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INDEPENDENT COMMISSION AGAINST CORRUPTION

THERESA HAMILTON ASSISTANT COMMISSIONER

PUBLIC HEARING

OPERATION MAGNUS

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 12 APRIL, 2010

AT 10.10AM

Any person without publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MS RONALDS: Commissioner, if I could just indicate, I've had an informal meeting with my friends, some time friends, and explained how we hoped things would go this week. I'll now do a bulk tender we'll then, then seek that we adjourn for a few minutes while we distribute the copies. So, if I could just run through them one by one.

ASSISTANT COMMISSIONER: Ah hmm.

10

MS RONALDS: I tender a statement of Matthew Walker dated 17 March, 2010. And I've indicated to my friends that this will be provided to those who want it on a disc, because it's some 500 pages long.

ASSISTANT COMMISSIONER: That will be Exhibit 120.

**#EXHIBIT 120 - STATEMENT OF MATTHEW WALKER DATED
17 MARCH 2010**

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MS RONALDS: I tender statement of Robert Cummins dated 13 November, 2009.

ASSISTANT COMMISSIONER: Exhibit 121

**#EXHIBIT 121 - STATEMENT OF ROBERT CUMMINS DATED 13
NOVEMBER 2009**

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MS RONALDS: Robert Cummins, dated 21 May, 2009.

ASSISTANT COMMISSIONER: 122.

**#EXHIBIT 122 - STATEMENT OF ROBERT CUMMINS DATED 21
MAY 2009**

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MS RONALDS: John Kavanagh dated 9 February, 2010.

ASSISTANT COMMISSIONER: 123.

**#EXHIBIT 123 - STATEMENT OF JOHN KAVANAGH DATED 9
FEBRUARY 2010**

MS RONALDS: John Kavanagh dated 19 February 2010.
ASSISTANT COMMISSIONER: 124.

**#EXHIBIT 124 - STATEMENT OF JOHN KAVANAGH DATED 19
FEBRUARY 2010**

10 MS RONALDS: John Tannous dated 2 February, 2010.
ASSISTANT COMMISSIONER: 125.

**#EXHIBIT 125 - STATEMENT OF JOHN TANNOUS DATED 2
FEBRUARY 2010**

20 MS RONALDS: Neil Whipp, W-H-I-P-P dated 28 January, 2010.
ASSISTANT COMMISSIONER: 126.

**#EXHIBIT 126 - STATEMENT OF NEIL WHIPP DATED 28
JANUARY 2010**

30 MS RONALDS: Khalid Azer, A-Z-E-R, 24 February, 2010.
ASSISTANT COMMISSIONER: 127.

**#EXHIBIT 127 - STATEMENT OF KHALED AZER DATED 24
FEBRUARY 2010**

40 MS RONALDS: Giovanni Dardano, 9 March 2010.
ASSISTANT COMMISSIONER: 128

**#EXHIBIT 128 - STATEMENT OF GIOVANNI LUIGI DARDANO
DATED 9 MARCH 2010**

MS RONALDS: Frederick Thinesh, 16 March, 2010.
ASSISTANT COMMISSIONER: 129.

**#EXHIBIT 129 - STATEMENT OF S FREDERICK THINESH
DATED 16 MARCH 2010**

MS RONALDS: Inglese, Jonn Inglese, 17 March, 2010.

ASSISTANT COMMISSIONER: 130.

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**#EXHIBIT 130 - STATEMENT OF JOHN INGLESE DATED 17
MARCH 2010**

MS RONALDS: Ammer Issa, 18 November, 2009.

ASSISTANT COMMISSIONER: 131.

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**#EXHIBIT 131 - STATEMENT OF AMMAR ISSA DATED 18
NOVEMBER 2009**

MS RONALDS: And Youssef Saad, 16 September, 2009.

ASSISTANT COMMISSIONER: 132.

30 **#EXHIBIT 132 - STATEMENT OF YOUSSEF (JOE) SAAD DATED
16 SEPTEMBER 2009**

MS RONALDS: Ian Dencker, 16 March, 2010.

ASSISTANT COMMISSIONER: 133.

40 **#EXHIBIT 133 - STATEMENT OF IAN DENCKER DATED 16
MARCH 2010**

MS RONALDS: Steven Ellul, E-L-L-U-L, 10 February, 2010.

ASSISTANT COMMISSIONER: 134.

#EXHIBIT 134 - STATEMENT OF STEPHEN ELLUL DATED 10 FEBRUARY 2010

MS RONALDS: Kim Child, 23 March, 2010.

ASSISTANT COMMISSIONER: 135.

10 **#EXHIBIT 135 - STATEMENT OF KIM CHILD DATED 23 MARCH 2010**

MS RONALDS: And if I could apply to lift the suppression order on the transcript for proceedings of Friday, 9 April, 2010 of Mrs Carmela Romano and seek that the name of the son be suppressed and the other suppression orders are reflected in the amended transcript.

20 ASSISTANT COMMISSIONER: Yes. All right. Well, I lift the suppression order except for the matters you've noted. And that will be Exhibit 136.

#EXHIBIT 136 - TRANSCRIPT OF EVIDENCE AT COMPULSORY EXAMINATION DATED 9 APRIL 2010 OF MRS CARMELLA ROMANO

30 MS RONALDS: I'll now tender a series of call charge records. I'll do them one by one for ease of transcript, for ease of reference later. If I could just use the surnames with no disrespect to the people, Giangrasso to Becerra.

ASSISTANT COMMISSIONER: 137.

#EXHIBIT 137 - CALL CHARGE RECORDS – GUISEPPE GIANGRASSO TO MANUEL ALBERT BECERRA

40 MS RONALDS: Romano to Giangrasso.

ASSISTANT COMMISSIONER: 138.

#EXHIBIT 138 - CALL CHARGE RECORDS – PAT ROMANO TO GUISEPPE GIANGRASSO

MS RONALDS: Becerra to Giangrasso.

ASSISTANT COMMISSIONER: 139.

**#EXHIBIT 139 - CALL CHARGE RECORDS – MANUAL ALBERT
BECERRA TO GUISEPPE GIANGRASSO**

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MS RONALDS: Child to Romano.

ASSISTANT COMMISSIONER: 140.

**#EXHIBIT 140 - CALL CHARGE RECORDS – STEVEN CHILD TO
PAT ROMANO**

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MS RONALDS: Child to Becerra.

ASSISTANT COMMISSIONER: 141.

**#EXHIBIT 141 - CALL CHARGE RECORDS – STEVEN CHILD TO
MANUEL ALBERT BECERRA**

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MS RONALDS: Becerra to Child.

ASSISTANT COMMISSIONER: 142.

**#EXHIBIT 142 - CALL CHARGE RECORDS – MANUAL ALBERT
BECERRA TO STEVEN CHILD**

MS RONALDS: Romano to Child.

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ASSISTANT COMMISSIONER: 143.

**#EXHIBIT 143 - CALL CHARGE RECORDS – PAT ROMANO TO
STEVEN CHILD**

MS RONALDS: And then there's a call charge record of a combination of calls 19 January, 2008 to 29 January, 2008 which has been compiled by the

Commission which we say is a series of calls about the units so it's called, its various calls relating to the Edwin Street units.

ASSISTANT COMMISSIONER: 144.

#EXHIBIT 144 - VARIOUS CALLS – 19/1/2008-29/1/2008 RELATING TO EDWIN ST UNITS

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MS RONALDS: A bundle of documents in relation to the employment of Becerra.

ASSISTANT COMMISSIONER: Exhibit 145.

#EXHIBIT 145 - BUNDLE OF DOCUMENTS RE EMPLOYMENT OF ALBERT BECERRA

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MS RONALDS: Some, a series of emails from, to and from Ms Kate McClymont, a journalist at the Sydney Morning Herald and the front two pages are her contemporaneous notes of an interview with Mr Romano on 2 April, 2009.

ASSISTANT COMMISSIONER: 146.

#EXHIBIT 146 - SERIES OF EMAILS TO MS K. MCCLYMONT AND HER CONTEMPORANEOUS NOTES OF HER INTERVIEW WITH MR ROMANO

30

MS RONALDS: The Council's discrimination et cetera policy as at September 2009.

ASSISTANT COMMISSIONER: 147.

#EXHIBIT 147 - BURWOOD COUNCIL DISCRIMINATION, HARASSMENT, BULLYING POLICY AND GRIEVANCE PROCEDURES

40

MS RONALDS: A bundle of emails about certain workers, payments to Henry Davis York.

ASSISTANT COMMISSIONER: 148.

#EXHIBIT 148 - BUNDLE OF EMAILS RELATING TO PAYMENTS TO HENRY DAVIS YORK

MS RONALDS: A letter dated 31 March, 2010 from Mr Weir, the general manager of Shellharbour City Council which relates to some evidence given by Mr Howe.

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ASSISTANT COMMISSIONER: 149.

#EXHIBIT 149 - LETTER DATED 31 MARCH 2010 FROM MR WEIR RE BURWOOD COUNCIL – PUBLIC INQUIRY

MS RONALDS: A bundle of documents relating to the employment of Mr Child.

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ASSISTANT COMMISSIONER: 150.

#EXHIBIT 150 - BUNDLE OF DOCUMENTS RELATING TO EMPLOYMENT OF MR CHILD

MS RONALDS: A bundle of documents relating to a disciplinary matter involving Mr Child and the payment of overtime in cash.

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ASSISTANT COMMISSIONER: 151.

#EXHIBIT 151 - BUNDLE OF DOCUMENTS RE CASH OVERTIME PAYMENTS TO STAFF BY STEVEN CHILD

MS RONALDS: A bundle of documents relating to the employment of Mr Giangrosso.

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ASSISTANT COMMISSIONER: 152.

#EXHIBIT 152 - BUNDLE OF DOCUMENTS RELATING TO EMPLOYMENT OF MR JOE GIAGRASSO

MS RONALDS: A bundle of documents relating to the discrimination complaint lodged by Mr Saad and matters relating thereto including Mr Child's response to that complaint.

ASSISTANT COMMISSIONER: 153.

10 **#EXHIBIT 153 - BUNDLE OF DOCUMENTS RELATING
DISCRIMINATION COMPLAINT BY MR SAAD REGARDING MR
CHILD**

MS RONALDS: A bundle of documents including in particular a statutory declaration signed by Mr Sidoti dated 8 August, 2008 and this relates to the surveillance of councillors issue and some related matters.

ASSISTANT COMMISSIONER: Exhibit 154.

20 **#EXHIBIT 154 - STATUTORY DECLARATION BY ANTHONY
JOHN SIDOTI REGARDING COUNCIL ELECTION 2008**

MS RONALDS: A bundle of documents relating to the employment of Mr Cummins.

ASSISTANT COMMISSIONER: 155.

30 **#EXHIBIT 155 - BUNDLE OF DOCUMENTS RELATING TO
EMPLOYMENT OF MR ROBERT CUMMINS**

MS RONALDS: And I think that's it.

ASSISTANT COMMISSIONER: Right.

MS RONALDS: If I could just seek your indulgence for five minutes, Commissioner, while we sort out the copies.

40

ASSISTANT COMMISSIONER: All right. We'll have a short adjournment, thank you.

SHORT ADJOURNMENT

[10.18am]

ASSISTANT COMMISSIONER: Thank you. Please be seated.

MR NEILL: Commissioner, could I seek leave? My name is Maurice Neill, to appear for Mr David Baird in lieu of Mr Peter Neill who was previously represented.

ASSISTANT COMMISSIONER: Yes, Mr Neill.

MR NEILL: Thank you.

10 MR EURELL: Commissioner, might I also seek leave? I appear for Mr Les Hullick. My name is Eurell, E-U-R-E-L-L.

ASSISTANT COMMISSIONER: Yes, Mr Eurell.

20 MR EURELL: Commissioner, there may be some matters I will need to raise with you on behalf of Mr Hullick once learned senior counsel assisting has conducted her examination. I foreshadowed those matters with her but suffice to say they concern our ability to be able to re-examine comprehensively, given the short period we've had to come up to speed on where the investigations are.

ASSISTANT COMMISSIONER: All right. Well, we will see how we go.

MS RONALDS: I've indicated to my friend that Mr Hullick will be back in final periods after this one so he doesn't need to do it today. He can do it, if all goes according to plan, on Wednesday.

ASSISTANT COMMISSIONER: All right.

30 MS RONALDS: I call Mr Baird.

ASSISTANT COMMISSIONER: Yes, Mr Baird. Please be seated. I confirm that you're still under oath and that the Section 38 declaration applies to your evidence today.

MR BAIRD: Thank you.

MS RONALDS: Mr Baird, you recall last time we were here, well, maybe you don't, but we were looking at a series of correspondence and there was a letter dated 12 April, 2007, from Lindy Richardson to various people and it said that there was a draft letter of appointment attached and that was Exhibit 117?---Draft consultancy agreement I seem to recall.

10 I'm sorry, a draft letter of appointment for Mr Becerra attached to the letter?---I, I'd have to refresh my memory.

I'll just show you Exhibit 117?---I thought it was a draft consultancy agreement.

No, this is a draft letter of appointment. See that in the first paragraph?
---Yes.

20 And I'll just show you this documents. If I can just explain that, I've pursued the matter with Maddocks and they've now produced a full copy of the letter and some handwritten notes which I'm advised are Ms Richardson's notes and then a revised draft of the contract. Just for completeness, Commissioner, if I could tender this as a replacement for 117. It's now the complete document but you didn't have, you didn't play any part in any of this, did you?---No, I did not.

Thank you. You recall, it will be taken from you, so if that could be replaced for 117.

30 ASSISTANT COMMISSIONER: Yes, yes.

MS RONALDS: And you recall that we were looking at some meetings booked, one on 14 March, 2007, and we, that was at the (not transcribable) with you, Mr Becerra and Mr Romano?---Yes, I recall that.

And I suggested to you that you had a second meeting on 19 March and you couldn't recall that?---I don't think I could recall that at the time.

40 And have you had occasion to turn your mind to the matter in the intervening 10 days or so?---Um - - -

And are you able now to recall whether there was a second meeting?---I still can't recall.

All right. If the witness could be shown Exhibit 145. To assist my friends, it looks like this. And this is a bundle of documents that relate to the employment of Mr Becerra and you'll see on the first page there's some page numbers and there's, you see on the, you see the first page there,

Mr Baird, on the third bottom, from the bottom, this is a printout of the computer version of Mr Romano's 2007 diary, the original having gone missing. Do you understand?---Yes.

And you'll see the, from the third bottom entry, it says, David Baird and Albert Becerra, et cetera, et cetera, entered on the 6th which, as I understand, the day it's created, but, starts on the 14th of the 3rd. Do you see that?
---Yes, I do recall. I - - -

10 Now, and if I could take you up to the top and if I could take you to the fifth one down. You see it says, "Appointment of principal architect for library, David Baird and LH conference room for the 19th of the 3rd". Do you see that entered Wednesday, the 14th of the 3rd?---Yes, I do.

That appears after the conclusion of the conference on the 14th. And then there's an entry for a further conference for you, Mr Hullick and Mr Romano, bearing in mind this is his diary?---Yes, I see that.

20 In the conference room, which would suggest that that was at the Council itself?---The Council Chamber, yes.

Yes. For Monday, the 19th?---Yes. I see that.

And you have no independent recollection of that meeting?---No, I don't, but I would believe that it was a meeting that most probably discussed the, effecting the earlier advice which was to have an independent procurement process and I think Mr Hullick was charged with that duty.

30 And do you recall any discussion about the conflict of interest of Mr Romano in relation to Mr Becerra occurring at that meeting, this is 19 March?---I don't have an independent recollection of it, but I would be surprised if it had not been raised because the whole reason for - - -

Well, just stop you speculating, you have no independent recollection of it occurring?---I can't recall, no.

Thank you. I have nothing further.

40 MS McDONALD: I'd like to ask some questions, Commissioner.

ASSISTANT COMMISSIONER: Yes.

MS McDONALD: I'll just take you back to before, or I'll take you back to a time before Mr Becerra's employment. As you are aware I think he was initially employed and then became a partner of Baker Kavanagh?---I believe that's the case, yes.

And to your knowledge when was the first time that Baker Kavanagh did work for the Council?---I couldn't recall that.

Would it be, is it to your knowledge that it pre-dated say the period of 2005, which is the period when these, when your advice to the Council about terminating the services of Baker Kavanagh, can you recollect at all how, how long Baker Kavanagh had been engaged by the Council at that stage? ---I really don't know, I'm sorry.

10 Were you aware at all of the involvement of Baker Kavanagh in a project to build a child care centre in 2003?---I can't remember. I really can't recall. I was aware that they had done work for Council, but when and what details, I can't recall.

But you can recall that in and around mid-2005 some advice was given by Maddocks about the ongoing civic precinct project and the involvement in particular of two firms in that project, McLachlan Lister and Baker Kavanagh and as I recall your evidence, the advice given was that their involvement should be effectively formally terminated and a tender process
20 engaged for all of the service providers involved with the process. Is that right?---That's correct. Yes.

Now, are you aware of how those two firms and perhaps others came to be involved in the project in the first place?---Not entirely. I, my recollection was that, I'm not sure how Baker Kavanagh were, were originally retained, but I, I do recall that Mr Romano had said anecdotally that he had done work with Russell Lister in the past and thought he was a very good operator and he was going to recommend that they be retained for some specific advice on the project.
30

So, are you aware that there had been, prior to your advice in 2005, a cross functional team set up to, to advise Council generally in relation to the civic project?---I think it was around about that time that the team was being recruited might be - - -

So you think that was in or around 2005?---Without checking my records, I'd have to, I'd have to really go back and have a look.

40 Can I suggest to you that there was a cross function team established in 2003 to investigate the feasibility of the project and to generally give some advice and that both of those firms were members of those teams as well as others?---That may be the case. I'd have to check the records.

Now you advised that those two, the services of those firms be terminated and that there then be a selection, a tender process?---A tender process.

And as a result of that Baker Kavanagh became a panel member?---That's my understanding.

And they were involved, were they not, in producing several concept schemes and a, and a development application for the civil precinct project, civic precinct project?---The detail of their involvement I can't recall but, yes, they were involved in the project.

And do you, are you aware of who specifically at Baker Kavanagh was, was doing the primary work?---At that stage I can't recall.

10 Are you aware or can you confirm that Baker Kavanagh up until the beginning or the end of say 2006 were engaged reasonably heavily in the, in the planning and design of the, of the project?---In 2006?

In, yes, in 2006, so close to the tender?---That appear to be true, yes.

Yeah. And can you confirm that Mr Becerra had been in effect the principal architect on that project through his involvement with Baker Kavanagh?
---Yes, my recollection was that he was the, I think they described him as the team leader or the project leader.

20

The project leader?---Mmm.

So to your knowledge he had quite a considerable expertise and knowledge of this project?---My understanding, yes.

And when was the first time that you became aware that Mr Becerra was going to be leaving Baker Kavanagh?---I, I couldn't give you an exact date, I'd have to reference the date by looking back to those advices and I think if we, I haven't got them in front of me, if I could have access to those advice
30 on or around about that time.

So these, you're talking about the advices to do with the - - -?---Recruitment of the principal architect and the letter which referred to the disclosure of the interest I think was one of the first letters. I can't, I don't have it in front of me so I don't have the exact date but around about that time.

Yes. Perhaps if the witness could be shown Exhibit 109 and 110?---And can I return 145.

40 Now, those I think are the, the tax invoices my friend had - - -?---Yes, and there's a - - -

Oh, and an email, actually 110 is irrelevant, 109 is the primary one which, which details the work done around that time. So does it, by reference to that would you agree that it's likely that you first became aware that Mr Becerra would be leaving Baker Kavanagh in, in or around early February - - -?---2007, yes.

- - - 2007. Now, in your evidence that you gave on 1 April you said that Mr Romano when he told you this expressed his concern about the Council losing the intellectual property and the resource and expertise of Mr Becerra?---Yes.

Was that his overwhelming concern do you think?---I think it'd be fair to describe it as, as the significant factor in his, which was driving his concern to retain Mr Becerra.

10 I see. And so far as you're aware, and I understand you weren't working on the project in a daily sense but do you think that was a legitimate concern? ---Well, I can't, I don't know whether I can really answer that other than to speculate and to offer an opinion.

Well, you were, can I ask you this, you were aware that he was the principal person from Baker Kavanagh doing the work?---Yes.

20 And you were aware he was described as the, as the principal architect on the project or the team leader?---Yes.

So therefore it would not seem unreasonable that the General Manager would be concerned about his loss to, to the Council?---Yes, it was, it, it seemed to be a reasonable concern, yes.

Can you tell me before, well, first of all can I ask this, the meeting that you had with Mr Becerra and Mr Romano at the Bar Cupola on 14 March - - -? ---Yes.

30 - - -and there was some notes of that shown to you. Is that the only time that you spoke with Mr Becerra about him being either, his either departure from Baker Kavanagh or his engagement on any terms by the Council?---Oh gee, I just don't remember.

40 So you have no recollection of any other times speaking directly with Mr Becerra?---Well, there would have been, but I just can't recall. And I think that there was even a, I think that we, we, at the conclusion of the process and this is my recollection is incomplete here, at the conclusion of the process I do recall there was a, a celebratory lunch which I, my recollection is that Mr Becerra paid for, which was a welcome to the team, that was - - -

So that was after it was all over. After he'd been appointed as a principal architect?---That was my recollection, yes. Because I think that the process of his appointment was, only seemed to, the process undertaken took about four to six weeks, from memory.

Can the witness please be shown Exhibit 114?---Thanks.

Now you were shown this on, this Exhibit when you gave evidence on 1 April?---Yes.

And learned counsel assisting suggested to you that it recorded advice you'd given to Mr Becerra and you disagreed?---It picks up some of the matters that I recall, but not necessarily - - -

10 Can you, well in fact, I think your evidence was, as I recall, that you advised that he needed to have his own independent legal advice?---That's correct. Yes.

Can you tell me, do you recollect at all it being discussed or you being told on that day that in fact Mr Becerra had engaged Nash O'Neill Tomko?--- Can you repeat the name?

20 Can you recall being discussed on that day that Mr Becerra had in fact engaged Nash O'Neill Tomko Lawyers to advise him in relation to his exit from the partnership of Baker Kavanagh?---I can't remember exactly, but it could've been, yes.

Can you tell me just from your knowledge of the legal profession in Sydney, are you aware of the firm of Nash O'Neill Tomko?---No.

You're not?---No.

30 I won't ask you any questions. Now, as I understand also your evidence last, or the other week was to the effect that the purpose of this meeting was to discuss first of all how the, the documents and expertise might be obtained should Albert leave, Mr Becerra leave Baker Kavanagh. Is that, is that your recollection?---My recollection was that the matter of concern for Burwood Council and the matters that I was discussing were the potential exposure to, of risk and potential legal exposure to Council in the event that there was a partnership dispute involving Mr Becerra and his former partners. And in the event that they sought to restrain him from an employment or contract arrangement with Burwood Council based upon a restraint of trade style of constraint. And that was the concern that I raised with the General Manager. That was the concern that seemed to be, what I can remember and although I didn't put it or suggest to Mrs Ronalds when she was asking me in my earlier evidence, I can say having thought about it, because I didn't even remember the meeting in any great detail, but I can say that the fact that it was at the coffee lounge downstairs is significant to me because it was my practice at the time and my recollection was that Mr Romano would often ring and say I'm downstairs, come down for a cup of coffee. Sometimes it was just to keep him company and talk about various matters, to say hello, he was a significant and very, very important client, the General Manager and Burwood Council are a very important client. But sometimes these, these meetings were a little bit on the fly, as it were. And I might've had a cup of coffee and had a chat and then left both Mr Romano

and Mr Becerra. So that's the sort of context I just wanted to add. But I don't really remember the detail to the extent that - - -

So you can't recall or, or could be denied and in fact Mr Becerra, did Mr Becerra say, I want to be engaged by Burwood Council?---I don't remember. I don't, I just can't remember the exact discussion and conversation apart from those elements that I've referred to.

10 And so he never, as least as so far as you can recall, you can't recall whether he said, you know, I want to be engaged and on these terms and any, anything like that?---I don't, I just don't remember.

And these subsequent letters, the advice that was given over that period, I think from 16 February through to the conclusion of the contract and around mid April, 2007, can you recall ever or are you aware of any document received from Mr Becerra or any communications received from Mr Becerra in which he informed you directly in any way the terms upon which he would like to be engaged by Burwood Council?---Look, I don't recall. If he did, I would have referred them to our employment people, because they were looking after that. But I don't recall that happening and I was, my recollection is I was awaiting for the outcome of the actual process for the recruitment of the architect.

20 I see. And so your instructions to the extent they were coming directly to you or so far as you're aware to any of the other staff at Maddocks, was coming primarily from Mr Hullick?---On the actual procurement, the, the hiring, I think Mr Hullick had a significant involvement. I just can't remember who was, because I think that Mrs Richardson was largely handling this matter and I don't know who she was, was speaking to at Burwood because she was having direct discussions. But generally, I think I'm aware that she was speaking to Mr Hullick and or, well, I don't know, his, his name is mentioned in dispatches, so I assume that's, that was the reason that he was having contact.

I see. I have no further questions.

ASSISTANT COMMISSIONER: Thank you Ms McDonald. Yes, does anyone else seek to examine this witness?

40 MR BLAKE: I do, Commissioner. Mr Baird, do you still Exhibit 109 in front of you?---Yes.

Now just so we don't get mixed up, I'm just wondering if the other Exhibits might be returned. I'd like you to keep 109 if you could. Could Mr Baird also be shown Exhibit 112, which I don't think was part of the Exhibits you had. Mr Baird, you'll see that Exhibit 109, the first entry is on 6 February, a reference to a Genevieve Wallis doing certain work?---Yes.

And within this bill a significant matter was the provision of the advice in Exhibit 112, the letter of advice dated 21 February, 2007, which you gave some evidence about on the last occasion?---Could, I'm sorry, could you repeat the question? I was looking at the documents.

Yes. Within the bill itself or the tax invoice, there's a reference to the provision of advice, for example, the, not for example, 21 February, 2007, you considered and settled the advice regarding consultancy for contract.
10 You see that in the bill?---Yes.

And Exhibit 112 is that advice?---Yes.

And this matter was raised by Mr Romano contacting you, do you recall that in about early February?---I believe so, yes.

And he expressed some concern to you that he'd learnt that Mr Becerra was about to leave Baker Kavanagh and he expressed his concern about the impact that would have on the library project?---Yes.
20

And he wanted to know whether there was a way of continuing Mr Becerra's involvement on the library project?---We would've explored the whole range of options in, in a discussion, yes. That could've been part of it.

And you offered or, sorry, I withdraw that. The result of that conversation was that you were retained to provide some advice about that?---Yes.

And that led to initially the letter of 21 February?---Yes, amongst other
30 advices and matters of document preparation, yes.

Now, can you please look at the second document within Exhibit 109?
---Yes.

You'll see that the second entry there, 14 March, 2007, refers to you as the professional, conferring with General Manager regarding potential in-house position for project architect and conflict and governance issues?---Yes.

2.43 hours?---Yes.
40

So that was a lengthy meeting, wasn't it?---Both, well, meeting and/or revealing documents, I think it's a combined entry.

Yes?---Yes.

And one of the issues raised at the meeting was Mr Romano's conflict of interest, wasn't it?---I have no doubt but that was raised, yes.

And the reference to conflict in the tax invoice is a reference, a shorthand reference to conflict of interest, isn't it?---I believe so, yes.

Yes. And at that meeting it was discussed that Mr Hullick would be given authority to proceed with the appointment process?---I can't recall whether it was at exactly that meeting but my understanding is Mr Hullick was appointed.

10 Yes. Well, can the witness be shown Exhibit 115. Could I just see that before he is shown? Yes, thank you?---Thank you. Yes.

And you agree with me that following the meeting on 14 March you gave some instructions to the employment team, I think that's Lindy Richardson, to provide some advice to Mr Hullick and that's what led to the sending of Exhibit 115?---That appears to be the case. I'm just trying to see whether there's a reference to a solicitor. Contact Lindy Richardson, partner Darren Gardner, your reference Les Hullick, yes. And there's some handwritten notes on the document which is not my writing. I assume it's either Lindy's or Mr Gardner's.

20

So that the process was in effect you gave some advice on 14 March about the conflict of interest. Mr Romano said it (not transcribable) to Hullick. You then went to the employment team and then they sent a letter of retainer the following day?---I think that's generally correct but to understand the complete context and the timeline, it does also refer back to the advice that, the 21 February, not the costs agreement but the question of conflict and probity considerations were also considered on 21 February but they were ongoing considerations.

30 Yes?---Yes.

Yes, thank you. And I think you said you don't have a clear recollection of the meeting of 14 March but you can confirm one that the intellectual property issues concern Mr Romano that Council would retain - - -?---Yes.

- - -access to the work that had already been undertaken by Baker Kavanagh?---Yes. The question, the critical question there was who owned the architectural drawings and the working papers.

40 Yes. And the second question was in the short term how to procure Mr Becerra's expertise. You agree with that? That's the second matter of concern?---I think the, the question, the issue was procurement of an architect who could meet the requirements, having regard to the governance rules and if that meant that Mr Becerra was a candidate, to have a process where he, he could participate for selection and if he was successful on merit he would be appointed.

And at the meeting on 14 March, do you recall there being a discussion about there was the short term issue of securing an architect to provide continuity but there was also a longer term issue of an architect for the civic precinct project that may require panels and tenders and the like?---That's probably correct but I can't remember the exact terms, as you've put it.

Yes, thank you. Now, can you just look back again if you would at the Exhibit 109. You'll see for 11 April, 2007, there's an entry in which you are referred to as the principal considering contract issues with Pat Romano.
10 Do you see that?---Yes.

And then the next entry Lindy Richardson is recorded as the principal conferring with David Baird regarding instructions and telephone attendance on Peter Macklin?----Yes, yes.

There are two entries regarding yourself, perhaps that's better to put it, considering contract issues with Pat Romano and an entry with Lindy Richardson referring to a conversation with yourself?---yes.

20 All on that day?---Yes.

Now, are you able to recall what those contractual issues were?---No.

Okay. Can I show you this document, 11 April?---Yeah, there are two emails. Which one do you want me to look at?

I think you should look at both, if you would?---Yes.

30 Does that refresh your memory now as to the matters regarding the contract issues that you discussed with Mr Romano on 11 April, 2007?---Well, not really but my role was coordination and often it meant having a joint telephone conference as is noted with, with Lindy who was the prime operative, the, the solicitor who was having the carriage of it and we would discuss over the telephone various matters and Lindy or Miss Richardson would make the notes and would probably conduct the, the discussion in terms of the substantive matters. I might have made some comment to contribute but I don't think I really had an active role in it other than to be
40 aware of what stage we were up to and it seemed from my recollection and the document also appears to confirm that by early April the question of the offer was on the table, the offer of employment or offer of contract so that's where we were up to. The process must have, the process for selection must have been completed by that time.

Yes. And you'd accept that the matters you discussed with Mrs Richardson, the contract matters, are those referred to in the email, that's likely, isn't it?
---It's, it's likely, yes.

Yes. And it's also likely that they are the matters you discussed with Mr Romano?---It could be the case but I can't remember.

And I seek to tender this document.

ASSISTANT COMMISSIONER: So what is it, an email between whom?
--- From Peter Macklin who's the manager for industrial relations employment to tanya@recruitmentedge.com, cc Pat Romano and Les Hullick.

10

So it's not an email you, you received?---That's correct, Commissioner, yes, I didn't receive it.

All right. Well, I, I mean I'll accept it as an exhibit, I'm not really sure that its provenance has been proven in any strict way but I don't know that we need to do that so that'll be Exhibit 156.

20 **#EXHIBIT 156 - EMAIL DATED 11 APRIL 2007 FROM PETER MACKLIN – SUBJECT ALBERT BECERRA**

MS RONALDS: I was intending to tender the bottom half.

ASSISTANT COMMISSIONER: I beg your pardon?

MS RONALDS: I was intending to tender the bottom half of it later but not, obviously not through this witness and indeed who seems to have nothing to do with this witness but - - -

30

ASSISTANT COMMISSIONER: All right.

MR BLAKE: Sorry, the exhibit number, Commissioner?

ASSISTANT COMMISSIONER: 156.

MR BLAKE: Thank you. Those exhibits can be returned and can Mr Baird be given Exhibit 145, please.

40

Mr Baird, do you have Exhibit 145, no, you don't?---Not yet.

ASSISTANT COMMISSIONER: We need 145, I believe it's the bundle about Mr Becerra's employment.

MS RONALDS: The witness has already had it once this morning?---I haven't got it.

MR BLAKE: I think Mr Baird is meticulous in returning documents, it's certainly not in my hands this time.

MS RONALDS: I have a spare if (not transcribable)?---I have it, yes.

MR BLAKE: Can you please go to page 23, the bottom right-hand corner?
---Is that a, an email from Don McKenzie?

MS RONALDS: No, that's just who's printed it off.

10 MR BLAKE: No, no. If you see again there are two, there are two emails -
- -?---Sorry, page 20 - - -

23?---Yeah. Well, from Pat Romano to Ian Dencker and David Baird. Is
that the one?

Yes, and then one below that sent on behalf of Ian Dencker to yourself at
9.29am?---Yes, just let me have a look.

Now, do you recall receiving each of those emails?---Oh, this is 2009.

20 It is?---I probably do recall but I can't say specifically, yes. It's June, 2009.

You had an involvement, didn't you, with the renewal of Mr Becerra's
contract in June 2009. Do you recall that?---I think I referred that matter to
Mr Belling. I was, I joined HWL on 1 June, 2009 and if this was an
employment matter I would have referred it to Mr Belling.

You'll see that the second email in time, the 10.27am, refers to the attached
document?---The second email?

30 Yes, there's two emails, there's the second in time but at the top of the page
- - -?---Yes.

- - - is 10.27am and Mr Romano refers to the attached document?---Which
is over, is that the - - -

No, no, no, no, just, just the email itself refers to the attached document?---I
can't recall what the attached document would have been.

40 Yeah. Can I show you - - -?---Yes.

You accept that the email which is just here, the 9.29am email, that the
document that is attached to it was in fact attached to it when you received
it?---Yes. This is the attachment you're referring to marked "Urgent
confidential briefing memorandum?"

Yes?---Well, that appears to be the case but I, I accept that that's the
attached document, yes.

And you became aware, didn't you, that in June of 2009 that Mr Romano had delegated the issue of any renewal of Mr Becerra's contract to Mr Dencker, didn't you?---Yes. My recollection was it was either Mr Hullick or Mr Dencker, yes.

Yes, I tender that document, Commissioner.

ASSISTANT COMMISSIONER: Yes, that will be Exhibit 157.

10

#EXHIBIT 157 - EMAIL FROM T ORIORDAN ON BEHALF OF IAN DENCKER TO DAVID BAIRD DATED 16 JUNE 2009 – SUBJECT EMPLOYMENT CONTRACT – ALBERT BECERRA

MR BLAKE That's that, and that Exhibit 145. and I think if you can go back to Exhibit 145. If you go to page 21?---Yes.

20 You'll see page 21 and 22 consists of two further emails (not transcribable) the latter in time, 17 June at 10.17am and then an earlier one of 16 June, 5.13pm, which has as a first email on the second page, page 22, the original email 16 June, 2009, at 9.29am?----That's correct. Do you want me to read them?

Yes please?---Yes.

Now, you received each of those emails, didn't you?---Yes.

30 And you can recall there was some contention as to whether Mr Becerra was properly characterised as an employee or a contractor?---Yes.

Yes, thank you. And is it your evidence that after this that Mr Belling became involved from HWL Ebsworth in dealing with the contract?---It's my recollection, yes.

Yes, thank you. Commissioner, I have five or ten minutes but I notice the time. I'm happy to proceed or - - -

40 ASSISTANT COMMISSIONER: We'll take the break.

SHORT ADJOURNMENT

[11.34am]

ASSISTANT COMMISSIONER: Yes, Mr Blake.

MR BLAKE: Mr Baird, I'd just like to take you back to the events in 2007 dealing with the appointment of Mr Becerra, not 2009, 2007 and ask you

about 19 March. Do you recall counsel assisting showed you an entry in Mr Romano's diary this morning that referred to an appointment of principal architect for library David Baird and LH. Do you recall that?---Yes, yes.

Yes. I want to suggest that there was a short meeting on 19 March, 2007 at the Council meeting?---Council Chamber.

Council Chambers?---I think I agree that that was probably the case.

10 Probably the case. And the discussion involved Mr Romano expressing some concern that he wanted a solution to allow the continuation of the library project that might be occasioned if Mr Becerra was leaving Baker Kavanagh?---My recollection is that Mr Romano would've expressed or did express concern about the impact that the, that, in any, and potential dislocation that could occur if the Council could not guarantee a continuity of input by Mr Becerra, having regard to his special knowledge of the project and the fact that he was effectively the team leader at his former partnership.

20 Yes?---That was the concern.

And I suggest that at that meeting you confirmed your earlier advice that because of Mr Romano's conflict of interest he should appoint Mr Hullick to undertake the appointment process?---I believe that's correct. Yes.

And Mr Hullick was in fact there?---Yes, he may well have been there and I certainly recall that that was a significant part of the discussion.

30 Yes. And you confirmed that you'd get Mr Darren Gardner from the employment group to handle this?---Yes.

Yes. Thank you?---Handle the employment side of it.

Yes. Correct?---Yes.

Now can Mr Baird be shown Exhibit 101, please?---Thank you.

40 Now Mr Baird, that was produced by our, "our friends at HWL Ebsworth" last week or the week before, regarding Mr Romano's parking fines. Now, did you have any involvement in the preparation of this schedule?---No, not in the sense of preparation, I was aware that there was a request that had been made to confirm this information. My understanding was that Mr Barakate, who's assisting Mr (not transcribable) sent an email to the partners and or solicitors that may have had any involvement with Burwood matters and to that extent I think I may have assisted in nominating those partners and solicitors. That was to the extent of my involvement. And the email was just to ask them whether they had had any meetings with Mr Romano during the, that period of time.

And did you have any appointments diary last year?---Which part of last year? The answer is yes, I would have but last year I changed firms and my appointment diary was electronic.

Right. Well, during that period after you commenced at HWL Ebsworth, do you have an appointments diary?---From 1 June?

10 Yes?---Yes, I'm not sure whether it had been activated electronically for the first week or so. But the answer is, yes.

So do I understand you correctly to say it was an electronic diary?
---Electronic diary.

Right. And do you know if that has been provided to the Commission?---I don't believe it has. I don't think, I don't believe I've been asked to, to present it.

20 Thank you. And when you were both at Maddocks and, and from 1 June last year at HWL Ebsworth, your practice was to have conferences at your law offices with Council officers from time to time?---Yes.

And they included executive team meetings?---Yes.

Meetings with particular officers of Council connected with the library project or the civic precincts project?---Yes, any matter that, that we were currently instructed, we had meetings with Council officers and executives, yes.

30 And I think you gave evidence earlier in this public inquiry that from time to time you had lunches with Mr Romano?---Yes.

And you described those as working lunches?---Yes.

And can you recall now whether you had a lunch with Mr Romano at the La Bora Restaurant in Barrack Street on 14 August, 2009?---I remember the restaurant and I remember that Mr Romano was there. I think Mr Barakate was there too from memory, if it was that occasion. I can't recall the - - -

40 And that you would describe as a working lunch?---I don't, I don't remember. Sometimes I just don't remember. I'd need to see some record of it. My, my general recollection is most of the times that we did eat we were always talking about Burwood Council and its various matters.

ASSISTANT COMMISSIONER: Would you have charged for attending that lunch?---Oh, for, for that lunch in particular I couldn't recall but my practice was generally not to charge for time at lunch unless it was in the office with sandwiches and we were working through documents, but I,

there were, there were sometimes exceptions to that, Commissioner, but generally not to.

MR BLAKE: Now, a further matter that arose in 2009, you became aware that workers compensations claims had been made by Mr Cummins, Mr Giangrasso and Mr Child?---In which part of 2009? Early - - -

April or May of 2009?---I was aware that there were active claims for workers compensation, yes.

10

And you were also aware that C & A Insurance Support Services Pty Limited on behalf of the insurer, StateCover Mutual Limited, requested a response from various officers of Council?---I was, I wasn't aware of the specifics of the request but I became aware of the general carriage of the workers compensation mater. I, I wasn't instructed in it directly. There was, there were separate solicitors acting for Burwood Council.

20

Yes. And you're also aware that the insurer in June in the case of Mr Child and Mr Giangrasso and May in the case of Cummins, denied liability?---The insurer denied liability, I believe that's correct, yes.

Yes. And there were some joint meetings between HWL Ebsworth and Henry Davis York to facilitate Council's ongoing response to those claims from about May 2009, weren't there?---That's correct.

And you were involved in some of those meetings?---Yes, that is correct.

30

Thank you?---So were Maddocks who were acting on the employment side of the issue, too.

Yes. I might come back to some of those meetings when you return again. I'm just going to leave it there for the moment. Now, Mr Baird, you were asked some questions about the occasion on which you introduced Mr Romano to the manager, I think, of St George Bank. Do you recall that?---I recall the questions, yes.

40

Yes. And you were aware at that stage that Mr Romano or the Romano family and two other families were contemplating purchasing an investment unit. That was the purpose of the meeting, wasn't it?---No, the, I don't recall the detail of, I, I, my recollection was that Mr Romano was considering a property investment. I don't remember that it was disclosed that he was buying with partners, he may have. I don't remember him mentioning anyone by name but the purpose was purely to introduce him to the bank people who were going to look after him. I had no interest in the matter after, after that which was the formal introduction.

All right. Is it fair to say you can't recall that, the conversation that took place with Mr Romano on that occasion?---I, that's fair to say, yes.

If Mr Romano had mentioned that Mr Becerra was involved in this proposed purchase that would have increased your existing concern in February 2007 about a possible conflict of interest, wouldn't it?---I believe it would.

Yes?---Yes.

10 Now, you were also asked some questions on the last occasion about legal fees charged by Maddocks?---Yes, I remember those.

It's fair to say that from time to time the quantum of Maddocks' legal fees was the subject of discussion between you and Mr Romano?---That's correct.

20 And there were occasions on which Mr Romano in fact challenged the quantum in a bill and you reviewed it and reduced the charges. That happened from time to time?---Yes, not in any, it did happen and it was part of my role to, to be primarily responsible for the account and it's a phenomenon that was not confined just to Mr Romano or Burwood Council.

Yes. And the, I suggest that you and Mr Romano became concerned that other members of the executive team were not fully aware of what was happening so far as the progress of legal matters in which Maddocks was providing advice?---The question is was there concern that - - -

30 Yeah, that you and Mr Romano had a joint concern about a lack of understanding within the executive team about what precisely was happening with the matters in which legal service was being provided by Maddocks?---It's a very, very general proposition. I don't know whether I can really respond to that other than to say that there was always discussion concerning how to better the service including how to better the communication between both Maddocks and prominent directors or personnel at Burwood.

And the means to better the communication was the establishment of regular meetings between yourself, when you were at Maddocks - - -?---Yes.

40 - - - and the executive team?---That's correct.

And one of the matters done in those meetings was to review the progress of the various legal matters in which Maddocks was providing legal services? ---Correct.

And from time to time that could include a review of costs or likely costs? ---Yes.

And that practice continued or has continued since you joined HWL Ebsworth in respect of the matters in which that firm has been providing legal services?---Yes, that is correct.

Yes. I have nothing further at this stage, Commissioner.

ASSISTANT COMMISSIONER: Thank you, Mr Blake. Yes, well, if there's nothing further at this stage, Mr Eurell?

MR EURELL: Thank you, Commissioner.

Mr Baird, would it be fair to say that you have given evidence that you had frequent meetings with Mr Romano?---Yes.

10

He would drop by to use your expressions?---Sometimes they were impromptu, yes.

Yes?---Unscheduled.

And they almost always concerned some sort of legal matter?---Inevitably.

Would you agree with the general proposition that the degree of legal literacy at Burwood Council in the executive was not high?---What do you mean by, I don't quite, are you suggesting that other members of the executive team were not interested or - - -

20

No, that their, the degree of legal knowledge they had about matters pertaining to the proper administration of Council was not at the high end? ---No, I, I don't think I'd agree with that, especially during the course of the practice when we had regular meetings with the Executive and that the agenda items usually canvassed all the significant matters that we were handling in terms of the - - -

30

They had to come to you for that advice, didn't they, as opposed to for example having general counsel?---When you say they had to come to me they, they didn't have to come to me, if I was instructed or the firm was instructed to, I'm not - - -

Well, they did come to you though, didn't they? You, you received a significant amount of the legal work from Burwood Council?---Well, we, we were instructed on a wide range of significant matters, yes, as - - -

40

And there was no general counsel at Burwood Council at the time was there?---No in-house general counsel, is that what you mean?

Yes?---Yes, no in-house general counsel.

And would you agree with the proposition that you substantially filled the vacuum that arose as a result of not having somebody with legal qualifications within the executive? Sorry, do you agree with that?---Well, when you say fulfil the role if you're suggesting was I a de facto general counsel, is that what you're - - -

Yes?---I, I don't know whether I would have, I would describe myself in that role. I, I saw myself in a very privileged role as a, as a trusted adviser and someone who was privy to the most serious and significant matters that Burwood were conducting.

Pat Romano has no legal qualifications, does he?---I don't believe he does. I think he's an engineer by profession.

10 Neither does Leslie Hullick?---I don't believe so.

Or Peter Macklin?---I'm not sure. I think Peter Macklin has studied some aspects of employment law but I don't believe he has a legal qualification and I remember that Mr Cummins has a legal qualification.

20 Do you agree that in terms of the appointment or engagement, there are many terms that have been used, of Albert Becerra, that the distinction between engaging him on a contractual basis, that is contract for services, as opposed to the other option of engaging him in an employment capacity, became blurred throughout this process?---Which process?

The process of taking on Albert Becerra as the principal architect?---Well, there were many, are you talking about the first process of his engagement and then the subsequent re-engagements or which, which particular - - -

30 I'm not talking about the 2008 contract, I'm talking about the first point at which he became the principal architect in 2007 and the meetings that took place envisaging that ultimate goal?---Well, I, I don't believe that there was any misunderstanding but I have to, to answer that I wasn't handling that part of the matter, it was always given to our employment lawyers who could accurately advise on those matters and I really didn't hold myself out to be an employment expert so I can't tell you yes or no other than that I referred it to the appropriate - - -

It's not a criticism of you?---No, I accept that.

40 What I'm getting at is this, do you remember ever having a conversation in which the distinction between taking on Albert Becerra as an employee as opposed to a person providing services under a contract for services was the topic of a distinct conversation?---Jeez, I can't recall a distinct conversation but I have no doubt that it would have been discussed in the context of Council's tender obligations which are referred to in the earlier advices and the question of the responsibility of Council and obligations to go to public tender in the event that there was a contractual relationship.

That is a contract for services?---I believe that's correct, that I, I, I then handed it to the employment lawyers and they were well aware of that distinction and that concern as well.

Now, that's what I'd like to ask you a few questions about for a moment, is that decision to hand it from you after having visited the procurement options, that is for contracts of services, to somebody with specialist employment law knowledge. Why was that decision taken?---Simply because I didn't feel that I had the requisite expertise to assist the client and I wanted, the, the job is to get the best advice and the experts who, who carry the field to marshal those, those minds and those resources and to, to deliver that expertise to the client and that was within another group within
10 the firm.

We'll come back to that in a moment. If I could just firstly take you though to the email that the learned senior counsel for Mr Romano took you to a few moments ago dated 17 June, 2009. Do you have that in front of you?
---No, I don't.

I believe it is - - -?---I have 101, which I'd like to return.

- - - 145 at page 21?---Sorry, now which one?
20

145 at page 21. You can see there that the email is from Mr Romano to Peter Macklin - - -?---Yes.

- - - being the HR executive at Burwood Council?---Yes.

And he cc'd to Stephen Gorry and Eric Herman. Who are those two people?---Stephen Gorry is a partner at Henry Davis York and Peter Macklin - - -

30 No, Eric Herman?---I beg your pardon, Eric Herman is, I believe the solicitor at Henry Davis York.

As well as to yourself - - -?---Yes.

- - - Mr Hullick and Mr Dencker?---Correct.

Do you know what position Mr Dencker was filling at that point in time?
---He was director of planning, but he was also, he had a dual responsibility as did Mr Hullick, which was to be acting General Manager, supervising
40 certain aspects of Council administration, particularly in the ICAC investigation.

Now, Mr Romano's email opens with the sentence, I dispute your suggestion that Mr Becerra was employed as an employee of Council?
---This is to Mr Macklin?

Yes?---Yes, I see that.

So you know what we're talking about?---Yes.

And the first dot point is, I challenge Mr Hullick as to his selection of Mr Becerra?---Yes.

At any point in time throughout your conversations with Mr Romano, did he express any form of doubt, derision, concern about the appointment of Mr Becerra to you?---I don't understand the question. In relation to what?

- 10 In relation to the selection of Mr Becerra. You see there point number 1? ---Oh, I see. Well, I can't recall him ever raising that concern because my understanding was that the process had been to appoint Mr Hullick to independently supervise the selection process.

It wasn't just Mr Hullick though was it? I mean there was a committee formed here to interview potential candidates and two were interviewed. Is that your recollection?---I've been told that. I wasn't really privy to that level of detail.

- 20 Okay. You're also aware that a recruiter was engaged, two recruiters in fact, were engaged?---Yes. Yes.

That is Recruitment Edge and Drakes?---Once again, I've been informed that, but I didn't know the exact - - -

You weren't involved at that end of the process?---Correct.

- 30 You were certainly though involved at the initial stages, that is where the consideration was given to this potential of bringing on a principal architect at Burwood Council?---Oh, yes, yes.

And would it be fair to say that Mr Romano had a significant contribution into that potential outcome? That is he raised with you the prospect of doing it and had subsequently advised you that there were people you were to go to at Council on it?---The last part of your question, I'm not sure what you mean. He raised it, as I have said.

- 40 He raised it or he embraced it?---No, no, he raised it at the very, very beginning.

Yes?---His interest was to, was expressed to me to, to absolutely guarantee Burwood Council had access to the best architectural resources. And in his view he expressed to me that, that Mr Becerra had a unique level of knowledge and input and history with the project and it would be a tragedy to lose that, that experience.

He was effectively saying to you he would like Albert Becerra to be the person. Is that what you understood it to be about? Is that what you

understood?---I'm just trying to reflect. I can't recall whether he expressly stated an open preference for Mr Becerra or whether it was implied. I don't really recall. I think it's fair to say he was sympathetic to Mr Becerra and his interests. But my concern was that he had declared an interest, a conflict of interest in the matter, therefore he had a, a preference or could perhaps be seen to be having some bias in that regard. I mean that's what conflict of interest is all about. So my, my concern was that there was to be a transparent process, an accountable and transparent process to protect him from any perception of bias or favouritism. And to guarantee that the Council had undertaken the, the correct level of probity in any search or in any appointment of an architect. So it was, I acknowledge that he, he was putting Mr Becerra forward as a candidate for that process. When I say putting him forward, I mean he was, he was going to, there was no doubt that Mr Becerra was going to apply for the job. So when I said put him forward, it wasn't Mr Romano's nomination, I probably, a poor choice of words, but - - -

Well, let's not mince words here, I mean, Mr Romano, you say was empathetic or, to Mr Becerra coming on board. He expressed a clear (not transcribable) didn't he?---Yeah, there was no doubt about that, yes.

Yes. And so when you received this email on 17 June, 2009, in which he says I challenged Mr Hullick as to his selection of Mr Becerra, did it occur to you that that must have been nonsense?---Look, I don't, I can't really recall my reaction to reading the email. It's almost eight months ago. So, it's difficult to reflect - - -

Well, (not transcribable) this question then. With the benefit of hindsight now looking back at this email, knowing what you do about Mr Romano's expressed preference for Mr Becerra, that first document can't ring true to you can it?

MR BLAKE: I object, Commissioner. This is asking Mr Baird to speculate about a conversation that he wasn't even part of.

ASSISTANT COMMISSIONER: Yes, I agree. I don't think his reaction to the email is the point. I guess, I mean, I understood from your earlier evidence that there's no doubt is that Mr Romano thought it would be beneficial to the Council to retain the knowledge that Mr Becerra had? ---Yes. Indeed.

So he never said anything that would lead you to believe he would object to Mr Becerra being appointed?---Never.

Whether or not you have any reaction to the email or not?---That's correct. Yes.

Yes. Thank you. Yes, Mr Eurell.

MR EURELL: Thank you, Commissioner?---But if I could just add, it may save time, I referred this line of inquiry to Mr Belling, who handled it. I didn't handle this aspect of it.

Do you know whether or not at the time of sending this email, Mr Romano was aware that the investigation of this Commission was underway?---By 17 June, 2009, I'm pretty sure that we all knew that the Commission were taking an active interest in the affairs of, well, I won't say the affairs of
10 Burwood Council, but I think that the, the allegations that have been published in The Sydney Morning Herald were the, were the principal concerns.

Now, can I return for a minute to who was involved in this process. Is it your, you had been, at the time of Mr Becerra being considered for the position of principal architect, you had been providing services to the Council for some time hadn't you?---Yes.

And is it your understanding that Mr Hullick's interests in having a
20 principal architect was that it would facilitate the civic centre project that he had primary responsibility for?---Mr Hullick?

Yes?---Mr Hullick's interest?

Yes. Well, Mr Hullick had responsibility, a significant responsibility for the civic project?---That's correct. Yes.

And so he required, did he not to your understanding, a principal architect in order to be able to carry the plans through. Is that what the principal
30 architect is about?---I can only assume that'd be the case, because I don't believe I, I ever really discussed that aspect with Mr Hullick. But there seemed to be a general acceptance that a principal architect position was logical and justifiable having regard to the size of the project.

The civic project?---The civic project, yeah, the library project.

Which you had strategic responsibility for?---That's correct.

Peter Macklin had responsibility for human resources at that time, didn't
40 he?---I believe that's the case, yes.

And Mr Romano was providing instructions to you about the appointment of a principal architect or discussing it with you and receiving advice about it?---Not with me, with Mr Belling.

What about before it got to Mr Belling?---Well - - -

Had you been giving some advice about whether or not - - -?---No, I didn't, that's the point. I didn't - - -

At any time?---I, I don't recall and I don't, and I've thought about this long and hard. I don't recall ever giving any employment advice.

What, what about, what about before it became employment advice? What about the time when it was considered procurement?---When it was, yeah, procurement, yes and, and general governance and probity, yes, but - - -

10

You would have been having discussions about taking on a principal architect as part of that advice, would - - -?---Yes, but not in the employment law context.

So and you were having those discussions about whether or not a principal architect would be taken on by the Council with Mr Romano without either Mr Hullick or Mr Macklin present on occasion, weren't you?

20 MR BLAKE: Well, I object to that. That's (not transcribable) the evidence this morning, the 19th of March for example.

MR EURELL: I said on occasions.

ASSISTANT COMMISSIONER: Yes, it's the question, the question, as I understand it, should be limited to on occasions were you having discussions about taking on a principal architect with Mr Romano without the other two?---I don't believe that there was a substantive discussion about it because of Mr Romano's sensitivity to the fact that he had an interest which he volunteered at many, many meetings and reinforced. So - - -

30

MR EURELL: What do you mean by substantive discussions?---Oh, he might've just asked in passing how's it all going, how is Les and, and Ian moving it through? From the perspective of progress reporting, how's it all going, I want this wrapped up soon because he, he wanted matters wrapped up quickly so in that context I don't doubt he might've raised it but in terms of the substantive detail I understood that Mr Dencker and Mr Hullick were the main proponents, the main actors in that part.

40 And as part of the advice you said you gave regarding contractor services or the procurement aspects, were you informed at some point that it was contemplated taking on a principal architect and paying them \$140,000 per annum?---Oh, I don't remember the dollar figure other than in the context of trying to work out was there going to be a breach of the tender threshold.

Yes?---I don't recall, you know, are we going to pay him X dollars or Y dollars. I don't recall that level of detail.

Wasn't that really a critical requirement in the context of the advice you were given, that is, whether or not a person could be taken on as a contract for services without the tender process?---Well, critical in the sense that one was advising the Council of their obligations, statutory obligations and in the context of a contract for services there was a statutory threshold for tender, absolutely. It's - - -

What's that threshold?---At the time it was, I can't recall. I think it's in the advice but I, it was either a 100,00 or a 150,000, I can't recall.

10

See, the Local Government Regulation provides that up to \$150,000 - - -? ---The Regulation overrules the, the Act. The Act refers to \$100,000 or, or as referred to in the Regulation.

And you, you can't be certain as to whether or not that applied at the time. Was that, I would've thought that was the critical aspect of the advice you were giving?---Oh, I can't remember the, I don't have the advice in front of me, that's what I'm saying. I know it's referred to in the advice.

20

If the witness could be shown Exhibit 112, please?---Thank you.

Mr Baird, this is, do you agree that this is the advice we're talking about? ---This is a draft advice that is dated 21 February, 2007.

Yes. And who is it addressed to?---It's addressed to Mr Romano but all correspondence is addressed to the General Manager.

When you say all correspondence, are you saying all correspondence coming from your office?---Yes.

30

Yes?---It was my practice.

Sorry?---That was my practice. This, this particular advice was probably addressed to him in his capacity as General Manager.

Yes, and it says there, doesn't it, in 1.3, that the threshold, as far as you're concerned at the time this tender process was \$100,000?---That's correct.

40

And to your mind that precludes the possibility, doesn't it, that Mr Becerra could've been taken on as the principal architect through any other mechanism other than a contract of employment?---I don't think it's as subtle as that. I mean, the, the paragraphs in the executive summary 3, 4 and 5 talk about if, if Council anticipates the services so this is advice if, if you want to do this and it exceeds 100,000, you've got to go to tender but paragraph 5 and I don't know whether I, I have referred to this in evidence before, before you were here. The last sentence in paragraph 5, 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. In

other words, in any event we were suggesting even if it was less than the threshold, because it was such an important project and because of the probity considerations in paragraphs 17 and 18 where we state that the General manager has declared a conflict of interest, that it was best from a public perception and accountability perspective, that there be no doubts left in, in, in the community's mind that this was an open process. I didn't want council criticised for a decision that could be based on the perception of some sort of bias or favour being afforded Mr Becerra.

10 And so what ended up happening in terms of giving efficacy to that advice, those calling for expressions of interest for architectural services you're aware that went to, two recruiting firms were asked to, I withdraw that. It was ultimately decided that it be by way of contract of employment. Did you have nothing to do with that at all?---I don't think I did. I think that the, at least when I say I don't think I did, I don't, I didn't advise on that aspect of it. This advice was (not transcribable) in principal, as I recall. Mr Romano appointed Mr Hullick to supervise the process. Mr Hullick undertook that process. I wasn't privy to the detail of it. I, it's been said to me that various personnel agencies were, were required to submit
20 candidates, et cetera, and those candidates were assessed and that Mr Becerra also applied for the position. I wasn't privy to that other than to know that at the end of that process Mr Becerra had been considered the successful candidate. Then in terms of the actual documentation, that was handled by my employment people and, and as instructed, as I understand by Mr Macklin and Mr Hullick.

Did, did you see the advice in Exhibit 117 at any point in time, either before or shortly after it went to Council, that is, the advice regarding employment of in-house architectural manager?---Is that the one prepared by
30 Ms Richardson?

By Darren Gardner - - -?---And Miss - - -

- - - and Miss Richardson?---I would have probably seen it just as a matter of this advice that was going out.

Yes?---But Mr Gardner was a partner, is a partner at Maddocks and I accepted his, his, his conduct of the matter was, being a partner, was something that I would not have been in any, what's, I would have accepted
40 my partner's work on the face of it as, as being appropriately and professionally discharged so it, it wouldn't have raised a huge - - -

I'm not suggesting to you that you would have supervised another partner within Maddocks. What I'm asking is in the context of the legal relationship you had with Burwood Council at the time, did you have a look at the contract of employment that had eventually been drafted after you had given advice that that - - -?---I don't think I did.

No?---But Mr Gardner was privy and, and was aware of the constraints.

Who is Gretchen Shirm?---She's a solicitor that was employed at Maddocks in the governance group.

And do you have Exhibit 109 with you?---No, I don't.

Could the witness be shown Exhibit 109?---Thanks, 109, yes.

10 Do you see there, it's page 4, it's the first entry dated 13 March, 2007?
---Page, 13 March, yes.

There's an entry there saying that Gretchen Shirm had drafted an email to Pat Romano regarding architectural services advice - - -?---Yes.

- - - and consultancy agreement?---Yes.

20 Do you know what that consultancy agreement was?---My recollection was that at that stage there was a, a request by, I think it was Mr Romano, just to see a standard consultancy or, a standard contract just so he could familiarise himself with the type of document that might be the subject of, of anybody being appointed. That was my recollection. If, if Council were going to appoint an external architect what's the type of standard agreements that would cover those terms and conditions.

And consultancy agreement, would you agree, contemplates a type of contract for services - - -?---Contract, yes, yes.

30 - - - that might come under the tender process?---Well, it could be a consultancy agreement for an amount less than the threshold, yes, but - - -

And if it exceeded the threshold it would have to go to tender and that would be a matter you would give advice on?---Correct, correct.

Now, the day after on 14 March, 2007 you see there there's an entry for Gretchen Shirm conferring with you regarding probity issues in employing an architect?---That's right - - -

40 And - - -?--- - - - because when, as, as the instructions crystallised and as we understood the position to develop it became apparent to me that what we had was a potential for concern in terms of Mr Romano's conflict and it had to be managed, conflict of interest.

But what, what I'm driving at here is that the day after there's an entry concerning a consultancy agreement the structure of this principal architect had moved from a consultant to an employee?---No, no, no, no. I understand what you're suggesting and on the face of it it's probably a valid proposition but the what actually occurred and bearing in mind that the

narrative doesn't, you know, it's, it's only a summary, a capsule of what occurred, the inquiry from my recollection was very, very short, as you can see by the, the 13 March time entry, it's .16, so that's a very short attendance and indicative that not a lot of discussion or resource time was utilised, it was merely to answer the general inquiry, if we're going to have a contract for this type of consultancy what's the standard document, do you have a precedent document I can have a look at, I think that it was as simple as that. Then when we got into the detailed assessment of understanding the client's concerns and getting instructions and when Mr Romano confirmed his conflict of interest and when I was discussing it with him - - -

When did that happen?---Well, this would have been on the 14th, you see "Conferring with General Manager regarding potential in-house position and conflict and governance issues."

Is that 14 March?---Yes, 14 March, I beg your pardon.

Yes?---The day after the first attendance. Then, then it's, things became clear to me that we needed to provide advice on the obligations and indeed obstacles that might arise and statutory issues that might arise if the client wished to proceed with an in-house position for architect, an in-house architectural principal.

Now, do you say it was at that point Mr Romano nominated Mr Hullick as the person to whom you should go to get instructions in relation to the principal architect?---That I, I'm not sure whether it happened on that date. I know that there was a date where, I can't remember, a date was put to me this morning where Mr Hullick was in attendance and I think that was the date that Mr Romano appointed him. I just can't remember - - -

ASSISTANT COMMISSIONER: That was 19 March I believe it was put to you by Mr Blake?---Yes. I think that was the date.

A meeting on 19 March with Mr Hullick and you?---Yes, thank you, Commissioner. I think that was the date but these, these were, these matters were being considered at the time.

MR EURELL: Yes. Yet after 19 March, 2007 you continued to confer both with the employment lawyers at Maddocks and Mr Romano in relation to the structure of this contract didn't you?---I don't think I did.

Well, if you go to the entry on this, on the same page, on 11 April, 2007 you have charged for considering contract issues - - -?---Hold on, let me - - -

- - - with Pat Romano and Lindy Richardson?---11 April?

April, 2007.

ASSISTANT COMMISSIONER: Does that .40 mean 40 minutes?

MR EURELL: Yes, Commissioner. Point four of an hour?---Point four of an hour.

ASSISTANT COMMISSIONER: So what does that mean, sorry, 15 minutes?---24 minutes.

24 minutes, okay.

10

MS RONALDS: I think they're six minute units?---I don't remember what I would have discussed in relation to that entry other than what he generally states but it may not have been, we, we may have been discussing - - -

MR EURELL: Contract issues.

20

ASSISTANT COMMISSIONER: Well, the bill's headed "Appointment of an in-house architectural manager so I presume all of these entries relate to discussions about that topic?---Yes. I can't say anything other than that. I just don't remember.

And then there's another entry further down, on 11 April, another discussion with Mr Romano alone it appears - - -?---Yes.

- - - for point four, whatever that is, 24 minutes?---Yes.

So they're quite lengthy discussions, aren't they?---Yes.

30

So it doesn't really appear he stood aside very much from this process at all?---On the - - -

Except on paper perhaps?---Well, on the procurement side of it he was, as I understood it, standing aside but whether there were technical discussions on contract issues that were unrelated and whether he wanted to clarify a particular concern on a contract issue I just don't recall but I, I understand the point.

40

MR EURELL: Yes, the point, yes, the point I'm driving at here is that Mr Romano did not walk away from the process. It's not, any suggestion that he might have left it with Mr Hullick and walked away can't be correct, can it?---No, not, not necessarily and I'm not trying to defend or to, to deflect any criticism, I'm just suggesting that the process of procurement was in Mr Hullick's hands and that the elements, the building blocks of a contract may have been the issues that Mr Romano was referring to on that point. I don't know. He, he may have called which he often did to talk to Ms Richardson and I was called into a meeting with, with her, she was just around the corner and sometimes the message would come that Mr Romano's on the phone with Lindy, could I come down, it could have

been that type of issue and she may have been engaged in discussing the terms and conditions of a contract, I just don't recall.

Well, this is a contract for the appointment of an in-house architectural manager. That's the file name?---Yes, I know. I understand that, I understand that. But we were talking about the, the preparation of a document which was to be a contract with a person designated architectural manager. Not Mr Becerra, but the candidate who was going to be successful. Do you see my distinction? This was - - -

10

I'm not questioning you about whether or not this involved Mr Becerra. What I'm asking you is whether any propositions by Mr Romano that you simply left this in the hands of Mr Hullick and walked away from it can be correct in circumstances where employment lawyers are coming to you (not transcribable) into phone calls with the General Manager of Burwood Council and there's not one, but multiple entries tending to suggest here that Mr Romano is still heavily involved in that process?---In the, well, he was involved in, in discussions relating to the contract for a successful candidate. He was not, as far as I was aware, involved in the procurement process, which was to deliver the best candidate to Burwood.

20

You see, you - - ?---That's the distinction I'm seeking to draw.

You were also conferring with Mr Macklin, the Human Resources manager about this contract weren't you?---Yes. Yes.

And specifically were you going to him on questions of the terms of the contract?---The terms of a contract to be offered.

30

Yes?---But not to Mr Becerra, but a contract to be offered to the successful candidate.

And if Mr Hullick had been copied in on any of these phone calls, that is had they been telephone conferences, that would be recorded in this invoice wouldn't it?---Well, you would, that would be my expectation, yes.

40

ASSISTANT COMMISSIONER: Mr Baird, I note in Exhibit 117, the next day, 12 April, a letter was sent to Les, Peter and Pat with the draft letter of appointment for Mr Becerra. So it does appear that the discussions on 11 April would not have been general, perhaps, because it seems at that stage the process was well under way to appoint Mr Becerra?---I think I mentioned that earlier, Commissioner, that I wasn't, I couldn't confirm the exact date when they had made the selection of the successful candidate, but it seems on or about that time that Mr Becerra had been selected.

Well certainly this, this letter from Maddocks enclosing the draft letter of appointment is dated 12 April?---Yes.

And it is addressed to Les, Peter and Pat?---Yes.

So Mr Romano was included in that - - -?---It would, it would appear, yes. Yes, that the selection process had completed. That Mr Becerra had been selected as the successful candidate and here's the document and it's for review by those three parties.

10 Yes. So your point is more that he was not to take part in the actual selection process?---Yes, yes.

Not so much the contractual side of it?---Yes. That's exactly the point I'm trying to make.

Yes.

MR EURELL: Because, would you agree, I'll have to correct this date at a later stage, I've only been (not transcribable) for forty eight hours, but as I recall the interview in which Albert Becerra was, after which he was, decided that he would be the nominee to (not transcribable) took place on
20 about 7 April didn't it?---I just don't remember. It may have. I don't think I was part of that.

All right. But you are aware that that process did not involve Mr Hullick alone. That that employment process involved two recruiters and a panel of three directors at the Council?---I don't know that, but I have been told that and I accept that was the position.

30 Commissioner, I may have some further questions for this witness at a future stage.

ASSISTANT COMMISSIONER: Yes, Mr Eurell. Well, at this stage, oh, sorry, Ms Ronalds.

MS RONALDS: I do have a question. So you were by July, 2009 acting, you were at that stage acting for the Council in relation to this Commission's inquiries?---Yes.

40 And do you recall an occasion upon which Mr Kurd and Mr Browning visited you. You know who they are? He's pointing to them, but - - -?---I do know who they are and - - -

Do you recall them visiting you at your office at 10.35 on 10 June, 2009?---I don't remember it explicitly, but I'm sure they did, if you're telling me.

And they handed you a document which I'll show you?---Were they the section 22 notices?

The first one?---The first ones. Yes, I do remember that and they, I think that one of the two gentlemen even rang to say that they were coming over, was it convenient? And I said, by all means. We had instructions to accept service.

Right. And what I'm suggesting to you is this is the first section 22 notice served by this Commission on Burwood Council?---That is probably correct, but, I don't doubt that, yes.

10 And you'll see there's a stamp at the top which wouldn't of been on your copy, but it's the Commission's record that records it was served on David Baird, you'd agree that'd be you?---Yes.

There's a status, Mr. Then it says at 10.35am on 10/6/09. Do you see that? ---Yes. I do remember them coming, I just - - -

And, but you'd accept that they would be accurate in recording, if they recorded it was 10.35 on 10 June, that's when it happened?---I have no doubt as to the accuracy of what you're suggesting, because I recall that we
20 sat down and I think I even offered them a cup of tea.

And what did you do upon receipt of this section 22 notice?---I think I immediately advised, well we were anticipating it, I think there was - - -

I'm asking, I'm not asking you what you were thinking about, I'm asking you what you did immediately upon receipt of this notice?---But I was answering, because we were anticipating it, we knew it was coming, I immediately rang to confirm, I think I rang Mr Hullick or Mr Dencker and I said, well, I've finally, I've got the document. I'm, I think we sent it to
30 Burwood electronically immediately.

And you would've sent it to Mr Romano?---I don't, I don't remember. I don't, I think it just went to Mr Hullick and Mr Dencker. I don't remember whether it went to Mr Romano at that particular stage.

Do you recall having a discussion with Mr Romano about this first section 22 notice on or about 10 June, after you'd read it?---I could have. I just don't remember.

40 You have no recollection?---No. I could have, I could have spoken to him because I know he was extremely concerned about the whole issue. And we were trying to understand the compass, the extent of the, the investigation. And I think he was also, I think I, my recollection was that he was principally concerned whether he was the subject of the investigation. My, my recollection was that up until that time, it had not been confirmed one way or another whether he was the subject of the investigation. And there was a reason for our concern, when I say our, Mr Hullick, Mr Dencker and myself, because, and Mr Romano, the terms of the Council's insurance

required there to be confirmation that an individual was subject to an investigation by an agency before that individual would qualify for reimbursement of or contribution towards their legal fees in defending themselves. So that was another matter that was of concern. But I can't remember exactly the, the sequence of events. But it would've been generally as I've indicated.

10 Well, what I'm suggesting to you is this, that fairly shortly after you received it and sent it on to the Council, you had a conversation with Mr Romano and he was concerned about the extent of the section 22 notice wasn't he?---That's probably correct. Yes.

And the issues being traversed in the section 22 notice?---Yes. That's probably correct.

And you'd agree with me that paragraph 12 documents relating to the appointment, retention and payments of Becerra (not transcribable) first name - - -?---Yes.

20 - - - is the matter that we've been traversing this morning?---Yes.

That's what you understand when you read that don't you?---I do, yes.

And so that that matter was one of the issues in the 25 paragraphs raised in the section 22 notice?---That's correct.

Thank you. If I could tender that notice. I don't have any copies, I'll provide some.

30 ASSISTANT COMMISSIONER: Yes. That notice will be Exhibit 158.

#EXHIBIT 158 - COPY OF NOTICE TO ATTEND AND PRODUCE DOCUMENTS TO BURWOOD COUNCIL FROM THE ICAC DATED 9th JUNE 2009

40 MS RONALDS: I don't have anything further for this witness at the moment. He is required later in the week.

ASSISTANT COMMISSIONER: Yes. Mr Baird, you are stood down for the time being.

<WITNESS STOOD DOWN

[1.01PM]

ASSISTANT COMMISSIONER: Thank you. And - - -

MS RONALDS: I was about to call Mr Hullick, but - - -

ASSISTANT COMMISSIONER: Yes. No, I think that brings us to the adjournment, so we will resume at 2 o'clock. Thank you.

LUNCHEON ADJOURNMENT

[1.01pm]