

CHURCHILLPUB00305
10/03/2011

CHURCHILL
pp 00305-00355

PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION CHURCHILL

Reference: Operation E10/0486

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 10 MARCH 2011

AT 2.15PM

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

THE COMMISSIONER: Mr Cotman.

MR COTMAN: Yes, Commissioner.

10 THE COMMISSIONER: Sorry, my memory is failing. Were you not, you hadn't started questioning yet? I beg your pardon. Sorry to have disturbed you. Ms Williams.

MS WILLIAMS: I won't be too much longer, Commissioner. Mr Woodhams, you're familiar with the council's Gifts and Benefits Policy? ---Yes.

And so far as you're concerned are your staff sufficiently familiar with the requirements of that policy?---I believe so.

20 And you're aware that that policy requires them to declare gifts that they receive over a token value of \$50, is that correct?---That's correct.

How does that operation - - -?---Sorry, withdraw that. I would expect them to declare all gifts not just those over \$50.

I see. And the declaration is made in the first instance to you, is that correct?---No, it's made to the Public Officer Mr Knight or to the General Manager but predominantly Mr Knight.

30 But the staff within your division you'll fill in a form to make the declaration, is that so?---They do.

And the form goes to you?---It does not go to me.

It doesn't go to you?---No.

Do you see the form at all or - - -?---No.

Do you still have volume 9 there, Mr Woodhams?---No volumes.

40 I'll have that provided to you. And if you could turn to page 169. I should point out to you that the date of that form is 23 December, 2008?---Yes.

Is the same form still in use so far as you're aware at this time?---Yes. It looks like the same form and I do see my signature at the bottom so I have signed it, I'd forgotten but that's probably because I haven't done it so many times.

I see. But do you understand that that's what typically should happen with this form that it should come to you in the first instance to be signed?---Yes.

And then it goes to Mr Knight, is that right?---Yes. I see that it's noted by manager/director so I'm not sure if that means both of us or one of us or, or just me but anyway.

And is, can I take it then that you don't frequently receive and sign forms like this, it's a fairly unusual occurrence?---Yes.

10

And when you do receive a form like this would you inquire into the circumstances of the gift and the reasons why the recipient felt that it was appropriate for them to accept it and to retain it?---I can't recall this particular instance. There is no formal process that I recall going through to make those inquiries.

The - - ?---Would I have I can't, I can't remember whether I did on this particular occasion.

20

Is it the case that it happened so infrequently that you don't have a general practice about this that you can give evidence?---That's correct.

The information in these forms makes its way on to a gifts and benefits register maintained by the council. Is that correct?---Yes.

Do you from time to time review that register to see for example what sort of gifts and the frequency with which gifts are being offered to your staff and retained by them?---I have looked at it on occasion but it's not an annual occurrence nor is it a frequent occurrence.

30

Is the register and the receipt of gifts something that's discussed at senior management meetings from time to time?---Yes. Yes. And we have recently reviewed the gifts and benefits policy at the senior management level and, and considered whether it ought to be changes to that.

And have changes been made or are they in the process of being made as result of that review?---We reviewed that, the current police and thought that it was appropriate in, in the general circumstances that it was dealing with the gifts and benefits, in particular we wanted to review the adequacy of the \$50 token and whether that was an excessive figure or too low. And, and the ultimate conclusion was that the policy was a good policy as it stood and therefore didn't require revision.

40

And I think you've indicated have you in your evidence this morning thought that it would be possible to simply put a blanket ban on receipt of any gifts to simplify matters?---Yes. (not transcribable), yes.

And that's something that, as far as you're aware, the council may be prepared to consider?---Yes.

THE COMMISSIONER: How do you, does the, does the council have a policy in relation to its officers being entertained?---Well in terms of the gifts and benefits policy and the Code of Conduct.

And can you just tell me where the Code of Conduct, please.

10 MS WILLIAMS: Yes, Commissioner. It's in volume 3 which has been marked as Exhibit 13.

THE COMMISSIONER: Thank you. Could I just have that?

MS WILLIAMS: Commencing at 559.

THE COMMISSIONER: Thank you. Mr Woodhams, do you have that Code of Conduct?---I do. Yes.

20 If you turn to clause 5 of it, please, it's page - - -?---Yes, yes, I have that.

It does refer to hospitality but not under A2E I don't think?---Yes.

And hospitality is referred to in the second last paragraph of the section dealing with gifts and benefits?---Yes.

So hospitality is not subject to an express prohibition?---I'm just trying to turn my mind to the rest of the document, whether there's anything else that I recall in the document.

30 Yes?---The structure of the document is overriding principals about the way you should conduct yourself and general conduct.

No, I understand that?---But I don't read any particular phrase that is the receipt of hospitality is prohibited in the way that A2E is prohibition effectively.

40 There seems to have been or at least as, at least as far as Mr Karkowski is concerned a course of conduct involving persons who are wanting the council to do something for them to provide him with meals and other forms of entertainment, has, is that, has that topic ever been the subject of any training?---Yes, through the Code of Conduct training.

But expressly dealing with hospitality and entertainment?---(NO AUDIBLE REPLY)

I don't, I don't need to know that, I just really want to know whether you intend to make it a topic in the future?---Yes, we would and I would have,

had assumed that each of my officers had known that going to dinner with developers or applicants is inappropriate behaviour or contrary to the Code of Conduct.

And should it not be an express provision of the Code of Conduct?---Yes.

10 And what about being entertained at football games, what do you say about that?---If the person, if the staff has any association with that person that relates in any way to the conduct of their duties or their responsibilities then it should be a blanket prohibition.

Because apart from anything else would you agree with me it gives rise to a perception of, of, of undue favour to the person who's providing the ticket or the box?---Well, by any third who observes - - -

That's what I mean?---That's right, yes.

I'm talking about a third party?---Yes.

20 It would, so it's an undesirable situation?---Yes.

Now, there has been evidence before the inquiry that other, that at least one person other than Mr Karkowski has been afforded that kind of entertainment, that evidence may or may not be accepted - - -?---Mmm.

30 - - - but there has been evidence to that effect?---Yes. And my, the answer that I gave to you was that if it was a staff member who receiving the gift had anything to do with that person in terms of the normal operation of their business or the carrying out of their duties there should be a blanket prohibition. The difficulty is when if that person, if that staff member has no association with that other person through work should they be allowed as an acquaintance to attend that box?

Well, it's a question, it all depends what you mean by association, doesn't it?---Yes.

40 I mean, if the person is in a position of considerable responsibility in the council and is able to influence others in their dealing with the host what about that?---Well, in extraordinary circumstance for a person to attempt to influence another officer, I'm not saying it doesn't happen - - -

Extraordinary?---I think that's extraordinary, I think that's specifically contemplated by the Local Government Act and the Code of Conduct that one doesn't attempt to influence particularly development assessment or regulatory staff in the performance of their duties.

No, that's true but it doesn't make it extraordinary that people try?---I, well, I think it is extraordinary that people should try because I think it's, its known - - -

Whether it's extraordinary or not - - -?---Mmm, mmm.

- - - I'm trying to find out - - -?---It's inappropriate.

- - - do you accept that it's inappropriate?---Yes.

10

It might not even be with that specific intention, it might simply be with the specific intention of getting into the good books of a senior person in the council in case something crops up in the future?---I can imagine that circumstance arising.

20

And so isn't it not a good idea to have something in the Code of Conduct that prohibits persons accepting entertainment from organisations that are likely to require permission of various kinds from the council?---Here's where I have some difficulty with this and why we've been struggling with it for some time, is that in, in my duties as a director, a senior manager, I attend functions on behalf of the council and, and, for example, with the, with the Probus Association or a chamber of commerce where, where I am invited to a dinner to make a presentation or - - -

That's just a matter of definition though isn't it?---It is and I think that's what I'm grappling with is that - - -

30

Well, one has to distinguish between public attending, attending on behalf of the council - - -?---Yes.

- - - which was surely permissible - - -?---Ah hmm.

- - - and attending in a private capacity?---Social, yes, yes.

That's something that's easy to define?---I think, I think we just need to give it some thought and prepare clear guidelines so that there is no misunderstanding.

Do you intend to do that?---Yes.

40

All right. Ms Williams.

MS WILLIAMS: Mr Woodhams, I'm going to ask for you to be shown Exhibit 26?---Yes.

Do you recognise that as a document produced by the Commission in about April last year and seen by you some time shortly after that?---Shortly after that I received a notification from the LGSA saying that this was a document that was available, I printed it off and then did some preliminary

viewing myself and then asked both my managers similarly review that and discuss it with me particularly in terms of whether we are able to demonstrate that we are doing these things or whether we ought to be doing some of the things that are referred here.

All right. And the managers that you refer to are Mr Rowan and who's the other manager?---Mr Arnott.

10 Mr Arnott. And as a result of those discussions with Mr Rowan and Mr Arnott did you identify some things that needed to be changed or are you still in the process of doing it?---Still in the process of that but there are things that are quite minor but other things that we can tweak. For example, in terms of the development application form we've done some revisions to that over time to clarify responsibilities for signing by the owners, by putting stuff on our website about development application processes. So there are things that I'm still working on.

20 And is it the case that you've identified what needs to be worked on and you're in the process of working through those changes?---Yes.

All right. Could you turn to page 4 of the document using the pages numbers down the bottom of the pages?---Yes, I have it.

And you see there the third entry in the Part A table on that, sorry, the second entry in the Part A table on that page, Council has in place procedures for verifying an applicant's cost estimates for building and associated works?---Yes, I see that.

30 Was that something raised with you by Mr Rowan as something that required attention or training?---Can't remember the specific discussion but I think it has been one that we have turned our mind to and in particular looked at a process by which the building surveyors in particular can use a ready reckoner if you like using the Rawlinsons guide to assist the officers to verify whether a cost estimate is within a reasonable or a genuine reflection of the actual cost of the work.

40 And the discussions that you had with Mr Rowan and Mr Arnott were they in about May last year, is that timing about right?---It might've been a little bit later probably. Around that time, yes.

And has the process of training building inspectors to use that ready reckoner or providing them with one to use been put in place as yet or is that still pending?---No, that's not been put in place as yet. I think one of the - if I may answer fully.

Yes?---I think of the difficulties is that the legislation provides the framework on what has to be considered as cost and in the absence of any judicial interpretation or strict or clear guideline from the Department of

Planning is the difficulty with each council making up its own mind as to what's included and not included.

THE COMMISSIONER: It doesn't mean that you don't decide it all does it?---No, and I think it would be helpful if we did, do have one but I think for the sake of consistency across the state it would be worthwhile for there to be a state policy.

10 Yes, but in the meantime - - -?---That's what we're working on to try and come up with our own process.

I'm sure Mr Cotman will be able to help you in about ten minutes?---Thank you.

It's not a big deal?---No, no.

It's very, very easy to work out what construction costs mean?---With respect, I don't know that it is, Commissioner, because the - - -

20 Why don't you hire a lawyer?---Because a lawyer may not be proficient in building matters as I'm not.

It's got nothing to do with business matters it's got to do with the meaning of words in a statute?---Yes.

MS WILLIAMS: Mr Woodhams, would you expect that the staff in the Building Services Branch or that the building inspectors in that branch would at least be familiar with the substance of the statutory provisions?
---Yes.

30 Mr Karkowski has given evidence to the, to this inquiry to the effect that he didn't know about the provisions until some time shortly before he came to give his evidence at the inquiry. Is that a matter of some surprise to you?
---It is.

And concern?---Yes.

40 THE COMMISSIONER: Did you know what they were?---Did I know what they were?

Yes?---I have a, I have a, not a working knowledge because I have not done construction certificates, I'm not qualified to do that.

I understand that?---But I have, yes, I have a knowledge them.

My impression is that nobody at the council really had looked at the regulation in an attempt to understand exactly what the legal obligations involved were?---I think the difficulty is that these things, when they come

up you then spend a lot of time analysing them. But as part of your day to day process you carry out the duties as best as you can.

Mr Woodhams, this is part of your day to day process. This is, this is a means whereby the council is able to obtain quite a lot of money?---Yes.

10 And it simply has to understand what the obligations of persons who apply for these certificates are and what the rights of the council is and that needs to be examined?---Mmm. And in the context of this inquiry, it has drawn focus on that particular clause in Environment Planning Assessment Act, the Local Government Act, the ICAC Act, there are many regulations that we need to be aware of.

Mr Woodhams, this is, this is an issue - - -?---Yes.

- - - which is a matter of importance in every single certificate of the kind where buildings costs needs to be assessed?---Yes.

20 That must happen several hundred times a year?---At least.

Surely it's something that you would look at an early stage to work out exactly what the council is going to do about it?---And we have a process whereby we expect on our development application forms applicants to rely on either builders quotes or if the figure looks unlikely to represent the true cost we can request them as we have done in the past to provide quantity surveyors reports.

30 Mr Woodhams really, this is a matter for the council. In the council there is only one person who had the task of assessing these costs. That person had never received any training as to what the costs were to comprise of? ---Mmm. And what I - - -

Were to comprise rather and there doesn't appear to be any explanation for that except that it was lost sight of. Is that right?---No, I don't believe that's the case.

So you applied your mind to it did you?---(NO AUDIBLE REPLY)

40 Do you mind answering that question?---I'm just trying to think, I'm trying to think of the answer. When we prepared the development application checklist and the development application form we're bound to use what the legislation prescribes in the Act. Now whether we turn our mind to every aspect of it is important for us to make sure that we've done that. I don't recall in that, on that particular matter whether we spent considerable time dealing with it because I have an expectation that for building surveyors it would have been part of their training to, to become accredited certifiers to be able to make that judgement. I'm not an accredited certifier, I don't have that qualification, but one would have expected that as part of their training.

So that's why I was surprised to hear Mr Karkowski say that he'd never had any training in that regard.

This is the meaning of certain words in the regulation?---The interpretation of the word construction costs, because the legislation itself talks about costs associated - - -

I know what it is?---Thank you.

10 I know what it is. Thank you. Ms Williams.

MS WILLIAMS: Mr Woodhams, you gave some evidence earlier about Mr Karkowski's workload and I think you said something to the effect that you continued to monitor his workload. Do you recall that evidence?---No, I don't recall I said that.

I recall you said you monitored his, you were monitoring his workload in the context of arranging for him to or approving for him to be doing some overtime and arranging for Mr Baker, I think it was, to assist him?---Mmm.
20 Yep, yep.

And, and that the workload and the pressure was being monitored. Is that - -
-?---I wouldn't use the word monitored.

Mmm?---That, that implies that I was on a daily basis watching and checking, I don't think that was the case at all.

Well, what I wanted to ask you was how, how was his workload and the pressure he was under being monitored or measured?---Only through
30 discussions with his manager Mr Rowan about, you know, how was he coping and was the work becoming too difficult for him, what other resources do we have to reallocate to assist.

THE COMMISSIONER: And how was he supervised as to whether he was doing the work properly?---I've heard that discussion this morning with Mr Rowan and, and, and the inquiry. The, the only, the only monitoring that's really been done is in terms of the output not the quality of the work, that's what it seems to be.

40 MS WILLIAMS: Mr Woodhams, do you acknowledge now that that monitoring focussed on the output appears to have been inadequate?---I accept that.

Mr Woodhams, have you been shown yesterday or this morning some draft corruption prevention recommendations?---Yes, I have.

Yes, do you have a copy of those with you?---I do, yes.

Commissioner, I hand up - - -

THE COMMISSIONER: Yes, I have a copy.

MS WILLIAMS: Have you had an opportunity to read those recommendations?---Yes, I have.

10 Can I ask whether so far as you're concerned the recommendations made under the heading "Recommendation 1" are recommendations that you would agree with and to the extent you disagree could you indicate the areas of disagreement and your reasons?---I'm turning to the first part of, which is if you like a preamble that Willoughby Council review all current regulatory practices involving the assessment of a Development application, I have no problem with that and turning to each of the requirements - - -

I'm sorry, are you under the heading "Recommendation 1" at the moment? ---Yes.

20 Yes, okay, thank you?---Maybe I better have the, an actual document because I've got (not transcribable) another copy.

I'll have this copy provided to you. Recommendation 1 relates to supervision and oversight?---Oh, yes, thank you. Yes. I have no difficulty with the first sentence other than the need to clarify which regulatory staff are involved. If it's the broader sense of regulatory staff then that would include the parking police and compliance unit development enforcement officers, not just the building and development planning officers.

30 All right?---So with that qualification and, and having some clarity, I don't have a problem with that.

And dealing with the first bullet point under recommendation 1, do you accept that reviewing or auditing of work done by the regulatory staff that you've referred to is something that could be put in place as an additional supervisory measure?---Yes.

40 Do you agree in relation to bullet point 2 that rotation of staff is important for all regulatory building and, and planning staff?---Yes, just with the clarification again about regulatory staff in the second line but, yes, I agree.

So you're excluding parking officers and the like, is that correct?---I had assumed that this was only in relation to development and building. I guess what I'd also like to do is - - -

THE COMMISSIONER: I think you, I think that's correct.

MS WILLIAMS: That, that is correct, thank you, Commissioner.

Do you see there's another suggestion given by way of example in the second bullet point of possibly limiting the role of some specialist staff to providing advice on specialist issues to other building surveyors and planners. Is that something that's a practical possibility so far as you're concerned?--I, I think I understand what it means, the, the difficulty is the, I guess the limitations on the role, I'm not, not really sure what that meant in terms of limiting the role so is their only role is to provide oral or written advice, I'm not sure what the, what the phrase means limiting the role of.

10 Well, by way of example - - -?--Ah hmm.

- - - would one way of coping with the shortage of resources to process CBD Fast Track applications have been to allocate a number of building inspectors to those applications and have Mr Karkowski available to those building inspectors to provide advice on complex issues, to attend sites when necessary to see what the issue was and to assist those other building inspectors?--I would answer it by saying yes but I'm not accredited to do the certification process so I'm not sure what that technically or practically involves for a building surveyor to do that dealing with, where the person
20 would probably need to be on site to make those judgements. So then it becomes an issue of resourcing.

I see?--So yes, I have no problem with it in principle subject to us just understanding what the resourcing - - -

THE COMMISSIONER: The recommendation you'll see is just to assess and implement strategies?--Yes. And implement.

It's in pretty broad terms. It really is asking you to apply your mind to
30 this?--Yes, and I am and implementing it means that there may be resource implications which would have budget implications. That's all I'm saying.

We understand that.

MS WILLIAMS: Mr Woodhams, is there any other comment or difficulty you want to raise with the other points under recommendation 1?--The third dot point deals with end to end control of regulatory approvals. I think there are some issues there about the practicalities of implementing that as well in that the officers who deals with the Construction Certificate may
40 also need to do the inspections and issue the Occupation Certificate because of the regulatory framework they operate under. So it may not be possible, legally possible to interpose somebody in that process to do part of that work.

THE COMMISSIONER: I don't understand that. Where does the law say that you've got to have one officer to do all of those things?--The process for the Construction Certificate following through to an Occupation Certificate is assigned to a particular person under the legislation and that

person has to carry out mandatory inspections and then sign off on the Interim or Final Occupation Certificate. So you can't - - -

Are you sure about that?---I guess I'm less than correct but that's my understanding of the process that you can't pick and choose between people to do the parts of the job that you want them to do.

10 You've got to get one person to do everything and you can't get, select a number of people to do the same job?---Because when the competitive process was introduced it was found that what applicants could do was pick and choose who they wanted to do bits of the process and so the person who had responsibility for the carriage of the whole application may not see the whole process and then be missing out on things. So with that qualification yes, we can certainly look at that process.

MS WILLIAMS: And you don't have to have though do you the same council officer assessing a development application and determining whether or not to approve that application?---That's correct.

20 Theoretically that part of the Fast Track can be split up?---Can be done, yes.

Moving on to recommendation 2A?---I have no problem with the first dot point or the second dot point.

And recommendation 2C, do you have any difficulties with those recommendations?---Don't have a problem with the first dot point subject to this qualification that I think there needs to be a broader local government understanding of this estimated cost to works issue.

30 Yes, that may be so but in the meantime Willoughby Council could issue its own guidelines to building inspectors couldn't it?---Yes. Yes. Similarly the second dot point, don't have a problem with that. Don't have a problem with the dot point about the worksheets. The fourth dot point is problematic because there is a distinction under the legislation between advertising applications and notifying applications. One occurs through advertising in newspapers and the other is notifying to adjoining neighbours. And in the case of Fast Track applications the process of advertising something in the newspaper would then remove any of the timesaving if you've got to then wait for the time to pass and time for people for making submissions on a
40 Fast Track application which we've been trying to process within twenty days or ten days or something.

THE COMMISSIONER: All it says is that you've got to review regulatory practices including the circumstances in which an application should be advertised?---Yes. Yes.

You have any objection to that?---I have no problems with reviewing that. And the (not transcribable) I have no problem with that.

MS WILLIAMS: So do you accept in effect that there may be, the council may need to build into its practices exceptions to the 10 day rule if there are, if circumstances arise that mean an application should be advertised or referred to a review committee or a review group, that the council may need to consider that?---Yes.

Recommendation 2(d) concerning the gifts and benefits policy?---The first dot point, the Commissioner did discuss that, yes, and I agree with that.

10

All right. And do you agree in relation to the second dot point that the declaration form could be expanded to ensure a more detailed consideration at the time the acceptance of a gift is raised with you or with Mr Rowan as to all of the circumstances and what's appropriate?---Yes, that would be reasonable.

Thank you. And do you agree in relation to the third dot point that gifts that have been accepted should be somehow quarantined whilst a determination is being made as to whether they can be retained by the staff member?

20

---Yes.

Recommendation 2(e), the community engagement policy?---Ah hmm.

Do you agree that it's not sufficient for the council just to produce a brochure about what the community should expect in their dealings with council, but to actively seek to educate the community about those matters and particularly the inappropriateness of offering gifts?---I firmly believe this is a matter that's broader than Willoughby Council. I have no problem with the council doing that, but because we deal with applicants who may work internationally if not nationally, to educate our community because the turnover of people running shops and businesses would not be the same people all the time. And so this would need to be something held on a weekly basis because of the turnover, the churn of businesses operating in Chatswood and the rest of the city. It's something that's a broader application I think for the whole of the state about how different communities, business and other communities get that message. But I don't have a problem with the council making those efforts.

30

And presumably the council could raise that with the Local Government Association?---(not transcribable) the department of Local Government, the Department of Planning.

40

I see?---Yes, it's a state government responsibility.

And then finally recommendation 2(f), do you have any difficulty with those recommendations?---Well again my concern is the council formulating a policy about estimated costs of works that may not be legally

correct or might expose the council to challenge if we try and pose something that's beyond the, what the legislation intended.

THE COMMISSIONER: But you're doing that at the moment. In fact what, isn't it worse to try and impose something and you have no idea whether it's legally right or wrong?---Sometimes it's better not to say something so that it is - - -

10 But you are doing it all the time, everyday?---Yes, yes.

Hundreds of times a month or a year, rather?---Yes.

And you are, your officer is assessing costs on some basis that you don't understand and he doesn't understand. You think that's, it's better to do that then to take legal advice on the issue and to do it in accordance with the legal advice?---I think we need to get some legal advice about the best way to do it.

20 MS WILLIAMS: Commissioner, I have no further questions for Mr Woodhams.

THE COMMISSIONER: Yes. Do you have any questions?

MR LEWIS: No questions.

THE COMMISSIONER: Mr Cotman, any questions for Mr Woodhams?

MR COTMAN: No.

30 THE COMMISSIONER: Thank you for you evidence, Mr Woodhams?---
Thank you.

You may be excused.

THE WITNESS EXCUSED

[2.54pm]

40 MS WILLIAMS: Commissioner, before I call the next witness the council has very helpfully prepared a statement of Mr Ian Arnott which sets out the way in which construction certificate fees are calculated as well as development application fees. And I tender that statement.

THE COMMISSIONER:

Yes, thank you. Thank you for that. The statement of Mr Arnott is Exhibit 29.

#EXHIBIT 29 - STATEMENT OF MR ARNOTT

MS WILLIAMS: Thank you, Commissioner, and I call David Perry. Commissioner, Mr Perry's statement is in volume 3 which is Exhibit 13 commencing at page 1.

THE COMMISSIONER: Ms Hughes, do you represent Mr Perry?

10 MS HUGHES: I seek leave to appear on behalf of Mr Perry and he'll be seeking a declaration, Commissioner.

THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Perry and all documents 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.

20

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR PERRY AND ALL DOCUMENTS 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

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GIVEN OR DOCUMENT OR THING PRODUCED.

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

MR PERRY: Under oath, Commissioner.

THE COMMISSIONER: Swear Mr Perry in please.

MS WILLIAMS: Would you please state your full name for the record please?---David John Perry.

And you are the Human Resources Manager at Willoughby City Council?
---That's correct.

10 That's a position you've held for some 20 years, correct?---Correct.

You've made a statement to the Commission in connection with this matter on 21 December, 2010?---Correct.

And do you have a copy of your statement with you, Mr Perry?---I do.

Thank you. Mr Perry, you say in paragraph 4 of your - - -

20 THE COMMISSIONER: Might I have a copy of his statement?

MS WILLIAMS: I'm sorry, Commissioner.

THE COMMISSIONER: You did tell me where it was and I've forgotten.

MS WILLIAMS: That's all right. Exhibit 13, volume 3, commencing at page 1, Commissioner.

THE COMMISSIONER: Thank you.

30 MS WILLIAMS: Mr Perry you say in paragraph 4 of your statement that your responsibilities include training and development?---That's correct.

Does that extend to Code of Conduct training?---Yes, it does.

And are you responsible for determining the content of that training?---No, I'm not. The content is generally set in conjunction with Jeff Knight as a result of any changes to the Code. It's then communicated to the HR staff, my training officer, and the training is administered jointly by my training officer and Jeff Knight.

40 And the training is held whenever the Code is updated, is that correct?
---That's correct.

And in addition approximately every two years, is that right?---Yes, that's correct and - - -

And it, I'm sorry, you finish your answer?---Training is also given on it at induction as well in the very early stages of the employee's commencement

on what the Code entails and then it is, regular training is provided and definitely when the Code is updated.

THE COMMISSIONER: What level, does everyone attend at the council, Mr Perry or - - -?---Yes.

- - - some people - - -?---No, when the Code is updated, Commissioner, it's mandatory for all staff to undergo the training.

10 Including the general manager?---Correct.

MS WILLIAMS: And you mention in paragraph 4 of your statement that your responsibilities also include risk management. Do the risks that you're responsible for include the risk of corruption? Is that part of your portfolio? ---I, I have never considered it to be part of the risk management structure.

Do you know who is responsible for corruption and mismanagement within the council?---I would say the senior management team.

20 And the senior, who, who are the senior management team?---The senior management team are the general manager and all our directors plus myself.

I see. To your knowledge is there, does anyone on that senior management team actively address corruption risk management?---I think it's probably a topic that's always under review but not, I don't believe it's done in a formal way.

THE COMMISSIONER: Subconsciously?---Correct, well, I think it's, it's probably at the forefront in, in a lot of our minds and so it's dealt with in probably an ad hoc way.

30

MS WILLIAMS: Do your responsibilities extend to deciding or having an involvement in what level of delegation should be given to particular positions or particular staff members?---(NO AUDIBLE REPLY)

No?---It's not, not part of my role.

Whose role is that so far as you're aware?---Delegations I think would probably go back to the individual director for each division depending on the responsibilities that, you know, attach to a position.

40

All right. Mr Perry, I'm going to ask you to be shown a copy of Volume 3 which is Exhibit 13. Could you turn to page 15 of that volume please. You'll see the pages in the top right-hand corner. I'm sorry, the photocopy is a little poor but you'll see that's a letter from the Human Resources Branch to Mr Karkowski of 25 May, 2010?---Yeah.

Advising that his employment has been reclassified?---Yeah.

Is that letter, being the most recent letter concerning Mr Karkowski's classification, is that letter together with the Local Government State Award, in effect, Mr Karkowski's employment contract?---Yes, that's correct.

There's no separate contract, as it were, there's a letter of engagement and then the provisions of the award apply. And currently it's the Local Government State Award 2010, is that right?---(NO AUDIBLE REPLY)

10

Thank you. And so Mr Karkowski's hours of work, the disciplinary procedures applicable et cetera they're all dealt with under the State Award, is that correct?---Yeah.

You're familiar obviously with the council's Code of Conduct?---Yes.

The code that appears at page 159 of the volume that you have that's the staff, I'm sorry?---Yes, that's the staff edition.

20 The staff edition. What other editions of the code are there?---There's, as I understand it there is a public edition and there are also, there's also separate training for councillors for aspects of the code that relate to the elected councillors at council.

Is there a separate, is there a difference between the substance of the code as between the staff and the councillors?---I think they're very similar but obviously some things to do with council's roles that have to be added into, into the code.

30 I see. You're familiar are you with the provisions of the Local Government Act 1993 that require the council to have a Code of Conduct and that require council staff to act in accordance with that Code of Conduct?---Yes.

And from the point of view of council staff this is the code with which they're required by that Act to comply?---Yeah.

40 And apart from the training program that you've mentioned in evidence how does the council go about ensuring that the code and its principles are actively promote amongst its staff and adhered to by the staff?---As I mentioned all staff on commencement are given an individual induction and that's by a member of the HR staff. And Code of Conduct and a copy of it is raised and discussed at that initial induction discussion. Usually probably within a month or a time when we have enough people to warrant a larger induction we do a half day induction with a large group of up to say 15 to 20 people. One of, it's a half day ranging on a whole range of topics but there is a very large component dedicated to the Code of Conduct and the training development specialist goes through it in some detail for all new staff to make sure they all understand it in, in detail. At the conclusion of that half

day induction the General Manager and all of the Directors attend and welcome new staff and in an address by the General Manager or one of the, one of the Directors in his absence we make it very plain and have for many years that Willoughby Council has a zero tolerance for corrupt conduct.

And what does that zero tolerance mean, what happens, for example, when there's a breach of the code?---It could range from implementing the disciplinary procedure within the Award through to termination of employment.

10

And is that something done confidentially with the staff member concerned presumably is it?---If, if a breach, if a breach came to our notice it would be, you know, obviously through procedural fairness the individual would have an opportunity to advise what they had done or had not done et cetera. But there have been occasions when the officer has elected to resign or their services have been terminated.

20

And do breaches, have particular breaches led to revision of the training materials, for example, to make sure that the code is, or the training on the code is reflecting the situations that the officers are actually having to deal with?---I mean, I would say that these things are isolated, there's only been a handful in my time at the council and probably have been picked up in renewed training later on but I wouldn't have said the code had been amended to address those issues. Some of these issues too might be referred to as petty theft, blue collar crime et cetera.

30

There's been some evidence given to the public inquiry today about the possibility of building inspectors who have to spend time during working hours out of the council offices completing timesheets so that their managers are able to monitor how their time is being spent. From your perspective as the Human Resources Director is that something that you consider to be a good idea?---It may be a good idea from the level of raising awareness but in, in practicality I think it's been raised earlier on today, it may not preclude breaches still occur.

THE COMMISSIONER: It makes it more difficult?---Correct.

40

MS WILLIAMS: The process for an employee to obtain approval to work overtime is relatively informal as things currently stand, is that right?---I wouldn't say informal. I guess what we do is we apply strictly the Local Government State Award, the policy for overtime. I do believe there is scope for us to implement or introduce a council HR policy overtime.

And that policy would be directed, would it, to monitoring the extent to which particular employees were working overtime on a regular basis? ---Well, if I can firstly address employees council-wide not just in regulatory positions. But it may, it may review the process right from the

beginning, like through, yeah, through, a little bit, a little bit more structure to it and a little bit more robust.

As things are currently done an employee has to get approval before actually working the overtime, correct?---Correct.

And that's typically just a verbal approval from their manager or director, is that right?---(not transcribable).

- 10 In your view would it improve things if there were a process whereby that approval had to be obtained on a periodical basis where general workloads and upcoming requirements would be discussed rather than simply on a case by case basis, day by day basis as it were?---I would be hoping that overtime was approved on every occasion that it was worked. So even if, if it was regular or irregular it would need to be approved on every occasion.

- 20 Do you, as the Human Resources Manager, have any involvement in policies and practices concerning rotation of staff amongst, between different duties and areas?---No, I don't. I mean, that's generally more of an operational matter for each division or branch however it would, it would be reported to HR so we keep a paper trail and we notify the staff et cetera any changes to their terms and conditions of employment.

Mr Perry, have you been provided with a copy of the draft recommendations that the Commission is considering?---Yes, I have.

Are there, have you had an opportunity to read those before giving evidence?---I have.

- 30 And are there any matters that you wish to raise either matters that you consider to be particularly important and which you would support or alternatively matters which you think create problems?---Recommendation 1, fifth dot point which is tracking in some way the office movements via a timesheet or something similar. I think we can do that. Recommendation 2A regarding overtime and bonus payments. Well, we've already discussed overtime and I actually think we're more than happy to improve the overtime process via a policy. And I'm just a little unclear on retaining a formal process for the claiming of overtime actually worked, I'm just, I'm just not quite understanding what retaining a formal process, the intent
40 there.

MS WILLIAMS: There is currently in place a process isn't there whereby an employee has to submit a form - - -?---Yes.

- - - stating the hours worked, what they worked on and have it signed off?
---Yeah, that's correct. They must sign off, they're declaring that the work was actually done and then it would be countersigned by a manager or director.

And the intent of the second bullet point is to suggest that that process should be retained even if the prior approval process is enhanced. Do you agree with that?---Yeah, that's, that's the, that's the paper trail of the whole structure behind the current process. And perhaps more detail can be provided into the, the level of detail in the work actually done rather than just a generic heading, it can actually be a little bit more by way of detail advising what the officer did, so, yeah, I support that.

10 Thank you, Mr Perry. Are there any other matters arising from the other recommendations that you wish to - - -?---Most of them fall outside my field of expertise.

All right. Thank you, Mr Perry. I have no further questions for Mr Perry, Commissioner.

THE COMMISSIONER: Does anyone wish to question Mr Perry? Thank you Mr Perry for your evidence. You're excused?---Thank you, Commissioner.

20

THE WITNESS EXCUSED

[3.11pm]

MS WILLIAMS: Commissioner, I call Jeffrey Knight.

THE COMMISSIONER: Ms McGlinchey.

30 MS McGLINCHEY: I seek leave to appear for the witness. Request a section 38 declaration.

THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given Mr Knight 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 produced.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN MR KNIGHT 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 PRODUCED.**

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

MR KNIGHT: Under oath, thanks.

MS WILLIAMS: Just state your full name please for the record?---Jeffrey Aiden Knight.

And you're the Administrative Services Manager of Willoughby City Council?---Yes, ma'am.

10 And you've made two statements to the Commission in connection with this matter. Is that correct?---Yes.

The first is a statement dated 18 January, 2011. Is that correct?---Yes.

Commissioner, that statement is found at volume 3, Exhibit 13, page 203.

THE COMMISSIONER: Thank you.

20 MS WILLIAMS: And Mr Knight you made a subsequent statement. Is that correct?---Yes.

And Commissioner, that statement is found in volume 9, Exhibit 27 at page 137.

THE COMMISSIONER: Thank you.

30 MS WILLIAMS: Mr Knight, you say in paragraph 4 of your first statement that you're responsible for maintaining the disclosure of interests records? ---Yes.

And that requires does it an annual, first of all a primary return within three months of someone commencing employment?---That's correct.

And what does that primary return have to disclose?---Well it's a whole range of things under section 440 of the Local Government Act. Things like where they live, what their position is, any positions they might hold, you're testing me now.

40 I think that's probably sufficient. Is the purpose of the return to enable council to identify potential conflicts of interest in effect?---That's right, yeah.

And each staff member required to submit that return has to update it annually in effect?---That's right. It's filled out by designated staff members, so members who we designate usually have some delegated authority to expend money and, and undertake regulatory functions and senior officers.

And Mr Karkowski was one of those designated officers. Correct?---Yes, he was.

So far as you're aware what happens with the disclosure, with those returns? Are they reviewed by yourself or the general manager or other people within the council on a regular basis for any purpose?---The, when we get the returns in, for instance the annual returns are done and we make sure that we get them all in by, within the three months. When they come in I look at them, but in many cases I wouldn't know what the information
10 relates to, you know, ownership of property, things like that. But I do give a cursory glance through them, but no, no great examination of them.

If a regulatory staff member such as a building inspector has a friendship with a property developer and that property developer has developments within the Willoughby City Council area, is that the sort of matter that one would expect to be exposed?---That's not on the form, no.

Not on the form?---No.

20 THE COMMISSIONER: So that's not the sort of thing that council officers are required to disclose?---No, not under the form, no.

Well in any way?---Not in any way.

MS WILLIAMS: Mr Knight, in your second statement you refer to the Gifts and Benefits Register. You're responsible as I understand your statement for receiving forms where gifts and benefits are declared. Is that correct?---That's correct, yes.

30 And inserting the information into the register?---Yes.

And then producing a report to the first council meeting of each year as to the gifts and benefits that have been declared?---Yeah.

What sort of information does that annual report give to the council about the gifts and benefits? Does it dissect them into the nature of the benefits or the different departments receiving them?---No, nothing like that. It really just gives a total number received and the register is tabled for anyone to look at if they wish to.
40

THE COMMISSIONER: Hospitality doesn't form part of this does it?---Of the Gifts and Benefits?

Mmm?---It's not, not on the register, no. It is in our Gifts and Benefits Policy.

It's in, I beg your pardon?---It is in our Gifts and Benefits policy, it is mentioned.

What in the Code of Conduct?---No, in the Gifts and Benefits Policy.

In the Code of Conduct?---Which is subsidiary policy to the Code of Conduct.

Do we have that?

10 MS WILLIAMS: Yes, Commissioner. The Gifts and Benefits Policy is at page 219 of volume 3, Exhibit 13. Mr Knight, do you know where it is in this policy, the reference to hospitality?---It's actually under a heading called Purchasing and Tendering. But it reads - - -

I think it's under the term benefit?---Oh, yeah, it's under the definition.

Under the definition of benefit. So that includes tickets to major sporting events, corporate hospitality at a corporate facility or sporting venue?
---Yeah, that's the, that's - - -

20 Free or subsidised lavish meals or hospitality et cetera. So that has to be disclosed does it?---No, not necessarily. Under the, well, the, the policy actually says that , if I can find it - - -

(not transcribable) so I don't know what it says?---Oh, it says that the recipient of any gift, benefit or hospitality offered other than token or (not transcribable) must submit a declaration form for the director, general manager for authorisation. So it does include hospitality.

30 Is that before the hospitality is provided?---I think that would be after.

Have you ever seen anybody ever disclose hospitality?---No, not in my time.

MS WILLIAMS: Mr Knight, is it the case that you've been responsible for gifts and benefits declarations and for the register since the register was established?---Yes, that's correct.

So in the whole of that time you've never seen hospitality disclosed?---No.

40 And you mention in paragraph 9 of your second statement that to your knowledge no one has done a detailed review of the declaration forms attached to the Gifts and Benefits Register?---Not a detailed review, no.

And in fact above that in paragraph 8 you say that to your knowledge no one has looked at the register when it is tabled in council?---That's right.

If someone had looked at the register when it was tabled or done a detailed review of the declaration forms, is that something that you would expect to be aware of in your position?---Yes.

So the likelihood is that just has not happened, is that right?---That's right.

Does anybody within the council to your knowledge take an interest in the Gifts and Benefits Register or is it just seen as a paper that needs to be filled out?---The general manager has seen it on occasions and I think
10 Mr Woodhams has indicated that he's seen, seen it once or twice and I think one of the other directors who has since left did look at it once as well but apart from that, no.

Are the directors, for example, given a report or information in some form as to the extent of gifts and benefits disclosed by their staff during a particular year or time period?---No.

In your role do you do any analysis of the extent to which different divisions or branches are accepting gifts and the nature of those gifts?---No, I don't
20 turn my mind to that, no, just, I just look at each form individually.

THE COMMISSIONER: Mr Knight, have you been to these training courses on the Code of Conduct?---Yes.

Is anything said about hospitality?---Yes.

What is said?---That generally particularly regulatory staff should refrain from any hospitality and that's included in our - - -

30 Refrain from?---Any hospitality.

From receiving any?---Yeah.

Yes?---And that's what, that's the message that's given out and other staff have to be extremely careful about how, what sort of hospitality they accept, take into account - - -

And nothing's said about - - -?---Take into account perceptions and things like that.
40

Nothing's said about the Gifts and Benefits Register?---Well, no, the Gifts and Benefits Register is mentioned at the training, yes.

And that hospitality should be recorded on that?---Oh, it's not specifically mentioned but I think staff - - -

MS WILLIAMS: Mr Knight, we have what I understand to be all of the gifts and benefits declaration forms for 2009 and 2010 I'm just going to pass

you this volume and I've placed a yellow tab on a page that's open which appears to be a declaration relating to hospitality, if you just have a look at that form. Do you agree that's one declaration relating to hospitality?
---Yes, yes, I'd forgotten about that, yeah.

That's all right - - -?---Yeah.

10 - - - I simply want to be fair to the council. So the, there may have been the odd disclosure possibly in relation to hospitality but it's not a frequent occurrence as far as you're aware?---That's correct.

Thank you. That can be handed back if you don't mind. Commissioner, I'll make that available to Mr Cotman.

20 And, Mr Knight, as I understand your evidence in paragraphs 25 to 27 of your second statement there's usually some delay between a gift being accepted and a signed declaration form making its way to you is that correct?---It depends, sometimes I get them almost the same day or the day after but other times there can be a week or two's delay and, yes, that's correct.

And it's not part of your role is it to question whether the gift should be accepted, by the time the form comes to you that decision has been made by the director who signs the form, is that right?---I will turn my mind to it to some extent but, yeah, because I'm receiving it quite late sometimes it's, it's a bit difficult.

30 Do you, do you have the authority to in effect override a director's decision to say the gift should be returned? How does that work?---I wouldn't say I have the authority but I would certainly go and have a talk with the director if I was uncomfortable about it, yeah.

And have you had occasions on which you've had to do that?---Once or twice, yes.

40 And can you remember the outcome on those occasions?---Well, a couple that I can recall we, we returned gifts. There were a couple of others which I think may be in the register where staff received gift vouchers and we actually returned those to the company and informed them that we couldn't accept them, they're just the ones that I can recall off the top of my head now, yeah.

Would it assist you in, in your role in reviewing the declaration forms if the forms contained some more information, for example, about the circumstances in which the gift was given?---Yes, it would, yes.

And the relationship between the recipient and, and the person giving the gift?---Yeah.

And - - -?---I think our form is based on the ICAC gifts and benefits model that's in the guidelines that you produce but I think there is scope there for additional questioning and to provide further information to guide everyone, yeah.

And would it assist you also if the recipient were required to briefly note on the form the reasons why they thought it was appropriate to retain the gift?
---Yeah, yeah, I think that'd make it clear for everyone then.

10

You say in paragraph 29 of your statement that since the policy, sorry, this is your second statement, that since the policy commenced you think there are only about six occasions when gifts or benefits have been returned, does that mean six occasions on which the recipient has wanted to keep the gift and a form has therefore been submitted to you but you have decided that the gift should be returned?---No, not necessarily that. A couple of them might have been in that regard but some others, the staff have often given me a ring when they, before they, if they receive any gift and before they put the form in and, and I might suggest to them that it's not worth, not
20 appropriate for them to accept it.

Is it possible that there are more than, there are occasions in addition to these six occasions you mention where staff have been offered the gift and refused it and therefore the matter has never come to your attention?---Quite possibly, yeah.

I see. You say in paragraph 32 that simply not allowing council officers to accept a gift or benefit would be easy to enforce amongst those who have regulatory functions but more difficult amongst other staff such as childcare
30 workers and the like?---Yeah, it's an issue we've grappled with. I'm aware that there are some councils that have a, a no gifts policy. We've discussed it at Willoughby and recently adopted, well, re-adopted a policy that we had in to allow taking gifts but in view of what's been happening we may, in the last week or so, we might have to review that again.

And the gifts and benefits policy is currently under review, isn't it?---No, well, it was actually adopted by the council two weeks ago.

I see?---It was under review when this was being done.
40

And the new policy or the policy adopted two weeks ago, is that the, is that the policy that's exhibited to your first statement at page 219?---No, no it's not.

No?---It's - - -

I'm sorry, that's - - -?---The new policy was, it's only just come into operation last week so - - -

I see?---Really there weren't, there weren't any particular great change to the existing, the existing policy anyway. It was a question, we were turning our minds to the question of whether we would introduce a no gift policy or whether we would stay with a taking gift policy.

So there were no material changes to the existing policy, is that right?---No.

But you anticipate that there will be some further review, is that correct?---I think so.

10

And that review will be taken via you in conjunction with the general manager?---Probably our MANEX team, yes.

I see. I have no further questions for Mr Knight, Commissioner.

THE COMMISSIONER: Does anyone wish to question, Mr Knight?

MR BALTINOS: I just have one or two.

20 THE COMMISSIONER: Yes, Mr Baltinos.

MR BALTINOS: Is there a - - -

THE COMMISSIONER: Just explain who you are, please.

MR BALTINOS: Sorry. My name is Baltinos, I'm the counsel for Mr Karkowski. Is there a register or something similar to record when gifts have been returned, in other words, when a decision by either you or your colleagues has been made for the return of the gift?---It depends on the
30 circumstances, if, if we, if the gift hasn't really been accepted and it's, and it's more or less refused no. If there, there are a couple of examples in the register where we've actually written to people saying that we can't accept a, the gift that's been offered because it's against our policy.

In a case where the gift has been accepted what normally happens to that gift? Is it stored somewhere whilst there's a decision being made about it, whether it should be returned or not?---Just in the lead-up to Christmas last year we did start to arrange for the gifts to come to me first but I wouldn't say that I was getting all those gifts. There are some gifts that come to
40 people at our, for instance, our works depot and the first I know about it is when I receive the gift and benefit form.

Might the witness please be shown volume 9. Mr Knight, could you please turn to page 170. Firstly, if you just go to the bottom of that page. Does your signature appear anywhere there?---Yes, it does.

And in respect to the description given of that particular gift in this declaration could you tell us please what that gift is?---Yeah, it relates to a \$50 note that was given to a worker at our MOSAIC Centre.

10 And do you know what happened to that \$50 note in respect of, was it returned or was it allowed to be kept by the employee?---I can explain to you what happened with this. It's quite a good little story. The, the person who received the gift was on her second or third day of work, she just started at council, she hadn't received any of our training at that stage, she's an Asian person as you can see from the name, she works at our multicultural centre and she was given this gift and accepted the gift. And then a few weeks later when she was given her induction training she realised that she'd done the wrong thing so she came and saw her supervisor and said, Look, I've accepted this \$50 note, I realise now that I shouldn't have so we arranged for that to be put into Willoughby Council consolidated revenue, I suppose you could say, and we've instituted a policy or procedure at the MOSAIC Centre now because they do get that sort of behaviour to ask people if they want to make any sort of a donation to the centre to do it through the council.

20

Thank you. No further questions.

THE COMMISSIONER: Is there any other questions for Mr Knight?

MS McGLINCHEY: Yes, sorry.

THE COMMISSIONER: Do you mind just coming forward to the microphone.

30 MS McGLINCHEY: Mr Knight, could you just turn to paragraph 40 of your second statement?---Yep.

Now, in that paragraph you deal with a particular declaration for whether a named, submitted by named council officers, is that correct?---Yes, that's right.

40 And you have described in that paragraph the development of, the officer as being a Development Planner, is that correct?---Yeah, that is just slightly incorrect. This particular officer's actually a Development Planning Officer I think her title is rather than a Development Planner and the distinction there is that this officer doesn't have any delegated authority to approve applications. Her, her work is given to one of the managers to actually make determinations on it.

And her position actually reports to a Development Planner?---That's right. That's correct I think, yes.

Thank you. Just one more question. Paragraph 43 of your second statement?---Yes.

I think you've made a mistake in the last line, "I signed this form on 26 November, 2008" is how it reads. Is that correct?---Yes. Should be 2009.

It should read 2009?---Yeah.

Thank you. Nothing further.

10

THE COMMISSIONER: Yes, thank you, Ms McGlinchey. Ms Williams, do you have any questions?

MS WILLIAMS: No, nothing further, Commissioner.

THE COMMISSIONER: Thank you, Mr Knight, thank you for your evidence, you may be excused?---Thank you.

20

THE WITNESS EXCUSED

[3.34pm]

MS WILLIAMS: Commissioner before I call the next witness I should tender the Local Government State Award that I asked Mr Perry about 2010. Provide a copy to Mr Baltinos and Mr Cotman.

THE COMMISSIONER: Exhibit 30 is the Local Government State Award 2010.

30

#EXHIBIT 30 – GOVERNMENT STATE AWARD 2010

MS WILLIAMS: And Commissioner I also tender the Gift and Benefit Register shown to Mr Knight.

THE COMMISSIONER: Exhibit 31 is the Gift and Benefit Register.

40

#EXHIBIT 31 – GIFT AND BENEFIT REGISTER

MS WILLIAMS: And I call Nicholas Tobin.

MR LEWIS: Seeking declaration Commissioner, thank you.

THE COMMISSIONER: Please be seated Mr Tobin. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that

all answers given by Mr Tobin 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.

10 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT
ALL ANSWERS GIVEN BY MR TOBIN 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.**

20 THE COMMISSIONER: Mr Tobin, do you wish to give your evidence under oath or do you wish to affirm your evidence?

MR TOBIN: Oath Please, I'm sorry.

MS WILLIAMS: Your full name is Nicolas Tobin?---Nicolas Ashley Tobin.

Thank you. And you're the general manager of Willoughby City Council?
---That's correct.

10 And you've made a statement to the Commission in connection with this matter on 25 January, 2011?---Ah yes, after an interview in December.

Thank you Mr Tobin. Commissioner, Mr Tobin's statement is in Exhibit 14 Volume 6 commencing at page 193.

THE COMMISSIONER: Yes, thank you.

MS WILLIAMS: Mr Tobin, as the general manager of the council Mr Woodhams' the director of the environmental services division reports
20 directly to you does he?---That's correct.

And Mr Rowan the building services manager reports to Mr Woodhams as I understand it?---To Mr Woodhams, that's right.

And Mr Karkowski reported to Mr Rowan – that's how the lines of authority went?---That's correct, yes.

Right. And given those lines of authority – to what extent did you have direct dealings with Mr Karkowski in the course of his employment with the council?---Not a great deal although I was heavily involved in or am heavily
30 involved in the Concourse project so occasionally I would pop around and see how he's going with that part of his work but on a day to day basis I didn't have any involvement in his day to day work.

And as a result of popping around occasionally to see how he was going – what was your understanding of the nature of the workload and the pressure that he may have been under?---I was well aware that he was doing the overtime hours to complete the Concourse work and yeah, it was my understanding that yes, he had a lot of work on but he seemed quite happy
40 to be doing that work and receiving the overtime for it.

And did you understand that was a need for – I withdraw that. Did you have any perception that there was a need for additional resources to assist Mr Karkowski?---Yes, I was aware of that and I actually discussed that with Mr Woodhams and Mr Rowan and Mr Karkowski as well – I can recall meetings in my office just talking about the workloads and actually bringing Josh across to assist back in 2008/9 whatever, but it was some time ago.

That's Mr Baker is it?---Mr Baker, Josh Baker that's right because what it was centred around was the Concourse project and the need to get these constructions certificates out. We had a situation where if we were to hold up those construction certificates we would be holding up our builder and they would be subject to time delays on the project and that's project is a \$165 million construction project.

10 Is that a project in which the council itself has a stake?---The council is funding all of it, it's our project, it's a new performing arts centre in the middle of Chatswood, it's been a 12 year project and we're funded basically a 100% of the project and it's opening in September.

So in addition to his responsibility for determining Fast Track development applications submitted by private third parties, Mr Karkowski had the responsibility of dealing with applications and inspections for this council funded development?---That's right. And the applications submitted by the, the construction, through the construction managers, which was an external consultancy.

20 So it's fair to say is it that there was some considerable pressure on Mr Karkowski to turn the applications relating to the concourse around in a very timely manner, otherwise the council itself would feel the financial burden of the delay?---That's correct.

30 Is your view that the, the Fast Track system in the 10, the five to 10 working day timeframe does create pressure on your building inspectors?---It shouldn't because the codes are very clear and in my opinion that it's, it either meets the code or it doesn't meet the code and it is tick and flick type work. We're talking about fit-outs, we're not talking about high rise construction work. So you know, the Fast Track is for very simple applications. When they're not simple then they will take longer than 10 days and you just won't be able to meet that guideline. But you know they are supposed to be fast because of the type of work that they are.

THE COMMISSIONER: But it surely depends upon the number. I understand what you say, but if you, if a person has a heavy workload involving a whole number of these, it will - - -?---It will delay the fast tracking of them, yes.

40 Yes. And will create personal pressure and so on. I mean it's obvious isn't it?---Yes. That's (not transcribable) - - -

But you're saying the work isn't, shouldn't be regarded as particularly difficult?---Well I don't do the work, I'm not trained in that area, but what I am saying is that the nature of Fast Track work is that it is generally fit-outs, changes of use, which has less I would imagine technical issues and things, I mean you still get things like fire and safety and those sorts of things, but a

lot of times, I mean shopping centres that have already got that sort of thing built into them, so it is, it is a little bit, it should be an easier process.

But it still requires, as I understand it, please correct me if I'm wrong, discretionary decisions on the part of the, the council officer attending to that? He can approve them or he doesn't have to, that's at his discretion? ---Oh, yes, that's right. Yes. Based on the data that's supplied and how it matches up to our, our policies and codes.

10 MS WILLIAMS: Do you acknowledge Mr Tobin that it can lead to problems that under the Fast Track system the same council officer assesses the application and decides whether or not to, to approve it?---Yes, I, that's, that's a fair comment and one that I think we've all agreed to today.

THE COMMISSIONER: I beg your pardon?---That's right. It's something that we've all agreed to today.

20 MS WILLIAMS: In your view is there scope for splitting up the assessment and determination functions without unduly interfering with the other objectives that the Fast Track process is trying to achieve?---I think it will be quite difficult to do that. We're going to have to look at it very carefully how we can, the idea of doing a DA and a construction certificate at the same time is, is about speeding up the process. If you separate them it will slow it down and so we need, we need to think how we can meld those two processes together to keep it going fast.

30 THE COMMISSIONER: Do you understand what the problem is, which is, the problem is that which has been shown up in this inquiry. There may be other ways of dealing with the problem?---That's what I'm saying, we need to have a look how else we can deal with the issue and put other checks and balances in the process to see if we can actually improve and ensure things like this don't occur.

Yes. And the issue appears to be that there is too much discretionary power given in one person in an area where it's extremely difficult to know what he's doing?--- I hear what you're saying, Commissioner and - - -

40 Well that's obviously what, what has happened here?---It is what has happened with this person, yes.

Yes?---With this person. But, you know, I'm very disappointed that that's occurred. You know, I have, Mr Rowan has nine other building surveyors where I believe it hasn't happened.

Yes, all right. As far as we know?---Well - - -

No one has, I'm not casting any aspersions on those persons?---I understand that.

All I'm pointing out is that the structure, the present structure appears not to have any facility for detecting anything that goes wrong of the kind that has gone wrong here?---And, and the comment I would make in the CBD that is very true in the type of work that happens. When you go out into DA's and construction certificates within the general residential areas, there are a whole series of - - -

10 That may be?---I'll just, but I'm just saying why, you know, and that's why we need to concentrate on that section of the work, because out in the community areas you have the public, you have the councillors getting involved and you get a lot more feedback on, on applications.

How long do you need to come up with, with the new scheme?---Well, we had, we had done a lot of work actually yesterday, Commissioner, in relation to the things that you've asked us to have a look at and, you know, I would think within six weeks we can turn the processes around and, and bring back something that's - - -

20 Can we make it sooner than that? The reason that I'm asking is that we've, we've got our own requirements for reporting?---Oh, if - - -

And so we will, we will play a lot of regard to what you say, we certainly don't have any wish to impose recommendations on you that are impractical so we need to know what you have in mind so I am not perhaps, I'm not asking you to commit yourself but - - -?---Commissioner, I think - - -

30 - - - if you could do it earlier it would be appreciated?---Well, we'll certainly try to, right at that point in time we're just doing our next year's budget which is, is a very difficult period for everyone but we will make the time and come back to you as quick as we can possibly can.

40 MS WILLIAMS: Mr Tobin, in your statement you say that would you describe Mr Karkowski as a good and a diligent employee. How, what was the basis on which you formed that opinion given that he wasn't reporting directly to you?---Because of the feedback I got from various people in the, in the CBD that the work was getting done, I didn't get complaints about his work, I wasn't getting feedback that things weren't getting there on time. I saw the amount of hard work he was doing on the concourse project so all those things, you know, lead me to believe he was, he was doing a very good job.

Did you have an understanding before today of the way in which Mr Rowan and Mr Woodhams above him supervise and monitor the performance of the staff in the building services branch?---Yes, I did and I don't think they quite accurately reflect some of the other things they do do. I mean, they, they do have, everyone has job descriptions of what they're supposed to do, the performance management system is electronic and works very well and,

you know, I walk past Mr Rowan's office because it's very close to the toilet in the council and his staff are always in there discussing things with him so I don't think Mr Rowan came across as, explained just how much time he actually does spend with this staff but he certainly does spend a lot of time with his staff and working through - - -

10 THE COMMISSIONER: That's not the issue, Mr Tobin?---No, no, well, I mean, that's a form of supervision and working with the staff which I get, I do see that a lot but, you know, I have no doubt that what I've heard today is there are some things that we need to improve on.

MS WILLIAMS: Did you receive formal reports from time to time from Mr Woodhams or Mr Rowan about the performance of the building services branch and the staff in your role as general manager?---We don't, not a formal report but we do actually form a report to council which is I suppose is a formal report throughout the, what was our management plan and is now what we call the delivery programme which we're required to do under the Local Government Act and there is various things build in to that, statements about how progress was happening and, and how things are
20 going in various areas, the building control area is one area and the planning area is another area that, that comes through those reports.

And the reports that you provide to council, are they focussed on numbers of applications and turnaround times and other similar statistics?---All those types of things, yes.

And is that what drives the supervision from, from you down the chain of the building services branch?---No, it's not just that, it's the way we deal with our customers and making sure that the community's informed what, what's happening with applications, that's the one area that I get the most
30 feedback on in relation to, well, mainly Development Applications, the community's not keeping up to date with what, what's happening and they're the things that we've been working on, like we've been giving that feedback back to the community so it's not just turnaround time, we're very much about getting the job done properly without Development Applications, giving the public ample opportunity to have input if that's, if it's, if it's that type of application and then making sure that it goes through the proper process, if it can be done under delegated authority because not everything gets done under delegated authority or whether it goes to what
40 we call our ward councillor meetings or it goes to a full council meeting to be approved and depending on the issue, you know, it, it can go to all those different levels of approval process.

And do you agree that whether or not the job gets done properly in relation to Fast Track development applications rests almost entirely in the hands of the officer who's assigned to assess and determine those applications?--- Yes, in the hands of a very senior officer.

Is that something though that you acknowledge needs to change as a result of this inquiry?---Yes.

As General Manager of the council what steps did you take to ensure that the council's Code of Conduct and its key principles are actively promoted to all council staff?---As was said earlier we'd make sure we do the training to all new staff, I make sure I, when I deal with the new staff and meet all the new staff at regular meetings that I reiterate what our expectations are under the Code and when the Code changes we do updates in relation to that and we do have everything on the intranet available to council staff as well so all those codes and policies are all available for staff and they get that every morning. The intranet comes up in front of them every morning when they log on to the computer.

Do you consider that, I'll withdraw that. The Commission has heard evidence to the effect that the training in the Code of Conduct happens about once every two years unless there's an update to the Code in the meantime, is that your understanding?---That's right.

20 Is that often enough in your opinion?---Should be. It's, you know, I think we have to learn, we have to, from this process we'll learn new ways of doing it but may not be taking everyone in all the time to do updated training but we may target areas and we may also look at how we can use the intranet better to provide updates, so providing, putting it into, I mean, I do a General Manager's update once a month, I can put details, more details into things like that. So I think we've got to learn smarter ways to do it than to just have a resource sitting in front of people telling them about each time because that we can't afford.

30 And the council maintains a gifts and benefits register?---Yes.

What do you do with that register as General Manager, is it something that you review or - - -?---I don't review it very often, I would flick through it probably once, once every 12 months, it's not something, I mean, I don't believe we have a lot of gifts registered in the council, it's not, not something that we go out and seek.

THE COMMISSIONER: Doesn't mean to say that not many gifts are received, not suggesting that?---No, but that, that - - -

40 But one just doesn't know?---Well, that could also be the case.

Yes. What's your view on having a zero tolerance gift policy?---After this inquiry I think it's a very good idea.

MS WILLIAMS: When you flick through the gifts and benefits register every so often, every 12 months I think you said, what are you looking to see, what information do you gain from it?---I just need to see if there's

anything very large just to get a feel for the types of things, whether it's still in those areas like community services where small gifts are given across in areas of, you know, you know, people get boxes of chocolates and things like that, making sure that, you know, there's no major gifts given from someone who may be a supplier that's, you know, looking for more business. You'll see there's times when things have been sent back and that's because of those types of reasons where it's not appropriate to accept gifts off those people. So that's the sort of things I'm looking, looking for.

10 In paragraph 11 of your statement you refer to a letter that Mr Karkowski asked you to write in March 2010 in support of the Red Chilli Restaurant's application for a visa from the Department of Immigration, do you recall that?--(NO AUDIBLE REPLY)

Why was it appropriate for you as General Manager of a council to enter into correspondence with the Department of Immigration about that matter? --Well, I, I didn't actually enter into correspondence with the department I entered into, I gave a, a letter of support to the Red Chilli Restaurant which is a little different. It's not appropriate for me to get involved with the
20 department. It is appropriate for me as the General Manager to try and get the diversity into our city that we need and the businesses that we need to make it a thriving CBD and that's, that's one of the things I need to do is get out there and promote the CBD and try and assist businesses come into our area. So I don't, that's the reason why that occurred, no other reason.

THE COMMISSIONER: Do you regard it as some sort of reference?---Am I reference or - - -

30 Yes, the reference you provided to this person to get a visa?---What I was saying in this letter was that we support diversity of business in our area and use it as a reference if it helps, it helps but it's not, I'm not knocking on that Department of Immigration's door saying, you know, we want this person to get in, I wasn't aware of who the person was or anything like that I just knew that they had an issue if I was aware of the situation as to why, I probably wouldn't have written the letter.

From my part, I see no reason why you shouldn't write a genuine letter of reference for a deserving person - - -?---Mmm.

40 - - -but that's to be contrasted with a situation where you have been used by someone else as what seems to have happened here.---I was pretty disappointed.

MS WILLIAMS: Did Mr Karkowski when he asked you to write this letter explain to you the nature of the assistance that he was providing to Red Chilli Restaurant in relation to the immigration issue?---No.

Was it an unusual thing a building inspector to be approaching you to write this sort of letter?---Slightly unusual but knowing that Ed deals with all these people in the CBD it didn't, it wouldn't feel that unusual.

THE COMMISSIONER: He was doing, on one view he was doing the same kind of thing which you think is to the benefit of your council?---Well, I do and I also think as a lot of people have said and as Ed is a very helpful person didn't – I didn't have issues with the people in the CBD I thought he was doing a good job for them.

10

MS WILLIAMS: I think you may now know Mr Tobin that Mr Karkowski was enjoying and continued to enjoy after this the hospitality of the Red Chilli people at expensive restaurants and the like – that's not – that's obviously something that you don't regard as appropriate is it?---No, definitely not appropriate.

Mr Tobin, what's, you refer in paragraphs 18 – 27 of your statement to your friendship with Mr Sam Koura.---Yes.

20

Have you ever given him any special treatment within the council or arranged for him to be give any special treatment as a result of your friendship with him?---No, definitely not, in fact, when I was, at one stage what my staff, we used to have the Con Contract with us and it was taken away from him so I certainly haven't given him any special treatment.

Was it taken away from him because of his relationship with you or for other reasons?---No, for other reasons, it was based on the tender prices and the whole scale of the reason for dealing with that company.

30

Are other council staff aware of your friendship with him is it something you disclose when a potential conflict arises?---Yes, it is, I know I'd say to the town planners or anyone I would always say to them, look, you know, I don't want to get involved in this project can you deal with the person and you know, spell it out with their architect, his architect or whoever may be dealing with the application.

40

And did Mr Koura ever ask you about developments that he was doing within the Willoughby City Council area?---He would tell me what he's doing, he wouldn't ask me to do anything for them. He would whinge about the process as all, most people with development applications before council do but he'd, he wouldn't ask me to go and do anything for him as in change the council's decisions or anything like that but he'd sometimes ring me up and say it's been sitting there for two months now and I haven't heard anything what's going on? And I'd say, I don't know, same as other people do, I had two phone calls to answer yesterday afternoon from local residents asking me exactly the same question and I'd say to him, look, you know get your architect to ring this person and sort it out.

Did he ever ask you to get some information for him?---No, never.

No. Is there anything that you can think of that you have done for Mr Koura in connection with any of his developments that would have justified him in saying that he had the general manager on his side in relation to a particular development?---No, and I was quite disappointed in that comment just that wasn't my understanding of our relationship.

10 THE COMMISSIONER: Have you read that piece of his evidence?---I was here when he stated it.

So - - -?---Sorry, yes, I was here when it was broadcast, yes.

So there was also an impression given by him, which he accepted, that at that particular time there was, you were, you were more inclined to do him a favour, I mean, he referred, I think the phrase was, "while the heat was on", that you'd be warmed up?---No. I'm not sure what he meant by the heat was on.

20 I think it means that you are what I've said, I think he accepted that, that at the time you were more easier to be able to be influenced then at another time?---That was his opinion.

Yes?---Yes. And he may (not transcribable) he made a contribution to a fundraising programme that I did last year for the Humpty Dumpty Foundation where I raised \$50,000 for a children's charity. He supplied a jersey for an auction on, on the charity night. And that was, yeah, that's something that he actually offered to me.

30 Yes?---It was in his evidence that he, he presented here the other day.

And that's all?---That's all.

MS WILLIAMS: Mr Tobin, have you been provided with a copy of the draft corruption prevention recommendations that the Commission is considering?---Yes, I have.

40 Have you had an opportunity to read those?---Yes, and we have worked through them and I think we can work through or you know, basically implement most of those.

Are there any particular difficulties that you'd like to take the opportunity to point out or other issues you'd like to raise of the proposed recommendations?---No, I think that staff, other staff have mentioned some minor things that we need to work with and some areas we'll need to work with the Department of Planning and so forth. And the issue of the construction certificate and the occupation certificate is something we'll

need to, to work through. But I think the rest of it is all things that we can certainly come to grips with.

Thank you, Mr Tobin. Commissioner, I have no further questions.

THE COMMISSIONER: Mr Tobin, the Commission does not regard you as an affected person. That means that you are not in jeopardy of having any finding made against you. But there's something that concerns me. Do you have the Code of Conduct?---Yeah.

10

Can you turn to page 162 or that's page 4?---This is the staff edition?

Yes?---Yes.

Page 4, paragraph 5. The second last paragraph, the paragraph reading, you must avoid situations, can you just read that to yourself again?---Yes. Yep.

Now the evidence has been and I notice from your statement that you accept that you have attended football games in Mr Koura's box?---Correct.

20

More than once?---More than once, yes.

Often?---Once last season, I think twice the season before and a few times the year before that.

And was that just an ordinary game or a special game?---They're just Manly Sea Eagles versus whoever the, the person is they're playing.

30

Not a - - -?---It's not a big fancy corporate box, it's a box just in a stand where you cram eight people into. But it's, it is a corporate box and Commissioner, I have certainly, you know, as I said in my statement, I've known Mr Koura for a long, long time. And I understand what, exactly what you're saying. And I certainly won't be going anywhere near a football box in the future.

I think it's a bit more than that too I think. It's, it's avoiding it generally in the words of this Code?---Yeah.

40

Avoiding situations giving rise to the appearance that a person through the provision of hospitality is attempting to secure favourable treatment from you or from the council?---Yes.

And I mean, well it's obvious isn't it, nothing needs further to be said? ---No, your Honour, Commissioner.

Yes, very well. Any questions?

MR GRIFFIN: Yes, thank you, Commissioner.

THE COMMISSIONER: Just explain who you are.

MR GRIFFIN: Mr Tobin, my name is Griffin, I appear for Mr Koura?
---Yes.

Can I take you to paragraph 23 of your statement which is on page 198?
---yes.

10 Can you see where it says "Council has an open file policy and many documents are available on council's website?"---Yes.

Is that a public website?---Yes, it is.

Is there a written policy as to what documents are placed on that public website?---I'm not, I'm not certain to be honest with you, I'd have to ask one of my staff. We, we try to put all documents associated with Development Applications onto, onto the website - - -

20 On what basis?--- - - - so when I say documents I, in this situation it was about anything that might have related to a Development Application and we put, you'll get notification plans on that but you won't get the full-blown, you know, plans with all the detail on them, on the, on the website.

30 As far as you know are there certain criteria to define which documents go on the website and which ones don't?---Well, there was that criteria in relation to the plans and there are some criteria in relation to whether it's, we don't put things like vexatious comments up, that type of thing but the majority of things, you know, we have an open file policy so the majority of the things go up.

Who would be appropriate person at council that could tell the Commission exactly what documents go up and which ones don't and the reason why?
---Ms Crouch is here today.

Thank you, Commissioner.

THE COMMISSIONER: Any other questions?

40 MR COTMAN: Yes, Commissioner.

Mr Tobin, you've referred in your statement at paragraph 17 to the council commencing cultural awareness training in 2005 and I think you observed that you had seen yesterday the draft proposals from the, from the Commission in relation to the conduct of the conduct - - -?---Yes.

- - - which included translations of various council documents into multiple languages to deal with the diverse community in Willoughby. First of all, in

relation to the production of translated documents is that a matter that is presently in hand?---They have been produced and they're now available to go out with Development Applications and Construction Certificate documents and be available in the admin centres, in the libraries and also we'll make them available on line.

Has consideration been given - - -?---We have made them available on line.

10 Thank you. Has consideration been given to the economics of doing translation into multiple languages of the substantial documents on the website?---We've thought about it but it is considerable cost and something that would be, wouldn't be really, we'd be able to afford at this point in time.

And so far as the cultural awareness training that you commenced in 2005 and then I think you say again rolled out in 2008, is that itself an ongoing project?---It hasn't been but following this inquiry we'll be implementing more activity in that area.

20 Thank you.

THE COMMISSIONER: Any other questions for Mr Tobin? Ms Williams?

MS WILLIAMS: Just one from me, Commissioner.

30 Mr Tobin, do you anticipate that the cultural awareness training will be compulsory in future as opposed to optional for staff?---It will, what's going through my mind at the moment is it will be compulsory for frontline staff, staff in the regulatory areas, those type of areas and then we'll look at other staff but yeah, there are some areas that really have very little public contact but a lot of areas do so anything from childcare through to, you know, the library, regulatory services as I've said so we'll have to hit all those areas.

Thank you, Mr Tobin.

MR COTMAN: I'm sorry, Commissioner, I overlooked one matter which may be of some significance.

40 In relation to the various policies that have been referred to in the evidence either of your own or others, what is the process for the adoption of those policies by council?---They're firstly passed through what we call our senior management team which is myself and, and the directors and the human resource manager and then they're reported up to a full meeting of council and adopted through, through the council, the actual councillors and the mayor approve them and then they - - -

And the councillors would bring to bear consideration on those matters when it comes before them?---That's right. And the other thing we do have to do with all those policies, Code of Conduct, Code of Meeting Practice is actually exhibit them as well publicly for comment.

10 So that when the Commissioner asked you earlier today about a timeframe in relation to responses to various matters in a short timeframe what sensibly can be reported back to the Commission about the process of change?---Well, we can certainly produce the draft policies that we'll be putting up to council to adopt and an outline of all the activities and training and changes in delegations and procedures that we're committing to.

And lastly, in relation to delegations, from whom do the delegations come ultimately?---The process is, the council delegates certain functions to myself under the Act, I then delegate those down through the Directors to the relevant staff and I have to sign off on those.

Thank you.

20 THE COMMISSIONER: Mr Tobin, would we be particularly interested in within a reasonably short period of time is what, which, if any, of our draft recommendations you regard as impractical or undesirable?---Yeah, we'll be able to produce that early next week, Commissioner.

30 The other material might take you longer but also we, well, I think those are the most important and to know what you have in mind as you answer Mr Cotman, that is, your, the draft recommendations that will be put up to council. Two general matters that I just want to ask you about. I mean, what this inquiry demonstrates I think is the need to educate the people who deal with the council, not about the entire Code of Conduct at all but really two simple things. One is don't give gifts, two, don't provide hospitality? ---Yes.

That's all?---Yes.

Now, one way of dealing with that is to, and I'm not saying that you should do this but one way of dealing with that is to have signs in different languages in the council chambers where the people come in - - -?---Yes.

40 - - - just saying that and it just needs six words. And when the material goes out for development applications instead of providing long sentences, I mean, the basic message is the same, no gifts, no hospitality?---The brochures are very brief in that regard.

And the other thing I was going to, the second matter is that this is not simply something that is needed for new immigrants. I mean, what this inquiry has shown is that we, there are some substantial and national companies who, in whose interest it is to get close to council officers and be

very persuasive and I'm not sure how one does this but the education for them might be different but it should be directed to the same end. You've seen and heard that?---Yeah. Yes, Commissioner, and the other thing that I, that's highlighted to me is how to give the community a funnel back into council when they don't believe people are operating appropriately and that's a, because from the amount of things that I've heard and the people that have been involved, you know, I'm just so, we are all very surprised that we didn't know.

10 In many of the inquiries that this Commission has done not only into corruption but other inquiries it has become plain that it's really to the benefit of persons providing the public service like council officers to have a zero tolerance policy that's advertised because that's for the protection of their own officers because they can say look, you know, I don't want to embarrass you but the fact is that I can't take it because it's against the rules of the council?---Mmm.

So this is for their own protection. That's one of the great benefits of a zero tolerance policy and one that's publicised?---Mmm.

20

Then, then there can be no hard feelings even if somebody wants, if some aged person wants to give someone some embroidery as a present in appreciation - - -?---(not transcribable) or things like that.

I think everybody would understand that. Yes, thank you Mr Tobin, you're discharged. Thank you for your evidence.

THE WITNESS EXCUSED

[4.15pm]

30

MS WILLIAMS: There is no further evidence Commissioner that I wish to
- - -

THE COMMISSIONER: Yes, I think we need just to discuss submissions and a timetable.

MS WILLIAMS: Yes, Commissioner.

40 THE COMMISSIONER: When would you be ready with your submissions, Ms Williams?

MS WILLIAMS: Friday next week for submissions on my part, Commissioner, if that's convenient.

THE COMMISSIONER: Yes. Would that include corruption prevention recommendations?

MS WILLIAMS: It would subject to any additional material that Mr Cotman may wish to have the Commission consider. I'm uncertain as to whether he wishes to apply to - - -

THE COMMISSIONER: All right. Mr Cotman, the, the issue is basically one of procedural fairness to your client and also secondly, help to us. As I said we do not wish to make recommendations that are impractical or unreasonable. And, and you need to be able to respond to recommendations that we want to make where we disagree with you.

10

MR COTMAN: Quite.

THE COMMISSIONER: So if, Ms Williams is going to put up written submissions dealing with those issues, it really would be to everybody's benefit if your provisional attitude is made clear as to what is reasonable or unreasonable of what you know so far. Ms Williams may put in new material when, in the light of what you've done or in the light of other ideas that may surface in the next two weeks.

20

MR COTMAN: Correct.

THE COMMISSIONER: But you will have an opportunity of dealing with those if they were now incorporated in her submissions, which I hope they would be, if you'd provide an answer provisionally on those matters to which I referred within say seven days.

MR COTMAN: If we could have until Friday next week, I would be - - -

30

THE COMMISSIONER: Well that's not, but that's when, Friday next week, what about that?

MS WILLIAMS: Well - - -

THE COMMISSIONER: Just on the, on the corruption prevention matters.

MS WILLIAMS: Perhaps in that even, Commissioner, if I make written submissions on all matters other than corruption prevention by Friday next week and have a further (not transcribable)

40

THE COMMISSIONER: A further - - -

MS WILLIAMS: - - - in relation to corruption and prevention which will give me time to address Mr Cotman's material.

THE COMMISSIONER: All right. Yes.

MR COTMAN: I must say, I think (not transcribable) be informed in both directions.

THE COMMISSIONER: Yes.

MR COTMAN: And, and frankly as you've heard, Commissioner, we don't anticipate, there are a large number of (not transcribable)

THE COMMISSIONER: No.

10 MR COTMAN: - - - in respect of which we have got any violent objection.
The, the real issue for the council is to try and have a more nuanced approach to some of the - - -

THE COMMISSIONER: I accept that Mr Cotman.

MR COTMAN: And as I say, we can probably in relation to some of the matters where we think it is in fact a matter that lies outside the council's scope of control, either wholly or substantially indicate what those are relatively early in the piece.

20 THE COMMISSIONER: Yes.

MR COTMAN: We have as we were debating again at lunchtime today after yesterday's session, a relatively small number of documents principally the Codes of Conduct and the like of other like organisations and so forth dealing with the same sorts of issues as the Commission is engaging with today. A few matters of that sort which again we were going to supply to counsel assisting having regard to your observations this morning, Commissioner. And if the Commission is (not transcribable) to receive them into evidence we can then circulate them to the other interested parties.

30 THE COMMISSIONER: Yes. Although I don't think they would be interested in those.

MR COTMAN: I suspect that's right. But - - -

THE COMMISSIONER: But anybody who wants them can ask for them.

MR COTMAN: We hope it is not a significant number of documents or - - -
-

40 THE COMMISSIONER: But it would be helpful if you provide documents if you at the time suggest what's to be drawn from them.

MR COTMAN: Right, we'll, we'll supply the full document, we will mark out the parts that we, we are drawing attention to where they're germane to the, to the inquiry.

THE COMMISSIONER: Then if we could have all parties' written submission in reply two weeks after receipt of Ms Williams' submissions. It's the practice of the Commission to receive only written submissions and argument and not oral. Does anyone have any problems with that? No. And then, Mr Cotman, just to finish that off what will happen is that Ms Williams will provide her submissions on the merits, you'll provide your submissions and I presume, I'm not sure if you are going to make any submissions on the merits but if you do you'll do it at the time, the same time as everybody else. You will let us have by Friday week your
10 provisional submissions on the draft recommendations and when you receive Ms Williams' submissions, formal submissions on the recommendations you will have two weeks after that to respond to those.

MR COTMAN: That is a convenient timetable.

THE COMMISSIONER: Very well. Those will be, those will then be taken to be orders in relation to the future conduct of this matter and thank you to all for your cooperation and assistance in this matter. The Commission will now adjourn.
20

MR COTMAN: Oh, I'm sorry. Commissioner, there's one matter that was drawn to my attention while the last witness was giving evidence. In volume 2 which I gather is Exhibit 13, volume 2 of which is Exhibit 13, there appear to be a large number of documents which would be ordinarily the subject of legal professional privilege, being exchanges between the council and its solicitors in relation to the matters of concern with that volume. My instructions are - - -

THE COMMISSIONER: Yes.
30

MR COTMAN: - - - we can go through and identify to counsel assisting the documents concerned but what we would seek is an order of confidentiality - - -

THE COMMISSIONER: You want a suppression?

MR COTMAN: - - - to preserve the privilege in relation to those documents lest it be thought that we are waiving by leaving the documents in evidence unprotected so to speak.
40

THE COMMISSIONER: I don't think there could ever be a waiver because you're obliged to do it but - - -

MR COTMAN: Quite.

THE COMMISSIONER: - - - I'm perfectly happy to make a suppression order in regard to documents as long as they are identified.

MR COTMAN: We'll go through, we've tagged them and we can identify them to counsel assisting. If there's any controversy about that then we might have to deal with the Commission later but I doubt there would be. They are the exchanges with the solicitors.

10 THE COMMISSIONER: Yes. I take it that no one has any objection to that? No. Well, the order will be that there will a suppression order in relation to the documents that Mr Cotman has generically identified and in due course that order will be refined to specifically identify the documents concerned.

THERE WILL A SUPPRESSION ORDER IN RELATION TO THE DOCUMENTS THAT MR COTMAN HAS GENERICALLY IDENTIFIED AND IN DUE COURSE THAT ORDER WILL BE REFINED TO SPECIFICALLY IDENTIFY THE DOCUMENTS CONCERNED.

20 **AT 4.23pm THE MATTER WAS ADJOURNED ACCORDINGLY**
[4.23pm]