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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHURCHILL

Reference: Operation E10/0486

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 7 MARCH 2011

AT 10.05AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: This public inquiry concerns an investigation by the Commission as to whether Edward Karkowski, a building inspector with Willoughby City Council, corruptly exercised his official functions in favour of various business owners in the Chatswood area in return for benefits. The general scope and purpose of the inquiry is to gather evidence relevant to these allegations for the purpose of determining the matters referred to in section 13(2) of the Independent Commission Against Corruption Act. Ms Williams.

10 MS WILLIAMS: May it please the Commission, I appear as counsel assisting.

THE COMMISSIONER: Yes, thank you.

MR BALTINOS: Commissioner, with your leave I appear for Mr Karkowski.

THE COMMISSIONER: Yes.

20 MR BALTINOS: Baltinos is my name, initial N.

THE COMMISSIONER: Yes, Mr Baltinos, you have leave. Yes?

MR GRIFFIN: Commissioner, my name is Griffin of counsel instructed by Gadens Lawyers. I seek leave to appear on behalf of Mr Sam Koura.

THE COMMISSIONER: Yes, you have leave Mr - - -

MR GRIFFIN: Thank you, Commissioner.

30 MS FISHER: Ms Fisher of counsel, I also mention the appearance of Mr Cotman, senior counsel, we appear on behalf of Willoughby Council and we seek leave.

THE COMMISSIONER: Yes, very well.

MR LEWIS: Commissioner, my name is Lewis, I seek your authorisation to represent the following, Greg Wood hams, Nicholas Tobin and Ms Noni De Carvalho.

40 THE COMMISSIONER: Yes, you have leave.

MR LEWIS: Thank you.

MS McGLINCHEY: Commissioner, Ms McGlinchey, solicitor, I seek leave to appear for Mr Feng Xiao.

THE COMMISSIONER: Yes.

MS HUGHES: Commissioner, Hughes is my name, I seek authorisation to appear on behalf of Anthony Debeck.

THE COMMISSIONER: Yes, you have leave.

MR McILWAINE: Commissioner, McIlwaine, I will when they are, when they are called, Commissioner, seek leave to represent Mr Peter Rowan, Mr David Perry, and Jeff Knight and Mr Mark Hayward.

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THE COMMISSIONER: Well, you have leave now, Mr McIlwaine.

MS BERGLUND: Commissioner, my name is Berglund, I seek leave to appear for David Tasker.

THE COMMISSIONER: Yes, you have leave. Ms Williams.

MS WILLIAMS: Thank you, Commissioner. Commissioner, Mr Edward Karkowski is a building inspector and development officer employed by Willoughby City Council. Under delegated authority from the general manager of Willoughby City Council Mr Karkowski is responsible for assessing and determining development applications for Development Consent and Construction Certificates, carrying out building inspections and issuing Building Certificates and Occupation Certificates. His delegated authority includes the exercise of discretionary power that is available to Willoughby City Council under applicable planning instruments.

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Mr Karkowski's work relates to developments within the Willoughby City Council geographical area known as area 4 which is the core of the Chatswood central business district and is comprised almost wholly of commercial premises. Mr Karkowski's work is done primarily under the council's Fast Track approval system. This system allows applicants to apply for Development Consent and a Construction Certificate at the same time. Mr Karkowski holds a pre-lodgement meeting with applicants where the details of the proposed development, the applicant's estimate of the construction costs and the council's application fees are discussed. The application fees charged by the council are based on the estimated cost of construction.

30

Once the application is lodged Mr Karkowski assesses it against the requirements of the relevant planning instruments including the Willoughby City Council Development Control Plan and the Building Code of Australia. The assessment process includes a site visit and consultation with other council officers as to any conditions that should be attached to the Development Consent or to the Construction Certificate if the application is approved.

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Mr Karkowski completes a worksheet recording his assessment but no detailed report is prepared for the council or for his superiors. In most cases no other council officer is involved in the decision whether to approve the application. If the application is approved Mr Karkowski issues the Development Consent and Construction Certificate under his delegated authority. Once the building work is completed Mr Karkowski is responsible for inspecting the work and issuing an Occupation Certificate if he is satisfied that it complies with all relevant requirements.

- 10 In the case of the Building Code of Australia requirements this involves Mr Karkowski determining that the development complies with the strict requirements of the Code or determining that an alternative solution is appropriate. Where an alternative solution is required or proposed in relation to a development the applicant is required to submit an alternative solution report.

Mr Karkowski is the only development officer or building surveyor at Willoughby City Council who handles applications under the Fast Track system in relation to commercial premises in the Chatswood COD.

- 20 Mr Karkowski reports to the manager of building services at Willoughby City Council who in turn reports to the director of environment planning services. The manager of building services describes Mr Karkowski as one of his best staff members. A great deal of trust has been reposed in Mr Karkowski who has been working it would seem with minimal supervision.

- 30 I anticipate that the evidence to be adduced at this public inquiry will establish that this trust has been abused. In January 2008 Mr Karkowski issued a Development Consent and Construction Certificate for the renovation of premises at suite 2, 7 Help Street, Chatswood known as the Oriana Bath House and for the use of those premises as a beauty and massage centre. The Statement of Environment Effects submitted with the application stated that staff would be fully dressed and that there would be no body to body massage or sex offered at the premises. A condition to that effect had applied to the use of the premises under the original Development Consent granted by Willoughby City Council in May 2000.

- 40 This public inquiry will hear evidence to the effect that Mr Karkowski has been visiting the Oriana Bath House and receiving massages and sexual services there since at least approximately September, 2009. He has not reported to the council that the business is providing sexual services, in breach of the development consent. It is alleged that the proprietors and manager of Oriana Bath House have not required Mr Karkowski to pay for those services presumably on the implicit understanding that he will turn a blind eye to the breach of the conditions.

The public inquiry will also hear evidence about relationships that Mr Karkowski has established with several individuals who have applied to

Willoughby City Council for planning approvals relating to premises within Mr Karkowski's area. It is alleged that those relationships involve Mr Karkowski doing various favours for the individuals in connection with their applications in return for various gifts and other benefits.

Such conduct if found to have occurred would be a clear breach of Willoughby City Council's code of conduct and gifts and benefits policy.

10 The favours are alleged to have included Mr Karkowski suggesting to applicants that they reduce their estimate of the construction costs for their proposed developments thereby reducing the fees that they are required to pay to the council in respect of their applications. Mr Karkowski writing alternative solution reports for applicants, which were then placed on the council's file purportedly under the name of the relevant officer or manager of the applicant and formed part of the material taken into account by Mr Karkowski in determining the application for the building certificate or occupation certificate. The applications would save the time and cost of engaging a consultant to prepare these reports.

20 Mr Karkowski backdating the council's determination of an application under section 96 of the Environmental Planning and Assessment Act to modify a development consent and for the issue of an associated construction certificate so as to conceal the fact that the works the subject of the application were substantially completed before the modification was approved.

30 Mr Karkowski issuing occupation certificates before all of the outstanding works identified during his building inspection were completed. Mr Karkowski knowingly permitting one restaurant to commence trading before he issued the occupation certificate and Mr Karkowski assisting applicants for planning approval to prepare and lodge their separate application to the Office of Gaming, Liquor and Racing for liquor licenses, thereby saving the fees that they would otherwise have paid to solicitors.

40 It is alleged that the gifts and other benefits received by Mr Karkowski in return for these favours include meals at expensive and exclusive restaurant at the applicant's expense. Visits to massage parlours after some of these meals, again at the applicant's expense and gifts of wine and other expensive items.

It is alleged that Mr Karkowski has not declared these gifts and benefits to the council nor has he declared any conflict of interest in performing his official functions arising out of the relationships that he has developed with the applicants. Many of the meals to which Mr Karkowski has alleged to have been treated by applicants who he has favoured involved long lunches during working hours. On several dates on which those lunches are alleged to have been held, Mr Karkowski claimed and was paid overtime for additional hours worked in the evening. It is alleged that these claims were

not legitimate on the basis that Mr Karkowski was not engaged in legitimate council business during his core working hours.

It is alleged that Mr Karkowski has provided confidential information held by the council to a friend. The friend is a developer operating in the Willoughby City Council area, but outside Mr Karkowski's area of responsibility and the information allegedly provided relates to his developments or proposed developments. Mr Karkowski is alleged to have received various benefits from his friends in return for the information.

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This public inquiry will investigate Mr Karkowski's alleged conduct in the course of carrying out his official functions on behalf of Willoughby City Council in failing to report to the council the illegal operation of the Oriana Bath House, accepting services from the Oriana Bath House free of charge, which services were provided on the implicit understanding that Mr Karkowski would not report the breach of conditions of development consent. Performing favours for development applicants in return for gifts and benefits that were not disclosed to the council and that clearly compromised Mr Karkowski in his position as a development officer and building inspector. Claiming overtime and accepting payment for hours worked outside of normal working hours where a significant part of the normal working day had been spent dining out and not on legitimate council business and providing confidential council information to a friend in relation to planning and development applications being pursued by him and developments being carried out by him.

20

The public inquiry will also investigate the factors that allowed the alleged corrupt conduct to occur and the systemic changes that can be made to prevent it from reoccurring. The specific corruption prevention issue is to be investigated are the extent to which Mr Karkowski's superiors supervised his work and whether insufficient or ineffective supervision allowed or contributed to his alleged conduct. The lack of clear policies and procedures for regulatory functions at Willoughby City Council that allowed Mr Karkowski to influence council processes in a manner that is alleged to have been inappropriate. Whether a culture has developed within Willoughby City Council in which it is acceptable to accept gifts and benefits and steps that could be taken by Willoughby City Council to more effectively inform its business community about the proper way to deal with council officers and in particular the inappropriateness of offering gifts and benefits to council officers.

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May it please the Commission.

THE COMMISSIONER: Yes, thank you Ms Williams. The Commission will adjourn for five minutes and then the evidence will be called.

SHORT ADJOURNMENT

[10.16am]

THE COMMISSIONER: Ms Williams.

MS WILLIAMS: Thank you, Commissioner. I call Edward Karkowski.

THE COMMISSIONER: Mr Baltinos, do you wish me to make a section 38 order?

10 MR BALTINOS: Yes, Commissioner.

THE COMMISSIONER: Please be seated. Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr Karkowski and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document or thing produced.

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

30

THE COMMISSIONER: Now, Mr Karkowski, do you wish to give your evidence under oath or do you wish to affirm the truth of your evidence?

MR KARKOWSKI: Under oath, Commissioner.

THE COMMISSIONER: Ms Williams.

MS WILLIAMS: Mr Karkowski, for the record could you tell the Commission your full name please?---Mr Edward Karkowski.

10 And your address?---..... ..,

And you are a qualified building surveyor, is that correct?---Yes, I am.

You're a member of the Australian Institute of Building Surveyors?---Yes.

And you have national accreditation from that institution?---Yes.

You joined Willoughby City Council as a building surveyor in about April 1999?---That's correct.

20 And since about 2007 you've been a specialist surveyor working within the CBD area in Chatswood, is that correct?---I have.

And is that area known as Area 4?---It is.

And in that role you assess and determine applications for development consent, correct?---Yes.

And also applications for construction certificates?---Yes.

30 And most of those involved, do they not, a combined application for the development consent and a construction certificate under the council's Fast Track system?---Yes.

And those applications typically relate, do they, to fit-outs of business premises within the Chatswood area?---Yes, they do.

40 And is it correct that from all major developments a senior town planner within the council would be responsible for assessing the Application for Development Consent and may seek advice from you about building issues?---That's correct.

And one of those senior town planners is Ms De Carvalho?---That's correct.

If the development is approved and if council is appointed as the principal certifying authority you would then on those more major developments take over the construction certificate and occupation certificate process, is that correct?---Yes, if I was appointed by the applicant.

Applicants have the option to appoint a private certifying authority?
---That's correct.

The applications that you deal with under the Fast Track program for development consent and construction certificate involve you reviewing the plans and the Statement of Environmental Effects lodged with the application, is that right?---Yes, that's correct.

10 And you would ordinarily conduct a site visit?---Yes, that's correct.

And your assessment itself is recorded in a worksheet, is that right?---That's correct.

And you then after completing that worksheet make a determination under delegated authority from the general manager of the council whether or not to approve the Application for Development Consent?---Yes.

And whether or not to issue the construction certificate?---Yes.

20 And you determine any conditions to be attached to either or both of the development consent and the construction certificate?---No, I, not all conditions but the majority would be anything building related, any planning conditions by the planner.

I see. So you would consult with other officers within - - -?---That's correct.

- - - the council if necessary as to non-building related conditions?---Yes.

30 And you don't provide a detailed report to your superior officer in the council for them to consider and decide or have a say in the approval of the application, is that right?---No, the minor applications just have the Fast Track approval worksheet.

And almost all of the work that you do, is it fair to say, would be classed as those minor applications?---That's correct.

40 All right. So you alone are responsible for assessing the material and making the determination subject to advice from other council officers about non-building related conditions, is that right?---Yeah, where relevant, that's correct.

There is a peer review group that you can refer particularly complex issues to, is that right?---Not complex issues, no.

Are there issues that can be referred to a peer review group?---Yes, there are.

And is that a matter of your choosing as to whether or not that referral is made?---I don't understand the question. What peer review are you referring to?

Is there a peer review group comprised of other building inspector team leaders within Willoughby City Council?---There is.

10 And when you're assessing an application under the Fast Track system do you decide whether or not any issues needs to be referred to the peer review group?---I think you may be referring to alternate solutions. Is that correct? Peer review for alternate solutions.

I see. Could you explain then the practice in relation to alternative solutions? Do they always go to the peer review group or do you decide? ---No, my understanding is that only the more complicated fire related type issues get referred, things like ceiling height and minor issues are dealt with by the officers of their choice.

20 THE COMMISSIONER: What are alternative solutions, what does that term mean?---An alternate solution is where you don't meet (not transcribable) to satisfy provisions of the building code regulation and where you don't meet that you can demonstrate by performance clauses as to how you can meet or equal the same, to come to the same end result through performance criteria.

30 MS WILLIAMS: And Mr Karkowski, where you identify in the course of your work that there is a non-compliance with the building code performance requirements, does the process involve you discussing with the applicant alternative solutions that may be available?---Sorry, can you repeat the question?

Where you're dealing with an application and you identify a non-compliance with the Building Code of Australia requirements - - -?---Yes.

40 - - - first of all would that ordinarily happen at the stage of the application for development consent and the construction certificate or is it more likely to arise later down the track?---It varies. The majority of the time it happens after the approval has been granted, 'cause it's an unforeseen change or a miscalculation in height or something of that nature.

I see. And whatever stage it arises at do you and the applicant discuss the issue and the best way around it?---Sometimes it's discussed, yes.

Ah hmm. And the applicant is responsible are they not for submitting to you a report explaining how they can overcome the non-compliance?---Yes. They've got two options. One's to, to demolish and comply if it's possible and that's often sought after if it is possible or alternatively provide an

alternate solution report. It's, it's their choice which way they go. We can't force them.

And if they provide you with a report you review that report in the first instance?---Yes, that's correct.

And you decide whether it's a matter that you can make a determination about or whether it goes to the Peer Review Group, is that right?---Yeah, depending on the nature of the, the non-compliance.

10

Right. And once the work has been completed or very close to completed you carry out a building inspection if the council as the certifying authority?---Yes, if I'm requested to attend an inspection either progressive or, or an actual formal inspection I attend, yes.

Ah hmm. And you identify any matters that need to be attended to before an occupation certificate be issued?---That's correct, either interim or final occupation, yes, that's correct.

20

And an interim occupation certificate allows the premises to be occupied and used pending the completion of specified matters. Is that right?---That's correct.

And a final occupation certificate allows the premises to be occupied and used without being subject to conditions. Is that right?---That's correct.

Other than of course the conditions that are attached to the development consent?---That's correct.

30

Mr Karkowski, I'm going to show you a volume of documents which is volume 3 and ask you to turn to page 151 of the volume. I provide a copy to Mr Karkowski's counsel, Commissioner. You'll see the pages on the top left hand corner, Mr Karkowski?---Sorry was that page 151? Yep.

151 on the top left hand corner. Do you have that there?---Yes, I do.

And could you just take a moment to look through pages 151 to 154 and just confirm if you would for the Commissioner that that is the instrument setting out your authority delegated to you by the Willoughby City

40

Council?---Yes, it appears to be, yeah.

All right. Thank you. I'll just ask you to close that volume up then. You may keep it there but just close it for the moment. Thank you. I just want to ask you some questions about the reporting lines within the council. You report direct to Mr Peter Rowan?---Yes, I do.

And he's the Building Services Manager?---That's correct.

And Mr Rowan in turn reports to Mr Greg Woodhams?---That's correct.

And Mr Woodhams is the Director of the Environmental Services Division. Is that correct?---He is.

And does Mr Woodhams then reports directly to the General Manager, Mr Tobin?---I would assume so, yes.

10 Right. And you are and at all times since 2007 have been the only specialist building surveyor responsible for the work concerning the Chatswood CBD area. Is that correct?---Yes, except for times, in time periods of absence or leave.

And during those periods Mr Rowan would undertake your functions to some extent?---No, it was performed by various others.

I see?---It changes from time to time.

20 But whilst you're there you work pretty much alone for practical purposes. Is that right?---I wouldn't say alone.

You don't have a team of building inspectors working with you?---I have had a team at times, but only comprising myself and one other person.

And is that where the development requires additional effort?---No. Depending on workload.

30 I see. But you, you are the only person designated as it were to undertake the specialist building surveying work within the CBD area?---Only to my knowledge that I was, but I don't know if anyone else was given that specialist title, but, yes, I was for area 4.

All right. And in carrying out your functions you are familiar aren't you with the relevant planning instruments that apply to the geographical area that you work in?---Yes, I am.

You're familiar with the Sydney Regional Environmental Plan Number 5 for the Chatswood Town Centre?---Yes.

40 And the Willoughby Development Control Plan?---Yes.

And you have a good working knowledge do you of the types of uses of premises for which council consent is required or not required within your area?---I have an understanding, but I wouldn't say a good working knowledge. I rely on that information from the Town Planning section.

All right. To take an obvious example though, you know don't you that a

premises can't be used as a brothel without council's consent?---That's correct.

An applicant who applies to the council under the Fast Track system pays fees to the council for that application. That's correct?---Yes, they do.

And those fees for both the development consent and a construction certificate are based on the applicant's estimate of the construction costs. Is that right?---That's correct.

10

When the applicant applies outside the Fast Track process there is a Development Assessment and Review Committee that reviews the reasonableness of the applicant's construction cost estimates. Is that correct?---I'm not aware of that process, no.

20

There's no process to review the applicant's estimate and it's reasonableness under the Fast Track system other than if the assessing officer picks up that the construction costs appear to be unreasonable. Is that right?---No. It's possible it could have been done at lodgement. I didn't necessarily do all the quotes on jobs depending, it wasn't my role to do that for customer, customer service reasons. I would just help and if they gave me the figure of their estimated costs I would give them the fees applicable to that cost.

I see. So the, the applicant submits a, physically submits a form to the council under the Fast Track system. That's right isn't it?---Yes.

30

And the applicant states on that form their estimate of the costs of the construction for works involved?---That's correct.

And at the time they submit that form a council officer working on the counter staff may have some input do you say - - -?---That's correct.

- - - in looking at whether those fees are reasonable?---It could be any officer or a customer service officer.

40

When you're in the process of looking at the development and what is involved both by reference to plans and site visits, you would also form an understanding of the work involved wouldn't you?---Say, repeat that again, please, sorry, I didn't - - -

During the process of your assessment you form an understanding of the nature and extent of the work involved?---You get a feel for what is being done, yes.

And you get a feel for whether or not the construction costs indicated by the applicant are reasonable. That's right?---No, no I'm not a quantity surveyor, I'm sorry.

All right. So you don't, that's something that you just don't turn your mind to in the process of your functions?---I wouldn't say I don't turn a blind eye or it's something that is given consideration, but it's, it's something that you would consider, but it's not something I'm a specialist to determine the actual building costs.

10 I see. In the course of carrying out your work is it fair to say that you would often be asked by applicants for names of trades people, to recommend trades people to do various aspects of the work?---Yes, I have been asked that, yes.

And it's council policy isn't it that it's not appropriate to give recommendations. Is that right?---That's correct.

There is though a list prepared by the council of people who carry out floor testing for slip assessments. That's right isn't it?---Yes, correct.

20 And you are permitted to provide that list. Is that right?---I believe so, yes.

Now once a development is completed your occupation certificate is issued, you don't have any ongoing involvement do you in monitoring compliance with conditions?---No, it's not my role.

There's a separate compliance unit within the council that would deal with any known breaches of development consent?---Yes, that's correct. Depending on the nature of the, the breach. If it was building related it would usually come to the building officer.

30 If you were aware of a breach that related to the use of the premises or something other than a building issue the appropriate thing for you to do would be to alert the compliance unit to that breach wouldn't it?---I don't feel it's my role to do that. My job is to look after buildings and building safety.

40 I'm not suggesting that you should go actively looking for breaches, Mr Karkowski, but if you became aware of a clear breach of conditions of development consent the appropriate thing would be for you to alter the compliance unit to that wouldn't it?---No, I don't believe it's my role to do that, I'm sorry.

Right. You think it would be appropriate for you to remain silent about that?---My, my role is a building officer, seek public safety for buildings.

THE COMMISSIONER: Just answer the question, please.

THE WITNESS: Sorry, can you repeat the question again, please.

MS WILLIAMS: Do you think it would be appropriate to remain silent about a breach of development consent of which you became aware rather than referring it to the council's compliance unit?---No, it wouldn't be appropriate.

THE COMMISSIONER: Sorry?---No, it wouldn't be.

MS WILLIAMS: Now it's not part of your role is it to assist business people in the Chatswood CBD area to locate and secure leases over commercial premises. That's not something with which you're involved?
10 ---No, it's not.

It's not part of your to assist those people in negotiations with landlords?
---No.

And it's not part of your role to assist them to obtain liquor licenses?---No, it's not.

What are your core working hours within the Building Services Division,
20 your standard working hours?---Pardon? The hours I worked were from 7.30 to 4 o'clock.

And that's considered to be core working hours in the sense that anything over that you would be entitled to claim overtime. Is that right?---No. Yes, if, if I was, yeah, that's correct. Yes.

And your job requires quite a bit of time spent out of the office going to site inspections and the like. Is that right?---Yes, it does.

30 You don't have a formal timesheet or other time recording system within the council do you?---No, we don't.

There is isn't there an access card system that records your movements in and out of the, the building in effect?---Yes, there is.

And to what extent did you report your activities to Mr Rowan as your supervisor on a daily or weekly basis?---I would only (not transcribable) him when he asked to see me.

40 So unless he asked to see you for a particular reason you would be left to carry out your responsibilities and organise your time as you thought appropriate?---That's right.

THE COMMISSIONER: And you wouldn't have to tell anybody what you'd been doing?---No, not unless I was asked, Commissioner.

And you weren't asked?---Not very often, no.

MS WILLIAMS: When you were going out of the office for any extended period of time were you required to indicate where you were going or what you were going to be doing?---No, there was no requirement to report that, no.

And your practice was simply to go and do what you had planned to and not give any indication of what was happening?---Well I, there was no obligation to record anything.

10 And your base salary is approximately \$85,000 a year. Is that about right?
---Gosh, I think so.

That's before tax, that's about right?---I think so, yeah.

And we mentioned overtime a moment ago, there are two rates of overtime that apply. Is that right? Time and a half and double time?---Yes, that's correct.

20 And it's council policy isn't it that you needed prior approval before working overtime?---That's correct.

And generally speaking would you get approval before working overtime?
---Yes. Yes, that's correct.

And is that something done just in conversation with Mr Rowan or is there some formal written process for that?---Usually conversation.

30 And what did that conversation involve? Would you simply indicate you needed to work extra hours or would you tell him the reasons?---It would, it would depend on workloads.

Yes, but - - -?---Workloads would dictate whether I needed to do it or not.

Yes, but when talking to Mr Rowan about the fact that you needed to do it, would you be indicating the kind of work you would be doing in these overtime hours or just the fact that you needed - - -?---I would generally, yeah, I'd give him an idea. He would ask what it is I would be doing, yes.

40 All right. And, and then you would fill in a form indicating what you had been doing after the overtime was worked for the purpose of claiming that overtime. Is that right?---That's correct.

And was it Mr Rowan who would always sign off those forms?---No.

Who would sign off the forms?---It was either Mr Rowan, Greg Woodhams, I think that was it. Usually, yeah, those two.

All right. Was it any one of them or did you only go to Mr Woodhams when Mr Rowan was away?---That's correct.

I see. All right. And was any further explanation of the overtime required by them at the time of signing off the claim forms?---No, oh, no.

And are you aware that Willoughby City Council has a Code of Conduct?
---I am.

10 If I ask you to turn again to that volume you have in front of you, please, volume 3, page 159. Just take a moment, please, to look through pages 159 to 164 and indicate if you would whether that is the Code of Conduct of which you are aware?---Yes, it, it appears to be the simplified staff edition.

It's a document you've seen before?---Yes, I have seen it.

And you received some training in that Code of Conduct as recently as September 2009, do you recall that?---Yes.

20 And in the course of that training you improved your familiarity with the Code of Conduct, is that fair to say?---Say it again, sorry?

At least, at least from the time of that training, from September 2009, you've been well aware of the provisions of the Code, that's right, isn't it?
---I am aware of the Code, I wouldn't say I know every part of it.

Okay. Would you say, if you just take a moment to look underneath the heading at paragraph 2, Key Principles, and the matters that follow under there, would you say that those are principles with which you are familiar?
30 ---Yeah, they went through that in the training.

And you're, you're familiar with those principles aren't you?---Yes, I am.

And if you turn please to section 5 on page 162 and just take a moment to read there the five things in paragraphs (a) to (e) under the heading Gifts and Benefits that it says you must not do. You're familiar with those provisions, aren't you?---Yes.

40 And if you see the statement two paragraphs down from there, commencing "You must avoid situations," you understand the need to avoid the situations there described don't you?---Yes.

Yes. And you understood those things at all times since at least September 2009 when you did the training?---That's correct.

And in fact before then really didn't you, it's commonsense, isn't it?---I don't know whether it'd be commonsense but I understood it, yeah.

THE COMMISSIONER: Before September 2009 you understood that?
---Yes.

MS WILLIAMS: And the Code is - - -

THE COMMISSIONER: And in fact during the course of your employment with the Willoughby City Council you understood that I take it?---Yes, Commissioner.

10 MS WILLIAMS: And Mr Karkowski, the Code is accessible, isn't it, on the council's Intranet system whenever you may wish to refer to it for any reason?---I've been, I've been told it is.

Yes. All right. But you haven't yourself referred to it?---No.

Is it something you have a hard copy of available to you on your desk or - -
-?---Oh, I did have a hard copy available.

20 Right. And did you ever have cause to refer to the hard copy?---No, I didn't.

All right. Now, if you could turn please to page 219 of volume 3 that you have in front of you and just take a moment to look through pages 219 through to 229. Are you familiar with that policy, the council's Gifts and Benefits Policy?---Yes, I am, yes.

All right. And you've been familiar with that policy at all times during your employment with the council, is that correct?---Yes.

30 And have you ever completed a form of the kind seen on pages 228 to 229 declaring that you've received a gift or benefit?---Not directly, indirectly on one occasion.

And that occasion involved a form being completed by Ms De Carvalho, did it?---I believe so.

And that related to something that had been given to you and her jointly, is that right?---That's correct.

40 And apart from that you have never completed one of these forms?---No.

Mr Karkowski, I want to ask you some questions about premises at suite 7, number 7 Help Street in Chatswood?---Yeah.

Those are premises trading as Oriana Bath House?---Yes.

You're familiar with those premises, aren't you?---(NO AUDIBLE REPLY)

Okay. Those premises are within the Chatswood town centre area which is covered by the Sydney Regional Environment Plan No 5, that's correct, isn't it?---Yes, that's correct.

And those premises are in an area which can't be used as a brothel except with the consent of the council, that's right isn't it?---That's correct.

10 And you were involved, were you not, in assessing a Fast Track application for Development Consent and a Construction Certificate for those premises in 2007 and 2008?---I was.

Mr Karkowski, I'm going to provide you with another volume which is volume 1, it might be convenient for you to hand volume 3 back so that you're not overly cluttered. Could you turn please to page 41 of the volume, again the numbers are on the top right-hand corner. Just take a moment, please, to look at pages 41 and 42. Do you recognise that as the application that was submitted by the proprietor of the Oriana Bath House for Development Consent and a Construction Certificate for some renovations?---Yeah, it looks to be the one submitted by the architect, yes.

20 And the architect was making that submission of behalf of the proprietor? ---I believe so.

And it was submitted in about October 2007, do you see that from the date? ---Yes.

And you'll see there that the description of the proposal in section 1 of the form is described as a "skin and body massage centre (female only)?" ---Yes.

30 And then if you look, please, at pages 43 through to 46, do you recognise that as the Statement of Environmental Effects that was submitted in conjunction with that application?---Yes.

And that's a document that you would have reviewed in determining and assessing the application?---Yes.

40 All right. And you see on page 46 under the heading 6.2, do you see the statement there "staff are to remain dressed at all times and there be no body to body massage or sex offered at this facility?"---Yes.

And you would have noted that statement at the time?---Yes.

Would you have familiarised yourself at the time with the conditions of development consent that the premises was then operating under?---Sorry, repeat that again, please.

At the time that you were assessing this application in 2007, sorry, I'll go back a step. This application related to some renovations of the premises? ---I'm not sure that this one is the, I think this might be the original consent, I didn't actually issue this one. I'm not sure, I can't, I can't verify, I need to see the application file.

If you turn to page 43 - - -?---Because, just, sorry to interrupt, it's just that the conditions that are put on here are more planning related conditions. I normally wouldn't have to do that, that'd be done by a planning officer.

10

Which page are you looking at now, Mr Karkowski?---45 and 46.

And those are matters set out in the Statement of Environmental Effects that was submitted on behalf of the applicant?---Oh, yeah, sorry, yeah, I'm with you.

And if you turn to page 43 you'll see a date down the bottom of the page November 2007?---That's correct.

20

Does that assist you to recall that this was in fact a document submitted which you would've assessed in 2007?---I'm not sure, there was a few applications on this site that was the original application and there was some subsequent section 96 variations in relation to some minor changes to the business and some signage. I just, I can't recall which documents belong to which, I'm sorry.

I see. But do you agree with me that this statement would've been submitted at some stage in 2007?---Quite possibly, yes.

30

And reviewed by you?---I don't know that I reviewed those documents. I can't, I can't recall back that far without having seen the file.

Would you have familiarised yourself with the terms of the original development consent granted to this premises under which it was then operating?---Not necessarily. I would've probably referred the application to Planning just to let them know that it was a same use and there may have, I can't recall whether there was or wasn't planning conditions, they may have put the same conditions on from the previous consent, that's normally what would happen.

40

So the application that you were assessing didn't involve any change of use, that's correct isn't it?---Not to my knowledge, no.

Except perhaps to the extent that there was a statement that it was to be for females only that might involve some change?---That's, that's quite possible, yes.

All right. And so the outcome of your application would not change the conditions that had originally attached to the use of the premises?---No, I'd have no reason to change them.

All right. And you understood, didn't you, that the, that your granting development consent sought in this application would not permit the premises to operate as a brothel?---That would appear so.

10 While you have that volume there could you just turn to page 49 please. I'm sorry, 48 and 49. And, indeed, through to 52?---Yep.

Is that an example of the worksheet that you would fill out in determining a Fast Track application?---That's correct.

That's what we were referring to earlier?---That's correct.

The proprietor of the Oriana Bath House business is a lady by the name of Misook Kang known as Grace?---I know her as Grace.

20 You know her as Grace. And what's the nature of your relationship with her?---I got to know her during the application process. She, actually no, I didn't, sorry, I got to know her after the application had been lodged. I dealt with the builder and the architect during that process.

And at some stage after the application was lodged but not yet determined you got to know Grace?---I think I met her during the construction stage, she might've been on site or something like that.

30 Okay. And Grace lives in Australia does she?---I believe so, I've seen her around Chatswood so I'm assuming she does.

And what's your understanding of her country of birth?---I think she's Korean.

Korean. You also know, don't you, the manager of the Oriana Bath House Mr Hyuk Il Kwon or otherwise known as Mike Kwon?---I met, I do know Mike.

40 And you got to know him in about late 2008, is that right?---I'm not sure of the exact time but possibly around that time I would say, yes.

In any case he's been the manager of the Oriana Bath House for a couple of years now hasn't he?---I believe so.

And what's the nature of your relationship with Mike Kwon?---I just got to know him during the, towards the end of the project as well and I understood he was managing the place.

And you know, don't you, that the Oriana Bath House offers sexual services to customers?---I'm not aware of sexual services, no.

You know, don't you, that they offer naked massage?---I do know that, yes.

And you know, don't you, that they offer what is referred to as hand relief meaning masturbation?---That's correct.

10 That's a sexual service isn't it?---I'm not sure of the exact definition of sexual service but I'm assuming it might cover that.

And you know, don't you, that if the Oriana Bath House were offering services of that nature to customers for payment that would amount to using the premises as a brothel?---I don't know the definitions but if that's one of the definitions I'd have to agree.

20 But you agreed with me earlier that you are familiar with the relevant planning instruments?---I do have familiarity but I don't have a full working understanding of the development codes. My, I don't, I'm only a building officer, I don't deal with planning issues but I do have a general understanding of planning concepts.

Well, you were the council officer responsible for determining the Oriana Bath House's development consent application in 2007?---That's correct. That's correct.

And you understood the purpose for which the premises were to be used as stated in that application?---That's correct.

30 And you understood that that use did not involve use as a brothel as stated in the application?---At the time that I signed the project off it was being used as a female only.

But you know, don't you, that subsequently the sexual services that I've described have been offered by the Oriana Bath House to customers?---Yes, I did know.

40 And you know that in addition to the services I've mentioned the Oriana Bath House has been offering oral sex to customers?---I'm not aware of that.

Not aware of that. And, indeed, sexual intercourse?---I'm not aware of that.

You're not aware of that. Well, Mr Karkowski, I want to suggest to you that you are aware of that because you've been regularly using those services yourself for some time?---I'm not aware of it that it was general, general to the public but I am aware of it under other circumstances.

THE COMMISSIONER: I beg your pardon?---I'm not aware of it being available to the public, I'm just aware of it under other circumstances.

What circumstances?---I, I had a relationship with one of the girls there.

MS WILLIAMS: That relationship involved you attending the Oriana Bath House whenever it was convenient to you didn't it and receiving sexual services there?---That's correct.

10 And over what period of time has that been occurring?---I don't know exactly but I would say probably for about a twelve month period.

Possibly longer?---Possibly, I'm not sure exactly, I think it's been about twelve months, maybe a little bit longer, I'm not sure.

And the girl in question her name was Tina, is that correct?---That's correct.

Is Tina the only person you have ever received sexual services from at the Oriana Bath House?---No.

20

There was another person by the name of Anna, that's right isn't it?---That's correct.

And sometimes when you visited there if Tina or Anna weren't available would you receive sexual services from somebody else?---Yes, I would.

So it's not really a case of one relationship that involved you visiting the Oriana Bath House is it, Mr Karkowski?---No.

30 You had an arrangement with Mike and with Grace that you could visit the Oriana Bath House whenever you liked and receive those services, that's correct isn't it?---No, I didn't have an arrangement.

You didn't pay for those services did you?---No, they never charged me.

And you knew, didn't you, that you weren't charged because of your position with the council?---I didn't know that, no.

Why did you - - -

40

THE COMMISSIONER: Why did you think you were being, were being offered these free services?---I believed that they, they found me quite helpful during their application process when they initially started and during the process of the inspections and just the whole process of getting their business open. I seemed to help them out and get along with them and I just, that's all I can - - -

This was as a reward?---I don't know that it was a reward.

Did you think it was a reward?---I didn't see it as a reward, no.

What did you see it as?---I saw it more of a gesture of thank you or thanks or gratitude for help.

You must've given them a lot of help?---I wouldn't say a lot of help. I wouldn't say a lot of help, Commissioner.

10 Why do you think they kept doing it?---I don't know, I never asked.

MS WILLIAMS: Mr Karkowski, you knew, didn't you, that one of the reasons that they were going to provide these services to you for free was that you would not then report the breach of the Development Consent to the council?---No, there was no agreement to that, that effect.

20 But you must have understood, didn't you, that if you, being an officer of the Council, knew that they were operating in breach of their Development Consent, they would apprehend that that could get them in trouble?---I, I could have, I could have reported them but I never did.

And you understood, didn't you, you must have understood that they would be anxious to ensure that you didn't report them?---Possibly, yeah.

Didn't you, didn't it ever cross your mind that that was one reason why they were prepared to offer you these services for free?---No, not really, it didn't cross my mind, no.

30 But if you thought about it that would have been obvious, wouldn't it?
---They may have had some fear of me knowing that I worked for council, possibly, yeah.

THE COMMISSIONER: But you couldn't have, after a while you couldn't, well, it would have been difficult for you to report what they were doing to council wouldn't it?---Yes, it would have.

Because you would be implicating yourself?---Not really because I, I didn't ever protect them, I just didn't disclose what they were doing.

40 But you were taking advantage of their services that they offered you?
---Possibly, yeah.

What do you mean possibly?---Well, it could be viewed that way I suppose.

What other way could you view it?---I don't know.

So you put yourself in a position where you couldn't tell the council about their services even though it was in breach of the Development Consent?

---Yes, that's correct.

And you did that deliberately?---I don't think I did it deliberately but it, it, it seems that way, yes.

Why don't you think you did it deliberately?---Because I, I never had that intentions in, in when I went there, it wasn't, I wasn't there to protect them.

10 But you knew they weren't allowed to do what they were doing?---Once I found out what they were doing I knew it wasn't something that they should be doing.

And you really in a way helped them to do it by taking advantage of the services they were offering?---Yes.

20 MS WILLIAMS: Mr Karkowski, there will now be played some recordings of telephone conversations between you and various other persons made pursuant to warrants issued under the Telecommunications Interception and Access Act 1979. The first one is a telephone conversation with you and Mr Bill Geroulis on 25 June, 2010 at 11.27am in the morning. Commissioner, you find the transcript, which I will make available to Mr Karkowski's counsel, commencing at page 118 of volume 1.

TELEPHONE INTERCEPT PLAYED

[11.04am]

30 MS WILLIAMS: Mr Karkowski, the place where you and Mr Geroulis were planning to go, upstairs to Help Street in that telephone conversation, that's the Oriana Bath House, isn't it?---That's correct.

And Mr Geroulis did attend the Oriana Bath House with you on occasions, didn't he?---Yes, he did.

And he received sexual services also, didn't he?---I assume that he may have, yeah.

And he paid for those services, didn't he?---Yes, that's correct.

40 Paid a standard rate of \$165?---I think so.

So it's not the case, is it, that these sexual services were provided only to you because of your relationship with some particular girls working at the Oriana Bath House, is it?---Ah, sorry, can you repeat that again, sorry?

It's not the case, is it, that these sexual services were provided only to you because of your particular relationship with some girls working at the Oriana Bath House?---No (not transcribable)

They were provided to others for payment?---Yes.

And your evidence earlier when you suggested that they were, you didn't know they were being provided to members of the public, that's incorrect, isn't it?---Yes, that's right.

I'm sorry, I didn't quite hear you?---Yeah, you're right, sorry, I did, I misunderstood what you were talking about.

10

In that conversation we've just heard you say to Mr Geroulis the only thing is I won't be sponsored. What did you mean by sponsored?---That was taking Cialis.

And what is that?---Cialis a drug used commonly for impotence.

And where did you get that drug from?---I would usually source it from a friend of mine named Sam.

20

And did you pay him for that or that was something he provided to you for free?---No, he, he used to give it to me.

THE COMMISSIONER: Sam who?---Sam Koura.

MS WILLIAMS: Mr Karkowski, there's a further telephone conversation between you and Mr Geroulis on 6 July, 2010 at 6.46pm in the evening which will now be played.

30

THE COMMISSIONER: What page of the bundle is it?

MS WILLIAMS: You will find that, Commissioner, at, I'm sorry, we've taken extracts from this one so I'll hand up - - -

THE COMMISSIONER: Yes. I take it that at some point you're going to tender the relevant documents?

MS WILLIAMS: I will be tendering the files, Commissioner, yes.

40

TELEPHONE INTERCEPT PLAYED

[11.09am]

MS WILLIAMS: Mr Karkowski, the 69 action you referred to in that telephone conversation, that's a reference to oral sex, isn't it?---Yes, it is.

And your answer when I asked you earlier whether oral sex was provided at the Oriana Bath House, you said no, that was false evidence, wasn't it?

---I, I, I wasn't aware of it to others, but to myself, when I was referring to, you, you were asking me whether, you weren't, I don't know if you were referring to me or others, but to others I don't know, but to me I can confirm yes.

Ah hmm. And you know that those services were also provided to Mr Geroulis on occasion, don't you?---From what he tells me, yes, but I'm not sure to what extent.

10 THE COMMISSIONER: So you weren't telling the truth when you were asked the question by counsel assisting, were you?---I, I don't know if I understood the question clearly, whether she was referring to others or myself.

But as far as you are concerned, you did have oral sex at the bath house, didn't you?---Yes, I did.

20 And as far as you knew about other people, you knew that other people had oral sex as well, because they told you that?---Um, with, in the case of Bill, yes.

Yes. So your answer wasn't true, was it?---I, yes, it wasn't, no.

And it was deliberately untrue, wasn't it?---I don't know if it was deliberate but I - -

Well, you knew that it wasn't true, didn't you?---Um, I'm still a bit nervous, Commissioner.

30 But nervous, being nervous doesn't stop you from telling the truth, does it? ---No, I don't intend on hiding or lying about anything.

MS WILLIAMS: Mr Karkowski, that conversation with Mr Geroulis took place, as I've indicated, at 6.46pm on the evening of the 6th of July last year?---Yes.

And at the time you were speaking to him you had just left the Oriana Bath House. That's correct, isn't it?---That's correct.

40 And you had been there for I'm guessing an hour, an hour and a half. Would that be about right?---About an hour.

About an hour. Now, you claimed overtime on that day for hours worked between 4.00pm and 10.00pm?---Yes.

Do you recall that?---Ah, I don't recall it, but possibly, yes.

All right. I'm going to provide you with another volume, volume 8, and I'll ask you to turn to page 65 of that volume. The pages there again in the top right-hand corner?---8, or 7 or 8?

10 Volume 8. I'm sorry, we've given you a wrong volume. Thank you, Mr Karkowski. Page 65. I'm sorry, Mr Karkowski, I hadn't realised that this page is quite difficult to read. The Commission officers have made some clearer copies which I will make available. That's a form completed by you, isn't it, claiming overtime for the hours 4.00pm to 10.00pm on 6 July, 2010?---That's correct.

So do you, having had an opportunity to see that form, do you acknowledge that you were claiming overtime for a period during which you were receiving sexual services at the Oriana Bath House and talking to you friend on the phone about it?---Yes, I do.

20 Mmm. Did you do this on other occasions, claim overtime for hours during which you were not working on council business?---It wasn't common, but it had happened, yes.

Ah hmm. And you told me earlier that you would obtain prior approval from Mr Rowan before working overtime. Would you, do you recall whether you spoke to him about working overtime on this occasion? ---I would have spoken to him about it, yes.

30 Ah hmm. And is it the case then that you lied to him about what you were going to be doing between the hours of 4.00 and 10.00pm?---I don't know about lying to him. There was, there was occasions at work where I didn't have a lunch break or I didn't have time to have lunch breaks so I would take my break later in the day or I, I would start work, work longer hours, like I'd start earlier than I, and I always clock on to start or stay back a little bit later so my hours were a little bit flexible in that regard. Well, I worked my hours but the way I um, um, I probably worked more hours than what I actually used. Um, like I might not have had my lunch break, I can't recall, but there was a lot of times where I didn't have my lunch break or might have had a 15-minute stop and continued on.

40 And your lunch break is ordinarily one hour. Is that right?---Yes, that's, that's the standard time, yes.

And is there a system where you work an extra half hour day so as to be able to have a day off every three weeks, a flexiday?---That's correct.

And did you ordinarily take those flexidays?---I took them, I, when I first started I used to take them on a regular basis during those three-week periods but my workloads were quite heavy so I wouldn't necessarily take them, they might build up and I'd take them when I needed them.

So you'd take them in a block rather than necessarily every three weeks?
---No, not necessarily a block, just depending on if I had something on or if I had to go away or just used them when I could actually use them.

Ah hmm. And so you were supposed to work your core hours from 7.30 till 4 o'clock with either a half-hour or one-hour lunch break, depending on what you were doing with your- - -?---Yeah.

- - -accumulation of time for flexidays. Is that right?---That's right.

10

And working hard or not taking your lunch break doesn't mean, does it, that the council should pay for your time in the evening attending a brothel?
---No, I don't believe it should pay for it, but I, I do believe I'm entitled to take time off to do what I choose to do with my lunch break.

THE COMMISSIONER: But you have you lunch break, what time, between 1.00 and 2.00?---Oh, it could vary. Sometimes I never had lunch, depending on the work I was doing, Commissioner.

20

You're not suggesting, are you, that the time you spent at the brothel was your lunch break?---I wouldn't call it lunch, but I would say, take it as time off.

MS WILLIAMS: You knew, didn't you, when you filled in this overtime claim form that you were representing to the council, telling them that you had been working on council business during the hours of 4.00 and 10.00pm?---That's correct.

30

And you knew that that was false, didn't you?---Yes.

And you knew that the council would be paying you money for that overtime in the belief that you had been working on council business during those hours?---Yes.

Mr Karkowski, I'll ask you again. Did you receive other sexual services at the Oriana Bath House other than the ones we've already established? Did you receive full intercourse services there?---I did, yes.

40

Ah hmm. And to your knowledge, were other people receiving those services there for payment?---Not to my knowledge.

THE COMMISSIONER: Mr Karkowski, not telling the truth to the Commission at this public inquiry is an offence. And if you're found guilty the maximum imprisonment is five years in gaol. You do not know what evidence the Commission has?---That's correct.

I'm simply pointing out to you that it really is very much in your own interests to tell the truth and nothing but the truth. I'm not suggesting

you're not telling the truth, just, I'm just pointing out to you that there may be serious consequences if you do not tell the truth. Do you understand that?---I understand.

Yes, Ms Williams.

MS WILLIAMS: Thank you, Commissioner. Mr Karkowski, the nature of your arrangement with the Oriana Bath House was that you could attend there at any time you liked, that's right isn't it?---I didn't have an
10 arrangement but I, I could go there when I liked, yes.

That was the practice in effect?---Yes.

You were never charged for the services?---I think I might've paid once.

And when was that?---It was a good night, I went out with a few friends and we all came in together and I think I paid that time. That's the only time I can recall.

20 And apart from that you never paid and you were never asked to pay in fact?---No.

And you would go there as frequently as you liked from several times a week to perhaps a couple of times a month?---Yes.

Depending on what suited you?---Yes.

THE COMMISSIONER: And surely you understood that you were being provided with these benefits because you have a position of power in
30 relation to the bath house, you could actually get them into serious trouble if you wanted to, isn't that right?---Yes, but I never threatened them.

No?---It was never talked about.

And is there any other reason why they could possibly offer you these benefits on this long term basis?---I can't give a reason, no.

MS WILLIAMS: Mr Karkowski, you knew didn't you that receiving these benefits placed you as an officer of the council in a position that others
40 might think would influence you in the performance of your job?---Sorry, can you just repeat that again, I didn't quite understand.

You understand that appropriate conduct for council officers depends, in part, on what others might perceive. Do you understand that?---Yes.

And you understood didn't you that others, if they had known of your conduct in frequenting the Oriana Bath House, might reasonably think that

you would be influenced in the performance of your job as a council officer?---That could be correct, yes.

10 And, in fact, you were influenced weren't you, that's the reason why you never reported the illegal operation of the premises as a brothel?---I wasn't influenced, it was, it was never discussed that I'd protect them or not disclose it, it just didn't, it just went without saying but I didn't feel it was my responsibility to report them just given my scope of my, my role in council as a building officer. And obviously I didn't, was a bit embarrassed that I was going there, I didn't want to exactly report where I was going, a bit personal.

But the appropriate thing to do would've been to report it wouldn't it?
---Yes.

20 And the only reason you didn't is because of the personal benefit that you were deriving from the services you were receiving there, that's right isn't it?---Well, I didn't intentionally do it, not report it, I just didn't feel it was my position or my role to report them.

But you knew at the time that the appropriate thing to do would've been to report it to the Compliance Unit of the council didn't you?---Yeah, I could've reported it, yes.

And you know, don't you, that councils take questions of premises operating illegally as a brothel very serious?---Yes, I do.

And you knew that Willoughby Council took it very seriously?---Yes.

30 And you also know, don't you, that it's something that is very difficult and expensive and time consuming for a council to prove?---Yes.

Did you know that a complaint had been made to the council about the Oriana Bath House operating as a brothel?---I believed there was something on the file so to speak, yes.

40 On which file?---It was on, I'm not sure, I saw some document that there was produced that they had a complaint about them of some kind of nature, of some, it was a lengthy document, I didn't read it in its entirety. Yeah, that was some sort of complaint about it.

Was this a file that you saw that was maintained by the Compliance Unit?
---I'm not sure which file it was on, I only had the, I would've had the Development or Construction Certificate file if anything but I'm not sure, I just saw some document, it might've even been one of the compliance officers that, that had the document, I can't recall, I just saw the document.

You wouldn't ordinarily see files held by Compliance Unit officers of the council would you?---No, not necessarily. The same files that we had they had, like it might've been a file that went to the Development Application file or the Property file, it would just be either in my office or other offices, they just travel. They're not sort of secret files. I don't understand your question but - - -

10 Well, perhaps I was making a wrong assumption. I was assuming that a file relating to development consent would be separate from a file relating to compliance issues in relation to the same premises, is that the case?---I don't know if, if the complaint was about the development consent itself, it would usually go on the development file if it was related to the use. If it was a property matter it would go to the property file.

And a complaint to the effect that premises were being operated illegally as a brothel which file would that go to?---I'm not sure. It didn't come to me, I didn't, I might've seen it on the system or something like that but I don't know which file it ended up on.

20 And how would you have seen it on the system, would you have had to go looking for it?---No, I can't recall whether it was the system or I saw it in hardcopy version, it might even be Compliance that, that come and spoke to me about it at the time that it occurred.

And why would they come and speak to you about a matter like that?
---Because if they, they knew, they wanted to know probably the history of what the place had been approved as.

30 They would see that wouldn't they from the development file?---Yeah, they would but they might've just asked questions about it generally.

And do you recall roughly when it was that you saw this document you have a recollection of?---I've got no idea of the time or date I'm sorry.

Was it after you started going to the Oriana Bath House and receiving services there?---I, I can't recall, I really couldn't recall.

40 Did you speak to Grace or Mike about this issue that the Compliance Unit was investigating?---No, but they did ring me and, and said that, that they've, they've had complaints, 'cause they had, they had a few issues, I think they had a health complaint from a women who had sores on her body from, from the Health Department or something like that so they would sometimes ring me and say that they've got a problem with something there, like in relation to that or there was some waterproofing, a leaking pipe issue and I think that time they, they might've mentioned it.

Were there any other matters that they would ring you about other than the three that you've mentioned, the health problem, the waterproofing and the Compliance Unit?---No, no, that's the only three I can recall.

10 And taking them one by one what help or advice, if any, did you give them in relation to the health issue that they raised with you?---I told them that it's not my area of concern, it's the, our Health section and I told them that it was very important that they chlorinate their baths, a reticulated chlorination to prevent health, health problems, biological contamination or
10 whatever. But I said you'll need, I think it was being dealt with by the Health Department and the council's Health Officer at the time.

I see. And what about the waterproofing problem did you give them any assistance or advice in relation to that?---No, I went to the premises 'cause it was a (not transcribable) the business downstairs, the Korean restaurant downstairs and there was some complaints, there was some concern about it leaking into the premises so I thought I'd better go down and have a look at it. And, and, and they, I suggested to Grace to speak to her builder firstly because obviously it might've been some substandard work that he'd done,
20 plumbing wasn't my field of expertise but there was obviously waterproofing issues possibly, I couldn't, it was hard to determine whether it was a plumbing issue or a waterproofing issue and between them all they sort of tried to work it out. No one was sort of, there was no angst between them but they tried to remedy the problem and I believe they, they might've fixed it up.

30 But there was no formal complaint that had been made by the tenant downstairs?---No, it was just she rang me about it or saw me and said that we've got a problem and I think there was some feud between them at some early stage and I just sort of acted as the mediator between them and to try to get the problem fixed up 'cause obviously they both had a business to run and - - -

40 And you did that didn't you as, in effect, as a favour to Grace, that's right isn't it?---I wouldn't say it was favour to Grace, I'd say, well, it could've been seen as a favour to Grace but it was more there was an obvious problem associated with water leaking into a food premises was my main concern. Yeah, obviously that's not a healthy situation, you can't operate a business with water coming into it.

But as a busy development officer, building inspector working for the council you ordinarily wouldn't become involved in those issues between two tenants when no formal complaint has been made to involve the council would you?---I, I was asked for, I, I was often asked for help from people in all types of areas in council 'cause they knew that I looked after the CBD so it wasn't uncommon that sort of thing would occur.

But one of the reasons you were prepared to go down there and mediate and look at the problem is because of the benefits that you were receiving from the Oriana Bath House isn't it?---No, that wasn't my main focus. My main focus was the concern about the (not transcribable) at the time.

10 And you mentioned that Michael and Grace called you about the compliance issue that council was dealing with. When did that happen?---I don't know the exact date but they mentioned something about that the compliance had been to visit as a result of a complaint, some sort of complaint that was lodged against them.

And was it before or after that that you saw a document relating to the compliance issues that you've mentioned?---I can't recall. It might have been around the same time because it would have been put into council, I can't recall, but I, I do remember vaguely seeing the document. And I do remember the incident from them calling me about it.

20 Did you go looking for the document after they called you about it?---Yes, I did because I needed to understand what the problem was and yeah, I did go looking for it.

30 And why didn't you simply leave it in the hands of the compliance officer of council?---Because Grace was, it was hard to understand Grace and Mike's English, particularly Grace because of their broken English. And I didn't quite understand what it was that they were trying to explain to me. And that's why I went to look at the document to see what it was actually about and then, and then I explained to them that it wasn't my area. They're going to have to explain it to compliance how they're running their business and what they're doing with their business. It wasn't something I got involved, could get involved in.

40 And how did you go about looking for the document? Did you speak to the compliance unit or did you make your own searches?---I think the compliance unit came and saw me. I eventually, I can't remember how I got the document, but compliance I think came and saw me just generally about the business and asked me and they showed me a copy of the, it was like a complaint, it was a multiple, it was quite a thick document. I think it had internet sort of printed pages of their advertising or something like that. It was quite a thick document, that's my own recollection of it.

And at this stage were you receiving sexual services at the Oriana Bath House at the time this discussion occurred?---I can't recall, possibly yes.

Assuming that you were did you mention to the compliance officers that that was the case?---No I didn't.

So you knew that your receipt of those services at the Oriana Bath House was corrupt didn't you?---I don't believe there was any arrangements to protect them, I never went out of my way to protect them. It's just I never

dobbed them in to the council for what they were doing. I always sort of thought, the belief that if they got caught it was their responsibility to, you know, sort out their business.

But it was something that you didn't want anybody at the council knowing about wasn't it?---Oh, it was not something I wanted to advertise, no.

10 THE COMMISSIONER: How did you find out about it?---I found out, 'cause the place when I originally approved it was a legitimate female only place and, and once it had been signed off and occupation had been granted I really had no reason to go there and then just in the circle of friends in Chatswood someone mentioned, this is quite a while after it had been operating as a female only, and someone mentioned, oh, you know, they're operating as a male, a male place now, it's changed. And I sort of was a bit in disbelief because I knew that it had opened as a legitimate premises.

When you say a male place you mean as a brothel?---No, I don't mean as a brothel, I meant as a male massage, sauna, massage place.

20 I see. So what did you do?---Well I didn't run up there, but I did go up there eventually and - - -

And what did you say?---I didn't say anything. I saw Grace and I think she sort of read between the lines and, and she asked me if I'd like to come and, come in and try it.

Well what do you mean she read between the lines?---Well I think she knew that I, I'd found out 'cause I turned up there and then - - -

30 Found out what?---That she'd been, she changed the business over to a female, from a female to a male premises.

And then?---And then she offered if I would like to come in and try it and I did and that's how it started.

But that wasn't just massage?---No, it was hand relief and other favours.

All right.

40 MS WILLIAMS: Mr Karkowski, when one attends the Oriana Bath House there's a reception area. Correct?---That's correct.

And one is then shown into one section of the premises to undress, put on a robe and taken through to an area where there are showers and saunas and the like?---That's correct.

And in that area traditional Korean saunas, baths and massages are applied. That's correct?---That's correct.

And then if one wishes to receive sexual services one is shown through to a separate area on the other side of the reception desk. Is that correct?

---That's correct.

And there's another waiting area behind there. Is that right?---I don't know of a waiting area behind the - - -

Well from there one is shown into a different private room where the sexual services would be performed?---That's correct.

10

And the times that you attended there you from time to time saw other men go into that area where private rooms are for sexual services didn't you?

---Yes, that's correct.

So you were fully aware that the services were being provided not just to you or any of your friends but to members of the public generally. That's correct isn't it?---Yeah.

20

You received some information on about 7 June last year suggesting, which suggested to you that this Commission may be investigating your activities didn't you?---When did you say, 7 June?

On about 7 June last year - - -?---Yep.

- - - you received some information to suggest that the Commission may be interested in a gift to you of some suits. Is that correct?---Yes.

Do you remember that?---Yeah.

30

And that caused you didn't it to call Grace - - -?---That's right.

- - - to try to speak to Mike at the Oriana Bath House?---Yes.

And to ask them if anybody had been there asking about your activities there didn't you?---That's correct.

40

And that was because you knew didn't you that it was wrong for you to be going there and receiving these services for free?---I was more concerned about the embarrassment of what it would do to my marriage, my wife and, and just my, it was a personal thing. I didn't want sort of everyone to know about it.

But you also knew that it was wrong from the point of view of your position with the council to have been receiving the services there for free when the place was operating illegally and you weren't disclosing that to the council. You knew that didn't you?---Yes.

And you, did you ask Grace when you spoke to her on that occasion not to tell that you had been there if she was asked?---No, I just said I was a bit concerned and I asked her whether they filmed, whether their cameras were working at the front desk. And she said, yes, the do. And I sort of thought, well great, then that's about it. I did tell her, you know, obviously I didn't stop the investigations, it's just I was concerned about you know, the fact that I got found out.

10 Did she indicate to you what she would say if anybody came asking?---No.

Did she indicate whether - - -?---I didn't really speak to Grace, it was more to Mike.

When you first made contact with the Oriana Bath House about this, Mike wasn't available was he, so you had to speak to Grace?---I can't recall to be honest. I spoke, I ended up speaking to, to Mike in the end 'cause Grace's English wasn't the best, so I usually, I could speak to her but not the same as with Mike. Mike was a little bit more easier to understand and explain things better to him.

20

But at any case the reason why you made contact was because you didn't want either your family or the council finding out about your conduct?
---That's correct.

And you didn't want the Commission finding out about your conduct?---No, I didn't want anyone to find out.

30 Right. Mr Karkowski, I'll ask you to hand back the volumes that you have in front of you and I'm going to pass you another volume labelled 7. Mr Karkowski, I want to ask you some questions about the New Shanghai Restaurant in Chatswood Chase. You know the proprietor of that restaurant, he's a man by, his full name is Zhong Yuan Chen, you may know him as John Chen?---That's correct.

And you were introduced to John Chen about two years ago by his father, is that correct?---Yes.

40 And his father operates another restaurant up in the Lemon Grove, is that right?---That's correct.

Now, during the period April and May 2009 you were aware, weren't you, that Mr Chen was trying to source a site and negotiate the terms of a lease for his restaurant that's now in Chatswood Chase?---Yes, I was aware of that, yes.

And during that period Mr Chen took you to lunch and dinner on a number of occasions, is that correct?---Yes, he would oblige some dinner on a friend, on a friendship basis, yes.

One such lunch I want to suggest to you was on 28 April, 2009 at the Rockpool Restaurant in the city?---Yeah.

That was a Tuesday, a day which was a working day for you?---Yeah.

And Mr Chen paid for that lunch?---Yeah, he did.

You didn't make any offer to pay for it?---No, I didn't.

10

And at that stage Mr Chen was seeking advice from you, was he, about sourcing a location for his restaurant?---My, my recollections were we just generally discussed, it, it was discussed but not at great detail.

What else were you talking about at the lunch?---Oh, wine, food, family, a bit of everything. It was just, it wasn't particularly just for development but he did, we did talk about, I was a bit surprised that he was going into, knowing the background of the type of business and the type of food that it was I was a bit surprised that he was going into a prestigious shopping
20 centre like the Chase to do business and, yeah.

And that was another subject of discussion, was it?---Yeah, we just discussed general, general conversation.

The lunch was a reasonably long one, is that fair to say?---I can't remember the duration.

Would about two and a half hours be about right?---Probably about right, yeah.

30

And so adding travel time from Chatswood to the city and back again, you would have been out of the office for about three and a half hours, is that correct?---Three, three and a half, possibly, yeah.

And did you tell Mr Rowan when you left the office to go to this lunch where you were going?---No, I didn't.

Did he ask you any questions about where you were going?---No, he didn't.

40

When you came back did you give him any indication of where you had been?---No.

And he didn't ask you?---No.

And this was consistent with what you described earlier, the general practice was that you generally weren't asked questions or required to explain your absences from the office?---No, I didn't generally (not transcribable)

And Mr Rowan would have assumed, if he'd noticed your absence, that you were out on sites doing council work, correct?---I'm assuming that, yeah.

You knew didn't you that the reason Mr Chen wanted to have lunch with you was because of your position in the council?---I don't know his reasons, you'd have to ask him his reasons but we, we just got along, he was a similar age to me and we just had things in common. He had, liked nice wine, so did I and, yeah. I don't know what his motives were.

- 10 Well, I'm asking you, Mr Karkowski, what you assumed, you assumed, didn't you, that one of the reasons he wanted to take you to lunch at the exclusive Rockpool Restaurant at his expense for two or two and a half hours midweek was because, as a result of your position in the council you may be able to be useful to him in some way?---Maybe, it's, it's quite possible how it could be perceived.

Could you turn please to page 45 of volume 7 that you have in front of you and just take a moment to look through that page through to page 56?---Yes.

- 20 That's an email, isn't it, that you received from Mr Chen shortly after this lunch on 28 April, 2009?---That's correct.

And it attaches, doesn't it, a lease proposal that he has sent on to you?
---That's correct.

And he was asking you, wasn't he, for your assistance or advice about that lease proposal?---He was, yes.

- 30 And that was one of the, the reasons that he took you out to lunch as you perceived it on 28 April, isn't it?---That's right.

On the day of 28 April you claimed six hours' overtime between the hours of 4.00pm and 10.00pm that evening, didn't you?---I can't recall, I possibly did, yeah.

All right. I'll ask for volume 8 to be handed back to you, Mr Karkowski, and I'll ask you to turn to page 2 of that volume. You may find some documents in the front that don't have numbers?---Oh, sorry.

- 40 That's all right, the first page, the page in that document numbered 2 in the top right-hand corner.

THE COMMISSIONER: Did you find it?---Yeah, that - - -

MS WILLIAMS: Do you recognise that as an overtime payment claim form completed by you in respect of the date 28 April, 2009?---Yes, I do.

Claiming overtime from 4.00pm to 10.00pm?---Yes.

That's your signature underneath, above, rather, the words "employee's signature?"---It is.

And is it Mr Rowan's signature or Mr Woodhams above "departmental head?"---Mr, Mr Rowan.

Mr Rowan. Prior to working these hours did you discuss the need to work the hours with Mr Rowan?---I usually would, yes.

10

Do you think you would have told him that you needed to work the overtime in part because you'd been out to lunch for a couple of hours that day with Mr Chen?---No, I didn't tell him that.

But he would have assumed, as you've agreed with me earlier, that your absence from the office would be because you were out on site carrying out council work, wouldn't he?---He would assumed that, yeah.

20

And when you submitted this claim for payment did you tell him at that stage that you'd been out for lunch for a couple of hours?---No, I didn't, didn't tell him that, no.

It's fair to say, isn't it, that your lunch, the time you spent at lunch with Mr Chen wasn't spent on legitimate council business?---Some council business may have been discussed but not of the whole thing, no.

30

Well, you agreed with me earlier that it wasn't part of your role with the council to assist people or advise them about finding spaces and commercial leases?---No, I, I didn't do that, I referred him to Bill Geroulis for that.

Well, what part of the lunch do you say involved council business, legitimate council business?---It was just a discussion about him going into that premises for future business, that part of it, that was the only part of it.

40

But that wasn't your role as a building inspector with the council to have that kind of discussion was it?---No, it just, he would, he was just discussing the space that he was going into and he knew that I knew just the general confines of the development, he showed the spot where he was looking at going and just general discussion about it, that's all it was.

At that stage he hadn't submitted any application for Development Consent had he?---No, he hadn't.

So I'll suggest to you again that your lunch with John Chen on 28 April was not, I withdraw that, did not involve legitimate council business?---No.

When you say no you're agreeing with me, is that - - -?---I am but some of it would have been discussing council business in some respects but the majority of it, no.

And to the extent it did involve council business, that was council business outside of your particular role with the council, wasn't it?---I took it as my own time, yes.

10 I'm sorry?---I, when I, when I took that time I wasn't assuming it to be work time, no.

Well, ordinarily your core working hours would finish at 4.00pm, that's right, isn't it?---That's right.

And so do you say, do you, that your two or two and a half hour lunch with Mr Chen on 28 April, that was done on your own time?---No, no. I'm saying that it was nothing, it didn't have, didn't have much to do with the council's business, no.

20 Ah hmm?---Some, some matters were discussed that were relevant to council but the majority of it wasn't.

And it wasn't really an appropriate way to spend your core working hours, was it?---Say it again, sorry?

It wasn't an appropriate way for you to be spending your core working hours for the council?---Um, no.

30 Ah hmm. So at least an hour of that, if we assume the lunch was two, two hours, at least one hour of that was council time?---That's right.

And yet you claimed overtime commencing from 4.00pm when your core working hours finish that evening. And you agree with me, do you, that that was wrong to do that?---Um, yeah, it was wrong, yeah.

40 Ah hmm. And you knew that when Mr Rowan was signing off on the overtime claim form that he would have been assuming that your core working hours had been spent on legitimate business for the council and the extra work you needed to do was from 4.00pm onwards. That's right, isn't it?---That's right.

So you knew, didn't you, that he would have signed that form under a misapprehension as to what the true position was?---Yeah. Um, just in relation to that, there was numerous times, like I said, started working hours before my core working hours um, because of my workloads, and there was often times outside of the scope of overtime because the council was quite sensitive to overtime payment at times 'cause of the amount that I was doing, that I would um, do some work from home, I would take files home

and um, do work from there and um, make up hours, because just the sheer volume of work that I had. So um, I took it upon myself that those hours that I did in addition before and after that I didn't claim as overtime to be, to balance out. I don't think I ever intentionally went out of my way to rip the council off and I think the council knows from the sheer volumes that I, that I, that were output by me that, that there was never any clear intention to do so.

10 But you know, don't you, that the appropriate thing to do would have been to simply claim overtime for the number of hours that you actually needed to work overtime?---Yes, that's correct, but work was um, I had pressure at times when I approached Peter Rowan, and I think that came from higher above, about the number of hours I was doing and um, I did, I do like my work, but I wasn't going to do it at the expense of my family. In some cases I did and um, perhaps that's why my marriage isn't the best, because of the amount of hours I was spending with my work.

Ah hmm. And you were also spending a large amount of hours out at lunches like the one we've been discussing on 28 April, weren't you?
20 ---At, at times I did it during work time but there was many other times that I did it in my own time during flexi, flexi (not transcribable)

And you didn't tell Mr Rowan that you were going out to lunch on 28 April because you knew, didn't you, that he would consider that inappropriate?
---No, I (not transcribable)

Don't you agree that he would have considered it inappropriate for you to be spending council working hours at a lunch that had nothing to do with your role for the council?---Yeah, he wouldn't have, yeah, (not transcribable)
30

Ah hmm. And he would have also considered it inappropriate, wouldn't he, for you to be going to lunch with a potential applicant for development consent, as Mr Chen then was, and enjoying an expensive lunch at his cost?
---That's correct.

And that was inappropriate, wasn't it, quite apart from who was paying for your time, it was inappropriate for you to be accepting the hospitality, wasn't it?---That's right.

40 And you knew at the time that that was a breach of the council's Code of Conduct, didn't you?---Yes.

Shortly after the lunch on 28 April, Mr Chen, together with his wife, took you and Mr Geroulis out to dinner at Rockpool on 4 May. That's correct, isn't it?---That's correct.

And again Mr Chen paid for this dinner, didn't he?---He did.

Do you know what the cost of the dinner was?---No, I didn't ask.

It would have run into several hundreds of dollars, you would assume, wouldn't you, at a place like that?---Yeah.

10 And at this dinner Mr Chen was again discussing with you and Mr Geroulis the premises he was considering and the terms of the proposed lease. That's correct, isn't it?---It was about the lease document which I referred to Bill to discuss because it wasn't my forte, it wasn't something I was familiar with, lease plans.

Ah hmm?---So yeah.

So- - -?---So he invited me along to attend that, just to tag along, come along- - -

Ah hmm---?- - -for the introduction and yeah, discuss the lease.

20 And you were in effect facilitating the contact, as it were, between Mr Chen and Mr Geroulis for that purpose?---Yeah, I introduced them, yeah.

Ah hmm.

THE COMMISSIONER: What was Mr Geroulis' position?---Ah, he was a commercial real estate agent.

30 MS WILLIAMS: And there was a further lunch, wasn't there, at Machiavelli's Restaurant in the city between Mr Chen, you and Mr Geroulis in about May, 2009? Do you recall that?---I think so, yes.

Ah hmm. That lunch took place on a working day?---I can't recall. I didn't really keep tabs of when, I didn't really write them down or keep tabs of them.

Ah hmm. And again Mr Chen paid for the lunch?---Yes, he did.

And you made no offer to pay?---No, I didn't.

40 You understood, didn't you, that it wasn't expected that you would pay? ---No, I didn't. I didn't, I didn't feel that I was expected to pay, no.

Ah hmm. And so you've been taken out in a short period of time to three expensive meals at Mr Chen's expense. You knew, didn't you, that the reason you were being entertained in this way was because of your position with the council?---Um, it was probably for that and just to get um, information out of me in relation to the process and just friendship.

Ah hmm. Well, I suggest to you that friendship didn't play much of a role. You don't have too many friends, do you, who take you out to lunches and dinners at places like Rockpool and Machiavelli's at their expense on a weekly basis?---No.

And you knew, didn't you, that an outsider who knew about this conduct would apprehend that your, that you would be influenced to, or you may be influenced to favour Mr Chen in the Development Application that he was then considering lodging?---Yeah, that could be perceived, yeah.

10

THE COMMISSIONER: Mr Karkowski, do you mind speaking a bit louder? The, your words are not being picked up?---Sorry.

MS WILLIAMS: Mr Karkowski, I'm going to show you a document, which I'm sorry, it's not in the bundle, so I'll hand up a copy for you also, Commissioner, and one for Mr Karkowski's counsel. Mr Karkowski, do you recognise that as the Development Application submitted on behalf of Mr Chen for his New Shanghai Chinese Restaurant in about- - -?---I do, I do recognise it, yes.

20

And that was submitted in about August 2009. Is that correct?---Yes.

And that's a fast-track application for both development and construction certificate. That's correct, isn't it?---It was.

And do you see under Section 3 that \$100,000 is stated as the estimated cost of the work?---Yes.

30

I want to suggest to you that you gave Mr Chen some advice to state that figure so as to reduce his fees that he would have to pay to the council for this application?---Um, I didn't influence people on their fees, the only thing they would have asked at times was um, what was the cost for, and I said it was the cost of the building works and materials. And a lot of the time people asked whether furniture and items such as dishwashers and movable items that were placed in were part of the construction costs and I, and I answered no, but I never told them what fees to put on their application.

40

Do you recall that Mr Chen had estimated that the cost would be in the order of about 250 to \$300,000?---I don't recall that. That might have been if it was possibly for the completed project with the tables and chairs and all other furniture and decorative items and, yeah, I don't know. That's quite possible, but I don't recall those figures, no.

I want to suggest to you that you told Mr Chen that he should lower the figure placed on this form as the estimated cost of work, that is pick a figure lower than what he thought the actual cost would be so that he could save money on council fees?---I don't necessarily agree. I may have told him that it includes the estimated cost of works, but I didn't, I wouldn't go out of

my way to, if you did an analysis of the fees, there's not a great difference or great benefit in the costs associated with works based on say 20, 30,000, it's, it's a pretty insignificant amount if you do the calculations on it, so I don't see why I would do that.

10 Well the point of my question is whether you have an actual recollection of giving him that advice or deny giving him that advice. Is that correct?---I can't recall, a lot of people ask that question, particularly at pre-lodgement, they discuss the fees, sometimes they don't, occasionally you get a job that
10 looks like it's well short of the mark and I will question it and ask them to, if they don't provide a more realistic figure that I will ask them for a full quantity survey, but that wasn't a common thing at the council. We often had so many applications we didn't have time to question every single application.

20 All right. Do I understand from your evidence that you say you have never suggested to any application for development consent that they reduce the estimated costs or think very carefully about it because it will affect the fees that they have to pay?---I would have told them in that regard it would have only been for, in relation to the actual construction costs, not so much the overall costs, it might have been discussed, but it wasn't something I influenced. There was, on the contrary, there was other examples where Chatswood Chase would pay for the costs of a particular high profile client and they would stick 800,000 for the fit-out and likewise I wouldn't go and tell them, oh, you know, drop your fees because, you know what I mean, I didn't, it wasn't, it wasn't a regular practice that I would, it just, I would take it on face value that they're putting a true legitimate figure of the estimated building costs.

30 Now shortly after this application was lodged, you had lunch did you not with Mr Chen, Mr Karkowski and Mr Geroulis at a place called (not transcribable) at North Sydney?---May have, I can't recall, but, yes, possibly.

In about September, 2009?---I couldn't, I can't recall, but it possibly happened, yeah.

40 Do you recall having other lunches and meals with Mr Chen after his application was lodged in August, 2009?---Yeah, John and I sort of hit it off, we became close friends and we talked about a lot of things there. John's parents had other businesses in Ashfield and they would just ask me general questions and we would chat and, you know, we had, we had common things with wine. He liked wine, I liked wine. So we just, yeah.

And you, do you recall who paid for these lunches that you had after August, 2009?---Usually John would pay, yes.

Okay. I want to suggest to you that John typically did pay. That's right isn't it?---That's right.

And you didn't see any need to offer to pay?---No, I did not, no.

And that was not because John was talking to you as your friend but because you knew that he was taking you out to lunch because he perceived that you may be able to assist him in relation to his development application. That's right isn't it?---Yeah, he could have perceived that, yes.

10

And you know don't you that if a third party or outsider looking at this would perceive that you may well be influenced in carrying out your official functions by reason of having enjoyed Mr Chen's hospitality?---They could perceive that, yes.

And you didn't tell Mr Rowan or Woodhams did you about these lunches after August, 2009 with Mr Chen?---No, I didn't.

20

And you understand don't you that if you had told them they would have advised you not to accept that hospitality?---Possibly, yes.

You saw it as something that you needed to conceal from them in effect?---I just didn't advertise it, no.

And you were able to spend, I want to suggest to you, working hours attending lunches of this nature because of the lack of supervision over how you spent your time?---Sometimes at the time I did it during work hours, yes.

30

You were able to take advantage of that lack of supervision by leaving the building, having others assume that you were going out on council business and attending lunch for a couple of hours?---Yeah. Work was particularly good to me, well good to everyone. But particularly they were very trustworthy and, and - - -

40

THE COMMISSIONER: Very trusting?---Yeah. As far as work went I don't think Peter Rowan or Greg Woodhams had too many problems associated with my work in getting it done and getting the job done and so I think they were quite relaxed about my work 'cause it got done and it got done properly, yeah.

Mr Karkowski, I'm not being critical or making any comment about the quality of your work, but it was an abuse of Mr Rowan's and Mr Woodhams' trust wasn't it to be spending working hours at lunch and then, as we've seen on some occasions, claiming overtime?---Yeah, but I, it could be seen as that but likewise I think there was occasions where management knew that I was doing work from home that I didn't claim and that could have been seen as abuse as well. But I didn't, I never had a problem with

the council. Council, like I said they always had an understanding that I got the job done and, yeah.

Did you help John Chen with his application for a liquor license for his New Shanghai Restaurant?---No, I didn't.

10 Okay. Now John Chen's development application or the application for The New Shanghai Restaurant was submitted in August, 2009, it would have been approved was it sometime later in 2009?---I can't recall the dates, the dates are sort of, I do so many applications, but I'll take your word for it, yeah.

Was there something you were working on with Mr Chen in June, 2010, during last year?---I don't understand the question.

MS WILLIAMS: Were you, in your role as a council building inspector, doing some work relating to Mr Chen's restaurant in 2010?---Not that I can recall.

20 Were you, perhaps together with Mr Geroulis, working with him on some other project?---No, the only thing, builders involved with was just seeking advice on his lease, I don't understand the question, sorry.

Do you recall going to lunch with Mr Chen on, about 8 July last year at Prime Restaurant in the city?---Yes, I did actually, yeah, we did go there.

30 Do you recall what the occasion was that led to that lunch occurring?---I can't recall but it was just another social outing. I think John just likes my company and Bill's company and 'cause he was into business and there was future business there, he might've saw that he could use Bill for information or just general advice but I can't recall what the actual discussion, I think it was more just a social lunch.

Do you recall who initiated the idea for the lunch?---I can't recall.

40 See, I want to suggest to you that the lunch at Prime was something that you had discussed with Mr Geroulis hitting Mr Chen up for?---Yeah, I, I would've discussed it with him 'cause I didn't, I don't make a habit of asking people to take me out to lunch, I'm not that sort of a hungry person but they would often, people would ring me and ask me would you like to catch up or go to lunch and so I probably would've called Bill to say look, where do you want to go, 'cause John was pretty open to where, where, what venue we went to and so I would've spoken to Bill perhaps to say look, where do you want to go and a few places might've been discussed and we ended up going there.

You don't recall speaking to Mr Geroulis before you spoke to Mr Chen and debating with Mr Geroulis what you could hit Johnny up for?---We may

have discussed where we're going but yeah, it was, I probably did talk to Bill, I would've probably said to him, 'cause we would've had to see whether he was available to go as well and we were going to go but, yeah, maybe it was discussed, yeah.

10 See, what I'm suggesting to you is that it was your idea perhaps together with Mr Geroulis to ask Mr Chen to take you for lunch and to take you somewhere like Prime, do you agree with that?---Yeah, they, they would often, people would often ask where you'd like to go and sometimes they would suggest the place or sometimes they would say where would you like to go and you would just suggest, it wasn't sort of a, you know, it was somewhere I hadn't been before and we decided to go there.

Mr Karkowski, what I'm suggesting to you is that you asked Mr Chen to take you to lunch not the other way around and you indicated the venue. Do you understand the question?---Sort of, I know where you're coming from, I didn't, I wouldn't usually ask people to take - - -

20 THE COMMISSIONER: Did you or didn't you?---He would've asked me if I wanted to go to lunch and we would've picked a venue and gone out there. I didn't demand people to take me to - - -

Do you have any specific recollection of this?---I do recall that lunch and that three of us were there.

30 Do you have a specific recollection of him asking you where you would like to go for lunch?---I recall him contacting me to ask, actually 'cause he, sometimes he would call, people would call and say do you want to go out for lunch or dinner and at the time it may not have been suitable 'cause I was busy or whatever and then - - -

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

MS WILLIAMS: Pardon me one moment, Commissioner. Mr Karkowski, there will be played in a moment a transcript of a telephone conversation between you and Mr Chen on 30 June, 2010 at 6.51pm. Commissioner, that's at, the transcript is at page 97 of volume 7 and I provide a copy of the transcript to Mr Karkowski's counsel.

40 THE COMMISSIONER: Volume 7?

MS WILLIAMS: Volume 7, Commissioner, yes.

THE COMMISSIONER: It doesn't have a page 97.

MS WILLIAMS: I can provide a copy of the transcript, Commissioner.

THE COMMISSIONER: Thank you.

TELEPHONE INTERCEPT PLAYED

[12.12pm]

MS WILLIAMS: Mr Karkowski, does hearing that telephone conversation help you to recall that in fact it was you who suggested to Mr Chen that you have a meal at Prime Restaurant together?---Yeah, I suggested it but it wasn't something that I asked him to take me to. He would've said on
10 another telephone conversation or when I met him in, saw him in Chatswood to go out for lunch or dinner. I didn't demand for him to take us out, I have no reason to make someone take us out for lunch or dinner. But I did suggest the venue, yes.

Mr Karkowski, you suggested the meal as well as the venue didn't you?
---Say again?

What I'm saying to you is that in that conversation you were suggesting going out in addition to suggesting the venue, the idea to get together over
20 lunch or dinner was suggested by you in this conversation, that's right isn't it?---In this conversation it was, yes, but I wouldn't have kicked off the me asked him to take us out, it's not something that I would do.

You say in that telephone conversation to Mr Chen, "When we do this you, me and Bill will go there", meaning Prime, what was it that you were doing that you referred to in that conversation?---Sorry, what, which part of it?

At the foot of page 99, if that can be shown on the screen please. Or page 3 of the transcript. You see those words highlighted there? What were you
30 referring to when you said, "When we do this"?---Probably when we go there, I, I don't recall that, like I can't recall that, those, those text, I just, I would've meant when we do go I presume.

You don't recall that there was anything that you were helping Mr Chen with or, or working with him on at that time?---No, there wouldn't have been.

Ah hmm. And the lunch did in fact take place on 8 July. Do you recall that?---I don't know the exact date, but yeah.
40

Ah hmm. But you did go to lunch at Prime?---Yeah, we did.

And that happened on a working day. Is that correct?---Um, I, I can't recall whether it was working or whether I took a flexiday or, I can't recall.

And Mr Chen paid, Mr Chen paid for the lunch?---Yes, he did.

Ah hmm. And the lunch lasted several hours. Is that right?---Yes, it did.

And it wouldn't surprise you that the cost would have run into several hundreds of dollars again, would it, at a place like that?---No, it wouldn't have surprised me. John had big tastes. He wasn't shy.

THE COMMISSIONER: Sorry, I can't hear, do you mind?---He, he, he didn't mind spending the money when it came to lunches and dinners.

10 MS WILLIAMS: And you knew that one of the reasons he didn't mind was because of your position with the council and the potential ability for you to assist him in matters relating to his business, wasn't it?---He may have had that in his mind. I'm not sure. You'd have to ask him that.

Ah hmm. But it would have been clear to you that he may have had that in his mind at the time?---Um, I didn't think about that but it's quite possible that he was thinking that way, yes.

20 So is this your evidence, that you never thought about why John Chen was prepared to take you out to lunch to expensive restaurants and dinner at expensive restaurants at his cost?---It didn't matter who it was. I never felt obligated by any of these people to, to give them something in return. It was never discussed that I give them something. It just wasn't, it just wasn't that way inclined. I, I, I did not feel obligated ever.

30 It would have occurred to you though, wouldn't it, that they may think that you would feel obligated and that was one of the reasons why Mr Chen in this instance was prepared to extend this hospitality to you?---I can't control his feelings but I don't believe he did another application after that, that time, I think that they were so busy with their two restaurants here and the one in Ashfield, I don't think there would have been any benefit gained by him from me.

You would have realised though, if you'd turned your mind to it at the time, that Mr Chen might think that you owed him something in return for these expensive meals?---I never felt that. That wasn't a feeling I ever experienced at any time during these lunches and dinners.

40 I'm asking you whether you turned your mind to whether Mr Chen would think that you owed him something?---I don't know what he was thinking. You'd have to ask him I'm sorry.

You would have been conscious, wouldn't you, of the fact that receiving this sort of hospitality from a businessperson operating a business in Chatswood for whose Development Application you had been responsible was contrary to the council's Code of Conduct? You knew that at the time, didn't you?---Yes, I did.

Mmm. But you accepted the hospitality anyway?---Yes, I did.

You nominated expensive restaurants to go to?---Yes, I did.

See, what I want to suggest to you was that you did understand that businesspeople such as Mr Chen in the Chatswood area may perceive you as being in a position to assist them or do them favours in their dealings with council. You understood that, didn't you?---They may, they may well perceive that, yes.

10 Mmm. And you in effect took advantage of that perception. Whether you intended to do them any favours or not, you took advantage of that perception by enjoying this level of hospitality. That's right, isn't it?
---Yeah, I did enjoy the level of hospitality.

Mmm. And you knew that you were taking advantage of their perception of your importance within the council. You knew that you were taking advantage of that perception in accepting this hospitality?---I didn't, I didn't, never felt that I was taking advantage of them. I, I respected people that went out of their way and actually in some instances um, built
20 friendship and relationships um, call it one way or whatever you want to call it, I never felt those feelings and there was definitely no expectations from their, their side.

Mr Karkowski, I'm going to have played another telephone conversation. This time it's between you and Mr Geroulis on 23 June, 2010, at 10 past 5.00 in the afternoon. I'll just locate copies of the transcript, Commissioner. You may find the transcript at page 87 of volume 7, Commissioner.

30 THE COMMISSIONER: I'm afraid there's no 87.

MS WILLIAMS: I'm sorry, Commissioner. I'll come round and attend to that. We do have it on the screen, if that's convenient?

THE COMMISSIONER: Yes, that's fine.

MS WILLIAMS: Yes. All right. Good.

40 **TELEPHONE INTERCEPT PLAYED** **[12.26pm]**

THE COMMISSIONER: Do we have to endure all of this?

MS WILLIAMS: No, I've just asked for it to be terminated that that point, Commissioner, thank you.

Mr Karkowski, do you agree with me that in that conversation you were discussing with Mr Geroulis what you could hit Johnny up for?---Yeah, we discuss that, yeah.

And the reference to Johnny is Mr Chen, isn't it?---Sorry?

The Johnny that you're referring to in that conversation is Mr John Chen?
---That's correct.

10 That's correct. So the suggestion that you go to lunch at Prime was, had in fact been rehearsed beforehand with Mr Bill Geroulis?---Yeah, we, we would have spoken on several occasions about it, the decision hadn't been reached and John was the sort of guy that was open to whatever place we wanted to go to. I did know his limits and, yeah, we, it was just being discussed but I, like again, I must clarify I wouldn't have initially asked him to take us out, that would have come at the request of him saying, you know, do you want to catch up for lunch or for dinner and that's where that would have kicked in and we would have discussed when we were available and what we were going to do and where we're going to go.

20

And you decided to explore his limits by suggesting somewhere like Prime which you knew to be very expensive, correct?---I don't think Prime was the most expensive. I just, we, we had a, we had, we just discussed it as you can hear in that conversation and we decided to go because we hadn't been there.

And because you were determined to take advantage of Mr Chen's hospitality by going to exclusive and expensive restaurants, is that correct?
---He usually didn't have a problem with them. I don't know if I was taking advantage, maybe I was but, yeah.

30

And you knew, as I suggested to you earlier, that you were in this position of being invited out to these occasions because of your position with the council?---Well, yeah, possibly, I did have interaction with them at various levels, yeah.

Mr Karkowski, I'd ask you to hand that volume back and I'll give you another volume which is marked 6.

40 THE COMMISSIONER: I am, Mr Karkowski, I notice from other parts of that conversation that you were discussing wines that were pretty expensive, often costing several hundreds of dollars?---Yes.

And that you sometimes had wines costing several hundreds of dollars?
---Yes.

And Mr Chen paid for it?---Yeah, Mr Chen was a very big wine lover. He did enjoy nice wine.

Mmm, that was wine for you as well?---That's correct.

MS WILLIAMS: Mr Karkowski, you mentioned Mr Sam Koura earlier as a friend of yours?---Yes.

And as the person supplying you free of charge with a drug I've forgotten the name of but you mentioned that earlier?---Cialis, Cialis.

10 Cialis, thank you. Mr Koura has a number of businesses but amongst other things he is a property developer, is that correct?---Yes, he is.

And he has developments within the Willoughby City Council's area?---He does.

One of those developments is at 500 Willoughby Road, is that correct?
---I'm not sure what the exact address is but I know Willoughby Road he does own a few properties.

20 He has a development, you may not know the address, but it's Willoughby Road and he was negotiating to purchase that site in about late 2009, does that assist you to recall the particular development?---I can't recall, do you know the name of the, what, what shop's there or something?

I can give you an address of 500-502 Willoughby Road?---Oh, you're talking about the development that he purchased within an approval on it, is that correct?

Yes, that's correct?---Yeah.

30 You, you're, you're aware that that's when he (not transcribable)?---I, I, I realised that he purchased that, yes.

And you were aware that he was negotiating to purchase it in about late 2009, weren't you, before he'd actually purchased it?---Yeah, he was, he, he mentioned that he was going to do that, take it on.

40 And the owner of that particular property had submitted an application for Development Consent to council that had already been determined at the time that it was up for sale?---Yeah, I don't know who submitted it but I, I believe there was an already gained approval Development Consent, yes.

And did you provide Mr Koura with the plans that had been submitted to the council for the purpose of that Development Consent?---No, I think he along with a gentleman by the name of Ben Moseley had a copy of the plans. They had, they had the plans already, I think I provided them with a copy of the consent. I don't know, one, one of the two they didn't have, I can't remember which one but they didn't have one, I can't remember

which one of it they, they had or didn't have but they had, they knew about it and I think they had the plans already but didn't have the Development Consent conditions.

So that's your best recollection but it's possible you've got it the wrong way around and in fact gave them the plans?---Possibly, yeah.

10 And if you had given them the plans that would give Mr Koura an edge over other potential purchasers bidding for the property wouldn't it?---I don't know what edge it would have given him. I imagine that you could have obtained those plans from whoever was selling it. You should, you wouldn't sell a property without disclosing an approval if that was your edge, it'd be worth more I presume with Development Consent approved than without it so I don't understand your question.

Well, certainly potential purchasers could obtain a copy of the Development Consent through council, that's correct, isn't it?---Yes, under Freedom of Information they probably could, yeah.

20 And the terms and conditions attached to that consent?---Yes.

But the plans drawn up by an architect, that's not something that council would ordinarily give out is it?---Under Freedom, I'm not sure what Freedom of Information allows but my, my recollection was I think they did have the plans already, it was the consent that they didn't have was my recollection. I think I may, the only thing with the plans, I made an additional copy for me 'cause there was two of them at the time looking at it, I just ran a second copy off.

30 All right. And Mr Koura had another development that he was working on at 32 Emerstan Drive, Castle Cove, do you recall that?---Yes, yes, I knew about that..

And that was a development of a residential property, is that correct?
---That's correct.

So whilst it was within the Willoughby City Council area it was outside your geographical area?---Yeah, I didn't look after that area, no.

40 And during 2010 Mr Koura was in the process of applying for Development Consent for that property?---Yeah, he would have been.

And two council officers were responsible for assessing and determining that application, that is Ms Annie Leung, L-E-U-N-G and Mr Ian Arnott. Is that correct?---I don't know who, I think, the only person I knew and I think Annie had carried because Sam had mentioned that she had carriage of it.

Sorry, I didn't quite catch your answer you think Mr Koura had informed you - - -?---I don't know that both of them, I only thought that the carriage was with Annie Leung 'cause Sam had mentioned that she was the assessment officer that was looking after it.

10 And from time to time during 2010 you obtained reports and other information about Mr Koura's application for 32 Emerstan Drive, Castle Cove and gave that to him didn't you?---I think he asked at times like whether there was any objections lodged or was there any requirements, I think engineering put an email out requiring additional information just for the, the plans to be determined.

On 31 May last year you obtained, didn't you, a copy of an engineering report from Ms Leung's desk and made a photocopy for Mr Koura so as to give him a heads up?---Yeah, that's correct. The, there was a requirement, I think that was just waiting on additional information because the, something with engineering wasn't right so I gave him a copy of the letter so he could get the plans fixed up, yeah.

20 And you got the letter by taking it from Ms Leung's desk and making a photocopy, didn't you?---I can't remember whether, whether it was from her desk or the file or on the system because a lot of the time the engineering stuff is available, they send it in like electronic format attached to the property file which is available. I can't remember which way I sourced it but it was one of those three, I can't recall which one at the time.

But you didn't just ask Ms Leung for it or ask her to give it to Mr Koura you - - -?---No, because I didn't want to get involved in the application.

30 Or rather because you didn't want her to know, Ms Leung to know that you were passing information to Mr Koura, that's right isn't it?---Well, I didn't, I didn't want to influence her decision knowing me and knowing that I knew him that, that there was an expectation of doing anything (not transcribable) I just gave him a copy of a letter that he would've received probably a day or two later once the officer had sent it out formally. There was, there was, the information that I would've given him wouldn't have been anything private or confidential, it was just a requirement of information that was required for the determination of the outcome of his application.

40 So why not simply wait to hear from Ms Leung, you were doing him a favour weren't you?---Well, he asked me, you know, 'cause he was, he seemed to be taking quite a long time with my work, it seems to be fairly quick and not sort of much waiting around and with that process it was and he just asked me, he just asked me general questions about it, how it's going and obviously if there was anything confidential I couldn't give him but it was a standard incidental memo requiring more information.

Commissioner, I might pause at that point and tender the documents that have been referred to during the course of the morning before you adjourn if that's convenient.

THE COMMISSIONER: Yes.

MS WILLIAMS: I tender the transcript of the telephone conversation between Mr Karkowski and Mr Geroulis on 25 June, 2010.

10 THE COMMISSIONER: Sorry, you have to go slower.

MS WILLIAMS: I'm sorry, Commissioner. The - - -

THE COMMISSIONER: Transcript of telephone conversation between Mr Karkowski and Mr Geroulis on?

MS WILLIAMS: 25 June, 2010.

THE COMMISSIONER: Yes.

20

MS WILLIAMS: At 11.27am.

THE COMMISSIONER: Yes. That's Exhibit 1.

**#EXHIBIT 1 - THE TRANSCRIPT OF TELEPHONE
CONVERSATION BETWEEN MR GEROULIS AND MR
KARKOWSKI ON 25 JUNE 2010 AT 11:27AM**

30

MS WILLIAMS: Thank you, Commissioner. I tender the telephone conversation between Mr Karkowski - - -

THE COMMISSIONER: Transcript?

MS WILLIAMS: Transcript, yes. Between Mr Karkowski and Mr Geroulis on 6 July, 2010 at 6.46pm.

40 THE COMMISSIONER: Transcript of the telephone conversation between Mr Geroulis and Mr Karkowski on 6 July, 2010 at 6.46 that's Exhibit 2.

**#EXHIBIT 2 - TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR GEROULIS AND MR KARKOWSKI 6 JULY 2010
AT 6:46PM**

MS WILLIAMS: Thank you, Commissioner.

THE COMMISSIONER: Yes.

MS WILLIAMS: I tender the Development Application dated 31 August, 2009.

THE COMMISSIONER: Development Application dated 31 August, 2009 is Exhibit 3.

10

#EXHIBIT 3 - DEVELOPMENT APPLICATION DATED 31 AUGUST 2009

MS WILLIAMS: Thank you, Commissioner. And, Commissioner, the last telephone recording that was played I will arrange for copies of the transcript to be made over the lunch adjournment and tender that immediately when we resume.

20 THE COMMISSIONER: Very well. Yes, thank you. Is that all?

MS WILLIAMS: That's all for the moment, Commissioner.

THE COMMISSIONER: Yes. We'll adjourn till 2.15.

LUNCHEON ADJOURNMENT

[12.43pm]