a - I won't use a crude expression, but it
8 was a cluster mess, it really was. People retrospectively
9 are trying to paper it over, "We weren't told this, we
10 didn't know that." To be frank, that's just rubbish, in
11 terms of what's really required here. I have to go back to
12 say if the current CEO had been there, none of this would
13 have happened. I'm one hundred per cent confident of that.
14 If Mr Hart had been there, as he was CEO of Warringah, or a
15 dozen other CEOs, Mr Viv May from Mosman, now an
16 administrator - none of these people would have allowed
17 this to happen. You can try and make excuses to protect
18 your reputation and possibly further your career, but I'm
19 afraid to say it wasn't acceptable.

20
21 Q. So apart from the CEO and the CFO, other people must
22 have known that restricted funds were being used?

23 A. I'm not sure about that. One of the criticisms I have
24 of Mr Murphy which led to me being very comfortable in
25 terminating his employment was the way he ran his
26 executive. I've already mentioned the spoiling of it, in
27 my view, by the inappropriate role of the mayor at the
28 time, the first mayor. It wasn't a forum where you
29 could - where that sort of discussion was allowed. The
30 systems were a problem and they were getting information
31 late.

32
33 If I had a criticism of the ELT - and Mr Hart's
34 comments would be interesting, because he's stayed there
35 longer - possibly they acted like the heads of their own
36 little empires, "I'm not going to ask questions; if I have
37 the money to spend on my projects, that's fine, someone
38 else's problem" - maybe. A lot of people wanted me to
39 terminate the executive. That was a sort of emotional
40 community reaction. Well, there's a number of factors to
41 consider there. The first one is: who is going to run the
42 place? Again, it was coming from people who didn't really
43 understand the outcome of what they were talking about.

44
45 Mr Hart and I formed the view that we would watch
46 their performance. I formed the view by the time I left
47 that they were performing reasonably well and it would be

1 up to the incoming CEO to assess their performance and
2 whatever.

3
4 So, during my time, I actually had to still be the
5 council, and of course Mr Hart was concentrating on the
6 nitty-gritty of negotiating with the unions to exit staff
7 and on some of those things. Went out on the road, when
8 you are driving around, looking at things, talked to the
9 ELT about what it was actually like. For example, there was
10 no effective performance management system. There is a
11 system where you fill out a document, but they never got
12 any feedback on it. They never got any rating or
13 confirmation or any finalisation of it - another major
14 fault in the management system.

15
16 At some stage I'd like to go to Mr Murphy's
17 performance agreement and the role of the councillors,
18 because I know you talked about that with --

19
20 Q. Do that now, then.

21 A. Okay. So, in trying to understand what happened, as
22 an experienced chief executive, I went in and asked for the
23 performance agreement. I got a big document, which had two
24 years covered in it. Have you got that?

25
26 Q. I don't believe I have the performance - the contract
27 for the general --

28 A. No, the performance agreement.

29
30 Q. I have a performance report for two years.

31 A. Okay, yes. Sorry, performance report, correct.
32 I read the first year and I noticed there were I think five
33 or six financial indicators. Two of them had miserable
34 points in them. I think it was to be within 5 per cent of
35 revenue and 5 per cent of expenditure.

36
37 When I went to the next year, they'd gone. I'm sorry
38 you didn't have a chance to ask Mr Murphy why they had
39 gone, because the way documents like that are developed by
40 the officer who puts it together - you know, the chief
41 executive puts it together, does their own rating and then
42 puts it up for review.

43
44 Q. I don't know if you heard Ms Smith's evidence, but she
45 suggested that they were removed because of the
46 unavailability of financial figures at the time the review
47 was being conducted.

1 A. I did, and I laughed then when I heard it. That's
2 just ridiculous. You don't take them out; you just fill
3 them in later. Why take them out? I mean, they were going
4 to be answerable fairly soon. Everyone knew what the
5 answer was going to be - blown out of the water. You don't
6 take them out. That's a post - because I had made this
7 claim in my earlier reports, that was their best attempt to
8 make up for what I consider to be inexcusable by Mr Murphy
9 and inexcusable by the councillors for not noticing.

10
11 It is interesting that only five of the councillors
12 attended the final discussion. Notably, Mr Best, who
13 wanted to ask all about this stuff, wasn't there. That was
14 typical of often what was happening there. A lot of the
15 councillors weren't fronting up and doing their job.

16
17 The performance agreement is one of the most important
18 parts of holding the chief executive accountable to the
19 elected body. That's where they act more like a board than
20 a Parliament. That is one of the ways, which I'd like to
21 get to at some point. So it's very clear that the - and if
22 you look at the non-financial bits, the ratings were still
23 not really critical, even though it wasn't concluded.

24
25 The reason why - probably the unhappiest decision
26 I made in a very long public service career was paying out
27 the full amount of that contract. I think it was
28 \$370,000-odd, for someone who, in my view, had not
29 performed adequately.

30
31 But the contract's written in a way that - I talked
32 about this to Tim Hurst, the CEO at the time of the Office
33 of Local Government. He admitted that the contract that's
34 written sort of favours the general manager a bit, because
35 more typically he's dealing with cases where councils are
36 trying to dismiss a general manager for doing their job.
37 But, in this case, the only way I could have not paid out
38 that amount was because there had been no negative
39 performance review, I would have had to have conducted some
40 sort of process to do that sort of review. There would
41 have had to have been a right of reply and response, and it
42 was already clear to me that the most important thing on
43 the Central Coast Council was to get an experienced chief
44 executive in place as soon as possible. As you would
45 understand, January was looming, it's a pretty dead month
46 for a lot of things.

1 In fact, when I was first approached to do this job
2 I said no, to be frank. It was two days before I started
3 and I said, "No, it doesn't suit me." And I finally said,
4 "Well, I can do three months." They explained - as you
5 would know, normally when a council is going to be set
6 aside there has been an inquiry, people have got a good
7 idea of what's coming, they can find an administrator. On
8 this occasion, it all happened within a matter of days,
9 when they came and said, "We can't pay our staff next
10 week." So I recognised the dilemma. He said, "Look, I
11 need an experienced administrator, there aren't many." I
12 said, "Okay, I'll do three months." He said, "What about
13 six?" I said, "No, I can only do three."
14

15 When I got there I soon realised that the third was
16 January and that I was also going to have to put in a new
17 CEO and a good CEO was going to have to time to extricate
18 themselves. That's why I agreed to the second
19 three months, to be frank. I'm not sure how I got to that
20 point. I'm wondering around a bit here.
21

22 Q. You'll have to remind me, you did mention something -
23 you said, "I want to talk about that later", but now I have
24 forgotten.

25 A. That's the role of the board.
26

27 Q. Oh, yes, is the council a board of a company. I know
28 you made that reference in your report, but it is
29 different.

30 A. It's got some functions that are - as a company, it is
31 a governing body under the Act. Parliaments aren't
32 governing bodies, okay, they don't actually run an
33 organisation - well, they sort of run the parliament, but
34 they don't run the government.
35

36 A council runs the government. It a governing body
37 like a board and has responsibilities, so it is like a
38 board in that sense. It is both. It's a complicated
39 model. The role of the CEO is very complicated in that,
40 and if it's not done well, the thing is at risk of falling
41 apart, as I said earlier.
42

43 So they have responsibilities under the Act and
44 I believe - and again, Mr Sansom, if I could just make the
45 observation, universities now have to make their money, a
46 lot of their money, from private work, from consulting
47 work, and UTS has a big school in this local government

1 area and local councils are their clients. He presents
2 himself in his own report as having senior and chief
3 executive management experience. Well, he ran the Local
4 Government Association, the federal body, which has nine
5 staff, and he had, as best I can find out, a third-level
6 management position in Wollongong council. He has not run
7 large organisations. He is an expert in local government
8 policy and he understands the Act and whatever, but
9 I consider that 23 or 43-page document a - basically he
10 finds me, or the government, first, and then me,
11 responsible for the problems, and if the government had
12 just done things differently, it wouldn't have been a
13 problem and they wouldn't have had to have been suspended.
14 It is the most academic rubbish I have sort of come across.
15 He makes it sound like I said that they should be a board
16 and not a parliament. I didn't say that. I explained that
17 it had to be more like a board.

18
19 This is in a context which I think is very important,
20 if I can just put on the record. He suggests that the
21 holding of a referendum to consider reducing the number of
22 councillors from 15 to 9 - first of all he says there is no
23 evidence that that would be effective. I accept that there
24 is no evidence. But also I am very confident from my
25 experience, which I rate very much ahead of his own, that
26 the councils that have 15 are operating more like
27 parliaments and less like governing boards, and it's a
28 dynamic that I can't guarantee, and I say in my report
29 there is no guarantee it will make any difference.

30
31 I am strongly convinced that the reaching across the
32 aisle to try to find common ground with your political
33 opponents - and I live in a council which is contested in
34 Waverley, in Sydney, it goes Labor, Liberal, Greens, but
35 they don't have this sort of rubbish. They work
36 collaboratively on 99 per cent of the jobs.

37
38 I think a smaller number would facilitate that. But
39 to suggest that it's unfair to put that to the public in a
40 democratic vote because I unduly influenced the ratepayers
41 is both patronising and ridiculous.

42
43 Q. Mr Persson, could I just stop you there, because
44 I don't need that I even to consider a referendum or the
45 ward structure. But I am interested - if you want to make
46 comment on Mr Sansom's report in relation to what happened
47 historically, I'm happy to hear that.

1 A. No, I have said enough there. I do just want to make
2 the point, though, because you made a comment - I wasn't
3 able to listen to all of your inquiry but at one point
4 I think you made a comment which indicated to me that you
5 had some trouble with this idea of the council being a
6 board. I may have misjudged that.

7
8 Q. No, no, I did, because when you look at how
9 councillors are selected, it's not because of their
10 professional background and experience. In fact, the
11 information that's out there for candidates suggests that
12 anybody from any walk of life can come and be a councillor?

13 A. You've just opened up the biggest can of worms in the
14 whole local government system. They don't have the
15 experience for a function that they take on under the Act,
16 in my view.

17
18 A good CEO, a good CFO can help them through that
19 process, but if that's not happening there is huge risk,
20 and I think that's what happened here. They do have
21 responsibilities that are more like those of a board and
22 I believe a referendum is democratic and the public will
23 determine that. But that's all I wanted to say on that.

24
25 Q. Okay. Did you want to make any further comment on
26 Mr Murphy's role in relation to the misuse of restricted
27 funds?

28 A. No, I have said clearly that I think there are strong
29 indicators that there was an awareness. It's not
30 evidentiary proof that might be required in a legal sense,
31 but in terms of my role, I'm satisfied that that was the
32 case and I think there's enough smoke around these guns in
33 those memos to indicate what they knew. Mr Hart might also
34 talk you through some of the figures that changed and how
35 that was presented. I don't have that at the top of my
36 tongue.

37
38 Q. He's given a really comprehensive submission. That
39 has been very useful.

40 A. That also confirms the likelihood that there was an
41 awareness.

42
43 Q. Yes. Do you have any other comment to make,
44 Mr Persson, before I invite Ms Bulut to make an application
45 in relation to your cross-examination?

46 A. Yes. In terms of your report, I think the whole role
47 of selecting CEOs is really quite challenging. I've been

1 involved in selecting senior people for a long time, and
2 I've made mistakes - not as many as I have successes, but
3 I have made mistakes. When I look back to the times where
4 I think I made a mistake, I found that probably it was
5 because I felt the need to rush, once in a council and once
6 in a department.

7
8 When I was at Central Coast I was meeting all the MPs
9 as well, and one of them said to me, "Well, can this new
10 CEO be a short-term appointment, because the community
11 won't have any input through the councillors?" I was
12 shocked a bit, and I realised she was serious. I said,
13 "The actual councillors don't have any experience in
14 selecting a person for one of the most senior jobs in the
15 country." I'm not saying they shouldn't be involved in the
16 process, but to me it's a great risk the way the system
17 works.

18
19 I've talked to Tim Hurst about that and obviously you
20 can't and shouldn't look to cap them out of the process.
21 So I've tried to come up with an idea that might strengthen
22 the process, and I'd like just to bounce that off you.

23
24 Q. Yes.

25 A. There are a number of people, and I put myself in this
26 category, who would be very happy to sit with a council
27 through the process of selecting a CEO. Because a CEO who
28 has run a council, like a small one or a medium one, is
29 going to answer all the questions. To get to the interview
30 they clearly, you know, know enough to answer all the
31 questions. The challenge of the interview is to get behind
32 that and work out whether they are actually going to do it
33 when it gets tough.

34
35 So I think it would be appropriate for the minister to
36 put in place a system whereby there was a panel of grey
37 eminent people, and Mr Hart and myself might be the sort of
38 people that you would include amongst a list of 10 or 15
39 people, and the council selecting a CEO may have one of
40 them allocated by the office of local Government to sit
41 with them through the process - not to vote, but just to be
42 almost like an advisor. Hopefully, most would welcome
43 that, to help open up all of the people that could do it.
44 It's not a guarantee that it would be successful, but
45 I think it would help reduce the risks.

46
47 Q. Did you have cause to examine the process that the

1 council went through to select Mr Murphy?
2 A. I did, yes.
3
4 Q. And did you think there was anything wrong with the
5 process that they used?
6 A. No. I - no, I don't want to - you know, I won't
7 comment on it. Nothing technical or legally wrong, no.
8 I don't think the people - I was disappointed that more of
9 the councillors didn't get involved. I was disappointed
10 that the people who made the decision had no experience in
11 doing that job. It's just not a good idea to have people
12 doing a hard job with no experience.
13
14 Q. Well, they did have a recruitment firm assisting them?
15 A. Yes. I don't want to comment too much on that because
16 that gets me into an area of possible risk, but some
17 recruitment firms are very happy to make the client happy.
18
19 Q. Is there anything else you wanted to say to the
20 inquiry?
21 A. Only good luck.
22
23 THE COMMISSIONER: Thank you. I will just ask
24 Mr Annis-Brown if she has any questions for you.
25
26 MS ANNIS-BROWN: No, Commissioner, no questions, thank
27 you.
28
29 THE COMMISSIONER: Ms Bulut, do you have any application?
30
31 MS BULUT: Yes, Commissioner, I would like to make an
32 application to question the witness in relation to the
33 interest of my client, Mr Gary Murphy, in light of the
34 evidence given by the witness both during the hearing this
35 morning, but also in light of the findings made in the
36 interim report. My application is to ask the witness some
37 questions in relation to those findings, in particular,
38 that is, the findings that my client had knowledge of the
39 use of restricted funds and allowed that to continue prior
40 to a notification. On that subject/topic, I would ask for
41 permission to question the witness.
42
43 THE COMMISSIONER: Yes, I think in the circumstances it's
44 appropriate.
45
46 Mr Persson, you will be cross-examined by Ms Bulut
47 now.

1
2 THE WITNESS: Can I just clarify, am I answering the
3 questions to Ms Bulut or to you?
4
5 THE COMMISSIONER: You are giving the answers to the
6 Commission, but you are being asked the questions by
7 Ms Bulut.
8
9 THE WITNESS: Thank you.
10
11 <CROSS-EXAMINATION BY MS BULUT:
12
13 MS BULUT: Q. Thank you, Mr Persson, as you probably
14 heard, I appear for Mr Gary Murphy, the former CEO of the
15 council. You understand that?
16 A. Yes.
17
18 Q. Earlier today you have given some evidence to the
19 Commissioner in relation to my client's participation or
20 lack thereof in your process and in the reports that you
21 prepared. Do you recall that?
22 A. Of course.
23
24 Q. I want to suggest to you that, putting to one side the
25 days on which my client was unavailable to attend a meeting
26 with you because of his health, my client did, in fact,
27 offer to assist you and to participate in an interview with
28 you. Specifically, I want to put to you that on
29 11 December 2020 - and just in terms of orienting
30 ourselves, this is after the publication of the interim
31 report, that is the 30-day interim report, and prior to the
32 publication of the three-month progress report, which came
33 down in February of 2021 - Mr Murphy wrote you a letter.
34 Do you recall receiving a letter from Mr Murphy?
35 A. I do. By then he was a private citizen, am I right?
36
37 Q. That's right. Yes, his employment was terminated in
38 November. In that letter, do you recall that he wrote to
39 you the following:
40
41 I'm extremely disappointed that you did not
42 see fit to seek my input into this report
43 despite me offering my assistance on more
44 than one occasion.
45
46 Do you recall him saying that in the letter?
47 A. I do, and I recall being surprised because I'd invited

1 him to two meetings, which he declined to attend, and then
2 when I asked him to nominate a date he didn't respond.
3 I was very surprised.

4
5 Q. Do you recall that you sent him an email on 29 January
6 2021 in response to his letter?

7 A. You might remind me of the context.

8
9 Q. I can certainly do that. In response to his letter to
10 you, you sent him an email, and this is the substance of
11 your email. I will read it out to you:

12
13 Dear Mr Murphy,
14 I will not be responding to the many points
15 raised in your letter. Your refusal to
16 accept responsibility, combined with your
17 attempts to blame others, is most
18 unfortunate. I stand by my comments in
19 this report.

20
21 Regards,

22
23 Dick Persson.

24
25 Do you recall stating that in the email?

26 A. I recall - I'm very pleased with that response, yes.

27
28 Q. Okay. It was certainly open to you to engage with
29 Mr Murphy at that point in time when he had clearly offered
30 his --

31 A. Why would I do that? He's a private citizen now.
32 He's written a report which denies any responsibility, full
33 of half-truths and misinformation. I considered myself -
34 much more important to focus on trying to get the next loan
35 to keep the staff being paid and the creditors being paid
36 from the mess that he'd left behind. I didn't see it
37 appropriate to allocate any of my time to dealing with his
38 sadness about what had happened to him.

39
40 Q. Well, before you gave evidence to the Commissioner
41 that it was very important that you spoke to the
42 councillors, it was very important that you spoke to the
43 ELT and that you regarded that as part of the process that
44 you were engaged to do; isn't that right?

45 A. I'm surprised you have missed the point again, that
46 I invited him to come in twice, he declined twice, and then
47 I asked him to nominate a date and he declined to do that.

1 That was before he was dismissed. He was being paid
2 \$10,000 a week sitting at home, evidently able to do it.
3 I want to go back to it. Let's just talk about this
4 inability to attend.

5
6 Q. Can I interject there, Mr Persson. Perhaps I'm the
7 person asking the questions and you can answer the
8 questions I'm putting to you. I hadn't asked you a
9 question to that?

10 A. Well, you should.

11
12 Q. Well, perhaps I will decide the questions I wish to
13 ask.

14 A. All right.

15
16 Q. Do you have a copy of the 30-day interim report in
17 front of you?

18 A. I do.

19
20 Q. Could I please get you to turn to page 2 of that
21 report?

22 A. Yes.

23
24 Q. Under the subheading "Executive Summary", you see the
25 very last dot point on that page reads as follows:

26
27 The previous CFO, Mr Craig Norman, and CEO
28 Mr Gary Murphy, were aware of this unlawful
29 use of funds. While the exact date they
30 became aware remains hard to ascertain,
31 emails and notes indicate they continued to
32 spend funds unlawfully after they became
33 aware and before they advised the elected
34 body.

35
36 Do you see that?

37 A. I do.

38
39 Q. If you go over to page 8 of the report, at the top of
40 that page, the second paragraph, it states:

41
42 Interrogation of council's emails and notes
43 system shows clearly the both --

44
45 perhaps that should say "that both" --

46
47 the CFO and the CEO were aware that

1 restricted reserves were being used for
2 both purposes prohibited under the Act and
3 for purposes not approved by council.

4
5 Do you see that?

6 A. I do.

7
8 Q. You accept that's a very serious allegation of finding
9 to make?

10 A. Yes.

11
12 Q. And you accept that in your position as the
13 administrator, you had access to all of the council's
14 records and all of the emails contained on the council's
15 servers; correct?

16 A. I do.

17
18 Q. And in response to this finding, which you accept is a
19 very serious one, Mr Murphy, in his letter in December
20 2020, asked you for a copy of the records and documents
21 that you say disclose - "show clearly", in fact, are the
22 words that you use - that he was aware that the restricted
23 reserves were being used. In response, you did not provide
24 him with a copy of those emails, did you?

25 A. No, as I said in my previous answer to you, I made the
26 judgment that Mr Murphy was now a private citizen and that
27 my focus had to be on fixing up the mess that he was
28 largely responsible for creating.

29
30 Q. But you had no difficulty making a very serious
31 finding --

32 A. He subsequently asked for --

33
34 THE COMMISSIONER: Mr Persson, could I ask you to, when
35 you have finished your answer, pause and then Ms Bulut can
36 ask you another question. It is very hard, because you cut
37 out and I can't hear what you are saying anyway.

38
39 THE WITNESS: That's a shame.

40
41 THE COMMISSIONER: Go ahead, Ms Bulut.

42
43 MS BULUT: Q. You have accepted that it's a very serious
44 allegation you have made against two individuals, but I'm
45 focusing, of course, on Mr Murphy, and you have given no
46 opportunity to Mr Murphy to respond to those documents and
47 to provide any explanation that he may have for those

1 documents; you accept that, don't you?
2 A. Well, he has no right to a time for a response. He's
3 a private citizen with \$400,000 in his pocket. Where are
4 you going with this? Do you think he was hard done by, is
5 that what you are saying?
6
7 Q. Sorry, just answer my question. Is the answer to my
8 question, no, he was not given an opportunity to respond;
9 is that right?
10 A. He did respond. He wrote to me.
11
12 Q. Yes, and he asked for a copy of the documents that you
13 relied on to make that very serious finding, and you did
14 not provide him with a copy, did you?
15 A. Not at that time, no. But later --
16
17 Q. Subsequent to that, yes, because subsequent to that
18 Mr Murphy made a GIPA application to access those
19 documents, didn't he?
20 A. That's correct.
21
22 Q. In response to the GIPA application you made the
23 documents public, didn't you?
24 A. Yes.
25
26 Q. And the documents that you made public are five
27 documents, they total nine pages, and they are the copies
28 of the documents which were circulated to you earlier this
29 morning by the inquiry. Do you have those documents with
30 you?
31 A. I do.
32
33 Q. Can I please get you to turn to the first document.
34 It's a document numbered 1, for those of us that are using
35 the version circulated this morning.
36 A. I don't have access to the documents circulated today
37 because it's on my computer, through which I'm talking to
38 you. I have my own copy of those.
39
40 Q. Okay. We'll use your copy.
41 A. I've answered all of these - I addressed all of these
42 points in my previous evidence.
43
44 Q. Well, I wish to ask you some questions, if I may,
45 about those documents.
46 A. Okay.
47

1 Q. You tell us that these are the documents you relied on
2 to make a very serious finding. I note that the finding
3 you made in your interim report is a finding that these
4 documents show clearly that, relevantly, the CEO was aware,
5 and yet this morning you seem to have watered down your
6 position somewhat to say that the documents strongly - they
7 are strong indicators. So putting that to one side and
8 focusing on your finding, as I understand it, these are the
9 documents you relied on to make that finding, so I want to
10 ask you some questions about those documents, the first of
11 which is the file note dated 19 November 2019. Can
12 I please get you to find that document.

13 A. Got it.

14
15 Q. So that's a one-page document. The date at the top is
16 19 November 2019. As you have identified to the
17 Commissioner, the third item on that list is typed up, and
18 it states:

19
20 Financial strategy for financial
21 sustainability.

22
23 Pausing there, so far, no issue; it's entirely appropriate
24 that in any meeting between the CFO and the CEO there is
25 discussion in relation to financial strategy for financial
26 sustainability. I take it you couldn't possibly have an
27 issue with that, could you?

28 A. Of course not.

29
30 Q. Okay. So if we get to the second part of that. It
31 says:

32
33 Use of restricted fund reserves
34 et cetera ...

35
36 Now, restricted funds aren't prohibited to be used full
37 stop, their use is simply restricted for particular
38 purposes; isn't that right?

39 A. Yes.

40
41 Q. Yes. So as part of the --

42 A. In the context of the financial sustainability point.
43 It's not there as a separate item.

44
45 Q. Well, yes, but as part of --

46 A. It's there as part of the financial strategy and
47 sustainability.

1
2 Q. Yes, but --
3 A. It's clearly there.
4
5 Q. If I may ask the question, Mr Persson.
6 A. And if I may answer it in my own way.
7
8 Q. Yes, but I haven't asked a question yet. You're not
9 allowing me to ask the question.
10 A. Okay.
11
12 Q. So the question I have for you is that financial
13 strategy as to how those restricted funds are to be used
14 for their proper purpose is very much a subject matter that
15 ought to be discussed between the CFO and the CEO, isn't
16 that right?
17 A. I made it clear in my evidence to the Commissioner
18 that this wasn't a point that was conclusive in a legal
19 sense. The fact that he's written "next time", and that
20 there is no next time, to me is what I would call a smoking
21 gun.
22
23 Q. A smoking gun for what, Mr Persson?
24 A. Combined with the other information, the other emails
25 that you are quite possibly going to get to, I believe it
26 is very clear that there was awareness of the issue. I do
27 not accept his claim that he only first knew about it when
28 it was raised by an external consultant. No, I don't
29 accept that.
30
31 Q. Mr Persson, focusing on this document, what it
32 discloses is that there is to be some discussion, as an
33 item on the agenda, if you will, "Financial strategy for
34 financial sustainability, use of restricted fund reserves
35 et cetera." As we have discussed, there is nothing wrong
36 with discussions with respect to financial strategy for
37 financial sustainability, and of course financial strategy
38 for the use of restricted fund reserves for their proper
39 purpose - nothing wrong with any of that; you agree with me
40 there, don't you?
41 A. No-one has said that there is.
42
43 Q. There is something wrong?
44 A. I never said there was something wrong with discussing
45 it.
46
47 Q. No, exactly. What I put to you is that the reason why

1 there is a comment "next time" next to that item is because
2 they ran out of time in this particular meeting to discuss
3 that line item, if you will, so that that was the
4 indication by the comment "next time". You have made the
5 observation that there was no next time. Putting that to
6 one side, what this discloses --

7 A. Why would you put it to one side?

8

9 Q. Because we are dealing with what this document
10 evidences, because this is one of the documents you relied
11 on to make a very serious finding and allegation that the
12 documents clearly show --

13 A. This isn't a court of evidence.

14

15 THE COMMISSIONER: It's not, Mr Persson, but I have given
16 leave to Ms Bulut to cross-examine you, so you will have an
17 opportunity, once you have answered her questions, to
18 respond in the way that you wish to, but while you are
19 being cross-examined, could you just answer those
20 questions. Thank you.

21

22 THE WITNESS: I will do my best.

23

24 THE COMMISSIONER: Thank you. Go ahead, Ms Bulut.

25

26 MS BULUT: Q. Because there is a very innocent
27 explanation to this line item, that's a matter that you
28 would have been informed by, wouldn't you, if you had given
29 Mr Murphy an opportunity to provide his response to this
30 document; isn't that right?

31 A. I provided him opportunities to respond and he never
32 took them up. After he left the organisation, he presented
33 me a report, which I read.

34

35 Q. Now, if we go to the next document in my bundle, and
36 I will identify it for you in a moment but it is page 2 for
37 the Commissioner's record, it is an email from Mr Gary
38 Murphy to Mr Craig Norman dated Monday, 23 March 2020, and
39 the subject line says, "Re: City of Sydney response"?

40 A. I'm having trouble finding - oh, yes, I think I've got
41 that, yes.

42

43 Q. Can I get you to take a moment to have a look at that
44 document because I want to ask you a question about that
45 document. I want to be fair to you. Have a read of that
46 document?

47 A. Am I reading Murphy's email or Norman's email?

1
2 Q. I don't know, Mr Persson, this is your document. You
3 had published publicly this document as evidence that you
4 relied on to make a finding that my client had knowledge
5 of --
6 A. That's a bit smart. I'm trying to find the document
7 that you're asking me to look at.
8
9 Q. It's an email chain?
10 A. I don't have the same enumeration as you, so I'm
11 trying to work out which one it is. Which is the email
12 you're talking about?
13
14 Q. The email is from Mr Murphy to Mr Norman dated
15 23 March 2020.
16 A. Yes.
17
18 Q. And that's in response to an email that appears below
19 that. So there is an email below that from Mr Norman to
20 Mr Murphy. There is only one document to the email chain,
21 being Mr Murphy's response.
22 A. Now I understand that and I'm familiar with it.
23
24 Q. Okay. All right. Can you show me where in that email
25 chain there is evidence that my client knew that the
26 restricted funds were being used other than for their
27 legitimate purpose?
28 A. I did not ever make the claim that every document in
29 the release package alluded to that point. This is not one
30 of those documents. I was asked under GIPA to release
31 information that was relevant to the whole issue.
32
33 Q. Okay. Well, as I understand it, the documents that
34 were made publicly available by you are in this bundle.
35 There are nine pages, five documents in total. This is one
36 of the five documents. So is your evidence now that we can
37 disregard this document?
38 A. No, possibly the last point of that email. It says:
39
40 ENP should hopefully be looking at what
41 restrictions they can relax quickly for
42 businesses operating essential services.
43 Deliveries are one example highlighted
44 below.
45
46 I think that's pertinent.
47

1 Q. Restrictions being lifted from businesses? What does
2 that have to do with the use of restricted funds by council
3 for purposes other than their legitimate purpose?
4 A. As you are aware, some restricted funds can't be used
5 for some purposes.
6
7 Q. Yes.
8 A. I think this opens up the issue for me. This issue
9 was being explored.
10
11 Q. So is that just because the word "restrictions"
12 appears in this email?
13 A. Yes, it's largely that, yes, and the context. It's in
14 context.
15
16 Q. Well, what's your understanding of what ENP stands
17 for?
18 A. I'm not sure.
19
20 Q. Right. You actually don't know what the sentence
21 relates to at all, do you?
22 A. No, and I won't have you being smart with me either.
23
24 Q. I'm trying to understand, Mr Persson?
25 A. No, I'm not going to be treated in a smart-arse way
26 like that. Ask questions, I'll answer them.
27
28 Q. Okay. So the reason this email was included on the
29 documents that you published online, do I take it that it's
30 limited to that line that appears being the last line in
31 Mr Norman's email?
32 A. Looking at it now, yes, that would be the case.
33
34 Q. Okay. I put to you that nothing in that line
35 discloses my client's, that is Mr Murphy's, knowledge of
36 the use of restricted funds; do you accept that?
37 A. I would accept that it's not an absolute confirmation.
38 I have said before it's another smoking gun.
39
40 Q. Can I get you, please, to locate the next email chain
41 in my bundle. I will identify the email for you in a
42 moment. For the Commissioner, it's the document which
43 commences on page 4. This is a email chain, Mr Persson.
44 The top email is an email from Mr Norman to a Shane
45 Sullivan, Julie Vaughan, Boris Bolgoff, Scott Cox and
46 Kristie Bryant, copied to Mr Murphy and others, dated
47 27 March 2020. The subject line is "Re: Councillor update

1 questions for action"?

2 A. Yes.

3

4 Q. Do you have that?

5 A. I do.

6

7 Q. Just to confirm, the top email is the email from

8 Mr Norman. Below that is an email from Ms Sullivan to

9 Mr Norman and others copied to Mr Murphy. Do you see that?

10 A. I do.

11

12 Q. So if we start with that bottom email to which

13 Mr Norman is responding - again, just to identify for

14 context purposes, it's clear that both in the email from

15 Ms Sullivan and the email from Mr Norman, my client,

16 Mr Murphy, is copied in to those emails, that is, the email

17 isn't directed to him specifically but, rather, he's copied

18 in to the email chain. You accept that, don't you?

19 A. I'm looking at the paragraph in the first email that

20 says:

21

22 For funds to become unrestricted there

23 would need to be legislative change which

24 itself would have to cover off on whether

25 it was able to be delegated to the CEO and

26 to what level?

27

28 Is that the one you're talking about?

29

30 Q. That's the email, that's right, yes. That's an email

31 from Mr Norman in response to Ms Sullivan's email. So for

32 context --

33 A. (Indistinct - simultaneous speakers) what you have to

34 do to get funds to be unrestricted, yes.

35

36 Q. If we go to the bottom email from Ms Sullivan, that

37 email commences with:

38

39 Below are the questions raised today by

40 councillors on the Skype meeting today that

41 require a response. Can you provide

42 updates responses to councillor support

43 with a cc to Gary and to me.

44

45 Do you see that?

46 A. I do.

47

1 Q. So then there appears to be a list of queries and they
2 start with a name. So "Julie", "Craig", "Boris", "Scott",
3 et cetera, and it appears that Mr Norman, in responding to
4 the email, has gone through and highlighted his name - that
5 is, that he's responding to the queries that are targeted
6 or directed to him; isn't that right?

7 A. Yes.

8

9 Q. So if we go to the ones that are highlighted in yellow
10 under "Craig", the first is:

11

12 Seeking a list of shovel-ready projects for
13 which we applied for funding that went to
14 the State or Commonwealth (Smith).

15

16 Do we take that to mean that that's a question or query
17 that came from Councillor Smith?

18 A. I don't know.

19

20 Q. Okay. But it's a fair inference, is it?

21 A. I haven't focused on that one. That's probably the
22 case. I'm only focused on the last one which talks about
23 unrestricted funds.

24

25 Q. I'm coming to that one. We then get to the next one
26 highlighted "Craig", which says:

27

28 What is the anticipated impact of the
29 current situation on council's investments?

30

31 That's MacGregor. Do you see that?

32 A. Yes.

33

34 Q. The last item is:

35

36 If funds were unrestricted ...

37

38 So there is a premise, "If funds were unrestricted":

39

40 ... would approval to use those funds have
41 to go to council or would it be something
42 Gary could do under delegation in
43 consultation with council (Smith).

44

45 Do you see that?

46 A. Yes.

47

1 Q. So it's not clear on the face of this email what funds
2 are being referred to, because there's a premise that -
3 there is certainly discussion about some funds; there is a
4 question that if those funds were unrestricted, so there's
5 a question mark about that - query whether they are
6 restricted or unrestricted; and if they were unrestricted,
7 would the approval of those funds go to the council or
8 would the CEO be able to deal with those. You accept that
9 on a fair reading of that sentence? Do you accept that.

10 A. Probably, yes. I'm not sure --

11
12 Q. Sorry?

13 A. From my point of view, this is another smoking gun.
14 They are not legal tests in a court of law which is how you
15 are trying to address this. Mr Murphy's not been charged
16 with anything, or whatever. I formed a view on the balance
17 of the information before me, and there is a bunch of
18 smoking guns here in my view. Do you accept that?

19
20 Q. I don't, Mr Persson. I don't. This isn't an
21 opportunity for you to ask me questions, just to go back to
22 our task here. The reason why I'm going through these
23 documents in a bit of detail and asking you these questions
24 is because you've made a very serious finding against my
25 client, and you've accepted that. To make that finding,
26 which is a public finding in a public document in your
27 public role as an administrator is a very serious one. So
28 one would assume and one would certainly expect that in
29 making such a serious finding - not just a finding full
30 stop, but a finding --

31
32 THE COMMISSIONER: Ms Bulut, is there a question here?

33
34 MS BULUT: Yes. I'm perhaps trying to explain why I'm
35 asking these questions.

36
37 THE COMMISSIONER: You don't need to explain, you just
38 need to ask the questions, thank you.

39
40 MS BULUT: Q. Mr Persson, this particular question
41 which, on its face, appears to have been asked by
42 Councillor Smith, "if funds were unrestricted" - there is
43 some discussion about some funds, clearly - did you speak
44 to Councillor Smith about what funds were being discussed
45 or what the question was targeted at?

46 A. No.

47

1 Q. At this meeting? No. But you accept that that's an
2 important contextual matter to understand what Mr Norman
3 was answering in providing his response at the top of the
4 first page?

5 A. Possibly.

6
7 Q. Yes.

8 A. I haven't focused on that.

9
10 Q. If I put to you that the funds that were being
11 discussed was a business support package that was being
12 discussed by the government, you wouldn't know whether
13 that's correct or not, because you didn't make those
14 inquiries; isn't that right?

15 A. That's not a question, that's just a comment dressed
16 up as a question.

17
18 Q. Well, I'm putting to you that because you didn't make
19 those inquiries, you don't know - you are not able to
20 assist the Commission as to whether that was a discussion
21 in relation to business --

22 A. I'm very comfortable with what I know and what I am
23 very comfortable with is that in my view there was an
24 awareness of the restricted funds issue before it was
25 indicated by your client. I believe there is a pub test
26 here of smoking guns which satisfy me. Possibly that
27 wouldn't be enough in a court of law, but I'm not in a
28 court of law.

29
30 Q. Okay. So you proceeded with your reports on the basis
31 of a pub test, is that right?

32 A. No, I believe there is a whole lot of smoking guns
33 here that indicate --

34
35 Q. I'm going through those smoking guns with you,
36 Mr Persson, and trying to understand what reliance you
37 placed on these so-called smoking guns and the basis upon
38 which you made your finding in your conclusion. So, in
39 relation to this smoking gun, I take it that your reliance
40 on this document in this email chain is limited because you
41 made no inquiry as to the question by Councillor Smith in
42 relation to the use of certain funds?

43 A. What's the question?

44
45 Q. So the weight that you placed on this document in
46 making your finding is limited, do you accept that, because
47 you don't know, you have no context as to what was being

1 discussed and the question raised by Councillor Smith?

2 A. They are not the only factors in me forming an
3 opinion.

4

5 Q. Okay. Let's go to the next email. Can I please get
6 you to locate the email from Mr Murphy to Mr Norman, the
7 subject line is "Re: cash flow", and it's dated 1 April
8 2020?

9 A. What was the date again?

10

11 Q. 1 April 2020, with a time stamp of 3.31pm, if that
12 assists?

13 A. I'm struggling to find a 1 April email. Bear with me.

14

15 Q. If it assists, there is a line graph in the middle of
16 the page under the subheading "Cash burn scenarios". That
17 might assist you.

18 A. Yes, thank you. That's 20 March on my --

19

20 Q. That's the email in the middle. At the top of that
21 page the email chain starts with an email from Mr Murphy to
22 Mr Norman dated 1 April. Do you see that?

23 A. We are now on the same page.

24

25 Q. Okay, thank you. Can I please get you to have a look
26 at that email. It's the one page. I will ask you a
27 question about that email in a moment.

28 A. Yes.

29

30 Q. Can you point to what in this email discloses my
31 client's knowledge of the use of restricted funds?

32 A. It reveals that there's a discussion about the use of
33 restricted funds for operational purposes.

34

35 Q. So you're referring there to, I take it, the very last
36 line in the email from Mr Norman; is that right?

37 A. Sorry, can you repeat that?

38

39 Q. So you're referring there to the very last line of the
40 email from Mr Norman to my client, which commences in about
41 the middle of that page?

42 A. Correct.

43

44 Q. That last line, which comes after various scenarios
45 are modelled, says:

46

47 Both scenarios result in having to access

1 restricted funds and also putting our
2 current ratio below the OLG benchmark so
3 there would need to be advice OLG/minister.

4
5 Do you see that?

6 A. Yes.

7
8 Q. That's a statement as to the forward scenario - that
9 is, a potential scenario going forward may involve X that
10 would require advice to the OLG and minister, et cetera.
11 What there discloses knowledge of past or current use of
12 restricted funds?

13 A. It doesn't do what you have just purported I have said
14 it does and I didn't say that. It is yet again another
15 smoking gun which indicates that the whole issue of use of
16 restricted funds was in play between the CFO and the CEO,
17 and if you add that together with the others, particularly
18 going back to the 19 question - yes. None of these on
19 their own make a case that I base my view on; it's a
20 collection of them and it's the context within which we
21 were operating.

22
23 Q. But just for clarity, Mr Persson, I'm taking you now
24 to each and every one of those documents you relied on, and
25 I'm about to go to the last one, the fifth document. This
26 comprises the entirety of the documents you relied on to
27 make your finding. So in fairness to you, we are going
28 through them each. You say, "It wasn't this particular
29 document, it was a collection." I'm now going through each
30 one.

31
32 Can I get you to turn up the very last document, which
33 is an email from Mr Norman to Mr Murphy dated 21 April
34 2020. Again, it a chain, so there are various emails that
35 go below. The entire email chain goes for some three
36 pages. For the record and for the Commissioner, this is an
37 email chain commencing on page 7.

38
39 THE COMMISSIONER: Yes.

40
41 THE WITNESS: Did you say 21 April it starts?

42
43 MS BULUT: Q. That's right. 21 April is the very last in
44 email in the email chain, Mr Norman to my client,
45 Mr Murphy.

46 A. Yes.

1 Q. So the email from Mr Norman at the top the page says:

2

3 I understand last time we tried to
4 restructure it was extremely cost
5 prohibitive and I suspect that would have
6 increased.

7

8 That's in answer to an email from my client in the middle
9 of that page. Do you see that?

10 A. No. I'm trying to read the documents now.

11

12 Q. Sure, take your time.

13 A. If you just let me read the documents. Okay.

14

15 Q. So in relation to this email chain, can you point me
16 to where in this email chain there is evidence that my
17 client was aware of the use of unrestricted funds - sorry,
18 restricted funds, I should say?

19 A. I didn't see anything in that particular email.

20

21 Q. Right. So having regard to the five documents that
22 I have just taken you to in their entirety - and I
23 appreciate you're looking at documents in their entirety,
24 not in isolation - do you now accept that, at their
25 highest, these documents disclose some discussion about the
26 restricted funds, or the mere word "restrictions", and
27 that's it, that's the extent of what these documents
28 disclose?

29 A. No, I don't.

30

31 Q. You don't accept that? Notwithstanding that I have
32 taken you to each and every one of these documents and
33 asked you to point me to where the document shows that my
34 client had knowledge, and you weren't able to do so,
35 instead you referred to them as "smoking guns" and the
36 like, do you still stand by the finding that you made in
37 the interim report, and I quote:

38

39 The interrogation of the council's emails
40 and note systems shows clearly that both
41 the CFO and the CEO were aware that
42 restricted reserves were being used for
43 both purposes prohibited by the Act and for
44 purposes not approved by council.

45

46 Do you still stand by that?

47 A. Yes, I do.

1
2 Q. And in making your finding, you relied on the five
3 documents that I have just taken you to; is that right?
4 A. Not totally, no.
5
6 Q. What did you rely on?
7 A. Discussions with lots of staff, the overall context
8 that we were in, the likelihood, the balance of
9 probabilities - it is inconceivable that a CFO would not
10 have known about the restricted funds, and it is
11 inconceivable in Mr Murphy's situation that he did not
12 discover that before he claims he did - inconceivable.
13
14 Q. Mr Persson, in this paragraph that I'm referring to on
15 page 8 of the interim 30-day report you don't say that.
16 You don't say that it's inconceivable, it's likely, or
17 "based on my discussions with staff" - you say that
18 interrogations of the council's emails and note systems.
19 A. Yes.
20
21 Q. What you say there quite clearly is that business
22 records disclose my client's knowledge. That's what you
23 say in the paragraph?
24 A. I believe they do.
25
26 Q. The documents you are referring to are the five
27 documents that I just took you to?
28 A. Yes. I believe that some of them are very clear. I
29 think the 19 November 2019 document, to me, is a very clear
30 indication that he had an awareness.
31
32 Q. I put to you that your finding --
33 A. The fact that it never appeared again, that they never
34 had another documented discussion, is a very strong
35 indicator to me that there was an awareness.
36
37 Q. I put to you that your finding is not supported by the
38 documents that you relied on and made public?
39 A. You are entitled to that view.
40
41 Q. You disagree with me?
42 A. I do.
43
44 THE COMMISSIONER: I think he already has, Ms Bulut.
45
46 MS BULUT: Q. I put to you, in fairness to you, that the
47 finding you made in the report was an unreasonable one?

1 A. Totally disagree.

2
3 MS BULUT: Thank you. Just give me one moment,
4 Commissioner. I think they are all the questions I have.
5 I will just confirm that, one moment. No, that's all the
6 questions that I have. Thank you very much, Mr Persson,
7 thank you, Commissioner.

8
9 THE COMMISSIONER: Thank you, Ms Bulut.

10
11 Q. As I said, Mr Persson, you now have an opportunity to
12 respond if you have anything in response.

13 A. Thank you very much. In organisations like this large
14 council, and given the general understanding across the
15 industry of restricted reserves and how they can and can't
16 be used, there is just almost no chance in the world that
17 the CFO and the CEO were not aware of what was happening
18 before they claimed they were aware.

19
20 Now, I have acknowledged that the information
21 available to me may not have passed a legal test, but
22 I wasn't putting it to a legal test. I was forming a view,
23 as someone who has come in to try and fix up this mess, of
24 what went on. I am very comfortable, notwithstanding the
25 attempts to break down the documents one by one and say
26 that they don't do this, or they don't do that; I believe
27 collectively they add to the balance of probabilities that
28 there is a very strong view that they do show that there
29 was an awareness.

30
31 I accept that if it was in a court, they may not
32 prevail. But in the court of public opinion, and hopefully
33 with yourself, it would. I look forward to listening to
34 Mr Norman's evidence on oath.

35
36 THE COMMISSIONER: That conclude your evidence. Thank you
37 very much.

38
39 THE WITNESS: Thank you very much. Most enjoyable
40 experience.

41
42 THE COMMISSIONER: I doubt that that was the case. Can I
43 ask you to leave the meeting and then rejoin us, if you
44 wish, to watch it on YouTube.

45
46 THE WITNESS: Okay, thank you very much.

47

1 THE COMMISSIONER: Thank you, Mr Persson.
2
3 <THE WITNESS WITHDREW
4
5 MS BULUT: Commissioner, if I can indicate at this stage,
6 if I may be excused, Mr Simone will step in and appear on
7 behalf of Mr Murphy for the remainder of the day.
8
9 THE COMMISSIONER: I understand, thank you, Ms Bulut.
10
11 MS BULUT: Thank you.
12
13 THE COMMISSIONER: We will take a short break. The next
14 witness is Mr Norman. We will come back on at 11.30, a
15 little later than scheduled. Thank you.
16
17 SHORT ADJOURNMENT
18
19 THE COMMISSIONER: The public hearings into the Central
20 Coast Council will now resume. The next witness is
21 Mr Norman. Mr Norman, could you come on camera and off
22 mute, please. Mr Norman, could you please come on camera?
23
24 MR NORMAN: Good morning, Commissioner, can you hear me?
25
26 THE COMMISSIONER: I can hear you, but I can't see you.
27 Now I can see you, you. Could you just wait there,
28 Mr Norman, and I will ask Mr Annis-Brown to swear you in as
29 a witness.
30
31 <CRAIG NORMAN, affirmed: [11.31am]
32
33 <EXAMINATION BY THE COMMISSIONER:
34
35 THE COMMISSIONER: Q. Mr Norman, you were the chief
36 financial officer at Central Coast Council from May 2019
37 until 24 April 2020; is that correct?
38 A. That's correct, Commissioner.
39
40 Q. I will start first by asking you about your
41 professional background and your professional
42 qualifications?
43 A. Okay. I've spent most of my career, Commissioner, in
44 either the New South Wales state public service or the
45 Victorian public service, with a range of bodies. My
46 previous position prior to starting at Central Coast
47 Council was as executive director of finance, assets and

1 performance at New South Wales Ambulance, and prior to that
2 I was with what was then the Department of Health and Human
3 Services in Victoria.

4
5 My professional qualifications are I have a bachelor
6 of economics plus a masters of accounting and I'm a fellow
7 of the certified practising accountants.

8
9 Q. Can I just ask you first about the budget process.
10 How many budgets were you involved in when you were at the
11 Central Coast?

12 A. Only the one, Commissioner. That was at the start of
13 2020, and that was the budget initially set down for the
14 2021 year.

15
16 Q. Do you remember what date you started in May?

17 A. It was 27 May.

18
19 Q. Okay. So you were quite late in the piece, the budget
20 was about to be made. Did you have any input into the
21 budget at that point?

22 A. There was only - I think it was the week before
23 I started, Commissioner, the council had been advised that
24 the IPART decision on water and sewer rates had been made.
25 Mr Murphy, the CEO, rang me to advise me of that. Then the
26 process, as I recall, there was a bit of a mad rush, for
27 want of a better term, to get the budget adopted by 30 June
28 in line with the requirements. So given that I hadn't been
29 involved in that process, a lot of the retuning of that
30 budget was undertaken by my staff and I was sort of
31 learning off them, as it went along.

32
33 Q. You were aware that the reduction in funds was in the
34 order of \$39 million?

35 A. That's correct, Commissioner.

36
37 Q. But the adjustment to the budget wasn't in that order,
38 was it?

39 A. No. The adjustment to the budget I think, with the
40 benefit of hindsight, the approach was more to impose some
41 savings targets on various directorates. I think that was
42 the case because of the limited time to do that. So the
43 ability to consult wasn't as - there wasn't as much time as
44 necessary. But obviously with the benefit of hindsight we
45 would have taken a different approach to effect that
46 change.

1 Q. I know you weren't there at the council, but did you
2 become aware that there had been a draft decision or a
3 draft report issued by IPART which gave some indication
4 that there would be a substantial reduction in income for
5 the council - April?

6 A. I'm aware of the \$39 million.

7

8 Q. But prior to that. That was announced in I believe
9 May.

10 A. Yes.

11

12 Q. Councillor Smith gave evidence that there was some
13 sort of draft information release from IPART, presumably
14 for council planning purposes, to inform of a reduction,
15 a substantial reduction in rates?

16 A. I wasn't aware of that, Commissioner.

17

18 Q. Okay. Did you have any opportunity to observe the
19 role that the councillors played in the formulation of the
20 budget?

21 A. Not for the first budget, Commissioner, but, yes, for
22 the second, the budget we started formulating in early
23 2020, yes, we had a councillor workshop one weekend,
24 I think it was in early February. It was scheduled to go
25 for two days, but at that particular point in time there
26 was a flood event on the coast, so it was curtailed to one
27 day.

28

29 Q. Was there any express desire or attempt to achieve a
30 balanced budget or a surplus budget?

31 A. No, and I think that's - I mean, I recall as part of
32 my presentation to councillors I did - one of the points
33 I made was that we had to consider intergenerational
34 equity, and my preference, notwithstanding that obviously
35 councillors, individual and as a group, had their
36 priorities, my preference was that we should try to move
37 towards a scenario where we had a long-term future where
38 there would be either small surpluses or small deficits,
39 and I think the response at that particular juncture was -
40 I think it was one councillor, and I can't recall who it
41 was, made the comment that we are here - as government, we
42 are here to run deficits.

43

44 Q. Was that a majority view?

45 A. It was hard to say, Commissioner, because there was -
46 I think there was a fair bit of silence after that. So
47 whether or not that could be taken as a consensus, or

1 whatever, I think perhaps one councillor who was on
2 video-link at the time, as I recall, may have disagreed
3 with it.

4
5 Q. Were you aware of the change in accounting practice
6 that occurred in the 2015/16 financial statements of the
7 predecessor councils?

8 A. No, I wasn't, not until reading the transcripts from
9 this inquiry, Commissioner. I was unaware.

10
11 Q. So you were never aware of that change in accounting
12 policy?

13 A. No. When I started I had conversations with the
14 auditors about - and obviously as part of the normal annual
15 account statement process there are changes to accounting
16 policy, but I wasn't made aware that that policy had been
17 changed at that point in time.

18
19 Q. You didn't have a local government background.

20 A. No.

21
22 Q. How did you become informed about the way externally
23 and internally restricted funds were managed within the
24 council?

25 A. It was probably, Commissioner, post-event. I was
26 learning as I got my feet under the desk, as the saying
27 goes, so it wasn't until some time later that I became
28 aware of the requirements the under the Act, because
29 I think as Mr Murphy said, my remit on starting was to
30 focus on the PWC report and the sustainability.

31
32 Q. To your knowledge, were the individual directorates
33 using their funds in an inappropriate manner? Were they
34 using restricted funds for the restricted purposes?

35 A. That came to light, Commissioner, as part of the
36 annual account process in - I think it was
37 around September/October, maybe roughly those dates, where
38 I was told that a staff member in the environment planning
39 directorate had raised an issue about the use of
40 section 7.11/7.12 funds.

41
42 That was then self-reported to the audit office. That
43 related to the administrative funds and it was about
44 13 million, as I recall, over a fairly long period of time.
45 So that came to light then and, as I said, it was reported
46 to the audit office.

1 Subsequently, that also helped inform the audit office
2 review of several councils on the use of local
3 infrastructure contributions, and I think that was
4 highlighted in that report.

5
6 Q. Did you say then that the funds were being used for
7 administrative purposes for the implementation of the
8 section 94 plans, was it?

9 A. That's what I understood. As I understand it, it went
10 back to the former Gosford council, as I understand it, and
11 it was over a fairly extended period of time, and my staff
12 did a calculation that highlighted the transactions back to
13 about 2001, I believe. Prior to that, I think it became a
14 bit difficult to get information out of the system to
15 verify, but that was my understanding.

16
17 Q. You think that unauthorised use was in the order of
18 about \$13 million?

19 A. That's what I understood, yes.

20
21 Q. And what happened, was it repaid to the fund?

22 A. Yes, it was.

23
24 Q. From the general fund?

25 A. Yes.

26
27 Q. When did that occur?

28 A. That would have been self-reported
29 around September/October of 2019, and then that - I think
30 the annual accounts for that year, when they were
31 eventually adopted in February, would have reflected that.

32
33 Q. Did you become aware of any other suggestion that
34 restricted funds were being used in an improper manner?

35 A. No, I did not.

36
37 Q. Was there sufficient information flow between finance
38 and the other directorates to understand whether those
39 directorates were meeting their budgets on a monthly basis?

40 A. I think there was a degree of - the reports - I think
41 where I was trying to head to with them, what I call
42 management reports to the directorates, and as I said to my
43 staff, was that the timeliness was an issue for me. I know
44 one particular directorate raised it with me, I think it
45 was about mid-month after the end of the month they were
46 getting reports. When I looked into it, there were a lot
47 of problems with the IT systems in terms of being able to

1 produce those reports, but I definitely had a plan in mind
2 to try and bring that forward so that the reports could be
3 more timely. But also, what I wanted to emphasise was
4 around the commentary, because these management reports are
5 always backward-looking. What I wanted to try and do was
6 try to get the business partners ingrained in the business
7 to understand each directorate's business so that they
8 could then have what I call a black hat and white hat
9 approach where they can assist the business if there were
10 issues coming up. But, more importantly, to get ahead of
11 the game to try and see if there were upcoming issues
12 within each directorate, to try and flag issues as they
13 occurred.

14
15 My view was that we had some fairly good members of
16 ELT who understood the process, but I think materially the
17 organisation in terms of financial management had a bit of
18 a way to go in that regard.

19
20 Q. So when you refer to a business partner, that's a
21 member of the finance team that was attached, if you like,
22 to a directorate?

23 A. That's right. Some directorates had more business
24 partners because of their sheer size. Sometimes they got
25 rotated around and that was up to Ms Louie as the manager
26 to do that. But, yes, the concept was to ingrain
27 themselves in the business so they could provide assistance
28 to the various directorates.

29
30 Q. You were familiar with the monthly investment report
31 that was provided to the councillors?

32 A. Yes.

33
34 Q. Were you made aware of the change to the investment
35 report in October 2019?

36 A. No, I wasn't, Commissioner, but I do accept, of
37 course, that it was signed off under my signature. But,
38 no, it wasn't raised that there was a change.

39
40 Q. Okay. Were you aware that the balance of the
41 unrestricted funds had become negative?

42 A. No, I wasn't aware it was negative at that stage,
43 Commissioner.

44
45 Q. When did you become aware?

46 A. I only became aware after I left the organisation. As
47 part of the - the budget setting process, it wasn't - it

1 didn't come to light to me until after I left, and the
2 subsequent circumstances surrounding the investigations
3 were undertaken.

4

5 Q. So the investment report wasn't an automatically
6 generated report; it was something that was manually
7 prepared?

8 A. Yes, that's what I understand. Again, that probably
9 reflects some of the issues with systems within the
10 organisation.

11

12 Q. Who prepared the investment reports?

13 A. That was prepared by - I forget the job title, but it
14 was prepared by Mr Oldfield, in his area.

15

16 Q. He was unit manager, financial --

17 A. Services.

18

19 Q. -- services?

20 A. Yes, that's right.

21

22 Q. What does that mean, as opposed to unit manager,
23 financial performance?

24 A. So the structure was financial services looked after
25 the banking, accounts receivable, payable, that side of the
26 business, in a nutshell. Financial performance was under
27 Ms Louie and her role was around the business partnering
28 plus budget formulation and setting, and her staff
29 generating those reports.

30

31 Q. So Mr Oldfield would have known that the net
32 restricted cash position had fallen into negative?

33 A. I would assume so. Again, I should have known too.

34

35 Q. Do you have any idea why he didn't inform you as the
36 person signing off on the reports about that?

37 A. I have been thinking around that, Commissioner, and my
38 only explanation would be that in conjunction with the
39 disclosure of the section 7.11/7.12, there was a bit of -
40 unsure as to whether that was 13 million or more. I know
41 at the time Mr - I think it was at that time, I will stand
42 to be corrected, that Mr Oldfield did take some sick leave,
43 family leave, for good reason. So other than that, I can't
44 know why it wasn't reported.

45

46 Q. Would anybody else in the organisation have been privy
47 to that information?

1 A. I don't know, Commissioner.
2
3 Q. I don't know if you were listening on YouTube this
4 morning?
5 A. No, I didn't have the opportunity, unfortunately.
6
7 Q. Okay. Some document were put to Mr Persson, who was
8 administrator following suspension of the councillors, and
9 some of them refer to you.
10 A. Mmm-hmm.
11
12 Q. If I could just ask what you know about these things.
13 First of all, there's some sort of a file note which
14 appears to be connected with you, because it has a tab at
15 the top of in blue that says "Craig" - I assume that that's
16 you - 19 November 2019, and there was a list of matters for
17 discussion. This was a file note prepared by Mr Murphy?
18 A. Okay, yes.
19
20 Q. One of the lines in that list of topics was "Financial
21 strategy for sustainability", "Use of restricted funds,
22 reserves", et cetera. Do you recall having a conversation
23 with Mr Murphy about the use of restricted funds in about
24 November 2019?
25 A. As I recall, that was related to the section 7.11/7.12
26 issue that we discussed before and its impact on the
27 ability to deliver the annual accounts. I think there was
28 a fair level of frustration - not only myself, but with
29 Mr Murphy himself - that we weren't able to deliver the
30 annual accounts in a timely manner because obviously by
31 19 November it had become clear to me that it was going to
32 take into the new year to deliver those annual accounts.
33 That's my recollection of that file note.
34
35 Q. And he has a handwritten note, an arrow, "Next time".
36 Does that suggest that there was going to be some further
37 discussion about that issue, or do you remember any further
38 discussion about it?
39 A. No, I can't speak for how Gary notated his file notes.
40
41 Q. No.
42 A. There may have been less formal conversations, you
43 know, "How are the accounts going, Craig, when are they
44 going to go?" I know it was, as I said, a source of
45 frustration, not only for myself but also for Gary, that we
46 couldn't get those out in a timely manner.
47

1 Q. Were the councillors aware of the reason for the delay
2 in the publication of those accounts?
3 A. I think we would have mentioned it at a briefing. I
4 don't think there was a paper given, but obviously we had
5 briefing sessions with councillors every second Monday. So
6 I think it would have been raised there. I can't put hand
7 on heart, Commissioner, and say I definitely did it, but I
8 think it would have been made aware.
9
10 Q. Mr Persson was also taken to an email chain in
11 March 2020. It is dated 27 March. First of all, there was
12 an email from Ms Sullivan to a group of executives,
13 including you. The opening paragraph refers to "questions
14 raised today by councillors on the Skype meeting". Do you
15 remember having a Skype meeting on 27 March 2020?
16 A. I can't recall that particular date, Commissioner, but
17 by that stage, that was the early stages of COVID and we -
18 I recall I think we would have been working from home at
19 that particular time, so there were a number of Skype
20 meetings on a regular basis.
21
22 Q. The email from Ms Sullivan to the group has names as
23 headings, and your name appeared on three items.
24 A. Yes.
25
26 Q. One of the items I want to ask you about. The
27 question is:
28
29 Craig, if funds were unrestricted, would
30 approval to use those funds have to go to
31 council or would it be something Gary could
32 do under delegation in consultation with
33 councillors? (Smith)
34
35 I take it that that means this question was raised by
36 Councillor Smith. Your response in your email of the same
37 date is:
38
39 For funds to become unrestricted there
40 would need to be legislative change, which
41 itself would have to cover off on whether
42 it was able to be delegated to the CEO
43 and/or what level.
44
45 A. Mmm-hmm.
46
47 Q. Could you explain what you understood by the question

1 that you were being asked, and your response?
2 A. Okay. Well, at that particular point in time, as I
3 said, it was the early days of COVID. I know that
4 Mr Murphy had been involved in forums with other council
5 CEOs. I myself had been involved within forums with other
6 CFOs, that was organised - I forget the lady's name - I
7 don't think it was through OLG, but it was through one of
8 the professional networks. I know that it had been
9 raised - or I understand from Mr Murphy it was raised at
10 the CEOs about, well, given the uncertainty around COVID
11 and the sort of concerns I think most councils had at that
12 particular point in time that perhaps cash could be an
13 issue, because people would be losing their jobs, cash
14 would dry up. The question was put, you know, is there an
15 opportunity to use unrestricted funds. That was also
16 raised at the CFOs - just as a question, and I don't know
17 the process of how - whether it was the CEO group that took
18 it to government, or a question was asked, but that's my
19 understanding of that question. There was a bit of, well,
20 can councils be allowed to use unrestricted funds given the
21 uncertainty at that particular point in time, and quite
22 clearly the answer was no.

23
24 Q. So you were definitely talking about restricted funds
25 rather than unrestricted funds?

26 A. That's correct. And, as I said, that came from that
27 general feeling at that particular point in history that
28 everyone was concerned that - you know, where is the money
29 going to come from and can we as a short-term measure use
30 restricted funds, as a whole industry, given the
31 uncertainty at the time.

32
33 Q. Do you remember Ms Smith asking that question during
34 the Skype meeting that day?

35 A. Are you referring to the deputy mayor at the time?

36
37 Q. Yes, she would have been the deputy mayor.

38 A. I don't know whether I was - I can't recall being in a
39 Skype meeting with the councillors, but I stand to be
40 corrected.

41
42 Q. You might not have been. I don't know whether you
43 were there. It doesn't say that you were there, but the
44 email was sent to a group of people after that meeting.

45 A. Yes. I think Shane and Gary had a catch-up with
46 councillors on a regular basis.

47

1 Q. Shane being Ms Sullivan, the governance manager,
2 director?

3 A. Yes.

4
5 Q. Then there was another email dated 20 March 2020.
6 This was a series of emails between you and Mr Murphy.
7 You'd done a graph called a cash burn scenario. Do you
8 have a recollection of that?

9 A. Yes. That was undertaken by the unit manager,
10 financial services, provided to me.

11
12 Q. So that's Ms Louie?

13 A. No, that's Mr Oldfield.

14
15 Q. Mr Oldfield, okay. At the foot of that graph it says:

16
17 Both scenarios result in having to access
18 restricted funds and also putting our
19 current account ratio below the OLG
20 benchmark so there would be a need to
21 advise OLG/minister.

22
23 Yes. So, can I clarify, that was 20 March, was it,
24 Commissioner?

25
26 Q. Yes, it was 20 March.

27 A. Again, that's the early days of COVID where we were
28 doing various scenarios around the possible impact on the
29 community not being able to pay rates, and/or the
30 government saying, "Well, local councils, you've got to
31 hold off a bit". So there were various scenarios being
32 done and there were always various iterations from, you
33 know, week to week at that point in history. So, yes, that
34 was - I forget what the scenarios were, whether it was
35 20 per cent of ratepayers weren't able to pay on time for a
36 period of time --

37
38 Q. There were two scenarios graphed. One was 10 per cent
39 drop in cash inflow in April, and 5 per cent thereafter
40 with no change to cash outflow; and the other scenario,
41 which is also called 1, but was a different colour, was
42 20 per cent drop in cash inflow in April and 5 per cent
43 thereafter, no change to cash outflow. So both of those
44 had been graphed in different colours, red and orange.
45 Then there were two lines, horizontal lines, one blue and
46 one green.

47

1 Now, I know you don't have the graph here, and it's
2 probably difficult for you to say, but there's a blue line
3 called "External" and there's also a blue line called
4 "Total cash in investments". External I take to mean, am I
5 correct, externally restricted funds?

6 A. That would be my understanding, yes.

7
8 Q. So where the graphed lines meet the externally
9 restricted funds, was predicted to be in around June 2020,
10 so on either of those scenarios at about that time, you
11 would be running out of unrestricted cash?

12 A. That was the absolute worst case scenario because we
13 hadn't factored in any reduction in expenses. So whether
14 or not that was the - they were the right scenarios to
15 model, because ultimately there would have been some
16 reaction to decreasing cash outflow.

17
18 Q. That was a graph that was then provided to Mr Murphy,
19 you forwarded that on?

20 A. Yes.

21
22 Q. And I think in that email - in response Mr Murphy
23 said:

24
25 I'm concerned that we are unlikely to get
26 any of our usual revenue for the next six
27 plus months. Our investment income will be
28 negligible and unless we can force staff to
29 take leave we will be holding expenses
30 pretty much the same.

31
32 A. Yes.

33
34 Q. He then asked in the next paragraph whether you - he
35 says:

36
37 What strategies should we be considering to
38 preserve our financial position as much as
39 possible whilst still delivering essential
40 services?

41
42 Can you recall what advice you gave Mr Murphy after that?

43 A. No, I can't, Commissioner.

44
45 Q. There is another email, and this is dated 20 April
46 2020, from Carlton Oldfield to you and copied to Ms Louie:

1 Hi Craig,
2 I thought we would run with the following
3 items on Thursday.

4
5 A. Yes.

6
7 Q. What was Thursday going to be? Was that some sort of
8 meeting that you were having?

9 A. Yes, that was the meeting with the ELT. That was the
10 last week I was there at the council. I finished on
11 24 April. Just as a bit of background, I had a discussion
12 with Mr Murphy that, given the circumstances of lockdown
13 and working from home, that Mr Oldfield was probably best
14 positioned to take the running on financial matters and
15 therefore be the acting CFO. So I asked - as part of that
16 handover I encouraged Carlton to come up with an agenda for
17 that Thursday meeting. As I recall, it was the CEO and the
18 rest of the ELT.

19
20 Q. One of the items in the agenda under "COVID impact"
21 was (iv) "Building cash restrictions". What did that mean?

22 A. I think, if I'm right - and again Mr Oldfield might be
23 able to shed light on it - I think that was more around how
24 we could sort of restrict cash going out the door in terms
25 of operational expenditure.

26
27 Q. I see. So it wasn't talking about restricted funds,
28 it was talking about stopping expenses?

29 A. Yes. Because going back to the March emails, I think
30 the scenario of just concentrating on income drying up and
31 not looking at expenses was probably a bit of a blunt stick
32 in terms of getting people's attention, but obviously there
33 had to become a point in time where cash would have to stop
34 going out the door. As part of the background, too, there
35 were a lot of discussions within local government about
36 changes to the award, et cetera, about how staff could be
37 dealt with to make sure they could still be paid and what
38 would that mean for council in its financial projections.

39
40 Q. The finance staff of the council have been criticised
41 by other witnesses for not reacting quickly enough or
42 sufficiently to the IPART decision and then the series of
43 disasters that befell the Central Coast in 2020. What's
44 your response to that?

45 A. I think my - again, with hindsight, the organisation
46 as a whole was sort of battered from pillar to post in
47 terms of the bushfire and then the flood incident and then

1 COVID. I know that relates to every our council, just
2 about, at that particular point in time, but I don't think
3 it had the robustness in terms of - from what I could see,
4 that merger process didn't have indeed a true financial
5 focus. But, again, I can understand why people would see
6 finance not reacting quickly enough. Again, finance can
7 have a view across the organisation but it doesn't
8 necessarily get the whole view all the time. So there is
9 accountability for all people and budget holders around
10 that.

11
12 I think the other big thing that I learnt as part of
13 the budget-setting process for 2021 was that there was a
14 bit of - the disconnect between finance and the business
15 was quite evident then, that some senior managers worked
16 quite well and quite diligently with finance to make sure
17 they delivered budgets, et cetera, but I don't think that
18 was consistent across the organisation. At the time, I
19 think my view was that was just a sign of a maturity
20 journey that the organisation had to be on.

21
22 Q. Why did you leave the council in April 2020?

23 A. Probably two reasons, Commissioner. As you said
24 before, this was my first time in council and people may
25 not be - there is a stark difference between the jobs I had
26 before and local government, and that's not a criticism of
27 anyone in local government, it's just it wasn't a good fit
28 for me, I don't think.

29
30 Then subsequent, I think in early February, the CEO
31 made the decision to restructure ELT, as his want is, and
32 that's fine, and that my position would be removed from ELT
33 and the director of corporate services created. I said to
34 Gary in an email that I didn't necessarily agree with
35 that because one of the big things - not from a personal
36 point of view, because Mr Murphy had the right to say
37 goodbye to me and that's what you sign up for, but at the
38 particular point in time, I believed that the organisation
39 needed a strong messaging around finance being at the
40 table. I'm sure Mr Murphy would say that it would have
41 been at the table through the director of corporate
42 services, but I didn't see myself being able to effect the
43 change necessary. Again, that's on me, and not a criticism
44 of anyone, but I decided that it may be best for me to move
45 on.

46
47 Q. Had that restructure occurred when you left?

1 A. No, it hadn't, but I'd indicated to Mr Murphy, and I
2 think the director of people and culture, Kristie, that I
3 wanted to leave. Initially I was going to stay to the end
4 of the financial year, but with COVID and, you know,
5 working from home, et cetera, I sort of had the
6 conversation that I thought it was best if I leave before
7 that, just to give someone a bit more time to settle in.
8

9 Q. Were you aware of the instability in the CFO role that
10 the council had experienced since it had started?

11 A. I was aware prior to taking the position. As part of
12 my due diligence, I happened to have worked in the same
13 department and knew Ian Reynolds, the former administrator.
14 So when I was approached about this job, I did give
15 Mr Reynolds a call to say, you know, "To the extent you
16 can, tell me about it", and he did mention that there had
17 been a bit of instability there. He said he couldn't
18 disclose why previous CFOs had left. I wasn't aware at the
19 time of the length of the acting roles that Ms Louie and
20 Ms Sullivan undertook. I didn't know it was that long.
21

22 Q. What did you observe of Ms Louie while you were there?

23 A. Ms Louie was a very hard worker, probably to her own
24 detriment. She did focus - she did get down into the
25 detail too much the detriment of probably spending more
26 time with the business to explain things a bit more
27 finance. In fairness to Viv, we didn't have a formal
28 performance review before I left, but I don't think anyone
29 could question that Viv was trying really hard, but I think
30 part of the issue I had was when we started to formulate
31 the budget for early 2020, myself and Mr Ricardo Martello,
32 who was the executive manager of strategy and innovation,
33 we got together the two senior managers from each area -
34 Ms Louie from my area, and I can't recall the lady who was
35 involved from Ricardo's area, so I apologise for that, but
36 we were quite clear that - as I think Mr Murphy highlighted
37 from the PwC report, PwC highlighted that there needed to
38 be a bit stronger strategic alignment between outcomes from
39 the operational plan and the finance. But I think what
40 happened in reality was that both went separate ways and I
41 don't think the clear-cut connection between strategic
42 alignment and budgets was as good as it could have been.
43

44 Q. What was the result of that lack of alignment?

45 A. Again, it was a timing issue. I think there was - it
46 seemed to be a race to the line. In fairness to
47 councillors, they had to review the draft in fairly short

1 fashion and then I think what's happened after that,
2 obviously with COVID and working from home, that sort of
3 threw - not threw it out the window, that's the wrong thing
4 to say, but it sort of muddied the waters about ensuring
5 that everyone was comfortable.
6

7 Q. This is the budget?

8 A. Yes, that's right.
9

10 Q. Before you left, were you ever aware that restricted
11 funds had been used for an unauthorised purpose?

12 A. Only for the section 7.11/7.12 issue, that was the
13 13 million.
14

15 Q. And Mr Murphy was already aware of that?

16 A. Yes.
17

18 THE COMMISSIONER: I don't have any more questions, but if
19 you stay there, Ms Annis-Brown May some questions for you.
20

21 MS ANNIS-BROWN: No questions, thank you, Commissioner.
22

23 THE COMMISSIONER: Thank you. Mr Simone, do you have any
24 application?
25

26 MR SIMONE: Thank you, Commissioner. In the
27 circumstances, I don't have an application to make, thank
28 you.
29

30 THE COMMISSIONER: Thank you.
31

32 Thank you, Mr Norman, that concludes your evidence.
33 You may leave.
34

35 THE WITNESS: Thank you, Commissioner.
36

37 <THE WITNESS WITHDREW
38

39 THE COMMISSIONER: I will just get the timetable. Our
40 next witness will be Mr Hart at 1.50pm. We will adjourn
41 until 1.50pm, thank you.
42

43 LUNCHEON ADJOURNMENT
44

45 THE COMMISSIONER: Good afternoon. The public inquiry
46 into Central Coast Council will now resume. Mr Hart, I see
47 you are there. Could you please come on camera and off

1 mute.

2

3 MR HART: Yes, I am here. Good afternoon.

4

5 THE COMMISSIONER: Good afternoon. Ms Annis-Brown will
6 swear you in as a witness.

7

8 <RIK HART, affirmed: [1.50pm]

9

10 <EXAMINATION BY THE COMMISSIONER:

11

12 THE COMMISSIONER: Q. You were initially the interim
13 general manager, from the beginning of November to the end
14 of November 2020, and then you became the acting general
15 manager from 30 November until 2 March, and you are now the
16 administrator of Central Coast Council. Could you give us
17 your professional background and qualifications, please?

18 A. Right. I graduated with a BSc and masters of Ag
19 science, I've completed the New Zealand company directors
20 course and I've completed two or three mid-term courses at
21 Cranfield business school in the UK.

22

23 My first 18 years was in the private sector working
24 predominantly for a large multi-national ICI. I worked in
25 New Zealand, the UK and eastern Europe. And then,
26 following that, I actually had a short stint in a big
27 cooperative, being a food distributor. So during that
28 time, I did one takeover, I was taken over once, and I went
29 through one receivership when I was the CEO of a
30 medium-sized company, which did bring back a lot of
31 memories when I came to this organisation.

32

33 I then ran New Zealand fisheries and restructured it
34 into a separate ministry for the New Zealand Government. I
35 joined the Victorian Government in 1995 as one of the eight
36 government departmental heads working for Jeff Kennett.
37 During that time we had one or two mergers, taking more
38 things into the mega departments, so I had to do that.

39

40 When he got tossed out, I got tossed out and I ended
41 up back with Helen Clark and the Deputy Prime Minister of
42 New Zealand where they wanted to set up a similar inbound
43 investment attraction agency, so I was involved in the
44 early stages as setting Industry New Zealand as the early
45 CEO. I then had a disagreement with the government about
46 how that should be run, and I said, "Well, you need to find
47 somebody else", and I then went and joined local government

1 running the Hutt City Council, which I did for about seven
2 years and then I came across the ditch and worked for Dick
3 at Warringah Council, which is where I first met
4 Dick Persson, and was there for approximately 12, 13,
5 14 years until the mergers, and with the mergers I was
6 supposed to take over one of the entities, which never
7 eventuated, so I sat around for a couple of months waiting
8 for that, and then the government asked me to go into Inner
9 West to replace the CEO there because they were having
10 problems. I was there for a couple of years. I thought
11 I was retiring. Then Parramatta had a problem and they
12 sacked their CEO, so I worked in there for nine months.
13 I then retired again and then along came this gig and I'm
14 looking forward to retiring again.

15

16 Q. Yes. Can I just take you back - you've provided a
17 lengthy submission which I am very grateful for. I won't
18 go into all of the details, but I do have a few questions
19 about it. You say that the decisions of the former
20 council, both financial and staffing, presented a distorted
21 picture of their true financial position - this is the
22 Gosford and Wyong. What do you mean by that?

23 A. Well, first of all I'll talk generally and then I'll
24 be specific about those two councils. I was heavily
25 involved in the actual set-up of councils and was one of
26 two CEOs advising the State Government on how they might go
27 about this process. A lot of my experience that I tried to
28 contribute there was based around being involved in setting
29 up the large Auckland metropolis from seven local bodies,
30 and also coming in at the tail-end of the mergers in
31 Victoria, where I was dealing with the council. So I had
32 had a bit of experience.

33

34 Looking at the ones here that were involved, Gosford
35 in particular - and you can clearly see by some of the
36 graphs that were in Mr Persson's report and also in some of
37 the YouTube videos and so on that I did during my time as
38 CEO - the first thing that happened, I think in Gosford, is
39 they kept saying they had the same staff numbers, but you
40 could see their costs of employment going down.

41

42 When you think that under the award, costs you would
43 expect to go up because of the standard 2.5 per cent, which
44 rounds out at around 3 per cent when you add in the step
45 increases and performance pay and all the other things, so
46 you generally work on a number of about 3 per cent increase
47 in employee costs. So that went down in the previous three

1 years by \$12 million, when you might have expected it to
2 actually have gone up. That's the first point.

3
4 The second point is, and it does come down to a little
5 bit - in this case it was more specific, but when you
6 analyse the amount of unrestricted cash, or as I refer to
7 it as working capital, coming more from the profit sector,
8 the working capital or unrestricted cash was zero.

9
10 Now, the accounts, as you've well gone into, because
11 of the voluntary accounting policy, were actually showing a
12 different number, which was considerably higher. As you
13 know from my opinion and the CFO's opinion, we didn't
14 believe that was correct and we ultimately we made a prior
15 period adjustment in our own accounts. So there were those
16 things.

17
18 If you look at their current ratios, the current
19 ratios are always distorted a little bit, because the
20 practice in local government is you do include some of the
21 restricted and unrestricted funds. Now, I think that's a
22 mistake and it's a mistake generally across local
23 government because, by definition, as we are going through
24 this inquiry, you know, these externally restricted funds
25 and so on shouldn't be used at all. So you can't actually,
26 in my term, acknowledge - although I understand the
27 accounting methodology does allow for it, but practically
28 I think it gives a false representation. So a lot of
29 those either liquidity ratios or current ratios were
30 propped up prior to the mergers by councils. There was
31 that.

32
33 There was also the backlog of infrastructure.
34 A number of councils, and I can certainly mention one of
35 the last ones I was at, which was Inner West, just to give
36 you an example of what they do, in the Inner West, the
37 backlog of infrastructure for the previous Marrickville
38 Council was 3-point-something - I can't remember the
39 decimal place but it was about 3-point-something million,
40 and for Leichhardt Council it was something similar,
41 3-point-something million.

42
43 If I just take one asset of each of those, so if
44 I take Dawn Fraser pool at Leichhardt Council, to fix that
45 up it would cost \$9 million. So if you think one asset was
46 showing a backlog of, if you like, \$9 million - and they
47 were saying the total backlog across all asset classes.

1
2 In Marrickville, they were a little bit more devious.
3 They had the council building, administration building,
4 where they wanted to hold, and did hold, council meetings
5 on the top floor, but it wasn't fire-rated. It only had
6 one fire exit it therefore wasn't compliant. The cost of
7 restoring that was in the order of 4 to 5 million.

8
9 There was also allegedly a note from the then CEO to
10 the roads area to make sure that they got their backlog
11 down, and they did that simply by reclassifying better
12 roads down to less-good roads. So those are the sorts of
13 tricks that were put in place by councils right across the
14 patch, all in the struggle to get themselves "Fit for the
15 Future".

16
17 So I can talk about the Fit for the Future process
18 down the track, but it wasn't a good one.

19
20 Q. You may as well tell me now, in relation to the
21 Central Coast, what were the particular aspects where the
22 two councils were not fit for the future, in your view?

23 A. The first thing, in Gosford - if I take Gosford first,
24 they had not put a rate increase in. They were well
25 overdue for a rate increase. They had zero, as per their
26 annual report, working capital, so by definition, the very
27 first month they would have had to be use using illegally
28 internally or externally restricted funds unless they had
29 unrestricted some of the internal ones. So they did none
30 of that. So that council particularly would have been
31 operating deficit back in those days.

32
33 They had the backlog of infrastructure, and I would
34 agree with some of the people you've previously
35 interviewed - that's not the biggest thing in the world,
36 but, nonetheless, it is a metric that the State Government
37 asks you to report to and it is a metric that was used in
38 the Fit for the Future analysis.

39
40 As I said, they ran down staff numbers and their
41 liquidity ratios I suspect were a little bit suspect.

42
43 The other thing that occurred, which I don't think
44 worked well, was selecting a CEO from one of the councils.
45 I argued strongly against this in the preamble before
46 what's been referred to as the green books, ie, the bible
47 for how you went about the merger. I don't believe that

1 keeping one of the CEOs in place helped because it was
2 automatically seen as a bias. And one of the success
3 factors of the Victorian mergers was, of course, Jeff
4 Kennett moved them all around, so they just moved the deck
5 chairs around and also put in place what is called CCT,
6 compulsory competitive tendering, which made the
7 outdoor side - reduced the number of outdoor staff down to
8 approximately half, because half the services had to be
9 outsourced. So it forced discipline immediately.

10
11 The other things that were put in place in the merger
12 process were things like the restrictions on staff
13 movements and so on.

14
15 Now, the government couldn't do a lot about that
16 because it's tied up in the legislation, and so on, so I
17 can understand that, but different from Kennett, who had
18 controlled of both houses and they put new legislation
19 through to be able to carry out the mergers in the way they
20 wanted to.

21
22 So, as I said, the Fit for the Future gave a couple of
23 years of poof behaviour by councils desperately trying to
24 avoid mergers, therefore looking at ways that they could
25 actually tweak those metrics that TCorp, IPART and the
26 government were reviewing in order to determine whether
27 they were fit for the future. As I said, you couldn't put a
28 lot of, I guess, emphasis on some of the metrics that were
29 produced at the time.

30
31 Obviously IT was a major contributor, again, right
32 across the board. Because unfortunately, with
33 rate-pegging, with the requirement for councils to go
34 through the IPART process, councils as a generalism, at a
35 political level, are very reluctant to go for rate
36 increases because it is so visible to the community. IPART
37 can often make some difficult comments in there, which
38 doesn't help them politically, and at the end of the day
39 they will cut back on things like where capital expenditure
40 should be spent, on internal things such as IT - they won't
41 spend it, they would far rather spend it on something that
42 looks bright and shiny out in the community.

43
44 Again, that process of rate-capping does diminish the
45 ability of a council to be able to respond, particularly at
46 the political level, because of the high impact that a rate
47 increase, determination from IPART, draws from the

1 community.

2

3 Q. In terms of the appointment of the former general
4 manager of Wyong to the council, do you think that might
5 have contributed to the north and south mentality?

6 A. Look, the north and south mentality is something
7 interesting. It was present at all councils. When I went
8 to - obviously the Northern Beaches, where I think
9 Mr Persson mentioned I was the CEO of Warringah, and just
10 out of interest I will slightly correct Mr Persson on one
11 thing, Pittwater Council, for example, in terms of their
12 assets and their asset register, somehow left out all of
13 their wharfs and water-based infrastructure out of their
14 asset register. So there was \$30 million-odd of assets in
15 there which were never in their calculated figures for the
16 Fit for the Future. There were examples like that that
17 occurred even in what was relatively a well-run area,
18 regardless of that particular fact.

19

20 Sorry, I've just to come back to your question, I'm
21 running away there a bit - can I ask you to repeat that,
22 please?

23

24 Q. The question was whether - now I have forgotten.
25 Whether you think the installation of the former general
26 manager of Wyong contributed to that ethos within the
27 council?

28 A. Look, I think the position of Wyong definitely
29 contributed, because they should, as they were talking
30 about, have put a rate increase back in 2012, and that
31 never occurred. So you can imagine by the time you get
32 through to 2021, you've actually had the residents there
33 having the benefit, if you like, of paying below rates that
34 they should have. So my gut feel, without having gone back
35 through all the previous accounts, was that they were
36 consuming cash to spend to keep some of their assets and
37 everything up to speed, and probably why they ended up with
38 zero as per their public accounts at the date of merger.
39 So I suspect that was, you know, a major problem for them.

40

41 Q. Was that Gosford or Wyong you are talking about with
42 the zero?

43 A. That was Gosford. Wyong had about just under
44 \$6 million, so they weren't much better, to be perfectly
45 honest. It's nowhere near enough working capital to
46 maintain or look after a business. Again, it's one of the
47 problems that exists in all local government and the way

1 that they are operated. The unrestricted cash basically is
2 equivalent to what you and I and the private sector would
3 call working capital. That is the money that is there if
4 you get COVID, if you get, you know, a Wamberal Beach
5 erosion problem or if you are starting to want to fund
6 deficits. That's where you draw your cash from, from your
7 working capital. So you must know that at all times.

8
9 Unfortunately, in local government, there isn't that
10 concept. People don't think of it like that. All they
11 know is there is a bunch of funds there, one of them is
12 unrestricted, which is the equivalent of.

13
14 So organisations like both Wyong and Gosford weren't
15 looking at that and they had to, by definition, in their
16 first two months, given that rates don't start to come in
17 for up to two months after the commencement of a year - so
18 by the time they are paying weekly salaries, monthly
19 creditor run, you had to be drawing the cash from
20 somewhere.

21
22 Because councils are only audited at year end, by that
23 time, of course, the cash flow has restored itself and they
24 look a lot better at year end. As I said, I do believe the
25 government is going to have to look very seriously if they
26 are going to continue with the concept of restricted and
27 unrestricted. I think they have to look at that as
28 something that they do audit and do monitor on a constant
29 basis in the future.

30
31 Q. You referred earlier to the change in accounting
32 policy. You say in your statement that that led to the use
33 of externally restricted funds. But I heard yesterday from
34 Mr Naven, who was the chief financial officer at the
35 beginning of the council term, that in fact the staff
36 didn't operate like that: although that was an accounting
37 policy and that was reflected in the consolidated accounts,
38 there were still restrictions or controls within the
39 spending within the council to prevent restricted funds
40 being accessed.

41 A. That's absolutely correct. I think Mr Gordon
42 yesterday described it as something where you sometimes
43 don't - the final annual accounts may look a little
44 different from how you manage them internally. I think he
45 said something along those lines.

46
47 This would be a classic case of it. As far as I can

1 determine, no-one utilised the fact that there may have
2 been more unrestricted cash that was available. So you are
3 quite right, the organisation continued to run and report
4 internally, in quarterly reports and so on, as if the money
5 was restricted, and the water and sewer dollars were
6 restricted. So it only appeared, you know, once a year,
7 which was in those annual accounts, and nobody - but
8 nobody - took any notice of it or even understood it.

9
10 There is only one group that may have, and I only just
11 use the "may have", and that is the PwC report that's been
12 referred to numerous times. I haven't been able to
13 ascertain precisely, but it's possible, because the report
14 seems to focus on year-end results and extrapolating from
15 that, they may have utilised, being the only time that the
16 cash reserves - sorry, those voluntary policy extra cash
17 was actually utilised. So that may have been why they
18 didn't come up with, you know, that there was an immediate
19 crisis approaching.

20
21 Q. Which was the PwC report?

22 A. The PwC was the report that Mr Murphy, I think,
23 commissioned - I'm not sure of the year, probably '18. If
24 I can just refer to it.

25
26 Q. Earlier in the piece?

27 A. July 2019, yes.

28
29 Q. Okay. So not when the true state of financial affairs
30 was revealed, the year before that?

31 A. Yes. I think so.

32
33 Q. They did have a monthly investment report that
34 reported the cash position, the unrestricted cash position.
35 Were you aware of what controls there were to ensure that
36 restricted funds weren't used?

37 A. Not previously. Not at that point in time. Certainly
38 from when I arrived and from when Ms Cowley arrived, there
39 was no question, we were keeping very strong track of it.
40 I would reiterate a point that she made, I think, the other
41 day, that we didn't change anything, we didn't change any
42 systems. We didn't spend any more money or anything, we
43 just utilised the information in a slightly different way.
44 I can certainly talk more about how I think people utilised
45 or didn't utilise information that was available. I find
46 it, I guess, quite extraordinary, I have to say, when
47 I listened to this morning's conversations with Craig, that

1 he was unaware, and you had a CEO who was unaware,
2 allegedly, and you've got an organisation turning over
3 three quarters of a billion dollars nearly - they are not
4 aware of what their working capital position is? I just
5 found that absolutely extraordinary, I have to say.
6

7 Q. Do you have any explanation for how that arose?

8 A. The only explanation I have got is I don't - I think
9 probably - Mr Norman actually probably alluded to it: he
10 came from the private sector, and bear in mind I came from
11 the private sector as well. Now, I was fortunate, before
12 I arrived at Warringah - just talking about local
13 government - I was fortunate to be CEO in New Zealand.
14 Now, New Zealand is run differently. It is run much more
15 like a corporate. So the idea of how you run it, there is
16 no or limited interference from the national government
17 over there, compared to the state here. There is no rate
18 capping, you have to do everything on your own. There are
19 no grant programs and all the rest. So you are having a
20 true and honest conversation with the community about their
21 services.
22

23 That, I think, lesson from there, when I came over
24 here, made it much easier for me to adapt at Warringah.
25 Now, I did bring in a CFO there, who I think came from
26 Deloitte, but we also did have some support people below
27 him, when he came in, who were also very good.
28

29 Between him and myself and a couple of the other
30 people in the finance area, we clearly turned all the
31 financials around. We reduced all the asset backlog, we
32 did achieve pretty much a zero backlog, and we were
33 producing surpluses, by the time of merger, approximately
34 14 to 15 million dollars per annum. This for an
35 organisation that's probably half the size of the current
36 Central Coast Council. So it's entirely possible.
37

38 When I went to the Inner West I again employed the CFO
39 from American Express Asia Pacific. Now, it took him a
40 little bit of time to get up to speed, but he did have the
41 luxury of having one of the previous CFOs there acting as
42 what we called a unit manager or a level 3 person in the
43 organisation. So he got up to speed. It doesn't take much
44 to get up to speed; you've just got to understand the
45 vagaries of what goes on.
46

47 There's another thing that gets people concerned from

1 the private sector, it's because they tend to see
2 depreciation as a non-cash item. In all my days running
3 businesses and looking at things, yes, depreciation is a
4 non-cash item, you don't particularly worry about it.

5
6 In government, it is not. When I say "in government",
7 it applies only to Local Government. So State Government
8 and Federal Government, you will note their accounts do not
9 have the depreciation line in there. So there is no
10 emphasis placed on them when it comes to looking at
11 maintaining assets. That's why you get your boom-bust
12 cycles of different political parties: one spends it on
13 assets, the other doesn't, and they have to go through the
14 cycle of rebuilding again. But you don't see that from a
15 financial point of view because depreciation is never
16 accounted for.

17
18 With us, the arguments I had with both Mike Baird as
19 Premier of the State and Tony Abbott as the Prime Minister
20 over Brookvale Oval - because they both wanted to
21 contribute \$10 million to a new grandstand at Brookvale
22 Oval and I said no. I was roundly abused in a couple of
23 meetings by the premier at the time, Mike Baird, who was
24 also our local member, of course, because he said, "It's a
25 non-cash item." I just kept saying, "Who's going to pay
26 for the roof when it falls in?"

27
28 Q. That's one of the issues for Central Coast, too. They
29 were offered loans, or grants, I should say, for a number
30 of facilities, but they would have had the upkeep and the
31 ongoing cost?

32 A. That's absolutely right. It's another major problem.
33 Unfortunately, it's an evolving problem, and that is, I
34 guess, the new means by political parties, both at a state
35 and federal level, to give grants. Those grants, even if
36 it is a fully funded grant, as you quite correctly say, the
37 next year we have to provide for the depreciation of that
38 asset; we have to provide for any upgrades associated with
39 it. That was another thing that was kind of very wrong,
40 I think, in the two previous councils. They used what's
41 been referred to as "work in progress". Now, if you're
42 going to run something pretty hard-nosed, what you do is
43 you make your project managers, at the end of the year,
44 properly account for what they have spent against the
45 project, and you add what they plan to spend next year into
46 the capital program, so you don't get suddenly, as I think
47 occurred here, you set a capital program and then all this

1 "work in progress" from the previous year switches over and
2 all those invoices come through as well. So you have to
3 run that discipline and it is absolutely quite possible to
4 do and that's what we have now in situ with the council.
5 We have put those processes in place.

6
7 Q. In terms of the councillors understanding what they
8 were taking over, do you think the consolidated accounts
9 tricked them?

10 A. No, I would have some sympathy with the councillors.
11 I don't think they had any idea, and I would include in
12 that those who purported to say things were being
13 over-spent and everything else. They may have known, but
14 they certainly couldn't articulate the reasonings, and
15 I think it was more about political point-scoring, but
16 I think Mr Persson has covered off a lot of my similar
17 thoughts in that area.

18
19 Q. Yes. For the future, are you satisfied that the
20 council can now control the use of restricted funds?

21 A. Absolutely. It's a different organisation now. As
22 I said, we have been able to change it, effectively
23 Natalia Cowley and myself. Mr Farmer has come in and he's
24 an extraordinarily good operator. I have known him
25 actually, as it turns out, for quite a number of years. He
26 is, one, financially trained by profession; and, two, he of
27 course comes with a very strong and good reputation.

28
29 So I'm very confident that things will continue. But
30 right now, we were able to downsize, we knew what we had to
31 get to. We were able to convince the staff, the unions,
32 that all of this was the right approach, we had to do it.
33 We did that inside six months, which is pretty rapid for a
34 massive downturn, taking sort of 50 to 70 million dollars
35 out of an entity, with agreement. Now we are running
36 monthly accounts and we have reduced the number of managers
37 down at both levels 2 and 3, which is directors and unit
38 managers, by over 40 per cent, and we have put in place
39 where each unit manager has a proper P&L, so we allocate
40 the rates revenue to them, or the water and sewer revenue
41 to them, we put their costs in there, their share of
42 overheads, so that when you add all of those together and
43 that's your total. Each directorate has responsibility for
44 a number of those unit managers, and they will all add up
45 together make a whole. That way you have accountability
46 driven into the organisation.

47

1 By reporting monthly to the council and online, the
2 community can now keep track of it. We also obviously put
3 in cash flow because, again, cash flow analysis or cash
4 flow monitoring has never been a strong point in local
5 government, right across the patch. So those are things
6 that I think there has been too little emphasis placed on
7 by the Office of Local Government and the State Government
8 during the evolvement of local government here in New South
9 Wales. They need to at some stage - you either free them
10 up or you manage them, but leaving them in this half-way
11 position doesn't work for anybody.

12
13 As I said, New South Wales operates a different system
14 of government to just about any other third world country -
15 first world country.

16
17 Q. First world, yes.

18 A. They are definitely better than third world countries.

19
20 Q. Your submission raised some questions to ask about the
21 ARIC. Have you heard the evidence from the members?

22 A. Yes, I have indeed, and I will confess I know
23 John Gordon extremely well. I have brought him on to two
24 committees that I have been involved with. One was at
25 Warringah, I had him there. I then brought him in to the
26 Inner West as chair of the committee there. So I have a
27 very high respect for him. Carl, I have no doubt, in my
28 short time that I have seen him, again, I would put him up
29 in a similar category. Two highly experienced people.

30
31 Now, the interesting thing is, things are changing.
32 At Warringah, John Gordon spent a lot of time on the
33 financials and pretty much predominantly financials.
34 That's what we were looking at, myself and the CFO, and
35 I only had two exec members, so a very small management
36 team and 17 direct reports to them. So we were a very lean
37 team, but with full accountability.

38
39 So I think John referred a couple of times about
40 certain things - he referred to jam jars, that's one of my
41 sayings. You cut out jam jars, because that's again one of
42 the causes of people not knowing what's going on, because
43 there are so many jam jars everywhere.

44
45 So I've heard what he's had to say. I think there
46 needs to be focus on the compliance side of the financials
47 that are going to the external auditor. So when they look

1 through those, my expectation is that they would look
2 through them. They are not auditors in that role, and
3 I think that's got to be very clearly stated. They are not
4 testing it; they are not looking at it and reviewing, you
5 know, 20 journal samples, or something along those lines.
6 They are looking at, overall, does it look and feel right
7 and are we meeting the legislative compliance things.

8
9 I suppose it's a little bit of a moot point, but is it
10 a compliance issue about whether you've got sufficient
11 working capital to run your business? So I guess that's
12 the point where I might have a point of difference with
13 what they said, but I understand exactly what they did say,
14 and I agree with Mr Gordon when he said, "I don't believe
15 I should look at the quarterly reports and the monthly
16 reports from a management point of view, because they are
17 not signing off that these are correct. It's important to
18 show them, I think, as part of the fact that we are
19 complying and that we know what we are talking about. So
20 I absolutely agree, and, as I said, I have always enjoyed
21 that relationship with John, free and frank discussions,
22 and so on. And I probably slightly disagree with some of
23 his comments about councillors being present or not.

24
25 Q. Okay. Did you have any role in the change in the
26 charter to ARIC?

27 A. Yes. The administrator and I talked about that and we
28 felt we needed more of a financial input from them.
29 I think, going forward, that is going to be important, that
30 there is a third party there, certainly to try and give
31 some confidence back to a newly elected body and also the
32 community, that there is another set of eyes having a look
33 at things. So, yes, that is why we looked at just
34 increasing that exposure to the financial look.

35
36 Q. As the current administrator, do you have a view on
37 how much longer the council should remain under
38 administration?

39 A. Yes, I do. My view - and I have already mentioned it
40 to the minister - is that there should be an election held
41 in September next year, which I think Mr Persson agrees
42 with, although he might like it to be a little bit longer.
43 My view is that with an election in September next year,
44 that would be two years prior to the next round of local
45 government elections. The minister is unable to put a
46 financial controller in at that point in in time, but
47 I think I would be reasonably assured that they would keep

1 a very close eye on it and at the very first hint of
2 something, they are able to appoint a financial controller.

3
4 I can't imagine, once the outcome of your review comes
5 out and the fact that the community may have to pay a
6 little bit more in terms of water and sewer charges - and
7 hopefully we'll be successful with our IPART application to
8 maintain the current ratings structure - that the community
9 will be, by being able to see the monthly reports, able to
10 keep a much closer track on what's going on. There
11 certainly are some keyboard warriors out there who have
12 views on what the council is actually doing, and I would
13 expect them to be noisy.

14
15 So I think there will be more oversight. One will be
16 electronically through that mechanism, through the
17 community; secondly, I think OLG will be taking a little
18 bit stronger interest in how things are performing, but
19 also, I would have to say, the number one thing is with a
20 great CEO and a very strong CFO, I think nothing's going to
21 go past them.

22
23 Q. That assumes that those people will remain in their
24 roles. That hasn't been the case, sadly, at Central Coast
25 Council.

26 A. No.

27
28 Q. Does it solely depend on those people?

29 A. It doesn't solely depend on, and that's why I think
30 I believe ARIC should have a slightly greater role. It's
31 also why I think the monthly reporting is just so
32 absolutely important to be continued.

33
34 We will be having another look at the code of meeting
35 practice, because we have already limited the number of
36 notices of motions, and so on. We certainly did that at
37 Warringah - after Dick had gone and I had an elected body
38 back we had to reduce the number of notices of motions that
39 an individual could put up; we reduced the number of
40 questions with notice that could be put up, so we reduced
41 the time spent on those things.

42
43 Also, we had the ability - not that it was used that
44 often - because we had such good control of our financials,
45 in the council meeting we were able to bring up the P&L and
46 show the impact in live time to councillors of what would
47 happen if they proceeded with a certain discussion.

1
2 The other thing is we made very, very clear - and I
3 had to do this at Inner West and Parramatta - nothing goes
4 through without something being taken out or a source of
5 funding.
6

7 I just want to say that a lot of people know - and
8 again it's appeared that one of the things that I got
9 criticised a little bit for was removing the grants
10 officer. The problem is, the more grants we get - the
11 problem we discussed earlier - the bigger the problem
12 becomes. There is no free lunch. I think the community
13 don't understand that, and state and federal members don't
14 understand that, because they are not accounting for
15 depreciation in their own accounts, even if they did
16 understand them.
17

18 Q. You took the role away, but that doesn't mean the
19 council doesn't apply for grants anymore.

20 A. Absolutely, absolutely correct. The accountability
21 has to go to - I will just use one example. A person looks
22 after roads, traffic and waste. Now, that director knows
23 that game backwards. He or she should know where and what
24 grants are available. He or she should know how they can
25 utilise that money - potentially section 11 or 12 moneys -
26 to fund their business. So capital is something that
27 obviously got away from the council, and a lot of that I
28 know Mr Murphy partially explained with the work in
29 progress thing, which I would agree, there is an element of
30 it, but that shouldn't occur. But that shouldn't occur.
31 There shouldn't be a massive transfer from one year into
32 the next year of costs that just land on you because people
33 haven't processed the invoices, they haven't been approved,
34 they haven't been accounted for.
35

36 It just talks about having proper financial
37 discipline, literally as per the private sector. I'm doing
38 nothing different to what I did in the private sector.
39

40 Q. You don't have any new systems to give you the
41 information that you are relying on?

42 A. There's not one new system. What we did do is, at the
43 beginning I obviously reduced the number of the executives
44 down. I had to keep, I think as Mr Persson explained,
45 three of them, I think, at the end of the day, because
46 I was also reducing by 40-odd per cent the number of unit
47 managers. So it's very difficult to have all your level 3s

1 and 2s up in the air, with me there trying to reduce the
2 costs by up to \$70 million. So I had to keep them on board
3 to look at that.

4
5 What we've done is we've allocated those out. Each of
6 those unit managers is now responsible for their unit, they
7 are responsible for the income and the expenditure, and
8 they have to live within the bottom line. The new CEO has
9 made it real clear to them that they must, on a monthly
10 basis, be acquitting their capital expenditure so that at
11 all times we know where we are going to be.

12
13 The emphasis that has had to come in, and I insisted
14 upon, is that they have to be able to forecast where they
15 are going to end up in the year with their P&L. Things
16 come along, so you can expect, in some of these things,
17 that there will be a bit of over-expenditure because of
18 weather, or there may be less revenue because of COVID.
19 But you must forecast it, because you're the only person,
20 as the unit manager, that knows your business area. So you
21 forecast, this is where I'm going to end up at the end of
22 the year, my best guess, and at the three-quarter mark,
23 third-quarter review, my performance management structure
24 for these people, they must be within plus or minus
25 5 per cent of that number.

26
27 Q. Have the performance review criteria for the general
28 manager been changed?

29 A. Yes, they have. We have a full-blown performance
30 agreement in place and he is in the process, which I
31 absolutely agree with - you just break that down almost
32 exactly to each of the directors, because, if you like, all
33 the CEO is doing is managing the whole. Each director is
34 managing in its entirety a component of that.

35
36 I will give you one example that I found when
37 I arrived there which probably helped me form some of the
38 opinions that I have of what went wrong.

39
40 At a meeting of the executive, when I was telling them
41 this is how it was going to be, pretty early on in the
42 piece, I said, "We'll be allocating out overheads". There
43 was a response from one of the members of the executive,
44 "No, we don't take that because we don't manage overheads."
45 I had to respond with, "How the eff do you think - or who
46 does that around here, if you don't?" I said, "You
47 determine what IT programs you need, what spending should

1 be there to give you the information you need. You
2 determine whether you need financial assistance with
3 business partners. You determine whether you need HR
4 support from HR partners." I said, "You are the ones who
5 determine that level of expenditure." I said, "Don't tell
6 me that it's my problem; you guys work out what you want."
7 So we got all of those things sort of going down.
8 I have to say, now, most of that is embedded and, as
9 I said, Mr Farmer is really continuing that at a pace.

10
11 Q. You had a meeting with some state MPs and federal MPs
12 and you ran through the financial performance package that
13 you put together for them. Did they seem to understand the
14 history and where you are going?

15 A. I'm pleased you've asked that question. Yes. I will
16 generalise across both of those two political spectrums.
17 They are not sympathetic. If I talk about the Liberal side
18 of politics, they believe there should be no more rate
19 increases, there should be none of these things. So
20 clearly don't understand that the costs have gone up,
21 revenue has come down and that we must trade to make a
22 surplus because we must repay the millions of dollars worth
23 of debt that was incurred to set the entity up.

24
25 On the other side of politics, their view is, "We
26 can't support you in going to IPART because in our
27 political Labor Party state policy, we also respect IPART's
28 decisions." So they respect IPART's decision that we would
29 only have the rate increase for three years, not the
30 10 years, which was the condition on which the banks lent
31 to us. Which was pointed out to IPART.

32
33 I have to say from an IPART point of view - and
34 I can't afford to get offside with them because I have to
35 ask for things - I will say taking \$39 million off the
36 council didn't hurt, in a sense, anybody in the council,
37 but it certainly hurt the community, because it meant that
38 approximately \$120 million worth of work wasn't done over
39 the previous three years.

40
41 They took, apparently, no notice of the fact that we'd
42 had to go through effectively a commercial restructure that
43 required bank assistance, which came with some terms and
44 conditions, so they made no allowance for fact that we had
45 to repay that debt in a 10-year period, which meant
46 developing surpluses over that period of time, which said
47 we had to have an SRV of 13 per cent, plus the rate cap of

1 2 per cent, totalling 15 per cent - we had to have that for
2 10 years in order for our business plan to work. So all we
3 do is we go back and we ask for it again, but, as I said,
4 I'm not getting support from the two political parties to
5 do that.

6
7 Q. What's the future for Central Coast Council if you're
8 not allowed to increase the rates, to have a further SRV?

9 A. That's why we are going earlier rather than later,
10 because I need to establish a trading position, because if
11 I - well, I do have to refinance in approximately just over
12 two and a half year's time, \$95 million-odd. So no-one's
13 going to lend me \$95 million if I can't demonstrate that
14 I'm trading profitably and have the ability to repay.
15 Therefore, if there is a refusal by IPART next year to
16 grant us the continuation of the current rate structure,
17 I will immediately ask the staff to put in place a further
18 reduction of staff numbers and costs, to the tune of about
19 \$26 million, because if I don't get the P&L working
20 properly in get us those surpluses, then I will not be able
21 to get the refinance.

22
23 So that will be our case going to the community.
24 There is a choice for the community. The choice will be
25 continue as we are with the current level of service, which
26 isn't as good as it used to be, but it's better than
27 nothing, or we will be putting a budget forward, a 10-year
28 plan forward, which removes \$26 million from our revenue
29 and cost structure will be - we will tell the community
30 what that's going to involve in our consultation process
31 prior to Christmas.

32
33 Q. Just a couple of things: IPART didn't rule out making
34 any further application. It can't.

35 A. Not at all, not at all. That's why we're going.

36
37 Q. The other thing is when IPART did take the money from
38 the council, you said the community was the loser, but the
39 people who would have paid those rates were the winners,
40 weren't they?

41 A. They were indeed, yes. So there has been - and that's
42 obviously been conveniently forgotten - it went down by
43 \$39 million, so the happy customers on the Central Coast
44 were paying that percentage less for the last three years.

45
46 Our proposal, even if we got the maximum we'd
47 requested, really only takes it back up to where we were

1 back in 2018. When you combine that rate at its full
2 maximum that we require, and the current SRV that's in situ
3 now, our combined rates for water, sewer and general rates
4 and waste, is less than our neighbours.

5
6 Q. Still?

7 A. Still, even if we get the maximum, yes.

8
9 Q. Thank you very much, Mr Hart. Is there anything more
10 you wanted to add that might be of relevance to the terms
11 of reference?

12 A. There were just a few things that I might just very
13 quickly mention. The issue of the water and sewer - we do
14 have some problems that are appearing, which we will be
15 trying to do something about, but already the
16 auditor-general raised the issue of under the Water
17 Management Act you may be able to account for it one way;
18 under the Local Government Act you have to account for it
19 another way.

20
21 I have to say that the Clayton Utz advice was
22 unequivocal about the way we should do it, which is the
23 advice that both Ms Cowley and I followed, and also, after
24 that, cited the Crown's advice, they still agreed with
25 their same view.

26
27 In there, there is one question I think that needs to
28 be sorted out. When you have like a tier 1 firm
29 disagreeing strongly with the auditor-general, with just a
30 "maybe", why do they have the right to just have their view
31 going forward, without some reference to a third party or
32 some other umpire, if you like, that might come down with a
33 ruling, because neither the auditor-general nor myself -
34 the only way to test it obviously is to go to court and
35 that's really a complete waste of time, and also more of
36 time and money, over something that was not of any
37 consequence, really, in the way things had been run. So
38 that's one thing that I think needs to be looked at.

39
40 I think the other issues there, if you take
41 depreciation under water and sewer, for example, under
42 IPART's rulings, if you get a grant - so if you got
43 \$80 million towards the Mardi pipeline, for example, IPART
44 don't allow you, in your cost recovery, to charge
45 depreciation on that. Precisely. Because it's a gift. So
46 the rules under IPART, if you get it as a gift or a grant,
47 you can't charge depreciation on it.

1
2 Then you switch to the Local Government Act that says
3 all assets have to be accounted for. So you can
4 automatically see there is a bit of an issue there.
5

6 The other thing is in your debt/equity ratio. IPART -
7 and I would agree with them - tend to favour loading up
8 with debt to provide intergenerational equity for long-term
9 and long-held assets. Local government tends to penalise
10 people. You know, you shouldn't have too much debt.
11 There's obviously a balance in between, but the two Acts
12 are different. So there's not just a simple question of
13 making a determination by the government over should
14 unrestricted cash be allowed to include water and sewer or
15 not. There are these other issues that make it very
16 difficult because we are that unique beast under the Water
17 Management Act.
18

19 So that's not specifically in your remit and we are
20 investigating, as an organisation, what the best model
21 might be to move forward, and we will be putting that
22 proposal to the State Government. That's just something
23 that's going to have to take place in hopefully the near
24 future and hopefully will be resolved before councillors
25 come back.
26

27 I think other the other thing I do want to touch on,
28 because it's been raised in a couple of the submissions,
29 and so on, is could the council have got their own way out
30 of it. I have been through a receivership - not anything
31 of the magnitude of this one, but, nonetheless, at the time
32 it was a pretty daunting experience, as the CEO, suddenly
33 finding out that your CFO had been keeping the place
34 running by just journalling the money around. So as fast
35 as the auditors were looking at things, he was journalling
36 it ahead of them overnight, but of course it's the old
37 story, ran out of cash. So I'm probably a bit
38 over-zealous, I'm thinking about cash because of that
39 experience, because it has become very clear in this
40 particular thing that cash and the management of it is
41 paramount.
42

43 Now, in terms of the people who come in to local
44 government - and we have talked about this already, one of
45 the CFOs having some difficulty in adapting - there is no
46 question, it's difficult to come in and adapt straightaway
47 without coming in at a lower level and learning some of the

1 ropes before you move up into it. But New South Wales is
2 more inbred than any other state. People have just come
3 through local government systems.

4
5 Gary - I know Gary, he's a great guy, you know, I like
6 him dearly, but in my opinion, he was - and I have had a
7 couple of conversations with him, and I pointed out, I just
8 asked, you know, "How did you think you were paying for all
9 these things? Where did you think the money was coming
10 from?" As he said, he was relying on accountants and so on
11 to give him that advice. But, to me, any CEO who doesn't
12 understand where the money comes from, when you look at
13 these restricted reserves and, you know, the conversations
14 that Ms Bulut had with Mr Persson - to think that they were
15 contemplating at one stage, and it's in those emails, the
16 council was seeking at one point to borrow \$30 million to
17 help solve the problem - now, I just don't understand, if
18 you've got to borrow money, you must have looked at all of
19 the options internally of where the money might be.

20
21 So I fail to see how they couldn't have been looking
22 at restricted/unrestricted reserves, just their cash that
23 was in the bank, what could they use of that. So to say
24 they had to borrow, almost by definition, says that they
25 didn't have money that they felt they could use sitting in
26 the bank. It's things like that that I really find
27 astronomical.

28
29 One of the things I think the government has to take
30 responsibility for, they have taken away the requirement
31 for councils to actually publish the unrestricted cash
32 position, which further weakens the ability for anybody to
33 keep track of what's going on. As I said, I think they
34 have to change the language, to think about it as working
35 capital: this is the money that is there for the rainy
36 day.

37
38 I heard one or two of the councillors say, "Our
39 surplus is too skinny" - I think it was the \$64,000 -
40 "because what if something goes wrong?" The conceptual
41 thinking there is just completely wrong.

42
43 Certainly, we have - I won't say "trained", that's
44 probably an overstatement, but I have tried to educate all
45 the councillors I have been with, along with the CFO, just
46 how all that works, and I have to say I have been
47 relatively successful and they have understood it and they

1 have respected it, even the most difficult of councils, of
2 which I would actually say the Inner West was not far away
3 in terms of the political way it's set up. But,
4 nonetheless they did respect the financial things and did
5 respect what had to be done.
6

7 Look, I guess those are the key things that I would
8 suggest, other than the last one, that IPART, I think OLG,
9 DPIE and the auditor-general - they have to start working
10 together. They keep treating us as if it's a singular
11 problem over here, then a singular problem over there, when
12 in actual fact the problem is one big one and it requires
13 all of these bits to come together to solve it. So, as I
14 have mentioned, IPART are the regulators for both sides of
15 their income, water, sewer and drainage and on the general
16 rate. They are regulators both ways there. OLG sets a set
17 of metrics that have to be there. DPIE, in terms of
18 lending money, is not a bank, they don't lend money; they
19 will help fund infrastructure, but they in no way will
20 contemplate lending to an organisation gone broke, that
21 needs to restructure.
22

23 So I actually don't disagree with the government's
24 position that we had to go through the commercial route,
25 because if we hadn't gone through that I don't think the
26 lessons would have been learnt and firmly implanted. I can
27 tell you, right down to the people on the shop floor of the
28 depots and so on, they understand what went wrong with the
29 organisation now, and they will be looking to make sure
30 that some of those metrics are being met and looked forward
31 to in the future.
32

33 I will just finish on that, because I think you have
34 other people to talk to. Thank you for the opportunity.
35

36 THE COMMISSIONER: Thank you, Mr Hart. If you could just
37 stay there, and I will check whether there are any
38 questions for you. Ms Annis-Brown?
39

40 MS ANNIS-BROWN: Just one question, Mr Hart.
41

42 <EXAMINATION BY MS ANNIS-BROWN:
43

44 MS ANNIS-BROWN: Q. You mentioned earlier about making
45 changes to various policies, you specifically referred to
46 new code of meeting practice. There is a risk, though that
47 when councillors return, these changes perhaps can be

1 undone?
2 A. Absolutely there is a risk. My view would be that
3 should they attempt to do something like that, the
4 administrator actually appoints a financial controller, so
5 there is a financial controller present for the remainder
6 of that term.
7
8 MS ANNIS-BROWN: Okay, thank you. Thank you,
9 Commissioner.
10
11 THE COMMISSIONER: Thank you. Mr Simone, did you have any
12 application in relation to Mr Hart?
13
14 MR SIMONE: Thank you, Commissioner. No application.
15
16 THE COMMISSIONER: Thank you.
17
18 Thank you very much, Mr Hart, for your submission and
19 your oral evidence. I will just get my timetable.
20
21 THE WITNESS: Thank you for the opportunity. I will
22 depart the screen now.
23
24 <THE WITNESS WITHDREW
25
26 THE COMMISSIONER: We will resume at 3.30 with
27 Mr Glendenning. I will adjourn until 3.30. Thank you.
28
29 SHORT ADJOURNMENT
30
31 THE COMMISSIONER: Good afternoon. The public hearing into
32 Central Coast Council will now resume.
33
34 Mr Glendenning, I see that you are there. Would you
35 come on camera and off mute, please.
36
37 MR GLENDENNING: Good afternoon, Commissioner.
38
39 THE COMMISSIONER: Thank you. Thank you very much for
40 making your yourself available this afternoon. I know it
41 is difficult, given your position. I will ask
42 Ms Annis-Brown to swear you in as a witness.
43
44 <BRIAN GLENDENNING, affirmed: [3.30pm]
45
46 <EXAMINATION BY ask THE COMMISSIONER:
47

1 THE COMMISSIONER: Q. Can you describe for me your
2 professional background and qualifications?

3 A. I have bachelor and masters degrees in law, I was
4 admitted as a solicitor on 16 December 1992. I have worked
5 in law continuously as a solicitor since early January
6 1993. I have worked in private practice from 1993 to 2010.
7 I worked in government practice for the following eight and
8 a half years and then I worked in private practice before
9 joining the then Federal Circuit Court and Family Court of
10 Australia, roughly a year ago.

11
12 Q. Okay. And your government practice, what did that
13 involve?

14 A. The first eight years were as general counsel at Wyong
15 Shire Council until it was dissolved as part of the
16 amalgamation that you are well aware of, Commissioner. On
17 12 May 2016, and from 12 May 2016 until 3 October, I worked
18 for Central Coast Council in a variety of roles, including
19 as general counsel.

20
21 I started with the New South Wales Resources Regulator
22 as the director of major investigations and I worked there
23 from I think 3 or 4 October 2018 until 30 June 2019.

24
25 Q. In your role at the Central Coast Council, you were
26 also an acting general manager at one point?

27 A. I was an acting general manager and then I was a
28 general manager at a different point.

29
30 Q. You were appointed on a one-year term, were you?

31 A. No, no, I did a couple of holiday reliefs, I will call
32 them that, for Rob Noble when he was the general manager,
33 when he went overseas. There were some smaller, briefer
34 periods. Then from I think 26 January 2018 until I think
35 3 July 2018 I was the general manager, given the title
36 acting CEO by the local council at the time.

37
38 Q. Because of Mr Bell's departure?

39 A. Correct.

40
41 Q. Did you have to go to council meetings?

42 A. Yes, many, many, many council meetings, Commissioner.

43
44 Q. What was your observation of the Central Coast Council
45 meetings?

46 A. Of the elected council or under administration?

47

1 Q. Elected.
2 A. It was always a very busy and dynamic environment,
3 Madam Commissioner. We had meetings generally each
4 fortnight. Again, they are all records that you have
5 available and they were all live streamed. Some of them
6 went for several hours, some of them much longer. Some
7 finished at 1 o'clock in the morning, having started at
8 6pm. They were certainly robust and vigorous at times.
9
10 Q. You had had the opportunity to see council meetings
11 when you worked for Wyong council?
12 A. I attended all but I think two meetings in the time
13 that I worked for Wyong and the Central Coast Councils.
14 Part of my role, whether it was in the brief periods I was
15 general manager or the periods when I had another role,
16 which was general counsel. I attended all of the meetings.
17 I was expected to be there, so I did. Sorry, what was your
18 question again?
19
20 Q. I just wanted to know whether you'd had that
21 experience?
22 A. Absolutely.
23
24 Q. Comparing the two councils, was there a significant
25 difference, in terms of behaviour, I'm talking about?
26 A. In both councils there were times when councillors
27 demonstrated good, constructive behaviours, and there were
28 times when it was not like that. Both councils had their
29 periods where there was robust and vigorous, and sometimes
30 divisive, conduct. I would add to that that prior to
31 starting at Wyong council I'd acted for seven other
32 councils and also had experience of observing those
33 councils, and some of those had excellent behaviours and
34 some of those had some of the less positive. For the most
35 part, most of the councillors were fairly - you know, it's
36 a political arena and the setting is particularly harsh.
37
38 Q. Harsh, was that?
39 A. Yes.
40
41 Q. Did you have anything to do with the selection process
42 for the general manager?
43 A. I was part of that process.
44
45 Q. You were an applicant, were you?
46 A. Yes. I applied for the role of permanent general
47 manager on the closing date, which would be the same date

1 that we had a councillor workshop over that weekend.
2 I participated in an interview with the recruitment firm.
3 Rachel Patterson I think was the head recruiter. Then
4 I participated in an interview with a panel of four of the
5 councillors in Ms Patterson's office in Sydney, and I was
6 notified that I was unsuccessful after the councillors
7 interviewed the successful candidate, Mr Murphy.

8
9 Q. Did that prompt your departure from the council?

10 A. Not directly. It wasn't a case of I'm taking my toys
11 and I'm going to throw them out of the cot and I'm going to
12 walk away. There were a number of reasons why I departed.
13 One was I looked for career opportunities outside of the
14 council, because I considered that at that council there
15 was no career opportunities there for me and I thought
16 I needed to reinvigorate my career and go and do something
17 different, and prosecuting mining companies was certainly
18 different to local government.

19
20 Q. And you are certainly in a different role now.

21 A. Oh, I would not have thought I would end up here, but
22 I am very grateful, it's a great place to work.

23
24 Q. Have you read the terms of reference that I'm required
25 to report on?

26 A. I read them when I got an email from I think someone
27 from your office, but other than that, no.

28
29 Q. Okay. I don't know that you can help me a great deal
30 on those, just because of the relatively short time that
31 you were there and your limited opportunity to interact
32 with the councillors, but is there anything you want to
33 comment on to the inquiry?

34 A. No. I didn't make a submission because in my current
35 role I didn't think it was appropriate that I make a
36 submission. I also had a view that much of the material
37 that you would be looking at probably pre-dated my
38 employment at council, and I left. So I'm only here
39 because you have compelled me to be here. I'm not saying
40 that at all disrespectfully, but I just didn't think it
41 appropriate for me to make it.

42
43 Q. I understand and I respect that decision too. I don't
44 have any further questions. I will just check with
45 Ms Annis-Brown.

46
47 MS ANNIS-BROWN: No questions, Commissioner, thank you.

1
2 THE COMMISSIONER: Mr Simone, do you have any application?
3
4 MR SIMONE: Thank you, Commissioner, no application.
5
6 THE COMMISSIONER: Thank you.
7
8 Thank you very much, Mr Glendenning. I'm sorry that
9 you might have been inconvenienced but it was useful,
10 anyway, to hear from you to complete the picture.
11
12 THE WITNESS: Best of luck with your inquiry,
13 Commissioner.
14
15 THE COMMISSIONER: Thank you very much.
16
17 We will now adjourn for the day and resume tomorrow at
18 10am, thank you
19
20 MS ANNIS-BROWN: Just a correction there, tomorrow, being
21 Thursday, 14 October, is a non-sitting day for the inquiry.
22 So the inquiry will resume on Friday, 15 October. Thank
23 you
24
25 AT 3.37PM THE INQUIRY WAS ADJOURNED TO
26 FRIDAY, 15 OCTOBER 2021 AT 10AM