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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 16 MARCH 2016

AT 9.40AM

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

THE COMMISSIONER: Yes, Ms McNaughton.

<GARY WILLIAM GOODMAN, on former oath

[9.40AM]

10 MS McNAUGHTON: Yes, thank you. I've only got a limited number of matters to raise with you this morning, sir. Can I go back to one that I raised with you yesterday, just in relation to credit card statements. I just want to put it to you more precisely. Do you recall being asked by Ms Cullinane to provide her with the credit card statements of the soon to be retiring Mr Fitzgerald in about 2011?---Yes.

And did she tell you that they were for him to acquit?---I can't recall that but I'd accept that.

And that she was going to email him?---Same thing, I'd accept that.

20 Yes, thank you. Can I move on back to the ex gratia payments issue?
---Ah hmm.

Can I ask you this. In relation to the payment in 2014, when you told her that you would be processing the payment, did she ask you to put it into her Local Government super fund?---I don't recall that, I don't recall her saying that to me. I just – if that was the case I would have done that.

30 All right. Is it possible that you forgot to do that, even though you were asked to do that?---It could be. I'm not, I'm not going to deny that, it could be.

And that you said words to the effect, it doesn't matter, you can put it in yourself, the tax has been paid?---That would probably be true.

THE COMMISSIONER: I beg your pardon?---That would probably be true.

Is this in relation to all the payments?---No, no, no, no, just the last one.

40 The last one?---Just the last one, yes.

MS McNAUGHTON: Well, yesterday you said it was at least in relation to the last - - -

THE COMMISSIONER: Two.

MS McNAUGHTON: - - - two?---We paid two together. The last payment I meant. We paid two together.

And I suggest to you again, sir, that it was Ms Cullinane's understanding and as a result of, in part, discussions with you at least that tax would be met by Council on all those payments?---I know I did tell Lorraine we'd pay tax on the – through the FBT system not to the Tax Office, on that last payment which was two, two lots of superannuation.

10 Can I go now back to the 2011 meeting about invoices. First of all, can I suggest that the issues raised concerned expenditure that appeared excessive and that the subjects raised included, but this is not necessarily all?---Mmm.

Included fuel cards, cameras and computers and some expenses at the Business Unit, refreshments, tools, Officeworks, Bunnings, phone numbers?---I'll accept all that.

Also Computer Intersection invoices were raised?---Yes.

20 And when – can I now go out of that meeting. When the Computer Intersection invoices first came in those that were later raised at the meeting, were you told by Ms Cullinane that you could not authorise them unless the manager of IT verified that the goods were received because they were a few years later than the apparent - - -?---That would, that would have been true.

All right. Did she raise at the meeting that the invoices had apparently not been verified by the head of IT?---I think what Lorraine said, she checked them and I gave them to everybody to check and she said that there was an invoice there that we previously paid and it had a different item on it, on this one and I actually checked that with, with Mr Mark.

30 Did she also raise or did she raise the issue that you had not complied with her earlier instruction that the head of IT should approve - - -?---I can't recollect that but I did give all the invoices to the head of IT.

- - - or to verify?---I did give them to him.

40 Well, in fact, did you say rather that you had checked them?---That might have been the words I used but I did give them to a number of people to check and tell us – we're looking for serial numbers, anything to see if we actually received that equipment.

Can I now go to a final issue in relation to Teletec. This is in about 2014? ---Ah hmm.

Is it the case to your knowledge that Ms Cullinane found out that Teletec had been paid for some reimbursement of telephone accounts in about November, 2014?---Can you repeat that one again for us. Sorry.

To your knowledge did Ms Cullinane find out that Council had paid Teletec for some reimbursements of telephone accounts in about November, 2014?
---That could be true but I just don't recall it.

And she was doing that and she found that out in the course of preparing the annual report?---The same, same answer. I, it could have but I can't recall that. It doesn't mean it's wrong. I just can't recall it.

10 Did she raise with you as to why a contractor was paying for accounts on behalf of Council?---Yes, she did.

Did she tell you that this was inappropriate and it shouldn't occur again?
---Once again I can't recall but that would be the correct response to me.

Did she also say that she'd – words to the effect that she'd reviewed a couple of the Teletec accounts and she saw that the invoicing details were poor?---Yes.

20 And that the accounts included a regular consulting amount?---Yes.

And she – did she also tell you that the notation “works as directed”, that is in quotes, “works as directed” was inappropriate?---Once again I can't recall but that would be a, a response that Lorraine would give.

And that the invoice should specify the details of the works being undertaken?---That, yes.

Did she also raise with you the consulting amount?---Yes.

30 And did you say that that related to work being done for the Business Unit?
---I can't recall that but - - -

Possible?--- - - - I know the end result of all this but I can't recall what took place in the middle.

And did she say to you that any work completed by Sam Alexander should be able to be done by the Council's own IT staff and what effectively appeared to be a retainer should cease?---Retainer, yes.

40 And did she also say that if after speaking to IT the work couldn't be done with existing resources, a business case should be prepared for consideration by the General Manager?---I'd have to agree with that. I don't recall that conversation but I have to agree that would be the way to do it.

Yes, thank you, they're my questions.

THE COMMISSIONER: Anyone else before Mr Overall asks any questions? No. Yes, Mr Overall.

MR OVERALL: Thank you, Commissioner. Mr Goodman, you've repeatedly said in your examination that you have some difficulty identifying or remembering certain false invoices and inflated invoices. Is it your view that if you had access to such documents you would be able to assist in specific identification of corrupt payments?---Yes, I believe I could.

10 Why do you believe you could do it if you had access to the documents rather than in the witness box?---When you have access to documents you sit down and you look at them and you're thinking about them. When you're in this witness box it's just about impossible to think about anything. Very, very difficult.

And if you had that opportunity do you think that you could put a fairly accurate figure on the corrupt payments that you had and others had from the Council?---Yes.

20 And to date, have you ever been requested by Botany Bay Council to undertake such a task?---No.

And to be fair to Botany Bay Council you have not offered to do that as yet, have you?---No.

And if you were asked would you be willing to do that?---Yes.

Now going to your evidence regarding Mr Fitzgerald. Can you tell the Commission when was the last time you spoke to Mr Fitzgerald?---Probably about three weeks ago.

30 And where was that?---He came to my workshop.

And that's in - - -?---Wetherill Park.

- - - Wetherill Park. And about three to four weeks ago, was it?---Yeah. It was something like that, I can't - - -

Before this Commission started taking evidence?---Yeah. Before this Commission started, yes.

40 But after the - - -?---Yes, announcement.

After the investigation was well known?---Yeah.

And was anybody else there other than you and Mr Fitzgerald?---There was a friend of mine but he left when Mr Fitzgerald came in.

Okay. And what did Mr Fitzgerald do when he came to your workshop?---Took the phones away.

Took, what, your phones away?---And his one, yes.

And what did he do with them?---I think he put them – I have a memory of it, he put it in the fridge.

He put your phones in the fridge, did he?---Yeah.

10 Did he say why he would do that?---Oh, previously he told me that once they're in the fridge no one can listen.

Okay. And what did he say to you, what was the gist of the conversation that was supposedly hidden?---Spoke about what was going to happen here. And I raised a couple of issues, especially one about that meeting that I just can't remember about it. This is what has been confusing me. And he said "I was not there. You remember that, I was not there".

Yes. And why would he say that?

20 MR LATHAM: I object to that.

THE COMMISSIONER: Well as far as this witness is concerned, he can give an opinion as to what he thought was in Mr Fitzgerald's mind but whether or not he can be accurate about that, I remain sceptical.

MR OVERALL: Did Mr Fitzgerald explain to you why he, why he was doing that, why he was saying that?---No, he didn't. He didn't explain why.

30 Did he discuss with you your evidence that you would give at the Commission?---Only and limited to that he wasn't at that meeting I raised which has been spoken about ad nauseam here now, but just to say that he wasn't there.

Okay. He didn't talk about the cash payments, did he?---No. None of that was - - -

In relation to the cash payments, you previously gave evidence that you personally delivered to Mr Fitzgerald \$4,200 in cash monthly - - -?---8,400 monthly.

40 Sorry, 8,400, I think it was 4,200 twice a month, right?---Yeah, both at the same time but two separate papers, yes.

About \$8,400 in cash to Mr Fitzgerald in one envelope?---Ah, generally two.

Generally two envelopes. And what did he do with the envelopes?---I can't be sure, I can speculate but I can't be sure. One may have been passed on to someone else, I just can't, can't be sure.

Did he put one in his pocket?---Yes.

And what did he do with the other one?---In his drawer.

10 THE COMMISSIONER: Sorry, in his?---Drawer.

Drawer?---Yes.

Desk drawer?---Desk drawer, yeah. That's just one, one of, one I saw, other occasions I don't know.

MR OVERALL: So it's your speculation only - - -?---Yeah, absolute speculation.

20 - - - that one's for him and one's for somebody else?---Could have been. Maybe that was the reason we'd draw two, I don't know.

Did he say why – did he say why he wanted the cash?---No, other than the time I was introduced to a, to a Mr Bloggs.

And at any time did he say anything to anybody else about the cash payments in your presence?---Repeat that one again, sorry?

30 At any time – you gave this money to him over a long period of time regularly?---Yes, yes, yes.

And you had taken it out of the bank?---Yes.

And it was basically taken out of Council funds?---Yes.

And it would have amounted to many hundreds of thousands of dollars over the years?---Yes.

40 And did he make that, make any statement about that cash in the presence of anybody else other than you?---I don't, I don't – look, could have but I don't believe so.

Now, in order to get this cash - - -?---Can I go back one there?

Yes?---I think on a couple of occasions someone else did it. I can't be sure but I just think on a couple of occasions someone else did it when I wasn't able to.

Do you know who that might have been?---Ah, I would hazard Mark Thompson.

But that's a guess, right?---I believe that to be the case.

Now, were these, these payments the subject to prepared invoices?---No.

Except the Bloggs or MB invoices?---Yes. I don't think I ever used one of those, I never – I don't think I ever wrote one out.

10

So you never prepared an MB or a Bloggs invoice. Do you know who did? ---I can't recall. As I say, you need to look at vouchers and that and then I give a more definite answer.

If you were given access to Council records, could you identify handwritings and - - -?---Absolutely.

When you went to the bank, I think you gave evidence that you went with somebody else?---Oh, I'd generally send someone else, I just - - -

20

Yeah, but to collect this money?---Yeah.

To collect this cash you went - - -?---To collect the 4,200 by two, yes.

Yes?---Sometimes I'd go there, sometimes they'd send someone else.

Who, who else did they send?---Um, I think Suman Mishra was sent a couple of times, recall her going there ah, Kim Tran might have gone a couple of times, I just, I just can't recall who. We had people going to the bank regularly to cash petty cash cheques and do banking or whatever, so I'd give it to one of them, or someone would make a special trip down there.

30

I want you to cast your mind to the issue of leave entitlements?---Yes.

And specifically the payouts of annual leave?---Yes.

I think your evidence was that you and Mr Fitzgerald and two other people were paid out annual leave entitlements?---Yes.

40

Who were the other two again?---Oh, I think Lorraine had a payout, Mark Thompson had a payout, Barry Byrnes had a payout, I think Rodger Dowsett had a payout, Mr Fitzgerald had a payout.

Okay. And did anybody from the Human Resources Department express some concern about this procedural or process of paying out annual leave? ---It only happened once, which is probably about, I'd say about eight or nine months ago. Council's current HR Manager said, "Do you realise this process was illegal?" And I said, "No." The auditors had mentioned it a

couple of times, that we shouldn't be doing it, but yeah, the HR sat down and explained it to me and I thought, mmm, but previous to that, no.

When he explained it to you, did he say - - -?---She.

- - - it's specifically a breach of section 3 of the Annual Holidays Act?
---Yes, yes.

10 And that the Annual Holidays Act section provides that leave must be given and taken?---Yes, that's correct.

Yes. And that surely your Human Resources Manager would have said you can't contract out of a statutory obligation?---I don't know if they were the words used but now that's what I understand.

Yes. Of course annual leave can be paid out on termination, that's part of the Act?---Yes, yes.

20 Right. So there were a number of beneficiaries?---Absolutely, and probably more than that over the years.

Effectively isn't this the case, that normally you would work for, you would work for 48 weeks of the year, forget about sick leave and the public holidays, but a person's working for 48 weeks of the year and has four weeks annual leave?---Yep.

The people you mentioned effectively are working 52 weeks of the year - - - ?---Correct.

30 - - - and getting 56 weeks' pay?---Yes, yes.

Isn't that a fraud on the Council?---I don't know. I don't know. I wouldn't consider it a fraud, it's very expensive because we had staff there that had a lot of annual leave that couldn't take it, they became, they were either too essential or we couldn't afford to, to let them go on leave for long periods.

Despite the fact that the legislation requires them to take it?---That's true.

40 Now, in relation to gardens2nv, you heard the evidence yesterday of Lyndal Marshall?---Yes.

And her great concerns about what was happening?---Yes.

And how she dealt with it?---Yes.

Did you at any time ever receive any benefit from the gardens2nv fraud?
---From that thing directly, no. From Malcolm Foo I now worry that things he did for me might have been connected to that.

Yep. But you didn't receive any - - -?---No, no.

- - - payments that say this is the Government deal?---No, absolutely not, no.

Okay. Now, the Subeski fraud?---Yes.

You received money from that?---Yes.

10

Mr Subeski received money from that?---Absolutely.

Are you able to put in broad terms a ballpark figure on what Mr Subeski would have got out of it?---I would suggest maybe double what I got.

So you got \$700,000?---I'd say 1.2, 1.3 million if that's the case.

20

THE COMMISSIONER: Does that take into account the money that you owed him or is that on top of the debt that you - - -?---No, I believe I still owe him that money.

Right. What do you mean, that money?---That hundred odd thousand I believe I owe him.

I see.

MR OVERALL: I have no further questions, Commissioner.

30

MR LATHAM: Commissioner.

THE COMMISSIONER: Yes, Mr Latham.

MR LATHAM: There's some evidence that's just come up today - - -

THE COMMISSIONER: Yes, I understand that you might need to ask some further questions. Can you do that now?

40

MR LATHAM: No, I can't, I'll need to get some instructions. I could do so probably after lunch.

THE COMMISSIONER: All right. Well, we'll - - -

MR THANGARAJ: I'll address that question as well because - - -

THE COMMISSIONER: All right.

MR THANGARAJ: - - - Mr Latham might want to ask some questions. Can I ask you about that - - -

MS McNAUGHTON: Can I just – could I ask one more questions that I omitted to ask, sorry, and then - - -

THE WITNESS: Struth.

MS McNAUGHTON: Thank you.

THE COMMISSIONER: Certainly.

10 MS McNAUGHTON: Sir, I just should have asked you this. In relation to the Computer Intersection invoices and generally dealing with Computer Intersection, did Ms Cullinane say that you could no longer deal with that firm because the printer cartridges that they were buying at the time, at that time when she had the conversation with you, that the Southern Sydney Regional Organisation of Council price and the Government contract price for computers was essentially a better price and that it wasn't appropriate in those circumstances in any case to deal with a company in Queensland? ---I can't recall that but I'm not going to say it didn't take place, I just can't recall it.

20

Yes, thank you. Thank you, Commissioner.

MR THANGARAJ: The visit that you had with Mr Fitzgerald that you've given evidence about, can you tell us – when he said he wasn't at the meeting, can you tell us the best you can not only what he said, but the way in which he said it, can you repeat using the tone that he used?---This is the one where he came to visit me?

30

And said he was not at that meeting?---He was fairly forceful.

What, tell us - - -?---Forceful.

- - - what he said and the way he said it and I'll ask you some questions on it?---I was not at that meeting.

All right. And how did that topic even arise?---I just – we just talked a little bit about what was happening and I think Peter was concerned – like, I can't speak for him.

40

No, this is your understanding?---This is my, my view.

Yeah?---He was concerned about what might be said.

All right?---Which anyone, anyone would be concerned about what might be said because one thing I did say I am going to tell the truth and I've tried to do that all the way through this.

Well, how did the meeting specifically arise and the conversation between the two of you?---Peter just turned up.

No, no, the – sorry, my fault. The meeting where he said he was not there, how did that topic arise in the conversation you were having with him?
---(not transcribable) to think about it. I think I might have raised it.

All right?---I think I might have raised that.

10 All right. Now the way that he said - - -?---Because I couldn't remember the details. It was a fairly significant meeting in my view.

You're talking about the meeting with Ms Cullinane and - - -?---Yes.

Right?---Yes.

Now when he said it in the way that you've told us, what did you understand was, what did you understand he was trying to convey to you by saying that?---He wasn't there in no uncertain terms.

20

All right. But was he trying to say – did you understand that that was a genuine comment by him or that it was what he wanted you to say about that?---I believe it was what he wanted me to say.

All right. In your evidence here?---If asked.

All right?---There was a number of different things talked about.

30 I understand. Now he introduced you to a – you've given evidence that he introduced you to a man that he introduced as Mr Bloggs?---That's true.

Did you understand that Mr Bloggs was the true name of the person that you were meeting?---Well, that's who he was introduced as.

Yeah?---It was outside his office.
That's not what I'm asking?---Okay. Sorry.

Has it been done as this is - - -?---Yes.

40 - - - Mr Mark Goodman, this is Mr Barry Byrnes or was it being done as well, this is a – this is Micky Mouse?---Yes.

Do you understand what I mean?---Yes, yes.

Did you understand the person you were meeting was actually called Mr Bloggs?---That's what I understood.

That that was his real name?---(No Audible Reply)

I understand – you’ve told us that he was introduced to you as Mr Bloggs?
---Yeah. Did I believe it was his real name at the time?

Yes?---No.

You were asked – you gave an answer I think to Mr Latham that other people knew of these payments that were being made to Mr Fitzgerald?
---Yes.

10

Who were those other people that you think may have known?---Barry Byrnes, Mark Thompson. Mark prepared those payments many times. He drew most of the cheques.

All right. And I think you’ve given - - -?---I’d just ring him up and say due again - - -

All right?--- - - - whatever it was and he’d draw the cheques.

20

All right. Can we go to the telephone call of 2-0-0-4, page 4 please, and while that’s coming up I’ll just move on. The Botany Bay lunch you’ve told us about – sorry, the Botany Bay Hotel lunch you told us about?---Ah hmm.

Who was there?---Lorraine Cullinane, myself and Peter Fitzgerald.

All right. And do you remember who paid for that, and I don’t mean that in a defrauding sense. I’m just asking do you remember who used their credit card or who paid for it?---I think Lorraine might have paid for it herself like
- - -

30

Okay?--- - - - not using any. She paid for it herself.

All right. I just want to ask you, Mr Lathan asked you about the words at the top of that page “you and Peter” and he suggested to you to which you agreed that the “you and Peter” was a comment – sorry, that was what Ms Cullinane – sorry, Ms Kirchner had said?---Yes.

All right. Can we just go back to the previous page?---I believe so.

40

Can we just look at that carefully. You see at the bottom of the page that the entry is, “Oh, have we. I didn’t know about it”, and that’s you saying – relaying what she had told you?---That’s right.

Okay?---She wasn’t aware of the, of the superannuation payments to start with.

All right. But let's look at whether the next sentence is also her talking or you talking because what you say is, "It doesn't matter whether" – if we just stay on that page – "It doesn't matter whether she knew or not"?---Ah hmm.

Now it wouldn't - - -?---That was me talking to Peter.

Right. Exactly. So now you're just back talking to him?---Yes.

10 All right. So if we – and the same sentence continues over the page, "It doesn't matter whether she knew or not that's between you and Peter not me." So the entire passage wasn't about what – wasn't relaying what she had said?---No.

So in light of it looking at it like that, the bit where it says "That's between you and Peter, not me", it doesn't sound like Ms Kirchner was simply saying, I'm staying out it, you two deal with it?---Yeah.

20 She was looking into this, wasn't she?---Absolutely. Yeah, I'd made a payment.

Yeah. She wanted to get to the bottom of it?---Wanted an explanation.

So was she saying, you, Mr Goodman, you and Mr Fitzgerald sort it out or was it you saying, you Ms Kirchner should speak to Mr Fitzgerald about it? ---I think it went both ways.

30 Right?---What was missing was the documentation that was on the file. There's actually, I believe there's another document missing as well that I'm aware of. And I think Ms Kirchner might've said to me, I just can't recall exactly, but, listen that's your problem, you better find it. Because I know it existed.

40 All right. Now I want to – you asked by Ms McNaughton yesterday about whether or not the evidence you'd given about false invoicing covering the security system that was installed at Ms Cullinane's house. And you were taken to a question that I put to you in a particular way. Now I just want to put something else to you. Can I vary this oppression order on page 752, the compulsory examination of Mr Goodman, 10 March, this year, lines 20 to 22, please, Commissioner?

THE COMMISSIONER: Yes. The suppression order in relation to the compulsory examination of 10 March, 2016, is varied to allow publication or reference to that part of the transcript page 752 lines, 20 to 22.

**THE SUPPRESSION ORDER IN RELATION TO THE
COMPULSORY EXAMINATION OF 10 MARCH, 2016, IS VARIED**

**TO ALLOW PUBLICATION OR REFERENCE TO THAT PART OF
THE TRANSCRIPT PAGE 752 LINES, 20 TO 22**

MR THANGARAJ: Now on that date which is recently, I asked you about how that was funded how the - - -?---Yes.

10 And this is your answer in part. And I just want to read it out. "There's no doubt Council paid for the work, no doubt. Absolutely none whatsoever, no question. It would've done through false invoicing, no question"?---Yes.

Now that's the answer you gave. That is - - -?---This is the one at Lorraine's house?

Yes?---Yes.

And the \$50,000 figure had been discussed by this stage?---Yes.

20 In fact it was in my question, the \$50,000 - - -?---Yes.

- - - figure?---Yes.

And that's the answer you gave?---That's my estimate of what it cost.

Right. And I'll just read it out again, the last bit. "It would've done through false invoicing, no question". That's the answer you gave?---Yes.

30 And then I put a question to you in the public hearing which we don't have to worry about. I want to – I'm just asking you now, that's the evidence you've given. What is your belief as to the way in which the \$50,000 or the security system was funded, was it just general revenue or was it recovered through some other way?

MS McNAUGHTON: I object to the question being phrased in terms of belief, Commissioner.

40 THE COMMISSIONER: Well, I mean, I don't know that he can say anything other than belief can he, and he said a number of times without actually reconciling the relevant payments and invoices, he probably can't say with any certainty.

MR THANGARAJ: Before I - - -?---General revenue.

Yeah. All right. You knew that CND Computers had put in false invoicing? We've been through – that's Raj Haria's - - -?---Yeah. I believe so, yes.

All right?---I know so, sorry.

Yeah. All right. I just want to, a couple more questions. You were asked by Mr Latham about the blank cheques being - - -?---Yes, I remember that.

Now remember you've given evidence earlier about you taking blank cheques and having them countersigned by Mr Thompson?---Yes, or Mr Byrnes, yes.

10 Now is it the case or is it possibly the case that some of the blank cheques that you were asking others to counter sign related to this evidence you've given or is it totally separate?---I'd have to look at – I don't know. I don't.

All right. Okay?---Without looking at the documents - - -

All right. You were asked – it was put to you by Mr Latham that Mr Fitzgerald was simply paid what he was entitled to be paid under his contract of employment. Now then you qualified that with respect to the top-up payments and you said - - -?---Yes.

20 "If you think the top-up payments are okay, well that's fine". Did you include in your answer to that the \$8,000 cash a month that you were talking about?---No.

So were you answering the question with respect to benefits paid pursuant to his employment contract?---Pursuant to the contract I had.

Right?---I just read that contract that was sitting here.

30 All right. All right. Commissioner, while we're looking at the transcript, can I take you to 1119, please, just one correction to the transcript because it's an important one, it's in Ms McNaughton's question at line 43. It says, it records it as saying, "Well, I suggest to you, sir, in relation to the tax aspect in respect to Ms Cullinane's understanding there was discussions as between you and her that indicate she was understanding she was evading tax." It should say, "There was no discussions." So just – that's, we haven't worried about transcript corrections but I thought that was one that should be - - -

40 THE COMMISSIONER: Yes, thank you.

MR THANGARAJ: Otherwise I have no further questions.

THE WITNESS: Can I add one further thing about that meeting at the Botany – and I think this is important.

THE COMMISSIONER: Sorry, which meeting are we talking about?
---Botany Bay Hotel.

This is the lunch where - - -?---Yes, Peter Fitzgerald, Lorraine - - -

- - - you and Mr Fitzgerald and Ms Cullinane - - -?--- - - - Cullinane and myself were there. That was there to – that was called to discuss another lost document that was missing, and I had seen this document, as had a number of other people of staff, Botany Bay staff. It authorised the payment to Ms Cullinane of untaken sick leave upon termination. Now, I had that letter signed by the General Manager at the time, I sent it down to go in her
10 file, it never made it to the file, like the superannuation approval. I know that’s probably nothing to do with this Commission but that is a fact, whether – and that’s what, what, that was one of the reasons we had that meeting at the Botany Bay Hotel and Peter would have been more than happy to re-sign another letter giving that same approval or saying that the, sorry, the approval did exist prior to him leaving.

MR THANGARAJ: All right?---That’s it.

20 That’s, they’re the questions.

MR MOSES: Commissioner, I just have just two questions to clarify with the witness.

THE COMMISSIONER: Yes.

MR MOSES: The first relates to the question about the phone, the freezing phone issue. You talked about Mr Fitzgerald putting phones in a fridge?--- Oh, in the fridge, yes.

30 Okay. Did you recount that story to Ms Cullinane, that Mr Fitzgerald had approached you and said to you that that meeting – and told you to recall certain things and not recall certain things in relation to that meeting? ---I haven’t spoken to Lorraine since before Christmas.

Thank you?---At all.

40 And just one final question. Counsel Assisting asked you who paid for the lunch at the Botany Bay Hotel and you said Ms Cullinane. Did she pay using a credit card or an ATM machine, because we don’t know her version of events as to whether she was there?---I think she paid, I think I remember she paid using cash. I know she paid for my lunch using cash.

Okay, thank you?---Just took it out of her purse and paid for it.

And it was during a working week?---It was lunchtime.

Thank you, thank you?---Yeah.

Thank you, Commissioner.

THE COMMISSIONER: So subject to questions from Mr Latham is that, is that all that we can usefully do for present purposes?

MR THANGARAJ: Except the – oh, we’ve got Ms Cullinane next.

10 THE COMMISSIONER: Oh, no, no, I know, just in relation to Mr Goodman.

MR THANGARAJ: Sorry, yeah.

THE COMMISSIONER: I’m just conscious of when Mr Latham might be able to seek those further instructions.

MR THANGARAJ: Yes.

20 THE COMMISSIONER: Mr Latham, did you say after lunch?

MR LATHAM: Yes, that was on the assumption that Ms Cullinane would go now, but I imagine after lunch would be fine.

THE COMMISSIONER: Well, can I clarify something. Are you suggesting that you won’t be in a position to put further questions until after you’ve heard Ms Cullinane’s evidence in its entirety?

30 MR LATHAM: No, no, no, no, no, it was simply that I need to get some instructions from Mr Fitzgerald.

THE COMMISSIONER: Yes, no, okay. All right. I understand that.

Mr Goodman, I’ll stand you down for present purposes but you’ll have to return at some later stage, probably later today?---Okay.

Thank you. Could I ask you to remain in contact with your legal representatives - - -?---Yeah.

40 - - - to ensure that you can return promptly.

THE WITNESS STOOD DOWN **[10.19am]**

MR THANGARAJ: Ms Cullinane.

THE COMMISSIONER: Ms McNaughton, I take it that Ms Cullinane seeks a section 38 order?

MS McNAUGHTON: Yes, indeed.

THE COMMISSIONER: And she knows about the limits of that order?

MS McNAUGHTON: Yes, indeed.

10 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.

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

30 THE COMMISSIONER: Would you like to be sworn or affirmed, Ms
Cullinane?

MS CULLINANE: Sworn.

THE COMMISSIONER: Yes. Can we have the witness sworn please?

MR THANGARAJ: Ms Cullinane, can you give the Commission your full name, please?---Lorraine Cullinane.

And until recently what was your role at Council?---Deputy General Manager, Director of Corporate and Community Services.

10 And how long have you had that role?---19 years, 18 years, 19 years.

And what role did you first start in at Council?---I first started at Council in about 1993 on a consultant basis. Then I was in about 1995 I was the Acting Director of Corporate Services. In 1996 I was appointed as the Director of Corporate and Community Services. And then in 1997 I was appointed as the Deputy General Manager, Director of Corporate and Community Services.

20 Right. Now can we take this from the cross examination that Counsel put to Mr Goodman, that for the entire time that he was at Council you were not aware of any criminal conduct that he engaged in?---That's correct.

And not aware of any breach, any material or significant breach of Council policy, apart from the Cabcharges which I'll come to in due course, is that right?---There was a couple of issues I'd raised in relation to Gary in terms of some conduct issues but they were addressed, but if you're asking me was there any fraudulent or anything of that nature, the answer is no, I was never aware.

30 So you had no reason to protect him?---Absolutely not.

There was nothing to protect you're saying really?---No. I wouldn't have protected anybody.

And therefore there was no reason, and I'll come to the detail of this later. But you weren't you say stopping or trying to stop people inquiring into the workings of the Finance division?---No.

40 For any such reason?---No.

Was it important to you that Mr Goodman stay in the Finance division to be able to control secrecy issues or protect issues from being exposed?---No.

All right?---Well the only thing in relation to that was towards, I think I had a conversation with Gary in about September, 2015. There was a fair bit of work that we needed to complete. Some of it was in relation to the long term financial plan and things like that. Gary made a comment along the lines of you know, we'll I'll, I'll leave and I said words to the effect to Gary,

you know, you're not going to leave me with this shit. Being like, you know, there was a whole lot of stuff that we'd committed to doing. We'd introduced a fair bit of business improvement at the Council and it was important that he, you know, saw that, saw that through that we completed that.

10 Otherwise there would've been an unfair burden on whoever was remaining or whoever came in, is that what you're saying?---Well, I think that as well as it's once you start a project, particularly if you're doing things like long term financial planning or whatever, it relies on also somebody's knowledge. I mean you don't always - able to transfer that knowledge to a document, you have that working knowledge.

All right.

20 THE COMMISSIONER: In fact that was one of the things that made Mr Goodman so central to all of these abuses that we've been hearing about because he in fact been in that position for a very long time. Would you agree with that?---I think that's probably true.

Right.

MR THANGARAJ: I want to start with the security system now that was installed at your house. Now, notwithstanding the questions that have been asked there are still a couple of introductory things I want to confirm with you. Firstly, you confirmed that a security system was installed at your house?---Yes. Yes.

30 And do you remember what year that was?---Not exactly, but probably around 2003, yeah, about 2003.

All right. And do you accept that it was entirely paid for by Council?---Yes.

All right. And do you know or how many cameras – so is that still the house that you're at now?---Yes.

All right. How many cameras were installed?---About seven.

40 And was one of them a movable camera, that is, you could use a joystick to - - -?---Yes.

All right. And what else was involved in the system apart from the cameras and the installation do you know?---Sorry, I don't understand the question.

Was there any other hardware component to that system apart from the camera?---There was an alarm, alarm as well.

Yeah?---Yeah.

Anything else?---No, I don't – not that I - - -

THE COMMISSIONER: So the alarm system was one of those keypad systems at the door was it where you enter the premises and - - -?---That's correct.

- - - you enter the code?---That's correct.

10 MR THANGARAJ: And did you have any discussions with Mr Goodman at the time about the quality of that hardware?---No, no. I mean it's not something I have any knowledge of in terms of quality or otherwise of equipment.

All right. And you agree do you that Council contractors were used to install those systems?---Yes.

Okay. Now your Counsel - - -?---A contractor used by Council is that what you mean?

20

Yes?---Yes.

That's what I mean. Your Counsel put to or raised with Mr Goodman the security of servants policy?---That's correct.

Now have you – is that a written document?---I believe so, yes.

And have you ever seen that document?---Yes, I have.

30 And what part of the Council protocols or policies does that fall under?---I don't understand the question, sorry.

Well, what - - -?---It's a policy of the Council - - -

Right?--- - - - as I've always known it to be.

Okay. And how long has it been in existence for do you remember?---Oh, I think it was there before I started.

40 All right. And what does that policy say?---Oh, it says words to the effect that if a, if a servant, I think it uses the word member or senior officer raises a concern about their safety that the General Manager can arrange – in their home a General Manager can authorise a review of that security and incur the necessary expenditure within the votes of Council to reduce the risk to that member or, or officer of the Council.

Right. And it was suggested to Mr Goodman by your Counsel of it being work related, the concern being work related. Is that part of the policy, is

that – does that – is that the threshold that has to be met?---It's not in the policy but there would have to be some element of concern that was work related or could be work related before it was - - -

So I'll ask you about this example. Not saying it arises here but let's say that whoever qualifies, a senior Council employee was having an ongoing dispute with a neighbour - - -?---No.

10 - - - and the neighbour took out an AVO and the employee wanted a security system installed, would that cover it?---No.

All right. So it's not simply whether or not someone had a security concern, there has to be a connection back to work. Is that right?---I think that would be - - -

So for example if someone had - - -

20 MS McNAUGHTON: If the witness could be allowed to answer. She hadn't finished.

MR THANGARAJ: All right?---Yeah. I think if it was in the circumstances that you just described then clearly that wouldn't be the case but if there's a – it says if the person has a concern about their safety in their home and that would have to be tantamount to have some concern that it could be related to work.

30 All right. So if someone had threatened the Mayor over a development that was being – going through Council that would be work related you would say?---Yes.

All right. So you discussed with Mr Goodman this security concern that you had at the time?---And the General Manager.

And the General Manager?---Peter Fitzgerald.

Yeah. And you've heard Mr Goodman's evidence about that security concern. Have you been here for all of his evidence?---Not all of his evidence.

40 You've been here - - -?---Most of it, sorry.

You've been her for his evidence?---I apologise.

All right?---Yeah, I have.

You've been here for the evidence that he gave when he was asked questions by your lawyers?---Yes.

All right. And he was asked specifically about it being work related and he wasn't – he didn't have any understanding that it was work related on the basis of what you told him. Did you – what basis do you say that this was work related?---I think the issue was being – over time all officers I think have been threatened in one way or another. Myself - - -

10 Sorry, all officers – I didn't hear that sorry, what did you say?---Sorry. All officers at some stage were probably subject to some sort of threat over something over time. I've, I've been um, you know, threatened by, by individuals. I remember one time um, um, you know, a ratepayer had a knife in their home, there was another one that I investigated about an abuse of an older person - - -

20 Right. If we could do it one by one just so we sort of won't forget. Let's start with the ratepayer with the knife?---Yeah. So we went, it was a case and partly that was probably as much my fault as anybody's, I let my guard down um, it was a ratepayer, I went to their home um, the ratepayer said something to the effect of you know, look out the back window, I did, and when I turned around she was sitting there on a chair with a knife um, on her lap.

Right?---Um, you know, you get a sense of – and you know, and probably I um - - -

But what was the link between that incident and - - -?---No.

- - - someone coming to your home?---No, no. What I was saying, there are threats over time.

30 Okay. Right?---I didn't know about whether there was a definite link to work and this particular threat but I raised it with Mr Fitzgerald that I felt that I was being followed and that somebody had been around my home.

THE COMMISSIONER: That – sorry, that was the particular issue you raised with him that caused the review of your - - -?---That's correct.

- - - home security?---That's correct.

40 So your discussion with him was, I think I'm being followed and I think someone's around my home?---That, that's correct, I've been followed, I, I think um, from, from work on a couple of – I had a sense I was being followed um, and somebody had been around my home. Um, Mr Fitzgerald then gave me a couple of things to do to see if that was the case um, part of it was putting some sand down of, of a night-time and seeing if there was any footprints in the sand or putting things perhaps to reduce people's ability to come onto the property um, to see if they were moved, they were, and in, they had been um, and probably the um, probably the biggest concern I had was that somebody had actually come into my home and had

used the toilet. So at that stage um, you know, I'd had, over the years there had been probably threats or concerns um, whilst you are at work or related to that, I remember I had another incident where we were dealing with somebody um, in a matter relating to a person who had a child with a disability and we were dealing with that particular person, and I was receiving, I don't know um, threatening or whatever phone calls on my mobile, but in this particular case it was the first time I actually felt that I had a threat that had actually come into my home and I raised that with Mr Fitzgerald and we discussed that and he arranged - - -

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MR THANGARAJ: Right?--- - - - for a security review um, and he um, I mean he would have to give evidence as in terms of why he approved it um, because all I know is he approved it, the work was carried out um, it wasn't carried out by CND, I've never ever had any association with CND, the work was carried out by Emu Alarms and that company was a sole trader and the person's name was Kevin and I now know - I didn't know his surname but I now know it as Maton. Um, he undertook the work, he undertook subsequent work in my home that I paid for. Um, from the date the alarm and whatever was installed um, he was contracted to provide

20 monitoring which I paid for myself, I think the company was sold um, I think it's SSM Security um, and they continue to monitor my home.

MR THANGARAJ: All right?---And I hope that it's actually been ICAC that's contacted them recently.

All right?---Is that right?

Well, I'll ask the question, Ms Cullinane?---Oh, sorry.

30 This is an ongoing investigation, as you may or may not appreciate. You were in a relationship at this time with Mr Goodman, were you?---Sorry?

Were you in a relationship with Mr Goodman at this time?---No, I think our relationship - we were friends, I think our relationship had effectively finished but we were friends.

All right. Well, you confided in him with respect to this security concern and someone breaking into your house?---Yes.

40 And you, and that led to a discussion about the security system being installed in your house, didn't it?---The discussion about a security system was firstly with Peter - - -

Right?--- - - - and then subsequently with Gary, that's correct.

Right. And you had a discussion with Mr Goodman as to why you needed to have the security system, you told him that someone had broken into the house?---Um, I would have, but when I say broken in, they had - - -

All right. Well, someone came into your house?---That's correct.

Someone uninvited came into your house?---That's correct.

You told him that. And did you tell him that you were concerned that you were being followed from work?---I, I, I would have I presume. I can't, I mean I can't remember all of the details.

10 Well, surely if what you're saying is correct and you're telling someone who you've got a close relationship with that someone, you've got security concerns because someone uninvited has come into your house, surely you would have told him that you were followed from work?---No, I don't know if I told Mr Goodman I was followed from work, I know I was, I told Mr Goodman I felt I was being followed.

Well, okay. So you told him that you felt you were being followed?---Yeah, that would be correct.

20 Right. And if you told him you thought you were being followed, you would have told him being followed from work?---I, I, I can't – if you want me to give you a truthful answer, I can't give you exactly a truthful answer for that.

Well, you're telling us this was part of your concern at the time, right?
---(No Audible Reply)

That's what you're telling us, these are the concerns you had at the time?
---I had a concern for my personal - - -

30 Yeah. And you're telling us - - -?--- - - - wellbeing.

Yeah. And you're telling us why you had those concerns. Correct?---Yes.

And you confided at the time with someone that you've known for a long time and at least either were in or had recently stopped being in a relationship with, right?---Yes.

40 And he – this is the person that came to your house with you regularly to see how the system was being installed, to make sure it was being done properly. Right?---I don't know regularly, but I accept that, yes.

Often?---Well, I, I can't recall how long it took to install.

Okay?---So I'd have - - -

He had a keen involvement in it being - - -?---If you ask – yes, yes, yes.

Yeah. And - - -?---And so did, so did other people.

Yeah, okay. But you hadn't been in a relationship with other people involved in this process, right?---No.

Right. So surely in those circumstances, if it was the case that you were being followed from work or had a concern you were being followed from work, you would have told him that, wouldn't you?---Not necessarily. I mean my concern - - -

10

Well, you've already told him that you – you've already told us that you - - -

MS McNAUGHTON: if the witness could be allowed to finish her answer?

THE WITNESS: The only thing I can – if you want a truthful answer, the only thing I can genuinely say, I would have told Gary I was genuinely concerned about my welfare.

20

THE COMMISSIONER: Ms Cullinane, can I just, can I just try and encapsulate this. You see, the difficulty is from the perspective of the policy, that it would have to be, there would have to be some feature of the concern which made it work-related, and so far what you've suggested you conveyed to Mr Fitzgerald and Mr Goodman is that you had a sense of being followed and that there were persons who may have been around your home or inside your home uninvited. Now, the only thing that connects it to any work function, as far as I know from the evidence you've given, is the suggestion that you were being followed from work. So I think what Mr Thangaraj is attempting to refine is this, is the nature of the information that was passed on to Mr Goodman and Mr Fitzgerald in order for this matter to

30

come within the policy. That's the focus of the question you see?---Okay. So can we concentrate on that for the time being?---And I understand what you're saying?

Mmm?---But the conversation that keeps being referred to is my conversation with Mr Goodman, not Mr Fitzgerald.

MR THANGARAJ: I'm focussing on the conversation with Mr Goodman for the moment?---Yeah.

40

Mr Fitzgerald hasn't given evidence so - - -?---I understand that.

- - - I'm talking about what Mr Goodman and you discussed. Now, did the Security of Servants Policy come up when you were talking to Mr Goodman?---No.

So the Deputy General Manager is talking to the Chief Financial Officer about security concerns and what may or may not happen as a consequence,

and the Security of Servants Policy was not discussed?---I think the issue with Mr Goodman was that there were certainly discussions about my – the, the safety of me.

10 Yes?---The issue was raised in terms of the Security of Servants Policy and the question of whether Council would pay for that security was raised with – Mr Fitzgerald raised that. So when I raised the concerns it wasn't raising those concerns as in will Council put a security system in my home. The issue was raised in terms of there is an issue. Now clearly I was going to
10 get a security system installed in my home. Mr Fitzgerald then said during this course of this conversation, that he would arrange a review of the security in my home and that he, he felt that if the security could be installed by Council under that policy. So it wasn't me going and asking for a security system to be installed in my home. The reason I had the conversation initially with Mr Goodman and Mr Fitzgerald was more for advice.

20 All right. So did you or did you not discuss the Security of Servants Policy with Mr Goodman?---I don't recall having that conversation specifically in, in relation to Mr Goodman. I think Mr Fitzgerald and Mr Goodman may have been in the office when Mr Fitzgerald was saying that the security system can be, could be installed under that policy. But I don't specifically remember having that conversation with Mr Goodman, no.

All right. And were these counter measures deployed, putting sand out in places?---Yes.

They were?---Yes.

30 And did you speak to Mr Goodman about that?---I would have.

All right. Have you got a copy of this – when did you last this policy?
---There will be a copy at work on, on Council's records.

Yeah. When did you last see it?---I, I probably haven't had cause to look at it for a number of years.

40 All right. So does that mean you don't have a copy of it?---I don't personally have a copy, no.

Okay. Now this must've been quite a serious and concerning series of events for you personally. You're saying there was a general problem or potential problem with Council staff including ratepayers, one with a knife and other sending a text to your mobile phone. There was a general - - -?
---A phone call I said.

A phone call, sorry. And then there was specific threats, someone had come into your house uninvited. So much so that you were issuing, you were

deploying counter measures. You must've been extremely concerned at the time of your health and wellbeing, were you and that of your mother?
---That would be true.

Right. And did you report any of this to the police?---No.

Why is that?---I discussed it with Mr Fitzgerald who I, who I trusted.

10 Did you tell the police that a ratepayer had, in your words, there had been a threat to you by pulling out a knife when you'd gone to see the ratepayer about a problem?---No. I think later on we found out that that particular ratepayer had a, had a case worker and normally that case worker would be accompanied by, by the police. I mean, I'm not suggesting that those events happened in a short period of time, it happened over a large period of time. My understanding is that this particular Security of Servants Policy has been applied to other Councillors and other Council staff. That's my understanding, but - - -

20 To who, to whose benefit?---Who has it been installed at?

Yes?---I think it was installed at the Mayor's home, the former Mayor's home.

Yeah?---I think a security system was installed at the Director of Planning at the time but Mr Fitzgerald would have to provide that information because it's not something that one, I would have the authority to approve and secondly, not necessarily something that I would have, be privy to that information of.

30 Sorry, what information?---Well who had, who the General Manager - - -

Who had, okay, no, I understand that?--- - - - had approved. It's not something that I think he would, you know, discuss. I just recall he discussed that policy with me and he approved it I understand under that basis.

40 Right. Well and you were confident that that was okay, because you yourself had seen the policy and you've been able to tell us passages from it or paraphrasing passages from it?---That's correct.

Right. Now when the knife incident happened with the ratepayer, you said you later on found that the caseworker was going with a police officer to see that ratepayer?---I think we found out that that particular ratepayer had a case manager. And that that case manager would normally go to that person's house with a police officer.

All right. What has that got to do with the ratepayer threatening you with a knife? Why would that mean you do not report it to the police?---It was

because the person had a caseworker, I think. I think there was some discussions with the staff with that person's case manager. I mean I think at the end of day, officers are sometimes put in a situation where they make decisions and people make threats to them. I mean there was another particular case that I recall going to see a lady who had reported that she was being abused. I went and saw that particular person in the company of one of the other staff. We went to her home. In that particular case the, the lady was actually living in virtually a locked room in her own home with a son. And we went there and the son was clearly – it appeared to be a case of at least self-abuse. I remember going asking the, the lady could I have a look through her house. I went through her house because she was living in the locked room at the front. And when I went back to the rear of the house with the person's son, I remember being quite shocked because there was a lot of newspaper clippings or whatever about fairly horrible sorts of crimes. And we made a report to ACAC of self-neglect and ACAC came down and we met them on site and the gentleman was quite a threatening person. He clearly had some mental health issues and stood that close to my face. So I think there are times, you know, Council officers make decisions that people aren't happy with. Sometimes they make threats but quite often you don't necessarily think that they're going to carry out that threat. People say things when they're upset or where they feel that perhaps a decision's been unfair to them.

THE COMMISSIONER: Ms Cullinane, can I just ask you. Can you indicate what year it was that these cameras were installed in your home that the - - -?---Yes. I think it was 2003.

2003?---Yes, 2003 or thereabouts.

And so between your appointment as Director of Corporate and Community Services, I think you said - - -?---I was Deputy General Manager at the time.

Yes. But I'm just saying, what I'm trying to find out is that the nature of these incidents that you're relating now where threats were made or people were unhappy with decisions, I take it that they have been occurring since approximately 1996 at various intervals?---And I'm sure if you speak to other Council officers - - -

Well I'm not disputing that?---No.

I'm just asking you about the time frame?---That's correct.

As I understand it, this has been happening over a period of time?---That's correct, unrelated, unrelated incidents.

Yes, you mean they're isolated incidents?---Yes, sorry, yes.

So my question is, what was it in 2003 that changed your view or escalated your concern if this was a not uncommon interaction that you had with

vulnerable people in the community?---Yeah. The only, the only, the only thing different about 2003 and anything that had occurred either before or after 2003 was that this involved my home, like actually coming into my home.

Yes. I appreciate that. But the difference is that you – is that you're saying that someone had come into your home but you were actually unable to assert positively that that had anything to do with the nature of your work. For example had you - - -?---No, that's true, that's true.

10

- - - had you at that particular time – was there a particular case that was in your area of responsibility at the time in 2003, where you had incurred the same kind of displeasure or insults from a member of the community that caused you to think that it was related to some of those incidents?---No, no.

No?---No, I couldn't and, and to be honest, I can't, I couldn't testify under oath that it was a work-related - - -

20

THE COMMISSIONER: Entry?---No, no. I think what it was it was concern – I raised the concern with the, with the General Manager and the General Manager then approved that under that, under that policy.

MR THANGARAJ: All right. Now - - -?---That's really a matter for, for Mr Fitzgerald to - - -

30

Well, you can't abrogate responsibility like that can you surely, simply because the General Manager – you wouldn't, you wouldn't accept an authorisation from the General Manager which you knew to be improper would you?---No.

So the fact that he authorised it is only part of the answer isn't it, it's also whether - - -?---Yeah, no, I'll accept that.

All right?---I accept that, sorry.

40

Now in this case, and I'll come back to that in a moment but I assume that there's a Council record is there if when you go to someone's house and someone pulls a knife on you is there – do you come back and make an entry, file note about that visit?---Oh, I couldn't even tell you what, what year it was but it would probably be – if that was the case it would probably be through the Community Services area.

No, what I'm asking is, when something like that happens I assume you come back and at the very minimum - - -?---Oh, there would - - -

- - - for OH&S reasons you make an entry for that?---Yeah, that, that's, that's correct. There would have been, there would have been some, some notation - - -

All right?--- - - - because that person's case manager would have been contacted, yes.

All right. And similarly, any threat over a phone call you would make a official Council record of that too?---I think in that particular case I just raised it with the, the General Manager in relation to that particular incident. I mean I couldn't, you know, certify that it was the person who we were dealing with but it had a similar accent.

10

And is it the Deputy General Manager's function to be going to ratepayers' places for these sort of incidents?---Um - - -

Or why were you there?---If you're asked to see a ratepayer if a Mayoral rep comes in or if you're asked to go to a person's home then I would do that. I mean I don't do that all the time but probably less now than I used to because I'm not as involved in the Community Services area but there would be an expectation from the Council that you would do that. I mean in previous times we would have received representations for someone to assist with, you know, moving something on their balcony. You know, somebody would write to the Mayor and we would provide that assistance.

20

All right. Now - - -?---And I've gone to people's homes and, you know, they wanted their lawn mowed - - -

I'm not talking about whether Councils would respond. I'm talking about whether the Deputy General Manager herself would go and do that or himself. But anyway, that's - - -?---Yes, I, yes.

30

You've told us you sometimes - - -?---Yes, I would on occasions.

All right. Now when the person – when you had found out that somebody had come into your house uninvited did you report that to the police?---No.

So you were living with your mother, just the two of you alone. Is that right?---Yes.

You had an open house in the sense of there was - - -?---Yeah, yeah.

40

- - - no big fence or anything. Is that right?---That's correct. I was doing building renovations at the time.

All right. Okay. And you're saying that someone effectively broke into your house?---Somebody entered my house. That's correct.

Yeah. All right?---I did send my mother away to live with my sister for a short period of time.

All right. So you were so concerned you did that you say?---I was concerned for my mother. That's correct.

All right. Yeah?---I mean my principal concern obviously was my mother.

Yeah. Now if, if this is correct, if the basis for which you're saying you were given the security system is correct, why would you – why would there be any reason you would not report this to the police?---It was just being handled by – I was taking the advice of, of Peter Fitzgerald who - - -

10

Sorry?--- - - - who I - - -

Sorry. You finish?--- - - - who I trusted.

All right. When you say – are you saying that Peter Fitzgerald was in a better position than the police to – or that he was the more appropriate person than the police to deal with this?---Yes. Yes.

Well, all right. Now I assume then that when you reported this to
20 Mr Fitzgerald you – there would be some Council record of you expressing a concern for your personal welfare that may have had some tenuous link to work or was there not?---As in written record?

Yeah?---No. I just discussed it with him.

So is this how it works, this security of servants policy can be triggered without the person in need of protection having to fill in a form?---Well, I didn't at the time.

30 Well, did you do it later?---No.

All right. So Mr Goodman estimates the work here was for \$50,000. He knows how much individual cameras cost. Let's assume – let's not worry about - - -

MS McNAUGHTON: I object to that. I don't know that Mr Goodman knows that.

40 MR THANGARAJ: Well, he's given evidence. Did you hear him - - -

THE COMMISSIONER: Well, his estimate was 50,000 and I think that Mr Maton was shown a series of false invoices – well, invoices he said were false - - -

MR THANGARAJ: Yes.

THE COMMISSIONER: - - - that referred to the work and I think that it was around about that figure but that can be checked.

MR THANGARAJ: Yes. And Mr Goodman estimated the value of individual cameras and that came to the 50. But forget about how much was done, are you seriously saying that Council of Botany or that your Council could authorise and use Council funds to install a security system at your house without you even having to fill in a form to say what had happened and why it was work related?---Well, I would have say on the basis of what happened the answer to that is yes.

10 Yeah. But you weren't some first year or some very young, inexperienced person seeking this. You were the Deputy General Manager at the time?
---Mmm.

Right. Weren't you?---Yes, that's true.

Well, surely proper governance, if you're interested in that, surely proper governance would have required you to in fact fill out a statutory declaration but in any case at least a form to say dear sir, Mr Fitzgerald, I'm
20 very concerned about this. I want to, you know, and the form, the form would come under the security of servants policy that you've told us about, surely you would have to put something in writing for the purposes of audit, for the purposes of triggering the policy?---I take your point and probably the answer is yes, but it didn't occur at the time.

All right. Well, did the policy require you to do that?---Not that I believe.

Well, surely as the Deputy General Manager you must have felt that if you were going to get the benefit of Council assets in this way you should put something in writing?---Probably in hindsight I'd have to agree with you.
30

No, but not in hindsight. How could you not have thought that at the time?
---Well, I just didn't.

Well, the alternative is that what you're saying is completely untrue. I'm trying to explore what it is that you claim happened. Why is it that – is there any, is there any Council record that says Council has paid for works to be done at the Deputy General Manager's house?---I presume the invoice would record that.

40 Which invoice?---The invoice that would have been submitted or the quotation that would have been submitted in relation to the work.

All right. So you presume that but that's the invoice. What would be the entry – Finance comes under your department?---That's correct.

What is the entry that goes into the Council books to say – to talk about that expenditure?---I would – I accept there was nothing else documented to the best of my knowledge and perhaps the General Manager did make a note of

the issue, I don't know, but I would have assumed that the invoice would have had on it work completed at my address and I assume that the invoice would have been then approved by the General Manager under that particular policy.

We're not talking about – I'm not asking about the invoicing. I'm talking about how did you understand this would be accounted for in Botany Bay's records, its own ledgers not the invoices coming from the contractor?
---You're talking about its records management as opposed to its ledgers?

10

I'm talking about what, what would Council record this as. I'm not talking about what's in the invoice. Surely Council when it enters in the payment of such amounts, especially things that should be as transparent as this sort of - - -?---Yeah.

What records do Council keep about that?---Perhaps if – not on its ledgers. I'm not, I'm not – I don't understand what you mean by ledger. Perhaps if you could - - -

20

Council document as opposed to one prepared by a third party?---So that would be part of our records management so yes, there would be a file on security of servants perhaps. I'm not – I don't know.

Yeah?---And there may well be a note on that file from the General Manager. I don't know. From a Finance perspective in terms of subject to audit, I would think that from that perspective the notation would be on the invoice. So there's two issues I guess. I perhaps have got confused with your question but the first thing is the actual documentation of that. It may be on a security of servants file. I don't know. And then that's the record of it.

30

Yeah?---And then the payment of it would be the invoice that was then duly authorised by the person who had the authority to do so.

Right?---So if this was all legitimate in the way that you've told us, if that's the case then the invoice would say, security system installed at the house of Ms Lorraine Cullinane?---I would presume it, I would presume it does.

40

What I mean is, there would be no reason whatever for the invoice to describe that work in any other way such as - - -?---I would agree with that.

All right. Now what did you have to establish or what did Council need records of to determine that you qualified under this policy with respect to the connection to work?---I don't think there was any specific documentation in relation to it. There was specific form that I had - - -

So the process was - - -

MS McNAUGHTON: Again, my friend isn't - - -

MR THANGARAJ: All right.

MS McNAUGHTON: - - - allowing the witness to finish answering.

THE COMMISSIONER: I think she said there was no specific form.

MS McNAUGHTON: But I don't think she'd finished answering.

10

MR THANGARAJ: All right, sorry?---There was no specific form. As I said, I think the policy and I don't have access to those, to those records. But my recollection says when a member or officer has a concern. I think, I'm pretty sure it says the word concern. The General Manager is authorised to conduct a review.

Yeah?---And the General Manager is authorised within the votes of Council to authorise the necessary expenditure.

20

All right?---I mean that's – if you want to look at it from a governance point of view that's what the policy says. So from my point of view, I felt whether I should've filled in a form, whether there is a documentation on Council's file, I don't know. But my issue was I raised the concern and the General Manager approved that review and the expenditure based on that policy. And that was - - -

THE COMMISSIONER: Ms Cullinane - - -?--- - - - and that was the policy adopted by the Council.

30

Ms Cullinane can I just raise something with you about the process you are describing. You seem to be speculating, you don't know whether there is in fact any note on the relevant security management file about this concern that you raised that caused the expenditure of moneys. So that's something that is imponderable at this stage. You don't know whether that exists or not?---No. What I can say, I didn't, I don't recall ever filling anything in myself.

40

No. I appreciate that. So you don't know whether anybody else did and you don't know what Mr Fitzgerald may have done by way of recording this conversation that you had with him?---That's correct.

And you indicate that the only other record that you think would fulfil this policy requirement is the invoice itself?---That's correct.

But you would acknowledge that of course, the way the invoice is described as not something over which you have control or over which the General Manager has control but it in fact remains under the control of the relevant contractor. Isn't that right?---That's, that's correct.

Right?---But when - - -

When the invoice is submitted?---When the invoice is – that's correct.

10 Right. So accepting all of that, from a purely and I would've thought from the point of view of your own self-protection, if in circumstances such as we now find ourselves, someone accuses you of causing Council money to be spent outside the terms of Council policies. In other words if a Councillor had come to you or had come to the General Manager and said what's this 50,000 that's gone on a security system at someone's home, you would've had absolutely nothing in writing to your knowledge, that could've supported the fact that the concerns were expressed and that they were accepted and that they were within the policy. Is that the position?---I think, yeah, I would accept that. And I think going back - - -

20 But isn't that the problem?---Yes, I think that, that's true. And I think also it goes back to 13 years ago. I mean the governance of the organisation has improved probably substantially in that 13 years.

MR THANGARAJ: Well this was a matter that directly concerned you. You were a direct beneficiary of it?---Yeah.

Surely there was an even more pressing need for transparency?---Yeah.

Which you didn't do anything about?---I accept that.

30 And the only people that you say know any of this were you, Mr Fitzgerald and Mr Goodman?---I would accept that too.

And when you just said the General Manager had to have a concern, are you saying that he did not have to have a concern that it was work – sorry, he did not have to have a link to it being work related, or it was a concern enough?---No, I think that – no, I think that was tantamount being a Council policy that it would've had to, it was implicit in there that it would've had, had to have had some suggestion that it related to work.

A suggestion, was that the threshold, a suggestion?---I don't know.

40 Well, if it was a suggestion that would mean that you don't keep any – so you're saying all you needed to do to access this policy to get an expensive camera system installed at your house was a suggestion of it being work related and no record would be kept of that fact?---No, that's, that's not what I'm suggesting. What I'm suggesting is the General Manager had the authority under the policy - - -

Yeah?--- - - - so the General Manager would have to be satisfied himself that that matter fell within the, within the ambit of that policy.

All right?---And, you know, I, I can only assume - - -

Right?--- - - - that Mr Fitzgerald felt that and that's why he would've authorised it.

Okay. But as a senior manager at the organisation, you wouldn't have wanted the benefit of that if you didn't believe that you qualified under that policy, would you?---No, that's probably true.

10

All right. So you were also, you also believed, do you, you also believed therefore that you qualified under the Security of Servants Policy because it was work related?---In answer to the question I would have to say, if you put it that way, that I would have to say, yes.

Well, surely as the Deputy General Manager of some standing at that time, you wouldn't have wanted to be the improper beneficiary of that?---No. Yeah.

20 Correct?---That's correct.

And notwithstanding the absence of any corporate governance or any record keeping to justify it at all, you wouldn't still have, you would've thought at the time, well I'm satisfied that I'm entitled to this?---That's correct.

And that's because you say, do you, that you satisfied the work related threshold?---The potential for it to be work related, that's correct.

30 Well now is it work related or is it potentially work related?---Well, what I can, I can only say to you I, I don't know, that's the truth. I don't know.

No, no. But Ms Cullinane - - -?---It was a concern that it could be work related, that's what triggered it.

Ms Cullinane - - -?---And I can, sorry.

40 No, what I - I've been trying to be doing this by step by step. I'm talking about what your belief was at the time. Because you've agreed that you would not, as the Deputy General Manager, you would not have wanted to have been the improper beneficiary - - -?---Yes.

- - - of Council assets?---I agree.

Right. So therefore you satisfied yourself that you were entitled to it and that Council should pay for it at the time?---(No Audible Reply)

Surely you wouldn't have received the benefit otherwise?---Yes, yes, that's correct. Yes, that's correct.

Right. So in that circumstance you were satisfied that you had satisfied - - - ?---It was proper.

- - - the threshold of, well work related nexus?---Yes.

And now I want to ask you what that work related nexus was. Because it's an important threshold. Did it have to be satisfied on the balance of probabilities?---I can't answer, I can't answer the question - - -

10

Well you read the policy and you satisfied yourself that you were entitled to it. Now did the policy say what had to be satisfied, surely it would've?--- No, not that I believe.

Okay. So what did the policy say about the work related nexus?---It didn't say anything.

All right. So where do you get that from?---Where do I get the nexus from?

20

Yeah. Where do you – it's obvious that it has to be work. You've agreed that you can't get one because your neighbour wants an AVO unrelated to Council work?---Yeah.

So there's obviously – it's obviously not any concern, you've agreed with that, so it has to be, there has to be some work related connection. What is the necessary connection?---I can't answer that question. I didn't write the policy.

30

Well you said it's not in the policy?---That's correct.

So it doesn't matter whether you wrote the policy or not. What was the policy written or unwritten?---I, I, to the best of my knowledge, I've expressed what the policy was.

Right?---To the best of my knowledge and recollection, it – the policy used words to the effect that if a, if a member or Senior Officer had a concern about their security.

40

Yeah?--- - - - that the General Manager was authorised to conduct a review - - -

Yeah?--- - - - and to incur the necessary expenditure to reduce the risk for that officer - - -

Yeah?--- - - - or that member.

All right?---You then said there must be some nexus to work-related.

Yeah. Well, you've agreed with that?---And I said yes, that would be tantamount to it because it's under the policy.

Right?---What that degree or what that requirement was to me, I don't believe there was anything else under that policy, so therefore I accept that in me accepting that um, that, that I have an obligation to ensure myself that that's a proper payment for me to receive.

All right. Yeah?---And I accept that.

10

All right?---Um, but the trigger for that is that it's a determination to be made by the General Manager.

All right. How did you – how do you say that this was work-related?
---Well, I don't know.

Well what did you, what did you - - -?---I didn't know if it was work-related or not.

20

Right?---Um, I didn't know.

Okay?---Um, and the General Manager said that – and I, and I, and I probably if you – he wouldn't be able to testify that it was work-related either.

All right. Well - - -?---It just came under that particular policy.

Okay.

30

MR MOSES: Commissioner, can I just make an observation if I could. This Security of Servants Policy that this witness has been deploying - - -

MR THANGARAJ: Sorry, maybe I can just ask a few more questions about this before anything's said?

MR MOSES: I'm sure, yeah, yeah.

MR THANGARAJ: Is this policy still in force?---I don't, I don't know. I presume so.

40

When did you last have any – okay, you presume it's still in force. When was the last time you had any reason to look at the policy?---Oh, not for a long time.

Right. Well, when do you say?---I couldn't answer the question.

Okay. If a policy like that is no longer policy, would you know about it?
---I would say so - - -

Yeah, okay?--- - - - because it would have to be revoked.

Right. And that's why you said as far as you know, it's still in place?
---That's correct.

And did you access it through the intranet or was there a hard copy of a folder, where were these sort of policies kept?---Um, there's a – in a policy register.

10

Right. And is that hard copy or electronic or both?---Um, I don't know if it's electronic but it certainly would be in hard copy.

Right. Well, if you're a Council employee are you saying you can't access all policies on the internal system?---All the current policies are on the internet and intranet, but if they're older policies of the Council they would probably be in the hard copy because those older policies would go back many, many years.

20

Yeah. And where are they kept in Council?---Um, they would be kept in the administration area.

Right. And are there multiple copies of these policies so that anyone can access them?---Multiple copies?

Yeah?---Um, I, I – there would be some electronic copy and there would be a hard copy.

30

No, no, but are there multiple copies of the Security of Servants Policy?
---I, I can't answer that question.

Well, if you – and which building is that, Council's main office?---Yeah, 141 Coward Street.

So if you're at the Business Unit, how do you, how would you look at a policy that's only in hard copy, would they have their own copies as well?
---No.

40

Okay. And how would people know what policies even existed, is there some master index and people can - - -?---I believe so.

Right. And is that - - -?---I think um, I think from memory um, it was probably in about 2010/2011 I think the Council actually resolved to endorse all previous policies. I can't exactly remember but it was around that time I think.

Right. And under that, under that policy the issue of it being work-related, what did you tell Mr Goodman or Mr Fitzgerald about the connection between your concern and work or what was the highest that you put it at? ---I, I, I can't honestly recall.

Well, is this, is this what you - - -

MS McNAUGHTON: Again I'd like to ask my friend to let the witness finish.

10

MR THANGARAJ: All right. Is this what, is this what you said to them, someone's walked into my house uninvited?---No. I think I raised a concern that I was being following in some way.

Yeah?---Somebody had been in my home. The - Peter Fitzgerald was not only the General Manager but I would consider a friend and somebody I respected and valued their advice. He then gave me some solutions to um, perhaps reassure myself whether it was occurring or not occurring.

20

Right?---I mean at the end of that um, um, it wasn't just - I mean obviously Council um, and I accept Council did install the security but there are a number of other measures that I took in my own home myself obviously um, to increase my security, and that is a series of gates um, and, and other different locks and, and whatnot.

Now, the measures that were suggested, the sand et cetera, did that reveal anything?---Yes, it did, that somebody - - -

30

What did it reveal?---That somebody had been um, around my property.

So where was the sand put?---Along the um, side, side passages and at the front, front of the house.

Right. So these were all - this would only establish whether or not someone was in and around your property, it would have no relationship to Council? ---That's correct.

40

And so then the sand - if the sand showed footprints that means there was a second occasion was there that someone had improperly visited the house? ---It was, it was going on for a little while until the security was installed. When the security was installed it stopped.

And all these - sorry, these multiple times where someone had come to your house, not one of them stimulated you to speak to the police?---No.

Not even the second time or the third time?---No. I trusted the advice um, of - - -

But did he say not go to the police?

MS McNAUGHTON: Again I'd ask my friend to allow her to finish.

MR THANGARAJ: All right?---I, I just, I mean I valued the advice of, of, of Peter Fitzgerald.

Right?---And I still value the advice of Peter Fitzgerald. If had an, if I had an issue um, um, I, I, I, you know, I would raise it with him.

10

All right. Did he tell you not to go to the police?---No, I don't think he would have told, said, told me not to go to the police.

All right. Did you ask him, should I go to the police?---No, I can't remember saying that.

All right. Now, is this then an accurate summary of this connection from work? Firstly you couldn't satisfy yourself that these, this intruder at your house had any connection to Council?---I couldn't, I couldn't satisfy myself that it did or it didn't, I didn't know.

20

Yeah, you didn't know. You certainly didn't report to the police I think I'm being stalked and someone's coming into my house?---No.

No. And all you – and the question of whether or not anyone was coming into your house at all, given that you did not make a police report, depends entirely on your say-so. Is that right?---And, and the recollections of perhaps Mr Fitzgerald.

30 But that's only what you told him?---That's correct.

So you're the only person, are you, that has any first-hand knowledge, given the absence of any complaint, first-hand knowledge of any of this?
---That would be true - - -

Right?--- - - - except what I've told others, that would be true.

40 Okay. You told, you say that you have a recollection of telling Mr Goodman that he, that you were followed but you don't know whether you said it was from work or not?---That's correct.

That's right. Now, you were here when your lawyer asked Mr Goodman questions and he said he wasn't aware of any work-related activity, remember when he gave that answer in response to a question put by your - - -?---Ah hmm.

Right. And you didn't rush to your lawyer and say hang on, I told him that I was followed from, and that I was in fact followed from work. You didn't tell her to put that question. Do you agree with that?---Yeah.

Right. So, and there is no Council record of any of this?---I, I don't know that to be the case.

Right. Okay. Well, you're not aware of any Council record?---That, that would be true, I don't know.

10

All right. And so is this the position then. There was no link known to you between this so-called intruder and Council. Is that right?---I don't know if it was no link. I don't know. That's, that's, that's the answer, I don't know.

So there was, right, and yet you felt that as the Deputy General Manager you were entitled to the benefit of a policy that only legitimately triggered when there was a work-related concern?---Well, I wouldn't – the only way I can answer that question is, I wouldn't have accepted the benefit unless I believed it met the criteria of the policy.

20

That's right and that's what I want to ask you. That's what I'm – that's what I've been trying to ask you. What was, what was the criterion that you say you satisfied with respect to work related?---I don't think it had – I think the policy – I've told you what the policy said. You gave me the example of if it was definitely an argument between two neighbours would that have triggered the policy and the answer is no. But I don't believe the policy had to actually stipulate exactly what the nature of – that it's – of the work concerned was. It said if the member has a concern. It didn't say that you had to document that concern. Now clearly if I've benefited from that policy I don't know whether it was work related or not. I felt that I was being followed from work on a number of occasions. That's what triggered my acceptance of the benefit. I had no knowledge it was \$50,000. I wouldn't have thought it would have been anywhere near that amount of money.

30

THE COMMISSIONER: Can - - -

MR THANGARAJ: What basis did you have - - -?---I didn't - - -

40

What basis did you have to think of any estimate for the value of the work? ---Well, that's probably true but I wouldn't have thought it would have been in that order.

Would it make the slightest bit of difference how much it was if you were not entitled to the policy?---No, that's true, that's true.

All right. Now what audit conducted at Council would have picked up this sort of payment?---What audit?

What audit should have picked up – what area of the business would have picked up the application of the security of servants policy, let's start with that. What part of the audit looks at whether or not application of the security of servants policy is being done appropriately?---I, I don't think there is any audit of that.

Well, wouldn't you have wanted the internal auditor to look at that?---Well, if you're talking about in 2016 or '15 the answer would have been yes.

10

Yeah?---But we're talking about 2003.

Okay What about - - -?---There was - - -

Sorry?---There was no internal audit so I would accept – all of your arguments I would accept of that was – if that happened in more recent times I would totally agree with what you're saying but that wasn't the process that applied 13, 14 years ago.

20

All right. What about the - - -?---And before.

What about the external auditor, did the external auditor have any role in looking at this?---I would have, I would have thought that the payment would have been subject to the external auditor as all the other payments would be.

All right. And how would the external auditor be able to perform his or her job without you providing – without there being documents provided by you?---(No Audible Reply)

30

Do you understand the question? You haven't filled out a single form in relation to this. You haven't said I've made this complaint. I've had this discussion. I'm filling in this form for access to Council revenue for my benefit?---Yeah.

How is the auditor to check whether any of that is true or whether it's just a lie?---I don't think that the external auditor audited those sorts of things at the time. We didn't have an internal auditor that would have audited that. The area that the external auditor would have picked up is when they reviewed the payments made by Council and that would have been at that time. Now I don't know what was on the invoice. I didn't see the invoice. I presume there was some sort of quotation and I presume that was given to the General Manager but I don't know.

40

That's my point, Ms Cullinane. You agree that the external auditor might look at certain parts of this and the payments is one of them. Now if the external auditor wants to – an audit involves getting selected payments and tracing them all the way through doesn't it?---That's correct.

Right. So an external auditor doesn't just look at an invoice and say okay, well, there's a payment, that's been done. It's about auditing the system and if it - - -

MS McNAUGHTON: Well, it rather depends in my respectful submission on the type of audit. If my friend could specify which type of audit.

10 MR THANGARAJ: All right. Yeah. If an auditor wanted to look at this payment - - -?---Ah hmm.

- - - the auditor would need the documentation that supported it?---That's correct.

20 So the auditor says I want to look at this payment of however much money made to this Council contractor for doing work this invoice – according to this invoice. How would the – how – what assistance could the auditor have had to chase through or follow up this payment?---Would have gone back to the General Manager and the General Manager may have records in relation to this matter. I don't know. It would be a similar thing I guess if it was a credit card payment and the auditor had a query on that particular credit card payment on the General Manager's account. They would go back to the General Manager for perhaps the substantiation of that particular payment. Not everything would be recorded on the voucher. So in relation to the records I can't answer your question because I don't know if there are records on a Council file or they're not.

30 Surely you're not comparing a credit card entry which has a time, date and recipient of payment and an amount with this which has no detail of the – any of, any of the detail that you're talking about which triggers and activates under a particular policy. The point of a credit card audit is you can speak to the person that used the credit card and say well, tell us more about this, right. Accept that?---(No Audible Reply)

MS McNAUGHTON: Well, that was a very long preliminary part of that question.

40 MR THANGARAJ: Yeah, I'm going to break – I'm breaking it up. So if someone wants to ask the person that used a credit card some more details they can go to that person and say well, what was this dinner bill for \$2,000, who was there, why is it Council?---But I would, I would suggest that the same thing could have occurred in relation to the invoice on the voucher. I assume the invoice on the voucher has that a security system was installed at my particular property and I imagine when the General Manager has authorised it he may well have put on that security of servant policy. I don't know. I didn't see it.

I'm talking about documents that were in the name and signed by the person who is activating the policy and is the beneficiary of the policy. The point of a credit card – I'll come to – I'll break that up in a moment. The point of speaking to the person that's used the credit card is they're the potential beneficiary of it. Do you understand that?---Yes.

Or they authorised someone else to – or they've used it so that someone else has become the beneficiary of it. You understand that?---Yes.

10 Now the beneficiary of this policy was not Mr Fitzgerald it was you?---
That's correct.

Right. So what record – what contemporaneous record would there be - - -

MS McNAUGHTON: Well - - -

MR THANGARAJ: - - - from you - - -

MS McNAUGHTON: I object.

20

THE COMMISSIONER: Let him finish the question.

MR THANGARAJ: What - - -

MS McNAUGHTON: I object to the previous question in terms of its - - -

THE COMMISSIONER: Well, a benefit in the sense that she received a benefit from Council by way of installation of a security system. I think that's what's being put isn't it, Mr Thangaraj?

30

MR THANGARAJ: And she agreed.

MS McNAUGHTON: But - - -

THE COMMISSIONER: It's not – the benefit – the term benefit is not loaded I don't think. It's simply a realisation of the fact that she received the benefit of a security system.

MS McNAUGHTON: Except as an employee of Council - - -

40

THE COMMISSIONER: Yes.

MS McNAUGHTON: - - - the ultimate beneficiary is Council because they want to keep their employee safe.

THE COMMISSIONER: Well, that's another aspect of it but anyway, go on.

MR THANGARAJ: What contemporaneous record would you have been able to assist the auditor with or could the auditor have been assisted by to say one, you did actually make a complaint or raise a concern, and two, that it was satisfied under the policy?---I've already said I didn't complete any documentation.

Okay?---So in that regard none.

10 All right?---But if there was required I – and there wasn't documentation I suppose the only other thing I could have done was to have completed a statutory declaration if required.

Right. Now your entire explanation for the legitimacy of your discussions and the payment by Council relies entirely on the application of the security of servants policy doesn't it?---Probably, yes.

Well, not probably. You haven't given a single other - - -?---Yes.

20 - - - suggestion?---Yes.

Right?---Yes.

Okay. So if there was no security of servants policy do you agree then that this was a deliberate fraud on the Council?---No.

Right. Well, you said that you have read part of this policy?---Well, I would have over the years.

30 No, hang on. Now you don't - - -?---Yes. Yes.

All right. Are you coming back to I would have or I did?---No - - -

THE COMMISSIONER: I think you said you'd seen the policy?---Yes, yes.

THE COMMISSIONER: Yes.

MR THANGARAJ: You quoted parts of it?---Yes, yes.

40 All right. So you have read the policy?---Yes.

You believed you were – that you satisfied the criterion under this written policy?---Yes.

Right. And that you discussed this written policy with the General Manager?---(No Audible Reply)

That's what you said?---Yes, I said that - - -

And that you said - - -

MS McNAUGHTON: Well, she hasn't finished.

MR THANGARAJ: Okay?---Yes. I think, I think what the – in relation to that matter, yes, I have seen the security of servants policy. Yes, I would have read it over the years. Yes, the General Manager and I discussed that and the only thing I can really recall is that the General Manager said yes, I
10 can approve this expenditure under the – when he, he agreed to install the security - - -

Yeah?--- - - - and said yes, you know, he obviously was satisfied it fell under that policy. I accept in me accepting that that I also accepted that as well.

Yeah. So what I'm saying is that the only belief that you had to get this system installed at Council's expense was the policy and the only explanation given to you by Mr Fitzgerald was likewise the policy?---Yes.
20

All right. Well, I'm going to leave it to Mr Moses in due course to ask you questions about that issue as to – because I have not seen a security of servants policy.

THE COMMISSIONER: Are you going to pass to another subject, Mr Thangaraj?

MR THANGARAJ: I am.

30 THE COMMISSIONER: Can I suggest we take a short 10 minute adjournment and we'll resume at 20 to 12.00. Thank you.

SHORT ADJOURNMENT

[11.31am]

MR THANGARAJ: Ms Cullinane, I want to move on to the, what have been referred to as the top-up payments. Were you eligible for the defined benefits scheme?---I don't believe so.
40

And we know that there were some payments, these payments that were over and above, were they paid, any of them paid through payroll?---No.

And were they paid into a superannuation fund?---No.

I beg your pardon?---No.

And we've heard about the \$90,000, the \$91,000 amount and you inquired of Mr Goodman, sorry, you said to Mr Goodman if it's super it had to go into your super fund?---Ah, yes.

LG Super Fund I think?---Yeah, that's correct.

Do you want me to bring that document up so you can see it again, your email?---No, no, no, no, no, no, no, no.

10 All right?---I have, I mean I have put some payments into the super fund but um, and I did require, I did ask for that payment to go in there um, but I remember what you were talking about.

All right. So with respect to that, you heard some questions being asked by your counsel this morning about that and asking Mr Goodman if he told you to put it in a super fund?---That's correct.

Now, that 90,000, was it superannuation or not?---The actual payment?

20 Yes?---No.

It was not?---No.

So you had sent an email saying if it's super it goes in this fund, and then you received some communication back, did you - - -?---No, I think, yeah, sorry.

30 So you received some communication back, did you, saying it was not superannuation?---No um, but the actual payment isn't a superannuation payment. I did, I did send an email I think words to the effect if this is the super payment can you pay it into my, it should have been paid into my Local Government Superannuation Fund.

Yes?---Is that the email you're talking about?---Yes.

Yes. And there's no dispute you sent that email?---No.

40 And then did you chase that up to work out whether it should have gone in your super fund or not?---It didn't need to go into my super fund but that, that was just my preference for that payment.

If it was super. Well, we'd better bring it up otherwise we're - can we bring up volume 23, page 230 please. It's Exhibit R60. And can we just go over the page. So that's the payment, 91 odd thousand - - -?---Yeah.

- - - in October of 2014?---Yep.

So we go back to the email. Sorry, sorry, my fault, if we could just stay on the other page for a moment. It says, "Superannuation contribution?"

---Yep.

All right. And then if we go back to the email, is that the reason why you put in your email, "I assume this is my superannuation payment?"

---That's correct.

10 And then you point out that if that's the case it should be going into the super fund, not to you personally?---That's correct. That payment, that payment I asked Mr Goodman - - -

Yes?--- - - - if he could put it into my super fund, that's correct.

Sorry, was there some communication requesting from you that over and above this email or are you saying that's - - -?---Yeah, Mr Goodman said, "I'll be making your, your, your payment soon," I said, "Can you put it into the Local Government Super Fund."

20 Okay?---So at some stage, I can't remember when that was, but we did have a conversation.

All right. And what happened as a result of this email?---Um, I spoke to him, Mr Goodman, and Mr Goodman said words to the effect, well, you know, the tax is paid, if you want it to go into your super fund, put it in your super fund.

30 All right. But did you understand this, after your final discussion with Mr Goodman did you understand this to be superannuation or not?---I've never - we've used the word superannuation but it was never a superannuation payment.

No, no, sorry, maybe I'm being unclear. I'm not talking about the top-up payments generally and I'm not - I'm asking you which category this payment fits into?---Oh, sorry, it was, it was in relation to those payments, yes.

40 So this is a top-up, this is, this is the in lieu of super payment, it is not super?---It was an, it was an ex gratia payment based on a superannuation calculation.

Okay. So - - -?---So it wasn't a top-up payment or it wasn't a superannuation payment, it was an ex gratia payment that's calculation was based on a super calculation.

All right. Well, we've heard about and I've taken Mr Goodman through some of these payments that happened every year, they're the ones you're talking about?---Yes, that's correct.

And so the 90,000, the reason it did not go into the super fund, the reason you did not put it into the super fund is because it was not superannuation, it was one of these other payments?---That's correct.

Okay. Okay. Now, you've received these payments every year for about 20 years. Is that right?---That's correct.

10 And in the vicinity of – Mr Goodman gave a range of 38,000 to 45,000 a year. Do you agree with that?---Probably.

Right. And were – do you agree with him that he, that these were paid to you through cash cheques?---Into, did the payments go into my bank account are you saying, is that what you mean by that?

Well, well, were some of them paid by way of cash cheques?
---Very, yeah, very, very early on there were a couple.

20 Right. Okay. And of these payments, if there – let's say there were, just let's say there were 20, how many would have been cash cheques and how many would have gone into your account?---Probably the majority I would say would have gone into my account.

Okay. And what would be the basis of any payment such as this being – oh, I'll come back to that. So none of these payments were superannuation, they were income?---They were – it was ex gratia payment.

Okay, but it's like a bonus or it's income?---Yep.

30 So therefore tax was payable on each of these ex gratia payments?---That's correct.

And your salary went through payroll?---That's correct.

Why did this not go through payroll?---Because it was just an ex gratia payment that was approved as part of my salary package.

40 All right. Now, if something goes through payroll, tax is withheld?
---That's correct.

What possible reason would there be for an ex gratia payment that's happening every year not to go through payroll and for Council not to withhold the tax?---Because the – my understanding of the agreement that was reached was that the tax was paid by Council so I would be paid in the form of a Fringe Benefits Tax.

Right.

THE COMMISSIONER: No, sorry, that wasn't the question. The question's premised on the fact that you previously agreed that the payroll system allows for tax to be withheld by Council in relation to income?
---That's correct.

10 Therefore if this was in effect income, why did it not go through payroll, that's the question, which would then have allowed tax to have been withheld in the same way?---Because that wasn't the understanding of the agreement that I understood the payment to be offered under. It was, it was offered to me as an ex gratia payment of which the Council would pay the tax on, because the Council would pay the tax on, it didn't need to go through payroll otherwise I would have been paying the tax.

20 There are two explanations for what's happened at least. You tell me if there is another one. One is what you're saying and it's entirely legitimate, the second one is that as described, sorry. The second one is this was a way of getting you money off the books illegitimately every year in substantial amounts. Right. There are two possible explanations. You understand that?---Yeah.

Is there a third, so we can focus on - - -?---Well not, not that I'm - - -

Okay. All right. Now let's explore what you're saying. Is there any written – is there any document which says that the tax would be paid by Council?
---I don't know.

Well, if you're the Deputy General – you were the Deputy General Manager?---That's correct.

30 You were described by Mr Goodman as being intelligent. Would you agree with that?---I think so.

He described you as being hard working?---I'd agree with that.

40 Right. Now and you say that for 20 years you received this ex gratia payment from Council without there being any record that you were entitled to that in writing?---I only, I only found out that there was no record about that in more recent times. I assumed that when I was appointed and when that was negotiated that would go on my, my personnel file.

Well, surely there's an agreement between a Council and a senior employee to make an ex gratia payment? The senior employee would have to sign a form saying something along those lines?---I think, yeah, you're right again in what you're saying. But I think if I was looking – if we, if we were looking it now compared to 20 years ago, that's probably the case. Twenty years ago, I accepted that the offer that was made to me and my employment conditions would be, would be documented on my personnel file. I don't ever recall ever even receiving a letter of my appointment.

All right. Let's assume that things were different 20 years ago to how they are today?---Yeah.

Did you decide in 2015 that you should formalise this and have some proper corporate governance around it and transparency?---In relation to mine?

Yes, your ongoing payments?---No. That was in 2011.

10 What did you do in – was you employment – all right, what happened in 2011 to document this?---When the former General Manager retired, I asked him to, to, could he check to make sure all my conditions of employment were documented. He said, yes.

All right?---I trusted that that had occurred.

20 All right. I'm not talking about what documents he may have had, I'm talking about you satisfying yourself that you had contributed through proper corporate governance for you to have contributed by saying this is part of my agreement. Did you do anything?---I didn't, I didn't, I didn't give it any thought whatsoever until the General Manager was retiring.

And did you tell the new General Manager that you were receiving this ex gratia payment through for which Council was paying tax?---No.

30 And why wouldn't you possibly not have told the new General Manager that?---I would've thought it was the General Manager's responsibility to inquire about her officers conditions of employment. It was never raised – but the new General Manager never raised it with me. I had no knowledge or otherwise of whether she was aware of it or not aware of it.

Well that's precisely the point. If she – you're assuming that that's some reason why she would raise it. At the moment you've not given us any example that you knew of a document which would indicate this was being done legitimately. You're saying they're assumptions?---That's correct.

40 So you knew at the time when she started she either knew or she didn't know, you did not know. Why would you not tell her when Mr Fitzgerald left that this was – that there was a substantial amount of money coming to you every year that was not coming through payroll?---Well, I just assumed that she would've made those inquiries either with the General Manager or with individuals.

All right. Now - - -?---I don't think it's necessarily my responsibility to tell the General Manager. I thought the General Manager would make those inquiries herself.

Right. The other explanation is that if these payments were entirely illegitimate that would be a perfect reason for you not to tell the General Manager?---(No Audible Reply)

MS McNAUGHTON: Well is that a question?

THE COMMISSIONER: Well it's a proposition he's putting to her. She can agree or disagree with it?---Well I wouldn't do that.

10 MR THANGARAJ: All right. Why were they – if this was a legitimate payment to a Senior Officer, why were they originally being paid through cash cheques?---I think Mr Goodman, I think he did it twice from memory. And to be honest, I don't know why he did it.

Well, let's not worry about why he might've done it. There's an explanation for that. But why, why did you agree to accept a cash cheque for an ex gratia payment that you say was part of your salary?---Well, I suppose at the end of the day, if the tax is being paid by the Council which I believed it was. It really doesn't matter how that's paid. Whether it was paid, I mean
20 it's, it's no different, I guess, my, my thought. It's no different than those conditions that currently or were existing under the previous General Manager's contract arrangements. I think we spoke about that. His salary package happened to include X amount of dollars that he could – that could be used by the General Manager for private expenditure. It was to me, there was no difference between that and my payment. Both, both should've been subject to FBT.

THE COMMISSIONER: Ms Cullinane, can I just ask you this. Otherwise, leaving aside these ex gratia payments. You received a fortnightly or I
30 don't know, weekly, what was the pay period at Council?---Weekly.

Weekly. Otherwise you received a weekly pay slip either electronically or in hard copy?---That's correct. That's correct.

And that pay slip would record the income, the gross income and then it would record the amount of tax that had been taken out?---That's correct.

And then it would give you the net amount?---That's correct.

40 And I'm assuming that it would also include any other pre-tax expenditure, you know such as health insurance or whatever else that you authorised them to deduct from your salary?---That's correct.

Right. So when you received these payments, these ex gratia payments from Council, whether it was in a cash cheque or in any other form you had absolutely no documentary evidence of what tax was taken out by Council, you just received the sum?---I received the net payment, that's correct.

But, no. No. You received a payment that you assumed was the net payment - - -?---That's correct.

- - - but you saw nothing to indicate that tax had been taken out by Council, such as you would see on a pay slip?---No.

Right.

10 MR THANGARAJ: The point of receiving a cash cheque, isn't it, is that there is no record in relation to that cheque, it simply is kept as a cash cheque?---No, I don't, I don't believe there was ever a cash cheque. It still would've been paid in my name.

Well, did you hear the evidence of Mr Goodman. He was saying that some of these payments were made through a cash cheque and on one occasion he went down to the bank with you and cashed it and you took the cash?---No. No, I don't, I don't recall him ever giving that evidence while I've been here, no.

20 All right. Well what do you mean by a cash cheque, if the first couple were cash cheques what do you mean by that?---Well you said – Mr Goodman I think on one or two occasions in the very early stages cashed those cheques. They still would've been paid to me. They may have been open for cash. I can't remember. I mean I'm going back 20 years. But through all the – from back to whenever I looked at my bank records to the early 2000s, I've got a direct debit entry into my account. I'm just presuming that – I haven't got my bank records from before. I'm just presuming what he's saying is, is, is correct.

30 All right. Well - - -?---But there would've been no reason to ever record those payments as being anything other than the particular creditors name though. I assume what Mr Goodman was talking about when he said cash cheques and I can't really record that, recall, you know that, that occurring exactly. Was that he's actually opened that particular cheque up for cash.

Right. Have you seen any, any Council record which says or records that you were being given this ex gratia payment?---There's a, there is some note on my personnel file with the - - -

40 Well that's – are you talking about the original calculation?---That's correct.

No, I'm not talking about the original calculation, I'm talking about have you seen any, a single Council document - - -?---No, I relied I, no, I relied on the advice of the former General Manager that that had been document.

All right.---I relied on the advice of Mr Goodman before that he'd seen that documentation, but to be honest, the first time I'd seen my personnel file was probably within the last month.

All right. No of course, if you're correct in all of this being legitimate then, of course, you would have declared as part of your annual tax returns these ex-gratia payments?---No, I've never done that because I believe that the tax was paid by Council through fringe benefits.

But surely, surely you understand that whether or not tax has been taken out, you need to declare it?---Well, no I didn't.

10 Well, you've had a job for a long time, have you not put in your Council of Botany Bay salary because the tax has been withheld?---No, I put in my group certificate.

Yes.---And I paid my tax on that but I haven't - - -

Okay. With your weekly pay, is your tax withheld?---Yes.

20 So what is the possible difference between that situation and the ex-gratia payment with respect to the tax?---Because I understood the tax had already been taken out so there was no need for me to include that.

But Miss Cullinane, how can you, you've been the deputy general manager for 19 plus years at a council, are you seriously saying that if you've got this agreement for up to \$40,000 a year, you don't have to tell the tax office you're receiving that money?---Well, to the best of my knowledge, the answer is no, I didn't need to, I didn't believe that I needed to.

30 Well - - -?---Because I thought the tax was being paid by Council so I believed any obligation in respect of that money had been met.

THE COMMISSIONER: Miss Cullinane, can I just raise another issue and that is that the rate of tax on what's called a fringe benefit, ie the fringe benefit tax is differently structured to income tax, in other words, it is a different rate of tax. So you were not being charged - or sorry - you were not being taxed according to your income you were, on your assumption, taxed in a different way which in effect represented a reduced form of taxation on that payment. That's the effect of what you're saying, isn't it? ---Sorry, could you just explain it again.

40 Fringe benefit tax is taxed at a lower rate, the fringe benefit tax is calculated at a lower rate than income tax. In other words, if you're in a bracket, if you're in an income bracket that requires you to pay 37% tax then that's the percentage that comes out of your salary. If you receive an ex-gratia payment which you say, on your assumption, was taxed as a fringe benefit, that is a different and separate rate of tax to income tax, in other words, it's not calculated at 37% it's calculated at a different percentage.---That's correct.

So you were paying a lower rate of tax on what would otherwise be income.
---Yes, but the fringe benefits tax is paid in Council's annual return for fringe benefits.

I'm not disputing that, I'm just saying that you were being taxed at a lower rate on money which is in the correct sense of the term, part of your income, right, is the that the effect of the evidence?---What you're saying but I wasn't aware of that.

10 MR THANGARAJ: What is the purpose of putting in a group certificate?
---I'm sorry.

Why do people put in group certificates to the Australian Taxation Office?
---So the Australian Tax Office can ensure that you've paid the appropriate amount of tax on whatever other income you've received.

And you know, don't you, that tax returns require you to disclose the fringe benefits that you've received?---Well, I have an accountant to do that, but I've not mentioned that and I've not included it.

20

Right.---It hasn't been dishonestly, I just haven't honestly been aware that I had to include it.

Well, you know that tax returns require fringe benefits, you say this was a fringe benefit do you?---Well, I don't know - - -

MS McNAUGHTON: Well, he's just asked two questions.

30 MR THANGARAJ: Well, did you just agree that tax returns include a provision for declaring fringe benefits?---No, I don't, to be perfectly honest, no I don't know, I don't do my own tax.

So is this the case - for 20 years you received an ex-gratia payment of around \$40,000 a year which firstly, you did not tell your accountant about?---That would be correct.

You did not declare for it tax?---No.

40 Do you agree?---Yes, I do.

You did not declare any fringe benefits to the Australian Taxation Office?
---Not that I'm aware of, no.

There is no record that you know of where Council has an entry per year saying this is an ex-gratia payment to you?---As I became aware of recently, yes.

But throughout that 20 years you never saw any document that showed a that a legitimate payment was being made to you in that amount?---Could you ask that question again.

At no point had you seen a legitimate, any Council document that records this payment being made to you?---That would be correct.

And you haven't paid a dollar of tax on that roughly \$800,000 that has accumulated?---Not separately, no.

10

So if the tax was taken out, then you're saying that you're grossly entitled to something more than \$40,000, that's after tax you're saying?---That would be, if you look at it that way the answer would probably be yes.

And some of those were not put in through your bank account?---No, I was relying on Mr Goodman's evidence in relation to that, I don't know. I don't have records - - -

20

How were the amounts - sorry?---I don't have the records going back that far.

How were the amounts calculated year to year, that is - I withdraw that. I'll put this way, if there was, if this was being paid pursuant to a calculation which was pegged against a salary then the ex-gratia payment could never be lower than the year before could it?---No.

30

So, how was it being calculated according to what you understood?---In accordance with that formula of the, it was based on the Defined Benefits Superannuation calculation.

And would it, should it have been done at the level of the general manager, according to the general manager's salary?---No.

Well, why was it at the general manager's salary, do you know? Why was it pegged against the general manager's salary?---I don't believe it ever was.

40

Well, assume from me that there's a letter from Mr Goodman to Miss Kirchner saying it was pegged against the general manager's salary, do you know anything about why that might have been written?---No, I don't, I don't think that's correct, I don't think it was ever calculated against the general manager's salary. I understood the general manager also had some provision for a superannuation payment um, or this similar calculation and that's what I understand it was based upon but I think Mr Goodman might be confused, it's based on my salary.

All right. Did you ever come to know that Miss Kirchner was making inquiries with Mr Goodman about this?---Yes.

And did you speak to Mr Goodman about that?---No, not before that, no.

Okay. No, after the two of them were speaking about this, did you speak to Mr Goodman about the fact that he had to report back to Miss Kirchner about this?---No. Miss Kirchner raised it with me herself.

Can we just bring that document up please. All right. Now, were you aware that he was, I think you've just said that you weren't aware that he was required to do that for her, prepare a memorandum?---No.

10

All right. So therefore - - -?---I have subsequently seen that the general manager showed it to me but I wasn't aware, I wasn't involved in the prior.

All right. So until the General Manager showed you that document you weren't aware of its existence?---That's correct.

All right. And so therefore – I asked Mr Goodman whether or not you assisted him with preparing documents for Ms Kirchner or something like that and he – I think he said he couldn't remember. Did you have any involvement in preparing this letter?---No.

20

And do you agree it would have been – given that you were the beneficiary of it and it was going to the General Manager it would have been highly improper for you to have had some role in preparing this document?
---Absolutely.

All right. I'll play session 2-1-3-6.

30 **AUDIO RECORDING PLAYED**

[12.21pm]

THE COMMISSIONER: Mr Thangaraj, can I just raise a matter about page 7 of that transcript. About the middle of the page I think that there are some either mis-transcriptions in terms of the speaker or there's some additional words that are spoken. Where Ms Cullinane is recorded saying, "Yeah, and just leave it quite simple because sometimes you can put more information in", and then I heard further words after that and I'm not sure that the - - -

40 MR THANGARAJ: Maybe that could just be replayed and we'll have - - -

THE COMMISSIONER: Could it be replayed.

MR THANGARAJ: Yeah.

THE COMMISSIONER: Because I'm not sure that the attribution to Mr Goodman after that - - -

MR THANGARAJ: We'll do that but - - -

THE COMMISSIONER: Can we come back to that?

MR THANGARAJ: Well, we have to play the whole thing so - - -

THE COMMISSIONER: Oh, all right.

MR THANGARAJ: We can't go to certain bits of it.

10

THE COMMISSIONER: I see.

MR THANGARAJ: We could do that at lunch and just - - -

THE COMMISSIONER: Come back to it. All right.

MR THANGARAJ: But I'll continue with the examination on that call. Ms Cullinane, if we can bring back up volume, volume 37, page 1. That is the letter that the two of you were discussing in that call, wasn't it?---It appears so, yes.

20

And the date – Mr Goodman has the date of 27 July in the memo and the phone call was on the 28th but it's clear that the - - -?---I, I accept that.

Right. Now, firstly you told us before I played the call that you were not involved in preparing this document. That's clearly not correct, is it? ---No, no, it's not. I, I, I didn't intent, I, I, I honestly didn't intentionally mislead you, I just don't recall that conversation.

30 All right. Well, let's go to the more important question which was, you agreed it would be highly improper for you to be involved in the preparation of that letter. You agreed with that, didn't you?---Yeah.

And that's in fact what you did do, you were involved in preparing this letter. Right?---(No Audible Reply)

Correct?---Yes.

40 And therefore you agree that you engaged in highly improper conduct in relation to this letter?---Probably in terms of improper conduct I think – I understand what you're saying um, um, but I don't know if it's highly improper conduct but, but I agree if the, if the CFO's been asked to report to the General Manager he should have reported it to the General Manager and I shouldn't have had, have had that involvement, I would accept that.

The reason that you shouldn't have had any involvement was because it related to a direct benefit to you?---I think that's true, the only saving grace

in that whole conversation if there is one, at least it acknowledged that, my words acknowledged that it was audited by the former auditor.

I'll come to the audit, but the punchline with respect to the audit is that Mr Goodman accepts that he deliberately misled the external auditor in relation to this issue, so that's the, that is the uncontroverted evidence to date in relation to that issue. All right. So forget about the external auditor, I want to come back to this letter. Before I played the tape I said to you, "It would be highly improper for you to have engaged in preparing this letter." Do
10 you agree that I asked you that question?---Yes.

And do you agree that you said yes, it would be?---Yes, yes, I do.

And you did precisely what I put to you, didn't you?---It – yes, I did.

And therefore your conduct in relation to this letter concerning this ongoing and substantial ex gratia payment was highly improper?---On the basis of how you're putting it I'd have to agree to that, but it wasn't the intention, but I understand.
20

Well, forget about how I'm putting it, I'm relying on the words you used. I put to you that it would have been highly improper for you to engage in preparing this letter and you agreed with that?---Yeah, that's true.

Right. So I'm asking you now this for the third time. Your conduct in relation to this letter was highly improper?---Probably, yes.

Not probably yes, your conduct - - -?---Yes.

30 This is the fourth time?---Yes.

And the reason it was highly improper was it related directly to a significant ongoing payment you were receiving from Council?---Yes.

And your particular concern was that the General Manager, unlike the previous General Manager, this General Manager was making inquiries about it?---No, that wasn't my concern, that's got - - -

All right. Well, let's go to the, let's go to the transcript of this call. Page 2.
40

MS McNAUGHTON: Do you have a copy for me?

MR THANGARAJ: It's on the screen. Can we get a hard copy? We're just getting them now.

Now, you knew that this was a letter being or a memo being sent by Mr Goodman to the General Manager, didn't you?---Yes.

And he was typing it out as - - -?---Well, now I, now I recall that, yes.

Okay. Well, during the phone all you were obviously aware that it was a letter he was preparing for the General Manager?---Yes, yes, yes.

And you could hear that he was typing it up - - -?---Yes.

- - - as you spoke?---Yes.

10 And at page 2 he read out something that he wanted to put in there and you told him not to?---That's correct.

And then later – your next entry - - -?---Because, because it wasn't, because it wasn't true.

Okay. Then the next entry you say, "I don't think we want to say that." See that?---Yes.

This was a joint effort - - -?---Yeah.

20

- - - between the two of you in relation to what would be told or not told to the General Manager?---From, from what I've said, yes, but I, I think also too where you're speaking and you're casually speaking and you don't know that you're being recorded, then you're probably not as careful with the words that you use.

I don't think there's any doubt about that.

30 MS McNAUGHTON: Well, I think – well, that might be very funny but the witness should be allowed to finish her answer, with respect.

MR THANGARAJ: Sorry, could I tender that transcript and audio.

THE COMMISSIONER: Exhibit R76.

#EXHIBIT R76 – TRANSCRIPT SESSION 2136

40 MR THANGARAJ: And we'll provide a copy of the transcript on the understanding it needs to be reproofed in light of what you've said, Commissioner.

THE COMMISSIONER: Yes.

MR THANGARAJ: You were saying that the was an informal use of the word?---That's correct.

All right?---It wasn't intended.

All right. It wasn't intended that way but that's in fact exactly what it was?
---(No Audible Reply)

It was a joint effort between the two of you anyway, wasn't it?---Only to record the information for the General Manager, not to be deceptive or to put an untruth to the General Manager.

10 All right. Well, let's, let's deal with the first bit first, which was the point that you wanted to make and the point that your lawyer's raised. The use of the word we. The reality was, whether you used it informally or not, the reality was it was a joint effort?---Yeah, oh, I'd accept that.

Right?---I accept that.

So the use of the word we, any semantic difference that might have been pointed to actually has no bearing on the relevance of what we're talking about. Do you agree with that?---Yes.

20

All right. Now, let's go to the next bit. When you say, "Why can't we just say it was a condition of employment," why did you want to say that?

MS McNAUGHTON: Well, again I can't see it.

MR THANGARAJ: Oh, it's not on the screen, sorry.

THE COMMISSIONER: Unfortunately it only stays up for a limited length of time. We'll just restore it.

30

MR THANGARAJ: We've got a copy for Ms McNaughton.

Okay. Page 2 a little bit past halfway, Mr Goodman proposed saying something and then you said, "No, but why can't we say - - -?---Yeah.

- - - it was just a condition of employment?" Why did you want to do that?
---Because I just wanted to record it exactly how, how the payment was derived at. I think um, he didn't get approval from the Mayor and I think somewhere else in there he, he used some other words. I mean the truth was
40 that the, the condition of employment was offered by Peter an ex gratia payment based on that defined benefits superannuation calculation. That was it. It was subject to two separate external audits um, and one of them I think in there I refer to the audit being undertaken by Norm and that was true, and then I think it was separately audited and that was probably in the late, the late 90s or it could have even been early 2000, but I think it was the late 90s when the, when the payment first started, it was audited by Norm who was the auditor at the time and I think the second time it was audited was by a chap who was the auditor which was Ken.

Right?---And I think when Norm raised it with me, and I think he then had a conversation with the General Manager, he actually used the words that it was “Generous but legal.”

All right. When I asked you, when I showed you this letter before and I asked you when you first saw it and you said you weren't, you didn't see it until the General Manager had shown it to you, you were trying to convey that the first you knew about the contents of that letter was after the General
10 Manager showed it to you, weren't you?---That's true because at the time I didn't recall the phone conversation, I did recall the General Manager showing me that um, report from Gary, but I remember the General Manager raising it with me, I think before that date.

All right?---Well, before that date.

When you – when the General Manager showed you the letter did you say to her oh, yeah, I know all about this. I helped Gary write it?---No, I don't think she showed it to me in those terms. She just gave me in terms of – and
20 I think it was after the – it was in February I think after the matter was raised at – when I raised it at the private hearing when you raised the – when it was raised with me that a payment I received, a large payment and I had no knowledge of that payment and the solicitor that was at the private hearing who is beside you was quite convinced and had a date that I'd received a particular large payment and I actually volunteered to the Commission that no, I hadn't received that other payment but perhaps were you getting confused with this ex gratia payment. So I volunteered that information.

30 Well, let's set aside - - -?---And I think after that that's when I think the General Manager may have given me copies of this and some other documents in relation to the ex gratia payments. There's been some conversations about that payment over the last oh, couple of months I guess and I thought that the documentation was on my file because Peter had led me to believe that yes, it had been and that's what happened. I think it was raised with Council's solicitors because it was raised as a concern. I think that I recall the General Manager saying to me that the, the explanation I'd given in relation to the payment was, was plausible.

40 Ms Cullinane, could I suggest that you don't suggest that you volunteered anything to ICAC when you have no idea what ICAC has or - - -?---No, that's true.

- - - or does not have?---That's true.

So that with respect won't assist. Can - - -?---I think the point that I was making was that at that private hearing these payments were being – they weren't being raised.

All right. Well - - -?---Or they hadn't been raised.

I didn't raise the private hearing you did?---Yeah.

Now I want to ask, this phone call is a very detailed call about a letter which you had numerous things to say about?---I accept that.

Do you agree with that?---I accept that.

10

Are you seriously telling us that when I asked you about this 10 minutes ago you had completely forgotten that you had dictated to Mr Goodman what you wanted in the letter?---Yes.

All right. And the fact that you knew that there was a significant advantage to you wasn't the reason why you wanted to deny involvement in the preparation of the letter?---No.

20

All right. We can replay page 7 but just while that's coming up, is it the case that you wanted this letter to be frank and complete?---This, this - - -

List letter that you were helping Mr Goodman prepare for the General Manager, is it a letter that you wanted to be frank and complete?---I would have, yes.

30

Okay. Well, let's go to page 3. Sorry. Sorry. And while it's coming up, and you'll see it again, but so you can think about it, you said, "Yeah, because don't give them too much information"?---I think what I was referring to is Gary, Gary has a tendency to put too much in. All I wanted Gary to do was - like I can't remember this conversation, right. I can't remember Gary doing the memorandum to the General Manager. But all it had to be was the truth and the accurate information. Don't put something in it that it didn't have to be, just put the circumstances otherwise you put wrong information in or you try to make it something that it's not. It gets too confusing. You know, in my view and has always been my view that that payment was a legitimate payment to be made. It was, it was offered to me by the General Manager. I accepted it by the General Manager and it's been paid ever since.

40

Ms Cullinane, just go to the entry below that. This wasn't simply a matter of having more information that may have been required. Look at the next thing you say, "Because then something comes back and somebody says well", and then he interrupts and you say, "No, hang on. Somebody comes back", right?---That's correct.

What you did not want this letter to generate was further inquiries into this area?---No, I don't think that's true at all. I don't think that's true at all.

All right. We can replay page 7.

AUDIO RECORDING PLAYED

[12.45pm]

MR THANGARAJ: Okay. We can pause it there. What – did you hear that, Ms Cullinane?---Yes, I did.

10 What then entry should read as, it says, “Yeah, and just leave it quite simple because sometimes you can put more information in”, that’s what it reads?
---“And it hangs”, yeah.

And what should be - - -?---Yeah, I heard it.

“And it hangs us”?---Yeah.

20 So this is an example isn’t it of you being concerned that further inquiries might be problematic?---No, I don’t, I don’t think that’s true. I mean I understand the term that I’ve used and I understand that but it wasn’t – that wasn’t an issue. Like provide the explanation, give the information and then just let the General Manager investigate it any way she sees fit and that was at the time – I had the conversation with the General Manager at the time and the only other, only other information that I could give in relation to it wasn’t on my file was to go back to the external auditors and see if they had a note of those two times that the auditor raised it, to go back to the external person who I thought may have been party to that, that calculation, which was Strategic Planning Consultants, to go to the General Manager’s file to see if there was something on his file about it or to speak to the
30 former General Manager.

The word you used, Ms Cullinane, the critical word that you used was “hangs”?---Yeah, I accept that.

So – well, you have to accept it because it’s uncontroversial. The issue is not whether you said it. The issue is your choice of that word?---I agree.

40 Now it’s not a matter of oh, well, someone’s going to get bored reading a 20-page treatise about this?---Mmm.

What you were concerned about was being exposed?---No, I, I totally – I don’t accept that.

Okay?---Not at all.

And the critical other word was “us” because it wasn’t limited to you. The reason you were having this highly improper conversation with

Mr Goodman was because he was in on it as well?---No, I totally, utterly refute that.

Okay. Now you tell us then why what I'm proposing doesn't make sense and what you are proposing does, tell us how the words "hangs us" fit in?
---I don't know. It was, it was a poor choice of words. It was a poor choice of words and I accept that but I think when you go back to my personnel file if, if the payment – if the payment was never a payment that should have been made then back in 1997 it wouldn't have had the General Manager's signature on a calculation.

THE COMMISSIONER: Ms Cullinane, can I just – sorry, can I just ask you this question. You say it's a poor choice of words but do you accept that when one speaks of something in effect hanging us that it's a reference to, by way of a metaphor, being hung or strung up or hoist on your own petard, is that the sense in which you used it?---No. No.

You didn't use it that way?---No.

20 Do you accept that it in fact is capable of meaning that objectively?---I can understand how, how my choice of words you would derive that but it's – but if you – if, if it's about the truth that's not what I meant.

All right. But you're accepting that objectively it's capable of meaning something - - -?---Something – yes.

- - - like that?---Yes.

30 Yes.

MR THANGARAJ: When you say a poor choice of words, this is a private conversation as you understood it between you and Mr Goodman?---That's correct.

All right. Now the person – you're relying on Mr Fitzgerald's approval back a long time ago. That of course assumes that he was doing the right thing?---That's correct.

40 You agree with that?---That's correct.

So, have you seen the form, you've seen the personnel file recently.---My personnel file?

You've seen the document that you refer to about the calculations?---Yes, yes, yes I have, yes I have.

And you've seen on that, haven't you, that it says to go through payroll, have you seen that?---Oh sorry, no sorry I can't remember.

Can that be brought up, sorry. It's Volume 37 page 98. Now you seen the two asterisk on the right hand side?---Yes.

Who's handwriting and signature is that?---I don't know but it would be somebody in the pay office, I presume.

Okay. And you see that this calculation is to be paid through the payroll from 31 January '97.---Right.

10

Do you see that?---Yes.

And there's a further entry - previously paid through creditors. Do you see that?---Yes.

20

Now, if it had been paid through payroll, one, there would have been transparency, correct?---And to be honest I don't know if that's talking, I presume it's talking about the super but um, but it was always, as I said, I always understood it was not paid through payroll, it was paid through an ex-gratia payment and I don't know if that's talking about the car allowance or, or the super payment to be honest.

Can we go to 97 and then we'll come back to 98.

30

MR MOSES: Commissioner, can I just point something out. Volume 37 page 173 is an example where these payments were being made through payroll and they were, these other payments which were off the books and going through creditors were additional payments. So this witness should be very careful in terms of that issue because that payment did go through payroll, these other payments went through creditors, the illegitimate payments, just so that everybody knows there's no secret about that because the clearly demonstrate.

THE COMMISSIONER: I think this issue has arisen before because they've been described as top-up payments by Mr Goodman - - -

MR THANGARAJ: Yes.

40

THE COMMISSIONER: - - - so I think that's the payments we're referring to.

MR MOSES: I just don't want the witness to continue saying something.

THE COMMISSIONER: Yes.

THE WITNESS: Would be able to have a look at those records.

MR THANGARAJ: All right. So you see that page 97 Volume 37 comes to the amount in lieu of superannuation of \$222.75 a week.---Yes.

And if we go back to page 98 you see that that figure's used?---Yes.

And what should have happened is that this top-up or ex-gratia payment should have gone through payroll.---Okay, well I wasn't aware of that.

10 Okay. You say that, but this document in 1997 doesn't limit anything as to what should go through payroll, does it?---No.

MS McNAUGHTON: Well, in fairness to the witness, she is neither the author or the recipient of it.

20 THE COMMISSIONER: No, no, no, that's obvious. I'm just looking at the note on the page which reads, "paid through the payroll from 31/1/97 previously paid through creditors week ending 28/2/97." So at some stage a decision was taken that it should be payroll, I think that's the point that's being made. But you were unaware of that are you Miss Cullinane?---
That's correct.

Right.

MR THANGARAJ: So what seems to have happened is that a salary and a car allowance were paid through payroll from a particular date but the top-up was not.---Was not paid through payroll?

30 Right.---Yes, I accept that but I also said that I was never aware that it was to go through payroll it was never the way it was conveyed to me.

Let's go back to the transcript you said that the phrase hangs us, was a poor choice of words. Hangs us is used in the context of there being, to your knowledge and to well, in the circumstances where there is no Council record of this on-going payment to you nor has there been any tax paid by you, that is the context in which this phone call took place, do you accept that?---Say that again.

40 The context in which this phone call took place was that no tax was being paid by you over these payments, right? You have to yes for the transcript. ---Yes, yes, yes.

And that to your knowledge and it seems to anyone else's knowledge at the moment at least, there is no Council record identifying a payment to Miss Cullinane or a payment to Lorraine Cullinane in relation to these top-up payments for all these years.---Aside that from that note on that file, that's correct.

Right.---I thought there was but that wasn't, I thought you asked me about the purpose of the phone call.

No, no, I'm talking about the, I want you to understand clearly Miss Cullinane when I'm talking about the impact of this telephone call, I'm not limiting it at all to the \$91,000 payment. When I said to you you were, what I'm putting to you is you and Mr Goodman were concerned about someone digger deeper into this and exposing what had happened for the last 20 years?---No, I absolutely, categorically refute that suggestion.

10

And that's the only reason in which you would use the phrase, hangs us?--- No, absolutely, categorically refute what you're saying.

Okay.---It wasn't something that I was in collusion with Mr Goodman over, it was none of that. I received a payment for those period of time what I genuinely believed I was entitled to.

All right.---I believe it was approved by the general manager, I believe it was subject to a fringe benefits tax and I didn't believe that I had to declare it.

20

Right.---So it's not a, it, it may have been errors in the way it was paid, I accept that but if you're suggesting that it was a dishonest payment or it was somehow I was in collusions I absolutely refute that.

All right. Well you tell us then why you used the phrase, in circumstances where you say you were having a legitimate conversation about trying to assist the general manager, you tell us why you used the phrase, hangs us? ---I don't know, I don't know.

30

All right. Let's go to page 4. Now I've said to you earlier - - -?---The only - - -

I said to you earlier that this was pegged against the general managers and you said, it was not the general manager, this entry on page 4, you used the word, on a similar calculation to the general managers.---That's correct but I thought you asked me was my payment pegged to the general manager's salary in other words, I thought what you were asking me was my calculation based on the general manager's salary not my salary when you said, was it pegged against the general manager's, that's what I thought you were asking me. I thought you were implying that the payment I received was somehow based on his salary and not mine, that's why I said no, that's not the case.

40

So what you're saying was the calculation methodology was as per the general manager.---Well I understood the general manager was also getting.

All right.---I don't know if he was or he wasn't but when the general as in Lara Kirchner raised it with me I said perhaps the information is on the previous general manager's file in relation to it.

All right. I tender the audio and the transcript with the, sorry, will replace the page 7 with the additional.

THE COMMISSIONER: That's Exhibit R76 and at some stage the revised transcript will be substituted for the existing one.

10

#EXHIBIT 76 - TRANSCRIPT SESSION 2136

MR THANGARAJ: Was any audit conducted into any area of the business that would have looked into your super or these top-up payments that you received for 20 years?---Only, only that it was audited by the auditor on two occasions.

20 Is that the external auditor?---That's correct.

Right?---That's correct.

And did you direct the internal auditor at all, ever to look into these payments?

MS McNAUGHTON: Well in my respectful solution, that's not a fair question given what the system of how audit plans are devolved.

30 MR THANGARAJ: All right. I'll go back a step. Would it have been within the remit of the internal auditor to look at ex gratia payments being made to a senior Council employee?---Would it have been within her ambit of her - - -

Yes?--- - - - scope? If, if that was the audit, yes.

Yeah. So it's something that you could've directed her to if you wanted to? ---I don't - - -

40 You could've asked the internal auditor - - -?---To audit - - -

- - - to check ex gratia payments being made to Council employees?

MS McNAUGHTON: Well again I object. Because as I understood the evidence from the internal auditor yesterday, there was an audit plan, it was set out, it was subject to the Audit Committee. And it wasn't the case that Ms Cullinane well simply said, audit this, audit this next, it was part of a

whole overall plan and then they discussed which part should be audited next. I don't think it's a fair question to ask the witness.

MR THANGARAJ: All right. You - - -?---I think that, I think that's true and I think the external, the internal auditor when she answered the question yesterday in terms of the accounts payable audit, and I said to her, well do that after. Because it was scheduled in the '15/'16 year. And when I said start that audit when the procurement officer comes on board in October, so do that audit say from November. I think her evidence was and then I can't
10 remember what audit she did before that. I discussed that with the General Manager. Then when she raised it, when November came, of course, ICAC had already come and started their investigation of Council. So at that point that's when I said, after talking to the General Manager, instead of doing that accounts payable audit now that would be really something better done by an external audit form after we've gone this process. That's when I told her, just do the child care centres. So I wasn't avoiding the accounts payable audit, it was just that ICAC had already come on – had started their investigation and that's why we decided not to do the accounts payable audit at that stage.

20

You directed Ms Rai to do something that was not in the audit plan?---I asked her to do - - -

Yes or no?---In consultation with the General Manager, yes.

Okay. Yes. You're not seriously suggesting that you could not direct the internal auditor to look at something outside the audit plan are you?---Me direct her?

30 Yes?---I, I would only direct her after discussions with the General Manager, yes.

All right. Well you knew that, you knew when you were putting this letter together with Mr Goodman, that the General Manager was looking at this? ---It wasn't, it wasn't something that immediately crossed my mind.

No?---To get - - -

40 THE COMMISSIONER: But this was – sorry. I just wanted to put this in context. This is in July, 2015, this is after the internal auditor had been employed?---That's correct.

Right?---The internal auditor started I think in around September/October 2014.

MR THANGARAJ: Yeah. And there was an internal auditor before her too?---That's correct.

Yeah. So you could've directed, whether you needed to consult with someone else or not, you could've directed an internal auditor to look at some area if you wanted to, you're not saying you couldn't do that?---Well in consultation with the General Manager, yes.

All right. Are you seriously suggesting that if you went to Lara Kirchner and said, I'd like the internal auditor to look at ex gratia payments to senior employees of Council, that there was any prospect she would say no?---No.

10 Right. So if you wanted the internal auditor either before Ms Rai or after when she started, if you wanted the internal auditor to look at these ex gratia payments that could've been done?---That's true.

And did you?---No. Because it wasn't raised that's it's an issue until July, 2015. It wasn't something that I, it wasn't something that was at the forefront of my mind or I don't think anybody else's mind.

Right?---I mean, I think in 2014 the structure changed. And at that stage there was some discussions about the Council expressed a preference for me
20 to go onto a contract like the other two Directors that they'd appointed. I expressed the fact that I didn't really want to change from my award conditions. At that stage the General Manager said and the Council said, whatever your current conditions are can be taken over to the contract. There was never any discussion about what my current conditions were. It was never raised with me. That was in 2014, January. So in 2014, the General Manager said to me, whatever your conditions of employment are now that the previous General Manager has agreed to, the, the Council is happy for those conditions to go under into, into a contract. That was in
30 January, 2014.

Right. And - - -?---Nobody ever then said to me, the General Manager didn't say to me then, oh, and by the way what are your conditions?

All right. Just finally before lunch. You returned a cheque recently, did you to Mr Byrnes?---That's correct.

And how much was that for, roughly?---87,000.

40 And what was that, why was that?---It was, that was for an amount that was raised at the private hearing in relation to an amount that I received. That I said that I didn't have any knowledge of. And that's the amount that I repaid. I didn't know about it, I went home, there was an amount that had been paid to me so I refunded it, or I assumed that's what the payment was.

Sorry. You received - - -?---I think it was - - -

- - - a payment into your account of \$87,000 from Council, did you?---I think it was that.

You received a payment into your account of \$87,000 from Council and you did not notice it?---That's correct. It was 10 years ago.

And you repaid it – so an \$87,000 payment was made by Council into your account, you did not notice it?---That's correct.

And you repaid it after you were asked about it at the private examination?
---It was - - -

10

THE COMMISSIONER: Did you say 10 years ago?---Yeah, it was.

Ten years ago?---It was raised at the hearing.

No, no. It was 10 years ago that you received this \$87,000 into your account?---Or maybe I've got the wrong amount. That's - - -

I'm not asking about the amount. Did you say it was 10 years ago?---Yes.

20

That was a huge amount of money 10 years ago - - -?---It was - - -

- - - respective to your - - -?---It was, it was 2007 and - - -

All right. Just a minute?---Sorry.

That was a lot of money 10 years ago by reference to what was your then annual salary, wasn't it? It would've represented more than half of your annual salary?---A bit less than half, that's right.

30

And you didn't notice a one off payment of \$87,000?---(No Audible Reply)

MR THANGARAJ: Come back for lunch?

THE COMMISSIONER: Yes, thank you. We'll resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[1.07pm]