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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION RICCO

Reference: Operation E14/2586

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 8 JUNE 2016

AT 10.20AM

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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: Commissioner, I'm just going to read a couple of things onto the record we send around to everyone to ask about potential witnesses just so they know what the situation is. Firstly, Mr Freitas. We told the parties that we anticipated that Mr Freitas could give evidence to the effect that he does not recall anything about a Lexus vehicle being purchased by Ms Baccam. Mr Seng could have given evidence to the effect that he remembers Ms Baccam's Lexus because he was asked to check the electricals on it which were fine but he was not there when it was purchased. Mr Haria from CND would have been able to give evidence that he was not involved in the installation of the alarm system at Ms Cullinane's house which is consistent with the evidence of Mr Maton yesterday.

THE COMMISSIONER: Ah hmm.

MR THANGARAJ: So we asked if any of those witnesses were required and none of them are required so I just wanted to put that on the record.

20 THE COMMISSIONER: Thank you.

MR THANGARAJ: Further, we've received a second statement from Ms Kirchner which will be distributed as soon as it gets put onto the system this morning and we're hoping – there are a couple of parties that have a few questions for her but we're hoping to, if possible, to have her at 3 o'clock today and if that's – if she is available at 3 o'clock today and the parties can – are in a position to question here today then we could finish today so that's the – we're hopefully going to do that. So then this morning I just want to play one telephone call in light of some questions that arose yesterday from Ms Cullinane of Mr Thompson. It's self-explanatory, and after we do that it will be Mr Fitzgerald, then Mr Foo, then Ms Marshall, then Mr Byrnes.

THE COMMISSIONER: Thank you.

MR THANGARAJ: I'm going to play a call, number 7-4-4-4, of 1 September, 2015 between Mr Goodman and Ms Baccam.

40 **AUDIO RECORDING PLAYED** **[10.20am]**

MR THANGARAJ: The relevance of that is that it - - - sorry, I tender that call.

THE COMMISSIONER: Yes, that call will be Exhibit R92.

#EXHIBIT 92 – TRANSCRIPT SESSION 7444

MR THANGARAJ: And the relevance of it is that in relation to the – it's potentially relevant to the absence of bank account details on some invoices that Mr Thompson was taken to yesterday as to how the relevant data entry person obtained details of Mr Goodman's bank account when there was nothing on the face of the invoice itself. So it may be relevant to that issue.

10 THE COMMISSIONER: Thank you.

MR THANGARAJ: I call Mr Fitzgerald.

THE COMMISSIONER: Yes, Mr Fitzgerald. I take it you remember the terms of the section 38 order and you wish to take advantage of that?

MR FITZGERALD: Yes, I do, Commissioner.

20 THE COMMISSIONER: Yes, just take a seat. Could I just make sure that you appreciate that the order doesn't protect you from the use of your answers against you in proceedings under the ICAC Act if it should be found that you have given deliberately false or misleading evidence, you understand that?

MR FITZGERALD: Yes, I do.

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 Fitzgerald?

MR FITZGERALD: Swear.

THE COMMISSIONER: Yes, could we have the witness sworn please.

THE COMMISSIONER: Yes, Mr Thangaraj.

MR THANGARAJ: Mr Fitzgerald, on the last occasion I said I'd ask you
10 some questions about credit card usage when we returned. I just want to ask
you about some particular credit card entries on one or both of your Council
cards. I'm not going to do this in any particular order but the first one I
wanted to ask you about is, is the Tempe facility. Do you remember there
was a site there that had a storage unit?---Yes.

And there is electronic records in relation to that unit in your name with the
alternate name being that of the Council and the business phone number
that's listed on that is your home phone number or at least the one according
to your HR file. Do you know anything about the use of the credit card for
20 that facility in the amount of about 20,000?---I'm unaware of the amount
but, yes, I do know that there was a storage unit there.

Right. So the storage unit it has the mailing city recorded as [REDACTED].
Were you living at [REDACTED] between 2005 and 2009, in that area?---In that
area, yes.

Right. And did you use the Tempe facility, the storage unit for personal
use?---Not for personal use.

What was it used for?---It was used to store some excess furniture and it
30 was also used to store some documents and other, other archives.

Of Council?---Yes.

And so why was the storage unit in your name?---I presume it was – I
organised it and put the, and put those things there.

Sorry, you organised for them to go there?---Yes.

Sorry, I don't understand. You're the General Manager organising for
40 storage of furniture and records in a facility at Tempe?---It was the most
expeditious way at that time to do it.

But are you saying you personally did it?---Some of it. And some of it was
done by other members of staff who I can't recall.

So why was your home number listed as a contact number for the Tempe
facility?---I don't know the answer to that.

Right. Well, why would the storage name be in your name? If it was for personal use, there would be a good reason why it would be in your name, with your home phone number. But if it's for Council only, why is the storage unit being booked in your name?---Well, from recollection, a lot of Council documents and other equipment were stored in a disused change room in a park in Botany. And I understand - - -

THE COMMISSIONER: In a where, sorry? In a - - - ?---In a disused - - -

10 Change room?---Amenities block, yes.

Yes. Whereabouts?---In Mutch Park.

In a park?---Yes.

In Botany?---Yes. And from my recollection, and I've not thought about it till just now, is that there was a large water heater in there that had an event and it needed to be done forthwith. Records were in danger of being destroyed.

20

Mr Fitzgerald, didn't Council have a records room or a storage room within Council premises?---It did have a records room but the records were stored in many places there because the building was quite an old and small building. They were stored behind the back of stages, under stages, and in any place that was just spare. And I do remember this incident where that occurred, and maybe just as an emergency situation that ran on obviously for some time, we got a storage shed as nearby as we could.

30 MR THANGARAJ: That explains why you would use another facility. No-one's suggesting Council should not be able to store furniture and documents. The question was, and with respect you haven't answered it, the question was why was it in your name? You're the general manager. Why would it possibly be in your name?---Because I would have been involved in the process in some way and I would have said, I don't know how, but somebody would have said, "Let's, you know, look, we'll get a shed quickly," because we needed to get something sort of forthwith there. And I would have gone over and, and if for whatever reason the card was put across, the card had my name on it, that's what - - -

40 But if Council's renting property for storage or any other reason, it's not put in someone else's individual name, is it?---Well, not normally. But these things don't happen normally. It's not a constant flow. I mean, if we knew that we had to get out of a building at a certain time, you would make those arrangements. But these were emergency arrangements.

But whether it's an emergency or not, how much – sorry, I'll withdraw that. What possible difference does it make by having it in your name as opposed to Council's name if it's an emergency? And why would your home

number be on the facility.---I may have been asked for my home number. I don't know.

I beg your pardon?---The clerk across the thing probably said, "Is this your name? What's your home phone number?" I would have given it to him.

THE COMMISSIONER: How long was that storage facility at Tempe maintained?---A number of years.

10 Well, if it was an emergency measure, wasn't there some point where it could have been either changed to Botany Council's name or moved from there to some other suitable premises?---In retrospect, yes. I can't remember all of the details as to why it wasn't. But I know the storage of records, because we generated a significant amount of paper each year.

MR THANGARAJ: No-one's talking about the need for storage.---Yeah.

That's not the issue.---Yeah. But why it wasn't moved out, I can't answer the question.

20

And why was the mailing city recorded as the city that you were living in or near, being [REDACTED] as opposed to Botany?---Because if they would have asked my address, I would have said it.

All right. Are there any records kept at Council to show that certain material is being kept for Council at Tempe facility or any other facility? And if you're looking for something, how do you know where it's stored? ---That was always the problem in that, as I said, they were stored in the backs of hall, under stages and - - -

30

All right, well, is there any record of any Council property being stored at the Tempe facility?---I don't know.

All right. All right. Another credit card payment between 2004 and 2011 which added up to over \$70,000 was with Viator Travel. Do you know that company?---I know of that company, yes.

And they're in [REDACTED], which was near where you were living?---Yes.

40 Did they book any Council-related flights or accommodation?---I believe they did.

And did they book any private things for you?---You said from which year?

THE COMMISSIONER: 2004 to 2011.---I don't think so, but I don't have the detail.

MR THANGARAJ: All right. Well, there is travel booked in that period in the names of your children and wife. Is that private or Council-related?---It would be private.

All right. So does that mean that anything booked in the name of your children and wife through Viator Travel between 2004 and 2011 should not have been paid by Council?---It would have been an entitlement under my contract.

10 Right. And I thought you just said it was private.---Well, in the sense that it is but it's private to my contract.

Right. Okay. And what does the contract allow? What did it allow?
---Well, it allows a number of items of expenditure that I could take.

Right. So - - - ---And certainly not for children, but for wife there may have been reasons why she would accompany me - - -

20 Right.--- - - - to an event. But I just don't have the particulars.

All right. There is mention in the contract of spouse travel.---Right.

But as you say, children are not.---Children, definitely not.

30 So does that mean that any time that Council paid for anything involving your children, for flights or accommodation through Viator, should not have been paid by Council?---It should have been paid by Council, but the cost centre should have been against my contract, not against other activities.

Well, does that mean you should have paid it, not Council?---No, no. It means that Council would have paid it on my behalf in accordance with my contract.

THE COMMISSIONER: But I thought we were talking about children here.---Yes.

40 Well, I thought you agreed a short time ago that your spouse was covered under your contracts but the children would not have been.---They would, because I had an optional amount of money there that I could spend as I determined from time to time.

MR THANGARAJ: Well, that's a matter for debate. You're talking about that discretionary money?---Yes.

Well, you can't just put everything into that. Was there a tally kept every year as to how that was being used?---I don't know.

Well, you say that your children must have come within that discretionary amount that you claim that you could spend on whatever you wanted to.
---Yes.

How did you know whether you'd gone past that amount?---I would have expected that the accounting function would have done that.

Well, who was going through the credit cards to cross-check that?---Well, there was a number of people in the accounting function doing that.

10

So was someone reporting back to you, saying, look, you're at your threshold or you've gone past your threshold this year or anything like that?
---Nobody ever drew it to my attention I was even close to the threshold, and I don't believe I was.

All right. Now, what do you say the discretionary allowance permitted you to do?---Whatever the words in that clause say.

20

Yeah, well, we had a debate about that last time and I suggested to you that it was whatever you wanted to as long as it was related to Council work and gave you benefits that would help Council. For example, if you wanted to go to a conference overseas that could improve your ability as general manager, that was one legitimate use. But you say you could spend it on whatever you wanted to, do you?---Yes.

30

Right. Well, what does that mean? Does that mean that you could legitimately entertain – I'm not suggesting for one moment you did, but I'm trying to test what you say you were entitled to. Does that mean you could take a group of friends on a holiday at Council expense?---I think the limits are expressed in that clause and each hypothetical is difficult for me to - - -

Well, it's not a hypothetical. If you say you were allowed to do anything legal, are you saying you could do anything you wanted to that was legal?
---Yes.

So you could take a few friends on a holiday at Council expense. Is that what you're saying?---Well, it wouldn't be at Council expense. It's at the - - -

40

But it's part of your contract, you're saying?---It's part of my contract.

All right. So, all right. And, okay. All right. Well, the next one that I wanted to ask you about was Huett Marine. H-u-e-t-t Marine.---Yes.

Do you know that place?---Yes, I do.

Have you used your credit card there in relation to Council matters?---I've used my credit card in relation to the entitlement in my contract.

All right. So let's just go through it bit by bit. You agree, then, do you, that the only legitimate use of the Huett Marine money, which was in thousands of dollars, I'll come to the amount in a moment, but the only way that Council could pay for that was within the discretionary component you're talking about under your contract?---Yes.

10 All right. So, \$4,000 was used on the corporate credit card. Do you remember what it was used for?---Are you asking me about another invoice?

No, no. You used the corporate credit card at Huett Marine in the amount of \$4,000. Do you remember what that was for?---It was repairs and alterations to a boat.

20 All right. Now, as I go through some of these, if there's any basis on which you say you were entitled to use the corporate credit card other than the discretionary allowance you're talking about, can you let us know? Do you understand what I'm saying?---Depending on the question.

Yeah.

THE COMMISSIONER: Just before we go there, can I just clarify? When you refer to a corporate card, Mr Fitzgerald, was that a card that was in the name of Botany Bay Council?---But it also had my name on it.

Well, yes. But when the account issued, did it issue in the name of the Council?---The bill came in to the Council.

30 Yes.---Yes.

And you were a signatory for the purposes of the use of that card?---Yes.

Was anyone else a signatory on that card?---Not on that card.

And then you had another card, did you, that was again part of your employment?---Yes.

40 And was that in the Botany Council name or your name?---No, well, in the Botany Council name but with my name on it.

Right. So they were both in the name of Botany Bay Council and you were signatories to both of those cards?---Correct.

MR THANGARAJ: Did you have a third card?---Yeah, there was two CBA.

Yeah.---And one Diners.

Right. All right. Sydney City Motorcycles. There were over \$6,000 in January of 2007. Was that a motorcycle or a trail bike that you bought there?---Yes.

All right. Again, the only potential legitimate use of the credit card for that was under your discretionary allowance?---Yes.

10 THE COMMISSIONER: Was that a motorcycle for you or for someone else?---No, for me.

MR THANGARAJ: Bridge Mowers and Chainsaws Centre, \$9,000. Was that something that you had spent?---That's money I spent in the same category.

Okay. Digital Camera Warehouse, \$9,000.---I'm unaware of the details of that. I did buy some camera equipment for the Council over a period of time.

20 Sorry, you bought it for the Council?---Yeah, bought it for Council use.

Why would you be buying – so how does that work? What's the process for that?---It was to take photos of - - -

No, no. Not why it was needed. You say that you bought it for Council. ---Yes.

30 Does that mean that – there must be some record, then, of the purchase of it, where it's stored, the reason it's required. Are there records about that? ---No.

Well, what's the general manager buying small hardware for Council? Why is that happening?---Because it was for use in my area.

What do you mean your area?---In the general manager's office or the administration.

40 Right. But were you taking the photos?---Sometimes, yes, and sometimes some of the staff would take photos.

Right.---Functions and events.

All right. Well, so what happens, then, if you want to use the credit card to buy something you say is for Council? What's the process?---Then we would buy it.

No, well, I think we understand that. But do you fill in any forms to say, "Well, this is needed for this amount and it's going to be kept by this person

or it's going to be stored here." Is there any documentation?---Not if I bought it. If I bought it, it was obviously for that use, it was crystal clear, right, and it would remain the property of the Council.

All right. Well, there must be some inventory of Council's assets.---There would be.

10 Right. So how does it then – you buy it, you take possession of it from the shop, how does it then get logged onto the asset register?---Well, it depends on the value because those amounts there I – as I said I don't have the benefit of knowing what items were purchased but cameras are not very expensive any more. Cameras are just a couple of hundred dollars.

Yes. Well, this was \$9,000 spent over a few years. I'm just asking did it go on the register or not?---Well, I don't think it's one item of 9,000 and I just
- - -

No, it's not.---Well, I don't know the details.

20 No. I'm just asking what – okay. Let's say you buy a camera for \$400.
---Yes.

Is that listed as a Council asset anywhere?---I, I can't recall – there is, there is a dollar value for permanent assets and the other things are consumables.

30 All right. But surely for governance and transparency if the General Manager is buying himself, he's buying a piece of equipment no matter how small someone needs to be told that it's for Council don't they?---No, not with the redundancy rate of electronic equipment.

All right. So - - -?---Because a \$400 camera is worth not much. The same as like a computer. You used to pay a lot of money for them and within 12 months it was virtually valueless.

All right. Well, I'm not – I don't know what the value of it is but there were – \$9,000 was spent over a few years and again, almost every record but for one has your, your details or the contact number of your PA.---Yes.

40 All right. Now, there were a series of transactions on the Gold – on the Central Coast. You had a property on the Central Coast at that time?---Yes.

I'll just go through them. You tell me if these were matters spent by you. BCF Tuggerah?---I don't know the details.

All right. Well - - -

THE COMMISSIONER: Well, that's Boating, Camping and Fishing isn't it?---I understand it but I don't know what was purchased.

No, but have you – can you think of any reason or do you have any knowledge of anyone buying anything in and around the Central Coast for Botany Council?---I don't know.

All right. Well, maybe I'll just read them out and then ask a global question. Bias Boating Warehouse West Gosford, Bunnings Tuggerah and Gosford, Coastal Air Conditioning West Gosford, Digital Appeal Tuggerah, Domain Gosford, Gasweld Tuggerah, JB Hi-Fi Tuggerah and Erina, John Ralph's Camera House Tuggerah, Kontiaki Design Furniture West Gosford, Liquorland Bateau Bay, Locksmith The Entrance, New South Wales Waterways Gosford, OPSM Bateau Bay Tuggerah, Saiyan Style Erina, Beach House Gifts and Coastal Décor, Supercheap Auto Erina Tuggerah West Gosford, Toowoan Bay Cellars, Toowoan Bay Tourist Park, Tumbi Umbi Mowers, W Eagles Plumbing Long Jetty, Worldwide Appliances Erina, Apple Centre Erina, Central Coast Camera House, Domain Furniture Gosford, Harvey Norman Erina, Harvey Norman Electrical Erina. Do you have any knowledge of any of that being purchased by someone else or for any Council related matter?---I just don't know the purchases that were made but some of those ring a bell with me but, but I'd have to really go through in fine detail and find out exactly what it was.

THE COMMISSIONER: Mr Fitzgerald, just in the course of reading that list there were a number of expenditures that could only be related to a property somewhere, namely, the air conditioning expenditure, the plumbing expenditure and Domain and Harvey Norman Furniture and Electricals. Now, it seems odd to me that anyone would be purchasing air conditioning or furniture or electricals or paying for plumbing supplies that were referable to Council premises on the Central – if those purchases were made on the Central Coast. They would have to be referable to your property would they not?---I just, I just - - -

Well, just as a matter of common sense, Mr Fitzgerald.---The problem is - - -

I'm just asking you would they not be referable to your property on the Central Coast?---They may be but, but again I'd have to know what it is.

MR THANGARAJ: Well - - -?---And I don't know the years and I don't know the amounts.

What about Camec at Ingleburn for about \$4,000, it was caravan related. Did you buy a caravan in 2008 or around that time or caravan type equipment?---I bought one last year. I – and I had an older one. I can't, I, I, again I can't – I don't know the details.

All right.---I'm happy to provide all, all of the details. If you give me the details I - - -

Well, we'll work out a process to do all that but what about – there are a number of significant payments for utilities and insurances on the card, AAMI, Integral Energy, Energy Australia, the RTA, Alliance Insurance, Sydney Water, NRMA, AGL, Origin Energy, GIO, in the tens of thousands. Do you know anything about those?---I don't believe they're mine but again I'd have to see what they were paid for. AAMI I don't insure with so that's certainly one that's out but the others could be anything.

10

Why would the Botany Bay General Manager's credit card be used for that do you know?---I think there was a lot of discussion about this in this place yesterday right, so I don't know who put them on there but - - -

No?--- - - - but I'm not, but I, but again I can't tell you till I have the detail.

All right. Well, all the detail is available. It's on the restricted website. I'm not saying you've had the time but it's been there for a short time including source documents and invoices for example.

20

MR LATHAM: Sorry, including some source documents, Commissioner.

MR THANGARAJ: Yes, that's what I was saying, some.---All the source documents are clear but there's only three or four of those on the website.

30

All right. What I'm asking about insurances and utility bills is, were you aware or was there some process at Council whereby insurances and utilities for Council would be paid on your credit card?---No, there wasn't other than there was an arrangement to pay the Councillors' Telstra bills on my credit card. That's the only thing that I gave approval to do.

All right. All right. Well, there are a series of medical payments in relation to this. I won't – I don't think it's necessary for me to put that on the record but that will be some of the material that we ask you to look at carefully to see what if any of it's relating to you.---I know at least one of them is.

All right.

40

THE COMMISSIONER: Mr Fitzgerald, did Council have an insurance broker who looked after the insurance of Council premises and things like public liability insurance, things of that nature?---Council belonged to a group called Metro Pool in which they bought bulk insurance for a whole raft of things with a series of other – a number of other Councils and we - - -

And that would reduce the cost overall?---Yes.

Ah hmm.---To, to, to bulk purchase and then some of them were in a self-insurance scheme for PL and PI, public liability and professional indemnity

in which the group would – there’s – the – there would be a layer in which the Council would have a deductible, the next the group would insurance and the third was insured into London directly.

MR THANGARAJ: The medical one you’re talking about, you don’t need to tell us what it was, but was there some reason why the credit card was used to pay for it?---It was a medical procedure on me.

10 Yeah, but was it Council related, is there some – what I’m asking for is - - - ?---Well, it was I believe part of my contract entitlement.

Right. Under which category?---There’s, there’s two categories it could fall under but I’d have to get the details first.

All right. Well, now, Gray’s NSW, do you know anything about that?--- Yes, I do.

And who are they?---They’re an auction house.

20 Right. There are a series of transactions between September, 2007 and April, 2011.---Yes.

And what are they for?---They were for the purchase of, amongst some other things, and it’s many, many purchased lots at the auction for that amount of money, but they related to the provision of some tool boxes for the Airport Business Unit, and safety gloves and safety vests and equipment that were being auctioned off.

30 So presumably there are records of all these purchases, then?---Well, there would be. I’m not seeing the invoices. I’m only seeing that one line item this morning.

But why were they being bought on your credit card?---Because it was the most convenient way for us to bid on it because I had an account with that group.

Sorry, you had an account with the group?---Yes.

40 And was that a personal account?---A personal account.

Right. So, why would you mix your personal matters with Council business?---Because it’s an auction and it’s something that has to be done. If there was an opportunity to buy equipment that the Council needed, then I would.

But are you saying that there was no capability of having an arrangement with Grays through Council of where payment could be made?---I think over the 10 years there we probably only ever bought 10 lots.

All right.---So it was not something that was done very regularly because the opportunities didn't arise for it.

So did you buy anything personally at Grays?---As I said, I know I have. But I'm not sure what items are on that list because there's just one consolidated list with no details of what the goods were.

10 Well, does that mean that it's possible that you used the credit card to buy things for yourself at Grays?---I don't know the answer to that because I don't have the detail.

All right. Well, you told us about the Telstra bill. Do you know what that was for? Was it the Telstra bill that was coming off your credit card? ---Well, there were a number of – the councillors' bills were paid off my credit card. The others, again, I don't know the detail of what's there.

20 What are you saying you permitted to be used?---For the payment, right, of either telephone bills connected with me or with the councillors.

The councillors?---Councillors.

Okay. What about Foxtel?---Foxtel?

Yeah.---Would be for the provision of the Foxtel service and the internet into my house.

30 Right. So that comes within the discretionary part of your contract, does it? ---No, that comes in with the separate provision in my contract.

Which provision's that?---Well, the provision of an internet service and a pay TV service, which I think also you'll find is somewhere mentioned in my entitlements.

Sorry, you're saying that part of your contract included Council paying for Foxtel, did it?---Yes.

40 Okay. I'm just going to show you your contract, just so you can tell us where this comes in. It's R75. All right, can you tell us where Foxtel comes in, please?---In clause 20.

Yeah?---And in 3.3, it's more expressed in 3.3 on page 11 of the contract.

All right. Let's start with 20. "The Council undertakes to provide the resources reasonably required to enable the general manager, with the application of due skill and diligence, to fulfil the provisions of this contract." Is that what you're talking about? 20?---Yes.

You're saying that Foxtel comes within that?---Well, yes.

Well, sorry, "The Council undertakes to provide the resources reasonably required to enable the general manager, with the application of due skill and diligence, to fulfil the provisions of this contract."---Yes.

You're saying Foxtel into your house comes within that provision?--- Yes, and then if we go - - -

10 Well, hang on, if we just deal with 20 first.---Yes.

You're not suggesting 20 is linked to 3.3, are you?---Yes.

Or are you?---Yes, I am.

Okay. All right. Well, let's go to 3.3, then. Which part of 3.3?---All of it.

20 All right. But which part of it deals with Foxtel? I don't see, with respect, anything that deals with Foxtel in that.---Well, the Foxtel and the internet were all bundled into one package.

So what? That might be how Telstra provides it.---Yes.

That doesn't mean that Council has to pay for it.---Right.

30 Well, on what basis do you say that the \$5,000 that was spent on Foxtel on your credit card, what basis do you say that that comes within 3.3 and 20? ---The Foxtel and the internet, well, that's the way it was bundled. That's the way it was provided to me.

But so what? That's the way it's bundled? Why should Council pay for it? ---Well, because the facilities that Foxtel bring. The news services they bring. Listen, the job of a general manager at a Council is a 24-hour job. Right? You're on the job all the time and you have to know what's going on in the world. You have to know what's going on in your city. You have to know all of this information. You have to be able to be in contact with. You don't clock off at 5 o'clock in the afternoon, right? You're there all the time.

40 THE COMMISSIONER: Sorry, Mr Thangaraj, what does 3.3 say?

MR THANGARAJ: 3.3 is quite long, but I could read it onto the record for the benefit of people that don't have it. "To the extent that the Council requires the general manager to have access to such equipment/devices as phones, fax machines, pagers, computers, et cetera, or access to databases or libraries, then the cost of supply, installation, maintenance, registration, rental, operation, et cetera, shall be met by Council. Equipment supplied at the commencement of the contract shall be at a minimum level. As the

general manager is required to be available at all times, he is entitled to the most efficient and modern communication systems. Portable computers, mobile telephony, fixed telephony and email/internet must be available at all times to ensure his availability. The general manager should determine the methods used and his spouse/partner is entitled to use Council equipment to assist in this communication as an alternate contact if he so determines. Full private use is included and as an offset to this private use, no additional payments will accrue to any party.” What that’s about is access to databases and libraries and communication.

10

MR LATHAM: No, it's not. It's about much more about than that. It should be fair to the witness.

THE COMMISSIONER: Well we can perhaps deal with that in submissions. But I understand, Mr Fitzgerald, you maintain that if that was the way the service was provided by Telstra then you didn't think that you were obliged to a portion sum pro rata or some proportion of that expenditure that related solely to communication and internet functions. You saw it as one expense in other words, is that what you're saying?---

20

Well, yes. Yes, I did say that.

Right?---But I'm sorry, that's what I am saying. But I also said what's supplied at the commencement of the contract so with a minimum level and it was provided at the commencement of the contract.

MR THANGARAJ: Well it depends on whether or not you're entitled to honour the contract, well we can deal with that in submissions. But part of the Foxtel deal included Fox Sports Live Streaming for \$1,000. Do you include that in your previous answers?---I, I have no, no knowledge of that, what you just said. Because I never use, I've never used live streaming of any sport in my life.

30

All right. Now the travel related payments from the period of 2004 to 2011 total quite a significant amount almost \$200,000. Is it your position that anything that you spent on the credit card in relation to travel came within Council's allowance?---No, because I have no, I have no details.

THE COMMISSIONER: Sorry, Mr Thangaraj, could I just ask you the 200,000 you said related to what period?

40

MR THANGARAJ: 2004 to 2011 inclusive.

THE COMMISSIONER: And I'm just wondering, how does that relate to the earlier figure of 70,000, that was solely referable to the travel agent, was it?

MR THANGARAJ: Yes.

THE COMMISSIONER: But now you're including other expenses that were travel related?

MR THANGARAJ: That's right.

THE COMMISSIONER: Right.

MR THANGARAJ: So there's – I think we should assume the 70 falls within the 194, yes.

10

THE COMMISSIONER: Right.

MR THANGARAJ: Well did you use the corporate credit card or any of the cards when you travelled in a private capacity?---Not, not that I can recall but I don't, I don't know the answer to the question. Because I don't know the details of what you're asking me.

20

But surely you, surely if you only used the corporate credit card for Council use you would be able to confidently say that you didn't, why are not able to confidently say that you did not use it for private use?---Because I, I know and you know and the Commission knows that I, there's been something booked to my credit card, all right, that was private travel.

I'm talking – I understand that there was two, sorry. You're talking about the trip in April of 2012, seven and a half thousand dollars each?---Well it was travel in June '12 but booked in (not transcribable) yeah.

Yeah. And there were two charges of seven and a half each?---Yes.

30

I'm not including those. Sorry, I should've been clearer. Setting aside those, are you able to say whether or not the credit card was used for private use?--As soon as I was provided with all of that detail I was able to instantly, right, instantly of having that knowledge, because it was the first knowledge I had of that and I don't have knowledge of any other the questions you're asking me.

40

Okay. So you're saying that – are you saying that there could be others that are private that were inadvertently charged to Council?---Yes. There may well be, because I don't have the details. As soon as I have those details we came straight to you.

All right.

THE COMMISSIONER: Mr Fitzgerald, can I just ask, is there a policy in Botany Bay Council for approved interstate or overseas travel by employees on Council business or Council related business?---There is now, yes.

Was there during your time there?---It was less clear then than it is now.

Well was there a policy, did a policy exist? In other words, let me just give you an example. If someone in finance or someone in parks and gardens wanted to attend a conference in New Zealand for example, Local Government improvements in environmental impacts, blah, blah, blah. Could they apply to attend - - -?---Yes, they could.

10 - - - and they would receive a what, a per diem rate to attend the conference on top of their, on top of the airline and accommodation expenses, was that what used to happen?---There was, there was a system that was discussed from what I read yesterday here in relation to there being per diem rates. But if somebody wanted to go to a conference they would seek approval to do it if it was not within a schedule that was approved in a Council resolution.

Yes. Well I'm talking about Council employees here?---Yeah, Council employees, yeah.

20 So they would have to submit – they'd have to submit a proposal that would be approved by their immediate supervisor and would that ultimately come to you or would it be dealt with at the Deputy General Manager level?---It would depend on the amount of the expenditure and what the travel was. Certainly if it was overseas I would expect it to come to me.

30 Right. And just for argument sake, which is not uncommon. Say that person attended the conference but then wanted to take a weeks' leave either before or after the conference so that there was an element of private expenditure that may have been booked to a credit card but then had to be accounted for at the end of the period so that Council wasn't in fact paying for someone's private holiday. Was that procedure also followed from time to time in Council?---I don't think it happened very often. I, I - - -

But it could happen, I'm just asking whether or not there was an accounting system that allowed the employee to in effect, say well this expenditure was privately incurred, I will pay for that even though it might've been booked to a Council account or a Council credit card?---Right. That would be my expectation but I don't know if it was expressed in a policy.

40 All right. Is that something that you ever did on returning from one of your trips, that is, accounting for the personal or the private expenditure that was incurred outside of the Council business that related to that travel? Did you ever do a reconciliation of your account in that way?---I don't ever recall staying longer than I needed to stay anywhere. I don't ever recall taking a holiday on with business travel.

Well over the period of time that you were the General Manager, how many overseas trips did you take on Council business?---Two or three, I can't recall.

And over what number of years are we talking?---20.

So two or three that were on Council business?---Yeah.

And the rest were in effect private?---All the private ones were private. There was no work.

10 Right. But you see in the eight years between, or in the seven years between 2004 and 2011, there appears to be \$200,000 worth of total travel expenses on the credit card. Does that mean that the bulk of that was in fact private travel?---I wouldn't have thought so. But as I said I've not had the opportunity to see what those expenditure items are.

Well but I'm just following on from your previous answer. If over a period of 20 years you only took two to three overseas trips for Council business, it would follow would it not, that the bulk - - -

20 MR THANGARAJ: Sorry, a lot of these are domestic - - -

THE COMMISSIONER: Oh, well, all right then. I'll withdraw that. But insofar as you only took two or three overseas holidays for over a period of 20 years, to the extent that any of that \$200,000 related to overseas travel, it would be private and business related, would it?---But other people's, sorry. Either Councillors or other staff may have had travel booked to my credit card of which I have no knowledge and that's why I'd like to see the detail.

I see, all right. I wasn't aware of that?---It may have been, I don't know.

30 Did you keep these corporate credit cards on your person, were they in your wallet?---They were but, but the numbers and the accounts were known by my secretary.

Right.---And, and certainly I understand by other people.

MR THANGARAJ: Sutton City Holden, was your credit card used to buy things from them?---I've seen that at about 10 to 10.00 this morning. I don't believe any of that expenditure is mine.

40 All right. Chatswood - - -?---But again I just haven't got the detail.

All right. Well – all right. Well, 140,000 was spent in a couple of years at Sutton City Holden on the credit card.---Yes.

Do you have any memory of any private use in relation to Sutton City Holden?---I have no, no, no recollection of any private use at Sutton City Holden.

All right. What about Chatswood Sony Centre?---Chatswood Sony Centre we – again was very similar to the cameras. It was a place where we, we would buy audio visual computing equipment from time to time as, as, as the need required. Again I don't know the details of what's on there.

And again why, why is it that the General Manager's credit card is being used for that if it's for Council purchases over a seven year period?---
Because it depends on the item of equipment we bought. It may well be something that either the Council wanted me to do, they may have wanted
10 to have some audio visual equipment, so it's a matter of then finding out which is the best sort of equipment and, and I would do it.

So you would go around different shops working out what to buy?---Yes.

You, the General Manager?---Yes.

THE COMMISSIONER: Mr Fitzgerald, can I just ask you was one or more of these cards linked to Frequent Flyer points?---I think they all were.

20 They all were, and those Frequent Flyer points accrued to you in your personal capacity?---Yes, they have.

Was that one of the reasons why you used the credit card as much as you could?---No, not really. I mean I, I, I don't contemplate Frequent Flyer.

MR THANGARAJ: There a significant payments to State Debt Recovery Office for infringements and enforcement orders.---Yes.

30 Do you know anything about that?---No.

Mercedes-Benz?---I don't know the details.

Well, are you aware of using the credit card for anything to do with Mercedes-Benz?---I may have. At one time my wife had a Mercedes-Benz motorcar right, but I don't know the details.

All right. Well, to your knowledge did anyone at Council have anything to do with Mercedes-Benz?---Oh, there was Mercedes-Benz trucks and other things that we had so as I said I just don't know the detail.
40

All right. But who serviced those?---I don't know.

\$10,000 at the Park Hyatt Melbourne in February of 2009. Any recollection of that?---In February of 2009?

Yes.---It, it, it may have been a – some sort of a conference attended by either Councillors and staff, I don't know, and if that was the case and I was there then I would have paid the bill.

All right. Well, I assume that if there are any Council related matters for these travels that there would be Council records in relation to all of them wouldn't there?---There would be.

9,200 Auto Connection [REDACTED] in 2004. Do you know anything about that?---Auto Connections?

10 Auto Connection [REDACTED]?---I, I don't know that name at all.

Lexus of Chatswood?---I don't know the - - -

'09.---I don't know the details of that.

Cronulla Furniture, Brescia Furniture?---Again I'd have to see the detail.

Motorcycle Accessories Parramatta, have you ever been there?---Yes. I think that's my expenditure because I think that's similar to the motorbike.

20 Right. Fraser Motorcycles Homebush?---Yes.

Can we assume that all the motorcycles are private, all the motorcycle related - - -?---I would like to see the detail.

Bike Biz Parramatta, is that you?---Again I'd like to see the detail.

Did you ever own a Lexus?---I, I didn't own a Lexus until after I left Council.

30 Commissioner, what, what we'll do is, I think we'll have a section in the submissions detailing the credit card and why there's potential concern and then – and that will give Mr Fitzgerald from today at least, at least a month to go through the detail of the material that's available and he can respond accordingly in his submissions on these particular issues.

THE COMMISSIONER: Well, I suppose one difficulty in relation to that is that if Mr Fitzgerald wanted to proffer some evidence in relation to some of those matters it might have to be done by way of an agreed statement or something to that effect.

40 MR THANGARAJ: He can give us a statement. That's fine.

THE COMMISSIONER: All right.

MR THANGARAJ: They're all the questions that I have.

THE COMMISSIONER: Right. Yes, Mr Moses.

MR MOSES: Yes. Mr Fitzgerald, I act for the Council. Before commencing at Botany Bay you were the Mayor of Drummoyne Council, you held the position of Mayor of Drummoyne Council at some time?---I did hold the position of Mayor of Council for some time, yes.

And both Gary Goodman and Lorraine Cullinane were employed at Drummoyne?---Lorraine Cullinane was employed while I was involved with Drummoyne Council. I don't believe Mr Goodman was.

10

Okay. And you commenced working for Botany Council on 5 September, 1988?---Correct.

As the Director of Personnel?---Correct.

And on 20 November, 1993 you were appointed as the Deputy General Manager?---I can't remember the exact date but I don't raise - - -

Okay.---No.

20

And on 29 October, 1997 you were appointed to the role of General Manager?---That's my understanding.

And, Commissioner, if the witness – if we could just have on the screen volume 26 of the ICAC brief, page 181-182. Can you have the contracts ready for me, the references for the two contracts. Sorry, page 181, 182, apologise, volume 26. And that was by way of a Mayoral minute that went up to Council and on that occasion I think the Deputy General Manager, Ms Cullinane, was to be appointed. Is that right?---That's what the Mayoral minute says.

30

Yeah. At that time did you enter into a written contract of employment with Council as General Manager?---Subsequently I - - -

Yeah.--- - - - I understand so.

Okay. I just want to - - -?---But I, but - - -

40

That's okay. I just want to show you a document on the screen. If the witness could be shown volume 26, page 116. This is the contract – your contract of employment signed by you on 18 September, 2001. This is as a result of a resolution to reappoint you as General Manager. Your contract was to expire in September, 2006 and that's – I just want to ask whether you could just go to the front of that document. It's on the screen now. That's, that's a document that you entered into in 2001 with the Council. Correct? --- (No Audible Reply)

Page 123 we might take the witness to which is his signature. That's your signature on the page with Mr Hoenig, the former Mayor. It's coming up on the screen.---I've got nothing.

No, that's okay. It's coming up on the screen. Correct?---That – yes, but I don't know if that's the last page of that same document but that's - - -

Okay.--- - - - that's my signature there.

10 Yeah. Well, you can take it from me it's not the last page. There are schedules to the - - -.---Right.

- - - document that deal with certain matters. And in 2006 did you enter into a new contract of employment, do you recall signing a new contract?---My understanding, yes.

Okay. And again I'm not being critical of you it's just that on the Council records the only other contract that could be found was one at – this is at volume 26. I don't need to take the witness to it. The ICAC brief, page
20 45-53, there appears to be an unsigned document on the Council file that has every second page of a contract but do you recall executing subsequently a - - -?---In, in, in 2006?

Yes.---Yeah, I signed a 2006 contract - - -

Okay.--- - - - that expired in '11.

Okay. Thank you. Now, just want to ask you some general questions and then I'll be a bit more specific. During your time as general manager, is it
30 fair to say this? That you had a close working relationship with both Ms Cullinane and Mr Goodman, who held the roles respectively of deputy general manager and chief financial officer?---I had a working relationship.

Okay.---Close would be - - -

Yeah.---Might be - - -

I'm not being critical. I'm just saying - - -

40 MR LATHAM: I don't think Mr Goodman was the chief financial officer at that time.

MR MOSES: During your - - -

THE COMMISSIONER: Well, not for all of it, perhaps, but - - -

MR MOSES: During your period of employment as general manager of Council, Mr Goodman held the role, did he, at one stage prior to your departure as chief financial officer?---No, he did not.

Okay. What role did he hold?---To the best of my recollection he was the manager in finance administration for all of the time he was there.

Yeah.---But he wasn't there as long as I was.

10 Okay. And was there a chief financial officer at the time that you were employed?---No.

No. So just dealing with your counsel's objection, Mr Goodman was the most senior financial administrator within the Council at that time? Reporting to the deputy general manager and then you.---Well, yeah, the deputy general manager was also director of finance administration.

Yeah. Okay.---So I would say that she would have been the most senior.

20 Okay. That was Ms Cullinane?---Yes.

Okay. Thank you. Now, in relation to your relationship with Mr Goodman, you've no doubt read the transcript.---Yes.

The number of witnesses. They say that you would be a frequent attendee at premises at Wetherill Park, where he ran his motorsport business from, correct?---Over a long period of time I attended there on a number of occasions.

30 Yeah.---I have an interest in motor cars. I would never race them or done any of those sorts of things.

No, no. I'm not suggesting that, but what I'm saying is that you had a relationship with Mr Goodman outside of work.---Yes, but not a close relationship.

Okay.---I would only call in there if I was there. I would never set out to go out and see what was happening.

40 Okay.---Right?

So if you just happened to be in Wetherill Park, you'd stop by?---If I had business in the outer western suburbs, I would call in.

Sure. Okay.---But we didn't socialise.

Okay.---We didn't go for drinks. We didn't go for dinners. We didn't go for any of those other things.

No. Okay. Okay.---And he never called to my house.

Okay. You've, of course, had the benefit of listening to his evidence or at least, if not listening to it, having evidence of his drawn to your attention by your lawyers, who've been here. The way that Mr Goodman tells it is that you and he had a discussion about the use of the Council credit cards and that he alleges that he said to you that he was using a Council credit card for private use and that you said to him, "Just don't get caught." Are you aware of his evidence to that effect?---I'm aware of the evidence.

Yeah. And what do you say about that?---It never happened.

Okay. So insofar as he suggests that conversation occurred, you deny it?
---Yes.

Okay. Now, I think it was this morning your lawyer sent an email to the Commission in which you've indicated that expenditure on your credit card in 2012, insofar as it relates to flights that were booked through a travel agent on two occasions, are flights that you accept were personal in nature and that you will repay if Council has not deducted them from payments made to you, correct?---That's right.

Okay. Just to clarify a couple of matters.---But it was not on two occasions.

Okay.---It was two entries for the one occasion.

Okay. So what your lawyers have said is that, and you're right, these transactions both occurred on 12 April and were to the value of \$15,190.
---Yes.

And then they go on to say that, you should correct me if I'm wrong or if your lawyers have got it wrong, the next two transactions, one on 13 April and 19 April, to the value of \$648.90 and \$547 respectively were also made inadvertently. So are your lawyers right or are you right? What's your recollection of what's gone on here?---Well, it was all the one event.

Okay.---Right?

Ah hmm?---The credit card was used for travel in June.

Okay.---Right? And they were booked to it. And I've contacted the travel agent to find out what happened.

Okay.---All right?

Okay. So what they've done is put through the payments on different dates associated with that travel?---And all pre – the arrangement with the travel agent is we arrange generally a private trip.

Okay.---Right?

Ah hmm.---They had on file - - -

10 Okay.--- - - - right, a previous credit card. They don't have that credit card currently on file.

Okay.---And they used that card.

Okay.---Right? Inadvertently.

Okay. Okay. I understand. In 2012 you were not employed by Council?
---No.

20 Okay. And you accept, I think, don't you, that when you ceased being employed by Council you had no right to have transactions on that card being charged to Council, correct?---Absolutely.

Yeah. Okay. And is it your evidence that you did not check your credit card statements at the time that these flights were booked? Because had you checked them you would have found that you had not been charged for these flights and you would have no doubt chased up the travel agency. Is that right? To see what was going on? Is that your evidence?---Or what card did you use?

30 Yeah. Okay.---It would have been.

Okay.---Right?

Okay.---But there is other expenditure that was involved in that. \$10,000, significant expenditure, which, when I did check after I found that information out the other day, I think yesterday or Monday, sorry, that I did check and the rest of it was paid for by me.

40 Okay. Thank you. Certainly I just want to go through some of these. But you can correct me if I'm wrong. Transactions post 10 September, 2011 on your card relate to items to do with private health insurance. Would that have been an error?---I had no knowledge of that.

Okay. What about hardware and fabrics? Would that have been an error? You don't know?---I don't know what - - -

Okay.---And I don't know that was put to me.

Okay. Okay. What about internet or phone use after you left?---Well, I had an arrangement with the Council, which is a written arrangement, that when I left that I would still be continue to be provided with the internet and mobile phones, because I continued to represent the Council - - -

Okay.--- - - - on a number of external committees over a period of time.

Okay.---Right?

10 Okay. Could we just have come up on the screen volume 49 of the ICAC brief at page 38 first? So this is the business card for January 2012. And there's a number of transactions there which relate to motor vehicles. Titan Motorsports. I think Counsel Assisting asked you about some of these. These are not your transactions?---No, they're not.

Okay. And if the witness could be shown volume 44, page 1158. So it's volume 44, 1158. Just while it's coming up on the screen, would it surprise you to learn that there were transactions totalling \$54,118 on your credit card after you left for internet or phone?

20

THE COMMISSIONER: For what, sorry, Mr Moses?

MR MOSES: For internet or phone use.

THE COMMISSIONER: Internet or phone. Did you say \$54,000?

MR MOSES: \$54,118. Would that surprise you?---Yes.

30 Okay. And if that expenditure were to appear – I've just got some of the Telstra bills coming up there. If that was to come up on the Diners Club credit card, some of that amount, that would not have been a sum that you would have thought you were entitled to do or use after you left the Council, correct?---Well, I didn't.

No. So it wasn't you it was somebody else?---Yes. And I, yes.

Okay. That's fine?---I had some entitlement - - -

That's okay?--- - - - after that.

40

I understand that?---Because the internet and the phone was continued to be provided for me.

I'm not accusing you - - -?---No, no, no. But I just want to make it clear to the Commission - - -

Sure?--- - - - and the questions I was asked earlier.

I understand?---Those arrangements for, for internet and phone and Foxtel we continued for, well whilst I was retained by Council.

Okay. No, I'm not accusing you of being the person responsible for the expenditure?---Yeah.

But I wanted to know whether you say that fell within the use but you're saying that's not you, correct, the 54,000?---No, no.

10 Okay?---Look, those entitlements just continued at the same level as it was when I was employed.

Okay. What about Volkswagen, did any of your children or you have a Volkswagen from Barloworld?---Yes. But I don't know the details of those services.

No?---But I also know the Council has Volkswagens as well.

20 Okay. So Barloworld Volkswagen, after you left there was an expenditure on the credit card for, this is at volume 44, page 1137, of \$2,401?---Yes.

That of course will not fall within any arrangement that you had with Council after you left?---No, it would not.

No. And if it was something that occurred for your benefit then you would accept that that did not fall within the consent that had been given to you?---Yeah. It should be repaid. But I just don't know the details.

30 That's okay.

THE COMMISSIONER: Mr Fitzgerald, sorry. Could I just ask, did a copy of these credit card statements come to you?---Sorry.

Did a copy of these credit card statements at the end of the billing cycle, did they come to you?---Whilst I was employed?

Well either, when you were employed or after you were employed at Council?---I've never seen these documents until two days ago.

40 Well, while you were employed at Council?---Yes.

Did a copy of these credit card statements come to you at the end of each billing cycle?---No.

So you never saw any statement from a credit card - - ?---I did.

- - - account?---I did. Towards the end of my full-time employment there, right, there was a reconciliation between Ms Cullinane and myself where,

where she bought round the most recent of the statements and maybe some of the earlier ones and we went through them all and allocated all of, all of the payments that I'd incurred to cost centres.

All right. So that's the only time you saw statements?---Yes.

Well when they came into Council do you know where they went?---They, they went to the accounts branch whose job it was to, to deal with them.

10 And no one from the accounts branch ever came to you and said - - -?---
Could you explain this?

- - - what's this about?---Never.

MR MOSES: See, in terms of the credit cards that you had, you had the Commonwealth Bank business card account, correct?---Two of those.

Yeah. And you had a Diners Club credit card?---Correct.

20 Would it surprise you to know that during the period May, 2000 to July, 2012, a total transactions of \$3,084,000 went through those credit cards?---
Yes.

Okay. And where expenses were incurred on the credit card for personal use by you, so you're saying Ms Cullinane would come into your office with the credit card statements and go through them - - -

MS GERACE: Sorry, I object. That wasn't his evidence.

30 THE COMMISSIONER: No, his evidence was that it happened on one occasion, Mr Moses.

MR MOSES: Thank you.

THE COMMISSIONER: And that was shortly before he left.

MR MOSES: Thank you. And so that was at the end of your employment?---Yes, it was.

40 Okay. So was it Ms Cullinane's job to go through your credit card statements?---No. But because you know - - -

So, I'll stop you, sorry. Ms Cullinane came to see you at the end of your employment - - -?---Towards, just towards the end of my employment.

Okay. With how many credit card statements, for what period, for the whole period of your employment?---No.

So what, a most recent period?---It was either the most recent three or maybe the month before, I can't really recall.

Okay?---But it was not, it was not inextensive.

Okay. So when she – well let's go back one step. Credit card statements for your credit cards, Commissioner asked you the question, would you see them during the course of your employment?---Not normally.

10 Sorry?---Not normally, no.

No. Okay. And if you did use your credit card for personal use would you make a record of what were the items that you were using the credit card for? Would you have a journal somewhere where you'd note that you'd used the credit card either inadvertently or otherwise for personal use and you made a note to yourself that you needed to pay the money back to Council?--No. Because to the best of my knowledge I would only use it for what my entitlements were within the contract.

20 Okay. So to the best of your knowledge the only time, this is your evidence, that you used your credit card whilst you were General Manager was for what you thought you could use it for during the course of your employment, correct?---To the best of my knowledge but I didn't have perfect knowledge.

Okay. That's fine. What about air fares, Counsel Assisting has asked you some questions about air fares and I'm not going to name your children, but there are quite a few entries for flights by your children on occasions when you weren't travelling?---Yes.

30 Which were then billed to Council?---Yes.

For the period 2008 through to 2012. And again, I'm not going to name your children but what I'm saying is that if your credit card was used for paying for their flights interstate, and this seems to have happened a bit with Melbourne and Sydney, you would accept would you not, that that did not fall within your contact of employment?---No, I don't. I accept it does fall within my contract of - - -

40 It does?---Yes.

That your children's air fares would be paid by Council irrespective of whether you were travelling with them and it had nothing to do with Council business? You're not suggesting to the Commissioner, are you, that you understood your contact of employment permitted that to occur?---Yes, I am.

Okay. Can you explain that?---Well because I had discretionary expenditure in there to do as I saw fit from time to time and I did. And in the scheme of things, they were significantly small, not large amounts.

But let's not worry about the large amounts. But you're not suggesting to the Commissioner that you thought for instance, you could use your credit card to buy a Harley Davidson for yourself?---Yes, I am.

I'm sorry?---Yes, I am.

10

Right. Well, sir, with all due respect, that is a nonsense, isn't it?

MR LATHAM: Well it's not a nonsense, Commissioner. And that question should not be - - -

THE COMMISSIONER: Well again, it's a matter for submissions. But Mr Fitzgerald, can I just ask you was there a monetary component to this discretionary expenditure?---Yes, \$20,000.

20

Well \$20,000 doesn't go very far, does it. On an annual basis are you suggesting, was it 20,000 per annum?---Yes.

Well I think you've already agreed that you spent at least in one year, \$6,000 on a motorcycle which you said was within your discretionary expenditure. Are you suggesting that on no occasion did you ever come close to or exceed the \$20,000 discretionary limit?---I don't believe I did.

30

But you have no way of knowing because no one ever told you what you'd actually spent?---That's right. But that, but they, but the accounting staff were aware of that entitlement.

Well they might've been but I mean you've already said that not once in 20 years did any member of the accounts department come to you and say, what's this expenditure about. You never had any contact with them over any aspect of the credit card expenditure?---Not, not that I can recall.

40

And you never had any contact with any member of the accounts department in relation to whether or not you were exceeding your discretionary expenditure?---No, I did not.

MR MOSES: So just picking up on what the Commissioner said, you didn't keep a record, did you of what you were spending on the credit card, correct?---Not a separate record.

So you would not know for a fact how much you were spending on the credit card relating to personal use, correct?---I'd have a rough idea only.

Okay. Do you have a rough idea how much you spent in 2010?---Sorry?

In 2010, how much did you spend on the credit card, what rough idea?---I don't know.

Okay?---I mean it's, it's a long time ago but I mean - - -

Okay. Now MB Consulting?---Yes.

10 Michael Davis, Michael Davis was a friend of yours?---Michael Davis is, is known to me, yes.

Yeah. Well, Michael Davis is somebody that was known to you, was he not through political connections, correct?---Yes.

20 Okay. You've heard the evidence here, or you've had it drawn to your attention by your lawyers, who've been present while there's been evidence given by Mr Goodman about this. He said, and the way that he tells it, is that you had asked him to arrange for payments to be made in respect of Boggs Consulting, and that in effect cheques would be drawn for cash in respect of making those payments, correct?---That's the evidence I've heard.

Okay. Well, he says he gave evidence that there were regular payments of \$4,200 being made to you over a period of 10 years, and that these payments were in the form of cash and cheques. The reference for that evidence, Commissioner, is the transcript of 11 March, 2016, 2586, and 14 March, 2016, pages 936 to 937. What do you say about that?---I didn't receive any of that money.

30 THE COMMISSIONER: Well - - -

MR MOSES: Okay, well, let me ask you this question. Did you ask him to draw cheques for MB Consulting or Bloggs Consulting, sir?---No.

I'm sorry?---No.

You didn't?---I did not.

40 Okay. And you never asked him to arrange cheques to be drawn up for other MB Consulting or Bloggs in the whole period of your employment as general manager, correct?---Correct.

Okay. And you never received that cash from Mr Fitzgerald Senior, correct?---I am Mr Fitzgerald Senior.

Withdraw that, sorry. Withdraw that. From Mr Goodman?---No, I did not.

From Mr Byrnes?---I did not.

From Mr Thompson?---I did not.

Okay. And Mr Goodman, his version of events as I've put to you, you would say that that is not true, did not happen?---Correct.

Okay. With Michael Davis, he was known as Boggs, is that right?---Well, I didn't know that MB Consulting was Davis until I saw a document yesterday.

10 But you know that there were occasionally some payments being made out to, or said to be made out to, Mr Davis? There's a record or a document that exists in the ICAC brief that makes reference to a Michael Davis?---I saw that document and I think there are two payments, one in '03 and one in '04.

Do you know anything about that?---I can't recall anything about that. But I don't say they weren't illegitimate.

Did Michael Davis ever do any work for the Council?---He certainly didn't do any work for me but he may have done some work in the mayor's office.

20

Okay.---Back in that time. But I don't know the details.

THE COMMISSIONER: Did you know Mr Davis as Boggs? Was that a name that he was known by, Boggs?---No, but I have, since applying my mind to it, he was sometimes referred to as Boggs, never Bloggs, to the best of my - - -

No, I know. But when you knew him?---He was always Michael Davis to me.

30

All right. When did you first come to know him as using the nickname Boggs?---Only that I've applied the name, but just I've heard it when I've put my mind back to it, I've just heard some. And I thought it was a bit of a pejorative term, actually. I didn't really know what it was about or why it was about. But I just knew he was Michael Davis. Every time I spoke to him, I spoke to him as Michael Davis.

MR MOSES: Mr Fitzgerald, you said you've seen two documents that mention Michael Davis. These were, I think, Exhibit 90. Your lawyers would have shown you this, I think.---They were two cheque copies.

40

Yeah. There's an email from Mr Goodman to Mr Thompson asking for a cheque to be drawn for \$7,500 for Michael Davis, for consultancy expenses.---I don't know if I saw the email.

Okay. I'll show you the document. It might be quicker if I just hand it to you. It's Exhibit 90. Thank you. So, Michael Davis, Mr Fitzgerald, so

Michael Davis, who, I think, you said you knew. He is not somebody that you introduced to Mr Goodman?---I don't recall ever introducing him.

Did you ever mention the name of Michael Davis to Mr Goodman to the best of your recollection?---Not to the best of my recollection because, as I said, that you've got to remember that the mayor's office within the Council is not within the Council building.

10 Okay.---It's located at Eastgardens, which is some five or six kilometres away.

Okay.---So had he have worked in the mayor's office, he would have had no reason to be in our building. And so I don't ever recall him being there.

That's okay.---But he may have been. Do you know what I mean?

20 That's okay. All I'm asking is whether you ever mentioned to Mr Goodman the name of Michael Davis.---I can't recall doing it. I couldn't imagine any reason why I would.

Okay. Thank you. If that could be returned to me. Thank you.

THE COMMISSIONER: Mr Fitzgerald, when you said that every time you spoke to him, you spoke to him as Michael Davis, on what occasions did you speak to him and for what purpose?---Well, prior to joining the Council, I used to work in the Minister for Planning's office, and he would come there from time to time.

30 Mr Davis did?---Michael Davis.

In what capacity?---In no working capacity. Just as either a friend of the Minister or - - -

MR MOSES: A friend of the mayor? You said the Minister. The friend of the mayor?---No, the Minister. I'm talking about when I met him.

Okay.---It was back in the '80s and I was then working in the Minister for Planning and Environment's office.

40 Okay.---And in those ministerial offices, people floated in and out all the time.

THE COMMISSIONER: But were they the only occasions that you ever spoke to him back in that period of time, or did you speak to him at any stage while you were at Council?---As I said, I have some recollection, but it's not very clear, that he may have done some sort of short-term work in the mayor's office.

MR MOSES: Okay.---But back a long time ago. And I haven't seen the man for years.

Okay, okay. And you understand he's now passed away?---And I didn't know that until I saw the document yesterday.

Okay, okay. Can I just go back to the discretionary spending on the credit card? In relation to the credit card, apart from yourself, in terms of who had access to the credit card to use it, was there anybody else within Council
10 who had access to your credit card?---The only person - - -

When I talk about the credit card, I'm being generic there.---For the three.

All of them, yeah.---The only person, I gave Gary permission to use that card to pay the councillors' telephone bills because, for whatever reason in the system, from time to time they were cut off and I would get into trouble for them not having a phone service.

20 Sure, yeah.---And I said, "Look, stop mucking around with this. Pay them on my card." And that was the only time I gave him permission to do anything with my card.

Okay.---I didn't give anybody else any permission to use that card.

Okay. Okay.---And that's the only time.

So, with Mr Goodman, your evidence is you never authorised him to use your credit card for his own personal use?---Never.

30 Okay. Okay. Now, in relation to the question of Ms Baccam, if I could come to that. You've heard evidence, or been told about this evidence by your lawyers, that a Lexus was purchased for Ms Baccam.---Yes.

And the way Ms Baccam tells it is that she went to an auction house and saw you there with your son and you facilitated the purchase of a Lexus for her. Did your lawyers explain that evidence to you?---Yes, they did.

40 Okay. And what's your response to that?---My response is that I was at an auction house.

Ah hmm.---Pickles at Harp Street at Belmore.

Yeah.---Right? Some eight or nine years ago.

Ah hmm.---My son was interested in purchasing a car.

Yeah.---Because he wanted to buy a car.

Ah hmm.---He was undecided between two cars.

Yeah.---Right? I rang Joe Freitas at Wetherill Park and said, “How would I tell if this car’s been in an accident?” because he’s a panel beater and he’s the only one who would know.

Yeah.---So he said, “Look, the others are all here. We’ll come down.”

10 Ah hmm.---So within three-quarters of an hour or so, right, to the best of my recollection, four people turned up.

Okay.---That was Joe Freitas, Leon Zhang, Marny Baccam and Gary Goodman.

Okay.---Right? My only conversation and discussion were about the cars that I was interested in my son to buy. And my son subsequently bought one of those cars.

20 Yeah.---Right? There was nothing in any conversation I had with anybody that could be construed that I gave any person permission to buy Marny Baccam a car with Council funds.

Okay. Thank you. Thank you. Now, in relation to the payments that you receive upon your employment coming to an end.---Yes.

Just in relation to that, you received payouts in respect of your sick leave entitlements?---Yes.

30 Okay. And in relation to those sick leave entitlements that were the subject of payout they were quite substantial were they not?---Yes, I, I, I – to the best of my recollection I received a cheque and I’m not sure if I received the details as what the payment was for.

Yes.---And I subsequently after that received another cheque to say that there had been an adjustment.

Yeah.---So I received some more money.

40 Okay. So I, I, I couldn’t say that I actually worked out what was for – how many hours for what. I think I just accepted whatever they gave me and banked it.

Okay. Do you know that through the creditor system in 2011 you received a cheque for \$204,000 for unused sick leave?---I may have. I don’t recall. But, but it’s – I don’t know – I would have no knowledge it was through - - -

Okay.--- - - - the creditor system or whether it was through the payroll. I wouldn’t know.

That's fine.---If I received a cheque - - -

That's okay.--- - - - I wouldn't know what allocation that was against.

Okay. I'm just asking you some questions. And in 2008 you received a cheque for \$240,000 through the creditor system for unused sick leave, a cheque.

10 THE COMMISSIONER: Did you say \$240,000?

MR MOSES: Yes. A cheque. Do you recall that?---I recall a cheque but I don't recall the details of it.

And these payments were received whilst you were still employed by Botany?---I can't remember the dates you've said but, yes, they would have been.

20 Okay. And again I'm just asking you these questions because these are facts but no doubt I can show you the documents if you want me to show them. Those payments weren't recorded on your group certificates. Are you aware of that?---I don't know the answer to that.

There wasn't Ministerial approval for those payments was there?---I don't know.

30 And just so that you know, the reason I'm saying that to you is that under the Local Government Act there must be Ministerial approval given pursuant to section 354A and by reference to regulation 405 for untaken leave if it goes over a certain amount. But you're not aware of the mechanics of that are you?---No.

Okay. Do you know who authorised the – or triggered those payments to you, was it Mr Goodman or Ms Cullinane?---I don't know the – I don't know.

You don't. Okay.---I, I, I just don't know the details.

40 And again I'm not being critical of you but just explain to me this, in terms of payments being made through the creditor system that's not something that, is it, that you instigated, that would have been either within the bailiwick of Ms Cullinane or Mr Goodman. Correct?

MS GERACE: I object to, to that. That's not been the evidence so far in terms of – sorry, might I be heard – Ms Cullinane having any involvement in the instigation of those payments.

THE COMMISSIONER: Well - - -

MS GERACE: I don't understand that to have been the evidence, Commissioner.

THE COMMISSIONER: I don't think it's being put as evidence. I think the witness is being asked of the possible sources of the authority to pay those amounts out of the creditors system that would have to have been either Ms Cullinane or Mr Goodman. Is that right, Mr Moses, according
- - -

10

MR MOSES: That's correct.

MS GERACE: Well, my, my object to that, Commissioner is this, what's the premise for the suggestion that it would – that the authority could have come from Ms Cullinane?

THE COMMISSIONER: I think the premise is that they're both – Ms Cullinane was in charge of finance and Mr Goodman was the relevant delegate below Ms Cullinane but look - - -

20

MR MOSES: How about I put the question.

THE COMMISSIONER: Yes.

MR MOSES: And see what he says.

THE COMMISSIONER: All right.

MR MOSES: Ms Fitzgerald, in terms of payments through the creditor system, let's go through it carefully because there's quite a body of payments being made through the creditor system. Were you aware whilst you were General Manager that payments were being made to employees through the creditor system rather than the payroll system for employment related payments?---I have no knowledge of that.

30

Okay. Do you know who was responsible for making payments through the creditor system?---No. I really don't understand how, how – when a cheque is drawn - - -

40

Okay.--- - - - what account it gets allocated to.

Okay.---Because the cheque is drawn out of the one system.

Yeah.---And it's whatever cost centre they charge it to and I don't know how that works.

Now, in relation to Mr Goodman's evidence, he in effect was suggesting that during the period which you were General Manager there appear to be

some form of sense of entitlement for Council resources to be used for personal use by employees and he puts you right in the middle of it. He says that in effect, you know, monkey see monkey do. He saw what you were doing and others were doing and he thought he would get a bit of it. whilst you were the General Manager of Botany Council was there a culture of using Council resources for person use by employees, did you encourage such a culture?---I don't believe so and I don't - - -

10 Okay.--- - - - and I don't believe it was – there was such a culture or such an activity where, where Council resources were used for personal.

Okay. During your tenure as General Manager there is a suggestion that Mr Goodman and Ms Cullinane had a meeting with you, and you would have been told about this evidence by your lawyers, that they had a meeting with you in which they raised with you an issue in relation to your expenditure on credit cards.---That's not true.

Okay. Thank you.---And I don't know – I've not seen that in the evidence.

20 Okay. Thank you.

THE COMMISSIONER: Well, can – sorry, can I just clarify something.

MR MOSES: Yeah.

THE COMMISSIONER: I understood the witness to say that he did have a meeting with Ms Cullinane where there was a reconciliation of credit card statements.

30 MR MOSES: That's correct.

THE COMMISSIONER: You referred to that earlier didn't you, Mr Fitzgerald?---Yeah, but that wasn't – that wasn't – that's not what my understanding of the question was. The understanding was - - -

MR MOSES: No, he's – the witness is correct, Commissioner. I was referring to something else. The Commissioner – you're – he's right – you're right, Commissioner, about the recollection but the witness is right about my question and asking about something else.

40

THE COMMISSIONER: All right. Well, I – all right.

MR MOSES: Yeah. Okay.

THE COMMISSIONER: You're talking about a different occasion, Mr Moses?

MR MOSES: I am. I am.

THE COMMISSIONER: Thank you.

MR MOSES: And it might be that I have a misunderstanding of the evidence but my understanding was that there was a discussion that took place. Now, in relation to your tenure as General Manager is it fair to say that there was no corporate credit card policy in place, that is, a written document, a policy document of Council that existed whilst you were General Manager that dealt with the use of credit cards and how the use of credit cards were to be reconciled with?---I think, I think that's correct.

Okay. I can say, Commissioner, for the record the Council's position is that the first corporate credit card policy was introduced in June, 2012 when the new General Manager came on board and was updated in November, 2015. The, the one that came into effect in June, 2012 is at volume 27 of the ICAC brief at page 88. Okay. The, the final question I wanted to ask you is this, whilst you were General Manager was this the position that there weren't delegations in place in relation to a distinction between the management role that you had as General Manager as opposed to the authority which he Mayor could exercise in relation to certain matters. Would that be right?---I, I don't really understand the question.

Okay. Okay, that's fine. Were there delegations in place whilst you were General Manager - - -?---Yes, there were.

- - - in respect of the exercise of your functions as General Manager?---In relation to the functions of the exercise of General Manager?

Yeah, in terms of the day-to-day management of the Council.---Yeah, there were extensive delegations - - -

Okay.--- - - - in relation to us.

Okay.---And they were reviewed in, in the year before I left.

Okay.---We had a manager of special projects who took it on as a special project to go right through all of the delegations from, from the very lowest - - -

Okay.--- - - - level of delegation, the powers and authorities and responsibility of rangers and all the way – the expenditure delegations, all the way up and through because there were hundreds of delegations under a series of not only the Local Government Act but the Health Act and all – control of that that, that goes through Councils.

Okay. Thank you.---So I don't really understand the - - -

Okay.--- - - - the question so I don't know if I gave you a sensible answer.

Have you read Ms Kirchner's statement?---I, I actually just had a quick look at three paragraphs of it while I was sitting in the back of the room.

Okay.---Right, and so, yes, so – but I can't say I took it into account - - -

Okay.--- - - - or put my mind to it.

10 Okay. Okay. Just bear with me. Commissioner, I might just need a short adjournment before I complete my examination of the witness.

THE COMMISSIONER: Well, I was going to say we should take a short morning tea adjournment.

MR MOSES: Yeah.

THE COMMISSIONER: Yes. Just before we do, Mr Fitzgerald, can I just ask you the period of time that you were at Drummoyne Council - - -?
---Yes.

20

- - - did you have a credit card issued to you in the name of Drummoyne Council while you were there?---I was, I was never an employee there. I was an elected official there.

I see. So you don't know what the policy was at Drummoyne Council in relation to the use of corporate credit cards?---No.

30 No.---No. But I do know and I don't know whether this helps the Commission but there were directions – a section 23A direction was given in July, 2011 in relation to how a General Manager deals with their credit card and a Mayor. So there are some Local Government guidelines in relation to that but they were effective July, '11.

All right. Thank you. We'll resume at quarter past 12.00. Thank you.

SHORT ADJOURNMENT

[12.02pm]

40 MR MOSES: Thank you, Commissioner.

Mr Fitzgerald, you gave evidence earlier to the Commissioner that under your contract you say you were entitled to spend, was it up to \$20,000 in terms of discretionary spending on what you liked. Correct? That is airfares for your kids, a Harley-Davidson, you could do up to 20,000. Correct?---Um, I've not seen expenditure on a Harley-Davidson but (not transcribable)

I'm sorry?---Yes, that's right, yes is the answer.

That's your evidence?---Yes.

And you're telling the truth?---Yes.

Okay. Can you explain why whilst you were General Manager you actually received \$20,000 cheques from the Council which were said to be – and this was happening through a bank account, were said to be travel expenses.

10 What's that about?---Oh, I, I, I don't know what the, the cheque you're talking about.

Okay?---I mean, well, I'm - - -

I'm going to show you, I'm going to show you a document. This was located in the Fujitsu – and just when you're answering your questions, please read this carefully because you've given sworn evidence to the Commission which you've locked yourself into a position in respect of the credit card, so I want you to look at this and then after you've looked at his,
20 then inform the Commissioner whether you wish to change the evidence you gave on oath earlier, bearing in mind you are not protected from telling a lie to the Commission. So I'm going to show you a document that was located in the Fujitsu Financial System this morning, which is the old financial system for the Council, and I'm going to show you the document. Does this prompt your memory as to whether you were receiving cheques from the Council for what was said to be travel expenses whilst you were employed?

30 MR LATHAM: Commissioner, might my friend explain how this is said to be records of payments to Mr Fitzgerald?

MR MOSES: These are - - -

MR LATHAM: I don't follow it.

MR MOSES: Okay.

THE COMMISSIONER: I don't have the document.

40 MR MOSES: These are, these are, these are payments which relate to payments made to the General Manager, according to the Fujitsu system, and you'll see littered throughout the references are references to GM.

THE COMMISSIONER: You said cheques, plural, Mr Moses. Is this over – can you just tell me what period of time?

MR MOSES: From 2003, Commissioner, up to 2010 this schedule provides for.

THE COMMISSIONER: Are they annual or more than annual?

MR MOSES: More than annual.

THE COMMISSIONER: Right.

MR MOSES: A number of payments being made during that period.

10 THE COMMISSIONER: Thank you.

MR MOSES: Do you say that these cheques were not cheques that you received during this period, that is that these were not your cheques, they must've been somebody, going to somebody else?---(No Audible Reply)

Perhaps we could do it the hard way. We can go through your bank accounts and see whether these were hitting your bank accounts? Did you have recollection about this at all?---I'd like, I'd like to be able to do that.

20 Okay. So you'll do a reconciliation if the Commissioner permits you between now and the close of submissions, to ascertain whether this schedule, whether you actually received the cheques that were being presented during this period, could you do that?---Yes.

Thank you so much?---I'd be happy to do that.

30 Okay. And if it transpires that you were receiving these cheques, for instance, in respect of travel expenses that were going into your bank account, would that mean that the evidence you gave that you thought that you could spend up to \$20,000 using the Council credit card for discretionary use, that you were either telling a lie or were mistaken about your authority to use the credit card? Just so we understand your position?

MR LATHAM: Commissioner. There's a third option which my friend knows which is that he was entitled to be repaid travel expenses.

40 THE COMMISSIONER: Well repayment I would accept. But these appear to be regular payments in the round sum of 20,00, are they, Mr Moses?

MR MOSES: Correct. That's correct.

THE COMMISSIONER: Mr Fitzgerald, was there a provision in your contract for payment to you on an annual or more than annual basis of \$20,000 for travel expenses independently of the \$20,000 discretionary expenditure item that you referred to before?---I, I would like the opportunity to be able to check the contract, check how these reconcile back towards it. Because I just do not know.

MR MOSES: But you accept, I think don't you that - - -

MR THANGARAJ: We'll give him a copy of his contract.

MR MOSES: Thank you. If the witness could be shown volume 26 of the ICAC brief and I'll show the witness the contract, I'll provide it in hard copy. If I could ask whether he could be shown the hard copy. Could you just point out to us under what provision you were entitled to firstly, the
10 discretionary use of your credit card up to \$20,000 and secondly, the travel expenses provision? Because what we're trying to get to is whether you had an honest belief held on reasonable grounds that these moneys could be spent by you. So if you could just tell us which part of the contract you relied upon to have that honest belief held on reasonable grounds?---(No Audible Reply)

MR LATHAM: Commissioner, this is not the proper contract. The contract that should be being referred to is one of 1 June, 2006.

20 THE COMMISSIONER: Is this an earlier one?

MR LATHAM: Yes.

MR MOSES: The one of 2006, I think is as I've referred to - - -

THE COMMISSIONER: Yes, I think we don't have a complete copy of that.

MR MOSES: Yes, we don't have the complete copy. If my friend has a
30 copy on instructions from his client, then he can maybe give us the copy. But on the file of the Council - - -

THE COMMISSIONER: This is the only one we have.

MR MOSES: - - - there's an unsigned 2006 document with every second page. But if my friend has it then we would be obliged if we get a copy.

MR LATHAM: Well my friend should know. I think it's R75, it's been
40 tendered.

MR MOSES: R75, okay, thank you.

THE COMMISSIONER: Well perhaps he could be given a copy of that?

MR MOSES: Thank you. Could the witness be shown a copy of that. Thank you. Could the witness, just to be clear, Commissioner. The witness should look at his 2001 contract first because some of this relates to up to 2003 and beyond. So I think he should look at the first contract to tell us

where it comes from that. Because my friend's objection is not entirely correct. And then the second contract he can then tell us where it appears, because that will then overlap till the next phase. So first look at the 2001 contract, Mr Fitzgerald, the first contract I showed you?---Could I just ask you a question. Some of these payments I don't actually understand. There's one here in - - -

10 Okay. Well let's first focus on the contract. Because I'm asking you about the provisions in the contract. What parts of the contract do you rely upon to say that you were entitled first of all to use up to \$20,000 of Council money for discretionary use through the credit card?---(No Audible Reply)

Is it in your contract?---I believe, what I rely on is all of Schedule F.

All of Schedule F, okay.

20 THE COMMISSIONER: Well, the only reference to \$20,000 is a figure appears in the Loyalty Retention Allowance which refers to an annual allowance of 20,000 to be available to use as he determines from time to time, followed by this sentence, "Council recognises the benefits of travel and study to help compare our city to others and to derive the best outcomes for the city by introducing the best available." Does that mean that that \$20,000 is the relevant travel allowance?---(No Audible Reply)

Is that what it refers to?---I, I, I don't know what, I don't know what the cheques refer to.

No, but I'm - - -

30 MR MOSES: I'm asking what your – I think what the Commissioner was asking you was whether your understanding of the 20,000 was it related to travel to do with that issue. What did you understand the \$20,000 was to be used for?---(No Audible Reply)

Was it for you to attend conferences overseas to compare the Council's infrastructure to other Councils or was it for you to use that money for whatever purpose you deemed you wanted to use it, whether it was for a motorcycle or airfares for family members?---I, I, I rely on the words in 3.5.

40 In?---3.5.

Okay. Thank you. That's what you say. Okay. So if you received a cheque for a particular year for \$20,000, for \$20,000 which was said to be related to travel expenses and you incurred expenses on your credit card for instance for airfares for family members or a motorcycle, would that have been double-dipping?---Well, it, it, it, it, it may have exceeded the limit.

Yep?---But, but again I've (not transcribable)

Okay. Thank you. Okay. Thank you. So you'll go through that document that I provided you and ascertain whether or not those cheques actually hit your bank account?---Yes.

Correct?---Yes.

10 And if those cheques related to travel expenses did hit your bank account, then would you accept the proposition that insofar as there were expenditures on your credit card for those relevant years, that were in addition to the \$20,000 that you received, those payments should not have been made on the credit card. Correct?---As I said, I rely on all of schedule F but particularly that \$20,000.

Okay?---But there's other amounts in there. Some said refund of expenses.

Yeah?---Some say other things, so - - -

20 Correct, but I'm talking about the traveling expenses amounts.---Well, I, I don't know what the travel expenses means but if you give me some time to think about it.

But you accept that there was no other provision in your contract that would have entitled you to receive on a regular basis cheques of \$20,000 relating to travel expenses?---Not that I can see quickly.

30 No. Okay. And if that was the case that these cheques were hitting your bank account during the relevant period and your credit card was being used for private use in the way that Counsel Assisting has eluded to and the examples that you've been taken to, then you would accept that those payments should not have been accrued on the credit card?---That they would have exceeded my entitlement.

Okay. Well, more than that, that they shouldn't have been made, correct?---That they exceeded the entitlement but again, I'd want to reconcile them.

40 Okay. But we're not talking here about you being in a position where, in effect, you were a multi-millionaire with rivers of cash available to you that you wouldn't know what expenses you were using of your own, that is, using your own resources as opposed to using somebody else, like you would know whether in fact, if you were purchasing a motor cycle whether it was coming out of your pocket or coming out of somebody's pocket, correct?---(No audible reply)

You would accept that wouldn't you? Like you're not suggesting you're of such able means that you wouldn't notice whether something was coming out of your pocket in respect of a personal item such as a Harley Davison,

correct?---Again, I'd have to, I wouldn't use the card unless I believe I had the entitlement.

Okay. Okay. Thank you. Just finally, can I just show you this newspaper article of the 12th of May, 1989 and I'm not using the article to say Senator Brown Bishop is a credible source, thank you, and no criticism of the senator or then senator, 12th of May, 1989, this is a newspaper article which relates to Michael Davis and it records you allegedly being told by the then Senator Richardson something about Mr Davis. Michael Davis, it's fair to say, is somebody that you were familiar with, correct?---Could I just read it first?

Of course, yes.---I've read it quickly but I've got to read it in finer detail to that level.

It's quite funny it's a good read.

THE COMMISSIONER: This is Exhibit R89 for the record Mr Moses, thank you.

MR MOSES: Yes, thank you.

THE WITNESS: I note that it's undated so.

MR MOSES: It's the 4th of May, 1989. I think the journalist is having a dig at the then, Senator Richardson and I think a reference to the former Senator Bishop wearing Parramatta Jersey's and shorts.---I'm sorry, I don't understand, what, could I have your question?

Okay. Two points from that article. Number one, that there seems to be with Mr Davis some suggestion in that article, of course, that you know who Michael Davis is, correct?---And I said, I do, yes.

And that he seems to have had some relationship with the then Mayor of the council, correct?---Well, I mean - - -

According to the article?---Yeah.

Okay. In relation to Mr Davis, are you aware of him having any relationship with Mr Goodman?---No. Well, I don't know, I just don't know.

You just don't know, okay. Thank you.---If I were to rely on this document, I never had a discussion with Graeme Richardson about Laurie Brereton but that didn't stop them publishing it.

No, of course not, no, no. I mean, newspapers sometime say things that aren't true.

THE COMMISSIONER: No Mr Moses.

MR MOSES: You know, Commissioner, regrettably they do, sometimes they have campaigns.

THE WITNESS: I can't even see where my name's there.

MR MOSES: Okay.

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THE WITNESS: It bears no relationship.

MR MOSES: Okay. No further questions thank you.

THE COMMISSIONER: Any other questions - - -

MR MOSES: Oh yes, can I tender the - - -

THE COMMISSIONER: Oh sorry.

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MR MOSES: Can I tender the Fujitsu document, can I just say that it's a document that Council accepts should have been produced as part of an answer to an earlier notice but it was only uncovered this morning - - -

THE COMMISSIONER: Yes, Exhibit - - -

MR MOSES: And it came about as a result of documents uncovered in Mr Thompson's cupboard which I think, is Exhibit 90.

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THE COMMISSIONER: Exhibit 93 is the Fujitsu spreadsheet.

#EXHIBIT 93 - FUJITSU SPREADSHEET RE: GM PAYMENTS

MR MOSES: Thank you.

THE COMMISSIONER: Yes now, who has some questions of Mr Fitzgerald.

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MS GERACE: I do briefly, Commissioner.

Mr Fitzgerald I appear for Ms Cullinane the former Deputy General Manager of the Council and I just wanted to ask you some on a very small point and that being what you referred to in your evidence on the last occasion as the additional superannuation payment that you agreed, that you negotiated for Ms Cullinane. Do you recall giving that evidence?---Yes.

Now I want to leave aside please the mechanics of how it was paid, I know you were asked about that on the last occasion but I only want to focus on the agreement that was reached itself. And that is this, can I ask you the following questions, in what you negotiated was, is it fair to say the following. What you negotiated was that Ms Cullinane would be paid an additional amount per annum or on an ongoing basis which you call this additional super payment first, is that accurate?---Yes, I it is.

- 10 All right. Now, leaving aside how someone, where it was credited to or pay through, in 2007 Ms Cullinane or late, sorry 1996/1997 Ms Cullinane was paid a base salary, yes?---Yes.

And was what you negotiated that this additional super payment would be on top of her base salary, first?---Yes.

In addition to the regular super payments that were made compulsorily?
---Yes, to catch up and to bring her in line with another office.

- 20 Yes.

THE COMMISSIONER: Ms Gerace, can I just ask you to pause there for a minute. I'm having a bit of a problem, I accept that these payments, these additional payments may have been at some stage styled as or nominated as super payments. Mr Fitzgerald, as I understand it, indicated that these payments were designed to put her in a position that she would have been in under a more advantageous super scheme, is that right?---Had she not lost some continuity.

- 30 Yes.

MS GERACE: Yes.

THE COMMISSIONER: But the payments themselves were never deposited into a super fund and they were never subjected to the tax benefits that superannuation payments normally accrue.

MS GERACE: Yes.

- 40 THE COMMISSIONER: I just don't want there to be any mistake about the fact that these were not, in fact, super payments whatever else they were meant to do for Ms Cullinane's financial position.

MS GERACE: Sorry Commissioner, I just missed the last part of what you said.

THE COMMISSIONER: I just don't want there to be any mistake, in terms of the propositions you're putting to this witness, I don't want the witness to

be under the misapprehension or indeed the transcript to reflect any acceptance of the proposition that these were in fact super payments.

MS GERACE: Well, Commissioner, I'm not, I'm not proposing to - - -

MR MOSES: As the employer of Ms Cullinane that is our position as well, Commissioner.

MR GERACE: Might I finish Mr Moses.

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THE COMMISSIONER: Yes, I know, I know. No, I just, I'm not being critical I just want to make sure.

MR GERACE: No, I understand Commissioner.

THE COMMISSIONER: That the questions are being put on the proper basis.

MR GERACE: I have that Commissioner - - -

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THE COMMISSIONER: Yes, go on.

MR GERACE: - - - and I'll make sure I do that. Now, Mr Fitzgerald, you needn't concern yourself, but do you understand what the Commissioner was saying about there were problems in the way the payments were processed and I'm not asking you to turn your mind to those matters. I'm coming back to what was agreed and what was intended at the time in 1996/1997. Now I want to ask this, was, is it fair to say that what was agreed was this payment to Ms Cullinane was on top of her base salary, firstly.---(No audible reply)

30

The additional, what you call the witness calls this super payment to bring in, in-line with this other employee, correct?---Yeah, to catch up.

To catch up.---Yeah.

And in terms of the scheme. And how that was worked out has already been the subject of evidence, but additionally the super that would have been paid to this other employee, there was a monetary difference between what Ms Cullinane was receiving in 1996 and what this other employee was receiving, correct?---That's my understanding.

40

Right. And that additional amount, whatever we want to call it, ex gratia or the additional super amount, leaving aside the irregularities, was to be paid on an ongoing basis throughout her employment. Are we agreed on that? ---Yes.

And that as her base salary increased from one year to the next, this additional payment was calculated on the increased base salary, correct?
---Yeah, otherwise she would have stayed frozen and had a loss of inflation.

That's right. So it was meant to stay in lockstep with her increasing salary from year to year?---Yes, and the notional salary of the other person to whom she was lockstepped.

10 Precisely. So that if her salary was 150 in one year, the percentage would be applied against that 150, correct?---Yeah.

To calculate the additional payment. Then if her salary went to \$200,000 the following year, her base salary, the calculation was applied against the increased base salary, correct?---Well, that's how I would have imagined it would have been calculated, but I didn't do the calculations.

20 No. But that's what you intended to agree with her, and that's what she would have understood from that agreement?---Because that's what the other person who was in the lockstep would have got. As long as it was the same as that person, I would feel comfortable with it.

Precisely. So, just coming back to the agreement, she would have understood, would she have not, leaving aside the problems that might have arisen in terms of taxation or FBT, because the evidence suggests that that's not what I'm asking. She would have understood, would she not, in 1996, that it was within your authority to reach that agreement with her?

MR MOSES: Objection. It's not a matter for the witness to - - -

30 THE COMMISSIONER: Well, I don't know that this witness can say what it was that she would have understood, but, I mean, certainly he can be asked whether or not it was within his authority at that time - - -

MS GERACE: Thank you, Commissioner.

THE COMMISSIONER: - - - to negotiate such a payment.

40 MS GERACE: Yes. Let me do it in this way. Senior staff of Council, while subject to an award for certain conditions, their pay quantum is negotiated commercially, correct?---In equivalent commercial.

In equivalent commercial - - - ---Yes, yes.

- - - within the field?---Yes.

And within that equivalent commercial, there was great scope within which you could reach an agreement with your senior staff about the terms on

which they would be paid. That's accurate, isn't it?---Yes, in the marketplace.

In the marketplace?---Yes.

Yes. So that did you consider, when you reached this agreement with Lorraine Cullinane, that that additional payment in the way it was calculated was within your authority to reach that agreement?---Yes, I did.

10 Thank you.

THE COMMISSIONER: Any other questions of Mr Fitzgerald? Yes, Mr Abboud.

MR ABOUD: Thank you, Commissioner. Mr Fitzgerald, I act for Mr Goodman in this inquiry. Just like to ask you a few questions. How well did you know Mr Davis, the late Mr Davis? Or Mr Bogg?---Yeah, I met him in the mid to late '80s. And I would go many years without seeing him. So I've known him back since the mid to late '80s.

20

Weren't you members of the Young Labor at some stage, you and him?
---No.

You didn't meet him as a Young Labor person?---I was never in Young Labor.

Okay. And whilst you were the general manager of the Council, you had wide powers, didn't you?---Well, I had powers. Whether they're - - -

30 Yeah. And you were au fait with the financial affairs of the Council, weren't you?---Up to a point. Not in fine detail.

Okay. And were you aware of how the accounting process worked in relation to ledgers, accounting system?---Not in detail.

Not in details. And in relation to sick leave, we heard today that you received a cheque for a couple of hundred thousand dollars for your sick leave entitlements?---Well, yes, I've been told that.

40 Yes, and there was subsequently an adjustment, you mentioned to the Commission?---No, what I said is I received a termination payment.

Yes.---And then subsequent to receiving the termination payment I received another payment just saying that it was an adjustment but it was not explained what it was.

Was it in your favour?---Yes.

The adjustment?---Well, if I got a cheque otherwise - - - -

Okay. And if I recall it correctly you told the Commission that you weren't sure how much your sick leave entitlement were. Is that right?---Yes.

Okay. Did you make any inquiries or you just accepted the cheque on face value?---I just accepted all of my termination pays on face value.

10 Okay. In relation to MB Consulting, did you have any involvement in the creation or falsification of invoices - - -?---No.

- - - to benefit?---No.

Are you sure about that?---Absolutely.

Okay. Did you not instruct Mr Goodman to use blank invoices whenever money was needed?---No.

20 You didn't. Well, sir, I put it to you that you knew exactly what Mr Goodman was doing and you turned a blind eye because you were benefiting through those envelopes he gave you. What do you say to that? ---It did not happen.

Okay. And you know nothing about blank invoices with MB Consulting on top of them?---No, I don't.

Never seen them?---No.

30 Nothing further, Commissioner.

THE COMMISSIONER: No other questions for Mr – anything arising, Mr Thangaraj?

No.

MR LATHAM: Sorry, Commissioner, I have some questions.

THE COMMISSIONER: You do. Yes, go ahead.

40 MR LATHAM: In fact only one. Mr Fitzgerald, can I – you were asked some questions about your credit cards and what controls were involved in acquitting the credit cards. Do you remember those questions being asked of you?---Yes, I do.

What controls did you understand existed over the credit cards?---It was my expectation that the credit card – all of, all of the debits on the credit card would have been acquitted to a cost centre each month and I was also told by Mr Goodman that the external auditors every year or every second year

did a check of the credit cards and not once did he raise with me any problems with those cards.

And have you seen in evidence any of the reports by the auditors about the credit cards ?---I've seen a document in all, in all of these documents in – from a firm called something Spencer, Spencer Steer where they - - -

10 Commissioner, might we just have volume 46, page 16 up on the page – up on the screen. Is that the document you're referring to – sorry, part of the document that you're referring to?---Yes, it appears to be.

Okay. And what did you understand that document to be?---Well, it's, it's headed up Spencer Steer Chartered Accountants Subject GM's Allowances and then it goes down and deals with expenditure on, on the credit cards which were the credit cards that I had in my possession.

20 And as far as you were concerned was the same – did that process ever change?---I had no knowledge of it changing but that gave me comfort that that – some external review of the credit cards was taking place.

I've got nothing further, Commissioner.

THE COMMISSIONER: Yes, Mr Thangaraj, anything arising from that?

MR THANGARAJ: No.

THE COMMISSIONER: No. Thank you, Mr Fitzgerald, you may step down. You're excused.

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THE WITNESS EXCUSED

[12.59pm]

MR THANGARAJ: At 2 o'clock it will be Mr Foo and then Ms Marshall.

THE COMMISSIONER: Right.

MR MOSES: Commissioner, just one issue I wanted to raise.

40 THE COMMISSIONER: Yes.

MR MOSES: Ms Kirchner, as I understand it the Commission doesn't require her to give evidence (not transcribable) two statements but we were just wondering whether – if any parties want her for questioning whether they could let us know because she has another commitment at 2.00 and we said if she could be here by 3.00 but we'd like to be told if we could by no later than 1.30 if that's the case so she can make arrangements to be here.

THE COMMISSIONER: All right. Well, anyway - - -

MR THANGARAJ: We may or may not get to her because we have Mr Byrnes as well.

MR MOSES: Okay.

MR THANGARAJ: Hopefully we will but there's – we may not.

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MR MOSES: Thank you. Okay. Thank you.

MR THANGARAJ: But if she could be here it would be helpful because we'd have a chance of finishing today even if we sat on a little bit.

MR MOSES: Okay. Thank you.

THE COMMISSIONER: All right. Well, we'll see what we can do.

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MR MOSES: Thank you.

THE COMMISSIONER: At 2 o'clock, thank you.

LUNCHEON ADJOURNMENT

[1.00pm]