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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE REGINALD BLANCH AM QC

PUBLIC HEARING

OPERATION SCANIA

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 26 AUGUST, 2016

AT 10.00AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

ASSISTANT COMMISSIONER: Yes, Mr Mack.

MR MACK: Commissioner, there's a legal representative here for Mr Barillaro I have spoken to. Perhaps if Mr Crawford-Fish - - -

ASSISTANT COMMISSIONER: Mr Crawford-Fish, welcome to the Commission.

10 MR CRAWFORD-FISH: Thank you, Commissioner. I'm seeking leave to appear for Mr Barillaro.

ASSISTANT COMMISSIONER: Thank you. I grant you leave.

MR CRAWFORD-FISH: He is on his way, Commissioner. I expect him to be here any moment. I apologise. We're otherwise ready to proceed with his giving further evidence.

ASSISTANT COMMISSIONER: Thank you.

20 MR MACK: In light of that, I call Mr Luna.

ASSISTANT COMMISSIONER: Thank you.

MR MACK: To continue his evidence. And I should indicate that I will try and get to the end of Mr Luna before calling Mr Barillaro. I won't try and transpose. And, Commissioner, just while Mr Luna's coming to the witness stand, I should indicate that there is a witness list for the balance of the inquiry released publicly yesterday, and that indicated that next Tuesday the Commission would not be sitting. I understand that there may need to be a  
30 correction to that, as it is the Commission's intention to sit at least half of next Tuesday.

ASSISTANT COMMISSIONER: Yes, from 2.00pm.

MR MACK: 2.00pm. Commencing at 2.00pm?

ASSISTANT COMMISSIONER: Yes. Just take a seat there, Mr Luna. You're still on the same oath you took yesterday.

40

**<SERGIO ANTONIO LUNA GALLEGOS, on former oath [10.05am]**

ASSISTANT COMMISSIONER: Thank you. Yes, Mr Mack.

MR MACK: Mr Luna, where we left things yesterday was at this meeting. This is the first meeting at the Blackrose Café in Liverpool.---Yeah.

Do you recall that?---Yes, I do.

I just want to take you to paragraph 72 of your statement and at paragraph 72 you give the date for your second meeting with Mr Cannuli as being 8 April, 2015.---Yes.

You see that. And then at paragraph 76 you also give the date of 8 April, 2015 for the date of the meeting at the Blackrose Café. Do you see that?  
---Yes, I do.

10

Did your second meeting with Mr Cannuli where you had a notebook interview with him and the meeting at the Blackrose Café happen on the same day?---Not from my memory but from my notes it appears so, yeah.

Okay. Can you remember as you sit here now whether or not those two meetings occurred on the same day?---Yeah, I believe so.

Okay. And at paragraph 72 you say that the meeting with Mr Cannuli happened at quarter to 12.00, that's 11.45am on 8 April.---Yes.

20

Did the meeting at the Blackrose Café happen after that time?---Oh, it was, yeah, after that.

You also gave evidence yesterday that in the meeting at the Blackrose Café Mr Izzard's name was mentioned in conversation.---Yes.

Do you recall giving that evidence?---Yes. I just can't remember who brought the name up.

30

Okay. If you could have a look at paragraph 80 of your statement and at the second sentence over the page you say Craig Izzard's name was never mentioned as the person they had paid any moneys to or the person who had made promises to protect them from prosecution or other formal actions, and that's in the context of the Blackrose Café meeting. I'm just trying to - - ----Is that in that context?

Yes, it follows from – so I'll take you back to paragraph 76.---Ah hmm.

40

Which is you requested to meet with Reuben Matthews, Mr Cannuli, Nosir at the Blackrose Café and then 77 upon arrival and then 78 you give an account of what was said following through to 79 and then through to 80 and then at 80 you say Craig Izzard's name was never mentioned as the person they had paid moneys to or the persons who have made promises to protect them from prosecution or other formal actions. Now, out of fairness to you I might take you now to what you said yesterday - - ----Ah hmm.

- - - in the transcript.---Yeah.

And then you can tell the Commission what your evidence is having regard to both those statements. If I take you to transcript 263. It's just coming up now. And if you go to the top of the page at line 1 I asked the question, "What was the nature of the expenses?" And you say, "Now I don't remember who actually brought the name up but they didn't want to speak about this particular person. The name Craig Izzard did come up in the conversation and the five of us were – out of the five of us there, were there I can't remember who actually brought up the name but when the name was brought up Nosir didn't want to speak about it. He tried several times for the conversation not to continue but it got to the point where he said and they were sort of talking to us and then talking amongst themselves at the same time mostly between Nosir and Andy not so much Mr Matthews but they didn't really want to talk about this subject, to drop it and to leave it alone but whatever it cost them it was a lot." Do you accept you said that yesterday?---Yes.

And then I said, "And was that a reference to what Nosir had to pay Mr Izzard, to your understanding?" And then you agreed and said, "I understood it that way, yes."---Yeah.

Understood it was a payment.---Ah hmm.

So do you understand what I'm putting to you, is that there's an inconsistency in the evidence you gave yesterday and the evidence you gave in your statement?---Yeah.

And which statement is it correct? Is the statement - - -?---From reading that now and from reading what my statement says - - -

Yes?--- - - - I believe my statement was referring to the meeting that we had at the café at Carnes Hill, because he spoke about the summons, which is a court attendance notice, from my understanding.

Okay. So - - -?---Which didn't take place at the Blackrose.

So you say you had at the Blackrose - - -?---Ah hmm.

Is it your evidence now that Mr Izzard's name was never mentioned? Or - - -?---At the Blackrose?

Yes.---No, it was.

It was mentioned?---Yeah.

Okay.---Yeah, it was.

And the part of the transcript that I read out from yesterday - - -?---Ah hmm.

- - - was that in relation to the conversation at the Blackrose?---Yes, it was.

I understand.---Yeah.

And then in your statement, at paragraph 8, in the second sentence, “Craig Izzard’s name was never mentioned as the person that had paid any money to or the person who had made promises to protect them from prosecution or other formal actions,” is that a reference to the meeting at the Blackrose Café? Or is that a reference to the meeting at Carnes Hill?---From memory,  
10 I believe that was the reference to the meeting at the Carnes Hill café.

Okay. So - - -?---Because it mostly focused on the court attendance notices.

That doesn't quite follow from your statement, though, does it? Because if you look at paragraph 80, at the first sentence, sorry. I'll take you to the first sentence of paragraph 80. It says, “They all appeared to be quite upset that they had been summoned to court to answer those charges, and that the person who was meant to help them had not done as he promised.”---Yeah.

20 When you say, “They all appeared to be quite upset that they had been summoned to court,” that’s a reference to the meeting at Carnes Hill when you handed them the court attendance notice. Is that correct?---That’s, from my memory, yeah.

All right.---Because I was the one that actually had the three envelopes.

Okay. I understand. Thank you. At paragraph 82 of your statement, you give the date of 5 June as the attendance of Mr Kabite, Mr Matthews and Mr Cannuli at Liverpool Local Court.---Yeah.  
30

Did you attend Liverpool Local Court on that day for the sentence?---Yeah.

And after sentence was handed down - - -?---Ah hmm.

- - - can you recall a lawyer from somewhere in the court?---Yes.

Can you tell the Commission what happened after the sentence was handed down?---Well, we were all in shock. Even our legal representation was quite shocked at the sentence they had just received or had been handed  
40 down to them. Whilst I was talking to Ian Lacy, which happens to be a council lawyer, and the barrister named Charles, we were talking about what had just happened. And Ian informed us, because we all saw what happened, but Ian informed us that the lady that had just approached the other three parties happened to be a lawyer and he’d told them, sorry, he told us that she planned or she instructed them to actually appeal the matter, because it was a harsh sentence. And what he said was she didn't know that she couldn't appeal it, they couldn't appeal it at that court, that it had to be

appealed at the Land and Environment Court. So it was, yeah, it's a long process.

Okay. Did you have any discussions with Mr Matthews following the court proceeding?---Then? No.

Did you have any discussions with Mr Cannuli?---No.

10 Or Mr Kabite?---Because I walked out of the court with the barrister and the lawyer.

Okay. All right. I want to move on to a new topic now. This is in relation to the evidence in your statement regarding 100 Martin Road, Badgerys Creek. And at paragraph 92 of your statement, you say that on 18 May, 2015, Liverpool City Council received a complaint of illegal landfill at 100 Martin Road. Did you receive that complaint personally?---I remember seeing the customer request but I can't remember whether I received it personally or whether it was Frank.

20 Okay. And then at paragraph 93, you say that you and Frank had difficulties contacting or meeting with the land owner, Mr Barillaro.---Yes. Because the property wasn't owned by Mr Barillaro. It was owned by the corporation.

Okay.---So we had to find out who the director was and then had to go through that process.

I understand that. Can the witness be shown volume 7, page 28. Can you recognise that document?---Yeah.

30 And can you recognise your handwriting on that document?---Yeah, I can.

Yes?---Yes.

And that's your handwriting in the comments column on the right-hand side?---Yes, there.

And that records the attempts you made to contact Mr Barillaro, is that correct?---Yes.

40 Okay. Had you met Mr Barillaro before you and Mr Bono went out there on 18 May, 2015?---No.

So all of those comments relate to either calls or all of those comments relate to phone calls, is that correct?---Yes. And also personal visits, because I remember knocking on the door at 110 Martin Road.

Yes.---I got to speak to, I believe, his mother.

Ah hmm.---And I got to speak to his sister.

Yes.---Yeah.

But never before Mr Barillaro until 18 May, 2015?---No, never before. I never met him before.

10 And then on 18 May, 2015, you and Mr Bono arrived at 100 Martin Road, Badgerys Creek, that's correct?---Yes.

And definitely not 110 Martins Road?---No. No, because 100 Martin Road was always locked up. He had gates and they were clearly locked. So we had to wait for him to show up for us to get in.

And did Mr Barillaro meet you at the front of the property?---Yes.

20 And at paragraph 94, you say that Mr Bono and Mr Barillaro were walking ahead of you whilst you took photographs.---That's correct. I started taking photographs even before we entered the property.

Okay. Can the witness be shown volume 7, page 11? And this is the first of a series of photographs, and I just want you to have a look at them and I'll get the operator to flick through them. And I want you to identify whether or not you took those photos. Did you take that photo on 11?---No.

On 12?---No.

30 12?---No.

Okay. Well, I'll ask that they be stopped there and I'll show you another set of photographs that commence at page 41 of volume 7. And they're not the best quality photographs but - - -?---Yeah.

Is that a photo that you took? Do you recall taking that photo?---Possibly. I mean, it's not very clear.

40 Possibly. All right. But have a - - -?---I can make it out and it is of, that's inside the property because that's the gravel path.

Okay.---It leads to the - well, it runs through the property, towards the back.

Okay. If you could have a look at the photograph on page 42 and then - - - --Yeah.

- - - go from page 43.---Yes.

Page 44, 45, 46, 47, 48. Are they photographs that you - - -?---Yeah, they're, they're - - -

- - - you took?---Yeah.

Yes.---They're clearly those photographs.

All right. And if the witness could be shown the photograph on page 63. Do you recall taking that photograph?---Yes.

10

Is that your hand?---Yeah, that's my left hand.

All right. And those photos were all taken on 18 May, 2015?---Yes, after our entering to the property.

Okay. And, well, is your evidence that some of them were taken before you had a conversation with Mr Barillaro and Mr Bono or all of them were taken before?---No, no, all of them were taken at that time.

20

But before the conversation with Mr Barillaro or did you take some photos after the conversation with Mr Barillaro?---No, during.

During. Okay.---Well, because they were walking ahead I had the time to actually take photographs and then we went through the, through the property itself, all the way through the bottom, sort of went around the side of the property and then walked back and that conversation took place I believe after our return back towards the front of the property.

30

Okay. So at paragraph 95 of your statement you say when we got to the back boundary of the property you caught up with Mr Bono and Mr Barillaro as you completed taking the photographs and then you commenced to have a conversation with Mr Barillaro.---Yeah.

Does that refresh your memory about where the conversation took place?---I mean the, there was little bits of conversations happening throughout the property but, yeah, that one did take place at that particular spot.

40

And is it fair to say that the conversation at paragraph 96 is a conversation where Mr Bono was conversing with Mr Barillaro as opposed to yourself. Is that correct? So you'll see that - - -.---Number 96, right?

At paragraph 96. This is a long paragraph and it extracts a conversation and you will see that at the bottom of the first part of 96 it says Mr Barillaro said words to Mr Frank Bono. You see that?---Yes.

And then at the very bottom of the page it says Frank Bono replied words to the effect.---Yeah.

And if you go over to page 60 you will see that the conversation or the participants in the conversation of people doing the speaking are Mr Barillaro, Mr Bono, Mr Barillaro, Mr Bono, Mr Barillaro and so on. ---Yeah, it is long.

What I'm trying to establish is, is it – did you participate in that conversation?---I had very little involvement in that conversation.

10 So it's fair to say that Mr Bono was asking the questions and Mr Barillaro was answering them - - -?---Yeah.

- - - but you were there listening?---Yeah. I just mostly witnessed it.

And I'm just going to take you through the conversation because it's important.---Ah hmm.

20 And just to see if you stand by this evidence. Mr Bono said words to the effect of, to Mr Barillaro, "You are not from the fucking RID Squad are you?" And then Mr Bono replied, "No, no, we are from Liverpool City Council. We have received a complaint of illegal landfill on your property and that is why we are here today. What's your issue with the RID Squad?" Do you recall Mr Bono saying that?---Yeah.

All right. And then Mr Barillaro replied, "Not with the RID but with that cunt Craig." Do you recall that?---Yes.

30 And do you recall Mr Bono saying, "Why, what's he done? Whatever you tell us stays here with us." And then Mr Barillaro said, "I met Craig at the front of my property and he said, 'I know you're bringing in landfill. If you give me 10 grand I can make it go away'." Do you remember Mr Barillaro saying those words?---Very clearly.

And do you remember Mr Barillaro putting a figure - - -?---Yes.

40 And then Mr Bono said, "Hang on, are we talking about the same Craig?" And then Mr Barillaro said these words and I want you to think back to the conversation and tell me if you recall these words being said by Mr Barillaro, "Yeah, Craig Izzard. He was a shit footballer and he was corrupt when he was a copper as well." Do you remember Mr -?---I remember them very clearly because I didn't know – I'd only met Craig once before and that was at my manager's office when we took over the illegal landfill. I didn't get to build up any sort of relationship with him so I didn't know who he was and only during this conversation I realised that he had been a football player, had been a police officer and those things.

All right. And then what was your reaction after those words were spoken?--I'm pretty sure my face must have said it all. I mean, I was sort of gobsmacked. Yeah, I didn't know what to say.

And do you recall Mr Bono saying – he came right out and asked for 10 grand to confirm - - -?---Yeah.

Yes?---He asked him basically to confirm that.

Okay. And then Mr Barillaro said yes?---Yes.

He confirmed it?---Yes.

10

And then Mr Bono said, “Have you had any dealing with Craig Izzard before?” And Mr Barillaro said, “Yeah, out at my other property, before I sold it. And I know that my neighbour paid him between 50 to 60 grand.” Do you recall Mr Barillaro saying that?---Yes, I do.

Do you recall what you thought at the time the reference to neighbour was? Was that a neighbour at his current property or a neighbour - - -?---No, no. The other property out at Willowdene.

20

Okay. And just finally there’s four more bits of dialogue there. Mr Bono said, “Are you willing to give us a formal statement?” Mr Barillaro said, “If I can remain anonymous, I will.” You can recall that part of the conversation?---Yeah.

And Mr Bono said, “I will speak to council and if they can guarantee your confidentiality, would you be prepared to put it in writing?” And Mr Barillaro answered yes.---Yes.

30

Okay. And then at paragraph 97 of your statement you say that – can you just read paragraph 97 to yourself?---Okay, yeah.

And it’s not in quotation marks, but I want you to tell the Commission when Mr Barillaro also informed you of what Mr Izzard informed him. I just wanted to see if you can recall that conversation.---Sorry, can you - - -

So that might be a bit confusing, but you'll see that at paragraph 97 you're saying that Mr Barillaro informed you and Mr Bono of something in addition to what he had said in the preceding paragraph.---You mean whether it happened before that conversation or after that?

40

No, what I'm trying to establish with you is you've given an extract of - - -? ---Ah hmm.

- - - the questions that Mr Bono asked and the replies that Mr Barillaro gave.---Yeah.

And then you've finished giving the exchange of that conversation, and then you say, "Mr Barillaro also informed us that Craig Izzard informed him." You see that?---Yeah.

How did he also inform you of those matters that followed?---Just came out and said it during that conversation or towards the end of the conversation.

And what did he say?---He said he got told that if he doesn't pay him the money, he can't help him.

10

And just to be clear about the next point, did Mr Barillaro say that he ever paid the money to Mr Izzard?---No, he actually said that he didn't pay him, yeah. He actually stated that, from memory, a couple of times.

Okay. What happened after the conversation finished, the exchange between you, Mr Bono and Mr Barillaro?---Do you mean after we left the property?

20

Well, after the dialogue finished.---Ah hmm.

What happened next?---We then, as both Frank and I felt this was quite important, so we actually left the property and returned back to our office.

And when you got back to your office, what did you do?---I asked, well, we asked for an urgent meeting with our back then team leader Ben Krkach and Nada Mardini, our manager.

30

Yes. And did you record what happened in writing?---Yeah. Well, basically we told her exactly what's been spoken of now.

Okay. And did you give a statement to anybody at the time it happened? ---I don't remember the time frame, whether it happened right there and then.

Yes.---But I do remember that we had to make a statement because I believe that our manager and our team leader escalated the matter and it ended up going higher within council. And then we had to give a statement, I believe, to our internal lawyers, I think.

40

Okay. And can you recall how long after 18 May that occurred?---I honestly can't recall the time frame, no.

And did you make a note in your notebook of the conversation, can you recall?---I can't recall making it but from our standard practice, I usually tend to make notes.

Can the witness be shown this document?---Thank you.

Do you recall this document?---Yeah, it's my handwriting.

All right. And can you see the entry at page 119, dated the 18<sup>th</sup> of the 5<sup>th</sup>, 2015?---Yes.

At 11.40am?---Yeah.

And that goes over to page 121.---Yeah.

10 Can you recall when you made this record?---I believe I was doing that right after.

Right after? Whilst you were still at the property?---Yeah, well, I remember actually taking down some notes.

Okay.---At the time.

And you mentioned a statement you had to give subsequent to - - -?---Yes.

20 - - - 18 May. Was that more detailed than these notes?---Yes.

All right. I tender that document, Commissioner. I can make copies available.

ASSISTANT COMMISSIONER: Exhibit 14.

**#EXHIBIT 14 - HANDWRITTEN NOTES DATED 15, 18 AND 19  
MAY 2015**

30

MR MACK: The final property I want to ask you some questions about, Mr Luna, is a property at 30 Bellfield Avenue.---Yeah.

I'm going to ask you to be shown a picture of the property, an aerial shot. It's coming up on the screen now. Do you recognise the property depicted in that picture?---Yes, I do.

40 And you can see two sheds?---Yeah.

And a little rectangular circle?---Yes.

All right. And they're sheds from 30 Bellfield Avenue, is that correct? ---Yes, they are.

And that's the property you attended on 15 October, 2015?---Yeah.

And can you recall going inside those sheds?---Yes, I do.

And can you recall what was inside the shed on the left-hand side of that picture?---A lot of waste material and a lot of skip bins and an excavator and a gentleman by the name of, I remember, (not transcribable) Bill.

Bill. Okay. And you recall if there was any signage on the skip bins?  
---Cobra skip bins. Not all of them, though, because I believe that was when they originally were sort of starting, so they had some new ones which were not painted. And they had some that were painted already.

10

Okay. And did you go into the shed on the right-hand side?---Yes, we did.

And what was inside that shed?---It was mostly empty but right down – it's not a full photo but if you, if you're looking at the shed on the right if you go in through the bottom part which is near the, that sort of dam - - -

Yeah.--- - - - you go in through there. Yeah, that's correct. And all that's empty until you get to actually right down the end and there were a few stacked up skip bins. They were brand new. They were sort of rusted.

20

They had just been, they had just been welded together and they were stacked up on top of each other.

And did they have any signage on the side of them?---None.

And you mentioned Bill before.---Yes.

Do you know who – what Bill's relationship with 30 Bellfield Avenue was?---He was the – he was a, an employee for Cobra Bins. A big fellow.

30

At paragraph 124 of your statement you mention a Mr Roy Ykmour.  
---Yeah.

Who you also mention earlier in your statement but do you recall having an interview with Mr Ykmour?---Yes.

All right. And that interview occurred on 21 October, 2015 if you look at 122 of your statement.---Yes.

40

You accept that's on 21 October, 2015?---Yeah.

And then at paragraph 123 you say that Mr Ykmour confirmed to you he did not have an approved development application to the council.---That's correct.

All right. And then at 124 you say that Mr Ykmour was issued a \$4,000 infringement notice for operating his skip bin business from the property without a development application. Do you see that?---Yes, he was issued a fine.

And if I said to you that he wasn't issued an infringement notice for operating his skip bin business would you accept that from me or do you want me to show you the document – sorry, I'll start that again.---Okay.

Are you certain that the \$4,000 infringement notice was for the offence of operating a skip bin business?---I'm not certain of the actual wording of the offence, exact offence but I am certain that he was issued a fine and he was issued a clean-up notice as well.

10

I'm going to show you a document in volume 7. Sorry, not volume 7. Just excuse me, Commissioner. This is a document in volume 8 at page 51 and you will see that it's a penalty notice to Mr Ykmour.---Ah hmm. That's correct.

You will see that the offence code is 8-4-1-2-5 and it's in relation to the transport of waste. Do you see that?---Oh. Okay.

20 So do you accept that you're wrong in your statement at paragraph 124 - - - ?---Ah hmm.

- - - that the infringement notice was issued for a development application? ---Yeah, that was unfortunately incorrect.

All right.---But as you can clearly see I didn't issue that infringement notice. That was issued by also Bono.

I understand that.---Yeah.

30 Paragraph 127 of your statement you say that Mr Kolovos directed Mr Ykmour and Mr Rifi to place bricks at the rear of the property near the sheds so that the trucks do not sink and become bogged on the driveway. ---Yeah. That was during a conversation at his property.

At his property on 15 October, 2015?---I don't remember the actual date.

So there's another - - -?---But I do remember the conversation.

40 All right. So you remember being on site with Mr Kolovos and Mr Ykmour and Mr Rifi?---Yes.

And - - -?---Rifi, sorry? What - - -

Bill.---Is it Bill?

Bill, yes.---Okay. Yeah.

And just finally, you give evidence at page 131, at paragraph 131, about being present when Mr Bono received a telephone call. Can you remember that telephone call that I'm referring to, with - - -?---Yeah.

Yes. Can you tell the Commission what you heard?---Well, I remember the person I'm going to say was Craig Izzard, from when I was listening. And I remember that it was spoken of that they had just attended 30 Bellfield, him and another RID Squad officer named Eric. Again, I don't remember what his surname but there was two of them.

10

Do you know Eric?---I hadn't had much to do with him until Frank and I moved over to city presentation, which is where we are now. Then, yeah, now I know exactly who he is. But before that point I didn't know him. I didn't know who he was. I knew that he was just an officer for the RID Squad and that's about all I knew.

Could you recognise his voice?---No. I wouldn't be able to recognise his voice. Not over the phone anyway. Not then.

20

Okay. All right. And what did Mr Izzard say to Mr Bono?---From memory that they had just attended 30 Bellfield and if they had received a complaint about that property. It's a while ago.

Can you recall what Mr Bono said in reply?---I think he asked him why he needed to know that. And I also believe the property owner's name was mentioned.

Mr Kolovos?---Yeah. Nick, yeah.

30

Yes. But to your understanding was Mr Izzard responsible for illegal dumping matters at that property at that time?---Not at that time, no. He shouldn't, there was no reason for, from my understanding, there was no reason for either one of those two officers to be there.

When you say either one, the other one is a reference to Mr Eric Ryffel, is that correct?---Yes. Yeah. And I clearly made my view to officer Bono very clearly. I said there was no reason for them to be there. Or not inside the property anyway.

40

So how would you describe the nature of the telephone call?---Extremely strange.

Extremely strange.---For us to find out that they had already been in there.

And did you express how extremely strange the call was to Mr Bono after the call finished?---Yeah. Yes.

Can you recall what you said?---Well, we thought it was really sort of, not just strange but, lack of a better word, sort of suspect. Especially after the other phone call we had received after we had, you know, after we attended Mr Matthews's property. Again, we're receiving another phone call on a property that we'd just attended once again. And that's what gave me so much concern.

10 And then did you have a conversation with Mr Bono about what you should do in relation to the phone call you had from Mr Izzard?---Yes.

And what did you discuss with Mr Bono?---Don't remember the words for the conversation. I do remember what I did afterwards.

Yes?---I believe I informed the Commission.

All right.---Yeah.

20 And can you recall a phone call being made to the owner of the property by Mr Bono?---I know it took place but I can't – I don't recall the conversation.

All right. We'll have a look at paragraph 136 of your statement.---Sorry, which paragraph?

136. It goes over the page.---Yes.

Does that refresh your memory about a - - -?---Yeah, especially the last bit that he was only a friend of his and he seemed sort of worried.

30 All right. So Mr Kolovos – this is a reference to the final paragraph of 136 where you say that Nick Kolovos kept repeating to Frank Bono that it was only a friendly visit.---Yes, yeah.

All right. So you can just - - -?---He, he seemed really sort of scared, worried when I – his voice was cracking. He was shaking.

All right. Thank you, Mr Luna. I have no further questions.

40 ASSISTANT COMMISSIONER: Yes, Mr Dunne.

MR DUNNE: Mr Luna, my name is Dunne and I appear for Mr Matthews. ---Yes.

I'd like to ask you some questions about the meeting in your statement at paragraph 72 which you had with Mr Cannuli. Do you have your statement available there?---I mean I've got a hard copy with me.

Yes. If you would like to have a look at that.---Okay.

When was that – do you recall when – how many days before that meeting you arranged to interview Mr Cannuli?---Sorry, what was that question?

So the meeting was arranged on 8 April.---I've got it in front of me now.

10 Did you call Mr Cannuli the day before, a week before, do you recall when you made the arrangements for that meeting?---No, I don't remember when I made the arrangements.

I see. But you've given evidence I think that in relation to the second meeting which you've given evidence about that took place on 8 April with yourself, Mr Bono, Mr Matthews, Nosir and Mr Cannuli - - -.---Yes.

- - - that that took place on the same day.---I believe so. Later on that day.

20 Are you sure about that or is there some uncertainty?---I can explain why I am sure.

Yes.---Because Nosir is the person that took Mr Cannuli into the original meeting.

Yes.---He actually took him there.

So Nosir - - -?---So that's why.

30 - - - took Mr Cannuli into the meeting?---Yes. But he couldn't be present during the interview so he had to wait.

That's right.---He had to – I don't know where he went.

And you've given evidence I think that Nosir had rung you to organise what I'll call the second meeting, not the interview meeting, the second meeting that took place on 8 April.---Yes, I believe so.

40 That's right. And in your statement at page – paragraph 79 you give evidence of words used by Mr Cannuli and Nosir. You say that Mr Cannuli said everyone has to eat and Nosir then said words to the effect of don't worry about it, don't worry about it.---Yes.

It's possible isn't it that Mr Matthews did not attend the second meeting to which you refer to in paragraph 79 but firstly in paragraph 76?---Sorry.

You don't – you want me to repeat the question?---Yes, please.

Okay. It's possible that Mr Matthews - - -?---Ah hmm.

- - - did not attend the second meeting, not the interview meeting with Mr Cannuli, but the second meeting that you say took place on 8 April?---No, that's possible.

I suggest that to you because Nosir arranged the meeting and Nosir took Mr Cannuli to his interview?---From memory, yes.

10 And Mr Matthews wasn't present then was he?---During the interview no.

Or when Mr, when Nosir brought Mr Cannuli to the meeting?---No, during the interview, no, he was not present.

Or before?---Nobody else was. Or before?

You said Nosir brought Mr Cannuli to the meeting?---Yes.

Did he bring him up to your offices?---No,

20 I see?---As I said I don't know where he went.

And in your statement you don't recall Mr Matthews saying anything of any importance or saying anything might I say?---That's correct.

Well can I suggest to you that Mr Matthews didn't attend that meeting, the second meeting on, on 8 April referred to in para 76 and 79?---I mean that's your suggestion but - - -

30 Do you agree or disagree?---I disagree.

Thank you. If I could now take you to the meeting that took place on 15 May and that is referred to in your statement well I take you to para 81 of your, of your statement?---Yep.

And I think you'd agree that there was a meeting on that day of 15 May when you were actually served the court attendance notices on Mr Matthews, Mr Cannuli and Nosir?---Yes.

40 And Mr Bono was present there?---Yes.

Is that right?---Yep.

Now I'm going to ask you a series of questions - - -?---Ah hmm.

- - - where I'm going to suggest firstly that you said these words to Mr Matthews, Mr Cannuli and Nosir?---Okay.

And secondly – and also that Mr Bono said these words. So there was sort of a tag team type situation and my instructions were, you would say, one of you would say words to the effect of what I’m going to put to you and the other one would repeat them. And I want you to agree or disagree - - -?  
---Okay.

- - - as to whether you said those words. This is after the court attendance notices were served or handed to the three gentlemen?---Ah hmm.

10 Firstly you said words to the effect, “But they did not need to worry about the court attendance notice”?---Disagree.

Do you agree?---Disagree.

Secondly you said you will not need a solicitor?---Disagree.

Thirdly, you said words to the effect, “You just go to court, stand in front of the magistrate and plead guilty”?---Disagree.

20 In relation to the court attendance notices, Mr, sorry, you were actually listed as a prosecutor weren’t you on the court attendance notices. Do you recall that?---No, I don’t recall that.

That’s just a procedural thing that you wouldn’t - - -?---Oh, it must be ‘cause I didn’t lodge it.

Well that’s something that, that’s something - - -?---Our legal department - - -

30 - - - that’s something that’s handled by the legal department?---Ah hmm.

You, you probably were named because you were, one of the investigating officers?---Most likely, yes.

MR MACK: Out of fairness to the witness, perhaps the witness could be shown the court attendance notice. I’m not sure if he accepted that his name was on the court attendance notice.

see under details, there’s a heading details for prosecutor.---It’s got my name on it.

40

MR DUNNE: I’m happy for - there’s nothing much that turns on it. But it’s volume 5, page 138. If you’ll see under – is that in front of you?---Yes, it is.

You see under details, there’s a heading details for prosecutor.---It’s got my name on it.

And it's just got your name on it. And that's simply put there because you would have been one of the investigating officers.---It must be one of the procedures, yeah.

Yeah, I see. And in relation to the detail, if that could just stay up, the details of the offence and any statements of facts, that would all be handled by your legal department. Is that the case?---Description?

10 Yeah, details. You'll see a heading that says details of offence.---Mmm.

You would consult with your legal department but they would be the ones who would actually prepare that, is that right?---Yes.

And of course when the matter went to court you would have been present, but there would have been a solicitor from your department?---Yeah, there was council solicitor and barrister present.

20 Yes. Okay. Now, if I can take you now to 5 June, 2015. And that's the date that the matter was heard before Liverpool Court.---Okay.

You accept that, you don't have a clear memory but you can accept it from me that that is the case.---I remember going to court, yes.

And you attended court on that day?---Yeah. Frank and I tend to attend all court proceedings.

I see. And just excuse me a moment. Can I ask you to agree or disagree?  
---Ah hmm.

30 That after the sentences had been handed down, firstly yourself with Mr Bono approached Mr Matthews, Mr Cannuli and Nosir, who were all together in a group, and expressed how shocked you were about how high the fine was, firstly. Do you agree or disagree with that?---Are you asking me, well, where did this happen?

Did this happen in the courthouse?---I'm asking you to explain to me where this happened.

40 Well, I'm asking you – well, first of all I'm putting to you in the courthouse. Did that happen to you in the courthouse?---Disagree.

Did it happen somewhere else? Did it happen at a coffee shop? Did you and Mr Bono go for a coffee with the three defendants after - - -?---After the court proceedings?

Yeah.---I was speaking to my council solicitor and barrister.

Yes. But did you go for a coffee with - - -?---Not straightaway because we had things to discuss with our legal representation.

Immediately following the hearing?---Yeah.

But on the same day, on 5 June, after you'd finished speaking with your legal representatives, did you and Mr Bono have a coffee with the three, Mr Cannuli, Mr Matthews and Mr Nosir?---Yes.

10 At that meeting - - -?---I don't remember drinking the coffee but I remember a little, yeah, discussion.

Was the coffee shop near the court?---Between the courthouse and the council administration building. So on our way back to the office.

I see.---Yeah.

And so you sat down with Mr Cannuli, Mr Nosir, Mr - - -?---Briefly.

20 Briefly. Did you have a coffee with them?---Like I said, as I said, I don't remember having the coffee.

You don't remember having coffee. But you sat down?---But I remember sitting down, yes.

And you had a discussion with them?---Yeah.

And in that discussion did you express how high you thought the fine was?  
---I don't remember exactly what I said but the court's findings were  
30 brought up.

And did you express shock at how high the fine was?---I was shocked from the moment they were handed down.

So you were shocked with how high the fine?---Yeah, but I expressed that to my legal representation as well.

I see. And did you suggest to anyone or all of Mr Cannuli, Mr Matthews or Nosir that they should appeal or consider appealing?---That was, no, that  
40 was suggested by that – and I don't know the lady's name, but it was a legal representative that happened to be at the courthouse at that time.

And so you observed the solicitor come up to the three defendants?---I didn't know she was a solicitor. I don't know the lady.

You saw a person go up to - - -?---But I saw somebody approach them.

And you overheard a conversation?---No, the conversation – something took place and what took place was brought to my attention by Mr Ian Lacy, our solicitor.

I see.---He told us that.

I see.---Or he told me that.

10 Just excuse me a moment. I've almost finished. You've been out to the site 405 Willowdene.---Yeah.

And from your experience as an inspector would you describe it as a waste facility?---An unlawful waste facility, yes.

A waste facility?---Not a waste facility, an unlawful waste facility.

20 So would you agree that it's a situation where there was land on the property that either had holes or slopes and that illegal fill was being delivered to level that off?---Yeah, that's correct.

But it wasn't a waste facility in general where multiple customers could come and dispose of their waste, it was an illegal landfill operation.---I don't remember the exact words under the definition but if a property is being used as a waste facility it's up to us to determine whether it's being used as a lawful waste management facility or an unlawful waste management facility.

30 Oh, yes. I'm not suggesting that the landfill there perhaps was not illegal. I'm just - - ----Yeah.

- - - trying to distinguish from a situation where there was waste – general waste from members of the public being delivered there or whether this was simply unlawful landfilling.

40 MR RUSHTON: Can I just raise one matter that may be confusing my learned friend. I don't have the Act in front of me either but my recollection is the term waste facility is defined in the dictionary to the Protection of the Environment Operations Act and it does cover the sort of activity which was onsite. It's quite a wide definition.

ASSISTANT COMMISSIONER: Yes. Thank you, Mr Rushton.

MR DUNNE: Yes, thank you.

ASSISTANT COMMISSIONER: I think the question you were being asked, was this just basically dirt that was being put there to level out some contours in the property?---Yeah, mostly.

MR DUNNE: Thank you, Commissioner. Yes, thank you. Those are my questions.

ASSISTANT COMMISSIONER: Yes, thank you. Are there any other questions apart from Mr Patterson? Mr Patterson, then you.

MR PATTERSON: Thank you, Commissioner. Mr Luna, my name is Patterson. I represent Mr Izzard. Mr Dunne just put some questions to you upon instructions about what occurred on 18 May I think when you delivered the court attendance notices.---Yes, we were talking about the cars.

MR DUNNE: Sorry, but I'll just interrupt. It wasn't 18 May it was 15 May.

MR PATTERSON: Thank you. I'm obliged. 15 May. You remember those questions?---Yes.

20 You were in fact the officer in charge weren't you?---Officer in charge of the whole investigation or - - -

Yes.--- - - - delivering or - - -

Yes.---Because as I was being in every investigation – both Frank and myself have always been involved in every investigation from the start to completion it's never been – it's not something that we actually put – it's not something that I say to Frank look, I'm in charge of this or he doesn't tell me that I'm in charge of that or – it's never been treated that way.

30 Because as council, or as we actually are on a rotating roster during – and back then it was actually more stringent than it is now, I mean you'll have days where I'm on shift and when – and Frank's off and vice versa. So you can't have, you know, sometimes we're actually off up to four or five days so you can't have the – a lead officer and having that investigation go stagnant for that period of time so it was never determined who was in charge or who wasn't.

Could the witness be shown the court attendance notice? That is the document that was on screen a little while ago.

40

MR DUNNE: If I can assist it's volume 5, page 138.

MR PATTERSON: Thank you.

MR MACK: If I could assist further, there's actually three court attendance notices in that volume.

MR PATTERSON: Well there is on screen one dated 13 May, 2015. Do you see that Mr Luna?---Yes, I do.

And under details of prosecutor can you tell me who was named as the prosecutor?---That's my name.

That's you?---Yes.

10 So am I right in thinking that this in fact was your first ever prosecution?

MR MACK: Can I just object, the witness's evidence before was that he didn't know that he was listed as the prosecutor, I'm just worried about the language being used in terms of the court proceeding and prosecution. If you could take it back a couple of steps.

MR PATTERSON: Was this the first time you had ever been named in a court attendance notice as the prosecutor?---To be honest I don't even remember, I didn't until now that there was, there was my name on it. Like  
20 I said, I handed closed envelopes.

And what role did you take when the matter was heard in court on 5 June?--  
-I believe I was just one the witnesses for the prosecution.

But you weren't, you didn't act as the prosecutor?---No. No, like I said, I've stated a few times we're little our council lawyer and barrister - - -

Had you been involved in a prosecution previously?---For this matter or just in general?  
30

Generally?---Yes.

Could the witness be taken to the transcript of yesterday, page 259.at about line 9 – 19. Can you see it is recorded there you were asked by Mr Mack, "And do you know why Nosir made the request"? And your answer was, "He rang me personally asking for that meeting". What do you mean by personally?---We are issued with council mobile phones whilst we're out in the field so those numbers are, are stamped on our business cards, the council business cards. Then it had no member of the public has access to  
40 our personal mobile phones but the council issued ones we, we take them home with us. I mean any member of the public can get with that phone, the phone number.

So are you saying, are you saying that Mr Nosir or Mr Kabite as I think he's also known?---Oh it must be, 'cause he's change his surname a few times.

He phoned you on your work mobile. Is that right?---Yeah. But what I said there by him ringing me personally or he range me directly.

On your - - -On my works.

On your work mobile?---Yes, my work - - - - -

10 Okay. And how is it that he would have had your work mobile?---I also (not transcribable) evidence that I actually saw him out at 405 Willowdene, saw him on site because I caught his nephew dumping on site and his nephew happened to be from, he had a, he had an out of state driver's license I believe from Melbourne. And because (not transcribable) on site with his nephew Nosir came down. And that's the first time I met him.

Did you give him your business card?---I haven't got a business card because of the changes at work but I did give him a piece of paper with my details.

20 And was it a frequent occurrence that Mr Nosir would phone you?---Not very frequent. But when he needed to speak to me it was through that phone.

So it wasn't unusual for him to call you?---During office hours, no.

Out of office hours?---No. Because like I said, that was a work phone.

Now, you have stated in your evidence in relation to the first meeting at the Blackrose Café - - -?---Yes.

30 That all agreed not to disclose the details of the meeting, is that correct? Did you agree with that?---Can you specify exactly what we all agree do?

Did you agree to keep the discussion confidential?---I did, yes.

You did?---I did.

That would have been unusual, wouldn't it?---Yeah.

And was it because of that agreement that you made no notes of the discussion?---Possibly.

40 That would be contrary to your standard operating procedures, would it not?---Yeah, well, I tend to take a lot of notes.

But you didn't on that occasion?---Not from memory, no.

No. With hindsight, do you think that was improper?---I should have taken notes, yes.

Now, if I could take you to, and before I do that, just finally in relation to the questions that Mr Dunne put to you, if it was the case, just assume for the moment it is the case that you and/or Mr Bono said the things to Mr Matthews that Mr Dunne has suggested, you'd agree that would be highly improper, would you not?---Very.

Now, if you could please, if the witness could have a look at paragraph 34 of his statement. Can you just read that to yourself, please, sir?---34?

10 Yes.---Mmm. Okay.

Did you ever make a complaint to Mr Izzard or his superiors?---No.

About anything contained in that paragraph?---No. But that's not my role to do so.

Right. If you could look at paragraph 45 of your statement. Was it Mr Izzard who invited you and Mr Bono to collect the records from his office?  
---He never invited me personally, no.

20

I'm sorry?---Sorry, I never received that invitation. He never invited me personally.

So you just don't know?---No, I know that the invitation was sent to council.

Yeah.---I know that officer Bono with officer Le went to his office.

Yeah.---But from memory that invitation was not given to me personally.

30 But you don't know if the invitation came from Mr Izzard?---Well, I can't really comment on that because - - -

Very well.---Yeah.

If you look at paragraph 47 of your statement, where you speak of little to no information contained in any of the files, did you ever raise that matter with Mr Izzard or his superiors?---No.

40 Why not?---Because any matter involving council we need to follow our protocols or our procedures, which is to raise things with our higher management. We start off with our team leader then manager and so on.

Now, if you look at paragraph 63 of your statement, where you speak of entries made in your official notebook concerning a conversation with Mr Matthews, is it the case, to your knowledge, that no mention of Mr Izzard was made in that conversation?---I didn't mention Craig Izzard's name.

Thank you.---Now, because I didn't mention his name, doesn't mean that his name wasn't mentioned. His name was mentioned. I just didn't mention it.

Is it your recollection that his name was mentioned or not?---Yes, it was but not by me.

Not by you. If you could have a look at – if the witness could be shown Exhibits 12 and 13.---Thank you.

10 If you have a look at those documents, please, sir.---All of it or just a particular page?

Yes, read all of it. Read all of both documents.---Okay.

Do you agree with me, sir, that there is no mention of Mr Izzard in either of those documents?---Um - - -

MR MACK: I'm not sure if the witness has had time to - - -

20 THE WITNESS: I haven't read the document.

MR PATTERSON: I'm sorry. Please, take your time. I stand corrected. Have you had a chance to finish reading that, sir.---Most of it.

Okay. Have you found any reference to Mr Izzard yet?---No.

No. I'm sorry. I may have already asked you this previously but in paragraph 76 of your statement, you speak about a meeting on 8 April at which Mr Nosir attended. Nosir, Nosir.---That's the one that I put my name  
30 on instead of - - -

Yes.---Yeah.

Did you, did you have occasion to have frequent meetings with Nosir?---I've never met with Nosir on my own. It's always been with office Bono or witness present.

Whether you're - - -?---And it's always been for – regarding 405 Willowdene regarding the investigation.

40 Not specifically in relation to this investigation or that investigation but was that the first occasion you had met Nosir?---You mean on 8 April?---

Yes.---From memory, no, I can't remember whether it was the first time.

All right. And you've already agreed with me that it was unusual not to record the details of that meeting. Did you report the circumstances of the meeting to any of your superiors?---Which meeting?

On 8 April at the Blackrose Cafe.---I can't remember that but I do, I do know that it is normal for us to report.

You can't recall whether you did or not?---No.

10 Now, I think that the evidence that you eventually gave to Mr Mack earlier this morning was that – and if you turn to paragraph 80 of your statement, second sentence that Mr Mack read to you earlier, Craig Izzard's name was never mentioned as the person they had paid any moneys to or the person who may have made promises to protect them from prosecution or other formal actions. Do you see that?---Yeah, I've just read it.

And I think your evidence earlier this morning was that your recollection now is that that refers to the second meeting with occurred at Carne Hill on 15 May. Am I correct?---I remember giving evidence regarding the court attendance notices or the summons. I remember having that meeting.

20 Right.---And I remember the other meeting at the Blackrose Café.

All right. Well - - .---Sorry, I just didn't understand the question properly.

All right. When you are – when you say in paragraph 80 Craig Izzard's name was never mentioned, are you referring to what occurred at the first meeting at the Blackrose Café or the second meeting at Carne Hill when you delivered the court attendance notices or don't you recall?---No, I - - -

30 MR MACK: Perhaps if the witness is just shown the start of paragraph 80. ---Is it okay if I look at - - -

Yeah, absolutely.--- - - - my one?

Yes.---Okay. That - this was – from my memory that's actually what happened at Carnes Hill.

MR PATTERSON: So that's the second meeting.---Okay.

40 So you agree that at the second meeting Craig Izzard's name was never mentioned?---No, that's not - - -

As the person they had paid money to?---That's not what that says.

Yes. Thank you. So you adhere to that evidence?---In this context, yes, that he was never mentioned as the person - - -

I'm not asking you about context. I'm just asking do you adhere to that evidence?---Yes.

Thank you.

ASSISTANT COMMISSIONER: Can I ask about the context. What do you mean about the context?---Well, it says there that his name was never mentioned as the person that was – they had paid moneys to but his name was mentioned, it just wasn't regarding that. I mean they never brought up – they never clearly stated that he was the person they paid money to.

Okay.---Yeah.

10

MR PATTERSON: In fact they never said it all did they, whether clearly or not clearly?---No, they didn't say it. That's - - -

That's right. Thank you.---They didn't say it.

Now if you could go to paragraph 78 of your statement.---Yes, I've got it in front of me.

Yeah. You see words there attributed to Frank Bono.---Ah hmm.

20

Could you now please refer to page 263 of the transcript of evidence you gave yesterday? At the top of the page.---Yeah.

Mr Mack asked you, "What was the nature of the expenses?" And your answer was, "Now, I don't remember who actually brought the name up." ---That's correct. I don't remember.

The name Craig Izzard did come up in the conversation.---Ah hmm.

30

I want to suggest to you that in fact it was Mr Bono who first brought up the name Craig Izzard in that conversation. Do you agree with that?---I stand by what I said. I don't remember actually who said it. I mean, that's your suggestion but - - -

Do you agree it could have been Mr Bono?---Could have been.

Now, in paragraph 79, you'll see what's recorded there. And in your evidence yesterday, I don't have the transcript reference but I think you said, "They were trying to tell us something." Is that fairly put?---Well, that's how I felt.

40

Yes. And you said, "I understood it was a payment to Craig Izzard?" ---When they were talking about financial so that's how I understood it.

That was just a supposition on your part wasn't it?---Can you explain that?

That was just an assumption you made?---Yeah, like I said it was my, my understanding.

You had, you had no concrete basis to form that opinion?---That's correct I didn't.

You didn't. And in fact when the words "cost a lot" I think - - -?---Ah  
hmm.

- - - were used do you agree with me that could have been a reference to anything?---It could have been.

10

It could have been a reference to any legitimate expense concerning the property?---It could have been.

It could have been. If there was a payment at all?---If there was a payment, yeah.

Thank you. If you could turn to paragraph 90 of your statement you state there of records held by the council for activity at the property from approximately 2012 to 2014?---Yes.

20

Are you – do you know what council officers were involved with investigations of that property from 2012 onwards?---Not exactly. I was employed by Liverpool Council on 1 December, 2014.

Right?---I don't know what the politics were prior to that and what happened and what was taken back and forth.

Okay. So if I was to suggest to you that Steve Gillis amounts other was involved in investigating that property that's not something within your knowledge?---I've never met the man.

30

Thank you. Commissioner, is that an appropriate time? I might be a little while longer.

ASSISTANT COMMISSIONER: All right. If you're going to be a little while longer we'll adjourn for 20 minutes.

#### **SHORT ADJOURNMENT**

**[11.31am]**

40

ASSISTANT COMMISSIONER: We're still on the same oath, Mr Luna. Yes, Mr Patterson.

MR PATTERSON: Thank you, Commissioner. Mr Luna, if you could have a look at paragraph 92 of your statement. It's on the screen in front of you?---Ah, thank you.

You speak of a complaint of illegal landfill being received by the Council?--  
-Ah, yes.

Do you know who the complainant was?---Well as per my statement it says  
that it came from the Western Sydney RID Squad - - -

Craig Izzard?--- - - - officer, Craig Izzard, yes.

10 So you agree that Mr Izzard was the complainant?---Well as per statement,  
yes.

Thank you. Now paragraph 95 when you speak of catching up with Frank  
after completing your photographs and you commenced to have a  
conversation with Mr Barillaro. It was you that made the notes of the  
conversation was it not?---Yeah. The notes were in my notebook.

20 When were those notes made?---As contemporaneous as possible I  
remember taking photographs at the time. I remember making some notes.  
Now those particular notes I can't be a 100 per cent certain whether they  
were right there or right after.

Could the witness be shown Exhibit 15. Are they the notes that you refer  
to?---At the bottom of page 19?

Yes. From 18 May onwards over to the bottom of page 119, page 120 and  
121, that's your handwriting is it not?---Yes, yes.

And they're the notes of the conversation that you speak of?---Yes.

30 Yes. And you say that those notes are accurate?---Yes.

Now if you look at paragraph 96 of your statement you've set out there what  
you say was the contents of the discussion between yourself, Barillaro and  
Bono, you see that?---Number 96, yes.

Sorry?---Number 96?

Yes, paragraph 96?---Ah hmm.

40 You set out at length a conversation you say that you and Bono had with Mr  
Barillaro?---Well I was a witness to the conversation. The conversation - - -

Yes. Mr Mack has taken you through that conversation earlier this  
morning?---Yes.

Yes. Do you agree with that none of that appears in your note of the  
conversation? None of that appears in your notebook?---Not this, no not  
this extent.

That's right. Now you say that Mr Barillaro, first line paragraph 96 you say that Mr Barillaro appeared quite agitated?---Yeah.

Did either you or Mr Bono inform Mr Barillaro that Mr Izzard was the complainant?---No.

You sure of that?---I'm a 100 percent sure that I didn't make that suggestion.

10

And to your recollection did Mr Bono?---Whilst I was present witnessing that conversation that didn't take place.

You didn't. All right. Thank you?---Yep.

You also said earlier this morning that during the conversation Mr Barillaro said that Craig Izzard did not pay him or words to that effect?---No, no, no. That he didn't pay Mr Izzard. Mr Barillaro did not pay Mr Izzard because Mr Izzard or Mr Barillaro said to us that the bribe was being demanded of him, not that he made suggestion of the bribe.

20

Did Mr Barillaro say that he did not pay anything to Mr Izzard?---That's correct. He was adamant that he didn't pay Mr Izzard.

Thank you. And that wasn't recorded in your notebook either, was it?  
---Well, I haven't got it in front of me but from memory I don't - - -

Do you want to have access to the document again?---Yes, please.

30

ASSISTANT COMMISSIONER: It's in front of you on the screen.  
---Thank you. Well, it clearly states there, towards the bottom of page 120, the person stated to council that because he refused to pay the money that Mr Izzard contacted council regarding the landfill on his property, so in my notebook I do have that he refused to pay.

MR PATTERSON: Thank you. We'll come back to that in a moment. Now, at the bottom of paragraph 96, you record Frank Bono said, "Have you had any dealing with Craig Izzard before?" And you record Mr Barillaro as saying, "Yeah, out at my other property."---Sorry, at the bottom of - - -

40

Bottom of page - - -?---Do you mean page 60 or page - - -

Bottom of page 60.---Ah hmm.

Frank Bono says, "Have you had any dealing with Craig Izzard before?"  
---Ah hmm.

And at the top of the next page it's recorded, "Yeah, out at my other property."---Yes.

Did either you or Mr Bono ask Mr Barillaro when and where that meeting occurred?---From memory, no. I don't remember that.

Now, if you could look at paragraph 131 of your statement. And you're speaking there of a telephone conversation on loudspeaker received by Mr Bono. And you say you recognise the voice of the caller to be Craig  
10 Izzard.---Yes.

And you say Mr Izzard informed Frank that he had just attended the premises after his work colleague Eric Ryffel had received an anonymous complaint.---From my memory that's, yeah, that's correct.

Could I suggest to you that Mr Izzard in fact said that it was he who received the anonymous complaint and not Mr Ryffel, could that have been the case?---No, it's – what I remembered is what happened here.

20 And at paragraph 132 you say that I found this conversation to be unusual because Western Sydney RID had no involvement of illegal landfill into private properties.---Yeah, that was my understanding of the later agreement after we had taken over the illegal landfills back to council.

If I was to suggest that there was a standard operating procedure in RID that if there's a complaint, investigate. Is that something about which you could comment?---I don't know much about their standing operating procedures. Like I said, I have only been with council since December, 2014. I've had to start fresh with the current, with all the investigations.  
30

Fair enough.---So I can't comment on their procedures.

Now, in relation to the meeting – the second meeting at Cannes Hill when you've served the court attendance notices - - -?---Yeah.

- - - who suggested that you meet in a café?---I don't remember anybody suggesting it was a café. I believe Frank and I were out in the field at the time and it was basically the closest location for them – for us to meet because we were out at that area. I think they wanted to meet at the  
40 Blackrose Café and we asked them if they can meet us over there because that's where we were, that's – we were closer to that location.

And you understood the purpose of the meeting being to serve the court attendance notices?---Yeah.

Was it unusual to serve court attendance notices in a café?---No, because we've actually had to serve court attendance notices to people in all sorts of situations, to their homes, out on site, out in the field.

Very well.---People don't like to receive those kind of notices.

Very well. And just finally, if you could look at paragraph 98 of your statement.---Yes.

You say that Mr Barillaro informed you that he refused to pay moneys to Izzard and this is why Izzard reported him to the Liverpool Council.---Yes.

10 Did that strike you as being improbable?---Improbable?

Yeah.---In what way?

Well, if Mr Izzard had in fact attempted to solicit a bribe and that was unsuccessful - - -?---Ah hmm.

- - - do you think it likely that he would then make an official complaint about the target of his solicitation?---I can't comment on what Mr Izzard would or would not do, sir.

20

Because that would almost certainly bring the evil deed to light would it not?---Like I said, I can't comment on what Mr Izzard would or would not do. I've only met the person once before in my life.

Well, it's not something you would do is it?---Not something that I would, I believe I wouldn't do.

In fact it's not something that any sensible person would do.---Like I said, I can't comment on what Mr Izzard would or would not do, sir.

30

Okay. Thank you. That's - I have no further questions, Commissioner.

ASSISTANT COMMISSIONER: Yes, Mr Mack. Anything for examination?

MR MACK: Yes, just a few things arising, Commissioner. Mr Luna, you will recall some questions from Mr Patterson in relation to the first time that you met Mr Kabite and you were taken to paragraph 76 of your statement which I'll ask for you to be shown.---Yes, sir.

40

And my recollection of the evidence was that you said you weren't sure if that was the first time you'd ever met Mr Kabite. I want to refer you to paragraph 57 of your statement where you say that on 4 March, 2015 at 4.25pm you met Mr Kabite?---Yes.

Does that refresh your memory as to whether or not you'd met Mr Kabite before 8 April, 2015?---Yes, I remember that, that taking place.

And is it possible that you'd met Mr Kabite before 4 March, 2015 or you can't recall?---Yeah, it is actually possible because the interview was formally noted in my contemporaneous notebook which means that I would have had to have spoken to him before obtaining that information.

Okay. Have a look at this document, please. This is a two-page document - -?---Thank you.

10 - - - notebook pages 48 to 50. Is that your handwriting?---Yes.

And is that the document referred to in paragraph 57 of your statement? ---That's correct.

I tender that document.

ASSISTANT COMMISSIONER: Exhibit 15.

20 **#EXHIBIT 15 - HANDWRITTEN NOTES DATED 4 AND 5 MARCH 2015**

MR MACK: Do you recall me asking you questions earlier in relation to the records you took after the conversation with Mr Barillaro?---Yes.

And you said that you took some notes in your notebook?---Yes.

30 And we've seen the notebook. And you also said that you made a report back in the office to people higher up than you?---That's correct.

Can you have a look at this document, please?---Thank you.

Can you just have a read of that document, please?---Ah hmm. Okay.

And that's a document dated 28 May, 2015. Is that correct?---Yep.

And that's your signature at the bottom?---Ah, yes, it is.

40 I tender that document, Commissioner.

ASSISTANT COMMISSIONER: Exhibit 16.

**#EXHIBIT 16 - STATEMENT OF SERGIO LUNA DATED 28 MAY 2015**

MR MACK: I want you to have a look at paragraph 4 of that document. It says, "I have read the statement of Frank Bono regarding the conversation he had with the property owner on this day."?---Yes.

I want to show you another document. I don't want you to read the whole thing but if you could have a quick flick through and arrive at the final page, it's a three-page document. And is this document the document you refer to in page 4 of Exhibit 15, at paragraph 4 of Exhibit 15 when you say, "I read the statement of Frank Bono regarding the conversation he had with the property owner on this day?"?---Yes.

I tender that three-page document of Frank Bono, Commissioner.

ASSISTANT COMMISSIONER: Exhibit 17.

**#EXHIBIT 17 - STATEMENT OF FRANK BONO DATED 28 MAY 2015**

20

MR MACK: And at paragraph 6 of the one-page document that you signed – sorry to jump back around – you say that you independently concur that Frank's statement accurately reflects the conversation that took place. That's a reference to the three-page document - - -?---What happened at the site.

- - - I just handed you, is that correct?---That's correct.

30 Okay. And when you said that you had to give records back at the office to somebody higher up than yourself?---Yeah.

Is that a reference to that one-page document that bears your signature?---Yes.

Thank you. I have no further questions.

40 ASSISTANT COMMISSIONER: Yes, thank you. Is there any reason that Mr Luna can't be excused? And thank you Mr Luna for coming. And I'll excuse you from further attendance?---Thanks.

**THE WITNESS EXCUSED**

**[12.11pm]**

ASSISTANT COMMISSIONER: Yes, Mr Mack.

MR MACK: Commissioner, I call Angus McVay and I'll just indicate the reason why I'm calling him now instead of Mr Barillaro and that's because I

understand Mr McVay has travelled from Queensland to be here today and I don't want him having to go until Monday.

ASSISTANT COMMISSIONER: Thank you.

MR MACK: And I don't anticipate he will take very long.

ASSISTANT COMMISSIONER: Mr McVay will take you an oath or an affirmation?

10

MR McVAY: Yes, I will.

ASSISTANT COMMISSIONER: An oath?

MR McVAY: An oath.

ASSISTANT COMMISSIONER: Thank you. Mr McVay it's possible during the course of the evidence you're giving you might say something that could give rise to some criminal or civil liability. I can protect you of against that by making a general order that to save you objecting to any particular questions but anything that you do say can't be given and used in evidence against you. Would you like me to make that order?---Yes, please.

10

Thank you. I should say that of course it doesn't cover the question of committing perjury when you give your evidence.

So pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

20

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

30

ASSISTANT COMMISSIONER: Thank you.

MS SPIZZO: Commissioner, may I seek leave to appear with my client, Angus McVay?

40 ASSISTANT COMMISSIONER: Yes, thank you. I grant leave to appear, Ms Spizzo.

MS SPIZZO: Thank you.

ASSISTANT COMMISSIONER: Yes, Mr Mack.

MR MACK: Mr McVay, did you sign a statement for the purposes of this inquiry?---Yes, I did.

And was that a nine-page statement?---Yes, it was.

And did you sign that on 7 April, 2016?---I believe I did.

And have you an opportunity to read through that statement recently?---Yes, I have.

Is there anything you wish to correct in that statement?---No.

10

Are you currently employed by Sakkara Property Services?---Currently I'm a contractor to Sakkara Property Services. At the time I signed that I was a full-time employee.

Okay. And in September, 2015, were you a full-time employee of Sakkara?---Yes, I was.

20

And what is Sakkara's relationship to a property in Riverstone, the corner of Riverstone Road and Bandon Road? Do you understand where I'm referring to?---Yes, yeah. Sakkara is the development manager for - - -

You just might need to – the microphone is a bit far away?---Sorry.

Thank you?---Sakkara is the development manager for that development project.

30

Okay. And what's the nature of development management?---So obtaining development applications, carrying out aspects of property development for Greenfield sites and also managing the existing property as it stands.

And is there – in relation to – first of all, when I say a property on the corner of Riverstone and Bandon Road do you refer to that property as a particular address or - - -?---Yes, it – well, it's known as the Riverstone West Precinct. It's a 234 hectare parcel of land that has three frontages.

40

Yes.---So it is referred to from Garfield Road West, Riverstone Parade or Bandon Road so different people refer to it as different things. We refer to it as the Riverstone West Precinct which is what it's classified under the, under the SEPP.

And who owns the Riverstone West Precinct?---A company by the name of Riverstone Parade Pty Limited.

Okay. And do they lease out the Precinct?---They do, yes.

And how many leases are there on the Riverstone Precinct?  
---Approximately 68 commercial tenancies and 20 residential tenancies.

I'm going to show you a few photographs and just so we can tease out a bit more Riverstone Precinct.---Sure.

Could the witness please be shown volume 9, page 38. Have you seen this document before?---Yes, I have.

All right. And does this – and you will see that there's an aerial photograph of the area that we're talking about and then there's some colour layered on top of the aerial photograph. Does the colour that's layered on top of the  
10 photograph, does that accurately represent the Riverstone West Precinct?  
---Yes. You can see that there's a red border around the entire site where the colour is.

Yes.---That is the boundary of the property excluding the TransGrid yellow portion and the Sydney Water Treatment Plant to the northern end of the site.---Yes.

There's also a small yellow dot right in the middle which is also owned by –  
20 right where the mouse is that's also owned by Sydney Water. It's a pumping station.

Yes.---So apart from those three parcels of land the – everything else in the red border is the Riverstone West Precinct and on one lot and owned by Riverstone Parade Pty Limited.

And Sakkara Services is responsible – or in September, 2015 was responsible for that whole area in relation to development management?  
---That's correct.

30 And I understand that you – there was also another company involved in the management of the Precinct and are you familiar with Ms Anne Bartlett?  
---Yes.

And in September, 2015 who did Ms Anne Bartlett work for?---She worked for a real estate agency PRD Commercial or PRD Norwest I think it was, a real estate agency in Norwest and they – we had engaged them as our property managers to manage our commercial tenants.

40 So what was the demarcation in responsibility between what Sakkara did and what Ms Bartlett did on behalf of PRD?---We have a property management agreement with PRD that outlines scope of works. In essence it was once – basically if we had a tenant on the site they were under a formal lease agreement. PRD prepared that lease agreement and PRD managed that particular tenant on that parcel of land that they had leased.

Is it accurate to say that you had the relationship with the client, the client being the owner of the property?---Yes.

And whereas Ms Bartlett and PRD did not have that relationship. Is that accurate?---That is accurate. I will clarify that PRD were engaged by Riverstone Parade Pty Limited.

Yes.---But in terms of a point of contact.

I understand.---What you said was accurate.

10 I want to take you back to September 2015 and to paragraph 7 of your statement, and do you have your statement there in front of you?

---Yes, I do.

And it says that – sorry, I’ll first of all take you back to paragraph 6 where you say in October 2015 ATM Excavations & Demolition Hire leased a 6,000 square metre yard located in the north-eastern corner of the site and accessed off Bandon Road?---That’s correct.

Can I show you a picture in volume 16 at page 36. Have you seen this - - - ?---Yes, I have.

20

- - - diagram before? Does the red boundary indicate the 6,000 square metre boundary of the site that was leased in October 2015?---No. The, the red – there’s two red boundaries, there’s a larger red boundary which is about 9.5 hectares.

Yes?---The small her hatched boundary in the north-western corner of the other, the larger area was, is about 1.2 to 1.5 hectares.

30

Yes?---The 6,000 square metres that was leased is within that hatched area.

Okay. Can I ask you to be shown page 37 of the same volume and you’ll see another hatched area?---That’s right.

Does that approximately represent the parcel of land that was leased to ATM Excavations?---Yes, it does. That’s approximately one hectare and the 6,000 square metres is within that, that hatched area.

40

Okay. And I’ve asked you to be shown volume, page 39, and you can see a blue - - -?---Yes.

- - - boundary. Is that approximately again the area that was leased?---Ah, approximately, again it’s a larger area than what was leased. On the, there’s actually an aerial photo on the, the actual lease document that shows the exact 6,000 square metres, but yes, it’s, it’s, it’s within that area.

Okay. And there’s a, you’ll see that there’s an entry there onto Bandon Road?---Yes.

Is that the only entry onto the site that was leased?---Yes, yes, it was. There are several – this is a paddock and there are several – and that’s the boundary of a, just a barbed wire fence and there are several rural gate accesses onto that property. So there was another one just to the, just out of frame on this picture, another entry into the property, but that driveway was the direct access into the ATM leased area.

10 Do you know a person by the name of Nosir Kabite?---Ah, yes, I was introduced, I can’t remember when, it’s in my statement, from when I – it was in October last year where I was introduced to – he was only introduced to me as – Nosir I think was how he was introduced to me as, as one of the members associated with ATM Excavation.

All right. And at paragraph 14 it says that you saw him subsequently on occasions when you were driving past the Bandon Road site?---That’s correct.

20 And if you first met him in October 2015, which is what you say in paragraph 13, how many times after the first time you met him did you see him, approximately?---Ah, I would see him approximately 10 times and of those 10 times, spoken to him approximately five, half of those.

And on the times you spoke to him, approximately five times, can you recall if that was before Christmas 2015?---There were probably some times before Christmas. Yes, I don’t have an exact recollection of the times.

Okay.---But, yes, I would have spoken to him before Christmas.

30 Okay. And at paragraph 15 of your statement, you say that on 18 January you recall somebody by the name of David and you being out at the Bandon Road site.---That’s correct.

Who’s David?---David Bedingfield who’s a director of Sakkara Property Services.

40 And what were you doing out at the site?---As we manage the development, I’m out there from time to time to meet consultants or have meetings with Ann Bartlett, our property manager, on property issues or talk to members of the community or councillors. So quite often we were out there, so had driven past just checking the property, and noticed - - -

What did you notice on 18 January in relation - - -?---Just noticed that since I had last seen the ATM leased area that there was a significant amount of material that had been imported into the site.

And I want you to – I’ll ask it this way, if that material was VENM. Do you know what I mean by VENM?---Yes, I do.

Would have that been in breach of the lease agreement?---Yes, it would have.

Yes, all right. So do you understand - - -?---I believe it would have. I believe it would have.

All right.---My understanding is it would have.

10 So there was, your understanding of the lease agreement was that there was nothing that allowed for the large-scale importing of material, whether that material be VENM, which is virgin excavated material, or contaminated material, is that correct?---That's right. That's correct. In the lease in particular, I think it's clause 54, it very clearly stipulates what our understanding of the lease agreement was for.

I'll take you to that clause now because this might assume some importance. Just part of me wants to find it. I think it's probably nine. Fifteen, is it? No, no. It's all right. Can the witness be shown volume 9, page 29? Can you see that in front of you, Mr McVay?---Yes, I can.

20

All right. I'll just read it onto the transcript. "The lessee agrees to use the allocated area for the specified usage only and understands that no waste is to be permanently left on site, and it is further agreed and understood that no hazardous or contaminated waste is to be brought onto the property." Do you understand that there's a distinction there between waste that is left permanently on the site and then waste that is brought onto the property? ---Yes, I do.

30 And there's also a distinction there between waste and hazardous or contaminated waste.---Yes.

Nevertheless, it was your understanding that waste of any nature wasn't to be - - -?---Wasn't to be brought onto the property.

- - - brought onto the site?---So the original understanding of the lease was that I would be bringing in concrete.

40 Ah hmm.---Crushing the concrete, salvaging scrap metal and selling the crushed concrete as road base, and scrapping the steel out of the concrete. That was the understanding of the lease, and that clause was trying to, the lawyers drafted that clause to capture that no material, in particular contaminated material, was to be brought onto the site or anything was to be left on the site.

Okay. And if you're bringing in concrete and crushing concrete and then scrapping metal, that's not hazardous in the sense that it's understood in clause 54?---No, no.

So it doesn't fall foul of that clause, is that the intention?---That's right.  
That's right.

On 18 January when you noticed that some dirt had been dumped on the Bandon Road site over the Christmas period, how much dirt did you notice?---Quite a significant amount. It's hard to put a volume calculation on it. After we terminated the, the tenant we had our surveyors do a pickup of the area.

10 Yes.---We had a survey before they moved in so there were some 13,000 cubic metres there. Of the material that was there that we noticed in January I would say in a ballpark figure approximately 10,000 cubic metres was already there when we, when, when we noticed it. There was quite a significant, quite a significant amount of dirt.

So after 18 January and between – and the time you terminated there was an extra 3,000 cubic metres of dirt?---Approximately, yes.

20 Approximately.---Yeah.

And are you able to convert your understanding of the cubic metres into metric tonne, do you have any idea of the tonnages?---It's about, it's about double so 26,000 tonne is what I've been – so 13,000 cubic metres is approximately 26,000 tonne based on the density of the material it's - - -

And that would have - - -?--- - - - it's understood to be clay and quite moist so it's one point eight to two times.

30 That would have come as quite a surprise to you?---It was.

Is the material still there?---Yes, it is.

And you're aware that it's been tested?---We tested it. We, we had the report that you referred to before, the JBS&G report was commissioned by us.

Okay. And you're aware of the results of that test?---Yes, we are.

40 And can you tell the Commission brief terms what the test results show?  
---Yeah. There's basically ACM asbestos material scattered throughout the material.

Have you ever managed a site before where there's been a problem similar to this?---Not similar to this but I have been involved in developments where there has been sites with contamination with regards to buildings that either have asbestos on them or hydrocarbons, petrol chemicals in the ground that we're dealt with.

I mean in relation to the dynamic of leasing out a property and then somebody using that property - - -?---No. No, I haven't.

- - - to store large amounts of material, to dump large amounts of material?  
---No, I haven't.

Can the witness be shown volume 9, page 17. Have you seen this document before, Mr McVay?---Yes, I have.

10 In what context have you seen this document?---The – we had requested validation certificates of the material that had been brought into the site from Nosir. This was one of the documents that he produced along with two other photographs – sorry, three other photographs of other – extracts from other validation reports.

And what were you seeking validation of?---When we noticed the material was there we firstly asked him to remove it but additionally to that requested that he provide validation to prove that it was VENM that he had brought onto the site. Even though it was outside of his lease we just wanted to  
20 know that the material brought on there was VENM and not contaminated or hazardous material.

So at no stage was it the understanding that if it was VENM it was okay for it to be on the site. Is that - - -?---There was never, never, never any intention for that.

Can you just scroll down to the – and did this document satisfy you?---No. No, it didn't. We had, we had requested validations. He had provided three other photographs, one being of a portion of a validation report from I think  
30 September, 2015 from memory and then another two photographs of – which looked to be the same report again saying that material was virgin but there was no – so we – the property manager passed those three photographs onto me.

Yes.---I explained to Anne that we needed the whole report.

Yes.---And we also needed proof that the material had come from the site, the source site, where the (not transcribable) were, by way of truck docketts, movements, diary notes. This was a response. This, the image that's on the  
40 screen now, is what was given to us as that proof.

Okay.---When JP Tipper Hire, which is written on there, came up, when we were doing the lease we realised that JP Tipper Hire had been an associated company with a director of the company, of ATM Excavations. And it had been deregistered.

Yes.---So that's when we said, yeah, that flagged an alarm for me and that's when we proceeded with the eviction notes.

Okay. And before you issued the eviction notice, you issued a compliance notice, is that correct?---A compliance and eviction. It was, yes.

It was both, was it?---Yes. The letter dated the 17<sup>th</sup> was a - - -

Clean up and get out type - - -?---Yes.

10 Are you familiar with the site being called – or are you familiar with a site known as Roadmasters?---Yes, Roadmaster were the previous owners of the Riverstone West Precinct.

Of the Riverstone West Precinct? The whole precinct, is that correct?---Roadmaster Transport.

Yes.---The company owned by a gentleman by the name of Denis Robertson. And he owned the Riverstone West Precinct and the land on the other side of Eastern Creek known as Lot 11.

20 And do you know approximately when it changed hands?---Roadmaster, or Master Group, which was a previous owner, which went into receivership in approximately 2009, and the property sat in, managed by the receivers and managers until Riverstone Parade purchased it on 2 September, 2013.

All right. So when you say that Tom Cooper on 25 February contacted you and you state that he worked at the old meatworks area - - -?---They are a tenant. Tom Cooper works for Kingsfeld Contracting, who is a tenant down at the old meatworks area of the site, which is where Roadmaster Transport operated out of.

30 All right. I'll just ask you to be shown the picture again that I showed you at the start - - -?---Sure.

- - - of your examination. And that was volume 9, page 38. Where on this map is - - -?---If you scroll down slightly you can see that there is a yellow square.

40 Yes.---Yes. That yellow square is approximately one hectare. There is about a 15 hectare area from there heading north, which is where the old abattoir, meatworks facility was. So there's offices, warehouses and (not transcribable). So that's where the majority of the commercial tenants are leasing and Kingsfeld is a tenant down there.

And how long have you known Tom Cooper for?---I met Tom Cooper – I can't remember exactly. It was probably August, maybe July of 2015.

And did it come to you as a surprise when he contacted you in relation to - - -?---Yes, it did.

And why did it come to you as a surprise?---Again, that material, so Kingsfeld, we have a contract with Kingsfeld to undertake earthworks on the site. So he was managing those aspects and he was up the northern end of the site and witnessed more trucks coming in and tipping what he defined as crap, you know, chunks of concrete and things, onto the site.

So he said that to you at a previous occasion before 25 February, 2016, is that correct?---Yeah, I believe - - -

10

Sorry, you can look at your statement. Paragraph 18 of your statement, you say you had a conversation with Tom Cooper on 25 February.---Oh, no, so that was after the fact that we had – sorry, that was after the fact that we had issued the eviction notice. That’s right.

Okay. So at what point in the chronology did you have a conversation with Tom Copper about the crap that was being tipped in the Bandon Road site?--So that would've been during the - - -

20

Before Christmas, after Christmas?---No, no, no, it was after Christmas. It was, it was during the process of us going through the eviction process after we'd issued the notice. Yeah, I don't know the exact date but it was probably early February when, when he, he had notified me that more material had been dumped there.

And so is it fair to summarise the conversation on 25 February as, sorry. The conversation on 25 February did Tom sound satisfied with what Mr Izzard had told him?---Yes, yes, yeah. That's right.

30

And so it was in effect a change of tune from Mr - - -?---Exactly. That's right.

I want to (not transcribable) now the conversation you had with Mr Izzard and just in the lead up to this conversation. You received – I just want to get this chronology right. You received a phone call from Mr Cooper and shortly after that Ms Bartlett called you and then on the same day you then phoned Mr Izzard, is that correct?---That's correct.

40

All right?---I just wanted to – I'd been as per my statement both Tom Cooper and Anne Bartlett had told me that everything was okay but I just wanted to confirm for myself.

All right. And was it a long conversation with Mr Izzard?---I don't recall it being overly long, no.

Can you recall what you discussed?---We discussed the ATM Excavation company that had leased the area at the northern end of the site that we, we had proceeded with the eviction from ATM from the site after it became

apparent to us that they were doing the wrong thing by us, by the lease. We weren't sure if they were doing the wrong thing illegally or not but we knew that we hadn't signed an owner's consent for a DA so we knew that they didn't – hadn't actually lodged a DA to our knowledge. So we had proceeded to – I explained that we had commenced proceedings to evict the tenant.

10 And when you say in your statement that some of your fears were allayed, what fears were they that were allayed?---That he had been operating illegally bringing in hazardous waste into our site.

Illegally as a matter against the laws, the legislation as opposed to in breach of contract?---That's right. So more so to do with the hazardous waste concerns because we hadn't tested the material to be – see if there was anything hazardous in it.

And did you tell him, Mr Izzard that you'd spoken to Mr Cooper, can you recall?---I can't recall.

20 So it wasn't the case that Mr Izzard convinced you that you shouldn't proceed with leased termination and eviction?---My recollection of the conversation was that Mr Izzard was suggesting that we didn't proceed further with the eviction notice because Council had been monitoring ATM Excavations and they were satisfied with what Council – with what ATM Excavations were doing. I explained that they were in breach of their lease so we were going to proceed with the eviction anyway. When I, when I say that my, my fears were allayed was at a level of comfort that the material that had been bought in was in accordance with the law and not hazardous material.

30 And so before you had the conversation with Mr Izzard had the decision been taken to evict the - - -?---Yes.

40 And then Mr Izzard tried to impress upon you that perhaps you should stop the eviction procedure. Is that correct?---My understanding, my recollection of the conversation was, yes, that was, that was what I took out of the conversation and that's what I put forward to David, my immediate boss, David Bedingfield, my Director, that I'd just had a phone call from Council and maybe we shouldn't evict this tenant, maybe we need to reassess their lease and see what they're doing in breach of their lease to negotiate to keep them there. But because they had breached their lease without talk to, David and I decided, or it was confirmed from David, it was my recommendation that we proceed with the eviction.

So you – I take it from that answer that on some level you put forward Mr Izzard's suggestion to David that eviction should be reconsidered?  
---Look, I, my recommendation was the eviction would, should still stand, but I had to explain to my Director all the facts that I had, and that was that

– which was a new piece of information, which was that Council had been monitoring this tenant and Council was satisfied with what he was doing because, because of the sum of money that they were paying, it affects our business plan and our cash flow, so we should, should we consider keeping him there and reassessing his lease terms. My recommendation was no, because he breached his lease, and David agreed with me and said keep doing what you're doing.

10 Do you know if the site was being monitored by cameras?---No. Oh, I think that was explained to either, I can't recall who told me, I believe Craig Izzard had mentioned to Anne Bartlett and he may have mentioned it to me, I can't recall, but that there was some cameras up there.

Cameras up where?---At Bandon Road, monitoring Bandon Road, placed by Council, not, not us, not, not, not our - - -

When you say Council, do you mean - - -?---Mr Izzard.

20 Mr Izzard?---Yeah.

So your recollection is that Mr Izzard said either to you or to Ms Bartlett that he had set up some cameras?---Yes, that's right, that's correct.

And was that – can you recall if he said that during the conversation you had with him?---I, I can't recall.

Can you recall if you said that to David when you were giving him all the relevant facts?---I did, I did, yes.

30 And in general what was David's reaction to all of these relevant facts and circumstances you were putting to him?---The fact that the tenant had done the wrong thing and he should go.

Do you think the owner of the property – or sorry, I withdraw that. Did you have conversations with the owner of the property about what had happened at Bandon Road?---No.

40 So do they know currently that there has been - - -?---Yes, they do. There is a Board for Riverstone Parade and David reports to the Board.

And do you know what their reaction was?---Ah, shock and concern for the liability.

And if they wanted their property to be used for the purposes of dumping large amounts of material, would have they been engaged in that process before it was used?---I don't understand the question, sorry.

Sorry, sorry, that was confusing. Is it your understanding that a Development Application would have been required to use the Bandon Road site for the purposes of transporting material in large scale to it?  
---Yes, it would have.

And would have the owners of the property been consulted in the Development Application process if it were to be used for that purpose?  
---Yes, it would have. Yes, they would have.

10 And what would have been your involvement in that process?---For our other tenants that required DAs which we have, we have a procedure for that.

Yes.---Which is once the – the tenant is to have a pre-lodgement meeting with council.

20 Yes.---Prepare their DA pack, bring that DA pack to us for review by either our consultants, our town planners and then we provide an owner's consent letter and sign the application form and give that back to the tenant to lodge with council. So we get to review every application before we provide owner's consent to – for them to lodge an application.

And what's the plan for the property now – when I say plan, is it – does it need to be remediated?---Yes, it does.

30 And are there plans to have the property remediated?---The EPA have instructed us that they are undergoing their own investigation and while that investigation is happening we are to remain out of that area. We have put some ParaWeb fencing up around it and instructed – and installed some signage and some new gates and a new padlock. So we haven't gone into that area – will not go into that area until the EPA investigation has concluded.

So it's fair to say that the owner of the property is currently losing substantial amounts in lease revenue?---Yes, we are – yes, they are.

And do you have any idea how much it's going to cost to remediate the property?---In the order of \$9 million.

40 One final question for you, sir. If the witness could be shown volume 9, page 37 a final time. Sorry, that's the wrong photo. Volume 38, page 38. I just want you to focus on the TransGrid site.---Yes.

Where in relation to the TransGrid site is the Bandon Road site?---The ATM leased area?

Yes.---To the east you can – if – where the white hatching is - - -

Yes.--- - - - in the northern end of the north-eastern corner.

Yes.---It's the very western – it's the north-western corner of that white hatching area.

I understand.---You can see a road, proposed road coming out next to the Sydney Water STP boundary.

10 What does STP stand for?---Sewerage Treatment Plant.

So all of the contaminated waste is quite close to the Sewerage Treatment Plant. Is that correct?---Yes, it is. The top of – the lie of the land is there's a low point along that boundary between the Sydney Water STP and our site and it actually heads north. You can see on the aerial photo there is a creek that runs north on the other side of Bandon Road.

All right. Thank you, Mr McVay. They're all the questions I have for you.

20 ASSISTANT COMMISSIONER: Yes. Cross-examination? Apart from Mr Patterson anyone else? It's you, Mr Patterson.

MR PATTERSON: Thank you, Commissioner. Mr McVay, my name is Patterson. I represent Mr Izzard. Are you aware of any approved works in the Bandon – in the Riverstone West Precinct along Bandon Road?---Yes. There's a development consent for earthworks for approximately nine and a half hectares approved by Blacktown Council.

30 And where is that in proximity to the Riverstone West Precinct about which you have been speaking?---It's at the norther end and it encompasses the – if you look at this plan that's on the screen now the white hatched area is part of it as well slightly south down towards where that roundabout is. I actually have a plan of the approved here of you would like to see it.

Thank you. If I could just take you to paragraph 15 of your statement in which you say that you and David noticed substantial amounts of dirt that had been dumped there.---Ah hmm.

40 Did that material appear to you to be hazardous or contaminated?---It was quite overgrown with weeds so we couldn't actually see the majority of the material from the roadway.

In relation to the lease of the premises, to your knowledge is there anything in the lease preventing clean fill being brought onto the site for the purposes of levelling the site?---That was – that was - for in terms of levelling to for that material to remain - - -

Yes?--- - - - after the lease?

Yeah?---No.

Are you saying there's nothing in the lease preventing that?---The lease stipulates that they have to return the site as they found it – as they, as they had it.

10 Now you speak of a conversation that you had with Mr Izzard in paragraph 20 of your statement. And you said in earlier evidence that you took from that conversation that Mr Izzard was attempting to persuade you not to proceed with the eviction. Is that fairly put?---Yes, it is.

Can I put, I put to you that Mr Izzard did not attempt to persuade you one way or another about the eviction?---You can.

That was – may have been your interpretation?---That's correct.

20 Did Mr Izzard inform you in that conversation that he had set of surveillance cameras in Bandon Road?---As stated before, I can't recall if he said to me or to Anne Bartlett in one of his earlier conversations with her. I can't recall.

And do you of your own knowledge, are you aware whether or not cameras in fact were set up?---No.

In paragraph 20 of your statement you say that Mr Izzard told you the same thing as Anne Bartlett had told you?---Yes.

30 Perhaps for the sake of accuracy, if you refer to paragraph 19 of your statement where you describe what Bartlett informed you and you say Izzard, you say Anne informed me she'd spoken to Izzard who said he had been monitoring ATM. And then in paragraph 20 you say that Izzard told you the same thing?---That's correct.

I put to you that in fact Mr Izzard did not say that he had been monitoring ATM specifically that – but rather that he had been monitoring the Bandon Road area in general?---My recollection was that he, he singled out ATM Excavation.

40 Do you have any knowledge of Bandon Road being used as a notorious dumping site?---I have witnessed small loads along Bandon Road.

Thank you. No further questions Commissioner.

ASSISTANT COMMISSIONER: Anything arising, Mr Mack?

MR MACK: No, Commissioner.

ASSISTANT COMMISSIONER: Then thank you Mr McVay. You're excused if you'd like to leave?---Thank you.

**THE WITNESS EXCUSED**

**[12.59pm]**

10 MR MACK: I note the time, Commissioner. Perhaps it's a convenient place (not transcribable).

ASSISTANT COMMISSIONER: Yes, we'll adjourn until 2 o'clock.

**LUNCHEON ADJOURNMENT**

**[12.59pm]**