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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION DANBY

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 1 FEBRUARY 2011

AT 2.00PM

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

ASSISTANT COMMISSIONER: Thank you, please be seated.

<MICHAEL FOOK TSHUNG CHAU, on former oath [2.03pm]

ASSISTANT COMMISSIONER: Yes, Mr Downing.

MR DOWNING: Thank you, Commissioner.

10 Mr Chau, I was asking some questions before lunch about the 3 September, 2010 meeting, the second meeting at Gloria Jean's and do you recall that I, I put to you what I was suggesting you had said to Mr Armstrong in relation to a payment of \$10,000. Do you recall I put his version of the events to you?---You put the - - -

I read to you what Mr Armstrong claimed you said to him and you denied that?---Yes.

20 Can I also suggest to you that in the course of that 3 September, 2010 meeting, after that discussion there was a period where other people joined the conversation but then there was a time when Mr Armstrong spoke to you directly, that is just the two of you, and he said to you, Do you want me, do you want Tenix to pay for the printing directly, to which you said, I'd prefer to have the cash directly given to me so I can finalise the arrangements and Mr Armstrong said, I need to consider the request and get back to you. Do you agree that those matters were said?---Not true.

You deny that?---Yes.

30 Do you also recall during that same meeting that Mr Saxon Hill was a late arrival was at that meeting, wasn't he? He wasn't there for the whole thing? ---Yes.

Do you recall during that meeting there being a discussion where Mr Hill indicated that it'd be a good idea to conduct a survey to measure the extent of parking on compliance issues in Strathfield Square so the council had some strong evidence of a problem before committing to a fixed camera solution like PICS? Do you remember him suggesting that?---A traffic survey?

40 Well, him suggesting it'd be a good idea to do a survey to actually measure the extent of the dangerous parking problem?---A traffic survey?

Yeah?---I can't recall.

Well, do you recall saying to him words to this effect, No surveys are needed as, as I've already completed a report for the council's planning committee recommending that PICS be installed?---No, I wouldn't have

said the recommendation was there because like I said earlier reports can change all the time, it would be very wrong of me to say that the recommendation has been done, that PICS will be installed. What I would have said was the, I already completed my report.

And it's true, wasn't it, that you had completed you report and that the report recommended that PICS be installed?---It was for my own knowledge, not for outside knowledge.

10 I know you say that but it's true isn't it that in your mind as at 3 September, 2010 you had completed a report to council and the report did recommend that PICS be installed?---It was a draft report, things can change any time. It was only a, sort of a suggestion and it was up for discussion. There was nothing firm about it.

20 What about the suggestion by Mr Hill that you said to him in relation to his proposal that a survey be done that no surveys are needed as I've already completed my report to council recommending that PICS be installed?---I'm not sure what, which survey, we already agreed to do a camera survey and that was the extent of my responsibility for, to, to these PICS people. What other survey he has to do I have, I can't recall.

So, well, do you deny saying that that there's no need for a survey during that meeting?---Well, are you referring to the camera survey that we already agreed to?

Well, presumably it would have been a camera survey to measure the extent of the problem?---Well, we already agreed to that.

30 So you deny saying there's no need for a survey?---Well, there's no other survey that I can think of. It was only the camera survey that we already agree.

Do I take it from that answer that you deny saying that there is no need for surveys?---I do not, no, I cannot say that because I already agreed to the camera survey. I already sent an email confirming that there's, should be a camera survey so whatever survey else he's talking about I don't know.

40 Do you recall Mr Hill speaking to you during the course of that meeting or Mr Armstrong and Mr Hill about timeframes for the PICS system to be up and running?---Not at that, not at the second meeting I don't think.

Well, do - - -?---I thought it was at the first meeting I think.

Do you say there was a discussion about a timeframe for PICS to be up and running at the first meeting, that is on 18 August, 2010?---I don't know whether it was the first or the second meeting.

Do you say that council, that someone on behalf of council had set a timeframe by the first or second meeting for PICS to be up and running? ---No, you ask me did I mention anything about timeframe, I think I did either at the first meeting or the second meeting.

And what did you say about timeframe?---Well, it was just to measure how soon say if the thing was completed today everything was approved, how soon can you, can you get the thing in and it was just a timeline that I wanted to find out for myself.

10

Well, can I suggest to you that at that third meeting, that is on 3 September, 2010 you said in the presence of Mr Hill and Mr Armstrong, Council wants the cameras up and running by the end of October 2010?---No, I couldn't have said that. It would something like the timeline for myself would be, if everything is done today how soon can you fully install all, everything. It's a timeline that, a question that would be asked of me of management.

20

Do you recall being present at the inquiry yesterday when Mr McIlwaine, your counsel, suggested that what you'd said was, if council approve it today, and this was at transcript 45 line 22, if council approve it today could it be up and running in say six weeks, October 2010?---Yeah, that's the time I established for myself, yeah.

But you had no expectation or desire that the system would be up and running by October 2010 did you?---No. It was just a timeline that you got to establish.

30

But Mr Chau, you said in your evidence earlier that on the basis of all the things that needed to be done before anyone could seriously look at PICS being taken up by council, it was a matter of months?---That's right. If the whole thing was approved by end of this year to December, if anything was done on the 1st, approved by 1 December, how long can you put it in before, after 1 December? And if six weeks, well fine. That's the time I was trying to establish.

40

But Mr Chau, you had no reason to inquire about whether if council approved it today whether it could be up and running in say six weeks by October, 2010 because that was never ever, never a realistic timeframe at all was it?---No. I was, that's why I was asking them. No, I beg to differ I have to establish a timeline so that if management ask me I got my answer ready. Just a, I want to establish a timeline. It was up to them.

I'm suggesting to you that you in fact represented to Mr Hill and Mr Armstrong that council wanted it up and running by the end of October, 2010 because you wanted to create in their mind the impression that this was going to happen soon and you were going to be the person that would make it happen?---Not true at all.

Now do you recall in the course of that meeting on 3 September, 2010 having, saying some words to Mr Armstrong that the particular arrangements for Frank Ianni to go to Melbourne?---Any detail, discussion you mean?

About the particular arrangements for Frank Ianni to go to Melbourne?
---Not at all. I can't recall.

10 Can I suggest to you that later again in that meeting on 3 September, that is after the earlier discussion about the possible payment of \$10,000 and the form in which that payment might be made that you had a conversation where Mr Armstrong said to you, can we discuss the trip to Melbourne? How would you prefer to manage the payment for the trip? Do you want the council to pay or Tenix? And you said, it's best for you to pay for it. Friday or Monday is best for Frank. Can you let me know, and then you said, sorry, Mr Armstrong said, can you let me know what Frank would like to see in Melbourne. I need to brief Tenix Melbourne staff and also arrange customer representatives to make themselves available to assist with a reference visit. And then you said in a fairly quiet voice so that only Mr
20 Armstrong could hear, Frank would like a nice lunch and a massage?---No, it was, it was open discussion. And he did ask the question what would Frank want to see. I said, oh, just give him a nice lunch and then somebody broke in and said, somebody broke in and said, and a massage. And I said, oh, yeah, and a massage. And there was some laughter around the table.

Well, where do you say you were when this discussion occurred?---In the coffee shop.

30 And who was present?---Everybody.

Who's everybody?---Mr Saxon Hill, Mr Armstrong and Mr Simon Taylor, I think. Yeah.

Right. And you're saying that someone suggested that Frank would like a massage?---I'm sure I heard it, yeah.

Well, you and Frank were the only people there on behalf of council?---Yes.

40 You're not suggesting that someone from Tenix or VMS suggested that he should be given a massage are you?---Somebody said it. I don't know who.

Well you say it wasn't you?---No.

It wasn't Frank was it?---No. I said it afterwards as well.

You understood the nature of this trip to Melbourne was for in effect some fact finding to be done on behalf of Strathfield Council about the PICS

system and how it was working at Maribyrnong Council?---Was there to look at the locations not how it was working.

It certainly wasn't to give Frank a trip to Melbourne so he could have a nice lunch and a massage was it?---Definitely not.

What I'm suggesting is that you were through what you'd suggested Frank would like to see indicating that you wanted him to be taken care of while he was in Melbourne?---Not really. That's how the conversation revolve.

10

Because you were looking to take care of Tenix Solutions?---No, not at all. The discussion came up that he wanted to go to Melbourne and that's what he wanted to see.

Well Frank didn't want to go to Melbourne did he?---When he left he said no he doesn't want to go.

He never indicated any desire or intention to go to Melbourne did he?---I didn't know at that time.

20

Before that meeting on 3 September you were aware of the proposal that someone from council might go to Melbourne?---I'd forgotten all about it.

Did you have it in mind before the meeting that Frank who you were inviting along might be an appropriate person to be sent to Melbourne? ---Not at that time.

Had you spoken to him at all about it?---No, I don't think so, I can't recall.

30

Do you recall introducing Frank at that meeting as the supervisor of engineers?---I said he was the supervisor of outdoor staff.

Can I suggest you said he was the supervisor of engineers?---No, he was the supervisor of outdoor staff, that's what I said.

And I suggest to you that you said that to try and again create an impression of some seniority on Frank's behalf that he was going to also assist in making this happen through his involvement?---No, nothing like that at all. He's a respectful guy, I just say he's the supervisor of, of those staff.

40

Now, do you recall the day after, I withdraw that. This meeting was on a Friday, Friday, 3 September 2010?---Yes.

Do you recall on whether the next day, that would be the Saturday or perhaps the next working day, the Monday that Frank called you?---I, I can't recall what he said or whether he called.

Do you remember him calling you and saying that he's not going, "I'm not going to Melbourne, why do I want to know about cameras?" And you said to him, "Just go anyway."?---Yeah, but there were more words than that.

Well, do you recall him expressing why would he want to go to Melbourne because he had nothing to do with cameras?---Yeah, he said that.

And you said to him, "Just go anyway."?---No, I said, "Just go and have a look at the posts anyway, just go."

10

It was just the poles?---Yeah, just what I have all in mind along.

Did you think it might be important to someone to look at the cameras that were attached to the poles?---Eventually we'll get that from the company, yes.

But you didn't think someone from council should look at that?---Not down there, no.

20 Do you recall suggesting to Frank during that conversation that he should go on his rostered day off?---He did mention that Monday or Friday is usually his rostered day off.

Just pausing for a moment, forget what Frank said about his rostered day off. Did you suggest to him that he should go on his rostered day off? ---That's right. When he said that he couldn't go, he doesn't want to go and usually Friday or Monday is his rostered day I said, Well, just go on a rostered day.

30 Then I asked you you were intending that he would go down to Melbourne as part of his work, that is, to look at the cameras or the poles as part of his work as a council employee?---That's right.

Why would Frank want to go to Melbourne to look at a possible parking system that council might adopt on his day off?---Firstly, he's a very busy man and I thought that one of the reasons why he didn't go, didn't want to go apart from his family was because he, he was very busy on a working day. So I said, A rostered day is good, you know, I was thinking well, go on your rostered day. And secondly, I thought yes, rostered day is also good because it will save on council resources then. That means he weren't taking off a working day.

40

But he'd expressed to you I didn't want to go didn't he, he'd said that, I don't want, I'm not going to Melbourne, why do I want to know about cameras?---Yeah, that's right, that's what he said.

So why would he want to go and find out about cameras on his day off?

---Well, I already said that. Because he's a very busy man and I thought he didn't want to go on a working day, okay. And on a rostered day perhaps he'd want to be with his family. Okay. I said, Well, perhaps the other reason is it could be good for council because he might save on council resources.

Mr Chau, I'm suggesting to you that what you're telling us now about your thought processes for wanting Frank to go to Melbourne is not true?---No, (not transcribable)

10

And what I'm suggesting to you is that in fact what you were trying to do was to convince Frank to go to Melbourne so you could continue in the minds of the Tenix people the impression that you were making this happen and that you were the person that was promoting PICS within council?
---Not true.

Thank you.

ASSISTANT COMMISSIONER: Thank you, Mr Downing. Yes?

20

MR CRADDOCK: I'd like to ask the witness some questions if I may.

ASSISTANT COMMISSIONER: Yes, Mr Craddock.

MR CRADDOCK: You say that Frank was present when there was the discussion which involved the reference to a massage?---No, I don't think he was present.

30

Did you say anything to him about that?---No.

You say that in your mind the reason to have him go to Melbourne was just to, to look at poles?---The location of the poles.

What do you mean by the location of the poles?---Well, how far exactly were they from the parking area, where exactly are they in relation to telegraph poles, how they are dug up, how they are put in, whether by a sleeve or cement or whatever. There was, and how did they get around the problem of avoiding damaging any wires. That was my intention.

40

Wouldn't all of that have required Mr Ianni asking questions of people at the Maribyrnong Council?---He could be.

Well, it's obvious isn't it that it must because if, if the area around the poles had been filled in since the poles were erected it would be a bit difficult for Mr Ianni simply to look at the poles and tell whether there had been any inference or any need to avoid interference with any underground cabling?
---It was his area of expertise.

And do you say that you thought that he would be able to tell whether there was any problem with inference with underground cabling simply by looking at the ground?---No, I didn't say that.

Well, he would have to have spoken to officers are Maribyrnong Council, wouldn't he?---Well, he would have to speak to somebody of his sort of work, yes.

10 And you were simply going to send him down there if you could without any kind of briefing as to who he should speak to, what he should ask?---We haven't come to that yet.

Well, if you didn't go through the exercise of figuring any of those things out on what basis did you decide that he was the appropriate person from council to go down there and do it?---Because he does most of the work around the square and he knows where to dig and he knows precisely how they are going to be situated. He has put bollards in before.

20 He's put bollards in. Is that your answer?---No, my answer was he, he has an area of expertise. He has done work before around Strathfield Square.

Around Strathfield Square?---Yes.

What about Maribyrnong, did you think he knew anything about the way things worked at Maribyrnong?---But that's why it has to be different.

30 Is it the truth that you did not give any consideration whatsoever to any of those sorts of issues because all you were concerned about was being able to present yourself to the Tenix people as having the power or the authority to direct staff where to go?---No, not true at all.

Wasn't the obvious way of making preliminary inquiries about the situation in Maribyrnong to pick up the phone?---Yes, eventually.

40 Eventually, when you eventually pick up the phone to make basic inquiries about whether the Maribyrnong Council thought the system was effective? ---It could be any time, sir, it could be when the GM have a discussion with me, it could be when the camera survey comes in, it could be when the technical assessment comes in, it could be any but eventually it would have to be, yes.

It could be straightaway couldn't it? It could be, for example, after you attended the meeting with Mr Backhouse that since the company represented that this system worked in Maribyrnong you could simply ring Maribyrnong and say is it effective, does it work?---Oh, it has to be more than that, sir, it has to be more than a phone call.

It'd be a good start, wouldn't it?---No, I don't think so. They would be just spreading the information all around.

Do you think that rather than simply picking up the phone and speaking to someone at Maribyrnong at the cost of the STD rate for a phone call for 15 or 20 minutes it would be better to have a couple of hundred dollars expended on airflights?---The inquiry to the council would be very different from what Frank is doing.

10 But it would be a first step wouldn't it because if Maribyrnong said for example, well yes we had them installed but we're not very happy with them and we abandoned them because for example, we took one of the notices to court and the court rejected it?---The information that Strathfield Council is interested in PICS system is I think from the community and the council consideration is not something that you should spread all around. So to ring up another council without any direction or information, it's just spreading information.

20 You're not spreading information by ringing Maribyrnong, you're seeking information that might save a whole lot of time and effort if that simple preliminary inquiry resulted in Maribyrnong saying, well we don't really think it's worth much?---Eventually it will come to an inquiry. But a lot more things to ask of the council then just simply whether it works or not.

You were asked some questions about your declaration as to secondary employment?---Yes.

30 And you informed the Commissioner that you are on the roll of solicitors? ---Not now.

You're not on the roll?---No. I didn't renew my practicing certificate this year.

When was your practicing certificate due for renewal?---April last year I think it was.

40 So do you say that you decided not to renew your practicing certificate when it came due for renewal in about April of 2010?---Yes, I think so. I know I don't have one.

Prior to that I think you told the Commissioner that you practiced styled as Metrop Lawyers from about 2003?---Yes. I can't remember the exact date.

And you said that you did some matters but not, not many?---Not many, no.

You said that the practice always made a loss?---Yes, for the last two or three years.

The last two or three years?---Yes.

What about prior to that?---I can't say one way or the other, but I do know, remember very clear the last two or three years and other times, you know, I can't remember. But I can definitely say definitely the last two or three years, definitely.

10 During the whole of the time that you practiced as Metrop Lawyers and as the principal of Metrop Lawyers, is that right?---Yes.

Did you pay professional indemnity insurance to LawCover?---Yes, I think I did.

The premiums would have been in the order of thousands of dollars per year?---It's on a sliding scale, so - - -

Yes. That's right?---It's zero to 10,000 and 10,000 to, or is it zero to 50,000, I'm not sure.

20 So you were paying thousands of dollars per year in professional indemnity insurance?---About 2,000 a year.

About 2,000 per year?---I'm not sure. I have to check.

And I take it that you premises?---Yes.

And you were paying rent?---Yes.

30 And you had employees?---No, just one casual.

An employee?---A casual employee.

And was that person a licensed conveyancer?---No.

What work did that person do?---Take phone calls, open mail, make appointments to see other solicitors if, if it is outside work.

So you were - - -

40 MR McILWAINE: Can I object at this stage. Again, it's a terms of reference to this inquiry. This first point seems to be going well beyond the terms of reference. And secondly I don't see how it advances the interest of Mr Craddock's client to ask these questions. We now seem to be performing the role of the Law Society in examination of Mr Chau's conduct.

ASSISTANT COMMISSIONER: Yes, Mr Craddock, I presume, are you interested in a failure to appropriately declare secondary employment to the council?

10 MR CRADDOCK: Well, that, yes, but this is not our inquiry this is your inquiry and the only relevance of it is not to anything that is purely in the council's interest but rather the Commission's interest in determining questions of fact which are hotly contested where there is available a body of evidence which enables you to make an assessment of the credibility of
10 the witness having regard to written declarations that he made when not at risk by comparison with what he says here when tested by cross-examination. It is, I would submit, relevant to assess his credibility in ways which will assist the Commission to decide the questions of fact that are posed before you.

20 ASSISTANT COMMISSIONER: I agree in respect of anything that's false in the declaration about secondary employment which he's already been taken to. I must say the questions about employees et cetera seems to be going beyond even the scope of what may have been false in the secondary declaration.

MR CRADDOCK: It goes to a particular series of answers that he gave as to whether the declaration was if not strictly technically correct then certainly understandable in the sense that he asserts that he got no money.

ASSISTANT COMMISSIONER: Yes, but again I don't see how the details of whom he was employing and what their skills were go to that.

30 MR CRADDOCK: Let me be frank about this. If you, Commissioner, think that it's a little too far away to be of assistance to you then that's the end of it because it's useful if it assists you, it's not for any private purposes of my client.

40 ASSISTANT COMMISSIONER: I must say on the issue, the relevant issue in question my preliminary view is that Mr Chau's responses that he was entitled to say he wasn't getting paid because he made a loss has no viability at all. He's obviously admitted he was getting paid by clients which on the face of it at this stage seems to be a false declaration so I don't think going into the details of it will assist.

MR CRADDOCK: Then let me approach one aspect of his evidence about that which at least to me seemed a little unclear and if it wasn't unclear to you then either you or counsel assisting or Mr McIlwaine will stop me fairly smartly. You, you said to the Commissioner this morning that you made no money and you made a loss, is that right?---Yes.

But is it the case that you were paid by clients?---Yes, they paid for, yes.

They paid for the legal work that you did for them?---Yeah.

And is it the case that you were in fact paid a salary by the practice Metrop Lawyers?---No, I don't receive anything. Like I said we're making a loss.

Are you saying, let me be perfectly clear about this, are you saying that you did not yourself ever receive any money as a consequence of undertaking the legal work that you did for Metrop Lawyers?---Well, like I said the clients pay yes, but because we are making a loss I never got paid.

10

Are you saying you got no money, you did not ever receive any money?

MR McILWAINE: There's a difference between money - - -

ASSISTANT COMMISSIONER: I mean it is a fairly difficult concept to put in that way because he's talking about terms of profit and loss and drawings.

20

MR CRADDOCK: That's why I want to separate those.

ASSISTANT COMMISSIONER: Could I just clarify though. You now seem to be saying that you're only sure that it was in the last two or three years that you made a loss?---Yes.

Is it possible that in the preceding years you were making some money out of it as in profit?---I can't be too sure, I have to check but I cannot remember at one single stage where I received a salary or payment at all. I have to check.

30

In the years where you didn't make a loss if there were any what would've happened to any surplus funds?---Just the practice is really, really small, we, you know, tried to make ends meet and there's absolutely no payment to me. I can't recall.

Yes. I don't really think there's any point in pursuing this.

MR CRADDOCK: Thank you.

40

ASSISTANT COMMISSIONER: There are other avenues to obtain information if necessary and I do think the relevant issue at this stage for me is that he has accepted that he was paid by clients for the work. Whether or not he made a profit at the end of the year is another issue altogether.

MR CRADDOCK: Yes, thank you. Now, you told the Commissioner that you also maintained a registration as a migration agent?---Yes.

I think you also told the Commissioner that you would speak to people in the course of your work for the council who would ask you migration related questions?---Not, not frequently, not all - - -

Whether or not frequently did you not tell the Commissioner that you would speak to people in the course of your duties for council who would raise migration related questions?---Yes.

10 And did you tell the Commission that you would just tell them to go and see a migration agent?---Yes, I would often refer them to other migration agents.

20 Why on earth did you need a migration agent's registration at cost to you no doubt if all you were doing was simply referring people who made inquiries to migration agents?---To protect myself against any allegation that I'm giving migration advice because in the migration section, Act there's a section there to say that you must be a registered person to give any sort of legal advice and there's a dispute actually whether such advice include written, verbal or even ticking a box on a form, on the form. So I said, gees, you know, gets very strict so I better just register myself in any case.

So you thought you had to be registered as a migration agent in order to be able to tell people who made inquiries of you you should maybe see a migration agent, I'll give you a referral?---When I know what their problem is, yes. They often say I've got a (not transcribable) who wants to come from overseas. I said, Is that the problem? Yes. Well, that's migration advice. So I said, Okay, go to a migration agent.

30 You say that even listening to their problem and making a referral to a migration agent constitutes migration advice which registration is obligatory?---When I ask them what the problem is I thought that they would be asking, you know, advice or giving advice.

At one point you told the Commissioner that you informed Mr Redmond that you had had a meeting with the PICS people?---The very first site inspection, yes.

40 Did you report, was that the one on 27 August?---The very first meeting, our first site inspection.

Did you report to him upon the meeting of 3 September?---No.

Is there any particular reason why you informed him of the 27 August meeting but not the 3 September meeting?---I just happened to walk past his office on the first meeting of the 27th so I said, I better tell you. So I did.

So it was merely coincidental?---Yes, I just told him, I said, yep, I just went for a site inspection with the camera people.

There was in fact, if your version of events is correct, a very good reason to report to him the fact that you'd been to the meeting on 3 September, wasn't there?---No.

According to you Mr Armstrong raised the question of making a donation and you indicated to Mr Armstrong that that could be facilitated by you?
---No, I said you give it to me or give it to Mr Scott, give it to Mr Scott or give it to me.

10

But you told the Commissioner than you were facilitating that or you're prepared to facilitate that?---That's what I was doing, yes.

Wasn't that something that you thought that you needed to inform Mr Redman about?---Definitely if it happened, yes.

Well, what happened according to you was that the offer or the suggestion of the payment was made by Mr Armstrong?---Sorry, what did you - - -

20

You say that what happened was Mr Armstrong suggested that he would make a payment, he would make a donation?---I asked him and he said, I asked him and he said it shouldn't be a problem or something like that.

But it was proper, wasn't it, to report back to your superiors?---If it happened, yes.

No, not only if the money changed hand, it was proper wasn't it to report to your supervisors the fact that there had been a discussion about money?
---No.

30

Now you concede that the first mention of the figure 45 per cent came from you, don't you?---Yeah.

You say that it was just a discussion, don't you?---Yes, discussion.

Yeah. The proper thing to do in the circumstances I put to you was to say I have no authority to talk about money?---It was just discussion.

40

I'm putting to you and I want your direct response to my question that the proper thing to do in the circumstances was to say I have no authority to discuss money?---It was just discussion. If it was a formal request, yes, then I'll say it but it was just discussion.

Do you concede that the proper thing or do you deny that the proper thing was to say I have no authority to talk about money?---I can't answer yes or no to that question. Like I said, it was not a formal discussion. If it was a formal I would definitely say it. It was just informal discussion.

What did you say to Mr Armstrong or anybody else at the meeting that would lead them to understand that the discussion concerning money was (1) only informal and, (2) a discussion where you had no authority to bind the council?---Sorry, I don't understand the question.

What did you say to Mr Armstrong, if anything, that would lead him to understand that it was just an informal discussion?---Because we were there for a site inspection and nothing else.

10 What did you say if anything to Mr Armstrong that would lead him to understand that you did not have any authority to deal with the company with respect to the question of money?---I don't understand the question.

Are you sure you don't understand the question?---Yes. I don't understand that question. I already told you it was discussion and it was purely a site inspection on the day.

But let's just go back a step. You were called to a meeting by the general manager, weren't you?---The first meeting.

20

Yes, on 18 August?---Oh, it was through Ms Linda Seeto.

Whether it was through Ms Linda Seeto or someone else doesn't much matter, you ended up in a meeting with the Tenix people and VMS people, didn't you?---Yes.

There was the general manager and you and other senior managers?---Yes.

30

And the Tenix people knew that you were senior staff?---I don't know.

It would have been obvious, wouldn't it, to anybody at the meeting, obvious to the Tenix people that they were dealing with senior staff of the council? ---I don't know, I can't say.

40

And then, however it was initiated, whether you made the call, whether Mr Armstrong made the call, that doesn't matter. You were next having a meeting with them and there was nothing, was there, coming from you to them to indicate what your level of responsibility was?---Yeah, I told them I was there to help them set up this camera, do a site inspection and do a camera survey. That's what they wanted.

There was nothing said by you which would be likely to indicate to the people that you were dealing with that your authority on behalf of council was very limited indeed, was there?---Never, no, I was there to do a site inspection and to help them set up the camera, other discussion were all informal.

Now, you wrote a report and you wrote it after the first site inspection but before the second site inspection?---I wrote it on either Tuesday or Wednesday.

Yeah. And I think you've conceded that you told somebody I've completed my report?---I did.

But you've told the Commissioner that it was only a draft, I think you've said that many times today, it was only a draft, isn't that right?---Yes.

10

Well, why would you tell anybody else, especially somebody outside council, that you had completed your report?---Yeah, they - - -

Why did you do that?---Well, because I did have a report. I can't say I did not do a report.

Well, nobody said to you have you completed a report did they?---I said I, I did a report.

20

Did anybody say to you have you completed your report?---No.

Well, why did you have to say anything about it at all?---Yeah, I said I completed a report.

No, why did you have to say anything about having done a report?---I just wanted to tell them that I did one.

Well, why did you want to tell them that you did?---Why, I just did.

30

Was it because you wanted to convey to them that you were onsite, that you were backing them up, that you were moving this right along?---No, I just said I did a report, that's all.

You can't think of any reason - - -?---No.

- - - why you would say that?---No.

The report wasn't a proper report to go to council, you conceded that?
---Yes.

40

It wasn't a proper report to go to the general manager either, was it?---I cannot agree with that.

Well, wasn't it apt to mislead a reader?---No, it was just here to remind the general manager that I have done this and that was it.

Remind the general manager that you have done this?---Yes.

Done what?---Just follow up with the PICS people.

But the report doesn't say that, does it?---No, but it shows that I selected some locations and so on and so forth.

In the main doesn't the report do no more than demonstrate that you could transcribe things on the pamphlet over to a report?---That's right, we have to remind the general manager what it is all about as well.

- 10 I thought you said to the Commissioner that the report was essentially to remind yourself about it so that you didn't forget?---That too, it was a tool to remind myself as well what I had done.

Why do you need that? I mean, you had the brochures didn't you? Why, why did you have to transcribe them into a report to remind yourself about what Tenix was about when you had the brochures?---Because in the report it says the location that I was there, there's three or four locations that I have been there that, to remind me that I have been there, that I showed them there.

20

Commissioner, could page 71 of Exhibit 1 be displayed on the screens?

ASSISTANT COMMISSIONER: Yes.

MR CRADDOCK: Just to remind you this is your report?---Yes.

There is an email that referred to draft report, but you don't say draft in this document do you?---We don't, we don't say that.

- 30 ASSISTANT COMMISSIONER: To be fair he does say it in the covering email.

MR CRADDOCK: Yes. Under the heading Report, the second paragraph under that heading reads, the danger is actually escalating in the Strathfield town centre also creating traffic congestion especially during the late afternoon and early evenings. Now you can see that that appears there? ---Yes.

- 40 They're your words?---Yes.

You hadn't carried out any investigation to determine that there was an escalating danger had you?---No. But can I add something on that?

Yes?---Meaning the town centre late at night for festivals, when we close off the road. And when we open the roads again, you could see the traffic is chaos. So we know from personal first hand observation and from other information from other council officers that there is a danger there. It's going up and increasing and also traffic congestion and, sir, if you go down

there today at 7 o'clock or between 6.00pm and 7.00pm, it's chaos down there.

Okay. But you say that the danger is actually escalating?---It is getting worse every day.

In the second last paragraph on that page commencing Tenix Solutions, you read that to yourself?---Yes.

10 You say to the general manager by way of this report that Tenix is the only company in the world who does this?---That's straight out from their literature.

So you just accepted that as being a fact?---That's what they put out. That is what we do in reports, we actually - - -

You just accept that it was being accurate?---No, I didn't accept that, I just reported it. That's all.

20 On the top of the next page you write, it is considered that at this present time PICS is the most appropriate and beneficial to council?---Yes.

Well isn't that apt to mislead a reader?---It's only a draft report, sir.

Well why doesn't it say, we ought to investigate the question whether this is the most appropriate and beneficial system that council could obtain?---Yes, that would come later, definitely.

30 You go on to say the system is the only proven parking safety cameras enforcement solution in Australia used for the enforcement of safety related offences. Again, is that just something that was in the brochure that you just copied?---I believe so. I can't remember exactly.

Isn't that apt to mislead a reader?---It's only a draft report, sir.

40 What is proper to do and what you didn't do was to set out a document that indicated the investigations that ought to be carried out before anything firm could be said about the Tenix system?---It was what we were going to do when we have formal discussions with management, when we follow up things, we do independent assessment, yes, that's what we have to do.

Why would you write a report, which on the face of it says look go ahead with this, rather than write a note up your line of management saying, we've had a site visit, this is what the company has said so far. Here's a list of things that ought to look at in order to determine whether this is appropriate?---Because all the other departments haven't put their input in. This is only my input.

You made some reference to a question of controversy?---Yes.

Why not make a heading in the draft the question of whether this would be acceptable to the ratepayers is a matter that needs to be investigated?--- That's up to another meeting whether I should put it in or not.

10 Now you indicated on in the way that you describe the 3 September meeting, that you said to Mr Armstrong that either he could give the money to Mr Farlow or he could give it to you?---He can give the money to Scott or to me.

Yes. Well what if he pulled \$10,000 in cash out of pocket what would you have done then?---I can't answer that because it didn't happen.

Well would you have given him a receipt?---I would have reported it. But like I said it didn't happen.

20 ASSISTANT COMMISSIONER: I'm sorry, why would you have reported it?---Sorry?

You were in fact invited him to give you the money weren't you?---No. He - - -

You were saying he could give it to Mr Farlow or you?---Give it to Scott or to me, yes.

So that obviously meant you were willing to accept the money and pass it on?---Yes.

30 So why would you have reported it if he acted in accordance with what you said and given it to you?---Well, I just have to report to my supervisor that I pass on some money to, you know, somebody else on behalf of this company. That's what I have to do.

Yes.

40 MR CRADDOCK: Now I think at one point you told the Commissioner that you prepared the report to record what you knew so far?---As a tool to remind myself what I've done.

And this afternoon after the luncheon adjournment counsel assisting asked you some questions about determining a timeline?---Yes.

And you said that it's something that you had to establish so that if management ask you could tell them?---They often ask me, yes.

Why wouldn't you put that in the report?---Because it was up for discussion. That's what it is. Normally they would ask me verbally what do you think,

you know, how soon can they do it. And that's my answer, I got it ready. It shouldn't be in the report. It's not necessary.

Thank you, Commissioner. I have no further questions.

ASSISTANT COMMISSIONER: Thank you, Mr Craddock.
Mr McIlwaine?

10 MR McILWAINE: (not transcribable) Commissioner. Could the witness be shown page 32 of Exhibit 1. Now, Mr Chau, that document's headed Community Services Staff in our Register?---Yes.

That's a document that you complete to indicate when you're out of the office and what duties you're attending to?---Yes.

And down the bottom you'll see Manager, Community Services and also Director, Community Services place for signature, is that correct?---Sorry, what was that?

20 Down the bottom firstly on the left-hand side there's a space for a signature Manager, Community Services?---Yes. Yes.

Space for signature Director, Corporate Services?---That's right.

And Director, Corporate Services as at 27 August 2010 was Mr Neale Redman, is that correct?---Yes.

30 Now, if you go to your entry for that day, the second entry could you read to the Commission what that says?---Yes. Strathfield Square – PICS Camera 10.10 to 11 o'clock and then the vehicle that - - -

All right. And is it your understanding that these, this register is provided to your supervisor on a fortnightly basis, is that correct?---That's right.

And available to him to inspect to see what you've been doing?---Yes.

And if you turn to page 83 of the same exhibit could be brought up. Now, that's the entry for 3 September 2010?---Yes.

40 And the, could you read to the Commission the second entry under Reason for Leaving Office?---Site inspection – and it's Strathfield Square, that's shorthand for Strathfield Square.

Is that a reference to the meeting which there's been a lot of evidence about today with representatives of Tenix and others, is that correct?---Yeah, the second meeting.

And so certainly you made no, and also you had a diary, is that correct?

---Yes.

And that's your personal diary?---On my desk, yes.

That's retained on your desk. And perhaps if the witness could be shown page 81, Exhibit 1. The entries of 3 September, 11.00am, Tenix, Simon Taylor, that of course is a reference also to the meeting that took place, site inspection as you described it took place at Strathfield Square on that day?
---The site inspection because I was there to meet Simon Taylor as well.

10

And whilst that document is your personal diary it's left on your desk, is that correct?---Yes.

So if someone came into your office to try and find out where you were it would be available to them, is that correct?---Yes.

Nothing further, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr McIlwaine.

20

MR DOWNING: That completes the witnesses. There is the transcript of Mr Chau's compulsory examination which I can hand up. It's been tendered, I think we had an exhibit number (not transcribable).

ASSISTANT COMMISSIONER: It's Exhibit 15.

MR DOWNING: I'm not sure if you had a separate copy of it so I'll hand it up.

30

ASSISTANT COMMISSIONER: Thank you.

MR DOWNING: But other than that, Commissioner, that completes the evidence.

MR McILWAINE: Can I just raise one matter, Commissioner.

ASSISTANT COMMISSIONER: Yes.

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MR McILWAINE: I'm not aware whether there's any other compulsory examination of any other witnesses who have been called because there'd be no reference to it but if there had been I'd be asking that they also be made available.

MR DOWNING: Commissioner, I can indicate that the only other witness with whom there's been a compulsory examination was Mr Ianni. Given the nature of his evidence I'm not intending to tender the transcript.

MR McILWAINE: I don't seek his cross-examination, Commissioner.

ASSISTANT COMMISSIONER: You don't wish to? No. I think there's nothing else. Nothing else?

MR DOWNING: There isn't.

ASSISTANT COMMISSIONER: No. All right. In terms of submissions, I'm sorry, I'll excuse the witness before we got onto that. Mr Chau, thank you, that is the end of your examination, you are now excused?---Thank
10 you.

Thank you.

THE WITNESS EXCUSED

[3.05pm]

ASSISTANT COMMISSIONER: Yes, Mr Downing, I was thinking in view of the relatively short compass of the evidence perhaps a week for
20 your submissions.

MR DOWNING: Could I just ask for the end of next week, I just have some court commitments for the rest of this week which will make it hard for me to get very far.

ASSISTANT COMMISSIONER: End of next week.

MR McILWAINE: Me too, I'll have them next week.

30 ASSISTANT COMMISSIONER: All right. And then would a week be enough for you for any response?

MR DOWNING: I think so, Commissioner.

ASSISTANT COMMISSIONER: Do you think you'll be making any submissions, Mr Craddock?

MR CRADDOCK: I may do but if I do a week at the outside would be - - -

40 ASSISTANT COMMISSIONER: All right. We'll say counsel assisting's submissions by next Friday and any submissions in response by the following Friday. Yes, thank you, this inquiry is now adjourned.

AT 3.06pm THE MATTER WAS ADJOURNED ACCORDINGLY

[3.06pm]