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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHURCHILL

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 8 MARCH 2011

AT 10.05AM

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

THE COMMISSIONER: Mr Williams.

MS WILLIAMS: Yes, Commissioner, might Mr Karkowski return to the witness box please.

THE COMMISSIONER: Mr Karkowski.

<EDWARD KARKOWSKI, on former oath

[10.03am]

10

THE COMMISSIONER: Mr Karkowski, you're still under the oath. Please sit down. You're still under the oath you swore yesterday and the section 38 order that I made in regard to you continues to apply?---Thank you, Commissioner.

MS WILLIAMS: Mr Karkowski, do you recall yesterday afternoon I was asking you some questions about Red Chilli Restaurant in Chatswood?
---Yes.

20

And you indicated that you knew Ms Dai, Theresa Dai?---That's correct.

One of the directors of the group of companies that operates that restaurant?---Yes.

And you also mentioned another lady by the name of June?---Yes.

Do you know her full name as Xiao Jun Guo?---I really don't know her name. I, I only knew her as June.

30

And I think you indicated yesterday her English language skills are not terribly good, is that correct?---That's correct.

Did you understand through that she was Ms Dai's co-director of the group of companies that operate the Red Chilli Restaurant?---I, I, my understanding of her was to be the wife of the owner of the business or the enterprise or, they'd sort of run the Red Chilli Group.

40

I see. So she had some connection with the business of the Red Chilli Restaurant?---Yeah, that's how I understood it when they explained it to me.

All right. And I think you indicated you know Mr Feng Xiao or you know him as Frank Xiao the manager?---That's correct.

All right. Now, for convenience I'll refer to Xiao Jun Guo simply as June?
---Ah hmm.

And Mr Feng Xiao I'll refer to him by the name you know him as Frank Xiao?---Thank you.

All right. Now, I was asking you yesterday about a dinner at the Astral Restaurant in April 2010?---Yes.

And that was a dinner that I think you indicated you attended together with Mr Geroulis and his then fiancée Ms Dai and June, is that correct?---Yes.

10 Was Mr Xiao also at that dinner, Frank Xiao?---Frank was there, yeah.

All right. And the purpose of that dinner was to discuss the progress of the Red Chilli Restaurant renovations which were then underway in Chatswood wasn't it?---I don't think there was an agenda, I think it was more just a get-together, a social get-together to meet, to meet up with Bill. I don't think they'd met Bill at that stage because he, although he would've probably secured that lease for them he was overseas at the time, I think he started it and then went overseas and so he never really got part of that introduction. So it was just a, my understanding of it was just a dinner out. Business was
20 discussed a little bit and, yeah.

It was Bill or Mr Geroulis who'd introduced Theresa Dai to you wasn't it when she first was in the process of submitting the development application?---No, I don't think I met Theresa Dai straightaway, I think, sorry, Theresa Dai, yes, it was June I met later.

So Mr Geroulis had, in effect, been the agent who facilitated - - -?---No, sorry, I didn't meet through him it was through Tommy his colleague, work colleague 'cause as I stated I think Bill was away or going away at the time so Tommy handled the matter.
30

And Tommy is the person who works with Mr Geroulis in his office is it? ---That's correct.

All right. And before this dinner in April 2010 you remember I showed you yesterday the Development Consent and Construction Certificate that you issued in 2009 in December?---Yes.

40 You had also been to dinner hadn't you in February 2010 with Ms Dai and Mr Xiao, is that correct?---That's Frank and Theresa?

Yes?---Yeah. The dinner with, in when, sorry?

In about February 2010?---Can you state maybe where that was, I just can't recall from a date, the date doesn't ring a bell, I don't have dates in my head but - - -

Do you remember attending any dinner with Theresa and Frank before this dinner at Astral Restaurant in April?---Not sure if it was a dinner or a lunch, I, I, I'm not sure, I possibly could've. There was, there was a couple of lunches and dinners that we were, we had with those people.

So from the time that the Development Consent and Construction Certificate were issued in December 2009 there were lunches and dinners with representatives of Red Chilli that you attended on a number of occasions, that's right isn't it?---Sorry, just repeat that again please.

10

You went to lunch or dinner several times with Frank and Theresa and sometimes June from Red Chilli on a number of occasions after you issued their Development Consent and Construction Certificate?---That's correct.

The dinner that you do recall in April 2010 at the Astral Restaurant, that's a rather exclusive and expensive restaurant isn't it?---It was.

20

And who paid for that meal?---The Red Chilli Group, I'm not sure which one of them but I didn't see who paid, which one of them paid but it was, it wasn't myself.

Did you make any offer to pay?---No, I didn't.

And you understood, didn't you, that you didn't need to offer to pay because you were being treated to this hospitality due to your position with the council?---Yes, I was invited to go out with them.

30

And you understood, didn't you, that Theresa and Frank and June thought that you would be able to assist them in relation to the renovations that they were carrying out and the Occupation Certificate they would ultimately need?---They may have assumed that, yes.

Well, that's the only reason they would be taking you out to dinner isn't it, Mr Karkowski?---I really don't know, you'd have to ask them.

But you knew, didn't you, that by accepting their hospitality you were placing yourself under some kind of obligation to assist them in the future? ---I never felt obligated at any time.

40

So you thought you could go and enjoy their hospitality with no obligation flowing from you to them in return?---They never gave me a sense of any obligation to do, it was never discussed to do, it was never discussed to give them any special considerations or obligations to do anything, it just didn't happen.

I'm not asking you whether it was discussed, I'm asking whether you knew in your own mind that that you were in fact obliged to help them in some way in return for this hospitality?---I, I never felt obliged at any time.

You knew, didn't you, that this hospitality was a benefit that should be declared to the council?---I did.

And you didn't declare it, did you?---No.

Why not?---I, I knew that it wasn't the right thing to do.

10 THE COMMISSIONER: And why wasn't it the right thing to do?
---Because of the perception that if I was doing it it could be perceived that I was giving them something that they shouldn't have had perhaps.

You were favouring them unduly?---Yes.

MS WILLIAMS: And, Mr Karkowski, you knew didn't you that that perception was one of the very things you needed to strive to avoid in performing your functions with the council?---Yes.

20 Whether or not you felt obligated it was important to avoid a perception that others may have that you would be obligated?---Yes.

That's right, isn't it? In April 2010 Mr Xiao, Frank Xiao, gave you a Montblanc pen, didn't he?---He did.

And do you understand why he gave you that?---He, he never said why. He never, he never, he never said what it was for. He, he just gave it to me.

30 But again you understood, didn't you, that it was to secure your support and assistance in relation to - - -?---Ah huh.

- - - the renovations at the Red Chilli Restaurant?---No, I didn't feel that obligation. Around the time for, I, I received the pen they had asked me for some assistance in looking at their wine menu and, and things of that nature and they, because they knew that I, I knew wines and liked wines, I sort of, they, they asked me to have a look at, just proofread the spelling and stuff on a menu, a city menu they were embarking on because the one in Chatswood was already planned and done so, yeah, I'm assuming it might have been for that, for help and assistance with that.

40 But that was no part of your job with the council to be doing that kind of thing, was it?---No, it wasn't.

And didn't you in fact refer them to Sonia Seo for that assistance?---No, Sonya was a graphic designer and I think she, I referred to her, they asked if I knew anyone who could help them with graphic design for their city store. They were wanting to change their menu and modernise it and I said look, I don't do that and I suggested maybe contacting a graphic designer.

Did you declare the Montblanc pen to the council's Gifts and Benefits Register?---No, I didn't.

And when Mr Xiao gave it to you you told him that you weren't supposed to accept it, didn't you?---I, I told him he didn't need to give me this, it wasn't necessary and he said no, I think he said June or Theresa wanted, wanted me to have it as a thank you and I accepted it.

10 Didn't you say to him something like look, I'm really not supposed to accept this?---I can't recall what I said at the time exactly.

But you knew that you weren't supposed to accept it didn't you?---I did know.

And you knew that the reason for that was to avoid the perception that others may have that you would be obliged to favour Red Chilli in some way, didn't you?---Yes.

20 And you're quite sure, are you, that you didn't in fact favour Red Chilli in relation to their renovations and Occupation Certificate in Chatswood?---I, I never exercise any favouritism, I help people openly in any circumstance if they ask for my help.

You never helped them in any way that was inappropriate?---No, I don't believe so.

30 Towards the end of May, 2010 you identified didn't you a problem - - -?
---I'm sorry, I'll rephrase that. In inappropriate help, I did assist them in a report which I think you've alluded to in the documentation, the alternative solution report, but that's all that I would have helped them with inappropriately.

40 Ah hmm. Right, would you tell the Commissioner please what happened with that alternative solutions report and what you did?---During the, during the application being lodged the plans showed that they would have a one metre clear path of travel through a back corridor to an exit going to the rear car park entrance and, and they, the plans indicated compliance with the one metre with some cabinetry being installed through that location for storage. And during the, during the fit-out stages and getting closer towards the end, it wasn't evident towards the end because the, the cabinets were being made off-side and when in fact the cabinets did get installed towards the end they cut in on the one metre cleared path of travel. So I indicated to them maybe they need to modify them or provide an alternate solution report. And they asked me whether I was capable, whether I was able to do it for them. I usually went through the usual process that you have to get somebody to do the report separate to me and I didn't really, I didn't offer, but they asked me whether I could and I agreed.

Are you quite sure you didn't offer, Mr Karkowski?---I'm pretty sure I didn't offer. I'm pretty sure I told them that they need to get somebody and then they asked me whether I could and I agreed.

10 Well I want to suggest to you that it happened this way, that you told Mr Xiao about the problem and you told him that you might have to do a report for them, meaning for Red Chilli. And Mr Xiao then asked can you do that? And you said something like, I'm going to have to because we're running out of time?---My recollection of it is a little bit vague on that. I can't recall exactly whether I offered or did they, it's not something that I made a regular occurrence of doing, 'cause I knew that it was something that I shouldn't have been doing because of conflict of interest.

All right. I'm going to play a recording of a telephone conversation between you and Mr Xiao on 31 May, 2010 at 4.47 in the afternoon. Commissioner, I hand up a copy of the transcript.

TELEPHONE INTERCEPT PLAYED

[10.18am]

20

MS WILLIAMS: Mr Karkowski, does that help you recall that in fact it was your suggesting that you write the report?---It does but I must say that I believe there was prior conversations leading, and that conversation I don't believe is in its entirety in, in all honesty because the conversation starts very abrupt. I, I don't believe that to be case from the initial onset of the discussion but it appears from that conversation that I did, I agreed to do the report for them.

30 And when you said "we're running out of time," what were you referring to there?---Well, when I said we're running out of time is, I knew that they had an opening date and I said to them, you know, you're running out of time, you need to get this thing wrapped up because like I told, I advised them that it couldn't be signed off until they'd either fixed the problem or had a report carried out.

40 The fact that they had an opening date looming and that there was a problem with their building works wasn't your problem was it, Mr Karkowski, except to the extent that you needed to identify the problem and make sure it was fixed, it was no concern of yours?---No, it wasn't.

But wasn't it the case that you felt obliged to help them meet their opening date in part by reason of the hospitality they've been extending to you?---I tried whenever I could to help people out.

Yes, but you felt obliged to go one step further and help them out in a way that you've acknowledged was inappropriate in this case and I suggest to

you that that's in part because of the hospitality they've been extending to you?---It could be viewed that way.

But that's right, isn't it? You felt a sense of obligation?---I never felt obligated from any of the gifts that were given to me, the lunches, dinners or gifts.

10 So what was the reason then why you offered to write this report when you knew that you weren't supposed to?---Because the people were genuine people and they were kind, they were easy to deal with, again I, I tried to help people in Chatswood. I was more proactive in helping people in, in my job. I probably shouldn't have, in hindsight I probably wouldn't do it.

But there's a difference, isn't there, between helping people and bending the rules, do you agree?---Yes, there is.

And this was not helping, was it, it was bending the rules to help?---Yes, it was.

20 Did you generally bend the rules for people or was it only for people like Mr Xiao and Ms Dai who'd been taking you out to expensive meals and giving you expensive gifts?---I wasn't in a habit of bending rules but I, I did exercise flexibility to help assist people where I could.

THE COMMISSIONER: That's not the question. The question is whether you did that to people who had given you expensive gifts and taken you out to dinner only or whether you did it for others as well?---Commissioner, I did it for anybody.

30 But can you identify people who you did it for who didn't take you out to dinner or give you gifts or give you favours?---There would be examples, off the top of my head I couldn't think of it but there was times where a certificate might have been in the wrong format, as an example, or didn't have a, wasn't bearing a signature and I was quite meticulous in my recordkeeping and stuff like that nature so I would take it on face value perhaps that the certificate was legitimate and I would hold off and allow an occupation, for example, as an interim and not issue the certificate until I received the signed copy, something of that nature, for example and that would have been an example where I wasn't invited to a lunch or a dinner or
40 any gift associated at all.

No one ever checked on you, whether you, how you were performing your work?---No, I don't believe I was checked.

You were just given a free rein to do whatever you like?---Yeah, work trusted me in my role.

You didn't, there was no method of reporting which enabled people to check on whether you were doing the right thing?---I think the only means of, of, of that happening, Commissioner, was reports, either my manager seeing the volume of work going in and out of the secretary's in-tray that sat next to him which was also his secretary or, or the performance reports of how many applications I've been dealing with in each month, just the volume of work.

10 And the fact that you'd go out and you went out, you went out fairly often to restaurants for lunch didn't you?---I did.

And they were pretty long lunches it seems?---It varied, sometimes they were short, sometimes they were a bit longer than the one hour, sometimes they were twice that length.

And was there any recordkeeping to show what time you would come back to, what time you would leave work and what time you'd come back?---No, there was not, there was no recordkeeping.

20 So no one knew what periods you were spending away from work?---No.

And no one knew what you were doing when you were away from work? ---I don't believe so.

MS WILLIAMS: Commissioner, I tender the transcript of that telephone conversation.

30 THE COMMISSIONER: Yes. The transcript of the telephone conversation between Mr Karkowski and Mr Feng Xiao known as Frank of 31 May, 2010 is Exhibit 16.

#EXHIBIT 16 - TRANSCRIPT OF SECTION OF TELEPHONE CONVERSATION BETWEEN MR KARKOWSKI AND MR XIAO DATED 31 MAY 2010 AT 16:47

MS WILLIAMS: Thank you, Commissioner. I should indicate - - -

40 THE COMMISSIONER: That's an extract it's not the conversation.

MS WILLIAMS: It is an extract and I will tender- I'm having copies made now- of the transcript of the entire conversation in fairness to Mr Karkowski and I'll return to that. Mr Karkowski, a few days after the telephone conversation an extract of which was just played you went to lunch didn't you at the Red Chilli Restaurant in Chinatown on 2 June, 2010?---I did.

And you went to lunch with Frank Xiao, Theresa Dai and Sonia Seo there, is that correct?---I did.

The lunch went from about 12.30 until about 3 o'clock, does that sound about right?---I think so.

And you met up first for drinks at a hotel in Chinatown, do you remember that?---Yeah, we did.

10 And how long were you out of the office for to attend that lunch?---I didn't keep a record and I can't remember, I'm sorry.

It was a working day though?---I believe it was.

And what was the purpose of that lunch as you understood it?---The purpose of that lunch was to introduce, I think it was to introduce Sonya to them and it was more I think for Sonya and them to talk about their menu content but they invited me along to come along.

20 And why did you agree to go along given that it had nothing to do with your work and it was a working day?---I just got the invitation to go along to try to, it didn't, I hadn't tried their cuisine that much in their restaurant, they used to take me to other places.

So, in effect, you were going for your own enjoyment, is that right?---That's correct.

30 Was the progress of the work in the Chatswood restaurant discussed at the lunch?---I can't recall, we may have discussed, I don't think so, I don't think there was a need to discuss it, it may have come up in general conversation but it wasn't the real focus I don't believe of that lunch. My recollections of those conversations are very vague but it's possible that it could've been discussed.

Did you have a discussion towards the end of the lunch about the need for the floor services at the Chatswood restaurant to be tested by a slip assessor?---It's quite possible that we discussed that, yes.

40 And there was an issue with the marble floor surfaces wasn't there?---I believe so.

They had previously failed slip testing hadn't they?---I believe they had some tests conducted which were showing a fail result, yes.

And Red Chilli Chatswood had applied some treatment or solution to those tiles, remember that?---I believe they did.

And they were hoping that that would lead to the tiles passing?---That's correct.

The floor had been laid, is that correct?---I'm not sure what stage it was laid or whether they tested it prior, prior to laying it or laid it, I can't recall but it's quite possible that it was laid.

10 And this lunch happened on 2 June, when did you understand at this stage that Red Chilli Chatswood was hoping to open for business?---I can't remember the exact date, I just, I just knew that it was nearing, I don't know the exact, I can't remember off the top of my head dates.

And if the tiles that had been laid did fail the slip test again, notwithstanding the treatment - - -?---Yep.

- - - Red Chilli Chatswood had a big problem didn't they?---That's correct.

20 Do you recall telephoning Anthony Debeck at about 10 to 3.00 towards the end of this lunch on 2 June?---Yes.

And making arrangements with him to attend Red Chilli Chatswood the next day to redo the testing?---Yes. Yes.

Do you recall telling Mr Debeck that the marble floor needs to pass?---Yes, that's right.

30 And you were making it known to him weren't you that it was very important to Red Chilli Chatswood that their tiles needed to pass his test? ---Yes, it was important for them.

And by telling him that the marble floor needs to pass, you were putting pressure on him weren't you to make sure that it would pass rather than simply leaving him to do his job?---No, I was simply implying that they need to have a treatment that will obtain a pass result. I can't make somebody make a tile pass.

But the tiles had already been treated you agreed with me a moment ago after their initial fail result?---Sorry, repeat that again?

40 I asked you some questions a few moments ago and I understood your evidence was that the tiles had already failed once and had therefore been treated. Correct?---That's correct.

So if they failed this time - - -?---That's correct.

- - - it wasn't necessarily a matter of a further treatment was it?---If they failed they would have had to have another treatment or a different type of

treatment applied. There was, there was probably, there's probably more than one way of treating tiles.

But you didn't know that did you, that's Mr Debeck's form of expertise?
---That's right, Mr Debeck would have given them guidance as to what, what method would be best to get that result.

10 Ah hmm. So you deny do you that you were putting pressure on Mr Debeck by telling him the tiles had to pass?---I don't believe I was forcing him to make it pass. I just told him that it was important, I believe I was advising him that it was important to the Red Chilli group that they, they somehow get a result, a pass result through treatment and testing procedures.

THE COMMISSIONER: What's the relationship between you and Mr Debeck?---Anthony I've known for probably five or six years. He's an older gentleman. I met him through my predecessor in the area and he seemed to be the most popular at the time or of recent in relation to conducting slip tests and so sometimes I would see him on site 'cause he was around, he would come to the site and conduct - - -

20

So he was an officer of the council?---No, he wasn't. He was an independent operator who carried out wet and dry slip tests (not transcribable) on floors.

So the council would rely on his opinion would it?---Him or others, that they would, they would conduct on-site tests and provide a, a result based on the friction testing.

30 Some kind of certificate?---That's correct.

And the certificate from, do these people need a particular qualification or are they on a register?---I'm, I'm not sure, but they're not easy to find. There's only about three or four operators that I know of or Willoughby City Council knows of. And we do have a list of these people available at the counter for that reason.

40 What did you mean by telling him that the floor needed to pass, the tiles needed to pass?---Well, well I can't, I couldn't allow a business to trade with a floor that failed, so that's what I meant by it needs to pass.

But you knew that didn't you?---Well, I wasn't going to allude to him that I was going to, 'cause I know these people that I'm going to let them trade without it. It would be the wrong thing to do.

Are you responsible for giving Mr Debeck a lot of work?---No, but a lot of work could come to Anthony via council's register. We have a list of slip test consultants and he could end up getting work because he's on that list I would imagine.

And did you say that he was your favourite?---I wouldn't say he was my favourite. I don't believe I ever said he was my favourite, but I, I think he was the most honest operator and - - -

So did you choose him more then others?---I liked him more then others.

Did you choose him more then others?---I never chose him, but - - -

10 Who would choose him?---It was up to the applicant to choose.

But did you recommend to the Red Chilli Restaurant to go to Mr Debeck?
---In case where I knew the people doing the job I may have recommended, usually I would say, only this one, this operator does a pre-test, which the other operators never did.

Did you recommend Mr Debeck to Red Chilli?---Yes.

20 And then you phoned him?---I think I did, yes.

To tell him that they had to pass?---That's correct.

You know what that looks like don't you?---It looks, yeah, it looks like I've coerced him or something.

Yes. But you say that's not true?---I don't believe I, I put pressure to coerce him to make, I don't believe I could make someone, Commissioner, give a result that was incorrect.

30 No you couldn't make him but you could influence him?---Well it'd be foolish of him to, for me to influence him 'cause he would bear all the responsibility should a court case occur later on on false, on false testing results. I just don't understand why he would do that.

How many people a year do you recommend to Mr Debeck?---I probably only ever recommended a handful of people to him. And they're probably people that I, I know quite well. And the rest of them I would just give them the list and, and say these are the operators. There was one, one - - -

40 So why do you choose Mr Debeck for the people who you know and give other people simply a list?---Because he's the cheapest. He offers the pre-test which the others don't offer.

So you're doing the people you know a favour?---Yes.

Yes.

MS WILLIAMS: Mr Karkowski, it's more than a handful of people that you recommend Mr Debeck to isn't it?---I don't have an exact figure, but it would be usually people that I knew that I would, I would give that, so it wouldn't be just anybody. I would usually give out the list from the counter and let them make that decision. A lot of the time he was generally known because he, because of his presence, like to give you an example, people never wanted to really obligate themselves to do this test because of the expense and it was probably the most least important thing in light of the big picture and so often it was left, for example when I was doing
10 Chatswood Chase, Anthony was down there for a test, he actually did the base building works for Westfields and he did it for Chatswood Chase and so he had presence in that regard. And he, and so when I was going around doing the inspections of the shops as they were opening, I would say to them, you know, where's your slip results and there would be a project manager from, from Chatswood Chase's side, (not transcribable) was the project company and they would say to them, you know, you need to get your slip test. They would reinforce what council was saying and then they'd say, look, the guy's here on-site, get him to do your test, 'cause it needs to be done. And that's a lot of the time how he got the work 'cause he
20 was in the area, known in the area and known to the centres. But sometimes I would refer him to people that I knew or felt comfortable with telling them.

And one reason why you referred him to people you knew rather than just anybody was because you weren't supposed to be recommending trades people at all. Is that right?---That's correct.

Okay. The business that you did refer to Mr Debeck was valuable to him wasn't it?---I assume so, yeah.
30

And you assume that don't you because he took you out to lunch from time to time to restaurants such as Machiavelli's to thank you for it?---Yes, he would.

And that's a very expensive restaurant isn't it?---Yeah, I believe so.

When you phoned him on 2 June to ask him to test Red Chilli's marble floors you weren't just telling him it needed to pass you were also putting pressure on him to test them the very next day weren't you?---I can't recall
40 that conversation, but perhaps I would have told him, yeah, well it needed to be retested after treatment, so it couldn't, it couldn't be, it couldn't be accepted until he had tested it and I had a report showing that it passed.

It was important to Red Chilli to have the floors tested and know the outcome quickly wasn't it at that time?---Yes. Well, Red Chilli had asked me about the floor and they were concerned about it.

And you did them a favour by using your relationship with Mr Debeck to arrange for him to rearrange his schedule so he could do that test the very next day?---Yes. Yes, I did.

I think you agreed with me earlier that the lunch at Red Chilli Chinatown finished at about 3 o'clock that afternoon, is that correct?---Yeah.

Where did you go after that lunch, did you go straight back to the office?
---I can't, honestly can't recall where I went after that.

10

Did you go somewhere else with Sonia Seo before going back to the office?
---I may have, I'm, I'm, I'm, I can't recall, I'm sorry.

If you have a look at pages 54 and 55 of volume 5 which I'll have handed to you. Those are photographs taken by officers of the Commission of you and others outside the Red Chilli Restaurant in Chinatown on 2 June shortly after 3 o'clock. Do you recognise yourself in those photographs?---I do.

And you recognise the others?---I do.

20

Can you identify the others please dealing first with the photograph at page 54?---54 is the one on the screen?

Yes?---Sonya with her back turned in the blue.

I see?---Frank facing us walking towards us. Myself behind him and Theresa walking towards us on the right.

30

And on page 55 do we see Sonia Seo again in the blue jacket?---That's correct.

Standing close to you by the looks of it. You're on the right-hand side of the picture, correct?---Yeah, it appears from that angle I'm close, yeah.

You appear to be heading off somewhere in the same direction as Ms So, is that correct?---It appears that way, yeah.

40

Does that assist you to recall that you didn't go straight back to the office after the lunch on 2 June?---My vague recollection is that she had somewhere else to go and we got a cab or, I can't recall, I believe I might've come back to the office after that. I can't recall.

If you assume for a moment that the Willoughby Council's access card records appears to show you accessing the building again at about 10 to 5.00 in the afternoon would you disagree with that?---Well, if the access card says that it's probably right.

All right. I'll ask you to be shown volume 8 please. If you turn to page 26 of that volume. All right. Can I ask you first of all are these records that you have any experience in reading?---No, I don't.

All right?---(not transcribable).

If you just, you can see that they're all entries for 2 June, 2010 from the second column from the left-hand side, do you agree with that?---Yes.

10 And then you'll see times next to each occasion when that date appears. Do you see in about the eighth line down there's an entry for 10.53am?---Yes.

And then the next entry appears to be 4.49pm?---Yes.

Do you agree with me that that indicates that you were out of the council offices between those hours on 2 June?---Yes, it is quite possible, yeah.

20 And that's not inconsistent with your recollection of events on 2 June is it?
---I, I don't have exact recollections of what I did afterwards but my recollections are that I may have returned to work but notwithstanding that just because I didn't swipe in doesn't mean I didn't follow somebody in that had the door already open. That is quite possible. But I'm, I'm not saying that I did or didn't come back to work, I can't recall to be honest.

All right. Either way you were out of the office for several hours - - -?
---That's correct.

- - - until at least some time after 3 o'clock on 2 June?---That's correct.

30 If you turn to page 15 of volume 8 that you have there. Is that an overtime claim form completed by you for overtime claimed on 2 June, 2010?---It is.

THE COMMISSIONER: 6 June? Sorry, 2 June.

MS WILLIAMS: Yes. The week ending 6 June. And the date 2 June being the date on which the overtime is claimed to have been worked. And you claimed overtime for the hours from 4.00pm to 10.00pm that day, correct?
---I did.

40 That's your signature on the bottom left-hand side of the form?---It is.

And it's Mr Rowan's signature is it on the right-hand side - - -?---It is.

Did you get approval from Mr Rowan for these overtime hours before you made the claim?---I would've, yes.

And did you do that just by talking to him or - - -?---Usually it was by going to his office.

And did you tell him when you had that conversation that you'd been out to lunch for several hours with Red Chilli people?---(NO AUDIBLE REPLY)

I'm sorry, you need to - - -?---No, I didn't.

And you understand, don't you, that he would have signed this form in the belief that you had been engaged in legitimate council business during all of your core working hours on 2 June?---Yes, he would've.

10

And that's not the case is it?---No.

And if you turn to page 16 of the bundle you agree with me that you were actually paid for those hours claimed if you take a moment to have a look at the payslip for that week ending 6 June, 2010?---Yes, I was.

20

And you received that payment based on the lie told to Mr Rowan by completing that over form, correct?---Again, as I explained yesterday there was times where I wouldn't have lunch or I worked overtime without getting paid from home or started early and worked, I didn't just sit there and twiddle my thumbs, if I got to work which I normally got to work anywhere between quarter to 7.00 or 7 o'clock I would just do my, do my job.

THE COMMISSIONER: Just answer Ms Williams' question?---Yes.

Would you repeat the question, Ms Williams.

30

MS WILLIAMS: You claimed and received the payment for that overtime on 2 June based on the lie that you told Mr Rowan when you signed that form at page 15?---That's correct.

40

And, Mr Karkowski, if you could claim overtime for days when you hadn't legitimately been involved in council business why is it you say you couldn't claim it for the times that you were actually working overtime when you say you weren't paid?---Because work was particularly sensitive about it, when I approached my manager from time to time a big issue was raised, I don't think necessarily by, on his account but pressure from above about the amount of overtime I had to do to get my job done with my heavy workload and so with knowing that I'd taken longer lunchbreaks from time to time doing other things I felt that I owed work to do that and I didn't feel that I should be claiming in those instances with, also with the pressure of, of them, you know, being sensitive to the overtime, the amount I was doing so I felt an obligation of owing them, you know, to do that so I just did the work to keep my work flowing.

All right. Now, the manager you refer to that's Mr Rowan is it?---That's correct.

And is it your evidence that on, it was your understanding that it was a difficult issue for him to always obtain, or for him to always approve the overtime hours that you were claiming?---Not always but from time to time the question would arise about how much longer or, you know, I felt like I was expected to do a lot of work and I was feeling like they expected me to maybe do it for nothing at times because I had so much and you can only do so much in a day and I just felt pressure in that regard. But I didn't believe to be Mr Rowan's doing, I think it was from above.

10

It was just general budgetary pressures, was it?---Probably that, yes.

And you've mentioned your heavy workload several times, can you, I'll give you the opportunity to explain the nature of that workload and the pressure that you feel you were under?---My job consisted of the CBD when I started and I worked alongside a colleague at the time, Mr Barry Jeffrey, and in that job role it was quite busy and I was allocated to assist him because of that heavy workload.

20

Just stopping there for a moment, this was before 2007 that you were working with Mr Jeffrey?---This is when I commenced work at Willoughby, the history of this, how it eventuated. When Mr Jeffrey retired I was, I was made to apply to take on that role because I think a few other officers, not many, were interested in taking on the role, I think maybe two applied other than myself and having working there for quite some time and, and, and showing them, demonstrating that I was capable of handling the work and doing the work I believe I was successful for the role. With that came an extended area. I, I, it was bigger than previously with Barry and that entailed a part of a residential area. It wasn't extremely busy in that part but there was referrals from time to time for, for planning because that was predominantly a conservation area so the carriage would usually go with the planner or myself depending on the type of work it was and, and so I was in my opinion doing a job role that two were doing, taking it on with myself. At the same time council had been working on a, a rather large development known as The Concourse, it started off being called City Place and so I, I was tackling that rather large job at the same time as running the CBD and, and during that time, I can't think of the exact dates, but Chatswood Chase embarked on quite a significant redevelopment which involved I think about, anywhere between 120 to 160 fit outs which you can imagine the amount of work for one person. Work did, did resource me with somebody to help with that which did help a bit but it wasn't really the answer, I think work was a little bit ginger or shy in, in wanting to resource it any further so I, I didn't mind the work. I believed that I was a hard worker and did a lot of work and, and I felt there was pressure involved. I often had little problems at home with my wife about not being around and taking work home and she complained about me doing work at home and asking me if I was getting paid and sometimes the answer was no, just doing some catch-up work and, yeah.

30

40

How many applications would you typically have to deal with at any one time, that is Fast Track type applications?---Oh, there could be times where I may have had a pile up of 20 or 30 at a time, depending on the area. Like when, for example, when Chatswood Chase was being redeveloped they, luckily they, they did break it into stages, I think it was six stages in total but there was anything between 20 to 30 tenancies at a time so I was the only one performing pre-lodgement meetings, giving them fee quotes, doing the assessments, the inspections and then I was at, like I mentioned before I
10 was given some resourcing with a young person named Josh Baker who assisted me in that role, which he was quite helpful.

All right. And he was appropriate qualified and able to give you some assistance to relieve the pressure?---Yeah, he, he, he did the job very well in my opinion.

All right. And is it fair to say that some of these Fast Track applications would be quite straightforward and others would occupy more time, it just depended on the nature of the work?---Yes. A lot of them were pretty quick
20 but they, they did take time to determine, it was filling out the forms and checking all the information was there and doing it a BCA assessment on a lot of them but there were some that might have been a little bit more complex, there's complexity in it with fire, alternate solutions relating to fire, it varied, it varied quite a bit.

And the forms that you needed to fill out, that's primarily the Fast Track worksheet that we saw a copy of during your evidence yesterday?---That, that's correct.

30 All right. And, to the extent that non-building matters were involved you would refer those issues off to other officers within the council for their input?---We, we went through a funny phase at the council in respect to that, where we were finding that the Fast Track system that we wanted to have to provide the public service to the people to give the, the fast turnarounds was being delayed through that referral process because an application would come in and they would refer it to every department that may not have necessarily needed that referral. Like it might have referred to engineering and there was no engineering matter so it wasn't, and then some
40 departments didn't give, didn't have the same pressures at the building department was, as you're probably aware, our building department is in direct competition with the private sector in respect of private certification so a lot of other departments don't really share the same values of customer focus in changing their attitudes and beliefs about determining applications and fast tracking them so their priorities were a little bit different. Given that I had a background in health and building and, and I was working predominantly with food shops and shops I took on the role of doing the food with discussion with management, doing that as well because I felt

capable and, but it was extra work to do that but I felt I could streamline it faster and turn around applications quicker.

10 And was that something that you initiated in your discussions with management or did they come to you with the idea?---I, I think I, it was a long time since that discussion was held but I, I presented the problem to the council to say that the applications were, were delaying, there was numbers of examples where that was happening, for example when applications were lodged at the counter it might be two or three days before I saw, by the time
10 applicant lodged it to the time it landed on my desk because it'd go upstairs, get registered, copied onto the electronic document system and the Fast Track system was sort of designed to, to streamline that to get the application to the officer quickly and, and send a smaller package up later so that the application could, otherwise we, the council in terms of competition with the private sector, we would lose a lot of business and it wouldn't be customer focussed and we, we tried to keep business in-house because we believe, we, we deliver a good service.

20 All right. And so do I understand the effect of your evidence was that it was your suggestion most likely that the workflow in relation to food and health issues be changed so that matters come to you first before being referred elsewhere?---Yeah, I think I suggested it at the time.

And do you recall roughly when you made that suggestion?---I've got no idea, I can't remember. It was, it was, the Fast Track system was ever evolving, it was probably close to, as good as it could get towards the end but it was always changes required in the forms or the system and, and work was mindful of that and they supported it.

30 Did you ever have conversations with Mr Rowan or Mr Woodhams about your workload and the pressure you were under asking for extra assistance or raising problems it was causing?---I, I don't think I needed to say. I think they knew it but there was times where Mr Rowan discussed with me - - -

It's all right, Mr Karkowski, just take a moment?--- - - - that he, he was aware of the pressure on me was concerned.

40 THE COMMISSIONER: I think we'll take an adjournment for five minutes.

MS WILLIAMS: Yes, Commissioner.

SHORT ADJOURNMENT

[10.59am]

THE COMMISSIONER: Are you right Mr Karkowski?---Thank you, Commissioner.

MS WILLIAMS: Commissioner, before we continue, I tender a transcript of the full telephone conversation of 31 May, 2010 of which Exhibit 16 is an extract.

THE COMMISSIONER: Yes, Exhibit 17 is the transcript of the full conversation of which Exhibit 16 is an extract.

10 **#EXHBIIT 17 - TRANSCRIPT OF FULL TELEPHONE
CONVERSATION FROM WHICH EXHIBTI 16 IS EXTRACTED**

MS WILLIAMS: Thank you, Commissioner. Mr Karkowski, is there anything else you wish to say to the Commission about the question of your workload and Mr Rowan and Mr Woodhams knowledge of your workload and the support that they may or may not have given you with coping with that?---Although I enjoyed my work there and doing that type of work with the people and, it was a lot of pressure and I think to its detriment it's led to
20 my family, the demise of my family and, and it's just sort of caused problems for me that I have to overcome and some of the behaviours I carried out and conducted. That's all.

You appear to have had time, despite your heavy workload to be going out to long lunches during working hours. Do you agree with that?---Yes, I do.

And on occasions meeting up with Mr Geroulis and Mr Koura for a cup of coffee during working hours. Correct?---That's correct.

30 How is it that you had time for those things despite your heavy workload?
---I think I may be good at my job, but I'm not a machine. I think anyone's entitled to have a break for a coffee or a drink or you know, it wasn't all play. There was a lot of times that you guys won't show that I was actually doing a lot of work. What more can I say?

THE COMMISSIONER: Mr Karkowski, I notice that on the day that these photographs which are on page 55 and 56 of volume 5, in which they occur. Do you know which photographs I'm talking about?---I know which ones you're referring to, Commissioner.
40

You came back to the office and worked til about later then 10 o'clock that night?---Yes.

I mean perhaps I'm not understanding this properly, but it does seem to me that had you not spent so much time with the people you went to the restaurant with and done whatever you did do after the restaurant and I don't know what you did do, but you seem to get back to the office at 4.00. But had you not, had you not spent say from half past 10.00 til 4 o'clock with

the Red Chilli people that day and you had been working, you could have gone home at about 5.00 or 6.00 o'clock and you wouldn't have had to work until 10 o'clock?---Yeah, that, that may have been the case at times, but, Commissioner, as I've said there was a lot of times where I made up time doing work in my own time and - - -

I understand?--- - - - and I think I balanced the job.

10 Mr Karkowski, I mean what we're really trying to find out here I think is whether what you've described as an overload of work had anything to do with your behaviour and you're being given the opportunity to say that and to explain that if that's what you're saying?---I don't believe, I don't believe that the workload contributed to my behaviour. I believe what may have lead to my behaviour is the time that, that I spent in the area. For example, Commissioner, when you spend a lot of time doing a particular role with particular people you become very familiar with those people and it wasn't uncommon that I could walk down the main street of Chatswood, and I'm not putting tickets on myself, but I could stop and talk to five to ten different people that I'd say hello or just how you going, how's business going. It was, it became a very social friendly sort of environment. I didn't mind 20 that, it was actually a nice feeling to come to work and, and see people and greet people. It made the job worth coming for. My behaviour probably was encouraged by people's friendly gestures to want to take me out. But as a token of thank you for helping them or assisting them in small ways, sometimes a little bit bigger, if you take that opinion. I never meant any malice from it. I obviously did obtain a benefit in some respects for a meal or a gift, but I never felt obligated in those times to, to really have to give someone something they didn't deserve.

30 I understand. But what I'm, I'm not sure what you're saying when you say that it has to do with the long time in the area. I mean, maybe I'm not making myself clear. I do understand that that's your explanation for becoming overly friendly with the people that you were dealing with. That, that's really what you're saying isn't it?---Yes.

40 But was there any way of avoiding this?---It's, I felt it a little bit hard to just turn people away because of knowing them and, and knowing them for such a long time. I felt it was more a social, friendly gesture. Sometimes it was, I felt for cultural reasons that people, they, that's the way they operate, like the Asians for example would want to give you a gift to take you to lunch, that sort of thing, it just - - -

Was there ever any other work that you could have done at the council of a different kind which would have moved you away from this environment? ---Yes.

What was that?---Any role. I, I, I was, I was moved to residential towards the end of, prior to the, being summonsed here to court to a residential area.

I started, I've been working in residential since my employment in local government. It wasn't my favourite area, dealing with objections and the like from neighbouring properties but nevertheless I was capable of doing that.

10 And do you think that that's what should have happened earlier?---Not necessarily that but there's other areas in council such as the industrial area, that's a very similar style of work and, and complexity to the CBD, probably not as complex but it has at times got similar complexities that I probably would have or could have done.

What you're really saying is that there is a danger in keeping someone in your position as a building inspector in the same area for a long time and there are temptations that occur?---Yes.

And you were overcome by the temptations, had you been moved to other areas at regular intervals this could have been avoided?---There's a good chance of that, your Honour, Commissioner.

20 Yes, Ms Williams.

MS WILLIAMS: Mr Karkowski, do you think with the benefit of hindsight that another way in which those temptations could have been avoided would have been for you to adopt a policy right from the outset of never accepting hospitality from people with whom you were dealing?---Yes, I would agree. I must say after reading the policy I find it a little bit strange in that it allows you to accept a gift or a meal or a subsidised meal to a value of \$50 and I think we all know if you go out you're not going to sort of be looking at the person saying oh, have we reached that \$50 limit yet and notwithstanding that, I, I don't feel what's the difference between \$50 and \$100 like where
30 does, where's the line, it just was an awkward requirement.

You know when you're going somewhere like Prime though that it's not going to be \$50 don't you?---That's correct.

40 To your knowledge does the council have any information that it provides to business people within its area about the correct way in which to deal with council officers and specifically about the inappropriateness of offering gifts and hospitality?---I'm not aware of any of those documents, I'm sorry.

THE COMMISSIONER: And did you, did you receive any training about how you were to conduct yourself in relation to these various people of different ethnic backgrounds that you would be mixing with virtually from day to day?---Are you referring to culture training?

Yes, on how to deal with them?---No, there was no specific training with cultural backgrounds or anything like that.

And did you receive, with regard to the Code of Conduct did you receive any training in how to apply the Code of Conduct?---I think there was two occasions a few years apart, I can't recall exactly, Commissioner, that we would be, it was compulsory to, to attend Code of Conduct training where a presenter would, would talk about the, the code and it would be done on a visual presentation going through and I, and I can't recall but it may have been a condensed version because it's, it's quite a long document so they had the key points that they'd discuss on the screen that we would attend but there was two of those sessions.

10

And did you get any training on, on the acceptance of gifts?---It was discussed at those, it was discussed during those meetings, yes.

MS WILLIAMS: Mr Karkowski, do you think it would have made it easier for you to refuse people's offers of gifts and hospitality had you been able to point to a council, a formal council document that you could have given them a copy of and say I'm very sorry, but I'm not allowed to accept it?---I, I, I wouldn't say definitely not but it, it would be very clear I think if zero/zero, it means nothing.

20

I've been asking you about a lunch at Red Chilli Chinatown on 2 June. Two days later on 4 June you went to lunch with Mr Debeck and Ms So at Machiavelli's didn't you?---I think I did, yes.

And the previous day on 3 June Mr Debeck had tested Red Chilli's marble floor at your request?---I believe so, yes.

Do you recall whether that, whether the floor passed the test on that occasion on 3 June?---I can't remember to be honest. Can't remember.

30

Do you recall discussing the result with Mr Debeck at lunch on 4 June? ---We may have but I can't recall whether we discussed it or not.

And on 4 June you were at lunch with Mr Debeck from about 12.30 at Machiavelli's, would that be right?---That's probably about right, yes.

And Ms So joined you a little later, do you remember that?---Yes, that's correct.

40

And you were at lunch for the rest of the afternoon effectively weren't you, you didn't return to work?---Yeah, I, I don't, I'm not sure whether I took the day off or had a half day flexi, that was something I did if I wasn't coming back. I just can't recall that day.

If you have a look at page 39 of volume 8. Is that staff attendance record a form of document that you're familiar with?---No, this isn't one that I'm familiar at all, I think it's done by others.

Do you see your name there under the bold heading Building amongst other names?---I do.

And do you see that in the column for Attendance Details there's a tick for your name for each day of the week ending 4 June, 2010?---Yes, I do.

10 And that indicates to you, doesn't it, that so far as the council were concerned or at least the person at the council who completed this form 4 June was a working day for you?---It appears that way from that sheet but I, to confirm it I'd have to check. There's another sheet that we prepare in our department that shows flexi days, there's not many on there so I'm just a bit curious as to whether that's an accurate, I don't know, it's quite possible that I was, I just can't recall, I'm sorry.

All right. If you turn over the page to page 40. Is that the flexi leave sheet you're referring to?---No, this is, this is some sort of list that's been compiled, I don't know who requested it but someone's prepared it. There's actually a table which, I don't know if you've got it.

20 I don't believe we have, Mr Karkowski, but perhaps I can make some inquiries about that. And Mr Debeck paid for the lunch on 4 June, is that correct?---I believe he did, yeah.

And you wouldn't be surprised to know that that cost came to several hundred dollars?---I would imagine it would, yeah.

A little over \$500 sound about right?---I don't know what, I didn't count, I wasn't counting.

30 But you had some nice wines as well as nice food?---Yeah, we did, we did have wine, yes.

And did you make any offer to pay?---No, I didn't.

And you understood, didn't you, that Mr Debeck was taking you out for lunch because of your assistance in recommending him for jobs from time to time?---I'm not sure if that was his main objective but it may have been, yes.

40 Was Machiavelli's was that his choice or yours?---Probably mine. I probably might've, he, he, like I said when people ask me to go to lunch they would often ask me where I would like to go and if they asked me then I would suggest where I would like to go.

You see isn't that a clear indication that you were being taken out because of the person's perception that you can be of some assistance to them, that they're not only inviting you for lunch they're inviting you to nominate

where you'd like to go and they're picking up the bill at these expensive places?---Yeah, it could be perceived that way.

Well, that is what was happening isn't it, Mr Karkowski?---I, I don't know that that was the intention but it definitely could be perceived that way I would think by others if they saw it happening.

10 And whether or not you intended to do any favours for these people inviting you to these meals you, in effect, took advantage of their assumption that you might by enjoying their hospitality in nominating these expensive restaurants didn't you?---It appears that way, yes.

If you could close up volume 8 please and go back to volume 5 at page 168. Do you recognise that as the slip resistance test certificate that Mr Debeck issued for Red Chilli Restaurant at Chatswood?---It appears to, yeah, I'm not sure if that's the one on the file but it looks like typically of what he would submit.

20 I see. And if that is the one on file you would've reviewed it and included that in your deliberations - - -?---That's correct.

- - - before issuing the Occupation Certificate?---That's right.

And you'll see that he's put a note on there in relation to the marble tiles marked with the double asterisks that that particular classification was achieved on the marble only after it was treated?---That's correct.

30 Did you have any understanding about how long that treatment would be effective for?---No. It's not something, I would imagine it depends on traffic or wear and tear but that's not something the council was concerned about, we were only concerned about the passing at the time of the, of the initial test so it wasn't something we endeavoured.

40 And that was the case for all development applications?---That's right. This, this process wasn't uncommon and it probably occurred on maybe ten per cent of jobs where, where floors were poorly, poorly, poor products were chosen or the products just couldn't meet the requirements so treatment, it was either, the options were to replace the floor which was obviously an expensive exercise or to treat it and council actively accepted that as a suitable means.

All right. And it was then a matter for the owner to reapply treatment as necessary?---That's correct. But we saw it as their responsibility to maintain a level of safety if they chose to do so.

All right. Now, on about 11 June Mr Xiao told you didn't he that they were hoping to open the Red Chilli Restaurant or reopen it on 4 July, do you

remember being told that?---Yeah, I remember there was conversations about that, yes.

And at that stage you still hadn't written the Alternative Solution Report?
---I can't recall the dates but, yeah, quite possible.

And do you remember going to lunch with Mr Xiao on 16 June at Kingsleys?---Yes, I do.

10 That's the steakhouse restaurant down at Woolloomooloo there isn't it?
---That's correct.

And do you remember giving Mr Xiao the Alternative Solutions Report either at that lunch or around that time?---I can't recall, I may have given it to him that day, I just can't recall, I'm sorry, but it's quite possible.

Well, let me just suggest to you a chain of events and you tell me if you think it sounds about right. Firstly, Mr Xiao told you on about 11 June they were hoping to open on 4 July. You then prepared the Alternative Solution
20 Report at home on the evening of 15 June, asked your wife to email it to you at work the next morning and finished it off in the office on 16 June after which you went to lunch with Mr Xiao at Kingsleys?---That's quite possible, yeah.

And if you turn to page 188 of volume 5. Sorry, 189. Do you recognise pages 189 to 192 as the report that you prepared for Mr Xiao for Red Chilli Chatswood?---To 193?

30 Yes, I'm sorry, 193?---Yes, I do.

And when you asked your wife to email it to you at work you've made sure to tell her to not give the email a title or at least not call it Red Chilli. Do you remember that?---That's correct.

Because you were anxious to ensure that no one at the council would be able to link you to the writing of this report weren't you?---That's correct.

Mr Xiao paid for lunch at Kingsley's on 16 June?---He did.

40 I wouldn't surprise you would it to know that the bill was a little over \$500 again?---Possibly, yeah.

Ah hmm. Kingsley's was your suggestion or his suggestion?---Possibly mine.

And again you knew that you were being treated to lunch at Kingsley's to ensure that you would continue to assist Red Chilli achieve their desired opening date didn't you?---I don't believe I had a specific goal. It wasn't

like a, a game or anything. It was, they asked me if I wanted to go out and I accepted.

But you knew that they had a goal, to open in (not transcribable)?---Of course they did talk about dates and times that they'd like to get the business running.

10 And to your observation they were very busy running around trying to achieve that weren't they?---Of course they would have been, yes.

And the reason they took time out to take you to lunch was to in their minds, secure your continued assistance with their achieving that goal wasn't it? ---Yeah, possibly, yeah.

Well if you thought about it at the time that would have been obvious to you wouldn't it?---Yeah, I think they appreciated my assistance. I got the impression.

20 Do you remember how long you were at lunch for on 16 June?---No, I didn't keep a time track of how long I was.

Does about four hours sound right?---I can't remember to be honest.

If you have a look at page 63 of volume 8. Do you see that's another one of these access card records for 16 June, 2010?---Yes, I do.

30 And do you see about seven lines down there's an entry for 10.59am with your name recorded against it? And that the next entry is 3.25pm?---Yes, that's correct.

And barring the possibilities that you alluded to earlier of you entering the building immediately after somebody else and so not using your access card, that would indicate to you that you were probably out of the office for a little over four hours wouldn't it?---Yeah, that's possible. But again, it doesn't, it's not conclusive in that it doesn't mean that I got in there earlier, I'm not saying I didn't, but I'm just saying that I could have followed somebody in or I might have gone to a job site on the way back into Chatswood or something. I don't know, I don't keep tabs on my, my whereabouts.

40 Do you have a diary or anything that would record what you were likely to be doing that day (not transcribable)?---No, I only had my desk diary which was taken by you guys on the day that you came to my office. And I usually just put in appointments that were allocated in there, that were scheduled. So I remembered, you know, to be there for it 'cause if I be away from the office I needed to make sure I remembered to come back.

All right. And would you have put the lunch at Kingsley's in there on 16 June?---No, no, I wouldn't have.

Because you wanted to make sure that council didn't know that you were doing that?---That's correct.

But lunch at Kingsley's at any event was not a short affair was it?---Oh, I can't remember the time, but no, it was possibly over an hour I would imagine.

10

And possibly two or three hours?---I could have been, yeah. I, I, like I said, I don't recall.

Can you turn to page 45 of volume 8, please? Do you recognise that as an overtime claim form submitted by you for overtime said to have been worked on 16 June, 2010?---I do.

And you obtained verbal approval from Mr Rowan to work that overtime did you?---I would have.

20

And you didn't disclose to him when obtaining that approval that you'd been to lunch at Kingsley's that day did you?---No.

And you know don't you that he would have, sorry, I'll go back a step. That is Mr Rowan's signature on the form is it, above - - -?---It is.

Right. And you know don't you that he would have signed that form, approving the overtime payment on the assumption that you've been engaged in legitimate council business for the whole of your core working hours on 16 June?---That's correct. That's correct.

30

And that assumption would have been wrong wouldn't it?---That's correct. Can I just say that these, it wasn't uncommon for, there was a lot of these forms. It just appears that there's these particular dates for these lunches and dinners, but I did a lot of hours of overtime, there was a lot of forms which I applied on an individual basis each, each time I did it with, with the permission of my manager.

Right. I'm prepared to accept that, Mr Karkowski, but you understand don't you that the Commission is particularly interested in the occasions where - - -?---I understand.

40

- - - you worked overtime without spending your core hours appropriately?
---Yep, I understand.

And in addition to helping Mr Xiao with issues relating to the development of, well the building works at Red Chilli, you'd also been helping him in relation to some immigration issues concerning some Red Chilli staff

members hadn't you?---Yeah, they, they asked for my assistance with, they were having problems with letter writing to, to members of the immigration department and they would ask me for assistance in writing a letter.

Ah hmm. And how was it with your workload that you were able to provide that assistance?---I took it home to do, that letter.

10 And, and why did you agree to give them that assistance?---Because I said, as I said before, the people were very genuine and friendly and they were always nice and courteous to me, so I felt I should help them out. I didn't mind helping people out.

And also because they'd been taking you out to lunches and dinners and giving you Montblanc pens. Correct?---Correct.

20 And you anticipated didn't you that if your assistance with the immigration matters was successful for them that you would be entitled to some more hospitality or gifts by way of a thank you?---I don't believe that was the case. I, I don't recall that occurrence. I, I did ask them how they were travelling with it because the letter was put in and they weren't receiving any responses and it just seemed to be taking a long time. But no, I don't recall anything else.

30 But weren't you looking forward to some form of thank you if they were able to get the visas they were seeking for their staff members?---I'm sure they would have been happy in a positive result because that's after all what they were trying to do. And, and knowing the people, I'm sure they would have expressed their gratitude to thank me for the assistance in getting that, achieving that goal. There's no doubt.

And you know that they would have expressed it in the form of lunch or dinner or a gift of some kind don't you?---Oh, possibly, yeah.

Mr Karkowski, I'm going to play a recording of a telephone conversation between you and Mr Geroulis on 18 June, 2010 at 5.04pm. I hand up a copy of the transcript, Commissioner.

40 **TELEPHONE INTERCEPT PLAYED** **[11.39am]**

MS WILLIAMS: I'd just ask for that to be fast-forwarded, Commissioner, to the relevant excerpt.

THE COMMISSIONER: Yes.

TELEPHONE INTERCEPT CONTINUES **[11.40am]**

THE COMMISSIONER: That's enough.

MS WILLIAMS: Mr Karkowski, those benefits you were anticipating in that telephone call with Mr Geroulis, being taken out to dinner and to other places by Red Chilli, that was the reason you were providing them with their assistance with Immigration, was it not?---I was helping them out but I, I, I obviously knew given their prior history that they're likely to extend their hospitality.

Isn't it the case that generally speaking you were prepared to help people out in things that didn't, in things that went outside of your role or that involved bending the rules where you perceived there was something in it for you, isn't that right?---That's right.

And this was one of those examples, wasn't it?---Yes, it was.

You were invited by the Red Chilli people to their, the grand opening of their restaurant on 9 July weren't you?---I was.

And they were opening though to the public some time before 9 July, weren't they?---They, they mentioned, set, they were setting up in the kitchen and getting things prepared for I think a soft opening or something they mentioned.

And you understood that was an opening to some members of, of the public?---I don't know that we discussed that, I think they were talking about a non-public event just to their staff and family and friends. I don't think it was a public event, like an advertised opening. I can't recall. I didn't go to it but they did mention it.

I'm sorry, Commissioner, before I go further I should tender the transcript of that telephone conversation on 18 June, 2010.

THE COMMISSIONER: Exhibit 18 is the transcript of the telephone conversation between Mr Karkowski and Mr Geroulis of 18 June, 2010.

#EXHIBIT 18 - TRANSCRIPT OF TELEPHONE CONVERSATION BETWEEN MR KARKOWSKI AND MR GEROULIS DATED 18 JUNE 2010

MS WILLIAMS: Thank you, Commissioner.

And you had some discussions during the latter part of June 2010 with Mr Xiao about their opening date and what you would need to do in order

for them to get their Occupation Certificate by that date, didn't it?---I would have had that discussion, yes.

10 Do you remember saying to Mr Xiao that you would come and do an inspection and write a list of things that he would need to give you so that it would look like a normal job?---I don't know what you mean by look like a normal job, maybe you're misunderstanding, I would often, it was common that I would do a pre-inspection which I would attend the site to, it often was before a job was completed to give an applicant guidance as to what things are defects or what items are required to be submitted in order to get the business opened and operating.

Mr Karkowski, I'm going to ask to be played a recording of a telephone conversation between you and a man I suggest is Mr Xiao on 24 June, 2010 and I hand up a copy of the transcript, Commissioner.

TELEPHONE INTERCEPT PLAYED

[11.47am]

20

MS WILLIAMS: We'll terminate that there, Commissioner.

Mr Karkowski, you recognise the voice that is not yours in that conversation as the voice of Mr Xiao?---It is.

30 And what did you mean when you said, "That way it will look like a normal job?"---I, I, I probably spent, my meaning of that was when I, with this job I did spend a lot of time down on site as I would with a lot of other jobs but particularly more with this job I do, like a walk-through inspection or just, just a general check of the site and I felt a bit funny like as if, if I didn't write, like normally my job would show a lot of defects and if I didn't show it for this I just felt it would have looked a bit abnormal given the, a food shop wouldn't have any defects but it was just my assistance in helping them to make sure they got things right just doing my job that, so that's what I meant by normal job.

So do I understand you correctly, you didn't expect there to be many defects because you'd been down there so often, is that right?---That's correct.

40 But you thought it would be better to put quite a few on the form because that would reflect - - -?---Well, it looks like what normally happens on a normal job.

Right.

THE COMMISSIONER: What was abnormal about this?---Well, probably, Commissioner, I probably gave them a little bit more attention in terms of

going down there, assisting them with their, their inspections probably would be the abnormal thing about it.

So there were, there were in fact no defects?---There was. I can't recall, I don't have the, the thing (not transcribable)

Very, very few?---I can't recall, I can't remember the - - -

10 Less than normal?---It probably would have been a little bit less than normal, yeah.

Because of the extra help you'd been giving them?---That's correct.

That's help that you don't normally give people?---I do give people that help.

But, I know you do but you gave them more help than you usually give? ---You could, you could say that, yes.

20 And that resulted in them having fewer defects than would normally be the case?---That's correct.

But you didn't want anyone to see that so you explained that you would list some other defects?---That's correct.

30 MS WILLIAMS: And, Mr Karkowski, you understood from what Mr Xiao told you in that conversation, didn't you, that you, sorry, that they rather were planning to open to the public on about 2 July at that stage?---That's correct.

And there would be an opening to the public earlier than the opening night to which you were invited on 9 July?---It, it, it appears that way from that conversation.

Commissioner, I tender that transcript.

40 THE COMMISSIONER: Yes, the transcript of the telephone conversation between Mr Karkowski and Mr Feng Xiao, that is Frank, of 24 June, 2010 is Exhibit 19.

**#EXHIBIT 19 - TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR KARKOWSKI AND MR XIAO DATED 24 JUNE
2010 AT 18:38**

MS WILLIAMS: Thank you, Commissioner.

Mr Xiao and Ms Dai took you to lunch at Prime Restaurant in the city the following day, 25 June, didn't they?---That's correct.

And that was a lunch that lasted several hours?---I can't recall but I would say it would of, yes.

THE COMMISSIONER: That was basically a reward, wasn't it?---I didn't ask them what it was for but it could be perceived that way, yes.

10 MS WILLIAMS: And in fact June was there at that particular lunch as well, wasn't she?---She was.

And she paid the bill, is that correct?---I didn't, I don't recall seeing but one of them did, yes.

You didn't pay or offer to pay?---No, I didn't.

It wouldn't surprise you to learn, would it, that the bill was a little over \$1,000 for the four of you?---No, that probably would be about right.

20

Was Prime their choice or your choice?---I think it was my choice.

On 30 June you did an inspection at Red Chilli, do you recall doing that inspection?---There was many inspections there but I don't recall that particular one.

Perhaps if you turn please to page 173?---Sorry?

30 173 of volume 5. Is that your handwriting on the Building Inspection Result Sheet?---It is.

And you'll see there that the date inspection required is noted as 4 June, 2010 on this particular form?---Yes.

That's a date prior to your conversation with Mr Xiao that was played a short time ago?---Yes.

40 Is this one of those ongoing inspections that you say you were doing for Red Chilli?---It possibly was, like I said, I would do progressive inspections at people's request based on how complete or not the job was done but I can't recall, it's one of the inspections I did do, yes.

And did this particular list that you made, was that a list of things that actually needed to be attended to or a list of things to make it look like a normal job?---I can't recall. They were possibly things that were needed to do, I can't see why I would write things down that were already done because going on from earlier discussions we'd had, maybe I didn't make it very clear but when I was doing progressive inspections I wasn't necessarily

putting down the items I was finding so when I did this list I probably did jot down the things that were outstanding matters that required attention 'cause obviously if I wrote down during those other periods there could have been three or four pages worth of defects which I don't think many people would like to do that.

And if you go to page 174 which is the second page of this particular form - - -?---Yes.

10 - - - do you see there against item 14, down the bottom of the page, you've listed a number of certificates that Red Chilli needed to provide you with? ---Yes.

And those were certificates that needed to be provided before you could issue an occupation certificate, is that correct?---That's correct.

One of those is a certificate indicating business registration with the New South Wales Food Authority, do you see that?---Yes, I do.

20 There are a number of items, I'm sorry, if you look at item 13 just above there you'll see a reference to a Final Fire Safety Certificate for certain matters?---Yes.

Do you see that?---Yes.

And that was another certificate that Red Chilli needed to provide you with before you could issue an Occupation Certificate?---That's correct.

30 All right. If you turn over to page 175 do you see there a further building inspection result sheet for 30 June, 2010?---Yes.

And again that's your handwriting isn't it?---That's correct.

And you've noted there that all works completed and all certificates received?---That's correct.

Correct, okay to occupy and commence trade?---That's correct.

40 Was it in fact the case that all of the certificates, including the certificates you had noted on 4 June, were received by 30 June?---That's correct. I, I would have, I think the, the reason why some of the items in 14 aren't underlined and ticked is because at that time they had them but they didn't have a, they weren't bearing a signature so I would have asked them to get the people to organise the signatures for them.

Right, and - - -?---Yes.

I'm sorry, did I cut you off there?---Yeah. No, you're right, you're right.

All right. So do you say that by 30 June when you filled in the form that was on page 175 you had received all of those signed certificates?---From my recollection I believe I would have had them, yes.

Could you go forward please to pages 225 and 226 of volume 5. Do you recognise at page 225 a certificate to the effect that fire extinguishers and fire blankets had been installed?---Yes.

- 10 And that's a certificate relating to the Red Chilli Restaurant at Chatswood?
---That's correct.

Do you see the date on it, 1 July, 2010?---Yes, I do.

So you didn't have that certificate did you at the time that you completed the form on page 175 on 30 June?---No, there's a reason for that.

- 20 What's the reason?---Because if an applicant or a person that takes responsibility to sign off a final, a formal final fire safety certificate completes that document we don't take regard to the supporting document, there's no obligation for the person to submit that certificate to us and in fact the format of that certificate is invalid because it's not a final fire safety certificate. Hence if you refer back to the actual formal final fire safety certificate probably on a council letterhead it will contain all the fire safety measures.

Just go back to page 174 please which if your form that you completed on 4 June, 2010?---Yes.

- 30 Page 174 is page 2 of that form. Item 13, do you agree with me that it reads as follows: "Furnish council with a final fire safety certificate for the following" and then there are a number of specific items listed and they include fire blankets and portable fire extinguishers. Do you agree with that?---That's correct.

The certificate at page 225 is a certificate to the effect that fire extinguishers and fire blankets have been installed, is that correct?---That's what it appears to read, yes.

- 40 And that's one of the certificates that you indicated on 4 June was required, is that correct?---Yes, but that's not a, that's not a final fire safety certificate.

And a final fire safety certificate could only have been issued after the certificate at page 225 about the extinguishers and fire blankets was received, is that correct?---No, not necessarily because the applicant took responsibility, there's no obligation for them to submit the individual certificates under the legislation. They, they can submit and complete the

final fire safety certificate and take the responsibility and sign off. The legislation changed a while back, it used to require the fire fighting company to sign off on those measures and it changed after that to allow anyone to sign that document. So I believe I had one. Because that, that, that's not in the correct format, I would normally not have accepted a certificate in that format.

10 So to make sure I understand this correctly the certificate that you were looking for was a certificate signed by Mr Xiao or someone on behalf of Red Chilli?---That's right.

Which was a final fire safety certificate?---That's correct.

And it was up to them - - -?---Mr Xiao or other person from that company, it didn't matter who it was, there was no - - -

It was up to them was it to ensure that the statements made in that final fire safety certificate were accurate?---That's correct.

20 And neither you nor anybody else on behalf of the council would check whether they had the necessary certificates underlying that final fire safety certificate?---I don't believe we, we had to take regard to it, in fact I, I don't think there was an obligation for me to even take that certificate once I'd received the final fire safety certificate.

30 Is it the case that you did take the certificate at page 225, have you seen it before?---It's on the file, if it's on the file I did take it, yeah. That was a common occurrence with a lot of certificates. For example, gas connections or plumbing work they were often given to us even though we didn't ask for them in PCA agreement documentation but we just put them on the file for information.

All right. Did it, do you say that at the time you received this certificate at page 225 sometime after 1 July you already had a final fire safety certificate signed by somebody on behalf of Red Chilli?---I believe I would've, yeah.

40 Would receiving this certificate later have caused you to question whether Red Chilli had all of the necessary certificates to enable them to sign that final fire safety certificate?---No, I don't have any regard for that once I have the final fire safety certificate, that's what I'm relying upon as the legal document.

Just looking at page 174 again and item 14 that you've completed on that form. Do you see there that one of the other certificates said to be required is business registration with the New South Wales Food Authority?---Yes, I can see that.

And when you completed the form on 30 June at page 175 you were indicating that all of those certificates including the New South Wales Food Authority registration certificate had been provided weren't you?---I did.

And if you look at page 226 of volume 5 you'll see a notification confirmation from the New South Wales Food Authority dated 1 July, 2010?---Ah hmm.

10 Is that the certificate to which you were referring in the form you completed on 4 June?---I'm not sure, I'm not sure if there was another, I didn't put a correlation between them but I, I told them that they need to make sure the business is registered. It's just something that council, I don't think council was obligated under any legislation to, to do this function but we, we found it helpful in assisting the Food Authority in, in ensuring food premises were on the register.

If you look at page 173 again. You see there you've written down the bottom of the page the contact details for a builder by the name of Bob? ---That's correct.

20

And that was the builder carrying out the work for Red Chilli, is that correct?---I believe so, yeah, he was there from time to time.

And a number of the certificates that you specified on page 2 of that form at 174 of volume 5 those were certificates that the builder was to obtain and provide to Red Chilli to pass on to you, is that correct?---That sounds, sounds about right.

30 And not all of those certificates had been received at the time that you completed the form on page 175 of volume 5 on 30 June had they?---I can't recall, I seem to remember one or two of them that were, I sighted, I think one of them had a wrong reference to an Australian standard and the other may have not been signed or something of that nature but I did sight a certificate but I can't recall whether I received it or not before signing it off.

Do you remember the date that you issued the Occupation Certificate for Red Chilli was ultimately 9 July?---I can't recall the dates, sorry.

40 All right. To assist you have a look at page 233 of volume 5. Does that help you recall that it was 9 July that you issued that certificate?---That's correct. Yes.

And that's your signature down the bottom of that page isn't it?---It is.

Right. And that was the same day on which Red Chilli held their opening night, correct?---I believe so, yes.

They had in fact opened for trading some days before 9 July, do you remember that?---I don't remember it. I remember them, as I said before I remember them talking about a soft opening for staff only, staff and family but I don't recall, I didn't go to it and I didn't really check up on it, I just, they did, they did mention that.

10 Do you remember ringing Mr Xiao the day before you issued this Occupation Certificate, that is, on 8 July and chasing him up about where were the certificates that you were waiting on from the builder?---I may have made that call, yes.

Do you remember that there were certificates outstanding from the builder as late as the 8th?---I believe there was those ones, I think they were the ones we were referring to there.

And that was one of the reasons why you couldn't issue the Occupation Certificate until the 9th, that's right isn't it?---Quite possible, yes.

20 And Red Chilli though had opened to the public before 8 July hadn't they, a couple of days before that?---I don't, I'm not aware of it that they opened to the public. As I said they said to me that they were just doing a soft opening for staff and family.

30 If you had been aware that they were open to the public before an Occupation Certificate had been issued what would've been the appropriate thing for you to do about that?---Probably to have Compliance, well, it's very difficult to stop a business trading, there's probably hundreds of examples in Chatswood where people did or are trading without a formal Occupation Certificate. There's probably a little bit too many to keep up with but it happens, it's a reality.

And if you had known about that though, the appropriate thing would have been for you to tell the compliance unit about it and leave it up to them to decide what if anything to do?---If, if I felt that there was a serious public safety issue or a breach, yes, I probably would.

40 Was it up to you to decide though whether it was important or not or was that really up to the compliance unit?---Well, having a building background I, I did inspect the building and I didn't believe there to be any, anything that was going to significantly affect the public, no.

But my question was Mr Karkowski, was that your decision or was that a decision that should properly be made by the compliance unit?---Usually whether we grant occupation or not, it's a decision for the building inspector, I believe.

THE COMMISSIONER: But you haven't got a discretion on that have you? You've got to, you can only grant the Occupation Certificate if the

rules have been complied with?---There's two certificates, Commissioner. There's an interim occupation and a final. And usually an interim Occupation Certificate is used where there might be something small outstanding.

Was there an interim certificate used in this case?---No, there wasn't.

10 MS WILLIAMS: Mr Karkowski, I'm going to play a recording of a telephone conversation between you and Mr Xiao on 8 July, 2010 at 10.45am.

TELEPHONE INTERCEPT PLAYED

[12.11pm]

MS WILLIAMS: I tender that transcript, Commissioner.

20 THE COMMISSIONER: Transcript of the telephone conversation between Mr Karkowski and Frank on 8 July, 2010 is Exhibit 20.

#EXHIBIT 20 - TRANSCRIPT OF TELEPHONE CONVERSATION BETWEEN MR KARKOWSKI AND MR XIAO DATED 8 JULY 2010 AT 10:45AM

30 MS WILLIAMS: Mr Karkowski, the reason you asked Mr Xiao towards the end of that conversation whether the restaurant was doing well is because you knew that Red Chilli Chatswood was already and open to the public at the time you had this conversation didn't you?---I don't know if that's what I meant by that, those words, but, 'cause I didn't, I didn't believe it to be trading to the public. I don't know if I was asking well, as in the business was basically brand new setting up, I don't know how it would be up and trading officially or fully in - - -

THE COMMISSIONER: What could it possibly mean?---Doing well?

40 Yes?---As in the set up. I don't know. I don't think the restaurant, it would have been possible to, to, for that type of kitchen to be up and running to the public. It just doesn't seem logical.

It's logical if it's been trading for a week isn't it?---Yeah, but I don't believe it was, Commissioner.

Well I mean he says, Frank says he's busy. You say is the restaurant doing well. He says, yes, it's doing well. Yeah, if you have a chance come and have a look. What else could it mean?---But Commissioner, but they were busy in a number of ways, like the setting of this restaurant, I think one of

their chefs left for another kitchen, like it's just impossible that they could have traded, like if you saw the fit-out and the complexity of this kitchen, it's, I don't believe it's something that could have been trading to the public. Like it would have been advertised in newspapers and stuff. Like that's typically what, what happens when a business opens, like - - -

Yes, all right?---Sorry, if there's any confusion there, but I - - -

Ms Williams.

10

MS WILLIAMS: Mr Karkowski, the restaurant was going to be open the following night for the grand opening wasn't it?---Yeah, that was the plan, yes.

You were attending that grand opening?---That's correct.

And why is it then that you that it wasn't possible that it was opening and trading on 8 July or for a couple of days before then?---Well I, sorry, I misunderstood - - -

20

I'll put the question another way. If the, if the kitchen and the restaurant were going to be ready to serve people dinner at the opening night on 9 July, why is it that you say you don't think they could have been serving food to the public on 8 July or for a few days before that?---Because during the times I was inspecting there was people everywhere. There was people being interviewed and trained, it was, it was, it would have been impossible. It's possible that they got the opening, but, I'm not saying that during the opening night it was smooth sailing, it was busy, I wouldn't have, it just wouldn't have been possible to have, they were still employing staff. It was, that's what I mean when they were busy, there was people everywhere.

30

You were certainly intimately familiar by the sounds of it with their set up and their state of readiness?---Well, I'd been down there for inspections at various stages, yes.

Had you done more inspections there than you would ordinarily do for a restaurant of that kind?---Maybe one or two additional inspections, yeah.

40

And that was because you were trying to be helpful to the Red Chilli people?---Yeah, that's correct.

And ordinarily an inspection fee is charged by the council each time you go and do an inspection. Is that right?---No, it was on our, reinspections were on our inspection sheets, but I must say in the 10 or 11 years I worked there I don't believe I ever charged it for any job.

It was your practice generally speaking not to charge reinspection fees?
---That's correct.

Now on 8 July when you spoke to Mr Xiao there were four certificates missing that you needed from the builder. Correct?---I can't recall, there possibly was.

Four certificates is the number that you mention in the telephone call?
---Yeah, I did say that.

10 And the builder hadn't been answering your phone calls, that's why you rang Mr Xiao. Correct?---That's correct.

And you mention to Mr Xiao that if the builder says he can't fax them today then he must be bullshitting. Did you have an apprehension at that time that the builder might not be telling the truth if he said that he had the certificates?---Just with the builder, I found him a little bit unreliable and he wasn't always on site and I think he had some, a mishap with his wife and the birth of a child, so I think that explained a bit of about his availability and getting things out of him. So I'm assuming that might have caused
20 them some trouble in contacting him or that type of thing, but he didn't fill me with confidence in terms of getting, he wasn't contactable and he wasn't on site that often and, yeah.

And so when you spoke to Mr Xiao on 8 July you didn't know for sure whether or not the certificates existed but you did know that you didn't have them, correct?---I think, I'm not sure of all four but at least two of them I had sighted. I can't recall which ones but, again, like I said, they, they, they had an error in them, in the format or the signature or something like that that I had sighted. It may have even been all four, I can't recall, I do so
30 many inspections and so many, take so many certificates, it's very hard to recall the exact, I do recall that, that, that occurrence, there were certificates that were pending.

And these were certificates that you needed in order to issue the Occupation Certificate for Red Chilli, correct?---That's correct.

And they needed that Occupation Certificate no later, well, they, I want to suggest to you they needed it already as at 8 July because they were open and trading. I take it you deny that from your previous answers?---Well, I'm not denying it, I just, I'm just unaware of it, I'm unaware of them
40 trading to the public. As I said several times they only mentioned to me that they wanted to do a soft opening with the staff and family and, and I took their, their word for that because I wasn't aware of any other occurrence.

But in case they needed it no later than 9 July, the following day, so that they could hold their grand opening evening, correct?---Yeah, I would, I would say so, yes, it wasn't a public opening, it was an invite only but I don't know if you debate it, it makes very little difference, I'll just agree with you, yeah.

Well, when you said to Mr Xiao in the telephone conversation on 8 July, “Look, don’t panic, I’m not going to create a problem for you,” what was the problem you were referring to?---Well, I wasn’t going to hold them to ransom over some certificates that, that in, in light of the big picture weren’t a big deal. I, I didn’t feel that they were, there was anything on site that was going to compromise anyone’s life or safety. I, I’d seen during stages the waterproofing was being applied and, and checked parts of that but, so it was just a certificate confirming it and like I said, I saw that certificate but I
10 think the, the detail was wrong so that’s what I mean, I wasn’t going to hold them to ransom and not let them open. As I mentioned before, there’s plenty of other businesses that take advantage of council and just will, council or private certifiers and just open their business. I’d much prefer a business to do it the right way if we can do it that way.

But if to your knowledge a business is doing it the wrong way that’s not something that you should encourage or permit, is it?---No, that’s correct.

And you were prepared to indicate to Mr Xiao of Red Chilli that you
20 weren’t going to prevent him from opening even without these certificates because of the hospitality that he and his colleagues at Red Chilli had extended to you, that’s right, isn’t it?---I, I, I don’t believe that that influenced my decision but like any business I don’t think it would be fair to hold them to ransom over some certificates when I know that the job is okay. I just don’t feel it’s fair.

THE COMMISSIONER: So you were prepared to waive the rules for them?---Not just for them, I, it’s, it’s happened on other jobs,
Commissioner, I can’t keep up with the volume and number of shop fit outs
30 I’ve dealt with. If I worried about every job that I didn’t get a certificate on you can see numerous jobs that have been referred to compliance and still trading today and still don’t have compliance action taken against them, what am I supposed to do? Lose sleep over it, stop them from trading? How, how can I answer.

As regards Red Chilli you did waive the rules and you issued a final certificate when according to the rules you shouldn’t have, is that correct?
---That’s correct.

40 And are you saying that you do, you’ve done that also for other people?---I have.

Many times?---I wouldn’t say many times, it’s not, not something I, I practice or pride myself in, I like to think to myself that I do my job well and, and detailed, and protect public safety because at the end of the day that’s what my job is.

You've done, you've done it sometimes I gather from your evidence, you've done this sometimes for other people as well?---That's correct.

How many times do you think?---I couldn't pick, Commissioner, but there's been a lot of - - -

Well, what sort of, are we talking about ten or 100 or - - -?---When you talk about ten years of employment in a CBD doing, I don't have the statistic of how many applications I've done but - - -

10

I understand that?--- - - - it might be ten per cent of them overall. I, I don't have a figure, it's not something I check.

Okay, ten per cent of them?---Of, of all the work I've ever done, you know, giving people a bit of slack to get, you know, their stuff together.

Well, I assume we're talking about hundreds then?---Possibly, yeah.

20 MS WILLIAMS: Mr Karkowski, in the case of Red Chilli you were in a position where you had to cut them a little bit of slack, excuse me, didn't you, having accepted their hospitality in the past and having also accepted an invitation to attend their grand opening, grand opening on 9 July with nine guests?---I didn't have to. There was no, nothing saying I have to, no.

But it put you in a very awkward position, didn't it?---I didn't feel in an awkward position. I would have preferred the certificates to be forthcoming but they weren't.

30 So do I take it from your last answer that the certificates were not actually provided before you issued the Occupation Certificate?---I, I can't recall, they may have come in, I don't know, I can't recall that.

THE COMMISSIONER: Mr Karkowski, I don't know if you're withdrawing your answer but in a question, in an answer to a question that I asked I understood you to, to agree that you'd issued the fire certificate when you didn't have all the requisites of certificates and you thereby waived the rules?---Yes, I think there was two outstanding, Commissioner.

40 I beg your pardon?---I think there was two certificates possibly outstanding, Commissioner.

Right.

MS WILLIAMS: What I am suggesting to you, Mr Karkowski, is that by accepting the hospitality that the Red Chilli people had extended to you on the occasions we've discussed and by accepting their invitation to attend the grand opening with nine guests of your choosing on 9 July you had put yourself in a position where they were able to expect that you would help

them by issuing the Occupation Certificate?---They, they never at any time put pressure on me I don't believe to do that but I wasn't coerced or pressured into it or, or told we gave you this or took you there so you should give it to me, it was just, I thought it was the right thing to do given that the job they did was in my opinion okay and safe.

10 And if you had wanted to require them to comply strictly with the rules that would have been an awkward thing for you to do wouldn't it?---It would probably be awkward, yes, but the same token it would have to be done on a lot of jobs, you could probably do it on every third or fourth job that happens. It's not - - -

THE COMMISSIONER: Not, not when they've taken to a restaurant and spent \$1,000?---But there's been instances where, where they haven't taken me to lunch or dinner or gift and no association and, and I've let it go because I just don't have the time and resources. I've got to look, if I worried about every and stopped every job I just wouldn't be able to function in my job as a Fast Track development officer, building surveyor, I couldn't do it.

20

I see.

MS WILLIAMS: Mr Karkowski, it doesn't cost you any time or resources to simply not issue an Occupation Certificate, does it?---No, it doesn't.

You could have done that on this occasion given that all of the necessary certificates hadn't been received, couldn't you?---Yes.

30 And the reason you didn't is because of the hospitality you had received and were going to receive the following evening at the grand opening, that's at least one of the reasons, isn't it?---Yes.

Sorry, is your answer yes?---Yes, yes.

And you did in fact attend the grand opening with nine of your guests on 9 July?---Yes, I did.

40 And you were not charged at payment for, for that dinner?---No, I wasn't charged payment.

So you and nine of your guests dined for free on fine foods and wines at the Red Chilli Restaurant in Chatswood?---Yes.

And then some time later in July you raised with Ms Dai, didn't you, whether the visa application for her staff had been approved, do you remember talking to her about that?---Yes, I asked.

And when she told you that it had been you suggested a lunch at Flying Fish didn't you at Pymont?---Sorry, go back, I don't recall that they got their visa approved and I don't recall me suggesting to them about a lunch. Like I said often I would be called or they saw me and they would ask me if I could join them for dinner or lunch, it's not something I, I sought after or, or made people do for me. I don't understand why I would do that.

In any event did you go to dinner on 19 August, 2010 with Mr Xiao, Ms Dai and June at Flying Fish at Pymont?---I did.

10

And June paid for dinner on that occasion?---I'm not sure which person but yeah, one of the people paid for it, yes.

And you made no offer to pay?---No, they didn't ask me.

Flying Fish was your choice of venue?---I think it was, yes.

Right. You had a degustation menu?---Yes, I think they discussed that they wanted it to go that way.

20

And lots of fine wines?---There was.

And does it surprise you to learn that the bill was a little over \$2,000?---No, it doesn't surprise me.

And the reason for that dinner was to thank you for your assistance with their immigration issues, correct?---I, I don't know what, I, I never asked them when we went to a lunch or dinner what the, the purpose of the lunch or dinner was for. It just wasn't discussed so I can only assume it was for me helping them out with things.

30

By things relating to their development and relating to immigration?
---Could be both, could be either, I don't know you'd have to ask them.

Have you had any other meals with the people from Red Chilli since August 2010?---That was the Flying Fish was it?

Yes, it was?---I think, I think that was the last, I think.

40

So since their development has been completed, their restaurant has opened and the immigration issues have been resolved you haven't - - -?---I'm not sure if the immigration issue's been resolved. It was a little bit complicated 'cause I didn't quite understand the process myself. I learnt a little bit about it while assisting with the letter but there was parts of it for sponsorship and parts of it for, there was different parts and different sections, it was something out of my, it was more putting a letter together for them to help them get the wording right based on, 'cause I think they sort of muddled it all up giving them wrong information and stuff like that.

All right. But since their development has been completed and their restaurant officially opened on 9 July the only occasion you have been to dinner with people from Red Chilli or received any hospitality from them is the dinner at Flying Fish on 19 August, is that correct?---I think that would be correct. I don't recall anything with them after that.

Mr Karkowski, I'll ask you to return that volume 5. Commissioner, I tender volume 5.

10

THE COMMISSIONER: A bundle of documents marked volume 5 is Exhibit 21.

#EXHIBIT 21 - BUNDLE OF DOCUMENTS MARKED VOLUME 5

MS WILLIAMS: Thank you, Commissioner. And I also tender Volume 8 containing the overtime claim forms.

20

THE COMMISSIONER: And a bundle of documents marked Volume 8 is Exhibit 22.

#EXHIBIT 22 - BUNDLE OF DOCUMENTS MARKED VOLUME 8

MS WILLIAMS: Mr Karkowski, do you know a person by the name of Joey Huang?---Yes, I do.

30

Yes. She's the proprietor of a restaurant known as Mango Restaurant at 77 Archer Street?---That's correct.

And that's in Chatswood?---That's correct.

Within your area of responsibility?---It is.

And Ms Huang is the former wife of a man by the name of Jacky Mai, is that correct?---That's correct.

40

And Mr Mai is the proprietor of a restaurant known as Chatswood Barbecue Kitchen?---Yes.

Mr Mai is also a friend of yours, is that right?---He is.

And through your friendship with him you also became friendly with Ms Huang when they were married, is that right?---That's right.

Ms Huang's Mango Restaurant is located close to Mr Mai's Barbecue Kitchen, is that correct?---Yes, it is.

Are they on opposite sides of a laneway or what's their proximity?---Sort of around the corner and upstairs above.

All right. And so in addition to being former husband and wife Ms Huang and Mr Mai are now business competitors, is that fair to say?---They, well, I suppose they would be, yeah. They're both in the same field, yes.

10

And you were responsible for determining Ms Huang's application for a development consent and construction certificate under the Fast Track system in about February or March 2010?---That's correct.

And those applications related to her Mango Restaurant?---That's correct.

Did you show Mr Mai any plans relating to the Mango Restaurant or give him any information about it?---I did.

20

And you did that knowing that Ms Huang's Mango Restaurant would be in competition with Mr Mai's Barbecue Kitchen to some extent?---I don't think it would've been in direct competition, they were completely two different completely styles of restaurant, completely different concepts. Obviously would've been some competition in a food sense but not in direct competition I don't feel.

Why did you show the plans and documents to Mr Mai?---Because he asked, he asked about them.

30

Why did you understand him to be asking about them?---He was just curious about what she was doing.

And what was your reason for satisfying his curiosity?---He asked me the question what, what it was and I said, If you want to see the plans. And he said yes so I showed him. I didn't think there was anything sensitive about it.

40

THE COMMISSIONER: You did it because he was a friend of yours?---I knew him and I knew her and, and I, and I believe they communicate, I don't know whether they communicate at a, well, what level of communication but I do know that they do talk to each other.

But he was your friend?---That's correct.

MS WILLIAMS: Mr Karkowski, was the Mango Restaurant another instance in which you issued an Occupation Certificate before all of the outstanding items you'd identified had been fixed?---I can't recall, there

might've been some minor things on that one as well, I'm not sure, I can't recall.

At the time that you were talking to Ms Huang about the application she was going to submit for the Mango Restaurant did you, sorry, I'll withdraw that. At the time that you were talking to Ms Huang about her application did she indicate to you that she estimated the cost of construction would be about \$100,000?---Can't recall the job. I can't recall. The job was, the premises was already a restaurant and had a partial kitchen or it had a kitchen and they were making renovations to that and most of it contained, it was mainly the furniture and some upgrade of the kitchen 'cause it was premises that was a little bit dilapidated and needed some repairs.

Did you tell Ms Huang to think carefully about the cost of construction she stated on her application form because it would affect the fees that she pays to council?---Yes, I did tell her, I would've told her that the fees are reflective only of the construction cost not of all the furniture and painting the walls and all the rest of us, it was just construction costs which, of which there was probably not a lot of construction.

In saying that to her were you suggesting that she should put a figure lower than what she might otherwise have put on her form?---I can't remember specifically saying that but it was probably discussed at a pre-lodgement meeting because I was looking at the plans, I remember looking at the plans and there wasn't a lot of construction work as such, it was probably more refurbishment of what was already there so it wasn't like rebuilding. Yeah, so I said, I may have said to, suggested to her to consider putting the fees applicable to what the construction costs actually are.

Was there any help that you gave Ms Huang in relation to her Mango Restaurant that was over and above the call of duty or involved bending the rules?---I don't believe I gave her anything more than I would give to anyone else. I had, there was several pre-lodgement meetings which happens on many jobs. No, I don't believe so.

Do you know whether Mr Mai thought that you were assisting her or did he think that you were hindering her so as to benefit his restaurant?---I, I didn't even take that into consideration what he thought. It's not for me to think what, it's, it's, I just did my job. I didn't think of what he would think.

Did you have any discussions with Mr Mai about slowing down the progress of the Mango Restaurant application and consent?---He did, I think he did ask me about delaying it and that played in the back of my mind. But I, I, I, the only way the delays would have occurred is by their own, their own doing in not completing that in my opinion were safe or satisfactory for, for opening, but he did ask me about that. It was discussed.

So he asked you to delay things with the Mango Restaurant?---I think he asked me to, whether I could delay it and I sort of said to him that I didn't, I don't think I felt comfortable doing that and I didn't even really have to sort of talk about it because it's, it's just something that, if it was going to happen it was going to happen on their own accord, regardless of what he said or asked.

So you didn't feel comfortable with doing what he was asking you to do?
---No, it wasn't something that I liked to do. It's not fair.

10

It would have been a bit uncomfortable for you to refuse outright to do what he asked though wouldn't it?---To refuse outright, I saw of knew in my mind just from experience on jobs that what he was asking for was probably going to happen anyway. So I just, I didn't take it that seriously. I just didn't want him to believe that I was, you know, if he thought it was happening, so be it, but it wasn't something I was entertaining.

20

Did you in effect fob the question off so that you knew in your own mind what he was going to do, but he might think that you were going to do what he asked?---Well I didn't care what he thought. If it happened it happened, if I didn't well so be it, it wasn't something I was going to enforce and I didn't plan on holding the job up like that. I don't feel that I had, it was the right thing to do or I had reason to do it, unless, unless it was because of their own, you know, failure to comply.

Mr Mai had become acquainted with you through your working as a council officer on developments in which he was involved. That's correct isn't it?
---Say that again, sorry.

30

Your acquaintance with Mr Mai had originated with you working on developments that he was involved in in your role as a council officer?
---Yes.

That's how you got to know him?---Yeah, that's right, through, through the area.

And Mr Mai was another person who gave you generous gifts from time to time. Is that correct?---He did.

40

In December, 2009 he had given you hadn't he a Louis Vuitton handbag and an iPhone?---He did.

And having received that gift in December, 2009 it was difficult for you wasn't it to refuse outright to do what he asked in early 2010 by way of slowing down the progress of the Mango Restaurant's application?---I didn't even, it didn't even cross my mind. It wasn't discussed and it wasn't offered. But the gifts that you're referring to were offered to me to give to my wife. I think the phone was meant for me and the bag obviously for my

wife. But I didn't really, the phone sort of didn't really excite me all that much, so I just gave them both to my wife as Christmas gifts. And I, and I declared it to her that it was from Jacky and CC as Christmas gifts.

Did you declare it to the council?---No, I didn't.

Do you accept that it should have been declared to the council?---I, I think it's, it's a difficult area. I think there's a fine line between a friendship, perhaps it would have been safer to declare it, but I never did.

10

So as far as you were, do you say do you that those things were given to you by Mr Mai purely out of friendship?---Yes, I believe so.

Did you give him a Christmas gift that year?---I never gave him Christmas gifts, but they would often give us something for Christmas.

20

It's a one-sided friendship isn't it Mr Karkowski?---I didn't have the money to compete with the lavish lifestyle that he lived. If, if you know the people his wife, his now wife has twenty or so Louis Vuitton bags and Hermes and he used to tell me about it and you know, he has got plenty of money and he's a very generous person, a very kind person. And, yeah, what can I say.

But it's clear to you now, at least with the benefit of hindsight isn't it, that Mr Mai expected things in return for those gifts? For example, he thought it was open to him to ask you to use your position at the council to slow down the Mango Restaurant development?---I never felt obligated when that was given, in the context that it was given to me.

30

That wasn't my question Mr Karkowski. It's clear to you, at least now with the benefit of hindsight, that Mr Mai felt he was entitled to ask you for favours in return for giving you these gifts?---He may have felt that, yeah. He may have, he may have felt that way.

And the Mango Restaurant wasn't the only development that he asked you to slow down was it?---No.

He asked you to slow down the development of another known as (not transcribable) Eatery?---That's correct.

40

And that's another restaurant that competed with one of his restaurants, being directly opposite. Is that correct?---Mmm. Yes.

Did you agree to his request on that occasion?---I think I sort of suggested to him that I would, but I actually didn't because the nature of that project was that it was quite, the time that they came to see me with that was a time where I was extremely busy with the Chatswood Chase development and that was just unfortunate and it was unusual, but it was a fact that when they lodged it that was the case. And so getting the application off quickly as I

would normally be accustomed to didn't occur for that reason. And then when I finally got hold of the application to start assessing it there was a number of issues and problems associated with it that I had to make them aware. And they just took time 'cause I think she was using a student architect or draughtsperson and I don't know what happened on her side, but it was just taking time to get those changes made. But eventually the approval got granted.

10 So although you didn't actually intend to fulfil Mr Mai's request to slow down the (not transcribable) Eatery, it just worked out that way?---It did.

And even though you didn't intend to agree to his request, you said that you indicated to him that you would slow it down. Is that right?---I, I don't, I can't recall whether I said I would or whether I just sort of agreed with him. I can't remember the exact words that I used at the time. But I knew in my mind that it was going to happen that way anyway based on the timing it was lodged and the lack of detail and the problems associated with the plans and details that were submitted.

20 But you didn't say to him, I can't possibly do that, that would be improper for me to do that?---I think he knew that.

But you didn't say that to him did you?---I don't recall whether I did or didn't. I can't recall.

30 See I want to suggest to you the reason you didn't say that and the reason you wouldn't feel comfortable saying that to Mr Mai is because of the generous gifts that he had given you including the handbag and the iPhone you mentioned?---I don't necessarily agree with that. I just, I was surprised he was asking me to do those things. And I didn't really take much notice of it, like I might have agreed with him, but I just knew that it was something that was going to pan out that way he probably thought it was going to anyway. So I just didn't really take much regard for it.

Now coming back to the Mango Restaurant and Ms Huang, she gave you some very expensive wines didn't she in about May, 2010 once her development was completed?---Yes, she did.

40 Why did she give you those?---I didn't ask but it was around my birthday in April that I received them, but yeah, again I'm assuming it's because I assisted them in the pre-lodgement process, getting the job completed and signed off and approval and, yeah. I'm assuming it was for those reasons.

So you didn't ask for the wine but she indicated that she would get you some wine. Is that right?---Yeah, I think she originally told me she was getting me a bottle of Grange and I said, I'm really not interested in the Grange, it's just a bit over the top and I suggested to her that I did like a cheaper one, RWT Penfolds and so she gave, she got me some.

And in fact you suggested that she buy, she spend the same amount of money but buying more bottles of the cheaper wine than one bottle of the Grange, is that right?---That's right.

10 Is that something you ordinarily do when someone indicates they'll give you a birthday gift?---No. Well, I, I just felt that \$400 on a single bottle of wine was unnecessary, I would have rather preferred some, I didn't, I didn't care if she didn't give me, I didn't request the wine in the first place, it was an offer she gave but when she suggested what I liked and I, I gave her that information and she, she, she came forward and gave me some, gave me the wine.

You see, you knew it had nothing to do with your birthday, didn't you, you knew it was a thank you for assistance you provided her in the development of the Mango Restaurant?---Well, I don't know, it could have been for both, I don't know. I'm assuming it was for the restaurant, it just might have been coincidental that it was around my birthday, I don't know.

20 The only reason you felt comfortable specifying exactly what the gift should be was because you knew it was a thank you for the work that you'd done for her restaurant?---Well, it was never discussed, it was never discussed that she's going to give me a gift or I didn't ask for the gift in the first place. It was just a gift she offered to give me as a thank you but she didn't say what, what it was for.

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

30 You knew that it was something that you shouldn't be accepting, didn't you?---Yes.

And you arranged to take collection of the wine by picking it up from the garbage area behind her restaurant one afternoon didn't you?---Yes, I did.

And you arranged with her that you would drive up to the garbage area in your car - - -?---Ah hmm.

40 - - - remove the wine, put it in the boot of your car and go straightaway, didn't you?---Yes, that's correct.

And you checked with her whether any of the staff at Jacky Mai's restaurant nearby would be able to see what was going on, didn't you?---That's correct.

And you were anxious that they shouldn't see what was going on?---Well, it was something that I wanted to advertise and I didn't, definitely didn't want people to get the wrong idea or perception that, you know, something,

something suspicious was going on in terms of some, some, some benefit for something I didn't actually do.

Well, there were two things at play, weren't there, you didn't want Jacky Mai to know that you'd been helping Joey Huang rather than hindering her in developing Mango Restaurant, that was one concern, wasn't it?---I, I didn't even think about that at the time to be honest. It was more about people seeing me receive a gift in public.

10 Well, you didn't think that Jacky Mai would otherwise be worried about you receiving a gift, did you?---Not really. Jacky Mai often gave me a bottle of wine or a gift. Like I said, you know about the gift, the iPhone, it's not, it's just something I didn't consider, I didn't even think about it.

So he wouldn't be upset about you receiving a gift from Ms Huang except if he thought that meant that you'd helped her with her development?---Well, I don't think, I don't know, you'd have to ask him whether he was upset or not, I didn't particularly care if he was upset, it wasn't something I considered.

20

Well, my question, Mr Karkowski, is why were you concerned about whether or not Mr Mai's staff would see you collecting the wine from Ms Huang's garbage area?---Because as I've said, I, I didn't want to advertise the fact that someone was giving me a gift in broad daylight. It wasn't just them, it was, you know what I mean, it was anyone seeing me hence otherwise I would have pulled up at the front on the road and got her to put it in the car straightaway. It doesn't make sense like.

30 And you didn't want to advertise it because you knew full well, didn't you, that it was inappropriate for you to be receiving gifts from development applicants?---That's right.

Whether or not you'd done them any extra favour it was just inappropriate, wasn't it?---That's right.

And it was a breach of the council's Code of Conduct?---That's right.

40 Mr Karkowski, I want to ask you some questions about the Izakaya Arigato Restaurant in, that's a restaurant in Chatswood Central, isn't it?---Izakaya Arigato, yes, it is.

And is the same development that you've been working with Mr Tasker on, Chatswood Central?---It is.

And the proprietor of that restaurant is a man named Sanha Jee or otherwise known as Jay Jee, is that correct?---That's correct.

And what's the nature of your relationship with Mr Jee?---I met Jay a year or so ago and I met him on his original application, I think I got introduced through Bill from Sheads when he was looking to do the fit out of Sushi Arigato in Archer Street and I just got to know him from that, that's where it started.

And Bill from Sheads, that's Mr Geroulis you're referring to?---That's correct.

- 10 And you were responsible were you for assessing and determining Mr Gee's Fast Track application for his Izakaya Arigato Restaurant?---Yes.

And that was in June and July 2010?---I'm assuming it was.

- 20 If you have a look at page - I'm sorry, do you have, no, that's volume H over there. I'm asking you to pass that volume back and I'll provide you with volume 7 which is Exhibit 15. And if you turn please to page 119 of volume 7 of Exhibit 15. Do you recognise that as the application form submitted by Mr Gee's architect Melchiovsen in relation to the Izakaya Arigato Restaurant?---It is.

And then at pages 121 to 122 is that your Fast Track worksheet that you completed assessing that application?---It is.

And then at page 124 that appears to be an unsigned copy of the development consent?---Which page?

124?---Yes.

- 30 And although there's no signature do you see your name at the bottom of page 124 as the person to call for inquiries?---Yes.

And that's because you were processing and dealing with this particular application, is that correct?---I was.

Do you remember speaking to Mr Melchiovsen Mr Gee's architect about the estimated construction costs of this particular project?---Yeah, it was, I did and it's a common discussion when people come in to lodge applications.

- 40 Do you remember Mr Melchiovsen telling you that he had received some quotes?---I vaguely remember a conversation about it, yeah.

Do you remember that those quotes were coming in in the order of about \$200,000?---No, I don't remember the value of the quote, no.

You don't remember the details?---I don't think I saw quotes. It might've just been discussed or something, I don't know.

Do you remember nominating a figure of \$100,000 and telling Mr Melchiovsen to put that in the application?---I don't know if I stipulated 100,000 or whether I just told, again I would've told them that it's based on the estimated cost of the building works not the furniture as I would with most jobs or all jobs.

Do you remember discussing with Mr Gee making the estimate even lower than \$100,000?---It might've been discussed but I, I said to him that it needs to be a fee applicable to the costs associated with the construction costs.
10 Because I think he was uncertain and he was asking this, is this counted or is that counted and he started going through, I think we were discussing furniture or whatever but yeah, it was discussed but I don't, I can't remember the detail of the discussion.

And these are discussions you were prepared to have with Mr Gee and his architect notwithstanding that as you told me yesterday you're not a quantity surveyor?---That's right.

And as I understood your evidence yesterday the cost of construction was
20 not something you normally paid any attention to?---I didn't ignore it but it was something that I saw but based on dealing with hundreds of thousands of applications of this nature that was a very common figure that people would put on their application. It was usually fifty or a hundred would appear in a lot of applications of that nature in my experience with Willoughby City Council.

THE COMMISSIONER: Mr Karkowski, I'm looking at page 119 of this volume 7, Exhibit 15. Do you have it there?---119. Yes.

30 Paragraph 3, estimated cost of work, do you see that?---Yes.

And then it says the estimated cost of the development or contract price is subject to a check by council before final acceptance. Do you see that?
---Yes.

Is that, is that a final check by you?---We, the council (not transcribable) to check it. It was never checked by council.

The person whose duty it was to check was you?---Well it's debatable
40 whether it be done at the front counter. There was some discussions at work about this topic and a lot of discussion about it as to whether it should be done at the front counter first or whether we should ask for a quantity survey with all jobs because in essence if you look at the legislation and the way it's worded, unless you're a quantity surveyor I don't think you can truly estimate a cost unless you have some skill. And if you've ever taken the time to look at the Cordell's or Wellington guide, it's a very difficult task. I've tried it myself.

But has, did the council appoint any person to investigate the cost of development?---I don't believe there was a formal appointment of the person.

Was there an informal appointment?---I think it was just assumed that the assessment officer would consider it, but no emphasis was placed on, on how much detail or how much time was spent on checking the fee.

Who's the assessment officer?---In this case I did this one.

10

So you were the person who it was assumed by the council would verify the cost of a development?---I would, I would look at that and take it into consideration.

But are you answering my question as yes?---Yes.

20

And you being the person on whom that responsibility rested took it upon yourself to tell people what to put down?---I would have given them guidance as to what types of elements of the building would be concluded in the construction. You know, I'm sure there's times where people included furniture but didn't need to, but you know, it just - - -

30

I thought you suggested figures to them like \$100,000 for example?---Well if, if, it was a common, it was very common that \$100,000 for a restaurant of around that size would be a common figure that I would associate. So when, when an application came in at around that figure I wouldn't usually raise any further question. Likewise if it was the same size shop for a clothing shop at 50,000, I wouldn't raise any further concern about the application.

But what, all right. I think this is an appropriate time to adjourn.

MS WILLIAMS: Thank you, Commissioner.

THE COMMISSIONER: We'll adjourn until 2.00pm.

LUNCHEON ADJOURNMENT

[1.03pm]

40