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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 MONDAY 6 JUNE 2016

AT 2.05PM

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

THE COMMISSIONER: Yes.

MS CALLAN: Commissioner, my name is Callan. I seek leave to appear on behalf of Mr Hurst who's the next witness.

THE COMMISSIONER: Yes, yes, Ms Callan, that leave is granted.

10 MS CALLAN: And I can also indicate that I've explained the effect of sections 37 and 38 to Mr Hurst having regard to assistance he's endeavouring to provide the Commission, he does not seek a declaration at this stage.

THE COMMISSIONER: All right. Thank you.

MR THANGARAJ: Mr Hurst.

THE COMMISSIONER: Yes Mr Hurst, would you like to come forward, thank you. Just take a seat. According to your counsel you understand the effect of the section 38 order?

20

MR HURST: Yes, I do.

THE COMMISSIONER: Do you require one or you're happy to go without?

MR CALLAN: No, I don't at this stage.

THE COMMISSIONER: All right. Thank you. Would you like to be sworn or affirmed?

30

MR CALLAN: Sworn please.

<TIMOTHY SIMON HURST, sworn

[2.07pm]

MR THANGARAJ: Mr Hurst, could you give the Commission your full name, please?---Timothy Simon Hurst.

40 And your current role?---I'm the Acting Chief Executive of the Office of Local Government.

All right. And you've prepared a statement for this matter?---Yes, I have.

Can you just confirm that this is a copy of your statement?---Yes, I can confirm this is a copy of my statement.

All right. I tender that.

THE COMMISSIONER: Yes, that's Exhibit R87.

**#EXHIBIT R87 – STATEMENT OF TIM HURST AND ANNEXURES
DATED 1 JUNE 2016**

10 MR THANGARAJ: You can keep one, sorry have you only got just one
copy have you? Sorry. All right. Mr Hurst, no doubt you're aware of the
evidence heard at this inquiry concerning the extent and the duration of the
various frauds that have taken place at Botany Council?---Only from media
reports.

All right. And there was a report or a review that was done that you've
referred to in your statement at page 28, paragraph 89 and 88. That was a
review provided, undertaken in 2012?---Yes, I see that.

20 And just go to paragraph 90 of your statement. Your report concluded that
council had satisfactory systems and processes in place to meet its
legislative obligations?---I can see that.

Now we know that in fact council did not have, sorry well we know what's
happened since or at least from media reports that you've seen but we know
that there's been significant breakdowns in processes that have led to multi
million dollars of council money being misappropriated. Do you understand
that to be the case or you're not aware of that?---Only from the media
reports.

30 All right. All right. Well, with the benefit of hindsight or any matters or
investigations you're aware of that have been done since that report do you
have any understanding as to why the systems and processes did not detect
the breaches that were then being perpetuated?

MR MOSES: I object. The witness has said, Commissioner, that he's only
aware of the matters that are being examined here through media reports. It
would be unfair to the witness but also unhelpful to the Commission one
would have thought for him to have to answer that question in that vacuum.
It's not really going to assist the matter any further.

40 THE COMMISSIONER: Well, perhaps we could ask Counsel Assisting to
just summarise broadly the areas where the misappropriations occurred and
then ask the witness if he has a view about that. If you just listen, Mr Hurst.
They fell into a number of broad areas so I'll leave that to Counsel
Assisting.

MR THANGARAJ: All right. So you understand that Council retains
contractors and people to provide services. It can be services, it could be
provision of goods, hardware. Do you understand that?---Yes.

And that in order to be paid invoices are sent to Council by organisations to be paid. Do you understand that?---Yes.

Okay. So there have been – just dealing with that issue. There have been creation of false invoices, so invoices that do not reflect any work having been done which are then paid, all right?---Yes.

10 Assume that. There have been invoices that have legitimate work but have been inflated and so that extra moneys were paid to these people that were not – that they had not done work for or performed services for.---Yes.

All right. There have been invoices created without the knowledge of any service provider and just fabricated by one or more employees of Council and the money has gone directly into their own account.---Yes.

20 All right. Vehicles bought for people that weren't entitled to them, Council employees. Superannuation payments almost for seven figures for one individual that were regarded as superannuation payments that were made that were not done in the usual way through payroll, et cetera, et cetera. Credit card misuse, over seven figures for personal credit card use that was not – that Council did not require – were not required to pay for but in fact did. Cabcharge abuse, Officeworks cards abuse, et cetera. All right. Now, you can see that even that short summary crosses a number of systems and processes of any Council. Do you agree with that?---Yes.

30 So in circumstances where there has been that sort of misconduct, that sort – that nature of misappropriation and a wide variety of different types of frauds or misappropriations, are you able to assist with – as a – sitting inside OLG as to what sort of breakdowns of processes there were that led to those sort of problems?---Not personally, no.

All right. And in preparing your statement with talking about all the things that OLG does, has that helped you work out in any way what could have been done differently say from OLG's perspective or from the Council's perspective to avoid some or all of these problems?---Not in the specific case of Botany, no. I don't know enough of the detail.

40 All right. That paragraph that I took you to, paragraph 90, apart from what you've said in your statement with respect to this review, do you have any understanding as to why the review was undertaken and how those conclusions at paragraph 90 were come – had come about?---Yes. So obviously the, the review was undertaken before my time as - - -

Yes, I understand.---At the Office of Local Government. It was what was called a promoting better practice review. This program is no longer undertaken by the Office of Local Government. The, the review is a – not an audit of the Council, it is a health check and it goes through a

combination of desktop review and site visits to, to work with material provided by Council to understand how better practice in terms of systems and processes can be implemented.

So is it something that's done with Council rather than about Council?--- Absolutely.

All right. So do you have any knowledge of who at Council was assisting the OLG with respect to this review?---Not personally, no.

10

All right. I take it there must be Council, I mean OLG records about who the interactions were with?---I'm sure there would be, yes.

And do you have any knowledge apart from stating what the recommendations were as to what underpinned the recommendations that were made that you've referred to in your statement at page 29?---I've reviewed the report broadly and, and I understand that based on better practice or best practice principles that the investigators at the time or the review team at the time felt that there were areas of shortcomings in the way that the Council was operating at that time and made those recommendations.

20

So when you say investigators what is their task when they go in and conduct a review like this? If you're using investigators as opposed to someone else, is there some sort of expectation for some forensic analysis of what's being done?---Sure. I think, I think the review itself does provide some detail about how that material is undertaken, that is obtained from the Council. Yeah. So as I understand it a broad risk based approach was taken that was targeting resources to areas identified as core matters for examination. These were aspects of administration of Councils that were considered to be important having regard to the local circumstances of an individual Council and the review did not examine every aspect of the Council's operations.

30

All right. And what was it attempting to – how was it attempting to help?--- By providing a report to the governing body of Council about areas where better practice, hence the title could be implemented within the Council.

All right. Did it come within any role that OLG felt that it had of overlooking or ensuring that elected bodies performed their functions?---So as I've, as I've noted in my statement, I do talk about the role of the office. And one of those areas includes improving Local Government performance through - - -

40

Sorry, what paragraph are you reading from?---So this is paragraph 9. "Improving Local Government performance through working with Councils, issuing standards and guidelines, reviewing Council operations and investigating issues and complaints".

So did the review come within that final open bullet point? Sorry, that's what I was asking. I understand that OLG has certain functions but was the review conducted as part of OLG's functions or separately?---I'm sorry, I don't quite understand that question?

All right. Well you've listed the OLG's responsibilities at paragraph 9?---Yes.

10 Right. So did this review come within part of OLG's responsibilities or was something else done just collaboratively with Council?---No, it was part of OLG's responsibilities.

All right. And including the responsibility that you took us to of Standards and guidelines and reviewing operations and investigating issues and complaints, is that what you're saying?---As well as those elements it was also about improving performance through working with Councils, yes.

20 All right. Do those paragraphs or is, I'll withdraw that. Are part of OLG's responsibilities ensuring that elected bodies have good governance as a general, broad topic or not?---Will provide assistance to Councils to ensure that they implement the best governance including the guidelines and standards and so on.

Yes?---But ultimately the council is an autonomous self-governing body.

30 So that's what I'm trying to work out the difference between whether you're trying to help them do your job or whether the OLG has any role in ensuring they do their job?---So no we investigate complaints in certain circumstances, but it's actually council's responsibility to govern themselves appropriately and in accordance with the Act.

And when you say investigate complaints the OLG can initiate its own investigations can't it?---Yes, it can.

So what sort of circumstances might arise for that to happen?---When there was matters brought to our attention that would warrant an investigation.

40 Right.

THE COMMISSIONER: How many investigators does the Office of Local Government have?---We have six investigators, a manager and a senior legal officer in the investigations branch.

And does that, is that meant to cover the whole of the state?---It is.

And have you found that that's a sufficient resource for those purposes?

---So we, we have seconded some officers to various other public inquiries at the moment, a backfill of those roles and, and we continue to be able to manage the investigative workload that we presently have.

MR THANGARAJ: So short of someone from the council or someone else making a complaint to you that warrants an investigation, do investigations start from any other means, that is for example, you, you meaning the OLG discovering a problem?---It can happen, yes. But we would normally undertake preliminary inquiries before proceeding to an investigation.

10

All right. And the OLG does have significant powers with respect to conducting an investigation doesn't it?---It has powers, yes.

Well it includes requiring people to give evidence on oath, requiring them to produce material?---Yes and I'm not aware that the Chief Executive is ever required anyone to give evidence on oath as part of the investigation in the past. And I'm only aware that an order has been required to produce a document once in the past.

20

All right. But the Act, your Act allows you to call evidence on oath if it's deemed - - -?---Yes, it does.

Yes. Does the OLG review council's audited financial statements?---Yes. They're sent to the office for review.

And what about management letters from an external auditor, is that part of that - - -?---Not it's not.

30

And is there some reason why that's the case?---Because the management letters don't form part of the audit of the annual financial statements.

Right. So what the OLG reviews is limited to that end of year financials? ---Yes. So the Act requires that a copy be provided of the audited financial statements and, and that is what's reviewed.

All right. The parts of the council that the OLG takes some responsibility for, how does it know that the council is actually doing what it's supposed to do?---Councils are actually responsible for doing what they're supposed to do.

40

Right. Yes?---And we provide them with guidance and assistance about how they should undertake that role. My, my powers under the Act are broadly speaking, around matters of individual misconduct of a councillor or matters of when they fail to make appropriate disclosures of a, of an interest in a matter.

And how would you know that if there has been a failure to properly disclose?---That information can come to us from various sources.

So again you're relying on someone to make a complaint. Is that the position?---Yes or, or our own, our own investigations.

But how would that investigation have even started?---Generally people bring matters to our attention, other councillors will raise it with the Office. Media reports and so.

10 All right. If, if a council, and I appreciate what you're saying about management letters, if a council like Botany or, had management letters that were, over successive years raising similar issues, do we take it then unless someone makes a complaint about it, it won't reach the OLG for the purpose of an investigation?---I'd say yes probably that is the answer. We have the capacity to request or require the provision of the, of the management letter. But there would be need, need to be something that, that triggered that.

20 Yeah.---I think it's also relevant to, to note that there's an express provision in the Act for the auditor to provide material to the Minister at any point if they hold concerns about what they found at the Council.

All right. All right. I asked you about these recommendations. Are you able to – if you go to page 29 of your statement and you've listed there a few of the recommendations. Are you able to say what recommendation 4 means, what specifically the broadening - - -?---I think I would need to look at the context in, in the document. I, I'm not aware of what that means directly.

30 Do you have that – do you have the document to – if you could tell us which document you're looking at, Mr Hurst, we'll have it brought up on the screen.---Sure. So this is the promoting better practice record itself. I'm just looking for the section where it talks about recommendation for within the document.

MS CALLAN: I think it may be page 20 of 81 of the document.

THE WITNESS: Yes, I have that page.

40 MR THANGARAJ: All right. Well, we can see what's written there but you probably don't have any further information other than what's written there. Is that right?---All I can suggest from the reading of this document is that (not transcribable) audits includes, but it's probably not limited to, auditing the risk management function contractor performance and its development and assessment function.

All right. All right. Can I ask you to go back to your statement please at paragraph 39, page 14.---Yes, I have that.

All right. Paragraph 39 the final sentence you've given a reason and you say, "For this reason the Audit Committee reports directly to the governing body of the Council." I think you were here when Mr Glinatsis gave his evidence. When you say the governing body of Council what can that encompass or what manifestations of that could be appropriate?---So the governing body is defined in the Act. It's the, the group of Councillors including the Mayor sitting as a, as a group.

10 So does that mean that from your perspective it would only be that group or could it be the finance and performance committee of the Council?---I think that that is taken from the, the guidelines on, on internal audit and the, the suggestion that's made in the document.

Which is?---I'll have a look if you would like.

Yeah. Can I just ask where you're looking, Mr Hurst?---At this stage I'm up to page 20 of the, the guidelines. So page 23 at paragraph 3.10.

20 Yeah, sorry, can you just tell us where that is again?---So, page 23 of the internal audit guidelines at section 3.10.

All right, can you just read? Unless we can bring that up.---It just notes that "The Audit Committee should report regularly to the Council on the management of risk and internal controls. This may be done following each meeting of the Audit Committee, but as a minimum the Audit Committee should report at least annually to the full Council on its oversight role of the internal audit function."

30 All right. So, that would mean that it was the, as you said before, the councillors not a subcommittee of the councillors?---So, that's the guidance, the recommendation that's provided from the office in the guidelines.

All right. All right. And can I just take you to paragraph, on another topic, paragraph 23 of your statement, please? Page 9, where you talk about the model code of conduct and the relationship between officers.---Yes.

40 And that they're not subject to direction by council or by councillor, et cetera. Is the effect of all this that the elected body is dependent on the general manager and the Audit Committee for information as to whether the Council has proper controls in place?---So, I don't believe the Act prevents a councillor from talking to a staff member. However, it would be guided by the councillor-staff interaction policy that Council may have adopted.

Yeah.---And the model code of conduct. But I recognise that, in practice, the general manager is generally the link between the governing body and the staff of the council.

All right. But setting aside the model Code of Conduct if you need to, but is it the case that the elected bodies dependent on the General Manager and the Audit Committee to make sure that the proper processes are in place?---It's the General Manager's responsibility to make sure that the proper processes are in place, yes.

All right. Does that then mean, and it may be wrong, but does that mean that the only source of independent information is the Audit Committee, independent of management?---And the external audit of course.

10

Yeah. Sorry, I'm talking about internal people at the moment. But does that mean that with respect to processes relating to these sort of problems that we've seen in this case, that the only external, sorry, the only people outside management but within Council from whom independent information might be sought or guidance is the Audit Committee?---I think there's nothing to stop the Council and the General Manager implementing whatever requirements they believe are appropriate to, to manage the internal policies of the, the Council.

20

This doesn't apply to Botany but how do Councils without Audit Committees have sort of people independent of management look after their processes, is it entirely in the hands of the external auditor or is there some other mechanism?---So my understanding is that they don't. And this is part of the proposed changes to the Act which the office is considering.

30

All right. Apart from those changes you're talking about are there any other changes or potential changes that you can see in your role as being something that might've prevented the problems that we've seen over the last few years at Botany Council?---So in, in my submission I provide quite a lot of detail from paragraphs 129 through 138 about reforms that are currently under way. As to whether they would have affected the situation at Botany I think that's going to depend on the individual circumstances.

All right. And just finally. Is the elected body responsible for ensuring the General Manager has good controls in place?---The General Manager is responsible for ensuring that, that the good controls are in place.

40

Right. Well what role does the Council have with respect to that?---The Council's role is the appointment of the General Manager. The performance management of the General Manager against the contract and setting any delegations so all, all matters that are undertaken by Council staff have to be delegated to them. Council can only delegate to the General Manager and the General Manager then puts in place a system of delegations to other staff as appropriate. There are some areas that are not able to be delegated. Those are listed in the Act.

All right. Is there some mandatory process for evaluating how the General Manager is looking after the processes, sort of the risk processes? There's

the Audit Committee on the one hand, there's, to do whatever they're required to do but is there some mandatory way in which the Council can assess what the General Manager is doing or is it a matter entirely for them?---So the, the, the Act requires the General Manager to have those appropriate systems in place as part of the General Manager's responsibilities under the Act. In terms of the assurance of that there is, the General Manager's performance agreement and the contract of the General Manager which Council is responsible for conducting the performance reviews against that.

10

Were you here for all of Mr Glinatsis's evidence?---I believe so.

In given the evidence that you heard what is your view as to whether or not the audit committee ought to have requested the draft management letters?--
-I think that that's a matter for Mr Glinatsis and the audit committee.

One of the criteria that you had to take, if you were on the audit committee what criteria do you take into account to determine whether or not you will do that?---Sorry, I don't have any experience on an audit committee.

20

All right. Nothing further.

THE COMMISSIONER: Oh sorry Mr Moses, could I just ask one question? Mr Hurst, in your statement where you talk about the best practice or promoting better practice programme, was there any follow up in relation to the recommendations that was made, that were made sorry, with regard to Botany? The reason I ask is because recommendation 5 which appears on page 30 reads, "the council should consider amending its procurement policies and procedures to provide greater safeguards in purchases over \$2,000 and to ensure greater market testing." One of the things that we've learned in the course of this inquiry is that, is that a large amount of the, of the invoicing fraud if I could put it that way was undertaken because council were, council were in effect using the same companies for many, many years and it allowed a certain kind of familiarity to be engendered between those companies and council staff. And in fact it was a mechanism whereby the principals of those companies were in fact told to put in false invoices. So I'm just wondering after those recommendations were made, was there any reference back to council to determine whether or not they'd done anything and what they had done?
---Sorry, I understand that there is a, a process whereby the, the council responds to the recommendations.

30

40

Right?---And then the report incorporating the response from council is finalised.

Right?--- And then tabled at a council meeting.

Right?---And, and unless monitoring of the implementation is required, that's where it's left. It is a report to the governing body of council.

So for all we know there was a report to the council that they'd done something and that was the end of it?---I think council would have seen our report.

10 Ah hmm?---And then also the – any management response that was incorporated in there. But I'm not sure what, what else they would have done beyond tabling it and adopting its recommendations.
Right. Yes, sorry Mr Moses.

MR MOSES: That's fine, Commissioner. Mr Hurst, I think as you've said you're only joined in the Office of Local Government in your current role in 2015. Correct?---That's right.

20 And you've had a background yourself I think as a Chief Financial Officer at Arts New South Wales for nearly 9 years?---I was in various roles at Arts New South Wales.

But you were a Chief Financial Officer? Was that the last position you held?---So the role sold that way, but I wasn't - - -

I'm sorry?---Sorry, I wasn't required to sign off on the annual financial statements of the department.

30 Okay. Sorry I'm just going from LinkedIn, but it's probably inaccurate. Okay. I assume you had nothing to do with that? I'm sure it must be the internet. But you got some familiarity with Australian Auditing Standards. Would that be right?---I think less than, less than you probably would think.

40 Okay. Okay. Well I'll, I'll skip over those questions I was going to ask you about fraud risks that are associated with the Auditing Standards. So I'll move on to another topic. My learned friend asked you some questions in relation to the power of the Office of Local Government to undertake investigations and the like. I think that's the case isn't it, that it does have a power under section 430 of the Act to undertake investigations and if necessary public inquiries?---Public inquiries are not under 430, yes, 430 provides a body of investigative panel.

Yes. And it's the case, isn't it, on your understanding of the records within the Office of Local Government, there have not been any section 430 investigations undertaken by the Office of Local Government on Botany Council? Are you aware of that?---That's correct.

And there had been no public inquiries undertaken by the Office of Local Government, correct?---That's correct.

And no allegation of misconduct by a councillor reported to the Office of Local Government or investigated by it at Botany Council? You're aware of that? If you're not aware of it, say so.---No, I'm not aware of that.

Thank you. And I think you earlier said to my learned friend that you're not aware of the facts in relation to the fraud that's occurred here, other than reading media reports, correct?---Yes, that's correct.

10 Okay. And if you go to paragraph 22 of your statement, if I could ask that you turn to that for me. Are you aware that Botany Council undertakes those matters that are referred to in paragraph 22 of your statement?---Yes, so these are taken from the Act.

But are you aware that Botany Council does this? Or you don't know?
---It's Botany Council's responsibility to comply with the Act.

Okay. But whether they do it or not, you don't know. Is that right? I'm just asking you the question.---No, I'm sorry, I don't know.

20 Okay. And are you aware that Botany Council has adopted a code of conduct based on the model code, which sets out interaction between staff and councillors?---All councillors are required to adopt a code of conduct under the Act. I'm sure that Botany will have adopted one.

Okay.---I don't know of its content.

That's fine. And you're aware, of course, that Botany Council has an external auditor?---They're required to under the Act.

30 Yeah. But are you aware of that, that they have an external auditor?---Yes, I understand they do.

Okay. And I think, as you've noted in your statement, the Office of Local Government devolves responsibility for the auditing of councils to external auditors, correct?---No, I'm sorry, we don't devolve the responsibility.

Okay.---The Act requires that Council have their financial statements audited.

40 I think you used the terminology in your statement, but I may be wrong, that the Office of Local Government devolves that responsibility under the statute to the external auditors. But - - - ---I'm sorry. Do you have the reference?

I think, as I understand it, you're saying, "Well, whether we do or we don't, that's a matter that the Act provides for," correct?---Yes. Do you have the reference there?

I'll turn it up for you. I might move on to the questions while my junior locates it. Are you aware that the external auditor here, in this matter, certified that there were sufficient records to enable the audit to be carried out?---No, I'm not aware of that.

Now, your office receives a copy of the Council's financial reports annually, including reports from the auditors, correct?---They're required to be provided under the Act.

10 I know you keep saying that, but your office receives them from Botany Council annually, correct?---So, I have not established whether or not they have been received from Botany Council, but I've got no reason to believe that they haven't.

Okay. Your performance team, that is the Office of Local Government performance team, this is in paragraph 33 of your statement, reviews these reports each year. So if you go to paragraph 33 and 34.---Yes, I see that.

20 Okay. And you set out those functions of the performance review team in paragraph 34 of your statement, correct?---Yes, I see that.

And the purpose of the review is to pick up any trends or anomalies that would be appropriate to bring to the attention of the Council? Correct? ---Yes, that's what I say.

30 And you're not aware, are you, from the files of the Office of Local Government, that any matters have been brought to the attention of the Office of Local Government - by the Office of Local Government to Botany Council that suggest that, for instance, that expenditure on suppliers was excessive?---I haven't examined the files at the office.

Okay. So you're unable to answer that question?---I can confirm it hasn't been raised with me.

Okay, thank you. It has not been raised with you?---No.

40 Thank you. Okay. But it's fair to say that if the performance review team picked something up in the financial reports, if I'm reading paragraph 34 of your statement correctly, or the auditor's report that is a trend or anomaly, that might be something that the team would draw to the attention of the Council?---Yes.

Thank you. Now, can I ask that the witness be shown Corruption Prevention volume 1, page 177. This is the promoting better practice review report. This is what you referred to in paragraph 89 of your statement, Mr Hurst, which I think you give us a link to but the Commission I think has this on its system. If we could go to that. This is - I'm sorry, my learned friend.

MS CALLAN: I was just going to say, perhaps why that's having a reference to devolving power I think – is it paragraph 117 of Mr Hurst's statement.

MR MOSES: Thank you. I thank my learned friend for that. This is the document I think that forms part of the performance – promoting better practice review. Have you had the opportunity to review that document for the purpose of giving your evidence before the Commission?---Yes, I have.

10 And this is a – are you aware that this is a report that the Council's, that is, the General Manager of the Council requested be done on Botany Council? ---I'm not aware of that.

Okay. Can I ask that you go to page 195. This sets out the recommendations that were made in the report and in particular there are recommendations there that relate to risk and fraud management. Correct? --- (No Audible Reply)

20 Is that right?---I'm sorry, I don't see these on page 195.

Okay. Well, if you go to risk management and fraud control, page 195 there is a heading – wrong page number. Okay. So if you go to page 19 of the document. This is Corruption Prevention volume 1. Thank you. So that's the page. Do you see that in front of you?---Yes, I do.

And there are a number of recommendations that relate to risk management and fraud control.---I agree.

30 Yeah. And I think the Commissioner asked you some questions in relation to recommendations and what was being done. Could I ask you to go to page – I'll just pick this up with the page numbering because it doesn't appear to be numbered. Just bear with me. So it's page 63 of the document.---Yes, I have that.

It'll come up on the screen, 63 as well. What this sets out are the recommendations that – are the recommendations that were made and then the responsibility and the time frame. Do you see that?---Yes, I see that.

40 Yeah. It's page 239 but I'm not sure whether the page numbering is following the volume 1. So is this what you were referring to earlier when the Commissioner was asking you some questions?---Yes. This is the action plan as I understand it.

Yes.---Which is passed back to Council once adopted.

So you will see there that it sets out a number of matters in relation to what is said to be – so we're going to – just so that we know, it's page 63 of the document. If the Commission staff can find it we'll ignore the page

numbers (not transcribable) Okay. So that's up on the screen now. So going through it you will see it sets out the responsibility for various matters to the General Manager, the Deputy General Manager. Correct?---Yes, it does.

And if you just continue going through to page 68. Again there are recommendations there relating to codes of practice and the like. This document what happens with it in terms of the recommendations in these time frames, does the Office of Local Government go back to the Council to ascertain whether these matters have actually been implemented?---My understanding is that depending on the, the nature of the recommendations, the actions that were proposed by Council and the time frames - - -

Yeah.--- - - - that an assessment was made whether or not any Council was followed up and at what intervals after the reports.

But I think in this case unless you know something different, in this case the Office of Local Government deemed it such that they didn't need to go back to Botany Council as a result of the conclusions that it had come to in the report, are you aware of that?---I believe that's the case, yeah.

Now just in relation to paragraphs 90 to 93 of your statement, you had no concerns, I'll shall withdraw that, because to be fair to you, you weren't there. You're not aware as to whether there were any concerns that the Office of Local Government had as to whether these recommendations had been implemented by the Council, correct?---I'm not aware, no.

No. Okay. And paragraph 91, subparagraph A, are you aware that the governance recommendation was implemented?---I'm not aware, no.

Okay. And are you aware in relation to 91(B) that the Council of course was reviewing its financial position on an ongoing basis both with Treasury corporation and the Office of Local Government, were you aware of that?---I wasn't aware.

Okay. And just in relation to the reference "To get" in 91(B). This is the last sentence. The Council was also advised to take steps to reduce the amount of debt that was outstanding. Of course you're aware that this Council has had no debt, it's operated debt free for over a decade?---I'm not aware of that.

Okay. And are you aware that this Council actually doesn't have any borrowings?---I'm sorry, I don't know that, no.

Okay. And is what you're referring to in 91(B), the amount of debt that you're referring to is the amount of debtors in terms of people haven't paid their rates, could that be what you're referring to in 91(B) or you don't know?---I feel I would need to go back to the recommendations - - -

Okay, that's fine?--- - - - to find that out.

That's okay. Now is the review undertaken by the Office of Local Government different from the Treasury core Financial Sustainability Reports?---Yes.

And have you seen the Treasury core Financial Sustainability Reports for this Council?---No.

10

Okay. I might just give the Commission reference to these because we won't take the witness to these, but I might just put a proposition. It's Corruption Prevention volume 3, page 66. It's Corruption Prevention volume 3, page 122 and Corruption Prevention volume 3, page 141. What these Treasury core reports demonstrated was that the Council in effect was operating in a manner that was financially sustainable and that there were no concerns in relation to its operations. But again, you're not aware of these reports, the substance of them?---(No Audible Reply)

20

Are you aware of the report issued by the Independent Pricing And Regulatory Tribunal of October, 2015?---Yes, I am.

Yeah. And that's at Corruption Prevention volume 3, page 188. If I could just ask you a question about that. On your review of it, is it correct that there was no issue in relation to the performance of the Council, this is page 188 and 189. But that there were issues that went to the question of its scale capacity, correct?---(No Audible Reply)

30

I'm not asking you questions about amalgamation, I'm not interested in that, I know you've been, that's been done to death with you in other forums. Nothing, I'm not asking you a question about that. The question is that there is nothing in this document, and I can take you to it specifically. There is nothing in the document that raises an issue in terms of the financial management of the Council, correct?---IPART's conclusion was that the Council is not fit.

Say that again?---IPART's conclusion is that the Council is not fit.

40

Yeah, yeah, and in terms of, that is in terms of – I'm not interested in the council in terms of – as I understand the purpose of this report was to deal with questions of as it were whether or not these councils should remain in their current size. I'm not interested in that. I'm talking about the financial performance of the council. There was no issue it contained within this document as to the financial performance of the council?---(not transcribable) from the government - - -

Ah hmm?--- - - - was to assess each of the councils against a range of criteria.

Yes?---And then to come up with an overall assessment as to whether they were fit or not fit. And they found that the Council of the City of Botany Bay was not fit.

For what?---In accordance with the – fit for the future criteria.

But that goes to the, to the size as councils amalgamations. Correct?
---There are a range of criteria they profiled.

10 Okay. Thank you.

Now in relation to your office, the Office of Local Government the purpose of preparing reports such as the 2013 report is to provide guidance and advice to councils as to their management. Correct? That's part of the review? That is you weren't there but do you understand that's the purpose of the 2013 report?---So I understand that it was paragraph 86 from the statement.

20 Ah hmm?---That it was designed to act as a health check by reviewing systems implemented by the council to give confidence about what was being done well and helping to focus attention on matters for improvement in terms of systems.

Yep. Okay. And again you weren't there but had it formed the view that there were serious concerns in relation to either the records or systems of the council then the matter would have been escalated. Correct?---I wasn't there at the time.

30 No, so you don't know?---I don't know.

Okay. Thank you. And I think you answered a question of the Commissioner that your office only has what six investigators. Is that right?---As part of a team, yeah.

That's for the whole of the state in terms of the councils?---Yes, that's right.

And what about staff generally, how many staff does the Office of Local Government have?---Less than 80.

40 Less than 80. And they're responsible for all of councils throughout the state?---That's right.

Ah hmm. Okay. Thank you. No further questions.

THE COMMISSIONER: Mr Hurst, is it do you know proposed to maintain an Office of Local Government in the future after these proposed amalgamations have taken place?---The role of advising the Minister on the operation of the sector, the investigative and council governance functions,

the policy functions and so on will continue as long as there are councils left in the state governed by the Act.

So essentially you'll continue to do what you've always done?---Some agency will be required, yes, to undertake that function.

All right. Does anyone else have any questions? No. Nothing arising? Yes, Ms Callan.

10 MS CALLAN : Just one or two things arising for me. During your time Mr Hurst, has the promoting better practice programme been running at the Office of Local Government?---No, it hasn't.

So your understanding of how that programme was undertaken is purely based on knowledge that you've gained since you've come into the position?---That's correct.

And in a historical sense?---Yes.

20 Is it your understanding that it would be the case that a review of a council really couldn't take place unless the general manager was involved in terms of providing access to documents and any other information that was required for the promoting better practice programme to be conducted? ---That's my understanding of the methodology that was applied.

You were asked a question by Mr Moses, a Senior Counsel about the involvement, in fact the request by the General Manager of the council for the promoting better practice programme to come in and provide the review that it did, could I just show you a document, and I apologise I just don't
30 have copies. I didn't realise it would come up.

THE COMMISSIONER: That's all right.

MS CALLAN: Do you see that's a document, two pages, it's a letter dated 7 June, 2012 and it appears to have been signed by a predecessor that is Chief Executive at the time, Mr Woodward?---Yes, I see that.

And it's address to Ms Kirchner, General Manager, the Botany Bay City Council?---Yes.
40

And the opening lines of the letter confirm initial discussions about the undertaking of a review?---Yes.

Does that suggest to you that Ms Kirchner was involved from the outset of the program coming in and the review being undertaken?---No.

Does it suggest that she was made aware that it was going to be taking place?---Yes, it does.

That can be handed back, I think. Unless you want it to be marked for identification.

THE COMMISSIONER: No, that's all right.

MS CALLAN: Thank you. Might just keep it there. Is it your understanding that councillors are selected for the program by the Office of Local Government? Or that councillors approach the Office of Local Government for the assistance?---My understanding is that they were
10 selected. There was a program.

You were asked by Counsel Assisting about the investigative powers of the Office of Local Government. Is it your understanding, under the Act, whether individuals can be compelled to give testimony in such an investigation? Or is that beyond your knowledge?---I would have to refer back to the Act.

Okay. Commissioner, I can indicate, as I understand it, there's no power of
20 compulsion for such investigations. You were asked a number of questions about what follow-up occurred in respect of the Promoting Better Practice report. Could I just ask you to turn to paragraph 90 of your statement? ---Yes, I have that.

As I understand it, from the first sentence, sorry, from that paragraph, because of the nature of the conclusions reached about the Council, it was not required to report back to the Office of Local Government in terms of its progress?---Yes, that's right.

And is that what you were endeavouring to indicate in response to the
30 Commissioner's questions and Mr Moses, that follow-up depends on the conclusions that are reached?---Yes, that's correct.

Okay. But, as I understand it, perhaps what you were also endeavouring to convey was that what you cannot speak about is what steps the Council itself has taken in terms of its follow-up?---No, I can't speak for that.

Thank you, Commissioner. Those are the only questions arising.

THE COMMISSIONER: Thank you. Thank you, Mr Hurst. You may step
40 down. You're excused.

THE WITNESS EXCUSED

[3.07pm]

MR THANGARAJ: Mr Goodman.

THE COMMISSIONER: Yes, Mr Goodman, please come forward. Thank you, Ms Callan. You're excused. Yes, thank you. We might revisit the section 38 order, Mr Goodman. 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.

10

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

20

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

MR GOODMAN: Sworn, thanks.

THE COMMISSIONER: Yes, can we have him sworn, please?

30

MR THANGARAJ: Could we have page – on a previous occasion you were asked questions by Mr Latham, who appears for Mr Fitzgerald, about the allegation or the evidence you gave with respect to Mr Fitzgerald receiving monies in cash, the MB Consulting money, if I could put it that way.---Yes.

10 And you said at page 1112, line 25 of the transcript, “There may be – they – there may well be other people who know that not just myself”.---Ah hmm.

All right.---That’s true.

All right. Well, let’s just, we’ll just revisit some of that just to put it into proper context. You’ve given evidence that regular payments were being made to Mr Fitzgerald which you facilitated.---That’s true.

And they were in cash.---Yes.

20

Monthly.---Yes.

I think it was about \$4,000 - - -?---4-2.

4,200, 4,200 in – times two per month.---Yes.

And MB Consulting was the name of the company used.---That’s true.

30 All right. Just on that, are you aware of any company by the name of MB Consulting providing any goods or services to Council?---Not that I’m aware of.

Were you aware of – have you seen any invoices, even false invoices, in the name of MB Consulting sent to Council?---I was handed some blank invoices by the previous General Manager to be used if necessary. They were headed up MB Consulting and they were blank apart from that.

40 All right. All right. Now, just going back to what you said at the transcript at 1112. Were there any other people that knew about these cash – MB Consulting cash payments?---Mark Thompson, Barry Byrnes, Lorraine Cullinane and obviously Peter Fitzgerald.

All right. Well, we’ll just go through them one by one. What do you say – why do you say that Ms Cullinane knew about this?---Lorraine had told other staff members that she reviews all invoices that are paid at Council. Not me, she told another staff member that very early on and I had also told Lorraine about these payments on top of that.

Why don't you just confine to telling us what you say you told her.---Oh, I told Lorraine about the payments to MB Consulting and I think it was at the time when – I know people laughed at this – that I met the particular consultant. I was introduced to him in the General Manager's foyer.

All right. I think we've been through that.---Yeah.

10 But do you remember – I'm not suggesting you'd remember the exact words but do you remember the conversation you had with Ms Cullinane about this, these payments?---I think it was more that there may have been some doubts about the authenticity but I think it was after I met the actual consultant. I was surprised and it was words to that effect.

All right. It's not very clear to me, sorry, with respect.---Oh, okay.

What is it that you say - - -?---Sorry.

20 - - - you told Ms Cullinane, if anything, about the evidence you've given us about those cash payments?---That I met Mr Blogs.

Right.---That I met him.

Yes.---And there may have been some doubts in my mind early on but that convinced me that everything was okay.

THE COMMISSIONER: You mean you were introduced to someone who was - - -?---Purporting to be that, yes.

30 Who was said to be Mr Blogs?---That's right.

Yes.---Yes.

MR THANGARAJ: Right. And when you say everything okay, what do you mean by that?---Well, I might have doubt – I'd never seen any work done and I assume the work was either done for the Airport, for AMAC, I didn't know. I'd never seen the person in our office. I'd never seen any reports produced by that organisation - - -

40 Right.--- - - - in all the time there. So you sort of think oh, okay, does he really work for us or doesn't he. It just raises doubts. And when I met that particular person who purported to be him it gave me a lot more confidence that they were genuine.

So that the payments were genuine?---Yes.

The payments to Mr Fitzgerald were genuine?---Yeah, the money that I handed to Mr Fitzgerald was in fact for MB Consulting.

Right.---And not for Mr Fitzgerald.

Right. So what are you now saying, that the money that you withdrew – sorry, the money that you gave to Mr Fitzgerald in cash was what you understood to be legitimately earned by MB Consulting?---No.

I don't understand?---No, no, now obviously what's been said in this Commission, there has been a total denial that it even took place. I now know their false. I have no doubt in my mind at all.

10

Let's not worry about what you are hypothesising now as a result of everything that you've learnt or read?---Mmm.

Let's go back to the time when you say you're providing these envelopes with cash - - -?---Yes.

- - - to Mr Fitzgerald, what do you say – well how did that come about?---I can't remember the details of how it started.

20

Right?---I can very clearly remember going into, being called into the General Manager's office and after a number of – we'd made a number of these payments and been handed the blank bits of paper if needed.

Right?---I very clearly remember that.

Well why were you providing cash in the same amount fortnightly or monthly Mr Fitzgerald?---I believed that they were for a consultant called MB Consulting who was doing some work for the council.

30

Did you - - -?---Now in what capacity I don't know. We had a lot of consultants working for Botany at that time.

All right. And why did you understand that MB Consulting was doing legitimate work for council?---That's what the General Manager told me.

All right. And did you ask him why it was that you were giving cash to him and not paying the company directly?---Yes, I did.

40

And?---(not transcribable) had used these invoices if needed. And that was it. That's all that was said.

All right. Well what did you understand that to be?---That there wasn't a general invoice that was available - - -

All right?--- - - - from this organisation, no doubt.

When you were providing the cash to Mr Fitzgerald who did you understand would be the beneficiary of the cash?---I believed initially MB Consulting,

as did, I can't say what other may thing, but I believed it was MB Consulting. I did actually ask a couple of times why has it got to be in cash? Why can't it be a cheque? There just no answer.

All right. Well did you - - -?---I did question a couple of times about that.

All right. Well did your view change as to whether it was legitimately for MB Consulting at the time?---Sorry, I missed that one.

10 Did your view change at the time that you were providing these cash envelopes as to whether or not it was legitimate earnings?---Yes.

At what point in time roughly? I don't mean by date, I mean after how many envelopes?---Oh, it's hard to say.

All right?---And as I say when I met a particular person it sort or reinforced again, oh well it must be all right.

20 All right. Well what - - -?---I don't know when that was in the, in the timeframe.

What caused you to change your view as to the legitimacy of those payments?---In what regard do you mean?

Well that they were not going to MB Consulting?---Absolutely remiss. The inquiry started and there was complete denial from the General Manager that it ever occurred. That absolutely changed my mind totally.

30 Well why did you raise the question of a lack of invoices with Mr Fitzgerald at the time?---I did.

No, why did you?---Because I never had any invoices. It's always good to have invoices with, with vouchers.

So - - -?---And I got handed these blank ones as, as and when needed.

40 Well that's what I'm asking. So when that happened were you still of the view after that that they were payments for MB Consulting for work done for council?---Yes. As I say, it wasn't long after that I met the particular person in the General Manager's foyer.

THE COMMISSIONER: Mr Goodman, you're not suggesting are you that when you were introduced to Mr Bloggs that you thought he really was Mr Bloggs?---I genuinely did.

You did?---Yes, I did. It's, look it's very difficult, you've got a General Manager and I met a lot of consultants who worked for the council. You've

got a General Manager who introduces you to someone, you don't laugh and say, oh I don't believe you. You don't do that.

But if, but if that occurred, if that occurred together with Mr Fitzgerald giving you, as you say, a number of blank invoices - - -?---Ah hmm. - - - wouldn't those two things together cause you to doubt the legitimacy of, of that transaction?---There is always doubts, always. Always doubts. But you're dealing with the General Manager.

10 MR THANGARAJ: I'm not asking why you didn't do something more about it, that would be answered by, well he's the General Manager, possibly?---Mmm.

I'm asking, you're not seeing any invoices?---No.

You're not seeing any work being done by MB Consulting. Is that right? ---Yeah, but that part of it isn't necessarily strange. We have other - - -

20 No, it's a combination of things?---Yeah, we had other people who worked for us I'd never, never seen them. Other people have worked for the airport in a, in an advisory capacity, (not transcribable) I never saw those people.

Yeah, but would you see invoices from those people? ---Yes.

Were any of them paid in cash?---No.

30 So we've got a situation where at the time you say these envelopes are being provided, as far as you know, you're not aware of any work that MB Consulting's doing?---No, I'm not aware of any.

You haven't seen any invoices from them.---No.

They're being paid cash.---Yes.

The cheques are being made out to cash.---Made out to MB Consulting, then opened up to cash.

40 Right. And they're going to someone who's not MB Consulting? That is, the general manager.---Well, they're handed to the general manager.

Right.---I assumed at the time, initially, very early on, to pay MB Consulting.

Right.---Why in cash? I don't know.

Well, why would the general manager be facilitating payments to a supplier?---You'd have to ask him that question.

Well, I'm asking - - -I don't know the answer to that one.

Well, was there any legitimate basis on which a supplier of services could be paid cash by the general manager?---I would expect not.

10 All right. So, if all of those things are correct, and this is your evidence, if those things are correct, how could you have thought for one moment that it was anything other than something illegitimate? Either that or your evidence is not true.---No, my evidence is truthful. Don't be in any doubt about that.

Well, if what you're saying is correct, how could it be anything that was legitimate?

20 THE COMMISSIONER: And could I add to that, Mr Goodman, particularly in light of the fact that you yourself have already, at this point in time, been engaging in considerable falsification of invoices. So let's put it in that context.---Mmm. Yeah. And this was well before that. Well before that. I suppose I didn't really think about it in those terms. There are other things that various people have done wrong in that organisation over a long period of time. Maybe it was the accepted practice in that place. I don't know.

MR THANGARAJ: What was the accepted practice?---Sorry?

30 What was accepted? What might have been accepted practice?---Well, that you didn't have to provide an invoice. That had happened with more than just that particular organisation. I'd done it myself, not supplied invoices, for quite legitimate work. We were waiting for companies to send them. This just started with the GM and it just went on.

Right. Now, you said Mr Byrnes and Mr Thompson. What role, if any, did they have?---Well, Mr Byrnes and Mr Thompson, both cheque signatories. It takes two people to sign a cheque.

Yeah.---And Mr Thompson or Mrs Dale prepared the cheques.

40 Right. And you'll remember that I asked you some questions about you having a discussion with Ms Cullinane about you and Mr Thompson co-signing cheques?---Yes.

And is it the case that, at some point in time, Ms Cullinane said that you and Mr Thompson were not to co-sign cheques?---Absolutely, yes.

Did that conversation happen before or after these MB Consulting cheques were co-signed by the two of you?---I can't remember.

All right.---And that conversation, later on in the piece, really would have become irrelevant, because the third cheque signatory, being Barry Byrnes, was only working three days a week, which made it incredibly difficult to get cheques signed if Barry's not there.

All right.---So it had to be (not transcribable).

Well, were cheques co-signed by you and Mr Thompson after that direction from Ms Cullinane?---Yes. Yes, absolutely.

10

All right. Now, apart from them facilitating the cheques being drawn, did you tell Mr Thompson or Mr Byrnes anything further about this cash?---I think after a while I'd just make a phone call to Mr Thompson and - - -

No, I'm not talking about how it happened.---Oh, okay, sorry.

I'm saying did you tell Mr Thompson or Mr Byrnes as to what was happening with that cash?---Yes.

20

And what did you say and to whom?---That it was going to the general manager.

All right. Well, who did you tell - - - ---Or the general manager's secretary.

And who did you tell that to?---Both of them.

All right. And did you tell them - - -?---At different times

Did you tell them why?---MB Consulting.

30

All right. So you told them that it was being paid for a consultant but it just happened to go to the General Manager first?---That's exactly right, yes.

All right?---Or the General Manager's secretary. As the case may be.

And who was the secretary at that time?---Denise, Denise Kirby.

Were any requests for payments made, sorry, any requests for payments prepared by you to allow the cheques to be drawn?---Yes.

40

And what sort of, what form did they come in?---A form of a voucher.

All right. And were there times when you did not have a voucher?---Yes.

All right. And what happened with those vouchers?---I'd just ring up Mark Thompson or Barry, whoever happened to be in the office at the time after I was told that we had to draw it and ask them to draw the cheques.

And do you know – were the vouchers retained or not?---Oh, yeah.

And where were they?---Yeah. They'd be there.

And where were they retained?---They'd just be filed away. I'm not sure if they were filed in a section called a Confidential area that Mark Thompson a bind that he held. I have an idea they may have been, I'm just not sure on that.

- 10 What did you tell Denise, that is Mr Fitzgerald's secretary about these envelopes when you – on the occasions - - -?---If Peter, if Peter wasn't there I'd just put the money in an interoffice envelope. It's a large brown one, staple it always three or four times, put his name and confidential and either hand it to his secretary or place it on his desk.

All right. Now you've given some evidence about a visit you say Mr Fitzgerald made to your workshop, I think it was sometime earlier this year?---February. February, yeah.

- 20 Was anyone else there when he came to your workshop?---On that night?

Yes?---Yes. Yes.

And were they present when you spoke to Mr Fitzgerald?---One of my friends met him then left. And the other person he went and saw after he'd spoken to me.

- 30 All right. Well firstly, who do you say was there at the workshop that night?---A friend called Dominique Cammelari was talking to me, having dinner when Peter arrived. Dominique left, after he was introduced to Peter and then he left. He went over and spoke to another person that was in a different area. Peter spoke to me, he spoke to Joe Freitas and then he rang Marny Baccam and got her to come down.

Sorry, Joe Freitas happened to be there?---He's got a workshop just a 100 metres away.

- 40 No, but I'm saying, I appreciate that. Was he in your workshop or - - -?---No, no, no, he was in his own one.

All right. So you're just saying that Mr Fitzgerald went and later spoke to Mr Freitas?---Spoke to him, yes.

All right. And how do you know that?---I saw him there.

All right. And, sorry, and what happened with Marny Baccam, did you say?---Marny wanted to see him and she came down and had a – and I don't

know what about, it was outside, probably a 15 minute conversation with him.

And how is that she came there, did you say?---Phone call.

From who?---I'm not sure whether I rang her or Peter rang her. One of the two of us did.

10 All right. Now do you know the spelling of your friend Dominique , the surname?---C-a-m-m-e-l-a-r-i, Cammelari. Cammelari, yeah.

All right. And there's been some evidence about a purchase of a Lexus for Ms Baccam?---Yes.

Can you tell us whether you know anything about that?---Yes.

And what do you, what do you know about that?---I can't remember what night of the week it was, but I received a phone call from Peter - - -

20 Peter who?---Fitzgerald, senior. To bring Marny down to, I think it was Auto Auctions at Villawood, I think. I'm not a 100 per cent on that. It was an auction, auction house to look at a car. When I arrived there Peter was there with his son, Luke, looking at a car. And he took Marny off and what I'm about to say is second hand, pick what you want and after they'd come back she'd picked, after being told no on a number of cars, a silver is200 Lexus which I was then instructed to purchase for her.

30 Who instructed you to purchase it?---The General Manager, Peter Fitzgerald.

And when you say you were told – sorry, that you heard second-hand pick what you want, who told you?---Marny told me that because she went straight for a black, very expensive BMW.

All right.---And he said no.

All right. Now, I want to ask you some questions about credit card usage. ---Yeah.

40 You've already given evidence that you misused the credit card that was in the name of Mr Fitzgerald.---Yeah.

At that time records weren't available but they are now. There are a number of occasions where Mr Fitzgerald's card or his card number seems to have been used by you. Is that right?---Correct.

For personal matters that you were not entitled to have Council pay for. ---Correct.

And sometimes they were for things personal to you, that is, things that you wanted to buy.---Yes.

Other times they were for your – one of your businesses, Gas Motorsports. ---Correct. Yes.

Other times they were for Garden Extra.---Correct.

10 Garden Extra was – well, tell us – you tell us about Garden Extra.---It was a business owned by my sister-in-law that got into trouble and I thought I'd try and help them by working in there, which I did. It didn't work. The developers closed it down.

All right. Well, your brother also was involved with Garden Extra.---Yes, yes.

20 That's presumably the husband and the sister-in-law you're talking about is it?---Yeah.

All right. Now - - -?---Those, those payments on that credit card, Lorraine Cullinane has a copy of those and has had them for a number of years. I also have a copy of them at work as well. This had been identified some time ago. I'd admitted to it to her and we talked about it and I agreed I'd have to pay it back.

When was this?---I would say probably three or four years ago.

30 What did you admit to her?---There was a list of payments on credit cards which were incorrect and had to be reimbursed and the majority of those things you mentioned then were on that list. Now, Lorraine has a copy of that. I have a copy of it.

All right. And did you discuss, did you discuss it with anyone else?---I might have with Barry Byrnes. I can't remember. I might have. But definitely with Lorraine. She asked me a number of times have you been able to pay any of that back yet and I said no, not yet.

40 All right. Well, what sort of money do you say – sorry, I withdraw that. Did she say that she had told anyone or would be telling anyone about it? ---It was at the time I think when she was going over all the General Manager's credit cards and I recall her evidence saying that she found a lot of his Diners Club cards in my drawer which would be true. She was looking for his Diners Club cards to have them acquitted. I can't remember the time frame. I assume – I can only assume – no, I can't assume. I don't know.

All right.---She was going to talk to Peter about a whole range of issues with his cards.

What sort of – and if you were going to repay anything how would that happen?---When I retired.

No, no. How would it get back into Council's books?---Draw a cheque and repay it.

10 But how would that be recorded?---Just as a cash payment or a cheque payment from me.

But - - -?---It may well highlight it but that doesn't reflect the fact that you paid it back.

No, but – was the repayment going to be concealed - - -?---No.

20 - - - as a credit or was it going to record credit card, credit card usage that was unauthorised – repayment for unauthorised credit card - - -?---I don't know what would have been on the receipt.

Right.---But it would have been a correct cheque issued and reimbursement of expenses.

All right. Well - - -?---Whether it says, whether it says incorrectly or not I don't know.

30 All right. Well, we're talking about a lot of money and I'll come to what we think that it adds up to but what do you say was the amount of money that you and Ms Cullinane agreed you'd repay?---I can't, I can't recall. I really can't.

Well, what's the ballpark?---Like I haven't had access to anything in my office for - - -

Well are we talking tens or hundreds of thousands?
---Oh, it'd over 100.

40 All right. Well the, the companies, I don't want to read out the companies, but there seem to be a lot that relate to landscaping and your, your Gas Motorsports business?---Yep, there are. That'd be correct.

And – well maybe I will so you can tell us if these are correct or not. There was a lot to Emu Alarms?---Credit card payments?

Sorry, no, no, that's, Mabuzi Ultimo?---Yes.

What were they doing?---Clothing design and printing.

Why were you using them for anything?---They were, they were used to produce clothes for our race team.

Right. Well that was \$50,000?---Well I'll have to have a look at that, but I've got to accept what you're saying.

All right. Well let's, is there any legitimate, when I say a company tell me if there's any legitimate use from council for of these?---Yes.

10

And then we'll know whether or not the entire amount was council had made - - ?---Mabuzi, I doubt that was all me, but I can have a look at that.

Sorry, you doubt that it was all you?---Mmm.

Well what else could it have been?---I don't know. I just can't imagine that amount.

All right. Well how about you tell me if there's anything that you say is a legitimate council use?---Yep. O.K.

20

And we'll have a prima facie understanding – that means you used the, some of those fireproof clothing et cetera can be quite expensive can't it? ---Fireproof clothing – no these were only T-shirts.

Only T-shirts?---Only T-shirts, yeah.

All right. It's got custom printed T-shirts, so uniforms you're meaning race team uniforms?---That's right.

30

Go Fast Bits?---Yep.

Abruzzo Ceramics?---Yes, a lot of them I paid for. Anyway, yes. I'm not saying you haven't paid for some of them?---Right. O.K. Yeah.

THE COMMISSIONER: Sorry can we just clarify what the witness is answering to?

MR THANGARAJ: Yes. So you're agreeing that you paid using Mr Fitzgerald's credit card number, these companies for things that were personal to you?---Some things, yes.

40

Yes, some things?---Some things, not the whole lot.

No. But whatever, whatever was on the credit card was a, was a payment that you saw - - -?---That's exactly, yes, yes.

- - - that you made using his - - -?---Yes, yes.

All right. All right. Well it seems that the, it's around the \$150,000 or so?
---I did read through the documents in the volumes. I couldn't, a lot of them
I couldn't make a lot of sense of.

Sorry, one of them was Balmain Rentals, the car - - -?---Yes.

Now what were you using Balmain Rentals for, because that's a figure
that's, I'm almost - - -?---They own, they owned the property.

10

THE COMMISSIONER: Sorry, they owned what property?---The property
that we were renting for the garden centre.

For the?---Garden centre.

Oh, the garden centre?---Yes.

So you, you were paying them as the landlord for the - - -?---Yes.

20

Right.

MR THANGARAJ: Sorry, that figure that I said was completely wrong.
130, 000 just for them, there's another 100,000 for Davidsons Nursery
Galston. What was all that - - -?---I'll have to have a look at that.

All right?---Can I get that list you've got there and have a chance to go
through them.

30

We'll provide it to your solicitor?---Yep.

Haltech Wetherill Park?---Yes.

That's 60,000?---Yes.

There was Dr Michael Johnson in North Parramatta, Orthopaedic Specialist,
that's on the credit card. Was that you?---No.

And a Dr David Dickinson, Orthopaedic Surgeon. Do you know whether
you saw - - -?---(No Audible Reply).

40

Well if you take those two - - -?---Who was it, Dr, who Johnson?

Michael Johnson, an Orthopaedic surgeon?---Yeah. He's a Parramatta team
doctor. I don't know, I don't think I saw him. No, I just recognise the
name.

No. That's right. You're right. But - - -?---Yeah, I know.

- - - he's also an orthopaedic surgeon?---Yeah.

But did you see him or did someone else see him?---I can't recall. The only reason I say that, Lorraine had an issue with her back that was being exacerbated at work. Now Peter did send her to a doctor. Whether it was him or me, I don't know.

All right. Well just, we'll show you, we'll show this list to your solicitor. But the amounts that seem to be your misuse, amounts to over 700,000?---I don't know. I'd have to have a look at it.

10

All right. Well we'll show you this list overnight and if you can go through it with your solicitor and tell us what, if any, of it's wrong?---Yeah. Because there could be things on there I know nothing about.

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Well that's why we ask for your assistance – so I'll give you more details so you can study it. All right. Commissioner, what's proposed is that because some of this evidence is new to some of the people in the room, I've told some of them, I think, I've told some of them definitely what I anticipated would come of it. I've got to wait to hear it obviously. So I agreed with them that unless anyone wanted to start today they could defer their questions of Mr Goodman till the morning, to get instructions et cetera.

THE COMMISSIONER: Well it seems that he has to look at this list anyway.

MR THANGARAJ: Anyway, yeah.

THE COMMISSIONER: So it might be an appropriate time.

30 MR THANGARAJ: Yeah.

THE COMMISSIONER: And we'll leave it till tomorrow morning. All right. Well I'll adjourn. You can stand down Mr Goodman and I'll adjourn until 10.00am, thank you.

THE WITNESS STOOD DOWN [3.41pm]

40 **AT 3.41PM THE MATTER WAS ADJOURNED ACCORDINGLY [3.41pm]**