

CHURCHILLPUB00058
07/03/2011

CHURCHILL
pp 00058-00095

PUBLIC
HEARING

COPYRIGHT

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 2.14PM

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: Ms Williams.

MS WILLIAMS: Commissioner, I tender the transcript of a telephone conversation between Mr Karkowski and Mr Geroulis on 23 June, 2010 at 17.10pm.

- 10 THE COMMISSIONER: The transcript of the telephone conversation between Mr Karkowski and Mr Geroulis on 23 June, 2010 at 17.10pm is Exhibit 4.

**#EXHIBIT 4 - TRANSCRIPT OF TELEPHONE CONVERSTION
BETWEEN MR KARKOWSKI AND MR GEROULIS 23 JUNE 2010
AT 17:10PM**

- 20 MS WILLIAMS: Thank you, Commissioner. I'm sorry, Commissioner, I think the Development Application, no, that's, I'm sorry, I withdraw that. And I tender a further transcript of a telephone conversation between Mr Karkowski and Mr Chen on 30 June, 2010.

THE COMMISSIONER: Exhibit 5 is the transcript of a telephone conversation between Mr Karkowski and Mr Chen of 30 June, 2010.

- 30 **#EXHIBIT 5 - TRANSCRIPT OF TELEPHONE CONVERSTION
BETWEEN MR KARKOWSKI AND MR CHEN 30 JUNE 2010**

MS WILLIAMS: Thank you, Commissioner. I hand up both. Mr Karkowski, I was asking you before lunch about you obtaining an engineering report relating to Mr Koura's development at 32 Emerstan Drive, Castle Cove and about you providing him with a copy of that. Do you remember those questions?---Yes, I do.

- 40 Now, you obtained that report by getting it from Ms Leung's desk didn't you?---I can't remember exactly but it's quite possible I did, yes.

And I want to suggest to you that you took it from her desk early in the morning before she arrived, photocopied it and put the original back so that she would be unaware of what you had done?---Yeah, that could possibly be correct. I, I started early.

Sorry, you started early?---I started earlier than most people.

And did you tell her later that you'd done that?---No, I didn't.

And you did that in order to give Mr Koura the heads-up about what the engineering report said, that's right isn't it?---Yes, I did.

So that he would have an advantage compared to if you just received the report in the ordinary course from Ms Leung?---Yeah, he would've got it quicker (not transcribable).

10 And he would've been able to start any work identified in the engineering report more quickly than if he had waited for it?---Yes, that's correct.

And that, no doubt, would have potentially saved him time and holding costs in moving the development forward?---I don't know what it would've cost him but yeah, it would've saved him time for sure.

And this happened at the end of May 2010, do you remember that timing, does that sound about right?---I don't know, I wouldn't have a recollection of time or date.

20

Do you recall that at about the same time you obtained this engineering report and gave a copy of Mr Koura you were also checking for him on the council's system periodically to see whether any new objections had been lodged in relation to the development at 32 Emerstan Drive?---Yes, he'd asked me, he was particularly concerned whether the neighbours were going to object towards his development application.

30 And what happens ordinarily when an objection is made to a development application?---Normally it's put in writing and submitted to the council and it's, it's part of the assessment process. Becomes part of the assessment by the officer.

Is it shown to the developer or the applicant for consent?---I think, I can't, I'm not sure, I'm not too sure about that process. I have been out of the residential stuff for quite a while. I think they do find out about it, I think it's pretty obvious when somebody objects, it's pretty obvious where it comes from and I believe, I'm not a hundred per cent sure to be honest I'm sorry.

40 All right. So when you checked on the council system for any objections for Mr Koura you were looking to find out for him information that he may not necessarily receive in the ordinary course, is that right?---He would receive it, in the, in the process he would've found out about it through his design and may, may have, it may cause, it may or may not have made cause for him to change his development depending on the substance of the objection.

Would he be given a copy of the letter of objection?---I don't believe he's given a copy, no. I think he can come up to view it but I don't think he'd be given a copy.

Do you recall meeting Mr Koura on about 2 June last year and reading out to him over the phone a letter of objection relating to 32 Emerstan Drive that you had found upon searching the council's system?---Yes, I do remember.

10 And you did that, didn't you, to give him an advantage over what developers would have in the ordinary course of things?---I don't, I don't know whether he would've obtained an advantage but he definitely would've known earlier, well, I suppose if he came up there he could've done it himself but he, he chose to ask me and I, I (not transcribable) to, to, to read it out to him.

20 You were going out of your way weren't you to search the council's system and offices of your colleagues for information relating to his development and pass it on to him?---It wasn't hard to do, I wouldn't say it was going out of my way but it's, it wasn't my, wasn't my area to do that but I, I, he asked me to do it and I, and I did it for him as he was a ratepayer of the council.

THE COMMISSIONER: Would you do it for anyone?---If anyone asked for my help I would usually assist if I could, yes.

Would you do for anybody what you did for Mr Koura?---I have done in the past, yes.

30 Simply on a request?---Yeah, I've had a lot of times because I don't know why it happens, but I get a lot of tasks or calls that may fall outside my jurisdiction. I don't just simply tell them to go away or it's another person, I'll answer it if I can. If I can't well I'll just say it's not area, you need to speak to such and such.

Was this an appropriate thing to do?---Probably something I should have said to him you need to probably come up and do yourself, but because I knew him and he was a ratepayer in the area I just helped him out.

40 But was it an appropriate thing for you to do to go and search the, the computer system of the council to see whether there were any objections by anyone so that, so that a ratepayer could get advance notice?---I probably should have kept out of it. In hindsight I probably wouldn't do it.

Why did you do it for him?---Sam was a particularly nice guy. We, we got along. He didn't, he never meant any harm. He was just concerned about his development that was taking, he expressed that it was taking a long time to determine.

Did he ever do things for you?---What do you, like what do you mean by things, I mean - - -

I don't know, but I'm sure, I mean, I can't tell you?---Well - - -

But I'm asking you whether he ever gave you benefits?---We would sometimes go out for lunch. We did a lot of coffees together, lunch sometimes.

10 And he paid?---Yeah, he would pay, yes.

The same way as Mr Chen paid?---Yes, very similar, yeah.

And was it high class restaurants?---Not so often with Sam. Sam and I just met locally most of the time. We didn't - - -

So there were sometimes meals at high class restaurants?---Maybe once or twice.

20 Good wine?---Yeah, reasonable.

What's a reasonable bottle, \$80?---Yeah, about that, yeah. It wasn't, Sam wasn't one that I would go out to fancy restaurants all the time.

Yes. Okay.

MS WILLIAMS: What a box of wine, Mr Karkowski? Mr Koura gave you a box of wine didn't he at about the same time as you were locating the engineering report and providing him with a copy of it?---Yeah, the, the box
30 of wine was bought, we went to a, Bill, Sam Koura and myself went to a lunch and - - -

THE COMMISSIONER: When you say a box of wine, I take it you don't mean - - -?---Six bottles.

- - - a box of boxed wine?---Six bottles.

You mean a box - - -?---Six bottles.

40 What kind of wine?---It was a medium, \$20 a bottle, bottle of wine which I sourced, well I originally bought a bottle that we went on a casual lunch in the area to a lunch we went to and that they liked it and through, I had a contact through a wine supplier and he could get it cheaper, so we endeavoured to buy a couple of cases and, which Bill paid for on his credit card and we were all expecting to pay our own way for it when they arrived. I only wanted to take six 'cause that's all I sort of could afford. And when it came to that, I went, I was going to give Sam the money, but he didn't want to take it from me.

Is it Mr Koura who paid for the wine?---Well Bill paid for it initially and then Sam bought a couple for himself and he gave me a six, well I was going to buy one, but he, he paid for it and gave it to me.

Right. Was this before you went to do your research for him?---I can't recall whether it was before or after, Commissioner.

10 MS WILLIAMS: Mr Karkowski, just returning for a moment to the letter of objection that you can remember reading out to Mr Koura over the phone, as you understand it would a developer or applicant normally be given the details of the identity of the person who'd made the complaint or is that something council would protect?---I'm not sure. I think if they come up they can have a look at the letter, so I think they see the detail. I'm not 100 per cent sure of that. It's been a while since I've done that (not transcribable).

20 THE COMMISSIONER: So had you given this information without bothering to find out whether you were entitled to?---Yes, I didn't check properly.

You didn't check at all?---No.

MS WILLIAMS: And you did tell him didn't you the address of the person making the objection and the name of that person?---Yes, I did.

30 Now, I asked you earlier I think why didn't you simply ask Ms Leung to give Mr Koura the engineering report or information that he may want about his development?---Because I didn't want to interfere with her role or persuade her or see to be persuading her in her function, I just thought of giving him, the, the, an internal memo would just get, assist in the process of him getting done what he needs to get done anyway, it just would have saved him a day or two in getting it. I didn't really want to be asking her or seen to be influencing another officer. I know that I wouldn't like that on myself, another officer asking me questions and, you know, interfering so I just kept out of it.

40 But you were interfering though with Ms Leung's role, weren't you, by taking material from her desk, photocopying it, putting it back and passing it to Mr Koura without her being aware of that?---Well, I suppose, yeah, I was, yeah.

And can I suggest to you the reason you didn't disclose this to Ms Leung is because you knew full well that what you were doing was inappropriate?
---Yes.

And you knew that at the time, didn't you?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Your answer is?---Yes, it was, Commissioner.

MS WILLIAMS: You also provided Mr Koura with information, didn't you, about a complaint concerning the building work he was carrying out at 500 Willoughby Road, do you recall doing that?---Sorry, can you disclose the nature of the complaint?

Well, complaints concerning landscape report, structural engineering certificates and the like?---I don't, I don't recall that.

10

All right. To be fair to you then I'll ask to be a played a telephone call between you and Mr Koura on 25 June, 2010 at 12 minutes past 10.00 in the morning. Commissioner, I provide a copy of the transcript.

THE COMMISSIONER: Thank you.

MS WILLIAMS: And one for the representatives for Mr Koura and Mr Karkowski.

20

TELEPHONE INTERCEPT PLAYED

[2.28pm]

MS WILLIAMS: We've just terminated the recording at that point, Commissioner.

Mr Karkowski, during that conversation you are, are you not, in the process of looking up on the council's system to find information for Mr Koura? Is that correct?---Yes, I was and the, the issue was that a complaint had been lodged against the private certifier that was running Mr Koura's job and he wasn't sure what was going on so I, I had a look at it and I could see that basically there were some allegations that the payments weren't being made or whatever the case may be and, and left it at that and I said to him, look, basically I can't do anything about it, it's between you, your certifier and the council officer will action or whatever course of action is necessary, I couldn't interfere with that process.

30

But what you could do was read it out to Mr Koura over the phone - - -?
---Ah hmm.

40

- - - and make a copy for him, correct?---Yeah, I did.

And you made a copy for him and left it at what he calls his mailbox, Houlihans Coffee Shop, correct?---That's correct.

And you asked the question, "Can you trust him," referring to the proprietor of Houlihans, that's right, isn't it?---That's correct.

Because you yourself were a bit anxious about having anybody else know that you were passing this information on to Mr Koura, that's right, isn't it?
---That's right, yes.

Because you knew, didn't you, that what you were doing was inappropriate?
---That's right.

THE COMMISSIONER: And Mr Koura must have known that it was inappropriate too?---I, I can't answer that, I'm sorry.

10

Well, why did he ask you to deliver it to Julio, who's Julio?---Oh, Houlihans is a coffee shop in Chatswood not far from the council offices where he, he would have an account and he would drink coffee there on a regular basis so it was just probably more for convenience, Commissioner.

20

Why did you ask again, why did you ask Mr Koura whether you could trust Julio?---Because I, I, it's not something that, that he would often do, he wouldn't often ask me to leave him something like that there and I just sort of said, you know, is it, I just didn't want to leave it, it wasn't a common occurrence.

What would you, worrying about trust him, trust him to do what?---Oh, I just don't, don't want people to get the wrong idea that I'm, I'm giving him something that he shouldn't have it, it's just a document that he would have had to deal with, it just - - -

30

That's, that's precisely what you were doing?---But it's, it's not something that he wouldn't have found out about, it was more probably his certifier I think doing the wrong thing by him on the site and an administration thing that he would have had to deal with. I didn't see any harm in it.

Ms Williams.

MS WILLIAMS: Mr Karkowski, I'm also going to play you a recording of a telephone conversation between you and Mr Koura on 26 July, 2010 at 5.49pm. Before I commence that, Commissioner, I'm sorry, I should have, I should tender the transcript I handed up a moment ago.

40

THE COMMISSIONER: Yes. Yes. Exhibit 6 is a transcript of the telephone conversation between Mr Karkowski and Mr Koura on 25 June, 2010.

**#EXHIBIT 6 - TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR KARKOWSKI AND MR KOURA DATED 25 JUNE
2010 AT 10:12**

MS WILLIAMS: Thank you, Commissioner. And I hand up a copy of the extract from the telephone recording about to be played.

TELEPHONE INTERCEPT PLAYED

[2.36pm]

MS WILLIAMS: Mr Karkowski, the man by the name of Ian that you're referring to in that conversation, that's Mr Ian Arnott isn't it?---Correct.

10

And Ms Leung's report in relation to Mr Koura's development at 32 Western Drive, once it was prepared had to be reviewed by Mr Arnott as her supervising officer. Is that correct?---Yes, that would be the process.

And it would be for Mr Arnott to decide whether the report would be adopted as the report to be submitted to council from the council staff?---I believe so.

Or whether any changes were required. That's correct?---Yep.

20

And you agreed didn't you to get hold of a copy of the report for Mr Koura?---I did.

Even though as you understood it at that stage it had not yet been finalised and it was still with Mr Arnott for his consideration?---That's correct.

That conversation occurred on the afternoon of 26 July. Do you recall the following morning you arrived early at the council offices and did in fact obtain a copy of the report from Mr Arnott's desk?---That's correct.

30

And you photocopied that report?---Yes.

And you then gave that Mr Koura later that morning when you met him at Chatswood. Is that correct?---Yes.

Did you tell Mr Arnott that you had taken a copy of the report from his desk?---No, I didn't.

Or that you had otherwise given a copy of the report to Mr Koura?---No, I hadn't.

40

And you knew didn't you that it was highly inappropriate for you to give that report to Mr Koura?---That's correct.

And you did it in order to assist Mr Koura partly because was your friend. Is that correct?---Yes.

Partly because he was supplying you with benefits such as wine and Cialis. Correct?---Yep. It was never, it was never stated that or agreed that things would be given to me because of those things that I helped him with. It was, it just never happened. Sam was a very generous, wealthy individual and he, he was having troubles with the process through council whereby there's more to this then, then is transcribed in this telephone conversation where he was being asked to make a lot of changes where Ian Arnott would attend pre-lodgement meetings and then he wouldn't attend further meetings and he'd come in and make changes so every time Mr Koura and his
10 architect would change the development they would keep asking to make further changes and I felt he was being sort of stuffed around a little bit, to say it quietly.

And did that justify you in providing this information to Mr Koura in your view?---No, I don't, I don't think that giving him that report would've given him any advantage other than he would've found out the result a little bit earlier than he would've when it was released. He couldn't have changed anything, I don't think it would've changed any outcomes but no, I
20 shouldn't have given it to him.

He was certainly anxious to get it wasn't he?---Yeah, he sounded like he was.

So whatever you might've thought he certainly thought that it would be advantageous to him to have it?---I don't know what he thought about it but he, he possibly thought it was, I don't know what he thought to be honest, I, he sounded like he wanted just to read it 'cause I could tell he was just disappointed with the way the system was going and he wasn't getting anywhere with his development.
30

THE COMMISSIONER: He said it would be nice to know exactly what's going on?---Who said that? He - - -

Mr Koura told you that on the telephone?---Yeah. I think he was getting a bit disillusioned at the process because he was being told one thing and then, you know, another thing would be said or he'd make changes. I don't know the full history (not transcribable) but just from what I'm hearing and reading between the lines he was being told to do this, that and the other, he would do those requirements and then they would come back with another
40 set of changes which was getting him a little bit anxious I think. From what it sounded like to me it sounded a bit, like he was getting the rough end of the stick if that makes sense.

MS WILLIAMS: Mr Karkowski, do you recall that the day after you provided the report to Mr Koura he took you to lunch and to a place called Romeo's at Petersham?---Yes, I do recall that.

And Romeo's is a massage parlour, is that correct?---That's correct.

Which also provides other types of services?---I'm not sure what you mean by other types of services.

Well, it also provides sexual services doesn't it?---You mean sexual intercourse?

Any kind of sexual service?---It does provide sexual services, yeah.

10 And you went there and to lunch with Mr Koura during the middle of the day on 28 July, the day after you gave him the report?---I can't remember the exact date but yeah, possibly.

It was a working day?---I don't know. If it befalls on the calendar it might've been, yes.

I want to suggest to you that it was a working day and that you left the office a little after 11.15 in the morning and didn't return until about 2.45 that afternoon during which time you were out with Mr Koura at lunch and
20 at Romeo's, does that sound right?---I can't recall it to be honest. I know I did do it but I don't recall the times and all the detail.

These visits to massage parlours are these another kind of benefit that Mr Koura provided to you from time to time?---It wasn't regular, Sam, but it did happen from time to time, yeah.

And when you went with him to Romeo's at Petersham on the occasion we've discussed Mr Koura paid?---Yes, he did.

30 And he paid for lunch as well that day?---Yes, he did.

And there were other occasions where you went to places like Romeo's with him and he would pay for you, is that correct?---Yeah, I don't know the places but, yeah, possibly, yeah, it could've well happened.

THE COMMISSIONER: When you went to these massage parlours you didn't pay?---No, I didn't.

40 He paid?---Yes, he did.

MS WILLIAMS: And Mr Karkowski, you continued after providing Mr Koura with the copy of the report that you obtain from Ian Arnott's office, you continued to be on the lookout for him for other information about 32 Emerstan Drive, didn't you?---I think I was, yeah.

In fact you called him a few days later on 30 July, didn't you, and told him that it looked like Mr Arnott supported Ms Leung's report, do you

remember doing that?---I think that's, eventually that's what happened, eventually it did accepted by both parties and I think, yeah.

But do you remember after you gave him the copy of the report on 27 July being on the lookout for information through Ian Arnott's office about what was happened with the report after that?---I vaguely remember but, yeah, I assisted him through until the time of the approval, you know, if he asked me something about it I would help him out with it, give him information.

10 And you would help him out by if need be taking copies of reports from Mr Arnott's or Ms Leung's desk, photocopying them and handing them on? ---I think I gave him a copy, I don't think I gave him everything in copy, I think some of it was just on the telephone and other things might have been copied but, yeah, there wasn't a lot of that going on, it was just occasional documents.

Do you recall coming into the council officers early one Saturday morning towards the end of August to collect some plans and software for Mr Koura? ---I vaguely recall something, I can't recall what, exactly what the
20 documents were but I can't recall.

Mr Karkowski - - -

THE COMMISSIONER: Ms Williams, are you going to tender that transcript?

MS WILLIAMS: Yes, thank you, Commissioner, yes, I will.

30 THE COMMISSIONER: Yes. The transcript of 26 July, 2010 at 178:49:28 of a conversation between Mr Karkowski and Mr Koura is Exhibit 7.

**#EXHIBIT 7 - TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR KARKOWSKI AND MR KOURA DATED 26 JULY
2010 AT 17:49**

MS WILLIAMS: Thank you, Commissioner.

40 Mr Karkowski, there will be played in a moment a recording of a telephone conversation between you and Mr Koura on 28 August, 2010 at 9.47am and I will ask you to assume or accept from me that 28 August, 2010 was a Saturday morning and I hand up a copy of the transcript, Commissioner.

TELEPHONE INTERCEPT PLAYED

[2.47pm]

MS WILLIAMS: Mr Karkowski, did you hear in that telephone conversation you indicated to Mr Koura that you had some software or plans for him?---Yeah.

And those were things you had obtained from the council office that morning, is that correct?---My recollection of that was I think it was plans and software that his colleague gave to me for some reason to give to him. I don't, I don't recall that being anything from council because we, we never had, there was nothing in software format that I can recall. I seem to recall
10 his colleague, his name escapes me at the moment, Mark Machoul had given me some stuff to pass onto Sam in that regard and that's all it was because I, I think I told him that I was coming in on Saturday morning and, and Mark wasn't going to be there or something like that.

So you think that Mr Machoul gave you something to pass on to Sam?---I believe that's what it was.

And it was necessary for you to go to the council office early on a Saturday morning?---No, the reason why I came in was because Sam Koura
20 sponsored the Manly Sea Eagles and - - -

THE COMMISSIONER: Sponsored what?---The Manly Sea Eagles football team. And my wife was organising a fundraising event for my daughter's school and so I had asked Sam if he was, 'cause knowing that he was a sponsor I said, Are you able to get a signed jersey so we can raffle off and the school can raise some funds for some of the electronic TVs they use in the teaching classes and he was kind enough to arrange that for me through his sponsorship contacts. And so that's why I was coming in primarily but I, I, the final order was to give, just to pass that information
30 that was the plan and I think it was an electronic copy of the plan to, for Mark to Sam, I don't believe it was anything from council.

MS WILLIAMS: And the framing thing that you refer to in the conversation that's the Sea Eagles jersey is it?---That's, that's the Sea Eagles jersey, that's correct.

And why is it then that you say to Mr Koura during the conversation that you just saw Nick Tobin driving to work and that it was lucky that you got out of the office before he came?---I was just a bit surprised to see Nick
40 there on the weekend and, you know, if he saw me he'd be wondering what I was doing and have to explain myself why I was at work myself but, yeah, I just, that's all it was about.

And why were you worried about having to explain yourself on that occasion?---Because it wasn't, I didn't come in to work on weekends very often, it wasn't something I got into a habit of doing. I was only there, didn't come into Chatswood much at all on weekends and just, you know,

having to explain why I was there I just didn't want to tell him that I was with Sam and picking up a jersey.

Mr Tobin is the General Manager of the council isn't he?---That's correct.

And why would it have been awkward or worrying for you to have to explain to him that you were doing something in connection with Mr Koura?---I just knew that they knew each other and I just didn't want to have to discuss with him, I just, I didn't think there was any need to.

10

Isn't it the case that you were, in fact, obtaining some plans from the council office which you shouldn't have been obtaining from Mr Koura and that's why you were worried about Mr Tobin spotting you?---I don't, I don't think so, I don't understand why I would, I can understand plans maybe but not plans of the software, I don't know what I would have in software form that would be of any benefit. I, I could be wrong but I'm pretty sure it wasn't anything to do with work.

20

THE COMMISSIONER: Why would Mr Machoul did you say his name was?---Mark Machoul, yeah.

Why would he give you plans and software for Mr Koura, why wouldn't he give them to Mr Koura himself if he was his associate?---I, I can't recall, there was a reason for it but the main purpose of me being there on that day was to pick up the jersey. It was, it was on that actual, that night that my wife was holding the school function.

30

Why was the jersey at work?---No, the jersey was at Sam's brother's place where I had to pick it up 'cause Sam was at the inspection at Spearman Street, the auction inspection.

So why did you go to work?---Why did I go to work?

40

Yes?---'Cause I came into work 'cause I had parked the car there, I didn't know what his whereabouts were, that's why I kept asking him what are you doing, where are you and I met him, I think I originally met him, I think I picked up the documents that I had at my desk for Sam and then I, I think I went to Spearman Street and met him there, gave him the stuff from Mark Machoul and then I, I, I had to kill some time because the frame was actually at his brother's place over at Lane Cove West where I had to go and pick it up and I went out for morning tea or breakfast.

And what documents did you take from your office?---I think it was the documents that Mark had given to me to pass on to him. It was for one of the jobs that they were working on, I don't know which one, I didn't ask any questions.

What does he do Mr Machoul, what's his job?---Mr Machoul's a draftsman.

And does he work in Mr Koura's office?---Yes. He does, he works with him.

Everyday?---I'm not sure if everyday or not.

10 Most days?---I'm not sure, I wouldn't have a clue to be honest.

Part of the same company?---They didn't, they didn't originally, they've only just recently joined together as, as - - -

But he was working in Mr Koura's office?---I'm not sure where he was working on that day, I've got no - - -

But generally?---Well, he started to, he never was originally.

20 Well, at that time was he working in Mr Koura's office?---I can't recall, Commissioner, I wouldn't know, I didn't ask the question, I was just passing on the information.

MS WILLIAMS: Whether he was working in Mr Koura's office or not he was working closely with Mr Koura in relation to the development of 32 Emerstan Drive wasn't he?---Yes, he would've been.

30 And any other developments that you can think of?---I don't know, I didn't really ask him what developments what they were, but that would've been the main one at the time 'cause I know that that's what he was working on, yeah.

And can you recall when it was that Mr Machoul gave you these plans or documents to pass on to Mr Koura?---I don't recall, it was a fair while ago, I don't know. All I can, all I can remember was I have a vague recollection that he had something that he wanted me to pass on to Sam but like I said the main reason was in Chatswood was to get the jersey for the, for the function that night.

40 Why would you leave the documents that Mr Machoul gave you in your office at the council?---Because I knew I was going to come to work and I probably would park and I was meeting up with Sonya as I mentioned so I didn't know, with her I didn't know what time it was going to be whether it was going to be breakfast or lunch and I had to get back home.

THE COMMISSIONER: What were you coming to work for?---What was I coming to work for? Well, in Chatswood there's really nowhere to park, everything's paid parking so I was just coming to work to pick up those

documents that Mark has left with me and then park the car and I was, you know, going around Chatswood killing some time. Have a coffee.

MS WILLIAMS: Mr Karkowski, I've asked you this already but I think in fairness to you I should give you one more opportunity to explain why would it have been awkward for you to explain to Mr Tobin if you had seen him in the office that you had just popped upstairs to pick up some documents that you had left behind that you needed to give to a friend?
---Because I knew that I was coming there to pick up a jersey and I didn't
10 really want to, that was the main reason for me being in Chatswood and I didn't really want to broach the subject with him or talk to him about it.

And why did you not want to do that?---'Cause I just felt awkward about it, you know, letting him know I've come in to get a jersey that Sam Koura's organised for a school function for my wife, that wasn't something that I'd talk to my general manager about.

THE COMMISSIONER: Why not?---Because I just didn't feel that, it sort of, didn't feel not appropriate but just felt awkward requesting, 'cause I did
20 ask Sam as a favour if he could get that jersey for me for the school function.

MS WILLIAMS: You mentioned earlier that Mr Tobin knew Mr Koura?
---Ah hmm.

What did you understand to be the nature of Mr Tobin's relationship with Mr Koura?---I don't know a lot, I, I just knew that they knew each other but I don't know what their, their relationship was, I just knew that they talked or met for coffee and that's about all I knew. I didn't go in prior and ask
30 him what they do or what, you know, what happened.

Did you have an understanding or an impression about what they would talk about when they met for coffee?---No, I've got no, I didn't ask, I didn't get involved.

Did Mr Koura ever say to you anything to indicate that he had Mr Tobin on his side or on side in relation to particular matters?---Not really. I think, I think Sam may have thought that knowing, you know, myself and knowing Nick may have assisted him but I, I think in all honesty it sort of went
40 against him to be honest. I don't think that Nick, you know, in his position could do things for Mr Koura and, you know, you're getting perceptions there, you know, people, you know, it was a bit of an awkward situation but I don't know any details of anything that they did, I just know that they were friends, known each other for a few years.

But knowing you certainly assisted Mr Koura didn't it?---Yeah, may have assisted him, yeah.

Well, it assisted him to get hold of information to which he either was not entitled or for which he would've otherwise had to wait longer to get?
---Yeah, possibly but again I must stress I don't really think he gained any real advantage from, from that process. I don't think there was any advantage that he would've gained, I just don't see what he would've gained out of it.

10 And you gained an advantage didn't you in the form of the supply of Cialis, the wine that you mentioned and various meals and visits to massage parlours?---I agree with that but, but Sam wasn't just about giving me, taking me for a coffee 'cause he wanted something we would catch up for a drink or a coffee on a regular basis and, you know, he'd go to Lebanon for a holiday with his family and he'd come back and he'd give me a shirt, for example, as a gift, not just myself but, you know, Bill Geroulis was a close friend and, you know, it was just the sort of person he was, it wasn't like there was any expectations or it wasn't set up like, you know, you get me this I'm going to get you that sort of scenario, it was just, I think it was just his way of saying thank you.

20 Thank you for the assistance that you had provided?---Perhaps, yeah.

And whilst it may not have been expressed in so many words it was implicit wasn't between you that it was a two way relationship? You would provide information and assistance and he would look after you and - - -?---But it wasn't, it wasn't always the case, like you pointed out earlier about we went to the massage parlour straight the day after, it wasn't sort of like it was premeditated or planned or you know, you do this for me and I'm going to do that for you. It was just very casual and you know, there was no expectations on either side. It was, it was more about, I think it was
30 harmless in terms of what he asked me and the benefits that he would receive from them. I don't think he really gained any major outcomes from it.

But nevertheless there was a flow of information from your side and - - -?
---Yes.

- - - the benefits we've discussed from his side?---Yes.

40 And you understood didn't you that accepting these benefits and providing this information was a clear breach of the council's code of conduct?
---Possibly, yes.

Well you knew that didn't you?---I don't know that I was giving him anything that wouldn't otherwise be able to obtain himself. Like for example if he came up to council to see those people looking after his application I'm sure they would have discussed those items or that memorandum themselves anyway. Perhaps he got a days advantage, I don't

know. I don't know the true outcome of what he would have really achieved by the information that I would have given to him.

But whether or not he ended up being able to get an advantage out of the information, you knew that it was a breach of the code of conduct to be giving him that information in the first place didn't you?---Yes.

THE COMMISSIONER: Are you tendering that transcript?

10 MS WILLIAMS: Yes, Commissioner, I will tender that transcript. Thank you.

THE COMMISSIONER: Exhibit 8 is a transcript of the telephone conversation between Mr Karkowski and Mr Koura on 28 August, 2010.

**#EXHIBIT 8 - TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR KARKOWSKI AND MR KOURA DATED 28
AUGUST 2010 AT 9:47AM**

20

MS WILLIAMS: Mr Karkowski, I'll you to return that volume 6 that you have there and you'll be given a - - -?---I don't have a volume.

Oh, I'm sorry, you don't have a volume. In that case I'll ask for you to be provided with volume 4. If you can just leave that closed for the moment, but we'll go to the various pages of it. You can just leave it closed for the moment, that's fine. In the last one to two years a great deal of your time has been spent hasn't it in assessing and determining Fast Track applications relating to the Chatswood Central Development?---Yes, it has.

30

And that's a large development being constructed above the Chatswood Railway Station, in that area?---I wouldn't say large, but it's of a significant, it was more an upgrade of an existing plaza concourse level. I wouldn't say it's major, but it's major in terms it's larger then one shop. It was I think about seven or eight tenancies in the one, well the tenancies left and new ones came back. So it was recycling of development.

40 And the developer is a company by the name of Bennelong Funds Management. Is that correct?---Correct.

And its general manager for projects is a Mr David Tasker?---That's correct.

And what's the nature of your relationship with Mr Tasker?---David I met in the early stages of the development. I think initially he spoke with Noni De Carvalho and Greg Woodhams, my director about the project and the (not transcribable) incident. And I think I got invited into those meetings and because there was no significant planning complications other then a

section 94 contribution payable, and having known the Jones Lang LaSalle team that were sort of looking after those two twin towers, I, and most of it was a building, a Building Code of Australia sort of issues. There wasn't much ongoing planning. But some planning input was required because of signage and other issues. So I got to know David at an early stage, you know through meetings and the like and yeah, it went from there.

10 And you mentioned the Jones Lang LaSalle team, what was their role in relation to the Chatswood Centre development?---Jones Lang LaSalle, particularly Greg Christofis, he was responsible for the delivery, well you know when applications were occurring in the office towers that's separate to that development, so he again was the facilitating the, the new tenants that were coming in. There was some involvement from them.

I see so he was the, in effect acting as the property manager for the tenants?
---Yeah, yeah, property manager would probably be the best description, yeah.

20 I see. And he, he was in effect acting on behalf of Bennelong Funds Management in that role. Is that right?---Yeah, he would, most of the discussions about the development would occur with David and the architect, Michael from Graphos Architects, not so much with Greg Christofis, they were more just facilitating during the, I didn't have a lot to do with the management of that. They just, they were around, they were part of the - - -

30 All right. Now the, the original development consent was handled I think by Ms De Carvalho as the senior town planner. Is that correct?---That's correct.

And you assisted her to some extent with building issues relating to it. Is that right?---Yeah I, yes.

But then at a later stage as the various shops forming part of the development started to be let, you would deal wouldn't you with numerous Fast Track applications from those tenants in relation to the fit-outs for their shops and businesses?---Correct.

40 And in dealing with those applications you had primary responsibility for assessing and determining those applications. Is that right?---That's correct. Yep.

And that occupied a significant portion of your time did it not over the last, well during 2009 and 2010?---Yeah, it would have been around that time period, yes.

And in the course of doing that work you had fairly frequent contact with Mr Tasker didn't you?---Yeah, I did.

And he would take you out for meals from time to time?---Yes, he would.

And he would always pay for those meals. Is that correct?---That's correct.

And those meals would be in the context of and for the purpose of discussing various matters relating to the applications you were dealing with?---Yeah, we would have been discussing a lot about the project and how it's going to, we didn't meet that often, but when we did we caught up because he was based in Melbourne. So when he came to Sydney we'd often take the opportunity to catch up and just talk about how things are going and any changes, minor changes in the direction of the project.

And you would have telephone contact with him as well at different times?
---That's correct. Correct.

And do you recall at one stage Mr Tasker suggesting that his employer, Bennelong Funds Management should in fact pay the council for your time because you were spending so much time in relation to this project?---He, he did make the offer.

And you spoke to Mr Rowan about that didn't you?---That's correct.

And Mr Rowan indicated to you didn't he that that would not be appropriate because it could be perceived that the council was giving Bennelong a favourable or preferential treatment if Bennelong was paying for your time?---That's correct.

And you conveyed that response to Mr Tasker didn't you?---Yes, I think I let him know that thanks for the offer, but no thanks.

And you understood didn't you Mr Rowan's reasons for rejecting that offer?---Yes, I did.

And you agreed didn't you that it would in fact be inappropriate and that it could lead to a perception that the council may be giving Bennelong favourable treatment?---It could lead to that, yes.

In May, 2010 Bennelong submitted an application to modify their development consent and an amended construction certificate. Do you recall that?---Yeah, they, I think they made two, possibly three changes to the S96. I can't remember, I think there was one for hours of operation and there might have been one for just minor variations to the development. I think it was particularly when they brought the toilets in line with the development, redid the amenities.

If you turn to page 92 of volume 4 which you have in front of you and just take a moment to look at that page and page 93?---Yep.

Do you recognise that as an application under section 96?---Yes, it does look like that.

And it's an application made on behalf of Bennelong Project or Bennelong Funds Management, is that right?---That's right.

And it relates, does it not, to a number of different changes that Bennelong was seeking to make to the Chatswood central development?---That's correct.

10

And we see that, do we, from section 1 of the form which describes the changes?---Yes.

And is it fair to say this was in effect a whole bundle of changes rolled up into the one application for convenience?---That's right.

And one of the changes is for a new wall between, I think it says P8 and P9/10, is that right?---Yes.

20

And those references to P8 and P9 or 10, they represent shop numbers, do they?---Can you say which ones, P?

On the second line of the description of the amendment in section 1 - - -? ---Yeah.

- - - you see a reference to a new wall between P8 plus P9/P10?---Yeah.

Those numbers, P8, P9 and 10, they represent shop numbers on the plaza level of the development?---That's correct.

30

And, Ms De Carvalho as the senior town planner who had been responsible for the original development consent took responsibility for this particular application, is that correct?---Yes, she did.

However, she did seek and obtain assistance from you in relation to it, is that right?---That's right, yes.

40

And you were responsible for the Construction Certificate side of things in particular, is that right?---I don't know that there was a Construction Certificate applicable to it, I'm not sure, I can't recall. I thought it was an amended Development Consent and Construction Certificate.

All right. If you have a look in the first box of the form on page 92 you see there the, the second option is marked with a cross?---Yeah.

And you see there the words after that include "Amendment and Amended Construction Certificate?"---That's right, yeah.

Does that recall to, does that assist you to recall that there was an Amended Construction Certificate involved?---Yeah, I think you said a Building Certificate.

I'm sorry, that was my mistake then?---If I'm wrong, sorry.

So I'll go backwards then. Ms De Carvalho was responsible for the amendment to the Development Consent?---Yes.

10 Were you responsible for the issue of the Amended Construction Certificate?---That's correct.

Thank you. And then could you turn please to page 111 of that same volume, volume 4, do you see there a Notice of Determination to Modify a Consent?---That's correct.

And if you look about halfway down the page you'll see a Description of Modification?---(NO AUDIBLE REPLY)

20 Do you see that?---Yes, yeah.

And this is the consent to the modification which was the subject of the application form that we looked at a moment ago, isn't it? That's right? --- (NO AUDIBLE REPLY)

And do you see there that it's signed by Ms De Carvalho, that's her signature, isn't it?---Mrs De Carvalho, yes, it is.

30 Underneath that signature there is a reference number and then the word "inquiries" followed by your name?---Yes.

Is that because you were the contact person in relation to this particular modification application?---I think it stayed on there because originally the application, it changed hands, I think it came in under my name and then when Noni had carriage of it they just didn't change it across back into her name and it didn't really matter because I, in terms of the construction it was more construction so it sort of made sense that I was the contact portal anyway for the majority of it but they could have rang either of us, it didn't really matter.

40

All right. And if you look, please, at page 114 of volume 4 that's the Amended Construction Certificate associated with the Modification to the Development Consent, isn't it?---Yes.

And if you look on page 115 do you recognise the signature there as being your signature?---Yes, that's, that's my signature.

And you've signed that Amended Construction Certificate under your delegated authority from the general manager?---That's correct.

And you see the date on both the Amended Construction Certificate at page 114 and on the Modification for Development Consent at page 111 is 21 June, 2010?---Yes.

That was not the date on which those documents were in fact issued was it? ---I don't recall, I'd have to see the documents.

10

I want to suggest to you that those documents were in fact issued on about 2 July, 2010?---Which documents are they? Which documents are you referring to?

The Modification for Development Consent which commences at page 111 and the Construction Certificate which commences at page 114?---Yeah, so what are you, I'm just trying to see what, what you're suggesting.

20

I'm suggesting that those documents were in fact issued on 2 July not on 21 June as stated on the documents?---Yeah, it was held back, there's a reason why that has occurred, the dates, the date was, I think it was ready for determination which I think Noni prepared the documents and there was some other items that were being discussed at a higher level of management in relation to a particular condition that was imposed on the original Development Consent that wasn't probably fair to the developer and not only that it was inconsistent with normal council practices and I wasn't, they, they'd raised it as an issue and it wasn't a strong issue but they, they, they did raise it nonetheless and as you can see condition 20 about the footpath replacement, there was a lot of, on the file you'd notice there's quite a wad of information backwards and forwards from director to director and, and engineer to engineer in relation to it and I think the date difference is as a result of that information coming through and we held this application back until they got resolved to, to include it rather than do a subsequent section 96 to modify so I think that's the difference, why the dates are different.

30

40

And the condition 20 you're referring to, that's the condition that appears on page 113, is it?---It's, yes, that's correct, because that took a long, long time, as you can see the email trail, it was discussed and thrown around and engineers I think were a little embarrassed that it went on, this condition was normally put on new developments, if Meriton or Westfields were building a new block they would apply that type of condition and it was agreed by myself and Noni, I think Greg Woodhams particularly suggested it was inappropriate that council applied it and it was a bit late once it had been issued so it was discussed with Bennelong and, and we met sort of after a lot of talking and discussing they agreed that they'd wear half it and council would pay the other half so we, we, we put that condition and amended it in fairness to put on the development but I think that's the

reason why it got held back and the dates don't align, because that took a long time to resolve.

10 So is the effect of your evidence that the development, I withdraw that, the Modification of the Consent and the Construction Certificate weren't in fact issued on 21 June and the reason for the delay was the negotiation about the footpath condition?---That, that's correct, I think that's what caused the problems and it just simply didn't, administratively didn't get redated and it just got signed once it got resolved and then we, it went off, that's my, my recollection, my vague recollection of it.

The Construction Certificate couldn't be issued, could it, until the modification had been approved?---That's why they were done together.

That's right and the works couldn't be commenced by Bennelong unless and until the Construction Certificate was issued, that's right, isn't it?---That's correct.

20 And that created a problem for Bennelong, didn't it, in the sense of delaying their progress?---It probably would, would have, it probably would have slowed them down a little bit having to wait for it, yes.

Particularly given the number of different aspects of work that were rolled up into this application, that would have been a problem for them, do you agree?---Yeah, it was, yeah, it wasn't like a straightforward, it was more than just inline shops, it was the base building which formulated, yeah, so it would have delayed, it was a bit more complicated than just sort of, yeah.

30 And Mr Tasker was in contact with you asking about progress with this modification and Construction Certificate application?---Yes, he, he was.

And he was in contact with you about that after 21 June, wasn't he?---I can't recall the dates but it was spoken about a lot because obviously there was pressure also to, to have that other condition modified which we'd sort of discussed for a long period of time.

40 If you turn backwards a few pages in the bundle to page 106 please of volume 4. You see there that's an email from Mr Tasker to you on 30 June, 2010?---Yep.

And you see in the second last line of that email he's asking, Any news on the section 96 for us. You see that?---Yep.

That's a reference isn't it to - - -?---I would imagine so, yeah.

So even on 30 June the modification and the construction certificate had not yet been issued?---No, I don't, I don't think, I think it's incorrect because

this section 96 isn't to do with P4 to P7. This holding this \$250,000 I think it's to do with something else. I think it was - - -

THE COMMISSIONER: CP4 to CP7?---Sorry? In the letter from, email from, from Bennelong to me it's talking about P4 to P7.

10 Yes?---And that section 96 wasn't to do with those, it was other parts of the building that reflected, the meaning of that holding deposit was that I, from my recollection was that David Tasker was withholding paying the builder until such time as we, council was satisfied that the works that had been conducted in those P4 to P7, 'cause it was done in stages, it wasn't done in one go so they wanted to make sure that that's what I think he's talking about there. But the section 96 he does, he does refer to any news on it and that, that was, yeah, so it does, it does reference both.

MS WILLIAMS: So to make sure I understand you correctly do you accept that when he asks, Any news on the section 96, that's not about P4 to P7A is it?---No, P4 to P7A is a previous stage of the development.

20 So when he says, Any news on the section 96 for us, he's asking you about the application - - -?---I believe he's referring to that application, yes.

THE COMMISSIONER: Page 107?---Yeah, I believe he's referring to that in that statement.

30 MS WILLIAMS: You offered didn't you to Mr Tasker to backdate the section 96 modification and construction certificate?---I don't recall, I don't recall backdating it. I may, I may have but that was, there was really no reason for me to backdate it. I don't understand why I would do that.

Mr Karkowski, I'll play you a recording of a telephone conversation between you and Mr Tasker on 22 June, 2010 at 9.08am. I hand up a copy of the transcript, Commissioner.

TELEPHONE INTERCEPT PLAYED

[3.23pm]

40 MS WILLIAMS: Mr Karkowski, now that you've had the benefit of hearing that do you agree with me that you offered to backdate the modification of development consent and construction certificate for Mr Tasker?---It appears that was discussed but I don't believe in the end we, we actually had to do it, I don't believe the backdating it to occur for that reason. I know that they were anxious and on the site, they started marking up lines on the floor and the first row of blocks and I was getting a little bit worried that they were going to start, that's why I mentioned that, you know, wanted the thing to be finished before I issue the job. But the other thing that you can hear out of that conversation was that the owner's

consent., because RailCorp was involved getting an owner's consent letter which we had to make sure for a valid consent that we had it in hand and we didn't actually get it for that S96 so we were waiting on that also. And I think I suggested it because I thought it was going to take a lot longer and they suggested bring it in but the main reason for that date difference is from what I said before I don't believe I ended up backdating it for any reason 'cause it would've made no difference to me whether I issued that, the only thing that would've changed would've been instead of issuing a construction certificate if the work had been completed I would've had to change it to be sure a building certificate to cover that, that construction. So I don't believe I ended up exercising the need to do that.

You weren't just worried that the work might start were you, you were worried that it might be finished before the consent was (not transcribable)? ---Well, the way that they were going I was concerned but it wasn't, it was only a portion at the back of, to be honest the wall that they demolished between P8 and P9 didn't require consent 'cause it could be done under exempt development policy anyway but they happened to contain it within (not transcribable) occurred and they started marking out the floor where the wall changed, there was a slight deviation in a wall which you'll notice on the plans and then where a doorway was positioned but it was very minor in the scope of things so I don't think I ended up, the consent wasn't prepared by me or the CC I only provided the information, it would've been done by Noni from Planning section. So I wasn't in a position to power and backdate it anyway. I think it was discussed but it's not something that I had to worry about in the end.

I think you agreed with me when you told me earlier that you were responsible for the construction certificate or the amended construction certificate side of this?---That's correct. That's correct.

That wasn't Noni's responsibility was it?---I understand that but I, I didn't prepare the consent and the dates align together when she prepared the consent, it was the same day for the CC but like I said I never asked her to change those dates because I never needed to backdate the application because the works didn't go on and now this consent came in so I had no reason to backdate it.

Did you not prepare the Modification of Development Consent document as part of your assistance given to Mr Kavalo in this process?---I can't recall. There was a lot of applications dealt with. I may have, I may, I can't recall whether I did the worksheet and the CC or whether she just provided comments to me on the basis of no planning issues. I can't recall, can't recall.

But in any case you certainly indicated to Mr Tasker that you might backdate the (not transcribable)?---Yeah, I did, I did, I did mention, it was discussed in there, it was.

And the construction certificate ultimately was signed with a date of 21 June the day before this conversation?---Yeah, but I don't, I, I think that's again because of the fact that we were waiting on the condition to come back, it would've actually been later. This, this consent would've been issued even later if we'd waited, the application was put on hold, the dates are inconsistent because of the date of the, the information coming back for condition 20. That's what affected it.

- 10 THE COMMISSIONER: From this telephone conversation I infer that Mr Tasker had commenced the construction while he was talking to you?
---Yeah, but the, the project was an ongoing project, construction was always happening, but they were eagerly awaiting this application so they could complete it before- - -

- 20 But the structure of the, the subject of the Section 96 application had been commenced while he was talking to you, before he, before he spoke to you in this conversation which we've just had replayed?---I think you're right, and I think in the respect of the demolition of the wall and they definitely hadn't started things such as the toilets and- - -

So if it had been discovered that he started doing the work before the certificate was issued, he might have got into trouble, I take it?---Depending on the nature of the works. Again I stress that the wall was demolished that was part of it would have been exempt development which didn't require council's consent and the marking out of the wall I didn't see as a significant issue needing to backdate it or change it, it was just a small portion of the- - -

- 30 Mr Karkowski, you were undoubtedly thinking about backdating it during this conversation, were you not?---It was discussed, yes.

Well, why? Why were you thinking about- - -?---Because I didn't know when the actual outcome of the owner's consent was coming, there was a couple of unknowns so I said to him, you know, "If I have to, I'll backdate it." But it wasn't something that, a practice that I made to do.

- 40 So you were happy to protect him from getting into trouble because he's started doing the construction before he had the permission to do so?
---Um, well, it was the modifications, they, they always had permission to
- - -

Whatever it was, whatever work he was doing, he wasn't entitled to do at the time. You knew that. Isn't that so?---That's right.

And you were doing your best to protect him by agreeing to backdate it, should that become necessary?---Yes, I was offering that, if they- - -

Yes. Why?---Because, because the scope of the works that they were changing in that area, I knew the toilets weren't going to occur 'cause they were nowhere near ready for- - -

Why were you doing it for Mr Tasker?---I would have considered it for anyone that had an application with council.

Do you not regard backdating as lying?---It's, it's not something that I would entertain, it's, it's- - -

10

That's not my question. I mean, you are portraying to the world that something happened when it didn't happen, aren't you, if you do the backdating?---Yep.

You're quite prepared to do that, are you?---Um, hmm, well, I- - -

For anybody?---At the time I considered it, yes.

20

But, and you say you would do it for anyone?---No, normally we would make an application for a Building Certificate.

So why did you do it for Mr Tasker?---Because like I said, the portion that was commenced that I could see that they had started was the demolition of the wall which is in my opinion not construction, it's demolition, and they had the marking of the wall for the first roll of blocks worked down so- - -

30

Are you saying that as a fact you knew that whatever construction they'd been doing in regard to the Section 96 application was construction they were entitled to do without the Construction Certificate?---The portions that they had done were so minor I didn't think it was relevant.

Did you know what they had done?---Yes, I did, 'cause I'd been on the site at regular intervals doing progressive inspections, so I was sort of quite aware of what- - -

40

When you saw that they were doing, you knew when you were onsite that they were doing things without the Construction Certificate having been issued?---Not straightaway, 'cause when I, when I visited the site I didn't always have the full set of plans with me and they did discuss some changes that they were embarking on which was part of the Section 96.

But at some point you discovered that?---That's right. I- - -

You discovered that before you've made this, before this telephone call took place?---Yes, that's correct.

You must have?---Yeah, I did.

So why didn't you do anything about it?---Because they didn't, they didn't proceed any further with the, I said to them, "If you keep on constructing this" - - -

So they stopped, did they?---They did. That's right.

So why does Mr Tasker contemplate the whole structure being finished - - -?---Because- - -

10 - - -before the certificate is issued?---Because they didn't know when they were going to get this, they were waiting, they were pending council issuing this Development Consent.

So they were going to go on building?---I don't know what their intentions were, whether they- - -

20 That's what he's saying, "Specially if you've got the whole structure finished."---Well, I don't know whether he, I think he's talking about the whole structure as in the development, not necessarily the works related to this. It was quite a big project, like, it's not just, the, the, the works that he's modifying are so insignificant compared with the big picture, like, the main crux of that Section 96 was the addition of the toilets.

What concerns me, Mr Karkowski, is that this demonstrates that you were quite prepared to bend the rules and lie, now you say on some minor issue for Mr Tasker. Is that right?---It appears that way, yeah, I was- - -

30 And I'm trying to find out why and the best I get from you is that it was just a small thing. Is that right?---Well, if, if I was, the other only, only other opportunity was on the minor nature of it was to make him put a Building Certificate for a wall that had been demolished and part, part of a small portion of a wall that- - -

But if that's the council rules, who are you to change them?---Well, it's not the council rules, it's the Planning and Assessment Act requirements.

Well, who are you to change that?---I'm nobody to change it, it's not- - -

40 Can anybody change it?---Um, no, but I'm- - -

So why did you do that for Mr Tasker?---Because I believed it was so insignificant it wasn't worth the delay and another application, he would have been waiting months for another owner's consent for a Building Certificate from Railcorp. It just didn't make any sense to do it.

So that must have been a great favour that you did him?---Oh, I don't think so. I wouldn't consider it a great favour.

It saved him a big delay, didn't it?---Yeah, I suppose it would have slowed the project down making him lodge a Building Certificate, changing the fees across from a construction to a Building Certificate, it wouldn't have- - -

You did him a great favour?---Um, you could call it that, yeah.

Why?---The, the, the job was going well, they were pleasant to deal with, never had a problem with them, it just, there was, there was no reason to make them, put them through any heartache over- - -

10

And also, do you agree, because he's a man who's taken you at regular intervals to massage parlours and restaurants- - -?---He didn't.

- - -and paid for it and, he didn't do that?---He never took me.

And what did he do for you?---Occasionally we went to lunch at the building, at one of the restaurants located onsite at the building.

That's all?---That's all he ever did.

20

Did he buy you wine?---Sorry?

Did he buy you wine?---Yes, but we, it wasn't a big drinking session or expensive. I often went straight back to work. It was only a short visit. It wasn't like hours lunching. It was very much business-orientated.

What did he do for you over the period?---Nothing other than friendly, easy to deal with, went to lunch with him occasionally onsite, but not just myself and him, others. Natasha from the same company would come along, there was really no benefit at all.

30

MS WILLIAMS: Mr Karkowski, an issue arose, didn't it, in relation to the ceiling height above Shop P8 in Chatswood Central once these works were underway?---Yes, it did.

And the issue was that the ceiling wasn't quite as high as the Building Code of Australia required. Is that correct?---Yes, depending on the use of the space.

40

Ah hmm. And that was a problem that you identified and told Mr Tasker about. Correct?---Yes. It was found during inspection onsite.

Ah hmm. And you told Mr Tasker, didn't you, that he would need an Alternative Solution Report in relation to the height of the ceiling?
---I did.

And you mentioned to him that he could engage a consultant to prepare that report?---That's correct.

But ultimately you agreed with Mr Tasker that you would write that report for him. Is that correct?---Yeah, after, after he'd asked me to do, like, if I could do that for him, which I originally declined and um, then subsequently agreed to do that for them.

You say you originally declined that request, do you?---Yes.

10 Ah hmm. And was it in the same conversation or a separate conversation that you say you agreed to it?---Ah, it was in, it was in the initial conversation that I declined it and then later during that conversation accepted to do it for them.

Ah hmm. When you say you declined it, do you mean you said something like, I shouldn't do it?---That's correct.

Because you knew that in fact it was wrong for you to write a report that you would then- -?---That's correct.

20 - - -yourself assess and use to determine the application?---That's correct.

Ah hmm. But in that same conversation you agreed to do it. Do you accept that?---I did.

30 And you explained to Mr Tasker that although you would write it, it would need to be on his company's letterhead and submitted to the council under Mr Tasker's name. Correct?---I prepared it 'cause they, they didn't require any particular qualified individual to prepare it, but it was just the format in which it was prepared was, was essential. The way you structured the report. And, and I, as you said, I suggested and I offered after originally declining to, to do that for them.

And the format was also essential in that it need to conceal the fact that you were the author of the report didn't it?---Well I don't believe it needed to have an author. Those sort of reports just needed to address the issue that, yes, the, the author was put on as David Tasker.

40 Can you turn to page 154 of volume 4? Do you recognise there on page 154 through to 160 the report that you wrote?---Yes, I do.

And you inserted those words on the cover page, prepared by David Tasker didn't you?---I did.

Because you could hardly say that it had been prepared by you when it was going on the council's file could you?---That's correct.

Because in effect what was happening was you were writing and then assessing the report and making a determination. That's correct isn't it?

---That's correct.

THE COMMISSIONER: Does anyone else in the council look at this report in order to assess it?---Usually with minor things such as reduce ceiling heights, it wasn't something that was peer reviewed which I think you mentioned earlier. They were, as long as they were justified, like I don't think in my time as a building surveyor a ceiling height lower than the requirements have ever been knocked back, obviously depending on its type of use that it was being used for. So it was considered a minor - - -

10

So were you the sole assessor?---I would have been the sole assessor. But this, this, this hadn't been done upfront. It had obviously been done and it identified (not transcribable) inspection, that's the inspection phase of the development. It wasn't something we, we planted. They knew it was going to happen or I knew it was going to happen. It just sort of simply happened and I said it needs to be addressed and put on the file.

20

MS WILLIAMS: And the appropriate way for Mr Tasker or his company to address this would have been to either prepare a report themselves or to engage a consultant with the skills to do so?---That's, that's correct.

And by agreeing that you would write the report for them, you were in effect saving them the time and cost associated with that method?---That's correct.

30

Which was of some considerable benefit to them given that they wanted to progress this development. Correct?---No. It, it needed to be done. I don't think time was of essence, it just needed to be done to address the future tenant and I don't think that Bennelong wanted to hand it to an NCO but to a tenant that had a floor in it, that wasn't addressed or justified, so it wasn't required for fit-out until sometime later. I don't exactly the timeframe, bit it was probably a month or two away from needing to be used. But just, it's an item that required to be addressed.

And, I'm sorry, Commissioner.

THE COMMISSIONER: Sorry. There's another benefit to Mr Tasker wasn't there?---Yes.

40

What do think that other benefit was?---Giving, doing this report.

Mmm. Because you were obliged as part of your duties to bring an unbiased, impartial assessment to the report. Is that so?---That's correct.

And there's always a risk with any assessor or judge or magistrate that that person might not agree with what's happened isn't there?---Possibly, yes.

And Mr Tasker knew that if you wrote the report there was no doubt that you were going to say it's all okay?---With ceiling heights, Commissioner, it's, it's a difficult one because - - -

But you weren't going to say - - -?---I've never said - - -

- - - I don't like this report. It's not good enough were you?---No, not exactly.

10 So you were going to say this is a brilliant report. It's all okay?---Mmm.

Weren't you?---Mmm.

Answer yes?---Yes, Commissioner.

And so Mr Tasker knew that by persuading you to do it he was getting a real benefit that he wasn't otherwise entitled to?---That's correct.

20 MS WILLIAMS: The report needed to be written and in effect approved by you before the Occupation Certificate could be issued for shop P8 didn't it? ---That's correct.

And without an Occupation Certificate Bennelong couldn't lease that shop to a tenant and have them paying rent. That's correct isn't it?---That's correct.

30 So the other real benefit to Bennelong is not having their progress in completing the work and being able to lease the shop held up by the delay involved in getting a consultant to write this report. That's right isn't it? ---It's right, but in some respects the report was prepared I suppose from their, on their, on their behalf because they didn't know at the time who the future tenant was or what the space below was going to be used for. And I think from vague recollection it was twenty two sixty in height, which the building code allowed twenty one hundred as an acceptable height for certain uses. Where as 2.4 was required for dining and, and kitchen use and I think in the end given that it was a space that was infrequently occupied as a, it was confined to a service T prep counter area, 2.1 was deemed to be suitable to meet the building code. So probably the report wasn't necessary in the end or, or required to be relied upon in the determination of the
40 application. So it probably in hindsight it was a silly thing for me to do. I don't think it was in the end required for the sign-off of the tenancy.

But nevertheless at the time you raised the issue about the ceiling height with Mr Tasker, you believed did you not that an alternative solution report was required?---Well I suggested to him if, I said to him, what is it going to be used for? And he couldn't answer me. I said, is it the kitchen, is it the storeroom, is it, 'cause if it was the storeroom we wouldn't even be discussing it. An alternate solution wouldn't have been required. And he

couldn't answer what it was going to be. And I said, well if it's part of a dining area, 'cause it was more towards the front of the tenancy, I think they ended up designing it just for common sense to make it as a T prep serving counter area. I think it was just by luck or chance that it, it just became defunct and wasn't necessary.

But if you just come back to my question, at the time you suggested it to Mr Tasker, you believed that the report was necessary didn't you?---He needed to address what it was going to be.

10

And the way to address that was to prepare and submit an alternative solution report. Correct?---It was either that or they would have had to put in writing what it was going to be used for there, so we, the defect would have disappeared. But they couldn't commit, they didn't know what (not transcribable) to do at the time.

And as they couldn't commit the alternative solutions report was necessary. That's right isn't it?---At that time, yes.

20

And the matters that you've just mentioned which ultimately led you say to the report not being necessary, they were no reason for you to prepare the report on behalf of Bennelong as opposed to requiring it to make its own arrangements were they?---No.

Now Mr Tasker offered to pay you for your efforts in preparing the report didn't he?---Yes, he did.

And you accepted that offer?---Yes.

30

You asked him whether he could pay cash?---I did.

You suggested to him an amount of 600 to \$800. Correct?---That's correct.

And he gave you a Woolworths voucher to the value of \$500 didn't he? ---That's correct.

The report was completed on about 10 August. Does that sound about right?---I think so, yes.

40

And he gave you the Woolworths voucher for \$500 about two days later. Correct?---Yes, I think so.

And you accepted that voucher?---I did.

And you used it to buy wine amongst other things. Correct?---Yes.

And a couple of weeks later Mr Tasker gave you another voucher didn't he for \$250?---That's correct.

And that was in the form of a, what was called a Concept gift card, is that correct?---Yes, it was.

And you accepted that?---I did.

And you used that again mainly to purchase wine and alcohol?---That's correct.

10 Did Mr Tasker pay you any cash in addition to giving you these vouchers?
---No, he didn't.

Did you declare these gift vouchers or gift cards to the council?---No, I didn't.

Didn't even mention it to anybody informally?---No, I didn't.

And you recall that the Commissioner was asking you some questions earlier about the benefits that Mr Tasker gave to you?---Yes.

20

And these gift cards are another benefit that Mr Tasker gave to you that you failed to mention in answering those questions, aren't they?---Yes, but he was referring to massage at the time and I, he was being specific to those two items and that's when I corrected him in stating that we never went to massage, it wasn't something that we did.

Commissioner, before I move on I should tender the transcript of the telephone conversation on 22 June, 2010 at 9.08am.

30 THE COMMISSIONER: Yes, that's Exhibit 9.

**#EXHIBIT 9 - TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR KARKOWSKI AND MR TASKER DATED 22 JUNE
2010 AT 9:08AM**

MS WILLIAMS: Thank you, Commissioner.

40 THE COMMISSIONER: That's the transcript of the telephone conversation between Mr Karkowski and Mr Tasker of 22 June, 2010 at 9.08am.

MS WILLIAMS: Thank you, Commissioner. I'll also tender volume 4 containing statements and other documents relating to Chatswood Central.

THE COMMISSIONER: Exhibit 10 is a volume, is a bundle of documents entitled volume 4.

#EXHIBIT 10 - BUNDLE OF DOCUMENTS ENTITLED VOLUME 4

MS WILLIAMS: Thank you, Commissioner. I'll ask that Mr Karkowski be provided with a copy of volume 5.

10 Mr Karkowski, I want to ask you some questions about the Red Chilli Restaurant at 272 Victoria Avenue, in Chatswood?---Yeah.

You're familiar with those premises?---I am.

And the proprietor of that restaurant or one of the proprietors is a woman by the name of Theresa Dai, D-A-I, is that correct?---That's correct.

20 And what's the nature of your relationship with her?---I didn't have a lot to do with Theresa initially because her English is very poor and I usually communicated with or through her, through Therese, sorry, did you say June or Theresa?

Theresa Dai?---Sorry, Theresa Dai, Theresa Dai was the English-speaking, she was quite a nice lady, easy to deal with, pleasant to talk to, good communication skills, just found them quite nice people.

And you also know do you a Mr Feng Xiao, you may know him as Frank Xiao?---Frank, yes, I do.

30 He's the manager of the Red Chilli Restaurant in Chatswood, is that correct? ---That's correct, yeah.

And you were responsible, weren't you, for issuing a Development Consent and Construction Certificate for some major renovations carried on at that restaurant?---Yes, I was. It was previously a Chinese restaurant but they, they basically stripped it out and refitted it as a Chinese restaurant again so, yeah.

40 And the Development Consent and Construction Certificate were issued in December 2009, is that correct?---That's, actually that, that sounds about right, yes.

To assist you you may want to look at page 102 of volume 5 which you have in front of you, pages 102 to 110. Do you recognise there the Development Consent and Construction Certificate in respect of the Red Chilli Restaurant?---I do.

And is that your signature on the Development Consent at page 102?---It is.

And you issued that consent under your delegated authority from the general manager of Willoughby City Council?---I did.

And then in relation to the Construction Certificate do you again recognise your signature at page 109?---Yes, it is.

And again you issued that certificate under your delegated authority, correct?---I did.

10 Do you recall being taken out to dinner by Ms Dai and her co-director of the Red Chilli Group of Companies, a lady by the name of June in April 2010 at the Astral Restaurant at Star City?---I do.

And the purpose of that dinner was, wasn't it, for Ms Dai to seek your assistance and advice concerning the renovations to the Chatswood restaurant which were then still underway?---I don't know what their purpose was, I think it was mainly to meet people that were involved and introduced June because I, I think it may have been one of the few times I'd met June. We went, we went up there and my wife and I were invited but
20 my wife never used to come to work functions, very rarely because we had young children, and Bill and his fiancée at the time came along and we also met another gentleman that was involved in their side of things, the name escapes me, Yung, Yung is his name so we got to meet him at that dinner function.

All right. And you were, you had no hesitation, did you, in accepting Ms Dai's hospitality on this occasion?---No, I did accept it, yes.

30 Is that something that you mentioned to your supervisors at the time, that you were going out to dinner?---No, I, I don't believe they were aware of it.

Because at this time the renovations to the restaurant were underway and you were to be responsible for building inspections and ultimately for issuing an Occupation Certificate, that's right, isn't it?---That's correct.

Commissioner, if it's convenient I might rest there for the moment and tender some other documents before the Commission adjourns.

40 THE COMMISSIONER: Yes.

MS WILLIAMS: I tender volumes 1, 2 and 3 containing documents and statements relating to the Oriana Bath House.

THE COMMISSIONER: Well, I think it's enough to call them volumes 1, 2, 3 so Exhibit 11 will be a bundle of documents part volume 1.

#EXHIBIT 11 - BUNDLE OF DOCUMENTS MARKED VOLUME 1

THE COMMISSIONER: Exhibit 12 will be a bundle of documents marked volume 2.

#EXHIBIT 12 - BUNDLE OF DOCUMENTS MARKED VOLUME 2

10 THE COMMISSIONER: Exhibit 13 will be a bundle of documents marked volume 3.

#EXHIBIT 13 - BUNDLE OF DOCUMENTS ENTITLED VOLUME 3

MS WILLIAMS: Thank you, Commissioner. And I tender volume 6 containing materials relating to Mr Koura.

20 THE COMMISSIONER: Exhibit 14 is a bundle of documents marked volume 6.

#EXHIBIT 14 - BUNDLE OF DOCUMENTS MARKED VOLUME 6

MS WILLIAMS: And finally volume 7 containing documents relating to The New Shanghai Restaurant amongst other things.

30 THE COMMISSIONER: Exhibit 15 is a bundle of documents entitled volume 7.

#EXHIBIT 15 - BUNDLE OF DOCUMENTS MARKED VOLUME 7

MS WILLIAMS: Thank you, Commissioner, that's all I wish to tender at this stage.

40 THE COMMISSIONER: Yes. We'll adjourn 'til 10.00am tomorrow morning.

THE WITNESS STOOD DOWN [3.58pm]

AT 3.58pm THE MATTER WAS ADJOURNED ACCORDINGLY [3.58pm]