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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 15 JUNE 2011

AT 2.00PM

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

MR BROAD: Now Mr Algie, you have open before you page 297 of folder 1?---Yes.

Which is the email you received from Ms Hildebrand on 20 April, 2009?
---Yes.

10 And you would have read this email when you received it. Correct?---Yes.

You printed a copy, a copy of it. Correct?---Yes.

Now the email makes reference to underneath the hyperlink are the words for title plan, lease, sale, et cetera searches. Do you see that?---Yes.

Now title is obviously certificates of title, it's a reference to certificates of title. Correct?---I presume so, yes.

20 Plan is a reference to a deposited plan or a strata plan?---Yes.

Both of those types of documents are relevant to the, a task that a valuer or valuation companies such as Addisons would use for the purposes of, of performing its business?---Yes.

A lease, a lease document is, contains information about rental income, obviously the terms of the lease, that would be information relevant to a valuation company. Is that correct?---Yeah, it could be.

30 It could be, potentially?---Yep.

And sales, sale searches, sale et cetera searches, what's that a reference to?
---I don't know that. I couldn't answer what that's in reference to.

Would sale be a reference to sales information or could it be?---It might be previous sales history or something like that. I don't know.

40 I think you said earlier in your evidence before lunch that the, that those particular words also led you to form the view that you were being provided with the account by Ms Hildebrand so that you could use it to obtain the sort of information that I've just referred you to. Is that right?---That's right.

Now you've given evidence that, that on 3 April, when you were having, you were interviewing Ms Hildebrand you mentioned in a chit chat sort of way that you had tendered for some Valuer General work?---Yep.

And did you, do you recall whether you said that, said that to Ms Hildebrand on other occasions after that?---Not that I can recall. My

recollection is there was some general banter on the day, at the interview and I think that's as far as it went.

Okay?---And I may have made the comment that we had tendered for the, the work and certainly her expertise in that would be, have been beneficial to us, you know, maybe in the future if we got some work.

10 All right. You've made reference to a conversation concerning the strata plans, a conversation with Ms Hildebrand, during the course of that conversation do you recall her saying to you, this is, this is about the access to the database, did she say to you that you were not to give anyone else the username and password?---I don't recall that. As I've stated I don't recall any caveat being on it.

All right. And do you recall her saying to you she was giving you access to show you what you can get when you tender for Valuer General work? ---That's not my recollection.

20 Did she tell you that she expected that the account would close when her permanent employment at Westlink came to an end?---I don't recall whether there was any discussion in relation to that.

Is it possible that she may have said that to you?---It could be possible. I don't recall her ever mentioning an expiration date.

30 Of course you realised that the access that she was providing to you was access that she had obtained through the course of her employment with Westlink, that was obvious?---Well I don't know whether it was obvious, but I just assumed that it was in the normal course of her work that you'd come across that, yeah.

Work, and that the access was access for the Valuer General work?---I didn't, I didn't fully associate it with that, no.

But in any event you knew or you believed when she provided you with the access that you weren't, she wasn't entitled to give it to you and you weren't entitled to use it?---I, I don't know what I thought at that stage.

40 Well you knew you weren't authorised to use it?---I had no idea I wasn't authorised to use it. I, I've actually never logged into the site. I passed this on to one of the other admin members, I think it was probably two weeks after receiving this email. I didn't treat this email as that important and I was very busy at the time. And I think, I think we used it maybe a couple of times going into the second week of, of May I think was the first time we sort of accessed it. And I'd sort of given it to one of the admin staff and said, look Kim sent this through apparently it does this, have a look at it.

Right?---And that sort of, that sort of where I sort of left it with the admin staff and I note that we were still ordering strata plans via our normal means up until early to mid May.

Right.

THE COMMISSIONER: Mr Algie, I don't understand that. Firstly you read the email?---Ah hmm.

10 Why did you print it out?---I print out lots of emails because I get - - -

No, that's not an answer. Why did you print this one out?---I can only imagine that it was to hand it to someone.

For use?---Yes.

And you must have read it?---Yes.

20 And you must have read that what you were given was a link to the Valuer General's database?---I, I read what's on the page, yes.

Well, that's what it says, doesn't it?---Yeah.

And you knew that Ms Hildebrand was giving you a link which she had to the Valuer General's database?---Recalling that's not the, the way I, I, I felt at that time.

30 I don't understand that, because that's the plain meaning of the words used, isn't it?---It is. It's, it's there. I, looking at it now, it's very clear.

And you knew that ordinarily you would have to pay for information obtained from the Valuer General's database?---Well, we were already doing that, we were already paying for it.

So your answer's yes?---Yes.

And you knew this was a way of getting that information without paying for it?---Well, it was suggest to me that it was a way I could get it, yes.

40 Yes. And did you think that you were entitled to do that?---No.

Yes.

MR BROAD: Can you recall who you gave the email to, could it have been Deborah Whitelaw?---It could have been. It, it, I believe it probably would have been Jodie De Costa or Deborah Whitelaw who would have been undertaking admin duties at that time.

With the instruction to use it to download strata plans on a needs basis?
---I believe so. I believe the first instruction would have been, have a look at this, see, see whether it works, 'cause I hadn't seen the site myself, I was unaware of it, and if it works, then we'll, we'll use it.

Yeah. And they were also to use it to download deposited plans?
---Whatever was required for the jobs on an as needs basis. We don't need that many deposit- - -

10 So it essential came to replace the account you had with the information provider?---Over time it did, yes.

Yeah. Over time it became used exclusively be Addisons to obtain the information- - -?---Yes.

- - -that was required for your work? And you gave evidence before lunch that you submitted a tender for, a tender to the Valuer General for the work relating to the Valuer General's valuation of land in the Warringah and Pittwater areas. Do you recall that evidence?---Yes, I do.

20

Was that a written tender?---I believe so, yes.

And who prepared, who prepared the tender, did you or Mr Smith?
---It was a collaborative effort between our firm and there was another information, another information firm and together we submitted the- - -

Is it possible that the tender could have gone in under the other firm's name?---Ah, yes. And then, then we- - -

30 What was the name of the other firm?---Ah, there was Hometrack and a company by the name of Landwin.

But this was a- - -?---There was a, there was a collaborate effort in relation to that.

Right. Right. Now, at the time that you handed over the email to staff at Addisons, how many, were you, well, I think you gave evidence earlier that you were receiving about 20, 20 to 30 request for valuations per day around April 2009?---Yes.

40

Did that volume of work increase from April 2009 onwards?---We were, we were a growing business and 2009 was, was a growth year for us. I would say yes, it was growing.

So let's, let's go to say 30 June, 2009. Were you, can you say how many valuations you were receiving at that point in time?---It's, it's a difficult question to answer because our, our workflows fluctuate greatly from day to day. We might get 40 jobs one day, we might get 18 jobs the next, so it's,

it's hard, but we sort of measure it over a monthly basis and, and you know, I think maybe we were getting 20 jobs a day on an average and then it moved, moving through to maybe 30 jobs a day.

Right?---As an average, so- - -

10 And all those jobs would require a plan for the valuer to - - -?---A percentage would and even if its Torrens title we, we normally didn't, didn't need any plans unless it was for non-bank lenders who would require us to do a title search. We only do a very small percentage for that, that sort of client base, strata plans, maybe 30 to 50 per cent of the work and again if it was a purchase we, we'd try and ascertain it from a, an agent, we'd check our library and then if that wasn't the case we'd order it.

Now after you put the email into circulations and after it was being used to download the plans, did you, did you speak with Ms Hildebrand about that? ---No.

20 Did you purposely keep that information or that fact a secret?---I, I - - -

Or is it the case that it just never came up in conversation?---I don't think the, I don't think, well, I don't think it come up in conversation.

Right?---I don't think it was a topic of conversation after that.

If I could lead you to page 326 of folder 1, the minutes of the management meeting of 30 June, 2009 and it would indicate that you're present along with Mr Smith and Ms Whitelaw?---That's correct.

30 And we're, at page 328 there's a reference to strata plans?---Yes.

You were present at that discussion, is that correct?---Yes, I, I remember that meeting, I, I think that was the, that was actually our, our first formal meeting together as, as sort of a management meeting. I think it went for, well, it seemed to go forever, I think it went for three hours or something so it was quite a long meeting.

40 And what was the, what's written here is obviously just a summary of the discussion about the strata plans but what can you recall, what was the nature of the discussion to the best of your recollection?---Well, I think that, I understand or I understood that there was, has been some people engaged to do some downloading and I think that was, that was the crux of that agenda item and - - -

Well, by then, by that date, 13 June a decision had been made by you and Mr Smith to, to download as many plans as you, you could, isn't that correct?---Yes.

Yeah. Up until then or shortly before that date you were downloading them on a, on a needs basis, correct?---Yes.

And the opportunity presented itself to download them all and you and Mr Smith agreed to do that, correct?---Yes.

The note is to the effect or it says that “We must gain as much access to the, to get SPs from the site while we still have access,” that was obviously a, a theme of the discussion as it’s recorded by Ms Whitelaw?---Oh, right.

10

Can you explain to the Commissioner what, in more detail what that part of the discussion was about?---I, I couldn’t recall that part of the discussion.

Well, it would indicate that the access that you had to the site was something over which you had no control in terms of the, the time period. Would you agree with that?---I, I, I agree with that, yes.

20

Yeah. Well, did, at that particular time did you understand that the account could be deactivated at any time?---I, I hadn’t, personally I hadn’t considered that that much.

Well, it’s recorded. Well, someone must have discussed that particular matter during the discussion, during the meeting?---Well, it’s, it was normal course of business to, for people to raise agenda items and then for them to be included in the meetings and I’m just suggesting that necessarily wasn’t an agenda item that I was responsible for the inclusion.

30

But it would appear that someone who was present at that meeting understood that the access may not last. Was that you?---I don’t believe so.

THE COMMISSIONER: But we now know that that was true?---That’s right.

So some, either you or Mr Smith or Ms Whitelaw must have raised it? ---Yes.

40

And you were the only one who had communications with Ms Hildebrand as of by that date. That’s right, isn’t it?---That’s my understanding. I can’t ---

So the inference is, inference is open that this information must have come from you. I don’t know where else it came from, do you?---I, I suggest that it might have been one of the other persons. That’s all I can suggest.

It might have been Mr Smith or Miss Whitelaw?---It could have been.

But you agree that they would have only, it could only have come from them had they spoken to Ms Hildebrand by then?---I, I can't respond as to how they were thinking.

10 Well, this is, it's a piece of, I mean, it's a piece of information about their access that in hindsight has been shown to have been true. It's not something that we've plucked out of the air. Somebody must have been given that information?---Commissioner, I don't recall at any time saying to the other occupants or the other participants that there was some sort of time restriction on it.

But the suggestion is that, well, an inference is that Ms Hildebrand told you this?---I, I don't recall being told that the password was going to be deactivated. I would suggest that who was ever perhaps hiring students and organising that was probably running the thought process behind that.

20 But that's not a thought process that immediately, not a thought process that could arise, could it, unless someone had said something about it?---(NO AUDIBLE REPLY)

Had there been any problem from between the time you first started to use the password until the date of that meeting in regard to the use of the password?---Sorry, could you- - -

Had there been any problem concerning the use of the password from the time Addisons first began to use it until the date of this meeting?---Not, not that I was aware of.

30 So why would somebody, why would you then discuss the need to gain as much access to get SPs from the site while you still had access?---It ah, I can only suggest, Commissioner, that it was raised as an agenda item by someone and I, and that's, that's what Deborah recorded it as. Whether that was her own- - -

Raised as an agenda item. What, the- - -?---Well, each, each, there's a number of headings on, on those pages and each of those are agenda items that are raised by various- - -

40 Where do you see that? Which is there, where is, where do we see what the agenda item- - -?---Well, there's, there's the one above it, accounts and bookkeeper, insurance assessments, staff calendar.

Yeah?---Each one of those we, are generally- - -

But this is not an agenda item. Access is not an agenda item?---(not transcribable)

That's something that, and Miss Whitelaw doesn't seem to me to be the sort of person who would imagine this. She knows very, seems to know very little about the operation of the site. And it's a matter of interest to the Commission to know what was said about the access. You're unable you say to cast any light on it, even though it's recorded as a, in the minutes of the meeting which you attended?---That's my understanding.

10 MR BROAD: Even though you remember the meeting because it was the first meeting?---That's right. That's right. But as you can see it was quite a comprehensive sort of long winded thing, so I don't, I don't know how long that was touched on or whether it was a brief point, I, I - - -

THE COMMISSIONER: You see you understand the importance of it, because it suggests that all three of you knew at the meeting that access was limited and there is an inference that you all knew that you weren't entitled to use it and someone else could terminate it?---Yep.

20 That's why I'm interested in knowing who said it and what because it does, from that we could learn what people knew about the rights and wrongs of using the password?---On that basis, I don't recall. I couldn't accurately answer it.

MR BROAD: In any event after 30 June, a student was hired to download the plans. Is that right?---Yes.

And that was at your direction and the direction of Mr Smith?---Yes.

30 And that person and Addison staff members then proceeded to download the plans or as many plans as they could until 3 September, 2009 when the account was deactivated. Is that correct?---That's my understanding, yes.

THE COMMISSIONER: Can we just go back to this access point. If Ms Hildebrand had been entitled to access and one would ordinarily infer that if an erroneous entry was made by mistake and the account was locked that she could arrange for it to be activated again. But that was what one would ordinarily expect were her access to be legitimate. Do you agree?---Yes.

40 But this, this item in the minute indicates that the topic of discussion was that the account could be deactivated and Ms Hildebrand would not be in a position to do anything about it doesn't it?---It appears that way, yes.

Well that suggests in turn either that she had only a limited lawful period left within which to use it or that her use, or that the use of it in her name was unlawful. I mean I can't think of anything else. Can you?---No.

But it would be strange if it was, she had lawful use of it by then because she'd left her employment with Westlink hasn't she?---Oh, that's what I was told, yes.

So why would Westlink allow her to continue to use her password after she'd left their employ?---I've got no, I don't know.

I mean one would think that they wouldn't. Would you agree?---Yes.

So it would follow that, logically, that there must have been an underlying understanding that Ms Hildebrand had given you this password when she wasn't entitled to do so?---It could be construed that way.

10

MR BROAD: Now, you recall on 3 September the, it was reported to you that the password for the Hildebrand account had, was no longer working? ---Yes.

Who told you that?---I don't, I don't recall whether it was Deborah or one of the staff members but I think I was informed, informed at some point during that morning.

20 And were you in fact informed that the password was, was not working?---I, I couldn't recall, I, I think I was just told that the site, the website wasn't working or the password wasn't working.

Right. And did you, did you talk to Kim Hildebrand after receiving that news?---Well, I imagine I would have been fairly busy doing other duties. I'm, I remember Kim left a message in the morning for me to call her in relation to a job - - -

30 Yeah?--- - - - and I don't think I got around to returning that call, I think Kim called again some time that morning and we had a, obviously we would have had a discussion about that particular job or issues in relation to that job and I imagine the conversation would have turned at some point to, to the access. I think Kim was probably already aware that it didn't work.

Did she say that to you?---I, I couldn't recall the exact conversation but I imagine during that conversation we, it would have been communicated and I think, well, and at some point and another email was forwarded to me with more access details.

40 Yes. Presumably that was when you asked her for another account. Is that right?---I couldn't recall that. I, I didn't know there'd be another one in existence so I don't know whether Kim suggested that, or I, I asked whether she had another one or she volunteered that information, I can't recall.

You can't recall that? You didn't ask her for another, another account?---It, its possible, I, I can't recall.

But did you tell her why you wanted another account?---No, I, I thought it'd be obvious.

Well, you wanted, you wanted another account so that you could continue the, the task of downloading plans, correct?---That's right.

And you found out that she had another account because she told you during the phone call?---I believe so.

And did she indicate where she'd obtained this account from?---I didn't ask.

10 But it was an account to the same database?---I believe so.

And it was an account that had a username which consisted of a surname and, and a letter, correct?---That's right.

And a password?---Yeah.

And I think, well, you would have assumed that that was the same, it had come from the same source as Ms Hildebrand's account?---I imagine so, yes.

20

And that her account had come from her previous employment, correct? ---That's right, yes.

And so that somehow she'd obtained a former colleague's, a former colleague at Westlink, his or her account?---Yes.

And that she wasn't entitled to do that?---I couldn't answer, I don't know whether she was entitled.

30 Well, you weren't entitled to use it?---No, no, it was given to me but I can't comment whether she was allowed to use that or not, I don't know what her, what the conditions on those passwords were.

But you certainly, you, you agree that you weren't entitled to use it? ---That's right, yeah.

You've said that you didn't tell her why you wanted another account and that's because you just assumed that she would understand. Is that correct? ---That's right.

40

Why did you make that assumption?---Well, we were using it on a as needs basis so I assumed that that's what would have been presumed was occurring.

Well, it wasn't just on a as needs basis, was it?---Not at all.

I take it, well, did you tell her that you were using it for another reason? ---No, Kim had no idea.

During this phone conversation on 4 September did you tell her that you were tendering for Valuer General work?---No.

It had never come up during the course of the conversation?---no.

10 Before you spoke to Kim Hildebrand on 4 September, did it occur to you that she may have had access to another account?---I vaguely remember her mentioning, I vaguely remember that she might have mentioned something previously and, and I can't be that sure because we talk about, I have a lot of conversations every day with a lot of people, so it's something I couldn't probably elaborate on but I, for some reason I had a - - -

You had an inkling that she may have had another account?---Potentially, whether it was something that was said or an inference that was made at an earlier point in time, I don't know, but that's - - -

20 Right. I understand that. It may not have been a firm belief, but the suspicion or the inkling that you had was based on something that Kim had either said or done. Is that right?---Yeah. Well, the password, the original one seemed to flow fairly easy and, and I just thought in the course of our discussions that came up and the second one appeared just as easy so - - -

Yes. And then it was emailed to you immediately after the phone call?
---I think so, yeah.

30 Yeah. I think the email is at page, page 336. Now, you've, you have that page in front of you. That's a copy of the email she sent you. Is that right?
---Yes.

And in the subject part of the email she's written, Valuer General SIX login, last one. Okay. Had that been the subject of some discussion during the phone call, that this was the, the last- - -?---I believe so.

- - -time she was going to provide you with an account?---I believe so.

40 How did that part of the conversation arise, can you recall?---I understand the conversation just advised of that this, you know, this was the last login that, that was available and once this one's no longer working, that's, that's it.

Did she make it clear to you or was it discussed that if someone entered the wrong password into this account it would be deactivated and that would be the, that would be the end of it?---I, I can't recall what detail we went into. I, I didn't necessarily go into a lot of detail in relation to logging in and, and utilising the site. I certainly received the passwords. I spoke to Kim about that. I, I don't recall what depth we went into about logging in and out of the site and, and getting logged out and, and whatever else.

Because you, you were in the hearing room when the strata plan instructions were prepared, were shown to Ms Whitelaw?---Yeah.

Instructions that she prepared after receiving this account?---Yep.

And she warned staff members of the, of the danger of entering the password incorrectly. Do you recall that? I might just show you that. I think that's on page 337?---Ah hmm.

10

THE COMMISSIONER: The fourth line in 1, top of the page, Mr Algie? ---Where, where am I looking?

You're looking, no, page 337?---Yes.

In paragraph 1?---Right.

It says, "We have a new login", and if you look at the note- -?---Right.

20

"Just trying to avoid errors logging in."---Mmm.

MR BROAD: Is that something that you would have advised her to warn other staff members about?---Not that I, not that I'm aware of.

Would she have included that because of something you had said to her? ---Not that I'm aware of.

30

THE COMMISSIONER: And she also warns about problems that would be caused of other users of the login used the login at the same time that a staff member did. And you will see that at the bottom of the page?---Yeah, I'm looking at the document, I, I can't even remember seeing that document.

THE COMMISSIONER: Did you ever tell her anything like that?---No, well XXXXXXXX was involved, so I imagine he was, he was the one operating so they could have been talking about it.

40

He wouldn't have known that. I mean he, who would have known, who would have told him or how would Ms Whitelaw have learnt that there were potential problems if there were two people using the password at the same time?---I don't know. Unless the staff were talking amongst themselves. I think they used to log themselves out if, if multiple users, is my understanding, if there was multiple users it would log people out.

MR BROAD: During the phone call you had with Ms Hildebrand on 4 September, did you raise the possibility of her, raise the possibility with her that she could do something to unlock the hildebrandk account or to reactivate the hildebrandk account?---I don't, I don't recall the conversation being that detailed. I think it was more talking about work. I don't think

this was the main, I don't think the reason for her calling me was the password. Like it was work related.

Right?---And it came up and it was of a general discussion and I think that's as far as it went. And then an email was sent.

Right. But there was no discussion that you can recall - - -?---Not that I can recall.

10 - - - that raised the possibility of reactivating the account, that is the Hildebrand account was spoken about?---I don't, I don't think that, I don't think that entered the, the topic of conversation is my recollection.

Certainly Ms Hildebrand didn't raise that as a possibility?---I don't, I don't recall it ever being discussed or raised.

All right. And did you give her anything in return for the Fleming user account?---No.

20 Was she provided with any more work?---No.

Did she ask for anything in return?---No.

Was there an understanding that there would be, was there an unspoken understanding that there'd be, well let's face it Mr Algie, as you know in business it's not often that something is given for nothing. Was there some sort of - - -?---I can see inference. Kim was given the work that was allocated in her area, that's, there was, there's valuers, you know, around her area that, that were not deprived of work to give more work to Kim.
30 Kim was given the work that was in her area.

All right?---Valuers can only undertake a certain number of jobs per day. And that's all that occurred.

She indicated in the email that this was the last one. After 4 September, did you make reference to the fact that she had access to another account?---Not that I can recall.

40 All right. The account, the Fleming account was deactivated, in fact the Fleming account and the Hildebrand account was deactivated on 6 November, 2009?---Ah hmm.

And you will recall that you received a phone call from Kim Hildebrand? ---I recall that.

I think actually it was deactivated on 5 November and you received the call on the following day?---Yeah, I'm not great with the exact dates, but I do remember that call.

Just before I ask you questions about the call. Between 3 September, sorry 4 September when you obtained the Fleming account from Kim and 6 November when you spoke to her about the cancellation of all the accounts, do you recall ever, recall any conversations you had with Kim Hildebrand where she said to you that she noticed that some of the plans, the strata plans that she was receiving from Addisons had her name or Fleming's name on them?---I don't recall having that conversation with her. She might have had that with someone else in the office, but it wasn't with me.

10

Not with you. Okay. So the call on 6 November, she rang you?---Yes, yes. A call was put through to me.

And, and what do you recall was said, what did she say to you?---I recall Kim being quite flustered and, and, and distressed. She indicated that she had been made aware by Westlink, I think Belinda was, was, was a lady she'd been speaking to and Belinda had made her aware there had been substantial downloads on, on the Fleming and the Hildebrand accounts. Kim was quite anxious to, to sort of be reassured that we hadn't done that.

20

And did you, and did you- -?---At no point did I divulge to Kim that, that Addisons had, had undertaken that.

Right. Okay. Go on?---And Kim went on just to say that Belinda had contacted, there had been a large amount of downloads and that I think there was, there's some issues or questions had been raised and, and I just assured Kim that, no, we hadn't, Addisons hadn't- - -

30

And did you, did you ask her whether she told Westlink that she had provided you with both user accounts?---I recall asking, I, I recall asking Kim, yes, whether she had told Westlink in relation to the passwords.

Yes?---And, and Kim indicated that she told Westlink that, that they, that she'd given it to someone at Addisons.

Right. Did she say who at Addisons?---I, I can't remember whether she had mentioned any names.

40

Right?---But she made it clear that, yes, she had told Westlink that- - -

Did you tell her not to provide any further information to Westlink?---I don't recall saying that.

Is that something you may have said to her?---I doubt it.

Why is that, why do you doubt it?---Well, I, I don't see the purpose in, in saying something like that. It's, they're already aware that the information's there and- - -

Right?---You know.

And did you speak to Mr Smith after this phone call and advise him of, of what had transpired?---I believe so.

Yes. And what decisions if any did you and Mr Smith come to?---Well, I think at, I think at that point everything became a lot clearer as to the magnitude of, of, of the events, the preceding events.

10

Well, you'd already, by that point in time you'd downloaded 74,000 strata plans. Is that right?---That's, yeah, that's right.

I'm just curious as to why you say that it was the phone call that brought home to you the magnitude of what you had done?---Well, I think it, I think during the stages of all the downloads I, you know, I think we were referring it to as a free access Website and after Kim's phone call saying that Westlink had, had, you know, said that there had been substantial downloads and there was an inquiry going on or something, it's, that's sort of triggered it.

20

You, you continued to use the strata plans after 6 November, 2009. Isn't that right?---Yes.

You used them right up until the time if ICAC's inquiry?---Ah, yes. A portion of them we would have used.

Yeah. Well, the ones that were, that were on the, in the library and that were relevant to any particular work you were doing. Is that right?---That's right, yeah.

30

I think you've indicated that prior to 20 April, 2009, you were spending what, between 300 and \$500 on deposited plans and strata plans. Is that right?---Sorry, what was that date again, the- - -

Prior to 20 April, 2009?---Yeah, yeah.

THE COMMISSIONER: Three to \$500 a what?

40 MR BROAD: Three to \$500 on title searches and- - -?---Per month, yeah.

THE COMMISSIONER: Per month.

MR BROAD: Per month, is it?---Yeah, per month. That's right.

All right. And as the business grew from that date onward you would have obviously spent more money on various plans and title searches?---That's a fair comment, yes.

Mmm. Yes, I have no further questions.

THE COMMISSIONER: Does any counsel wish to question, Mr Algie?

MR LEWIS: Could I go first, Commissioner?

THE COMMISSIONER: Yes.

10 MR LEWIS: Mr Algie, I represent Kim Hildebrand. Did I not hear your evidence earlier that you required 20 to 30 plans or searches a day in relation to jobs that you were doing?---Sorry, can you repeat that?

Did I not hear you earlier say that Addisons needed 20 to 30 searches or plans a day?---No.

THE COMMISSIONER: At the time?---No, that's, that was the number of jobs coming in.

20 MR LEWIS: Yes?---So we had 20 to 30 jobs coming in of which probably a third to half of those were strata plan properties. They, that's what would require searches and of that percentage we would check our library so we would have a, probably have a percentage again of the information that was required so out of, out of 20 or 30 jobs we, we might need maybe five.

Or ten?---Ten, yeah.

Searches, at around, what ten or \$11 each?---That's right.

30 A day?---A day, yeah.

And of course once you'd compiled your library to comprise nearly every strata plan registered in this state - - -?---Ah hmm.

- - - that would be a valuable commercial asset for your business, wouldn't it?---Yes.

And at no time did you offer Kim Hildebrand anything in return for what she'd given you?---No.

40 And not only that but you didn't even disclose to her the extent of what you were doing?---No.

Why, why was it that you didn't tell her what you were doing with the password that she'd given you?---It never came up as a topic of conversation.

You must have felt somewhat grateful to her?---I can't remember how I felt.

Well, she'd, she'd given you a gift, hadn't she?---She'd given me a password.

A gift of considerable commercial value?---Well, that was determined later.

What, you had no concept of the value?---When the password was initially given to me I firstly didn't know whether it worked and I'd never seen the site or operated the site. It was not, it was over time that the commercial value of that password was determined.

10

And that's exactly why the password was given to you, to have a, to have a look at the site, wasn't it?---My understanding it was provided on an as needs basis.

What do you understand by those words?---To be used by Addisons as it needed to have strata plans, title searches.

So it immediately meant that Addisons no longer needed to pay for that material?---Yes.

20

Immediately no longer needed?---Well, apparently.

Well, you're the director of the company, wouldn't you know that?---Well, that's right, that's (not transcribable) worked (not transcribable) that's right.

So did you close your existing account with your information broker?---I, I couldn't answer that. I, I, maybe we just stopped using it as, as this other password started to come in but I remember getting it off Kim and, and at some point passing it to an admin person saying, you know, can you investigate this and let us know what it does.

30

So when Kim came to the interview for the position that you advertised you had the formal part of the interview and then you had what you call chat-chat at the end?---Yes.

And it was during that time, it was a kind of what, a getting to know you portion?---Well, it's a way of closing the interview off so probably for, you know, two minutes, five minutes, just a way of rounding off the interview.

40

And you recalled that you had seen her at a briefing?---Well, Kim's quite a stunning woman so you recognise her.

In 2008 at the Queens Square premises of the department?---That's right.

Yeah. And that led the conversation to tendering for that sort of work didn't it?---No.

It didn't?---Not, not that I know of, I think we had a general chat about, about that we put a tender in and, for the Warringah or the, the North, North Sydney/Warringah area.

Yeah. And you were interested in tendering in the future for more of that work, weren't you?---Potentially.

Well, you did, didn't you?---Oh, we did, yes.

10 Yes, you did. And I think it was then or some time later that she offered you the access to the site so that you could have a look and see what was in there in the context of tendering for that work?---The, the tender had already been submitted that we were discussing.

But there was a potential that in the future you would tender again?---Well we did in 2010.

20 Yes. But it was in the context of that conversation that she offered you access to the site so that you could have a look at it?---I don't know how looking at strata plans or deposited plans or title searches would have assisted me in preparing a tender.

Well I'm asking you whether she offered it to you on that basis?---I've already answered that it was on an as needs basis.

Well you've said actually that you took the inference that you could use it on a as needs basis. Those are your words aren't they?---Yeah, through the, through the conversation I had with Kim.

30 They certainly weren't words that she used to you were they?---My understanding is that Kim advised me that she had access to a site where you could get strata plans and title searches. And Kim suggested that I use it and sent me the password.

So that you could have a look at it?---On an as needs basis.

Which was an inference that you took from that conversation?---Well no that's, well that's, that's what was said to me.

40 Oh, well - - -?---We should use that site.

That's not what you said in your evidence earlier today here.

THE COMMISSIONER: Well I'm not sure if that's right.

MR LEWIS: Well I think my note, Commissioner is that I took the interference.

THE COMMISSIONER: No, no, there's a misunderstanding I think, Mr Lewis. What I'm saying is, Mr Algie says that Ms Hildebrand told her, told him that he should use the site. He took that to mean on an as needs basis. Is that correct Mr Algie?---That's right. That's my understanding.

MR LEWIS: That's what I'm trying to put to him in my clumsy way, Commissioner. So when, a time came that you decided to escalate the access to the site from as needs to something else didn't it?---Sorry?

10 A time arrived when you made a decision to change the use of that site from as needs to something else?---A director of the business did do that, yes.

Was that you?---No.

Who was it?---That was James Smith.

Did he consult with you about that decision?---There is some email correspondence in relation to that.

20 THE COMMISSIONER: And so is the answer yes?---Yes.

MR LEWIS: Did you think that was a good idea?---I didn't object to it.

Well did you agree with it?---Yes.

And then commenced the wholesale downloading of as many plans as you could get your hands on?---That's correct.

30 But you certainly didn't tell Kim Hildebrand that you were doing that?--- She didn't know about anything.

THE COMMISSIONER: He has said that already.

MR LEWIS: Do you recall that when the password was given to you or shortly before in a conversation Kim Hildebrand said to you, don't give it to anyone else?---As I've previously stated, I believe the password came without caveats. But there was not that discussion.

40 There was not that discussion?---That's my understanding. That's how I recall it. The email is fairly simplistic in its, in its format that it's saying this is for searches.

Those words do appear on the email. But is it possible that she said that to you?---Not that I recall.

THE COMMISSIONER: Said what?

MR LEWIS: That she said to you don't give it to anyone else?---Not that I recall, no.

It's not possible?---Sorry?

Do you rule it out, do you reject it?---Yes.

All right. Thank you. Nothing further.

10 THE COMMISSIONER: Any other questions? Mr Young?

MR YOUNG: Commissioner.

Mr Algie, you're a married man?---Yes.

You have three children aged 3, 7 and 9 years?---Yes, I do.

20 A short time ago you were asked a question I think by the Commissioner, did you think that you were entitled to download the information and you said no. Do you agree with that?---Yes.

A bit further on you were asked whether it was your understanding that Ms Hildebrand gave it to you without lawful authority, do you recall that? ---Yes.

30 Can you tell the Commission what you understand is, what you believe lawful authority means?---Well, I was, I was of the impression that Kim had a password that she was authorised to use and that was provided to me and suggested that I, I could use it.

What I'm asking is do you, do you mean you were entitled to use it or you were doing something unlawful, you were breaking the law, one or the other or both?---Well, I, I, took it to mean that I was, I was able to use it.

But you've acknowledged to the Commission that you weren't entitled to use it?---Well, I just said yes in that regards, yes.

Yes, nothing further, Commissioner.

40 THE COMMISSIONER: Any other questions from any counsel? Mr Broad?

THE COMMISSIONER: No, Commissioner.

THE COMMISSIONER: Yes, thank you, Mr Algie, you're excused.

THE WITNESS EXCUSED

[3.01pm]

MR BROAD: Yes, Commissioner, that completes the oral evidence in this inquiry. I have a list of documents, I have some documents to tender and what I might do, Commissioner, is to distribute that list to the persons present and the documents can be tendered.

THE COMMISSIONER: Yes. Is it correct that all counsel have already received copies of the statements concerned?

10 MR BROAD: I understand that the, all off, representatives of affected persons have received copies of the statements and, and there was an additional statement that was obtained today and that's been provided to counsel for Ms Hildebrand, yes, so the answer to that question is yes.

THE COMMISSIONER: And does any, does anyone have any objection to any of those statements going in as exhibits? Those, those statements will later be given exhibit numbers and they will be admitted as exhibits. Now, in accordance with the usual practice of the Commission there will be no oral submissions but written submissions will be invited. Mr Broad, by
20 when will you be able to serve your submissions?

MR BROAD: Perhaps a week from today, Commissioner.

THE COMMISSIONER: All right.

MR BROAD: That would be the, the 22nd.

THE COMMISSIONER: Well, if counsel are given two weeks after the date of receipt of Mr Broad's submissions would that be sufficient time for them to file their submission?
30

MR LEWIS: Well, certainly around that, yes.

THE COMMISSIONER: Yes. Very well.

MR HAVERFIELD: Two weeks after, is that two weeks after (not transcribable)

THE COMMISSIONER: Yes. Two weeks after you, receipt of Mr Broad's submissions.
40

MR HAVERFIELD: Well, I'm actually flying out (not transcribable)

THE COMMISSIONER: Well, I'm not waiting for you. You shouldn't take a brief then and this is the general practice of the Commission.

MR HAVERFIELD: Well, I'll have to submit it.

THE COMMISSIONER: Yes, very well. When are you coming back?

MR HAVERFIELD: I'll be back in chambers on 4 July (not transcribable)

THE COMMISSIONER: I don't think it does. Yes, it does.

MR HAVERFIELD: (not transcribable)

THE COMMISSIONER: Yes. I just hope that there isn't an earthquake
somewhere. All right. Yes, thank you for your assistance. The
10 Commission will now adjourn.

AT 3.04 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.04pm]