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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 1 APRIL, 2010

AT 2.05PM

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ASSISTANT COMMISSIONER: Yes. Please be seated.

<PASQUALE HENRY ROMANO, on former oath

[2.05pm]

MS RONALDS: Mr Romano, did you have an opportunity to look through Exhibit 78 over the lunch time?---Yes.

10 Do you agree that some of those emails are you giving directions to Mr Child about things to do. Would you agree?---Yes. Instructions to approach trades people and material type issues, yes.

Do you have a copy of 78 with you in the witness box?---Yes, I do.

Could I ask you to turn to page 45. You see that there's some handwritten page numbers down the bottom of the page?---Yes.

20 And if you turn to number 45, please. Now you know who Mr Martin is?  
---Yes. I do.

And he raised with you didn't he, some concerns he had that he shouldn't, in essence what he's saying is he's doing, he worked for the Council, and he didn't think he should be working on something of yours personally as well as Council work?---That's correct.

That's his view isn't it?---Yes, it is.

30 Now you say to him, Martin, now, his first name is actually Andrew isn't it?---I got it confused, yeah.

I wish to advise you I'm not an owner of this property?---That's right.

Now you considered that an appropriate response did you to his raising of a concern about a conflict of interest?---At the time it was my belief that because I wasn't an owner that there wasn't a conflict, yes.

40 Well, why didn't you say to him, my wife is an owner of that property and I am actively engaged in the renovation of the property, in organising work to be done on it?---I don't know that that was something I was trying to hide. I just responded to his email.

But Mr Romano, I'd suggest to you that it's clear you are trying to hid your involvement isn't it?---No, I disagree with that.

Well, you say I'm not an owner. Now, I don't want to get into an argument about whether you are in fact an owner in some way or not, but do you agree that your wife is a part owner?---I agree with that, yes.

Why didn't you tell him that?---It didn't occur to me at the time. But it doesn't mean that I was trying to hide anything.

Why didn't you tell him that you were engaged as at September, 2008 in the process of renovations?---He was aware that the agents were actively involved in renovations.

10 Well, why didn't you tell him you were doing that?---Sorry?

Why didn't you tell him you were doing that?---He knew. He was aware of that.

Why didn't you confirm that you yourself were undertaking tasks in relation to the renovation of the property?---Well, it didn't occur to me, but I was responding to his concern. And in my mind I didn't think I had a conflict.

Could you turn to page 2?---Yes.

20 Do you see that?---Yes.

It's an email from Mr Fasanella saying, how's it going? All is well. See you soon. Back at the end of the long weekend. Can you give me an update on, as to how Edwin Street is going? So it suggests as at 2 June, 2008, Mr Fasanella was not playing a particularly active role. Would that be correct? ---He was away. I think he was out of the country at the time.

And then you answered him. Do you see that?---Yes.

30 Unit 2 has vacated. Gave, Vera gave Albert keys on Monday?---Yes.

Met with Steve, and you'd agree that's Mr Child?---Yes, absolutely.

And Albert?---Yes.

Mr Becerra?---Yep.

At Site yesterday?---Yes.

40 That's the 2<sup>nd</sup>?---Yes.

Steve is commencing, Steve to commence stripping unit this week. So at that time, in your view, Mr Child was going to do some work?---No, poor choice of words on my part. He was organising the stripping.

Poor choice of words you say?---Yes.

Have given him an eight week deadline for the entire project?---Yes.

And that reflects what you've done doesn't it?---Sorry?

That reflects what you did?---We talked about a timeframe that we wanted the works to be completed in, yes.

And you'd given him an eight week - - -?---Well, it was a general discussion amongst the three of us, yes.

10 And at the same time there were concerns being raised about the hours Mr Child was working. Mr Child was working at his Burwood Council job. Do you recall that?---I do recall that, yes.

I'll show you this document. You see that starts with an email from Mr Macklin on 30 May, 2008. You see that?---Yes.

And you're included in that loop?---Yep.

20 And then there's one to you, a copy of Mr Macklin, it was all about Steve Child. I won't read it out but just take a second to read through it. You'd agree that it is all about Mr Child's work, Mr Child's working hours?---Yes.

And concerns about that?---Yes.

And Mr Macklin says doesn't he on the first page in the middle, "The bottom line is Steve is doing two shifts in one day, this is impossible to sustain."?---Sorry, where, where is that, Counsel?

30 On the first page in the middle of the bottom email. You see that? The bottom line?---Yes, yep, yep.

So that on 1 June, 2008 members of the executive, Mr Macklin and yourself are discussing the long working hours of Mr Child and on the same day or within 24 hours you're giving Mr Child an eight week period to complete the work?---It was a general discussion around an eight week period for the project, I wasn't instructing him to complete the work, there were a number of us involved.

40 Well, just go back to your own words, Mr Romano?---Yeah, I understand that the words - - -

"Have given him an eight week deadline for the entire project." It's pretty clear isn't it?---I would believe so, yes.

Unequivocal?---I'm not going to argue on that basis.

And at the same time you are noting that there are concerns internally about the hours he's working for Burwood Council?---I believe the email that Mr

Macklin sent was in relation to excessive hours that Mr Child had done a lot prior to the date of these emails. He was referring to work, I believe, possibly in May that Mr Child wasn't involved in and maybe even early June. I don't believe that he was doing those hours in around the days that these emails were sent.

10 Mr Romano, just read the email, I don't want to waste time on it but it says, "Pat, yes, I think Steve understands the need to ensure he has appropriate breaks." Do you see that?---Yes, we both had discussions with Mr Child about not having back to back shifts and having breaks.

And at the same time you're giving other work to do for you?---My, my reference and Peter's reference in these emails were in relation to any future work that he might be doing. I don't believe, I don't believe that he was running back to back shifts at that point in time.

20 And at the same time you've given him an eight week deadline to complete the work on some units in which you have some form - - -?---We equally all had the same timeframe applied it wasn't just for Mr Child.

I have nothing further at this stage. If I could tender the email about the working hours, the last, the top email is 3 June, 2008 from Romano to Macklin.

ASSISTANT COMMISSIONER: That will be Exhibit 104.

30 **#EXHIBIT 104 - EMAILS FROM PETER MACKLIN AND  
RESPONSES COMMENCING 30 MAY 2008 - SUBJECT: STEVE  
CHILDS**

MR HANLEY: Counsel Assisting, I will have some questions but I'll reserve my - Commissioner I'm sorry. I will have some questions of the witness but I'll reserve mine.

ASSISTANT COMMISSIONER: You'll reserve. Does anyone want to ask any questions at this time of Mr Romano?

40 MR NEIL: Commissioner, I would like to ask just a few questions at the moment if I might. It will only take two or three minutes.

ASSISTANT COMMISSIONER: Yes.

MR NEIL: Thank you. I'll go to this microphone here. Mr Romano, I appear for Mr Baird just so that you're clear. Could I please show Mr Romano Exhibit 100. You looked at this earlier, Mr Romano, minutes of a

meeting of the Board Executive Legal held on 22 February this year - - -?---  
Yes.

- - - a number of matters were discussed but do you recall, although it is not recorded amongst the persons present, that there was a young lady from HWL Ebsworth who was the minute taker at this meeting?---No, look, I can't remember the details of the meeting or who exactly was here but I take your word that she was there.

There was a minute taker, do you recall that much?---Possibly, yes.

10

All right. Now, can I take you to page 2, to the heading ICAC Investigations insurance claim and taking into account the whole of the content under that heading, I go to the last paragraph on page 2 commencing Mr Dencker raised, do you see that?---Yes.

And it records Mr Romano did not consider it necessary to give any information to ICAC unless it is required under legislation on the basis that this is an issue between Mr Romano and his employer?---Well - - -

20

The next sentence, wait please, Mr Baird advised that there is no such requirement under legislation?---Yeah.

Now, may I suggest that your position on this point was that you were an employee of Burwood Council, the question of whether the existing insurance policies in terms of an ICA investigation covered the costs of the counsel and/or the costs of Burwood employees was a matter that was under consideration?---I, I don't believe that that paragraph accurately reflects the discussions that occurred. We, I don't believe that we were talking about an amended policy. I believe we were talking about correspondence that I had received on, I think the company's called DLA Phillip Fox through HDY who represent me at the moment. We, we talked about the deficiency in the policy and the existing policy of Council for the C and O arrangements but my comments were specifically in relation to the letters that HDY had received on my behalf, not in relation to the policy.

30

Your personal lawyer at this time for this matter was Mr Stephen Gorry of Henry Davis York. Is that so?---Yes.

40

Now, as for this penultimate sentence of the last paragraph of page 2, what do you say about the accuracy of that statement?---Sorry, can you repeat that please.

Yes, the second last sentence of the last paragraph on page 2 commences Mr Romano did not consider it necessary. What do you say about the accuracy of that sentence?---I was referring to the letter that I had, well, had been discussing that HDY had received from Council's insurer.

Was it in the context of the discussion on that letter that Mr Baird advised that under the legislation there was no requirement for this particular matter to be disclosed to the ICAC?---I believe that he was specifically referring to that letter, not Council's policy.

All right. Now, could I take you over the page to the last paragraph under the heading we were discussing, the ICAC Investigations commencing Mr Dencker. Do you see that?---Yes.

10 Do you remember that towards the end of the meeting you were asked to leave the meeting by Mr Baird?---Yes, that's correct.

And you left the meeting?---That's correct.

And may I suggest to you that you were not present during the subject matter identified in that last paragraph of this topic, Mr Dencker is to discuss some confidential issues relating to his ICA interview with Mr Barakate?---That's correct. These minutes, although they generally give a description of what occurred at the meeting, aren't really in detail  
20 accurate.

Okay. But the fact is that Mr Baird made known to you his wish that you leave the meeting at this point of the meeting because he considered, as he made known to you at the time, the discussion about to take place may involve some conflict between him in his role as the legal adviser to Burwood Council and you in your role as its General Manager?---Yes, I believe that what you're saying is entirely true.

30 Thank you. Now, a question was asked earlier on about the high level of Maddocks legal charges. Do you recall that?---Yes, I do.

Is it correct for me to suggest to you that both while at Maddocks and at HWL Ebsworth, Mr Baird raised with you on a number of occasions his concern that the high level of legal costs being incurred by Burwood Council?---I don't know that I would put it that way.

40 How would you put it?---David and I had a number of discussions over the years about legal fees. I had question to, discuss with him some of his invoices from time to time. I did scrutinise invoices on a periodic basis and he wasn't excluded from that process. And there were a number of times where I expressed concern about what he was charging for or the length of time that he was charging for on certain issues. And I do believe in, in some of those discussions he may have conceded that their costs were of a high order on, on some issues. He, he did also say generally that he didn't want his firm or his reputation brushed with a view that they were getting a lot of work from us. We had those discussions.

At that time and perhaps now Burwood was the second smallest Council in New South Wales?---I would agree with that.

10 And Mr Baird made comment here from time to time that the level of Burwood Council legal costs was high in his experience compared with larger Council's for whom he acted?---No, I don't agree with that. I disagree with that entirely because you need to put those legal fees in context. Burwood Council, in the last four to five years, has been engaged in probably one of the biggest capital programmes it's ever experienced in the last 100 years. Part of that capital programme involves the biggest project that the Council has ever undertaken. That's our civic precinct library project. The value of that project is in the order of 80 \$90 million, it's quite significant. In itself that project commanded, I would believe at a guess, three quarters of the fees that were spending on legal fees on an annual basis. So, I disagree. I think that given the scale of the project and the other projects we have within our capital programme that he was a part of, I don't think that was an unreasonable amount of fees to be charging. If we didn't have that programme, if the library project wasn't in existence, then I would agree with you.

20

Mr Baird was heavily involved in the library project. Correct?---He was a significant advisor in that group or in that project.

And while at Maddocks and HWL, heavily involved in a number of other major projects for Burwood Council?---Yes.

30 Now, is it correct for me to suggest that there were times when Mr Baird and his team, whether at Maddocks or HWL, were acting on between 15 to 20 large matters at the one time for Burwood Council?---I don't know that I can answer that accurately. I don't believe, look I'm not sure that it would've been in the order of 15, but, but there were a number of projects that he was working on.

And the library project of them all was by far the biggest?---Absolutely. He spent a significant amount of time at Council and in his office with me, without me on that project.

40 And the library project extended over a very lengthy period?---Probably four to five years.

Yes. In other words, a large part of the time that Mr Baird was doing legal work for Burwood Council while you were General Manager?---Yes, I believe that's an accurate statement.

Can I just ask one other question, I'm sorry, I forgot about it, Exhibit 100, not about the document itself, but just about Mr Dencker. His general position at February this year and some time before with the Council was the Director of Planning. Is that so?---That's correct. Yes.



But at this particular time, February, 2010, he was also acting was he not in the role as General Manager for the purpose of the ICAC investigation?  
---Both Mr Dencker and Mr Hullick were sub-delegated by me for various aspects of ICAC investigation, the roles of Acting General Manager, yes.

Was that so that Mr Dencker and or Mr Hullick would have responsibility for the oversight of that role rather than yourself?---That is correct. It was a deliberate decision to distance me from that process.

10

And is it also the case that at this time and for some period before Mr Dencker was Acting General Manager on the same basis in respect of worker's compensation claims brought against Burwood Council by Mr Cummins and a number of depot workers?---I'm not sure whether it was Dencker or Mr Hullick, but one of the two had that responsibility. I'm not sure.

Did you assign whoever it was to that role for the same purpose you've just described re, the ICAC investigation?---Yes. That was the exact reason.

20

And may we take it that those steps that you took with respect to Mr Dencker and Mr Hullick were made known by you to Mr Baird?---Yes.

Now this meeting of 22 February, 2010, was held in the city at the HWL offices. Is that so?---I believe so, yes.

And when you were requested by Mr Baird to leave the meeting, after you did so did you then go straight on to see Mr Gorry?---I'd have to check my diary. I'm not sure.

30

You don't recall?---I could have, but I'm not sure.

At about this time, is it correct for me to suggest that you were consulting Mr Gorry from time to time as you considered necessary about your own personal position in relation to allegations that you believed were under investigation, allegations concerning you that you believed were under investigation by the ICAC?---He was acting on my interests were issues that may have involved Burwood Council, for example, the worker's comp matters. So I was, so that there wouldn't be any question in my mind or other peoples minds in terms of conflict and other matters that might arise involving those Burwood Council matters. As well as my own personal interest.

40

And am I correct in suggesting that Mr Gorry is a solicitor who you selected out to act for you in that capacity?---Yes.

Now just in terms of the chronology, when was it that you first instructed Mr Gorry?---I can't recall the exact date. But I made a number of calls, I

think it might've been the Friday prior to the Sydney Morning Herald articles coming out, which I think were on the 4<sup>th</sup>. I didn't actually speak to Mr Gorry on that Friday. I left a number of message. Sorry, I apologise, I may have spoken to him on that day, but I can't recall. But I did leave a number of messages with him. And another, another two law firms. I eventually selected Mr Gorry for the purpose of representing me on a number of issues. My first meeting with him was on that weekend. I don't know whether it was a Saturday or Sunday.

10 And since then Mr Gorry has continued to act for you and is still acting for you now?---That's correct. Yes.

I have nothing further. Thank you, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Neil. Well, Mr Romano, you may stand down now.

THE WITNESS STOOD DOWN

[2.29pm]

20

ASSISTANT COMMISSIONER: Oh, yes, Mr Baird (not transcribable) remaining on the

MS RONALDS: Can the witness be shown Exhibit 36. Mr Baird, do you recall last time you were here we were looking at a statement that you prepared and sent to this Commission on or about 17 December, 2009 and you referred did you not to a handwritten contemporaneous note that you took immediately after Mr Romano left you following a conversation on 17 December, 2000-and - - -?---A handwritten note that I wrote personally after  
10 the interview, yes.

And I'll just show you this document. Now, just handed you a copy of a handwritten document on HWL Ebsworth letterhead dated 17/12/09 at 3 o'clock, 3.45, no units headed Burwood. That's your handwriting?---It is.

And is that the note you referred to last time you were here?---Yes.

And is it correct that you produced that and provided that to the Commission this morning?---Yes.  
20

Thank you. If I could tender that note.

THE WITNESS: As requested.

MS RONALDS: If I could tender that note.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 105.

30 **#EXHIBIT 105 - MR BAIRD'S HANDWRITTEN FILE NOTE  
DATED 17.12.09 RE MR ROMANO'S TELEPHONE CALL**

MS RONALDS: And when you turn to paragraph 8 of your statement on page 4 - - -?---This is my copy?

You're not writing on it are you, Mr Baird?---You did say it was a copy. I just wrote Exhibit 105 at the top, Assistant Commissioner.

40 ASSISTANT COMMISSIONER: I've got a clean one if you want.

MS RONALDS: Once I could understand but twice is really, there's a special padded room out the back. Paragraph 8 of the statement, do you have - please don't write on the statement. Yes, give me your pen. Paragraph 8 of the statement you'd agree that the contents of that paragraph you relied on this handwritten note to produce?---It was combination of the handwritten note and, and my reflection and memory which was also being called upon at the time because I remember I dictated the statement pretty

close to the time, I think the statement's dated the 21<sup>st</sup> but the first cut of the statement would've probably been dictated that afternoon.

And you've heard Mr Romano's evidence that he disagrees with this account of the conversation?---Yes, I heard that.

But you have no reason to resile from your account?---Absolutely not.

10 Now, I wish to ask you some questions about the first of all the engagement, the potential engagement of Mr Becerra as a consultant and then his employment just so you know where I'm going. Now, you've met Mr Becerra?---Yes, yes.

When do you say you first met him?---I can't recall the exact date.

Do you remember when you first heard?---Yes, I think it would've been when the Council were engaging his former partnership and his name came up from time to time.

20 I don't know what you've got open but would you mind shutting it?---Sure. It's not (not transcribable).

I'll give you the documents I want you to look at and if you think you've got another document that I don't have then you can advise me about that, all right?---Sure, sure.

30 But otherwise could you please remind me to give them to you. Do you recall a meeting on 18 April, 2005 at Maddocks about the library project where conflict of interest matters were raised?---18 April 2000-and?

5. I realise it's a while ago?---Gees. I don't, I don't, I'd need probably something to assist me, I just don't remember. Yes, I recall - you're referring to the first page point 1?

40 Yes. Sorry, we're just having a little document flow problem over here so there might be others joining you in the padded room. You see there there's probity issues, conflicts of interest. The third paragraph starts, "Pat Romano stated he wished to disclose a possible conflict in relation to McLachlan Lister and Baker Kavanagh Architects."?---Correct, I - - -

And then it says, "Pat stated" and then there's matters about McLachlan Lister?---Yes.

Now, what was their role in the library project?---I think they were originally retained to advise on the delivery of the project and project management issues.

So he's disclosing a conflict of interest in relation to them, that is, that he'd been working as a contractor prior to becoming the General Manager. You see that?---Yes.

Does reading this enable you to recall this meeting at all or are you just really relying on this note to remind you?---I do, I think I do recall the meeting because as you can see there was a cast of thousands.

10 Yes, but I wasn't sure if from what we've heard before there are always a cast of thousands?---Usually it was a big production when we had a meeting.

Well, only Mr Romano from the Council?---Well, I'm just, can I just read.

Sorry?---That seems to be the case but - - -

Is that unusual?---It was, yes, it was unusual.

20 Did he have the major carriage of the project?---Yes. Initially, yes, but my recollection was that for these meetings usually Mr Hullick and/or Mr, sometimes Mr Dencker would be in attendance.

On this particular day they weren't?---Well, they don't appear to be but that may have been the case.

30 It's an important issue about disclosure so I suppose you've been to so many meetings about the library project that you have no independent recollection of this meeting. Is that correct?---I, I do, I think I do remember this meeting because there's a number of matters that, I remember the personnel, the people that attended and I do remember the declaration because Pat had stated to me I think privately and before the meeting that he, he felt compelled to make declarations and we were very concerned that there'd be proper standard of probity and transparency for this project hence we had engaged Rory O'Connor who's ex-Deloittes now, O'Connor Marsdens is the name of the firm and Rory was considered a leading probity advisor around the traps and my view was that these declarations should be put on the, on the table immediately and tabled as they were, yes.

40 And you see the one under the McLachlan Lister one which is Pat also stated that one of the directors of the proposed architect, poor English but I think it means proposed architectural firm to be used, was a close friend and that Pat had also had prior business dealings with him?---Yes, and I believe that to be Mr Becerra.

That was Mr Becerra wasn't it?---That was my understanding, yes.

And is it your recollection that the name was used at that point?---I think it was, that's my recollection but certainly Mr Romano had declared to me that Mr Becerra was the partner at Baker Kavanagh who he was referring to.

And so you say do you by on or about 18 April or prior to 18 April you were aware that Mr Romano claimed that Mr Becerra was a close friend who he'd had prior business dealings with?---That's correct.

10 And there's an issue about when other people became aware of that information. Do you recall whether you knew it a long time before or just around this time?---I think it was around about this time because it, it seems to be consistent with my recollection that as the engagement with Baker Kavanagh crystallised and they were involved in the preliminary sketch plans that Mr Becerra, who was the principal architect within the firm handling that matter, became more and more prominent so that's when the declaration became pressing and, and obviously had to be made.

20 If I could ask you to go then to the third page of the document and take you to point 4.5 where it says Council briefing. Pat Romano indicated that Councillors were to be briefed on the project at a Councillor workshop (not transcribable) May 2005?---Yes.

Do you recall whether you were in attendance at that workshop?---I can't recall. I may have been, I was invited to a number of Council briefings but I, I just couldn't recall whether I was.

30 Are you able to recall whether you were ever present at a briefing with Councillors where a similar declaration of conflict, well, not conflict but a disclosure of a potential or a conflict of interest between Mr Romano and Mr Becerra was made to Councillors?---I can't recall. I, I just can't remember.

And if I suggest to you that it was never done - - -?---Mmm.

- - - would that accord with your recollection?---I don't, I, I just can't remember, Ms Ronalds and it may have been, I just can't remember. It may not have been. I don't, don't remember.

40 And do you recall ever being at an executive meeting or a meeting with members of the executive where Mr Romano made a similar declaration of conflict of interest in relation to Mr Becerra in 2005?---I can't recall the exact date but my recollection is that he did repeat the declaration at a subsequent executive meeting or as we called it, the library, we, we called this group a project review group or a PCG, project control group. They had different labels from time to time. My recollection was that it was repeated at least once, at least once to my recollection and my recollection is that we were required to make declarations and to fill out a declaration form if there was indeed a declaration of interest and that was a requirement of

Mr Marsden or within his, his jurisdiction to keep control of those matters and my recollection was that, that Mr Romano had made such a declaration.

But that went, did it not, not generally within the Council files but was maintained separately at Deloitte's?---It may very well have been that case.

Are you able to recall that?---Once again, I, I didn't see the Deloitte files but that could have been the administrative process.

10 And then on 5 July, 2005 you provided a detailed advice to the Council about certain probity issues for the library project. Do you recall that?  
---What was the date again?

Yes, sorry, I should have tendered that previous document, or did I do that?

ASSISTANT COMMISSIONER: Yes, the minutes of that meeting will be Exhibit 106.

20 **#EXHIBIT 106 - MINUTES OF MEETING HELD MONDAY 18  
APRIL 2005 AT MADDOCKS LAWYERS REGARDING THE  
LIBRARY CIVIC CENTRE REDEVELOPMENT PROJECT**

MS RONALDS: If I could show you this document, now it's got some handwriting on it and I'm sorry that's the best we could do, so someone's written on it but it's not yours, well, it might be yours, I don't know. I'm sorry, if I could just have a moment, Commissioner?---It's not my handwriting that I can - - -

30 You're innocent this time?---This time I am innocent but let me have, do you want me to - - -

(not transcribable) because this is the file copy?---Do you want me to read it? Ms Ronalds, do you want me to read it or - - -

Yes, just have a look through it while we're trying to sort out the document?  
---Okay, yeah.

40 I'd like you particularly to look at paragraphs 3.11 to 3.19. Do you see them?---I'm just getting there.

I'm sorry, are you right?---Yeah, 3.11 to 3.19.

And that is a discussion about Baker Kavanagh are architects, do you see where you were giving certain advice about that?---(NO AUDIBLE REPLY)

And you raise some concerns about the fact that there were no tender processes. Do you recall that issue?---If I can just quickly read them I - - -

Yes, certainly, just have a look from 3.11 through to 3.19?---Yes, I have read that and I recall that and it's also relevantly linked, I'll, yes, sorry.

10 Has that enabled you to recall that you were expressing concerns about, in effect, how Baker Kavanagh had got on board?---I think that was, that's a fair comment but there was a general concern which I shared with the probity auditor that all the contractors and consultants who were to provide services for this project should be retained in a manner that was transparent and complied with usual procurement convention and that means that there should have been a public tender or an expression of interest or that Council should appoint a panel of professionals who they could select from that panel, having gone to an expression of interest so that they could, they could hand pick architects, engineers, agents, et cetera, et cetera.

20 And what I'd suggest to you is that this suggests at least that none of that process hadn't been undertaken in relation to the initial engagement of Baker Kavanagh?---I don't think it had but in fairness they probably weren't generating the level of fees that would trigger the threshold, the compulsory threshold for a tender which I think, I think I recall seeing 150,000 but the law changed, it moved from 100 to 150,000.

30 When was that, I was going to ask you later?---I think it was, it's at least three or four years, I'm not sure, I can't remember but it went from 100 to 150 but my concern, our concern was there should, if, if, as the project was obviously going to move forward, that we have all current contractors and their relationship with the Council regularised and that the relationship could be seen to be transparent and, and their, their retainer properly accountable in terms of those types of processes and I was backed up solidly by my colleague, Mr Marsden who took over the lead from Mr O'Connor from the probity audit. O'Connor was, sorry, Marsden was O'Connor's partner, former Deloitte and then they moved to their own firm.

40 And in 3.17 you'll see you say you will record this matter and this letter, this advice is addressed to O'Connor and Marsden, not to Burwood, that the matter was discussed with yourselves and the General Manager on 11 May and it was agreed that Baker Kavanagh's services were to cease as soon as possible and then there were to be tenders?---Yeah.

Is it your recollection that that's what happened?---Generally that's my recollection, yes.

And you'd agree, is it correct that when that happened, work still went to Baker Kavanagh?---Were they still retained, from time to time. I, I assume that to be the case, but I don't know the full details of their retainer, because it was something that was beyond my knowledge.



It wasn't something that you in your in-depth involvement in the library project were involved with?---No, no, I wasn't.

And I'll now show you some minutes of the Burwood Council civic precinct on 7 September, 2006?---September, 2006.

ASSISTANT COMMISSIONER: Do you want to tender that letter?

10 MS RONALDS: Oh, sorry, yes, I tender that.

ASSISTANT COMMISSIONER: That letter to Deloittes will be Exhibit 107.

**#EXHIBIT 107 - LETTER DATED 5 JULY 2005 FROM MADDOCKS TO DELOITTE TOUCHE TOHMATSU RE BURWOOD COUNCIL – CONDER STREET CIVIC CENTRE PRECINCT PROJECT**

20

MS RONALDS: And just as a, Mr Baird, can you tell me whether, that, that letter was copied to Mr Romano. That's noted at the end of it?---I haven't got it.

Well, it says cc Pat Romano. That would mean he was sent a copy of that letter wouldn't it?---Indeed, yes.

Now, have you got some minutes in front of you?--- McLachlan Lister document?

30

Yes. You see you're present at the meeting with Romano, Hullick, Lister, Kligget and Stanfield and Ms Stanfield seems to be the minute taker. Can you see that?---Yes.

And that's dated 7 September, 2006. And I could ask you just to turn to 5.2?---5.2, yes.

On page 2, it's about the middle of the page?---Yes.

40 Architects, Baker Kavanagh. PR advise, now PR is Mr Romano?---Ah hmm.

Advise that Baker Kavanagh may not be available to undertake future tasks. Requirement from Council to ensure they have digital file copies of all work undertaken. Now do you recall, do you have any recollection of this meeting and this discussion?---I vaguely recall the meeting, but I can't remember the, that item in any detail.

Right?---No.

You don't, you don't recall do you why it was that it was suggested that, by Mr Romano, that they may not be available to undertake future tasks?---If, I'm possibly speculating, but there may have been a discussion, when I'm saying speculating, I'm trying to reconstruct in my mind what occurred. But there may have been - - -

10 I appreciate it's some years ago, and I'm sure you've had tonnes of meetings since, so - - -?---Yes. There may have been a discussion at that point where, where, where we were informed that Mr Becerra, who was the principal architect at Baker Kavanagh may have been considering a change in his career status. It may have been raised in that context because - - -

Well, that's what I was wondering. I was wondering if it was raised in the context of Mr Romano reporting that Mr Becerra was going to leave and set up his own firm?---That could've been discussed. But I, I just, as I said, I'm speculating. I don't recall.

20 Now, do you recall that, and I'll give you dates in a moment, but I just want to test your independent recollection, that at some stage you were asked to provide some advice in relation to the engagement, first of all of Mr Becerra as a consultant?---Initially as a consultant and then as a potential employee.

All right. Now doing the best you can, do you recall how it was that process was initiated?---Well, I think I was informed and I think this is around about early 2007, because the formal advices in the documents sent to, which I've reviewed and refreshed my memory, seem to be dated, one, one in particular, February, 2007 So I'm using that as a benchmark to set the  
30 timeline. So I'm not sure whether Mr Becerra left Baker Kavanagh prior to, on the Christmas side of 2006 or early 2007. But it was certainly put to me that there were two issues of concern by Mr Romano.

Ah hmm?---One was the, the impact on Burwood Council in the event that Mr Becerra was to leave Baker Kavanagh, because he was the, effectively the principal architect who had worked on the library project. And Mr Romano was concerned to preserve the intellectual property and effectively the resource and the expertise of Mr Becerra on the project. Secondly, if, and (not transcribable) into that was if he was to leave Council, Mr Romano  
40 expressed a view that possibly he might be available to engage with Council as a contractor or possibly as an employee. So there were legal issues in terms of how to facilitate that and I think at the time, I also raised the possibility that we didn't want to be involved in a dispute between Becerra and Baker Kavanagh over any restraint of trade or any claim that they may have over his intellectual property and or records. And I think we had a general discussion about that, so that we had to be very careful not to be party to a, a dispute between Becerra and his former partnership. So those were the two issues that I think were current in our minds.

But it was, would it be correct to say that from the initial discussion with Mr Romano about the matter, it was about getting, retaining Mr Becerra in some form?---That was probably the third stage. I think the first two points that I'm referring to were the preliminary discussions. My reaction to those discussions, then Mr Romano said, well, I want to hire him, how do we do it. So that was probably stage three. And then stage three prompted the production of some advices, which I was involved in and also members of my employment team, who operated under my direction, but they  
10 independently authored as least one of the advices.

Right. And what I want to suggest to you is there was never any discussion was there between you and Mr Romano in February when this, in February, 2007 when this process was on about an open advertisement or an open field competition for a principal architect at Burwood Council?---I don't know that I would agree entirely with that proposition, because I was concerned and it's reflected in the February document that I prepared. I was concerned and I think I might've even raised these concerns with Andrew Marsden,  
20 who we were working with, as our probity advisor, that we, if we were, we as Burwood Council were going to take Mr Becerra into the project either as a contractor or as employee, that it had to be consistent with a process which was going to withstand any vigorous criticism or assessment in terms of probity and the transparent, the process of, of retaining him. And in the advice of February, I actually, I think there's two provisions which, which I remember.

Right. I'll just stop you there because we'll go through them. But I just want to explore the general principals before we get into that. You knew, because you'd been at the previous meeting that there was a friendship and a  
30 business relationship between Romano and Becerra?---That's what he told us, yes.

And I've read the advices carefully and I don't see anywhere where you traverse that issue, that is, the existing personal and business relationship between Romano and Becerra and give Mr Romano any advice about not being involved in the process. Now was there any discussion you and Mr Romano about that issue, that is, that the previously, there was an identified, potential conflict of interest and he should be completely hands off?---Yes. There was a discussion and I do believe the advice refers to that issue  
40 because it refers to the conflict of interest previously declared by the General Manager, which in the context of these documents can only be the business relationship and the friendship with Mr Becerra. So, I think you've got to read those two together and - - -

But it's not spelt out anywhere in abundantly clear terms for a reader who didn't know what the previous declaration was or who wasn't at the meeting?---But well, it's not particularised, but it's very, very clear that I was referring to and, and demonstrably openly trying to highlight the fact

that the General Manager had declared an interest in this matter and I haven't got the document in front of me, but - - -

We'll get to it in a moment?---Yeah. That's what I wanted to emphasise. And I, and in the draft advice, I think that there were words to the effect that having regard to the importance of this project and it's high profile and the expenditure that was, was estimated, that we recommended that there should be an expression of interest, even though probably it wasn't legally mandatory, but that that was the best way to go forward. And I recall that in  
10 the advice of February, 2007. Now, I know that I discussed, my recollection I'm very sure I discussed those matters with Andrew Marsden, to get his concurrence, because we worked closely and he was covering probity from the perspective of process and I was covering the legalities and we were both, I think, happy with that approach. Discussions that I remember were with Mr Romano and other members of the team. Mr Romano asked, I think it was Mr Hullick to take over the procurement process and to manage it and he said he would stand aside because of his conflict. That was my recollection. That's what Mr Romano told me. And I - - -

20 2007 process?---I believe so, yes. I believe so.

You're not confused with 2009?---I don't believe, I don't think so but - - -

I'll show you this document which is two accounts one dated 28 February, 2007 and one 30 April and it has as is Maddocks want the dates and it just may assist you to - if I could tender the McLachlan Lister minutes.

ASSISTANT COMMISSIONER: Yes. They will be Exhibit 108.

30

**#EXHIBIT 108 - DRAFT MEETING MINUTES OF THE CIVIC  
PRECINCT WORKING GROUP DATED 07.09.06 AT BURWOOD  
COUNCIL OFFICES RE BURWOOD COUNCIL CIVIC PRECINCT**

THE WITNESS: Of which bill? Of the February bill?

MS RONALDS: Well, if you look at the February bill where it starts it enables you does it not to see when the process started at least in relation to  
40 when Maddocks was first involved?---On this matter, yes.

Yes. Sorry, yes, on this matter?---Yes.

Hang on, I've just got to get organised?---Mmm.

(not transcribable) McLachlan Lister (not transcribable)?---I'm certain that -  
- -

I'm sorry, Mr Baird, just bear with me while we sort out the documents. Does that assist you if you look at the first one and you see the dates start on 6 February where it is a considering provision made in standard consultancy service documents in a situation where professional staff leave entity that has tendered?---Yes.

10 And that's the beginning of the sequence - I don't want to take you through it at the moment but just so that you have it for yourself if you need that. If I could tender those two bills?---It's entirely consistent with my recollection, yes.

I'm just endeavouring to assist you?---Yes.

ASSISTANT COMMISSIONER: Those two invoices dated 28 February and 30 April, 2007 will be Exhibit 109.

**#EXHIBIT 109 - TWO MADDOCKS, LAWYERS INVOICES TO BURWOOD COUNCIL DATED 28/2/2007 AND 30/4/2007**

20

MS RONALDS: If you could just then put that aside for a moment, you might want to hang onto it. I say that with some caution. Now, there's an email that was sent - now, Gretchen Shirm, is that how you say it?---Shirm was a solicitor under my supervision in my group.

30 And on 21 February, 2007 at 8.46am she sends Mr Hullick an email that says, I'm assisting David Baird in our advice to Council regarding the engagement of Albert Becerra to provide architectural services to Council? ---Yes.

So on 21 February at least as far as your solicitor was - there's no general proposition it's about engaging Mr Becerra. That's correct isn't it?---That's correct and, and I think there was even a draft consultancy contract that was prepared and I think that it was considered at that stage, it might've been a stopgap measure just as a short term arrangement. That's my recollection.

40 Right. And she says, "I need to review the terms of engagement for Baker Kavanagh" and sets out various matters that she wanted from Mr Hullick. And then she said, "I understand the advice is required urgently." What did you understand was the reason for the urgency assuming she's correct in that?---I, I, I, my recollection would be that the departure of Mr Becerra may have been imminent or he, the opportunity to retain him may have been pressing.

And it was Mr Romano who was pressing for it wasn't it?---Yes.

If I could tender that email.

ASSISTANT COMMISSIONER: Yes. That will be Exhibit 110.

**#EXHIBIT 110 - EMAIL FROM GRETCHEN SHIRM TO LES HULLICK DATED 21/2/2007 SUBJECT: ENGAGEMENT OF BAKER KAVANAGH FOR ARCHITECTURAL SERVICES**

10 Now, there's a letter, a draft advice then from Maddocks sent to Mr Romano and I'll show you that. And I'm sorry for our friends, we'll put it on the screen and we'll have to copy these at the end of the day. I'm sorry, there's been a document hiccup our end. Now, that's an advice, you see it's draft?  
---Yes.

But not being able to find a final one but that's from you to Mr Romano?  
---Yes.

20 And you'll see in paragraph numbered 4 you say, "The Council will need to reach an agreement with Mr Becerra as to the fee payable and as advised this fee must not exceed \$100,000." See that?---Yes.

Now, it's correct is it not that that was reflective of section 55 of the Local Government Act, that was your concern and there's a more detailed advice about it in a moment but just to shortcut it if you can?---Yes, yes.

It was then 100 and is it now 150 and it changed somewhere along the way?  
---Yes.

30 So that if you are going to engage services, I mean in short form for more than \$100,000 then you had to take certain steps didn't you?---The Act mandated a tender requirement, there was certain exceptional circumstances or there were exceptions to section 55 but generally the rule was a contract for goods or services exceeding \$100,000 required a public tender.

And on the exceptions this wouldn't have come within it, I mean there was no wild emergency was there?---I, I don't, it's a complicated assessment as to whether there is an exceptional circumstance and I don't think we looked at that at the time.

40 But it was your view that section 55, and I have it here if you want to refresh your memory?---I remember it.

Applied. And again trying to shorten this process what happened was once the 100,000 became clear that's when the consultant, engagement as a consultant passed and engagement as an employee became the issue. Do you understand it was the \$100,000 limit that caused the transmogrification from possible contractor to possible employee?---I understand its relevance,

I can't tell you whether that was the defining or the determining factor, I just can't recall. Plus at the time I had my employment partner Darren Gardner and Lindy Richardson who was a senior associate dealing with the employment issues independently so they would've been looking at that too. I, I, it was obviously a relevant consideration but I can't say that it was a determinative factor.

10 And do you recall any discussions with Mr Romano where you told him that that was an unmovable feat so to speak that that is that it had to be low, be below 100,000 or section 55 applied and that was that basically?---Not even he could change section 55, yes.

And do you recall any discussions with him about that?---I, I, we probably spoke two or three times in a week or if not at least once a day during this period on this particular matter and - - -

20 And that caused him concern didn't it because he wanted to pay Mr Becerra more than \$100,000?---I can't recall exact money, monetary figure but I do recall that the threshold was relevant so the figures that were probably discussed more so with the employment group than with me might have been close to the 100 or, or exceeded the 100, I just can't remember. But in this document I think in fairness the, you have to read this, as we said at the beginning, in conjunction with the draft advice which I think was dated the 27<sup>th</sup> or 22<sup>nd</sup>.

21<sup>st</sup>?---21<sup>st</sup>, yeah.

30 And that's the one about advice regarding engagement of architect as consultant and I'll just show you a copy of that document?---Yeah, I think that's the one.

Just to show that we're of varying consistency?---Thank you.

And this is about, and it's clearly headed, let me get there?---Yes, this is the document.

40 Advice regarding engagement of architect as consultant. Now, you're memo, sorry, perhaps if I could tender the, your draft email letter 21 February, that's the two page one we're looking at first?---Yes.

ASSISTANT COMMISSIONER: That will be Exhibit 111.

**#EXHIBIT 111 - DRAFT EMAIL ADVICE LETTER FROM MR  
BAIRD TO MR ROMANO DATED 21/2/2007 RE ENGAGEMENT OF  
ALBERT BECERRA TO PERFORM ARCHITECTURAL SERVICES**

MS RONALDS: 111 clearly says engagement of Albert Becerra to perform architect tasks, doesn't it?---Absolutely.

And executive summary in relation to this longer advice, now you've signed off on this longer, it's got your name at the end of it?---Yeah.

10 Would it be correct that Mr Gardner had helped you with this?---I, I, if you go back to the bills you'll probably, you can trace whether he had input into this one. I think this was essentially what we would have called a governance advice so I would have run with this with Gretchen.

I think on an analysis of the bills Mr Gardner wasn't doing this at this stage but he may have been?---Yeah.

You see there in paragraph 1, Council may engage Mr Becerra as a consultant. So it's a, there's no, there's no discussion as at 21 February, 2007 of looking at for tendering for a wider pool of a principal architect is there?---Mmm.

20 The only person being focussed on at this point is Mr Becerra?---That's in the executive summary but I, I, I'm not trying to be disrespectful but if you go to paragraph 5 that's the paragraph that if you read that consecutively and, and collectively, the last sentence, "However, given the scale of the project Council as a matter of probity should invite expressions of interest for architectural services in relation to the matter." That's the point I wanted to emphasise. Even though, yes, indeed they were, there was certainly an urgency to retain Mr Becerra, he was the man of the moment, but I was very concerned that it not be considered or not be undertaken as a fait accompli without due process.

30 Now, is this the advice you say there's a reference to the potential conflict of interest?---Yes, paragraph 17, "We note that the General Manager has declared a conflict of interest in relation to this matter previously."

40 But you don't say what it is?---I don't but I was probably referring to the minutes that were, I thought, on part of the Council record and there, there didn't seem to be any doubt in my mind that that was what I would have been referring to and I have said, "Given the nature of this matter it may be prudent for the GM to consider his position and have regard to the code of conduct and the Local Government Act when determining what course to take in relation to this matter. We note that Andrew Marsden is appointed as probity advisor for the civic centre working group. We therefore propose that we contact Mr Marsden to discuss the above course so that he may raise any probity concerns that need to be addressed. It may be upon consideration an expression of interest for specific project work is recommended." So my, my approach was it was on the table, it was something that had to be considered by the General Manager as a pressing concern.



Would you be surprised to know that, as far as I understand it, Mr Hullick says that as at February 2007 he was unaware of the personal friendship and business relationship between Mr Becerra and Mr Romano as at that time?  
---At that date that would surprise me, yes.

And that Mr Macklin says the same?---That would surprise me, yes.

10 But you don't recall having a one on one conversation or being part of a meeting when they were present where it was openly discussed?---Not on, not one on one but my recollection was that, now you said earlier I may have my dates wrong but my recollection until I have a chance to refresh my memory, was that this advice was accepted and Mr Marsden also recommended (not transcribable) I haven't checked with him on this but he was, I think, ever sent a copy of this advice that Mr Romano should accept the view that he shouldn't have any active involvement in the procurement process and that someone else should be put in charge of that and that there should be some form of expression of interest or tender process for architectural services.

20

And this, despite your earlier evidence about Mr Hullick stepping in, this is addressed to Mr Romano?---Yes. All, all correspondence, this, this, this is a letter to him but all correspondence was automatically addressed to the General Manger. Sometimes it had attention Mr Hullick but yes, this - - -

This one doesn't have any and it says, "Dear Pat"?---Yeah, no, no, this was one for Mr Romano, there's no doubt about that.

30 And so you wouldn't know whether he showed it to anyone else or not?---I, I couldn't, I couldn't assist. I don't know whether it was cc'd to Andrew Marsden, that, it's not, on the, on the face of the document it doesn't say cc.

We don't have the accompanying email, we only have the advice?---Yeah, yeah.

I could tender that advice.

ASSISTANT COMMISSIONER: Yes. The draft advice of 21 February '07 is Exhibit 112.

40

**#EXHIBIT 112 - DRAFT LETTER FROM MR BAIRD TO MR PAT ROMANO DATED 21/2/2007 RE ADVICE REGARDING ENGAGEMENT OF ARCHITECT AS CONSULTANT DATED 21/2/007**

MS RONALDS: And then what seems to have happened is that then there's an email from Ms Shirm, copy you, about the matter and if I could show you this document and I'm sorry, actually if you look at the bottom of this one we do have the email?---Thank you.

You'll see the bottom one is attaching the email and the advice that, they're the two documents we've just looked at, would you agree?---That would appear to be correct, yes.

10 And it only goes from Ms Shirm, copied to you, back to Mr Romano?  
---Yes.

And so was the one above?---Yes.

If there's anything, if there was nothing additional you wanted addressed in "the advice we're going to finalise it," and that's consistent with your practice that you explained last time of sending a draft advice to get further instructions if need be and then finalising it?---Having the facts correct (not transcribable) yes.

20 And this one you'd agree is only sent to Mr Romano not copied to Mr Hullick?---That's correct, yes.

So both of them are sent to Romano and apparently no one else apart from yourself?---On these two emails, yes.

If I could tender that email.

30 ASSISTANT COMMISSIONER: Yes, that will be Exhibit 113.

**#EXHIBIT 113 - EMAILS FROM GRETCHEN SHIRM TO MR ROMANO DATED 23/2/2007 AND 13/3/2007 SUBJECT: ENGAGEMENT OF CONSULTANT FOR ARCHITECTURAL SERVICES**

40 MS RONALDS: Now, do you recall that on 14 March, 2007 you had a meeting with Mr Becerra and Mr Romano?---On 14 March?

Ah hmm, yes. Do you remember that?---I don't remember it specifically but I'm sure that we did if, if - - -

In the Bar Cupola?---(NO AUDIBLE REPLY)

That doesn't help?---It, it, not, not, specifically but most probably, yes, we could have, yes.

Well, did you have meetings with, many meetings with Mr Becerra?---At that stage he would have just been, he would have been a new member of the team, I'm surmising that he was on the team at that stage. I'd have to check the records (not transcribable).

All right. Well, I wouldn't, wouldn't surmise that at all?---I don't remember.

10 He wasn't, in fact his contract of employment, do you recall that he was eventually employed - - -?---Yes.

- - - rather than engaged as a consultant?---Yes.

20 And that contract started on 13 April, 2007, is dated 13 April, 2007 so what appears to have happened in February there was a kerfuffle about appointment as a consultant, I'm suggesting to you the \$100,000 was the barrier in section 55, knobbed that (not transcribable) then there was a change in Mr Romano's plan and he set about trying to engage Mr Becerra as an employee?---Generally that's consistent with my recollection, yes.

And that you had a meeting with Mr Becerra and Mr Romano on 14 March, 2007 to discuss the terms of the employment. Do you recall that?---I don't. I don't.

30 Well, there's a meeting note from Mr Becerra and it discusses (not transcribable) discussion BC, which I assume is Burwood Council about PR in-house that's believed to be, I mean I assume that's a reference to an architect as an employee or in-house principal architect. Right of private practice. Legal strats' for BKA, settle exit. Neutral release. Payout's, et cetera. Now that's what his note says. And I'll hand it to you in a moment. Does that refresh your memory at all?---A little bit, yes. Yes.

40 So is it correct that you were giving Mr Becerra advice about how to, what the strategies should be to exit from BKA?---Not him, no. Not giving him advice. Those issues were covered and I was talking to him and Pat from the perspective of protecting Burwood Council from issues relating to his exit and I think at the time I recall saying, Albert, you're going to have to get your own legal advice. I think he even had a solicitor that he was retaining, who was advising him on the concrete issues. Because I was very concerned that he be properly advised in a partnership dispute if it became a dispute.

But having already known about the conflict of interest, weren't you concerned that you were giving advice to Mr Romano and Mr Becerra together about setting up these matters and discussing these matters when you were supposed to be the Council's legal advisor?---No, I, my understanding of the meeting was that the issue was to look at the question

of exposure to Burwood Council, potential exposure to Burwood Council in relation to any, any difficulties that Mr Becerra might have in his exit from Baker Kavanagh. That's my recollection. Not acting, we were not acting for, for Mr Becerra. And I think we discussed him retaining his own solicitor. And I'm pretty sure he said he had. And I think it was, I can't recall the exact nature of the meeting, it's so many years ago, but I don't believe there was any compromise to the position that Mr Romano held because his concern was that there be an ability for Albert to freely come to Burwood Council. I think that was the focus of the meeting.

10

But to be consistent with your earlier evidence, Mr Baird, shouldn't it have been that you said, I can't have any meeting with you, Pat, about this matter because you can't be in the loop. You've got a conflict of interest, you've declared it, Mr Hullick should be here?---Not quite, in that, in those terms, my advice to Pat was that the procurement process for any engagement with Mr Becerra by Burwood Council must be handled independently. That's, that's, so that process, yes, must be handled independently. But at around about the same time there was a concern about whether Mr Becerra could leave the firm Baker Kavanagh. My recollection was that I think that that meeting was only confined to that aspect of it and I, my recollection was a reinforcement to Albert that I couldn't give him any advice in that regard. He had to go and get his own independent advice.

20

I'm not worried about, I'm not talking about Mr Becerra and his own advice. I'm talking about you having discussions with Mr Romano and earlier you've given evidence that you say you did advise that he couldn't have anything to do with the process?---The process of retaining Mr Becerra?

30 Yes?---Correct.

Well, this was part of the discussion about the process wasn't it?---Well, no, I believe this was a process, this discussion was about Mr Becerra exiting Baker Kavanagh and conflicts and issues relating to disputes with that firm. And the issue of him obtaining private advice, independent advice to manage that process.

Well, I'll show you Mr Becerra's note and I'd suggest to you, with respect, that your recollection is flawed and that you were talking about the potential terms of employment for Mr Becerra?---Can I see the note, please? I, I can't remember.

40

See a right of private practice would have nothing to do, would it, with his terms of exit from his partnership. It would only be relevant in relation to the terms of his employment. Do you agree?---Yeah, from what you said, but this, if I can read it, his writing is hard to read. Yes, I can see that. I think that he might've - - -

Did that refresh your memory about what was discussed at the meeting, Mr Baird?---To some degree, yes. But these are, these are note points and I don't remember the exact context for each point. I've got to be frank about that. These are, these are Albert's notes.

Yes, that's right?---Yes, Mr Becerra.

10 But you'd agree that the rights private practice (not transcribable) of itself has nothing to do with the severing of the relationship between BKA and - - - ?--- I can't, I can't be that sure because he, he may have discussed it in the context that he always had a right to private practice or always wanted a right to private practice. I can't remember whether he was telling me about the dispute that he had with Baker Kavanagh, which I wasn't really all that interested in. I just don't remember. It's certainly, he, he, he could have mentioned it as something that he would like to consider if he was to come to Burwood, but I don't remember.

I tender that document.

20 ASSISTANT COMMISSIONER: Yes. Those notes will be Exhibit 114.

**#EXHIBIT 114 - HANDWRITTEN DIARY NOTE OF MR BECERRA DATED 14.3.07 RE MEETING**

30 MS RONALDS: Now on 14 March, that is the same day that you met with Romano and Becerra, a letter was sent from Maddocks, but from the employment team, from Lindy Richardson and Mr, sorry, Ms Richardson and Mr Gardner to Mr Hullick about instructions in terms of employment. And I'll show you this document?---But you see that reinforces in my memory that Mr Hullick had been invited by Mr Romano to manage the process, because we were (not transcribable) Mr Hullick.

40 Yes, but my concern, what I'm trying to say to you is that Mr Romano shouldn't of been at a meeting with you and Mr Becerra at all discussing anything about it. Would you agree?---No, I don't, I don't, I didn't consider it inappropriate because we were, we were discussing, Mr, Mr Romano knew my views and I knew that he'd declared his interest and there was no advantage that was being, sought to be conferred upon Mr Becerra. And my recollection was at the time that Mr Becerra was extremely nervous about his exit from Baker Kavanagh and extremely concerned about potential legal disputation that he might have with his former partnership.

But there was a significant benefit going to flow to Mr Becerra wasn't there? There was going to be a financial benefit of a regular payment of salary if he was engaged or employed?---If he was engaged. If he was

engaged, yes. But we weren't, there was no promise or, or suggestion that he had the job, it was in the bag or anything like that.

I suggest to you it was clear that it was in the bag from the beginning wasn't it?---Not from my perspective.

Well, you're writing, you're writing letters headed, Engagement of Albert Becerra?---As a, that's, as a subject matter, yes. But not engagement as in he is engaged, no. It was re, Mr Becerra.

10

Yes. There was only one person being discussed from February wasn't there, Mr Becerra?---Mr Becerra was the, was being discussed but I take you back to the letters, the letters categorically state, re, Mr Albert Becerra, re, any engagement of Mr Albert Becerra. Number 1, because of the size of this project, get a public tender process involved. That's what - - -

20

That didn't happen did it?---That's something I don't, no, no, I believe that Mr, my understanding was that Mr Hullick was, was directed by Mr Romano to run the process consistent with advice from us which he'd received and, and Mr Marsden and that my understanding was that there wasn't a process of independent selection, that's my understanding.

As an employment selection, process there was never a tender for an engagement?---An employment selection process, a competitive employment selection process.

We'll return to that in a moment?---Yep. That, that was my understanding.

30

What I'm suggesting to you was there was never any tender process for an engagement of a consultant?---As, as it turned out no, but in the original advice - - -

I understand that?---Yeah.

40

I'm just saying to you it didn't happen did it?---Yeah. But when you say re engagement of, of Mr Albert Becerra to draw the, the, to suggest that the letter implies a fait accompli because it's headed re engagement is absolutely wrong. It was just the subject matter of the advice, re engagement of Mr Albert Becerra.

The only thing being talked about at that stage when that correspondence was on was the engagement of Mr Becerra wasn't it?---Yes.

Yes. Thank you?---There's no doubt about that. Sorry, what's the next question?

Did Mr Romano tell you as at February or March 2007 that in January 2007 a new company had been formed called Befaro, that is, and it involved Mrs - - -?---The wives?

The wives?---Of the three, I don't believe he did and I don't recall.

Because that would've been a different business relationship than the one you knew about wasn't it?---Well, I, I don't recall whether he actually disclosed the details of the business relationship per se. He said, I'd had a  
10 business relationship with Mr Becerra and we were good friends.

And that's 2005?---Yes.

What I'm asking you is whether in February or March 2007 he updated his advice to you and said that there was a significant new project underway, a company had been formed on 22 January, 2007 called Befaro?---I can't - - -

And I'd suggest to you that if you'd looked at the Befaro letters it's quite clear that two are for Mr Becerra, two are for Mr Romano or Mrs Romano?  
20 ---I can't recall the exact date but I do remember if it leads into the query that Mr Romano raised with me as to whether he should make the declaration in his pecuniary interest statement once again I'd have to check the dates but I do recall the evidence this morning, I do recall the phone call from Mr Romano, I do recall - - -

Well, that's in July I think?---I can't remember the dates.

Well, that's when the form's completed?---Yes. But the forms I think post-dated the relationship because he's declaring it after the event so what I'm  
30 trying to say is I don't recall him ever telling me I've gone into business with Albert or our wives are engaged in a property investment, I don't recall that. All I remember is that when he did raise the issue of the declaration in his, in his pecuniary interest statement he asked me from a technical perspective was he required to make the declaration. And he was quite open about it and I said, Well, good luck to you with the investment. I think at that stage he, I think I said earlier he may have, he may have stated that it's an investment in Ashfield or thereabouts.

Well, do you remember that I asked you last time whether you went with Mr  
40 Romano on 17 February, 2007 to the St George Bank? Do you remember that?---Yes, I took him there to introduce him to the bank, yes.

Yes. Did he tell you why at that stage, that is, that he and Mr Becerra or the Becerra family, the Romano family and the Fasanella family were borrowing over \$1,000,000 jointly?---No, I don't believe he did disclose the full details of the, of the shareholding if I can the term or the partnership arrangement or the trust arrangement.

(not transcribable)?---No, but I don't believe he did disclose that and I don't even believe that he, that I was privy to the exact dollar amount. It was merely a, Would you like to meet Joe Bloggs at St George Bank? This is Mr Romano, he's General Manager of a significant client of ours, I hope you can look after him. See you later. It was that sort of a meeting.

10 I'm trying to explore with you what you knew at what stage?---Yes. Well, I don't think I, I don't think he told me the full details of the investment, I don't recall it and going back to the declaration, the pecuniary interest declaration I remember the conversation and I remember advising him that if you have any doubt whatsoever, I would've said words to this effect, If you have any doubt whatsoever, Pat, if in doubt declare. That was what I told everybody. When in doubt make the declaration and do it as a discretionary if you don't want to put it into any of the categories. That's why it's in the discretionary disclosure.

We'll get to that later, just try and keep it in chronology if we could?  
---Yeah.

20 If I could tender that letter to Mr Hullick from Maddocks?

ASSISTANT COMMISSIONER: Yes. The letter to Mr Hullick will be Exhibit 115.

**#EXHIBIT 115 - LETTER TO MR LES HULLICK FROM MR BAIRD DATED 14/3/2007 – LEGAL PROFESSION ACT 2004 DISCLOSURE STATEMENT AND COSTS AGREEMENT**

30 MS RONALDS: Sorry, I'm just finding a document. I suggest to you that you met with Mr Hullick and Mr Romano on 19 March to discuss the appointment of a principal architect for the library. Do you recall that?  
---Which year, 2000-and?

7, sorry. 19 March, 2007?---I can't recall the specific meeting, I'm sorry, there's no doubt that it may have occurred but I just can't remember.

40 Do you recall a meeting where the three of you discussed the appointment of the principal architect or you say you don't remember that?---Just don't remember.

But if it's recorded in one of Mr Romano's diaries as having been set up it's likely to have happened. Would you agree?---I don't want to be disrespectful but I couldn't accept that as being an authentic record.

All right. Thank you. Now, there was a draft advice then sent about certain matters relating to employment of an in-house architectural manager?



---Mmm.

And I'll show you that. And that's from Mr Gardner, well, it was from Mr Gardner and then it's been changed on the front you'll see to you?---I think that it's actually from, Lindy Richardson was the author.

But the party taking responsibility is you. Do you see that?---Yes, but Mr Gardner's also, it's transmitted, the authorised transmitter was Darren Gardner.

10

Yes. But it changed you see on the front page from Darren Gardner to David Baird?---Yeah, I see that but I'm not suggesting that I came and changed the top one just saying that it was from the three of us but the author - - -

Is Miss Richardson?---Is Miss Richardson under Mr Gardner's supervision.

All right. Well, if I could ask you to turn to the fourth page?---Yep.

20

Numbered paragraph 3. It's observed there by Ms Richardson you'll see, "We understand that Mr Albert Becerra is a possible candidate for the manager position should Council proceed with the establishment of this position." So at that stage it's correct is it not that he was in active consideration for the position of an in-house architectural manager and it has turned into an employment issue not engagement of a consultant? ---Correct. And - - -

30

Does that accord with your recollection of what happened?---That's my, that's my recollection but I, I want to qualify it that Ms Richardson who was a senior associate and a senior practitioner was dealing with Mr Romano I think, I'm not, sorry, Mr Hullick.

Mr Hullick?---Mr Hullick, yes. He was dealing with Mr Hullick on this matter directly and I was not privy to every instruction or every conversation so - - -

If I could tender that document.

40

ASSISTANT COMMISSIONER: Yes. It will be Exhibit 116.

**#EXHIBIT 116 - COPIES OF DRAFT EMAIL LETTERS TO MR HULLICK FROM MS LINDSAY RICHARDSON, MADDOCKS DATED 21/3/2007 RE EMPLOYMENT OF IN-HOUSE ARCHITECTURAL MANAGER AND ANOTHER DATED 27/3/2007 RE APPOINTMENT OF IN-HOUSE ARCHITECTURAL MANAGER**

MS RONALDS: And, sorry, just to look at the front page you'll see that there are a number of, there are five options being traversed at that point?  
---Five?

See on the front page?---Five bullet points?

Yes, five possible options for Council employment of the manager (not transcribable) blah, blah, blah, AWA, engagement as an independent contractor and seeking the secondment of a manager from the panel of architectural firms that are on Council's panel?---Yes, I have a later version of this document which I'd like to, if I could just have a look at it.

Certainly?---Thank you. I think I have it.

Sorry?---I thought I had it, I'm sure I, yes, I've got it.

You might have one that doesn't have track changes in it?---Yeah, I've got the untracked, a copy of the untracked changes.

20 The completed one, the final one?---It looks like it, I'm happy to make it available - - -

Thank you?--- - - - if that assists.

Well, yes, I think you'll find your firm was asked for these documents and this is what we got so you've obviously got a better one than us?---No comment.

30 If I could perhaps have a look at that document?---Anyhow I'll give you, that's your document, the ICAC, that's my document which I haven't written on but there appear to be five options, yes.

Yes?---That's not my writing. I didn't write on that.

I see. When you said you didn't write on it - - -?---No.

- - - somebody's written on it?---Somebody's written on it.

40 Well, perhaps if I could tender this one with that one so that they're the same.

ASSISTANT COMMISSIONER: Yes, both - - -

MS RONALDS: Essentially this appears to be the track changes version without, with them actually done?---It's a later edit.

ASSISTANT COMMISSIONER: It's an accepted version, yes.

ASSISTANT COMMISSIONER: Yes. Well, both versions will be Exhibit 116.

**#EXHIBIT 116 - COPIES OF DRAFT EMAIL LETTERS TO MR HULLICK FROM MS LINDSAY RICHARDSON, MADDOCKS DATED 21/3/2007 RE EMPLOYMENT OF IN-HOUSE ARCHITECTURAL MANAGER AND ANOTHER DATED 27/3/2007 RE APPOINTMENT OF IN-HOUSE ARCHITECTURAL MANAGER**

10

MS RONALDS: Now, then there was a letter from, this is from Mr Gardner and well, again, from Ms Richardson but from a partner or a, I assume your solicitors aren't allowed to send out their own correspondence, is that right, it always has to go out under the name of a - - -?---Usually, that was the convention, yes.

Yes. I'll show you this document. That just sets out some employment rights so that's, "We are pleased to enclose a draft letter of appointment  
20 Mr Albert Becerra. Do you see that?---Yes.

So there's been, something's happened and Mr Becerra is now about to be appointed?---That's correct.

That's correct. Now, did you have anything to do with the drafting of the terms and conditions? You'll see there Ms Richardson is sending it under Mr Gardner's name?---Yeah. I don't believe I did. I think I'd handed it over completely to the employment group.

30 I show you this document which was the actual - - -?---Contract or the - - -  
- - - contract as signed. If I could ask you just to look through that. Is it your evidence that you played no role in the formulation of this document?  
---That's my best recollection. I don't think I had anything to do with that.

And if you look at the middle of page 2 where it says remuneration, you'll see - - -?---Remuneration.

40 A long week, remuneration is 140K so that's over the 100, isn't it, so that if that was the determined level that would be at least one reason why the consultant arrangement was not proceeded with if that was the - - -?---It's a possibility, yes.

But you don't, so you didn't have anything to do with that matter?---No.

And there was a new contract entered into in 2008. Did you have anything to do with that?---From Mr Becerra?

Yeah?---I don't believe I did. I may have - - -

Can I have a look at it?--- - - - only been made aware of it. I need to see it to refresh my memory but - - -

Sorry, if I could tender the first contract.

ASSISTANT COMMISSIONER: The draft letter of appointment?

10 MS RONALDS: It's a signed one, Commissioner.

ASSISTANT COMMISSIONER: Well, we haven't tendered the first one yet.

MS RONALDS: Oh, sorry, I'm a letter behind, sorry, sorry.

ASSISTANT COMMISSIONER: The draft letter of employment will be 117 and the final letter of employment will be Exhibit 118?---Hold on, let's not get, that's the advice.

20

**#EXHIBIT 117 - COPY OF EMAIL LETTER FROM LINDY RICHARDSON TO LES HULLICK DATED 12/4/2007 – EMPLOYMENT OF IN-HOUSE ARCHITECTURAL MANAGER**

**#EXHIBIT 118 - LETTER OF OFFER OF FIXED TERM TEMPORARY EMPLOYMENT**

30

MR NEIL: Are they different dates or the same dates, the draft letter and the final?---That's a, no, that's an advice and that's the letter of offer.

MS RONALDS: 12 April is the date of the email, 13 April is the date of the contract and it's on Burwood letterhead so it's obviously gone through some process.

ASSISTANT COMMISSIONER: So this doesn't include the draft letter of employment does it?

40

MS RONALDS: No, that's a separate - - -

ASSISTANT COMMISSIONER: So it's - - -

MS RONALDS: And what I'm handing up in fact is the signed contract.

ASSISTANT COMMISSIONER: So it's an email re the draft letter of employment - - -

MS RONALDS: Yes.

ASSISTANT COMMISSIONER: - - - and that's Exhibit 117 and then the signed final letter of appointment - - -

MS RONALDS: Yes.

10 ASSISTANT COMMISSIONER: - - - dated 13 April - - -

MS RONALDS: April.

ASSISTANT COMMISSIONER: - - - is Exhibit 118.

MS RONALDS: Yes. And then I'm just now going to the next year's contract which is dated 15 April, to show this to Mr Baird to see whether he recalls whether he had any involvement in this issue?---Thank you, April 2008. I don't believe I did.

20 And the evidence will eventually show that Mr Romano played a very active role in relation to that contract in 2008. Did he discuss that possibility with you prior to doing so?---I don't remember. I don't think I, I don't think I was dealing with Mr Becerra's contract at all and I don't think he, he, apart from an, he may have made a reference oh, Albert's contract's coming up and I, I don't really recall discussing it in any detail with him.

30 It would have been your view, wouldn't it, that it would have been not the correct thing to do for Mr Romano to have anything to do with the contents of Mr Becerra's contract?---Well, my understanding was that it was Mr Hullick who'd been given the specific task of, of supervising that aspect of it going back to the original direction and the original probity concern and if I just may add I'm not trying to be long winded about this but I did, I think I stand by what I said earlier that Mr Hullick was appointed in, at the very beginning to supervise the employment selection.

No, I'll just ask you to reflect on that for a moment, that's 2007. I'm now talking about 2008?---Yes, and I'm saying - - -

40 It was a different process, okay?---The process, my understanding would have been it would have Mr Hullick who would have dealt with this not Mr Romano. I don't know.

Okay. What I'm suggesting to you is that if Mr Romano played a close role in developing the terms of this contract that would be contrary to your advice, would it not?---Yes, it would have been, for the same reasons.

Because nothing would have changed between 2007 and 2008 as far as you knew?---If the, if the conflict was still current, yes.

And in, and in - - -?---And, and even if it wasn't current, the perception of the conflict would still have been apparent.

And in fact between April when the, April 2007 when the contract was signed and April 2008 the family structures had purchased a building for over the cost of \$1 million, that is, 187 Edwin Street?---I now know this to be the case.

10 But you didn't know that at the time?---No, I didn't.

And no advice, in the, in the many times you were with Mr Romano in and around April 2008 he didn't discuss the contract or its terms or his changes to the terms of the previous contract draft by Maddocks?---I'm not at all aware of any, any discussion relating to those subject matters.

You can't recall any?---Not with Mr Romano, no, and not with anyone else for that matter but no.

20 And it's possible you didn't have any or you just don't recall them?---I don't think we, I don't think we did. I don't think he raised it with me and I don't, I don't remember.

Now, did Mr Romano ever seek any advice from you in, before April, earlier in the year, in February or March 2008 about making some payments to Mr Becerra, I don't want to get into trouble from anyone, but on top of his contract, so I'll try and put it in a non-pejorative sense?---I don't recall that at all.

30 Because there was a total of 41,400 paid to Mr Becerra during the course of the 2007 contract and given Maddocks drafted the contract do you recall whether anyone approached you or through you to Mr Gardner to get some advice about whether it was possible to make these payments to Mr Becerra?---I don't remember it. They may have rung Mr Gardner's group direct, I don't remember that.

Right. But to the best of your recollection you don't recall that happening?--No, not at all. I generally was not privy to any of the financial arrangements, the detail and certainly the dollar figures and I wasn't, you  
40 know, it was none of my business to know how much someone's earning, that's what I'm saying.

I thought everything at Burwood was your business. So, just bear with me one second. I have nothing else at this stage.

ASSISTANT COMMISSIONER: Yes.

MS RONALDS: Oh, sorry, I tender that. Thank you. Thank you, Mr Baird, I'm in your debt. If I could tender the April, 2008 contract.

ASSISTANT COMMISSIONER: Oh, yes. Well, the second, the letter of appointment, 15 April, '08 is Exhibit 119.

10 **#EXHIBIT 119 - LETTER OF OFFER OF FIXED TERM  
TEMPORARY EMPLOYMENT TO MR BECERRA DATED 15  
APRIL 2008 FROM MR ROMANO**

ASSISTANT COMMISSIONER: Well, is there anybody who could deal with Mr Baird in the remaining time or who wants to?

MR NEIL: I have just a couple of matters I could deal with in a couple of minutes, Commissioner.

20 ASSISTANT COMMISSIONER: Yes, Mr Neil.

MR NEIL: Well, I'm happy to do these now. I may want to go again, but -  
- -

MR BLAKE: If I could get an Exhibit before I (not transcribable)

MS RONALDS: Mr Blake needs the Exhibits, not unreasonably.

30 MR NEIL: Is Mr Baird going to be back next week?---It's not on next week.

MS RONALDS: He'll be all alone if he is.

ASSISTANT COMMISSIONER: The week following he will be back, I believe.

MR NEIL: The week following. Can I ask a couple of things now because I may not be able to be here in the week following?

40 ASSISTANT COMMISSIONER: Okay, then.

MR NEIL: Thank you, Commissioner.

MS RONALDS: He can come next week if he loves it so much, but - - -

MR NEIL: Just a timing question, Mr Baird. As we understand it, Mr Romano made a pecuniary declaration to the Burwood Council in July, 2007?---I'm not sure of the exact date. The document has a date on it, but -  
- -

Okay. If we assume it was somewhere around there?---Yes.

10 Taking that as a time point of reference, are you able to give an indication of how, at what period before that it was that you had your discussion with him in which you said something to the effect, if in doubt, declare it?---Oh, it would've been, I'm pretty sure it would've been close to the actual date when the declaration was made, because otherwise, it just seemed as though the flow of the conversation was, like I'm putting in my annual declaration, do I have to declare this and we had a discussion as to whether he had a  
10 mandatory obligation under the act, which I was advising him.

20 Can you just briefly explain the distinction between a statutory obligation to make a pecuniary declaration under the local government act and a discretionary declaration?---There are certain matters that are mandated under the terms of the local government act in regulations, which must be declared. I haven't got the regs' in front of me but they, they're set out as prescriptive requirements, as I understand. In fact I think there's even a form that is part of the schedule to the act, that is annexed to give you a  
20 guidance as to the subject matter. And those matters are required to be declared anywhere. And, or at least not less than anywhere and you can update them at any time and you can supplement them at any time. And there is a provision within the declaration form that is a paragraph that says discretionary disclosures, I believe it's discretionary disclosures. And that's  
20 a, there is a, so if there is a doubt as to whether you need to make a declaration on a particular set of facts and circumstances, and sometimes there are grey areas and when one has complex family structures and corporate structures involved, and one is looking at testing the definition as to whether it's a requirement for the actual declaration under the act, my  
30 advice was to all of them, particularly to Pat in the circumstances, Mr Romano, in the circumstances, when I doubt, make the declaration. And, you know, you will be, I think I probably, I'm sure I would've said words, you will be applauded if you make the declaration. No one's ever going to criticise you for not making a declaration. So, that's, that was the context.

40 On the knowledge you had at the time of that conversation with Mr Romano about the pecuniary declaration, did you have sufficient information at that time to form an opinion one way or the other as to whether it was necessary for Mr Romano to make a declaration?---No, I didn't. It was a short conversation and I think he, he, I think it was whilst in the car, the first discussion.

Just on the distinction, I won't retrace the \$100,000 limit between consultant and employee in the context of Mr Becerra but is there any aspect in relation to consultant to a Council and designated person that bears upon the question of whether one might be a consultant or an employee?---Possibly but I defer to my employment law experts on that.

That's not your field of expertise?---Not that particular field.



And did you consider in your discussions with Mr Romano on the subject of the engagement on any basis of Mr Becerra considerations of designated person in the context of whether it was appropriate that he be a contractor or an employee or anything else?---I don't think I got into that level of detail.

Right. Just one other matter. Did you, when at Maddocks and also at HWL Ebsworth raise with Mr Romano from time to time your concern about the level of legal costs being incurred by Burwood Council?---Yes.

10

Can you just briefly say when in point of time you first raised this and what was the course of your communications with Mr Romano over a period on the subject?---Well, I'll endeavour to be as brief as I can. But the discussion, the dialogue concerning the level of legal fees has been a longstanding one that's occurred between Mr Romano and myself. Myself from the perspective of being the person responsible to him and, and responsible for the level of fees and also responsible, myself as responsible to maintain a proper and healthy client/solicitor relationship. When we first started receiving a flow of work from Burwood it seemed to me to be quite a significant and disproportionate flow of work having regard to the size of the Council and my experience with Councils and I've acted for many, many Councils including some of the largest if not the largest and Burwood was the second smallest and it seemed to me to be a disproportionate account having regard to the size of Burwood. Now, I heard Mr Romano's evidence this morning and I disagree with a couple of the points that he's made but I did also agree with some of the points that he made. I disagreed with his, his contention that we never had these discussions in terms of my concern about the level of the bills. We had many of those discussions, some witnessed by members of the executive and in particular Mr Hullick I recall was a witness to quite an entertaining debate that I had with Mr Romano. I was concerned that Burwood was going broke paying too many dollars for lawyers. And I said to Mr Romano in pretty friendly terms but concerned terms, I don't want to see this sort of level of exposure because it's just not sustainable. And we were talking about bills being generated for huge amounts of money and not just all being driven by the major projects side of it and that was my concern and I wanted to sit down, develop strategies to contain the cost to make the matters that are run efficiently and to try and, you know, give the best possible value for the service - - -

40

What happened?---Well, generally he was very appreciative of those concerns and we did sit down and we did develop some strategies to contain costs on what I'd call non-project items and generally we were successful but it was, but I did, I say I did raise the concern and for me it was a matter of vigilance to continually monitor these costs and to keep them relatively under control. I do agree with his, his, his concern that you, you had to see Burwood in the context of a ordinary council that was taking on some extraordinary legal matters and there were two or three significant matters

that generated multi hundreds of thousands of dollars in legal fees and those were the matters that were blowing the budget out. One, one particular matter was what was called, known as the Elsie Street dispute with a developer. There was another matter, Railway Parade, which was a significant development and dispute over a planning agreement. There was the LEP programme, which was the draft LEP for the Burwood town centre and then there was of course the Burwood town centre project and the property sales. Now, if you take those three or four matters cumulatively, and you look at those, then you see there are some very, very, large bills for huge amounts of work that were done, massive pieces of complex litigation, et cetera, et cetera so - - -

Did the bills include heavy disbursements?---Some did, yes, including counsels' fees.

Indeed, often senior counsels' fees?---Sometimes.

In this day and age regrettably, of some significant amounts?---Yes.

20 But very proper no doubt?---Yes. I'm not suggesting that they were disproportionately weighted but there were disbursements, of course, contained in the gross so, but, so I'm not disagreeing with Mr Romano's context or content in terms of having perspective but I do disagree with him in suggesting that we didn't have regular discussions and my concerns raised as to, you know, getting, getting Burwood the best value for money and not wasting on some disputations that seem to have no, no real prospects or, or seem to be perhaps unnecessary.

30 Did those discussions continue after you moved to HWL Ebsworth?---Yes, and one of the mechanisms that we put in place to try and monitor the bills was to have regular meetings of what we called the executive and have a legal progress, progress reporting mechanism and that minute of that meeting that was referred to earlier was an example of that mechanism to try and bring the executive into the loop and to have their input into the strategies to resolve legal disputes and regular reporting so that they understood what was being done by the lawyers, where we were up to and whether we were being successful or not.

40 I have nothing further, thank you, Commissioner.

ASSISTANT COMMISSIONER: Yes, thank you, Mr Neil. You've managed to take us over 4 o'clock limit, well done. All right. Well, look, I think, are we resuming on 12 of April, I believe, that's the date?

MS RONALDS: Monday the 12<sup>th</sup>. Can I just ask also those at the bar table I'd be grateful if people could either email me or call me early next week if they could approximate how long they think they'll be with the witnesses who are returning because I do need to try and plan it and try and get some,

so people can come when they're needed so I'd be grateful if people could advise me about that.

ASSISTANT COMMISSIONER: Thank you, Ms Ronalds. All right. Well, we, at this stage we'll adjourn until 12 April. Could all the parties obviously remove all their documents at this time from the room.

MS RONALDS: Oh, yes, everyone has to take their documents with them this time, you can't leave them behind.

10

ASSISTANT COMMISSIONER: Thank you.

THE WITNESS STOOD DOWN

[4.03pm

**AT 4.03pm THE MATTER WAS ADJOURNED ACCORDINGLY[4.03pm]**