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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 THURSDAY 10 MARCH 2011

AT 10.05AM

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

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

THE COMMISSIONER: Ms Williams.

MS WILLIAMS: Commissioner, before I call the next witness may I tender the transcript of the telephone recording played on 8 March at page 154 of the transcript. It's a telephone conversation between Mr Karkowski and Mr Melchiorson dated 24 June, 2010 and I hand up a copy of that transcript, I provide a copy to Mr Baltinos.

10 THE COMMISSIONER: Yes. The transcript of the telephone conversation between Mr Karkowski and Mr Melchiorson of 24 June, 2010 is Exhibit 25.

**#EXHIBIT 25 – TRANSCRIPT OF TELEPHONE CONVERSATION
BETWEEN MR KARKOWSKI AND MR MELCHIORSEN DATED
24 JUNE 2010**

MS WILLIAMS: Thank you, Commissioner and I call Peter Rowan.

20 THE COMMISSIONER: Mr Cotman, yesterday we adjourned early to give the council to an opportunity to respond to recommendations that the Commission was contemplating in regard to corruption procedure and I find it extremely disappointing and incomprehensible that we've had no response.

30 MR COTMAN: The matter I was discussing with counsel assisting before the session resumed was the preparation of the council's response. We spent yesterday afternoon reviewing the document and we are preparing a response to it. It in fact involves consideration of at least three substantial issues, those matters which are raised in the document that actually involve the interaction of the council's position with the Environmental Planning and Assessment Act and the Department of Planning's requirements of council in relation to the way it conducts itself in relation to planning issues and applications and matters of that sort. There are other matters which are already in hand or are work in progress by the council in respect of which the assembly of the documents to demonstrate that proposition is something that requires to be done and is in the throws of being done and the middle ground is the material in respect of which the council has a capacity to respond and that is the matter that is the subject of assembly of material
40 again as to what the range of responses might be and the respective responses might be. It is not a question, with respect, of the council not responding, it is the situation that the council try to respond in a considered way to a document that raises a number of issues of public policy and administration.

THE COMMISSIONER: This has been going on for a long time. I mean these matters have been, the Commission has been thinking of these matters for days and so should the council have been. But I mean in the light of the

fact that the council hasn't responded, we will simply examine the witnesses on these issues and I had hoped that we would arrive at some degree of common ground so that that would not be necessary. But because of the complete lack of response, not even on part of the issues, we will proceed.

10 MR COTMAN: Well with greatest respect, Commissioner, what had been flagged by us to counsel assisting before the inquiry started was that we wished to in fact put together a comprehensive response on these issues because they are significant issues, both for the council and for public
10 interest, but they are not matters that can be best dealt with on the fly and some of the matters I dealt with in the statements, others go further and require responses from people other than the people who are being called. Now, we had been told that this was a hearing set down for some two weeks and in respect of which there would be evidence adduced and we would have an opportunity to, to deal with it. That is what we proposed to do and we proposed to do it in a way that we hoped would be most helpful to the Commission. But, it is not with respect, appropriate or a fair assessment of the council's position that the council has made no response, when we have said - - -

20

THE COMMISSIONER: Well that's right, council has made no response. That's, that's - - -

MR COTMAN: What we have said is we wished to put together material responsive to the specifics (not transcribable) recommendations were given at, some time after 2 o'clock yesterday in which we considered during yesterday afternoon and in respect of which we have met again this morning and in respect of which I have formed the view that the best way of dealing with it is to put together a kit of paper that deals with the matters that are
30 already in hand and can be put before the Commission in a fashion that would allow the Commission to assess whether those meet the various matters dealt with in the document that was supplied yesterday and to isolate those matters that raised the issues between the council and the Department of Planning and to work on those matters in respect of which, as I say, the council has a range of possible responses which each of them call up various issues, not only in relation to corruption prevention but also the efficiency and economy of the council's performance of its public duties. Now with respect, that is the very material that I was going to rise and (not
40 transcribable) to ask how and when we could most sensibly present that to the Commission because it can't be done, with respect, overnight and it requires a considered response. And that's what the council proposes to give the Commission.

THE COMMISSIONER: Well Cotman, we don't have all year to do this. The case was listed for two weeks. Anybody familiar with litigation knows that these are just estimates and witnesses can become unnecessary because of responses by other witnesses. These are issues that have been around for a long time. The council has known that we're investigating these matters.

We've done our best to cooperate with council. We have not had a single word back in response as far as I know to the recommendations that we proposed, so we'll simply explore them with the witnesses.

MR COTMAN: With greatest respect, I cannot suggest that the Commission proceed in any way other than the Commissioner thinks fit. But with the greatest respect, those were the recommendations given to us yesterday afternoon that we have considered and even the most cursory consideration of them demonstrates for example, that some of the recommendations
10 require us to liaise with Department of Planning because the issues are within the province of Department of Planning, not the council.

THE COMMISSIONER: I'm not going to take this any further, Mr Cotman. I've explained what my attitude is. I can only say that the Commission has dealt with similar area, similar agencies and it's the first time that I've been sitting here, when we have provided in advance the recommendations that we propose on the areas that have been well understood since the beginning of the inquiry that we've had no response at all. So, that's simply a comment that I make and you've explained your
20 position.

MR COTMAN: Our position is, Commissioner, that we wish to, the council does wish to bring material forward and I was going to seek a direction from the Commission as to the most convenient way in which to do that, the process I apprehended would be substantially a body of documentary material that addresses the various issues that have been dealt with in the document supplied yesterday afternoon.

THE COMMISSIONER: Well, I think the best way to do it is that the
30 Commission will question the witnesses and you'll have full opportunity to question them yourself and then there will be a period allotted for written submissions and you will have the opportunity to take a couple of weeks to provide your written submissions and the Commission will consider your written submissions in regard to these matters and I will form a view.

MR COTMAN: There's one step left out, with respect, Mr Commissioner, which is the question of any further documentary material that would have to be put forward.

THE COMMISSIONER: Well, you can tender that later if that's what you
40 wish.

MR COTMAN: Thank you. Because that is what I was going to seek leave to do because it seems to us that to deal with a large number of the recommendations that deal with questions of documentation bringing forward the documentation that is presently in existence in relation to some of those issues might allow the Commission to indicate in a considered way which aspects of the documents did not meet or if they did meet the

recommendations contained in the document that was supplied yesterday afternoon.

THE COMMISSIONER: Yes. Mr Cotman, the Commission is here not interested in a witch hunt in failures of the past although that is undoubtedly relevant. The Commission is interested in what steps will be taken to prevent what has happened from happening in the future.

10 MR COTMAN: Quite. That is the very matter that we wish to address but the matter exists within a framework of the council's position both as an elected body, the administrative agencies, an aspect of it, and its role as part of local government interacting with the state government policies.

THE COMMISSIONER: Yes.

MR COTMAN: Each of those matters require consideration and that's what we propose to bring forward so that the contextual issues can be dealt with as well as the immediate issues. We are mindful of both.

20 THE COMMISSIONER: I'm mindful of the time. Yes, Mr Cotman, we'll deal with that and we'll deal with it in the way that we have discussed.

MR COTMAN: Thank you, Commissioner.

THE COMMISSIONER: Ms Williams.

MS WILLIAMS: Thank you, Commissioner.

30 THE COMMISSIONER: This is Mr - - -

MS WILLIAMS: Mr Rowan.

THE COMMISSIONER: Mr Rowan. Please be seated, Mr Rowan. (not transcribable), Mr Rowan.

MS HUGHES: Commissioner, I seek leave to appear on behalf of Mr Rowan. Leave was previously given to Mr McIlwaine (not transcribable). My name is Hughes.

40 THE COMMISSIONER: Yes, Ms Hughes. And I take it you want a section 38 order?

MS HUGHES: He'll be seeking a declaration.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr Rowan and all documents and things produced by him during the course of this evidence at this public inquiry are to be regarded as having been given

or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document or thing produced.

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

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

20 MR ROWAN: Under oath.

THE COMMISSIONER: Ms Williams.

MS WILLIAMS: Mr Rowan, could you please tell the Commission your full name for the record?---Peter Gregory Rowan.

10 And you are the Manager of Building Services at Willoughby City Council?---That's correct.

You've made a statement to the Commission in relation to this matter on 9 December last year?---That's correct.

And, Commissioner, Mr Rowan's statement commences at page 298 of volume 2 which is Exhibit 12. Do you have a copy of your statement with you, Mr Rowan?---I do.

20 I'm also going to have handed to you a copy of what has been marked volume 9. Could you turn to page 3 of volume 9, Mr Rowan. You'll see the pages are in the top right-hand corner.

Do you have page 3, Mr Rowan? No, sorry, after that document that you've shown me you'll see the pagination commences again in the top right-hand corner?---Yes.

And if you turn to page 3 of that numbering?---Right.

30 Thank you. Does that diagram set out the current structure of the building services branch of Willoughby City Council?---Yes, that's correct.

And is that the structure that was in place over the last couple of years, during 2009 and 2010 or have there been changes?---Well, the only change there is Wayne Watkins and Troy Sullivan which are listed under development officers, Wayne Watkins no longer works for us, it's now just Troy Sullivan.

40 So there's been some change to the individuals but no change to the positions as it were, is that correct?---No, no, that's correct.

And you're, you as the manager of the building services branch report to Mr Greg Woodhams, is that correct?---That's correct.

And Mr Woodhams is the director of the environmental services division? ---Correct.

And immediately reporting to you then are three team leader, three team leaders - - -?---That's right.

- - - and also Mr Karkowski?---Correct.

And Mr Karkowski as a speciality building surveyor doesn't have a team leader to report to, he just reports directly to you?---Correct.

And he doesn't generally have other people working beneath him or reporting to him, he operates for most part alone?---Correct.

10 In paragraph 3 of your statement you say that you, there are ten building supervise that you - - -

THE COMMISSIONER: Building surveyors.

MS WILLIAMS: Sorry, building surveyors, Commissioner, thank you, that you supervise, those are the building surveyors including Mr Karkowski, the three team leaders and the people reporting to the team leaders, is that right? ---That's correct.

20 And how, how do you go about supervising these people? Can you just explain the practices that you have to get a handle on what they're doing and how they're doing it?---These people are broken up into areas. The team leaders also do areas and their work comes through into those allocated areas. My supervision is to ensure that they're carrying out that work that is delegated to them and, and that comes as a matter of the fact that they're allocated through a system of being in a particular area, area 1 to 10 for instance so the work comes in at the counter, it's, the street is nominated as in a particular area, that application goes to that person in that area that that street's allocated to.

30 So the work is allocated directly from the front counter to the staff who report to you, that's correct?---It comes through the front counter and from there it goes through a DART system and it then is allocated but it directly goes to those people from an administrative assistant.

So it doesn't come across your desk first?---It doesn't come across my desk at all, now.

40 And what do you do in order to supervise their work? You know that they're getting work relating to their particular geographical area but what do you do to supervise how they're carrying out that work and whether or not they're going it adequately?---We have a computerised system of undetermined and determined DAs. It's my job to check that those Development Applications and the Construction Certificates and Building Certificates are in fact carried out within a reasonable timeframe. We, I do a check every month to see that that happens. Usually any Development Applications over 100 days raise alarm bells and I need to go down and find out what the delay is. The other process is through people ringing me and

raising concerns that their application is not being dealt with, can I look into it and that's the general process.

And you referenced to 100 days, that would be applications that are not submitted through the Fast Track process, is that right?---That's true, the Fast Track process, I still get readouts on those. I haven't had the need to at this stage indicate to Ed that there was any concerns because generally they were done well within the 10-day timeframe.

- 10 Of the people reporting to you was it only Mr Karkowski who was processing applications under the Fast Track system?---It was only Mr Karkowski for the commercial business district. There were Fast Tracks that were also done in the industrial area, but of minor number in terms of Fast Track.

So apart from My Karkowski's area the bulk of development applications were handled through the normal process which takes longer. Is that correct?---That's right.

- 20 And is there anything else you do by way of supervising your staff apart from checking the timeframes within which they're processing applications from the computer records?---Well they all have delegated authority to deal with applications. I would generally only be called in where there was concerns being raised either by the public or by my superiors that there is problems and I needed to investigate.

- 30 Just on the question of delegation, do you have any role in deciding who gets what delegated authority or is that something decided by somebody else?---When we advertise for the position we indicate in those positions what their delegated authority is. They are also designated by basis now accreditation, so certain levels of accreditation, the higher levels would be the more experienced persons such as Ed and other senior staff. Their delegation allows them to do different types of developments of a, of a more complex nature. Others that have delegation of a lower level have work that's of a, of a less difficult nature such as a smaller residential type development. So delegations would be based on, also on the accreditation level that that person has.

- 40 So do I understand this correctly, that the delegation attaches automatically as it was, or as a matter of course at least, to the position and the accreditation level rather than being something determined by reference to the individual person and their particular - - -?---That's the case now since 2009 when delegation, sorry, when accreditation was brought in - - -

I see?--- - - - by the Building Professionals Board.

And before 2009 it's simply attached as a matter of course to the particular position?---It was attached to based on the expertise of the person and the knowledge of the person as to what work that they were done.

10 So far as you're aware is there any consideration given before giving that particular person a certain delegation? Is there any consideration given to any risk that might be associated with giving the delegation to that particular person as opposed to the position?---No. The only risk factor now would be that that person has the experience and knowledge to be able to carry out that work in that particular area. We would not put a person into that area if we believed that they did not have the experience and knowledge to do that.

Is there any consideration given to questions about whether the particular person is in your assessment or someone else's assessment likely to carry out or exercise the delegated authority consistently with council's Code of Conduct?---I'm sorry, could you just repeat - - -

Sorry, it was a long question?---Yeah.

20 You're familiar with the council's Code of Conduct, Mr Rowan?---Familiar, yes.

Yes. When somebody who's been given delegated authority is there an assessment made of whether that person is likely to exercise that authority consistently with the principles in the Code?---No.

30 No. Is that as far as you're aware there is no such assessment made?---Not to my understanding. The assessment is based on their knowledge and their experience in that work.

40 You also mention in paragraph 3 of your statement that you are responsible to the Director of Environmental Planning Services that your Building Services Branch runs properly what reports do you give to the Director, Mr Woodhams to satisfy him that the branch is running properly?---Well there's no, no actual report that I gave him. I do, I am assessed through a performance review each year and there is usually it's a case where if there are concerns raised by the public or by anyone else about the work that's being carried out, that they come through the Director, this might also be from a councillor. They'll come through the Director, who will then request that I take some action. But there is no physical report sheet if you like that I hand to my Director every month or every year.

Is there regular communication between the two of you - - -?---Yes.

- - - about how the branch is running?---Yes. We have, we have meetings every month, we have manager's meetings.

THE COMMISSIONER: It seems to me and please correct if I'm wrong, Mr Rowan, that the only aspect of the staff under your supervision in which you're interested in is whether they do their job within their time limits that you imposed?---And that they're doing the job correctly too.

Your check on that depends on whether you get a complaint from the public, nothing more?---That's true. I, it is a case where we, if we get feedback we will certainly take action.

10 Mr Rowan, do you accept that it's general knowledge that throughout New South Wales the whole process of obtaining development applications is a potential source of corruption?---It is potential source, I agree with that.

20 So what steps has the council taken to limit the possibility of corruption occurring in connection with the grant of development applications?---Well, my section, and I rotate my staff every two years so that the familiarity in that area does not continue. This, unfortunately, did not happen in terms of Ed's area because of the expertise that that area required but in all the other areas they are rotated so that that reduces the potential for that familiarity to occur.

And is that all? I mean I'm not saying that that's not important but I'm asking whether there is any other steps that are taken to limit the potential for corruption occurring in connection with development applications? ---None that I can think of immediately, no.

30 And do you accept that it's general knowledge that many new immigrants to Australia especially those who are not familiar with English pose a higher corruption risk than others?---That's certainly what's come out here too in this case, yes.

Isn't that something that's generally known?---There is a concern that they have a different culture in terms of dealing with public authorities.

And has the council taken any steps to respond to risks of that kind?---I understand that council has developed cultural documents that are in different languages that spell out the way that these people should deal with council and how council will deal with them.

40 What happens to the document?---The documents are put out on public display and they may well also be on council's websites.

And is there training given to council officers how to deal with people of this kind?---There hasn't been any recent training to my knowledge but it's obviously something we will have to look at and certainly do something about.

And the Fast Track system, I'm sure everybody will agree is a really good idea when it works but to leave it in the hands of a single person and not actually check anything except whether the work's been done in time, would you not accept that that's in itself a really risky thing to do?---Well, up 'til now we hadn't had a problem with that but that doesn't mean that it's not a risky thing to do, I agree that we obviously need to improve in those areas to, to change that situation.

10 What do you, what do you think can be done?---I, I think it needs probably more monitoring now which means - - -

Monitoring of what kind?---Monitoring through the, from a person that's actually done the report coming back through somebody else to check that application to see whether or not there are any concerns with the way that that application has been dealt with.

20 How will you be able to pick that, pick up concerns?---Well, that, that's going to be one of the problems because we don't, unless we have two people involved in the process and that process involves ongoing discussions, preliminary meetings and we would need two people to do that I think and that may well be something that we have to look at and do so that it doesn't rest in the hands of a single person.

I mean, what, what we've seen in this case is, is the manipulation of time records, do you accept that?---Overtime records?

Yes?---Yes.

30 And time records generally. I mean, people are, Mr Karkowski has, has disappeared from work on frolics of his own and no one has known, no one has checked?---Yes, I understand that, Commissioner, I think - - -

40 What do you think of that?---Well, the problem we have is this is a position where there is a large amount of trust attached to it. We have people that go out each day with bundles of files and in this case there are ten of them that do that. The job, one inspection may take half an hour, another may take two hours, other, others may take longer. It's not uncommon for the officers to go out at 10.00, 10.30 and continue through to 2.00 or 3.00, they have their lunch out in the field and unless we have somebody that follows them around - - -

You don't need that, you just need someone to do the occasional unexpected spot check?---Yes, I realise that and I guess we could do that from time to time. I am concerned that there may be an issue with the unions doing that but, but irrespective we would do that.

Mr Rowan, in so many of the inquiries that we do when there's a breakdown of supervision there is one response, it's the one you've given, that is there is a strong element of trust?---Mmm.

Do you accept that trust is not a management tool?---I do.

And you can't rely on trust, do you accept that you can't rely on trust as a means of ensuring that in the long term that things are done properly?---I do and it's certainly failed me in this case.

10

There's another aspect of this case that springs out at one if you think about it and that is that you have a person who, in Mr Karkowski's position who, he has a, he is given a lot of power, do you accept that?---He's got a lot of discretion and power, yes.

And he is in a position to make decisions that will affect people, people's pockets potentially by hundreds of thousands of dollars if not more?---Correct.

20

And he earns 80,000 odd dollars a year. That's so isn't it?---That's true.

Anyone with any experience of life knows that a person in that position is exposed to, is likely to be exposed to all kinds of temptations. Is that no so?---That's, that's true.

30

So what is the council going to do about that?---Well we obviously need to review our practices and how we deal with these sorts of issues. And that may mean that we do do spot checks, that we, what we do is require a, a daily timesheet and in addition to that timesheet diarise the, the jobs that those persons are doing and they need to justify their timeframe at each of those jobs. We, we also may ask them to provide information of the persons they spoke with and the phone numbers so that we can verify that they have been there and have actually spent time at that property. I've turned my mind to these things and they are things that I believe we, we will definitely have to start to give strong consideration to.

Yes, Ms Williams.

40

MS WILLIAMS: Mr Rowan, you mentioned the problem with rotating Mr Karkowski through different duties. Mr Karkowski has in recent times been moved into a residential role. Is that correct?---Very recently he has.

And, and who's doing the specialist CBD building inspections now?---We have a person who has level A1 accreditation who has not had the experience in the commercial work that Ed has, so he'll be learning a little bit as he goes. Ordinarily I'd rather have put somebody in with, with the person that was in there for a period of six to twelve months and then pull that more senior person out and rotate it that way, but this person has to be

thrown in, I guess, the deep end in way to try and learn the processes and work.

10 With the benefit of hindsight, would it have been preferable in your view to have some of your other staff members trained up alongside Mr Karkowski along the way so that over time you achieved a position where Mr Karkowski could be rotated through different areas and other staff members would be able to undertake the specialist CBD building inspections?---With the benefit of hindsight, but also, there's also resourcing because I need to cover the work that would otherwise be done by those persons.

Did you not have the resources to do what I've just suggested at the time, during 2009 and 2010?---I, I don't believe I did, no.

THE COMMISSIONER: Well you'd save on lawyers fees?---That's true.

20 MS WILLIAMS: Given that at the time you didn't and you say you couldn't rotate Mr Karkowski, were there other steps you took to try and ensure that the familiarity he would be developing with the business people and applicants he was dealing with didn't lead him into temptation? Was there some other steps in place to attempt to avoid that situation occurring? ---No.

THE COMMISSIONER: What about educating the customers? You could have give notices in the council premises warning against giving gifts, entertaining council officers?---These are certainly things that will be and need to be looked at. I'm sure that they are things that will now be thought about, but - - -

30 And you could have a blanket prohibition, I mean, Ms De Carvalho is an example for all isn't she?---Mmm.

I mean if she does that as a rigid rule, why shouldn't all council officers behave like her?---Well to be quite honest, Commissioner, there are a lot of good council officers that do behave like her.

I'm sure there are. Of course there are. No one's suggesting not. There are others or at least one and it seems to, it was known wasn't it?---Known that - - -

40 Known that Mr Karkowski was being entertained and going out to lunch? ---I'm not aware of that, no.

You never knew that?---No, certainly not. And it came as a huge shock to me and to our staff that the activities that Ed Karkowski was carrying on with.

The idea of being entertained by a prospective applicant?---And the form of entertainment that was taking place as well, yes.

What about going to the football in boxes, in company boxes by council staff, is that allowed?---Well, are we talking in working hours now, Commissioner or just generally?

10 People who often have to obtain council agreement to what they do in the course of their business?---I can speak for myself. I, I certainly do not and I would not entertain that.

But are there others to anybody's knowledge in the council who do take advantage of invitations of that kind?---Look, there might be but it's certainly not to my knowledge at this stage.

20 Well, one thing the council could do is to have a prohibition against that?---I agree and I think there are some things that will come out of this and policy documents and strengthening of our code of conduct will make that quite clear.

Would you accept that it's undesirable for senior council officers to accept invitations by large and powerful businesses to socialise with them and be spoilt by them?---It's something that again I can only speak for myself. I would not entertain it as a senior council officer.

Yes, Ms Williams.

30 MS WILLIAMS: Mr Rowan, prior to Mr Karkowski's conduct being brought to your attention have there ever been another instance where there's been misconduct of some kind by a building inspector working under you?---Not that I recall in the years of my being the manager there.

40 You mentioned I think earlier some cross-cultural information being, some information about the way of doing business with council being made available to people. I'm going to ask you to be passed volume 3 which is Exhibit 13. If you could turn please to page 231 of that volume. Just take a moment to have a look at pages 231 and 232 and when you're ready could you indicate whether that's the brochure you referred to?---Yeah, that is the brochure. I understand there had been a more recent, fairly recent brochures done which are available as a glossy brochure at the council's information counter. I say recent, I think we're talking within the last two months.

I see. You'll see this document down the bottom is dated October 2010? ---Yep.

Is that about the same time these other brochures you're referring to were produced?---It may well be, yes. I'm, I have not myself been involved in the preparation of this document.

The brochures you're referring to, are they available in different languages or only in English?---I believe they're in different languages.

And do you know whether the substance of those brochures is the same as what's in, in this document, as least the English language version?---Well, I'd imagine there would be some similarities with the detail.

10 Right. Mr Rowan, can I ask you a little bit more about the Fast Track system. When was the Fast Track system introduced roughly?---The Fast Track system has been in place for about six to seven years that I recall.

20 And what was the reason for introducing it so far as you understand it?---It was done in an effort to just speed up the smaller type applications, particularly those that involved predominantly fit outs for shops and the object being that a lot of those applications were being not handled in a sufficiently fast manner and we believed that because of the nature of the application that they could go onto, under a Fast Track system. We were also encouraged by the Department of Planning to speed up our approval process and we are constantly being asked by the Department of Planning to do that and not just on Fast Track but on other applications.

30 And at the same time as the Fast Track system was introduced, was there also a system introduced whereby a person who obtained development consent could either appoint council or could appoint a private certifier as the certifying authority for the subsequent stages of the approval process? ---For the Construction Certificate or for the inspection of the works, yes. That came as part of the Building Profession Awards, changes to the Act, yeah.

And I'm sorry, was that at the same time as or somewhat later than the Fast Track process coming in?---Oh, no, that was later, sorry, no, the, the, 1996 from memory was when the, the Local Government, sorry the Department of Planning introduced the system of accreditation whereby a person could do, a private certifier could do a Construction Certificate or you had the option of either having council deal with it or a private certifier could do the inspection regime or otherwise council could do that.

40 So - - -?---So it was in place, it was in place before our Fast Track system from memory.

Is one effect of those two combined changes that the council is under increasing pressure to turn things around quickly and in a way that is competitive with private certifiers?---Well, we are in competition with private certifiers for all Construction Certificates and inspections. It's just the nature of the way the work is. The private certifier has the ability to undercut us on price anyway and we, we are losing a number of Construction Certificates and inspections as a result of that.

Does, does the competition though lead to pressure to do the work that the council does have to do more and more quickly in your view?---We, the Fast Track system we introduced was for ten, up to ten days so we, we try to stick to a designated timeframe of ten days. The, the fact is that the applicant has the option if they don't believe that council's going to be quick enough to go to a private certifier for the Construction Certificate but it's the, this is a combined DA CC process so we're only, you're only talking, narrowing it into the Construction Certificate, there's still the
10 Development Consent which can't be done by a private certifier which has to be done via council so that area of the work, if you're talking about, you know, pressure perhaps that, the Development Application is the side that there might be some pressure in.

Mr Karkowski has given evidence to the Commission indicating that he felt quite burdened by his workload and it appears that he felt he was frequently under a great deal of pressure, would you agree with that from your observation of him during 2009 and 2010?---I, I believe that Ed had a very heavy workload and the pressure was not just the pressure from outside but
20 the pressure that Ed had in one, to be able to meet the objectives of the Fast Track system and get them out within the ten days.

And that was pressure from within the council was it or pressure that you say he put on himself?---Well pressure that he put on himself.

I think if I understood your evidence correctly beforehand, you indicated that as a result of you becoming aware of Mr Karkowski's conduct you've considered whether it would be necessary to do spot checks of particular officers work. Is that, is that correct?---That, I don't actually do that now,
30 but that would be something that I would propose to do.

You're familiar with the Fast Track worksheet that an assessing officer completes to determine a Fast Track application?---Yes.

It contains fairly little detail doesn't it? There's lots of boxes and ticks and a few spaces for, for comments, but how would you actually meaningfully check the quality or the adequacy of the work that an officer had done on a particular Fast Track application?---Well in those boxes there is a lot of information contained in a few words. I mean a lot of them refer to sections
40 of the, of the building provisions and so on. And while you may look up a particular clause that clause may well have a lot of data and information in it that you must know. The idea of ticking that off was that this is not a merit based assessment of a development application as would be with a normal development application. This is a fast track of a application that has somewhat less requirements on it then what a DA for say a dwelling house where you've got to consider a lot of other factors and have input from neighbours as well.

I see. So is, is the nature of the application such that it's not particularly important, for example, to understand the reasons why the assessing officer has decided it should be approved but more just to satisfy yourself that they have considered the relevant matters as indicated in the form?---That they have met the statutory requirements that they have to which are listed in that worksheet.

10 Do you consider that it would be appropriate to break up the Fast Track approval assessment system so that one officer assesses the application and completes that worksheet. The worksheet is then forwarded on to another officer who makes the determination or do you think that would be unworkable?---I think we've got the capacity to do that through our team leaders, even though our team leaders do an area themselves, there is the ability I think now, having seen what's happened here, that we could do that process.

20 Okay. And how in your view with doing that help avoid the problems that have occurred with Mr Karkowski?---Well it brings I guess some, some independence if you like to the assessment of that and the responsibility would fall on both those persons because they would both sign on that, off that application.

And does, and do I understand your evidence correctly that the council does have the resources to do that by using the team leaders in a slightly different manner?---No, I didn't say we had the resources to do that at all. But - - -

30 This is your opportunity Mr Rowan?---In the circumstances of what's coming out of this hearing I believe that we need to reassess the way we're doing things and if it means that we have to resource these areas to meet those objectives then that would be something that I'd be recommending to my superiors.

40 You mention in paragraph 10 of your statement, Willoughby City Council is coming first in New South Wales for the Fast Track system. What, what does that mean? How is performance measured throughout New South Wales, performance of council and the Fast Track - - -?---It's, it's called the Local Government, sorry, Local Development Performance Monitoring by the Department of Planning. And in the period 2008 to 2009, 2009 to 2010, council was first in the main gross determination timeframes.

THE COMMISSIONER: What does that mean?---What that means is that over an average, based on the number of applications and the time taken, council was the, council achieved the highest rating in terms of doing them quickly.

In New South Wales?---In New South Wales.

And that really is the, that's due to Mr Karkowski?---Yes.

Solely?---I believe so, yes. Because he has, does predominantly most, just about all the Fast Tracks.

When one looks at the few timesheets that have surfaced in this, it seems usual for him to be working after 10.00pm at night?---I know that the timesheets that I've seen he's done upwards to six hours of overtime.

10 A day?---Well not every day but, but that's what he was doing. His core hours are to 4 o'clock, 7.30 to 4 o'clock, so he would commence at 4 o'clock, which meant that generally come 10 o'clock he would be finishing his overtime and, and that would be the timeframes that I've seen. If he goes beyond that, and I haven't seen too many where's he's actually gone beyond, beyond that - - -

Are we talking about 10 o'clock, you're talking about 10.00pm?---10.00pm sorry, yes.

20 So he'd start work at 7.00am work until 4.00?---Yes.

And then do overtime until 10.00pm?---That's right.

And how many times a week would he do that?---Look there were, there were occasions depending on what the workload was like, what the pressures were on to get applications out for the concourse that he might do that three times a week, four times a week at the very most. And that would be - - -

30 And how is that - - -?---Sorry.

- - - over what period? Is that over a year that he would do this?---This was while he was, he had the, he, he had what's called the concourse development that he was required to, to deal with, which is a very large council project. And he also had the, the Chatswood Town Centre to deal with. And so the overtime was predominantly based around the concourse development and the timeframes that he had to put in to try and meet, there was a number of amendments, section 96 amendments that changed the construction certification applications. He had to amend a number of them. And there was a lot of work that he had to put into it anyway.

40

Is it regarded as, at the council as appropriate to allow a council officer in the position of Mr Karkowski to work six hours of overtime three or four days a week?---Well it's not something that we encourage I guess, but it's - - -

But allowed?---But, but there is no policy that says that he can't do that.

And do you think that that is acceptable?---I think it's something we're going to have to change.

10 The aspect that I'm still struggling with and I'm struggling with it because it's difficult, and it's not a criticism, is how do you actually check to see in this Fast Track system that the work is being done properly?---Well apart from what I've told you and that's really, you're looking at the stats to ensure that the work is being done, it's, it's, and it's going out, there is none and that's why we're proposing that well if we need to, what we will have to do is have other people monitoring that work at the same time.

You must have, I take it that you have read or heard of the evidence which involves rules being bent to get these done under the Fast Track system, that is certificates being issued when they shouldn't have been, certificates being backdated?---Commissioner, those certificates we're talking about were not, were not part of the assessment process of the Fast Track system. They were part of the inspection regime that followed afterwards.

20 Right?---And I totally - - -

That's just accepting that to be so. Is there any procedure at council to check this from time to time or to make more - whether the documents are being issued properly or is everything just taken at face value?---It's taken on face value and trust.

30 Is that because it's just too difficult to do anything otherwise?---I, I, I don't know that anything is too difficult to change, it's a matter of being able to resource the changes to make sure that if we're going to do it we do it properly.

One of the problems seems to be that if you give all the work to one person only then that person can do whatever he likes and no one is in a position to know whether what he's doing is right or wrong?---Well, that's proven to be the case here and I can only say that we would need to review the way that those practices are being done. You see, this is just one person we're talking about. I have nine others also and when I talk about resourcing I mean we need to - - -

40 I understand. Are they all on their own in the same way that Mr Karkowski was on his own, in their own particular spheres?---That's true, yes. They have their own areas and they work independently in their own areas.

I can understand that it's a difficult situation, Mr Rowan, but it's not satisfactory?---We need to consider measures on how to correct it.

I understand that, it's not something that can be done overnight. But you accept that this case has revealed a strong need to make changes?
---Definitely.

MS WILLIAMS: Mr Rowan, just dealing with the overtime claims. Mr Karkowski had to get your approval before actually working overtime on any particular occasion, is that right?---That's correct.

And did he generally do that?---He did.

10 And was that a matter of just talking to you about it or submitting a form?
---Usually he would come in the morning of the night he wanted to do
overtime and indicate the reasons for me why he wanted to do that overtime.
It might be that he had pressures being put on him to deal with an amended
application that's come in for the concourse. There are time constraints
attached to that which put pressure on him because if the application is not
dealt with, you know, within reasonable timeframe then the building works
may well, and in many cases, did have to stop until such time as the
assessment was made. And so that may have meant that he had to do
overtime not just for that one night but it might've had to have been the next
two nights after that to be able to complete it.

20 And when you were having these discussions with him about overtime did
you feel you had an adequate sense of his general workload so that you
could decide, for example, whether the problem was to be solved by
overtime or by moving some resources around temporarily by some other
means?---Well, I didn't have resources to move around I'm afraid. It, it,
it was a case also where this project was a specialised project, he had a lot of
knowledge in it, he had tendered all the prior meetings with consultants and,
and they in themselves took a lot of time of him because he had to attend in
the very early stages of the development many site meetings or, sorry,
30 specialised meetings which were held in the city, that might've taken two or
three hours out of his day by the time he got there, went through the meeting
and then came back. You see, when he got back he, he then had to attend to
either what work he could on the CTC, being the Chatswood Town Centre,
which meant that he also had to deal with the concourse as well.

THE COMMISSIONER: This is work of great responsibility isn't it?---It
was, yes.

40 I mean, he had in his power the ability to stop work or advance work, cause
developers and shopkeepers save money or to lose money in hundreds of
thousands of dollars if not millions?---Well, that's - - -

That's the nature of the job?---That's the nature of the job and that applies
to planning as well.

Do you think it's odd that a person who earns \$82,000 a year is entrusted
with this vast responsibility and given a free rein as to how just to do it?

---If we're basing it simply on his salary then I would've thought that if he was in the private field he'd be earning a lot more money to take those responsibilities on but - - -

This is a recipe for temptation isn't it?---Look, it may well be to some people, I'm not saying that if I put one of my other staff in who was on the same salary pace that he may have taken the same way as what Ed did.

10 But this seems to be one, this is the area, and please correct me if I'm wrong and I'm not sure if my understanding is right but this area where he was working was the area which would give rise to the greatest temptations because here you'd be dealing with the most, with aggressive businessmen all the time who have a lot of money and who wanted permission granted very quickly all the time and he was the person, he was the only person who could say yes or no?---Yes, that's correct.

MS WILLIAMS: Mr Rowan, do you think moving forward it's, it would be practicable to get a feel on a weekly or say fortnightly basis for your ten
20 building inspectors over all workload and determine who needed extra assistance and how the workload could be managed between people by some people providing assistance outside their normal areas or is that not practicable given their different skill sets?---That sometimes occurs but the practicality of it not so much Ed's area but the other areas is that once you get involved in an application for a house or a block of units or that you get involved to the extent that you're also dealing with complainants, objectors, neighbours and you must have the familiarity of the concerns that these people have raised. So to pass that job on with that knowledge that you have to somebody else to take on board becomes a bit difficult for that
30 person who takes that job on. He needs to spend a lot of time coming back and reassessing all that has happened beforehand. So it's not a simple task to do. But look, it's possible, I'm not saying it's not possible, it's possible and it's certainly something that we have looked at. We, we actually did offer Ed, we gave him a person who did not have the same knowledge or experience or the, or the accreditation level, if you like, he was brought in to assist Ed for six months but in doing that we had to give his area across to another person who was already doing an area because we recognised the workload was there in Ed's area at that particular time. But that person that we gave Ed was only able to do small, a small proportion of Ed's
40 responsible work, he was only able to do inspections for Ed and while that did help it wasn't enough.

So is it really a case of you really needed another person or half a person with Mr Karkowski's skill sets to do the job that was in fact just allocated just to him in order to make any real dent and the need to do overtime, is that right?---We did but you can't find those people I'm afraid. You don't get them outside, they don't want to work as, you know, for a short term basis and a lot of them with that experience are earning a lot more money than what council could offer.

So it wasn't a, it was a case of being unable to, to source a suitably qualified person rather than not having some funding to, to get them or were the issues at play?---Well, either funding or reallocation of work within the, within my branch so that somebody takes on more, we split up the areas more so that the areas become bigger for some people and ultimately we can free somebody up that we can train under, say in this case we could have trained under Ed, that's, that was a possibility. It, it mean that, that those areas would have suffered because there would have been a slower
10 processing time for those applications.

Are you able to get, if you were to restructure in the way you've just mentioned are you able to get another staff member, part-time or full-time, to assist in those other areas or do you run into the same problems in terms of not finding those people in the market and/or not having the funding?
---The problem is finding those people in the market - - -

I see?--- - - - and then the timeframe it takes to bring them up to speed if you can find somebody. We, we advertised for a position recently and we
20 wanted a person with seniority, we got one applicant that applied that had the seniority but didn't have the experience in dealing with Development Applications, he'd only dealt with Construction Certificates and so we ended up being forced to take him on because the other ten applicants we got were totally unsuitable. You see, the time, the time at the moment is being spent training that person up.

What about changing the timeframes under the Fast Track system? Would it be a disaster for applications for take up to 15 working days instead of ten working days?---It wouldn't be a disaster but I guess does it still become a
30 Fast Track system any more?

It's still a lot faster than the ordinary system though isn't it?---It, when you say a lot faster it would be faster still but I'm not sure what benefits you're gaining by extending it another five days.

Would that not reduce some time pressure on the building inspectors like Mr Karkowski assessing and determining the applications, doing the inspections and all the other work they need to do?---He'd still have the same quantity of work to do, he'd just have, I guess have the leisure of
40 being able to say well, I've got another five days to deal with it but when that job is finished he still has to follow up and do all those inspections so nothing would change after that, it'd just be the assessment time that would be possibly helpful.

THE COMMISSIONER: And the temptations would remain?---And the temptations would remain, yes.

MS WILLIAMS: Mr Rowan, I'm going to show you a document and I hand up a copy for you also, Commissioner, it's an extract from the Environmental Planning and Assessment Regulations. You'd see the first half a dozen or so pages are just a list of contents and then one comes to regulation 245A and regulation 246, do you have 246 there?---Yes.

10 We've heard in evidence about a sliding scale of fees that council has, that are payable for development applicants, are you able to tell me whether that table in 246 is the sliding scale of fees that applies to applications for Development Consent?---Development, Development Applications, not Development Consent but Development Applications, the fees are designated, they're designated by the Act.

Yes, what I'm asking - - -?---It's, is that, that's what you're saying, sorry?

Yes, I'm asking you is this, so far as you're aware is this the legislation that designates those fees for development?---Yes, I believe that to be the case.

20 And what about Construction Certificates, those fees are determined by council rather than by legislation?---Yeah, they're determined by council and that's because there are market forces which were introduced as a result of accreditation, sorry, as a result of private certification being put in place by the state government.

I see. The fees for the Development Application bear a relationship to the estimated cost of the building or the cost of the work, is that your understanding?---Sure.

30 Is, is it the same as the fees for Construction Certificates, are they determined by reference to the cost of work?---Estimated cost of the work, yeah.

I see?---That's, a Construction Certificate, that is if the Construction Certificate is separate from the Development Application. If you're talking about a combined Development Application and CC, the council will charge the Development Application fee and there's a 15 per cent decrease in the rate on the CC if the applicant chooses to come with council.

40 I see. And so far as you're aware, do all of your staff have a good working knowledge of these fee scales and where they come from and how they're to be applied?---As far as I'm aware they all have knowledge of it, yes. The, a lot of our fees would be done by the counter staff when the application's lodged and a lot of the fees would be automatically put into the computer system so that so that you can go in and check to see whether your particular estimated cost what that fee structure would be.

I see. And that's a computer system that the counter staff have available to them?---Yeah, that's right, yeah. The building staff, usually if they've got

any concerns will go and check with the counter staff as to what the correct fee might be.

I see. And it's up to the applicant in the Fast Track system at least to nominate the estimate cost of works on their application form, is that right?
---That's right.

10 And the counter staff will accept that on face value unless it seems wildly low to them, is that right?---They're not, they're not experienced or trained enough, we're talking about administrative assistants that have not been trained in the area of assessing estimated costs of building work so they would - - -

THE COMMISSIONER: What are the construction costs? I mean, where does one find, is there, is there some statutory definition of construction costs?---The only, the only, well, there's only 245 I think of the, of the Act, the Regulation which talks about the different areas of, of how you, sorry, 255.

20 255?---254, 255, I think, 255 is one that, how is the fee based on estimated cost determined but - - -

Does anybody understand, I mean, is there, does the council have some policy as to what, what the costs associated with the construction of a building means?---Other than what's contained in the provisions within this section which if you go to, sorry, you haven't got it here but 255 talks about - - -

30 Yes, well, I'm looking at 255, it towards the end of - - -?---255(1)(b).

Yes?---Which talks about costs associated with preparation of the building for the purpose for which it should be used such as costs of installing plant, fittings, fixtures and equipment.

Yes, that's included?---Yes. But, but there is a concern about what you determine is fittings and fixtures and I, I honestly believe that this needs to be clearly determined as to what the extent of the fixtures and fittings mean.

40 Well, it says that, it says the fittings?---Do we, do we, do we say that for instance that furniture is a fitting or a fixture?

Mr Rowan, there's no need for us to have a debate as to meaning of these words - - -?---I realise that.

- - - but what it is, what is important is whether the council has a policy as to what it means, do people know what it's, what council thinks it means at least?---I think, I believe my officers do.

How do they know that?---Well - - -

Were they told that?---Well, from the experience of dealing with applications over the years.

But how does that teach them what the true meaning of the regulation is? The true meaning of the regulation depends on interpreting the regulation not on practice?---Well, I think in using the document and in practice that gives you the experience and knowledge of what you're looking for.

10

So there's no uniform, there's no uniform interpretation that the council applies to the meaning to, to what the genuine estimate of regulation 255(1)(a) and (b) costs amounts to. That's really as I understand your evidence?---I, I would say that's correct and that uniformity does not just apply to this council. I've worked at other councils where there are similar concerns about determining the estimates costs.

20

And so really that's an invitation for anybody to put down whatever they want?---That's true and that's why I say they need, the documentation should clarify further then what it does.

When you say the documentation you mean the regulation?---The regulation.

Right. Just explain to me what, what fees are paid if the, if those, if the 255(1) costs are say \$100,000?---What fees are paid, there's on the development application there's a, there's the statutory fee that's regulated by the regulation.

30

How much is about?---I think it's about 3 to \$400. This is off the top of my head.

Yes, I understand. Is that all they have to pay?---That's, no, there is a, there is a fee that the government has set for development first, I can't think of the correct terminology, there is a fixed amount that the government has required on all development applications, which is to be paid, apart from the normal fee that's contained in this regulation.

40

Which is the regulation that sets out the formula?---This is the regulation that sets out the formula.

Well where's the formula?---Well it's on a sliding scale. It's - - -

Where's that?---You see it's 170 plus three dollars for each \$1,000.

Where are you reading from?---Sorry, from the table.

Where's the table?---The table is in 246.

Yes?---So for instance taking the 5,000 to 50,000 the base fee is 170 plus an additional three dollars for every 1,000 or part thereof of 1,000 of the estimated cost.

I see. So the difference of \$100,000 is 100 times \$3.64 is it? If I'm looking at the cost between 50,000 and 250,000?---Yeah.

That's right is it?---Roughly, yeah, roughly, right.

10

And is that, is that the only - - -?---No, there are other - - -

There are other costs as well?---There are other costs as well. This is just the application fee. There are other - - -

What are the other costs?---There are other fees which the state government has set for, it's Planning First, which is a government initiative for - - -

20

Sorry, sorry to, to interrupt, but what I'm mainly interested in is are there other costs based on the cost of construction?---Yes, well this is just purely the DA fee.

Yes?---So the construction certificate the council sets the fees for the construction certificate. That's the other fee that's charged if it's a combined development and construction certificate.

And is that fee based on a construction cost as well?---It's based on the construction cost.

30

And how is that determined?---Well the council sets that fee and - - -

By reference to what?---Well it's a market, well it'd be a market force fee, so we would be, all councils would be looking at what they believe is the cost to them to carry out that service. And appropriately the fees would be similar to this on some case on a sliding scale based on the estimated cost of the work.

40

What does your council base its costs?---Our, our council has a sliding scale at the moment fee. It ranges from 5,000 up to in excess of 1 million and within each of those categories of cost we have a fee that's fixed for that amount.

So what, if the building costs, what's the difference in that fee between building costs of 200,000 and building costs of 100,000?---It could be in the vicinity of anything from \$200 to I'm just thinking, I haven't looked at the fee structure recently, but it would be in excess of \$50 to upwards towards 100, \$150.

And if the difference is between 100 and 400,000?---Oh well we're talking in terms of hundreds now. We could be up around the \$500 mark. What we've done is as, as the scale gets higher we've charged more because you've got to consider the complexity of the job and what inspection - - -

I understand?--- - - - and the timeframes of doing those inspections.

And this assessment is left solely to Mr Karkowski to determine?---No. The fees are already fixed and approved by council.

10

The assessment of the costs?---And the, the costs are assessed based on those scales that he has in front of him, so - - -

Yes, but someone has to check whether the costs nominated by the applicant are correct?---You're talking about the estimated costs that's nominated by the applicant?

20

Yes, yes?---The Fast Track system does not go through a DART system. The DART system would normally be in a position to look at costs, but the Fast Track system goes directly to the officer that's handling the application.

So the answer to my question is yes, there is, it's just left to Mr Karkowski to determine it. So even if the costs are say 400,000, if he puts in 100,000, no one knows the difference?---Well no they, well they wouldn't. That's if he decided to do that. And you know, look it's not something that I'd certainly be happy about anybody changing the costs, the estimated costs that are put in by an applicant.

30

But there was no way of checking?---That's true.

MS WILLIAMS: Mr Rowan, the Commission - - -

THE COMMISSIONER: Sorry, Ms Williams. How many of these does he do a week?---Well he could do upwards of 20 to say on a good week 30 a week if - - -

40

So we're looking, we're looking at between 100 and 150 a month?---We would be, yes.

And if he understates each one by with the result of the council (not transcribable) say \$300 each, you're looking at \$300,000 a month loss of fees?---Yeah, we are. If that was occurring there would be a substantial loss.

You know, we're looking at something like more than three and a half million dollars a year?---Can I just correct that the number that, the figures, before I left work I checked to see how many DA's that were done over a

period and we had something like 923 done during the period of 2009 to 2010.

Right?---So that gives a little bit more accuracy to it.

Well if I recall his evidence he said he was doing hundreds over the year?
---Yes, that's true, yeah, 928 is roughly - - -

10 So I mean the assessment of these building costs is really important for the income that the council receives isn't it?---Oh most definitely, yes.

Yes.

MS WILLIAMS: Mr Rowan, the Commission has heard evidence of a couple occasions in which Mr Karkowski did suggest to applicants that they lower their estimate of the building costs on the application form they were submitting and he gave evidence to the effect that what he was really doing was explaining to them that they didn't need to include the cost of, for example, equipment in their - - -

20

THE COMMISSIONER: Fit-out.

MS WILLIAMS: - - - estimate of costs and fit-out. Your understanding based on the legislation is isn't it that those costs are included in the estimate that the applicant has to give?---Yeah, there was, and this goes back to the question the Commissioner asked, there was confusion within the staff ranks as to what area of works were included in the estimated cost. I think I heard evidence here about one person who included things like furniture and that in his estimated costs.

30

THE COMMISSIONER: That was an applicant?---Yes, that's right. We would not consider that that is appropriate.

No?---But fixtures and fittings - - -

Anything permanent?---Yeah, permanent thing. The same as you're selling a house they're fixed and that's - - -

40 Floor tiling would be part of the cost?---Yeah. The other thing, Commissioner, I might just add is the level of those finishes. You can go for the higher level and pay a lot more, you've got a mid level and you've got a low level and we don't know what level they're choosing at.

I know. But I don't quite understand why you don't know because the applicant knows and the applicant, why can't the applicant show the building inspector the quotes he's got or that is accepted? I mean, by the time he's applied for the application he must have a good idea?---A lot of

the information that came through on the plans of course doesn't detail, just says floor tiles for instance other than Italian floor tiles, a lot dearer.

Yes. The problem is as I understand Mr Karkowski thought that floor tiles were not included, told them to exclude it. Terrazzo covering. That seems a basic lack of training in the person whose job it is to do the assessment?

10 ---In, in honesty none of my staff are being trained in the area of this and this is something that we need to look at because if we're going to now have to check all of these which we should thoroughly then training in documents such as Rawlinsons is probably essential for us.

Mr Rowan, can you just explain this competition between councils and private certifying bodies please?---It's just a market competition I guess. The private certifier needs to, should get as much work as he can and he will, he may well offer his services for a fee that's somewhat lower than what councils do.

20 So does he do, the private certifier do what Mr Karkowski did?---Suggest to the applicant that he should lower his - - -

No, no, does the kind of work that - - -?---Yes, yes. The private certifier approves the construction certificate, not the development application but the construction certificate and he also can do the follow-up inspections after he's approved that construction certificate. He doesn't, the private certifier does not have to come to council, he issues the construction certificate and a copy of that comes to council for filing purposes.

30 And the council doesn't check that?---No, the councils, the councils don't have to check that, they're not obliged to under the Act.

40 Yes. You just take them at face value?---Well, we do but I mean some of the residential ones have just raised concern with us because at times, I have asked my staff at time to time to just do a quick look-through to make sure that there's something not glaring in there because what will happen is if a private certifier's approved a house for instance where there's something that is, is incorrect then we end up at the end of the day having to pick up the pieces and sort out the problem with the building certificate 'cause the private certifier can't deal with that building certificate. So I guess we do do a surveillance, if you like, but we don't go, do a thorough check of their assessment.

And the area of competition, what is the cost, the private certifier would charge less than a council?---The private certifier's got the option of raising or lowering his cost as he feels appropriate. We have to fix our costs and our costs go out onto the website.

And how does this affect the way in which you conduct your business?

---Well, it means in many cases that we lose construction certificates in a lot of cases.

You mean, you don't get the work?---We don't get the work.

And that means you don't get the fees?---That's correct.

10 And so what do you do to get the work?---We try to encourage people to come with us by sending out flyers with our application, Please use us, we've got all these years experience, you know, but - - -

I mean, is this a temptation to cut corners?---No, it's not because the private certifiers have got builders anyway that recommend him for all the jobs. I mean, we've, we have probably only got 40 per cent, 45 per cent of the market in construction certificates. We don't, we're not trying to cut any corners we're just trying to compete if we can and at the moment we're not competing as well as I would like us to compete because we can't match them.

20 Is it easier or more difficult to get a certificate from a private certifier?
---That's a loaded question, Mr Commissioner, but I'm not sure how I should answer that.

Honestly?---My belief is that builders tell me that they prefer private certifiers because they don't have to go through all the red tape and bureaucracy that they have to deal with with councils and therefore they will go with a private certifier every time.

30 And what does this, does this mean less resources for the council really?
---It, it ultimately would, yes, it will have an impact in terms of our budgets.

Yes, Ms Williams.

40 MS WILLIAMS: Mr Rowan, you mentioned that none of your staff have been trained in assessing the applicant's estimate of costs. Mr Karkowski gave evidence to the effect that before this inquiry was commenced he hadn't in fact seen the Environmental Planning and Assessment regulations governing the costs of construction and the development application fees, is that something of a surprise to you or - - -?---Your reference to training costs and my reference to it was I was referring to the use of Rawlinsons to estimate the costs. This document I believe that Ed only became familiar with the wording fairly recently. And I think it may have come as a surprise about things such as some fixtures and fittings as to whether or not they should be (not transcribable) applied to estimate the cost.

How is it that a building inspector of Mr Karkowski's seniority who's been at the council since 1999 was not aware of the substance of this provision and the kinds of things that need to be included in the estimated construction

costs?---Well, I think we, he should've been aware of it and having said that we all should be aware of it so it may not be that Ed was the only one at fault here.

Do you acknowledge that these provisions are something that your staff should receive some training in to ensure they are aware of them?---I do but I'd also like to think that at some stage we can have the department view this and perhaps get some clearer understanding of what's required.

10 And in what respects do you think the department needs to make the regulations clearer?---They need to clarify what exactly they, they see as building works in terms of fixtures and fittings and plant equipment and so on and whether that also includes, whether that's an estimated total cost of everything that goes into that building such as furniture, chairs et cetera.

And from your perspective would it help building inspectors if an applicant was required to submit a quote that they'd received with their application so there was something to back up the figure they state on their form as their estimate?---Yeah, not just any quote but a quote from a builder who's also
20 licensed to do that work.

Yes?---We have had quotes from builders and it's ultimately council that still has to accept that quote as being satisfactory and a lot of those quotes come from builders who the applicant has obtained and when we check the licensing provisions of those builders he's not licensed to carry out that type of work so he shouldn't have been given the quote in the first place.

Is requiring quotes from a licensed builder or tradesperson something that the council has the ability to do now as part of its application procedures or
30 is that something that you understand would require some change to regulations?---Well, we, on our application form, our Development Application form there's a statement made below the estimated costs which says that council ultimately is the person who must be satisfied with the estimated cost and that council may well require that person to provide either quotes from a builder or otherwise a quantity surveyor. That's there in black and white for the applicant to know. It's then a question for, for us to decide whether we want it as a requirement for every application which may be somewhat unfair to particularly applications where we're only
40 talking about \$15,000, \$10,000, where do you draw the line and then if you draw a line at say, say \$100,000, does that mean everyone knows if I go below that \$100,000 I don't have to provide them with a quote. You see, it can have the opposite effect when you start a line. So you either say for every application or I guess we have to ourselves sit down and determine every one of them against a document such as Rawlinsons.

It's likely isn't it that an applicant has already obtained a quote for the work they want to do before they make their application to the council in most cases?---You would think that that would be the case, yeah.

So it's unlikely to involve any great hardship to applicants to require as a matter of course that they simply staple a copy of the quote to their application?---Yeah, there are, there are a number of them that get quotes and may not be necessarily happy with the quote and we've had some people that when you question them they say oh, yeah, I did get a quote but I wasn't happy with the quote, this is my estimate of the quote. You then get the quote in and unfortunately the person that gave the quote wasn't really qualified to give that quote but, yes, look, it's something that we could certainly require them to do. I just think that there are problems associated with it as I've described.

Yes, but the, having a quote would put council one step further down the track as it were to understanding whether the estimate was reasonable, is that right?---Yes (not transcribable)

And the council officer involved would then have a, a discretion and be required to use their professional judgment as to whether the quote needed to be queried or the matter taken up with the applicant further, is that correct?---Yeah, that's right, it's, it, it could be done that way.

And you've referred to Rawlinsons, that's a book which - - -?---Okay, that's a document that's put out that is used in the marketplace for assessing costs of all different types of building works and it may be based on simply on different types of buildings and on the square meterage of those buildings, a certain monetary figure is placed on, it is based, it, it goes into regions. It's quite, it's not a simple document to use because it breaks up into regions, Sydney east region would be a higher cost factor on, on most elements than what say further out towards the country areas would be or towards the western areas of Sydney. But it's a document that unless it's used regularly can be a difficult document to just pick up and start trying to interpret.

Do you, you mentioned training in the use of Rawlinsons for your staff, do you consider that that kind of training would be useful to give them some level of working knowledge of the document so that they could then use it as a reference tool where necessary?---Most definitely, yes.

What sort of training are your staff given in relation to the Code of Conduct?---The last training that my staff received in Code of Conduct was 2009. It was compulsory. They attended and from memory they might have even been required to sign off on their attendance at that.

And apart from these formal mandatory training sessions that are held every couple of years, is that right, in relation to the Code of Conduct?---That's right.

Apart from those sessions what if any other steps are taken within your branch, within the environment services division, to reinforce the principles

underlying the code?---The, apart from that training I guess it's only just internal discussion that occurs so occasionally, you know, I have a staff meeting every month, if the matter comes up we will discuss it but it's not a matter that's brought up every month for instance, it might happen that somebody's come across a problem that may be a Code of Conduct issue and on those odd occasions we will talk about it but it's not, there's not a, a regulated training regime.

10 You mentioned earlier the possibility of reviewing the Fast Track worksheets as a means of exercising some additional form of supervision over your staff, I'm going to ask you to be provided with volume 1 which is Exhibit 11 and if you could turn please to page 48 of volume 1, Mr Rowan. If you could just a moment to look through pages 48 to 51, I'm just interested to understand how you would form a meaningful view about the adequacy of the assessment from reviewing this form?---Well - - -

20 For, can I give you an example, if you look on page 49 the table at the top of the page there are a number of items listed and ticks beside them, how would you know for example what the assessing officer's reasons were for deciding that the site was suitable for the development?---Well, what you're asking me is what changes I would make to this document. I mean, you're reading it as a lay person who is unfamiliar with a lot of the terminology perhaps there but the only thing I could see that we would need to do in those instances so that anyone, anyone picking up this document understands that would be to beef up all of those sections to give a clear understanding of what they mean and what the person who has assessed it has given or put his mind to in terms of meeting those requirements.

30 And how would that beefing up happen? Would there for example be sub questions underneath some of those matters in that table that would enable you as an expert reading it to get a slightly better picture of the though process underlying the assessment and the determination?---So any development control plans, we would list up all those development control plans and we would say that any particular items in there that were applicable to this type of development, that they are satisfactory in terms of meeting the regulations on the basis that perhaps it's, it's a, it's an acceptable form of development for that particular category. The problem we're getting into here is that we're getting into a total merit assessment here. We're going back to a full DA system and that's, we may as well not
40 have a, a system of Fast Track any more.

What I'm - sorry, Commissioner.

THE COMMISSIONER: No.

MS WILLIAMS: What I'm interested to explore is whether there is some halfway option which would enable you to retain a Fast Track system but enable the assessment process to be sufficiently transparent for someone in

your position to be able to be satisfied that the officers reporting to you are performing their job adequately and appropriately?---Mmm.

I know that's a difficult question?---Well, it is.

10 Please take your time and - - -?---I think that we could expand this table so that we understand exactly what areas the officer has dealt with in terms of like development control plans, the relevance of those areas in terms of this application and whether they meet the standards that are required by that rather than having a one-liner with a tick at the end of it.

THE COMMISSIONER: I suppose the question is if you repose complete trust in your officer you don't want to know this because this actually tells you nothing except that he appears to have thought about it and ticked it but you have no idea why he's ticked it. The question is should you know why he's ticked it? Should you or not?---Yes, I should. I mean, are we talking about a second person checking this such as me?

20 Yes?---I would need to know why he's ticked it, yes.

Obviously that's right but my question is really is there a need for a second person to check it or are you saying that the Fast Track system won't work if you have to have a second person and you've got to have, you've got to do it this way otherwise you either don't have the resources to do it or it's going to take too long or it becomes too complicated. I'm not sure what your evidence is?---Okay. Well, if we extend it as suggested the timeframe to 15 days rather than ten that would also help in not only changing the format of this report but giving a bit of time for a secondary person to look at that application and understand it.

30 And is that necessary, do you think that that's a good thing or not?---Um, - - -

40 Well, can I put it another way, I can see it's a difficult question to answer and I accept that but do you think that it's appropriate for one person to have complete control over this and for no one else to actually understand what he's been doing?---No, I, I, I agree that one person should not have total control over it, there should be an understanding that somebody else can walk in and look at that application and the report and know what exactly was going on with it.

That does seem to me on the fact of it, I mean, more desirable and do you think that something like that can be worked out, Mr Rowan?---I think the transparency aspect of that is important and yeah, look, it's something we can work with.

Right. Ms Williams.

MS WILLIAMS: Mr Rowan, the Commissioner has heard evidence to the effect that on more than one occasion Mr Karkowski did not, in his words, create a problem for or hold to ransom a business owner who was commencing to trade before an Occupation Certificate had been issued. Is that something that you're aware of as being a practice amongst building inspection staff or is that something that comes as a surprise to you?---We don't necessarily hold people to ransom for Occupation Certificates. We try to get the work done and the only, the only control we have over having that work completed is to not issue an Occupation Certificate.

10

THE COMMISSIONER: That question wasn't intended to criticise anybody, I think it was using Mr Karkowski's words?---Yeah.

MS WILLIAMS: Perhaps I'll put it to be clear. Mr Karkowski gave evidence to the effect that there are occasions on which he would not hold a business owner to ransom meaning he would not refuse to issue the Occupation Certificate because all the necessary certificates hadn't come in or he would not do anything about them trading before the Occupation Certificate had been issued?---Well, there's another option to that and that is what's called an Interim Occupation Certificate where if he believes that within reason he can issue an Interim Occupation Certificate and not a Final Occupation Certificate then he can allow, if the works that, or the outstanding matters are a nature that will not present a public danger to people using those premises then he could've issued an Interim Occupation Certificate and received those certificates later if he believed that that's appropriate and then issued a Final Occupation Certificate once he was satisfied of those certificates.

20

30 Does it come as a surprise to you to learn though that there were occasions on which he didn't do that, that he simply turned a blind eye, as it were, to the trading and issued the Occupation Certificate later?---Well, I guess it comes as a surprise because there was another option for him to consider, whether he believed that that was appropriate in the circumstances I'm not sure but that is, that is a procedure that could've been followed.

30

And is it fair to say that until these matters arose the main way in which you monitored your staff's activities was through your review of the computer generated records to check the turnaround timeframes for development applications and responding to any complaints that were made, is that a fair summary?---Yes, and talking to my staff, I regularly talk to them asking if there's, there's any issues that we need to go over. I, I often used to go out on inspections with my staff where they needed support and backup so that was another monitoring, form of monitoring if you like.

40

And you know, I think, about the evidence that's been given to the Commission of Mr Karkowski's activities in spending working hours at long lunches not on legitimate council business and not reporting a brothel operating illegally, those sorts of matters. You understand the effect of the

evidence that's been given. Looking at it now with the benefit of that knowledge and the benefit of hindsight are there other things that you in your position and with the resources available to you are able to do to prevent this kind of conduct occurring without your knowledge in your branch?---A more intense monitoring of my staff, knowing where they are each day, knowing what jobs they're working on, that's going to involve a lot more work on my part but something that I need to address and that may mean having to have them fill in, as I've mentioned before, daily timesheets, sheets which tell me what, where they are during the day. But as we know
10 those sheets can still be fudged.

Yes.

THE COMMISSIONER: More difficult - lawyers have been used to that for a long time. Timesheets would make it more difficult, they're not popular?---No.

But they would make, they would give you a greater degree of control?
---Perhaps put responsibility back on the person that they know - - -
20

You might need to get assistance though. There are lots of things that have to be thought about, I accept that. Mr Baltinos, do you have any questions?

MR BALTINOS: Sorry, Commissioner, no questions.

THE COMMISSIONER: Mr Cotman.

MR COTMAN: Yes, thank you. Mr Rowan, in relation to the questions of supervision that you were asked, in relation to your personal skills are you a person who's technically qualified in relation to the, and at the same level as
30 the people under you in the chart that appears at page 3 of exhibit, volume 9 which you were shown initially. I'm not sure whether you saw that document there?---Sorry, that page again?

Yes, its page 3, the chart you were shown right back at the beginning.

THE COMMISSIONER: The page numbers don't start at the beginning so - - -?---Yes.

40 MR COTMAN: And I think you said that various people under you had various accreditation levels that qualified them to do the work that they were doing?---That's true.

And is your accreditation level, what is your accreditation level?---My accreditation level is A1, which is the top accreditation level.

And is your experience across all those areas that we are (not transcribable) concerned with in the four panels under you?---I believe so although my

knowledge in the area of fire safety, fire safety is an ongoing science and something that has constantly changed in terms of regulations and requirements. I am not as up to speed as I would like to be sometimes, but generally I can, I can deal with applications that are of a, of that standard.

And now you mentioned that the construction certificates were, some done by council and some done by the private certifiers that you've referred to. Can you give the Commission an indication, an impression if you like, of what percentage of the certificates passing through the council are from private certifiers and how much from the council?---Well I think I've mentioned it, we've probably got about 40 or 45 per cent of the market in terms of the construction certificates against the private certifier.

But in terms of the type of work is that predominantly is there any observer will preference one way or the other (not transcribable)?---There is a big difference there. The work that we get is more of a, a smaller development. The larger developments which we used to do many years ago have all gone to private certifiers. We get mainly, in the CBD we get mainly fit-outs and all the new buildings, predominantly all the new buildings go to private certifiers.

All right. Now the accreditation that you adverted to who is that done by? ---The Building Professional Boards who are attached to the Department of Planning.

And if there was a complaint made about the certification process by private certifiers or by the council exercising a certification function, is there any monitoring process available for that?---The Building Professional Board monitor us in terms of our accreditation and they also monitor the private certifiers. And if a complaint is made, a complaint can be made to, if the council is at fault and or has undertaken some matter that is of concern to the public, the public can contact the Building Professionals Board and make a formal complaint. We are also responsible to the Building Professional Board in terms of their Code of Conduct.

Does it have an audit function?---It has an audit function that comes around and in fact is going through a number of councils at the moment.

And does that audit function extend to both the private and the council certifying activities?---It does. That's correct.

Now the, in relation to the Fast Track planning matters you were asked some questions about, I think you made the observation that it could be anything from a coat of paint so to speak through to substantial work that was submitted under that system. Again, in terms of the preponderance of the work that's coming through, can you give the Commission your information or impression in the, where the bulk of the work that's being submitted for Fast Track is? At the high end or the low end or what is it?

---It's on the low the medium end I guess if you want to fill that in. With some of the major fit-out we may get them and we may not, but we generally are doing the smaller shop fit-outs in most cases.

And ultimately I suppose those jobs are then built in accordance with the, the material that's been submitted and certified for?---Yes.

10 And has it been council's experience of there being detected any significant disconformity between what has been built and the planning regulations that govern what can be built?---No, no. In fact I, I feel that our council prides itself on the fact that we are very stringent in our approach to ensuring the works carried out in accordance with any standards or regulations.

20 Has there been a significant incidence in your experience of public complaint or complaint by fellow occupants of buildings and the like with the work that's been done that they considered to be unlawful or improperly done?---Well when you say unlawful, the only concern there would be if the work was being carried out without approval. But if we're talking about an approval, no, I haven't experienced any people telling me that. In fact usually if I'm getting any complaints it's about the fact that we're being too hard on people.

Now you were asked some questions concerning the issue of overtime and why it as being worked and under what circumstances and the like. First of all is the circumstances of the, of the council and the teams working under you constant or is it moved over time as the level of work that you've got on your plate?---You mean the teams being a constant in terms of the numbers that I have or - - -

30 No. The amount of work that your teams are called on to perform, is that a constant matter or does it fluctuate over time? What's the scenario?---It can fluctuate, depending on what developments come in to council. It could be major developments that occur which suddenly require, you know, us to deal with a lot of applications in a short period of time.

Now the circumstances that you described in 2009 was that a usual or unusual situation?---It was unusual.

40 Why?---Unusual because the period that particularly with the concourse development, I'm talking about purely the CTC area now, the Chatswood Town Centre, we had the concourse development running and we had, we had Chatswood Chase redevelopment, we had Westfield who were doing changes. And all of that work amounted to a large volume of applications coming into council.

Now from time to time you've, you said earlier today you were approached in, for authority to perform overtime?---That's right.

Did you observe overtime being worked from, with your own eyes so to speak?---I wasn't there for the full time that Ed would be doing overtime, but Ed would commence at 4.00. I usually left at 5.00, 5.30. I, I used to see Ed coming down past the corridor, past my office on regular occasions. But I wouldn't be there at 10 o'clock or whenever when he left.

THE COMMISSIONER: But you knew he was working?---But I knew he was working there, yes.

10 MR COTMAN: Did you see evidence of what had been done the following day?---Yes, my administration officer is outside my office. There'd be a pile placed on her desk. She let me know that they were there because she regularly used to complain about the fact that she couldn't get into a lot of her own work because she had to do a lot of Ed's work.

And when you say a lot of Ed's work, work emanating from Ed?---From the overtime that he was doing.

20 Were you ever given cause for concern that the overtime that you were being asked to be, to authorise was not being done or was being improperly used?---I never had, I never had that concern.

THE COMMISSIONER: Mr Rowan, I take it that your, is it your administrative assistant - - -?---(not transcribable)

- - - she wasn't overwhelmed by work that Mr Karkowski produced between half past 7.00 and 4.00?---No.

30 And one of the reasons for that is that he, on his own evidence, often wasn't actually working?---But, well, we know that he was at luncheons but - - -

And other places?---And other places. But he - - -

For several hours?---Yeah. But, Mr Commissioner, I must say that that wasn't the case on every day. There was - - -

No, no, no?---There was work still being done during the day by Ed it just wasn't of the quantity that you would get - - -

40 Well, didn't it sometimes cause you to wonder why it is that he was able to produce so much between 4.00 and 10.00 and far more than he produced in ordinary working, working hours?---Yeah, but sometimes the work does not entail paperwork.

A different kind of work?---There's other sorts of work.

It just wasn't possible to pick it up you're saying?---That's right.

MR COTMAN: The very matter I was about to come to, during the day I think you said one function was to attend meetings and so forth in relation to sites which were in development or in planning stages and the like?
---Yeah.

10 What other work was being performed during the day in the ordinary course of your, the people under your supervision including Ed?---Okay. Well; they would be going out and dealing with neighbours where an application had been lodged and the neighbours had raised objections. Some of those discussions can be extensive discussions, as you can appreciate some neighbours can be quite volatile about how they, how they want council to consider their objections and there'd be times when the officers may well be held up on site for, for some considerable, sometimes an hour, an hour and a half to deal with a concern from a neighbour. There would be Building Certificates that they would be dealing with where they'd have to inspect a building. There's Development Applications obviously where they'd go out before the assessment occurs doing a preliminary look at the proposal to see what impacts there are, looking at shadowing impacts, all of these things take a long time.

20 Do they generate significant quantities of paper when there's been, for example, a site inspection?---Some of them can because there's a, they may be something that comes out of it which has to be a referral, has to require referral up to another section such as open space for landscaping or engineering may need to know some of the, some issues that particularly they've found but I wouldn't say there's a huge quantity that comes as a result, it flows on after they start the report.

30 Well, coming back to the matter the Commissioner was asking you about a moment ago, in terms of the work that was landing on your administrative assistant's desk - - -?---Yes.

40 - - - what in your observation was the type of work that was, that was landing on her desk?---That type of work was predominantly dealing with the concourse development which involved a number of changes to the Construction Certificates. There were a lot of amendments made to the Construction Certificates and there were also alternative solutions that were proposed in that development and there was just general dealing with all the consultants that, because Ed was on a panel of consultants and they would have what was called Aconex which is a management tool where they all to used to put different requirements into Aconex and it'd go around that group and each one had to respond back to each other on certain issues to do with design requirements. Let me see, what else - - -

THE COMMISSIONER: Mr Cotman, is this all necessary?

MR COTMAN: I thought, Commissioner, your question sought to imply that there was some, something to be inferred from the fact that paper was being produced after an overnight, an overtime session was - - -

THE COMMISSIONER: This is a very minor aspect of the inquiry. The, the main issue about the overtime is that there were long periods of overtime over a long period which Mr Rowan has already accepted was undesirable, when he should have detected earlier than Mr Karkowski was not doing his work is not really something that the Commission is interested in.

10

MR COTMAN: Very good.

Now, you were asked some questions concerning the Environmental Planning and Assessment Regulation 255 in relation to the, and the relationship of that to the regulation fixing the fees, do you recall that? ---Yes.

20

I think you were asked some questions as to council forming a view as to whether or not the estimated cost declared in relation to an application was or was not a proper number for the work. Do you recall that?---Yeah.

And when you were answering those questions did you, did you assume that the council could reject an estimate as given to it by an applicant?---Yes, if we thought it was too low.

30

Simply on the basis it was too low?---Well, on our consideration it, the legislation actually says the council must be satisfied, even though we receive a, sorry, even though we receive a quantity surveyor's report or we receive quotes, the council still must be satisfied.

You were then asked whether you took any steps to reinforce matters of corruption or Code of Conduct issues with your staff?---Mmm.

I think in preparing to give evidence today you made an examination of your papers, can the witness be shown this document.

THE COMMISSIONER: I take it that this has all been given to counsel assisting?

40

MR COTMAN: It is being done so now.

THE COMMISSIONER: That's not the practice of the Commission, Mr Cotman, and I thought I'd made it clear, you weren't here but no documents can be tendered unless due notice has been given to counsel assisting but I, this is not a controversial matter and I will allow it but really I did explain that all documents go through counsel assisting. That's how the Commission always operates, no documents, it's not a trial, it's an

investigation so that the counsel assisting are not intended to be taken by surprise.

MR COTMAN: I didn't intend to take the counsel by surprise and indeed in relation to the document I doubt counsel, well, I'm sorry.

THE COMMISSIONER: Well, it's not controversial, I'm just saying this to emphasise for those who, this seems to be happening more and more often, that documents are produced with the Commission being aware of them.

10

MR COTMAN: That's why, I must say, we wish to prepare a bundle of documents and deal with those in one group which is what I was suggesting this morning was that very (not transcribable)

THE COMMISSIONER: What I was suggesting this morning, Mr Cotman, is that your clients have had a long time to do this and it's inappropriate to do it at the end of the inquiry. It should have been done before the inquiry started.

20 MR COTMAN: Very good.

Now, Mr Rowan, that's a document I think that you have seen and the circulation list attached to it?---That's right.

And the circulation list, is that the ordinary form that you use in the office for identify who's received documents that you have put into circulation in your group?---That's correct.

30 Yes, I tender that, if the Commission please.

THE COMMISSIONER: What is this bundle, Mr Cotman?

MR COTMAN: It is the Commission's paper produced in relation to the question of the prospects of corrupt conduct in relation to council activities and in particular development activities.

THE COMMISSIONER: I'm not sure how to describe it as an exhibit.

40 MR COTMAN: Well, the April 2010 Development Assessment Internal Audit Tool published by the Independent Commission Against Corruption.

THE COMMISSIONER: Oh, I see. But I've got a, I see.

MR COTMAN: And then on the front of it you have the circulation list.

THE COMMISSIONER: Yes, thank you. Just a moment, please.

MR COTMAN: You recall - - -

THE COMMISSIONER: Sorry, Mr Cotman.

MR COTMAN: Sorry, Commissioner.

THE COMMISSIONER: Exhibit 26- - -

MR COTMAN: Thank you.

10 THE COMMISSIONER: - - -is a bundle of documents which include a council circulation list and an ICAC document entitled Development Assessment Internal Audit 2. Thank you.

#EXHIBIT 26 - BUNDLE OF DOCUMENTS WHICH INCLUDE A COUNCIL CIRCULATION LIST AND AN ICAC DOCUMENT ENTITLED DEVELOPMENT ASSESSMENT INTERNAL AUDIT TOOL

20

MR COTMAN: Thank you, Commissioner. Mr Rowan, do you recall how the document I've just shown to you came to you?---Yes, I do. The, the document was forwarded through, to me from my director and I was asked to look at that document and make comments in respect to different issues that were raised in that document, which I did. I then decided that it was something that my staff should be aware of so I sent it through to my staff to have a look at. It was referred to them for their information. They didn't need to provide me necessarily with comment, but if they were prepared to, good.

30

Lastly, you were asked some questions concerning the provision of quotations for building work and the like in relation to applications either for Fast Track or other DA services of the council where a declared value was required. Do you recall that?---Yes.

In relation to the Fast Track projects, starting with that, do you have owner/builders applying for a DA combined certificate under that process? ---We have owner/builders that apply for applications, yes, but I'm not sure that we have any under the Fast Track system.

40

In terms of the bottom levels of work, are there necessarily builders involved at all in the performance of the work?---In performance of the building works that are carried out?

Yeah?---Yes, there would be, yes.

In relation to the, leaving aside the Fast Track, is there a process for owner/builders to apply to council for consents?---With the authority of the owner, yes.

Yeah. And, thank you. Yes, I have no further questions.

THE COMMISSIONER: Thank you. Ms Hughes?

MS HUGHES: No, thank you.

10

THE COMMISSIONER: Does anyone else want to ask- - -

MS WILLIAMS: Yes.

THE COMMISSIONER: Ms Williams?

20

MS WILLIAMS: A couple of further questions from me. Mr Rowan, in relation to the internal audit tool published by the Commission that you've been provided with, Exhibit 26, did the Willoughby City Council adopt the tool that is comprised in this document so far as you're aware?---I'm not aware that they did.

I'm sorry?---I'm not aware that they did.

So you haven't, is it something you would expect to be aware of if they had in fact adopted it?---Well, yes, I would. I believe we met most of the, you know, most of the criteria. There were obviously things that we needed to work still on.

30

The, so is it your understanding that the council reviewed the document and decided it didn't need to make any additional changes? Is that the effect of your answer?---In many cases the council felt that it was already- - -

THE COMMISSIONER: Sorry, I can't hear. I beg your pardon?---Sorry. In many cases I believe the council may, felt that they, when I say the council, the officers felt that they'd already complied with some of the criteria but there were still matters that, that needed to be considered further.

40

MS WILLIAMS: And, and so far as you're aware, are those matters being considered further at this point in time?---I understand they are, yeah.

And who, who is considering those matters?---Well, they would be considered by senior management.

Does that include you or are you talking about people above you?---People above me.

Ah hmm. And you've made some comments on the document to your director, Mr Woodhams?---Ah hmm.

And you understand that those comments will be taken into account in that consideration?---That's correct.

And you circulated the document amongst your staff. Did you have any discussions or meeting about it with them or it was just a matter of them reading it?---No, it was a matter for them to read.

10

Ah hmm. Did any of your staff give you any feedback or comments on it? ---Some, some came down and asked certain questions to do with issues. Estimated cost was one.

Ah hmm. And those questions, did, did they lead you to form the view that some further training and development in that area was necessary?---Ah, yes.

20

Ah hmm. And when was, this was in May approximately last year, was it, judging by the dates on the sheet?---Yes.

Ah hmm. But so far that further training hasn't been undertaken?---Not at this stage, no.

All right. And so far as you know, this document is still under consideration by Mr Woodhams and those senior to him. Is that correct?---Well, I believe so, yeah.

30

Thank you. Nothing further, Commissioner.

THE COMMISSIONER: Thank you, Mr Rowan. You may be excused. Thank you for your evidence.

THE WITNESS EXCUSED

[12.26pm]

40

MS WILLIAMS: Commissioner, before I call the next witness I tender volume 9 that was shown to Mr Rowan.

THE COMMISSIONER: A bundle of documents entitled Volume 9 is Exhibit 27.

#EXHIBIT 27 - BUNDLE OF DOCUMENTS MARKED VOLUME 9

MS WILLIAMS: Thank you, Commissioner. And is it convenient to mark for identification the extract from the Environmental Planning and Assessment Regulation shown to Mr Rowan, just so the provisions shown to him can be identified? I don't think they need to be tendered, Commissioner.

THE COMMISSIONER: Yes. The extract, if I can find- - -

MS WILLIAMS: I can find a further copy.

10

THE COMMISSIONER: The extract from the Environmental Planning and Assessment Regulation 2000 that was shown to Mr Rowan is marked MFI 1.

#MFI 1 - EXTRACT FROM THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION SHOWN TO MR ROWAN

20 MS WILLIAMS: Thank you, Commissioner. I call Greg Woodhams.

MR LEWIS: Commissioner, I'm seeking a declaration.

THE COMMISSIONER: Yes.

MR LEWIS: Section 38. Thank you.

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

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

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

MR WOODHAMS: Under oath, please.

THE COMMISSIONER: Would you swear Mr Woodhams in, please.

THE COMMISSIONER: Yes, Ms Williams.

MS WILLIAMS: Mr Woodhams, could you please state for the record your full name?---Greg Peter Woodhams.

10 And you are the Environmental Services Director at Willoughby City Council?---I am.

And you've made a statement to the Commission in this matter on 2 February, 2011?---I did.

Do you have a copy of your statement with you?---I do.

Thank you. Pardon me for a moment. Commissioner, I tender a copy of Mr Woodhams' statement dated 2 February, 2011.

20 THE COMMISSIONER: All right. Mr Woodhams' statement of 2 February, 2011, is Exhibit 28.

#EXHIBIT 28 - STATEMENT OF MR WOODHAMS

MS WILLIAMS: Mr Woodhams, Mr Rowan reports to you so far as the Building Services branch is concerned?---That's correct.

30 And you're ultimately responsible for the performance of that branch. Is that right?---That's correct.

40 What sort of reports or information do you receive from Mr Rowan to satisfy yourself that that branch is operating as it ought to be?---Okay. There are a series of reporting mechanisms that range from budgetary reports, which is done on a quarterly basis, through to delivery and operational plan reports that they have to report to me and which I then have to report to the council about. On a weekly basis I would be conferring with Mr Rowan on an ad hoc basis about issues in his branch and issues raised by his staff. On a monthly basis I confer with all of the managers about issues confronting, that they're confronting with the staff and with the operation of the branch. So they're the main areas of monitoring or, or, or, or reviewing the performance of him and his branch.

And to what extent over the last say two years have you been aware of issues concerning workload pressures and the need for overtime to be worked, particularly in relation to CBD Fast Track applications?---I have been aware of that, you question about to what extent, we have all been

conscious of the workload of the concourse that has been brought for all of the council officers because it's a significant CBD project for the council. But more particularly there has been other developments occurring in the CBD area that Mr Rowan has referred to in terms of Westfields, Chatswood Chase and other projects, that have required the allocation of resources to, to carry out those works. And I appreciate that they have required resources to be assigned to them to do those. And that has been an extraordinary situation that hasn't occurred in previous years.

- 10 THE COMMISSIONER: Are they ongoing Mr Woodhams?---They are, they have bumps and humps in them. So in the 2008/2009 period it was a, it was a hump. At the moment they're starting to transition out. However now the Chatswood Interchange, the retail complex there is just about to open this year, so we will probably have another hump this year.

By all accounts, there is a great deal of business activity and construction activity going, going on in the Chatswood area and in your council area?
---That's correct.

- 20 So I mean what has been happening so far I assume, please correct me if I'm wrong, is something that could be expected to continue with the humps and bumps but nevertheless continue more or less in the same way as it's been going for the last year or so?---Commissioner, that's difficult to predict and I do that every year with the managers in terms of the allocation of the resources that they need.

(not transcribable) chance that will happen?---Yes.

- 30 MS WILLIAMS: Mr Woodhams, is it fair to say that most of the workload relating to the development or the Fast Track development applications in the CBD area fell on Mr Karkowski?---That's correct.

He was permitted to work extensive overtime hours to meet that workload?
---Yes.

- 40 To what extent were other resources made available to him?---Over that period I, I do recall talking with Mr Rowan about the pressure of the workload that Ed was experiencing. And one of the solutions that we brought was to bring another officer, a Mr Josh Baker, to assist Ed with doing straight forward fit-out applications or inspections. That incurred, that occurred over a period of eight to 12 months or eight to 10 months. He then accumulated a lot of knowledge and then resigned because of that additional expertise that he had. And that's one of the difficulties in recruiting staff and maintaining staff. But we did allocate additional resources to assist Mr Karkowski in that work. Whether it was sufficient was something that I was concerned about. I recall discussing with Ed whether this was a reasonable thing for council to do about providing this much overtime for him. Because of the pressure I understand what it has on

family life and, and his capacity to do his job properly. And so in that discussion I recall having with him, he said, no I'm able to cope with it. I'm able to do it. But I, but I'm just struggling with the pressure. That was, that was the recollection that I have of the conversation with him.

And what if any steps did you take or ask Mr Rowan to take to help him with that pressure further?---Only in terms of monitoring that workload with him just so that if there was a, for example if he needed to take leave to provide support for him to take that leave by reallocating somebody else to do that work. But also just keeping an eye on the workload that was going on to the typists desk to see how much was being done and if there were issues about the volume of work that was coming through, because if there was a, a sudden drop off then that would be an indicator that there was some issue I would imagine.

But weren't you at the time you weren't, you weren't concerned at the time that he wasn't doing enough work were you? You were more concerned that he had too much work?---No, I wasn't, I was concerned that perhaps the overtime was taxing him and therefore it may have pressures on him as a, as a professional and as a family man, because I knew he had a family and as, as an organisation we are, well I believe, quite family friendly about looking after and supporting staff.

If you had been able to find another employee in the market place who could have been employed to share Mr Karkowski's workload, would you have had the budgetary resources to do that?---The answer that I would give is that if the workload was of sufficient size and we could find the right person then in discussion with the general manager, we would find a way to support Mr Karkowski if it had occurred that there was a problem. There was no evidence that there was any problem with him doing that work. The answer to your question is, yes, we could find those resources. The budgetary provision for the branch is that they don't generate enough income to meet their expenditure, so we're always behind. But that's, that's a matter for the council's broader budgetary review about how we finance different branches.

And did you advertise for a staff member or you didn't feel it was necessary, you felt that the overtime combined with Mr Baker's assistance was sufficient?---I believed it was sufficient.

All right. You're familiar with the Willoughby City Council Code of Conduct?---Yes.

And with the mandatory training that staff have to undertake periodically in relation to that Code?---Yes.

What do you as Director of the Environmental Services do to ensure that the principals of the Code are applied and properly understood by your staff in

addition to them attending a mandatory training?---The, the major way that I've been dealing with that is through either performance appraisals, by engaging in staff meetings, reaffirming the importance of being aware of the risks of corruption. When, when an officer starts they undergo an induction process, that occurs through our HR division, but I also separately meet with new staff and explain to them the council's attitude to corruption and that my expectation about them is to strictly observe the Code of Conduct. On a day to day basis though, in answer to your question, it's not a regular feature of my job to actively inform staff about adherence to the Code of Conduct.

10 I have an expectation that as professionals they would do so.

THE COMMISSIONER: Mr Woodhams, one of the items in the Code of Conduct concerns gifts. I don't have it in front of me at the moment but you recall that?---Yes.

Are you prepared to consider changing that to prohibit all gifts?---I would like to, I think there are practical constraints in doing that in that there may be circumstances across the whole of the council that it may make it difficult for staff to do that and I'll give you an example. In the area of

20 Aged Care if somebody is receiving aged care services wants to give one of the council officers a handkerchief or a crocheted tea cosy we would have to reject that on the basis of that policy.

You would?---And that might mean embarrassment for that person.

On the contrary. Wouldn't it actually be a protection for your staff if there was a blanket prohibition. Firstly it would make things far clearer and secondly, it would enable them to say to everybody this is against the rules, I'm not allowed to take it, whatever it is, thank you very much?---Yes. And

30 I understand that and I agree with the principle. I've thought about circumstances where there may be practical difficulties in rejecting that.

It's just a question of will?---It is but also in terms of dealing with the public in accepting a cake or something that somebody has done something to return that cake is impractical on some occasions. That's what I'm saying. But in principle I agree with what you're saying.

Our experience is that if you allow a slice of cake it ends up with the whole cake. And this kind of allowing of gifts causes confusion?---Mmm.

40

And the concept of a small gift is in the eye of the beholder?---Yes. There are - - -

We regard really seriously the notion of prohibiting all gifts?---Ah hmm.

Are you prepared to consider that, reconsider that?---Yes.

And what about educating the customers?---And I think you've realised that this was an important part of the relationship between council providing services and, and - - -

I don't mean new immigrants, I mean big powerful companies who seem to require just as much education as does newcomers to Australia?---Mmm.

10 I mean, would you agree that it would be a good idea to make it plain to all those who deal with the council that no gifts are to be given and nobody is to be entertained?---Yes, I do. I think that would be a matter that certainly Willoughby Council would support, it needs broader support from the State Government and the Department of Planning to get that message out and through the various industry groups to get that message out through the Local Shires Association and other associations. Yes, I think that would be a good idea, yes.

MS WILLIAMS: Mr Woodhams, have you heard Mr Rowan give evidence this morning?---I did.

20 And you heard the evidence he gave about Mr Karkowski not being rotated - - - ?---Yes, I did.

- - - in different duties within the branch? Is that something that you were aware of at the time that Mr Karkowski was not being rotated?---I was aware of that, yes.

30 And were you aware that that was specific to his role that other staff were being rotated?---It is but there is a comparison also with the development planner responsible for the CBD and that's Noni De Carvalho who isn't similarly rotated and does the same role in terms of major development applications. So they are the twin specialists, if you like, and they confer on almost a daily basis on development applications and so the issue would also be that the same principle ought to apply to her. So the answer to your question is yes, I'm aware of that issue but we would also need to extend it to perhaps her and look at how that might work among the whole of the CBD.

40 And are you, do you have a view that not rotating the staff members in those two twin positions as you called them may lead to them becoming familiar with and friendly with the business people they deal with in the course of their duties and to lines between what is and what isn't appropriate becoming blurred?---Yes, it can, I agree with that.

And what checks and balances, if any, were in place to ensure that neither Ms De Carvalho nor Mr Karkowski fell into that error?---The, the principal area of checks and balances is in terms of their professional training and ongoing training in terms of the council's code of conduct and the training

about the code of conduct and the level of trust that we engender to senior professional officers to do their job and to do it properly.

THE COMMISSIONER: That's not a management tool?---It's, I think it is.

Trust?---Trust is a management tool.

That's what everybody says when they come here?---Yes.

10 And then the trust is betrayed and nobody's looked at them?---Mmm.

And what do you do about that?---Then you distrust every council officer.

You don't distrust anybody you just put in proper supervision?---And then that, that becomes a function of understanding what are the practicalities of doing that, the resources associated with doing that and whether those, the thing that you do are effective. For example - - -

20 Mr Karkowski's supervision was nil?---Well, I don't agree it was nil.

Well, it involved checking to see whether he met the time periods, to that extent it wasn't nil but that was all it was?---But if Mr Karkowski was going to do these things preparing a timesheet wouldn't disclose that he is doing these things.

I'm not suggesting what should be done, I'm suggesting that that's something that the council should very carefully consider - - -?---Yes.

30 - - - namely steps should be taken to ensure that someone in that position does receive a level of supervision that makes it far less easy to do what Mr Karkowski did?---Mmm. What I, what I think I'm putting to - - -

I'm not sure whether you resist that or not?---No, I don't resist that. It means that I need to also apply that to every council officer involved in the regulatory area.

40 Well, what does that mean, are you saying that that's too difficult to do? ---No, it's just means we need to think very carefully about what are the implications in making sure that they're effective in doing what we need to do to stop the opportunities for corruption.

And how long will it take for you to actually work this out?---Well, it might take some weeks for us to develop a process, then we need to ensure that that process is being effective and that could take six months or, or whatever.

No, I understand?---I think that the challenge that we're facing is that despite having all sorts of processes in place somebody can still do the wrong thing.

Of course but there are some areas in which the temptation is greater, the temptation to be corrupt is greater than others?---I agree.

10 And Mr Karkowski was in a, in a situation that was peculiarly susceptible to having pressure brought on him by others to do the wrong thing?---Yes, and I think those pressures are a part and parcel of the nature of development assessment and building services.

Yes, you won't find us disagreeing on that?---Mmm.

That just means that there should be considerable focus on that area. You don't have to do it for every council officer to the same extent but this is an area which requires very careful focus, does it not?---I am at one with you on that, yes.

20 All right.

MS WILLIAMS: Is that a convenient time, Commissioner?

THE COMMISSIONER: Yes, thank you. We'll adjourn 'til 2.15.

LUNCHEON ADJOURNMENT

[12.47pm]