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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION RICCO

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 3 JUNE 2016

AT 2.20PM

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

THE COMMISSIONER: Yes, Mr Thangaraj.

MR THANGARAJ: Gary Mottau, Commissioner. While he's coming can I just say we won't get to Mr Byrnes today and he's not related to (not transcribable) because of his lawyers convenience, but he's now available Wednesday afternoon. So if we're able to call him Wednesday afternoon.

10 THE COMMISSIONER: All right. Thank you. Just come forward Mr Mottau. Mr Fini, have you told Mr Mottau about the effect of a section 38 order?

MR FINI: Yes, I have. And he wants to - - -

THE COMMISSIONER: And he wants to take advantage of one.

MR FINI: Yes.

20 THE COMMISSIONER: Thank you. Just take a seat Mr Mottau. The order that I am about to make protects you from the use of your answers against you in civil or criminal proceedings. It doesn't protect you should it be found you've given false or misleading evidence to the Commission. Do you understand that?

MR MOTTAU: Yes, I do, Commissioner.

30 THE COMMISSIONER: 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.

40 **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**

THE COMMISSIONER: Do you wish to be sworn or affirmed Mr Mottau?

MR MOTTAU: Sworn, Commissioner.

THE COMMISSIONER: Yes, can we have him sworn, thank you.

MR THANGARAJ: Mr Mottau, can you give the Commission your full name, please?---Yes, Gary Frederick Mottau.

And you're a Director at Hill Rogers Spencer Steer?---The firm is now known as Hill Rogers.

10 Right. Sorry. Could I just show you this, is this a copy of your statement dated 29 February, 2016?

THE COMMISSIONER: That's your statement?---Yes, it is Commissioner, sorry.

Yes.

MR THANGARAJ: I'll tender that and if you could keep one copy and return the other two, please.

20

THE COMMISSIONER: Yes, Exhibit R80.

#EXHIBIT R80 - STATEMENT OF GARY MOTTAU DATED 29 FEBRUARY 2016

MR THANGARAJ: Right, Mr Mottau, can you tell us your role at the firm please?---Yes, I'm a Director work in the audit division at Hill Rogers.

30

And how long has Hill Rogers been looking after Botany Bay Council's audit?---Commissioner, I can only answer in relation to my term with the firm.

Right?---And I'm aware since 2009.

Right. And how long have you been conducting the audit for the council?---Since 2011.

40 Right. In your time who has been responsible for liaising with you from council?---During my time that I've been responsible, who I've liaised with?

Yes?---Predominantly senior management that I personally liaised with and that would include the General Manager, the Deputy General Manager, the CFO and a couple of other, a few other staff in the finance division.

All right. And what roles did those staff have?---Well certainly Barry Byrnes, who's second in charge to Gary until Karen Rowe came. So Karen Rowe is of course and Mark Thompson.

All right. And what about the audit committee?---I would report to the audit committee generally once a year in relation to where – if we've almost finalised an audit or if an audit was still in progress.

10 All right. And who was the – was there one principal person that you liaised with at council or not?---It would be, it certainly Gary Goodman and Chief Financial Officer. And also his, his delegation, he was delegated as the Responsible Training Officer.

Right?---So under the legislation he is our primary contact.

20 Okay. Now can you just tell us the difference between an interim audit and a final audit, please?---Yes. Our methodology at Hill Rogers involves us conducting two interim audits before doing, completing the year end audit. That, that, the interim audit essentially is around looking at the systems with the view of seeing whether they were reliable to produce financial statements. And the final audit, which is, which is a verification audit around the financial statements is about us discharging our responsibility to form an opinion on the financial statements.

All right. And you explain that in a little bit more detail in your statement. Is that right?---Yes.

30 Now there are a number of recurring issues identified in the management letters over a couple of years or a few years. Is that right?---Yes.

Can you just tell us what the purpose of the management letters were and how that worked from your perspective?---Yes. We, under the Australian Audit Standards we have a responsibility to communicate deficiencies in systems to management. And we, we used, because we do interim audits during the year, and progressively we will report progressively to management in respect of any issues where we feel that improvements could be made to systems with a view to streamline the year end process.

40 All right. I want to take you to one of those draft management letters now. It's at volume 4, page 49 please. Could the witness be given please volume 4 and volume 5 and he can just keep those. Sorry, it's the CP brief, volume 4 and volume 5. Okay. It's all right. We'll just do it off the screen.---Okay.

All right. Can we go to page – the bottom of page 49 please. One of the things that you raised was the issues of payments being beyond delegations and over \$150,000.---Ah hmm.

And you've listed those on that page and the next page and I won't take you to it now but in the 2015 – or one of the 2015 drafts you again list a series of payables that are \$150,000 plus.---Ah hmm.

And that was a problem that had existed for at least those two years. Is that right?---Yes.

10 All right. Now, in relation to that why was it that that was a matter that was of concern to you?---It is – we do as I indicated in the interim audit do tests on the systems, the transaction systems and during those tests or substantive tests around payments we look for a number of qualitative characteristics to see if it is duly authorised expenditure of the Council in those, in those sample tests. But in addition to that, because Council has a procurement policy and had in around 2011 which was about the time I took over the audit introduced that procurement policy we identified that those payments appeared to us to not be in accordance with the requirements in Council's policy. So it's not a matter that turns on whether we form an opinion on the financial statements but it's certainly a matter that we came across during our tests of detail.

20

And was part of the concern that it might have represented an increased risk of fraud?---For us to report it's a concern that it is not in accordance with the policy.

Yea.---And we felt – we feel obligated to report that matter. If it, if it is an indicator of fraud that's certainly – our communication allows management to be aware of that.

30 But part of the reason that the policy is in place is to minimise the risk of fraud isn't it?---It would be for management.

Yeah.---Our role, our role in relation to fraud is in terms of detecting a material misstatement in the financial statements.

Yeah.---Not in terms of the transactions that are under the control of management.

40 What about when you discover these transactions yourself as you've listed in these management letters of being well over \$150,000 for example?---Ah hmm.

Is that a situation where you then have to consider whether there might be a fraud risk?---Certainly - - -

I'll put it this way.---Yeah.

If you detected something that might have been a fraud risk - - -?--- Ah hmm.

- - - as an auditor you would have to explore it further wouldn't you?---Oh, definitely.

Right.---If, if something is brought to our attention that indicates fraud - - -

Yeah.--- - - - it's certainly something that we would, we would have to report.

10 Well, whether it's brought to your attention or you discover it doesn't make any difference does it, it still requires you to - - -?---Certainly. If we - - -

- - - analysis it further?---If we discovered fraud we, yeah, we report to the Office of Local Government as well as the Mayor of the Council.

Yeah. So I just wanted to go back to this question then. There are a number of transactions that are over the \$150,000 threshold which is a statutory threshold.---Ah hmm.

20 In those circumstances did it occur to you that that might be a matter of fraud or potential fraud?---Of itself, no.

Right. And why is that?---Because matters over 150,000 means that Council hasn't followed their - might not have followed their system.

Yes.---At this, at this point in time they haven't explained that all payments are subject to a contract or a procurement placed in accordance with their policy. It - of itself it wouldn't be a sole indicator because the other qualitative aspects of those payments were that they were in accordance with their system. That there were documents to substantiate the payment being made. They were authorised by the relevant officers of Council. The payment had been matched with a disbursement from the Council. It had been coded correctly in accordance with the Council - - -

30

Sorry, but did you - are you saying that you had, you had checked or had that checked did you that they were legitimate payments all of these?---In relation to our testing there are a number of other qualitative and quantitative aspects that we do on selected payments.

40 Yeah.---And that if they were also - if they failed those control tests they also would have been reported. But clearly the part that wasn't being addressed from our point of view was that they weren't complying with their own policy. It didn't indicate to us that the accounts were misstated, just for us that that's what it indicated.

All right. Well, let's put it this way. You found something that's not consistent with the policy.---Ah hmm.

Do you then take the attitude that things need to be chased down to see if there's more to it than just not following the policy, that is, fraud?---I would expect management would.

10 Right. But how would they – and how do you assist them with that, what – do you tell them you need to – do you tell them how to check or verify or do you do it with them to make sure that management is not involved in any corruption, what do you – what steps do you take?---The risk for us if I, if I was to do what you suggested is I'm supposed to be independent. My – I'm engaged by the Council to form an independent view of the financial statements.

Yeah.---If I was to advise them on how to keep their accounts and then come in subsequently and form an audit opinion - - -

20 No, sorry, I might have been unclear. I didn't mean advise them how to keep their accounts. Advise them how to determine whether or not there in fact was a fraud.---Similarly, Commissioner, we – auditors will not investigate for fraud for the reason of our primary responsibility is to be independent and form a, form a view on the accounts.

Well - - -

THE COMMISSIONER: Well, sorry, I don't - - -?---And that is not, that is not our role.

I think we might be somewhat confused.---Ah hmm.

30 I don't know that it was suggested that you should investigate fraud. I think the suggestion is that if you're auditing the accounts and you see a series of payments that exceed or sorry, that contravene Council policy and you see this again and again and again, apart from advising Council that these payments exceed their policy and what are they going to do about it, if at some point it suggest perhaps the occasion of fraud in the organisation what do you do about that?---Well, certainly, Commissioner, if, if the – if we encounter something that suggests fraud we would need to report it to the Mayor and to the Office of Local Government, obviously to ICAC because that's the primary place for reporting fraud.

40 MR THANGARAJ: I think you're one step further along. We're talking about the position where you haven't yet determined or believe that there actually is fraud but there's a potential for it. The person that you are talking to may be the person that's the one that's behind the corruption themselves.---Ah hmm.

So if you discover a potential fraud because of a failure to follow policy or for some other reason, some examples I'll come to.---Ah hmm.

If you discover something that's potentially a fraud what is it that you do as the auditor of a Council like Botany Bay Council where the person that you may be liaising with, say it's Mr Goodman, might be the problem. So what is it that then you – what steps did you take in '14 and '15 with these draft management letters when these potential problems arose?---If, if it were – Commissioner, if it fell on our mind that these were indicators of fraud we would clearly not report that issue to the Chief Financial Officer, we would take it higher.

10 Right. So did you report anything from – any of the concerns that you raised in 2014 or 2015 as potential fraud matters?---No.

All right. Are you aware of what has been exposed with respect to Botany Bay Council over the last six months or so?---Yes.

Right. You understand how the false invoicing system operated within Council?---Yes.

20 So people would either inflate existing invoices or just make them up entirely.---Mmm.

None of that was picked up in any audit?---No, not that I'm – no. Not under my time with the - - -

I'm talking about the time that you've been responsible for the audit.---Yes.

30 Given the amount of money involved, we're talking about millions of dollars over several years at least, is any of that something that should have been picked up in an audit or in any of your work?---Commissioner, I don't believe that – if we came across it, yes, we would have reported it.

I think we can - - - ---But we're not engaged to do that.

I think we can understand that.---Yeah, yeah.

I'm not suggesting you came across it and - - - ---And didn't report it.

- - - turned a blind eye to it. I'm not suggesting that.---Ah hmm.

40 What I'm asking is, there are things, and I'll go through a few more, there are things that seem to have been established, and from the paperwork we've seen from you that none of that was reported. So I'm just wondering, I'm just asking you if you'll assist us as to how it is that all this got through the audit. The first one's the false invoicing. Maybe I'll just list them and then I'll come back to them.---Okay.

The first one's, for example, the false invoicing. Another one is the chief financial officer's bank account details are on a number of invoices leading

to hundreds of thousands of dollars going into his own bank account. Employees, including himself, setting up companies and money going into their bank accounts. Credit card abuse. Cars that Council employees were driving that they're not entitled to. Superannuation payments around seven figures for an individual that she was not entitled to. How did all this get through the audit.---There again, we were engaged to form an opinion on the financial statements.

10 Yeah.---If the payments that we select - - -

Sorry, could I just say one thing.---Yes.

I'm sorry to interrupt you.---Yeah.

I'm not too worried about the financial statements. I'm not worried about the audit. I'm more focused on the draft management letters.---Yes.

20 Because these are the things that are supposed to pick up systemic problems, right? Is that right?---Well, no. They're not designed for that. They're a communication under the audit standards - - -

Yeah.--- - - - of where an auditor perceives deficiencies in systems - - -

Yeah.--- - - - and communicates that with management.

30 Right.---And as I've described them in the management letter, I've described them as suggestions for improvements because, really, I have no responsibility over that. If I had responsibility, I couldn't be the auditor, because I need to be independent. Now, because we come across breakdowns and weaknesses in systems, we feel it our responsibility. It's under the standards that we need to report that. The fact that if management chooses not to take up our suggestions, that's management's prerogative. We still have to consider whether we've done sufficient testing of transactions and systems in relation to the financial systems to produce financial reports.

All right. I'm not at the stage yet of asking what it is that management did or didn't do.---Mmm.

40 At the moment I'm still focusing on what - - - ---We did.

- - - you did or didn't do. Should the work that you did, should it have picked up the fact that there was systemic false invoicing involving in excess of seven figures? Should any of the tasks that you were undertaking have exposed that?---Clearly, I and members of my team and other directors of our firm have gone through our work, and we've looked at the application of our procedures. And we haven't selected the payments for

detailed testing that were subject to the falsifying of invoices. Certainly, if we had selected, it would have then been reported.

Right. Does that mean that you did look into invoicing but - - -
---Definitely, definitely.

- - - the ones that you selected didn't come up with the false invoicing? Is that what you're saying?---That's right. The sampling selections that we made haven't included the ones that have come through this inquiry.

10

All right. So, does that mean that we take it, then, that the false invoicing as a topic or as a part of the Council payment system, that did come within your audit as a concept?---Mmm.

Is that right?---Well, certainly invoicing, yes.

Yeah. So, apart from sampling however many invoices you choose to, and I take it that means tracking it back to making sure that it's okay, is it?---
What that means is to look at a number of characteristics to ensure that
20 when the expenditure appears in the financial statements that it's correctly coded, in terms of is it a capital item or is it of revenue nature. So an expense rather than a balance sheet item.

Well that's a mechanical rather than corruption isn't it?---Exactly.

Right?---And that's our responsibility.

Right. So, well then what you saying that, what false invoices would have exposed anything if you'd sampled one of these false invoice, if the coding was correct - - -?---Yes.
30

- - - what would you have discovered?---Well that's correct. If the coding, if, if the system was that people had signed off on the payment and, and it indicated that those were the correct delegation had signed off then that would have passed one test. If another test was to ensure the amount was in accordance with the order that was raised that's, that's another test. The, the coding as you indicated is mechanical. I'm just trying to think - - -

Well by that logic then if the order was a false order then none of those
40 systems would have picked up – I mean you could well have sampled false invoices and they would have got through under that checklist?---Yes.

Right?---Well I guess another test also is the bank account that it is paid to.

So is that part of what you did check? Did you cross check – is it something that you checked, the bank account details?---We do look at controls on, on creating in the masterfile bank details. And we also look at the controls for

being able to edit that. And that is subject to comments in our management letter.

But are there – sorry so you have a list of employee bank account details and make sure that they’re not on invoices? I’m not suggesting you would have. These are all things with the benefit of hindsight - - -?---Mmm.

10 - - - but as part of an audit would you crosscheck bank account details of employees against invoices to make sure that there was no overlap?---Well most, most organisations do have a system that overlap because most, in a lot of systems council employees are also creditors. And - - -

But on top of that - - -?--- - - - my experience is on, on many, on many systems that the bank account details are also in the creditor systems for council employees.

20 THE COMMISSIONER: Why would that happen?---Because is that it can be efficient for the organisation to reimburse staff for expenses they’ve incurred on behalf of the organisation.

But wouldn’t that go through salaries? Wouldn’t you see that go through the payroll system?---Not all, not always. If, if a staff member has, has paid an expense that is reimbursed, it could be reimbursed through, through the creditor system and it’s not a payment summary reportable amount.

Well that suggests though that if it’s a reimbursement it would be for relatively small amounts wouldn’t it?—Generally, yes.

30 You shouldn’t see payments of thousands of dollars going into a bank account that was referable to an employee without that looking on its face somewhat suspicious?---Yeah, that’s, that’s correct, Commissioner.

40 Can I, can I just ask something else because you talked about sampling invoices, did any part of your audit involve just for example looking at the invoices submitted by one supplier and determining whether or from one year to the next or over a period of years there had been a dramatic change in the, in the volume of the invoicing or in the amount of the invoicing?--- Commissioner, no in relation to that particular scenario. The way we approach and actually not sampling invoices, we actually sample payments. So our, our sampling technique is around ensuring that we get the population of all payments made by an organisation over a period.

Ah hmm?---And we’ll, we’ll apply, we would have determined a materiality level based on our materiality, applying our materiality guide, and that will lead to selecting a number of, a number of transactions and we’ll take the population and divide that by the number of transactions and take intervals and select payments in that way. So we’re actually selecting a payment and then, we’re then looking has that payment been authorised in a particular

way. It's not always by invoice, sometimes they're payroll payments, sometimes they're payments to the tax office that don't have invoices, they might be a loan repayment that doesn't have an invoice, so it'll have a loan agreement.

Did you have any systems where Council employees' bank accounts were checked, I don't mean by going to their bank but the amount that's being deposited into those bank accounts if they were hundreds of thousands of dollars?---No, we don't have a system.

10

Okay. I'm not suggesting that you - - ----No. No.

All right. I just want to ask you something about the draft management letters. If you can just go to your statement please at paragraph 19 and 20. ---Yes.

Now, you prepared the 2015 management letter, the draft management letter before the 2014 had been finalised I take it?---By saying finalised, because only drafts have been issued and I hadn't signed off.

20

That's what I mean.---Yes. Yes.

So you still had not a final - - -?---That's correct.

- - - management letter for 2014 when you prepared the draft for '15?
---Correct.

30

And you say that – you give the explanation of that's because you were unable to reach agreement with Mr Goodman. How is it that that fact would be a reason to not finalise the '14 letter?---It's, it's the nature of that letter in relation to how important that is to us in terms of forming an opinion on the financial statements. By the time we get to 30 June, 2014 if management is not going to respond to the issues we have raised with them it's not going to have a bearing on the systems for which we are forming an audit opinion at 30 June, 2014. It then becomes relevant, their response if we get a response would be relevant then for the 2015 audit.

40

Right. I understand that it doesn't – that the interim audit or the draft management letters may not affect the final audit but it's – what if the person that you're dealing with that you're expected to reach this agreement with or at least get a response from, what if he's the corrupt one?---Well, in that instance, Counsel, the – we – because we go on to then complete our audit after 30 June because that's the financial year end for the Council, we will report the existence of draft management letters through our correspondence in relation to the end of year audit. So the management letter we see as reporting to management in accordance with the audit standards on how we've observed Council operating their systems and whether it's operating as, as they've indicated to us it will operate. When

we come to an end of year audit and we form a – we’re required to form an opinion on the financial statements we will then – and we’ve got a number of reports that we issue in relation to that – we’ll make, we’ll make mention when we’re reporting to our client, in this case the Council and the Office of Local Government, that there are in existence management letters.

10 Yes, but it’s one thing to say there is in existence management letters and it’s another thing to say that your Chief Financial Officer is not getting back to us to finalise the draft management letter and you agree that there’s some different – material difference in that?---Yes.

And there’s obviously some reason why you’re preparing these draft management letters. They have some purpose don’t they?---They do and
- - -

Okay, they have some purpose and it is - - -.---Yes.

It’s something that you do every year, right?---Yes, it is. Counsel - - -

20 And it’s something that Council is to receive and have some contribution with, right?---Yes.

And yet you simply did not get a final 2014 letter and moved onto 2015.
---Counsel, if I can elaborate.

Yeah.---There was – in 2013 we, we issued a final, what you would call a final management letter in that I signed the letter and issued it without management comments, without a response.

30 Yeah.---It was determined in discussion with management, and that includes the General Manager, Deputy General Manager and the CFO, that it would be advantageous if we were able to get a response from management in relation to these issues. So in 2014, no different to our correspondence with, with other audit clients, we sought to gain responses during the conduct of the audit during the year and try to get their comments as, as we progress. And that’s why you’ll see that in 2015 we’ve issued more than one draft. It’s a number of drafts and they’re cumulative. What has turned on that is that obviously 2014/2015 management hasn’t been able to finalise their responses in relation to the comments we - - -

40 Or they refuse to?---Or they refuse to and hence we – in 2016 the General Manager has agreed that we now go back to issuing a letter and they will under separate cover write a letter in response to us.

All right. Well, I’m not worried about the situation now.---Mmm.

I’m more about what happened before.---Ah hmm.

In paragraph 19, you specifically say that this was very unusual - - -
---Ah hmm.

- - - that you were unable to reach agreement. And if it's the case that in 2013 you signed the letter without management contribution, 2014 you didn't do that, did you?---Counsel, that's what I'm trying to – I thought I tried to explain, is that there was a change in system, with management's concurrence, that they want to incorporate their responses.

10 Yes.---Because they didn't respond. They hadn't responded to 2011, 2012, 2013.

Yeah. I understand that.---Yes.

You're saying that they wanted to respond.---Yes.

They didn't respond. Could you then have signed off on the 2014 letter without their contribution, given that they had not come back to you?---Yes.

20 Okay. Well, did you do that?---No.

All right. So, you chose not to do that. You were unable to reach agreement with Mr Goodman about the '14 letter. Who did you take it up with?---It was reported in the Audit Committee that we had issued a draft management letter.

Yes.---And it was also in our - - -

30 Sorry, can you just, I just want to be clear on the question.---Yes.

Who did you report to that you were unable to reach agreement with Mr Goodman? Not the existence of the draft letter or the existence of a letter. What I'm interested in is the fact that there was no consensus or an agreement to disagree, who did you tell, "Mr Goodman just won't get back to me about this," if anyone? Because as far as we can see, it wasn't taken up with anyone.---Well, in terms of telling anyone verbally, no. But in terms of our documented reports, which is what we're engaged to do, we reported to the Council and we reported to the Audit Committee.

40 Well - - - ---But we didn't report, as you say, specifically that we didn't have agreement with Gary Goodman. It is that we haven't received responses from management on all the items that we raised.

THE COMMISSIONER: Can I just ask you, sorry, you said that that was reported to the Audit Committee.---Yes.

And it was reported to Council. But what do you mean by reported to Council?---In our formal report, Commissioner, we - - -

Yes. And that would go to the general manager?---No, the formal report goes to the mayor. We're engaged - - -

Oh, sorry. So that report goes to the mayor?---We're engaged by the mayor, by the Council to report to the Council.

But would that be provided to the general manager as well, that report?
---Yes.

10

MR THANGARAJ: I might have misunderstood you, Mr Mottau. Did you say that you did note in writing that you had not yet received responses from management?---No, I didn't say.

Okay, I'm sorry. So all you'd put in writing was that there was a draft management letter in existence.---Correct.

Which means you did not tell anyone of the reason why it was that the draft couldn't be finalised?---No, I didn't.

20

All right. We now know, with the benefit of hindsight, that Mr Goodman was engaged in various things. You've described it as a very unusual experience that, sorry, very unusual in your experience that you were unable to sign off on a management letter because the CFO doesn't get back to you. Did that warrant you raising it above him? We know you didn't, but does that warrant you raising it with the mayor or the general manager or even the deputy general manager, to say you're not getting cooperation that you expect from the CFO? And, you know, I'm not saying that this means he's engaging in fraudulent conduct, but there's no explanation that I can see that's legitimate. Isn't that something that should have been raised above him?---I don't believe that was my responsibility.

30

Well if it was only you and him that knew about that, you could hardly rely on him to do that could you?---Yes, because even though the letter was emailed to the responsible accounting officer, the responsible accounting officer is acting under a delegation from the General Manager.

Yes?---And a letter is address to the General Manager.

40

But not sent to the General Manager?---Well it goes to a council's record system if - - -

Let's just talk about this simply?---Mmm.

You're not getting a response from a particular individual?---Yes.

You should you have got a response from that individual, the CFO?---If I can interrupt. The, the method of communication in 2014 and 15 in relation

to the responses, including the responses wasn't at my instigation. It was management that would like to include their responses. Whether they chose to include their responses then, it, it is a consideration but it doesn't stop us from completing an audit.

But the point is, I asked you this before, I thought we covered this, the point is that if that was the only reason and it was their choice not to participate then you would have, you should have signed off on the 14th letter.

Right?—I don't see the issuing, me signed the letter was material to our - - -

10

Well you say at paragraph 20, sorry you say at paragraph 20 it's my responsibility to finalise management letters?---Yeah, because the audit standards say it's, that I, I choose, the audit standards say who, who the auditor decides who to report to in management and that, and we, we emailed the draft letters and a number of them, but it wasn't going to be, there was going to be no further value in pursuing something at the end of June because no changes would have been able to system for our year end audit. And in terms of, if I can just – in light of how we progressively do audits an outstanding matter from a 2014 audit is the beginning point for the next years's audit. So we are appointed for a six year period. It's not a start and finish for each year.

20

Yeah?---Management letters, we look at various systems over a six year period and things will be reported in the next year if that, if, if they're outstanding in previous year and we felt that they're warranted in the next year.

But all that means is if someone doesn't get back to you or do anything it's going to be rolled over?---It does, it does counsel, but I'm trying to draw a distinction between our audit opinion and issuing a management letter.

30

We're actually engaged to issue the audit opinion. If we didn't sign an audit opinion the audit wasn't done. The management letter doesn't indicate that the audit wasn't done.

Now I'm not suggesting that they are inexplicably linked, but you had a management letter for a reason?---Mmm.

You sought input for a reason. Whether or not you got input, it was your responsibility to sign off on it. The 14 letter and the 15 letter were not finalised because of Mr Goodman you say. And they weren't finalised by you in any case and it seems you didn't tell anyone that Mr Goodman was the reason why you had not signed off on the 14 and 15 letter. Is all that correct?---With, with the exception that yes, Mr Goodman is responsible as the Chief Financial Officer, but we were liaising with a number of people on his staff, so we weren't getting responses from other people.

40

He's the one that's in charge?---He is. That's correct.

So it doesn't really - - -?---So that's why in my statement I've referred to him, as he is the primary person that we communicate.

All right. Well why is it that you didn't tell the General Manager or the Deputy General Manager or the Audit Committee that you were not signing off on the 14 and 15 letters because of Mr Goodman?---Well firstly when I reported it in the report to the Audit Committee I wasn't asked questions in relation to an actual letter.

10 Well with respect you didn't tell them that Mr Goodman was playing a role in the failure to do that did you? All you had told them was the existence of it. Is that correct?---That's correct.

All right. So let's not worry about what you actually told them because it doesn't seem that you really gave them all the information for them to then respond in the way you've just suggested, with respect. Why is it that you didn't tell the General Manager, the Deputy General Manager and or the audit committee that the reason you weren't finalising the se letter was because of Mr Goodman?---Mainly the reason is that it did not have, not
20 longer had a bearing on us on completing our audit for the 2014 year.

Now what about the issues that were tracked over into '15 from 2014, does that mean that you had not received adequate responses from Council about those issues that were concerned of?---Could you please clarify?

Where there are matters that are in your '14 draft letter and your '15 draft letters, such as \$150,000 for example, that topic?---Right, yes.

30 It's in the '15 letter - - -?---Yes.

- - - because it hadn't been resolved from the '14 letter?---No. I think you'll find, Counsel that they're possibly different payments and same with 2016.

I'm not suggesting they're the same payments but the problem was ongoing?---Yes.

40 Right. So with respect to that problem what steps did you take to notify someone other than Mr Goodman that this problem existed?---Well in 2015 the response and I'm going off my recollection there were responses from management not from Mr Goodman that systems had been introduced in relation to that qualitative aspect and that they would get back to us with ensuring the contracts were, were in place and advising us if they had been. And in, in - - -

And did they get back to you?--- - - - and largely in Council, largely most were.

So when you say largely most were, what does that mean?---It means that I can't recall if everyone was ticked off.

Right?---Similarly in the current audit, what's very current in my mind is the current audit, a similar process has been taken place.

Did you raise any of these issues that you've referred to in the '14 and '15 draft management letters, did you raise any of them with the General Manager?---Yes.

10

And how was that?---We would, we would have an exit meeting. When we finish off an audit and we would discuss draft management letters. I can't recall all the dates. I certainly recall the Deputy General Manager being present at the 2015 exit meeting. I can't recall if the General Manager was also was present in the 2014. Certainly was present in the 2013.

All right. So does that mean, do you take notes of who's there at these meetings so you know who it is that you've reported issues with?---No, I don't take notes of who, who was present at the meeting.

20

All right. So how do you keep track of who it is you've informed of potential problems?---How we keep track of, well it's – when we, when we address a letter to the General Manager we've considered we've informed the General Manager.

What's the purpose of having the meeting then?---The meeting is on exit, we're discussing these issues before we, before we correspond, before we - - -

30 When you send a letter to the General Manager do you send it directly to the General Manager or does it go to someone else who's supposed to give it to the General Manager?---Largely it goes to the persons delegated.

So what, Mr Goodman?---Yes.

Was it a concern that the person that you're unable to reach agreement with was the person in between you and the General Manager receiving her correspondence?---Well it's clearly a concern - - -

40 I mean it's proven to be but I'm not suggesting, I mean obviously in hindsight it's proven to be a problem?---Yes.

But at the time you're sending correspondence to the General Manager via the CFO who you are unable to reach agreement with, shouldn't you have sent it directly to the General Manager?---Definitely if it was going to lead to a modified audit opinion, definitely. I can say but that's - - -

Well let's set aside that?---That's really and really I can only say, Commissioner, that would be the case where we would escalate it. If it was going to impact our ability to form our opinion and would lead to any sort of modification to opinion the Council as our client would expect that we would communicate via, then - - -

All right. Well - - -?--- - - - then the CFO.

10 But some of these matters you've referred to you in your draft letters including say the bank reconciliation. If we can bring page 48 up please of volume 4. This is the bank reconciliation which has been an issue for more than one year and for amounts that were significant at least on the face of it, at least in the '15 year. But if you go down to, just scroll down a little bit further please. You see under "Suggestions for improvement", that first paragraph?---Yes.

And just read that to yourself?---Yes.

20 And that's part of the reason why bank reconciliations are important, aren't they?---Yes.

And with respect correctly identify the potential fraudulent – the risk of fraudulent activity. When you're raising issues like that and there's one person that's the one that you can't reach agreement with, wouldn't that be a circumstance of itself to warrant direct communication with that person's superior?---Commissioner, in relation to bank reconciliations, by the time we came to do the year-end audit the bank reconciliation wasn't an issue. The – you'll see from – I think if we scroll up a bit you'll see that this - - -

30 I'm not – sorry.---Sorry.

I understand what you're saying about that and it's in the '15 letter as well. ---Yes.

But I'm not talking about whether or not the paperwork checks out, I'm talking about the concepts that you're looking at.---Mmm.

40 The paperwork checking out in part depends on the information you're given by management doesn't it?---Yes, definitely.

Right. So that's what I'm talking about. The risks go further than what you might have understood at the time because you're relying on information being provided to you by others, you're not doing the investigation. Correct?---That's correct.

All right. Did you tell the audit committee that the '14 and '15 management letter were not finalised?---No.

All right. And can you just tell us – go to paragraph 22 of your statement. Are you – is it your position that the audit committee – that you had discussions or correspondence with the audit committee about audit management letters but nothing more, is that the - - -?---The – our report to the audit committee included a summary of issues that were in the draft and final management letters.

Yeah.---But they're headings.

10 Yeah, I understand that. But the – is there a difference between the audit management letter and the draft management letter?---Yes, in that a draft management letter indicates that we haven't received - - -

Finalised.--- - - - a response and - - -

Finalised.---Yeah.

That's whether it's finalised or not?---Yeah.

20 Yeah. All right. All right. If you go to paragraph 29 of your statement. Sorry, it may not be paragraph 29 but it's the part where you say that you're not required to send management letters to the audit committee.---That is paragraph 29.

Sorry. We have the wrong statement, that might be why. If we could have up on the screen please volume 5, page 8. I'll just tender this document, Commissioner. It's the Auditing Standard ASA265.

30 THE COMMISSIONER: Yes. Exhibit R81.

#EXHIBIT R81 - AUDITING STANDARD ASA 265 AS AT NOVEMBER 2013

40 MR THANGARAJ: And if you can go to page 8 of that document. And can you just help us with this. So you've said in your statement at paragraph 29 that you're not required by the legislation to send the audit committee the management letters. Just have a look at this Auditing Standard and tell us if there's any difficulty with that. If you look at requirements, paragraph 8, numbered 8 and 9.---Yeah, I'm looking at that in terms of reporting the deficiencies of internal control. The standard is about reporting to management. It's headed communicating deficiencies in internal control to those charged with governance and management.

Yes.---The Audit Committee is an advisory group to the Council. It doesn't have any executive function, doesn't have any delegated powers.

So do you say that the Audit Committee doesn't come within people – under the category of those charged?---Correct.

All right. So, then, you say that that's satisfied, do you, by sending it to the CFO?---Because the CFO is delegated as responsible accounting officer, and that is explicit in the regulation which local government operates under. And as a result of that regulation, the responsible accounting officer is viewed as the person charged with governance.

- 10 All right. And does it make any difference whether it's in draft form or final form?---I don't believe so.

All right. Given that those charged need to be so informed, does the auditor have a function after that is done or not?---I don't follow the question, sir.

So, part of this regulation is you're required to put in writing to the responsible person what the deficiencies in the internal control are.
---Ah hmm.

- 20 Once that's done, do you have a role any further?---I don't believe so. And certainly it's quite explicit in local government that management's responsible for the systems. Our role further is to consider whether that has, the deficiencies are significant enough to impact our opinion on the financial statements.

All right. All right. Just have a look at page 9. This talks about the level of detail that's required. All right. Can I just show you this document? It's ASA260. I'll tender copies of that.

- 30 THE COMMISSIONER: Exhibit R82.

#EXHIBIT R82 - AUDITING STANDARD ASA 260 AS AT NOVEMBER 2013

MR THANGARAJ: And if you just go to page 9, please. Yeah. Paragraphs 10 and 11. Have you read that, Mr Mottau?---Yes.

- 40 All right. So, paragraph 10, I see that – I'm taking you to paragraph 11, which gives you discretion. Paragraph 10, would that normally – or could it include an audit committee or not?---Not in a council context, because an audit committee are independent members.

All right.---And independent of management. In paragraph 11, there's actually a requirement that the auditor determines who to communicate with.

That's why I took you to the paragraph. All right. Were you required to have an understanding of – does that paragraph 10A include the Council itself? The councillors or management?---In paragraph 10A, certainly the Council has a responsibility for overseeing the strategic direction of an entity. The Council actually signs off on the accounts, together with the general manager and the responsible accounting officer. So, yes, the Council does have a role in governance.

10 All right. Part of your responsibilities include, don't they, to understand how the Audit Committee works and how it identifies and responds to risks of fraud, et cetera? Is that right?---If it's relevant for our audit, we can include consideration of that. But our audit standards actually direct us to not use the work of internal audit. But we're certainly to be aware of what work they have performed, recognising that the internal audit function, by its very nature, will be a function of management.

All right. And would you make inquiries of management to determine whether or not they actually did suspect or know of any fraud?---We do in relation to representations. We've got some - - -

20

Sorry, what do you mean by that?---We receive a written representation from management in respect of fraud matters, fraud control and prevention measures, undertaken by the Council. We also, when reporting to the Audit Committee, we explicitly ask whether the organisation is aware of any instance of fraud.

30 But do you ask individuals within management? Do you make inquiries of management that way, to ask them individually whether or not they're aware of any fraud or suspected fraud, such as the CFO or the deputy general manager?---We ask for them to complete a representation, which is a mandatory aspect of our audit. But we don't walk around the Council or an organisation asking Council staff unless there would be reason.

40 And how do they do that, how do they – do they – does someone prepare a document on behalf of others or on behalf of Council to say there's no fraud?---In relation to the management representation we do prepare a document. It's a standard one out of our audit system that we furnish management and it's one of those, one of those items of the audit that has to be completed. It's a mandatory requirement that we have it completed and furnished.

So who completed it on behalf of Council?---In the 2015 audit it was completed by the Deputy General Manager.

Right. And so what does she say in that document, as far as I'm aware I'm not aware of any fraud or suspected fraud?---A number of things. It goes for a couple of pages. It - - -

Could I take you to the relevant ASA.---Yes.

That might make it easier for you. Can I – ASA240.---Yes.

Have we tendered that? If we go to ASA240 and go to page 11 and particularly paragraphs 18, 19 and 20. Can you just tell us how, how you comply with those requirements?---There was certainly – the representation from management is, is the mandatory requirement and that has to be finalised before we're in a position to be able to complete an audit.

10

So see where it - - -?---So I'm taking that from paragraph 18.

Could I just – sorry, could I just take you to 18.---Yes.

So it says, “The auditor shall make inquiries of management and others within the entity as appropriate to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity.” So how do you go about that if there's anything extra than what you've already told us, what do you understand this requirement to be, is it a requirement that senior management confirm their view that there is no such activity?
---That's certainly one, one aspect certainly.

20

Right.---The other aspect of that is the report to the audit committee where we've, we have asked that question and received an answer in each case to the negative and that we see that as the, the primary areas of inquiry of management in respect of us forming an opinion on the financial statements.

All right. So you got one from Ms Cullinane. What about Mr Goodman?
---I can't recall without looking back at our files whether we received one – a separate one from Mr Goodman on previous years but we certainly – the 2015 audit is, is clear to my mind that we received one from the Deputy General Manager and that we, we raised it with the audit committee and we received an answer to the negative.

30

All right. And is it in the form of a statutory declaration or just signing a form?---The representation that's made by the - - -

Yeah.---It's a two-page questionnaire.

40

All right. All right. Can you just go to paragraph 20 and tell us what you understand that to mean.---What I understand that to mean is that, that the entity that we're auditing has systems and controls in place that considers the risk of fraud and that those, those controls are communicate to us by that questionnaire.

All right. Well, it's more than, it's more than knowing that they have systems in place though isn't it, it's understanding how they work. Is that right?---That they report on it, yes.

Well, look at the second sentence – second line, “The auditor shall obtain an understanding of how those charged with governance exercise oversight of processes.” So it’s not simply a matter of knowing that they’re in place is it, it’s a matter of understanding that how – understanding how they work . Is that right?---Yes.

And did you have an understanding of how those charged with governance, how they were exercising oversight over processes and risks of fraud?
10 ---The, the information – yes, in terms of information that was reported to us was consistent with our understanding of the organisation.

And does that mean that under 20 you were required to be satisfied that the processes they did have in place were sufficient?---Under 20 I don’t believe that it caused the auditor to assess whether their systems are sufficient. It does - - -

Well what would be the purpose of having an understanding of how it worked if it wasn’t for you to say that’s an appropriate system?---I believe
20 the purpose is about that there is a system of being able to disclose a fraud in the financial reports. And that if a fraud was identified it would be disclosed. It doesn’t, it doesn’t tell me anything about detecting for it.

All right. Does that mean that with respect to Botany Bay Council, firstly you did not know whether the systems were adequate and that’s because you didn’t believe you needed to know whether the systems were adequate?---I believe the systems were adequate for the purpose of reporting if a fraud existed in the financial statements.

30 But not detecting it?---Correct.

All right. What role did Mr Goodman play at audit committee meetings if any?--- Counsel, I’m just, I recall Mr Goodman being in attendance at, at one of the audit committee meetings I’ve attended over the years, over the last five years that is. But he, I don’t believe he attended all of them.

Right. So does that mean you’re not sure how often he came but you have a recollection of one but you’re not sure how often he came otherwise?---I wouldn’t know otherwise other than the times when I was there. The times
40 I was in attendance - - -

Right?--- - - - I recall him being there on one occasion.

Was there a designated note taker when you’re meeting with the audit committee?---Yes.

And who would that be?---The internal auditor.

Right. Do you have a recollection of Mr Goodman addressing the draft management letters in audit committee meetings?---No.

Did you understand that the audit committee was aware that it was obliged to examine management's performance in terms of fraud and financial management?---Was I aware? I'm not, no I'm not.

All right. Did the audit committee every ask you for finalised letters for the 14 and 15 years?---No.

10

Did you ever meet with the audit committee in the absence of management?---No.

Is that something that is good practice? It is something that is observed at other interviews I audit.

Right. And is there any reason it wasn't done at Botany Bay Council?---Oh, I don't know.

20

Well it was up to you wasn't it? I mean you could have called, is this right? You could a meeting with the audit committee in the absence of management to have discussions with them. Is that right?---No, it hasn't been my practice to call a meeting of the audit committee.

30

MR THANGARAJ: I'm not saying it was your practice I'm saying were you entitled to call meeting with the audit committee in the absence of management or not?---I don't know if their charter provides for that but I think I could. I would see that in the advisory capacity of the council it would probably be, because I do, I would see my client as being the Mayor, and if in doing that the members of the audit committee would add value to the discussion with the Mayor, I could see value in that.

All right. Well maybe I need to take you to it, but under ASA 260, good governance principals include the audit committee meeting with the auditor without management at least annually. Do you accept that?---It is practice at other, at other - - -

I'm just asking why that didn't happen here?---Oh, I didn't ask for it.

40

So why didn't you ask for it?---Because it's not , it's not general practice. Many, and particularly in local government I would say allow 27 audit clients, half would have audit committees and of those maybe half would ask for (not transcribable) camera meeting with the auditor. So generally I recognise it's good practice and the Standard suggests, says it's good practice. It's just not common.

All right. Do you provide management letters to audit committees at other Councils?---No.

Does Hill Rogers do that, not the ones that you're involved, but does the firm do it with other Councils do you know?---No. The reason being that the management letter is addressed to the manager. If, if management chose to table the management letter to the audit committee as is practice at some other entities, well then, then we sometimes are called to be in attendance when that's being considered.

10 All right. Can I take you to paragraph 25 of your statement please. You've raised some issues there about what was concerning to you?---Yes.

When you're auditing you operate under a presumption that fraud could exist, right, that's the conservative approach?---Scepticism, yes.

That's the professional scepticism. There's some phrase for that isn't there? It may be professional scepticism that's, that might actually be the phrase and the standard?---That's it, professionalism.

20 And is the case that – were you here for Ms Rowe's evidence?---Yes.

You heard that she suspected Teletec you heard her reason, she thought it was a lot of money to be paying for that sort of service via Council and ultimately demonstrated to be correct. Given that you're working under that presumption of that of scepticism presumption, were you, did anything ever raise concerns with you as to fraud at Botany Bay Council given what we've seen in fact took place?---Certainly in relation to the items I raised in paragraph 25 being bank reconciliations and the procurement to pay process. The reason I viewed them as the most concerning issues because they have, they do present the opportunity if not managed for, for fraud to be perpetrated. Clearly looking at where, where the Council has come from in 2011 when they did one bank reconciliation per annum and we were reporting to them by 2013 that bank reconciliations need to be timely. The fact that they were starting to do bank reconciliations on a monthly basis was an improvement to the process and was - - -

30 Sorry. The things that you're referring to in 25 or more process?---Yes.

40 Right. I'm not talking about mechanical risks I'm talking about actually identifying concrete potential fraud such as why is Teletec receiving so much money or why are there invoices this way or why are these people driving these cars. In the entire time, the five years that you've been auditing Botany Bay Council as the external independent auditor, have you not seen anything that caused you concern of actual fraud, a suspicion of actual fraud?---No. Because we've, as we've raised issues, although you can say, you can look at 2014 and '15 and say that, yes, they're not, it still needs improvement, there was some degree of management response to our queries to improve their system, or be it obviously not enough to detect a fraud, the matter still, still remain for us to consider whether that

improvement was sufficient enough for us to be able to issue audit opinions and we were able to satisfy that for those years.

The numbers that were above 150.---Mmm.

Now, every auditor has a materiality consideration, right?---Mmm.

And we don't need to say what yours is specifically, but every auditor has a level that anything above is of concern.---Ah hmm.

10

Some of the figures in the 150 table of the draft management letters for '14 and '15 exceed that materiality threshold, don't they?---Yes.

Why is it that in those circumstances those individual payments, or those companies receiving these significant amounts of money, including seven figures on occasions, why is it that, given they're individually above the materiality threshold, why is it that they are not tracked through?---Well, my response to that is that they were identified through that process of materiality.

20

Yeah.---For the purpose of our audit.

Yes.---And in terms of the tracking through - - -

Well, sorry, just on that.---Yeah.

They were identified because they came above the section 55 legislative threshold. It wasn't because of materiality. They proved to be material but they were raised because they were over \$150,000.---Yes.

30

So it's got nothing to do with materiality at that stage, does it?---Materiality for us is about disclosure in the financial statements. And the materiality number, we've got two levels of materiality. One, the overall materiality, which is about the disclosure in the financial statements. And we also have the performance materiality, which is a lesser number, which helps us determine how we select our samples. So in relation to, yes, those payments on that list, in one case there was a payment that was selected that was above our overall materiality.

40

Yes.---And that payment passed all our tests and doesn't appear on that list of being over \$150,000.

No, but we know – on that list includes things like Teletec and Jovane, for example.---Mmm.

And they're above the materiality threshold, aren't they?---Yes.

Because of the quantity.---No, sorry, they're above the materiality threshold for the sake of the Act, \$150,000.

Yes.---That's a specific materiality.

Yes.---But they're not necessarily over our financial disclosure materiality figure.

10 No, that's true. It just depends on how much it is, doesn't it? And the Jovane one was, I think it was over, it might have been over – so, Jovane, in the '15 year, was \$570-odd thousand. That would have crossed your materiality threshold, wouldn't it?---It does cross one of them, yes, yes.

So - - - ---The selection one.

20 Does that warrant – oh, so you're saying it's limited only to the section 55 thresholds? Not the materiality thresholds?---What we reported, yes, Counsel, in this report that we've given here is in relation to the \$150,000. It's a specific issue around governance. It's nothing to do with our ability to – or the Council's ability to disclose information in their financial statements in terms of the expenditure. We recognise the expenditure was incurred in that there was an outlay.

Yeah, no, I understand that there was an outlay, but there was an outlay without going to tender.---Mmm.

That's what's highlighted as a potential fraud risk, isn't it? In part, right? ---Correct, yes.

30 And all I'm asking is, when you've got one company that's receiving that sort of money in the same year, and in circumstances where they haven't complied with the tender process under the Act, does that warrant those invoices being checked or not?---Certainly the invoice was checked, in terms of that there was an invoice. The invoice was - - -

These are mechanical things we went through earlier, aren't they?---Yes, correct.

40 They're not the substance of whether the invoices are false?---That's right.

All right.---Yes.

All right, nothing further, Commissioner.

THE COMMISSIONER: Does anyone have any questions of Mr Mottau? Yes, Mr Moses.

MR MOSES: Yes. Thank you, Commissioner. Mr Mottau, I act for the Council. Can the witness be shown a folder that was provided to the Commission - - -

MR THANGARAJ: Sorry, could I just tender something I forgot to tender.

MR MOSES: Of course.

10 MR THANGARAJ: Could I just tender A40 – ASA240 please, Commissioner. Sorry about that.

THE COMMISSIONER: ASA2 – you mean ASA240?

MR THANGARAJ: Yeah.

THE COMMISSIONER: All right. Thank you. Exhibit R83.

20 **#EXHIBIT R83 - AUDITING STANDARD ASA 240 AS AT NOVEMBER 2013**

MR MOSES: Mr Mottau, if you just go to tab 2 just behind page 2. I think this is right, isn't it, in terms of your experience prior to joining Hills Rogers you were a Chief Financial Officer yourself at Warringah Council?
---Correct.

For approximately nine years?---Just over eight, yes.

30 Yeah, eight years 11 months I think your LinkedIn says. Is that right?
---Yes.

Yeah. Okay.---Yes.

And I think Hills Rogers I think advertise don't they that they do auditing for about 28 Councils?---Yes.

40 Yeah. And you're familiar with the Local Government Act aren't you in terms of the auditing of financial reports by Council's auditors?---Yes.

If you go behind tab 3 you're aware of that - - -?---Yes.

- - - provision there aren't you in respect of financial reports must be audited in accordance with the requirements set out in the standards. Correct?
---Correct.

And that's what you were doing in respect of Botany Council?---Yes.

Correct. And so we can assume that all of the audits that you conducted since 2011 were in accordance with the Australian Auditing Standards?
---Yes.

And during the audits Counsel Assisting I think has taken you to some of the management letters. You identified some areas of the Council's accounting systems and internal controls which you considered could be strengthened?---Yes.

- 10 Correct. And you thought the best way to address those matters was by bringing them to the attention of management by way of audit management letters. Correct?---Yes.

And is this the position, that you considered that those matters could be sufficiently dealt with by management, is that the view you took?---By me reporting some – yes.

Ah hmm.---Yes.

- 20 And is this the position, that in answer to the questions you were putting to Counsel Assisting that you should say what your response is, is this the position, that you were satisfied that the matters identified at least up to 2014 were not sufficiently serious that they required the attention of the audit committee or some higher Council official? Is that right?---Yes.

And on that basis is it fair to say that you considered that the matters you identified were not serious deficiencies which had the potential to result in material misstatements in the Council's financial reports?---That's correct.

- 30 Okay. Now, my learned friend has I think shown you a copy of ASA240. That's one of the uploaded documents. If the witness could be shown that document. It's the Auditing Standard ASA240, the auditor's responsibilities relating to fraud in an audit of a financial report. R83, Exhibit R83. Thank you. If you can turn that up in my document. Thanks. Now, you're familiar of course with that document?---Yes.

- So I just want to take you through some of the, the items there if I could. If we go first to page 9 and this is the ASA246. This is the responsibilities of the auditor and it states there isn't it that the risk – this is in the second
40 sentence, "The risk of not detecting a material misstatement resulting from fraud is higher than the risk of not detecting one resulting from error".
---Yes.

"This is because fraud may involve sophisticated and carefully-organised schemes designed to conceal it, such as forgery, deliberate failure to record transactions or intentional misrepresentations made to the auditor?"---Yes.

“And such attempts at concealment may even be more difficult to detect when accompanied by collusion.” Yes?---Yes.

And one of the matters that it draws your attention to as an auditor is that the difficulty of detecting fraud may of course increase where the degree of collusion involved includes the seniority of individuals involved. Correct? ---Yes.

10 And if you go to 7, where it states there, “The risk of the auditor not detecting a material misstatement resulting from management fraud is greater than for employee fraud because management is frequently in a position to directly or indirectly manipulate accounting records, present fraudulent financial information or override control procedures designed to prevent similar frauds by other employees?”---Ah hmm.

Yes?---Yes.

20 And you approached your fraud considerations with that in mind. Is that right?---Yes.

Ah hmm. And you agree, don't you of course, with the proposition that the risk of not detecting fraud is greater when it involves collusion between senior employees. Correct?---Yes.

Now, at what level did you consider the risk of fraud at the Council during the period 2011 to 2014 when you were carrying out your audit, sir?---Ah ---

30 Was it low, medium, high?---Yeah, well, our work papers certainly suggest it's low.

Correct. And how did you address that level of risk in your audit procedures?---That, that level of risk, as a result of being low because there is an organisation, there is a system, there are a number of people um, that, that has the effect of increasing our materiality number um, and therefore our determination of what, what tests were needed to detect a material misstatement.

40 Is the answer to my question that you were of the view that there were procedures in place at the Council that resulted in you thinking that there were sufficient control measures in place to deal with fraud?---Ah, yes.

On what basis did you have that view, why did you form that view? ---Because of management's representations in relation to our questions around fraud activities, the existence of policies, the existence of procedures and, and generally an existence of representations in a number of levels of management involved in the review process of, of, of accounts before we form an opinion on the, on the accounts.

Here of course the person that you were getting, according to your statement in paragraph 21, most of your information from is Mr Goodman?---Mmm.

Correct?---Ah, yes.

And the Deputy General Manager. Correct?---Yes.

10 And you say that they were – is this right – providing you with information about Council’s control procedures. Correct?---Yes.

MS GERACE: I object to that. Sorry if I’ve not followed the evidence, I don’t think it was this witness’s evidence certainly in respect to the Deputy General Manager and the control procedures and if the evidence was given could I have it identified?

THE COMMISSIONER: Well - - -

20 MR MOSES: I’m not sure what my friend’s objecting to, with all due respect to my friend. I refer to paragraph 21 and I’m putting a positive proposition to the witness.

THE COMMISSIONER: Yes, I think he’s putting a proposition. I don’t know that the question itself was objectionable. Anyway, go on, Mr Moses.

So, and did you consider that the responses you were getting from the Chief Financial Officer and the Deputy General Manager to be appropriate, given your assessment of the risk of fraud being low. Correct?---Yes.

30 Okay. You now know though, don’t you, that during the period that you were conducting audits of the Council, that as a result of the investigation at the Independent Commission Against Corruption, there’s been at least fraud detected during that period of at least \$7 million against the Council. Correct?---I’m not aware of the quantum - - -

Okay?--- - - - but I’m certainly aware it’s more than \$4.2 million.

Yeah?---Yes.

40 Well, and during that period of time your firm of course was charging the Council I think about, a total of about \$370,000 in audit fees in respect of the audits being carried out. Correct, about \$70,000 a year?---I don’t believe our audit fee is 70,000.

Okay?---I believe our fee is in the order of 50,000 a year.

MR MOSES: And during that period of time your firm of course was charging the council I think about, a total of about \$370,000 in audit fees in

respect of the audits being carried out. Correct? About 70,000 a year?---I don't believe our audit fee is 70,000 a year.

Okay?---I believe our is in the order \$50,000.

Okay. But during that period that ICAC's work has uncovered this fraud, you did not uncover it. Correct?---Correct.

10 Now did you maintain an appropriate level of professional scepticism throughout your audits of the council. I believe I did, sir.

Well if you got to – if we can just look at 10 of the document that's on the screen, it's item 12, that's one of your responsibilities isn't it? That in accordance with the standard you've got to maintain professional scepticism throughout the audit recognising that a material statement due to fraud could exist, notwithstanding your past experience of the honesty and integrity of management and those charged with governance. Correct?---Correct.

20 And you're aware of that?---Yes.

How does one do that? How do you maintain – how did you maintain an appropriate level of professional scepticism throughout your audits of the council?---Some, some of our standard procedures includes not taking things at face value, like for example there is a rebuttable presumption of fraud in respect of revenue recognition.

30 Ah hmm?---And also in respect of management override and in practical terms we, we will observe the reconciliation of the significant revenue items of council and in terms of management override, we will review journal, journal postings, journal entries who, who performed them, how they were signed off, whether they had supporting documentation.

I think you said in your evidence that you noted a number of weaknesses in respect of council's accounting systems and internal controls which you brought to the attention of management. Correct?---Ah hmm. Correct.

And that was what to the Chief Financial Officer, Mr Goodman?---Over a number of years - - -

40 Ah hmm?--- - - - since I've been involved, 2012 would have been my first management letter and that would have been when the new General Manager started.

Yes?---So it would have been, it was directly to the General Manager.

Yep?---2013 I think was the last year that we did it that was as well.

Ah hmm?---2014 and 15 as I indicated to Counsel Assisting with management's agreement we attempting to get a better communication of responses from management, hence we went through a number of series of drafts that were reported to the Chief Financial Officer and on occasion the Deputy General Manager.

To what extent, given that you say you identified weaknesses did you reply on council's controls around purchases, purchases and payments during your audit?---Our reliance on controls wasn't conclusive.

10

Ah hmm?---Hence we, we undertook substantive testing. Substantive testing is a term that refers to more detailed testing and we selected a larger sample of payments.

We'll come to those, we'll come to those in a moment?---Okay.

But it's fair to say is it not that you detected that some of the controls that council had in place were not being adhered to such as delegations and payments being made not in accordance with delegations. Correct?---I'm trying to recall if delegations was one of them.

20

Well in a series of your letters you point out that there were payments for instance that were made in excess of \$150,000 in circumstances where for instance this is, I'll use this as an example, where there had not been a tender process. Agreed?---Okay. I agree with you - - -

About the tender process?---Yeah, I, I – use of the word delegations - - -

Let's go with tender process?---Yep. Okay.

30

You agree with that?---Yes.

Okay. And so let me, let me just go then to that issue. Did you perform substantive testing of any of these payments made to the suppliers?---I don't recall.

No. Because it's no secret, isn't it and we can go through the audit letters and we will shortly. Some of the payments that were made to entities were to entities which we now know to be part of the fraudulent scheme established by Mr Goodman, correct?---Yes.

40

Yeah. Such as Jovane, correct?---Yes.

Such as the Truck and Service Centre, correct?---Yes.

Such as Teletec, correct?---Yes.

Yeah. And substantive procedure is an audit procedure designed to detect material misstatements at the assertion level, correct?---Yes.

And that means tests of transactions, correct?---Yes.

Account balances and disclosures, correct?---Yes.

10 And you didn't do any of that in respect of those entities that were picked up in your letters as being payments made without a tender process, did you?---
(No Audible Reply)

Let's be blunt about it, you didn't do it because if you did it you would've picked it up, correct?---That's why I'm hesitating.

Okay?---Because even if we did, the test of detail that we would do, the documentation would be there.

20 Well let's go through that then. Did you review documentation in respect of any specific payments to those entities that were listed as entities where the Council had not undertaken a tender process to confirm that the correct documentation and independent authorisation was in place, did you?---I can't answer affirmative or negative without going and looking at our work papers to see if we did.

Sure?---Yeah. There is a chance we did.

Your working papers - - -?---Yeah, sorry.

30 Your working papers?---Yes.

Did you prepare those working papers?---My staff did.

Yeah. Well do actually do the audits that you sign off on or do your staff do, who does them?---A number of people actually - - -

Now let's - look - - -?---Yes.

40 Do you do them or does somebody do them and then you sign off on the letter?---Yeah. I review.

Yeah?---I review - - -

So who actually does the audits within your office, say for instance, last year, 2015?---We have an Audit Manager, we have a supervisor, probably have two or three other staff over the course of the year.

And do those people chop and change depending on staff turnover at Hill Rogers or do you have them consistent as the team?---The Manager was

consistent, supervisor was, has been consistent. In terms of chop and change, certainly at the grad level there is a level of turnover. But I am responsible for the supervision and control of, of the work. And any work that is conducted by a grad or a senior is reviewed by a supervisor or Manager.

10 Okay. Can the witness have up on the screen, "Corruption Prevention", volume 4 at page 43. Thank you. I think it's on the second page if we go to that letter. Yes, thank you. So it's under the heading, so it's the third page, it's under the heading "Procurement Tendering". Now thank you. So just a bit further down on the table you'll see there the Truck Service Centre, that's just under \$200,000, do you see that?---Yes.

That was, if I can call it a bodgie entity payment. I want you to accept that, okay. Did you confirm the specific terms of contracts with that party?---Not that I'm aware of, no.

20 No. Did you obtain evidence that the contract was being carried out in accordance with its terms, sir?---Not that I'm aware of, no.

Did you confirm that the goods or services that were invoiced and paid for the Council had actually been received and the amount invoiced?---There again I can't without looking at my work papers, know if that's the case or not.

Well the answer's going to be – when I ask you did you, you're going to tell me, aren't you it wasn't me, it would've had to have to have been someone within my team?---Correct.

30 Yeah?---Yes.

Did you perform a computerised match of the vendor with a list of employees of the Council to identify matches of addresses, phone numbers or bank accounts?---No.

No. Can I just ask that the witness be shown again, I apologise. As I say 240, which is Exhibit R83, I think it is.

40 THE COMMISSIONER: Yes.

MR MOSES: Appendix 2, page 39. You see these propositions that I was putting to you and some of these Counsel Assisting was putting to you, these actually come from the Australian Standards in Appendix 2. So if we go to page 39, which is right towards the end of the document and I apologise. It's, yeah, there it is there. So those points there, these are examples of responses to the auditors assessment of risk of material misstatements. And we have for instance, this has been raised previously I think by the Commissioner early on in the hearing and Counsel Assisting's

raised it about a computerised match with a vendor list with the list of employees. That's something that you're Australian Standards tell you to do as an auditor if you pick up something that looks a bit dodgy, correct, sir?---
Yes.

Yeah?---Yes.

And if you go down some of the other items that I just mentioned to you in questions that's part of what you're supposed to do. Correct?---Yes.

10

That is as an example?---In the instance you've - - -

Yeah. But you can't tell us can you whether or not that was done because you didn't actually do it. Correct?---Correct.

And if we just go back if we can to Corruption Prevention volume 4, page 47 and here is 2014, and again I apologise to the Commission staff. It's on page 3 of that letter. It's actually page 47. I apologise. 47. And if we go to I think it's page 49 and then over to 50. Again there's an entity there Elias & Son Smash Repair which is about 187,000. Again that's one of the entities caught up in the fraud. If I were to ask you the very same questions I asked you in respect of the Truck Service Centre your answer would be the same?---Correct.

20

Okay. I just want to ask you some questions about your statement if I could so - - -?---Sure.

If we go to paragraph 7. I think I mentioned 28. You've actually 27 Local Councils. Is the experience that you had with Botany in terms of information not being provided or delays or obstruction, is that something you'd experienced with other Councils in this State in terms of the - - -?
---Yes.

30

Yes?---Yes.

And when those matters have occurred have you sought to escalate those issues to higher levels of management?---In the instances where there are delays, yes, we do escalate the issue to higher management.

40

Yeah. And do you tell the General Manager or Mayor in those circumstances?---The General Manager, yeah.

If you go to paragraph 10. The focus on the Council's accounting systems and internal controls was also was it not for the purpose of determining whether you could rely on those controls for the audit. Correct?---Whether we believed the Council can – yeah, the controls for producing financial statements.

Did you form a view that you could rely on the Council's accounting systems and internal audits for the purpose of dealing with your audit?
---Yes.

Okay. And again looking at paragraphs 10 and 11, none of the management letters said that the issues raised would or could affect your audit opinion. Correct?---Yes. I, I believe that all our management letters in the first paragraph indicate that we are communicating these issues for the purpose of forming our audit opinion.

10

But this is the position isn't it you did not say that you could not express an audit opinion because the issues you had raised did not permit you to come to a final conclusion. That's correct isn't it?---Sorry, could you repeat that.

Okay. You never said in any of the management letters because of the issues you've raised about systems within the Council that did not permit you to express an opinion in relation to the audit. Correct? You didn't say I can't do this audit because your systems are in disarray and I can't rely on what I'm being provided with?---Not expressed in the management letters but in relation - - -

20

Well, it's not – well, let's be clear about.---No. Okay.

Let's be clear.---Yes.

There is nothing in the management letter about this. Correct?---Not in the management letter but certainly in our report to the audit committee there was an instance where we could not issue an audit opinion.

30 And what year - - -?---And we made that very clear.

And what year was that?---It would have been the year where there were a number – we attended a number of audit committees.

What year was that? Do you have a recollection?---If I can refer to my reports.

Ah hmm.---It was either 2014 or 2013.

40 Okay.---But you'll find from the information I've tendered - - -

Was that when one of your previous partners of your firm was the chair of the Audit Committee?---Previous partner of Spencer Steer was the chair, yes.

Yes. And who was that?---Norm Mah Chut.

Yeah. And he was previously the auditor of the Council, wasn't he?---In 2009, yes.

Mmm. Okay. So, in the management letters, you did not state that. I think you've accepted that proposition, correct?---In the management letters, I agree.

And you say you dealt with that at an Audit Committee meeting. Did you subsequently issue the letters?---The reports?

10

The letter that you said you couldn't issue. Because of information, or the stated information, did you subsequently issue the letter?---Just to clarify, sir, the report to the Audit Committee - - -

Yeah.--- - - - was in the context of it's October, councils need to lodge by 31 October.

Correct.---You're not able to furnish these explanations.

20

Ah hmm.---Once we're able to get these explanations on the matters listed in that report - - -

Yes.--- - - - then we'll be able to. And that was completed.

Ahen you, and then you did express the opinion?---Yes.

Which enabled the Council to submit its report.---Yes.

30

Okay. And the people you were dealing with primarily were the chief financial officer, correct? In terms of trying to get information from them? ---Yes.

Yeah. And who else?---The Council, signing a statement.

Ah hmm.---Representations from management. So either the general manager or the deputy general manager.

40

Who did you deal with most? The deputy general manager or the general manager during this process?---During that process, I'm trying to recall. It was probably the deputy general manager at that time.

Ah hmm. Okay. Now, in terms of paragraphs 14 to 15 of your statement, you've set out there who your main liaison were at the Council, which was Mr Goodman. And you say you also discussed drafts with Karen Rowe and the deputy general manager, Lorraine Cullinane. And you set out your view about Council in terms of one of the more difficult to do an audit. And you've talked there about your concerns. Did you consider the repeated failure to adequately address the issues you were raising as a red flag?

---Yes.

Yeah? And did you escalate your concerns to ascertain whether or not the failure to provide information was such that there may have been management involvement in fraud being committed on the Council? Sir?--- Certainly, fraud, disclosure of fraud in the financial statements is an issue. And how we escalated that was to ask the question of any known existence of fraud at the Audit Committee.

10 But the fact is, this is right isn't it, you didn't do any of the things that appendix 2 of the Australian Standard 240 tells you to do, where you consider there's potential fraud involved, correct? Let's be blunt about it. You didn't do any of that? Correct?---Yes, but the - - -

No, no.---Correct.

Just answer the question. You didn't do any of that, did you?---Okay. No.

20 No. And you didn't escalate the concerns that you had in 2015 to the general manager of the Audit Committee, correct? Those concerns that you've set out in paragraph 15, you did not escalate those concerns to the Audit Committee or the general manager. Correct, sir? I think you've answered this question already with Counsel Assisting.---Oh, 2015.

Mmm.---Okay. Not in the instance of 2015.

No.---No, it was 2014 that those issues were escalated.

30 Now, the purpose of issuing draft management letters is to seek comments from Council management, correct? Is that right?---No.

Okay. Well, let's go to paragraph 16.---Not to seek comments.

Okay. Let's go to paragraph 16 to 17.---Yeah.

Just read that. That's exactly what you say there, isn't it? You say there, don't you?---They're issued for - - -

40 The draft letters are issued to Goodman for consideration and comments, correct?---The purpose for which drafts are issued is to give management the opportunity to comment. But the purpose for which we issue a management letter is not – it's to communicate with management any deficiencies in systems which could impact our ability to inform an opinion on the financial statements.

Well, no, no, no. Just read paragraph 17, what you've said?---Yes.

“The purpose of issuing draft management letters to the Council’s management is to seek their comments to the issues we’ve identified. Their comments may lead us to revise or remove some issues from the final management letter.” Correct? So you give them the draft management letter you give it to the Chief Financial Officer?---Yeah.

10 You say look, I’ve highlighted all these issues and I think you’re not doing your job properly because of XYZ, and I’m going to sign off on this. What have you got to say about that? And then what happens, is there a response from that person to say, well, actually don’t put that in the letter because I’ve now dealt with it, or you’ve got it wrong. Correct?---There can be - - -

Isn’t that, isn’t that what you’re saying in paragraph 17?---What I’m saying in paragraph is I’m explaining what a draft is.

Yes, and it says - - -?---In, in the context of this, this entity.

20 These draft management letters you would provide them – this is the position, isn’t it, you’ve said this in paragraph 16, you’d provide them to the Chief Financial Officer. Correct?---Yeah, they were, yes.

They were given to him so that comment would be made about what you were going to say about the issues that needed to be dealt with. Correct? ---Correct, yes.

And were there occasions where Mr Goodman would come back to you and say, don’t put that in the letter because you’ve got it wrong or I’ve dealt with that issue?---Um, I don’t recall Mr Goodman saying that.

30 Okay?---I certainly recall Karen Rowe saying that.

Okay. But is Karen Rowe telling you not to put things in a draft letter, in a final letter?---Oh, providing evidence that, that I have got it wrong - - -

Okay?--- - - - or, you know, in, in, what I’ve, what I’ve, what I’ve put in the draft has either been, has been dealt with and can show us subsequent changes to the system - - -

40 Okay?--- - - - which is, was, was the, the aim of the letter in the first place.

Okay. Now, in relation to the Audit Committee, I think you’ve dealt with this at paragraph 21, 27 to 29 and 32, this is the position, isn’t it. The Audit Committee was provided with summaries of the issues raised in the management letters only. Correct?---Correct.

And these documents that were provided to the Audit Committee, just by way of an example if we could go to the document which appears – this is at

Corruption Prevention volume 4, page 198. This is an example of one of the reports to the Audit Committee. Is that right?---(No Audible Reply)

Were these done by way of PowerPoint or were they just handed out?
---Ah, no, these were, these were tabled at the meeting, Council.

10 Yeah. And these are basically in effect summaries of the issues that were raised. Can we just go to Fraud Risk, which appears at page 206. So you say there in the third line to the Audit Committee for the June 2014 audit, “No risks of material misstatement were evaluated as significant?”
---Correct.

Do you see that?---Yes.

20 And you say that, this is in the second paragraph, “We also focussed on obtaining sufficient evidence regarding this risk through designing and implementing appropriate responses and responding to fraud or suspected fraud identified during our audit.” If I can stop there. You didn’t identify any fraud for the June 2014 audit. Correct?---That’s correct.

Mmm. Even though we know now there was actually a significant fraud on the Council during that year, but you didn’t pick it up. Correct?---Correct.

Mmm. And what were the, what were the, what were the responses which were designed and implemented by Hills Rogers in respect of suspected fraud, was there anything actually done or is this just a formulae that you use in each of your reports?---We do have a standard audit program around our responses - - -

30 Yeah?- - -?--- to representation - - -

If I ask you the question now - - -?---Yes.

- - - do you actually know what was done in June 2014 by Hills Rogers in respect of this or you don’t know because you didn’t do the audit yourself. Correct?---No, I, I, I have seen the work paper on, on this and - - -

But you didn’t do it yourself, did you?---No.

40 So what did they do then in respect of that period?---In terms of – we, we received representations from management in terms of the systems they had in place and their evaluation of those systems and ah - - -

But you keep talking about systems, but what did you, what did Hill Rogers do, because what we’re trying to get to the bottom of here is as best we can to ensure this theft of ratepayers money doesn’t happen again?---Mmm.

What did your audit firm actually do to test this issue? That's what the Commission no doubt is trying to learn from you?---Yes.

What did you actually do, because whatever you did actually missed it. Correct?---Yes.

10 You missed the target by a long way. So what did you do?---Specifically it is about receiving representations from management around the systems that they have in place to be able to detect and report fraud and so we've asked the question of whether they've identified fraud.

Okay. Okay.

THE COMMISSIONER: Mr Moses, I'm just wondering are you going to be a while yet? I'm not sure if anyone else has any questions for Mr Mottau, does anyone else - - -

20 MR THANGARAJ: The difficulty is he's flying overseas for three weeks. That's why we pushed him into today.

THE COMMISSIONER: I see. All right.

MR MOSES: I should be able to wrap my questions up in about 5 to 10 minutes I think.

THE COMMISSIONER: Does anyone else have questions?

MS GERACE: I do have some questions, yes, Commissioner I do.

30 THE COMMISSIONER: Anyone else or is that all?

MR THANGARAJ: Perhaps we could find out what time he's leaving on Monday, whether there's any possibility of coming here in the morning or not. I don't know what time the flight is.

THE COMMISSIONER: Do you have anything you want ask Mr Fini?

40 MR FINI: I don't believe I will. But I think Mottau is actually flying tomorrow and going away for four weeks.

THE COMMISSIONER: All right. Well we better press on then. Sorry, Mr Moses, go on.

MR MOSES: I'm sorry, I'm sorry, Commissioner.

THE COMMISSIONER: No, it's all right.

MR MOSES: So do I understand your answer to be that what you were talking about with systems was to satisfy yourself as to the systems council had in place to deal with fraud?---In addition to those tests that I spoke of earlier in terms of looking at management override, via journal, reviewing journals.

10 But you didn't do any of the things that are set out in appendix 2 of Australian Standard 240 in respect of testing for instance those, if I can call them suspect payments to entities that were made where there wasn't a tendering process. Correct?---And that's correct because we didn't suspect that those were, that fraud was involved in those transactions.

Okay. Yet throughout a few years you actually did pick up that there were payments being made without a tendering process to a number of entities and that did not set alarm bells ringing for you that there may be a systemic problem. Correct?---We certainly - - -

I'm just asking you the question, it didn't alert you - - -?---No.

20 - - - to go down the road of potential fraud. Correct?---Correct.

Okay. Now can I ask that, I think document's been, I think this document's been uploaded on the ICAC site, it's Auditing Standard ASA265. I don't think it's been tendered yet.

THE COMMISSIONER: No, the 265 is not - - -

MR MOSES: That's it there.

30 THE COMMISSIONER: - - - separately tendered, yes.

MR MOSES: You're familiar with that Standard Mr Mottau?---Yes.

40 And if we go to paragraph – well you've got paragraphs 29 and 30 of your statement there, this is in respect of concerns you were raising about deficiencies and the like, did you consider that the deficiencies were of sufficient importance to merit the attention of the Audit Committee, the General Manager or the Mayor, bearing in mind this ASA265?---Certainly no, no more than reporting the existence of it, of management letters from paragraph 29.

Right. If we go, if we just go to the document that is on the screen?---Yes.

It's item 5, so if we go to, I think it appears at page 8. This is the objective of the auditor, is to communicate appropriate (not transcribable) with governance and management, deficiencies in internal control that the auditor has identified during the audit and that in the auditors professional

judgement are of sufficient importance to merit their respect attention. Do you see that?---Yes.

Now, is the reason you didn't do that was because you did not pick up deficiencies in the internal control of the Council that you thought warranted or of sufficient importance to go to the Mayor and the General Manager and say there is something dreadfully wrong here and you're going to need to step in?---We would not normally go to the Mayor on a matter of management.

10

No.---And we - - -

What about, what about something of sufficient importance – well, let's - - - ?---Yes. Okay.

Let's do it in a three-step process. Did you form a view that there were serious deficiencies in internal control at the Council?---No.

20

No. Because if you had you would have escalated the issue. Correct? ---Yes.

Okay. Now, if you just go to paragraph 33 of your statement. Thank you. Just go to – could we tender that ASA265, Commissioner.

THE COMMISSIONER: Well - - -

MR MOSES: Or seek to have it tendered through Counsel Assisting.

30

THE COMMISSIONER: I'm not sure, was that tendered together with ASA260?

MR MOSES: I'm not sure, Commissioner.

THE COMMISSIONER: I only had ASA260 marked as Exhibit R82.

MR MOSES: 265. It was just up on the screen.

THE COMMISSIONER: I'm sorry. It was – sorry, yes.

40

MR MOSES: It was tendered. Thank you.

THE COMMISSIONER: It was tendered as Exhibit R81.

MR MOSES: Thank you. That's (not transcribable) And then paragraph 33 is the reference there to the Chair of the audit committee and I think you've said that he was previously the audit partner that dealt with Botany Council. You did not consider there were any issues there with him being the Chair of the audit committee despite the fact that he was formerly the

person at your firm that was doing the audits, you didn't consider that to be a problem or an issue?---Certainly I was aware and I – it wasn't my appointment clearly but I was aware that there was a two year gap between when I was reporting to the Chair in that instance.

Yes.---The risk could be a familiarity risk but as Mr Mah Chut was the Chair there are two other independent members. I felt the meeting at the time of the audit committee was objective and I was able to report the issues in my report.

10

Because there are issues aren't there in terms of concerns raised in the Australian Standards in respect of ensuring that there is not as it were over familiarity either with the auditors conducting the audits or those within management in order to ensure that there is sufficient distance and objectivity in the carrying out of what's an important function. Correct? ---Correct.

Yeah. And you're aware aren't you – or are you aware that the Office of Local Government has made a recommendation that audits of Councils should now be undertaken by the Auditor General?---I'm aware they're seeking to transition. There's a draft bill.

20

Yeah.---And that will be entering parliament at some stage in the future, yes.

Yeah. And in your experience audits conducted by a public agency such as the Auditor General over public agencies would probably be more effective?---I haven't worked with the Auditor General.

30 Okay.---So I can't, I can't comment.

Okay. Thank you. I have no further questions. Thank you, Commissioner.

MS GERACE: Commissioner, may - - -

THE COMMISSIONER: Yes.

MS GERACE: I note the time.

40 MR MOSES: Commissioner can we just have marked the folder that I've handed to the witness as well.

THE COMMISSIONER: Yes. You just want it marked for identification?

MR MOSES: If we could have it tendered - - -

THE COMMISSIONER: Or you want it tendered?

MR MOSES: - - - as an exhibit in the proceedings. There are a series of other audit management letters that aren't in evidence and chains of emails between Mr Mottau and Mr Goodman concerning the audit reports and the like which we will be putting some submissions forward on at the end of the case.

10 THE COMMISSIONER: Any issue with that, Mr Thangaraj?

MR THANGARAJ: No.

THE COMMISSIONER: No. That folder will be – it's a folder of material in relation to Mr Mottau be Exhibit R84.

#EXHIBIT R84 - FOLDER OF GARY MOTTAU DOCUMENTS

20 THE COMMISSIONER: Yes. Sorry.

MS GERACE: Mr Mottau, can I ask you just some questions to clarify your evidence please. In relation to the management letters that have been referred to, were they commonly issued after the end of an audit period? ---No. They're commonly issued during, during an audit period.

Thank you. So if the purpose of the audit is to be to audit the financial year from July to June, is that right?---Yes.

30 And you'd attend for two audits ordinarily in any year?---We, our practice at Botany has been two interims and then a year-end audit after 30 June.

Okay. And you say that you would issue the management letters during the audit in the financial year that you're auditing?---As we're conducting our procedure, yes, during the year.

Did you issue one or two each year, each financial year?---Sometimes more than one.

40 All right. Okay. So now did I understand your evidence to be that for the years 2012 and 2013 they were issued directly to the General Manager?---Yes.

And then by agreement it was only from 2014 that they were issued to the Chief Financial Officer, Mr Goodman?---Yes. In order to, correct.

Right. Okay. So that 2014 when you refer to 2014 you're talking about the financial year, '13, '14?---Yes, '13, '14 and '14 and '15.

Okay, '14 and '15, all right. And from there on pursuant to that same arrangement the management letters were sent to the CFO, Mr Goodman?---Yes.

All right. Now you talked about having some difficulty in obtaining some information that you requested in some management letters. And certainly I think you were saying in your evidence, was it not, that those difficulties were coming in terms of information being received by you from Mr Goodman, correct?---Mr Goodman and other staff from the Council.

10

All right. Now can I come back to those other staff. Certainly it was never the case, was it, that you were having difficulty getting evidence from the Deputy General Manager to the extent you needed to ask her for information?---That's correct.

All right. Okay. And certainly in relation to facilitating your processes, the Deputy General Manager took steps to facilitate your access both to the internal auditor, do you agree with that?---I don't recall access (not transcribable). I didn't ask for it but, no, I can't - - -

20

But you never had any difficulty - - -?---No.

- - - having access to the internal auditor, did you?---I don't recall I had.

No, right?---Yes.

Okay. Great. So your evidence is you never recall having any difficulty in having access - - -?---Yes.

30 - - - to your internal auditor?---Yes.

All right. Terrific. And certainly you never had any difficulty obtaining information from Karen Rowe?---No, that's correct.

All right. And was it also the case the Deputy General Manager advised you of Karen Rowe's appointment?---Yes.

And that she was there to assist you in your audit processes?---Yes.

40 And to deal with any issues that had arisen in relation to previous audit periods?---Yes.

Another thing that came up. It's clear from some of the documents that have been seen that you're aware that Council did in fact have a procurement policy, yes?---Yes.

And annexed to that procurement policy or contained within it were the financial delegations, is that correct?---I don't recall.

All right. All right. So you don't recall now?---No.

But there certainly was a procurement policy available?---I certainly recall that earlier management letters we reported to management that there should be a procurement policy and in some years later there was a procurement policy.

10 Thank you?---But the, the content of that policy - - -

You don't recall?--- - - - I don't know the detail.

All right. Thank you. Is the management response that you sought in relation to fraud this management planning questionnaire or is that another document?---I think it – no. Management planning questionnaire is the two page document that has questions in relation to fraud systems and controls.

20 All right. Thank you. And I think you gave some evidence that at least you could recall for the 2015 questionnaire that was completed by Lorraine Cullinane, is that correct?---Yes.

And you are unable to assist as to who provided that information in other years?---I can but not off the top of my head. I could refer to our work papers and, and give that, give you that answer.

30 Okay. Thank you. And certainly in terms of that, from the perspective that the auditor was intended to be independent to that extent it would not have been appropriate for senior employees to be intimately involved in the audit process itself in terms of the collation of the material or the direction of your tasks, would you agree with that?---Yes. We do our tasks ourselves. Yes.

40 Okay. And if I could just ask the witness to – if the witness could be shown a document at the back of Exhibit R79 which is the statement of Karen Rowe and the email is at tab 1, I think it's the first page at the end of the statement. It's an email started Yan Yang to Karen Rowe, including Mr Mottau. This deals with the audit process that appears to be underway at or about 18 March, 2015, and just can I ask you the following questions. If you look at the first paragraph, it appears to be that Yan Yang from your office is issuing the management planning questionnaire and the draft management letter for the 2014 audit?---Yes.

All right. And so the first thing we can observe is that occasionally the management letters and the questionnaires for a particular audit period were in fact issued well after the end of the financial year?---In this case this is the draft management letter for 2014 for information purposes.

Right?---I think if we looked at the attachment to that email, the draft management letter would have been dated much earlier.

This management planning questionnaire, is this the one you were referring to earlier in terms of seeking the assurances of management?---Correct.

All right?---Yes.

Thank you. All right. And certainly if we just look through that correspondence, do you agree at least for this period that (not transcribable) involved in the audit, the Deputy General Manager was not involved in that audit process or with you in relation to those matters?---Ah, correct. Yan,
10 Yan has sent the email to Karen Rowe and Gary Goodman in preparation for our, our interim audit for the 2015 year.

Are you able to assist and do you know whether to your knowledge Yan Yang carried out a test of the account, the bank accounts in Council's facilities on the direction or request of Lorraine Cullinane?---Ah, no, she wouldn't have performed, not that I'm aware of.

Not that you're aware of?---I wouldn't - - -

20 All right. Now, can I just ask the following questions. In terms of the Audit Committee - - -?---Ah hmm.

- - - you were, did you attend in your capacity as an invitee?---Yes.

All right. And you provided summaries of the issues you had identified? ---A number of things.

You've already been taken to that?---Yes, summaries, yes.

30 And was the process then that the Audit Committee had an opportunity to ask questions of you of the matters you had provided in summary form of concern to the Audit Committee?---Yes.

And did that on occasion occur from time to time that you would be asked questions in relation to your reports?---Yes.

And you provided that information as, as requested?---Yes.

Thank you, Commissioner.

40 THE COMMISSIONER: Any other questions of Mr Mottau? Yes, Mr Thangaraj.

MR THANGARAJ: Just two questions. Could I show you this document. Is this an – is this the questionnaire that you were talking about coming back from Ms Cullinane?---Yes.

All right. I tender that.

THE COMMISSIONER: Yes, Exhibit R85.

**#EXHIBIT R85 – EMAIL FROM KAREN ROWE TO YAN YANG
DATED 30 OCTOBER 2015 AND ATTACHMENTS**

10 MR THANGARAJ: And just finally, Mr Mottau, is it correct that Warringah Council, when you audit them, when your firm audits them, that you provide the draft management letters to the Audit and Risk Committee?
---Um, I'm not involved.

Sorry, the final – sorry, the final management letters. Does your firm provide the final management letters to Warringah Council's Audit and Risk Committee?---We, we, we wouldn't provide them to – management would provide them if they're provided, but we certainly don't provide management letters to the Audit committee.

20

Right. That's it.

MS GERACE: Sorry, just in relation to the document that's been - - -

THE COMMISSIONER: Yes.

MS GERACE: Because it's been, Commissioner, I'll be very very quick certainly.

30 May I ask you some questions just about the document before you. Could you have a look at page 2 of that document, paragraph 3 and the policies there?---So, counsel, this is the document I was just handed.

Yes, it is.---Sure, yes.

This is the management questionnaire.---Paragraph 3, yes.

40 Certainly in terms of your role as the auditor, did your role extend to identifying and viewing and verifying the existence of policies?---No, we didn't.

All right. And do you agree, then, in terms of the information contained within this document, that what this document does is declare that certain policies, that might prevent either fraud or set out systems for the recording and processing of financial documents, exist?---Yes.

All right. But that the specialist knowledge, in terms of understanding whether the implementation of those policies, in terms of the actual recording and processing of that information, was the subject of your expertise, which is identifying whether or not they were being followed, and whether material's been recorded accurately, whether the cross-checks were being undertaken to ensure that reconciliations and the like were done?
---Sorry, can I ask you to repeat that?

10 Yes. That was very long. So, this deals with one assurance being given in terms of policies being in place and any specific knowledge that management might have.---Ah hmm.

That's one side of the fraud equation. But the other side of the fraud equation is a process that was undertaken through the audit process itself, to ensure that data is being entered, that where it's being entered it's being entered correctly.---Mmm.

20 That reconciliation's being undertaken so that accounts can be cross-matched and cross-checked. That side of identifying fraud or identifying failures in the processes was the subject of the audit process itself, wasn't it?
---Not in relation to these documents.

No? Not in relation to the documents?---Our audit process is in relation to the financial transactions.

Yes.---Not into the governance of an organisation, unless it relates to - - -

30 Right. So these go to the documents and the policies of the actual implementation of correct financial transaction reporting and processing, was your function?---Oh, no.

Auditing.---Not at all.

The auditing of it.---No, that's - I'm trying to make that clear to you, that our responsibility is forming opinion on the financial statements. The actual responsibility for maintaining and managing the systems, including the financial systems, is a management function.

40 Yes, but let me put it just around this way. In order to satisfy yourself as to the quality of the financial statements - - - ---Mmm, yes.

- - - the information has to be accurately entered, yes?---We make an assessment on the reliability - - -

Yes.--- - - - to produce financial statements.

So the reliability depends upon that processing of the information and the cross-checking between the different accounts to ensure that the final information produced in the financial statements is reliable and accurate?
---It is not materially misstated.

Yes, thank you.---I'm sorry I have to be pedantic, but that's what we're engaged to do.

Yes. Thank you.

10

THE COMMISSIONER: Nothing arising?

MR FINI: Commissioner?

THE COMMISSIONER: Yes?

MR FINI: As Mr Mottau is here under summons, may he be excused from any further - - -

20

THE COMMISSIONER: Yes.

MR FINI: - - - attendance?

THE COMMISSIONER: Yes.

[BREAK IN RECORDING]

THE WITNESS EXCUSED

[4.39pm]

30

AT 4.39PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.39pm]